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Decision 95-12-058 December 20, 1995

have authorized numerous interexchange carriers (IXCs) to compete BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of Alternative Regulatory Frameworks for Local Exchange Carriers.

I:87-11-033 (Filed November 25, 1987)

And Related Matters.

Application 85-01-034

I:85-03-078 Case 86-11-028

Case 87-07-024

OPINION ORIGINAL

On September 1, 1995, GTE California Incorporated (GTEC) filed a petition for modification of Conclusion of Law (COL) 8 of Decision (D.) 94-09-065, generally known as the Implementation Rate Design (IRD) decision. COL 8 presently reads as follows:

8. Competition for basic exchange services (LXI) and LEC-to-LEC competition for Category II services (except IEC directory assistance) should not be authorized at this time.

GTEC requests that the commission's intent with respect to this prohibition be recognized as temporary and transitional in nature and that the ban be removed based on the expressed intention of the Commission to authorize facilities-based local competition.

This decision grants the modification request conditioned on our adoption of certain other decisions.

Background

The IRD decision was issued in September 1994. Among other things it authorized competition in the provision of intralocal access and transport area (LATA) toll services within California. (D.94-09-065, mimeo. at 335, Ord. 1.) Other decisions schedule for their consideration and adoption. Following receipt

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have authorized numerous interexchange carriers (IEC) to compete for such intralATA service. At the same time, however, we determined that it was not appropriate at that time to authorize toll competition between Pacific Bell (Pacific) and GTEC, the two largest LECs.

The reasons we gave at that time all centered around GTEC's ability to compete effectively in a geographic setting in which Pacific had a significant presence in close proximity to much of the GTEC service territory. We stated:

Our fear is that Pacific may acquire a substantial portion of GTEC's business, even without presubscription. The loss of this revenue could severely harm GTEC, which faces enough of an initial challenge in responding to competition from the IECs and in adjusting to the other changes resulting from this (IRD) decision. In an effort to retain revenue for

GTEC, we will prohibit LEC-to-LEC competition for Category II services at this time. (D.94-09-065 at 25.)

One exception to this prohibition was authorized, the provision of directory assistance services to IECs (Id.)

Subsequent to the adoption of the IRD decision, we have taken several steps in furtherance of the Commission's and the Legislature's goals of opening all telecommunications markets to competition by January 1, 1997. (Enhancing California's Competitive Strength: A Strategy for Telecommunications Infrastructure (Infrastructure Report), November 1993; Assembly Bill 3606, Ch.1260, Stats. 1994.)

By issuance of D.94-12-053, we formally adopted a procedural plan to implement our stated goals. As part of that procedural plan we instituted Order Instituting Rulemaking (R.) 95-04-043 and Order Instituting Investigation (I.) 95-04-044 in which we proposed interim rules for competition in the provision of local telecommunication service and established a procedure and schedule for their consideration and adoption. Following receipt

and review of filed comments; we issued D.95-07-054, adopting initial rules in certain limited areas sufficient to enable prospective "competitive local carriers" (CLC) to file petitions for authority to enter the local exchange market by January 1, 1996. Both GTEC and Pacific have participated in the proceedings R.95-04-043/I.95-04-044, and both filed petitions to provide both facilities and resale-based local telecommunications services as CLCs.¹ Both GTEC and Pacific have also filed applications requesting authority to provide competitive intraLATA toll service and, in the case of Pacific, high speed digital transport service in each other's service territory.²

GTEC filed its petition for modification of D.94-09-065 on September 1, 1995. On September 18, 1995, Pacific filed a response to GTEC's petition. On October 2, 1995, the Commission's Division of Ratepayer Advocates (DRA) filed a response. While two responses were filed, neither these responses nor any other filings were presented as protests to the request. The responses filed went to questions of whether a petition for modification was even required (Pacific) or the proper sequencing of decisions and the need for certain implementation measures (DRA).

In addition to this order, the Commission now has before it proposals to resolve, among other things, GTEC's and Pacific's CLC petitions and intraLATA applications. GTEC's Request:

GTEC notes the language of D.94-09-065 that refers to LEC-to-LEC competition as being prohibited "at this time" and notes

Pacific does not believe a modification of D.94-09-065 is required to eliminate the ban on LEC-to-LEC

competition. However, if we determine that such is the case,

1 GTEC filed Petition 50; Pacific filed Petition 30. Pacific wishes to provide

2 GTEC's request for Application (A.) 95-05-004; Pacific's is Application (A.) 95-10-021. Pacific wishes to provide Category II services, but also

contends this indicates a clear intention on the part of the Commission that this prohibition be temporary in nature. GTEC also observes that while D/95-07-054 which adopted the rules for the initial filing of petitions for local competition, did not refer explicitly to LEC-to-LEC competition, an intention is indicated to open all markets to competition by January 1, 1997. Implicitly, in GTEC's view, this would include any local exchange competitor, including GTEC and Pacific being authorized to compete in the service areas of the major LECs. (Petition at 12.) Both GTEC and Pacific recognize the inevitability of competition in its own as well as other markets. GTEC believes a continuation of the ban on LEC-to-LEC competition will undermine its own ability to compete by depriving it of entry into the large market areas of Pacific. (Id. at 12-13.) GTEC also notes that D/95-07-054 did not contain any prohibition on GTEC becoming a CLC in a new geographic area. GTEC suggests that the issue be resolved by either granting this requested petition for modification or by granting its CLC petition request in D/95-07-054. (Id. at 13-14.)

Finally, GTEC offers that while the express ban on LEC-to-LEC competition applies explicitly only to Category II services, it is linked in the language of D/94-09-065 to the then existing ban on local competition. With the institution of local competition in the territories of GTEC and Pacific, GTEC suggests this as another logical basis for the elimination of the ban on LEC-to-LEC competition. (Id. at 14-15.)

Response of Pacific

Pacific does not believe a modification of COL 8 in D.94-09-065 is required to eliminate the ban on LEC-to-LEC competition. However, if we determine that such is the case, Pacific wishes to join GTEC in requesting such modification. Pacific observes that in D.94-09-065 we not only prohibited LEC-to-LEC competition for Category II services, but also continued

basic exchange services as Category I services only available from the LECs (Pacific Response at 27). Pacific states that in 1988 the Commission did not deem it necessary to modify D.94-09-065 in order to initiate local exchange competition through R.95-05-043/II (now I.95-04-044). It is not necessary to modify D.94-09-065 to authorize LEC-to-LEC competition for Category II services by Pacific and GTEC in each other's service territories. Response of DRA:

DRA describes the chronology of events described previously and notes that it has filed comments on topics similar to the issues raised in this petition for modification. In its response to GTEC's and Pacific's petitions for CLC authority,

DRA states its belief that the Commission has authorized LEC-to-LEC competition for basic services and Category III services, to the extent a Category II service is considered a "local exchange service" because the Commission did not restrict the LECs from seeking CLC status and obtaining certificates of public convenience and necessity (CPCN) to provide local exchange service. (DRA Response at 213.) However, DRA contends that even if LEC-to-LEC competition for local exchange service was authorized implicitly by D.95-07-054, the Commission has not authorized LEC-to-LEC competition for intralATA toll and high speed digital transport services.

DRA notes D.88-09-059 adopted a settlement which, while establishing the rules and conditions for intralATA high speed digital private line service competition, explicitly did not authorize LECs to provide such service in the territory of another LEC. (Id. at 3.) For this reason, DRA believes that explicit authorization of such competition is required either by modifying D.88-09-095 and D.94-09-065, or approving GTEC's and Pacific's applications for intralATA authority prior to allowing competition for these services. Initially, the service areas of GTEC and Pacific are

Finally, DRA requests that consideration be given as to how GTEC and Pacific's CLC activities will fit into the New Regulatory Framework (NRF). Among the questions which DRA would like to see addressed are what category will GTEC and Pacific's CLC operations fall into, if any, Category I and II as they are presently, as a LEC, Category III as a fully competitive service, or not be categorized, similar to other CLCs. As a product of answering that question DRA believes it is then necessary to resolve how revenues will be addressed for earnings floor/ceiling calculations. DRA urges it is necessary to resolve the extent of pricing flexibility GTEC and Pacific will enjoy for their CLC operations and what NRF reporting or monitoring requirements will apply.

DRA suggests that the Commission should consider holding workshops to determine how these and other implementation issues should be addressed.

Discussion

As has been evidenced by various decisions the Commission has previously issued, we are embarked on the implementation of a policy to open all telecommunications markets in California to competition by January 1, 1997, at least insofar as this Commission possesses the authority to do so.

GTEC, Pacific, and DRA all indicate their expectation that this includes the authorization of LEC-to-LEC competition for both local exchange service and intraLATA toll, premised on the issuance of D.95-07-054. In that decision we, among other things, established the filing requirements for entities desiring to become CLCs. Subsequently we accepted for filing petitions from both GTEC and Pacific.

In fact, it is our intention to authorize competition by LECs operating as CLCs in the service territory of other LECs in situations in which other requirements established for such service are met. Initially, the service areas of GTEC and Pacific are

being opened to such competition, ultimately it is anticipated to include all markets within California. The specific authorization and criteria for the provision of CLC services will be decided separately from this decision. Here we will merely ensure that no perceived impediment to such competition is removed by the prohibitions on LEC-to-LEC competition contained in D.94-09-065 and while the parties concur that it is unclear whether such a modification is required, in the interest of clarity of our intent we will grant the request for modification that GTEC has made, and in which Pacific has joined.

As noted by GTEC, the prohibition was initially instituted for the purpose of protecting the revenues and financial integrity of GTEC. GTEC, through this modification request and through its corresponding requests for a CLC CPCN and intraLATA authority external to its own service area, clearly articulates its belief that such protections are no longer necessary nor desirable.

With respect to the GTEC and Pacific applications for intraLATA toll service and, in the case of Pacific, high speed digital service, in each other's service areas, these are also being addressed by separate decisions.

DRA has requested that procedures be established to address pricing flexibility available to GTEC and Pacific as CLCs, as well as the classification and treatment of revenues from any authorized CLC operations of GTEC and Pacific for purposes of NRP. These issues are appropriate for resolution, but will not be addressed in this decision. The general issue of competitive pricing policies among LECs and CLCs are already before the Commission in Phase II issues in R.95-04-043/I.95-04-044 and we intend to address pricing issues applicable to GTEC and Pacific in those dockets. In the interim, it is appropriate to utilize the same pricing rules as generally applicable to CLCs in D.95-07-054.

Finally, it should be apparent that granting of this relief from the LEC-to-LEC competition prohibitions in D.94-09-065

is done solely in relation to the expectation that CLC CPCNs will be granted to GTEC and Pacific as a result of R.95-04-043/ and R.95-04-044. Absent was grant of a CLC CPCN to GTEC and/or Pacific and the approval of the LECs' applications to offer intralATA toll services in each other's territory, this modification will not in itself authorize LEC-to-LEC competition to commence.

Findings of Fact

1. The Commission determined in D.94-09-065 that toll competition between GTEC and Pacific was not appropriate at that time.

2. Concern over GTEC's ability to compete effectively, while at the same time adjusting to the other changes in the IRB decision, was an essential reason for adoption of the LEC-to-LEC competition prohibition.

3. Subsequent to the issuance of D.94-09-065, the Commission has taken several steps to implement the Commission's and Legislature's goals of opening all telecommunications markets to competition by January 1, 1997.

4. R.95-04-043/ and R.95-04-044 was instituted to propose interim rules for competition for local telecommunications service and established a procedure and schedule for their consideration and adoption.

5. GTEC and Pacific have both filed petitions in R.95-04-043 for CLC CPCNs.

6. GTEC and Pacific have both filed applications to provide competitive intralATA toll service and, in the case of Pacific, high speed digital transport service in each other's service territory.

7. GTEC and Pacific were not prohibited from filing petitions to become LECs. In the interim, it is appropriate to

8. GTEC no longer wishes the protection provided by R.94-09-065's prohibition on LEC-to-LEC competition.

9. Relief from the LEC-to-LEC competition prohibition in D.94-09-065

9. Issues relating to pricing flexibility for GTEC and Pacific as CLCs, as well as the categorization of service and revenues for the purpose of NRF will be addressed in Phase II of R.95-04-043/I.95-04-044.

Conclusions of Law

1. Implementation of the the goal of opening all telecommunications markets to competition by January 1, 1997, requires that LEC-to-LEC competition be authorized.
2. D.94-09-065 should be modified to remove prohibitions of LEC-to-LEC competition for Pacific and GTEC.

ORDER

1. Conclusion of Law 8 of Decision (D.) 94-09-065 should be modified to read as follows:

"8. Competition for basic exchange services and LEC-to-LEC competition for Category II services (except for IEC directory assistance) by Pacific Bell (Pacific) and GTE California (GTEC) should not be authorized until this Commission issues a decision or decisions authorizing competition for basic exchange services and specifically authorizes GTEC and Pacific to engage in the competitive provision of local exchange services."

This order is effective today.

Dated December 20, 1995, at San Francisco, California.

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