

L/MMA/pds

Decision 90 06 059 JUN 20 1990

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

CENTEX TELEMAGEMENT, INC.,

Complainant,

vs.

PACIFIC BELL,

Defendant.

**ORIGINAL**

Case 87-09-005  
(Filed September 4, 1987)

ORDER MODIFYING D.90-03-073  
AND DENYING REHEARING

Centex Telemagement, Inc. has filed an application for rehearing of Decision (D.) 90-03-073. We have considered all the allegations of error in the application and are of the opinion that good cause for rehearing has not been shown. However, we have determined that D.90-03-073 should be modified as indicated below.

Therefore,

IT IS ORDERED that:

Decision 90-03-073 is modified as follows:

1. The following shall replace page 9, paragraph 2, from sentence 3 to the end of the paragraph:

"Nor can a utility offer a service not authorized by the tariff, unless it first requests a deviation from the tariff, and the Commission authorizes the deviation. Pacific's consent, or the withdrawal thereof, from an unauthorized and mistaken combining of the HICAP and FEX services without the required rate adjustments is illegal.

Consent to an illegality is of no effect."

2. Conclusion of Law No. 1 shall be modified to read:

"Centex is not entitled to the combined HICAP/FEX service, as ordered, without paying the FEX mileage charges because the tariff does not permit it.

Pacific's consent, or the withdrawal thereof, to an unauthorized transaction has no legal force and effect under these circumstances."

3. Page 10, the 2nd and 3rd full paragraphs shall be replaced by the following:

"The issues raised in this matter point up some of the problems inherent in the transition from traditional ratemaking into incentive-type regulation. The Commission does not wish to stifle competition, creativity, or innovative ways of using the network. We are mindful, however, that in promoting competition, we must continue to observe the statutory safeguards against discriminatory rates as mandated by the Public Utilities Code."

"We are unsure how this tariff provision relates to the unbundling principle promulgated as policy in D.89-10-031. Any specific findings on this issue are beyond the scope of this proceeding and record. Nevertheless, we intend to signal a concern that parties should contemplate change when drafting tariffs in order to more easily accommodate intralATA competition and maximize utility services in the local exchange network."

4. Centex's motion for a stay of the order in D.90-03-073 to "forthwith pay to Pacific all money deposited with the Commission for disputed bills issued for service rendered after April 10, 1988" is hereby denied.

5. The Executive Director shall disburse to Pacific all funds on deposit with the Commission in connection with this proceeding on or after the date of this order.

IT IS FURTHER ORDERED THAT:

1. Rehearing of D.90-03-073, as modified herein, is hereby denied.

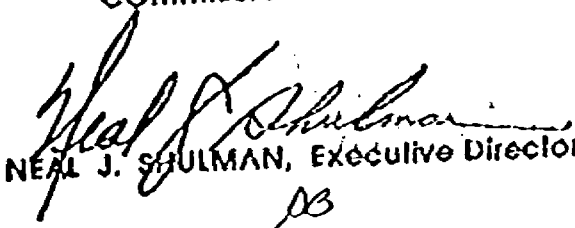
This order is effective today.

Dated JUN 20 1990, at San Francisco, California.

FREDERICK R. DUDA  
STANLEY W. HULETT  
JOHN B. OHANIAN  
PATRICIA M. ECKERT  
Commissioners

President G. Mitchell Wilk,  
being necessarily absent, did  
not participate.

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

  
NEAL J. SHULMAN, Executive Director  
DB