

Decision 07-03-004 March 1, 2007

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)

**DECISION APPROVING SETTLEMENT AGREEMENT ON
AT&T CALIFORNIA COLLOCATION RATES**

This order adopts a settlement agreement resolving outstanding issues related to the rates charged by Pacific Bell Telephone Company (dba AT&T California) for collocation services to competitive local exchange carriers (CLECs). The settlement would make permanent the rates previously paid by CLECs for AT&T California's collocation services and would permit CLECs to opt for lower tariffed rates going forward, which would remain in effect for three years. The settlement does not apply to Verizon.

I. Background

The Commission opened this proceeding in 1993 as part of the process to introduce significant competition in the provision of telecommunications services. Its purpose was to address several issues relating to the provision of services by Pacific Bell and Verizon to CLECs. Among those issues are the terms

and conditions for “collocation” services. In this context, “collocation” means the housing of CLEC facilities in the incumbent local carrier’s central office for the purpose of providing competitive services. The Commission proceeded to address the very complex cost and pricing issues during a time of rapid policy and rule changes at the federal level.

On March 31, 1999, the Federal Communications Commission (FCC) issued significant new rules on collocation in its *Advanced Services Order*¹ which the Commission intended to address in this rulemaking. On January 13, 2000, the assigned Commissioner issued a ruling providing that all collocation issues would be adjudicated in this proceeding, including the minimum collocation requirements contained in the *Advanced Services Order*² and the development of cost-based prices³ for physical, common, shared, virtual, cageless, adjacent on-site and adjacent off-site collocation arrangements. The ruling set a September 2000 deadline for completing this proceeding.⁴ Although the Commission subsequently conducted hearings in this matter and submitted the matter for briefing in May 2000, the Commission has not, for a variety of reasons, issued an order on AT&T California’s final rates or any possible true-up requirements.

¹ *In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Dkt. No. 98-147, *First Report and Order and Further Notice of Proposed Rulemaking*, 14 FCC Rcd. 4761, FCC 99-48 (rel. Mar. 31, 1999)

² ACR, p. 3; *see also Advanced Services Order*, ¶¶ 19-60.

³ ACR, p. 8.

⁴ *Id.*

During the intervening period after the issuance of the FCC's Advanced Services Order in 1999 and the Open Access and Network Architecture Development (OANAD) proceeding, AT&T California began billing all CLECs interim rates for collocation. CLECs have been billed under one or more pricing structures stemming from differing tariffs, accessible letters, advice letters or interconnection agreements. Because these rates had not been determined to be final, all of them have been subject to a retroactive adjustment or "true up" to the final rates adopted in this proceeding.

On July 8, 2005, AT&T California filed a motion in this proceeding to set final collocation rates. As a result, the parties began confidential negotiations in an attempt to resolve this proceeding in lieu of litigation. On August 25, 2006, the parties informed ALJ Malcolm that a settlement had been reached and would file a motion for its adoption in the coming weeks.

On November 3, 2006, Pacific Bell Telephone Company dba AT&T California, Arrival Communications, Inc., Qwest Communications Corporation, MCImetro Access Transmission Services LLC, dba Verizon Access Transmission Services, Cbeyond Communications, LLC, Covad Communications Company, XO Communications Services, Inc., Eschelon Telecom, Inc., Advanced TelCom, Inc., CF Communications, LLC dba Telekenex, Navigator Telecommunications, LLC, Mpower Communications Corporation, dba TelePacific Communications, Cox California Telcom, LLC, Level 3 Communications, LLC, Call America, Inc., US TelePacific Corporation, Qwest Enterprise America, Inc., Telscape Communications, Inc., AT&T Communications of California, Inc., and TCG San Francisco, TCG Los Angeles, Inc., and TCG San Diego (collectively, the "parties") filed a motion seeking the Commission's approval of a settlement agreement that resolves all issues involving AT&T California's final collocation rates presented

in this proceeding. AT&T California issued written notice to all parties in this proceeding that settlement discussions pertaining to collocation rates and terms would take place via teleconference on June 23, 2006. Settlement discussions took place on that day in accordance with the notice.

No party has protested the settlement or any of its terms.

On November 22, 2006, the assigned ALJ issued a ruling seeking clarification by the settling parties of several settlement terms. The ruling stated that although the parties did not anticipate any objection to the settlement, "the record of this proceeding must include sufficient information to enable the Commission to understand the policy implications of the settlement and its terms." The ruling also presented several questions to Verizon, mainly with regard to how the Commission should resolve any outstanding controversies concerning Verizon's collocation rates. The settling parties and Verizon each filed responses to the ruling on December 15, 2006.

II. The Settlement Agreement

The following summarizes the settlement terms. The complete settlement agreement is attached to this order as Appendix A.

- All existing interim collocation rates billed under the FCC Tariff 128, CPUC 175-T tariff, 175-T discounted tariff, Accessible Letters (AL) CLECC00-064, AL CLECC00-111, and AL CLECC99-200, shall become fixed rates and charges for a period of three years from the effective date of the settlement agreement.
- Upon expiration of the three-year period, all rates and charges shall convert to the rates and charges in AL CLECC00-064 and AL CLECC00-111 unless otherwise negotiated and mutually agreed to or ordered by the Commission.
- CLECs may elect individually to convert the pricing on its collocation arrangements to the rates and charges in AL CLECC00-064 and AL CLECC00-111.

- All orders for new collocation arrangements and/or augments to existing arrangements shall be billed at the rates and charges under AL CLECC00-064 and AL CLECC00-111.
- AT&T California shall eliminate the charge for redundant power, if any, on all existing and all new collocation arrangements and/or augments, on a prospective basis.
- All parties agree to waive any rights to true-up. AT&T California, Qwest Communications Corporation, Qwest Enterprise America, Inc., and Telscape Communications, Inc., however, reserve any rights they may have relative to the pending complaint case, C.05-05-030, the outcome of which will determine the rates that AT&T California will bill Qwest Communications Corporation, Qwest Enterprise America, Inc. and Telscape from 1999 through the three year period from the effective date of the Settlement Agreement. Qwest or Telscape may make an election to convert to AL CLECC00-064 and AL CLECC 00-111 (if applicable) on a going forward basis.
- All parties agree to waive the provisions of Section 1542 of the California Civil Code, with the exception of certain claims relating to C.05-05-030 and a current specified dispute between AT&T California and Eschelon.

The Settlement Agreement would take effect immediately upon the Commission's approval and provides that each party will amend existing interconnection agreements to conform to the settlement.

The ALJ's ruling sought responses to several questions. The following presents those questions and summaries of the responses of the settling parties:

- *What is the significance of making "fixed" those rates and charges included in FCC Tariff 128 and CPUC Tariff 175-T? Are the prices in each of those tariffs and agreements generally higher or lower than those in AL CLECC00-64, AL CLECC00-111, and AL CLECC99-200? The settling parties respond that fixing collocation charges would make those rates permanent for a three year period and make moot the issue of whether those rates should be trued-up. The parties did not compare the proposed rates to the existing rates.*

- *What would be the range of AT&T California's outstanding liability if it were to true-up all charges and rates billed to all settling CLECs so that the true-up amount equaled the difference between the rates in FCC Tariff 128 and CPUC Tariffs 175-T and corresponding rates in AL CLECC00-64, AL CLECC00-111 and AL CLECC99-200? The settling parties did not perform an analysis of AT&T California's outstanding liabilities.*
- *What is the significance of AT&T California's elimination of the charge for redundant power? What is redundant power? What is AT&T California's outstanding liability if related past charges were to be refunded? The settling parties state that redundant power refers to the feeds the CLEC uses to power collocation equipment. Redundant power assures that the failure of one power feed does not interrupt power to the equipment. AT&T California has charged for power at both feeds. The settlement would reduce CLEC liability for redundant power by half because AT&T California would charge only for a single power feed. The parties did not analyze the impact of this rate reduction on AT&T California's revenues.*
- *Are the rates in the relevant tariffs cost-based? If not, are those rates based on a reasonable proxy of costs? If they are not cost-based, what authority does the Commission have to adopt them under existing state and federal law? For purposes of the settlement, the parties state that they were willing to accept existing tariffs and AL rates as reasonable and based on accepted cost-based models. The parties agree that the rates are not discriminatory under the terms of the settlement. The parties state that these rates would be incorporated into interconnection agreements by way of amendments, which the Commission has authority to approve.*
- *Does the settlement or state or federal law require the Commission's approval of changes to interconnection agreements that would be affected by the settlement? If so, how would that approval be secured? The parties state the amendments to their interconnection agreements would be effected when the Commission approves the settlement.*

- *Does the settlement filed in this rulemaking change the relevance of the motion filed by AT&T California in Case 05-05-030 on October 10, 2006?* The settling parties state that Qwest and AT&T California have settled all outstanding issues in C.05-05-030, making moot the referenced motion.

AT&T California and other settling parties jointly filed a response to these questions.

III. Discussion of Settlement

The Commission requires that settlements be reasonable in light of the record, consistent with the law, and in the public interest. The parties state their settlement satisfies this requirement because they have negotiated at arms length and in good faith and present reasonable compromises on all issues. They state the terms of this settlement agreement are consistent with the Advanced Services Order, and all other applicable federal and state law.

The settlement presented here is the culmination of almost a year of work by the parties. The settlement does not impose any terms on parties that are not signatories to the settlement. It does not raise any public policy issues that may affect other carriers or competitive markets generally. We do not perceive that it would in any way harm consumers as a group or individual customers. To the contrary, the settlement would resolve a number of outstanding issues relating to AT&T California collocation rates. It makes permanent those rates that have been “interim” and subject to refund following years of uncertainty. No party has protested the settlement.

We herein find the settlement attached to this order to be reasonable and in the public interest. Consistent with the parties’ views, we do not find any element of the settlement that would contravene state or federal law. For these reasons, we adopt it.

IV. Resolution of Verizon's Collocation Rates

In accordance with the ALJ's ruling issued on November 22, 2006, in this proceeding, Verizon addressed the relevance of the settlement and related issues to its own collocation rates. Verizon states its collocation rates are interim but have never been a subject of controversy in this proceeding. It states that the settlement that would resolve AT&T California's rates has no relevance to Verizon's collocation rates because the two companies' rates structures differ substantially. Verizon states no party has approached it to negotiate changes to its collocation rates, although it would be willing to engage in discussions if any party so wishes. It states the existing record in this proceeding is stale and could not be used for the purpose of setting permanent rates. No party filed replies to Verizon's comments or otherwise contradicted its assertions. However, a number of CLECs filed comments on the ALJ's proposed decision and addressed this topic. Those parties argue that in fact Verizon's collocation rates are in dispute and, although they have not yet been the subject of settlement discussions, the CLECs intend to address the matter in the foreseeable future.

We make no substantive findings at this time with regard to Verizon's rates. Although the record developed in this proceeding addressed those rates, that record is now several years old and probably too stale for us to rely upon it. We will consider whether to modify those rates if and when a party in interest presents us with a request to consider Verizon's existing collocation rates. Because this docket has been open for many years, however, we may close it at our discretion if the active parties do not take the initiative to resolve matters in dispute.

V. Comments on Proposed Decision

Several CLECs filed comments on the proposed decision of the administrative law judge. This order reflects those comments by clarifying that Verizon's collocation rates remain controversial with the CLECs.

Findings of Fact

1. The settlement would resolve all outstanding issues concerning AT&T California's collocation rates in this proceeding.
2. The settlement does not conflict with the record before the Commission and is in the public interest.
3. Several active CLEC parties state their intention to address Verizon's collocation rates, which they believe remain subjects of dispute.

Conclusions of Law

1. The settlement appears to present no conflicts with state or federal law.
2. The Commission should adopt the settlement as reasonable.

O R D E R

IT IS ORDERED that:

1. The Settlement Agreement attached to this order as Appendix A is hereby adopted.

2. Pacific Bell Telephone Company shall affect the terms of the settlement immediately.

This order is effective today.

Dated March 1, 2007, at San Francisco, California.

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