

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Petition of AT&T Communications of California, Inc. for a Commission Order Instituting Rulemaking to Adopt, Amend or Repeal a Regulation Pursuant to California Public Utilities Code Section 1708.5 to Implement Cost-Based Intrastate Carrier Access Charges.

Petition 01-10-008
(Filed October 4, 2001)

Order Instituting Rulemaking to Review Policies Concerning Intrastate Carrier Access Charges.

FILED
PUBLIC UTILITIES COMMISSION
AUGUST 21, 2003
SAN FRANCISCO, CALIFORNIA
RULEMAKING 03-08-018

DECISION GRANTING PETITION OF AT&T COMMUNICATIONS OF CALIFORNIA AND ORDER INSTITUTING RULEMAKING TO REVIEW POLICIES CONCERNING INTRASTATE CARRIER ACCESS CHARGES

Summary

This order grants in part the petition of AT&T Communications of California, Inc. (AT&T) to institute a rulemaking to review intrastate carrier access charges. The term "access charges" refers to charges imposed by local exchange carriers (LECs) such as Pacific Bell Telephone Company (herein referred to as SBC) on interexchange carriers (IEC) such as AT&T for using the LEC's local exchange network. Interexchange carriers use this switched access to originate and terminate long distance calls to the vast majority of California residential and business customers.

We open this rulemaking in recognition that circumstances have changed since the Commission made significant changes to access charges in 1994. At this time, the Commission will consider reductions to the access charges of SBC and Verizon only. In addition, as explained below, we will limit the scope of this proceeding to the network interconnection charge (NIC) portion of SBC's access charges and the transport interconnection charge (TIC) of Verizon's access charges.

AT&T's Petition

On October 4, 2001, AT&T filed a petition pursuant to California Public Utilities Code Section 1708.5 asking the Commission to reduce intrastate access charges. AT&T argues that access charges for SBC and Verizon California (Verizon) should be based on "forward-looking economic costs" consistent with what AT&T perceives to be FCC requirements.

AT&T contends that the Telecommunications Act of 1996 (Pub. L. No. 104-104, 110 Stat 56, codified at 47 U.S.C. §§151, et seq. (Telecommunications Act)) requires the Commission to eliminate disparities in prices charged to IECs and LECs for similar or identical LEC services. AT&T argues that the Telecommunications Act requires cost-based pricing for interconnection services, including the transmission and routing of telephone exchange service and exchange access (Section 251(c)(2)(a)). It proposes that this standard applies equally whether the network function is used for local or switched access purposes.

AT&T contends that switched access is functionally equivalent to call termination for local exchange services. It observes that switched access is comprised of several wholesale network elements (unbundled network elements, or UNEs) and the price for each is currently set based on forward-looking costs.

AT&T states that local switching, transport and tandem switching are combined to create access services. AT&T urges the Commission to eliminate what it considers an artificial distinction between “local” and “toll” interconnections and apply the UNE rate to both “toll” switched access and “local” call termination.

AT&T states that access charges were originally set at levels that provide subsidies from long distance services to local phone service. AT&T contends that Section 254(e) of the Telecommunications Act requires that all subsidies be explicit, and the Commission must bring intrastate access charges into compliance with this mandate.

In support of its position, AT&T observes that the telecommunications marketplace has changed significantly since 1994, when the Commission last examined intrastate access charges. These changes include the Telecommunications Act, local toll competition, adoption of the new costing methods, and FCC reforms to interstate access charges. AT&T also refers to California’s Universal Service program, and in particular the California High Cost Fund B, which removed from local rates any implicit subsidies to support basic phone service in high cost areas of the state served by large and mid-sized incumbent local exchange carriers (ILECs). AT&T argues that the change in how universal service subsidies are funded eliminates the need for inflated access charges to support local exchange service. The result, according to AT&T, is that the ILECs are making extraordinary profits from access charges.

In addition, AT&T maintains that the entry by Verizon and SBC into long distance markets requires changes to access charges. It believes SBC’s high access charges in combination with its low toll rates does not permit competitors to recover their own costs and still keep their toll prices competitive.

Responses to the Petition

SBC, Verizon, a group of small LECs,¹ and Roseville Telephone Company (Roseville) filed comments opposing AT&T's petition. The Commission's Office of Ratepayer Advocates (ORA) and The Utility Reform Network (TURN) filed joint comments.

SBC and Verizon comment that AT&T's request to reduce access charges to cost ignores the Commission's long-standing policy of pricing intrastate access charges to promote universal service. AT&T would eliminate this subsidy from access charges to local basic rates but proposes no way to subsidize local service from another source.

SBC and Verizon contend that the Telecommunications Act does not require access charges to be based on TELRIC. They argue that the FCC has found that the Act preserves the legal distinction between long distance access charges and charges for UNEs.² SBC and Verizon cite a decision of the Eighth Circuit Court that upholds the FCC's findings in this regard to preserve certain rate regimes already in place.³ The LECs argue that the Commission is within its discretion to determine how it will ensure affordable local service.

¹ The small LECs that filed jointly were Calaveras Telephone Company, Cal-Ore Telephone Company, Ducor Telephone Company, Evans Telephone Company, Foresthill Telephone Company, Happy Valley Telephone Company, Hornitos Telephone Company, Kerman Telephone Company, Pinnacles Telephone Company, The Ponderosa Telephone Company, Sierra Telephone Company, The Siskiyou Telephone Company, Volcano Telephone Company, and Winterhaven Telephone Company.

² First Report and Order, *In the Matter of Access Charge Reform*, CC Docket No. 96-262, 12 FCC Rcd. 15,982, para. 1033 et seq. (May 16, 1997).

³ *Competitive Telecommunications Association v. FCC*, 117 F.3d 1068 (8th Cir. 1997).

SBC contends that AT&T has not proposed a way to ensure that IECs will pass along the savings associated with lower access charges to their customers. It believes access charge reductions will only benefit AT&T shareholders. Verizon contends that AT&T fails to propose ways to offset a rate reduction through increases in other LEC rates, in contravention of Commission policy articulated in D.94-09-065. The small LECS and Roseville raise similar arguments to those presented by SBC and Verizon.

TURN and ORA oppose the petition on the grounds that access charge reform is not a high priority because other regulatory proceedings will provide more immediate ratepayers benefits, among them, the NRF review, the service quality review, review of UNE prices, the line sharing proceeding, and a review of universal service mechanisms adopted in D.96-10-066.

Discussion

This order grants AT&T's petition in part and initiates a rulemaking on topics relating to the level of intrastate access charges. We grant the petition in recognition that circumstances have changed since 1994, when we last comprehensively examined access charges for Verizon and SBC. First and foremost, since our 1994 decision, ILECs and IECs have become direct competitors for interLATA traffic. Verizon has been permitted to offer interLATA service since 1996 and SBC began offering interLATA service in January 2003. AT&T alleges that IXC's suffer a price squeeze by virtue of the fact that they must pay access charges to their ILEC competitors, but the ILECs need only make paper transfers of money to their affiliates. According to AT&T, to the extent access charges are unduly high, the margin between access charges and the ILECs' retail long distance rates does not permit fair competition in long distance markets. In this order opening this docket, we make no finding one

way or the other regarding the validity of AT&T's argument. We anticipate that this docket will address the validity of the price squeeze argument.

Second, we note that significant aspects of the current intrastate access charge rate structure were established by a settlement adopted in D.95-12-020. In that decision, the Commission instituted the network interconnection charge (NIC) element of access charges.⁴ D.95-12-020 described the NIC as an item that is not cost-based and not associated with the costs of any specific transport function. 62 CPUC 2d at 664, 668. In noting this statement from D.95-12-020, we do not intend to preclude parties in this docket from contending that the NIC recovers costs of providing switched access. We believe it is time to review whether the NIC and TIC elements should remain at current levels, should be reduced, or should be eliminated.

In order to narrow the scope of a proceeding that has the potential to be resource-intensive and lengthy,⁵ we will limit the scope of this proceeding to only the NIC and TIC portions of access charge tariffs. According to AT&T, the NIC comprises about half of total access charges for SBC and about a quarter of Verizon's. By limiting the scope of this docket to a rate element that has been identified as not cost-based, we hope to avoid the need for new cost studies and

⁴ For Verizon, the comparable rate element is called the transport interconnection charge (TIC).

⁵ As an indicator of the potential complexity and controversy, we note that the phase of the proceeding that culminated in D.94-09-065, in which the Commission last significantly reduced access charges, took more than three years to conclude. We are aware that our 1994 decision addressed many more issues than this docket and was subject to some unique procedural circumstances that delayed the decision. In addition, in that decision, the Commission had decided that all rate changes must be revenue neutral, a determination that we reserve for an interim decision in this docket.

the attendant controversies regarding the appropriate cost standard that we should apply.⁶

In addition, we note that the FCC is now considering significant changes to the structure and levels of interstate charges in the context of other forms of inter-carrier compensation.⁷ We are hesitant to launch a lengthy docket to comprehensively re-examine all aspects of intrastate access charges, when such a proceeding would probably be better timed to follow whatever decision the FCC reaches. While intrastate access charges need not be identical in form or amount to those set by the FCC, this Commission will make a more informed decision once it knows what the FCC has decided.

A threshold issue in this proceeding is whether reducing access charges would require increases to other LEC rates. As previously noted, AT&T argues that there is no need to make any rate changes revenue neutral, while SBC and Verizon contend that revenue neutrality is indeed required. We wish to resolve this controversy immediately in order to know whether and how changes in access charges may affect customers of other LEC services. If we decide that any access charge reductions need not be offset by equivalent rate increases, our task will simply be to decide whether and by how much to reduce (or eliminate) the NIC and TIC portions of access charges. On the other hand, if we decide that access charge reductions must be revenue neutral, proposals for access charge rate decreases will need to identify which rates are being increased and by how

⁶ As noted by TURN and ORA, without further comments from the parties, it is not clear whether the Commission should apply a total element long run incremental cost (TELRIC) standard or a total service long run incremental cost (TSLRIC) standard.

much.⁸ We therefore will begin the proceeding with an examination and determination of this threshold issue and defer consideration of whether and how to change access charges to a second phase of the proceeding.

A related issue that we will explore early in the proceeding is whether the scope of this rulemaking should include a review of the access charges of CLECs. All local exchange companies, i.e., CLECs and ILECs, have exclusive control of both originating and terminating access to their customers. Thus, the local exchange carriers' control of access equally provides an opportunity to charge rates in excess of TELRIC, or any direct cost standard that could be applied. A review of some CLEC access tariffs indicates access rates in excess of the ILEC access rates. Therefore, some may argue that the logic of regulating the access charges for SBC and Verizon applies equally to CLECs.

We will conduct this proceeding in two phases. The first will focus on those issues relating to LEC rate design that would arise if the Commission were to change access charges and on whether the Commission should consider reviewing access charges for carriers other than Verizon and SBC. Questions we will address in Phase 1 will include:

1. If the Commission reduced or eliminated the NIC and TIC portion of access charges, should it offset decreases in LEC access charge revenues with increases in other rates?

⁷ *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, rel. April 27, 2001.

⁸ Considerations of stimulated usage from reduced prices and repressed usage from higher prices may complicate the revenue estimates that are necessary when making revenue neutral rate changes.

2. If the Commission were to change the NIC and TIC portion of access charges, what is the possible range of revenue that would be affected?
3. Should the Commission consider revising the access charges for mid-size and small LECs? If so, should the Commission do so in this docket or should it open a separate proceeding on this issue? If in this docket, at what point in this docket?
4. Should the Commission consider regulating access charges for CLECs? If so, should the Commission do so in this docket or should it open a separate proceeding on this issue? If in this docket, at what point in this docket?
5. In lieu of the Commission establishing access network costs for individual mid-size LECs, small LECs, and CLECs, should the Commission consider utilizing SBC's and Verizon's access rates as a proxy to establish ceiling rates applicable to the mid-size LECs, small LECs and CLECs.

In Phase II, we will examine the following issues:

1. Should the Commission reduce or eliminate the NIC and TIC portion of access charges?
2. If the Commission reduces access charges, and the Commission has found in Phase 1 that offsetting LEC rate increases are required, how should the Commission redesign LEC rates?⁹ What rates should be increased and by how much? In achieving a revenue neutral rate design, should the Commission take into account the stimulation and repression effects of decreasing and increasing rates? If so, what estimates should the Commission use in accounting for stimulated and repressed usage?

⁹ Our use of the term "rates" is not intended to exclude the use of SBC's Rule 33 and Verizon's Schedule A-38 surcharge/surcredit mechanisms.

3. If the Commission reduces access charges, should the Commission require the IECs to pass through those cost reductions to their customers? If so, how should that be accomplished?

The Assigned Commissioner and Administrative Law Judge (ALJ) may clarify or expand on these issues in order to accomplish the objective of our inquiry.

Scoping Memo and Schedule for Phase I

We initiate a rulemaking for purposes of resolving the foregoing issues. We categorize this proceeding as “ratesetting” as the term is defined in Rule 5(d) in recognition that many of the issues concern potential rate changes for SBC and Verizon.

The proposed schedule for Phase I of this proceeding is as follows:

Opening Comments	September 25, 2003
Reply Comments	October 15, 2003
Prehearing Conference	October 22, 2003

The Assigned Commissioner or administrative law judge may change the schedule for the sake of fair and efficient proceeding management, either by ruling or at a prehearing conference. The schedule for Phase II will be established at a later date either by ruling or Commission decision.

We do not anticipate holding hearings in Phase I. Parties may, however, propose hearings for Phase I in their opening comments. Any party who seeks hearings in Phase I has the burden to show a need for hearings by specifying material issues of fact that are disputed and the evidence that would be presented in a hearing in pursuit of resolving those controversies. We expect to hold hearings on issues identified as topics in Phase 2. Parties may address the

need for hearings in response to future pleadings, testimony, Commission decisions or rulings.

Pursuant to Rule 6 (c)(2), any party filing opening comments may object to (1) the categorization of this proceeding as ratesetting, (2) the preliminary determination that there is no need for hearings in Phase I and the need for hearings in Phase II, (3) the scope and schedule for the proceeding, and (4) the categorization of this proceeding as ratesetting with hearings.

Service List for Proceeding

Anyone wishing to be placed on the service list for this proceeding should inform the Commission's Process Office by electronic mail (ALJ_Process@cpuc.ca.gov) within 20 days of the mailing date of this order or in writing to the Process Office, 505 Van Ness Avenue, San Francisco, California 94102. Parties should refer to this proceeding number and include their name, the name of their representative (if any), address, and telephone numbers. Parties should also provide an e-mail address or indicate that no email address is available. The service list will be posted on the Commission's web site at www.cpuc.ca.gov.

Parties interested in participating in this rulemaking who are unfamiliar with the Commission's procedures should contact the Commission's Public Advisor Office in San Francisco at (415) 703-2074, or in Los Angeles at (213) 649-4782.

Service of Documents

All pleadings and testimony in this proceeding shall be served electronically and need not be served by U.S. mail unless a party requests such service of paper copies. Parties should electronically serve notices of availability

when their documents exceed 30 pages. The Commission's official service list in this proceeding will include e-mail addresses.

Intervenor Compensation

Any customer or representative of customers who intends to seek compensation should file and serve a notice of intent to claim compensation not later than 30 days after the prehearing conference in Phase I of this proceeding (Rule 1804(a)(1)). If the Commission does not hold a prehearing conference, the ALJ will notify the parties of an appropriate deadline for notices of intent. A separate ruling will address each requesting party's eligibility to claim compensation.

Ex Parte Communications

Ex parte communications will be allowed in this proceeding only in accordance with the reporting requirements presented in Rule 7(c) for ratesetting proceedings. Generally, this rule permits ex parte communications with notice and an opportunity for other parties to have meetings of similar duration with the same decision-maker. Written communications to decision-makers must be served on all parties concurrently.

Assignment of Petition

Loretta M. Lynch is the assigned Commissioner and Joseph De Ulloa is the assigned ALJ in this proceeding.

Findings of Fact

1. Circumstances in telecommunications markets and regulation have changed in ways that justify reviewing the "NIC" or "TIC" portion of SBC and Verizon access charges.
2. The issue of whether reducing access charges requires an offsetting increase in other LEC rates is yet unresolved and is a threshold issue for

consideration in this proceeding because of its implications for customers of other LEC services.

Conclusions of Law

1. Pursuant to Public Utilities Code Section 1708.5, the Commission has authority to consider a petition requesting the initiation of a rulemaking to consider access charge reform.

2. To the extent that the petition requests the initiation of a rulemaking to consider access charge reform, it should be granted.

3. The Commission should initiate a rulemaking to review intrastate access charges for SBC and Verizon as set forth herein.

O R D E R

IT IS ORDERED that:

1. The petition of AT&T Communications of California, Inc. is granted to the extent set forth herein.

2. Pacific Bell Telephone Company (SBC) and Verizon California shall and interested parties may file comments on Phase I issues as set forth herein.

3. The Executive Director shall serve a copy of this order on all telecommunications companies subject to the Commission's jurisdiction and on all parties to R.93-04-003 et al.

4. SBC, Verizon California and all other jurisdictional local telephone companies are respondents to this proceeding.

5. The Commission hereby opens a rulemaking for the purpose of considering access charges, as set forth herein.

6. Petition 01-10-008 is closed.

This order is effective today.

Dated August 21, 2003, at San Francisco, California.

MICHAEL R. PEEVEY
President

CARL W. WOOD
LORETTA M. LYNCH
GEOFFREY F. BROWN
SUSAN P. KENNEDY
Commissioners