

Decision 03-07-023 July 10, 2003

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Joint Application of AT&T Communications of California, Inc. (U 5002 C) and WorldCom, Inc. for the Commission to Reexamine the Recurring Costs and Prices of Unbundled Switching in Its First Annual Review of Unbundled Network Element Costs Pursuant to Ordering Paragraph 11 of D.99-11-050.

Application 01-02-024
(Filed February 21, 2001)

Application of AT&T Communications of California, Inc. (U 5002 C) and WorldCom, Inc. for the Commission to Reexamine the Recurring Costs and Prices of Unbundled Loops in Its First Annual Review of Unbundled Network Element Costs Pursuant to Ordering Paragraph 11 of D.99-11-050.

Application 01-02-035
(Filed February 28, 2001)

Application of The Telephone Connection Local Services, LLC (U 5522 C) for the Commission to Reexamine the Recurring Costs and Prices of the DS-3 Entrance Facility Without Equipment in Its Second Annual Review of Unbundled Network Element Costs Pursuant to Ordering Paragraph 11 of D.99-11-050.

Application 02-02-031
(Filed February 28, 2002)

Application of AT&T Communications of California, Inc. (U 5002 C) and WorldCom, Inc. for the Commission to Reexamine the Recurring Costs and Prices of Unbundled Interoffice Transmission Facilities and Signaling Networks and Call-Related Databases in Its Second Annual Review of Unbundled Network Element Costs Pursuant to Ordering Paragraph 11 of D.99-11-050.

Application 02-02-032
(Filed February 28, 2002)

Application of Pacific Bell Telephone Company (U 1001 C) for the Commission to Reexamine the Costs and Prices of the Expanded Interconnection Service Cross-Connect Network Element in the Second Annual Review of Unbundled Network Element Costs Pursuant to Ordering Paragraph 11 of D.99-11-050.

Application 02-02-034
(Filed February 28, 2002)

Application of XO California, Inc. (U 5553 C) for the Commission to Reexamine the Recurring Costs of DS1 and DS3 Unbundled Network Element Loops in Its Second Annual Review of Unbundled Network Element Costs Pursuant to Ordering Paragraph 11 of D.99-11-050.

Application 02-03-002
(Filed March 1, 2002)

OPINION IMPLEMENTING REVISED UNBUNDLED NETWORK ELEMENT RATES BASED ON DECISION 02-09-049

I. Summary

This decision implements the rate changes adopted by the Commission in Decision (D.) 02-09-049. In that order, the Commission made two changes to the methodology for calculating the recurring and nonrecurring unbundled network

element (UNE) rates that Pacific Bell Telephone Company (Pacific, d/b/a SBC California) charges competing local telephone carriers for use of its network. First, the Commission increased the shared and common cost markup percentage, which is a component of UNE prices, from 19% to 21%. Second, the Commission ordered Pacific to remove 13% from the expense portion of its UNE monthly recurring costs.¹ The recurring and nonrecurring rate changes resulting from these two modifications were effective on the date that D.02-09-049 became effective, September 19, 2002. The Commission ordered Pacific to submit a compliance filing identifying the net effect of these two changes. Today's decision approves the undisputed rate changes identified by Pacific in its compliance filings so that the rate changes can be implemented and appropriate adjustments made for UNEs purchased as of September 19, 2002.

II. Pacific's Compliance Filings

In compliance with D.02-09-049, Pacific submitted its recalculation of UNE rates on December 18, 2002. On January 21, 2003, AT&T Communications of California (AT&T) and WorldCom Inc. (WorldCom) (collectively "Joint Applicants") filed comments alleging that Pacific's filing was incomplete. They argued that the filing did not adequately comply with Ordering Paragraph 3 of D.02-09-049, which ordered Pacific to calculate "the net impact on all of its UNE prices of the markup and recurring cost changes ordered herein." Joint Applicants did not dispute the calculations contained in Pacific's compliance

¹ The Commission adopted these changes as a result of a remand ordered by the U.S. District Court for the Northern District of California. (*See AT&T Communications of California Inc. et al., v. Pacific Bell Telephone Company et al.*, Order on Cross Motions for Summary Judgment, No. C01-02517 (N.D. Cal. August 6, 2002.)

filing, only that it was incomplete because new rates were not calculated for all of Pacific's UNEs.

In a ruling dated February 25, 2003, the assigned ALJ directed Pacific to supplement its compliance filing with further rate recalculations for additional UNEs. Pacific submitted a supplemental compliance filing on March 21, 2003. On April 11, 2003, Joint Applicants, TRI-M Communications Inc., Anew Telecommunications Corporation and Sage Telecom, Inc. joined together to protest Pacific's supplemental filing as incomplete. These parties again claimed that Pacific failed to recalculate rates for all of its UNEs, particularly several adopted through negotiated interconnection agreements. Once again, the protest did not dispute the calculations for the rates contained in the supplemental filing, only the completeness of the filing.

III. Discussion

In compliance with D.02-09-049, Pacific has calculated the net effect of the two cost methodology changes ordered therein for many of its UNEs. While there is still a dispute among the parties over whether Pacific has adequately updated all of its UNE prices, Pacific's December 18, 2002 and March 21, 2003 filings have removed 13% from the expense portion of its UNE recurring costs and recalculated Pacific's UNE prices by substituting a new shared and common cost markup of 21% for the previously adopted 19% markup. There were no protests to Pacific's calculations in either of these filings. Therefore, the Commission should approve the rates shown in Pacific's two compliance filings so that the adjustment to Pacific's recurring and nonrecurring UNE prices can be implemented and any billing adjustments can be made for UNEs purchased as of the September 19, 2002 effective date of the rate changes. Pacific's revised monthly recurring UNE rates are shown in Appendix A of this order. Pacific's

revised nonrecurring UNE rates are shown in Appendix B, which merely adjusts Appendix B of D.99-11-050 to reflect the revised 21% markup.

Because the rates in Appendices A and B actually took effect on September 19, 2002, Pacific must now calculate any adjustments that it may owe to interconnecting carriers for UNEs purchased on or after that date if the rates in Appendices A and B are lower than the amount Pacific had previously billed. Likewise, Pacific should calculate whether it is owed money by interconnecting carriers for UNEs purchased on or after September 19, 2003, if the rates in Appendices A and B are higher than the amount Pacific had previously billed. Within 60 days of this order, Pacific should calculate any such adjustments and reflect the adjustments in its bills to interconnecting carriers for their monthly UNE recurring and nonrecurring charges.

The only remaining issue with regard to D.02-09-049 is whether Pacific's compliance filings are complete and whether additional UNE rates, other than those listed in Appendices A and B, should be adjusted. The dispute involves whether rates set through negotiated interconnection agreements were based on the same methodology that was corrected in D.02-09-049. Pacific argues that negotiated rates should not be changed. Joint Applicants and other competitive local carriers contend that Pacific should identify which negotiated rates may have been derived from the original OANAD methodology. In the interests of putting the undisputed rate changes into effect as quickly as possible, this order does not attempt to identify further UNE rates that may need revisions at this time. Rather, the assigned ALJ shall continue to review that matter and if she identifies further UNE rate changes that appear necessary, the Commission may consider them in a further order.

According to Rule 77.7(f)(2) of the Commission's Rules of Practice and Procedure, this decision is an uncontested matter where the decision grants the relief requested. The decision adopts the undisputed rates set forth in Pacific's two compliance filings to D.02-09-049. Although comments are not required on the draft, parties were allowed to file comments on the draft decision within seven days of the mailing of the draft. Pacific and Joint Applicants filed comments in support of the order. Pacific suggested minor edits which have been incorporated into the order. In addition, Pacific noted that the decision failed to address adoption of new nonrecurring rates as approved in D.02-09-049. The decision has been revised to include Appendix B listing the new nonrecurring rates reflecting a 21% shared and common cost markup.

IV. Assignment of Proceeding

Carl W. Wood is the Assigned Commissioner and Dorothy Duda is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. In D.02-09-049, the Commission increased Pacific's shared and common cost markup from 19% to 21% and ordered Pacific to remove 13% from the expense portion of its UNE recurring costs.
2. The recurring and nonrecurring UNE rate changes ordered in D.02-09-049 were effective September 19, 2002, but the implementation of the rate changes was stayed pending resolution of the actual adjustment amount.
3. Pacific submitted recalculations of its UNE recurring costs in compliance with D.02-09-049 and there were no protests to the accuracy of Pacific's calculations.
4. Some parties have challenged the completeness of Pacific's calculations, contending the rate adjustments are applicable to other UNEs.

Conclusions of Law

1. The Commission should approve the recalculation of Pacific's UNE recurring and nonrecurring costs, contained in Appendices A and B of this order, and the rates, which were effective on September 19, 2002, should be implemented as of the date of this order.
2. Pacific should calculate any adjustments that it may owe to interconnecting carriers for UNEs purchased on or after September 19, 2003 if the rates in Appendices A and B are lower than the amount Pacific had previously billed.
3. Pacific should calculate whether it is owed money by interconnecting carriers for UNEs purchased on or after September 19, 2003, if the rates in Appendices A and B are higher than the amount Pacific had previously billed.
4. Within 60 days of this order, Pacific should ensure that billing adjustments to reflect monies owed to or by interconnecting carriers for UNEs purchased at the rates in Appendices A and B on or after September 19, 2002 are properly reflected in its bills for UNE recurring and nonrecurring charges.

O R D E R

IT IS ORDERED that:

1. The recurring and nonrecurring prices for unbundled network elements (UNEs) offered by Pacific Bell Telephone Company (Pacific) that are set forth in Appendices A and B to this decision are approved.
2. Pursuant to Commission Resolution ALJ-181 (adopted October 5, 2000), Pacific shall prepare amendments to all interconnection agreements between itself and other carriers. Such amendments shall substitute the recurring and nonrecurring UNE prices set forth in Appendices A and B, for the UNE prices set forth in such interconnection agreements. Such amendments shall be filed with

the Commission's Telecommunications Division, pursuant to the advice letter process set forth in Rules 6.1 and 6.2 of Resolution ALJ-181, within 30 days after the effective date of this order. The amendments do not require a signature of the carriers involved as long as the amendments are limited to substituting the UNE rates adopted in today's order. Unless protested, such amendments shall become effective 30 days after filing.

3. Within 60 days of the effective date of this order, Pacific shall calculate any billing adjustments owed to or by interconnecting carriers based on the implementation of the rates in this order and ensure that these adjustments are reflected in its bills for recurring and nonrecurring UNE prices.

This order is effective today.

Dated July 10, 2003, San Francisco, California.

MICHAEL R. PEEVEY
President

CARL W. WOOD
LORETTA M. LYNCH
GEOFFREY F. BROWN
SUSAN P. KENNEDY
Commissioners