STATE OF CALIFORNIA GRAY DAVIS, *Governor*

PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

November 7, 2001

CA-7
11/29/2001

TO: PARTIES OF RECORD IN APPLICATION 01-05-042

This is the draft decision of Administrative Law Judge (ALJ) Grau. It will be on the Commission's agenda at the meeting on November 29, 2001. The Commission may act then, or it may postpone action until later.

When the Commission acts on the draft decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Pursuant to Rule 77.7(f)(9), comments on the draft decision must be filed within 12 days of its mailing and reply comments must be filed within 17 days of its mailing.

Parties to the proceeding may file comments on the draft decision as provided in Article 19 of the Commission's "Rules of Practice and Procedure." These rules are accessible on the Commission's website at http://www.cpuc.ca.gov. In addition to service by mail, parties should send comments in electronic form to those appearances and the state service list that provided an electronic mail address to the Commission, including ALJ Grau at jlg@cpuc.ca.gov. Finally, comments must be served separately on the Assigned Commissioner, and for that purpose I suggest hand delivery, overnight mail, or other expeditious methods of service.

/s/ LYNN T. CAREW by ANG
Lynn T. Carew, Chief
Administrative Law Judge

LTC:hkr

Attachment

109964

Decision **DRAFT DECISION OF ALJ GRAU** **(Mailed 11/7/2001)**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of GST Telecom California, Inc. (U-5469-C) and GST Pacific Lightwave, Inc. (U-5371-U) for Authority to Withdraw the Provision of Telecommunication Services in California.	Application 01-05-042 (Filed May 18, 2001)

OPINION GRANTING GST TELECOM CALIFORNIA, INC.'S AND GST PACIFIC LIGHTWAVE, INC.'S APPLICATION TO WITHDRAW SERVICES

I. Summary

This decision authorizes GST Telecom California, Inc. and GST Pacific Lightwave, Inc. (GST) to withdraw from providing telecommunications services in California and approves GST's transfer of its Mare Island customers to Pacific Bell Telephone Company (Pacific).[1] At GST's request, we also revoke its operating authority. We find that GST has met the customer notice requirements necessary for withdrawing from providing local exchange service and that the third party verification requirements of Pub. Util. Code § 2889.5 do not apply to this customer base transfer.

In light of GST's bankruptcy, we need to act promptly to ensure GST's Mare Island business customers do not suffer service interruptions. GST's

[1] GST transferred its other customers and assets to Time Warner via advice letter as permitted in Decision (D.) 98-07-094.

switching arrangements have expired. At the same time, we have had to consider the impact of GST's attempt to sell its customers and facilities to another carrier on its later request that Pacific complete necessary cross connections in order to assume that customer base. We have had to allow time for Pacific to complete those cross connections. We recognize that GST and Pacific have cooperated to ensure that Pacific is prepared to assume GST's Mare Island customers without a break in service. We will have GST file a compliance report that will provide the date when the successful transfer of its customers to Pacific has been completed.

II. Background

GST filed this application seeking expedited approval to withdraw or discontinue its remaining telecommunications services in California and to cancel its operating authority.[2] GST filed for bankruptcy protection under Chapter 11 of the United States Bankruptcy Code on May 7, 2000. Time Warner Telecom Inc. (Time Warner) purchased most of GST's assets but did not purchase GST's Mare Island customers and facilities. GST provided facilities-based local exchange services to approximately 105 business customers on Mare Island with 600 lines. GST no longer has the resources to provide those services. GST is attempting to find a purchaser for its Mare Island facilities and is discussing with Pacific the transfer of GST's customer base after Pacific makes certain cross connections at GST's switching office on Mare Island. Pacific currently provides local exchange services to all residential customers and to certain business customers on Mare Island. Notice of this application appeared in the

[2] GST has an affiliate, GST Net, Inc. (U-5373-C), which will retain its operating authority at this time.

Commission's Daily Calendar on May 25, 2001. The City of Vallejo (Vallejo) filed a protest on June 22, 2001, and stated it appeared GST intended to unlawfully discontinue telecommunications services to GST's Mare Island customers. GST replied on July 5, 2001, that it fully intended to comply with the Commission's procedures for service withdrawal.

GST seeks expedited approval of its request to withdraw services. GST anticipated the transfer of its remaining customer base and assets to a certificated provider of telecommunications services and intended to request authorization for such a transfer under Section 851 and withdraw this application.

In D.94-12-062, we granted GST Telecom, Inc.'s application to acquire Pacific Lightwave, Inc. (PLI). By D.94-04-001, we authorized PLI to provide interLATA telecommunications services and high-speed intraLATA private line services. We granted GST a certificate of public convenience and necessity (CPCN) in D.95-04-058 and authorized GST to provide interLATA services and intraLATA high-speed private line services. In D.95-12-057, we granted GST's petition to provide competitive facilities-based local exchange services, and in D.96-02-072, we granted GST's petition to provide competitive resale local exchange services.

GST provides facilities-based competitive local exchange services to its Mare Island customers. GST discontinued long distance services, both interstate and intrastate, on or about July 23, 2001, after sending notices on June 5, 2001 and July 6, 2001.[3] GST's facilities include a remote switch, rights-of-way and conduit

[3] Commission staff requested that GST send the July 6 notice, because the first notice had failed to inform customers that intrastate long distance services would be discontinued on July 23, 2001.

on Mare Island, and long-term easements for two buildings and two huts from which operations and service may be conducted.

On August 6, 2001, GST filed a Motion for Interim Relief. GST requested an interim order 1) requiring Pacific and GST to complete the cross connections that will enable Pacific to provide local exchange services to GST's current customers on Mare Island; (2) waiving the requirements of Pub. Util. Code § 2889.5 in connection with the transfer of the Mare Island customers from GST to Pacific; 3) authorizing GST to discontinue providing local exchange services to Mare Island customers as soon as (a) the cross connections at the GST switching office on Mare Island are complete, (b) each GST Mare Island customer has had at least thirty (30) days notice of the transfer of service to Pacific, and (c) GST has satisfied any remaining requirements for discontinuing service; and 4) revoking GST's CPCN once these requirements of GST and Pacific have been met. On August 16, 2001, GST sent a letter to its customers informing them of its motion, its request for Commission approval to transfer its customers' local service to Pacific on or before September 30, 2001, the opportunity to transfer to a carrier other than Pacific, and a toll-free number for questions.

Vallejo supported GST's motion and suggested the Commission only authorize GST to discontinue service when Pacific had transferred the Mare Island customers to its service. Pacific opposed GST's motion, because certain operational steps must occur before Pacific can provide service to GST's customers and GST is still pursuing arrangements to transfer its customers to another carrier.

On September 28, 2001, the assigned administrative law judge (ALJ) issued a ruling partially granting GST's motion and preliminarily determining that the requirements of Pub. Util. Code § 2889.5 do not apply to the transfer of GST's customers to Pacific and that GST has satisfied the notice requirements for the

transfer of its customers to Pacific. In its motion, GST notes that it has no customer deposits and that it has paid all current universal service surcharges and will pay remaining surcharges as due.

On October 31, 2001, the ALJ issued a ruling requesting additional information from GST concerning the discontinuance of intrastate long distance and/or toll services to its Mare Island customers and the completion of the cross connections. GST responded on November 2, 2001, that it withdrew from providing intrastate long distance and/or toll service on August 27, 2001, when its authority to withdraw from interstate long distance services was effective.[4] The projected date of discontinuance was July 23, 2001, and most of GST's customers were transferred on that date. GST's local service representative attempted to contact all customers to ensure they had chosen a primary interexchange carrier (PIC) and to verify that such PIC codes existed in Time Warner's host switch. GST could not reach all customers prior to July 23, 2001; as a result, approximately ten to fifteen customers temporarily lost long distance service shortly after July 23, 2001. When those customers notified GST, GST took care of the PIC change on that day.

As of November 1, 2001, 580 of 690 cross connections had been completed, although progress was slowing. Ninety-one customers had transferred to Pacific, and five customers still needed to be transferred.

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[4] The FCC granted GST's application to discontinue interstate services, including long distance service originating in California. (Public Notice, GST Telecommunications Inc. and its Subsidiaries' Application to Discontinue Domestic Telecommunications Services, DA 01-1799, July 27, 2001, application automatically granted on the thirty-first day after the public notice, 2001 FCC LEXIS 4037.)

III. Discussion

We grant GST's request to withdraw from providing its remaining telecommunications services in California and revoke GST's authority to provide interLATA and intraLATA services. Under General Order (GO) 96-A Section XIV, GST must continue to provide service to its Mare Island customers until the Commission authorizes it to discontinue that service. Our authorization is effective upon the successful transfer of GST's customers to Pacific. GST shall file a compliance report with the assigned ALJ within 30 days of the effective date of this decision to provide the date when the successful transfer of its customers to Pacific was completed.

We confirm the ALJ's preliminary determination that the third party verification requirements of Pub. Util. Code § 2889.5 do not apply to the customer base transfer from GST to Pacific, the incumbent local exchange carrier and carrier of last resort (COLR). (*See, e.g.*, D.97-12-119, 1997 Cal. PUC LEXIS 1146 *2.) We also confirm the preliminary determination that GST has met the advance customer notice requirements necessary prior to withdrawing from providing local service. We have found that the notice requirements for transfer of a customer base from one carrier to another, adopted in D.97-06-096, were generally applicable to the customer base transfer from a competitive local carrier withdrawing from the market to a COLR. (*Re Verizon Select Services Inc.*, D.01-06-036.) GST has provided written notice 30 days in advance of the transfer and has provided a description of the transfer, the opportunity to switch to a carrier other than Pacific, and a toll-free number for questions.

GST should have notified customers that not only the FCC but also this Commission had to approve GST's plans.[5] GST also should have provided 30 days advance notice of discontinuance of intrastate long distance and toll services, as required under § 2889.3. As a result, customers switched providers before it was necessary, and some customers had a short period where they did not have a PIC.

In D.01-06-036, we required Verizon Select Services Inc. (VSSI) to provide restitution to customers that switched to a more expensive or inferior bundled service alternative under the mistaken belief that their service would be discontinued. Customers opposed VSSI's proposal to withdraw from providing bundled local and long distance services and features, because alternatives were more costly or less convenient. Here, no customers have complained that GST's discontinuance of their intrastate long distance and/or toll services forced them to obtain more expensive or inferior service. Vallejo protested GST's initial proposal to withdraw from local service but did not object to GST's withdrawal from the long distance and toll markets. Since there are many competitive alternatives for long distance and toll services, GST's customers most likely found acceptable alternatives. Under the circumstances, it is not necessary to require restitution. However, new applicants should be careful to indicate in their customer notices the Commission's role in approving plans to discontinue service, including intrastate long distance and toll services.

Under the California Environmental Quality Act (CEQA) and Rule 17.1 of the Commission's Rules of Practice and Procedure, we must consider the

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[5] GST did alert customers in those letters that Commission approval was required before GST could discontinue <u>local</u> service.

environmental consequences of projects that are subject to our discretionary approval. (Public Resources Code § 21080.) The cross connections Pacific must complete before GST can transfer its customer base do not require the construction of new facilities. Therefore, GST's withdrawal from providing service will have no significant effect on the environment. Consequently, the Commission need not perform further environmental review. (See CEQA Guideline 15061(b)(3).)

In Resolution ALJ 176-3064, dated May 25, 2001, the Commission preliminarily categorized this proceeding as ratesetting, and preliminarily determined that hearings were not necessary. No party has requested a hearing. We conclude no hearing is necessary and affirm the preliminary determinations.

IV. Conclusion

We grant GST's application to withdraw from providing service in California and revoke GST's CPCN. We approve GST's transfer of its Mare Island customers to Pacific. GST's withdrawal from providing service and the revocation of its certificates are effective upon the successful transfer of its customers to Pacific. We find that the third party verification requirements of Pub. Util. Code § 2889.5 do not apply to this customer base transfer.

V. Comments on Draft Decision

The draft decision was mailed to the parties in accordance with Pub. Util. Code § 311(g)(3) and Rule 77.7(f)(9) of the Rules of Practice and Procedure. The public necessity requires a shortened comment cycle in order to ensure that GST's Mare Island customers receive uninterrupted local service. This necessity outweighs parties' need for the full comment cycle, especially because an earlier ALJ ruling anticipated resolution of some of the issues before us. Comments were filed by _____ on _____. Reply comments were filed by

_____ on _____. We have taken the comments into account, as appropriate, in finalizing this order.

Findings of Fact

1. GST was authorized to provide interLATA and intraLATA services in 1995. GST was authorized to provide competitive facilities-based and resale local exchange services in 1995 and 1996.

2. GST acquired PLI in 1994.

3. GST currently provides facilities-based local exchange services to approximately 105 business customers on Mare Island with 600 lines.

4. GST seeks approval to withdraw or discontinue its remaining telecommunications services in California and to cancel its operating authority.

5. GST filed for bankruptcy protection under Chapter 11 of the United States Bankruptcy Code on May 7, 2000.

6. Time Warner purchased most of GST's assets but did not purchase GST's Mare Island customers and facilities.

7. GST has provided written notice 30 days in advance of the transfer and has provided a description of the transfer, the opportunity to switch to a carrier other than Pacific, and a toll-free number for questions.

Conclusions of Law

1. Under GO 96-A, Commission approval is required before a carrier may withdraw from the provision of public utility service.

2. The customer notice requirements of D.97-06-096 apply to customer base transfers such as this one.

3. Pub. Util. Code § 2889.5 does not apply to this customer base transfer.

4. GST's withdrawal from the provision of facilities-based competitive local exchange services should be authorized when it has successfully completed the transfer of its customers to Pacific.

5. GST's CPCNs are revoked as of the date its customers are successfully transferred to Pacific.

6. GST shall file a compliance report with the assigned ALJ within 30 days of the effective date of this decision to provide when the successful transfer of its customers to Pacific was completed.

7. Since this order resolves protestant's concern that GST would withdraw from providing service without Commission approval, this decision should be effective on the date it is signed.

O R D E R

IT IS ORDERED that:

1. The application of GST Telecom California, Inc. and GST Pacific Lightwave, Inc. (GST) to withdraw from providing facilities-based competitive local exchange services is granted subject to the terms and conditions contained in this order.

2. GST shall file a compliance report with the assigned administrative law judge within 30 days of the effective date of this decision to provide the date when the successful transfer of its customers to Pacific was completed.

3. GST's certificates of public convenience and necessity are revoked upon the filing of the compliance report.

4. This proceeding is closed.

This order is effective today.

Dated _____, at San Francisco, California.