

Decision 03-11-014 November 13, 2003

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

MCI Metro Access Transmission Services,

Complainant,

vs.

Pacific Bell Telephone Company (U-1001-C),

Defendant.

(ECP)

Case 03-07-020

(Filed July 14, 2003)

ORDER APPROVING SETTLEMENT AGREEMENT

Summary

This order approves a settlement agreement between MCI Metro Access Transmission Services LLC (MCI) and Pacific Bell Telephone Company doing business as SBC California (SBC California). The agreement, as represented by the essential terms appended hereto, establish interim and permanent solutions to support MCI's request for its unbundled network element platform (UNE-P) end-user voice mail offering in California. The complaint is dismissed.

Background

MCI has been seeking from SBC California an electronic ordering process known as Local Access and Transport Area-Wide Message Waiting Indicator¹ (LATA-Wide MWI) Service. The service will enable MCI to provide MWI to its local UNE-P customers who use MCI's voice mail product. SBC California advised MCI that it did not expect the necessary upgrades for LATA-Wide MWI provisioning to be completed until January 2004.

On July 14, 2003, MCI filed the above-titled Expedited Complaint and Request for Mediation against SBC California alleging, among other things, that SBC California's inability to timely provision LATA-Wide MWI violated the parties' Interconnection Agreement (ICA) and this Commission's Decision (D.) 01-09-054². SBC California denied the allegations.

In accordance with D.95-12-056³ and following diligent and good faith negotiations regarding the implementation date of an ordering and provisioning process for LATA-Wide MWI, MCI and SBC California agreed to settle their dispute. On September 23, 2003, they moved⁴ the Commission to approve their settlement agreement.

¹ Commonly used with voice mail, a switch feature in the form of a stutter dial tone or a light indicator on a telephone that notifies a customer that she or he has a message that has not yet been retrieved and processed.

² The Commission approved the ICA between MCI and SBC California in this decision.

³ This order set forth a process under which the parties to an ICA must first attempt to informally resolve any disputes over terms of the agreement at the executive level.

⁴ The parties requested approval of their agreement by means of a letter and proposed order. We shall regard these as a joint motion and entertain them accordingly.

Generally, the Commission does not review or approve settlement agreements reached in complaint cases. However, dispute resolution process cases can be distinguished from the majority of complaint cases. Dispute

resolution process cases involve conflicts arising out of ICAs. The Commission approves ICAs and their amendments either through advice letters or at the conclusion of an arbitration. Consequently, while the Commission does not require dispute resolution process complainants to submit their agreements for approval, some parties might seek review as a means of mending a frayed ICA. Nevertheless, the Commission will apply the standard of review appropriate for settlements.

Terms of the Agreement⁵

Interim and permanent solutions comprise the agreement. First, SBC California will deliver an interim solution to support MCI's request for its UNE-P end-user voice mail offering in California.⁶ MCI will allow a one-week trial period to test or "prove out" the interim solution. Both Parties have agreed to cooperate during the trial period by sharing any necessary information. MCI has agreed not to start submission of live/production Local Service Requests until both parties have accepted the interim solution as "production ready."

Then, SBC California will implement a permanent solution by December 15, 2003. The permanent solution will replace the interim solution by using an Operations Support Systems upgrade that will continue to allow MCI to provide MWI, using SBC California's LATA-Wide MWI Links to MCI's local UNE-P

⁵ A copy of the agreed upon terms are appended to this decision.

⁶ SBC California agreed to deliver this by September 25, 2003.

customers who use its voice mail service. SBC California will make the permanent solution available for use by MCI by January 5, 2004.

Discussion

Commission Practice and Procedure Rule 51.1(e) provides that, prior to approval, the Commission must find a settlement “reasonable in light of the whole record, consistent with the law, and in the public interest.” This accord enables MCI and SBC California to satisfy the terms of their ICA by providing what MCI seeks: an interim and permanent process for ordering and implementing the LATA-wide MWI’s. As such, we find the agreement to meet the first two prongs of our Rule. In addition, the settlement enhances the local market by increasing the number of full-service voicemail providers. Thus, local competition in California is strengthened to the benefit of the public interest and in satisfaction of the third prong of Rule 51.1(e). In sum, we find the essential terms of MCI and SBC California’s accord to be reasonable, consistent with the law and in the public interest. We approve the settlement.

Comments on Draft Decision

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Section 31(g)(2) of the Public Utilities Code, the otherwise applicable 30-day period for public review and comment is being waived.

Assignment of Proceeding

Geoffrey F. Brown is the Assigned Commissioner and Jacqueline A. Reed is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. After diligent and good faith negotiations regarding the implementation date of an ordering and provisioning process for LATA-Wide MWI, MCI and SBC California agreed to settle their ICA dispute.
2. On September 23, 2003, MCI and SBC California asked the Commission to approve their settlement.
3. This accord enables MCI and SBC California to satisfy the terms of their ICA by providing what MCI seeks.
4. The settlement enhances the local market by increasing the number of full-service voicemail providers.
5. The settlement strengthens local competition in California.

Conclusions of Law

1. Pursuant to Rule 51.1(e), the Commission should apply the standard of review appropriate for settlements.
2. The essential terms of MCI and SBC California's accord are reasonable, consistent with the law and in the public interest.
3. The Commission should grant the joint motion approving the essential terms of the settlement.
4. Since the decision resolves a dispute and grants the relief requested, it should be effective on the date it is signed.

O R D E R

IT IS ORDERED that:

1. The joint motion of MCI Metro Access Transmission Services LLC (MCI) and Pacific Bell Telephone Company doing business as SBC California seeking approval of the settlement agreement, represented by the essential terms

appended to this Order (Appendix), establishing interim and permanent solutions to support MCI's request for its unbundled network element platform end-user voice mail offering in California, is granted.

2. Case 03-07-020 is dismissed with prejudice.

This order is effective today.

Dated November 13, 2003, at San Francisco, California.

MICHAEL R. PEEVEY

President

CARL W. WOOD

LORETTA M. LYNCH

SUSAN P. KENNEDY

Commissioners

Commissioner Geoffrey F. Brown, being necessarily absent, did not participate

APPENDIX

Essential Terms of the Settlement Agreement between MCI Metro Access Transmission Services, LLC and Pacific Bell Telephone Company doing business as SBC California

1. INTERIM SOLUTION

- 1.1. SBC California will initially provide an interim solution, as further ordered below, to support MCI's request for its UNE-P end-user voice mail offering in California.
- 1.2. SBC California agrees to deliver this interim solution no later than September 25, 2003.
- 1.3. MCI agrees to a one (1) week trial period to prove out the interim solution.
- 1.4. The Parties agree to cooperate during the trial period by, among other things, sharing any necessary information.
- 1.5. MCI agrees not to start submission of live/production Local Service Requests ("LSRs") until both SBC California and MCI have mutually accepted the interim solution as "production ready."

2. PERMANENT SOLUTION

- 2.1. SBC California will implement a permanent solution by December 15, 2003.
- 2.2. The permanent solution will replace the interim solution by using an OSS upgrade that will continue to allow MCI to provide MWI, using SBC California's LATA-Wide MWI Links to MCI's local UNE-P customers who use MCI's voice mail service.
- 2.3. SBC California will make the permanent solution available for use by MCI by January 5, 2004.

(END OF APPENDIX)