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Decision 96-10-079

October 25, 1996

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application  
of Rehearing of Resolution No. T-15782 )

A.96-04-028

ORDER DENYING REHEARING OF RESOLUTION T-15782

In 1984 we authorized competition for telephone calls between Local Access and Transport Areas (LATAs) (D.84-01-037; 14 Cal.P.U.C.2d 317.) Interexchange companies (IECs) began to provide interLATA service. Six months later, we found that competition should not be permitted within LATA boundaries (intraLATA competition). (D.84-06-113; 15 Cal.P.U.C.2d 426.) However, we did institute an investigation into alternative regulatory frameworks for local exchange carriers (LEC). The Implementation Rate Design (IRD) proceeding, culminated in the authorization of intraLATA competition and a rebalancing of LEC rates. (IRD Decision, D.94-09-065; \_\_\_ Cal.P.U.C.2d \_\_\_.)

The IRD Decision authorizes the provision of intraLATA service by any IEC to whom we have granted a certificate of public convenience and necessity (CPCN) to offer and provide telecommunications services within California LATAs (D.93-04-063 or subsequent decisions (D.94-09-065, Ord. Par. 1.)). Moreover, the authorization of IECs to offer intraLATA service was conditioned upon compliance with the limitations set out in the IRD Decision.

In 1985 we found that the introduction of Customer-Owned Pay Telephones (COPTs) service was likely to result in the availability of an increased number of pay telephones. (COPT Investigation, D.85-11-057; 19 Cal.P.U.C.2d 218,232.)

In a subsequent proceeding dealing with pay phone issues, the parties reached a settlement, which among other things, authorized all pay telephone providers (COPT and LEC) to charge end users a "Pay Station Service Charge" (PSSC) for each non-sent-paid call made over the pay telephone.<sup>1</sup> (COPT Settlement, D.90-06-018; 36 Cal.P.U.C.2d 446.) The payphone operator would otherwise receive no compensation for a non-sent-paid call. PacBell and GTEC California, Inc. (GTEC) were required to offer COPT owners a billing and collection service for the PSSC, as applied to intraLATA calls. We approved the settlement and agreed to a PSSC of 25 cents per call.

Currently, payphone operators are compensated by LECs for the use of their instruments to complete intraLATA calls pursuant to the COPT settlement. Thus, in addition to its otherwise applicable toll rates, the LEC must charge the caller the 25 cent PSSC to complete an intraLATA call from a payphone. An interLATA telephone call originating from a payphone is automatically routed to an IEC who, by prior arrangement, has agreed to compensate the payphone owner for the use of the instrument. However, due to technological advancements, a caller may now "dial around" the payphone operator to reach the caller's preferred IEC.

This bypass of the COPT's prearranged IEC means that the COPT owner is not compensated for the use of its equipment. The percentage of calls that are dialed around the payphone operator is potentially greater now that the IRD Decision has authorized IECs to carry intraLATA, as well as interLATA calls. Avoidance of the 25 cent PSSC would enable IECs to price intraLATA service lower than the LEC, which, under the terms of

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1. A "sent-paid" call is made by depositing coins in full payment of the call. "Non-sent-paid" signifies a noncoin call made by calling card, operator assistance, or "collect".

the COPT settlement agreement, must charge, bill, and remit the PSSC.

In the IRD Decision we dealt directly with this issue and found:

The LECs currently collect and remit to the pay telephone provider (after retaining a processing charge) the 25 cent pay station service charge (PSSC) from pay telephone noncoin calls completed using the LECs' facilities. With the start of competition for intraLATA calling, it seems consistent and fair to require IECs carrying intraLATA traffic to develop similar ways to handle the PSSC for pay telephone calls that they carry. We will direct CACD to hold a workshop on this issue and to report to us no later than June 1, 1995 with the results of its workshop and its recommendations. (D.94-09-065, mimeo at p. 181.)

Conclusion of Law 132 of the IRD Decision states,

It is fair to require IECs carrying intraLATA traffic to collect and remit to pay telephone providers the PSSC for intraLATA pay telephone noncoin calls completed using the IEC's facilities. (Id. at p. 325.)

Ordering Paragraph 25 of the IRD Decision states:

CACD (the Commission's Advisory and Compliance Division) is directed to convene a workshop on the methods and practices for IECs carrying intraLATA traffic to charge, collect, and remit the pay station service charges for pay telephone calls completed within the LATA and through the IECs' facilities. CACD is directed to file a report with its recommendations by June 1, 1995. (Id. at pp. 339, 340.)

CalTel, an association of public utility telephone companies known as interexchange carriers (IECs) subject to our jurisdiction, Sprint Communications Company (Sprint), and MCI

Telecommunications Corporation (MCI) did not apply for rehearing of our IRD Decision but instead filed Petitions to Modify Conclusion of Law 132.

During the time the Petitions were pending, the PSSC workshop was held as ordered. At the workshop, CalTel stated that the costs of modifying billing systems to bill and remit the PSSC could lead its members to bankruptcy. Following discussions, our staff made the following recommendations:

4. IECs carrying less than 3 percent of the traffic (non-coin intralATA carrier access calls from pay telephones) should be exempt from billing, collecting and remitting the PSSC to pay telephone providers until a procedure and/or technology has been developed to implement the PSSC without undue financial hardship on the exempt IECs. Currently, the PSSC would apply to AT&T Communications of California, Inc. (AT&T), MCI, Sprint, and LDDS METROMEDIA Communications (LDDS).
5. CACD shall review any suggested procedure for the exempt IECs to implement the PSSC and determine if there is any financial undue hardship on the exempt IECs.

("Workshop Report on Pay Station Service Charge in Response to Commission Decision 94-09-065", Petitioner's Exh. E, p. 4.) Thus, any potential financial hardship imposed on IECs with minimal resources was greatly mitigated under our staff's recommendations for implementation of the PSSC requirement.

We denied these Petitions in D.95-06-062. CalTel then applied for rehearing of the Decision denying its Petition for Modification. We again rejected the IECs' claims. CalTel next directed its arguments to the California Supreme Court with a Petition for Writ of Review of D.95-06-062 and D.95-09-126. The Court summarily rejected CalTel's Petition on February 14, 1996.

After 18 months of litigation regarding our policy decisions to compensate pay telephone providers for the use of their equipment, we adopted Resolution T-15782 on March 13, 1996.

This resolution authorized Pacific Bell to clarify the applicability of the PSSC to IECs carrying three percent or more of non-coin intraLATA carrier access calls from pay telephones. Resolution T-15782 also required such IECs, including MCI and Sprint to file and make effective within 30 days tariffs for billing, collecting, and remitting the PSSC as necessary to implement Pacific's Advice Letter No. 17014, and adopted the recommendations of the PSSC workshop report.

The only other IEC currently meeting the three percent test is AT&T-C. However, AT&T-C complied with our PSSC policy as adopted in the IRD Decision in 1995 by filing Advice Letter No. 456 which was effective on January 1, 1995.

On February 8, 1996 the Federal Telecommunications Act was enacted. Section 276 of the Act provides that within 9 months of the enactment, the Federal Communications Commission "shall take all actions necessary...to prescribe regulations that -- (A) establish a per call compensation plan to ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call using their payphone...." The Act further provides "To the extent that any state requirements are inconsistent with the Commission's regulations, the Commission's regulations on such matters shall preempt such requirements." On September 20, 1996 the FCC issued its first order on this matter. On October 21, 1996 we filed for Reconsideration of the FCC's order (FCC Docket No. 96-388-CC Docket No. 96-128, CC Docket No. 91-35).

On April 12, 1996 CalTel filed an Application for Rehearing of Resolution T-15782. CalTel, complained that the Resolution unlawfully regulated the conduct of certain public utilities through the tariff of another public utility, failed to make appropriate findings of fact and conclusions of law, contravened the IRD Decision, gave Pacific an unfair advantage and finally would be preempted by the FCC pursuant to the Federal Telecommunications Act of 1996.

On April 15, 1996 MCI Telecommunications Corporation (MCI) applied for rehearing of Resolution T-15782. MCI and Sprint Communications Company also submitted Motions to Stay the effect of Resolution T-15782. MCI and Sprint assert that federal law may preempt in the future and that it would cost them too much to comply with the Resolution.

Opposition to the Applications for Rehearing and Motions to Stay were filed by Pacific and the California Payphone Association. Both of these parties indicated they are losing millions of dollars because the PSSC had not yet been put in place for MCI and Sprint (Resolution, Finding of Fact One, pg. 9).

As the factual description laid out above indicates, Sprint and MCI have been trying to avoid paying the PSSC ever since our IRD Decision was issued in 1994. The current Applications for Rehearing and Motions to Stay are a continuation of a legal strategy to support an obvious policy on the part of these carriers to just "not pay" the PSSC. Our Telecommunications Division reports that seven months after the Resolution was adopted by us, MCI and Sprint still have not begun reimbursing pay phone owners through a PSSC.

The major complaint raised by MCI and Sprint is that implementation of the PSSC will cost them too much money. It is interesting to note that AT&T-C implemented the PSSC for \$200,000 (Workshop Report, pg. 15) and Pacific did it for \$300,000 (Pacific's Response, pg. 6). MCI and Sprint, who have fought the PSSC from its inception, claim it will cost over \$2,000,000 to implement (MCI's Application for Rehearing, pg.4 and Sprint's Motion to Stay, pgs. 4-5). In any case, the cost issue is a policy issue that was considered by us in the workshops and discussed in the Resolution (Resolution, pg. 3 and pg. 5). No legal error is raised by the parties on this point.

Next, all the applicants raised the issue of the Federal Telecommunications Act's preemptive potential. While it is clear that an FCC order based on Section 276 of the Federal

Act has the possibility of being preemptive in some respects in the future, on March 13, 1996 states still had the authority to set a PSSC for intrastate traffic. None of the applicants even question our authority on this issue. Setting a PSSC until the Act's preemptive measures come into play is clearly within our authority.

Next, MCI claims that we have unfairly discriminated between IECs subject to the PSSC and those who are exempt. It is interesting to note that we adopted the limitation of the PSSC to carriers with more than 3% of the pay phone traffic at CalTel's request. The limitation was adopted to mitigate financial hardship to smaller IECs and represented a reasonable balancing of parties interests (Resolution, pg.3 and pg 8). For MCI to now complain about smaller carriers getting an unfair advantage when its major competitor, AT&T-C, has been complying with the IRD Decision regarding the PSSC since January 1995, makes little sense. If any carriers are getting an unfair advantage over competitors its MCI and Sprint by their refusal for so long to comply with our decision to institute a PSSC and apply it to IECs in the IRD Decision.

CalTel complains that the Resolution unlawfully regulates the conduct of certain public utilities through the tariff of another public utility. This is a puzzling argument for CalTel to bring up because the Resolution requires Sprint and MCI to file and make effective their own tariffs to provide for billing, collecting and remitting of the PSSC. In any case, if we had used the procedure suggested by CalTel, there is no legal error given that it has regulated COPT providers through the tariffs of LECs for over 10 years without legal challenge.

Next, CalTel asserts that we failed to make appropriate findings of fact and conclusions of law regarding the appropriate processing fee for the IEC's billing and collection service. In this matter we adopted the workshop recommendations which found that procedures exist which permit the collection of the PSSC (Resolution, pg.9). No legal error exists on this point.

Finally, CalTel claims the Resolution contravenes the IRD Decision by giving Pacific a competitive advantage. The Resolution is implementing very specific language in our IRD Decision (Conclusion of Law 132) which CalTel litigated the legitimacy of before the California Supreme Court. This issue has been resolved.

Conclusion

For all the foregoing reasons, Applicants' Applications for Rehearing and Motions to Stay should be denied because they fail to raise legal error. We have reviewed all other allegation of the Applications for Rehearing and Motions to Stay and believe that there are no other grounds for rehearing or a stay as set forth. Having fully considered the issues raised, CalTel and MCI's Applications for Rehearing of Resolution T-15782 and MCI and Sprint's Motions to Stay Resolution T-15782 are denied.

WHEREFORE, IT IS HEREBY ORDERED that rehearings and stays of Resolution T-15782 are hereby denied.

This order is effective today.

Dated October 25, 1996, at Sacramento, California.

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

Commissioner Daniel Wm. Fessler,  
being necessarily absent, did not  
participate.



# Decisions

D 96-11-001

TO

D 96-12-003