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Decision 97-11-020 November 5, 1997

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Joint Application of GTE California Incorporated (U-1002-C), a corporation, and Contel of California, Inc. (U-1003-C), a corporation, for approval of elimination of charges for Nonpublished/Nonlisted services and offsetting increase of rates for residential flat and measured services.	Application 96-12-045 (Filed December 26, 1996)

Blane Yokota, Attorney at Law, for GTE California Incorporated and Contel of California, Inc., applicants.
Paul Stein, Attorney at Law, for The Utility Reform Network, and Cheryl Hills, for AT&T, interested parties.
Janice Grau, Attorney at Law, and Kelly Boyd, for the Office of Ratepayer Advocates.

OPINION

1. Summary

Pursuant to Public Utilities Code Section 2893(e), a telephone corporation shall not charge any subscriber for having an unlisted or unpublished telephone number until the market for local telephone service is competitive. We find that the local telephone service market of GTE California Incorporated (GTEC) and Contel of California Inc. (Contel) is competitive within the terms of Public Utilities (PU) Code § 2893(e). The application of GTEC and Contel to eliminate their tariffed rates for nonpublished/nonlisted services, with offsetting increases in other rates, is hereby dismissed.

2. Background

Effective January 1, 1997, PU Code § 2893(e) provides:

"Until the market for local telephone service is competitive, a telephone corporation shall not charge any subscriber for having an unlisted or unpublished telephone number. However, nothing in this subdivision shall be interpreted by the commission to reduce the revenues of telephone corporations. Any actions of the commission pursuant to this subdivision shall be implemented on a competitively neutral basis. This charge shall not be eliminated prior to the effective date upon which offsetting rates are implemented by the commission."

On December 26, 1996, GTEC and Contel filed this joint application.[1] Applicants seek elimination of their tariffed rates for nonpublished/nonlisted services, with offsetting increases in other rates.[2]

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[1] The Commission gave final approval to the merger of GTEC and Contel in Decision (D.) 96-04-053. Applicants report that the merger had not officially taken place by the time the application was filed, on December 26, 1996. Applicants state that Contel was merged into GTEC, and ceased to exist as a separate legal entity, effective January 1, 1997.

[2] GTEC offers "Directory Nonpublished Listing Service" for $1.50 per month. This service causes a subscriber's listing to be omitted from published directories, and to be unavailable from directory assistance (411). GTEC also offers "Directory Nonlisted Listing Service" for $1.00 per month. This service excludes a subscriber's listing from published directories, but the listing is available through directory assistance. In the territory of the former Contel, GTEC offers "Nonpublished Telephone Number" service for $0.60 per month. This service excludes a subscriber's listing from published directories, but the listing is available through directory assistance.

Applicants initially proposed increasing residential basic exchange rates to offset eliminating nonpublished/nonlisted service rates. Applicants proposed increasing GTEC's monthly residential basic exchange rate from $17.25 to $17.88 ($0.63 or 3.7%) for flat rate service, and from $10.00 to $10.36 ($0.36 or 3.6%) for measured rate service. Applicants proposed increasing Contel's monthly residential basic exchange rate from $16.85 to $17.14 ($0.29 or 1.7%) for flat rate service, and from $10.60 to $10.78 ($0.18 or 1.7%) for measured rate service.

In revised proposed testimony, applicants change their proposal. Applicants now recommend increasing the billing surcharge applied to the local market component of the billing base. This would increase the GTEC Billing Adjustment Surcharge (Tariff Schedule A-38) by 0.015%, and would increase the IntraLATA Billing Surcharge (Tariff Schedule Z-1) in the former Contel service territory by 0.0073%

Integration of GTEC and Contel rates is being considered in Application (A.).90-09-043, et.al. (Phase III of the merger proceeding) and is outside the scope of this application. A joint motion for adoption of a settlement agreement is pending in the rate integration proceeding, wherein applicants, the Office of Ratepayer Advocates (ORA), and AT&T Communications of

Footnote continued on next page

On January 29, 1997, The Utility Reform Network (TURN) filed a timely protest alleging, among other things, inadequate service of the application. On February 10, 1997, GTEC filed a response and motion for partial waiver of additional service. By ruling dated February 19, 1997, GTEC's motion was denied and additional service ordered.

On March 10, 1997, by Assigned Commissioner Ruling, this application was included in the sample of proceedings to be processed pursuant to the experimental rules adopted in Resolution ALJ-170.[3] The ruling categorized this proceeding as ratesetting.

On March 27, 1997, ORA filed a motion to file a late protest, with the protest appended to the motion. On April 7, 1997, GTEC filed a response in opposition to ORA's motion.

The protest period closed on April 11, 1997. A prehearing conference (PHC) was held on April 22, 1997. ORA's motion to file its protest was granted. The parties asked for, and were granted, additional time to pursue settlement.

A second PHC was held on May 6, 1997. The parties reported settlement had not been reached. The parties asked that the Commission first rule on the meaning of the word "competitive" in PU Code § 2893(e). According to the parties, extensive and expensive evidentiary hearings might be avoided depending upon the Commission's interpretation. The Administrative Law Judge (ALJ) reluctantly agreed to bifurcate the proceeding, with the Commission first addressing the interpretation of PU Code § 2893(e).

California, Inc. jointly propose increasing the nonpublished telephone service rate in the former Contel service area from $0.60 to $1.50 per month.

[3] Resolution ALJ-170 establishes experimental rules and procedures to gain experience with management of Commission proceedings under requirements of Senate Bill (SB) 960. SB 960 amends, repeals, and adds to PU Code §§ 311, 1701.1, 1701.2, 1701.3, 1701.4 and 309.5.

Public participation hearings (PPHs) were held in Victorville, Bishop, and Manteca in May and June 1997, in concert with PPHs held in Phase III of the GTEC/Contel rate integration proceeding (A.90-09-043, et.al.). On May 22, 1997, TURN filed a notice of intent to claim intervenor compensation. On June 20, 1997, a preliminary ruling pursuant to PU Code § 1804(b)(1) found TURN eligible to file a request for an award of compensation.

Opening briefs on the interpretation of PU Code § 2893(e) were filed on June 9, 1997. Reply briefs were filed on June 23, 1997. On September 3, 1997, the ALJ proposed that official notice be taken of two facts from the Commission's records, served the proposed decision for comment, and invited comments on the remaining schedule. On September 10, 1997, comments were filed by applicants, ORA, and TURN. No party objected to the taking of official notice, and that notice is taken. Parties were unanimous in recommending the schedule be suspended pending Commission consideration of the proposed decision. Finally, comments on the proposed decision were incorporated where relevant.

3. "Competitive"

Parties agreed to brief the question: What is the interpretation of the word "competitive", as it appears in PU Code § 2893(e)? (Reporter's Transcript, PHC-2, page 26.)

3.1. Position of Parties

Applicants propose elimination of current charges for nonpublished/ nonlisted services, with offsetting increases in other rates, in compliance with their reading of PU Code § 2893(e). In particular, applicants argue that "competitive," as used in § 2893(e), means more than the market simply being open to competition, and more than the amount of competition which existed on January 1, 1997. Applicants say that the Commission can avoid complex evidentiary hearings on the level of competition by simply finding that the Legislature intended more competition than now exists. The application can proceed, according to applicants, on the limited issue of the computation of the revenue losses and offsetting rate adjustments, subject to future

determination of the level of competition should reversal of the elimination of these charges be sought.

TURN contends that reading "competitive" as "open to competition" or "subject to competition" best fulfills the Legislature's intent. It fulfills the intent, according to TURN, because any other interpretation would prevent not only incumbent local exchange carriers (ILECs), but also competitive local carriers (CLCs), from charging for nonpublished/unlisted numbers. TURN says this would be contrary to the lack of rate regulation for CLCs. TURN asserts any other reading would require the Commission to dedicate far more resources than the Legislature contemplated for a relatively minor issue. TURN concludes that this reading makes the statute inapplicable to applicants since their markets are now open to competition, and the application should be dismissed.

ORA argues that the word "competitive" is unambiguous, and means the existing level of competition in local telephone markets open to competition today. ORA recommends that the application be dismissed.

3.2. Discussion

The first step in statutory interpretation is to examine the actual language of the statute, giving the words their ordinary, everyday meaning. If the meaning is without ambiguity, doubt, or uncertainty, the language controls. (See D.97-03-067, mimeo., page 11, citing IT Corp. v. Solano County Bd. of Supervisors, 1 Cal. 4th, 81, 98 (1991).) If the language is ambiguous or susceptible to more than one reasonable interpretation, the next step is to refer to the legislative history. (Id.) If legislative history fails to provide clear meaning, the final step is to apply reason, practicality, common sense, and extrinsic aids. (See, generally, 58 Cal. Jur. 3d §§ 96-118.)

3.2.1. Actual Language

"Competitive" means "of, involving or determined by competition." (ORA Opening Brief, page 4, citing the American Heritage Dictionary.) "Competition" means "rivalry between two or more businesses striving for the same customer or market." (Id.)

Two or more businesses are authorized to provide service and strive for customers in applicants' service area.[4] Moreover, by applicants' own statements we conclude that the market for local telephone service in their territories is competitive. Applicants state:

> "the advent of facilities-based competition in D.95-12-057 and resale competition in D.96-03-020 has resulted in almost 100 new competitive local carriers (CLCs) in California . . . " (Comments Of GTE California Incorporated (U 1002 C) In Response To Assigned Commissioner Conlon's Ruling re Facilities-Based Competition In The Local Exchange Market, dated March 18, 1997, page 2; appended as Attachment A to Applicants' Opening Brief.)
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> "the sweeping reforms initiated by the Telecommunications Act of 1996 (Act) have led to 13 approved interconnection agreements and ongoing negotiations with another 23 carriers in GTE territory alone . . . " (Id., page 2.)
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> ". . . there is absolutely no empirical data to support the assertion that the ILECs possess sufficient market power to impede the development of competition in the local exchange market. Moreover, examination of any of the relevant factors demonstrates that . . . [ILECs] are poised to lose market share to many competitors waiting in the wings." (Id., pages 4-5.)
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> "GTE has voluntarily converted 99.5 percent of its central office switches to provide intraLATA equal access utilizing the full 2 PIC methodology (with the single remaining office scheduled for conversion in April 1997), enabling GTE's local customers to select

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[4] Rules for local exchange competition were adopted in D.95-07-054. Petitions of numerous carriers to provide facilities-based and resale local exchange service were adopted in D.95-12-057, D.96-02-030, and D.96-02-072.

different carriers for both inter and intraLATA service on a 1+ dialing basis." (Id., page 6.)

* * *

"... CLCs can easily repackage and reprice their services to respond to customer demands or competitive offerings." (Id., footnote 7, page 10.)

* * *

"A sampling of recent press announcements in California demonstrates that barriers to entry are indeed disappearing, and that a wide range of companies, from the telecommunications juggernauts of AT&T and MCI to many smaller niche players, have begun to implement facilities-based strategies ..." (Id., pages 11-12.)

* * *

"As a result, the local telecommunications market, if not fully competitive at present, is certainly contestable - - i.e., there exist a number of potential competitors who could freely enter the market were GTE to attempt to exercise market power by raising its prices. Such competitors could easily enter the market via resale (without building any facilities) if they chose, thereby easily satisfying the condition of contestability that entry and exit be essentially costless from an economic point of view. The ability of ILECs to exert control over pricing or output in such an environment is virtually non-existent. In contrast, CLCs have no requirements for submission of cost studies to support price floors, and have almost unlimited pricing flexibility (in terms of the absolute price as well as the procedures for implementing pricing changes) for all of their competitive services." (Id., page 11.)

As of mid-August 1997, there are 104 CLCs certified to operate in California, with most certified to operate in applicants' area. Excluding paging companies, the Commission has approved interconnection agreements between applicants and 17 facilities-based carriers, with approval pending of agreements between applicants and four more facilities-based carriers.

"Competitive" is not ambiguous as used in PU Code § 2893(e). Applicants' local telephone service market is competitive as the term is used in PU Code § 2893(e).

Applicants argue that active Commission regulatory oversight of applicants' operations demonstrates that the relevant telecommunications market is not competitive. To the contrary, telecommunications markets are no longer monopolies, and we have modified our regulation to reflect that fact. Applicants are regulated under our New Regulatory Framework (NRF). Basic exchange services, for example, are no longer monopoly services categorized for ratemaking in Category I, but are now in Category II.[5]

3.2.2. Legislative History

Assuming, for the sake of argument, that the language is ambiguous, we look to legislative history. As applicants point out, however, legislative history should only be relied upon if that history is itself unambiguous.[6] We agree with applicants that the legislative history here does not provide unambiguous guidance.

The legislative history contains no clear statement, nor definition, of "competitive." The legislative findings and declarations in SB 1035 (which resulted in

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[5] Competition may affect prices for services in Category II, wherein prices may be increased or decreased by a local exchange carrier (LEC), within Commission-approved ceiling and floor rate levels.

[6] In support, applicants cite the California Court of Appeals:

> "Judges, lawyers and laypeople all have far readier access to the actual laws enacted by the Legislature than the various and sometimes fragmentary documents shedding light on legislative intent. More significantly, it is the language of the statute itself that has successfully braved the legislative gauntlet ... The same care and scrutiny does not befall the committee reports, caucus analyses, authors' statements, legislative counsel digests and other documents which make up a statute's 'legislative history.' " (Halbert's Lumber, Inc., 6 Cal. App. 4th at 1238, cited at Applicants' Opening Brief, page 4.)

PU Code § 2893(e)) do not address the term competitive, nor discuss under what circumstances the market for local telephone service should be considered competitive.

According to applicants, the only comment in the Legislative Counsel's Digest of SB 1035 relating to the word "competitive" states that:

> "The bill would also prohibit a telephone corporation in a noncompetitive market from charging any subscriber for having an unlisted or unpublished telephone number under specified conditions." (Applicants' Opening Brief, page 9.)

Noncompetitive is the opposite of competitive. At most, by characterizing the opposite, this might suggest that a telephone corporation may charge for nonpublished/nonlisted services in anything other than a "noncompetitive" market, even one with only the slightest amount of competition. We are not persuaded, however, that this language alone necessarily provides such unambiguous guidance.

TURN and ORA both cite an Assembly Committee report in support of their position. The report states:

> "As recently amended, this bill would not allow a charge for unlisted telephones, UNTIL local telcos are competitive. If local competition occurs as early as 1997, is not this bill largely moot within months?" (TURN Opening Brief, page 7, citing Assembly Committee on Utilities and Commerce, Report of August 8, 1996, page 3; ORA Opening Brief, pages 5-6.)

TURN and ORA claim this language supports a conclusion that the Legislature intended the prohibition on unpublished/unlisted charges to end once local competition began, on January 1, 1997. Moreover, ORA asserts that, by its query, the Legislature anticipated that local competition would occur soon.

To the contrary, "until local markets are competitive" does not clarify the meaning of competitive. Further, asking a question does not reveal what any particular legislator, nor the Legislature as a whole, thought to be the answer. Finally, there is no clear statement here of when in 1997, or beyond, the Legislature expected the

markets to be competitive. We agree with applicants that this language does not provide clear guidance.

Applicants cite language from the Committee report in support of their contention that the Legislature meant for the charges to now be eliminated. In particular, applicants refer to language stating that "this bill allows recovery of the $30 million in lost revenues from unlisted service" estimated to be lost by Pacific Bell (Pacific) and applicants. (Applicants' Reply Brief, page 4.) According to applicants, this language means the bill was intended to apply to Pacific and applicants.

We are not convinced. The $30 million estimate first appears in a discussion regarding the extent to which privacy is valued by Californians. It is immediately followed by statements that the Commission ordered telephone companies to spend $40 million to educate the public about their rights to privacy against "caller ID," the Federal Communication Commission claimed federal preemption, the Supreme Court found against the Commission, and this bill would have impact far beyond long distance telephone marketing. There is no clear statement regarding the utilities to which this law applies or does not apply.

The same legislative history is cited by TURN, ORA, and applicants to reach opposite conclusions. We are not persuaded that any particular reference provides unambiguous guidance. We concur with applicants' conclusion that this "is just the sort of ambiguous legislative history that should be disregarded under the holding of Halbert's Lumber, Inc., 6 Cal. App. 4th 1233, 1238 (1992)." (Applicants' Reply Brief, page 4.)

3.2.3 Other Considerations

3.2.3.1. Reason, Practicality, Common Sense

The last step in statutory interpretation:

> "... is to apply reason, practicality, and common sense to the language at hand. If possible, the words should be interpreted to make them workable and reasonable (citations omitted), in accord with common sense and justice, to avoid an absurd result (citations

> omitted)." (6 Cal. App. 4th 1233, 1239-40; 8 Cal. Rptr2d 298 [May 1992].)

Significant efforts have been undertaken, and dramatic progress made, in opening telecommunications markets to competition. Regulatory barriers have been eliminated in California on our own initiative, in response to state legislative direction, and as a result of the federal Telecommunications Act of 1996. While perfect competition may or may not ever be achieved, applicants say that "the local telecommunications market, if not fully competitive at present, is certainly contestable . . . " (Applicants' Opening Brief, Attachment A, page 11.) It is in this context that we must apply "reason, practicality, and common sense to the language" to make it "workable and reasonable in accord with common sense and justice, to avoid an absurd result."

PU Code § 2893(e) relies on the rivalry between competing carriers, rather than regulators, to ultimately establish the prices, if any, for nonpublished/nonlisted services. Applicants' interpretation of § 2893(e), on the other hand, would prevent price competition from even commencing, by immediately subjecting CLCs to total regulation of their prices for this service offering. Not only would applicants be prevented from charging for nonpublished/nonlisted services, CLCs (potentially numbering more than 100) in applicants' service area would have no freedom to set market-based prices for these services. This is contrary to federal and state policy to promote, not stifle, competition. It is also contrary to Commission policy, which seeks to eliminate rate regulation for utilities, such as CLCs, when they exercise no market power.

It is the CLCs who create the market in which participants determine the price, if any, that should be charged. It is the CLCs who are in the position to offer the price competition for this service. No barriers exist to a CLC offering nonpublished/nonlisted service without charge. It would be unreasonable to prohibit price competition just when the market is in a position to function.

No large or mid-sized LEC has applied for elimination of these charges pursuant to PU Code § 2893(e), other than applicants. Applicants state

that they "adopted a conservative approach," and, should the Commission find the local exchange market competitive in the context of PU Code § 2893(e), applicants "will continue to charge for nonpub/nonlisted services." (Applicants' Opening Brief, page 6, footnote 4.) To grant applicant's request in the face of no similar applications, with continued charges for these services by all other large and mid-sized LECs, and absent action on our part against other large and mid-sized LECs to enforce compliance, would result in inconsistent treatment of these rates for large and mid-sized LECs throughout California.

Thus, finding for applicants would be impractical in the context of current telecommunications markets. It would be unreasonable in that it would by government regulation prevent CLCs (potentially numbering more than 100) from competing with applicants (in conflict with federal and state policy to promote competition), and result in inconsistent treatment of these rates for large and mid-sized LECs throughout California.

3.2.3.2 Extrinsic Aids

Extrinsic aids may also be used to discern legislative intent. These aids include assessing the ostensible objects to be achieved, the evils to be remedied, public policy, contemporaneous administrative construction, and the statutory scheme of which the statute is a part. (ORA Opening Brief, page 3, citing People v. Woodhead, (1987), 43 Cal. 3d 1002, 1007, 239 Cal. Rptr. 656.)

The ostensible object to be achieved is the elimination of charges for unpublished/unlisted services until the market may be relied upon, at which time the market - - rather than government - - will be allowed to determine the economically equitable and efficient price for these services. Even if young, that market is now in place, with applicants facing in excess of 100 potential competitors. It would be unreasonable to stifle the market exactly when it is created.

The evils to be remedied are the charging for these services until the market can determine the equitable and efficient outcome. Again, it would be unreasonable to stifle the market exactly when it is created.

Public policy argues for relying on the market when reasonable. The number of competitors with relative freedom to explore pricing options makes reliance on the market reasonable here.

Contemporaneous administrative construction similarly supports finding against applicants. We have not opened local exchange markets to competition in the service areas of the small LECs, and small LECs are not under our NRF regulation.[7] Therefore, we recently applied § 2893(e), and eliminated nonpublished/nonlisted charges in a revenue neutral manner for the small LECs. (See, e.g., D.97-04-032, D.97-04-033, D.97-04-034, D.97-04-035, and D.97-04-036.) We have given § 2893(e) meaning where the markets are not competitive. Our construction as applied to the small LECs is consistent with our construction here because the circumstances are different (with applicants' local exchange market open to competition, applicants subject to NRF regulation, and applicants facing in excess of 100 potential competitors).

Finally, the statutory scheme of which the statute is a part argues against applicants' position. The Legislature can, and does, write language to achieve its objectives. If the Legislature had wanted to ban all charges for nonpublished/nonlisted services, it would have done so. It did not. Rather, the Legislature conditionally removed these charges, created the condition (that the market be "competitive"), resolved to let the market decide the equitable and efficient outcome when the condition is met, and left implementation to the Commission.

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[7] We recently sought comments on applying the existing rules for local exchange competition within the service territories of Pacific and GTEC (including Contel) into the service territories of Roseville Telephone Company (RTC) and Citizens Telecommunications Company (CTC). (See ALJ's Ruling dated June 19, 1997, in Rulemaking 95-04-043 and Investigation 95-04-044.) The ruling specifically notes that there is no indication that any CLCs have any imminent plans to enter the service territories of the small LECs, and extension of the rules to the service territories of the small LECs is specifically not addressed at this time. By D.97-09-115 (September 24, 1997), the Pacific and GTEC local exchange competition rules are extended to the service areas of RTC and CTC.

When the Legislature wants the Commission to apply specific tests, those tests are included in the law. For example, PU Code § 495.7(b) provides that one of two specific conditions be met before the Commission may exempt certain telecommunications services from tariffing requirements.[1] Moreover, in the first test, the Legislature specifies criteria to be used in determining market power (e.g., company size, market share, type of service). In the second test, the Legislature does not simply rely on the market being "competitive." Rather, the Legislature specifies that the:

> "[T]elephone corporation is offering a service in a given market for which competitive alternatives are available to most consumers, and the commission has determined that sufficient consumer protections exist in the form of rules and enforcement mechanisms to minimize the risk to consumers and competition . . .

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[1] PU Code § 495.7(b) provides:

"The commission may, by rule or order, partially or completely exempt certain telecommunications services, except basic exchange service offered by telephone or telegraph corporations, from the tariffing requirements of §§ 454, 489, 491, and 495 if either of the following conditions is met:

"(1) The commission finds that the telephone corporation lacks significant market power in the market for that service for which an exemption from §§ 454, 489, 491, and 495 is being requested. Criteria to determine market power shall include, but not be limited to, the following: company size, market share, and type of service for which an exemption is being requested. The commission shall promulgate rules for determining market power based on these and other appropriate criteria.

"(2) The Commission (sic) finds that a telephone corporation is offering a service in a given market for which competitive alternatives are available to most consumers, and the commission has determined that sufficient consumer protections exist in the form of rules and enforcement mechanisms to minimize the risk to consumers and competition from unfair competition or anticompetitive behavior in the market for the competitive telecommunications service for which a provider is requesting an exemption from §§ 454, 489, 491, and 495. This paragraph does not apply to monopoly services for which the commission retains exclusive authority to set or change rates."

> This paragraph does not apply to monopoly services for which the commission retains exclusive authority to set or change rates." (PU Code § 495.7(b)(2), emphasis added.)

Thus, when the Legislature wants to set a specific trigger for regulatory action, it does so by establishing an explicit standard for the Commission to follow, including specific criteria.

Applicants argue that the existence of PU Code § 709.5 precludes any reasonable argument that "competitive" as used in § 2893(e) means simply "open to competition." According to applicants, PU Code § 709.5 directs the Commission to have any and all rules and regulations necessary to achieve fair local exchange competition in place no later than January 1, 1997. Applicants conclude it is absurd to argue that, in amending PU Code § 2893(e), the Legislature did not already know that all telecommunications markets would be open to competition no later than January 1, 1997. Absent any indication that the Legislature intended for § 2893(e) to have no effective life, the position of TURN and ORA that "competitive" means "open to competition" must be rejected, according to applicants.

To the contrary, PU Code § 709.5 begins by stating that:

> "It is the intent of the Legislature that all telecommunications markets subject to commission jurisdiction be opened to competition no later than January 1, 1997." (PU Code § 709.5(a), emphasis added.)

This is not a specific mandate, but a statement of intent. The Legislature may well have understood that many factors besides Legislative and Commission action affected whether the intent could have been realized by January 1, 1997, including actions by state and federal courts and federal executive agencies.

PU codes § 709.5(c) states:

> "The commission shall expedite its open network architecture and network development, interconnection, universal service, and other related dockets so that whatever additional rules and regulations that may be necessary to achieve fair local exchange

competition shall be in place no later than January 1, 1997."

Having rules and regulations in place, however, may or may not ensure that the markets are competitive as of January 1, 1997. Therefore, there is no conflict between the intent to have markets open with rules and regulations in place by January 1, 1997, and passage of PU Code § 2893(e).

That there is no conflict is particularly evident by our elimination of charges for nonpublished/nonlisted services in the service areas of the small LECs, where the markets are not competitive. Thus, contrary to applicants' claim, even in light of PU Code § 709.5, PU Code § 2893(e) is not without an effective life.

4. Dismiss Application

Given our reading of PU Code § 2893(e), this application is not a compliance filing. As TURN and ORA recommend, the application should, therefore, be dismissed.

We emphasize that this is an interpretation of "competitive" as used in PU Code § 2893(e) with regard to local telephone service and charges for unpublished or unlisted telephone numbers. This interpretation is based on the actual language, and the application of judicial direction regarding statutory interpretation. It is not a finding on "competitive" as used in any other context or law. Further, this is not a decision that applicants' local telephone service markets are or are not competitive for any other purpose, nor is it a decision with respect to the markets of other LECs. Finally, this decision does not prejudge any Commission determination with respect to competition in any other proceeding.

5. Eligibility to File Request for Intervenor Compensation

On June 20, 1997, the ALJ, after consultation with the Assigned Commissioner, issued a preliminary ruling that TURN is eligible to file a request for intervenor compensation. We affirm that ruling.

PU Code § 1804(c) provides that a customer found eligible for an award of compensation may file a request within 60 days following the final order of the

Commission. This is our final order. TURN may file a request for compensation within 60 days from today.

Findings of Fact

1. On December 26, 1996, applicants filed, pursuant to PU Code § 2893(e), for elimination of tariffed rates for nonpublished/nonlisted services with an offsetting increase in other rates.

2. The threshold issue is the meaning of "competitive" in PU Code § 2893(e).

3. Competitive means of, involving or determined by competition.

4. Competition means rivalry between two or more businesses striving for the same customer or market.

5. Two or more businesses are authorized to provide service and strive for customers in applicants' service territory.

6. As of mid-August 1997, there are 104 CLCs certified to operate in California, with most certified to operate in applicants' area.

7. As of mid-August 1997, excluding paging companies, the Commission has approved interconnection agreements between applicants and 17 facilities-based carriers, with approval pending of agreements between applicants and four more facilities-based carriers.

8. Applicants state that there is no empirical data to support an assertion that applicants possess sufficient market power to impede the development of competition in the local exchange market, and that examination of relevant factors demonstrates that applicants are poised to lose market share to many competitors waiting in the wings.

9. Applicants state that GTEC has voluntarily converted 99.5 percent of its central office switches to provide intraLATA equal access utilizing the full 2 PIC methodology (with the single remaining office scheduled for conversion in April 1997), enabling GTEC's local customers to select different carriers for both inter and intraLATA service on a 1+ dialing basis.

10. Applicants state that their ability to exert control over pricing or output in such an environment is virtually non-existent.

11. Under Commission NRF regulation, basic exchange services are no longer monopoly services categorized for ratemaking in Category I, but are now in Category II.

12. Not only would the grant of this application prevent applicants from charging for nonpublished/nonlisted services, CLCs (potentially numbering in excess of 100) in applicants' service territory would be restricted from setting market-based prices for these services, contrary to federal and state policy to promote, not stifle, competition, and contrary to Commission policy that seeks to eliminate rate regulation for utilities, such as CLCs, when they exercise no market power.

13. No other large or mid-sized LEC has filed an application under PU Codes § 2893(e) to eliminate charges for nonpublished/nonlisted services with an offsetting increase in other rates, and to grant applicants' request without the same treatment for similarly situated LECs would result in inconsistent treatment of these rates throughout California.

14. Extrinsic aids, such as the ostensible objects to be achieved, the evils to be remedied, public policy, contemporaneous administrative construction, and the statutory scheme of which the statute is a part, support finding applicants' local telephone market competitive as the term is used in PU Code § 2893(e).

15. The ALJ issued a preliminary ruling that TURN is eligible to file a request for intervenor compensation.

Conclusions of Law

1. Until the market for local telephone service is competitive, a telephone corporation shall not charge any subscriber for having an unpublished or unlisted telephone number.

2. "Competitive" is not ambiguous as used in PU Code § 2893(e).

3. Applicants' proposed interpretation of PU Code § 2893(e) should be rejected based on judicial direction regarding statutory interpretation.

4. Applicants' local telephone service market for nonpublished/nonlisted service is competitive as that term is used in PU Code § 2893 (e).

5. Applicants may continue to charge their tariffed rates for nonpublished/ nonlisted services.

6. This application should be dismissed.

7. This determination of the meaning of "competitive" in PU Code § 2893(e) is not a decision on "competitive" as used in any other context or law, that applicants' local telephone service markets are or are not competitive for any other purpose, with respect to competition in the markets of other LECs, and that prejudges any Commission determination with respect to competition in any other proceeding.

8. The ALJ ruling on intervenor compensation should be affirmed.

9. This order should be effective today to facilitate an orderly and timely resolution of this proceeding within the context of Resolution ALJ-170, and provide certainty to the parties.

ORDER

IT IS ORDERED that this application is dismissed. The Utility Reform Network may file a request for intervenor compensation within 60 days of the date of this order. This proceeding is closed.

This order is effective today.

Dated November 5, 1997, at San Francisco, California.

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