

Decision 99-01-034

January 20, 1999

## BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

<p>Rulemaking On The Commission's Own Motion Into Universal Service And To Comply With The Mandates Of Assembly Bill 3643.</p>	<p>Rulemaking 95-01-020 (Filed January 24, 1995)</p>
<p>Investigation On The Commission's Own Motion Into Universal Service And To Comply With The Mandates Of Assembly Bill 3643.</p>	<p>Investigation 95-01-021 (Filed January 24, 1995)</p>

**ORDER DENYING REHEARING OF DECISION 98-09-039**

On September 23, 1998 Pacific Bell filed an application for rehearing of Decision (D.) 98-09-039. D.98-09-039 makes certain determinations regarding implementation of the California High Cost Fund B (CHCF-B), which was created in D.96-10-066.

We have carefully considered all the arguments presented by Pacific, and are of the opinion that good cause for rehearing has not been demonstrated. Therefore, we are denying rehearing.

D.98-09-039 authorizes the large and mid-size local exchange carriers (large LECs) to commence monthly draws from their accumulated CHCF-B surcharge revenue. Built into the draw system is a three month delay from the time the LECs may begin CHCF-B claims, and permanent rate reductions to offset the subsidies. Thus, for Pacific's permanent rate reductions which began on September 1, 1998, Pacific was authorized to begin the monthly draw from its

accumulated CHCF-B surcharge revenues in September 1998 for its June 1998 CHCF-B claim.

Pacific contends that the three month lag between the claims for CHCF-B draws and the related permanent rate reductions is arbitrary and capricious. Accordingly, Pacific urges that the dates for the draws, and the “catch-up” surcredit period should be changed. In addition, Pacific argues that the requirement that it file CHCF-B rate reduction tariffs is confusing, and is unnecessary if its suggested modifications are made.

Pacific’s arguments do not amount to legal error. Essentially Pacific argues that the timing mechanism adopted in D.98-09-039 is cumbersome and complex. This claim, even if true, is insufficient to support a request for rehearing.

Although Pacific alleges that the system is “arbitrary and capricious”, it provides no argument which supports this extreme contention. In fact, we carefully considered the timing of the claims, and an effort was made to synchronize the reimbursement of Pacific’s claims with the rate reductions Pacific must implement to offset this reimbursement. Pacific even acknowledges that the “apparent gap” is “explainable if one considers the timing of the actual cash flows.” (Pacific Appl., at p. 3.) It does not appear that Pacific actually believes that the holdings are arbitrary and capricious. Rather, Pacific is arguing that the system is inconvenient, which does not constitute legal error.

Pacific’s related arguments about the surcredit catch-up period, and the requirement to file rate reduction tariffs similarly have no legal basis. Pacific’s claims of complexity and confusion, absent any indication of error, are not a basis for granting rehearing. (See, Comm. Rules of Practice and Procedure, Rule 86.1.)

Therefore, **IT IS ORDERED** that:

1. Rehearing of D.98-09-039 is denied.

This order is effective today.

Dated January 20, 1999, at San Francisco, California.

**RICHARD A. BILAS**

**President**

**HENRY M. DUQUE**

**JOSIAH L. NEEPER**

**Commissioners**