Decision **DRAFT DECISION OF ALJ RYERSON** (Mailed 3/24/2003)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of Verizon California Inc. (U-10021-C) Petition for Arbitration with Pac-West Telecomm, Inc. (U5266-C) Pursuant to Section 252(b) of the Telecommunications Act of 1996.	Application 02-06-024 (Filed June 12, 2002)

DECISION APPROVING ARBITRATED AGREEMENT PURSUANT TO SECTION 252, SUBSECTION (e), OF THE TELECOMMUNICATIONS ACT OF 1996 (ACT)

Summary

In this decision we approve the arbitrated interconnection agreement (ICA) filed by on February 18, 2003, Verizon California Inc. (Verizon) and Pac-West Telecomm, Inc. (Pac-West), under Rule 4.2 of our Revised Rules Governing Filings made Pursuant to the Telecommunications Act of 1996 (Rules), pursuant to Subsection 252(e) of the Act. We find that the ICA does not violate the requirements of Section 251 of that Act, the Federal Communications Commission's (FCC) implementing regulations therefor, or the pricing standards set forth in Subsection 252(d) of the Act.

Application (A.) 02-06-024 is closed.

Background and Procedural History

As required by Subsection 252(e)(1) of the Act, in this decision we approve in its entirety the proposed ICA between Verizon and Pac-West, following

arbitration of certain issues the parties could not resolve through negotiation. Pac-West's previous ICA with Verizon expired on April 13, 2002.

The history of the dispute, and a complete discussion of the parties and disputed issues, are set forth in detail in the Final Arbitrator's Report (FAR), which was filed on February 10, 2003. Rule 4.2.1 required the parties to file the entire agreement conforming to the FAR, and respective statements concerning approval or rejection of the proposed ICA, within seven days after issuance of the FAR. Both parties timely filed these documents, thus placing before us the task of approving or rejecting the ICA in its current form.[1]

Rule 4.2.1 specifies that each party's statement must indicate:

a. the tests the Commission must use to measure an agreement for approval or rejection,
b. whether the party believes the agreement passes or fails each test, and
c. whether or not the agreement should be approved or rejected by the Commission.

An arbitrated ICA may be rejected by this Commission only if it does not meet the requirements of Section 251, implementing regulations prescribed by the FCC, or the pricing standards set forth in Section 252(d). This test is mirrored by our Rule 4.2.3.

Verizon's statement urges us to take a piecemeal approach in adopting the ICA, specifically by rejecting the Arbitrator's resolution of Issues 1, 3, 4, and 7; modifying his resolution of Issues 5, 6, 8 and 18; and drafting replacement contract provisions reflecting his resolution of Issues 19 and 20, because the

[1] No comments were filed by any member of the public within ten days after the filing of the agreement, as permitted under Rule 4.2.1.

parties have been unable to do so themselves. Essentially, Verizon's statement reargues its position with respect to all of these issues in an effort to have the Commission overturn the arbitrated outcome on each. This is inappropriate to the task before us, which is to determine whether the ICA as a whole satisfies Section 251 and its implementing regulations, and Section 252(d) of the Act. On the issues cited by Verizon, either party's position appears lawful on its face and satisfies this standard, and we will not be placed in the position of overturning or reworking the Arbitrator's resolution of an issue, or undertaking the parties' job of translating those results into contract language.

We note that the most controversial result is that posed by Issue 3, the treatment of intercarrier compensation for VNXX calls. We have previously recognized that this issue should be explored in a broader context, and pursuant to Ordering Paragraph 6 of Decision (D.) 99-09-029 anticipated that we would hold hearings on this specific issue. However, The Federal Communications Commission (FCC) initiated its own investigation into the VNXX issue two years ago in its Intercarrier Compensation NPRM.[2] We see no point in duplicating the FCC's effort, when the FCC's ruling would take precedence over a determination made by this Commission on the VNXX issue. Once the FCC issues an order addressing the VNXX issue, that policy will be reflected in this ICA through the change in law provision.

Pac-West's statement indicates its belief that the conformed ICA satisfies the rejection standard, with the exception of provisions reflecting two issues, 2 and 17(a), that were decided by the Arbitrator in the FAR. Regarding Issue 2,

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[2] Notice of Proposed Rulemaking, In the Matter of Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92, FCC 01-032 (Re. April 27, 2001).

Pac-West is concerned that Verizon might construe the FAR to impose the FCC's reduced rate caps on presumptively ISP-bound traffic retroactively from the effective date of the new ICS. We agree with Pac-West that Paragraph 82 of the FCC's *ISP Remand Order*[3] expressly proscribes such a result,[4] and may not be reflected in the ICA.

Regarding Issue 17(a), we also agree with Pac-West that a requirement for Pac-West to pay any allocated portion of costs on Verizon's side of the carriers' point of interconnection does not satisfy the interconnection requirements of Section 251 of the Act, and therefore must not be included in the ICA.

We have examined the conformed agreement filed by the parties, and have determined that approval should be granted, subject to the foregoing discussion. The pricing provisions comply with the standards for interconnection and network element charges, as well as the charges for transport and termination of traffic, under Section 252(d). The ICA does not discriminate against nonparties, and is consistent with the public interest, convenience and necessity, and thus comports with Section 252 (e)(2)(A). It also satisfies the requirements of Section 251 and the FCC's implementing rules, and thereby satisfies Section 252(e)(2)(B). Lastly, the agreement satisfies our own regulatory requirements.

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[3] *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic* CC Docket Nos. 96-98 and 99-68, *Order on Remand and Report and Order*, 17 FCC Rcd 9151 (2001).

[4] "The interim compensation regime we establish here applies as carriers renegotiate expired or expiring interconnection agreements. *It does not alter existing contractual obligations, except to the extent that parties are entitled to invoke contractual change-of-law provisions."* (*Italics* supplied.) D.02-01-062 determined that the change-of-law provision in the existing ICA excludes FCC orders, and any change to the terms of the existing ICA requires a written amendment by both parties.

Rule 4.2.4 requires a decision approving or rejecting an arbitrated ICA to contain written findings.[5] Consistent with this rule, we include findings in support of our order.

Under Rule 77.7(f)(5), we are not required to provide this Draft Decision for public review and comment. However, on March 24, 2003, the Alternate Draft Decision of Commissioner Brown and the Draft Decision of the ALJ was mailed to the parties for comments.

Assignment of Proceeding

Geoffrey F. Brown is the Assigned Commissioner and Victor D. Ryerson is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. The Interconnection Agreement under Sections 251 and 252 of the Telecommunications Act of 1996 by and between Verizon California Inc. and Pac-West Telecomm, Inc. (ICA), filed by the parties on February 18, 2003, pursuant to Rule 4.2.1, conforms to the Final Arbitrator's Report in this proceeding, except for the modification required to reflect the resolution of Issue 17(a).

2. The pricing provisions of the ICA comply with the standards for interconnection and network element charges, and the charges for transport and termination of traffic, under Section 252(d) of the Act.

[5] Section 252(e)(1) of the Act only requires us to include written findings as to any deficiencies in the ICA.

3. The ICA does not discriminate against nonparties, and is consistent with the public interest, convenience and necessity, and thus comports with Section 252 (e)(2)(A) of the Act.

4. The ICA, with the indicated modification of the outcome under Issue 17(a), satisfies the requirements of Section 251 of the Act and the FCC's implementing rules, and thereby satisfies Section 252(e)(2)(B).

5. The ICA satisfies the Commission's regulatory requirements, as reflected in its rules, decisions, and orders.

Conclusion of Law

The Commission should approve the ICA.

O R D E R

IT IS ORDERED that:

1. The Interconnection Agreement under Sections 251 and 252 of the Telecommunications Act of 1996 by and between Verizon California Inc. and Pac-West Telecomm, Inc., filed by the parties on February 18, 2003, is approved, subject to the modifications indicated in the body of our decision.

2. Application 02-06-024 is closed.

This order is effective today.

Dated _____, at San Francisco, California.