

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

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TO: PARTIES OF RECORD IN R.93-04-003 and I.93-04-002

This is the proposed decision of Administrative Law Judge (ALJ) Duda. It will not appear on the Commission's agenda for at least 30 days after the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the proposed decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the proposed decision as provided in Article 14 of the Commission's "Rules of Practice and Procedure," accessible on the Commission's website at www.cpuc.ca.gov. Pursuant to Rule 14.3 opening comments shall not exceed 15 pages.

Comments must be filed either electronically pursuant to Resolution ALJ-188 or with the Commission's Docket Office. Comments should be served on parties to this proceeding in accordance with Rules 1.9 and 1.10. Electronic copies of comments should be sent to ALJ Duda at dot@cpuc.ca.gov. All parties must serve hard copies on the ALJ and the Assigned Commissioner, and for that purpose I suggest hand delivery, overnight mail or other expeditious method of service. The current service list for this proceeding is available on the Commission's website, www.cpuc.ca.gov.

/s/ ANGELA K. MINKIN
Angela K. Minkin, Chief
Administrative Law Judge

ANG:jt2

Attachment

Decision **PROPOSED DECISION OF ALJ DUDA (Mailed 2/8/2007)****BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Rulemaking on the Commission's Own Motion to Govern Open Access to Bottleneck Services and Establish a Framework for network Architecture Development of Dominant Carrier Networks.

Rulemaking 93-04-003
(Filed April 7, 1993)

Investigation on the Commission's Own Motion Into Open Access and Network Architecture Development of Dominant Carrier Networks.

Investigation 93-04-002
(Filed April 7, 1993)

**DECISION GRANTING, IN PART, VERIZON CALIFORNIA INC.'S
PETITION TO MODIFY DECISION 06-03-025**

I. Summary

We grant Verizon California Inc.'s (Verizon) request to restructure the rates for switching, multiplexing and dark fiber to reflect how Verizon currently provisions and bills for those elements. We clarify that the rate adopted for an Integrated Services Digital Network (ISDN) loop is in addition to the deaveraged loop rate. We reject Verizon's request to place delisted elements in a separate appendix, but have included footnotes in Appendix A to show which elements are no longer unbundled network elements (UNEs). We have eliminated a few elements that Verizon says it does not provide.

II. Background

In Decision (D.) 06-03-025, we established final UNE rates for Verizon. The rates adopted in D.06-03-025 replace interim rates adopted previously. Those

interim rates are subject to true-up once the permanent rates have been established.

III. Verizon's Petition for Modification

On September 1, 2006, Verizon filed its Petition to Modify D.06-03-025. In its petition, Verizon states that it is evident from objections interposed to several Advice Letters Verizon filed on April 14, 2006 in compliance with that decision, that there is uncertainty and ambiguity within the industry as a result of certain parts of the decision, as well as additional practical concerns that Verizon has identified in attempting its implementation.

Verizon proposes changes in three areas as follows:

- 1) The UNEs delisted by the Federal Communications Commission (FCC) in its Triennial Review Order (TRO) and the Triennial Review Remand Order (TRRO) should not appear in D.06-03-025, Appendix A or Verizon's interconnection agreements;
- 2) The Commission should modify or restate rates for tandem switching and interoffice switching, multiplexing and dark fiber.
- 3) Additional issues require clarification or modification.

No party filed in opposition to Verizon's Petition to Modify.

Also on September 1, 2006, Verizon filed a motion for leave to file confidential materials under seal, namely Exhibit D (Multiplexing and Dark Fiber Rate Restructure Workpaper).

Following we discuss each of the points Verizon raised in its Petition.

1) Should delisted UNEs be included in D.06-03-025, Appendix A?

According to Verizon, Appendix A of the decision includes items that Verizon is not required to provide as UNEs, and the decision should be modified to strike the inappropriate elements. Pursuant to Section 251(d) of the

Communications Act, the FCC is vested with sole authority to identify the elements of an incumbent carrier's network that must be made available to competitors at cost-based, Total Element Long Run Incremental Cost (TELRIC) rates. The FCC most recently exercised this authority in the *Triennial Review Remand Order*¹ (TRRO) in which it explained:

Section 251(d)(2) authorizes the Commission [the FCC] to determine which elements are subject to unbundling, and directs the Commission to consider, "at a minimum," whether access to proprietary network elements is "necessary," and whether failure to provide a non-proprietary element on an unbundled basis would "impair" a requesting carrier's ability to provide service. Section 252, in turn, requires that those network elements that must be offered pursuant to section 252(c)(3) be made available at cost-based rates.

Verizon points out that the same authority to list UNEs encompasses the FCC's prerogative to delist them, that is, to determine that competitors are no longer impaired if they are not afforded access to a given UNE at TELRIC rates. In the TRRO, the FCC delisted several UNEs. While the Commission generally recognized the delisting effect of the TRRO in D.06-03-025, the Appendix includes several delisted UNEs. The Commission noted, "[T]here is no need to remove rate elements for UNEs Verizon no longer provides because the rate may be necessary for true-up purposes and the existence or absence of a price does not affect Verizon's obligations under federal law."²

¹ Order on Remand, In re: *Unbundled Access to Network Elements*, WC Docket No. 04-313, FCC 04-290 (rel. Feb. 4, 2005) (TRRO).

² D.06-03-025 at 141.

Verizon concurs that the latter statement is true, namely that the presence of a price does not affect Verizon's obligations, but asserts the former is not; by not removing the relevant rate elements (or at a minimum, not segregating them as included solely for true-up purposes), the Commission has created confusion in the industry. Verizon urges the Commission to correct D.06-03-025 Appendix A to exclude UNEs that have been delisted by the FCC; moreover, it should clarify that Verizon is not to include delisted UNEs that appear in Appendix A as UNEs in its interconnection agreement (ICA) amendments. Additionally, Verizon asserts that the Commission should modify the decision to affirm that services such as entrance facilities, transport facilities and Signaling System 7 (SS7) links to which Verizon may be required to provide access pursuant to D.06-02-035,³ are not UNEs and should therefore not be listed in Verizon's ICA amendments filed pursuant to D.06-03-025. Verizon suggests that omitting the delisted UNEs from Appendix A will have no effect on true-up or retrospective applications of the prescribed rates but will properly clarify Verizon's obligations pursuant to the TRRO.

We do not agree with Verizon's conclusion that omitting the delisted UNEs from Appendix A will have no impact on the true-up or Verizon's obligations under its ICAs. We need to adopt rates for those elements that will be subject to true-up, and it is appropriate that those rates appear in Appendix A. However, we see the value in adding a footnote specifying that those UNEs have

³ D.06-02-035 was issued in docket A.04-03-014, Petition of Verizon California Inc. for Arbitration of an Amendment to Interconnection Agreements With Competitive Local Exchange Carriers and Commercial Mobile Radio Service Providers in California Pursuant to Section 252 of the Communications Act of 1934, as Amended, and the Triennial Review Order.

been delisted and have revised Appendix A accordingly. In the ICA amendments, Verizon may indicate each UNE that has been delisted and the effective date of the delisting.

In addition, Verizon asks the Commission to affirm that services such as entrance facilities, transport facilities and SS7 links, which Verizon is required to provide for purposes of interconnection pursuant to D.06-02-035, are not UNEs and should be not be listed in Verizon's interconnection amendments filed pursuant to D.06-03-025. We concur with Verizon's assertion that the services listed above are *not* UNEs. However, those services *are* available to competitors for purposes of interconnection pursuant to D.06-02-035. The rates for those services are the UNE rates adopted in this decision.

Section 252(d) of the Telecommunications Act of 1996 requires that elements used for interconnection should be priced at cost-based rates, the same as UNEs. The rates to be charged for those services when used for purposes of interconnection with Verizon's network are as shown in Appendix A.

We affirm that we ordered that competitors have continued access to those services for purposes of interconnection in a separate proceeding (A.04-03-014). However, the UNE rates should appear in Appendix A since they are needed for true-up purposes and for pricing those elements when they are used for interconnection purposes. Verizon should include a footnote to these rates in its ICA amendments, indicating that they are delisted UNES that are available for purposes of interconnection.

2) Rates for tandem switching and interoffice switching, multiplexing and dark fiber.

Verizon states that it is neither practicable for Verizon, nor appropriate for the Competitive Local Exchange Carriers (CLECs) it serves, to

make changes to longstanding provisioning standards. Verizon asserts that it does not seek a revisitation of the rates directed; rather, those rates should be applied as converted within the wholesale provisioning standards already in effect for Verizon, rather than through wasteful, confusing and unnecessary conversions to different measurements and units than those currently utilized. Each affected element is discussed independently below:

A) Tandem switching and interoffice switching should be on a per minute of use basis.

Verizon proposes that certain rates be restructured to be applied on a per minute of use (MOU) basis. Verizon finds these modifications to be especially reasonable given that tandem switching and interoffice switching are no longer UNEs. The proposed per-MOU rate structures for tandem switching and interoffice switching are consistent with rate structures previously adopted by this Commission, including the interim rates ordered in D.03-03-033 and D.05-01-057. Verizon points out that Verizon used the same per MOU-based tandem switch rate to calculate the true-up amounts that it owed CLECs and that CLECs owed it in its June 27, 2006 UNE True-Up and Rate Re-Examination Proposals. No party objected to the use of Verizon's per Minute of Use based tandem switch rate.

Verizon states that its methodology is easily explained. Verizon has assumed a 3.95 minute average call holding time to calculate a single per-MOU rate for each switching component.

Appendix A - Tandem Switching		Divided by	
		Average Hold	
		Time	
Set up Per Message	0.000217	3.95	0.000055
Holding Time Per MOU	0.000309		<u>0.000309</u>
			0.000364

<u>Appendices A and B - Interoffice Switching (Orig/Term)</u>		<u>Divided by Average Hold Time</u>	
Set Up Per Message	0.001293	3.95	0.000327
Holding Time Per MOU	0.001184		0.001184
			0.001511

To summarize, Verizon proposes replacing the rate structure ordered in D.06-03-025 with the following:

<u>Switch Usage</u>		
Tandem Switching per MOU		0.000364
Interoffice Switching per MOU		0.001511

According to Verizon, implementing this change will not have a material effect on rates, as it chiefly effects a simpler per-MOU structure. If Verizon is required to apply the ordered set-up per call and holding time per minute of use charges, necessary billing system modifications may take up to 12 months to complete and implement.

We find it significant that Verizon presented its switch data in the true-up phase of this proceeding in the form described here, and no party took exception to the structure or the rates Verizon employed. Also, it makes no sense to reinvent the wheel and require extensive modifications to Verizon's billing system when a simpler solution is before us. Verizon's proposed per minute of use rates for tandem switching and interoffice switching are adopted and will be included in the revised version of Appendices A and B which are appended to this order.

In a footnote, Verizon asserts that the Commission should strike the rates for reciprocal compensation and all references to reciprocal compensation found in the decision. According to Verizon, it is improper for the

decision to prescribe a reciprocal compensation switching rate, derived from runs of HM 5.3, given the express exclusion of reciprocal compensation from the proceeding by the Assigned Administrative Law Judge (ALJ).

On November 3, 2003, Verizon filed its direct case-in-chief, which included reciprocal compensation rates. AT&T moved to strike reciprocal compensation as outside the scope of the proceeding, and at a February 3, 2004, Law and Motion hearing, ALJ Duda granted AT&T's motion on this point. Verizon states that there were no further references to reciprocal compensation until the first Draft Decision issued on November 22, 2005. Verizon claims that its only opportunity to comment on the issue was after the Draft Decision was issued, which violates due process concerns associated with a rate-setting proceeding.

Verizon has not chosen the correct forum to revisit this issue. If Verizon believed that the Commission committed legal error by adopting rates for reciprocal compensation, Verizon should have included that issue in its Application for Rehearing of D.06-03-025. Verizon did not do so. It is not appropriate that the issue be raised, in a footnote, in this Petition to Modify.

As a point of clarification, the ALJ rejected Verizon's request for a *separate* cost study for reciprocal compensation, and instead indicated that the adopted UNE rates be used for reciprocal compensation purposes. At the Law and Motion hearing Verizon referenced, ALJ Duda made it clear that adopted UNEs would be used to set reciprocal compensation rates:

...as I understand it, in all of the other OANAD [Open Access and Network Architecture Development] decisions we have never taken up reciprocal compensation prices; we've...set the UNEs prices and ...let [them] apply to reciprocal comp....⁴

In other words, Verizon had notice that the Commission intended to apply adopted UNE rates to reciprocal compensation, in lieu of entertaining Verizon's separate cost study. We note that D.06-03-025 also states that this was the same outcome that we ordered in the SBC UNE case.

B) Multiplexing and Dark Fiber

Verizon states that the adopted rate structure for dark fiber and for multiplexing is impracticable, without significant, costly and time-and resource-consuming changes to Verizon's billing systems. Due to the small number of these types of UNEs sold, the costly billing system changes required to implement the ordered rates are not warranted.

Specifically, Verizon states that multiplexing should be per-multiplexer (MUX), rather than per-channel. Verizon describes multiplexing as the attachment of electronic equipment to increase the carrying capacity of the facility. Appendix A prescribes "per DS0" and "per DS1" rates for multiplexing and "per channel" rates for Digital Cross Connect System (DCS) multiplexing. This is inconsistent with both Verizon's existing rate structure and its existing practices, in which it provisions – and bills--UNE interoffice transmission facilities on a per-multiplexer basis. These rates are appropriate because when multiplexing is ordered by a CLEC, Verizon dedicates an entire multiplexer to the CLEC, and does not share the equipment among multiple carriers.

⁴ TR at 16519, Law and Motion Hearing, February 3, 2004 (ALJ Duda).

Verizon proposes that rather than implement an inordinately costly change to its billing system, in a manner inconsistent with its provisioning practices, that the order be modified to reflect that a carrier requesting multiplexing be charged for the entire multiplexing unit. That carrier would, of course, continue to be offered the entire capacity of the MUX without additional per-channel multiplexing charges. The proposed rates, converted to a per-MUX unit structure are:

Multiplexing:

DS1 to DS0 \$3.14 per DS0 x 24 DS0 channels = \$ 75.36 per MUX
 DS3 to DS1 \$5.58 per DS1 x 28 DS1 channels = \$ 156.24 per MUX

Digital Cross Connect System (DCS) Multiplexing

DS1 to DS0 \$3.14 per channel x 24 DS0 channels = \$ 75.36 per MUX
 DS3 to DS1 \$5.58 per channel x 28 DS1 channels = \$156.24 per MUX

We concur with Verizon that the rates for multiplexing will be changed to reflect the fact that a carrier requesting multiplexing will be charged for the entire multiplexing unit. This change reflects the way that the service is actually provisioned and billed.

Verizon states that the situation with dark fiber is much the same as with multiplexing. According to Verizon, converting from one billing system to another would be resource-intensive, expensive, and not worth its substantial cost in light of the small number of dark fiber dedicated interoffice transmission facilities currently provisioned in California.

Verizon urges the Commission to modify the decision to reflect an appropriate conversion methodology as follows:

ITF Dark Fiber per strand rate – Conversion to per pair, per mile rate

$\$11.10 \times 2 \text{ strands} = \$22.20 \text{ per pair} \div 11 \text{ miles (longest existing ITF Dark Fiber circuit length)} = \$2.02 \text{ per pair, per mile}$

ITF Dark Fiber per foot rate – Conversion to per pair, per mile rate

$\$0.00017 \times 2 \text{ strands} \times 5280 \text{ feet} = \$1.80 \text{ per pair, per mile}$

Total per pair, per mile rate $\$2.02 + \$1.80 = \$3.82 \text{ per pair, per mile.}$

In addition, Verizon asks that the Commission revise the reference to dark fiber “interoffice per strand” to read “interoffice IDT facility per pair, per mile,” and similarly, “IOF to CO” should be revised to reflect “Interoffice IDT Termination per end.”

Verizon makes a compelling argument for changing the way that dark fiber is leased, to reflect the fact that Verizon bills on a per pair, per mile basis. It makes no sense to require significant changes to Verizon’s billing system, given the small number of dark fiber dedicated interoffice transmission facilities currently provisioned. Verizon’s proposal to change the way that dark fiber is billed as described above, is adopted, and Appendix A will be changed accordingly.

3) Additional issues requiring clarification or modification.**A) Statewide average rates**

Verizon states that by including the statewide average rates for certain loops in Appendix A, the Commission has created unnecessary confusion within the industry. This is because, although the statewide average is arithmetically correct, no party purchases an “average” priced loop; rather, the rates are broken into four geographic zones in accordance with federal law, and it is only those deaveraged rates that are actually available to competitors.

Because the statewide average rates are shown in Appendix A, it has caused some competitors to contend that Verizon is in violation of the decision because it has not included the “statewide average” loop rate as a valid

price in the relevant portion of the compliance filings. Verizon suggests that the Commission remedy the problem by striking the Appendix A statewide average rates for UNEs that have been geographically deaveraged.

Verizon points out that the FCC requires that “State commissions shall establish different rates for elements in at least three defined geographic areas within the state to reflect geographic cost differences.”

(47 C.F.R. § 51.507(f)) Verizon suggests that Appendix A be corrected to reflect the Commission’s extensive discussion of its deaveraging methodology.

We concur with Verizon’s position that the FCC requires state commissions to adopt geographically deaveraged rates, and we adopted geographically deaveraged loop rates in D.06-03-025. We also agree with Verizon that the statewide average rates shown in Appendix A for UNEs that have been geographically deaveraged are not available to competitors. Only the deaveraged rates are available to competitors. However, we decline to delete the statewide average rates from Appendix A. Those rates may be needed for true-up purposes so it is important that the adopted rates be part of our decision. Verizon may include a note in its ICA amendments that the statewide average rates are included for true-up purposes only and are not available for purchase under the ICA.

a) ISDN option

According to Verizon, the Commission’s identification of an “ISDN option” rate requires clarification for implementation. Appendix A to the decision identifies the following line item:

Loops

ISDN Statewide Average	\$16.48
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This listing, standing alone, and without further explanation, is ambiguous because like the loops on which it is provisioned, ISDN is not a service priced on a statewide average; rather, it is generally an enhanced function for a two-wire loop. This rate was portrayed in the SBC UNE order, D.04-09-063 as modified by D.05-05-031 as a rate *in addition to* the two-wire loop rate, and was presented the same way by Verizon in its Advice Letter filings filed to implement this decision. Since the loop rates are deaveraged, the ISDN feature should not be added to the statewide average loop rate. Instead, Appendix A should be corrected to add the following ISDN loop rates (the sum of the two wire deaveraged loop rates + \$2.54):

ISDN

Zone 1	\$ 14.47
Zone 2	\$ 49.25
Zone 3	\$ 137.28
Zone 4	\$ 528.24

We concur with Verizon's view of how the ISDN line should be treated, and adopt the deaveraged ISDN rates described above. The ISDN function must be added to the deaveraged loop rates, not to the statewide average loop rate. It is contrary to the FCC's rules to use the statewide average rate to price UNEs that have been geographically deaveraged, such as loops.

b) Other “UNEs”

Finally, Verizon has a problem with three UNEs in

Appendix A:

Coin Option	\$ 3.61
ADSL ⁵ on copper loop	\$ 6.74
ADSL on DLC loop	\$ 16.54

Verizon finds the “Coin Option” to be problematic because it is not a service that Verizon offers. Rather, loops for coin pay telephones are simply priced at the relevant loop price for the geographic zone. Verizon, therefore, requests that “Coin Option” be deleted.

We concur with Verizon’s request. Since Verizon does not offer a special Coin Option service, it is appropriate to delete that item from Appendix A.

Verizon points out that the entry for “ADSL on copper loop” appears to be in addition to the geographically deaveraged loop rates. Verizon urges the Commission to clarify that ADSL on copper loop is an adder to a copper loop for which ADSL service has been provisioned.

Additionally, for the sake of both clarity and consistency, the rate should more properly reflect “xDSL” rather than “ADSL.” Presumably, the additional cost is appropriate for the provisioning of all types of DSL service, and, conversely, it makes little sense for the fee to apply solely to the asymmetric version.

As Verizon points out, the issue here is similar to that for ISDN service. The DSL rate should not be added to the statewide average loop

⁵ Asymmetrical Digital Subscriber Line

rates, but to the geographically deaveraged loop rates. In addition, it makes sense that this rate apply to all DSL services, so we have revised the item to read “xDSL.”

According to Verizon “ADSL on DLC Loop” is not technically feasible. Verizon does not provision DSL services over digital loop carrier, and is not aware of any commercially practical way to do so. Verizon asks that this item be deleted because it does not exist.

We grant Verizon’s request to delete ADSL on DLC loop from the Appendix since Verizon does not provision DSL services over digital loop carrier.

IV. Comments on Proposed Decision

The proposed decision of the ALJ in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1), and Rule 14.2(a) of the Commission’s Rules of Practice and Procedure. Comments were filed on _____ and Reply Comments, on _____.

V. Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and Dorothy Duda is the assigned ALJ in this proceeding.

Findings of Fact

1. Delisted UNEs must be included in Appendices A and B because they are necessary for true-up purposes.
2. Delisted UNEs should be identified in Appendices A and B by a footnote.
3. Entrance facilities, transport facilities and SS7 links are not UNEs.
4. Entrance facilities, transport facilities and SS7 links are available to competitors for purposes of interconnection pursuant to D.06-02-035.

5. The rates to be charged for entrance facilities, transport facilities and SS7 links are the UNE rates adopted in D.06-03-025.

6. Verizon presented its switch data in the true-up phase of this proceeding on a MOU basis, and no party took exception to the structure or the rates Verizon employed.

7. Verizon's proposed per minute of use for tandem switching and interoffice switching should replace the structure for switching adopted in D.06-03-025.

8. Verizon had notice that the Commission intended to apply adopted UNE rates to reciprocal compensation.

9. When a carrier requests multiplexing from Verizon, the carrier is charged for the entire multiplexing unit.

10. Verizon bills for dark fiber on a per pair, per mile basis.

11. It would be costly and time-consuming to change the way that dark fiber is provisioned.

12. The statewide average rates shown in Appendix A are not available to competitors.

13. Only the deaveraged rates in Appendix A are available for purchase by competitors.

14. The ISDN loop rate must be added to the deaveraged loop rates, not to the statewide average loop rate.

15. Verizon does not offer a special Coin Option loop so it is appropriate to delete that item from Appendix A.

16. The xDSL rate should be added to the deaveraged loop rates, not to the statewide average loop rate.

17. Verizon does not provide ADSL on DLC Loop so that service should be deleted from Appendix A.

Conclusions of Law

1. Pursuant to Section 252(d) of the Telecommunications Act of 1996, elements used for interconnection should be priced at cost-based rates, the same as UNEs.
2. If Verizon believed that the Commission committed legal error by adopting rates for reciprocal compensation in D.06-03-025, it should have included that issue in its Application for Rehearing of the decision.
3. At the Law and Motion hearing on February 3, 2004, ALJ Duda made it clear that adopted UNEs would be used to set reciprocal compensation rates.
4. The FCC requires state commissions to adopt geographically deaveraged rates.
5. It is contrary to the FCC's rules to use the statewide average rate to price UNEs that have been geographically deaveraged, such as loops.
6. Verizon's motion to file Exhibit D materials under seal should be granted for two years.

O R D E R

Therefore, **IT IS ORDERED** that:

1. The Petition to Modify filed by Verizon California Inc. shall be granted, in part, as described in this order, and Appendices A and B of Decision 06-03-025 shall be replaced with the new versions of Appendices A and B attached to this order.
2. The September 1, 2006 motion of Verizon California Inc. for confidential treatment of Exhibit D (Multiplexing and Dark Fiber Rate Restructure Workpaper) is hereby granted for two years from the effective date of this order. During that period the information shall not be made accessible or disclosed to anyone other than the Commission staff except on further order or ruling of the

Commission, the assigned Commissioner, the assigned Administrative Law Judge (ALJ), or the ALJ then designated as the Law and Motion ALJ.

3. If Verizon California Inc. believes that further protection of the information kept under seal is needed, it shall file a motion stating the basis for such further protection at least one month before the expiration date.

This order is effective today.

Dated _____, at San Francisco, California.