

MAIL DATE
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Decision 00-11-042 November 21, 2000

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Pacific Bell (U 1001 C), a Corporation, for Authority for Pricing Flexibility and to Increase Prices of Certain Operator Services, to reduce the Number of Monthly Directory Assistance Call Allowances, and Adjust Prices for four Centrex Optional Features.

Application 98-05-038
(Filed May 5, 1998)

**ORDER GRANTING LIMITED REHEARING TO MODIFY
DECISION 99-11-051, AND DENYING REHEARING AS MODIFIED**

I. SUMMARY

By this order, the Commission grants the rehearing of Decision (D.) 99-11-051, which authorized Pacific Bell (Pacific) to increase its tariff price for Directory Assistance (DA) service, to reduce the monthly DA call allowance for customers, to increase the price floors for Busy Line Verification (BLV) and Emergency Interrupt (EI) in order to cover costs, and to change its DA, BLV, EI, and four Centrex optional features resale prices to maintain a 17 percent margin between its retail and resale prices for these services. This rehearing is granted in order to modify or add material findings and conclusions, and to clarify misperceptions, such as those held by the Joint Applicants, with regard to Commission policy, authority and discretion, as they pertain to the New

Regulatory Framework (NRF) and its progeny decisions.¹ As modified, the rehearing of D.99-11-051 is denied. The order promulgated in companion decision D.00-03-042, making the rate increases subject to refund, is also rescinded.

II. BACKGROUND

On May 5, 1998, Pacific filed an application for pricing flexibility authority and to increase the prices of certain operator services including DA, to reduce the number of monthly DA call allowances, and to adjust prices for four Centrex option features. By resolution on June 4, 1998, the proceeding was designated as a ratesetting proceeding and provided that hearings may be held. On July 17, 1998, The Utility Reform Network (TURN) and the County of Los Angeles (County) jointly filed a motion to dismiss the entire application. The motion was denied at a prehearing conference held on August 11, 1998 in San Francisco. The Scoping Memo and Ruling identified the issues to be addressed in this proceeding as price floors, tariff prices, price ceilings, a reduction in the monthly DA call allowances, the impact on Pacific's basic service and the California High Cost Fund, and revenue neutrality.

Public participation hearings (PPHs) were held in San Diego, Fresno, San Jose, Pasadena, Sacramento, and San Francisco over the period from November 4 through December 3, 1998. Approximately 175 people spoke at the PPHs. The Public Advisor's Office received more than 34,000 comments on the application, most of which opposed it.

Evidentiary hearings were held on December 7, 9, and 10th of 1998. The matter was submitted upon receipt of reply briefs on February 3, 1999. A proposed decision was issued for comment on August 17, 1999. The final decision was issued on November 18, 1999 (beyond the 60-day statutory time

¹ A joint rehearing application was filed by The Utility Reform Network (TURN), the Office of Ratepayer Advocates (ORA), and the County of Los Angeles (hereinafter, Joint Applicants). ORA joins the rehearing application with respect to Sections A-G and I only.

period set forth in SB 960; Stats. 1996, Ch. 856, §1). D.99-11-051 (hereinafter, the Decision), granting Pacific's application, was adopted by a 3-2 vote, and mailed on November 23, 1999. Commissioners Wood and Hyatt jointly filed a written dissent.

On December 23, 1999, a joint application for the rehearing of D.99-11-051 was filed by TURN, the County of Los Angeles and ORA. The rehearing application contained numerous assertions of legal error. One category of charges revolve around the alleged lack of substantial evidence. The Joint Applicants contend that the Decision fails the substantial evidence test because of its findings that DA costs have not changed materially since 1994; that \$0.46 is a just and reasonable rate; and that Centrex feature rate increases are justified. They also charge that the Commission violated the intervening parties' due process rights by denying them a right to a fair hearing regarding the "special study" on the average amount of time it takes operators to handle a directory assistance call. Joint Applicants also contend that the decision to raise rates for directory assistance without requiring offsetting rate reductions is an abuse of discretion because it marks a radical departure from existing policy. In addition, the Joint Applicants allege that the Commission effectively shifted the burden of proof to the intervenors in violation of Public Utilities Code §454(a). The rehearing applicants also request oral argument.

Concurrent with the filing of the rehearing application on December 23, 1999, the Joint Applicants filed an emergency motion to make Pacific's rate increase approved in D.99-11-051 subject to refund pending resolution of the rehearing application. Pacific filed its opposition to the motion on January 7, 2000, arguing that the motion is meritless and its approval will result in an outcome that is burdensome, excessive and punitive.

On January 7, 2000, Pacific filed its Opposition to the Joint Application for Rehearing of D.99-11-051, arguing that the Commission's cost

findings are supported by the record, and the price established for directory assistance is a policy and factual decision supported by the record. Pacific further asserts that the Decision does not depart radically from NRF, and the Commission correctly set the price for the Centrex features. Finally, Pacific urged the Commission to deny the request for oral argument on the grounds that it would not be productive or appropriate, and stating further that the Joint Applicants' request comes much later than is contemplated by Rule 8 of the Commission's Rules of Practice and Procedure.²

On March 16, 2000, the Joint Applicants' motion to make the rate increases subject to refund was granted in D.00-03-042.

III. DISCUSSION

The Joint Applicants made numerous assertions of legal error and raised policy differences, based on their interpretation of Commission policy. The substantial evidence claims, as well as the due process and Centrex rate claims, were found to be without merit. However, because there were instances where an explicit finding or conclusion should have been made or clarified, we grant rehearing to accomplish this. We also modify the decision as indicated herein in order to clarify misperceptions regarding our policy, as expressed by the Joint Applicants. As modified, rehearing is denied. In addition, we rescind the order in companion decision D.00-03-042, which made the rate increases subject to refund.

A. Substantial Evidence

The Joint Applicants argue generally that the Commission's findings and conclusions are not supported by substantial evidence. We disagree. What we have here is not insufficient evidence, but conflicting evidence and a difference in the interpretation of Commission decisions and of the data. The Joint

² Rule 8(d) of the Commission's Rules of Practice and Procedure provides that in a ratesetting proceeding, a party has the right to make a final oral argument before the Commission, if the party so requests within the time and in the manner specified in the scoping memo, or later ruling in the proceeding.

Applicants' interpretation of Commission decisions is not objective, but rather is skewed to serve their ends. The Joint Applicants read the NRF decisions too broadly when it suits their purposes and too narrowly when they do not. In addition, the Joint Applicants, by their own admission, used Pacific's data and documents to support their position.³ At the same time, Pacific emphatically did not subscribe to the Joint Applicants' interpretation of the data. In examining the same data, the Commission weighed the evidence from the point of view of the agency charged with issuing a decision that balances the equities, incorporates Commission policy, and serves the public interest.

The Joint Applicants are incredulous that the Commission viewed the evidence differently than did they. They claim that "the Commission gave no indication whatsoever as to why it...rejected TURN's evidence and arguments. Ms. Murray's testimony on DA costs fills a full eleven pages, and TURN briefed the issue extensively, but the decision spends only two sentences summarizing TURN's evidence and arguments." (Joint Rhg. App. at 21-22.) This is a weak argument upon which to base a claim of legal error. It is not the amount of evidence that is dispositive, but the quality of the evidence and its ability to persuade or dissuade. Furthermore, the Commission need not explain in minute detail why it credits some evidence and discredits others. Indeed, the Joint Applicants acknowledge that "[a] detailed evaluation of every piece of evidence or testimony is not required."⁴ The Commission's duty is to weigh the evidence and present a reasoned explanation for its consideration of the material facts. The Commission has fulfilled that duty here.

³ See Joint Rhg. App. at 15, fn. 18, wherein the Joint Applicants acknowledge using Pacific's data to calculate the increase in calls handled per operator in order to support their position that an increase in operator efficiency caused a reduction in the TSLRIC (incremental cost).

⁴ Joint Rhg. App., p. 21.

1. The Commission Has Not Breached the Substantial Evidence Standard.

The Joint Applicants allege that the Commission has violated Section 1757 of the PU Code, which addresses the substantial evidence standard.⁵ The courts have articulated various definitions of what substantial evidence means. The California Supreme Court has stated that “substantial evidence ... requires that evidence be reasonable, credible, and of solid value. [Citation omitted.] It does not require that the evidence appear to the appellate court to outweigh the contrary showing. [Citation omitted]”⁶ The U.S. Ninth Circuit Court of Appeals defines it as follows: “Substantial evidence means ‘more than a mere scintilla,’ [Citation omitted.] but ‘less than a preponderance’ [Citation omitted].”⁷ A California Court of Appeal further defines substantial evidence as “enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached.”⁸ It is also noteworthy that the courts have long recognized a strong presumption favoring the validity of Commission decisions. (*Greyhound Lines, Inc. v. PUC* (1968) 68 Cal.2d 406) With the substantial evidence standard as the yardstick and in consideration of a strong presumption favoring the validity of Commission decisions, we examine closely the Joint Applicants’ rehearing application.

⁵ Specifically, PU Code 1757(a)(4) provides in pertinent part that court review shall extend no further than to determine, on the basis of the entire record, whether the findings in a Commission decision are supported by substantial evidence in light of the whole record.

⁶ *People v. Javier A.* (1985) 38 Cal.3d 811, 819.

⁷ *Young v. Sullivan* (9th Cir. 1990) 911 F.2d 180, 183.

⁸ *Castaic Lake Water Agency v. City of Santa Clarita* (1995) 41 Cal.App.4th 1257, 1264-1265.

2. D.99-11-051 Meets the Substantial Evidence Requirements, Notwithstanding the Absence of Pacific's "Re-look" Analysis, As A Discrete Document, From the Record.

The Joint Applicants' legal theory is that the D.99-11-051 lacks substantial evidence because its findings adopted material conclusions from Pacific's re-look analysis, which was not admitted into evidence.⁹ This theory is shortsighted in that it disregards witness testimony and other exhibits in the record which do provide support for the Decision's findings and conclusions. The Joint Applicants' singling out of selected findings as if they could *only* have come from Pacific's re-look analysis, as a discrete document, defeats their claims of error. We find that the record provides sufficient support for the findings at issue here. The Commission's findings are not open to attack for insufficiency if they are supported by *any reasonable construction of the evidence*. (*PG&E v. Devlin* (1922) 188 Cal.33.) Indeed, this state's highest court describes the limits of the appellate court in reviewing findings challenged for an alleged lack of substantial evidence:

"It is an elementary, but often overlooked principle of law, that when a [finding] is attacked as being unsupported, the power of the appellate court begins and ends with a determination as to whether there is *any* substantial evidence, contradicted or uncontradicted, which will support the [finding]. When two or more inferences can be reasonably deduced from the facts, the reviewing court is without power to substitute its deductions for those of the trial court." (Emphasis added; Citations omitted.) *Western States Petroleum Assn. v. Superior Ct.* (1995) 9 Cal.4th 559, 571.

⁹ The Administrative Law Judge (ALJ) provided all parties with the opportunity to update DA cost studies that were previously approved in the OANAD proceeding. Pacific availed itself of that opportunity by doing a "re-look," which is an analysis of its cost study to make it more current and forward-looking. In ALJ rulings of October 23, 1998 and November 9, 1998, the parties were forbidden from re-litigating already-approved OANAD cost studies.

The Joint Applicants point to Findings of Fact Nos. 17, 23, 24, and Conclusion of Law No. 3 as being traceable only to Pacific's re-look analysis. They are mistaken. For example, Finding of Fact No. 17 currently states as follows: "Pacific Bell's re-look at its DA volume sensitive TSLRIC study shows that the results of its initial study would increase by less than one percent." This evidence is drawn from Exhibit 7, the rebuttal testimony of Ms. Timmermans (Pacific). The Joint Applicants also challenge Finding of Fact No. 17 as not being a true finding. We are persuaded that this finding could be re-stated to clarify it, and thereby eliminate any doubt that it is a Commission finding. We modify the Decision accordingly.

Similarly, other findings and conclusions may be traced to witness testimony or exhibits that are part of the record. This is true of Findings of Fact Nos. 23, 24, and Conclusion of Law No. 3.¹⁰ Disappointed that the Commission credited Pacific's evidence over its own, the Joint Applicants attempt to leverage their complaints into substantial evidence deficiencies; however, the evidence does not support their claims.

We conclude that this is a case of conflicting interpretation of the evidence, not a dearth of evidence, in the record. The California Supreme Court noted that "[w]hen conflicting evidence is presented from which conflicting inferences can be drawn, the commission's findings are final."¹¹ The Commission was more persuaded by Pacific's evidence. In its discretion, the Commission may weigh the evidence and make a determination based upon the evidence that it finds more compelling.

¹⁰ Finding of Fact No. 23 states that "[a] 25% decrease in DA calls from 1994 to 1997 resulted in a corresponding decrease in the number of DA operators." This may be traced back to Exhibit 7, p. 2 (Rebuttal Testimony of Ms. Timmermans for Pacific), which is in the record. Finding of Fact No. 24 reads as follows: "The consolidation of DA offices impacted the TSLRIC by less than five percent." See Pacific's Exhibit 7, p. 3. Conclusion of Law No. 3 provides: "The consolidation in DA offices and operators had no impact on the time an operator spent on a DA call." Compare with Pacific's Exhibit 7, p. 3.

¹¹ *City of Los Angeles v. PUC* (1972) 7 Cal.3d 331, 351.

3. The Record Supports D.99-11-051's Cost Findings.

The Joint Applicants contend that the Commission has committed legal error with respect to the new DA rate of \$0.46, and with regard to the incremental cost of providing DA, suggesting that both are unjust, unreasonable and without substantial evidence. The Joint Applicants failed to substantiate their claims. We are fully aware of the requirements of PU Code §451, which requires any charges received by any public utility for any product or service be just and reasonable. The Commission's charge is to ensure that the utility makes a showing sufficient to justify the new rate.¹² Pacific made such a showing in this application.

The Commission was persuaded by Pacific's showing that its current tariff price for DA service was below cost. (Decision, *mimeo* at 21.) Therefore, we concluded that the DA price floor should be increased to enable Pacific to recover its costs. (*Id.*, Conclusion of Law No. 4) The Joint Applicants acknowledge that this Commission has held in D.97-03-021 (71 CPUC 2d at 255) that where rates are below cost, a rate increase is necessary.¹³ It is undisputed that DA has traditionally been provided below cost as part of the local exchange carrier's (LEC's) traditional franchise obligations. We affirm that as part of the ongoing restructuring of the telecommunications industry from a regulated basis to a competitive showing, the prices of Category II services must cover costs. Thus, in the Implementation Rate Design (IRD) decision, we ordered that if the adjusted price floor for a service exceeds the rate as a result of the inflation adjustment, the LEC must either raise the rate or revise the price floor.¹⁴ When DA service was

¹² PU Code §454(a) sets forth procedural requirements, such as burden of proof and notice, that must be met by carriers before a rate change can occur.

¹³ Joint Rhg. App. at 29. However, the Joint Applicants mischaracterize the holding that a rate increase is appropriate, "but only to the extent necessary to prevent below-cost pricing." This stretches the holding and is misleading.

¹⁴ *Re Alternative Regulatory Frameworks for LECs* (IRD Decision)(1994) 56 CPUC 2d 117, 290, OP No. 70 (D.94-09-065).

reclassified from Category I to Category II in *Re Competition for LECs* (1996) 65 CPUC 2d 156 (D.96-03-020), the requirement that the price cover costs extended to it, as well. In addition, Commission reinforced its policy that implicit subsidies should be eliminated or made explicit.

Pacific's TSLRIC cost studies, as approved in the Open Access and Network Architecture Development (OANAD) proceeding, identified DA costs to be approximately \$0.33 (Decision, Finding of Fact No. 12). In analyzing its data, Pacific concluded that the incremental cost for DA increased by less than one percent from 1994 to 1997.¹⁵ The Commission was persuaded by Pacific's showing, adopting it as Finding of Fact No. 17.

The Joint Applicants took exception to Finding of Fact No. 17, claiming it lacks substantial evidence and is based on uncorroborated hearsay.¹⁶ Their position is that Pacific's operators have become more efficient since 1994, causing a decrease in incremental cost. They theorized that the reduction in the number of DA operators by 28 percent stemmed from a decrease in DA call volumes, faster information retrieval and other operating efficiencies made possible by state-of-the art operator work stations and the consolidation of Pacific's operator work centers. According to the Joint Applicants, these changes led to an increase in the number of calls handled per operator. Thus, according to the Joint Applicants, the calls processed per operator increased between 25-41 percent. (Joint Rhg. App. at 13-14.)

Pacific's position differed from that of the Joint Applicants. Pacific acknowledged that the total volume of DA calls decreased, this time by about 25 percent from 1994 to 1997, and that the decrease was the primary cause of a corresponding decrease in the number of DA operators. Pacific further concluded that the consolidation of DA offices decreased the TSLRIC per DA call by less

¹⁵ Exhibit 7 (Timmermans for Pacific), p. 2.

¹⁶ While attempting to make this point, they correctly conceded that hearsay is permitted in Commission proceedings, per PU Code §1701. (Joint Rhg. App., pp. 12-15.)

than 5 percent. Pacific argued that equipment modernization did not have a significant impact on operator average work time (AWT) because the protocol for a DA call has already been reduced to its minimum.¹⁷ Pacific also maintains that the call center consolidations, while they may make the management of an operator workforce more efficient, do not significantly reduce per call AWT.

Based on the evidence, we are persuaded that the consolidation in DA offices and operators had essentially no impact on the time an operator spent on a DA call. (Decision, Conclusion of Law No. 3). We are also convinced that since the routine for handling a DA call did not change, operator work time should remain largely unaffected. Thus, we conclude that after a decrease in DA call volume, followed by a corresponding decrease in the number of DA operators, there was no effect on the average time it took an operator to answer a DA call. (Decision, *mimeo* at 19.) The Joint Applicants object to this statement, concluding that it could only be based on the “special study,” which is not in the record of the proceeding. We reach a different conclusion. Good judgment dictates that if the call volume is reduced and operators are decreased proportionately, there should be no impact on AWT. It is common for businesses to tailor the workforce to fit the workload, which appears to be the case here.

We agree with the Joint Applicants that the primary cost of providing DA service is labor (Decision, Finding of Fact No. 25). We also acknowledge that determining operator AWT is a key component in determining labor costs. We disagree, however, that the Commission’s use of 1999 labor rates is legal error, as alleged by the Joint Applicants. (Joint Rhg. App. at 20.) The use of forward-looking labor rates is consistent with Commission practice, as was done in approving non-recurring OANAD costs in D.96-08-021, as well as when

¹⁷ Pacific made the case that the routine for a DA call is reduced to its minimum. That routine consists of the operator asking “What city, please?” Then, the operator searches the database and sends the caller to the automated announcement’s equipment. (See Reply Brief of Pacific Bell (February 3, 1999), p. 15.)

determining the 1995 NRF productivity factor (not the 1994 factor), although all the other costs were based on 1994.

The Joint Applicants' claim that the Decision improperly relied on DA prices charged by other incumbent local exchange carriers (ILECs) is erroneous. (Joint Rhg. App. at 42-43) The mere mention of the rates charged by other ILECs, by comparison, does not constitute legal error. The Joint Applicants presented no evidence that the Commission relied on such evidence. The Decision did just the opposite in specifically noting on page 26, for example, that the level of residential and business DA call allowances in other states is not a basis to determine what the appropriate level of DA call allowances should be in California.

In sum, there is substantial evidence in the record to justify the increase in DA calls to \$0.46. This is the first such increase since 1984 when the charge for DA calls was raised to \$0.25.¹⁸ The OANAD decision approved Pacific's cost studies, which established that the TSLRIC incremental cost for DA calls was \$0.33 per call. Pursuant to the IRD decision, the Commission set the price floor for Category II services above costs, based on the long run incremental cost (LRIC).¹⁹ The Commission increased the price floor from \$0.25 to \$0.35 to allow Pacific an opportunity to recover its Category II DA costs. The Commission deemed \$0.46 to be just and reasonable in comparison to the \$0.394 DA UNE wholesale rate in the OANAD proceeding. After adding in the 17 percent differential between wholesale and retail prices commonly used in setting the wholesale prices of resold service, the result is a \$0.46 retail rate for DA. As the Decision notes on page 22, this rate would enable Pacific to recover its \$0.35 incremental DA cost, shared and common costs, and a reasonable margin, consistent with a partially competitive service.

¹⁸ *Re Pacific Telephone & Telegraph* (1984) 15 CPUC 2d 232 (D.84-06-111).

¹⁹ *Re Alternative Regulatory Frameworks for LECs* (1994) 56 CPUC 2d 117, Conclusion of Law No. 151.

4. Pacific's Centrex Feature Rate Increases Are Justified.

The Joint Applicants charge that the new prices for Centrex do not take into account the alleged reduction in Centrex feature costs. They contend that by treating Pacific's request for Centrex rate increases as a compliance matter, the Decision fails to meet the substantial evidence test and fails to make the required finding that a rate increase is necessary, as required by PU Code §1705. (Joint Rhg. App. at 45-47) The substantial evidence claim is without merit. Allowing Pacific to make a compliance filing for its Centrex feature rate increases is consistent with Commission practice and procedure under similar circumstances.²⁰ Since a rate increase for the Centrex optional features was found to be necessary, it is appropriate that there be a finding so stating.

With respect to the substantial evidence claim, it was not disputed that the price ceiling for Pacific's four Centrex optional features dropped below their floors through the operation of the inflation index. The evidence was clear, and the Decision so found.²¹ The IRD decision provided that if the adjusted price floor for a service exceeds the rate as a result of the inflation adjustment, the LEC must either raise the rate for the service or revise the price floor. (56 CPUC 2d 117, 290, OP No. 70.) Therefore, Pacific was authorized to raise its current tariff and ceiling rates for the Centrex features in an amount necessary to prevent authorized rates that are less than the actual costs of the services.

B. The Joint Applicants Misrepresent the Decision on the Issue of Alleged Customer Harm.

The Joint Applicants claim that “[p]erhaps the most troubling finding in the decision is that customers will not be harmed by the increase in the DA rate

²⁰ The Commission's procedure treats a compliance filing as it does any other advice letter. After the NRF III proceeding, GTE California (GTEC) was allowed to revise its Centrex service price floors by the advice letter process.

²¹ D.99-11-051, Finding of Fact No. 47.

and the reduction in the DA call allowances.” (Joint Rhg. App. at 42.) As support for this contention, they cite language on page 26, claiming it stated “that the rate increase and reduction in the call allowances will ‘maintain the status quo of a majority of residential customers’.” This is little more than hyperbole, and is less than accurate. First, there is no finding or conclusion of law in the decision that corresponds with the Joint Applicants’ assertion.²² Second, the Decision correctly stated that “any approval of Pacific Bell’s proposed reduction in residential DA call allowance would maintain the status quo of a majority of residential customers.” (Decision, *mimeo* at 26.) The statement applies to residential DA call allowance, and accurately reflects the fact that nearly 80 percent of all residential accounts made no more than three DA calls in a month. (Decision, Finding of Fact No. 30)

The Joint Applicants contend that the Commission did not fairly take into account the impact of rate increases on residential or business customers, and that the Decision barely acknowledged customer testimony at the public hearings. (Joint Rhg. App. at 44.) This statement is baseless. Public reaction was actively sought by the Commission, and public hearings in six different cities are a testament to that fact. Without question, the transcripts of customer testimony are an essential part of the public file associated with this proceeding. The Commission did not take lightly customer reaction to the proposed rate increase in DA calls. The Commission places a high value on customer reaction, notwithstanding counter charges that each side attempted to influence public

²² The closest thing to it is Conclusion of Law No. 8, which provides as follows: “A reduction in the monthly DA call allowance would not impact basic telephone service and would not be contrary to Pub. Util. Code §709.” If they are referring to this conclusion, and it is not clear that they are, their interpretation misconstrues the conclusion and stretches credulity. The Commission is under no obligation to make sense out of vague assertions. (PU Code §1701; Rule 86.1.)

reaction.²³ The Commission places public response in its proper context, along with other factors to be considered.

The Joint Applicants suggest that a detailed bill impact analysis is required in order to justify rate increases, but failed to prove that it is established practice in all cases. (Joint Rhg. App. at 42-43.) In trying to make the case for a detailed bill impact analysis, the Joint Applicants argued for the inclusion of more customer testimony in the Decision. However, a detailed bill impact analysis is not provided by speakers at public hearings. Even as the Joint Applicants urge that the Decision recite more customer testimony, they concede that the public file is not a detailed demographic study: "Admittedly, the public file does not amount to a detailed demographic study of the impact on customers,...." (Joint Rhg. App. at 45.) Furthermore, the inclusion of customer testimony will not cure the alleged deficiencies about which the Joint Applicants complain. In the final analysis, the Commission chose, in the exercise of its discretion, to credit Pacific's evidence over the Joint Applicants' evidence. That is not legal error.

C. The Joint Applicants Have Failed to Demonstrate that Their Due Process Rights Were Violated.

The Joint Applicants also charge the Commission with violating their due process rights by relying on a "special study" not in evidence, and which Pacific's cost witness could not explain in detail. (Joint Rhg. App., pp. 23-25.) In its Opposition to the Joint Rehearing Application, Pacific countered that the Joint Applicants exaggerate the issue, and failed to seek such information in discovery or compel the studies that they claim constitute error. (Pacific's Opposition, p. 3) Once again, the Joint Applicants attempt to leverage the omission from the record

²³ TURN accused Pacific of trying to distort the record when it argued that tens of thousands of postcards sent to the Commission resulted from a misleading mailer by TURN and should be given no weight. (Joint Rhg. App., p. 44) Pacific responded that TURN's postcard campaign was used to improperly manipulate public opinion. (Pacific's Opposition to Joint Rhg. App., p. 5) Pacific also alleged that many of the speakers at the public hearings appear to have been solicited and prepared by AT&T, acting through the advocacy group it created, Californians for Telecommunications Choice. (Pacific's Opening Brief, p. 27.)

of Pacific's re-look analysis, as a discrete document, into legal error. The record does not support their claims. We have already demonstrated that the contested evidence can be found elsewhere in the record.

The requirements of due process depend on the particular circumstances of each case.²⁴ In this case, the Joint Applicants were provided an opportunity to cross-examine Pacific's witnesses and challenge the statistics advanced by Pacific in support of its application. Pacific produced pre-filed testimony, exhibits, and witnesses to present its case. Whether the data emanated from an exhibit or witness testimony, it becomes part of the record once admitted into evidence and may be subjected to cross examination. The witness' response and demeanor in responding to the questions are factors that the fact-finder considers in assessing the weight of the evidence. We agree with Pacific that the Commission has the discretion to credit some testimony and discredit other testimony. We disagree with the Joint Applicants that they did not have the opportunity to challenge the reliability of the statistics themselves.

The Commission has fully satisfied the Joint Applicants' due process rights. They were afforded the requisite procedural rights guaranteed by California law and the due process clause of the federal and California constitutions.

D. The Joint Applicants Have Failed to Prove that D.99-11-051 Departs from Commission Policy by Allowing Pacific to File an Application, Or That It Is Legal Error to Not Require Revenue Neutrality.

The Joint Applicants allege that the Commission departed from the NRF framework in allowing Pacific to file an application to raise rates for Category II services. They also maintain that the Commission committed legal error by not requiring revenue neutrality in this proceeding. (Joint Rhg. App., pp.

²⁴ *People v. Western Air Lines, Inc.* (1954) 42 Cal.2d 621; *Southern Pacific Co. v. Public Utilities Com.*, (1953) 41 Cal.2d 354.

25-36) The Joint Applicants are wrong on both counts. First, the Commission did not depart from the NRF framework in D.99-11-051 since NRF decisions provide for Category II services to obtain rate increases by application. In the first NRF decision, the Commission provided that Category II “above-cost pricing should occur only with explicit Commission review and approval in order to adequately protect the interests of largely captive ratepayers.”²⁵ Hence, this proceeding satisfies the requirement of providing explicit Commission review and approval for above cost pricing. The NRF decisions that followed the original decision also permit rate increases through the application process.²⁶ In permitting Pacific to file an application to raise the rates for DA service, the Commission is adhering to the principles set forth in NRF, IRD, OANAD and the universal service proceedings.²⁷

We also reject the Joint Applicants’ claim that the omission of revenue neutrality from the order in this proceeding is error. The Joint Applicants are correct that the Commission did set forth a revenue neutrality policy that required rate changes, which resulted in a revenue increase or decrease to be offset by countervailing rate adjustments. However, in the IRD decision, the Commission stated clearly that revenue neutrality may be modified by subsequent Commission decisions. (56 CPUC 2d 117 at 142.) In a later decision, the Commission reiterated this point in defining the goal of its revenue neutrality policy to be: “to shift revenues between services and customer classes without

²⁵ D.89-10-031, *mimeo*, p. 152 (33 CPUC 2d 43).

²⁶ Similarly, in the Second Triennial Review of NRF (63 CPUC 2d 377; D.95-12-052), the Commission capped Category I & II prices, but exempted changes through the application process. The Commission noted that if Pacific and GTEC desired to propose to raise their rates above the price caps, they could file a formal application (63 CPUC 2d 377 at 394). In the Third Triennial Review, the Commission made plain that “the NRF mechanism has never prevented Pacific and GTEC from applying for unique adjustments in their prices, based on costs and different competitive pressures.” *Re Incentive-Based Regulatory Frameworks*, D.98-10-026 (Oct. 8, 1998) *mimeo*, p. 15.

²⁷ Two OANAD decisions are germane here: *Re Open Access to Bottleneck Services and a Framework for Network Architecture Development of Dominant Carrier Network* (1995) 62 CPUC 2d 575 (D.95-12-016) and (1996) 67 CPUC 2d 221 (D.96-08-021). See also *Re Universal Service* (1996) 68 CPUC 2d 524 (D.96-10-066).

any change in the base year revenue requirement (1989 for Pacific and 1990 for GTEC), *except as modified by subsequent Commission decisions.*²⁸

The Commission further explained that it used revenue neutrality in the IRD decision as an estimating tool, and that it was not quite the overarching policy urged by some.²⁹ Just as the Commission rejected CALTEL's use of revenue neutrality as an overarching policy, we adhere to the same policy here.

E. D.99-11-051 Does Not Shift the Burden of Proof to the Intervenors.

The Joint Applicants claim that the Decision “appears to have relieved Pacific of its burden [of proof] in this proceeding” and shifts the burden to them, in violation of PU Code §454(a).³⁰ There is no merit to this argument. This charge repeats their claim that Pacific failed to prove that DA is priced below cost, thereby necessitating a rate increase. This allegation has already been addressed in this analysis. Therefore, we will not repeat our reasons for rejecting it, except to emphasize that the burden of proof was at all times on Pacific to justify its requested rate increase. Pacific met that burden with its showing, which was replete with exhibits and witness testimony found persuasive by the Commission.

F. Oral Argument Would Not Assist the Commission in Resolving the Issues.

The Joint Applicants request oral argument, alleging that it would materially assist the Commission in resolving Pacific's application and “the Commission would benefit from a detailed presentation from the parties about the evidentiary record and the important policy and legal implications of the decision.” (Joint Rhg. App., p. 51) We disagree. The 52-page rehearing

²⁸ *Re Alternative Regulatory Frameworks for LECs*(1996) 65 CPUC 2d 223, 226 (D.96-03-021).

²⁹ *Id.* at 227.

³⁰ Joint Rhg. App. at 47-50. PU Code §454(a) allocates the burden of proof to the utility to make a showing justifying its request for a rate increase.

application covers in considerable detail the Joint Applicants' concerns about the record, and the important policy and legal implications of the decision. Moreover, the arguments in the rehearing application have already been thoroughly briefed, and were also addressed in comments and reply comments to the Administrative Law Judge's (ALJ's) proposed decision. A reiteration of the Joint Applicants' views before the Commission would not be helpful in the resolution of the issues. Thus, we conclude that the Joint Applicants' request for oral argument does not meet the criteria for oral arguments, as set forth in the Commission's Rules of Practice and Procedure (Rules) 86.3 (Cal.Code Regs., tit.20). Therefore, the Joint Applicants' request for oral argument is denied.

IV. CONCLUSION

For the reasons stated herein, we grant rehearing to modify D.99-11-051 by adding or modifying findings or conclusions, consistent with the evidence of record. In addition, we clarify misperceptions about Commission policy, authority and discretion as applied to NRF proceedings. In all other respects, rehearing is denied.

Therefore **IT IS ORDERED** that:

1. Finding of Fact No. 17 should be modified as follows:

We find credible Pacific Bell's conclusion from its re-look analysis of its DA volume sensitive TSLRIC study that the per call cost of DA would be increased by less than one percent in comparison with the results of its initial OANAD study.

2. The last sentence in the last paragraph on p. 20 should be modified to read:

Pacific Bell's re-look analysis provides further support for increasing the DA price floor by \$0.10 from \$0.25 to \$0.35, so that Pacific Bell may have an opportunity to recover its Category II DA costs.

3. The last sentence in Paragraph 3, page 21 should be changed so that it now reads:

Any attempt to keep Pacific Bell's partially competitive DA service artificially low could have the effect of stifling competition in the DA market.

4. Paragraph 4, page 21 should read as follows:

In our informed judgement and upon review of all the evidence, including sealed data and testimony, we conclude that \$0.46 will provide Pacific Bell with the recovery of its DA costs and a reasonable profit.

5. The last paragraph at the bottom of page 21, beginning with "The \$0.46 rate," to the end of that paragraph on page 22 should be deleted and replaced by the following:

The \$0.46 rate is deemed to be just and reasonable on a number of grounds. DA service has traditionally been, and has continued to be, priced below cost at the time this application was filed. Pacific has not had an increase in DA rates since 1984 when the rate was increased to \$0.25. For reasons of policy and pursuant to state and federal law, traditional subsidies of DA service are being phased out. In consideration of this, combined with inflation, to which is added a 17 percent differential between wholesale and retail prices, the Commission determined that a \$0.46 retail rate is reasonable. This 17 percent differential will cover retail costs such as billing, advertising, and marketing. This rate would also enable Pacific Bell to recover its \$0.35 incremental TSLRIC DA costs, shared and common costs, and a reasonable margin, consistent with a partially competitive service. While it may be worth noting that \$0.46 is below the median price charged by ILECs, this comparison does not justify an increase in rates in this application. Whether the rates are just and reasonable depends upon the particular circumstances of each case. In this case, Pacific Bell complied with the conditions for

authorization to raise its DA tariff price from \$0.25 to \$0.46.

6. Finding of Fact No. 28 is modified to read as follows:

A key NRF principle requires that Category II services be priced above cost.

7. Finding of Fact No. 40 is modified to read as follows:

The NRF Decision and its progeny provide that the Commission's revenue neutrality policy may be modified by subsequent Commission decisions.

8. The following shall be added as Finding of Fact No. 48:

A rate increase is necessary for the Centrex optional features set forth in this application.

9. The following shall be inserted as Conclusion of Law No. 18:

The rate increases authorized in this application are just and reasonable, as required by Public Utilities Code §451.

10. The following is added as Conclusion of Law No. 19:

The order in D.00-03-042, making rate increases for Directory Assistance, Busy Line Verification, Emergency Interrupt, and four Centrex Optional services subject to refund, should be rescinded.

11. The following is added as Ordering Paragraph No. 10, and Ordering Paragraph No. 10 is re-numbered to become Ordering Paragraph No. 11:

The subject to refund order promulgated in D.00-03-042 shall be rescinded.

12. In all other respects, the rehearing of D.99-11-051 is denied.
13. Application (A.)98-05-038 is closed.

This order is effective today.

Dated November 21, 2000, at San Francisco, California.

HENRY M. DUQUE
JOSIAH L. NEEPER
RICHARD A. BILAS
Commissioners

I dissent.

/s/ LORETTA M. LYNCH
President

I dissent.

/s/ CARL W. WOOD
Commissioner