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**PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Telecommunications Division  
Market Structure Branch

**RESOLUTION T-16011**  
March 7, 1997

**RESOLUTION**

**RESOLUTION T-16011. PACIFIC BELL (U-1001). REQUEST TO PROVIDE OPTIONAL CALLING PLANS (OCPs) ON A RESALE BASIS PURSUANT TO ORDERING PARAGRAPH 3 OF D.96-03-020.**

**BY ADVICE LETTER NO. 18464, FILED ON SEPTEMBER 3, 1996, AS SUPPLEMENTED BY ADVICE LETTER NO. 18464A ON OCTOBER 10, 1996, AND ADVICE LETTER NO. 18464B ON NOVEMBER 4, 1996.**

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**SUMMARY**

This resolution approves Pacific Bell's compliance filing in which it tariffs its Optional Calling Plans (OCPs) for resale by Competitive Local Carriers (CLCs), subject to the filing of the supplemental Advice Letter ordered in Ordering Paragraph 2 of this resolution. Pacific's filing includes a requirement for end-user aggregation, rather than aggregation at the reseller level.

**PROCEDURAL BACKGROUND**

On March 13, 1996, the Commission approved D.96-03-020 in R.95-04-043/R.95-04-044 which initiated the resale of local exchange services by CLCs, and required Pacific Bell (Pacific) and GTE California (GTEC) to offer a variety of services for resale. However, in filing comments on the proposed decision, Pacific indicated that its billing system could not accommodate the resale of its OCPs for toll service because the billing system could not apply the applicable end-user discounts.

Consequently, as an interim measure Pacific and GTEC were directed in D.96-03-020 to offer their toll service for resale on a bulk basis subject to a discount off the regular tariff rate. In Ordering Paragraph (OP) 3 of D.96-03-020 the companies were ordered to implement the necessary modifications to their billing systems to make their OCPs available to CLC resellers within six months of the effective date of D.96-03-020. The two companies were to file Advice Letters by September 1, 1996, amending their tariffs to make their OCPs available to resellers. The Commission further directed that the calling plans should be offered at wholesale rates which apply the avoided cost discount adopted in D.96-03-020.

Pacific filed Advice Letter (AL) 18464 on September 3, 1996 in compliance with OP 3 of D.96-03-020.

**NOTICE/PROTESTS**

Pacific states that a copy of the Advice Letter and related tariff sheets was mailed to competing and adjacent utilities and/or other utilities. Notice of Advice Letter No. 18464 was published in the Commission Daily Calendar of September 6, 1996.

AL 18464 was protested jointly by Frontier Communications International and its affiliate, Business Telemangement, Inc. (Frontier/BTI) on September 19, 1996 and jointly by AT&T Communications of California, Inc. and MCI Telecommunications Corp. (AT&T/MCI) on September 23, 1996. The AT&T/MCI protest was a limited protest, in that the parties urged the Commission to allow the Advice Letter to go into effect on a provisional basis pending resolution of the issues. Pacific responded to the protests on October 1, 1996.

On October 9, 1996, Frontier/BTI replied to Pacific's response to their joint protest. On November 4, 1996, AT&T/MCI submitted a joint protest to AL No. 18464A. Pacific responded to AT&T/MCI's protest to the AL as supplemented, on November 13, 1996.

### SUMMARY OF PROTESTS/RESPONSES

Both the AT&T/MCI and Frontier/BTI protests assert that Pacific's proposed wholesale tariff for optional toll calling plans, with its proposed anti-aggregation restrictions, is contrary to the Federal Communications Commission's (FCC's) Interconnection Order I (FCC 96-325). Both protesters cite portions of the same section of the FCC's order:

With respect to volume discount offerings, however, we conclude that it is presumptively unreasonable for incumbent LECs to require individual reseller end users to comply with incumbent LEC high-volume discount minimum usage requirements, so long as the reseller, in aggregate, under the relevant tariff, meets the minimal level of demand. The Commission traditionally has not permitted such restrictions on the resale of volume discount offers.<sup>1</sup>

Frontier/BTI asserts that the anti-aggregation provision is the type of restriction the FCC found to be unreasonable. AT&T/MCI also indicates that prohibiting aggregation of a reseller's end-user volumes inappropriately restricts resellers by forcing them to mirror the terms and conditions of the Pacific's optional calling plans. The protesters allege that competition will be undermined if competitors are forced to mirror the LEC's offerings. AT&T/MCI goes on to state that Pacific incorrectly applies the 17 percent discount, which results in a higher price for resellers. Pacific first applies the avoided cost discount of 17% to its standard tariff Message Telecommunications Service (MIS) rates and then applies the retail discount. According to AT&T/MCI, the correct methodology is to first determine the retail rate by deducting the applicable retail discount and then apply the 17% avoided cost discount.

Frontier/BTI raises a second point, namely, that Pacific has not justified the maintenance of cross-class restrictions on the resale of business toll services to residential customers, or other restrictions proposed in its tariff filing. Frontier/BTI maintains that Pacific's proposed restrictions are presumptively unreasonable under the FCC's Interconnection Order.<sup>2</sup>

In Pacific's response to the two protests, the company indicates that it is irrelevant whether or not the Advice Letter filing complies with the Telecommunications Act of 1996 (the Act) and the FCC's First Interconnection Order. The purpose of the filing is to comply with a CPUC order. Pacific goes on to say that it is not necessary for Pacific to satisfy the Act's resale requirements by means of a tariff. The Act does require incumbent carriers to negotiate, and if necessary, arbitrate resale terms and conditions, which would be reflected in an agreement between Pacific and the reseller. Those agreements would be separate and apart from any tariffs the company has on file.

While Pacific opines that compliance with the Act is not an issue in the Advice Letter filing, the company does respond to the specific issues raised by the protesters. The FCC established a

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<sup>1</sup> Interconnection Order I at 953.

<sup>2</sup> Interconnection Order I, Rule 51.613.

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rebuttable presumption that end user level volume requirements are unreasonable, according to Pacific. Pacific concludes that it has demonstrated that a number of factors overcome the FCC's presumption and establish that the OCP end user level aggregation requirement is both reasonable and nondiscriminatory. The end user aggregation requirement is an essential component of the retail service. Changing the terms and conditions of a service can materially change the nature and cost of the service.

Therefore, no change should be required to terms and conditions which merely define a service. Also, the end user level aggregation requirement is consistent with the Commission's imputation rules. For high volume customers, Pacific imputes the contribution from high-capacity special access services. Allowing CLCs to resell Pacific's high volume-based services to low volume end users ignores the fact that low volume customers don't have the high capacity service alternative, which would unfairly disadvantage facilities-based CLCs.

Pacific indicates that AT&T correctly points out that the AL fails to reduce the dollar thresholds which must be reached to qualify a user for a "for resale" OCP discount. Pacific states that the company will supplement the AL so that CLC reseller end users and Pacific's end users will be required to reach the same usage volumes to qualify for corresponding discounts.

In responding to Frontier/BTI's protest to its cross-class restrictions, Pacific states that the cross class restriction is reasonable. In particular, the cross class restriction preventing residential end users from taking advantage of business OCPs is essential to the definition and purpose of OCPs. Removing the cross class restriction would contravene the Commission's requirements that retail OCPs match the service to be resold.

Pacific refutes Frontier/BTI's criticism of the AL provision which prohibits carriers from reselling Pacific's toll services in circumstances where the end user, using private facilities, has the ability to extend the communication beyond the ostensible points of origination and termination. According to Pacific, it does not offer OCPs on a retail basis on lines on which Pacific cannot bill the qualifying usage to the appropriate end user. Such lines include party lines and farmer lines, lines shared by multiple end users. Due to technical limitations, Pacific asserts that its wholesale OCP offering should mirror its retail OCP "no extension" restriction.

Pacific responds to AT&T's criticism that CLC end user customers must agree to the same terms and conditions as Pacific's customers, which forces the competitor to mirror Pacific's OCP terms, stating that there is room for a reseller to customize its own volume discount offering. The reseller can offer different discounts, term periods or even threshold volumes.

Frontier/BTI's reply to Pacific's response to their joint protest reiterates some of their previous points but also raises two new issues. First, Frontier/BTI refutes Pacific's assertion that the provisions of the Act do not apply to tariff filings and cites Section 251(b) of the Act which provides that a local exchange carrier has "[t]he duty not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of its telecommunications services." Frontier/BTI goes on to state that the FCC states that the proscription against resale

restrictions applies irrespective of whether the restriction is imposed by contract or tariff.<sup>3</sup> Frontier/BTI also asserts that anti-aggregation restrictions are objectionable because they interfere with the ability of the resale arbitrage mechanism to promote efficient pricing and eliminate discrimination. The protesters state that Pacific has not provided any cost-based justification for maintaining the very substantial difference in usage-based toll discounts that are currently contained in Pacific's retail tariffs. Because of shortcomings in Pacific's scheme of toll discounts, it is entirely appropriate that all resale restrictions of Pacific's toll services be eliminated so that the resale arbitrage mechanism can be allowed to rationalize pricing. According to Frontier/BTI, if a reseller can acquire Pacific's toll services in bulk and economically resell those services to low-volume subscribers below Pacific's retail price, Pacific will be forced to lower its retail price and/or reduce its retail costs in order to compete against the reseller. Pacific did not respond to the filing.

AT&T/MCI's protest to AL 18464A indicates that Pacific's supplemental advice letter fails to address any of the concerns identified in the original AT&T/MCI protest. Specifically, the three following points raised in the original protest remain unresolved:

- AL fails to comply with portions of FCC Interconnection Order which have not been stayed
- Pacific attempts to restrict aggregation of reseller's end user volumes
- Pacific incorrectly applies CPUC-mandated user discounts

Pacific responded to the points raised by AT&T/MCI indicating that the protesters mistakenly assume that the AL Supplement is required to address the concerns of protesters, absent a resolution by the Commission of the issues. Pacific had no procedural or other obligation to respond to the protest in its Supplement, and the Supplement cannot be deemed deficient to the extent it does not do so.

According to Pacific, the protest ignores the response Pacific filed on October 1, 1996. In the response Pacific countered the following arguments outlined in the protest:

- The AL complies with all relevant portions of the FCC's interconnection order
- Pacific's end user level volume requirements are reasonable, in the public interest, and nondiscriminatory, and furthermore are essential to retail OCPs
- The inadvertent miscalculation of the applicable discount rates was corrected in the Supplement

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<sup>3</sup> Interconnection Order I at 939.

In AL 18464A, Pacific applied the avoided cost discount of 17% to both the thresholds and the volume discount options for Plan 50 and Plan 1000. In AL 18464B, Pacific applied the avoided cost discount of 17% to the term thresholds for Plan 1000 and the Plus Plan.

### DISCUSSION

We have four specific issues to address in analyzing AL 18464 and the protesters' allegations:

- 1) Does AL 18464 as supplemented comply with D.96-03-020?
- 2) Does AL 18464 as supplemented comply with the Telecommunications Act of 1996?
- 3) Does AL 18464 as supplemented comply with the FCC's First Interconnection Order?
- 4) Are there any other issues relating to AL 18464 as supplemented that the Commission must address?

We will discuss each issue in turn.

- 1) Does AL 18464 as supplemented comply with D.96-03-020?

Ordering Paragraph 3 of D.96-03-020 orders Pacific to file a tariff by September 1, 1996, offering its optional toll calling plans for CLC resale. That language indicates this Commission's clear intent that those OCPs would be available for resale to individual CLC end users. It was not our intent that CLCs be able to aggregate the usage of their end users to qualify for the plan with the deepest discounts, on behalf of all its end user customers. Indeed, in the dicta of that decision we specified that CLC resellers should not be permitted to resell business OCPs to residential customers at this time and made a commitment to review this issue further in Phase III of the local competition proceeding (R.95-04-043/I.95-04-044). The wholesale OCP offering was to be priced at the 17% avoided cost discount adopted in D.96-03-020.

Frontier/BTI points out what it considers to be flaws in Pacific's retail OCP offerings, namely the fact that there is no cost-basis for the different toll discount plans currently in effect. However, it was not the purpose of this compliance filing to review the structure of the existing retail OCPs, rather to make the plans currently in effect, with the associated retail terms and conditions, available for resale.

As AT&T/MCI pointed out in its protest, Pacific improperly applied the avoided cost discounts. In AL 18464A and 18464B, Pacific corrected most of the technical errors described by AT&T/MCI, with some exceptions which are discussed under Issue 4 below.

We conclude the Pacific's AL filing as supplemented is in compliance with D.96-03-020.

- 2) Does AL 18464 as supplemented comply with the Telecommunications Act of 1996?

Section 251(c)(4)(B) of the Act imposes a broad duty not to prohibit resale, but permits that a

state may, "consistent with regulations prescribed by the Commission [the Federal Communications Commission] under this section, prohibit a reseller that obtains at wholesale rates a telecommunications service that is available at retail only to a category of subscribers from offering such service to a different category of subscribers." This section supports our position that it is appropriate for a state commission to make a determination that a particular OCP should only be available for resale to qualifying end users of the reseller. Nothing in Section 251(c) precludes the state from imposing restrictions on resellers, as long as those restrictions are reasonable and non-discriminatory. We believe that the decision we made in D.96-03-020 to not impose an obligation to provide toll volume discounts to resellers when the underlying customer does not qualify for the discount is both reasonable and non-discriminatory. Clearly, changing the terms of the retail service goes far beyond the dictates of 251(c)(4) to offer retail services on a wholesale basis. Changing the terms and conditions changes the definition of the service so that a wholesale service offering could be substantially different from the retail service, but the Act does not require that a wholesale service be altered at the reseller's request. We therefore conclude that AL 18464 is in compliance with the Telecommunications Act of 1996.

3. Does AL 18464 as supplemented comply with the FCC's First Interconnection Order?

Before we can make a determination about whether AL 18464 as supplemented complies with the FCC's First Interconnection Order, we need to determine the status of that order, as it applies to the issues in AL18464. On September 27, 1996, an Order Setting Hearing and Imposing Temporary Stay was issued by the United States Court of Appeals for the Eighth Circuit in Iowa Utilities Bd. V. Federal Communications Commission (No. 95-3321). This order stayed the effective date of certain rules promulgated by the FCC in its First Interconnection Order which was issued on August 8, 1996. On October 15, 1996, the Eighth Circuit entered its Order Granting Stay Pending Judicial Review. The Stay affects the pricing provisions and the "pick and choose" rule of the FCC's Order.

We note that under the provisions of the Stay, the only remaining resale provision left in place is Section 51.613. Section 51.613 explicitly permits restrictions on resale. In particular, 47 C.F.R. Section 51.613(b) states that "an incumbent LEC may impose a restriction only if it proves to the state commission that the restriction is reasonable and nondiscriminatory." We also note that there is no unstayed regulation in the FCC's First Interconnection Order that adopts a blanket prohibition on resale restrictions. As noted above under Issue 3, we have determined that the prohibition on aggregating a reseller's end users to qualify for a particular OCP is both reasonable and nondiscriminatory. We therefore find that we are in compliance with the FCC's First Interconnection Order.

4. Are there any other issues related to AL 18464 as supplemented that the Commission must address?

Telecommunications Division (TD) staff reviewed the advice letters and found one portion where the avoided cost discount had not been applied and a footnote which had been added in AL 18464B indicating that resold Custom 8 service is not available.

On Schedule CAL.P.U.C. No., 175-T, Original Sheet 947-II-7, Section 118.7.8(G)(2), the avoided cost discount has not been applied to the minimum monthly usage charge.

AL 18464B contains a number of footnotes which indicate that Resold Custom 8 service is not available. However, end users are able to use Custom 8 usage, along with their direct dialed local toll usage, to meet the minimum threshold to qualify for a particular OCP. Resellers' end users must have the same option that retail customers have to use Custom 8 usage to help qualify for particular plans.

### FINDINGS

1. Pacific filed Advice Letter 18464 in compliance with Ordering Paragraph 3 of D.96-03-020.
2. Pacific supplemented Advice Letter No. 18464 with Advice Letters No. 18464A and 18464B.
3. The protest of AT&T/MCI regarding the incorrect applications of the avoided cost discount has merit. The other items protested by AT&T/MCI and Frontier/BTI do not have merit and are dismissed.
4. Except as specified in Finding 5, Advice Letter 18464, as supplemented, is in compliance with D.96-03-020, the Telecommunications Act of 1996, and the Federal Communications Commission's First Interconnection Order.
5. Advice Letter 18464, as supplemented, has two technical errors which must be corrected:
  - On Tariff Sheet 947-II-7, Section 18.7.8(G)(2), the minimum monthly usage charge to qualify for the Plus Plan Term Discount must have the avoided cost discount applied.
  - All tariff sheets in Advice Letter 18464B must be amended to indicate that Resold Custom 8 service is available to resellers' end users on the same basis that it is available to Pacific's end users.


### **THEREFORE, IT IS ORDERED that:**

1. Pacific Bell's Advice Letter 18464, as supplemented by Advice Letters 18464A and 18464B requesting Commission authority to offer its Optional Calling Plans on a wholesale basis is approved, subject to the filing of the supplement described in Ordering Paragraph 2.
2. Pacific Bell shall file a supplement to Advice Letter 18464 to correct the deficiencies described in Finding of Fact 5 within 5 days of the approval of this Resolution. That supplement will be effective (1) day following filing with the Commission's Telecommunications Division.
3. The Advice Letter and tariff sheets shall be marked to show that they were authorized by Resolution T-16011.
4. This resolution is effective today.



March 7, 1997

I hereby certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting on March 7, 1997. The following Commissioners approved it:

  
WESLEY M. FRANKLIN  
Executive Director

P. GREGORY CONLON

President

JESSIE J. KNIGHT, Jr.

HENRY M. DUQUE

JOSIAH L. NEEPER

RICHARD A. BILAS

Commissioners