Decision 15-10-027 October 22, 2015

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

The Utility Reform Network, Complainant, vs. Pacific Bell Telephone Company D/B/A/ AT&T California (U1001C), Defendant.	Case 13-12-005 (Filed December 6, 2013)

DECISION APPROVING SETTLEMENT

Summary

On May 15, 2015, The Utility Reform Network, Pacific Bell Telephone Company D/B/A AT&T California, and The Center for Accessible Technology 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 The Center for Accessible Technology (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) of the Commission's Rules of Practice and Procedure (Rules), 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

Rule 12(d) requires that any settlement be "reasonable in light of the whole record, consistent with law, and in the public interest." As discussed below, we find that the settlement meets these requirements.

Moreover, the United States Court of Appeals for the Ninth Circuit has observed, in evaluating a settlement, that 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. 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 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.
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> Rule 12.1(d) provides that:
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> 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 granted AT&T California and the other ILECs the right to set rates without regard to the factors ORA enumerated. 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, subject to the general requirement that basic service rates remain just and reasonable.

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.

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. Comments were filed by TURN, CforAT, Greenlining, and ORA.

TURN, CforAT, and Greenlining supported the proposed decision with suggested modifications (discussed below). ORA's comments repeated arguments that were rejected in the proposed decision and are accorded no additional weight. We have modified the decision to state more clearly our reasons for rejecting the ORA analysis.

The supporting comments asked that the decision be amended to clarify the following points:

1. D.06-08-030, the so-called URF Decision, did not grant regulated telephone companies unrestricted freedom to set rates but retained the requirement that basic residential service should remain just and reasonable.
2. The settlement does not "approve" AT&T rate increases or mandate rate increases. Rather, it caps increases for a period of years.
3. The settlement does not unduly bind the Commission, non-parties to the settlement or even settling parties from taking separate action to ensure that carriers, including AT&T, are charging just and reasonable rates.

We find that each of these comments has merit and the proposed decision has been modified accordingly.

Assignment of Proceeding

Michael Picker is the assigned Commissioner and Karl Bemesderfer 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 settlement is an agreement between two parties. It does not "approve" AT&T rate increases or mandate rate increases. Rather, it caps increases for a period of years.

9. 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. Nothing in the settlement precludes the Commission from investigating or reviewing the state of competition in the telecommunications marketplace or ensuring that carriers including AT&T are charging just and reasonable rates.

3. 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 October 22, 2015, at Sacramento, California.

MICHAEL PICKER
President
MICHEL PETER FLORIO
CATHERINE J.K. SANDOVAL
CARLA J. PETERMAN
LIANE M. RANDOLPH
Commissioners

ATTACHMENT A

SETTLEMENT AGREEMENT