

AUG 14 1995

Decision 95-08-037 August 11, 1995

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Rulemaking on the Commission's)
 Own Motion to Govern Open Access)
 to Bottleneck Services and)
 Establish a Framework for Network)
 Architecture Development of)
 Dominant Carriers Networks.)

R.93-04-003
(Filed April 7, 1993)

Investigation on the Commission's)
 Own Motion into Open Access and)
 Network Architecture Development)
 of Dominant Carrier Networks.)

ORIGINAL
 I.93-04-002
 (Filed April 7, 1993)

DECISION GRANTING PACIFIC BELL'S PETITION TO MODIFY
DECISION 95-04-073 CONCERNING PRICING OF COLLOCATION TARIFFS

On June 5, 1995, Pacific Bell (Pacific) filed a petition for modification of Decision (D.) 95-04-073, our interim decision concerning expanded interconnection and local transport restructuring. In its petition, Pacific asks for modification of Conclusion of Law (COL) 14 of D.95-04-073, which requires Pacific and GTE California Incorporated (GTEC) to file intrastate interconnection rates set at direct embedded cost (DEC), "or higher as appropriate."¹ Pacific argues that unless it is allowed to

¹ COL 14 provides in full:

"The FCC's requirement that interconnection rates must be based on the direct costs of providing interconnection plus a reasonable amount of overhead costs, is inapplicable here because Pacific and GTEC are subject to NRF-style regulation. In accordance with this Commission's prior decisions, we will order that Pacific and GTEC interconnection rates subject to our jurisdiction be set at DEC (or higher as appropriate), a cost standard that captures direct costs plus service-related overhead."

set interconnection rates below DEC, it will not be able to maintain parity with the interconnection rates it has filed at the Federal Communications Commission (FCC).

On June 16, 1995, the Administrative Law Judges (ALJs) assigned to this proceeding issued a Ruling shortening the time for response to Pacific's petition, so that responses would be due no later than June 30, 1995. No oppositions or other responses were received by this date.

In its petition, Pacific notes (at pages 1-2) that the methodology for collocation service rate elements used at the FCC will produce "a different price for these services than DEC will produce. Specifically, the DEC-based cost for site preparation may be higher than our corresponding FCC prices." Pacific then offers the following reasons why parity with the FCC collocation rates is desirable:

"The collocation space, the cages and the cross-connect will carry intra- and interstate traffic on an undifferentiated basis. Different prices at the state and federal levels will lead to arbitrage problems, as carriers seek out the lowest prices. The collocation services will produce a modest revenue stream, and cannot absorb the network modification and administrative costs we would incur if we tried to segregate the traffic jurisdictionally." (Petition, p. 2.)

We conclude that Pacific has made a good argument for modifying COL 14. First, we agree that such a modification will promote rate parity with the FCC. In both D.95-04-073 and D.93-08-026 (our original proposal for expanded interconnection and local transport restructure), we noted the advantages of such parity. (See D.95-04-073, mimeo. at 36; D.93-08-026, 50 CPUC2d 500, 501, 504-05.) While we departed from the parity principle in D.95-04-073 (mimeo. at pp. 29-36), we adhered closely to the FCC's rules for virtual collocation tariffs, departing from them only to

the extent that we deemed our NRF-style regulation of Pacific and GTEC to be inconsistent with the FCC's orders. (See COLs 14, 17, and 18.)²

Second, allowing Pacific to price collocation services below DEC offers none of the opportunities for anticompetitive behavior that caused us to establish price-floor rules in D.89-10-031 (33 CPUC2d 43, 119-122) and D.94-09-065 (mimeo. at 202-225), and to apply them in D.95-04-073 (mimeo. at 45-46). Our price floor rules apply to Category II, partially-competitive services. Collocation, however, is not a competitive service. As D.95-04-073 recognized, it is considered a Category I, monopoly service because only an LEC can provide it. (Mimeo. at 25; COL 22.) Further, in COL 14, we directed that DEC be used to establish interconnection tariffs principally because the switched access rates in IRD were based on DEC. In D.94-09-065, we chose this standard because we concluded that it would not be "fair to require Pacific to provide [access] services to its direct competitors (the IECs) at less than DEC." (D.94-09-065, mimeo. at 117.) In this case, however, it is Pacific that, for reasons of parity, is seeking the authority to price collocation services below DEC.

Finally, we think that the possibility of tariff arbitrage identified by Pacific justifies the requested modification of COL 14.

Findings of Fact

1. On June 5, 1995, Pacific filed a Petition to Modify COL 14 in D.95-04-073.

2. In keeping with its emphasis on maintaining consistency with the FCC, Pacific has promised that if the FCC adjusts Pacific's interstate collocation rates "either up or down, we would make corresponding changes to the state tariffs to maintain parity." (Petition, p. 2.)

2. On June 16, 1995, the assigned ALJs issued a Ruling directing that any responses to the Petition must be filed and served no later than June 30, 1995.

3. No such responses were filed, and no opposition to the Petition has been expressed by any party.

4. The requirement in COL 14 of D.95-04-073 that collocation tariffs filed with this Commission should be based on DEC could result in higher charges for certain collocation services than are reflected in the collocation tariffs filed with the FCC.

5. If the collocation tariffs filed by Pacific at this Commission differed materially from those filed at the FCC, tariff arbitration might result.

6. Pacific has represented that if either upward or downward adjustments are made in the collocation tariffs it has filed at the FCC, Pacific will make corresponding adjustments to the collocation tariffs it has filed with this Commission.

Conclusions of Law

1. To the extent it does not produce inconsistency with our other policies, parity between the collocation tariffs filed with this Commission and those filed with the FCC is a desirable goal.

2. Allowing Pacific to price certain services in its intrastate collocation tariffs at less than DEC in order to maintain parity with the corresponding FCC tariffs is unlikely to afford opportunities for the kind of anticompetitive behavior that necessitate our price-floor rules.

3. COL 14 of D.95-04-073 should be modified to allow Pacific to file collocation tariffs with this Commission containing rate elements priced below DEC in cases where that is necessary to achieve parity with the collocation tariffs Pacific has filed at the FCC.

O R D E R

IT IS ORDERED that Conclusion of Law 14 of Decision 95-04-073 is modified to add the following third sentence:
"However, where it is necessary, Pacific and GTEC may set such interconnection rates below DEC in order to maintain parity with corresponding FCC rates."

This order is effective today.

Dated August 11, 1995, at San Francisco, California.

DANIEL Wm. FESSLER
President
P. GREGORY CONLON
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
Commissioners

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

Wesley Franklin

Acting Executive Director