

## PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE  
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TO PARTIES OF RECORD IN CASE 09-07-021

This is the proposed decision of Administrative Law Judge (ALJ) Karl Bemederfer. 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](http://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 Karl Bemederfer at [kjb@cpuc.ca.gov](mailto:kjb@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](http://www.cpuc.ca.gov).

/s/ KAREN V. CLOPTON

Karen V. Clopton, Chief  
Administrative Law Judge

KVC:jyc

Attachment

Decision **PROPOSED DECISION OF ALJ BEMESDERFER** (Mailed 6/8/2010)

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

XO Communications Services, Inc. (U5553C)

Complainant,

vs.

Pacific Bell Telephone Company,  
d/b/a AT&T California (U1001C),

Defendant.

Case 09-07-021  
(Filed July 20, 2009)

**DECISION SETTING RATE FOR CROSS-CONNECTION**

**Summary**

Section 251(c)(6) of the Federal Communications Act requires Pacific Bell Telephone Company d/b/a/ AT&T California to provide cross-connects between XO Communications Services, Inc. and other competitive local exchange carriers collocated within the same wire center at rates based on total element long-run incremental cost.

**Background**

XO Communications Services, Inc. (XO) is a competitive local exchange carrier (CLEC) certified to offer telecommunications services to customers in California. Pacific Bell Telephone Company d/b/a/ AT&T California (AT&T California) is an incumbent local exchange carrier (ILEC) with whom XO interconnects at various wire centers in California pursuant to the terms of a Commission-approved interconnection agreement (ICA). AT&T California also

provides cross-connection between XO and other CLECs at its wire centers pursuant to the ICA.

The sole issue in dispute is how much AT&T California may charge XO for cross-connection. AT&T California interprets the ICA (and the related federal law which it incorporates) as permitting it to charge rates established in its federal special access tariff. As agreed in the parties' Joint Factual Stipulation, these rates include both a modest fee for cross connection and a substantial fee for so-called "0 mileage transport." In the example given in the Joint Factual Stipulation, AT&T California's total charge for cross-connection via its main distribution frame (MDF) could be as high as \$723.96, of which \$600 is the 0 Mileage Transport Fee.

XO interprets the ICA (and the related federal law which it incorporates) as requiring AT&T California to provide cross-connection at total element long-run incremental cost (TELRIC) rates rather than special access tariff rates. In particular, XO disputes the legality of the 0 Mileage Transport Fee.

XO began disputing AT&T California's billing for collocation cross-connection as of January 1, 2008. Since then, it has paid only those amounts which it claims are due for cage-to-cage collocation at TELRIC rates. As of November 15, 2009, the amount in dispute was \$1,482,996.

## **Discussion**

The parties agree that Section 251(c)(6) of the Act, as interpreted by various decisions of the Federal Communications Commission (FCC) is the governing law of this case. That section provides, in relevant part, that ILECs like AT&T California have "[t]he duty to provide, on rates, terms, and conditions that are just, reasonable, and non-discriminatory, for physical collocation of equipment necessary for interconnection or access to unbundled network elements at the

premises of the local exchange carrier . . .” The FCC has interpreted Section 251(c)(6) to require ILECs to include CLEC-to-CLEC cross-connection as part of their obligation to provide collocation<sup>1</sup> and to authorize ILECs to charge only TELRIC-based rates as part of the just, reasonable and non-discriminatory rates, terms and conditions for collocation, including cross-connection.<sup>2</sup>

AT&T California argues that the Collocation Cross-Connect Order and the Local Competition Order have to be read in conjunction with the FCC’s Triennial Review Remand Order (TRRO).<sup>3</sup> The TRRO requires ILECs to provide CLECs access to unbundled network elements (UNEs) at TELRIC rates only in those wire centers that the FCC has determined to be “impaired,” which are, roughly speaking, wire centers serving markets in which CLECs would find themselves otherwise without the ability to compete effectively. In non-impaired wire centers, ILECs are not required to offer UNEs at TELRIC rates. AT&T California takes the position that (a) “0 mile transport” is a UNE and (b) within a non-impaired wire center, AT&T California can charge an access tariff rather than a TELRIC rate for such transport.

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<sup>1</sup> *In re Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, FCC 01-204, Fourth Report and Order 55-84 (rel. Aug. 8, 2001). (*Collocation Cross-Connect Order*.)

<sup>2</sup> *See Implementation of the Local Competition Provision in the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499, 629 (1996). (*Local Competition Order*.)

<sup>3</sup> *Unbundled Access to Network Elements, Review of the Section 251 Unbundling Requirements of Incumbent Local Exchange Carriers*, CC Docket No. 01-338, FCC 04-290, Order on Remand, 20 FCC Rcd 2533 (2005), *aff’d*, *Covad Communications Co. v. FCC*, 450 F.3d 528 (D.C. Cir. 2006).

We disagree. The Section 251(c)(6) obligation to provide cross-connection on “just, reasonable and non-discriminatory terms” would have little meaning if it could be avoided simply by classifying an essential element of cross-connection – short cables between collocation cages and the MDF--as “0 mile transport” and calling it a UNE. The TRRO makes no reference whatsoever to the Collocation Cross-Connect Order. If the FCC had meant the TRRO to effect a radical alteration in the price that ILECs may charge CLECs for cross-connection, surely it would have said so, particularly in view of the stated purpose of the Collocation Cross-Connect Order, which is “to put the collocator in position to achieve the same interconnection with other competitive LECs that the incumbent itself is able to achieve.”<sup>4</sup> AT&T California can connect with other LECs at a transport cost of zero. Permitting it to charge XO \$600 for “0 mile transport” would completely frustrate the purpose of the Collocation Cross-Connect Order.

AT&T California argues that its cross-connections involve “dedicated transport” for which it can charge an access tariff in a non-impaired wire center. But this is merely playing with words. Cross-connection requires the use of small cables between the MDF and a CLEC’s collocation cage.<sup>5</sup> Such cables are necessary incidentals to the provision of legally required cross-connection rather than a UNE within the meaning of the Act.

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<sup>4</sup> *Collocation Cross Connect Order* at 82.

<sup>5</sup> In some cases, CLECs may connect directly within a wire center (i.e., may bypass the MDF) but even in those wire centers where direct connection is technically possible, the CLEC seeking connection has the choice of connecting via the MDF. The ILEC cannot force the CLEC to connect directly.

Our decision in this case accords with a 2005 decision of the Colorado Public Utilities Commission, *Petition of Qwest Corporation for Arbitration of an Interconnection Agreement with Covad Communications Co.*<sup>6</sup> At issue in that case was whether Qwest could charge Covad other than TELRIC rates for channel regeneration facilities as part of providing Covad with cross-connection. Qwest proposed there, as AT&T California proposes here, to charge tariff rates rather than TELRIC rates. The Colorado Commission, after an extensive discussion and interpretation of the Act and the various FCC orders, concluded that:

“Qwest’s retail . . . offering is not a lawful substitute for a wholesale TELRIC rate for regeneration. Therefore, we find that Qwest must charge TELRIC rates for channel regeneration, when it is needed to complete a CLEC-to-CLEC cross-connection.”<sup>7</sup>

Channel regeneration facilities are significantly more complex than the short cables connecting collocation cages with the MDF. Yet the Colorado Commission had no difficulty finding that the ILEC was required by the Act and the related FCC orders to provide those facilities at TELRIC rates as part of its cross-connection obligation. We reach a similar result here.

### **Comments of Proposed Decision**

The proposed decision of the Administrative Law Judge (ALJ) in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission’s Rules of Practice and Procedure. Comments were filed on \_\_\_\_\_, and reply comments were filed on \_\_\_\_\_ by \_\_\_\_\_.

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<sup>6</sup> Colorado PUC Docket No. 04B-160T, Decision No. C05-0616, Order on Rehearing (March 30, 2005).

<sup>7</sup> *Id.* at 52.

**Assignment of Proceeding**

Michael R. Peevey is the assigned Commissioner and Karl J. Bemesderfer is the assigned ALJ in this proceeding.

**Findings of Fact**

1. XO and AT&T California are parties to an interconnection agreement.
2. Pursuant to the interconnection agreement, AT&T California provides cross-connection services between XO and other CLECs via the main distribution frames in AT&T wire centers.
3. Cross-connection between collocation cages and the main distribution frames requires the use of short cables.

**Conclusions of Law**

1. Providing the cables required to effect cross-connection between collocation cages and main distribution frames is not “transport” within the meaning of the Telecommunications Act.
2. AT&T California must provide cross-connection to XO, including cables between collocation cages and main distribution frames, at TELRIC rates.
3. XO does not owe AT&T California charges for cross-connection services in excess of TELRIC rates from January 1, 2008 until the effective date of this order.

**O R D E R**

**IT IS ORDERED** that:

1. Pacific Bell Telephone Company d/b/a AT&T California shall charge XO Communications Services Inc. at total element long-run incremental cost rates for providing cross-connection services.

2. Pacific Bell Telephone Company d/b/a AT&T California shall write off that portion of any bill rendered to XO Communications Services Inc. for cross-connection services in excess of total element long-run incremental cost rates from January 1, 2008 until the effective date of this order.

3. Case 09-07-021 is closed.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.



\*\*\*\*\* SERVICE LIST \*\*\*\*\*  
Last Updated on 08-JUN-2010 by: AMT  
C0907021 LIST

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