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Decision 96-10-058 October 25, 1996

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
GTE California Incorporated)
(U 1002 C), a corporation, for)
authority to establish a tariff)
schedule for Integrated Services)
Digital Network.)

ORIGINAL
Application 95-07-042
(Filed July 19, 1995)

OPINION DENYING APPLICATION FOR REHEARING
AND RECONSIDERATION OF A PORTION OF D.96-01-023

Dirk Hughes-Hartogs (Hughes-Hartogs) filed an application for rehearing and reconsideration of a limited portion of Decision (D.) 96-01-023 on February 26, 1996. The pleading asks the Commission to reconsider its decision to identify some elements of GTE California, Inc.'s (GTEC) Integrated Services Digital Network (ISDN) service as "Category II" services, arguing that ISDN service is basic telephone service.

This pleading should have been accepted for filing as a petition for modification, not an application for rehearing, for it does not allege any legal error, but rather seeks reconsideration of the decision. Further, Hughes-Hartogs did not participate in the underlying proceeding, and therefore has no standing under Public Utilities Code § 1731(b) to apply for rehearing. Therefore, we will consider his request as a petition for modification of D.96-01-023.

GTEC filed a response on March 12, 1996, opposing Hughes-Hartogs' petition. GTEC argues that the issue is moot

because the Commission subsequently identified all ISDN elements as "Category II" in another docket. GTEC argues that ISDN service satisfies all of the criteria for Category II service because it is discretionary and is subject to partial competition.

During the pendency of Hughes-Hartogs' petition, Pacific Bell (Pacific) filed Application 95-12-043 seeking changes to its ISDN rates. Hughes-Hartogs is an active participant in that proceeding and has submitted written testimony there. Unlike the issues he raises with respect to our decision on GTEC's ISDN services, Hughes-Hartogs' testimony does not contest the status of Pacific's ISDN service as a Category II service.

In D.96-03-020, issued in the Local Exchange Competition dockets (Rulemaking (R.) 95-04-043 and Investigation (I.) 95-04-044) in March, we identified all ISDN elements as Category II services. (D.96-03-020, slip op., p. 55.) We also note that utility services classified as Category II are subject only to downward pricing flexibility. Category II services are subject to cost and pricing principles developed in our Open Access and Network Architecture Development proceeding (I.93-04-002).

In light of these developments and facts, the assigned Administrative Law Judge (ALJ) recognized that the relevancy of how ISDN is classified may be less critical to Hughes-Hartogs than he assumed when he filed his petition in the GTEC proceeding. By ruling issued July 25, 1996, the ALJ solicited a clarification from Hughes-Hartogs regarding how the classification of GTEC's ISDN services as Category II affects him or other customers and how he believes the Commission should regulate ISDN services. The ruling stated that absent adequate

clarification of the relief sought by the petition, the ALJ would recommend the Commission deny his request without further review. The clarification was to be filed by August 9, 1996. No clarification was filed.

Findings of Fact

1. In D.96-03-020, issued in the Local Exchange Competition dockets (R.95-04-043 and I.95-04-044), the Commission identified all ISDN elements as Category II services.

2. Utility services classified as Category II are subject only to downward pricing flexibility.

3. The ALJ solicited a clarification from Hughes-Hartogs regarding how the classification of GTEC's ISDN services as Category II affects him or other customers and how he believes the Commission should regulate ISDN services. No clarification was filed.

Conclusions of Law

1. This pleading will be treated as a petition for modification, not an application for rehearing, for it does not allege any legal error, but rather seeks reconsideration of a decision.

2. With the adoption of D.96-03-020, this petition for modification is moot and should be denied with prejudice.

O R D E R

IT IS ORDERED that:

1. Dirk Hughes-Hartogs' Application for Rehearing and Reconsideration of a Limited Portion of Decision 96-01-023 is denied with prejudice.

2. This proceeding is closed.

This order is effective today.

Dated October 25, 1996, at Sacramento, California.

P. GREGORY CONLON
President

JESSIE J. KNIGHT, JR.

HENRY M. DUQUE

JOSIAH L. NEEPER

Commissioners

Commissioner Daniel Wm. Fessler,
being necessarily absent, did not
participate.