

MAR 20 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own Motion into rating area consistency and routing practices between incumbent Local Exchange Carriers and certified Competitive Local Carriers in instances where expanded local service has been afforded.

ORIGINAL
FILED

PUBLIC UTILITIES COMMISSION
MARCH 18, 1997
SAN FRANCISCO OFFICE
INVESTIGATION 97-03-025

ORDER INSTITUTING INVESTIGATION

This Order Instituting Investigation (OII) is issued to address the factual and legal issues relating to the reassignment of NXX prefixes and the rating and routing of telephone calls between incumbent local exchange carriers (LECs) and certified competitive local carriers (CLCs) in instances where expanded local service has been established. There is an outstanding complaint case that prompts this investigation wherein intraLocal Access and Transport Area (intraLATA) telephone calls from LEC customers are not being completed to CLC customers because of discrepancies in how the calls are routed and how the calls are rated (or charged for). As the market for telecommunications becomes more competitive, the Commission has the dual role of adjudicating this dispute while simultaneously reviewing the generic issues associated with the reassignment of NXX prefixes that have previously been associated with expanded local service.

Background

The referenced complaint, C.96-10-018, was filed by Pac-West Telecomm Inc. (Pac-West), a certificated CLC, against Evans Telephone Company (Evans) and Volcano Telephone Company (Volcano), two small incumbent LECs. Pac-West alleges that these LECs are improperly routing calls made to Pac-West's customers such that the calls cannot be completed. Evans and Volcano argue that Pac-West is manipulating the telecommunications network in an attempt to cause toll calls to be carried on

intraLATA toll facilities without payment of the tariffed charges associated with use of those toll facilities.

Our understanding of the facts underlying this routing and rating dispute is as follows: Pac-West entered into an interconnection arrangement with Pacific Bell Company (PacBell), under which certain prefixes (NXXs) previously assigned to PacBell's Jackson and Crows Landing central offices were assigned (sold) to Pac-West. Pac-West then sold local exchange service to its customers, assigning them numbers from these prefixes. (See *Advice Letter 18115*, March 19, 1996.) Based on available information, it appears that Pac-West's customers (e.g., regional businesses, Internet providers) do not reside in Jackson or Crows Landing. Hence, the NXXs assigned to Pac-West are no longer associated with the geographic rate centers of Jackson and Crows Landing, as they have been in the past.

Calls made from Patterson, which is served by Evans, to Crows Landing (served by PacBell) have historically been routed to PacBell's access tandem in Stockton, where they are switched to terminate at PacBell's central office in Crows Landing. Under the routing arrangements between Pac-West and PacBell, it appears that these calls no longer terminate at the Crows Landing central office. Instead, these calls are routed from Stockton to Pac-West's customers residing in the Stockton area, where Pac-West has switching facilities. It appears that similar routing arrangements are made for calls originated by Volcano customers to the NXXs that previously terminated in the Jackson central office and which Pac-West purchased from PacBell.

For rating purposes, calls originating from Patterson to NXXs associated with the Crows Landing central office are considered local, and are included in the flat monthly charge that Evan's customers pay. Similarly, calls from Volcano to Jackson are rated as local calls. This treatment stems from our decisions to extend the geographic boundaries of local service (through either extended area service (EAS) or expanded local calling area (ELCA)) to tie together communities of interest in rural areas. In numerous cases we have expanded toll-free calls to areas in which essential services are offered. (See, for example, Decision (D.) 77311, D.77921, D.87664, D.88939, D.89255 and D.91-07-016 for EAS; D.90-11-058 for ELCA.)

Evans and Volcano contend that the calls in question are destined for Stockton, which is a toll route to which end user toll charges and carrier access charges should be applied. Pac-West argues that customers for the purchased NXX prefixes do not have to physically reside in the community of interest or local calling area, and that calls should be rated as local calls (per tariffs for EAS and local service) and routed per the local exchange routing guide. Pac-West filed its complaint when these LECs changed the routing of calls to Pac-West customers such that the calls were routed directly to Crows Landing and Jackson central offices, which do not have facilities to switch traffic to Stockton. As a result, calls made to Pac-West customers having the Crow's Landing and Jackson NXX prefixes could not be completed.

Procedural History

Pac-West informed our Telecommunications Division of the dispute by letter dated July, 29, 1996. During the subsequent weeks, staff attempted to facilitate communication among the parties in order to resolve the dispute. The parties did not reach agreement on the issues, and Pac-West filed a complaint and motion for a temporary restraining order and permanent injunctive relief on October 15, 1996. The assigned Administrative Law Judge (ALJ) denied the motion for issuance of a temporary restraining order, but set a November 25, 1996, hearing date on the issue of preliminary injunction. (See ALJ Ruling dated October 24, 1996.) The assigned Commissioner and ALJ also requested the presence and participation of a representative of PacBell at the hearing. (ALJ Ruling dated November 8, 1996.) Calaveras Telephone Company petitioned to intervene in this case. Evans and Volcano filed a timely response to the complaint on November 18, 1996.

By letter dated November 14, 1996, Pac-West withdrew its motion for preliminary injunctive relief, without prejudice to its requesting similar relief further on in this proceeding. In its letter, Pac-West noted that the resolution of its complaint would probably require the Commission to address issues of broader interest to both incumbent LECs and CLCs that were not currently parties to the proceeding. Accordingly, Pac-West preferred to withdraw its request for preliminary injunctive

relief so that issues could be addressed in a broader context in a less constricted timeframe. On November 18, 1996, the assigned ALJ granted Pac-West's request to withdraw its motion, without prejudice, and granted the petition to intervene by Calaveras Telephone Company.

Compliance Issues

Our inquiry in this investigation will examine the specific facts of the complaint in light of current Commission policies, and determine if those policies were violated, and by whom. To this end, we will address the following questions, among others:

1. Do Evans and Volcano have certificate of public convenience and necessity (CPCN) responsibilities to complete calls even if underlying carrier arrangements do not compensate them to their satisfaction?

2. Did Pac-West, in the above-mentioned interconnection agreement, clearly represent to PacBell how it would use the NXX prefixes it purchased, i.e., did they mention that they would use inconsistent rate centers?

3. Was PacBell or Pac-West obligated to inform the Commission of these rating/routing inconsistencies?

4. Did Evans and Volcano know that the NXX prefixes were sold to Pac-West?

5. Did PacBell violate any of its interconnection agreements or toll settlement agreements with Volcano and Evans in entering into agreements with Pac-West?

6. What were the technical, contractual and payment arrangements for call origination and completion between Evans and PacBell and Volcano and PacBell before Pac-West entered into the interconnection agreement with PacBell? What are those arrangements now?

7. What is the impact on Volcano's and Evans' toll revenues if calls made to Pac-West customers were rated as local? How is this loss in toll calculated and what are the sources (e.g., access charges, toll pooling)?

8. How did Evans and Volcano change the routing of calls to prevent call completion and were these changes consistent with their obligations under the Federal Telecommunications Act of 1996?

Generic Issues

The complaint raises the generic issue of rating and routing inconsistency in instances where EAS or expanded local calling arrangements have been afforded. In particular, how should NXXs previously assigned and used under EAS or ELCA arrangements be handled when they are repurchased to be used in different geographic areas and terminate outside of previously-assigned rate centers? On the one hand, our local competition rules create the possibility that geographic prefix (NXX) designations could change. In D.96-03-020, we did not require that CLCs conform to the LECs' existing rate centers in the interest of preserving scarce number resources and promoting the development of facilities-based competition. (See D.96-03-020, mimeo. pp. 72-84.) On the other hand, our rules limit local competition to PacBell and GTE California and do not specifically contemplate the impact that rating/routing inconsistencies could have on small LECs' revenues where there are EAS or other expanded local calling arrangements. Therefore, we will address in this investigation the following questions, among others:

1. For what purposes or policy objectives have EAS or ELCA been established in the past?
2. For all LECs and CLCs entering into interconnection arrangements since the issuance of D.96-03-020:
 - a. Have EAS or ELCA-related NXX prefixes been reassigned to CLCs?
 - b. If so, how is the traffic rated and routed (e.g., rated local, routed toll)?
 - c. Do these interconnection agreements have conditions on use of NXXs new or previously assigned?
3. What is the potential revenue impact on small LECs of allowing NXXs previously assigned to EAS or ELCA-designated rate centers to be used for calls terminating in a different geographic area?

To address these questions, we will examine how small LECs recover their costs, the history of how EAS routes and ELCA arrangements have been established in the past, and what revenue impacts these routes have had on PacBell and various small LECs. Depending on the results of our inquiry, we may decide to refer issues to our

local competition proceeding (R.95-04-043), broaden the scope of this investigation, or take other actions, as appropriate.

Senate Bill 960

We are currently conducting an experimental implementation of procedures that will become mandatory for our proceedings, effective January 1, 1998, pursuant to Senate Bill (SB) 960. These Experimental Rules are set forth in Resolution (Res.) ALJ-170, which is appended to this OII. We propose to consider the generic issues in this proceeding, but not the compliance issues, under the Experimental Rules.

We therefore begin the process in Res. ALJ-170 (see Experimental Rule 2.e) as follows. We identify the generic phase of this proceeding as a candidate for inclusion in our SB 960 experiment. We preliminarily categorize the generic phase as quasi-legislative because the issues in that phase, which we summarized earlier in this OII, have to do largely with interpretation of prior Commission decisions and the policies underlying those decisions. However, an evidentiary hearing may be appropriate regarding the revenue impact issue. At this point, we are unable to set a detailed schedule, but intend to address the compliance issues first. We intend to complete both the compliance and generic phases within 18 months of issuance of this OII. Commissioner Josiah Nepper and Administrative Law Judge (ALJ) Meg Gottstein are assigned to this proceeding.

A prehearing conference (PHC) for both the compliance and generic phases of this proceeding will be held at 10:00 a.m. on Wednesday, April 30, 1997, at the Commission Courtroom, State Building, 505 Van Ness Avenue, San Francisco, California. At the PHC, we will establish service lists for each phase.

Interested parties should file PHC statements at the Commission Docket Office no later than April 15, 1997. Copies should also be served on the assigned Commissioner and ALJ by April 15, 1997. All parties filing PHC statements should

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bring 30 extra copies to the PHC. Copies to the assigned ALJ should be mailed to the following address:

ALJ Meg Gottstein
PO Box 210
Volcano, California
95689-0210

All parties filing PHC statements shall provide a proposed scoping memo, as described in Experimental Rule 3.c. Specifically, the memos should raise any concerns the parties may have regarding 1) inclusion of the generic phase in the SB 960 experiment, 2) categorization of that phase as quasi-legislative, or 3) the list of issues for that phase. Also, the memos should contain the parties' scheduling proposals, which should be consistent with our goal of completing both phases of this proceeding in 18 months or less.

Therefore, good cause appearing, **IT IS ORDERED** that:

1. An investigation on the Commission's own motion is hereby instituted into rating area consistency and routing practices between incumbent local exchange carriers and certified competitive local carriers in instances where expanded local service has been afforded for the purpose of determining whether such practices promote local competition in a manner that creates an unreasonable burden on small LECs or is unreasonable or lawful in any other respect.
2. Case (C.) 96-10-018 is consolidated into this investigation.
3. A prehearing conference shall be held at 10:00 a.m. on Wednesday, April 30, 1997, at the Commission Courtroom, State Office Building, 505 Van Ness Avenue, San Francisco, California, at which time and place all interested parties may appear and be heard.

4. The Executive Director is directed to cause a certified copy of this order to be immediately served upon all incumbent local exchange carriers and certificated competitive local carriers and all appearances and the state service list in C.96-10-018.

This order is effective today.

Dated March 18, 1997, at San Francisco, California.

P. GREGORY CONLON

President

JESSIE J. KNIGHT, JR.

HENRY M. DUQUE

JOSIAH L. NEEPER

RICHARD A. BILAS

Commissioners

BACKGROUND

Jaime L. Atilano, doing business as Tri Star Limousine, operates as a charter-party carrier of passengers pursuant to a permit first issued on July 24, 1991 under TCP 7348P.

On September 1, 1994, the Commission issued Order Instituting Investigation No. 94-09-006 into the operations and practices of Atilano, doing business as Tri Star Limousine. The OII sought to determine whether Tri Star Limousine violated Section 5379 of the California Public Utilities Code by conducting for-hire transportation during the suspension of its charter party permit for lack of liability insurance; whether Tri Star Limousine violated Section 5378.1 of the California Public Utilities Code by engaging employees without workers' compensation insurance coverage on file and in effect with the Commission; whether Tri Star Limousine violated Part 5.02 of General Order 157-B, by failing to enroll in the Department of Motor Vehicles' (DMV) Pull Notice Program; and whether Tri Star Limousine should pay a fine of \$5,000 pursuant to Public Utilities Code Sections 5378 and 5415 as well as the fee established pursuant to Public Utilities Code Sections 421 and 5387.5.

On March 16, 1995, Atilano, dba Tri Star Limousine, entered into a settlement agreement with the staff of the Rail Safety and Carriers Division (formerly known as Safety and Enforcement Division) to resolve issues raised in the OII. The Agreement was formally adopted by the Commission in Decision 95-08-018, which placed Tri Star Limousine on probation for 18 months and ordered the carrier to remit \$3,000 fine to the Commission, with \$500 held in forbearance unless Tri Star Limousine violates the terms or conditions of the agreement. In addition, Atilano agreed to enroll in the DMV Pull Notice Program; to comply with the workers' compensation requirement and General Order 157 provisions; and not to engage any unlicensed driver to operate company vehicles.

The Rail Safety and Carriers Division staff advises us, through its declaration of January 16, 1997, that it initiated an investigation into the operations of Atilano, dba Tri Star Limousine and his compliance with Decision 95-08-018. The results of that investigation, summarized below, lead us to institute this investigation.

INVESTIGATION

The Rail Safety and Carriers Division staff informs us through the declaration supporting the issuance of this order that Atilano, dba Tri Star Limousine, failed to comply with any of the agreed terms of the settlement and order of the Commission in Decision 95-08-018. Atilano failed to provide the staff with monthly progress reports of his compliance with Commission regulations; failed to remit the \$3,000 fine imposed by the Decision; and failed to comply with the Department of Motor Vehicles Pull Notice driver-enrollment requirements imposed by General Order 157 and the California Vehicle Code. Moreover, the staff has disclosed evidence that Tri Star Limousine apparently engaged subcarriers that were not licensed by the Commission.

Failure To Comply With Commission-Ordered Probation

In Decision 95-08-018 the Commission adopted the stipulated settlement agreed to by Atilano and the staff of the Rail Safety and Carriers Division. In the settlement, Atilano agreed to an eighteen month period of probation during which the staff would monitor his compliance with Commission regulations. During this probation, Atilano would prepare and present progress reports to the staff which would include: (a) a list of drivers and their drivers' license numbers engaged for the prior month; (b) evidence of compliance with Section 1808.1 of the Vehicle Code which include the Pull Notice and DMV printouts; (c) waybills for the prior month; and (d) income and expense

statements for the prior month. These reports were due on the 15th of each month, commencing September 15, 1995. Atilano further agreed to provide the staff copies of Employment Development Department (EDD) Form DE3 filed quarterly with EDD within 15 days of filing them. The staff advises us, through the declaration supporting the issuance of this order, that to date Tri Star Limousine has not complied with the probation progress reports as required by Decision 95-08-018.

Failure To Pay Commission-ordered Fine

By Decision 95-08-018 the Commission ordered Atilano, to pay to the Commission a fine of \$3,000. The first installment of \$140 was due no later than the 1st of the month after the August 11, 1995 effective date of the Decision. The staff advises us, through the declaration supporting the issuance of this order, that Tri Star Limousine has not remitted any fine payments to the Commission.

Failure to Comply with Pull Notice Program

Pursuant to General Order 157, Part 1.06, "every charter-party carrier and their drivers shall comply with the provisions of the California Vehicle Code." Also, pursuant to General Order 157, Part 5.02, all charter-party carriers shall enroll in the Pull Notice Program of the Department of Motor Vehicles as defined in Vehicle Code Section 1808.1. The Rail Safety and Carriers Division staff's investigation disclosed evidence that although Atilano opened an employer Pull Notice account with the Department of Motor Vehicles on August 8, 1994, he failed to enroll five drivers that he used between August and November 1995.

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Engaging Unlicensed Subcarrier Drivers

Pursuant to General Order 157, Part 3.04, "a carrier shall not use the services of another carrier (subcarrier) that provides the vehicle and driver, unless the second carrier holds Commission authority as a charter-party carrier." Also, pursuant to Part 5.03 of GO 157, "[e]very driver of a vehicle shall be the permit holder or under the complete supervision, direction and control of the [TCP] operating carrier. The staff advises us, through the declaration supporting the issuance of this order, that Tri Star Limousine utilized unlicensed subcarriers between August and November 1995.

DISCUSSION

The requirements set forth in the Public Utilities Code for the operation of a charter-party business, as well as the rules which we have promulgated to implement those requirements, are largely to ensure public safety. We are concerned that Respondent failed to comply with the terms and order of the Commission in Decision 95-08-018. Moreover, we are particularly concerned that Respondent has continued to engage drivers without enrolling them in the Department of Motor Vehicles Pull Notice Program, and that Respondent has engaged unlicensed subcarriers. If this apparent pattern of violations continues the public will be exposed to an unacceptable level of risk.

Because of the serious nature of the allegations and complete disregard of in Decision 95-08-018, we believe that Atilano, doing business as Tri Star Limousine, should be ordered to show cause why his operating authority should not be revoked.

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ORDER

IT IS ORDERED that:

1. An investigation on the Commission's own motion is instituted into the operations and practices of Jaime L. Atilano, doing business as Tri Star Limousine, Respondent, to determine whether the Respondent:

- a. violated Public Utilities Code Sections 421, 5378, 5415 and 5387.5 by failing to remit the \$3,000 fine and to comply with the order of the Commission in Decision 95-08-018.
- b. violated General Order 157, Parts 3.04 and 5.03, by engaging the services of unlicensed charter-party carriers;
- c. violated General Order 157, Parts 1.06 and 5.02, by failing to enroll drivers in the Department of Motor Vehicles Pull Notice Program as required by Vehicle Code Section 1808.1.

2. This investigation is also instituted for the purpose of allowing the Respondent to show cause why his charter-party permit should not be revoked, in view of what appear to be continuing violations of applicable laws and regulations.

3. The Rail Safety and Carriers Division staff, if it elects to do so, may present additional evidence at any hearing beyond that described in its declaration supporting this order, either through testimony or documentation. The staff's declaration supporting this order shall be filed in this proceeding's formal file, and shall also be provided to the Respondent, Jaime L. Atilano, when this order is personally served.

A hearing will be scheduled and held only if the Respondent requests a hearing within thirty days from the date this order is personally served on him. A request for a hearing must be separately sent to Assistant General Counsel Ira R.

Alderson, Jr. and Chief Administrative Law Judge Lynn T. Carew, both at the Commission's headquarters, and a hearing shall be expeditiously scheduled upon receipt of a request. If no hearing is requested, we will enter an order revoking the Respondent's operating authority for cause and with prejudice based on the staff's submitted declaration.

The Executive Director shall cause a certified copy of this order and the supporting declaration to be personally served upon:

Jaime L. Atilano, Respondent
DBA: Tri Star Limousine
25531 Vista Famoso Drive
Moreno Valley, CA 92388

A copy shall be sent by certified mail to Atilano's brother and his representative in I.94-09-006:

Jesse L. Atilano
President/CEO
Labor Law
2500 South Atlantic Blvd., Bldg. C
City of Commerce, CA 90040

If personal service cannot be made on Respondent, despite diligent efforts, then service may be made by sending a copy by certified mail to Respondent at the last known physical address of record supplied by the Respondent to the Commission. (Staff shall file a declaration explaining efforts to effect personal service, and if the Chief ALJ finds staff's efforts diligent, the service by mail will suffice).

This order is effective today.

Dated March 18, 1997, at San Francisco, California.

P. GREGORY CONLON
President
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
RICHARD A. BILAS
Commissioners