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Decision 91-11-018 November 6, 1991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

**ORIGINAL**

In the Matter of the Alternative  
Regulatory Frameworks for Local  
Exchange Carriers.

I.87-11-033  
(Filed November 25, 1987)

And Related Matters.

Application 85-01-034  
Application 87-01-002  
I.85-03-078  
I.87-02-025  
Case 87-07-024

(See D.91-07-044 for appearances.)

Additional Appearances

Gregory L. Castle, Attorney at Law, for Pacific  
Bell; Judith A. Endejan, Robert N. Herrera,  
and Elaine M. Lustig, Attorneys at Law, for  
GTE California, Incorporated; and David J.  
Lenahan, for AT&T Communications of California;  
interested parties.

OPINION MODIFYING DECISION 91-03-020  
REGARDING THE CRITERIA FOR A "LARGE BUILDING" IN  
KEEPING WITH THE USE AND DEFINITION OF "FEEDER CABLE"

Background

On April 12 and 15, 1991, Pacific Bell (PacBell) and GTE California, Incorporated (GTEC), respectively, filed separate applications for rehearing of Decision (D.) 91-03-020 alleging legal error in that there was no evidence in the record to support the parameters outlined for a "large building" in D.91-03-020, and that D.91-03-020 modified D.89-10-031 without notice and opportunity for the parties to be heard on such a modification. The modification is alleged to have precluded local exchange

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carriers (LECs) from extending an optical fiber "feeder" to serve a large residential building without preapproval by the Commission.

The Commission agreed that there was no evidence in the record to support the meaning of a "large building" as set forth in D.91-03-020. Consequently, the Commission on June 19, 1991 issued D.91-06-049, which granted a limited rehearing on this issue.

However, the Commission did not agree that D.91-03-020 changed, in general, the preapproval requirements for investment in fiber optics it mandated in D.89-10-031. Therefore, in D.91-06-049, the Commission noted that it will continue to require LECs to file applications for authority to offer new services that are dependent on a fiber-to-the-customer infrastructure prior to making any investment in fiber beyond the feeder system, other than investment necessary for small-scale trials or for fiber which the Commission has found to be cost-effective in the provision of traditional LEC services.

In D.91-06-049 the Commission specifically limited the rehearing to:

1. Taking evidence on the meaning of the term "large building" as used in the definition of "feeder" adopted in D.91-03-020; and to
2. Allowing parties notice and the opportunity to address their concerns regarding when preapproval is required for investment in fiber feeder which serves a large residential building.

D.91-06-049 also specifically deleted the following language from the ordering paragraph on page 8 of D.91-03-020:

"A business customer's large building as included in the above definition shall be further defined as a commercial building with a minimum of 10,000 square feet of floor space, or any size building served with a private branch exchange (PBX) with a minimum of five active central office trunks. Where service is provided by equipment other than a PBX, the 10,000-square-foot size of building or 50 active telephone stations will prevail."

PacBell, GTEC, California Cable Television Association (CCTA), and the Division of Ratepayer Advocates (DRA) timely served testimony in this proceeding in response to D-91-06-049.

The Evidentiary Hearings

Evidentiary hearings were held on September 23 and 24, 1991 to receive testimony from four witnesses, separately representing the positions of PacBell, GTEC, CCTA, and DRA.

The prepared testimony left the definition of a "large building" somewhat vague, although there was general agreement among PacBell, GTEC, and DRA that the term "large building" should include buildings where a feeder is connected to a terminal of "one-hundred pair or greater," or is used to provide circuits involving business services that usually use fiber transport, such as DS-1 or DS-3 circuits.

While CCTA's witness, Kelly W. Curenton, did not oppose the 100-pair terminal service criteria proposed by both PacBell and GTEC for business, he recommended:

"...that all investments in fiber feeder which directly serves a residential building (and fiber distribution) be subject to a pre-approval requirement until such time that Pacific and GTEC can prove that direct fiber feeder termination to a residential building is cost-justified and necessary for traditional local exchange services."

He also recommended that investments in fiber feeder to serve business customers be permitted based on the 100-pair terminal service criteria, subject to "an initial review of the criteria for determining the 100-pair requirement." (Exhibit 3-f.)

At issue is the potential for deployment of fiber feeder in residential distribution systems to buildings of any size. While CCTA's Curenton would subject all fiber feeder distribution to residential customers to Commission preapproval, PacBell's Director of Integrated Technology and Planning Support, Robert E.

Riordan, asserts that Commission preapproval, "whether for business or residential use, should never be required."

During most of the first day of hearing, CCTA and the other parties maintained their widely separated positions. This was further confirmed by PacBell's Riordan in response to questions from the Administrative Law Judge (ALJ) regarding the reasonableness of the definition of a large building contained in D.91-03-020 as follows:

"Q...  
 "What did you find wrong with the definition that we had in the prior order?  
 "A My belief, the problem did not exist with the definition of 'large building'; it existed with requiring preapproval for feeder to a residential building."  
 (Transcript (Tr.) 12062-12063).<sup>1</sup>

Then CCTA's Curenton, after expressing some lack of knowledge as to deployment of fiber in Cable TV systems in California, and of the general nature of Cable TV technology for competitive services today, agreed in an off-the-record discussion

1. In response to another series of questions from the ALJ, Riordan explained that PacBell's engineers routinely examine three alternatives to serve cost-effectively new applicants for services, namely:

1. Add carrier equipment to existing cable facilities to derive the additional circuits necessary to serve the new customer.
2. Add new copper cable pairs sufficient to reinforce the plant from the central office to the customer's premises, or
3. Place fiber optic cable from the central office to the customer's premises with electronic conversion equipment at each end of the circuit.  
 (Tr. 12081-12082.)

to "seek a possible accommodation of the parties." (Tr. 12152-12159.)

After a lengthy recess, Curenton presented the following response:

"For the purposes of defining a large residential building, I would recommend that we use the size of 15,000 -- a minimum of 15,000 square feet floor space for residential usage and a service location where the service requirement is at least 50 access lines or the equivalent." (Tr. 12160.)

PacBell's counsel objected to Curenton's statement, contending that:

"...this statement that Mr. Curenton has just indicated on the record has been the product of the mutual efforts of all the parties here. And furthermore I believe that what was just stated misstates what was the mutual development from these parties.

"Namely, we did not indicate in any of our discussions that this would be a conjunctive test, i.e., it would have to be greater than 15,000 square feet and a service requirement.

"We distinctly discussed that it would be a disjunctive test, either/or. And to that extent, I believe that it has been mischaracterized and Pacific firmly disagrees with what has just been stated." (Tr. 12160-12161.)

The parties then asked for a recess to seek to refine the details of CCTA's proposal and the proposals that GTEC and PacBell had considered and to finalize the language for a mutually agreeable solution. (Tr. 12162-12163.)

Following the recess, DRA's Program Manager of Telecommunications Operational Costs, Louis G. Andrego, made an oral presentation of his suggested revisions, and none of the parties asked for an opportunity to cross-examine him. However,

the ALJ did ask DRA to provide Andrego's recommendations in writing as an exhibit. Andrego presented a one-page Exhibit 6-F to confirm his oral testimony.

Exhibit 6-F contains a revised version of the D.91-03-020 definition of local exchange telephone utilities "Feeder" facilities as follows:

"Generally, local exchange carrier outside plant is divided into feeder plant, distribution plant, and drops. Feeder plant connects a local exchange carrier's central office or remote wire center to a distribution point, such as a remote terminal unit, a terminal for a large building, or serving area interface. At the distribution point, individual circuits are connected to distribution plant and customer service drops delivering service directly to a customer premises. Generally speaking, distribution is initially installed at the capacity (number of lines) it is ultimately intended to serve, while feeder plant is periodically reinforced to add capacity as new customers (and their corresponding distribution plant and drops) are added to the network. Feeder plant is usually not connected directly to customer drops.

"For purposes of this definition of 'feeder' a 'large building' will mean:

- "1. For large buildings serving commercial customers a size of at least 10,000 square feet, or a service requirement of 50 access lines or their equivalent, or five PBX trunks or their equivalent.
- "2. For large buildings serving residential customers either a size of at least 15,000 square feet or any service location where the residential customers' service requirements exceed 50 access lines or their equivalent.
- "3. For large buildings serving a combination of residential and commercial customers a size of at least 15,000 square feet, or a service requirement of 50 access lines or

their equivalent, or five PBX trunks or their equivalent."

None of the parties objected to the receipt of Exhibit 6-F in evidence, or its use in resolving the issues in this limited rehearing.

Discussion

First, we are pleased that PacBell's plant engineers explored the effectiveness, reliability, and costs of each of three alternative technologies; namely, copper cable, carrier over existing cable, and fiber optics with optical to electrical converters, remote terminals, and digital loop carrier equipment, before determining which technology will be used to provide new services to existing or new customers.

While we will add no new provisions to require that these alternative technologies be studied before finalizing any new plant designs and specifications, we nonetheless place PacBell and GTE on notice that it would not be a prudent or reasonable practice to ignore a study of each alternative when designing new plants.

Next, it appears that through Exhibit 6-F the parties have reached a reasonable compromise on the definition of "feeder" and of feeder service to:

1. A large "Commercial Building,"
2. A large "Residential Building," and
3. A large "Building including both Commercial and Residential uses."

Accordingly, we will adopt the definitions set forth in Exhibit 6-F to modify the ordering paragraphs of D.91-03-020 in response to the evidence taken herein pursuant to the rehearing ordered by D.91-06-049.

Findings of Fact

1. On April 12 and 15, 1991, PacBell and GTEC, respectively, filed petitions to modify D.91-03-020 stating that the Commission had no evidence to support the meaning of a "large building" contained therein.

2. By D.90-06-049 the Commission granted a limited rehearing to take evidence on the meaning of "large building" in the definition of "feeder," and to address concerns regarding investments in fiber feeder to serve large residential buildings.

3. The parties reached an early compromise on the definition of a large commercial building but were unable to reach a consensus on the definition of a large residential building until the second day of the evidentiary hearing.

4. During numerous recesses on the second day of hearings, a compromise definition of a "feeder" for commercial and residential services and combinations thereof was reached.

5. DRA's Exhibit 6-F memorialized in writing the compromise definition of a feeder for commercial and residential applications and combinations thereof.

6. No party opposed the terms and definitions set forth in Exhibit 6-F.

Conclusions of Law

1. The ordering paragraphs of D.91-03-020 should be modified to fully conform with Exhibit 6-F received in evidence in this proceeding.

2. This order should be made effective today to permit PacBell and GTEC to construct fiber optic "feeder" facilities, without preapproval by this Commission, and without further delays, in instances where the provisions of this order are met.



ORDER

IT IS ORDERED that:

1. The ordering paragraphs of Decision 91-03-020 are hereby vacated, and the definition of local exchange telephone utilities' "Feeder" facilities shall hereafter be as follows:

"Generally, local exchange carrier outside plant is divided into feeder plant, distribution plant, and drops. Feeder plant connects a local exchange carrier's central office or remote wire center to a distribution point, such as a remote terminal unit, a terminal for a large building, or serving area interface. At the distribution point, individual circuits are connected to distribution plant and customer service drops delivering service directly to a customer premises. Generally speaking, distribution is initially installed at the capacity (number of lines) it is ultimately intended to serve, while feeder plant is periodically reinforced to add capacity as new customers (and their corresponding distribution plant and drops) are added to the network. Feeder plant is usually not connected directly to customer drops."

2. For purposes of this definition of "Feeder," a "large building" will mean:

a. For large buildings serving commercial customers a size of at least 10,000 square feet, or a service requirement of 50 access lines or their equivalent, or five PBX trunks or their equivalent.

b. For large buildings serving residential customers either a size of at least 15,000 square feet or any service location where the residential customers' service requirements exceed 50 access lines or their equivalent.

NOISES IN REQUIREMENTS EXCEED 50 ACCESS LINES OR THEIR EQUIVALENT.

FOR LARGE BUILDINGS SERVING A COMBINATION OF RESIDENTIAL AND COMMERCIAL CUSTOMERS A SIZE OF AT LEAST 15,000 SQUARE FEET, OR A SERVICE REQUIREMENT OF 50 ACCESS LINES OR

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their equivalent, or five PBX trunks or their equivalent.

This order is effective today. Dated November 6, 1991, at San Francisco, California.

Patricia M. Eckert, President

PATRICIA M. ECKERT, President

JOHN B. OHANIAN, Commissioner

DANIEL Wm. FESSLER, Commissioner

NORMAN D. SHUMWAY, Commissioner

Commissioners

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

*Neal J. Shulman*  
NEAL J. SHULMAN, Executive Director