

Decision 98-07-026 July 2, 1998.

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

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)

FINAL OPINION

Summary

By this decision, we dismiss Application (A.) 97-02-020 and close this proceeding. However, we shall require Pacific Bell (Pacific) to fully annotate a new Statement of Generally Available Terms for Interconnection and Access (SGAT), should the company file one, and use a "redline" approach to show the differences between the old and new SGAT.

Background

On February 19, 1997, Pacific filed A.97-02-020 for approval of its SGAT pursuant to Section 252(f) of the Telecommunications Act of 1996 (the Act) and Rule 5 of the Commission's Rules.¹ The Act² 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 of the Act as well as the applicable standards and Federal Communications Commission regulations.

¹ Specifically, the Commission's Rules Governing Filings Made Pursuant to the Telecommunications Act of 1996 adopted in Resolution ALJ-168 on September 20, 1996.

² Section 252(f)(1).

On April 21, 1997, in Decision (D.) 97-04-056, the Commission permitted Pacific's SGAT to take effect, as provided by law. The Commission stated that it would continue to review the SGAT, and that the SGAT should not be deemed to have been either approved or rejected. As a part of its review, the Commission granted Pacific the opportunity to reply to the public comments filed in response to the SGAT. Pacific filed its reply on May 13, 1997.

On August 4, 1997, Pacific filed a notice advising the Commission that, effective immediately, it was withdrawing its SGAT. On August 19, the Office of Ratepayer Advocates (ORA) and the California Cable Television Association (CCTA) jointly replied that Pacific had exceeded its authority by attempting to unilaterally withdraw the SGAT in light of D.97-04-056. ORA and CCTA take issue with the procedural course that Pacific has followed: issuing a notice announcing the SGAT's withdrawal, rather than filing a petition for modification of D.97-04-056 or moving to amend the terms of the SGAT.

ORA and CCTA argue that the purpose of the SGAT is to provide competitive local carriers (CLCs) "with the equivalent of tariffed terms for interconnection and access." Reply Comments of ORA and CCTA at 2. They also contend that the SGAT offers CLCs, who neither wish to negotiate nor have the bargaining power to negotiate effectively, an expedited means of reaching an interconnection or access agreement with Pacific. Thus, they maintain, Pacific's action has prejudiced CLCs either negotiating with the company or considering entrance into the local market in reliance on SGAT. ORA and CCTA also insist that Pacific's procedure will now require that the Commission and interested parties spend time comparing the withdrawn SGAT with the possible new one.

To supplement the record in this proceeding, the assigned Administrative Law Judge (ALJ) issued a ruling soliciting responses from Pacific and the interested parties on several issues.³ AT&T Communications of California, Inc. (AT&T) urges that Pacific be required to fully annotate and clearly delineate differences between the old SGAT and a new one using a "redline" approach. Comments of AT&T at 1-2. Further, AT&T proposes that comments on a new SGAT be limited to the changes, and that all previous comments on the old SGAT be incorporated by reference into comments on the new document. AT&T also asks the Commission to formally reject this application as a sanction for Pacific's conduct in the proceeding.

ORA, in conjunction with CCTA, warns the Commission that less than full annotation of a new SGAT will substantially burden the Commission and the parties. ORA and CCTA question the accuracy of Pacific's response on the number of interconnection agreements that have been based on the "withdrawn" SGAT. They contend that the assessment does not factor in partial reliance on the SGAT or the reliance of potential entrants on the SGAT to develop entry strategies. ORA and CCTA exhort the Commission to "reject the ALJ's mistaken acceptance of Pacific's unilateral attempt to withdraw the SGAT," and declare void and disregard Pacific's Notice. Reply Comments of ORA and CCTA at 5.

³ The August 1997 ALJ Ruling asked Pacific and the interested parties to respond the following four questions: 1) How many interconnection and access agreements have been based on the now withdrawn SGAT? 2) If Pacific decides to file a new SGAT, is the company planning on fully annotating the new document so that any differences between the old and the new SGAT are clearly delineated? 3) What other recommendations could facilitate the review of a new SGAT for all the parties? 4) In light of the withdrawal of the SGAT what procedural actions should be taken with respect to D.97-04-056?

Pacific reports that the SGAT was the basis for only one interconnection agreement: between itself and ACN Communications.⁴ The company asserts that any requirement to fully annotate, using a "redline" approach to show differences between the old SGAT and a new SGAT, is unwarranted. It maintains that if it files a new SGAT, Pacific will describe any major areas of difference between the old and new documents. Moreover, Pacific states that it will cooperate with the parties to provide information to facilitate a comparison of the old and new SGATs. Pacific Response to ALJ Ruling at 2 and Pacific Response to Comments of AT&T at 1-2.

The company argues that either formally rejecting its SGAT application, directing it to file a motion to amend the document or ordering it to petition for modification of D.97-04-056 is inappropriate. Pacific reiterates that in D.97-04-056, the Commission had specifically neither approved nor rejected the SGAT and only permitted it to take effect subject to further review. It does not oppose the Commission dismissing the application.

Discussion

There is no indication in the record that Pacific's withdrawal of the SGAT has or will detrimentally affect either CLCs operating in, or potential entrants contemplating entry into, the California competitive local exchange market. Moreover, as Pacific emphasizes, under Section 252(i) of the Act, CLCs are entitled to any interconnection, service or network element that an ILEC has provided under a Section 252-approved agreement to any other requesting carrier on the same terms and conditions as those in the original agreement.

⁴The Pacific and ACN Communications interconnection agreement was adopted in D.97-06-111.

We find that the ALJ did not err by declining to declare void and disregard Pacific's Notice of Withdrawal. In permitting Pacific's SGAT to take effect in D.97-04-056, we expressly did not reach a conclusion as to whether the SGAT should be approved or disapproved pursuant to Section 252(f). We permitted the SGAT to take effect as only an interim measure pending further Commission review. In fact, we stated that we would continue the review and investigation of the document and reach a determination of whether it should be approved or disapproved at a later date. Pacific withdrew the SGAT at a stage in the proceeding when no determination had yet been reached on the merits and the Commission review and investigation were continuing. Given this, to require Pacific to petition to modify D.97-04-056 or file a motion to amend the discretionary SGAT would be elevating form over substance. Thus, we will not rescind Pacific's withdrawal of the SGAT.

However, we agree with AT&T, ORA and CCTA that should Pacific file a new SGAT, the company should fully annotate it and clearly delineate any differences between the old and new SGAT using a "redline" approach. Such an approach will facilitate the comparison of the old and new document. While parties may incorporate by reference their old comments on the unchanged portions, we shall not require that comments on a new SGAT be limited only to changes made to the old SGAT.

Since Pacific has withdrawn its SGAT, we dismiss A.97-02-020 and close this proceeding.

Findings of Fact

1. Pacific has withdrawn its SGAT.
2. There is no indication in the record that Pacific's withdrawal of the SGAT has or will detrimentally affect either CLCs operating in, or potential entrants contemplating entry into, the California competitive local exchange market.

3. The ALJ did not err by declining to declare Pacific's Notice of Withdrawal void and disregard it.

Conclusions of Law

1. Pacific is entitled to withdraw its SGAT under the specific facts and circumstances of this proceeding.
2. This order should be effective on the date signed so that this matter can be promptly concluded.

FINAL ORDER

IT IS ORDERED that:

1. If Pacific Bell files a new Statement of Generally Available Terms for Interconnection and Access (SGAT), the company shall do so in a new application which shall fully annotate and clearly delineate any differences between the old and new SGAT using a "redline" approach.
2. Application 97-02-020 is dismissed, and this proceeding is closed.

This order is effective today.

Dated July 2, 1998, at San Francisco, California.

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