

Decision 89 03 052 MAR 22 1989

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

AT&T COMMUNICATIONS OF  
CALIFORNIA, INC., A CORPORATION, )

Complainant, )

vs. )

CALIFORNIA-OREGON TELEPHONE  
COMPANY, CITIZENS UTILITIES  
COMPANY OF CALIFORNIA, SIERRA  
TELEPHONE COMPANY, INC., )  
TUOLUMNE TELEPHONE COMPANY, )

Defendants. )

ORIGINAL

Case 85-07-062  
(Filed July 23, 1985)

Randolph Deutsch, Attorney at Law, for AT&T  
Communications of California, Inc.,  
complainant.

Pelavin, Norberg, Harlick & Beck, by Jeffrey F.  
Beck, Attorney at Law, for California-Oregon  
Telephone Company, Citizens Utilities  
Company of California, and Sierra Telephone  
Company; and John Engel, Attorney at Law,  
for Citizens Utilities Company of  
California, defendants.

Alberto Guerrero, Attorney at Law, and Brian M.  
Chang, for Division of Ratepayer Advocates.

### OPINION

Complainant, AT&T Communications of California, Inc.  
(AT&T) seeks an order requiring defendants,<sup>1</sup> California-Oregon  
Telephone Company (Cal-Oregon), Citizens Utilities Company of  
California (Citizens), and Sierra Telephone Company, Inc. (Sierra)

<sup>1</sup> Tuolumne Telephone Company has eliminated its interLATA toll  
surcharge and is no longer a defendant.

(collectively ICOs) to show cause, if any they have, within 60 days why they have not taken action to eliminate the interLATA toll surcharges imposed on AT&T's customers and a preliminary and permanent injunction, enjoining the above three defendants from imposing a surcharge on the interLATA toll bills of AT&T's customers during the pendency of this action. A duly noticed prehearing conference was held before Administrative Law Judge (ALJ) N. R. Johnson in Los Angeles on August 5, 1986 and evidentiary hearings were held before ALJ Johnson in Los Angeles on October 29 and October 30, 1986 and on January 6, 1987. The matter was submitted on concurrent opening briefs due March 13, 1987 and concurrent reply briefs due March 27, 1987. Opening and closing briefs were received from AT&T and ICOs.

Testimony was presented on behalf of AT&T by one of its district managers - Exchange Carrier Cost Analysis, Dennis Mayfield; and by one of its district managers - Analysis and Forecasting Organization, Glen J. Thompsen. Testimony was presented on behalf of Sierra by its director of revenue requirements, Sharon Carlson; on behalf of Cal-Oregon by its president, Robert H. Edgar; and on behalf of Citizens by its connecting company relations manager, C. A. Swanson, by its assistant vice-president - revenue requirements, C. B. Bromagem, by its vice-president - revenue requirements, Robert L. O'Brien, by its assistant vice-president and controller, Arthur J. Smithson, and by the senior manager of the Telecommunication Group of Ernst and Whinney, William A. Broadhead.

#### I. Position of AT&T

##### Evidence

Testimony presented on behalf of AT&T indicated that:

1. AT&T estimates that it has lost upwards of \$1.7 million of revenue annually as a result of the surcharge in the three

independent telephone company (ITC) serving areas.

2. AT&T's intrastate access minutes growth rate was 3.1% from 1984 to 1985 and 3.8% from 1985 to 1986.
3. The interstate high cost fund is an appropriate offset to the interLATA surcharge revenues for the defendant independent companies.
4. Since the surcharge is applied by the ITCs' toll billing system and since AT&T is the only interexchange carrier that subscribes to the ITCs' billing service, only AT&T customers are subject to the surcharge, placing AT&T's interLATA toll service at a competitive disadvantage.
5. The 24% billing surcharge of Citizens is not separately identified on billing statements as contrasted to both Sierra and Cal-Oregon that show the surcharge separately on the customer bill.
6. The surcharge provides exchange revenues through a tax on toll billings resulting in discrimination against customers of toll service and repression of toll usage.
7. The surcharge deaverages toll rates in violation of both this Commission's stated policy and ITCs' position.
8. There are new technological changes in the rural telephone industry which offer opportunities for more interexchange carriers to enter the rural toll market and compel a more rapid elimination of the surcharges.
9. From 1984 to mid-1986 AT&T's customers have paid upwards of \$4.208 million in excess of their toll bills to Citizens because they subscribed to AT&T's service.
10. A 24% surcharge would repress usage by 12% if an elasticity coefficient of .518 for message toll service (MTS) is assumed.

11. A Commission staff policy witness in the Pacific Bell (Pacific) rate case testified that should the three defendant ICOs file to increase rates to reflect reduced settlement revenues resulting from the rate case, the parties, AT&T, or the independents should pursue eliminating the surcharge.
12. MCI, Sprint, Allnet, and Western Union reach Citizens' customers through private line arrangements and pay special access rates.
13. Neither this Commission nor the independents want deaveraging in California.
14. Studies indicated that revenues were not up to expectations in the companies that carried surcharges.
15. It is rare for customers to choose one carrier for intrastate service and another for interstate service.
16. AT&T does not have any basis upon which it can justify the application of the statewide Washington study to the specific exchange areas of the defendant companies.
17. In Citizens' Elk Grove exchange some subscribers use FX service to avoid the surcharge.
18. Western Union, MCI, Sprint, and Allnet had the same type of special access arrangements.
19. AT&T has feature group C service.
20. For every dollar of revenue AT&T pays \$.90 for access charges for Citizens, \$.87 for Cal-Oregon, and \$.80 for Sierra.
21. California other common carriers (OCC) buying feature group A and B access enjoy a 28% discount over the feature group C connections used by AT&T.

22. Statewide elasticity is a reasonable estimate of the elasticity for the Citizens' service area.
23. Historically intrastate toll has a higher elasticity than local service.
24. AT&T's intrastate revenue losses from Citizens' toll surcharges are in the range of \$772,000 to \$862,000 a year in 1986.
25. The price elasticity for AT&T's California demand is  $-.51$ .
26. The California model provides a reasonable estimate of the probable elasticity for the Citizens' market.
27. AT&T's toll demand and revenues are significantly repressed by Citizens' 24% surcharge.
28. There is no significant difference in average revenue per minute within the State of California and within Citizens' service area.
29. Cal-Oregon would eliminate the surcharge if it could put all four of its exchanges on a common rate schedule.

Argument

In its briefs AT&T argues that:

1. Surcharges which arose in the pre-divestiture market structure became inappropriate after divestiture and should have been expeditiously eliminated.
2. The surcharges applied to AT&T customers' interLATA billings have arbitrarily raised the price of AT&T's tariffed interLATA services in the eyes of the consumers.
3. The price differential caused by the surcharge has repressed interLATA calling to AT&T's detriment.

4. The surcharges are discriminatory in those service territories where competitors offer service not subject to the surcharge.
5. The defendant companies are indifferent to the surcharges' effects on AT&T or its customers.
6. Citizens and Sierra have refused to consider expeditious removal of the interLATA surcharges.
7. Decision (D.) 85-08-091, dated August 21, 1985 on the rehearing of D.84-09-086, ordering Sierra to reduce its interLATA surcharge by the amount of increased settlements stated in part:

"We find that the public interest in promoting fair competition in interLATA services requires that, in reducing rates for ITCs with surcharges on interLATA toll billings, priority be given to reducing or eliminating such surcharges." (Mimeo. p. 14.)

and acknowledged the surcharges are detrimental to AT&T as follows:

"We appreciate AT&T-C's concern about the continued imposition of billing surcharges on interLATA AT&T-C toll services for the benefit of ITCs. In the competitive post-divestiture environment we do not intend to increase such surcharges or to authorize new ones, and we plan to reduce and eliminate existing ITC surcharges on interLATA toll billing when rate reductions are called for." (Mimeo. pp. 13-14.)

8. The issue is not whether or not the interLATA surcharge must be removed but, rather, how quickly it must be removed.
9. The high cost fund (HCF) revenues now available to replace the interLATA surcharges are the equivalent of the increased settlement revenues referenced in D.85-08-009 so that relief can be granted

immediately without any change in Commission policy on the timing of the phase out.

10. This matter was not consolidated with Pacific's general rate case (Application (A.) 85-01-034) because: (1) In D.85-08-091, the Commission indicated that the surcharges would be eliminated as rate reductions for the relevant exchange companies became available. (2) No revenue reductions for independent companies were expected to result from A.85-01-034.
11. Given current and expected near-term industry circumstances basing independent company rate reductions on increased settlement revenues offers no apparent relief.
12. The surcharge scheme established by the Commission for defendant exchange companies became wholly arbitrary after divestiture and cannot be continued as legitimate ratemaking.
13. The customers affected by these prejudicial and unreasonable rates are not only of another class but of another utility than customers benefited by the subject rates and bear no relation to the service provided.
14. Order of magnitude estimates show \$1.7 million annual revenues lost to competitors in Citizens' service territory and \$210,000 in Sierra's territory.
15. AT&T's revenue loss because of repression caused by the surcharge is estimated to be \$862,000 for Citizens and \$100,000 for Sierra for the year 1986.
16. A statewide model would provide a reasonable estimate of the magnitude of repression effects in defendant's service territories.

17. Citizens' fight against having to make a rate case showing before this Commission is not hard to understand in view of Citizens' 32.7% rate of return for local services inclusive of the interLATA surcharge.
18. Sierra's surcharge generates \$100,000 of revenue while it received \$393,000 from the interstate high cost fund.
19. Citizens' interLATA surcharge generates \$1.6 million while its 1986 interstate HCFs amount to \$2.2 million.
20. Removal of the 24% surcharge in Citizens' service territory would provide a powerful stimulus to calling in that area and generate a significant increase in access charge revenue.
21. Citizens' method of showing that AT&T's competitive loss is only \$14,000 annually is invalid.
22. There is no basis for assuming that U.S. Switch will not reach California and be deployed here. The surcharges should be removed before implementation of such devices is underway in California.
23. The Federal Communications Commission (FCC) holds that the HCF assistance should be used exclusively to keep local telephone rates lower than they otherwise would be and, therefore, establishes a condition which meets our present policy on surcharge removal.
24. There is no impediment whatsoever to using intrastate high cost fund revenues as an offset to the surcharges.
25. Citizens' billing format represents AT&T's charges as 24% higher than its tariffed rates and should be changed immediately.
26. This Commission made it clear in its initial orders authorizing the surcharges that such surcharges were a temporary expedient not to be long tolerated.



27. The interLATA surcharge revenues of \$100,000 for Sierra and \$1.6 million for Citizens are relatively small compared to the additional revenue requirement sought in the Pacific rate case of \$1.746 million for Sierra and \$5.2 million for Citizens.
28. Both Sierra and Citizens object to a rate case showing in any reasonable time frame.
29. AT&T has offered reasonable alternatives (high cost funds) to the surcharges in its requested relief.
30. The 24% surcharge of Citizens has a significant repressive effect on AT&T's toll rates from both a statistical and a layman's point of view.
31. AT&T has established that all evidence, both theoretical and empirical, shows that the price elasticity for toll service is both negative and significant.
32. The level of access charges in Citizens' service territory is currently at 80% of toll revenues and is decreasing over time.

## II. Position of ICOS

### Evidence

Testimony presented on behalf of Sierra indicates:

1. Industrywide changes in separations and settlements which adversely impact Sierra's earnings include the changes in non-traffic sensitive (NTS) separations from subscriber plant factor (SPF) to subscriber line usage (SLU) which is being phased in over a 6-year period, the direct assignment of wide area telephone service (WATS) at both the state and interstate levels, changes in separations treatment of Account 645 (Local Commercial Operations) and detariffing of interstate billing and collection.

2. The calculated effects of the interLATA SPF to SLU and WATS transitions and the anticipated intraLATA SPF to SLU toll rate reduction is \$1.746 million for Sierra.
3. \$1.224 of this \$1.746 million will be shifted to Sierra's local exchange at \$10.14 per access line monthly.
4. D.85-08-091 ordered Sierra to reduce its revenue requirement by \$187,000 annually which was done by reducing the surcharge by that amount. AT&T participated in the hearing and requested that the entire surcharge be removed. This was not done.
5. AT&T's evidence in this matter was essentially the same as presented at the hearing resulting in D.85-08-091.
6. In D.85-08-091 this Commission stated that in the future we would not authorize new surcharges or increase existing ones but confined the relief granted to making surcharge reductions "...when rate reductions are called for." (Mimeo. p. 14.)
7. Transferring the \$100,000 surcharge revenue to basic rates would increase the charge per access lines 69 cents a month.
8. Sierra has experienced a reduction in its intraLATA but not its interLATA toll revenues.

Testimony presented on behalf of Cal-Oregon indicated that:

1. Cal-Oregon is a company of four exchanges with two of the exchanges (Dorris and Macdoel) having a surcharge and the other two (Tulelake and Newhall) without surcharges.
2. Cal-Oregon has a relatively high proportion of interstate toll traffic compared to other small independent companies in California.

3. Other than AT&T there are no known resellers or interexchange carriers of any type offering intrastate interLATA service to Cal-Oregon's end users.
4. AT&T has shown no justification for removal of the surcharge.
5. The removal of the surcharge would aggravate present disparities in rate design in Cal-Oregon's four exchanges.
6. Since acquisition of the Tulelake and Newhall exchanges, Cal-Oregon has made substantial investment to upgrade the facilities in those exchanges with the result that the service and costs in all four exchanges are comparable.

Testimony presented on behalf of Citizens indicated that:

1. In December 1984 this Commission ordered Citizens, Roseville Telephone Company, and Pacific to extend the Sacramento ZUM to include all of Elk Grove and Roseville, making calls from Sacramento to Elk Grove and Roseville local calls subject to EAS settlements rather than toll calls.
2. From 1984 to 1985 completed toll calls increased by over 8% whereas completed local calls per access line actually decreased clearly refuting AT&T's allegation that the surcharge has caused a revenue reduction for AT&T.
3. There has been a sharp reduction in FX service in Citizens' Elk Grove District refuting AT&T's claim that customers are increasingly using that service to select other carriers in lieu of the toll services provided by AT&T.
4. There has been a substantial growth in interLATA calling in Citizens' operating area.
5. FX service in Elk Grove has steadily decreased since 1981.

6. There is little likelihood of Citizens' offering abbreviated dialing in the near future.
7. AT&T connects to Citizens on a feature group C connection.
8. AT&T's competitors connect to Citizens on a special access interstate basis to three different connections.
9. MCI, Sprint, and four other interexchange carriers have points of presence in Sacramento.
10. Interexchange carriers other than AT&T can pick up a toll call in Sacramento that originates over an EAS line in Elk Grove and avoid the surcharge.
11. Citizens has made no studies that attempt to estimate any lost access revenues.
12. Citizens has no idea how much, if any, OCC traffic is coming out of Elk Grove.
13. FX customers get billed the same surcharges that apply to regular exchange customers when they make a toll call over AT&T lines.
14. AT&T has completely failed to present any hard factual evidence that it has suffered any substantial injury as a result of the surcharge contained in Citizens' rate design.
15. The only alternative to the surcharge to meet Citizens' revenue requirement was a higher level of local exchange rates which could impose major financial hardship on Citizens' ratepayers.
16. Citizens believes that the surcharge will be removed in the course of its next general rate proceeding.
17. The alleged decrease in toll calling was caused by the implementation of a ZUM system for several toll routes in Citizens' territory resulting in short-distance toll

calls being reclassified from toll to local.

18. Citizens concurs in Pacific's intraLATA private line rates and is unable to change these statewide rates set in a Pacific rate case.
19. The entire subject of the surcharge removal is considerably more complex than presented by AT&T.
20. Citizens' present billing format accurately informs the subscriber of the cost of a call.
21. Citizens provides special access service at Susanville and Elk Grove exchange to MCI, Sprint, Allnet, and Western Union.
22. The maximum damages to be incurred by AT&T from intrastate operations is \$14,000.
23. AT&T's presentation is blatantly misleading and contains so little support that it cannot be accepted by this Commission
24. The use of a statewide econometric model is inappropriate for Citizens.
25. A statewide model estimated from statewide data cannot reliably predict price/demand relationships within the service territory of a small telephone company that does not mirror the demographic characteristics of the state as a whole.
26. AT&T's demand model used outdated 1984 data.
27. Application of the derived elasticity factor to relatively large price changes, such as 24%, violates the assumptions underlying the computation of price elasticity leading to imprecise results.
28. Sixty percent of Citizens' access lines are in rural areas and Citizens serves no urban areas such as San Francisco; consequently,

the use of a statewide model is inappropriate.

29. Changes since 1984 indicate the need for revision and updating of AT&T's econometric model.
30. Citizens' service area is clearly different in nature from California as a whole or the United States as a whole.
31. The growth rates for minutes of use (MOU) as calculated by Citizens of 9.5% for 1985 over 1984 and 12.8% for 1986 over 1985 are more accurate than AT&T's growth rates of 3% and 4%, respectively.
32. Citizens has outperformed the expectations of AT&T and even with the surcharge has provided substantial increases in MOU and revenues to AT&T.
33. The maximum damage to AT&T, assuming the validity of its assumptions, is \$50,000 per year.
34. It is not reasonable to claim a revenue loss equal to 50 times Citizens' annual revenue.
35. If Citizens' proposal to the Commission in A.85-01-034 is adopted, Citizens will file a rate application by 1991 and include a request to remove the surcharge.
36. AT&T had a toll rate decrease of 4.13% in July 1985 and 7.7% in March 1986 for intrastate toll.

Argument

In its briefs, ICOs argue that:

1. The surcharges were created by this Commission in 1982 and 1983, as part of the local exchange rate designs adopted in general rate proceedings of the defendant companies which were completed prior to divestiture.

2. These surcharges, not subject to the settlement process, provide local exchange revenues that directly contribute to the determined local exchange revenue requirement of each company.
3. The surcharges authorized since divestiture have been applied only to intraLATA changes.
4. As a result of this Commission's actions in D.85-08-091, our policy on the removal of the interLATA portion of the surcharges has been clearly defined as follows:
  - a. New local exchange rate designs adopted in the course of general rate proceedings (either formal rate cases or General Order 96-A proceedings) will not include any surcharge measured by interLATA toll calling;
  - b. When a reduction in the local exchange revenue requirement of a company with a statewide toll surcharge is required, the Commission's first priority will be to reduce the interLATA portion of the surcharge by an amount equal to the required revenue reduction; but
  - c. The Commission will not remove the interLATA portion of the surcharges beyond the amount of any required revenue reductions except in the course of general rate proceedings.
5. AT&T seeks to have the Commission regulate the defendant local exchange companies based entirely upon consideration of the concerns expressed by AT&T rather than having the Commission consider the needs of all ratepayers of the affected companies and of the companies themselves.
6. AT&T completely failed to present any hard, factual data to demonstrate damages it allegedly suffers from competitive disadvantage caused by the surcharges.

7. AT&T carries 87.5% of the intrastate interLATA toll traffic from Citizens' Elk Grove exchange (the only Citizens' exchange subject to competition).
8. The maximum damages AT&T suffers from competition in Citizens' Elk Grove exchange on its intrastate operations are approximately \$14,000 annually.
9. The econometric model used by AT&T to attempt to estimate toll usage repression and associated revenue losses claimed from the billing surcharge is defective in that: a statewide model cannot be used to predict price/demand relationship for the limited service territory of a small telephone company; the model did not include data on price changes since 1984; the demand data used for the model did not include a price change of a 24% magnitude; and the model could not be applied to measure relatively large price changes, such as 24%.
10. AT&T failed to perform any studies in the service territories of Sierra despite the presence of specific factors, such as four contiguous exchanges of which two had surcharges and two did not, which would have facilitated the development of the effect of surcharge on repression.
11. AT&T's toll usage in Citizens' service territory is dramatically outperforming AT&T's statewide growth expectations.
12. The damages under any theory presented by AT&T for Citizens cannot possibly justify the filing of a general rate case by Citizens in order to save AT&T from a few thousand dollars of unsubstantiated losses.
13. AT&T has previously litigated before this Commission the identical issues it raises in this complaint and has received an adverse ruling.
14. The surcharges were adopted specifically as components of the local exchange rate designs of ten different local exchange



companies in 1982 and 1983 and were applied to all intrastate toll billing.

15. AT&T's divestiture on January 1, 1984 provided for a transfer to and an assumption by AT&T of the portion of intrastate toll traffic which is now considered interLATA in nature.
16. The surcharges were specifically incorporated as a permanent component of the respective local rate designs to remain in effect until a subsequent general rate proceeding adopted a new local rate design after full consideration of the Commission of all relevant rate design considerations.
17. Removal of the surcharge would impose a substantial cost burden upon the general body of Citizens' ratepayers, and absent a reliable basis of concluding that AT&T is in fact suffering substantial damages, neither Citizens nor this Commission can justify imposing these costs upon the general body of ratepayers.
18. The basis for the ALJ's ruling refusing to join this complaint with Pacific's rate case was that the rate case was not likely to produce a rate reduction and therefore AT&T would have to make some other or additional threshold evidentiary showing in order to justify surcharge removal.
19. Intrastate high cost funds are not available until a company has filed and concluded a general rate case.

### III. Discussion

#### History

ICOs' testimony and briefs accurately set forth the history and evaluation of the presently existing interLATA toll call surcharge. As noted these surcharges were established by this Commission in 1982 and 1983 as part of the local exchange rate

designs adopted in general rate proceedings of the defendant companies. These surcharges provide local exchange revenues and are not subjected to the toll settlement process and are therefore, in effect, a charge to the local exchange customers for local exchange service.

In 1982 and 1983 the toll network included the toll facilities of the independent companies and Pacific. AT&T, through Pacific, participated directly in this integrated statewide toll network which included all intrastate toll calling over the facilities of Pacific and the independent local exchange companies. As a result of the divestiture Pacific is limited to participating in that portion of the intrastate toll market within each LATA and AT&T took the assets and traffic for calls which are between LATAs. Since divestiture newly adopted toll surcharges have been applicable only to intraLATA toll calls.

CPUC Position

AT&T and ICOs agree that D.85-08-091, our decision on the rehearing of D.84-06-111 on Pacific's rate case, set forth our position on the surcharge as follows:

"We appreciate AT&T-C's concern about the continued imposition of billing surcharges on interLATA AT&T-C toll services for the benefit of ITCs. In the competitive post-divestiture environment we do not intend to increase such surcharges or to authorize new ones, and we plan to reduce and eliminate existing ITC surcharges on interLATA toll billings when rate reductions are called for. We find that the public interest in promoting fair competition in interLATA services requires that, in reducing rates for ITCs with surcharges on interLATA toll billings, priority be given to reducing or eliminating such surcharges."  
(Mimeo. pp. 13, 14.)

ICOs advocate a continuation of the above policy on the basis that AT&T has offered no evidence mandating any revision to this policy and that any acceleration of rate applications to

facilitate removal of the surcharge at an early date will create substantial and unnecessary expense for the ICO ratepayers.

AT&T, on the other hand, takes the position that conditions in the post-divestiture period require immediate removal of the surcharges. These conditions, according to AT&T, include: confiscation of AT&T's property without due process or just cause; discrimination; surcharges that are unfairly burdensome; and surcharges that are counterproductive. It is AT&T's further position that the creation of interstate and intrastate HCFs provide this Commission with a means of offsetting the elimination of the interLATA toll surcharges without reversing our general policy as set forth in the above-quoted portion of D.85-08-091.

#### Confiscation

According to AT&T, the surcharges are confiscatory because they are applied by defendants as a percentage of AT&T's rates to AT&T's customers to subsidize defendants' services. Further, the revenues collected from AT&T's rates should belong to AT&T, not another utility. We find this position to be without merit. As previously noted, the surcharge was imposed on all intrastate toll calls prior to the divestiture. At the time of hearings the surcharges in question were still being charged by the independent companies to their local exchange customers on the basis of the extent of all intrastate toll traffic carried on the statewide toll network, including interLATA toll calls carried on the portions of the network assumed by AT&T. The surcharges are applied on a "bill and keep" basis, are outside the toll settlement procedures, and are designed to provide monies to meet the individual company revenue requirements. Inasmuch as the surcharges are designed to provide revenues to meet the individual company revenue requirements, their retention by the individual utilities does not constitute confiscation.

### Discrimination

AT&T claims that since its customers are the only exchange carrier customers to which the intrastate interLATA surcharge is applied, the surcharge is discriminatory. It should be noted that the tariff does not in and of itself limit the application of the surcharge to AT&T. The surcharge is applied by the ITCs' toll billing systems to all companies that utilize these billing systems. Since AT&T is the only interexchange carrier that subscribes to such service, only AT&T's customers are subject to the surcharge. If AT&T were to bill its customers as do the other interexchange companies, no surcharge would be applicable. Similarly, were the other interexchange companies to subscribe to the ITCs' billing service, the surcharge would be applicable. In other words, AT&T is treated the same as the other interexchange companies. Under these circumstances, discrimination does not exist.

### Burdensome Surcharges

According to AT&T the surcharges are unfairly burdensome because: the surcharges are confusing and misleading to customers; the surcharges have repressed toll revenues approximately \$1 million annually in the service territories of Citizens and Sierra; other sources of replacement revenue have become available since the surcharges were created; and the burden has been borne by AT&T's customers for over three years since divestiture even though the surcharges were to be temporary in nature.

We agree with AT&T that surcharges tend to be confusing to subscribers. However, we do not believe that an intrastate toll surcharge is any more or less confusing than any other surcharge and certainly not so unintelligible as to require its immediate removal.

AT&T produced two estimates of revenue losses due to repression, indicating the magnitude of such losses to be slightly



below \$1 million a year. AT&T also claims an annual loss to competitive interexchange companies of \$1.7 million.

ICOs dispute the repression losses of approximately \$1 million a year on the basis that the data used in AT&T's computation was outdated, repression estimates based on a statewide model were inapplicable to the ICOs' service territories, and the computations grossly exaggerated the repression losses. It is noted that AT&T's second witness on toll repression used updated information negating the first of ICOs' allegations relating to the accuracy of ICOs' studies. We agree with the ICOs' position that a statewide model will not accurately reflect the repression to be experienced by the ICOs in their respective territories. ICOs' service territories are rural in nature and the demographic factors therein do not accurately reflect those of the state as a whole. However, specific data for the ICOs' service areas is not available in this record. Consequently, for the purposes of this discussion we will accept AT&T's figures as a rough approximation of the repression effects of the surcharges. As noted by ICOs, the \$1 million annual repression is a gross figure which should be multiplied by the percentage access charges to reflect AT&T's true cost and further reduced by 50% to reflect income taxes that would have been payable by AT&T had it received the additional net revenues. The above computations yield a total net annual loss to AT&T of \$50,000 which ICOs classify as minimal and of no consequence. This \$50,000 annual repression loss is approximately 3% of the annual surcharge revenues and does not impress us as being of sufficient magnitude to require immediate action. This is especially true when consideration is given to the cost of the rate proceeding required to effect the removal of the surcharge. Even if this repression cost were doubled to reflect declining access charges, no immediate action appears to be mandated.

ICOs take an even stricter view when addressing the alleged \$1.7 million lost to competitive companies. ICOs first

remove the interstate revenue since the surcharge only applies to intrastate toll calling. This remaining figure is further reduced to reflect the 40% Elk Grove factor as being the only exchange subject to competition and further adjusted to reflect the fact that as of the time of divestiture, AT&T had already lost 5% of the intrastate market. This figure was then further reduced to reflect the 90% access charge factor and 50% for income taxes. The overall effect of these calculations is to reduce the \$1.7 million competitive losses to a mere \$14,000 a year. AT&T argues that the interstate revenue factor should be included because no subscriber would use one carrier for interstate calls and another for intrastate calls. This position appears reasonable. AT&T also notes that the current access ratio is 80% instead of 90% and dropping. It should be noted that even including the interstate toll revenues in the total and applying an 80% access ratio instead of the 90% ratio results is an annual loss to competitive companies of approximately \$47,500. This is a relatively insignificant amount and even coupled with the above discussed repression losses does not justify immediate action in removing the surcharge.

AT&T's evidence and arguments indicate its belief that the availability of interstate and intrastate HCFs can furnish the basis for surcharge removal under our stated policy to reduce surcharges when rate reductions otherwise are called for. The stated policy of the interstate HCFs is to keep local telephone rates lower than they would otherwise be. In general they were authorized by the FCC to offset increased local exchange costs resulting from federally adopted policies. There is nothing in this record to indicate that the monies HCFs received will exceed the increased costs resulting from the effects of FCC's policy changes. Under these circumstances, the use of HCF monies to offset the intrastate interLATA surcharges would be inappropriate. In keeping with our stated policy the surcharge removal will be given priority in any general rate proceeding. Consequently,



HCF will not be considered as a surcharge offset as proposed by AT&T.

Counterproductive Surcharges

It is AT&T's position that the surcharges are counterproductive because: the surcharges repress the revenues from toll that the surcharge is based on; the surcharge represses the revenue that could be collected from access charges; the existence of the surcharge limits the incentive of the utilities to address their basic problems relating to costs and revenues; and the surcharges need to be removed before programs facilitating competition in rural areas are fostered in California. As previously discussed it would not appear that the repressive effect of the surcharges is significant enough to cause concern. Both the Commission and the ICOs are closely monitoring the ICOs' revenue requirements. Such activities are independent of the existence of the surcharges in question. Should programs facilitating competition in rural areas be implemented in the ICOs' service, we can further address the problem at that time.

The Billing Format Issue

AT&T notes that Citizens has imbedded the surcharge into AT&T's rates with the result that AT&T's charges are set forth on the bills as being 24% higher than AT&T's tariffed rates. AT&T further alleges that the billing format clearly presents a dilemma because a separate line statement for the surcharge could easily be worded in such a manner as to exacerbate the competitive disadvantage under which AT&T labors in Citizens' Elk Grove exchange.

In his testimony Citizens' witness Bromagem expresses surprise that AT&T has raised this issue inasmuch as AT&T has made two full audits of Citizens' billing procedures since divestiture and at no time during this period did AT&T raise this issue. This witness further testified that it is Citizens' belief that the billing format presents an accurate picture to the consumer of what

each telephone call actually costs but that Citizens is willing to discuss the matter with AT&T outside the formal proceeding. Further, according to Citizens there is no reason for this Commission to involve itself in this dispute prior to AT&T having made efforts to resolve the issues on an informal and non-adversarial basis. This position appears reasonable and we will not order any change in the billing format at this time. It is understood, however, that Citizens is amenable to accommodate AT&T's billing format design changes. Should our assumption appear invalid, we will take further action on this issue.

Comments on Proposed Decision

As provided in Section 311 of the Public Utilities Code, ALJ Johnson prepared a Proposed Decision which was filed with the Commission and served on all parties on February 2, 1989. Rules 77.1 through 77.5 of this Commission's Rules of Practice and Procedure permit parties to file comments on such a Proposed Decision within 20 days of its date of mailing or February 22, 1989 and reply comments five days later.

Comments were filed by the ICOs indicating defendants' belief that the proposed decision correctly resolves the issues of the proceeding but requires two changes which are not central to the rationale or result of the decision. The first change relates to the statement appearing on page 20 of the decision that if AT&T were to do its own billing, no surcharge would be applied. According to ICOs the record in this proceeding is inadequate to support such a conclusion. We disagree. The cross-examination of AT&T's witness Mayfield clearly supports AT&T's position that removal of the billing function from the independent company would result in AT&T escaping the imposition of the surcharge.

The second change recommended by ICOs are references to page 22 of the decision and Finding of Fact 11 that an ITC must file and conclude a general rate case as a precondition to the receipt of intrastate HCFs. According to ICOs the statement was

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correct at the time the record was developed but subsequently D.88-07-022 modified the HCF to make it possible for utilities to receive such funding as necessary to offset their settlement losses. This position is well taken and the decision has been modified accordingly.

AT&T filed reply comments to the above-discussed ICOs comments. AT&T has no objection to the proposed changes regarding the HCF procedures. AT&T does, however, take issue with ICOs' comments relating to the surcharge elimination were AT&T to do its own billing. AT&T claims that ICOs' comments never touch on the issue of discrimination and state there is little difference in adding a surcharge to AT&T's customers because AT&T uses ICOs' recording service from surcharging an MCI or US Sprint customer because those carriers buy access lines from the ICOs. On this basis AT&T requests that the comments of the ICOs be rejected. We did not accept ICOs' recommended changes in this respect so AT&T's request is moot.

AT&T also notes that since this complaint was filed, the interLATA surcharges of three of the four defendants have been removed or will be removed in the near future. According to AT&T, only Sierra has not attempted to remove its interLATA surcharge. According to AT&T, since Sierra is a HCF recipient, even this surcharge must be reviewed and eliminated within the foreseeable future.

#### IV. Findings and Conclusions

##### Findings of Fact

1. The intrastate toll surcharges applicable to interLATA toll were established prior to divestiture as part of the local exchange rate designs adopted in general rate proceedings.
2. These surcharges provide local exchange revenues and are not subject to the toll settlement process.

3. Since divestiture newly adopted toll surcharges have been applicable only to intraLATA toll calls.

4. In D.85-08-091 we stated in part:

"We find that public interest in promoting fair competition in interLATA services requires that, in reducing rates for ITCs with surcharges on interLATA toll billings, priority be given to reducing or eliminating such surcharges." (Mimeo. pp. 13, 14.)

5. Intrastate toll surcharges are applied on a bill and keep basis, are outside the toll settlement procedures, and are designed to provide monies to meet the individual company revenue requirements.

6. The application of the intrastate interLATA surcharge is uniform for all interexchange companies and is applied by the ITCs toll billing systems. Since AT&T is the only interexchange carrier that subscribes to the ITCs' billing service only its customers are subject to the surcharge.

7. An intrastate interLATA surcharge is no more or less confusing than other surcharges.

8. A statewide econometric model will not necessarily accurately reflect the repression to be experienced by the ICOs in their respective service areas.

9. The repressive and competitive damages to AT&T caused by the application of the intrastate interLATA surcharges are relatively negligible after the application of appropriate factors reducing the gross damages to their net amounts.

10. The use of interstate HCF monies to offset the loss of intrastate interLATA surcharge revenues would be inappropriate.

11. The intrastate interLATA surcharge should be removed at the ICOs' next general rate proceeding.

12. There is no merit to AT&T's position that the intrastate interLATA surcharges are counterproductive; however, from a practical standpoint this complaint may be moot in any event

because AT&T indicates that three of the four defendants have either removed, or will remove, their interLATA surcharges, in the near future.

13. Citizens should be amenable to accommodate AT&T's billing format design charges.

Conclusions of Law

1. Since intrastate toll surcharges are designed to provide monies to meet the individual company revenue requirements, the retention of revenues for the surcharges based on AT&T's billings by the individual companies does not constitute confiscation.

2. The application of the intrastate interLATA surcharge is uniform for all interexchange companies and is, therefore, not discriminatory.

3. The net repressive and competitive damages to AT&T caused by the application of the intrastate interLATA toll surcharges are relatively negligible.

4. AT&T has not shown sufficient damages caused by the imposition of the intrastate interLATA toll surcharge to warrant action on our part to effect their immediate removal.

5. Our policy set forth in D.85-08-091 of giving priority to the removal of intrastate interLATA surcharges in the ICOs' next general rate proceedings is still valid.

6. HFC monies are not available to offset revenues lost by the elimination of the intrastate interLATA toll surcharges.

7. To the extent this complaint is not already moot, the relief requested should be denied.

ORDER

IT IS ORDERED that the relief requested by AT&T Communications of California, Inc. is denied.

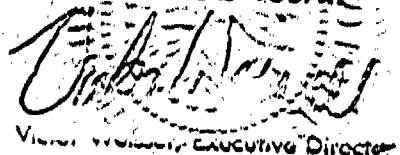
This order becomes effective 30 days from today.

Dated MAR 22 1989, at San Francisco, California.

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

Commissioner Patricia Eckert,  
present but not participating

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

  
Victor W. Young, Executive Director

remove the interstate revenue since the surcharge only applies to intrastate toll calling. This remaining figure is further reduced to reflect the 40% Elk Grove factor as being the only exchange subject to competition and further adjusted to reflect the fact that as of the time of divestiture, AT&T had already lost 5% of the intrastate market. This figure was then further reduced to reflect the 90% access charge factor and 50% for income taxes. The overall effect of these calculations is to reduce the \$1.7 million competitive losses to a mere \$14,000 a year. AT&T argues that the interstate revenue factor should be included because no subscriber would use one carrier for interstate calls and another for intrastate calls. This position appears reasonable. AT&T also notes that the current access ratio is 80% instead of 90% and dropping. It should be noted that even including the interstate toll revenues in the total and applying an 80% access ratio instead of the 90% ratio results is an annual loss to competitive companies of approximately \$47,500. This is a relatively insignificant amount and even coupled with the above discussed repression losses does not justify immediate action in removing the surcharge.

AT&T's evidence and arguments indicate its belief that the availability of interstate and intrastate HCFs can furnish the basis for surcharge removal under our stated policy to reduce surcharges when rate reductions otherwise are called for. The stated policy of the interstate HCFs is to keep local telephone rates lower than they would otherwise be. In general they were authorized by the FCC to offset increased local exchange costs resulting from federally adopted policies. There is nothing in this record to indicate that the HCFs received will exceed the increased costs resulting from the effects of FCC's policy changes. Under these circumstances, the use of HCF monies to offset the intrastate interLATA surcharges would be inappropriate. As noted by ICOs, the intrastate HCFs are not available until a company has filed and concluded a general rate case. In keeping

with our stated policy the surcharge removal will be given priority in any general rate proceeding whether or not the company in question qualifies for intrastate HCFs.

Counterproductive Surcharges

It is AT&T's position that the surcharges are counterproductive because: the surcharges repress the revenues from toll that the surcharge is based on; the surcharge represses the revenue that could be collected from access charges; the existence of the surcharge limits the incentive of the utilities to address their basic problems relating to costs and revenues; and the surcharges need to be removed before programs facilitating competition in rural areas are fostered in California. As previously discussed it would not appear that the repressive effect of the surcharges is significant enough to cause concern. Both the Commission and the ICOs are closely monitoring the ICOs' revenue requirements. Such activities are independent of the existence of the surcharges in question. Should programs facilitating competition in rural areas be implemented in the ICOs' service, we can further address the problem at that time.

The Billing Format Issue

AT&T notes that Citizens has imbedded the surcharge into AT&T's rates with the result that AT&T's charges are set forth on the bills as being 24% higher than AT&T's tariffed rates. AT&T further alleges that the billing format clearly presents a dilemma because a separate line statement for the surcharge could easily be worded in such a manner as to exacerbate the competitive disadvantage under which AT&T labors in Citizens' Elk Grove exchange.

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billing format presents an accurate picture to the consumer of what each telephone call actually costs but that Citizens is willing to discuss the matter with AT&T outside the formal proceeding. Further, according to Citizens there is no reason for this Commission to involve itself in this dispute prior to AT&T having made efforts to resolve the issues on an informal and non-adversarial basis. This position appears reasonable and we will not order any change in the billing format at this time. It is understood, however, that Citizens is amenable to accommodate AT&T's billing format design changes. Should our assumption appear invalid, we will take further action on this issue.

#### IV. Findings and Conclusions

##### Findings of Fact

1. The intrastate toll surcharges applicable to interLATA toll were established prior to divestiture as part of the local exchange rate designs adopted in general rate proceedings.
2. These surcharges provide local exchange revenues and are not subject to the toll settlement process.
3. Since divestiture newly adopted toll surcharges have been applicable only to intraLATA toll calls.
4. In D.85-08-091 we stated in part:  
"We find that public interest in promoting fair competition in interLATA services requires that, in reducing rates for ITCs with surcharges on interLATA toll billings, priority be given to reducing or eliminating such surcharges." (Mimeo. pp. 13, 14.)
5. Intrastate toll surcharges are applied on a bill and keep basis, are outside the toll settlement procedures, and are designed to provide monies to meet the individual company revenue requirements.

each telephone call actually costs but that Citizens is willing to discuss the matter with AT&T outside the formal proceeding. Further, according to Citizens there is no reason for this Commission to involve itself in this dispute prior to AT&T having made efforts to resolve the issues on an informal and non-adversarial basis. This position appears reasonable and we will not order any change in the billing format at this time. It is understood, however, that Citizens is amenable to accommodate AT&T's billing format design changes. Should our assumption appear invalid, we will take further action on this issue.

Comments on Proposed Decision

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The second change recommended by ICOs are references to page 22 of the decision and Finding of Fact 11 that an ITC must file and conclude a general rate condition as a precondition to the receipt of intrastate HCFs. According to ICOs the statement was



6. The application of the intrastate interLATA surcharge is uniform for all interexchange companies and is applied by the ITCs toll billing systems. Since AT&T is the only interexchange carrier that subscribes to the ITCs' billing service only its customers are subject to the surcharge.

7. An intrastate interLATA surcharge is no more or less confusing than other surcharges.

8. A statewide econometric model will not necessarily accurately reflect the repression to be experienced by the ICOs in their respective service areas.

9. The repressive and competitive damages to AT&T caused by the application of the intrastate interLATA surcharges are relatively negligible after the application of appropriate factors reducing the gross damages to their net amounts.

10. The use of interstate HCF monies to offset the loss of intrastate interLATA surcharge revenues would be inappropriate.

11. Intrastate HCFs are not available until a company has filed and concluded a general rate case.

12. The intrastate interLATA surcharge should be removed at the ICOs' next general rate proceeding.

13. There is no merit to AT&T's position that the intrastate interLATA surcharges are counterproductive.

14. Citizens should be amenable to accommodate AT&T's billing format design charges.

#### Conclusions of Law

1. Since intrastate toll surcharges are designed to provide monies to meet the individual company revenue requirements, the retention of revenues for the surcharges based on AT&T's billings by the individual companies does not constitute confiscation.

2. The application of the intrastate interLATA surcharge is uniform for all interexchange companies and is, therefore, not discriminatory.

correct at the time the record was developed but subsequently D.88-07-022 modified the HCF to make it possible for utilities to receive such funding as necessary to offset their settlement losses. This position is well taken and the decision has been modified accordingly.

AT&T filed reply comments to the above-discussed ICOs comments. AT&T has no objection to the proposed changes regarding the HCF procedures. AT&T does, however, take issue with ICOs' comments relating to the surcharge elimination were AT&T to do its own billing. AT&T claims that ICOs' comments never touch on the issue of discrimination and state there is little difference in adding a surcharge to AT&T's customers because AT&T uses ICOs' recording service from surcharging an MCI or US Sprint customer because those carriers buy access lines from the ICOs. On this basis AT&T requests that the comments of the ICOs be rejected. We did not accept ICOs' recommended changes in this respect so AT&T's request is moot.

#### IV. Findings and Conclusions

##### Findings of Fact

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3. The net repressive and competitive damages to AT&T caused by the application of the intrastate interLATA toll surcharges are relatively negligible.

4. AT&T has not shown sufficient damages caused by the imposition of the intrastate interLATA toll surcharge to warrant action on our part to effect their immediate removal.

5. Our policy set forth in D.85-08-091 of giving priority to the removal of intrastate interLATA surcharges in the ICOs' next general rate proceedings is still valid.

6. HFC monies are not available to offset revenues lost by the elimination of the intrastate interLATA toll surcharges.

7. The relief requested should be denied.

ORDER

IT IS ORDERED that the relief requested by AT&T Communications of California, Inc. is denied.

This order becomes effective 30 days from today.

Dated \_\_\_\_\_, at San Francisco, California.

5. Intrastate toll surcharges are applied on a bill and keep basis, are outside the toll settlement procedures, and are designed to provide monies to meet the individual company revenue requirements.

6. The application of the intrastate interLATA surcharge is uniform for all interexchange companies and is applied by the ITCs toll billing systems. Since AT&T is the only interexchange carrier that subscribes to the ITCs' billing service only its customers are subject to the surcharge.

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8. A statewide econometric model will not necessarily accurately reflect the repression to be experienced by the ICOs in their respective service areas.

9. The repressive and competitive damages to AT&T caused by the application of the intrastate interLATA surcharges are relatively negligible after the application of appropriate factors reducing the gross damages to their net amounts.

10. The use of interstate HCF monies to offset the loss of intrastate interLATA surcharge revenues would be inappropriate.

11. The intrastate interLATA surcharge should be removed at the ICOs' next general rate proceeding.

12. There is no merit to AT&T's position that the intrastate interLATA surcharges are counterproductive.

13. Citizens should be amenable to accommodate AT&T's billing format design charges.

#### Conclusions of Law

1. Since intrastate toll surcharges are designed to provide monies to meet the individual company revenue requirements, the retention of revenues for the surcharges based on AT&T's billings by the individual companies does not constitute confiscation.

2. The application of the intrastate interLATA surcharge is uniform for all interexchange companies and is, therefore, not discriminatory.

3. The net repressive and competitive damages to AT&T caused by the application of the intrastate interLATA toll surcharges are relatively negligible.

4. AT&T has not shown sufficient damages caused by the imposition of the intrastate interLATA toll surcharge to warrant action on our part to effect their immediate removal.

5. Our policy set forth in D.85-08-091 of giving priority to the removal of intrastate interLATA surcharges in the ICOs' next general rate proceedings is still valid.

6. HFC monies are not available to offset revenues lost by the elimination of the intrastate interLATA toll surcharges.

7. The relief requested should be denied.

ORDER

IT IS ORDERED that the relief requested by AT&T Communications of California, Inc. is denied.

This order becomes effective 30 days from today.

Dated \_\_\_\_\_, at San Francisco, California.