

Decision 90 09 085 SEP 25 1990

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Pacific Bell for approval, to the extent required or permitted by law, of its plan to provide enhanced services.

Application 88-08-031
(Filed August 15, 1988)

OPINION

ORIGINAL

This decision directs Pacific Bell (Pacific) to file certain information regarding SMART Talk services offered by Pacific's affiliate, Pacific Bell Directory (Directory).

Background

On February 27, 1989, Pacific notified the Commission's Executive Director by letter that it intended to offer new services through its subsidiary, Directory. In particular, Pacific identified an enhanced service named SMART Talk which would provide an audiotex gateway for Yellow Pages advertisers and other enhanced service providers to make recorded messages available to the public. The notification to the Commission was intended for information only and was not filed as an application or advice letter.

On the following day, February 28, 1989, Pacific filed with the Federal Communications Commission (FCC) a Notification of Market Trial and Petition for Special Consideration to offer the SMART Talk service.

On May 24, 1989, the assigned administrative law judge (ALJ) issued a ruling raising concerns about the regulatory status of SMART Talk services. The ruling stated that enhanced services offered by a Pacific subsidiary are likely to be subject to Commission review. Directory finances are included in the intrastate revenue requirement. Moreover, new services introduced by Directory are subject to the provisions of D.85-12-065, which

approved Pacific's request to move directory services into a utility subsidiary. Ordering Paragraph 7 of Decision (D.) 85-12-065 states:

"Pacific shall not undertake any new subsidiary operations until the following have been submitted to Commission's Evaluation and Compliance Division and met with its approval:

An estimate of current costs and not revenues of Directory Services;

An accounting plan which will facilitate audits of PBD operations;

A proposal for allocation of revenues and expenses to PBD operations;

A description of proposed new lines of business."

In view of these concerns, the ALJ ruling directed Pacific to address several issues in a brief to be filed in this proceeding on June 19, 1989. The ALJ ruling required Pacific to answer several specific questions:

1. Is there any reason why the SMART Talk service or any other enhanced service provided by Pacific Bell Directory should not be subject to review in A.88-08-031?
2. Is the testimony provided to date in this proceeding limited to the activities of Pacific Bell's Information Services Group? Would an enhanced service offered by another division of Pacific Bell or any subsidiary not be included in Pacific's testimony?
3. Is there any reason to believe that SMART Talk service should not be subject to the mandatory provisions of Ordering Paragraph 7 of D.85-12-065?

The following addresses these questions and the regulatory status of Directory enhanced services.

Positions of the Parties

1. Pacific Bell

Pacific states that the Commission has no jurisdiction over enhanced services offered by Directory, pursuant to Public Utilities (PU) Code § 728.2, except that Directory revenues and expenses are, consistent with the PU Code Section, included in the regulated revenue requirement. Its testimony in this proceeding, according to Pacific, applies to all enhanced services except those over which the Commission has no jurisdiction.

Pacific does not believe Ordering Paragraph 7 in D.85-12-065 applies to SMART Talk services because SMART Talk is not a new operation. Rather, according to Pacific, it is the provision of directory advertising in a form different from that used in the past. Second, Pacific states it has met with Commission Advisory and Compliance Division (CACD) regarding SMART Talk and agreed to track SMART Talk costs and revenues.

2. Reuben H. Donnelley Corporation (Donnelley)

Donnelley argues that Commission policy on enhanced services was intended to apply to all enhanced services. However, the scope of the proceeding was limited, according to Donnelley, to enhanced services offered by Pacific's Information Services Group (ISG), and therefore additional hearings should be held on the subject of SMART Talk. Donnelley believes Directory's offering of SMART Talk raises several important regulatory issues regarding potential anti-competitive activity. Donnelley adds that D.85-12-065 specifically sought to protect ratepayers from Directory's forays into new lines of business.

3. Division of Ratepayer Advocates (DRA)

DRA does not have an opinion about what action the Commission should take because it does not have information regarding the nature of the service. DRA suggests a request for interim authority would provide such information.

Discussion

Our authority to regulate Directory services is, as Pacific states, defined in PU Code § 728.2. Section 728.2 states in pertinent part:

"...the Commission shall have no jurisdiction or control over classified telephone directories or commercial advertising included as part of the corporation's alphabetical telephone directories, including the charges for and the form and content of such advertising, except that the commission shall investigate and consider revenues and expenses with regard to the acceptance and publication of such advertising for purposes of establishing rates for other services offered by telephone corporations." (Emphasis added.)

The statute clearly does not permit the Commission to regulate rates or content of advertising services. We interpret the language of the statute to limit also our authority over the terms and conditions under which directory services are offered.

Although § 728.2 removes some regulatory oversight from our jurisdiction, it specifically requires us to consider revenues and expenses for directory services in setting the utility's revenue requirement. Of course, § 728.2 does not require that all revenues and expenses automatically be placed in the revenue requirement. The Commission is required to "consider" those costs and revenues in setting the revenue requirement, just as it considers those of other services. We may therefore decline to permit Pacific to include directory costs as part of the revenue requirement.

While § 728.2 limits our authority to order specific pricing practices, the authority the Commission has under that section provides a mechanism for protecting ratepayers and the competitive marketplace. We may discourage below-cost pricing by preventing cross-subsidization of a directory service by the general body of ratepayers. To this end, D.85-12-065 provided a

process under which the Commission could monitor revenues and costs from new services. Ordering Paragraph 7 of D.85-12-065 requires Pacific to provide certain marketing and financial information to CACD prior to the introduction of new directory services.

SMART Talk is a new service. It is marketed separately from traditional directory services, appears to be included in separate accounts, and uses technology not used for traditional directory services. The service is identified by the FCC and Pacific as a separate service subject to FCC approval and conditions as an enhanced service offering. To conclude that SMART Talk is not a new service would be to conclude that any of dozens of new telecommunications services are not new, but merely provision of traditional services "in a form different from that used in the past."

Because SMART Talk is a new service offered by Pacific's directory services subsidiary, it is subject to Ordering Paragraph 7 of D.85-12-065. Pacific states it has met with the CACD and is tracking service costs and revenues. Pacific does not indicate, however, whether it is in compliance with Ordering Paragraph 7 of D.85-12-065, which requires an accounting and allocation plan, and a description of the service.

D.85-12-065 also specifically required separate approval for provision of electronic publishing services. We cannot tell from the record whether SMART Talk is an electronic publishing service or whether it is even subject to Section 728.2.

In order to clarify the many uncertainties associated with SMART Talk, we will order Pacific to file, within 30 days of the effective date of this decision, the following information:

A description of the service, the technology it employs, locations where it is currently offered, and prices;

Current revenue and cost tracking account information;

An estimate of future costs and revenues;

A description of current allocation of revenues and expenses;

A report of the status of filings with the FCC regarding SMART Talk;

The reasonableness of including SMART Talk costs and revenues in the sharing calculation established by D.89-10-031 (or, under § 728.2 provisions, in the revenue requirement calculation).

Parties may file comments on Pacific's filing within 30 days of the filing date. Thereafter, we will determine whether we should take further action.

Our decision today does not signal a change from past Commission decisions. We have stated our intent to protect ratepayers from highly risky ventures and to promote pricing policies which are compatible with a competitive marketplace. These regulatory objectives and regulatory treatment of enhanced services are set forth in D.89-10-031, which addressed Phase II issues in our ongoing review of the regulatory framework for telecommunications companies. Our request for information in today's decision will permit us to assure that the SMART Talk service and its regulatory treatment lies within the framework established in D.89-10-031.

Findings of Fact

1. Pacific notified the Commission on February 27, 1989, that it intended to offer a new service called SMART Talk through its Directory affiliate.

2. SMART Talk is a new service.

3. Ordering Paragraph 7 of D.85-12-065 requires certain information from Pacific before it offers new directory services.

4. The record does not establish that Pacific is in compliance with Ordering Paragraph 7 of D.85-12-065 or that SMART Talk is subject to the provisions of Section 728.2.

Conclusions of Law

1. Section 728.2 provides that the Commission has no jurisdiction over pricing or content of telephone directory advertising. It also provides that the Commission shall consider revenues and expenses associated with such services, for the purpose of setting rates for other utility services.

2. Pacific should be required to file in this proceeding information regarding its SMART Talk service.

ORDER

IT IS ORDERED that:

1. Pacific Bell shall file in this proceeding, within 45 days of the effective date of this decision, the following information:

A description of the service, the technology it employs, locations where it is currently offered, and prices;

Current revenue and cost tracking account information;

An estimate of future costs and revenues;

A description of current allocation of revenues and expenses;

A report of the status of filings with the FCC regarding SMART Talk;

The reasonableness of including SMART Talk costs and revenues in the sharing calculation established by D.89-10-031 (or, under Section 728.2 provisions, in the revenue requirement calculation).

Pacific's filing shall be served on the Commission Evaluation and Compliance Division and the Division of Ratepayer Advocates. It shall also serve the information on any party to this proceeding who requests it.

2. Parties wishing to comment on the information filed pursuant to Ordering Paragraph 1 shall do so within 45 days of the date of Pacific Bell's filing.

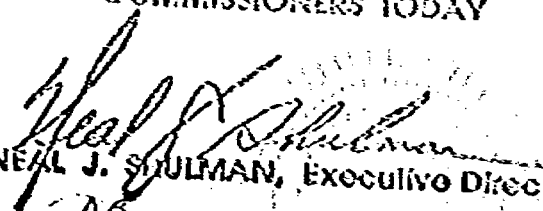
This order is effective today.

Dated SEP 25 1990, at San Francisco, California.

G. MITCHELL WILK
President
FREDERICK R. DUDA
STANLEY W. HULETT
PATRICIA M. ECKERT
Commissioners

Commissioner John B. Ohanian,
being necessarily absent, did
not participate.

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


NEAL J. SULMAN, Executive Director