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Decision 00-03-024

March 2, 2000

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Petition by Pac-
West Telecomm, Inc. (U-5266-C) for
Arbitration of an Interconnection
Agreement with Citizens
Telecommunications Company of
California, Inc. (U-1024-C).

Application 99-02-002
(Filed February 2, 1999)

**ORDER DENYING APPLICATION FOR REHEARING OF
DECISION 99-12-021**

I. SUMMARY

Citizens Telecommunications Company of California, Inc. (CTC-CA) filed an application for rehearing challenging Decision (D.) 99-12-021, which adopted the results of the Final Arbitrator's Report and approved the resulting Interconnection Agreement between CTC-CA and Pac-West Telecomm, Inc. (Pac-West). The focus of the application for rehearing is whether Internet Service Provider (ISP) bound traffic should be subject to reciprocal compensation provisions of the agreement. Another aspect of the application appears to focus on whether a bill-and-keep arrangement for the termination of local traffic should have been adopted instead of reciprocal compensation. A response to the application for rehearing was filed by Pac-West. We have reviewed each and every allegation of legal error in CTC-CA's application and conclude that grounds for rehearing have not been demonstrated. We accordingly deny CTC-CA's application for rehearing.

II. DISCUSSION

A. **CTC-CA's application for rehearing should be dismissed as it fails to meet the requirements of Public Utilities Code § 1732 and Rule 86.1 of the Commission's Rules of Practice and Procedure.**

Rule 86.1 of the Commission's Rules of Practice and Procedure provides in part: "Applications for rehearing shall set forth specifically the grounds on which applicant considers the order or decision of the Commission to be unlawful or erroneous. Applicants are cautioned that vague assertions as to the record or the law, without citation, may be accorded little attention." Public Utilities Code § 1732 similarly states that applications for rehearing must set forth specific grounds on which the applicant considers the decision to be unlawful.

Although CTC-CA alleges that the Commission's decision to impose reciprocal compensation on ISP-bound calls was "inequitable" and "erroneous," CTC-CA fails to specifically allege any factual or legal error in the Decision. CTC-CA alleges the Commission "manipulated" the facts in making its determination, but fails to specifically point out what facts were manipulated or ignored. Likewise, while the bulk of CTC-CA's application disagrees with the Commission's policy on compensation for ISP-bound traffic, CTC-CA does not allege that the Commission violated any particular provision of federal or state law. In fact, CTC-CA concedes that the Commission has discretion under the Federal Communications Commission's February 26, 1999, Declaratory Ruling¹ to require reciprocal compensation or not require it. CTC-CA's argument is that the Commission disregarded and ignored "any facts or citations which demonstrate that this Commission is also provided the discretion not to impose reciprocal compensation if it determines the facts warrant such action." (CTC-CA Application for Rehearing at 3.) This Commission is well aware that it has the discretion to impose an appropriate compensation mechanism for ISP-bound

¹ Re Local Competition Implementation, Inter-Carrier Compensation for ISP-bound Traffic, Declaratory Ruling and Notice of Proposed Rulemaking, FCC N.99-38, CC Dkts. 96-98 and 99-68 (rel. Feb. 26, 1999).

traffic, including choosing not to impose reciprocal compensation if the facts so warrant. (See D.99-07-047.) Exercising this discretion in a manner which is merely disagreeable to CTC-CA does not raise legal error in the Decision.

CTC-CA's application also alludes to the possibility that the reciprocal compensation requirement would cause significant adverse economic impact on its customers and/or create an unduly economically burdensome requirement on CTC-CA. However, CTC-CA neither follows up on this argument with any analysis nor points to any place in the record where it presented any evidence in support of this proposition. A review of the record shows that CTC-CA never advanced this argument in the arbitration proceeding, nor did it present any evidence to demonstrate it would suffer adverse economic impact if reciprocal compensation were adopted. In fact, neither party submitted a cost study that complied with FCC pricing rule § 51.705(a)(1), and the rate adopted by the Decision for such compensation is based on the lowest local switching cost proxy that is legally permitted by the FCC's rules. Moreover, by CTC-CA's own admission, the adopted rate is only negligibly different from its own recommended rate.

Since CTC-CA's application for rehearing fails to specifically set forth any grounds for legal error with respect to the decision to provide reciprocal compensation for ISP-bound traffic, and does not alert the Commission to legal or factual error in the Decision, we find that the application fails to meet the requirements of Rule 86.1 and Pub. Util. Code § 1732.

B. CTC-CA's argument that the Decision is inconsistent with existing Commission precedent is without merit.

CTC-CA argues that the Commission departed from established precedent that it is inequitable for the Commission to change the *status quo* relationship between parties prior to the FCC issuing its Order on inter-carrier compensation for ISP-bound traffic. CTC-CA portrays the arbitrated agreement as

a drastic departure from previously agreed-upon arrangements between CTC-CA and Pac-West. Since CTC-CA had a prior agreement which provided for bill-and-keep, rather than reciprocal compensation, CTC-CA argues that the Commission has changed the *status quo* between the parties by adopting reciprocal compensation. CTC-CA argues that this represents a departure from Commission precedent, as exemplified in the decision adopting the Pacific Bell/Pac-West interconnection agreement. CTC-CA points to the Commission's decision in that case to "stay the course" in requiring reciprocal compensation for ISP-bound traffic. CTC-CA argues that since the parties in this case had an existing agreement which provided for bill-and-keep, the Commission should have "stayed the course" here and adopted bill-and-keep.

CTC-CA's argument is flawed in several respects. First, it misconstrues the meaning of the phrase "stay the course" as used in the Pacific/Pac-West decision. There, the Commission discussed its position on various issues surrounding ISP-bound traffic, including the definition of local calls, definition of toll-free service, and treatment of calls to ISPs. It did not merely refer to the type of compensation mechanism (reciprocal compensation or bill-and-keep) that would be adopted for the termination of local traffic. CTC-CA's interpretation of the Commission's policy is therefore inaccurate.

Second, as the Final Arbitrator's Report in this case points out, the "*status quo*" between Pac-West and CTC-CA was governed only by a general interim agreement entered into while the parties negotiated an interconnection agreement. In fact, several times in the arbitration proceeding, CTC-CA strenuously pointed out that CTC-CA and Pac-West did not have an existing interconnection agreement. For example, CTC-CA argued that the FCC's Declaratory Ruling only applied to existing agreements between the parties, and that the Commission should have ignored the Ruling as the parties did not have an existing agreement in this case. (See Response of CTC-CA to Pac-West Telecomm's Petition for Arbitration, p. 10.) It is inconsistent for CTC-CA to

argue on the one hand that there is no existing agreement when it comes to applying an FCC order, and on the other hand argue that the parties do have an existing agreement to establish some sort of “*status quo*” relationship in order to apply Commission precedent.

In addition, regardless of the existing agreement between the parties, this argument ignores FCC Rule § 51.713 which allows state commissions to impose a bill-and-keep arrangement only when traffic is in relative balance between the two networks. As the Arbitrator’s Report notes, Rule § 51.713 is currently in effect² and precludes reliance of the bill-and-keep arrangements in a case such as this where traffic is not in balance.

The Commission’s determination in this case to treat ISP-bound traffic as local for purposes of inter-carrier compensation is consistent with prior Commission policy. Currently, the Commission’s policy is to provide reciprocal compensation for the transport and termination of ISP-bound traffic (see D.98-10-057 and D.99-07-047). CTC-CA’s allegation that the Commission somehow deviated from current policy is simply unavailing.

III. CONCLUSION

For the foregoing reasons, CTC-CA’s application for rehearing fails to demonstrate legal error in Decision 99-12-021.

THEREFORE, IT IS ORDERED that CTC-CA’s application for rehearing of Decision 99-12-021 is denied.

² Although this FCC requirement was vacated by the Eighth Circuit, it was reinstated by the Eighth Circuit on June 10, 1999, following the U.S. Supreme Court’s order in AT&T v. Iowa Utilities Board.

This proceeding is closed.

This order is effective today.

Dated March 2, 2000, at San Francisco, California.

RICHARD A. BILAS

President

HENRY M. DUQUE

JOSIAH L. NEEPER

CARL W. WOOD

LORETTA M. LYNCH

Commissioners