

DSP/ /lmz \* \* .

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own)  
Motion into the Establishment of a }  
Forum to Consider Rates, Rules, }  
Practices and Policies of Pacific }  
Bell and GTE California Incorporated.)

FILED  
PUBLIC UTILITIES COMMISSION  
FEBRUARY 23, 1990  
SAN FRANCISCO OFFICE  
I.90-02-047

ORIGINAL

ORDER INSTITUTING INVESTIGATION

As specified in Decision (D.) 89-10-031, in which we adopted an incentive regulatory framework for Pacific Bell (Pacific) and GTE California Inc. (GTEC), this order creates a new forum for telecommunications customers, competitors and interested parties who have no other forum to raise issues that would otherwise be addressed in general rate case proceedings of Pacific and GTEC.

In D.89-10-031, we adopted an incentive regulation framework for Pacific and GTEC encompassing a wide variety of elements intended to take the place of cost-of-service regulation. One of the key elements in the new framework is the elimination of general rate cases, which have served in the past as a forum for investigations of appropriate cost and rate levels. However, they also have been a forum for interested parties to bring to the Commission's attention issues related to the subject utilities, and for the Commission to address important policy issues in the context of a broad review of the utility's operations.

Therefore, we will now provide a mechanism to allow parties to bring to our attention relevant issues which do not fit within other proceedings or procedural options by filing a Petition

in this Docket. Petitioners must make an affirmative showing why other available forums are inadequate or inappropriate to meet their needs. Petitioners should first address their concerns to the Commission's Advisory and Compliance Division (CACD) in order to attempt to reach an informal resolution of the problems. Any Petition which does not append documentation of such informal resolution efforts will not be docketed. Parties who need assistance with filing a Petition may contact the Commission's Public Advisor's Office.

This investigation will provide a forum where parties can raise concerns about Pacific's and GTEC's application of unbundling and other policies adopted in D.89-10-031. Parties also will be able to use this investigation to ask that categorization of a local exchange carrier service be changed, either for pricing purposes or for below-the-line/sharing treatment. This forum also will provide recourse for parties which have serious concerns about the adequacy of current tariff offerings to meet their needs, either because of perceived structural problems with the tariff or because services which they need are not offered under tariff.

Further, this investigation will provide a forum for parties to bring to our attention issues arising from the monitoring and cost allocation efforts called for in D.89-10-031, as well as any Federal-state separations issues that may arise. Parties also may bring unresolved problems regarding auditing or cost allocation so that we may address these issues apart from the annual sharable earnings review and prior to the 1992 review of the adopted framework.

We stress that this investigation will not be an omnibus proceeding. It will not be available for customers who simply think their rates are too high, or to competitors who wish to delay or otherwise impede competition for their own economic interests. Parties will not be allowed to attempt to abrogate the fundamental approach and goals of D.89-10-031 through filings in this investigation as those changes were made permanent subject only to review of variables such as the index. We will not accept filings that challenge the prudence of local exchange carriers' costs,

since D.89-10-031 removes from detailed Commission review this aspect of such costs. Parties may, however, file a Petition related to limited areas concerning utility costs under section A(5)(b) (Category II price floors) or section A(6)(a) (monitoring review) of this Order.

We intend that this investigation be as helpful as possible to parties needing a forum to address regulatory issues. At the same time, we are committed to limiting potential abuses of the proceeding. D.89-10-031 directs this Order to be very explicit about the issues that parties may or may not raise. Petitions concerning issues which are raised inappropriately will not be considered.

We adopt this Petition process as an interim procedure for two years and will evaluate it at that time for any needed changes to our Rules of Practice and Procedure. We will continue the process or a modification of it for as long as it is needed beyond that time frame; our intent is that this new forum remain available on a permanent basis. If during the initial two-year period it appears that the Petition process requires formal Rule changes, we will pursue those changes through the appropriate channels.

A. Issues that Parties May Raise in This Proceeding

The following sections discuss in more detail the issues that parties may raise through this procedure. Section C discusses the specific procedure for raising these issues through this mechanism. Any issue discussed in this section may only be raised in this proceeding if no other appropriate forum or procedural option is available.

1. TARIFF OFFERINGS: Parties may use this forum to request changes in access arrangements, tariff rules, or the availability of services from Pacific or GTEC. Examples include the following:

a. Enhanced service providers can request that the Commission order the LECs to provide new or modified basic service elements (BSEs), basic service arrangements (BSAs) and other Open Network Architecture (ONA) services. (Pacific would need FCC approval for certain of these services.) Parties may Petition to request changes or modifications to the arrangements already approved by the Commission.

b. Customers can request new or changed services such as custom calling features.

c. Competitors can request direct connection to LEC central offices, or other new or different access arrangements.

2. POLICY IMPLEMENTATION: Parties will be able to bring to the Commission's attention inappropriate application by Pacific or GTEC of Commission policies (as distinct from alleged violations of tariffs or orders, which would be handled through the Complaint process).

Examples of applicable policies include the following:

a. Unbundling and Related Principles -- D.89-10-031 determined that an unbundling requirement would provide important benefits as part of a regulatory framework structured to respond to a range of increasingly competitive conditions. The Decision held that monopoly building block services used by LECs be made available to competitors on a nondiscriminatory basis, along with unbundled uniform pricing of monopoly building blocks. The principles of unbundling, nondiscriminatory access, imputation, and rate structures based on underlying cost structures are applicable to any utility service which faces competition. The principles of unbundling and nondiscriminatory access may be subject to appropriate limitations such as technical or system integrity considerations, economic feasibility, or privacy concerns.

As an outcome of D.89-10-031, Pacific and GTEC are now required to impute the tariffed rate of any function deemed to be a monopoly building block in rates for any bundled tariffed service which includes that monopoly function. Pacific and GTEC also

may propose that any cost differences between provision of a monopoly function as part of a bundled utility service and provision of that function on an unbundled basis be reflected in tariffed rates.

Through this Investigation, parties may raise concerns with Pacific's and GTEC's application of the principles adopted in D.89-10-031, including the following: unbundling, nondiscriminatory access, imputation and the principle of rate structures based on underlying cost structures.

b. Other Commission Policies -- Parties may raise concerns about the application of other Commission policies in this forum. For example, if a party believes that Pacific is not modernizing its network as anticipated by D.89-10-031, this is the appropriate forum. Or if a party believes that a subject utility systematically provides inferior service to a particular geographic area or demographic group, such action may violate our universal service policy and may be appropriate for this forum.

3. NEW POLICIES: Parties will be able to propose new policies for Commission consideration, and raise any special problems that may have been addressed in general rate cases in the past. Of course, such proposed policies would have to be within the jurisdiction of the Commission to merit consideration.

As an example, parties may propose new policies in the area of ONA and CEI above and beyond those articulated in D.89-10-031 and other related decisions. An example from a previous rate case would be Pacific's efforts in the area of bilingual telephone service.

4. SERVICE CATEGORIES:

a. Parties will be able to use this investigation to ask that categorization of a local exchange service be changed, either for pricing purposes or for below-the-line/sharing treatment. Such parties must show that the conditions under which the Commission

approved the current categorization have changed enough to warrant reconsideration.

Services are currently categorized for pricing purposes into Category I (fixed price services), Category II (flexibly priced services), and Category III (maximum pricing flexibility). We have placed each LEC service into one of these three categories to begin the new framework. Parties cannot simply disagree with the current categorization. They must show some significant change, such as increased or decreased competition, or a change in the "basic service" aspect of a service.

Generally, all LEC services were placed above-the-line in D.89-10-031, while authorized enhanced services were placed below-the-line for the purposes of the shareable earnings calculations. Parties may propose that services be moved from above-the-line to below-the-line, or vice-versa. However, as with categorization of services for pricing purposes, parties will not be permitted to simply disagree with the Commission's decision through this proceeding. A proposed change in status must be supported by evidence of a change in the circumstances surrounding a service. For example, a party may propose that a service be moved below-the-line if that service has been moved from Category I to Category III because of a change in the competitive status of the service. Finally, we will not entertain proposals to move services back above-the-line simply because they are profitable; other issues such as changes in degree of market power or basic service attributes must be in evidence.

b. Parties other than Pacific and GTEC may use this forum to question the level of price floors for a Pacific or GTEC Category II service. A Category II service may have a price floor set at the direct embedded cost of the service. The price floor then will automatically increase by the inflation rate (GNP-PI) each year. Parties may use this forum if they believe the direct embedded cost of the service is actually higher than the inflation-adjusted price floor (i.e., if cost increases for this service have outpaced inflation).

5. AUDITING AND COST ALLOCATION ISSUES: Parties may bring unresolved problems regarding, for example, auditing or cost allocation on an ongoing basis so the Commission can address the issues prior to and apart from the annual shareable earnings review.

a. The DRA and/or CACD staffs of the Commission are to conduct the triennial audit required by Public Utilities Code section 314.5 and to bring any unresolved audit problems as soon as possible into this proceeding. Problems uncovered as a result of the ongoing staff audit should be considered in this proceeding (or should be resolved through informal means) and not in the proceeding dealing with the filing concerning possible shareable earnings.

b. The LECs are required to have ongoing systems to allocate all costs on a service-specific basis for all utility services. The Commission's staff is required to conduct ongoing audits of the cost allocation. Any issues arising out of this audit, including the question of the proper establishment of the cost allocation system, may be brought up in this proceeding.

c. Changes in cost allocation and auditing systems, including adopted changes by the FCC or FASB, may be established in this proceeding, or in a separate investigation if the Commission is the initiating party.

d. Parties may raise issues related to possible changes in the Federal-state separations methodology.

6. MONITORING:

a. Parties may address in this investigation issues arising from the monitoring program called for in D.89-10-031. Workshops will be held to establish the specific monitoring requirements. As a result of review of data or reports gathered in the monitoring program, parties may file a Petition questioning adherence to the Commission's monitoring goals established in D.89-10-031 to the

extent that such Petitions are consistent with other provisions in this Order.

b. Parties may use this forum to address the adequacy of the monitoring program. For example, parties may note changes in circumstances which they believe require monitoring safeguards not already in place.

**B. Issues Parties May Not Raise in This Proceeding**

In general, parties may not raise issues which are currently under consideration in another proceeding. Parties may only raise issues germane to Pacific and GTEC. Parties may not raise issues which could be raised through another procedural mechanism, such as a complaint, an advice letter, an application, or a Petition for Modification. Other specific exclusions are discussed below.

1. COMPLAINT ISSUES: Parties may not raise issues in this proceeding that can be filed as complaints. Public Utilities Code Section 1702 and Rule 9 of the Rules of Practice and Procedure set forth the conditions for filing complaints. Briefly, a complaint may be filed by any interested party alleging "any act or thing done or omitted to be done by any public utility" which violates "any provision of law or any order or rule of the Commission." Complaints about the reasonableness of rates or charges, however, cannot be considered by the Commission without the signatures of 25 consumers or an appropriate official representative of such consumers.

Examples of issues that are properly raised as complaints include allegations of the following:

- a. LEC violation of existing tariffs, including not offering a tariffed service or not charging tariffed rates
- b. LEC misinterpretation of existing tariffs
- c. The reasonableness of rates or charges (accompanied by the appropriate signature(s))



2. LEVELS OF RATES: We will not accept Petitions by customers which question the level of a tariffed rate itself, except to the extent that the level of the rate reflects a possible noncompliance with other policies adopted by the Commission (e.g., unbundling, anti-competitive behavior).

3. REGULATORY FRAMEWORK: We will not accept Petitions which attempt to abrogate the fundamental approach and goals of D.89-10-031 through filings in this investigation. For example, parties may not petition the Commission to re-adopt cost-of-service regulation or reinstate general rate cases.

4. UTILITY COSTS: We will not accept Petitions which challenge the prudence of local exchange carriers' costs, since D.89-10-031 removes these utility costs from Commission review.

5. ISSUES THAT BELONG IN OTHER PROCEEDINGS:

a. Billing and collections issues for enhanced service providers, co-carriers and others will be the subject of a separate OIR.

b. Competitive access to customer list information is the subject of I.90-01-033.

c. Phase III of I.87-11-033 will address the issues of broadening intraLATA competition, rate design issues related to competition and the Supplemental Rate Design, and pooling and settlements issues.

d. In Pacific's ONA filing (A.89-10-012), Pacific seeks approval for its ONA services, including several BSAs, BSEs and Complementary Network Services. Issues directly related to these matters should be addressed in that proceeding.

e. Women and minority business enterprise (WMBE) contracting, clearinghouse, compliance with the P.U. Code and Commission policies will be considered in an annual WMBE proceeding.

f. LECs may not file a Petition in this proceeding on a topic that should be filed as an application, an advice letter, an Application for Rehearing of a Commission decision, a Petition for Modification, or any other existing mechanism. Such topics include new services applications, shareable earnings advice letters, flexible pricing, monitoring information, etc.

C. Process for Filing a Petition

Petitioners who wish to raise an issue in this docket shall file the original and twelve copies of a Petition with the Commission's Docket Office. A certificate of service shall be attached to the Petition. The initial service list will be the same as that used in I.87-11-033. This Petition must be consistent with the purposes of the ongoing investigation established herein and must be specific about the nature and extent of the relief requested, in addition to complying with Article 2 of the Commission's Rules of Practice and Procedure (formal requirements for all pleadings and briefs).

Petitioners must include in their Petition a demonstration that the issues raised are not the subject of another proceeding, and cannot be addressed through an existing mechanism, such as the complaint mechanism. Protests to Petitions may be filed pursuant to the Commission's Rules 8.1 through 8.8. Parties may also file Comments on Petitions using the procedure for Protests.

Each Petition accepted for filing will be given a specific Petition number, serially issued, which shall be used thereafter in referring to the matter.

**IT IS HEREBY ORDERED that:**

1. Pacific Bell and GTEC are made respondents to this Investigation.
2. Petitions may be filed for the purposes set forth in this Investigation. Petitioners should file an original and twelve (12)

copies of each Petition with the Commission's Docket office and serve a copy on each party of record in I.87-11-033.

3. The Executive Director is directed to cause a certified copy of this order to be served by certified mail on Respondents Pacific Bell and GTE-California Incorporated and to cause a copy of this order to be served by mail on each parties of record in I.87-11-033.

4. Petitioners in this Investigation shall make an affirmative showing that there is no other proceeding or procedural option available to consider their Petition.

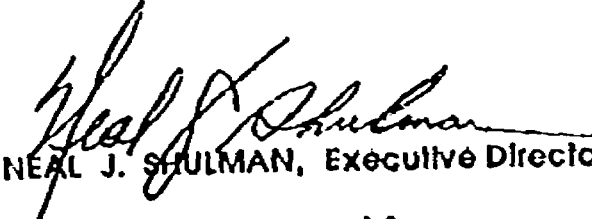
5. Petitioners shall append documentation of informal resolution efforts.

This order is effective today.

Dated February 23, 1990, at San Francisco, California.

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

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

  
NEAL J. SHULMAN, Executive Director

pg