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MAIL DATE
10/15/97

Decision 97-10-033

October 9, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

Order Instituting Rulemaking on the
Commission's Own Motion into
Competition for Local Exchange
Service.

R.95-04-043
Filed April 26, 1995)

Order Instituting Investigation on the
Commission's Own Motion into
Competition for Local Exchange
Service.

I.95-04-044
(Filed April 26, 1995)

ORDER EXTENDING STAY OF DECISION 97-08-059

In Decision (D.) 97-08-059 (the Decision), the Commission addressed outstanding issues regarding the competitive resale of the retail telecommunications services offered by Pacific Bell (Pacific) and GTE California, Inc. (GTEC) which had been designated for resolution in Phase III of the Commission's local competition OIR/OIL. Among other things, the Commission held that voice mail services should be made available for resale, but at the retail tariff rate. Further comments were called for on an appropriate wholesale discount to be applied to resold voice mail services at some future point.

Pacific and its subsidiary, Pacific Bell Information Services (PBIS), filed an application for rehearing protesting the determination that voice mail services be offered for resale, and a motion requesting that the ordering paragraphs of the Decision dealing with voice mail resale be stayed until the Commission could rule on the application for rehearing and pending judicial

review, if such review was sought. The California Telecommunications Coalition (Coalition) filed a response opposing the motion for stay. ¹

Pacific/PBIS also filed a letter with our Executive Director concurrent with their motion for stay, asking him to exercise his discretion to extend the time set forth in the Decision for filing tariffs making voice mail available for resale, and for those tariffs to become effective. The Executive Director responded with a letter stating that any action he might take would be superceded by the Commission's ruling on the motion for stay; however, he did grant a temporary stay until further order of the Commission, and informed Pacific/PBIS that the matter would be placed on the Commission's September 24 agenda, in order that the Commission could act on the motion then, if it wished to.

In their motion for stay, the parties argue that they will suffer significant financial harm if the stay is not granted because of the requirement that they provide resale voice mail in a manner which is at parity with their retail processes for providing voice mail. They also argue that competitors might unfairly use PBIS's voice mail service in combination with their intraLATA and interLATA services to take customers of Pacific. Should they prevail on their application for rehearing, Pacific/PBIS will have spent this amount of money for no purpose and with no source of recovery; moreover, they will have lost customers who will be unidentifiable and may well not return. Finally, they argue it is physically impossible to reach parity of resale OSS and retail OSS for voice mail services before March 1998. They attach two declarations to their motion setting forth the modifications necessary to the OSS of Pacific and PBIS in order to achieve parity with systems used for PBIS's voice mail service. They argue that

¹ The Coalition filed its opposition one day late with a motion requesting acceptance of the late filing, based on its usual delivery service being delayed by traffic problems caused by the BART strike. We hereby grant the Coalition's motion and accept its filing.

if the Commission fails to stay the Decision relative to voice mail, they will necessarily be out of parity.

Pacific/PBIS further argue that granting the motion to stay will not cause prejudice to customers or utilities, that there is a strong likelihood of their prevailing on the merits of their application for rehearing, that consideration of the balance of hardships favors approval of their motion, and that such approval is in the public interest.

The Coalition, in a detailed response, disputes these arguments.

We have reviewed all of the arguments presented on both sides of the stay issue. While the Coalition presents cogent and well reasoned arguments, we find we cannot unequivocally conclude at this time that Pacific/PBIS's arguments are completely without merit. Therefore, we have decided to extend the stay until November 19, 1997. This will give us an opportunity to review thoroughly Pacific/PBIS's application for rehearing and any responses to it which may be filed. We remain fully committed to moving forward with competition in the local arena with all due haste, and are of the view that continuing the stay until the above date will allow due process to all of the parties while assuring that no undue burden is placed on any of them.

We do note that Pacific/PBIS appear to be unduly fixated on achieving full implementation of OSS before voice mail services can be resold. This need not be the case. The Coalition has argued that voice mail may readily be made available manually during the period in which these companies are implementing OSS, which is presently the case with many other services which are being offered for resale. While full parity is a goal toward which to work, we never contemplated that full OSS implementation would be required before resale of LEC voice mail services would be made available. Should we ultimately deny Pacific/PBIS's application for rehearing and order these companies to move forward with resale of voice mail services, we will expect them to begin with

manual implementation, proceeding with electronic implementation as it becomes available.

Therefore, **IT IS ORDERED** that the stay of Ordering Paragraphs 1, 3, 5 and 6 of Decision 97-08-059 is continued until November 19, 1997, unless otherwise ordered by the Commission.

This order is effective today.

Dated October 9, 1997, San Francisco, California.

P. GREGORY CONLON

President

JESSIE J. KNIGHT, JR.

HENRY M. DUQUE

JOSIAH L. NEEPER

RICHARD A. BILAS

Commissioners