

Decision 99-09-050 September 16, 1999

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.

Rulemaking 95-04-043
(Filed April 26, 1995)

Order Instituting Investigation on the
Commission's Own Motion into Competition for
Local Exchange Service.

Investigation 95-04-044
(Filed April 26, 1995)

O P I N I O N

I. Background

Decision (D.) 95-12-056, issued on December 20, 1995, adopted interim rules governing local exchange competition within the market territories of Pacific Bell (Pacific) and GTE California Inc. (GTEC). Among other things, the Commission's rules established interconnection standards in General Order (GO) 133-B for both Competitive Local Carriers (CLC) and Incumbent Local Exchange Carriers (ILECs) Intercompany Interconnection Service Orders (IISOs) and required that LECs submit reports to the Commission on all overdue Intercompany Interconnection Held Service Orders (IIHSOs). On February 23, 1998, Cox California Telcom, Inc. (Cox) filed a Petition to Modify D. 95-12-056 (the Petition.)

Cox requests that the Commission modify Ordering Paragraph (OP) 52 of D.95-12-056, which defines reporting standards for IIHSOs, to ensure that ILECs accurately report CLCs trunk service orders, the provisioning of which are delayed by an ILEC.

II. Position of Parties

Generally, IIHSOs must be reported when service is not provided within 15 days of a "mutually agreed-upon due date." *Id.* at OP 52. The mutually agreed-upon due date starts the 15-day clock. Cox expresses concern, however, if an ILEC refuses to agree to a due date (i.e., a Firm Order Commitment (FOC) date) for an IIHSO. The ILEC can essentially avoid the Commission's IIHSOs reporting requirements, because the 15-day time period is never triggered. As a result, Cox argues, an ILEC can engage in provisioning delay tactics, whereby the Commission cannot properly track the timeliness of its trunk provisioning (or lack thereof) for CLCs. Consequently, Cox claims, its ability to offer local exchange service to its customers is seriously impaired.

Cox claims Pacific delayed the provisioning of critical tandem trunk IIHSOs by refusing to provide Cox with a FOC date for the trunk orders for more than 30 days after a January 7, 1998 order was received, as discussed in the Affidavit of Richard Smith, attached to the Cox Petition. Specifically, Cox argues that refusal to provide Cox with a FOC date for IISOs warrants a change in the reporting requirements for IIHSOs.

Currently, OP 52 of D.95-12-056 reads as follows:

An Intercompany Interconnection Held Service order (IIHSO) shall be reported when the service is not provided within 15 days of the mutually agreed-upon due date.

Cox requests that OP 52 be modified to read as follows:

An Intercompany Interconnection Held Service Order (IIHSO) shall be reported when the service is not provided within 15 days of the mutually agreed-upon due date. If such a due date is not agreed-upon by the parties within three (3) days of the submission of a service order due to the failure of the carrier responsible for provisioning the service order, then the date of submission of the service order should be used in lieu of a mutually agreed-upon due date for IIHSO reporting purposes.

Responses to the Petition were filed on March 25, 1998. A response in support of the Petition was filed by the Office of Ratepayer Advocates (ORA). Responses in opposition to the Petition were filed by Pacific and GTEC. Cox filed reply comments on April 6, 1998.

ORA not only supports Cox's suggested modification, but believes that a broader examination of the intercompany performance measurement and reporting standards is necessary. The IIHSO standards were developed as part of a series of workshops conducted in 1995 by the Chair of the GO 133-B Committee. The participants in those workshops reached consensus about the standards and they were subsequently adopted in D.95-12-056. At the time the workshops were conducted, local exchange competition had not yet been authorized, the Telecom Act of 1996 had not been passed, and few potential competitors had actually interconnected to ILEC networks. Thus, ORA argues, the standards were necessarily preliminary in nature, and the Commission should now reexamine those standards in light of several years of experience in the marketplace. ORA recommends the Commission order that a workshop be conducted to address revision of the current standards.

Pacific opposes the Petition, and disputes Cox's assertions that Pacific failed to agree to a due date for certain orders placed on January 7, 1998. Pacific supplemented its responses with a declaration of Harry Tom, Pacific Bell account manager assigned to the Cox account. Mr. Tom states that Pacific received the orders which Cox discusses on January 8, 1998, (not on January 7th) for 6 DS-1's (not six trunks lines by Mr. Smith alleges) for Pacific's Los Angeles tandem.

On January 19, 1998, Pacific informed Cox there were no facilities available at the Anaheim tandem, and that no due date could be given because Pacific did not know when facilities would be available. On February 6, 1998, Pacific informed Cox that facilities would be available to fill Cox's order on

February 26, 1998. Pacific located 5 DS-1's on February 19, 1998 - 43 days after it received the order, compared to a 34 day normal interval for this number of trunks (144).

Pacific received the order for the 3-DS-1's ordered by Cox out of Pacific's Los Angeles tandem on January 12, 1998. Cox was informed that it contained incorrect information on January 15, 1998, and Pacific was informed that Cox would correct this information. Cox never corrected the information, but cancelled the order on March 19, 1998. Pacific explains it never gave a FOC with a due date because it never received corrected order information from Cox.

Pacific claims Cox's proposed modification to D.95-12-056 requires that a due date for provisioning service orders be agreed upon in an unreasonably short amount of time. Pacific's standard interval for giving CLCs a due date is seven days; Cox agreed to this in its interconnection agreement. Pacific claims that arriving at a mutually agreeable due date within three days for all CLCs is simply not possible.

Pacific claims Cox's proposed modification completely undercuts the intent of the reporting requirements. The reporting requirements are intended to inform the Commission of orders held 15 days beyond the due date, because competitors rely on the due date. Pacific claims Cox's proposed modification fundamentally changes the purpose of the reporting from identifying orders held beyond a mutually agreeable date to establishing a 15-day standard interval for provisioning all orders. Pacific believes such a modification is contrary to D.95-12-056 which concluded that the Commission "could not realistically specify a standard provisioning time," and also ignores the intervals expressly permitted in Cox's interconnection agreement.

Pacific argues that Orders should not be reported to the Commission as held simply because the CLC does not like the available date, or because it takes more than 15 days to install. Pacific's standard intervals for installing trunks are 30-40 days from receipt of an order, depending on the number of trunks ordered. Pacific claims Cox's proposed modification could result in every order being incorrectly reported as a held service order.

Comments were also filed by GTEC in opposition to Cox's Petition. GTEC argues it is inappropriate to change industry standards on the strength of this one incident. Even assuming Pacific failed in this instance to timely provide Cox with an FOC date, GTEC finds no indication of a general problem with establishing FOC dates. To date, GTEC has not received an interconnection trunk order from Cox, but typically provides FOC dates within five days of receipt of a valid complete order. In some instances (particularly in the case of expedited requests) a longer period may be required to provide that date to allow for a field visit to ensure the availability of facilities. (See, Declaration of Ron Soto, attached as Attachment A to GTEC's Response.) GTEC believes disputes over FOC dates are appropriately addressed through interconnection agreements, not through a change in Commission rules.

Cox filed a third-round reply on April 6, 1998. Cox disagrees with Pacific's statement of events involving its service order requests. Cox emphasizes that in any case, Pacific admits it did not provide Cox with a due date for its January 8, 1998 orders for six DS-1s from Pacific's Anaheim tandem until February 6, 1998, over four weeks after the orders were placed.

Cox denied that its proposed modification to OP 52 would require ILECs to provision all IISOs within 15 days of the order, unless ILEC can provide a due date within three days of the order. Cox only seeks to establish a reporting

requirement for an ILEC's failure to provide a CLC with a due date within three days of the order.

III. Discussion

We find no justification to adopt Cox's proposed modification to OP 52 of D. 95-12-056. As a basis for the proposed modification, Cox points to one incident between itself and Pacific in which Cox was dissatisfied with Pacific's responsiveness to Cox's service request. A review of the parties' recitation of the disputed facts surrounding the incident suggests that clearer communication on the part of both Pacific and Cox may have at least minimized the extent of the problem or misunderstanding. In any event, the occurrence of the single dispute at issue here over the timeliness of responding to a service order request does not provide a reasonable basis to undertake a generic change in the Commission rule as prescribed in OP 52.

Disputes over specific incidents of the nature alleged by Cox are more appropriately addressed through the filing of a complaint or other dispute resolution process which may be called for under an interconnection agreement. There has been no demonstration of a widespread abuse of the existing rules. Moreover, the specific modification proposed by Cox would arbitrarily impose a three-day IIHSO response time requirement without any showing as to a factual basis supporting the reasonableness of such a shortened response time for all IIHSOs. Cox's proposed requirement could cause an excessively large number of orders being reported as held orders simply because of the arbitrary three-day response rule. As a consequence, the informational value of the report could be impaired as a tool to identify true problems.

In D. 95-12-056, we expressly declined to adopt "one-size-fits-all" provisioning or response times for IIHSOs, recognizing the diversity of factors affecting response and provisioning intervals. Cox has not justified a departure

from this principle. To the extent that generic changes to GO 133-B may be warranted, however, this rulemaking proceeding is not the appropriate place to take up such a change. The Commission has opened a separate rulemaking Rulemaking (R.) 98-06-029) specifically to address the need for revisions to GO 133-B. Any generic concerns of Cox regarding GO-133-B reform are more appropriately the subject of that rulemaking. Likewise, ORA' proposal for workshops to address revisions to GO-133-B are more appropriately addressed in R.98-06-029.

For all of the reasons outlined above, Cox's Petition for Modification is denied.

IV. Comments on Draft Decision

The draft decision of the ALJ in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g) and Rule 77.1 of the Rules of Practice and Procedure. Comments were received on September 2, 1999, and reply comments were received on September 7, 1999. We have reviewed the comments, and taken them into account in finalizing this order.

Findings of Fact

1. Under rules adopted in D.95-12-056, IIHSOs must be reported when service is not provided within 15 days of a mutually agreed upon due date pursuant to GO 133-B.
2. D.95-12-056 did not impose a specific date by which parties must reach agreement on service order provisioning because of the diversity of circumstances underlying various types of service orders.
3. Cox filed a Petition to Modify D.95-12-056, to impose a rule requiring the reporting of IIHSOs if a due date for provisioning of a service order is not agreed to by the parties within three days of submission of a request.

4. No basis has been provided to indicate that Pacific could reasonably determine a service order provisioning due date and respond to Cox within three days.

5. Cox's proposed requirement could cause an excessively large number of orders being reported as held orders simply because of the arbitrary three-day default rule, thereby impairing the informational value of the IIHSO report.

6. The Commission has opened a separate rulemaking (R.98-06-029) specifically to address the need for revisions to GO 133-B, including consideration of service quality standards for all telecommunications carriers.

Conclusions of Law

1. Disputes over specific instances of service order response timeliness of the nature alleged by Cox are more appropriately addressed through the filing of a complaint or other dispute resolution process which may be called for under an applicable interconnection agreement.

2. Any generic concerns of Cox or of ORA regarding GO-133-B reform are more appropriately the subject R.98-06-029, rather than the Local Competition proceeding.

3. Cox's Petition for Modification of D.95-12-056 should be denied.

O R D E R

IT IS ORDERED that:

1. The Petition of Cox California Telecom, Inc. to Modify Decision 95-12-056 is hereby denied.
2. This order is effective today.

Dated September 16, 1999, at San Francisco, California.

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