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Decision 98-03-075 March 26, 1998

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of Cook Telecom, Inc. for arbitration pursuant to Section 252 of the Federal Telecommunications Act of 1996 to establish an interconnection agreement with Pacific Bell.

Application 97-02-003  
(Filed February 3, 1997)

**ORIGINAL**

David M. Wilson, and David A. Simpson, Attorneys at Law,  
for Cook Telecom, Inc., applicant.

Thomas J. Ballo, David Discher, and John S. diBene, Attorneys at  
Law, for Pacific Bell, respondent.

Karen Jones, Marc Kolb, and Mike Watson, for the Commission's  
Telecommunications Division.

**FINAL OPINION**

**1. Summary**

We approve Amendment I to the Conformed Paging Interconnection Agreement (Agreement) between Cook Telecom, Inc. (Cook) and Pacific Bell (Pacific) filed March 16, 1998, pursuant to the Telecommunications Act of 1996 (Act), and our Revised Rules for Implementing the Provisions of Section 252 of the Act (Rules).<sup>1</sup> The amended Agreement is the final Agreement. The final Agreement should be filed and served by March 31, 1998, and will include a new cover page, the signed original approved Amendment I, and a copy of the interim Agreement. The final Agreement will become effective upon filing. The proceeding is closed.

<sup>1</sup> Resolution ALJ-174, dated June 25, 1997.

## 2. Background

On February 3, 1997, Cook applied for arbitration of a paging interconnection agreement with Pacific. The Arbitrator's Report was filed and served on April 21, 1997. Parties filed and served an Agreement in compliance with the Arbitrator's Report on April 28, 1997. On May 21, 1997, in Decision (D.) 97-05-095, we rejected the arbitrated Agreement, ordered parties to file an interim Agreement in compliance with the Act and our Rules (including an interim rate payable by Pacific to Cook for traffic sent by Pacific to Cook for local paging calls), and kept the proceeding open to set final rates (Phase II).

Parties filed an interim Agreement on June 20, 1997, which became effective upon filing. On June 20, 1997 and June 23, 1997, Cook and Pacific, respectively, filed applications for rehearing of D.97-05-095. On September 24, 1997, the Commission issued D.97-09-122 and D.97-09-123, denied the rehearing applications of Pacific and Cook, respectively, and provided further guidance on setting final rates. In addition, in ordering paragraph 2 of D.97-09-122, the Commission directed that transport and termination rates be developed in Phase II for Cook to pay Pacific with respect to traffic from Cook to Pacific.

In Phase II, parties negotiated provisions and rates for Cook's traffic and payments to Pacific, but presented 14 issues for arbitration to determine the final rate Pacific will pay Cook. The Final Arbitrator's Report (Report) in Phase II was filed and served on February 17, 1998.

In compliance with the Report, on February 24, 1998, parties jointly filed Amendment I to the interim Agreement incorporating all negotiated and arbitrated Phase II results. In the filing, parties explain the amendment, identify the standards applicable to Commission consideration of the negotiated portions of the amendment, and submit that the negotiated portions meet the standards and should be approved. Further, parties identify the standards applicable to

Commission consideration of the arbitrated portion of the amendment. Both parties contend that the arbitrated termination rate Pacific will pay Cook fails to meet the standards, urge Commission rejection of the arbitrated termination rate, and ask for Commission adoption of an alternate rate consistent with that party's comments on the Draft Arbitrator's Report.

On March 16, 1998, parties filed a revised version of the February 24, 1998 Amendment I. According to parties, the revised version "is a slightly amended version of" Amendment I. The revisions correct two citations in the original amendment, and clarify one definition (Agreement Section 1.39). It is the March 16, 1998 version of Amendment I that we consider here.

### **3. Amendment I**

#### ***3.1 Negotiated Provisions and Rates***

Section 252(e)(2)(A) of the Act provides that we may only reject an agreement (or portions thereof) adopted by negotiation if we find that the agreement (or portions thereof) discriminates against a telecommunications carrier not a party to the agreement, or implementation of such agreement (or portion thereof) is not consistent with the public interest, convenience and necessity. No party or member of the public alleges that any negotiated portion of the amendment should be rejected. We find nothing in any negotiated portion of the amendment which results in discrimination against a telecommunications carrier not a party to the amendment, nor which is inconsistent with the public interest, convenience and necessity. Therefore, we have no basis to reject the negotiated portions of the amendment.

#### ***3.2 Arbitrated Rate***

Section 252(e)(2)(B) of the Act, and our Rule 4.2.3, provide that we may only reject an agreement (or any portion thereof) adopted by arbitration if we find that the agreement does not meet the requirements of Section 251 of the

Act, including the regulations prescribed by the Federal Communications Commission (FCC) pursuant to Section 251, or the standards set forth in Section 252(d) of the Act. The only matter presented for arbitration in Phase II was the final rate for termination of paging calls from Pacific to Cook. The Arbitrator resolved 14 issues presented by the parties to determine the final rate. In the February 24, 1998 joint filing, each party argues that we should adopt an alternate rate that is consistent with that party's comments on the Draft Arbitrator's Report. That is, each party recommends we affirm the Arbitrator on issues wherein they prevailed, and reject the Arbitrator on issues wherein they did not prevail.

We are not persuaded to reverse the Arbitrator on any of the 14 arbitrated issues, or the resulting rate, and we affirm the rulings and findings of the Arbitrator. We find nothing in the arbitrated portion of the amendment (i.e., the rate) which does not meet the requirements of Section 251 of the Act, including regulations prescribed by the FCC pursuant to Section 251, or the standards set forth in Section 252(d) of the Act. Therefore, we have no basis to reject the arbitrated portion of the amendment.

### ***3.3 Preservation of Authority***

Section 252(e)(3), and our Rule 4.2.3, provide that nothing shall prohibit a State Commission from establishing or enforcing other requirements of State law in its review of an agreement, including compliance with intrastate telecommunications service quality standards, or other requirements of the Commission. No party or member of the public identifies any conflict between the amendment and any State law, including intrastate telecommunications service quality standards, or other requirements of the Commission, and we are aware of none.

### **3.4 Filing**

Consistent with the conclusion of this arbitration, and to promote clarity, we direct that the parties file a final Agreement. The final Agreement will contain a cover page which implements Section I of Amendment I. Further, in addition to any other dates the parties mutually agree to show on the cover page, the cover page will also show the date the final Agreement is filed with the Commission, which shall be on or before March 31, 1998. The final Agreement will next contain the signed original approved Amendment I. Lastly, the final Agreement will contain a copy of the June 20, 1997 Interim Conformed Paging Interconnection Agreement. The final Agreement will become effective upon filing.

### **Findings of Fact**

1. In Phase II, parties negotiated provisions and rates for Cook's payments to Pacific, and arbitrated the final rate for Pacific's payments to Cook.
2. On February 24, 1998, parties jointly filed Amendment I to the interim Agreement, incorporating all negotiated and arbitrated Phase II results, and, on March 16, 1998, filed a slightly revised version, correcting two citations and clarifying one definition.
3. No negotiated portion of the March 16, 1998 amendment results in discrimination against a telecommunications carrier not a party to the amendment, or is inconsistent with the public interest, convenience and necessity.
4. No arbitrated portion of the March 16, 1998 amendment fails to meet the requirements of Section 251 of the Act, including FCC regulations pursuant to Section 251, or the standards of Act Section 252(d).

5. No provision of the March 16, 1998 amendment conflicts with State law, including compliance with intrastate telecommunications service quality standards, or other requirements of the Commission.

#### **Conclusions of Law**

1. Amendment I, filed March 16, 1998, to the interim Agreement between Cook and Pacific should be approved.

2. The parties should file the final Agreement as described herein.

3. This order should be effective today so that final rates may be implemented without delay, and national telecommunications policy, as accomplished through the Agreement, implemented without delay.

#### **FINAL ORDER**

##### **IT IS ORDERED that:**

1. Pursuant to the Telecommunications Act of 1996, and Resolution ALJ-174, Amendment I to the Interim Conformed Paging Interconnection Agreement between Cook Telecom, Inc. and Pacific Bell (Pacific) filed March 16, 1998 is approved. Parties shall sign, file and serve approved Amendment I as described below, and the amended Agreement shall become the final Agreement. The final Agreement shall consist of a cover page which implements Section I of Amendment I. Further, in addition to any other dates the parties mutually agree to show on the cover page, the cover page shall show the date the final Agreement is filed. The final Agreement shall next contain the signed original approved Amendment I. Lastly, the final Agreement shall contain a copy of the June 20, 1997 Interim Conformed Paging Interconnection Agreement. Parties shall file the final Agreement on or before March 31, 1998, and the final Agreement shall become effective upon filing.

2. Pacific shall, within 10 days of the date of this order, serve the Director of the Telecommunications Division, and the Administrative Law Judge Division Webmaster, with a copy of the final Agreement on electronic disk in hypertext markup language format. Further, within 10 days of the date of this final opinion, Pacific shall place the final Agreement on its world wide web site, and provide information to the Administrative Law Judge Division Webmaster on linking the final Agreement on Pacific's web site with the Commission's web site.

3. This proceeding is closed.

This order is effective today.

Dated March 26, 1998, at San Francisco, California.

RICHARD A. BILAS  
President  
P. GREGORY CONLON  
JESSIE J. KNIGHT, JR.  
HENRY M. DUQUE  
JOSIAH L. NEEPER  
Commissioners