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Decision 98-05-020 May 7, 1998

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

MCI Telecommunications Corporation (U 5011 C),

Complainant,

vs.

Pacific Bell (U 1001 C) and GTE California Incorporated (U 1002 C),

Defendants.

Case 97-04-008
(Filed April 7, 1997)

ORIGINAL

OPINION

Summary

MCI Telecommunications Corporation (MCI), complainant, requests that the Commission find that the existing intrastate switched access rates of Pacific Bell (Pacific) and GTE California Incorporated (GTEC), defendants, are unreasonable and discriminatory in today's local competition environment and should be reduced to economic cost. MCI estimates the relief it requests will reduce Pacific's access rates by approximately $250 million annually and GTEC's access rates by approximately $125 million annually.[1] This is a complaint

[1] MCI states that economic cost is equal to Total Service Long-Run Incremental Cost (TSLRIC) or Total Element Long Run Incremental Cost (TELRIC), plus a reasonable portion of shared and common costs, based on the Hatfield Model. MCI proposes that the exact amount of the proposed reductions would be determined through a version of the Hatfield Model, which would be included in MCI's testimony in this case.

case which endeavors to challenge the reasonableness of rates or charges. This is not an adjudicatory proceeding as defined in Public Utilities (P.U.) Code § 1757.1.

This decision grants the motions of Pacific and GTEC to dismiss the complaint on the grounds that MCI's complaint does not state a cause of action under Sections 451, 453 or 709 of the P.U. Code.

Background

On April 7, 1997, MCI filed a complaint alleging that Pacific and GTEC's access rates are excessive in relation to the economic cost of the underlying services and, therefore, violate (1) Sections 451, 453, and 709; (2) the congressional intent of the Telecommunications Act of 1996 (Act) and the specific rules implementing the Act; and (3) defeat the California legislature's and the Commission's express policy to open all telecommunications markets in California to competition.

Specifically, MCI asserts that Sections 451 and 453, which prohibit unjust, unreasonable, and discriminatory rates for telecommunications services, as well as sections of Title 47 of the Code of Federal Regulations that implement the Act, are violated because Pacific and GTEC's currently tariffed intrastate access rates:

a. tend to defeat full, fair and efficient competition in local exchange, exchange access, and interexchange telecommunications markets in California;

b. reduce economic efficiency;

c. result in overall higher rates paid by consumers and reduced choice by consumers for telecommunications services in California; and

d. allow Pacific, GTEC, and their affiliates, to engage in anti-competitive price squeezes and accrue unreasonable, excessive, monopoly profits. (Complaint, page 15.)

Further, MCI asserts that "permitting Pacific and GTEC to charge rates for access services that are discriminatory and excessive is contrary to the Legislature's pronounced goals in Section 709 of the P.U. Code and the Commission's announced policy to promote full and fair competition in all California telecommunications markets." (Ibid, p. 27.)

Both Pacific and GTEC answered MCI's complaint in a timely manner on May 15, 1997. In addition, on May 15, 1997, GTEC filed a motion to dismiss the complaint, and on May 22, 1997, Pacific also filed a motion to dismiss.

In its answer to the complaint, GTEC denies each and every allegation set forth in the complaint. It states it has acted in accordance with all of the terms and conditions contained in its tariffs, it has violated no Commission rule, order, or decision with regard to its rates for intrastate switched access service, and the complainant has failed to state facts sufficient to state a cause of action under Sections 451, 453, or 1702 of the P.U. Code.

In its motion to dismiss, GTEC requests that the complaint be dismissed in its entirety because it challenges the reasonableness of GTEC's rates and, therefore, is not properly before the Commission and must be dismissed as required by Section 1702. Further, the complaint fails to allege any cognizable violation of Sections 451 and 453, or any violation of GTEC's tariff provisions, any provision of law, or any order or rule of the Commission and is an improper collateral attack upon Commission decisions in violation of Section 1709. GTEC also asserts that by filing the complaint, MCI is in breach of its 1995 agreement to the "Joint Petition to Modify Decision 95-04-073 with Respect to the Rate Structure for Intrastate Local Transport" that the Commission adopted in

Decision (D.) 95-12-020.[2] Finally, GTEC asserts that other Commission proceedings exist to examine the costing and pricing proposals made by the complainant.

In its answer to the complaint and motion to dismiss, Pacific states that the authority cited by MCI in bringing its complaint, Rule 9(a) and Section 1702, specifically bar MCI from bringing the complaint because MCI is not one of the parties designated by statute who has standing to bring a complaint regarding the reasonableness of rates. Further, Pacific states that even if MCI had standing to bring this complaint, it fails to state a cause of action for which relief can be granted since (1) Pacific is not charging any price which is in excess of that allowed by order of this Commission as there is no law, rule or order requiring Pacific to set prices at "economic cost"; (2) Pacific is legally bound to charge its tariff price; (3) a complaint is an improper vehicle for challenging a rate design, a rate restructuring or the integrity of an already approved price; (4) Pacific is not violating Section 451 because its tariff prices have been found reasonable by the Commission; and (5) Pacific is not violating Section 453 because it is not charging different prices for switched access to MCI than it charges to others.

MCI responded to GTEC's motion to dismiss on June 6 and to Pacific's motion on June 13, 1998. In both filings, MCI makes similar arguments.

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[2] In D.95-12-020, the Commission approved the Joint Petition to which MCI was a party. GTEC asserts that the agreement underlying the petition approved by the Commission was based upon the uniform expectation that the Network Interconnection Charge and intrastate switched access issues would be addressed in the Open Access and Network Architecture Development (OANAD) docket, Rulemaking (R.) 93-04-003/Investigation (I.) 93-04-002. See D.95-12-020, mimeo. at 8-9; see also Joint Petition to Modify D.95-04-073 at p. 5. GTEC states that in return for agreeing to the rate specified in the Joint Petition and the establishment of a long-term local transport rate structure in the OANAD proceeding, GTEC and Pacific expressly agreed that they would forego contracting flexibility (i.e., the ability to enter into customer-specific contracts for switched access local transport service).

MCI asserts that the reliance Pacific and GTEC place in their motions to dismiss on two decisions, D.94-09-065 and D.95-04-073, is misplaced because significant change in telecommunications has occurred since the Commission adopted those decisions.

In response to GTEC and Pacific's assertion that it does not have standing under Section 1702 to bring this complaint, MCI states that the requirements of Section 1702 are not applicable to it. MCI bases its assertion on two grounds: (1) the case cited by GTEC in its motion involved a complaint case filed by an individual rather than a public utility; and (2) the filing requirements of this case are governed by Section 1707, not Section 1702.[3] Furthermore, MCI asserts that the filing requirements of Section 1702, even if applicable in this case, do not encompass complaints alleging that a rate is discriminatory.

MCI affirms that its complaint "sufficiently alleges that excessive and discriminatory access charges violate Sections 451, 453 and 709, which proscribe unjust or unreasonable charges (Section 451), prohibit preferences or disadvantages as to rates or charges (Section 453) and proclaim the state policy favoring lower prices, greater consumer choice and full and fair competition in California's telecommunications markets (Section 709)". (June 13 filing, page 5.)

Discussion

In its complaint, MCI requests relief because, it alleges, Pacific and GTEC's intrastate access charges are excessive in relation to the economic cost of providing the service and, therefore, unduly discriminate against interexchange

[3] MCI's complaint states it is filed in accordance with Rule 9(a) and Sections 1707, 1702 and 1701. Section 1707 states that a public utility can complain on any of the grounds upon which complaints are allowed to be filed by other parties. It also directs the Commission to apply consistent procedure to such complaints, but permits ex parte hearing or service of the complaint on other parties the Commission designates.

carriers and their customers, thereby violating the state policy favoring lower prices, greater consumer choice, and full and fair competition in California's telecommunications markets. MCI states that it has filed this complaint to place the critical issue of access charge reform squarely before the Commission as the Commission has not addressed it in recent proceedings where MCI has raised it. (See MCI's June 6 response, page 2.)

The Commission has addressed the issues MCI raises here, and will continue to address these issues, in other proceedings. In D.94-09-065 (the Implementation Rate Design decision), the Commission significantly lowered switched access charges and also stated that its imputation rule, first adopted in D.89-10-031, would directly address the concerns raised by interexchange carriers regarding the potential for an anticompetitive price squeeze and that the OANAD proceeding would move closer to a truly competitive world by ensuring that competitors have access to individual bottleneck services by identifying the costs of narrowly defined rate elements. (56 CPUC2d 117, 227-9.) In D.95-12-020, the Commission approved the "Joint Petition to Modify Decision 95-04-073 With Respect to the Rate Structure For Intrastate Local Transport" to which MCI was a party.

Current proceedings are also addressing the issues. MCI's Hatfield model is under consideration in the Unbundled Network Element phase of the OANAD proceeding, R.93-04-003 and I.93-04-002; MCI's proposal to reduce intrastate access rates to economic cost is under submission in Application 97-03-004; and as part of its 1998 Business Plan, the Commission plans to initiate a proceeding at the end of 1998, following completion of the Pacific pricing phase in OANAD, to look at issues relating to access reform.

The complaint proceeding of an individual utility is not the proper forum for the Commission to decide on its own motion to open a new proceeding on

access reform, especially as here when the issue is currently under considerations by the Commission in other proceedings. MCI's complaint does not state a cause of action under Sections 451, 453, or 709 because: (1) there is no law, rule, or order requiring Pacific or GTEC to set switched access prices at "economic cost"; (2) MCI's allegations of discrimination and unfair competition were addressed in D.94-09-065; (3) the switched access rates being paid by MCI have been found reasonable in previous Commission decisions; and (4) the Commission has designated other proceeding, specifically OANAD and the upcoming access reform proceeding to address the merits of the Hatfield model and the issue of switched access reform.[4]

Having found MCI's complaint lacks merit for the reasons discussed, we do not address MCI's assertion that Pacific and GTEC's access rates violate federal law and regulation.

We find that MCI fails to state a cause of action for which relief can be granted in this proceeding. Therefore, we grant the motions of Pacific and GTEC to dismiss the complaint.

Findings of Fact

1. On April 7, 1997, MCI, complainant, filed a complaint alleging that Pacific and GTEC's intrastate access rates are excessive in relation to the economic cost of providing the service and, therefore, unduly discriminate against interexchange carriers and their customers.

2. MCI requests the Commission reduce the currently tariffed intrastate access rates of Pacific and GTEC to an economic cost which is equal to TSLRIC or

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[4] In the OANAD proceeding, the Commission in D.98-02-106 rejected version 2.2 of MCI's Hatfield model for Pacific; application of version 4.0 of the Hatfield model for GTEC is a pending issue.

TELRIC, plus a reasonable portion of shared and common costs, based on the Hatfield model it will submit in its testimony.

3. MCI's complaint deals with access reform issues that are before the Commission in other proceedings.

Conclusions of Law

1. This is a complaint case challenging the reasonableness of rates or charges and so this decision is not issued in an "adjudicatory proceeding" as defined in P.U. Code § 1757.1.

2. MCI fails to state a cause of action for which relief can be granted.

3. This complaint should be dismissed.

ORDER

IT IS ORDERED that the complaint is dismissed.

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.