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Decision 88 09 033 SEP 14 1988

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the Application of AT&T COMMUNICATIONS OF CALIFORNIA, INC., a corporation, for authority to increase rates and charges applicable to telecommunications services furnished within the State of California (U 5002 C).	Application 85-11-029 (Filed November 18, 1985)

ORDER MODIFYING DECISION (D.) 88-06-036, GRANTING LIMITED REHEARING, DENYING REHEARING IN ALL OTHER RESPECTS, AND CLARIFYING D. 88-08-066

The California Association of Long Distance Telephone Companies (CALTEL); U.S. Sprint Communications Co. (U.S. Sprint); and MCI Telecommunications Corp. (MCI) (collectively "Applicants") have filed applications for rehearing of D.88-06-036 (the Decision), in which the Commission ordered AT&T Communications of California (AT&T-C) to reduce its ongoing rates and to amortize previously experienced expense reductions by means of a six-month surcredit. AT&T-C has filed a response opposing these applications and the Commission's Division of Ratepayer Advocates (DRA) has filed a response supporting them.

In D.88-08-066 (August 24, 1988), we disposed of several issues raised by these applications for rehearing. First, we ordered AT&T-C to make some revisions to its ongoing rates to bring them into compliance with the Decision. Second, we stayed the six-month surcredit, effective September 12, 1988, pending an anticipated rehearing. Third, we ordered AT&T-C to preserve all of its billing records and arrange with the local exchange companies [LECs] who perform its billing to do the same. We also dismissed an application for rehearing filed by Extelcom,

Inc., as unauthorized by Public Utilities (P.U.) Code §1731(b). We are now prepared to deal with the remaining issues raised by these applications for rehearing.

Applicants contend that the sums that were being returned to AT&T-C's ratepayers by means of the six-month surcredit should have been returned in compliance with P.U. Code §453.5. We have carefully reviewed Applicants' arguments, the statute, and the cases they cite, including California Manufacturer's Association v. Public Utilities Commission, 24 Cal. 3d 836 (1979). We remain of the opinion that §453.5 does not apply where no supplier rebates are involved and the overcollections being returned to ratepayers are relatively recent. Accordingly, we will modify the Decision to more expressly state this conclusion.

CALTEL's application does point out that a portion of the surcredit reflects pre-1988 AT&T-C expense savings. Accordingly, we will grant a limited rehearing to consider whether or not the Commission should adopt a method other than a prospective surcredit for returning to AT&T-C's ratepayers any AT&T-C expense savings from before January 1, 1988.

The Decision ordered uniform ongoing rate reductions and a uniform surcredit for all of AT&T-C's switched services. The surcredit and the ongoing rate reductions both mostly reflect reductions in the access charges AT&T-C pays to LECs. MCI and U.S. Sprint point out that AT&T-C's several switched services did not enjoy uniform reductions in access charges; some received smaller reductions than others. Accordingly, MCI and U.S. Sprint argue that the surcredit and the ongoing rate reductions should not have been uniform, but instead should have been proportioned to the reduction in access charges for each service. AT&T-C argues that the Commission properly employed a uniform surcredit and uniform rate reductions. We believe that the best means of resolving this dispute is to go back to hearing. Accordingly, we will grant a limited rehearing on the issue of whether the surcredit and ongoing rate reductions should be uniform for all of AT&T-C's switched services or proportional to the reduction in

costs for each service.[1] We hope that resolution of this issue will provide precedent as to how future "SPF to SLU" access charge reductions should be spread among AT&T-C's ratepayers. We are aware that this limited rehearing may impact AT&T-C's regulatory flexibility proceeding (A.87-10-039 & I.85-11-013). Still, we remain committed to issuing a decision in that proceeding before the end of this year. Accordingly, we intend to rehear this issue expeditiously, so that, if necessary, we can incorporate our resolution of the issue into our decision in the regulatory flexibility proceeding.

Applicants challenge the Decision's Findings of Fact Nos. 79 and 80, which state:

> 79. All interexchange telephone companies [IECs] purchasing local exchange access have received proportionately similar access charge reductions from local exchange companies regulated by this Commission.
>
> 80. As previously discussed, because AT&T-C's competitors have received similar reductions in the access charges they pay, a prospective AT&T-C rate adjustment to reflect these access charge reductions will not competitively disadvantage other interexchange carriers.

We have carefully reviewed Applicants' arguments and AT&T-C's reponses, and are of the opinion that Applicants have shown good cause for granting rehearing with regard to these two findings.

Public Utilities Code §1732 requires an application for rehearing to set forth specifically the grounds on which the applicant considers the decision to be unlawful, and bars a court challenge based on any ground not so set forth. Accordingly, and

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1 Applicants have challenged the Decision's Finding of Fact No. 89, which supports these uniform adjustments. Their challenge to this finding also falls within the scope of the rehearing that we grant.

because we want the rehearing to proceed expeditiously, we will limit the rehearing on Findings 79 and 80 to those arguments specifically raised in Applicants' applications for rehearing.[2]

After thorough consideration of the applications and responses, we are of the opinion that good cause exists for granting rehearing with regard to several other issues as well. First, we will permit Applicants to show, if they can, that the effects of the alleged "growth penalty" and of including sums relating to the Tax Reform Act of 1986 in AT&T-C's surcredit are sufficiently detrimental that the Commission should not employ a surcredit. Second, we will grant rehearing on Findings of Fact Nos. 81, 82, and 83 and the cost and practicability of retrospective refund plans. Finally, we will grant rehearing on Finding of Fact No. 84.

CALTEL and MCI each contend that the Decision violated P.U. Code §1708 by rescinding or amending a prior order of the Commission without a hearing. However, neither has shown that the present Decision has rescinded or amended any prior order or decision of the Commission. Thus, they have not shown that §1708 applies here. Nevertheless, for other reasons we are granting Applicants a rehearing, as outlined above, concerning many of those issues as to which they claim §1708 requires a hearing.

With regard to the other arguments raised in these applications for rehearing, we are of the opinion that Applicants have not shown good cause for granting rehearing on any additional issues. In response to one of their arguments, we will, however, modify the Decision in a minor respect.

Although we have granted rehearing on a number of issues, we intend to proceed expeditiously, and accordingly have carefully delimited the scope of the rehearing and the issues we

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2 If Applicants are able to show that other IECs did not receive proportionately similar access charge reductions, we will also consider whether AT&T-C's access charge reductions were sufficiently disproportionate that we should modify or abandon the Decision's surcredit plan.

will consider. We also hope that the following comments will help focus the rehearing.

Under our current system of regulating interexchange carriers [IECs], the Commission directly regulates the rates of only the dominant IEC (AT&T-C). However, this regulatory system assumes that by directly regulating the rates of the dominant IEC we can force other IECs to compete with the those rates. Thus we indirectly regulate the rates of the non-dominant IECs. Here, although the details are disputed,[3] it appears that non-dominant IECs enjoyed substantial reductions in access charges during the first half of 1988. By using a prospective, six-month surcredit to pass through AT&T-C's first-half 1988 access charge reductions, we put competitive pressure on other IECs to also pass through the first-half 1988 access reductions they did receive. Thus, one of our goals was to ensure reasonable rates for the customers of all IECs. A one-time refund, or a refund based only on past use, would not have the desirable effect of encouraging other IECs to pass through the first-half access charge reductions they did receive. Accordingly, we suggest that Applicants propose solutions to their problems which do not entirely eliminate a prospective surcredit as a means of returning AT&T-C's overcollections to its ratepayers. We also suggest that the parties consider whether this pressure on other IECs to compete with AT&T-C's surcredit and pass through first-half 1988 access charge reductions might avoid some of the problems about which Applicants complain.[4] Finally, we ask the parties to consider the extent to which the allegedly anticompetitive effects about which Applicants complain would have occurred even if there had been no surcredit, and AT&T-C had simply passed through its cost reductions immediately. If these

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3 The rehearing we grant today should resolve this dispute.

4 In its challenge to Findings 79 and 80, CALTEL argues that some of its reseller members now purchasing services from non-dominant IECs did not receive the benefit of access charge reductions.

effects would have occurred in any event, they would appear not to provide any reason why we should forego the advantages of a surcredit.

We would also like to take this opportunity to clarify one aspect of our order in D.88-08-066 (August 24, 1988). That decision ordered AT&T-C to preserve all of its billing records, and to arrange with the local exchange companies [LECs] that perform billing for it to preserve all AT&T-C billing records, in order to preserve our options after rehearing. D.88-08-066 noted that AT&T-C's billing is generally performed by LECs and that AT&T-C had informed us that many of these LECs do not maintain AT&T-C's billing records for more than 90 days. According to AT&T-C's response to the applications for rehearing, it is "computer processible historic data" that these LECs do not maintain beyond 90 days. Therefore, we will clarify that our prior order requiring AT&T-C to preserve, and arrange for the preservation of, "all" its billing records included "computer-processible" billing records within its scope.

Therefore, good cause appearing,

IT IS ORDERED that D.88-06-036 is modified as follows:

1. The following sentence is added at the end of the first partial paragraph at the top of page 138:

> Moreover, we have found before that a rate reduction will stimulate greater volumes of calling; these additional calls create benefits to consumers that they would not otherwise receive if rates were to remain near current levels.

2. The first full paragraph on page 138 is deleted.

3. The following sentence is added at the end of Conclusion of Law No. 25.

> Section 453.5 does not apply where no supplier rebates are involved and the overcollections being returned to ratepayers are relatively recent.

IT IS FURTHER ORDERED that:

1. The applications for rehearing of CALTEL, MCI, and U.S. Sprint (Applicants) are granted on the following limited issues, consistent with the foregoing discussion:

   a. Whether or not the Commission should adopt a method other than a prospective surcredit for returning to AT&T-C's ratepayers any AT&T-C expense savings from before January 1, 1988.

   b. Whether the surcredit and ongoing rate reductions should be uniform for all of AT&T-C's switched services or proportional to the reduction in costs for each service. (Including Applicants' challenge to Finding of Fact No. 89.)

   c. Applicants' challenges to Findings of Fact 79 and 80. (Limited to those arguments specifically raised in Applicants' applications for rehearing.)

   d. Whether the effects of: (i) the alleged "growth penalty"; and (ii) including sums relating to the Tax Reform Act of 1986 in AT&T-C's surcredit are sufficiently detrimental that the Commission should not employ a surcredit.

   e. Findings of Fact Nos. 81, 82, and 83 and the cost and practicability of retrospective refund plans.

   f. Finding of Fact No. 84.

2. This limited rehearing shall be held before Administrative Law Judge Alison Colgan and Commissioner Wilk. A prehearing conference is set for Wednesday, September 28 at 10 a.m. in the Commission's Courtroom, 505 Van Ness Avenue, San Francisco, CA to schedule dates for exchange of testimony and dates for hearings which shall be completed without delay. Parties are placed on notice that requests for extensions of time will not be routinely granted and further that attempts to broaden the issues in this limited rehearing will be rejected.

3. The Executive Director shall provide notice of such rehearing to the parties hereto, in the manner prescribed by Rule 52 of the Commission's Rules of Practice and Procedure.

4. Except as granted herein, rehearing of D.88-06-036 is denied.

5. The following language is added to Ordering Paragraph 5 of D.88-08-066, to clarify the scope of that order:

> "Computer-processible" billing records are included within those records which AT&T-C shall preserve and arrange for local exchange companies to preserve.

6. AT&T-C shall promptly inform all local exchange companies that perform billing for it of Ordering Paragraph 5 of this decision.

This order is effective today.

Dated SEP 14 1988, at San Francisco, California.

STANLEY W. HULETT
President
DONALD VIAL
FREDERICK R. DUDA
G. MITCHELL WILK
JOHN B. OHANIAN
Commissioners

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

Victor Weisser, Executive Director

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e. Findings of Fact Nos. 81, 82, and 83 and the cost and practicability of retrospective refund plans.

f. Finding of Fact No. 84.

2. This limited rehearing shall be held expeditiously, at such time and place and before such Commissioner or Administrative Law Judge as shall hereafter be determined.

3. The Executive Director shall provide notice of such rehearing to the parties hereto, in the manner prescribed by Rule 52 of the Commission's Rules of Practice and Procedure.

4. Except as granted herein, rehearing of D.88-06-036 is denied.

5. The following language is added to Ordering Paragraph 5 of D.88-08-066, to clarify the scope of that order:

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