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MAIL DATE  
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Decision 97-08-069

August 1, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of  
Pacific Bell (U 1001 C), a  
corporation for Authority to Increase  
and Restructure Certain Rates of Its  
Integrated Services Digital Network  
Services.

**ORIGINAL**

Application 95-12-043  
(Filed December 5, 1995)

Compaq Computer Corporation and Intel  
Corporation;

Complainants,

vs.

Case 96-02-002  
(Filed February 1, 1996)

Pacific Bell (U 1001-C),

Defendant.

ORDER DENYING REHEARING OF DECISION 97-03-021

An application for rehearing of Decision (D.) 97-03-021 was filed by Dirk Hughes-Hartogs and Thomas McWilliams (Applicant). In D.97-03-021 we resolved the application of Pacific Bell (Pacific) for approval of rate increases to its Integrated Services Digital Network (ISDN) services. By that same Decision we resolved the complaint of Compaq Computer Corporation and Intel Corporation against Pacific which alleged that Pacific provides inadequate ISDN service. In its amended application Pacific sought to increase monthly charges for ISDN service by \$8.00 per month, and to eliminate unlimited residential usage during off-peak periods. In D.97-03-021 we authorized Pacific to increase its ISDN monthly rates by \$5.00 for residential services and \$7.50 for business services. We

also required Pacific to offer, at no additional charge, off-peak residential usage for up to 200 hours per month.

A number of arguments are offered in support of the Application for Rehearing. Pacific filed a Response to the Application for Rehearing, in which it counters Applicant's arguments. We will discuss each of Applicant's arguments, and the counter-arguments raised by Pacific, below.

Applicant argues that Pacific did not meet its burden of proof and that on this basis Pacific's application should be denied. (Application, pp. 2-4.) Applicant cites to D.97-03-021 where we noted that Pacific's brief was of little assistance to us in our review of the record. Pacific correctly points out in its Response that Pacific's burden of proof had to be met in its evidentiary presentation at hearings. Briefs are not evidence and the quality or completeness of Pacific's brief has no bearing on whether it met its burden of proof in the evidentiary proceeding. Applicant is incorrect when it implies that we did not find that Pacific met its burden of proof. Based upon a review of the record we concluded that Pacific is entitled to some rate relief. (D.97-03-021, mimeo, p. 22.)

Applicant contends that the monthly rate increases that we authorized are arbitrary. (Application, pp. 4-7.) Its first contention is that the Findings of Fact and Conclusions of Law in D.97-03-021 do not adequately justify the authorized rates, and hence the rates are arbitrary. The California Supreme Court has addressed the issue of the level of detail that should be provided in findings of fact and conclusions of law. Findings of fact and conclusions of law must be sufficient to enable the court to determine that the Commission properly exercised its authority and did not act arbitrarily. (Toward Utility Rate Normalization v. Pub. Util. Com. (1978) 22 Cal.3d 529, 538.) Finding of Fact 21 demonstrates that the rates which we authorized were arrived at based upon a review of the numerous arguments presented by Pacific and the other parties regarding ISDN rates. There is ample evidence in the record that the rates

we authorized were the subject of substantial dispute, and that our decision was based upon a review of the arguments of the parties as well as policy considerations, including the goal of granting an increase that would permit Pacific to improve its ISDN service and recover costs, without creating "rate shock" for Pacific's ISDN customers. (D.97-03-021, mimeo, pp. 21-22.) Applicant appears to suggest that the method and reasoning that the Commission adopts when it sets rates must be uniform in all cases. (Application, pp. 5-7.) Applicant complains that in D.97-03-021 we did not follow the method of line by line analysis of cost forecasts that is set forth in D.96-12-074. We reject Applicant's contention that this is evidence of any arbitrariness in rate setting in this case. The rates authorized in D.97-03-021 are based upon the specifics of the record developed in this proceeding, taking into consideration the economic and policy considerations raised by the specific application before us.

We reject Applicant's allegation that we have miscalculated the magnitude of the monthly rate increases, and granted increases in excess of 30%. (Application, p. 8.) As Pacific points out in its Response, ISDN service cannot be provided to customers by selling this feature alone. Our calculation that Pacific's rate proposals were for increases of approximately 30% used the bundled price of service. Using the bundled cost of service, the percentage increases that we have authorized are below 30%. Applicant has neither alleged nor shown legal error.

Similarly, we reject Applicant's contention that the Decision should have included an analysis and Findings of Fact related to each of the issues raised by the parties regarding the adequacy of Pacific's cost studies. Public Utilities Code Section 1705 requires that Commission decisions must contain findings of fact and conclusions of law by the Commission on all issues material to the order or decision. The Findings of Fact and Conclusions of Law in D.97-03-021 address all issues material to our decision. Applicant in effect asks us to engage in a

different methodology for setting the rates in this proceeding. No legal error has been shown.

Lastly, Applicant claims that D.97-03-021 ignores the fact that Pacific makes a profit on the per-minute charge for local calls made from ISDN lines, and that this is inconsistent with the statement in the Decision that rates should be set at costs. The argument raised by Applicant is a policy argument, and the Commission is asked to modify its decision. Applicant states "... we would at least like to see a compromise where residential ISDN users will pay only Pacific's cost for local usage with no extra undeserved profit." (Application, p. 10.) This argument is rejected because no legal error has been shown.

No further discussion is required of the allegations of error raised by Dirk Hughes-Hartogs and Thomas McWilliams. Accordingly, upon reviewing each and every allegation of error raised by Applicant we conclude that sufficient grounds for rehearing of D.97-03-021 have not been shown.

Therefore, IT IS ORDERED:

That the application for rehearing of D.97-03-021 filed by Dirk Hughes-Hartogs and Thomas McWilliams is denied.

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