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Decision 98-08-023 August 6, 1998

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of GTE California Incorporated
(U 1002 C), a corporation, for Authority to File A
Tariff Schedule For Services for Interconnecting
Radiotelephone Utilities.

Application 92-06-012
(Filed June 8, 1992)

OPINION DISMISSING APPLICATION

Summary

This decision is issued in response 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 In D.98-05-011, we concluded that Pacific's application was moot because it had been superseded twice, first by the wireless interconnection services tariff filed by Pacific in our Open Access and Network Architecture Development (OANAD) proceeding,¹ and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, GTE California Incorporated (GTEC) filed an RTU interconnection tariff proposal at the same time as Pacific, and like Pacific's, GTEC's proposal has been rendered moot by developments in OANAD and the passage of TA 96. Accordingly, it is also appropriate to dismiss GTEC's RTU interconnection tariff application.

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

Background

GTEC's RTU 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 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 they should be filed within 150 days after the effective date of the decision. (*Id.* at 31-32.) Pursuant to these instructions, GTEC filed the instant application on June 8, 1992. Protests to the proposed RTU tariff were filed by Fleet Call, Inc. and Smart SMR of California, Inc., the Allied Radiotelephone Utilities of California (Allied), Comtech Mobile Telephone Company (Comtech), and by Paging Network of Los Angeles, Inc. and Paging Network of San Francisco, Inc.

Before any action was taken on GTEC's tariff proposal, Pacific filed a proposal to amend *its* RTU interconnection tariff to make the tariff applicable to *all* wireless providers, including cellular carriers. Pacific's proposed amendment was accompanied by a petition to modify Ordering Paragraph (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 all the cellular carriers, we granted Pacific's petition in D.94-04-085 (54 CPUC2d 330.) In granting the petition, we (1) directed 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.)

Pursuant to D.94-04-085, GTEC filed an interconnection tariff proposal applicable to all wireless carriers on August 18, 1994. This proposed tariff was protested in whole or in part by the Division of Ratepayer Advocates, AirTouch Paging of California, Incorporated (and its affiliates), AT&T Communications of California, Inc., McCaw Cellular Communications, Inc., Los Angeles Cellular Telephone Company, MCI Telecommunications Corporation, and by Cellular Service, Inc., Comtech, and Allied. GTEC filed a response to these protests on October 18, 1994. No further action has been taken on the wireless interconnection tariff proposal since GTEC filed its response.

Discussion

Just as in D.98-05-011, it is clear that events within the telecommunications industry have overtaken both GTEC's RTU interconnection tariff proposal of June 8, 1992 and the wireless interconnection tariff that it filed in the OANAD proceeding on August 18, 1994. The most important of those events is, of course, the passage of TA 96, which President Clinton signed into law on

February 8, 1996.² As we noted in D.98-05-011, TA 96 requires local exchange carriers such as GTEC to enter into negotiated interconnection agreements with other carriers, including wireless carriers. Just as in Pacific's case, it appears that all of the wireless carriers still in existence³ who protested GTEC's OANAD wireless interconnection tariff filing (which superseded the instant application) have entered into such interconnection agreements. Further, it is clear that future wireless carriers seeking interconnection agreements will be able to use the existing interconnection agreements as a template for their own negotiations. Under these circumstances, GTEC's 1992 RTU interconnection tariff proposal is clearly moot and should be dismissed.⁴

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 (and interim costs for GTEC) based on the Total Service Long Run Incremental Cost (TSLRIC) methodology approved in D.95-12-016. More recently, in D.98-02-106, we concluded for a variety of reasons that the Commission should use a somewhat different forward-looking methodology known as Total Element Long Run Incremental Cost (TELRIC) for the purpose of pricing unbundled network elements.

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

⁴ On September 29, 1997, about a month before Pacific filed its motion to withdraw A.92-06-009, Pacific filed a motion to withdraw its wireless tariff filing in the OANAD docket. As in its motion to withdraw A.92-06-009, Pacific argued that the wireless interconnection tariff it filed in OANAD had been rendered moot by the provisions of TA 96. GTEC supported Pacific's motion and asked for similar relief, stating:

"GTE agrees with Pacific that the wireless tariffs on file in this docket have been superseded by the execution of interconnection agreements with wireless carriers under [TA 96]. GTE has executed approximately 12 wireless interconnection agreements which have been approved by the Commission. Such agreements are available for adoption by other wireless carriers under the provisions of section 252(i) of the Act, or may be used as the basis for

Footnote continued on next page

Findings of Fact

1. GTEC filed the instant application on June 8, 1992.
2. 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.
3. Pursuant to D.94-04-085, GTEC filed a proposed wireless interconnection tariff in the OANAD docket on August 18, 1994.
4. GTEC responded to the protests to its wireless interconnection tariff proposal on October 18, 1994.
5. 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.
6. 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 that was the subject of the instant application was rendered moot by GTEC's filing of a wireless interconnection tariff proposal in the OANAD docket on August 18, 1994.

negotiation of new agreements. In either case, the terms and conditions set forth in the [proposed] tariff are no longer necessary. GTE believes that these tariffs should be withdrawn and this phase of the [OANAD] docket should be ended." *(Response of GTE California Incorporated To Motion of Pacific Bell To Withdraw Wireless Interconnection Services Tariff, dated October 14, 1997, page 2.)*

2. GTEC's OANAD wireless interconnection tariff has 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 the June 8, 1992 RTU tariff filing is now moot, this docket should be closed.

ORDER

IT IS ORDERED that Application 92-06-012 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