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Decision 01-09-067 September 20, 2001

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application by AT&T Communications of California, Inc. (U 5002 C) for Rehearing of Resolution T-16532 Regarding Citizens' Request to Implement a Temporary California High Cost Fund-B Catch-up Surcredit in Compliance With Decision 98-09-039.	Application 01-07-015

ORDER DENYING REHEARING OF RESOLUTION T-16532

I. INTRODUCTION

On July 19, 1995, the Commission issued Decision 95-07-050, proposing new rules governing the provision of universal service, "the concept that all members of society have access to telephone service." 60 CPUC 2d 536, 544. Previously, in support of universal service, the Legislature enacted the California High Cost Fund ("CHCF"), Section 739.3 of the Public Utilities Code:

> The CHCF allows high cost companies, such as the small and medium size local exchange carriers (LECs), to receive funds to recover the relatively high network costs of providing service in areas of the state that produce less revenue. This fund ensures that both residential and business customers in high cost service areas of the smaller size LECs have access to telephone services at reasonable prices. The funds are used to keep both residential and business rates priced below the actual cost of providing service.

Id. at 546. Now, however, "It is apparent that changes will be needed to the existing universal service programs … because competition will allow competing providers to

enter all markets in California." Id. at 557. Thus, "The funding mechanisms need to be redesigned to allow new market entrants access to universal service funds if they provide basic service to low income customers or to high cost areas." Id.

On October 25, 1996, the Commission issued Decision 96-10-066, adopting final rules "pertaining to how universal service will be carried out in California as the local exchange telephone markets are opened to competing carriers." 68 CPUC 2d 524, 542. Specifically, it established the California High Cost Fund-B ("CHCF-B") to subsidize basic residential service provided by the two large and three midsize LECs in designated areas of high cost:

> With the introduction of competition, multiple carriers will be competing for the same customers. The implicit subsidies of averaged rates, and services priced above cost to support services priced below cost, will no longer be sustainable in a competitive market. Therefore, revisions to the mechanisms for the funding of high cost areas are needed so that the [Competitive Local Carriers], and the incumbent LECs, can have access to universal service funds on a competitively neutral basis. To that end, as discussed later in this decision, we have created a new explicit subsidy support mechanism for high cost areas of the state. This fund shall be known as the CHCF-B. The purpose of this fund is to replace the implicit subsidies that are used to support universal service, with an explicit funding mechanism.

Id. at 548-544. Under the CHCF-B, every intrastate carrier would impose a monthly surcharge on each of its customers. At the same time, "In order to avoid a windfall … any subsidy support received from the CHCF-B shall be reduced by the same amount through an equal percentage reduction for all services except for basic service rates." Id. at 543.

On January 13, 1997, the Commission issued Decision 97-01-020, establishing a trust to receive and disburse money collected by the surcharge associated

with the CHCF-B. The surcharge would be implemented on February 1, 1997, with disbursements scheduled to begin by May 30, 1997. Formation of the trust was delayed, however, by the Commission's decision to have the Internal Revenue Service first determine the status of the CHCF-B. In the meantime, the Legislature introduced AB 2461, under which a fund would be established in the State Treasury to handle the money collected by the surcharge.

On September 3, 1998, the Commission issued Decision 98-09-039, implementing the CHCF-B. Until disbursements could be made from the CHCF-B, various LECs, including Verizon California ("Verizon"), were authorized to begin withdrawing on December 15, 1998, money they had been collecting through the surcharge since February, 1997. To offset these withdrawals, Verizon and the others were directed to implement on December 1, 1998, a permanent surcredit:

> Each LEC's permanent surcredit shall be based on the average of the LEC's approved monthly CHCF-B claims for the 12-month period ending July 31, 1998. As required by D.96-10-066, each LEC's surcredit shall reduce all of its rates, except for residential basic service and contacts, by an equal percentage.

Mimeo at 8 (footnote omitted). In addition, they were directed to repay through a temporary surcredit for a period of three months their claims approved for the period of February, 1997, through August, 1998:

> In D.97-01-020, the Commission anticipated that the CHCF-B would begin disbursements to the large LECs by May 1997 for services rendered by the LECs starting in February 1997. However … disbursements from the CHCF-B have not yet begun, resulting in the accumulation of hundreds-of-millions of dollars owed by the CHCF-B to the large LECs for service rendered since February 1997 (i.e., "the catch-up amount").

Id. at 14. Accordingly, "When the State Fund is ready to operate, the Director of the Telecommunications Division shall notify the large LECs regarding: (i) when should

cease the monthly draws from their accumulated CHCF-B surcharge revenues; (ii) when they should file advice letters to implement its catch-up surcredits; and (iii) the procedures they should follow in order to receive CHCF-B monies from the State Fund." Id., at 17.

On April 16, 2001, in response to a letter sent by the Director of the Telecommunications Division, Verizon filed Advice Letter 9743, which it twice supplemented, requesting authorization to implement for a period of three months a surcredit of 19.30 percent based on billings received for the twelve months ended on January 31, 2001, to offset some $79.042 million of approved claims for the period of February, 1997, through August, 1998. On May 10, 2001, AT&T filed a protest to Advice Letter 9743, arguing that use of billings from February, 2000, through January, 2001, rather than the period of February, 1997, to August, 1998, would cause some customers to receive less through the surcredit than they had paid into the fund. On June 14, 2001, the Commission issued Resolution T-16532, adopting the surcredit requested by Verizon, applicable for the period of July 1 through September 30, 2001.

On July 16, 2001, AT&T filed an application with the Commission for rehearing of Resolution T-16532, again questioning use of billings for February, 2000, through January, 2001 rather than February, 1997, through August, 1998. In its view, "The year 2000 billing base calculation unfairly penalizes access customers such as AT&T who will be credited substantially less than it paid into the CHCF-B fund pursuant to Verizon's original surcharge … due to declining purchases of interexchange access by AT&T (and other interexchange carriers)." Application at 2. Also, "This calculation unfairly … advantages Verizon's retail customers over its competitors as its retail business local exchange customers and toll customers will be able to overrecover the CHCF-B surcharge refund." Id. Furthermore, according to AT&T, "Nowhere does the Commission explain why the original approved 1998 billing base approved in Decision 98-09-039 could not be used to calculate the refund." Id.

II. DISCUSSION

AT&T argues in effect that the revenue provided by the surcharge from February, 1997, through August, 1998, should be refunded to the customers from whom it was collected: "Nowhere does the Commission explain why the original approved 1998 billing base approved in Decision 98-09-039 could not be used to calculate the refund." Application at 2. Well over two years earlier, however, the Commission stated, "We do not believe it is appropriate to view the catch-up surcredit as a refund to customers." Decision 98-09-039, mimeo, at 2. With this in mind, the Commission expressly ordered,

> When the State Fund established pursuant to AB 2461 to receive and disburse CHCF-B surcharge revenues is ready to operate, the Director of the Telecommunications Division shall provide written instructions to the each large LEC regarding: (i) when the large LEC shall cease its monthly draws from its accumulated CHCF-B surcharge revenues; (ii) when the large LEC shall file an advice letter to implement its catch-up surcredit; and (iii) the procedures the large LEC shall follow in order to receive CHCF-B monies from the State Fund

Id., Ordering Paragraph 19, at 33. In turn,

> Each large LEC shall file an advice letter to implement its catch-up surcredit in accordance with the instructions issued by the Director of the Telecommunications Division pursuant to Ordering Paragraph No. 19.

Id., Ordering Paragraph 20, at 33-34. Under Section 1731 of the Public Utilities Code, therefore, the time for AT&T to have sought rehearing elapsed 30 days following the issuance of Decision 98-09-039. And because it is now final, that decision is conclusive and cannot be made the subject here of collateral review. See Section 1709 of the Public Utilities Code.

AT&T's argument also fails, under Section 1732 of the Public Utilities Code, by the lack of any showing that the Commission committed legal error. After all, the purpose of the surcredit is to offset any claims approved for Verizon from the CHCF-B for the period February, 1997, through August, 1998: "[T]he surcredit is meant

to insure that incumbent LECs do not realize a windfall from their receipt of CHCF-B draws for prior periods." Id. at 20. It is not intended to make AT&T whole or to prevent Verizon from gaining a competitive advantage. Indeed, AT&T does not argue that either result is legally required.

Beyond this, a surcredit would prove far more practical. As the Commission observed, "We are … concerned that the cost to implement [a refund] might be too high." Id. Specifically, "The LECs would incur costs to: (a) identify former customers who now subscribe to the LEC's competitors; (b) determine the amount of CHCF-B surcharge paid by these former customers; (c) determine the amount of catch-up surcredit due to these customers; and (d) issue checks to the former customers." Id., footnote 39. In sum, "Up until now, we have utilized a surcredit/surcharge approach for handling universal service funds due to the proven cost effectiveness of this approach, and we see no reason to alter our approach now." Mimeo at 20.

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III. CONCLUSION

AT&T's application for rehearing of Resolution T-16532 should be denied.

THEREFORE, it is **ORDERED** that:

1. Rehearing of Resolution T-16532 is denied.
2. This proceeding is closed.

This order is effective today.

Dated September 20, 2001, at San Francisco, California.

LORETTA M. LYNCH
President
HENRY M. DUQUE
RICHARD A. BILAS
CARL W. WOOD
GEOFFREY F. BROWN
Commissioners