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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Pacific Bell Telephone Company, dba AT&T
California (U 1001 C),

Complainant,

vs.

Cbeyond Communications, LLC (U 6446 C),
Covad Communications Company (U 5752 C),
and Arrival Communications, Inc. (U 5248 C),

Defendants.

Case 06-03-023
(Filed March 22, 2006)

SCOPING MEMO AND RULING OF ASSIGNED COMMISSIONER

The undersigned Commissioner hereby rules upon the matters required by Rule 7.3 of the Commission's Rules of Practice and Procedure (Rules).

1. Category. This proceeding is categorized as adjudicatory.
2. Hearing. A hearing is necessary in this proceeding.
3. Presiding Officer. The presiding officer shall be Administrative Law Judge (ALJ) Victor D. Ryerson, to whom the proceeding was reassigned from ALJ Kim Malcolm on September 13, 2006.
4. Prehearing Conference (PHC). A telephonic PHC was held in this proceeding on July 6, 2006. No official record of the proceedings was made, and I did not attend.
5. Parties. Complainant AT&T California is an incumbent local exchange carrier (ILEC) and intraLATA toll service provider. Defendants

Cbeyond Communications, LLC (Cbeyond), Covad Communications Company (Covad), and Arrival Communications (Arrival) are competitive local exchange carriers (CLECs) certificated to provide local service in California. XO Communications Services, Inc., Mpower Communications Corp., and U.S. TelePacific Corp. are CLECs that have been granted leave to intervene in this proceeding. Arrival was dismissed from the proceeding by stipulation of the parties following the filing of the complaint.

6. Background. AT&T filed this complaint against Cbeyond, Covad, and Arrival, seeking relief in the nature of a declaratory order to the effect that certain wire centers that AT&T has removed from its list identifying impaired facilities are non-impaired under guidelines adopted by the Federal Communications Commission (FCC) in its *Triennial Review Remand Order* (TRRO)¹ and under criteria set forth in 47 C.F.R Section 51.319(a)(4) and (a)(5).

“Impaired” in this context is a term of art signifying essentially that the level of activity at a particular wire center is presumptively insufficient to support unassisted competition by interconnecting CLECs. In this regard an ILEC’s assertion that a wire center is non-impaired has significant economic importance under the terms of the Telecommunications Act of 1996 (46 U.S.C. Section 251 et seq.): If a wire center is impaired (i.e., does not meet the TRRO criteria for non-impairment), CLECs can obtain high capacity (DS1 and DS3) loops and dedicated transport at Commission-approved unbundled network element (UNE) rates, which are based on the Total Long Run Incremental Costs

¹ Order on Remand, *In the Matter of Unbundled Access to Network Elements, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04-313, CC Docket No. 01-338, FCC 04-290 (Feb.4, 2005).

associated with those loops. On the other hand, if the ILEC shows that a wire center is non-impaired, there is a presumption that sufficient alternatives are available to the CLEC for high capacity loops and transport, and the ILEC will not have to provide high capacity loops and transport as UNEs. Instead, the CLEC either must obtain the high capacity loop and transport from the ILEC at significantly higher Special Access rates, or the CLEC must make arrangements to obtain high capacity loops and/or transport from third parties. In either case, the CLEC will have to pay appreciably more to provide its service to customers.

The Commission is being asked to take three steps in this proceeding: first, to resolve policy and definitional disputes that will establish the ground rules for determining business line counts and fiber-based collocators that are ultimately used to determine if a wire center is non-impaired; second, based upon the resolution of these definitional disputes, to determine whether AT&T's data supports its identification of business line counts and/or fiber-based collocators; and finally, to establish the initial list of non-impaired AT&T wire centers in California.

7. Issues. The parties submitted the following statement of issues on July 25, 2006, which is adopted for purposes of this Scoping Memo. This formulation will govern the scope and nature of the issues in the proceeding, subject to subsequent alteration by stipulation or ruling of the presiding officer.

Under the FCC's rules, the availability of high-capacity loops and dedicated transport on an unbundled basis turns on the number of business lines and/or fiber-based collocators in AT&T California's wire centers. The FCC's rules (47 C.F.R §§ 51.5 and 51.319(a)(4)(i), (a)(5)(i), (e)(3)) establish objective criteria for defining and counting business lines and fiber-based collocators. The overarching issues in this proceeding are whether AT&T California properly implemented those criteria - and thus accurately

designated its wire centers – and, if not, what adjustments should be made.

1. *Fiber-Based Collocators*: How should Fiber-based Collocators (FBC) be counted under the FCC’s definition of “Fiber-based collocator” in 47 C.F.R. § 51.5 and applicable orders?
 - a. Are there instances in which the Commission should count as an FBC a connecting carrier who uses a collocation-to-collocation cross-connect to access fiber capacity from the second collocator as a separate FBC (*i.e.*, in addition to the collocation of the second collocator)? If so, what are the circumstances in which such connecting carriers should be counted as an FBC?
 - b. What constitutes a “comparable transmission facility” under the FCC’s definition of a “Fiber-based collocator”?
 - c. What data should be used to identify FBCs in the disputed wire centers?
 - i. Should affiliate relationships (other than the affiliation between AT&T Corp. and SBC Communications Inc.) be examined based on the carrier’s affiliate status at the time that the wire center is designated as non-impaired or should more recent data be considered? Should the affiliate relationship between Verizon and MCI affect the FBC count (regardless of the date of affiliation)?
 - ii. How should fiber that AT&T Corp. deployed prior to the merger with SBC Communications Inc., and that is operated and/or utilized by other carriers, be treated?
 - iii. Are network changes that occurred after March 11, 2005 relevant to the disputed wire center determinations?
 - iv. Is a carrier that sub-leases collocation space from another carrier eligible to be considered as an FBC?

- d. Taking all relevant factors into consideration, are the FBCs identified by AT&T California appropriate? If not, what adjustments to the FBC count should be made?
2. *Business Line Counts*: How should Business Lines be counted in order to comply with the FCC's definition of "Business Lines" in 47 C.F.R. § 51.5 and applicable orders?
 - a. What is the appropriate vintage for the supporting data used in evaluating the Business Line counts governing proper classification in the disputed wire centers?
 - b. How should UNE Loops be counted?
 - i. How should digital UNE-L lines be counted under the FCC's definition of business line?
 - ii. How should digital UNE-P lines be counted under the FCC's definition of business line?
 - iii. Should UNE lines be counted in the same manner as AT&T's retail active voice grade circuits?
 - c. Should business switched access lines provided under a commercial agreement be counted as business lines under the FCC's definition of business line?
 - d. Taking all relevant factors into consideration, are the Business Line Counts identified by AT&T California appropriate? If not, what adjustments to the Business Line counts should be made?
 3. Based on the Commission's determinations for the issues presented in Parts 1 and 2 above, what are the appropriate classifications for the wire centers at issue in this proceeding?

[Footnotes are omitted.]

8. Procedural Schedule. A procedural schedule was initially established by ALJ Malcolm, but as a result of the recent reassignment of this proceeding, all unexpired procedural deadlines were vacated by ALJ Ryerson,

and the evidentiary hearing was continued from September 19 to October 4, 2006. Additional procedural deadlines shall be established by the presiding officer at the conclusion of the hearing. In no event will the Commission's decision be issued later than March 22, 2007.

IT IS SO RULED.

Dated October 13, 2006, at San Francisco, California.

/s/ RACHELLE B. CHONG

Rachelle B. Chong
Assigned Commissioner

***** SERVICE LIST C0603023*****

Last Update on 05-OCT-2006 by: SMJ

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