

Date of Issuance: June 14, 2011

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

**Communications Division
Carrier Oversight & Programs Branch**

**RESOLUTION T-17308
June 9, 2011**

R E S O L U T I O N

**RESOLUTION T-17308. Removal of Suspension of AT&T California's
Advice Letter No. 38241, Filed October 1, 2010, with Two Modifications.**

SUMMARY

This Resolution lifts the suspension of AT&T California's Advice Letter No. 38241, Amendment for 2011 Modified UNE Rates, filed October 1, 2010, with the following two modifications. First, this Resolution concludes that DSL capable loops (except ISDL-capable loops) should also be subject to the formula set forth in the Settlement Agreement adopted in D.09-02-017. Second, this Resolution clarifies that the rates for all UNEs not subject to the formula adopted in D.09-02-017 are frozen during the duration of the Settlement Agreement. The Advice Letter, with the two modifications discussed herein, is made effective as of October 31, 2010.

BACKGROUND

AT&T California (AT&T) filed Advice Letter (AL) No. 38241 pursuant to the Settlement Agreement reached between AT&T and the California Association of Competitive Telecommunications Companies (CALTEL), and approved in Decision (D.) 09-02-017, dated February 20, 2009. Under this Agreement, AT&T must calculate the unbundled network element (UNE) recurring rate index and include the new UNE recurring rate in an annual Advice Letter filing on October 1 of each year, beginning October 1, 2010.

On October 1, 2010, AT&T filed AL 38241, to modify the UNE recurring rates in its interconnection agreement with CALTEL members.

On October 21, 2010, CALTEL filed a protest against AT&T's Advice Letter, arguing that AT&T's data and analysis "contain material errors or omissions". CALTEL claims that AT&T referenced the incorrect Decision in the Settlement Agreement, and as a result, applied the UNE rate changing mechanism to only certain UNE recurring rates.

In addition, CALTEL contends the language used in the Settlement Agreement intended the application of the UNE recurring rate changing mechanism apply to all UNEs. Furthermore, CALTEL argues that it was the intention of the parties and the Commission to resolve all pending UNE issues with the Settlement Agreement. AT&T responded to CALTEL's protest on October 28, 2010. AT&T states that the Settlement Agreement and D.09-02-017 clearly provide that the adjustment applies to UNE recurring rates set in D.04-09-063, as subsequently modified by D.05-05-031. AT&T states that CALTEL incorrectly believes that D.05-03-026 modifies all UNE recurring rates, which AT&T states is not correct.

The Communications Division (CD) suspended Advice Letter No. 38241 on October 31, 2010, pursuant to General Order 96B, Section 7.5.2.

DISCUSSION

In its protest, CALTEL argues that AT&T referenced the incorrect Decision in the Settlement Agreement and incorrectly applied the UNE rate changing index to only certain UNE recurring rates. The Settlement Agreement, as adopted in D.09-02-017, it states, in relevant part:

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.

D.04-09-063 established UNE rates for loops, switching, dedicated transport, signaling system 7 links and DS-3 entrance facility without equipment, while D.05-05-031 modified D.04-09-063. CALTEL claims the AT&T's reference to D.05-05-031 in the Settlement Agreement was incorrect and that the Settlement Agreement really meant to refer to D.05-03-026, which CALTEL says modified all UNE rates. CALTEL argues that the language used in the Settlement Agreement intended that the application of the UNE rate changing mechanism apply to all UNE rates.

AT&T responds that the Settlement Agreement was very specific about the application of the rate changing index to UNE recurring rates set in D.04-09-063, as subsequently modified by D.05-05-031, and that it is reasonable and logical to have the index only applied to those UNE recurring rates that were referenced.

We have carefully examined CALTEL's arguments and agree, to some extent, with AT&T's position that the Settlement Agreement states that the indexing mechanism adopted in the Settlement Agreement applies to UNE recurring rates set in D.04-09-063, as modified by D.05-05-031. We also find that neither D.04-09-063 nor D.05-05-031 modified all UNE rates and that the Settlement Agreement does not refer to D.05-03-

026. In D.04-09-063 rates were adopted for loops (including de-averaged rates for 2-wire, DS-1 and DS-3 loops), switching, dedicated transport, signaling system 7 links and the DS-3 entrance facility without equipment. D.05-05-031 modified D.04-09-063 to correct an error in unbundled tandem switching rate.

We disagree with AT&T, however, with its argument that the formula adopted in the Settlement Agreement does not apply to DSL-capable loops (except IDSL-capable loops). We note that Ordering Paragraph 49 in D.99-11-050, Interim Decision Setting Final Prices for Network Elements offered by Pacific Bell¹, provides:

“The monthly recurring charge for a loop used to provide ADSL service should be that applicable to a 2-wire copper loop, and the monthly recurring charge for a loop used to provide IDSL service should be that applicable to an ISDN loop.”

This language supports CALTEL’s contention that recurring rates for DSL-capable loops (except IDSL-capable loops) should be the same as the rates for 2-wire loops. Because the Settlement Agreement adopted a formula applicable to 2-wire loops, the Settlement Agreement implicitly adopted the formula for DSL-capable loops as well. To do otherwise would be inconsistent with D.99-11-050

We also clarify that the UNE rates which are not subject to the formula adopted in the Settlement Agreement are frozen during the applicability of the Settlement Agreement. The Settlement Agreement clearly states in the third Covenant: “AT&T may not file a request for a cost proceeding with the CPUC until the end of the Initial Term or Renewal Term, and only after notice consistent with this provision.” Thus, the UNE rates that are not subject to formula set forth in the Settlement Agreement are frozen until the end of the initial term of the Settlement Agreement, October 1, 2015. If the parties agree to a Renewal Term, the rate freeze would continue until the expiration of the Renewal Term.

If CALTEL wishes to otherwise modify the Settlement Agreement adopted in D.09-02-017, there are other formal remedies available instead of an Advice Letter protest.

We lift the suspension of Advice Letter No. 38241, with the two changes discussed herein, and make the filing effective as requested, October 31, 2010.

COMMENTS

In accordance with Public Utility Code 311 (g) CD provided notice on March 15, 2011 to the interested parties, informing these parties that this draft resolution is available on the Commission’s website at <http://www.cpuc.ca.gov> and available for public

¹ Pacific Bell is now known as Pacific Bell Telephone Company [d/b/a](#) AT&T California.

comments. Parties may submit comments on the draft resolution within 20 days of its date of mailing.

On March 30, 2011, CALTEL submitted its comments. CALTEL alleged AT&T is violating the Settlement Agreement and is ignoring UNEs such as Dark Fiber and DSL Capable Loops. Therefore, CALTEL requested that AL 38241 be permanent suspended and AT&T be ordered to apply rate indexing mechanism to all UNE recurring elements in Interconnection Agreement, retroactively to January 1, 2011.

In its Reply Comments, filed on April 5, 2011, AT&T reiterated its position that the Settlement Agreement with CALTEL does not apply to all UNEs. AT&T states that the Settlement Agreement is governed and interpreted by California contract law, and CALTEL is attempting to rewrite and reinterpret the Settlement Agreement.

CD has made changes to the resolution in response to the Comments of CALTEL and AT&T.

FINDINGS

1. Decision 09-02-017, adopting a Settlement Agreement, between AT&T California (AT&T) and California Association of Competitive Telecommunications Companies (CALTEL) and approved by the Commission on February 20, 2009, puts into place an unbundled network element (UNE) rate changing mechanism in which AT&T will calculate the UNE recurring rate index and include the new UNE recurring rate in an annual advice letter filing on October 1 of each year.
2. The Settlement Agreement applies the indexing mechanism to UNE recurring rates set in D.04-09-063, as subsequently modified by D.05-05-031, including DSL capable loops (except IDSL-capable loops).
3. AT&T filed Advice Letter (AL) 38241 on October 1, 2010 to modify the UNE recurring rates pursuant to the Settlement Agreement.
4. On October 21, 2010, CALTEL protested AT&T's advice letter.
5. On October 28, 2010, AT&T responded to CALTEL's protest of AL 38241.
6. On October 31, 2010, Communications Division (CD) suspended AL 38241 for 180 days.
7. CD's suspension of AT&T's Advice Letter No. 38241 should be lifted.

8. AT&T's Advice Letter No. 38241, with the two modifications set forth in this Resolution, should be made effective October 31, 2010.

THEREFORE, IT IS ORDERED that:

1. The suspension of AT&T California's Advice Letter No. 38241 is lifted.
2. AT&T California's Advice Letter No. 38241, with the two modifications discussed herein, is made effective as of October 31, 2010.

This resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed, and adopted at a conference of the Public Utilities Commission of the State of California held on June 9, 2011, the following Commissioners voting favorably thereon:

/s/ Paul Clanon

PAUL CLANON
Executive Director

MICHAEL R. PEEVEY
President
TIMOTHY ALAN SIMON
MICHEL PETER FLORIO
CATHERINE J.K. SANDOVAL
MARK J. FERRON
Commissioners