

DEC 6 1991

Decision 91-12-013 December 4, 1991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Rulemaking on the Commission's own )  
 motion for the purpose of modifying )  
 existing tariff filing rules for )  
 telecommunication utilities, other )  
 than local exchange carriers and )  
 AT&T-C, and for the purpose of )  
 addressing other issues concerning )  
 the regulation of these utilities. )

**ORIGINAL**

R.85-08-042

(Filed August 21, 1985)

**OPINION MODIFYING DECISION 90-08-032  
 AFTER LIMITED REHEARING  
 PURSUANT TO DECISION 90-12-102**

**I. Background**

Decision (D.) 90-08-032 revised tariff filing rules for nondominant telecommunications utilities following the receipt of numerous comments from interested parties. The comments were initially taken at workshops held on December 19 and 20, 1985. Written comments were received in response to a draft staff workshop report mailed on January 22, 1986 and more recently in response to D.90-02-019.

Through the lengthy review process leading to the adoption of D.90-08-032, the Commission sought to resolve all currently relevant issues concerning tariff filings of nondominant interexchange carriers (NDIECs). However, on September 12, 1990, MCI Telecommunications Corporation (MCI) and California Association of Long Distance Telephone Companies (CALTEL) filed applications for rehearing of D.90-08-032.

CIC

In response, the Commission issued D.90-12-102, granting limited rehearing on four issues related to NDIEC tariff filing requirements:

- "(1) notice provisions for rate increases, including the requirement of notice to customers by bill insert or by first class mail, and including the alleged inconsistency in retaining the 1-day notice provision for NDIECs with FCC-approved tariffs while applying a new time limit to other NDIECs;
- "(2) notice requirements for new service offerings, including the issue of whether new service offerings should be more specifically defined, and, if so, whether the definition contained in D.88-12-091 (adopting limited rate flexibility for AT&T) would be appropriate;
- "(3) additional regulations to safeguard customer deposits; and
- "(4) time limits for retention/maintenance of billing records."

In lieu of holding evidentiary hearings, the Commission, by D.90-12-012, directed the Commission Advisory and Compliance Division (CACD) to conduct workshops and then to summarize the workshop recommendations on the four issues in a draft report. After receipt of written comments on the draft workshop report, CACD was to prepare a final workshop report for use by the assigned administrative law judge.

CACD conducted the specified workshops on March 19 and 27, 1991 and then issued its "Draft Workshop Summary" on April 26, 1991. On May 28, 1991, after receipt and review of comments on this draft, CACD issued its Workshop Summary Report.

No material issues were raised at the workshops, or in subsequent comments on the CACD Workshop Summary Report which require evidentiary hearing. Accordingly, none is planned relative to the modifications to D.90-08-032 adopted in this order.

## II. Workshop Results

CACD's May 28, 1991 final workshop report discusses in some detail the underlying positions and concerns of the workshop participants on each of the four issues being reconsidered. Those positions and concerns are noted and further summarized as follows:

### A. Notice Requirement for Rate Increase Filings

D.90-08-032 authorized rate increase filings by NDIECs to become effective 30 days after filing, rather than 40 days, as otherwise provided in Section IV.B of General Order (GO) 96-A. (Tariff Filing Rules for Telecommunications Utilities, 37 CPUC 2d 130, 139, 158.)

Some of the workshop participants argued that the 30-day notice requirement should be reexamined with the following points in mind:

- o The competitive marketplace provides the most efficient process for assuring efficient pricing, service quality, innovation, and overall consumer satisfaction.
- o Regulatory oversight is only necessary when conflicting forces such as market power upset the natural incentives of a competitive company.
- o Regulatory oversight, interjected unnecessarily, will disrupt market forces, inhibiting the development of efficient pricing and innovative services and ultimately thwarting the flow of these benefits to consumers.
- o NDIECs operate as fully competitive entities in the marketplace. NDIECs do not possess market power and customers of NDIECs are free to exercise their choice of alternative competitors. Therefore, the 30-day notice period for NDIEC rate increases is unnecessary, counterproductive and anticompetitive.

The representatives of CACD, Division of Ratepayer Advocates (DRA), and Consumer Affairs Branch (CAB) who attended the workshop also reportedly stated their respective positions on the notice requirement as follows:

- o CACD and DRA opined that the notice period was appropriate to permit time for necessary actions to take place. In general, one purpose of notice, from CACD's and DRA's perspective, is to inform customers before the fact that their rates will increase.

"Provision of customer notice is a matter of public policy and law for public utilities, and NDIECs remain public utilities in California.

"The customer needs time:

- "a. to receive such notice;
- "b. to make a decision on whether to switch carriers;
- "c. to accomplish a transfer through either the IEC or LEC [local exchange company].

"These steps would require several days, even if notices were mailed immediately to all affected customers. Billing cycles may necessitate a longer period to ensure that the last customer in the cycle has adequate notice." (CACD Workshop Report (WR) p. 5.)

The "notice" period also allows time for the staffs of CACD and DRA to review the filings, and for the filing to appear in the Commission's in-house data base program called PAL. DRA also presented an outline to the workshop participants which depicted the Commission's internal advice letter review process.

The CAB presented a report of the number and classifications of NDIEC customer contacts it received from 1987 to 1989, which brought forth some objections from MCI and from US

Sprint Communications Company Limited Partnership, neither of which had seen the data prior to that presentation.

1. Workshop Participants' Compromise on Notice of Rate Increases

CACD reports that the "parties developed a mutually agreeable compromise position to propose as an amendment to D.90-08-032. The compromise would modify the 30-day notice of rate increases beginning with a bifurcation of those increases into major and minor ones." This bifurcation was derived from the decision in AT&T Communications of California's (AT&T-C) "READYLINE" proceeding (D.90-11-029 in Application 89-03-046). In D.90-11-029 the Commission defined minor rate increases as follows:

"The term 'minor increases' is understood to mean an increase in rates which does not increase AT&T-C's California intrastate revenues by more than one percent (1%) and which will not increase rates for the affected service by more than five percent (5%)." (AT&T Comm. of Calif. (1990) 38 CPUC 2d 126, 146.)

The parties agreed to use the same definition, and as long as a rate increase filing is less than both 1% of total California intrastate revenue and 5% of the affected service's rates, it will be considered a minor rate increase. If a filing on any service exceeds either parameter above, then it will be treated as a major increase. Increases would be cumulative, such that if the sum of the proposed rate increase and rate increases that took effect during the preceding 12-month period for any one service exceeds either parameter above, then the filing will be treated as a major increase.

Under the compromise agreement, when the NDIEC files a minor rate increase, it would go into effect in five working days. If the filing is a major rate increase, then the present 30-day notice requirement will continue to apply. The agreement, if adopted, will allow the NDIECs to respond quickly to minor cost increases and to save the cost of notices for them, while

protecting customers from unnoticed major rate increases. The agreement also allows the CACD and DRA staffs time to review the more substantial rate increases.

CACD, in its workshop report, recommends clarifying that the term "service" as in affected service discussed above "should be the equivalent of [individually] separately tariffed services that are offered to customers by the NDIECs."

## 2. Discussion of Notice Requirement for Rate Increases

We agree that the compromise agreement, which was unopposed, has merit and a five-day notice requirement for minor rate increases is reasonable. Accordingly, we will modify D.90-08-032 to permit minor rate increases to become effective on five working days' notice. All rate increases exceeding the criteria of a minor increase will continue to require a 30-day notice period.

### B. Method of Notice

D.90-08-032 authorized NDIECs to give their customers notice of pending rate increases by bill insert or first-class mail. (37 CPUC 2d at 139, 158.) CACD's workshop report recommends that we add a third option of printing the "notice" as a message on the periodic bill itself. CACD asserts that there are advantages to having the message printed on the bill as contrasted to the other two methods. CACD notes that a message on the bill is faster and easier to prepare, and it is more likely to be read by customers receiving the notice. Pacific Bell and GTE California Incorporated, who prepare and render periodic (monthly) bills for many of the NDIECs, have the facilities and expertise to prepare and distribute notices on bills and such a method is practical for them as well, according to CACD.

### Discussion of Method of Notice

CACD's suggestion that a third method of providing notice be authorized is reasonable. No party to the workshop objected to this proposal. Accordingly, we will add the option of printing

messages on periodic bills by NDIECs as an additional way of providing notices to customers, including "notice" of minor rate increases.

**C. Approval of Federal Communications Commission  
(FCC) Tariffs on One Day's Notice**

D.90-08-032 continues to reflect the longstanding practice which allows NDIECs to file their effective FCC-approved tariffs as part of their California tariff schedules on one day's notice. This authority has its origin in D.84-06-113, Ordering Paragraph 8:

- "8. Applicants are authorized to have on file with this Commission tariff schedules for the provision of intrastate interLATA telecommunications services, subject to the condition that rates shall be uniform on a distance basis. If any applicant has an effective FCC approved tariff, it may file a notice adopting such FCC tariffs with a copy of the FCC tariff included in the filing. Those applicants that have no effective FCC tariffs, or that wish to file tariffs applicable only to California, are authorized to do so, including rates, rules, regulations, and other provisions necessary to offer service to the public. Such filings shall be made in accordance with General Order 96-A, excluding Sections IV, V, and VI and shall be effective not less than one day after filing."

(Competition in the Provision of  
Telecommunications Transmission Services  
(1982) 15 CPUC 2d 426, 477.)

CACD in its workshop report states that some NDIECs believe that the one-day approval provision for FCC tariffs is discriminatory.

"They interpret D.90-08-032 to say that if an NDIEC files a rate increase on a particular service with the FCC in its interstate tariff, then the NDIEC may also file a California tariff for the same rate on the same service and get approval of it in only one day. Those NDIECs that serve only California and thus

cannot file an FCC tariff may therefore be disadvantaged."

After further discussing the problem, CACD speculates that:

"It may be that the intent of the decision was only to say that California would acknowledge an interstate tariff (over which California has no jurisdiction) one day after its approval by the FCC, but, if so, this point is not clear in the decision."

CACD asserts that the parties would like this point clarified.

#### Discussion of the One-Day Notice Provision for FCC Tariffs

Our intent in D.90-08-032 relative to the one-day notice provision for effectiveness of FCC tariffs was merely to acknowledge that bona fide, effective, interstate services have been authorized by the FCC, and that those interstate services are available in California through the respective NDIEC which has been authorized to do business in California. We will further clarify that the only FCC-approved tariffs authorized for effectiveness on one day's notice for the California NDIEC are tariffs that are clearly limited to interLATA interstate services over which this Commission has no jurisdiction. Such tariffs do not include any intrastate services under the regulatory authority of this Commission. We will adopt this clarification to eliminate any existing confusion on this issue.

#### D. Notice Requirement for New Services

D.90-08-032 followed the provisions of GO 96-A and allowed tariffs related to new services to become effective 40 days after filing, unless suspended. (37 CPUC 2d at 140, 158.) CACD reports that the participants' position on the 40-day notice requirement for new services is similar to their position on the 30-day notice for rate increases. Some of the participants believe that "...the competitive marketplace does not allow the



postponement of such offerings until they have been reviewed by CPUC and LECs. If the advantage of the immediate offering of new services is lost, the development of those new services will be discouraged and the industry and the public will suffer." (WR p. 10.)

CACD states that the participants "...agree that the definition of 'new services' given in D.88-12-091 is acceptable for their filings. . . . That definition reads as follows: 'A new service is an offering which customers perceive as a new service and which has a combination of technology, access, features or functions that distinguishes it from any existing service' (AT&T Communications of California (1988), 30 CPUC 2d 384 at pp. 411-412)." (WR p. 10.)

However, CACD and DRA representatives informed the parties that they regard the 40-day notice requirement as a reasonable one. DRA noted that it needs the 40-day period to review the provisions of new service offerings. Part of the period is needed to allow protests to be filed, and the protests then further form the aspects of DRA's review of the new service offering. DRA also noted that the potential expansion of intraLATA competition and increased market activity will broaden the review process.

The workshop report notes that the participants ultimately "agreed to sustain the current 40-day notice for new services and to adopt the definition of new service quoted earlier...." (WR p. 11.)

#### Discussion of "Notice" Requirement for New Services

We will adopt the agreement of the workshop participants to retain the 40-day notice provision for tariff filings involving new services and the definition of new service quoted earlier herein.

**E. 40-Day Notice Requirement for All Other Tariff Filings**

Although this issue was not set forth among the issues for the workshop, CACD notes that the NDIECs raised concerns over this requirement of D.90-08-032. Accordingly it was addressed with the significant comments.

The participants stated that a simple change of address or phone number of a utility would fall into this "all other" category and the change could not be made effective for 40 days. After some discussion, CACD notes that the following compromise was reached by the workshop participants:

"The 40-day notice for 'all other tariff changes' should be changed. The proposed compromise is to allow 5 working days for the marginal symbols 'I' and 'T' and to divide 'C' into 2 categories:

"(C)(R) -- a change reducing rates: 5 [working] day notice

1. These marginal symbols were not defined in the Workshop Report; however, GO 96-A defines them as follows:

- "(C) To signify changed listing, rule or condition which may affect rates or charges
- "(D) To signify discontinued material, including listing, rate, rule or condition
- "(I) To signify increase
- "(L) To signify material relocated from or to another part of tariff schedules with no change in text, rate, rule or condition
- "(N) To signify new material, including listing, rate, rule or condition
- "(R) To signify reduction
- "(T) To signify change in wording of text but not change in rate, rule or condition"

"(C)(I) -- a change increasing rates: 30 days notice, when rate increase meets the stipulations for large increases.

"In this way, those changes that do not affect rates and charges may proceed expeditiously, while those that increase rates and charges are treated like increases. (The marginal symbol 'D' has purposely been left out.)" (WR p. 12.)

#### Discussion of 40-Day Notice for "All Other" Tariff Filings

We have carefully reviewed the compromise language above and concur that it should be adopted in our order modifying D.90-08-032. Although this specific question was not included in the list of issues for rehearing set in D.90-12-102, it is closely related to other notice requirement that were explicitly identified in D.90-12-102. The parties have identified a way to improve on the requirements of D.90-08-032, and we should make those improvements at this time.

#### F. Customer Deposit Safeguards

D.90-08-032, Conclusion of Law 13 specifies that:

"Except for specific individual cases of significant hardship, NDIECs should include a standard deposit rule providing for a deposit equal to one month's estimated usage." (37 CPUC 2d at 157.)

CACD states that:

"The NDIECs' position on safeguarding customer deposits is that no requirement should be set by the Commission because the marketplace will establish a balanced position for those carriers. If an NDIEC requires too many months' deposit, then customers won't sign up with that carrier in the first place; and if an NDIEC requires too few months' deposit, it may lose money until it either increases its requirements or goes out of business." (WR p. 12.)

The CAB reported that it does receive inquiries and complaints about deposits not being returned in a timely fashion when a customer transfers service to another carrier or the existing carrier goes out of business. CACD opines that this problem suggests that it would be wise to allow smaller rather than larger deposits, leaving to special consideration, by Commission resolution, the need for larger deposits.

CACD characterizes the issue as "whether to grant NDIECs the discretion to collect up to three months' deposit without an approving Commission Resolution." CACD reports that the NDIECs would like a discretionary deposit range equal to one to three months of service. Admittedly they would require larger deposits from customers with "poorest credit ratings." (WR p. 13.)

#### Discussion of Customer Deposit Safeguards

We are not convinced that the present standard deposit amount "equal to one month's estimate usage" should be expanded to three months' estimated usage, without a specific showing of need from a given NDIEC. However, we are persuaded that the current one-month standard may not be sufficient to cover the level of service provided to customers which are billed monthly, and are then required to timely pay for that service within approximately 25 days after billing.

A deposit level equal to twice the estimated average monthly bill should help protect NDIECs from extending services, beyond payment for such services, received by customers who have not proven their credit worthiness. This increased deposit level is also consistent with Pacific Bell's current RULE NO. 7 - ADVANCE PAYMENTS AND DEPOSITS set forth in its "2nd Revised Sheet 59" of its tariff "Schedule CAL. P.U.C. NO. A2."

Accordingly, we will modify Finding of Fact 13 and Conclusion of Law 13 of D.90-08-032 to permit NDIECs to take the increased deposit level discussed above.

### G. Retention of Billing Records

CACD discusses the NDIECs' concerns about keeping billing records longer than one year, on the basis that longer retention would present burdensome costs. CAB contends that it receives complaints on bills up to three years old. Accordingly it urges that NDIECs be required to retain detailed billing records for three years. Public Utilities Code § 736 allows a three-year period for consumers to file a complaint. (WR pp. 13-14.)

CACD then noted that "...the FCC uses the Code of Federal Regulations (CFR) [Title] 47 (Telecommunications), and CACD Auditing and Compliance Branch has used it and expected NDIECs to use it for their records. Chapter 1, [Section] 42.9 Paragraph 77 deals with collection reports and records. This says that detailed records must be kept for one year, and summary reports must be kept for six years (pp. 635)." (WR p. 14.)

### Discussion of Billing Records Retention

D.90-08-032 requires NDIECs to retain their detailed billing records for one year prior to the current billing month.

We are not aware of any new revelations or justification to compel retention of detailed customer bills by NDIECs longer than the one year plus current month (13 months) required by D.90-08-032. It is true that, in a complaint case, the customer may have an evidentiary advantage of having retained detailed bills for three years while the NDIEC may have discarded all but one year. However, conceding this advantage in a few complaint cases would likely be less costly to the NDIEC than retaining all customer bills for a longer period. Also, since we do not impose rate of return regulation on NDIECs there is no need to review their general accounting records beyond the usual periods involved in a formal complaint. That period is limited by the statute of

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limitations to no more than four years as discussed in more detail in D.90-08-032.<sup>2</sup>

Accordingly, there is no reason to extend the retention of any intrastate service records of NDIECs to six years merely to mirror the FCC requirements for interstate service set forth in CFR Title 47 (Telecommunications).

Therefore, we will make no changes to the recordkeeping requirements heretofore established in D.90-08-032.

#### Findings of Fact

1. MCI and CALTEL on September 12, 1990 filed applications for rehearing of D.90-08-032.

2. On December 19, 1990, the Commission issued D.90-12-102 granting limited rehearing on four areas of tariff filing procedures involving notice requirements for rate increases, notice requirements for new services, additional regulations to safeguard customer deposits, and time limits for retention of billing records.

3. Instead of evidentiary hearings, the Commission in D.90-12-102 directed that CACD conduct workshops followed with a summary report on the four relevant issues.

4. CACD held the necessary workshops on March 19 and 27, 1990, issued a draft report thereon for comment by the participants on April 26, 1990, and subsequently issued its final workshop report on May 28, 1991.

5. CACD reported that the workshop participants reached "agreeable compromises" in the areas of "notice" of minor and major rate increases and for minor changes to tariff language versus new service offerings.

<sup>2</sup> 37 CPUC 2d at 150.

6. The recommendations made at the workshops and subsequent comments would generally, if adopted, result in more relaxed oversight of NDIECs' operations as compared to the tariff rules and practices adopted by D.90-08-032.

7. The parties' recommendation that the Commission establish a bifurcated notice procedure using a five working days' notice period for minor increases versus the existing 30-day notice period for major rate increases is reasonable.

8. The parties' recommended use of the definition of minor rate increases adopted in D.90-11-029 is reasonable and rational.

9. The propriety of using a one-day "notice" period for incorporating FCC-approved interstate tariffs in an NDIEC's California tariffs as discussed in D.90-08-032 was somewhat ambiguous and not clearly understood by the parties.

10. The parties recommend that advice letters involving only minor tariff text revisions, such as relocations of text and changes of addresses of an NDIEC, be accepted on five days' notice rather than 40 days' notice as specified in D.90-08-032.

11. The parties' agreement that the 40-day notice requirement be applied to tariff filings involving new services or for discontinuance of existing services is reasonable.

12. The parties' agreement that tariff filings involving reductions in rates or less restrictive conditions become effective on five days' notice is reasonable.

13. Finding of Fact 13 and Conclusion of Law 13 of D.90-08-032 provide for a deposit equal to one month's estimated usage, and an exception for specific individual cases of significant hardship which upon Commission approval would allow deposits greater than the normal one month of service level. This standard level of deposit does not provide adequate protection for coverage of NDIEC's services, when such services are billed monthly in arrears, and payment for such services is not received by the NDIECs for up to 25 days after presentation (mailing) of such bills.

14. Although CFR Title 47 (Telecommunications) adopted by the FCC for interstate operations requires retention of detailed\* billing records for one year and summaries of billing records for six years, there does not appear any compelling reason to require the NDIECs to create similar summaries for their billings of intrastate services or to extend the current retention period of customer bills beyond the current 13-month period.

#### Conclusions of Law

1. The "notice" provisions for rate increases adopted for NDIECs in D.90-08-032 should be modified consistent with the compromise requirements developed at the March 19 and 27, 1991 workshops as reported by CACD, and as further revised and clarified in the narrative, discussions, and findings of fact in this order.

2. The 40-day "notice" provision for new services set forth in D.90-08-032 should be retained as adopted therein.

3. The current 40-day "notice" provision of D.90-08-032 applicable to "all other" tariff filings should be relaxed to five working days for tariff filings:

- a. Which contain text (wording) changes which do not affect any rate, rule, or condition.
- b. Which merely relocate text material within the tariff schedules.
- c. Which contain changes in any listing, rule, or condition which results in reduced rates to customers.

4. The current 40-day notice provision should be relaxed to 30 days for changes in any listing, rule, or condition which results in a greater than minor rate increase.

5. D.90-08-032 should be revised to include the definition of minor rate increases consistent with the similar definition contained in D.90-11-029.



6. The current process by which an NDIEC's effective FCC tariffs may be filed on one day's notice to verify that the NDIEC is authorized to provide California interstate service should be retained subject to the clarification of any existing ambiguity as previously discussed in this order.

7. The provisions regarding the standard deposit rule for NDIECs currently contained in D.90-08-032 should be revised to permit NDIECs to take deposits equal to twice the estimated average monthly bills of new customers, without proven credit worthiness, to safeguard payment for services rendered by the NDIECs.

8. The provisions regarding retention of billing records for NDIECs currently contained in D.90-08-032 should remain unchanged by this order.

9. There is no need to hold an evidentiary hearing to consider and adopt the modifications discussed in this order.

10. These long-awaited revisions to D.90-08-032 should be made effective today, to reduce regulatory lag and thereby provide added competitive benefits to all NDIECs.

#### ORDER

#### IT IS ORDERED that:

1. Decision 90-08-032 dated August 8, 1990 is modified as follows:

a. Finding of Fact 3 (37 CPUC 2d at 155) is changed to read:

3. A 30-day notice requirement for tariff revisions resulting in rate increases (other than minor rate increases) is reasonable and appropriately will allow bill inserts to be included advising the NDIEC's customers of the forthcoming rate increase in the next billing round.

b. Finding of Fact 3a is added as follows:

- 3a. A five working days (notice) requirement for tariff revisions resulting only in minor rate increases, text changes, or relocation of text not resulting in a rate change is reasonable. A minor rate increase is defined as an increase in rates which, in addition to all prior increases during the last 12 months, does not increase the NDIEC's revenues by more than one percent (1%) and which does not increase rates for the affected service by more than five percent (5%).
- c. Finding of Fact 5 (Id. at 155) is changed to read:
5. Bill inserts, notices printed on the bill itself, and/or notices by first class mail are reasonable methods for informing customers of pending NDIEC rate increases, or minor rate changes which became effective during the billing period.
- d. Finding of Fact 6 (Id. at 155) is changed to read:
6. The use of a 30-day notice requirement for NDIEC tariff filings resulting in rate increases (other than minor rate increases) is not likely to create a hardship on NDIECs, especially in view of the fact that nearly all recent and past NDIEC rate revisions have been downward.
- e. Finding of Fact 13 (Id. at 155) is changed to read:
13. It is reasonable to permit NDIECs to adopt a standard deposit rule providing for a deposit equal to two months' estimated usage, unless a compelling case is made for a greater amount in cases of individual company hardship.

f. Conclusion of Law 1 (Id. at 156) is changed to read:

1. The 5 working days' notice provision should be permitted for NDIEC tariff filings which merely reduce rates, and required for NDIEC tariff filings which result only in minor increases, for existing services.

g. Conclusion of Law 3 (Id. at 156) is changed to read:

3. A 30-day notice provision for tariff revisions resulting in rate increases, other than minor rate increases, will allow use of bill inserts, or messages on the bill itself, to be included to advise NDIEC customers of forthcoming rate increases and should be adopted.

h. Conclusion of Law 4 (Id. at 156-157) is changed to read:

4. Bill inserts, messages printed on the bill itself, and/or notices by first class mail of pending NDIEC rate increases or minor rate changes which became effective during the billing period, are reasonable and proper noticing methods and should be required.

i. Conclusion of Law 13 (Id. at 157) is changed to read:

13. Except for specific individual cases of significant hardship, NDIECs should be permitted to include a standard deposit rule providing for a deposit equal to two months' estimated usage.

j. Ordering Paragraph 1 (Id. at 158) is changed to read:

1. All respondents and interested parties to this OIR and all nondominant interexchange telecommunications utilities (NDIEC) with utility

identifying numbers U-5001-C to U-5249-C (and subsequent) are hereby placed on notice that hereafter their recordkeeping, reporting requirements, tariff filings, financing transactions and new and transfer applications, before this Commission, will be processed in accordance with the narrative, findings of fact, and conclusions of law set forth in this order, as modified by D.91-10-041 and D.91-12-013, except as may be later changed or amended again by further order of this Commission.

k. Ordering Paragraph 5 (Id. at 158) is changed to read:

5. All NDIECs are hereby placed on notice that their California tariff filings will be processed in accordance with the following effectiveness schedule:
  - a. Inclusion of FCC-approved rates for interstate services in California public utilities tariff schedules shall become effective on one (1) day's notice.
  - b. Uniform rate reductions for existing services shall become effective on five (5) days' notice.
  - c. Uniform rate increases, except for minor rate increases, for existing services shall become effective on thirty (30) days' notice, and shall require bill inserts, a message on the bill itself, or first class mail notice to customers of the pending increased rates.
  - d. Uniform minor rate increases, as defined in D.90-11-029 for existing services shall become effective on not less than 5 working days' notice, and shall require bill inserts or a notice on the bill itself to inform customers of the increased rates.

- e. Advice letter filings for new services and for all other types of tariff revisions, except changes in text not affecting rates or relocations of text in the tariff schedules, shall become effective on forty (40) days' notice.
- f. Advice letter filings merely revising the text or location of text material which do not cause an increase in any rate or charge shall become effective on not less than five (5) days' notice.

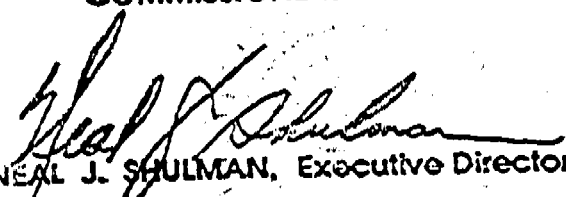
2. The ordering paragraphs and other requirements of D.90-08-032 dated August 8, 1990, except as expressly modified by D.91-10-041 dated October 23, 1991 and this order, continue to apply to all nondominant interexchange carriers after the effective date of this order. Appendix A to this order restates the currently applicable ordering paragraphs of D.90-08-032 as modified by D.91-10-041, and this order.

This order is effective today.

Dated December 4, 1991, at San Francisco, California.

PATRICIA M. ECKERT  
President  
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

APPENDIX A  
Page 18

COMPLETE ORDERING PARAGRAPHS OF D.90-08-032  
AS REVISED BY D.91-10-041 AND D.91-12-013

ORDER

IT IS ORDERED that:

1. All respondents and interested parties to this OIR and all nondominant interexchange telecommunications utilities (NDIEC) with utility identifying numbers U-5001-C to U-5249-C (and subsequent) are hereby placed on notice that hereafter their recordkeeping, reporting requirements, tariff filings, financing transactions and new and transfer applications, before this Commission, will be processed in accordance with the narrative, findings of fact, and conclusions of law set forth in this order, as modified by D.91-10-041 and D.91-12-013, except as may be later changed or amended again by further order of this Commission.
2. All NDIECs operating in California with utility identifying numbers U-5001-C through U-5218-C and subsequent are hereby directed to revise their tariff schedules, within 120 days after the effective date of this order to conform with the deposits, interest on deposits, and discontinuance and restoration of service provisions of this order as set forth in the narrative, findings of fact, and conclusions of law of this order.
3. The Commission Advisory and Compliance Division (CADC) is hereby directed to prepare and assemble, within 90 days after the effective date of this order, copies of sample standard tariff schedules, with rules and special conditions consistent with the narrative, findings of fact, and conclusions of law contained in this order, and make such sample standard tariff schedules available, at the Commission's standard per page charge, to any NDIEC, or prospective applicant for a CPC&N as an NDIEC, requesting same.

APPENDIX A  
Page 2

4. The CACD shall on or before January 1, 1991 and at least one time each year thereafter, prepare a list of all current NDIECs in good standing operating in California, including addresses, phone numbers and the name of the responsible contact person at each such utility, similar to Appendix C to this order, and then disseminate that list to all other telecommunications utilities including the local exchange companies and NDIECs and will be provided at the Commission's standard per page charge, to any other interested party having requested such list.

5. All NDIECs are hereby placed on notice that their California tariff filings will be processed in accordance with the following effectiveness schedule:

- a. Inclusion of FCC-approved rates for interstate services in California public utilities tariff schedules shall become effective on one (1) day notice.
- b. Uniform rate reductions for existing services shall become effective on five (5) days' notice.
- c. Uniform rate increases, except for minor rate increases, for existing services shall become effective on thirty (30) days' notice, and shall require bill inserts, or a message on the bill itself, or first class mail notice to customers of the pending increased rates.
- d. Uniform minor rate increases, as defined in D.90-11-029 for existing services shall become effective on not less than 5 working days' notice, and shall require bill inserts or a notice on the bill itself to inform customers of the increased rates.
- e. Advice letter filings for new services and for all other types of tariff revisions, except changes in text not affecting rates or relocations of text in the tariff schedules, shall become effective on forty (40) days' notice.

APPENDIX A  
Page 3

- f. Advice letter filings merely revising the text or location of text material which does not cause an increase in any rate or charge shall become effective on not less than five (5) days' notice.

5.1. New applicants for CPC&Ns as NDIECs shall be permitted to use any of the following financial instruments to satisfy the applicable unencumbered cash requirements established by this order.

- a. Cash or cash equivalent, including cashier's check, sight draft, performance bond proceeds, or traveler's checks;
- b. Certificate of deposit or other liquid deposit, with a reputable bank or other financial institution;
- c. Preferred stock proceeds or other corporate shareholder equity, provided that use is restricted to maintenance of working capital for a period of at least twelve (12) months beyond certification of the applicant by the Commission;
- d. Letter of credit, issued by a reputable bank or other financial institution, irrevocable for a period of at least twelve (12) months beyond certification of the applicant by the Commission;
- e. Line of credit or other loan, issued by a reputable bank or other financial institution, irrevocable for a period of at least twelve (12) months beyond certification of the applicant by the Commission, and payable on an interest-only basis for the same period;
- f. Loan, issued by a qualified subsidiary, affiliate of applicant, or a qualified corporation holding controlling interest in the applicant, irrevocable for a period of at least twelve (12) months beyond certification of the applicant by the Commission, and payable on an interest-only basis for the same period;



APPENDIX A  
Page 48 of 58

- g. Guarantee, issued by a corporation, copartnership, or other person or association, irrevocable for a period of at least twelve (12) months beyond the certification of the applicant by the Commission;
- h. Guarantee, issued by a qualified subsidiary, affiliate of applicant, or a qualified corporation holding controlling interest in the applicant, irrevocable for a period of at least twelve (12) months beyond the certification of the applicant by the Commission.

The definitions of certain of the financial instruments listed above and our intent on nondiscriminatory application of these definitions are clarified as follows:

- (1) For purposes of this order, a qualified subsidiary, affiliate, or corporation holding a controlling interest in the applicant must be either (1) a certificated going concern with active NDIEC operations in California, or (2) a going concern with active NDIEC operations outside California.
- (2) All unencumbered instruments listed in 6.a. through 6.h. above will be subject to verification and review by the Commission prior to and for a period of twelve (12) months beyond certification of the applicant by the Commission. Failure to comply with this requirement will void applicant's certification or result in such other action as the Commission deems in the public interest, including assessment of reasonable penalties. (See PU Code §§ 581 and 2112.)

APPENDIX A  
Page 5 of 10

- (3) Applicants for CPC&Ns as resellers shall assure that every issuer of a letter of credit, line of credit, or guarantee to applicant will remain prepared to furnish such reports to applicant for tendering to the Commission at such time and in such form as the Commission may reasonably require to verify or confirm the financial responsibility of applicant for a period of at least twelve (12) months after certification of the applicant by the Commission.
- (4) All information furnished to the Commission for purposes of compliance with this requirement will be available for public inspection or made public, except in cases where a showing is made of a compelling need to protect it as private or proprietary information.

5.2. Applicants who do not directly own, control, operate, or manage any conduits, ducts, poles, wires, cables, instruments, and appliances in connection with or to facilitate communications by telephone (Switchless Resellers) shall be permitted to apply for CPC&Ns with a reduced unencumbered cash requirement as discussed in the narrative, findings of fact, and conclusions of law of this order.

6. The Executive Director is hereby directed to include the applicable changes to GO 96-A from the narrative, findings of fact, and conclusions of law, of this order as applicable to NDIEC telecommunications utilities operating in California, in the next revision and printing of GO 96-A.

7. This proceeding is closed.

APPENDIX A  
Page 6

8. The Executive Director shall mail copies of this order to the respondents and interested parties listed in Appendices A, B, and C to this order.

This order is effective today.

Dated August 8, 1990, at San Francisco, California.

(END OF APPENDIX A)