

Decision 98-10-012 October 8, 1998

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of the Application of GTE West Coast Incorporated (U 1020 C) for approval of its proposed tariff for RTU interconnection pursuant to D.92-01-016.

Application 92-07-008  
(Filed July 2, 1992)

**ORIGINAL**

**OPINION DISMISSING APPLICATION**

**Summary**

This decision is issued in response to Decision (D.) 98-05-011, D.98-08-022, and D.98-08-023, in which we recently dismissed as moot applications filed by Pacific Bell (Pacific), Contel of California, Inc. (Contel), and GTE California Incorporated (GTEC), respectively, for authority to file radiotelephone utility (RTU) interconnection tariffs. In these decisions, we concluded that the applications filed by the utilities had become moot because they had been superseded twice, first by the wireless interconnection services tariffs filed by Pacific and GTEC in our Open Access and Network Architecture Development (OANAD) proceeding,<sup>1</sup> and then by the provisions of the Telecommunications Act of 1996 (TA 96). As GTE West Coast Incorporated (GTEWC) argues in its August 24, 1998 motion to withdraw the instant application, the RTU interconnection tariff proposal that it filed at the same time as Pacific, GTEC, and

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

Contel has also been rendered moot by these events. Accordingly, it is appropriate to dismiss GTEWC's application as well.

### Background

GTEWC'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, GTEWC filed the instant application on July 7, 1992. No protests were filed in connection with this application.

Before any action was taken on GTEWC'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 OP 10 of D.90-06-025 (36 CPUC2d 464), 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,<sup>2</sup> (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. (54 CPUC2d at 333.)

Pursuant to D.94-04-085, GTEC and Pacific filed interconnection tariff proposals applicable to all wireless carriers on August 18 and September 2, 1994, respectively. These proposed tariffs were protested by various parties, and GTEC and Pacific each filed a response to the protests on October 18, 1994. No further action has been taken on the wireless interconnection tariff proposals (or on GTEWC's original application) since the filing of these responses.

### Discussion

Just as in D.98-05-011, D.98-08-022, and D.98-08-023, it is clear that events within the telecommunications industry have overtaken GTEWC's RTU interconnection tariff proposal of July 7, 1992. The most important of

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<sup>2</sup> D.94-04-085 did not require LECs other than Pacific and GTEC to file interconnection tariffs in the OANAD docket because "our intention is that the smaller LECs should have the option of either filing their own tariff proposals or concurring in Pacific's or GTEC's proposal." (54 CPUC2d at 336, n. 11.) Accordingly, OP 5 of D.94-04-085 provided that within 20 days after the filing of the new tariff proposals in the OANAD docket, "each LEC other than Pacific and GTEC may file an advice letter with CACD stating whether such LEC wishes to adopt the proposal of either Pacific or GTEC as its own." (*Id.* at 335.)

those events is, of course, the passage of TA 96, which President Clinton signed into law on February 8, 1996.<sup>3</sup> As GTEWC states in its August 24 motion to withdraw:

"[TA 96] rendered RTU tariffs unnecessary because RTUs now have the opportunity under the Act to negotiate (and, if necessary, arbitrate) interconnection [] agreements. 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 negotiation of new agreements. In either case, the terms and conditions set forth in the [RTU interconnection] tariff are no longer necessary."

We agree. GTEWC's 1992 RTU interconnection tariff proposal is clearly moot, so the application containing it should be dismissed.

#### **Findings of Fact**

1. GTEWC filed the instant application on July 7, 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 interconnection tariff proposals in the OANAD docket. In D.94-04-085, other LECs such as GTEWC were given the option of either concurring in Pacific's or GTEC's tariff, or filing their own.

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<sup>3</sup> 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. Pursuant to D.94-04-085, GTEC and Pacific filed their proposals for wireless interconnection tariffs on August 18 and September 2, 1994, respectively.

4. Pacific and GTEC responded to the protests to their respective wireless interconnection tariff proposals 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 direct embedded cost 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 made moot by the filing of wireless interconnection tariff proposals in the OANAD docket on August 18 and September 2, 1994.

2. The wireless interconnection tariffs filed in the OANAD docket 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 GTEWC's July 7, 1992 RTU tariff filing is now moot, this docket should be closed.

**O R D E R**

**IT IS ORDERED that:**

1. Application 92-07-008 is dismissed.
2. This proceeding is closed.

This order is effective today.

Dated October 8, 1998, at Laguna Hills, California.

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