

Decision 99-09-039 September 2, 1999

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Bell
Communications for a Certificate of
Public Convenience and Necessity to
Provide InterLATA, IntraLATA and
Local Exchange Telecommunications
Services Within the State of California

A.96-03-007
(Filed March 5, 1996)

ORDER DENYING REHEARING OF DECISION (D.) 99-02-013

On March 17, 1999 MCI Worldcom, Inc., ICG Telecom Group, Inc., AT&T Communications of California, California Cable Television Association, and The Utility Reform Network (TURN) ("Rehearing Applicants") jointly applied for rehearing of Decision (D.) 99-02-013 ("Decision"). D.99-02-013 grants a Certificate of Public Convenience and Necessity (CPCN) to Southwestern Bell Communications Service (SBCS) to provide long distance service in California upon obtaining permission to do so by the Federal Communications Commission (FCC).

We have carefully considered all the arguments presented by the Rehearing Applicants and are of the opinion that legal error has not been demonstrated. We are therefore denying Rehearing Applicants' application for rehearing of D. 99-02-013.

Rehearing Applicants allege that the Decision errs in failing to adopt a requirement that joint marketing of SBCS services by Pacific Bell be conducted by a separate sales force, and by allowing Pacific Bell to use its Customer Proprietary Network Information (CPNI) to market long distance services. According to Rehearing Applicants, by declining to adopt the marketing

restrictions, the Decision fails to adequately address the evidence, fails to fulfill the Commission's public interest mandate, violates Public Utilities Code section 709.2, and fails to adequately guard against cross-subsidization. We find these arguments unconvincing.

Contrary to Rehearing Applicants' assertions, the Decision does not ignore the record evidence. Rehearing Applicants fail to acknowledge that the Commission may reach inferences based on the record which differ from those in the Proposed Decision (PD). Significantly, the Decision does not dispute certain evidence describing Pacific Bell's draft marketing plans. Rather, the Decision differs from the PD regarding whether those marketing drafts indicate that unfair or anti-competitive behavior will occur. As the Decision states, our view is that although Pacific Bell intended aggressive marketing, that marketing is not inherently unfair or anti-competitive. These conclusions are fair inferences based on the record, and are judgments which are within our discretion. We note that all other conclusions in the Decision are adequately supported by the record, and all inferences are legitimately based on the evidence.

Moreover, we reiterate that the Decision adequately explains its rationale and its reasons for differing with the other positions. The Decision explains its differing view of the significance of the draft marketing plan, its rationale for declining to impose certain restrictions, and its reliance of the FCC's CPNI Order. (FCC 98-27 (Feb. 26, 1998) 13 FCC Rcd. 8061.) There is no error in our desire to be consistent with the FCC policies, and we note that our reasons for agreeing with the FCC are adequately explained. Furthermore, we emphasize that there is no legal requirement that the Commission specifically rebut every inference that was drawn in the PD. At the same time, the Decision adequately explains why the changes to the PD were made.

In addition, the Decision complies with the requirements of Public Utilities Code section 709.2. Section 709.2 requires the Commission to make

certain findings before issuing orders allowing intrastate interLATA competition. Rehearing Applicants argue that we incorrectly found that "there is no anti-competitive behavior including unfair use of customer contacts generated by the local exchange telephone corporation's provision of local exchange telephone service." (Pub.Util.Code § 709.2 (c)(2).)

Our conclusion that Pacific Bell's use of its customer information is not "unfair" is a judgment which is fairly based on the evidence and is within our discretion. The Decision explains that SBCS' competitors may use their CPNI, and Pacific Bell must comply with all state and federal laws regarding use of CPNI. SBCS and Pacific Bell testified that they intend to comply with all regulations.

Furthermore, the Commission is not required to reopen this proceeding for new evidence regarding Pacific Bell's alleged non-compliance with CPNI regulations. If Rehearing Applicants believe that Pacific Bell violated laws concerning use of CPNI after the close of the evidence in this proceeding they have other remedies available to them to pursue the issue, such as filing a complaint. We note that it is against the goals of the Telecommunications Act and Public Utilities Code section 709.2 to postpone the CPCN proceeding indefinitely.

Finally, Rehearing Applicants' assertions that the Decision does not adequately safeguard against improper cross-subsidization are without merit. As SBCS notes, cross-subsidization concerns are not unique to this CPCN application, and generic rules exist to prevent affiliate abuses. However, the Decision also requires that an additional California audit be performed to guard against cross-subsidization errors, in addition to the joint FCC/state audit required by the FCC. Rehearing Applicants' arguments that the existing safeguards along with the additional audits will be inadequate are speculative.

For the above reasons we find that we have fulfilled our public interest mandate and no legal error is contained in the Decision. No further discussion of Rehearing Applicants' allegations is necessary.

THEREFORE IT IS ORDERED that:

1. Rehearing of D.99-02-013 is denied.
2. This proceeding is closed.

This order is effective today.

Dated September 2, 1999, at San Francisco, California.

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