

Decision 09-02-017 February 20, 2009

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Rulemaking on the Commission's Own Motion to Govern Open Access to Bottleneck Services and Establish a Framework for Network Architecture Development of Dominant Carrier Networks.

Rulemaking 93-04-003
(Filed April 7, 1993)

Investigation on the Commission's Own Motion Into Open Access and Network Architecture Development of Dominant Carrier Networks.

Investigation 93-04-002
(Filed April 7, 1993)
(Verizon UNE Phase)

**DECISION APPROVING SETTLEMENT AGREEMENTS ADOPTING
UNBUNDLED NETWORK ELEMENT RE-EXAMINATION PROCESS**

1. Summary

This decision approves settlement agreements between the California Association of Competitive Telecommunications Companies and Pacific Bell Telephone Company d/b/a AT&T California and Verizon California Inc. relating to the process for future re-examination of the rates for Unbundled Network Elements.

2. Background

In Decision (D.) 06-03-025, we established final Unbundled Network Element (UNE) rates for Verizon California Inc. (Verizon). The rates adopted in D.06-03-025 were subsequently modified by D.07-10-003.

In a November 2005 motion, the California Association of Competitive Telecommunications Companies (CALTEL) requested that the Commission

allow for consideration of a price cap process for future modification of Verizon's UNE rates in the next phase of this proceeding.

In D.06-03-025, the Commission indicated that it had considered establishing a procedure for re-examination of Verizon's UNE rates identical to the procedure used for Pacific Bell Telephone Company d/b/a AT&T California (AT&T), but noted that there is no dispute that cost modeling proceedings have expended vast resources, and industry changes make it difficult for carriers to litigate these proceedings. The Commission granted CALTEL's November 2005 motion, stating that it would consider other options, such as CALTEL's price cap proposal in the next phase of the proceeding.

On June 27, 2006, parties filed their rate re-examination proposals. On February 5, 2008, CALTEL filed a motion asking the Commission to move expeditiously to begin its examination of the methodology or process to be used for future re-examination of UNE rates. In this decision, we grant CALTEL's February 5, 2008 motion, at least in part, to move forward with a proposed decision as quickly as possible.

The assigned Administrative Law Judge (ALJ) issued a Proposed Decision (PD) on June 25, 2008. Following the filing of comments on the PD, the assigned Commissioner issued a ruling on July 30, 2008, setting a 120-day period for parties to negotiate an agreement on the UNE re-examination process to be used by the Commission. The parties were successful in reaching agreement on the UNE re-examination issue, and the proposed settlement agreements and Notice of Settlement Conference were e-mailed to all parties to the proceeding on November 21, 2008. The Settlement Conference was held on December 1, 2008, and the settlement agreements between CALTEL and AT&T and between CALTEL and Verizon were filed on December 2, 2008. On that same date,

parties also filed a motion to shorten time for comments. We deny the motion as moot. We wanted to allow interested parties adequate time to comment.

However, no comments were filed on the proposed settlement agreements.

3. The Settlement Agreements

Each of these settlement agreements resolves all pending issues regarding the UNE re-examination process at issue in this phase of the proceeding.

Following is a description of the terms of each of the settlement agreements.

3.1. The Verizon Settlement Agreement¹

The Verizon UNE re-examination process provides that a “lock-out” process applies to UNE recurring rates set in D.06-03-025, as subsequently modified by D.07-10-003. The term of the “Lock-Out” Process shall be from December 1, 2008 (or date of settlement) through October 1, 2014. Verizon may not file a UNE rate proceeding with the Commission until the end of the term, and only after notice consistent with this provision. Verizon may provide a statement of intent to file a UNE rate proceeding with the Commission and the anticipated date for such filing, no later than six months prior to such filing.

3.2. The AT&T Settlement Agreement²

The parties agree that the following indexing mechanism applies to UNE recurring rates set in D.04-09-063, as subsequently modified by D.05-05-031:

$$\text{new price}_{\text{UNE}} = \text{old price}_{\text{UNE}} * (1 + \text{index})$$

where

$$\text{index} = \text{Inflation}_{\text{previous year}} - 2.25\%$$

where

$$\text{Inflation}_{\text{previous year}} \leq 3.00 \text{ and } > 1.50.$$

¹ The CALTEL-Verizon Settlement Agreement is attached as Appendix A to this decision.

² The CALTEL-AT&T Settlement Agreement is attached as Appendix B to this decision.

Inflation is defined as the prior calendar year's calculated percent change in the Gross Domestic Product Price Index published in the current year's August edition of the U.S. Department of Commerce's Bureau of Economic Analysis *Survey of Current Business* as currently tabulated in Table 7 Line 45 of:

<http://www.bea.gov/newsreleases/national/gdp/2008/xls/gdp308a.xls>

The index will be calculated and included in annual advice letter filings modifying the UNE recurring rates in interconnection agreements on October 1 of each year beginning October 1, 2010. New rates noticed in each such advice letter will become effective January 1 of the year following the October 1 advice letter filing.

The term of the Indexing Mechanism Process will be from October 1, 2010 through October 1, 2015 (Indexing Term). Thereafter, the Indexing Mechanism Process shall continue for one or more renewal terms, each on a three year basis unless notice is given by either party to terminate 6 months in advance of the conclusion of the initial term or any renewal term. In the event that AT&T seeks to terminate under this provision, in addition to the notice AT&T will also provide a statement of whether it intends to file a request for cost proceeding with the Commission and the anticipated date for such a filing. AT&T may not file a request for a cost proceeding with the Commission until the end of the initial term or renewal term and only after notice consistent with this provision.

4. Discussion of Settlement Agreements

Pursuant to Commission Rule 12.1, Commission settlements must be reasonable in light of the record, consistent with the law, and in the public interest.

4.1. Reasonableness in Light of the Whole Record

The settling parties represent that all interested parties have had multiple opportunities over many months to brief the manner in which UNE rates should be reexamined. Parties have done so, and a full record has been developed. The parties assert that this is a reasonable compromise on all issues.

We agree. Parties have had many opportunities to present their positions, and the settlements presented provide a reasonable compromise. We conclude that the settlements are reasonable in light of the whole record.

4.2. Consistent with the Law

Each settlement agreement resolves the issue of UNE rate re-examination based on good faith and arms' length negotiations. AT&T and CALTEL on one hand, and Verizon and CALTEL on the other, each concur that their respective voluntary settlement agreements are consistent with applicable federal and state law and assert that each respective settlement agreement treats CLECs equally.

We concur that the settlement agreements are the product of good faith negotiations between the parties that was ordered by the assigned Commissioner. We conclude that the settlement agreements are consistent with the law.

4.3. In the Public Interest

The parties state that the settlement agreements efficiently resolve the manner of updating UNE rates for the parties for the next several years, a contentious process that in the past has consumed significant time and resources on the part of the Commission and all parties. The parties also collectively represent that none will, directly or indirectly, attempt to challenge the legality of, or seek to overturn, any Commission order incorporating the terms of either

voluntary settlement agreement in this proceeding. Thus, the parties assert that the risks of future litigation are negligible, and conclude that, therefore, the settlement agreements are in the public interest.

We concur with the parties' assertion that the settlement agreements efficiently resolve the manner of updating UNE rates for the next several years. We are aware that not all Competitive Local Exchange Carriers (CLECs) are members of CALTEL, but no CLEC or other party filed in opposition to the settlement.

5. 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.

6. Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and Dorothy Duda is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. The settlement agreements resolve all pending issues regarding the UNE re-examination process at issue in this phase of the proceeding.
2. Not all CLECs are members of CALTEL.
3. No party filed in opposition to the proposed settlement agreements.
4. Parties have had many opportunities to present their positions, and the settlements presented provide a reasonable compromise.
5. The settlement agreements are the product of good faith negotiations between the parties.

Conclusions of Law

1. The settlement agreements are reasonable in light of the whole record.
2. The settlement agreements are consistent with the law.
3. The settlement agreements are in the public interest because they resolve all outstanding issues and are not opposed by any party.
4. The February 5, 2008 motion of CALTEL, asking the Commission to move forward with a proposed decision as quickly as possible should be granted, in part, as described in this decision.
5. The December 2, 2008 joint motion for order shortening time should be denied as moot.

O R D E R

IT IS ORDERED that:

1. The Joint Motion of the California Association of Competitive Telecommunications Companies (CALTEL), Pacific Bell Telephone Company d/b/a AT&T California, and Verizon California Inc. for approval of the settlement agreements, which are attached hereto as Appendices A and B, is approved.
2. The February 5, 2008 motion of CALTEL is granted in part, as described in this order.
3. The December 2, 2008 joint motion for order shortening time is denied.
4. This decision shall also be served on the Open Access and Network Architecture Development service list used for Decision 99-11-050 in Rulemaking (R.) 93-04-003/Investigation (I.) 93-04-002 and the service list for Application 01-02-024.
5. R.93-04-003 and I.93-04-002 remain open.

This order is effective today.

Dated February 20, 2009, at San Francisco, California.

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

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