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Decision 96-10-040 October 9, 1996

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Joint Application)
of Cox California Telecom, Inc. and)
Pacific Bell (U 1001 C) for Approval of)
their Local Interconnection Agreement)
pursuant to Section 252 of the Tele-)
communications Act of 1996)

ORIGINAL

Application 96-07-045
(Filed July 26, 1996)

O P I N I O N

Summary

We approve a local interconnection agreement (Interconnection Agreement) between Cox California Telecom, Inc. (Cox) and Pacific Bell (Pacific) pursuant to the requirements of the Telecommunications Act of 1996¹ (Telecom Act) and the Interim Rules for Implementing the Dispute Resolution Provisions of Section 252 (Resolution ALJ-167) (the Interim Rules).

Procedural Background

Cox and Pacific filed their joint application on July 26, 1996, attaching a copy of their negotiated Interconnection Agreement. A notice of the application was duly published in the Daily Calendar on August 6, 1996. Pursuant to Interim Rule 4.1.3, four members of the public filed comments: AT&T Communications of California, Inc. (AT&T-C), MCI Telecommunications Corporation (MCI), Sprint Communications Company L.P. (Sprint) and Time Warner AXS of California, LP (Time Warner). The comments of MCI were filed a day late, August 27, 1996, under the Interim Rules, which require comments to be filed within 30 days of the date of filing of the application. MCI did not move for leave to file out of time, and to the extent that its comments raise issues that are different from the issues

raised by other commenters, it has waived its right to comment under the Interim Rules. Sprint filed a correction to its comments to correct a reference to Cox, which was mistakenly given as "TCG." Its comments, accordingly, shall be deemed to have been timely filed, since the comments were otherwise timely timed and the drafting error, if uncorrected, could have misled the Commission.

Telecom Act

Among the other provisions of the Telecom Act is the creation of a framework for competition in the local exchange market that requires local exchange carriers (LECs), such as Pacific, to negotiate interconnection and resale agreements with potential competitors who request access to the LEC's facilities. (1996 Annual Report of the Publications Committee to Report on Developments During the Year in the field of Public Utility, Communications and Transportation Law of the Section of Public Utility, Communications and Transportation Law of the American Bar Association at 119.) This framework is required by Sections 251 and 252 of the Telecom Act. The Federal Communications Commission (FCC) has adopted regulations implementing the framework. (In the Matters of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996 and related matters FCC 96-333 (Aug. 8, 1996).)

Discussion

Section 252(a) (1) of the Telecom Act permits a LEC, such as Pacific, to negotiate and enter into a binding agreement with a requesting telecommunications carrier. Pacific and Cox have done so and present the Interconnection Agreement for

¹ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (Feb. 8, 1996), to be codified at 47 U.S.C. § 151 et seq.

Commission review and approval, as required by Section 252(a)(1) and 252(e) of the Telecom Act.

Section 252(e) of the Telecom Act requires us to approve or reject the Interconnection Agreement, with written findings as to any deficiencies.

The grounds for rejection of a negotiated agreement are limited:

- It discriminates against a telecommunications carrier not a party of the agreement; or
- Its implementation would not be consistent with the public interest, convenience, or necessity.

The LEC (in this case, Pacific) may voluntarily agree with the entrant (in this case, Cox) without regard to the substantive requirements set forth in Sections 251(b) (duty to interconnect, not to install certain network features, duty not to prohibit resale, number portability obligations, dialing parity obligations, duty to provide access to right of way, duty to establish reciprocal compensation arrangements for transport and termination) and Section 251(c) (additional duties of "incumbent" LECs, including duty to provide physical collocation [sic] except in certain circumstances) of the Telecom Act. As a consequence, we are not at liberty to substitute our judgment for that of the principals to the Interconnection Agreement with respect to the degree to which Pacific has satisfied its obligations under Section 251 of the Telecom Act, except to the limited extent that the Interconnection Agreement may discriminate against other parties or is otherwise inconsistent with the public interest.

If we fail to act within 90 days after submission by the parties of an agreement, it is deemed approved as a matter of law. (Telecom Act § 252(e)(4).) In the case of the present

application, October 24, 1996 is the 90th day after submission of the Interconnection Agreement.

Pacific and Cox assert that the Interconnection Agreement "does not discriminate against any telecommunications carrier not a party to" it and that it is "consistent with the public interest, convenience, and necessity, and it does not violate any requirement of the Commission, including, but not limited to, quality of service standards adopted by the Commission."

None of the commenters claim that the Interconnection Agreement discriminates against them as telecommunications carriers,² nor do any of the commenters assert that the Interconnection Agreement would not be consistent with the public interest, convenience, or necessity.

Findings of Fact

1. Pacific and Cox filed a joint application for approval of the Interconnection Agreement on July 26, 1996.
2. No party has protested the approval of the Interconnection Agreement.
3. Approval of the Interconnection Agreement is governed by Section 251(e) of the Telecom Act.

² Mainly, they are concerned that (1) the terms of the Interconnection Agreement not be deemed to create a precedent, and (2) the agreement between Pacific and Cox regarding whether Pacific has satisfied certain requirements set forth in Section 271 of the Telecom Act not be deemed endorsed by the Commission. For the first concern, it should be noted that any decision to approve is non-precedential since our action to approve or our inaction have the same effect. Therefore, it is only our action to reject that could be considered as establishing a precedent. For the second, the agreement regarding Section 271 only purports to bind the parties, and it should not require further comfort from the Commission that the private agreement of the parties on a collateral matter does not bind the Commission or any non-party to the same outcome in any other proceeding.

Conclusions of Law

1. No public hearing is required.
2. The Interconnection Agreement should be approved.

ORDER

IT IS ORDERED that:

1. The local interconnection agreement between Cox California Telecom, Inc. and Pacific Bell is approve pursuant to the requirements of the Telecommunications Act of 1996.

2. This order is effective today.
3. Application 96-07-045 is closed.

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