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PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

COMMISSION ADVISORY & COMPLIANCE DIVISION
Telecommunications Branch

RESOLUTION NO. T-13056
March 22, 1989

RESOLUTION

PACIFIC BELL. ORDER ON SPECIALIZED SERVICE ARRANGEMENT (SSA) WITH MCI FOR PACIFIC TO BILL MCI'S CUSTOMERS IN PACIFIC BELL SERVING AREAS

SUMMARY

Pacific Bell, by Advice Letter No. 15515, dated February 10, 1989, requested that a new billing agreement with MCI be approved. The new billing agreement, submitted to the Commission Advisory and Compliance Division (CACD) as a Specialized Service Agreement (SSA), will revise Pacific Bell Tariff Schedule Cal.P.U.C. No. 175-T. The billing service will allow MCI's customers in Pacific Bell serving areas to be billed for their MCI long distance service by Pacific Bell.

The cost to Pacific Bell for providing this service is $4.9 million, which will be recovered in full if MCI does not terminate the service until the expiration of the six year contract. In the billing contract, up to $3.2 million of the non-recurring expenses incurred by Pacific to provide the service are not guaranteed or recoverable if MCI should decide to withdraw from the service at some time before the expiration of the contract. There is, however, little likelihood that MCI would ever withdraw before the expiration of the contract.

This Resolution authorizes conditional approval of the tariffed contract with MCI, contingent upon Pacific Bell making a modification to the contract. The contract should be modified to require Commission approval of any extention beyond the intial six year contract, which has been the Commission's past practice on contracts. As the contract is presently written, the contract can be automatically renewed after six years without any further review by the Commission. Contracts that can be continued in perpetuity without Commission approval are not in compliance with the intent of General Order (G.O.) 96-A.

The Division of Ratepayer Advocates (DRA) filed a protest of this Advice Letter on March 2, 1989. Pacific responded to DRA's protest on March 6, 1989. MCI responded to DRA's protest on March 13, 1989.

BACKGROUND

MCI's customers currently receive two phone bills each month: a local phone service bill from Pacific Bell and a long distance bill from MCI. The approval of this resolution would consolidate the bills by allowing Pacific Bell to also bill MCI's residential and low toll usage commercial customers. This SSA provides two different billing services by Pacific for MCI.

One of the billing arrangements is Message Ready Billing. This billing is used by Pacific on MCI's behalf to charge toll customers who use MCI's services on a casual basis, using MCI's long distance access code. These customers are not presubscribed to MCI. Pacific already provides this service for MCI and other Interexchange Carriers (IEC's). Under the terms of this contract, Pacific will continue to provide this service for MCI at the existing tariffed rates until the end of 1990, when the tariffed rates expire. The rates at which this service will be provided beyond that date are being reviewed by Pacific Bell.

The other billing arrangement, which is new, is Invoice Ready Billing. With Invoice Ready Billing, MCI will do the calculation of taxes, surcharges, discounts, allowances and promotions to Residence and Business customers who are presubscribed to MCI and reside in Pacific's service territory. MCI will give this billing information to Pacific, which will then send a consolidated local service and long distance service bill to MCI's presubscribed customers. MCI's presubscribed customers currently receive separate bills from MCI and their local phone company. Pacific expects about 90% of MCI's residential customers to be converted to the consolidated bill. MCI will also send Pacific their lower toll usage commercial accounts.

Presently, MCI customers who do not pay their MCI bill may be disconnected from their presubscribed access to MCI's long distance service. As long as these customers pay their Pacific Bell bill, however, they retain their local phone service from Pacific Bell. The adoption of a consolidated phone bill would increase the number of customers whose phone service would be suspended or disconnected for nonpayment, since these MCI customers would be subject to disconnection for not paying either portion of their bill, local service or long distance service (D83-12-024 & D 85-06-015).

Pacific Bell's rate of service suspension and disconnection for nonpayment in December, 1988 was 0.6% (0.006) of their customer base. If MCI's customers were receiving a consolidated bill, then a .6% disconnection and suspension rate (assuming that this rate was approximately the same for MCI's customers as it was for Pacific Bell's customers as a whole) would have resulted in about 2700 MCI customers being suspended or disconnected from all telephone service in December 1988. The current rate of suspension or disconnection for MCI customers in Pacific Bell serving areas has not been provided by Pacific Bell, nor is it known how many of these customers would have lost local service anyway for non-payment of their Pacific Bell bills.

The contract currently before the Commission is open-ended. It can be renewed over and over indefinitely, without any further oversight of the rates or conditions by the Commission. At the expiration of the initial six year term, the contract can be automatically renewed at the current rates. The CACD Staff feels that prior to the expiration of the contract term, another contract should be submitted for Commission review if Pacific and MCI wish to continue with this billing arrangement.

PROTESTS

The Division of Ratepayer Advocates filed a protest of this Advice Letter on March 2, 1989. Pacific responded to DRA's protest on March 6, 1989, and MCI responded on March 13, 1989. The protest raises the same issues mentioned above on the lack of a termination liability clause and the fact that the contract is open ended. DRA's protest also includes suggested language changes that DRA feels should be made to Pacific's Advice Letter.

DRA's suggested language on termination liability is as follows:

> In the event the Invoice Ready Billing Service is cancelled by MCI prior to implementation, MCI will reimburse the Utility for all development work completed to date.
>
> In the event the Invoice Ready Billing Service is implemented by the Utility and is cancelled by MCI prior to the six-year term of this SSA, MCI will reimburse the Utility for the full cost of developing an Invoice Ready Billing System, subject to the provisions in 12.2 (E) (1) above and 12.2 (E) (3) below.

Pacific Bell's response states that it does not believe that any such language change is necessary, because they believe it is unlikely that MCI would drop the service. Pacific also believes that there is no identifiable risk to Pacific's ratepayers, since Pacific has no current rate request before the Commission. Furthermore, the handling of any possible loss can not be decided until Investigation No. 87-11-033 has decided on the manner in which local exchange companies should be regulated in the future.

MCI feels that the suggested language is an unwarranted renegotiation of the original contract, a contract to which both Pacific and MCI agreed, and in which the extent of financial liability was known to both parties. MCI also agrees with Pacific that since Pacific claims they don't have a mechanism for passing any loss to the ratepayer, there is no risk to the ratepayer.

Even in the very unlikely situation where MCI for some reason terminated the service contract after implementation of the service, MCI would be liable for a minimum of 1.6 million out of a potential 4.9 million in developmental expenses. If MCI terminated the contract before the service was implemented, it would be liable for all of the developmental expenses up to a maximum of 1.6 million dollars.

DRA's suggested language to correct the open-ended nature of Pacific's contract is as follows:

> At the end of this initial six-year term, the SSA may continue to remain in effect for a maximum period of 12 months, at the same rates then in effect until this SSA is terminated or cancelled as provided herein, as long as the Utility, prior to the end of this initial six-year term, files another advice letter requesting authorization to implement a new SSA for MCI. The Utility shall include a detailed cost study with this advice letter filing.

Neither Pacific nor MCI object to this language, and Pacific is willing to adopt it. The CACD Staff, however, does not agree with this language. The CACD Staff feels that Pacific should file a new advice letter before the service expires if MCI wishes to continue the billing agreement, with no automatic extension of the agreement.

DISCUSSION

Although the MCI contract puts some Pacific Bell customers who subscribe to MCI service at greater risk of being disconnected from local telephone service for non-payment of their MCI bills, this problem is far outweighed by the other benefits of this contract. One of those benefits is the additional revenue Pacific Bell will obtain which will help all ratepayers. Another benefit that will help many Pacific Bell customers who subscribe to MCI service is the postage and check writing savings derived from receiving one consolidated phone bill each month instead of two.

The Commission is concerned that this contract signed between MCI and Pacific does not guarantee that Pacific Bell will recover its costs if MCI decides to withdraw from the contract before 1991.

Pacific tried to negotiate a written termination liability agreement with MCI, but MCI would not agree to a written agreement. Pacific Bell still feels that it is a very good contract and should be approved as is. MCI does not want the Commission to assign more risk to the MCI shareholders than the shareholders were originally exposed to under the contract negotiated with Pacific.

The Commission believes that such a termination liability agreement is not necessary, because it is very unlikely MCI would terminate the contract early, and therefore there is very little risk to Pacific's ratepayers. As with any service or contract there is some amount of risk because no one can predict the future. No venture or activity is risk free. The Commission rejects DRA's protest because it sets an unfair precedent that allows the ratepayers to share in the benefits without assuming any risk.

The contract as currently written is open-ended. It can be renewed over and over indefinitely without any further oversight of the rates or conditions by the Commission. This is not reasonable, since all the costs given by Pacific are only estimates, and recorded figures could differ significantly due to unforeseen events. Furthermore, contracts that can be continued in perpetuity without Commission approval are not in compliance with the intent of General Order (G.O.) 96-A. DRA's suggestion that Pacific be able to extend the contract for one year beyond the six year term is not necessary. Pacific should be able to submit a new SSA and contract to the Commission Staff on a timely basis before the old contract expires.

FINDINGS

1. Pacific Bell's Advice Letter No. 15515 is reasonable, with the exceptions in Finding of Fact No. 3.

2. DRA's protest is granted in as much as it agrees with Finding of Fact No. 3.

3. Pacific Bell should modify its contract so that it is not automatically renewed after the six year term of the contract. If Pacific and MCI wish to continue this billing arrangement beyond the expiration of this contract, they should file another contract with the Commission before the expiration of this contract, with sufficient time for review by the CACD Staff.

IT IS ORDERED that:

(1) Pacific Bell's Advice Letter 15515 is approved, contingent on Ordering Paragraph No. 2.

(2) Pacific Bell shall modify the contract so that it is not automatically renewed after the six year term is over.

I certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting on March 22, 1989.

The following Commissioners approved it:

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

Commissioner Patricia Eckert,
present but not participating

Victor Weisser
Executive Director