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Decision 98-05-011 May 7, 1998

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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Bell to Tariff Radiotelephone
Utility Interconnection Arrangements.

Application 92-06-009
(Filed June 8, 1992)

DECISION DISMISSING APPLICATION

Summary

This decision is issued in response to a motion to withdraw the above-noted application filed by Pacific Bell (Pacific) on October 24, 1997. In its motion, Pacific argues that this proceeding is now moot, because the radiotelephone utility (RTU) interconnection tariff that is the subject of the application was superseded by the wireless interconnection services tariff filed by Pacific in our Open Access and Network Architecture Development (OANAD) proceeding,¹ and then mooted by the provisions of the Telecommunications Act of 1996. Because we agree with Pacific's analysis, and in view of the fact that the motion to withdraw is unopposed, we will grant the relief Pacific requests.

Background

The instant application was filed as a result of Ordering Paragraph (OP) 9 of Decision (D.) 92-01-016, an interim opinion in our rulemaking concerning the radiotelephone utility industry. In that decision, we noted that interconnection of RTUs with the public switched network was a "monopoly service" that only a local exchange carrier (LEC) could provide, and that as a result there was a need to ensure that RTU interconnection was available on reasonable and non-discriminatory terms and conditions. We therefore concluded:

"[I]n order to assure equal bargaining power between RTUs and LECs, and assure the equal availability of all types of RTU/LEC interconnection

¹ Rulemaking (R.) 93-04-004/Investigation (I.) 93-04-002.

at reasonable, non-discriminatory, non-preferential terms, conditions and rates, we will order all LECs offering RTU interconnection to tariff these interconnection arrangements." (Mimeo. at 31; emphasis supplied.)

In D.92-01-016, we also described what should be included in the RTU tariffs, and we directed that they should be filed within 150 days after the effective date of the decision. (Id. at 31-32.) Pursuant to these instructions, Pacific filed the instant application on June 8, 1992.

On April 15, 1993, Pacific filed an amendment to its RTU tariff, which proposed to make the tariff applicable to *all* wireless providers, including cellular carriers. Since OP 10 of D.90-06-025 had held that cellular interconnection arrangements should be handled through contracts rather than tariffs, the April 15 proposed amendments were accompanied by a petition to modify OP 10 of D.90-06-025 to permit the tariffing of cellular interconnection arrangements.

After oral argument on the petition for modification, we granted it in D.94-04-085 (54 CPUC2d 330.) In granting the petition, we (1) directed Pacific to confer with the cellular carriers concerning the April 15, 1993 proposal for an all-wireless interconnection tariff, (2) directed that Pacific's cellular interconnection tariff, whatever form it took, should be filed in the OANAD docket, and (3) ordered that the cellular interconnection tariff, like the RTU interconnection tariffs, should be based upon direct embedded cost (DEC). (54 CPUC2d at 333.)

Pursuant to D.94-04-085, Pacific filed an amended interconnection tariff proposal on September 2, 1994. The amended interconnection tariff was protested in whole or in part by the Division of Ratepayer Advocates, AirTouch Paging of California, Inc. and its affiliates, AT&T Communications of California, Inc., McCaw Cellular Communications, Inc., U.S. West Cellular of California, Inc., Los Angeles Cellular Telephone Company, Paging Systems, Inc., Bay Area Cellular Telephone Company, Cellular Services, Inc., Comtech Mobile Telephone Company, and Orion Telecom. Pacific filed a response to these protests on October 18, 1994. Additional protests were also filed by MCI Telecommunications Corporation and the Allied Personal Communications Industry

Association of California. No further action has been taken on the interconnection tariff proposal since Pacific filed its response.

Discussion

Pacific is correct when it argues in its October 27, 1997 motion that events within the telecommunications industry have overtaken both the RTU interconnection tariff filed on June 8, 1992 and the wireless interconnection tariff filed in the OANAD proceeding on September 2, 1994. The most important of those events is, of course, passage of the Telecommunications Act of 1996, which President Clinton signed into law on February 8, 1996.² After noting that "the Act requires that local exchange carriers enter into negotiated interconnection agreements with other carriers, including wireless carriers", Pacific's motion continues:

" [RTUs] now have available to them the opportunity to enter into interconnection agreements pursuant to the [Act]. We believe that all of the wireless carriers still in existence³ who protested the OANAD wireless interconnection tariff filing, which superseded [the instant] application, have entered into such interconnection agreements. Future wireless carriers seeking interconnection agreements will be able to use the existing interconnection agreements as a template for their own negotiations with Pacific." (Pacific Motion, p. 2.)

The parties apparently do not disagree with this assessment, because none of them has filed an opposition or protest to the motion to withdraw. Accordingly, it is appropriate to dismiss the instant application.

² Another change, of course, is that in the OANAD proceedings, the Commission has elected to use a "forward looking" cost methodology rather than "direct embedded cost" standard prescribed in D.92-01-016. In D.96-08-021, the Commission adopted costs for Pacific based on the Total Service Long Run Incremental Cost (TSLRIC) methodology approved in D.95-12-016. For a variety of reasons, D.98-02-106 concludes that the Commission should now use for pricing a somewhat different forward looking methodology known as Total Element Long Run Incremental Cost (TELRIC).

³ For example, McCaw Cellular Communications, Inc. no longer exists as a separate entity; it was acquired by AT&T through a merger in 1994. See D.94-04-042 (54 CPUC2d 43).

Findings of Fact

1. Pacific filed the instant application on June 8, 1992.
2. On April 15, 1993, Pacific filed proposed amendments to its RTU tariff, along with a petition to modify D.90-06-025.
3. On April 20, 1994, the Commission issued D.94-04-085, which granted the petition to modify D.90-06-025 and directed Pacific to file a DEC-based wireless interconnection tariff proposal in the OANAD docket.
4. Pursuant to D.94-04-085, Pacific filed a proposed wireless interconnection tariff in the OANAD docket on September 2, 1994.
5. Pacific responded to the protests to its wireless interconnection tariff proposal on October 18, 1994.
6. In D.95-12-016, the Commission adopted Consensus Costing Principles that called for the use of the TSLRIC methodology rather than the DEC methodology.
7. On October 24, 1997, Pacific filed a motion to withdraw the instant application.
8. In D.98-02-106, the Commission concluded that the TELRIC rather than the TSLRIC methodology should be used for pricing unbundled network elements.
9. No opposition or protest to Pacific's motion has been received.

Conclusions of Law

1. The RTU tariff that was the subject of the instant application was made moot by Pacific's filing of a wireless interconnection tariff in the OANAD docket on September 2, 1994.
2. The OANAD wireless interconnection tariff has been made moot by the passage of the Telecommunications Act of 1996, which provides, among other things, for the voluntary negotiation of (and, where necessary, arbitration of) wireless interconnection tariffs.
3. Because the June 8, 1992 RTU tariff filing is now moot, this docket should be closed.

O R D E R

IT IS ORDERED that Application 92-06-009 is closed.

This order is effective today.

Dated May 7, 1998, at San Francisco, California.

RICHARD A. BILAS
President
P. GREGORY CONLON
HENRY M. DUQUE
JOSIAH L. NEEPER
Commissioners

Commissioner Jessie J. Knight, Jr., being necessarily absent, did not participate.