Decision **DRAFT DECISION OF ALJ ECONOME** (Mailed 3/07/2006)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Pacific Bell Telephone Company (U 1001 C), Complainant, v. MAP Mobile Communications, Inc., Defendant.	Case 05-11-016 (Filed November 21, 2005)

DECISION GRANTING MOTION TO DISMISS

I. Summary

This decision grants defendant MAP Mobile Communications, Inc.'s (MAP) motion to dismiss this complaint without prejudice on the grounds that the Federal Communications Commission (FCC) is considering many, if not all, of the issues in a case filed about four months before the instant complaint.[1] If the issues between Pacific Bell Telephone Company (Pacific) and MAP are not resolved in the FCC action, Pacific may petition this Commission to reopen this case to resolve those issues.

[1] The FCC case is entitled MAP Mobile Communications, Inc. v. SBC Communications, Inc., Ameritech Corporation, Pacific Bell Communications, and Southwestern Bell Telephone Co., File No. EB-05-MD-010.

II. Background

A. The Complaint and Motion to Dismiss Before this Commission

Pacific asks us to resolve a dispute concerning MAP's alleged refusal to pay for interconnection services, arrangements, facilities and access services (services) MAP has purchased under an interconnection agreement between the parties. Pacific requests a Commission order directing MAP to pay the full disputed amount (which Pacific claims is over $2 million), plus interest.

MAP moves to dismiss the complaint on the following grounds: (a) the FCC is currently considering the same issues raised in Pacific's complaint; (b) this Commission lacks subject matter and personal jurisdiction over Pacific's complaint; (c) the interconnection agreement referenced in the complaint has been terminated for several years; and (d) a portion of the damages Pacific seeks is time-barred by the statute of limitations. Pacific opposes the motion and believes the Commission is the proper forum to adjudicate disputes under MAP's valid interconnection agreement.

B. The FCC Action

On July 12, 2005, MAP filed a complaint at the FCC against SBC Communications, Ameritech Corporation, Pacific, and Southwestern Bell Telephone Company. MAP alleges that these defendants have (a) unlawfully charged MAP for (i) telephone numbers, (ii) transport and termination of SBC-originated traffic, (iii) services which MAP did not request or authorize, and (iv) circuits that MAP cancelled; (b) failed to pay MAP for terminating their local traffic; (c) provided MAP with unclear and confusing bills; and (d) demanded that MAP pay charges that are more than two years old.

On August 11, 2005, the defendants, including Pacific, moved to dismiss at the FCC arguing that the FCC should dismiss all claims against Pacific because the Commission is the appropriate forum to resolve this interconnection agreement dispute. The motion also requests the FCC to dismiss all claims concerning reciprocal compensation and defendant's bills for failure to assert a claim, and that all claims concerning charges greater than two years old should be dismissed because they are barred by the applicable statute of limitations. MAP opposes this motion.

C. Prehearing Conference and Briefs

The instructions to answer determine that hearings are necessary in this case. At the January 12, 2006 prehearing conference, it was determined that the case might be adjudicated either by a motion to dismiss or by briefing on the merits. Because the case can be resolved on the motion to dismiss, we change the initial determination and conclude that hearings are not necessary. This case was submitted upon the conclusion of the briefing on the motion to dismiss on February 7, 2006.

III. Standard of Review

A motion to dismiss essentially requires the Commission to determine whether the party bringing the motion wins based solely on undisputed facts and on matters of law. The Commission treats such motions as a court would treat motions for summary judgment in civil practice. (See Decision (D.) 01-08-061, 2001 Cal. PUC LEXIS 512 ** 8-9.)

IV. Discussion

The FCC is currently considering many, if not all, of the issues that are raised by Pacific's complaint at the Commission. For example, at this Commission, Pacific alleges that the interconnection agreement between itself

and MAP remains in effect, and that MAP owes Pacific charges for services incurred pursuant to the interconnection agreement.

At the FCC, MAP has raised many, if not all, of these issues. MAP alleges that the interconnection agreement terminated in October 1999, that Pacific's direct inward dial (DID) number charges and trunk and termination charges violate federal law, and that Pacific's charges are unlawful under federal law regardless of whether or not they are incurred pursuant to an interconnection agreement.

Whether MAP owes Pacific for certain services involves, in major part, matters of federal law. MAP raised these matters at the FCC before Pacific filed its complaint. Having these two actions proceed simultaneously in two different forums is inefficient at best and poses the risk of inconsistent results. Furthermore, other affiliates over whom we do not have jurisdiction (i.e., Ameritech and Southwestern Bell) are joined in the proceeding before the FCC, and the FCC will have the ability to adjudicate the disputes in a consistent manner vis-à-vis all the affiliates. For these reasons, we dismiss this complaint without prejudice as we have done previously when matters of federal law were simultaneously before this Commission and the FCC. (See *Pacific Bell v. AT&T Communications of California, Inc.*, D.97-09-105, 75 CPUC2d 678.)

In *Pacific Bell v. AT&T*, the Commission dismissed without prejudice Pacific's complaint that AT&T and MCI were marketing their local and interexchange services as one package, thus violating federal law and an FCC decision, as well as state law. The Commission reasoned that whether violations of federal law occurred were best left to the FCC. The Commission also justified its result with reasoning equally applicable to the instant case:

> "…consistent application of federal law will be enhanced by having one regulatory body address these issues. Finally, efficient deployment of this Commission's resources requires that we decline to exercise our jurisdiction where a fully competent agency is also addressing the same issues." (*Id*. at 679.)

In this case, Pacific argues that the same matters are not raised in both proceedings. Pacific states that MAP contests only three of Pacific's charges before the FCC (transport, termination, and DID numbers) while the action before this Commission concerns payments for all interconnection services, including items such as access and transit charges. MAP replies that the issue of transit charges is before the FCC, having been raised by Pacific's parent SBC, and that what Pacific calls an access charge is a different term for what is at issue before the FCC.

We need not resolve whether the issues before the FCC and this Commission are identical, because there are, at the least, many overlapping issues and defenses (e.g., the validity of the interconnection agreement) to resolve. The similarity of the two actions merits the disposition set forth above. Moreover, Pacific will not be prejudiced if the FCC fails to resolve all of the issues raised in this complaint. Should the FCC's final disposition of the similar case before it fail to resolve the issues between Pacific and MAP presented in this case, Pacific may petition this Commission to reopen its complaint in this case to resolve those issues.

Pacific also argues against our dismissing this case because we have jurisdiction to interpret the interconnection agreement. However, we do not dismiss this complaint on jurisdictional grounds, but to further consistent results over all the parties joined in the FCC action, and to further efficient deployment

of this Commission's resources when another competent agency is addressing the same or similar issues.

Because of the result reached today, we need not address the other arguments MAP believes warrant dismissal of the complaint.

V. Comments on the Draft Decision

The draft decision of Administrative Law Judge (ALJ) Econome was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure. Comments were filed on _____ and reply comments were filed on _____.

VI. Assignment of Proceeding

Geoffrey F. Brown is the Assigned Commissioner and Janet A. Econome is the assigned ALJ in this case.

Findings of Fact

1. The FCC is currently considering many of the same issues raised in Pacific's complaint.
2. The Commission's limited resources should not be expended on cases where the FCC is addressing the same or substantially similar and overlapping issues.

Conclusions of Law

1. The complaint should be dismissed without prejudice.
2. Should the FCC's final disposition of the similar case before it fail to resolve the issues between Pacific and MAP presented in this case, Pacific may petition this Commission to reopen its complaint in this case to resolve those issues.

3. The initial determination in the instructions to answer that hearings are necessary should be changed, because we now conclude that hearings are not necessary.

4. Because we wish to resolve the uncertainty concerning similar actions pending simultaneously before two forums, this decision should be effective immediately.

O R D E R

IT IS ORDERED that:

1. The complaint in Case 05-11-016 is dismissed without prejudice.

2. Should the Federal Communications Commission's final disposition in MAP Mobile Communications, Inc. v. SBC Communications, Inc., Ameritech Corporation, Pacific Bell Communications, Southwestern Bell Telephone Company, FCC File No. EB-05-MD-010, fail to resolve the issues between Pacific Bell Telephone Company (Pacific) and MAP Mobile Communications, Inc., Pacific may petition this Commission to reopen its complaint in this case to resolve those issues.

3. Hearings are not necessary to resolve this matter as provided in the foregoing Ordering Paragraphs.

4. Case 05-11-016 is closed.

This order is effective today.

Dated _____, at San Francisco, California.