

Decision 99-07-032 July 22, 1999

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Petition of AT&T Communications of California, Inc., for Arbitration Pursuant to Section 252 of the Federal Telecommunications Act of 1996 to Establish an Interconnection Agreement with GTE California, Incorporated.

Application 96-08-041
(Filed August 19, 1996)

In the Matter of the Petition of MCI Telecommunications Corporation for Arbitration Pursuant to 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Pacific Bell.

Application 96-08-068
(Filed August 30, 1996)

In the Matter of the Petition of MCI Telecommunications Corporation for Arbitration Pursuant to 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with GTE California, Incorporated.

Application 96-09-012
(Filed September 19, 1996)

ORDER REOPENING AND CONSOLIDATING APPLICATION (A.) 96-08-041, A.96-08-068, AND A.96-09-012 FOR THE PURPOSE OF DECIDING ISSUES REMANDED FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

Summary

This order reopens and consolidates Application (A.) 96-08-041, A.96-08-068, and A.96-09-012 for the purpose of deciding issues remanded by the United States District Court for the Northern District of California (the Court). This order also requires the parties to hold settlement discussions and to submit

written comments regarding (1) the issues remanded by the Court, and (2) the scope, schedule, and expected outcome of this proceeding.

Background

On August 19, 1996, AT&T Communications of California, Inc., (AT&T) filed Application (A.) 96-08-041 for compulsory arbitration with respect to a proposed interconnection agreement with GTE California Incorporated (GTE). On August 30, 1996, MCI Telecommunications Corporation (MCI) filed A.96-08-068 for compulsory arbitration with respect to a proposed interconnection agreement with Pacific Bell. On September 19, 1996, MCI filed A.96-09-012 for compulsory arbitration with respect to a proposed interconnection agreement with GTE. Each of these applications was filed pursuant to the § 252 of Telecommunications Act of 1996, 47 U.S.C. §§ 151-614 (the Act).

The Commission conducted the arbitrations in accordance with § 252 of the Act. On January 13, 1997, the Commission issued Decision (D.) 97-01-022 which adopted an interconnection agreement between AT&T and GTE. On January 23, 1997, the Commission issued D.97-01-039 which adopted an interconnection agreement between MCI and Pacific Bell. And on January 23, 1997, the Commission issued D.97-01-045 which adopted an interconnection agreement between MCI and GTE.

Pursuant to § 252(e)(6) of the Act, the parties to A.96-08-041, A.96-08-068, and A.96-09-012 filed complaints with the Court seeking to overturn portions of D.97-01-022, D.97-01-039, and D.97-01-045.¹ The Court issued its decision on

¹ MCI Telecommunications Corp., et al., v. Pacific Bell, et al., No. C 97-0670 SI; GTE California Incorporated, v. P. Gregory Conlon, AT&T Communications of California,

Footnote continued on next page

September 29, 1998. In its decision, the Court remanded to the Commission the following issues for further decision:²

1. Whether the Commission's requirement to obtain written authorization from customers prior to releasing customer proprietary network information (CPNI) is unlawful in light of the Federal Communications Commission's (FCC's) CPNI Order. (D.97-01-039 and D.97-01-045.)
2. Whether AT&T's and MCI's physically collocated remote switching units (RSMs) are used for interconnection and access to unbundled network elements (UNEs). (D.97-01-022 and D.97-01-045.)

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Discussion

We shall reopen A.96-08-041, A.96-08-068, and A.96-09-012 for the limited purpose of deciding the issues remanded by the Court. Since each issue remanded by the Court affects more than one proceeding, we shall consolidate A.96-08-041, A.96-08-068, and A.96-09-012 in order to efficiently use our resources. Commissioner Duque and Administrative Law Judge Kenney are assigned to the consolidated proceeding.

The parties to A.96-08-041, A.96-08-068, and A.96-09-012 shall file and serve written comments regarding the scope, schedule, and expected outcome of this proceeding. Opening comments shall be due 30 days from the effective date of this order, and reply comments shall be due 40 days from the effective date of this order. Prior to submitting opening comments, the parties shall hold settlement discussions for the purpose of attempting to reach an agreement on

et al., C 97-1756 SI; and GTE California Incorporated, v. P. Gregory Conlon, MCI Telecommunications Corp., et al., C 97-1757 SI.

² See Order Regarding Parties' Cross Motions for Summary Judgment.

(1) the issues remanded by the Court, and (2) the scope, schedule, and expected outcome of this proceeding. Any agreement reached by the parties should be included in their opening comments.³

Article 2.5 of the Commission's Rules of Practice and Procedure

A.96-08-041, A.96-08-068, and A.96-09-012 were each filed prior to 1998, and hearings were held in each of these proceedings prior to 1998. Therefore, pursuant to Rule 4(b)(2) of the Commission's Rules of Practice and Procedure (Rules), this consolidated proceeding is not subject to Article 2.5 of the Commission's Rules.

Pub. Util. Code § 311(g)

The draft decision of Administrative Law Judge Kenney was mailed to the parties of A.96-08-041, A.96-08-068, and A.96-09-012 in accordance with the requirements of Pub. Util. Code § 311(g). None of the parties exercised their right under Rules 77.2 – 77.5 to file comments on the draft decision.

Findings of Fact

1. On September 29, 1998, the United States District Court for the Northern District of California issued an order which remanded to the Commission the following issues for further decision: (a) Whether the Commission's requirement to obtain written authorization from customers in order to release CPNI is unlawful in light of FCC's CPNI Order; and (b) Whether AT&T's and MCI's physically collocated RSMs are used for interconnection and access to UNEs.

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³ If the parties do not reach an agreement on how they believe the Commission should decide the issues remanded by the Court, then parties' opening comments should only address the scope, schedule, and expected outcome of this proceeding.

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2. The issues remanded by the Court were previously considered by the Commission in D.97-01-022/A.96-08-041, D.97-01-039/A.96-08-068, and D.97-01-045/A.96-09-012.

Conclusions of Law

1. The following proceedings should be reopened and consolidated for the limited purpose of deciding the issues remanded by the Court: A.96-08-041, A.96-08-068, and A.96-09-012.

2. The parties to A.96-08-041, A.96-08-068, and A.96-09-012 should file and serve written comments and reply comments regarding the scope, schedule, and expected outcome of the proceeding identified in Conclusion of Law 1. Prior to submitting comments, the parties should hold settlement discussions for the purpose of attempting to reach an agreement concerning (a) the issues remanded by the Court, and (b) the scope, schedule, and expected outcome of this proceeding. Any agreement reached by the parties should be included in their opening comments.

3. This proceeding is not subject to Article 2.5 of the Commission's Rules of Practice and Procedure.

4. The following order should be effective immediately.

IT IS ORDERED that:

1. The following proceedings are reopened and consolidated for the limited purpose of deciding the issues remanded by the United States District Court for the Northern District of California: Application (A.) 96-08-041, A.96-08-068, and A.96-09-012.

2. The parties to A.96-08-041, A.96-08-068, and A.96-09-012 shall file and serve written comments regarding the scope, schedule, and expected outcome of the consolidated proceeding identified in Ordering Paragraph 1. Opening comments shall be due 30 days from the effective date of this order, and reply

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comments shall be due 10 days thereafter. Prior to submitting opening comments, the parties shall hold settlement discussions for the purpose of attempting to reach an agreement concerning (a) the issues remanded by the Court, and (b) the scope, schedule, and expected outcome of this proceeding. Any agreement reached by the parties shall be included in their opening comments.

This order is effective today.

Dated July 22, 1999, at San Francisco, California.

RICHARD A. BILAS
President
HENRY M. DUQUE
JOSIAH L. NEEPER
JOEL Z. HYATT
CARL W. WOOD
Commissioners