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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Pacific Bell Telephone Company (U 1001 C) d/b/a AT&T California for Arbitration of an Interconnection Agreement with SureWest Telephone (U1015C) d/b/a SureWest Broadband and SureWest TeleVideo (U6324C) d/b/a SureWest Broadband Pursuant to Section 252(b) of the Telecommunications Act of 1996.

Application 09-12-022
(Filed December 18, 2009)

DRAFT ARBITRATOR'S REPORT

Procedural History

Pacific Bell Telephone Company d/b/a AT&T California (AT&T California) filed an application for arbitration of its proposed interconnection agreement (ICA) with SureWest Telephone d/b/a SureWest Broadband (SureWest) pursuant to Section 252(b) of the Telecommunications Act of 1996 on December 18, 2009. SureWest filed its response on January 15, 2010 and a revised statement of unresolved issues on January 22, 2010. A prehearing conference was held on March 25, 2010 at which the parties agreed that there is a single issue to be arbitrated: whether Section 1.3 of AT&T's California's proposed ICA¹ should be included or excluded from the text of the finally-adopted ICA. On April 9, 2010, the parties filed concurrent opening briefs. Also on April 9, 2010,

¹ Section 1.3: Parties shall port telephone numbers only to those end users with a service address in the rate center to which the NXX of that ported number is assigned, and assign telephone numbers only to those end users with a service address in the rate center to which the NXX is assigned, subject to exceptions (e.g., Foreign Exchange Service) as noted in the number resource guidelines.

SureWest filed a motion asking the Commission to take official notice of SBC California Advice Letter 27449, dated October 7, 2005. On April 16, 2010, the parties filed concurrent reply briefs.

Statement of Findings and Conclusions

Subject to exceptions in the number resource guideline,

1. AT&T California may not require SureWest Broadband to port telephone numbers only to those end users with a service address in the rate center to which the NXX of that ported number is assigned.
2. AT&T California may not require Surewest Broadband to assign telephone numbers only to those end users with a service address to which the NXX is assigned.

Discussion

Section 1.3 of AT&T's proposed ICA effectively bars SureWest Broadband from providing what is known as "virtual NXX" or VNXX service to its customers.

More than a decade ago, this Commission ruled, in its so-called Local Exchange Competition Order, that Incumbent Local Exchange Carriers like AT&T California could not prevent Competitive Local Exchange Carriers (CLECs) like SureWest Broadband from providing VNXX service to their customers. Specifically, we ordered that "Carriers shall not be prohibited from designating different rating and routing points for the delivery of telephone calls for purposes of providing customers a local presence within a foreign exchange." (D.99-09-029, at Ordering Paragraph 2.) In reaching this conclusion, we considered and rejected the arguments advanced by AT&T California in this case. Nothing has occurred in the intervening period that causes us to change our mind.

Pursuant to the Local Competition Order, AT&T has entered into ICAs with CLECs other than SureWest Broadband that permit those CLECs to provide VNXX service to their customers. Permitting the quoted language to remain in this ICA would place SureWest Broadband at a significant competitive disadvantage relative to other CLECs with which it competes. In this regard, we take official notice, as requested by SureWest Broadband, of an advice letter filing by AT&T California's predecessor SBC California, notifying us of an amendment to an interconnection agreement with another CLEC that explicitly recognizes that the interconnecting CLEC offers VNXX service to its customers. (SBC California Advice Letter No. 27449 dated October 7, 2005 at Section 5.1.)

ORDER

IT IS ORDERED that within thirty days of the entry of this order, the parties shall file executed final agreements that delete Section 1.3 in its entirety.

This order is effective today.

Dated June 17, 2010, at San Francisco, California

/s/ KARL J. BEMESDERFER

Karl J. Bemederfer
Administrative Law Judge
Arbitrator

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Dated June 17, 2010, at San Francisco, California.

/s/ TERESITA C. GALLARDO

Teresita C. Gallardo

N O T I C E

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