

ORIGINAL

Decision 84 07 121

JUL 18 1984

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
THE PACIFIC TELEPHONE AND TELEGRAPH
COMPANY, a corporation, for authority
to increase certain intrastate rates
and charges applicable to telephone
services furnished within the State
of California due to increased
depreciation expense.

Application 82-11-07
(Filed November 4, 1982)

Application 83-01-22
(Filed January 17, 1983)

OII 83-04-02
(Filed April 20, 1983)

Application 83-06-65
(Filed June 30, 1983)

(I&S) Case 83-11-07
(Filed November 22, 1983)

And Related Matters.

In the Matter of the Application of
AT&T Communications of California,
Inc. for emergency relief.

Application 84-06-057
(Filed June 19, 1984)

ORDER DIRECTING EVIDENTIARY HEARINGS,
CONSOLIDATING PROCEEDINGS, AND
MODIFYING ADMINISTRATIVE LAW JUDGE RULING

On June 29, 1984, this Commission issued Decision (D.)
84-06-193, which granted in part a motion for stay filed on June 18
by AT&T Communications of California, Inc. (AT&T-C) with respect to
D.84-06-111, issued June 13 in Application (A.) 82-11-07 et al. As
explained more fully in D.84-06-193, that order temporarily stayed
that portion of D.84-06-111 which ordered revisions in rates for
AT&T-C, which would have reduced its annual revenues by approximately
\$73.5 million.

The purpose of the stay was to maintain the status quo
pending analysis of allegations by AT&T-C that, according to its

current projections, it will experience a loss of approximately \$80 million on 1984 California intrastate operations. AT&T-C estimates this loss based upon an annualized projection of recorded results from its first four months of operations in 1984; liability under the Universal Telephone Service Tax Act which took effect July 1, 1984; and the \$73.5 million revenue reduction ordered in D.84-06-111. AT&T-C attributes the projected loss primarily to a shortfall in actual intrastate revenues below the level estimated in D.84-06-111, without a comparable decline in access charge expenses.

In coordination with its motion for stay, AT&T-C filed on June 19, 1984, an application for emergency relief, which was docketed as A.84-06-057. Based on the same allegations of poor current financial results presented in the motion for partial stay, A.84-06-057 seeks not an increase in rates but a reduction in expenses due to access and billing charges. AT&T-C refers to several aspects of the access and billing charges currently levied by Pacific Bell (Pacific) and General Telephone Company of California (General) and seeks adjustments which would diminish the expense burden to AT&T-C. A.84-06-057 also requests "appropriate accounting orders," apparently to require that certain revenues of Pacific and General be held subject to refund pending revisions in access and billing charges.

The revenue reduction ordered by D.84-06-111 was derived from a record based on 1982 recorded operating results trended into 1983. Because AT&T-C began operations after divestiture in January 1984, no actual recorded operating results for AT&T-C were available upon which to base our decision. The data supplied by AT&T-C in its requests for a partial stay and for emergency relief, as reviewed on a preliminary basis by our staff, indicate a substantial difference from the estimates in the hearing record. Accordingly, it appears that a further record should be developed in order to determine the appropriateness of the revenue reduction ordered in our June 13 decision.

We do not contemplate reopening the rate proceeding de novo. Too much time and effort have been expended developing the present record and too few resources are available for that to be done. In any event, our Rate Case Plan (RCP) permits AT&T-C, as one of the heirs to The Pacific Telephone and Telegraph Company, to file a new rate application later this year on a 1986 test year basis.

In the meantime, we will order further hearings with respect to certain limited aspects of AT&T-C results of operations for test year 1984 - those aspects which have been directly called into question by the AT&T-C filings. The purpose of the further hearings will be to redetermine the level of 1984 intrastate revenues and certain expenses for AT&T-C. The expense categories subject to reexamination will be access and billing charge expenses, lease payments to General for interLATA facilities, and depreciation expense. In addition traffic expense, the operating expense category which varies most directly with revenues, will be examined and adjusted as necessary to reflect the change in estimated revenues. Except for these adjustments, the expense levels and ratemaking disallowances adopted for AT&T-C in D.84-06-111 will not be reevaluated.

The lease payments and depreciation expense issues are being reopened because evidence relevant to these items was excluded from consideration in D.84-06-111 solely to comply with the "general spirit of the RCP." D.84-06-111 stated that this evidence could be considered in subsequent proceedings. In view of the reopening of AT&T-C results of operations, it is appropriate that these issues be reconsidered in that context. We note that this action is consistent with that requested by AT&T-C in its application for rehearing and modification of D.84-06-111, filed July 13, 1984

A prehearing conference will be scheduled for Monday, September 10, 1984, to plan for these further hearings regarding AT&T-C results of operations. AT&T-C will be required to compile and submit to the Commission staff its most current available data bearing on the revenue and expense items at issue, together with

prepared testimony and exhibits, such materials to be served on all appearances no later than August 31, 1984.

Neither of the AT&T-C filings calls into question the changes in rate design set forth in D.84-06-111 except as they affect total revenues. In order to permit the adopted rate design to go into effect while preserving the current financial operating condition of AT&T-C pending the outcome of the further hearings, we shall lift the partial stay ordered by D.84-06-193 but shall impose a temporary surcharge on all AT&T-C rates in the amount of 4.21%, calculated to neutralize temporarily the effect of the \$73.5 million D.84-06-111 revenue reduction. The revenues collected pursuant to this temporary surcharge will be held subject to refund pending the outcome of the further hearings provided for above. This surcharge will be in addition to the 4.167% surcharge authorized by Commission Resolution (R.) T-10849 to implement the Moore Universal Telephone Service Act of 1983 and our D.84-04-053.

It must be emphasized that both the partial stay and the temporary surcharge which now replaces it result from extraordinary conditions. Our order reducing long distance rates was based upon the best information available at the time. Because divestiture took place at the beginning of 1984, there was no opportunity to produce in a hearing record actual results of operations sufficient to base an order on the actual experience of the new entities. We continue to believe that our discussion of issues, conclusions reached, and orders made in D.84-06-111 are sound and should take effect as promptly as possible. Accordingly, it will be the responsibility of AT&T-C in the further hearings provided for above to show by clear and convincing evidence why the full rate reduction ordered in our June 13 decision should not take effect expeditiously by elimination of the 4.21% surcharge.

We will take this opportunity to correct an omission in D.84-06-111 regarding the authorized optional discount plans for off-peak and large users of toll service. To make the discount plans for

AT&T-C consistent with the discount plan authorized for Pacific, and for the reasons stated by staff witness Popenoe in regard to the Pacific plan, the discount plans approved for AT&T-C will not be available to resellers of toll service.

The relief requested by AT&T-C in A.84-06-057, to the extent it goes beyond the relief already granted by D.84-06-193 and R. T-10849, appears to concern issues associated with the second phase of hearings on access charges which commenced July 9, 1984, in the consolidated rate proceeding A.82-11-07 et al. In fact, AT&T-C's application for emergency relief does not seek any changes in AT&T-C rates but rather amounts to a complaint regarding the access charges levied on it by Pacific and General. Both Pacific and General have protested the AT&T-C application, raising both procedural and substantive objections to the relief from access charges which AT&T-C seeks. The protestants appear particularly concerned that AT&T-C's access charge obligations not be diminished in isolation from the broader evaluation pending in the second phase of access charge hearings in A.82-11-07 et al. Neither Pacific nor General appears to object to having AT&T-C's requests addressed in the context of the access charge hearings, which in any event is the most practical means of responding promptly to AT&T-C's concerns. Accordingly, A.84-06-057 will be consolidated with A.82-11-07 et al.

Some of the issues raised in A.84-06-057 with respect to access and billing charges levied on AT&T-C are already at issue in the Phase II access charge hearings. In particular, by ruling issued May 17, 1984, the presiding Administrative Law Judge (ALJ) has designated the current General access charges and the access charges for directory assistance as subjects for urgent review through the hearings which commenced July 9, and has listed the appropriate rate of return for access services plant and the proper application of detailed costing studies by both Pacific and General among numerous issues set for further review in the Phase II hearings. This appears

to account for three of the five issues listed in A.84-06-057. The issue of the appropriate return on Pacific's billing and collection services, initially resolved in D.83-12-024, our interim access charge decision, is raised again in A.84-06-057. We will leave to the ALJ the determination whether that issue should be reopened in the further issues phase of this proceeding.

The last issue raised by AT&T-C is a challenge to the access services revenue requirement for Pacific adopted in D.83-12-024. The ALJ's May 17 ruling excluded the issue of revisions in Pacific's access services revenue requirement from consideration in the Phase II hearings. This is one of two elements of the ALJ ruling which have been the subject of motions for reconsideration addressed to the Commission. We will respond to these motions and deal with the issue proposed by AT&T-C below.

With regard to AT&T-C's request for "appropriate accounting orders," we note that General's access charges are already being collected subject to refund. We hope to reach a decision promptly upon the conclusion of the "urgent issues" hearings in access charges Phase II which will establish General's access charges on a permanent basis no longer subject to refund. We see no sufficient justification for setting Pacific's or other exchange carriers' access charges subject to refund at this time. These access charges were set at their present levels based on an evidentiary record developed in the fall of 1983 with the active participation of AT&T, the parent corporation of AT&T-C. AT&T had full opportunity to raise the issues now raised by AT&T-C through its petition for rehearing of D.83-12-024. AT&T chose to concentrate its attention on other issues at that time. Pacific and other carriers concurring in its tariffs should not suffer the financial penalty of having their revenues made subject to refund based solely on the uncertain claims belatedly raised by AT&T-C. Those claims will be evaluated in due course.

Returning to the ALJ ruling of May 17, we note that the most controversial aspects of that ruling are the ALJ's efforts to limit the range of issues to be considered in the Phase II access charge hearings. AT&T-C moved the Commission to overrule the ALJ's refusal to consider

"reallocation of costs from access services to intraLATA services for purposes of revising Pacific's access services revenue requirement and exchange service rates in this proceeding,"

or to consider "changes in rates for intraLATA services." In its motion filed May 25, AT&T-C urges that the Phase II hearings should be broad enough to determine whether current access charges are excessive and, if so, to remedy the situation. AT&T-C notes that both Pacific and General have substantially modified their interstate access tariffs, so that adherence to the principle of parity, tentatively adopted in D.83-12-024, would require comparable changes in intrastate tariffs. AT&T-C also asserts a need for reallocation of non-traffic-sensitive (NTS) costs away from access services, urging that the Commission should retain its flexibility to reduce the access service revenue requirement both "permanently" and "immediately." AT&T-C notes the experience of the FCC, which "has had to modify its position on various critical access issues several times."

Pacific likewise appealed the ALJ's ruling, but focused attention in its May 31 filing on his refusal to consider a change in the recovery of NTS costs to be implemented in this proceeding. Pacific wishes to offer evidence to support implementation of a change in access charge revenue requirement beginning in January 1985, apparently based on a reallocation of NTS costs and a reduction in the rate of return assigned to access services plant.

By motion filed June 18, GTE Sprint Communications Corporation (GTE Sprint) also sought reconsideration of the ALJ's ruling, but on a different issue. GTE Sprint objects to the ALJ's refusal to reexamine the level of premium access charge imposed on

AT&T-C by D.83-12-024. Because the FCC has raised the interstate premium charge since this Commission issued that decision and because Pacific has adopted a new plan to default unprescribed traffic to AT&T-C, among other reasons, GTE Sprint argues that the premium charge issue should be reopened. On July 2 AT&T-C filed its opposition to the GTE Sprint motion, basically urging that the Commission fully considered the premium charge issue in D.83-12-024 and that no intervening change of circumstances warrants reconsideration. AT&T-C argues that if the issue is reopened, a thorough investigation of actual minutes of use and actual access payments by AT&T-C's competitors would be required.

We commend the ALJ's efforts to limit the range of issues to be considered in access charges Phase II. It was not our intention in issuing D.83-12-024 that our detailed consideration of the NTS cost allocation and premium access charge issues would have to be reopened a bare seven months later. We do not share the apparent view of AT&T-C that the FCC's vacillation in setting interstate access charges is a regulatory method worthy of emulation.

A careful, objective reading of D.83-12-024 makes clear that we have, by that decision, determined the NTS cost assignment and premium access charge issues for purposes of setting access charges in this proceeding. In Phase II we intend to consider proposals for gradual revisions in NTS cost assignment, but we sustain the ALJ's interpretation that such revisions need not be implemented prior to Pacific's next general rate proceeding. We are unpersuaded that any intervening change of circumstances warrants reopening these issues.

However, the pleadings of AT&T-C and Pacific reveal a serious inconsistency in the ALJ's ruling. The ALJ has scheduled various issues for consideration in the Phase II hearings, many of which could result in changes in specific access charges. In

particular, reexamination of the appropriate rate of return for access services plant and of the appropriate access charge levels to reflect parity with interstate charges could result in broad adjustments in access charges. These adjustments, in turn, may justify revisions in the overall revenue requirement to be achieved from access charges. We therefore find it necessary and proper to receive further evidence in the Phase II hearings bearing on the issue of the appropriate access services revenue requirement. In consequence, we must also be prepared to adjust rates for intraLATA services as may be necessary to compensate for changes in access service revenues. If such adjustments are necessary, they will be accomplished for Pacific through the billing surcharge on monthly recurring rates set forth in Pacific's Tariff Rule 33 (Schedule Cal. P.U.C. No. 36-T).

Finally, inasmuch as the depreciation expense issues raised by A.82-11-07 have by now been fully resolved, that proceeding will be closed. The lead case in this consolidated proceeding will henceforth be the general rate application A.83-01-22.

Findings of Fact

1. No actual recorded operating results for AT&T-C were available when D.84-06-111 was prepared.
2. Data supplied by AT&T-C in its requests for a partial stay and for emergency relief indicate a substantial difference from the estimates in the hearing record.
3. Further hearings are necessary to reexamine the level of test year 1984 intrastate revenues and certain categories of expenses for AT&T-C, but adopted expense levels need not otherwise be reexamined.
4. The AT&T-C filings have not called into question the changes in rate design set forth in D.84-06-111 except as they affect total revenues.

5. Imposition of a temporary 4.21% surcharge on AT&T-C rates coincident with lifting the stay of D.84-06-111 will permit the adopted rate design to take effect while preserving the current financial operating condition of AT&T-C.

6. It would be inappropriate to make available to resellers the optional discount calling plans for off-peak and large users of toll service authorized for AT&T-C in D.84-06-111.

7. The relief AT&T-C seeks in A.84-06-057, to the extent it has not already been granted, appears to concern issues associated with the second phase of access charge hearings in A.82-11-07 et al.; consideration in the course of those hearings is the most practical means of responding promptly to AT&T-C's concerns.

8. AT&T-C has not offered sufficient reasons to justify more extensive requirements that access charge revenues be collected subject to refund than are presently in effect; no such accounting orders are appropriate at this time.

9. D.83-12-024 has determined the NTS cost assignment and premium access charge issues for purposes of setting access charges in A.82-11-07 et al.; no intervening circumstances warrant reopening these issues.

10. It is necessary and proper to receive further evidence bearing on the issue of the appropriate access services revenue requirement.

11. Changes in access services revenue requirement may necessitate adjustments in rates for intraLATA services, which should be accomplished for Pacific through its billing surcharge.

12. To implement the adopted rate design as soon as possible this order should be effective today.

Conclusions of Law

1. A further record should be developed in order to determine the appropriateness of the revenue reduction for AT&T-C ordered in D.84-06-111.

2. The partial stay of D.84-06-111 should be lifted.

3. A temporary 4.21% surcharge should be applied to all rates of AT&T-C, coincident with lifting the partial stay of D.84-06-111, to remain in effect subject to refund pending the outcome of further hearings regarding AT&T-C results of operations.

4. The burden rests with AT&T-C to show by clear and convincing evidence why the entire 4.21% surcharge should not be eliminated expeditiously.

5. The request of AT&T-C for accounting orders to require that access charge revenues be collected subject to refund should be denied.

6. To the extent that the requests of AT&T-C, Pacific, and GTE Sprint for reconsideration of the ALJ's ruling seek to reopen the NTS cost assignment and premium access charge issues, those requests should be denied.

7. To the extent that the requests of AT&T-C and Pacific for reconsideration of the ALJ's ruling seek to reopen the access services revenue requirement issue, those requests should be granted.

O R D E R

IT IS ORDERED that:

1. Further hearings shall be set in this proceeding for the limited purpose of reexamining the level of test year 1984 intrastate revenues and certain categories of expenses for AT&T-C as set forth in the foregoing discussion.

2. AT&T-C shall compile and submit to the Commission staff its most current available data bearing on the revenue and expense items set for further hearing, and shall serve these materials on all appearances by August 31, 1984.

3. A prehearing conference shall be held Monday, September 10, 1984, in San Francisco beginning at 1:00 p.m., to plan for the further hearings regarding AT&T-C results of operations.

4. The partial stay of D.84-06-111 effected by D.84-06-193 is lifted, subject to the tariff filing schedule set forth in Ordering Paragraph 5.

5. AT&T-C is authorized to file with this Commission, 7 days after the effective date of this order, in conformity with the provisions of General Order 96-A, revised tariff schedules with rates, charges, and conditions of service modified as set forth in Appendix C to D.84-06-111, and further revised by the addition to all such rates and charges of a 4.21% billing surcharge, such surcharge to remain in effect subject to refund pending the outcome of further hearings regarding AT&T-C results of operations. The effective date of the revised tariff sheets shall be 5 days after the date of filing, except as provided in Ordering Paragraph 2 of D.84-06-111.

6. AT&T-C shall not offer for purposes of resale the optional discount calling plans authorized for AT&T-C in D.84-06-111 and shall amend its tariff sheets accordingly.

7. A.84-06-057 is hereby consolidated with A.83-01-22 et al.

8. The ALJ conducting the Phase II access charge hearings in A.83-01-22 et al. shall determine whether the issue of the appropriate return on Pacific's billing and collection services should be reopened for further consideration.

9. The request of AT&T-C for accounting orders to require that access charge revenues be collected subject to refund otherwise than is presently required is denied.

10. The motion of GTE Sprint for reconsideration of the ALJ's prehearing conference ruling is denied.

11. The motion of AT&T-C for reconsideration and the petition of Pacific for an order modifying and/or clarifying the ALJ's prehearing conference ruling are granted to the extent they seek to reopen the access services revenue requirement issue, but are otherwise denied.

12. A.82-11-07 is closed.

This order is effective today.

Dated JUL 18 1984, at San Francisco, California.

LEONARD M. GRIMES, JR.
President

VICTOR CALVO

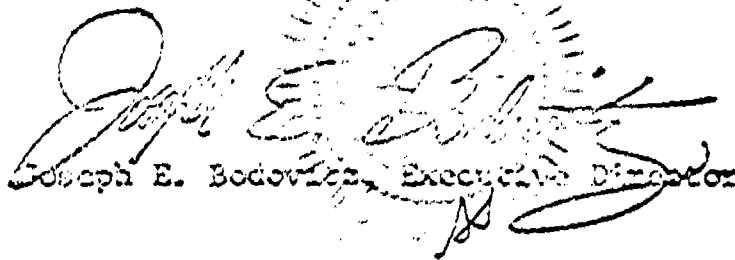
FRISGILLA C. GREW

DONALD VIAL

WILLIAM T. BAGLEY

Commissioners

I CERTIFY THAT THIS DECISION
WAS APPEALED UNDER ABOVE
COMMISSIONERS' ORDER.


Joseph E. Bodovick, Executive Director

3. A prehearing conference shall be held Monday, September 10, 1984, in San Francisco beginning at 1:00 p.m., to plan for the further hearings regarding AT&T-C results of operations.

4. The partial stay of D.84-06-111 effected by D.84-06-193 is lifted, subject to the tariff filing schedule set forth in Ordering Paragraph 5.

5. AT&T-C is authorized to file with this Commission, 7 days after the effective date of this order, in conformity with the provisions of General Order 96-A, revised tariff schedules with rates, charges, and conditions of service modified as set forth in Appendix C to D.84-06-111, and further revised by the addition to all such rates and charges of a 4.21% billing surcharge, such surcharge to remain in effect subject to refund pending the outcome of further hearings regarding AT&T-C results of operations. The effective date of the revised tariff sheets shall be 5 days after the date of filing, except as provided in Ordering Paragraph 2 of D.84-06-111.

6. AT&T-C shall not offer for purposes of resale the optional discount calling plans authorized for AT&T-C in D.84-06-111.

7. A.84-06-057 is hereby consolidated with A.83-01-22 et al.

8. The ALJ conducting the Phase II access charge hearings in A.83-01-22 et al. shall determine whether the issue of the appropriate return on Pacific's billing and collection services should be reopened for further consideration.

9. The request of AT&T-C for accounting orders to require that access charge revenues be collected subject to refund otherwise than is presently required is denied.

10. The motion of GTE Sprint for reconsideration of the ALJ's prehearing/conference ruling is denied.

11. The motion of AT&T-C for reconsideration and the petition of Pacific for an order modifying and/or clarifying the ALJ's prehearing conference ruling are granted to the extent they seek to reopen the access services revenue requirement issue, but are otherwise denied.