

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Telecommunications Division  
Market Structure Branch

RESOLUTION T-16056  
August 1, 1997

R E S O L U T I O N

RESOLUTION T-16056. PACIFIC BELL (U-1001). REQUEST FOR APPROVAL OF AN INTERCONNECTION AGREEMENT BETWEEN PREFERRED NETWORKS, INC. AND PACIFIC BELL PURSUANT TO SECTION 252 OF THE TELECOMMUNICATIONS ACT OF 1996.

BY ADVICE LETTER NO.18837, FILED ON MAY 20, 1997.

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SUMMARY

This Resolution approves an Interconnection Agreement between Pacific Bell and Preferred Networks, Inc. (Preferred), a facilities-based paging carrier, submitted under provisions of Resolution ALJ-168 and GO 96-A. The Agreement becomes effective today and will remain in effect for 2 years.

BACKGROUND

The United States Congress passed and the President signed into law the Telecommunications Act of 1996 (Pub. L. No.104-104, 110 Stat. 56 (1996)) (1996 Act). Among other things, the new law declared that each incumbent local exchange telecommunications carrier has a duty to provide interconnection with the local network for any requesting telecommunications carrier and set forth the general nature and quality of the interconnection that the incumbent local exchange carrier (ILEC) must agree to provide.<sup>1</sup> The 1996 Act established an obligation for the incumbent local exchange carriers to enter into good faith negotiations with each competing carrier to set the terms of interconnection. Any interconnection agreement adopted by negotiation must be submitted to the appropriate state commission for approval.

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<sup>1</sup> An incumbent local exchange carrier is defined in Section §251(h) of the 1996 Act.

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Section 252 of the 1996 Act sets forth our responsibility to review and approve interconnection agreements. On July 17, 1996, we adopted Resolution ALJ-167 which provided interim rules for the implementation of §252. On September 26, 1996, we adopted Resolution ALJ-168 which modified those interim rules. Recently, on June 25, 1997, we approved Resolution ALJ-174 which again modified these rules.<sup>3</sup>

On August 8, 1996, the FCC issued its First Report and Order On Interconnection, CC Docket No. 96-98 (the Order). The Order included several regulations regarding the rights and obligations of Commercial Mobile Radio Service (CMRS) providers and ILECs in providing local interconnection. For example, Section 51.717 allowed for CMRS providers to re-negotiate arrangements with ILECs with no termination liability or other contract penalties. On October 15, 1996, the Order was stayed by the United States Court of Appeals for the 8<sup>th</sup> circuit. However, on November 1, 1996, the stay was lifted for sections that related to the scope of the transport and termination pricing rules, reciprocal compensation of LECs, and the re-negotiation of non-reciprocal arrangements typically associated with CMRS providers.<sup>4</sup>

On July 17, 1997 the 8th Circuit issued its opinion on the Order. Although the opinion overturned several sections of the Order, it did maintain that certain sections would remain in full force and effect with respect to CMRS providers.<sup>5</sup>

On May 20, 1997, Pacific Bell filed Advice Letter No. 18837 requesting Commission approval of a negotiated interconnection agreement between Pacific Bell and Preferred under section 252.

In ALJ-168 we noted that the 1996 Act requires the Commission to act to approve or reject agreements. We established an approach

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<sup>3</sup> We note that ALJ-174 did not change our process for reviewing agreements reached by negotiation. Because Pacific filed this agreement for approval under ALJ-168 on May 20th, over a month before ALJ-174 was approved, and because the rules for review of negotiated agreements remain unchanged, we will still review this agreement under the old rules of ALJ-168.

<sup>4</sup> The stay was lifted on Sections 51.701, 51.703, and 51.717 of Appendix B.

<sup>5</sup> Specifically, the Opinion cited sections 51.701, 51.703, 51.709 (b), 51.711(a) (1), 51.715(d), and 51.717 as applicable to interconnection with CMRS providers. Iowa Utilities Board, et al., v. Federal Communications Commission, et al., Action 96-3321, Footnote 21.

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which uses the advice letter process as the preferred mechanism for consideration of negotiated agreements. Under Rule 4.3.3, if we fail to approve or reject the agreements within 90 days after the advice letter is filed, then the agreements will be deemed approved.

The Interconnection Agreement sets the terms and charges for interconnection between Pacific Bell and Preferred (the "parties"). The Agreement provides for the following:

- The parties define local paging calls as provided in 47 CFR s51.701(b)(2);
- Termination of local paging traffic originated by Pacific without explicit compensation;
- Depending on the Point of Interconnection adopted, Preferred is responsible either for the provision of the interconnection facilities or for compensation to Pacific for its provision of the interconnection facilities;
- Access to number resources;
- A price schedule for several CMRS interconnection service elements including an analog interface for Type 1 trunk side message trunk (TSMT), interoffice mileage, Type 1 direct inward dial (DID) and TSMT circuit termination, class of call screening, billed number screening, and pre-conditioning of DID numbers.
- A price schedule for type 1, type 2A and type 2B CMRS trunk terminations.
- To the extent provided in Section 252 (I) of the Act, Pacific shall make available to Preferred any interconnection, service, or network element provided under an agreement approved under Section 252 of the Act to which Pacific is a party upon Preferred's agreement to the same terms and conditions as those provided in that agreement.
- The parties have established a dispute resolution procedure which includes reference to the procedure outlined in pages 36-39 in the Commission's interconnection decision (D.95-12-056).

**NOTICE/PROTESTS**

Pacific states that copies of the Advice Letter and the Interconnection Agreement were mailed to all parties on the Service List of ALJ 168, R.93-04-003/I.93-04-002/R.95-04-043/I.95-04-044. Notice of Advice Letter No. 18837 was published

in the Commission Daily Calendar of May 27, 1997. Pursuant to Rule 4.3.2 of ALJ-168, protests shall be limited to the standards for rejection provided in Rule 4.1.4<sup>6</sup>.

On June 9, 1997, two parties, Airtouch Paging of California and The Paging and Narrowband PCS Alliance of the Personal Communications Industry Association, each filed "comments" to this advice letter requesting that the Commission modify the interconnection agreement by rejecting portions that allowed Pacific to charge Preferred and that did not provide for termination compensation to Preferred.<sup>7</sup> The protesters argued that the agreement was discriminatory and that it was not consistent with the FCC's First Report and Order on Interconnection. On June 16, five business days after receipt of the protests, Pacific sent a reply to the Commission. Although the Telecommunications Division received and filed the reply on June 17, 1997, we recognize that the reply was served on the Commission within the 5 business day requirement of G.O. 96-A. Nevertheless, the question of whether Pacific's response was served timely to the Commission is moot because we did not rely on Pacific's arguments to determine that the protests were without merit. As discussed below, our review of agreements reached through voluntary negotiation is different from that of agreements arrived at through compulsory arbitration.

#### DISCUSSION

In November 1993, this Commission adopted a report entitled "Enhancing California's Competitive Strength: A Strategy for Telecommunications Infrastructure" (Infrastructure Report). In that report, the Commission stated its intention to open all telecommunications markets to competition by January 1, 1997. Subsequently, the California Legislature adopted Assembly Bill 3606 (Ch. 1260, Stats. 1994), similarly expressing legislative intent to open telecommunications markets to competition by January 1, 1997. In the Infrastructure Report, the Commission states that "[i]n order to foster a fully competitive local telephone market, the Commission must work with federal officials to provide consumers equal access to alternative providers of service." The 1996 Act provides us with a framework for undertaking such state-federal cooperation.

<sup>6</sup> See below for conditions of Rule 4.1.4.

<sup>7</sup> Although the parties' filings were entitled "Comments", we recognize these as protests because they requested that we reject portions of the agreement.

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Sections 252(a)(1) and 252(e)(1) of the Act distinguish interconnection agreements arrived at through voluntary negotiation and those arrived at through compulsory arbitration. Section 252(a)(1) states that:

"an incumbent local exchange carrier may negotiate and enter into a binding agreement with the requesting telecommunications carrier or carriers without regard to the standards set forth in subsections (b) and (c) of section 251."

Section 252(e)(2) limits the state commission's grounds for rejection of voluntary agreements. Section 51.3 of the First Report and Order also concludes that the state commission can approve an interconnection agreement adopted by negotiation even if the terms of the agreement do not comply with the requirements of Part 51--Interconnection. Therefore, the protesters' reliance on the FCC First Report and Order, 47 C.F.R. Section 51, is misguided.

Based on Section 252 of the 1996 Act, we instituted Rule 4.3 in Resolution ALJ-168 for approval of agreements reached by negotiation. Rule 4.3.1 provides rules for the content of requests for approval. Consistent with Rule 4.3.1, the request has met the following conditions:

1. Pacific has filed an Advice Letter as provided in General Order 96-A and stated that the Interconnection Agreement is an agreement being filed for approval under Section 252 of the Act.
2. The request contains a copy of the Interconnection Agreement which, by its content, demonstrates that it meets the standards in Rule 2.18.
3. The Interconnection Agreement itemizes the charges for interconnection and each service or network element included in the Interconnection Agreement.

Rule 4.3.3. of ALJ-168 states that the Commission shall reject or approve the agreement based on the standards in Rule 4.1.4. Rule 4.1.4 states that the Commission shall reject an interconnection agreement (or portion thereof) if it finds that:

- a. the agreement discriminates against a telecommunications carrier not a party to the agreement; or

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b. the implementation of such agreement is not consistent with the public interest, convenience, and necessity; or

c. the agreement violates other requirements of the Commission, including, but not limited to, quality of service standards adopted by the Commission.

We make no determination as to whether the rates, terms and conditions for transport and termination meet the pricing standards of Section 252(d) of the 1996 Act. Our consideration of these agreements is limited to the three issues in rule 4.1.4 of ALJ-168.

The Agreement is consistent with the goal of avoiding discrimination against other telecommunications carriers. We see nothing in the terms of the proposed Agreement that would tend to restrict the access of a third-party carrier to the resources and services of Pacific Bell.

Section 252(I) of the 1996 Act also ensures that the provisions of the agreement will be made available to all other similarly situated competitors. Specifically, the section states:

"A local exchange carrier shall make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement."

Furthermore, in Section 26 of the Agreement, both parties recognize section 252 (I) of the Act which would allow Preferred to receive the same terms and conditions received by any other carrier who enters into an agreement with Pacific.

We do not find merit in the protesters' concerns that our approval of this agreement would deny any other party the ability to obtain the terms and conditions of another agreement which we have approved pursuant to the Federal Telecommunications Act, or to request arbitration with Pacific to obtain terms and conditions to which they believe they are entitled.

We have previously concluded that competition in local exchange and exchange access markets is desirable. We have found no provisions in this Agreement which undermine this goal or are

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inconsistent with any other identified public interests. Hence, we conclude that the Agreement is consistent with the public interest.

The Agreement also meets other requirements of the Commission. Also, this Agreement is consistent with the Commission's service quality standards and may exceed those standards in at least one respect. Pacific Bell and Preferred have agreed to engineer all final CMRS interconnection trunk groups with a blocking standard of one percent (.01). This means that the parties have a goal of completing, on average, no less than 99% of all initiated calls. We note that this call blocking provision exceeds the service quality reporting level set forth by the Commission in General Order (GO) 133-B, which requires carriers to report quarterly to the Commission as to whether or not their equipment completes 98% of customer-dialed calls on a monthly basis. Although both carriers must continue to comply with this requirement, we are encouraged that they are seeking to achieve an even higher standard of service.

Several commenters to previous interconnection agreements sought assurance that the Commission's treatment of those interconnection agreements would not impair their rights and opportunities in other proceedings'. We wish to reiterate such assurances as clearly as possible. This Resolution stands solely for the proposition that Preferred and Pacific Bell may proceed to interconnect under the terms set forward in their Agreement. We do not adopt any findings in this Resolution that should be carried forth to influence the determination of issues to be resolved elsewhere.

If the parties to this Agreement enter into any subsequent agreements affecting interconnection, those agreements must also be submitted to the Commission for approval. In addition, the approval of this Agreement is not intended to affect otherwise applicable deadlines. This Agreement and its approval have no binding effect on any other carrier. Nor do we intend to use this Resolution as a vehicle for setting future Commission policy. As a result of being approved, this Agreement does not become a standard against which any or all other agreements will be measured.

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<sup>4</sup>A.96-07-035 and A.96-07-045.

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With these clarifications in mind, we will approve the proposed Agreement. In order to facilitate rapid introduction of competitive services, we will make this order effective immediately.

FINDINGS

1. Pacific Bell's request for approval of an interconnection agreement pursuant to the Federal Telecommunications Act of 1996 meets the content requirements of Rule 4.3.1 of ALJ-168.
2. The Interconnection Agreement submitted in Pacific Bell's Advice Letter No. 18837 is consistent with the goal of avoiding discrimination against other telecommunications carriers.
3. We conclude that the Agreement is consistent with the public interest.
4. The Agreement is consistent with the Commission's service quality standards and may exceed those standards in at least one respect.
5. We do not find merit in the issues raised by either Airtouch Paging of California or The Paging and Narrowband PCS Alliance of the Personal Communications Industry Association in comments filed on June 20, 1997.

**THEREFORE, IT IS ORDERED that:**

1. Pursuant to the Federal Telecommunications Act of 1996, we approve the Interconnection Agreement between Pacific Bell and Preferred Networks, Inc. submitted by Advice Letter No. 18837.
2. This Resolution is limited to approval of the above-mentioned Interconnection Agreement and does not bind other parties or serve to alter Commission policy in any of the areas discussed in the Agreement or elsewhere.
3. Pacific Bell Advice Letter No. 18837 and the Interconnection Agreement between Pacific Bell and Preferred Networks, Inc. shall be marked to show that they were approved by Resolution T-16056.

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This Resolution is effective today.

I hereby certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting on August 1, 1997 The following Commissioners approved it:

*Wesley Franklin*  
WESLEY M. FRANKLIN  
Executive Director

P. GREGORY CONLON  
President

JESSIE J. KNIGHT, Jr.

HENRY M. DUQUE

JOSIAH L. NEEPER

RICHARD A. BILAS

Commissioners