

ALJ/MCK/tcg

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Decision 98-08-022 August 6, 1998

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Contel of California, Inc. (U 1003 C), a corporation, for approval of Radio Telephone Utilities Interconnection Services.

ORIGINAL
Application 92-07-035
(Filed July 21, 1992)

DECISION DISMISSING APPLICATION

Summary

This decision is issued as a follow-up to Decision (D.) 98-05-011, in which we recently dismissed as moot an application filed by Pacific Bell (Pacific) for authority to file a radiotelephone utility (RTU) interconnection tariff. In D.98-05-011, we concluded that Pacific's application was moot because it had been superseded twice, first by the wireless interconnection services tariff filed by Pacific in our Open Access and Network Architecture Development (OANAD) proceeding,¹ and then by the provisions of the Telecommunications Act of 1996 (TA 96). As explained below, Contel of California, Inc. (Contel) initially filed an RTU interconnection tariff application at the same time as Pacific. Subsequently, Contel filed a motion seeking to withdraw that application and to concur in Pacific's RTU tariff.

Even though Contel's situation is different from Pacific's, we agree that its 1992 RTU interconnection tariff application is also moot and should be dismissed.

¹ Rulemaking (R.) 93-04-003/Investigation (I.) 93-04-002.

First, pursuant to D.94-04-083 and D.96-04-053,² Contel has merged with GTE California Incorporated (GTEC), and all of Contel's California operations and management are now part of GTEC.³ We are today dismissing the RTU interconnection tariff application filed by GTEC in 1992 because, like Pacific's, it had been rendered moot by developments in OANAD, and then by the provisions of TA 96, which entitle RTUs and other wireless carriers to enter into interconnection agreements with local exchange carriers such as GTEC. In view of the GTEC-Contel merger and the interconnection provisions of TA 96, Contel's 1992 RTU interconnection tariff application is also moot.

Background

Contel's 1992 RTU interconnection tariff application was filed as a result of Ordering Paragraph (OP) 9 of D.92-01-016, an interim opinion in our rulemaking concerning the RTU industry. In D.92-01-016, we noted that the 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 of this situation, 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 at reasonable, non-discriminatory, non-preferential terms, conditions and rates, we will order all LECs offering RTU

² The plan whereby Contel would be merged into GTEC was approved in D.94-04-083, but that decision was stayed at the request of the applicants. D.96-04-053 reaffirmed the terms on which the merger was approved and lifted the stay of D.94-04-083.

³ We recently approved a settlement whereby former customers of Contel will enjoy the same rates as customers of GTEC. See D.97-12-091. With the approval of this settlement, the final phase of the Contel-GTEC merger proceedings is complete.

interconnection to tariff these interconnection arrangements."
(*Mimeo.* at 31.)

In D.92-01-016, we also described what should be included in the RTU tariffs, and we directed that these tariffs should be filed within 150 days after the effective date of the decision. (*Id.* at 31-32.) Pursuant to these instructions, Contel filed the instant application on July 21, 1992. Protests to Contel's RTU interconnection tariff proposal were filed by the Division of Ratepayer Advocates, the Allied Radiotelephone Utilities of California, Paging Network of Los Angeles, Inc. and Kern Valley Dispatch, Inc.

On September 4, 1992, Contel filed what it termed a Withdrawal of Application (Withdrawal). In this pleading, Contel stated that it now wished to "concur" in the RTU interconnection tariff proposal of Pacific (except as to dedicated NXX codes, for which Contel stated that it had separately determined rates and conditions). Contel asserted that it was entitled to withdraw its RTU interconnection tariff proposal and concur in Pacific's pursuant to discussion that appeared on page 34 of the mimeo. version of D.92-01-106. Contel also argued that in view of its decision to concur in Pacific's RTU interconnection tariff, the protests to A.92-07-035 should be dismissed. No immediate action was taken in connection with the Withdrawal.

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

Oral argument was held on Pacific's petition for modification of D.90-06-025 in November of 1993. Despite the opposition of GTEC and the

cellular carriers, we granted Pacific's petition in D.94-04-085 (54 CPUC2d 330.) In granting the petition, we (1) directed both Pacific and GTEC to file new cellular interconnection tariff proposals in the OANAD docket, (2) directed Pacific and GTEC to confer with the cellular carriers before making the new tariff filings, 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.)⁴

Pursuant to D.94-04-085, GTEC and Pacific filed interconnection tariff proposals applicable to all of their respective wireless carriers on August 18 and September 2, 1994, respectively. Pacific's amended interconnection tariff was protested by 13 parties; GTEC's amended interconnection tariff was protested by nine parties. Both Pacific and GTEC filed responses to these protests on October 18, 1994.

Discussion

As in D.98-05-011, it is clear that events within the telecommunications industry have overtaken both Contel's original application of July 21, 1992, and the wireless interconnection tariffs filed in OANAD in August and September of 1994. The superseding events include not only Contel's absorption by GTEC, but also the passage of TA 96, which President Clinton signed into law on February 8, 1996. As we noted in D.98-05-011, TA 96 requires incumbent LECs to enter into negotiations for interconnection agreements with other carriers,

⁴ Since the issuance of D.94-04-085, the Commission has decided to use a "forward looking" cost methodology for pricing unbundled network elements, rather than the DEC standard prescribed for the RTU interconnection tariffs in D.92-01-016. In D.96-08-021, the Commission adopted costs for Pacific (and interim costs for GTEC) based on the so-called Total Service Long Run Incremental Cost (TSLRIC) methodology. More recently, in D.98-02-106, we concluded for a variety of reasons that a somewhat different forward-looking methodology, known as Total Element Long Run Incremental Cost (TELRIC), should be used for the purpose of pricing unbundled network elements.

including wireless carriers. It appears that all of the wireless carriers still in existence who protested Pacific's and GTEC's 1994 interconnection tariff filings in OANAD have entered into interconnection agreements with Pacific, GTEC, or both under the provisions of TA 96. Further, it is clear that future wireless carriers seeking interconnection agreements will be able to use these existing interconnection agreements as a template for their own negotiations. Under these circumstances, the 1992 RTU interconnection tariff proposal filed by Contel is -- quite apart from Contel's attempt to withdraw it -- moot and should be dismissed.

Findings of Fact

1. Contel filed the instant application on July 21, 1992.
2. On September 4, 1992, Contel filed a pleading withdrawing its July 21 RTU interconnection tariff proposal and asserting an intention to concur in Pacific's RTU interconnection tariff proposal.
3. On April 15, 1993, Pacific filed amendments to its RTU interconnection tariff proposal, as well as a petition to modify OP 10 of D.90-06-025.
4. On April 20, 1994, the Commission issued D.94-04-085, which granted Pacific's petition to modify OP 10 of D.90-06-025 and directed both Pacific and GTEC to file DEC-based cellular interconnection tariff proposals in the OANAD docket.
5. Pursuant to D.94-04-085, GTEC filed a proposed wireless interconnection tariff in the OANAD docket on August 18, 1994.
6. Pursuant to D.94-04-085, Pacific filed a proposed wireless interconnection tariff in the OANAD docket on September 2, 1994.
7. On October 18, 1994, both Pacific and GTEC filed responses to the protests to their respective wireless interconnection tariff proposals.

8. In D.94-04-083 and D.96-04-053, this Commission approved the merger of Contel into GTEC.

9. 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 in pricing network elements.

10. In D.98-02-106, the Commission concluded that the TELRIC methodology rather than the TSLRIC methodology should be used for pricing unbundled network elements.

Conclusions of Law

1. The RTU tariff filed by Pacific (in which Contel sought to concur) was rendered moot by the filing of wireless interconnection tariff proposals in the OANAD docket in August and September of 1994.

2. The wireless interconnection tariff proposals filed in OANAD in August and September of 1994 have been made moot by the passage of TA 96, which provides, among other things, for the voluntary negotiation of (and, where necessary, arbitration of) wireless interconnection tariffs.

3. Because Contel's July 21, 1992 RTU tariff filing is now moot, this docket should be closed.

O R D E R

IT IS ORDERED that Application 92-07-035 is closed.

This order is effective today.

Dated August 6, 1998, at San Francisco, California.

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