

Decision 09-12-018 December 17, 2009

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

CommPartners, LLC (U6910C),

Complainant,

vs.

Pacific Bell Telephone Company, dba
AT&T California (U1001C),

Defendant.

Case 08-01-007
(Filed January 14, 2008)

DECISION DENYING COMPLAINT

Summary

CommPartners, LLC (CommPartners) alleged that Pacific Bell Telephone Company, doing business as AT&T California, discriminated against it under state and federal law by refusing to relieve CommPartners of its 911 trunking obligations under their interconnection agreement (ICA). The Commission finds that federal law controls in this matter, and Public Utilities Code Section 453 offers CommPartners no relief from the contractual obligations of its ICA. AT&T California is not solely responsible for 911 reliability.¹ Therefore, there is

¹ If interconnecting carriers provide 911 service independent of AT&T California or other incumbent local exchange carriers.

no legal barrier to it executing a 911 waiver amendment to its ICA with CommPartners. This case is closed.

Background

CommPartners, LLC (CommPartners) is a certificated competitive local exchange carrier (CLEC) authorized to provide “limited facilities-based and resold local exchange and interexchange telecommunications services” in California.² In late 2004, it entered into an interconnection agreement (ICA) with Pacific Bell Telephone Company, doing business as AT&T California,³ and in accordance with the terms of the ICA, established one-way trunks to AT&T California’s selective routers⁴ for the routing of 911 calls. In early 2006, CommPartners submitted a disconnection order with AT&T California seeking removal of the enhanced 911 (E911) trunks. Citing the Complainant and AT&T California’s ICA, AT&T California refused to disconnect the trunks.

In mid-2006, Complainant asked AT&T California for an E911 waiver amendment to their agreement. AT&T California provided CommPartners with a document entitled “13 State E911 Waiver.” According to CommPartners, the document offered a method for it to receive a waiver of the ICA provisions, enabling disconnection of the E911 trunks, and indemnifying AT&T California

² Decision 04-09-045 (September 24, 2004).

³ CommPartners adopted the “SBC California/Pac-West Telecom, Inc.” agreement pursuant to Section 252(i) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996. AT&T California previously did business as SBC California.

⁴ A selective router is a phone switch in a central office that provides tandem switching of 911 calls. It controls the delivery of the voice call with the caller’s telephone number to the designated Public Safety Answering Point (PSAP) based upon the location of the caller.

from any resulting liability for E911 claims. AT&T California asked CommPartners to confirm that Complainant did not have end-users placing 911 calls.

In June 2006, CommPartners signed and submitted the E911 Waiver Amendment, and informed AT&T California that it was not directing any 911 traffic to the 911 trunks that were subject to the disconnection orders. CommPartners stated to AT&T California that all of its end-user 911 calls would automatically be routed by Intrado, an independent 911 provider, and that it was technically impossible for any end-user to send a traditional landline 911 call to CommPartners.

In August 2006, AT&T California denied CommPartners' waiver request and informed it that the incumbent carrier does not support two-way voice trunking configurations without the support of E911 trunks. In November 2006, CommPartners issued disconnection orders to remove the two-way interconnection trunks and E911 circuits in the Eureka local access and transport area (LATA). AT&T California approved the request and removed all Eureka circuits after confirming that CommPartners was removing its entire network in the LATA, not just the E911 trunks.

During 2007, pursuant to the ICA dispute resolution provisions, Complainant twice escalated its contention requesting removal of the E911 trunks, and Defendant denied each escalation. Complainant filed this matter on January 14, 2008, alleging failure to negotiate an ICA in good faith, and violation of state and federal discrimination laws. It seeks disconnection of specified E911 trunks, removal of all associated billing charges, reimbursement, and sanctions.

CommPartners and AT&T California contended that their dispute involves legal issues, not factual issues; therefore, they waived evidentiary hearings and requested that the Commission resolve this matter after review of the legal briefs. The parties stipulated to the receipt into the record of three exhibits,⁵ and filed concurrent opening briefs on September 22, 2008, and concurrent reply briefs on October 31, 2008. Both parties cooperatively responded to the Commission's technical staff's questions regarding the related network from October 2008 through December 2008.

Position of the Parties

CommPartners alleges that AT&T California's failure to negotiate an E911 waiver amendment to their ICA, in good faith, was unjustifiable, discriminatory, and a violation of Section 251(c)(1) of the Communications Act of 1934 (the Act).⁶ It contends that AT&T California has granted E911 waivers and eliminated 911 trunks for other requesting CLECs that state that they do not offer outgoing voice services.⁷ Complainant asserts that it "was ready and willing to certify that it did not, and could not, originate any traditional circuit-switched

⁵ Exhibits 1 and 3 are the Opening and Reply Testimony of CommPartners' Michael Burke, and Exhibit 2 is the Reply Testimony of AT&T California's Patricia Pellerin.

⁶ As amended by the Telecommunications Act of 1996 (TA96). Section 251(c)(1) states: "(c) Additional Obligations of Incumbent Local Exchange Carriers. -- In addition to the duties contained in subsection (b), each incumbent local exchange carrier has the following duties: (1) Duty to negotiate: The duty to negotiate in good faith in accordance with Section 252 the particular terms and conditions of agreements to fulfill the duties described in paragraphs (1) through (5) of subsection (b) in this subsection. The requesting telecommunications carrier also has the duty to negotiate in good faith the terms and conditions of such agreements."

⁷ CommPartners Opening Brief at 9.

911 calls.” It argues that AT&T California’s conduct towards it violates Public Utilities Code Section 453(a)⁸ as well as Section 252(i) of the Act.⁹

CommPartners claims that AT&T California has not audited any of the CLECs to which it has granted 911 waivers in order to determine whether the CLEC was originating voice traffic. It believes that at least one of the CLECs to which AT&T California recently granted a waiver has a business plan identical to its own. CommPartners also contends that AT&T California has granted a waiver to another CLEC that is actively marketing voice/data bundles in the areas where the waiver applies.

AT&T California argues that this matter is a contract dispute. The terms and conditions under which CommPartners and AT&T California interconnect their networks are set forth in the ICA between the parties. AT&T California asserts that nothing obligates it to amend the ICA that CommPartners voluntarily adopted under Section 252(i) of the Act merely because CommPartners does not care for some of its terms.¹⁰ It acknowledges having executed 911 waiver amendments with other carriers; however, AT&T California maintains it has done so only in situations and in those locations where the

⁸ Section 453(a) reads: “No public utility shall as to rates, charges, service, facilities, or in any other respect, make or grant any preference or advantage to any corporation or person or subject any corporation or person to any prejudice or disadvantage.”

⁹ As amended by TA96. Section 252(i) states: "Availability to Other Telecommunications Carriers. -- A local exchange carrier shall make available any connection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement."

¹⁰ AT&T California Opening Brief at 2.

carriers at issue did not offer their customers the ability to place outgoing voice calls. According to AT&T California:

CLECs are not required to have 911 trunks when they do not have two-way interconnection with AT&T California and/or when they serve voice customers that do not have the capability of dialing 911. This would include, for instance, data-only providers and one-way terminating providers. An example of a one-way terminating provider would be one that served only dial-up internet service providers (“ISPs”); another example would be a provider serving only incoming call centers. In these cases, because the customer’s service does not include the ability to dial 911, there is no need for 911 trunks.¹¹

AT&T California denies having violated its Section 251 obligation to negotiate in good faith. It submits that because CommPartners adopted an ICA under Section 252(i) instead of negotiating or arbitrating one under Sections 252(a) or (b), there was nothing over which to negotiate.

AT&T California asserts that even assuming that Section 252(i) required negotiation, there is no evidence in the record to indicate that it negotiated in bad faith in granting CommPartners' request to adopt the Pac-West agreement.

AT&T California insists that CommPartners is not similarly situated to other carriers to which it has granted 911 waivers. According to Complainant's testimony, it notes, CommPartners' customers are placing 911 calls¹² and those calls are being routed to a 911 service provider named Intrado to whom

¹¹ Exhibit 2 at 10, Reply Testimony of Patricia H. Pellerin on behalf of Pacific Bell Telephone Company d/b/a/ AT&T California.

¹² See, e.g., Exhibit 1, Verified Rebuttal Testimony of Michael Burke in Support of Formal Complaint of CommPartners, LLC (U6910C) Against AT&T California, Inc. (U1001C), at 4 (“It does not make any difference to a CommPartners end user how the 911 call gets to the proper PSAP [Public Safety Answering Point]”).

CommPartners has outsourced its 911 services.¹³ AT&T California states that it has no objection to a CLEC outsourcing its 911 obligations to another company. However, it argues that it is not AT&T California's role, and should not be AT&T California's obligation to sanction the manner in which a CLEC meets its 911 obligations or outsources its 911 applications.¹⁴

AT&T California states that while it is not legally obligated to relieve CommPartners of its obligation under the ICA, it will execute a prospective 911 waiver amendment and do so, if the Commission so directs. AT&T California asks the Commission to relieve it of liability for any failed 911 calls that might occur if it permits CommPartners to disconnect its 911 trunks. It urges the Commission to find that a CLEC outsourcing its 911 obligations to an alternative 911 service provider does not raise public safety concerns.

Discussion

While CommPartners raised the issues of voice over Internet protocol providers and alternative 911 service providers,¹⁵ what is at issue in this proceeding is the ICA. There is no dispute that the AT&T California-CommPartners ICA requires CommPartners to establish dedicated 911 trunks between each of its switches and AT&T California's Selective Router for the routing of 911 calls:

¹³ *Id.*

¹⁴ Exhibit 2 at 12.

¹⁵ *See*, CommPartners Opening Brief at 3-5.

[CommPartners] shall connect its switches to the E911 Selective Router by one-way outgoing CAMA trunks dedicated for originating emergency 911 service calls¹⁶

Additionally, Section 4 of the Appendix ITR¹⁷ requires the trunks to be one-way outgoing trunks:

A segregated trunk group will be required to each appropriate E911 tandem within the exchange in which [CommPartners] offers the Exchange Service. This group shall be set up as a one-way outgoing only and shall utilize MF CAMA signaling.¹⁸

There is no language in the agreement that makes the requirement to install and maintain the 911 trunks optional.

CommPartners asked AT&T California to execute a 911 waiver amendment to the ICA, and the incumbent local exchange carrier (LEC) refused to do so. Neither Section 251 nor Section 252 of the Act compels AT&T California to relieve CommPartners of its 911 trunking obligations under the agreement. Moreover, regarding this issue, federal law controls and Pub. Util. Code § 453 offers CommPartners no relief from the contractual obligations of its ICA.¹⁹

CommPartners has not shown that AT&T California has violated state or federal law by refusing to execute a 911 waiver amendment to their ICA. CommPartners characterizes the refusal as an indication of anti-competitive

¹⁶ AT&T California Opening Brief, ICA, Appendix 911-CA, § II. E, WP Appendix at 4 of 7. (CAMA is Centralized Automatic Message Accounting.)

¹⁷ ITR is Interconnection Trunking Requirements.

¹⁸ *Id.*, Appendix ITR at 4 of 11.

¹⁹ The authority granted to state regulatory commissions is confined to the role of arbitrating, approving and enforcing interconnection agreements described in Section 252 of the Act.

behavior or corporate greed. However, AT&T California insists that it has more concern about continuing to be considered a steward of and responsible for the 911 system, than about CLECs outsourcing their 911 service to third-party 911 service providers.

AT&T California wonders whether or not the Commission relies on the fact that its ICAs require CLECs to install and maintain 911 trunks to the 911 tandems to satisfy public safety concerns about 911 system reliability. For more than three decades, federal and state authorities have charged AT&T California and other incumbent LECs with the stewardship of and responsibility for the 911 system. AT&T California contends that if it no longer bears responsibility for the 911 reliability of the carriers that interconnect with its network, it will execute a prospective 911 waiver amendment.

While we continue to consider the reliability of the 911 system an integral element of public safety, competition in the realm of communications dictates that the number of those that we must hold responsible for its reliable operation must likewise expand. Historically, we held AT&T California responsible for the 911 system, because it controlled the network. Today, AT&T California interconnects with vast numbers of carriers and networks. Consequently, it shares the responsibility for the reliability of the 911 system as well as the state and national communications network. We expect every carrier that interconnects with the telephone network in California to meet its 911 obligations, and we will consider interconnecting carriers responsible for the failed 911 calls that occur on their respective networks if they provide 911 service independent of AT&T California or another incumbent LEC.

We do not find AT&T California's refusal to amend its ICA with CommPartners to be a violation of Pub. Util. Code § 453 or § 251 and § 252 of the

Act. Thus, Complainant's request for reimbursement and sanctions is denied. AT&T California is not solely responsible for 911 reliability; therefore, there is no legal barrier to it executing a 911 waiver amendment to its ICA with CommPartners. We urge AT&T California to execute a prospective 911 waiver amendment with CommPartners and disconnect its 911 trunks.

Assignment of Proceeding

Timothy Alan Simon is the assigned Commissioner and Jacqueline A. Reed is the assigned Administrative Law Judge (ALJ) in this proceeding.

Comments on Proposed Decision

The proposed decision of the ALJ in this proceeding was mailed to the parties in accordance with Pub. Util. Code § 311 and Rule 14.3 of the Commission's Rules of Practice and Procedure. CommPartners filed opening comments on December 4, 2009, and AT&T California filed reply comments on December 8, 2009. We have reviewed the comments, and taken them into account, as appropriate, in finalizing this decision.

Findings of Fact

1. CommPartners is a certificated CLEC authorized to provide "limited facilities-based and resold local exchange and interexchange telecommunications services" in California.
2. In late 2004, it opted into the AT&T California-PacWest Telcom, Inc. ICA.
3. Under the terms of the ICA, CommPartners established one-way trunks to AT&T California's selective routers for the routing of 911 calls.
4. In early 2006, CommPartners submitted a disconnection order with AT&T California and asked for enhanced 911 trunks to be removed.
5. Citing the relevant provisions of their ICA, AT&T California refused to disconnect the trunks.

6. In mid-2006, CommPartners asked AT&T California for an E911 waiver amendment to their agreement, and received a document entitled “13 State E911 Waiver” from AT&T California.

7. AT&T California asked CommPartners to confirm that Complainant was not sending any 911 traffic to it.

8. CommPartners signed and submitted an E911 waiver, and told AT&T California that all of its end-user 911 calls would automatically be routed by Intrado, an independent 911 provider, and that it was technically impossible for any end-user to send a traditional landline 911 call to CommPartners.

9. In August 2006, AT&T California denied CommPartners’ waiver request and informed it that the incumbent carrier does not support two-way voice trunking configurations without the support of E911 trunks.

10. In November 2006, CommPartners issued disconnection orders to remove the two-way interconnection trunks and E911 circuits in the Eureka LATA.

11. AT&T California approved the request and removed all Eureka circuits after confirming that CommPartners was removing its entire network in the LATA, not just the E911 trunks.

Conclusions of Law

1. The AT&T California-CommPartners ICA requires CommPartners to establish dedicated 911 trunks between each of its switches and AT&T California’s Selective Router for the routing of 911 calls.

2. Section 4 of the Appendix ITR of the ICA requires the 911 trunks to be one-way outgoing trunks.

3. There is no language in the agreement that makes the requirement to install and maintain the 911 trunks optional.

4. Neither Section 251 nor Section 252 of the Act compels AT&T California to relieve CommPartners of its 911 trunking obligations under the agreement.

5. Moreover, regarding this issue, federal law controls and Pub. Util. Code § 453 offers CommPartners no relief from the contractual obligations of its ICA.

O R D E R

IT IS ORDERED that:

1. The complaint of CommPartners, LLC against Pacific Bell Telephone Company, doing business as AT&T California is denied for failure to state a claim for which relief can be granted.

2. Case 08-01-007 is closed.

This order is effective today.

Dated December 17, 2009, at San Francisco, California.

MICHAEL R. PEEVEY
President

DIAN M. GRUENEICH

JOHN A. BOHN

RACHELLE B. CHONG

TIMOTHY ALAN SIMON

Commissioners