

Decision 11-01-028

January 13, 2011

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application by Pacific Bell Telephone Company (U1001C) d/b/a AT&T California For Arbitration of an Interconnection Agreement with SureWest Telephone (U1015C) d/b/a SureWest Broadband and SureWest TeleVideo (U6324C) d/b/a SureWest Broadband Pursuant to Section 252(b) of the Telecommunications Act of 1996.

Application 09-12-022
(Filed December 18, 2009)

**ORDER GRANTING REHEARING OF DECISION 10-10-028,
MODIFYING DECISION 10-10-028, AND DENYING REHEARING
OF DECISION, AS MODIFIED**

I. INTRODUCTION

SureWest Broadband and SureWest Televideo doing business as (dba) SureWest Broadband (SureWest) timely applied for rehearing of Decision (D.) 10-10-028.¹ D.10-10-028 concerns the proposed Interconnection Agreement (ICA) between SureWest and Pacific Bell Telephone Company dba AT&T California (AT&T). At issue is section 1.3 of the ICA. Section 1.3 was originally proposed by AT&T. The Draft Arbitrator's Report (DAR), which issued on June 17, 2010 eliminated section 1.3. However, the Final Arbitrator's Report (FAR) issued on September 17, 2010, included a portion of the language proposed by AT&T for section 1.3, concerning the porting of telephone numbers. D.10-10-028 adopted that modification. Section 1.3 of the FAR provides: "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."

¹ Citations herein are to the pdf electronic versions of the Commission's decisions. Electronic versions of Commission decisions issued after July 2000 can be found on the Commission's website at: <http://www.cpuc.ca.gov/PUC/documents>.

SureWest argues that section 1.3 adopted by D.10-10-028 is an improper limitation on porting of numbers by the parties. SureWest argues that section 1.3 should be deleted in its entirety or, in the alternative, modified. AT&T opposes SureWest's application for rehearing but agrees that section 1.3 should be modified; however, it opposes SureWest's proposed modification in favor of its own.

II. DISCUSSION

SureWest contends that section 1.3 of the FAR is erroneously overbroad in violation of the Telecommunications Act and rules adopted by the Federal Communications Commission (FCC). (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. § 51.1 et seq.)² It seeks rehearing, arguing that the FAR should be modified to delete section 1.3, or in the alternative, modified so that it instead provides: “Parties shall port numbers only within the rate center to which the NXX of the ported number is assigned.” (SureWest application for rehearing at p. 6.)

In its response to SureWest’s application for rehearing, AT&T argues the alternate language proposed by SureWest in its application for rehearing is not specific enough. AT&T instead proposes the ICA should be revised to provide for the exemption of foreign exchange service, and offers the following modification of section 1.3: “Parties shall port telephone number only to those end users with a service address in the rate center to which the NXX of that ported number is assigned, subject to exceptions (e.g., Foreign Exchange service) as noted in the numbering resource guidelines.” (December 9, 2010 AT&T response to SureWest application for rehearing at p. 2) Although not identical, AT&T’s proposed modification is similar to its initial proposed

² Section 251 of Title 47 of the United States Code imposes various duties on each telecommunications carrier, including, among other things, the duty to provide, to the extent feasible, number portability. (47 U.S.C. § 251(b)(2).) Section 252 of Title 47 of the United States Code pertains to agreements, including arbitration agreements, concerning requests for interconnection, services and network elements pursuant to section 251. Part 51.1, et seq., of Title 47 of the Code of Federal Regulations concern the rules to implement sections 251 and 252 of Title 47 of the United States Code.

language for section 1.3, as well as the actual modified version of that language which the FAR adopted.

Both SureWest and AT&T agree that the sepcific language ordered by the FAR is problematic. While AT&T proposes modified language as a solution, SureWest's primary request is for the Commission to essentially adopt the Draft Arbitration Report, by deleting section 1.3. In its response to the DAR, AT&T alleged the Commission erred by omitting section 1.3, contending that the deletion of section 1.3 was inconsistent with FCC practice. Following issuance of the FAR which included the section 1.3 now at issue, AT&T alleged the Commisison would err if it did not adopt AT&T's proposal for section 1.3, instead of the FAR's section 1.3, arguing:

The FAR correctly finds that Section 1.3 should prohibit the parties from porting outside the rate center on the ground that the FCC limits the porting of telephone numbers to the rate center to which a telephone number is assigned. However, the FAR declines to prohibit parties from assigning ...[telephone numbers] outside the rate center on the ground that to do so "effectively bars SureWest from providing what is known as 'virtual NXX' or VNXX service to its customers."

Now, in its response to SureWest's application for rehearing, AT&T agrees there are problems with section 1.3, but does not argue that deletion of it in its entirety, or replacement with SureWest's proposed modification would be erroneous. Rather, AT&T argues for limitations on porting based solely on policy, not legal, reasons.

SureWest argued that the ICA adopted by D.10-10-028 "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)." (SureWest application for rehearing at p. 4.) SureWest argues that under the ICA adopted by D.10-10-028, it would be barred from accepting a subscriber request to port a telephone number from an exchange different from the one where the customer resides, if the customer did not reside in the same area as his or her telephone number. Thus, SureWest

alleges, section 1.3 prevents local number portability that is permitted by the Telecommunications Act (47 U.S.C §§ 153(46)³ and 251(b)(2).) SureWest also argues that the “FCC has considered provisions similar to the one adopted in ...[D.10-10-028] and found such restrictions on porting number violate carriers’ [s]ection 251(b)(2) obligations...,” citing a ruling in an FCC docket.⁴ (SureWest application for rehearing at pp. 4-5.) The FCC order SureWest relies on provided in part:

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. [Footnote omitted.] 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....

(Id.)

Further, SureWest asserts, “under the rules adopted by the FCC... not only is SureWest authorized to port numbers with disparate routing and rating points, it is impermissible to restrict its right to do so.” (SureWest application for rehearing at p. 5.)

Relevant federal law requires the Commission to authorize ICAs that are consistent with the requirements of section 251 and section 252 of the Telecommunications Act. State commissions are authorized to reject portions of ICAs

³ Telecommunications service is defined in section 153(46) of Title 47 of the United States Code as follows: “The term “telecommunications service” means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.”

⁴ Telephone Number Requirements for IP-Enabled Service 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 page 19, paragraph 33.

that do not meet the requirements of the aforementioned federal laws. Thus, for the reasons discussed above, we find that the language in section 1.3 of the ICA runs afoul of federal law and should be deleted. Although SureWest (and AT&T) proposed modified language in the alternative, at this point, there does not appear to be any compelling legal reason for the Commission to adopt any additional language. Upon reviewing each and every allegation of error, we are of the opinion that rehearing should be granted and D.10-10-028 should be modified as set forth herein.

THEREFORE, IT IS ORDERED that:

1. The application for rehearing of Decision 10-10-028 is granted.
2. Decision 10-10-028 is modified as follows:
 - (a) On page 2, the sentence “We affirm the arbitrator’s determination” is deleted and the following added in its place: “On June 17, 2010, the Draft Arbitrator’s Report determined that section 1.3 of AT&T’s proposed ICA effectively bars SureWest Broadband from providing what is known as “virtual NXX” or VNXX service to its customers and that section 1.3 of the ICA should be deleted in its entirety. Yet the Final Arbitrator’s Report determined that section 1.3 of the proposed ICA should be modified as set forth in the Final Arbitrator’s Report. We do not agree that the proposed modification will prevent the problems highlighted in the Draft Arbitrator’s Report, and for the reasons set forth in the Draft Arbitrator’s Report, we agree with that section 1.3 should be deleted in its entirety.”
 - (b) On page 3, Finding of Fact Number 3 is added as follows: “3. The Draft Arbitrator’s Report of June 17, 2010 determined that permitting section 1.3 to remain in this ICA would place SureWest Broadband at a significant competitive disadvantage relative to other CLECs with which it competes.”
 - (c) On page 3, Finding of Fact Number 4 is added as follows: “4. We take official notice, as requested by SureWest Broadband, of an advice letter filing by AT&T California’s predecessor SBC California, notifying us of an amendment to an interconnection agreement with another CLEC that explicitly recognizes that the interconnecting CLEC offers VNXX service to its customers.”
 - (d) On page 3, Conclusion of Law Number 1 is deleted and the following added in its place: “1. Section 1.3 of the ICA should be deleted in its entirety.”

(e) Ordering Paragraph Number 1 is deleted and the following added in its place: “1. Section 1.3 is deleted from the ICA,.”

3. Rehearing of Decision 10-10-028, as modified, is denied.
4. Application 09-12-022 is closed.
5. The Executive Director shall serve this order on all parties to this

proceeding.

This order is effective today.

Dated January 13, 2011 at San Francisco, California.

MICHAEL R. PEEVEY
President
TIMOTHY ALAN SIMON
NANCY E. RYAN
Commissioners