

Decision 98-06-027 June 4, 1998

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.

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

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

ORIGINAL

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

**ORDER GRANTING LIMITED REHEARING, MODIFYING
D.98-01-022, AND SUBSEQUENTLY DENYING
REHEARING OF THE DECISION AS MODIFIED**

An Application for Rehearing of Decision (D.) 98-01-022 was filed by Pacific Bell (Pacific) alleging legal error. In D.98-01-022 we directed Pacific and GTE California (GTEC) to establish memorandum accounts to track billings for directory assistance (DA) services and the provision of subscriber listings for directory publishing by third-party competitors. The Commission ordered that tariffed rates billed for directory access shall be deemed provisional and the billings shall be subject to true-up once the final rates are determined in the OANAD proceeding. A future order will address the disposition of the balance of the memorandum accounts. In the discussion section of the Decision, we concluded that the parties raised valid questions over the reasonableness of the ILECs' directory-access rates, and whether they properly conform to the cost-

based provisions of the Telecommunications Act of 1996 (the Act). (D.98-01-022, p. 5.)

A joint Response to the Application For Rehearing was filed by The Association of Directory Publishers, AT&T Communications of California, Inc., and MCI Telecommunications Corporation. We have reviewed the allegations of error raised in the Application for Rehearing, and the arguments in the Response.

Applicant argues that we committed legal error by incorrectly concluding that access to directory publishing information is an unbundled network element subject to cost-based pricing pursuant to the Act. The joint Response contains arguments to the contrary, alleging that the charges must be cost-based under the Act. We reject Pacific's argument. We find that Sections 153(29), 222(c), and 252(d)(1)(A)(i) of the Act require that the rates for network elements, including directory publishing information, must be based on cost. No legal error has been shown.

Applicant further argues that we have committed legal error by ordering refunds retroactively. (Application, pp. 4-5.) Applicant claims that the rule against retroactive ratemaking prevents the Commission from ordering refunds for service provided prior to the Commission's final decision establishing rates. The Response argues that no retroactive ratemaking has occurred.

We reject Applicant's argument. At the present time we have simply ordered the establishment of memorandum accounts to record billings to third-party vendors. (D.98-01-022, Ordering Paragraph 1.) We have not issued any order regarding rates or the disposition of the money tracked in the accounts. Pacific itself recognizes that no legal error has been shown when it states that "...this issue may not be ripe for review until the Commission orders a *disposition* of the balances in Pacific's memorandum accounts." (Application, p. 5.) We thus find that no legal error has been shown.

The final argument raised by Pacific is that we erred in requiring in Ordering Paragraph 4 that the memorandum accounts shall retroactively reflect revenues which were previously billed since the effective date of the directory-access tariffs. Pacific claims that this requirement will require Pacific to track revenues for directory access services commencing July 1975 because they have offered access under tariff since that date. (Application, p. 5.)

We find that such a tracking requirement constitutes legal error. It was not our intention to require tracking of billings to third-party vendors prior to the effective date of the Telecommunications Act of 1996. We find that to require tracking of past billings for periods pre-dating the effective date of the Act bears no relationship to our stated intention of evaluating rates for compliance with the Act. Accordingly, we grant limited rehearing on this issue for the purpose of modifying Ordering Paragraph 4 to reflect that the memorandum accounts shall retroactively reflect revenues billed since the effective date of the Act.

In the course of our review we became aware of an another error in the Decision that was not pointed out by any of the parties. Specifically, it came to our attention that the Decision fails to include findings of fact and conclusions of law supporting our conclusion that charges for directory publishing information must be based on costs. This error merits correction. Accordingly, we will grant further limited rehearing for the purpose of modifying the Decision to add findings of fact and conclusions of law on this issue, as required by P.U. Code § 1705.

Additionally, during the course of our review, we identified a typographical error on page 5, line 4 of D.98-01-022. We will modify the language that currently reads "47 U.S.C. § 153(45)" to read "47 U.S.C. § 153(29)".

No further discussion is required of Applicant's allegations of error. Accordingly, we conclude that the Application for Rehearing should be granted for the limited purposes specified above and modifications to the Decision made accordingly. No further proceedings are necessary since the basis for these

modifications is adequately contained in the existing record, the application for rehearing, and D. 98-01-022. We further conclude that rehearing of the Decision in all other respects should be denied because sufficient grounds for rehearing have not been shown.

THEREFORE, IT IS ORDERED that a limited rehearing is granted and D.98-01-022 is modified as follows:

1. The language in Ordering Paragraph 4 that reads "...since the effective date of the directory-access tariffs..." shall be modified to read as follows: "...since the effective date of the Telecommunications Act of 1996...".
2. The Decision is modified to add the following Finding of Fact 1A immediately after Finding of Fact 1: "The Act defines subscriber numbers and databases as (network elements). (47 U.S.C. § 153(29)). The Act also requires that rates for network elements be 'based on the cost...of providing the ...network element...' (47 U.S.C. § 252(d)(1)(A)(i))."
3. The Decision is modified to add the following Conclusion of Law 1A immediately after Conclusion of Law 1: "The Act defines subscriber numbers and databases as network elements. The Act mandates that charges for providing access to these network elements must be based on cost."
4. The language in the Decision at page 5, line 4 that reads: "47 U.S.C. § 153(45)" shall be modified to read as follows: "47 U.S.C. §153(29)".

IT IS FURTHER ORDERED that rehearing of D.98-01-022 is denied in all other respects.

This order is effective today.

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

RICHARD A. BILAS
President

P. GREGORY CONLON

JESSIE J. KNIGHT, JR.

HENRY M. DUQUE

JOSIAH L. NEEPER

Commissioners