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Decision 92-03-052 March 11, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
Centex Management, Inc. for Rehearing of
Resolution T-14645 Re: GTE California
Advice Letter No. 5337.

ORIGINAL

Application 91-11-032
(Filed November 25, 1991)

ORDER GRANTING REHEARING OF RESOLUTION T-14645

An application for rehearing of Resolution T-14645 has been filed by Centex Management, Inc. In Resolution T-14645 the Commission rejected an Advice Letter filing made by GTE California Incorporated (GTEC) and directed GTEC to present its request in the Implementation Rate Design (IRD) Phase of Order Instituting Investigation (I.) 87-11-033. We have carefully considered all of the issues and arguments raised in the application for rehearing and are of the opinion that rehearing should be granted for the reasons discussed below.

The genesis of Resolution T-14645 is Advice Letter 5337, filed by GTEC on August 6, 1991. In that filing, GTEC sought authority under General Order 96-A to establish two new CentraNet service options: a ground start connection option, for which it sought an additional monthly charge of \$4.75, and an "Assume Dial 9" option. Centex filed a protest objecting to the additional monthly charge for the ground start connection option.

In Resolution T-14645, which denied the grant of the new authority, the Commission recognized that in its protest, Centex had raised serious questions relating to discrimination in

GTEC's provision of the ground start serving arrangement. The questions concerning discrimination relate to both access and pricing. The Commission, however, concluded that the appropriate forum for resolution of these issues is an evidentiary hearing, such as the one scheduled for the IRD phase of I.87-11-033. The issues relating to discrimination were deferred to that proceeding. Upon reconsideration, we are of the opinion that these issues deserve more immediate attention. Accordingly, we will grant rehearing to address the issues discussed below.

As the Commission has previously recognized, it appears that GTEC has been providing the ground start serving arrangement to some CentraNet customers at no extra charge, while Centex has been unsuccessfully attempting to obtain this serving arrangement for two years. These facts raise a serious question of discriminatory access. Furthermore, GTEC has filed several Advice Letters seeking authority to institute a new monthly charge for this serving arrangement (Advice Letter Nos. 5337 and 5364). The original Advice Letter proposed a rate increase of \$4.75, while the more recent filing requested \$1.50 per month. Irrespective of the amount of the charge sought, if existing customers are exempted from a rate increase to provide ground start connection, a question of discriminatory pricing is also raised.

Public Utilities Code Section 453 clearly prohibits discriminatory access and discriminatory pricing. As stated therein:

No public utility shall, as to rates, charges, service, facilities, or in any other respect, make or grant any preference or advantage to any corporation or person, or

subject any corporation or person to any prejudice or disadvantage.

As provided below, rehearing shall be granted to conclusively determine whether GTEC is in violation of Section 453 with respect to its provision of the ground start serving arrangement. GTEC is forewarned that if the Commission finds a violation of this section, GTEC may be liable for reparations, pursuant to Section 734 of the Code, to compensate for the decreased value of the service actually rendered to Centex. Because it also appears that such conduct may have been occurring over some time period, we will issue an Order Instituting Investigation to determine whether past violations have occurred, warranting reparations under the Code.

THEREFORE, IT IS HEREBY ORDERED:

1. Rehearing is granted to conclusively determine whether GTEC is offering its ground start service arrangement on a discriminatory basis, both as to access and pricing.

2. If GTEC is currently offering the ground-start serving arrangement to some existing customers as a bundled part of their CentraNet service without additional charge, it shall offer this service arrangement to all other new or existing CentraNet customers as a bundled part of their CentraNet service, without additional charge.

This rehearing shall be held at such time and place and before such Administrative Law Judge as shall hereafter be determined.

The Executive Director shall provide notice of this rehearing to all parties in the manner prescribed by Rule 52 of the Commission's Rules of Practice and Procedure.

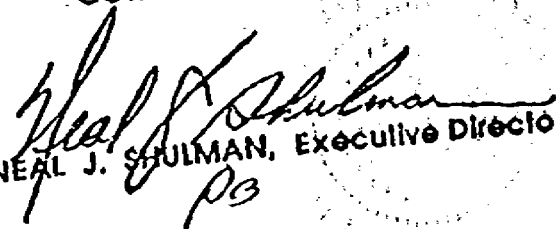
A.91-11-032

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This order is effective today.
Dated March 11, 1992, at San Francisco, California.

DANIEL Wm. FESSLER
President
JOHN B. OHANIAN
PATRICIA M. ECKERT
NORMAN D. SHUMWAY
Commissioners

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


NEAL J. SHULMAN, Executive Director
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