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BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF CALIFORNIA

Application by Pacific Bell Telephone Company (U 1001 C) d/b/a AT&T California for Arbitration of an Interconnection Agreement with SureWest Telephone (U 1015 C) d/b/a SureWest Broadband and SureWest TeleVideo (U 6324 C) d/b/a SureWest Broadband Pursuant to Section 252(b) of the Telecommunications Act of 1996.	A. 09-12-022 (Filed December 18, 2009)

APPLICATION OF

SUREWEST TELEPHONE (U 1015 C) D/B/A SUREWEST BROADBAND

AND SUREWEST TELEVIDEO (U 6324 C) D/B/A SUREWEST BROADBAND

FOR REHEARING OF D. 10-10-028

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November 24, 2010

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I

INTRODUCTION

Pursuant to Rule 16.1 of Practice and Procedure before the California Public Utilities Commission ("Commission") and Section 1731 of the California Public Utilities Code, SureWest Telephone and SureWest TeleVideo (hereinafter collectively "SureWest") hereby apply for rehearing of Decision 10-10-028 (the "Decision"), issued October 29, 2010. The Decision affirms the erroneous determination in the Final Arbitrator's Report ("FAR") that the proposed Interconnection Agreement ("ICA") between SureWest and Pacific Bell Telephone Company d/b/a AT&T California ("AT&T") may contain a provision prohibiting SureWest from porting a telephone number from an end user with a

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residence address outside the NXX[1] of the rate center to which the number is assigned. The inclusion of such a prohibition in an ICA is legal error. Therefore, the Commission should grant rehearing in order to modify or delete this unlawful provision.

II

ISSUE IN DISPUTE

The dispute in this proceeding involved a single paragraph in the ICA originally proposed by AT&T. This paragraph (at Section 1.3 of Attachment 4 – Local Number Portability, Page 3 of 8, included as part of Attachment C of AT&T's Application), stated:

> 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 numbering resource guidelines.

AT&T wanted the ICA to contain this provision. SureWest did not want the ICA to contain this provision because it would unfairly limit SureWest's ability to assign and port numbers for its customers.

The Draft Arbitrator's Report ("DAR") issued on June 17, 2010, eliminated Section 1.3 in its entirely. On September 17, 2010, Administrative Law Judge Bemesderfer issued the Final Arbitrator's Report (the "FAR") in this matter. The FAR differed from the DAR in that it provided for inclusion of that portion of Section 1.3 which related to porting of telephone numbers. Specifically, the FAR concluded that Section 1.3 of the ICA should be revised to state:

> 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.

On October 28, 2010, the Commission adopted the FAR in the Decision. While Section 1.3 of the ICA as set forth in the FAR and as adopted in the Decision is an

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[1] The NXX is a three-digit code used to identify the central office and forms the second part of a 10-digit North American Numbering Plan ("NANP") telephone number (digits 4-6 of NPA-NXX-XXXX).

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improvement over the terms originally proposed by AT&T in that it eliminates the unlawful restriction on the assignment of numbers by SureWest, it remains unlawful because it retains an improper limitation on porting of numbers by the parties. Therefore, for the reasons set forth herein, Section 1.3 should be modified or eliminated in its entirety, as discussed below.

III

SECTION 1.3 OF THE ICA ADOPTED BY THE DECISION DOES NOT MEET THE REQUIREMENTS OF SECTION 251 OF THE TELECOMMUNICATIONS ACT

The Telecommunications Act (the "Act") and the rules adopted by the Federal Communications Commission ("FCC") establish the standard for reviewing the disputed interconnection agreement provision. See, 47 U.S.C. §§ 251 and 252; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 13042 (1996) ("Local Competition Order"); 47 C.F.R. § 51.5 et seq.

Specifically Section 252(c) of the Act provides that state commissions resolving open issues through arbitration are to "ensure that such resolution and conditions meet the requirements of section 251 of this title, including the regulations prescribed by the [FCC] pursuant to section 251 of this title." 47 U.S.C. § 252(c).

Section 251 of the Act provides that incumbent local exchange carriers, such as AT&T, must provide interconnection with CLECs, such as SureWest, "on rates, terms and conditions that are just, reasonable, and nondiscriminatory...." 47 U.S.C. § 251(c)(2).

In this regard, the state commission is required to make an affirmative determination that the rates, terms, and conditions that it prescribes in any arbitration proceeding for interconnection are consistent with the requirements of Sections 251(b) and (c) and Section 252(d) of the Act. 47 U.S.C. § 252(d).

Pursuant to these authorities, the Commission should grant rehearing and revise the ICA with respect to the provision limiting the porting of numbers only from end users who are physically located in the rate center to which the NXX of their telephone numbers are

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assigned. The inclusion of this language in the ICA is unlawful, unreasonable, and discriminatory.

Specifically, the ICA adopted by the Commission would unlawfully prevent SureWest from doing what it is allowed to do by law: port telephone numbers for subscribers whose service addresses are outside the rate centers assigned to their NXXs (e.g., for subscribers to foreign exchange service, VNXX service, et cetera).

For example, AT&T offers foreign exchange service to customers who are located outside the exchange or rate center of the exchange where the customer resides. (Gierczak Testimony, pp. 11, 19, Exhibit A, SureWest Response to Petition for Arbitration.) A description of AT&T's foreign exchange service can be found in AT&T's California Guidebook, Part 4-Exchange Access Services, Section 3-Foreign Type Exchange Services. This service allows a customer to purchase telephone service with a telephone number from an exchange different from the one where the customer resides. A subscriber to this service would reside in an area different from the exchange assigned to the NXX of his or her telephone number. Under the ICA adopted by the Commission, SureWest would be barred from accepting a subscriber request to port such a number because the customer does not reside in the same rate area as his or her telephone number.

Local number portability, as defined and mandated in the Act, is the ability of end users to retain their existing directory numbers at the same location as they change from one service provider to another. (47 U.S.C. §§ 153(46) and 251(b)(2).) Section 1.3 as adopted in the Decision would restrict the ability of a customer subscribing to the AT&T foreign exchange service described above to port his or her number to SureWest simply because the customer does not reside in the rate area of his or her telephone number. As explained below, this is inconsistent with the requirements of the Act and the FCC rules which allow customers to port their telephone numbers to the carriers of their choice.

The FCC has considered provisions similar to the one adopted in the Decision and found such restrictions on porting numbers violate carriers' Section 251(b)(2) obligations:

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> We also find that interconnected VoIP providers and their numbering partners may not enter into agreements that would prohibit or unreasonably delay an interconnected VoIP service end user from porting between interconnected VoIP providers, or to or from a wireline carrier or a covered CMRS provider. Because LNP promotes competition and consumer choice, we find that any agreement by interconnected VoIP providers or their numbering partners that prohibits or unreasonably delays porting could undermine the benefits of LNP to consumers. Additionally, because we determine that the carrier that obtains the number from the NANPA is also responsible for ensuring compliance with these obligations, such porting-related restrictions would contravene that carrier's section 251(b)(2) obligation.

Telephone Number Requirements for IP-Enabled Services Providers, CC Docket No. 95-116, CC Docket No. 99-200, Report and Order, Declaratory Ruling, Order on Remand, and Notice of Proposed Rulemaking, released November 8, 2007, at paragraph 109.

Thus, under the rules adopted by the FCC pursuant to the Act, not only is SureWest authorized to port numbers with disparate routing and rating points, it is impermissible to restrict its right to do so. The Decision, however, has done just that. Such a provision, according to the FCC decision quoted above, violates Section 252(b)(2) of the Act; therefore, Section 1.3 of the ICA as adopted in the Decision must be modified or eliminated.

Furthermore, the policy reflected in the adoption of the FAR will also hinder SureWest's and other parties' abilities to port numbers from customers of other providers. SureWest competes with many different wireline competitors in the Sacramento Metropolitan area. Some of these competitors assign VNXX telephone numbers to their customers. The Commission has explained that VNXX "refers to codes that are assigned throughout a Local Access and Transport Area (LATA) without regard to the location of the end-use [sic] customer. As a result, a customer in one rate center may use a local call to call the end-use [sic] customer physically located in another rate center."[2] If SureWest can

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[2] Decision 07-02-031 (February 15, 2007), p. 2, fn. 3.

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only port telephone numbers for end users with a service address in the rate center to which the NXX of the ported number is assigned, as the FAR and adopted decision only allow for, the Commission would be establishing a policy that would bar SureWest, and other parties, from porting VNXX telephone numbers of any other wireline carrier even when technically possible, thus frustrating customer choice and inhibiting competition. This is legal error, contrary to the goals of the Act, and not in the interest of consumers.

Accordingly, the Commission should grant rehearing and modify or delete Section 1.3 in its entirety. Modification or deletion of the disputed paragraph would have absolutely no effect on how the parties to this proceeding interconnect their facilities, the relevant subject matter of the ICA, or impose any new obligations on AT&T which would otherwise not apply to it.

SureWest understands and agrees that ported numbers must remain rated to their original rate center and has not and does not propose changing this requirement. (Gierczak Testimony, p. 11, Exhibit A, SureWest Response to Petition for Arbitration). SureWest simply seeks to port customers' telephone numbers in cases where the customer does not reside in the same rate center as his or her telephone number, not change the rate center of the telephone number.

In this regard, the FCC rules already require that ported numbers must remain rated to their original rate center and SureWest must abide by these rules whether or not they are set forth in the ICA. However, if the Commission believes that this rule needs to be stated in the ICA, Section 1.3 could be revised as follows to do so without also improperly affecting SureWest's right to port numbers for subscribers for whom it has a right to do so:

> 1.3 Parties shall port numbers only within the rate center to which the NXX of the ported number is assigned.

In summary, the limitation on porting telephone numbers set forth in the FAR and adopted in the Decision is in conflict with the Act and the FCC's rules implementing local number portability. It is also discriminatory and anticompetitive. Accordingly, Section 1.3 as set forth in the FAR and adopted in the Decision does not meet the standard of

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review set by the Act, would hinder the competitive choice of customers to move their telephone numbers and services to different providers, and should either be modified or be eliminated by the Commission to conform with the rights of customers to port their telephone numbers to the provider of their choice.

IV

CONCLUSION

For the reasons set forth herein, the Commission should grant rehearing and modify the Decision to comply with the law by either changing the wording of Section 1.3 of the ICA as set forth above or eliminating Section 1.3 of the ICA in its entirety.

Executed this 24th day November, 2010, at San Francisco, California.

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CERTIFICATE OF SERVICE

I, Martin Spence, declare:

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is COOPER, WHITE & COOPER LLP, 201 California Street, 17th Floor, San Francisco, CA 94111.

On November 24, 2010, I served the:

APPLICATION OF SUREWEST TELEPHONE (U 1015 C) D/B/A SUREWEST BROADBAND AND SUREWEST TELEVIDEO (U 6234 C) D/B/A SUREWEST BROADBAND FOR REHEARING OF D. 10-10-028

by sending via e-mail a true and correct copy in Adobe Acrobat PDF searchable format to the parties on the CPUC's service list for Proceeding No. A. 09-12-022 who provided an email address (see attached).

Hard copies of the Application for Rehearing were sent via U.S. Mail to Assigned Commissioner Peevey and Assigned ALJ Bemesderfer.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 24, 2010, at San Francisco, California.

Martin Spence

Martin Spence

SERVICE LIST

CPUC Service List as of November 22, 2010
Proceeding No. A. 09-12-022 (AT&T Application for Arbitration)

The following parties were served via email using an address provided to the CPUC.

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