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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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PUBLIC UTILITIES COMMISSION

JAN 24 1990

Investigation on the Commission's own)
motion into the matter of Competitive)
Access to Customer List Information)

SAN FRANCISCO OFFICE
NO. I. 90 01 033

ORDER INSTITUTING INVESTIGATION

Summary

This order opens an Investigation to consider what customer list information possessed by public utilities in California should be made available to competitors and other utilities and what measures should be taken by this Commission to protect the privacy of customer information. This Investigation will also consider the competitive arrangements of access to customer information, especially treatment of utility subsidiaries or affiliates vis a vis treatment of competitors. We will also assess pricing issues and the effects of access to information on rates.

While the main focus of the Investigation will be on telecommunications local exchange carriers (LECs), the generic issues of competitive access to customer information are relevant to the gas and electricity utilities as well.

This OII will cover a number of issues which are currently under consideration in other proceedings. Two of these proceedings will be consolidated with this OII. Such proceedings include:

- o A.89-07-030, the Pacific Bell Application to adopt a tariff to offer additional business subscriber information products; and
- o the limited rehearing of D.89-03-051, granted in D.89-07-032, to consider the issue of compensation for GTEC's use of the joint Directory Assistance database in a competitive context and the reciprocal issue of the appropriate compensation to be paid to GTEC by Pacific.

C.88-06-031, a complaint case of The Reuben H. Donnelley Corporation, et. al. vs. Pacific Bell, will remain open, with a final decision reserved until comments are received in this Investigation.

Background

The genesis of this Investigation is D.89-03-051, which authorized GTEC to provide InterLATA directory assistance services in competition with Pacific Bell in five area codes in southern California. While approving such services for GTEC, the Decision noted that broader issues concerning LEC listing information needed to be addressed elsewhere:

While the special circumstances of this situation confine the present competition to Pacific and General, others might want access to similar listings. Tariffs already exist for the provision listings to competitive publishers of telephone directories. There is some dissatisfaction with how listings are now shared for competitive directories (C.88-06-031), although ratepayers have a significant stake in the contribution that local telephone company directories now provide to help keep basic rates affordable. At an appropriate time, we should consider

whether to offer broader access by competitors to the listings, as there may be significant value in other uses. Ratepayers might also need protection from exploitative or annoying use of their published telephone number and address, especially where privacy is a concern. (mimeo, p.23) (emphasis added)

Now is the time to consider such access issues. Although directory listing information is the main impetus for this investigation, we recognize that access to customer information encompasses a broader spectrum of issues, including credit, usage and demographic information.

Pacific currently has a number of tariffs which offer users (including competitors) access to its customer lists in one form or another. These tariffs include the following:

- o Tariff A5.7.4 is a Telephone Directory Reproduction Rights tariff which allows the user to purchase directory listings in whole or sorted in specified ways. These listings are often used for the purpose of soliciting Yellow Pages advertising in competition with Pacific. In December 1988, Pacific began the informal process of revising Tariff A5.7.4. These revisions have not yet been formally filed as an Advice Letter.
- o Tariff A5.7.5 is a Street Address Telephone Directory Service (also known as "reverse white pages") which allows the user to look up customers by address. This service is typically used by marketers and political campaigns to target populations geographically.
- o Tariff A5.7.6 is a List Service (also known as "list upgrade" service) whereby a customer can provide Pacific with a list of names and addresses and receive associated telephone numbers subject to certain conditions. Sale, reprint, lease, rent or others' use of the information provided is prohibited.
- o Tariff A5.7.7 is an Appointment Service which allows the user to receive telephone

numbers if address and name are supplied. This service is similar to the List Service, but is provided in person instead of in writing.

- o Tariff A5.7.9 was the Direct Customer Access to Directory Information tariff. This tariff allowed business customers to access Pacific's electronic database of directory listings, sortable by name and address. This tariff expired on December 31, 1989.
- o Tariff A12.1 is a List Rental tariff which lists customers by name and address. This Tariff is available for one-time uses and is typically used by telemarketers. There are restrictions on the use of residential and non-published numbers.

In a related matter, The Reuben H. Donnelly Corporation (Donnelly) et.al. filed a complaint against Pacific (C.88-06-031) alleging that Pacific unfairly denied Donnelly access to the same directory information that Pacific supplied to its own unregulated subsidiary, Pacific Bell Directory. This case is submitted for decision.

In A.89-07-030, Pacific requests Commission approval of a new "business subscriber information" tariff. According to Pacific, this tariff would make available to all requesters the same information that Pacific currently provides to Pacific Bell Directory. This information would be provided at "market prices." Several parties have protested or commented on this application. These matters will be considered generically in this investigation.

GTEC currently has tariffs to provide customer information as well. Tariff D-1 is the Street Address Telephone Directory Service. Tariff D-2 is the "list upgrade" service. Tariff D-4 is the Telephone Directory Reproduction Rights Tariff.

As discussed above, GTEC has received authority through D.89-03-051 to provide Intrastate directory assistance, including use of certain Pacific Bell information, in competition with Pacific Bell. Several LECs share directory information with each other outside of tariffs.

The LECs also share customer credit information with each other through the centralized credit check system. This sharing of credit information is allowed under P.U. Code Section 2891(a)(2) as an exception to Code provisions forbidding the disclosure of residential customers' credit or other personal financial information. The gas and electricity utilities have a pilot program to share such information with each other, but not with the telecommunications utilities.

In a related matter, the California Legislature passed AB 1446, signed by the Governor in September 1989 (Chapter 483, 1989 Statutes). This bill requires the LECs to provide free per-call blocking of calling number identification if such service is offered to the public. The relationship of this issue to access to customer list issues is twofold. First, calling number identification services may enable a customer to compile a list of those who call their telephone, and then build a further list of such customer's names and addresses for marketing or other purposes. Second, the Legislature raises the issue of privacy of customer information; the privacy issue¹ is pervasive in the consideration of access to customer list issues.

The gas and electricity utilities traditionally have not released customer information either under tariff or through other means. One exception has been information on customers who

1. See discussion, *infra*, pp. 11-13.

negotiate special contracts; these contracts have been made public. While no formal proceedings have addressed the issues surrounding customer lists for these utilities, there have been informal efforts made to obtain listing information on such topics as gas transportation, and conservation.

Objectives

Our objectives in this proceeding can be broken down into several categories. We recognize there may be some tension between these objectives; parties should comment on their prioritization of objectives. The order of the objectives listed below is not intended to establish our prioritization.

1. Competitive Equity -- There are already customer lists available from the LECs for competitive uses; the threshold issue of whether some lists should be made available has already been answered in the affirmative. Ideally, in such cases competitors of the LEC should be treated the same as the LEC's divisions and affiliates in the provision of and access to customer lists. Such equality may include quality of lists, access to new information, and pricing. In cases where no competitive access is currently available, our objective is to seek the fair and equal provision of information sought by competitors, subject to legal and other policy constraints.

2. Contribution -- The LECs use revenues from Yellow Pages operations and the various list tariffs to contribute to the maintenance of low basic rates, which are key to maintaining the Commission's Universal Service goals. Pricing of customer lists available for competitive access may either increase or decrease the level of contribution, depending on the relationship of price and cost, and the amount of utility business lost due to access to such lists. For the LECs, the level of contribution may be less important in the new incentive environment; however, due to such considerations as rate design, sharing of profits above a benchmark, and the 1992 update of the productivity

factor, (all of which could affect rate levels) this issue continues to merit Commission scrutiny. For energy utilities, we do not want to see access to lists lead to a significant negative impact on rates.

3. Protection of Customer Privacy -- The Public Utilities Code (e.g., Section 2891), Rulings of the FCC on Customer Proprietary Network Information (CPNI), and Legislative actions (e.g., AB 1446) all limit the customer information that may be released or sold by the LEC. Given competitive access to certain customer lists, we favor effective privacy policies to ensure that customers can expect that the information provided to the utility will not be used by the utilities or competitors for purposes that the customer would find objectionable.

4. Administrative Simplicity -- There may be limits on the ability of the utilities to gather and disseminate information desired by competitors. Competitors may find it difficult to use information if it is not provided in a compatible form. On the Commission side, competitive access to customer lists may require complex rules and review to ensure competitive equity and privacy. We would like to minimize, to the extent possible, the administrative burden associated with competitive access to customer lists.

Scope of the Proceeding

There is considerable overlap among the issues considered in the above proceedings. Issues of competitors' desire to obtain listing information, LEC proposals to make arrangements for the availability of listing information, the prices to be paid for such information, and privacy issues show up time and again. In lieu of an ad hoc approach, we prefer to take a comprehensive look at the issues surrounding competitive access to customer listing information in order to obtain consistent results in these proceedings and to set the rules for future consideration in similar circumstances.

We will be considering a companion OIR on billing issues in the near future. There is a certain amount of overlap possible between these Investigations. For example, the billing OIR will likely involve the availability of telecommunications billing name and address (BNA) and calling number identification for billing and information gateway uses while this Investigation considers more generally what lists can and should be made available to competitors for other purposes. In order to minimize redundancy, any issues specifically related to telecommunications billing and information gateways will be handled in the billing OIR.

The issues surrounding access to customer lists arise in many circumstances. As recent proceedings and in-place tariffs demonstrate, some competitors want access to white pages (directory) information in electronic form, in databases which sort the listings in various ways, and in a form which includes periodic updating of listings. Customers also want access to information to complete their own lists which may be missing one or more portions of name, address and telephone number. In general, we note that the reason access to subscriber information is desired is because this information has intrinsic value.

For all utilities, competitors may be interested in obtaining customer information which is not now legally available for release. Customer usage information would be useful to competitors of the LECs in terms of PBX vs Centrex, for high-speed digital private line competitors, for inside wire competitors. On the energy side, usage information may be useful for suppliers of conservation equipment or non-core gas competitors.

In a competitive market, firms do not necessarily share usage information with each other. However, in the utility environment, there are mixed monopoly/competitive markets. The utility may have an advantage in its competitive activities due to its access to information from the monopoly side. We are interested in exploring generically if information gathered by the monopoly side should be made available to competitors when the utility is also involved in the same competitive activities. Of course, such provision would need to be consistent with our other objectives of protecting privacy and maintaining affordable basic rates.

In some areas of California, gas and electric firms are in indirect competition. Each firm may desire information from the other concerning usage patterns in order to direct marketing efforts. Other competitors may want information on, for example, which customers are weatherized in order to target their own conservation efforts. Further, information on gas contracts would be useful in the competitive non-core gas markets.

Competitive Situations

We note that there are three types of situations involving competitive use of customer information. First, some competitors may use currently-available or improved versions of customer information to continue competition with current utility operations, such as Yellow Pages. While Yellow Pages pricing is unregulated by law, LECs currently dominate in all but niche markets. Competitors who have access to the same information provided to utility subsidiaries or affiliates may be able to compete more effectively with the utility.

A second use of customer information is to provide services not currently offered by the utilities. For example, directory information is used for marketing purposes not currently offered by LECs. However, it is conceivable that an LEC could start up a similar service using its own customer information. (Note that because of MFJ restrictions, Pacific Bell is prevented from offering electronic Yellow Pages at this time.)

A third possibility is that a competitor may use newly-available customer information to more effectively compete with the utility. For example, firms currently compete with the utilities for inside wire services or provision of non-core gas supplies even without access to certain utility customer information. However, access to customer information may enhance competitors' ability to compete with the utility. In such cases, customer information may directly lead to a loss of revenue for the utility. On the other hand, customers may benefit from greater choices and increased diversity of supply.

LEC List Sharing

LECs share both directory and credit information with each other. Currently, GTEC pays Pacific Bell for the use of shared directory information. Information has value in other ways. For example, directory information is a source for solicitation of Yellow Pages advertising revenue. When one LEC allows another to use its directory listings for overlapping directory information purposes, the originating LEC may inadvertently be allowing the other LEC to tap into its Yellow Pages market.

The next issue that arises is whether competitors should have access to directory, credit or other information. Theoretically, a competitor could purchase the directory listings and set up its own directory information services, perhaps providing more or different uses for the public.

LEC Directory information has value for competitors of the LEC as well as for other LECs. For example, a firm may want to use directory information to develop a competitive Yellow Pages business separate from any LEC. Firms currently use other forms of directory information for purposes including marketing and political campaigns. While the LECs do not currently have marketing or political campaign consulting arms, they may in the future offer such services (subject to federal line-of-business restrictions under the 1982 MFJ).

Privacy Issues

While customer lists appear to have value to firms that compete with utilities or go beyond utility services, customers may not appreciate the uses associated with such information. As many utility services are considered necessities, nearly all California residences and businesses are customers of the utilities. Provision of such information as name, address, telephone number and certain credit information is a requirement of arranging service. Other information, such as usage patterns, is created as a result of having utility service.

Two countervailing issues arise from the customer's perspective. First is the expectation of privacy. Most customers are unaware that their service information is being sold or rented by utilities in any form. Many would object to any such transactions, beyond even the limitations in the Public Utilities Code. The prospect of more information sharing, rental and sale may worsen this problem.

The expectation of privacy involves two concerns: the legal protections of confidential information, and the "quality of life" concerns about unwanted uses of information. The legal issue is already embedded in the Public Utilities Code. Section 2891 proscribes the telephone corporations from making available residential customers' information, including calling patterns, credit information, services obtained, or demographic information

without the written consent of the subscriber.² In this Investigation, we would like to examine both whether the current legal restrictions are adequate and whether some legitimate competitive needs may be facilitated within existing legal restrictions.

The Federal Communications Commission (FCC) has set forth rules concerning Bell Operating Companies' (BOCs, such as Pacific Bell) release of customer proprietary network information (CPNI) to enhanced services providers (ESPs), including their own internal operations.³ CPNI rules apply, with minor exceptions (such as credit information) "to all information about customers' network services and customers' use of those services that a BOC possesses by virtue of its provision of network services."⁴ CPNI includes such information as billing information, usage data and calling patterns. BOCs must have written permission from customers before sharing this information with ESPs. BOCs then must make CPNI available to both their internal ESP and any other ESPs to whom the customer allows access, although BOCs do not have to get permission to share the information with their own affiliates.⁵ The BOCs are prohibited from making unpublished

2. Certain exceptions apply, such as information provided for inclusion in a directory, for directory assistance, zip code information, certain information provided to collection agencies, emergency service information, and information provided to law enforcement agencies under a Court order.

3. The best discussion of these rules is in CC Docket no. 88-2 Phase I, adopted November 17, 1988, pp. 207 - 232.

4. *ibid*, p. 213.

5. In a December 1, 1989 News Release, Pacific Bell announced that it is sending letters to 500,000 multi-line business customers asking them to decide which companies, if any, will be able to use their account information to market enhanced services and telecommunications equipment.

and unlisted telephone numbers available unless the customer contacts the BOC.

The CPNI rules apply on both an interstate and intrastate basis. Absent a legal challenge, the FCC has preempted state regulation of CPNI that is inconsistent with the FCC CPNI requirements. However, we do invite comments on any implementation issues associated with CPNI requirements that are germane to this proceeding. We also seek comments on whether the CPNI model can be extended to other areas, including directory information and customer information held by energy firms.

The second privacy concern is the quality of life issue; as with issues of "junk FAX"⁶ or ADADs, many people do not want their telephone to be used as a source of information about them or intrusion into their daily life. There is the prospect that new service offerings may further intrude on customer privacy. Call number identification, for example, would allow the called party to know the telephone number of the calling party. While some hail this service as a way of limiting unwanted or obscene calls,⁷ others see it as an invasion of privacy, especially for callers with unlisted telephone numbers. As noted previously, LECs are now required to provide callers a free blocking option if the service is offered. However, this option is not required for "800" or "900" calls until the appropriate technology is available.

In terms of customer lists, the privacy issue extends from utility-compiled lists to the potential for others to compile their own lists through the use of utility services.

6. SB 993 (Rosenthal) passed the Legislature this year requiring the CPUC to study issues related to "junk FAX" by January 1, 1991. CACD will be doing this study.

7. In New Jersey, reports say that obscene phone call reports have dropped by 50% since the introduction of the call number identification service.

Some fear the prospect that the simple act of making a telephone call will automatically allow businesses to find out too much about the individual. For example, a business may be able to develop a list of all people who enquire about purchasing a particular item. By assimilating such information with other similar lists, a profile of the individual's buying habits may become available. Such an assimilated list could then be sold to others for marketing or other purposes.

Ownership of Customer Information

The other issue from the customer's perspective is the issue of who should gain from the rental or sale of customer information. Clearly, the ratepayer is the source of the information that has value, although the utility is the possessor of the information. This value may be reflected in the price charged for access to the information. In a rate-of-return regulatory environment, ratepayers may benefit from sale of information if the price is above cost, the revenues are treated above the line, and the profits are used to hold down other rates. However, in an incentive environment such as the regulatory framework recently adopted for GTEC and Pacific Bell, rates and profit levels are not so closely tied. These LECs may profit from information rental or sale without any direct benefit to ratepayers. Conversely, any losses from pricing below cost or from competitive activities may not be able to be recovered in higher rates.

The question of who owns the information is crucial. If the customer owns the information, the customer should have a say in who can have access to this information, at what price it can be sold, and what should be done with the profits. If the utility owns the information, it should be able to make such decisions, with regulatory approval. The Public Utilities Code requires that customer permission be given for access to many

types of information. However, no permission is necessary to sell or rent other information, such as directory information.

Pricing Issues

The pricing of customer list information is a crucial issue for this Investigation. If customer information is priced to non-utility customers at the cost of assembling the information, economic efficiency is satisfied, all users pay on the same basis, and there would be no discrimination between a utility's actual or potential operations and competitors' operations based on the same information. On the other hand, if customer lists are priced at market rates above the cost to assemble the information, the utility is able to realize profits based on the value of the information and, for Pacific and GTEC, may share some profits with ratepayers. Further, such profits may also offset losses that come about due to access to customer information.

By setting up appropriate parameters and constraints on availability of lists, we envision this Investigation will mitigate most controversial issues when they arise in related circumstances in the future.

Specific Issues to be Addressed

We will require written comments on the issues in this Investigation in order to determine the areas of controversy and agreement. These comments should be in the form of written testimony for use in the event that evidentiary hearings are necessary. After review of the comments, we will determine the need for evidentiary hearings. In addition to the questions below, Respondents should address how to measure customers' reactions to these issues. We will require comments on the following issues:

1. Who owns customer information?

- o Should a customer's permission be required before information about that customer is released or sold? Are there any exceptions?
- o Are there any implementation issues associated with the FCC CPNI rules that need to be considered?

2. Should a telecommunications customer who has an unlisted number continue to have more protection from access to customer information than other customers?⁸ Should there be other differentiations between customer groups (e.g., residential vs. business) in terms of privacy protections?

3. What new protections, if any, are needed to ensure that customer information is not made available in a way that would disrupt the privacy rights and expectations of customers?

4. What should be the pricing principles used to determine the rates charged for access to lists?

- o Should all lists be subject to the same pricing principles?
- o Should lists be priced at cost, or should they be priced above cost in order to reflect their value in the marketplace and traditional source of contribution?
- o Should "market-based" pricing be used? How can the "market-based price" be determined? Can a bidding process be used to determine the market price?

8. The California Legislature passed a law in 1989 (Ch. 120, stats. 1989) that specifically prohibits a telephone or telegraph corporation from selling a list which incorporates a telephone subscriber's unpublished or unlisted access number without his or her consent, except in specified instances.

5. Should one utility be required to compensate another when one uses information gathered by the other? What pricing principles should be used in such instances?

6. When a list is available for competitive access, should the utility be required to offer exactly the same information that it has available for its own internal use? Should the utility be required to provide more information or information in different forms to competitors than it uses itself?

7. When does the utility have the right to refuse to provide customer information?

8. What additional information (lists, formats, etc.) held by utilities that are not currently available under tariff should be made available, given the legal limitations on release of information? Are there any current tariffs related to customer lists that should be revised or eliminated? Are there any Code provisions which should be changed?

9. What would be the effects on utility rates and profits if customer lists are made available to all comers under various pricing and access schemes? Specifically, what would be the effects for the telecommunications firms under the regulatory framework adopted in D.89-10-031 (alternative regulatory framework for local exchange carriers)?

10. Should ratepayers or shareholders be the beneficiaries of profits realized by utilities by rental or sale of information required from a customer as a condition of service or gathered by the utility as a consequence of a customer's use of utility services?

11. For the purposes of access to customer information, should a utility subsidiary (such as Pacific Bell Directory) or affiliate (such as GTE Directory) be considered as a part of the utility or as a customer/competitor? What are the pricing and access arrangement consequences of your answer?

Procedural Issues

This Investigation covers territory already under consideration in current proceedings. To avoid overlap, we will consolidate these proceedings as necessary.

A. 89-07-030 is Pacific Bell's Application to offer additional business subscriber information products. This application brings up issues including: what information should be made available to competitors, in what form should this information be made available, at what price should the information be made available (among other issues). These matters will be considered generically in this Investigation. Therefore, we will consolidate A.89-07-030 with this Investigation.

The rehearing of D.89-03-051, granted in D.89-07-032, involves the issue of what price, if any, should be paid by one LEC to another for the use of directory information. This issue will be examined generically in this Investigation and therefore will be consolidated with this proceeding as well.

C.88-06-031 is a complaint case of Reuben H. Donnelly Corporation, et.al., vs. Pacific Bell. This case involves the issues of the legality of Pacific Bell's Reproduction Rights and List Rental tariffs, as well as whether Pacific Bell has complied with these tariffs. This case has been in litigation for over a year and has been briefed.

Although we recognize that this Investigation and the Donnelly complaint case involve certain related issues, we choose not to consolidate the two proceedings at this time. This is primarily a question of timing and administrative efficiency. C.88-06-031 is submitted for decision, and it does not appear productive to set aside submission and reopen the record at this point. However, many of the broader customer list issues raised by Donnelly may be resolved through the comments process initiated in this investigation. Therefore, we will reserve a

final decision in C.88-06-031 until we have made sufficient progress in this Investigation to address the broader issues raised in C.88-06-031.

We shall seek comments from all Respondents and any interested parties. After comments are received, the assigned Administrative Law Judge in consultation with the assigned Commissioner will determine the need for written testimony or other further action.

O R D E R

IT IS ORDERED that:

1. On or before 90 days after issuance of this OII, the respondents listed in Appendix A, the Division of Ratepayer Advocates and any other interested party shall file comments regarding competitive access to customer listing information in response to each of the questions listed on pages 15 through 17 of this decision.

Issues to be set for hearing and filing dates for testimony will be set by ruling after review of the comments.

2. Each of the respondents shall compile a list of all formal (tariffed, signed agreement, Public Utilities Code or other legal mandate) or informal uses of their customer information, including all rates and charges, at this time to be included in their written comments.

3. The Executive Director shall serve a copy of this order on all respondents and entities listed in Appendix A.

4. Parties shall file an original and twelve (12) copies of any comments with the Commission's Docket office.

5. Application (A.) 89-07-030 and I&S Case 86-06-004 are hereby consolidated with this investigation to the extent outlined in the preceding discussion.

This order is effective today.

Dated January 24, 1990, at San Francisco, California.

G. MITCHELL WILK
President
FREDERICK R. DUDA
STANLEY W. HULEFT
JOHN B. OHANIAN
PATRICIA M. ECKERT
Commissioners

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY.

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Wesley Franklin
WESLEY FRANKLIN, Acting Executive Director

APPENDIX A

The following parties are respondents to this
Investigation:

Pacific Bell
GTE California
Contel of California
Roseville Telephone Company
Citizen Utilities Company of California
Calaveras Telephone Company
California-Oregon Telephone Company
Ducor Telephone Company
Foresthill Telephone Company
The Ponderosa Telephone Company
CP National
Evans Telephone Company
GTE West Coast Incorporated
Kerman Telephone Co.
Pinnacles Telephone Company
Sierra Telephone Company, Inc.
The Siskiyou Telephone Company
Tuolumne Telephone Company
Winterhaven Telephone Company
Happy Valley Telephone Company
Hornitos Telephone Company
Volcano Telephone Company

Pacific Gas and Electric
Southern California Gas Company
Southern California Edison Company
San Diego Gas and Electric

(End of Appendix A)