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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.	R.95-04-043
Order Instituting Investigation On The Commission's Own Motion Into Competition for Local Exchange Service.	I.95-04-044

ORDER DENYING IN PART AND GRANTING IN PART REHEARING AND MODIFYING DECISION 98-11-066

I. SUMMARY

In Decision (D.98-11-066), the Commission ordered an interim, refundable customer surcharge for the recovery of 1996 local competition implementation costs by Pacific Bell and GTE California Incorporated (GTEC). A final order on the surcharge was deferred until a reasonableness review could be conducted.

By this present decision, the Commission responds to several applications for rehearing of the interim surcharge order, and addresses each claim of legal error. In addition, because we find that applicants have demonstrated that certain fundamental aspects of the surcharge mechanism require rehearing, and because there is no longer any reason to defer consideration of a final surcharge order, the Commission is revising the orders of D.98-11-066 so that we may

proceed directly with a reasonableness review without imposing an interim surcharge in customer billings.

II. INTRODUCTION

In an earlier decision of this Local Competition docket, D.96-03-020, the Commission ordered, among other things, that Pacific Bell and GTEC open memorandum accounts to record costs incurred in developing the necessary programs and services constituting an infrastructure for local exchange competition. (D.96-03-020, 65 CPUC 2d 156, 206 (1996).) That order was followed by the decision presently under review, D.98-11-066, in which Pacific Bell and GTEC were granted interim and refundable partial recovery of their costs. The surcharge was based on 75% of the 1996 recorded implementation costs divided by the number of end-user (or, customer) lines. A separate surcharge was calculated for Pacific Bell's and GTEC's service territories. The interim surcharge was expressly made subject to refund upon a subsequent review for reasonableness and effectiveness. All customers, regardless of their telecommunications carriers, were to have been billed the interim surcharge for their territory as of January 1, 1999. The competitive local carriers (CLCs) in the two service territories, both facilities-based and reseller carriers, were ordered to transmit the surcharges they collected from their customers directly to Pacific Bell and GTEC on a monthly basis.

DO NOT ANNOTATE

Several parties filed applications for rehearing of D.98-11-066. The Utility Reform Network (TURN) and the Office of Ratepayer Advocates (ORA) filed separate applications, though they are virtually identical in content. They generally claim our decision made insufficient findings to support the imposition of the customer surcharge without a finding a reasonableness. They also contend that the Commission issued D.98-11-066 in violation of Section 311(d) of the California Public Utilities Code because it was not preceded by a proposed

decision of the assigned Administrative Law Judge (ALJ) or assigned Commissioner, and the parties consequently did not have the opportunity to comment on a proposed decision.

In addition, a number of CLCs jointly filed for rehearing as the California Telecommunications Coalition (Coalition).[1] The Coalition claims that the Commission legally erred in failing to make sufficient findings for ordering the CLCs to implement the interim surcharge on a per line basis. They also assert the Commission failed to provide protection for proprietary customer information which is needed because the surcharge is calculated on the number of customer lines, and the collected surcharges must be remitted each month, with verifying accounting, by each CLC directly to Pacific Bell or GTEC.

GST Telecom California, Inc. and GST Pacific Lightwave, Inc. (GST) similarly request rehearing with respect to the exposure of confidential information that would result from the surcharge and remittance orders. GST asks as well, without claiming legal error, that the decision be modified to permit an annual rather than a monthly transfer of the collected surcharges to Pacific Bell and GTEC.

Pacific Bell and GTEC each filed responses in opposition to the rehearing applications. GTEC indicated, however, that it would not oppose the Commission's altering the decision to permit the interim surcharge to be calculated according to customer usage (or, customer billing), rather than the number of end-user lines. (GTEC Application, at 2-3.)

Shortly after the issuance of D.98-11-066, one of the Coalition members, CALTEL, requested and received from the Executive Director of the

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1 The Coalition members who joined in the application are: California Association of Competitive Telecommunications Companies, also known as CALTEL, the ICG Telecom Group, Inc., LCI International, MediaOne Telecommunications of California, Inc., MCI Worldcom, Inc., NEXTLINK California, MGC Communications, Inc., NorthPoint Communications, Inc., Sprint Communications Company, L.P., Teligent, Inc., and Time Warner Telecom of California, L.P.

Commission an extension of time to comply with the interim surcharge order of D.98-11-066. CALTEL explained that the CLCs were not in a position to change their billing systems quickly enough to impose the surcharge as of January 1, 1999. On December 23, 1998, ORA filed a motion for a stay of D.98-11-066 until there was a decision on its application for rehearing. Pursuant to Rule 48 of the Commission's Rules of Practice and Procedure, the Executive Director granted CALTEL's requested extension of time by letter dated December 24, 1998. The extension was applied to all parties and made effective until the Commission acted on the ORA motion. [2] Because no action has been taken on the motion to date, the interim surcharge has been held in abeyance.

After careful review of the issues presented by the parties, the Commission concludes that TURN and ORA have not substantiated legal error, with the exception of the calculation of the GTEC interim surcharge. They have failed to demonstrate that the Commission exceeded or arbitrarily exercised its authority in ordering an interim and refundable recovery of 1996 implementation costs for Pacific Bell and GTEC. The issues raised by TURN and ORA are those which are appropriate for consideration in the reasonableness review that is to follow.

However, they correctly indicated that GTEC's memorandum account for 1996 does not reflect the Commission's definition of implementation costs. (See, D.98-11-066, slip op. 13-14.) The rehearing applications of TURN and ORA, therefore, are denied except for the matter of reconsidering GTEC's 1996 memorandum account.

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[2] The Executive Director of the Commission also granted to Mr. Earl Nicholas Selby, by letter dated January 20, 1999, an extension of time for compliance with Ordering Paragraph 6 of D.98-11-066 which required that parties file comments challenging the implementation costs filed by Pacific Bell and GTEC within 30 days of the Commission's adoption of certain interconnection costs in the Open Access and Network Architecture Development proceeding (R.93-04-003/I.93-04-002).

We further find that in the Coalition and GST have identified legal error in our decision regarding the use of the number of end-user lines as a principal factor for calculating and billing the interim surcharge. The Coalition and GST have also alerted us to the fact that we overlooked the protections required for confidential information associated with each CLC's customer base. Such information would likely be compromised if we required that the surcharges be billed on a per line basis and then remitted with the required accounting by each CLC directly to Pacific Bell and GTEC.

We conclude, therefore, that with respect to the interim surcharge order in D.98-11-066, the applications for rehearing have shown that rehearing should be granted for the purpose of:

1. recalculating the 1996 implementation cost surcharge for all customers served by GTEC and CLCs in GTEC's service territory;
2. reconsidering the appropriate mechanism for applying the interim customer surcharge; and
3. adopting a means for transmitting the interim surcharges collected by the CLCs to Pacific Bell and GTEC without compromising proprietary and confidential information.

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However, given the status of the case, we have decided not to order a limited rehearing on these issues alone for the purpose of imposing an interim surcharge.[3] The time has arrived for efficiently going forward with a comprehensive reasonableness review in order to reach a final rather than interim decision on Pacific Bell's and GTEC's implementation cost recovery and the appropriate customer surcharge. The three rehearing issues will, of course, be incorporated in that review.

[3] See Section 1736 of the California Public Utilities Code regarding the Commission's authority to modify or abrogate the original order.

Further, because ORA's motion for a stay of the interim surcharge order pending consideration of the applications for rehearing is now moot, the Executive Director's extensions of time tied to ORA's motion are terminated. [4]

III. PROCEDURAL PLAN FOR FINAL RATHER THAN INTERIM SURCHARGE

When we issued D.98-11-066, we ordered that the interim surcharge was to be included in customer billings as of January 1, 1999. As we have explained, that has not occurred because an extension of time was granted upon the showing of good cause. We also ordered in D.98-11-066 the commencement of the reasonableness review, required for a final surcharge order, to coincide with the issuance of a decision in the Open Access and Network Architecture Development (OANAD) docket, R.93-04-033/I.93-04-002. (D.98-11-066, slip op. 36, Ordering Paragraph 6. See also Ordering Paragraphs 7, 8 and 9.) [5] We wanted to have available before starting the reasonableness review sufficient information to differentiate the costs submitted by Pacific Bell and GTEC in the OANAD docket for recovery from competitive carriers through pricing terms in interconnection agreements, and the implementation costs submitted in the present Local Competition docket for recovery from customers. The potential for a double recovery of costs is a crucial issue.

The relevant OANAD decision has since been issued (D.98-12-079), and there is no longer a reason to delay the start of the reasonableness review. [6]

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[4] We note that the interim surcharge order in D.98-11-066 only reflected 1996 memorandum account balances. Pacific Bell has since filed a statement for the 1997 implementation costs. As we explain in this decision, Pacific Bell and GTEC will have the opportunity to make a complete filing of all their implementation costs for consideration in the reasonableness review.

[5] Although our ordering paragraphs did not refer expressly to the reasonableness review, they were intended to describe the schedule by which that review would be conducted.

[6] The OANAD proceeding is considering, among other things, Operations Support System costs relating to the electronic linkup of a CLC to the Pacific Bell and GTEC networks. These costs, however, will be translated into specific pricing terms to be paid by the CLC as part of its individual interconnection agreement with Pacific Bell and/or GTEC.

Therefore, after considering the need for a rehearing on critical matters regarding the surcharge mechanism, and the intervening events which have affected the procedural status of the case, we find that it would be wasteful of the resources of the parties and of the Commission were we to pursue on one track a limited rehearing pertaining only to the interim surcharge, and pursue on a separate track, virtually contemporaneously, a comprehensive reasonableness review for adopting a final surcharge order. Accordingly, in this decision the Commission responds to the applicants' allegations of legal error in D.98-11-066, and determines that the reasonableness review be started as soon as possible without reinstating an interim surcharge.

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IV. REHEARING APPLICATIONS OF TURN AND ORA

Implementation Costs

One of TURN's and ORA's contentions is that the Commission violated Section 1705 of the California Public Utilities Code by ordering a customer surcharge without expressly finding that the implementation costs filed by Pacific Bell and GTEC exclude costs common to all carriers and exclude costs of internal processes. (TURN Application, at 3-4; ORA Application at 4.) This allegation goes to the question whether the costs were incurred in developing the infrastructure necessary to implement local competition. TURN and ORA, however, do not direct their argument to the interim and refundable character of the surcharge ordered in D.98-11-066. They raise a pertinent question, therefore, but do so prematurely since it relates to the reasonableness review anticipated in our order. (D.98-11-066, slip. op. 16, 23, 36, Ordering Paragraph 6.) A final determination of the specific cost items that should be excluded and included in the surcharge shall result from that reasonableness review.

We have in the meantime provided the basic parameters to identify the kind of costs that can qualify as implementation costs. (D.98-11-066, slip op. 13-

14; D.96-03-020, 65 CPUC 2d, 206 (1996).) We stated that the implementation costs are those incurred in "the development of processes and functions which are not linked to a particular carrier or transaction, but which relate to the underlying competitive infrastucture developed for the use of carriers generally." (D.98-11-066, slip op. 13.) We further indicated that the costs are those "incurred in response to a regulatory order implementing the infrastructure to enable CLCs to compete with the ILEC [i.e., incumbent local exchange carrier]." (D.98-11-066, slip. op. 14.) Where TURN and ORA dispute Pacific Bell's accounting description, therefore, they raise a factual issue to be resolved in the reasonableness review where we will afford the parties opportunity to audit and contest the individual cost items. However, the fact that the dispute exists with respect to the final surcharge order does not prove legal error in our ordering provisional cost relief through an interim, refundable surcharge.[7]

On the other hand, TURN and ORA are correct in pointing out that GTEC's 1996 memorandum account for implementation costs should not have been relied on even for a provisional order. In reviewing our decision, we find that we were less certain of the kinds of costs included in GTEC's memorandum account than of the costs recorded in Pacific Bell's account. At the time of our decision, GTEC was still reconciling its accounting of implementation costs with the costs it submitted in the separate OANAD proceeding for recovery through interconnection agreement prices. (D.98-11-066, slip. op. 7.) GTEC, in fact, had conceded that it may have double counted the costs. (Slip op. 25.) GTEC also included capitalized costs, something Pacific Bell did not do, and we asked GTEC to justify their inclusion in the memorandum account of one-time, non-recurring

[7] The use of an interim surcharge, or interim rate, subject to refund pending a reasonableness review is a ratemaking procedure the Commission has employed to reasonably balance utility and ratepayer interests when confronted with unavoidable time delays in hearing a matter and compiling a sufficient record for final decision. See, e.g., D.94-11-024, 57 CPUC 2d 309, 313 (1994); Toward Utility Rate Normalization v. Public Utilities Commission, 44 Cal.3d 870, 879 (1988).

costs. (Slip op.15.) Additionally, while Pacific Bell indicated its 1996 costs were for completed projects, as we require, the Commission did not receive the same assurance from GTEC. GTEC's accounting, therefore, will have to be reconsidered.

Furthermore, the Commission decided in the OANAD decision, D.98-12-079, that both Pacific Bell and GTEC failed to show that certain Operations Support System (OSS) costs they submitted should be assigned to the CLCs in the pricing terms of interconnection agreements. We indicated that Pacific Bell and GTEC could reevaluate these costs to see if they qualified instead as infrastructure implementation costs, and if they did, submit them for consideration this Local Competition docket. We expressly warned, however, that this opportunity to reevaluate the costs should not be misconstrued as a prejudgment by the Commission that the costs would be recoverable from customers. (D.98-12-079, slip op. 47-48.)

As a result, in addition to GTEC resubmitting the required revision of its 1996 memorandum account statement, Pacific Bell as well may revise and submit its 1996 statement for inclusion in the reasonableness review. Both Pacific Bell and GTEC must clearly and carefully identify the revisions made to the 1996 account statements and provide an accompanying justification to demonstrate the costs submitted may be fairly and reasonably included in a customer surcharge.

In addition, because we are here ordering the start of a comprehensive reasonableness review, Pacific Bell and GTEC shall submit memorandum account statements for all the costs, not just the costs incurred in 1996, that are to be considered for recovery as implementation costs.

Consumer Cost-Benefit Analysis

TURN and ORA also contend that our decision violates Section 1705 because it did not rely on a cost-benefit analysis in assigning the costs to all

customers. (TURN's Application, at 5. ORA's Application, at 6.) They cite our earlier 1996 decision where we stated that Pacific Bell and GTEC have the burden of proof in establishing both the reasonableness of the implementation costs and consumer benefits:

> "The LECs are placed on notice that they will be responsible for justifying the reasonableness and consumer benefits of any amounts which they seek to recover through an end-user surcharge."
> (D.96-03-020, slip op. 91; 65 CPUC 2d, at 207.)

We reiterated this requirement in D.98-11-066:

> "Before a final determination of the proper level of cost recovery, we must find that the costs reflect finished work products that have been prudently and effectively implemented." (D.98-11-066, slip. op. 20.)

However, our statements refer to the final order, not an interim surcharge order. Whether and to what extent Pacific Bell and GTEC carry the burden of demonstrating consumer benefits and prudence in incurring the costs shall be determined in the upcoming reasonableness proceeding. TURN and ORA have not shown that the Commission is legally compelled to require that Pacific Bell and GTEC carry their burden of proof prior to the reasonableness review. On the contrary, TURN states that a cost-benefit analysis is "part and parcel of a reasonableness review." (TURN Application, at 6.) We are not persuaded, therefore, that because consumer benefits have not yet been measured, there was legal error in ordering an interim, refundable surcharge. TURN's and ORA's arguments do not reveal any fundamental unfairness or imbalance in our weighing of the interests of the utilities and consumers, and deciding on a interim surcharge because of the circumstances that existed at the time D.98-11-066 was issued.

In sum, the concerns expressed by TURN and ORA are to be addressed in the reasonableness review. The Commission considers a fair customer allocation as well as a verification of the accuracy and eligibility of the costs for recovery to be part of that review. [8]

Telecommunications Act of 1996

TURN and ORA also do not substantiate their assertion that the Commission committed legal error in D.98-11-066 by failing to make a finding that the Telecommunications Act of 1996 (1996 Telecom Act) supports the recovery of implementation costs by incumbent local exchange carriers (ILECs), such as Pacific Bell and GTEC. (TURN's Application, at 7, ORA's Application, at 7.) TURN and ORA present this claim, however, merely as a conclusory allegation. They do not, for example, argue that in promulgating the 1996 Telecom Act, the federal government completely occupied the field of local telecommunications regulation. This argument would have failed in any event, since the Telecom Act itself specifically preserves the mandate of state commissions to implement state law in regulating local telephone service. (47 U.S.C. §§ 252(e)(3), 252(f)(2); 252(b).) TURN and ORA also do not argue that any specific federal law supersedes or conflicts with the Commission's authority to provide for the recovery of costs relating to the intrastate services of the ILECs and CLCs which have been certified by the Commission and are within the Commission's regulatory jurisdiction. (Cal. Pub Util. Code §§216(b), 234(a).) Instead, without explanation, TURN and ORA merely cite 47 U.S.C.§ 251

[8] See, e.g., D. 97-08-056, at 15, 179 P.U.R.4th 425, 436 (1997) ("Section 454 requires the Commission to issue findings with regard to the reasonableness of utility rates, a process which assumes cost allocations between customer classes and utility functions.") Similarly, D.97-05-088, n. 8, 178 P.U.R. 4th 1, n.8 (1997) ("Transition costs will be allocated in a manner which 'ensures a fair allocation among all customer classes and prevents inter- and intraclass cost-shifting.'") Also, D.95-12-046, 63 CPUC 2d 240, 268 (1995) (Conclusion of Law 4 - "All costs resulting from PG&E's Transwestern subscription should be disallowed in 1993 and subsequent years unless PG&E can establish in a reasonableness proceeding that the customers it would allocate these costs to received net benefits directly attributable to PG&E's subscription.")

(c)(2)&(3) of the Telecom Act. (TURN Application, at 7; ORA Application, at 7.) Their reliance on these statutory provisions is clearly misplaced.

Section 251(c)(2)(D) relates to the duty of an ILEC to provide the equipment and facilities needed to permit network interconnection for a requesting CLC, and to do so on just and reasonable price terms and conditions. In other words, the statute pertains to the interconnection prices to be paid by a CLC as part of an agreement with an ILEC. Similarly, Section 251(c)(3) mandates that an ILEC provide a requesting CLC with access to unbundled network elements. But again, the access terms and prices are those to be set forth in an individual agreement between the carriers.

These statutes have nothing to do with the kind of infrastructure implementation costs that we are presently addressing. Rather, they are related to our OANAD rulemaking docket where interconnection and unbundled network element costs are being considered to determine the appropriate prices to be paid by CLCs. In contrast to the OANAD subject costs, implementation costs "include those costs which are not recovered through prices charged to CLCs for specific services ...." (D.98-11-066, slip op. 13.) The implementation costs we are considering here are not linked to a particular carrier, as is a cost reflected in a pricing term of an interconnection agreement, but result instead from the development of services that make it possible to have various carriers provide competing services to different customers within a territory previously served by either Pacific Bell or GTEC alone. In short, the implementation costs are not going to be reflected in the pricing terms of an individual interconnection agreement, which is the subject matter of concern in 47 U.S.C.§ 251 (c)(2)&(3) of the Telecom Act.

We find, therefore, that TURN's and ORA's claims of legal error in D.98-11-066 under the 1996 Telecom Act to be without merit. They have not shown that the Commission must look for express authority in the 1996 Telecom

Act to order a customer surcharge for an ILEC's recovery of reasonably incurred local competition implementation costs.

Section 311(d) Proposed Decision Requirement

TURN and ORA correctly point out that the terms of Section 311(d) of the California Public Utilities Code in effect in 1998 require that a proposed decision be filed and served before the issuance of a decision "arising from the taking of evidence at a hearing." (TURN Application, at 8; ORA Application, at 10.) On this issue, however, TURN and ORA misapprehend the procedure leading up to D.98-11-066.

In the 1996 phase of the above-captioned docket, the Commission conducted an evidentiary hearing that was broad in scope and included limited testimony regarding the recovery of implementation costs. However, because Pacific Bell and GTEC could only present estimates of anticipated costs, the Commission did not order any surcharge. We instead authorized Pacific Bell and GTEC to open memorandum accounts to record the implementation costs, and deferred the fundamental question as to "what amounts, if any, should be subject to recovery through an end-user surcharge." (D.96-03-020, 65 CPUC 2d, at 207, Ordering Paragraphs 62 to 65.) Subsequent to that 1996 decision, we received the accounting data for 1996 implementation costs from Pacific Bell and GTEC, and in 1997 and 1998, we solicited comments from the parties on the recovery of the implementation costs. (D.98-11-066, slip op. 2-4.) In deciding to order an interim surcharge because a reasonableness review could not be initiated at that time, we expressly noted that this determination was "based upon the comments which have been filed." (D.98-11-066, slip op. 3.)

The issuance of D.98-11-066 without a prior proposed decision, therefore, did not contravene Section 311(d) as it existed at the time. The statutory requirement pertained only to decisions based on evidentiary hearings, not to

decisions resulting from consideration of submitted comments, as in the instant case.

Interim Surcharge Calculation

TURN and ORA point out in their application that there was a clerical error in Ordering Paragraph 1 of D.98-11-066 which refers to the interim surcharge amortizing "one-third" of the 1996 implementation costs. As stated in Finding of Fact 29 of that decision, the interim surcharge was in fact calculated on the basis of "¾ of the 1996 costs" recorded in memorandum accounts by Pacific Bell and GTEC. We also referred in the discussion portion of our decision to amortizing "75% of the 1996 year-end balance...." (D.98-11-066, slip op. 22.) We acknowledge, therefore, a clerical error in Ordering Paragraph 1 which does not constitute legal error.

V. REHEARING APPLICATION OF THE COALITION AND GST

Allocation of the Surcharge

The Coalition demonstrates a material omission in D.98-11-066 which does not define "end user line," even though this is the critical factor we relied on in computing the surcharge and would have been the critical factor in billing the surcharge to each customer. According to the Coalition, without a precise definition, each carrier could bill the surcharge in different ways because of the technology of telecommunications. (Coalition Application, at 5.) The Coalition indicates that confusion could develop as to the number of end-user lines in connection with ISDN service and 24 voice-grade-equivalent channels for each Primary Rate Interface connection. They also suggest the possibility of misinterpreting "end-user line" in connection with PBX and CENTREX trunks and T-1 circuits. They propose that either the Commission grant rehearing to determine the appropriate definition for "end user line" or, preferably, reconsider

whether the surcharge instead should be based on a percentage of a customer's total usage (or, amount billed), which has been the usual basis for applying Commission-mandated surcharges and refunds. (Coalition Application, at 6.)

When we issued our decision, we had assumed that the end-user line data the Commission had received earlier from the CLCs for computing an interim number portability (INP) surcharge could also apply to the implementation cost surcharge. With respect to the INP matter, we had asked the CLCs and ILECs to provide from recorded data, as of the end of year 1997, their total number of end-user telephone lines. (D.98-04-066, slip. op. 9) We were not informed that the CLCs were uncertain as to how to tally the lines, however, until the filing of the Coalition's present application for rehearing.

If, as the Coalition indicates, the CLCs are now aware that some carriers may have computed the number of lines in different ways, we should ascertain the facts and assure a consistent count. We should also determine whether a per line surcharge is as appropriate for the recovery of the implementation costs now before us as for the recovery of the INP costs. For, although there is an evident relationship between a per line surcharge and the costs for providing for the portability of each line, the same relationship may not be as evident or as appropriate for a surcharge to recover the implementation costs which reflect a broad infrastructure of services. Moreover, in its response to the rehearing application, GTEC states that it would not oppose having the surcharge based on a usage if it would hasten the collection of the surcharge and if the distinction between Pacific Bell's and GTEC's service territories were maintained. (GTEC Response, at 2.)

We will, therefore, revisit the question whether the surcharge should be based on customer usage or the number of lines as part of the reasonableness review. If we continue to find the end-user line basis reasonable, we will provide a workable definition to assure an equitable application of the surcharge.

Maintaining The Confidentiality of Proprietary Information

Similarly, we agree with the Coalition and GST that the surcharge mechanism ordered in D.98-11-066 did not make adequate provision for maintaining the confidentiality of proprietary or commercially sensitive information. If each carrier must remit the surcharges collected each month directly to Pacific Bell and GTEC, with the necessary accounting to verify the total due, then financial and customer base information of individual CLCs will be compromised. The Commission, however, has consistently protected such information. When we directed the carriers to submit data to the Commission on their end-user telephone lines in connection with the INP costs, we stated that the data was to be treated confidentially under General Order 66-C and Section 583 of the California Public Utilities Code. (D.98-04-066, slip. op. 9.) We have also stated that similar commercially sensitive information will be granted protection under General Order 66-C in our decisions granting certifications of public convenience and necessity to telecommunications carriers. (See, e.g., D.98-12-083, slip. op. 5; D.98-11-043, slip op. 2-3; D.98-11-047, slip. op. 3; D.98-06-067, slip op. Ordering Paragraph 20.) Accordingly, we will reconsider in the reasonableness review the means to be employed in accounting for and remitting the collected surcharges to Pacific Bell and GTEC so that confidential information is protected. The parties should be prepared to offer alternative procedures other than having the Fiscal Office or the Telecommunications Division of the Commission manage the transmission of the funds.

As to GST's request to modify our decision to allow the remittance of the surcharges to Pacific Bell and GTEC on an annual rather than monthly basis, no legal error was alleged and good cause has not been shown to warrant the modification.

VI. CONCLUSION

As provided in the following orders, the assigned ALJ will notify parties of a prehearing conference to establish procedures and a schedule for the reasonableness review of Pacific Bell's and GTEC's implementation costs. Those issues for which legal error was demonstrated by the rehearing applications will be included in that review. Additionally, because the reasonableness review is to be comprehensive, we expect to address all the recorded costs in the memorandum account, not just those recorded by Pacific Bell and GTEC in 1996.

The motion of ORA for a stay of D.98-11-066 is denied as moot. The extensions of time granted by the Executive Director for compliance with D.98-11-066 are thus terminated. The interim surcharge, however, will not be reinstated.

IT IS THEREFORE ORDERED that:

1. Ordering Paragraphs 1-14 of D.98-11-066 are superseded by the following orders, thereby abrogating the prior interim surcharge order and revising the procedural plan for the reasonableness review.

2. The assigned Administrative Law Judge shall notify parties to the proceeding of the time and place when a prehearing conference will be held to establish a reasonableness review of the Pacific Bell and GTEC local competition implementation costs.

3. In addition to other issues that will be addressed in the reasonableness review, reconsideration shall be given to the following matters for which legal error in D.98-11-066 was found:

a) the factors to be used in calculating and billing a customer surcharge;

b) the method for remitting the interim surcharges collected by the CLCs to Pacific Bell and GTEC without compromising proprietary and confidential information.

4. Within 30 days of the mailing date of this decision, Pacific Bell and GTEC shall submit to the assigned ALJ, and serve on all parties, revised memorandum account statements for the implementation costs they seek to recover in the reasonableness review established by this decision. The statements shall be complete in setting forth the accounting for all costs incurred and shall be consistent with the parameters for implementation costs we have discussed in this decision and in D.98-11-066. Any changes to the account statements previously submitted by Pacific Bell and GTEC shall be specifically identified and explained.

5. Except as provided herein, rehearing of D.98-11-066 is denied.

6. ORA's motion for a stay of D.98-11-066 is now moot, and the extensions of time granted by the Executive Director for compliance with D.98-11-066 are hereby terminated.

This order is effective today.

Dated July 22, 1999, at San Francisco, California.

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