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PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

**Telecommunications Division
Carrier Branch**

**RESOLUTION T-16650
May 2, 2002**

R E S O L U T I O N

RESOLUTION T-16650. PACIFIC BELL TELEPHONE COMPANY.
REQUEST TO REVISE SCHEDULE CAL.P.U.C. NO. A2.
GENERAL REGULATIONS, 2.1 RULES, 2.1.12 RULE NO. 12 –
DISCLOSURE OF RATES AND CHARGES AND INFORMATION
TO BE PROVIDED TO THE PUBLIC, PURSUANT TO ORDERING
PARAGRAPH 7 OF DECISION NO. 01-09-058 TO MODIFY
TARIFF RULE 12.

BY ADVICE LETTER NO. 22435, FILED ON NOVEMBER 26, 2001;
SUPPLEMENTED BY ADVICE LETTER NO. 22435-A, FILED ON
DECEMBER 21, 2001; SUPPLEMENTED BY ADVICE LETTER NO.
22435-B, FILED ON JANUARY 29, 2002; SUPPLEMENTED BY
ADVICE LETTER NO. 22435-C, FILED ON MARCH 5, 2002; AND
AGAIN SUPPLEMENTED BY ADVICE LETTER NO. 22435-D,
FILED ON MARCH 12, 2002.

SUMMARY

On September 20, 2001, we issued Decision (D.) 01-09-058, in which we ordered Pacific Bell Telephone Company (Pacific) to modify its Tariff Rule 12 to create a clear distinction between its customer service and sales or marketing efforts.

On November 26, 2001, Pacific filed Advice Letter (AL) 22435 modifying its Tariff Rule 12 to comply with the Ordering Paragraph (OP) 7 of the Commission decision. Pacific also attached a sheet on its "Code of Business Conduct" to comply with OP 13 of D.01-09-058. Pacific filed four supplements to this advice letter.

ORA and Pac-West filed protests. We partially adopt ORA's protest and deny Pac-West's protest for reasons explained below.

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Pacific's AL 22435, with the exception of attached SCHEDULE CAL. P.U.C. No. A2, 6th Revised Sheet 84.1 and the attached sheet on "Code of Business Conduct", complies with OP 7 of D.01-09-058. Pacific's supplements AL 22435-A, 22435-B and 22435-C, do not fully comply with OPs 7 and 13 of D.01-09-058 as amended by D.02-02-027. On March 12, 2002, Pacific filed AL 22435-D that modifies Tariff Rule 12 in compliance with OP 7 of D.01-09-058. However, Pacific still has not modified its standards for proposed internal corporate rules and practices that would prohibit unfair, misleading, and predatory sales practices in accordance with OP 13 of D.01-09-058. Therefore, we order Pacific to submit, within 5 days of the effective date of this resolution, a new advice letter to comply with OP 13 of D.01-09-058, setting out the company's standards for proposed internal corporate rules and practices that would prohibit unfair, misleading, and predatory sales practices. Pacific is notified that if it fails to comply with this resolution and/or fails to fully comply with D.01-09-058 as amended by D.02-02-027, Pacific will be subject to penalties in accordance with Public Utilities Code Sections 2107 and 2108.

BACKGROUND

On April 6, 1998, the Utility Consumers' Action Network (UCAN) filed a complaint (Case (C.) 98-04-004) with this Commission regarding Pacific's marketing practices and strategies in marketing optional services to its residential customers. We consolidated similar complaints (C.98-06-003 filed on June 1, 1998, C.98-06-027 filed June 8, 1998; and C.98-06-049 filed June 24, 1998) by the Greenlining Institute and the Latino Issues Forum (Greenlining) and others, with the UCAN's complaint (C. 98-04-004), into one proceeding.

In 1997, Pacific instituted a policy of marketing optional services, such as Call Waiting and Caller ID, every time a customer calls Pacific, regardless of the customer's purpose in calling. Pacific instructed its service representatives to ask each caller, at the beginning of every call, for permission to access the subscriber's proprietary network information (CPNI) so that Pacific can market its own or its Affiliate's products on every call. If the customer denied permission for Pacific's representative to access its CPNI, the Pacific representative was still instructed to proceed to market only Pacific's products. Pacific argued that it has a constitutional right to offer its products and services to residential customers in California.

On September 20, 2001, we issued D.01-09-058 addressing the concerns raised by the various complainants in their respective cases. In D.01-09-058, we addressed a number of Pacific's marketing practices for its optional services to residential

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customers, finding that some of Pacific's marketing practices violate statutory and decisional laws. In OP 7 of D.01-09-058, we ordered Pacific, within 45 days of the effective date of this order, to file an advice letter modifying Tariff Rule 12 to create a clear distinction between customer service and sales or marketing efforts in conformance with the directives set out in OP 8 and as described in Section 9.3 of D.01-09-058.

Pacific requested an extension of time to file an advice letter to comply with the decision, and we granted Pacific's request. On November 26, 2001, Pacific filed AL 22435 modifying its Tariff Rule 12 and attached to it a sheet describing Pacific's "Code of Business Conduct" to comply with OP 7 and OP 13, respectively. The Telecommunication Division staff (TD) reviewed AL 22435 and informed Pacific that its filing did not fully comply with D.01-09-058. TD pointed out that the language in Pacific's AL 22435 did not conform to the language or intent of Section 9.3 in D.01-09-058.

On December 17, 2001, ORA filed a protest to AL 22435.

On December 17, 2001, Working Assets Funding Services, Inc.; d/b/a Working Assets Long Distance (U-5233-C) ("Working Assets") and Pac-West Telecomm, Inc. (U-5266-C) ("Pac-West") filed a protest to Pacific's AL 22435.

On December 21, 2001, Pacific filed a supplemental AL 22435-A revising its Tariff Rule 12. TD reviewed and informed Pacific that its revised Tariff Rule 12, as shown in the tariff sheets filed with AL 22435-A, did not comply with D.01-09-058. Again, TD pointed to Section 9.3 in D.01-09-058, and explained that the language in the AL did not conform accordingly.

On January 29, 2002, Pacific filed supplemental AL 22435-B. TD reviewed and informed Pacific that its revised Tariff Rule 12, as shown in the tariff sheets filed with AL 22435-B, still did not comply with D.01-09-058. Once more, TD cited Section 9.3 of D.01-09-058 in discussions with Pacific.

On February 7, 2002, we issued D.02-02-027, amending some sections of D.01-09-058 including some ordering paragraphs.

On March 5, 2002, Pacific filed supplemental AL22435-C that reflected some amendments made in D.02-02-027. TD reviewed AL 22435-C and again informed Pacific that its revised Tariff Rule 12, as shown in the tariff sheets filed with AL 22435-C and its filed sheet on "Code of Business Conduct", still did not comply with OP 7 and OP 13 of D.01-09-058.

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On March 12, 2002, Pacific filed supplemental AL 22435-D modifying its Tariff Rule 12.

NOTICE/PROTESTS

Pacific states that a copy of the Advice Letter and related tariff sheets were mailed to competing and adjacent utilities and/or other utilities, and interested parties, as requested. Advice Letter 22435 was listed in the Commission's Daily Calendar of November 28, 2001; Advice Letter 22435-A was listed in the Commission's Daily Calendar of December 28, 2001; Advice Letter 22435-B was listed in the Commission's Daily Calendar of February 1, 2002; and Advice Letter 22435-C was listed in the Commission's Daily Calendar of March 8, 2002. Advice Letter 22435-D was listed in the Commission's Daily Calendar of March 15, 2002. ORA and Pac-West filed timely protests to Pacific's Advice Letter 22435.

DISCUSSION

On November 26, 2001, Pacific filed AL 22435 to revise Schedule Cal. P.U.C. No. A2 General Regulations, 2.1 Rules, 2.1.12 Rule No. 12 – Disclosure of Rates and Charges and Information to be Provided to the Public, Pursuant to OP 7 of D.01-09-058 to modify Rule 12. Pacific attached a sheet on “Code of Business Conduct” to comply with OP 13 of D.01-09-058.

TD reviewed Pacific's AL 22435 and then informed Pacific that the revised Tariff Rule 12, as shown on Schedule CAL. P.U.C. No. A2, 6th Revised Sheet 84.1, filed with AL 22435 did not comply with the directives described in OP 7 of D.01-09-058. TD also informed that the attached sheet on “Code of Business Conduct” did not comply with OP 13 of D.01-09-058.

On December 21, 2001, Pacific filed a supplemental AL 22435-A modifying its Tariff Rule 12. TD reviewed the supplement and informed Pacific that its revised Tariff Rule 12, as shown in the tariff sheets filed with AL 22435-A, still did not comply with D.01-09-058.

On January 29, 2002, Pacific filed a supplemental AL 22435-B after making some modifications to its previously filed Tariff Rule 12. TD informed Pacific that its revised Tariff Rule 12, as shown in the tariff sheets filed with AL 22435-B, still did not comply with D.01-09-058.

On February 7, 2002, we issued D.02-02-027 in which we amended some sections as well as some ordering paragraphs of D.01-09-058.

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On March 5, 2002, Pacific filed supplemental AL22435-C that reflected some amendments made in D.02-02-027. TD reviewed AL 22435-C and again informed Pacific that its revised Tariff Rule 12, as shown in the tariff sheets filed with AL 22435-C and its filed sheet on “Code of Business Conduct”, still did not comply with OP 7 and OP 13 of D.01-09-058.

On March 12, 2002, Pacific filed supplemental AL 22435-D modifying its Tariff Rule 12 that finally met the requirements of OPs 1 and 7 of D.01-09-058 as amended by D.02-02-027. Schedule CAL. P.U.C. No. A2, 6th Revised Sheet 84.1, filed with AL 22435-D complies with the directives described in OP 7 of D.01-09-058 as amended by D.02-02-027 and is therefore accepted.

In AL 22435, Pacific stated that it would adhere to OP 13 of D.01-09-058 through the Code of Business Conduct, which is subject to change and addresses the standards for internal corporate rules and practices that prohibits unfair, misleading, and predatory sales practices. Pacific filed a sheet describing its “Code of Business Conduct” with Advice Letter 22435.

Pacific’s attached sheet describing its “Code of Business Conduct” does not address Pacific’s proposed internal rules and practices that would prohibit unfair, misleading, and predatory sales practices. In the Slamming and Cramming section of the attached sheet, it is written that “Slamming, cramming, and other fraudulent sales practices are illegal and would not be tolerated. . .” There is no reference at all to unfair, misleading and predatory sales practices. Also, fraudulent sales practices are not defined on the sheet attached with AL 22435. It is not clear what types of sales are considered “fraudulent sales” by Pacific. We note that Pacific’s code of business conduct has been in place for some time and so far it has not deterred Pacific from its unfair, misleading and predatory sales practices that are addressed in D.01-09-058. Therefore, it does not meet the requirements of OP 13 of D.01-09-058. Therefore, within 5 days from the effective date of this resolution, Pacific is ordered to file a new advice letter setting out the company’s standards for proposed internal corporate rules and practices that would prohibit unfair, misleading, and predatory sales practices.

In AL22435-D, Pacific requested that the effective date of this advice letter be 90 days after final conclusion of all legal appeals. TD estimates that over 6 months have passed since D.01-09-058 was issued and over 140 days have passed since Pacific filed its AL 22435 to comply with this decision. Pacific filed its supplemental AL 22435-A 25 days after AL22435 was filed; supplemental AL22435-B was filed 64 days after AL 22435; supplemental AL 22435-C was filed

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99 days after AL22435; and supplemental AL 22435-D was filed 106 days after AL 22435 originally was filed. By the time this resolution is approved another 50 plus days would have passed after AL 22435-D was filed. In D.01-09-058, the Commission clearly spelled out what modifications are to be included in Pacific's Tariff Rule 12. In D.02-02-027, the Commission made some minor amendments to the language that is to be included in Tariff Rule 12. The required advice letter filing was a compliance filing and Pacific could have included the Commission language verbatim in Tariff Rule 12. It appears that Pacific is attempting to delay the implementation of Tariff Rule 12 as modified by the Commission. We believe that more than enough time has already passed in implementing our modified Tariff Rule 12. We make this resolution effective on the day it is approved.

In its AL No. 22435 and its first three supplements, Pacific failed to fully comply with OP 7 of D.01-09-058. Pacific, in its AL 22435 and its four supplements, still has not complied with OP 13 of D.01-09-058. We put Pacific on notice that if Pacific further fails to comply with this Commission resolution and/or fails to fully comply with the Commission D.01-09-058 as amended by D.02-02-027, Pacific will be penalized in accordance with Public Utilities Code Sections 2107 and 2108.

On December 17, 2001, ORA filed a protest to AL 22435. In its protest, ORA stated that in the Slamming and Cramming section of Pacific's Code of Business Conduct, Pacific refers to changes to a customer's service provider or services and to the necessity of obtaining consent of the customers. The term used in both the slamming and cramming statutes is "subscriber", and that is the term that should be used here.

On December 26, 2001, Pacific filed its response to both protests of Advice Letter 22435 recommending that ORA's and Pac-West's protests be denied.

In its response, Pacific points out that the Commission has used the term "customer" and not "subscriber" in this decision. In Pacific's tariffs, "subscriber" and "customer" have the same definition and in its tariffs these terms have been used interchangeably with the same meaning. Therefore, Pacific claimed, there is no need to change the term "customer" to "subscriber" as ORA recommended in its protest.

ORA recommended that the final tariff language specify that the subscriber's or customer's request shall be resolved first before Pacific asks for "permission to access the subscriber's proprietary network information." We agree with ORA's recommendation. Also, our modified Tariff Rule 12 provides clear directives on this issue. Thus, ORA's protest is granted in part.

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On December 17, 2001, Working Assets Funding Services, Inc.; d/b/a Working Assets Long Distance (U-5233-C) ("Working Assets") and Pac-West Telecomm, Inc. (U-5266-C) ("Pac-West") filed a protest to Pacific's AL 22435. In its protest, Working Assets and Pac-West challenge the advice letter "insofar as" Pacific's "sales practices will include the marketing of long distance services of SBC services". Working Assets and Pac-West concede that D.01-09-058 does not address joint marketing of local and long distance services by Pacific.

Pacific is not yet authorized to provide long distance service to California customers. In D.01-09-058, we did not address the joint marketing by Pacific of its local services with SBC's long distance services. This resolution is not the place to open discussion on this issue. Working Assets and Pac-West can bring this issue to this Commission's attention when and if Pacific's sales practices include the marketing of SBC's long distance services. Therefore, at this time, we reject the protest to AL 22435 filed by Working Assets and Pac-West.

The draft resolution of the Telecommunications Division in this matter was mailed to the parties in accordance with PU Code Section 311(g)(1) on April 2, 2002. Pacific filed its comments on the draft resolution on April 17, 2002.

In its comments, Pacific states that it should be given at least 90 days to comply with any resolution after the Commission adopts it; otherwise full compliance would be impracticable. Pacific stated further that it worked with the Commission staff as directed by Commission order to modify its tariffs. Pacific adds that the draft resolution fails to define unfair, misleading and predatory sales practices. Ordering Paragraph 13 required Pacific to develop "internal corporate rules and practices that would prohibit unfair, misleading, and predatory sales practices." Pacific states that the fundamental problem is that the order uses vague terminology. Pacific indicates that it cannot tell its service representatives to abstain from "unfair" or "predatory" practices without explanation. Finally, Pacific claims that it has provided direction and complied with the new requirements by modifying Tariff Rule 12 and its Code of Business Conduct to address the specific concerns identified by the Commission.

TD believes that Pacific has had enough time to comply with the Commission decision for modifying Tariff Rule 12. On September 20, 2001, the Commission issued D.01-09-058 ordering Pacific, in OP 7, to file an advice letter within 45 days of the effective date of the decision modifying its Tariff Rule 12 to create a clear distinction between customer service and sales or marketing efforts.

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On November 26, 2001, Pacific filed AL 22435 but did not modify its Tariff Rule 12 as required by D.01-09-058. At the same time, Pacific failed to submit its standards for proposed internal corporate rules and practices that would prohibit unfair, misleading, and predatory sales practices. In its fourth supplement to AL 22435, filed on March 12, 2002 (i.e., 106 days after AL 22435 was originally filed), Pacific finally modified its Tariff Rule 12 so that it would comply with the requirements of D.01-09-058 as amended by D. 02-02-027 issued on February 7, 2002. At the time this resolution is being considered, more than 83 days have passed since D.02-02-027 was issued.

OP 7 of D.01-09-058 instructed Pacific to file a compliance AL to “create a clear distinction between customer service and sales or marketing efforts in conformance with the directives set out in Ordering Paragraph 8 and as described in Section 9.3 of this order”. Section 9.3 contains the information Pacific was to include in its Tariff Rule 12 revisions. While it is true that our rehearing order modified in part the directives in Section 9.3, that section was largely unchanged by the rehearing order. Yet Pacific was unable, in four separate attempts to conform language in its AL to Section 9.3, as TD noted in its review of each AL or AL supplement. Pacific’s fifth submission copied the language ordered by the Commission.

Consequently, Pacific has had ample time and opportunity to comply with the provisions of D.01-09-058. We find its protestations now to be disingenuous and direct immediate compliance.

In OP 13 of D.01-09-058, the Commission ordered Pacific, within 45 days of the effective date of this decision, to submit an advice letter setting out its standards for proposed internal corporate rules and practices that would prohibit unfair, misleading, and predatory sales practices. The “Code of Business Conduct” filed with Pacific’s AL 22435 does not meet the requirements ordered in OP 13 of D.01-09-058. TD believes that Pacific still has not fully complied with OP 13 of D.01-09-058. At the time this resolution is considered, over 240 days would have passed since the decision was issued. In this resolution, TD has recommended that Pacific be ordered to file an advice letter within 5 days of the effective date of this resolution that would comply with OP 13 of D.01-09-058. TD believes that Pacific is trying to delay complying with the Commission orders. Therefore, TD recommends that no additional time be given to Pacific to comply with OP 13.

We agree with TD’s recommendations.

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FINDINGS

1. On April 6, 1998, the Utility Consumers' Action Network (UCAN) filed a complaint (C.98-04-004) with this Commission regarding Pacific's marketing practices and strategies in marketing optional services to its residential customers.
2. We consolidated similar complaints (C.98-06-0003 filed on June 1, 1998, C.98-06-027 filed June 8, 1998; and C.98-06-049 filed June 24, 1998) by Greenlining and others, with UCAN's complaint (C.98-04-004), into one proceeding.
3. In 1997, Pacific instituted a policy of offering optional services, such as Call Waiting and Caller ID, every time a customer calls Pacific, regardless of the customer's purpose in calling.
4. On September 20, 2001, we issued D.01-09-058 addressing the concerns raised by various complainants. In D.01-09-058, we addressed a number of Pacific's practices for marketing its optional services to residential customers, finding that some of Pacific's marketing practices violate statutory and decisional laws.
5. In OP 7 of D.01-09-058, we ordered Pacific, within 45 days of the effective date of this order, to file an advice letter modifying Tariff Rule 12 to create a clear distinction between customer service and sales or marketing efforts in conformance with the directives set out in OP 8 and as described in Section 9.3 of D.01-09-058.
6. In OP 13 of D.01-09-058, we ordered Pacific, within 45 days of the effective date of this order, to submit an advice letter setting out the company's standards for proposed internal corporate rules and practices that would prohibit unfair, misleading, and predatory sales practices.
7. Pacific requested an extension of time to file an advice letter to comply with the decision, and we granted Pacific's request.
8. On November 26, 2001, Pacific filed AL 22435 revising its Tariff Rule 12 and included a sheet on "Code of Business Conduct" to comply with OPs 7 and 13 of D.01-09-058, respectively.
9. TD reviewed AL 22435 and then informed Pacific that the revised Tariff Rule 12, as shown on Schedule CAL. P.U.C. No. A2, 6th Revised Sheet 84.1, filed with AL 22435 did not comply with the directives described in the OP 7 of

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D.01-09-058. TD also informed Pacific that its sheet on Code of Business Conduct did not meet the requirements of OP 13 of D.01-09-058.

10. On December 17, 2001, ORA filed protest to AL 22435.
11. On December 17, 2001, Working Assets Funding Services, Inc.; d/b/a Working Assets Long Distance (U-5233-C) (“Working Assets”) and Pac-West Telecomm, Inc. (U-5266-C) (“Pac-West”) filed a protest to Pacific’s AL 22435.
12. On December 21, 2001, Pacific filed a supplemental AL 22435-A.
13. On December 26, 2001, Pacific filed its response to both protests.
14. On January 29, 2002, Pacific filed a supplemental AL 22435-B.
15. On February 7, 2002, we issued D.02-02-027 amending some portions of D.01-09-058.
16. On March 5, 2002, Pacific filed a supplemental Advice Letter 22435-C.
17. Pacific failed to fully comply with OPs 7 and 13 of D.01-09-058 in its AL 22435 and its first three accompanying supplements.
18. On March 12, 2002, Pacific filed a supplemental AL 22435-D. In its AL 22435-D, Pacific modified its Tariff Rule 12 that fully complies with OP 7 of D.01-09-058.
19. Pacific’s attached sheet on “Code of Business Conduct” to comply with OP 13 of D.01-09-058, does not address Pacific’s unfair, misleading and predatory sales practices as required by OP 13. Therefore, Pacific is ordered, within 5 days of the effective date of this resolution, to submit a new advice letter setting out the company’s standards for proposed internal corporate rules and practices that would prohibit unfair, misleading and predatory sales practices as required by OP 13.
20. In its tariffs, Pacific did not make a distinction between the “customer” and the “subscriber”. Therefore, there is no need to change “customer” to “subscriber” as recommended by ORA in its protest.
21. In D.01-09-058, we did not address the joint marketing by Pacific of Pacific’s local services with SBC’s long distance services. This resolution is not the appropriate forum to open discussion on this issue.

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22. Pacific, in its AL 22435 and its first three supplements, failed to fully comply with D.01-09-058 as amended by D.02-02-027. Therefore, we put Pacific on notice that if Pacific further fails to comply with this Commission resolution and/or fails to fully comply with Commission D.01-09-058 as amended by D.02-02-027, Pacific will be subject to penalties in accordance with Public Utilities Code Sections 2107 and 2108.
23. ORA's protest is partially adopted as shown in this resolution.
24. Working Assets' and Pac-West's joint protest is denied.
25. Pacific's request to make this resolution effective 90 days after final conclusion of all its legal appeals is denied.

THEREFORE, IT IS ORDERED that:

1. With the exception of attached SCHEDULE CAL. P.U.C. No. A2, 6th Revised Sheet 84.1 and the attached sheet on "Code of Business Conduct", Pacific's Advice Letter 22435, is approved. In addition, Pacific's supplemental AL 22435-D and accompany tariff sheet modifying Tariff Rule 12 to comply with OP 7 of D.01-09-058 is approved. Pacific's supplemental ALs 22435-A, 22435-B, and 22435-C did not comply with OPs 7 and 13 of D.01-09-058 and are therefore not approved.
2. Within 5 days of the effective date of this resolution, Pacific shall submit a new advice letter to comply with OP 13 of D.01-09-058 setting out the company's standards for proposed internal corporate rules and practices that would prohibit unfair, misleading, and predatory sales practices.
3. We put Pacific on notice that if Pacific further fails to comply with this Commission resolution and/or fails to fully comply with the Commission D.01-09-058 as amended by D.02-02-027, Pacific will be subject to penalties in accordance with Public Utilities Code Sections 2107 and 2108.
4. ORA's protest is partially adopted.
5. Working Assets' and Pac-West's joint protest is also denied.
6. Pacific's request to make this resolution effective 90 days after final conclusion of all legal appeals is denied.

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The effective date of this Resolution is today.

I certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting on May 2, 2002. The following Commissioners approved it.

WESLEY M. FRANKLIN
Executive Director