

ORIGINAL

Decision 90 03 025 MAR 14 1990

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)	Application 86-07-034
Necessity to provide IntraLATA High)	(Filed July 14, 1986)
Speed Private Line Data Transmission)	
Services in LATAS 1 and 3 in California.))	

OPINION MODIFYING DECISION 87-02-022

On January 10, 1990, Bay Area Teleport (BAT) filed a petition for modification (petition) of Decision (D.) 87-02-022 granting it authority to offer intraLATA high speed data transmission services at a data speed of 1.544 megabits per second (mbps) or higher in LATAS 1 (San Francisco) and 3 (Sacramento).

By its petition, BAT requests that:

- a. Ordering Paragraphs 1 and 6 delete the requirement that BAT file rates and charges for intraLATA services "above cost"; and
- b. Ordering Paragraph 6 delete the requirement that BAT provide cost data to the Commission Advisory and Compliance Division (CACD) prior to submitting advice letters changing its rates for intraLATA service.

BAT represents that the relief sought in this petition has recently been granted to similarly situated non-dominant carriers offering intraLATA high speed digital telecommunications services.

D.89-05-066 and D.89-07-044 dealt with a similar petition by MCI Telecommunications Corporation (MCI) and US Sprint Communications Limited Partnership (Sprint), respectively. The following rationale was set forth in granting MCI and Sprint authority to delete their "above cost" requirement in these decisions.

When we added the above cost requirement to MCI's and Sprint's certificate of public convenience and necessity (CPC&N) we did not anticipate any controversy. We were mistaken in that expectation.

The settlement agreement in Phase I of Investigation (I.) 87-11-033 contained a requirement that Pacific Bell and GTE California Incorporated (GTEC) offer cost justifications to establish the lower bound of their pricing flexibility in this market. No such requirement was prescribed for new entrants. Since Pacific Bell and GTEC were starting in this newly competitive market from a near-monopoly position with monopoly local service as a potential source of cross-subsidy, the cost justified price floors were an appropriate measure to help assure that the market would develop fairly. We believe that the parties had precisely these concerns in mind in drafting the specific terms of the settlement on this issue.

As a new entrant in this market, MCI and Sprint have neither market share nor potential recourse to any source of monopoly revenues to cross-subsidize prices for anticompetitive reasons. Further, it is difficult to anticipate how MCI or Sprint could make such anticompetitive conduct pay, as they would need to become dominant in the market and determine a means to exclude others (in particular Pacific Bell or GTEC) before becoming able to sustain prices high enough above cost for long enough to recoup their losses from initial predatory pricing. Such a scenario may be theoretically possible, but from this vantage it seems highly unlikely and there is no evidence in support of it. We will continue to monitor the development of this market closely to assure that it develops fully and fairly. Also, we retain our full investigative authority to respond to evidence of anticompetitive conduct on the part of MCI, Sprint, and on others, whether brought to our attention through our own formal monitoring or by aggrieved parties.

We are therefore left with no good policy rationale to support this requirement, and a good argument that its imposition would disturb the integrity of the settlement's implementation. We will grant BAT's motion to delete D.87-02-022's requirement that BAT file rates and charges for its intraLATA services above cost.

BAT's secondary request to delete D.87-02-022's Ordering Paragraph 6 requirement that BAT provide cost data to CACD prior to submitting advice letters changing its rates for interLATA service is redundant. By Ordering Paragraph 3 of D.89-02-031, we previously granted a similar request of BAT's. Therefore, this issue is moot and should not be addressed further.

Findings of Fact

1. The Phase I settlement in I.87-011-033 included cost-justification requirements only for the intraLATA high-capacity private line prices of Pacific Bell and GTEC.

2. The integrity of the Commission's implementation of the Phase I settlement would be better preserved if the requirement to price above cost were deleted from BAT's CPC&N granted in D.87-02-022.

3. BAT has no monopoly markets from which cross-subsidies could be extracted to support predatory pricing in the high-capacity intraLATA private line market.

4. BAT has no apparent means to exclude other competitors from any segment of the intraLATA high-capacity private line market.

5. It is extremely unlikely that BAT is now or will foreseeably be in a position to profitably pursue anticompetitive conduct in the competitive intraLATA high-capacity private line market.

6. The better preservation of the integrity of the Commission's implementation of the Phase I settlement and the inability of BAT to profitably pursue anticompetitive conduct are

good cause to delete the requirement to price above cost from BAT's intraLATA's high-capacity private line CPC&N.

7. BAT's request to delete D.87-02-022's Ordering Paragraph 6 requirement that BAT provide cost data to CACD prior to submitting advice letters changing its rates for interLATA service was previously granted by D.89-02-031.

Conclusion of Law

BAT's request to delete the requirement that BAT file rates and charges for intraLATA services above cost should be granted.

O R D E R

IT IS ORDERED that Ordering Paragraphs 2 and 6 of Decision 87-02-022 shall be modified to delete the requirement that Bay Area Teleport's rates and charges for intraLATA high speed data transmission services be "above cost", as shown in Appendix A.

This order is effective today.

Dated MAR 14 1990, at San Francisco, California.

G. MITCHELL WILK
President
FREDERICK R. DUDA
STANLEY W. HULETT
JOHN B. CHANLAN
PATRICIA M. ECKERT
Commissioners

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


NEAL J. SHULMAN, Executive Director

APPENDIX A

Page 1

Decision 87-02-022 Ordering Paragraphs Revised
Pursuant to D.89-02-031 and D.90-03-025

1. A certificate of public convenience and necessity (CPC&N) is granted to Bay Area Teleport (applicant), a general partnership organized under California law, to provide intraLATA high speed private line data transmission services at a data speed of 1.544 megabits per second (mbps) or higher in LATAs 1 (San Francisco) and 3 (Sacramento) is granted, 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" services. "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 shall refrain from holding out to the public the provision of any intraLATA services it is not authorized to provide.
- f. Applicant shall advise its subscribers that intraLATA communications which applicant is

APPENDIX A

Page 2

not authorized to provide should be placed over the facilities of an authorized carrier.¹

2. 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 Commission Advisory and Compliance Division (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.

The reporting requirement of this Ordering Paragraph 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, 1991.²

3. Applicant is granted authority to provide a four-wire circuit from applicant's facilities in Alameda to Pacific Bell's

¹ Ordering Paragraph 1 as modified by D.89-02-031 and D.90-03-025.

² Ordering Paragraph 2 as modified by D.89-02-031.

APPENDIX A
Page 3

paging transmitter at Big Rock and a two-wire circuit to provide telephone service at the same site.

4. Blanket authority to provide telecommunication circuit is denied.

5. Within 30 days after this order is effective, applicant shall file a written acceptance of the certificate granted in this proceeding.

6. Applicant is authorized to file an advice letter, after the effective date of this order and in compliance with General Order 96-A, tariffs applicable to the service authorized containing rates, charges, and rules applicable to the authorized service.³

7. Applicant shall notify the CACD (formerly the Commission's Evaluation and Compliance Division) Director within five days after service begins.

8. The certificate granted and the authority to render service under the rates, charges, and rules authorized will expire if not exercised within 12 months after the effective date of this order.

9. Applicant is subject to the user fee as a percentage of gross intrastate revenue under Public Utilities Code §§ 431 through 435.

10. The corporate identification number assigned to Bay Area Teleport is U-5109-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.

³ Ordering Paragraph 6 as modified by D.89-02-031 and D.90-03-025.