

Decision 99-03-057 March 18, 1999

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Pacific Bell (U 1001 C), application to modify certain affiliate transaction rules as contained D.92-07-072 and D.86-01-026 to facilitate the post-merger consolidation of support services.

Application 98-06-050
(Filed June 17, 1998)

OPINION

Summary

This decision grants with conditions the Application of Pacific Bell (Pacific) to interpret Ordering Paragraph 5 of Decision (D.) 92-07-072 to permit netting of intellectual property and proprietary assets between Pacific and affiliates, and to allow the use of fully distributed costs for pricing services provided by SBC Communications Inc. (SBC) and centralized support service organizations of Pacific and affiliates.

Discussion

Pacific filed this application for modification of certain affiliate transaction rules as set forth in D.92-07-072 and D.86-012-026. Specifically, Pacific requests that we interpret the rule that an affiliate must compensate Pacific for the transfer of Intellectual Property and Proprietary Information (IPPI) as follows:

Ordering Paragraph 5 of D.92-07-072 shall be interpreted such that intellectual properties and other proprietary assets ("IP") owned by Pacific Bell which are contributed to and used by an affiliated centralized support services organization or holding company in the performance of support services to Pacific Bell, Pacific Bell Directory, Nevada Bell, and/or Southwestern Bell Telephone Company ("SWBT")(collectively, the "Telcos"), shall be netted

against like-kind comparable IP owned by another contributing Telco, and vice versa, to the extent that IP is comparable in character or attribute.

Pacific also requests that we approve the use of fully distributed cost allocations to bill for services provided by centralized support services organizations and SBC, Pacific, and other affiliates. Pacific asks that we adopt the following order:

"Centralized support services organizations and SBC Communications Inc. may use fully distributed cost allocations for services supporting Pacific Bell and other affiliates."

As indicated in its application, the requests of Pacific flow from D.97-03-067, in which the California Public Utilities Commission (Commission) authorized the merger of the Pacific Telesis Group and SBC. This application is part of the effort to implement that decision and realize savings and efficiencies contemplated by the merged parties.

Pacific had originally requested these items in Application (A.) 97-11-040, along with a request that the transfer fee for an employee transferred from Pacific to an affiliated entity be waived. Protests to that application were filed by the Commission's Office of Ratepayer Advocates (ORA), AT&T Communications of California (AT&T), and MCI Telecommunications Corporation (MCI). Two prehearing conferences were held at which several parties in addition to protestants participated. Extensive discovery was held, and hearing dates established. Following the last prehearing conference several meetings were held between the parties to the proceeding, resulting in the withdrawal of A.97-11-040 and the filing of A.98-06-050. The issue pertaining to waiving the transfer fees for employees is no longer a part of Pacific's request.

Only one response was received to this application. This was from ORA, which does not oppose the application but asks that safeguards relating to the matter of transfer of intellectual property be imposed.

In its response ORA lists the various safeguards promised by Pacific in its filing. These are the following:

- * Pacific continues to own its IPPI.
- * The like-for-like netting process applies only to IPPI owned by the telephone companies and used for the benefit of the telephone companies.
- * The like-for-like netting process applies only to "like-kind comparable" IPPI.
- * The like-for-like netting process will not apply to IPPI used by a non-regulated, competitive affiliate or provided to an administrative affiliate for use by a non-regulated, competitive affiliate.
- * Inventories of IPPI potentially subject to the like-for-like netting process are being made.
- * Pacific will maintain a complete listing of IPPI provided to an administrative affiliate.
- * A listing will be maintained which provides a general description of the IPPI where the like-for-like netting was utilized.
- * No "customer specific" information will be shared between telephone companies or affiliates in the like-for-like netting process.
- * Where no like-for-like IPPI exists, SBC will use appropriate costing processes to bill SWBT for Pacific's IPPI.

- * Pacific will provide additional information and a description of the netted IPPI to Commission staff within 10 days if Commission staff has questions, concerns or requires additional information in order to verify any particular transaction.
- * If the initial verification process does not satisfy the Commission's staff's questions or concerns, Pacific agrees to pursue whatever additional information may be required on a case-by-case basis.

We note that ORA did not define the term "Commission staff." We shall interpret this to mean both ORA and the Telecommunications Division. We assume that the "initial verification process" includes all but the last safeguard listed by ORA above.

In addition, ORA requests a clarification of "like-for-like" in the netting-out process to make sure that there is true value being represented on both sides of the equation. It would also have us determine that "customer-specific" information includes both carrier and end-user information. In addition, ORA prefers to receive regular quarterly updates on the nature of the like-for-like netting process being undertaken by Pacific. ORA also indicates that an audit is a proper way to verify compliance with the procedures described in the application; however, ORA in its response did not specifically request that an audit be required.

In its subsequent comments, Pacific does not oppose the clarification sought by ORA with the exception of ORA's comment regarding an audit.

We shall grant the application of Pacific, with the clarifications proposed by ORA and adopt additional safeguards that we believe are appropriate to assure compliance with the procedures. However, we decline to impose audits because the safeguards proposed by Pacific provide adequate means of assuring

compliance with the like-for-like netting procedures without creating unnecessary regulatory audits.

Pacific's verification proposal as modified herein provides sufficient information to Commission staff to determine whether Pacific is properly netting IPPI. Pacific has proposed to provide information related to netted IPPI, questions, concerns, and additional information to the Commission staff on demand within 10 days of the request. If initial verification does not satisfy the Commission staff's questions and concerns, Pacific agrees to respond to further inquiries on a case by case basis. We find that this verification process in combination with other safeguards we adopt today should adequately resolve any problems that might arise. We decline to require an audit because the need for a such regulatory oversight has not been established and we do not find a need for it that can not be met through Pacific's provision and staff's review of information related to the netting process. In D.97-03-067, approving the merger of Pacific with SBC, we put the applicants in that case on notice that we expect their full compliance with prevailing law, policies and practices regarding affiliate transactions pursuant to our Significant Utility/Affiliate Transactions Reporting requirements. We again note that in granting the modification sought by Pacific, we expect it to uphold our rules and fully comply with the adopted procedures.

We note that at the present time if Pacific wishes to deviate from the affiliate transaction rules it must apply to the Commission and justify the proposal. Thus the burden of showing that a deviation from the procedures we adopt today is justified would be on Pacific. Likewise, if ORA believes a violation has occurred with respect to compliance with the like-for-like transfer, ORA or the Telecommunications Division staff can take appropriate actions to bring the matter before the Commission.

This application was preliminarily designated as a ratesetting matter in Resolution ALJ 176-1996 dated July 2, 1998, and preliminarily determined that a hearing was required. The preliminary determination that a hearing was required was changed by a Commission order dated October 22, 1998.

Findings Public Utilities Code Section 311 (g)

The alternate decision of Commissioner Josiah L. Neeper in this matter was mailed to the parties in accordance with § 311(g) and Rule 77.1 of the Commission's Rules of Practice and Procedure.

Findings of Fact

1. A.97-11-040 was filed by Pacific covering most of the matters in the present application. Following protests to the application, two prehearing conferences, and extensive discovery, the application was withdrawn.
2. The present application seeks an order that intellectual property and other proprietary assets owned by Pacific and contributed to a centralized support service affiliate be netted against like property contributed by other SBC affiliates. It also asks that centralized support services organizations and SBC be permitted to use fully distributed cost allocations for pricing of services provided to support Pacific and other affiliates.
3. No protests have been received to this application, though ORA did file a response indicating several safeguards that it wished placed in the decision. ORA did not ask for a hearing.
4. At the second prehearing conference in A.97-11-040 the ALJ raised the issue of a potential shifting of burden of proof to ORA should there be a dispute over whether a like-for-like property was being "netted out". This issue was not addressed in the present application.

Conclusions of Law

1. The application of Pacific should be granted.
2. The response of ORA contains many safeguards listed in the body of this opinion. These safeguards are reasonable and appropriate and should be incorporated into the order of this decision.
3. ORA's request that "like-for-like be clarified to ensure that true value is represented on both sides of the equation should be granted. This was unopposed by Pacific.
4. ORA's request that "customer-specific" information includes both end-user and carrier information is reasonable. This was unopposed by Pacific.
5. ORA's request for regular quarterly updates on the like-for-like process is reasonable. This was unopposed by Pacific.

O R D E R

IT IS ORDERED that:

1. The application of Pacific Bell (Pacific) is granted, with the conditions stated below.
2. Pacific shall continue to own its Intellectual Property and Proprietary Information (IPPI).
3. The like-for-like netting process shall apply only to IPPI owned by the telephone companies and used for the benefit of the telephone companies.
4. The like-for-like netting process shall apply only to "like-kind comparable" IPPI.

5. The like-for-like netting process shall not apply to IPPI used by a non-regulated, competitive affiliate or provided to an administrative affiliate for use by a non-regulated, competitive affiliate.

6. Inventories of IPPI potentially subject to the like-for-like netting process shall be maintained.

7. Pacific shall maintain a complete listing of IPPI provided to an administrative affiliate.

8. A listing shall be maintained which provides a general description of the IPPI where the like-for-netting was utilized.

9. No "customer specific" information shall be shared between telephone companies or affiliates in the like-for-like netting process. This includes both carrier and end-user information.

10. Where no like-for-like IPPI exists, SBC Communications Inc. (SBC) shall use appropriate costing processes which comply with this Commission's affiliate transactions and cost allocation rules to bill Southwestern Bell Telephone Company for Pacific's IPPI.

11. Pacific shall provide additional information and a description of the netted IPPI to Office of Ratepayer Advocates (ORA) and Telecommunications Division within ten days if either has questions, concerns or requires additional information in order to verify any particular transaction.

12. If the initial verification process does not satisfy the Telecommunications Division's or ORA's questions or concerns, Pacific shall pursue whatever additional information may be required on a case-by-case basis.

13. This proceeding is closed.

This order is effective today.

Dated March 18, 1999, at San Francisco, California.

RICHARD A. BILAS
President
HENRY M. DUQUE
JOSIAH L. NEEPER
Commissioners