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Decision 00-04-066 April 20, 2000

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of Pacific Bell Telephone Company's (U 1001 C) Petition for Arbitration of Advice Letter No. 58 Filed by TCG-San Francisco (U 5454 C) on November 29, 1999 Regarding TCG-San Francisco's Request to Adopt Section 18 of the Interconnection Agreement between AT&T Communications of California, Inc. (U 5002 C) and Pacific Bell Telephone Company.	Application 99-12-017 (Filed December 14, 1999)
In the Matter of Pacific Bell Telephone Company's (U 1001 C) Petition for Arbitration of Advice Letter No. 63 Filed by TCG-Los Angeles (U 5462 C) on November 29, 1999 Regarding TCG-Los Angeles' Request to Adopt Section 18 of the Interconnection Agreement between AT&T Communications of California, Inc. (U 5002 C) and Pacific Bell Telephone Company.	Application 99-12-018 (Filed December 14, 1999)
In the Matter of Pacific Bell Telephone Company's (U 1001 C) Petition for Arbitration of Advice Letter No. 56 Filed by TCG-San Diego (U 5389 C) on November 29, 1999 Regarding TCG-San Diego's Request to Adopt Section 18 of the Interconnection Agreement between AT&T Communications of California, Inc. (U 5002 C) and Pacific Bell Telephone Company.	Application 99-12-019 (Filed December 14, 1999)

OPINION

1. Summary

We affirm the results in the Final Arbitrator's Report, and approve the resulting arbitrated Interconnection Agreements between Pacific Bell Telephone Company and TCG-San Francisco, TCG-Los Angeles, and TCG-San Diego. The proceedings are closed.

2. Background

2.1 The Act, FCC Regulations and Resolution ALJ-178

Section (§) 252(i) of the Telecommunications Act of 1996 (Act) provides that:

> "A local exchange carrier shall make available any interconnection, service, or network element provided under an agreement approved under this Section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement." (47 U.S.C. § 252(i).)

The Federal Communications Commission (FCC) adopted regulations implementing the Act. Regarding § 252(i) of the Act, the FCC adopted regulation § 51.809 (47 C.F.R. § 51.809), hereinafter "§ 51.809," which states:

> **"Section 51.809 Availability of provisions of agreements to other telecommunications carriers under section 252(i) of the Act.**
>
> "(a) An incumbent LEC [local exchange carrier] shall make available without unreasonable delay to any requesting telecommunications carrier any individual interconnection, service, or network element arrangement contained in any agreement to which it is a party that is approved by a state commission pursuant to section 252 of the Act, upon the same rates, terms, and conditions as those provided in the agreement. An incumbent LEC may

not limit the availability of any individual interconnection, service, or network element only to those requesting carriers serving a comparable class of subscribers or providing the same service (i.e., local, access, or interexchange) as the original party to the agreement.

"(b) The obligations of paragraph (a) of this section shall not apply where the incumbent LEC proves to the state commission that:

"(1) the costs of providing a particular interconnection, service, or element to the requesting telecommunications carrier are greater than the costs of providing it to the telecommunications carrier that originally negotiated the agreement, or

"(2) the provision of a particular interconnection, service, or element to the requesting carrier is not technically feasible.

"(c) Individual interconnection, service, or network element arrangements shall remain available for use by telecommunications carriers pursuant to this section for a reasonable period of time after the approved agreement is available for public inspection under section 252(f) of the Act."

State commissions may adopt procedures for making agreements subject to § 252(i) of the Act available to carriers on an expedited basis. (FCC 96-325, *First Report and Order*, adopted August 1, 1996, released August 8, 1996, in CC Docket Nos. 96-98 and 95-185, Paragraph 1321.) To that end, the Commission[1] adopted Resolution ALJ-178 on November 18, 1999.

Pursuant to Resolution ALJ-178, a competitive local exchange carrier (CLEC) wishing to adopt a previously approved interconnection agreement

[1] References to the Commission are to the California Public Utilities Commission.

(ICA) must file and serve an advice letter identifying the agreement and portions thereof it proposes to adopt. (Rule 7.1, Resolution ALJ-178.) The incumbent local exchange carrier (ILEC) upon whom the advice letter is served must, within 15 days after its receipt of the advice letter, either (1) send the requesting carrier a letter approving its request or (2) file an application for arbitration. The request for arbitration must be based solely on the requirements of § 51.809. If the ILEC does not act to either approve the request or file a request for arbitration, the CLEC's request is deemed effective on the 16th day. (Rule 7.2, Resolution ALJ-178.)

2.2 Existing Interconnection Agreements

The ICAs between TCG-San Diego, TCG-San Francisco, and TCG-Los Angeles (collectively TCG or respondents) and Pacific Bell Telephone Company (Pacific or applicant) expired on October 17, 1999. Rather than negotiate new ICAs, TCG informed Pacific before expiration of the existing ICAs that they planned to adopt portions of the ICA between Pacific and AT&T Communications of California, Inc. (the AT&T Agreement) under the expedited procedures provided by § 252(i) of the Act.[2]

TCG requested adoption of all provisions of the AT&T Agreement with limited exceptions. For example, TCG did not request adoption of Attachment 18.[3] Pacific accepted TCG's adoption requests and, on September 8,

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[2] The AT&T Agreement became effective on December 19, 1996. (See Decision (D.) 96-12-034.) It was noticed for re-negotiation on June 21, 1999. It remains effective until December 19, 1999, and thereafter until a new agreement becomes effective. (AT&T Agreement, § 3.1.)

[3] Attachment 18 contains the details, and all the technical aspects, of interconnection. It includes local interconnection trunk arrangements, third-party traffic, compensation for call termination, compensation for use of local interconnection facilities, meet-point

Footnote continued on next page

1999, filed the resulting replacement ICAs for approval with the Commission. On October 21, 1999, the Commission approved the replacement ICAs by Resolution T-16357. The replacement ICAs became effective on that date, remaining in effect until December 19, 1999, and continuing in force and effect until new agreements between the parties are negotiated. (See Resolution T-16357, Summary, page 1.)

2.3 Advice Letters, Applications for Arbitration, and Responses

Pursuant to Act § 252(i) and Resolution ALJ-178, on November 29, 1999, TCG served Pacific with Advice Letter Nos. 56, 58, and 63. These advice letters notified Pacific that TCG intended to adopt Attachment 18 of the AT&T Agreement.

On December 14, 1999, Pacific filed applications for arbitration of the TCG advice letters asking that the advice letters be denied. On January 7, 2000, TCG filed and served responses asserting that the arbitrations should be denied.[4]

2.4 Arbitration

An initial arbitration meeting was held by telephone conference call on January 18, 2000. An arbitration conference and hearing was held on January 21, 2000. Parties agreed that no facts were in dispute, and evidentiary hearings were not required. Rather, the only disputed matter was a legal issue: whether or not respondents may adopt a portion of an ICA shortly before the ICA is due to

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trunking arrangements, responsibilities of the parties, installation of trunks, trunk forecasting, grade of service, local interconnection trunk servicing, trouble reports, and network management.

[4] AT&T Communications of California, Inc., (AT&T) submitted the responses on behalf of TCG. TCG is a wholly-owned subsidiary of AT&T Corporation, the parent of AT&T.

expire, even if the ICA remains in effect after its technical expiration date, based on § 252(i) of the Act, FCC regulation § 51.809, and Resolution ALJ-178.

The three applications were consolidated, and a briefing schedule adopted. Opening briefs were filed and served on January 31, 2000. Reply briefs were filed and served on February 4, 2000.

The Draft Arbitrator's Report (DAR) was filed and served on February 22, 2000. Comments on the DAR were filed by applicant and respondents on March 3, 2000.

The Final Arbitrator's Report (FAR) was filed and served on March 17, 2000. The FAR directed parties to file entire ICAs for Commission consideration in conformance with the decisions in the FAR. Further, the FAR ordered parties to file a statement identifying the criteria by which the arbitrated ICAs must be tested under the Act and Commission's Rules, explaining whether the ICAs pass or fail each relevant test, and stating whether or not the ICAs should be approved or rejected by the Commission.

On March 24, 2000, respondents filed and served Advice Letter Nos. 56A, 58A, and 63A. The advice letters transmit entire ICAs signed by both parties. The ICAs conform with the decisions in the FAR, including an effective date of November 29, 1999. Respondents' advice letters also include a statement that explains why the ICAs meet the requirements of the Act and Commission Rules, and should be approved. Applicant did not file a statement.

On April 17, 2000, applicant filed a motion for acceptance of a late-filed statement to address whether or not the ICAs should be approved or rejected by the Commission. The motion is denied.

Applicant contends that it misunderstood Ordering Paragraph 2 of the FAR.[5] Rather, applicant states that it understood parties were to work jointly to meet the requirements of Ordering Paragraph 2, and avoid duplicative filings. Applicant says it worked with respondents to execute one complete set of ICAs.

We thank applicant for working with respondents to avoid duplicative filings. We believe, however, that in such cooperative effort applicant would have sought to learn what respondents planned to submit in compliance with Ordering Paragraph 2(b). Further, we think applicant would have taken the opportunity to submit a separate statement in compliance with Ordering Paragraph 2(b) if applicant disagreed with respondents' statement, or sought more timely clarification from the Arbitrator.[6]

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[5] Ordering Paragraph 2 states:

"2. Within seven days of the filing date of this Final Arbitrator's Report, parties shall file and serve:

a. Entire Interconnection Agreements for Commission approval that conform with the decisions in the Final Arbitrator's Report.

b. A statement which (i) identifies the criteria in the Telecommunications Act of 1996 and the Commission's Rules (e.g., Rules 2.18, 4.2.3, and 4.3.1 of Resolution ALJ-178) by which negotiated and arbitrated portions of the Agreements must be tested, (ii) explains whether the negotiated and arbitrated portions at issue here pass or fail each relevant test, and (iii) says whether or not the Interconnection Agreements should be approved or rejected by the Commission."

[6] For example, our rules provide for the filing and service of a DAR, subject to comments by parties. (Rule 3.18, Resolution ALJ-178.) Applicant could have sought clarification of Ordering Paragraph 2 in its comments on the DAR. Alternatively, applicant could have sough clarification from the Arbitrator after the filing and service of the FAR when applicant first learned that respondents would file a statement in compliance with Ordering Paragraph 2(b) with which applicant disagreed.

We expect that there are arbitrations in which parties accept the outcome, and do not continue to seek another result. That acceptance might be demonstrated by silence if the party does not chose to actively support the outcome. Therefore, it is meaningful to us if parties jointly file the statement, file individual statements, or do not file a statement.

Applicant asserts it believed only one statement was to be filed by parties. We are not convinced. We do not believe that applicant could have reasonably expected that the Arbitrator ordered applicant to subscribe to a statement to which it disagreed. The fact that applicant did not subscribe to respondents' statement, nor did if file its own statement, is important in our deliberations. It is untimely for applicant to seek late consideration.

Applicant clarifies now, however, that its silence neither signifies acceptance nor agreement with the result. Applicant contends that neither respondents nor the Commission would be prejudiced by accepting applicant's late-filed statement.

We decline to accept applicant's late-filed statement. Applicant's statement fails to comply with Ordering Paragraph 2(b). That is, there are specific grounds upon which we may test the results of an arbitration. Parties were to specifically identify the criteria we may use. Applicant fails to do so clearly and specifically.

Nonetheless, applicant argues that the result violates § 51.809(c). Conformance with regulations adopted by the FCC pursuant to § 251 of the Act is one criterion we must use to test the results of an arbitration. Pacific raises no new argument, however. The FAR thoroughly discusses and addresses Pacific's contentions. We affirm the results of the FAR. Pacific offers nothing in its late-filed statement that adds to our deliberations. Even if we were to grant the motion, we would make no changes to the decision.

Pacific asks in its statement that, at a minimum, the Commission make clear that the results here are not precedential. We decline to make any particular statement beyond that already made in Resolution ALJ-178. We there make clear that we have not adopted a strict definition of what constitutes a "reasonable" period of time "but since circumstances may vary, we will make that determination on a case-by-case basis." (Resolution ALJ-178, p. 5.) We affirm the FAR, which makes this clear without further discussion here.

Again, even if we were to grant applicant's motion, we would make no changes to the decision. Thus, we conclude for several reasons that we should not consider the late-filed statement.

3. Discussion

3.1 Negotiated Portions of ICAs

No negotiated portions of the ICAs are presented for our consideration.

3.2 Arbitrated Portions of ICAs

Section 252(e)(2)(B) of the Act, and our Rule 4.2.3, provide that we may only reject an ICA (or portion thereof) adopted by arbitration if we find that the ICA does not meet the requirements of § 251 of the Act, including the regulations prescribed by the FCC pursuant to § 251, or the standards set forth in § 252(d) of the Act.[7] No party or member of the public argues that the arbitrated results violate any part of the Act or FCC regulations. We are not aware of any violations, and conclude there are none. We affirm the results of the arbitration.

[7] Section 251 states interconnection standards. Section 252(d) identifies pricing standards.

3.3 Preservation of Authority

Section 252(e)(3) of the Act, 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 clause of the ICAs, or any results of the arbitration, that potentially conflict with any state law, including intrastate telecommunications service quality standards, or other requirements of the Commission, and we are aware of none. We conclude there are no such conflicts. We affirm the results of the arbitration.

4. Unforeseen Emergency

The Public Utilities Code and our Rules of Practice and Procedure generally require that proposed decisions be circulated to the public for comment, and that the Commission not issue its decision any sooner than 30 days following the filing and service of the proposed decision.[8] On the other hand, the Act requires that the Commission reach its decisions to approve or reject an arbitrated agreement within 30 days after submission by the parties.[9] This establishes a conflict.[10]

Pursuant to Rule 81, consideration of this decision qualifies as an "unforeseen emergency situation." An unforeseen emergency situation is one "that requires action or a decision by the Commission more quickly that would

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[8] See Pub. Util. Code §§ 311(d) and (g), and Rules 77 and 83 of the Commission's Rules of Practice and Procedure.

[9] 47 U.S.C. Section 252(e)(4).

[10] See D.99-01-009 for a more thorough discussion and explanation.

be permitted if advance publication were made on the regular meeting agenda." (Rule 81.) It qualifies as such because of a deadline "for Commission action imposed by legislative bodies..." (Rule 81(g).) Therefore, we consider and adopt this decision today on the basis of an unforeseen emergency.

Moreover, Rule 77.7(f)(5) provides that we may reduce or waive the period for public review and comment "for a decision under the state arbitration provisions of the Telecommunications Act of 1996." We consider and adopt this decision today under the state arbitration provisions of the Act.

Findings of Fact

1. On March 24, 2000, respondents filed and served Advice Letter Nos. 56A, 58A, and 63A, transmitting entire ICAs signed by both parties which conform with the decisions in the FAR, including an effective date of November 29, 1999.

2. The Advice Letters also include statements from respondents explaining why the ICAs meet the requirements of the Act and Commission Rules, and should be approved.

3. Applicant did not file a statement regarding whether or not the ICAs meet the requirements of the Act and Commission Rules, and whether the resulting ICAs should be approved or rejected.

4. By motion dated April 17, 2000, applicant seeks leave to file a statement late.

5. No negotiated portions of the ICAs are presented for Commission consideration.

6. Only one issue was presented for arbitration: whether or not respondents may adopt a portion of an ICA shortly before the ICA is due to expire, even if the ICA remains in effect after its technical expiration date, based on § 252(i) of the Act, FCC regulation § 51.809, and Resolution ALJ-178.

7. No party or member of the public argues that the arbitrated results violate any part of the Act or FCC regulations.

8. No arbitrated portion of the ICAs fails to meet the requirements of § 251 of the Act, including FCC regulations pursuant to § 251, or the standards of § 251(d) of the Act.

9. No provisions of the ICAs conflict with state law, including compliance with intrastate telecommunications service quality standards, or other requirements of the Commission.

10. The Act requires that the Commission approve or reject an arbitrated ICA within 30 days after the agreement is filed. (47 U.S.C. § 252(e)(4).)

11. The Commission generally may not act on a proposed decision any sooner than 30 days after it is filed and served for public comment. (Pub. Util. Code § 311(d) and (g).)

12. The Commission's 30-day period before acting on a proposed decision may be reduced or waived in an unforeseen emergency situation. (Pub. Util. Code § 311(g)(2).)

13. An unforeseen emergency situation includes deadlines established for Commission action imposed by legislative bodies. (Rule 81(g).)

14. Rule 77.7(f)(5) provides that the Commission may reduce or waive the period for public review and comment for a decision under the state arbitration provisions of the Act.

15. This is a proceeding under the state arbitration provisions of the Act.

Conclusions of Law

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

prescribed by the FCC pursuant to § 251, or the standards set forth in § 252(d) of the Act.

2. Section 252(e)(3) of the Act, 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.

3. The ICAs transmitted by Advice Letter Nos. 56A, 58A, and 63A should be approved, and the ICAs should be effective November 29, 1999.

4. Applicant's motion dated April 17, 2000 should be denied.

5. This order should be effective today because it is in the public interest to implement national telecommunications policy as accomplished through the ICAs, and to replace existing ICAs with the new ICAs, as soon as possible.

O R D E R

IT IS ORDERED that:

1. Pursuant to the Telecommunications Act of 1996, and Resolution ALJ-178, the signed Interconnection Agreements (ICAs) between Pacific Bell Telephone Company and TCG-San Francisco, TCG-Los Angeles, and TCG-San Diego, filed and served on March 24, 2000 by Advice Letter Nos. 56A, 58A, and 63A, are approved. The approved ICAs are effective November 29, 1999.

2. The motion dated April 17, 2000 by Pacific Bell Telephone Company is denied.

3. These proceedings are closed.

This order is effective today.

Dated April 20, 2000, at San Francisco, California.

LORETTA M. LYNCH
President
HENRY M. DUQUE
JOSIAH L. NEEPER
RICHARD A. BILAS
CARL W. WOOD
Commissioners