

**PUBLIC UTILITIES COMMISSION**505 VAN NESS AVENUE
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April 13, 2010

Agenda ID #9381

TO PARTIES OF RECORD IN RULEMAKING 93-04-003, INVESTIGATION 93-04-002

This is the proposed decision of Administrative Law Judge (ALJ) Duda. It will not appear on the Commission's agenda sooner than 30 days from the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the proposed decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the proposed decision as provided in Article 14 of the Commission's Rules of Practice and Procedure (Rules), accessible on the Commission's website at www.cpuc.ca.gov. Pursuant to Rule 14.3, opening comments shall not exceed 15 pages.

Comments must be filed pursuant to Rule 1.13 either electronically or in hard copy. Comments should be served on parties to this proceeding in accordance with Rules 1.9 and 1.10. Electronic and hard copies of comments should be sent to ALJ Duda at dot@cpuc.ca.gov and the assigned Commissioner. The current service list for this proceeding is available on the Commission's website at www.cpuc.ca.gov.

/s/ JANET A. ECONOME for
Karen V. Clopton, Chief
Administrative Law Judge

KVC:jt2

Attachment

Decision **PROPOSED DECISION OF ALJ DUDA** (Mailed April 13, 2010)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Rulemaking on the Commission's own motion to govern open access to bottleneck services and establish a framework for network architecture development of dominant carrier networks.

Rulemaking 93-04-003
(Filed April 7, 1993)

Commission order instituting investigation on the Commission's own motion into open access and network architecture development of dominant carrier networks.

Investigation 93-04-002
(Filed April 7, 1993)

DECISION CLOSING PROCEEDING

1. Summary

In this decision, we close the long-lasting Open Access and Network Architecture Development proceeding. A process is established for parties to address any open issues not resolved during the life of this proceeding.

This proceeding is closed.

2. Background

This proceeding, known as the Open Access and Network Architecture Development (OANAD) proceeding, was initiated in April 1993 to set prices that incumbent local telephone exchange carriers (ILECs) would charge competitors who lease portions of the ILECs' networks. The proceeding has been split several times into discrete phases to handle issues such as collocation, Operations Support Systems and Non-recurring Costs (OSS/NRC), Verizon California Incorporated (Verizon) unbundled network element (UNE) rates,

resale pricing, issues surrounding Section 271 of the Federal Telecommunications Act (Section 271) and line sharing. Indeed, the Commission maintains eight separate service lists for this proceeding on these various topics.¹

Over the seventeen years that the OANAD proceeding has been active, numerous decisions have issued, and many issues have been resolved by the Commission. While some issues e.g., permanent line sharing rates, still remain open for one reason or another, any record developed previously has become stale.

Over the past five years, only two phases of this proceeding have been active: Verizon's UNE rates and collocation. The Verizon UNE phase was completed with the issuance of Decision (D.) 09-02-017 which approved settlement agreements adopting UNE re-examination processes for Pacific Bell Telephone Company d/b/a AT&T California (AT&T) and Verizon.

The collocation issue was handled separately for AT&T and Verizon. A settlement agreement on AT&T's collocation rates was approved in D.07-03-004. That leaves Verizon's collocation rates as the only active phase of this proceeding. Verizon and Competitive Local Exchange Carriers (CLECs) have been negotiating a settlement on permanent collocation rates for Verizon for several months. In an e-mail to the assigned Administrative Law Judge (ALJ) on May 8, 2008, the parties indicated that the settlement discussions with AT&T took a very long time, and that negotiation with Verizon was progressing very

¹ The eight service lists are: Arbitration, Line Sharing Arbitration, New Collocation List, OANAD, OSS/NRC Phase, Permanent Line Sharing Phase, Verizon UNE Phase, and the wholesale/retail phase.

slowly as well. The parties indicated that if discussions broke down, they would advise the assigned ALJ and request Commission assistance.

In an effort to speed the process, the assigned ALJ asked for a status report in approximately 60 days. The report came in the form of an e-mail from Verizon on July 23, 2008, which indicated that Verizon would respond to a pending counterproposal on or before September 15, 2008, if a pending labor issue was resolved within the following month.

On August 21, 2008, the assigned ALJ issued a ruling saying, "... this proceeding has now exceeded 15 years in duration and, absent a settlement agreement, the record to conclude the collocation phase of this proceeding would need to be completely updated." (Ruling at 2.)

The ALJ indicated that while he was willing to provide the parties with a certain amount of flexibility in pursuing their negotiations, there is a desire to bring the collocation phase and the entire docket to a close. For that reason, the ALJ gave the parties until October 1, 2008 to complete negotiations and present to the Commission for its consideration an all-party settlement of final collocation rates for CLECs in Verizon's territory. The ALJ concludes:

Absent the parties' ability to accomplish that, and without any attribution of responsibility for that not occurring, I will prepare for the Commission's consideration a draft decision that will close this proceeding without formally altering present rates and arrangements.

The Ruling states that future changes in collocation rates and arrangements for Verizon would be effectuated by the filing of an application by Verizon or a CLEC no sooner than one year after this docket was closed.

On September 10, 2008, AT&T filed a motion seeking clarification that the Ruling applies only to the establishment of collocation rates, not to terms and

conditions. AT&T asks the Commission to establish a short briefing schedule in the proceeding for the resolution of the legal issues relating to non-rate issues. Alternatively, AT&T requests that the Ruling be clarified to allow AT&T to initiate a separate proceeding in which these disputed issues could be resolved.

On September 25, 2008, Verizon filed a response to AT&T's motion, saying that AT&T's request was unnecessary since the non-rate terms and conditions were not within the limited scope of the proceeding, which has always focused primarily on rate issues. Verizon points out there is already a methodology for bringing such issues before the Commission, and that is through the Section 252 negotiation and arbitration process, not the Motion for Clarification presented by AT&T.

The assigned ALJ authorized AT&T to file a Reply to Verizon's Response. According to AT&T, Verizon and AT&T agreed to remove collocation issues from their interconnection negotiations and resolve them in this proceeding. AT&T states that this was done at Verizon's request. Therefore Verizon should be estopped from claiming that the Commission lacks the authority in this docket to decide collocation term and condition disputes.

On October 1, 2008, the participating CLECs notified the Commission that the parties were unable to reach a settlement and requested that the Commission assign a mediator to facilitate further negotiations. The request was renewed in a letter to the assigned ALJ on February 9, 2009. The ALJ indicated to parties that it was not likely the Commission would have a mediator available in the short term.

3. Discussion

We initiated the OANAD proceeding 17 years ago to set the rates that ILECs would charge to competitors that lease portions of the ILECs' networks.

It has served as an umbrella proceeding to address a number of issues relating to the development of competition in the telecommunications industry, e.g., AT&T's entry into the long-distance market pursuant to Section 271 of the Federal Telecommunications Act of 1996 and UNE rates for Verizon, to name a few. The proceeding has served us well, but the time has come to close the proceeding, including all its various phases. We find it more efficient to address issues through applications dealing with discrete issues.

The only active issue at the present time is Verizon's collocation rates and terms and conditions. Any other phases that have not been resolved have been dormant for a number of years, with records that are stale and out-of-date. To the extent that parties have issues they want to address, they should file a new application on that specific issue so that a fresh record can be developed. Since parties have not displayed much interest in any pending issues over the past five years, we will allow any interested party to file an application on issues, other than Verizon's collocation issue, no sooner than one year after this docket is closed.

The Verizon collocation proceeding has been at a standstill for the past year. If the parties have been negotiating since they made a request for a mediator in February 2009, they have not notified the assigned ALJ as to their progress. We do not intend to leave this 17-year old proceeding open indefinitely to effect a settlement to Verizon's collocation rates and terms and conditions.

However, we are mindful of AT&T's concern expressed in its September 10, 2008, motion that it should not have to wait a year to file an application to resolve any outstanding collocation issues with Verizon. We agree and will grant AT&T's motion to allow the filing of a new application without a

year's delay on the issues relating to Verizon's collocation rates and terms and conditions. AT&T and other CLECs should use the process outlined in Resolution ALJ-181 for resolving interconnection disputes under the Telecommunications Act of 1996, if they are unable to negotiate collocation rates and terms and conditions with Verizon.

However, we would hope that parties have continued their negotiations over the past year and are able to come to a settlement on the collocation issues and would be able to file a request for approval of a settlement agreement. If parties believe that a mediator would help at this point, they should make that request.

We are closing all phases of this proceeding. Parties with issues the Commission needs to address should file new applications, as described above.

4. Comments on Proposed Decision

The proposed decision of the Administrative Law Judge in this matter was served on all eight service lists maintained for the OANAD proceeding: Arbitration, Line Sharing Arbitration, New Collocation List, OANAD, OSS/NRC Phase, Permanent Line Sharing Phase, Verizon UNE phase, Wholesale/Retail phase. Comments were received on _____, and Reply Comments on _____.

5. Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and Dorothy Duda is the assigned ALJ in this proceeding.

Findings of Fact

1. The OANAD proceeding was initiated 17 years ago to set the rates that ILECs would charge to competitors that lease portions of the ILECs' networks.

2. The only active issue in OANAD at the present time is Verizon's collocation rates and terms and conditions.
3. The Verizon collocation phase has been at a standstill for the past year. Parties have not notified the assigned ALJ as to their progress.
4. Any other phases of OANAD that have not been resolved have been dormant for a number of years, with records that are stale and out-of-date.

Conclusions of Law

1. AT&T's September 10, 2008 motion asking the Commission for permission to file a new application, without a year's delay, to resolve collocation issues with Verizon, should be granted.
2. Parties with unresolved issues from the OANAD proceeding, other than Verizon's collocation issues, may file new applications no sooner than one year after this docket is closed.
3. The OANAD proceeding should be closed.

O R D E R

IT IS ORDERED that:

1. The Open Access and Network Architecture Development proceeding, Rulemaking 93-04-003 and Investigation 93-04-002 is closed.
2. Pacific Bell Telephone Company d/b/a AT&T California's (AT&T) September 10, 2008 motion to allow AT&T California to file a new application to address Verizon California Incorporated's collocation rates and terms and conditions without a year's delay, is granted. Before filing its application, AT&T is required to follow the process outlined in Resolution ALJ-181 for resolving interconnection disputes under the Telecommunications Act of 1996.

3. Rulemaking 93-04-003 and Investigation 93-04-002 are closed.

This order is effective today.

Dated _____, at San Francisco, California.

INFORMATION REGARDING SERVICE

I have provided notification of filing to the electronic mail addresses on the attached service list.

Upon confirmation of this document's acceptance for filing, I will cause a Notice of Availability of the filed document to be served upon the service list to this proceeding by U.S. mail. The service list I will use to serve the Notice of Availability of the filed document is current as of today's date.

Dated April 13, 2010, at San Francisco, California.

/s/ JOYCE TOM
Joyce Tom

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.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074 or TDD# (415) 703-2032 five working days in advance of the event.