MAB/hkr 4/21/2006

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Qwest Communications Corporation and Qwest !nterprise America, Inc., Complainants, vs. Pacific Bell Telephone Company, dba SBC California, Inc., Defendant.	Case 05-05-030 (Filed May 31, 2005)

ADMINISTRATIVE LAW JUDGE'S RULING GRANTING MOTIONS TO PLACE CERTAIN DOCUMENTS UNDER SEAL, AND GRANTING, IN PART, MOTION TO COMPEL

A. Qwest's Motion to Compel

On February 24, 2006, complainants, Qwest Communications Corporation and Qwest !nterprise America, Inc., (collectively, Qwest or complainants) filed their motion to compel responses to data requests. Qwest stated that defendant, SBC California, Inc. (SBC), now doing business as AT&T California, refused to supply January bills for specific competitive local carriers[1] for 2000, 2001, and 2002, as required by the agreement reached at the November 10, 2005, Law and

[1] Qwest originally sought billing data for seven carriers but reduced the request to four.

Motion Hearing. Qwest also sought production of seven interconnection agreements.

In opposition, SBC stated that it had produced substantial billing data for 2003, 2004, and 2005, which is available in an electronic data format. Data requested for prior years, i.e., 2000, 2001, and 2002, is not available in electronic format and must be manually located in long-term hard copy storage and individually copied. SBC stated that producing all requested billing data would require "no less than six months" with no guarantee that all bills would be successfully located. SBC also contended that the earlier data would have little probative value because it was unlikely the SBC would have billed rates in the 2000-2002 time frame that were different from the 2003-2005 billings, which SBC has provided to Qwest. SBC opposed providing copies of interconnection agreements because it had already provided copies of the two agreements where collocation rates had been altered. SBC stated that reviewing the terms of the other interconnection agreements "could not possibly lead to the discovery of admissible evidence" because the rates were not modified by the agreements.

In reply, Qwest noted that SBC had not provided the necessary detailed estimate of the time required to comply with the request, and that SBC's estimate of six months was at odds with SBC's production in two weeks of Qwest bills from the same time. Qwest stated that the older billing data was critical to evaluate the treatment over time of arrangements entered into prior to March 15, 2000. Qwest also argued that it should be allowed to determine whether the interconnection agreements alter the collocation rates, and not be forced to rely on SBC's conclusions.

SBC's response explained that changes in the collocation rates paid by two carriers[2] were caused by amendments to interconnection agreements, rather than improper rate changes. With this explanation, SBC concluded, there is no evidence of inappropriate billing by SBC that could justify production of the earlier billing records.

As provided in Pub. Util. Code § 1701, the technical rules of evidence do not apply in Commission proceedings. The Commission, however, often relies on the Code of Civil Procedure for guidance in resolving discovery disputes. The discovery provisions are found at Code of Civil Procedure §§ 2016 to 2036. The California Supreme Court has repeatedly stated that these provisions are to be interpreted liberally to achieve the purpose of "assisting the parties in obtaining the facts and evidence necessary to expeditious resolution of their dispute." (*Davies* v. *Superior Court of Tulare County*, 36 Cal. 3d 291 (1984).)

Qwest's complaint alleges that SBC charges discriminatory collocation rates; consequently, the collocation rates paid by other carriers are central to this proceeding. Although SBC asserts that obtaining the information would be burdensome, it offers no detailed analysis in support.

To achieve the purposes of the discovery, Qwest's motion to compel is granted, in part. Billing data is important to resolve Qwest's claim of discrimination. SBC's unsupported assertion that compliance would be burdensome does not outweigh Qwest's need for this information. SBC, however, should not be required to expend infinite resources complying with this data request. SBC stated that it had spent over 100 hours responding to

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[2] Masked CLEC Q and R.

other Qwest data requests. Half that total, or 50 hours, is a reasonable time for locating and copying the requested bills.

Therefore, it is ruled that SBC shall provide the billing information that it can obtain with 50 hours of efficient work. Highest priority shall be January 2000 billings. SBC shall record the time spent obtaining the information, with supporting time sheets which shall be verified by the workers. If necessary, the parties may consult with the undersigned Administrative Law Judge (ALJ) to resolve any further disputes.

As for the interconnection agreements, SBC admits that collocation rates may be changed by amendments to interconnection agreements. SBC contends that it has provided all such amendments, and thus providing the other interconnection agreements could not reasonably lead to discoverable information. Qwest wishes to make its own determination, and to review any other provisions of the interconnection agreements that may influence the terms and conditions of collocation arrangements. Qwest's request is granted.

Qwest's motion to compel production of the interconnection agreements is granted. The interconnection agreements are relevant to the issues in this proceeding and, consistent with the purposes of liberal discovery rules, should be available to Qwest for review.

B. Requests to File Material Under Seal

On March 13, 2006, Qwest filed its motion to place under seal the unredacted version of its reply, supplemental declaration of Adam L. Sherr, and attachments thereto. Qwest stated that these documents contain non-public proprietary information provided to Qwest by SBC pursuant to a nondisclosure agreement under which SBC claims that the information is competitively

sensitive, confidential information obtained from other competitive local carriers, which would be harmed if the information is disclosed to the public.

On March 23, 2006, SBC filed a similar motion asking to have the unredacted version of its response to Qwest's reply placed under seal. SBC states that the response contains highly confidential, business-sensitive information.

No party has opposed the above motions. Good cause exists to place the information designated above under seal according to the terms of this ruling set forth below.

IT IS RULED that:

1. Qwest's motion to compel production of copies of January 2000, 2001, and 2002 bills for carriers C, E, Q, and R is granted, in part. SBC shall provide all such copies that it can obtain with the expenditure of 50 working hours. SBC shall place highest priority on January 2000 bills. SBC shall record the time expended to provide these copies, with supporting time sheets verified by the worker. SBC shall complete its work and provide the resulting copies no later than 21 days after the effective date of this ruling.

2. Qwest's motion to compel production of interconnection agreements excerpts for carriers 2, C, E, Q, R, and T containing all rates, terms and conditions relating to collocation is granted.

3. SBC's and Qwest's requests to place the documents described above under seal are granted. These documents should be placed under seal for two years from the date of this ruling, and during that period the material so protected shall not be made accessible or disclosed to anyone other than Commission staff except on the further order or ruling of the Commission, the Assigned

Commissioner, the assigned ALJ, or the ALJ then designated as Law and Motion Judge.

4. If SBC or Qwest believes that further protection of this information is needed after the two-year period, they may file a motion stating the justification for further withholding the material from public inspection, or for such other relief as the Commission rules may then provide. This motion shall explain with specificity why the designated material still needs protection in light of the passage of time involved, and a copy of this ruling shall be attached to the motion. This motion shall be filed at least 30 days before the expiration of this protective ruling.

Dated April 21, 2006, at San Francisco, California.

/s/ MARIBETH A. BUSHEY

Maribeth A. Bushey
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Granting Motions to Place Certain Documents Under Seal, and Granting, in Part, Motion to Compel on all parties of record in this proceeding or their attorneys of record.

Dated April 21, 2006, 2006, at San Francisco, California.

/s/ KE HUANG
Ke Huang

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to ensure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.