

Decision 99-12-021 December 2, 1999

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)

OPINION**I. Summary**

By this decision and pursuant to Section 252 of the Telecommunications Act of 1996 (Act), we approve an interconnection agreement between Pac-West Telecomm, Inc. (Pac-West) and Citizens Telecommunications Company of California, Inc. (CTC-CA). The parties filed this agreement in accordance with an Arbitrator's Report issued on October 4, 1999.

II. Procedural Background

Pac-West filed a Petition for Arbitration (Petition) on February 2, 1999 to institute an arbitration proceeding with CTC-CA. Pac-West filed the Petition under § 252 of the Act and Commission Resolution ALJ-174 (ALJ-174). On March 1, 1999, CTC-CA filed its response to the Petition. On March 10, 1999, Pac-West and CTC-CA 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.

All parties on the larger service list utilized at the initial stages of an arbitration were given adequate notice and the opportunity to indicate their interest in participation in the proceeding. On March 10, 1999, the Daily Calendar set forth the schedule for 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 dictate 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 an agreement that has been adopted as a result of an arbitration conducted pursuant to the Act must be approved or rejected by the Commission within 30 days after its submission by the parties. (§ 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 or tribunals, the office of the Governor, or a legislator." (Rule 81(g).)

B. Schedule and Conduct of the Arbitration

Under § 252(b)(1) of the Act, petition 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, the Act further requires the resolution of all issues by the end of the ninth month following the initiation of negotiations. Pursuant to the discussion in Resolution ALJ-168¹, 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, an August 26, 1998 meeting was the mutually agreed upon date when the parties started the negotiation process. Thus, Pac-West's Petition for Arbitration was timely.

At the conclusion of the March 18, 1999 arbitration hearing, the parties waived on the record the nine-month arbitration resolution requirement contained in § 252(b)(4)(c) of the Act. The waiver was voluntarily offered and to accommodate the schedules of the parties and the arbitrator.

¹ ALJ-168 was an earlier Commission resolution establishing arbitration rules in accordance with Section 252 of the Act. ALJ-174 is the current version, but definitions in the earlier version are generally applicable.

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 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, the parties waived the mandatory deadline because of scheduling constraints. Thus, 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.

Pac-West submitted its testimony on February 2, 1999, and CTC-CA submitted its testimony with its March 1, 1999 response. In the response, CTC-CA addressed the four issues that Pac-West raised in its petition, and identified seven additional issues that it maintained should be resolved within the context of this arbitration. On March 10, 1999, the revised statement of unresolved issues jointly proffered by the parties set forth eleven issues.

The arbitration hearing took place on March 18, 1999. In accordance with the agreed upon schedule, Pac-West and CTC-CA filed concurrent briefs on April 16, 1999. The Draft Arbitrator's Report (DAR) filed on September 13, 1999, disposed of the contested issues as set forth below². Pac-West, CTC-CA and Roseville Telephone Company filed comments on the DAR on September 23, 1999³. The comments were taken into account as appropriate in finalizing the Arbitrator's Report.

The FAR was filed and served on October 4, 1999, and required the parties to file their Interconnection Agreement within seven days. Ordering Paragraph 1 of the FAR directed parties to file and serve an interconnection agreement that conformed to its decisions. On October 22, 1999⁴, the parties filed the conforming Interconnection Agreement.

Both Pac-West and CTC-CA also filed statements on October 22, 1999, regarding their remaining disagreements with the resolution reached in the FAR. Pac-West asserts that while the rate adopted for reciprocal compensation by the FAR falls within the FCC's range of acceptable proxies, it does not believe that the rate is fairly representative of the parties' actual costs of terminating traffic. Notwithstanding, Pac-West states that the arbitrated interconnection agreement

² After the arbitration hearing, the parties resolved an issue concerning the provision of mutual warranties relating to Year 2000 compliance. In its response to the arbitration petition, CTC-CA concurrently moved to dismiss. The DAR addressed threshold issues raised in the motion and the ten remaining issues.

³ CTC-CA inadvertently filed its comments on September 24, 1999. Its oral motion to have the late-filed comments accepted was granted.

⁴ CTC-CA requested an extension of time in which to file the arbitrated interconnection agreement and statement pursuant to the FAR. Pac-West advised in writing that it had no objections to the request.

complies with the criteria specified by the Act and Resolution ALJ-174, and urges the Commission to approve the agreement at this time.

CTC-CA contends that the FAR's findings on the Internet Service Provider (ISP) issues are inconsistent with the Act and the FCC's rules. Moreover, CTC-CA insists that the FAR disregards the unique circumstances presented by an arbitration involving an incumbent local exchange carrier (ILEC) that is smaller than Pacific Bell (Pacific) and GTE California Incorporated. CTC-CA does not ask the Commission to reject the agreement, but seeks to have it modified in accordance with CTC-CA's position.

Pac-West and CTC-CA 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 reads as follows:

"(2) Interconnection. —The duty to provide, for 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

In its petition, Pac-West presented four issues in dispute. The parties ultimately identified 11 issues for arbitration, but subsequently settled one issue.

The most significant issue presented in this arbitration is the correct treatment of calls passed from CTC-CA to Pac-West and then to an ISP. The other issues that the Commission must also resolve include: (1) the correct definition of local calls subject to reciprocal compensation; (2) the reciprocal compensation rate for termination; (3) the term of the agreement; and (4) switching and transport compensation.

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 statements filed pursuant to Ordering Paragraph 2 of the FAR.

A. ISP Issues

The central controversy in this arbitration is whether calls terminated by Pac-West that originate from CTC-CA's customers to Pac-West's ISP customers should be subject to reciprocal compensation. CTC-CA objects to the FAR's finding that such calls should be subject to reciprocal compensation. CTC-CA argues that the proposed resolution is not in accordance with the Act and the FCC's rules.

1. CTC-CA's Position⁵

CTC-CA claims that since the FCC's ISP Declaratory Ruling⁶ explicitly held that calls to ISPs do not terminate at the ISP, such calls do not terminate on the network of a party to the local interconnection agreement as

⁵ Pac-West filed no comments on the FAR's disposition of ISP issues since the FAR adopted its position.

⁶ 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")

required by § 252(d)(2)(A)(i). Consequently, ISP calls are removed from the scope of this Commission's authority to arbitrate local interconnection agreements. CTC-CA states that the Commission contravenes federal law by ordering it to pay local compensation for what the FCC has now determined is non-local, interstate traffic.

CTC-CA also argues that the FAR fails to maintain the *status quo* bill-and-keep arrangement between Pac-West and CTC-CA.

In addition, CTC-CA asserts that traffic terminated to Pac-West that is subject to Pac-West's unique rating and routing protocols should not be subject to terminating compensation under the Agreement.

2. Discussion

We uphold the findings of the FAR with respect to its resolution of reciprocal compensation for ISP-bound calls. We recognize, 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. However, the FCC has not yet rendered a definitive conclusion concerning how carriers must compensate each other for the exchange of ISP-bound traffic. In the meantime, the FCC has continued to give discretion to state commissions to make this determination. Thus, we find no contravention of federal law insofar as the FAR prescribes reciprocal compensation for ISP-bound calls.

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 declared that its

determination that a portion of dial-up ISP-bound traffic is interstate is not dispositive of interconnection disputes 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.) We note that the FCC stated that: "until adoption of a final rule, state commissions will continue to determine whether reciprocal compensation is due for this traffic." (*Id.* ¶ 28.)

CTC-CA's contention that in recent arbitration decisions the Commission established the policy of maintaining the existing state of affairs regarding reciprocal compensations issues for ISP-bound traffic until final FCC inter-carrier compensation rules are adopted is misplaced. CTC-CA and Pac-West's status quo is a general interim agreement that they entered into while they negotiated an interconnection agreement. In contrast, the status quo maintained in the other cases was pursuant to earlier Commission-approved interconnection agreements. We never sanctioned the CTC-CA/Pac-West agreement.

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 discussed above. In fact, most recently, the Commission concluded in D.99-09-029 that: "the rating of calls as toll or local should be based upon the designated rate center of the NXX prefix of the calling and called parties' numbers. Even if the called party may be

physically located in a different exchange from where the call is rated, the relevant rating point is the rate center of the NXX prefix.⁷

B. Reciprocal Compensation Rate for Termination of Local Calls

Pursuant to § 252(d)(2) of the Act, the rates for transport and termination of local exchange traffic are to be based on a "reasonable approximation of the additional costs of terminating those calls." The FCC's rules require that such rates be based on the ILEC's Total Element Long Run Incremental Cost (TELRIC) of transport and termination. The exception is if the state commission determines pursuant to § 51.707 that it does not have sufficient cost information, default proxies must be used.

Neither party submitted a cost study that complied with FCC pricing rule § 51.705(a)(1); therefore, this Commission must use the proxies described in FCC § 51.705(a)(2). The FAR adopted \$0.002, the low end of the FCC's proxy range, as the termination rate for local calls.

1. Parties' Positions

Pac-West states that while the rate adopted for reciprocal compensation by the FAR falls within the FCC's range of acceptable proxies, it does not believe that the rate is fairly representative of the parties' actual costs of terminating traffic. Pac-West submits that the FAR adopted rate should have been selected from the mid to high range of the FCC's range of acceptable proxies in keeping with CTC-CA's position as a mid to high cost carrier.

CTC-CA urges the Commission to avoid altogether the FCC's pricing rule by ordering a bill-and-keep arrangement. It maintains that although

⁷ Mimeo. at 21. (September 3, 1999).

its cost study was not a TELRIC study, the submission was a "reasonable approximation of the additional costs of terminating..."⁸ local traffic pursuant to the Act. CTC-CA declares that since the differences between the prices derived from its cost study and those derived from the FCC proxies are so minimal, it does not contest the FAR's adoption of the FCC proxy.

2. Discussion

As stated in the FAR, since there are no TELRIC cost studies before the Commission in this proceeding, only speculation can set the differences in actual costs between CTC-CA and Pacific firmly at the high end of the proxy range. Neither party's comment on the arbitrated result on the compensation rate for termination would justify its rejection. Therefore, we adopt the arbitrated outcome.

C. Term of the Agreement

The FAR adopted a two-year term of agreement, stating that such a period provided the best balance between both parties' proposals.

1. CTC-CA's Position

CTC-CA notes that since neither the Act nor FCC rules dictate the term of the agreement, the Commission is free to act in the manner it deems most equitable. CTC-CA states that its one-year proposal acknowledges the rapidly changing telecommunications industry and gives the parties another opportunity relatively shortly to enter into good faith negotiations towards an interconnection agreement.

⁸ Excerpted from 47 U.S.C. § 252(d)(2)(A)(ii).

2. Discussion

We concur with the FAR that a one-year initial term is too brief. Thus, we affirm the resolution reached by the FAR concerning the term of agreement.

D. Switching and Transport Compensation

The FAR adopted Pac-West's position on the issue of whether calls to Pac-West's NXX should be subject to switched access charges if there is no point of interconnection within the local calling area.

1. CTC-CA's Position

CTC-CA maintains that the proposal that it put forth makes it clear that Pac-west will compensate CTC-CA for transporting calls to points of interconnection (POI) which are not within the local service area of the originating call.

2. Discussion

The FAR noted that Pac-West agreed to establish two POIs within CTC-CA's service boundaries. We uphold the FAR's finding that there is no support for CTC-CA's proposal that Pac-West should be assessed switching and transport charges for the traffic routed over indirect interconnections. As held in D.99-09-029, this Commission does not prohibit CLECs' use of different rating and routing points in the individual design of their networks.

Findings of Fact

1. The petition for arbitration was filed on February 2, 1999.
2. CTC-CA filed its response to the petition concurrent with a motion to dismiss on March 1, 1999.
3. A revised statement of unresolved issues was filed on March 10, 1999.

4. The Act requires matters submitted for arbitration to be concluded within nine months after the initiation of negotiations.

5. 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.

6. At the conclusion of the arbitration hearing on March 18, 1999, the parties the parties waived on the record the nine-month arbitration resolution requirement contained in § 252(b)(4)(c) of the Act.

7. The waiver was voluntary, knowing and to accommodate the schedules of the parties and the arbitrator.

8. A Draft Arbitrator's Report was filed and served on September 13, 1999.

9. Comments on the Draft Arbitrator's Report were served and filed by Pac-West, CTC-CA and Roseville Telephone Company on September 23, 1999.

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

11. On October 22, 1999, pursuant to an extension granted to the parties, an interconnection agreement that conformed to the Final Arbitrator's Report was filed with the Commission.

12. The primary disputed issue in this arbitration is whether CTC-CA should be required to pay reciprocal compensation for calls made by its customers to ISPs who are customers of Pac-West.

13. Parties also disputed the arbitrator's resolution of the appropriate termination rate payable for reciprocal compensation.

14. CTC-CA disputed the arbitrator's resolution of the term of the agreement and switching and transport compensation.

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. 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 § 251, or does not meet the standards set forth in § 252(d), which relates to pricing standards.

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

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

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

8. 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.

9. 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.

10. The FAR properly adopted \$0.002, the low end of the FCC's proxy range, as the termination rate for local calls because in the absence of TELRIC-based cost studies the rate could only be set at the high end of the proxy range through speculation.

11. The FAR appropriately concluded that a two-year term of agreement provided the best balance between the proposals of three years by Pac-West and one year by CTC-CA.

12. The FAR properly rejected CTC-CA's proposal that Pac-West should be assessed switching and transport charges for the traffic routed over indirect interconnections.

O R D E R

IT IS ORDERED that:

1. The fully executed arbitrated interconnection agreement filed on October 22, 1999, in response to the Final Arbitrator's Report dated October 4, 1999, between Pac- West Telecomm, Inc. and Citizens Communications Company of California, Inc. 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 99-02-002 is closed.

This order is effective today.

Dated December 2, 1999, at San Francisco, California.

RICHARD A. BILAS

President

HENRY M. DUQUE

JOEL Z. HYATT

CARL W. WOOD

Commissioners

I will file a dissent.

/s/ JOSIAH L. NEEPER

Commissioner

I will file a partial dissent.

/s/ HENRY M. DUQUE

Commissioner

Commissioner Josiah L. Neeper, Dissenting:

I will dissent.

In 1998, this Commission, by a majority vote, established a policy that requires reciprocal compensation for calls made to Internet Service Providers. Subsequently, several interconnection agreements that in part dealt with reciprocal compensation issue came before us and were approved by 3-2 vote decisions. In every one of these cases, we argued the legality of reciprocal compensation in light of the Federal Communications Commission's ruling and precedent cases. I have also raised the issue of evaluating the financial aspects of these arrangements in the past since a one-way flow of cash may have adverse financial effects on carriers and their customers. The Citizens-PacWest interconnection case illustrates the danger of extending a policy that did not consider the impact it will have on smaller carriers like Citizens.

The case before you is different from the other reciprocal compensation cases because Citizens is not a large telephone utility that can easily absorb increased costs of reciprocal compensation by spreading it over a large consumer base like Pacific. Citizens has no more than 113,000 access lines in California. If it pays reciprocal compensation to PacWest, each customer will have to pay roughly about \$1.50. Other carriers will follow suit and we estimate that the cost can jump up to \$4.40, at a total of a half a million dollars per year. Citizens will be compelled to pass this cost to its customers and will request an adjustment in its residential telephone rates, which we may have to approve, as this is a mandated cost. So the question we need to answer now is why should Citizens' rural customers subsidize PacWest's and other competitive carriers' revenue streams.

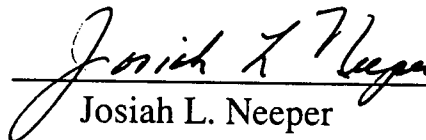
The proposed decision orders payment of monies to PacWest not because it has made a case that it should be compensated for service it otherwise is not getting compensated for, but because the Commission's policy requires it. I should note to you that PacWest never needed this compensation because if it did, it would not have agreed to a voluntary bill and keep arrangement which has been in effect for the last several years. This arrangement is now going to be replaced only because of a Commission decision that relied on legalistic interpretation of FCC precedents and ruling.

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I want to register my opposition to this proposed decision because it is fundamentally inequitable to customers of Citizens. It fails to establish that reciprocal compensation is warranted and blatantly ignores the impact of increased rates on ordinary customers who will ultimately carry the burden of payment.

For all the above reasons I will dissent on Item H-12.


Josiah L. Neeper
Commissioner

San Francisco, California
December 2, 1999

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Commissioner Duque, concurring in part, and dissenting in part:

I concur with the resolution of many of the issues contained in this decision. Moreover, I recognize that it is a key duty of this Commission under the Telecommunications Act of 1996 to arbitrate interconnection disputes in a timely fashion. This decision meets those legal requirements.

I do, however, believe that the current resolution of two issues contained in this decision is not justified. In particular, I oppose the decision's adoption of contract terms that both require reciprocal compensation for traffic from one local carrier to another that terminates with an Internet Service Provider and additionally set compensation rates for this special traffic at levels identical to those charged for terminating local calls.

My opposition to these provisions should surprise no one. Previously, I cast a dissenting vote on D.99-06-088, which also requires reciprocal compensation for traffic from one local carrier to another that terminates with an Internet Service Provider and sets compensation rates for this special traffic at rates identical to those charged for terminating local calls. I dissented because the record developed in this prior proceeding made the adoption of these policies premature at best. In particular, the record failed to address the technical and equity issues that arise from this policy, including the important issue of how a carrier can recover the revenues paid to the carrier who serves the Internet Service Provider. Although a more developed record might support some form of reciprocal compensation, this one does not.

No new facts have come to light in this proceeding. For this reason, I must again note my opposition to the incorporation of these reciprocal compensation requirements and these rates in the terms of yet another interconnection agreement.

/s/ HENRY M. DUQUE .

Henry M. Duque

Commissioner