

Decision 08-02-037

February 28, 2008

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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

R.03-08-018
(Filed August 21, 2003)

ORDER DENYING REHEARING
OF DECISION 07-12-020

I. INTRODUCTION

Qwest Communications Corporation (Qwest), a party in Rulemaking (R.) 03-08-018, timely filed an application for rehearing of Decision (D.) 07-12-020. In D.07-12-020 the Commission imposed a two-step series of limitations on the intrastate access charges¹ collected by competitive local exchange carriers. First, the charges are limited to \$0.025 per minute, effective April 1, 2008. Second, the charges may not exceed the higher of comparable charges by AT&T or Verizon, plus 10%, effective January 1, 2009. The Commission also reduced the intrastate access charges of mid-size and small local exchange carriers.

By D.07-12-020, competitive local exchange carriers are required to reduce their intrastate access charges to \$0.025 per minute beginning April 1, 2008, and then to the higher of AT&T's or Verizon's intrastate access charges, plus 10%,

¹ D.07-12-020 describes "access charges" as "charges imposed by local exchange carriers for use of the local network by interexchange or long distance carriers, which use this switched access to originate and terminate long distance calls to the vast majority of California residential and business customers." (D.07-12-020, at p. 1, fn. 1.) D.07-12-020 also defines "intrastate access charges" as the following switched access rate elements: "end office switching, which may include a set up fee, tandem transport and switching, and information surcharge." (*Ibid.*)

effective January 1, 2009. Small local exchange carriers that do not opt in to the Uniform Regulatory Framework set forth in D.07-12-020 are required to phase out non-cost-based elements over their next two rate case cycles.

Qwest raises two issues in its application for rehearing. It believes that the decision erroneously added four words to the end of the sentence in Conclusion of Law No. 2 rendering it confusing and requests that the decision be modified to delete those words. In addition, it contends that the challenged decision fails to include an ordering paragraph giving meaning to the directive in Conclusion of Law No. 2 and requests that the decision be modified to add such an ordering paragraph—before Ordering Paragraph No. 4.

Responses opposing the application for rehearing were filed by Cox California Telecom LLC (Cox), California Association of Competitive Telecommunications Companies (CALTEL). Responses supporting the Application for Rehearing were filed by Verizon California, Inc. (Verizon) and Pacific Bell Telephone Company (AT&T).

We have reviewed each and every allegation of error raised by Qwest and, as set forth herein, have determined that the allegations are without merit, and thus, the application for rehearing should be denied.

II. DISCUSSION

A. Conclusion of Law No. 2

Conclusion of Law No. 2 of D.07-12-020 provides:

To the extent practical, intrastate access charges should be cost-based and competitive carriers should charge only for functions provided to transport a call.

Qwest argues that the words “to transport a call,” following “provided” in Conclusion of Law No. 2, should be deleted because the phrase “is unnecessarily—and likely unintentionally—limiting.” (Qwest application for rehearing at p. 2.)²

Qwest suggests that Conclusion of Law No. 2 may be declared void for vagueness by a court; however, Qwest never explicitly argues that D.07-12-020 violates either of the two cases it cites. Rather, it argues that the challenged decision lacks “clarity and precision ... leav[ing] the issue [of whether the prohibition set forth in Conclusion of Law No. 2 was intended to be addressed by Ordering Paragraph No. 4] open to debate.”

We do not think Conclusion of Law No. 2 is vague or ambiguous. Qwest has not established that Conclusion of Law No. 2 is legally erroneous. Qwest has not established that D.07-12-020 errs by including the four words it seeks to have deleted.

B. Proposed ordering paragraph

Qwest also takes issue with D.07-12-020 for not including an ordering paragraph that it contends would effectuate Conclusion of Law No. 2. Qwest seeks to have the Commission insert a new ordering paragraph that provides: “Effective immediately, a competitive local exchange carrier shall charge an interexchange carrier only for functions it provides to the interexchange carrier.” (Qwest application for rehearing at p. 4.) It is obvious that the issue Qwest raises is a policy issue, not an allegation of legal error.

Qwest is really not challenging D.07-12-020, rather it is seeking a modification to the decision and its application for rehearing is not the correct

² AT&E agrees that the Commission intended to prohibit CLECs from charging for any access functions they do not provide and that the clarification Qwest seeks “would remove any source of possible dispute in the future...” (AT&T response at p. 1.) Similarly, Verizon agrees that the words Qwest seeks to have deleted from D.07-12-020 are unnecessary and also inconsistent with the scope of the price cap requirement that is to become effective on January 1, 2009.

procedural vehicle; a petition for modification may be a more appropriate vehicle. Rule 16.1(c) provides that the purpose of an application for rehearing is to alert the Commission to a legal error, whereas rule 16.4(a) clarifies that a petition for modification “asks the Commission to make changes to an issued decision.”

III. CONCLUSION

For the reasons set forth above, Qwest has failed to demonstrate grounds for rehearing of D.07-12-020.

THEREFORE, IT IS ORDERED that:

1. The application for rehearing of Decision 07-12-020 by Qwest Communications Corporation is denied.
2. Rulemaking 03-08-018 is closed.

This order is effective today.

Dated February 28, 2008, at San Francisco, California.

MICHAEL R. PEEVEY
President

DIAN M. GRUENEICH

JOHN A. BOHN

RACHELLE B. CHONG
Commissioners

Commissioner Timothy Alan Simon, being necessarily absent, did not participate.