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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)

**ADMINISTRATIVE LAW JUDGE'S RULING
DIRECTING PARTIES TO SUPPLEMENT RECORD**

In Decision (D.) 11-07-032, issued July 14, 2011, the Commission decided that Section XI of the Interconnection Agreement (ICA) between the parties set the rate that Pacific Bell Telephone Company (PACIFIC) could charge XO Communications, Inc. (XO) for cross-connections. D.11-07-032 modified the Commission's earlier decision (D.10-07-005) which had ordered PACIFIC to charge XO at the Total Long Run Incremental Cost (TELRIC) rate for such cross-connections. Both parties subsequently filed petitions for modification of D.11-07-032 and pleadings in opposition to each other's petitions.

In both the petitions and the related briefs, the parties - most particularly PACIFIC - introduced new arguments and changed earlier legal positions. The petitions and briefs also raised questions regarding the facts in dispute in this matter. Accordingly, this ruling directs the parties to supplement the record

with answers to the specific questions set out in Appendix A, attached to this ruling. It is unfortunate that the parties failed to adequately address these questions and to brief these matters at a much earlier stage in this proceeding. It is a considerable waste of Commission resources to have to seek this information now in order to rule on the petitions for modification.

IT IS RULED that:

1. Pacific Bell Telephone Company and XO Communications Services, Inc. shall provide written responses to the questions contained in Appendix A to this ruling in accordance with the instructions set out therein.
2. Responses and all supporting documentation shall be filed in this docket and become part of the record of this proceeding.
3. Each party shall serve the other party and the assigned Administrative Law Judge with a courtesy copy of its responses simultaneously with filing them.
4. Responses shall be filed and courtesy copies served no later than ten (10) business days from the date hereof.

Dated November 15, 2011, at San Francisco, California.

/s/ KARL J. BEMESDERFER

Karl J. Bemesderfer
Administrative Law Judge

APPENDIX A TO ADMINISTRATIVE LAW JUDGE'S RULING ORDERING PARTIES TO SUPPLEMENT THE RECORD

Definitions

For purposes of responding to the questions in this ruling, the following definitions apply:

ICA: the Interconnection Agreement between the parties, including all attachments and appendices.

Direct cross-connects: direct cabling between two CLECs' collocation spaces. See Joint Factual Stipulation ¶ 7 (Jan. 27, 2010).

Cross-connects via the MDF [main distribution frame]: cabling between one CLEC's termination on the MDF and another CLEC's termination on the MDF. See Joint Factual Stipulation ¶ 8.

Section 251 (and subsections thereof): section 251 (and subsections thereof) of the Telecommunications Act of 1996, 47 U.S.C. § 251 et seq.

Instructions

Cite specifically to the record in support of each answer. When asked what specific language means in the ICA or tariffs refer and cite specifically to the language in the ICA or tariffs on which you are relying in support of your answer.

If citing to a document not in the record, provide a copy of that document.

Questions to both parties

I. The ICA

1. ICA Definition No. 18 defines "cross connect" as "an intra-wire center channel connecting separate pieces of telecommunications equipment." What type/s of cross-connect service does this include? Does it include (a) direct cross-connects? (b) cross-connects via the MDF?

Explain.

2. ICA Definition No. 23 defines "EISCC (Expanded Interconnection Service Cross Connect)" as "the connection between the collocation point of termination ("POT Bay") and the unbundled Network Element or interconnection point to a switched or dedicated arrangement or service in PACIFIC's network."

- a. What type/s of cross-connect service does this include?
 1. Does it include (a) direct cross-connects? (b) cross-connects via the MDF? Explain.
 2. If it does include cross-connects (of any kind), why does it use the term "connection" instead of the term "cross-connect"?
 - b. How is an EISCC different from a "cross-connect," as defined in Definition No. 18 in the ICA?
3. ICA Section XI.A states in part: "PACIFIC will provide for physical collocation of transport and termination equipment necessary for interconnection of CLEC's network facilities to PACIFIC's network or access to unbundled network elements at its Wire Center premises."
- a. Does this language provide XO with the right to all forms of physical collocation? Does it include all types of cross-connects? Explain why or why not.
 - b. Does this language distinguish between direct cross-connects and cross-connects via the MDF? Explain why or why not.
4. ICA Section XI.A. also states: "Such collocation shall be provided on a non-discriminatory basis according to the rates, terms and conditions contained in Pacific's Schedule Cal. P.U.C. Tariff No. 175-T, Section 16, except as modified below."
- a. Does this language limit the preceding sentence's reference to "collocation" (see #3 above) to ONLY those collocation services set forth in the state tariff? If a particular collocation service does not appear in the state tariff, does XO have the right to it? Explain why or why not.
 - b. If the state tariff is silent on the rate for a particular collocation service, does XO nonetheless have the right to such a service but the rate must be found elsewhere? Explain why or why not.
5. ICA Section XI.A.2(b) states: "Should multiplexing via EISCC between CLEC and another party's collocated network facility in PACIFIC's Wire Center be found to be required under the Act or offered to another party, PACIFIC will provide this capability to CLEC."
- a. What type of cross-connects does this language address?
 - b. Does this language address cross connects via the MDF? Explain.
 - c. Does this language give XO the right to cross-connects? If so, what type of cross-connects and used for what purposes (i.e. for interconnection under section 251(c)(2) or as UNES and/or to access UNES under section 251(c)(3))?

d. The ICA's Definitions section does not contain a definition of the term "multiplexing."

1. Is the term "multiplexing" defined elsewhere in the ICA? If so, identify where.
2. Explain what the term "multiplexing" means as used in this section.

6. Section 6.1 of the ICA's UNE Appendix defines "cross-connect" as "the media between PACIFIC's distribution frame and a CLEC designated collocation space or other PACIFIC unbundled network element purchased by CLEC, the PACIFIC UNE and a CLEC designated point of access, or the media between PACIFIC UNE and a Collocation area for the purpose of permitting CLEC to connect the PACIFIC to other UNEs or to CLECs [sic] own facilities. Where PACIFIC has otherwise committed to connect one UNE to another UNE on behalf of CLEC, or to leave connected one UNE to another UNE on behalf of CLEC the cross connect is the media between one PACIFIC UNE and another PACIFIC UNE."

- a. Citing specific language, explain what equipment and/or service(s) this definition covers.
- b. Provide a diagram illustrating your explanation of what this definition means.
- c. Explain how this definition is different from and/or the same as (1) the definition of "cross connect" set forth in Definition No. 18 of the ICA (see #1 above); and (2) the definition of "EISCC" set forth in Definition No. 23 of the ICA (see #2 above).
- d. Does this definition include direct cross-connects?
- e. Does this definition include cross-connects via the MDF?
 1. Does this definition include cross-connects via the MDF used for the purpose of section 251(c)(2) interconnection? Explain.
 2. Does this definition include cross-connects via the MDF used as UNEs and/or to access UNEs under section 251(c)(3)? Explain.

7. Section 6.2 of the UNE Appendix states: "PACIFIC shall provide cross connections within its Central Offices or Wire Centers, including but not limited to cross connections at the following speeds. . . ."

- a. Does this section apply to direct cross-connects?
- b. Does this section apply to cross-connects via the MDF used for the purpose of section 251(c)(2) interconnection? Explain.
- c. Does this section apply to cross-connects via the MDF used as UNEs and/or to access UNEs under section 251(c)(3)? Explain.

8. Section 6.3 of the UNE Appendix states: "To the extent required by the FCC, PACIFIC will at its option permit CLEC to interconnect its network with that of another collocating telecommunications carrier at PACIFIC's premises and to connect its collocated equipment to the collocated equipment of another telecommunications carrier within the same premises provided that the collocated equipment is also used for interconnection with PACIFIC or for access to PACIFIC's Unbundled Network Elements. Subject to the conditions above PACIFIC will provide the connection between the equipment in the collocated spaces of two or more telecommunications carriers and any necessary DCS or other equipment at the requesting competitive local carrier's expense, unless PACIFIC permits one or more of the collocating parties to provide this connection for themselves. PACIFIC need not permit collocating telecommunications carriers to place their [sic] own connecting transmission facilities within PACIFIC's premises outside of the actual Physical Collocation space."

- a. Citing specific language, explain what equipment and/or service(s) this provision covers.
- b. Provide a diagram illustrating your explanation of what this provision means.
- c. Does this section apply to direct cross-connects? Explain.
- d. Does this section apply to cross-connects via the MDF used for the purpose of section 251(c)(2) interconnection? Explain.
- e. Does this section apply to cross-connects via the MDF used as UNEs and/or to access UNEs under section 251(c)(3)? Explain.

9. Identify all locations in the ICA in which the ICA sets forth a rate for cross-connects. Explain why or why not each rate identified applies to:

- (a) cross-connects via the MDF used for the purpose of section 251(c)(2) interconnection, and/or
- (b) cross-connects via the MDF used as UNEs and/or to access UNEs under section 251(c)(3).

10. Besides the ICA sections cited in questions 1 through 9 above, identify any other language in the ICA that refers to cross-connects, including without limitation direct cross-connects and cross-connects via the MDF. For each instance, does the language cited (a) distinguish between direct cross-connects and cross-connects via the MDF or (b) give XO the right to cross-connects via the MDF?

11. Is XO using the cross-connects via the MDF at issue in this proceeding for the purpose of section 251(c)(2) interconnection or as UNEs and/or to access UNEs under section 251(c)(3)?

12. XO's October 6, 2011 reply in support of its petition for modification attaches as "Attachment 2" a document entitled "Appendix Pricing."

- a. Is this document part of the ICA currently in the record? If not, explain why or why not.
 - b. Citing to particular language in this document, particularly in section I ("Unbundled Network Elements and Collocation"), explain the relevance of this document, including:
 1. Does this document refer, pertain, and/or apply to direct cross-connects?
 - (a) If so, does it refer, pertain, and/or apply to direct cross-connects used for the purpose of interconnection under section 251(c)(2)? Explain.
 - (b) If so, does it refer, pertain, and/or apply to direct cross-connects used as UNEs and/or to access UNEs under section 251(c)(3)? Explain.
 2. Does this document refer, pertain, and/or apply to cross-connects via the MDF?
 - (a) If so, does it refer, pertain, and/or apply to cross-connects via the MDF used for the purpose of interconnection under section 251(c)(2)?
 - (b) If so, does it refer, pertain, and/or apply to cross-connects via the MDF used as UNEs and/or to access UNEs under section 251(c)(3)?
13. Does the ICA encompass the complete agreement of the parties regarding their rights and obligations regarding interconnection? If not, then what other authority (a) establishes the rights and obligations of the parties regarding interconnection or (b) modifies the parties' rights and obligations regarding interconnection as set forth in the ICA?
14. Assuming for the purpose of this question that the ICA DOES provide XO with the right to cross-connects via the MDF, does the ICA contain a rate for that service?
- a. If so, where? Specify the language and rate that applies.
 - b. If not, should the Commission apply (1) the TELRIC rate or (2) another rate? If it should be another rate, identify what the rate should be and where that rate is located.
15. Assuming for the purpose of this question that the ICA does NOT address cross-connects via the MDF, must the Commission conclude that the parties agreed NOT to include that service in their agreement? In other words, must the Commission conclude that XO - by opting into an existing negotiated ICA - gave up its right to cross-connects via the MDF by entering into an ICA that does not address cross-connects via the MDF?
16. Identify and provide a copy of all relevant portions of any ICA between PACIFIC and another competitive local exchange carrier (CLEC) that provides the CLEC with the right to cross-connects via the MDF.

II. The state tariff and the federal special access tariff

17. Identify all locations in PACIFIC's state tariff (PACIFIC's Schedule Cal. P.U.C. Tariff No. 175-T) in which the state tariff:

- (1) addresses, refers to, or covers cross-connects via the MDF and/or provides XO with the right to cross-connects via the MDF, and
- (2) sets forth a rate for cross-connects via the MDF. For each citation to a rate in the state tariff, explain why or why not that rate applies to cross-connects via the MDF used for the purpose of section 251(c)(2) interconnection and/or as UNEs and/or to access UNEs under section 251(c)(3).

Provide copies of all cited state tariff provisions if not already in the record.

18. Identify all locations in PACIFIC's federal special access tariff (PACIFIC Tariff F.C.C. 1) in which the federal tariff:

- (1) addresses, refers to or covers cross-connects via the MDF and/or provides XO with the right to cross-connects via the MDF, and
- (2) sets forth a rate for cross-connects via the MDF. For each citation to a rate in the federal tariff, explain why or why not that rate applies to cross-connects via the MDF used for the purpose of section 251(c)(2) interconnection and/or as UNEs and/or to access UNEs under section 251(c)(3).

Provide copies of all cited federal tariff provisions if not already in the record.

19. Section 7.1.2(D) of PACIFIC's federal special access tariff (F.C.C. Tariff No. 1) states: "Collocation Transport provides for the transmission facilities between collocation arrangements located in Telephone Company Central Offices."

- a. Explain how this language and the meaning thereof is different from and/or similar to the ICA's provisions re: collocation and/or cross-connects, including without limitation Definition No. 18, Definition No. 23, section XI.A, and sections 6.1, 6.2, and 6.3 of the UNE Appendix.
- b. Does this language include or refer, pertain, or apply to cross-connects via the MDF used for the purpose of interconnection under section 251(c)(2)? Explain.
- c. Does this language include or refer, pertain, or apply to cross-connects via the MDF used as UNEs and/or to access UNEs under section 251(c)(3)? Explain.
- d. Does this language include or refer, pertain, or apply to direct cross-connects used for the purpose of interconnection under section 251(c)(2)? Explain.
- e. Does this language include or refer, pertain, or apply to direct cross-connects used as UNEs and/or to access UNEs under section 251(c)(3)? Explain.

20. Assuming for the purpose of this question that the federal tariff DOES apply to the disputed cross-connects, does the federal tariff have to comply with the TELRIC pricing requirements in

the FCC's Local Competition Order, 11 FCC Rcd 15499, ¶¶ 29, 618-629 (1996)? If the federal tariff sets a rate higher than TELRIC, is the federal tariff therefore contrary to the Local Competition Order? Explain why or why not.

21. Assuming for the purpose of this question that (a) the ICA does NOT provide XO with the right to cross-connects via the MDF and (b) the federal tariff also does NOT address cross-connects via the MDF, what rate applies?

Questions to PACIFIC only

1. In the parties' Joint Factual Stipulation (¶ 10), the parties' stipulated that PACIFIC is currently charging XO for cross-connects via the MDF located "in [PACIFIC's] wire centers that had been deemed 'impaired' for dedicated interoffice transport" "at the TELRIC rates established by the Commission and incorporated into the ICA."

- a. Is the rate PACIFIC is charging XO in PACIFIC's "impaired" wire centers set forth in the in the Pricing Appendix to the ICA (See Attachment 1 to XO's October, 6, 2011 reply brief) OR elsewhere in the ICA? If so, identify where. Specify the exact language and rate that applies.
- b. If not, (1) identify in what document the rate is located and (2) provide the document if it is not already in the record. Specify the exact language and rate that applies.
- c. If the rate PACIFIC is charging XO in PACIFIC's "impaired" wire centers is set forth in the ICA, does this rate apply to ALL cross-connects via the MDF (i.e. regardless of whether they are located in "impaired" wire centers under the section 251(c)(3) impairment analysis for UNEs)?
 1. If the answer is yes, explain why PACIFIC is not charging XO this rate for ALL cross- connects via the MDF.
 2. If the answer is no, please explain why not.

2. In PACIFIC's February 17, 2010 Opening Brief at page 5, PACIFIC stated that "the provision in the parties' ICA where the parties incorporated the right for XO to obtain Cage-to-Cage Connection is contained in the UNE Appendix." (On pages 2-3 of the same brief, PACIFIC defined "Cage-to-Cage Connection" as including both direct cross-connects and cross-connects via the MDF.)

- a. Does PACIFIC now contend that the UNE Appendix does NOT incorporate the right for XO to obtain cross-connects via the MDF? Explain why or why not. In addition, explain the position PACIFIC presents at page 2 of PACIFIC's September 26, 2011 reply brief in support of its petition for modification (Section II).
- b. If PACIFIC believes that the ICA (including the UNE Appendix) does not provide XO with the right to cross-connects via the MDF, then pursuant to what

agreement, tariff, or other document is PACIFIC currently charging XO the TELRIC rate, as set forth in paragraph 10 of the Joint Factual Stipulation (see question 1 above)? Cite to the record or provide a copy of any document cited that is not in the record.

(END OF APPEDIX A)