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Decision 97-03-048 March 18, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Petition of)	
Sprint Communications Company)	
L.P. (U-5112-C) for Arbitration of)	
Interconnection Rates, Terms,)	Application 96-09-039
Conditions, and Related Arrangements)	(Filed September 25, 1996)
with GTE California, Inc.)	

OPINION**ORIGINAL**Procedural History

On September 25, 1996, pursuant to provisions of the Telecommunications Act of 1996 (the Act), Sprint Communications Company L.P. (U-5112-C) (Sprint) filed a petition seeking arbitration of interconnection rates, terms, conditions and related arrangements with GTE California, Inc. (GTEC).

At the time the pleadings were filed, there were approximately 75 issues in dispute between the parties. While it is not necessary at this point to discuss these issues in detail, it is worthy of note that Sprint's position with respect to each issue was that it would accept whatever AT&T of California, Inc. (AT&T) obtained in the interconnect agreement with GTEC, which would result from the AT&T/GTEC arbitration proceeding (Application (A.) 96-08-041) then pending before the Commission. That "offer" was rejected by GTEC.

While agreement on several issues was reached pending hearing, agreement between the parties on all issues proved elusive, and as a result, hearings on 47 disputed issues were held before the arbitrator on November 4, 5, 7, and 8, 1996. Once again, we note that with respect to those issues actually heard by the arbitrator, Sprint indicated that it was willing to accept the AT&T/GTEC arbitration results on those issues, whatever they might

ultimately be, but GTEC rejected that offer. Post-hearing briefs were filed by the parties on November 25, 1996, and Reply Briefs were filed on December 2, 1996. During the course of the hearings and the post-hearing briefing period, agreement was reached on several more issues and by the time the Arbitrator's Report was filed on December 27, 1996, only 11 issues were addressed by it.

On January 13, 1997, in A.96-08-041, the Commission issued Decision (D.)97-01-022, approving the AT&T/GTEC agreement,

On January 15, 1997, the parties Jointly filed an Interconnection Agreement as required by the Arbitrator's Report, however, this "joint agreement" was, in fact, not an agreement in that it contained extensive differences in language in several of its provisions, and the parties noted that each side anticipated filing comments on that document explaining their respective positions as provided in Rule 4.2.2 of ALJ Resolution 168. On January 27, 1997, each of the parties filed Comments on the Arbitrator's Report. While Sprint explained the language it used in the "joint agreement", it noted once again that it would accept the results achieved in the AT&T/GTEC arbitration agreement.

On January 23, 1997, the AT&T/GTEC agreement was filed with conforming modifications.

Post-hearing Motions

On February 5, 1997, Sprint filed a motion requesting that it be permitted to elect to take the contract between AT&T and GTEC and on February 22, 1997, GTEC filed an opposition to Sprint's motion. Meanwhile, on February 18, 1997, GTEC filed a "Motion Requesting that the Commission Approve Agreement Incorporating Terms of the Arbitrator's Report Pursuant to Rule 4.2.3 of ALJ Resolution 168" and on March 5, 1997, Sprint filed a "Response" in opposition thereto.

In its opposition to Sprint's motion GTE stated: "Sprint professes to be requesting that it elect the entire GTE/AT&T agreement in a cursory acknowledgement of the Court's stay of the

pick and choose rules. However, Sprint's correspondence and even its motion reflect that its true effort is aimed at convincing GTE to use the AT&T agreement as a 'baseline' from which Sprint would select certain provisions." (Opposition, pp 5, 6.) Further, GTE stated: "While Sprint purports now to accept the GTE/AT&T agreement in its entirety, the clear import of these passages from its own election motion is the desire to bind GTE to the AT&T agreement and then recommence negotiations to 'conform the contract more closely to its operational and other practices." (Opposition, p. 7.)

Thus, the Commission is faced with two mutually exclusive competing motions; one advocating acceptance of the Commission approved AT&T/GTEC interconnect agreement, and the other advocating approval of an agreement incorporating terms of the Arbitrator's report.

Because GTEC inferred that Sprint's version of the AT&T/GTEC agreement was at variance with the AT&T/GTEC agreement and amounted to little more than an attempt by Sprint to "pick and choose" terms favorable to it while rejecting unfavorable terms, the arbitrator issued a ruling directing GTEC to furnish the Commission and the arbitrator with a copy of the agreement tendered by Sprint marked or highlighted to show each and every claimed variance from the AT&T/GTEC agreement. On March 7, 1997, GTEC advised the arbitrator that "GTE has not alleged in its filings that the text of the agreement filed by Sprint with Sprint's motion requesting that it be permitted to elect the AT&T/GTE contract varies from the text of the AT&T/GTE agreement except that the names of the companies have been changed."

Discussion

Section 252(i) of the Telecommunications Act of 1996, provides:

"(i) Availability to Other Telecommunications Carriers--A local exchange carrier shall make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a

party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement."

We find that the agreement sought to be elected by Sprint in this proceeding is, except for the name of the second contracting party and authorship of certain technical manuals referred to therein, the same as that entered into between GTEC and AT&T, which was approved by the Commission under Section 252 of the Act in D.97-01-022.

We find that, pursuant to the above quoted section of the Act, Sprint is, as a matter of law, entitled to the same interconnect agreement with GTEC as exists between GTEC and AT&T as approved in D.97-01-022, and we hereby grant Sprint's motion to elect that contract in this proceeding, and approve the same. By necessity, we deny GTEC's February 18, 1997, Motion Requesting that the Commission Approve Agreement Incorporating Terms of the Arbitrator's Report Pursuant to Rule 4.2.3 of ALJ Resolution 168.

We are concerned that GTEC either negligently or deliberately attempted to mislead the Commission as to the nature of Sprint's request. We disagree with GTEC's characterization of its motion in its response to the Arbitrator's Ruling. GTEC's allegation that Sprint was seeking something other than the AT&T agreement was taken seriously and our own staff spent considerable effort evaluating that claim prior to the issuance of the ALJ's Ruling asking GTEC to demonstrate variances from the AT&T agreement.

Findings of Fact

1. On September 25, 1997, pursuant to the Telecommunications Act of 1996, Sprint filed a petition seeking arbitration of an interconnection agreement with GTEC.
2. Hearings were held in November 1996 to consider certain issues.
3. On December 27, 1996, the Arbitrator's Report was filed.

4. On January 15, 1997, the parties jointly filed an Interconnection Agreement as required by the Arbitrator's Report.

5. In actuality, the Interconnection Agreement was not an agreement in that it contained extensive differences in language in several of its provisions.

6. On January 27, 1997, each of the parties filed comments on the Arbitrator's Report.

7. Both during the hearings and in its post hearing submissions, Sprint indicated that it would accept the results of the AT&T/GTEC arbitration in A.96-08-041, when rendered.

8. On January 13, 1997, the Commission issued D.97-01-022 approving the AT&T/GTEC agreement which was filed with conforming modifications on January 23, 1997.

9. On February 5, 1997, Sprint filed a motion that it be permitted to elect to take the contract between AT&T and GTEC.

10. On February 22, 1997, GTEC filed an Opposition to Sprint's motion and advocated approval of an agreement incorporating terms of the Arbitrator's Report; GTEC also represented that Sprint was seeking something at variance from the AT&T contract.

11. Sprint's tendered agreement is, except for the name of the second contracting party and authorship of certain technical manuals, the same as the contract between GTEC and AT&T approved by D.97-01-022.

Conclusions of Law

1. Section 252(i) of the Telecommunications Act of 1996 requires a local exchange carrier to make any interconnection, service or network element provided under an approved agreement to which it is a party available to any other requesting carrier on the same terms and conditions as those provided in the approved agreement.

2. GTEC provides interconnection, services and network elements to AT&T under an agreement approved in D.97-01-022.

3. Section 252(i) of the Act requires that the interconnection, services and network elements made available to AT&T pursuant to the agreement approved in D.97-01-022 be made available to Sprint on the same terms and conditions.

4. Sprint's motion to elect to take the AT&T/GTEC agreement should be granted.

5. GTEC's motion requesting that the Commission approve an agreement incorporating the Arbitrator's Report should be denied.

6. GTEC knowingly or negligently misrepresented to the Commission the nature of the Sprint tendered agreement.

O R D E R

IT IS HEREBY ORDERED that:

1. Sprint's motion to elect to take the AT&T of California, Inc. (AT&T)/GTE-California, Inc. (GTEC) interconnection agreement is granted.

2. GTEC shall make available to Sprint the interconnection, service, and network elements available to AT&T under the AT&T/GTEC interconnection agreement on the same terms and conditions approved in D.97-01-022.

3. The parties shall file an executed copy of such agreement within 10 days of the date of this order and shall supplementally provide two copies to the Telecommunications Division, together with a version thereof in electronic form in hyper text markup language format.

4. GTEC's motion requesting that the Commission approve an agreement incorporating the Arbitrator's Report is denied.

5. This proceeding is remanded to the Division of Administrative Law Judges for further proceedings to determine whether the misrepresentations referred to in Finding of Fact 10 and Conclusion of Law 6 were negligent or deliberate, and whether any sanctions should be imposed on GTEC.

This order is effective today.

Dated March 18, 1997, at San Francisco, California.

P. GREGORY CONLON
President
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEPPER
RICHARD A. BILAS
Commissioners