PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Telecommunications Division

RESOLUTION T-16079
October 9, 1997

R E S O L U T I O N

RESOLUTION T-16079. PACIFIC BELL (U-1001). REQUEST FOR APPROVAL OF AN INTERCONNECTION AGREEMENT BETWEEN GTE CALIFORNIA, INCORPORATED(U-1002) AND PACIFIC BELL PURSUANT TO SECTION 252 OF THE TELECOMMUNICATIONS ACT OF 1996.

BY ADVICE LETTER NO.18926, FILED ON JULY 11, 1997.

SUMMARY
This Resolution approves an Interconnection Agreement between Pacific Bell (Pacific) and GTE California, Incorporated (GTEC), a facilities-based carrier, submitted under provisions of Resolution ALJ-174 and GO 96-A. The Agreement becomes effective today and will remain in effect for one 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 competing local carriers and set forth the general nature and quality of the interconnection that the local exchange carrier 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. The Act required that interconnection agreements adopted prior to the the date of enactment of the Act be submitted to the state commission for approval.

On August 8, 1996, the FCC issued its First Report and Order On Interconnection, CC Docket No. 96-98 (the Order). Paragraph 171 and Rule 51.303 required that the interconnection agreements between Class A carriers such as GTEC and Pacific be filed with the state Commission by June 30, 1997 for approval pursuant to Section 252 of the Telecommunications Act[2]. On July 17, 1997 the

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

[2] Class A companies are defined as companies "having annual revenues from regulated telecommunications operations of $100,000,000 or more." 47C.F.R Section 32.11(a).

8th Circuit vacated parts of the Order including rule 51.303 and its accompanying policy statements.

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 July 11, 1997, Pacific Bell filed Advice Letter No. 18926 requesting Commission approval of a negotiated interconnection ageement between Pacific Bell and GTEC.

In ALJ-168 we noted that the 1996 Act requires 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 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 GTEC (the "parties"). The Agreement provides for the following:

- The agreement covers traffic exchanged between the parties both across adjacent incumbent local service territories and within each other's incumbent local service area;
- Transport and termination of local exchange traffic without explicit compensation until one year after permanent number portability is implemented;
- Provisions to share switched-access revenues on both meet point billing arrangements and on ported numbers;
- Interim number portability (INP) via remote call forwarding and direct inward dialing;
- Network interconnection via physical, shared space and virtual collocation pursuant to collocation tariffs and interconnection pursuant to a mid-span fiber-meet.
- The current points of interconnection is available upon request. All additional points of interconnection will be filed in amendments to Appendix A.

Many arrangements that would accommodate competition within the other's incumbent local service territory have not yet been

established and are marked "reserved for future use" or "to be determined".

The advice letter states that "the agreement supersedes all 'interconnection,' as defined by the FCC in the First Interconnection Order, agreements previously executed by the parties." This would include the previous interconnection agreement between the parties filed with Pacific's Advice Letter No. 18372 on July 19, 1996 and made effective on August 28, 1996 pursuant to D.95-12-056. However, in a joint-party discussion with Telecommunications Division staff, representatives of both parties amended the advice letter statement to indicate that this new Agreement would not supersede current agreements between the parties related to access to poles, conduits and rights of way. Neither would this new Agreement supersede the current agreements filed in Pacific Advice letters 18562 and 18926 that cover data exchange for the billing of collect, calling card, and third-party billed calls.

NOTICE/PROTESTS

Pacific notes in Advice Letter 18926 that it had originally served a copy of the agreement to the Telecommunications Division on June 30, 1997 in a letter to the Division Director. However, the agreement was not filed with the Commission in accordance with the requirements of ALJ-174 until July 11, 1997. Notice of Advice Letter No. 18926 was published in the Commission Daily Calendar of July 15, 1997. 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. Pursuant to Rule 4.3.2 of ALJ-174, protests shall be limited to the standards for rejection provided in Rule 4.1.4[4]. In a letter dated July 21, 1997, Sprint Communications Company, L.P. (Sprint) protested the interconnection agreement. Pacific responded to the protest in a letter dated July 31, 1997.

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 and the Order provide us with a framework for undertaking such state-federal cooperation.

[4] See below for conditions of Rule 4.1.4.

For procedural clarification, while we note the parties' efforts to file their agreement with the Commission by the June 30, 1997 deadline imposed on them by rule 51.303 of the Order, we also maintain that the agreement was not filed according to our procedures for processing agreements negotiated pursuant to the Act until July 11, 1997. We also note that the 8th Circuit vacated rule 51.303 of the Order. Therefore, we find it reasonable to recognize July 11, 1997 as the date the agreement was filed with the Commission.

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. 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 1996 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.

While the Agreement does itemize the charges for the services and elements included in the Agreement, we note that there are many services which are listed as "TBD" (to be determined). While we recognize that the parties have mutually agreed to defer finalizing the rates and terms of various services, we want to make clear that, especially as Class A carriers, these parties are obligated to make the terms for those services public when

established by filing an amendment to this interconnection agreement. Further, the parties shall not begin to operate under those newly negotiated terms until those filed amendments are effective. In the meantime, we expect that this agreement contains all of the terms and rates for interconnection services under which the parties are currently operating.

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:

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.

We make no determination as to whether the rates in these agreements 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.

In its protest, Sprint alleges that the agreement discriminates against carriers that are not a party to the agreement because the Agreement does not contain the same call traffic monitoring requirements of other interconnection agreements between either Pacific or GTEC and, among others, Sprint. Sprint argues that Pacific and GTEC therefore discriminatorily avoid a cost that other carriers must incur.

Pacific responded (with GTEC's concurrence) to the Sprint protest by arguing that this traffic monitoring provision when viewed in context with the rest of the agreement does not discriminate against parties to other agreements with GTEC or with Pacific.

We do not find Sprint's concern sufficient to warrant rejection or modification of the agreement. We agree with Pacific that one should compare the entire agreements and not just the single disputed provision. Also, Pacific has other negotiated interconnection agreements that do not require traffic balance monitoring. Nor do we view this particular issue as one that causes an unreasonable amount of expense to a prospective competitor as to harm competition.

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 Pacific Bell or to those of GTEC.

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. The Agreement promotes public safety by including provisions for termination of emergency calls. Also, the Agreement is consistent with the Commission's service quality standards and may exceed those standards in at least one respect. Pacific and GTEC have agreed to a blocking standard of one half of one percent (.005) during the average busy hour for final trunk groups carrying meet-point traffic. All other final trunk groups are to be engineered 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.

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.[5] We wish to reiterate such assurances as clearly as possible. This Resolution stands solely for the proposition that GTEC and Pacific 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.

Given the regulatory status of Pacific and GTEC, we want to clarify that our approval of this agreement does not indicate a determination about how either Pacific or GTEC may recover any costs associated with implementing this agreement. For example, Paragraph 50 of Article III of the agreement discusses costs and expenses for any new or modified electronic interfaces required for ordering or provisioning.

If the parties to this Agreement enter into any subsequent agreements on establishing rates, terms or conditions affecting interconnection, those agreements must also be submitted to the

[5] A.96-07-035 and A.96-07-045.

Commission for approval. In addition, the approval of this Agreement is not intended to affect otherwise applicable deadlines. This Agreement's approval has no binding effect on any other carrier. Nor do we intend to use this Resolution as a vehicle for setting future Commission policy. Our approval of this Agreement does not make it 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. Pacific Bell's request for approval of an interconnection agreement between Pacific Bell and GTE California, Incorporated pursuant to the Federal Telecommunications Act of 1996 meets the content requirements of Rule 4.3.1 of ALJ-174.

2. Sprint protested the agreement alleging that the call traffic monitoring provisions discriminates against carriers not a party to the agreement.

3. Sprint's concern does not warrant rejection or modification of the Agreement

4. The Interconnection Agreement submitted in Pacific Bell's Advice Letter 18926 is consistent with the goal of avoiding discrimination against other telecommunications carriers.

5. We conclude that the Agreement is consistent with the public interest.

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

7. Approval of this agreement does not indicate a determination about how either Pacific or GTEC may recover any costs associated with implementing this agreement.

THEREFORE, IT IS ORDERED that:

1. Pursuant to the Federal Telecommunications Act of 1996, we approve the Interconnection Agreement between Pacific Bell and GTE California, Incorporated submitted by Advice Letter 18926.

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 18926 and the attached interconnection agreement shall be marked to show that it was approved by Resolution T-16079.

This Resolution is effective today.

I hereby certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting on October 9, 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