

Decision **89 02 031** FEB 8 1989.**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 Bay Area Teleport (U-5109-C) for a)
 Certificate of Public Convenience)
 and Necessity to Provide Intralata)
 High Speed Private Line Data)
 Transmission Services in LATAs 1)
 and 3 in California.)

Application 86-07-034
 (Filed July 14, 1986)

OPINION MODIFYING DECISION 87-02-022Background

Applicant was granted authority to provide intraLATA (Local Access and Transport Area) high speed digital private line service (high speed service) in LATAs 1 and 3, pursuant to Decision (D.) 87-02-022. Ordering Paragraph 2 of the decision precludes applicant from multiplexing below 1.544 megabits per second, and precludes applicant from switching intraLATA voice or data traffic. Also, Ordering Paragraph 6 requires applicant to provide cost data to the Commission Advisory and Compliance Division (CACD) Director, formerly the Evaluation and Compliance Division, before applicant requests any changes or additions to its tariff for high speed service.

Modification of D.87-02-022

On October 24, 1988, applicant filed a petition for modification of D.87-02-022 to remove the above restrictions from applicant's certificate of public and convenience and necessity.

Applicant seeks the removal of these restrictions so that it can provide high speed service in a manner consistent with the terms of the Alternative Regulatory Framework Phase 1 Decision, D.88-09-059.

Appendix A of the Phase 1 Decision prescribes the following conditions for intraLATA high speed digital private line service competition:

"Competitive providers in high speed digital markets may hold out the availability of and provide multiplexing equipment or services, including voice services, as part of such highspeed digital services.

"For purposes of this document, digital private line services at 1.544 megabits per second (mbps) or above are considered to be 'high speed digital private line' service. As used herein, 'intraLATA high speed digital private line' service is defined as the dedicated connection of two or more end user premises within a LATA for the purpose of providing intraLATA high speed digital nonswitched services. Competitive carriers may provide multiplexing service for voice and/or data at the end user's premises such that the transmission speed from or to the end user's premises is at 1.544 mbps or above.

"This document does not permit the transport from or to the end user's premises for intraLATA service or either analog or digital transmissions at speeds less than 1.544 mbps."

The Phase I Decision concludes that competitive intraLATA high speed digital private line services should be coincident with the effectiveness of local exchange carrier pricing flexibility for such services.

Protest

On November 28, 1988, Pacific Bell filed a protest to applicant's petition. Pacific Bell asserts that the petition is silent on whether applicant intends to offer multiplexing equipment "at the end users premises," and whether applicant will multiplex transmission between end user premises at speeds of 1.544 mbps or higher as required by D.88-09-059. Pacific Bell requests that the effective date of any changes to applicant's high speed service

should not be effective prior to the date Pacific Bell's high speed service tariffs are effective.

On January 6, 1989, applicant sent a letter to Pacific Bell providing written assurance to Pacific Bell that applicant will only multiplex and transmit its high speed digital service consistent with the terms of D.88-09-059. The letter also concurs that applicant's requested changes should be effective on the same date that Pacific Bell's high speed service is effective. A copy of this letter is attached as Appendix A.

By letter of January 19, 1989, Pacific Bell seeks to withdraw its protest because it is satisfied that applicant's letter resolves Pacific Bell's concern. Although Pacific Bell's letter was dated January 19, 1989, the assigned administrative law judge did not receive the withdrawal notice until January 26, 1989. With the receipt of Pacific Bell's withdrawal request the protest is moot and should be dismissed.

Subsequent to the Phase 1 Decision, Pacific Bell and GTE California, Incorporated (GTEC) requested pricing flexibility for high speed service, Application (A.) 88-10-012 and A.88-10-017, respectively.

Applicant participated in both Pacific Bell's and GTEC's high speed service application. Applicant concurred with other parties to these two proceedings that it would be most desirable if all competitive intraLATA high speed digital private line service applications were approved with the same effective date for commencing service.

Discussion

Applicant's petition is consistent with the Phase 1 Decision. Applicant should be allowed to multiplex, offer voice services, and to establish rates and charges without first providing cost support to CACD in accordance with D.88-09-059. Therefore, applicant's petition should be adopted.

Consistent with our decision on competitor applications for similar service, applicant should be required to provide monitoring reports to the CACD, and provide a copy of the report to the Division of Ratepayer Advocates, Telecommunications Rate Design Branch. Therefore, applicant should submit semiannual monitoring reports beginning with the effective date of the tariff revisions attached as Appendix B and ending two years from the date of applicant's first report. The report format, to be determined by CACD, should show applicant's monthly in-service and inward movement volumes, and recurring and nonrecurring billings by tariff rate item.

In D.88-09-059, we agreed to take action on all conforming requests for authority to provide competitive intraLATA high speed service filed on or before October 31, 1988 with any resulting authority to be effective on the same date of local exchange carriers pricing flexibility for similar service.

Applicant's petition does not appear on the February 8, 1989 agenda for consideration because applicant and Pacific Bell did not timely notify us that the protest was withdrawn. All other high speed data applications, including local exchange companies' applications filed prior to October 31, 1988 appear on the agenda.

PU Code § 306(b) precludes us from addressing matters not placed on the agenda unless an unforeseen emergency situation exists. Although applicant and Pacific Bell are at fault for not timely notifying us of the withdrawal of the protest, authority for such competitive service is in the public interest and should be addressed concurrent with other timely filed applications for high speed data service. Therefore, we will exercise our emergency authority for this petition and address it concurrent with other timely filed applications listed on the agenda.

The effective date of this order should be today, consistent with the effective date of Pacific Bell's, GTEC's, and other competitor applications being addressed today.

Findings of Fact

1. Applicant was granted authority to provide restricted intraLATA high speed digital private line service in LATAs 1 and 3, pursuant to D.87-02-022.
2. Applicant requests authority to multiplex below 1.544 mbps, offer switch intraLATA voice service, and not be required to provide cost data to CACD prior to requesting changes or additions to its tariff for high speed service.
3. D.88-09-052 does not permit the transport from or to the end user's premises for intraLATA service or either analog or digital transmissions at speeds less than 1.544 mbps.
4. Applicant assures Pacific Bell that applicant will only multiplex and transmit its high speed digital service consistent with the terms of D.88-09-059.
5. Pacific Bell has withdrawn its protest to applicant's petition.
6. D.88-09-059 concluded that competition to provide intraLATA high speed digital private line service as provided in the decision is in the public interest and should be authorized.
7. D.88-09-059 concluded that it is reasonable to coordinate the effectiveness of any authorization granted to interexchange carriers to provide intraLATA high speed digital private line service with the effectiveness of local exchange carrier pricing flexibility for such service.
8. Applicant should be treated no differently than any other interexchange carriers regarding the granting of authority to provide intraLATA high speed digital private line service.
9. Public convenience and necessity require the granting of this petition to the extent set forth in this Order.

Conclusions of Law

1. Applicant's petition should be granted to the extent that it is consistent with D.88-09-059.

high speed digital private line" service is defined as the dedicated connection of two or more end user premises within a LATA for the purpose of providing intraLATA high speed digital nonswitched services.

- c. Applicant may provide multiplexing service for voice and/or data at the end user's premises such that the transmission speed from or to the end user's premises is at 1.544 mbps or above.
- d. This authority does not permit the transport from or to the end user's premises for intraLATA service of either analog or digital transmissions at speeds less than 1.544 mbps.
- e. Applicant must agree to establish rates and charges for its intraLATA high speed digital private line service above its cost of providing such service.
- f. Applicant shall refrain from holding out to the public the provision of any intraLATA services it is not authorized to provide.
- g. Applicant shall advise its subscribers that intraLATA communications which applicant is not authorized to provide should be placed over the facilities of an authorized carrier.

3. Ordering Paragraph 6 of D.87-02-022 requiring applicant to submit cost data to the Commission Advisory and Compliance Division (CACD) before applicant files an advice letter requesting any changes or additions to its tariff is rescinded.

4. Applicant is authorized to file an advice letter and associated tariff sheets for its revised offering of intraLATA high speed 1.544 mbps digital private line service. The tariff sheets shall be as identified in Appendix B, modified to include the phrase BAT will advise its subscribers that intraLATA communications which BAT is not authorized to provide should be placed over the facilities of an authorized carrier.

CORRECTION

**THIS DOCUMENT HAS
BEEN REPHOTOGRAPHED**

TO ASSURE

LEGIBILITY

2. Applicant should be prohibited from holding out the availability of intraLATA services that it is not authorized to provide and should advise its customers that such intraLATA communications should be placed over the facilities of an authorized carrier.

3. Only the amount paid to the State for operative rights may be used in rate fixing. The State may grant any number of rights and may cancel or modify the monopoly feature of these rights at any time.

4. Notice of this matter did not appear on the Commission's public agenda; however, an emergency exists in that high speed service is a competitive service and applications of Pacific Bell, GTEC, and nondominant carriers are scheduled to be decided for this service today which justifies our action today under PU Code § 306(b).

5. In order to allow applicant to begin service on the same date as its competitors, this order should be effective today.

ORDER

IT IS ORDERED that:

1. Bay Area Teleport's (applicant) petition for modification of Decision (D.) 87-02-022 is granted to the extent provided in the following ordering paragraphs.

2. Applicant is authorized to provide intraLATA high speed digital private line service at 1.544 megabits per second (mbps) or higher within LATAs (Local Access and Transport Area) 1 and 3 subject to the following conditions:

- a. Applicant may hold out the availability of and provide multiplexing equipment or services, including voice services, as part of such high speed digital services.
- b. Digital private line services at 1.544 mbps or above are considered to be "high speed digital private line" service. "IntraLATA

high speed digital private line" service is defined as the dedicated connection of two or more end user premises within a LATA for the purpose of providing intraLATA high speed digital nonswitched services.

- c. Applicant may provide multiplexing service for voice and/or data at the end user's premises such that the transmission speed from or to the end user's premises is at 1.544 mbps or above.
- d. This authority does not permit the transport from or to the end user's premises for intraLATA service of either analog or digital transmissions at speeds less than 1.544 mbps.
- e. Applicant must agree to establish rates and charges for its intraLATA high speed digital private line service above its cost of providing such service.
- f. Applicant shall refrain from holding out to the public the provision of any intraLATA services it is not authorized to provide.
- g. Applicant shall advise its subscribers that intraLATA communications which applicant is not authorized to provide should be placed over the facilities of an authorized carrier.

3. Ordering Paragraph 6 of D.87-02-022 requiring applicant to submit cost data to the Commission Advisory and Compliance Division (CACD) before applicant files an advice letter requesting any changes or additions to its tariff is rescinded.

4. Applicant is authorized to file an advice letter and associated tariff sheets for its revised offering of intraLATA high speed 1.544 mbps digital private line service. The tariff sheets shall be as identified in Appendix B, modified to include the phrase BAT will advise its subscribers that intraLATA communications which BAT is not authorized to provide should be placed over the facilities of an authorized carrier.

5. The advice letter and associated tariff sheets described in Ordering Paragraph 4, above, shall be filed in compliance with the provisions of General Order (GO) 96-A after the effective date of this order. The revised schedules shall apply only to service rendered after their effective date which shall be at least five days after filing, but no earlier than February 15, 1989.

6. The requirements of GO 96-A relative to the effectiveness of tariffs after filing are waived in order that future tariff revisions for this competitive intraLATA service may become effective on five days' notice after filing.

7. Within 30 days after this order is effective, applicant shall file a written acceptance of the modification granted in this proceeding; absent such filing, the authority granted by this order may be revoked.

8. Applicant shall notify the CACD Director in writing of the date service is first rendered to the public as authorized herein, within 5 days after service begins.

9. Applicant shall monitor its intraLATA 1.544 mbps high speed digital private line service and shall submit semiannual reports for a two-year period beginning with the effective date of the rates and charges for this service as authorized herein. These reports shall be filed with the CACD Director with copies to the Division of Ratepayer Advocates - Telecommunications Rate Design Branch and shall include the following recorded data for applicant's intraLATA 1.544 mbps high speed digital service:

- a. Monthly in-service volumes.
- b. Monthly inward movement volumes.
- c. Monthly recurring billings by tariff rate item.
- d. Monthly nonrecurring billings by tariff rate item.

10. The reporting requirement of Ordering Paragraph 8 shall commence within 45 days after June 30, 1989, and shall terminate upon submission of applicant's semiannual report ending December 31, 1990, to be submitted on or before February 14, 1991.

11. Within 60 days after the effective date of this order, applicant shall prepare and issue to each employee who, in the course of employment, enters a customers or subscribers premise, an identification card in a distinctive format having a photograph of the employee. Applicant shall require each employee to present the identification card when requesting entry into any building or structure of a customer or subscriber, pursuant to PU Code § 708.

12. The corporate identification number currently assigned to Bay Area Teleport is U-5109-C, which should continue to be included in the caption of all original filings with this Commission, and in the titles of other pleadings filed in existing cases.

13. Applicant's IntraLATA 1.544 mbps high speed digital private line service is a utility service and is subject to the user fee as a percentage of gross intrastate revenue under PU Code §§ 431 through 435.

14. The authority granted in this order will expire if not exercised within 12 months after the effective date of this order.

This order is effective today.

Dated February 8, 1989, at San Francisco, California.

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

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

[Signature]
Vernon W. Weller, Executive Director

APPENDIX A

LAW OFFICES
OF
EARL NICHOLAS SELBY
420 FLORENCE STREET
PALO ALTO, CALIFORNIA 94301
TELEPHONE (415) 323-0990

January 6, 1989

Mr. Ronald R. McClain, Esq.
Senior Counsel
Pacific Bell
140 New Montgomery Street, Room 1507
San Francisco, CA 94105

RE: Application No. 86-07-034

Dear Mr. McClain:

This letter responds to the November 28, 1988 Protest by Pacific Bell of the Petition for Modification of Decision 87-02-022 by Bay Area Teleport in the above-referenced application. On page 3 of its Protest, Pacific Bell states, "Should BAT provide Pacific with its written assurance that it will only multiplex and transmit its high speed digital services consistent with the terms of Decision No. 88-09-059 Pacific will withdraw its Protest on this point." This letter constitutes the written assurance by Bay Area Teleport to Pacific Bell that it will only multiplex and transmit its high speed digital services consistent with the terms of Decision No. 88-09-059.

Second, Pacific's Protest requests that the Commission not make effective the changes requested by BAT's Application until such time as Pacific's Advice Letter in Expedited Application Docket (EAD) A. 88-10-012 is made effective. Bay Area Teleport agrees with Pacific's request. Bay Area Teleport understands that decisions approving Bay Area Teleport's Petition for Modification and Pacific Bell's Advice Letter in EAD A. 88-10-012 will be before the Commission for its action on February 8, 1989. It is my understanding that this date has been coordinated between ALJs Amaroli, Galvin and Ford.

Accordingly, Bay Area Teleport requests that Pacific Bell immediately withdraw and dismiss its Protest of Bay Area Teleport's Petition for Modification of Decision 87-02-022.

Thank you for your cooperation in this matter.

Very truly yours,


Earl Nicholas Selby

CC: ALJ Michael J. Galvin
Bay Area Teleport

(END OF APPENDIX A)

APPENDIX B

Page 1

Original Cal. P.U.C. Sheet No. 36-T

Bay Area Teleport
1141 Harbor Bay Parkway, Suite 101
Alameda, CA 94501
(415) 769-5300

APPLICABILITY

This Tariff contains effective rates and rules together with information applicable to IntraLATA, intrastate services in the State of California provided by Bay Area Teleport ("BAT").

BAT also provides InterLATA and interstate telecommunications services within the State of California.

This schedule is applicable to IntraLATA non-switched private line high speed data transmission services at a data speed of 1.544 MBPS or higher. Services are furnished to connect two or more points on a flat monthly rate. ~~BAT will not offer IntraLATA voice services; BAT will not hold out the availability of IntraLATA voice services.~~

Service under this Tariff is not available to interexchange carriers providing InterLATA telecommunications services. InterLATA services offered by BAT and interconnected to an interexchange carrier providing InterLATA telecommunications services shall be provided separate from BAT's IntraLATA high speed data service under BAT's InterLATA Tariff or under authority of the Federal Communications Commission, provided, any such separate InterLATA service offered under BAT's InterLATA Tariff or authority of the FCC shall not be construed as permitting or allowing any IntraLATA service.

(Current Tariff Page 36-T
Showing Proposed Deletion)

Advice Letter No. 4
Decision No. 87-02-022

Issued by
W. Meyers
Director of Finance
and Administration

Date Filed _____
Effective _____
Resolution No. _____

Bay Area Teleport

1141 Harbor Bay Parkway, Suite 101

1st Revised Cal. P.U.C. Sheet No. 36-T

Alameda, CA 94501

Cancels Original Cal. P.U.C. Sheet No. 36-T

(415) 769-3300

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(D)

(D)

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(END OF APPENDIX B)

Advice Letter No. _____

Issued by

Date Filed _____

Decision No. _____

John Boerama

Effective _____

Tariff Manager

Resolution No. _____

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rendered after their effective date which shall be at least five days after filing, but no earlier than February 15, 1989.

6. The requirements of GO 96-A relative to the effectiveness of tariffs after filing are waived in order that future tariff revisions for this competitive intraLATA service may become effective on five days' notice after filing.

7. Within 30 days after this order is effective, applicant shall file a written acceptance of the modification granted in this proceeding; absent such filing, the authority granted by this order may be revoked.

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14. The authority granted in this order will expire if not exercised within 12 months after the effective date of this order.

This order is effective today.

Dated FEB 8 1980, at San Francisco, California.

G. MITCHELL WILK
President
FREDERICK R. DUDA
STANLEY W. HULETT
JOHN B. O'HANIAN
Commissioners