

JUL 3 1991

Decision 91-07-021 July 2, 1991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation)
and Suspension on the Commission's)
own motion of tariffs filed by)
Advice Letters Nos. 8 and 9 of)
Telesphere Network, Inc.)

(I&S)
Case 89-11-020
(Filed November 22, 1989)

ORIGINAL

OPINION

This decision rejects a proposed settlement agreement filed jointly on February 7, 1991 by Telesphere Network, Inc. (Telesphere), an interexchange carrier, and the Commission Advisory and Compliance Division (CACD).

Background

On November 6, 1989, Telesphere filed Advice Letter 8 setting forth the conditions under which Telesphere proposed to offer tariffed intrastate "900 service" in California.¹ Telesphere filed Advice Letter 9 on November 17, 1989 adding consumer safeguard provisions. The advice letters were suspended by the Commission pending an investigation into the legality and reasonableness of the proposed tariff. (Case 89-11-020, Decision (D.) 90-01-022, D.90-03-030.) The investigation was subsequently combined with proceedings initiated by U.S. Telecom, Inc., AT&T Communications of California (AT&T), and MCI Telecommunications Corporation (MCI) seeking to provide similar intrastate 900 service (referred to here and elsewhere as "the 900 Docket"). (See Order Instituting Investigation 90-12-040.)

¹ "900 service" refers to service whereby a telephone customer may dial a 900 prefix number to reach an information provider in order to receive a message for which the customer will be charged.

Four months before the Commission readied its decision in the 900 Docket, the Commission issued a separate "Order to Show Cause" (D.90-11-055, November 21, 1990) directing Telesphere to show why it should not be ordered to cease and desist from providing intrastate 900 service without Commission authority and in violation of the order suspending Advice Letters 8 and 9. The order was made on the filing of an affidavit by CACD alleging that Telesphere was holding itself out as a carrier of intrastate 900 service.

Specifically, CACD alleged that in August and October 1990 it became aware of two different 900 information programs which appeared to be of interest only to residents of California.² In both cases, the information provider (IP) was served by Telesphere. Further preliminary investigation revealed, according to CACD, that Telesphere was serving several IPs who are physically located in California and that Telesphere transported 900 calls which initiated and terminated within the state.

The assigned administrative law judge (ALJ) set a prehearing conference on December 20, 1991 and, at the request of the parties, continued the conference to January 17, 1991 to allow an opportunity to explore the possibility of settlement. On January 17, 1991, no agreement had been reached, and the ALJ set hearing for February 14, 1991. Meanwhile, the parties held a noticed settlement conference, pursuant to Rule 51, et seq., of the Commission's Rules of Practice and Procedure, on February 5, 1991 and filed their proposed settlement agreement on February 7, 1991. The ALJ suspended further hearing at the parties' request.

² CACD alleged that one of these programs offered information on local gasoline prices and the other concerned a local county ballot measure. CACD alleged that the programs neither contained an announcement of the charge for the call nor provided a period during which a caller could hang up without charge.

Comments on the proposed settlement were filed under Rule 51 by AT&T and MCI. Neither took specific issue with the consumer safeguards in the proposed settlement. MCI objected to the "headstart" foothold Telesphere would gain if the settlement were adopted. MCI noted that the Commission's decision in the 900 Docket would render the headstart issue moot.

AT&T objected to the settlement on grounds that it would result in "de facto" authority to provide intrastate 900 service while Telesphere's 900 competitors would be required to file tariffs in order to obtain authority. AT&T recommended that the Commission not act on the proposed settlement until the Commission issues a decision in the 900 Docket.

The Telesphere/CACD Settlement

The proposed settlement consists of four essential elements:

1. Telesphere would continue to provide 900 service in California as an interstate carrier, including the transport of calls originating and terminating within the state but excluding information programs of exclusively local (intraLATA) interest.
2. Telesphere would investigate any and all consumer complaints received since the March 14, 1990 suspension of Advice Letters 8 and 9 and would apply a liberal bill adjustment policy.
3. Telesphere would undertake to implement 16 consumer safeguard practices and govern its service under "policy manuals" issued to its own employees and IPs.
4. The agreement would take effect on the date the Commission adopts it and would terminate on the 60th day following the date on which the Commission's decision in the 900 Docket becomes final.

Both Telesphere and CACD submit that the proposed agreement is in the public interest. The parties assert that

litigating the matter further will necessarily involve complex facts and will require the Commission to resolve the dispute between Telesphere and CACD as to whether Telesphere's 900 service activity was intrastate or interstate in nature.³ The parties say that the Commission's foremost concern in regulating 900 service in California is for adequate consumer safeguards to ensure that California 900 customers are not billed unfairly. The parties believe that the consumer safeguards on which they have agreed meet the Commission's concerns.

The parties also submit that Telesphere's agreement to investigate all complaints arising during the suspension of its 900 advice letters will provide a remedy for any customer problems that occurred during the period in which no safeguards were provided.

On March 13, 1991, just five days after the close of the 30-day comment period under Rule 51.4, the Commission issued D.90-03-021 in the consolidated 900 Docket. That decision authorizes the parties in that proceeding, including Telesphere, to file tariffs for 900 information service in California and imposes a number of consumer safeguards. The decision became effective on the date signed.

Discussion

We see no purpose in adopting those provisions of the proposed settlement which would allow Telesphere to offer "California 900 service." Telesphere shall instead file its tariff under D.90-03-021 along with the other newly authorized carriers. To approve the agreement would only confuse customers during the

³ Telesphere's position in the investigation has been that its 900 service is provided via a national network and that its activity in California is only incidental to its interstate 900 service. CACD maintains that calls which originate and terminate in California constitute intrastate service and are subject to Commission regulation.

brief period in which the settlement might be in effect because its consumer safeguards are not identical to those of D.90-03-021. It would also enable Telesphere to offer the service in violation of Public Utilities (PU) Code § 489. This is so because the proposed settlement does not require Telesphere to file tariffs for its "California 900" operations.⁴

On the other hand, we agree with CACD and Telesphere that litigating the issues alleged in the order to show cause could

4 PU Code § 489 states:

- "(a) The commission shall, by rule or order, require every public utility other than a common carrier to file with the commission within such time and in such form as the commission designates, and to print and keep open to public inspection, schedules showing all rates, tolls, rentals, charges, and classifications collected or enforced, or to be collected or enforced, together with all rules, contracts, privileges, and facilities which in any manner affect or relate to rates, tolls, rentals, classifications, or service. Nothing in this section shall prevent the commission from approving or fixing rates, tolls, rentals, or charges, from time to time, in excess of or less than those shown by the schedules.
- "(b) The commission shall, by rule or order, require every telephone corporation operating within a service area, on first contact by a prospective subscriber and in subsequent contacts by the subscriber for the purpose of changing service, to fully inform the subscriber of the basic services available to the class of subscribers to which the subscriber belongs. For eligible residential subscribers, these services shall include universal lifeline telephone service. The subscriber shall be presented with information orally, in print form, or in computer data form, according to the means by which contact is established. If after a hearing, the commission finds that any telephone corporation has not provided prospective subscribers with the information required by this section, the commission may make an appropriate adjustment of the telephone corporation's rates or impose penalties pursuant to other provisions of law."

prove arduous to the extent that state and federal jurisdiction issues may be involved. In as much as Telesphere appears willing to file a tariff for its intrastate services, the jurisdictional issue is moot.

Under Rule 51.7 we may reject a proposed settlement without hearing where we determine that it is not in the public interest. We may also include in an order rejecting a settlement our guidance as to what might comprise an agreement which would be acceptable. We believe that Item 6 of the proposed settlement is a potential basis on which a new settlement proposal might be developed. In Item 6 Telesphere agreed to investigate all consumer complaints which were filed since March 14, 1990 and to apply a liberal adjustment policy to any consumer seeking a refund of 900 service charges. Item 6 could remedy any actual harm that occurred to customers, albeit after-the-fact, and D.90-03-021 could provide clear authority for Telesphere's service henceforth. We would add the requirement that Telesphere immediately publish a notice on five consecutive days in at least one major newspaper of general circulation in each of the nine Bay Area counties stating that Telesphere will refund all 900 service charges it collected between March 14, 1990 and the date of this order to customers within those counties who called "900-4-LOW-GAS" or (900) 234-5477.

Finally, we take note of Telesphere's willingness to comply in the proposed settlement with many of the 900 safeguards that were adopted in D.91-03-021. With that commitment in mind, we shall order Telesphere to file its advice letter within 30 days of the effective date of this order rather than the 180 days ordered in D.91-03-021.

In return for Telesphere's agreement to comply with Item 6 of the proposed settlement and to file an advice letter complying with the safeguards in D.91-03-021 subject to Commission approval, we would rescind our order to show cause in D.90-11-055. We will allow a period of 30 days for Telesphere to consider our proposal.

Telesphere may indicate its acceptance by letter to the CACD Director.

Findings of Fact

1. On February 7, 1991 Telesphere and CACD filed a proposed settlement agreement by which the two parties intended to resolve the issues in our order to show cause issued in D.90-11-055.
2. The settlement agreement would allow Telesphere to offer "California 900 service" in California including 900 service calls originating and terminating within the state without first filing a tariff.
3. The settlement incorporated 16 consumer safeguard provisions to be implemented by Telesphere.
4. The settlement provided that Telesphere would develop policy manuals for its IP subscribers and its own employees to govern the service.
5. The settlement provided that Telesphere would investigate and apply a liberal refund policy to all consumer complaints filed after March 14, 1990.
6. Telesphere agreed to respond to all Consumer Affairs Bureau requests for information regarding informal complaints concerning Telesphere's 900 service, to submit detailed reports, and to report each month to the Chief of the CACD Telecommunications Branch on its compliance with the agreement.
7. Under the proposed settlement agreement Telesphere would provide "California 900 service" from the date the Commission adopts the agreement until 60 days from the date on which the Commission's decision in the consolidated 900 Docket becomes final.
8. The Commission issued D.91-03-021 in the consolidated 900 Docket on March 13, 1991.
9. The proposed settlement agreement is not in the public interest because its terms differ from those provided in D.90-03-021.

10. Item 6 in the proposed settlement, if modified to provide notice of Telesphere's willingness to refund all charges for consumer calls to "900-4-LOW-GAS" and (900) 234-5477 between March 14, 1990 and today's date, would provide a remedy for any harm to customers that may have resulted from Telesphere's activities as alleged in D.90-11-055.

11. Telesphere's filing of an advice letter with the 900 safeguards contained in D.91-03-021 subject to the Commission approval within 30 days of the effective date of this order would provide a remedy for any further harm to customers.

Conclusions of Law

1. The proposed settlement agreement filed on February 7, 1991 by Telesphere and CACD should be rejected without hearing as provided by Rule 51.7.

2. Telesphere should be allowed a period of 30 days to indicate its willingness to agree to our proposal described herein of complying with Item 6 of the proposed settlement and filing an advice letter complying with the 900 safeguards of D.91-03-021 subject to Commission approval

3. In order to resolve this matter and to promote the implementation of D.91-03-021, this order should be effective on the date it is issued.

ORDER

IT IS ORDERED that:

1. The proposed settlement agreement filed in this proceeding on February 7, 1991 by Telesphere Network, Inc. and the Commission Advisory and Compliance Division is rejected.

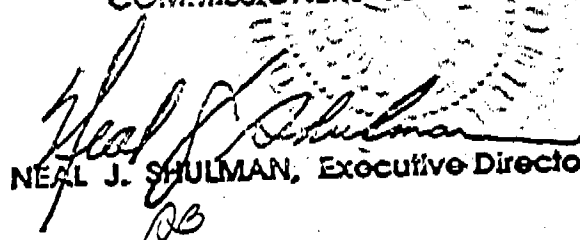
2. Telesphere Network, Inc. shall have a period of 30 days to accept the proposed alternative described herein.

This order is effective today.

Dated July 2, 1991, at San Francisco, California.

PATRICIA M. ECKERT
President
G. MITCHELL WILK
JOHN B. OHANIAN
DANIEL Wm. FESSLER
NORMAN D. SHUMWAY
Commissioners

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


NEAL J. SHULMAN, Executive Director