

Decision **DRAFT DECISION OF ALJ Duda** (Mailed 8/12/02)**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

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

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

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

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

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

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

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

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

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

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

Application of XO California, Inc. (U 5553 C) for the Commission to Reexamine the Recurring Costs of DS1 and DS3 Unbundled Network Element Loops provided by Pacific Bell Telephone Company, as and for the Commission's Second Triennial Review of Recurring Unbundled Network Element Costs Pursuant to Ordering Paragraph 11 of D.99-11-050.

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

**INTERIM OPINION  
APPLYING PACIFIC BELL TELEPHONE COMPANY  
INTERIM SWITCHING DISCOUNTS TO ALL PORT TYPES**

**I. Summary**

This decision applies the interim switching discounts recently adopted in Decision (D.) 02-05-042 to all of the Pacific Bell Telephone Company (Pacific) ports listed in Appendix A of D.99-11-050. The interim port rates adopted by this decision are subject to adjustment when the Commission completes its assessment of new cost studies for Pacific's loop and switching unbundled network elements (UNEs).

**II. Background**

In D.02-05-042, the Commission adopted interim discounts to Pacific's unbundled loop and switching rates due to delays in this proceeding to

reexamine Pacific's UNE rates. The delays were caused by certain deficiencies in Pacific's cost filing and the need to examine competing cost models. Specifically, the Commission adopted an interim discount of 69.4% to local switching rates and 79.3% to tandem switching rates. This interim discount resulted in a corresponding 69.4% discount to the basic (2-wire) port rate that had previously been set in D.99-11-050 in the Commission's Open Access and Network Architecture Development proceeding. (*See* Appendix A of D.99-11-050)

The level of the switching discount was based, in part, on application of an evidence sanction against Pacific for failing to comply with discovery rulings in the course of the proceeding. Pacific's failure to provide certain cost information resulted in the Commission deeming the missing material to support Joint Applicant's claim that switching rates should be lowered from the levels adopted in D.99-11-050. The Commission also found evidence to support the contention that switching prices for Illinois proposed by Pacific's sister corporation, SBC-Ameritech, either equal or exceed the appropriate cost-based rates in California. (*See* D.02-05-042, mimeo. at 48.) This evidence included public data showing uniformity across geographic regions in switching cost trends, and Pacific's admissions that it buys switches for use in California at prices that are equal to, or more favorable than, the prices at which it can buy switches for use in Illinois. (*Id.*)

Parties commenting on the draft order before its adoption by the Commission maintained that the 69.4% switching discount should apply to all port types priced in Appendix A of D.99-11-050 rather than just the basic port. In D.02-05-042, the Commission declined this request, noting that Pacific was not given notice that the Commission might adopt an interim rate for anything other

than the basic port. The order directed the administrative law judge (ALJ) to solicit comments on this issue by further ruling.

The ALJ issued a ruling shortly thereafter inquiring whether it would be appropriate to apply the interim port discount of 69.4% to all port types. Pacific, AT&T Communications of California, Inc. and WorldCom Inc. (collectively “Joint Applicants”), Office of Ratepayer Advocates (ORA), The Utility Reform Utility TURN, Z-Tel Communications, Inc. (Z-Tel), Tri-M Communications d/b/a TMC Communications (TMC), and Anew Telecommunications Corporation d/b/a Call America (Call America) filed comments. Pacific and Joint Applicants filed reply comments. In response to an ALJ ruling seeking further information from the first round of filings, Joint Applicants and Pacific filed additional declarations from their respective witnesses.

The ports for which a discount is currently under consideration, and the current rates for these port, are as follows:

**Table 1**  
**Current Non-Basic Port Rates**

<b>Port Type</b>	<b>Current Rate</b>
Coin Port	\$3.81
Centrex Port	4.37
Direct Inward Dial (DID) Port	4.18
DID Number Block	1.00
Integrated Services Digital Network (ISDN) Port	14.10
Trunk Port Termination:	
End Office Termination	20.99
Tandem Termination	142.82
DS-1 Port	20.99

**III. Positions of Parties**

Pacific contends there is no evidence that costs for ports other than the basic port have declined and that the Commission cannot presume, as other parties urge, that the same pressures that have driven reductions in switching rates also apply to the non-basic ports. Pacific maintains that there are physical network differences between the basic port and other port types. Specifically, Pacific describes the different hardware requirements of ports such as Centrex, ISDN, DID, and Coin, and these varying ports switch resource needs. For example, Pacific describes how ISDN ports require different line cards than the basic port, how Centrex ports require a “Common Block” to provide Centrex-like services, and how Coin ports require unique signaling equipment. Further, Pacific explains that DID ports require a trunk-side switch connection that differs from the line-side switch connection of the basic port.

Pacific asserts that application of the discount would only be justified if all the port types used the same switching equipment and consumed switching resources in the same quantities. According to Pacific, this is not the case and therefore, the 69.4% interim discount should not apply to the non-basic ports.

In contrast, Joint Applicants maintain that network facilities, both hardware and software, are the same for basic ports and all other port types, except for Centrex and ISDN ports. According to Joint Applicants, all ports except Centrex and ISDN are merely rearrangements of the same components and capabilities for which the Commission has already reduced costs in D.02-05-042. In contrast to Pacific’s argument that ports with trunk side connections should not receive the same discount as the basic port, Joint Applicants contend that the Commission has already reduced the usage rate elements that reflect the costs of equipment components beyond mere line-side

ports. According to Joint Applicants, the trunk port elements are the same trunk equipment components included in end-office and tandem usage rate elements. (Joint Applicants' Reply Comments, 6/12/02, p. 3.)

For Centrex, Coin, and ISDN Ports, Joint Applicants acknowledge that these ports use some unique software, signaling equipment, and/or hardware. Nevertheless, they recommend that the Commission can reasonably infer that these unique costs have declined in a fashion similar to the cost declines found for the equipment and facilities used by the basic port. Specifically, Joint Applicants allege that Pacific has increased purchasing power since the merger of its parent company, SBC, with Ameritech, and that any unique Centrex and ISDN expenses are part of the overall reduction in switching related expenses shown in SBC's public data and referred to in D.02-05-042. (*See* D.02-05-042, *mimeo* at 14 and 46.)

ORA, TURN, Z-Tel, TMC and Call America all support application of the interim basic port discount to the other port types. ORA notes that the record shows that other SBC states do not make distinctions among various port types when pricing UNEs. ORA also states that given the true-up mechanism adopted in D.02-05-042, Pacific will not be harmed by the interim port discount. Z-Tel claims that absent application of the same discount to all port types, UNE rates will be discriminatory. Furthermore, Z-Tel argues that the Commission has no record to justify discounted analog port rates while digital port rates remain at the levels set in 1999. TMC and Call America request that the Commission apply the same rate to basic and Centrex ports, or in the alternative, the same discount. They contend that D.02-05-042 found evidence that Centrex and basic port rates were proposed at equal levels by Pacific's affiliate SBC-Ameritech in Illinois. TMC and Call America also suggest that proper application of the issue sanction

adopted in D.02-05-042 requires the Commission to assume that basic and Centrex ports are equal.

#### **IV. Discussion**

When we adopted an interim switching discount of 69.4% for local switching and ports and 79.3% for tandem switching, we based this on evidence that switching prices proposed by SBC's affiliate in Illinois either equal or exceed the appropriate cost-based rates for California. The switching discounts were also based on public data showing uniformity across regions in switching cost trends. Parties now ask that we apply these same discounts to the other port types for which we set rates in D.99-11-050.

We must essentially decide whether it is reasonable that the non-basic ports would be similarly impacted by the cost declines we found in D.02-05-042, or whether these non-basic ports are so significantly different in terms of hardware, software and switch usage that there is no correlation between the discounts affecting the basic port and the other ports.

We find that there is a correlation between the basic port and the other port types and that the discount we adopted for the basic port should extend to the other port types listed in Table 1.

In the declaration of Scott Pearsons provided by Pacific, Mr. Pearsons admits that Centrex and basic ports do share most of the same equipment, even though they do not share all of the same equipment. (Pearsons Declaration, 7/11, p. 2) He also agrees with Joint Applicants that the Common Block feature used by the Centrex port resides in the same memory chips that are used for basic call processing. (Id., p. 3) Because of these admissions, we find that the basic port discount should apply to the Centrex port as well.

Mr. Pearsons also agrees that the Coin Port, DID Port, DID Number Block, ISDN Port, Trunk Port Terminations and DS-1 Ports have some equipment and facilities in common with the basic port, although each port has unique equipment requirements. (Id.) In the declaration of Catherine Pitts presented by Joint Applicants, Ms. Pitts describes specific equipment commonalities between the basic and non-basic ports. For example, she describes how the Coin and Centrex Ports share a main distributing frame (MDF) termination, line card, and a portion of the line peripheral with basic ports. (Pitts Declaration, 7/11/02, p. 2.) A chart provided by Pacific's witness Mr. Pearsons substantiates these commonalities. Ms. Pitts states that the DID Number Block uses the same memory components to store a DID number as the Centrex Common Block and all other information stored in the switch's memory. (Id., p. 2, footnote 4.). In addition, she states that ISDN Ports also use a MDF termination and line peripheral in common with the basic port. (Id., p. 3.)

While Mr. Pearsons describes specific differences and unique switching equipment used by some of these ports, we find that the existence of some commonality, as detailed by Ms. Pitts and Mr. Pearsons, whether it be use of line cards, memory chips, or MDF terminating equipment, makes it reasonable to extend the basic port discount to all port types. Furthermore, we think there are sound policy reasons to maintain the general pricing differentials that existed among the port types prior to our adoption of an interim discount to the basic port in D.02-05-042. By discounting the basic port, and not the other port types, we have skewed the pricing structure that existed before. With the statements from Mr. Pearsons that these other port types do have some equipment and facilities in common with the basic port, there is ample reason to extend the basic

port discount to the non-basic ports and by doing so, reinstate the pricing differentials among these port types that we adopted in D.99-11-050.

We do not agree with Pacific's assertion that the Commission can only extend the discount to non-basic ports if they use all of the same switch equipment and resources as the basic port. It is not necessary for there to be exact replication of all switch equipment and resources. As long as non-basic ports use some of the same switch equipment and resources that were found to have declining costs in D.02-05-042, we find it reasonable that non-basic port prices should decline by the same percentages that were found to apply to basic ports.

With regard to trunk ports (i.e. DID, end-office and tandem trunk port terminations, and DS-1 ports), Ms. Pitts contends they should be discounted the same as the basic port because they use the same equipment components that are included in interoffice usage rates which were discounted in D.02-05-042. At first glance, Pacific appears to take a contradictory position, stating that trunk ports are not a subset of usage. We find that the difference in these positions is one of semantics. Pacific does not directly dispute Joint Applicants' implication that trunk port rates are derived from the same equipment components that are already included in the interoffice usage rate elements. While Pacific states that trunk port costs are not a subset of interoffice usage rates, it does not contradict the assertion that the equipment from which usage costs are derived is also used to derive costs for trunk ports. If it is true, as Joint Applicants state in their declaration, that trunk port costs and usage costs use the same equipment components, then we should extend the usage discounts to trunk port terminations as well. We find Ms. Pitts declaration credible on this matter.

Therefore, we will extend the basic port discount to trunk ports as set forth in Table 2 below.

We deny the request of TMC and Call America to lower all port rates to the same rate as the basic port. This would eliminate the differential in prices that was established in D.99-11-050. The declarations provided by both Pacific and Joint Applicants only support applying the same interim discounts to all the port types. The evidence thus far does not support equalizing these rates. Moreover, we decline to adopt the suggestion of TMC and Call America to extend the issue sanction applied in D.02-05-042 to non-basic port rates.

Finally, we disagree with Pacific's claims that its due process rights are violated if the Commission were to discount non-basic rates in what Pacific calls an "abbreviated fashion," based on a single set of opening and reply comments, particularly when it took over a year to establish the interim prices in D.02-05-042. The comment period in this case has afforded Pacific ample opportunity to make its case, just as it was given that opportunity when interim rates were considered in D.02-05-042. A comparison of the time taken to adopt interim switching and loop rates with the time taken to then apply that same discount to other port types is not a fair comparison, particularly when the effort to establish interim rates did not begin in earnest until six months into the UNE reexamination proceeding.

In summary, the following interim discounts should apply to the port rates established in D.99-11-050:

**Table 2**  
**Non-Basic Port Discounts**

<b>Port Type</b>	<b>Interim Discount</b>	<b>Interim Rate</b>
Coin Port	69.4%	\$1.17
Centrex Port	69.4	1.34
DID Port	69.4	1.28
DID Number Block	69.4	.31
ISDN Port	69.4	4.31
Trunk Port Termination:		
End Office	69.4	6.42
Tandem	79.3	29.56
DS-1 Port	69.4	6.42

These interim rates shall be subject to adjustment, either up or down, once final rates for basic and non-basic port types are adopted in the next phase of this proceeding. Therefore, we require Pacific to establish a balancing account to track the revenues received from these interim port rates. The balancing account should begin tracking revenues on the same date the interim rates become effective, which is the effective date of this order.

#### **Comments on Draft Decision**

The draft decision of the ALJ in this matter was mailed to the parties in accordance with Section 311(g)(1) of the Public Utilities Code and Rule 77.7 of the Rules of Practice and Procedure. Comments were filed by \_\_\_\_\_. Reply comments were filed by \_\_\_\_\_.

**Findings of Fact**

1. The non-basic ports listed in Table 1 have some equipment and facilities in common with the basic port even though each port has some unique equipment requirements.
2. Centrex and basic ports share most of the same equipment, even though they do not share all of the same equipment.
3. The Common Block feature used by the Centrex port resides in the same memory chips that are used for basic call processing.
4. Coin and Centrex Ports share a MDF termination, line card, and a portion of the line peripheral with basic ports.
5. The DID Number Block uses the same memory components as a Centrex Common Block.
6. ISDN Ports use a MDF termination and line peripheral in common with the basic port.
7. The equipment from which switching usage costs are derived is also used to derive costs for trunk ports.

**Conclusions of Law**

1. Because the non-basic port types listed in Table 1 use some of the same equipment as the basic port, including line cards, memory chips, and MDF terminations, there is a correlation between the basic port and other port types and the discount adopted for the basic port should extend to the other port types listed in Table 1.
2. By discounting the basic port, and not the other port types, we have skewed the pricing structure that was established in D.99-11-050.

3. For policy reasons, the Commission should retain the general pricing differentials that existed among the port types when rates were adopted in D.99-11-050.

4. Once final port rates are adopted in a further phase of this proceeding, the interim port rates adopted in this order should be adjusted, either up or down, from the effective date of this order.

### **INTERIM ORDER**

#### **IT IS ORDERED** that:

1. The monthly recurring prices for the ports offered by Pacific Bell Telephone Company (Pacific) that are set forth in Table 2 of this order satisfy the requirements of Sections 251(c)(2), 251(c)(3), and 252(d)(1) of the Telecommunications Act of 1996 and are hereby adopted on an interim basis.

2. The interim unbundled network element (UNE) prices for ports adopted in this order shall be effective on the date this order is effective.

3. Pacific shall prepare amendments to all interconnection agreements between itself and other carriers substituting the interim monthly recurring prices for UNE ports set forth in Table 2 of this order for the UNE prices set forth in such interconnection agreements. Such amendments shall be filed with the Commission's Telecommunications Division, pursuant to the advice letter process set forth in Rules 6.2 and 6.2 of Resolution ALJ-181, within 30 days after the effective date of this order. The amendments do not require a signature of the carriers involved as long as the amendments are limited to substituting the port rates adopted in today's order. Unless protested, such amendments will become effective 30 days after filing.

4. Pacific shall have 60 days from the date of this order to complete all billing program changes necessary to ensure that an effective date of today is accurately reflected in bills applicable to these UNEs. Upon completion of said billing program changes, Pacific shall notify the Director of the Telecommunications Division in writing that all of the necessary billing program changes have been completed.

5. Within 10 days of the effective date of this order, Pacific shall file an advice letter to establish a balancing account to track the revenues received from these interim UNE port rates, beginning on the same date the interim rates become effective. The balancing account should accrue interest at the three-month commercial paper rate. Unless protested, the advice letter shall become effective five days after filing.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.