

Decision 07-12-020 December 6, 2007

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Review Policies
Concerning Intrastate Carrier Access Charges.

Rulemaking 03-08-018
(Filed August 21, 2003)

FINAL OPINION MODIFYING INTRASTATE ACCESS CHARGES

I. Summary

This decision reduces intrastate access charges¹ by requiring all mid-size incumbent local exchange carriers to remove the non-cost-based element or its equivalent, effective January 1, 2009. With this effective date, no surcharges will be necessary for the mid-size incumbent local exchange carriers.

The surcharges authorized by Decision (D.) 06-04-071 for Pacific Bell Telephone Company, now doing business as AT&T (AT&T), and Verizon California Inc. (Verizon) shall expire on the date the rate freeze on basic residential telephone service is lifted, currently scheduled for January 1, 2009.

Competitive local exchange carriers will reduce their intrastate access charges to \$0.025 per minute effective April 1, 2008, and then to the higher of

¹ The term "access charges" refers to charges imposed by local exchange carriers for use of the local network by interexchange or long distance carriers, which use this switched access to originate and terminate long distance calls to the vast majority of California residential and business customers. For purposes of this decision, intrastate access charges are defined as the following switched access rate elements: end office switching, which may include a set up fee, tandem transport and switching, and information surcharge.

AT&T's or Verizon's intrastate access charges, plus 10%, effective January 1, 2009.

Small local exchange carriers that do not opt in to the Uniform Regulatory Framework shall phase out non-cost-based elements over their next two rate case cycles.

This proceeding is closed.

II. Background

On October 4, 2001, AT&T Communications of California (old AT&T)² filed a petition pursuant to § 1708.5³ seeking a reduction in intrastate access charges. In Decision (D.) 03-08-018, the Commission granted old AT&T's petition and noted that certain components of the access charges are not cost-based or associated with the costs of any specific transport function. In the decision resolving the first phase of the proceeding, D.04-12-022, the Commission decided that should it authorize local exchange carriers to decrease access charges, these carriers would also be authorized to offset any decrease in access charge revenue with comparable increases in revenue for local services by imposing a surcharge on local telephone service.

The Commission resolved Phase II of this proceeding with D.06-04-071, which eliminated the non-cost-based elements of the access charges assessed by the two largest incumbent local exchange carriers, Pacific Bell Telephone Company (now merged with AT&T) and Verizon. That decision also directed the small, mid-sized, and competitive local exchange carriers to submit

² This refers to AT&T prior to its merger with SBC.

³ All section citations are to the Public Utilities Code, unless otherwise indicated.

comments on whether any non-cost-based elements of their respective access charges should also be modified in a Phase III decision.

On March 13, 2007, the proposed decision resolving the remaining Phase III issues was mailed to the parties for comment. Based on the parties' comments and reply comments, the assigned Commissioner and ALJ determined that further procedural actions were required before the record was ready for consideration by the Commission. The proposed decision was therefore withdrawn.

On May 4, 2007, the assigned Commissioner and ALJ issued a joint ruling requiring further procedural steps and seeking comment on additional issues. The ruling directed the mid-size, small, and competitive local exchange carriers to provide notice to their customers of this proceeding and the potential for local service rate increases. Comment was sought on the Commission's decision granting pricing flexibility to AT&T, Verizon, SureWest Telephone, and Citizens Telecommunications Company of California dba Frontier Telecommunications Company of California (Frontier) for all services except basic residential service, and the most appropriate means for treating these carriers in this docket. Comments were also sought on using a two-rate case cycle to move the small local exchange carriers to comply with the policy in D.06-04-071, and whether the FCC's interstate access charge cap methodology should be adopted for intrastate charges as well.

The positions of the parties are set out below on the initial issues in this proceeding, as well as the later issues. Today's decision resolves all remaining issues in this proceeding.

III. Commission Decision Eliminating Regulation of Retail Prices

On August 30, 2006, the Commission adopted D.06-08-030 which substantially changed rate regulation for California's four largest incumbent local exchange carriers – AT&T, Verizon, SureWest Telephone, and Frontier - by adopting the Uniform Regulatory Framework. With the objective of symmetrically regulating all providers of local exchange service, the decision immediately eliminated all retail price regulations for all business services. Retail price regulation for residential service, with the exception of basic service, was also eliminated. The existing price caps on basic residential service will remain in place until January 1, 2009, after which these four carriers will have unlimited authority to set prices for basic residential service. Geographically averaged residential basic service rates will no longer be required. The Commission's decision also recognized two on-going proceedings that will address basic residential service provided pursuant to the Commission's low-income program, Lifeline, and California High Cost Fund B subsidized service.

The decision also relaxed the procedural requirements for these four incumbent local exchange carriers when offering new services and filing tariffs. These carriers can now provide new services with full pricing flexibility. The carriers were also authorized to allow all tariffs to go into effect on a same day filing, but any tariffs that impose price increases or service restrictions require a 30-day advance notice to all affected customers.⁴

Our decision today reflects the changes adopted in the Uniform Regulatory Framework.

⁴ The Commission established three levels of scrutiny for advice letters in D.07-09-019.

IV. Positions of the Parties

A. Initial Issues

SureWest Telephone and its broadband affiliate, SureWest TeleVideo, opposed eliminating non-cost-based elements from access charges prior to the Federal Communications Commission (FCC) completing its comprehensive review of access charges in Docket No.01-92. The SureWest affiliates agreed, however, that if this Commission were to eliminate the non-cost-based elements, then any reduction in access charge revenue needed to be accompanied by corresponding rate rebalancing.

Frontier and its affiliates⁵ stated that extending the Commission policy developed in Phase II of this proceeding to Frontier and its affiliates would have no effect because their access charges do not have non-cost-based elements. These carriers also supported waiting for the FCC to complete its review of access charges.

The small local exchange carriers⁶ opposed eliminating non-cost-based elements from their access charges. In addition to recommending that this Commission await final action by the FCC, these carriers pointed out that

⁵ Citizens Telecommunications Company of the Golden State dba Frontier Communications Company of the Golden State, Citizens Communications Company of Tuolumne dba Frontier Telecommunications Company of Tuolumne, Electric Lightwave, Inc., and Frontier Communications of America.

⁶ Calaveras Telephone Company, Cal-Ore Telephone Company, Ducor Telephone Company, Global Valley Network (Evans Telephone Company), Foresthill Telephone Company, Happy Valley Telephone Company, Hornitos Telephone Company, Kerman Telephone Company, Pinnacles Telephone Company, Ponderosa Telephone Company, Sierra Telephone Company, Inc., Siskiyou Telephone Company, Volcano Telephone Company, and Winterhaven Telephone Company.

revenue rebalancing would require them having rate increases ranging from 7% to 47%. These carriers also noted that the Commission's Phase II decision resolved the access charge issue for the majority of the California market, with the small LECs affecting only a "very small share of the total California long distance market."

AT&T and its competitive local exchange carrier affiliates - TCG Los Angeles, Inc., TCG San Diego, Inc., and TCG San Francisco, Inc. - supported extending the Commission's access charge policy to other incumbent and competitive local exchange carriers.

MCImetro Access Transmission Services (MCI Metro) agreed with the Commission's direction in eliminating non-cost-based elements in access charges for all local exchange carriers, and recommended that competitive local exchange carriers' access charges should be capped. The cap should be the access charge imposed by incumbent local exchange carrier in whose territory the competitive local carrier's switch is located.

Verizon West Coast Inc. stated that its access charges do not contain an element named "network interconnection charge or transport interconnection charge" and thus extending the policy of D.06-04-071 to Verizon West Coast, Inc., would have "no impact."

The California Association of Competitive Telephone Companies, (CALTEL) urged the Commission to continue to exclude competitive carriers from consideration in this proceeding. If, however, the Commission decided to impose controls on competitive carriers' intrastate access charges, then CALTEL's members would be "willing to be subject to a cap" on such charges, with six conditions: (1) the cap must be set at the incumbent carrier's access rate plus 10%, (2) maintain tariffing flexibility, (3) charge for equivalent incumbent

services, (4) use small or mid-size incumbent rate, not just large, (5) allow rate rebalancing, and (6) allow a three-year implementation period. CALTEL also recommended an interim benchmark rate of \$0.025 per minute for competitive carriers.

In reply comments, Light-Year Innovations recommended that any competitive carrier cap should be set based on the access charges of the small local exchange carriers. Light-Year contended that the levels of buying power, efficiencies, economies of scale, and other business expenses are likely to more closely mirror those of the small carriers rather than the large carriers. It proposed a cap of \$0.04 to \$0.07 per access minute.

MCI Metro agreed in principle with CALTEL's proposed cap but objected to several of the conditions. MCI Metro observed that CALTEL's requested charge of 10% above the corresponding incumbent local exchange carrier's rate was not supported by any rationale, and that it was at odds with the FCC's pricing policy. MCI Metro was also "puzzled" by CALTEL's request for rate rebalancing authority, because all competitive carriers have substantial pricing flexibility and change prices readily. Finally, MCI Metro objected to CALTEL's requested three-year phase in period as being unnecessary and inappropriate.

The Division of Ratepayers Advocates (DRA) opposed extending the intrastate access charge policy to the small local exchange carriers due to the likelihood of increased draws on the subsidy mechanism for high-cost small carriers.⁷ DRA supported capping the competitive carriers' access charges.

⁷ This fund is called California High Cost Fund A (CHCF-A) and it distributes amounts collected from a surcharge on all intrastate telephone service in California. In order to

Footnote continued on next page

Qwest Communications Corporation urged the Commission to extend its access charges policy to the small and mid-sized carriers, and to cap the competitive carriers' charges.

Sprint Communications L.P. supported requiring the small and mid-sized carriers to remove non-cost-based elements from intrastate access charges. Sprint also supported the proposed cap for competitive carriers at the access charge for the incumbent carrier in whose territory the competitive carrier is operating, but opposed the proposed 10% adder. Sprint recommended that the Commission's next major reform for intercarrier compensation should be to create a compensation system with only one rate for the termination of all types of traffic. Sprint contended that pricing differentials between, for example, local and toll calls, wireline and wireless calls, are legacies of the historic system, and, if abandoned, would result in lower prices for consumers.

B. Further Issues

In the May 4, 2007, joint ruling, the parties were directed to comment on aligning the regulatory treatment of AT&T and Verizon with SureWest and Frontier, allowing the small carriers two rate case cycles to phase-out non-cost based elements in their access charges, and adopting the FCC's methodology for capping competitive local exchange carriers' intrastate access charges. The comments and reply comments submitted by the parties are summarized below.

DRA and The Utility Reform Network supported terminating the authorized surcharges for Verizon and AT&T, and any similar surcharges for

receive a subsidy from CHCF-A, among other requirements, the carrier must raise its basic service rate to 150% of urban rates.

SureWest and Frontier, on the date these carriers obtain basic residential service pricing flexibility. DRA cited D.06-12-039, where the Commission terminated a surcharge for undergrounding costs on the date AT&T obtains full pricing flexibility.

Verizon⁸ argued that competitive local exchange carriers' intrastate access rates are unreasonably high, and that some of these carriers are increasing these rates. Verizon recommended that the Commission move promptly to apply the FCC regime to cap these rates. Verizon also supported extending the surcharge methodology currently applicable to Verizon and AT&T to SureWest.

AT&T and its affiliated competitive local carriers - AT&T Communications of California, Inc., TCG Los Angeles, Inc., and TCG San Diego - also supported adopting the FCC methodology for capping competitive local exchange carriers' intrastate access rates, with no extended transition period. AT&T also pointed out that the FCC interstate access charge methodology limits carriers to charging only for functions actually provided, not for other related services not used by the purchasing carrier. AT&T and its affiliates contended that carriers subject to the Uniform Regulatory Framework should be able to use their approved surcharge until pricing flexibility is implemented, and then these carriers should be able to choose the means, if any, used to recover lost revenues caused by reducing intrastate access charges.

SureWest sought the same revenue recovery methodology as approved for Verizon and AT&T, but implemented through its own rate design methodology. SureWest also objected to a lengthy phase-in period for competitive local

⁸ Verizon California Inc., Verizon West Coast, Inc., MCI Metro Access Transmission Services, LLC, and MCI Communications Services.

exchange carriers to reduce intrastate access charges. SureWest contended that this would allow those carriers to have a competitive advantage over other carriers that have been forced to reduce these rates and increase local exchange rates.

Telscape Communications contended that capping competitive local exchange carriers' intrastate access charges at the rate charged by the incumbent local exchange carrier operating in the area would prevent competitive carriers from recovering fair and reasonable compensation because the competitive carriers have much higher cost structures than the large incumbent carriers. Telscape supported incremental steps to move any access charges that are beyond a zone of reasonableness gradually down to reasonable levels. Telscape pointed out that the FCC has existing rules that prohibit much of the supposed access charge abuse being carried out by competitive local carriers, and that across-the-board rate caps are not justified.

CALTEL opposed capping competitive local carriers' rates but, should the Commission decide to impose a cap, the intrastate access charges of a mid-sized carrier would be more appropriate than an incumbent local exchange carrier. CALTEL also supported a three-year step-down period, as was adopted by the FCC when it capped interstate access rates, and opposed the 30-day "flash cut" in the proposed decision. CALTEL indicated that a transition period was the single most important issue for its members.

A coalition of competitive carriers⁹ argued that no evidence supported a determination that incumbent carriers' intrastate access charges were a

⁹ Navigator Telecommunications, LLC, Eschelon Telecom, Inc., and Advanced Telecom.

reasonable cost proxy for competitive carriers'. These carriers also argued that the competitive carriers lack market power.

Cox California Telecom, L.L.C., dba Cox Communications and Time Warner California LP (Cox Communications) contended that the record did not support reducing competitive local exchange carriers' rates to that of the incumbent exchange carriers because there is no evidence that the competitive carriers' rates are too high or that the incumbents are cost-based. Should the Commission elect to do so, however, Cox Communications proposed the following components of a cap:

1. 25% adder to incumbent rate for competitive carriers
2. competitive carriers have one state-wide rate
3. three-year transition period
4. rates lower than benchmark are reasonable
5. allow competitive carriers to file tariffs with higher rates, subject to protest and
6. option to negotiate higher rates with specific carriers.

In reply comments, Cox Communications agreed with CALTEL's proposed initial cap price of \$0.025 with 180 days to implement, and a final cap, after three years, equivalent to SureWest's rate of \$0.017670.

Paetec Communications, Inc. stated that no evidence supports the conclusion that competitive carriers' costs to provide intrastate access services are equivalent to the costs incurred by incumbent carriers. Paetec opposed any rate cap, but, if the Commission adopts a cap, it should be phased in over at least a two-year period.

Sprint Communications Company urged the Commission to control intrastate access rates because access service can only be obtained from the end-

user customer's local exchange provider. As there is no possibility for a competitive alternative, the Commission must control these prices. Sprint explained that the intrastate access charges imposed by competitive carriers were approximately 66% higher than similar services provided by incumbent carriers. Sprint stated that the New York Public Service Commission resolved this by adopting a "mirror rule" which limited access charges to that of the largest carrier in the market. In this way, all carriers pay each other the same price to terminate each other's traffic. Sprint concluded that the competitive carriers' excessive intrastate access charges were "anti-competitive and anti-consumer market distortions."

Intermetro Communications, Inc., stated that it has experienced first-hand abusive practices by a competitive carrier to obtain unwarranted intrastate access fees, and cited to its subsequent lawsuits. Intermetro offered evidence showing that some competitive carriers' intrastate access charges were over twice that of the incumbent carriers, and concluded that the record supported capping competitive carriers' intrastate access rates at the rates charged by incumbent carriers. Intermetro also asked this Commission to include a requirement, adopted by the FCC, that carriers charge only for services performed. Intermetro explained that some competitive carriers offer only "blended" access rates, which include all switched access functions, which are not needed or performed for all traffic. Finally, Intermetro opposed a lengthy transition period.

Qwest also noted that some competitive local exchange carriers' intrastate access charges are up to three times that of incumbent local exchange carriers, and that numerous states have adopted the FCC's methodology.

The small interexchange carriers commented that they preferred to implement an access charge decrease over three rate cycles, rather than two as

suggested in the May 4, 2007 ruling, but did not describe any insurmountable practical issues caused by using two rate case cycles.

V. Discussion

Fair competition in the long distance market is a long-standing goal of this Commission. Ensuring fair competition requires that intrastate access charges closely follow actual costs. In D.06-04-071, we determined that AT&T's and Verizon's rate elements were not consistent with this requirement, and we eliminated the non-cost-based component of access charges. We also allowed AT&T and Verizon to impose offsetting rate increases to maintain revenue neutrality.¹⁰

As described below, we will extend the policy established in D.06-04-071 to mid-sized, small, and competitive local exchange carriers but tailor the specific implementation requirements to fit the unique characteristics of each carrier group. We will also reflect the regulatory changes adopted in the Uniform Regulatory Framework by making most significant changes effective on January 1, 2009.

A. Mid-Size Carriers – SureWest and Frontier

Frontier states that such an extension of policy is moot as regards to its intrastate access charges because those charges do not include any non-cost-

¹⁰ Our decision permitting AT&T and Verizon to impose offsetting rate increases was issued prior to the Uniform Regulatory Framework decision. Consequently, those regulatory changes were not reflected in our treatment of AT&T's and Verizon's rate changes after January 1, 2009, when the freeze on basic residential rates is expected to be lifted. In today's decision, we align our treatment of AT&T's and Verizon's surcharge with that of SureWest and Frontier; namely, the surcharge authorization shall expire on January 1, 2009, or when the basic residential rate freeze is lifted.

based elements, but has agreed to reduce its intrastate access charges an amount equivalent to SureWest's TIC (\$0.00909). The policy we adopt in today's decision will apply to both mid-sized local exchange carriers.

Both carriers are included in the Uniform Regulatory Framework and have pricing flexibility for all services other than basic residential service, which is subject to a rate freeze scheduled to be lifted on January 1, 2009.

As noted above, when we ordered AT&T and Verizon to reduce their access charges, we also authorized these carriers to impose a surcharge to recover these "lost revenues." SureWest and Frontier, could also be eligible for a similar surcharge. As explained below, however, any such surcharge would expire on January 1, 2009. We will make the reductions necessary in SureWest's and Frontier's intrastate access rates effective January 1, 2009; consequently, no interim surcharge will be necessary. Until January 1, 2009, SureWest's and Frontier's intrastate access rates are capped at the current levels.

In its comments, SureWest explained that while Frontier's intrastate access rates do not have an explicit non-cost based element, such as a NIC or TIC, "non-cost based expenses remain embedded in its access charges as they were never separated into an individual access charge element." To remedy this, SureWest requested that the Commission reduce Frontier's access charges in an amount equivalent to SureWest's reduction. As noted above, Frontier has agreed to reflect this reduction.

B. Small Local Exchange Carriers

Data filed by the small local exchange carriers show that non-cost-based intrastate access charge rate elements are responsible for substantial portions of certain carriers' revenue requirements. Abruptly altering this long-standing arrangement could lead to sharp rate changes and customer confusion or

dissatisfaction. No party, however, has presented a convincing rationale for exempting these carriers from the otherwise applicable policy against non-cost-based elements in intrastate access charges.

We will, therefore, extend our policy to the small local exchange carriers but will move these carriers towards compliance with our policy through gradual rate changes.

The small local exchange carriers shall include in their next regularly scheduled rate case filing a long-term plan for fully implementing our policy requiring intrastate access charges to be based on cost, as well as a proposed first step towards such implementation.¹¹ The long-term plan shall extend for no more than two rate case cycles to allow these carriers to phase in our policy.¹²

The small local exchange carriers are not currently included in Uniform Regulatory Framework. Should any such carrier become regulated under the Uniform Regulatory Framework, then our access charges policy as set forth above for SureWest and Frontier should be implemented concurrently as well.

C. Competitive Local Exchange Carriers

The record shows allegations of competitive carriers imposing excessive intrastate access charges, and that the purchasing carriers are unable to seek alternatives to terminating the call traffic. When confronted with similar allegations with interstate access charges, the FCC adopted a rule that all carriers must charge the rate of the competing incumbent carrier. Many parties support a

¹¹ Any carrier that does not have a scheduled general rate case filing shall file a long-term plan no later than three years after the effective date of this order.

¹² If feasible, any small carriers currently in the rate case process may supplement their rate case filing to include the required long-term plan.

similar rule for California intrastate access charges, but many competitive carriers have raised substantial practical issues with this approach.

We will, therefore, adopt CALTEL's recommendation for a cap of \$0.025,¹³ effective April 1, 2008, for the competitive carriers to originate or terminate intrastate access. This modest cap will ensure that these carriers' intrastate access charges are closer in line with other carriers.¹⁴ Carriers with current intrastate access charges in excess of \$0.025 shall file and serve an advice letter¹⁵ within 30 days of the effective date of this decision adjusting their intrastate access charges to conform to the April 1, 2008, cap.

Effective January 1, 2009, competitive carrier's intrastate access charges shall be capped at the higher of AT&T's or Verizon's intrastate access charges, plus 10%, with each rate element provided also capped at the higher of AT&T's or Verizon's comparable intrastate access charge rate element, plus 10%. This 2009 cap is also based on CALTEL's recommendation. Advice letters implementing this rate cap shall be filed and served no later than November 3, 2008.

Existing contracts between carriers that specify intrastate access charges are not affected by this decision. Carriers may voluntarily contract with each

¹³ In today's decision, all access rates are per minute of use.

¹⁴ When filing advice letters to set switched access rates, carriers must include an electronic spreadsheet demonstrating that their composite switched access rate, and its elements, is consistent with these caps.

¹⁵ In D.06-08-030 the Commission modified the advice letter process for many services but not for wholesale service. Pending further modifications, the incumbent carriers shall submit applications and competitive carriers shall file advice letters consistent with pre-D.06-08-030 procedures to change intrastate access rates.

other to pay intrastate access charges different from those adopted in today's decision.

The Commission may authorize intrastate access charges higher than these caps upon a showing, supported by a detailed cost-of-service study, that a competitive carrier's actual costs exceed the caps adopted in today's decision.

VI. Conclusion

Our primary objective in this proceeding is to ensure that California's long distance markets remain competitive and working to the benefit of California customers. This order resolves the remaining questions set forth in R.03-08-018 and brings finality to intrastate access charges. This proceeding should be closed.

VII. Hearings Are Not Required

No hearings are necessary as there are no disputed issues of material fact.

VIII. Comments on Proposed Decision

The proposed decision of the ALJ in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on November 5, 2007, and reply comments on November 13, 2007.

AT&T generally supported the PD but sought clarification that the applicable cap would be incumbent carrier in the area which the competitive carrier was providing service. AT&T opposed the one-year transition period for competitive carriers and the requirement that it and Verizon file Tier 3 advice letters to raise their access charges. AT&T recommended that the advice letter process used prior to D.06-08-030 be retained.

Verizon also generally supported the PD but requested changes to close what it termed a “loophole” in the decision which would allow competitive carriers to charge for services they do not perform, and to clarify three points in the ordering paragraphs. Verizon provided helpful recommended revisions for the Ordering Paragraphs.

SureWest and Frontier jointly requested that their access charges rates should be reduced by the amount of SureWest’s TIC, \$0.00909 per minute, rather than capped at the higher of AT&T’s and Verizon’s. These carriers argued that the focus of this proceeding has been non-cost-based elements, such as TIC, and that the cost structures of the largest carriers are not comparable to SureWest’s or Frontier’s.

The small local exchange carriers requested no revisions to the PD.

CALTEL sought clarifications to the proposed cap based on incumbent local exchange carriers’ access charges.

Cox generally supported the PD but sought modifications to allow voluntary agreements with different access charges, eliminate the proposed officer statement in the competitive carriers’ advice letters, delete language the might suggest that competitive carriers must adopt certain rate structures, and clarify that no carrier’s access charges are cost-based.

Qwest agreed with Verizon that competitive carriers should be prohibited from charging for services they do not perform, and asked the competitive carriers be required to serve their advice letters lowering their rates on all parties to this proceeding.

Telscape disagreed with Qwest and Verizon and explained that competitive carriers’ networks are configured differently from the incumbent carriers’, and that access charges should be set based on the functional

equivalence of the networks. Telscape stated that the FCC recognized this difference and found that competitive carriers provide the functional equivalent of all rate elements usually included in incumbent carriers' access charges.

The coalition of competitive carriers urged the Commission to modify the PD to eliminate the PD's cap on these carriers' charges, and set hearings to take evidence on whether AT&T's or Verizon's rates are sufficient to allow the competitive carriers to recover their costs of providing access services.

Paetec Communications submitted reply comments opposing AT&T's proposed changes to the PD. Paetec stated that it supported overall the PD's recommendation because it allows competitive carriers to cap their intrastate access rates at Verizon's intrastate access charges anywhere in the state, which is a more realistic price than AT&T's, and that AT&T's insistence that the competitive carriers charge the same as the incumbent carrier would result in the competitive carriers failing to recover their costs. Paetec joined Telscape in supporting a "functional equivalence" standard for access charges rather than an element-by-element charge.

Fones4All Corp. and Light-Year Innovations opposed using incumbents' rates as the cap on competitive carrier's rates because competitive carriers' costs are higher than the larger incumbent carriers.

In reply, AT&T urged the Commission to reject the competitive carriers' assertions, and to adopt the cap proposed in the PD. Verizon disputed the competitive carriers' contention that higher costs justified higher access charges for the competitive carriers. Verizon concluded that the price cap based on the incumbent's rates as reflected in the PD was supported by substantial evidence and should be adopted. Verizon also supported the proposed reduction of both SureWest's and Frontier's access charges by an amount equal to SureWest's TIC.

SureWest and Frontier, jointly, stated that reducing their access charges to the higher of Verizon's or AT&T's would require an increase in local service charges of over \$4.00 per month, which is much more than the increases of less than a dollar necessary when the Commission reduced Verizon's and AT&T's access charges in D.06-04-071. SureWest and Frontier also emphasized the complexities created by capping access charges at the incumbent carrier's rates, specifically whether the price should be on an across the boards basis, as supported by the competitive carriers, or on an element by element basis, which AT&T and Verizon favor. SureWest and Frontier concluded that removing the TIC amount, as they proposed, was a simpler and fairer way to accomplish the Commission's goals.

The coalition of competitive carriers reiterated their claim that the PD violates § 1757 which requires that Commission decisions be based on substantial evidence. These carriers also contended that the competitive carriers lack market power over access charges.

Cox disputed AT&T's comments that the PD "adopted" the FCC approach, and pointed out that the PD "adapted" the FCC such that the competitive carriers are not required to mirror the incumbent's rate structure.

Qwest opposed Cox's request that the PD be modified to allow competitive carriers to negotiate voluntarily lower access charges. Qwest argued that §§ 532 and 453 require these carriers to charge tariffed rates and not to discriminate. Qwest explained that it was aware of "off-tariff pricing arrangements" between certain carriers and incumbents which have not been made available all competitive carriers.

CALTEL supported the PD, and Cox's interpretation that the PD did not require competitive carriers to mirror the incumbent's rate structure.

IX. Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and Maribeth A. Bushey is the assigned ALJ in this proceeding.

Findings of Fact

1. The intrastate access charges of the small, mid-size, and competitive local exchange carriers may include rate elements which are not based on cost.
2. In D.06-04-071, the Commission eliminated non-cost-based elements from the intrastate access charges of Verizon and AT&T.
3. In D.06-08-030, the Commission adopted the Uniform Regulatory Framework which gave AT&T, Verizon, SureWest and Frontier immediate rate flexibility for all prices, other than basic residential service, and the rate freeze for basic residential service is expected to be lifted on January 1, 2009.
4. For small local exchange carriers, the rate changes necessary to maintain revenue neutrality include up to a 47% increase.
5. Doing intrastate access charge cost-of-service studies for each competitive and mid-sized local exchange carriers is inefficient and unnecessary.
6. The Commission had not adopted revised advice letter filing requirements for wholesale tariff filings. The three tiers adopted in D.06-08-030 do not apply to intrastate access charge adjustments.
7. There are no disputed issues of material fact pending in this proceeding.

Conclusions of Law

1. No hearings are necessary.
2. To the extent practical, intrastate access charges should be cost-based and competitive carriers should charge only for functions provided to transport a call.

3. In D.06-04-071, the Commission adopted a methodology for calculating revenue reductions attributable to the elimination of non-cost-based elements in access charges, and a surcharge to recover this amount. Authorization for this surcharge is not necessary when the residential rate freeze expires, currently scheduled for January 1, 2009.

4. The small carriers should have two rate case cycles to implement this policy, unless a carrier opts in to the Uniform Regulatory Framework, then the carrier should comply with the requirements for the mid-sized and competitive carriers. All small carriers that do not have a scheduled rate case filing shall file a longer-term plan to implement this policy no later than three years after the effective date of this order.

5. The mid-sized exchange carriers should remove the Transport Interconnection Charge, or the equivalent amount, from their intrastate access charges effective January 1, 2009, or the date on which the residential rate freeze is lifted.

6. The competitive local exchange carriers should charge no more than \$0.025 per minute to originate or terminate intrastate access, effective April 1, 2008.

7. The competitive local exchange carriers should charge no more than the higher of AT&T's or Verizon's intrastate access charges, plus 10%, effective January 1, 2009, and each rate element provided should also be limited to the higher of AT&T's or Verizon's comparable rate element, plus 10%. Advice letters implementing this rate cap should be filed and served no later than November 3, 2008.

8. Incumbent carriers should file an application to change intrastate access charges. Competitive carriers should file an advice letter consistent with pre-D.06-08-030 procedures to change intrastate access charges.

9. If supported by a detailed cost-of-service study, the Commission may authorize intrastate access charges higher than the caps adopted for competitive carriers.

10. Existing contracts between carriers that specify intrastate access charges are not affected by this decision. Carriers may voluntarily contract with each other to pay intrastate access charges different from those adopted in this decision.

11. This decision should be effective immediately.

12. This proceeding should be closed.

FINAL ORDER

IT IS ORDERED that:

1. Effective January 1, 2009, or the date that the residential rate freeze is lifted for the large and mid-sized incumbent local exchange carriers under the Uniform Regulatory Framework, SureWest Telephone, Citizens Telecommunications Company of California dba Frontier Telecommunications Company of California, shall exclude from their intrastate access charges the Transport Interconnection Charge or equivalent amount.

2. The intrastate access rates of SureWest Telephone and Citizens Telecommunications Company of California dba Frontier Telecommunications Company of California are capped at current levels until January 1, 2009 or the date which the residential rate freeze is lifted.

3. Effective April 1, 2008, all California-certificated competitive local exchange carriers shall impose intrastate access charges no greater than \$0.025 per minute for originating or terminating call traffic. Such carriers shall file and serve advice letters to implement any required intrastate access charge

reductions within 30 days of the effective date of this order. The advice letter filing shall include an electronic spreadsheet demonstrating compliance with the per minute of use cap.

4. Effective January 1, 2009, all California-certificated competitive local exchange carriers shall impose intrastate access charges no greater than the higher of Pacific Bell Telephone Company doing business as AT&T California's (AT&T) and Verizon California Inc.'s (Verizon) intrastate access charges per minute of use, plus 10%, and each access charge rate element that is provided shall be no greater than the higher of AT&T's or Verizon's comparable charge, plus 10%, for that rate element. Advice letters implementing this rate cap shall be filed and served no later than November 3, 2008.

5. Carriers may voluntarily contract with each other to pay intrastate access charges different from those adopted in today's decision.

6. The Commission may authorize higher intrastate access charges upon a demonstration, including a thorough cost-of-service study, of higher actual costs.

7. The surcharges adopted in Decision 06-07-041 for AT&T and Verizon shall terminate on the date the freeze on basic residential service is lifted, currently scheduled for January 1, 2009. AT&T and Verizon shall file applications to obtain Commission authorization for any modifications to intrastate access charges.

8. Each small local exchange carrier shall eliminate any non-cost-based rate elements from its access charges and shall include in its next general rate case filing a long-term plan to bring its access charges into compliance with our cost-based policy and a proposal to implement the first step in the plan in the immediate rate application. The plan shall extend for no more than two rate case cycles. If feasible, carriers currently processing a general rate case may

supplement the current rate case filings to include a long-term plan. Small carriers that do not have a scheduled rate case filing shall file a long-term plan no later than three years after the effective date of this order.

9. Any small local exchange carrier that becomes regulated under the Uniform Regulatory Framework shall comply with the requirements for mid-size local exchange carriers.

10. No hearings are necessary for this phase of this proceeding.

11. Rulemaking 03-08-018 is closed.

This order is effective today.

Dated December 6, 2007, at San Francisco, California.

MICHAEL R. PEEVEY

President

DIAN M. GRUENEICH

JOHN A. BOHN

RACHELLE B. CHONG

TIMOTHY ALAN SIMON

Commissioners

I reserve the right to file a concurrence.

/s/ RACHELLE B. CHONG

Commissioner

R.03-08-018
D.07-12-020

Concurrence of Commissioner Rachelle Chong
Order Instituting Rulemaking to Review Policies Concerning Intrastate
Carrier Access Charges
Final Opinion Modifying Intrastate Access Charges - Item 37
December 6, 2007

I concur in today's decision to remove implicit subsidies from the intrastate access charge system. I concur because, while this decision is a step in the right direction, it is only a modest step towards where the rest of the nation is with respect to intercarrier compensation reform.

The record provides ample evidence that the cap could be set at a much lower rate. The CALTEL proposal would base the cap on the access rate of the respective ILEC territory, instead of the higher Verizon rate plus 10%. If we set the cap lower, following federal movement and some states, consumers would benefit with lower intrastate long distance rates. But our decision is keeping the cap higher, in order to continue implicit subsidies to the competitive local exchange carriers. I would have preferred a lower cap.

We have also missed an opportunity to make access charges more economically rational. Such reforms would promote competition while aligning access charges more closely with access *costs*. The removal of subsidies from access rates would reinforce a similar action that the FCC took for interstate access in 2001. The 2001 FCC action resulted in lower interstate long distance

rates which, in turn, dramatically increased the use of communication networks by consumers.¹⁶

I am not persuaded by the arguments that we should not act in this proceeding. Review of the record reveals that CLEC access rates vary quite dramatically. On average, CLEC access rates are well above the rates that ILECs charge for similar service. Such high rates inappropriately shift costs that should be recovered from end users to the long distance market.

I am convinced that the best means of proceeding is to provide a bright-line for all carriers that will make easier effective enforcement. So while I would have liked to go further and set that line closer to cost, this action is one I do support.

Dated December 6, 2007, at San Francisco, California.

/s/ RACHELLE B. CHONG
RACHELLE B. CHONG
Commissioner

¹⁶ See, Federal Communications Commission, Industry Analysis and Technology Division of the Wireline Competition Bureau, *Trends in Telephone Service*, February 2007 at Tables 10.2, 11.3, and 13.4.