

Decision 08-12-008 December 4, 2008

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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.

Application 05-07-024
(Filed July 28, 2005)

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 to implement provisions of the Federal Communications Commission's (FCC's) Triennial Review Order (TRO),¹ and the Triennial Review Remand Order (TRRO),² regarding unbundled access to network elements. The TRRO specifies that any disputes among carriers regarding the negotiation of interconnection arrangements to implement

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").

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.

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 (D.) 05-07-043, in the Local Competition Rulemaking,³ the Commission closed its TRO proceeding, but determined that a batch hot cut process was still required to accomplish the transition. In that decision, the Commission stated that disputes remain, particularly with respect to the batch

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.

hot cut process and processes for the conversion of CLECs' embedded base of mass market customers served by UNE-P.

On July 28, 2005, Pacific Bell Telephone Company, d/b/a SBC California (now known as AT&T California) filed an application to implement changes to the FCC's unbundling rules, as required by D.05-07-043. In light of the March 11, 2006 deadline for transitioning CLECs' UNE-P lines, it was necessary to have a very tight schedule to deal with the parties' disputed issues under their interconnection agreements. Following a series of conference calls with the parties, the assigned Administrative Law Judge (ALJ) issued a ruling on October 10, 2005 setting a procedural schedule for the proceeding. As anticipated in D.05-07-043, a separate schedule was adopted for the batch hot cut portion of the proceeding. Opening briefs were to be filed on November 23, 2005 and Reply Briefs, on December 2, 2005.⁴

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 assigned 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

⁴ The parties asked for an extension of time to file, and opening briefs were actually filed on December 9, 2005, and reply briefs, on December 20, 2005.

appears that there is no longer a need for the Commission to set batch hot cut prices.

On September 5, 2008, the assigned ALJ issued a ruling asking parties 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.

AT&T filed comments on September 26, 2008, saying that it had engaged in negotiations and discussions regarding batch hot cut issues with a number of CLECs. While the discussions were never officially concluded, several CLECs have signed batch hot cut appendices to their interconnection agreements. AT&T believes there is no need to act on the issue, and requests that the Commission close the proceeding without taking further action relating to batch hot cuts. No party filed reply comments.

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 decision grants the relief requested in an uncontested matter. Accordingly, as provided by Rule 14.6(c)(2) of our Commission's Rules of Practice and Procedure, we waive the otherwise applicable 30-day comment period for this decision.

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 AT&T's assertion that there is no need to act on the issue of batch hot cuts.
2. The batch hot cut issue 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 05-07-024 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