

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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

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

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

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

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

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

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

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

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

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

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

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

**ADMINISTRATIVE LAW JUDGE'S RULING
SETTING SCOPE AND SCHEDULE FOR TRUE-UP PHASE**

This ruling sets a schedule for the “true-up” phase of the above-captioned proceedings (commonly known as the “2001/2002 UNE Reexamination”).

In May 2002, the Commission adopted Decision (D.) 02-05-042 setting interim rates for the unbundled network elements (UNEs) that Pacific Bell

Telephone Company, doing business as SBC-California (SBC-CA) sells to competitive local exchange carriers (CLCs). The interim UNE rates were adopted subject to adjustment or “true-up,” either up or down, once permanent rates for SBC-CA were set in a later phase. Shortly thereafter, the Commission set additional interim UNE rates in D.02-09-052.

In September 2004, the Commission issued D.04-09-063 adopting permanent UNE rates for SBC-CA, and ordering SBC-CA to calculate any billing adjustments owed to or by interconnecting carriers for the difference between interim rates set earlier in D.02-05-042 and D.02-09-052 and the new permanent rates. At the same time, the Commission stayed the payment of these billing adjustments pending the outcome of further proceedings to consider payment options or other mitigation to lessen any negative effects of the true-up, and whether and how to implement any shared and common cost mark-up revisions along with the true-up. (D.04-09-063, Ordering Paragraph 4.)

At a prehearing conference on October 13, 2004, parties expressed their views regarding a schedule for the Commission to resolve disputes over the true-up of interim to final rates, and suggested several issues the Commission should address in this phase.

Scope

The issues the Commission will consider in this phase will include:

- SBC-CA’s calculation of the true-up amounts and the proper forum for carriers to resolve potential disputes over these calculations.
- Whether payment of the billing adjustments will have negative effects on the competitive local exchange market or constitute a financial hardship for certain CLCs.
- Whether the Commission should order mitigation, including but not limited to long-term payment options

and interest limits, to alleviate possible negative effects of true-up payments.

- Whether SBC-CA should include in the true-up calculation an adjustment of the 21% shared and common cost markup that a recent Ninth Circuit Court of Appeal order holds was incorrectly calculated.¹

Schedule

The following schedule is adopted for this phase.

October 22, 2004

SBC-CA provides its calculation of true-up amounts to each carrier and files the same with the Commission, along with a motion for confidential treatment of these true-up amounts since carriers may be concerned that this billing information could reveal competitively sensitive information.

November 1, 2004

SBC-CA files its proposal for:

- Payment of true-up amounts, including any payment options it is offering,
- Criteria the Commission should use to determine if carriers will be competitively harmed or undergo a financial hardship,
- How to resolve disputes over true-up calculations,
- Whether the true-up calculations should incorporate any adjustment to the shared and common cost markup and how that would be calculated. Given that the Ninth Circuit's order is the subject of a pending rehearing request, SBC-CA should brief whether the Commission should order payment of the true-up less the contested 21% markup, pending finality of the Ninth Circuit's order.

¹ See *AT&T Communications of California, Inc. et al., v. Pacific Bell Telephone Company, et al.*, 375 F.3d 894.

November 19, 2004

Carriers and other interested parties may respond to SBC-CA's proposal, and offer their own proposals for:

- Payment options
- Criteria the Commission should use to determine if carriers will be competitively harmed or undergo a financial hardship
- Mitigation to reduce competitive harm or financial hardship
- How disputes over calculations should be resolved
- Whether the true-up should incorporate any adjustment to the shared and common cost markup and how that would be calculated. Given that the Ninth Circuit's order is the subject of a pending rehearing request, parties should brief whether the Commission should order payment of the true-up less the contested 21% markup, pending finality of the Ninth Circuit's order.

December 8, 2004

Parties may file rebuttal comments.
Submittal of this phase.

February 1, 2005

Commission issues draft decision on issues on this phase.

Therefore, **IT IS RULED** that the scope and schedule described herein is established for the "True-up" phase of this proceeding.

Dated October 18, 2004, at San Francisco, California.

/s/ Dorothy J. Duda

Dorothy J. Duda

Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail, and by electronic mail to the parties to which an electronic mail address has been provided, this day served a true copy of the original attached Administrative Law Judge's Ruling Setting Scope and Schedule for True-Up Phase on all parties of record in this proceeding or their attorneys of record.

Dated October 18, 2004, at San Francisco, California.

/s/ Antonina V. Swansen
Antonina V. Swansen

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 insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, *e.g.*, sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.