

Decision 97-06-104 June 25, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of Alternative Regulatory
Frameworks for Local Exchange Carriers.

I.87-11-033
(Filed November 25, 1987)

And Related Matters.
(IntraLATA Presubscription Phase)

Application 85-01-034
Application 87-01-002
I.85-03-078
I.87-02-025
Case 87-07-024

(See Decision 97-04-083 for appearances.)

OPINION

1. Summary

This decision adopts minimal rules governing the provision of subscriber choice for local toll calls by competitive local exchange carriers certified to do business in California. The intraLATA presubscription phase of this proceeding is closed.

2. Background

In Decision (D.) 97-04-083, issued on April 23, 1997, the Commission directed Pacific Bell to make intraLATA equal access¹ available to all of its California customers on the date that a Pacific Bell affiliate begins competition in the long distance market. Earlier, in D.96-12-078, issued on December 20, 1996, the Commission authorized intraLATA equal access for subscribers in areas served by GTE California Incorporated (GTEC) and its affiliated companies.

¹ Competition in the provision of intraLATA service is designated as "dialing parity," "intraLATA presubscription," "intraLATA equal access" and "1-plus dialing." It refers to the ability of a telephone customer to designate (or presubscribe to) a communications carrier and thereafter dial toll calls within a Local Access and Transport Area (LATA) without having to dial additional numbers.

Most of the rules governing intraLATA equal access for Pacific Bell and GTEC also have been made applicable to the 17 smaller local exchange carriers and three medium-sized local exchange carriers in the state.

The Commission in D.97-04-083 declined to make the intraLATA equal access rules adopted in the same decision applicable to the state's competitive local carriers (CLCs), noting that the record was insufficient to determine which rules, if any, should apply. (CLCs offer local exchange service but, unlike the state's 22 incumbent local exchange carriers, are not designated by this Commission as the carriers of last resort in their service areas.) The Commission noted, however, that CLCs are required under federal rules to obtain this Commission's approval for their plans for implementing intraLATA presubscription.²

Accordingly, the Commission directed the Telecommunications Division to prepare draft rules for CLCs, and it directed the administrative law judge to seek written comments on the draft rules. By Administrative Law Judge Ruling dated April 14, 1997, all parties to this proceeding and all CLCs were invited to comment on the draft rules. Comments were filed on May 5, 1997, by 10 telephone carriers or their associations, and by the Office of Ratepayer Advocates (ORA).

3. Positions of Commentators

Incumbent local exchange carriers Pacific Bell and Roseville Telephone Company support the draft rules with only minor changes. CLCs and the ORA urge that neutral business office rules and other rules designed for incumbent local exchange carriers should not be applied to small telephone carriers that possess no market power. The position of each of the commenting parties is described below.

² 47 CFR § 51.213 provides: "A [local exchange carrier] must file a plan for providing intraLATA toll dialing parity throughout each state in which it offers telephone exchange service. A LEC cannot offer intraLATA toll dialing parity within a state until the implementation plan has been approved by the appropriate state commission or the [Federal Communications] Commission."

3.1 Office of Ratepayer Advocates

ORA notes that the draft rules are virtually identical to those adopted for incumbent local exchange carriers. While some of these rules are appropriate for CLCs, other rules were "designed to address the potential for anti-competitive behavior arising when one carrier possesses an embedded customer base at the time [intraLATA equal access] is implemented." (ORA Comments, p. 2.)

Accordingly, ORA urges the Commission to adopt those draft rules (Rules 1, 2, 3, 4, 7, 8, 9, 17, 15(a), 15(b), 15(c), 15(h), and 18) that track requirements of the federal Telecommunications Act.³ ORA urges the Commission not to adopt other draft rules that it believes are either directed at major carriers with substantial market power (script and notice review, neutral responses to subscriber questions) or are unnecessary or burdensome to small carriers ("free" PIC change⁴ rule, notice requirements).

ORA states that to impose on CLCs the same intraLATA rules applicable to Pacific Bell and GTEC would limit the ability of small carriers to compete for local and intraLATA toll service, particularly in the residential market. According to ORA, "[S]ymmetrical rules can produce asymmetrical results if, as here, the players are not on an even footing at the start." (ORA Comments, p. 11.)

3.2 Time Warner

Time Warner AxS of California, LP, a facilities-based CLC, and Time Warner Connect, a CLC reseller of telephone services, urge even fewer intraLATA rules, noting that between them the Time Warner companies have only 500 customers in California. According to the Time Warner companies, most of the draft rules are intended to curb the market power of Pacific Bell and GTEC, not to thwart budding CLCs from gaining a foothold in the local and intraLATA toll markets.

³ 47 U.S.C. §§ 151, et seq. (1996). See 47 CFR §§ 51.205, et seq.

⁴ In D.97-04-083, the Commission approved parties' agreement that would permit a subscriber to make one intraLATA PIC (primary interexchange carrier) change without charge within a specified period of time.

The Time Warner companies note that § 251(f)(2) of the Telecommunications Act permits small and rural CLCs to petition for suspension of intraLATA equal access requirements if they have fewer than 2% of the nation's subscriber lines. According to the Time Warner companies, there are 147 million subscriber lines nationally, and 2% of that number would represent 3 million lines.⁵ Few if any California CLCs have anything approaching 3 million lines, and thus virtually all CLCs could seek suspension of the intraLATA equal access requirements.

3.3 Telecommunications Resellers

The Telecommunications Resellers Association (TRA) represents more than 500 service providers and suppliers, including 40 California-based companies. TRA states that the draft intraLATA rules have little practical meaning for reseller companies because dialing parity is exclusively within the province of underlying facilities-based local exchange carriers. According to TRA, it is the underlying local exchange carrier that controls, through its tariff and interconnection agreements, the terms by which interexchange carriers gain access to the local network.

Since dialing parity is a function that is out of the hands of reseller CLCs, TRA suggests that the Commission could simply exempt resellers from the proposed rules. To the extent rules are adopted, TRA urges changes in the rules to recognize that reseller CLCs and other non-facilities-based carriers must rely on the underlying carrier for establishment of dialing parity functionality.

3.4 AT&T Communications

AT&T Communications of California, Inc. (AT&T) questions whether the Federal Communications Commission (FCC) rules on intraLATA dialing parity were intended to apply to reseller CLCs, which cannot provide presubscription any earlier than the underlying local exchange carrier.

⁵ The Time Warner companies cite the most recent FCC report concerning access line, the 1995 FCC Statistics of Communications Common Carriers.

Still another question, AT&T states, is how a reseller CLC could recover its implementation costs for customer notice and initial free carrier change requests, since it would have no means to apply an equal access recovery charge to interexchange carriers as incumbent local exchange carriers will do. In the resale environment, access charges and equal access recovery charges will continue to be paid by the interexchange carriers directly to the incumbent local exchange carriers, not to CLCs.

3.5 Cox California Telcom

Cox California Telcom, Inc., began offering local exchange and intraLATA toll services in Southern California earlier this year. As one of the first CLCs to begin competing in California's local exchange market, Cox states that its experience suggests that CLCs will be unable technically to comply with an August 8, 1997, deadline for implementing toll dialing parity.⁶ Cox states that it and other CLCs are likely to ask the Commission to temporarily suspend the implementation date so that they may have more time to overcome technical challenges in implementing dialing parity.

3.6 GTE Card Services

GTE Card Services Incorporated, the long distance affiliate of GTEC, states that many of the draft rules ignore the market realities of three scenarios under which most CLCs will introduce local exchange competition in California, namely, (a) reseller CLC competing in incumbent local exchange markets with intraLATA equal access already implemented; (b) reseller CLC competing in incumbent local exchange markets in which intraLATA presubscription is yet to be implemented, and (c) switch-based CLC introducing service with no other interexchange carriers having arranged for originating access.

Based on these scenarios, GTE Card Services argues that it makes no sense to impose restrictions on CLC contacts with existing or new customers, particularly

⁶ Under 47 CFR § 51.211(c), "A LEC that is not a [Bell operating company] that begins providing in-region, interLATA or in-region, interstate toll services in a state before August 8, 1997, shall implement intraLATA and interLATA toll dialing parity throughout that state by August 8, 1997."

since a CLC will acquire customers only as a result of a customer making a competitive choice in response to the CLC's marketing effort.

3.7 Teleport Communication Group

Teleport Communications Groups, Inc. (TCG) on February 13, 1997, filed 2-PIC intraLATA and interLATA presubscription plans on behalf of each of its affiliates, TCG San Diego, TCG San Francisco, and TCG Los Angeles. TCG supports the draft rules as being fully consistent with the FCC order mandating that local exchange carriers file plans for intraLATA toll dialing parity throughout each state in which a local exchange carrier offers telephone services.

However, TCG urges the Commission to provide that CLCs be eligible for recovering costs of implementing intraLATA presubscription in much the same manner that the Commission has authorized such recovery for the larger local exchange companies. TCG also urges simplification of the method for charging subscribers who change both intraLATA and interLATA carriers at the same time.

3.8 ICG Telecom Group

ICG Telecom Group, Inc., opposes adoption of draft rules 9 through 16, dealing with communications with customers, on grounds that those rules were imposed on major carriers to prevent abuses of market power by carriers with large embedded customer bases. ICG Telecom urges that those rules be deleted as unnecessary ("even, in a word, silly") for CLCs or, alternatively, that the Commission exempt those CLCs that deal exclusively with business customers or that have fewer than 25,000 interLATA toll and local exchange customers. (ICG Telecom Comments, p. 3.)

3.9 Pacific Bell

Pacific Bell supports adoption of the draft rules with minor changes, arguing that local service providers, regardless of size, should compete under similar rules and should be required to give customers an opportunity to make an informed choice of intraLATA service provider.

Pacific Bell also urges the Commission to distinguish those CLCs with fewer than 2% of the nation's installed subscriber lines from "the Big Three" interexchange

carriers with CLC authority, namely AT&T, MCI, and Sprint. The latter, according to Pacific Bell, should not be permitted to suspend the schedule for implementation of intraLATA presubscription.

3.10 Sprint Communications

Sprint Communications Company L.P. states that CLCs should not be subject to the same customer contact rules that govern Pacific Bell and GTEC because "CLCs simply have not and are not the bottleneck providers of...historically monopolistic services." (Sprint Comments, p. 2.) Sprint also urges that the Commission establish cost recovery methods for CLCs that incur system costs, engineering costs, customer notice costs, and right-to-use fees in implementing intraLATA equal access.

3.11 Roseville Telephone Company

Roseville Telephone Company "strongly supports" the draft rules to avoid what it calls a significant and unfair competitive advantage for CLCs, adding, "A company like Roseville should not have to compete against corporate giants like AT&T or MCI under restrictive marketing rules unless similar marketing constraints are placed on its competitors." (Roseville Comments, p. 1.)

Roseville also urges that CLCs, like local exchange carriers that are not Bell operating companies, be required to implement presubscription by August 8, 1997. Those CLCs certified after that date, Roseville asserts, should be required to provide presubscription within two months of offering local service. Roseville also recommends that a CLC's charge for changing an interLATA or intraLATA provider be capped at the Pacific Bell tariffed rate of \$5.26 to prevent a CLC from charging exorbitantly to dissuade a subscriber from changing his or her carrier for long distance and local toll calls.

4. Discussion

We are persuaded on this record to adopt minimal rules governing implementation of intraLATA equal access by competitive local exchange carriers. As many of the commentators have pointed out, CLCs have had little impact on California's telecommunications market to date, and reseller CLCs are dependent on their incumbent local exchange carriers in implementing intraLATA choice. As ICG

Telecom Group notes, the consumer-protection rules adopted in D.97-04-083, such as business office procedures and script review, were for the most part agreed upon by major carriers in Commission-sponsored workshops. They are short-lived (expiring one year after intraLATA presubscription is offered) and were intended to curb the opportunity for market power abuse by major players. The rules gave little or no attention to the small CLCs.

We will, therefore, adopt only those rules that track requirements of the FCC, particularly 47 CFR § 51.213, and relevant Commission orders. We note with interest AT&T's contention that the FCC rules on implementing toll dialing parity were not intended to apply to CLCs, but we are provided with no authority for that view, and the plain words of the FCC regulations clearly include competitive local exchange carriers.

In any event, we do not believe that it will be burdensome on CLCs to file their intraLATA dialing parity plans with this Commission via advice letter.⁷ We note that all CLCs commenting on the subject already plan to follow other rules adopted today, including the so-called full 2-PIC methodology and non-balloting.

Those CLCs relying on Pacific Bell for implementation of intraLATA presubscription may so advise the Commission in their advice letter filings, and they may request a suspension of the intraLATA equal access implementation date to coincide with or follow Pacific Bell's implementation date.

Since we have eliminated most of the draft rules that would have required special costs for CLCs, the need for a cost recovery mechanism for these carriers in implementing presubscription is minimized. Those CLCs that believe that they will incur costs in implementing presubscription may provide details of those costs in their advice letter filing and propose a method for cost recovery.

⁷ The Commission has before it Application (A.) 96-12-012, filed by MFS Intelenet of California, Inc., for approval of an intraLATA presubscription implementation plan and a petition for suspension of the implementation plan schedule. We direct that this application be converted to an advice letter request to be reviewed, pursuant to our order today, by the

The rules that we adopt today for implementing intraLATA presubscription for CLCs are attached to this decision as Appendix A.

5. Comments on Proposed Decision

The proposed decision of the administrative law judge in this matter was mailed to the parties and to CLCs in accordance with Public Utilities Code § 311 and Rule 77.1 of the Rules of Practice and Procedure. Comments were required within 20 days of mailing, and replies to comments were permitted 5 days thereafter.

ORA in its comments urges that CLCs be required, like incumbent local exchange carriers, to advise callers that they have a choice of providers for intraLATA services and to provide that information in a neutral fashion. We agree, and we have added certain of those provisions as a new Rule 10. ORA also proposes that a CLC be required to implement equal access within three months of the time that its underlying facilities-based carrier does so. We decline this proposal because we lack a record showing that a three-month rule would be reasonable in all cases. We also decline a proposal that advice letters be sent to ORA as well as the Telecommunications Division, since we are confident that arrangements can be made internally for sharing this information. ORA suggests technical corrections in the draft decision, and those corrections have been made.

ICG Telecom Group notes that advice letters filed at the Commission are not effective on less than 40 days' notice (see General Order 96-A, § IV.B), and that this puts a time squeeze on those CLCs that must implement equal access dialing by August 8, 1997. We agree, and we have modified Rule 2 to state that advice letters filed on or before August 8, 1997 shall be effective on 20 days' notice. We decline to adopt an ICG Telecom proposal exempting CLCs from the service requirements of General Order 96-A, since we rely on such service to provide us with any objections that other parties may raise. ICG Telecom objects to ORA's proposed Rule 15(h) on grounds that it is

Telecommunications Division. Since MFS Intelenet's application will be acted upon as an advice letter filing, our order today dismisses A.96-12-012.

unnecessary and subject to contrary legal interpretation; we agree, and we have not included this proposed rule.

Pacific Bell suggests that Rule 8 track the language of Ordering Paragraph 15 in D.97-04-083, providing for alternate routing of 0- calls through the use of smart sets. We have made that change.

Roseville Telephone objects that it will be subject to more stringent intraLATA rules than AT&T and other large CLCs. This objection was considered and dealt with earlier. Sprint supports the proposed decision without change. AT&T would add a rule dealing with interpretation of D.97-04-083, but we decline to do that. There are more appropriate forums in which AT&T can complain of alleged unlawful practices by another carrier.

Findings of Fact

1. In D.97-04-083, issued on April 23, 1997, the Commission directed Pacific Bell to make intraLATA equal access available to its California customers on the date that a Pacific Bell affiliate begins long distance competition.
2. In D.96-12-078, issued on December 20, 1996, the Commission authorized intraLATA equal access for subscribers served by GTEC and its affiliated companies.
3. Pursuant to D.97-04-083, most of the rules governing the introduction of intraLATA equal access were also made applicable to 17 smaller local exchange carriers and three medium-sized local exchange carriers.
4. The Commission in D.97-04-083 declined to make the equal access rules applicable to the state's CLCs until a further record was developed.
5. On April 14, 1997, all parties to this proceeding and all CLCs were invited to comment on draft rules for CLCs.
6. Comments on the draft CLC rules were filed on May 5, 1997, by 10 telephone carriers or their associations, and by the ORA.
7. Incumbent local exchange carriers Pacific Bell and Roseville Telephone Company support the draft rules with only minor changes.

8. CLCs and the ORA urge that neutral business office rules and customer notice rules contained in the draft decision not be applied to small CLCs that possess no market power.

Conclusions of Law

1. The Commission should adopt minimal rules governing implementation of intraLATA equal access by CLCs.
2. The Commission should adopt the rules set forth in Appendix A for implementing intraLATA presubscription for CLCs.
3. Because CLC advice letter filings directed by this order are due promptly, this order should be made effective immediately by the Commission.
4. A.96-12-012 should be converted to an advice letter to be reviewed by the Telecommunications Division, and A.96-12-012 should be dismissed.
5. The intraLATA presubscription phase of this proceeding should be closed.

ORDER

IT IS ORDERED that:

1. All competitive local carriers certificated in California shall implement direct dialing, or intraLocal Access and Transport Area (intraLATA) presubscription, in accordance with the requirements set forth in Appendix A of this decision.
2. Application (A.) 96-12-012 is converted to an advice letter, and A.96-12-012 is dismissed.

3. The IntraLATA presubscription phase of this proceeding is closed.

This order is effective today.

Dated June 25, 1997, at San Francisco, California.

P. GREGORY CONLON

President

JESSIE J. KNIGHT, JR.

HENRY M. DUQUE

JOSIAH L. NEEPER

RICHARD A. BILAS

Commissioners

APPENDIX A

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**RULES FOR IMPLEMENTING
INTRALATA PRESUBSCRIPTION FOR
COMPETITIVE LOCAL CARRIERS**

1. Local exchange carriers authorized to provide service as competitive local carriers (CLCs) in California shall implement direct dialing, or intra-Local Access Transport Area (intraLATA) presubscription, in accordance with the requirements set forth in the Telecommunications Act of 1996, the applicable orders adopted by the Federal Communications Commission (FCC), and the rules set forth by the California Public Utilities Commission (Commission).
2. Each CLC shall file its implementation plan for offering intraLATA presubscription in California with the Commission via advice letter. The advice letter filing shall be subject to approval by the Commission's Telecommunications Division. An advice letter filed pursuant to this provision on or before August 8, 1997, shall be filed on not less than 20 days' notice; after August 8, 1997, it shall be filed on not less than 40 days' notice.
3. IntraLATA presubscription will be offered by CLCs without balloting of subscribers.
4. IntraLATA presubscription will be offered by CLCs pursuant to the so-called "full 2-PIC methodology," which permits customers to presubscribe to a telecommunications carrier for all inter-Local Access Transport Area (interLATA) calls and to presubscribe to another telecommunications carrier for all intraLATA toll calls. The acronym "PIC" designates "primary" or "preferred" interexchange carrier.
5. The non-recurring charge for intraLATA PIC changes shall be set equal to the current rates of each CLC for interLATA PIC changes.
6. If a customer changes both his/her interLATA and intraLATA PICs at the same time and to the same long distance carrier, the CLC will bill the customer the full non-recurring interLATA PIC change charge and one-half of their respective intraLATA PIC change charge. The full non-recurring PIC change charge shall be levied when an intraLATA PIC change is ordered separately from an interLATA PIC change

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and/or when a customer presubscribes to different carriers for his/her interLATA and intraLATA toll service at the same time.

7. New customers who do not affirmatively select an intraLATA PIC will not be presubscribed to any carrier; instead, they will be required to place intraLATA toll calls on a 10XXX basis until they select a carrier on a presubscribed basis. For the purpose of these rules, a new customer is a subscriber who establishes telecommunications services with the CLC after intraLATA presubscription is implemented by that CLC.
8. Calls to a local operator, designated as "0- calls," shall be routed to a customer's local exchange carrier, except in the case of pay telephones where payphone providers and location providers can agree to route calls differently through the use of smart sets, or some other functional equivalent.
9. Implementation of intraLATA presubscription shall apply to public pay telephones and semi-public pay telephones in the manner set forth in the FCC Report and Order adopted September 20, 1996, in CC Docket 96-128, FCC 96-388, and Order on Reconsideration adopted November 8, 1996, in CC Docket 96-128, FCC 96-439.
10. Each CLC shall handle in-bound calls for a period of one year following implementation of intraLATA presubscription in the following manner.
 - (a) In dealing with a carrier's service representative, both new and existing customers who raise the subject of intraLATA presubscription shall be advised that they have a choice of service providers for intraLATA services, including the CLC.
 - (b) If a new customer has not yet decided upon a specific carrier, the service representative will provide the customer with a list of available carriers from a list that is randomly generated. The choices shall be read off the list in the order they appear on that list.

(END OF APPENDIX A)