

Decision **DRAFT DECISION OF ALJ DUDA (Mailed 4/26/2005)****BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Joint Application of AT&T Communications of California, Inc. (U 5002 C) and WorldCom, Inc. for the Commission to Reexamine the Recurring Costs and Prices of Unbundled Switching in Its First Annual Review of Unbundled Network Element Costs Pursuant to Ordering Paragraph 11 of D.99-11-050.

Application 01-02-024
(Filed February 21, 2001)

Application of AT&T Communications of California, Inc. (U 5002 C) and WorldCom, Inc. for the Commission to Reexamine the Recurring Costs and Prices of Unbundled Loops in Its First Annual Review of Unbundled Network Element Costs Pursuant to Ordering Paragraph 11 of D.99-11-050.

Application 01-02-035
(Filed February 28, 2001)

Application of The Telephone Connection Local Services, LLC (U 5522 C) for the Commission to Reexamine the Recurring Costs and Prices of the DS-3 Entrance Facility Without Equipment in Its Second Annual Review of Unbundled Network Element Costs Pursuant to Ordering Paragraph 11 of D.99-11-050.

Application 02-02-031
(Filed February 28, 2002)

Application of AT&T Communications of California, Inc. (U 5002 C) and WorldCom, Inc. for the Commission to Reexamine the Recurring Costs and Prices of Unbundled Interoffice Transmission Facilities and Signaling Networks and Call-Related Databases in Its Second Annual Review of Unbundled Network Element Costs Pursuant to Ordering Paragraph 11 of D.99-11-050.

Application 02-02-032
(Filed February 28, 2002)

Application of Pacific Bell Telephone Company (U 1001 C) for the Commission to Reexamine the Costs and Prices of the Expanded Interconnection Service Cross-Connect Network Element in the Second Annual Review of Unbundled Network Element Costs Pursuant to Ordering Paragraph 11 of D.99-11-050.

Application 02-02-034
(Filed February 28, 2002)

Application of XO California, Inc. (U 5553 C) for the Commission to Reexamine the Recurring Costs of DS1 and DS3 Unbundled Network Element Loops in Its Second Annual Review of Unbundled Network Element Costs Pursuant to Ordering Paragraph 11 of D.99-11-050.

Application 02-03-002
(Filed March 1, 2002)

**OPINION MODIFYING DECISION (D.) 04-09-063 AND D.05-03-037
TO CORRECT ERRORS IN APPENDICES**

Background

In September 2004, the Commission issued Decision 04-09-063 adopting permanent unbundled network element (UNE) rates for Pacific Bell Telephone

Company d/b/a SBC California (SBC-CA). The decision contained three appendices listing new rates -- Appendix A contained the newly adopted rates, Appendix B compared proposed and adopted rates, and Appendix C listed usage based UNE switching rates for use in reciprocal compensation payments between carriers. This decision modifies an error in Appendix C of D. 04-09-063. A corrected version of Appendix C is attached to this order. Because Appendix C of D.04-09-063 was used to create tables for a subsequent order, this order also corrects Appendix B of D.05-03-037.

Error in Appendix C

Following issuance of D.04-09-063, staff from the Telecommunications Division notified the Administrative Law Judge (ALJ) in this proceeding that Appendix C of the order contains a rate for unbundled tandem switching “setup per completed message” that differs from the adopted rate for that same element shown in Appendices A and B of the decision. Specifically, the rate for this UNE is \$0.001562 per completed message in Appendix C, while it is \$0.000179 in Appendices A and B.

Appendix C was included in the decision to address the concern of PacWest Telecomm Inc. (PacWest) that if the Commission adopted a flat rate structure for the unbundled switching UNE, it should not be applied in the context of reciprocal compensation arrangements between competitive local exchange carriers and SBC-CA. The intent of Appendix C was to provide usage-based switching rates for reciprocal compensation even though the Commission was adopting non-usage based UNE switching rates in Appendices A and B. (D.04-09-063, *mimeo.*, at 242.)

In a November 5, 2004 ruling, the ALJ solicited parties’ comments on this potential error and discrepancy in this rate. The ALJ asked whether it was

appropriate to simply delete the unbundled tandem switching rates from Appendix C because usage-based tandem switching rates were already included in Appendices A and B and there was no need for them to be included in Appendix C in the first place.

AT&T Communications of California (AT&T) agreed with the ALJ's suggestion that the usage-based tandem switching rates in Appendix C were unnecessary and should be deleted. In contrast, SBC-CA responded that the correct rate for unbundled tandem switching setup per completed message was the higher rate in Appendix C and it should replace the lower rate in Appendices A and B. According to SBC, the higher tandem rate in Appendix C includes tandem usage costs that were apparently left out when the rate was calculated for Appendix A.

AT&T opposes SBC-CA's suggestion to change Appendix A to the higher tandem switching rate found in Appendix C. AT&T explains that when the HM 5.3 cost model, which was used in D.04-09-063 to establish UNE rates, is run with the Commission's adopted inputs, the resulting rate for tandem switching setup per completed message is the \$0.000179 found in Appendix A. The \$0.001562 rate in Appendix C does not match the price generated by HM 5.3 using Commission adopted inputs and it would be improper to adopt this rate as SBC-CA suggests. In addition, AT&T comments that Appendix A should be modified to remove the tandem switching setup per attempt rate element because it is unclear how this rate was derived from HM 5.3.

Clearly, there is an error in D.04-09-063 in that Appendices A, B, and C contain different rates for the same rate element. Unfortunately, the parties do not agree on the correct course of action. AT&T points to the rate in Appendix A as the correct one, but suggests other modifications to the unbundled tandem

switching rate elements. SBC maintains that the correct rate is the higher one found in Appendix C. We find that the proper course of action is to correct the unbundled tandem switching “setup per completed message” rate element in Appendix C to match the rate in Appendix A because when HM 5.3 is run with Commission adopted inputs, the resulting rates are the ones found in Appendix A.

We decline SBC-CA’s suggestion for the opposite result because SBC-CA has not explained or supported with calculations why the higher rate in Appendix C is the correct one. SBC-CA had several opportunities to comment that the Commission’s calculation of the rate for tandem switching setup per completed message was wrong, yet SBC-CA never raised this objection to the calculation of this rate element in the many rounds of comment leading up to D.04-09-063. We find that because HM 5.3 yields the rate in Appendix A when it is run with the Commission’s adopted inputs, the rate in Appendix C should simply be corrected. If SBC-CA believes the rate has been calculated incorrectly, it can file a petition to modify D.04-09-063.

Likewise, we decline AT&T’s suggestion to delete unbundled tandem switching setup per attempt charges from Appendix A. This too, should have been pointed out in the many rounds of comments leading up to D.04-09-063 and it would be improper to make this modification based on reply comments in response to an ALJ ruling on a different rate element. If AT&T or any party believes this rate is incorrect, it can file a petition to modify D.04-09-063.

As part of today’s order, we must also correct subsequent orders that relied on Appendix C of D.04-09-063. Appendix C was relied on in D.05-03-026 when the Commission settled UNE true-up and shared and common cost issues. D.05-03-026 was later corrected by D.05-03-037. Thus, this order modifies

Appendix B of D.05-03-037 to show the correct rate for unbundled tandem switching. A corrected Appendix B is attached to this order.

Comments on Draft Decision

The Commission mailed the draft decision of the ALJ in this matter to the parties in accordance with Section 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure. Comments were filed by _____ and reply comments were filed by _____.

Assignment of Proceeding

Michael R. Peevey is the Assigned Commissioner and Dorothy J. Duda is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. In D.04-09-063, the Commission adopted UNE rates for SBC-CA, including unbundled tandem switching rates.
2. When the HM5.3 cost model is run with the inputs adopted in D.04-09-063, the resulting rate for unbundled tandem switching setup per completed message is \$0.000179, as found in Appendix A of that order.
3. The rate for unbundled tandem switching setup per completed message in Appendix C of D.04-09-063 does not match the price generated by HM 5.3 using Commission adopted inputs.
4. Appendix C of D.04-09-063 was relied on in D.05-03-026, which was later corrected in D.05-03-037.

Conclusions of Law

1. Appendix C of D.04-09-063 should be modified so that the rate for unbundled tandem switching setup per completed message is \$0.000179.

2. Appendix B of D.05-03-037 should be modified to show a current rate for unbundled tandem switching setup per completed message of \$0.000179 and a current rate with a 19% mark-up of \$0.000176.

O R D E R

IT IS ORDERED that:

1. Appendix C of Decision (D.) 04-09-063 is modified as set forth in this order.
2. Appendix B of D.05-03-037 is modified as set forth in this order.
3. This proceeding is closed.

This order is effective today.

Dated _____, at San Francisco, California.

D.04-09-063
 Appendix C (Corrected)
 Switching Rates Based on Minute of Use *

UNEs	Current Rates	Commission Run of HM 5.3 **
Switch Usage		
Interoffice - Originating		
Setup per Message	\$ 0.001751	\$ 0.001472
Holding Time per MOU	\$ 0.000547	\$ 0.001382
Interoffice - Terminating		
Setup per Message	\$ 0.002076	\$ 0.001472
Holding Time per MOU	\$ 0.000554	\$ 0.001382
Intraoffice		
Setup per Message	\$ 0.003974	\$ 0.001562
Holding Time per MOU	\$ 0.001071	\$ 0.001382
Unbundled Tandem Switching		
Setup per Attempt	\$ 0.000153	\$ 0.000461
Setup per Completed Message	\$ 0.000231	\$ 0.000179
Holding Time per MOU	\$ 0.000135	\$ 0.000461

* All rates include a 21% markup for shared and common cost.

** Based on a 70 / 30 split of traffic sensitive / non-traffic sensitive cost.

(END OF APPENDIX C)

D. 05-03-037
Appendix B (Corrected)
 Switching Rates Based on Minute of Use

UNEs	Rates adopted in D.04-09-063 with 21% Mark-up *		New Rates with 19% Mark-up	
Switch Usage				
Interoffice - Originating				
Setup per Message	\$	0.001472	\$	0.001448
Holding Time per MOU	\$	0.001382	\$	0.001360
Interoffice - Terminating				
Setup per Message	\$	0.001472	\$	0.001448
Holding Time per MOU	\$	0.001382	\$	0.001360
Intraoffice				
Setup per Message	\$	0.001562	\$	0.001536
Holding Time per MOU	\$	0.001382	\$	0.001360
Unbundled Tandem Switching				
Setup per Attempt	\$	0.000461	\$	0.000453
Setup per Completed Message	\$	0.000179	\$	0.000176
Holding Time per MOU	\$	0.000461	\$	0.000453

* Based on a 70 / 30 split of traffic sensitive / non-traffic sensitive cost.

(END OF APPENDIX B)