

Decision 01-11-059 November 29, 2001

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of the Application of XO California, Inc. and ICG Telecom Group, Inc. for Modification of Decision 94-09-065 so that Competitive Local Carriers and Nondominant Interexchange Carriers May Withhold Customer Names from Filings of General Order No. 96-A Contracts and May Also Make Such Contracts Effective on 14 Days' Notice

Application 01-08-043  
(Filed August 6, 2001)

**OPINION REVISING GUIDELINES  
ORIGINALLY SET IN DECISION 94-09-065  
REGARDING THE FILING OF CONTRACTS UNDER  
GENERAL ORDER 96-A BY CERTAIN CARRIERS**

**I. Summary**

This decision grants the application of XO California, Inc. (XO) and ICG Telecom Group, Inc. (ICG) (jointly, "Applicants") for modification of Decision (D.) 94-09-065 ("Implementation Rate Design (IRD) Decision").<sup>1</sup> By this order, the commission prospectively changes the procedures for the filing of customer specific contracts under General Order (GO) 96-A to allow competitive local exchange carriers (CLCs) and nondominant interexchange carriers (NDIECs) to file contracts under the same guidelines that apply to the incumbent local exchange carriers (LECs) regulated under the "New Regulatory Framework (NRF)." Specifically, CLCs and NDIECs may, when their customers so request,

---

<sup>1</sup> 56 CPUC 2d 117.

file these contracts without disclosing the names of their customers, and the contracts may become effective on 14 days' notice.

## **II. Background**

XO and ICG are telecommunications carriers certificated as CLCs and NDIECs subject to the jurisdiction of the Commission. On August 6, 2001, Applicants filed this application requesting the Commission modify its 1994 IRD Decision regarding the filing with the Commission of customer specific contracts.<sup>2</sup>

The IRD Decision allows "utilities, at the customer's request, to file contracts with the customer's name omitted." (IRD Decision, mimeo at p. 240 56 CPUC2d 117 at 244.) The decision also provides that "Express Contracts" filed by LECs regulated under NRF (hereinafter "NRF LECS") will be effective 14 days after they are filed with the Commission. (Id. mimeo at 233). Applicants request clarification and modification of this language to extend the same filing guidelines to contracts filed by NDIECs and CLCs.<sup>3</sup> Applicants maintain this modification will ensure equal treatment of competitive carriers and NRF LECs and provide the same benefits to customers of competitive carriers that customers of NRF LECs receive.

---

<sup>2</sup> The Commission's GO 96-A sets forth rules for the filing of rates, rules, and contracts by commission-regulated utilities.

<sup>3</sup> Applicants explain that Rule 4.E in Appendix E to D.96-02-072 provides that "Contracts for CLCs shall be subject to GO 96-A rules for NDIECs, except interconnection contracts." Thus, if D.94-09-065 is modified as requested, any change in the GO 96-A rules for NDIECs will automatically apply to CLCs as well.

Applicants justify their proposed modification by stating that NDIEC and CLC customers are entitled to the same privacy rights with regard to GO 96-A contracts as NRF LEC customers. Applicants supply several reasons, including a customer's desire to keep details of contract negotiations from its own customers and competitors, as rationale for extending the same guidelines regarding contract filings to competitive carriers.

With regard to the effective date of contracts, Applicants point out that at present, NDIEC and CLC contracts are not allowed to become effective on less than 40 days' notice. Applicants contend that NDIEC and CLC customers are entitled to have their contracts become effective no less quickly than NRF LEC's express contracts, and that anything less than equal treatment would be discriminatory.

Responses to the application were filed by Pacific Bell Telephone Company (Pacific), AT&T Communications of California (AT&T), and Cox California Telcom L.L.C. (Cox). Pacific supports the Applicants' request, noting that parity is critical to competition and bringing lower prices and more services to California consumers. AT&T also supports the application but requests that the Commission approve a 14-day contract effectiveness deadline only as an interim measure, pending approval of AT&T's recommendation in the GO 96-A proceeding<sup>4</sup> for contracts to be effective upon signing. Cox supports the application and requests an additional modification to the IRD Decision to clarify

---

<sup>4</sup> Rulemaking 98-07-038.

that since NRF LECs no longer have to file a tariffed listing of contracts, competitive carriers should not have to file this tariffed listing either.<sup>5</sup>

### III. Discussion

We agree with Applicants that there is no reason that the contract filing guidelines for NRF LECs should differ from those that apply to CLCs and NDIECs. The customers of these three carrier types are entitled to the same treatment with regard to their contract filings. If we were to maintain the status quo, CLCs and NDIECs would face a competitive disadvantage if one of their customers wanted to maintain anonymity for their contract or wanted a quick effective date for the contract.

In the IRD Decision, the Commission stated:

...we recognize that some contract customers may not want their names to be made publicly available in connection with specific contract terms. The identity of a specific customer is less central to our competitive goals than the prices of the contract services. We will honor customers' requests for privacy and permit *utilities*, at the customer's request, to file contracts with the customer's name omitted. Allowing *utilities* to remove customers' names from filed contracts at the customer's request is within the authority § 498(a) grants us to specify the form of filed contracts. (IRD Decision, mimeo p. 240) (emphasis added)

Based on this language, we see no reason to give privacy protection only to some customers. We prospectively clarify that all telecommunication's carriers that file contracts under GO 96-A may request anonymity on behalf of their customers. We also accept Cox's suggestion to prospectively change the requirements in the IRD Decision regarding the filing of a tariff listing of

---

<sup>5</sup> See IRD Decision, mimeo at p. 236, 56 CPUC 2d 117, 242.

contracts. It would not make sense to allow anonymity on the contract filing but require NDIECs and CLCs to list the names of their contract customers in the tariff, particularly when the NRF LECs are exempt from this tariffed listing.

In addition, we see no reason to delay customers of certain carriers, namely CLCs and NDIECs, from receiving the benefits of customer specific contracts under the same time frame as customers of NRF LECs. The language, in the IRD order states that the express contract procedure applies to review of “all nongovernmental contracts.” (IRD Decision, mimeo p. 233) The decision also states that the primary purpose of Commission review of contracts is “to verify that contract prices are not below appropriate price floors.” (Id., mimeo p. 234) Since the Commission does not apply this same price floor review to NDIECs and CLCs, we shall grant the expedited contract procedure and 14-day effective date to those carriers as well. If we were to maintain the status quo and not make this change, customers of NRF LECs would see their contracts go into effect more quickly than customers of CLCs and NDIECs. This is not an outcome that we wish to perpetuate.

Although the issues raised in this application are before us in our rulemaking to revise GO 96-A, we agree with Applicants that it makes good sense to handle this revision now to prevent the continuance of any competitive imbalance rather than await the outcome of our GO 96-A revisions. Further, no party objects to the proposed modification. The outcome of this order is, of course, subject to further change pending the outcome of our rulemaking to revise GO 96-A. Thus, there is no reason to explicitly state that this order is interim as AT&T suggests.

For all of the above reasons, we will grant the relief requested and prospectively modify the terms of D.94-09-065. Although Applicants have

provided specific language to modify the text of the IRD Decision, we prefer to leave the language of that order intact. Instead, through this order we will prospectively expand the language of the IRD Decision regarding the filing of customer-specific contracts to apply to NDIECs and CLCs as well. Specifically, the following guidelines regarding customer specific contracts originally applicable to NRF LECs shall now apply equally to NDIECs and CLCs:

1. NDIECs and CLCs may file customer specific contracts, at the customer's request, with the name omitted.
2. NDIECs and CLCs are no longer required to list customer specific contracts in their tariffs.
3. The express procedure set forth in the IRD Decision shall apply equally to qualifying contracts filed by NDIECs and CLCs and these contracts may become effective 14 days after filing at the Commission.

#### **IV. Categorization and Comments**

In Resolution ALJ 176-3071 dated September 20, 2001, the Commission preliminarily categorized this proceeding as quasi-legislative, and preliminarily determined that hearings were not necessary. Based on the record, a public hearing is not necessary, nor is it necessary to alter the preliminary determinations in ALJ 176-3071.

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code § 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

#### **Findings of Fact**

1. The IRD Decision allows NRF LECs to file customer specific contracts without disclosing the names of their customers if the customer so requests.
2. The IRD Decision states that LECs are no longer required to list customer contracts in their tariffs.

3. Under the provisions of the IRD Decision, “Express Contracts” filed by NRF LECs will be effective 14 days after they are filed with the Commission.

4. At present, NDIEC and CLC contracts are not allowed to become effective on less than 40 days’ notice.

**Conclusions of Law**

1. There is no reason to treat CLCs and NDIECs differently than NRF LECs for the filing requirements and effectiveness date of customer specific controls.

2. CLCs and NDIECs should be able to file customer specific contracts without disclosing the names of their customers if the customer so requests.

3. Customer specific contracts filed by CLCs and NDIECs should become effective on 14 days’ notice the same as contracts filed by NRF LECs.

4. The guidelines set forth in D.94-09-065 should be expanded to allow CLCs and NDIECs to file GO 96-A customer specific contracts under the same guidelines that apply to NRF LECs.

5. Application 01-08-043 should be granted.

**O R D E R**

**IT IS ORDERED** that:

1. The application of XO California, Inc. and ICG Telecom Group, Inc. for modification of Decision (D.) 94-09-065 is granted.

2. The guidelines regarding customer specific contracts originally set forth in D.94-09-065 and applicable to new regulatory framework (NRF) local exchange carriers (LECs) shall now apply equally to non-dominant interexchange carriers (NDIECs) and competitive local exchange carriers (CLCs) such that:

- a. NDIECs and CLCs may file customer specific contracts, at the customer's request, with the name omitted.
- b. NDIECs and CLCs are no longer required to list customer specific contracts in their tariffs.



- c. The express procedure set forth in D.94-09-065 shall apply equally to qualifying contracts filed by NDIECs and CLCs and these contracts may become effective 14 days after filing at the Commission.

This proceeding is closed.

This order is effective today.

Dated November 29, 2001, at San Francisco, California.

LORETTA M. LYNCH  
President  
HENRY M. DUQUE  
RICHARD A. BILAS  
CARL W. WOOD  
GEOFFREY F. BROWN  
Commissioners

I will file concurrence.

/s/ Loretta M. Lynch  
President

A.01-08-043

D.01-11-059

**President Loretta M. Lynch, concurring:**

I concur in the result of today's decision because I agree that nondominant interexchange carriers (NDIECs) and competitive local carriers (CLCs) should not face more restrictive rules than incumbent local exchange carriers (ILECs) for approval and implementation of customer specific contracts. Because ILECs currently are permitted to omit the customer's name from the contract filed with the Commission and because ILEC contracts may become effective 14 days after filing at the Commission, I agree with today's decision that the same rules should apply to NDIECs and CLCs.

However, I write separately to express my discomfort with the current Commission policy, established in D.94-09-065 (the IRD decision), of permitting the omission of customer names from the contracts filed with the Commission. Public Utilities Code Section 453(a) states that "[n]o public utility shall, as to rates, charges, services, facilities, or in any other respect, make or grant any preference or advantage to any corporation or person or subject any corporation or person to any prejudice or disadvantage." As the IRD decision itself recognized, this provision requires that contract rates must be made available to all similarly situated customers willing to meet the contract terms. (56 CPUC 2d 117, 243.) To comply with Section 453(a), as well as Public Utilities Code Section 489(a), the IRD decision requires that all contracts filed with us remain open to public inspection, unless a motion for confidential treatment is filed and granted. Unfortunately, the IRD decision allowed utilities to withhold the names of the contracting customer merely upon the request of the customer without any showing of competitive harm or other adverse effect upon the customer. As a result, it has become a standard practice for customer names to be omitted from contracts filed with the Commission.

I believe that the omission of customer names can make it unreasonably difficult for customers to demonstrate that they are similarly situated to a customer who enjoys the benefits of a customer specific contract. Without knowing the identity of the contracting customer, a customer who is seeking the same rates and terms as exist in a contract is at a serious disadvantage in their negotiations with carriers. The carrier can claim that there are differences that justify more advantageous rates and terms for the contract customer. Without knowing the identity of the contracting party, the prospective customer will find it difficult to counter the carrier's assertions.

For these reasons, I believe that we should reexamine our policy of allowing customer names to be withheld from the otherwise public customer specific contracts.

/s/ LORETTA M. LYNCH

Loretta M. Lynch

President

San Francisco, California

December 5, 2001

A.01-08-043

D.01-11-059