Decision **DRAFT DECISION OF ALJ PULSIFER** **(Mailed 6/20/2006)**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the Commission's Own Motion into Competition for Local Exchange Service.	Rulemaking 95-04-043 (Filed April 26, 1995)
Order Instituting Investigation on the Commission's Own Motion into Competition for Local Exchange Service.	Investigation 95-04-044 (Filed April 26, 1995) **(FCC Triennial Review Nine-Month Phase)**

OPINION RESOLVING PETITIONS FOR MODIFICATION OF DECISION 05-07-043

I. Introduction

By this decision, we dispose of the petitions for modification of Decision (D.) 05-07-043 (petitions) filed respectively by Verizon California Inc. (Verizon) on January 5, 2006, and by Pacific Bell Telephone Company dba AT&T California dba SBC California (SBC) on February 3, 2006. By their petitions, Verizon and SBC each seek to terminate the requirement in D.05-07-043 for arbitration of their respective disputes with competitive local exchange carriers (CLECs) regarding batch hot cut processes[1] and pricing. As explained below, we direct that a

[1] A "hot cut" defines the process whereby the incumbent local exchange carrier (LEC) technicians manually disconnect a customer's loop, which was hardwired to the incumbent LEC switch, and physically re-wire it to the competitive LEC switch, while simultaneously reassigning (*i.e.*, porting) the customer's original telephone number from the incumbent LEC switch to the competitive LEC switch. Generally, the new

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prehearing conference be conducted in the currently pending consolidated arbitration proceedings for Verizon and SBC in order to consider what actions may be warranted to address remaining disputes as to batch hot cut processes and pricing.

In D.05-07-043, we closed the "nine-month phase of the Federal Communications Commission (FCC) Triennial Review Order (TRO) proceeding"[2] because the TRO had been superseded by subsequent events, including issuance of the FCC's Triennial Review Remand Order (TRRO) regarding Unbundled Access to Network Elements.[3] We recognized that remaining disputes between carriers needed to be resolved to implement applicable TRO and TRRO change of law provisions involving the elimination of the unbundled network element platform (UNE-P). The TRRO contemplated a process of intercarrier negotiations to implement applicable change of law

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connection would be cut over while the customer's loop is "hot" – *i.e.*, in active service, hence, the term "hot cut." A "batch" hot cut process is used to accumulate two or more CLEC hot cut orders in each affected central office. Once an efficient volume of orders are accumulated, the hot cut orders can be processed together in a "batch" to promote efficiency and minimize costs.

[2] Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, In the Matter of Review of the § 251 Unbundling Obligations of Incumbent Local Exchange Carriers (CC Docket No. 01-338); Implementation of the Local Competition Provisions of the Telecommunications Act of 1996 (CC Docket No. 96-989); Deployment of Wireline Services Offering Advanced Telecommunications Capability (CC Docket No. 98-147), FCC No. 03-36, ¶ 669 (rel. Aug. 21, 2003) (hereinafter, "TRO"). *vacated in part and remanded*, *USTA v. FCC*, 359 F.3d 554 (D.C. Cir.), *cert. denied*, 125 S. Ct. 313, 316, 345 (2004).

[3] Order on Remand, In the Matter of Unbundled Access to Network Elements, WC Docket No. 04-313, CC Docket No. 01-338, adopted December 15, 2004, released February 4, 2005, (hereinafter, Triennial Review Remand Order or TRRO).

provisions with close monitoring by the state commission to ensure that parties did not misuse the negotiation process to engage in unreasonable delay. Accordingly, in D.05-07-043, we directed that remaining disputes regarding interconnection arrangements to implement applicable TRO and TRRO change-of–law provisions be addressed through consolidated arbitrations, consistent with TRRO directives.

We acknowledged that the lack of a batch hot cut process no longer provided a basis for the FCC to find impairment warranting continuation of UNE-P requirement. Because the TRRO phased out UNE-P availability over a 12-month period ending March 11, 2006, the embedded base of UNE-P lines needed to be transitioned to alternative arrangements. For UNE-P lines to be transitioned to the CLEC's own switch utilizing an unbundled loop (UNE-L), a hot cut process is required.

We also recognized in D.05-07-043, however, that carriers needed to resolve remaining disagreements over batch hot cut processes, terms and pricing, and to revise their interconnection agreements accordingly. In D.05-07-043, we thus directed that such disputes be addressed within the consolidated arbitrations to implement applicable TRO and TRRO change-of–law provisions.

Accordingly, as authorized in D.05-07-043, the Assigned Commissioner and Administrative Law Judge in the previously opened consolidated arbitration for Verizon (A.04-03-014) were to "establish a separate track for Batch Hot Cut issues" to migrate the embedded base of UNE-P lines to alternative arrangements by March 11, 2006. We also directed SBC to file a new consolidated arbitration application for a similar purpose.

II. Petition of Verizon

Verizon filed its petition to eliminate the requirement in D.05-07-043 for arbitration of remaining batch hot cut disputes, claiming that such arbitration is unnecessary. Verizon argues that its existing nationwide process to cut over mass quantities of lines is adequate to accommodate batch hot cuts in California. Verizon attached the Declaration of Thomas Maguire, Senior Vice President of Verizon's Wholesale Markets Group, to support its claims concerning Verizon's progress in assisting CLECs to transition from UNE-P to alternative arrangements.[4] Verizon also claims that CLECs almost never use the batch process, but frequently use Verizon's "large job" or "project" hot cut processes. (Maguire, Decl. ¶ 9). Verizon argues that, in any event, its hot cut processes are scaleable and can easily accommodate potential CLEC orders.

Verizon also argues that the circumstances relied upon by the Commission in adopting D.05-07-043 in July 2005, have changed dramatically. In July 2005, only 11% of lines had been transitioned off UNE-P. By the time of the filing its Petition on January 5, 2006, however, a total of 89% of UNE-P lines in Verizon's territory had been migrated to replacement arrangements. Only a fraction of those UNE-P lines actually required hot cuts. The majority of the UNE-P lines were moved either to resale or a "commercial" UNE-P substitute, neither of which requires a hot cut.

Verizon filed a supplemental Declaration of Thomas Maguire on January 27, 2006, as an update indicating that the CLECs had since transitioned

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[4] By ruling dated January 24, 2006, the motion of Verizon to file under seal the confidential proprietary version of its Petition and supporting Declaration of Thomas Maguire was granted.

up to 95% of the embedded base of UNE-P lines.[5] Thus, as of January 27, 2006, only 5% of the embedded base of UNE-P lines remained to be transitioned. Verizon states that because only two carriers are collocated with Verizon, the actual number of lines that could be cut over was further reduced to only 490.

Verizon argues that, as a result of these changed circumstances since D.05-07-043 was issued, there is no longer a basis to justify an arbitration proceeding to modify Verizon's batch hot cut process. Verizon thus petitions the Commission to modify D.05-07-043 to eliminate the requirement for arbitration of batch hot cut disputes.

A response in opposition to the Verizon petition was filed by a group of parties (Joint Parties)[6] on February 3, 2006. The Joint Parties argue that irrespective of the specific number of lines remaining to be cut over, there are still a number of unresolved disputes that warrant arbitration, as directed by D.05-07-043. Even though the volume of lines requiring batch hot cuts may be smaller than previously expected, Joint Parties argue that the number of lines to be transitioned off UNE-P remain significant. CLECs claim that they have an ongoing need for batch hot cut processes after March 11, 2006, priced at

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[5] Verizon currently filed a motion to file under seal the confidential version of the Supplemental Declaration of Thomas Maguire. There is no opposition to the motion, and it is accordingly hereby granted.

[6] Parties joining in the opposition were CF Communications, LLD d/b/a Telekenex; Curatel, LLC; DMR Communications, Inc. TCAST Communications, Inc. A+ Wireless, Inc., California Catalog & Technology, Inc. NII Communications, LTD; North County Communications, Inc.; The Telephone Connection Local Services, Inc.; Telscape Communications, Inc.; U.S. Telepacific Corp.; Utility Telephone, Inc.; and Wholesale Air-Time, Inc.

reasonable rates if they are to have a chance of successfully competing against the major incumbent carriers.

The Joint Parties argue that while the volumes of lines requiring batch hot cuts have been reduced, Verizon has not resolved specific batch hot cut problems that CLECs identified in the Nine-Month TRO proceeding including pricing issues. The Joint Parties claim that Verizon has not shown how its nationwide hot cut process addresses CLECs' remaining concerns, other than the scalability of its nationwide process.

Joint Parties dispute Verizon's claim that only three CLECs have the option of ordering hot cuts because no other CLECs competing in its territory have the collocation facilities that necessitate hot cuts. The Joint Parties argue that additional CLECs may agree to use one another's collocation arrangements to connect Verizon UNE loops to their own (or third-party) switching.

III. Petition of SBC

On February 3, 2006, SBC also filed its petition seeking similar relief to that requested by Verizon. SBC presents similar arguments that batch hot cut arbitration should be terminated because the assumptions underlying the basis for such arbitration have changed. SBC argues that the D.05-07-043 assumed that the CLECs' embedded base of UNE-P lines was large enough to require a batch hot cut process, and that current hot cut processes were inadequate to meet that demand.

SBC argues that even if those assumptions were correct when D.05-07-043 issued, they are no longer accurate. SBC attached the Declaration of Carol

Chapman, Associate Director-Local Interconnection Services on behalf of SBC, to support its claims.[7]

SBC argues that when the Commission referred the batch cut issues to the consolidated arbitration proceeding, the Commission had no evidence that carriers were quickly moving to UNE-P alternatives. It based its decision on the belief that a batch hot cut process was necessary to convert mass-market UNE-P arrangements to non-UNE-P alternatives by the FCC's March 11, 2006 deadline. SBC argues that the basis for that belief no longer exists, and that CLECs should be satisfied using SBC's normal hot cut process.

In September 2003, SBC provisioned over 1.25 million UNE-P lines in California.[8] By October 2005, however, more than 90% of those UNE-P lines had either been migrated to replacement arrangements or belonged to CLECs that planned to migrate to alternative arrangement that require no hot cut.[9] SBC argues that there are not enough potential UNE-P transitions remaining to justify continuing a proceeding to arbitrate disputes over SBC's batch hot cut processes. Where UNE-P lines have been converted to competitive switch-based providers to date, SBC states that the vast majority of the transitions were accomplished by

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[7] SBC filed both a public redacted version and a confidential unredacted version of its pleading subject to the provisions of the October 16, 2003 Protective Order in this proceeding. SBC concurrently filed a motion for leave to file its designated confidential material under sea. The motion to file under seal is granted. The confidential materials, as identified in SBC's motion, shall be filed under seal subject to confidentiality protections.

[8] *See* Declaration of Carol Chapman in Support of Petition to Modify D.05-07-043, ¶ 6 ("Chapman Decl.").

[9] *See Id.* at ¶ 7.

SBC's normal hot cut process, not the batch hot cut processes that are also available. SBC argues that the small number of UNE-P lines left to transition, coupled with the reduction in the embedded base outside of a batch hot cut process, constitute "changed facts" warranting modification of D.05-07-043 under Commission Rule 47.

SBC further argues that because CLECs have already transitioned most lines to a UNE-P alternative, very few UNE-P lines remain to be transitioned, and that those relatively few lines that may require hot cuts are spread across wire centers. Following the FCC's elimination of new UNE-P arrangements in the TRRO, CLECs began transitioning to SBC California's commercial offering, primarily to Local Wholesale Complete ("LWC") and to resale. LWC allows CLECs to access SBC's network at a single monthly rate via a commercial agreement outside of the §§ 251/252 process. Based on these considerations, SBC claims that its ordinary hot cut processes are sufficient to meet demand. (*Id.* at ¶ 8.)

SBC claims that even apart from its "batch" process, its existing hot cut process is adequate to transition remaining UNE-P lines that may require a hot cut.[10] SBC claims that the Commission's 271 Order[11] confirmed this point, and

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[10] SBC claims that the only exception would be due to a CLEC's decision not to participate in the transition process in a timely fashion. (*See* Chapman, Decl. ¶ 9.)

[11] *Re Open Access to Bottleneck Services and Establish a Framework for Network Architecture Development of Dominant Carrier Networks*, Decision 02-09-050, *Decision Granting Pacific Bell Telephone Company's Renewed Motion for an Order That It Has Substantially Satisfied the Requirements of the 14-Point Checklist in § 271 of the Telecommunications Act of 1996 and Denying That It Has Satisfied § 709.2 of the Public Utilities Code*, *mimeo*, 2002 Cal. PUC LEXIS 619 (Sep. 19, 2002) ("CPUC 271 Order"), available at <http://www.cpuc.ca.gov/word_pdf/FINAL_DECISION/19433.pdf>.

rejected CLEC allegations that SBC had failed to perform hot cuts in a timely fashion, or that CLECs had experienced an undue number of service outages, and similar allegations.[12]

[12] *Id.,* at 140-44.

SBC argues that the FCC reached similar conclusions in its California 271 Order,[13] finding that SBC's hot cut rates were within a "range that a reasonable application of our Total Element Long Run Incremental Cost (TELRIC) rules would produce."[14] The FCC concluded that "[b]ased on the evidence in the record, we find that Pacific Bell demonstrates that it provides hot cuts . . . in California in accordance with the statutory requirements pertaining to checklist item 4."[15]

SBC states that even though its batch hot cut processes have been available for over a year,[16] the vast majority of lines that transitioned to UNE-L through October of 2005 utilized the standard (non-batch) hot cut processes. (See Chapman, Decl. ¶ 6.) CLECs who have chosen to use SBC's existing batch hot cut processes have agreed to those voluntarily-offered rates, terms, and conditions without modification. (*Id.*)

In sum, SBC argues that there is no need for a "batch" hot cut process to complete the TRRO transition, and that continuing to conduct a proceeding to create a California version of a batch hot cut process and rates would be a waste of time and effort. SBC thus petitions the Commission to modify Decision 05-07-

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[13] *In the Matter of Application by SBC Communications Inc, Pacific Bell Telephone Company, and Southwestern Bell Communications Services Inc., for Authorization To Provide In-Region, InterLATA Services in California*, WC Docket No. 02-306, *Memorandum Opinion and Order*, 17 FCC Rcd 25650, FCC 02-330 (2002).

[14] *Id.* at ¶ 71.

[15] *Id.* at ¶ 125; *see also Id.* at App. B-12 (documenting SBC California's hot cut performance).

[16] *See* A.05-07-024, Initial Brief of SBC California Regarding Batch Hot Cuts, at 7-15 (filed Dec. 9, 2005) (describing SBC California's batch hot cut process, and the FCC's approval thereof).

043 by deleting or modifying Ordering Paragraphs 2, 3, and 5, to affirm that batch hot cut issues do not need to be considered in its Arbitration Application 05-07-024.

Covad Communications Company (Covad) filed a response in opposition to the SBC petition on March 6, 2006. SBC filed a third-round reply on March 16, 2006.[17] Covad claims that SBC's existing batch hot cut processes continue to be flawed and that arbitration proceedings must go forward in order to resolve disputes over the adequacy of existing processes and reasonableness of prices.

SBC takes exception to Covad's claim to the extent it relies on the FCC's TRO which directed state commissions to oversee the development of batch hot cut processes and rates. SBC argues that the TRO's batch hot cut rule was vacated by the D.C. Circuit. On remand in the TRRO, SBC claims that the FCC refused to impose a batch hot cut rule but instead approved SBC California's *existing* batch hot cut process.

Covad also contends that SBC California has "admitted" that it will be required to hot cut approximately 125,000 lines in order to complete the UNE-P transition, and that its existing hot cut processes will be "swamped" by such

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[17] In an ex parte communication dated March 28, 2006, a letter was sent to the assigned ALJ, jointly sponsored by the following carriers: CF Communications, LLD dba Telekenex, Curatel, LLC, DMR Communications, Inc., TCAST Communications, and Fones4All. In addition, The Utility Reform Network and the Division of Ratepayer Advocates joined in the letter. The joint parties sponsoring the letter expressed support for Covad's opposition, particularly with respect to the assertion that a batch hot cut process involves more than merely migrating existing UNE-P customers to other serving arrangements. Thus, the joint parties oppose SBC's claim that there is no need to resolve disputes necessary to implement a seamless and economic batch hot cut process. In the interests of a complete record, we hereby formally incorporate this *ex parte* communication as part of the formal record.

volumes. SBC denies making such an admission. SBC California explained[18] that the system limitations discussed in the motion to which Covad refers[19] involved limitations on the capacity of SBC's systems to process service orders. SBC claims, however, that those limitations have nothing to do with the actual work required to perform hot cuts.

Covad further claims that SBC's Petition is an attempt to thwart the implementation of a batch hot cut process. SBC responds, however, that it has had a batch hot cut process available to CLECs for more than a year, the same batch hot cut process that was deemed sufficient by the FCC.

SBC argues that Covad's aim is to alter the way SBC complies with 47 C.F.R. § 51.323(h), which is the rule governing how ILECs facilitate connections between CLEC collocation arrangements.[20] SBC claims that issue has nothing to do with the TRO, the TRRO, or batch hot cuts.[21] SBC argues that Covad may pursue that objective through procedures established in the 1996 Act – *i.e.*, negotiation and, if necessary, arbitration.

IV. Discussion

At the time that D.05-07-043 was issued, we designated a separate phase of the above-referenced consolidated arbitration proceedings for resolving batch hot cut issues. As Verizon and SBC point out, however, the number of lines to be

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[18] *See* Reply of SBC California (U 1001 C) in Support of Motion to Stay Batch Hot Cut Phase, A.05-07-024, at 14-15 (filed Mar. 1, 2006).

[19] *See* Motion of SBC California (U 1001 C) To Compel UNE-P Transition (filed Feb. 10, 2006).

[20] *See* Reply Brief of SBC California (U 1001 C) Regarding Batch Hot Cuts, A.05-07-024, at 1-2 (filed Dec. 20, 2005).

[21] *See Id.*

transitioned to UNE-P alternatives has been reduced significantly from the volumes anticipated at the time D.05-07-043 was adopted. Covad argues that the central fact that has changed here – i.e., the massive reduction in the embedded base of UNE-P customers – is already in the record of "this proceeding."

As SBC points out, although it provided evidence regarding that reduction in A.05-07-024 (the TRO/TRRO arbitration proceeding), it has not previously done so in this rulemaking proceeding (R.95-04-043). Accordingly, we agree with Verizon and SBC that the significant reduction in the embedded base of UNE-P customers since July 2005 is a changed fact that was not taken into account in the record in R.95-04-043 underlying D.05-07-043.

Nonetheless, even to the extent that there are changed facts regarding anticipated volumes of hot cuts to be processed, we are not persuaded that such facts necessarily eliminate all need for arbitration of ongoing disputes regarding hot cut processes and pricing. Parties' pleadings indicate that there have been mixed results in terms of the suitability of available hot cut processes to meet the needs of CLECs and their customers in a seamless and efficient manner.

In order to accommodate the March 11, 2006 deadline, many carriers appear to have allowed their UNE-P lines to transition temporarily to resale or to other arrangements such as Verizon's "Wholesale Advantage" offering while they deploy their own switching platforms. Alternative options may include contract renewal or negotiation of other commercial agreements similar to those already in existence. CLECs have differing timetables and constraints in reference to implementation of their ultimate serving arrangements. As noted by Covad, many CLECs are waiting for the growth of their customer bases to reach the point where the CLEC can move lines that are currently on a resale or "commercial agreement" status to UNE-L status. Covad indicates that such lines

will predominantly be moved in batches by central office. Thus, to the extent that future migrations to UNE-L are needed in this manner, CLECs will have a continuing need for a batch cut process. Accordingly, ongoing disputes concerning the adequacy of batch hot cut processes are not automatically eliminated or rendered moot merely because the March 11, 2006 deadline has passed.

Various CLECs express an ongoing need for batch hot cut processes to allow them to compete effectively, and assert that problems still need to be addressed with respect to the ongoing processing of hot cut orders. For example, disputes continue as to the proper scope of a batch hot cut process. SBC continues to believe that the process should be limited only to migration of UNE-P voice-only loops. Covad, on the other hand, persists in arguing that such limitation is improper and that the process must also accommodate voice/data line splitting and line sharing arrangements in order to promote a competitive environment.

Covad claims there are 1.8 million line shared loops in California, the vast majority of which are SBC customers. This is another type of "embedded" customer that SBC excludes from its hot cut calculations. If CLECs win any of these SBC line shared customers, the customer loop must be hot cut to the CLECs' switch. Covad claims that SBC has admitted that the volume of voice-only UNE-P migrations alone will likely "swamp" its existing hot cut process. Covad claims that adding a potential 1.8 million voice plus data loops would only strain SBC's existing hot cut process further. SBC denies making this admission and claims that such service order processing limitations do not relate to actual hot cut performance. Nonetheless, the fact remains that bottlenecks in service order processing necessarily impacts timely completion of hot cut orders.

Disputes also remain as to whether UNE-P migrations, are only a subset of the migrations that SBC's batch hot cut process will be required to handle. Covad contends that the batch hot cut process must handle migrations of loops not only from SBC to other carriers, but between and among switches of all carriers.

Similar disputes remain over the appropriate level of pricing of batch hot cut processes that may reasonably be recovered from CLECs. If further arbitration was terminated, as the ILECs request, then CLECs would be deprived of a forum to resolve their disputes over these issues.

We are not persuaded by SBC's arguments based upon previous findings in the Commission's 271 Order. These findings are not changed facts, but were known and taken into account when we issued D. 05-07-043. Moreover in the TRO, the FCC indicated that its prior findings concerning the number of hot cuts performed in connection with the 271 process were not comparable to the number that ILECs would need to perform assuming unbundled switching were no longer available.[22] In any event, arguments based on prior findings in the Section 271 proceeding are not changed facts and do not form a persuasive basis to modify D. 05-07-043.

In addition, SBC's claim that that the FCC refused to impose a batch hot cut rule but approved SBC's existing batch hot cut process is simply reargument of a position that we rejected in D. 05-07-043. Such reargument does not constitute a changed fact warranting modification of D.05-07-043.

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[22] TRO, ¶ 469.

Verizon and SBC filed their petitions in the context of the deadline of March 11, 2006, as prescribed in the TRRO. By March 11, 2006, the TRRO required that all batch hot cuts necessary to transition the embedded UNE-P base were to have been completed. As a practical matter, however, the March 11, 2006 deadline for completing batch hot cuts of the embedded UNE-P base is now history. Therefore, to the extent that the March 11, 2006 deadline for completion of UNE-P cutovers is now passed, the question of whether to grant the petitions within that context is essentially rendered moot.

In comments on the Draft Decision, SBC mischaracterizes the Draft Decision as concluding that the original basis for the Commission's decision to review its batch hot cut processes is now moot. On the contrary, although consideration of Petitioners' request not to comply with an expired deadline is moot, the underlying basis for the Commission to resolve continuing disputes regarding batch hot cut processes and pricing remains relevant. Merely by failing to resolve relevant batch hot cut disputes by the March 11, 2006 deadline, SBC and Verizon cannot, by default, deprive competitors of their rights to a forum for dispute resolution.

The underlying issue posed by the petitions still must be resolved, namely whether Commission arbitration should proceed to resolve ongoing disputes over the processes and prices applied to hot cuts. This question remains relevant even though the deadline of March 11, 2006, for the cutover of the embedded UNE-P base has expired.

In comments on the Draft Decision, Petitioners reargue their earlier positions, claiming lack of Commission jurisdiction to arbitrate the disputes at issue and reiterating that their existing processes and prices are already adequate. Because the Petitioners are essentially merely rearguing earlier

positions taken, we are not persuaded to revise the disposition reached in the Draft Decision based on such reargument.

In recognition of the ongoing concerns of CLECs and the continuing need to resolve batch hot disputes, we therefore direct the Administrative Law Judge (ALJ) assigned to the consolidated arbitration proceedings to convene a prehearing conference. The prehearing conference will be for purpose of providing the opportunity for parties to identify remaining disputes regarding batch hot cut processes and pricing, and to offer proposals for resolving such disputes in the most efficient manner. We make no prejudgment at this time concerning the scope of further arbitration proceedings that may be found necessary or in what manner they may be conducted regarding batch hot cut processes or prices. We defer such determinations to the consolidated arbitration proceedings. We also recognize that specific disputes at issue may be different for SBC as opposed to Verizon, and agree that in the interests of efficiency, the ALJ may adopt procedural measures as appropriate to consider such disputes in separate tracks.

V. 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 Rules of Practice and Procedure. Comments were filed on July 10, 2006, and reply comments were filed on July 17, 2006. We have reviewed the comments on the Draft Decision and taken them into account, as appropriate, in finalizing this order.

VI. Assignment of Proceeding

Michael R. Peevey is the Assigned Commissioner and Thomas R. Pulsifer is the assigned ALJ in this proceeding.

Findings of Fact

1. In D.05-07-043, the Commission determined that a consolidated arbitration was an appropriate procedural vehicle to facilitate resolution of disputes for carriers relating to batch hot cut processes and pricing or other change-of-law provisions under the TRO and TRRO.

2. In the TRRO, the FCC found no impairment arising from the hot cut process for the majority of mass market lines. Nonetheless, D.05-07-043 found that disputes remained concerning batch hot cut pricing and processes for the conversion of CLECs' embedded base served by UNE-P.

3. By the time of the filing of its Petition in January 2006, a total of 89% of lines in Verizon's territory had been migrated to replacement arrangements, and only a fraction of those UNE-P lines required hot cuts.

4. As of September 2003, CLECs with which SBC California had an interconnection agreement in California had 1.25 million UNE-P lines.

5. Following the FCC's elimination of new UNE-P arrangements in the TRRO, CLECs began transitioning to SBC California's commercial offering, primarily to Local Wholesale Complete outside of the §§ 251/252 process and to resale.

6. While the original circumstances in effect at the time that D.05-07-043 was adopted have changed, CLEC continue to have concerns regarding the adequacy of batch hot cut processes that may not have been adequately resolved.

7. Even to the extent that there are changed facts regarding anticipated volumes of hot cuts to be processed, such facts do not necessarily eliminate any need for arbitration of ongoing disputes regarding hot cut processes and pricing.

8. Disputes continue to exist among carriers as to the proper scope of a batch hot cut process, whether the process should include CLEC-to-CLEC migration,

and whether they should be limited only to migration of UNE-P voice-only loops or should include loops that carry both voice and data.

9. Various interim arrangements, such as a resale or "commercial agreement" status, have been used to accommodate the March 11, 2006 deadline for cut over of UNE-P lines. Nonetheless, many CLECs are waiting for the growth of their customer bases to reach the point where the CLEC can move lines that are currently on such interim arrangements to UNE-L status.

10. To the extent that future migrations to UNE-L are needed to transition off of such interim arrangements, CLECs may have a continuing need for a batch cut process.

Conclusions of Law

1. Since the March 11, 2006 deadline prescribed in the TRRO for completing batch hot cuts of the embedded UNE-P base has passed, the Petitions for Modification of D.05-07-043 to seek relief from compliance with that deadline are essentially moot.

2. Ongoing disputes concerning the scope, adequacy, and pricing of batch hot cut processes are not automatically eliminated or rendered moot merely because the March 11, 2006 deadline for cutovers has passed.

3. In order to address any remaining ongoing concerns regarding potential disputes over the adequacy of batch hot cut processes and pricing, a prehearing conference should be scheduled in the consolidated arbitration proceedings for Verizon and SBC.

O R D E R

IT IS ORDERED that:

1. The Petitions of Verizon California Inc. (Verizon) and SBC California, Inc. (SBC) to Modify Decision 05-07-043 are denied as moot in that they request relief from a compliance with a deadline that is already passed.

2. The question of whether, or to what extent, further arbitration proceedings are warranted to address ongoing disputes prospectively concerning batch hot cut processes and/or pricing shall be considered further at a prehearing conference in the consolidated arbitration proceedings for Verizon and SBC, respectively.

3. The assigned Administrative Law Judge (ALJ) in the consolidated arbitration proceedings shall schedule a prehearing conference for the purpose of considering the need for and extent of further arbitration proceedings to resolve disputes concerning batch hot cut processes and pricing, as discussed above.

4. The motion of SBC, dated February 3, 2006, is hereby granted for leave to file under seal designated confidential materials in the confidential version of SBC's Petition and related Declaration of Carol Chapman is hereby granted.

5. The motion of Verizon, dated January 27, 2006, for leave to file under seal the confidential version of the Supplemental Declaration of Thomas Maguire is hereby granted. (The Verizon motion to file the initial Declaration of Thomas Maguire was granted by ruling date January 24, 2006).

6. The *ex parte* communication dated March 28, 2006, consisting of a letter sponsored by multiple carriers to the assigned ALJ, is hereby incorporated into the formal record.

7. The Triennial Review Order/Triennial Review Remand Order phase of these proceedings are closed.

This order is effective today.

Dated _____, at San Francisco, California.