

Decision 00-02-023 February 3, 2000

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

In the Matter of the Petition of Pacific Bell for Arbitration of an Interconnection Agreement with MFS/Worldcom Pursuant to Section 252(b) of the Telecommunications Act of 1996.

Application 99-03-047  
(Filed March 22, 1999)

**O P I N I O N**

**1. Summary**

By this decision, the September 21, 1999 motion of Pacific Bell (Pacific) for an order requiring MFS/Worldcom (MFSW) to establish and maintain a memorandum account for all disputed payments made by Pacific Bell pursuant to the arbitrated Interconnection Agreement approved by the Commission in Decision (D.) 99-09-069 is granted.

**2. Background**

On March 22, 1999, Pacific filed an application for arbitration of an Interconnection Agreement with MFSW pursuant to Section 252 of the Telecommunications Act of 1996 (the "Act"). One hundred sixty-three issues were presented for arbitration. One of the most controversial issues involved the payment of reciprocal compensation. Pacific asserted that the Commission could not mandate reciprocal compensation for the ISP-bound traffic that Pacific delivers to MFSW. On September 16, 1999, the Commission adopted D.99-09-069. This decision approved, pursuant to the Act, an Interconnection Agreement mandating the payment of reciprocal compensation for ISP-bound traffic that Pacific delivers to MFSW.

In accordance with the Final Arbitrator's Report, the parties signed the conformed Interconnection Agreement on August 11, 1999, and Pacific will be making reciprocal compensation payments to MFSW for ISP-bound traffic under the Agreement. On October 18, 1999, Pacific filed a timely Application for Rehearing of D.99-09-069.

On September 21, 1999, Pacific filed a motion for an order requiring MFSW to establish and maintain a memorandum account for all disputed payments made by applicant pursuant to the arbitrated Interconnection Agreement, and a further order that such payments be subject to refund with interest should the reciprocal compensation requirement of the Interconnection Agreement subsequently be found invalid. On October 12, 1999, MFSW filed a response in opposition to Pacific's motion.<sup>1</sup>

### **3. Parties' Position**

Pacific requests that the Commission issue an order requiring MFSW to establish and maintain a memorandum account for all disputed payments made by Pacific pursuant to the arbitrated Interconnection Agreement approved by the Commission in D.99-09-069. Pacific has filed an Application for Rehearing of D.99-09-069 arguing that the Interconnection Agreement approved by the Commission violates federal law and that the Commission exceeded its authority when it mandated Pacific to pay MFSW reciprocal compensation for ISP-bound traffic. If Pacific's Application for Rehearing is denied, Pacific intends to pursue

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<sup>1</sup> On October 4, 1999, counsel for MFSW called the assigned Administrative Law Judge (ALJ) to request an extension of time to file its response from October 6, 1999 to October 12, 1999. Counsel for Pacific had consented to MFSW's request. The ALJ granted the extension and MFSW confirmed the extension by letter dated October 7, 1999. Therefore, MFSW's response was timely filed.

its claim in court. Thus, the issue involving the mandated payment of reciprocal compensation to MFSW for ISP-bound traffic is not finally resolved.

Pacific argues that the ultimate resolution of this dispute will become more complex and litigious absent a Commission order for MFSW to identify and maintain records of all ISP-bound traffic and the reciprocal compensation revenues that it receives pursuant to the Interconnection Agreement mandated by D.99-09-069. Pacific proposes that MFSW readily identify at its switch the volume of traffic being delivered to its ISP customers. Furthermore, Pacific proposes that MFSW enter into a memorandum account the reciprocal compensation revenues associated with this ISP-bound traffic.

MFSW accepts Pacific's request that it identify and maintain memorandum account records of ISP-bound traffic and associated reciprocal compensation revenues delivered by Pacific to MFSW pursuant to the Interconnection Agreement mandated by D.99-09-069, on two conditions. MFSW requests that the requirement be made contingent on Pacific paying the reciprocal compensation Pacific owes for traffic MFSW has terminated to ISPs pursuant to MFSW's previously effective Commission-approved interconnection agreement with Pacific. In addition, MFSW requests that the Commission order Pacific to track traffic it terminates to ISPs and establish and maintain a memorandum account for the associated reciprocal compensation payments it receives from MFSW pursuant to the Interconnection Agreement mandated by D.99-09-069.

#### **4. Discussion**

Applicant points out that ultimate resolution of this dispute will become more complex and litigious absent respondent identifying and maintaining records of all ISP-bound traffic and reciprocal compensation revenues that it receives pursuant to the 1999 Agreement. Applicant is correct. The rights of

both parties can be protected during this period by respondent creating and maintaining an account to track all revenues that are in dispute.

We agree with MFSW's request that we condition the requested memorandum account on Pacific likewise maintaining a memorandum account for the associated reciprocal compensation payments it receives from MFSW pursuant to the Interconnection Agreement mandated by D.99-09-069. The request is reasonable and we will adopt it. However, we reject MFSW's other condition that we order Pacific to make payment on reciprocal compensation Pacific already owes MFSW for traffic terminated to ISPs pursuant to previously effective Commission-approved agreement. MFSW alleges that Pacific has refused to make the required payments.

Although Pacific may be obligated to make such payments pursuant to Commission orders in D.98-10-057 and D.99-07-047, a complaint case filed by MFSW against Pacific requesting the Commission to order Pacific to make these payments is still pending before the Commission. The proper place to address the payment of reciprocal compensation and whether a Commission order has been violated by any of the parties involved is in that proceeding or a separate proceeding which MFSW can initiate to seek relief. We decline to tie the two Interconnection Agreement disputes in this decision which is intended to keep the rights of each party for possible future resolution of disputed reciprocal compensation payments arising out of the Interconnection Agreement mandated by D.99-09-069.

We shall adopt the condition that Pacific track by a memorandum account the reciprocal compensation that MFSW will pay to Pacific for traffic Pacific terminates to ISPs. If Pacific somehow wins its appeal and obtains a ruling that inbound ISP traffic is not covered by the reciprocal compensation obligation, such a ruling would apply equally to the traffic Pacific terminates to ISPs for

MFSW. We agree with MFSW that there is no distinction that would justify the Commission treating Pacific any differently from MFSW in this regard.

Therefore, we shall order Pacific to track traffic it terminates to ISPs and establish and maintain a memorandum account for the associated reciprocal compensation payments it receives from MFSW.

## **5. Comments on Draft Decision**

The alternate decision Commissioner Neepur in this matter was mailed to the parties in accordance with Pub. Util. Code Section 311(g) and Rule 77.1 of the Rules of Practice and Procedure. No comments were filed.

### **Findings of Fact**

1. On September 16, 1999, the Commission adopted D.99-09-069, approving an Interconnection Agreement mandating the payment of reciprocal compensation for ISP-bound traffic that Pacific delivers to MFSW.

2. The obligation of Pacific to pay reciprocal compensation to MFSW for ISP-bound traffic remains a disputed issue since Pacific has filed an application for rehearing of D.99-09-069.

3. The ultimate resolution of the ISP dispute will become more complex and litigious absent a Commission order for MFSW to identify and maintain records of all ISP-bound traffic and the reciprocal compensation revenues that it receives pursuant to the Interconnection Agreement mandated by D.99-09-069.

### **Conclusions of Law**

1. The motion of Pacific should be granted to require MFSW to establish a memorandum account for reciprocal compensation for ISP traffic.

2. It is reasonable to impose a similar requirement on Pacific to track traffic it terminates to ISPs, and to establish and maintain a memorandum account for the associated reciprocal compensation payments it receives from MFSW pursuant to the Interconnection Agreement mandated by D.99-09-069.

**O R D E R**

**IT IS ORDERED** that:

1. The motion of Pacific Bell is granted for an order requiring MFS/Worldcom to establish and maintain a memorandum account for all disputed payments made by Pacific Bell pursuant to the arbitrated interconnection agreement mandated by the Commission in Decision (D.) 99-09-069.

2. As a condition of granting Pacific's motion, Pacific shall track traffic it terminates to ISPs and establish and maintain a memorandum account for the associated reciprocal compensation payments it receives from MFSW pursuant to the Interconnection Agreement mandated by D.99-09-069.

This order is effective today.

Dated February 3, 2000, at San Francisco, California.

RICHARD A. BILAS

President

HENRY M. DUQUE

JOSIAH L. NEEPER

Commissioners

I dissent.

/s/ CARL W. WOOD

Commissioner

I dissent.

/s/ LORETTA M. LYNCH

Commissioner