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MAIL DATE
9/24/96

ORIGINAL

Decision 96-09-102

September 20, 1996

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking
on the Commission's Own Motion
into Competition for Local
Exchange Service.)

R.95-04-043
(Filed April 26, 1995)

Order Instituting Investigation on
the Commission's own Motion into
Competition for Local Exchange
Service.)

I.95-04-044
(Filed April 26, 1995)

ORDER MODIFYING AND DENYING REHEARING OF D.96-02-072

On July 24, 1995, we issued D.95-07-054, which adopted initial local exchange competition rules applicable to the service territories of Pacific Bell (Pacific) and GTE California (GTEC). The adopted rules authorize prospective competitive local carriers (CLCs) to request certificates of public convenience and necessity (CPCN) to provide local exchange service. The local exchange competition rules were adopted pursuant to the joint rulemaking (R.) 95-04-043 and investigation (I.) 95-04-044 instituted on April 26, 1995. This joint proceeding is part of our integrated plan to open all telecommunications markets to competition by January 1, 1997. This intention was stated in the our 1993 report to the Governor entitled, Enhancing California's Competitive Strength: A Strategy for Telecommunications Infrastructure. The California Legislature subsequently adopted Assembly Bill 3606 (Ch. 1260, Stats. 1994) which similarly expressed a legislative intent to open telecommunications markets to competition by January 1, 1997.

We began the process of opening telecommunications markets to competition with its issuance of D.94-09-065 (Investigation 87-11-033), in which we opened intraLATA toll markets to competition effective January 1, 1995. Subsequently, in D.94-12-053, we formally adopted a preliminary procedural plan to open the local exchange markets to competition. In that order, we ordered the implementation of local exchange competition in a manner which would deal carefully and systematically with the three major areas of regulatory concern relating to such competition. These areas of concern are: (1) Open Access and Network Architecture Development (OANAD); (2) Local Exchange Competition Rulemaking; and (3) Consumer Protections and Regulatory Streamlining.

In accordance with the plan adopted in D.94-12-053, we formally instituted a joint rulemaking and investigation proceeding on April 26, 1995 to further develop rules for local exchange competition. Parties submitted written comments on the proposed rules, and we convened a full panel hearing to hear oral statements addressing the merits of the proposed rules. Based on these comments, we issued D.95-07-054 adopting the interim rules. This Decision directed CLCs to file petitions for CPCN authority by September 1, 1995 to enable us to act upon and approve them in time to allow local exchange competition by facilities-based CLCs to begin on January 1, 1996, and for bundled resale-based competition to begin on March 1, 1996. In D.96-02-072 we approved the petition of the CLCs for authority to resell the local exchange service of Pacific Bell and GTE of California within prescribed service territories and subject to our adopted interim rules. Further, this Decision disposed of issues raised in the proposed interim rules issued April 26, 1995, for comment and which were not resolved in previously issued orders. These issues included but were not limited to access to local exchange companies (LEC) data bases and directory assistance services.

On March 29, 1996 California Telecommunications Coalition and the Association of Directory Publishers filed an

Application for Rehearing of D.96-02-072 raising a number of issues relating to the rules regarding access to LEC data bases and directory assistance services for local exchange competition adopted in D.95-07-054.

The Applicants in their application for rehearing assert that based on no record we found that access to the LEC's subscriber information database and provision of subscriber listings by the LEC is not an essential service. However, the applicants then cite to comments on the record made by Pacific Bell on this issue. See Pacific Bell's October 10, 1995 Comments at pg. 72. In D.96-02-072 we concluded that LEC line information data is a competitive service which the CLCs can access through self-provisioning, third parties or the LECs. This is a policy judgment that we made based on the record. Thus, we committed no legal error in taking this action.

Next, Applicants' assert that D.96-02-072's treatment of access to the LEC's directory assistance database and subscriber listings is inconsistent because Conclusion of Law 24 and Appendix D, page 3, 11 (D) (1) are in fact inconsistent with each other. Conclusion of Law 24 requires the LEC to include the CLC subscriber information in the LECs' directory assistance database at no charge, if the CLC provides the subscriber listing information to the LEC at no charge. Appendix D, 11(D) (1) conflicts with this statement and says that through mutual agreement CLCs shall compensate for their cost of including CLCs customers in their directory assistance database....¹ Clearly, the text of the appendix is not consistent with the Conclusion of Law. Since the Conclusion of Law controls, Appendix D, 11(D) (1) should be corrected to reflect the language in Conclusion of Law 24.

Finally, Applicants claim that we failed to rule on the issue of providing nonpublished telephone subscriber addresses to

1. D.96-02-072, mimeo, Appendix D, p.3, 11(D) (1).

the delivery agent common carriers of independent publishers for the purpose of delivering telephone directories. On March 18, 1996 an Administrative Law Judge ruling designated that this issue should be addressed in Phase III of the Competition for Local Exchange Service rulemaking. Therefore, this issue is being dealt with by us in Phase III.

We have reviewed all the other allegations of the Application for Rehearing and believe that no other grounds for rehearing are set forth. Having fully considered the issues raised, the California Telecommunications Coalition and the Association of Directory Publisher's Application for Rehearing is denied.

WHEREFORE, IT IS ORDERED that Appendix D, 11(D)(1) is modified to reflect the language in Conclusion of Law 24 of D.96-02-072. It is further ordered that California Telecommunications Coalition and the Association of Directory Publisher's Application for Rehearing of D.96-02-072 is denied.

This order is effective today.

Dated September 20, 1996, at San Francisco, California.

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

Commissioner Josiah L. Neeper,
being necessarily absent, did
not participate.