L/bwg

MAIL DATE
11/5/99

Decision 99-11-030 November 4, 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.	R.95-04-043 (Filed April 26, 1995)
Order Instituting Investigation on the Commission's Own Motion into Competition for Local Exchange Service.	I.95-04-044 (Filed April 26 , 1995)

ORDER DENYING REHEARING OF DECISION 98-07-091

I. SUMMARY

In D.96-03-020 we determined that the price floors for any package of services should be the sum of the price floors of the individual parts of the package, including any imputation requirement in establishing the price floors. The Decision also held that, when packaging residential services, the existing exemption rules should apply. In its Application for Rehearing of D.96-03-020, The California Cable Television Association (CCTA) argued that Conclusion of Law (COL) 49 was in error in the treatment of shared, joint or common cost recovery for purposes of Universal Service support that would result in anticompetitive cross-subsidization by the Local Exchange Carriers (LECs) when bundling Category II services with Category III and unregulated services. CCTA's rationale was that the portion of the per line universal service subsidy which represents support for shared and common costs should be excluded from the imputation test for bundled services. (Application for Rehearing, p. 1.) The Office of Ratepayer Advocates (ORA) supported the position of CCTA and urged that the Commission simply delete COL 49.

D.98-07-091, which is the subject of this Application, denied rehearing, but modified COL 49 of D.96-03-020 as follows (with text insertions shown in bold):

> "The **California High Cost Fund-B (CHCF-B)** subsidy payment, should be included in the revenues received in determining whether the price of a package is above the price floor. **Thus, revenues will equal the retail prices of the bundled services plus all subsidies received. Until we issue pricing orders for Pacific and GTEC in the UNE phase of our Open Access and Network Architecture Development proceeding, Pacific and GTEC should impute into the price floors of any bundled services they offer that include basic service, the total long-run incremental cost of such basic service, plus the contribution toward the LEC's shared and common costs determined in Decision 96-10-066."**

We also modified D.96-03-020 by adding Ordering Paragraph 16a, which reads as follows:

> **"The LECs shall impute into the price floor of a bundled service that includes basic service, the total long-run incremental cost of basic service, plus the contribution of basic service toward the LEC's shared and common costs identified in D.96-10-066. This order will sunset upon the issuance of pricing order(s) for Pacific and GTEC, respectively, in our Open Access and Network Architecture Development proceeding."**

CCTA's sole allegation of error in D.98-07-091 is that the Commission provided that the order would sunset with the issuance of pricing orders for Pacific and GTEC in the Open Access and Network Architecture Development proceeding (OANAD). CCTA alleges that this constitutes error because there is nothing in the OANAD record that would enable the Commission to address the issue of cross subsidy associated with universal support payments.

GTE, in its Response to the Application for Rehearing, points out that the issue of cross subsidy associated with universal support payments was specifically addressed by The Utility Reform Network (TURN) in its Opening Brief at pages 12-14 in the Pacific Pricing Phase of the proceeding (Response of GTE, p. 2). Further, the Commission stated at page 12 of D.98-07-091:

> "We know that the very definition of contribution is being debated in OANAD; as a result, the interim requirement we adopt today must sunset with the issuance of the pricing order in OANAD, where we will develop the proper contribution that must be imputed, along with the long-run incremental costs of unbundled network elements, into the price floor of services. If after the issuance of the pricing order in OANAD parties wish further clarification on this issue, they may petition the Commission." (Emphasis added.)

It is apparent from the language above that we intended that the interim imputation standards adopted in D.98-07-091 should be superseded by the standards to be adopted in the OANAD proceeding. Otherwise, the interim standard would have remained permanent. It is further obvious that the Commission intended that any dissatisfaction with the results in the OANAD proceeding should be taken up there, rather than in the present proceeding.

Applicants have failed to demonstrate that the Commission's decision to sunset its order in D.98-07-091 pending further consideration of the issues in the OANAD proceeding constitutes an error of law or fact. As pointed out above, TURN injected the issue into the proceeding in its Opening Brief. Further, the OANAD proceeding was still open at the time CCTA filed its Application for Rehearing in the present action. Applicants' allegations of what the Commission might properly consider in the OANAD proceeding are merely speculative and do not constitute error. Finally, if Applicants are convinced that the record in the OANAD proceeding does not support the decision therein, their

proper remedy is to seek an Application for Rehearing of the decision for this phase of the proceeding.

II. CONCLUSION

Applicants have alleged no legal or factual errors in D.98-07-091 and the Application for Rehearing should be denied.

IT IS ORDERED that Rehearing of Decision 98-07-091 is denied.

This order is effective today.

Dated November 4, 1999, at San Francisco, California.

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