

Decision 84 01 037 January 5, 1984

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ORDER INSTITUTING INVESTIGATION to)
determine whether competition should)
be allowed in the provision of)
telecommunications transmission)
services within the state.)

OII 83-06-01
(Filed June 29, 1983)

Application 82-12-21
(Filed December 9, 1982)

Application 83-01-20
(Filed January 13, 1983)

Application 83-05-16
(Filed May 6, 1983)

Application 83-05-26
(Filed May 13, 1983)

Application 83-05-40
(Filed May 18, 1983)

Application 83-06-54
(Filed June 24, 1983)

Application 83-07-21
(Filed July 11, 1983)

Application 83-08-26
(Filed August 8, 1983)

Application 83-09-37
(Filed September 19, 1983)

Application 83-10-09
(Filed October 5, 1983)

Application 83-11-07
(Filed November 3, 1983)

And Related Matters.

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Application 83-12-25
(Filed December 15, 1983)

Application 84-01-01
(Filed January 3, 1984)

Case 83-05-05
(Filed May 12, 1983)

(I&S)
Case 83-11-05
(Filed November 22, 1983)

(Appearances will be included with the final decision.)

INTERIM OPINION

This is one of several proceedings in which the Commission considers the effects of the Modified Final Judgment (MFJ), the antitrust consent decree between the Department of Justice and American Telephone and Telegraph Company (AT&T). Under the terms of the MFJ, exchange areas known as Local Access and Transport Areas (LATAs) are created. The LATAs provide the structural basis for the divestiture of the Bell Operating Companies (BOCs) from AT&T. California is divided into ten LATAs. After January 1, 1984, the BOCs can provide service only within LATA boundaries (intraLATA), while AT&T serves between the LATAs (interLATA), succeeding to the authority of the BOCs. Whether AT&T may also serve within the LATAs is one of the issues in this proceeding, although it has not filed an application for such authority.

Anticipating an emerging competitive market, a number of parties have applied to this Commission for authority to provide intrastate intercity telecommunications services, including the following:

A.82-12-21	MCI Telecommunications Company
A.83-01-20	GTE Sprint Communications Corporation
A.83-05-16	U.S. Telephone of the West, Inc.

A.83-05-26 American Telephone Exchange
A.83-05-40 Combined Network, Inc.
A.83-06-54 U.S. Ameri-Call Inc.
A.83-07-21 Telamarketing Communications, Inc.
A.83-08-26 Telesphere Network Inc.
A.83-09-37 Call U.S.A., Inc.
A.83-10-09 Satellite Business Systems
A.83-11-07 Ameritel, Inc.
A.83-12-25 L D Communications
A.84-01-01 Com-Vest Telecommunications, Inc.

In addition, Pacific Telephone and Telegraph Company (Pacific) has filed a complaint, C.83-05-05, alleging that MCI, Sprint and Western Union Telegraph Company (WU) have unlawfully furnished intrastate telecommunications services. WU claims that it has authority to provide such service by virtue of its prior operations within the state, preceding the enactment of the Public Utilities Code. On November 7, 1983, WU filed tariff revisions that would establish the intrastate offering of WU's switched voice service. On November 22, 1983, the Commission suspended WU's tariff filing and instituted C.83-11-05 to examine WU's filing. Each of these applications, the complaint proceeding, and the WU tariff suspension have been consolidated with this investigation. In the discussion that follows, applicants and WU are together identified as "Applicants".

The purpose of this proceeding is to develop the policy basis for resolving these various pending matters. In the order instituting this investigation we posed seven specific issues that we asked the parties to address. This matter is now submitted following 37 days of hearing, opening and reply briefs, and oral argument before the Commission en banc. In this interim decision we resolve one of the issues, while leaving the remaining issues to be resolved in a final decision in this proceeding.

In the order instituting this investigation we observed that the MFJ presumes a competitive market for interLATA services. We noted that no party had objected to intrastate interLATA

competition, but that there was debate about the terms under which such competition should be allowed. We asked whether the Commission should grant certificates for interLATA service before deciding whether intraLATA competition should be allowed. In this decision we decide that interLATA competition should be authorized immediately.

There is no opposition to interLATA competition.

Applicants argue that immediate entry is necessary to coincide with the timing of divestiture. They contend that failure to authorize entry at this time would give AT&T a significant competitive advantage and make their later entry into the market more difficult. However, Pacific argues that such authorization ought to be conditioned on Applicants' ability to effectively block attempted intraLATA calls from being completed over their networks, so that Pacific would be the sole provider of intraLATA service. AT&T also argues that blocking should be required.

Blocking would require that the Applicants reprogram their switches and take certain other measures to prevent intraLATA calls from being completed. In the overall context of this proceeding there are two stages of blocking that are under consideration: blocking before and after equal access.¹ The techniques required to implement blocking prior to equal access are not applicable to blocking conditions after equal access. This decision addresses only pre-equal access blocking. Both types of blocking will be addressed in more detail in the final decision.

¹ InterLATA equal access is required by the MFJ, to be phased in beginning in September 1984.

Pacific and Applicants disagree regarding how such blocking could be accomplished, at what cost, and in what time frame. This latter consideration is most important for purposes of this decision, because Pacific concedes that several months would be required, while Applicants contend that a much longer time would be necessary. The evidence is clear that an interim decision that requires blocking prior to permitting interLATA entry would effectively preclude Applicants from providing interLATA service for months, at least, or beyond the time of the final order in this proceeding. Because, the final order may not require blocking, Applicants would be likely to wait for the final order before investing their resources in blocking capability. An interim order that requires blocking is therefore pointless.

We find that the public interest is better served by an interim decision that authorizes immediate interLATA entry. As stated above, the MFJ contemplates a competitive interLATA market. The development of such a market will take time. Authorization of entry is a necessary first step. The timing is propitious for an interim decision.

Divestiture has focused unprecedented public attention on the telecommunications industry. This heightened public awareness creates a favorable environment for Applicants to enter the market, an environment that is not likely to repeat itself. Failure to authorize entry at this time would allow an unmistakable competitive advantage to AT&T.

The complexity of the situation is compounded by the overlapping jurisdictions. Those Applicants that do operate interstate are likely to advertise their services to the public in California. However, for many potential customers their services are likely to be less attractive if intrastate interLATA calling is not authorized.

In order to protect Pacific, the interLATA authority conferred by this decision is conditioned on Applicants' willingness to refrain from holding out intraLATA service. Applicants themselves have indicated a willingness to take certain precautions in their advertising and customer contacts to prevent the possibility of using their authority to make intraLATA calls, diminishing the risk of an adverse impact on Pacific. We are satisfied that these measures will adequately protect Pacific's interests, pending a final decision. ✓

We acknowledge that "holding out" is difficult to define in all possible permutations. We are most concerned about advertising and customer contacts. Applicants who are unable to conform their conduct to the standard expected of public utilities are subject to severe penalties, including suspension or revocation of authority. Obviously, widespread disregard of this Commission's authority could also affect our ultimate position on blocking. We will be observing their conduct to determine whether these measures are sufficient to protect Pacific, or whether further action is required. ✓

In D.83-12-24 in A.82-11-07 et al. we established access charges for the provision of exchange access services to long-distance carriers for the origination and termination of intrastate toll calls. One of the underlying issues in this proceeding is the distinction between intrastate and interstate calls. In D.83-12-24 we found that originating calls using Pacific's access services can be distinguished as intrastate or interstate by treating the relevant point of presence as a surrogate for the originating point. We adopt the above principle for purposes of this proceeding. We also recognize that some intraLATA calls will be completed over Applicants' networks, regardless of their good faith in not holding out such service. Such intraLATA calls are incidental to Applicants' intrastate interLATA authority and are subject to the access charges adopted in D.83-12-24 until further order of the Commission.

There remains as a final matter the rate regulation and tariff filing requirements that will be imposed on Applicants. These are issues that will be addressed in detail in the final decision. We observe that none of the Applicants appears to have sufficient market share to maintain unreasonably high rates. For purposes of this interim decision those Applicants that have tariffs on file with the Federal Communications Commission (FCC) are authorized to adopt such tariffs for their interLATA service but with a specific exclusion of provision of intraLATA service. Along with the filing of the Notice of Adoption of the FCC tariffs, the Applicant shall also file a copy of those FCC tariffs. Any Applicant that does not have tariffs on file with the FCC or that chooses to offer different rates or charges in California shall file a tariff setting forth the proposed services and charges offered by Applicant. Rate changes in FCC approved tariffs may be made as authorized by the FCC. When rate changes are made from time-to-time in the FCC tariffs, these changes may be used for interLATA intrastate California service by filing copies of such change tariffs that will become effective on the same date they are effective at the FCC. The provisions of General Order 96-A are waived only to the extent of Section IV, relating to filed and effective dates; Section V, procedure in filing tariff sheets which do not increase rates or charges; and Section VI, procedure in filing increased rates. In all other respects, tariffs shall be filed in accordance with General Order 96-A. Tariff filings will be effective five days after filing. Applicants are subject to ordinary complaint jurisdiction of the Commission.

Findings of Fact

1. The MFJ presumes a competitive market for interLATA service.
2. There is no opposition to interLATA competition.
3. Blocking requires that Applicants reprogram their switches and take certain other measures to prevent intraLATA calls from being completed.

4. Blocking capability would require several months to implement, at a minimum.

5. An interim decision that requires blocking prior to providing service would effectively preclude applicants from offering interLATA service for months.

6. Divestiture has focussed unprecedented public attention on the telecommunications industry.

7. This public awareness creates a favorable environment for Applicants to enter the market.

8. Failure to authorize entry at this time would allow an unmistakable competitive advantage to AT&T.

9. Precautions in advertising and customer contacts on the part of Applicants diminishes the risk of an adverse impact on Pacific and its ratepayers.

10. Originating calls using Pacific's access services can be distinguished as intrastate or interstate by treating the relevant point of presence as a surrogate for the originating point.

11. Intrastate intraLATA calls carried by Applicants are incidental to their intrastate interLATA traffic.

12. None of the Applicants has sufficient market share to maintain unreasonably high rates.

13. Because of the public interest served by immediate interLATA entry, this order should be effective today.

Conclusions of Law

1. Immediate interLATA entry is in the public interest.

2. Blocking would defeat the purpose of immediate interLATA entry.

3. Applicants should be prohibited from holding out intraLATA services to the public pending further order of the Commission.

INTERIM ORDER

IT IS ORDERED that:

1. Each of the applications listed in the foregoing discussion is granted to the limited extent of providing the requested service on a interLATA basis, subject to the condition that each applicant refrain from holding out to the public the provision of intraLATA service.

2. Western Union Telegraph Company is authorized to file tariffs offering interLATA service, subject to the condition that it not hold out to the public the provision of intraLATA service.

3. Each of the Applicants and Western Union Telegraph Company are authorized to file with this Commission, five days after the effective date of this order, tariff schedules for the provision of interLATA service. Applicants with effective FCC approved tariffs, may file a notice adopting such FCC tariffs with a copy of the FCC tariff included in the filing. Such adoption notice shall specifically exclude the provision of intraLATA service. Those Applicants that have no effective FCC tariffs, or that wish to file tariffs applicable only to California intrastate interLATA service 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.

4. The requirements of General Order 96-A relative to the effectiveness of tariffs after filing are waived in order that changes in FCC tariffs may become effective on the same date for California interLATA service for those companies that adopt the FCC tariffs.

This order is effective today.

Dated JAN 5 1984, at San Francisco, California.

LEONARD M. GRIMES, JR.
President

VICTOR CALVO

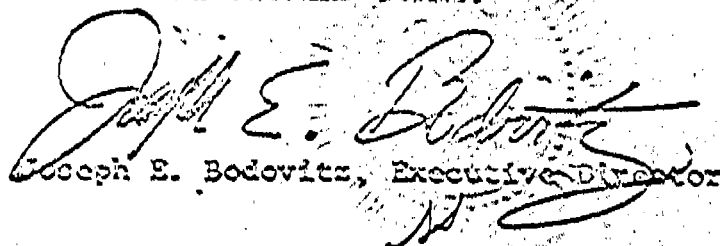
PRISCILLA C. GREW

DONALD VIAL

WILLIAM T. BAGLEY

Commissioners

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


Joseph E. Bodovitz, Executive Director

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