

Decision 99-05-035 May 13, 1999

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

Application of GTE Card Services Incorporated (U-5494-C) to Expand Its Certificate of Public Convenience and Necessity to Include Provisions of Facilities-Based Local Exchange Service Within the State of California.

Application 96-12-047  
(Filed December 23, 1996)

**ORDER MODIFYING DECISION 97-11-028**

**Summary**

This order grants, with limitation, GTE Communications Corporation's (Petitioner)<sup>1</sup> request that the Commission modify Decision (D.) 97-11-028 to authorize Petitioner to provide interLATA and intraLATA telecommunications services (Interexchange Services) as a facilities-based carrier throughout California.<sup>2</sup> Petitioner is not authorized to construct intraLATA transmission and end-office switching facilities in GTE California Incorporated's (GTEC) franchise territory without further Commission approval.

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<sup>1</sup> On October 31, 1997, Petitioner formally notified the Commission that it had changed its name from GTE Card Services Incorporated.

<sup>2</sup> "LATA" is an acronym for Local Access and Transport Area. With divestiture of the American Telephone and Telegraph Company in 1984, the territorial United States was divided into 163 geographic units or LATAs, which in turn were divided among the 22 Bell operating companies created in the divestiture. Telephone calls between LATAs are called interLATA calls. Telephone calls within a LATA are called local exchange calls or intraLATA toll calls (when a toll is assessed).

## **Background**

By prior decisions, this Commission has authorized Petitioner to provide Interexchange Services throughout California on a resale basis (D.95-08-028), to provide local exchange services as a competitive local exchange carrier (CLC services) in the service territories of Pacific Bell (Pacific) and GTEC on a resale basis (D.96-02-072), to provide CLC services in Pacific's service territories as a facilities-based carrier (D.97-11-028), and to provide CLC services in the service territories of Roseville Telephone Company and Citizens Telephone Company as a facilities-based carrier (D.98-01-055). In D.97-11-028, we declined to authorize Petitioner to provide CLC services in GTEC's service territories as a facilities-based carrier, noting that concerns raised in Application (A.) 96-03-007 about Southwestern Bell Communications Services' (SBCS)<sup>3</sup> facilities-based local exchange entry into Pacific's territory might equally apply to Petitioner's facilities-based local exchange entry into GTEC's territory. Accordingly, the Commission remanded A.96-12-047 to the assigned Administrative Law Judge (ALJ) in order to receive comments on the effects that Petitioner's facilities-based local exchange entry into GTEC's territory would have on GTEC. In D.98-02-028, we granted Petitioner's motion to withdraw its request for facilities-based local exchange entry into GTEC's territory, and closed this proceeding.

On March 16, 1998, Petitioner asked the Commission to modify D.97-11-028 to authorize it to provide Interexchange Services as a facilities-based carrier throughout California. Petitioner noted that in D.97-11-028 and

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<sup>3</sup> By amendment, SBCS, a wholly owned subsidiary of SBC Communications, Inc., substituted itself as the applicant in A.96-03-007, subject to the same commitments and obligations made by and placed upon the original applicant, Pacific Bell Communications.

D.98-01-055, the Commission has already reviewed and approved its showing of managerial, financial and other qualifications to provide facilities-based CLC Services. Moreover, the decisions included an environmental assessment of Petitioner's local exchange facilities. Those assessments, which resulted in the issuance of Mitigated Negative Declarations, would cover the facilities Petitioner proposes to use to provide facilities-based Interexchange Services. Petitioner asserted that no further environmental assessment would be required to grant this modification.

On April 15 and April 27, 1998, reiterating earlier potential anticompetitive concerns, the California Cable Television Association (CCTA) and the Office of Ratepayer Advocates (ORA), respectively, objected to the granting of expanded authority to the extent that it would allow Petitioner to operate in GTEC's territory on a facilities-based basis. On April 28 and May 14, 1998, Petitioner replied to CCTA's and ORA's objections and proposed a limitation to clarify the nature of the facilities-based service that it intends to provide.<sup>4</sup> ORA suggested, on May 21, 1998, that Petitioner make its proposed limitation consistent with the facilities-based authority limitation contained in the proposed decision and alternate order issued in A.96-03-007.<sup>5</sup> On June 2, 1998, CCTA stated that it would withdraw its objection to Petitioner's request should the Commission adopt the facilities-based authority limitation suggested by ORA.

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<sup>4</sup> Petitioner reiterated that while it had no immediate intention of renewing its withdrawn request to enter GTEC's territory on a facilities-based basis, it wished to reserve for the future the issues involved.

<sup>5</sup> The revised alternate order, which retained the facilities-based authority limitation, was issued as D.99-02-013 on February 4, 1999.

## **Discussion**

Petitioner specifically declared that for telecommunications services originating from customers located within the geographic areas where GTEC is the incumbent local exchange carrier, it will limit facilities to the construction of tandem switches and other network elements that will permit it to offer common features for both intraLATA and interLATA long distance telecommunication services. Petitioner further stated that it would not construct intraLATA transmission or end-office switching facilities in such geographic areas. Reply To Office of Ratepayer Advocates' Response To The Petition Of GTE Communications Corporation To Modify Decision No. 97-11-028 at pp. 1-2.

However, we concur with ORA that the wording of the limitation imposed on Petitioner should be slightly modified. Thus, we shall proscribe Petitioner's construction of intraLATA transmission and end-office switching facilities within the geographic areas where GTEC is an incumbent local exchange carrier without further Commission approval. By so doing, the restriction we place on Petitioner is consistent with the limitation that the Commission placed on the similarly situated SBCS in D.99-02-003. D.97-11-028 is modified as set forth below.

## **Comments on Draft Decision**

The draft decision of the ALJ in this matter was mailed to the parties in accordance with Pub. Util. § 311(g) and Rule 77.1 of the Rules of Practice and Procedure. Comments were filed on May 3, 1999. No reply comments were filed. We have reviewed the parties' filed comments and taken them into account, as appropriate in finalizing the decision.

## **Findings of Fact**

1. Petitioner requests the Commission modify D.97-11-028 to authorize it to provide Interexchange Services as a facilities-based carrier throughout California.

2. In D.98-02-028, the Commission granted Petitioner's motion to withdraw its request for a certificate of public convenience and necessity to provide facilities-based local exchange service in the service areas of GTEC.

3. In previous decisions, the Commission has already reviewed and approved Petitioner's showing of managerial, financial and other qualifications to provide facilities-based CLC Services.

4. Petitioner declared that for telecommunications services originating from customers located within the geographic areas where GTEC is the incumbent local exchange carrier, it will limit facilities to the construction of tandem switches and other network elements that will permit it to offer common features for both intraLATA and interLATA long distance telecommunication services.

5. Petitioner also stated that it will not construct intraLATA transmission or end-office switching facilities within the geographic areas where GTEC is the incumbent local exchange carrier.

6. In D.99-02-013, the Commission proscribed SBCS's construction of intraLATA transmission and end-office switching facilities in Pacific's territory without further approval.

### **Conclusions of Law**

1. This petition to modify D.97-11-028 should be granted with certain restrictions consistent with that applied to the incumbent local exchange carrier affiliate in D.99-02-013.

2. Petitioner's showing of managerial, financial and other qualifications to provide facilities-based CLC Services, including the environmental assessment of its facilities, was reviewed and approved by the Commission; therefore, it is unnecessary to analyze anew Petitioner's qualifications to provide facilities-based Interexchange Services.

3. Because the modification involves the limited expansion of previously approved service, this decision should be effective today.

**O R D E R**

**IT IS ORDERED** that Decision (D.) 97-11-028 is modified as follows:

1. GTE Communications Corporation's authority to provide facilities-based telecommunications services throughout California is limited in GTE California Incorporated (GTEC) franchise territory to construction of tandem switches and other network elements that will permit GTE Communications Corporation to offer common features for both intraLATA (Local Access and Transport Area) and interLATA long distance services pursuant to the terms and conditions outlined in D.97-11-028.

2. GTE Communications Corporation is not authorized to construct intraLATA transmission and end-office-switching facilities in GTEC's franchise territory without further approval of the Commission.

3. Application 96-12-047 is closed.

This order is effective today.

Dated May 13, 1999, at San Francisco, California.

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