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MAIL DATE  
8/10/99

Decision 99-08-028

August 5, 1999

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of Rehearing of  
Commission Resolution T-16288  
Approving Pacific Bell Advice Letter  
19795 For Authority to Provide a  
Nationwide Listing Service as a  
Category III Service.

A.99-05-041

**ORDER MODIFYING AND DENYING REHEARING OF**  
**RESOLUTION T-16288**

**I. SUMMARY**

In Resolution T-16288, the Commission approved an advice letter filing by Pacific Bell for authority to provide a nationwide directory assistance service. MCI Worldcom Inc. (MCI) had protested the filing on various grounds, including that Pacific Bell was not providing competitors access to its entire database of California directory assistance listings. The Commission declined to address the listings access issue within the context of Resolution T-16288. This Application for Rehearing by MCI followed.

**II. BACKGROUND**

On October 30, 1998, Pacific Bell filed Advice Letter No. 19795 seeking to establish a nationwide listing service. Pacific Bell sought to establish the nationwide listing service via the 411 dialing code, the same code for local directory assistance. The Commission had previously approved similar advice letter filings by other incumbent local exchange carriers (ILECs), including

Roseville Telephone Company and GTE California Incorporated. There were no protests or opposition to either the Roseville or GTE advice letter filings. By contrast, here, protests were filed by MCI Worldcom, Inc. (MCI) as well as The Utility Reform Network and the County of Los Angeles.

Among other things, MCI objected to Pacific Bell's policy of not providing competitors full access to its California directory assistance database. MCI contended that the denial of access creates an inequity in the provision of directory assistance services in violation of Section 251(b)(3) of the 1996 Telecommunications Act.<sup>1</sup> Pacific Bell responded that its policy complies with both Section 251(b)(3) and 251(c)(3).<sup>2</sup> Pacific Bell stated that access is provided to 100% of its own database and to listing information authorized to be disclosed by competing local exchange carriers (CLCs). Pacific Bell cited D.97-01-042 which prohibits disclosure of listing information from CLCs absent their authorization.

On April 22, 1999, the Commission issued Resolution T-16288 which approved Advice Letter No. 19795. The Commission concluded that the Advice Letter met the requirements set forth in Commission orders and General Order 96-A. The Commission declined to address the issue of access to Pacific Bell's directory assistance database. The Commission explained that the database access issue would be considered in the Local Competition docket. (Resolution T-16288, p. 6.) An Application for Rehearing of Resolution T-16288 was then filed by MCI. In its Application, MCI alleges that the Commission erred in not conditioning the Advice Letter approval on Pacific Bell providing competitors full access to its directory assistance database. A Response in Opposition to the Application was filed by Pacific Bell.

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<sup>1</sup> Unless otherwise indicated, all statutory references are to the Telecommunications Act of 1996, codified at 47 U.S.C. § 151, et seq. Section 251(b)(3) sets forth the duty of a local exchange carrier to provide nondiscriminatory access to directory listings.

<sup>2</sup> Section 251(c)(3) sets forth the duty of a telecommunications carrier to provide nondiscriminatory access to network elements.

### III. DISCUSSION

We have reviewed the arguments raised by MCI in its Application for Rehearing of Resolution T-16288 as well as the arguments in the Response filed by Pacific Bell. As discussed below, we conclude that sufficient grounds for rehearing have not been shown. MCI fails to demonstrate legal error, as required by Pub. Util. Code §1732. The Commission simply modifies Resolution T-16288 to clarify the manner in which the listings access will be resolved in the Local Competition docket (R.95-04-043; I.95-04-044.).

In brief, the Application alleges that the Commission erred in not requiring Pacific Bell to make its listing information available so MCI can offer a competing nationwide listing service. MCI contends that the Commission is erroneously ignoring its administrative obligation to resolve issues, such as the database access issue. It is MCI's understanding that Pacific Bell is providing its sister companies in other states with access to the complete California database. MCI also claims that Pacific Bell and GTE share database information which MCI is unable to obtain on the same terms and conditions. MCI argues that Pacific Bell's policy of denying access frustrates the ability of competitors to provide complete listing information, thereby adversely impacting consumers.

MCI contends that an ILEC's refusal to provide comparable access to its listing database is unreasonably discriminatory. MCI, in support, cites the Federal Communications Commission (FCC)'s decision In the Matters of Bell Operating Companies Petitions for Forbearance from the Application of Section 272 of the Communications Act of 1934, As Amended, to Certain Activities, DA 98-220, Feb. 6, 1998. This decision involved the Bell Operating Companies' petitions for forbearance from the application of Section 272<sup>3</sup> to reverse directory services. MCI objected to the forbearance based on BellSouth's refusal to provide

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<sup>3</sup> Section 272 sets forth the separate affiliate requirements for the Bell Operating Companies (BOCs). Section 10 allows the FCC to forbear from enforcing provisions of the Telecommunications Act, provided certain criteria are met. The criteria include that enforcement is not necessary to prevent unreasonable discrimination.

directory assistance listings. MCI argued that BellSouth's policy was unlawfully discriminatory under Section 272(c)(e). The FCC agreed with MCI, stating:

We agree with MCI that BellSouth obtained directory listings from other LECs for use in its directory assistance services solely because of its dominant position in the provision of local exchange services throughout its region. That position enables BellSouth to include listings for customers of other incumbent LECs and competitive LECs as well as its own customers within the databases it uses to provide reverse directory services. . . . These advantages will persist if BellSouth continues to deny unaffiliated entities access to all of the listing information that it uses to provide reverse directory services. . . . *We therefore conclude that, until it provides such access. . . BellSouth's subscriber listing information practices will be unjustly or unreasonably discriminatory. . . .*" (Emphasis added.)

Similarly, MCI contends that the Texas Commission has ordered SBC to provide MCI access "to any and all directory assistance databases." Arbitration Award, Docket No. 19075, Aug. 13, 1998, at p. 6. MCI argues that these same rationales should apply here. MCI concludes that database access will ameliorate to some extent the undue advantages afforded to Pacific Bell.

Pacific Bell objects that it was not served with the Application in violation of Rule 85 of the Commission's Rules of Practice and Procedure. Additionally, Pacific Bell disputes that competitors are being denied access to its database. Pacific Bell provides competitors access to 100% of its own database and to listing information authorized to be disclosed by CLCs. Pacific Bell's directory assistance listings are available from its Directory Assistance Listing Information Service (DALIS). Pacific Bell also makes directory assistance listings available to CLCs through interconnection agreements. In particular, Pacific Bell has been providing MCI with end-user customer listing information since April 1997. Pacific Bell adds that both federal regulation and California statute prohibit the release of nonpublished directory assistance listings. Pacific Bell cites D.97-01-042 which prohibits the release of "CLC directory-listing information to third

party publishers or directory assistance (DA) providers absent the express consent of the CLC and mutually agreeable compensation to the CLC.” Pacific Bell cites 47 CFR 51.217 and Pub. Util. Code § 2891.1(a) which prohibit the release of non-published listings to third parties.

Pacific Bell claims that there is nothing which prohibits MCI from requesting directory assistance listings from any LEC or CLC. Pacific Bell points out that a number of companies sell directory assistance listings. Lastly, Pacific Bell denies that it is swapping directory assistance listings with GTE. Pacific Bell states that it and GTE are purchasing and exchanging directory assistance listings pursuant to an agreement which prohibits the release of the information. Pacific Bell adds that Southwestern Bell Telephone Company obtains its directory assistance listings from Nortel, not Pacific Bell. Pacific Bell has a contract with Nortel to obtain directory assistance listings. Pacific Bell does not address whether or not MCI can obtain directory assistance listings from either Nortel or GTE on the same terms and conditions.

MCI has not demonstrated legal error. As an initial matter, it bears noting that the Commission in no way precluded MCI from initiating a complaint proceeding for a more expeditious resolution of the listings access issue. There was also nothing preventing MCI from filing a petition to modify D.97-01-042 which prohibits the release of “CLC directory-listing information to third party publishers or directory assistance (DA) providers absent the express consent of the CLC and mutually agreeable compensation to the CLC.” *See* Rule 47(d) of the Commission’s Rules of Practice and Procedure.

More importantly, the Commission did not err in declining to condition the Advice Letter approval on access to Pacific Bell’s directory assistance database. The Commission did not ignore the issue of access to Pacific Bell’s directory assistance database. The Commission correctly determined that resolution of the issue of access to directory assistance listings was more

appropriate for the Local Competition docket. The issue of access to directory assistance listings may not be specific to just MCI and Pacific Bell.<sup>4</sup>

While there is no legal error, the Rehearing Application raises issues concerning the availability of Pacific Bell's national and California directory assistance listings to competitors such as MCI. A majority of the issues relating to access to in-state directory assistance listings were previously addressed in comments filed pursuant to the Local Competition docket October 30, 1998 ALJ Ruling. We do not need to develop additional record on those issues.

However, questions raised regarding access to nationwide directory listings and some of the issues MCI raises regarding access to California data present additional issues which can be best addressed in the Local Competition docket, along with the issues the parties raised in response to the October 30, 1998 ALJ Ruling. We therefore modify Resolution T-16288 to clarify the manner in which the Commission will resolve the listings access issue in the Local Competition docket, as follows. A copy of this Decision will be served on all parties in the Local Competition docket. We direct the parties to file opening comments in the Local Competition docket within thirty days of the mailing date of this Decision, and Reply comments fifteen days after Opening comments. The parties are to address the following questions in their Opening comments:

1. Pacific Bell: Pacific indicated that it obtains the nationwide directory assistance information it uses to provide its Nationwide Listing Service (NLS) from Nortel. On what terms and conditions is the data available from Nortel? Is that nationwide database available to other carriers?
2. Pacific Bell: Has Pacific made its NLS data available to any other telecommunications carrier (including other incumbent LECs) in

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<sup>4</sup> For example, nondiscriminatory access to directory assistance services is an issue in Pacific Bell's Application for Authority to Provide InterLATA Services in California (D.98-12-069, p 50-51.). See 47 U.S.C. § 271(c)(2)(B)(vii)(II). The issue of whether directory assistance is a network element which ILECs should unbundle and provide under Section 251(d)(2) is also pending before the FCC (CC Docket No. 95-185, 96-98.).

California? If so, specify the carrier(s). Under what terms and conditions was the NLS data made available to other carriers?

3. Other carriers: Have you attempted to obtain the NLS data base from Nortel? If so, was the information available and under what terms and conditions does Nortel offer the information?
4. Is national listing information available from vendors other than Nortel?
5. MCI indicates that Pacific refuses to provide competitors with its complete in-state directory assistance database. Pacific does not supply information for either the independent LECs or CLCs, absent those carriers' explicit approval. While D.97-01-042 restricts the availability of CLC information, what Commission Rule or Order prohibits the sharing of directory assistance information of other ILECs?
6. Do carriers' proprietary rights in their customers' subscriber listings outweigh the need for ubiquitous access to complete in-state directory listings?
7. Pacific: Explain the difference in access to Pacific's directory assistance database for independent LECs in California and CLCs. Does Pacific supply its in-state directory assistance database to SBC entities in other states? If so, on what terms and conditions?

The parties may file their comments under seal to protect proprietary or other confidential information, along with a redacted public version.

Finally, the lack of service on Pacific Bell is not a basis for denying the rehearing application. Notice of the filing of the Rehearing Application on the Commission's Daily Calendar is sufficient notice. The Commission's Daily Calendar "is the means by which legal notice is effectuated for all filings."

Application of San Diego Gas & Electric Company (U 902-E) (1996) 68 CPUC2d 434. Pacific Bell in fact received notice of the rehearing application filing from the Daily Calendar. (Pacific Bell Response, p. 5.) Pacific Bell then filed its Response to the Rehearing Application on June 9, 1999.

#### IV. CONCLUSION

Resolution T-16288 is modified for clarification purposes, as set forth below. No further discussion is required of MCI's allegations of error.

Accordingly, upon review of each and every allegation of error, we conclude that sufficient grounds for rehearing have not been shown.

**IT IS ORDERED** that:

1. Resolution T-16288 is modified as follows.

a. At page 6, the last paragraph, the text now reads:

MCI states that the resolution recognizes Pacific has access to directory information superior to its competitors but attempts to rationalize these differences away. Although the Commission is considering some of these issues in the Local Competition Proceeding, this Resolution does not take these pending issues into consideration. A majority of the issues relating to access to in-state directory assistance listings were previously addressed in comments filed pursuant to the Local Competition docket October 30, 1998 ALJ Ruling. We do not need to develop additional record on those issues.

However, questions raised regarding access to nationwide directory listings and some of the issues MCI raises regarding access to California data present additional issues which can be best addressed in the Local Competition docket, along with the issues the parties raised in response to the October 30, 1998 ALJ Ruling. We therefore modify Resolution T-16288 to clarify the manner in which the Commission will resolve the listings access issue in the Local Competition docket, as follows. A copy of this Decision will be served on all parties in the Local Competition docket. We direct the parties to file opening comments in the Local Competition docket within thirty days of the mailing date of this Decision, and Reply comments fifteen days after Opening comments. The parties are to address the following questions in their Opening comments:

1. Pacific Bell: Pacific indicated that it obtains the nationwide directory assistance information it uses to provide its Nationwide Listing Service (NLS) from Nortel. On what terms and conditions is the data available from Nortel? Is that nationwide database available to other carriers?

2. Pacific Bell: Has Pacific made its NLS data available to any other telecommunications carrier (including other incumbent LECs) in California? If so, specify the carrier(s). Under what terms and conditions was the NLS data made available to other carriers?
3. Other carriers: Have you attempted to obtain the NLS data base from Nortel? If so, was the information available and under what terms and conditions does Nortel offer the information?
4. Is national listing information available from vendors other than Nortel?
5. MCI indicates that Pacific refuses to provide competitors with its complete in-state directory assistance database. Pacific does not supply information for either the independent LECs or CLCs, absent those carriers' explicit approval. While D.97-01-042 restricts the availability of CLC information, what Commission Rule or Order prohibits the sharing of directory assistance information of other ILECs?
6. Do carriers' proprietary rights in their customers' subscriber listings outweigh the need for ubiquitous access to complete in-state directory listings?
7. Pacific: Explain the difference in access to Pacific's directory assistance database for independent LECs in California and CLCs. Does Pacific supply its in-state directory assistance database to SBC entities in other states? If so, on what terms and conditions?

The parties may elect to file their comments under seal to protect proprietary or other confidential information, along with a redacted public version. Since Pacific has an advantage over other providers in access to directory listings, MCI recommends that Pacific's NLS should be a Category II service until competitors have fair access to all directory listings.

- b. Finding of Fact No. 7 is added as "There are unanswered questions concerning the availability of Pacific Bell's national and California directory assistance listings to competitors such as MCI."

- c. Item No. 5 is added to the Ordering paragraph at page 8 as "The listings access issue will be resolved in the Local Competition Proceeding pursuant to the directives of this Resolution."
2. The Rehearing of Resolution T-16288 is denied.
3. This Proceeding is now closed.

This Order is effective today.

Dated August 5, 1999, at San Francisco, California.

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