

PUBLIC UTILITIES COMMISSION505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

August 25, 2005

Agenda ID #4907

TO: PARTIES OF RECORD IN APPLICATION 02-11-027

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

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

Parties to the proceeding may file comments on the draft decision as provided in Article 19 of the Commission's Rules of Practice and Procedure (Rules). These rules are accessible on the Commission's Website at <http://www.cpuc.ca.gov>. Pursuant to Rule 77.3 opening comments shall not exceed 15 pages. Finally, comments must be served separately on the ALJ and the Assigned Commissioner, and for that purpose I suggest hand delivery, overnight mail, or other expeditious method of service.

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

ANG:hkr

Attachment

Decision **DRAFT DECISION OF ALJ KENNEY** (Mailed 8/25/2005)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Comm South Companies, Inc.
(U-5943-C) and Arbros Communications, Inc. for
Approval of Transfer of Control to Arcomm
Holding Co.

Application 02-11-027
(Filed November 15, 2002)

**OPINION TRANSFERRING THE LONG-DISTANCE TELEPHONE SERVICE
FOR TWO TELEPHONE LINES**

1. Summary

Pacific Bell Telephone Company d/b/a/ SBC California, Inc. (SBC) reports that the designated intrastate long-distance carrier for two telephone lines is Arbros Communications Licensing Company of California, LLC (ACLCC), a company that had its certificate of public convenience and necessity (CPCN) revoked. This Decision designates SBC as the intrastate long-distance carrier for the two lines and orders SBC to notify the affected customers about the change in carriers. This proceeding is closed.

2. Background

In Decision (D.) 04-09-023, the Commission noted evidence that indicated ACLCC had discontinued the provision of service in 2001 without authorization and ordered ACLCC to submit a compliance filing that stated whether ACLCC had, in fact, discontinued service. ACLCC did not submit the compliance filing. Shortly after D.04-09-023 was issued, the Commission's Telecommunications

Division (TD) revoked ACLCC's CPCN for failure to file an annual report, remit surcharges, and respond to TD's inquiries.¹

TD subsequently discovered that SBC had records which indicated that ACLCC was still reselling long-distance services, despite having no authority to do so, and that Global Crossing Ltd. (Global Crossing) was the underlying facilities-based carrier for the services being resold by ACLCC. The assigned Administrative Law Judge (ALJ) asked SBC and Global Crossing to investigate the unauthorized provision of service by ACLCC.

Global Crossing states that its investigation found that another reseller of its services, Digizip Com, Inc. (Digizip),² had submitted requests to SBC to change customers' primary interexchange carrier (PIC) that contained an alleged transposition error. Instead of showing Digizip's Utility ID of 6652, the PIC change requests showed a Utility ID of 6522, which belonged to ACLCC. As a result of the alleged transposition error, SBC's records mistakenly showed ACLCC as the reseller when the actual reseller was Digizip. Digizip submitted at least 90 erroneous PIC change requests.³

Global Crossing submitted change orders to SBC to correct the alleged transposition error (i.e., show Digizip as the reseller instead of ACLCC). However, SBC reports that its records show that ACLCC is still a designated

¹ Resolution T-16875, which was issued on September 23, 2004, revoked the CPCNs for 261 telecommunications carriers, including ACLCC.

² Digizip is authorized by D.02-05-016 to resell interexchange telecommunications services.

³ There is no evidence in this proceeding that ACLCC actually provided service as a result of the erroneous PIC changes.

carrier for two lines⁴ and Global Crossing is the underlying facilities-based carrier. Global Crossing claims that it does not serve either line.⁵ Telephone calls by the assigned ALJ to each line failed to produce definitive information about the identity of the carrier providing long-distance service for either line.

3. Discussion

SBC's records show that ACLCC is the designated intrastate long-distance carrier for two telephone lines, even though ACLCC has no authority to provide service. We conclude that the best way to resolve this proceeding is to require SBC to revise its records to remove ACLCC as the designated intrastate long-distance carrier for the two lines in question. To ensure that the two lines continue to receive long-distance service without interruption, we will require SBC to take over the long-distance service for the two lines in a manner consistent with our rules governing the transfer of customers between carriers.⁶ To this end, SBC shall send written notice to the billing addresses for the two lines that contains the following information:

- Pursuant to a Commission order, SBC will replace ACLCC as the designated provider of intrastate interexchange services.
- SBC's provision of service will commence 30 days from the date of the notice.
- A description of the services to be provided by SBC and the charges and fees associated with such services.
- A statement that the customer has a right to switch to another carrier.

⁴ One line is in the 408 area code, and the other line is in the 818 area code.

⁵ SBC states that it does not know if either line generates long-distance traffic. Thus, it cannot be inferred that ACLCC is providing unauthorized service.

⁶ A description of the Commission's rules is contained in D.05-06-055.

- A toll-free telephone number where the customer can obtain information about SBC's services, rates, and charges.

SBC shall send the required notice to the two customers no later than 30 days from the effective date of this Decision. SBC shall also file a copy of the notice at the Commission's Docket Office. Finally, SBC shall implement the transfer of telephone service without any charges to the affected customers.⁷

4. Pub. Util. Code § 311(g)(1)

The draft decision of the assigned 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. Comments were submitted on _____ by _____. Reply comments were submitted on _____ by _____. These comments have been reflected, as appropriate, in the final decision adopted by the Commission.

5. Assignment of Proceeding

Geoffrey F. Brown is the Assigned Commissioner and Timothy Kenney is the assigned ALJ in this proceeding.

Findings of Fact

1. ACLCC's CPCN was revoked by Resolution T-16875.
2. SBC's records show that ACLCC is the designated intrastate long-distance carrier for two telephone lines.

⁷ The transfer of intrastate long-distance service for the two lines to SBC is not subject to Pub. Util. Code § 2889.5. This statute requires, among other things, third-party verification of a customer's decision to switch long-distance carriers. Here, the Commission is ordering the transfer, so there is no need for third-party verification of the transfer.

Conclusions of Law

1. SBC should revise its records to remove ACLCC as the designated intrastate long-distance carrier for the two telephone lines in question.
2. To ensure that the two lines continue to receive intrastate long-distance telephone service without interruption, such service should be transferred to SBC in a manner consistent with the Commission's rules governing the transfer of customers between carriers. To this end, SBC should (i) send written notice to the billing addresses for the two lines that contains the information specified in the body of this Decision, and (ii) implement the transfer of service without any charges to the affected customers.
3. SBC should file at the Commission's Docket Office a copy of the written notice described in the previous Conclusion of Law.
4. The following Order should be effective immediately.

O R D E R

IT IS ORDERED that:

1. Within thirty (30) days from the effective date of this Order, Pacific Bell Telephone Company d/b/a/ SBC California, Inc. (SBC) shall send to the billing addresses for the two telephone lines discussed in the body of this Order a written notice that contains the information specified in the body of this Order.
2. SBC shall do the following thirty (30) days after it mails the notice described in Ordering Paragraph 1:
 - i. Take over the provision of intrastate long-distance telephone services to the two telephone lines unless the end-users select another carrier.

- ii. Revise its records to remove Arbros Communications Licensing Company of California, LLC as the designated intrastate long-distance carrier for the two lines.

3. Within 45 days from the effective date of this Order, SBC shall file at the Commission's Docket Office a copy of the written notice described in the previous Ordering Paragraph.

4. The transfer of the intrastate long-distance service for the two lines to SBC shall be implemented without any charges to the affected customers.

5. This proceeding is closed.

This Order is effective today.

Dated _____, at San Francisco, California.