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Decision 88 12 029 DEC 9 1988

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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In the Matter of the Application of)
Fiber Data Systems, Inc. for a)
certificate of public convenience and)
necessity authorizing the provision)
of access to long-distance telephone)
services and resale of long-distance)
telephone services.)

DEC 9 1988
Application 88-05-017
(Filed May 11, 1988)

OPINION

Fiber Data Systems, Inc. (applicant) has filed an application requesting that the Commission issue a certificate of public convenience and necessity under Public Utilities (PU) Code § 1001 to permit applicant to construct and operate a system which will enable applicant to provide access to long-distance telephone services within the County of Los Angeles and to resell to subscribers located in the County of Los Angeles long-distance telephone services offered by other communications common carriers providing telecommunications services in California.

Applicant seeks authority to provide both: (a) 24-hour interLATA access service from origination points in the County of Los Angeles to various points of presence of other authorized long-distance carriers in the County of Los Angeles and (b) 24-hour resale of interLATA service, which resale will include access service from origination points in the County of Los Angeles to various points of presence of long-distance carriers and on to the points of ultimate destination. Applicant plans to offer these services to its subscribers using facilities constructed and owned by applicant in the County of Los Angeles as well as facilities provided by other long-distance carriers. Applicant would offer its services solely for the purpose of interLATA communications.

Applicant requests that it be accorded the same regulatory treatment applicable to other non-dominant long-distance carriers, including the exemption from the requirements of PU Code §§ 816 through 830 for Commission authorization of securities issuance and transfer or encumbrance of utility property to secure debt, granted by Decision (D.) 85-01-008, D.85-07-081, D.85-11-044, and D.86-08-057. Applicant further requests that, for purposes of subsequent tariff filings, it be authorized to deviate from the requirements of General Order 96-A respecting tariff pagination and the setting forth of each tariff rule on a separate page. Such deviations were authorized for like utilities by Resolution T-10808 issued March 21, 1984.

Motions to file late-filed protests accompanied by protests to the application were filed by GTE California Inc. (GTEC) and Pacific Bell (Pacific).

In its motion GTEC asserts that it did not learn of, and reasonably could not have learned of, the fact that the application seeks to offer access service in competition with GTEC until after the apparent deadline for filing a protest. GTEC cites Rule 8.3 of the Commission's Rules of Practice and Procedure which sets forth the two deadlines for filing protests. As shown by the certificate of service, the application was not sent to GTEC. GTEC further asserts that although notice of the application appeared on the Commission's Daily Calendar of May 16, 1988, the caption was paraphrased in such a way as to omit any reference to the access services request which GTEC wished to protest. The paraphrased notice appeared to be a typical interLATA application, which local exchange companies normally do not protest and GTEC asserts it learned of the access service portion of the application during the week of June 20, 1988, when it saw part of a third party's copy of the application. Applicant does not protest GTEC's motion. There appearing to be good cause, the motion should be granted.

In Pacific's motion to file a late-filed protest, it asserts that it did not learn of the application until served with a copy on June 22, 1988, by counsel for applicant. Attachment A to the motion is a letter dated June 22, 1988 in which applicant's counsel apologized for not having served a copy of the application upon Pacific at the time it was filed. Since Rule 8.3 states that the deadline for filing a protest is 30 days from the date that copies of the application...were mailed to other persons, as evidenced by a certificate of service by mail or the date notice of the filing appeared in the Commission's Daily Calendar, whichever is later, and the letter to Pacific from applicant is dated June 22, 1988, the motion of Pacific to file a late-filed protest should be granted as it is within the 30-day deadline period.

GTEC asserts that it is already providing the services sought to be provided by applicant and therefore, the public convenience and necessity do not require the granting of the application. GTEC also alleges that the proposed access service is prohibited by D.83-06-113; that the application is premature and should await the conclusion of the Commission's consideration of competition with local exchange companies (LEC's) in I.87-11-033.

Pacific asserts that although applicant suggests it will limit its offering to interLATA service, its own document shows that it intends to under-price access services of LECs and directly compete with these companies in providing exchange access service. Pacific believes any granting of authority to applicant should be conditioned on applicant taking all reasonable steps to ensure that its facilities cause the routing of intraLATA traffic to Pacific.

Pacific also contends that since there will be a duplication and replacement of Pacific's facilities in Los Angeles, there is no demonstration by applicant that their economic costs are below those of Pacific. Like GTEC, Pacific also urges that the Commission pronounce its conclusions in I.87-11-033 prior to any decision on this application.

Applicant filed a response to GTEC's protest, asserting that its proposed access service is to be used solely for the purposes of interLATA communications and noting that its access service for interLATA communications is strictly equivalent in relevant respects to the Direct Access Service offered by Wang Communications as authorized by D.88-02-044. Applicant also asserts that in its most recent decision addressing carrier bypass, the Commission rejected Pacific's recommendation that Wang Communications' direct access service be prohibited as a form of carrier bypass, noting that the issue of carrier bypass had already been considered in D.85-06-115 and the Commission had declined to adopt such a ban (D.88-02-044). Finally, applicant points out that the Commission has not required a detailed showing of public convenience and necessity in the case of applicants for interLATA authority.

Discussion

In D.84-01-037 dated January 5, 1984 and subsequent decisions, numerous applications to provide competitive telecommunications services in Californian were granted, limited to the provision of interLATA service and subject to the condition that applicants not hold out to the public the provision of intraLATA service pending our decision in OII 83-06-011.

On June 13, 1984 we issued D.84-06-113 in OII 83-06-01 denying the applications to the extent not previously granted and directing persons not authorized to provide intraLATA telecommunications services to refrain from holding out the availability of such services and to advise their subscribers that intraLATA communications services should be placed over the facilities of the local exchange company.

Applicant is not proposing to offer an intraLATA service. The access service applicant proposes is to be used solely for purposes of interLATA communications. In D.88-02-044 we granted Wang Communications Inc. authority to provide connections directly

to interexchange carriers' points of presence in California. In that decision we declared that there was no reason to differentiate Wang's Direct Access service from its other interLATA services, and concluded that "[Wang's] Direct Access service should be authorized subject to the same holding out restrictions imposed on other interLATA services WCI may offer." Applicant's proposed Direct Access service is functionally identical to the access service we authorized in the Wang Decision.

Since the applicant is not seeking intraLATA authority, and we are not authorizing intraLATA service, the protests with respect to intraLATA service are moot.

Applicant's proposed service will provide an alternative access service to that offered by Pacific or GTEC and at a later date, long-distance telephone service on a resale basis at reduced rates to subscribers. Competition for subscribers needing access to the various IEC's will likely result in reduced rates and better service.

There is no basis for treating this applicant any differently than those which filed earlier. Therefore, this application will be granted to authorize interLATA service.

Findings of Fact

1. By D.84-01-037 the Commission authorized interLATA entry generally.

2. By D.84-06-113 the Commission denied applications to provide competitive intraLATA telecommunications service and required persons not authorized to provide intraLATA telecommunications service to refrain from holding out the availability of such services and to advise their subscribers that intraLATA communications should be placed over the facilities of the local exchange company.

3. Applicant's proposed Direct Access service is functionally identical to the access service authorized for Wang Communications, Inc. in D.88-02-044.

4. There is no basis for treating this applicant differently than those which filed earlier.

5. Because of the public interest in effective interLATA competition this order should be effective today.

6. As a telephone corporation operating as a Telecommunications service supplier, applicant should be subject to the 4% surcharge on gross intrastate interLATA revenues as established by Commission decisions and resolutions pursuant to PU Code § 879.

7. As a telephone corporation operating as a telecommunications service supplier, applicant should also be subject to the one-half (1/2%) surcharge on gross intrastate interLATA revenues to fund telecommunications Devices for the Deaf. This surcharge became effective on October 1, 1988 as set forth in Resolution T-13005 dated July 22, 1988 and issued pursuant to PU Code § 2881.

8. Applicant should be subject to the user fee as a percentage of gross intrastate revenue pursuant to PU Code §§ 431-435. The fee is currently .1% for the 1988-1989 fiscal year.

9. GTEC and Pacific have good cause to file late-filed protests.

Conclusions of Law

1. The motions of GTEC and Pacific to file late-filed protests should be granted.

2. This application should be granted to the extent set forth below.

ORDER

IT IS ORDERED that:

1. The application of Fiber Data Systems, Inc. is granted to the limited extent of providing the requested service on an interLATA basis, subject to the condition that applicant refrain from holding out to the public the provision of intraLATA service

and subject to the requirement that it advise its subscribers that intraLATA communications should be placed over the facilities of the local exchange company.

2. Applicant is authorized to file with this Commission, 5 days after the effective date of this order, tariff schedules for the provision of interLATA service. Applicant may not offer service until tariffs are on file. If applicant has an effective FCC-approved tariff, it may file a notice adopting such FCC tariff with a copy of the FCC tariff included in the filing. Such adoption notice shall specifically exclude the provision of intraLATA service. If applicant has no effective FCC tariffs, or wishes to file tariffs applicable only to California intrastate interLATA service, it is authorized to do so, including rates, rules, regulations, and other provisions necessary to offer service to the public. Such filing shall be made in accordance with General Order (GO) 96-A, excluding Sections IV, V, and VI, and shall be effective not less than 1 day after filing.

3. Applicant is authorized to deviate on an ongoing basis from the requirements of GO 96-A in the following manner: (a) to deviate from paragraph II.C.(1)(b) which requires consecutive sheet numbering and prohibits the reuse of sheet numbers, and (b) to deviate from the requirements set forth in paragraph II.C.(4) that "a separate sheet or series of sheets should be used for each rule." Tariff filings incorporating these deviations shall be subject to the approval of the Commission Advisory and Compliance Division's Telecommunications Branch. Tariff filings shall reflect the 4% interim surcharge noted in Ordering Paragraph 6.

4. If applicant fails to file tariffs within 30 days of the effective date of this order, applicant's certificate may be suspended or revoked.

5. The requirements of GO 96-A relative to the effectiveness of tariffs after filing are waived in order that changes in FCC

tariffs may become effective on the same date for California interLATA service for those companies that adopt the FCC tariffs.

6. Applicant is subject to the 4% surcharge applicable to the gross revenues of intrastate interLATA services as established by Commission decisions and resolutions pursuant to PU Code § 879.

7. Effective on and after October 1, 1988, applicant is subject to a one-half percent (1/2%) monthly surcharge to fund Telecommunications Devices for the Deaf as outlined in Resolution T-13005 dated July 22, 1988 pursuant to PU Code § 2881.

8. Applicant is subject to the user fee as a percentage of gross intrastate revenue pursuant to PU Code §§ 431-435.

9. The corporate identification number assigned to Fiber Data Systems Inc. is U-5166-C which should be included in the caption of all original filings with this Commission, and in the titles of other pleadings filed in existing cases.

10. The motions of GTEC and Pacific to file late-filed protests are granted, but the protests are denied consistent with this order.

11. The application is granted as set forth above.

This order is effective today.

Dated DEC 9 1988, at San Francisco, California.

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

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY.


Victor Weissor, Executive Director

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