



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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Order Instituting Rulemaking to Revise and Clarify Commission Regulations Relating to the Safety of Electric Utility and Communications Infrastructure Provider Facilities.

Rulemaking 08-11-005
(Filed November 6, 2008)

**REPLY COMMENTS
OF THE DIVISION OF RATEPAYER ADVOCATES
ON TELEPHONE COMPANY COST RECOVERY
FOR OVERHEAD LINE INSPECTIONS**

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April 8, 2009

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I. INTRODUCTION

The Division of Ratepayer Advocates (DRA) respectfully submits its Reply Comments in this proceeding. In summary, DRA asserts that incumbent local telephone companies (ILECs) AT&T Communications of California, Inc. (AT&T), Verizon California Inc. (Verizon), SureWest Telephone (SureWest), and Frontier Communications (Frontier),¹ are not entitled to recover the costs of inspecting and maintaining their poles, lines, and appurtenances through a ratepayer surcharge. DRA shows below that ILECs' formerly regulated prices have increased substantially in recent years, and that their market-based rates are more than sufficient to cover any costs that come about as a result of this proceeding.

¹ The four largest ILECs operate under various "doing business as" (dba) monikers. DRA intends to incorporate ILECs AT&T/Pacific Bell, Verizon, SureWest and Frontier, and each of their dbas, in these comments.

II. DISCUSSION

A. The Fact That Large ILECs Operate In a Competitive Market Weakens – Rather than Justifies – Their Request for a Surcharge

AT&T and a coalition of communications infrastructure providers (called CIPs in this proceeding) claim they are entitled to impose a surcharge to recover the costs of inspecting and maintaining their outside plant *because* they operate in a competitive market. *See, e.g.*, AT&T’s Opening Comments, 3/27/09, p. 7 (“CIPs operate in an extremely competitive market”); CIP Coalition Opening Comments, 03/27/09, p. 15 (“in a competitive market, costs cannot be recovered by simply increasing rates”).

The truth is just the opposite: if ILECs wish to have the pricing freedom this Commission has granted them, they must recover their costs – including those for pole inspection and maintenance – in their market-based rates. Granting requests to establish surcharges would run counter to the Commission’s determination in Decision (D.) 06-08-030 that the telecommunications market is competitive, and that large ILECs’ rates should be deregulated.

As a result of D.06-08-030, the large ILECs received nearly unrestricted pricing autonomy as of January 1, 2009. Further, as of January 1, 2011, they will be free to raise to any level the final service subject to rate regulation – the basic local exchange rate. To allow the ILECs a surcharge now would contravene the principles of “free market” competition. Now that they have been deregulated, the large ILECs must bear the burdens – and not merely reap the benefits – of competition. The current economic meltdown notwithstanding, in a competitive market, if a company cannot cover its costs through its prices, the company will not survive. The ILECs have made no argument justifying continued subsidies through surcharges. Rather, after years of asserting that they face abundant competition justifying reduced or no rate regulation, they now simply assert that a surcharge is necessary to recover costs in a competitive market. Thus, the ILECs have failed to meet their burden in this case.

B. Inspection and Maintenance Costs are Not Extraordinary Costs Eligible For Surcharge

Even under rate regulation, the large ILECs were not entitled to a surcharge for the kinds of ordinary inspection and maintenance activities this rulemaking aims to adopt. Such costs were a part of each company's revenue requirement, and were "rolled into" the rate design. Indeed, when the Commission established the "start-up revenue requirement" for each company in the original New Regulatory Framework proceeding, that revenue requirement included the costs of inspecting and maintaining facilities. Those very costs have been recovered for years as part of each ILEC's rates. While the implementation of augmented safety rules may require the large ILECs to incur moderate costs,² these costs are not extraordinary expenses; rather, they are fundamental to the carriers' service.

Further, even under traditional regulation, the ILECs bore the burden of proving entitlement to a surcharge, and they have made no attempt to meet that burden here. For example, to justify recovery via surcharge for an "exogenous" expense, a NRF ILEC had to meet a test that included several specific elements before the Commission would grant the request. The Commission dispensed with the "z-factor" treatment for exogenous expenses some years ago because of the evolution of the telecommunications marketplace to one it deemed increasingly competitive. The Commission should not resurrect the "z-factor" model at this juncture. The ILECs' request for a surcharge must be denied.

C. Facility-Based Providers Do Not Face Disadvantages

Both AT&T and the CIPs assert that rules affecting only facility-based providers will disadvantage them in comparison to carriers without their own facilities. AT&T states, "[Other] companies provide telephone service, such as Voice Over IP ("VOIP") providers, *e.g.*, Skype and Vonage, who are not regulated by the Commission and will

² AT&T estimates its costs at \$3-7 million annually, although it has not proven this amount. AT&T Opening Comments, Decl. of Scott P. Pearsons, p. 2.

not have to pass on such costs to their customers.” (AT&T Opening Comments, 3/27/09, p. 7).

The premise that inspection and maintenance rules disadvantage large ILECs is unfounded. While facilities-based providers may face requirements that other providers avoid, the converse is also true. ILECs benefit from tremendous advantages of incumbency – from existing infrastructure and accumulated manpower and inventory, to exemption from many provisions of the California Environmental Quality Act (CEQA) and other advantages – with which competing providers must contend in order to enter the market.

Indeed, large ILECs continue to dominate the wireline market, despite deregulation. A report produced by the Commission’s Communications Division (CD) found that competition in wireline services has diminished in recent years, to the benefit of the large ILECs. “CD observes that all ‘markets’ are ‘concentrated’ and/or ‘oligopolistic.’ The market concentration ratios also suggest that since June 2005, concentration has increased in residential (wireline) telephone lines.”³ This observation is validated by the Commission’s Opinion Approving Advice Letters 28800 and 28982. There, the Commission concluded “AT&T has not provided evidence that it has less than 60% of residential lines”⁴ Concurrently, the United States Department of Defense (DOD) forecasted that ILEC competition in “[the] market, under this projection, will be that of a duopoly.”⁵ Thus, the Commission, its staff, and the DOD have all found it untrue that large facilities-based ILECs face market disadvantages.

³ Communications Division, *Market Share Analysis of Residential Voice Communications in California (Public Version)*, (California Public Utilities Commission, San Francisco, December 2008) p. 1, available at <http://taxdollars.freedomblogging.com/files/2009/03/cpuc-white-paper.pdf>.

⁴ *Opinion Approving Pacific Bell Telephone Company Advice Letters 28800 and 28982 with Modifications*, (April 24, 2008) p. 29, available at http://docs.cpuc.ca.gov/PUBLISHED/FINAL_DECISION/82002.htm.

⁵ Commission, D.06-08-030, (San Francisco, CA: August 24, 2006) p. 69, available at http://docs.cpuc.ca.gov/word_pdf/FINAL_DECISION/59388.pdf.

D. ILECs' Revenues from Pricing Freedom Counter Claims of Competitive Inequality

In a report conducted on July 29, 2008, DRA presented evidence that the ILECs granted pricing freedom in the Commission's Uniform Regulatory Framework decision (URF)⁶ have significantly increased many of their prices since 2006. Thus, the large ILECs have ample funds from which to pay for any rules the Commission imposes here, despite the carriers' claims to the contrary. *See* AT&T Opening Comments, p. 8 (“[Consumer Protection and Safety Division] (CPSD) is incorrect in assuming AT&T California can just increase its prices, e.g., AT&T California's basic residential prices are capped until January 1, 2011”); CIP Coalition Opening Comments, p. 15 (CIPs “cannot simply pass [safety regulation] costs on to their consumers”).

Since 2006, AT&T has raised the price of inside wire maintenance 101%; directory assistance 226%; call waiting and other vertical services 86%; non-published listing services 346%; and caller ID 62%.⁷ Excluding the rate-cap on basic residential service – set to expire on January 1, 2011 – the ILECs increased prices for nearly all services:⁸

- Returned Check Charge: 276%
- Anonymous Call Rejection: 163%
- Local Calling: from 34% to 233% for a 3 minute call
- Zone 3 Calling: from 24% to 212% for a 3 minute call
- Local Toll: from 69% to 163% for a 3 minute call
- Directory Assistance: 226%
- Residential Inside Wire (WirePro) Protection Plan: 101%
- Non-Published Listing Service: 346%
- Caller ID: 62%
- Call Waiting, Call Forwarding, Call Screening, 3-Way Calling: 86%

⁶ *See* D.06-08-030 and D.08-09-042.

⁷ Division of Ratepayer Advocates, *Report on Rate Increases of Verizon, AT&T, SureWest and Frontier California Following Adoption of the Uniform Regulatory Framework in Decision 06-08-030* (07/29/2008) p. 4, available at <http://www.dra.ca.gov/NR/ronlyres/726D9AB3-EC05-4E5D-BB7D-D23879FFD10F/0/DRAFinalReportTelephoneServicePriceIncreases.pdf>

⁸ *Id.*, p. 11.

Thus, AT&T has ample revenue to cover its safety costs.

III. CONCLUSION

It is unreasonable for ILECs to benefit from price deregulation, yet request ratepayer surcharges whenever they claim they need them. DRA values the safety of California consumers and therefore agrees with the additional safety requirements proposed by CPSD. However, large ILECs should fund those requirements from their market-based rates, and are not entitled to a ratepayer surcharge.

Respectfully submitted,

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April 8, 2009

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of “**REPLY COMMENTS OF THE DIVISION OF RATEPAYER ADVOCATES ON TELEPHONE COMPANY COST RECOVERY FOR OVERHEAD LINE INSPECTIONS**” in **R.08-11-005** by using the following service:

E-Mail Service: sending the entire document as an attachment to all known parties of record who provided electronic mail addresses.

U.S. Mail Service: mailing by first-class mail with postage prepaid to all known parties of record who did not provide electronic mail addresses.

Executed on **April 8, 2009** at San Francisco, California.

/s/ REBECCA ROJO

Rebecca Rojo

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 and/or e-mail address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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