

**PUBLIC UTILITIES COMMISSION**505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298**FILED**04-12-10
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April 12, 2010

Agenda ID #9385
Ratesetting

TO PARTIES OF RECORD IN APPLICATION 09-12-021

This is the proposed decision of Administrative Law Judge (ALJ) Karl J. Bemederfer. It will not appear on the Commission's agenda sooner than 30 days from the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the proposed decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the proposed decision as provided in Article 14 of the Commission's Rules of Practice and Procedure (Rules), accessible on the Commission's website at www.cpuc.ca.gov. Pursuant to Rule 14.3, opening comments shall not exceed 15 pages.

Comments must be filed pursuant to Rule 1.13 either electronically or in hard copy. Comments should be served on parties to this proceeding in accordance with Rules 1.9 and 1.10. Electronic and hard copies of comments should be sent to ALJ Bemederfer at kjb@cpuc.ca.gov and the assigned Commissioner. The current service list for this proceeding is available on the Commission's website at www.cpuc.ca.gov.

/s/ JANET A. ECONOME for
Karen V. Clopton, Chief
Administrative Law Judge

KVC:gd2

Attachment

Decision **PROPOSED DECISION OF ALJ BEMESDERFER** (Mailed 4/12/2010)**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application by Pacific Bell Telephone Company (U1001C) d/b/a AT&T California for Arbitration of an Interconnection Agreement with Reliance Globalcomm Services, Inc. (U6357C), formerly known as Yipes Enterprise Services, Inc., Pursuant to Section 252(b) of the Telecommunications Act of 1996.

Application 09-12-021
(Filed December 11, 2009)

**DECISION GRANTING APPLICANT'S
MOTION FOR SUMMARY ADJUDICATION****Summary**

The decision adopts a draft interconnection agreement proposed by Pacific Bell Telephone Company d/b/a AT&T California to Reliance Globalcomm Services, Inc. on June 30, 2009 as the successor interconnection agreement between the parties.

Discussion

Section 252(b) of the Telecommunications Act of 1996 (1996 Act) delegates to state public utility commissions the authority to arbitrate interconnection agreements (ICAs) between incumbent local exchange carriers (ILECs) like Pacific Bell Telephone Company d/b/a AT&T California (AT&T) and competitive local exchange carriers (CLECs) like Reliance Globalcomm Services, Inc. (Reliance). Pursuant to 47 U.S.C. § 252(b), either party to ICA negotiations

may file a petition for arbitration between the 135th and 160th day following the date that a request to negotiate was received if they fail to agree upon an ICA during the statutory period set forth therein.

On June 11, 2009, AT&T notified Reliance by letter sent via U.P.S. that AT&T was requesting negotiation of a successor ICA. On June 30, 2009, AT&T sent Reliance a copy of its generic ICA as the proposed basis for negotiating a successor agreement. Pursuant to Section 252(b) of the 1996 Act, the 25-day period within which either party could petition the Commission to arbitrate unresolved issues commenced on November 23, 2009 and ended on December 18, 2009. AT&T filed its arbitration petition on December 11, 2009, which was within the statutory period.

Between June 11, 2009 when AT&T notified Reliance that it was requesting negotiation of a successor ICA and December 11, 2009, when AT&T filed its petition for arbitration, AT&T made repeated attempts in writing and orally to engage Reliance in negotiations. In addition to its initial notice to Reliance and its tender of the proposed draft ICA, AT&T sent formal requests to Reliance to commence negotiations on August 19, 2009, September 17, 2009, and October 8, 2009. After making additional calls and sending additional emails, on November 17, 2009, AT&T's lead negotiator notified Reliance's general counsel that AT&T planned to file an application for arbitration. An exchange of correspondence followed in which Reliance inquired if its retail agreements could serve as the basis for the successor ICA and AT&T responded that they could not.

On February 4, 2010 the parties were notified by the Chief Administrative Law Judge (ALJ) that a pre-hearing conference (PHC) would be held on March 24, 2010. AT&T appeared at the PHC through its counsel but no one

appeared for Reliance nor did Reliance advise either counsel for AT&T or the assigned ALJ that it did not plan to attend the PHC. At the PHC, counsel for AT&T moved for summary adjudication of the arbitration by adopting the draft ICA provided by AT&T to Reliance on June 30, 2009 as the successor ICA between the parties.

The draft ICA provided by AT&T is presently in force, in some cases as modified by negotiation or arbitration, between AT&T affiliates and other CLECs in 22 states. In the absence of any response from Reliance to this draft over the past eight months in spite of repeated overtures from AT&T, we conclude that Reliance has no objection to adopting the draft ICA as the successor ICA between the parties.

Reliance has had ample notice and opportunity to enter into negotiations with AT&T for the past nine months. AT&T has made repeated good-faith efforts to engage Reliance in such negotiations without success. Reliance has had notice and an opportunity to appear at a PHC and to seek modification of the draft ICA through the arbitration process and has chosen not to do so. Pursuant to § 252(b)(5) of the 1996 Act, failure to cooperate with a state Commission before which an arbitration petition is pending constitutes failure to negotiate in good faith.¹ By failing to attend the PHC and by not advising either the assigned ALJ or opposing counsel of its intention not to participate in the PHC, Reliance has failed to negotiate in good faith. Under the circumstances, adoption of the AT&T

¹ (5) REFUSAL TO NEGOTIATE – The refusal of any other party to the negotiation to participate further in the negotiations, to cooperate with the State commission in carrying out its functions as an arbitrator, or to continue to negotiate in good faith in the presence, or with the assistance, of the State commission shall be considered a failure to negotiate in good faith.

draft ICA as the successor ICA between the parties is an appropriate and timely resolution of this matter.

Comments on Proposed Decision

This is the proposed decision of ALJ Bemederfer. The proposed decision of the ALJ in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. It was circulated for comments on _____. Comments were received from _____ on _____.

Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and Karl J. Bemederfer is the assigned ALJ.

Findings of Fact

1. Since June 2009 AT&T has made repeated efforts to engage Reliance in negotiations of a successor ICA without success.
2. On June 30, 2009 AT&T tendered a draft ICA to Reliance and proposed that it become the successor ICA between the parties.
3. Reliance has neither accepted nor rejected the draft ICA.
4. Reliance has not commented on any portion of the draft ICA.
5. Reliance received timely notice of the March 24, 2010 PHC.
6. Reliance failed to appear at the March 24, 2010 PHC.

Conclusions of Law

1. AT&T timely filed its application for arbitration under 47 U.S.C. § 252(b).
2. This Commission has jurisdiction of this matter.

3. Reliance has had timely notice and adequate opportunity to appear in this proceeding.

4. Reliance has failed to negotiate in good faith.

5. The draft ICA proposed by AT&T to Reliance on June 30, 2009, which is set out in full in Attachment A to the application for arbitration filed by AT&T, should be adopted as the successor ICA between the parties.

O R D E R

IT IS ORDERED that:

1. The draft interconnection agreement proposed by Pacific Bell Telephone Company d/b/a AT&T California to Reliance Globalcomm Services, Inc. on June 30, 2009 is adopted as the successor interconnection agreement between the parties.

2. Application 09-12-021 is closed.

This order is effective today.

Dated _____, at San Francisco, California.

INFORMATION REGARDING SERVICE

I have provided notification of filing to the electronic mail addresses on the attached service list.

Upon confirmation of this document's acceptance for filing, I will cause a Notice of Availability of the filed document to be served upon the service list to this proceeding by U.S. mail. The service list I will use to serve the Notice of Availability of the filed document is current as of today's date.

Dated April 12, 2010, at San Francisco, California.

/s/ GLADYS M. DINGLASAN
Gladys M. Dinglasan

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to ensure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074 or TDD# (415) 703-2032 five working days in advance of the event.