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Decision 96-10-039 October 9, 1996

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Joint Application of TCG-San Francisco (U-5454-C), TCG-Los Angeles (U-5462-C), TCG-San Diego (U-5389-C) and Pacific Bell for Approval of Three Interconnection Agreements Pursuant to Section 252 of the Telecommunications Act of 1996.	)	Application 96-07-035 (Filed July 23, 1996)

ORIGINAL

OPINION APPROVING VOLUNTARY INTERCONNECTION AGREEMENTS

Summary

Earlier this year, the United States Congress passed and the President signed into law the Telecommunications Act of 1996 (Pub. L. No.104-104, 110 Stat. 56 (1996)) (1996 Act). Among other things, the new law declared that each incumbent local exchange telecommunications carrier has a duty to provide interconnection with the local network for competing local carriers and set forth the general nature and quality of the interconnection that the local exchange carrier must agree to provide.[1] The 1996 Act established an obligation for the incumbent local exchange carriers to enter into good faith negotiations with each competing carrier to set the terms of interconnection. Any interconnection agreement adopted by negotiation must be submitted to the appropriate state commission for approval.

Here, for the first time, this commission is reviewing interconnection agreements pursuant to the 1996 Act. In doing so, we approve agreements between Pacific Bell and three

[1] An incumbent local exchange carrier is defined (in critical part) as one which provided telephone exchange service in a specified area on February 8, 1996, the date of enactment of the 1996 Act. (See §251(h)(1)(A)).

affiliated companies of the Teleport Communications Group, Inc. (TCG), a facilities-based carrier. The agreements become effective today and will remain in effect for three years.

Background

Section 252 of the 1996 Act sets forth our responsibility to review and approve interconnection agreements. On July 17, 1996, we adopted Resolution ALJ-167 which provides interim rules for the implementation of §252. On July 23, 1996, TCG and Pacific Bell filed this application. Pursuant to the interim rules, several parties filed comments on August 22, 1996.

Under §252(e), if we fail to approve or reject the agreements within 90 days after the application was filed, then the agreements will be deemed approved. Thus, we must act on or before October 21, 1996.

The Agreements

The parties offer three agreements, each setting the terms for interconnection between Pacific Bell and a TCG affiliate (those serving San Francisco, Los Angeles and San Diego). Except for the name of the TCG affiliate involved and the identification of interconnection locations, the three agreements are identical. The parties agree that until one year after permanent number portability is implemented at the end of 1998, they would exchange local traffic without explicit compensation. TCG would be permitted to provide tandem, or intermediate, switching between long distance companies and Pacific Bell end offices and the firms would share the switched-access revenues. The applicants offer the following summary of other features of the agreements:

- Access to network elements, including unbundled local loops;
- Access to poles, conduit and other rights-of-way;
- Provision of emergency services, directory assistance and call completion services;
- Access to White Pages directory listings and customer guide pages;
- Access to number resources;

- Interim number portability until a permanent solution is feasible;
- Dialing parity;
- Resale of Pacific Bell retail services;
- Physical, shared space and virtual collocation; and
- Joint provision of wireless service provider access.

Comments

MCI Telecommunications Corporation (MCI), AT&T Communications of California (AT&T), Time Warner AxS of California (Time Warner), GTE California Incorporated (GTEC), and Sprint Communications Company (Sprint) all filed comments. None, however, objected to the approval of the agreements. Their comments go more to the interpretation or precedential value of provisions contained in the agreements and will be discussed below.

Discussion

In November 1993, this Commission adopted a report entitled "Enhancing California's Competitive Strength: A Strategy for Telecommunications Infrastructure (Infrastructure Report). In that report, the Commission stated its intention to open all telecommunications markets to competition by January 1, 1997. Subsequently, the California Legislature adopted Assembly Bill 3606 (Ch. 1260, Stats. 1994), similarly expressing legislative intent to open telecommunications markets to competition by January 1, 1997. In the Infrastructure Report, the Commission states that "[i]n order to foster a fully competitive local telephone market, the Commission must work with federal officials to provide consumers equal access to alternative providers of service." The 1996 Act provides us with a framework for undertaking such state-federal cooperation.

Based on the act, we have instituted Interim Rule 4.1.4 which states that the Commission shall reject an interconnection agreement if it finds that:

a. the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement; or

b. the implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity; or

c. the agreement violates other requirements of the Commission, including, but not limited to, quality of service standards adopted by the Commission.

The agreements submitted in this application appear to be consistent with the goal of avoiding discrimination against other telecommunications carriers. We see nothing in the terms of the proposed agreements that would tend to restrict the access of a third-party carrier to the resources and services of Pacific Bell. Significantly, the 1996 Act ensures that any beneficial provisions in this agreement will be made available to all other similarly-situated competitors.

Section 252(I) of the 1996 Act states:

> "A local exchange carrier shall make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement."

Thus, these agreements, which do not appear to be discriminatory, are likely to be non-discriminatory as implemented.

There is also no reason to conclude that these agreements are in any manner inconsistent with the public interest. We have previously concluded that competition in local exchange and exchange access markets is desirable. Because these agreements will allow another competitor to provide local service in three of the state's largest markets, they are consistent with our goal of promoting competition. We have found no provisions of these agreements which appear, on the surface, to undermine this goal or to be inconsistent with any other identified public interests.

These agreements do not appear to be inconsistent with the Commission's service quality standards and may exceed those standards in at least one respect. Pacific Bell and TCG

have agreed to a blocking standard of one half of one percent (.005) during the average busy hour for final trunk groups carrying jointly-provided switched access traffic between an end office and an access tandem. All other final trunk groups are to be engineered with a blocking standard of one percent (.01). This means that the parties have a goal of completing, on average, no less than 99% of all initiated calls.

We note that this call blocking provision exceeds the service quality reporting level set forth by the Commission in General Order (GO) 133-B, which requires carriers to report quarterly to the Commission as to whether or not their equipment completes 98% of customer-dialed calls on a monthly basis. Although both carriers must continue to comply with this requirement, we are encouraged that they are seeking to achieve an even higher standard of service.

Several commenters seek assurance that the Commission's treatment of these interconnection agreements will not impair their rights and opportunities in other proceedings. We wish to provide such assurances as clearly as possible. This decision stands solely for the proposition that TCG and Pacific Bell may proceed to interconnect under the terms set forth in their agreements. We do not adopt any findings in this docket that should be carried forth to influence the determination of issues to be resolved elsewhere.

For instance, in Paragraph XXI of each agreement, parties state that they "...believe that this Agreement...will satisfy the 'competitive checklist' set forth in Section 271(c)(2) of the [Telecommunications Act of] 1996." This checklist contains criteria with which Pacific Bell must comply before it will be allowed to enter into in-region interlata competition. While the quoted statement may reflect the belief of the parties, our approval of this agreement does not reflect a determination one way or another as to whether this belief is well placed. If the parties to these agreements enter into any subsequent agreements affecting interconnection, those agreements must also be submitted for our approval. In addition, the approval of these agreements is not intended to affect otherwise applicable deadlines such as those that apply to the implementation of Permanent Number Portability. These agreements and their approval have no

binding effect on any other carrier. Nor do we intend to use this decision as a vehicle for setting future Commission policy. As a result of being approved, these agreements do not become a standard against which any or all other agreements will be measured.

With these clarifications in mind, we will approve the proposed agreements. In order to facilitate rapid introduction of competitive services, we will make this order effective immediately.

Findings of Fact

1. The agreements submitted in this application appear to be consistent with the goal of avoiding discrimination against other telecommunications carriers.

2. There is no reason to conclude that these agreements are in any manner inconsistent with the public interest.

3. These agreements do not appear to be inconsistent with the Commission's service quality standards and may exceed those standards in at least one respect.

Conclusion of Law

Pursuant to the 1996 Act, the request of the applicants for approval of the three interconnection agreements offered in this application should be approved.

O R D E R

IT IS ORDERED that:

1. Pursuant to the Federal Telecommunications Act of 1996, we hereby approve the interconnection agreements incorporated in this application between Pacific Bell and the TCG affiliates serving San Francisco, Los Angeles, and San Diego.

2. This decision is limited to approval of the above-mentioned interconnection agreements and does not bind other parties or serve to alter Commission policy in any of the areas discussed in the agreements or elsewhere.

3. This docket is closed.

This order is effective today.

Dated October 9, 1996, at San Francisco, California.

P. GREGORY CONLON
President
DANIEL Wm. FESSLER
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
Commissioners