

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Telecommunications Division
Market Structure Branch

RESOLUTION T-16078
September 3, 1997

R E S O L U T I O N

RESOLUTION T-16078. GTE CALIFORNIA (U-1002). REQUEST FOR APPROVAL OF AN INTERCONNECTION AGREEMENT BETWEEN PAGE KIT COMMUNICATIONS AND GTE CALIFORNIA PURSUANT TO SECTION 252 OF THE TELECOMMUNICATIONS ACT OF 1996.

BY ADVICE LETTER NO.8507, FILED ON JUNE 16, 1997.

SUMMARY

This Resolution approves an Interconnection Agreement between GTE California (GTEC) and Page Kit Communications (PKC), a facilities-based paging carrier, submitted under provisions of Resolution ALJ-174 and GO 96-A. The Agreement becomes effective today and will remain in effect for 1 year.

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 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.

Section 252 of the 1996 Act sets forth our responsibility to review and approve interconnection agreements. On July 17, 1996,

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

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 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 First Report and Order was stayed by the United States Court of Appeals for the 8th 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.²

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.³

On June 16, 1997, GTE California filed Advice Letter No. 8507 requesting Commission approval of a negotiated interconnection agreement between GTE California and PKC 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 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.

² The stay was lifted on Sections 51.701, 51.703, and 51.717 of Appendix B.

³ 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.

The Interconnection Agreement sets the terms and charges for interconnection between GTE California and PKC (the "parties"). The Agreement provides for the following:

- The parties agree that the major trading area (MTA) constitutes the local calling area for the purpose of compensation for the transport and termination of commercial mobile radio service (CMRS) traffic.⁴
- The agreement is specifically limited to traffic terminating to PKC's end-use customers to which PKC provides paging or narrowband service.⁵
- GTEC shall compensate PKC for the termination of local traffic. The parties have agreed to a flat rate assessed per DS0 or DS0 equivalent trunk. GTEC will charge the applicable access rate if the call is non-local.
- GTEC will charge PKC for transiting calls originated by a non-GTEC end-use customer to PKC.
- Interconnection trunks will terminate at a GTEC Access tandem or a GTEC end-office. GTEC will charge PKC for the facility at its tariffed special access rates. Trunks carrying interLATA traffic will be delivered over separate trunks.
- Meet-point billing arrangements on a multiple bill/multiple tariff basis initially.
- Access to number resources.
- A dispute resolution procedure which may lead to commercial arbitration.⁶

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. 8507 was published in the Commission Daily Calendar of June 19, 1997. Pursuant to Rule 4.3.2 of ALJ-174, protests shall be limited to the standards for rejection provided in Rule 4.1.4⁷. On July 7, 1997, Airtouch Paging of California filed a protest to the advice letter urging that the Commission reject the Agreement unless the parties revise portions of the agreement that Airtouch argues are inconsistent with the Act, the Order, the Commission's findings in D.97-05-095 (the Cook Paging arbitration decision) and with public policy. On July 9, Paging Network, Inc. filed

⁴ Article II, Paragraph 1.18 of the Agreement.

⁵ Article IV, Paragraph 3.1 of the Agreement.

⁶ Article III, Paragraph 12 of the agreement.

⁷ See below for conditions of Rule 4.1.4.

comments to the advice letter noting apparent inconsistencies between the terms of the agreement and the terms available to paging carriers pursuant to the Act, the Order and findings of the Commission in D.97-05-095. However, recognizing the distinction between our review of voluntary agreements versus arbitrated agreements, Paging Network, Inc. simply requests that we confirm that our approval of this agreement carries no evidentiary value vis-a-vis other paging carriers in any future arbitration under Section 252(b) of the Act.

On August 6, 1997, GTEC filed a response to the protest. While we did review the response, we note that it was filed almost a month after AirTouch filed its protest, well after the 5 business day deadline established in GO 96-A.

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.

AirTouch's protest requests that the Commission reject portions of the agreement which it argues are inconsistent with the Act, the Order, D.97-05-095, and public policy. Clearly neither the Act nor the Order compel us to reject those portions of the agreement. Even AirTouch recognizes in its protest that the Act permits parties to negotiate interconnection arrangements without regard to certain provisions of the Act.

Sections 252(a)(1) and 252(e)(1) of the Act distinguish interconnection agreements arrived at through voluntary negotiation from 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.

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. Consistent with Rule 4.3.1, the request has met the following conditions:

1. GTEC 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-174 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
- 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 provides for explicit transport and termination charges assessed on the originating carrier. We make no

determination as to whether these rates 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-174.

AirTouch raises several concerns that the agreement unfairly discriminates against PKC. Without making a determination of the merits of those concerns, we reiterate that our discrimination test when reviewing voluntary agreements is whether the agreement discriminates against an entity that is not a party to that agreement. Although AirTouch argues that this agreement will affect it to the extent that GTEC will use this agreement with PKC as a template or guidepost for all paging interconnection arrangements, we do not agree that this discriminates against AirTouch. Our approval of this agreement does not limit AirTouch's rights to enter into a different arrangement with GTEC or to petition for arbitration.

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 serve 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."

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 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. This Agreement is consistent with the Commission's service quality standards and may exceed those standards in at least one

respect. GTE California and PKC have agreed to engineer all final CMRS interconnection trunk groups with a an objective P.01 grade of service. 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.

AirTouch suggests that the agreement provides for double recovery to GTEC when GTEC transits calls originated by a non-GTEC end-office to PKC, because GTEC is already recovering the transiting cost from the originating carrier. In GTEC's response, it clarifies that Section 3.4 of Article 4 of the agreement only requires that GTEC be compensated once for the transiting service provided, but that PKC be responsible for ensuring such compensation. Thus, if GTEC were receiving the compensation from the originating LEC, it would not subsequently recover the compensation from PKC. While we are satisfied that this will prevent double recovery, we remind the parties that they can not bind another party to pay a particular transiting rate in this agreement.

In response to the comments filed by Paging Network, Inc., we confirm that our approval of this agreement carries no evidentiary value vis-a-vis other paging carriers in any future arbitration under Section 252(b) of the Act. In each of the resolutions approving the agreements arrived at through voluntary negotiation, we have mentioned that 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 have reiterated such assurances. This Resolution stands solely for the proposition that PKC and GTE California 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. We make no determination of whether the terms are consistent with the pricing standards of the Act.

¹A.96-07-035 and A.96-07-045.

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.

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. GTE California'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-174.
2. The Interconnection Agreement submitted in GTE California's Advice Letter No. 8507 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 are not compelled by the issues raised by AirTouch to reject portions of the agreement.
6. This agreement and its approval have no binding affect on any other carrier.
7. We make no determination of whether the terms in this agreement meet the standards of Sections 251 (b) and (c) of the Act.

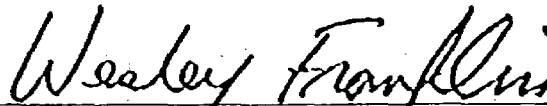
THEREFORE, IT IS ORDERED that:

September 3, 1997

1. Pursuant to the Federal Telecommunications Act of 1996, we approve the Interconnection Agreement between GTE California and Page Kit Communications submitted by Advice Letter No. 8507.
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. GTE California Advice Letter No. 8507 and the Interconnection Agreement between GTE California and Page Kit Communications shall be marked to show that they were approved by Resolution T-16078.

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