

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA  
COMMISSION ADVISORY AND COMPLIANCE DIVISION RESOLUTION T-15808  
Telecommunications Branch April 10, 1996

R E S O L U T I O N

RESOLUTION T-15808. GTEC CALIFORNIA, INC. (U-1002-C).  
REQUEST TO ESTABLISH A SCHEDULE CAL. P.U.C. NO. K-1,  
COMPETITIVE SERVICES; TO MOVE THE EXISTING SCHEDULE CAL.  
P.U.C. E-3, ENHANCED SERVICES, TO THE NEW TARIFF  
SCHEDULE K-1; AND TO WAIVE PROVISIONS OF G.O. 96-A WITH  
RESPECT TO SCHEDULE CAL. P.U.C. NO. K-1.

BY ADVICE LETTER NO. 7710, FILED ON JUNE 16, 1995.

SUMMARY

This Resolution approves GTE California, Inc.'s (GTEC) request in Advice Letter (AL) No. 7710 to establish a Schedule Cal. P.U.C. No. K-1, for the provision of "Competitive Services" and to move existing "Enhanced Services", Schedule Cal. P.U.C. No. E-3, to the new Tariff Schedule No. K-1. This Resolution also grants waivers of General Order (G.O.) 96-A requested in AL No. 7710.

BACKGROUND

GTEC filed AL No. 7710 on June 16, 1995, requesting authority to establish a "Competitive Services" tariff for the provision of Category III services as defined in Commission Decision (D.) 89-10-031 and D. 94-09-065. Category III services are fully competitive telecommunications services afforded maximum pricing flexibility allowed by law. GTEC proposes to move its existing "Enhanced Services", Schedule Cal. P.U.C. No. E-3, to the new Tariff Schedule No. K-1. GTEC also requests the Commission waive the following provisions of G.O. 96-A with respect to the proposed Schedule Cal. No. K-1:

1. Provision of service area maps (II.A.(4)) is unnecessary since competitive services do not have a franchise territory like public utility services. GTEC proposes to maintain a tariff list of exchanges where Category III services are offered.
2. Provisions regarding contracts (II.A(6), II.C(3), IX and X) are unnecessary because consumers may obtain Competitive Services from numerous other parties. GTEC requests authority to file Category III service contracts no less than one day prior to offering the service.

3. Provision of sample forms (II.A.(8) and II.C.(5)) is unnecessary because if consumers take issue with a form, they can obtain the Competitive Services from numerous other parties.
4. Estimate of annual revenue is unnecessary because the Competitive Services in the proposed tariff schedule are excluded from the Alternative Regulatory Framework sharing mechanism, and therefore, revenues from such services do not impact other services offered by the company.
5. Commission authority to withdraw Competitive Services (XIV) is unnecessary since consumers can obtain competitive services from other parties.

GTEC states that the requested waivers are consistent with those the Commission granted Pacific Bell (Pacific) in Resolution T-15139.

GTEC also proposes that the Competitive Services listed in the K-1 tariff have a maximum rate and a current rate, allowing GTEC pricing flexibility in setting current rates providing it does not exceed the maximum rate. Further GTEC asserts G.O. 96-A does not preclude such flexibility.

GTEC seeks permission to change the notice period for changing the maximum rate. Section III.F of G.O.96-A allows utilities to obtain short notice by so requesting by advice letter. GTEC makes such a request for the newly proposed Schedule Cal. P.U.C. K-1, "Competitive Services".

#### PROTESTS

Notice of this Advice Letter was published in the Commission's Daily Calendar of June 30, 1995. The Commission Advisory and Compliance Division (CACD) has received no protest to AL No. 7710.

#### DISCUSSION

CACD has reviewed GTEC's AL No. 7710. GTEC's request parallels the authority granted to Pacific in Commission Resolution T-15139. CACD therefore finds it consistent to grant GTEC the same authority. However, GTEC is hereby put on notice that it must abide by the safeguards under which Pacific's Category III Service authority was granted.

Specifically, compliance with the New Regulatory Framework (NRF) policy competitive safeguards of imputation, non-discriminatory access and network unbundling are reaffirmed for GTEC's Category III Services.

In addition to the tariff revisions proposed by AL No. 7710, GTEC's AL requires deviations in the filing and procedural administration of its new tariff schedule K-1, Competitive Services. G.O. 96-A sets forth the Commission's rules governing the filing and posting of schedules of rates and rules relating to the provision of utility services.

GTEC's reason for requesting the deviations is rooted in the NRF Phase II decision where GTEC is given "maximum pricing flexibility allowed by law" for its Competitive services. This pricing flexibility would obviously be seriously restricted if the company were obligated to comply with all the rules of G.O. 96-A, which are designed expressly to limit a utility's pricing flexibility to a strict set of timing and noticing parameters.

Section II of G.O. 96-A deals with the form and construction of tariff schedules and requires, among other things, the filing of service area maps and sample forms used by the utility in the conduct of its business.

Section III prescribes the rules for submission of tariff sheets. Subsection C provides that, where proposed tariffs result in changes in rates, utilities are required to submit estimates of the annual revenue effect of such changes. Subsection F requires specific Commission authorization for tariff sheets that reduce rates to be made effective on less than regular (40-day) notice. Subsection H provides that protests to submitted tariff sheets must be made within 20 days after the filing date and replies to protests must be made within five business days after the receipt of the protest.

Section IV sets forth the regular, 40-day period tariff revisions must be on file with the Commission before they become effective.

Section V governs the procedures for filing tariffs that do not increase rates. Whereas regular notice is 40 days, the utility may, for good cause shown and with specific Commission authorization, lower rates on less than regular notice.

Section VI provides that for other than "minor" increases, rates increases may not be made without a formal application from the utility in any event, a showing by the utility, and a finding by the Commission that such increases are justified.

Section IX directs requirements for contracts that are a tariffed prerequisite to the provision of service and requires contracts to contain language subjecting the contract to Commission approval.

Section X sets forth requirements for contracting for services at other than filed tariff rates and requires that such contracts must be filed with the Commission and that, except for contracts with governmental agencies from certain classes of utilities, contracts must have prior approval of the Commission.

Finally, Section XIV precludes a utility from withdrawing its service from the public or from withdrawing service from any portion of its service territory.

In the provision of its Competitive services, and in order to exercise its "maximum flexibility allowed by law," GTEC seeks authorization to deviate from these sections of the general order as necessary to implement the following:

- a. For Competitive services, GTEC requests permanent waiver of the requirements that maps of the service areas and sample forms be on file with the Commission.
- b. GTEC requests exemption from the general order requirement that an estimate of the annual revenue effect be provided with filings changing the rates.
- c. In the new Competitive schedule, GTEC proposes a two-tier price for each service, a "current rate" and a "maximum level." Each of these prices would be subject to imputation principles, that is, they could not fall below the sum of the costs of the service including the tariff rate for any monopoly building blocks employed. Within that imputation limitation, however, GTEC proposes latitude from the general order requirements for changes to rates, as follows:
  1. Authority to modify (i.e., increase or decrease) the current rates, provided that these new rates are below the approved maximum level, effective on one-day notice. Changes of the current rates would not be subject to protest.
  2. Decreases in the maximum levels would become temporarily effective on one-day notice and permanent on the twentieth day after filing, if not protested.
  3. Increases in the maximum levels of less than 5% would become temporarily effective on five-day notice and permanent on the twentieth day after filing, if not protested.
  4. Increases in maximum levels of 5% or greater would become effective on 30-day notice, permanently if no protest were entered, temporarily if a timely protest were filed.
  5. Changes in the maximum levels that are protested would result in temporary tariffs until the protest was either withdrawn or resolved. If the protest was not withdrawn or resolved, the rate would revert to its previous level.
- d. The terms and conditions under which Competitive services are offered are filed by reference to the

corresponding item in the company's monopoly services schedules, where those terms and conditions are identical to those proposed for Competitive services. Where the new tariff terms and conditions differ from those applicable to monopoly services, those terms and conditions are presented in the new schedule. Changes to any of the terms and conditions applicable to Competitive services would be temporarily effective on one-day notice and permanent on the twentieth day after filing, if not protested. Changes to the terms and conditions that are protested would result in temporary tariffs until the protest was either withdrawn or resolved. If the protest were not withdrawn or resolved, the terms and/or conditions would revert to the previous term or condition.

- e. GTEC is seeking authority for approval by the Commission of Competitive Services contracts on one-day's notice's.
- f. Finally, GTEC seeks authority to withdraw Competitive services either entirely or from any portion of its service territory, without obtaining prior approval of the Commission.

Section XV of G.O. 96-A allows the Commission to make exceptions to G.O. 96-A upon a showing by an interested party. We have reviewed AL No. 7710 and believe that GTEC has made the proper showing to grant Competitive Services specific waivers from G.O. 96-A. These waivers are based on the maximum pricing flexibility allowed by law the Competitive Services were granted in the NRF Phase II Decision (D.89-10-031, page 2)

GTEC's request to waive the requirement of service maps is justified. Service maps are an administrative burden to keep and maintain for both GTEC and the Commission. However, in keeping with the non-discriminatory access principle of the NRF Phase II Decision and to ease consumer inquiry and complaints regarding Competitive Service, it is important to tariff a list of exchanges where each service is offered. A list of exchanges where each Competitive Service is offered should be filed with the Commission. Subsequent revisions to these lists of exchanges should be filed and made effective on one-day notice with the Commission.

Sample forms are written communication between GTEC and its customers. They include sample contracts, bill inserts, and company notices. As with exchange maps, sample forms are an administrative burden to both GTEC and the Commission to keep and maintain. However, sample forms are a convenient method for disseminating tariff information to GTEC's customers. Generally, this Commission reviews and approves sample forms regarding GTEC's tariff services. This review ensures that sample forms contain information consistent with the rates, terms, and conditions in GTEC's tariff. We find it unnecessary to review GTEC's sample forms regarding Competitive Services. However, these forms may not modify or amend any rate, term, or

condition of the Competitive Services tariff. Our waiver of this G.O. 96-A requirement is based upon GTEC's compliance with this provision of today's Resolution.

GTEC's request to waive the requirement for an estimate of the annual revenue effects of Competitive Services is also justified. Competitive Services are deemed below-the-line services in the NRF Decision. Revenue and expenses from below-the-line services should accrue only to the shareholders. Therefore, we will waive the requirement for an estimate of the annual revenue effects of Competitive Services.

This Commission approves tariffed rates for regulated services to provide ratepayers in California a level of consumer protection. One aspect of consumer protection is an assurance that utility rates will not change dramatically in a short period of time. Also, if rates do change, it is assured that these changes are just and reasonable.

When we granted Competitive Services the maximum pricing flexibility allowed by law, we did not intend to ignore compliance with P.U. Code §489(a). GTEC's proposal of current rates and maximum level for a Competitive Service is a proper response. This structure strikes an appropriate balance between granting the "maximum pricing flexibility allowed by law" and providing a suitable notice of rate changes. It allows pricing flexibility through a one-day notice period and no protest period for current rate changes. However, it also maintains compliance with §489(a). Changes in maximum level will still be subject to protest and should receive a review consistent with the change to the maximum level being requested.

We believe that GTEC's proposal to change current rates for Competitive Services is reasonable. Under GTEC's proposal current rates can change on short notice without a protest period; however, they may only change up to a pre-specified maximum level. Changes in the maximum level require a longer notice period as described above and are subject to protest. Changes to current rates on one-day notice and without a protest period requires waivers from appropriate sections of G.O. 96-A. Having found this aspect of GTEC's proposal reasonable, we will waive Sections III.F, III.H, IV., V. and VI. of G.O. 96-A for changing of current rates for Competitive Services.

GTEC has filed price floors associated with its Competitive Service in Advice Letter No. 7709. These price floors were reviewed and approved by CACD as meeting the Commission imputation safeguards. They serve as price floor for both the price flexibility for current rates discussed about as well as contracting authority addressed below.

As with changes to the current rates, changes to the maximum level must balance pricing flexibility and compliance with P.U. Code §489(a). The ability to protest any change to the maximum level is adequate for Competitive services. It allows

interested parties to state why they believe the maximum level, which limits the current rate, should not be changed.

The issue that remains then is whether or not the pricing flexibility requested through the shortened notice periods is reasonable. Usually, the reasonableness of decreasing rates is not an issue. Lower rates would normally be thought of as a benefit to consumers, not something from which they need protection.

The notice of increasing rates has slightly different impacts on consumers. GTEC recognized this when it proposed a five-day notice period for increases of less than five percent and a thirty-day notice period for increases of five percent or greater. These notice periods, together with the twenty-day protest period are adequate for increases in the maximum level for Competitive Services.

We would also like to restate clearly our policy on refunds to customers in the event that temporary tariffs are protested, and the protest is upheld. It is possible, under our rules, that GTEC could seek an increase in the maximum rate level, and charge a rate higher than the former maximum level under a temporary tariff. If that higher rate is subsequently protested, and the Commission determines that the maximum rate should not be increased, then GTEC will be expected to refund to customers the amount charged above the Commission allowed maximum rate.

We note that it is within GTEC's latitude to avoid this situation by refraining from charging the higher rate until all protests are resolved. Therefore if GTEC chooses to enact the new rate when protests may still be outstanding, GTEC should also be required to refund the differences if any protests are upheld ultimately by the Commission.

We find that GTEC's proposal for changing the maximum levels is reasonable for Competitive Services. Therefore, we waive Section III.F, IV., V., and VI. of G.O. 96-A for changing the maximum levels of Competitive Services.

Consistent with the contracting flexibility we granted Pacific in Resolution T-15139, GTEC will be allowed to file contracts on one-day notice for contracts which contain tariff rates.

For contracts that GTEC desire to exercise pricing flexibility, such contracts will become temporarily effective on five-day notice and permanent on the twenty-first day after filing, if not protested. This structure will provide Commission staff adequate time to review such filing and allow potential protestants time to be heard. Therefore, we will waive Sections IX. and X. of G.O. 96-A for filing contracts for Competitive Services.

GTEC proposes to make changes to Competitive Services' terms and conditions effective as temporary tariffs on one day's notice,

and to make them permanent on the twenty-first day absent any protests. Changes to the terms and conditions that are protested would result in temporary tariffs until the protest was either withdrawn or resolved. Consistent with granting GTEC maximum flexibility, we find this proposal reasonable for Competitive services, so long as any changes in the terms and conditions are in compliance with all other provisions of this Resolution.

GTEC also requests authority to withdraw Competitive services, either entirely or from any portion of its service territory, through advice letter filings effective in one-day notice without prior Commission approval. We are concerned that customers be aware of GTEC-initiated changes that affect them in time to make informed decisions. GTEC's proposal would not accomplish that. However, we agree that GTEC should be allowed to cease offering them without our prior approval.

Consistent with the policy adopted in Resolution T-15139, we believe that that the interests of both GTEC and its customers would be well served by allowing GTEC to file advice letters which freeze Competitive Services offerings on one day's notice, and withdraw them from current customers on 40 days' notice. GTEC would achieve the Category III flexibility it seeks, prospective customers who had not yet signed up would look elsewhere when an offering is frozen, and current customers would have ample time to express their dissatisfaction and/or make other service arrangements. This is a reasonable way of handling Competitive Services withdrawals, and we will adopt it.

#### FINDINGS

1. One June 16, 1995, GTEC filed AL No. 7710 requesting authority to establish Tariff Schedule Cal. P.U.C. No. K-1, for the provision of "Competitive Services" and to move existing "Enhanced Services", Schedule Cal. P.U.C. No. E-3, to the new Tariff Schedule K-1.
2. GTEC also requests certain provisions of G.O. 96-A to be waived for the proposed Schedule Cal. K-1.
3. GTEC's request is consistent with the Category III service authority granted Pacific Bell in Commission Resolution T-15139.
4. Approval of Advice Letter 7710 would authorize deviations from G.O. 96-A.
5. We have a legal authority to authorize deviations from G.O. 96-A by way of a Commission resolution.
6. Deviations from G.O. 96-A are reasonable in providing Competitive services because some of the deviations requested comport with the spirit of the Commission's New Regulatory Framework for local exchange carriers established in Decision 89-10-031.



7. GTEC's Advice Letter No. 7709 will serve price floor for both the price flexibility for current rates and contracts.
8. Competitive services of public utilities must comply with the requirements for tariffing set forth in P.U. Code §489.
9. The maximum rates proposed by GTEC are just and reasonable. Increases in the current rates up to the maximum rates approved by this resolution are just and reasonable. Increases to the maximum rates that are not protested will be just and reasonable.
10. GTEC has shown good cause for allowing tariff changes on less than 30 days' notice.

**THEREFORE, IT IS ORDERED that:**

1. GTE California, Inc. (GTEC) is granted authority to establish Tariff Schedule Cal. P.U.C. No. K-1, Category III Services, and to move existing "Enhanced Services", Schedule Cal. P.U.C. No. E-3, to the new Tariff Schedule K-1.

2. GTEC is granted authority for the following deviations from General Order 96-A:

- The requirement for an estimate of the service annual revenue is waived for Competitive Services.
- The requirement that sample forms for Competitive Services be on file with this Commission is waived. These forms may not modify or amend the rates, terms or conditions of the Competitive Service tariff.
- Sections III.F, III.H, IV., V., and VI. are waived for changing current rates for Competitive Services, to the extent necessary to allow GTEC to implement its proposal as described in paragraph c. in the discussion section of this Resolution.
- Sections III.F, IV., V., and VI. are waived for changing maximum levels for Competitive Services, to the extent necessary to allow GTEC to implement its proposal as described in paragraph c. in the discussion section of this Resolution.
- Sections IV. and V. are waived for changing terms and conditions for Competitive Services, and for freezing and withdrawing Competitive Services. Any changes in terms and conditions must be consistent with all other requirements of this Resolution.
- The requirement for prior Commission approval of contracts offering Competitive Services is waived. However, GTEC must submit to CACD advice letters for Competitive Service contracts at tariff rates at least

one day before offering service. Sections IX. and X. of G.O. are waived to the extent authorized by the two immediately preceding sentences.

- If GTEC files contracts below tariff rates, such contracts will become temporarily effective on five-day notice and permanent on the twenty-first day after filing, if not protested.
- The requirement that service area maps for Competitive Services be on file is waived, but GTEC shall tariff a list of the exchanges where each service is offered.

3. GTEC is required to refund the difference between the current rate under a temporary tariff and the Commission-allowed maximum level should a protest of the temporary tariff result in non-approval of the new proposed maximum level.

4. GTEC's request to be exempt from filing contracts for Competitive Services with the Commission is denied.

5. GTEC is authorized to file and make effective on one day's notice advice letters revising Competitive Service terms and conditions. Tariffs revising Competitive Service terms and conditions shall be considered temporary when filed and will become permanent on the twenty-first day after filing absent protests. If an advice letter is protested, its tariffs shall remain temporary until the protest is withdrawn or the matter otherwise resolved.

6. GTEC is authorized to file and make effective on one day's notice advice letters freezing and withdrawing Competitive Service offerings. Tariff provisions freezing Competitive Service offerings may take effect no sooner than the effective date of the advice letter. Tariff provisions withdrawing Competitive Service offerings from current customers may take effect no sooner than the fortieth day after the advice letter is filed.

7. In its provision of Competitive Services, GTEC shall continue to adhere to the principles of unbundling, imputation, and non-discriminatory access, the three competitive safeguards established in D.89-10-031.

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8. GTEC shall within 30 days of the effective date of this Resolution file a supplement to advice letter 7710 reflecting the additional tariff changes required by this Resolution. The supplemental advice letter shall be effective five days after filing.

The effective date of this resolution is today.

I hereby certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting on April 10, 1996. The following Commissioners approved it:

*Wesley Franklin*

WESLEY M. FRANKLIN  
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