

Decision 07-01-042

January 25, 2007

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application by Pacific Bell Telephone Company d/b/a SBC California (U 1001 C) for Arbitration of an Interconnection Agreement with MCImetro Access Transmission Services LLC (U 5253 C) Pursuant to Section 252(b) of the Telecommunications Act of 1996.

A.05-05-027
(Filed on May 26, 2005)

**ORDER DISMISSING APPLICATION FOR REHEARING OF
DECISION (D.) 06-08-029 AS MOOT**

I. INTRODUCTION

In this Order we dispose of the application for rehearing of Decision (D.) 06-08-029 (“Decision”) filed by Pacific Bell Telephone Company d/b/a SBC California (hereafter “AT&T-CA”).

In D. 06-08-029 we approved the arbitrated and conformed interconnection agreement between AT&T-CA and MCImetro Access Transmission Services d/b/a Verizon Access Transmission Services (hereafter “Verizon”). In doing so, we affirmed, with amendments, the results of the Final Arbitrator’s Report (“FAR”), which resolved 80 disputed issues in 14 categories. Our Decision left open a number of issues which were transferred to A.05-07-024.¹ Among the transferred issues, and relevant for purposes of the instant application for rehearing, is the issue of rates to be charged for Price Schedule Issues 15 and 22 (in connection with Network Interconnection Method

¹ By mutual agreement of the parties and in accordance with the Arbitrator’s Ruling On Motions And Addendum To Final Arbitrator’s Report, dated June 2, 2006, various issues raised in A. 05-05-027 were transferred to A.05-07-024. (See *Application of Pacific Bell Telephone Company d/b/a SBC California for Generic Proceeding to Implement Changes in Federal Unbundling Rules Under Sections 251 and 252 of the Telecommunications Act of 1996* (“*Rehearing Order for D.06-01-043*”) [D.06-01-043] (2006) ___ Cal.P.U.C.___.)

(“NIM”) 13). The Decision found that it was appropriate to leave this issue open not only because it was one of the transferred issues, but because it was then pending as part of an application for rehearing of our determination in A.05-07-024 (as reflected in D.06-01-043).² Accordingly, D.06-08-029 orders that the outcome in A.05-07-024 will control, and the rates for Price Schedule 15 and 22 shall be changed to conform with the outcome reached in D.06-01-043. (D.06-08-029, pp. 20, 24 [Ordering Paragraph 1.b.] (slip op.).)

A timely application for rehearing was filed by AT&T-CA challenging Ordering Paragraph (“OP”) 1.b. regarding Price Schedule Issues 15 and 22. AT&T argues that to the extent OP 1.b. requires Price Schedule Issues 15 and 22 to include recurring and nonrecurring rates for Optical Carrier (“OC”) 3 and OC12 entrance facilities,³ it contravenes D.06-01-043 and relevant Federal Communications Commission (“FCC”) orders. Verizon filed a response to AT&T-CA’s application for rehearing.

We have carefully considered AT&T-CA’s allegation of error as raised in the application for rehearing and are of the opinion that good cause does not exist to grant rehearing. As briefly explained below, the application for rehearing is dismissed because it has been made moot by our recent determination in D.07-01-019.

² See *ante*, fn. 1.

³ OC is merely a type of technology, and is not in itself relevant for purposes of the broader issue of prices applicable to entrance facilities. Therefore, henceforth this Order will simply refer to entrance facilities.

II. DISCUSSION

AT&T-CA contends that OP 1.b.⁴ erroneously requires Price Schedule Issues 15 and 22 of the interconnection agreement to be conformed to include recurring and nonrecurring rates for dedicated transport (i.e., entrance facilities).⁵ According to AT&T-CA, the company is not required to provide entrance facilities as unbundled network elements (“UNE”s) at Total Element Long-Run Incremental Cost (“TELRIC”) rates. Therefore, AT&T-CA argues OP 1.b. should be corrected to exclude any recurring or nonrecurring rates for entrance facilities. (AT&T-CA Rhg. App., pp. 1-4, Attachment 1, p. 1.)

As mentioned above, the issue of rates to be reflected in Price Schedule Issues 15 and 22 was transferred to A.05-07-024, with final resolution to be governed by the outcome of our decision in response to AT&T-CA’s application for rehearing of D.06-01-043. On January 11, 2007, we approved D.07-01-019, disposing of the application for rehearing of D.06-01-043. With respect to the issue in controversy here, D.07-01-019 finds that entrance facilities must be provided to the CLECs at TELRIC rates when used for interconnection pursuant to section 251(c)(2) of the 1996 Act. (*Order Granting Limited Rehearing of Decision (D.) 06-01-043 on the Issue Regarding Rules on Fiber-to-the-Home (FTTH), Fiber to-the-Curb (FTTC) and Hybrid Loop, Modifying the Decision and Denying Rehearing, as Modified, in all Respects (“Rehearing Order for D.06-01-043”)* [D.07-01-019], (2007) __ Cal.P.U.C.__, at pp. 7-11 (slip. op.).)

⁴ Ordering Paragraph 1.b of D.06-08-029 provides:

The rates shall be changed to conform to the outcome reached in Decision 06-01-043 on Price Schedule Issues 15 and 22 (which were transferred from this proceeding to Application 05-07-024). The specific rates are on the following lines: (a) Pricing Appendix at Recurring Price List lines 302-309 and Non-Recurring Price List lines 62-94 (i.e., Price Schedule Issue 15), and (b) Pricing Appendix at Recurring Price List lines 362-367 and Non-Recurring Price List lines 253-255 (i.e., Price Schedule Issue 22).

⁵ An entrance facility is a form of dedicated transport that provides a transmission path between networks of AT&T-CA and a competitive local exchange carrier (“CLEC”).

By virtue of our determination in D.07-01-019, AT&T-CA's application for rehearing in this proceeding is moot and we dismiss the application.

Moreover, in D.07-01-019, we recently reconsidered the merits of whether AT&T-CA should be required to provide entrance facilities to CLECs at TELRIC rates. We reviewed our interpretation in D.06-01-043 as it relates to section 251 of the Telecommunications Act of 1996,⁶ in conjunction with the FCC's *Triennial Review Order*⁷ and *Triennial Review Remand Order*,⁸ and found no basis to contradict our original conclusion.

III. CONCLUSION

For the reasons stated above, the application for rehearing of D.06-08-029 filed by AT&T-CA is dismissed as being moot.

Therefore **IT IS ORDERED** that:

1. The application for rehearing of D.06-08-029 is dismissed.
2. This proceeding, A.05-05-027, is closed.

This order is effective today.

Dated January 25, 2007, at San Francisco, California.

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
RACHELLE B. CHONG

Commissioner John A. Bohn, being necessarily absent, did not participate.

⁶ Telecommunications Act of 1996, 47 U.S.C. § 151, *et seq.*, 104 P.L. 104.

⁷ *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking*, 18 FCC Rcd. 16978, FCC-03-36 (2003) ("*Triennial Review Order*") ("*TRO*").

⁸ *In the Matter of Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Order on Remand*, 20 FCC Rcd. 2533, FCC 04-290 (rel. Feb. 4, 2005) ("*Triennial Review Remand Order*") ("*TRRO*").