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

Pac-West Telecomm, Inc. (U5266C),

Complainant,

vs.

Sprint Spectrum, L.P., WirelessCo, L.P., Sprint
Telephony PCS, L.P., Nextel of California, Inc., and
jointly d/b/a Sprint PCS (U3062C, U3064C, and
U3066C),

Defendants.

C. 09-12-014
(Filed December 9, 2009)

And Related Matters

C. 10-01-019
C. 10-01-020
C. 10-01-021

**PAC-WEST TELECOMM, INC.'S (U5266C) PETITION FOR MODIFICATION
OF D.11-03-034 AND TO REOPEN THE COMPLAINTS**

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July 6, 2011

Pursuant to Rule 16.4 of the Rules of Practice and Procedure of the California Public Utilities Commission (“Commission”), Pac-West Telecomm, Inc. (“Pac-West”) respectfully requests that the Commission modify its Decision (“D.”) 11-03-034 as specifically set forth herein and immediately reopen the above-captioned consolidated complaint cases (“Complaints”).¹ D.11-03-034 was issued on March 29, 2011. Therefore, this petition is timely filed within one-year of its issuance. Rule 16(d).

SUMMARY

In light of the decision in *MetroPCS California, LLC v. F.C.C.* (“*MetroPCS D.C. Circuit Decision*”)² and in order to promote justice and prompt and efficient resolution of Commission proceedings, the Commission should modify D.11-03-034 to deny the defendants’ joint motion to dismiss the Complaints and immediately reopen the Complaints.³ In its order granting modification of D.11-03-034, the Commission should

¹ Pac-West filed an application for rehearing of D.11-03-034 on April 28, 2011 (hereinafter “Application for Rehearing”) to preserve its appellate rights. In this Petition, Pac-West asks the Commission to make changes to D.11-03-034. (“Filing a petition for modification does not preserve a party’s appellate rights; an application for rehearing (see Rule 16.1) is the vehicle to request rehearing and preserve a party’s appellate rights.” Rule 16.4(a).)

² *MetroPCS California, LLC v. F.C.C.*, --- F.3d ---, 2011 WL 1843403, 53 Communications Reg. (P&F) 187, (D.C. Cir. 2011)

³ Commission decisions establish that changed circumstances due to change of law by statute or court decision is adequate grounds for modification of a Commission decision. See, for example, *Re Pacific Gas and Electric Company, A. 08-04-020, D.10-08-004*, 2010 WL 3342332, *1 (Cal.P.U.C. 2010) and *Application of Southern California Edison Co.*, 76 CPUC 2d 606, *7 (Cal.P.U.C. 1997) (modifying decisions to reflect statutory changes) and *In re Renewables Portfolio Standard Program*, R. 04-04-026, D.07-11-025, 2007 WL 4226896, *12 and *15 (Cal.P.U.C. 2007) (allowing filing of petition or

announce its intention to proceed promptly to adopt or set a reasonable rate of compensation for Pac-West's termination of defendants' commercial mobile radio services ("CMRS") traffic and schedule a prehearing conference to set a schedule and scope for the proceeding to hear and decide the Complaints.

The *MetroPCS D.C. Circuit Decision* denies the MetroPCS petition for review of the Federal Communications Commission's ("FCC's") *MetroPCS Review Order*.⁴ The D.C. Circuit's decision eliminates the essential basis for D.11-03-034's dismissal without prejudice of Pac-West's Complaints. The essential basis for dismissal without prejudice in D.11-03-034 was that the determination of a rate for Pac-West's termination of defendants' CMRS traffic implicated "related and potentially determinative issues pending in a federal forum."⁵ The *MetroPCS D.C. Circuit Decision* makes clear that Pac-West's claims for compensation for termination of defendants' traffic are "wholly intrastate matters" for determination by this Commission. Pac-West's Complaints were all filed about a year-and-a-half ago and demand compensation for traffic exchanged as long as four-and-a-half years ago. Any further delay in resuming proceedings to hear and decide them perpetuates irreparable harm to Pac-West, substantial injustice and inefficiency.

modification "immediately upon the occurrence of a triggering event (e.g., statutory change, court decision)" and granting petition for modification based on change of law.)

⁴ *North County Commc'ns Corp. v. MetroPCS Cal, LLC*, 24 FCC Rcd. 14036, ¶¶ 1, 14 (2009) ("*MetroPCS Review Order*").

⁵ D.11-03-034, slip at 20. See also §§ 4.2 and 4.3, slip at 25-32.

I. THE METROPCS D.C. CIRCUIT DECISION ELIMINATES THE ESSENTIAL BASIS FOR DISMISSAL OF PAC-WESTS' COMPLAINTS IN D.11-03-034.

In the *MetroPCS D.C. Circuit Decision*, the D.C. Circuit denied the MetroPCS petition for review of the FCC's *MetroPCS Review Order*. The Court's decision begins with the straightforward observation that: "Providers of commercial mobile radio services must pay 'reasonable compensation' to local exchange carriers for traffic that starts with the provider and ends in the carrier's network. 47 C.F.R. § 20.11(b)(2)."⁶

The Court rejected MetroPCS's arguments that the FCC had abused its discretion in the underlying *MetroPCS Review Order*. The Court forthrightly concluded:

"... [T]he FCC reasonably determined that the FCC had no duty to set the rates for the wholly intrastate traffic at issue here. The FCC's policy of allowing state agencies to set such rates is consistent with the dual regulatory scheme assumed in the Communications Act, which grants the FCC authority over interstate communications but reserves wholly intrastate matters for the states."⁷

After noting the FCC's prior orders that consistently declined to preempt state regulation of local exchange carrier ("LEC") intrastate interconnection rates applicable to CMRS providers, the Court concluded:

Similarly, the FCC here refused "to preempt state regulation of intrastate rates that LECs charge CMRS providers for termination," instead determining that the CPUC "is the more appropriate forum for determining a reasonable [termination] rate" for wholly intrastate traffic. *North County Commc'ns Corp. v. MetroPCS Cal, LLC*, 24 FCC Rcd. 14036, ¶¶ 1, 14 (2009). This result reflects how Rule 20.11(b) has worked

⁶ *MetroPCS D.C. Circuit Decision*, 2011 WL 1843403, *1.

⁷ *Id.*, at *2.

from the start, and accords with how the Communications Act operates generally. That seems perfectly reasonable to us.⁸

In D.11-03-034, the essential basis for dismissal without prejudice of the above-captioned consolidated complaints is summarized as follows:

Depending on how these issues are decided by the D.C. Circuit, there may be little, if any, role for this Commission to play in determining the proper rate for termination of intrastate CMRS traffic. Thus, if this Commission were to accede to Pac-West's request that it immediately establish a rate for termination of the CMRS traffic at issue, there is a significant risk the Commission would end up wasting the resources devoted to this effort. ***Conversely, if the D.C. Circuit affirms the FCC's referral and clarifies the scope of this Commission's task, or if the decision is affirmed and the FCC provides guidance about the parameters of reasonableness in this controversial area, it will presumably make sense for this Commission to proceed.***⁹

The D.C. Circuit has now removed any uncertainty regarding the authority of the Commission to determine a just and reasonable rate for LEC termination of CMRS traffic. Moreover, the D.C. Circuit has reaffirmed this Commission's jurisdiction and authority over "the wholly intrastate traffic at issue here" noting that the Communications Act "reserves wholly intrastate matters for the states." Thus, there is not (and never has been) any federal law or FCC decision that impedes the Commission's authority to proceed to consider Pac-West's claims seeking to enforce its right to just and

⁸ *Id.*, at *3.

⁹ D.11-03-034, slip at 4 (emphasis added).

reasonable compensation for termination of CMRS traffic under the P.U. Code, California state law and FCC Rule 20.11.

In light of the D.C. Circuit decision, the Commission should modify D.11-03-034 to deny defendants joint motion to dismiss the Complaints, as specifically set forth in Attachment A. This would remove the cloud of uncertainty D.11-03-034 blankets over this Commission's clear jurisdiction over the wholly intrastate issues raised in Pac-West's Complaints. Also, if it modifies D.11-03-034, the Commission need not rule on Pac-West's Application for Rehearing and will avoid the additional cost and risk of involvement in a Pac-West appeal of D.11-03-034.

D.11-03-034 concluded without a factual record or any real analysis that Pac-West would suffer no irreparable harm from dismissal without prejudice because the Decision allowed Pac-West to petition the Commission to reopen these cases "... to the extent the D.C. Circuit's decision (and any subsequent FCC rulings resulting directly from that decision) leave issues for this Commission to decide with respect to intrastate CMRS traffic termination."¹⁰ Pac-West has challenged the Commission's conclusion that it has or will not suffer irreparable harm in its Application for Rehearing.¹¹

¹⁰ Id. at 5.

¹¹ See Application for Rehearing at 6-7. The Decision does not contain any findings of fact or analysis of record evidence to support this conclusion. To the contrary, dismissing these cases has already substantially delayed any relief to Pac-West and required Pac-West to go to extraordinary lengths, including the filing of this Petition and its Application for Rehearing, simply to have its Complaints heard.

The Commission should immediately reopen these Complaints. The D.C. Circuit denied the MetroPCS petition for review and there will be no further FCC proceedings “resulting directly from that decision.”¹² Though further FCC proceedings involving

¹² As set forth in Attachment A, Pac-West also seeks to modify D.11-03-034 to remove the premature and unnecessary discussion of the alleged complexity of adopting or setting CMRS termination rates and the need for FCC guidance in this area. The *MetroPCS D.C. Circuit Decision* rejected the argument that the FCC acted arbitrarily by refusing to give guidance to the Commission on “how to determine a reasonable rate” strongly reconfirming that setting the rate is a matter wholly within the reasonable exercise of this Commission’s discretion.

Finally, MetroPCS argues that the FCC acted arbitrarily when it refused to give guidance to the CPUC on how to determine a reasonable rate. According to MetroPCS, such guidance is critical and required by section 201. This is but a different telling of the same argument that we have already rejected. That the FCC can issue guidance does not mean it must do so. And to do so here would hardly be consistent with the longstanding policy of leaving wholly intrastate matters to the states. [Id. 2011 WL 1843403, *4]

The issue of how the Commission should set the rate for LEC CMRS traffic termination needs to be addressed by the Commission, in light of the D.C. Circuit’s decision not requiring FCC guidance and reaffirming unequivocally that the determination is one within the reasonable exercise of the Commission’s discretion. Thus, the tortured discussion of the alleged complexity of the exercise in D.11-03-034 no longer serves any purpose. Pac-West submits that the rate can be determined relatively simply and efficiently and reiterates that this can occur without any “rubber-stamping” of Pac-West’s tariff rates, which are in any event based on the total element long run incremental costs established in previous Commission decisions for AT&T California’s functionally equivalent call termination functions. See Pac-West Prehearing Conference Statement, at 7-10 and 11-18 (filed July 12, 2010); Pac-West’s Opposition to Defendants’ Joint Motion to Dismiss Complaints or, in the Alternative, to Hold the Complaints in Abeyance, at 45-47 (filed September 2, 2010); Comments of Pac-West on the Proposed Decision of Administrative Law Judge, at 9-10 (filed January 3, 2011); and Application of Pac-West for Rehearing of D. 11-03-034 and Request for Oral Argument, at 14-15 (filed April 28, 2011).

North County and MetroPCS may or may not eventually be required if North County continues to pursue its complaint pending at the FCC, those proceedings cannot occur until this Commission determines the rate applicable to North County's termination of CMRS traffic. In any event, such FCC proceedings, if they ever occur, will involve the relationship between North County and MetroPCS, not Pac-West. As such, those proceedings will involve a completely different set of facts. In addition, any further FCC proceedings will not in any way affect Pac-West's state law claims, which the *MetroPCS D.C. Circuit Decision* has reconfirmed are not in any way preempted by the Communications Act or by any FCC decision. To the contrary, the FCC has clearly deferred these wholly intrastate matters to determinations by state commissions. Pac-West has no pending complaint before the FCC. It has all along sought to enforce its right to compensation at the Commission, under the P.U. Code and California state law, consistent with the Communications Act and FCC Rule 20.11. Any further delay at this point would be delay for delay's sake, to the direct benefit of the nonpaying wireless carriers and the further detriment of Pac-West.

In light of the *MetroPCS D.C. Circuit Decision's* reaffirmation that the issue of reasonable compensation for LEC termination of CMRS traffic is a wholly intrastate matter within the purview of the Commission, there is no valid basis for delaying consideration of Pac-West's Complaints before this Commission. If the Commission does not adopt all of Pac-West's modifications, it should nevertheless order immediate reopening of the above-captioned consolidated complaints. The Complaints must be

promptly allowed to proceed in order to minimize further harm to Pac-West and allow the cases to proceed most efficiently.

II. THE COMMISSION SHOULD ORDER A PREHEARING CONFERENCE TO SET A PROCESS AND SCHEDULE FOR PROCEEDING PROMPTLY TO HEAR AND DECIDE PAC-WEST'S COMPLAINTS.

Most importantly, in its decision granting modification and reopening the Complaints, the Commission needs to act swiftly to rectify the injustice of ongoing nonpayment for four--and-a-half years of traffic. In light of Pac-West's facially valid claims for compensation under state law and the D.C. Circuit's confirmation that under federal law the defendants "must pay 'reasonable compensation'" as determined by state commissions to Pac-West for CMRS traffic termination, there is no legal or other reasonable basis for allowing the defendants to continue to refuse to pay any rate whatsoever or for further delaying a determination of the reasonable compensation they owe to Pac-West. The Complaints were all filed about a year-and-a-half ago (December 9, 2009 and January 25, 2010). Since that time, there has not been any progress whatsoever toward addressing the real issue – reasonable compensation to Pac-West for its termination of defendants' traffic. D.11-03-034 defers Pac-West's recovery of costs for services that were rendered several years ago, deferring critical revenue necessary to run the Company.

If the Commission makes clear that it intends to proceed to adopt or set a rate promptly, Pac-West believes that all or some of defendants may be inclined to agree to a settlement or to engage in alternative dispute resolution through Commission-assisted mediation. But the Commission needs to act decisively and forthrightly by promptly

modifying D.11-03-034 as requested herein and reopening the Complaints. In its decision modifying and reopening, the Commission should set a prehearing conference to be held no later than ten days after its issuance for the purpose of setting the schedule and scope of the proceeding to hear and decide the Complaints. The Commission should order that prior to the prehearing conference, the parties file statements to propose their recommended rates for Pac-West's termination of defendants' CMRS traffic and a schedule and scope for the proceeding. If any party recommends a protracted schedule, for example, to consider new cost studies, then the party should be ordered to address in its statement its position on the establishment of an interim rate, to be in effect subject to true-up pending completion of any proposed protracted schedule. The Commission should make clear its intention to set a rate applicable to Pac-West's termination of defendants' CMRS traffic as promptly and efficiently as is reasonably possible.

III. CONCLUSION

For all the foregoing reasons, the Commission should grant the relief requested herein and modify D.11-03-034 to deny defendants' joint motion to dismiss and immediately reopen these Complaints. The Commission should set a prehearing conference to be held ten days after issuance of its decision as specifically set forth herein and in the proposed order in Attachment A.

Dated: July 6, 2011 at Tiburon, California.

Respectfully submitted,

PAC-WEST TELECOMM, INC.

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ATTACHMENT A

**PROPOSED ORDER
GRANTING PETITION FOR MODIFICATION**

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

Pac-West Telecomm, Inc. (U5266C),

Complainant,

vs.

Sprint Spectrum, L.P., WirelessCo, L.P., Sprint
Telephony PCS, L.P., Nextel of California, Inc., and
jointly d/b/a Sprint PCS (U3062C, U3064C, and
U3066C),

Defendants.

And Related Matters

C. 09-12-014
(Filed December 9, 2009)

C. 10-01-019
C. 10-01-020
C. 10-01-021

**[PROPOSED] DECISION MODIFYING D.11-03-034, DENYING JOINT MOTION
TO DISMISS AND SCHEDULING PREHEARING CONFERENCE**

[PROPOSED] DECISION MODIFYING D.11-03-034, DENYING JOINT MOTION TO DISMISS AND SCHEDULING PREHEARING CONFERENCE

In this decision, we grant Pac-West Telecomm, Inc.'s ("Pac-West's") petition to modify Decision ("D.")11-03-034. We modify D.11-03-034 to replace it with this decision. We modify D.11-03-034 to deny defendants joint motion to dismiss four virtually identical complaints that Pac-West has filed against four groups of carriers that provide Commercial Mobile Radio Service (CMRS) and transmit CMRS traffic for termination to Pac-West.

Pac-West timely filed its petition for modification within one year of the issuance of D.11-03-034 pursuant to Rule 16.4. Modification of D.11-03-034 should be granted due to *MetroPCS California, LLC v. F.C.C.*, --- F.3d ----, 2011 WL 1843403, 53 Communications Reg. (P&F) 187, (D.C. Cir. 2011) ("*D.C. Circuit MetroPCS Decision*"), which was decided on May 17, 2011, after the Commission's issuance of D.11-03-034.

D.11-03-034 originally dismissed these Pac-West complaints without prejudice due to the pendency of the MetroPCS Petition for Review, which was denied in the *D.C. Circuit MetroPCS Decision*. The essential basis for dismissal without prejudice in D.11-03-034 was that the determination of a rate for Pac-West's termination of defendants' CMRS traffic implicated "related and potentially determinative issues pending in a federal forum."¹ The *D.C. Circuit MetroPCS Decision* eliminates the essential basis for D.11-03-034's dismissal without prejudice of Pac-West's complaints. The *D.C. Circuit MetroPCS Decision* makes clear that Pac-West's claims for compensation for

¹ D.11-03-034, slip at 20.

termination of defendants' CMRS traffic are "wholly intrastate matters" for determination by this Commission. Pac-West's Complaints were all filed about a year-and-a-half ago. Any further delay in resuming proceedings to hear and decide them is no longer warranted.

In each of the complaints, Pac-West alleges that the CMRS providers have wrongfully refused to pay Pac-West (a competitive local exchange carrier, or CLEC) for the termination of certain telecommunications traffic originated by the CMRS providers' customers. Pac-West generally alleges that each of the defendants should be required to pay a rate equal to the termination rate appearing in Pac-West's intrastate tariff, which applies to carriers like the defendants with which Pac-West does not have an interconnection agreement (ICA). Pac-West's intrastate tariff rates are based on the total long run incremental cost ("TELRIC") rates for AT&T California call termination functions adopted by previous Commission decisions.² Pac-West further alleges that this Commission has jurisdiction to set an appropriate termination rate for CMRS traffic pursuant to the so-called *MetroPCS Review Order*,³ which was issued by the Federal Communications Commission (FCC) on November 19, 2009, under the P.U. Code and state law. The *D.C. Circuit MetroPCS Decision* confirms that this Commission has jurisdiction to hear and decide Pac-West's complaints.

² See Proposed Decision of Administrative Law Judge McKenzie, mailed December 14, 2010, Finding of Fact 23.

³ The formal title of the *MetroPCS Review Order* is *North County Communications Corp. v. MetroPCS California, LLC*, Order on Review (FCC 09-100), 24 FCC Rcd 14036, issued November 19, 2009.

Upon consideration of that Decision, the Commission concludes that the defendants have not met their burden to show that they are entitled to prevail as a matter of law, accepting the well-pled factual allegations of Pac-West's complaints as true.⁴ Therefore, we modify D.11-03-034 to deny defendants joint motion to dismiss and to eliminate much of the discussion in that decision, which because of this modification is rendered superfluous.

We will set a prehearing conference to be held ten days after the issuance of this decision for the purpose of setting the schedule and scope to proceed to hear and decide the above-captioned consolidated complaints. Prior to the prehearing conference, the parties shall file statements to propose their recommended rates for Pac-West's termination of defendants' CMRS traffic and a schedule and scope for the proceeding. If any party recommends a protracted schedule, for example, to consider new cost studies, then the party should address in its statement its position on the establishment of an interim rate, to be in effect subject to true-up pending completion of any proposed protracted schedule. It is the Commission's intention to set a rate applicable to Pac-West's termination of defendants' CMRS traffic and resolve these complaints as promptly and efficiently as is reasonably possible consistent with the rights of the parties.

⁴ "The legal standard against which the sufficiency of the complaint is measured is whether, taking the well-pleaded factual allegations of the complaint as true, other than ultimate facts, the defendant is entitled to prevail as a matter of law." *Crain v. Southern California Gas Co.*, D. 00-07-045, 2000 Cal. PUC Lexis 553, slip. op. at 6 (footnote omitted) (citing *MCI Telecommunications Corp. v. Pacific Bell*, D. 95-05-020, 59 CPUC2d 665, 1995 Cal. PUC LEXIS 458, at *29-*30).

Findings of Fact

1. The complaint in C. 09-12-014 was filed on December 9, 2009, and the complaints in Cases 10-01-019, 10-01-020, and 10-01-021 were all filed on January 25, 2010.

2. Apart from the number of minutes at issue and the amount of compensation sought, the allegations in the complaints in Cases 10-01-019, 10-01-020, and 10-01-021 are identical.

3. The complaint in C.09-12-014 is essentially identical (except for minutes of use and amount sought) to those in Cases 10-01-019, 10-01-020, and 10-01-021, except that the undue discrimination theory pleaded as the fifth cause of action in the other three complaints is incorporated as part of the second cause of action in C.09-12-014.

4. None of the defendants has entered into an ICA with Pac-West.

5. Each complaint alleges that the defendants named therein have wrongfully refused to pay Pac-West compensation for terminating intrastate CMRS traffic originated on the defendants' networks.

6. Each of the complaints alleges that under the *MetroPCS Review Order* and other state and federal authority, this Commission has the authority and responsibility to determine an appropriate rate to compensate Pac-West for terminating intrastate CMRS traffic that originates on the defendants' respective networks.

7. Each of the complaints asks this Commission to rule that the appropriate termination rate for such traffic is the termination rate set forth in Pac-West's intrastate tariff, which applies to carriers with which Pac-West does not have an ICA.

8. The termination charges set forth in Pac-West's intrastate tariff are based upon the rates and costs of AT&T California, which in turn are based upon the TELRIC methodology.

9. On June 30, 2010, the assigned ALJ for these cases issued a ruling tentatively consolidating them and scheduling a PHC for July 22, 2010.

10. In the June 30 Ruling, the ALJ directed the parties to submit PHC statements addressing, among other issues, whether the relief sought in these complaint cases was essentially identical to the relief sought in A.10-01-003, and whether, therefore, these cases should not also be dismissed without prejudice in light of D.10-06-006.

11. On July 12, 2010, Pac-West submitted a 25-page PHC statement, and on July 19, 2010, the defendants submitted a 17-page joint response thereto.

12. A PHC was held on July 22, 2010, during which counsel for Pac-West orally responded to the arguments raised in the defendants' joint response, a thorough discussion of the jurisdictional issues took place, and the parties agreed upon a briefing schedule for a motion to dismiss proposed by the defendants.

13. Pursuant to the schedule agreed upon at the PHC, the defendants filed a 34-page joint motion to dismiss these cases on August 19, 2010, Pac-West filed a 59-page opposition thereto on September 2, and the defendants filed a 14-page joint reply to Pac-West's opposition on September 17, 2010.

14. The *D.C. Circuit MetroPCS Decision* was decided on May 17, 2011, after the Commission's issuance of D.11-03-034.

15. D.11-03-034 originally dismissed these Pac-West complaints without

prejudice due to the pendency of the MetroPCS Petition for Review, which was denied in the *D.C. Circuit MetroPCS Decision*.

16. The essential basis for dismissal without prejudice in D.11-03-034 was that the determination of a rate for Pac-West's termination of defendants' CMRS traffic implicated "related and potentially determinative issues pending in a federal forum."

17. Pac-West's Complaints were all filed about a year-and-a-half ago. As reflected in the following conclusions of law, any further delay in resuming proceedings to hear and decide them is no longer warranted.

Conclusions of Law

1. A petition for modification may be granted within one-year after issuance of a Commission decision upon a showing of changed circumstances, such as in this case the issuance of a relevant court decision.

2. Pac-West's petition for modification of D.11-03-034 should be granted.

3. The *D.C. Circuit MetroPCS Decision* eliminates the essential basis for D.11-03-034's dismissal without prejudice of Pac-West's complaints.

4. The *D.C. Circuit MetroPCS Decision* makes clear that Pac-West's claims for compensation for termination of defendants' CMRS traffic are "wholly intrastate matters" for determination by this Commission.

5. The *D.C. Circuit MetroPCS Decision* confirms that this Commission has jurisdiction to hear and decide Pac-West's complaints.

6. Upon consideration of the *D.C. Circuit MetroPCS Decision*, the Commission concludes that the defendants have not met their burden to show that they are entitled

to prevail as a matter of law, accepting the well-pled factual allegations of Pac-West's complaints as true.

7. D.11-03-034 should be modified to replace it with this decision and to deny defendants joint motion to dismiss.

8. This decision should be effective immediately.

O R D E R

IT IS ORDERED that:

1. D.11-03-034 shall be modified to be replaced by this decision.
2. The defendants' joint motion to dismiss Cases 09-12-014, 10-01-019, 10-01-020, and 10-01-021 is denied.
3. A prehearing conference shall be held ten days after the issuance of this decision for the purpose of setting the schedule and scope of this proceeding to hear and decide the above-captioned consolidated complaints. Prior to the prehearing conference, the parties shall file statements to propose their recommended rates for Pac-West's termination of defendants' CMRS traffic and a schedule and scope for the proceeding. If any party recommends a protracted schedule, for example, to consider new cost studies or alleged traffic pumping, then the party should address in its statement its position on the establishment of an interim rate, to be in effect subject to true-up pending completion of any proposed protracted schedule.

This order is effective today.

Dated _____, 2011, at San Francisco, California.