

Decision 99-02-017 February 4, 1999

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Electric Lightwave, Inc. (U-5377-C)
for arbitration pursuant to Section 252(B) of the
Telecommunications Act of 1996 to establish an
interconnection agreement with GTE California
Incorporated.

Application 98-10-018
(Filed October 7, 1998)

ORDER OF DISMISSAL

On October 7, 1998, Electric Lightwave, Inc. (ELI) filed this application (denominated a petition pursuant to federal law) for arbitration of an interconnection agreement with GTE California Incorporated (GTEC) pursuant to § 252 of the Telecommunications Act of 1996. An initial arbitration meeting was conducted by telephone conference call on November 4, 1998. Dates were set for the filing of testimony and the presentations of witnesses at an arbitration hearing. These dates were modified at the parties' requests. No other person or entity requested making an appearance in this matter.

On December 29, 1998, ELI filed a motion requesting an order dismissing without prejudice its petition for arbitration and affirming certain parameters regarding a subsequent pursuit of an interconnection agreement with GTEC for service within California.

Specifically, ELI requests that this Commission's dismissal order provide the following:

- a. ELI's petition in this proceeding is dismissed without prejudice to ELI's right to commence new interconnection negotiations and without prejudice to ELI's right to request any necessary arbitrations of its interconnection agreement.

- b. GTEC may not assert before this Commission, the Federal Communications Commission, or any other administrative agency or in any court, any claim that ELI is not entitled to arbitration of its subsequent interconnection requirements.
- c. ELI and GTEC have agreed to permit the commencement of negotiations for interconnection between ELI and GTEC in California, pursuant to Sections 251-252 of the Telecommunications Act of 1996, upon letter request from ELI.
- d. ELI and GTEC have further agreed to commence the relevant statutory timelines for negotiation, mediation, and arbitration of ELI's interconnection requirements pursuant to Sections 251-252 of the Telecommunications Act of 1996, as of the date of such letter request from ELI to GTEC.

ELI represents that GTEC does not oppose the motion to dismiss.

The requirements governing the circumstances under which negotiation, mediation and arbitration of interconnection agreements pursuant to the Telecommunications Act of 1996 can be undertaken are set forth in that law. The rules which this Commission has adopted (Resolution ALJ-174 and its predecessors) were developed to be strictly compliant with the requirements of the Telecommunications Act of 1996.

However, the request which ELI makes (and to which GTEC does not object) is seemingly in full accord with the concept of a dismissal without prejudice. ELI seeks to be able to commence new negotiations, have the full array of resolution procedures available, and proceed on the same schedule as if the prior negotiations and this arbitration had not been undertaken. That seems reasonable, is not objected to by the only other party that has an interest in this matter, and does not appear to be inconsistent with either the language or intent of the Telecommunications Act of 1996. Therefore, ELI's motion should be granted.

Although the initial arbitration petition was contested, this disposition is not and this order grants the relief requested. Accordingly, pursuant to Public Utilities Code § 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

Findings of Fact

1. The matter was filed on October 7, 1998, pursuant to Section 252 of the Telecommunications Act of 1996.
2. ELI and GTEC are the only parties to this proceeding.
3. GTEC does not object to ELI's motion.
4. The relief being granted by this order is the relief requested and is uncontested.

Conclusions of Law

1. The requirements governing the circumstances under which negotiation, mediation and arbitration of interconnection agreements pursuant to the Telecommunications Act of 1996 can be undertaken are set forth in that law.
2. The rules which this Commission has adopted (Resolution ALJ-174 and its predecessors) were developed to be strictly compliant with the requirements of the Telecommunications Act of 1996.
3. ELI's request appears to be in full accord with the concept of a dismissal without prejudice and does not appear to be inconsistent with either the language or intent of the Telecommunications Act of 1996.
4. Pursuant to Public Utilities Code § 311(g)(2), the otherwise applicable 30-day period for public review and comment should be waived.

O R D E R

IT IS ORDERED that:

1. The December 29, 1998 motion of Electric Lightwave, Inc., to dismiss its application for arbitration of an interconnection agreement with GTE California Incorporated, is granted.
2. This proceedings is dismissed without prejudice, in keeping with the discussion contained in the body of this order.
3. Application 98-10-018 is closed.

This order is effective today.

Dated February 4, 1999, at San Francisco, California.

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