

ORIGINAL

Decision 89-12-019 December 6, 1989

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of AT&T Communications)
of California, Inc. (U 5002 C) under)
Rule 15 for Authority to Provide an)
Intrastate InterLATA Private Line)
Service ACCUNET® Spectrum of Digital)
Services.)

Application 89-05-052
(Filed May 23, 1989)

INTERIM OPINION

By this decision, the Commission grants AT&T Communications of California, Inc. (AT&T-C) interim authority to provide its ACCUNET Spectrum of Digital Services (ASDS) on an intrastate interLATA basis subject to certain conditions. These conditions are: (1) final authority is deferred until resolution of Application (A.) 89-03-046, the AT&T-C Readyline consolidated proceeding, where long-run incremental costing methodology will be established; (2) AT&T-C must file additional cost support materials for ASDS consistent with the new service pricing and flexibility guidelines which will be established in A.89-03-046; and (3) ASDS pricing flexibility is denied for purposes of interim authority.

These conditions are necessary to allow this order to be issued ex parte in light of the concerns raised by protestants.

Background

AT&T-C submitted its application for authority to provide ASDS on May 18, 1989. The application was rejected by the Commission's Docket Office as incomplete due to a lack of necessary cost data. On May 23, 1989, AT&T-C submitted supplemental cost data (Attachment D to the application) and the application was therefore filed. Notice of filing of the application appeared in the Commission's Daily Calendar on May 26, 1989.

The Division of Ratepayer Advocates (DRA) filed comments (in lieu of a protest) on the ASDS application on June 22, 1989 requesting a workshop be held to explore issues raised by the application. On June 26, 1989, US Sprint Communications Company Limited Partnership (US Sprint) filed a timely protest to AT&T-C's application demanding hearings on issues raised by the application.

On July 10, 1989, AT&T-C filed a reply to US Sprint's protest once again requesting an ex parte order while agreeing to the workshop requested by DRA. On July 14, 1989, US Sprint responded to AT&T-C's reply reiterating its demand that the application not be granted without further examination of the proposed costing standard.

On July 18, 1989, an informal workshop sponsored by AT&T-C was held with representatives of DRA and US Sprint. A prehearing conference (PHC) set for July 25, 1989 was postponed until August 1, 1989, at AT&T-C's request.

At the August 1 PHC, AT&T-C submitted a document entitled "Proposal of AT&T Communications of California, Inc. for Authority to Provide ACCUNET Spectrum of Digital Services" which was filed at the Commission's Docket Office that day. Effectively, AT&T-C's proposal is a supplement to its application that attempts to respond to the concerns that DRA and US Sprint raised at the workshop. Rather than proceed to hearings, the parties at the PHC agreed to a round of further comments on ASDS due August 31, 1989. AT&T-C was instructed by the assigned administrative law judge to cooperate fully in discovery requests by the interested parties. Reply comments were due September 6, 1989. AT&T-C requested an extension of the filing of reply comments until September 8, 1989.

Adequacy of AT&T-C's Application for ASDS

As discussed above, AT&T-C submitted supplemental cost data on May 23, 1989, as Attachment D to its application, in order to meet the Commission's filing requirements. In a letter of that date to the Commission's Executive Director, AT&T-C referred to

Attachment D as "proprietary material" which would only be made available to other parties after a "Nondisclosure and Proprietary Protective Agreement" was executed. However, no motion was filed for receipt by the Commission of this attachment under seal. Thus, the material was properly included with the rest of the application in the Commission's Central Files, available for public inspection.

Further, even had a motion to receive Attachment D under seal been filed, it is inappropriate to grant such a motion. Applications filed with the Commission are public records. To seek authority to offer a new service justified by an untested costing method requires disclosure in the application of materials required under the Commission's Rules. AT&T-C purportedly filed its application under Commission Rule 15.

Rule 15(c) states that the applicant shall provide "such additional information as may be required by the Commission in a particular proceeding." Attachment D performs a Revenue Cost Analysis for ASDS including the cross-elastic effects of AT&T-C's ASDS with its DATAPHONE Digital Service (DDS). This attachment contains critical information as to whether ASDS is going to result in positive contribution to AT&T-C. This material is essential to the completeness of AT&T-C's application. An applicant is required to put this information on the public record so it can be subject to the scrutiny of the Commission staff, competitors, and the public generally. Apparently the applicant desires to furnish the least amount of financial data which is permissible, but it has made no showing that Attachment D should be treated confidentially. Merely stamping portions of its application as proprietary is not enough to merit confidential treatment as part of an application. Regulated public utilities are subject to a higher level of scrutiny than nonregulated entities, including financial matters. Therefore, Attachment D to AT&T-C's application is properly placed in the Commission's formal files and available for public inspection pursuant to Government Code § 6253.

Description of ASDS

ASDS is a digital private line service that, in AT&T-C's view, represents a significant advancement in private line communications by providing customers with an array of transmission speeds not now available to transport their information on an all-digital, dedicated, point-to-point basis. ASDS is capable of providing base bit rate speeds of 56/64 kilobits per second (Kbps) and intermediate bit rate speeds (IBRS) from 128 Kbps up to 1.544 megabits per second. The IBRS feature of ASDS is the innovative feature not now available in the interLATA market.

AT&T-C intends California ASDS to be equivalent to AT&T-C's interstate ASDS filed with the Federal Communications Commission in April 1989.

Rate Structure for ASDS

AT&T-C claims the rate structure proposed for ASDS is identical to AT&T-C's interstate rate structure. AT&T-C argues that the rates proposed for ASDS are just and reasonable and that the Commission has before it enough information to make that finding without hearings. AT&T-C argues since there are no competitors in the market at this time with an ASDS equivalent service, the question of an appropriate rate is also of critical concern to AT&T-C. According to AT&T-C, a rate set too high will leave the market free to AT&T-C's competitors; a rate set too low will cause AT&T-C to forego reasonable profit from ASDS.

AT&T-C suggests that there are several objective criteria which the Commission may apply in evaluating the proposed ASDS rates and determining that they are just and reasonable. AT&T-C recommends that the Commission evaluate the proposed ASDS rates against the existing rates of the services most closely substitutable with ASDS. AT&T-C claims the substitute services provide a rate maximum which should not be exceeded to the extent that ASDS is provided more cost-effectively over AT&T-C's network than is the substitute service.

Under AT&T-C's current California private line tariff, only end-to-end private line service is available, consisting of the following two rate elements: (1) a flat rate Local Channel, representing the connection of the customer's premises to the rate center of the customer's rate center area; and (2) a distance sensitive, Inter Office Channel (IOC) measured between rate centers at each end of the circuit. The Local Channel rate covers only a portion of the cost to AT&T-C of the Local Exchange Carrier (LEC) provided special access facility. The rates for the IOC bundle AT&T-C network costs with the remaining portion of special access costs not covered by the Local Channel rate.

AT&T-C asserts that the ASDS rate structure proposed with this filing unbundles the current rate structure to more closely reflect the manner in which various vendors actually provide the facilities. Since the access and transport functions are unbundled, customers have more alternatives since they may purchase the ASDS IOC from AT&T-C, yet purchase access to AT&T-C's Points-of-Presence (POPs) either from AT&T-C or from an alternative vendor.

The proposed IOC rate covers only AT&T-C-provided facilities between AT&T-C's POPs. The rate structure for the IOC portion of ASDS is a two-part monthly rate composed of a fixed rate element and a distance sensitive rate element. The rate structure also includes a monthly Central Office Connection charge.

The proposed Local Channel rate covers all special access facilities from the customer's premises to AT&T-C's POP. The rate structure for the Local Channel portion of ASDS includes the fixed and distance sensitive rate elements as does the IOC portion, but also includes monthly charges for access coordination. Furthermore, Local Channel rates are LATA-specific and are disaggregated in AT&T-C's tariff between Pacific Bell and non-Pacific Bell exchange company territories. With this rate structure AT&T-C claims it will be able to closely align its rates

with the underlying LEC special access charges for such Local Channels.

AT&T-C argues that the discussion of substitute service should focus on the IOC, since it is that portion of ASDS which AT&T-C provides exclusively.

AT&T-C asserts that ASDS is reasonably substitutable with voice grade private line service and 56 kbps DDS. According to AT&T-C, ASDS represents an advantage over voice grade service because it migrates customers to a more cost-effective digital technology. In AT&T-C's view, ASDS and AT&T-C's voice grade service use fundamentally the same transmission facilities and the underlying cost of providing the two services IOCs is essentially identical. Thus, AT&T-C believes ASDS should not reasonably be priced above the rate for voice grade service. Further, AT&T-C notes an additional maximum for ASDS' rate is the rate for DDS, even though it is not perfectly substitutable with ASDS because DDS has higher guarantees of performance and service reliability than ASDS. However, AT&T-C believes many customers will find the capabilities of ASDS more than adequate for their uses if the ASDS rate is sufficiently below that of DDS.

AT&T-C proposes to set its ASDS rate 5% below the rate for the average mileage length of a voice grade IOC. AT&T-C claims this rate is sufficiently below the voice grade rate to encourage migration from that service to ASDS and to a more cost-effective technology. Since the rate for voice grade IOC is significantly below the DDS IOC rate, AT&T-C argues the voice grade IOC rate is the effective maximum rate analog for ASDS. AT&T-C asserts that since the Commission has already reviewed and approved the rates established for AT&T-C's voice grade IOC and DDS IOC, these rates provide some objective criteria of the reasonableness of the proposed ASDS reference IOC rates. AT&T-C proposes that the Commission can rely on this analogy to voice grade and DDS rates to

determine that the ASDS reference rates are reasonable and not exorbitant.

AT&T-C has also developed a long-run incremental analysis for ASDS (which has not been reviewed in any proceeding before the Commission). AT&T-C claims that analysis shows that the net revenue earned from ASDS is positive, including the cross-elastic effect of migration from DDS. Furthermore, AT&T-C alleges the average long-run incremental cost of ASDS is well below the IOC rate for ASDS. Even major adjustments to the long-run incremental cost estimate are unlikely, in AT&T-C's view, to bring the cost up to a level which will require a rate increase. AT&T-C provided the details of this analysis to DRA and US Sprint.

AT&T-C proposes that the Commission may reach a determination that the proposed reference rates for ASDS are just and reasonable using the analogy to voice grade and DDS IOC rates described above as an upper bound, and because the proposed rates are well above the long-run incremental cost of providing the IOC. AT&T-C makes this claim despite the fact that the long-run incremental analysis has not been reviewed.

Pricing Flexibility for ASDS

AT&T-C argues that it should be granted pricing flexibility around the proposed rates for ASDS (the IOC portion). In its application, AT&T-C requested +10% and -15% flexibility which it argued was consistent with pricing flexibility granted to AT&T-C by the Commission in Decision (D.) 88-12-091. In its August 1, 1989 "proposal," AT&T-C offered to limit its request for upward flexibility to +5% in response to the objections of US Sprint that no pricing flexibility should be granted for this new service at this time. AT&T-C argues +5% and -15% for ASDS rate bands would match the upper and lower bounds for the most comparable voice grade IOC previously authorized in D.88-12-091.

US Sprint's Position

US Sprint filed a protest to AT&T-C's ASDS application and three other pleadings in this proceeding. In its protest, US Sprint argued that no approval should be granted for the proposed new service until the proposed new cost standard and the proposed new rate bands are adopted, as contemplated by D.88-12-091. US Sprint argues that AT&T-C's ASDS application proposes a new costing standard which has not yet been tested in the context of a hearing, based solely on the untested affidavit of an individual whose qualifications to attest to such facts are not stated. US Sprint asserts the sketchy information provided by AT&T-C in its application provides no basis to grant authority for ASDS without hearings.

US Sprint participated in the workshop held in July 1989. On August 31, US Sprint filed comments in response to AT&T-C's August 1 proposal suggesting certain conditions which would be placed on the grant of interim authority for ASDS which would allow US Sprint to withdraw its request for hearings on this application at this time.

First, US Sprint requests that only interim authority for ASDS be granted at this time. US Sprint suggests that final authority be deferred until resolution of A.89-03-046, the Readyline consolidated proceeding. US Sprint acknowledges that the incremental cost method for ASDS is not developed through the Transport Incremental Cost Model which is being thoroughly explored in A.89-03-046. However, US Sprint points out that the method and basic pricing approach of the two models are the same. Therefore, US Sprint suggests that a duplicative examination of AT&T-C's costing materials in the ASDS proceeding may be unnecessary when a similar review is currently scheduled in A.89-03-046. US Sprint thus suggests deferral of final authority for ASDS is appropriate.

US Sprint takes issue with AT&T-C's analogies of ASDS to pricing of existing private line services. US Sprint notes that

AT&T-C compares its proposed IOC rate for ASDS 56/64 kbps service with its current voice grade private line IOC rate. After examining AT&T-C-provided materials, US Sprint believes that this relationship does not hold over all mileage bands for these services, particularly for the longer haul circuits. US Sprint gives an example that, at 250 miles, the voice grade IOC rate is 22% below the ASDS 56/64 IOC rate, and at 350 miles it is 27% below. US Sprint notes that when AT&T-C calculated its incremental cost of providing ASDS service, the average ASDS circuit length assumed by its model was considerably longer than the average length of AT&T-C's voice grade private lines. US Sprint asserts that comparing only IOC rates, ASDS and existing voice grade private line circuits are not comparably priced, indicating that approval of even the proposed rates might lead to significant migration between these two services.

However, US Sprint acknowledges that since the PHC, AT&T-C has provided US Sprint with information that indicates that when access costs are included and an end-to-end price analysis is done, that ASDS 56/64 service rates and voice grade private line service are more comparably priced in the longer mileage bands, at least for AT&T-C's average customer. US Sprint agrees with AT&T-C that little or no migration to ASDS from voice grade service will occur at the proposed ASDS reference rates. Based on this analysis and the fact that AT&T-C's IOC rates are no lower than those it requested for interstate circuits, US Sprint now believes that AT&T-C's ASDS service can be approved on an interim basis at the proposed reference rates without concern for a major shift of existing private line customer usage patterns before permanent rates are approved. For the above reasons, US Sprint does not oppose interim approval of ASDS at the reference rates proposed in AT&T-C's application.

Second, US Sprint argues that pricing flexibility for ASDS should be deferred until after A.89-03-046 is concluded. US

Sprint points out that the Commission in D.88-12-091 explicitly deferred determination of the appropriate width of price bands for new services until the first new services application (D.88-12-091, p. 69). This issue is currently before the Commission in A.89-03-046 with hearings scheduled to begin February 5, 1989. US Sprint therefore proposes that the requested pricing flexibility be denied at this time, and consideration of pricing flexibility for ASDS be deferred until resolution of A.89-03-046 to avoid repetitious proceedings.

US Sprint disagrees with AT&T-C's assertion that its requested pricing flexibility is consistent with the pricing flexibility previously granted for voice grade private line service. US Sprint notes that AT&T-C compares ASDS 56/64 service and voice grade private line IOC rates for a 136-mile circuit and finds the proposed ASDS flexibility comparable. However, again comparing AT&T-C's proposed tariffs, US Sprint believes this relationship does not hold across all mileage bands. According to US Sprint, for a 350-mile circuit, the bottom of the band for AT&T-C's ASDS 56/64 service is 38% below the voice grade IOC rate. After reviewing information provided to US Sprint pursuant to a proprietary agreement, US Sprint asserts that even when average access costs are included, that bottom-of-the-band ASDS rates will be below voice grade private line rates for some longer mileage circuits.

US Sprint points out that it has consistently maintained throughout the regulatory flexibility case that pricing flexibility for new services should not be allowed if the result would undermine pricing flexibility established for existing services (A.87-10-039, D.88-12-091). US Sprint believes that pricing flexibility of existing services could be undermined if new service pricing is authorized which encourages service migration from the existing service to the new service. US Sprint believes that this issue will be considered in A.89-03-046 and is relevant to

consideration of the pricing flexibility requested here. For these reasons, US Sprint argues that AT&T-C's request for pricing flexibility should be denied at the present time and deferred until resolution of similar issues in A.89-03-046.

Finally, US Sprint notes that granting interim authority for ASDS rates only, with no pricing flexibility, strikes a reasonable balance between AT&T-C's desire to bring its product to market and the due process rights of the parties.

MCI's Position

MCI Telecommunications Corporation (MCI) did not originally file a protest to AT&T-C's application. However, MCI filed an appearance at the PHC and filed comments along with other parties on August 31, 1989. MCI fundamentally shares US Sprint's objection to the granting of any pricing flexibility for ASDS until the issue of rate band widths for new services is resolved in A.89-03-046. Further, MCI urges that any grant of interim authority possess no precedential effect in the final resolution of appropriate rates for ASDS.

DRA's Position

DRA filed two sets of comments in this proceeding. The first, filed on June 22, 1989, called for workshops to explore AT&T-C's new incremental costing method for ASDS.

In its second comments filed on August 31, 1989, DRA seemingly endorses the grant of authority requested for ASDS yet requests the Commission to place no reliance on the cost data provided. Rather than consider ASDS as a new service (which other parties to the proceeding do) DRA supports the treatment of this application as a stand alone application for the repackaging of existing services. Further, DRA does not object to the pricing flexibility requested by AT&T-C. DRA states that it is "reasonably satisfied that AT&T-C will not engage in predatory pricing to gain market share with this product." (August 31 Comments, p. 1.)

DRA apparently bases this conclusion, not on the cost data supplied by AT&T-C, but by comparing prices for ASDS with prices of existing products which could be replaced by ASDS. DRA argues that the absence of an incremental cost standard should not unduly delay the introduction of products that may benefit the public, if the competitive concerns of other parties can be satisfied in other ways. Finally, DRA urges that a decision on the ASDS application should not set a precedent for the use of incremental cost data in any future application.

Discussion

This application presents us with the challenge of balancing the desire of the applicant for a quick ex parte decision in the name of competitive pressures with the important due process rights of protestants raising legitimate concerns regarding the application. US Sprint's proposed compromise of allowing AT&T-C interim authority for ASDS at set rates with no pricing flexibility is a reasonable one because of the lack of record in this proceeding. AT&T-C objected strenuously to hearings which would have allowed a testing of its long-run incremental cost methodology used for ASDS. Without exploring the validity of AT&T-C's cost data in the hearing room, we should only grant AT&T-C what authority is uncontested by the protestant. To grant AT&T-C the full authority for ASDS requested in its application would put the Commission at risk of violating the protestants due process rights. We are unwilling to do this and therefore will instruct AT&T-C to file tariff sheets in compliance with this order, for interim authority only at the set rates proposed in its application with no pricing flexibility.

We defer final authority until resolution of A.89-03-046, the Readyline proceeding. While the long-run costing methodology for ASDS and Readyline are not identical, we agree with US Sprint that enough guidance may come from that proceeding to allow us to avoid hearings for ASDS. Therefore, we instruct AT&T-C to file

additional cost support materials for ASDS consistent with the new service pricing and flexibility guidelines which will be established in A.89-03-046.

Finally, we reiterate our earlier discussion where we found that AT&T-C's supplemental Attachment D, which it provided to complete its application, is properly in the Commission's formal files and available for public inspection pursuant to Government Code § 6253.

Findings of Fact

1. AT&T-C filed its application on May 18, 1989 and effectively supplemented it on August 1, 1989.
2. AT&T-C has not made any showing as to why Attachment D to its application should not be available for public inspection.
3. A timely protest was filed by US Sprint demanding hearings on the issues raised by AT&T-C's application.
4. AT&T-C requested ex parte treatment of its application despite protestant's request for hearings.
5. AT&T-C's costing methodology for ASDS has not been examined in hearings by the Commission or interested parties.
6. It is reasonable to place conditions on AT&T-C's requested authority to protect the due process rights of the protestant.
7. Final authority for ASDS should be deferred until completion of A.89-03-046 in order to benefit from the resolution of costing methodology issues in that proceeding.
8. It is reasonable to require AT&T-C to file additional cost support materials for ASDS consistent with the pricing and flexibility guidelines to be established in A.89-03-046.
9. In light of the issues raised by the protest of US Sprint, it is reasonable to only grant AT&T-C interim authority for ASDS with no pricing flexibility.

10. The interested parties believe reference rates proposed in AT&T-C's application are reasonable for purposes of interim authority only.

11. It is reasonable that no precedential value be given to the costing methodology for ASDS because it was not examined in hearings.

Conclusions of Law

1. The conditions contained in the ordering paragraphs below should be placed on AT&T-C's grant of interim authority for ASDS in order to protect the due process rights of the protestant.

2. Attachment D to AT&T-C's application should be available for public inspection pursuant to Government Code § 6253.

3. AT&T-C should file tariff sheets in compliance with the ordering paragraphs below within 10 days of the date of this order.

4. No precedential weight regarding the costing methodology underlying this application should be inferred from this grant of interim authority.

INTERIM ORDER

IT IS ORDERED that:

1. AT&T Communications of California, Inc. (AT&T-C) is granted ex parte interim authority to provide its ACCUNET Spectrum of Digital Services (ASDS) on an intrastate interLATA basis, conditioned on the following:

- a. Final authority is deferred until resolution of Application (A.) 89-03-046.
- b. AT&T-C shall file additional cost support materials for ASDS consistent with the new service pricing and flexibility guidelines to be established in A.89-03-046.
- c. Pricing flexibility is denied for purposes of interim authority.

2. AT&T-C's "reference" rates set forth in its application shall be the adopted rates for ASDS interim authority.

3. AT&T-C shall file tariff sheets in compliance with this order within 10 days of the date of this order.

This order is effective today.

Dated DEC 6 1989, at San Francisco, California.

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

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

Wesley Franklin
WESLEY FRANKLIN, Acting Executive Director
DB

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By this decision, the Commission grants AT&T Communications of California, Inc. (AT&T-C) interim authority to provide its ACCUNET Spectrum of Digital Services (ASDS) on an interstate interLATA basis subject to certain conditions. These conditions are: (1) final authority is deferred until resolution of Application (A.) 89-03-046, the AT&T-C Readyline consolidated proceeding, where long-run incremental costing methodology will be established; (2) AT&T-C must file additional cost support materials for ASDS consistent with the new service pricing and flexibility guidelines which will be established in A.89-03-046; and (3) ASDS pricing flexibility is denied for purposes of interim authority.

These conditions are necessary to allow this order to be issued ex parte in light of the concerns raised by protestants.

Background

AT&T-C submitted its application for authority to provide ASDS on May 18, 1989. The application was rejected by the Commission's Docket Office as incomplete due to a lack of necessary cost data. On May 23, 1989, AT&T-C submitted supplemental cost data (Attachment D to the application) and the application was therefore filed. Notice of filing of the application appeared in the Commission's Daily Calendar on May 26, 1989.

10. The interested parties believe reference rates proposed in AT&T-C's application are reasonable for purposes of interim authority only.

11. It is reasonable that no precedential value be given to the costing methodology for ASDS because it was not examined in hearings.

Conclusions of Law

1. The conditions contained in the ordering paragraphs below should be placed on AT&T-C's grant of interim authority for ASDS in order to protect the due process rights of the protestant.

2. Attachment D to AT&T-C's application should be available for public inspection pursuant to Government Code § 6253.

3. AT&T-C should file tariff sheets in compliance with the ordering paragraphs below within 10 days of the date of this order.

4. No precedential weight regarding the costing methodology underlying this application should be inferred from this grant of interim authority.

INTERIM ORDER

IT IS ORDERED that:

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