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**ORIGINAL**

Decision 89 02 080 FEB 24 1989

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )	
Fiber Data Systems, Inc. for a )	
certificate of public convenience and )	Application 88-05-017
necessity authorizing the provision )	(Filed May 11, 1988)
of access to long-distance telephone )	
services and resale of long-distance )	
telephone services. )	

ORDER GRANTING LIMITED REHEARING  
OF, AND PARTIALLY STAYING, D.88-12-029

GTE California, Inc. (GTEC) has filed an application for rehearing of D.88-12-029 (the Decision), in which the Commission granted Fiber Data Systems, Inc. (FDS) a certificate of public convenience and necessity to: (1) construct and operate a telephone system which will provide "access service" to long distance telephone services within Los Angeles County; and (2) resell long-distance telephone services offered by other communications common carriers to subscribers located in Los Angeles County. GTEC's application challenges only the Decision's grant of authority to provide access service. Pacific Bell has filed a response in support of GTEC's application and FDS has filed a response in opposition.

We have carefully considered all of the arguments raised in GTEC's application for rehearing and the responses and are of the opinion that sufficient grounds for granting a rehearing on FDS's application to provide access service have been shown. We wish to consider more thoroughly the factual, legal, and policy issues presented by FDS's application to provide access service on its own network, in competition with local exchange companies.

In granting this rehearing, we do not necessarily indicate agreement with GTEC's listing of the factors it believes relevant to determining whether the public convenience and

necessity require FDS's proposed access service. "[I]t is within the discretion of the commission to determine the factors material to public convenience and necessity" (California Motor Transport Co. v. Public Utilities Commission, 59 Cal. 2d 270, 275 (1963)). Many of the cases GTEC relies on are more than 50 years old, while the telecommunications market has changed greatly, and become much more competitive, in the past few years. As part of the rehearing we will determine what factors we should consider in deciding whether the public convenience and necessity require FDS's proposed access service.

In order to preserve our options pending this rehearing, we will stay the Decision's grant of authority to FDS to provide access service. If it wishes, and to the extent authorized by the Decision, FDS may operate as a reseller of interLATA long-distance telephone services offered by other communications common carriers. However, the stay will encompass all provision of access service by FDS, whether access service to the point of presence of another interexchange carrier (IEC) or access service to FDS's point of presence as a reseller IEC.

Therefore, good cause appearing,

IT IS ORDERED that:

1. GTEC's application for rehearing of D.88-12-029 is granted. The rehearing shall consider FDS's provision of access service, and not its authority to resell interLATA long-distance telephone services offered by other communications common carriers.

2. This limited rehearing shall be held at such time and place and before such Commissioner or Administrative Law Judge as shall hereafter be determined.

3. The Executive Director shall provide notice of such rehearing to the parties hereto in the manner prescribed by Rule 52 of the Commission's Rules of Practice and Procedure.

4. The authority to provide telephone service granted FDS by D.88-12-029 is stayed pending further order of this Commission, excepting only FDS's authority to resell interLATA

long-distance telephone services offered by other communications common carriers.

This order is effective today.

Dated FEB 24 1989, at San Francisco, California.

Commissioner Frederick R. Duda,  
being necessarily absent, did not  
participate.

G. MITCHELL WILK  
President  
STANLEY W. HULETT  
JOHN B. OHANIAN  
Commissioners

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

*Victor Weissor*  
Victor Weissor, Executive Director