

Decision 08-12-032 December 18, 2008

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the
Commission's Own Motion into Monitoring
Performance of Operations Support Systems.

Rulemaking 97-10-016
(Filed October 9, 1997)

Order Instituting Investigation on the
Commission's Own Motion into Monitoring
Performance of Operations Support Systems.

Investigation 97-10-017
(Filed October 9, 1997)

**DECISION GRANTING JOINT MOTION FOR ADOPTION OF
AMENDMENTS TO PERFORMANCE INCENTIVE PLAN**

Summary

Pacific Bell Telephone Company, doing business as AT&T California (AT&T California), and the following competitive local exchange carriers (CLECs), Comcast Phone of California LLC, Covad Communications Company, tw telecom, and US TelePacific Corp. (Joint CLECs) (collectively, the Settling Parties) have jointly moved the Commission to adopt their consensus modifications to AT&T California's performance incentives plan (PIP). The amendments seek to simplify the PIP by reducing the complexity of the plan while preserving the features that, in fact, provide incentives for appropriate performance. The Settling Parties intend a simplified PIP to be more easily understood, more effectively implemented, less susceptible to differing interpretations, and less prone to calculation errors. The Commission adopts the

consensus modifications to the PIP, the full text of which is set forth in Appendix A to this decision, and closes this proceeding. Future amendments, modifications, and/or changes to the PIP shall be sought through an application.

Background

On October 9, 1997, the Commission issued orders instituting a rulemaking proceeding and an investigation to effect several goals, including the determination of reasonable standards of Operation and Support System (OSS)¹ performance for AT&T California, the development of a mechanism that will allow the Commission to monitor improvements in OSS performance, and the assessment of the best and fastest method of ensuring compliance if standards are not met, or improvement is not shown.

Pursuant to the issuance of the OSS OII, various parties entered into lengthy and detailed negotiations to establish a set of performance measures consistent with the Commission's stated goals. Collectively, the parties filed a motion for approval of a Joint Partial Settlement Agreement regarding Performance Measurements (JPSA) on January 7, 1999, and filed motions on the remaining open issues on January 8, 1999. On August 5, 1999, the Commission issued Decision (D.) 99-08-020, which approved the JPSA, resolved most of the remaining open issues, and established AT&T California's performance

¹ OSS is the methods and procedures (mechanized or not) which directly support the daily operation of the telecommunications infrastructure. The average Local Exchange Carrier has hundreds of OSSs, including automated systems supporting order negotiation, order processing, line assignment, line testing, and billing. Hereafter, OSS OII.

measurements plan (PMP). The Commission has revised the JPSA three times since its initial approval.²

The Commission adopted AT&T California's PIP on March 6, 2002 in D.02-03-023, and modified it on June 6, 2002 in D.02-06-006. The current PIP applies a complex set of rules to calculate payments when performance does not meet established parity or benchmark standards. In establishing the PIP, the Commission acknowledged that it should be subject to subsequent review to "examine how the incentives plan model is functioning,"³ among other things. AT&T California advises that it reviewed both the PMP and PIP and identified specific modifications intended to improve their functioning.

On November 27, 2007, AT&T California served notice to the service list of the above-titled proceedings that a settlement conference pursuant to Article 12 of the Commission's Rules of Practice and Procedure would take place on December 5 "to discuss the possibility of settling certain issues relating to the performance measures (contained in the JPSA) and the associated performance incentives plan [PIP] that are the subject of this proceeding, Rulemaking (R.) 97-10-016/Investigation (I.) 97-10-017."⁴ AT&T California reports that a number of parties attended the initial conference call, and in the subsequent months, it held a series of conference calls to discuss AT&T California's proposed changes to both the PMP and PIP. Overall, AT&T California held seventeen conference calls.

² See D.01-05-087, D.03-07-035, and D.07-09-009.

³ D.02-03-023, *mimeo.*, p. 99 (Ordering Paragraph 6).

⁴ Email provided as Attachment C to the Joint Motion.

In the course of the conference calls, AT&T California proposed modifications to both the PMP and PIP. AT&T California asserts that its proposed modifications to the PMP are intended to simplify and reduce anomalies in the performance measures. After months of discussion and negotiation, the Settling Parties agreed to specific changes to the PMP. AT&T California has sought approval of those changes separately, with the Joint CLECs identified as participants in the collaborative process, pursuant to the Advice Letter process approved in D.07-09-009 for consensus changes to the PMP.⁵

After concluding discussion of the PMP changes, the Settling Parties held collaborative discussions regarding AT&T California's proposed changes to the PIP. AT&T California notes that its "proposals seek to simplify the PIP by reducing the complexity of the plan while preserving the features that truly provide incentives for appropriate performance."⁶ It also submits that a simplified PIP would be more easily understood, more effectively implemented, less susceptible to differing interpretations, and less prone to calculation errors.

On August 13, 2008, the Settling Parties jointly filed a motion requesting the Commission approve the modifications to the AT&T California PIP that they had negotiated. No party responded to or opposed the motion.

Amendments to the PIP

AT&T California proposed to eliminate the Tier 2 remedy payments previously required in the plan by the Commission. AT&T California also proposed that CLEC participation in the PIP be made voluntary rather than

⁵ Advice Letter 33311 submitted August 12, 2008, and approved on October 16, 2008.

⁶ Joint Motion at p. 3.

mandatory, and the voluntary nature of participation would be reflected in an interconnection agreement (ICA) amendment.⁷ The Settling Parties report that, after extensive discussion and negotiation, they agreed to certain changes to the PIP -- including that CLEC participation be made voluntary via an interconnection amendment.

Among the changes to the structure of the PIP, the Settling Parties agreed to designate certain performance measures⁸ as "critical." These measures, which are all subject to payments to individual CLECs (Category A),⁹ are identified as "primary" measures and are assigned to higher payment levels than the remaining Category A measures, which are designated as "secondary." The specific changes agreed to are reflected in the Amended PIP set forth in Appendices A and B, affixed to this decision. Appendix A is the consensus PIP resulting from the above negotiations. Appendix B is a "red line" version showing the changes to the previous PIP.

⁷ At the time of the filing of the Joint Motion, the Settling Parties had not yet negotiated the ICA amendment that will incorporate the revised PIP and its voluntary nature.

⁸ Performance measures were developed to help assess the provision of nondiscriminatory access to OSS and other services. Elements or functions were combined into the broad categories of: pre-ordering, ordering, provisioning, maintenance, network performance, billing, collocation, database updates, and interfaces.

⁹ Category A measures include all remedy eligible measures, except Measures 24 [Percent Blocking on Common Trunks], 38 [Percent Database Accuracy (Pacific Bell Only)] and 42 [Percent of Time Interface is Available], and are assessed at an individual CLEC level. Category B measures (Measures 24, 38 and 42) are only assessed for the aggregate of all CLECs.

In reaching an agreement on revisions to both the PMP and PIP, AT&T California and the Joint CLECs agreed on two important points.¹⁰ First, the Joint CLEC agreement regarding identification of certain performance measurements as "critical," and designated as "primary" Category A measures for the purposes of the revised PIP, will not be used against Joint CLECs in future negotiations or contested case proceedings related to further changes to the JPSA.¹¹ Second, the Settling Parties agreed that all revisions made to the PMP and PIP will be subject to review and negotiation in future JPSA collaboratives and any agreements reached in this collaborative were made without prejudice and will not be used by any of the Settling Parties to preclude revisiting and/or modifying any aspect of performance measurements and/or the PIP.

Discussion

Standard of Review

Rule 12.1(d) of the Commission's Rules of Practice and Procedure provides that a settlement must be reasonable in light of the whole record, consistent with the law, and in the public interest for the Commission to approve it. We examine the consensus modifications to the PIP considering these three criteria.

¹⁰ The Joint CLECs point out that they do not take a position on AT&T California's request to eliminate Tier 2 remedy payments (related to remedy payments placed in escrow that are then returned to AT&T California customers on an annual basis).

¹¹ The Settling Parties state that the Joint CLECs identified only specific performance measurements as "critical" and designated them as "primary." Therefore, the Joint CLECs are precluded from readdressing performance measurements that can or should be designated as "primary."

Reasonable in Light of the Whole Record

The Settling Parties include the carriers that are most directly affected by the standards by which AT&T California provisions its OSS. As a result, the proposed settlement reflects a "business-to-business" consensus regarding appropriate wholesale performance incentives for today's telecommunications market. Moreover, the Settling Parties have devoted extensive time and effort to reaching this settlement. Thus, we conclude that this accord is reasonable in light of the whole record.

In the Public Interest

This Commission has recognized a strong public policy of California favoring settlement. AT&T California urges prompt approval of this accord in order to encourage "business-to-business" solutions for and settlements of the challenges facing the telecommunications industry. We find that the revised PIP will benefit the telecommunications industry by bringing certainty to the issue of appropriate wholesale performance incentives, and conclude that it is in the public interest.

Consistent with the Law

The Settling Parties assert that they intend the attached revised PIP to be consistent with the laws governing OSS access. The Telecommunications Act of 1996 and the Federal Communications Commission's (FCC) implementing rules require incumbent local exchange carriers (ILECs), such as AT&T California, to provide CLECs with nondiscriminatory access to OSS. In the August 1996 Local Competition First Report and Order, the FCC commented that ILECs, such as AT&T California, must provide CLECs with access to the preordering, ordering, provisioning, billing, repair, and maintenance OSS subfunctions such that CLECs

are able to perform these OSS functions in “substantially the same time and manner” as the ILECs can for themselves.¹²

In August 1997, the FCC’s Ameritech Opinion clarified that for those OSS subfunctions with retail analogs, an ILEC “must provide access to competing carriers that is equal to the level of access that the [ILEC] provides to itself, its customers or its affiliates, in terms of quality, accuracy and timeliness.”¹³ The FCC further detailed in the Ameritech Opinion that for those OSS functions with no retail analog, an ILEC must offer access sufficient to allow an efficient CLEC a “meaningful opportunity to compete.”¹⁴

We find that the consensus modifications to the PIP are consistent with the requirements of applicable law because they provide incentives for AT&T California to provide its competitors with sufficient, non-discriminatory access to OSS in accordance with the Act. The consensus modifications appear to strike a reasonable compromise among all parties’ interests. Therefore, we conclude that the revised PIP is consistent with the law.

In sum, the consensus modifications to the PIP satisfy the three criteria. Accordingly, we grant the Settling Parties’ Joint Motion and adopt their amendments to AT&T California’s performance incentive plan.

Closing of the Docket/Looking Ahead

After eleven years, this aged docket has run its course. At present, the PIP is the only remaining segment in this proceeding that has not been re-directed to

¹² FCC 96-325 at ¶ 507 (August 8, 1996).

¹³ FCC 97-298 at ¶ 139 (August 19, 1997).

¹⁴ *Id.* at ¶ 141.

a new and more active path for its future gradual changes or modifications. When this Commission issued the decision setting forth the initial PIP, we expected that the plan would evolve over time. However, we neither anticipated nor planned that its evolution would intermittently take place within its originating and fossilizing docket. Therefore, with the adoption of the current amendments herein, we shall close this proceeding. We direct parties to pursue future amendments, modifications, and/or changes to the PIP through an application, in accordance with Public Utilities Code § 1701.1 and Rule 2.1 of the Commission's Rules of Practice Procedure.

Waiver of Comment Period

This is an uncontested matter, where the decision grants the relief requested. Therefore, pursuant to Pub. Util. Code § 311(g)(2) and Rule 14.6(c)(2) of the Commission's Rules and Practice Procedure, the otherwise applicable 30-day period for public review and comment is reduced to seven days. No reply comments will be accepted. No comments were filed.

Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and Jacqueline A. Reed is the assigned Administrative Law Judge.

Findings of Fact

1. The current PIP applies a complex set of rules to calculate payments when performance does not meet established parity or benchmark standards.

2. In establishing the PIP, the Commission acknowledged that it should be subject to subsequent review to examine how the incentives plan model is functioning, among other things.

3. AT&T California reviewed both the PMP and PIP and identified specific modifications intended to improve their functioning.

4. On November 27, 2007, AT&T California noticed this proceeding's service list about a December 5 settlement conference "to discuss the possibility of settling certain issues relating to the performance measures (contained in the JPSA) and the associated performance incentives plan."

5. AT&T California held 17 conference calls to discuss its proposed changes to both the PMP and PIP.

6. In August 2008, the Settling Parties jointly filed a motion requesting approval of the modifications to the AT&T California PIP that they had negotiated.

7. The Settling Parties include many of the carriers that are most directly affected by the standards by which AT&T California provisions its OSS.

8. As a result, the proposed settlement reflects a "business-to-business" consensus regarding appropriate wholesale performance incentives for today's telecommunications market.

Conclusions of Law

1. The consensus modifications to the AT&T California PIP attached to this decision, as Appendix A, are reasonable, consistent with the law, and in the public interest.

2. The Settling Parties' Joint Motion for Adoption of Amendments to the Performance Incentive Plan pursuant to D.02-06-006 should be granted, and the consensus modifications to the AT&T California PIP should be approved.

3. This docket should be closed.

4. Future amendments, modifications, and/or changes to the PIP should be sought through an application, in accordance with Pub. Util. Code § 1701.1 and Rule 2.1 of the Rules of Practice and Procedure.

5. For administrative efficiency, this order should be made effective immediately.

O R D E R

IT IS ORDERED that:

1. The Joint Motion for Adoption of Amendments to Performance Incentives Plan pursuant to Decision 02-06-006 and Article 12 of the Commission's Rules of Practice and Procedure by Pacific Bell Telephone Company, doing business as AT&T California, Comcast Phone of California, LLC, Covad Communications Company, tw telecom, and U.S. Telepacific Corp. is granted.
2. The consensus modifications to AT&T California's Performance Incentives Plan, attached to this decision as Appendix A, are approved.
3. Future amendments, modifications, and/or changes to the PIP shall be sought through an application, in accordance with Pub. Util. Code § 1701.1 and Rule 2.1 of the Commission's Rules of Practice and Procedure. Parties shall reference Rulemaking (R.) 97-10-016/Investigation (I.) 97-10-017 in the initial paragraph of a new application.
4. R.97-10-016 and I.97-10-017 are closed.

This order is effective today.

Dated December 18, 2008, at San Francisco, California.

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
TIMOTHY ALAN SIMON
Commissioners

