Decision 06-05-040 May 25, 2006

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 CONFIRMING THE ASSIGNED ADMINISTRATIVE LAW JUDGE'S RULING GRANTING IN PART THE MOTION FOR ENFORCEMENT OF DECISION 06-01-043

I. Summary

This order confirms, with some modifications, the April 13, 2006 assigned Administrative Law Judge's (ALJ) Ruling granting in part and denying in part the motion for enforcement of Decision (D.) 06-01-043, which was filed on March 29, 2006. The modifications to the outcomes in the ALJ Ruling are described below.

On March 29, 2006, a joint motion was filed by five Competitive Local Exchange Carriers (CLECs or Movant CLECs): Call America, Inc; CF Communications, LLC d/b/a Telekenex; DMR Communications, Inc; TRI-M Communications, Inc d/b/a TMC Communications; and FONES4ALL Corp requesting enforcement of D.06-01-043.

The motion was filed in response to AT&T California (AT&T's) March 10, 2006 notice to CLECs stating that it intends to charge $37.24 for each Unbundled Network Element Platform (UNE-P) line that had not been transitioned to another serving arrangement by March 11, 2006. Joint Movants

seek a Commission order forbidding AT&T from setting a proxy rate that is equivalent to the market-based rate it sought to impose in this proceeding, rather than the total-service resale rate the Commission directed it to charge in D.06-01-043.

II. Confirmation of the ALJ Ruling

A copy of the Administrative Law Judge (ALJ) Ruling is attached as Appendix A hereto. We hereby confirm, with some modifications, the ALJ Ruling in accordance with the provisions of Pub. Util. Code § 310 which states, in part:

> The evidence in any investigation, inquiry, or hearing may be taken by the commissioner or commissioners to whom the investigation, inquiry, or hearing has been assigned or, in his, her, or their behalf, by an administrative law judge designated for that purpose. Every finding, opinion, and order made by the commissioner or commissioners so designated, pursuant to the investigation, inquiry, or hearing, when approved or confirmed by the commission and ordered filed in its office, is the finding, opinion, and order of the commission.

Because the ruling is attached to this decision, we do not repeat its full contents. In brief, the ALJ Ruling analyzed the proxy resale rates proposed by the CLECs and by AT&T. The ALJ took elements from each and developed a revised proxy resale rate of $25.19. This compares with the $20 proxy rate proposed by the CLECs, and the $37.24 rate proposed by AT&T. The ALJ used AT&T's basic methodology, but made two significant changes to AT&T's model. It changes the business usage AT&T proposes--$23.99 for unlimited usage--to the CLEC's proposed $2.70 for 500 minutes of use. It also eliminates the $3.40 for access charges proposed by AT&T, since most of the CLECs use other carriers to provide long distance service.

The Ruling directs AT&T to charge $25.19 for all UNE-P lines that have not been transitioned, and suspends the interconnection agreements' requirement that CLECs first pay and then dispute charges. The ruling also allows AT&T to true-up actual usage and custom calling features, for those UNE-P lines that are ultimately transitioned to resale service.

In their comments on the Draft Decision (DD), the Joint CLECs indicate that most custom calling services are available at discounted resale rates in various packages. The CLECs point out that AT&T offers a "Power Pack" of Caller ID and five to nine additional features.[1] We concur with the CLECs that a CLEC is unlikely to buy three custom calling features individually, when the features are much less expensive when purchased as part of a package. The "Power Pack" package that sells for $6.64 provides caller ID and 5 to 9 additional features for business customers. We reviewed AT&T's resale tariff for a package offering for residential customers and found the "u-Select 3"[2] package, which provides Caller ID plus two other features. It is appropriate to use this particular package in our model since the ALJ originally modeled three custom calling features. The rate for "u-Select 3" is $9.35 per month. We have modified our model for both residential and business customers to reflect the two features packages, in lieu of the individual feature rates modeled by AT&T.

In its comments on the DD, AT&T points out that usage rate proposed by the movant CLECs and adopted by the ALJ Ruling is incorrect. According to AT&T, the usage estimate based on the CLECs' own assumptions would be $5.55 rather than $2.70. AT&T speculates that the CLECs omitted to include any

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1 SBC California, Schedule Cal.P.U.C. No. 175-T, Original Sheet 787-A-7-A.

initial minutes. In their Reply Comments, the CLECs concur that the business usage figure should be $5.55 rather than $2.70. We have made that adjustment in our model. With those two changes, the resulting proxy rate, weighted by the number of business and residential lines, is $23.16. AT&T is to charge this rate for all UNE-P lines that were not converted by the March 11, 2006 deadline, with the exception of unconverted lines purchased by Fones4All.

In its comments on the DD, Fones4All asserts that the assumptions in the proxy rate do not apply to Fones4All. First of all, Fones4All does not serve any business customers. Therefore, it is inappropriate to use any price for the access line that has a component of business pricing. Fones4All also indicates that minute-of-use charges are not appropriately levied on residential resale lines, since each access line comes with unlimited usage at no extra charge.

Fones4All also asserts that an assumption of three custom calling features is inappropriate, but we note that the ALJ Ruling states that Fones4All's website says that 3 features or more is common. Therefore, the rate for Fones4All will include the residential access line, the "u-Select 3" feature package, and the EUCL for a total of $22.60

We find that the rates we have adopted here are consistent with our finding in D.06-01-043 as follows:

> We find that adopting SBC's [AT&T's] market based rates would be unduly punitive for failure to make the deadline to transition services from ULS/UNE-P arrangements. We will instead adopt the CLECs' TSR [Total Service Resale] rates that we previously approved.[3]

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[2] SBC California, Schedule Cal.P.U.C. No. 175-T, 17th Revised Sheet 787-A-3.

[3] D.06-01-043 *Mimeo.,* at 47.

> The proxy rate proposed by AT&T is very close to the market based rates we rejected in D.06-01-043. Allowing AT&T to charge that rate would be inconsistent with our intent that CLECs pay TSR rates for their unconverted lines. Therefore, the $37.24 rate AT&T proposes to charge is not in compliance with D.06-01-043, and it would be inappropriate to allow AT&T to charge that rate for unconverted UNE-P lines. We believe that the proxy rates here we have developed for TSR rates are in accord with our intent in D.06-01-043.

We clarify that the rates adopted in this decision are effective as of March 11, 2006, the date when AT&T could start charging TSR rates for unconverted UNE-P lines.

III. Comments on Draft Decision

The draft decision of the Administrative Law Judge in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(2), and Rule 77.7 of the Commission's Rules of Practice and Procedure. Because this is a matter relating to temporary injunctive relief, the comment period was reduced. Comments were filed on May 11, 2006 and Reply Comments on May 16, 2006. Those comments have been taken into account, as appropriate, in finalizing this decision.

IV. 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. The ruling resolves disputes as to the proxy resale rate that AT&T may assess for UNE-P lines that were not converted prior to the March 11, 2006 deadline.

2. A CLEC is unlikely to purchase three custom calling features individually when the features are available at a lower price as part of a package.

3. D.06-01-043 required AT&T to charge the total service resale rate for a UNE-P line.

4. D.06-01-043 found it would be "unduly punitive" to CLECs to impose the market-based rates that AT&T sought to charge for such lines.

5. The $37.24 rate AT&T proposes to assess is remarkably similar to the rates in AT&T's Local Wholesale Complete commercial agreements.

6. AT&T presents no proof that the actual usage on the average exceeds the 500 minute proposed by the CLECs.

7. Most CLECs use another carrier to provide long distance service so it is inappropriate for AT&T to impose access charges on the CLECs.

8. Fones4All serves only residential customers.

Conclusions of Law

1. The April 13, 2006 ruling on the CLECs' motion resolves the issues brought before the Commission relating to disputes over the proxy resale rate that AT&T should assess on UNE-P lines that had not been transitioned by March 11, 2006.

2. AT&T's proxy rate of $37.24 is not in compliance with D.06-01-043.

3. The proxy rates adopted are in compliance with the intent expressed in D.06-01-043 and should be effective as of March 11, 2006.

4. An assigned ALJ has the authority to grant a temporary restraining order or preliminary injunction, subject to ratification or reversal by the full Commission.

5. The CLECs have met the four-prong test established by the Commission for a temporary restraining order, namely (1) a likelihood of prevailing on the merits; (2) irreparable injury to the moving party without the order; (3) no substantial harm to other interested parties; and (4) no harm to the public interest.

O R D E R

IT IS ORDERED that:

1. The assigned Administrative Law Judge's Ruling denying in part and granting in part the motion for enforcement of Decision 06-01-043, attached hereto as Appendix A, is hereby confirmed, as modified by this decision.
2. SBC California shall charge all Competitive Local Exchange Carriers, except Fones4All, a rate of $23.16 per month for each Unbundled Network Element Platform (UNE-P) line not converted by March 11, 2006.
3. SBC California shall charge FONES4All a rate of $22.60 per month for each UNE-P line not converted by March 11, 2006.
4. The proxy rates adopted in this order shall be effective as of March 11, 2006.

This order is effective today.

Dated May 25, 2006, at San Francisco, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
Commissioners

APPENDIX A

KAJ/eap 04/13/2006

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)

ADMINISTRATIVE LAW JUDGE'S RULING GRANTING IN PART MOTION FOR ENFORCEMENT OF DECISION 06-01-043

I. Introduction

On March 29, 2006, five Competitive Local Exchange Carriers (CLECs or Movant CLECs)[1] filed a motion for enforcement of Decision (D.) 06-01-043. On January 26, 2006, the Commission issued D.06-01-043, its Final Decision in the instant arbitration, resolving issues disputed between AT&T California (AT&T)[2] and the CLECs. In that decision, the Commission approved CLEC-proposed contract language stipulating that, in the event a CLEC is unable to submit a transition order for a line that it has been using to provide service to an end-user under the Unbundled Network Element Platform (UNE-P), AT&T is authorized

[1] The five CLECs are Call America, Inc.; CF Communications, LLC d/b/a Telekenex; DMR Communications, Inc.; TRI-M Communications, Inc. d/b/a TMC Communications; and FONES4ALL Corp.

[2] When this application was filed, the company was operating under the name "SBC California." Since the merger with AT&T has been completed, the company is now operating under the name "AT&T California."

to charge only the total service resale rate for such line.[3] In making this finding, the Commission ruled specifically that it would be "unduly punitive" to CLECs to impose the market-based rates that AT&T sought to charge for such lines.

II. Parties' Positions

On March 10, 2006, AT&T sent a notice to each CLEC that had been unable to complete the submission of its UNE-P transition orders. The notice, which is attached as Exhibit 1 to the CLECs' motion, indicates that AT&T plans to charge $37.24 for each UNE-P line. An e-mail message from AT&T regulatory attorney Ed Kolto to counsel for CLECs provided additional clarification as follows: "This resale rate incorporates the basic resale rates from the tariff, and includes a component for usage, three features, the EUCL [End User Common Line] charge, and an access charge."

According to the CLECs, the average usage on the CLECs' UNE-P lines is no more than 500 minutes, of which 125 are initial minutes and 375 additional minutes.[4] Thus, a reasonable maximum assumption of monthly usage charges is $2.70. Added to the typical $8.59 line charge, this yields a typical rate of $11.29 per line per month. Even adding two features at their average resale rate of around $4, this brings a typical CLEC UNE-P user's resale rate to $19.29.

The CLECs assert that imposition of access charges on CLECs is entirely inappropriate, since most CLECs use another carrier to provide long distance service. In that case, AT&T collects access revenues from the long-distance provider, not from the CLEC. Further, the CLECs claim that AT&T has offered no indication of its assumptions regarding local usage, and has given no

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[3] D.06-01-043 at 47.

[4] This is based on attached Declarations of Jeffrey Buckingham, Anthony Zabit, David Lee, and Ron Ireland in Support of the instant Motion.

justification for assuming that each and every CLEC resale line carries three custom-calling features, nor has it revealed its assumption regarding the average price of such features.

The CLECs find it telling that the $37.24 that AT&T plans to impose on CLECs for each UNE-P line for which a CLEC has yet been unable to provide transition orders is "suspiciously" near the rate that AT&T would charge for each line purchased under its market-based Local Wholesale Complete (LWC) commercial agreement for the replacement of UNE-P service. The CLECs indicate that they have reviewed the rates for LWC service but were required to enter into a confidentiality agreement under which they are not permitted to reveal publicly the actual rates AT&T has proposed.

According to the CLECs, the rate AT&T proposes is almost double the resale rate calculated as line charge plus usage derived from AT&T's resale tariff, even assuming an average of two features per line. The CLECs indicate that the attached Declarations of CEOs and managers of the Movant CLECs demonstrate that it would be ruinous to their finances to have to pay the extra $17[5] for each UNE-P line for which they have not yet been able to submit transition orders.

The CLECs state that if the Commission permits AT&T to charge a "proxy" rate for CLECs' resale lines, it should not be based on overblown assumptions regarding average CLEC usage of minutes and features, as well as the unjustifiable inclusion of access revenues.

The CLECs claim that limiting AT&T to $20 per line per month for resale service until CLECs are able to complete submission of their transition orders would not harm AT&T in any way, since the Movant CLECs agree to a true-up

[5] $17 represents the difference between the $20.00 proposed by CLECs and the $37.24 proposed by AT&T.

to their customers' actual usage in the first month of usage-based resale billing. The Movant CLECs indicate that they expect that this will result in higher charges for some lines, and lower for others, than the $20 cap sought in their motion.

The Movant CLECs urge the assigned Administrative Law Judge to grant relief in the nature of a temporary restraining order or preliminary injunction.

AT&T filed its opposition to the CLECs' motion on April 5, 2006. AT&T asserts that the $20.00 proxy rate proposed by the CLECs is not appropriate. AT&T proposes a blended proxy rate that consists of a proxy residential rate and a proxy business rate, weighted according to the relative number of unconverted UNE-P residential and business lines existing in California as of January 31, 2006. The components of both the residential and business proxy rates are the rates for the line itself (including unlimited usage), three vertical features, a EUCL charge, and an access charge.

III. Discussion

AT&T's methodology to develop its proxy rate is more comprehensive than that used by the CLECs so I will use AT&T's model. AT&T uses its standard tariffed business and residential service as a starting point.[6] While usage is included in the residential rate, AT&T adds $23.99 for unlimited business usage, in contrast to the 500 minutes at $2.70 modeled by the CLECs. I do not find AT&T's usage assumptions to be reasonable. AT&T states that it selected the unlimited calling standard because it is "comparable to the UNE-P model, where high usage was relatively inexpensive."[7] AT&T presents no proof that actual usage on the average exceeds the 500 minutes proposed by the

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[6] CLECs used the resale rate for measured PBX trunk lines.

[7] Smith Declaration ¶ 19.

CLECs. I cannot accept the "Cadillac" of usage which would allow for unlimited local calling. The CLECs' proposal is reasonable and AT&T's is not. Therefore, I will adopt the $2.70 proposed by the CLECs, for 500 minutes of usage, rather than the $23.99 unlimited usage proposed by AT&T.

AT&T includes three vertical features, rather than the two features proposed by the Movant CLECs, and I agree with AT&T that three features is appropriate. As AT&T states, this is consistent with the FCC's finding in the California Section 271 proceeding that "three features…is the average number of features per access line for both retail and wholesale usage."[8] AT&T also points out that movant Fones4All's own website makes clear that three features or more is common.[9] Likewise, movant Call America's website lists more than 20 available features that it markets to customers."[10] I concur that AT&T's selection of three features per line is reasonable.

AT&T has included the EUCL charge and points out that the CLECs' calculation fails to include or even acknowledge the EUCL charge. It is appropriate to include the EUCL, so I have included the $4.38 EUCL in my calculations.

AT&T includes $3.40 for access charges, saying that the access component is necessary and appropriate in order to account for AT&T's lost opportunity to bill interexchange carriers (IXCs) for access charges. A CLEC purchasing UNE-P was entitled to sell exchange access to IXCs delivering or receiving traffic destined to or from a CLEC carrier customer. Accordingly, there was no need for

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[8] Memorandum Opinion and Order, *Application by SBC Communications Inc., Pacific Bell Telephone Company, and Southwestern Bell Communications Services Inc. for Authorization To Provide InterLATA Services in California,* 17 FCC Rcd 25650, ¶ 61 (2002).

[9] *See* www.fones4all.com/fones4all_us/bundlepackages.html.

[10] *See* www.callamericacom.com/products_services/local_feature_description.html.

AT&T Carrier Access Billing System (CABS) to process IXC billing information, and it is not set up to do so. In contrast, states AT&T, in a resale arrangement the incumbent LEC rather than the reselling CLEC is entitled to collect access charges from IXCs. Here, however, because CABS is used to bill UNE-P lines, AT&T states that it does not have the ability to bill the IXC for exchange access usage. It is therefore appropriate to include an access component to recover those lost charges. I disagree. The CLECs states that since most CLECs use another carrier to provide long distance service, it is inappropriate for AT&T to impose access charges on the CLECs. The access charge of $3.40 has been removed from the model.

To summarize, I have adopted AT&T's assumptions in its model for the price for the access line, the number of custom calling features, and the inclusion of the EUCL. I have reduced the local usage charges for business customers to 500 minutes at $2.70 per month, rather than the $23.99 proposed by AT&T, which includes unlimited usage. I have also eliminated the access charges proposed by AT&T, since most CLECs use another carrier to provide long distance service. The result is a blended rate of $25.19. The Movant CLECs shall pay this rate until they have submitted the orders to transition their customers off of UNE-P service.

In their motion, the Movant CLECs agree that once they have completed submission of their transition orders, AT&T should be permitted to "true up" the charges imposed on them to a level based on the first month of measured resale usage and features for each former UNE-P line. The Movant CLECs expect that this will result in higher charges for some lines and lower for others. However, AT&T points out that a hot cut to UNE-L would not result in a conversion to AT&T's Customer Records Information System (CRIS) billing since those loops would still be handled by CABS. Accordingly, tracking of the actual usage that the CLECs claim would enable a true-up would not be possible.

To the extent that the UNE-P lines are transitioned to resale service, AT&T shall be permitted to true up the charges as described above.

IV. Is Injunctive Relief Warranted?

First, I will address the authority of an ALJ to grant a temporary restraining order or preliminary injunction. In D.04-09-056, the Commission ruled:

> An individual assigned Commissioner or ALJ may issue a temporary restraining order or preliminary injunction in order to preserve the status quo, subject to its ratification or reversal by the full Commission. (See the California Constitution, Article XII, Section 2 ["Any commissioner as designated by the commission may hold a hearing or investigation or issue an order subject to commission approval."]; see also Pub Util. Code § 310; *Systems Analysis and Integration, Inc. d/b/a Systems Integrated v. Southern California Edison Company,* D.96-12-023, 69 CPUC2d 516, 522…[11]

Based on the decision cited above, I find that I have the authority to issue a temporary injunction to preserve the status quo, subject to its ratification or reversal by the full Commission.

The CLECs point out that the Commission set out the standard for the issuance of a preliminary injunction in *AT&T Communications of California, Inc. et al., v Verizon California Inc.,* 2004 Cal. PUC LEXIS 478 (2004) at *16-*17 as follows:

> The Commission uses the same test for temporary restraining orders that it uses for preliminary injunctions. (See Westcom Long Distance, Inc. v. Pacific Bell et al., D.94-04-082, 54 CPUC2d 244, 259; see also Re Standards of Conduct Governing Relationships Between

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[11] *AT&T Communications of California, Inc. et al., v. Verizon California Inc.,* 2004 Cal. PUC LEXIS 478 (2004) at *16 - *17.

> Energy Utilities and Their Affiliates, D.98-12-075, 84 CPUC2d 155, 169.) To obtain a temporary restraining [*19] order, the moving party must show (1) a likelihood of prevailing on the merits; (2) irreparable injury to the moving party without the order; (3) no substantial harm to other interested parties; and (4) no harm to the public interest.

AT&T states that under the dispute resolution provisions of their respective agreements, the CLECs must establish that they are entitled to injunctive relief in order to gain any relief at all on their motion.

AT&T asserts that the CLECs have not demonstrated the requisite elements for an injunction. I will examine each element in turn.

The first element is whether the moving party has demonstrated the likelihood of prevailing on the merits. As I have shown above, I believe that the CLECs are correct that AT&T's assumptions are not all appropriate. I have made two adjustments to AT&T's assumptions: first I have eliminated the $23.99 for unlimited local calling and replaced it with $2.70, based on 500 minutes of use. I have also determined that it is inappropriate to include access charges. Using the model developed by AT&T, those two adjustments reduced the rate from the $37.24 rate proposed by AT&T to $25.19. Therefore, I find that the CLECs have met the requirement that they would prevail, at least in part, on the merits. I find that the revised proxy rate is closer to what the Commission envisioned in D.06-01-043 when it ruled that customers that had not been transitioned from UNE-P by March 11, 2006 would be billed at the resale rate, rather than the LWC rate found in AT&T's commercial agreements. As the CLECs state, AT&T's proposed proxy rate is remarkably similar to the LWC rate, which the Commission rejected in D.06-01-043.

The second element for injunctive relief relates to whether the moving party will sustain irreparable injury without the order. According to AT&T, the CLECs' claim of irreparable harm is based on the assertion that paying the

difference between AT&T's proxy resale rate and what they believe to be a true resale rate threatens them with bankruptcy. In other words, the CLECs are alleging monetary loss. AT&T points out that the Commission has held, "monetary loss alone is not an adequate showing of irreparable harm,"[12] AT&T acknowledges that the Commission has made an exception where the monetary loss in question cannot later be recovered,[13] but AT&T asserts that that exception does not apply here. According to AT&T, if the Commission ultimately agrees with the CLECs on the merits on their claims, the CLECs could simply seek a refund. AT&T finds the CLECs' claims that AT&T proxy rate could push the CLECs close or into bankruptcy as incredible on its face. According to AT&T, the CLECs themselves can relieve any perceived financial distress simply by completing the UNE-P transition process by converting their lines to resale.
I disagree with AT&T's conclusions on two grounds. First, a monetary loss cannot later be recovered if the company goes into bankruptcy. Therefore, I find that the Commission's determination that monetary loss alone is an adequate showing of irreparable harm applies in this case, since the monetary loss in question may not be later recovered.

Also, AT&T suggests that the CLECs should just complete the process to convert their lines to resale. However, in their motion, the CLECs indicate that "most of the Movant CLECs are not moving to resale arrangements, but are

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[12] Order Denying Emergency Motion for Stay of Decision 01-09-058, Utility Consumers' Action Network v. Pacific Bell, D.01-11-069, 2001 Cal. PUC LEXIS 1121, at *8 (Cal. PUC Nov. 29, 2001).

[13] *See e.g.,* Order Granting Stay of Ordering Paragraphs 2 and 3 of D.94-11-068 and Ordering Paragraphs 14 and 15 of D.94-11-069, *Investigation on the Commission's Own Motion Into the Causes of Recent Derailments of Southern Pacific Transportation Company Trains,* D.95-02-047, 58 CPUC2d 654, 1995 Cal. PUC LEXIS 98, at *3 (Cal. PUC Feb. 8, 1995).

attempting to deploy their own switching and transport so that they can provide facilities-based service to their customers…"[14] Therefore, AT&T's suggestion that the CLECs should just convert their remaining lines to resale, so as to avoid the application of AT&T's proxy rate is without merit. It does not address the needs of a carrier that is attempting to transition to UNE-L.

The third element for injunctive relief is that it would not result in harm to other interested parties. The CLECs state that "[AT&T] will be made whole by a true-up to usage-based resale rates, once the CLECs complete submission of their transition orders."[15] AT&T asserts that a true-up will not recompense AT&T for creating a temporary billing system that will be useless to all other CLECs. AT&T asserts that it would incur substantial costs if it were compelled to bill CLECs on an individual basis as if the bills were generated out of the genuine resale billing system. AT&T's argument is not convincing because, in this case, both AT&T and the CLECs are proposing a proxy rate. The only difference is the amount of that proxy rate.

AT&T also states that the moving parties fail to acknowledge the effect their requested relief – an artificially depressed resale rate available only to CLECs that have failed to complete the transition -- would have on the CLECs in California with whom they compete. This argument is without merit. I do not believe that the proxy rate I have adopted here is an "artificially depressed resale rate." Rather, it is a reasonable approximation of what these CLECs would pay if their customers were on resale service. Those rates should be comparable to the rates paid by other CLECs that are purchasing resale service.

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14 Motion for Enforcement of D.06-01-043 at 10.

15 CLEC motion at 13.

The final element for injunctive relief is whether there is any harm to the public interest. According to AT&T, it would frustrate the Federal Communications Commission's intent if the CLECs that have failed to initiate the transition mandated in the Triennial Review Remand Order were permitted to continue to compete using UNE-P, priced at the artificially depressed rate the CLECs propose. That argument does not have merit since I have already determined that the proxy rate I have adopted is a reasonable proxy for resale rates. It is in the public interest to assure that CLECs' customers continue to receive service from their carrier of choice.

In sum, I find that the CLECs have met their burden for injunctive relief and grant that relief as follows:

IT IS RULED that**:**

1. The motion of the Movant CLECs is hereby granted in part and denied in part, in accordance with the terms and conditions outlined above.
2. AT&T shall bill those CLECs that have not transitioned their UNE-P customers at a resale proxy rate of $25.19 per month.
3. The Movant CLECs' interconnection agreement provisions requiring them to "pay and dispute" are hereby suspended, but only with regard to payment of charges for UNE-P customers that had not been transitioned as of March 11, 2006.
4. For those CLEC customers that are transitioned to resale service, AT&T shall be permitted to true-up the charges imposed on CLECs to a level based on the first month of measured resale usage and features for each former UNE-P line.

Dated April 13, 2006, at San Francisco, California.

/s/ Karen A. Jones

Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Granting in Part Motion for Enforcement of D.06-01-043 on all parties of record in this proceeding or their attorneys of record.

Dated April 13, 2006, at San Francisco, California.

/s/ Erlinda Pulmano
Erlinda Pulmano

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to ensure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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(END OF APPENDIX A)