

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Telecommunications Division
Market Structure Branch

RESOLUTION T-16070
September 3, 1997

R E S O L U T I O N

RESOLUTION T-16070. GTE CALIFORNIA, INC. (U-1002).
REQUEST FOR APPROVAL OF AN INTERCONNECTION AGREEMENT
BETWEEN GTE CALIFORNIA, INC. AND COVAD COMMUNICATIONS
COMPANY PURSUANT TO SECTION 252 OF THE
TELECOMMUNICATIONS ACT OF 1996.

BY ADVICE LETTER NO.8520, FILED ON JUNE 30, 1997.

SUMMARY

This Resolution approves an interconnection agreement between GTE California, Inc. (GTEC) and Covad Communications Company (Covad) under the provisions of Resolution ALJ-174 and GO 96-A. The agreement becomes effective today and will remain in effect for the term identified in the agreement. The agreement adopts the identical terms and conditions of a previously approved interconnection agreement between GTE California, Inc. and AT&T Communications of California.

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.¹ The 1996 Act established an obligation for the ILECs 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.

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

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. On June 25, 1997, we approved ALJ-174 which modified ALJ-168, but did not change the rules for reviewing agreements achieved through voluntary negotiation.

On June 30, 1997, GTE California filed Advice Letter No. 8520. The Advice Letter requested Commission approval of an interconnection agreement between GTE California and Covad under Section 252. In the advice letter, GTEC stated that the agreement was neither voluntary nor negotiated, but rather a statutory adoption of an arbitrated agreement.

In ALJ-168 we noted that the 1996 Act required the Commission to act to approve or reject agreements. We established an approach which used 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 an agreement within 90 days after the advice letter is filed, then the agreement is deemed approved.

The Interconnection Agreement pertaining to this Advice Letter adopts the terms and charges for interconnection between GTE California and AT&T established in D.97-01-022. Additionally, GTEC states its position that Covad would be subject to any stay, injunction, modification, or ruling regarding lawfulness, in whole or in part, issued by a commission or court of competent jurisdiction with respect to the GTEC/AT&T arbitrated agreement; and that any such ruling would have the same effect on the agreement with Covad as it would have on the GTEC/AT&T arbitrated agreement.

NOTICE/PROTESTS

GTEC states that copies of the Advice Letter were mailed to all LECs, CLCs and other interested parties. Notice of Advice Letter No. 8520 was published in the Commission Daily Calendar of July 8, 1997. Pursuant to Rule 4.3.2 of ALJ-174, protests shall be limited to the standards for rejection provided in Rule 4.1.4.² On July 21, 1997, Cox California Telcom, Inc. (Cox) filed

² See below for conditions of Rule 4.1.4.

comments on this advice letter. On August 1, 1997, both Covad and GTEC filed responses to Cox's comments.

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.

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.

GTEC states in its advice letter that its agreement with the Covad is neither voluntary nor negotiated. While we understand GTEC's position on this issue, we still maintain that the agreement should be processed as an agreement arrived at through voluntary negotiation. The essential facts are: 1) that Covad requested interconnection from GTEC under the provisions of Sections 251 and 252 of the Act and 2) that the parties filed a binding agreement with us for approval. Section 252 of the Act

identifies three types of agreements. We could not classify the agreement under two of the alternatives: a mediated agreement (Section 252(a)(2)) or an arbitrated agreement (Section 252(b)). During the negotiation of the agreement, neither party requested that we participate in the negotiation and mediate any differences. Nor did one of the parties petition us for arbitration. Therefore, this agreement falls under neither Section 252(a)(2) nor Section 252(b), but does fall under 252(a)(1) as a voluntary agreement.

Based on Section 252 of the 1996 Act, we have instituted Rule 4.3 in Resolution ALJ-174 for approval of agreements reached by negotiation. Rule 4.3.1 provides rules for the content of requests for approval. Rule 4.3.1 requires that:

1. GTEC file an Advice Letter as provided in General Order 96-A and state that the Interconnection Agreement is a voluntary agreement filed for approval under Section 252 of the 1996 Act;
2. the request contain a copy of the Interconnection Agreement showing that it meets the standards in Rule 2.18.
3. the Interconnection Agreement itemize the charges for interconnection and for each service or network element included in the Interconnection Agreement.

GTEC has not met the content requirements of Rule 4.3.1 because the GTEC advice letter states that the agreement is neither voluntary nor negotiated. Also, the advice letter does not actually contain a copy of the interconnection agreement but rather references the GTEC/AT&T agreement. Regardless of these shortcomings, we will still review the agreement based on the standards of rule 4.3.3 which focus on the content of the agreement. To reject or delay the approval of this agreement because of GTEC's failure to strictly comply with our content rules in its advice letter would harm Covad, a carrier that desires approval of the interconnection agreement as soon as possible to provide competitive local service.

Rule 4.3.3. of ALJ-174 states that the Commission shall reject or approve an 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:

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

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 GTE California.

Section 252(i) of the 1996 Act 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."

Indeed, this agreement is the result of the parties recognition of Section 252 (i).

We have previously concluded that competition in local exchange and exchange access markets is desirable. We have found no provision in this Agreement that undermines this goal or is inconsistent with any other identified public interests. Hence, we conclude that the Agreement is consistent with the public interest.

The agreement meets the Commission's service quality standards for telecommunications services.

The agreement adopts the same terms, conditions and rates of a previously approved interconnection agreement. We have not changed our findings that that original agreement met the requirements listed in Rule 2.18. Furthermore, we recognize that no commenting party alleged that this Advice Letter was

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discriminatory, inconsistent with the public interest, convenience, and necessity or in violation of Commission requirements.

Cox submitted comments to this advice letter requesting that the Commission make clear that our approval of this agreement does not mean that we endorse GTEC's position that any "stay, injunction, modification or ruling regarding the lawfulness ... with respect to the GTE/AT&T agreement ... shall have the same effect on other agreements that adopt some or all of the terms set forth in the GTE/AT&T agreement." In Covad's response to Cox's comments, it states that this language was a statement of GTEC's position, one not binding on Covad, Cox or any other party unless and until held to be binding on such party by order of the Commission, or a court of applicable jurisdiction. Covad also emphasizes that it would not want this issue to lead to increased legal expenses or delay to the approval of its interconnection agreement. In its response, GTEC clarifies that the language in question was a statement of its position and not part of the stipulated language agreed to by both it and Covad. GTEC believes that since this language is not a part of the agreement between the two parties, the Commission should take no position on the language.

After reviewing the comments and responses from all three parties, it is clear that the language is simply a statement of GTEC's position. Therefore, without commenting on the merits of that position, we clarify that our approval of this interconnection agreement does not bind Covad, Cox, or any other party to that position.

Several who commented on previous interconnection agreements sought assurance that the Commission's treatment of those interconnection agreements would not impair their rights and opportunities in other proceedings.⁴ We wish to reiterate such assurances as clearly as possible. This Resolution stands solely for the proposition that the Covad and GTE California may proceed

⁴A.96-07-035 and A.96-07-045.

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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. Irrespective of this Resolution, no CLÉC may offer local service to the public until its tariffs are approved. 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.

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. GTEC's request for approval of an interconnection agreement between GTEC and Covad pursuant to the Federal Telecommunications Act of 1996 does not meet the content requirements of Rule 4.3.1 of ALJ-174 because GTEC states that the agreement was not entered into via voluntary negotiation.
2. The Commission should process the advice letter as a request for approval of a negotiated agreement under Rule 4.3 of ALJ-174 and review the underlying interconnection agreement based on the standards of Rule 4.1.4 of ALJ-174.
3. The Interconnection Agreement submitted in GTE California's Advice Letter 8520 is consistent with the goal of avoiding discrimination against other telecommunications carriers.
4. We conclude that the Agreement is consistent with the public interest.
5. The Agreement is consistent with the Commission's service quality standards.

6. Cox requests that the Commission comment on language in GTEC's advice letter that discusses GTEC's legal position that any "stay, injunction, modification or ruling regarding the lawfulness ... with respect to the GTE/AT&T agreement ... shall have the same effect on other agreements that adopt some or all of the terms set forth in the GTE/AT&T agreement."

7. Without commenting on the merits of GTEC's position, we will clarify that our approval of this interconnection agreement does not bind Covad, Cox, or any other party to that position.

THEREFORE, IT IS ORDERED that:

1. Pursuant to the Federal Telecommunications Act of 1996, we approve the Interconnection Agreement between GTE California and Covad Communications Company submitted by Advice Letter 8520.

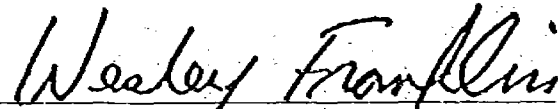
2. This Resolution is limited to approval of the above-mentioned Interconnection Agreement and does not bind other parties or serve to alter Commission policy in any of the areas discussed in the Agreement or elsewhere. Irrespective of this Resolution, no CLEC may offer local service to the public until it has complied with all of the Commission's requirements.

3. GTE California Advice Letter 8520 and the Interconnection Agreement between GTE California, Inc. and Covad Communications Company shall be marked to show that they were approved by Resolution T-16070.

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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 September 3, 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