

Decision 00-02-042 February 17, 2000

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.

Rulemaking 95-04-043
(Filed April 26, 1995)

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

Investigation 95-04-044
(Filed April 26, 1995)

OPINION

By this decision, we grant the motion jointly filed by the Association of Directory Publishers (ADP), Pacific Bell (U-1001-C), and GTE California, Inc. (U-1002-C), for an order from the Commission terminating the hearings in this proceeding concerning whether the provision of subscriber list information (SLI) is an essential service.

Background

In Decision (D.) 97-05-091, the Commission modified D.96-02-072 and directed the presiding Administrative Law Judge (ALJ) in this proceeding to provide parties an opportunity to be heard on the issue of whether the provision of directory subscriber listing by the LEC is an essential service. The Commission concluded that a "determination of whether LEC subscriber listings constitute an 'essential facility' could have bearing on what precise terms of access and pricing are ultimately established for the provision of LEC subscriber listings to third parties." (*Id.* at 8.)

On March 25, 1999, at a prehearing conference in this proceeding, counsel for ADP, Pacific and GTE informed the presiding ALJ that the Federal Communications Commission (FCC) was expected to issue a decision addressing access and pricing issues relating to the provision of LEC subscriber listing information to directory publishers. In recognition of the potential for substantial overlap between the FCC's proceeding and this proceeding, the parties proposed that the Commission proceeding be stayed, pending the outcome of the FCC proceeding. The presiding ALJ adopted this approach at the March 25 prehearing conference, and the matter has been stayed since that time.

On September 9, 1999, the FCC issued its SLI Order.¹ Among other things, the FCC issued a variety of rulings that address, in detail, access and pricing for the provision of LEC subscriber listing information to directory publishers pursuant to Section 222(e) of the Telecommunications Act of 1996. (See SLI Order at paras. 8, 53-119.) The FCC further established a provision that allows for enforcement of those rules through its complaint process pursuant to Section 208 of the Communications Act of 1934, as amended.

Because the FCC's SLI Order provides detailed access and pricing rules for the provision of SLI by LECs, the joint parties agree there is no longer any need for the Commission to devote its limited resources to addressing the question whether LEC subscriber listings constitute an essential service. Thus, ADP, GTE,

¹ See the FCC Third Report and Order in CC Docket No. 96-115, Second Order on Reconsideration of the Second Report and Order in CC Docket No. 96-98, and Notice of Proposed Rulemaking in CC Docket No. 99-273: Provision of Directory Listing Information under the Telecommunications of 1934, as amended, FCC 99-227, released: September 9, 1999 (SLI Order).

and Pacific, jointly request that the Commission issue an order terminating further proceedings concerning the issue of whether SLI is an essential service.

Discussion

No party contests the jointly filed motion to terminate the previously planned proceedings on the SLI issue as outlined in D.97-05-091. We agree that further proceedings on this issue are moot in view of the FCC's issuance of the SLI Order. Accordingly, the joint motion is granted.

This is an uncontested matter in which the decision grants the motion as requested. Accordingly, pursuant to Section 311(g)(2) of the Public Utilities Code, the otherwise applicable 30-day period for public review and comment is being waived.

Findings of Fact

1. In D.97-05-091, the Commission modified D.96-02-072 and directed the presiding ALJ in this proceeding to provide parties an opportunity to be heard on the issue of whether the provision of directory subscriber listing by the LEC is an essential service.

2. The Commission's rationale in scheduling proceedings on this issue was that a determination of whether LEC subscriber listings constitute an "essential facility" could have bearing on what precise terms of access and pricing are ultimately established for the provision of LEC subscriber listings to third parties.

3. On September 9, 1999, the FCC issued its SLI Order, addressing access and pricing for the provision of LEC subscriber listing information to directory publishers pursuant to Section 222(e) of the Telecommunications Act of 1996.

Conclusions of Law

1. The joint motion to terminate further proceedings on the SLI issues contemplated in D.97-05-091 should be granted.
2. The granting of the motion to terminate proceedings is without prejudice to any party's right to file for reconsideration of the FCC SLI Order with the FCC, or to pursue any available appeals.

O R D E R

IT IS ORDERED that the joint motion is granted to terminate further proceedings concerning whether the provision of subscriber list information is an essential service.

This order is effective today.

Dated February 17, 2000, at San Francisco, California.

RICHARD A. BILAS
President
HENRY M. DUQUE
JOSIAH L. NEEPER
CARL W. WOOD
LORETTA M. LYNCH
Commissioners