ALJ/AC/jc *

Decision 88-09-061 September 28, 1988

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation on the Commission's own motion into the rules, practices, and procedures of all telephone corporations, as listed in Appendix A attached to the O.I.I., concerning the billing of subscribers for telephone calls.	Mailed SEP 29 1988 R.85-09-008 (Filed September 5, 1985)

David Discher, Attorney at Law, for Pacific Bell; Jack Cutherell, for Continental Telephone Company of California; James L. Lewis, Attorney at Law (Massachusetts), for MCI Telecommunications Corporation; Kenneth K. Okel and Kathleen S. Blunt, Attorneys at Law, for General Telephone Company of California; Phyllis A. Whitten and Rubenstein, Bohachek & Johns, by Jose E. Guzman, Jr., Attorneys at Law, for U.S. Sprint Communications Company; and Bless Stritar Young, Attorney at Law, for AT&T Communications of California; respondents.

Terrence B. Egan, for American Network, Inc.; Gauthier & Hallett, by Mary Lynn Gauthier, for Gauthier & Hallett; Thomas J. MacBride, Jr., Attorney at Law, for California Association of Long Distance Telephone Companies; Jerry M. O'Brien and Diane M. Martinez, for API Alarm Systems; Harvey Rosenfield, Attorney at Law, for Network Project; James Wheaton, Attorney at Law, for Center for Public Interest Law and Network Project; Ken Bell, for Telesphere Network, Inc.; and Assemblyman Richard Katz and Cyrus Cardan, for themselves; interested parties.

Dean J. Evans, for the Commission Advisory and Compliance Division.

INTERIM OPINION

A. The Issues

This ongoing investigation has covered many facets of the issue of how telephone companies bill their subscribers for services. This Interim Opinion addresses the main issue raised in the hearing held July 6-8, 1987, that is, whether or not the backbilling limitations we ordered local exchange carriers (LECs) to institute with respect to billing end users (generally 90 days) should be applied to the billing of interexchange carriers (IECs) for access to the local network.

The testimony and briefs filed in this phase of the proceeding also address the propriety of Pacific Bell's (Pacific) proposed tariff change to allow IECs more time to collect from Pacific for overpayment of timely paid access charge bills and a motion to strike filed by Pacific alleging that portions of the prefiled testimony of MCI Telecommunications Corporation (MCI) and US Sprint Communications Company (Sprint) exceeded the appropriate scope of inquiry for this hearing. This motion was taken under submission at the time of the hearing. Since then we have issued Decision (D.) 87-09-017 which disposes of the new tariff question and makes the motion moot.

A second motion to strike filed by Pacific asserts that two documents appended to the opening brief of AT&T Communications of California Inc. (AT&T) are not relevant and should be striken because they were not admitted into evidence. We address that issue and the issue of extending the backbilling limitation to access charges in this opinion.

Since this decision resolves the backbilling extension issue, and since our stay of D.87-06-050 was premised upon the inequity of having a backbilling rule in place affecting IECs in their role as service providers, but no rule in place affecting IECs as customers, we lift the stay imposed by that decision. By

this action our underlying order in this matter, D.86-12-025, becomes effective except that its effect as to interexchange carrier (IEC) billing for uncompleted calls remains stayed until we have completed further consideration of that issue. GTE California, Inc. (GTEC) and Pacific filed comments to the Proposed Decision of the ALJ previously issued in this matter. Pacific supports the Proposed Decision, but GTEC urges some changes. We have slightly clarified the Proposed Decision in response to GTEC's concerns, but have not been persuaded to otherwise alter it.

B. The Motion to Strike

After the concurrent opening briefs were filed addressing the July, 1987 hearings, Pacific filed a Motion to Strike asking that we strike Exhibits B and C to the Concurrent Opening Brief of AT&T Communications of California, Inc. (AT&T), and references to these exhibits on pages 20, 21, and 22 of that brief on the grounds that they are not relevant and were not admitted into evidence in the proceeding. AT&T responded to the motion arguing that the two documents are relevant to this proceeding, that their authenticity is capable of ready verification, and that they are proper subjects for "judicial" notice, which AT&T claims it implicitly sought by introducing and attaching them to its opening brief. According to AT&T, Exhibit B is a report which it filed in an FCC proceeding regarding the effects of late access bills; and Exhibit C is a filing made by Pacific in the same FCC proceeding in May, 1987. Neither of these documents was introduced during the hearing, although the latter document was mentioned in the testimony of MCI's witness, Mr. Catherall.

The purpose of a post-hearing brief is to provide the parties with an opportunity to put forth their views of the appropriate interpretation of the evidence presented in the hearing in the light of applicable law. It is not a forum for producing new evidence, whether or not it is relevant and authentic. Such evidence might be the subject of a motion to reopen or some similar procedural device, if there is good cause why the evidence could not have been produced in a timely manner. Generally such good cause is only established when the party seeking its introduction

shows that the evidence was not available at the time of the hearing due to circumstances beyond its control, and in such circumstances there usually must be provision for the other parties to cross examine the witness producing it. Even assuming an implicit motion to reopen, AT&T has not alleged any circumstances which warrant consideration of new evidence. Aside from the fact that Exhibit B could not possibly be construed as anything more than unsubstantiated hearsay since it purports to be the statement of a firm other than AT&T, if these documents are matters subject to official notice by this Commission it would be discretionary, not mandatory, official notice. As with any other evidence the request that it be recognized should properly be made during a hearing, not afterward. (See, by analogy, California Evidence Code, Sections 452 and 455.) While it is rather meaningless to strike statements in post-hearing briefs, we will grant Pacific's motion to the extent that we will decline to take official notice of these documents and will accord them no weight in this decision.

C. **Positions of the Parties Regarding A Backbilling Limitation**

1. **Pacific**

Pacific opposes application of the 90-day backbilling limitation to access services, contending that although the revenue from such backbilling is less than 2% of its total access billing, it does provide a contribution to services that are priced below costs which would not be available if it were not permitted. It states that revenue from access charges over 90 days old was $15 million out of total intrastate access revenues of $1.093 billion in 1986. It adds that $730 million of that revenue came from AT&T.

Pacific additionally contends that a 90-day limitation could result in some free service to IECs, and that, since the IECs audit Pacific's access bills and keep data which allows them to compare actual usage and circuits with that for which they are billed, and can therefore identify over- (and under-) billing, they have failed to establish that Pacific's billing them beyond 90 days would cause them "substantial detriment." Further, Pacific asserts

that since the IECs have the capability of identifying usage and circuits and verifying charges billed beyond 90 days, and since they can make claims for refunds for overbillings for up to three years, the limitation is inequitable. Finally, Pacific claims that different treatment of IECs from end-user customers is justifiable because IECs are "co-providers of telephone service and co-utilities" and they have the ability to record calls and bill their end user customers independently of Pacific rendering an access bill.

2. General

General agrees with Pacific that the 90-day limitation on backbilling should not be extended to access charges. Citing D.86-06-035, our final opinion in I.84-05-046 which addressed retroactive billing by gas and electric utilities due to meter error and meter fraud, General points out that we found the three year statutory limits for recovery of overcharges in Public Utilities (PU) Code Sections 736 and 737 to be appropriate maximums for backbilling customers for meter or billing error, but concluded that because the utilities in question had indicated that they had adequate procedures to detect and correct such errors promptly, a three month limitation period for backbilling residential customers was sufficient, but the usually more complex and much larger bills for commercial customers warranted the continuation of a three year backbilling period. General asserts that we should follow the same rationale in this matter than we followed in I.84-05-046.

General also argues that because it only bills IECs "and a very limited number of large business customers" for access services, and because IECs receive monthly access bills from General and do monthly audits of these bills "to detect overcharges and/or undercharges," and because these IECs also receive monthly Access Billing Monitoring Reports from General which give them notice of estimated charges over 60 days old but not yet billed,

there is little impact on the ability of access services customers to plan for backbilled amounts.

Additionally General asserts that the fact that the IECs other than AT&T (which has a joint reconciliation process with General) do not inform their billing local exchange carrier (LEC) of undercharges for access services both indicates the IECs' "unwillingness to work with the LECs to insure timely, accurate access charge billing," and indicates that "they are receiving at least as much benefit from being unbilled (and not, therefore, paying) for the backbilling period, as they would receive detriment from receiving a large backbilling."

General, like Pacific, points out that backbilling is unavoidable in certain circumstances, such as when service is provided in advance of General's ability to bill the customer, or when service involves facilities provided jointly by General and another LEC, which requires the exchange of billing data between the two companies, or when necessary data elements are missing incorrect or incomplete and therefore require "manual investigation" and eventual "manual reentry into the billing system." General adds that while the Carrier Access Billing System (CABS) it expects to be installed by early 1989 will automate some of the functions which are presently performed manually, it will not eliminate all need for backbilling over 90 days.

General's witness, Rebecca Mayer, testified that General's intrastate switched access billings for 1986 were $218 million, of which about $5 million was billed more than 90 days after the service was provided. She also testified that for the first half of 1987 General rendered total intrastate access billings of $119 million of which $12.7 million was billed more than 90 days after service was provided. General argues that it would sustain unnecessary and unreasonable losses of revenue if it were not permitted to bill for these services, and takes the position that the burden of late billing rests primarily on the

LECs since they lose the use of revenues for such services while the IECs receive both the service and the benefit of the use of that money pending payment.

3. MCI

MCI urges the Commission to apply the 90-day backbilling limitation to IEC access billing just as it is to be applied to end user billing. MCI argues that the LECs failed to establish that they are unable to render access bills within the 90-day period. It disputes the LECs' claim that such application of the 90-day limitation would endanger the contribution from access services and result in increases to basic rates. It also disputes Pacific's claim that IECs are different from end user customers.

Addressing General's concerns, MCI states that it would not oppose the LECs including a request for a waiver of the backbilling rule for a "truly new access service," provided the LEC could show good cause for the waiver; however MCI adds that General did not substantiate its difficulties with timely billing of jointly provided access services and "error file" calls. Pointing out that its own tariff would place MCI itself at the same "economic disadvantage" as Pacific due to different treatment of backbilling abilities and refund liabilities, MCI adds that the contemplated backbilling restriction is "of no consequence."

In support of its position favoring the backbilling limitation MCI cites the testimony of its witness, Mr. Catherall that delayed backbilling can substantially complicate the IECs auditing and verification of access bills as well as their financial reporting and cash flow.

Catherall testified, for example, that when Pacific backbills it does not automatically adjust the minimum monthly usage charge it collected for the backbilled period. He stated that "overbilling consistently occurs" and added that "[u]nless the IEC disputes this overbilling, the LEC does nothing about it." Addressing cash flow and financial reporting, Catherall testified

that the impact of a large backbill could be great since more than 55% of MCI's Pacific-related expenses are access charges. Further, he stated that backbilling can destroy an IEC's reporting of expenses and revenues in a given period by "causing the IEC to under report expenses in one accounting period, and overreport them in another."

Catherall added that these problems could be ameliorated if the Commission would require Pacific to provide the IECs with advance notice of backbilling (as General began doing in the first quarter of 1987), an explanation of the reasons for the backbilling, a reconciliation of the amounts backbilled with amounts previously billed for the same billing period, and a later due date for the payment of backbilled amounts than the timely billed amounts.

MCI expresses agreement with AT&T's Mr. Yates that mixing current and late charges on the same invoice is a problem which adds to the difficulty of auditing these bills.

4. Sprint

Sprint's position is similar to that of MCI. Sprint is critical of the testimony of Pacific's witness, Ms. Lubamersky, insofar as it assumes that Pacific would have lost $15 million in revenue in 1986 had the 90-day backbilling limitation been in place, and is also critical of what it seems to consider Ms. Lubamersky's implication that this would require an increase in residential rates of close to $2 per year, pointing out that even if the revenue shortfall were correct, there is no basis for attributing it as a dollar-for-dollar contribution to residential rates.

Sprint also points out that Pacific's contention that a utility's backbilling abilities should be consistent with its refund liabilities ignores the fact that such treatment is not afforded telephone companies with respect to their exchange services. Sprint concludes that the correlation Pacific seeks is

unnecessary and that any economic disadvantage resulting from the disparity is shared by all telephone companies subject to the backbilling limitation.

Sprint also disputes Pacific's position that different backbilling treatment is warranted for IECs because of the "unique business relationship" between them and Pacific. Sprint's witness, Mr. Wescott testified that the relationship between Sprint and Pacific is the same as that between Pacific and any other business end user customer in that "we are a customer of a single monopoly provider of services which we need and use, and have no other provider to turn to if we are unhappy with that service." (Ex. 7 at 16.) Sprint urges us to follow the position we adopted in Parts Locator, Inc. v. PT&T Co. (1982), 9 CPUC 2d 262 in which we found all matters relating to billing to be in Pacific's control and concluded that an "external inducement" in the form of a 3-month backbilling limitation should be established to encourage Pacific to apply additional resources and emphasis on eliminating backbilling--at least that due to operational problems. Sprint takes the same position with respect to General, adding that according to General's witness, Ms. Mayer, General did succeed in eliminating a substantial amount of backbilling in the first quarter of 1987 through such added effort.

Sprint takes the position that there may be justification for a deviation from the uniform backbilling limitation for special non-operational problems caused by such things as the new services or jointly provided facilities mentioned by Ms. Mayer. However, Sprint contends that since access revenues billed beyond 90 days represent such a small part of Pacific's and General's total access revenues (1.37% and 2.2% respectively according to testimony) and since access costs are "the largest portion of US Sprint's and MCI's operating costs" (60% of US Sprint's operating costs, 55% of MCI's operating costs and 60% to 70% of AT&T's gross revenues,

according to testimony), such deviation should be requested by application to the Commission.

Citing the testimony of Mr. Catherall regarding the problems with cash flow and financial reporting and Mr. Wescott's testimony that IECs need a clear understanding of their costs so that they can "efficiently plan for changes in the marketplace" and offer improved or new services, Sprint adds that a balancing of the benefit to IECs with the burden on Pacific "must mitigate against a three year limitations period and in favor of a three-month limitations period." Sprint adds that even though Pacific's Lubamersky testified that of the approximately $15 million billed beyond 90 days, $13.4 million was billed within 365 days and "the vast majority [of backbills older than 90 days] were no more than six months old" (TR at 38), neither Pacific nor General were willing to offer an alternative to their current backbilling practices, and concludes that this Commission "should rebuff Pacific's and General's unwillingness to establish uniform, statewide backbilling rules for access charges by imposing the three-month backbilling limitation."

Finally, Sprint asserts that Pacific's reliance on D.86-06-035, in which we found it appropriate for energy tariffs "to carry the same limitations as the statute," is misplaced since the statute in question relates to claims by customers for refunds. Further, Sprint notes that this Commission has deviated from the three-year statutory period applying to claims by utilities for tariff charges (Public Utilities Code (PU) Section 737) by adopting a three-month backbilling limitation for residential energy consumers and for local telephone service.

5. CALTEL

Like Sprint, the California Association of Long Distance Telephone Companies (CALTEL) cites Parts Locator v. PT&T Co., 9 CPUC 2d 262, as establishing the principle of extending the 90-day backbilling limitation to services other than local exchange

services where there is no sufficient reason to distinguish between the two services. CALTEL asserts that that is the case with access service, and opposes Lubamersky's assertion that the level of sophistication and resources of the IECs makes it reasonable to "not require the same level of protective safeguards" afforded to end user purchasers of exchange services. CALTEL argues that failing to adopt a 90-day backbilling limitation would result in "extremely disparate billing treatment of customers with the same general 'level of sophistication'" while discriminating against IECs and in favor of shared tenant/joint user providers. It gives as an example of the former, a reseller who transitions from a private line-like WATS service with 90-day billing protection, to use of service which requires access, such as Feature Group B, which would not provide the same protection.

CALTEL argues that the LECs' claims about the effect on contribution to other services is not persuasive since other services with revenue to cost ratios above 1.0, such as message toll service, are subject to the 90-day limitation. CALTEL takes the same position as Sprint regarding Pacific's desire for the same limitation on billing as on customers' claims for reparations. CALTEL also agrees that the relationship between Pacific and the IECs is not "unique" in a way which warrants tariffed billing treatment similar to the billing treatment agreed to by contract between the LECs. CALTEL analogizes the rationale of Parts Locator, supra, regarding the complexity of the private line billing in that case to Pacific's claim of billing complexity here and concludes that there is no sufficient reason to keep a different billing limitation for access services. Finally, CALTEL asserts that it would be inequitable not to apply the 90-day limitation to access service.

6. **AT&T**

AT&T concurs with the arguments made by other IECs regarding Pacific's arguments about levels of sophistication and

refund claims. It asserts that the LECs had the burden of showing that the 90-day limitation "would be unreasonable or impossible to meet," but only demonstrated certain exceptions to the normal process which "can be accommodated easily." For example, AT&T's witness, Kitson H. Yates, expressed support for a five-month backbilling limitation for collect calls, third party calls, and error file calls as well as calls involving meet point billing, consistent with the exceptions allowed in D.86-12-025. However, he added that such charges should be billed separately, and that this separate billing should also be used to bill for new access services "where the charges are for services beyond the three-month limitation, but within the five-month exception limitation." (Exhibit 9 at 8.) AT&T seems to imply that this exception for new service should only be for one billing cycle.

AT&T cites the testimony of General's Ms. Mayer for the proposition that the Carrier Access Billing Systems (CABS) used by Pacific and General are designed to process, post and render access bills on a current basis pursuant to an industry set standard. AT&T concludes that since the LECs "have all the data necessary to render complete and timely access bills, and their systems are designed to bill on a one-month cycle, there is no reason why they should not be expected to render complete and accurate access bills within the three-month limitation ordered in Decision 86-12-025."

AT&T's Yates concurs with the other IECs that a three-month limitation would save the IECs money by prompting the LECs to improve their methods so as to render bills "consistently within the system designed time frames." (Exhibit 9 at 13.) He testified that bills older than twelve months require "substantially more time to investigate and validate" than do more recent bills, and are thus more costly. He added that Pacific's pattern of mixing together current and late charges on a single bill and providing insufficient supporting data also makes verification more time consuming.

As a "less effective" alternative to the three-month limitation Mr. Yates testified that it would improve the quality and timeliness of billing and avoid wasted time and resources of both the IECs and the LECs if the Commission were to require the LECs to adopt the following billing practices for bills exceeding three months from the date of service: (1) bill such services separately; (2) grant the IEC customer extra time to investigate the billing on a month for month basis for the number of months past three that the bill is rendered; (3) change the absolute limitation to two years rather than three so it is the same as the FCC limitation for interstate billing so that the LECs and IECs historical data maintenance will be more reasonable; and (4) develop "systems and reports that provide the IEC customer with the ability to reconcile access billing and revenue remittance based on the common underlying inventory and usage data." This latter requirement has to do with the problem of an IEC being credited, at the time of a backbilling, for the Minimum Monthly Usage Charge (MMUC) it earlier paid for a trunk because the earlier bill showed no current usage on that trunk. AT&T points out that the LECs offered no objection to the imposition of this alternative.

D. Discussion

We think there is a clear analogy here with our action in D.86-06-035 dealing with the backbilling of energy consumers for meter error and diversion. In that decision we made it clear that unless there is some significant mitigating circumstance we will not restrict a utility's right to collect for services rendered beyond its right under the applicable statute of limitations. In that case we weighed the significant burden which could be imposed on individual residential ratepayers without their knowledge against the utility's ability to detect and correct such things as malfunctioning equipment and we concluded that the circumstances

warranted imposition of a restriction on the utility. That is the policy we apply to the issue before us now.

In D.85-12-025 our principal focus was on the effect of varying billing policies on the average ratepayer, that is, the residential or small business end user. The possible financial burden on the individual ratepayer weighed against the state of the existing technology again warranted imposition of a restriction on utility billing practices. Likewise, in an earlier decision, Parts Locator v. PT&T Co., 9 PUC 2d 1982, we weighed the customer's burden against the telephone company's ability to provide timely billing for private line service, and again concluded that a 90-day restriction was warranted. In that case we noted that we do not wish to unnecessarily limit a utility's ability to collect lawful rates, but we concluded that the longer period for collecting past undercharges posed an unreasonable potential "extreme hardship" on private line customers.

The question before us in this proceeding then, is whether the burden placed upon the access services customers of the LECs constitutes a mitigating circumstance of such magnitude that it warrants a restriction of the LECs' right to backbill for past undercharges for the three-year statutory period. We do not think the evidence presented in this proceeding is sufficient to require such restriction. It shows that Pacific is billing for access services within the billing period the IECs wish us to impose 98% of the time already, and General's rate is almost identical. Under these circumstances we perceive no bad faith intent to foot-drag in the production of timely access bills; nor does the evidence demonstrate extreme hardship to access services customers due to the present billing practices. On the other hand, the IECs have described difficulties caused both by the format and the data furnished by the LECs, particularly Pacific, which could be improved in order to allow these customers to process backbillings more expeditiously and more economically.

Thus, while we do not think the behavior of the LECs or the unquantified burden on the access services customers requires restricting backbilling to 90 days, we do think that some of the proposals of AT&T's Mr. Yates would reasonably ease the backbilling difficulties the IECs now experience. Therefore, we will require the LECs to implement the separate billing proposal. However, in response to GTEC's comments to the Proposed Decision of the ALJ we wish to clarify that the LECS need not issue separate bills each month, but must at least separately identify current and backbilled charges on the monthly bill. We will also require them to provide their access customers with reports which enable the customers to reconcile access billing and revenue remittance based on the underlying inventory and usage data. We do not believe the month-for-month investigation time is necessary, nor do we see merit in mirroring the FCC limitation.

Finally, since we have now resolved the question of whether to impose a restriction on backbilling, the equitable purpose of the stay we imposed by D.87-09-014 no longer exists, so we will lift that stay. By this action we reinstate the backbilling limitations imposed by D.86-12-025. Because of the long period of time when this stay was in effect and the large number of matters which have come before this Commission as a result of its implementation, this decision should become effective at once.

D.86-12-025 provided that the affected carriers should file tariff sheets reflecting the adopted limitations within 90 days, and provided that these new tariffs were to become effective five days after the date of filing. Although that decision was stayed twice, it was in effect for more than 95 days. Thus, such tariffs ought to be effective on the date this order becomes effective. We recognize, however, that the required tariffs are not now in place and these utilities will need some time to file and implement them. Therefore, we will extend the

time for filing to 15 days from the effective date of this order and maintain the requirement that the tariffs take effect five days after the date of filing.

Findings of Fact

1. AT&T's introduction of and references to Exhibits B and C in its Concurrent Opening Brief constitutes an introduction of new evidence.

2. Local exchange carrier (LEC) backbilling for access services does not pose a potential extreme hardship or an unreasonable burden on access customers.

3. Backbilling format and data changes would result in more expeditious and economical processing by the LEC's access services customers.

4. The equitable reason for the stay which this Commission imposed in D.87-09-014 is moot as a result of this order.

5. Removing the stay imposed in D.87-09-014 results in the requirement that the backbilling limitations imposed by D.86-12-025 be immediately implemented. However, the tariffs reflecting these rates are not presently filed with the Commission.

Conclusions of Law

1. AT&T did not make a good-cause showing that the delayed introduction of Exhibits B and C in its Concurrent Opening Brief was reasonable.

2. There is no legal or equitable basis for extending the 90-day billing limitation to the LEC's access services tariffs.

3. The LECs ought to implement backbilling format and data changes that will permit their access services customers to process backbillings more expeditiously and more economically.

4. The stay this Commission imposed in D.87-09-014 should be lifted immediately.

5. For practical and equitable reasons the utilities effected by the backbilling limitations set out in D.86-12-025, should be granted a reasonable extension of time to file and

implement the tariff changes which they would otherwise be required to implement immediately.

INTERIM ORDER

IT IS ORDERED that:

1. Pacific Bell's motion to strike Exhibits B and C and references to those exhibits in the Concurrent Opening Brief of AT&T is granted to the extent that the exhibits and references have not been considered or addressed in this decision.

2. Within 30 days of the effective date of this order each local exchange carrier (LEC) which provides access services shall make an Advice Letter filing under the terms of General Order (GO) 96-A to amend its access services tariff to require that the access services billing format shall clearly and separately identify services rendered for periods other than the current billing period and those for current services.

3. Within 30 days of the effective date of this order each LEC which provides access services shall make an Advice Letter filing under the terms of GO 96-A which describes the content of the monthly report which the LEC shall provide its customers at the time a backbill is issued. The report shall contain sufficient information so that the customer can reconcile its access billing and revenue remittance based on the common underlying inventory and usage data.

4. The stay imposed by D.87-09-014 is hereby lifted. By this action our underlying order in this matter, D.86-12-025, becomes effective except that its effect as to interexchange carrier billing for uncompleted calls remains stayed until we have completed further consideration of that issue.

5. The filing requirement of D.86-12-025 is modified to the extent that the effected LECs and IECs shall have 15 days from the effective date of this order to file the tariffs described in that

decision. These tariffs shall take effect 5 days from the date of filing.

This order is effective today.

Dated SEP 28 1988, at San Francisco, California.

STANLEY W. HULETT
President
DONALD VIAL
FREDERICK R. DUDA
G. MITCHELL WILK
JOHN B. OHANIAN
Commissioners

I CERTIFY THAT THIS DECISION WAS APPROVED BY THE ABOVE COMMISSIONERS TODAY.

Victor Weisser, Executive Director

ALJ/AC/jc

Decision 88 09 061 SEP 28 1988

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circumstances there usually must be provision for the other parties to cross examine the witness producing it. Even assuming an implicit motion to reopen, AT&T has not alleged any circumstances which warrant consideration of new evidence. Aside from the fact that Exhibit B could not possibly be construed as anything more than unsubstantiated hearsay since it purports to be the statement of a firm other than AT&T, if these documents are matters subject to official notice by this Commission it would be discretionary, not mandatory, official notice. As with any other evidence the request that it be recognized should properly be made during a hearing, not afterward. (See, by analogy, California Evidence Code, Sections 452 and 455.) While it is rather meaningless to strike statements in post-hearing briefs, we will grant Pacific's motion to the extent that we will decline to take official notice of these documents and will accord them no weight in this decision.

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1. **Pacific**

Pacific opposes application of the 90-day backbilling limitation to access services, contending that although the revenue from such backbilling is less than 2% of its total access billing, it does provide a contribution to services that are priced below costs which would not be available if it were not permitted. It states that revenue from access charges over 90 days old was $15 million out of total intrastate access revenues of $1.093 billion in 1986. It adds that $730 million of that revenue came from AT&T.

Pacific additionally contends that a 90-day limitation could result in some free service to IECs, and that, since the IECs audit Pacific's access bills and keep data which allows them to compare actual usage and circuits with that for which they are billed, and can therefore identify over- (and under-) billing, they have failed to establish that Pacific's billing them beyond 90 days would cause them "substantial detriment." Further, Pacific asserts

that the impact of a large backbill could be great since more than 55% of MCI's Pacific-related expenses are access charges. Further, he stated that backbilling can destroy an IEC's reporting of expenses and revenues in a given period by "causing the IEC to underreport expenses in one accounting period, and over-report them in another."

Catherall added that these problems could be ameliorated if the Commission would require Pacific to provide the IECs with advance notice of backbilling (as General began doing in the first quarter of 1987), an explanation of the reasons for the backbilling, a reconciliation of the amounts backbilled with amounts previously billed for the same billing period, and a later due date for the payment of backbilled amounts than the timely billed amounts.

MCI expresses agreement with AT&T's Mr. Yates that mixing current and late charges on the same invoice is a problem which adds to the difficulty of auditing these bills.

4. Sprint

Sprint's position is similar to that of MCI. Sprint is critical of the testimony of Pacific's witness, Ms. Lubamersky, insofar as it assumes that Pacific would have lost $15 million in revenue in 1986 had the 90-day backbilling limitation been in place, and is also critical of what it seems to consider Ms. Lubamersky's implication that this would require an increase in residential rates of close to $2 per year, pointing out that even if the revenue shortfall were correct, there is no basis for attributing it as a dollar-for-dollar contribution to residential rates.

Sprint also points out that Pacific's contention that a utility's backbilling abilities should be consistent with its refund liabilities ignores the fact that such treatment is not afforded telephone companies with respect to their exchange services. Sprint concludes that the correlation Pacific seeks is

according to testimony), such deviation should be requested by application to the Commission.

Citing the testimony of Mr. Catherall regarding the problems with cash flow and financial reporting and Mr. Wescott's testimony that IECs need a clear understanding of their costs so that they can "efficiently plan for changes in the marketplace" and offer improved or new services, Sprint adds that a balancing of the benefit to IECs with the burden on Pacific "must mitigate against a three year limitations period and in favor a three-month limitations period." Sprint adds that even though Pacific's Lubamersky testified that of the approximately $15 million billed beyond 90 days, $13.4 million was billed within 365 days and "the vast majority [of backbills older than 90 days] were no more than six months old" (TR at 38), neither Pacific nor General were willing to offer an alternative to their current backbilling practices, and concludes that this Commission "should rebuff Pacific's and General's unwillingness to establish uniform, statewide backbilling rules for access charges by imposing the three-month backbilling limitation."

Finally, Sprint asserts that Pacific's reliance on D.86-06-035, in which we found it appropriate for energy tariffs "to carry the same limitations as the statute," is misplaced since the statute in question relates to claims by customers for refunds. Further, Sprint notes that this Commission has deviated from the three-year statutory period applying to claims by utilities for tariff charges (Public Utilities Code (PU) Section 737) by adopting a three-month backbilling limitation for residential energy consumers and for local telephone service.

5. CALTEL

Like Sprint, the California Association of Long Distance Telephone Companies (CALTEL) cites Parts Locator v. PT&T Co., 9 CPUC 2d 262, as establishing the principle of extending the 90-day backbilling limitation to services other than local exchange

warranted imposition of a restriction on the utility. That is the policy we apply to the issue before us now.

In D.85-12-025 our principal focus was on the effect of varying billing policies on the average ratepayer, that is, the residential end user. The possible financial burden on the individual ratepayer weighed against the state of the existing technology again warranted imposition of a restriction on utility billing practices. Likewise, in an earlier decision, Parts Locator v. PT&T Co., 9 PUC 2d 1982, we weighed the customer's burden against the telephone company's ability to provide timely billing for private line service, and again concluded that a 90-day restriction was warranted. In that case we noted that we do not wish to unnecessarily limit a utility's ability to collect lawful rates, but we concluded that the longer period for collecting past undercharges posed an unreasonable potential "extreme hardship" on private line customers.

The question before us in this proceeding then, is whether the burden placed upon the access services customers of the LECs constitutes a mitigating circumstance of such magnitude that it warrants a restriction of the LECs' right to backbill for past undercharges for the three-year statutory period. We do not think the evidence presented in this proceeding is sufficient to require such restriction. It shows that Pacific is billing for access services within the billing period the IECs wish us to impose 98% of the time already, and General's rate is almost identical. Under these circumstances we perceive no bad faith intent to foot-drag in the production of timely access bills; nor does the evidence demonstrate extreme hardship to access services customers due to the present billing practices. On the other hand, the IECs have described difficulties caused both by the format and the data furnished by the LECs, particularly Pacific, which could be improved in order to allow these customers to process backbillings more expeditiously and more economically.

Thus, while we do not think the behavior of the LECs or the unquantified burden on the access services customers requires restricting backbilling to 90 days, we do think that some of the proposals of AT&T's Mr. Yates would reasonably ease the backbilling difficulties the IECs now experience. Therefore, we will require the LECs to implement the separate billing proposal, and we will require them to provide their access customers with reports which enable the customers to reconcile access billing and revenue remittance based on the underlying inventory and usage data. We do no believe the month-for-month investigation time is necessary, nor do we see merit in mirroring the FCC limitation.

Finally, since we have now resolved the question of whether to impose a restriction on backbilling, the equitable purpose of the stay we imposed by D.87-09-014 no longer exists, so we will lift that stay. By this action we reinstate the backbilling limitations imposed by D.86-12-025. Because of the long period of time when this stay was in effect and the large number of matters which have come before this Commission as a result of its implementation, this decision should become effective at once.

Findings of Fact

1. AT&T's introduction of and references to Exhibits B and C in its Concurrent Opening Brief constitutes an introduction of new evidence.

2. Local exchange carrier (LEC) backbilling for access services does not pose a potential extreme hardship or an unreasonable burden on access customers.

3. Backbilling format and data changes would result in more expeditious and economical processing by the LEC's access services customers.

4. The equitable reason for the stay which this Commission imposed in D.87-09-014 is moot as a result of this order.

Conclusions of Law

1. AT&T did not make a good-cause showing that the delayed introduction of Exhibits B and C in its Concurrent Opening Brief was reasonable.

2. There is no legal or equitable basis for extending the 90-day billing limitation to the LEC's access services tariffs.

3. The LECs ought to implement backbilling format and data changes that will permit their access services customers to process backbillings more expeditiously and more economically.

4. The stay this Commission imposed in D.87-09-014 should be lifted immediately.

INTERIM ORDER

IT IS ORDERED that:

1. Pacific Bell's motion to strike Exhibits B and C and references to those exhibits in the Concurrent Opening Brief of AT&T is granted to the extent that the exhibits and references have not been considered or addressed in this decision.

2. Within 30 days of the effective date of this order each local exchange carrier (LEC) which provides access services shall make an Advice Letter filing under the terms of General Order (GO) 96-A to amend its access services tariff to reflect that billings for services rendered for periods other than the current billing period shall be separate from current billings.

3. Within 30 days of the effective date of this order each LEC which provides access services shall make an Advice Letter filing under the terms of GO 96-A which describes the content of the monthly report which the LEC shall provide its customers at the time a backbill is issued. The report shall contain sufficient information so that the customer can reconcile its access billing and revenue remittance based on the common underlying inventory and usage data.

4. The stay imposed by D.87-09-014 is hereby lifted. By this action our underlying order in this matter, D.86-12-025, becomes effective except that its effect as to interexchange carrier billing for uncompleted calls remains stayed until we have completed further consideration of that issue.

This order is effective today.

Dated _____, at San Francisco, California.