PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Communications Division **RESOLUTION T-17308**
Carrier Oversight & Programs **April 14, 2011**

R E S O L U T I O N

RESOLUTION T-17308. Removal of Suspension of AT&T California's Advice Letter No. 38241, Filed October 1, 2010.

SUMMARY

This Resolution lifts the suspension of AT&T California's Advice Letter No. 38241, Amendment for 2011 Modified UNE Rates, filed October 1, 2010. The Advice Letter is made effective as of October 31, 2010.

BACKGROUND

AT&T California (AT&T) filed Advice Letter (AL) No. 38241 pursuant to the Settlement Agreement reached between AT&T and the California Association of Competitive Telecommunications Companies (CALTEL), and approved in Decision (D.) 09-02-017, dated February 20, 2009. Under this Agreement, AT&T must calculate the unbundled network element (UNE) recurring rate index and include the new UNE recurring rate in an annual Advice Letter filing on October 1 of each year, beginning October 1, 2010.

On October 1, 2010, AT&T filed AL 38241, to modify the UNE recurring rates in its interconnection agreement with CALTEL.

On October 21, 2010, CALTEL filed a protest against AT&T's Advice Letter, arguing that AT&T's data and analysis "contain material errors or omissions". CALTEL claims that AT&T referenced the incorrect Decision in the Settlement Agreement, and as a result, applied the UNE rate changing mechanism to only certain UNE recurring rates. In addition, CALTEL contends the language used in the Settlement Agreement intended the application of the UNE recurring rate changing mechanism apply to all UNEs. Furthermore, CALTEL argues that it was the intention of the parties and the Commission to resolve all pending UNE issues with the Settlement Agreement.

AT&T responded to CALTEL's protest on October 28, 2010. AT&T states that the Settlement Agreement and D.09-02-017 clearly provide that the adjustment applies to UNE recurring rates set in D.04-09-063, as subsequently modified by D.05-05-031. AT&T states that CALTEL incorrectly believes that D.05-03-026 modifies all UNE recurring rates, which AT&T states is not correct.

The Communications Division (CD) suspended Advice Letter No. 38241 on October 31, 2010, pursuant to General Order 96B, Section 7.5.2.

DISCUSSION

In its protest, CALTEL argues that AT&T referenced the incorrect Decision in the Settlement Agreement and incorrectly applied the UNE rate changing index to only certain UNE recurring rates. The Settlement Agreement, as adopted in D.09-02-017, it states, in relevant part:

> The Parties agree that the following indexing mechanism applies to UNE recurring rates set in D.04-09-063, as subsequently modified by D.05-05-031.

D.04-09-063 established UNE rates for loops, switching, dedicated transport, signaling system 7 links and DS-3 entrance facility without equipment, while D.05-05-031 modified D.04-09-063, and D.05-03-037 corrected the unbundled tandem switching rates. CALTEL claims the AT&T's reference to D.05-05-031 in the Settlement Agreement was incorrect and that the Settlement Agreement really meant to refer to D.05-03-026, which CALTEL says modified all UNE rates. CALTEL argues that the language used in the Settlement Agreement intended that the application of the UNE rate changing mechanism apply to all UNE rates.

AT&T responds that the Settlement Agreement was very specific about the application of the rate changing index to UNE recurring rates set in D.04-09-063, as subsequently modified by D.05-05-031, and that it is reasonable and logical to have the index only applied to those UNE recurring rates that were referenced.

We have carefully examined CALTEL's arguments and agree with AT&T's position that the Settlement Agreement clearly states that the indexing mechanism adopted in the Settlement Agreement applies to UNE recurring rates set in D.04-09-063, as modified

by D.05-05-031. We also find with AT&T that neither D.04-09-063 nor D.05-05-031 modified all UNE and that the Settlement Agreement does not refer to D.05-03-026. In D.04-09-063 rates were adopted for loops (including de-averaged rates for 2-wire, DS-1 and DS-3 loops), switching, dedicated transport, signaling system 7 links and the DS-3 entrance facility without equipment. D.05-05-031 modified both D.04-09-063 and D.05-05-037 to correct an error in the Settlement Agreement. Furthermore, CALTEL's argument that the Settlement Agree meant to reference D.04-09-063, as subsequently modified by D.05-03-026 (instead of D.05-05-031) does not make sense because D.05-03-026 did not modify D.04-09-063.

We determine AT&T is also correct in asserting none of these decisions set rates for all UNEs. If CALTEL wishes to modify the Settlement Agreement adopted in D.09-02-017, there are other formal remedies available instead of an Advice Letter protest.

We concur with AT&T's argument and lift the suspension of Advice Letter No. 38241 and make the filing effective as requested, October 31, 2010.

COMMENTS

In accordance with Public Utility Code 311 (g) CD provided notice on March 15, 2011 to the interested parties, informing these parties that this draft resolution is available on the Commission's website at http://www.cpuc.ca.gov and available for public comments. Parties may submit comments on the draft resolution within 20 days of its date of mailing.

FINDINGS

1. Decision 09-02-017, reached between AT&T California (AT&T) and California Association of Competitive Telecommunications Companies (CALTEL) and approved by the Commission on February 20, 2009, puts into place an unbundled network element (UNE) rate changing mechanism in which AT&T will calculate the UNE recurring rate index and include the new UNE recurring rate in an annual advice letter filing on October 1 of each year.

2. The Settlement Agreement applies the indexing mechanism to UNE recurring rates set in D.04-09-063, as subsequently modified by D.05-05-031 and D.05-05-037.

3. AT&T filed Advice Letter (AL) 38241 on October 1, 2010 to modify the UNE recurring rates pursuant to the Settlement Agreement.

4. On October 21, 2010, CALTEL protested AT&T's advice letter.

5. On October 28, 2010, AT&T responded to CALTEL's protest of AL 38241.

6. On October 31, 2010, Communications Division (CD) suspended AL 38241 for 180 days.

7. CD's suspension of AT&T's Advice Letter No. 38241 should be lifted.

8. AT&T's Advice Letter No. 38241 should be made effective October 31, 2010.

THEREFORE, IT IS ORDERED that:

1. The suspension of AT&T California's Advice Letter No. 38241 is lifted.

2. AT&T California's Advice Letter No. 38241 is made effective as of October 31, 2010.

This resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed, and adopted at a conference of the Public Utilities Commission of the State of California held on April 14, 2011, the following Commissioners voting favorably thereon:

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PAUL CLANON
Executive Director