

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

Telecommunications Division RESOLUTION T-

Market Structure Branch July 22, 1999

**RESOLUTION**

RESOLUTION T-16302. PACIFIC BELL (U-1001-C). REQUEST TO PROVIDE INTEGRATED PATHWAY SERVICE, A NEW SERVICE, AS A CATEGORY III SERVICE.

BY ADVICE LETTER NO. 19804 FILED NOVEMBER 3, 1998

---

**SUMMARY**

This Resolution approves Pacific Bell's (Pacific) request to offer Integrated Pathway Service (IPS), a channelized (1.544 Mbps) high capacity service which delivers up to 24 channels of DS-0 (64 Kbps) level data/and or exchange voice connecting service. We also grant Pacific's request to offer IPS as a Category III service in view of the fact that similar services have been available to consumers from a number of providers. We believe that allowing Pacific to offer Integrated Pathway Service as Category III service will enable Pacific to compete with providers of IPS-type services who have already established themselves in the marketplace. In addition, the maximum pricing flexibility accorded to a Category III service will give Pacific the flexibility to offer competitive pricing strategies that will also benefit the consumers.

Protests to this Advice Letter were received from California Cable Television Association on behalf of itself, Time Warner Telecom of California, L.P., AT&T Communications of California, Inc. and ICG Telecom Group, Inc. on November 30, 1998.

For reasons we will discuss in detail below, the protests to Pacific's Advice Letter No. 19804 are denied.

**BACKGROUND**

Pacific did not provide Protestants with a service description and the market analysis data for IPS.

Pacific refuses to grant protestants access to its cost support data for IPS, wrongly asserting that it only has to provide such data to the Commission when it is asking for Category III treatment for a new service; and Pacific also refuses to grant access to cost support data even if -disclosure agreement with Pacific.

Pacific is possibly engaging in below cost pricing in light of Pacific's offer to waive a customer's substantial nonrecurring charges and other associated exchange services in exchange for a three year term commitment to IPS.

---

Pacific can not comply with the Commission's imputation requirement since the pricing phase of OANAD has not been completed, and the

Pacific is trying to circumvent Category II safeguards by asking for Category III treatment for a service that bundles business local exchange services, a Category II service, with IPS, in effect making business local exchange service a Category III service.

No protest was received for the supplemental Advice Letter No. 19804A.

## **RESPONSE FILED BY PACIFIC BELL**

In response to the protests, Pacific submitted a response on December 8, 1998. Pacific's response states the following.

Pacific has appropriately substantiated Category III treatment for IPS by providing a detailed service description and market analysis study to the Commission. Pacific was also making this information available to the Protestants in its response to the protests.

Pacific does not have to share cost support data with any entity other than the Commission when filing for Category III classification for a new

Pacific has met the unbundling and imputation requirements outlined in D.89-10-08-021. The result is available to the Commission in the cost support workpapers submitted by Pacific. Protestant's position that price floors should be established first before Pacific can offer new services would prohibit Pacific from offering new services and particularly those that are not identified in OANAD.

Pacific has demonstrated in the cost support data it provided to the Commission that it is not pricing IPS below cost; and that such an occurrence is prevented by the imputation requirements Pacific has to meet.

IPS does not improperly circumvent Category II safeguards because it is a new Category III service.

---

In approving Pacific's request to offer Integrated Pathway Service as a Category III service, we have considered the concerns expressed by the protestants and determined that the protests do not justify a denial of a competitive service to consumers.

Protestants indicated that Pacific did not provide to them a service description and the market analysis data of IPS. While we agree with Pacific that it does not have to deliver detailed service description and market analysis for IPS to every party receiving the advice letter, we do believe

-04-031, which requires that:

If Pacific or GTEC request that a new or existing service be placed in Category III for pricing purposes, its application or advice letter, as applicable, shall address, whether various market power criteria are applicable and, if so, shall include the relevant information. The market power criteria shall include but shall not be limited to, the following: market share; ease of entry and exit, including number of competitors, trends, estimations of capital investments necessary to compete, status of unbundling efforts by local exchange carriers; facilities ownership; size and growth capability of competitors; local exchange return on equity, including rate of return on marginal investment; competitors' earnings (to the extent available); substitutable services and studies regarding cross elasticities of demand; rates, terms, and conditions of substitutable services; and whether a utility affiliate offers a competitive services,

CCTA believes that this alternate commits legal error by failing to provide the proper market power analysis under D.90-04-031. CCTA argues that the language of D.90-04-031 is mandatory in its requirement that Pacific make an extensive categorical market power showing and it did not. CCTA further states in its comment that failure to analyze Pacific's deficient showing in light of the requirement of -04-031 is appealable error. CCTA also argues that IPS is not a new service and Pacific's bare claim that it is a new service is contrary to fact since IPS is a service that provides the functionalities of two existing Category II services.

IPS is not a bundling of two existing services but rather a new service that offers simultaneously both data and voice functions.

Commission Decision No. 90-11-029 defines a new service as "an offering which customers perceive as a new service and which has a combination of technology, access, features, or functions that distinguishes it from any existing services."

**THEREFORE, IT IS ORDERED that:**

