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Decision 05-06-028 June 16, 2005

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Petition by Pac-West Telecomm, Inc (U-5266-C) for Arbitration of an Interconnection Agreement with SureWest Telephone (U-1015-C) Pursuant to 47 U.S.C. Section 252(b).	Application 04-11-005 (Filed November 8, 2004)

OPINION APPROVING ARBITRATED INTERCONNECTION AGREEMENT

1. Summary

We affirm the results adopted in the Final Arbitrator's Report (FAR), and approve the resulting arbitrated Interconnection Agreement (ICA) between Pac-West Telecomm, Inc. (Pac-West) and SureWest Telephone (SureWest). On June 2, 2005, parties submitted a fully executed copy of the ICA, which will be effective today.

We find that SureWest should pay 100% of the costs of facilities on its side of the Point of Interconnections (POIs) between the parties. This outcome is consistent with FCC Rule 51.709(b) that requires that a carrier recover only the costs of the trunk capacity used by an interconnecting carrier to send traffic that will terminate on the providing carrier's network. The parties agree that traffic routed from Pac-West to SureWest is *de minimis*.

The proceeding is closed.

2. Background

On November 8, 2004, Pac-West filed a petition for arbitration of an ICA with SureWest pursuant to § 252(b) of the Telecommunications Act of 1996 (Act or TA96).

Pac-West is a California-based competitive local exchange carrier (CLEC) that was authorized to provide facilities-based and resold competitive local exchange service by Decision (D.) 95-12-057 and D.96-02-072, respectively, in the service territories of Pacific Bell Telephone Company and Verizon California Inc. Then, by D.97-09-115, the scope of Pac-West's facilities-based and resale local exchange authority was expanded to include the service territories of SureWest (formerly Roseville Telephone Company) and Citizens Telecommunications of California, Inc.

Pac-West and SureWest established interconnection arrangements a number of years ago and have discussed interconnection agreement provisions at various times since then. The agreement that is the subject of this petition is a new agreement that will supersede all prior arrangements and understandings on a going-forward basis. For purposes of this petition, the parties have agreed that the arbitration filing window opened on October 15, 2004 and closed on November 8, 2004, inclusive. Therefore, this petition was timely filed.

On December 3, 2004, SureWest filed its Response to Pac-West's petition. In its response, SureWest summarized its position on the issues previously raised by Pac-West. On January 10, 2005, the parties filed a "Revised Statement of Unresolved Issues," which showed there to be two unresolved issues. One of those issues was subsequently resolved by the parties.

The one unresolved issue is as follows:

> Should SureWest be responsible for bearing 100% of the costs of interconnection facilities located on its side of the Point of Interconnection (POI), or should those costs be borne equally by Pac-West and SureWest?

Opening briefs were filed and served on February 4, 2005, with reply briefs, on March 14, 2005. The Draft Arbitrator's Report (DAR) was issued on April 4, 2005, and comments on the DAR were filed on April 14, 2005 by Pac-West and on April 18, 2005, by SureWest. The Final Arbitrator's Report (FAR) was filed and served on May 26, 2005.

The fully executed conformed agreement was filed with the Commission on June 2, 2005, and on the same date both parties filed statements concerning the outcome in the FAR.

3. Issue in Arbitration

The issue before the Commission is whether SureWest should be responsible for 100% of the costs of the interconnection facilities that are located on SureWest's side of the POI. SureWest proposes that Pac-West pay 50% of the cost of those facilities, while Pac-West believes that SureWest should pay 100% of the costs of the interconnection facilities. The parties have cited a number of CPUC orders, FCC orders, and court decisions in support of their positions.

This is the first time the Commission has been confronted with this particular issue. Prior rulemakings and arbitrations have dealt with compensation for the traffic carried over a company's facilities, rather than payment for the facilities themselves, but in the instant arbitration, the parties have resolved the issue of compensation for the traffic exchanged between their networks, and the Commission is not being asked to arbitrate that issue.

4. Parties' Positions

a. SureWest's Position:

SureWest asserts that Pac-West should be responsible for a portion of the cost of facilities between SureWest's Central Offices (COs) and their respective POIs with Pac-West's network because Pac-West relies upon these CO to POI facilities to furnish its VNXX[1] service offering which provides Pac-West's customers a region-wide toll-free in-bound service.

According to SureWest, the FCC acknowledges that business plans of the variety that Pac-West has undertaken are rife with arbitrage opportunities. SureWest states that the equitable outcome is to reduce what it terms Pac-West's arbitrage scheme by maintaining in place the arrangement under the existing Interconnection Agreement (ICA) whereby Pac-West pays 50% of the cost of the facilities from SureWest's COs to their respective POIs, instead of requiring SureWest to bear the entire brunt of costs for those facilities which Pac-West relies upon to provision its special service offering.

SureWest states that Pac-West's service offerings generate tremendous volumes of one-way traffic. Pac-West acknowledges that the substantial focus of its "…business is on the provision of call completion services for Internet service providers…"[2] For ten months in 2004, approximately 387,000,000 minutes originated on SureWest's network and terminated to Pac-West. In that same

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[1] VNXX calls are those where a carrier assigns NXX prefixes rated for one exchange to customers located in another exchange as a means of offering a local presence. This disparately rated and routed traffic is termed Virtual NXX (VNXX) or foreign exchange traffic.

[2] Pac-West Petition at 5.

period, SureWest compensated Pac-West almost $270,000 in reciprocal compensation fees.[3]

Sure-West indicates that Pac-West's service area map under Attachment A to the Whitmore Testimony shows that Pac-West operates three traffic gathering points in California, designated "SuperPOPs." Those SuperPOPs are located in Stockton, Oakland and Los Angeles. For calls originating in Sure-West's service area, the Pac-West service area map shows that Pac-West transports those calls to Stockton, which is in the LATA to the south of the LATA in which SureWest's service area is located. From the Stockton SuperPOP, the routing of the call depends upon the location of Pac-West's customer. Whitmore confirmed that two of the "local" access telephone numbers operated by ISPWest in the 916 area code are in fact Pac-West VNXX numbers that are rated as local calls for SureWest subscribers. Accordingly, a SureWest subscriber can access a locally-rated dial-up number and have the call travel all the way to Los Angeles before it hits the Internet Service Provider's (ISP's) modem bank.

According to Sure-West, requiring Pac-West to bear a portion of the cost of facilities on SureWest's side of the POI is consistent with Commission precedent. In D.99-09-029, the Commission affirmed that the VNXX arrangement used by Pac-West is permissible. That decision, however states that "incumbents are entitled to fair compensation for the use of their facilities in the transport and termination of foreign exchange traffic."

Sure-West also points to D.03-05-031 in the SBC/Pac-West arbitration proceeding, in which the Commission notes that it would "…refrain from

[3] Testimony of Marie Rita Whitmore on behalf of SureWest, Attachment C.

creating an incentive that distorts marketplace investments by requiring incumbents to either subsidize its competitors or shift costs to local exchange customers for inter-exchange traffic that is destined beyond the origination rate center."

b. Pac-West's Position

According to Pac-West, the fact that some of Pac-West's ISP customers are physically located outside of the LATA is irrelevant. In responding to Pac-West's petition for arbitration, SureWest suggests that the fact that Pac-West provides its VNXX service to ISP customers who are located outside of the Sacramento LATA, where SureWest is located, somehow bolsters its entitlement to receive compensation for the facilities it uses to deliver VNXX calls to the local POIs. However, Pac-West asserts that the location of its customers is plainly irrelevant.

Pac-West states that the rationale underlying the compensation principles adopted in D.99-09-029 applies equally whether the called party is physically located in the same LATA, another LATA, or another state. SureWest incurs no more, and no less, cost in any of those cases so long as Pac-West is responsible for the cost of the facilities used to transport calls outside the SureWest local calling area. In no instance is SureWest incurring uncompensated costs. And Pac-West and its customers are bearing 100% of the cost of transporting VNXX calls from the calling parties' local rate centers to the distant point of termination. Therefore, the additional compensation that SureWest is seeking would constitute a windfall.

Pac-West also states that under its tariff for VNXX service, Pac-West is responsible for delivering calls only to the Point of Presence (POP) within the LATA within which a call originates. The customer is then responsible for carrying the call beyond the POP to the customer's location, whether it is at a

Pac-West SuperPOP or elsewhere. The customer can obtain the necessary service from another carrier or have calls transported to Pac-West' SuperPOP using service purchased under tariff from Pac-West, which most customers do. Consequently, it is not correct, technically, that Pac-West's VNXX service is an interLATA service.

5. Previous Commission Treatment of VNXX Traffic

In D.99-09-029,[4] the Commission allowed CLECs to designate different rating and routing points for traffic intended for their customers, in an effort to encourage carriers to develop innovative service alternatives in the most economically and technologically efficient manner. This traffic which is disparately routed and rated has been termed Virtual NXX or "VNXX" traffic. In many cases, the routing of the call requires the ILEC to transport that call across a LATA to where the CLEC's customer is actually located.

In light of the requirement to transport traffic beyond the local calling area, the Commission also concluded:

> While we recognize carriers' discretion to make such use of NXX prefix assignments from a foreign exchange where economic efficiencies warrant it, we expect carriers to negotiate reasonable intercarrier compensation arrangements for the routing, switching, and for the use of facilities to deliver such calls.

The Commission made it clear that it was dealing with VNXX calls where the ILEC is required to transport the call across its network to where it can be considered a local call:

[4] D.99-09-029, *mimeo.* at 17.

> The provision of a local presence using an NXX prefix rated from a foreign exchange may avoid the need for separate dedicated facilities, but does not eliminate the obligations of other carriers to physically route the call so that it reaches the proper destination. A carrier should not be allowed benefit from the use of other carriers' networks for routing calls to ISPs while avoiding payment of reasonable compensation for the use of those facilities. A carrier remains responsible to negotiate reasonable compensation with other carriers with whom it interconnects for the routing of calls from a foreign exchange. (D.99-09-029, *mimeo.* at 32.)

Since the Commission first addressed this issue in D.99-09-029 in 1999, it has addressed this specific issue in several ICAs brought to the Commission for arbitration pursuant to § 252. Because VNXX calls are often routed by the originating carrier far beyond the local calling area, the Commission has determined that the originating carrier should be fairly compensated for the costs of long-haul transport.

Pac-West cites various arbitrations to make this point. First, in approving the ICA between AT&T Communications Inc. and Pacific Bell Telephone Company (Pacific), the Commission concluded: "For calls with disparate rating and routing points, AT&T will pay switching and transport for calls routed across Pacific's network from distant exchanges while Pacific will continue to pay AT&T reciprocal compensation for terminating those calls."[5]

Pac-West also points to D.00-10-032 which addressed interconnection arrangements between Level 3 Communications, LLC and Pacific. The Commission explained that the required payment of compensation for VNXX traffic is "for Pacific's facilities used in the carriage of traffic from the rate center

[5] Pac-West Opening Brief, citing D.00-08-011, *mimeo.*, p. 14.

where the calling party physically resides to the point of interconnection closest to the switch used for terminating calls to the NXX rate center where the call terminates.[6]

Similarly, in addressing interconnection arrangements between Global NAPS, Inc., on the one hand, and Pacific and Verizon California, Inc. (Verizon) on the other hand, the Commission observed, "By allowing disparate rating and routing, we are allowing for those calls to become local calls, and as such, subject to reciprocal compensation. However, GNAPs is required to pay the additional transport required to get those calls to where they will be considered local calls."[7]

In all three of the cases cited, the CLEC is required to pay the costs of the additional transport required to get those calls to where they could be considered local calls. We need to explore the issues in this arbitration to see if they are similar. Is SureWest transporting Pac-West's calls across its network beyond the local calling area?

The undisputed testimony of Pac-West's witness Mart McCann reads as follows:

> Pac-West and SureWest currently interconnect using a meet-point facility that extends from SureWest's tandem wire center to certain Pac-West's facilities that are collocated at an SBC wire center in Sacramento. The interconnection facility is jointly operated by SBC and SureWest. It is my understanding that the existing meet point for this facility, which determines their respective and financial responsibilities, is at the border between their service territories. In any event, that point that has been deemed to be the POI between Pac-West's and SureWest's networks. The POI is approximately

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[6] Pac-West Opening Brief citing D.00-10-076, *mimeo.*, p. 6.

[7] Pac-West Opening Brief, citing D. 02-06-076, *mimeo.*, p. 28.

> 5 miles from SureWest's tandem wire center and well within the boundaries of the local calling areas for SureWest's end users.

SureWest's witness Marie Rita Whitmore, whose testimony is also undisputed, describes the interconnection arrangements between the two companies as follows:

> Currently Pac-West has 624 trunks (26 T1s) connected to SureWest's Citrus Heights Central Office, 984 trunks (41T1s) connected to SureWest's Roseville Central Office, and 72 trunks (3 T1s), for the purpose of overflow traffic, connected to SureWest's 04T tandem located at SureWest's Roseville Central Office. SureWest charges Pac-West approximately $3,900 per month for these trunks, which represents one half of their cost, under the existing interconnection agreement. These trunks exit SureWest's service area via two separate routes. The first route travels from the Roseville Central Office to a point of interconnection ("POI") at a controlled environmental vault ("CEV") operated by SureWest (designated the Antelope CEV). The second route travels from the Citrus Heights Central Office to a POI in a manhole on San Juan Avenue in Citrus Heights. Each route is approximately five miles from the central office to the POI.[8]

SureWest does not attest that it is carrying the traffic beyond the local calling area, and both parties concur that SureWest carries traffic destined for Pac-West from its COs, 5 miles to its POIs with Pac-West. Also, the parties have agreed on the location of the POIs. Pac-West does not dispute that the traffic it is carrying would be considered VNXX traffic, but the difference between this case, and those cited above, is that it is Pac-West, not SureWest that is transporting the traffic over its network. Since the 5 mile range from SureWest COs to the POIs is within the 12-mile local calling area, SureWest is not entitled to additional

[8] Testimony of Marie Rita Whitmore on behalf of SureWest Telephone at 2.

compensation for transporting such traffic. Therefore, the arbitration cases cited above are not on point.

6. Federal Precedent and FCC Rules

Pac-West contends that recent federal decisions preclude the compensation that SureWest is requesting. The first decision cited by Pac-West is the Virginia Arbitration Order,[9] in which the FCC's Wireline Competition Bureau, acting in the shoes of the Virginia Commission, conducted the arbitration. The Virginia Arbitration Order and the three court cases all rely, at least in part, on FCC Rule 51.703(b) in making their determinations. That rule reads as follows:

> A LEC may not assess charges on any other telecommunications carrier for telecommunications traffic that originates on the LEC's network. (Section 51.703(b))

The Virginia Arbitration Order cites § 51.703(b) and asserts, "under these rules, to the extent an incumbent LEC delivers to the point of interconnection its own originating traffic that is subject to reciprocal compensation, the incumbent LEC is required to bear financial responsibility for that traffic." At issue in the arbitration was the right of the CLEC to request to interconnect at a single POI per LATA.

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[9] In the Matter of Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration, et al., CC Docket Nos. 00-218, 00-249 and 00-251, *Memorandum Opinion and Order*, DA 02-1731 (released July 17, 2002) ("Virginia Arbitration Order").

While this Commission refused to defer to the holdings of that order because it was not a decision of the FCC itself,[10] a subsequent decision of the Federal Court of Appeals for the Fourth District addresses that specific point:

> When a federal agency delegates its decision-making authority to a subdivision and Congress has expressly permitted such delegation by statute, the decision of the subdivision is entitled to the same degree of deference as if it were made by the agency itself.[11]

With the 4th Circuit's determination in mind, we will take the Virginia Arbitration Decision into account in resolving this issue. However, SureWest states, and we agree, that the Virginia Arbitration Decision is not on point because it addresses per minute compensation for VNXX traffic rather than paying for the facilities used to transport that traffic.

SureWest asserts that the three federal court cases PacWest cites all pertain to the reasonableness of a charge for transporting traffic, rather than for a payment for facilities. SureWest concludes that the cases are not on point.

First, in the MCIMetro Access Trans. Service v. BellSouth Tele. case cited above, the court considered whether BellSouth can charge MCI for the cost of transporting local calls originating on BellSouth's network to MCI's chosen POI, when that POI happens to be outside of the local calling area where the call originated. The court noted that BellSouth proposed to resolve this perceived inequity by requiring MCI to pay it the incremental cost of transporting traffic destined for MCI's network from the relevant local calling area to the POI. The court attacks this cost-shifting by concluding:

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[10] See D.03-07-039, Order Modifying Decision 02-06-076 and Denying Rehearing, July 14, 2003, at 5.

[11] *MCIMetro Access Trans. Serv.* v. *BellSouth Telecomms.* (4th Cir. 2003) 351 F.3d 871, 880.

> In sum, we are left with an unambiguous rule, the legality of which is unchallenged, that prohibits the charge that BellSouth seeks to impose. Rule 703(b) is unequivocal in prohibiting LECs from levying charges for traffic originating on their own networks, and, by its own terms, admits of no exceptions.

This case is not strictly on point for two reasons: one, the POIs in the instant arbitration are within SureWest's local calling area; and, as SureWest asserts, the case deals with a charge for transporting traffic rather than a charge for facilities.

The second case PacWest cites is Southwestern Bell v. PUC. In that case the ILEC sought review of the Texas PUC's decision that interconnection rates to be paid by the CLEC should recover additional costs incurred by the ILEC in transporting calls to CLECs' designated POI should be cost-based. The district court determined that the transport costs imposed on AT&T by the PUC were charges related to reciprocal compensation under § 51.703(b), rather than interconnection terms under § 251(c)(2), and therefore, in violation of FCC regulations. The Court determined that the district court properly determined that the transport costs imposed on AT&T by Southwestern Bell are governed by the FCC's "reciprocal compensation" rules pursuant to § 51.703(b). Again, we agree with SureWest that this case is not on point because it deals with transporting of calls to the POI.

The third case involves Mountain Communications, Inc. (Mountain). The D.C. Circuit determined that the FCC's decision allowing Qwest Communications International, Inc. (Qwest) to charge Mountain, a commercial mobile radio service (CMRS) carrier, for the facilities used to provide "wide area calling" was arbitrary and capricious. The D.C. Circuit cited the two cases referenced above in making its decision, holding that § 51.703(b)

"unequivocal[ly] prohibit[s] LECs from levying charges for traffic originating on their own networks, and, by its own terms, admits of no exceptions."[12]

We agree with SureWest's conclusion that these cases are not on point; they all deal with the location of POIs and a per-minute charge for carrying traffic.

Both SureWest and Pac-West reference D.03-12-020, the Commission's order denying rehearing of D.03-05-031, the decision approving the ICA between Pac-West and Pacific. In that decision, the Commission reiterated its position that VNXX traffic is interexchange traffic, by nature of its termination outside of the originating calling area, not subject to the FCC's reciprocal compensation rules, even though it is rated as a local call to the calling party. Pac-West disagrees with the Commission's rationale that VNXX traffic is outside the scope of the FCC's rules. We do not need to address this issue further, since this case does not involve per-minute compensation for the transport of VNXX traffic.

Pac-West asserts that FCC rules expressly prohibit SureWest from charging Pac-West for the cost of interconnection facilities on SureWest's side of the POI, except to the extent that such charges are proportionate to the relative level of traffic that originates on Pac-West's network, as opposed to originating on SureWest's network. Pac-West states that in this case, the amount of traffic that originates on Pac-West's network and terminates on SureWest's network is *de minimis.*

Pac-West points to 47 CFR § 51.709(b) which provides:

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[12] *Mountain Communications, Inc. v. F.C.C.*, 355 F.3d 644, 648 citing *MCI Metro Access Transmission Servs.* v. *Bellsouth Telecomms, Inc.*, 352F.3d 872 (4th Cir. 2003).

> The rate of a carrier providing transmission facilities dedicated to the transmission of traffic between two carriers' networks shall recover only the costs of the proportion of that trunk capacity used by an interconnecting carrier to send traffic that will terminate on the providing carrier's network.

Pac-West states that in this case, virtually all the traffic currently being carried over the subject interconnection facility is originated by SureWest end users, and only a *de minimis* amount of the traffic is being terminated by SureWest. As a result, Pac-West concludes that under the FCC's rules, SureWest is not entitled to recover any payment from Pac-West for the portion of the interconnection facilities that are located on SureWest's side of the POI.

SureWest asserts that the FCC's reciprocal compensation rules embodied in §§ 51.703(b) and 51.709(b) do not apply, because the FCC has determined that ISP-bound traffic, which comprises virtually 100% of the traffic associated with the interconnection facilities between Pac-West and SureWest, does not fall within the scope of "telecommunications" which is the subject of § 251(b)(5).

In its ISP remand Order, the FCC defined what constituted the type of traffic subject to reciprocal compensation provisions (known as " § 251(b)(5) traffic"). The FCC concluded that service provided by LECs to deliver traffic to an ISP constitutes "information access" under § 251(g),[13] and thus, compensation of this service is not governed by § 251(b)(5). The FCC goes on to explain that § 251(g) excludes certain categories of traffic from the scope of

[13] Section 251(g) specifically exempts certain telecommunications services, specifically, exchange access, information access, and exchange services for such access to interexchange carriers and information service providers, from the reciprocal compensation obligations of 251(b)(5).

"telecommunications" subject to § 251(b)(5). The D.C. Circuit took exception to the legal reasoning behind the FCC's determination that traffic to ISPs was "information access" subject to the carve-out provisions of § 251(g).[14] The D.C. Circuit remanded, but did not vacate, the FCC's rules. Therefore, the FCC's rules are still in effect.

The FCC has not yet issued a final decision on this issue, although it is the subject of an ongoing FCC proceeding. In the interim, the FCC's determination that ISP-bound traffic is not subject to reciprocal compensation provisions still stands. Pac-West asserts that the FCC's rules relating to reciprocal compensation are do apply to ISP-bound calls. According to Pac-West, the ISP Remand Order did not exempt ISP-bound traffic from all FCC rules relating to reciprocal compensation. To the contrary, the FCC expressly held that the ISP Remand Order only affects the rates that are applicable to the delivery of ISP-bound traffic. The FCC states:

> This interim regime affects only the intercarrier compensation (i.e., the rates) applicable to the delivery of ISP-bound traffic. It does not alter carriers' other obligations under our Part 51 rules, 47 C.F.R. Part 51….[15]

We concur with Pac-West's interpretation of the FCC's rules. Even though the *ISP Remand Order* placed compensation-related caps on ISP-bound traffic, that order did not change Rules 51.703(b) and 51.709(b). Those rules prohibit ILECs from charging for delivery of ISP-bound calls to CLECs or charging

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[14] *See Worldcom, Inc.* v. *F.C.C.*, 288 F.3d 429, 434 (D.C. Cir. 2002).

[15] *ISP Remand Order*, ¶ 78, n. 149.

CLECs for the facilities the ILECs use to deliver such traffic. Those rules continue to apply to all traffic, including calls to ISPs.

7. Negotiated Portions of Agreement

Section 252(e) of the Act provides that we may only reject an agreement (or portions thereof) adopted by negotiation if we find that the agreement (or portions thereof) discriminates against a telecommunications carrier not a party to the agreement, or implementation of such agreement (or portion thereof) is not consistent with the public interest, convenience and necessity. No party or member of the public alleges that any negotiated portion of the agreement should be rejected. We find nothing in any negotiated portion of the agreement which results in discrimination against a telecommunications carrier not a party to the agreement, nor which is inconsistent with the public interest, convenience and necessity.

8. Arbitrated Portions of Agreement

Section 252(e) of the Act, and our Rule 4.2.3, provide that we may only reject an agreement (or any portion thereof) adopted by arbitration if we find that the agreement does not meet the requirements of Section 251 of the Act, including the regulations prescribed by the FCC pursuant to Section 251, or the standards set forth in Section 252(d) of the Act.[16]

In its statement filed with the conformed agreement, Pac-West states that the arbitrated ICA complies with the criteria specified by the 1996 Act and Resolution ALJ-181 in all respects. SureWest states the FAR improperly

[16] Section 251 describes the interconnection standards. Section 252(d) identifies pricing standards.

concludes that the ICA should require SureWest to bear the entire portion of the cost of interconnection facilities on its side of the POI. SureWest sees it as an equitable outcome to maintain in place the arrangement under the existing ICA whereby Pac-West pays 50% of the cost of facilities from SureWest's COs to their respective POIs in SureWest's service area. However, we find that SureWest's position violates FCC Rule 51.709(b). SureWest must be financially responsible for its facilities on its side of the POIs.

9. Waiver of Public Review and Comment

The Public Utilities Code and our Rules of Practice and Procedure generally require that draft decisions be circulated to the public for review and comment 30 days prior to the Commission's vote.[17] On the other hand, the Act requires that the Commission reach its decisions to approve or reject an arbitrated agreement within 30 days after submission by the parties.[18] This establishes a conflict.

However, Rule 77.7(f)(5) provides that we may reduce or waive the period for public review and comment "for a decision under the state arbitration provisions of the Telecommunications Act of 1996." We consider and adopt this decision today under the state arbitration provisions of the Act.

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[17] See Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Commission's Rules of Practice and Procedure.

[18] 47 U.S.C. Section 252(e)(4).

10. Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and Karen Jones is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. On June 2, 2005, parties filed an arbitrated ICA for Commission approval. Also, both parties filed statements on June 2, 2005 regarding whether or not the Agreement should be approved by the Commission.

2. The parties negotiated the entire Agreement, with the exception of the one item presented for arbitration.

3. No party or member of the public alleges that any negotiated portion of the Agreement is not in compliance with Section 252(e)(2)(A) of the Act.

4. No negotiated portion of the Agreement results in discrimination against a telecommunications carrier not a party to the Agreement, or is inconsistent with the public interest, convenience and necessity.

5. The Act requires that the Commission approve or reject an arbitrated interconnection agreement within 30 days after the agreement is filed. (47 U.S.C. Section 252(e)(4).)

6. A draft decision must be subjected to 30 days' public review and comment prior to the Commission's vote; however Rule 77.7(f)(5) provides that the Commission may reduce or waive the period for public review and comment under Pub. Util. Code § 311(g)(1) for a decision under the state arbitration provisions of the Act.

7. This is a proceeding under the state arbitration provisions of the Act.

Conclusions of Law

1. Nothing about the result of this arbitration is inconsistent with governing federal law.

2. No arbitrated portion of the Agreement fails to meet the requirements of Section 251 of the Act, including FCC regulations pursuant to Section 251, or the standards of Section 252(d) of the Act.

3. 47 CFR § 51.709(b) requires that a carrier recover only the costs of the proportion of that trunk capacity used by an interconnecting carrier to send traffic that will terminate on the providing carrier's network.

4. The Agreement between Pac-West and SureWest should be approved.

5. This order should be effective today because it is in the public interest to implement national telecommunications policy as accomplished through the Agreement, and to replace the existing Agreement with this new Agreement, as soon as possible.

O R D E R

IT IS ORDERED that:

1. Pursuant to the Telecommunications Act of 1996, and Resolution ALJ-181, the fully executed Interconnection Agreement between Pac-West Telecomm, Inc. and SureWest Telephone filed June 2, 2005 is approved.

2. This proceeding is closed.

This order is effective today.

Dated June 16, 2005, at San Francisco, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
SUSAN P. KENNEDY
DIAN M. GRUENEICH
JOHN A. BOHN
Commissioners