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Decision 97-04-056 April 21, 1997

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Bell (U 1001 C) for Approval of
its Statement of Generally Available Terms for
Interconnection and Access.

Application 97-02-020
(Filed February 19, 1997)

INTERIM OPINION

Background

On February 19, 1997, Pacific Bell (Pacific) filed an application for approval of its Statement of Generally Available Terms for Interconnection and Access (SGAT) pursuant to Section 252(f) of the Telecommunications Act of 1996 (the Act) and Rule 5 of the California Public Utilities Commission's (Commission) Rules Governing Filings Made Pursuant to the Telecommunications Act of 1996 adopted in Resolution ALJ-168 on September 20, 1996 (Rules). The Act¹ permits incumbent local exchange carriers (ILECs) to file with a State commission a statement of the terms and conditions that it generally offers within that State to comply with the requirements of Section 251 as well as the applicable standards and Federal Communications Commission (FCC) regulations.

The State commission has 60 days after the submission of the ILEC's SGAT to either complete its review and subsequently approve or reject the filing², or permit the SGAT to take effect.³ At the same time, the Act does not preclude a State commission from continuing to review a statement that has been permitted to take effect under

¹ Section 252(f) (1).

² Section 252(f) (3) (A).

³ Section 252(f) (3) (B).

Section 252(f) (3) (B) or from approving or disapproving the ILEC's SGAT pursuant to Section 252(f) (2).⁴

Rule 5.2 of the Commission's Rules under ALJ-168 provided members of the public 30 days after the submission of the SGAT to file comments on it, limited to the appropriate standard of review. Concurrent with its application, Pacific filed a motion requesting that the Commission shorten the comment period from 30 days to 20 days in order to allot itself more time to review the SGAT. The California Telecommunications Coalition⁵ (the Coalition) opposed Pacific's motion, contending that the comment period allocated under the Commission's Rules strikes a balance in the midst of a tight federal timeline to provide the minimal amount of time that parties and the Commission should have to comprehensively analyze the company's SGAT. Accordingly, the assigned Administrative Law Judge denied Pacific's motion. On March 21, 1997, individually and/or jointly, seven entities⁶ filed comments on Pacific's SGAT.

⁴ "A State commission may not approve such statement unless such statement complies with subsection (d) of this section and section 251 and the regulations thereunder. Except as provided in section 253, nothing in this section shall prohibit a State commission from establishing or enforcing other requirements of State law in its review of such statement, including requiring compliance with intrastate telecommunications service quality standards or requirements." Similarly, Rule 5.4 of the Commission's Rules under ALJ-168 provides that: "The Commission shall reject a statement if it does not meet the requirements of Section 251, the FCC's regulations prescribed under Section 251, or the pricing standards set forth in Subsection 252 (d). Pursuant to 252(e) (3), the Commission may also reject statements which violate other requirements of the Commission, including but not limited to, quality of service standards adopted by the Commission."

⁵ The members filing the response include AT&T Communications of California, Inc.; California Cable Television Association; California Payphone Association; ICG Telecom Group, Inc.; MCI Telecommunications Corp.; Sprint Communications L.P., Inc.; The Utility Reform Network (TURN); and Time Warner AxS of California, L.P.

⁶ The Coalition; the Telecommunications Resellers Association; the Office of Ratepayer Advocates; Worldcom, Inc.; Teleport Communications Group Inc., ICG Telecom Group, Inc., and Time Warner AxS, L.P.; Airtouch Cellular and its affiliates, Los Angeles SMSA Limited

Footnote continued on next page

Discussion

In general, the comments urge the Commission to thoroughly consider Pacific's SGAT. The majority of comments contend that the existing statement contravenes Sections 251 and 252 of the Act, as well as Commission decisions, in numerous respects. Commenters allege, among other issues, that the SGAT (1) fails to provide for nondiscriminatory access to Pacific's Operations Support System, requisite unbundled networks elements or rights of way; (2) unreasonably and unlawfully restricts resale; (3) is incomplete and discriminatory; and (4) unlawfully restricts access to Commission dispute procedures. Most of the comments contend that the Commission's action on the application will have no bearing on Pacific's attempted entry into interLATA markets under Section 271. However, a number of comments insist that there is a critical likelihood that if the Commission approves the SGAT or permits it to go into effect without further investigation or review, a flawed document will stand as the foundation for future negotiations of interconnection agreements.

The Commission's Rules under ALJ-168 do not provide the ILEC an opportunity to respond to the public's comments on the SGAT. However, given the significance of the allegations made and issues raised, we wish to give Pacific the opportunity to respond to the comments submitted. We are reluctant, given the primarily allegation-based record before us, to directly reject Pacific's SGAT. With the concerns raised, the SGAT as it now stands requires us to continue to review and investigate on behalf of California customers of telecommunications services.

Therefore, on April 21, 1997, pursuant to Section 252(f) (3) (B), we shall permit Pacific's SGAT "to take effect." By so doing, we do not intend to indicate that we have approved or rejected such statement, or made any determination with respect to compliance with Sections 251, 252(d), and 271(c) of the Act, and the regulations thereunder. In accordance with Section 252(f) (4) of the Act, this Commission shall

Partnership, Sacramento-Valley Limited Partnership, and Modoc RSA Limited Partnership; and Cellular 2000, Santa Cruz Cellular Telephone Company, and SLO Cellular.

continue to review the statement in effect and reach a determination at the earliest opportunity. Clearly, the sufficiency of the record will dictate how long this investigation will take.

Findings of Fact

1. Pacific filed its SGAT on February 19, 1997.
2. Federal law obligated the Commission to either approve, reject, or permit the SGAT to take effect on April 21, 1997.
3. Members of the public filed comments on the SGAT on March 21, 1997.
4. Pacific has not had an opportunity to respond to the comments on its SGAT.
5. The Commission will continue to review Pacific's SGAT.

Conclusions of Law

1. Pursuant to Section 252(f) (3) of the Act, the Commission should permit Pacific's SGAT to take effect on April 21, 1997.
2. Pacific should be permitted an opportunity to respond to the comments filed on its SGAT on March 21, 1997.
3. It is reasonable that the Commission has not yet made any determination with respect to Pacific's compliance with Sections 251, 252(d), and 271(c) of the Act and the regulations thereunder.
4. The SGAT should not be considered to have been either approved or rejected by the Commission.
5. The Commission should continue to review Pacific's SGAT as provided by Section 252(f) (4) of the Act.
6. This order should become effective immediately so that the Commission may continue and complete its review promptly.

INTERIM ORDER

IT IS ORDERED that:

1. Pacific Bell's (Pacific) Statement of Generally Available Terms for Interconnection and Access (SGAT), permitted by this decision to take effect on April 21, 1997 pursuant to Section 252(f) (3) of the Telecommunications Act of 1996 (the Act), shall not be deemed to have been either approved or rejected by the California Public Utilities Commission (Commission).

2. As of this date, the Commission shall not be deemed to have made any determination with respect to Pacific's compliance with Sections 251, 252(d), and 271(c) of the Act, and the regulations thereunder.

3. The Commission shall continue to review Pacific's SGAT pursuant to Section 252(f) (4) of Act.

This order is effective today.

Dated April 21, 1997, at San Francisco, California.

P. GREGORY CONLON
President
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
Commissioners

Commissioner Josiah L. Neeper, being necessarily absent, did not participate.

Commissioner Richard A. Bilas, being necessarily absent, did not participate.