



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

CommPartners, LLC (U 6910 C)

Complainant,

vs.

Case No. 08-01-007

Pacific Bell Telephone Company, dba AT&T
California (U 1001 C)

Defendant.

**REPLY OF PACIFIC BELL TELEPHONE COMPANY
d/b/a AT&T CALIFORNIA (U 1001 C) TO THE OPENING COMMENTS OF
COMMPARTNERS, LLC ON THE PROPOSED DECISION**

Pursuant to Rule 14.3(d) of the Commission’s Rules of Practice and Procedure (“Rules”), Pacific Bell Telephone Company d/b/a AT&T California (“AT&T”) submits these comments in reply to the Opening Comments of CommPartners, LLC on the Proposed Decision (“PD”).¹ Rule 14.3(c) requires comments on proposed decisions to focus on factual, legal or technical error and to make specific references to the record or applicable law. While CommPartners takes issue with the outcome of the PD in this case, its Opening Comments fail to identify any specific legal, factual or technical error and fail to support its arguments with supporting fact or law.

CommPartners’ Opening Comments attempt to argue three points. First, CommPartners contends the PD’s reasoning is flawed because the PD urges AT&T to amend the 911 trunking requirements in the parties’ interconnection agreement (“ICA”) on a prospective basis rather than ordering AT&T to do so retroactively.² However, CommPartners does not explain how this amounts to error. In fact, the PD’s urging in this regard was based on the record: AT&T’s

¹ Under Rule 14.3(a) of the Commission’s Rules, opening comments were to be filed by December 3, 2009 (20 days after service of the Proposed Decision). It is not clear whether CommPartners’ Opening Comments were timely filed. As such, AT&T submits these Reply Comments in the event the Docket Office accepts CommPartners’ Opening Comments for filing.

² CommPartners’ Opening Comments, p. 2.

Opening and Reply Comments stated its willingness to negotiate a prospective amendment to the ICA's 911 obligations if the Commission found AT&T would have no liability for CommPartners' failed 911 calls. AT&T stated:

[I]f the Commission determines there are no public safety issues raised by relieving CommPartners of this contractual obligation...and finds AT&T would have no liability for failed 911 calls if it permitted CommPartners to disconnect its 911 trunks, AT&T has no objection to negotiating prospective contract language on the matter with CommPartners.³

Second, CommPartners contends that AT&T's refusal to negotiate a 911 waiver amendment was *prima facie* evidence of discrimination because AT&T had no "valid reason for the denial" and already had granted such a waiver to "several CLECs."⁴ Even if these facts established *prima facie* evidence of discrimination (which they do not), the record evidence rebuts these claims. AT&T's unrefuted testimony established that the only carriers with whom AT&T had executed a 911 waiver amendment were carriers who represented to AT&T that they do not have end users placing 911 calls.⁵ CommPartners is not similarly situated because the record established that its customers do place such calls.⁶ CommPartners' assertion to the contrary in its Comments on the PD⁷ has no basis in the record whatsoever.

Third, CommPartners argues that if federal law controls this case as the PD claims, "the PD should not be interpreting federal law."⁸ CommPartners is mistaken. In cases involving interconnection and matters regulated by Sections 251 and 252 of the Federal Telecommunications Act, the law is clear: State law (including Section 453 of the California Public Utilities Code) is preempted and the duties described in Section 252 of the Act - including

³ AT&T Reply Brief, p. 4 (Oct. 10, 2008); *see also* AT&T Opening Brief, pp. 2, 6 (Sept. 22, 2008).

⁴ CommPartners' Opening Comments, p. 3.

⁵ AT&T Opening Brief, p. 5; *see also* Reply Testimony of Patricia H. Pellerin on Behalf of Pacific Bell Telephone Company d/b/a AT&T California, p. 10 (May 5, 2008).

⁶ Rebuttal Testimony of Michael Burke on Behalf of CommPartners, p. 4 (May 19, 2008) ("It does not make any difference to a CommPartners end user how the 911 call gets to the proper PSAP.").

⁷ CommPartners' Opening Comments, p. 3 ("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").

⁸ *Id.* at 4.

the duty to interpret and enforce the terms of an interconnection agreement – are conferred upon state commissions such as this one.⁹

The PD properly concludes on the basis of the record that CommPartners freely entered into an interconnection agreement with AT&T that obligates it to establish and maintain 911 trunks. As a legal matter, AT&T's enforcement of that obligation cannot be said to violate the law or otherwise unlawfully discriminate against CommPartners. The PD's findings, conclusions, and order should become a final decision of the full Commission.

Dated at San Francisco, California, this 8th day of December 2009.

Respectfully submitted,



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⁹ AT&T Opening Brief, pp. 4-5. See also, e.g., *MCI Telecomm Corp. v. Bell Atl.-Pa.*, 271 F.3d 491, 510 (3d Cir. 2001); *Pacific Bell v. Pac West Telecomm, Inc.*, 325 F.3d 1114, 1126 (9th Cir. 2003).

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the **REPLY OF PACIFIC BELL TELEPHONE COMPANY d/b/a AT&T CALIFORNIA (U 1001 C) TO THE OPENING COMMENTS OF COMMPARTNERS, LLC ON THE PROPOSED DECISION** in **C.08-01-007** by electronic mail and/or hand-delivery, to the person in the official Service List.

Executed this 8th day of December 2009, at San Francisco, California.

AT&T SERVICES, INC.
525 Market Street, 20th Floor
San Francisco, CA 94105

A handwritten signature in blue ink that reads "Michelle K. Choo". The signature is written in a cursive, flowing style.

Michelle K. Choo



CALIFORNIA PUBLIC UTILITIES COMMISSION Service Lists

**PROCEEDING: C0801007 - COMMPARTNERS, LLC VS
FILER: COMMPARTNERS, LLC
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