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Decision 92-06-057 June 17, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of AT&T Communications )  
of California, Inc. (U 5002 C) for )  
Authority to Provide Intrastate )  
AT&T 800 READYLINE Service. )

**ORIGINAL**  
Application 89-03-046  
(Petition for Modification  
of D.90-04-023 filed  
January 10, 1992)

ORDER DENYING PETITION TO MODIFY DECISION 90-04-023

GTEC's Request

On January 10, 1992, GTE California Incorporated (GTEC) filed a petition for modification of Decision (D.) 90-04-023, "...to continue the payment of compensation by AT&T-Communications of California, Inc. (AT&T-C), originally ordered in D.90-04-023, until the intraLATA competition issues are resolved in the Interim Rate Design (IRD) phase of I.87-11-033 and implemented." On February 21, 1992, AT&T-C filed a timely protest to GTEC's petition for modification.

Background

D.90-04-023, an interim opinion dated April 11, 1990, in Application (A.) 89-03-046, AT&T-C's request for authority to provide 800 READYLINE (READYLINE) service in California, adopted a "READYLINE STIPULATION AND SETTLEMENT AGREEMENT" (READYLINE Settlement) executed by AT&T-C and the California local exchange telephone companies (LEC) thereby authorizing conditional operating authority for AT&T-C's intrastate READYLINE service.

As part of the READYLINE Settlement, AT&T-C agreed to provide compensation at the rate of 7.5 cents per minute for any incidental intraLATA READYLINE usage of existing LEC customers of Basic 800 service theretofore offered on a shared basis by the LECs and AT&T-C. Specifically, the pertinent part of the February 20, 1990 READYLINE Settlement provided that:

- "1. AT&T will pay compensation to Local Exchange Carriers (LECs) for the intraLATA READYLINE usage of existing customers of the Basic 800 service presently offered on a shared basis by the LECs and AT&T. The compensation rate will be 7.5 cents per minute (with the minutes measured in the same increments as Basic 800). AT&T will measure the intraLATA READYLINE usage of such Basic 800 customers and pay the compensation to the LEC in whose territory the READYLINE 800 customer is located. LECs, DRA, and the CACD have the right to join in an audit of AT&T's usage measurements annually at their own expense. Compensation will continue at 7.5 cents until the date the Commission resolves the intraLATA competition and compensation issues in Phase III of I.87-11-033, or December 31, 1991, whichever occurs first. The LECs reserve the right to petition the Commission for compensation beyond December 31, 1991 in the event the competition and compensation issues have not been resolved by that date, and all parties reserve their right to protest or oppose such petition."<sup>1</sup> (Pages 2 and 3 of READYLINE Settlement of February 20, 1990.)

GTEC signed the READYLINE Settlement on February 20, 1990 along with all other California LECs and subsequently commented that it found no factual legal or technical errors in the administrative law judge's (ALJ) proposed decision recommending its adoption. The ALJ's proposed decision was not changed with regard

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<sup>1</sup> This part of the READYLINE Settlement of February 20, 1990 also contained subparts defining: "existing customers of Basic 800 service," "usage of existing customers," and an explanation of pooling arrangements as they may apply to compensation payments. These definitions and the explanation of pooling arrangements are not at issue in GTEC's instant petition.

to the issue of compensation of the LECs by AT&T-C when issued as D.90-04-023 by the Commission on April 11, 1990.

GTEC's Position

GTEC asserts that the READYLINE Settlement, "...reserves to the LECs the right to petition the Commission for compensation beyond December 31, 1991, if the competition and compensation issues in I.87-11-033 were not resolved by that date."

GTEC also argues that:

"The circumstances which existed at the time the Stipulation and Settlement Agreement was adopted and which prompted the parties to agree on the compensation arrangement, have not changed. Interexchange carriers (IXCs), such as AT&T-C, still lack general authority to provide intraLATA services to their customers. Only for specified services and only with regard to incidental traffic, is AT&T-C authorized to provide intraLATA service. The LECs, including GTEC, continue to lose 800 traffic to AT&T-C's READYLINE service. Because IRD is not yet completed, the LECs still do not have competitive rate designs in place which would allow the LECs to effectively compete with IXC intraLATA offerings. Since these competitive conditions remain the same as they did in February 1990 when the Stipulation and Settlement Agreement was signed and in April 1990 when D.90-04-023 was adopted, it remains appropriate for AT&T-C to compensate the LECs at the same rate and under the same terms set forth in the Stipulation and Settlement Agreement. In addition, it is appropriate for the Commission to require that the compensation be paid not only prospectively, but also retroactive to January 1, 1992."

AT&T-C's Response

AT&T-C opposes GTEC's petition on the grounds that:

- "1. The [petition] fails to comply with Commission Rules;
- "2. The [petition] requests retroactive compensation prohibited under the California Public Utilities Code; and

- \*3. Reestablishing compensation is not in the public interest and unnecessary, and the Commission's resources are better spent if focused on resolving the IRD phase of Investigation (I.) 87-11-033.\*

AT&T-C argues that Commission Rule 43 provides that requests to modify a Commission decision or order "...shall only be filed to make minor changes..." to that decision or order. In this case, GTEC seeks to reimpose compensation payments for many intraLATA calls over AT&T-C's READYLINE service. AT&T-C opposes this result which it contends is not necessary to protect universal service, which is the only legitimate reason for the compensation from AT&T-C's point of view. AT&T-C further asserts that the Commission should not impose such a burden on AT&T-C without hearings and a finding that compensation is in the public interest.

AT&T-C also argues that:

"GTE agreed to the Stipulation and Settlement Agreement ('Agreement'), which provided the basis for D.90-04-023 and clearly accepted the time period and level of compensation established with the Agreement.

"It would be a mockery of the entire settlement process which resulted in D.90-04-023 if the Commission now were to grant GTE's request without a thorough review of all the parties' interests as well as the public interest in resolving the issue. GTE's request raises several issues including, first whether compensation over and above access charges is necessary or serves the public interest, and second, even if compensation were appropriate, whether the Commission should discriminate against AT&T and impose the compensation requirement solely on AT&T's services."<sup>2</sup>

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<sup>2</sup> MCI Telecommunications Corporation (MCI) has a "Business Line" service, and U.S. Sprint Communications Company (US Sprint) has a "FONLINE" service, which are comparable to READYLINE service. Re: AT&T-C (D.90-11-029) (1990) 38 CPUC 2d 126, 165 footnote 17.

On the issue of retroactive ratemaking, AT&T-C asserts that in this instance compensation ended on December 31, 1991, pursuant to the agreement signed by GTEC and approved by the Commission, and GTEC did not file its petition seeking reimposition of compensation until January 10, 1992. It is unreasonable to allow a utility to seek a retroactive adjustment when a proper opportunity to prospectively adjust the rate was available to the utility. AT&T-C argues that GTEC allowed the compensation to expire and "...should not be rewarded now for its own dalliance."

AT&T-C maintains that the issues raised by GTEC (other than the retroactive adjustment) require hearings and would be best resolved in the current IRD phase of I.87-11-033. Conversely, the Commission's resources should not be diverted from completing the IRD phase expeditiously.

GTEC's Response to AT&T-C's Protest

On March 6, 1992, GTEC responded to AT&T-C's opposition to its petition, arguing that AT&T-C's arguments should be rejected. GTEC emphatically argues that its petition fully meets all requirements of Rule 43 and GTEC is simply exercising the right reserved to it in D.90-04-023, to petition "...for continuation of the compensation awarded GTEC in that decision." Thereafter, GTEC stated the reasons for its delay in filing the petition and asserts that no hearings are necessary to continue the plan already adopted in D.90-04-023.

Discussion

We disagree with GTEC's view and characterization of its request. It is no longer a petition to continue the compensation discussed (supra), rather it is a request for reinstatement of a previously stipulated temporary rate of compensation that has run its course.

While there can be no doubt that the Commission could easily have continued the rate when it was still effective, that is

not the case today or when GTEC tendered its petition for filing on January 10, 1992.

Even more to the point at issue, is the question, does GTEC's petition seek "minor changes" in D.90-04-023 and thus comply with Rule 43? Had GTEC filed such a petition in April, May, or June of 1990, after reviewing D.90-04-023, the answer would very likely have been "yes," since parties then generally expected that intraLATA competition would be in place at the end of 1991 or soon thereafter. At that time, GTEC's petition could have merely requested that the READYLINE Settlement be modified by deleting the words "or December 31, 1991, whichever occurs first" from paragraph A.1. Such a request would likely have been viewed as a minor change, even though GTEC had earlier signed the settlement agreement first on February 5, 1990 and later the revised READYLINE Settlement on February 20, 1990 with that phrase included in both versions.

Numerous questions arise now which merit review in an evidentiary hearing, namely:

1. Should a compensation requirement apply solely to AT&T-C's "READYLINE" service offering or should that requirement also extend to MCI for its "Business Line" service, and US Sprint for its "FONLINE" service, as well as any other similar interexchange carrier (IEC) incidental intraLATA 800 service offerings?
2. Are access charges, at the current level, adequate for compensating GTEC for any apparent or real net revenue loss associated with incidental intraLATA traffic or is added compensation necessary and appropriate?
3. To what extent, if any, has the issuance of D.92-01-020 on January 20, 1992 regarding the definition of "Holding Out" and "Incidental Use" relative to intraLATA traffic mitigated the level of incidental intraLATA provision of "READYLINE" service?

4. Have "READYLINE" service rates been revised on or about January 1, 1992 and were the changes, if any, in part attributable to the elimination of compensation previously paid by AT&T-C to the LECs under the READYLINE Settlement?
5. What legal precedent can be cited for retroactive reinstatement of an expired compensation payment, when the recipient has not established that it is facing an emergency financial hardship as to its current earnings?

In view of the significance of these questions, we will deny GTEC's petition for modification of D.90-04-023. However, GTEC may continue to pursue reasonable prospective compensation in the ongoing IRD phase of I.87-11-033, or file a separate application to impose reasonable compensation requirements on providers of incidental intraLATA 800 services.

Should GTEC elect the latter course of filing a separate application for additional rates or charges, it should present evidence of its need for the additional revenues, and/or the reasonableness of imposing these rates or charges selectively or exclusively on one, or conversely on all IECs providing incidental intraLATA services comparable to "READYLINE" within GTEC's California service areas. (Re. California Public Utilities Code § 453(a) and § 454(a) as applicable.)

Findings of Fact

1. D.90-04-023 adopted a February 20, 1990 READYLINE Settlement signed by GTEC and all other California LECs which provided, among other things, temporary compensation at the rate of 7.5 cents per minute for any incidental intraLATA READYLINE usage of existing customers of Basic 800 service theretofore offered on a shared basis by the LECs and AT&T-C.

2. The 7.5 cents per minute temporary compensation ended on December 31, 1991 pursuant to the specific terms of the Commission-adopted READYLINE Settlement.

3. GTEC did not seek modification of D.90-04-023 or an extension of the compensation for incidental intraLATA READYLINE traffic until January 10, 1992, ten days after the expiration of the temporary compensation provision of the READYLINE Settlement.

4. GTEC's petition for modification of D.90-04-023, in effect, seeks reinstatement of the temporary compensation and the retroactive payment of that same level of compensation for the lapsed period, rather than continuation of the payment as expressed in its petition.

5. AT&T-C objected to GTEC's petition for modification by filing a timely protest on February 21, 1992.

6. The issue of what future compensation, if any, should be paid by IECs to LECs for handling intraLATA traffic is currently being considered in evidentiary hearings for the IRD Phase of I.87-11-033.

7. GTEC has not submitted any evidence, with its petition, that it is facing an emergency financial hardship as to its current earnings warranting exceptional treatment by this Commission.

8. GTEC has not submitted as a part of its petition any analysis of the adequacy or inadequacy of the current access charges it imposes on IECs for offsetting any revenue losses associated with incidental intraLATA traffic it handles for the IECs.

#### Conclusions of Law

1. The temporary compensation paid exclusively by AT&T-C and GTEC under the READYLINE Settlement ended on December 31, 1991, and thus may not now be continued or extended retroactively.

2. GTEC should not be permitted to selectively revise its rates and charges to an individual IEC without advancing an evidentiary record showing that the current rates and charges it currently imposes on the IEC are unreasonable.

3. GTEC's petition for modification of D.90-04-023 is untimely and should be denied.



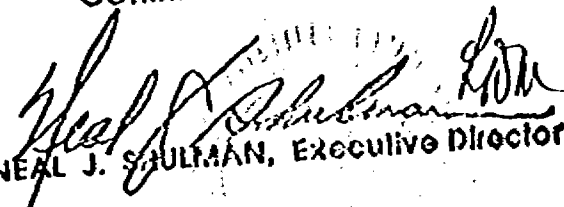
IT IS ORDERED that GTE California Incorporated's petition for modification of Decision 90-04-023 is denied.

This order is effective today.

Dated June 17, 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. SCHULMAN, Executive Director