Decision 08-12-010 December 4, 2008

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Petition of Verizon California Inc. (U1002C) for Arbitration of an Amendment to Interconnection Agreements with Competitive Local Exchange Carriers and Commercial Mobile Radio Service Providers in California Pursuant to Section 252 of the Telecommunications Act of 1934, as Amended, and the *Triennial Review Order.*	Application 04-03-014 (Filed March 10, 2004)

DECISION CLOSING PROCEEDING

1. Summary

In this decision, the Commission determines that there is no need to set Batch Hot Cut prices. Since this was the only outstanding issue in the proceeding, we are closing the proceeding.

2. Background and Discussion

This proceeding was initiated by Verizon California Inc. (Verizon) to implement provisions of the Federal Communications Commission's (FCC's) Triennial Review Order (TRO),[1] and remained open to address implementation

[1] Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, In the Matter of Review of the § 251 Unbundling Obligations of Incumbent Local Exchange Carriers (CC Docket No. 01-338 (rel. Aug. 21, 2003) ("TRO").

issues relating to the Triennial Review Remand Order (TRRO),[2] regarding unbundled access to network elements. The TRRO specifies that any disputes among carriers regarding implementation of applicable change-of-law provisions resulting from the TRO and TRRO were to be addressed through carrier negotiations and consolidated arbitration applications.

In the TRO the FCC directed that Incumbent Local Exchange Carriers (ILECS) would no longer be required to offer certain designated Unbundled Network Elements (UNEs). In markets where the UNE switching was to be eliminated, "Batch Hot Cut" processes were to be implemented, with determination of applicable prices to cut over Competitive Local Exchange Carrier (CLEC) lines from the UNE Platform (UNE-P) to other agreed-upon alternative arrangements.

The FCC issued its TRRO order, following an appeal to the provisions of the TRO order. In the TRRO, the FCC established a transition plan to migrate the embedded base of unbundled local circuit switching used to serve mass market customers to an alternative service arrangement. That plan called for a 12-month transition period beginning March 11, 2005 and ending March 11, 2006, during which time the embedded base would be migrated to alternative arrangements.

In Decision 05-07-043, in the Local Competition Rulemaking,[3] the Commission closed its TRO proceeding, but determined that a Batch Hot Cut

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[2] Order on Remand, In the Matter of Unbundled Access to Network Elements, WC Docket No. 04-313, adopted December 15, 2004, released February 4, 2005.

[3] Order Instituting Rulemaking on the Commission's Own Motion into Competition for Local Exchange Service, Rulemaking 05-04-043; Order Instituting Investigation on the Commission's Own Motion into Competition for Local Exchange Service, Investigation 95-04-044, issued April 26, 1995.

process was still required to accomplish the transition. In that decision the Commission stated that disputes remain, particularly with respect to the Batch Hot Cut process and processes for the conversion of CLECs' embedded base of mass market customers served by UNE-P.

On January 5, 2006, the assigned Administrative Law Judge (ALJ) held a Prehearing Conference to address procedural issues relating to the proceeding and to set a schedule for the Batch Hot Cut phase. Opening comments were to be filed on January 30, 2006 and reply comments, February 14.[4] Clearly this schedule did not allow much time for the Commission to act in light of the March 11, 2006 deadline for transitioning CLECs' UNE-P lines.

With the complexities of the proceeding and the condensed time period for dealing with them, it was not possible to address the Batch Hot Cut portion of the proceeding before the March 11, 2006 deadline. After that date had passed, it was our understanding that parties were negotiating Batch Hot Cut prices, so the issue was placed on the back burner.

Several months passed and the ALJ did not receive a request from the parties to act on the Batch Hot Cut phase of the proceeding. The stated purpose of the Batch Hot Cut process was to provide a process for migrating CLECs' embedded base of UNE-P customers to alternative arrangements. Those customers have already been transitioned to alternative arrangements, so it appears that there is no longer a need for the Commission to set Batch Hot Cut prices.

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[4] The ALJ granted a brief extension and reply comments were filed on February 17, 2006.

In a September 5, 2008 ALJ Ruling, parties were asked to comment on the need for the Commission to set Batch Hot Cut prices, in light of the fact that CLEC's UNE-P customers have already been transitioned to alternative arrangements. Verizon filed comments on September 26, 2008, saying that Covad Communications Company (Covad) was the only requesting party that was in the process of negotiating a Batch Hot Cut agreement with Verizon. Verizon and Covad exchanged draft written agreements, but a final agreement was never executed, and there have been no further discussions on the issue between Covad and Verizon since early to mid-2007. Verizon urges the Commission to close the proceeding. Covad filed reply comments on October 10, 2008, saying that although negotiations are no longer on-going, Covad intends to pursue open issues relating to Batch Hot Cuts in a forum other than this proceeding. Therefore, Covad does not object to closing this proceeding.

We find that there is no need for the Commission to set Batch Hot Cut prices. Since this was the only outstanding issue in the proceeding, we are closing the proceeding.

3. Waiver of Comment Period

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Section 311(g)(2) of the Public Utilities Code and Rule 14.6(c)(2) of the Commission's Rules of Practice and Procedure, the otherwise applicable 30-day period for public review and comment is waived.

4. Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and Karen A. Jones is the assigned ALJ in this proceeding.

Findings of Fact

1. No party has opposed Verizon's assertion that there is no need to act on the issue of Batch Hot Cuts.
2. The issue of Batch Hot Cuts was the only open issue in this proceeding.

Conclusion of Law

There is no need for the Commission to set Batch Hot Cut prices.

O R D E R

Therefore, **IT IS ORDERED** that Application 04-03-014 is closed.

This order is effective today.

Dated December 4, 2008, at San Francisco, California.

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
TIMOTHY ALAN SIMON
Commissioners