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Decision 98-02-043 February 4, 1998

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 Interconnection With Pacific Bell.	R.95-04-043
Order Instituting Investigation On the Commission's Own Motion Into Competition for Local Exchange Service.	I.95-04-044

ORDER DENYING APPLICATION OF EIGHT SMALL INCUMBENT LECS FOR REHEARING OF DECISION 97-11-024

I. SUMMARY

Eight small incumbent local exchange carriers have filed an application for rehearing of D.97-11-024. The eight carriers, who shall be referred to hereinafter as the eight "ILECs" or "the applicants," are: Evans Telephone Co., Happy Valley Telephone Co., Hornitos Telephone Co., Kerman Telephone Co., Pinnacles Telephone Co., The Siskiyou Telephone Co., The Volcano Telephone Co., and Winterhaven Telephone Co. In D.97-11-024, the Commission determined that an incumbent telecommunications carrier, such as each of the eight ILECs, is obligated to complete and/or relay calls transmitted from another interconnected carrier, whether or not the carriers have resolved interconnection

compensation disputes. The applicants allege that our determination is based on an unlawful construction of applicable California and federal statutes.

In response, the Office of Ratepayer Advocates (ORA) has submitted a reply urging denial of the application on the basis, primarily, of the contradictory positions on the issues taken by five of the eight ILECs, namely Evans, Kerman, Pinnacles, Siskiyou, and Volcano, and in part on the misreading of statutory provisions.

Upon review of the application and the reply of ORA, and all issues raised therein, we conclude that the applicants have failed to demonstrate legal error in D.97-11-024, as is required by Section 1732, and therefore the application for rehearing is denied.

II. DISCUSSION

The applicants argue that the Commission erroneously applied Section 558 of the California Public Utilities Code [1] in requiring that the eight ILECs continue to complete and relay calls so long as they are interconnected with the network. (Application for Rehearing, at p. 2.)

The applicants are correct in recognizing that in D.97-11-024 we indeed relied on Section 558 to conclude:

> "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. "(D.97-11-024, Conclusion of Law No. 4, at p. 7.)

[1] Unless otherwise indicated, all statutory references shall be to the California Public Utilities Code.

We also made clear that there are remedies available through Commission procedures to assist in resolving compensation disputes among telecommunications carriers related to the completion and relaying of calls, also referred to as "call termination." We stated that remedies are to be pursued independent of the continuing obligation of the incumbent carrier to complete and relay calls where it is technically feasible to do so. (D.97-11-024, Conclusion of Law No. 7, Ordering Paragraph No. 1, at p. 8.)

Our decision means that so long as each of the eight ILECs retains a certificate of public convenience and necessity, and each is connected to the telephone network, each carrier is obligated to serve the telephone customers of the State as is unequivocally provided in Sections 451 and 558. Section 451 provides in pertinent part:

> "Every public utility shall furnish and maintain such adequate, efficient, just, and reasonable service, instrumentalities, equipment, and facilities, including telephone facilities, as defined in Section 54.1 of the Civil Code, as are necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public."

Even more significant are the unambiguous directives of Section 558:

> "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 a physical connection has been made."

We see no exceptions, no alternatives, no conditions incorporated into the clear requirement of Section 558 that each interconnected carrier is obligated to receive, transmit, and deliver the telecommunications of the people of the State.

Remarkably, the applicants, who have long been certificated to provide telephone service, object to our determination that they cannot obstruct the telephone traffic of the State so long as they are interconnected to the network. The eight ILECs fail, moreover, to identify statutory or case law to support their extraordinary position. Most significantly, they fail to take their proposition to a logical conclusion, i.e., that if their obligation to serve is not a prevailing obligation, then each should be allowed to disconnect from or disrupt the telephone network at will, whenever and for whatever period of time each desires during disputes with other carriers over compensation. The argument of the eight ILECs is legally flawed and absurd.

The applicants rely on a misreading of Section 559 in an attempt to suggest that the requirements of Section 558 are deferrable or avoidable. Section 559 expressly pertains only to the obligation of a "common carrier" to establish joint rates, fares, and charges for the transportation of passengers and property. The applicants argue that Section 559 grants authority to a telecommunications carrier to block the telecommunications network of the State and to ignore the provisions of Section 558. (Application for Rehearing. at p. 3.) The argument is not persuasive.

First, it is clear that a "common carrier" as used in the California Public Utilities Code is not a telecommunications carrier or telephone company or telegraph corporation. A "common carrier" is defined in Section 211 as a person or corporation providing transportation of passengers and property for compensation to the public, and includes railroad corporations, certain vessels, and

passenger state corporations. A "common carrier" as used in the Public Utilities Code does not include telephone or telegraph companies.

Further, even if interconnected telecommunication carriers are, like common carriers, obligated to establish rates for their respective customers, the applicants have not shown, and they cannot show, that the law permits a carrier to remain on the network and interrupt the flow of telecommunications traffic whenever it raises an argument regarding authorized customer rates, or fails to resolve compensation disputes with another carrier.

The applicants also misplace reliance on Section 251 of the Telecommunications 1996 Act of 1996. (Application for Rehearing, at pp. 4-5.) Pursuant to the federal statute, each incumbent local exchange carrier, such as each of the applicants, is obligated upon receiving a request from a new, "competitive" carrier to interconnect with the requesting carrier and establish through private negotiations, or if necessary through arbitration conducted by the Commission, reciprocal compensation arrangements for the transport and termination of telecommunications.[2] We find nothing in the federal statute which conflicts with our interpretation of Section 558, and the applicants have failed to describe any conflict. The federal statute contains no terms which could be interpreted as superseding the requirements of Section 558 or as authorizing one incumbent telecommunications carrier to obstruct the flow of communications pending the resolution of disputes that arise with another carrier that is also already interconnected on the network.

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[2] Section 251(a)(1) of the Telecommunications Act of 1996 states the obligation of incumbent local exchange carriers as follows: "GENERAL DUTY OF TELECOMMUNICATIONS CARRIERS – Each telecommunications carrier has the duty - (1) to interconnect directly or indirectly with the facilities and equipment of other telecommunications carrier." Section 251(b)(5) provides: "OBLIGATIONS OF ALL LOCAL EXCHANGE CARRIERS –Each local exchange carrier has the following duties: (5) RECIPROCAL COMPENSATION – The duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications."

In addition, although as pointed out by ORA the application for rehearing is somewhat confusing and contradictory, to give the applicants the benefit of the doubt we have also viewed their claims from another angle. It is possible to read the application as attempting to express a concern that our discussion and orders in D.97-11-024 can be extrapolated to require the eight ILECs under Section 251 of the Telecommunications Act of 1996 to initiate interconnection with a new "competitive" carrier without first having completed, by negotiations or by arbitration, transport and compensation arrangements. If this is the intent of the application, then the applicants have misunderstood our decision and should have filed a petition for modification or clarification.

Our decision applies state public policy as expressed in Section 558 to telecommunications carriers which are already directly or indirectly interconnected on the network, and does not reach our mandate regarding Section 251 of the Telecommunications Act of 1996. To be clear, the Commission is not suggesting or implying in D.97-11-024 that under the federal statute it may order an incumbent local exchange carrier to establish a new interconnection upon the request of a competitive carrier before compensation arrangements between the carriers are successfully negotiated or arbitrated. Our implementation of Section 558 and the federal statute are not inconsistent.

III. CONCLUSION

The applicants have failed to demonstrate legal error in our construction and application of Section 558. In Section 558, on which we rely, the California Legislature codified a vital public policy to assure the telecommunications network of the State is not hindered or obstructed. The applicants nonetheless appear to argue that they have the right to contravene this public policy and still remain part of the network as public utilities certificated to provide telecommunications services to the people of the State. Under the law, they are wrong.

If the applicants are also contending that we did not sufficiently distinguish their obligations under Section 558 from their obligations under Section 251 of the Telecommunications Act, they, as we have indicated, are incorrect in their reading of our decision.

IT IS THEREFORE ORDERED that the application for rehearing of the eight ILECs be denied.

This order is effective today.

Dated February 4, 1998, at San Francisco, California.

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