

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Bell Telephone Company,
d/b/a SBC California for Generic Proceeding to
Implement Changes in Federal Unbundling Rules
Under Sections 251 and 252 of the
Telecommunications Act of 1996.

Application 05-07-024
(Filed July 28, 2005)

**DECISION GRANTING AT&T CALIFORNIA'S
MOTION TO COMPEL UNE-P TRANSITION**

1. Summary

This decision grants AT&T California's (AT&T) motion to compel Competitive Local Exchange Carriers (CLECs) to transition from the unbundled network element platform (UNE-P). All CLECs that have not yet transitioned from UNE-P are ordered to place orders to transition from the UNE-P service within 30 days of the effective date of this order. Any CLECs that do not place timely orders are ordered to notify their customers that their service may be discontinued, and AT&T is authorized to discontinue service after 60 days.

2. Background

On February 4, 2004, the Federal Communications Commission (FCC) released the *TRRO*,¹ which eliminated or restricted the unbundling obligations for numerous unbundled network elements, including unbundled switching.

¹ Order on Remand, *Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 20 FCC Rcd 2533, FCC 04-290 (rel. Feb. 2, 2005)(*TRRO*).

The FCC determined that since CLECs are not impaired without access to unbundled switching, CLECs are no longer entitled to the UNE-P. In the *TRRO*, the FCC set a deadline for the transition off the UNE-P: “[w]e require competitive LECs to submit the necessary orders to convert their mass market customers to an alternative service arrangement within twelve months of the [March 11, 2005] effective date of this Order.”²

Pacific Bell Telephone Company d/b/a SBC California³ filed an application to initiate a generic proceeding to amend the existing interconnection agreements between SBC and various CLECs, to comply with the terms of the *TRRO*. On January 26, 2006, this Commission issued Decision 06-01-043, resolving all the disputed issues between the parties. In that decision, we repeatedly stressed that March 11, 2006 was the “deadline” by which CLECs were required to migrate the embedded base of UNE-P customers to alternative arrangements.⁴ We emphasized that “the CLECs have an obligation to ensure that they submit their orders to complete the transition in a timely fashion. The transition should be *completed* by the end of the transition period, not *begin* on that date.”⁵

At the same time, the parties themselves recognized that possibly not all lines would be transitioned by the deadline. One of the disputed issues

² *TRRO* ¶ 227.

³ SBC California is now AT&T California. References to Pacific Bell Telephone Company, SBC California, and AT&T California refer to the same company.

⁴ See D.06-01-043 at 32, 47, and 89.

⁵ *Id.* at 32-33.

presented to the Commission to resolve was Issue 14: “What rates should apply to ULS/UNE-P services if the embedded base ULS/UNE-P customer’s service has not been disconnected or migrated by the deadline to be specified in the amendment?” The Commission rejected AT&T’s market-based pricing, saying it would be “unduly punitive” for failure to make the deadline to transition services from ULS/UNE-P arrangements, and instead adopted the CLECs’ Total Service Resale rates that the Commission had previously approved.

3. AT&T’s Motion to Compel

AT&T filed its Motion to Compel UNE-P Transition on September 21, 2007. No party filed in response to AT&T’s motion.

In its Motion to Compel, AT&T reports that most California CLECs effectively completed the transition in a timely manner, converting well over a million UNE-P lines to alternative arrangements. Others did not, and more than 100,000 lines still remained shortly before the March 11, 2006 transition deadline. On February 10, 2006, AT&T filed an emergency motion to compel the remaining CLECs to take the necessary steps to transition their embedded base of UNE-P customers to alternative arrangements by the March 11, 2006 deadline.

According to AT&T, certain CLECs responded by asserting, among other things, that various carriers had difficulty negotiating commercial agreements with AT&T, that they had difficulties in using AT&T’s ordering processes, that they were in the process of implementing a transition plan, or that certain delays had occurred on AT&T’s end. The assigned Administrative Law Judge found that “[t]his is not a complaint case, and it is not my intention to determine where the

faults lies,” but denied AT&T’s emergency based on the assumption that “it is unlikely that the fault is all on the CLECs’ side.”⁶

AT&T asserts that nothing in the ALJ’s order indicated that it would be appropriate for CLECs to wait until after March 10, 2006, to transition away from UNE-P – let alone another 18 months past that date, as is now the case. To the contrary, the ALJ “initiated a conference call on March 1, 2006,” in the “interest of facilitating the conversion of UNE-P lines before the March 11, 2006 deadline.”⁷ AT&T points out that the ALJ’s ruling explained that the CLECs on that conference call had promised to “provide[] SBC with a daily count of the number of service orders that they would be submitting between March 1 and March 10, 2006.” *Id.*

At that time, more than 100,000 UNE-P lines remained in California. Since then, more than 90% of those lines have been transitioned, thus demonstrating that there is no obstacle to completing the transition. It should be a simple matter for the remaining CLECs to order a transition of these former UNE-P arrangements to a bona fide resale arrangement or to a commercial arrangement with AT&T, if they do not intend to rely on their own or competitively provided facilities.

AT&T provides an attached declaration showing that 19 CLECs in California have failed to transition their embedded base of UNE-P customers to alternative arrangements. Those CLECs collectively use nearly 9,000 former

⁶ Administrative Law Judge’s Ruling Denying SBC California’s Emergency Motion to Compel UNE-P Transition at 4, A.05-07-024 (Mar. 8, 2006).

⁷ *Id.*

UNE-P lines in California. Although most have at some point in the past negotiated a transition plan or otherwise expressed an intention to complete the transition, they simply have not followed through.⁸ AT&T asks for leave to file Attachment A [the list of CLECs] to the Declaration of Deborah Fuentes Niziolek under seal.

AT&T requests the Commission to compel the CLECs identified in confidential Attachment A to the Niziolek Declaration to complete the transition that the FCC and this Commission required. AT&T asks that the CLECs be directed to place the necessary orders to complete the transition no later than 30 days of the Commission's order and to complete the necessary work to process those orders on their end. In the event that a CLEC fails to comply with that 30-day transition requirement, AT&T requests authority to discontinue providing service on those circuits, including taking steps to disconnect those lines. To ensure that the CLECs' customers do not lose service, the Commission should also order any CLEC that fails to submit its orders within that 30-day period to notify its customers that their service might be disconnected and those give them the option to find another provider.

We agree that AT&T has allowed more than enough time for the CLECs at issue to complete the required transition away from UNE-P. There is no reason why all UNE-P lines should not have been transitioned long ago. More than 18 months have passed since the FCC's March 11, 2006 deadline, and we find it significant that no party responded to AT&T's motion to compel. Apparently the CLECs realize that their transition from UNE-P is long overdue.

⁸ Niziolek Decl. ¶¶ 9-11.

Therefore, we will order all CLECs that still have UNE-P lines to submit the necessary orders to transition those lines no later than 30 days from the effective date of this order. Any CLEC that does not submit its order in a timely fashion, shall notify its customers by the 30th day that their service might be disconnected and give them the option to find another provider. At the same time, the CLEC shall send a list of those customers and their phone numbers to the Commission's Communications Division. Fifteen days later, the CLEC shall send the customer a reminder notice. Sixty days from the effective date of this order, AT&T shall have the authority to disconnect any of those lines for which they have not received orders to transition the service. We do not like the option of discontinuing a customer's telephone service so we encourage the CLECs involved to submit their transition orders in a timely fashion.

4. Waiver of Comment Period

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Section 311(g)(2) of the Public Utilities Code and Rule 14.6(c)(2) of the Commission's Rules of Practice and Procedure, the otherwise applicable 30-day period for public review and comment is waived.

5. Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and Karen A. Jones is the assigned ALJ in this proceeding.

Findings of Fact

1. AT&T has allowed more than enough time for the CLECs at issue to complete the required transition away from UNE-P.
2. More than 18 months have passed since the FCC's March 11, 2006 deadline for CLECs to transition off the UNE-P.

Conclusions of Law

1. There is no reason why all UNE-P lines should not have been transitioned long ago.
2. AT&T's motion for confidential treatment of Attachment A of the Declaration of Deborah Fuentes Niziolek should be granted.

O R D E R

Therefore, **IT IS ORDERED** that:

1. All Competitive Local Exchange Carriers (CLECs) that have not yet completed the transition from UNE-P, shall place orders to transition those lines within 30 days of the effective date of this order.
2. Any CLEC that fails to place orders to transition their UNE-P lines within 30 days of the effective date of this order, shall notify their customers by the 30th day that their service may be disconnected.
3. Any CLEC that fails to place orders to transition their UNE-P lines shall send a reminder notice to their customers by the 45th day that their service may be discontinued.
4. Sixty days after the effective date of this order, AT&T California has the authority to disconnect any remaining UNE-P lines where the CLEC has not placed a timely order to transition those lines.
5. AT&T shall ensure that all of the CLECs listed on Attachment A of the Declaration of Deborah Fuentes Niziolek receive a copy of this order within two days of its issuance.
6. AT&T California's motion for leave to file under seal Attachment A to the Declaration of Deborah Fuentes Niziolek is granted for a period two years from the issuance of this order.

This order is effective today.

Dated _____, at San Francisco, California.