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Decision 95-07-049 July 19 , 1995

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's  
own motion into the Second Triennial  
Review of operations and  
safeguards of the Incentive-Based  
Regulatory Framework for local  
exchange carriers.

I.95-05-047  
(Filed May 5, 1995)

**ORIGINAL**

OPINION GRANTING IN PART PACIFIC BELL'S EMERGENCY  
PETITION TO MODIFY I.95-05-047 TO FACILITATE  
EXPEDITIOUS REVIEW OF THE NRF STRUCTURE

On May 24, 1995, the Commission issued Order Instituting Investigation (I.) 95-05-047 (the OII) to initiate the second triennial review of the incentive-based regulatory framework for local exchange carriers (NRF) adopted in Decision (D.) 89-10-031. In the OII, the Commission directed all respondents and interested parties to file an opening statement of the issues they believe should be addressed in this review by July 19, 1995, and a reply statement by August 2, 1995 (OII, p. 4 at Ordering Paragraph (OP) 3 and OP 5.) The OII stated that further scheduling would be set by an assigned Administrative Law Judge's Ruling.

On June 26, 1995, Pacific Bell (Pacific) filed an emergency petition<sup>1</sup> requesting that the Commission modify the OII to specify the initial issues that the company believes should be addressed in a first phase of this proceeding. Pacific seeks to have the review of these initial issues completed before January 1, 1996. The

<sup>1</sup> "Emergency Petition of Pacific Bell for Modification of OII 95-05-047 to Facilitate an Expeditious Review of the NRF Structure."

company asks the Commission to determine what level of productivity factor, if any, it should apply beginning January 1, 1996. Pacific maintains that its current 5% productivity factor was adopted only for the years 1994 and 1995. Moreover, Pacific argues that the "telecommunications market is undergoing dramatic changes that have vastly altered the environment that existed when NRF was first established in 1990." Emergency Petition at 2. The company contends that expedited review is imperative to ensure that the present NRF regulatory structure is compatible with the telecommunications market in which it will operate in 1996 and beyond.

On July 10, 1995, five parties<sup>2</sup> filed responses to Pacific's petition. No party objects to a bifurcation of the issues of the OII. Each party agrees that the proposed issues framed by Pacific are integral. However, the parties disagree about which issues the Commission should consider in the initial phase and the pace under which the OII should proceed. CWA and CTC-California agree with Pacific's request that the initial phase be expedited. DRA and the Coalition<sup>3</sup> strongly disagree with the proposed expedited

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<sup>2</sup> The Communications Workers of America, AFL-CIO (CWA), the Commission's Division of Ratepayer Advocates (DRA), Citizens Telecommunications Company of California, Inc. (CTC-California), the California Telecommunications Coalition (Coalition) and GTE California Incorporated (GTEC) filed pursuant to an Administrative Law Judge's Ruling granting Pacific's motion to shorten the time to respond to the petition.

<sup>3</sup> The Coalition comprises AT&T Communications of California, Inc.; California Association of Long Distance Telephone Companies; California Cable Television Association; California Committee for Large Telecommunications Consumers; California Payphone Association; ICG Access Services, Inc.; MCI Telecommunications Corp.; MPS Intelenet, Inc.; Sprint Communications Co., L.P.; Teleport Communications Group; Time

schedule. GTEC declares that a less immediate pace than Pacific urges would be workable if the proposed timetable for the local competition proceeding remains relatively unchanged.

GTEC, the Coalition and DRA each recommend their own sets of issues that they regard as essential to an initial phase. Some of the issues, while individually phrased, overlap and supplement Pacific's proposed list of issues. GTEC urges a first phase examination of service categorization. The Coalition and DRA call for a Phase I consideration of quality of service issues.

Discussion

We have heard too many strong conflicting statements, either proclaiming the positive effects of the forces of competition or admonishing us about the deleterious impacts of those forces upon our present regulatory structure, to ignore the basic issues that Pacific presents in its petition. The parties agree that the OII should move forward. They differ primarily on the delineation of issues, the number of issues and the rate that we should proceed.

There is merit in streamlining and bifurcating the OII, as well as promptly addressing a few of what appear to be the pivotal issues in this proceeding. We have carefully considered the parties' responses, and believe that our Phase I issues incorporate a balance of the views. Therefore, we shall grant Pacific's petition in part and modify I.95-05-047 to expedite Phase I. This initial phase shall address three issues which reflect our questions, the concerns of Pacific and the responses of the other parties. We have narrowed the issues in order to facilitate review by the end of 1995.

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Warner AxS of California, L.P.; and Toward Utility Rate Normalization.

Findings of Fact

1. On June 26, 1995, Pacific filed an Emergency Petition for Modification of I.95-05-047 to Facilitate an Expeditious Review of the NRF Structure.

2. On July 10, 1995, pursuant to an ALJ Ruling granting Pacific's motion to shorten the time for responses to the petition, five parties filed responses.

3. Each party agrees that the proposed issues framed by Pacific are integral.

4. However, the parties disagree about which issues the Commission should consider in the initial phase and the pace under which the OII should proceed.

5. The overall comments indicate that there is merit in streamlining and bifurcating the OII, as well as promptly addressing the pivotal issues.

Conclusion of Law

It is reasonable to promptly address a few of what appear to be the pivotal issues in this proceeding.

O R D E R

IT IS ORDERED that Ordering Paragraphs 3, 4, and 5 of Investigation 95-05-047 should be deleted in their entirety and replaced with the following:

"3. In Phase I of this proceeding, the following issues will be addressed:

"1) Should GDP-PI minus X (inflation minus productivity factor) in the price cap formula be modified or eliminated?

- "2) Should the price cap formula be applied to all Category I and Category II services, or solely to Category I services?
- "3) Should implementation of NRF modifications be ordered in stages, contingent on achieving milestones?
- "4. The Commission's review of the issues identified in Ordering Paragraph 3 will be conducted as expeditiously as possible. The assigned Commissioner or the assigned Administrative Law Judge will promptly set forth the schedule for Phase I.
- "5. A determination of additional issues to be addressed in a later phase of this proceeding will be made by further order of the assigned Commissioner or Administrative Law Judge."

This order is effective today.

Dated July 19, 1995, at San Francisco, California.

DANIEL Wm. FESSLER  
President  
P. GREGORY CONLON  
JESSIE J. KNIGHT, JR.  
HENRY M. DUQUE  
Commissioners

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

*Wesley Franklin*  
Acting Executive Director