

Decision 83 05 031 JUN 29 1983**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

TELEPHONE ANSWERING SERVICES
OF CALIFORNIA,
Complainant,

vs.

GENERAL TELEPHONE COMPANY
OF CALIFORNIA,
Defendant.Case 82-10-08
(Filed October 28, 1982;
amended March 25, 1983)INTERIM OPINION

This interim opinion identifies the issues to be addressed in subsequent hearings, denies a motion to dismiss, and consolidates the complaint for hearing with the General Telephone Company of California's (General) pending general rate proceeding.

Background

Complainant Telephone Answering Services of California (TASC) alleges that General's tariff rates for direct inward dialing (DID) service for telephone answering services (TAS) are unjust, unreasonable, and discriminatory. It amended the complaint on March 25, 1983 by adding 25 customers as signators; Public Utilities (PU) Code § 1702 requires that a complaint about the "reasonableness" of a utility's rates must be signed by at least 25 actual or prospective customers. TASC does not seek reparations for affected TAS customers. Rather, it asks that we find General's existing DID rate unreasonable and then set a new rate for prospective application under PU Code § 728.

Before further listing the positions of TASC and General developed in their pleadings, we will briefly explain what DID service is. DID routes the last 4 digits of a called number directly to an end user through a telephone utility's central office. In the context of the TAS industry, as an example, the particular telephone answering service may receive calls over an "answering line"¹ for 100 customers; DID allows the answering service to have only 10 loop (trunk) lines from the utility's central office to receive calls for the 100 customers (with 100 different phone numbers). DID is in essence a central office function that identifies the 100 numbers upon an incoming call and routes incoming calls over one of the open 10 trunk lines. This saves the need for an additional 90 loops to handle all 100 of the answering service's customers. DID service is used by many business customers having large PBXs (e.g. insurance companies, airlines, etc.). Other applications of DID type service could be for radio common carrier (RCC) utilities who serve a number of subscribers, all having an assigned prefix and telephone number; DID allows a landwire call to go through the telephone utility's central office to the particular RCC, which then sets up radio communication with the called party. Similar economies, in terms of the reduction of required loops, result for an RCC as result for an answering service in the above example. We mention how DID service applies for RCCs because, as we discuss later, one element of TASC's complaint is that General's DID rate for the TAS industry is so much higher than General's charge applicable to RCCs that General's rates are discriminatory and unlawful.

¹ An answering line goes from an exchange's central office directly to an answering service; there is no line to a second location to serve the ultimate end user. The other answering service arrangement is "secretarial line" line service, where a loop goes to both the answering service and the end user customer. Under the secretarial line arrangement if, for example, the customer does not answer on the fourth ring the answering service can (a phone will ring at both locations).

TASC's Complaint

General's rate for DID was last set in a general rate decision (Decision (D.) 82-06-054). The monthly or recurring charge for each DID number is \$3.30 for each of the first 200 numbers a customer has, and \$.58 for each additional line. A copy of General's applicable tariff is contained in Appendix A. TASC contends, and General admits, that the rate for comparable service provided by General to RCCs is \$45/100 lines, or \$.45 per line per month. However, that rate for RCCs is set in intercarrier agreements (between public utilities) and is not in General's filed tariffs. TASC believes the disparity in rate levels is solid evidence of per se discrimination, and that it illustrates the rate applied to the TAS industry is unreasonably high.

TASC also contends that General has "unlawfully and unreasonably" limited the availability of DID numbers to the TAS industry through the following rules or conditions of the DID service offering:

1. General requires a minimum order of 200 DID numbers before it will set up the service.
2. General provides for 3-digit caller identification only when a TAS customer subscribes to 1,000 or more DID numbers (TASC contends this feature is essential for use of DID in connection with "automated customer-owned answering service equipment").
3. General requires separate trunk groups to serve each group of 100 DID numbers subscribed for.

General's Answer

General admits that it charges the rates alleged by TASC, and states that the rules or restrictions alleged to be unreasonable are all set out in its tariff. General states they apply because of equipment limitations, mechanical limitations, and in the interest of uniform rate structure.

General's Motion to Dismiss
And TASC's Response

In January 1983 we set this complaint for hearing on March 23 in Los Angeles. However, before the hearing General, on March 2, filed a motion to dismiss. The matter was taken off calendar to consider the motion; TASC amended its complaint on March 25 and, finally, on April 4 it filed a pleading opposing General's motion to dismiss.

General contends: TASC failed to allege a cause of action under PU Code § 1702; the complaint is barred by § 1709 (as a collateral attack on a final Commission decision in an earlier proceeding); and the comparison of tariff rates for DID with charges General assesses other utilities or RCCs as a basis for alleging discrimination is improper because its charges assessed through intercarrier agreements are for interutility service and not, therefore, public utility service.

After the complaint was filed TASC pursued discovery through depositions and the production of records. It alleges in its response in opposition to General's motion that it now has evidence that, in addition to the rate disparity for TAS customers vis-a-vis RCCs illustrating unreasonable discrimination, cost data show the tariffed DID is too high (TASC's Response, pages 5-7, and its supplement). As to the legal points raised by General TASC contends that its complaint states a cause of action, and it is not barred from challenging the reasonableness of a tariffed rate; finally TASC believes that General's DID charges to RCCs are germane to show discrimination because, regardless of whether the charge is memorialized in a tariff or an intercarrier agreement, it is a charge for public utility service provided with facilities dedicated to provide public utility service.

Does TASC Allege A
Cause of Action?

We think General misconstrues PU Code § 1702. In essence General states that customers may never allege as a cause of action that a rate previously found reasonable by this Commission is unreasonable. However, § 1702 specifically sets out who may file a complaint alleging an "unreasonable" rate. The statute requires at least 25 customers to allege unreasonableness, in contrast to the ability of any single customer to file a complaint alleging a utility violation of statutes or orders and/or rules issued by this Commission. The formal complaint most typically filed involves allegations of misapplication of tariff rules by a utility. We believe the Legislature set a more burdensome filing requirement for complainants alleging the unreasonableness of rates, tariffed or not, to discourage frivolous complaints by disgruntled utility customers. General's contention implies that once we have found a rate reasonable it is beyond reproach; however, neither we nor the ratesetting process are that perfect.

PU Code § 728 requires us, after a hearing, to change rates if we find they are unreasonable. Likewise, PU Code § 451 mandates that we ensure utility rates are just and reasonable. This is a dynamic process, as utility rates are continually reviewed in ratesetting. And while we will not award reparations when a tariffed rate (found reasonable when it was initially adopted) is subsequently shown in a complaint proceeding to be unreasonable,² we will change such rates prospectively. The statutory scheme for setting and reviewing utility rates provides for this process, and clearly contemplates complaints, with certain requirements as to who may file them, alleging that a tariffed rate previously found reasonable is in fact unreasonable.

² See D.83-05-07, Case (C.) 11043, issued May 4, 1983 in Eldridge vs Pacific Telephone.

We find that TASC has stated a cause of action. This conclusion is based primarily on TASC's allegation that the tariffed DID rate and conditions of service are unreasonable when contrasted to General's cost. It is not based on the comparison of General's charges to RCCs under their intercarrier agreements. This distinction will be discussed next.

Assuming General provides the comparable DID service to RCCs at lower charges than the tariffed rate, is it a material issue to show the tariff rate is discriminatory?

PU Code § 453 prohibits discriminatory rates. TASC alleges "DID equivalent" service is provided by General to RCCs at far lower rates. And while General contends its charges to RCCs are not for public utility service, because it is provided under "Connection and Traffic Intercharges Agreements", TASC believes that is a distinction without meaning. The real thrust of General's argument is that its provision of DID service to RCCs is not a service offering available to all customers, whereas its tariffed DID service offering is; and accordingly, to the extent TASC's complaint is founded on the rate disparity it does not amount to unlawful discrimination for service available to the public. It cites our decision in International Cable TV Corp. v. All Metal Fabricators and PT&T (1966) 66 CPUC 366, where we found it was not unlawful discrimination for The Pacific Telephone and Telegraph Company (Pacific) to offer channel distribution facilities under its tariffs while concurrently entering negotiated contracts with others (cable TV companies) to lease vacant pole space so they could install their own distribution system. The key to our holding was the finding that Pacific did "not hold out such contracts impartially to the general public [n]or does it thereby provide any 'service' related to the concept of dedication to the public of a communication service or facility which is the

benchmark of a public utility calling." (Supra, at page 383.) TASC contends the International Cable decision recognizes that there is a factual test to be addressed in deciding whether there is a "public offering", and that we cannot simply rely on whether a service is offered under tariffs vis-a-vis intercarrier contracts. Further, applied to this proceeding, TASC contends the provision of DID service to RCCs involves "a telephone-company provided communication service which is offered to the public, through facilities dedicated to public use." (TASC's Response pages 15-16.)

If the RCCs receiving General's DID service were not interconnected public utilities we would agree with TASC that potentially unlawful discrimination could exist given the rate disparity. We believe the critical distinction is that the service offered other interconnected communications utilities, to integrate wireline and radio or mobile telephone service into the overall statewide telecommunications network, is service provided to other utilities and not the public at large. Moreover, if we were to find an intercarrier charge too low, and thus creating an undue subsidy by ratepayers, we could, for example, impute or order increased or decreased rates. Another facet to consider is that RCCs generate revenue for General and visa versa; wireline service and radio service are integrated. They are interconnected carriers who have revenue sharing arrangements. For example, a call may originate with an RCC customer and be routed through General's wireline or radio facilities to the called party. General's DID charge for RCCs must be viewed as one element in the overall intercarrier economic relationship.

Our conclusion is that General's DID service to other utility carriers by intercarrier agreements does not make the charges analogous to tariffed charges available to noncarrier members of the public, such as TAS customers. Accordingly, the disparity in charges complained of by TASC will not demonstrate unlawful discrimination and the unreasonableness of the tariffed rates applicable to TASC's members. We think it is useful to the parties to point this out now so that extensive hearing time is not used by TASC to exhaustively address this issue. TASC will be afforded an opportunity to demonstrate the tariffed DID rates and conditions of service are unreasonable, but it cannot use the level of charges and conditions of service provided under intercarrier agreements to show discrimination or unreasonableness. If TASC has evidence to present apart from the level of charges assessed under intercarrier agreements, as it alleges it has in its pleading in opposition to General's motion to dismiss, it may present that evidence. We note in General's NOI 99 that it proposes a 44% increase for DID service. Certainly the best forum for TASC to present its evidence is in the context of General's rate proceeding. Accordingly, we will consolidate this complaint with that proceeding.

General states in its motion to dismiss that it is reviewing its intercarrier agreements and reassessing the charges for DID service. General will be asked in its rate proceeding to report the results of its assessment and renegotiations. We expect General to receive reasonable compensation related to costs for services it provides under intercarrier agreements. Finally, we believe the replacement of many settlement agreements by access charges in 1984 and the advent of cellular mobile telephone service and interexchange competition may lead us to take a more active role in reviewing the conditions and charges under intercarrier agreements.

Is TASC barred from challenging
the reasonableness of DID rates
under PU Code § 1709?

General goes to great length to show that TASC's complaint is barred because it is a collateral attack on a prior Commission decision, issued in a proceeding in which TASC was a party. TASC was a party in General's rate proceeding where the existing DID rates and conditions of service were ultimately authorized. It did not like the result. It applied for rehearing and was denied. TASC concedes that since the existing DID rates were found reasonable it is barred from recovering reparations by PU Code § 734; but it contends that it may seek a prospective change in rates as provided by PU Code §§ 728 and 1708.

TASC is correct. The statutory scheme comprised by PU Code §§ 728, 734, 1702, and 1708 allows its complaint. The entire issue of tariffed DID rates and whether they are too high or low for prospective application will be before us by consolidating these proceedings.

Findings of Fact

1. TASC has filed a complaint signed by 25 existing or prospective customers alleging that General's tariffed DID rates are unreasonable.

2. General provides DID equivalent service to RCCs under intercarrier agreements between communications public utilities.

3. The DID rates and conditions of service offered by General to all its customers are contained in its Tariff No. A-6, Sheets 231-237. Those rates and conditions have been found reasonable by this Commission.

4. On May 2, 1983 General's NOI 99 was filed, which was the start of its pending general rate increase proceeding.

Conclusions of Law

1. General's rates and charges contained in intercarrier agreements are for service not offered to the public but rather for service between utilities to facilitate interconnection. As such, while public utility facilities may be used, the charges are not for public utility service available to public end users.

2. The DID charges assessed by General to other utilities through intercarrier agreements cannot be used to show tarified charges for comparable service available to the public are discriminatory, unreasonable, or unlawful.

3. A complaint about the reasonableness of existing tarified rates may be brought by a complaint signed by at least 25 existing or prospective utility customers under PU Code §§ 1702 and 728.

4. The following order should be effective today so that parties may rely on it in planning the procedural and substantive conduct of their respective evidentiary presentations.

INTERIM ORDER

IT IS ORDERED that:

1. The motion of the General Telephone Company of California (General) to dismiss the complaint of Telephone Answering Service of California (TASC) is denied.

2. TASC shall not present evidence on the charges General assesses under its intercarrier agreements to show General's tarified rates are discriminatory, unreasonable, or unlawful.

3. Case 82-10-08 is consolidated with General's application for a general rate increase initiated by NOI 99. A hearing will be scheduled with the date, time, and place to be announced.

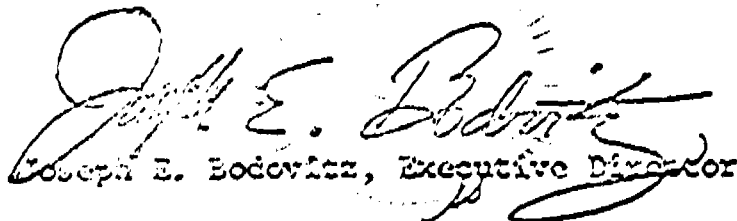
This order is effective today.

Dated June 29, 1983, at San Francisco, California.

LEONARD M. GRIMES, JR.
President

VICTOR CALVO
PRISCILLA C. GREW
DONALD VIAL
WILLIAM T. BAGLEY
Commissioners

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


Joseph E. Bodovitz, Executive Director

General Telephone Company of California
 Santa Monica, California
 An Equal Opportunity Employer
 FORM RA 7200 (2-82)

SCHEDULE Cal. P.U.C. No. A-6
 4th Revised Sheet 231
 Cancelling 3rd Revised Sheet 231

PRIVATE BRANCH EXCHANGE SERVICE

XV. Direct Inward Dialing Service

| <u>RATES</u> | <u>Basic Termination Charge (36)</u> | <u>NRC</u> | <u>Monthly Rate</u> | <u>(T) (T)</u> |
|--|--|------------|-------------------------------------|--------------------|
| A. Equipment arrangement in Utility central office necessary to provide in-dialing from the exchange and message toll network directly to a Utility-provided PBX or customer-provided dial switching equipment installed on the customer premises* (SEE SPECIAL CONDITION NO. 1) | | | | |
| 1. First 200 direct inward dialing (DID) station numbers | | | | |
| a. Each 100 direct inward dialing (DID) station numbers | \$6,500.00 | \$440.00 | \$330.00 (U/P 03205) | (I) |
| 2. Each additional 100 direct inward dialing (DID) station numbers over 200 | 1,100.00 | 77.00 | 57.75 (U/P 03206) (CPE 03235) | (I) |

* In addition to the charges and rates for other services and facilities including charges and rates applicable to private branch exchange trunk line service as shown in Schedule No. A-1

Continued

X (To be inserted by utility)
 Advice Letter No. 4743

Issued by

(To be inserted by Cal. P.U.C.)
 Date Filed JUN 21 1982

Decision No. 8206054

SPENCER C. HERZBERGER
 Vice President - Revenue Requirements

Effective JUN 26 1982

General Telephone Company of California
 Santa Monica, California
 An Equal Opportunity Employer
 FORM RR 7200 (3-82)

PRIVATE BRANCH EXCHANGE SERVICE

XV. - Continued

| XV. - Continued | Basic Termination Charge | NRC | | Monthly Rate | (T) |
|---|--------------------------------|----------------|----------------|--------------------|-----|
| <u>RATES</u> | | <u>Initial</u> | <u>Subseq.</u> | | |
| B. Arrangement to permit the automatic connection of a customer-provided dial switching system to a Utility-provided direct inward dialing service trunk (SEE SPECIAL CONDITION NO. 2.) | | | | | |
| 1. Common arrangement for 14 or less trunks | \$ - | \$132.00 | \$132.00 | \$54.45 (03207) | (I) |
| a. Each trunk connected | - | 30.00 | 51.00 | 6.10 (03208) | (I) |

Continued

(To be inserted by utility)

(To be inserted by Cal. P.U.C.)

Advice Letter No. 4743

Issued by

Date Filed JUN 21 1982

Decision No. 2206054

SPENCER C. HERZBERGER
 Vice President - Revenue Requirements

Effective JUN 26 1982
 Resolution No.

General Telephone Company of California
 Santa Monica, California
 An Equal Opportunity Employer
 KORN 405071

SCHEDULE Cal. P.U.C. No. A-6
 2nd Revised Sheet 233
 Cancelling 1st Revised Sheet 233

PRIVATE BRANCH EXCHANGE SERVICE

XV. - Continued

SPECIAL CONDITIONS

1. Equipment Arrangement

- a. This service is furnished where operating conditions and availability of facilities and equipment permit, subject to telephone number availability and in accordance with the rules and special conditions set forth in the Utility's tariff schedules.
- b. The Utility will provide to the customer an equipment arrangement in the Utility's central office to provide direct inward dialing service from the exchange and the message toll network directly to Utility-provided dial switching equipment installed on customer premises.
 - (1) Where furnished with Utility-provided PBX-PABX dial switching equipment, charges and rates as set forth in Schedule Cal. P.U.C. No. A-6 for the applicable PBX-PABX equipment will apply.
 - (2) Where furnished with customer-provided dial switching equipment, regulations for connection with customer-provided facilities and devices, as set forth in Schedule Cal. P.U.C. No. D & R, specifically, but not limited to, Rule No. 41, customer-provided facilities connected to Utility exchange facilities, will apply.
- c. The rates for this service are applicable for a minimum period of three years. In case of disconnection of, or a reduction in, this service within the minimum period, a basic termination charge, as shown in rates above, reduced by (1/36) one thirty-sixth for each full month or fraction thereof for service provided, shall be applied.

In connection with the foregoing, where a reduction in the service is requested, the last equipment arrangement provided shall be considered to be the first removed.

Revision due to Automated
 Processing capability

Continued

(To be inserted by utility)

(To be inserted by Cal. P.U.C.)

Advice Letter No. 4588

Issued by

Date Filed JUL 30 1980

Decision No.

RICHARD L. OHLSON

Effective AUG 29 1980

Vice President - Revenue Requirements

Resolution No.

General Telephone Company of California
Santa Monica, California
An Equal Opportunity Employer
FORM RA 7200 (3-73)

SCHEDULE Cal. P.U.C. No. A-6
1st Revised Sheet 234
Cancelling Original Sheet 234

PRIVATE BRANCH EXCHANGE SERVICE

XV. - Continued

SPECIAL CONDITIONS

1. - Continued

d. This service must be provided on all lines in an exchange trunk group arranged for inward dialing service. Numbers will be furnished and billed for in blocks of 100 at charges and rates shown herein. Spare telephone numbers reserved by the customer to assure growth capacity for direct inward dialing service will also be charged for at charges and rates shown herein. On customer-provided systems, the customer shall provide all necessary terminating equipment to maintain Utility specified service levels.

e. Customers either with Utility-provided or customer-provided switching systems, must agree to subscribe to sufficient direct inward dialing service trunks to maintain an average grade of service, whereby not more than one call out of each one hundred call attempts will be blocked during the average busy hour of the busy week of the busy season as measured at the Utility's central office.

If the customer fails to subscribe to a sufficient number of trunks, the service will be disconnected based on procedures outlined in Tariff Schedule Cal. P.U.C. No. D & R, Rule 11, paragraph H and M.

f. Customer-provided switching systems must be arranged by the customer, to provide for the mechanical or operator intercepting of incoming calls to unassigned and/or disconnected station numbers (with no contact closure on such calls) that have been assigned to the customer. Utility-provided PBX switching systems will be provided with an intercepting arrangement either in the basic system service features or at additional charges and rates, whichever is applicable and as set forth in Schedule Cal. P.U.C. No. A-6 for the particular PBX system furnished.

Revision due to Automated
Processing capability

Continued

(To be inserted by utility)

(To be inserted by Cal. P.U.C.)

Advice Letter No. 4588

Issued by

Date Filed JUL 30 1980

Decision No.

RICHARD L. OHLSON
Vice President-Revenue Requirements

Effective AUG 29 1980

Resolution No.

General Telephone Company of California
Santa Monica, California
An Equal Opportunity Employer
FORM RR7200 (3-73)

SCHEDULE Cal. P.U.C. No. A-6
1st Revised Sheet 235
Cancelling Original Sheet 235

PRIVATE BRANCH EXCHANGE SERVICE

XV. - Continued

SPECIAL CONDITIONS

1. - Continued

- g. Directory listings will be furnished in accordance with Schedule Cal. P.U.C. No. D-1, Telephone Directory Service, as it applies to private branch exchange service. Direct inward dialing station numbers may be listed at appropriate rates. Customer-provided equipment customers are responsible for timely updating of all telephone number changes, disconnects, additions, etc. In order to meet time schedule requirements for entry in or exclusion from the Utility's telephone directory(s).
- h. Customer-provided equipment must meet industry standards established under direct distance dialing network requirements with regard to trunking, signaling, intercept, tone signals, etc.
- i. The above rates and charges are in addition to the rates and charges for other Utility services or facilities with which this service is associated. Such services or facilities include but are not limited to PBX switching equipment, PBX stations, tie lines or private lines, exchange trunk lines and connecting arrangements.
- j. All changes in rearrangement of, or additions to this service made at the customers request will be billed at the appropriate charges specified herein or in other applicable tariff schedules such as, but not limited to Schedule Cal. P.U.C. No. A-41, service connection move and change charges. When changes in, rearrangements of, or additions to this service are caused by Utility-initiated telephone prefix (or code) reassignments, changes will be made by the Utility at no charge to the customer.

Revision due to Automated
Processing capability

Continued

(To be inserted by utility)

(To be inserted by Cal.P.U.C.)

Advice Letter No. 4588

Issued by

Date Filed JUL 30 1980

Decision No.

RICHARD L. OHLSON
Vice President-Revenue Requirements

Effective AUG 29 1980

Resolution No.

General Telephone Company of California
Santa Monica, California
An Equal Opportunity Employer
FORM RR 7200 (2-73)

SCHEDULE Cal. P.U.C. No. A-6
1st Revised Sheet 236
Cancelling Original Sheet 236

PRIVATE BRANCH EXCHANGE SERVICE

XV. - Continued

SPECIAL CONDITIONS

1. - Continued

- k. If the customer subscribes to less than 1000 numbers, service will be provided in separate groups of 100 numbers and a separate trunk group will be required for each group of 100 numbers, and two digits will be forwarded to the PBX.

If the customer subscribes to 1000 or more numbers service will be provided in separate groups of 1000 numbers, and the charges and rates, set forth above, will be applied to groups of 1000 numbers. A separate trunk group will be required for each group of 1000 numbers and three digits will be forwarded to the PBX.

Customers may reserve numbers in quantities mentioned above at the same charges and rates previously noted.

- l. When the operation of a PBX system is changed from regular type service to direct inward dialing operation, all trunks arranged for this operation will be considered new and the applicable service connection charges as shown in Schedule No. A-41 will apply.

Revision due to Automated
Processing capability

Continued

(To be inserted by utility)

(To be inserted by Cal. P.U.C.)

Advice Letter No. 4588

Issued by

Date Filed JUL 30 1980

Decision No.

RICHARD L. OHLSON
Vice President - Revenue Requirements

Effective AUG 29 1980

Resolution No.

G13

General Telephone Company of California
Santa Monica, California
An Equal Opportunity Employer
FORM RR 7200 (3-73)

SCHEDULE Cal. P.U.C. No. A-6
2nd Revised Sheet 237
Cancelling 1st Revised Sheet 237

PRIVATE BRANCH EXCHANGE SERVICE

XV. - Continued

SPECIAL CONDITIONS2. Automatic Connection Of Customer-Provided System

- a. This service is for use with customer-provided communications systems that are similar to Utility-provided services that are offered for use with direct inward dialing service.
- b. This service is for use with Item A. under Rates in this Schedule.
- c. This service provides dial pulse information to a customer-provided communications system for call completion purposes.
- d. This service provides one-way incoming voice service only and is not designed to accommodate data transmission.
- e. This service requires commercial power provided by the customer.
- f. This service is offered for use where facilities and operating conditions permit, and when required by the customer's system.

(END OF APPENDIX A)

Revision due to Automated
Processing capability

Continued

(To be inserted by utility)

(To be inserted by Cal. P.U.C.)

Advice Letter No. 4588

Issued by

Date Filed JUL 30 1980

Decision No.

RICHARD L. OHLSON

Effective AUG 29 1980

benchmark of a public utility calling." (Supra, at page 383.) TASC contends the International Cable decision recognizes that there is a factual test to be addressed in deciding whether there is a "public offering", and that we cannot simply rely on whether a service is offered under tariffs vis-a-vis intercarrier contracts. Further, applied to this proceeding, TASC contends the provision of DID service to RCCs involves "a telephone-company provided communication service which is offered to the public through facilities dedicated to public use." (TASC's Response pages 15-16.)

If the RCCs receiving General's DID service were not interconnected public utilities we would agree with TASC that potentially unlawful discrimination could exist given the rate disparity. We believe the critical distinction is that the service offered other interconnected communications utilities, to integrate wireline and radio or mobile telephone service into the overall statewide telecommunications network, falls under PU Code § 766. That statute mandates the establishment of connections between communications utilities to provide through service, and when utilities cannot agree on conditions, or charges or the division of revenues this Commission may resolve the issue. Traditionally intercarrier agreements to facilitate the mandate of PU Code § 766 are not placed in tariffs, and the tariff filing requirements of PU Code § 489 have not applied. Rather, intercarrier agreements are filed with the Commission. Also, we have traditionally not involved ourselves in intercarrier agreements unless a dispute arises between utilities. We assume that if the statewide communications network, with a large number of carriers, functions, and the utilities are satisfied with their intercarrier rates and divisions of revenue, our detailed oversight is not needed. However, if we were to find an

intercarrier charge too low, and thus creating an undue subsidy by ratepayers, we could, for example, impute increased revenues when ratesetting. Another facet to consider is that RCCs generate revenue for General and visa versa; wireline service and radio service are integrated. They are interconnected carriers who have revenue sharing arrangements. For example, a call may originate with an RCC customer and be routed through General's wireline or radio facilities to the called party. General's DID charge for RCCs must be viewed as one element in the overall intercarrier economic relationship.

SS Our conclusion is that General's DID service to other utility carriers by intercarrier agreements does not make the charges analogous to tariffed charges available to noncarrier members of the public, such as TAS customers. Accordingly, the disparity in charges complained of by TASC will not demonstrate unlawful discrimination and the unreasonableness of the tariffed rates applicable to TASC's members. We think it is useful to the parties to point this out now so that extensive hearing time is not used by TASC to exhaustively address this issue. TASC will be afforded an opportunity to demonstrate the tariffed DID rates and conditions of service are unreasonable, but it cannot use the level of charges and conditions of service provided under intercarrier agreements to show discrimination or unreasonableness. If TASC has evidence to present apart from the level of charges assessed under intercarrier agreements, as it alleges it has in its pleading in opposition to General's motion to dismiss, it may present that evidence. We note in General's NOI 99 that it proposes a 44% increase for DID service. Certainly the best forum for TASC to present its evidence is in the context of General's rate proceeding. Accordingly, we will consolidate this complaint with that proceeding.

General states in its motion to dismiss that it is reviewing its intercarrier agreements and reassessing the charges for DID service. General will be asked in its rate proceeding to report the results of its assessment and renegotiations. We expect General to receive reasonable compensation related to costs for services it provides under intercarrier agreements. Finally, we believe the replacement of many settlement agreements by access charges in 1984 and the advent of cellular mobile telephone service and interexchange competition may lead us to take a more active role in reviewing the conditions and charges under intercarrier agreements.

Is TASC barred from challenging
the reasonableness of DID rates
under PU Code § 1709?

General goes to great length to show that TASC's complaint is barred because it is a collateral attack on a prior Commission decision, issued in a proceeding in which TASC was a party. TASC was a party in General's rate proceeding where the existing DID rates and conditions of service were ultimately authorized. It did not like the result. It applied for rehearing and was denied. TASC concedes that since the existing DID rates were found reasonable it is barred from recovering reparations by PU Code § 734; but it contends that it may seek a prospective change in rates as provided by PU Code §§ 728 and 1708.

TASC is correct. The statutory scheme comprised by PU Code §§ 728, 734, 1702, and 1708 allows its complaint. The entire issue of tariffed DID rates and whether they are too high or low for prospective application will be before us by consolidating these proceedings.

Findings of Fact

1. TASC has filed a complaint signed by 25 existing or prospective customers alleging that General's tariffed DID rates are unreasonable.

2. General provides DID equivalent service to ROCs under intercarrier agreements between communications public utilities.

3. The DID rates and conditions of service offered by General to all its customers are contained in its Tariff No. A-6, Sheets 231-237. Those rates and conditions have been found reasonable by this Commission.

4. On May 2, 1983 General's NOI 99 was filed, which was the start of its pending general rate increase proceeding.

Conclusions of Law

1. General's rates and charges contained in intercarrier agreements are for service not offered to the public but rather for service between utilities to facilitate interconnection and an intercarrier division of revenue under PU Code § 766. As such, while public utility facilities may be used, charges are not for public utility service available to public end users.

2. The DID charges assessed by General to other utilities through intercarrier agreements cannot be used to show tariffed charges for comparable service available to the public are discriminatory, unreasonable, or unlawful.

3. A complaint about the reasonableness of existing tariffed rates may be brought by a complaint signed by at least 25 existing or prospective utility customers under PU Code §§ 1702 and 728.

4. The following order should be effective today so that parties may rely on it in planning the procedural and substantive conduct of their respective evidentiary presentations.

INTERIM ORDER

IT IS ORDERED that:

1. The motion of the General Telephone Company of California (General) to dismiss the complaint of Telephone Answering Service of California (TASC) is denied. R~

2. TASC shall not present evidence on the charges General assesses under its intercarrier agreements to show General's tariffed rates are discriminatory, unreasonable, or unlawful.

3. Case 82-10-08 is consolidated with General's application for a general rate increase initiated by NOI 99. A hearing will be scheduled with the date, time, and place to be announced.

This order is effective today.

Dated JUN 29 1983, at San Francisco, California.

LEONARD M. GRIMES, JR.
President

VICTOR CALVO
PRISCILLA C. GREW
DONALD VIAL
WILLIAM T. BAGLEY
Commissioners