

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA
COMMISSION ADVISORY AND COMPLIANCE DIVISION RESOLUTION T-15937
Date July 17, 1996

R E S O L U T I O N

RESOLUTION T-15937. REQUEST OF GTE CARD SERVICES INC. (U-5494-C) TO DO BUSINESS AS GTE LONG DISTANCE AND TO IMPLEMENT LONG DISTANCE MESSAGE TELECOMMUNICATIONS SERVICES, OPERATOR ASSISTANCE AND 800/888 SERVICE.

BY ADVICE LETTER NO. 2, FILED FEBRUARY 26, 1996 AND
ADVICE LETTER NO. 2 SUPPLEMENT A, FILED MARCH 26, 1996.

SUMMARY

This resolution approves the request of GTE Card Services (GTECS) to expand its non-dominant interexchange carrier (NDIEC) service to include long distance message telecommunications services (message toll service), operator assistance, and 800/888 service (800 service). The approval does not include GTECS' prepaid calling card service due to restrictions imposed on GTECS by Ordering Paragraph 17 (O.P.17) of D.95-08-028.

ADVICE LETTER

GTECS filed Advice Letter No. 2 on February 26, 1996 requesting to do business under an assumed name and expand its NDIEC service. GTECS plans to do business as GTE Long Distance and expand from prepaid calling card service into message toll service, operator assistance and 800 service.

GTECS' Advice Letter No. 2, as filed, did not comply with many of the requirements given in General Order No. 96-A (G.O. 96-A). GTECS filed Advice Letter No. 2-A on March 26, 1996 to bring the tariff filed in Advice Letter No. 2 into compliance with G.O. 96-A. No additional request is contained in Advice Letter No. 2-A. Advice Letter No. 2-A and Advice Letter No. 2 are essentially the same request.

BACKGROUND

In addition to GTECS Advice Letter Nos. 2 and 2-A, this Commission has before it an open proceeding dealing with intralATA presubscription, GTE California's Advice letter No. 8114 (a request to provide intralATA equal access), and two petitions to modify D.95-08-028. A prehearing conference (PHC) for matters related to intralATA presubscription in I.87-11-033 was held on June 12, 1996. Administrative Law Judge Glen Walker

July 17, 1996

raised the issue of Advice Letter No. 2 at the PHC. Although there are protests against GTECS' Advice Letter No. 2 which address issues that are being considered in I.87-11-033, no party suggests that the advice letter be consolidated into that formal proceeding.

PROTESTS

Protests to GTECS' Advice Letter No. 2 were filed by AT&T Communications, Inc. (AT&T-C) on March 20, MCI Telecommunications Corporation (MCI) on , and the Commission's Division of Ratepayer Advocates (hereafter collectively referred to as Protestants) on March 22. A supplemental protest was also filed by AT&T-C on April 19. All protests were filed timely.

Protestants do not believe that the Advice Letter process is the best forum to resolve the issues presented in GTECS' Advice Letter No. 2. GTECS did not originally serve copies of its advice letter to competing utilities and interested parties. Protestants saw a reference to the advice letter in the Commission's Daily Calendar and requested copies from GTECS. The copies were delivered to Protestants, but arrived too late for parties to protest within the 20-day protest period. CACD expanded the protest period to allow the Protestants and any other parties time to respond to GTECS' request. As a consequence, Protestants believe that GTECS has violated the service requirements in G.O. 96-A, Section III, Paragraph G which require advice letters to be served on competing utilities and interested parties.

Protestants also believe GTECS has failed to comply with restrictions imposed by the decision which granted GTECS authority to operate. Ordering Paragraph 17 of D.95-08-028 forbids GTECS from marketing its prepaid calling card service through its affiliate GTE California until several conditions have been met. Protestants believe GTECS has violated Ordering Paragraph 17 of D95-08-028 by developing marketing arrangements with GTE California which are suggested by the content of GTECS' Advice Letter No. 2.

According to Protestants, GTECS should not be allowed to compete in the interLATA market until GTE California has met its current obligations under Federal Law to provide dialing parity (otherwise known as intraLATA equal access or intraLATA presubscription). It is their contention that the Federal Communications Act of 1996 specifically requires all local exchange companies to implement dialing parity, and GTE California has not complied with this mandate.

Protestants believe GTECS' Advice Letter No. 2 is a deliberate attempt by GTE California to give the appearance of "end-to-end service" while interexchange carriers are prevented from giving a similar appearance of themselves by the fact that intraLATA equal access is not available in GTE California territory. They also believe that approval of GTECS' Advice Letter No. 2 would give GTE California an advantage over competitors in the long

distance market, until the presubscription issues in I.87-11-033 are resolved.

AT&T-C also filed a supplemental protest on April 19, 1996 to comment on new information provided in GTECS' response to protests. In its supplemental protest, AT&T-C drew attention to a signed joint marketing agreement between GTE California and GTECS that was acknowledged in GTECS' response to protests. According to AT&T-C, GTECS and GTE California would have a competitive advantage in the interLATA market over interexchange carriers trying to provide intraLATA service.

RESPONSE

Rather than file a separate response to each protest, GTECS filed its consolidated response on April 15, 1996. In general, GTECS submits that the protests are without merit and should be rejected.

GTECS states that Protestants have made serious mischaracterizations of the Telecommunications Act of 1996 (referred to as the Act). It is GTECS' contention that the requirements for Regional Bell Operating Companies (RBOCs) and the requirements for all other Local Exchange Companies (LECs) are very different. GTECS' interpretation of the Act holds that LECs are authorized to enter the interLATA toll market without any dialing parity (equal access) preconditions or marketing restrictions.

GTECS also contends that the competitive impact of granting the request contained in Advice Letter No. 2 is insignificant. GTECS believes that the Protestants represent the interests of very large and well established nationwide toll carriers. To the contrary, GTECS sees itself as an unestablished new entrant to the interLATA market which has a distinct disadvantage in competing with the larger carriers.

GTECS believes that the joint marketing restriction in Ordering Paragraph 17 of D.95-08-028 refers specifically to the joint marketing of prepaid calling cards, and in no way applies to other interLATA services that GTECS might offer. GTECS also argues that the joint marketing restriction was narrowly and specifically tied to the existence of the GTE Consent Decree, which has been superceded by the Act.

GTECS began working with CACD when the nonconformance problems with the requirements given in G.O. 96-A were first discovered, and sought to satisfy the protests by filing Advice Letter No. 2-A. GTECS believes its nonconformance with the requirements given in G.O. 96-A is a common error which it took steps to correct as soon as the problem became apparent.

GTE California (a local exchange carrier affiliated with GTECS) filed its own consolidated response to the protests against Advice Letter No. 2, and consulted with CACD staff about the

possibility of requesting intraLATA equal access by advice letter.

In an attempt to address the protests against GTECS' Advice Letter No. 2, GTE California filed Advice Letter 8114 on May 24, 1996 requesting intraLATA equal access. As proposed, presubscription would be accomplished in a rolled-out conversion of switching capabilities over a seven-month period. GTE California also requested compensation for the conversion. The GTE California Advice Letter No. 8114 is being handled as a separate issue before this Commission (Item C-1 on agenda 2950).

CONCURRENT FORMAL FILINGS

During the same period, AT&T-C, MCI, Sprint Communications Company L.P. (Sprint) and the California Association of Long Distance Companies (CALTEL) filed a joint petition in I.87-11-033 seeking an order requiring GTE California to immediately implement intraLATA equal access to competitors. The joint petition companies included GTECS' Advice Letter No. 2 in their filing as the basis for requesting immediate implementation of equal access.

On May 24, 1996, AT&T-C also filed a petition to modify D.95-08-028, the decision which granted GTECS authority to operate as a reseller of interLATA and intraLATA services. AT&T-C's petition is seeking to expand the scope of the joint marketing restriction specified in Ordering Paragraph 17 from prepaid calling cards to include all long distance services allowed under the interexchange carrier Certificate of Public Convenience and Necessity (CPC&N).

GTECS filed a response to AT&T-C's petition to modify D.95-08-028 and asked permission to use that opportunity for compliance with Ordering Paragraph 17. In its response, GTECS sought permission to file a marketing plan for review and seek relief from the joint marketing restriction specified in D.95-08-028. ALJ Richard Careaga issued a ruling stating that AT&T-C's petition to modify and GTECS' response represented two different kinds of modifications to the same decision. ALJ Careaga decided to treat both the original petition to modify and the response by GTECS as separate petitions. GTECS now has a deemed petition before this Commission requesting relief from the joint marketing restriction in D.95-08-028, and is ordered to file its proposed marketing plan by July 31, 1996.

DISCUSSION

CACD contacted GTECS when the nonconformance problems with the requirements given in G.O. 96-A were discovered. GTECS agreed to provide the corrections and omissions to its tariffs in supplemental Advice Letter No. 2-A. Copies of GTECS' Advice Letter No. 2-A were delivered to all competing carriers and interested parties. GTECS' Advice Letter No. 2-A is in compliance with G.O. 96-A.

July 17, 1996

Protestants believe that the Advice Letter process is not the appropriate forum for addressing GTECS' request, and are adamant about the Federal mandate requiring GTE California to provide intraLATA equal access. GTECS has its own interpretation of the language in the Act that differs sharply from that of the Protestants. I.87-11-033 is a more appropriate forum for discussing interpretation of the Act, but the issues under consideration in Advice Letter No. 2 and I.87-11-033 are separate matters. GTECS' request can be considered separately without precedent. Any order in this resolution will also be subject to the findings and determinations from disposition of presubscription issues in I.87-11-033.

The Protestants mistakenly believe that GTECS should seek relief from the joint marketing restriction in D.95-08-028 before expanding its service in the interLATA market.

Ordering Paragraph 17 states the following:

Applicant shall not, in the exercise of the authority granted hereby, market prepaid calling cards through GTEC California Incorporated (GTEC); provided, however, that should the consent decree in United States V. GTEC Corporation (D.C. Cir. 1984) 603 F. Supp. 730 be dissolved or modified as it relates to GTEC (As a GTEC Operating Company as defined therein) by the federal courts or the United States Department of Justice such that applicant would be permitted thereunder to market such cards through GTEC, applicant may petition the Commission for relief from this restriction and approval of its subsequent marketing plan. (O.P. 17, D.95-08-028, pages 9-10, emphasis supplied.)

We agree with GTECS in that the restriction imposed by Ordering Paragraph 17 above applied only to prepaid calling card service. The Commission's granting of CPC&N in the same decision did not exclude other services; nor did it require a petition to be filed by GTECS to seek approval for other long distance services. There are no conditions in D.95-08-028 that restrict GTECS ability to expand its intrastate interLATA services into message toll service, operator assistance, and 800 services. We'll approve GTECS' Advice Letter 2 and 2-A noting that the authority granted in this resolution does not apply to GTECS' prepaid calling card service as that service is subject to the restriction imposed by O.P. 17. GTECS may seek relief and approval of its marketing plan for prepaid calling card service through its petition filed to modify D.95-08-028.

1 Ordering Paragraph No. 1 of D.95-08-028 grants authority to GTECS "to operate as a reseller of the interLocal and Transport Area (LATA) and, to the extent authorized by Decision 94-09-065, intraLATA telecommunication services offered by communications common carriers in California."

The protestants' assertions, with the exception of their reference to prepaid calling services, are without merit with respect to GTECS Advice Letters 2 and 2-A. The Commission's granting of CPC&N to GTECS to operate interLATA and intraLATA services did not include conditions the protestants would like the Commission to impose on GTECS.

Allegations related to GTE California's obligation to provide equal access under Federal Law are concurrently being addressed in the presubscription proceeding, in a motion protestants filed in I.87-11-033 seeking an order requiring GTEC to implement equal access, and in GTEC's Advice Letter 8114, which the Commission is separately considering in another resolution today. Protestants are advised to continue to address their concerns related to GTEC's obligations in those proceedings. We will not consider them in this case.

We decline to withhold our approval of GTECS' long distance services other than its prepaid calling service due to AT&T's petition to modify D.95-08-028 which it filed to expand the scope of O.P. 17's restriction to include all interLATA services. This petition was filed by AT&T-C after it filed its protest against GTECS advice letters. We dismiss protestants' assertions regarding the applicability of O.P. 17 to GTECS' other long distance services without prejudice.

The request contained in Advice Letter No. 2 and the corrected request contained in Advice Letter No. 2-A are approved. The joint marketing restriction imposed on GTECS by D.95-08-028 with respect to GTECS' prepaid calling card services remains in effect and is unaffected by this Resolution.

FINDINGS

1. GTECS' Advice Letter No. 2 filed February 26, 1996 to expand its NDIEC service to include message toll service, operator assistance, and 800/888 service.
2. GTECS' Advice Letter No. 2-A filed March 26, 1996 corrected errors and omissions to the tariff filed in Advice Letter No. 2.
3. Protests against GTECS' Advice Letter No. 2 were filed by AT&T-C, MCI, and the Division of Ratepayer Advocates.
4. Protestants believe that GTECS did not comply with the requirements in G.O. 96-A to provide copies of advice letters to competing utilities and interested parties. Protestants do not want GTECS to enter the interLATA market until interexchange carriers are allowed equal access in the intraLATA market. Protestants want GTECS to request relief from the marketing restrictions in D.95-08-028 before it is allowed to expand service in the interLATA market.
5. GTECS believes its nonconformance with the requirements given in G.O. 96-A is a common error which it took steps to

July 17, 1996

- correct as soon as the problem became apparent. GTECS states that the Protestants have made serious mischaracterizations of the Act, and contends that the competitive impact of granting the request contained in Advice Letter No. 2 is insignificant. GTECS states that the joint marketing restriction in D.95-08-028 was narrowly and specifically tied to prepaid calling card service and the GTE Consent Decree.
6. AT&T-C, MCI, Sprint and CALTEL filed a joint petition in I.87-11-033 seeking an order requiring GTE California to immediately implement intraLATA equal access to competitors.
 7. AT&T-C also filed a petition to modify D.95-08-028 seeking to expand the scope of the joint marketing restrictions specified in Ordering Paragraph 17 from prepaid calling cards to include all long distance services allowed under the interexchange carrier CPC&N.
 8. GTECS filed a response to AT&T-C's petition to modify that was deemed a separate petition in a ruling by ALJ Richard Careaga. GTECS is ordered to file its proposed marketing plan by July 31, 1996.
 9. GTE California filed Advice Letter No. 8114 to address the protests against GTECS' Advice Letter No. 2. The GTE California advice letter is being handled as a separate issue before this Commission (Item C-1 on agenda 2950)
 10. The protests concerning compliance with Ordering Paragraph 17 of D.95-08-028 with respect to prepaid calling card services has merit.
 11. Marketing restrictions imposed on GTECS by Ordering Paragraph 17 of D.95-08-028 applied only to the prepaid calling card service GTECS was offering at the time. They do not affect other long distance services GTECS may wish to provide.
 12. The joint marketing restriction imposed by Ordering Paragraph 17 of D.95-08-028 with respect to GTECS' prepaid calling card service remains in effect and is unaffected by this Resolution.
 13. Decision 95-08-028 authorizes GTECS to operate as a reseller of interLATA and, to the extent authorized by Decision 94-09-065, intraLATA telecommunications services.
 14. GTECS agreed to provide the corrections and omissions to its tariffs in supplemental Advice Letter No. 2-A. Copies of GTECS' Advice Letter No. 2-A were delivered to all competing carriers and interested parties. GTECS' Advice Letter No. 2-A is in compliance with G.O. 96-A.

THEREFORE, IT IS ORDERED that:

July 17, 1996

1. The requests contained in GTE Card Services Advice Letter Nos. 2 and 2-A are approved as conditioned in Ordering Paragraph 2 of this Resolution.
2. The marketing restriction imposed by Ordering Paragraph 17 of D.95-08-028 with respect to GTE Card Services' prepaid calling card service remains in effect and is unaffected by this Resolution.

I hereby certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting on July 17, 1996. The following Commissioners approved it:

Wesley Franklin

WESLEY M. FRANKLIN
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