

**PRESIDING OFFICER'S DECISION (Mailed 12/22/99)**

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

The Utility Consumers' Action Network,

Complainant,

vs.

Pacific Bell (U 1001 C),

Defendant.

Case 98-04-004  
(Filed April 6, 1998)

Case 98-06-003  
(Filed June 1, 1998)

Case 98-06-027  
(Filed June 8, 1998)

Case 98-06-049  
(Filed June 24, 1998)

Investigation 90-02-047  
(Filed February 23, 1990)

And Related Matters.

**FINAL OPINION ON PACIFIC BELL'S  
MARKETING PRACTICES AND STRATEGIES**

(Appearances are listed in Attachment C.)

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## FINAL OPINION

### 1. Summary

In this decision we address a number of Pacific Bell's techniques for marketing its optional services to residential customers. We find that some of these techniques violate statutory and decisional standards and that some do not. Although marketing is the overarching theme, each individual issue is fact intensive and we address each separately and in the context of the applicable standards. It is not our purpose in this decision to limit the means Pacific Bell chooses to market its products and services. Our only purpose is to apply the statutory and decisional standards to Pacific Bell's actions.

In this decision we find that Pacific Bell failed to sufficiently inform customers regarding (1) the number blocking options to prevent a caller's number from being displayed on a Caller ID device, and (2) the two inside wire maintenance plans it offers. We also find that Pacific Bell's marketing policy of sequentially offering packages of services in descending order of price fails to sufficiently inform customers because they are not told of the lesser priced package unless they refuse the more expensive option. We determine that unlimited potential sales commissions for service representatives is not consistent with the incentive compensation guidelines we have previously stated with regard to Pacific Bell. We hold that Pacific Bell may not use the Universal Lifeline Telephone Service subsidy program as a link to market other optional services. In its marketing of "The Basics," a package of optional services, we conclude that the name inaccurately suggests a relationship with basic telephone service.

We find in favor of Pacific Bell on several issues raised by complainants. First, no law or decision precludes customers who do not wish to receive calls from lines with numbers blocked from Caller ID from rejecting such calls and

purchasing services from Pacific Bell to prevent such calls from being presented to their telephone. This service is called Anonymous Call Rejection.

Second, no law or decision prohibits Pacific Bell from requiring all service representatives to offer optional services on every call, so long as the call answering standards of General Order (GO) 133-B are met.

Third, the statutory and decisional standards that apply to Pacific Bell's marketing efforts make no distinctions based on ethnicity or duration of residency in this country. Hence, the request of some complainants that we hold Pacific Bell to a different disclosure standard for certain groups of customers is denied.

Finally, although Pacific Bell is subject to stringent federal and state regulations regarding the privacy of customers' information, those standards do not prevent Pacific Bell from providing customer information, subject to appropriate security measures, to its agents and affiliates for Pacific Bell marketing purposes.

Wide-ranging efforts by Pacific Bell are required to remedy the violations we find. Unfortunately, the record does not contain detailed remedial proposals, so we direct the parties to prepare such proposals for our further consideration. These proposals should address customer notification and refunds, including customer outreach plans to ensure that Pacific Bell reaches as many customers as possible. We direct Pacific Bell to make all necessary refunds directly to customers and to provide sufficient funds for the customer outreach effort.

In addition to these actions directed at customer refunds, we order Pacific Bell to undertake a broad customer education effort, similar to that ordered in response to Pacific Bell's 1986 marketing policies and our more recent decision approving a settlement with GTE California. The funding level of this effort shall be \$24 million.

Finally, we find that many of the marketing abuses complained of in this proceeding closely resemble the marketing tactics the Commission found violated statutes and regulations in Pacific Bell's 1986 marketing abuse proceeding. In light of the recidivist nature of Pacific Bell's actions, we also impose a fine of \$20 million, half of which shall be immediately payable to the State General Fund. The nature and scope of Pacific Bell's marketing abuses would justify an even larger fine, but we recognize in mitigation that Pacific Bell has generally shown candor and cooperation in this proceeding, and has already taken steps to correct some of the abuses. We also stay \$10 million, and may ultimately rescind that amount, depending on Pacific Bell's cooperation with the remedial steps ordered in this decision.

## **2. Procedural History**

This proceeding consolidates a petition by the Office of Ratepayer Advocates (ORA) and complaints against Pacific Bell by the Utility Consumers' Action Network (UCAN), the Greenlining Institute and the Latino Issues Forum (Greenlining), and the Telecommunications Union, California Local 103, International Federation of Professional and Technical Engineers, AFL-CIO (TIU). The petition and complaints allege that Pacific Bell has violated various statutes and Commission orders. The complaints specifically allege that Pacific Bell was

- persuading customers to switch from complete Caller ID blocking to selective blocking by providing incomplete and misleading information about the service and the level of privacy protection it provided,
- marketing packages of services under the name "The Basics" and the "Basics Plus" which suggest that the services are basic telephone service rather than a package of optional features,

- offering the most expensive inside wire repair service first and only telling customers of a lower-priced option if they reject the first,
- unlawfully using and disclosing Customer Proprietary Network Information, and
- employing sales programs and practices which operated to the detriment of customer service and quality customer information.<sup>1</sup>

On July 7, 1998, the Assigned Commissioner and Administrative Law Judge (ALJ) issued a ruling determining the scope of the proceeding and designating the ALJ as the presiding officer.

To address complainants' allegations in an efficient manner, the Assigned Commissioner and ALJ directed the parties to participate in a collaborative process to discover and potentially agree upon the basic facts that underlie these complaints. To facilitate this effort, Pacific Bell agreed to produce testimony and produce witnesses for deposition on a list of subjects identified by complainants, rather than the usual course of complainants producing the first round of testimony. On August 21, 1998, Pacific Bell produced testimony by four witnesses. The parties continued discovery and negotiations regarding a potential factual stipulation, and on October 30, 1998, the parties filed a statement of undisputed facts.

ORA filed its statement of disputed facts, the declaration of its witness, Kelly Boyd, and its report on Pacific Bell's marketing practices. On November 23, 1998, Greenlining and UCAN submitted their direct testimony.

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<sup>1</sup> Two other issues were eliminated from the proceeding. ORA decided not to pursue the issue it raised regarding screening for Universal Lifeline Service, and issues which arose under collective bargaining agreements were eliminated by earlier ruling.

Pacific Bell submitted rebuttal testimony on December 15, 1998, with surrebuttal testimony following on December 23, 1998. Cross-examination of witnesses occurred on January 21 through 27, 1999. Late-filed exhibits 90-102 were added to the evidentiary record by ALJ ruling on March 11, 1999. The statutory deadline to conclude the proceeding was extended by Decision (D.) 99-04-005. The proceeding was submitted with the filing of briefs on March 26, 1999.

## **2.1 Requests to Reopen The Record**

### **2.1.1 Wallace Roberts**

On July 22, 1999, Intervenor Wallace Roberts submitted a letter, copied to all parties, in which he alleged that Pacific Bell had transferred his local service from another provider back to Pacific Bell without his authorization. He submitted another letter on July 24, 1999, where he suggested that the unauthorized transfer was in retribution for his request that Pacific Bell not contact him about switching back. Roberts requested that his allegations be investigated as part of this case.

On July 30, 1999, Pacific Bell provided a letter in which it explained that Roberts' unauthorized transfer had been caused by clerical error and that steps had been taken to ensure that no further such errors occur. Pacific Bell opposed reopening the record.

### **2.1.2 TIU**

On September 9, 1999, TIU filed its Petition to Set Aside Submission and Reopen the Proceeding for the Taking of Additional Evidence. TIU stated that Pacific Bell had unilaterally canceled agreements with TIU that eliminated the requirement to offer certain services on every call and to limit supervisory monitoring. The agreements are included in the evidentiary record as Exhibits 44 and 45.



On October 1, 1999, Pacific Bell filed its response in which it stated that the petition lacked merit because the record shows that the agreement could be canceled at any time, and any questions regarding the legality of the cancellation would be better addressed in the collective bargaining process.

### **2.1.3 Resolution of Requests**

Rule 84 of the Rules of Practice and Procedure allows a party to file a Petition to Set Aside Submission. Such a petition, however, must supply facts demonstrating a change in law or fact since submission which would justify re-opening the record. Here, Roberts alleges that Pacific Bell has violated the anti-slamming statute, § 2889.5.<sup>2</sup> This issue is unrelated to the facts and law currently at issue in this proceeding. Should Roberts wish to pursue this issue, he may do so through the Commission's complaint process.

TIU claims that Pacific Bell's cancellation of a particular agreement with TIU affects the facts in this case. Subsequent cancellation does affect the fact that the agreements were in place during a portion of the time relevant to this proceeding. Should TIU wish to challenge Pacific Bell's right to cancel the agreements, TIU may do so through the collective bargaining process or other appropriate means.

For the reasons stated above, the Roberts request and TIU's petition are denied.

### **3. Disputed Material Facts**

Despite the volume of testimony, few disputed issues of material fact exist in this record. This is not surprising as Pacific Bell's marketing and customer

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<sup>2</sup> Unless otherwise noted, all citations are to the California Public Utilities Code.

service efforts are large-scale public activities that are readily observable and thus difficult to call into dispute. Instead, the focus of the proceeding is the legal effect of Pacific Bell's largely undisputed actions. The parties' jointly filed statement of undisputed facts covers many, but not all, of the circumstances in this proceeding. Consequently, much of the prepared written testimony consists of legal and policy argument.

Rather than reciting a detailed summary of the evidence presented by each party, the following sections of this decision rely as much as possible on the agreed-upon statement of undisputed facts as well as facts which are not contested in the record. Thus, where factual assertions are made without attribution, these facts are considered undisputed. Where conflicting assertions are made, they are attributed to the sponsoring parties.

#### **4. Witnesses Presented**

##### **4.1 UCAN**

UCAN's executive director, Michael Shames, testified regarding the consumer impact of Pacific Bell's sales and marketing plans. UCAN witnesses Charles Carbone and Danial Saban testified about contacts with Pacific Bell's customer service representatives. UCAN witnesses Patricia Greenan and Janet Spector provided their observations from their jobs as Pacific Bell employees. UCAN's final witness was Beth Givens, founder and director of the Privacy Rights Clearinghouse.

##### **4.2 Greenlining**

Guillermo Rodriguez, Latino Issues Forum board member, testified on Latino customers' reaction to Pacific Bell's marketing. Michael Phillips, former banking executive and author of numerous books on finance, economics, business development, and marketing, analyzed Pacific Bell's marketing and

outreach programs with respect to optional products, such as Caller ID and Anonymous Call Rejection, and packages of enhanced services known as “The Basics,” “The Basics Plus,” and “The Essentials.” Roxanne Figueroa, Paul Correa, and Jose Gutierrez testified on their respective phone service orders. Greenlining’s executive director, John Gamboa, testified that “high-pressure sales tactics exploit the fact that limited English speaking customers are eager to please and complain far less frequently than fluent English speakers.”

Henry Der testified on the effect of Pacific Bell’s marketing practices on the Chinese community. Nghia Tran testified on the effect of Pacific Bell’s marketing practices on the Vietnamese community. Bill Ong Hing, professor of immigration law, explained immigrant communities’ vulnerability to high-pressure sales techniques.

#### **4.3 ORA**

Kelly Boyd, a public utilities regulatory analyst employed by ORA, testified that she participated in monitoring of customer telephone calls to Pacific Bell. Based on these phone calls, she concluded that the pressure Pacific Bell has put on its service representatives to sell products puts the customers’ service, privacy, and potentially, safety, at risk.

#### **4.4 TIU**

TIU’s president, Alicia Ribeiro, testified that after Pacific Bell merged with SBC, the company began implementing a new sales policy and program which emphasizes sales over service and fundamentally changes the essential function of the service representative position from customer service to sales. Sharon Bogisich, Pacific Bell service representative, testified about the new requirements for her job. Specifically, she must now offer certain services on every call, regardless of customer need, the highest cost packages of services

first; overcome customer objections to those offers; fall back to lower cost packages only after customer rejection; and observe prohibitions and restrictions on disclosure of relevant and complete information. Bogisich believes these job requirements place the service representative in an adversary role to the customer. Carrie Pelinka and Rose De Trinidad, Pacific Bell service representatives, provided testimony that echoed Bogisich's. Diane Greene, Pacific Bell service representative currently assigned to the Bay Customer Appeals Team, concluded that the package sales complaints she handles are not the result of mistakes by the customers, but are due to customers simply not knowing that their account has been charged for several services.

#### **4.5 Pacific Bell**

Jewell Stoddard, director of Pacific Bell's Consumer Markets Group, presented testimony on service representative practices and procedures. Mark Pitchford, vice president of marketing for SBC Services, Inc., offered testimony to rebut complainants' concerns regarding marketing practices for Caller ID, Blocking, and the use of customer information. Michael P. Grasso, director of market management for SBC Operations, Inc., addressed marketing to ethnic communities. Carol A. Scott, professor of marketing, testified about Pacific Bell's marketing efforts and customer satisfaction ratings. Denise M. Gilley, Pacific Bell consumer markets group vice president, explained that Pacific Bell employees are subject to a code of business conduct which requires all managers and service representatives to deal with customers courteously, accurately, and truthfully.

#### **4.6 Wallace Roberts**

Roberts intervened in the proceeding as a party and stated that he is a subscriber to both Caller ID and anonymous call rejection. He has found these

services to be invaluable in protecting and enhancing his and his family's privacy.

## **5. Statutory and Decisional Standards Applicable to Pacific Bell's Duty to Inform Customers**

Specific statutory and decisional standards apply to Pacific Bell's various marketing activities. The most pertinent series of decisions were issued in 1986 and arose from Pacific Bell marketing programs then in place. We discuss that series of decisions in some detail. We then discuss, in the following order, Pacific Bell's marketing of specific services, its marketing programs and tactics, and finally its marketing to certain customer groups. Each issue is evaluated against the statutory and decisional standards.

### **5.1 General Standard**

Section 451 requires that all charges imposed by a public utility, such as Pacific Bell, be just and reasonable. Similarly, that section requires that all rules that pertain to or affect a utility's charges or service to the public be just and reasonable.

This general standard has been supplemented by the Legislature and interpreted by the Commission to give Pacific Bell, and other public utilities, more specific guidance on the types of charges and rules that are permissible. We now turn to this specific guidance.

### **5.2 Sufficient Information to Make Informed Choices**

With regard to providing customers information about different telecommunications services, § 2896 mandates that Pacific Bell (or any other telecommunications corporation) provide its customers: "Sufficient information upon which to make informed choices among telecommunications services and providers. This includes, but is not limited to, information regarding the

provider's identity, service options, pricing, and terms and conditions of service.”

The Legislature passed this statute in 1993. The legislative history reveals a general intention to ensure that telecommunications corporations provide basic information to consumers:

“Assembly Bill 726 [codified as § 2896] sets forth minimum customer service standards for telecommunications corporations. These standards are very basic, including requiring the provision of information to consumers so that they may wisely shop among competing telecommunications providers.”

Letter from Assembly Majority Whip Gwen Moore to Governor Pete Wilson (September 8, 1993) (noting that the bill has passed the Legislature and urging the governor to sign it, which he did.)

The reports from Senate and Assembly hearings similarly reflect an intention to protect consumers by requiring telecommunications corporations to provide consumers with a minimum level of information:

“The author believes that the customer service practices discussed in this bill – many of which are currently required by the PUC – should be codified because they represent basic consumer protection policies of the state and should not be subject to change by regulation. Both ongoing and future regulatory changes have and will inevitably continue to cause additional customer confusion. This bill is intended to address information requirements to alleviate such regulatory and marketplace confusion. Further, these policies are intended to help establish a level playing field among competing telecommunications providers.”

Senate Committee on Energy and Public Utilities, Hearing Report on AB 726 (Moore), June 22, 1993; see also Assembly Committee on Utilities and Commerce,

Hearing Report on AB 726 (Moore), April 19, 1993.) The Legislature thus made permanent the Commission's existing regulations for information disclosure.

The standard to be derived from § 2896 is a general directive to telecommunications corporations to provide consumers with information to allow them to make knowledgeable choices among services and service providers. The standard is based on both traditional regulatory concerns for consumer protection and emerging concerns for fair competition. We next discuss disclosure standards, developed by the Commission and Pacific Bell itself, that apply specifically to the marketing of optional services.

### **5.3 Tariff Rule 12 and Information Regarding "Packages"**

Pacific Bell's Tariff Rule 12 governs the offering of optional services to a customer. It states that Pacific Bell may call a customer's attention to the fact that optional services are available, and that the customer may designate which services are desired. Tariff Rule 12 also requires that Pacific Bell disclose all applicable recurring rates and nonrecurring charges:

"Where there are additional residence optional services (other than exchange access service) available, the Utility, or its authorized employees, may call applicant's attention, at the time application is made, to the availability of such optional services and the customer may designate which optional services they desire. The Utility shall provide a quotation of the applicable recurring rates and non recurring charges applicable to each service designated by the customer. The quotation of applicable rates and charges shall be stated separately for each optional service designated by the customer."

Rule No. 12 – Disclosure of Rates and Charges and Information to be Provided to the Public, effective May 15, 1995.

### **5.3.1 Basis of Tariff Rule 12**

The Commission's GO 96-A, originally adopted in 1962, requires among other things, that each public utility's tariffs contain rules covering certain subjects. These subjects are enumerated in Section II. C. (4) of GO 96-A, and one of the subjects, "Optional Rates and Information to be Provided to the Public," is the basis of Tariff Rule 12. We must construe Tariff Rule 12 in light of this antecedent. A duty of the utility, according to directions given in GO 96-A, is "to promptly advise customers of new, revised, or optional rates applicable to their service." Also included under this subject are directions requiring that "customers [are] to exercise option," and that the public may inspect "information regarding service." Taken together, these directions impose on each utility a duty to be reflected in the utility's own tariffs to (1) provide customers with up-to-date information regarding the utility's service, and (2) allow customers to choose from among any service options available to them.

### **5.3.2 Application of Tariff Rule 12 to Service "Packages"**

The Commission has previously addressed the requirements of Tariff Rule 12, and other marketing issues, in a series of decisions stemming from Pacific Bell's general rate case filed in 1985 (Application (A.) 85-01-034). As part of the rate case investigation, Commission staff members uncovered a number of marketing actions which staff believed violated provisions of the Public Utilities Code and Pacific Bell's tariffs. Staff reported these potential violations to the Commission. After a hearing, the Commission issued a decision directing Pacific Bell to cease and desist from: conducting an unauthorized trial program for enhanced services, engaging in "package selling abuses," violating Tariff Rule 6 in establishing credit, renaming basic service, and improperly administering the Universal Service Program. The Commission also ordered Pacific Bell to refrain from any cold selling telemarketing and from



implementing any sales quota systems. (Decision (D.) 86-05-072, 21 CPUC2d 182.) In a series of decisions issued over several years, the Commission subsequently ordered Pacific Bell to refund over \$62 million to customers (as of November 1988) and to contribute \$16.5 million to the Ratepayer Education Trust Fund. Pacific Bell's marketing practices were also placed under the guidance of the Customer Marketing Oversight Committee. (D.90-02-043, 35 CPUC2d 488, 500.) The entire series of decisions is known colloquially as the "Pacific Bell marketing abuse case" or the "cease and desist order." To distinguish this earlier proceeding from the current one, we will refer to the entire matter as the 1986 marketing case, although the decisions spanned a period of time well after 1986. When referring to a specific decision, we will provide a citation.

The decisions in the 1986 marketing case discussed Tariff Rule 12's requirement to disclose all recurring rates and nonrecurring charges in the context of selling packages of services. In the "cease and desist" decision (D.86-05-072, 21 CPUC2d 182, 188), the Commission found that Pacific Bell's "package selling abuses" had violated Tariff Rule 12 in two respects. First, basic local exchange service was packaged with expensive optional services in such a way as to "mask[] the basic rate, thereby causing ratepayers to unwittingly pay more for telephone service than they otherwise would, or worse, to go without such service at all." (Id.) The Commission staff witness described this as "representing to applicants for service that a loaded service is the basic service." (Affidavit of Karen Miller in Support of Order to Show Cause, May 7, 1986.)

Second, the Commission found that "in its 'package selling' efforts, Pacific Bell violated Tariff Rule 12 which requires a quotation and full itemization of recurring and nonrecurring charges applicable to the service and equipment a customer seeks." (Id. at 190.) Underpinning this finding was evidence that Pacific Bell at that time was misrepresenting to its customers that

local service could only be purchased as part of a package that included every available optional service Pacific Bell then offered. These packages increased the price of measured local service from \$4.45/month to \$28.15/month. (See Exhibit 511, A.85-01-034.) The Commission found that Tariff Rule 12 required Pacific Bell to disclose the option to purchase services separately and to itemize the price for each service in the package.

At the hearing which led to the 1986 “cease and desist” decision, Pacific Bell acknowledged its obligations to disclose and itemize the prices for component parts of its tariffed packages of services:

“Q. (by Pacific Bell attorney)

In addition, I want to be clear that yes, we do have tariffed packages, but also elements of those packages can be acquired individually. Do you consider it, since you have responsibility for developing and ensuring compliance, that the customer must understand that when we’re talking about a package, to the extent that individual parts can be obtained individually at different rates, that the customer must, we must do what we can to ensure that the customer understands them?

“A. (by Pacific Bell witness Haight) Yes.”

Transcript of May 16, 1986 hearing, 7949:19-7950:1.

The Commission subsequently ordered Pacific Bell to make revisions to its Tariff Rule 12 (D.87-12-067, 27 CPUC2d 1, 52.) The objective of those revisions was to provide “full explanation of residence optional services requested by the customer and a quotation of the associated tariffed rates and charges.” (Id.)

Currently applicable Tariff Rule 12 requires that Pacific Bell provide a quotation of all “recurring rates and nonrecurring charges” which

apply to each service a customer selects. The quotation must be “stated separately for each optional service designated by the customer.” (Emphasis added).

Thus, Tariff Rule 12 and the Commission decisions require that when offering packages of services, Pacific Bell must (1) offer basic exchange service apart from packages of optional services, (2) disclose that package components can be purchased separately, and (3) itemize each price on a stand alone basis. Unfortunately, as we discuss later in today’s decision, Pacific Bell’s practices at issue in this proceeding do not satisfy these requirements.

#### **5.4 Information Regarding Caller ID Blocking**

Section 2893 applies to providing Caller ID “blocking,” i.e., withholding the display of the caller’s telephone number. That section requires Pacific Bell to comply with the Commission’s rules on blocking services which the Commission adopted in conjunction with its authorization of Caller ID service. The Commission directed that a caller have the capability to withhold display of the caller’s telephone number, on an individual basis, from the telephone instrument of the called party. The Commission explained the linkage between Caller ID and blocking services in terms of the right to privacy of telephone subscribers:

“Our goal must be to ensure, to the greatest extent possible, that the decision to allow a calling party’s number to be displayed is the result of informed consent and a knowing and intelligent waiver of the right to privacy. To this end, we will seek to maximize the ease and freedom with which a caller may choose not to disclose the telephone number from which he or she is calling.”

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“So long as telephone subscribers are fully informed of the nature of the service and the nature of their blocking options, disclosure will be consensual and will manifest a waiver of the calling party’s privacy rights.”

D.92-06-065, 44 CPUC2d 694, 713-4.)

To inform customers of these new services, and the privacy consequences, the Commission directed Pacific Bell to undertake a substantial customer education effort, under the supervision of the Commission’s staff, prior to offering the services. The details of that effort, the Consumer Notification and Education Plan, were approved by the Commission in Resolution No. T-15827 (December 20, 1995.) Although Pacific Bell has completed the customer education effort, neither privacy concerns nor the informed consent standard was subject to an expiration date, and they remain in effect, as does § 2893.

Therefore, in providing Caller ID and blocking services, Pacific Bell has the duty, under statute and Commission order, to inform each customer of the opportunity to withhold display of his or her telephone number. Having duly informed the customer, Pacific Bell then would ensure that the display of the telephone number represents a knowing and intelligent waiver of the right to privacy.

## **6. Marketing Specific Services**

Below, we address each Pacific Bell service whose marketing is alleged by complainants to have violated one or more of the standards discussed above.

### **6.1 Caller ID and Blocking Service**

Pacific Bell sells the Caller ID service as a tariffed service. This service provides the name and telephone number on a special box, screen phone, or audio box, that announces the caller. Pacific Bell has offered this service in California since July 1996. It costs \$6.50/month for residences and \$7.50/month

for businesses when purchased separately. Approximately one million residential and 51,000 business customers subscribe to the Caller ID service.

As a prerequisite to authorizing Pacific Bell to offer Caller ID service, the Commission required Pacific Bell to enable callers to withhold (“block”) the display of their name and telephone number. Pacific Bell has two Caller ID blocking options: Complete Blocking and Selective Blocking. Complete Blocking prevents a caller’s name and number from appearing on the receiving party’s Caller ID display unless the caller chooses to unblock the number on a per call basis by dialing \*82. Selective Blocking displays the caller’s name and number to the receiving party unless the caller chooses to block the number on a per call basis by dialing \*67. Every telephone line has either Complete Blocking or Selective Blocking, and both options are free of charge. If a customer does not choose Complete Blocking, the default is Selective Blocking. If a customer has elected Complete Blocking, it is so indicated on the monthly telephone bill. The default, Selective Blocking, is not indicated on the customer’s bill.

To educate consumers about these new options, the Commission ordered all California local exchange carriers to implement a ratepayer-funded Customer Notification and Education Plan. (See D.92-06-065, 44 CPUC2d 694, 716-9.) The purpose of that plan was to ensure that all Californians were aware of the Caller ID services and their implications, including understanding their options for maintaining their privacy as a calling party. The plan included individual letters to each customer; TV, newspaper, and radio advertisements; and community outreach to over 500 organizations. The campaign cost over \$30 million and concluded in mid-1998.

Pacific Bell's marketing plan and scripts for service representatives set out its subsequent approach to offering Caller ID blocking options. In its Residence Caller ID Marketing Plan, SBC<sup>3</sup> noted that Pacific Bell's 1996 sales rate for Caller ID was 2% and set a goal of 30% for 1999.<sup>4</sup> Among the means for increasing the value of this product to customers was decreasing the number of lines that have Complete Blocking so that a greater share of numbers would be displayed. In other words, with a greater share of lines having Selective Blocking, Caller ID customer would see fewer calls marked "private" or "anonymous." The specific plan to accomplish this included:

- "attempt to convert customers to Selective Blocking on all customer contacts associated with Caller ID (included telemarketing, sales agency, business office, ERIC, etc);
- "implement sales incentive program (prizes) to reward net increase in Selective Blocking and track on a monthly basis;
- "change positioning of Complete Blocking prompt on Starwriter and establish policy for Service Representatives to address service only at customer prompting or when addressing removal of existing Complete Blocking; and
- "train service representatives to provide customers a balanced perspective of Complete Blocking and a bias towards Selective Blocking."

Exhibit 4.

Pacific Bell also provided its service representatives with suggested language to use when talking with customers on this topic:

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<sup>3</sup> In 1997, SBC merged with Pacific Bell's holding company, Pacific Telesis. The Commission approved SBC's control of Pacific Bell in D.97-03-067.

<sup>4</sup> As a result of increased sales of Caller ID as forecast in its Residence Caller ID Marketing Plan, SBC forecast that Pacific Bell would increase its revenues by \$2 billion over a 10-year period. The Plan is Hearing Exhibit 4 in the hearing record.

- “I noticed that you have Caller ID Complete Blocking. What are you using it for? I find that Selective Call Blocking gives me greater control over my privacy. Since it’s free, shall I go ahead and change that for you?”

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- “I see you have complete blocking for Caller ID. Do you know what that is? I’m concerned that your calls may go unanswered. Many of our customers don’t answer calls that are marked private and may even block them from coming through. I recommend switching to Selective Blocking. Then you can just dial \*67 when you really need to block your calls. Can I go ahead and take care of this for you? There is no charge.”

Exhibit 2, Attachments 66 and 67.

Pacific Bell presented no evidence that customers received additional disclosures or explanations of these services. Apparently, customers’ choices of blocking options were changed based on these representations alone.

We now examine these marketing practices in light of the applicable statutory and regulatory disclosure standards. Together the standards require that Pacific Bell provide consumers, on an individual basis, sufficient information upon which to make an informed choice between the two Caller ID blocking options such that any disclosure of the calling party’s number is the result of a knowing and intelligent waiver of the caller’s right to privacy.

Applying this standard to Pacific Bell’s statements to customers reveals that Pacific Bell’s statements were deficient in that customers were neither fully informed of the two options nor allowed to choose between them on that basis. Instead, customers were presented with information about one option, Selective Blocking, and a possible benefit of that option. Customers received no explanation of the privacy consequences of the choice that Pacific Bell was offering them, nor were the two options even described. Based on these cursory statements, customers were in no position to knowingly waive their right

to privacy. Thus, we find that Pacific Bell changed customers' Caller ID blocking choice in violation of § 2893 and the Commission decisions authorizing the sale of Caller ID services.

A related but distinct question arises with regard to Pacific Bell's marketing plan, that is, Pacific Bell's objective of decreasing the proportion of numbers with complete blocking. The disclosure standards discussed above apply only to Pacific Bell's interactions with its customers. To the extent Pacific Bell determines that particular customer choices are more advantageous to its corporate goals, it is free to encourage customers to select that option; however, in presenting the marketing information to customers, Pacific Bell must comply with the applicable disclosure requirements.

Thus, Pacific Bell may determine that it prefers customers to have Selective Blocking and it may raise the issue of blocking options with its customers that have Complete Blocking. When presenting the options to the customers, however, Pacific Bell may not omit information on one alternative (Complete Blocking) unless asked, or promote Selective Blocking by offering only limited information. The slanted presentation that Pacific Bell actually used does not meet the knowing waiver standard because the customer is barely informed of the other option, much less given a neutral explanation of the privacy consequences of the choice. For example, although the presentation raises the problem of blocked calls, Pacific Bell does not tell the customer that simply dialing \*82 will unblock the line for purposes of a particular call.

#### **6.1.1 Pacific Bell's Contract With BRI**

Pacific Bell contracted with Business Response, Inc. (BRI) to do outbound telemarketing to "downgrade nearly 2 million customers from Complete Call Blocking to Selective Call Blocking," and BRI stated that it



“understands the urgency involved in removing Complete Call Blocking from as many lines as possible during the fourth quarter of 1998 and the first quarter of 1999.” BRI promised to use its experience to implement a campaign that “not only meets but exceeds desired results.” BRI was compensated on an hourly basis, with incentive compensation to be considered after a test period. (See Exhibits 101, 102.)

Pursuant to the contract, Pacific Bell supplied BRI with a list of customers whose telephone numbers were published and who had Complete Blocking. Using Pacific Bell - approved scripts, BRI’s telemarketers were instructed to call the customers and inform them of new services like Anonymous Call Rejection which could interfere with their calls being completed and to recommend switching to Selective Blocking. The approved scripts specifically provided that the telemarketer was to acknowledge that the customer could choose between the two blocking options, and that \*82 would unblock any call that was not being completed. A Pacific Bell manager trained BRI’s agents and observed live calls in St. Louis on the first day of calling. That day, all observed agents used the approved scripts. BRI conducted its own subsequent monitoring.

After a few weeks and in response to customer complaints, Pacific Bell suspended this contract and initiated an investigation. The investigation revealed that BRI had used unapproved scripts in its calls; the unapproved scripts used the word “upgrade” several times and included other unapproved information as well:

“The special needs of our senior customers were considered during the development of this service upgrade. Many Californians are getting Anonymous Call Rejection and if you call anyone with that service, then your call will not ring through. With Selective

Blocking your call will go through automatically, yet if you choose to block your number, then you can – to anyone, anytime, anywhere. That’s the great idea of Selective Blocking. It gives you the choice of when to block your number. So, why don’t we go ahead and get you started on this free upgrade?”

BRI Script, Hearing Exhibit 101.

Pacific Bell determined that BRI had contacted 278,010 customers and that approximately 107,000 customers had been switched from Complete to Selective Blocking as a result of those calls. Pacific Bell contacted each switched customer to confirm the choice.

In terminating the contract with BRI, Pacific Bell was acting on complaints from its customers that these calls were “deceitful and dishonest.” We agree. These calls violate the disclosure requirements because consumers were not presented information upon which to make a knowing waiver of the right to privacy, and further the consumers also received misrepresentations of fact. For example, Pacific Bell does not charge for either blocking option; both services are “free,” not just Selective Blocking as the script implies. Selective Blocking was not developed as a “service upgrade” to Complete Blocking. Both types of blocking allow customers to decide on a call-by-call basis whether to block or unblock the number. We also contrast BRI’s description of the blocking service change as an “upgrade” in the statements to customers, to its description of the same service change as a “downgrade” in its contacts with Pacific Bell.

In its report on its investigation, Pacific Bell notes that the BRI scripts were not the approved scripts. Although the exact scripts were unapproved, Pacific Bell hired BRI based on BRI’s representations that it would “enter into a partnership with Pacific Bell in an attempt to downgrade nearly two million customers from Complete Blocking to Selective Call Blocking” by

means of a campaign “that not only meets, but exceeds the desired results.” (BRI Proposal, Hearing Exhibit 101.) Based on these representations, Pacific Bell should have done more than one day of monitoring to ensure that BRI’s contacts with Pacific Bell customers did not deviate from the requisite disclosures.<sup>5</sup>

In mitigation of the failure to undertake adequate monitoring, we note that Pacific Bell took prompt action to terminate BRI’s contract after discovering that BRI was not adhering to the approved scripts. Pacific Bell subsequently contacted consumers and confirmed their blocking choice. Thus, Pacific Bell corrected any wrong committed by BRI.

On balance, then, we compare Pacific Bell’s conduct in contracting with BRI to “downgrade” subscribers and its remedial efforts. Pacific Bell apparently agrees that BRI’s statements failed to meet the disclosure standards and that any blocking change authorization obtained by BRI is untrustworthy. Pacific Bell comprehensively addressed BRI’s conduct, without action by this Commission. Self-enforcement of the disclosure standards is the best enforcement mechanism, and one that we wish to encourage. Therefore, while we find that BRI’s actions violated the disclosure standards, BRI’s actions have been adequately mitigated by Pacific Bell’s remedial actions.

## **6.2 Anonymous Call Rejection**

Anonymous Call Rejection is a service offered by Pacific Bell that allows called parties to refuse to receive calls from telephones that have the number blocked. This service terminates such calls at the central office such that

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<sup>5</sup> Our disclosure analysis focuses on BRI’s contacts with customers. BRI’s representations to Pacific Bell, standing alone, do not implicate the standards but the representations are evidence of the likelihood that BRI would resort to unapproved tactics of the type that BRI rapidly implemented.

no toll charge is assessed. The rejected caller instead hears a recording stating that the called party does not accept anonymous calls, and if the caller wishes to complete the call, the caller's line must first be unblocked by using the \*82 code, and then redialing the number.

Greenlining's witness testified that the purpose of this product was to "punish consumers who have chosen to keep their numbers private – whether they use Selective or Complete Blocking," and that it invades rather than protects the caller's privacy. Rather than contending that this service violates the disclosure standards found in Tariff Rule 12 and the statute, Greenlining contends that this service violates § 2893. That statute requires that no charge be imposed for withholding a number. Greenlining reasons that to complete a call where the called party subscribes to Anonymous Call Rejection, the caller must incur the cost (and inconvenience) of calling from a pay phone to withhold the telephone number, thus incurring a charge to withhold the number in violation of the statute. In contrast, Intervenor Roberts states that he has found Anonymous Call Rejection to be invaluable in protecting and enhancing his and his family's privacy, and that the Commission should fairly balance both the calling and called parties' privacy interests.

On this issue, Greenlining has overlooked the privacy of the called party in its privacy balance. The Commission has previously determined that "Anonymous Call Rejection vindicates an important privacy interest of the called party, the interest in undisturbed solitude. [T]his feature merely automates a self-selected vindication of a privacy concern which might otherwise be defended on a call by call basis." (D.92-06-065, 44 CPUC2d 694, 719.) In short, the called party has every right not to answer the phone and to secure services from Pacific Bell to prevent certain calls from being presented to the phone. While the calling party who wishes to complete the call must unblock the

number or use a pay phone, that decision is for the calling party to make. Greenlining has presented no legal or policy basis for an absolute right to place anonymous calls to a phone customer who does not wish to receive such calls. Section 2893 places no burden on called parties to receive anonymous calls. That statute only requires that telephone corporations provide a blocking service at no charge to the caller. Here, Pacific Bell has met that requirement of the statute.

### **6.3 Inside Wire Maintenance Plans**

Pacific Bell is responsible for maintaining the wires that enter a customer's home up to the line of demarcation, usually a box on the outside of the structure. Wires inside the home are the responsibility of the customer, or the landlord, in the case of an apartment. Pacific Bell provides Inside Wire Service where, for a monthly fee, Pacific Bell maintains the customer's inside wire. Absent this service, the customer is responsible for any needed repairs to the inside wire.

#### **6.3.1 Disclosure of Different Maintenance Plans**

Pacific Bell offers two types of inside wire maintenance plans. For 60 cents/month, Wire Pro covers the repair of phone wiring and jacks on the customer's side of the demarcation point. For \$2.25/month, Wire Pro Plus adds a 60-day use of a loaner telephone to the services covered by Wire Pro.<sup>6</sup> Pacific Bell instructs its service representatives to offer Wire Pro Plus, and to explain Wire Pro only if the customer is not interested Wire Pro Plus. Pacific Bell also does not inform apartment dwellers of the landlord's statutory duty to maintain inside wire and one jack.

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<sup>6</sup> These rates were applicable during the time relevant to the complaint. The rates have since increased.

Complainants contend that this marketing approach violates § 451 and § 2896 because Pacific Bell fails to provide customers sufficient information upon which to make an informed choice among inside wire plans. Complainants state that by only offering the two service options in sequence (higher priced option first), customers who order Wire Pro Plus are unaware of the lower-priced option.

Pacific Bell states that both services are authorized by tariffs and that complainants fail to point to any legal prohibition against offering one service plan before the other.

We agree with complainants. In the 1986 “cease and desist” decision, we found that Tariff Rule 12 prohibits Pacific Bell from selling packages of services in a way that “masks” the basic rate such that customers may unwittingly pay more for a service, and from selling a “loaded service” as basic service. (D.86-05-072, 21 CPUC2d 182.) Tariff Rule 12 requires Pacific Bell to separately state the charges for each optional service, including each service that may be included in a package. By offering Wire Pro Plus first and only discussing the alternative of Wire Pro upon the customer’s rejection of Wire Pro Plus, Pacific Bell effectively “masks” the lower-priced alternative of Wire Pro. This tactic may cause customers unwittingly to pay more for inside wire service than they otherwise would have. This sales tactic violates Tariff Rule 12. Pacific Bell has also violated Tariff Rule 12 by failing to state that components of the Wire Pro Plus package may be purchased separately at a lower price.

Making an informed decision requires knowing about the alternatives. Unless customers are informed of the other inside wire plan, customers cannot choose between the two options. Pacific Bell’s sequential offering does not provide customers with this information. As the Commission found in the 1986 marketing case decisions, such information is particularly

relevant where the available options include the same core service, but at a substantially different price. In addition to being lower priced, Wire Pro would cover repairs for the more expensive components of the telephone facilities - the inside wire and jacks - all for 60 cents/month. In contrast, Wire Pro Plus costs \$1.65/month more than Wire Pro, and the only additional benefit is the use of a loaner phone for up to two months. Some customers may see value in paying \$1.65/month to insure the availability of a loaner phone for two months, but unless the alternatives are presented, Pacific Bell has not met the statutory standard of providing customers “sufficient information upon which to make informed choices among telecommunications services.” Therefore, Pacific Bell’s sequential presentation of inside wire maintenance options fails to meet the disclosure standards.

This conclusion is consistent with a recent decision in which we addressed Pacific Bell’s service representatives’ presentation to customers of inside wire service options. In D.99-06-053, we authorized Pacific Bell to re-categorize its inside wire services from Category II to Category III. We also noted that Pacific Bell’s service representatives only present customers with the option of Wire Pro as a “fallback” when the customer rejects Wire Pro Plus. We found that this sequence “may be misleading to residential customers” and ordered Pacific Bell to clearly explain both options to residential customers. (D.99-06-053 at Ordering Paragraph 8.)

### **6.3.2 Landlord’s Responsibility**

ORA takes up the related issue of disclosing the landlord’s responsibility to maintain inside wire and one working jack. ORA notes that the Commission previously required Pacific Bell to make a specific disclosure, including the “following statement, which shall be in bold print and shall be

underlined: You should be aware that, under state law, landlords, and not tenants, are responsible for repairs to and maintenance of inside telephone wire.” (Revision of the Accounting for Stations Connections and Related Ratemaking Effects and the Economic Consequences of Customer-Owned Premise Wiring (D.92-09-024, 45 CPUC2d 411 (headnote reported only).) The requirement that Pacific Bell make this specific disclosure expired on September 1, 1994.

Pacific Bell contends that the specific disclosure requirement having expired, it is no longer under any obligation to disclose that landlords and not tenants are responsible for inside wire repair.

While Pacific Bell is correct insofar as this specific disclosure is concerned, the expiration of a Commission dictate as to the exact words, and whether those words need to be in bold print and underlined, does not leave Pacific Bell free to selectively release information in a manner which is most advantageous to its revenue goals. The statutory requirement for “sufficient information upon which to make informed choices” remains applicable to all telecommunications services provided by Pacific Bell, and all other telephone corporations in California. Pacific Bell has an affirmative duty, created by § 451 and § 2896, to disclose to customers including inside wire service to renters, those facts that are necessary to reaching informed decisions on services Pacific Bell offers. To accept Pacific Bell’s contention that the expiration of a specific disclosure requirement means that no disclosure at all is required would put this Commission in the position of mandating each and every disclosure that each public utility must make. Such an outcome is not consistent with the law nor does it represent a workable policy.

Although Pacific Bell may now determine exact wording and whether printed materials will be in bold print or not, renters still have the right to be informed that landlords have a statutory duty to maintain the inside wire



and a usable jack. Notwithstanding this landlord duty, renters may still elect to purchase inside wire service from Pacific Bell for convenience and reliability reasons. To make an informed decision, however, the renter must be presented with all facts, known to Pacific Bell, which have a significant bearing on the decision. Here, the fact that the landlord, and not the tenant, is legally responsible for the inside wire and jack is a significant fact that may affect a tenant's decision to purchase inside wire maintenance services from Pacific Bell. Accordingly, Pacific Bell shall resume disclosing to its customers who are tenants that the landlord is responsible for inside wire maintenance. We will not specify the precise details of the disclosure statement but will require that it be substantially similar to the earlier one. This disclosure requirement shall not expire, absent further order of the Commission.

Later in this decision we address the issue of Pacific Bell refunds to customers. While we believe that Pacific Bell remained under a statutory obligation to disclose landlords' responsibility for inside wire notwithstanding the expiration of the specific disclosure requirement, the expiration date created ambiguity on this issue. For this reason, we will not require Pacific Bell to make refunds of all inside wire amounts collected from tenants.

### **6.3.3 Disclosure of Competing Maintenance Providers**

Complainants also raised the issue of Pacific Bell disclosing that other vendors, or the customer, may repair inside wire. When discussing inside wire repair plans with a customer, service representatives may state that Pacific Bell charges \$90/hour for its repair technicians. Complainants contend that Pacific Bell is violating the statutory standard by not disclosing that vendors other than Pacific Bell may provide inside wire repair services. Pacific Bell

responds that it does make such disclosures when a customer calls to order repair service, and that it only quotes its hourly repair rate to provide the customer some sense of what a repair visit might cost.

In a recent decision, we addressed the interrelationship of Pacific Bell's inside wire services and the use of other vendors to perform the actual repair of faulty wires. (D.99-06-053.) That decision also addressed and resolved the disclosure issue the complainants raise.

The decision began by determining that residential inside wire repair is one "market" with two payment options – either on a per-month basis or on a per-visit basis because both payment options are designed to solve the same problem, faulty inside wire. (D.99-06-053, mimeo., at 54.) Thus, Pacific Bell inside wire service is related to the repair service that other vendors may supply. To inform customers of these service options, we clarified on rehearing the disclosure requirements by adopting the following revised Ordering Paragraph:

“Pacific Bell’s service representatives must clearly explain to its residential customers that they have options for the repair and maintenance of inside wire, including Pacific’s Wire Pro plan which covers repair of the customer’s inside wire and jacks, Pacific’s Wire Pro Plus plan that covers the use of a loaner telephone instrument for up to 60 days. Customers may also use outside vendors to perform inside wire repair maintenance or may make repairs themselves.”

Application of Pacific Bell For Authority to Categorize Residential Inside Wire Repair as a Category III Service, D.99-09-036, mimeo., at 17.)

Our results in today’s decision comports with the language quoted above. We see no reason to disturb our previous decision.

## **6.4 The Basics and The Essentials Packages of Optional Services**

### **6.4.1 Background**

The Commission has approved Pacific Bell's tariff for Saver Packs of optional services.<sup>7</sup> The tariff lists the name of the different Saver Packs, the monthly charge for each package, and the actual products included in each package. The names of the various Saver Packs are:

- Classic - 2 custom calling services and calling card, \$6.30
- Caller ID - 2 custom calling services, Caller ID and calling card, \$12.
- The Essentials - 3 to 11 custom calling services and calling card, \$ 9.50 to \$24.95
- The Basics - 3 to 11 custom calling services, Caller ID, and calling card, \$12.95 to \$24.95
- The Works - 11 custom calling services, Caller ID, and calling card, \$24.95

To display the myriad of service and pricing options which result from the five different packages with up to 11 services, Pacific Bell prepared a table with five lines corresponding to the five packages and 11 columns for the number of custom calling features. The boxes where the columns and lines intersect contained the price for that particular service offering. The table dated May 1, 1998, contained in Hearing Exhibit 57 showed 28 different packages and prices.

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<sup>7</sup> These services include but are not limited to: call forwarding, call return, call screen, call waiting, priority ringing, repeat dialing, select call forwarding, speed calling - 8, and three way calling.

On June 16, 1998, Pacific Bell introduced a tariffed 90-day Basics Saver Pack promotion that offered nine custom calling features and The Message Center for \$19.95/month.

The special promotion expired and the price for the Basics Saver Pack with nine custom calling features and The Message Center returned to \$32.50/month. Pacific Bell also refers to The Basic Saver Pack (with any number of custom calling features) combined with The Message Center as The Basics Plus. Effective September 14, 1998, Pacific Bell changed the tariffed name of the Basics Saver Pack with nine custom calling features to The Works Saver Pack. Pacific Bell also lowered the price to \$16.95/month. The Basics Saver Pack with three to eight custom calling features remained unchanged.<sup>8</sup> Service representatives are now trained to first offer customers the Works Saver Pack and if rejected to then offer the Basics Saver Pack.

Pacific Bell served copies of its tariff filings on complainants UCAN and Greenlining. No complainant, nor any other entity, protested the filings.

Complainants now object to the names of “The Basics” and “The Essentials” Saver Packs. They contend that these names mislead customers into believing that these packages of optional features are standard telephone service. They further contend that Pacific Bell knew that the name “The Basics”

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<sup>8</sup> As a practical matter, however, the reduced price for the Basics Saver Pack with nine custom calling features (\$16.95) became equivalent to the price for the Basic Saver Pack with five such features. Thus, the price for five to nine features became \$16.95/month. Although the record is not clear on this point, the price for 10 and 11 custom calling features apparently remained at \$24.95/month.

was misleading because its own market research showed that focus group participants found it to be so:

“The fit between the name and package is the key issue with The Basics and is the primary reason it received a large number of last-place votes. Several respondents said the name implies plain old telephone service (‘a phone that works’) whereas the package includes bells and whistles they believe they can get along without:

- “It’s misleading. ‘The Basics’ is a phone, period. There’s too many choices there to be ‘The Basics.’
- “It doesn’t fit that package at all.
- “To me, that just represents the bottom-of-the-line package. ‘Premium Package’ or ‘Best Sellers Pack’ might get my attention.”

Nehring Marketing, Summary Report, Package Name Validation Study Qualitative Research, page 3 (Attachment MS-12 to Hearing Exhibit 2).

Complainants state that § 17200 and § 17500 of the Business and Professions Code prohibit the use, in selling services, of names that are unlawful, unfair, and misleading. Complainants argue that the names “The Basics” and “The Essentials” violate these statutes. Pacific Bell responds that complainants have not proven by extrinsic evidence that the names were likely to mislead a reasonable consumer.<sup>9</sup>

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<sup>9</sup> Pacific Bell also states that the claims arising under the Business and Professions Code should be dismissed because that code does not apply to services provided by a regulated public utility such as Pacific Bell, citing § 17024. We disagree. The exemption contained in Business and Professions Code § 17024 applies only to Chapter 4 of Part 2 of Division 7. Section 17500 is included in Chapter 1 (“Representations to the Public”) of Part 3 of Division 7, and § 17200 expressly applies to “any act prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and

*Footnote continued on next page*

#### 6.4.2 State Law on Basic Service

In the first of the series of decisions in the “1986 Marketing Case” (see Section 5.3.2 above), we found that Pacific Bell was marketing its basic local exchange service in a package with expensive optional services. (D.86-05-072, 21 CPUC2d 182, 188.) Such marketing, we determined, contravened the Legislature’s and this Commission’s universal service directives because it masked the basic rate. The statutes and our decisions all focused on reducing the basic rate as the means of ensuring universal service.

For example, in § 871.5 the Legislature finds that “the offering of high quality basic telephone service at affordable rates to the greatest number of citizens has been a longstanding goal of the state” and that “the Moore Universal Service Act has been, and continues to be, an important means for achieving universal service by making basic residential telephone service affordable to low-income citizens through the creation of a lifeline class of service.” (Emphasis added.)

The Commission has adopted rules that govern the provision of universal service to California telecommunications users. (Universal Service, D.96-10-066, 68 CPUC2d 524, 671-82.) These rules include the following policies:

- “That high quality basic telecommunications services remain available and affordable to all California regardless of linguistic, cultural, ethnic, physical, geographic, or income considerations;
- “That customers have access to information needed to make timely and informed choices about basic service and [universal service].”

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Professions Code).” Accordingly, the exemption is inapplicable to the alleged violations.

Id. at 672.

The rules also require that all carriers provide all the elements of basic service. The 17 elements of basic service are specifically defined and include, among other things: access to single party local exchange service, ability to place calls, one directory listing, free white pages telephone book, and access to operator services.

In sum, Commission precedent (1) requires Pacific Bell to state its charge for basic service apart from any charges for optional services, and (2) relies on and defines “basic service” as the focus of the statutory universal service program.

#### **6.4.3 The Basics Saver Pack and Commission Precedent**

In choosing to name a package of optional features “The Basics,” Pacific Bell selected a word that is commonly associated with local exchange service and, at least in the context of universal service, is a term of art meaning local exchange service. By using the term “basics,” Pacific Bell created an association between this particular group of optional features and basic service, an association that is not accurate.

Creating an association between local exchange service and packages of optional services was squarely at issue in 1986, when the Commission found that these “package selling abuses” violated Tariff Rule 12. (21 CPUC2d 182, Finding of Fact 2, Conclusion of Law 2.) The Commission also found that such an association “masks” the basic rate, which is the focus of the universal service subsidy program. (Id. at 188.)

Pacific Bell’s own customer research demonstrated the confusion this name causes. The quoted reaction to the name “The Basics” from the focus group sums it up nicely: “It’s misleading.” We agree.

The word “basic” is routinely used, even by Pacific Bell, to describe local exchange telephone service. Adding the additional words “Saver Pack” suggests a discount on basic services. Absent further explanation, no one would realize that this “Saver Pack” is a package of optional services that can triple a customer’s monthly service charges.

The translation of “The Basics” to other languages carried through and in some cases accentuated the erroneous impressions created by the name. Nghia Tran testified for Greenlining on the effect of Pacific Bell’s marketing practices on the Vietnamese community. He explained that Pacific Bell’s translation of “The Basics” to “Chuong Trinh Can Ban” is misleading because “can ban” means fundamental phone service, even bare minimum, not a package of optional services. Similarly, Greenlining’s witness Rodriguez pointed out that the name – “The Basics” - is particularly misleading when translated to Spanish because the translation of “Basics” and “basic” is the same - “basico” - not the plural as in English.

Pacific Bell states that the order in which customers are presented with the service choices obviates any confusion. Customers first select their local service (flat rate or measured rate), and then discuss optional services. The Basics Saver Pack is offered only after a customer has rejected The Works Saver Pack.<sup>10</sup> We fail to see how this sequence does anything to clear up confusion. Indeed, this sequence could lead a customer to reasonably conclude that the service representative is merely acknowledging the rejection of The

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<sup>10</sup> “The Works Saver Pack” is currently priced at \$16.95/month, and includes nine custom calling features, Caller ID, and a calling card. “The Basics Saver Pack” includes from three to eight custom calling features, Caller ID and a calling card. It costs between \$12.95 and \$16.95/month, depending on the number of services ordered.



Works and reconfirming the order for basic service, The Basics. Thus, Pacific Bell's selection of The Basics as the fallback to The Works exacerbates rather than mitigates any customer confusion.<sup>11</sup>

Pacific Bell knew or should have known that transplanting the term "basic" from local service to what could be the most expensive group of optional services available created a potential for customer confusion that needed to be addressed through careful marketing to maintain compliance with the statutes, Tariff Rule 12, and Commission decisions. Accordingly, we find that The Basics Saver Pack creates an association between local exchange service and optional services in violation of Tariff Rule 12, and that it also undermines our universal service goals.

The complainants included the package named The Essentials in their arguments, but the evidence presented was only directed at The Basics. We observe, however, that "essential" is virtually a synonym for "basic" and that the services included in The Essentials are not at all essential for telephone service. Neither name connotes an extensive and expensive package of optional features, although the term "basic" has been more closely associated with local exchange service. Accordingly, we find that the package named "The Essentials" suffers from a potential to mislead customers in a manner similar to The Basics. Thus, Pacific Bell shall include The Essentials in the remedial efforts set out elsewhere in this decision.

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<sup>11</sup> Pacific Bell also argues that it has a right to market its lawfully tariffed products. While we agree with this proposition, Pacific Bell fails to acknowledge that its marketing must comply with the statutory and regulatory disclosure standards.

## **6.5 The Basics Plus Saver Pack**

In addition to the tariffed Basics Saver Pack discussed above, Pacific Bell also offered customers a package of services named “The Basics Plus Saver Pack.” This package included The Basics Saver Pack and The Message Center.<sup>12</sup> The Message Center is a voice mail service provided by Pacific Bell Information Services (PBIS), a Pacific Bell affiliate. This service is tariffed with the Commission by Pacific Bell.<sup>13</sup>

In response to ORA’s allegation that “The Basics Plus” is not a name of a Pacific Bell tariffed package, Pacific Bell stated that it has a tariff which allows it to group services together by distinctive phrases. Pursuant to this tariff, Pacific Bell stated that it trained its service representatives to inform customers that The Basics Plus Saver Pack is composed of The Basics plus The Message Center.

The tariff to which Pacific Bell referred states as follows:

“The Utility may refer to groups of products and/or services by distinctive, collective phrase(s). These phrases will be used when discussing the Utility’s product line with customers and in advertisements. The Utility shall make available each product and/or service that make up these groups along with the rate and charge information for each individual product and/or service. The Utility shall inform its customers that the components of a product/service grouping may be purchased individually. (Group names will not be included in individual product tariffs.)” (Schedule Cal. P.U.C. No. A2, Rule 2.1.2(K), effective March 1, 1996.)

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<sup>12</sup> Pacific Bell also apparently offered “Plus” versions of its other Saver Packs. These “Plus” Saver Packs were comprised of the named Saver Pack and The Message Center.

<sup>13</sup> Tariff Schedule Cal. P.U.C. D3, effective September 10, 1997.

This rule allows Pacific Bell to assemble groups of tariffed services and to assign a distinctive name to the group. It does not, however, authorize Pacific Bell to charge other than the tariffed price of each component of the package. To charge a discounted price for the components, Pacific Bell must file a new tariff. Pacific Bell did so when it created The Works Saver Pack with discounted prices for both the custom calling features and The Message Center in September 1998.

Prior to filing The Works Saver Pack tariff, however, Pacific Bell was offering customers The Basics Plus Saver Pack, which was comprised of The Basics and The Message Center. As required by the grouping tariff, although this service was part of a saver pack, the charge for The Message Center remained unchanged. Customers were charged the same price for The Message Center whether or not they purchased it as part of the saver pack.

The parties did not raise the issue of whether customers might be misled into believing that The Message Center was being provided at a discount by a combination of The Message Center, at regular price, with a saver pack.<sup>14</sup> However, because we find so many other deficiencies with “The Basics Saver Pack” we need not reach the propriety of creating an association between local (or basic) service and an affiliate’s voice mail product in the name The Basics Plus Saver Pack.

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<sup>14</sup> The price charged is also limited by the federal antitrust laws, and the California statute (§ 2282.5) on cross-subsidization of enhanced services by noncompetitive services. Competition for Local Exchange Service, (D.96-03-020, 65 CPUC2d 156,193-4).

## **7. Marketing Programs and Tactics**

In this section we address several Pacific Bell marketing programs and tactics that are not directed at a specific service. “Offer on every call” refers to Pacific Bell’s requirement that its service representatives offer customers additional services on every incoming call to Pacific Bell. Sequential offering is Pacific Bell’s policy of ordering service representatives to offer large packages of services first and to only offer smaller packages upon refusal of the larger one. Incentives and targets refer to sales incentive programs for service representatives with specific sales goals. Finally, we address Pacific Bell’s policy of releasing customer information to its affiliates and agents.

### **7.1 Offer on Every Call**

In 1997, Pacific Bell instituted a policy of offering optional services, such as Call Waiting, Saver Packs, and Caller ID, on all customer contacts other than when a customer is disconnecting service or is temporarily disconnected for non-payment.

UCAN alleges that this policy elevates sales over service and results in excessive delays for customers to reach a service representative.<sup>15</sup> Pacific Bell states that it has a constitutional right to offer its products and services to residential customers in California.

As the complainant, UCAN bears the burden under § 1702 of proving by a preponderance of the evidence that Pacific Bell has violated a

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<sup>15</sup> UCAN presented a tally of the delays experienced on calls by its representatives placed to Pacific Bell’s customer service lines and concluded that Pacific Bell was not in compliance with GO 133-B. The Commission is well aware of Pacific Bell’s GO 133-B compliance failures and has imposed remedial measures. See Pacific Telesis and SBC Communications, Inc., D.97-03-067, mimeo., at 74-76. The Commission is also conducting an on-going review of other GO 133-B compliance issues in R.98-06-029.

provision of law or any order or rule of the Commission. Here, UCAN alleges that Pacific Bell gives higher priority to increasing sales than to providing service to its customers, and UCAN cites the 1986 “cease and desist” decision for the proposition that these priorities are impermissible. (UCAN Opening Brief at 40, citing 21 CPUC2d 182, 188 (D.86-05-072).) That decision, however, was directed at specific practices that violated other laws or rules.

UCAN alleges that Pacific Bell’s offer on every call policy also violates § 2896, which requires that customers receive “sufficient information upon which to make informed choices among telecommunications services.” UCAN, however, does not demonstrate that customers are being deprived of information; if anything, customers are receiving excess information in the form of undesired sales pitches. Section 2896 does not prohibit such information.

UCAN next contends that the offer on every call policy violates Tariff Rule 12, under which Pacific must quote all recurring rates and nonrecurring charges for all services. Again, proving a violation of this rule requires the opposite of what UCAN has shown: customers may be receiving unwanted information, but they are not being deprived of information.

UCAN has failed to meet its burden of proving that Pacific Bell’s offer on every call policy violates a provision of law or any order or rule of the Commission. We can envision, however, implementation measures that could cause this policy to interfere unreasonably with a customer’s attempt to obtain services from Pacific Bell. We caution Pacific Bell against forcing a customer to endure extended sales offers prior to responding to the customer's requests.

## **7.2 Sequential Offerings**

When offering optional services, Pacific Bell’s sales representatives were trained to offer first the Basics Plus Saver Pack with nine custom calling

features, Caller ID, and The Message Center at a cost of \$32.90/month.<sup>16</sup> If the customer was not interested in this package, the service representatives were trained to offer the Basics Saver Pack, which included all services except The Message Center, and costs \$24.95/month.

Effective September 14, 1998, Pacific Bell changed the name, contents, and price of certain saver packs. The Basics Saver Pack with nine custom calling features became The Works Saver Pack and cost \$16.95/month. Pacific Bell also created The Works Plus Saver Pack which included all the services contained in the Works Saver Pack along with The Message Center and cost \$24.90/month. (See Hearing Exhibit 57.) The Basics Saver Pack continued at a cost of \$14.95/month with four custom calling features or \$12.95 with three custom calling features. Subsequent to filing this tariff, Pacific Bell service representatives were instructed to offer The Works or The Works Plus Saver Pack first and, if rejected, to offer The Basics Saver Pack or The Basics Plus Saver Pack.

TIU alleges that service representatives are directed to inform the customer of the availability of individual custom calling services only after all saver packs have been rejected. Pacific Bell states that as of September 1998, only the Basics Saver Pack is offered as a fallback package. TIU provided documents which revealed Pacific Bell's strategy to "offer high, watch them buy, offer low, nowhere to go." TIU also provided evidence that Pacific Bell requires service representatives to offer the packages of services on every call, establishes team and individual sales goals for such packages, and provides service

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<sup>16</sup> All referenced Saver Pack prices are in addition to the monthly price for local residential service of \$11.25/month for flat rate service, \$6.00/month for measured service, or \$5.62/month for Universal Lifeline Flat Rate Service.

representatives with financial incentives for these sales. TIU concludes that this system results in vital information regarding lower-cost options being withheld from customers.

In response, Pacific Bell states that service representatives are trained (and are reminded with prompts) to advise customers that they may separately purchase services in a saver pack. Pacific Bell states that package offers occur “only” on 50% to 75% of all calls. Pacific Bell contends that it discloses “sufficient information” for customers to make an informed decision, and that it has no obligation to disclose all material facts.

In evaluating the opposing arguments, we recognize that some sort of sequence is inevitable whenever Pacific Bell presents customers with information on the multitude of custom calling services and packages.<sup>17</sup> The sequence that Pacific Bell has chosen and has mandated that service representatives use, however, is the sequence that most encourages sales. This sequence is driven by Pacific Bell’s interest in increasing revenue, not by providing the customer complete information on the options available and allowing the customer to make an informed choice. This sequence starts with the highest-priced package and only goes as low as necessary to entice the customer to buy.

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<sup>17</sup> We recognize the interplay between Pacific Bell’s policy of “offer on every call” and sequential offerings. If the policy is that a service representative must offer the highest priced option on all calls, then “offer on every call” and sequential offerings are synonymous. In our discussion (Section 7.1 above) of “offer on every call,” we considered the policy in the abstract, that is, without regard to the content of the offer. Here, we consider sequential offerings and look closely at the content of the offering. Although we determined that no law or policy prohibited offers on every call, where such a policy coupled with the sequential offerings discussed below, a different result occurs.

In the 1986 Pacific Bell marketing case,<sup>18</sup> the Commission reviewed Pacific Bell's sales strategies. The Commission concluded that Pacific Bell, by means of "an array of activities that have been referred to generically . . . as 'package selling,'" was causing customers to believe that local exchange service was part of a package of optional services. (D.86-05-072, 21 CPUC2d 182, 190.) The "array of activities" included the scripts for selling packages of services where the service representatives were instructed to recommend that a customer purchase a "full package" of telephone service which included all available custom calling features. This package increased the monthly price for unlimited local phone service from \$8.25 to \$31.95. If the customer objected, the script instructed the service representative to recommend a package with one less feature that costs 50 cents less per month. (Exhibit 511, A.85-01-034.) To remedy these "abusive marketing practices," the Commission ordered Pacific Bell to undertake a massive Customer Notification Plan to reach customers, to notify them of the services they currently have, and to afford them an opportunity to have unwanted services removed and obtain refunds.

Pacific Bell's 1986 script which was part of the package selling abuses (1) made service recommendations to customers which reflected Pacific Bell's objective to increase sales, not provide service recommendations to the customer tailored to meet the customer's needs, (2) had fallback positions which attempted to sell as many services as possible to the customer, again without regard to the customer's needs, and (3) did not offer optional services on an individual basis.

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<sup>18</sup> The history of this case is discussed in detail in Section 5.3.2 of today's decision.



At hearing in the current proceeding, complainants introduced one of the 1998 scripts used by Pacific Bell in selling packages of optional services. (See Exhibit 23.) Entitled “Selling to Success with the New Connect Model Contacts!!!” the script has the service representative telling the customer “I’d like to ask you a few questions to help you select your services.” The service representative then asks a series of questions about household composition, frequency of use of the phone, and whether the customer ever works at home or telecommutes.

Regardless of whether the customer is a frequent or infrequent user of the phone, the service representative is instructed to “recommend” to the customer “based on what you’ve told me about how you use the phone” that the customer purchase the Basics Saver Pack.<sup>19</sup> The customer’s answers to the questions are thus irrelevant to the service representative’s recommendation. If the customer refuses to purchase the packages, the Model Contacts direct the service representative to attempt to overcome objections by explaining the benefits of all the included services or, for customers that object to the price, pointing out that the per day price is only 70 cents. In all cases where the customer continues to object, a fallback package of fewer services is offered. Only after the fallback package is rejected is the service representative instructed to attempt to sell individual services.

Comparing the 1986 script to the 1998 script reveals striking similarities. In both cases, the scripts require the service representative to feign an interest in how the customer actually uses the telephone and to make a pre-determined “recommendation” ostensibly based on the customer’s

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<sup>19</sup> Or the Basics Plus Saver Pack, if the customer subscribes to The Message Center.

information. The recommendation, in both scripts, is one of Pacific Bell's most expensive packages of optional features. Should the customer refuse to purchase the package, both scripts require the service representative to offer a fallback package that has fewer features and is less expensive. If the customer persists in refusing to purchase a package, the 1998 script then allows the service representative to attempt to sell individual services.

The 1998 script then, like the 1986 script, (1) reflects Pacific Bell's objective to make service recommendations to customers to increase sales, not to tailor recommendations to meet the customer's needs, (2) has fallback positions which attempt to sell as many services as possible to the customer, again without regard to the customer's needs, and (3) offers optional services on an individual basis only after all packages had been refused.

We determined that Pacific Bell's 1986 sales strategies violated Tariff Rule 12 because the actions failed to separately quote the prices for each service. As discussed earlier in this decision, Tariff Rule 12 was subsequently modified to clarify that price quotations shall be "separately stated" for each service. A sales strategy which is designed to create the mistaken impression in a customer that a particular service package recommendation is based on the customer's needs, and which results in a quotation of individual services only if the customer persistently refuses the service packages, fails to meet the requirements of current Tariff Rule 12. Customers are not presented with a quotation for optional services and "allowed to designate which optional services they desire," as required by Tariff Rule 12.

While we recognize that Pacific Bell must present the many service and package options to customers in some sort of order, the 1998 script, like the 1986 script, falls far short of the standard set in Tariff Rule 12. That standard, and the more general statement found in § 2896, require Pacific Bell to provide

information to customers and guidance based on the customers' needs, not its revenue goals. Customer service does not preclude sales efforts, but does require that sales efforts be consistent with the disclosure standards and informed choice requirements of Tariff Rule 12 and § 2896.

### **7.3 Incentives and Sales Quotas**

Pursuant to agreements with the unions representing Pacific Bell's service representatives, Pacific Bell began paying service representatives monetary rewards for exceeding sales revenue targets in 1998. In the first level of the incentive system, service representatives receive up to \$150/month for meeting their sales revenue targets. The second level of the incentive gives each service representative a 25% commission on all sales above the target. There is no upper bound to the amount of the commission: "[t]his plan is not capped." The example from the TIU agreement shows that on the first \$1,890 of sales in a given month, a service representative could earn up to \$150. On the second \$1,890, with a commission of 25%, the service representative could earn \$472.50, with no maximum. (See Hearing Exhibit 42.)

UCAN witnesses Patricia Greenan and Janet Spector, both Pacific Bell employees, testified that the implementation of incentives (money and prizes) for customer service employees had resulted in overly aggressive sales efforts: "everybody's so consumed about this – the money, that in a lot of cases ethics are thrown by the wayside." Low-income customers who are signed up for expensive optional services that exceed their ability to pay particularly troubled witness Spector. This witness recalled one customer, whose service was limited to local calls only, who was being charged \$100/month for optional services. Both witnesses stated that they have observed an increase in the

number of customer calls they receive requesting that optional services be discontinued.

Sales incentives and sales targets or quotas played a significant role in the earlier Pacific Bell marketing abuse case. In the initial 1986 “cease and desist” order, the Commission directed Pacific Bell to stop “cold selling telemarketing activities and [to] discontinue its sales quota program until further order of this Commission.” (D.86-05-072, 21 CPUC2d 182, 191.) In 1989, the Commission subsequently granted Pacific Bell a limited waiver of the prohibition against incentive compensation<sup>20</sup> for a certain classification of employees, but only after the incentive compensation plan had been reviewed and approved by the Customer Marketing Oversight Committee (Committee) then advising Pacific Bell on its marketing operations. (D.89-02-048, 31 CPUC2d 112 (headnote only).)

The Committee retained The Center for Ethics and Social Policy, Drs. Charles S. McCoy and Fred N. Twining, to evaluate whether the safeguards put into place by Pacific Bell were adequate to restore public trust and prevent a recurrence of the marketing abuses which led to the 1986 “cease and desist” order. In their report to the Committee, McCoy and Twining stated that Pacific Bell’s “practices and incentives used in residential marketing have changed from sales quotas, packaged selling and bonus/rewards based on sales volumes to evaluation of individual performance based primarily on customer service.”<sup>21</sup>

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<sup>20</sup> The decisions use the term “sales quotas” and “comparable incentives” to describe employee compensation which is based on the amount of sales made by the employee. For purposes of this decision, we use “incentive compensation” to mean a sales-performance-based compensation system, and “sales quota” to mean a numerical target, goal, or objective.

<sup>21</sup> C. McCoy & F. Twining, Reviewing the Commitment to Customer Service: Managing Values to Redefine the Culture of Pacific Bell, p.9.

Based on this report and other information, the Committee reported to the Commission that Pacific Bell was in compliance with its tariffs, the Commission's general orders, and statutes. Relying on the Committee's report, the Commission lifted its prohibition on cold-selling telemarketing and sales quota programs. (D.90-02-043, 35 CPUC2d 488, 491.)

According to TIU witness Ribeiro, the Pacific Bell sales strategy that emerged following the 1986 decision was focused on customer service and full and accurate disclosure of service information. To demonstrate this, the witness presented a copy of Pacific Bell's 1992 Sales Quota Policy, which prohibits establishing sales quotas for nonsalaried employees and their immediate supervisors. This witness also offered Pacific Bell's 1992 Business Office Sales Policy and Guidelines, which stated that service representatives are to engage in "consultative selling" by responding to verbal cues from the customer and to cues from the customer records in order to make personalized product and service recommendations in all appropriate contacts.

In contrast to the 1992 policies, Pacific Bell's current sales strategies, as reflected in evidentiary record, rely on sales quotas, packaged selling and bonus/rewards based on sales volumes. Pacific Bell documents show that it established an Individual Incentive Plan that provided monetary compensation based on each service representative's sales of specific services. (See, e.g., Attachment A to Exhibit 58.) Pacific Bell also set revenue goals which were broken down into the number of Caller ID and custom calling features each service representative would need to sell each day to reach the overall total. The monthly goals also included numeric targets for Caller ID Complete Blocking removals, which were also broken down to per representative daily goal. (Exhibit 8 to Hearing Exhibit 38.)

Pacific Bell's current reliance on "packaged selling" is well documented, as discussed in the section above (Sequential Offerings). Similarly, the incentive compensation plans discussed previously clearly establish bonus/rewards based on sales volumes.

We find that Pacific Bell has essentially changed course and reinstated certain abusive marketing practices that we enjoined in 1986. The contrast between the 1992 sales policy and the current directions to service representatives well illustrates Pacific Bell's regression. The 1992 policy requires service representatives to engage in consultative selling, which is defined as responding "to verbal cues and cues provided by customer records to make personalized product and service recommendations." In contrast, the current sales strategy requires service representatives to ask questions but regardless of the response to recommend an expensive package of services. Similarly, the 1992 policy requires service representatives to ask customers if they wish to hear about additional products and services, while Pacific Bell's current policy is to offer packages of services on every call irrespective of the customer's interest or the purpose of the customer's call.

In conclusion, Pacific Bell's current incentive compensation programs closely resemble the marketing programs that we found did not comply with statutes, orders, and tariffs, and which led to the prohibition on cold selling telemarketing and sales quotas in D.86-05-072. These current policies are starkly at odds with the policies in place in 1990 when we both lifted those prohibitions and praised Pacific Bell for its "responsiveness and creativity in developing a series of internal safeguards to confront directly the internal problems that fostered these marketing abuses." (D.90-02-043, 35 CPUC2d 488, 491.)

Thus, we find ourselves in a dilemma. We have no desire to insert the Commission in day-to-day management decisions. Nevertheless, the above history shows a disturbing inability or unwillingness among Pacific Bell management to consistently comply with law absent exacting and continuous oversight. We see today essentially the same wrongdoing that we enjoined 13 years ago. The recurrence of these marketing abuses shows that our previous response failed to obtain, on a long-term basis, the level of customer protection we desired.

TIU requests that we order Pacific Bell to immediately cease and desist from offering any individual monetary incentives to service representatives. TIU would allow Pacific Bell to implement such incentive plans but only with Commission authorization. TIU would require that Pacific Bell file an application, and the Commission to hold hearings and issue a decision, demonstrating with “clear and convincing evidence that the incentive plan proposed by Pacific . . . would not be likely to encourage service representatives to engage in unethical or deceptive sales practices.” (TIU Post-Hearing Brief at 48.)

TIU’s proposal calls for a substantial increase in this Commission’s oversight of Pacific Bell’s day-to-day operations and interjects this Commission squarely into the collective bargaining process. Increasing regulatory oversight is contrary to our goals. We believe that the collective bargaining process is best left to employees and Pacific Bell. Therefore, we reject TIU’s proposal.

Nevertheless, Pacific Bell’s history and number of customers require that we take steps to ensure that these marketing abuses do not occur a third time. Accordingly, rather than create a temporary oversight committee as the Commission did in 1986, or create an approval process as TIU recommends, we will set out permanent limitations upon Pacific Bell’s incentive compensation

programs. We do not do so lightly. In this era of increasing competition, it is our general objective to decrease our regulatory function and to let the competitive marketplace winnow out firms that provide inept customer service. At this time, however, Pacific Bell's history and its nearly exclusive role as the provider of residential local exchange service for millions of California households warrants these limitations.

Therefore, we will limit sales-volume-based incentive compensation for service representatives and their direct supervisors to 5% of monthly compensation.<sup>22</sup> This applies only to compensation incentives which reward increased sales to customers, and does not extend to incentive compensation keyed to any other factors. One of our objectives in limiting sales volume incentives is to encourage Pacific Bell to re-focus its service representatives on meeting customers' true service needs, rather than increasing sales. We encourage Pacific Bell to develop innovative compensation plans that reward customer satisfaction or other factors that benefit customers. We envision broad policy-level changes in the values and traditions that guide Pacific Bell's service representatives.

The duration of this limitation shall be that which is necessary to achieve our goals. It will take some time for new values to take root, and Pacific Bell has shown a propensity for backsliding after several years of compliance. Thus, we conclude that the minimum duration of the 5 % limitation prohibition on sales-volume-based incentives for service representatives and their direct supervisors shall be 10 calendar years from the effective date of this decision.

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<sup>22</sup> The 5 % limitation is patterned on the first level of the incentive compensation plan currently in place.



After that period, if Pacific Bell believes that such incentives are consistent with its new values, then Pacific Bell may file an application seeking Commission authorization to implement an expanded sales-volume-based incentive program as part of a comprehensive incentive program that also rewards customer satisfaction. In such application process, Pacific Bell shall bear the burden of proving that it has instilled within its management a commitment to putting customer service ahead of single-mindedly increasing sales. Ten years is a reasonable period of time for this prohibition because lasting change in values is required at the senior management level to ensure that this does not happen a third time.

Incentive compensation is at the core of many of the violations detailed in this decision. It has a direct effect on the persons with whom customers interact. Thus, this prohibition plays a large role in the remedies of this case. Ensuring that customers will not be subject to service representatives excessively enticed by money and prizes to sell services is an important part of the overall remedy package we adopt in this decision.

#### **7.4 Providing Customer Information**

Pacific Bell from time to time hires outside vendors, such as telemarketing organizations, to contact its customers for sales or other reasons. In doing so, Pacific Bell necessarily provides the outside vendors the names and phone numbers of the customers. In some cases, the lists are created for a particular purpose, such as customers with Caller ID Complete Blocking. Pacific Bell also uses its corporate affiliates that are part of the SBC family of companies to answer customer service calls; these affiliates also have access to customer information.

Complainants object to this sharing of information as violating federal and state law regarding customer privacy. Specifically, UCAN states that 47 U.S.C. § 222 requires Pacific Bell to “protect the confidentiality of proprietary information of . . . customers.” UCAN also states that customer proprietary information includes “information that relates to the quantity, technical configuration, type, destination, and amount of use . . . that is made available to the carrier by the customer solely by virtue of the carrier-customer relationship.” (Hearing Exhibit 4.) UCAN also states that § 2891 prohibits Pacific Bell from providing customer information, including credit or financial information which services the customer purchases, to “any other person or corporation.”

The outside vendors, Pacific Bell states, are acting as its agents in performing certain tasks. Pacific Bell states that it does not divulge to outside vendors unlisted numbers or numbers of customers that have asked Pacific Bell not to be contacted by these vendors. Pacific Bell concludes that it is in full compliance with the 1996 Telecommunications Act and the Federal Communications Commission (FCC) regulations, which explicitly address the use of customer information and of sales agents and affiliates in making sales.

Complainants have not alleged that the information disclosed to agents or corporate affiliates was used for any purpose other than marketing Pacific Bell’s products, or that the agents or affiliates failed to keep the information secure. Complainants have not responded to Pacific Bell’s statements that it is operating in compliance with the FCC’s requirements for affiliates and vendors. Under the Total Service Approach adopted by the FCC, the determination of whether a telecommunications corporation may share customer information among its corporate family turns on the scope of the

service provided, not the corporate structure.<sup>23</sup> Complainants presented no analysis of this requirement.

Complainants next object to Pacific Bell's sharing of information with SBC Operations, Inc. call centers on both "incoming and outgoing" calls. However, complainants do not address the exception to CPNI restrictions for inbound calls found in 47 U.S.C. § 222(d)(3).

While Pacific Bell has made customer information available to other persons or corporations, those persons or corporations, both outside vendors and corporate affiliates, have been under the direction of Pacific Bell and have been conducting Pacific Bell's business. Complainants have not provided us a citation to an FCC order that prohibits such commonplace arrangements. We note also that no complaint has been filed with the FCC regarding this alleged violation of federal law and regulatory policy.

We turn next to California law on privacy of customer information. Section 2891 prohibits all California telephone corporations from making available to "any other person or corporation" various types of customer information, including customer calling patterns and financial information.<sup>24</sup> UCAN alleges that Pacific Bell has violated this statute because it has shared such information with its corporate affiliates and unaffiliated vendors. Pacific Bell responded that it has the right to provide such information to its agents for

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<sup>23</sup> See Implementation of the Telecommunications Act of 1996; Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, Second Report and Order and Further Notice of Proposed Rulemaking, FCC 98-27 (Feb. 19, 1998) at ¶ 51.

<sup>24</sup> Section 2891(d) contains 10 exemptions from the statute, none of which are applicable here.

use on Pacific Bell's behalf. Pacific Bell cites no statute or Commission decision for this proposition.

We observe that UCAN has not alleged that the third parties, whether corporate affiliates or not, were conducting business on behalf of any entity other than Pacific Bell. UCAN appears to be objecting to the mere availability of customer information to these third parties, not the use of the information. Similarly, UCAN has not alleged that Pacific Bell was inadequately supervising the third parties, nor has UCAN alleged any security failures by the third parties.

UCAN's reading of § 2891 - that a telephone corporation must obtain customer consent before sharing the information with anyone - would render the corporation powerless because a corporation can only act through natural persons. Under that reading, Pacific Bell, the corporation, would need customer consent in order to share customer information even with its employees, who are "persons" within the meaning of the statute. Such a narrow reading of the statute would also have the effect of prohibiting Pacific Bell from engaging in the commonplace business practice of hiring outside vendors.<sup>25</sup>

For the reasons stated above, UCAN has not established a claim under 47 U.S.C. § 222. As we do not adopt UCAN's interpretation of § 2891, the facts alleged by UCAN fail to support a claim under that statute.

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<sup>25</sup> While the statute shows no intent to prohibit such practices, we note that Pacific Bell's responsibility to maintain the confidentiality of its customers' information requires that it ensure that outside vendors use the information only for Pacific Bell purposes, securely maintain the information while in their possession, and return all copies when their Pacific Bell work is completed.

## **8. Marketing to Customer Groups**

In this section, we address two issues regarding the particular marketing approaches Pacific Bell used with minorities or recent immigrants, and with universal service customers.

### **8.1 Marketing Targeted at Minorities or Recent Immigrants**

Complainants contend that Pacific Bell has improperly targeted its marketing efforts at ethnic minorities and recent immigrants. Pacific Bell responds that it commits significant resources to its customers that prefer to do business in a language other than English. Over 20% of Pacific Bell's service representatives handle calls at its foreign language centers. These representatives speak Spanish, Cantonese, Mandarin, Japanese, Korean, Vietnamese and Tagalog. Pacific Bell engages in marketing efforts to build awareness of its products and services by using print advertising, newsletters, other media, and telemarketing, in addition to customer initiated contacts with service representatives, to explain the benefits of its products and services to these markets. Pacific Bell retains experts in each of the languages to translate and review marketing and service representative scripts, and it also works closely with groups that represent these customers.

Complainant Greenlining contends that immigrant and language minority groups are particularly vulnerable to high-pressure sales tactics and are less likely than other consumers to report abuse: For example,

“For cultural reasons, Latinos are reluctant to complain if they feel they are receiving poor service. There is a cultural tendency to be polite, if not fatalistic about consumer abuses. Latinos like to pay in cash; they like to pay in person; they want to be good customers. Where there are problems, the lack of English language fluency is a barrier to lodging complaints. And this reluctance is increased by the fact that many Latinos come from countries where due process and

consumer protections do not exist and where they may be persecuted for speaking out.

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“With respect to telephone service, there are several things that make it difficult for Latinos to complain about the quality of service that they receive. Because many Latinos come from countries where the telephone service is identified with the government, the telephone company is viewed as an extension of government. To the extent Latinos view the telephone company as an extension of the government, they are reluctant to complain because in many Latinos’ countries of origin, it may be a waste of time or even dangerous to complain about the government. Also, many Latinos come from countries where it takes a very long time to receive telephone service, and there is a fear that if they complain about their service, it may be disconnected and they must wait a long time to have it restored.”

Exhibit 13, pp. 3-4.

As discussed previously in this decision, Greenlining also analyzed the translations of Pacific Bell’s advertising of The Basics and The Essentials Saver Packs to Spanish and Vietnamese, and concluded that the translations tended to exacerbate rather than mitigate the misleading nature of those names.

In response to Greenlining’s allegations that it “targeted” ethnic minorities for sale of optional products and services, Pacific Bell pointed out that it had conducted studies of various market segments. Specifically high potential Caller ID customer segments, as identified in the research Pacific Bell presented, were “struggling city dwellers” and “income limited.” On an ethnic basis, Field Research Corporation market research yields these data:

<b><u>Ethnic Group</u></b>	<b><u>% Interested in Caller ID</u></b>
White	23
Hispanic	39
African-Americans	37
Asians	42

Based on this research, Pacific Bell set in place a marketing program that would better get information on Caller ID to those customers who were most likely to be interested in the product in the fastest possible manner. This included marketing and selling to customers in the language they chose.

Greenlining does not suggest that Pacific Bell used advertising or other marketing efforts for ethnic minorities that was different from that which was directed at other customers. Greenlining challenges the package names - The Basics and The Essentials - as misleading both in English and in the other languages. Greenlining also does not dispute Pacific Bell's marketing research, from other areas of the country, which tends to show that ethnic minorities are more likely to purchase certain services, nor does Greenlining suggest that Pacific Bell had any motive in targeting its marketing to this particular segment, other than to increase sales.

Greenlining seems to suggest that Pacific Bell should not attempt to sell its services to ethnic minority customers because these customers are vulnerable to marketing abuse, or that Pacific Bell should have a higher standard of disclosure when dealing with ethnic minority customers. We reject both of these suggestions.

The statutory standards applicable to Pacific Bell's marketing to ethnic minority customers are the same standards applicable to its other

customers. The determination of whether certain marketing efforts fail to meet the standards should not turn on the market segment to which it was directed. Pacific Bell must provide all customers sufficient information upon which to make informed decisions. Ethnicity does not affect this standard, nor should it.

The evidence shows that the market segment that Greenlining represents has a high interest in purchasing Caller ID. No evidence has been presented that Pacific Bell treated this market segment any differently from any other group of likely purchasers of Caller ID. Pacific Bell presented the same information, translated to the appropriate language, to each group of customers. To the extent that information fails to meet the statutory standard, as we find elsewhere in this decision, it does so in all languages.

## **8.2 Marketing to ULTS Customers**

The Universal Lifeline Telephone Service (ULTS) is designed to promote the use of affordable, statewide, basic telephone service among low income households by providing a subsidy to low-income customers funded by a surcharge on all end-users' bills. (See generally Universal Service and Compliance with the Mandates of Assembly Bill 3643, D.96-10-066, 68 CPUC2d 524.) To accomplish this goal, all local exchange carriers charge qualified residential low-income customers a discounted installation charge of \$10, and a monthly fee of \$5.62 for flat rate service or \$3 for measured service.<sup>26</sup> For each ULTS customer served, the local exchange carriers are reimbursed from the ULTS Fund for the difference between the ULTS rate and the respective local

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<sup>26</sup> These rates were applicable during the time period relevant to the complaint. The rates have since increased.



exchange carrier's usual rate for residential basic service. The ULTS program is currently funded by a 3.2% charge on all end users' bills.

On new connects, Pacific Bell service representatives offer and explain ULTS. Eligibility is based on the number of persons in a household and income level, as well as residence and income tax dependency status. Eligibility is self-certified by the customer. If the customer meets those eligibility criteria, the service representative explains the lower rates.

UCAN's witness contended that Pacific Bell used the lower rates provided to ULTS customers as a selling opportunity for optional features. UCAN provided a Pacific Bell document which appeared to be a Caller ID sales aid and which stated: "when regrading a customer to Universal Lifeline, offer Caller ID and advise the customer that they will be paying roughly the same dollar amount they were paying before but enjoying the benefits of Caller ID." (Attachment MS-94 to Hearing Exhibit 2.) UCAN contended that such offers do not promote the purpose of ULTS service, that is, to provide access to low-cost telephone service.

Pacific Bell did not deny UCAN's factual allegations.

We find that the script Pacific Bell provided to its service representatives is sharply at odds with the purpose of the ULTS program. The purpose of the ULTS subsidy program is to provide affordable service to low-income consumers, not to provide Pacific Bell a cross-marketing sales opportunity. The Legislature established this program to achieve universal service by making basic residential service affordable to low-income citizens, see § 871.5. Attempting to undo the lower-priced service offering undermines the Legislature's, and this Commission's, universal service goals.

We do not go so far as to suggest that ULTS customers should not have the opportunity to purchase optional services. As with all customers, the

individuals are best able to make their own purchasing decisions when presented with complete information. We are, however, stating emphatically that we will not allow a program funded by a surcharge on all customers' bills to form the basis for a Pacific Bell sales pitch.

## **9. Remedies**

Our first remedial objective is to ensure that customers are receiving the services that they choose, and that they receive refunds for any charges paid for unwanted services. This is consistent with our approach in the 1986 marketing case. (D.86-05-072, 21 CPUC2d 182, 191.)

Pacific Bell's violations implicate marketing of certain services as well as specific marketing programs and tactics. Our remedy plan addresses each violation.

### **9.1 Caller ID Blocking**

Our objective is to ensure that all customers are fully informed of their service options and the privacy consequences of each option so that customers who choose to transmit their telephone number to called parties are knowingly waiving their privacy rights. On a prospective basis, we instruct Pacific Bell to comply with this decision, and our previous decisions, in making the required explanations.

On a retrospective basis, Pacific Bell's actions have called into question customers' transfers from Complete Blocking to Selective Blocking beginning with the implementation of practices discussed in this decision. The evidence does not clearly show when these practices began but the Residence Caller ID Plan seems to contemplate changes occurring in 1998. Therefore, we will use January 1, 1998, as the date on which the violations began.

The next question is how to best inform customers of their options and to allow them to make any needed changes. Our guide to the answer is found in Pacific Bell's reaction to the BRI incident. There, Pacific Bell first attempted to contact by telephone each customer who had switched from Complete Blocking to Selective Blocking. (Out of the 260,000 customers contacted by BRI, 107,000 switched from Complete to Selective Blocking, according to Pacific Bell witness Gilley.) As Pacific Bell stated in its investigation report, Hearing Exhibit 102, approximately 70% of the customers who switched were reached through this method.<sup>27</sup> The remaining customers received a letter which contained an explanation as well as a dedicated 800 number to call with additional questions or to change blocking options. Thus, Pacific Bell employees directly contacted as many customers as possible and only used mailings after several failed personal attempts.

We direct Pacific Bell to use a similar plan to contact customers who were switched to Selective Blocking since January 1, 1998, excluding those customers whose choice has already been confirmed through the BRI remedial effort. Pacific Bell is directed to switch all customers that so request back to Complete Blocking without charge.

To provide customers regular reminders of their blocking status, we also require Pacific Bell to note on each bill the blocking status of the line. Currently only lines that have Complete Blocking are so noted. Pacific Bell shall also include on the bill (front or back) a brief description of the two blocking options and the codes used to block or unblock the number.

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<sup>27</sup> Pacific Bell stated that it reached 70% of the 107,000 customers, or about 75,000 customers, between January 22 and February 11, 1999.

Because the choice of Complete Blocking or Selective Blocking has no financial impact (there is no charge for either service), we need not consider the issue of financial reparations.

## **9.2 Inside Wire,<sup>28</sup> Packages Offered Sequentially, The Basics, and ULTS**

Remedying Pacific Bell's actions on these issues will require a process similar to that we have just described: (1) customer notification, (2) implementing customer choice and, if needed, (3) refunding improperly charged amounts.

We first direct Pacific Bell to return to customers the amounts that Pacific Bell has wrongfully obtained. The record does not include a specific proposal for identifying and notifying the customers that overpaid, and for making refunds. The Commission has previously addressed this type of task by convening workshops and developing proposals. (D.86-05-072, 21 CPUC2d 182, 189-91.) As this process worked well in the past, we will adopt the same general framework for use in developing the restitution program to be used in this proceeding. To initiate this process, we direct the Telecommunications Division to schedule a workshop no later than 30 days after the effective date of this order.

The restitution plan should provide for customer notification of the current service selections and associated prices, and confirm that the customer sought these services and wishes to continue purchasing these services. ULTS customers shall receive a specific explanation of the cost for ULTS service as

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<sup>28</sup> As noted earlier in this decision, we will impose no refund obligation on Pacific Bell for failure to disclose landlords' inside wire obligations to tenants. Thus, Pacific Bell's refund obligation on the inside wire issue will be limited to those customers who both (1) received inadequate disclosure of inside wire options and (2) purchased Wire Pro Plus.

clearly distinguished from optional services. Customers who indicate that they did not seek these services shall have such services discontinued and shall be accorded a full refund, with interest.

The final restitution plan shall be in the form of a resolution which shall be placed on the Commission's agenda no later than 180 days after the effective date of this order.

### **9.3 Sales Incentives to Service Representatives**

In response to the marketing abuses identified in the 1986 proceeding, this Commission imposed a moratorium on "cold selling telemarketing" and "sales quotas." (D.86-05-072, 21 CPUC2d 182, 191.) The Commission later clarified that "sales quota" included all incentive compensation programs for service representatives. (D.88-09-062, 29 CPUC2d 405 (headnote only).) The Commission assigned the task of determining the proper role for "business and residence incentive plans for salaried and nonsalaried employees" to the Customer Marketing Oversight Committee (Committee) that was then overseeing all Pacific Bell marketing activities. Based on a report which found that Pacific Bell's "practices and incentives used in residential marketing have changed from sales quotas, packaged selling and bonus/rewards based on sales volume to evaluation of individual performance based primarily on customer service," the Committee recommended that the Commission lift the prohibition, which the Commission did in 1990. (D.90-02-043, 35 CPUC2d 488.)

The Committee devoted several years of effort to addressing this and many other issues. As set out in this decision, Pacific Bell has reinstated the disapproved incentive policy (quotas, packaged selling, and sales volumes

incentives). This history amply demonstrates that corporate policies are ephemeral. Accordingly, we will opt for a different course this time.

As discussed previously in this decision, we impose an indefinite limitation on Pacific Bell's authority to offer sales incentive compensation to its service representatives and their immediate supervisors. Incentive compensation, whether in the form of monetary amounts or goods and services, shall not exceed 5% of the service representative's monthly compensation.

#### **9.4 Educating Customers**

Although we expect the customer notification and refund program to reach the majority of customers, our experience with such efforts has shown that a significant number of customers will be missed. Thus, limiting our reparation plan to direct refunds is inadequate relief for customers potentially affected by the marketing abuses identified in this decision. Using our equitable and statutory powers, we have used utility-funded customer education to address instances of broadly disseminated inaccurate information. (See GTE California, D.98-12-084, and decisions cited therein.)

Therefore, broad customer education efforts are necessary to remedy the wrongs identified in this decision. Such efforts will also have the salutary effect of increasing the number of informed customers who will be less likely to be victimized by actions similar to those which led to this proceeding.

To remedy Pacific Bell's 1986 marketing abuses, the Commission recognized the importance of customer education as a means to address the fact that "not everyone has been reached and not everyone can be reached." (D.87-12-067, 27 CPUC2d 1, 48.) Given the similarities between this and the earlier proceeding as to the violations and needed remedy, adopting the same approach to customer education is warranted.

The purpose of the earlier education fund was “to further ratepayer educational efforts”:

“We do not intend to define ‘ratepayer educational efforts’ in any rigid sense; however, the funds set aside should be used broadly to promote ratepayer education and understanding of the telecommunications system, and to educate ratepayers about their service options in the increasingly competitive telecommunications market. Such efforts might include, but not be limited to, mass media programs, educational forums, community outreach efforts, or grants to selected groups. The goal of this trust should always be ratepayer education, keeping in mind the genesis of the trust.” (Id. at 49.)

The decision directs that Pacific Bell prepare a trust instrument for the review of the Commission staff and Legal Division, to establish a disbursements committee, and to set annual disbursement goals. We will adopt these goals and directives for use in this current customer education effort.

We direct the Consumer Services Division, with assistance as needed from the Legal Division, to use the workshop forum to determine the components of the customer education effort. The broad outlines the process and priorities are set out in Attachment B. With the assistance of the parties, the Director of CSD shall develop and implement the Customer Education Program. We encourage parties to propose innovative educational strategies to address the particular abuses in this case.

To fund the customer education, we turn again to the Commission’s previous decision (D.87-12-067) where we adopted the customer education objective and directed Pacific Bell to deposit \$16.5 million into the fund. The purpose of that fund was to educate customers generally in recognition of the fact that not all consumers affected by Pacific Bell’s actions would be reached through a notification plan. This amount was apparently adequate to achieve

goals similar to those currently before us. To account for inflation, we will increase the funding amount to \$24 million.<sup>29</sup>

### **9.5 Fine**

The Commission may impose fines payable to the State of California pursuant to § 2104 and § 2107. Such fines must be between \$500 and \$20,000 per offense. Each day of a continuing offense constitutes a separate and distinct offense per § 2108.

To provide guidance in setting fines within the broad statutory range, the Commission recently distilled the principles that it has historically relied upon in assessing fines and restated them such that they may form the basis for future decisions assessing fines. (Rulemaking to Establish Rules for Enforcement of the Standards of Conduct Governing Relationships between Energy Utilities and Their Affiliates Adopted by the Commission in Decision 97-12-088, D.98-12-075, App. B.) Those principles begin by distinguishing reparations from fines. The purpose of reparations is to return improperly collected amounts to customers. The purpose of fines, in contrast, is to deter further violations. In setting the fine level, the Commission will consider the severity of the offense, the utility's conduct, the financial resources of the utility, the totality of circumstances in furtherance of the public interest, and the role of precedent.

Throughout this decision we compare Pacific Bell's actions which are at issue in this proceeding to those that were at issue in its 1986 marketing

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<sup>29</sup> See Attachment A which escalates \$16.5 million from 1988 to 1999 based on the percentage change consumer prices as reported in the UCLA Anderson Forecast. The resulting amount is \$23.8 million, which we will round to \$24 million.



case and determine that the current actions are essentially equivalent to its past actions. Indeed, we are struck by what appears to be a disturbing pattern of Pacific Bell compliance during periods of special oversight, only to be followed by noncompliance in furtherance of Pacific Bell's revenue goals when the special oversight ends. Examples include incentive compensation and Caller ID and inside wire disclosures.

We certainly hoped that the sanctions imposed after the 1986 marketing case would have permanently deterred further such conduct; apparently the deterrence has dissipated. Deterrence of future wrongdoing, by the current perpetrator and others, is one of the primary purposes of fines. (See D.98-12-075, Appendix B.)

In determining the amount of a fine, we are guided by the standards we adopted in D.98-12-075. The severity of this offense is suggested by the forecasted revenue to be gained, \$312.9 million (net present value of \$1.2 billion over a 10-year period) for increased sales of vertical services.<sup>30</sup>

In calculating the actual amount to be paid to the General Fund, we do not account for any restitution paid, consistent with the guidelines. In this case, however, we have ordered Pacific Bell to pay for a consumer education effort, which is necessary to obtain complete reparations, but the cost will exceed the dollar amount wrongfully collected. For this reason, we will treat the customer education amount as a component of the penalty calculation for

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<sup>30</sup> See Hearing Exhibit 80. Pacific Bell also forecast that Caller ID would add \$2 billion in additional revenue over the same period. Exhibit 100. We find that the upper bound of the potential fine is sufficiently high without consideration of this amount.

purposes of evaluating our compliance with the guidelines.<sup>31</sup> Actual restitution to specific customers shall not be so included.

The conduct of the utility is another factor that we consider in setting fines. Here, Pacific Bell failed to prevent these violations, despite having the benefit of previous experience with this Commission's view on these matters. Pacific Bell did detect and rectify the violations made by BRI. Another factor mitigates the size of Pacific Bell's fine. In litigating these complaints, Pacific Bell has been cooperative and forthcoming.

The financial resources of the utility also play a role in determining the appropriate fine level. Pacific Bell's 1998 report filed with the Commission shows total California revenue of \$ 9.4 billion.<sup>32</sup> Thus, a fine of substantial proportions is necessary to secure effective deterrence.

Our guidelines also require that we consider the totality of the circumstances in furtherance of the public interest when setting a fine. Recidivism is a highly undesirable outcome both for the public and the Commission; our objective is permanent reform.

Finally, our guidelines direct that we consider precedent in setting an appropriate fine. Here, the most directly applicable precedent is the 1986 Pacific Bell penalty of \$16.5 million, discussed previously, as well as GTE California's payment of \$13 million in settlement of marketing abuse allegations, (See D.98-12-025.) While the facts differ somewhat for each case, both involved

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<sup>31</sup> This treatment is also consistent with our previous description of the purposes of the \$16.5 million customer education effort. See 27 CPUC2d at 36.

<sup>32</sup> Pacific Bell's Tracking Report # P.D.-01-27, Cumulative Through December 1998, Line 7.

widespread marketing abuses and charges for unauthorized services. We note that the GTE California payment is a much larger proportion of its operating revenue. GTE California's 1997 operating revenue was \$3.3 billion as stated in its FCC Report 43-02, at p. 40. Pacific Bell's 1998 revenue, as noted above, was \$9.4 billion.

In light of Pacific Bell's recidivist conduct and the amount of forecasted gain, but mitigated by the two factors noted above, we determine that a fine of \$20 million, in addition to the customer education fund, is necessary to protect the public interest.

In this decision we order Pacific Bell to undertake extensive and long-term customer education and customer service programs. To provide Pacific Bell a quantifiable incentive to fully cooperate in these efforts as well as to change its philosophy, we will stay one half of the fine, or \$10 million, pending Pacific Bell's compliance with this decision. Should Pacific Bell fail to so comply, we will reinstate the stayed portion of the fine.

Thus, Pacific Bell shall contribute \$25 million to a customer education fund and shall pay \$10 million to the State General Fund within 180 days of the effective date of this order. The remaining \$10 million fine is stayed pending full compliance with the requirements of this decision.

### **Findings of Fact**

1. The parties engaged in a collaborative process in an attempt to create a set of stipulated facts.
2. On October 30, 1998, the parties filed a statement of undisputed facts that addressed some, but not all, facts in issue.
3. Neither Roberts nor TIU presented sufficient justification to set aside submission and reopen the record in this proceeding.

4. At the hearing which led to the D.86-05-072, Pacific Bell acknowledged its obligations to disclose and itemize the prices for component parts of its tariffed packages of services.

5. Pacific Bell sells the Caller ID service as a tariffed service. This service provides the name and telephone number on a special box, screen phone, or audio box, that announces the caller. Offered in California since July 1996, this service costs \$6.50/month for residences and \$7.50/month for businesses when purchased separately. Approximately 1 million residential and 51,000 business customers subscribe to the Caller ID service.

6. The Commission required Pacific Bell to enable callers to block the display of their name and telephone number. Pacific Bell has two Caller ID blocking options: Complete Blocking and Selective Blocking. Complete Blocking prevents a caller's name and number from appearing on the receiving party's Caller ID display unless the caller chooses to unblock the number on a per call basis by dialing \*82. Selective Blocking displays the caller's name and number to the receiving party unless the caller chooses to block the number on a per call basis by dialing \*67. Every telephone line has either Complete Blocking or Selective Blocking, and both options are free of charge. If a customer does not choose Complete Blocking, the default is Selective Blocking. If a customer has elected Complete Blocking, it is so indicated on the monthly telephone bill. The default, Selective Blocking, is not indicated on the customer's bill.

7. In D.92-06-065, the Commission ordered all California local exchange carriers to implement a ratepayer-funded Customer Notification and Education Plan to ensure that all Californians were aware of the Caller ID services and their implications, including understanding their options for maintaining their privacy as a calling party. The plan included individual letters to each customer; TV, newspaper, and radio advertisements; and community outreach to over 500

organizations. Pacific Bell's campaign cost over \$30 million and concluded in mid-1998.

8. In its Residence Caller ID Marketing Plan for Pacific Bell, SBC stated that among the means for increasing the value of Caller ID to customers was decreasing the number of lines that have Complete Blocking so that a greater share of numbers would be displayed. The specific plan to accomplish this included attempting to convert customers to Selective Blocking on all customer contacts associated with Caller ID, implementing sales incentive program to reward net increases in Selective Blocking and tracking on a monthly basis, establishing policy for service representatives to address service only at customer prompting or when addressing removal of existing Complete Blocking, training service representatives to provide customers a balanced perspective of Complete Blocking and a bias towards Selective Blocking.

9. Pacific Bell provided its service representatives with the following suggested language to use when talking with customers about Caller ID Complete Blocking:

- "I noticed that you have Caller ID Complete Blocking. What are you using it for? I find that Selective Call Blocking gives me greater control over my privacy. Since its free, shall I go ahead and change that for you?"
- "I see you have complete blocking for Caller ID. Do you know what that is? I'm concerned that your calls may go unanswered. Many of our customers don't answer calls that are marked private and may even block them from coming through. I recommend switching to Selective Blocking. Then you can just dial \*67 when you really need to block your calls. Can I go ahead and take care of this for you? There is no charge."

10. Pacific Bell changed customers' blocking option from Complete Blocking to Selective Blocking based on the representations set out in Finding of Fact 9; no

other information was provided to the customer at the time the change was made.

11. Pacific Bell contracted with BRI to do outbound telemarketing to “downgrade nearly 2 million customers from Complete Call Blocking to Selective Call Blocking,” and BRI stated that it “understands the urgency involved in removing Complete Call Blocking from as many lines as possible during the fourth quarter of 1998 and the first quarter of 1999.”

12. Pacific Bell compensated BRI on an hourly basis, with incentive compensation to be considered after a test period.

13. Pursuant to the contract, Pacific Bell supplied BRI with a list of customers whose telephone numbers were published and who had Complete Blocking. Using Pacific Bell approved scripts, BRI’s telemarketers called the customers and informed them of new services like Anonymous Call Rejection which could interfere with their calls being completed and recommend switching to Selective Blocking.

14. A Pacific Bell manager trained BRI’s agents and observed live calls in St. Louis on the first day of calling during which all observed agents used the approved scripts. BRI conducted its own subsequent monitoring.

15. In response to customer complaints, Pacific Bell suspended its contract with BRI, initiated an investigation, and determined that BRI had used unapproved scripts in its calls which used the word “upgrade” several times and included other unapproved information as well.

16. Pacific Bell determined that BRI had contacted 278,010 customers and that approximately 107,000 customers had been switched from Complete to Select Blocking as a result of those calls. Pacific Bell contacted each switched customer to confirm the choice.

17. Pacific Bell should have done more than one day of monitoring to ensure that BRI's contacts with Pacific Bell customers included the requisite disclosures.

18. Pacific Bell took prompt action to terminate BRI's contract when it became clear that BRI was not adhering to the approved scripts, and subsequently contacted consumers to confirm their blocking choice.

19. Pacific Bell corrected the lack of disclosures and misstatements of fact by BRI.

20. Anonymous Call Rejection allows called parties to refuse to receive calls from telephones that have the number blocked by terminating such calls at the central office so that no toll charge is assessed. The rejected caller instead hears a recording stating that the called party does not accept anonymous calls, and if the caller wishes to complete the call, the caller's line must first be unblocked by using the \*82 code, and then redialing the number.

21. Greenlining's witness testified that the purpose of this product was to "punish consumers who have chosen to keep their numbers private – whether they use Selective or Complete Blocking," and that it invades rather than protects the caller's privacy.

22. Greenlining contends that Anonymous Call Rejection violates § 2893, which requires that no charge be imposed for withholding a number. To complete a call where the called party subscribes to Anonymous Call Rejection, the caller must incur the cost of calling from a pay phone to withhold the telephone number, thus incurring a charge to withhold the number.

23. Intervenor Roberts states that he has found Anonymous Call Rejection to be invaluable in protecting and enhancing his and his family's privacy.

24. Pacific Bell offers two types of inside wire maintenance plans. For 60 cents/month, Wire Pro covers the repair of phone wiring and jacks on the

customer's side of the demarcation point. For \$2.25/month, Wire Pro Plus adds a 60-day use of a loaner telephone to the services covered by Wire Pro.

25. Pacific Bell instructs its service representatives to offer Wire Pro Plus, and to explain Wire Pro only if the customer is not interested Wire Pro Plus.

26. Pacific Bell does not proactively inform apartment dwellers of the landlord's statutory duty to maintain inside wire and one jack.

27. The fact that some other entity may be responsible for providing a service that a customer is considering purchasing from Pacific Bell is necessary to make an informed decision on a Pacific Bell offer.

28. The Commission has approved Pacific Bell's tariff for Saver Packs of optional services. The names of the different Saver Packs are: Classic, Caller ID, Essentials, the Basics, and the Works.

29. Pacific Bell service representatives first offer customers the Works Saver Pack or Works Plus and, if rejected, offer the Basics Saver Pack.

30. Pacific Bell served copies of its tariff filings on complainants UCAN and Greenlining. No complainant, nor any other entity, protested the filings.

31. Pacific Bell's market research showed that focus group participants found the name "The Basics" to imply plain old telephone service ("a phone that works") and that the name is misleading because it contained too many optional services to be "The Basics."

32. In D.96-10-066, the Commission adopted rules that govern the provision of universal service to California telecommunications users and which require that all carriers provide all the 17 elements of basic service, including: access to single party local exchange service, ability to place calls, one directory listing, free white pages telephone book, and access to operator services.



33. “Basic” is commonly associated with local exchange service and, at least in the context of universal service, is a term of art meaning local exchange service.

34. There is no relationship between local exchange service or “basic” telephone service and “The Basics Saver Pack,” a group of optional features.

35. The translation of “The Basics” to other languages carried through and in some cases accentuated the erroneous impressions created by the name.

36. “Essential” is virtually a synonym for “basic” and that the services included in “The Essentials Saver Pack” are not at all essential for telephone service.

37. Pacific Bell offered customers a package of services named “The Basics Plus Saver Pack” which included The Basics Saver Pack and The Message Center. The Message Center is a voice mail service provided by Pacific Bell Information Services (PBIS), a Pacific Bell affiliate, but the service is tariffed with the Commission by Pacific Bell.

38. The parties did not raise the issue of whether customers might be misled into believing that The Message Center was being provided at a discount by a combination of The Message Center, at regular price, with a “saver pack.”

39. In 1997, Pacific Bell instituted a policy of offering optional services, such as Call Waiting, Saver Packs, and Caller ID, on all customer contacts other than when a customer is disconnecting service or is temporarily disconnected for non-payment.

40. When offering optional services, Pacific Bell’s sales representatives are trained to offer first The Works Saver Pack, with nine custom calling features at a cost of \$16.95/month, or The Works Plus Saver Pack at \$24.95/month. If the customer is not interested in these packages, the service representative is trained

to offer the Basics Saver Pack, which costs \$14.95/month with four custom calling features or \$12.95 with three custom calling features.

41. The sequence in which Pacific Bell has chosen to present customers with information on the multitude of custom calling services and packages is the sequence that most encourages sales.

42. Pacific Bell's 1986 script which was part of the package selling abuses (1) made service recommendations to customers which reflected Pacific Bell's objective to increase sales, not provide service recommendations to the customer tailored to meet the customer's needs, (2) had fallback positions which attempted to sell as many services as possible to the customer, again without regard to the customer's needs, and (3) did not offer optional services on an individual basis.

43. Pacific Bell's 1998 script entitled "Selling to Success with the New Connect Model Contacts!!!" instructs the service representative to ask the customer a few questions about household composition, frequency of use of the phone, and whether the customer ever works at home or telecommutes. Regardless of the customer's response, the service representative is directed to recommend Basics Saver Pack to the customer. If the customer refuses, a fallback package of fewer services is offered. If the fallback package is rejected the service representative is to attempt to sell individual services.

44. In both the 1986 script and the 1998, the service representative is instructed to feign an interest in how the customer actually uses the telephone and to make a pre-determined "recommendation" ostensibly based on the customer's information. The recommendation, in both scripts, is one of Pacific Bell's most expensive packages of optional features. Should the customer refuse to purchase the package, both scripts require the service representative to offer a fallback package that has fewer features and is less expensive.

45. In 1998, Pacific Bell began paying service representatives up to \$150/month for meeting their sales revenue targets, and a 25% commission on all sales above the target, with no upper bound to the amount of the commission.

46. Pacific Bell's sales strategy that emerged following our 1986 decision was focused on customer service and full and accurate disclosure of service information as demonstrated by its 1992 Sales Quota Policy.

47. Pacific Bell's 1992 Business Office Sales Policy and Guidelines stated that service representatives are to engage in "consultative selling" by responding to verbal cues from the customer and to cues from the customer records in order to make personalized product and service recommendations in all appropriate contacts.

48. In contrast to the 1992 policies, Pacific Bell's current sales strategies, as reflected in evidentiary record, rely on sales quotas, packaged selling and bonus/rewards based on sales volumes.

49. Pacific Bell has essentially changed course from its 1992 policies and reinstated certain abusive marketing practices that we enjoined in 1986.

50. Pacific Bell hires outside vendors and uses its corporate affiliates to perform both inbound and outbound customer contacts. Pacific Bell provides the vendors and/or affiliates access to customer information, including services purchases and financial information.

51. Complainants have not alleged that the information disclosed to agents or corporate affiliates was used for any purpose other than marketing Pacific Bell's products, or that the agents or affiliates failed to keep the information secure.

52. Over 20% of Pacific Bell's service representatives handle calls at its foreign language centers. These representatives speak Spanish, Cantonese, Mandarin, Japanese, Korean, Vietnamese and Tagalog.

53. Pacific Bell engages in marketing efforts to build awareness of its products and services by using print advertising, newsletters, other media, and telemarketing, in addition to customer initiated contacts with service representatives, to explain the benefits of its products and services to these markets. Pacific Bell retains experts in each of the languages to translate and review marketing and service representative scripts, and it also works closely with groups that represent these customers.

54. Complainant Greenlining contends that immigrant and language minority groups are particularly vulnerable to high-pressure sales tactics and are less likely than other consumers to report abuse.

55. Field Research Corporation market research shows the following percentage interest levels for Caller ID: White, 23%; Hispanic, 39%; African-Americans, 37%; Asians, 42%.

56. All local exchange carriers charge ULTS qualified residential low-income customers a discounted installation charge of \$10, and a monthly fee of \$5.62 for flat rate service or \$3.00 for measured service.

57. For each ULTS customer served, the local exchange carriers are reimbursed from the ULTS Fund for the difference between the ULTS rate and the respective local exchange carrier's usual rate for residential basic service. The ULTS program is currently funded by a 3.2% charge on all end users' bills.

58. UCAN provided a Pacific Bell document which stated: "when regrading a customer to Universal Lifeline, offer Caller ID and advise the customer that they will be paying roughly the same dollar amount they were paying before but enjoying the benefits of Caller ID."

59. Pacific Bell's Caller ID scripts have called into question customers' transfers from Complete Blocking to Select Blocking from January 1, 1998, to the present.

60. Remediating Pacific Bell's actions on Inside Wire, Packages Offered Sequentially, "The Basics," and ULTS requires (1) customer notification, (2) implementing customer choice and, if needed, (3) refunding improperly charged amounts.

61. To remedy Pacific Bell's 1986 marketing abuses, the Commission established the Customer Marketing Oversight Committee which oversaw Pacific Bell's adoption of sales policies that were consistent with the law and regulatory policy. Pacific Bell has since abandoned those policies.

62. Limiting our reparation plan to direct refunds to customers who request such refunds is inadequate relief for class of customers potentially affected by the marketing abuses identified in this decision.

63. Achieving our goal of restitution to all customers requires broad customer education efforts.

64. Pacific Bell has exhibited a pattern regulatory compliance during periods of special oversight, only to be followed by noncompliance in furtherance of Pacific Bell's revenue goals when the special oversight ends.

65. The severity of this offense is suggested by the forecasted revenue to be gained, \$312.9 million (net present value of \$1.2 billion over a 10-year period) for increased sales of vertical services.

66. The cost of the customer education effort ordered in this decision will likely substantially exceed the amount collected from the remaining customers to which restitution is owed.

67. To account for inflation, \$16.5 million was escalated from 1988 to 1999 based on the percentage change in consumer prices as reported in the UCLA Anderson Forecast to \$23.8 million.

68. Pacific Bell's Tracking Report # P.D.-01-27, Cumulative Through December 1998, line 7, shows annual revenue of \$9.4 billion.

69. Recidivism is a highly undesirable outcome both for the public and the Commission.

### **Conclusions of Law**

1. The petitions to set aside submission of Roberts and TIU should be denied.
2. Section 451 requires that all charges imposed by a public utility be just and reasonable and that all rules that pertain to or affect a utility's charges or service to the public be just and reasonable.
3. Section 2896 mandates that every telecommunications corporation provide its customers: "Sufficient information upon which to make informed choices among telecommunications services and providers. This includes, but is not limited to, information regarding the provider's identity, service options, pricing, and terms and conditions of service."
4. The legislative history of § 2896 reflects a general directive to telecommunications corporations to provide consumers with information to allow them to make knowledgeable choices among services and service providers, which is based on both traditional regulatory concerns for consumer protection and emerging concerns for fair competition.
5. Pacific Bell's Tariff Rule 12 governs the offering of optional services to a customer. It states that Pacific Bell may call a customer's attention to the fact that optional services are available, that the customer may designate which services are desired, and that Pacific Bell must disclose all applicable recurring rates and nonrecurring charges.
6. Tariff Rule 12 is required by the Commission's GO 96-A, which requires that each utility provide customers with up-to-date information regarding their service, and allow customers to choose from among any service options available to them.

7. In D.86-05-072, the Commission ordered Pacific Bell to cease and desist from: conducting an unauthorized trial program for enhanced services, engaging in “package selling abuses,” violating Rule 6 in establishing credit, renaming basic service, and improperly administering the Universal Service program. The Commission also ordered Pacific Bell to refrain from any cold selling telemarketing and implementing any sales quota systems.

8. In response to the marketing abuses found in D.86-05-072, the Commission ordered Pacific Bell to refund over \$62 million to customers (as of November 1988) and to contribute \$16.5 million to the Ratepayer Education Trust Fund. Pacific Bell’s marketing practices were also placed under the guidance of the Customer Marketing Oversight Committee.

9. In D.86-05-072, the Commission found that Pacific Bell had violated Tariff Rule 12 by packaging basic local exchange service with expensive optional services in such a way as to “mask[] the basic rate, thereby causing ratepayers to unwittingly pay more for telephone service than they otherwise would, or worse, to go without such service at all,” and by failing to disclose the option to purchase services separately with the price for each component part of package of services.

10. Tariff Rule 12 and the Commission decisions require that when offering packages of services, a telecommunications utility must (1) offer basic exchange service apart from packages of optional services, (2) disclose that package components can be purchased separately, and (3) itemize each price on a stand alone basis.

11. Section 2893 requires that every telephone corporation that provides Caller ID comply with the Commission’s rules on blocking services which include providing each caller the capability to withhold display of the caller’s telephone

number, on an individual basis, from the telephone instrument of the called party.

12. The Commission has determined that, to the greatest extent possible, the decision to allow a calling party's number to be displayed must be the result of informed consent and a knowing and intelligent waiver of the right to privacy.

13. Pacific Bell's statements as set out in Finding of Fact 9 were deficient in that customers were neither fully informed of the two options nor allowed to choose between them on that basis.

14. Pacific Bell changed customers' Caller ID blocking choice in violation of § 2893 and the Commission decisions authorizing the sale of Caller ID services.

15. Pacific Bell may make a marketing determination that Selective Blocking is more consistent with its marketing goals and may raise the issue of blocking options with its customers that have Complete Blocking; however, when presenting the options to the customers, Pacific Bell must adhere to the statutory and decisional disclosure requirements.

16. BRI's calls were deceitful and dishonest.

17. BRI's script violated the disclosure requirements because customers were not presented information upon which to make a knowing waiver of the right to privacy, and customers also received misrepresentations of fact.

18. The Commission has previously determined that the called party has every right not to answer the phone, and to secure services from Pacific Bell to prevent certain calls from being presented to the phone.

19. Section 2893 places no burden on called parties to receive anonymous calls; it only requires that telephone corporations provide a blocking service at no charge to the caller.

20. Pacific Bell has met the requirement of § 2893.



21. By offering Wire Pro Plus first and only discussing the alternative of Wire Pro upon the customer's rejection of Wire Pro Plus, Pacific Bell effectively "masks" the lower-priced alternative of Wire Pro and may cause customers unwittingly to pay more for inside wire service than they otherwise would have.

22. Pacific Bell has violated Tariff Rule 12 by failing to state that components of the Wire Pro Plus package may be purchased separately at a lower price.

23. In D.99-06-053, we noted that Pacific Bell's service representatives only present customers with the option of Wire Pro as a fallback when the customer rejects Wire Pro Plus, found that this sequence "may be misleading to residential customers," and ordered Pacific Bell to clearly explain both options to residential customers.

24. The Commission previously required Pacific Bell to disclose the landlord's responsibility for inside wire, by stating in bold and underlined (when in writing) "You should be aware that, under state law, landlords, and not tenants, are responsible for repairs to and maintenance of inside telephone wire." This disclosure requirement expired on September 1, 1994.

25. Pacific Bell has an affirmative duty, created by § 451 and § 2896, to disclose to customers in marketing its products, including inside wire service to renters, those facts that are necessary to informed decisions on Pacific Bell offers.

26. In D.99-09-036, we ordered Pacific Bell's service representatives to clearly explain to its residential customers that they have four options for the repair and maintenance of inside wire: (1) Pacific's Wire Pro plan which covers repair of the customer's inside wire and jacks, (2) Pacific's Wire Pro Plus plan that covers the use of a loaner telephone instrument for up to 60 days, (3) outside vendors to perform inside wire repair maintenance, and (4) making the repairs themselves.

27. D.99-09-036 fully addressed the issue that complainants have raised regarding disclosure of alternative vendors for inside wire repair and the record shows no reason to disturb our previous decision.

28. In D.86-06-072, the Commission found that creating an association between local exchange service and packages of optional services violated Tariff Rule 12.

29. Pacific Bell knew or should have known that transplanting the term “basic” from local service to what could be the most expensive group of optional services available created a potential for customer confusion that needed to be addressed through careful marketing to maintain compliance with the statutes, Tariff Rule 12, and Commission decisions.

30. The Basics Saver Pack creates an association between local exchange service and optional services in violation of Tariff Rule 12, and the name also undermines our universal service goals.

31. The package named The Essentials suffers from a potential to mislead customers in a manner similar to The Basics.

32. Because we find so many other deficiencies with The Basics Saver Pack, we need not reach the issue of creating an association between local (or basic) service and a voice mail product in the name The Basics Plus Saver Pack.

33. Pacific Bell’s offer on every call strategy does not violate § 2896 because it does not deprive customers of information; if anything, customers are receiving excess information in the form of undesired sales pitches.

34. Proving a violation of Tariff Rule 12, under which Pacific must quote all recurring rates and nonrecurring charges for all services, requires the opposite of what UCAN has shown: customers may be receiving unwanted information, but they are not being deprived of information.

35. UCAN has failed to meet its burden of proving that Pacific Bell's offer on every call policy violates a provision of law or any order or rule of the Commission.

36. A sales strategy which is designed to create the mistaken impression in a customer that a particular service package recommendation is based on the customer's needs, and which results in a quotation of individual services only if the customer persistently refuses the service packages, fails to meet the requirements of current Tariff Rule 12 because customers are not presented with a quotation for optional services and "allowed to designate which optional services they desire," as required by Tariff Rule 12.

37. Customer service does not preclude sales efforts, but does require that sales efforts be consistent with the disclosure standards and informed choice requirements of Tariff Rule 12 and § 2896.

38. Pacific Bell's current incentive compensation programs closely resemble the marketing programs that did not comply with statutes, orders, and tariffs, and which led to the prohibition on cold selling telemarketing and sales quotas in D.86-05-072, and are starkly at odds with the policies in place in 1990.

39. The public interest requires permanent limitations upon Pacific Bell's incentive compensation programs.

40. The public interest requires that Pacific Bell's service representative compensation based on sales volume be limited to five percent of the sales representative's monthly pay which is not affected by sales volume.

41. Under the Total Service Approach adopted by the FCC, the determination of whether a telecommunications corporation may share customer information among its corporate family turns on the scope of the service provided not the corporate structure.

42. Section 2891 prohibits all California telephone corporations from making available to “any other person or corporation” various types of customer information, including customer calling patterns and financial information.

43. As used in § 2891, “any other person or corporation” does not include the telephone corporation’s employees or agents (including affiliates acting in that capacity). Such sharing of information must be within the scope of the employment or agency relationship, subject to the supervision of the telephone corporation, and for the purpose of conducting the telephone corporation’s business.

44. UCAN has failed to adequately state a claim under either 47 U.S.C. § 222 or § 2891.

45. The statutory standards applicable to Pacific Bell’s marketing to ethnic minority customers are the same standards applicable to its other customers.

46. ULTS is designed to promote the use of affordable, statewide, basic telephone service among low income households by providing a subsidy to low income customers funded by a surcharge on all end-users’ bills.

47. The purpose of the ULTS subsidy program is to provide affordable service to low income consumers, not to provide Pacific Bell a cross-marketing sales opportunity. Attempting to undo the lower-priced service offering undermines the Legislature’s, and this Commission’s, universal service goals.

48. The public interest requires that Pacific Bell confirm that all customers who have switched from Complete Caller ID Blocking to Selective Blocking since January 1, 1998, understood the privacy consequences of the switch and intended to make the change.

49. The public interest requires that Pacific Bell notify customers who, since January 1, 1998, have purchased Wire Pro Plus or a discounted package of custom calling services of the full range of choices for Inside Wire service and

discounted packages of custom calling services, including the option to decline to subscribe to any of these services.

50. The public interest requires that Pacific Bell determine which, if any, of the inside wire options and discounted packages of custom calling services customer wish to purchase, and immediately implement the customer's choice.

51. The public interest requires that Pacific Bell refund all amounts charged since January 1, 1998, for a more expensive level of inside wire service or discounted packaged of custom calling services where the customer indicates that he or she desired a lower cost option.

52. The public interest requires that Pacific Bell provide to ULTS customers who also subscribe to optional services a specific explanation of the price for ULTS service as clearly distinguished from optional services, and that Pacific Bell provide such customers who indicate that they did not seek these additional services with a full refund.

53. Pacific Bell's history with voluntary sales incentive policies requires that the Commission impose permanent limitations on Pacific Bell's sales incentive compensation plans.

54. The Commission's equitable and statutory powers authorize the use of utility-funded customer education to address instances of broadly disbursed inaccurate information.

55. The public interest requires restitution to all customers, which will necessitate broad customer education efforts.

56. To provide guidance in setting fines, the Commission recently distilled the principles that it has historically relied upon in assessing fines and restated them such that they may form the basis for future decisions assessing fines.

57. The Commission may impose fines of between \$500 and \$20,000 per offense payable to the State of California pursuant to § 2104 and § 2107. Each day of a continuing offense constitutes a separate and distinct offense per § 2108.

58. The purpose of reparations is to return improperly collected amounts to customers; the purpose of fines is to deter further violations.

59. In setting fines, the Commission will consider the severity of the offense, the utility's conduct, the financial resources of the utility, the totality of circumstances in furtherance of the public interest, and the role of precedent.

60. The customer education amount should be treated as a component of the penalty calculation for purposes of evaluating our compliance with our penalty guidelines.

61. An aggravating factor in setting Pacific Bell's fine is the fact that it failed to prevent these violations, despite having the benefit of previous experience with this Commission's view on these matters.

62. Pacific Bell's response to the BRI customer contacts and its conduct during the course of this proceeding are mitigating factors.

63. In light of Pacific Bell's 1998 revenues, a substantial fine is necessary to assure effective deterrence.

64. The most directly applicable precedents to the facts of this case are the Pacific Bell penalty of \$16.5 million from the 1986 case and the payment of \$13 million in settlement of marketing abuse allegations against GTE California approved by the Commission in D.98-12-025.

65. The public interest requires that Pacific Bell pay a fine of \$20 million to the General Fund of the State of California.

66. The public interest requires that one half of Pacific Bell's fine or \$10 million be suspended pending Pacific Bell's compliance with this decision and applicable law and regulations.

67. The public interest requires that Pacific Bell fund a ratepayer education effort similar in purpose and scope to that directed by the Commission in D.87-12-067.

68. The public interest requires that Pacific Bell fund a customer education effort in the amount of \$24 million.

69. To promptly remedy the results of improper marketing by Pacific Bell, and to reform those practices as soon as possible, this decision should be made effective immediately.

## **FINAL ORDER**

### **IT IS ORDERED** that:

1. Pacific Bell shall comply with this decision, all previous decisions, and other applicable law in making the required disclosures about Caller ID blocking options.

2. No later than 60 days after the effective date of this order, Pacific Bell shall begin including on every bill the Caller ID blocking status of each telephone line. The bill shall also contain (either on the front or back) a brief description of the two options and code required to block or unblock the number.

3. Pacific Bell shall contact all customers that have been switched from Complete Caller ID Blocking to Selective Blocking since January 1, 1998. Pacific Bell shall follow the same process that it followed when contacting the customers contacted by BRI.

4. Pacific Bell shall confirm that all customers who have switched from Complete Caller ID Blocking to Selective Blocking since January 1, 1998, understood the privacy consequences of the switch and intended to make the change.

5. Pacific Bell shall notify customers who, since January 1, 1998, have purchased Wire Pro Plus or a discounted package of custom calling services of the full range of choices for Inside Wire service and discounted packages of custom calling services, including the option to decline to subscribe to any of these services.

6. Pacific Bell shall determine which, if any, of the inside wire options and discounted packages of custom calling services the customer wishes to purchase, and immediately implement the customer's choice.

7. Pacific Bell shall refund the difference between amounts charged since January 1, 1998, for a more expensive level of service where the customer indicates that he or she desired a lower cost option.

8. Pacific Bell shall provide to Universal Lifeline Telephone Service (ULTS) customers who also subscribe to optional services a specific explanation of the price for ULTS service as clearly distinguished from optional services. Pacific Bell shall also provide such customers who indicate that they did not seek these additional services with a full refund.

9. The Telecommunications Division shall convene a workshop to no later than 30 days after the effective date of this order to establish a plan for Pacific Bell to follow in implementing Ordering Paragraphs 3 through 7. The Telecommunications Division shall file a final plan and status report no later than 180 days after the effective date of this order. The report shall contain date-specific milestones for significant events and further reports to the Commission, as well as recommendations for calculating refunds and interest on refunds. The final plan shall be in the form of a Commission resolution and shall be placed on the Commission's agenda.



10. Pacific Bell sales-volume-based incentive compensation to service representatives and their immediate supervisors shall not exceed five percent of the service representatives' or supervisors' monthly compensation.

11. The Consumer Services Division, with assistance as needed by the Legal Division, shall convene a workshop with all interested parties to determine the exact components of and timetable for the customer education effort. No later than 120 days after the effective date of this order, the Consumer Services Division shall prepare a resolution for the Commission setting out the details of the customer education plan.

12. Within 30 days of the effective date of this order, Pacific Bell shall charge an appropriate non-operational expense account in the amount of \$24 million, and set that amount aside in a special account. Pacific Bell shall also credit interest to this account on a quarterly basis. Such interest shall accrue at the 90-day commercial paper rate as published by the Federal Reserve Board. Pacific Bell shall notify the Director of the Consumer Services Division when it has completed such actions.

13. Pacific Bell shall pay a fine of \$20 million to the General Fund of the State of California, except that one half of the fine, or \$10 million, is suspended pending Pacific Bell's compliance with this decision and applicable law and regulations. Should Pacific Bell fail to comply with this decision or other applicable law and regulations, we will impose the full amount of the fine.

14. Greenlining's request that Anonymous Call Rejection be prohibited is denied.

15. Complainants' challenges to Pacific Bell's offer on every call policy are denied.

16. Greenlining's request for special disclosure requirements for ethnic minorities, recent immigrants, and customers that prefer to use a language other than English is denied.

17. Complainants have failed to meet the burden of proving that Pacific Bell has violated state or federal laws covering the use of Customer Proprietary Network Information.

18. This proceeding is closed.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.