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MAIL DATE
4/21/00

Decision 00-04-068

April 20, 2000

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Rulemaking on the Commission's Own Motion to Govern Open Access to Bottleneck Services and Establish a Framework for Network Architecture Development of Dominant Carrier Networks.

Rulemaking 93-04-003
(Filed April 7, 1993)

Investigation on the Commission's Own Motion into Open Access and Network Architecture Development of Dominant Carrier Networks.

I.93-04-002
(Filed April 7, 1993)

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)

ORDER CLARIFYING DECISION (D.) 99-11-028 AND DENYING REHEARING

I. SUMMARY

This decision denies the Joint Rehearing Application filed by Sprint Communications Company, MCI WorldCom and AT&T Communications of California, Inc. of D.99-11-028, which resolved the issue of how Foreign Numbering Plan Area (FNPA) Directory Assistance (DA) calls should be routed upon the implementation of intraLocal Access and Transport Area (LATA) presubscription in Pacific Bell's territory. We affirm that these calls shall continue to be routed to the customer's local service provider. We modify a factual misstatement in the body of the Decision, as replicated in the findings and conclusions, so that it reflects the law on dialing parity, and not just the technical definition of dialing parity.

II. BACKGROUND

On November 4, 1999, the Commission issued D.99-11-028 (hereinafter, the Decision), which ordered that FNPA DA calls should continue to be routed to the customer's local service provider, rather than to the presubscribed intraLATA toll carrier.¹ Pacific was ordered to implement dialing parity in D.97-04-083 and D.99-04-071, as well as by FCC Order.² In its attempt to implement intraLATA dialing parity, Pacific found that it could not route FNPA-555-1212 calls separately to the local or intraLATA toll provider based on whether the call will be local or toll.

¹ Presubscription is the process by which a customer preselects a carrier to which all of a particular category or categories of calls on the customer's line will be routed automatically. FNPA is an area code different from the area code of the line from which the call is placed.

² Pacific did not immediately implement dialing parity after D.97-04-083 was issued. It did so after the FCC issued *In the Matters of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996 and Petition of Southwestern Bell Telephone Company, Pacific Bell, and Nevada Bell for Expedited Declaratory Ruling on Interstate IntraLATA Toll Dialing Parity or, in the Alternative, Various Other Relief* (CC Docket No. 96-98 and NSD File No. 98-121) April 22, 1999. The Commission simultaneously issued D.99-04-071, which Pacific appealed on May 3, 1999. Rehearing was denied in D.99-07-019 (July 8, 1999).

Due to this technical infeasibility, Pacific asserted that all FNPA DA calls must be routed either to the local service provider or the intraLATA toll provider. Pacific routed all FNPA 555-1212 calls to its own operator platform (as the local service provider), on an interim basis, pending further action leading up to the issuance of D.99-11-028. On May 21, 1999, an Administrative Law Judge (ALJ) issued a ruling requesting comments on whether the local service provider or the intraLATA toll provider should control the routing of FNPA DA calls, subsequent to Pacific's implementation of intraLATA dialing parity. Opening comments were filed on June 18, 1999, and reply comments on July 2, 1999. The Commission subsequently issued D.99-11-028, ruling that the calls should continue to be routed to the customer's local service provider.

Sprint Communications Company (Sprint), MCI WorldCom and AT&T Communications of California, Inc. (AT&T) filed a Joint Application for the rehearing of the Decision on December 6, 1999. The Joint Applicants allege that the Decision has at least three major errors. First, they contend that the Decision violates §251(b)(3) of the Telecommunications Act of 1996 (the Act),³ the FCC regulations implementing the Act, and the Commission's own legal finding in D.99-04-071 that it could not grant Pacific any exception to its dialing parity obligations without seeking a waiver from the FCC. Secondly, the Joint Applicants assert that the Commission has violated the interexchange carriers' (IECs) due process rights by permitting Pacific to make programming changes before the IECs were afforded the opportunity to be heard on the changes. Finally, the Joint Applicants argue that equitable principles prohibit the Commission from allowing Pacific to contradict the arguments Pacific made in a private arbitration with AT&T.

³ The Telecommunications Act of 1996, 47 U.S.C. §151 *et seq.*

On December 6, 1999, the Joint Applicants also filed a Supplement to Joint Application for Rehearing of D.99-11-028, along with a Motion to Place Portions of the AT&T Supplement to the Joint Application for Rehearing Under Seal. Confidential materials were attached, and the documents were filed under seal.

On December 21, 1999, Pacific filed its Response to Joint Application for Rehearing of D.99-11-028. Pacific maintained that the Decision does not violate the dialing parity requirement, and the Commission has not violated the due process rights of IECs in this proceeding. On the same date, pursuant to its motion filed under seal, Pacific filed a proprietary version of its Response which details with greater specificity arguments opposing the Joint Applicants' rehearing application. On the same date, Pacific also filed its Response to AT&T's Supplement to the Joint Application for the Rehearing of D.99-11-028, accompanied by its Motion to Place the Response Under Seal. The confidential materials were filed under seal.

The Office of Ratepayer Advocates (ORA) filed its Response to Rehearing on December 21, 1999, arguing generally that D.99-11-028 does not contain legal error. ORA specifically asserts that the Act does not require dialing parity for FNPA DA calls, that the Commission's continued treatment of such calls as a part of local service is not legal error, and customers view their FNPA DA calls as local.

III. DISCUSSION

We will address the legal and technical reasons why the Joint Applicants have failed to sustain their allegations that the Commission in D.99-11-028 has violated the Act, the FCC's implementing regulations, and the Commission's findings in D.99-04-071. First, we turn to their allegation that the Decision's "first legal error inheres in a factual error" made by the Decision that the dialing parity requirement relates only to parity in the number of digits dialed.

(Joint Rhg. App., p. 4)⁴ In their attempt to refute that portion of the Decision, the Joint Applicants do not offer any explanation or proof of what else is involved in dialing parity. Instead, they focus only on allegedly having to dial seven extra digits which they claim violates dialing parity requirements.⁵ Their response in fact validates the Decision's statement that dialing parity requirement relates only to parity in the number of digits dialed.

Notwithstanding the Joint Applicants' failure to sustain their allegation, we believe that the statement in issue should be modified to express the law on dialing parity, beyond the technical definition of the term. Thus, we use this opportunity to clarify what is a factual error or misstatement, not a legal error. Although nondiscriminatory access is a separate requirement as indicated in the Decision, it is an integral part of dialing parity law. The Act itself links them together in §251(b)(3). The FCC interprets the nondiscriminatory access requirement to be access that is at least as equal in quality to the access that the LEC provides itself.⁶ In addition, the Act requires dialing parity to be provided without unreasonable delays. These elements are inextricably linked with dialing parity.

Accordingly, we will modify the Decision to acknowledge that although dialing parity focuses on the number of digits dialed, the dialing parity requirement sweeps under its umbrella other related concepts, including nondiscriminatory access and unreasonable dialing delays, without which dialing parity could not be achieved.⁷

⁴ On pages 11-12, the Decision used a shorthand definition of dialing parity derived from 47 U.S.C §153 (39) of the Act. While legally correct, restricting the concept of dialing parity to the number of digits dialed does not capture the law on dialing parity, as set forth in §251(b)(3).

⁵ Joint Rhg. App., p. 4. Although the Joint Applicants used the wrong cite for the Act's definition of dialing parity, we assume that they meant 47 U.S.C. §153(39).

⁶ *In the Matters of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Second R&O and Memorandum Opinion & Order*, (CC Docket No. 96-98; FCC 96-333), 11 FCC Rcd, No. 34, p. 19403, ¶14.

⁷ We note that the Decision does link nondiscriminatory access with the dialing parity, as set forth in the toll dialing parity requirements spelled out in §251(b)(3). See Decision, *mimeo* at 11.

A. D.99-11-028 Does Not Violate the Act, the FCC Regulations, or the Commission's Findings in D.99-04-071.

The Joint Applicants allege that the Decision, by directing calls dialed in the FNPA DA format (FNPA-555-1212) to the subscriber's local carrier, violates the Act of 1996, the FCC's implementing regulations and the findings in D.99-04-071. They assert that since divestiture, FNPA DA calls have always been directed to the customer's interLATA toll carrier when the foreign NPA lies wholly outside the LATA in which the customer is located. They fault the Decision for allegedly failing to explain why FNPA DA calls that seek intraLATA toll numbers should not be automatically directed to the customer's presubscribed intraLATA toll carrier. (Joint Rhg. App. at 5.)

The Joint Applicants' arguments misapply the toll dialing parity requirements, and are not persuasive. First, simply because calls were handled a certain way some time ago is not a sufficient reason that the same procedure should obtain. Great technological and legal changes have occurred in the world of telecommunications since divestiture in 1984. Secondly, while Pacific's switches can distinguish between ordinary calls within a LATA that are toll or local, this same capability does not extend to FNPA DA calls, for reasons explained below.

1. FNPA DA Calls Are Not Ordinary Local or Toll Calls.

FNPA DA calls do not fit neatly within the category of local or toll calls, as is understood in the ordinary sense of these words. In the general vernacular, a toll call is a call to any location outside the local service area, (but within the same LATA) generally referred to as a long distance call.⁸ The legal definition of telephone toll service is "telephone service between stations in

⁸ *Newton's Telecom Dictionary*, Harry Newton, Publisher's Group West, 16th Edition, p. 689 (February 2000).

different exchange areas for which there is made a separate charge not included in contracts with subscribers for exchange service.”⁹ Calls beyond 12 miles are classified as toll calls and are charged on a per minute basis. Conversely, a local call is any call within the local service area of the calling party.

The Decision correctly notes that it is becoming increasingly difficult to distinguish between local calls and intraLATA toll calls, observing that:

“At one time, dialing a 10-digit phone number would generally have been indicative of an intraLATA toll call. That is no longer the case. As the geographic area served by particular area codes gets smaller, we increasingly find more than one NPA within a customer’s local calling area.” (Decision, *mimeo* at 12.)

Calls to a different area code can be local or toll, and the fact that FNPA-555-1212 consists of ten digits does not mean it is an intraLATA toll call. The FCC recognizes that “[a] telephone call requiring seven-digit dialing is not necessarily a local call...and a telephone call requiring ten-digit dialing is not necessarily a toll call.”¹⁰

Contributing to the complexity of the above is the fact that directory assistance calls have their own unique characteristics. The FCC defines local directory assistance calls as those numbers requested by a customer within the customer’s LATA or area code:

There are two types of directory assistance available to customers throughout the United States: local directory assistance service and nonlocal directory assistance service. Directory assistance service is considered “local” whenever a customer requests the telephone number of a subscriber located *within his or her LATA* or area code. Local directory assistance is typically

⁹ 47 U.S.C. 153(48).

¹⁰ *Second R&O, supra*, ¶75.

provided by a customer's local exchange carrier (LEC). Under the Modified Final Judgment (MFJ), the BOCs were allowed to use their Official Services Networks (OSN), which cross LATA boundaries, for the provision of local directory service to their own local exchange customers.¹¹ (Emphasis added.)

Therefore, even if FNPA DA calls go beyond the 12-mile cutoff for toll within the LATA, and would otherwise be considered a toll call, the FCC still considers them to be local directory assistance calls, which are ordinarily handled by the LECs.

Another category of local directory assistance calls that may actually be toll calls is the adjunct-to-basic service call. The FCC, in its *National Directory Assistance Order*, has indicated that this classification is not limited to services that are local in nature. Adjunct-to-basic services are services that facilitate use of the basic network without changing the nature of basic telephone service.¹²

Technically speaking, FNPA DA calls have an additional twist that prevents these calls from being categorized as local or toll calls in the ordinary sense. The Decision succinctly explains the difficulty:

"The switch relies on the NXX code to determine that a call to a particular FNPA-NXX is local or intraLATA toll because each NXX is associated with a specific rate center. The complexity with FNPA DA is that "555" is an NXX that merely signifies directory assistance and not an association with any rate center."(Decision, *mimeo*, at 14.)

Thus, when the switch receives an FNPA DA call, it has no way of knowing what rate center the call is associated with, nor what the NXX code will be for the number requested by the caller. The switch routes the FNPA DA call to a live

¹¹ *In the Matter of Petition of U.S. West Communications, Inc. for a Declaratory Ruling Re: the Provision of National Directory Assistance; Petition of U.S. West for Forbearance; the Use of N11 Codes and Other Abbreviated Dialing Arrangements* (CC Docket No. 97-172; CC Docket No. 92-105) Memorandum Opinion & Order (rel. 9/27/99), ¶5 (NDA Order).

¹² See NDA Order, *supra* at ¶61.

operator who supplies the requested number. Therefore, the switch cannot route the call to the local or intraLATA toll provider based on whether the call that the caller ultimately makes once it has the phone number will be local or toll. Due to the inability of Pacific's switches to distinguish between FNPA calls seeking local numbers and those seeking interLATA numbers, all FNPA DA calls must be routed the same way. (Decision, p.16.) The parties did not contest that all FNPA DA calls must be routed in the same manner. The issue is whether they should all be routed to the LEC or to an IEC.

The Commission treats FNPA DA calls as local calls. The Implementation Rate Design proceeding set forth Pacific's obligation to treat all directory assistance calls within a LATA in the same manner, as local in nature. In D.96-10-066, access to directory assistance was deemed to be a part of basic service for residential customers in that it was a telephone service element that consumers have come to expect.¹³ The decision stated that basic service includes access to local directory assistance, and access to foreign NPAs. (*Id.* at 673) The Final Staff Report submitted in Pacific's 271 proceeding recited that all calls to Pacific's directory assistance within a LATA would be treated the same, and subject to the same free allowances and charges.¹⁴

2. By Blurring the Lines Between Local Dialing Parity, Toll Dialing Parity, and Technical Considerations, the Joint Applicants Fail to Prove that the Act or FCC Rules Are Violated.

The Joint Applicants have injected the Act's toll dialing parity requirements into a factual setting where they do not belong. They correctly quote §251(b)(3) which requires all local exchange carriers "to provide dialing parity to

¹³ See *ReUniversal Service and Compliance with the Mandates of AB 3643*, 68 CPUC 2d 524, 542 (1996).

¹⁴ *California Public Utilities Commission Telecommunications Division Final Staff Report (Final Staff Report)*, p. 116 (October 5, 1998).

competing providers of telephone exchange service and telephone toll service, and the duty to permit all such providers to have nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listing, with no unreasonable dialing delays.” They then proceed to apply the FCC’s toll dialing parity rules to FNPA DA calls, which this Commission deems to be local calls. Their theory is that the Decision violates FCC Rule §51.209(b) by not routing all FNPA DA calls to the presubscribed intraLATA toll carrier, and Rule §51.209(c) by allowing Pacific to automatically assign a customer’s intraLATA toll traffic to itself. (Joint Rhg. App. at 5-6.) The Joint Applicants have misapplied the rules, and have failed to take into account the peculiar nature of directory assistance calls.

Moreover, they fail to recognize, as the FCC has, state authority to control a LEC’s intraLATA dialing parity plan and to administer the implementation of intraLATA toll dialing parity.¹⁵ The FCC asserts that states are best able to evaluate implementation plans in a way that will avoid service disruptions for subscribers and promote competition in the intrastate toll market.¹⁶ The state may therefore determine, as the Decision has done, that an FNPA DA call within the LATA is not to be treated as a toll call.

We reject the Joint Applicants’ claim that customers will have to dial seven extra digits to have FNPA calls completed by their intraLATA toll provider. As Pacific pointed out, “when AT&T is chosen as the presubscribed intraLATA and interLATA toll provider, its customers can dial two digits ‘00’ (advertised as 00 INFO) to reach AT&T’s directory assistance service.” (Pacific’s Rhg. Response, p. 3.)

Indeed, AT&T boasts that its “00” INFO service:

¹⁵ See 47 CFR 51.213(a) which provides that a LEC must file plans for providing intraLATA toll dialing parity throughout the state in which it wishes to offer telephone exchange service. The LEC cannot offer intraLATA toll dialing parity within a state until the implementation plan is approved by the state.

¹⁶ *Second R&O, supra*, ¶39.

“makes it easier for callers to use directory assistance. They no longer need to remember multiple numbers for directory assistance. And they don’t need to know the area code. Customers need only dial one simple number to reach an AT&T information assistant who will help them find telephone listings anywhere in the United States.”¹⁷

Moreover, the Joint Applicants have misinterpreted the dialing parity requirements and blurred the line between legal standards and technical considerations. In an attempt to separate out the issues, the Decision correctly notes on page 14 that there are two different concepts at issue here. The first concept relates to the requirement to custom route FNPA DA calls under unbundled switching, and the second concept deals with the basic issue of how FNPA DA calls are routed in general.

As previously discussed, FNPA DA calls pose technical difficulties due to their unique characteristics. A part of the reason for the complexity is that “555” is an NXX code that signifies directory assistance and is not associated with any rate center. In addition, it is not technically feasible for the end offices that receive FNPA calls to determine if the number the calling customer requests would result in a local or an intraLATA toll call. Since the end office switches cannot route certain FNPA calls to different carriers, based on whether the call will be local or an intraLATA toll call, the Decision concurs with Pacific that all calls should be routed the same way, i.e., to either the local carrier or to the intraLATA toll carrier. (Decision, p. 16.) Given technical constraints, the Joint Applicants did not object that all calls must be routed the same way, however, they want all FNPA DA calls routed to them, asserting that FNPA DA calls include local and toll calls. Assuming *arguendo* that toll or nonlocal directory assistance calls are included, to the extent that they facilitate the use of the basic network without changing the nature of basic telephone service, the FCC considers them to

¹⁷ *National Directory Assistance Order, supra*, at ¶10.

be adjunct-to-basic calls. Hence, they are included as a part of basic exchange service, which is provided by the local service provider.

The Joint Applicants' insistence on FNPA DA calls being routed to them as the presubscribed intraLATA toll provider may be due to their confusing local dialing parity with toll dialing parity. Presubscription is the most feasible method of implementing toll dialing parity, but not local dialing parity. Local dialing parity is accomplished through unbundling, number portability and the interconnection requirements of §251 of the Act.¹⁸ As the Decision notes, the Commission adopted three types of unbundled switching in D.98-12-069, which requires Pacific, as a function of local service, to provide all customized routing associated with unbundled switching determined to be technically feasible.¹⁹

One of the unbundled switching options, Option A, provides automatic routing over Pacific's own network. If the Joint Applicants wish custom routing of FNPA DA calls, they may purchase Option B or ROAR since Option A does not provide custom routing. The parties agreed that it is technically feasible to route FNPA calls to a CLEC that purchases Option B or ROAR. By purchasing custom routing, the Joint Applicants will enable their customers' calls to be programmed into the switch, based on that customer's telephone number, so that whenever a call is placed, the switch knows where to route the call. This is a function of local service, not toll service. Toll dialing parity is not in issue here.

The second concept focuses on how FNPA DA calls are routed in general, and how that routing is affected by the Act's dialing parity requirement. Consumers in Pacific's service territory do not have to dial access codes to place intraLATA toll calls regardless of which carrier they choose to carry those calls.

¹⁸ *Implementation of Local Competition Provisions in the Telecommunications Act of 1996*, Notice of Proposed Rulemaking, CC Docket No. 96-98, FCC 96-182, 11 FCC Rcd 14171 (1996) at ¶ 207.

¹⁹ This requirement is part of the checklist items established in D.98-12-069, with which Pacific must comply in order to obtain Commission approval of its §271 application for interLATA authority in California.

Nor do consumers have to dial access codes to have local calls, including FNPA, provided by their chosen local provider. This comports with the FCC's requirement that a LEC must offer local dialing parity to permit telephone exchange service customers within a defined local calling area to dial the same number of digits to make a local telephone call, irrespective of the identity of either the customer or the local telephone service provider.²⁰

If a customer chooses AT&T as the presubscribed intraLATA and interLATA toll provider, an access code is not required in order to make a toll call. AT&T's customers need only dial "00" INFO to obtain listings throughout the nation. However, if a consumer wishes to have a local call carried by its intraLATA toll provider, an access code must be dialed. We concur with Pacific that this is not a violation of dialing parity. Presubscription is a process by which calls are routed by category, such as toll calls. Therefore, access codes are not necessary for intraLATA toll providers to receive toll calls, or for local providers to receive local calls.

3. The Commission Need Not Seek A Waiver from the FCC Because It Does Not Sanction Any Divergence from FCC Dialing Parity Rules.

Finally, the Joint Applicants charge the Commission with violating its finding in D.99-04-071 that it must seek FCC permission in order to allow Pacific to diverge from its obligation to provide intraLATA toll dialing parity to the toll customers of interexchange carriers. They assert that D.99-04-071 recognized that if the Commission wishes to pursue the approach it has taken in D.99-11-028, it must seek FCC permission to do so. (Joint Rhg. App. at 7-8.) There is no merit to this argument. In D.99-11-028, the Commission is not sanctioning any attempt by Pacific to diverge from FCC dialing parity rules. The

²⁰ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, *Interconnection Between LECs and CMRS*, CC Docket 95-185, *Second R&O*, FCC 96-333, 11 FCC Rcd 19392 (1996) at ¶ 9.

Commission did not then, nor does it now, seek to create any exceptions to Pacific's dialing parity obligations, as charged by the Joint Applicants.

In the name of dialing parity, the Joint Applicants are asking the Commission to have all FNPA DA calls routed to them. The Commission declines to do so. We have determined that FNPA DA calls will continue to be treated as local calls, and access to directory assistance continues to be a part of basic service.

B. The Joint Applicants Have Failed to Prove that the Commission Violated Their Due Process Rights.

The Joint Applicants assert that the Commission violated the IECs' due process rights by taking away their property right to receive FNPA calls without providing due process. (Joint Rhg. App. at 8-9.) By improperly asserting a right to receive FNPA DA (local) calls, the Joint Applicants are mixing apples and oranges, and indiscriminately applying toll dialing parity requirements to local calls. They argue that when presubscription was implemented, the property right to receive FNPA calls accrued to them. The Joint Applicants assert this alleged right by stating "[i]t is fundamental under the Fifth Amendment to the U.S. Constitution and California law [CITE] that, when this Commission prepares to make decisions that affect the property rights of citizens, it must afford those citizens the right to be heard regarding the proposed action *before* it is taken." (Rhg. App. at 8; emphasis in original.) The legal citation to support this essential element of their due process claim is curiously missing. Quoting "CITE", without more, fails to make the case.

Moreover, the Joint Applicants' claim that their due process rights were violated because Pacific made programming changes before the interexchange carriers had an opportunity to be heard on the changes is spurious. The alleged "changes" did not alter the fact that FNPA DA calls were routed, and continue to be routed, by the incumbent local exchange carriers (ILECs). The "changes" were of no consequence to the Joint Applicants; therefore, their due

process rights were not violated. Also, their allegation that they had no notice and opportunity to comment on how FNPA DA calls would be routed prior to receiving the ALJ's ruling of May 21, 1999 is without merit. The Joint Applicants were not caught by surprise that FNPA DA calls would continue to be routed by the ILECs, and not the intraLATA toll provider. The record shows Pacific filed its presubscription tariff in Advice Letter No. 20217 on April 30, 1999, indicating that FNPA-555-1212 calls would not be routed to the intraLATA toll provider.²¹ In addition to the ALJ Ruling of May 21, 1999, the Joint Applicants were afforded another opportunity to comment in response to the ALJ's Draft Decision of October 5, 1999.

Fundamentally, the Joint Applicants have not proved that Commission regulation of FNPA calls amounts to a taking under the Fifth Amendment of the U. S. Constitution. Nor have they addressed the legal standard that applies to regulatory takings. Therefore, we conclude that the Joint Applicants have not met their burden of proof.

C. The Commission Saw No Need to Resort to Arguments Made in Private Arbitration Agreements to Resolve the Issues in this Rehearing Application.

At the rehearing stage, the Joint Applicants attempt to inject proprietary information from private arbitrations between AT&T and Pacific in an effort to bolster their arguments. They did so by a filing proprietary supplement under seal to the rehearing application. They claim that Pacific made contradictory statements in a private arbitration with AT&T regarding Pacific's refusal to provide customized routing, and this somehow supports a third ground for legal error. The vague assertions made by the Joint Applicants run afoul of Public Utilities (PU) Code §1732, which requires that the rehearing application set

²¹ Advice Letter No. 20217, filed April 30, 1999, Schedule Cal.P.U.C. No. 175-T, third revised sheet 593-B, effective May 7, 1999.

forth specifically the grounds upon which the applicant considers the decision to be unlawful.

Moreover, we did not find it necessary to rely on arguments made in the private arbitration between AT&T and Pacific in order to resolve the issues in this rehearing. Therefore, the Joint Applicants' claim that equitable principles forbid the Commission from permitting Pacific to use such arguments is irrelevant. As D.99-11-028 states, "AT&T would have us focus our attention on the terms of its interconnection agreement with Pacific. However, we prefer to look at the issue from the viewpoint of the customer." (Decision, *mimeo* at 16.) We affirm that approach, particularly since it was not necessary to delve into the argument in the private arbitration to address the Joint Applicants' claim of legal error.

We note that the pleadings filed under seal are not part of the record in the instant proceeding, and the Commission declines to admit new evidence at the rehearing stage.

IV. CONCLUSION

We have reviewed each and every allegation of legal error in this joint rehearing application, and are of the opinion that legal error has not been demonstrated. Therefore, we deny rehearing. However, we clarify a factual misstatement in the text of the decision which was mirrored in the findings and conclusions.

Therefore, **IT IS ORDERED that:**

1. At the top of page 12, the first two complete sentences are deleted and replaced by the following:

"However, the Act's definition of dialing parity does not completely capture the law on dialing parity, or the duties imposed on all LECs. Section 251(b)(3) on dialing parity inextricably links the number of digits dialed with nondiscriminatory access and the absence of unreasonable dialing delays. These are essential elements of dialing parity law."

2. Finding of Fact No. 2 is changed to read:

“Neither FNPA DA calls nor presubscribed intraLATA and interLATA calls require the dialing of extra digits.”

3. Conclusion of Law No. 1 is modified to read:

“The Act’s dialing parity requirements, reflected in the FCC’s rules, relate to parity in the number of digits dialed, as well as nondiscriminatory access and an absence of unreasonable dialing delays.”

4. Conclusion of Law No. 2 is modified to read:

“FNPA DA calls satisfy the dialing parity requirement because they do not necessitate the dialing of extra digits when the local provider routes FNPA DA or intraLATA DA toll calls, or when presubscribed intraLATA or interLATA toll providers route toll calls.”

5. The Motion by AT&T to Place Portions of the AT&T Supplement to the Joint Application for Rehearing Under Seal is denied.

6. The Motion by PacificBell to Place Under Seal its Response to AT&T’s Supplement to the Joint Application for Rehearing of D.99-11-028 is denied.

7. The rehearing of D.99-11-028 is denied.

This order is effective today.

Dated April 20, 2000, at San Francisco, California.

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