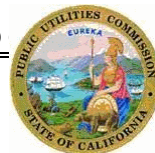


PUBLIC UTILITIES COMMISSION505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298**FILED**6-18-15
03:49 PM

June 18, 2015

Agenda ID #14083
Ratesetting

TO PARTIES OF RECORD IN CASE 13-12-005:

This is the proposed decision of ALJ Bemesderfer. Until and unless the Commission hears the item and votes to approve it, the proposed decision has no legal effect. This item may be heard, at the earliest, at the Commission's July 23, 2015 Business Meeting. To confirm when the item will be heard, please see the Business Meeting agenda, which is posted on the Commission's website 10 days before each Business Meeting.

Parties of record may file comments on the proposed decision as provided in Rule 14.3 of the Commission's Rules of Practice and Procedure.

/s/ KAREN V. CLOPTONKaren V. Clopton, Chief
Administrative Law Judge

KVC;jt2

Attachment

Decision **PROPOSED DECISION OF ALJ BEMESDERFER (Mailed 6/18/15)**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

<p>The Utility Reform Network,</p> <p style="text-align: right;">Complainant,</p> <p style="text-align: center;">vs.</p> <p>Pacific Bell Telephone Company D/B/A/ AT&T California (U1001C),</p> <p style="text-align: right;">Defendant.</p>
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Case 13-12-005
(Filed December 6, 2013)

DECISION APPROVING SETTLEMENT

Summary

On May 15, 2015, The Utility Reform Network (TURN), Pacific Bell Telephone Company D/B/A AT&T California (AT&T California), and The Center for Accessible Technology (CforAT) filed a joint motion for approval of a settlement agreement (Settlement Agreement) which is attached to this decision as Attachment A. The Settlement Agreement resolves all contested issues among the settling parties. This decision grants the joint motion.

Background and Procedural History

The Utility Reform Network (TURN) filed its complaint against Pacific Bell Telephone Company D/B/A AT&T California (AT&T California) and AT&T Corp. on December 6, 2013. The complaint, filed pursuant to Public Utilities

Code Section 1702, alleged that AT&T California's rates for basic service, flat and measured, were not "just and reasonable." As relief sought in the complaint, TURN requested that the Commission reduce current rates for basic service as an interim measure, conduct an investigation to set rates at "just and reasonable" levels and conduct an industry-wide review of the status of competition in California. Defendants filed an answer and a motion to dismiss the complaint as to both of them on January 23, 2014. The presiding Administrative Law Judge (ALJ) granted the motion to dismiss as to AT&T Corp. only. On July 2, 2014, the assigned Commissioner issued a Scoping Memo and Ruling confirming an earlier ALJ ruling that TURN as the complainant bore the burden of proof.

AT&T California, TURN and CforAT exchanged Opening Testimony on August 22, 2014 and Reply Testimony on October 3, 2014. After delays due to scheduling issues, the matter was set for evidentiary hearings beginning on April 6, 2015. On March 25, 2015, TURN advised the ALJ that it had reached a tentative settlement with AT&T California and requested that the ALJ vacate the hearing date. In accordance with Rule 12.1(b), TURN and AT&T California held an all-party telephonic settlement conference on Wednesday April 8, 2015. TURN, AT&T California and CforAT attended the settlement conference. Of the other entities granted party status in the proceeding, The Greenlining Institute (Greenlining) and the Commission's Office of Ratepayer Advocates (ORA) notified the settling parties that they would not join in the settlement. On May 19, 2015 the Consumer Federation of California (CFC) filed a motion in support of the settlement. On May 26, 2015, ORA filed a response in opposition to the settlement.

The Record

The record in this proceeding consists of all filed documents and all Opening and Reply Testimony which is hereby admitted into the record.

Standard of Review

As the United States Court of Appeals for the Ninth Circuit has observed, in evaluating a settlement the agreement must stand or fall on its own terms, not compared to some hypothetical result that the negotiators might have achieved, or that some believe should have been achieved:

Settlement is the offspring of compromise; the question we address is not whether the final product could be prettier, smarter or snazzier, but whether it is fair, adequate and free from collusion. (Hanlon v. Chrysler Corp., 150 F.3d 1011, 1027 (9th Cir. 1998).

Based upon our review of the record, we find that the parties to the settlement had a sound and thorough understanding of the issues and all of the underlying assumptions and data included in the record and, thus, we can consider the settlement agreement as the outcome of negotiations between competent and well-prepared parties able to make informed choices in the settlement process.

Pertinent Commission Rules

The Commission's Rules of Practice and Procedure (Rules) specifically address the requirements for adoption of proposed settlements in Rule 12.1 Proposal of Settlements, and subject to certain limitations in Rule 12.5 Adoption Binding, Not Precedential. Specifically, Rule 12.1(a) states:

Parties may, by written motion any time after the first prehearing conference and within 30 days after the last day of hearing, propose settlements on the resolution of any material issue of law or fact or on a mutually agreeable outcome to the proceeding. Settlements need not be joined by all parties; however, settlements in applications must be signed by the applicant and, in complaints, by the complainant and defendant.

The motion shall contain a statement of the factual and legal considerations adequate to advise the Commission of the scope of the settlement and of the grounds on which adoption is urged. Resolution shall be limited to the issues in that proceeding and shall not extend to substantive issues which may come before the Commission in other or future proceedings.

When a settlement pertains to a proceeding under a Rate Case Plan or other proceeding in which a comparison exhibit would ordinarily be filed, the motion must be supported by a comparison exhibit indicating the impact of the settlement in relation to the utility's application and, if the participating staff supports the settlement, in relation to the issues staff contested, or would have contested, in a hearing.

Rule 12.1(d) provides that:

The Commission will not approve settlements, whether contested or uncontested, unless the settlement is reasonable in light of the whole record, consistent with law, and in the public interest.

Rule 12.5 limits the future applicability of a settlement:

Commission adoption of a settlement is binding on all parties to the proceeding in which the settlement is proposed. Unless the Commission expressly provides otherwise, such adoption does not constitute approval of, or precedent regarding, any principle or issue in the proceeding or in any future proceeding.

Required Findings - Rules 12.1(d) and Rule 12.5

Based upon the record of this proceeding we find the parties complied with Rule 12.1(a) by making the appropriate filings and noticing a settlement conference. Based upon our review of the settlement documents we find that they contain a statement of the factual and legal considerations adequate to advise the Commission of the scope of the settlement and of the grounds for its adoption; that the settlement was limited to the issues in this proceeding; and that the settlement included a comparison indicating the impact of the settlement in relation to contested issues raised by the interested parties in prepared

testimony, or which they would have contested in a hearing. Finding that the settlement complies with Rule 12.1(a) allows us to conclude, pursuant to Rule 12.1(d), that the settlement is reasonable in light of the whole record, consistent with law, and in the public interest.

Based upon our review of the settlement document we find, pursuant to Rule 12.5, that the proposed settlement would not bind or otherwise impose a precedent in this or any future proceeding.

Summary of Settlement Terms

- 1 AT&T California will freeze its rates for Basic Flat Rate local exchange service, Basic Measured Rate local exchange service, LifeLine Flat Rate local exchange service, and LifeLine Measured Rate local exchange service (collectively "Listed Services") at their current level through December 31, 2015.
- 2 Beginning January 1, 2016, AT&T California will have the right to raise its rate for each of the Listed Services by no more than a total of \$3.00 over five years (until December 31, 2020). For each separate service, AT&T California agrees not to increase rates by more than \$1.00 in any given year in the five year period.
- 3 As of January 1, 2021, the price caps established by the settlement will expire, and AT&T California will have the same pricing authority regarding the listed services as it had prior to entering the settlement.
- 4 No party to the settlement will initiate or join an action before the CPUC addressing the reasonableness of AT&T California's rates for the Listed Services any earlier than January 1, 2021.

Discussion

As can be seen by the procedural history and the summary of the settlement, Settling Parties have concluded this proceeding to their mutual satisfaction. As explained below, ORA's objections to the settlement are not

persuasive. Accordingly there is no reason to keep this proceeding open after approval of the less-than-all-party settlement.

ORA argues that the settlement is unreasonable in light of the record, inconsistent with existing law and not in the public interest. In support of this conclusion ORA advances the following arguments:

- 1 AT&T California already has the highest rates for the Listed Services of any of California's four Incumbent Local Exchange Carriers (ILECs).
- 2 The Listed Services rates have increased faster than the rate of inflation.
- 3 The Listed Services rates are not connected in any way to the cost of providing service and the cost of providing service has been decreasing.
- 4 The Listed Services rate increases have not resulted in proportionate customer losses.

The difficulty with this line of argument is that the Commission decoupled rates from cost of service in its Decision (D.) 06-08-030 and awarded AT&T California and the other ILECs the right to set rates without regard to the factors enumerated by ORA. Ordering Paragraph 22 of D.06-08-030 summarized the decision's effect on ILEC pricing this way:

Price caps, the annual price cap filing, the productivity factor, and all **residual elements of rate-of-return regulation**, including the calculation of "shareable" earnings are eliminated. (Emphasis supplied.)

To ease the transition to unregulated pricing, D.07-09-020 imposed a rate freeze on basic rates which expired January 1, 2011. Thereafter, ILECs were free to set rates however they chose.

Thus even if, for the sake of discussion, we accept as true the arguments advanced by ORA that are summarized above, they do not alter the fact that we

have given the ILECs the right to make the changes in their rates that have resulted in AT&T California's rates rising in the manner described by ORA. Further, the facts alleged by ORA as reasons for opposing the settlement seem to us to provide reasons for approving the settlement. The settlement freezes rates for the Listed Services until the end of this year, and places caps on rate increases until 2021, significantly limiting the pricing freedom that AT&T California would otherwise enjoy, in a way that benefits the customers of the Listed Services.

Because we reject ORA's analysis of the settlement agreement, we find it unnecessary to address ORA's recommendations for a new investigation of the telecommunications market.

Submission

The joint motion to adopt a settlement was filed on May 15, 2015. After allowing an opportunity for anyone to protest and receiving the ORA protest and the CFC motion in support of the settlement, the consolidated proceedings were deemed submitted on June 1, 2015.

Comments on Proposed Decision

The proposed decision of the Administrative Law Judge (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. Comments were filed on _____, and reply comments were filed on _____ by _____.

Assignment of Proceeding

Michael Picker is the assigned Commissioner and Karl Bemederfer is the assigned ALJ.

Findings of Fact

1. There is a full and complete record composed of all filed documents and all exhibits received into evidence.
2. The parties engaged in extensive settlement discussions.
3. ORA, Greenlining and CFC chose not to participate in the settlement.
4. The settlement was opposed by ORA.
5. The settlement was supported by CFC.
6. The parties to the settlement had a sound and thorough understanding of all of the underlying assumptions and data included in the record and could make informed decisions in the settlement process.
7. The adopted settlement provides sufficient information for the Commission to discharge its future regulatory obligations.
8. The consolidated proceedings should be closed.

Conclusions of Law

1. The settlement is reasonable in light of the record as a whole, consistent with existing law, and in the public interest.
2. The settlement should be approved.

O R D E R

IT IS ORDERED that:

1. The Joint Motion of Pacific Bell Telephone Company D/B/A AT&T California, The Utility Reform Network, and The Center for Accessible Technology filed on May 15, 2015, for approval of the settlement is granted.
2. Case 13-12-005 is closed.

This order is effective today.

Dated _____, at San Francisco, California.

ATTACHMENT A
SETTLEMENT AGREEMENT

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is by and between The Utility Reform Network ("TURN"), Pacific Bell Telephone Company d/b/a AT&T California ("AT&T California") and the Center for Accessible Technology ("CforAT") (TURN, AT&T California and CforAT collectively referred to as the "Parties").

WHEREAS, on December 6, 2013, TURN filed a Complaint against AT&T California with the California Public Utilities Commission ("CPUC" or "Commission"), Case No. C.13-12-005 (the "Complaint");

WHEREAS, on January 14, 2014, CforAT moved for party status in Case No. C.13-12-005, and the motion was granted on March 5, 2014;

WHEREAS, the Parties desire to resolve the issues raised in the Complaint to their mutual satisfaction according to the terms set forth below; and

WHEREAS, the Parties believe that this Agreement is a reasonable compromise of their opposing positions in the Complaint proceeding, and agree that the provisions of this Agreement adequately balance the interests of AT&T California, TURN and CforAT, the Parties aver that this Agreement is reasonable in light of the whole record, consistent with law, and in the public interest, the Parties agree jointly to support the provisions of the Agreement set forth below;

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements contained herein, the receipt and sufficiency of which consideration is hereby acknowledged by each Party to the others, the Parties hereby agree that the issues raised in the Complaint and all related causes of action shall be settled and compromised pursuant to the terms of this Agreement set forth below.

1. AT&T California will freeze its rates for Basic Flat Rate local exchange service, Basic Measured Rate local exchange service, LifeLine Flat Rate local exchange service, and LifeLine Measured Rate local exchange service (all services referred to collectively as the "Listed Services") at their current level through December 31, 2015.
2. Beginning January 1, 2016, AT&T California will have the right to raise its rate for each of the Listed Services by no more than a total of \$3 over five years (until December 31,

- 2020). For each separate service, AT&T California agrees not to increase rates by more than \$1 in any given year in the five-year period.
3. As of January 1, 2021, the price caps established by this Agreement shall expire, and AT&T California will have the same pricing authority regarding the Listed Services as it had prior to the Effective Date of this Agreement, subject to any intervening decisions or changes of law.
 4. No party to this agreement will initiate, or be a party to, a complaint action before the CPUC addressing the reasonableness of AT&T California's rates for the Listed Services any earlier than January 1, 2021. Nothing in this provision limits the right of any party to this agreement to take any position in a Commission Investigation, a Commission Rulemaking, or any other proceeding addressing the telecommunications industry in California as a whole, nor does it limit the right of any party to initiate a proceeding addressing AT&T California's rates for other services or AT&T California's compliance with other matters under the CPUC's jurisdiction not directly concerning rates for the Listed Services. Additionally, nothing in this provision limits the right of any party to initiate a complaint, formally or informally, regarding an individual consumer's bill from AT&T California.
 5. The Parties acknowledge that this Agreement is a settlement and compromise of all disputed issues involved in the Complaint, which binds the Parties, their affiliates, subsidiaries, successors, assigns, directors, shareholders, officers, employees, and agents.
 6. Each party is aware that it may discover claims or facts in addition to or different from those it now knows or believes to be true with respect to the matters related herein. Nevertheless, it is the intention of the parties, subject to the conditions in paragraph 4, to fully, finally, and forever settle and release all such matters.
 7. If a Party fails to perform its respective obligations under this Agreement, any other Party may come before the Commission to pursue a remedy including enforcement. The Parties acknowledge that the Commission may assert jurisdiction to reopen this proceeding to enforce the terms and conditions of this Agreement.

8. The Parties agree that execution of this Agreement does not constitute an admission of liability or any violation of law with respect to any claim raised in or related to the Complaint.
9. Each party hereby waives any right or benefit of the provisions of Section 1542 of the California Civil Code, which reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

The Parties acknowledge in that connection that they may have sustained damage, loss, cost, or expense that is presently unknown and unsuspected, and that such damage, loss, cost or expense as may have been sustained may give rise to additional damage, loss, cost or expense in the future. Nevertheless, the Parties acknowledge that this Agreement has been negotiated and agreed upon in light of this situation and the Parties expressly waive any and all rights which they may have under Section 1542 of the California Civil Code, or any other state or federal statute or common law principle of similar effect.

10. The Parties hereto acknowledge each has read this Settlement Agreement, that each fully understands its rights, privileges, and duties under this Settlement Agreement, and that each enters this Agreement freely and voluntarily. Each Party further acknowledges that it has had the opportunity to consult with its legal counsel to explain the terms of this Agreement and the consequences of signing it.
11. Each Party to this Agreement represents that the person executing this Agreement has been duly authorized by the Party to execute this Agreement on behalf of that Party and that such execution is made within the scope of their respective agency and/or employment and that no Party to the Agreement assumes any personal liability as a result of this Agreement.
12. The undersigned hereby acknowledge and covenant that they have been duly authorized to execute this Agreement on behalf of their respective principals and that

such execution is made within the course and scope of their respective agency and/or employment.

13. This Agreement may be executed in any number of counterparts and by different Parties hereto in separate counterparts, with the same effect as if all Parties had signed one and the same document. All such counterparts shall be deemed to be an original and shall together constitute one and the same Agreement. A signature transmitted by facsimile or email shall be regarded as an original signature.
14. The provisions of this Agreement are not severable. If the CPUC or any court of competent jurisdiction rules that any material provision of this Agreement is invalid or unenforceable, or materially modifies any material provision of this Agreement, then the parties must meet in good faith to consider whether they agree to any such changes, which changes must be documented in writing. If the parties cannot agree, then the Agreement shall be deemed rescinded and the Parties returned to the status quo as of the date immediately prior to the Effective Date of this Agreement.
15. It is understood that the consideration recited in this Agreement is the sole and only consideration of this Agreement, and no representations, promises, or inducements have been made by any Party to the Agreement, or any director, officer, employee, or agent thereof, other than as they appear in this instrument.
16. This Agreement constitutes the entire agreement between the Parties and shall not be modified except in writing signed by the Parties.
17. This Agreement is governed by the laws of the State of California.
18. The Effective Date of this Agreement is the last date on which it is signed by any Party to the Agreement.
19. This Agreement is subject to approval by the CPUC. Nothing in this Agreement shall be deemed as an admission or an assessment of the outcome that could have been reached without voluntary negotiations. Further, the Parties agree that the obligations set forth in this Agreement are without any prejudice to positions each Party has taken, or may hereafter take, in any proceeding in another state, or in any future proceeding at the CPUC after the expiration of the term of this Agreement or pursuant to paragraph 4

above. Commission adoption of this Agreement does not constitute approval of, or precedent regarding, any principle or issue in R.05-04-005, the Complaint proceeding (Case No. 13-12-005), or in any other future proceeding.

- 20. The Parties to the Agreement shall use their best efforts to obtain Commission approval. No Party shall engage in any *ex parte* contact with the CPUC in regard to this Agreement unless such Party states that it is in full support of the Agreement and each and every term thereof. No Party shall seek, directly or indirectly, to have the CPUC modify the terms of this Agreement without the express consent of all other Parties.
- 21. Upon approval of the Agreement, the parties acknowledge that the provisions of this Agreement will be incorporated into an order approved by the CPUC, and that such order shall be binding on all Parties to the full extent of the CPUC's jurisdiction over such entities.

IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement on the pages that follow.

Pacific Bell Telephone Company d/b/a AT&T
California

By: *Ken McNeely*
 Printed Name: Ken McNeely
 Title: President - AT&T California
 Date: 6/8/15, 2015

The Utility Reform Network
 By: *Christine Marlowe*
 Printed Name: Christine Marlowe
 Title: Telecommunication Attorney
 Date: 6-8, 2015

Center for Accessible Technology

By: 

Printed Name: MELISSA W KASOWITZ

Title: LEGAL COUNSEL

Date: JUNE 9, 2015

(End of Attachment A)