

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA
COMMISSION ADVISORY AND COMPLIANCE DIVISION RESOLUTION T-15705
Telecommunications Branch March 16, 1995

R E S O L U T I O N

**RESOLUTION T-15705. PACIFIC BELL. REQUEST TO PROVIDE
FRAME RELAY SERVICE FOR LBC MABUHAY USA, INC. UNDER A
CUSTOMER-SPECIFIC CONTRACT.**

BY ADVICE LETTER NO. 17185 FILED DECEMBER 15, 1994.

SUMMARY

Pacific Bell (Pacific) requests authority under provisions of General Order No. 96-A (G.O. 96-A) and Decision Nos. (D.)88-09-059 and 91-01-018 to provide Frame Relay Service (FRS) for LBC Mabuhay USA, Inc. under a customer-specific contract. In compliance with D.94-09-065, Pacific filed Supplement A to Advice Letter No. (AL) 17185 on December 29, 1994 which demonstrated that the contract price exceeds the DEC (direct-embedded costs) for providing the service.

MCI Telecommunications Corporation (MCI) and AT&T Communications of California, Inc. (AT&T) filed protests to AL 17185 on January 4, 1995. Pacific filed a combined response to the issues on January 12, 1995. The protests are granted to the extent that MCI's and AT&T's concerns are reflected in Finding 5 of this Resolution.

This Resolution authorizes Pacific's request. Pacific estimates that the annual revenue impact for this filing will be a decrease of \$27,562.

BACKGROUND

In D.88-09-059 the Commission adopted a modified Phase I Settlement. Under the provisions of the Settlement, the Local Exchange Companies (LECs) are allowed to provide FRS contracts between LECs and customers. The Settlement provides that such contracts become effective upon authorization by the Commission.

The process and requirements for filing of advice letters to request authorization of customer-specific contracts are set

forth in Appendix A of D.88-09-059. Additional specifications for advice letter filings requesting authorization for private line service contracts are provided in D.89-10-031.

D.90-04-031 requires that special contracts comply with the principles of imputation, unbundling and nondiscriminatory access adopted in D.89-10-031 and that prices for monopoly utility services be based on their underlying costs. The Commission by D.94-09-065 clarified these principles and made other changes to the contracting requirements. The proposed contract complies with the contracting requirements.

FRS is a high speed statistically multiplexed data service. It provides an efficient way to multiplex across high quality digital lines over a wide geographical area at bandwidths between 56 Kbps (kilobits per second) and 1.544 Mbps (megabits per second). FRS reduces the overhead processing time to get information from one location to another, resulting in higher transmission speed and lower network delay.

Under the terms of the 5 year contract, Pacific agrees to provide 30 FRS Access terminations at 56 Kbps and 2 FRS Access Terminations at 1.544 Mbps for a monthly rate of \$4,233. Recurring and nonrecurring charges for additional FRS Access Terminations in excess of those at cutover are per contract.

Pacific estimates that the annual revenue impact for this filing will be an decrease of \$27,562.

NOTICE

Pacific has mailed a copy of Advice letter No. 17185 and the related tariff sheets to competing and adjacent utilities and/or other utilities and to the customer named in the contract. The Advice Letter was listed in the Commission's Daily Calendar of December 23, 1994.

PROTESTS

MCI and AT&T protested AL 17185. MCI recommends that the Commission withhold approval of the AL until Pacific demonstrates that the contract is in compliance with D.94-09-065. AT&T recommends that, should the Commission grant an exception in this case because the contract was executed prior to the effective date of D.94-09-065, the resolution issued should note that AL 17185 does not comply with D.94-09-065. The recommendations are based on the issues as summarized below:

- o The contract provides discounts for a service for which price floors have not been established.

- o The contract AL package fails to provide service diagrams and other information necessary to determine if imputation has been correctly applied.
- o The contract fails to disclose the individual prices of the services offered.

Since the issues were similar, Pacific filed a combine response to the protests of MCI and AT&T. Pacific says that its AL is in compliance with applicable Commission decisions and that MCI's and AT&T's protests are without merit and should be denied for the reasons summarized below:

- o The contract was negotiated many months prior to the effective date of D.94-09-065, and is in compliance with the guidelines in effect at the time AL 17185 was filed.
- o The Al complies with D.94-09-065. In the Decision the Commission stated that "(I)n keeping our adopted price floors, prices under the LECs' contracts must equal or exceed the LRICs (or DECs if they are lower) of each rate element of the contract service...." The prices in the contract exceed the DEC and comply with the price floor requirements of D.94-09-065.
- o FRS does not include any monopoly building blocks. Numerous competitive alternatives (MCI provides this service) exist for this service. Because competitors provide FRS, independently, this service does not include monopoly blocks.

DISCUSSION

MCI and AT&T protested AL 17185. The protesters argue that the contract proposed in AL 17185 fails to comply with D.94-09-065, in terms of price floors for this service, service diagrams and imputation for monopoly building blocks.

The Commission in D.94-09-065 stated "In keeping with our adopted price floors, prices under the LECs' contracts must equal or exceed the LRICs (or DECs if they are lower) of each rate element of the contract services, and prices for contracts involving bundled services which include monopoly building blocks must meet all of the adopted imputation tests. Obviously, the LEC must have filed rate elements LRICs before it can file contracts subject to LRIC price floors." The proposed contract prices are based on and exceed the DEC of providing the service, not the LRIC price floors. Thus the price floor is the DEC to provide FRS; this contract is in compliance with D.94-09-065.

The monopoly building block issue as it pertains to FRS has not been resolved. However, the proposed FRS service likely covers the price floor of providing FRS. The revenue-to-cost ratio is substantially above DEC and the revenues are expected to cover the price floor even if imputation is applicable. Therefore, we see no reason to delay our decision until this matter is resolved.

The Commission by Resolution T-15408 authorized FRS as a provisional service. In authorizing FRS as a provisional service, we stated that we were not convinced by Pacific that its FRS is not composed of monopoly building blocks, and we were unwilling to grant Pacific's request on a permanent basis. The Commission by Resolution T-15673 (dated December 21, 1994) extended provisional FRS to January 1, 1996. In that Resolution, the Commission acknowledged that Pacific has attempted to design FRS to be in compliance with existing unbundling and imputation requirements (to achieve a permanent status). The Commission in that Resolution said "it may be appropriate to extend FRS on a provisional basis to account for the possibility that these requirements may be further clarified in a future OAND (Open Access and Network Architecture Development) proceeding."

Because Pacific is requesting a contract for a provisional tariff service, CACD Staff required Pacific to notify LBC Mabuhay USA, Inc. that the proposed contract is for a provisional service and that pending further Commission action (e.g., determining if monopoly building blocks exist for FRS), the terms and rates of this contract may be changed substantially. Pacific notified the customer in a letter dated February 1, 1995.

In reviewing Advice Letter No. 17185 and Supplement A, we also note the following.

- a. Pacific requests in the Advice Letter that the workpapers and supporting cost documentation associated with the contract be treated as confidential.
- b. The rates and charges set forth in this contract are above the DEC of providing FRS.
- c. The Advice Letter indicates that the costs and revenue associated with the contract will be tracked.

We conclude that the Advice letter as supplemented meets the requirement set forth in the previously mentioned Commission Orders and G.O. 96-A and should be approved. However, we must emphasize that our approval is based on the specifics of the Advice Letter and the associated contract and does not establish a precedent for the contents of future filings or for Commission approval of similar requests.

FINDINGS

1. Pacific filed Advice Letter No. 17185 and Supplement A requesting Commission authority to provide Frame Relay Service for LBC Mabuhay USA, Inc. under contract.
2. The Advice letter as supplemented and the contract conform to the requirements of Decision Nos. 88-09-059, 89-10-031, 91-01-018 and 94-09-065, Resolution Nos. T-13069 and T-13091, and G.O. 96-A.
3. Pacific states that authorization of this contract will result in an estimated annual revenue decrease of \$27,562.
4. The rate, charges, terms and conditions of the contractual service approved in this Resolution are just and reasonable.
5. The contract is for a provisional service. Pacific notified the customer in a letter dated February 1, 1995 that the Commission may change the terms and rates of the contract.
6. Commission authorization of the Advice letter as supplemented and the contract does not establish a precedent for the contents of future filings or for Commission approval of similar requests. Commission approval is based on the specifics of the contract.

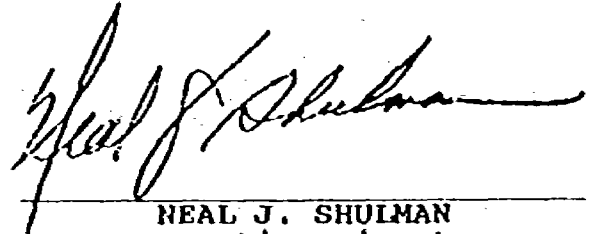
March 16, 1995

THEREFORE, IT IS ORDERED that:

1. Authority is granted to make Pacific's Advice Letter No. 17185, Supplement A and the contract effective on March 17, 1995.
2. The protests of MCI Telecommunications Corporation and AT&T Communications of California, Inc. are granted to the extent their concerns are reflected in Finding 5 of this resolution.
3. The Advice Letter and contract shall be marked to show that they were authorized by Resolution T-15705.

The effective date of this Resolution is today.

I certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting on March 16, 1995. The following Commissioners approved it:



NEAL J. SHULMAN
Executive Director

DANIEL Wm. FESSLEP
President
P. GREGORY CONLON
JESSIE J. KNIGHT, JR.
Commissioners