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Group-Washington

January 13, 1997

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, DC 20554

Dear Mr. Caton:

Re: *CC Docket No. 93-129, 800 Data Base Access Tariffs and the 800 Service Management System Tariff; CC Docket No. 86-10, Provision of 800 Services*

On behalf of Pacific Bell, please find enclosed an original and six copies of its "Petition for Reconsideration" in the above proceeding.

Please stamp and return the provided copy to confirm your receipt. Please contact me should you have any questions or require additional information concerning this matter.

Sincerely,



Enclosure

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of

800 Data Base Access Tariffs and the

800 Service Management System Tariff

and

Provision of 800 Services

CC Docket No. 93-129

CC Docket No. 86-10

PACIFIC BELL'S PETITION FOR RECONSIDERATION

I. **INTRODUCTION AND SUMMARY**

Pacific Bell ("Pacific") hereby seeks reconsideration of one issue decided in the Commission's *800 Data Base Order*,¹ relating to Pacific's costs of upgrading its tandems to provide 800 data base service. The Commission disallowed any cost recovery related to these tandem upgrades -- costs totaling \$1,315,000² -- even though the upgrades were made solely to meet the Commission's requirements, and are still being used by CLECs exclusively to gain access to 800 services.

¹ *800 Data Base Access Tariffs and the 800 Service Management System Tariff and Provision of 800 Services*, CC Docket Nos. 93-129 & 86-10, *Report and Order*, FCC 96-392 (rel. Oct. 28, 1996) ("*800 Data Base Order*").

² The Commission rejected Pacific's claimed tandem-related exogenous recovery in the amount of \$3,369,000. However, a portion of this amount was disallowed for reasons unrelated to this petition; \$1,315,000 of the reduction is in dispute here.

The Commission based its rejection of Pacific's exogenous cost request on the assertion that "the Commission has expressly stated that the costs of meeting the access time standards are not eligible for exogenous treatment." *800 Data Base Order*, ¶ 125, citing *800 Rate Structure Order*.³ However, *the 800 Rate Structure Order nowhere states that costs incurred as a result of meeting the Commission's access time standards are not recoverable*. Thus, the Commission's decision to reject Pacific's claim rests on an erroneous legal premise and should be reconsidered.

The tandem upgrades meet the Commission's standards for granting exogenous treatment as set forth in the *800 Rate Structure Order* -- the upgrades are "reasonable costs [Pacific] incurred specifically for the implementation and operation of the basic 800 data base service required by Commission orders." *800 Rate Structure Order*, 8 FCC Rcd at 911, ¶ 27. Pacific respectfully requests that the Commission reconsider its decision to deny an exogenous adjustment for the tandem costs.

II. THE COMMISSION DID NOT DISALLOW EXOGENOUS COST RECOVERY FOR COSTS ASSOCIATED WITH MEETING ITS ACCESS TIME STANDARDS

The Commission's sole reason for denying the tandem cost recovery is its statement that "[t]hese [tandem] costs do not meet the *Rate Structure Order* standard for granting exogenous treatment only to costs incurred specifically to implement basic 800 data base service because the Commission has expressly stated that the costs of meeting the access time standards are not eligible for exogenous treatment." *800 Data Base Order*, ¶ 125. The Commission's cites the *Rate Structure Order*, 8 FCC Rcd at 911 as support for this assertion. *800 Data Base Order*, ¶ 125 n.231.

³ *Provision of Access for 800 Service*, CC Docket No. 86-10, *Second Report and Order*, 8 FCC Rcd 907, 911 (1993) ("*800 Rate Structure Order*").

However, the *Rate Structure Order* says no such thing. It states instead that exogenous cost recovery for “reasonable [800 data base costs LECs] incurred specifically for the implementation and operation of the basic 800 data base service required by Commission orders” will be allowed. *Id.*, ¶ 125. Indeed, one of the Commission’s stated reasons for allowing LECs exogenous recovery based on this standard is the fact that “administrative actions by this Commission have established *stricter access time standards for 800 data base service* than those proposed by the LECs, thus increasing the costs associated with the provision of the service.” *Id.* (emphasis added).

Thus, the Commission concluded, “we have effectively required the implementation of [800 data base service] and dictated the terms, conditions, *and schedule* for offering it. Under these circumstances, we conclude that the reasonable costs specific to implementing basic 800 data base service *are outside the carrier’s control, and may, therefore, be treated as exogenous under price cap regulation.*” *Id.* (emphasis added).

Thus, rather than excluding recovery of 800 data base costs attributable to meeting the access time standards, the Commission affirmatively allowed them. Nowhere in the *800 Rate Structure Order* did the Commission state that exogenous recovery would not be allowed because the costs were incurred to meet the time standards. The Commission’s decision to disallow Pacific’s tandem costs is based on an erroneous premise, and should be reversed.

III. THE TANDEM UPGRADES WERE ESSENTIAL TO PROVIDE SERVICE TO INDEPENDENT/RURAL CARRIERS WHO COULD NOT PURCHASE THE 800 SERVICE SWITCHING POINT FEATURE

In addition to being entitled to reconsideration because of the Commission's reliance on an erroneous legal premise, the decision is also incorrect on its facts, both old and new.

Since filing our tariff, we have discovered new evidence justifying our original decision to install 800 data base software at the tandem.⁴ It is necessary today to use this feature for 800/888 traffic for any call routed via Operator Services -- including calls where the calling party dials "0" and requests connection to an 800/888 number, or calls routed from equipment used by the disabled. These calls are without exception routed to the tandem for 800 data base purposes. There is no way even today to reroute these calls back to their originating end office for that office to perform an 800 data base dip.

In addition, we still are using the 800 tandem upgrades exclusively for 800 data base purposes. At least one CLEC is using 800 software in our tandem for interconnection. Thus, it is still true today that the upgrade was for the sole purpose of "the implementation and operation of the basic 800 data base service required by Commission orders." *800 Rate Structure Order*, 8 FCC Rcd at 911, ¶ 27.

Moreover, Pacific was required to make the tandem upgrades in order to provide access to 800 data base service to independent and rural carriers whose switches were not SS7 compatible.

⁴ Pacific hereby introduces new facts pursuant to 47 C.F.R. Section 1.429(b)(1), (2) and (3). These provisions allow the introduction of new facts in a petition for reconsideration if "(1) the facts relied on relate to events which have occurred or circumstances which have changed since the last opportunity to present them to the Commission; (2) the facts . . . were unknown to petitioner until after his last opportunity to present them . . . or (3) . . . consideration of the facts . . . is . . . in the public interest." 47 C.F.R. §§ 1.429(b)(1), (2) & (3); *see also* 47 C.F.R. §§ 1.106(b)(2)(i), (ii) & (c)(1), (2).

Furthermore, because we did not deploy 800 data base software at the end office, we built devoted-to-800 trunk groups between the end offices and the tandems. These trunk groups were built to protect other sorts of traffic being sent from the end office to the tandem from the peaked nature of 800 traffic, and could not be used for any other purpose. Carriers and 800 users occasionally and inappropriately use 800/888 numbers as high-volume numbers for contest call-in numbers and the like. Only the office performing the 800 data base function is able to stop the progress of a call, using an Automatic Call Gap mechanism that automatically limits calls to numbers that are generating more calls than the terminating CPE can possibly answer.

Because in Pacific's case the tandems performed the 800 data base function, it was prudent for Pacific to separate the 800/888 traffic from all other traffic so that the 800/888 traffic did not consume all routes between the end office and the tandem to the exclusion of direct-dialed traffic.⁵ Hundreds of trunk groups were involved in this deployment. Had we not deployed the trunk groups to protect general telephone traffic, we likely would have received complaints from large IXCs such as AT&T and MCI -- the very parties that opposed our exogenous adjustment -- if their traffic was interrupted by a high-volume 800 call event.

Pacific set forth the facts in the previous two paragraphs in its Description and Justification ("D&J") filed with its tariffs. *See* D&J at II-7 ("Pacific's tandems required processor upgrades, replacement of equipment and additional software to provide for . . . 26,500 tandem trunk

⁵ While Pacific ultimately disconnected the 800 traffic trunk group to the tandem when it deployed the 800 data base function to the end offices, the trunk group nonetheless was necessary at the time it was deployed.

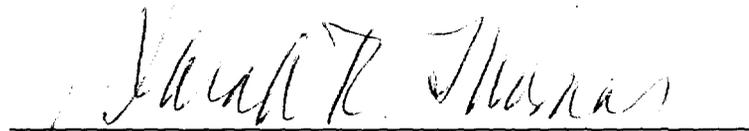
conversions . . .).⁶ Thus, this information was known to the Commission, but not considered in its decision, and reconsideration is merited for a second, fact-based reason.

IV. CONCLUSION

We urge the Commission to reconsider its disallowance of \$1,315,000 in tandem costs Pacific incurred solely to comply with the Commission's orders. The Commission's decision is based on an erroneous legal premise, is subject to reconsideration based on the new facts we submit here, and fails to take into account facts already in the record.

Respectfully submitted,

PACIFIC BELL



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Date: January 13, 1997
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⁶ Attached as Exhibit 1 is the section from our D&J relating to the tandem upgrade issue. It spells out, either directly or generally, the foregoing reasons for claiming the exogenous adjustment.

EXHIBIT 1

2. Tandem Upgrade Justification

In September of 1991, after the release of the Commission's Memorandum Opinion and Order on Reconsideration, Pacific began to plan the implementation of 800 number portability. On January 21, 1992, after careful consideration, Pacific filed with the Commission a petition for waiver of the access time standards established in the Order, and on July 28, 1992, the Commission granted Pacific's waiver of the March 1993 access time standard.

In granting the waiver, the Commission acknowledged Pacific's "...ambitious SS7 deployment schedule" and stated that Pacific's "...extensive effort will result in reduced access times for almost two thirds of its traffic and a mean access time in 1993 that meets the Commission's mean requirement for 1995. Moreover, by March 1995, Pacific will have deployed SS7 interconnection capability in virtually all of its end offices, and thus will be capable of achieving a mean access time of less than one second, which substantially exceeds FCC requirements and is substantially better than current NXX access time levels."⁴

In its waiver request, Pacific stated that in order to meet the March 1993 access time standard, it would be required to implement SS7 to the end office level in all of its LATAs. Pacific proposed, instead, to aggregate 800 traffic at tandem-level SSPs in order to meet the March 1993 implementation date. In granting the waiver, the Commission acknowledged that "...it would be difficult, if not impossible, for Pactel to accomplish these changes, along with all the other work that has to be performed by March, 1993, without compromising network reliability."⁵

⁴ Order, released July 28, 1992, at 14

⁵ Order, released July 28, 1992, at 15

There is no question that Pacific has worked effectively to achieve the 1993 access time standard granted by the Commission. And there is no question that Pacific will successfully complete its proposed SS7 end office deployment in order to exceed the 1995 mean access time standard.

Pacific has incurred tandem upgrade investment and expense associated with 800 Data Base Service implementation solely in order to meet the 1993 access time standard in a timely manner. Given the sheer volume of work that would have been required to implement SS7 at all end offices, Pacific was forced to plan 800 traffic aggregation at nine tandems in LATAs other than 1 and 5. This increased tandem traffic required increased capacity at the tandem level, as well as tandem-level SSP deployment.

In order to meet the requirements of its waiver, Pacific moved 800 traffic in LATAs 1 and 5 from the DMS10, Stromberg-Carlson, 1E and 2B switch types to the tandem, and moved all 800 traffic to the tandem in all other LATAs.

Pacific's tandems required processor upgrades, replacement of equipment and additional software to provide for 11,500 SS7 trunk augments and 26,500 tandem trunk conversions from MF to SS7 signaling.

This increased tandem capability does not provide future network efficiencies or cost savings for Pacific. These costs would never have been incurred were it not for the necessity to comply with the 1993 access time standard and implementation date.

Moreover, given that Pacific's ultimate goal is to provide end office SS7 and 800 SSP capability, and that the 800 traffic which is temporarily being re-directed to the tandem will, by 1995, have been re-homed to the end office, it should be clear that these costs were triggered solely by the Commission's access delay time requirements in the Order on Reconsideration.

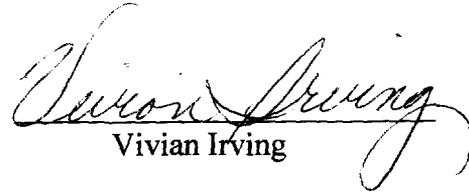
In the Second Report and Order,⁶ the Commission acknowledges that "...administrative actions by this Commission have established stricter access time standards for 800 data base service than those proposed by the LECs, thus increasing the costs associated with the provision of the service...we have required those standards to be met according to a Commission specified schedule. Thus, we have effectively dictated the terms, conditions, and schedule for offering it. Under these circumstances, we conclude that the reasonable costs specific to implementing basic 800 data base service are outside the carrier's control and may, therefore, be treated as exogenous under price cap regulation."

Pacific's tandem upgrade investment and expense meets the language of the Order. Pacific therefore petitions for exogenous treatment of these costs.

⁶ Second Report and Order, released January 29, 1993, at 27.

CERTIFICATE OF SERVICE

I, Vivian Irving, do hereby certify that on this 13th day of January, 1997, a copy of the foregoing "**Pacific Bell's Petition for Reconsideration**," was mailed by U.S. first-class mail, postage prepaid to the parties listed below.



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