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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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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)

OPINION ON MOTION FOR ADOPTION OF UNCONTESTED SETTLEMENT AGREEMENT IN PHASE TWO OF THE MATTER SET FOR REHEARING

Decision (D.) 88-09-033 grants rehearing of certain portions of D.88-06-036. At the prehearing conference held to schedule the rehearing the Administrative Law Judge (ALJ) announced that the rehearing would be conducted in two parts. Our decision on the issues set for Phase I of the rehearing has already been issued. This Phase II was reserved for the purpose of reexamining the following issues:

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

2. Applicant's challenges to Findings of Fact 79 and 80 (of D.88-06-036).

   (Finding of Fact 79, Decision 88-06-036, states that "(a) 11 interexchange telephone companies purchasing local exchange access have received proportionately similar access charge reductions from local exchange companies regulated by this Commission.")

(Finding of Fact 80 states that: "(a)s 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.")

3. 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 (to AT&T-C's competitors) that the Commission should not employ a surcredit.

4. The reasonableness of Findings of Fact 81, 82, and 83 and the cost and practicability of retrospective refund plans.

(Finding of Fact 81 states: "It is not practicable to refund the balance in AT&T-C's access charge reduction memorandum account based on customer usage dating back more than 90 days from the present due to the prohibitive costs that would be incurred in retrieving billing information from the local exchange companies that render customer bills for AT&T-C.")

(Finding of Fact 82 states: "Because it is not practicable to base refunds on more than the last 90 days of customer usage, we cannot match refunds to exact customer usage during the period of the memorandum account.")

(Finding of Fact 83 states: "The process of granting refunds based on the previous 90 days of customer usage would involve substantial administrative costs as outlined in AT&T-C's response to CACD's data request 88-04-08C; the cost for Pacific Bell would be $1.6 million, while undetermined other costs would be expended by other local exchange companies that bill for AT&T-C.")

5. The reasonableness of Finding of Fact 84.

(Finding of Fact 84 states that: "The possibly greater precision of providing refunds to customers based on recent usage within 90 days is not a compelling reason for undertaking such refunds when the alternative is rate reductions based on usage during the next six months.")

All current parties of record have requested that this Commission adopt the settlement agreement which they filed with the Commission on November 18, 1988 as the complete and final resolution of Phase II of this rehearing proceeding. The procedures followed by these parties comport with the newly adopted Article 13.5 of the Commission's Rules of Practice and Procedure, except that they agreed to waive the written notice requirement of Rule 51.1(b).

At their settlement conference of November 8, 1988 the parties agreed that there are two basic issues to be resolved in the Phase II proceeding:

1. The period of time over which the customer-specific refunds should be distributed; and

2. Whether the refunds should be based on historic or prospective usage of AT&T-C services.

The parties also agreed that their "overriding objective" is to "return the greatest amount of money to AT&T customers as quickly as possible, and to address the concerns of some parties that the refund method could place them at a competitive disadvantage."

Consistent with this objective the parties agreed that distribution should be made in one month rather than spread over a six-month period as previously ordered. In order to correspond to the companies' "customer billing rounds" they propose a single month of consecutive billing rounds.

Addressing the question of whether to base refunds on historic or prospective usage, and relying on time and cost

estimates provided to AT&T-C by local exchange companies (LECs), the parties conclude that implementation of a system based upon historic usage would be so time-consuming and costly that it would be inconsistent with their underlying objective. They therefore propose that all refunds attributable to 1988 expense savings be based on current customer usage. They add that this method of distribution would permit the LECs which bill for AT&T-C to implement a one-month refund by January, 1989.

The parties recommend a somewhat different treatment for the $15.3 million refund amount associated with AT&T's 1987 regulatory activities. This treatment takes into account the fact that resellers were involved in an industry-wide repricing of WATS during 1987 (due to the direct assignment of closed-end costs we ordered in D.85-06-115), and that these resellers generally used much less of AT&T-C's services in 1988 than in 1987. Therefore, it was agreed that all resellers who were certified to provide intrastate service in California in 1987 should be allowed an opportunity to submit a detailed claim for a direct refund of amounts paid for intrastate service in 1987. AT&T-C would validate these claims and assign a proportional share of the total 1987 refund amount to each qualified claimant. In preparation for the possible adoption of this procedure, AT&T-C sent a letter on November 11, 1988 to certified interexchange carriers instructing them on the claims procedure. The agreement requires that all claims must be received by AT&T-C on or before December 2, 1988. Any 1987 refund amounts not refunded directly to resellers would be combined with the 1988 refund amount and returned in the manner already described.

It was also agreed that all refunds for switched services would be based upon whatever flow-through methodology this Commission adopted in Phase I of this proceeding. Though our final Phase I opinion was not yet available to the parties at the time this stipulation was filed, the methodology we adopted was to flow

through refunds proportional to the savings for each switched service, that is, WATS, 800 Service, MTS, and SDN Service. The parties agree that refunds should be calculated based on the following formula, applied separately to each switched service (excluding MEGACOM AND MEGACOM 800) if we adopted a proportional flow-through methodology:

$$\frac{(RD+I-RIC)}{TBR} \times CBR = CRA$$

Where:

RD = Amount to be refunded
I = Interest earned
RIC = Refund implementation costs (excluding AT&T-C's internal costs)
TBR = Estimated AT&T-C billed revenue
CBR = Customer specific billed revenue
CRA = Amount of customer refund

A separate surcredit percentage would be applied to special access service accounts for 1988 refund amounts.

The parties also agree that AT&T-C will not advertise or otherwise provide notification of this refund except that it will provide the following notice with each bill that includes a customer's surcredit:

NOTICE TO CUSTOMERS
OF
REFUND ON YOUR CURRENT AT&T BILL

The California Public Utilities Commission has approved a one-time refund for customers of AT&T Communications of California, Inc. in the form of a credit applied to the intrastate charges on this bill. This credit distributes to customers expense savings, with interest, realized by AT&T as a result of various

regulatory proceedings in California in 1987 and 1988.

Questions about this refund may be directed to AT&T at (800) 222-0300 (residential customers) or (800) 222-0400 (business customers).

Finally, based on their agreement that this settlement does not establish any precedent on the issues identified by this Commission for rehearing in Phase II of this proceeding, the parties propose that Findings of Fact 80, 81, 82, 83, and 84 of D.88-06-036 be stricken and that Finding of Fact 79 should be modified to read as follows:

"All interexchange telephone companies purchasing local exchange access have received access charge reductions from local exchange companies regulated by this Commission."

Discussion

Our principal concern in reviewing a stipulation is to determine whether it is in the public interest. See Rule 51.7. In the matter before us there is the possibility that the long distance carriers will be concerned with competitive advantage to the exclusion of the best interests of their ratepayers. We had this concern in mind in D.88-09-033 when we stated the following:

"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."

While the proffered stipulation is not based on past use, its implementation on a one-time basis certainly provides no strong incentive for AT&T-C's competitors to pass through their access charge reductions. On the other hand, it appears from AT&T-C's description of the data it received from various LECs that the only reasonable alternative to the one proposed would be to spread out the amounts due AT&T-C's ratepayers over several months, based on prospective rather than past use. AT&T-C has already refunded about 45% or $53.3 million of the total amount to be refunded. Refunding the remainder over a period of the remaining three-plus months does appear to simply drag out the refund procedure and probably the implementation costs while increasing the possibility of inaccurate restitution and the possibility that some ratepayers who had overpaid might not be reimbursed at all.

In retrospect we are not certain that such an AT&T-C surcredit would cause other interexchange carriers to reduce their rates or that if it did, that such reductions would be significant in size or duration. Furthermore, we note that both the Division of Ratepayer Advocates and the consumer's advocacy group, TURN, support this stipulation. It thus appears more likely than not that the merits of the stipulated settlement outweigh the possible benefits of a plan with a prospective surcredit component. We therefore conclude that the stipulation is in the public interest and we will authorize its adoption.

In addition to the changes the parties recommend to the Findings of Fact in D.88-06-036 and their acknowledgment that the Conclusions of Law should be modified to be in accord with the recommendations, it is also necessary to amend certain inconsistent portions of the ordering paragraphs. Specifically, Conclusions of Law 27 and 28 and Ordering Paragraphs 3 and 4 must be amended. Though these changes are not specified in the Proposed Settlement, we believe they reasonably reflect its intent.

Finally, we note that Com Systems, Inc. filed a Petition for Limited Intervention in this proceeding which was received by the ALJ on November 21, 1988. On December 1, 1988 after receiving a copy of the above-described settlement agreement Com Systems, Inc., through its attorney, sent a letter to the ALJ stating that the settlement agreement satisfactorily addresses Com Systems' concerns and withdrawing the petition. Given these facts we find it unnecessary to act on the Com Systems' petition.

Findings of Fact

1. All current parties of record to the present proceeding have joined in requesting that their Proposed Settlement be adopted as a complete and final resolution of Phase II of the rehearing.

2. The Proposed Settlement recommends that the Commission modify the Conclusions of Law in D.88-06-036 to be in accord with the rest of the proposal.

3. Though not addressed by the parties, it is necessary to amend Ordering Paragraphs 3 and 4 of D.88-06-036 to make them consistent with the Proposed Settlement.

Conclusions of Law

1. The terms of the Proposed Settlement of the parties to this proceeding are reasonable and in the public interest and should be adopted.

2. Conclusions of Law 27 and 28 of D.88-06-036 should be amended to be consistent with the Proposed Settlement of the parties.

3. It is consistent with the Proposed Settlement to amend Ordering Paragraphs 3 and 4 of D.88-06-036, and it should therefore be done in order to reflect the intent of the Proposed Settlement.

4. In order to allow expeditious processing of the Phase II settlement this order should be effective today.

5. Adoption of the Proposed Settlement resolves all outstanding issues in the present proceeding.

O R D E R

IT IS ORDERED that the following changes are made to D.88-06-036 in order to implement the Proposed Settlement of the parties:

1. Findings of Fact 80, 81, 82, 83, and 84 are stricken.

2. Finding of Fact 79 is modified by deleting the words "proportionately similar."

3. Conclusion of Law 27 is amended to read:

> 27. AT&T-C should be ordered to refund the balance in its memorandum account by a one-time surcredit applied to each switched service in proportion to the cost savings for that service.

4. Conclusion of Law 28 is amended to read:

> 28. AT&T-C's Advice Letter 97 should be rejected in favor of a one time rate adjustment to switched services applied in proportion to the cost savings for each service.

5. The first two sentences of Ordering Paragraph 3 are amended to read:

> 3. Within ten days of the effective date of this order AT&T-C shall file an advice letter with revised tariff sheets to reflect an adjustment of its rates and surcharges for switched services consistent with the discussion, findings and conclusions of this decision as modified. The balance in the access charge reduction memorandum account shall be refunded on a one-time basis during January, 1989."

6. Ordering Paragraph 4 of D.88-06-036 is amended to read:

> 4. Consistent with Ordering Paragraph 4 in D.87-10-088, AT&T-C shall file a separate advice letter with revised tariff sheets within ten days of this order to pass through on a one-time basis in January,

1989 the balance remaining in the memorandum account associated with that decision. For administrative convenience AT&T-C shall consolidate the rate changes in Ordering Paragraph 3 with this change to produce a set of consolidated tariff sheets.

7. The following ordering paragraphs are added to D.88-06-036:

8. Interexchange carriers which were certified in 1987 may submit claims to AT&T-C for refunds based on their 1987 usage of California intrastate switched services.

9. AT&T-C shall validate claims received from interexchange carriers and remit any refund due.

10. AT&T-C shall refund all remaining memorandum account amounts due by applying surcredits to switched services (excluding MEGACOM AND MEGACOM 800) and to special service accounts for its bills rendered in January 1989. The surcredit percentages for such switched service accounts will be in accord with the methodology adopted by this Commission in its decision in Phase I of this proceeding. A separate surcredit percentage will be applied to special service accounts.

11. AT&T-C will not advertise or otherwise provide notification of these memorandum account refunds except that AT&T-C shall provide a bill insert in the customer bill containing the refund as described in the above decision.

12. For good cause shown a waiver of the seven-day written notice requirement of Rule 51 of the Commission's Rules of Practice and Procedure is granted and the settlement reached by the parties to this Phase II proceeding is found to be in compliance with Article 13.5 of the Rules.

13. This settlement and order of the Commission establishes no precedent and is applicable solely to this specific refund situation.

IT IS FURTHER ORDERED that this matter is closed.

This order is effective today.

Dated DEC 19 1989, 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.

Vic[illegible] Executive Director