

Decision 95-12-059 December 20, 1995

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
GTE California, Incorporated
(U-1002-C) for a Certificate of
Public Convenience and Necessity to
Provide IntraLATA Toll
Telecommunications Services within
Additional Portions of the State of
California.

ORIGINAL

GTE California, Incorporated (applicant) a California corporation, seeks a certificate of public convenience and necessity (CPCN) under Public Utilities (PU) Code §1001 to permit it to provide intraLocal Access and Transport Area (LATA) telephone services on a facilities-based and resold basis in certain portions of California, presently served by Pacific Bell.

Background

The Implementation Rate Design (IRD) decision was issued in September 1994. Among other things, it authorized competition in the provision of intraLATA toll services within California. (Decision (D.) 94-09-065, mimeo, at 335, Ord. (1).) Other decisions 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

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

1 California is divided into ten LATAs of various sizes, each containing numerous local telephone exchanges. "InterLATA" describes services, revenues, and functions that relate to telecommunications originating in one LATA and terminating in another. "IntraLATA" describes services, revenues, and functions that relate to telecommunications originating and terminating within a single LATA.

Decision 95-12-053 December 20, 1995

to competition between Pacific Bell (Pacific) and applicant, the two largest local exchange carriers (LECs).

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

"Our fear is that Pacific may acquire a substantial portion of (applicant's) business, even without presubscription. The loss of this revenue could severely harm (applicant), 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 (applicant), we will prohibit LEC-to-LEC competition for Category II services at this time. (D.94-12-053) (P.17)

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" (CLCs) to file petitions

for authority to enter the local exchange market by January 1, 1995. Both applicant and Pacific have participated in R. 95-04-043/1, 95-04-044 and both filed petitions to provide both facilities based and resale local telecommunications services as CLCs.² Applicant, as well as Pacific, has filed an application 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.³

In addition to this order, the Commission now has before it proposals to resolve, among other things, applicant's and Pacific's CLC petitions, applicant's petition to modify D. 94-09-065 with respect to LEC-to-LEC competition to remove restrictions on such competition, and applicant's intralATA application.

Discussion

By D. 94-09-065, we authorized competitive intralATA services effective January 1, 1995, for carriers meeting specified criteria.

The Commission has established two major criteria for determining whether a CPCN should be granted. An applicant that is a switchless reseller⁴ must demonstrate that it has a minimum of 10

² Applicant filed Petition 50; Pacific filed Petition 30.

³ Applicant's request is Application (A.) 95-05-004; Pacific's is A. 95-10-021.

⁴ D. 93-05-010 defines a switchless reseller as a nondominant interexchange carrier (NDIEC) with the following characteristics: it uses the switch of another carrier; it usually, but not always, uses access circuits that the underlying carrier purchases from a LEC; it provides service in its own name; and its customers view it as their telephone company for interLATA and interstate calls. D. 92-06-069 noted that it is possible to control, operate, and/or managed in order to facilitate communication by telephone.

(Footnote continues on next page)

\$25,000 of cash or cash equivalent (as described in D.91-10-041, Appendix A, Paragraph 5.1), reasonably liquid and readily available to meet the firm's start-up expenses. Such applicants shall also document any deposits required by LECs or IECs and demonstrate that they have additional resources to cover all such deposits. (D.93-05-010). In addition, an applicant is required to make a reasonable showing of technical expertise in telecommunications or a related business. A facilities-based applicant must demonstrate that it has a minimum of \$100,000 of cash or cash equivalent (as described in D.91-10-041) Appendix A, Paragraph 5.1), reasonably liquid and readily available to meet the firm's start-up expenses. Such applicants shall also document any deposits required by LECs or IECs, and demonstrate that they have additional resources to cover all such deposits. Any applicant who can demonstrate that \$100,000 of cash is not needed for its first year of operation may be granted a CPCN with a lesser amount, based on the sufficient requirements set forth in Ordering Paragraph 1.a of D.91-10-041.

Applicant will operate in part like a switchless reseller and in part as a facilities-based service provider. For purposes of this application only, we shall treat applicant as if it were an NDIEC.

3 Applicant's request is Application (A) 95-09-004, Petition for Review is A.95-10-021.

4 D.93-05-010 defines a switchless reseller as a nondominant interexchange carrier (NDIC) with the following characteristics: it uses the switch of another carrier; it usually, but not always, uses access circuits that the carrier provides; it provides LEC or IEC service to its customers; and it provides service to its customers through telephone lines without owning them. The decision also notes that resellers which do not own or directly operate their own telephone wires may still have plant which is owned, controlled, operated, and/or managed in order to facilitate communication by telephone.

(Footnote continues on next page)

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.

In applicant's petition to modify D.94-09-065 and the replies of Pacific and the Division of Ratepayer Advocates (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.94-07-054. In that decision we, among other things, established the filing requirements for entities desiring to become CLCs and subsequently we accepted for filing petitions from both applicant and Pacific. In fact, it is our intention to authorize competition by LECs 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 applicant 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 service will be decided separate from this decision. Here we will merely ensure that one perceived impediment to such competition is removed, and authorize intralATA service.

Finally, it should be apparent that granting of this intralATA authority is done solely in relation to the expectation that CLC-CPCNs will be granted to applicant and Pacific as a result of R.95-04-043/I.95-04-044. Absent a grant of a CLC-CPCN to applicant and/or Pacific, this authority will not become effective.

As part of its application, applicant provided a balance sheet as of June 30, 1995, which shows cash of \$15.03 million, demonstrating that applicant has, and will have during the first year of operation, the required financial resources. This indicates that applicant has more than \$100,000 in cash. It

satisfies our criteria for being reasonably liquid and readily available to meet the applicant's needs. We take official notice that applicant is a LEC and has been under our jurisdiction for many years; and accordingly we shall dispense with the usual inquiry into applicant's technical competence.

We will authorize the intra-LATA services that applicant seeks to provide, subject to the conditions described above.

Applicant anticipates that it will undertake some construction for the purpose of exercising its authority pursuant to this order. A portion of such construction will consist of normal extensions of its existing facilities within cities and counties that it already serves. Some extensions, however, will require new construction of transmission facilities within or along existing conduit, pole lines, streets, highways, and rights of way. Applicant believes that the only impacts associated with such extensions are temporary and minor impacts due to the installation process, and concludes that it can be seen with certainty that there is no possibility that the new services will result in a significant adverse impact on the environment. Earlier this year, we established a procedure under which prospective competitive local carriers, such as applicant, could file requests for CPCNs to provide local exchange service. We noted that such procedures would include compliance with the California Environmental Quality Act (CEQA) and Rule 17.1 of our Rules of Practice and Procedure. In applicant's petition (No. 50) in A.95-04-044 pursuant to that direction, applicant described the same facilities that are the subject of this application. In a companion order today, we are considering approval of a negative declaration for facilities in that petition, and we will incorporate that negative declaration herein by reference as adopted.

Findings of Fact

1. Applicant served a copy of the application upon telephone corporations with which it is likely to compete.

2. A notice of the filing of the application appeared in the Daily Calendar on September 14, 1995.

3. No protest has been filed, and a hearing is not required.

4. By prior Commission decisions we authorized competition in providing interLATA telecommunications service but generally barred those offering such service from holding out to the public the provision of intraLATA service.

5. By D.94-09-065 we authorized competitive intraLATA services effective January 1, 1995, for carriers meeting specified criteria.

6. Applicant has demonstrated that it has a minimum of \$100,000 in cash, which is reasonably liquid and readily available to meet its start-up expenses.

7. Applicant has represented that it has made no deposits with any LEC or IEC and that it has not been requested to do so.

8. Applicant's technical experience is adequately established by its status as a LEC that has been in operation for many years.

9. Applicant has submitted with its application a complete draft of applicant's initial tariff which complies with the requirements established by the Commission, including prohibitions on unreasonable deposit requirements.

10. Applicant has represented that no one associated with or employed by applicant in an executive capacity was previously associated with an NDIEC that filed for bankruptcy or went out of business.

11. The Commission has routinely granted NDIECs an exemption from Rule 18(b) to the extent that the rule requires applicant to serve a copy of its application on cities and counties in the proposed service area and to the extent that it requires applicant

to provide a conformed copy of all exhibits attached to applicant's filed application on potential competitors and no reason appears not to grant the same exemption to applicant, even though it is not an NDIEC.

12. In a companion decision (In the Matter of Alternative Regulatory Frameworks for Local Exchange Carriers (1987-11-633)) today, we will consider modification of D.94-09-065 (In re Implementation Rate Design (IRD) Proceeding (TAI-CPUC2d (1994)) to remove prohibitions of LEC-to-LEC competition. Accordingly, if that is approved, our 1988 (In re Alternate Regulatory Frameworks for Local Exchange Carriers (1988) 29 CPUC2d 376, 387 (D.88-09-059)) approval of a partial settlement in an early phase of our exploration of alternative regulatory frameworks for LECs (in which we said, "(n)othing in this document should be construed to permit an LEC to offer high speed digital services within the franchise territory of another LEC") presents no obstacle to granting applicant the authority sought.

Conclusions of Law

1. Applicant has the financial ability to provide the proposed service.
 2. Applicant has made a reasonable showing of technical expertise in telecommunications or a related business.
 3. Public convenience and necessity require intrastate services to be offered by applicant.
 4. Applicant is subject to the current 3.12% surcharge applicable to all intrastate service, except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund Universal Lifeline Telephone Service (PU Code § 879; Resolution T-15799);
- b. The current 0.36% surcharge, applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California Relay

Service and Communications Devices Fund (PU Code General Code § 2881, Resolution T-15801)

The user fee provided in PU Code §§ 431-435, which is 0.1% of gross intrastate revenue for the 1995-96 fiscal year (Resolution M-4778); and

d. The current 0.5% surcharge applicable to all intrastate services, except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California High Cost Fund (PU Code § 739.30; D.94-09-065; D.95-02-050).

5. Applicant should be exempted from Rule 18(b)'s requirement of service of the application on cities and counties in the proposed service area and service of all exhibits attached to this application on potential competitors.

6. The application should be granted to the extent set forth below.

7. Because of the public interest in competitive intraLATA services, the following order should be effective immediately.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to GTE California Incorporated (applicant) to operate to the extent authorized by Decision (D) 94-09-065, to provide intraLocal Access and Transport Area (LATA) telecommunication services offered by communication common carriers in California.

2. Applicant shall file a written acceptance of the certificate granted in this proceeding.

3. a. Applicant is authorized to file with this Commission tariff schedules for the provision of intraLATA service. Applicant may not offer intraLATA service until the respective tariffs are on file. Applicant's initial filing shall be made in accordance with

General Order (GO) 96-A, (excluding Sections IV, V, and VI, and shall be effective not less than 1 day after filing.

b. To the same extent as if applicant were a nondominant interexchange carrier (NDIEC), the effectiveness of its future tariffs is subject to the schedules set forth in Ordering Paragraph 5 of D.90-08-032, as modified by D.91-12-013 and D.92-06-034:

All NDIECs are hereby placed on notice that their California tariff filings will be processed in accordance with the following effectiveness schedule:

"a. Inclusion of (Federal Communications Commission) FCC approved rates for interstate services in California public utilities tariff schedules shall become effective on one (1) day's notice.

"b. Uniform rate reductions for existing services shall become effective on five (5) days' notice.

"c. Uniform rate increases, except for minor rate increases, for existing services shall become effective on thirty (30) days' notice, and shall require bill inserts, a message on the bill itself, or first class mail notice to customers of the pending increased rates.

"d. Uniform minor rate increases, as defined in D.90-11-029 for existing services shall become effective on not less than 5 working days' notice. Customer notifications are not required for such minor rate increases.

"e. Advice letter filings for new services and for all other types of tariff revisions except changes in text not affecting rates or relocations of text in the tariff schedules shall become effective on forty (40) days' notice.

Advice letter filings merely consisting of revising the text or location of text material which do not cause an increase in any rate or charge shall become effective on not less than five (5) days' notice."

4. Applicant may deviate from the following provisions of GO 96-A: (a) paragraph II.C.(1)(b), which requires consecutive sheet numbering and prohibits the reuse of sheet numbers, and (b) paragraph II.C.(4), which requires that "a separate sheet or series of sheets should be used for each rule." Tariff filings incorporating these deviations shall be subject to the approval of the Commission Advisory and Compliance Division's (CACD) Telecommunications Branch. Tariff filings shall reflect all fees and surcharges to which applicant is subject, as reflected in Conclusion of Law 4.

5. Applicant shall file a service area map as part of its initial tariff, after the effective date of this order and consistent with Ordering Paragraph 3.

6. Applicant shall notify this Commission in writing within 5 days of the dates on which intralATA service is first rendered to the public.

7. Applicant shall keep its books and records in accordance with the Uniform System of Accounts specified in Title 47, Code of Federal Regulations, Part 32.

8. Applicant shall file an annual report, in compliance with GO 104-A, on a calendar-year basis using the information request form developed by the CACD Auditing and Compliance Branch and contained in Attachment A.

9. Applicant shall ensure that its employees comply with the provisions of Public Utilities (PU) Code § 2889.5 regarding solicitation of customers.

10. 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.

11. The corporate identification number assigned to applicant is (U-1002-C) which shall be included in the caption of all original filings with this Commission and in the titles of other pleadings filed in existing cases.

12. In response to the applicant's request for waiver, applicant is exempted from Rule 18(b) of the Commission's Rules of Practice and Procedure to the extent that the rule requires applicant to serve a copy of its application on the cities and counties it proposes to operate in and to the extent that the rule requires applicant to serve a copy of all exhibits attached to its application on potential competitors.

13. In the event the books and records of the applicant are required for inspection by the Commission or its staff, applicant shall either produce such records at the Commission's offices or reimburse the Commission for the reasonable costs incurred in having Commission staff travel to applicant's office.

14. The negative declaration concerning the facilities which are the subject of applicant's petition in investigation (I.) 95-04-044 is applicable to the facilities that applicant seeks hereunder.

15. Applicant will not be authorized to offer or initiate the service until applicant has been granted a certificate of public convenience and necessity as a competitive local carrier in I.95-04-044.

Applicant shall ensure that its employees comply with the provisions of Public Utilities (PU) Code § 2889.2 regarding solicitation of customers.

The certificate granted and the authority to render service under the rates, charges, and rules authorized will expire

16. The application is granted, as set forth above.
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. NEPPER
Commissioners

TO: ALL INTEREXCHANGE TELEPHONE UTILITIES

Article 5 of the Public Utilities Code grants authority to the California Public Utilities Commission to require all public utilities doing business in California to file reports as specified by the Commission on the utilities' California operations.

A specific annual report form has not yet been prescribed for the California interexchange telephone utilities. However, you are hereby directed to submit an original and two copies of the information requested in Attachment A no later than March 31st of the year following the calendar year for which the annual report is submitted.

Address your report to:

California Public Utilities Commission
Auditing and Compliance Branch, Room 3251
505 Van Ness Avenue
San Francisco, CA 94102-3298

Failure to file this information on time may result in a penalty as provided for in §§ 2107 and 2108 of the Public Utilities Code.

If you have any question concerning this matter, please call (415) 703-1961.

ATTACHMENT A

Information Requested of California Interexchange Telephone Utilities.

To be filed with the California Public Utilities Commission, 505 Van Ness Avenue, Room 3251, San Francisco, CA 94102-3298, no later than March 31st of the year following the calendar year for which the annual report is submitted.

1. Exact legal name and U # of reporting utility.
2. Address.
3. Name, title, address, and telephone number of the person to be contacted concerning the reported information.
4. Name and title of the officer having custody of the general books of account and the address of the office where such books are kept.
5. Type of organization (e.g., corporation, partnership, sole proprietorship, etc.).
If incorporated, specify:
 - a. Date of filing articles of incorporation with the Secretary of State.
 - b. State in which incorporated.
6. Commission decision number granting operating authority and the date of that decision.
7. Date operations were begun.
8. Description of other business activities in which the utility is engaged.
9. A list of all affiliated companies and their relationship to the utility. State if affiliate is:
 - a. Regulated public utility.
 - b. Publicly held corporation.
10. Balance sheet as of December 31st of the year for which information is submitted.
11. Income statement for California operations for the calendar year for which information is submitted.

(END OF ATTACHMENT A)