

Decision 00-06-042 June 8, 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 CONFIRMING PRESIDENT'S RULING
GRANTING MOTION FOR A TEMPORARY RESTRAINING ORDER**

On June 2, 2000, President Loretta M. Lynch issued a ruling granting the emergency motion of Cox Telcom, L.L.C. (Cox) for a temporary restraining order (TRO) preventing Pacific Bell Telephone Company (Pacific) from any further delivery of White Pages directories in the South and East San Diego regions that contain the unlisted and non-published numbers of Cox's telephone customers. That ruling ordered Pacific to cease all deliveries of these directories until further notice by this Commission, or until a ruling is issued on Cox's motion for a preliminary injunction, whichever occurs first. The ruling also ordered Cox and Pacific to appear on June 12, 2000, at 10:00 a.m., to show cause why Cox's motion for a preliminary injunction should be granted or denied. In addition, the ruling gave Pacific and other interested parties until June 8, 2000, to file a response to Cox's motion for mediation.

Since the circumstances giving rise to Cox's motion required immediate action by this Commission, President Lynch, in consultation with assigned

Commissioner Richard A. Bilas, issued the June 2 ruling on Cox's motion for a TRO subject to the Commission's confirmation. Due to the emergency nature of Cox's motion and the need for an immediate ruling, the decision confirming President Lynch's actions was placed on the June 8, 2000 agenda in accordance with Public Utilities Code Section 310 and Government Code § 11125.3.

We have reviewed the criteria for a TRO and the analysis set forth in President Lynch's ruling of June 2, 2000. Due to the privacy provisions expressed in Public Utilities Code Section 2891.1 and in Article I, § 1 of the California Constitution, we agree with President Lynch's June 2, 2000 ruling and confirm the actions taken in that ruling.

This constitutes an unforeseen emergency situation for purposes of Section 311(g)(2) of the Public Utilities Code. (See Rules 77.7(f)(1) and 81(a), (f) and (h) of the Commission's Rules of Practice and Procedure.) 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. On June 2, 2000, President Lynch issued a ruling granting the emergency motion of Cox for a TRO preventing Pacific from any further delivery of the directories containing the unlisted and non-published numbers of Cox's telephone customers until further notice by the Commission or a ruling on Cox's motion for a preliminary injunction, whichever occurs first.
2. The ruling also ordered Cox and Pacific to appear on June 12, 2000 to show cause why Cox's motion for a preliminary injunction should be granted or denied.
3. The circumstances giving rise to Cox's motion required immediate action by the Commission.

Conclusions of Law

1. Due to the emergency nature of Cox's motion and the need to issue an immediate ruling, this agenda item was placed on the June 8, 2000 agenda on less than 10 days' notice pursuant to Government Code § 11125.3.
2. Privacy provisions are expressed in Public Utilities Code Section 2891.1 and in Article I, § 1 of the California Constitution.
3. President Lynch's ruling of June 2, 2000, and the actions taken therein should be confirmed by the Commission.

O R D E R

IT IS ORDERED that:

1. The June 2, 2000 "President's Ruling Granting Motion For A Temporary Restraining Order" is confirmed.
2. Pacific Bell Telephone Company (Pacific) shall cease distribution of all White Pages telephone directories for the South and East San Diego regions until further notice from the Commission or until a ruling concerning Cox Telcom, L.L.C.'s (Cox) motion for a preliminary injunction issues, whichever occurs first.
3. Cox and Pacific shall appear at the Commission on June 12, 2000, at 10:00 a.m., for an order to show cause and to hear argument on Cox's motion for a preliminary injunction.

This order is effective today.

Dated June 8, 2000, at San Francisco, California.

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