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Decision 02-06-006 June 6, 2002

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 On Motion into Monitoring Performance of Operations Support Systems.	Investigation 97-10-017 (Filed October 9, 1997)

MODIFICATION CLARIFYING IMPLEMENTATION DETAILS OF THE PERFORMANCE INCENTIVE PLAN FOR PACIFIC BELL TELEPHONE COMPANY

Summary

This order clarifies and modifies, on the Commission's own motion, Decision (D.) 02-03-023, by detailing in newly added Ordering Paragraphs the several options that competitive local exchange carriers (CLECs) have with respect to the performance incentives plan (PIP) for Pacific Bell Telephone Company (Pacific). Specifically, it clarifies how the plan will be implemented when a CLEC: (1) neither accepts the PIP, nor chooses approval of another plan (the PIP is implemented for that CLEC); (2) declines to accept billing credits (the PIP is implemented as if the CLEC had accepted the plan, and all Tier I and Tier II incentive credits are added to Tier II for distribution to ratepayers under Tier II procedures); and/or (3) seeks to be governed by a different or modified plan (the PIP is implemented until the new plan is approved).

Background

In our "Opinion on the Performance Incentive Plan for Pacific Bell Telephone Company", Decision (D.) 02-03-023 (*Pacific PIP Opinion*, or *Opinion*) we adopted the PIP for Pacific's Operations and Support System (OSS) performance for CLECs. During Pacific's work to implement the PIP, we have become aware of issues that may need clarification. To assist Pacific, the CLECs, and other parties to this proceeding, we modify D.02-03-023 to specify in the Ordering Paragraphs the options a CLEC has regarding the PIP, and to clarify how each option must be implemented.

Discussion

In the *Pacific PIP Opinion*, we ordered Pacific to offer the PIP to all CLECs, and stated that the PIP would be implemented for any CLEC accepting the plan. *Opinion* at 97, Ordering Paragraph No. 2. For CLECs not accepting the PIP and wishing to have an alternate plan, we required that our approval first be obtained. *Id.*, Ordering Paragraph No. 3. However, we did not make explicit what was required if a CLEC did not act at all, neither accepting the PIP nor obtaining approval of an alternate plan. Additionally, we did not make explicit what would be in effect until a CLEC and Pacific obtained approval of an alternate plan.

Our clarifications herein follow the fundamental rationale and structure of the PIP as adopted in D.02-03-023. The primary purpose of the PIP billing credits is to motivate Pacific's OSS performance. First and foremost, these credits are incentives. *Opinion* at 2, 41-50, 58-61, 63-64. We have crafted these clarifications to preserve the incentive nature of the PIP by maintaining the relationship between overall performance and incentive amounts. *Id.* For example, if CLECs declined to have any incentive plan or declined to accept incentive billing credits, the PIP's incentive levels would decrease relative to performance levels. The

PIP's performance-incentive relationship would be altered. Consequently, to prevent unilateral alteration of the PIP's core structure when a CLEC declines having a plan or credits, we require that any amounts, both Tier I and Tier II, that would be generated by the PIP if it were implemented for a CLEC be added to Tier II for disbursement.

Additionally, we wish to preserve how the PIP proportionally distributes credits to the CLECs and the ratepayers. *Opinion* at 63-68, 77. We do not intend to approve plans that significantly affect these credit distribution proportions. An example of such a plan is the SBC thirteen-state generic performance measurements plan, which has no ratepayer credit provisions. As a consequence, all CLECs currently having interconnection agreements ("ICAs") containing the SBC thirteen-state generic performance measurements plan will be governed by the PIP until receiving approval for an acceptable alternative.

In its comments on the draft decision, Pacific asked for two clarifications. Pacific Bell Telephone Company's (U 1001 C) Opening Comments on Draft Decision Clarifying Implementation Details, (May 28, 2002.) First, Pacific asked that we state that where a CLEC neither accepts the PIP, nor receives approval for a different plan, and the PIP is implemented for that CLEC, that the PIP will be implemented "as if it had accepted the plan."[1] *Id* at 1. We agree that this added text may be helpful and we include it in the ordering paragraph. Additionally, Pacific raised the issue of applying the PIP to CLECs without ICAs. *Id* at 2. Pacific is correct in assuming that we intended the PIP to apply to all CLECs whether or not they have an ICA with Pacific. *Id* at 2, footnote 1.

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[1] Pacific asked for additional text in this Ordering Paragraph, but we find that the text added here is sufficient to clarify what we intended.

A coalition of CLECs ("Coalition")[2] filed comments expressing qualified support for our clarifications. Comments of the California Telecommunications Coalition on the Draft Decision on Implementation of the Performance Incentive Plan for Pacific Bell Telephone Company at 1 (May 28, 2002). The Coalition expressed concern that the decision as drafted would not allow parties to have performance incentive remedies in their interconnection agreements "separate and apart" from our PIP adopted in D.02-03-023. These comments raise new issues not addressed in the draft decision.

This decision only clarifies D.02-03-023 and makes clear that changes to the PIP must be made only with our approval upon receiving a motion requesting changes. We have not raised the issue of what constitutes a change to the PIP. For example, a new performance incentives remedy might either be labeled a separate addition or a change to the PIP, yet be identical in its appearance and impact. Because the record is insufficiently developed regarding this issue, we do not address it here. However, if there is any doubt whether a new performance remedy would be deemed a change to the plan or a separate addition, parties should contact the Telecommunications Division staff for advice, and to avoid possible implementation delays, parties may wish to file a motion for approval.

Comments on Draft Decision

The draft decision of ALJ Jacqueline Reed in this matter was mailed to the parties in accordance with Pub. Util. Code Section 311(g)(1) and Rule 77 of the Commission's Rules of Practice and Procedure. Opening comments were

[2] AT&T Communications of California, New Edge Network, Inc, dba New Edge Networks, Pac-West Telecomm, Inc., WorldCom, Inc., and XO California, Inc.

received as noted and discussed, *supra*, on May 28, 2002. No reply comments were received. We have reviewed the comments, and taken them into account, as appropriate, in finalizing this order..

Findings of Fact

1. In the *Pacific PIP Opinion*, the details of the several options that the CLECs have with respect to the performance incentives plan were not explicitly set out in the Ordering Paragraphs.

2. The lack of specificity in the Ordering Paragraphs regarding the CLECs' several options may impede implementation of the PIP.

3. If CLECs declined to have any incentive plan or declined to accept incentive billing credits, the performance-incentive relationship established in the PIP in D.02-03-023 would be altered.

4. If a CLEC declined to have any incentive plan or declined to accept incentive billing credits, adding any amounts that would be generated by the PIP if it were implemented for that CLEC to Tier II for disbursement would prevent unilateral alteration of the PIP's performance-incentive relationship.

5. The SBC thirteen-state generic performance measurements plan has no ratepayer credit provisions.

Conclusions of Law

1. Public Utilities Code Section 1708 permits the Commission at any time, upon notice to the parties, and with opportunity to be heard, to amend any order or decision made by it.

2. D.02-03-023 should be modified to explicitly set out the CLECs' options with respect to Pacific's PIP in order to facilitate implementation of the plan.

3. If a CLEC declined to have any incentive plan or declined to accept incentive billing credits, all amounts that would be generated by the PIP, if it were implemented for that CLEC, should be added to Tier II for disbursement.

4. Any CLEC with an ICA containing the SBC thirteen-state generic performance measurements plan should be governed by the PIP until the Commission approves an alternate plan for that CLEC.

5. Any CLEC wishing to be governed by a performance incentive plan existing in a current ICA should receive formal Commission approval before that plan is implemented in place of the PIP.

6. Until the Commission approves a motion seeking approval for an alternate performance incentives plan for a CLEC, the PIP should be implemented for that CLEC.

7. This order should be effective immediately so that the initial six-month implementation period will not be delayed.

O R D E R

IT IS ORDERED that Ordering Paragraph 2 of Decision 02–03-023 shall be modified by adding the text as underlined below and by adding subsections (a.) through (d.). These modifications are reflected in the attached Appendix.

"2. The performance incentives plan, comprised of the performance measurements adopted in Decision (D.) 01-05-087, the decision model adopted in D.01-01-037 and as modified herein, and an incentive payment component adopted herein, shall be offered to all Pacific's CLECs, <u>both those with and without interconnection agreements,</u> and where accepted, implemented for an initial period of at least six months or until otherwise modified by this Commission."

"(a.) If a CLEC neither accepts the Commission's Performance Incentives Plan, nor receives Commission approval of a different plan, the Performance Incentives Plan shall be implemented for that CLEC as if it had accepted the plan."

"(b.) If a CLEC declines to receive the billing credits from any performance incentives plan, the Performance Incentives Plan shall be implemented for that CLEC as if it had accepted the plan, and all incentive credits generated, through both Tier I and Tier II plan structures, shall be added to the Tier II credits for disbursement to the ratepayers under Tier II procedures."

"(c.) CLECs must either (I) file an amendment to their interconnection agreement (ICA), pursuant to Rule 6.2 of ALJ-181, noting that they have accepted the Performance Incentives Plan, (II) file an amendment to their ICA declining to receive performance incentives credits from the Commission's Performance Incentives Plan, or (III) jointly file a motion with Pacific in this proceeding requesting that the Commission approve an alternate performance incentives plan."

"(d.) If Pacific and CLEC choose to file a joint motion requesting the Commission approve an alternate performance incentives plan, until such approval is granted, the Commission's Performance Incentives Plan shall apply."

This order is effective today.

Dated June 6, 2002, at San Francisco, California.

LORETTA M. LYNCH
President
HENRY M. DUQUE
CARL W. WOOD
GEOFFREY F. BROWN
MICHAEL R. PEEVEY
Commissioners

APPENDIX
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Decision 02-03-023 as modified by this decision is as follows:

1. A performance incentives plan, which identifies performance failures and non-failures, as specified in Appendix J incorporated by reference herein, shall be adopted for Pacific Bell (Pacific) to offer to CLECs.

2. The performance incentives plan, comprised of the performance measurements adopted in Decision (D.) 01-05-087, the decision model adopted in D.01-01-037 and as modified herein, and an incentive payment component adopted herein, shall be offered to all Pacific's CLECs, both those with and without interconnection agreements, and where accepted, implemented for an initial period of at least six months or until otherwise modified by this Commission.

   "(a.) If a CLEC neither accepts the Commission's Performance Incentives Plan, nor receives Commission approval of a different plan, the Performance Incentives Plan shall be implemented for that CLEC <u>as if it had accepted the plan</u>."

   "(b.) If a CLEC declines to receive the billing credits from any performance incentives plan, the Performance Incentives Plan shall be implemented for that CLEC as if it had accepted the plan, and all incentive credits generated, through both Tier I and Tier II plan structures, shall be added to the Tier II credits for disbursement to the ratepayers under Tier II procedures."

   "(c.) CLECs must either (I) file an amendment to their interconnection agreement (ICA), pursuant to Rule 6.2 of Commission Resolution ALJ-181, noting that they have accepted the Performance Incentives Plan, (II) file an amendment to their ICA declining to receive performance incentives credits from the Commission's Performance Incentives Plan, or (III) jointly file a motion

with Pacific in this proceeding requesting that the Commission approve an alternate performance incentives plan."

"(d.) If Pacific and a CLEC choose to file a joint motion requesting the Commission approve an alternate performance incentives plan, the Commission's Performance Incentives Plan shall apply until such approval is granted."

3. Pacific and any CLEC may agree to use a different performance incentives plan, subject to approval by this Commission.

4. Parties to this proceeding shall collaborate to review and recommend any appropriate revisions for the definition and/or use of Performance Measure 16.

5. Incentive payments, as specified in Appendix J of this decision, shall commence the first full month following the effective date of this order.

6. Following the six-month initial period, the performance of the incentives plan model shall be reviewed. Such review shall examine how the incentives plan model is functioning and shall include any adjustments and modifications to the components as well as the resolution of any issues remaining from D.01-01-037.

7. The schedule for the incentives plan model review shall be set by separate ruling.

(END OF APPENDIX)