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Decision 96-11-059 November 26, 1996

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

In The Matter Of The Joint Application Of Brooks Fiber Communications Of Sacramento, Inc. (U-5419-C), Brooks Fiber Communications of Stockton, Inc. (U-5546-C), Brooks Fiber Communications of Bakersfield, Inc. (U-5544-C), Brooks Fiber Communications of Fresno, Inc. (U-5545-C), Brooks Fiber Communications of San Jose, Inc. (U-5420-C) and Pacific Bell (U 1001 C) for Approval of Interconnection Agreement Pursuant to Section 252 of the Telecommunications Act of 1996.	) Application 96-08-062 (Filed August 29, 1996)

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)) (the Act). Among other things, the Act declares 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 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. Section 252 of the Act sets forth our responsibility to review and approve interconnection agreements. On September 26,

[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 Act (*see* Section 251(h)(1)(A)).

1996, we adopted Resolution ALJ 168, which establishes final rules governing the implementation of Section 252.

Brooks Fiber Communications Of Sacramento, Inc.; Brooks Fiber Communications of Stockton, Inc.; Brooks Fiber Communications of Bakersfield, Inc.; Brooks Fiber Communications of Fresno, Inc.; Brooks Fiber Communications of San Jose, Inc. (collectively "Brooks"); and Pacific Bell (collectively, the "Parties") have applied to the Commission for approval of the Interconnection Agreement ("the Agreement") entered into between Pacific Bell and Brooks on August 28, 1996, in accordance with Section 252 of the Act. It was designed by the Parties to accomplish interconnection between their companies in accordance with the requirements of the Act.

The Parties request that the Commission approve the Agreement in accordance with the requirements of Section 252(e) of the Act, by determining that the grounds for rejection of such agreement, set forth in Section 252(e)(2)(A)(i) and Section 252(e)(2)(A)(ii), are not applicable to the Agreement: that the Agreement does not discriminate against any telecommunications carrier not a party to the Agreement; that implementation of the Agreement is not inconsistent with the public interest, convenience, and necessity; and that the Agreement does not violate any requirement of the Commission, including, but not limited to, quality of service standards adopted by the Commission.

The Parties state that they entered into the Agreement in order to permit them to efficiently interconnect their networks and to allow them to advance the goal of this Commission and the United States Congress to open and expand telecommunications competition in California and around the country. The terms of the Agreement address the items identified in the Act as essential aspects of the opening of the local exchange market to full competition, and specific references to the Act are included as part of each section of the Agreement.

In accordance with Rule 5(c) of the Commission's Rules of Practice and Procedure, the Parties have served a Notice of Availability of this Application on all carriers that have received authority from this Commission to operate as competitive local carriers (CLCs), as well as the Commission's service list for the local exchange proceeding, Rulemaking 95-01-043/Investigation 95-01-044.

The Commission has received no comments in response to the filing of this application.

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 Act and the guidance subsequently offered by the Federal Communications Commission (FCC) provides us with a framework for undertaking such state-federal cooperation.

Based on this guidance, we have instituted 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

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

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

Section 252(I) of the 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."

In its first order interpreting the Act, the FCC expressed the view that "§ 252(I) appears to be a primary tool of the Act for preventing discrimination...." (FCC First Report and Order, CC Docket No. 96-98, FCC 96-325, p. 619, para. 1296). We are thus assured that this Agreement, which does not appear to be discriminatory, is likely to be nondiscriminatory as implemented.

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

The Agreement does not appear to be inconsistent with the Commission's service quality standards and may exceed those standards in at least one respect. The

Parties 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.

For instance, in Paragraph XXI of the Agreement, the 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 (Local Access and Transport Area) 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 this Agreement enter into any subsequent agreements affecting interconnection, those agreements must also be submitted for our approval. In addition, the approval of this Agreement is not intended to affect otherwise applicable deadlines such as those that apply to the implementation of Permanent Number Portability. This Agreement and its 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, this Agreement does not become a standard against which any or all other agreements may be measured.

We will approve the proposed Agreement. In order to facilitate rapid introduction of competitive services, we will make this order effective immediately.

Findings of Fact

1. The Agreement between Brooks and Pacific Bell, dated August 28, 1996, is consistent with the goal of avoiding discrimination against other telecommunications carriers.

2. There is also no reason to conclude that the Agreement is in any manner inconsistent with the public interest.

3. The Agreement is not inconsistent with the Commission's service quality standards, and may exceed those standards in at least one respect.

Conclusion of Law

The request of the applicants for approval of the Agreement pursuant to the Act 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 Agreement (Agreement) between Pacific Bell and Brooks Fibers Communications of Sacramento, Inc.; Brooks Fibers Communications of San Jose, Inc.; Brooks Fibers Communications of Bakersfield, Inc.; Brooks Fibers Communications of Stockton, Inc.; and Brooks Fibers Communications of Fresno, Inc., dated August 28, 1996.

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

3. This docket is closed.

This order is effective today.

Dated November 26, 1996, at San Francisco, California.

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

Commissioner Henry M. Duque, being necessarily absent, did not participate.