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Decision 97-10-017 October 9, 1997

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

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| In the Matter of Alternative Regulatory Frameworks for Local Exchange Carriers. | I.87-11-033 (Filed November 25, 1987) Petition for Modification filed July 17, 1997) |
| And Related Matters. (IntraLATA Presubscription Phase) | Application 85-01-034 Application 87-01-002 I.85-03-078 Case 86-11-028 I.87-02-025 Case 87-07-024 |

ORIGINAL

## OPINION

### 1. Summary

The joint petition to modify Decision (D.) 97-04-083 filed on July 17, 1997, by AT&T Communications of California, Inc.; the California Association of Competitive Telecommunications Companies; MCI Telecommunications Corporation, and Sprint Communications Company L.P. (collectively, the Joint Petitioners) is denied.

### 2. Background

On April 23, 1997, the Commission in D.97-04-083 directed Pacific Bell to make intraLATA equal access[1] available to all of its California customers on the date that a

[1] Competition in the provision of intraLATA service is commonly referred to as "dialing parity," "equal access," "intraLATA presubscription" 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.

Pacific Bell affiliate begins competition in the long distance market. Most of the rules governing intraLATA equal access also were made applicable to three medium-sized local exchange carriers and 17 smaller local exchange carriers in the state.

Among other things, the Commission's order requires Pacific Bell and other local exchange carriers to implement neutral business office procedures for a period of one year after the introduction of intraLATA equal access. The rules recognized that a local exchange carrier would wear two hats in introducing intraLATA equal access--first, as administrator of intraLATA change orders (since it controls the facilities by which changes are made), and second, as a competitor for intraLATA customers. The business office procedures were intended to discourage anticompetitive practices.

### 3. Petition to Modify

The Joint Petitioners ask that the Commission reconsider two of the business office rules. Specifically, Joint Petitioners request changes in Ordering Paragraph 13(g) and Ordering Paragraph 9. The request for these changes is supported by the Commission's Office of Ratepayer Advocates (ORA).

Ordering Paragraph 13(g) now states:

> "Service representatives may sell or market their intraLATA toll services if the caller agrees to hear information about toll services available from the called provider." (D.97-04-083, slip op. at 51; emphasis added.)

Joint Petitioners and the ORA urge that the rule be changed to reflect the language contained in an earlier version of the proposed rules, namely:

> "Service representatives may sell or market their intraLATA toll services if the caller initiates the request for information about toll services available from the called provider." (Emphasis added.)

Ordering Paragraph 9 now states:

> "No local exchange carrier shall solicit Primary Interexchange Carrier (PIC) freezes during the period of introduction of intraLATA presubscription. The period of introduction of intraLATA presubscription shall be deemed for purposes of this provision to be 45 days before and 45 days after implementation. Nothing herein shall preclude a local exchange carrier, at any time, from doing a separate mailing to subscribers

> with interLATA PIC freezes advising them that they must take further action for the freeze to apply to intraLATA toll service." (D.97-04-083, slip op. at 49; emphasis added.)

Joint Petitioners and the ORA urge that this rule be changed to delete the words "at any time" and to prohibit until after the introduction of intraLATA equal access any mailing to interLATA freeze customers advising them that they must take further action if they want the freeze to apply to intraLATA service as well. (Generally, customers request a freeze on interLATA PIC changes to prevent an unauthorized switch in their long distance provider, a practice known as "slamming"; once a freeze is in place, such a change is blocked unless the freeze is personally requested to be removed by the subscriber.)

Joint Petitioners and the ORA urge the change in Ordering Paragraph 13(g) to discourage service representatives from promoting their company's intraLATA service on calls where, it is argued, they should be serving as competitively neutral PIC administrators. Joint Petitioners note that an equivalent provision in a settlement involving GTE California Incorporated (GTEC) permits GTEC representatives to promote their own intraLATA service "if the caller initiates the request for information about the long distance services offered by GTE."[2]

Joint Petitioners and the ORA urge the change in Ordering Paragraph 9 to prevent local exchange carriers before or during the 90 days when intraLATA equal access is being implemented from writing to those customers who have PIC freezes in place for interLATA service to advise them that the freeze does not apply to intraLATA service. Joint Petitioners are concerned that local exchange carriers will seize on this provision to write to customers with freezes in order to extend the freeze to intraLATA service and impede competition for those customers.

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[2] D.96-12-078, Attachment A, Paragraph 22 (order approving settlement agreement between major telephone companies in California, the Commission's advocacy staff, and GTEC).

### 4. Opposition to Petition to Modify

The petition to modify is opposed by Pacific Bell, Roseville Telephone Company (Roseville) and Sierra Telephone Company, Inc. (Sierra).[3] They argue that the Joint Petitioners and the ORA have raised no legal basis for modification of D.97-04-093, and that the petition "simply rehashes the same arguments and facts that were presented during the eight days of hearings" and in the post-hearing briefs. (Pacific Bell Response, at 2.)

Pacific Bell states that the Commission's decision imposes substantial restrictions on the ability of local exchange carriers to market their intraLATA services, and that it would be unreasonable on top of that to prohibit a local exchange carrier from asking customers if they are interested in hearing about that carrier's toll services. As to the PIC freeze notice, Pacific Bell contends that

> "...customers will be understandably upset if they are slammed during the intraLATA presubscription conversion, and learn then, for the first time, that they were not already protected by their existing PIC freeze, and worse yet, that they were not notified about the limits of their protection." (Pacific Bell Response, at 6.)

Roseville and Sierra argue that the marketing restrictions set forth in Ordering Paragraph 13 benefit their competitors, since they apply only to local exchange carriers, and that the contested language in Ordering Paragraph 13(g) permits consumers to obtain full information before making an intraLATA choice. Roseville and Sierra state that Ordering Paragraph 9 is pro-consumer in nature, since it can help avoid misleading customers who may believe that they are fully protected against slamming.

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[3] Roseville and Sierra have filed a motion asking the Commission to accept their pleading, which inadvertently was filed one day late. The motion is unopposed and is granted.

## 5. Discussion

The two rules that Joint Petitioners and the ORA seek to change were adopted by the Commission after thoughtful consideration. The language in Ordering Paragraph 13(g) reflects an intention to provide a measure of balance in the restrictions (including script review by the Commission's staff) imposed on Pacific Bell and other local exchange carriers. Ordering Paragraph 9 from the beginning endorsed the view that subscribers who had gone to the trouble to request PIC freezes on their interLATA long distance service could be advised that the existing freeze would not protect them from intraLATA slamming. Restrictions on when subscribers could be so notified were deemed inappropriate, so long as local exchange carriers were paying for the notice and were not seeking to recover those costs as part of intraLATA implementation.

Joint Petitioners argue that changes in the two contested provisions were made only after numerous ex parte contacts with Commission decisionmakers by Pacific Bell representatives. Ex parte contacts are permitted by our Rules of Practice and Procedure, so long as the contacts comply with certain restrictions and so long as prompt written disclosure is made. (See Rules 1.1 through 1.7.) As Roseville and Sierra point out, similar ex parte contacts dealing with the subject matter of this petition also were made by AT&T and by ORA.

The fact that marketing restrictions in D.97-01-083 differ from those imposed on GTEC is not a compelling reason to modify Ordering Paragraph 13(g). The settlement with GTEC was the result of negotiations and compromises by the major players and involved facts and timing of services that were different from those considered in this proceeding.

In short, neither the joint petition nor the ORA has presented any new argument that would cause us to consider changing the two provisions that they contest. No declaration or affidavit has been filed to allege new or changed facts. (Rule 47(b).) All of the evidence and all of the arguments presented were considered by the Commission prior to its approval of D.97-04-083. It follows, therefore, that the petition for modification should be, and is, denied.

## Findings of Fact

1. Joint Petitioners petitioned the Commission on July 17, 1997, to modify D.97-04-083 to change two of the business practice rules set forth in Ordering Paragraph 13 of the decision.

2. The petition to modify is supported by the ORA.

3. The petition to modify is opposed by Pacific Bell, Roseville and Sierra.

## Conclusions of Law

1. Joint Petitioners have failed to set forth any evidence or fact that was not considered by the Commission in adopting D.97-04-083.

2. The petition to modify should be denied.

3. This decision should be made effective on date of issue.

## O R D E R

**IT IS ORDERED** that the Joint Petition to Modify Decision 97-04-083 filed by AT&T Communications of California, Inc.; the California Association of Competitive Telecommunications Companies; MCI Telecommunications Corporation, and Sprint Communications Company L.P., is denied.

This order is effective today.

Dated October 9, 1997, at San Francisco, California.

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