

Decision 87 11 022

ORIGINAL NOV 13 1987

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.)

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

And Related Matters.)

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

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

ORDER MODIFYING DECISION 85-06-115

On June 17, 1987, AT&T Communications of California, Inc. (AT&T), filed with this Commission a petition for modification of Decision (D.) 85-06-115 in the above-captioned matter, pursuant to Rule 43 of the Commission's Rules of Practice and Procedure, Title 20, California Administrative Code. The modification AT&T seeks is a specification of the methodology which the local exchange carriers (LECs) are to use for the remaining years of the phase-down in nontraffic sensitive (NTS) cost allocation from the subscriber plant factor (SPF) to the subscriber line usage (SLU) factor. Further, claiming that Pacific Bell (Pacific) and General Telephone Company of California (General) are applying allocation procedures which "have failed to comport with the intention of the Commission as set forth in Decision 85-06-115, and have resulted in an overstatement of NTS revenue requirements assigned to interLATA access services", AT&T proposes the methodology it believes should be specified.

Statements were filed by MCI Telecommunications Corporation (MCI) and US Sprint Communications Company (Sprint) in support of AT&T's petition and its proposed methodology. Pacific, the Commission's Public Staff Division (PSD), and a group of fifteen independent telephone companies (the ITCs) filed responses which oppose AT&T's proposed methodology. The ITCs also raise a procedural objection, claiming that AT&T's petition fails to fall within the ambit of Rule 43. General did not respond. AT&T filed a reply to the responses of Pacific and PSD.

Jurisdiction to Issue this Order

The petition and responses present no factual dispute, only a legal dispute about the proper interpretation of D.85-06-115, a secondary legal question about the proper interpretation of Rule 43, and a request for a remedy consistent with the petitioning party's interpretation of our previous decision. That being the case, there is no issue which requires a hearing. Since there is no need for a hearing in this matter, Rule 77.1 which requires service of a proposed decision on all parties for most matters in which there has been a hearing, Rule 77.2 which permits the parties to file comments on the proposed decision within 20 days of its date of mailing, and Rule 77.5 which permits replies to the comments to be filed five days after the comments are filed are not applicable except to the extent that we determine, pursuant to Rule 77.1, that such procedure is required in the public interest despite the normal inapplicability. Because we were aware that the subject of this petition was highly contested we extended this comment opportunity to the parties prior to issuance of a final Commission order. Therefore, on October 2, 1987 an Administrative Law Judge's Proposed Decision was issued. Pacific, General, AT&T, and PSD filed timely comments. General, PSD, and AT&T endorse the ALJ's proposed decision. Pacific states that it has no objection to the proposed methodology and is prepared to implement it in the manner described in the proposed

methodology. Pacific requests, however, that this final decision resolve two additional procedural matters. Those issues are addressed below. In all other ways this final decision is consistent with the one proposed by the ALJ.

Is Rule 43 Appropriately Invoked?

Rule 43 states in part: "Petitions for modification, other than in highway carrier tariff matters, shall only be filed to make minor changes in a Commission decision or order. Other desired changes shall be by application for rehearing or by a new application." Addressing the remedy which AT&T asks for, the ITCs argue that the petition does not seek only minor changes, but rather "invites a wholesale re-writing of D.85-06-115 and would result in a Commission decision without any evidentiary foundation in the record of the proceedings upon which it supposedly is based."

The parties are in accord that we did not specify the methodology that the LECs are to use in the SPF to SLU phase-down. Although we did not anticipate that this would be a problem, we now recognize that our failure to set procedural parameters might allow an inequitable result. Furthermore, we take the view that alleviating this problem by specifying the appropriate methodology to be used, in a manner consistent with the evidence already elicited in this proceeding, is an appropriate subject for a petition for modification.

The Appropriate Phase-Down Methodology

AT&T points to three areas which need clarification in order for the LECs to arrive at an annual carrier common line charge (CCLC) figure to recover the appropriate portion of NTS costs from interexchange carriers (IECs). They are:

1. The appropriate means of identifying company NTS costs to be used in the annual calculation;

2. The appropriate means of identifying the minutes of use (MOUs) to be used in the annual calculation; and
3. Which SLU factor to use in calculating the transitional SPF to SLU cost allocator used in the annual calculation.

AT&T suggests that the LECs should identify total company NTS costs from their books of account and then project them for the following year. Likewise, AT&T proposes that the LECs should use prospective year forecasts for MOUs. The ITCs argue that AT&T's proposal for determining these two figures is a proposal that an advice letter filing be used for what amounts to a general rate case determination of new revenue requirements in contravention of traditional ratemaking practice and theory. The ITCs conclude that it was our intent that the SPF to SLU phase-down would confine itself to annual changes in the separations factors as described in D.85-06-115 and that the separations factor would be applied to NTS and MOU levels adopted in the latest general rate case. That is what Pacific and General did in calculating their 1986 and 1987 CCLCs. They based their 1987 NTS costs on adopted test year revenue expectation and they used adopted 1986 access MOUs for 1987.

We agree with AT&T that because general rate cases for these telephone utilities are only conducted every three years, this means of determining NTS costs and MOUs assures that the figures are based on projections which may be several years old. Further, because of the dearth of historical data in these areas, the projections we adopted in the last general rate cases have a greater-than-ordinary potential for inaccuracy. We also agree with the ITCs that the methodology AT&T proposes amounts to ratemaking outside a general rate case. Such a procedure is bound to generate challenges and controversy rather than producing a simple, accurate means of attaining the objectives of the SPF to SLU transition

because one party or another will find something wrong with the LEC's projections.

We believe that there is a method for determining annual NTS costs and annual MOUs which is fairer than the methods presently being employed, but which avoids the problems associated with either of these positions, and therefore ought to be adopted. That method relies on recorded data for the previous year to determine figures for the year in which rates will be effective.

For MOUs, this is calculated by annualizing recorded data for at least the first six months of the previous year (more, if available at the time the annual filings are due). For NTS costs, this is calculated as the recorded costs as of January of the previous year plus additional recorded costs for at least the first six months of that year (more if available), annualized.

The advantage of this procedure is that it guarantees a lag which never exceeds one year no matter what happens in a general rate case while using figures which are easily ascertained and unlikely to generate the type of controversy and the resultant necessity for Commission hearing that AT&T's projection proposal is prone to.

As for the question of which SLU factor to use, we specified in D.85-06-115, and here reiterate, that the then-current SLU factor is to be used in calculating the SPF to SLU cost allocator each year. See D.85-06-115, page 239, Ordering Paragraph 5, and p. 65. This factor should be calculated based on the MOU determination described above.

Of course, as Pacific points out, adoption of this procedure does not change the fact that each such change in SPF to SLU allocations of NTS costs requires rate adjustments allowing for full recovery of the total shifted amount.

To the extent described above, we therefore grant AT&T's petition for modification of D.85-06-115.

Pacific's Additional Procedural Concerns

In its comments to the ALJ's Proposed Decision Pacific asks us to address two additional items. First, it asks that if the decision in the rate design phase of Pacific's pending rate case, A.85-01-034, is effective on or before January 31, 1988, that the rate design order and the SPF to SLU transition be implemented concurrently, but that if the rate design order is to be made effective after January 31 the SPF to SLU transition be implemented on January 1, 1988. It is our intention that the rate design order will be effective before the end of January, 1988. In any case it would be confusing to customers and administratively burdensome to Pacific to implement the SPF to SLU transition on January 1st when further rate changes will be implemented within a very short time. Therefore, we will direct Pacific to implement its 1988 SPF to SLU transition concurrently with the implementation of the rate design order.

Secondly, Pacific proposes that we should direct it to reflect the determination of the amount of shift applicable to "line termination" costs consistent with recently approved changes to the Separations Manual. Since these changes do not impact calculation of the 1988 shifted amount, and since testimony on this issue is under consideration in the pending OII No.87-02-023, we will leave consideration of the issue to that proceeding.

Findings of Fact

1. The petition of AT&T to modify D.85-06-115 raises only legal and not factual issues.
2. Although there will be no hearing in this matter, the petition of AT&T raises a highly contested issue. This Commission and the parties would benefit from comments on the proposed decision resolving that issue.
3. The ITCs claim that AT&T's petition does not fall within the requirements for a petition for modification as set out in Rule 43.

4. Determining NTS costs and MOUs based on projections adopted in the latest general rate case may result in a SPF to SLU phase-down equation which is out-of-date and inaccurate.

5. AT&T's phase-down methodology proposal has the potential for generating challenges and disputes.

6. A methodology for determining annual NTS costs and MOUs which relies on annualized recorded data for the first six months (or more if available) of the previous year is fairer and more accurate than one which relies on figures adopted in the last general rate case.

7. The then-current SLU factor should be based on the adopted MOU calculation.

8. It is the intent of this Commission that the rate design order in Pacific's pending rate case, A.85-01-034, will be issued before the end of January, 1988.

Conclusions of Law

1. The petition of AT&T to modify D.85-06-115 may be resolved by this Commission without hearing.

2. The provision of Rule 77.1 which permits this Commission to follow the procedure which allows for commenting on a proposed decision even where there has been no hearing may be appropriately invoked in this instance.

3. AT&T's petition for modification was properly brought pursuant to Rule 43.

4. It is reasonable for this Commission to specify a method of determining annual NTS costs and MOUs to be used in the SPF to SLU phase-down equation and to mandate a consistent SLU factor.

IT IS ORDERED that AT&T's petition to modify D.85-06-115 is granted to the extent that:

1. Ordering Paragraph 5 of that decision is amended by adding the following at the end of that ordering paragraph:

"Beginning with filings for 1988 the NTS cost figure used in calculating the CCLCs shall be the recorded NTS figure for January of the previous year plus additional costs incurred during at least the first six months of that year, annualized. The minutes of use (MOUs) figure used in calculating the CCLCs shall be the annualized recorded figures for at least the first six months of the preceding year. The SLU factor used in calculating the SPF to SLU cost allocator shall be based upon the MOUs calculated as herein described."

2. Pacific shall implement its 1988 SPF to SLU transition concurrently with the implementation of the rate design order in its pending rate application, A.85-01-034.

This order is effective today.

Dated NOV 13 1987, at San Francisco, California.

STANLEY W. HULETT
President
FREDERICK R. DUDA
C. MITCHELL WILK
JOHN B. O'HANIAN
Commissioners

Commissioner Donald Vial, being necessarily absent, did not participate.

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY.

Victor Weisser
Victor Weisser, Executive Director

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IT IS ORDERED that AT&T's petition to modify D.85-06-115 is granted to the extent that Ordering Paragraph 5 of that decision is amended by adding the following at the end of that ordering paragraph:

"Beginning with filings for 1988 the NTS cost figure used in calculating the CCLCs shall be the recorded NTS figure for January of the previous year plus additional costs incurred during at least the first six months of that year, annualized. The minutes of use (MOUs) figure used in calculating the CCLCs shall be the annualized recorded figures for at least the first six months of the preceeding year. The SLU factor used in calculating the SPF to SLU cost allocator shall be based upon the MOUs calculated as herein described."

This order is effective today.

Dated _____, at San Francisco, California.