Decision **DRAFT DECISION OF ALJ REED (Mailed 3/22/2005)**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

California Telcom, L.L.C. dba Cox Communications (U-5684-C), Complainant, vs. Southwestern Bell Corporation (U-1001-C), Defendant.	Case 03-02-011 (Filed February 6, 2003) (ECP under D.95-12-056)

OPINION GRANTING COMPLAINT

Summary

This decision grants the complaint of Cox California Telcom, LLC (Cox) against Pacific Bell Telephone Company, doing business as SBC California (SBC California), and finds that SBC California breached § 3(A) of the Cox-SBC California Data Exchange Agreement (DEA) from May 2000 through July 2001. Consequently, we do not find Cox liable to SBC California for the costs of the traffic at issue. The proceeding is closed.

Procedural Background

This matter comes before the Commission pursuant to the dispute resolution procedures set forth in Decision (D.) 95-12-056. Under the procedures, in the event of a dispute over terms of an interconnection agreement (ICA), the parties must first try to resolve the matter informally at the executive level. If

that is unsuccessful, a party may file a motion seeking mediation before an Administrative Law Judge (ALJ). If mediation fails, the ALJ then directs the parties to file pleadings and resolves the dispute. If either party disagrees with that ruling, the party may contest the ruling by filing an expedited complaint with the Commission.[1] *See* D. 95-12-056, Ordering Paragraph 11; 63 CPUC2d 700, 749-50.

Under the process, on June 14, 2002, Cox filed a motion[2] seeking the Commission's assistance in resolving an ICA dispute between Cox and SBC California. On January 7, 2003, the assigned ALJ issued a preliminary ruling in favor of SBC California, stating that neither the pleadings nor supporting documentation submitted substantiated Cox's claim. On February 6, 2003, Cox filed this complaint. SBC California responded on March 12, 2003, and amended its answer on June 12, 2003. Evidentiary hearings were held on June 25-26, 2003. Fifteen exhibits were identified and received into evidence.[3]

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[1] The expedited complaint process established for dispute resolution over the terms of an ICA adhere to the same rules set forth in Rule 13.2 of the Commission's Rules of Practice and Procedure, except that a court reporter may be present. The Commission decision may include separately stated findings of fact, and conclusions of law, and if so, the decision may be considered as precedent. (63 CPUC 2d, 700.)

[2] The motion was filed in the docket of D.95-12-056, Rulemaking (R.) 95-04-043 and Investigation 95-04-044.

[3] SBC California revised its Exhibit #15 on June 27, 2003.

Statement of the Case

In June 1997, Cox and SBC California entered into two ancillary agreements, pursuant to their ICA, for the exchange of customer billing data. These two agreements were a DEA[4] and a Meet-Point Billing (MPB) Agreement. The purpose of such agreements is to set out a process for how one local exchange carrier (LEC) trades call message records with other LECs to allow for the billing and collection of charges where the customer of one LEC uses the facilities of another LEC. The call message records take one of three forms: (1) calling card[5] and third party billed[6] (CATS)[7] messages, (2) non-CATS

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[4] Specifically entitled "Data Exchange Agreement For The Distribution Of IntraLATA Message Detail And/Or The Settlement Of IntraLATA Message Revenue Between Pacific Bell And CoxCom, Inc." (Exhibit #1, Attachment B to Joint Statement of Undisputed Facts.) Although not at issue, the DEA was withdrawn in order to correct a minor error soon after its June 1997 filing at the Commission. The agreement was never re-filed. Cox and SBC California stipulated that the terms of the DEA were applicable to the dispute. (Exhibit #1, Joint Statement of Undisputed Facts at ¶ 4.)

[5] Calling card message is "an intraLATA call where the charges are billed to a telecommunications line number based calling card issued by a LEC." (*Id.*, Attachment B at 1, § 1 (Definitions).)

[6] Third party or number billed message is an intraLocal Access Transport Area (LATA) call where (i) the charges are billed to a telephone number that is not the originating or terminating telephone number, and (ii) the billed telephone number is serviced by a LEC other than the Transporting LEC. (*Id.*, Attachment B at 2, § 1 (Definitions).)

[7] "Calling Card and Third Number Settlement… means that part of [the] Centralized Message Data System (CMDS) which is a mechanized computer process used to maintain records regarding intercompany settlements through which revenues collected by the billing company are distributed to the originating company." (*Id.*)

messages[8], and (3) switched-access messages involving meet-point billing records. The Cox-SBC California DEA provided for the CATS and non-CATS message records, and the Cox-SBC California MPB Agreement provided for the meet-point billing records.

All local exchange telephone companies exchange billing records where the call is originated and transported over one carrier's network, but the billed party is served by another carrier. The actual charges for the calls are determined by the tariffs of the transporting company, which "rates" the bill messages and sends them to the billing telephone company. The billing telephone company bills its customers, then remits the proceeds to the transporting telephone company, minus a small billing and collection fee. It is not uncommon to have messages received by the billing company that are unbillable, or for which the amounts billed are not collectable, returned for write-off by the transporting company.

Typically, there are three parties involved in the exchange of CATS message records: (1) the LEC with the customer that incurs the bill (the customer to be billed); (2) the LEC that actually transports the customer's traffic; and (3) a third carrier, designated as the CMDS[9] host, that performs the transfer of the records from the transporting carrier to the billing carrier. Non-CATS message

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[8] IntraLATA Collect Messages, Third Number Billed Messages, and/or Calling Card Messages that originate, terminate and bill within the same Bellcore Client Company Territory. (*Id.*)

[9] The industry-wide data collection system located in Kansas City, Missouri that handles the daily exchange of toll message details between participating telephone companies. CMDS toll message detail is defined as Collect, Calling Card and Third Number Billed Messages that are originated in one company and billed by another company. (*Id.* at 2, § 1 (Definitions.))

records involve two parties, the transporting carrier and the billing carrier that occasionally exchanges those messages directly. MPB message records also involve two LECs, which are providing interexchange carrier access, and the facilities of both carriers transport part of the traffic to allow for that access. While Cox and SBC California had transactions dealing with each of the forms of message billing records, the dispute in this proceeding involves non-CATS message records.

Cox's Position

Cox designated two different billing agents for the three types of message records it was to receive from SBC California. In August 1997, Communications Data Group (CDG), one of Cox's billing agents, notified SBC California that it would act as Cox's agent for the meet-point billing records. In December 1997, representatives of SBC California and Cox discussed the establishment of a different agent for receipt of CMDS messages on behalf of Cox. At that time, SBC California's representative informed Cox that the usage file for CMDS messages could not be separated from the meet-point billing file. Cox asked that duplicate sets then be sent to each agent. SBC agreed to send all call records to both agents. In February 1998, Billing Concepts, Inc. (BCI) d/b/a ZPDI notified SBC California that it was authorized to act as agent for all Cox-bound CMDS data (CATS and non-CATS). (Cox Expedited Complaint at 5.) In all, Cox paid CDG and Billing Concepts $1.3 million to have them segregate the message records in accordance with the two agreements. (Cox Opening Brief at 1.)

In the case of non-CATS messages, SBC California failed and/or refused to send the appropriate billing records to the designated billing agent. Specifically, SBC California sent the magnetic tapes for Cox's non-CATS messages to the meet-point billing agent, which had not prepared its automated data processing

system to process these non-CATS message records for billing and, therefore, ignored them. At no time was the DEA amended in writing to allow SBC California to transmit Cox's billing records to anyone other than Cox's designated billing agents. (Cox Expedited Complaint at 6.)

The two companies operated under this arrangement for approximately two years before the problem became serious enough to cause concern. Between mid-1997 and April 2000, Cox noticed certain discrepancies between SBC California's statements for CMDS and meet-point revenue settlements and the magnetic tapes Cox's billing agents received for billing and collection purposes. The billing discrepancies (often less than $5000 per month) seemed relatively minor in light of the expansive growth of Cox's customer base. Consequently, Cox paid the bills without questioning the discrepancies. (*Id.*)

However, in April 2000, the discrepancies began increasing significantly from less than $5000 per month to over $40,000 per month. At that time, Cox representatives began contacting SBC California to investigate the discrepancies and to help identify and correct the problem. SBC California either ignored Cox's attempts to resolve the problem, or passed the issue from one SBC California employee to another without any substantive attempts to understand or correct the problem. Consequently, SBC California began applying significant late charges to the unpaid amounts, even though Cox had requested SBC California's assistance in identifying the source of the billing discrepancies and SBC California had failed to initiate a timely investigation. Finally, in or about November 2000, Cox paid over $200,000 in disputed fees to avoid SBC California terminating its CMDS hosting services to Cox. At that time, SBC California agreed to investigate the disputed amounts. (*Id.* at 6-7.)

Despite SBC California's agreement to investigate the discrepancies, it took an additional eight months for SBC California and Cox to identify the source of the billing problem: SBC California was conveying the non-CATS billing records to the wrong billing agent. Once the source of the problem was discovered, Cox continued to be unable to bill and collect for a significant portion of the third-party billed messages. As the billing agents reviewed the magnetic tapes of billing records, they used what they could and ignored the rest. The magnetic tapes were then returned to SBC California for re-use to avoid unnecessary material charges. By the time SBC California acknowledged that it was sending the billing records to the wrong billing agent, it also advised that the billing data could not be re-created. Without the billing data, Cox was never able to bill for the traffic. (*Id.* at 7.)

During this time period, matters deteriorated further as the growth in Cox's telephone customer base and the fact that Cox was not receiving the non-CATS portion of the call records combined with a fraudulent call scheme that affected it and SBC California. Under this scheme, a relatively small number of Cox's local telephone customers received a large amount of collect calls from some penal institution inmates, and never received a bill because Cox was not receiving the call records from SBC. Apparently, word spread through the prisons and the problem increased dramatically from May 2001 until it was finally resolved in June 2001. As other Cox customers became aware that Cox was not billing for this type of call, the amount of third party billed traffic increased dramatically and the amounts in dispute also increased significantly (with the worst month exceeding $347,000). In or about June 2001, SBC California and Cox identified and corrected the billing data exchange

problem; subsequently, the parties have been properly billing and collecting for all CATS, non-CATS and meet-point traffic. (*Id.* at 7-8.)

Cox contends that SBC California continues to be in breach of the agreements. Since 2002, it has continued to receive all of the message records directly from SBC California, internally segregated them, and forwarded them to Cox's appropriate billing agent at great expense. (Cox Opening Brief at 8.) Cox further maintains that it is not responsible for the amounts owed to SBC California between April 2000 and July 2001 (including associated late fees) totaling approximately $2.25 million. However, if the Commission should find some allocation of liability is warranted between the parties, it should find Cox liable for only SBC California's reasonable costs based on Cox witness Doug Garrett's testimony, as modified. (*Id.* at 4.)

SBC California's Position

In July 1997, SBC California sent Cox a four-page technical requirements package requesting, among other information, the name and mailing address of the agent Cox wanted to designate to receive Cox's billing media. In August 1997, Cox returned the completed technical requirements form, and listed CDG as the company it wanted to receive its MPB[10] records. SBC California states that its requirements form did not permit such a specific designation. And, when Cox witness Whited asked SBC California's Cavanaugh, in December 1997, whether SBC California could "split off" its MPB messages from the rest of Cox's message data and send them to two different agents, he was told it would not be possible. (SBC California Opening Brief at 5.) When Whited further

[10] Meet point billing.

inquired whether SBC California could send duplicate files of Cox's message data to two different agents, Cavanaugh again told him that the company could not do it. So, SBC California continued to send all of Cox's billing data to CDG. At that time, Cox understood that SBC California could not and was not sending MPB records to CDG.

By letter, in February 1998, Cox amended its agent designation and informed SBC California that BCI would represent it "for all purposes and acts relating to negotiation of file transfer protocols for CMDS and CABS billing records."[11] (Exhibit#2- Direct testimony of Ron Whited, Attachment A.) SBC California notes that Cox did not retract its earlier CDG agency designation at this time, nor did it request that SBC California stop sending Cox's billing data to CDG. (SBC California Opening Brief at 5.)

In early March 1998, SBC California notified Cox by letter that by the middle of the following month, "CMDS data and Pacific Bell-recorded data will be sent to you on two separate files." The letter further stated that "with this change, you will receive usage recorded within Pacific Bell on the existing dataset name of J.xx.OLEC.Cnnnn.R00" and that data received via CMDS would be provided "with a dataset name of J.xx.CMDS.Cnnnn.R00." (Exhibit #2, Attachment E.) BCI's representative e-mailed SBC California confirming that of the two files that would be sent, "one file will be CMDS data only and the other file will be anything else." (Exhibit #7, Attachment B at 3.) When asked if it would be possible for "Billing Concepts to receive the CMDS file on behalf of Cox and the other file [to] be sent to CDG, Cox's meet point billing provider... who is

[11] The letter identified Caycee Kovacs as Cox's BCI representative.

currently receiving... all data," (*Id.*) SBC California said that it could and got addresses for where each file should go. SBC California was told to send BCI "the CMDS file via NDM" and that "the other data will continue to go to CDG" in Champagne, Illinois. Consequently, SBC California asserts that it did, in fact, begin sending Cox's CMDS file to BCI and the facilities file containing "all other data" to CDG in early 1998. Between April 1998 and July 2001, neither Cox nor its designated agents made any changes in these instructions. SBC California maintains that it followed these instructions.

Discussion

At issue are: (1) whether SBC California breached the Cox-SBC California Data Exchange Agreement by failing to deliver Cox's non-CATS billing records to the appropriate designated billing agent; and (2) whether Cox is liable to SBC California for the revenues lost when the larger carrier failed to transmit to the appropriate designated billing agent those message details which would have enabled Cox to bill its customers and cover SBC California's cost of carrying the traffic.

Did SBC California Breach Cox-SBC California Data Exchange Agreement?

The record reveals that the origin of the Cox-SBC California dispute was a misunderstanding and miscommunication that existed from 1997, when the Data Exchange Agreement was executed, through June 2001. While the Cox-SBC California agreement defined and delineated much of how the intraLATA message detail and revenue would be distributed and settled between the two companies, essential elements of the agreement were ambiguous.

The Data Exchange Agreement states: "Calling Card and Third Number Settlement (CATS) means that part of CMDS which is a mechanized computer process used to maintain records regarding intercompany settlements through

which revenues collected by the billing company are distributed to the originating company." (Exhibit #1, Attachment B (Cox-SBC California DEA) at 1, § 1.) It defines CMDS or Centralized Message Data System as "the industry-wide data collection system located in Kansas City, Missouri, which handles the daily exchange of toll message details between participating telephone companies." (*Id.* at 2.) The agreement further characterizes "CMDS toll message detail" as "Collect, Calling Card and Third Number Billed Messages that are originated in one company and billed by another company." (*Id.*) "Non-CATS Message" is "an intraLATA Collect Message, Third Number Billed Message, and/or Calling Card Message that originates, terminates and bills within the same Bellcore Client Company Territory." (*Id.*)

When Cox and SBC California discussed "CMDS call record data," Cox[12] understood the term to mean the call data for all collect and third number settlement messages: both inter-regional and inter-company involving SBC California, Cox and other LECs, and intra-regional involving SBC California and Cox. (Exhibits #5: Direct Testimony of Tara Flack at 5 and #6: Direct Testimony of Doug Garrett at 3-4.) SBC California understood the term to mean, "billing records for intraLATA calls originated outside California that are transmitted and settled through the CMDS system." (Exhibit #7: Opening Testimony of Claudia Cavanaugh at 6.) It considered Non-CATS to be non-CMDS "billing records for intraLATA calls placed in California and exchanged and settled directly between LECs (*i.e.*, outside CMDS)." (*Id.*)[13] From 1997

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[12] Including BCI, its designated billing agent for CMDS call records.

[13] Emphasis in the original.

through July 2001, Cox and SBC California conducted business with these disparate understandings.

In August 1997, Cox designated a billing agent[14] to receive its MPB billing records from SBC California. In December of that year, Cox notified SBC California of its designation of a billing agent[15] to receive Cox's end-user or CMDS billing records. At that time, SBC California informed Cox that it could not separate the call data and provide it to more than one billing agent. Cox asked if duplicate tapes (containing all the call data) could be sent to both billing agents. SBC California told Cox that it could not send duplicate tapes, and in February 1998, Cox notified SBC California through a letter of agency that BCI was designated to "act as Customer's[16] agent for all purposes and acts relating to negotiation of file transfer protocols for CMDS and CABS billing records required pursuant to the Agreement." (Exhibit #2, Attachment A (Cox CA 0006).) The record confirms that in March 1998, SBC California notified Cox of a "system change" in which the "CMDS data and Pacific Bell-recorded data" would be sent to it on two separate files. (Exhibit #2, Attachment E; RT at 41, ll. 2-11.)

In early April 1998, before the scheduled system change, Cox's end-user billing agent[17], noting that SBC California had confirmed that one of the separate files would be "CMDS data only" and the other file would be "anything else," asked SBC California if it would be possible for it to receive Cox's CMDS file

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[14] CDG.

[15] BCI.

[16] Cox.

[17] BCI.

while the other file "be sent to CDG, Cox's meet point billing provider... who is currently receiving the CMDS files containing all data." (Exhibit #7, Attachment B.) By mid-April 1998, when Cox's end-user billing agent followed up on whether the separate files could be sent to the two different billing agents, SBC California referred the agent to SBC California witness Cavanaugh who would work with the inquiring agent and transition her company to SBC California's Network Data Mover (NDM). Until the transition was completed, SBC California stated it would continue to send "CMDS and non-CMDS" to Cox's MPB billing agent. (*Id.*) The record shows that, in 1999, SBC California was sending some type of call record data to both Cox vendors.

Cox and SBC California had two data exchange agreements. One provided for access call record data, and one provided for calling card and third number settlement call record data. While SBC California was aware[18] of Cox's two billing agents, no one at the company appeared to link that knowledge with SBC California's conflicting policy of separating carriers' messages and sending CATS data through NDM and non-CATS data (along with the meet-point billing records) on tape. Cavanaugh testified that when SBC California began sending split billing records, separating carriers' messages that were received from CMDS from carriers' intraLATA messages originating in California, it did so "for internal business reasons," from approximately late 1997 to early 1998 and beyond.

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[18] After contacting Ron Whited about a CABS problem that SBC California had discovered and was attempting to resolve, Cavanaugh responded to a clarifying question regarding the SBC California-Cox MPB record exchange with: "[y]our CMDS Usage is sent via NDM [network data mover] but your MPB is sent on Tape. It was my understanding that the reason for this is they went to different vendors." (*Id.*, Attachment D.)

During this timeframe, it seems that no one at SBC California clearly conveyed to Cox the newly established split billing records policy change. If it had been aware of the change, Cox may have been better able to detect and timely resolve the billing problem on its own. In March 1998, SBC California notified Cox by letter[19] about an April 1998 system change that would "impact the Facilities-based usage data exchange file." Although SBC California characterizes it as informative, the letter appears ambiguous, and does not plainly convey that the system change would entail the Non-CATS call record data being separated and forwarded with the MPB call record data. Consequently, once SBC California began splitting the billing records contrary to the manner Cox requested and believed was occurring, we find that it failed to deliver Cox's non-CATS billing records to the appropriate designated billing agent.

SBC California argues that Cox was responsible for the misdelivery of its billing records. It claims that it forwarded the call record data in accordance with the directions outlined by Cox's agent. SBC California also asserts that it was Cox's inexperience with intraLATA data exchange that contributed to Cox's

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[19] "This is to inform you of a system change that will impact the Facilities-based usage data exchange file that you receive from Pacific Bell. Effective April 16, 1998, CMDS data and Pacific Bell-recorded data will be sent to you on two separate files for each Operating Company Number that you use within Pacific Bell. Separating the packed CMDS data from the unpacked data that we record will ensure that you receive accurate and timely data from Pacific Bell. With this change, you will receive usage recorded within Pacific Bell on the existing dataset name of J.xx.OLEC.Cnnnn.R00. The new file will be sent to you with a dataset name of J.xx.CMDS.Cnnnn.R00. If this new dataset naming convention generates the same dataset name for more than one company, another name will be chosen and you will be notified prior to implementation." (Exhibit #2, Attachment E.)

lengthy confusion about the routing of CMDS and non-CMDS data. SBC California's Cavanaugh testified that several signs should have alerted Cox to the fact that its CATS and non-CATS call data were not being submitted together to its end-user billing agent through CMDS (RT at 260, line 10 – 261, line 8.)

We disagree. Each of the supposed identifying signs were revelatory only if one already knew that SBC California distinguished CATS from non-CATS call record data. In late February 2001, Cavanaugh explained to Flack in an e-mail message that SBC California sent Cox two usage files daily along with reports that detailed the contents of the files. However, the reports did not go to Cox directly. Instead, the CMDS report went to the end-user billing agent and the facilities usage report, containing both access records and end-user alternate billed traffic (ABT) calls that SBC California had recorded or that may have been sent to it from other companies directly, was sent to the MPB billing agent in Illinois. Flack testified that since Cox's billing problem appeared to be confined to CMDS, Cox studied the CMDS usage files and reports for answers and had no reason to search the MPB usage files for clues. (Exhibit #5 at 2-6.)

Moreover, Cox's MPB billing agent received its call record data on tapes from which it extracted only MPB usage and returned the tape to SBC California where the tape was erased and reused. This process made file-by-file challenge, required by SBC California to correct problems,[20] impossible.

The evidentiary hearing record reveals that as soon as the CMDS billing irregularities that it was experiencing became significant, Cox sought to obtain

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[20] "Discrepancies (if there are any) must be raised on a file by file basis as your usage goes out daily." (*Id.*, Attachment G at Cox CA 0018 (e-mail from Claudia Cavanaugh.).)

training about SBC California's data exchange procedures pursuant to the DEA.[21]. The request was denied because SBC California did "not offer training in CMDS or ABT [alternately billed call] traffic because the record formats are an industry standard and the report formats are usually provided as an attachment to the contract, or data exchange agreement." (Exhibit #5, Attachment G at Cox CA 0018.) Cox appears to have attempted on numerous occasions to resolve its confusion about procedures and terminology, and to try to understand its billing problem. (Exhibit #2 at 3; Exhibit #5 at 2-5; RT at 43, line 18 through 44, line 16; RT at 54, line 21 through 55, line 28; RT at 84 through 94, line 24.) For almost a year, Flack would contact an SBC California representative to whom she had been referred and that person would either be unavailable or be responsible for a different subject area than needed to resolve the problem. (Exhibit #5 at 3-5.)

SBC California states that in early 1998, it forwarded the CMDS or Cox's CATS message data[22] to Billing Concepts in compliance with Cox's (and its designated billing agent's) request. It contends that the forwarding of Cox's non-CATS message data to CDG, the MPB billing agent, along with the Meet-Point call records were in direct response to Billing Concepts' e-mail request that "it wanted a file containing CMDS data only' and that all ' other data' (*i.e.*, non-CMDS data) should continue to go to CDG." (Exhibit #7 at 7.) SBC California

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[21] Tara Flack testified that she requested training in accordance with Exhibit A of the DEA. (RT at 73, line 27-74, line 5.) "As used... above the following terms are defined as set forth below: Pacific Consulting/Training Charge means the Consulting/Training Rate set forth in Exhibit A-Rate Schedule times the number of hours of consulting and/or training that Pacific provides Customer, at Customer's request, to assist or support Customer's data exchange processes." DEA § 4(C)(9).

[22] Call records.

argues that the misdirection that occurred happened because Cox and its staff were inexperienced and unfamiliar with standard industry practices. The record indicates that while SBC California's policy was not to capture and forward non-CATS/"Pacific Bell-recorded" message data on CMDS, other incumbent local exchange carriers with whom Cox and its billing agent exchanged call records did not uniformly follow such a policy, and SBC California itself forwarded CATS and non-CATS call record data together before April 1998.

In assessing the above facts, we find Cox neither solely nor primarily responsible for the misdelivery of its billing records. Cox needed SBC California's assistance to identify the billing problem. We cannot find SBC California's failure to clearly articulate its data exchange procedure to Cox to have been either excusable or reasonable. Accordingly, we find that SBC California breached § 3(A) of the Cox-SBC California DEA by the sum of its actions.

Is Cox liable to SBC California for the revenues lost in this matter?

SBC California seeks compensation for the amounts billed to Cox for non-CATS calls placed on its network between May 2000 and July 2001. It estimates the total amount owed to be $2.2 million. The record indicates that SBC California forwarded the non-CATS billing documentation to the wrong Cox agent which it did not realize until July 2001. While SBC California has an overall calculation of the amount owed, it cannot provide Cox with detailed call records because once Cox's Meet-Point billing agent[23] extracted the meet-point call records from the tape received from SBC California, the agent returned the tape to SBC California. SBC California recycled the tapes by recording new data

[23] CDG.

and simultaneously erasing the old. (Exhibit #2 at 4; RT at 58, lines 12-21.) It also included with the tape hard copy versions of the detailed call records that the billing agent cross-checked and disregarded once the meet-point call data was forwarded to Cox. (Exhibit # 14.)

Tara Flack testified that when the billing discrepancies first began to be significant, she contacted SBC California and attempted to get an explanation for why Cox's records differed so greatly from the invoices SBC California submitted. For more than a year, SBC California continued to seek from Cox the outstanding balances owed to it. However, there appeared to be no effort made to reconcile the SBC California-Cox call record disparities, nor were there any attempts to examine or sort out, more than perfunctorily, the source of Cox's complaints until SBC California's Bob Godwin actively resolved the mystery. We do not find SBC California's insistence that Cox should have either figured out on its own the source of its billing problems or understood intuitively SBC California's operating practices and company-specific use of terminology to be persuasive. Under the SBC California-Cox DEA, SBC California controlled the call record data.

It appears that no one employee at SBC California was at fault for the misunderstandings and oversights that formed Cox’s billing dilemma. However, during the time at issue, only one SBC California employee out of many went beyond his stated responsibilities and assisted Cox in discovering the problem. Given the facts before us, where SBC California failed to assist Cox in uncovering the cause of its billing discrepancies until June or July 2001, which enabled fraud to occur and increase the unrecovered costs, we do not find Cox liable for the costs of the non-CATS calls at issue in this case.

Comments on Draft Decision

The draft decision of the ALJ in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Commission's Rules of Practice and Procedure.

Assignment of Proceeding

Geoffrey F. Brown is the Assigned Commissioner and Jacqueline A. Reed is the assigned ALJ in this proceeding.

Findings of Fact

1. The record reveals that the origin of the Cox-SBC California dispute was a misunderstanding and miscommunication that existed from 1997, when the DEA was executed, through June 2001.

2. While the Cox-SBC California agreement defined and delineated much of how the intraLATA message detail and revenue would be distributed and settled between the two companies, essential elements of the agreement were ambiguous.

3. From 1997 through July 2001, Cox and SBC California conducted business with disparate understandings about CMDS and non-CATS.

4. Cox and SBC California had two data exchange agreements: one for access call record data, and one for calling card and third number settlement call record data.

5. In August 1997, Cox designated a billing agent to receive its MPB billing records from SBC California.

6. In December 1997, Cox notified SBC California of its designation of a billing agent to receive Cox's end-user or CMDS billing records.

7. Although SBC California was aware of Cox's two distinct billing agents, the company did not link that knowledge with its conflicting policy of separating carriers' messages and sending CATS data through NDM and non-CATS data (along with the meet-point billing records) on tape.

8. In mid-1998, SBC California did not clearly convey to Cox the split billing records policy change.

9. When SBC California began splitting the billing records contrary to the manner Cox requested and believed was occurring, it failed to deliver Cox's non-CATS billing records to the appropriate designated billing agent.

10. Knowledge of SBC California's policy of splitting CATS from non-CATS call record data was essential to solving Cox's billing discrepancies.

11. SBC California denied Cox's request for training on the data exchange procedures.

12. Cox was neither solely nor primarily responsible for the misdelivery of its billing records.

13. Cox needed SBC California's assistance to identify its billing problem.

14. While no one SBC California employee was at fault for the misunderstandings and oversights that formed Cox's billing dilemma, only one SBC California employee out of many went beyond his stated responsibilities and assisted Cox in discovering the problem.

15. SBC California's failure to clearly articulate its data exchange procedure to Cox was neither excusable nor reasonable.

16. SBC California failed to assist Cox in uncovering the cause of its billing discrepancies until June or July 2001, which enabled fraud to occur and increase the unrecovered costs.

Conclusions of Law

1. SBC California breached § 3(A) the Cox-SBC California DEA by the sum of its actions.

2. Where SBC California failed to assist Cox in uncovering the cause of its billing discrepancies until June or July 2001, thereby enabling fraud to occur and increase the unrecovered costs, Cox is not liable for the costs of transporting the non-CATS calls at issue in this case.

3. This order should be effective immediately so that the books of account at both companies may be finalized on this matter.

4. This proceeding should be closed.

O R D E R

IT IS ORDERED that:

1. Cox California Telcom, L.L.C. dba Cox Communications (Cox) shall not be held liable to Pacific Bell Telephone Company, doing business as SBC California, for any lost revenues resulting from the misdelivery of certain Calling Card and Third Number Settlement call record data that originated, terminated and billed within the same Bellcore Client Company Territory from May 2000 through July 2001, pursuant to the 1997 Data Exchange Agreement For The Distribution of IntraLocal Access Transport Area (LATA) Message Detail And/Or The Settlement Of IntraLATA Message Revenue Between Pacific Bell and CoxCom, Inc.
2. Case 03-02-011 is closed.

This order is effective today.

Dated _____, at San Francisco, California.