

ALJ/TRP/avs

Decision 00-10-026 October 5, 2000

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

Order Instituting Rulemaking on the Commission's Own Motion Into Competition for Local Exchange Service.

Rulemaking 95-04-043  
(Filed April 26, 1995)

Order Instituting Investigation on the Commission's Own Motion Into Competition for Local Exchange Service.

Investigation 95-04-044  
(Filed April 26, 1995)

**O P I N I O N**

**Introduction**

This decision is issued pursuant to Conclusion of Law (COL) 2 of Decision (D.) 98-04-012 in which the Commission indicated it would consider, on an industry wide basis, whether competitive directory assistance (DA) providers are providing adequate service. The Commission made this determination in disposing of Complaint (C.) 97-04-062. We also address in this decision issues raised in D.99-08-028 regarding Pacific's obligations to make available to third parties DA listing information obtained from a national database vendor.

**I. Ensuring the Integrity of Directory Databases**

**A. Background**

On April 28, 1997, a complaint (C.97-04-062) was filed by Malbour L. Watson. The complainant in that case alleged that his telephone listing had been omitted from both the white and yellow-page telephone directories, as well as from the DA database, following his switch in business local telephone service from Pacific Bell (Pacific) to MCI Telecommunications

Corp. (MCI). Although the parties to that complaint resolved the dispute, and the case was dismissed, the Commission raised generic concerns in D.98-04-012 regarding the accuracy and completeness of directory listing databases upon which the public relies to obtain timely information concerning subscribers' telephone numbers. Thus, in COL 2 of D.98-04-012, the Commission directed that these concerns be addressed on an industry-wide basis in the Local Competition Proceeding (R.95-04-043/I.95-04-044).

Historically, local and long distance DA have been provided by incumbent local exchange carriers (ILECs). Since 1996, state and federal policy have opened the service to competition. Current Commission rules and the Telecommunications Act of 1996 require ILECs to include competitors' customers in local DA databases and provide associated services. The Federal Communications Commission (FCC) has required the local exchange companies to provide competitors access to those databases at cost. Competitors may then offer their own DA service, generally as part of a larger package of telephone services. Currently, competitive DA providers may purchase updates from local exchange carriers on a daily, weekly or monthly basis to reflect changes in customers' services and telephone numbers. Neither this Commission nor the FCC, however, require competitors to subscribe to the updates or keep their databases current. A customer could conceivably be left out of a data base for long periods or indefinitely if the carrier inadvertently fails to update the database or delays database updates in an effort to cut costs. The timeliness of database changes could be compromised if local exchange carrier updates are not current.

In response to these concerns, D.98-04-012 directed that comments be solicited in the Local Competition docket as to what steps should be taken to

address the concern that competitive local exchange services, and long distance services, may not ensure adequate DA services. The competitive provision of DA service is a matter that has already been addressed to some extent in the Commission's Local Competition proceeding in D.97-01-042. In this decision, however, we address the specific concerns identified in D.98-04-012 that the general public may not be aware if they are omitted from being listed in competitive DA databases or that the inclusion of their listings may be delayed from the time they change carriers or telephone numbers.

An Administrative Law Judge (ALJ) ruling was issued on October 30, 1998, soliciting comments regarding how to address the concern that directory information services offered by local exchange carriers may not be adequate, and may fail to include complete and timely telephone directory listings in their databases, particularly when customers switch carriers. Parties were to comment concerning what steps may be appropriate to inform the public concerning the possibility that competitive local exchange services may not provide adequate or timely directory information services.

Opening comments were filed on November 30, 1998, and reply comments were filed on December 21, 1998. Comments were filed by Pacific Bell (Pacific), GTE California (GTEC), Roseville Telephone Company (RTC), and by a group of smaller ILECs.<sup>1</sup> The California Cable Television Association and AT&T Communications of California, Inc., also filed joint comments (referred to herein as CCTA/AT&T). Other parties filing comments were MCI Worldcom, Inc.

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<sup>1</sup> Joint comments were filed by Calaveras Telephone Company, Cal-Ore Telephone Co., Ducor Telephone Company, Foresthill Telephone Co., The Ponderosa Telephone Co., and Sierra Telephone Company, Inc. (hereinafter collectively the "Smaller Independent LECS").

(MCI), Nextlink California, LLC and ICG Telecom Group (Nextlink/ICG), the Office of Ratepayer Advocates (ORA), Metro One Telecommunications (Metro One), and the Association of Directory Publishers(ADP).

## **B. Parties' Position**

Parties representing competitive local exchange carriers (CLECs) argue that the perceived problem identified by the Commission concerning the accuracy of directory listings is not caused by CLECs. To a large degree, CLECs do not maintain their own separate database to provide DA service, but rather contract with third party vendors that, in turn, rely upon ILECs to provide accurate and timely DA changes. CCTA argues that the Commission should therefore focus its inquiry not on CLECs, but rather, on the ILECs and on the handling of CLEC listings by the ILECs. CCTA argues that any problem with the accuracy of listings will largely be solved if the Commission requires ILECs to provide access to their listing databases at parity. MCI argues that one of the underlying causes of incomplete directory listings may be the failure of Pacific and/or GTEC to release the directory listings received from CLECs and independent telephone companies to all other CLECs and providers of DA services.

Various parties claim that the ILECs are not providing nondiscriminatory access to all of the listings in their directory databases in accordance with D.97-01-042. In particular, parties object to the Pacific and GTEC exclusive arrangement whereby they exchange all of their listings, including those of CLECs, with each other, but refuse to provide such listings to independent third parties such as CLECs and independent directory publishers, absent a written release or mutually acceptable compensation arrangement. MCI claims that Pacific and GTEC use this consent and compensation procedure to

thwart the public goal of ensuring that all customers who so elect may appear in all DA listing services.

ADP and MCI request that the consent and compensation requirements of D.97-01-042 be deleted so that all third party data base vendors, including directory publishers, are accorded their full right of nondiscriminatory access to this information so as to be able to provide a fully competitive product to that of the ILEC affiliates that includes all information made available by the customer to its chosen exchange provider.

Specifically, ADP requests that the Commission do the following:

1. Require Pacific and GTEC to explain and justify why they are not releasing DA listings and subscriber list information that they have obtained from a CLEC and/or other ILEC to all other CLECs, DA services and directory publishers;
2. Revise Ordering Paragraph #2 of D.97-01-042 to require Pacific and GTEC to release CLEC directory listing information to CLECs, other DA providers and independent directory publishers without express consent of the CLEC; and
3. Require Pacific and GTEC to furnish all DA listings and subscriber listings that each makes available to its own customers to all CLECs, competitive DA service providers and independent directory publishers.

Roseville opposes the proposal to require Pacific and GTEC to release all DA listings in their databases regardless of whether the listings pertain to their own subscribers or were provided by other carriers. This proposal would mean that after Roseville licensed its listings database to one company, every other company, could obtain access to those listings without cost by seeking access from the original licensee, in turn circumventing Roseville's DALIS tariff. Roseville asks the Commission to require vendors to obtain access to Roseville's

subscriber listings as outlined under Roseville's Commission approved DALIS tariff.

Roseville's DALIS tariff provides that, "Rights in this offering are nonassignable and nontransferable by the DALIS providers other than through the provisioning of directory assistance." Accordingly, Roseville argues that while a company may obtain access to Roseville's subscriber listings, it does not have the authority to resell or release those listings to other companies.

ORA recommends that the Commission consider requiring carriers to provide billing messages that address the accuracy of directory listings. Roseville opposes ORA's proposal, arguing that it would require local carriers to incur costs responding to customer inquiries about listings which, for the most part, the carriers will have no ability to correct. While Roseville maintains an accurate database for subscribers in its service area, other companies are not required to rely on those listings to develop their databases. Roseville argues that the Commission should not put local carriers in the position of responding to customer complaints generated by the service offerings of unregulated companies.

Roseville also objects to the Commission imposing obligations on regulated carriers for the protection of consumers acquiring services from unregulated entities. Roseville argues that the provision of directory listings is a competitive information service that can be acquired through various sources, and that imposing notice requirements on regulated carriers creates an imbalance in favor of the unregulated directory listings services which are not subject to the same notice requirements.

The Smaller Independent LECs request that the Commission permit them to respond to requests for subscriber listings by referring those companies

to Pacific's database. Furthermore, they request that a small LEC be permitted to provide a blanket authorization to Pacific for release of its listings so that companies seeking complete access to Pacific's database will not have to contact any small LECs which have provided the blanket authorization.

Allowing the Smaller Independent LECs to refer requesting companies to Pacific is different from MCI's proposal which would require Pacific to release Smaller Independent LEC subscriber listings regardless of that carrier's wishes. In the future, small LECs may decide that it is cost effective to provide access to subscriber listings under tariff. To allow such tariff offerings without the possibility of circumvention, the Smaller Independent LECs believe the Commission should continue to require carrier consent prior to release of that carrier's subscriber listings by another carrier to ensure that carriers are appropriately compensated.

Pacific states that it has attempted to gain the consent of all CLECs/ILECs for the release of their end-user listings to other CLECs/ILECs and/or third party DA providers. To obtain each CLEC's consent, language is included in Pacific's generic Interconnection Agreement appendix for White Pages listings that gives Pacific's permission to provide CLEC end-user listings to third party directory publishers. Pacific states it is to obtain each CLEC's permission to not only to include their end-user listings, but to transmit those listings to third party directory publishers upon request. Decision 97-01-042 expressly prohibits an ILEC from releasing the CLEC's end-user listing without the CLEC's consent.

Yet the FCC has ruled that BellSouth Telecommunications, Inc. (BellSouth) failed to satisfy § 271 (c)(2)(B)(vii)(I) of the Act if it did not provide competing providers nondiscriminatory access to all listings, including

independent telephone company listings, despite the fact that BellSouth was contractually prohibited from providing such listings without the independent telephone companies' consent.<sup>2</sup> This ruling would appear to conflict with D.97-01-042. Pacific argues that it should not be placed in the untenable position of either violating this Commission's order or being unable to demonstrate compliance with § 271 (c)(2)(B)(vii)(I). Therefore, Pacific asks that the Commission reconsider D.97-01-042 to the extent that it conflicts with the FCC's decision.

Pacific disagrees with parties' claims that it discriminates in its provision of DA listings to third parties. Pacific explains that when customers place an order that results in directory listings – whether an end-user ordering retail service or a CLEC placing a resale, unbundled network element (UNE) or stand-alone listing order – the information is sent to three locations: Pacific's DA database, its customer billing records, and its "Reproduction Rights" for inclusion in Pacific's printed directory. Pacific updates its directory databases for all customers – both retail and CLECs – in the same manner and on a regular basis. The information is generally incorporated in Pacific's DA database within 3-5 days if it is a new connect. The listing may not appear in a printed directory when the next directory is printed following the change because only changes and new listings received by the directory "cut-off" date will be incorporated into a particular version of the directory. The cut-off date is the same for Pacific

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<sup>2</sup> *In the Matter of Application of BellSouth Telecommunications, Inc. and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana*, Memorandum and Order, CC-Docket No. 98-121, October 13, 1998, paragraph 249.

retail end-user listings as well as CLEC end-user listings. CLECs have the opportunity to verify the accuracy of the listings prior to the directory print date.

Pacific argues that fairness dictates that any requirement to update databases should apply equally to the ILECs, CLECs and indirectly to their third-party vendors that provide directory listing information to CLECs that operate in California.

### **C. Discussion**

Consistent with our continuing goal to promote a competitive local exchange market, consumers should not have to wonder whether the integrity of their subscriber listing information could be impaired if they change service carriers. We conclude, however, that carriers generally should not be required to provide a notice to customers that their listing information could be erroneously reported or omitted from DA databases if they switch service providers. Such a notice might tend to create misimpression among the public about the service reliability of a given provider and may have the unintended effect of impairing competition. To the extent that most CLECs do not maintain independent DA databases but rely upon the ILEC for DA services, those CLECs should not be penalized by actions taken or not taken by other DA providers over which they have no control. We thus find that a more appropriate approach is to take steps to assure that the DA databases of the ILECs do not exclude or erroneously report DA listings for customers merely because they are served by a CLEC.

Because Pacific and GTEC are the two principal possessors of a complete database covering all local exchange customers, it is essential that they provide their competitors with access to their DA database on the same basis that it is provided to the ILECs' own local exchange customers. It is also essential that the public be able to reasonably rely upon the accuracy and completeness of

DA subscriber listings available through the ILEC database irrespective of which local provider serves a particular subscriber. To the extent that such a risk is created by the failure of the ILEC to retain customers' listings in their DA databases when the customer switches carriers, we address that problem with the measures adopted below.

A major source of the concern over customers' being excluded from the ILECs' DA listings centers around the rule adopted in D.97-01-042 requiring CLEC consent before release of the CLEC's subscriber listing information to DA providers or third-party directory publishers. We adopted this requirement in recognition of the commercial value inherent in the exchange of such information, and in view of carriers' proprietary interests in their own subscribers' listings. The carrier, moreover, has an obligation to its customers to protect their rights to privacy and to impose appropriate restrictions on how a customer's subscriber listing information may be disseminated or the purposes for which it may be used. Carriers may properly impose reasonable restrictions on the manner and purposes for which each of its customers' subscriber listings may be provided or used by other entities.<sup>3</sup>

Nonetheless, these valid rights and interests should not be invoked by a CLEC as a basis to unreasonably exclude its customer's listings from the DA database of the ILEC in a capricious or discriminatory manner. Similarly, a CLEC may not refuse to consent to release of its listings from the ILEC's DA

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<sup>3</sup> We take note that a dispute has arisen in this docket between Pacific and Cox Telcom, L.L.C. (Cox) concerning the unauthorized inclusion of Cox's subscribers' unlisted and nonpublished numbers and addresses in directories of Pacific. Consumer privacy issues have been raised in connection with Cox's motion for a temporary Restraining Order and Preliminary Injunction.

database to third party DA providers. Reasonable provision must be made to ensure that the ILEC's DA database can be relied on to provide complete and accurate information irrespective of which local carrier provides service to a given subscriber listed in the DA database. We shall therefore augment the previous provisions of D.97-01-042. While we shall continue to make release of CLEC directory listing information from the ILEC's DA database to third party DA providers subject to CLEC consent, we shall also prohibit the CLEC from unreasonably withholding such consent. Reasonable provision must be made to assure that a telephone subscriber is not dropped from a DA database against the subscriber's wishes merely due to a change in the subscriber's local carrier.

To ensure the completeness and accuracy of the DA databases of the ILECs, CLECs shall be required to make available their directory listings to the ILECs for release to third party DA vendors subject only to exclusions for unpublished listings and related customer privacy rights. In the event mutual agreement cannot be reached on the compensation or other terms and conditions related to the provision of its directory listings, the carrier may pursue its existing legal remedies with the Commission seeking resolution of its dispute. Pacific is not required to obtain affirmative consent, in writing or otherwise, from the CLEC or Independent Telephone Company (ITC) before releasing the listing from such companies. During the pendency of any dispute, however, the CLEC may not withhold consent for its listings to be included in and released from the ILEC's DA database. The only valid basis for a dispute in such an instance would involve the terms, conditions, and compensation for provision of the listings information. The ILECs shall make available upon request by any directory vendor a list disclosing the identity of any carriers whose listing information is included in the ILEC's database.

We shall permit carriers to provide a blanket authorization to respond to requests for subscriber listings by referring those companies to Pacific's or GTEC database. We shall likewise direct the independent LECs to make available their listings to Pacific for inclusion in and release from its database based on the same principles discussed above with respect to CLECs.

Certain carriers, such as Roseville, provide their DA listings to third parties through tariff. To the extent that Roseville's DALIS tariff has been previously approved by the Commission, Roseville is entitled to compensation for the release of Roseville's subscriber listings under the terms of its tariffs. We expect Pacific to include Roseville's subscribers' listings in its own DA database and to release these listings to DA providers. Pacific shall be required to provide Roseville with an ongoing list of third parties that obtain Roseville's listings indirectly through Pacific. Roseville may then bill those third parties any applicable charges due pursuant to Roseville's DALIS tariff. Pacific shall also inform third party purchasers of their listings that they are required to pay Roseville for applicable charges under Roseville's DALIS tariff. Pacific, however, is not responsible for billing third parties the Roseville tariffed rates. Pacific will continue to bill rates for all listings pursuant to Pacific's DALIS tariff. Any third party, however, that accepts listings of Roseville through Pacific, or any other carrier, shall remain liable for any applicable charges under Roseville's DALIS tariff on the same basis as if the listings had been obtained directly from Roseville. Any third party failing to pay such applicable charges due Roseville under its tariffs shall be subject to the same sanctions, penalties, or other legal remedies that would be available if the listings were purchased directly from Roseville. Any other third party DA vendor seeking to obtain access to Roseville's subscriber listings may do so under the terms of Roseville's DALIS

tariff. Similar principles should apply to any other carrier that has a Commission-approved tariff governing the use of subscriber listings for DA purposes. To the extent that any provisions of Roseville's DALIS tariff is in conflict with the process we adopt in this order, Roseville is directed to promptly file any necessary amendment to its tariff to conform to this order.

## **II. Competitors' Access to Pacific's Listing Data Obtained Through a National Vendor**

### **A. Background**

In this decision, we also resolve issues involving competitors' access to Pacific's DA database as identified in D.99-08-028. In that decision, we ordered modifications and denied rehearing of Resolution T-16288 in which the Commission approved an Advice Letter filing by Pacific for authority to provide a nationwide DA service. Pacific sought to establish the nationwide listing service via the 411 dialing code, the same code used for local DA. MCI had protested the Advice Letter on various grounds, including the claim that Pacific was not providing competitors access to its entire database of California DA listings. In Resolution T-16288, the Commission concluded that the Advice Letter met the requirements set forth in Commission orders and General Order 96-A. The Commission declined to address the issue of competitors' access to Pacific DA database in Resolution T-16288.

An Application for Rehearing of **Resolution T-16288** was then filed by MCI, alleging that the Commission erred by failing to condition the Advice Letter approval on Pacific providing its competitors with full access to its DA database in violation of Section 251(b)(3) of the 1996 Telecommunications

Act.<sup>4</sup> Pacific responded that it complies with both Section 251(b)(3) and 251(c)(3),<sup>5</sup> and that access is provided to 100% of its own database and to listing information authorized to be disclosed by competing local exchange carriers (CLCs). Pacific cited D.97-01-042 prohibiting disclosure of listing information from CLCs absent their authorization.

The Commission issued D.99-08-028 on August 5, 1999, denying rehearing, but modifying the Resolution to clarify the manner in which the listings access would be resolved in the Local Competition docket (R.95-04-043; I.95-04-044.). In particular, the Commission solicited comments on various questions relating to competitors' access to national database listings provided through the national database vendor used by Pacific, and the manner in which Pacific provides access to its directory database among competing entities. Opening comments in response to those questions were filed on September 9, 1999 and reply comments were filed on September 24, 1999. Comments were filed by Pacific, MCI, Roseville, and ORA.

### **B. Parties' Positions**

MCI argues that ILECs, including Pacific, are required to provide CLECs the same access to directory listing equivalent to that which the ILEC provides to itself. To the extent this "equivalency" is not provided, CLECs such as MCI are disadvantaged. In the instance of the provisioning of nationwide DA

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<sup>4</sup> Unless otherwise indicated, all statutory references are to the Telecommunications Act of 1996, codified at 47 U.S.C. § 151, et seq. Section 251(b)(3) sets forth the duty of a local exchange carrier to provide nondiscriminatory access to directory listings.

<sup>5</sup> Section 251(c)(3) sets forth the duty of a telecommunications carrier to provide nondiscriminatory access to network elements.

service, MCI claims it is disadvantaged in relation to Pacific because MCI must take extraordinary efforts to gain access to complete DA listings while Pacific is afforded this information as a result of its position as the ILEC. MCI argues that this is exactly the competitive disadvantage the Act prohibits.

The existence of alternative sources of listings data is irrelevant to the ILECs obligation under the Act. On this basis, MCI argues that the Commission must order Pacific to provide its competitors with equal access to its directory listing. This is particularly important due to Pacific's introduction of its own nationwide directory listing service. MCI claims that Pacific continues to enjoy a competitive advantage in the access to directory listings in direct conflict with this Commission's procompetitive goals encouraging the development of local competition in California.

Pacific disputes that competitors are being denied access to its database. Pacific provides competitors access to 100% of its own database and to listing information authorized to be disclosed by CLECs. Pacific's DA listings are available from its DALIS tariff, and is available to CLECs through interconnection agreements. Both federal regulation and California statute prohibit the release of nonpublished DA listings. D.97-01-042 prohibits the release of CLEC directory-listing information to third party publishers or DA providers absent the express consent of the CLEC and mutually agreeable compensation to the CLEC. Pacific cites 47 CFR 51.217 and Pub. Util. Code § 2891.1(a) which prohibit the release of nonpublished listings to third parties. Pacific claims that nothing prohibits competitors from requesting DA listings from any LEC or CLEC. A number of companies sell DA listings. Pacific denies that it is swapping directory assistance listings with GTEC. Pacific states that GTEC is purchasing and exchanging DA listings with Pacific pursuant to an

agreement which prohibits the release of the information. Pacific adds that Southwestern Bell Telephone Company obtains its directory assistance listings from Nortel, not Pacific. Pacific has a contract with Nortel to gain access to its nationwide DA listings database.

### **C. Discussion**

We find no basis to require Pacific to make available to third parties directory listings data that is queried from a national directory listing service. MCI, in this proceeding, is only asking for a complete database listing for California consumers. Yet, the Nortel national listings, including the portion covering California, do not reside in Pacific's database. They are available to Pacific only on a query-by-query basis. Thus, Pacific cannot reasonably be ordered to release listing data of a nationwide vendor to third parties which is not contained in Pacific's own database, and over which it has no independent proprietary rights.

In any event, the directory listing database provided by Pacific to other carriers should already be complete, including the same listing information provided by CLECs and Independent Telephone companies (ITCs) that Pacific includes in its own database from which it provides DA service. Any additional or updated information that Pacific may query from Nortel or any other nationwide directory service on a query basis doesn't constitute part of Pacific's database, nor provide any competitive advantage to Pacific compared with any other carrier that purchases the same or comparable query service.

MCI claims that Pacific somehow has greater access to the provisioning of nationwide DA service because of its status as an ILEC. We find no evidence that Pacific's status as an ILEC somehow gives it an advantage in its ability to purchase nationwide directory service from Nortel. MCI does not deny that it

has the potential to obtain listings data from Nortel independently from Pacific. In fact, Nortel has previously approached MCI concerning the provisioning of directory listings, but MCI made the decision not to use Nortel's service, claiming it did not meet MCI's standards. Therefore, since MCI has already rejected the opportunity to obtain service from Nortel, we find no basis to conclude that MCI is unfairly disadvantaged by not being able to indirectly obtain Nortel data through Pacific.

MCI argues that Pacific is required to provide other carriers with the directory listing information queried from Nortel on the basis of FCC requirements to provide directory listings to competitors that is equal in quality to the access that the ILEC provides to itself. Yet, nothing in the FCC rules require this Commission to order Pacific to provide nonlocal directory data. The FCC has merely solicited comments on this issue in its Notice of Proposed Rulemaking, questioning whether nonlocal data obtained on a query basis by an ILEC from third parties can likewise be obtained by competitors on similar terms. Although parties were permitted to address this issue within the comments in this proceeding, no party provided evidence that competitors are precluded from obtaining such data independently of the ILEC. By contrast, Pacific provided information concerning a number of competitive database vendors from whom competitors can purchase query service in a similar fashion to that which Pacific uses.

Pacific's complete database is provided by requiring it to release the listings data of other CLECs and ITCs that are included in its own database pursuant to obtaining appropriate consent from such carriers as discussed above. Our disposition of this issue is consistent with the manner in which the FCC resolved access to directory listings by directory publishers as mandated by

47 USC § 222(e). The FCC Order states: “...a carrier need not provide subscriber list information to requesting directory publishers pursuant to that section unless the carrier ‘gathered’ that information ‘in its capacity as a provider of [telephone exchange] service.” Similarly in this situation, the queries made by Pacific of the nationwide directory service were not “gathered” in connection with its provision of telephone service as an ILEC. Thus, we find no basis to require Pacific to provide such information from a national database service to competitors where there is no evidence that such queries constitute part of Pacific’s DA database or that Pacific’s incumbent status gives it superior access to such information.

### **III. Comments on Draft Decision**

The draft decision of ALJ Thomas R. Pulsifer in this matter was mailed to parties in accordance with Pub. Util. Code § 311(g) and Rule 77.7 of the Rules of Practice and Procedure. Comments were filed on July 10, 2000 and reply comments were filed on July 17, 2000. A revised draft decision was mailed to parties on September 8, 2000. Comments on the revised draft decision were filed on September 22, 2000 and reply comments were filed on September 27, 2000. We have taken the comments into account in finalizing this order.

### **Findings of Fact**

1. In D.98-04-012, the Commission raised generic concerns regarding the accuracy and completeness of directory listing databases upon which the public relies to obtain timely information concerning subscribers’ telephone numbers.
2. While directory assistance historically has been provided by ILECs, state and federal policy have opened the service to competition.

3. Current Commission rules and the Telecommunications Act of 1996 require ILECs to include competitors' customers in local DA databases and provide associated services.

4. Competitive DA providers may purchase updates from local exchange carriers on a daily, weekly or monthly basis to reflect changes in customers' services and telephone numbers.

5. A customer could be left out of a database for long periods or indefinitely if the carrier inadvertently failed to update the database or delayed database updates.

6. The Nortel national listings, including the portion covering California, do not reside in Pacific's database, but are available to Pacific only on a query-by-query basis, with no independent proprietary rights.

7. Any information that Pacific may obtain from Nortel or any other nationwide directory service on a query basis doesn't provide a competitive advantage to Pacific compared with any other carrier that purchases the same or comparable query service.

### **Conclusions of Law**

1. A telephone subscriber should have reasonable assurance of not being removed from an ILEC's DA database merely due to a change in the subscriber's local carrier.

2. Carriers should not be required to provide a notice to customers that their listing information could be erroneously reported or omitted from DA databases due to switching service providers.

3. Each carrier has an obligation to its customers to protect their rights to privacy and to impose reasonable restrictions on how a customer's subscriber

listing information may be disseminated to third parties or the purposes for which it may be used.

4. A carrier may not unreasonably exclude its customer's listings from the DA database of the ILEC in a capricious or discriminatory manner. Similarly, they may not refuse to allow the ILEC to release their listings included in the ILEC's database.

5. While release of CLEC independent telephone company (CTC) directory listing information is subject to CLEC or ITC consent, no CLEC or ITC should unreasonably withhold such consent. The only reason basis for withholding such consent is if the customer has requested a private or non-published listing.

6. In the event mutual agreement cannot be reached as to the terms and conditions for the inclusion of its subscriber listings in the ILEC's DA database, the carrier may pursue its existing legal remedies with the Commission to obtain resolution of its dispute. Pending resolution of dispute, the CLEC's listings will be included in and released from the ILEC's DA database. The ILEC is not required to obtain affirmative consent, in writing or otherwise.

7. Carriers may provide a blanket authorization to respond to requests for subscriber listings by referring those companies to Pacific's database.

8. The independent LECs should make available their listings to Pacific for inclusion in its database based on the same principles discussed above with respect to CLECs.

9. To the extent that Roseville's DALIS tariff has been previously approved by the Commission, Roseville is entitled to compensation for the release of Roseville's subscriber listings under the terms of its DALIS tariff.

Nonwithstanding Roseville's DALIS tariff, however, ILECs are authorized to release Roseville's listings to third parties as required by the Act. ILECs are not

required to impose Roseville's tariff charges but will continue charging their own rates.

10. Any other third party DA vendor seeking to obtain access to Roseville Telephone's subscriber listings may do so under the terms of Roseville's DALIS tariff. Similar principles should apply to any other carrier that has a Commission-approved tariff governing the use of subscriber listings for DA purposes.

11. There is no basis to require Pacific to make available to third parties directory listings queried from a national directory listing service since such listings were not gathered in Pacific's capacity as a provider of telephone exchange service.

## **O R D E R**

### **IT IS ORDERED** that:

1. No local exchange carrier (LEC) shall unreasonably withhold consent for the release of its Directory Assistance (DA) listings to third parties as provided for in Decision 97-01-042.

2. To ensure the completeness and accuracy of the DA databases of the local exchange companies (ILECs), CLECs shall be required to make available their directory listings to the ILECs subject only to exclusions for unpublished listings and related customer privacy rights.

3. In the event mutual agreement cannot be reached as to the compensation or other terms and conditions related to the inclusion of a carrier's directory listing in the ILEC's DA database, the carrier may pursue its existing legal remedies with the Commission to obtain resolution of its dispute.

4. During the pendency of any dispute as to terms and conditions, the carrier may not withhold release of its listings for inclusion in the ILEC's DA database, and the ILEC will release the listings to third party DA providers, upon request.

5. Each carrier shall be required to provide Roseville with an ongoing list of third parties that obtain Roseville's listings indirectly through Pacific. Roseville is authorized to bill those third parties any applicable charges due pursuant to Roseville's DALIS tariff. Pacific, or any other carrier releasing Roseville's listings, shall also inform third party purchasers of their listings that they must pay Roseville for applicable charges under Roseville's DALIS tariff. Pacific will continue to bill its rates for all listings released. Similar procedures shall apply to any other carrier that has a Commission-approved tariff governing the use of subscriber listings for DA purposes.

6. Any third party, however, that accepts listings of Roseville through Pacific, or any other carrier, shall remain liable for any applicable charges under Roseville's DALIS tariff on the same basis as if the listings had been obtained directly from Roseville.

7. Any third party failing to pay such applicable charges due Roseville under its tariffs shall be subject to the same sanctions, penalties, or other legal remedies that would be available if the listings were obtained directly from Roseville.

8. To the extent that any provisions of Roseville's DALIS tariff is in conflict with the process we adopt in this order, Roseville is directed to promptly file any necessary amendments to its tariff to conform to this order. Similarly, any other carrier with a Commission-approved tariff governing the use of subscriber listings for DA purposes which is in conflict with the processes adopted in this order is directed to promptly file any necessary amendments required to conform its tariff to the order.

9. Pacific and GTEC shall each prepare a list disclosing the identity of each carrier that has provided its subscribers' directory listings to be included in the ILECs' directory database, and the list of such carriers shall be made available to third parties upon request

10. Carriers are authorized to respond to requests for subscriber listings by referring those companies to Pacific's or GTEC's database. Smaller independent LECs may provide blanket authorization to the ILEC for release of their listings.

11. The ILECs shall accept the listings from smaller independent LECs for inclusion in their DA databases.

12. D.97-01-042, Conclusion of Law No. 2 is hereby modified to state:

“While release of CLEC or ITC directory listing information of its customers is subject to CLEC or ITC consent, no CLEC or ITC should unreasonably withhold such consent. The only reasonable basis for withholding such consent is if the customer has requested a private or non-published listing. The ILECs are not required to obtain affirmative consent, in writing or otherwise, before releasing such listings to third party DA providers.

This order is effective today.

Dated October 5, 2000, at San Francisco, California.

LORETTA M. LYNCH  
President  
HENRY M. DUQUE  
JOSIAH L. NEEPER  
RICHARD A. BILAS  
CARL W. WOOD  
Commissioners