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Decision 96-03-021 March 13, 1996

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

In the Matter of the Alternative Regulatory Frameworks for Local Exchange Carriers.	I.87-11-033 (Filed November 25, 1987)
And Related Matters.	Application 85-01-034 Application 87-01-002 I.85-03-078 Case 86-11-028 I.87-02-025 Case 87-07-024

INTERIM OPINION

Summary

The petition of the California Association of Long Distance Telephone Companies (CALTEL) to modify Decision (D.) 94-09-065 (dealing with Implementation Rate Design (IRD) issues, the IRD Decision) to address phase-in issues associated with the elimination of certain surcharges and surcredits is denied.

Procedural Background

The IRD Decision

We issued the IRD Decision on September 15, 1994. It concluded the third phase of the investigation (I.87-11-033) into the design of a New Regulatory Framework (NRF) for GTE California Incorporated (GTEC) and Pacific Bell (Pacific). Although narrowly focused on the arrival of competition within the Local Access and Transport Areas (LATAs) and the requirement of associated pricing flexibility for GTEC and Pacific as local exchange companies (LECs), the IRD Decision was lengthy and dealt with a host of specific issues.

The CALTEL Petition to Modify the IRD Decision

CALTEL filed its petition to modify the IRD Decision on February 9, 1995. CALTEL quoted portions of the IRD Decision in

which we enunciated a principle that changes in rates in connection with our directives there should achieve "revenue neutrality." Notwithstanding what CALTEL calls the "overarching policy" of revenue neutrality, however, the petition alleges that the IRD Decision "has had an unexpected consequence, one clearly unintended by the Commission, and apparently, unforeseen by the parties." As discussed below, this consequence relates to timing of the modification of certain surcharges and surcredits that we authorized in the IRD Decision. CALTEL alleges that Pacific has collected $13 million more than it should have under a revenue neutral implementation of the IRD Decision and GTEC has collected $2.7 million more. In addition, CALTEL alleges, such amounts have fallen disproportionately upon customers whose billing dates fell in the first half of January 1995. CALTEL requests that we modify the IRD Decision to provide for a one-time surcredit to undo the timing effect.

CALTEL also requested that time to respond to its petition be shortened to 15 days. Due to the passage of time since the filing of the petition, this issue has become moot, and we will consider each of the protests that were filed.

The Protests to the CALTEL Petition

Pacific and GTEC each filed protests to CALTEL's petition. Pacific opposes CALTEL's request for a one-time surcredit on the grounds that the IRD Decision has been implemented consistently with procedures historically used to apply new billing surcredit percentages on a bill date basis. The effect here was that a customer with an early January 1995 bill date paid the higher rates in effect in December 1994 without the benefit of the higher surcredits in effect then. The customer with a late January 1995 bill date at least has a lower rate to go with lower surcredits. Over time, Pacific argues, increases and decreases in surcredits are a wash, neither benefiting the utility nor the customer.

GTEC also protested CALTEL's petition. Even if a supplemental surcredit should be imposed, GTEC argues, the relationship between the underlying billing practice and the IRD Decision[1] is too tenuous and, therefore, the proper remedy is something other than modification of the IRD Decision. GTEC goes on to argue that CALTEL is misconstruing the policy of revenue neutrality and, in any event, GTEC's billing practice of applying surcredit for access by bill date is actually revenue neutral if this practice is consistently applied. In addition, GTEC asserts that CALTEL's petition to modify is defective in that it does not seek to modify the language of any particular ordering paragraph in the IRD Decision. Finally, GTEC claims that the cumulative impact of bill date application of changes in access surcharges and surcredits is much less than the $2.7 million that CALTEL estimates for the January 1995 billing period, amounting to only approximately $43,000 for the period July 1985-December 1994.

Other Responses to CALTEL's Petition

AT&T Communications of California, Inc. (AT&T) and MCI Telecommunications Corporation (MCI) each filed in support of CALTEL's petition to modify the IRD Decision.[2]

AT&T argued that we should apply a 3-part test to determine whether to grant the relief sought by CALTEL:

> 1. Did the Commission adjust its revenue re-balancing (as reflected in Appendixes D and E workpapers) to reflect that tariff rate and surcharge/surcredit adjustments would not be implemented simultaneously?

[1] The supposed inconsistency with the goal of revenue neutrality

[2] AT&T and MCI took different procedural approaches. Under the Rules of Practice and Procedure that were in effect at the time, we did not specifically provide for a response to a petition to modify other than a protest. AT&T moved to accept its petition in support, while MCI styled its filing as a protest, even though it supported CALTEL's position. In light of the subsequent amendment of the Rules and the passage of time, we will treat each of these filings as part of the record before us without regard to the proper procedural treatment at the time, even if we would have reached a different result had we taken up this matter earlier.

2. Did the Commission intend to create an exception to the LECs' authorized price caps?

3. Is the rate discrimination which results from the LECs' different application of rate and surcharge/surcredit adjustments reasonable?

If the answer to any of the foregoing is "No," AT&T contends, then the Commission should grant the relief that CALTEL seeks.

MCI brings a more direct perspective to the debate. It claims that its January 1995 bill was "38% percent higher than ... previous access bills and over 50% higher than the access bills received since the elimination of" the Carrier Common Line Charge. MCI's loss, it claims, was Pacific's windfall.

Final Round Comments

Pacific moved to accept its response to the AT&T and MCI filings[3], and goes on to make the argument that implementing the bill date basis for the January 1995 adjustments in response to the IRD Decision offsets prior surcredit increases made on a bill date basis. CALTEL informally requested leave to respond to Pacific and GTEC's response to CALTEL's petition. In light of our disposition of this petition, we did not feel that the petition to modify would benefit by further pleadings.

Discussion

Procedural Rules Governing Petitions to Modify

At the time it was filed, CALTEL's petition was governed by former Rule of Practice and Procedure 43, which generally limited petitions to "minor changes in a Commission decision or order" and further provided that other desired changes "shall be by application for rehearing or by a new application." During the pendency of the petition, we adopted

[3] This is another procedural issue that we bypass in light of the passage of time, and we will simply take the record of filings as it now stands without ruling on the propriety of the form or sequence of pleadings.

revisions to the Rules, including current Rule 47, which does not contain the "minor changes" limitation. Rule 47 does, on the other hand, require that factual allegations be supported with specific citations to the record in the proceeding or to matters that may be officially noticed. If a petition to modify alleges new or changed facts that do not appear in the record, or which go beyond the scope of official notice, an affidavit or declaration is required. (Rule 47.)

Procedurally, then, CALTEL's petition to modify is defective whether considered under former Rule 43 or under Rule 47. Under former Rule 43, the modification requested is not minor, and therefore CALTEL's proper remedy was a timely petition for rehearing under Rule 85. Under Rule 47, the petition fails to "propose specific wording to carry out all requested modifications to the decision" or to support its factual allegations with either citations, requests for official notice, or a declaration or affidavit.

We are not precluded, however, from considering procedurally deficient petitions to modify. (In re Tariff Filing Rules for Telecommunications Utilities, Other than Local Exchange Carriers and AT&T-C (1992) 44 CPUC2d 747, 748 (construing former Rule 43).) When we do so under Rule 47, however, we will naturally be less likely to grant the relief sought without further hearings or briefing.

For purposes of dealing with CALTEL's petition, we shall assume that the facts alleged therein are true unless contradicted by facts alleged in the protests as our primary focus shall be upon construing the policy of revenue neutrality that we applied in the IRD Decision.

Revenue Neutrality

Treatment of Revenue Neutrality in the IRD Decision

We dealt with two related issues in the IRD Decision: the "further extension of competition within the Local Access and Transport Areas (LATAs) ... and the proper level of pricing and pricing flexibility authorized for" LECs. (IRD Decision, mimeo. at 2.) We said at the outset of the IRD Decision that

> [a]n important dimension to this order is that while our pricing policies for competitive services set the stage for competition for intraLATA toll and other telephone services, these policies are intended neither to result in a windfall to the NRF companies [i.e., Pacific and GTEC] nor to deprive GTEC or Pacific of a fair opportunity to earn a competitive rate of return. To accomplish this balancing, every rate change ordered by this decision which results in a revenue increase or decrease is offset by countervailing rate changes or revenue adjustments so that the cumulative effect of all revenue changes for each NRF company is zero (revenue neutrality).

(Id. at 3.)

We recognized that the interactions among rate design components would complicate the process of achieving revenue neutrality. (Id.) Revenue rebalancing forced us "to deviate from our preferred pricing principles in many instances." (Id.) But we set new rates for both GTEC and Pacific effective January 1995 and required "any existing recurring surcharges or credits carried over from previous years" to be eliminated. (Id.) We established final rates "for January 1, 1995, without revenue rebalancing surcharges." (Id.)

We further defined our policy of revenue neutrality in discussing the goals of rate design in Phase III of the IRD process: "to shift revenues between services and customer classes without any change in the base year revenue requirement

(1989 for Pacific and 1990 for GTEC), except as modified by subsequent Commission decisions." (Id. at 14-15.)

We recognized that intraLATA competition would result in a decline of associated revenues to the LECs, from loss of volume, or erosion of price, or both. (See id. at 32.) We intended to compensate for this decline by "offsetting adjustment to revenues and rates for other services (revenue rebalancing)." (Id.) We also recognized that continuing support for basic exchange services would result in other services being priced above cost. (See id. at 36.) However, we saw that as a pragmatic step that does not ultimately detract from our goal of moving toward eliminating all noncost-based charges, including surcharges. (Id.)

CALTEL's petition states that the customers most dramatically affected by the "unexpected consequences of the IRD Decision (with respect to timing of the application of changes in rates) are access customers of Pacific and GTEC." The petition does not explain which access customers these are.

The IRD Decision devotes a separate section to dedicated access.[1] These services are classified as Category II, because they are partially competitive or discretionary. (See id. at 13, 83.) We permitted the LECs to price dedicated access at any level above specified price floors. Accordingly, whatever else our policy of revenue neutrality may mean, it clearly does not mean that the LECs could not change prices for dedicated access. Accordingly, if the timing application of the rates in relation to surcredits on a bill date basis created a competitive disadvantage to the LECs, the LECs could have chosen to start with lower rates and then increase them. From the

[1] "Dedicated access may take the form of either a private line, which connects two customer locations, or special access, which connects a customer to an [interexchange carrier]." (IRD Decision, mimeo. at 81.) We decided that since they are functionally identical, they should be priced identically. (Id. at 110.)

customers' standpoint, it should not matter why the LECs' bill seemed high to them in January 1995 since they had competitive alternatives.

The IRD Decision also devotes a separate section to switched access, which is the switching and transmission provided by the LECs to connect end-users with interexchange carriers (IECs) and vice versa. (Id. at 114.) We kept switched access as a monopoly, or Category I, service. (See id. at 115-16.) "The customers of switched access services are IECs, who will be in competition with the LECs for the intraLATA toll market." (Id. at 117.) We decreased switched access rates. (Id. at 122.) In so doing, we eliminated certain rate elements and directed that their associated revenues "should not be accounted for in the revenue rebalancing" because so doing would be consistent "with our movement toward cost-based rates." (Id.) We adopted a demand elasticity factor "to calculate the revenues that will result from our adopting lower rates for switched access" and determined to "take these revenues into account in the revenue rebalancing." (Id.) Thus, with respect to switched access, our treatment of revenue neutrality was in terms of the effect among classes of service, not within switched access considered as a separate service.

Does the IRD Decision Require a True-up?

We are not persuaded that revenue neutrality was quite the "overarching policy" in the IRD Decision as CALTEL urges to justify its request for relief. CALTEL's focus on access customers as a separate class is inconsistent with how we used revenue neutrality in the IRD Decision, which was as an estimating tool. Although the effect of which CALTEL complains may have been unintended, since neither the parties nor we expressly addressed it in the proceeding or the IRD Decision, it was not unanticipated. In fact, we continued a number of surcharges. (See id. at 288-93.) If we had intended the bill

date method of applying surcharges and surcredits to change, we would have addressed that issue in that discussion, which we did not.

Whether Bill Date Application is an Exception to Price Caps

AT&T argues that the "LEC tariff rate, as adjusted by effective surcharges/surcredits, represents the price cap (or ceiling) for each Category I service." Therefore, the "non-parallel implementation of rate and surcharge/surcredit adjustments appears to result in significant violations of the LEC price caps." That argument ignores our treatment of the issue in the IRD Decision, where we apply the term to the yearly price cap index rate adjustment. (Id. at 281-82.) We set permissible rates, which the LEC reflects in its tariff. We permit recovery or require disgorgement of changes due to increases or decreases, respectively, of index rates (a proxy for changes in revenue requirements) to be flowed through to customers in the form of surcharges and surcredits expressed as a percentage of the customer's bill, not the tariff rate. AT&T is confusing two components of ratemaking.

Whether Rate Discrimination Exists

AT&T also argues that the non-identical treatment of customers based on billing dates is discriminatory and prohibited by Public Utilities (PU) Code Section 453.

PU Code Section 453(a) prohibits any public utility from making or granting any preference or advantage to any corporation or person or subject any corporation or person to any prejudice or disadvantage. PU Code Section 453(c) prohibits any public utility from establishing or maintaining "any unreasonable difference as to rates, charges, service, facilities, or in any other respect, either as between localities or as between classes of service."

It is undisputed that the practice of bill date application of surcharges and surcredits affects customers differently based on their billing date. It would affect customers differently if rates and application timing were adjusted weekly, daily, hourly, or by the minute. Differential effect is not the criterion.

Public utilities establish different billing dates for customers for the reasonable purpose of spreading the work of billing and collection evenly over the entire month. Absent a showing that a public utility deliberately assigned a particular customer to a given bill date for the purpose of creating an advantage or prejudice (for example, changing the bill date just prior to an event, then changing it back shortly thereafter), we do not think that PU Code Section 453 applies to the circumstances in this case.

Findings of Fact

1. CALTEL filed a petition to modify the IRD Decision on February 9, 1995.

2. Pacific and GTEC each filed protests to CALTEL's petition.

3. AT&T and MCI each filed in support of CALTEL's petition.

Conclusions of Law

1. Revenue neutrality was not intended in the IRD Decision to apply on a service-by-service basis.

INTERIM ORDER

IT IS ORDERED that the petition of the California Association of Long Distance Telephone Companies to modify Decision 94-09-065 to address phase-in issues associated with the elimination of certain surcharges and surcredits is denied.

This order is effective today.

Dated March 13, 1996, at San Francisco, California.

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