Mailed 9/17/99

Decision 99-09-069 September 16, 1999

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)

OPINION

I. Summary

By this decision and pursuant to Section 252 of the Telecommunications Act of 1996 (Act), we approve an interconnection agreement between MFS/WorldCom (MFSW) and Pacific Bell (Pacific). This agreement was filed with the Commission pursuant to an Arbitrator's Report issued on August 4, 1999.

II. Procedural Background

Pacific filed a Petition for Arbitration (Petition) on March 22, 1999 to institute an arbitration proceeding with MFSW. This Petition was filed pursuant to § 252 of the Act and Commission Resolution ALJ-174 (ALJ-174). On April 19, 1999, MFSW filed its response to the petition. On May 22, 1999 Pacific and MFSW filed a revised statement of unresolved issues as required by Rule 3.7 of ALJ-174, which notes on an issue-by-issue basis where the parties have reached agreement subsequent to the filing of the Petition and where disagreement still exists. This revised statement of unresolved issues defines the universe of disputed issues for which arbitration is sought in this proceeding.

An initial arbitration meeting was held on May 5, 1999, pursuant to Rule 3.8 of ALJ-174. The initial arbitration meeting was solely concerned with the

schedule for the proceeding, the opportunity for additional discovery and the nature of the record that would be utilized to resolve this proceeding. All parties on the larger service list utilized at the initial stages of an arbitration were given adequate notice of the adopted schedule and process and the opportunity to indicate their interest in participation in the proceeding.

A. Senate Bill 960 and Senate Bill 779

The schedule and procedural elements mandated for arbitrations pursuant to § 252 of the Act are incompatible with the schedule and other procedural requirements imposed by Senate Bill (SB) 960 (Ch. 856, Stats. 1996). The requirements of the Act require much faster processing of petitions for arbitration and shorter intervals between steps than does SB 960, but retains comparable opportunities for Commissioner involvement. For these reasons, while the purposes behind SB 960 are fully supported, arbitrations will necessarily be conducted under the requirements of the Act and ALJ-174, rather than under the requirements established to implement SB 960.

This decision comes before the Commission subsequent to the effective date of SB 779 (Ch. 886, Stats. 1998). This bill, in addition to a variety of other provisions, requires that a Commission agenda item not meeting specified criteria must be served on the parties and made available for public review and comment for a minimum of 30 days before the Commission may vote on the matter. (Pub. Util. Code § 311(g).) The Act requires that agreements submitted by parties that have been arrived at as a result of an arbitration conducted pursuant to the Act must be approved or rejected by the Commission within 30 days after the agreement is submitted. (§ 252(e)(4).) This establishes a conflict between the requirements of the Act and SB 779.

Pursuant to Rule 81 of the Commission's Rules of Practice and Procedure, this qualifies as an "unforeseen emergency situation" meaning it is a

matter "that requires action or a decision by the Commission more quickly than would be permitted if advance publication were made on the regular meeting agenda." It qualifies as such by involving "[d]eadlines for Commission action imposed by legislative bodies, courts, other administrative bodies or tribunals, the office of the Governor, or a legislator." (Rule 81(g).)

B. Schedule and Conduct of the Arbitration

Pursuant to the Act, § 252(b)(1), petitions for arbitrations must be filed between day 135 and day 160 after the initiation of negotiations between the parties. Once the arbitration petition is filed with the state commission, all issues are required to be resolved by the end of the ninth month following the initiation of negotiations. Pursuant to the discussion in Resolution ALJ-168[1], the resolution of all issues is deemed to have occurred when the parties file an agreement with the Commission that conforms with the resolutions contained in the Final Arbitrator's Report (FAR). (Res. ALJ-168, § 3.11, at pp. 7-8.) In this proceeding the petition indicates that MFSW's request to initiate renegotiation was sent to Pacific by letter dated August 15, 1998. To give the parties more time to negotiate, both parties agreed to extend the window for arbitration to be from February 28, 1999 until, and including, March 25, 1999. Pacific's Petition for Arbitration was, therefore, timely.

By letter to the Arbitrator dated June 28, 1999, both Pacific and MFSW indicated they agree to waive the nine-month arbitration resolution requirement contained in § 252(b)(4)(c) of the Act. The waiver is for a period ending not later than September 9, 1999. Parties state that this waiver is made with knowledge of

[1] ALJ-168 was an earlier Commission resolution establishing arbitration rules pursuant to Section 252 of the Telecommunications Act of 1996. ALJ-174 is the current version, but definitions in the earlier version are still generally applicable.

§ 252(b)(4)(c) and the remedies for failure to comply with it, and is made voluntarily at the parties' request.

The language setting forth the nine-month conclusion requirement is as follows:

> "The State Commission shall resolve each issue set forth in the petition and the response, if any, by imposing appropriate conditions as required to implement subsection (c) upon the parties to the agreement, and shall conclude the resolution of any unresolved issues not later than 9 months after the date on which the local exchange carrier received the request under this section." (§ 252(b)(4)(c).)

In the event that this Commission "fails to act to carry out its responsibility under this section in any proceeding or other matter under this section" then the potential effect is for the Federal Communications Commission (FCC) "to issue an order preempting the State commission's jurisdiction of that proceeding or matter within 90 days after being notified (or taking notice of such failure)...." (§ 252(e)(4).)

The intent of this provision is to protect the parties, particularly the petitioner, from the risk of a state commission failing to act in a timely fashion. In this arbitration, there is no question that the California Public Utilities Commission could and would resolve this matter within the imposed time limits. However, if the party for whom the protection is established wishes to knowingly, voluntarily and explicitly waive that protection for a reasonable purpose, such a waiver seems clearly permissible.

A schedule that would accommodate the requirements of the Act was discussed by the Arbitrator with the parties at the initial arbitration meeting on May 5, 1999. Opening testimony was submitted by Pacific on March 22, 1999, with rebuttal testimony on May 10, 1999. Pacific also presented a "Revised Issues Matrix" which reflected partial settlement of certain issues contained in the

previously submitted matrix, as well as the addition of the new issues identified by MFSW as being in dispute. MFSW submitted its opening testimony on April 16, 1999, with rebuttal submitted on May 24, 1999.

Evidentiary hearings were held June 1 through 10, 1999. Concurrent briefs were filed on June 18, 1999. The Draft Arbitrator's Report (DAR) was filed on July 6, 1999, disposing of the contested issues as set forth below. Comments on the DAR were filed on July 19, 1999, by Pacific and MFSW. The comments were taken into account as appropriate in finalizing the Arbitrator's Report.

The FAR was filed and served on August 4, 1999 and directed the parties to file their Interconnection Agreement within seven days. Pursuant to Ordering Paragraph 1 of the FAR, parties were required to file and serve an interconnection agreement which conforms with the decisions reached in the FAR. On August 11, 1999, an Interconnection Agreement which conformed to the FAR was filed with the Commission subject to resolution of certain conflicting appendix provisions.

Both Pacific and MFSW also filed statements on August 11, 1999, regarding their remaining disagreements with the resolution reached in the FAR. As discussed below, Pacific seeks Commission authorization to amend the Agreement to reverse the FAR's findings on Internet Service Provider (ISP) issues. With the exception of the resolution of ISP issues, however, Pacific believes that the findings reached in the FAR are not inconsistent with the Act (although Pacific still argues that its proposals provide a more appropriate outcome).

MFSW claims that although the Agreement does not comply with the Act, FCC and Commission rules in certain respects, MFSW does not ask that the Agreement be rejected on these grounds. MFSW states that the noncompliant issues are not immediately critical to MFSW's specific facilities-based business

plan and are being or will be addressed in other Commission proceedings. MFSW does not challenge the Agreement in these respects for purposes of this arbitration, without prejudice to its rights to challenge them in other pending or future Commission or FCC proceedings. MFSW does, however, seek Commission authorization for amendment of the filed interconnection agreement in certain limited areas, as outlined in Section IV below.

Pacific and MFSW both submit that the negotiated positions of the Agreement do not discriminate against a telecommunications carrier not a party to the proceeding and are consistent with the public interest, convenience and necessity.

III. Standard for Review

Pursuant to § 252(e)(1) an interconnection agreement adopted by negotiation or arbitration for operation in California must be submitted for approval to this Commission, which shall approve or reject the agreement, providing written findings as to any deficiencies. Grounds for rejection of an agreement reached as a result of arbitration conducted under § 252(b) are limited to the Commission finding that the agreement does not meet the requirements of § 251, including the regulations prescribed by the FCC pursuant to section 251, or does not meet the standards set forth in § 252(d), which relates to pricing standards.

The standards contained in § 251 relate to the obligations of local exchange carriers in responding to requests for negotiation and interconnection with carriers desiring access and interconnection. Among the duties identified are those for interconnection, § 252(c)(2), and unbundled access, § 252(c)(3), which read as follows:

> "(2) Interconnection.—The duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network—

(A) for the transmission and routing of telephone exchange service and exchange access;

(B) at any technically feasible point within the carrier's network;

(C) that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection; and

(D) on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms and conditions of the agreement and the requirements of this section and section 252.

(3) Unbundled access.—The duty to provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of the agreement and the requirements of this section and section 252. An incumbent local exchange carrier shall provide such unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service."

Pursuant to § 252(e)(4), if the state commission does not act to approve or reject an agreement within 30 days after submission by the parties of an agreement adopted by arbitration, the agreement shall be deemed approved.

IV. Issues Presented for Arbitration

When initially filed, 82 separate issues were presented by Pacific as being in dispute. By the time the testimony was filed, some of these items had been resolved by the parties while new issues had been added by MFSW. Parties ultimately identified 163 issues to be decided, but subsequently settled 41 issues.

The most significant issue presented in this arbitration is the correct treatment of calls passed from Pacific to MFSW and then to an ISP. There are, however, other issues that the Commission must also resolve, which can generally be categorized as follows: (1) Correct definition of local calls subject to reciprocal compensation; (2) Digital Subscriber Line (DSL) capable loops;

(3) Extended Loop; (4) General Terms and Conditions; (5) Collocation; (6) Network Interconnection; (7) Directory Assistance; and (8) Miscellaneous issues.

We have reviewed the FAR, and conclude that its resolution of the disputed issues properly conforms to the provisions of the Act and of Commission rules. We address below the disputed issues raised by parties in their comments on the FAR.

A. ISP Issues

The single most significant controversy in this arbitration is whether calls terminated by MFSW which originate from Pacific's customers to MFSW's ISP customers should be subject to reciprocal compensation. Pacific takes issue with the FAR's finding that such calls should be subject to reciprocal compensation. Pacific argues that the proposed resolution is not consistent with the Act.

1. Pacific's Position[2]

Pacific argues that § 251(b)(3) of the Act requires a local carrier to pay reciprocal compensation to another local carrier only for local calls – that is, calls that actually terminate on the neighboring carrier's network within the same local calling area. In discussing ISP-bound calls, the FCC concluded "that the communications at issue here do not terminate at the ISP's local server, as [competing carriers] and ISPs contend, but continue to the ultimate destination or destinations, specifically at a[n] Internet website that is often located in another

[2] MFSW filed no comments on the FAR's disposition of ISP issues since the MFSW position was adopted.

state."[3] The FCC concluded that because "a substantial portion of Internet traffic involves accessing interstate or foreign websites,"[4] such "ISP-bound traffic is non-local interstate traffic."[5]

Pacific argues that the FCC's determination that ISP-bound traffic is non-local and therefore not subject to § 251(b)(5)'s reciprocal compensation obligation compels the conclusion that this Commission may not require Pacific, in an arbitration conducted pursuant to § 252, to pay reciprocal compensation for ISP-bound traffic. Pacific contends there is no statutory authority for the Commission to impose reciprocal compensation on Pacific other than full accordance with the terms of § 252(d)(2)(A)(i).

2. Discussion

We uphold the findings of the FAR with respect to its resolution of reciprocal compensation for ISP-bound calls. We acknowledge, as does the FAR, that the FCC has ruled that ISP calls are largely interstate and do not "terminate" at the ISP modem for purposes of determining the FCC's jurisdiction over such traffic. The FCC, however, has not yet rendered a definitive conclusion concerning how carriers must compensate each other for the exchange of such traffic. In the meantime, the FCC has continued to give discretion to state commissions to make this determination. Thus, we find no inconsistency with the Act insofar as the FAR prescribes reciprocal compensation for ISP-bound calls.

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[3] 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) ("Declaratory Ruling").

[4] Id. at ¶ 18.

[5] Id. at ¶ 26 n. 87.

The FCC stated that, although ISP-bound traffic was deemed jurisdictionally mixed and appears to be largely interstate, "such conclusion does not in itself determine whether reciprocal compensation is due in any particular instance." (Declaratory Ruling ¶ 1.) Moreover, the FCC stated that its determination that a portion of dial-up ISP-bound traffic is interstate is not dispositive of interconnection disputes currently before state commissions. (Id., ¶ 20.)

The FCC has not asserted exclusive jurisdiction over inter-carrier compensation for all ISP-bound traffic. (Declaratory Ruling, Footnote 73.) The FCC declared that: "until adoption of a final rule, state commissions will continue to determine whether reciprocal compensation is due for this traffic." (Id., ¶ 28.)

Thus, while § 251(b)(5) of the Act may not <u>require</u> a LEC to pay reciprocal compensation for ISP calls, <u>discretion</u> is still accorded to the states to apply reciprocal compensation to such calls. The FAR properly based its resolution on generic Commission policy on reciprocal compensation in D.98-10-057. The Commission has also concluded in D.99-07-047 that the FCC's subsequent ruling on the jurisdictionally mixed nature of ISP-bound calls does not negate D.98-10-057 with respect to its reciprocal compensation policy.

We also uphold the FAR's finding that as long as the respective rate centers of the telephone number assigned to the calling party and to the ISP are within the same local calling area, the call shall be defined as a local call, and subject to the reciprocal compensation provisions as prescribed in Issue 1 above. Although the California Public Utilities Commission is considering generic rating/routing policy issues concerning inter-carrier compensation for this type of call within the Local Competition Docket (R.95-04-043), it has not yet issued an order. Thus, the issue must be decided for interim purposes in the context of this

arbitration. The Commission has addressed the issue of the proper definition of calls utilizing different rating and routing points on a more limited basis in a complaint case involving Pac-West. In D.99-02-096 issued in that case, the CPUC determined that a call is determined to be local based on the distance between rate centers of the assigned NXX prefixes.

Based on the Commission's holdings in that decision, it is reasonable to define in a similar fashion the calls terminated to MFSW's ISP customers which utilize a similar foreign exchange arrangement to that of Pac-West.

B. Disputes Over Conforming Contract Language

There are two issues where the parties have each proposed conflicting contract language in attempting to conform to the FAR's directives. The Interconnection Agreement filed and served on August 11, 1999, by Pacific in conformance with the FAR was marked in Appendix ITR, Section 1.2, and in Appendix Pricing, Section 4, to show competing language between Pacific and MFSW. Pacific's versions are attached hereto as Attachments 1 and 3, and MFSW's versions are attached hereto as Attachments 2 and 4. Pacific claims the language drafted by Pacific conforms to the FAR, while the language proposed by MFSW does not conform to the FAR.

1. Use of Logical Trunk Groups

a) Parties' Positions

The parties presented conflicting versions of conforming contract language for Appendix ITR – relating to Issue 48 (use of logical trunk groups). The FAR finds that if MFSW wants to exercise its right to use a single point of interconnection (POI) to serve an entire LATA, it must establish logical trunk groups to each access tandem and pay Pacific additional transport costs. If

MFSW thereby causes Pacific to incur higher costs, it must reimburse Pacific for those costs.

The FAR notes that at the time the arbitration was submitted, MFSW had failed to provide appropriate contract language regarding its proposed use of "logical trunk groups."[6] The FAR's discussion of this issue concludes as follows:

> MFSW is authorized to use "logical trunk groups" in the manner it has proposed, provided that MFSW produces the requisite contract language which clearly explains this arrangement, and accurately reflects the prices which it must pay to compensate Pacific for its additional costs resulting from use of a single POI. Unless MFSW produces the additional requisite language, it will be required to subtend every access tandem, as proposed by Pacific.[7]

Although MFSW has subsequently offered draft language for Appendix ITR concerning "logical trunk groups," Pacific claims the language MFSW proposes does not clearly provide for reimbursement of Pacific's additional costs resulting from this serving arrangement. Pacific has proposed alternative Appendix ITR language which it claims would provide appropriate reimbursement for its additional costs. Pacific argues that the Commission should either adopt the language Pacific has proposed which requires "logical trunk groups" to every access tandem and provides for compensation associated with Pacific's additional costs associated with "logical trunk groups," or, alternatively, require MFSW to subtend at every access tandem.

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[6] FAR, p. 47.

[7] Id., p. 47.

Pacific claims the language proposed by MFSW does not conform to the FAR in that MFSW attempts to reserve the right to not agree that logical trunk groups must be utilized. In addition, Pacific claims MFSW's proposed language does not clearly recognize its obligation to pay Pacific's additional transport costs associated with the logical trunk group arrangement in the context of local traffic. For these reasons, Pacific argues its proposed language conforms with the FAR and must be adopted.

MFSW claims that its proposed language conforms to the FAR's conclusion that "logical trunk groups" may be used by MFSW "in the manner it has proposed," while Pacific's does not. Pacific's language would require the parties to establish direct logical trunk groups to a tandem even when the amount of traffic to that tandem does not justify a direct logical trunk group. MFSW's language, by contrast, agrees to direct logical trunk groups only whenever traffic volumes justify a direct trunk. MFSW agrees to compensate Pacific for all of the additional costs Pacific incurs if no direct logical trunk is established because of insufficient traffic volumes. MFSW claims the only additional cost incurred by Pacific in this circumstance is an additional tandem switching event. MFSW's language requires it to pay Pacific for both local and intraLATA toll calls, if no direct logical trunk group is established due to insufficient traffic volumes. MFSW argues the FAR contemplates the possibility of two tandem occurrences, since it specifically addresses the need for MFSW to provide contract language for the logical trunk group proposal which addresses the pricing for the arrangement, "including extra tandem costs involved."[8]

[8] FAR at 46.

b) Discussion

We shall adopt MFSW's proposed version of Section 1.2 of Appendix ITR relating to logical trunk groups. The FAR authorized MFSW to use logical trunk groups provided it produced the additional requisite contract language. We find the proposed language offered by MFSW for Section 1.2 of Appendix ITR to be responsive to that directive. MFSW's proposed language provides for a more efficient outcome than does that of Pacific since it would only require the use of logical trunk groups when calling volume made it economical to do so. Pacific's proposed language would require parties to establish a direct logical trunk group at every access tandem irrespective of traffic volumes, thereby tying up valuable capital resources of both parties, even when the limited calling volume failed to justify incurring such additional costs.

Pacific objects to MFSW's language concerning the use of logical trunk groups because it fails to provide for payment of additional transport costs for local calls. Yet, as MFSW explained in its comments on the DAR, the logical trunking is intended as a concession relative to the routing of *toll* traffic, not *local* traffic. The prices set forth in Pacific's intrastate switched access tariff fairly compensate Pacific for its tandem switching and transport costs incurred to transport MFSW toll calls to a tandem sector where MFSW does not provide a physical connection.

2. Reciprocal Compensation Rate Elements

a) Parties' Positions

Pacific and MFSW offer conflicting versions of Section 4 of the Appendix Pricing relating to reciprocal compensation for termination of local traffic. This dispute was resolved in the FAR under Issue 83. The FAR adopted Pacific's position for issue 83. Pursuant to the FAR's resolution, MFSW is entitled to seek compensation only for costs MFSW incurs.

The FAR found that where MFSW provides no tandem or common transport functions and thus incurs no such costs, it is not entitled to compensation for those functions and costs. The FAR concluded that MFSW's switches do not serve the same or comparable area as Pacific, and thus MFSW's claim that it is entitled to reciprocal compensation for those functions was rejected. Pacific argues that MFSW incurs no greater costs using Pacific's tandems and common transport than it would if it were directly trunked to a Pacific end office.

MFSW takes issue with the FAR's resolution of reciprocal compensation pursuant to Issue 83. MFSW argues that MFSW and Pacific are providing one another essentially identical transport and termination services, with the only difference being that the network architecture of MFSW uses a single switch with SONET fiber rings, transport nodes and long loops to provide transport and termination rather than a hierarchy of tandem and end office switches. MFSW claims the FAR's result violates the Act and FCC implementing regulations by denying MFSW reciprocal compensation for the provision of these transport and termination services, but instead allows MFSW to recover only Pacific's end office switching rate. MFSW claims the FAR completely ignores the fact that MFSW's network of fiber rings, switching and transport nodes transports local calls which traverse several serving wire center territories to get between a customer and the serving switch, allowing MFSW to serve a geographic area comparable in size to the areas served by Pacific's tandem switch.

b) Discussion

We shall adopt the version of Appendix Pricing, Section 4, as proposed by Pacific. Pacific's version properly conforms to the FAR, clearly specifying that a party is entitled to tandem and common transport

compensation only when the party actually provides a tandem or common transport function. MFSW's proposed version of the Appendix Pricing conflicts with the outcome of the FAR, and would provide tandem and common transport compensation to MFSW even when Pacific does not incur such costs.

MFSW's disagreement is premised on its claim that the MFSW fiber ring network serves a comparable geographic area to that of Pacific, thereby justifying payment to MFSW of the same reciprocal compensation rate elements which it pays to Pacific. Contrary to MFSW's claim, the FAR did not ignore MFSW's argument that the MFSW network serves a geographic area comparable in size to the areas served by Pacific's tandem switch. The FAR acknowledged MFSW's showing on this issue as presented by witness Sigle, but found MFSW's showing unpersuasive. As concluded in the FAR, any similarity in the size of serving areas will soon go away when MFSW's new switches are in place. Moreover, many of MFSW's customers are not served by fiber rings. For example, the ISPs served by MFSW are actually collocated with MFSW's switch. We find that the FAR has properly supported its resolution of Issue 83. Therefore, we affirm the resolution of the FAR on this issue and, accordingly, approve Pacific's version of Appendix Pricing, Section 4, since it conforms to the FAR, while MFSW's version does not.

C. Collocation Prices

1. Position of MFSW

MFSW objects to the FAR's adoption of Pacific's position with respect to treatment of collocation pricing whereby contract prices are based on Pacific's tariffs with no true-up provision. MFSW argues that the incorporation of Pacific's tariffed prices for collocation without any true-up, violates the pricing standard of Section 252(d) of the Act. MFSW claims the prices for collocation in Pacific's collocation tariffs are not based on Total Element Long Run incremental

Coasts (TELRIC) as required by the Act, FCC and Commission rules, and that Pacific has proposed completely different TELRIC-based prices in the collocation phase of OANAD. Thus, MFSW argues that the interconnection agreement must be amended to provide for a true-up of tariffed collocation prices to be in conformance with the Act.

2. Discussion

We affirm the resolution reached by the FAR concerning the reference to collocation tariffs. The referencing of tariffs in the agreement is not unfair to MFSW. Pacific does not have unilateral control over the pricing and terms of its collocation tariffs. As previously noted, if MFSW disagrees with elements contained in Pacific's tariff, MFSW has the right to protest those elements. The tariffs will not become effective until the CPUC has approved them, after due review, together with consideration of any protests relating to compliance of the tariff with the Act and other applicable FCC and Commission rules.

Findings of Fact

1. The petition for arbitration was filed on March 22, 1999.
2. MFSW filed its response to the petition on April 19, 1999.
3. A revised statement of unresolved issues was filed on May 22, 1999.
4. An initial arbitration meeting was held on May 5, 1999.
5. The Act requires matters submitted for arbitration to be concluded within nine months after the initiation of negotiations.
6. The Act requires the Commission to approve or reject an interconnection agreement arrived at through arbitration within 30 days after the interconnection agreement is filed.
7. The parties commenced negotiations on August 15, 1998 and agreed to extend the window for arbitration to be from February 28 to March 25, 1999.

8. The Commission was prepared to conclude this arbitration within the nine-month time limit established by the Act.

9. On June 28, 1999, MFSW and Pacific provided explicit written waivers of the nine-month time resolution requirement noting their acceptance of a scheduled conclusion date not later than September 9, 1999, and that such acceptance was with full knowledge of the time limit established in § 252(b)(4)(c) and was entered into voluntarily and at their own request.

10. A Draft Arbitrator's Report was filed and served on July 6, 1999.

11. Comments on the Draft Arbitrator's Report were served and filed on July 19, 1999, by Pacific and MFSW.

12. The Final Arbitrator's Report was filed and served on August 4, 1999, and directed the parties to file their interconnection agreement within seven days.

13. On August 11, 1999, an interconnection agreement which conformed to the Final Arbitrator's Report was filed with the Commission.

14. The primary disputed issues in this arbitration is whether Pacific should be required to pay reciprocal compensation for calls made by its customers to ISPs who are customers of MFSW.

15. Parties also disputed the arbitrator's resolution of appropriate rate elements payable for reciprocal compensation, obligations to interconnect at access tandems, and reliance on tariffs for pricing of collocation.

Conclusions of Law

1. Arbitrations are conducted under the schedule requirements of § 252 of the Act, which generally requires faster processing times than required by SB 960 or SB 779.

2. This matter comes before the Commission as an unforeseen emergency situation pursuant to Rule 81 due to the conflict between the agenda schedule requirements of Pub. Util. Code § 311(g) and those of § 252(e)(4) of the Act.

3. Waiver of the nine-month time limit for concluding arbitrations under the Act is permissible if approved by the party for whom the time limit protection is provided – the petitioning party – and if done voluntarily and with full knowledge of the consequences of such waiver.

4. Section 252(e)(2)(A)(ii) of the Act, cited by MFSW as a standard for measure of the agreement filed in this proceeding, is set out as a standard applicable to agreements reached through negotiation and not through arbitration.

5. Grounds for rejection of an agreement reached as a result of arbitration conducted under § 252(b) of the Act are limited to the Commission finding that the agreement does not meet the requirements of § 251, including the regulations prescribed by the FCC pursuant to section 251, or does not meet the standards set forth in § 252(d), which relates to pricing standards.

6. Arbitrations are by their mandated schedules expeditious proceedings intended to resolve the limited issues identified by the parties.

7. Participation in arbitration conferences and hearings is strictly limited to the parties that were negotiating and agreement pursuant to §§ 251 and 252 of the Act.

8. Agreements reached through arbitration are subject to modification in the event the Commission resolves a related matter on an generic basis.

9. The Act requires a local exchange carrier to make available any interconnection, service, or network element provided under an agreement approved under § 252 to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement.

10. Although the FCC has concluded that ISP-bound traffic is jurisdictionally mixed and largely interstate, the FCC has left discretion to state commissions to determine whether reciprocal compensation is due in any particular instance.

11. While Section 251(b)(5) of the Act may not require payment of reciprocal compensation for ISP calls, there is no prohibition under the Act or FCC rules against a state commission requiring reciprocal compensation for such calls.

12. The Arbitrator acted within the bounds of the Act in finding that ISP calls shall be subject to reciprocal compensation, including those ISP calls to NXX prefixes routed from a different local exchange but rated as a local call.

13. The version of Appendix Pricing, Section 4, as proposed by Pacific (set forth in Attachment 3 hereto) properly conforms to the FAR, clearly specifying that a party is entitled to tandem and common transport compensation only when the party actually provides a tandem or common transport function.

14. MFSW's proposed version of the Appendix Pricing, Section 4, (set forth in Attachment 4 hereto) conflicts with the outcome of the FAR, and would provide tandem and common transport compensation to MFSW even when Pacific does not incur such costs.

15. The FAR properly concluded that the MFSW fiber ring network does not serve a comparable geographic area to that of Pacific.

16. The FAR authorized MFSW to use logical trunk groups provided it produced the additional requisite contract language.

17. The proposed language offered by MFSW for Section 1.2 of Appendix ITR (set forth in Attachment 2 hereto) is responsive to the FAR's directive.

18. MFSW's proposed language for Appendix ITR provides for a more efficient outcome than does Pacific's language since it would only require the use of logical trunk groups when calling volume made it economical to do so.

19. The referencing of collocation tariffs in the Agreement is appropriate since MFSW retains the right to formally protest any tariff filing and to raise any pertinent issues concerning conformance of prices to the Act.

20. The executed agreement filed by the MFSW and Pacific on August 11, 1999, incorporating the contract provisions set forth in Attachments 2 and 3, conforms to the requirements of the Act and should be approved.

ORDER

IT IS ORDERED that:

1. The fully executed arbitrated interconnection agreement filed on August 11, 1999, in response to the Final Arbitrator's Report dated August 4, 1999, between MFS WorldCom. and Pacific Bell, incorporating the contract provisions set forth in Attachments 2 and 3, is approved pursuant to the requirement of the Telecommunications Act of 1996, and effective as of the date of this order.

2. The parties shall within 10 days provide to the Director of the Telecommunications Division a copy of the executed agreement.

3. Application 99-03-047 is closed.

This order is effective today.

Dated September 16, 1999, at San Francisco, California

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

ATTACHMENT 1

ATTACHMENT 1--Pacific's proposed version of Section 1.2 of Appendix ITR

(Underscoring highlights *key* provisions of Pacific's proposal.)

1.2. Tandem Trunking—Multiple Tandem LATAs

Where PACIFIC has more than one Access Tandem in a LATA, IntraLATA Toll and Local traffic shall be combined on a single Local Interconnection Trunk Group at every PACIFIC tandem for calls destined to or from all End Offices that "home" on each tandem. At such time as CLEC offers originating local service with corresponding NXX codes in any rate centers which subtend an access tandem as to which no physical POI has been previously established, CLEC and PACIFIC will establish a physical POI within the serving area of that tandem using the Mid-Span Fiber Meet target architecture in Appendix NIM, Section 1.1. Where no physical POI has been established and such physical POI is not required by the preceding sentence, CLEC agrees to designate "logical trunk group(s)" from a POI agreed to by the parties to interconnect its switches with every PACIFIC access tandem within a LATA. For intraLATA toll traffic carried over these "logical trunk group(s)" Pacific shall receive switched access compensation as specified in Appendix Reciprocal Compensation, Section 5 (specifically, local switching and tandem switching plus tandem switched (*i.e* common) transport measured from the POI to the terminating Pacific end office). For local traffic carried over these "logical trunk group(s)", Pacific shall receive compensation based on rate elements specified in Appendix Pricing, Section 4 (specifically, tandem switching (where used), end office switching and common transport), except that in this case common transport shall be measured from the POI to the terminating PACIFIC end office. All local/IntraLata trunk groups (except as noted in 1.5 below) will be two-way and will utilize Signaling System 7 ("SS7") signaling or MF protocol where required.

(END OF ATTACHMENT 1)

ATTACHMENT 2

ATTACHMENT 2 – WorldCom's proposed version of Section 1.2 of Appendix ITR

(Underscoring indicates key additions by Worldcom that are objectionable to Pacific. WorldCom also made deletions from Pacific's version which are objectionable to Pacific. Since WorldCom deleted some of Pacific's language, such language is, therefore, not shown on this WorldCom version, but is shown on Attachment 1 (which is Pacific's version).)

1.2. Tandem Trunking—Multiple Tandem LATAs

Where PACIFIC has more than one Access Tandem in a LATA, CLEC will migrate to an arrangement in which IntraLATA Toll and Local traffic shall be comibned on a single Local Interconnection Trunk Group at every PACIFIC tandem for calls destined to or from all End Offices that "home" on each tandem. At such time as CLEC offers originating local service with corresponding NXX codes in any rate centers which subtend an access tandem as to which no physical POI has been previously established, CLEC and PACIFIC will establish a physical POI within the serving area of that tandem using the Mid-Span Fiber Meet target architecture in Appendix NIM, Section 1.1. Where parties agree that traffic is sufficient and no physical POI has been established and such physical POI is not required by the preceding sentence, CLEC agrees to designate "logical trunk group(s)" from a POI agreed to by the parties to interconnect its switches with PACIFIC's access tandems within a LATA. For intraLATA toll traffic carried over these "logical trunk group(s)" Pacific shall receive switched access compensation as specified in Appendix Reciprocal Compensation, Section 5 (specifically, local switching and tandem switching plus tandem switched (i.e. common) transport measured from the POI to the terminating Pacific end office). Until such time as logical trunk groups are established, for intraLATA traffic Pacific shall receive the switched access compensation as specified in Appendix Reciprocal Compensation, Section 5 (specifically, the same charges specified in the immediately preceding sentence, plus an additional tandem switching charge) and for local traffic, Pacific shall receive the compensation specified in Appendix Pricing, Section 4. All local/IntraLata trunk groups (except as noted in 1.5 below) will be two-way and will utilize Signaling System 7 ("SS7") signaling or MF protocol where required.

(END OF ATTACHMENT 2)

ATTACHMENT 3

ATTACHMENT 3--Pacific's proposed version of Section 4 of Appendix Pricing

(Underscoring highlights *key* provisions of Pacific's proposal.)

4. RECIPROCAL COMPENSATION FOR TERMINATION OF LOCAL TRAFFIC

Rate Elements

4.1 Tandem Switching-- (where used) compensation for the use of tandem switching functions: *[Note that Pacific's proposal provides tandem compensation only when the party actually provides the tandem function as per the FAR.]*

(i) $0.00113/Setup per Call, and
(ii) $0.00067/MOU

4.2 Common Transport ("where used") - compensation for the transmission facilities between the local tandem and the End Offices subtending that tandem. *[Note that Pacific's proposal provides common transport compensation only when the party actually provides the tandem function as per the FAR.]*

(i) $0.001330/Fixed Mileage and
(ii) $0.000021/Variable Mileage

4.3 Basic Switching-Interoffice Terminating (end office switching)

(i) $0.007000/Call Setup;
(ii) $0.00187/MOU

4.4 Transiting Rate

(i) $0.00113/ Call setup
(ii) $0.00277/MOU

(END OF ATTACHMENT 3)

ATTACHMENT 4

ATTACHMENT 4--WorldCom's proposed version of Section 4 of Appendix Pricing

(Underscoring indicates *key* changes by WorldCom that are objectionable to Pacific. WorldCom also made deletions from Pacific's version which are objectionable to Pacific. Since WorldCom deleted some of Pacific's language, such language is, therefore, not shown on this WorldCom version, but is shown on Attachment 3 (which is Pacific's version).)

4. RECIPROCAL COMPENSATION FOR TERMINATION OF LOCAL TRAFFIC

Rate Elements

4.1 Tandem Switching for Pacific or CLEC Terminated when Interconnection is through Pacific's Tandem Switching: *[Note that under WorldCom's version, WorldCom receives tandem switching compensation when Pacific incurs the tandem costs.]*

(i) $0.00113/Setup per Call, and
(ii) $0.00067/MOU

(In the event that Pacific is required to double tandem a local call, Pacific but not CLEC shall receive such compensation for each tandem occurrence.)

4.2 Common Transport for Pacific or CLEC Terminated Calls when Interconnection is through Pacific's Tandem Switch or directly from the point of interconnection to a Pacific end office. *[Note that under WorldCom's version, WorldCom receives common transport compensation when Pacific incurs the common transport costs!]*

(i) $0.001330/Fixed Mileage/MOU and
(ii) $0.000021/Variable Mileage/MOU

4.3 End Office Switching for Pacific or CLEC Terminated when Interconnection is not through a Pacific Tandem Switch.

(i) $0.007000/Call Setup;
(ii) $0.00187/MOU

4.4 Transiting Rate

(i) $0.00113/Setup per Call, and
(ii) $0.00277/MOU

(END OF ATTACHMENT 4)