



FILED

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

COMMPARTNERS, LLC (U6910C))
)
Complainant,)
)
v.)
)
PACIFIC BELL TELEPHONE COMPANY, dba)
AT&T CALIFORNIA (U1001C))
)
Defendant.)
_____)

Case No. 08-01-007

**OPENING COMMENTS OF COMMPARTNERS, LLC
ON PROPOSED DECISION**

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Opening Comments of CommPartners, LLC

Introduction

CommPartners appreciates the Commission's work on this complaint case and provides this short comment on the Judge Reed's Proposed Decision ("PD"). Ultimately, the PD appears to agree with CommPartners' long-standing requests that AT&T execute its standard 911 interconnection agreement ("ICA") amendment and disconnect the useless 911 trunks.

AT&T California is not solely responsible for 911 reliability; therefore, there is no legal barrier to it executing a 911 waiver amendment to its ICA with CommPartners. We urge AT&T California to execute a prospective 911 waiver amendment with CommPartners and disconnect its 911 trunks." PD at 10.

CommPartners appreciates that suggestion and is hopeful that AT&T will cooperate.

The Proposed Decision's Logical Underpinnings Are Flawed

Logically, however, the PD's reasoning is flawed. Nothing substantial changed in the 911 system from the date that CommPartners' first requested that the 911 trunks be removed to the present time. Why only now should AT&T be "urged" to do what CommPartners had requested three years ago? Some protection from liability granted through the Commission's blessing? The issue of AT&T's fear of liability has always been a red herring in this case. As the PD acknowledges, all carriers are legally responsible for ensuring that their 911 systems function properly. Moreover, AT&T's interconnection agreements are filled with various forms of indemnification more than adequate to protect AT&T from any 911 liability to a CLEC end user. And finally,

AT&T had already granted the waiver to several CLECs. Possible liability in the event of a 911 failure has never been a realistic concern for AT&T.

The reasoning that appears to underlie the denial of the discrimination count is similarly flawed. AT&T admits that it never audits the other carriers that have 911 waivers. But at the same time, AT&T insists that CommPartners is not similarly situated to the CLECs that have been allowed to sign the 911 waiver. PD at 5-6. How does AT&T know if it never even looked? There are thousands of end users in AT&T California incumbent exchanges right now that have the ability to place outgoing calls, originating as either voice over Internet protocol or traditional switched, and the CLECs servicing them have had the requested waiver in place and no 911 trunks for years. The amendment was made available to other CLECs, and refused to CommPartners. That is *prima facie* discrimination by any reasonable reading.

The PD seems to believe that CommPartners had an issue with the original negotiation for adopting its ICA. That is not at issue here. The issue is the 911 amendment only. The ICA has been amended several times through negotiations to reflect changes of law and other matters. The issue is that AT&T flatly refused to negotiate a 911 waiver amendment that was already in existence without having a valid reason for the denial. That is a violation of its obligations to negotiate ICAs and amendments thereto—an obligation that AT&T is very clear about when it is attempting to force execution of an ICA amendment that it wants a CLEC to sign.

CommPartners asked AT&T California to execute a 911 waiver amendment to the ICA, and the incumbent LEC refused to do so. Neither Sections 251 nor 252 of the Act compel AT&T California to relieve CommPartners of its 911 trunking obligations under the agreement.

Again, if AT&T had a valid reason not to execute the amendment when first asked three years ago, why would the Commission now be urging AT&T to execute a 911 waiver amendment?

As a final matter, the PD argues that federal law controls this case, but does not identify which particular laws or to which counts of this case that federal law supposedly applies. If federal law controls some portion of this case, the PD should not be interpreting federal law:

We do not find AT&T California's refusal to amend its ICA with CommPartners to be a violation of Pub. Util. Code § 453 or § 251 and § 252 of the [Telecom] Act.

Conclusion

CommPartners does appreciate the PD's suggestion that AT&T finally cooperate with its 911 requests. For the reasons cited above, however, the PD should be changed such that the 911 effectiveness of the 911 waiver amendment and disconnection of the trunks be made retroactive to June 2006.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Kristopher E. Twomey". The signature is fluid and cursive, with a large initial "K" and a long, sweeping underline.

Kristopher E. Twomey

December 3, 2009

CERTIFICATE OF SERVICE

I hereby certify that on December 3, 2009, and again per Docket Office instructions on January 8, 2010, I have served the foregoing document upon all parties of record in the following service list.

Dated at Oakland, California, this 8th of December 2010.

Signature

A handwritten signature in cursive script, appearing to read "Kristy Turner". The signature is written in black ink and is positioned below the "Signature" label.

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