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Decision 97-11-024 November 5, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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)

ORIGINAL**O P I N I O N**

By this decision, we resolve the question concerning the obligations of telecommunications carriers to complete calls even if underlying intercarrier arrangements for certain calls do not compensate them in a proper manner in the opinion of the carriers. This issue was raised during the preliminary consideration of Case (C.) 96-10-018/Investigation (I.) 97-03-025,¹ and a joint ruling was subsequently issued on April 20, 1997, which determined that this issue should be addressed on a generic basis within the Local Competition docket. The joint ruling was served on parties both in the Pac-West Telecomm, Inc. (Pac-West) complaint case and in the Local Competition docket.

¹ C.96-10-018/I.97-03-025 involves Pac-West Telecomm, Inc. (Pac-West) versus Evans Telephone Company (Evans) and Volcano Telephone Company (Volcano) regarding the routing and termination of certain Pac-West calls. Evans and Volcano refused to route certain Pac-West calls to the physical location requested by Pac-West because the geographic routing coordinates of the associated NXX codes did not match their rate center coordinates used for billing purposes. As a result, the calls were not routed to their intended destination, and could not be completed.

Positions of Parties

Comments were filed by Pacific Bell (Pacific) and GTE California Incorporated (GTEC), by Pac-West, by a separate group known as "the Small LECs [local exchange carriers],"² a separate group known as "the Smaller Independent LECs,"³ by various competitive local carriers (CLCs),⁴ and by the Commission's Office of Ratepayer Advocates (ORA). Opening comments were filed on June 2, 1997, with replies filed on June 16, 1997.

Pac-West argues that under no circumstances should this Commission permit any public utility telecommunications carrier to refuse to complete calls originating from or terminating to any other carrier. Allowing carriers to selectively handle traffic based on whether or not they are pleased with the status of intercompany compensation arrangements would introduce anarchy into the state's telecommunications system, threatening both ongoing commerce and the emergence of a fully competitive telecommunications market, according to Pac-West.

Pac-West cites Public Utilities (PU) Code § 558 as clearly establishing the affirmative duty of telecommunications carriers to complete calls to or from other carriers. Pac-West also cites Section 251 of the federal statute contained in the Telecommunications Act of 1996 (the Act).⁵

² The "Small LECs" include: Evans Telephone Company, GTE West Coast Incorporated, Kerman Telephone Co., Pinnacles Telephone Company, The Siskiyou Telephone Company, and The Volcano Telephone Company.

³ The "Smaller Independent LECs" include: Calaveras Telephone Company, California-Oregon Telephone Co., Ducor Telephone Company, Foresthill Telephone Co., Happy Valley Telephone Company, Hornitos Telephone Company, The Ponderosa Telephone Co., Sierra Telephone Company, Inc., and Winterhaven Telephone Company.

⁴ The competitive local carriers filing comments included AT&T Communications (AT&T) and MCI Telecommunications Corporation (MCI) (filing jointly), Sprint Communications, and ICG Telecom Group, Inc.

⁵ Pub. L. No. 104-104, 110 Stat. 56, 47 U.S.C. §§ 151, *et seq.*

The Small LECs believe that all local exchange companies, whether "incumbent" or newly certificated, have the obligation to complete calls in accordance with their filed tariffs, their interconnection agreements, and the rules of this Commission and the Federal Communications Commission (FCC). If an interconnection agreement with another carrier does not provide appropriate compensation, the LEC's remedy is, first, to negotiate a revised agreement with the interconnecting carrier, and if that cannot be done, to bring the dispute to the Commission (or other appropriate body) for resolution.

The Small LECs claim, however, that a LEC should not be required to route calls of another carrier in a manner that violates the LEC's filed and lawful tariffs. For example, in the situation faced in the Pac-West complaint, the Small LECs claim that Evans and Volcano would be violating their filed tariffs and engaging in unlawful rate discrimination if they completed the disputed calls in the manner demanded by Pac-West, i.e., routing them to the Stockton location without charging for the calls at toll rates.

Pac-West seeks to require that each of the LECs route certain calls to a location in Stockton, but bill for the calls as if they were being sent to a different location that is within the Commission-established free local calling area for the LEC. The legality and validity of such practices will be addressed by the Commission in a separate order.

GTEC argues that, although the Act requires the ILECs (incumbent LECs) to provide interconnection, the Act also requires that the ILECs be reasonably compensated for interconnection and, therefore, for the completion of calls.

GTEC believes that an ILEC must not be required to complete calls when the competitive local carrier (CLC) is not providing just and reasonable compensation to the ILEC.

GTEC further states that the actions of a carrier can impact the ability of another carrier to accurately charge its customers for the service provided. For example, a Commission policy of allowing inconsistent rate centers permits a carrier to establish rate centers in a manner that impacts another carrier's bills to its end-users. Under such circumstances, GTEC argues, a carrier should not be required to complete calls to the

carrier that established rate centers to its advantage and to the economic disadvantage of others.

GTEC believes that the issue raised in the joint ruling in this proceeding is closely linked with the issues related to consistent rate centers and reciprocal compensation, and that the prompt resolution of these issues will prevent an increase in disputes and complaint cases among carriers.

Various parties representing the interests of competitive local carriers filed comments agreeing that all common carriers, including ILECs, have the obligation to complete calls regardless of whether the compensation arrangements are deemed adequate. AT&T and MCI argue that such a duty is grounded in the nature of common carrier status, in which carriers hold themselves out to serve the public indiscriminately, i.e., without discrimination among the customers served. (*NARUC v. FCC* (D.C. Cir. 1976) 525 F.2d. 630, 640-642; *NARUC v. FCC* (D.C. Cir. 1976), 533, F.2d 601.

The Local Exchange Routing Guide (LERG), from which carriers obtain information needed to route calls correctly, does not provide alternative routing instructions for traffic from or to certain carriers based on shortfalls in compensation. AT&T and MCI argue that if carriers do not comply with the routing information in the LERG, but instead refuse to complete calls, the fundamental ability of the public switched telephone network to enable call completion is threatened.

ORA believes that every carrier is obligated to complete all calls destined to terminate on its network to assure end-users that they can successfully place and receive calls without regard to which carrier is providing the service, or within or between whose network(s) a call originates, transmits or terminates.

ORA further asserts that a situation in which any carrier intentionally fails to complete calls originating on another provider's network would contravene the goals of both the FCC and the Commission in seeking to create robust local exchange competition.

While some aspects of this issue overlap with the question of CLCs using rate centers inconsistent with those of the ILECs, ORA believes that resolving both of these issues is crucial to the development of effective local exchange service competition.

Discussion

We conclude that all carriers are obligated to complete calls where it is technically feasible to do so regardless of whether they believe that the underlying intercarrier compensation arrangements for completion of calls are proper. The obligation to complete calls applies not just to ILECs, but equally to all carriers involved in the origination, routing, and completion of calls. Whether a call originates or terminates on a carrier's network, the obligation to complete calls is the same. This obligation is a fundamental principle and expectation underlying both state and federal statutes. PU Code § 558 requires:

"Every telephone corporation and telegraph corporation operating in this State shall receive, transmit, and deliver, without discrimination or delay, the conversations and messages of every other such corporation with whose line physical connection has been made."

The obligation to complete calls is also embodied in the federal statutory language of the Act. As noted by several parties, Section 251(a)(1) of the Act states:

"Each telecommunications carrier has the duty...to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers." (47 U.S.C. § 251(a)(1).)

No carrier has the right to block or misdirect the routing of calls to their intended destination because the carrier believes that it is not being properly compensated for such calls. Customers have a right to expect that the telephone network throughout California is reliable, and that their calls will be completed regardless of billing disputes which may exist between carriers involved in the origination, routing, and completion of such calls. Ubiquitous network reliability is imperative not just for routine residential and business calls, but particularly where emergency health or safety matters are involved. It is in the public interest that we do not permit carrier disputes to affect the service to end-users, the third party in those disputes. Further, we believe that it is anticompetitive for a carrier to selectively choose to block calls of a competitor ostensibly due to unsatisfactory compensation arrangements. Such a practice will not be

tolerated nor permitted to frustrate the development of a competitive telecommunications market.

While carriers are entitled to just and reasonable compensation for the completion of calls over their facilities, the resolution of any disputes over compensation must necessarily be addressed after, and independent of, the physical routing of calls has been completed. The Commission has provided procedural remedies through the complaint process and other formal and informal dispute-resolution measures in which restitution can be achieved. Since this issue was raised in the context of a factual dispute involving inconsistencies between the rating and routing of calls, Pacific has asked the Commission to establish a generic policy prohibiting CLCs from establishing local calling areas different from the ILEC without revising the ILEC's existing rate structure on a revenue-neutral basis. The issue of rate center and local calling area consistency will be addressed in a separate order, and is beyond the scope of this decision.

We do not address here the merits of the factual dispute in the Pac-West complaint which gave rise to this issue. Nonetheless, in whatever manner we ultimately resolve that complaint, we conclude that all carriers are entitled to have their calls routed and completed by other carriers in the manner they have requested. These rights are not nullified by disputes over intercarrier compensation arrangements, disputes over tariff violations, or other areas of disagreement. The question of call rating and routing restrictions and compensation arrangements for the routing of calls to distant locations will be resolved as a separate matter in the complaint case or in an alternative procedural forum to be determined by the Commission.

Findings of Fact

1. The issue of carriers' obligations to complete other carriers' calls arose in conjunction with the Commission's preliminary consideration of the complaint case involving Pac-West Telecomm versus Evans and Volcano telephone companies.

2. Parties in the Local Competition rulemaking were provided an opportunity to file comments and reply comments regarding the generic policy which the Commission should adopt with respect to this issue.

3. If carriers were permitted to selectively refuse to complete certain calls of other carriers, it could threaten the underlying reliability of California's telecommunications network and undermine the development of a competitive telecommunications market.

4. If a carrier believes that it is not being properly compensated by another carrier for the completion of a call or has other disputes regarding the rating or routing of calls, it has procedural remedies for seeking relief or restitution through the Commission's complaint procedure and informal channels.

Conclusions of Law

1. The issue of carriers' obligations to complete calls is of generic importance and should be addressed as a policy matter in the Local Competition docket.

2. All carriers should be required to complete calls where it is technically feasible to do so regardless of whether they believe that the underlying intercarrier compensation arrangements or routing and rating instructions for completion of calls are improper.

3. Carriers' obligation to complete calls is a fundamental principle and requirement for a reliable ubiquitous telecommunications network underlying both the California Public Utilities Code (Sec. 558) and the Telecommunications Act of 1996 (47 U.S.C. § 251(a)(1)).

4. No carrier has the right to block or misdirect the routing of calls to their intended destination because the carrier believes that it is not being properly compensated for such calls or that the rating and routing configuration is improper.

5. It is anticompetitive for a carrier to selectively choose to block calls of a competitor ostensibly due to unsatisfactory compensation arrangements.

6. While carriers are entitled to just and reasonable compensation for the completion of calls over their facilities, the resolution of any disputes over

compensation must necessarily be addressed after the physical routing of calls has been completed.

7. The Commission has provided procedural remedies through the complaint process and informal dispute-resolution measures through which restitution can be achieved.

8. The merits of the factual dispute in the Pac-West complaint which gave rise to this issue should be resolved in the complaint case.

9. The findings and conclusions in this decision in no way prejudice the issue in dispute in the Pac-West complaint concerning the appropriateness of a carrier using NXXs assigned to a rate center in which no customers exist in order to route such calls to a distant geographic location beyond the rate center coordinates.

O R D E R

IT IS ORDERED that:

1. All telecommunications carriers are obligated to complete calls where it is technically feasible to do so regardless of whether they believe that the underlying intercarrier compensation arrangements or rating and routing instructions for completion of calls are proper.

2. A copy of this order shall be served on parties of record in Case 96-10-018/Investigation 97-03-025.

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