

Decision 97-08-033 August 1, 1997

**ORIGINAL** 1997

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

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

Investigation 87-11-033  
(Filed November 25, 1987;  
Petition Filed May 7, 1997)

And Related Matters.

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

**O P I N I O N**

**1. Summary**

Citizens Telecommunications Company of Tuolumne (CTC-Tuolumne) and Citizens Telecommunications Company of the Golden State (CTC-Golden State) (collectively, Petitioners) petition for temporary suspension of toll dialing parity requirements established in Section 251(b)(3) of the Telecommunications Act of 1996. The petition is granted.

**2. Background**

Petitioners are certified by this Commission to provide local exchange services to approximately 20,500 access lines in the counties of Shasta, Tehama, Tuolumne, Lassen, San Bernardino, Plumas, Colusa and Glenn. Petitioners are wholly owned subsidiaries of Citizens Utilities Company. Petitioners acquired and assumed operation of these local exchange carrier properties in July 1995 (for CTC-Tuolumne) and August 1995 (for CTC-Golden State) as part of a purchase agreement between Citizens Utilities Company and Alltel Corporation. Citizens Telecommunications Company (CTC), which is certified as a

competitive provider of resold long distance,<sup>1</sup> and Citizens Telecommunications Company of California, Inc. (CTC-California), a mid-sized local exchange carrier, also are separate, wholly owned subsidiaries of Citizens Utilities Company and affiliates of Petitioners. CTC-California voluntarily opened its territory to full two-PIC intraLATA equal access beginning in October 1995.<sup>2</sup>

### 3. Dialing Parity Requirements

Section 251(b)(3) of the Telecommunications Act imposes on all local exchange carriers the duty "to provide dialing parity to competing providers of telephone exchange service and telephone toll service." The Federal Communications Commission (FCC) adopted rules to carry out this statutory provision, including requirements for when certain local exchange carriers must implement intraLATA local access.<sup>3</sup>

Because Petitioners have an affiliated company engaged in interexchange service in California, they are required by Section 51.211(c) of FCC Order 96-333 to implement intraLATA equal access no later than August 8, 1997. Section 51.213(b) of the FCC rules requires local exchange carriers to submit their dialing parity plans for approval by state commissions. However, under certain conditions, Section 251(f)(2) of the Telecommunications Act permits carriers to petition a state commission for suspension of the dialing parity requirements.

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<sup>1</sup> The Commission granted certification in Decision (D.) 94-11-070 (November 22, 1994) (long distance toll resale) and in D.95-09-001 (September 7, 1995) (local toll service).

<sup>2</sup> "PIC" is an acronym for Primary Interexchange Carrier. "Full two-PIC" refers to the ability of a telephone subscriber to select up to two telephone companies to separately provide the subscriber's long distance and local toll services. "LATA" is an acronym for Local Access and Transport Area. "IntraLATA equal access" refers to the ability of a telephone customer to presubscribe to a communications carrier and thereafter dial toll calls within a LATA without having to dial additional numbers.

<sup>3</sup> 47 CFR § 51.5-335, adopted in *Second Report and Order and Memorandum Opinion and Order*, FCC 96-333 (August 8, 1996).

**4. Request for Temporary Suspension**

Section 251(f)(2) of the Telecommunications Act permits a local exchange carrier with fewer than 2% of the nation's subscriber lines to petition a state commission for a suspension or modification of the requirements of subsections 251(b) or (c), which include the requirement to provide dialing parity. Section 251(f)(2) further provides that:

"The state commission shall grant such petition to the extent that, and for such duration as, the State commission determines that such suspension or modification—

(A) is necessary—

- (i) to avoid a significant adverse economic impact on users of telecommunications services generally;
- (ii) to avoid imposing a requirement that is unduly economically burdensome; or
- (iii) to avoid imposing a requirement that is technically unfeasible, and

(B) is consistent with the public interest, convenience, and necessity."  
(47 U.S.C. § 251(f)(2).)

Each of the Petitioners is eligible to petition for relief under this provision because it has fewer than 2% of the nation's subscriber lines. When considering all of the access lines nationwide that are served by local exchange subsidiaries of Citizens Utilities Company, the number is still fewer than 2% of the nation's subscriber lines.<sup>4</sup>

Petitioners state that it is not technically or economically feasible for Petitioners to provide intraLATA equal access in their California exchanges by August 8, 1997.

Petitioners state that the Alltel acquisition agreement included a transition provision which provided that Petitioners' customers would continue to be billed on the pre-existing Alltel billing system until Petitioners were able to connect these customers to a new company system. According to Petitioners, the Alltel billing system

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<sup>4</sup> The FCC states that a local exchange company's eligibility under the "2%" provision must be considered at the holding company level. *First Report and Order*, FCC 96-325, ¶ 605 (August 8, 1996).

cannot accommodate full two-PIC toll access billing. Petitioners estimate that it would cost about \$300,000 and take about 12 months to modify the Alltel system to allow full two-PIC billing. Rather than modify the system, Citizens Utilities Company has undertaken to replace the Alltel system with an upgraded system for all of the Alltel-acquired properties, including CTC-Tuolumne and CTC-Golden State. Petitioners state that conversion to the new billing system should be completed in the first half of 1998, at which time Petitioners will be able to implement full two-PIC access billing.

Accordingly, Petitioners submit that these circumstances justify the grant of a temporary suspension of the requirement to implement intraLATA equal access by August 8, 1997, and an extension of that deadline to no later than July 1, 1998.

#### **5. Response to Petition**

In comments filed on May 22, 1997, the Office of Ratepayer Advocates (ORA) generally supports Petitioners' request for a suspension of the dialing parity requirements. ORA states that implementation of intraLATA equal access without full two-PIC capability would be a disservice to Petitioners' customers. ORA agrees that interim upgrading of the current billing system would be uneconomical since Petitioners intend to replace the system within the next 12 months.

At the same time, ORA urges the Commission to ensure that Petitioners not take advantage of the suspension to delay the implementation of intraLATA equal access. To that end, ORA recommends that the Commission authorize a penalty of \$1 per access line per month for the period of any delay Petitioners incur in implementing equal access beyond July 1, 1998. In addition, ORA recommends that the Commission direct Petitioners to comply with the customer notification requirements mandated by FCC Order 96-333 and by our intraLATA presubscription decision in D.97-04-083 (April 23, 1997).

Petitioners were granted leave by the administrative law judge to respond to ORA's recommendations. By response dated June 16, 1997, Petitioners argue that a state performance penalty is not contemplated in the FCC rules and that, in any event, the FCC has indicated that it intends to take enforcement action, including fines, against

carriers that unreasonably fail to comply with FCC rules.<sup>5</sup> Petitioners argue that special customer notice rules are unnecessary since rules applicable to other competitive local carriers are also applicable to them, pursuant to D.97-04-083.

#### 6. Discussion

Under the guidelines set down in Section 251(f)(2) of the Telecommunications Act, the grant of the temporary suspension sought by Petitioners is consistent with the public interest, convenience and necessity. Given that the existing billing system cannot accommodate full two-PIC billing, a temporary suspension avoids imposing a requirement that is technically not feasible for Petitioners to meet. Moreover, given the cost to modify the existing system, a suspension is necessary to avoid imposing a requirement that is unduly economically burdensome. There would be no significant adverse effect on customers because, even with a July 1998 implementation, Petitioners' customers still will have intraLATA equal access at approximately the same time that it becomes available to other California customers.

We decline to establish a performance penalty in advance of the July 1998 date that Petitioners have committed to make equal access available, since both the FCC and the Commission can take action then if the implementation is unreasonably delayed. Contrary to an inference raised by Petitioners, we believe that the Commission has jurisdiction to impose such a penalty if necessary, in addition to whatever sanctions may be considered by the FCC. Because we have previously directed that Petitioners will be subject to customer notice rules at the time equal access is implemented, no further notice directives are required.

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<sup>5</sup> "[T]he [FCC] will not hesitate to take enforcement action, including monetary fines and other remedial measures against carriers that are unable to provide a compelling justification for failing to comply with [FCC] rules." *Rules and Policies Regarding Calling Number Identification Service-Caller ID*, CC Docket No. 91-281, Memorandum Opinion and Order, ¶ 136, DA 96-875 (1996).

### **Findings of Fact**

1. Petitioners provide local exchange services to approximately 20,500 access lines in eight California counties.

2. Petitioners assumed operation of these services in July and August 1995 as part of a purchase agreement between Citizens Utilities Company and Alltel Corporation.

3. The Alltel billing system cannot accommodate full two-PIC toll access billing.

4. Rather than modify the Alltel system, which would take about 12 months to complete and would cost \$300,000, Petitioners propose to replace the billing system with an upgraded one.

5. The upgraded billing system will accommodate full two-PIC toll access billing.

6. The upgraded billing system is expected to be operational by summer 1998.

7. Petitioners are required by FCC regulations to implement full two-PIC equal access service by August 8, 1997.

8. Since Petitioners and their parent company serve fewer than 2% of the nation's subscriber lines, FCC regulations permit Petitioners to seek a temporary suspension of equal access implementation.

9. Petitioners seek a temporary suspension of equal access implementation until July 1, 1998, when their upgraded billing system is expected to be operational.

10. ORA supports petitioners' request.

11. ORA urges that penalties be put in place in the event Petitioners fail to implement intraLATA equal access by July 1998.

12. ORA urges that Petitioners be directed to comply with customer notice requirements of this Commission and of the FCC.

### **Conclusions of Law**

1. The petition should be granted.

2. There is no necessity at this time to impose performance penalties or further directives on customer notice.

3. Because the date for implementation of intraLATA equal access is near, this order should be made effective immediately.

**O R D E R**

**IT IS ORDERED** that:

1. The petition of Citizens Telecommunications Company of Tuolumne and Citizens Telecommunications Company of the Golden State (collectively, Petitioners) for temporary suspension of toll dialing parity requirements established in Section 251(b)(3) of the Telecommunications Act of 1996 is granted.

2. Petitioners are directed to implement toll dialing parity in compliance with the rules established by this Commission and by the Federal Communications Commission on or before July 1, 1998.

This order is effective today.

Dated August 1, 1997, at San Francisco, California.

**P. GREGORY CONLON**

President

**JESSIE J. KNIGHT, JR.**

**HENRY M. DUQUE**

**JOSIAH L. NEEPER**

**RICHARD A. BILAS**

Commissioners