

ALJ/MCK/wav

Decision 98-06-060 June 18, 1998

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ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion
into the matter of Competitive Access to
Customer List Information.

Investigation 90-01-033
(Filed January 24, 1990)

Application 89-07-030
(Filed July 17, 1989)

And Related Matters.

(I&S)
Case 86-06-004
(Filed June 4, 1986)

O P I N I O N

On January 24, 1990, we issued our Order Instituting Investigation (OII) in this docket -- which is often referred to as the "List OII" -- for the purpose of "consider[ing] what customer list information possessed by public utilities in California should be made available to competitors and other utilities and what measures should be taken by this Commission to protect the privacy of customer information." (OII, page 1.) Twenty-two local exchange carriers (LECs), as well as four gas and electric utilities, were made respondents in the proceeding and were instructed to file comments containing answers to eleven (11) broadly-phrased questions. (*Mimeo.* at 15-17.) Because they raised related issues, Application (A.) 89-07-030 and Case (C.) 86-06-004 were consolidated with the List OII.

Opening comments addressing the eleven questions in the OII were filed on May 14, 1990, and reply comments on July 9, 1990.

Since the filing of reply comments, the only activity in this docket has been the issuance of two relatively short and simple decisions. In the first, Decision (D.) 90-12-121, the four energy utilities were dismissed as respondents from the proceeding, principally on the ground that, unlike LECs, they rarely made commercial use of customer information. (*Mimeo.* at 10, 12.) However, Ordering Paragraph (OP) 3 of D.90-12-121 did direct Pacific Gas and Electric Company (PG&E) to modify its procedures for responding to requests for customer information from law enforcement agencies. PG&E was directed to prohibit its employees from responding to such inquiries except pursuant to legal process (i.e., a subpoena).

In the second decision, D.91-10-036, PG&E sought modification of the requirement in OP 3 of D.90-12-121 on various grounds. PG&E's petition to modify was denied, but its time for complying with OP 3 of D.90-12-121 was extended.

This Commission is now taking steps to clear out unnecessary and moot proceedings, and to reflect more accurately the duration and commitments associated with active dockets. It is clear that at least one issue associated with the List OII is now being considered in the Commission's Local Competition proceeding, Rulemaking (R.) 95-04-043/Investigation (I.) 95-04-044. That issue is the question of competitive access to telecommunications directory information. In D.97-01-042, issues relating to such competitive access were transferred from this proceeding to the Local Competition proceeding, "effective immediately." (*Mimeo.* at 38, OP 12.) D.97-01-042 also stated that "we intend to review any remaining issues in [I.90-01-033] to determine if they should be reassigned to another proceeding, or otherwise disposed of." Following this review, D.97-01-042 stated, "we may consider whether to merge the List OII with this proceeding or to close the List OII proceeding." (*Id.* at 22.)

Conditions within the telecommunications industry have obviously changed dramatically since 1990, especially with the passage of the Telecommunications Act of 1996. Moreover, as D.97-01-042 shows, the Commission has recently been addressing issues that were originally within the List OII in more specifically-tailored proceedings.¹ In view of the transfer to the Local Competition proceeding of issues related to directory information access, and the long period that has elapsed since the filing of reply comments in this docket, it became appropriate to ask whether there was any reason to keep this docket open.

On March 2, 1998, the assigned Administrative Law Judge (ALJ) issued a ruling reciting the above-noted procedural history and inviting the parties to file comments by March 24, 1998 on (1) whether there was any reason to keep this consolidated docket open, and (2) if the party contended that this docket should remain open, to specify each issue needing consideration, and to state why that issue could not be satisfactorily addressed in other ongoing proceedings.² The March 2, 1998 Ruling stated that if the comments indicated there was no reason to keep the List OII open, a short decision closing the proceeding would be prepared.

The only comments received in response to the March 2, 1998 Ruling were filed by the Association of Directory Publishers (ADP). In their comments, the ADP state that "in light of the transfer of directory list information matters to the

¹ For example, in recent years the Commission has been dealing with the privacy issues raised in the List OII in the context of specific proceedings. See, e.g., D.98-02-105 (*mimeo.* at 4-7) (discussing privacy protections required as a condition for approval of customer credit check data base system for commercial mobile radio service providers.)

² ALJ's Ruling Soliciting Comments On Whether There Are Reasons Why This Docket Should Remain Open, issued March 2, 1998 (3/2/98 Ruling).

local competition docket...ADP submits that this docket should be closed." (ADP Comments, p. 1.) We agree that in light of the procedural history recited above, and the absence of any apparent reason to keep this docket open, it is appropriate to close this proceeding.

Findings of Fact

1. This docket, I.90-01-033, was opened on January 24, 1990 to consider the terms on which customer list information held by California utilities should be made available to competitors, and what measures were necessary to safeguard the privacy of customer information. A.89-07-030 and C.86-06-004 were consolidated with I.90-01-033.

2. Comments in response to the OII were filed on May 14, 1990 and July 9, 1990.

3. On December 27, 1990, the Commission issued D.90-12-121, which dismissed the energy utilities as respondents, but directed PG&E to change its procedures so that it would respond to requests for customer information from law enforcement agencies only pursuant to legal process (i.e., a subpoena).

4. On October 23, 1991, the Commission issued D.91-10-036, which denied PG&E's petition to modify D.90-12-121, but extended the time for complying with OP 3 of D.90-12-121.

5. Pursuant to D.97-01-042, the issue of competitive access to directory listing information was transferred from this proceeding to the Local Competition docket, R.95-04-043/1.95-04-044.

6. There was no activity in this proceeding after the issuance of D.91-10-036 until issuance of the March 2, 1998 Ruling.

7. The record reflected in the comments submitted on May 14, 1990 and July 9, 1990 is stale.

8. The Commission is now taking steps to clear out unnecessary and moot proceedings and to reflect more accurately the duration and commitments associated with active dockets.

9. The March 2, 1998 Ruling directed parties who contended that this docket should remain open to file comments supporting that contention no later than March 24, 1998.

10. The only comments submitted in response to the March 2, 1998 Ruling were filed by ADP, which argues that it is appropriate to close this proceeding.

Conclusions of Law

1. I.90-01-033 and the proceedings consolidated with it, A.89-07-030 and C.86-06-004, should be closed.

2. Administrative efficiency requires that this order become effective on the date that it is signed.

O R D E R

IT IS ORDERED that Investigation 90-01-033 and the two matters consolidated with it, Application 89-07-030 and Case 86-06-004, are closed.

This order is effective today.

Dated June 18, 1998, at San Francisco, California.

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