

Decision 99-07-019

July 8, 1999

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of Alternative Regulatory  
Frameworks for Local Exchange  
Carriers.I.87-11-033  
(Filed November 25, 1987)

(IntraLATA Presubscription Phase)

**ORDER DENYING REHEARING OF DECISION 99-04-071****I. SUMMARY**

This order denies the rehearing of Decision (D.) 99-04-071 filed by Pacific Bell (Pacific) because the allegations were found to be without merit, and the issue of the timing of dialing parity as it pertains to Pacific is moot. Notwithstanding Pacific's claims of technical infeasibility of meeting the Federal Communications Commission-mandated date of May 7, 1999 and a failure to obtain an extension from the FCC until June 15, 1999, Pacific has implemented dialing parity in California.

**II. DISCUSSION**

Pacific's application alleges several grounds for rehearing, none of which has merit. Most of the allegations deal not with D.99-04-071, but with a prior decision, D.97-04-083.<sup>1</sup> In D.97-04-083, the Commission directed Pacific to implement intraLATA dialing parity coincident with its entry into long distance service, which at that time was anticipated in 1997, and specifically ordered all LECs to "implement [dialing parity] in accordance with the requirements set forth in the Telecommunications Act of 1996...." (D.97-04-083, *slip op.* at pp. 46-47,

<sup>1</sup> AT&T believes Pacific's rehearing application is time-barred and urges denial of rehearing because "[a]lthough Pacific dubbed its pleading an 'Application for Rehearing of D.99-04-071,' in reality it seeks rehearing of a far earlier decision, D.97-04-083." (AT&T's Response at 2.)

Ordering Paragraph 1.) The Telecommunications Act of 1996 (hereinafter, the 1996 Act) provides that the Bell Operating Companies (BOCs) must implement dialing parity no earlier than the date the company enters the long distance market, or three years after the enactment of the Telecommunications Act, which was February 8, 1999.<sup>2</sup> The implementation date for dialing parity has since been changed by the FCC to May 7, 1999, without regard to long distance entry, if a company already has a state-approved plan for dialing parity. This Commission approved Pacific's plan in D.97-04-083.

Pacific's claim that D.97-04-083 was premised on long distance entry is erroneous. D.97-04-083 deemed the timing of dialing parity to be moot in view of the requirements of the 1996 Act.<sup>3</sup> Mere mention of long distance entry does not mean that D.97-04-083 was premised on it. We note that Pacific did not point to any finding, conclusion, or ordering paragraph to support its claim. Rather, the Commission's order urges compliance with the requirements of law. Indeed, Ordering Paragraph 1 of the decision specifies that "[l]ocal exchange carriers in California [including Pacific] shall implement direct dialing, or intraLocal Access and Transport Area (intraLATA) presubscription, in accordance with the requirements set forth in the Telecommunications Act of 1996, and the rules set forth in this intraLATA presubscription proceeding." Among other things, D.97-04-083 directed Pacific to do what the law requires, regardless of whether long distance entry is in place.

Because Pacific was perceived to be dilatory in implementing dialing parity, a petition was filed to modify D.97-04-083 to require Pacific to provide intraLATA dialing parity (or intraLATA presubscription) by February 8, 1999. In D.99-04-071, the Commission denied the petition to modify D.97-04-083 because the relief requested by the Petitioners was either unnecessary or beyond the

<sup>2</sup> Section 271(e)(2)(B) of the Telecommunications Act of 1996, 47 U.S.C.A §151.

<sup>3</sup> See D.97-04-083, Finding of Fact 7, at 42.

authority of this Commission to grant, pursuant to U.S. Supreme Court ruling on January 25, 1999 that the FCC has primary jurisdiction over local competition, including dialing parity requirements.<sup>4</sup> The timing of dialing parity has thus been determined by federal law to be the responsibility of the Federal Communications Commission (FCC). 72.1.4.2

On March 23, 1999, the FCC issued an order mandating that carriers with state-approved dialing parity plans must implement dialing parity by May 7, 1999 "notwithstanding any date subsequent to May 7, 1999, that may have been ordered by the state commission." (Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, 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; NSD File No. L-98-121, FCC 99-54 , *(March 23 Dialing Parity Order)*). Pacific sought a waiver of the FCC's implementation date, however, its petition for waiver was denied.<sup>5</sup> This Commission does not have the authority to modify a federal deadline. Therefore, Pacific's complaints to this Commission about the May 7<sup>th</sup> dialing parity implementation date are misplaced. Pacific's challenge to D.99-04-071 regarding an alleged lack of record support for the May 7<sup>th</sup> date, and the Commission's purported failure to extend the dialing parity date to May 22<sup>nd</sup> are lacking in merit and undeserving of further consideration. Moreover, this issue is moot since Pacific has already implemented dialing parity. 72.1.4.2

The claim is made by Pacific that the Commission modified D.97-04-083's settlement agreement in D.99-04-071 by amending the agreement in deferring the dialing parity portion until Pacific's affiliate enters the long distance market.

<sup>4</sup> *AT&T v. Iowa Utils. Bd.*(1999) 119S.Ct. 721.

<sup>5</sup> *In the Matters of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996 and Petition of Southwestern Bell Tel. Co., Pacific Bell, & Nevada Bell for Expedited Declaratory Ruling on Interstate IntraLATA Toll Dialing Parity or, in the Alternative, Various Other Relief* (CC Docket No. 96-98 & NSD File No. 98-121, April 22 Dialing Parity Order).

(Pacific's Rhg. App. at 6.) This contention is groundless. The Commission did not modify the settlement agreement, despite Pacific's urging the Commission to do so. D.99-04-071 adopts the settlement agreement without changing any of its terms or conditions. Indeed, the Commission is limited by the agreement's provisions which expressly hold the parties to the terms specifically set forth in the agreement. (D.97-04-083, Appendix A. III.P.) The settlement agreement is neither conditioned on Pacific's long distance entry, nor is there any provision or mention in the settlement agreement dealing with the timing of Pacific's entry into long distance. Pacific's unproven allegation that the agreement was modified will not be allowed to void the agreement, thus relieving Pacific of its obligations thereunder.<sup>6</sup>

Nor did the Commission modify D.97-04-083 without further hearings, as alleged by Pacific. No hearings were necessary because D.99-04-071 did not modify D.97-04-083. Pacific had argued for revisions in the customer and carrier notification provisions of D.97-04-083, but D.99-04-071 rejected these arguments, stating, "We see no reason to change these notice requirements while Pacific is seeking an FCC waiver of the implementation date." (D.99-04-071 at 9.) In the event that the FCC's implementation date did not allow sufficient time for Pacific to provide notice as prescribed, the Decision reasonably accommodated Pacific in authorizing Pacific to send billing inserts in the first available billing cycle before or after implementation, with direct mail notice 10 days prior to implementation. (*Id.* at 13, OP 3.)

Pacific's claim of insufficient findings and conclusions in D.99-04-071 is without foundation. The Decision contains sufficient findings and conclusions on all material issues. For Pacific to assert that D.99-04-071 fails to make material findings on such issues as "whether D.97-04-083 is a valid state order," or "whether the FCC has the authority to issue the rules in question that

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<sup>6</sup> As ORA noted, "If the Commission chose to modify or invalidate any provision of the settlement agreement, the settlement agreement would be deemed rescinded. [citation omitted]." (ORA's Response at 2.)

bind the Commission" are not legitimate grounds for the rehearing of this Decision. There is a strong presumption of validity of the Commission's decisions. (*Greyhound Lines, Inc. v. PUC* (1968) 68 C.2d 406.) The Commission would not willfully or knowingly issue invalid orders and our findings, on which the orders are based, are presumed to be lawful, and accordingly are accorded deferential treatment in the courts. With respect to FCC authority, Pacific is aware of how to challenge the FCC's authority if it is aggrieved. A rehearing application at this Commission is not the procedural vehicle through which to make such a challenge.

11.2.1

### III. CONCLUSION

We have reviewed each and every allegation asserted by Pacific and conclude that rehearing is not warranted. Therefore,

**IT IS ORDERED** that:

1. The rehearing of D.99-04-071 is denied.
2. This intraLocal Access and Transport Area Presubscription Phase of this proceeding is closed; Investigation 87-11-033 remains open to address other issues.

This order is effective today.

Dated July 8, 1999, at San Francisco, California.

RICHARD A. BILAS  
President  
HENRY M. DUQUE  
JOSIAH L. NEEPER  
JOEL Z. HYATT  
CARL W. WOOD  
Commissioners