

ALJ/TRP/rmn

Decision 97-12-108 December 16, 1997

Mailed

DEC 18 1997

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the Commission's Own Motion into Competition for Local Exchange Service.

Rulemaking 95-04-043
(Filed April 26, 1995)

Order Instituting Investigation on the Commission's Own Motion into Competition for Local Exchange Service.

Investigation 95-04-044
(Filed April 26, 1995)

O P I N I O N

Introduction

In Decision (D.) 97-08-059, we authorized the local exchange carriers (LECs) to make their retail contract offerings available for resale. We noted, however, that a potential problem arises in cases involving retail contracts for Centrex, ContraNet, or other access lines where the customer must pay an "End User Common Line" (EUCL) charge. This EUCL charge is collected pursuant to federal regulations as part of the overall retail contract price to reimburse the LECs for the cost of telephone access lines allocated to the interstate jurisdiction. Consequently, based on our wholesale pricing policy which applies an avoided-cost discount to the LEC retail price, the wholesale contract price paid by competitive local carrier (CLC) resellers would already include the provision for an EUCL charge. We raised the concern in D.97-08-059, noting that if the CLC reseller was then required to impose its own additional EUCL charge on the retail customer and remit that amount to the LEC, the resulting retail contract price could become too high to permit the CLC to compete with the LEC.

Accordingly, we directed the Administrative Law Judge to take comments on appropriate measures in order to avoid potentially uncompetitive pricing of such contracts merely as a result of the collection of the EUCL charge. We deferred authorizing the resale of contracts for Centrex/ContraNet and other access lines pending review of parties' comments.

Comments were filed by Pacific Bell (Pacific), GTE California Incorporated (GTEC), AT&T Communications (AT&T) and MCI Communications (MCI) jointly, and ICG Telecom Group, Inc. (ICG).

Parties' Positions

Pacific states that, under its applicable federal tariff, resellers must pay the EUCL to Pacific. The Federal Communications Commission (FCC) has ruled "the [EUCL] is not subject to the wholesale pricing standard of Section 252(d)(3)" and resellers must pay the full EUCL charge to incumbent LECs¹. Pacific argues that the FCC's rules should be followed with respect to the EUCL charge because it is an interstate charge over which the Commission has no jurisdiction. Pacific therefore does not believe the EUCL charge should be discounted for resale purposes. Currently, the EUCL charge is included in the contract price for Pacific's Centrex services, as well as in contracts for other services. For resale contracts, Pacific argues that only the contract price per line minus the EUCL should be discounted.

Pacific states that while resellers must pay the EUCL charge to LECs for resold services, the reseller does not have an obligation under applicable regulations to impose its own additional EUCL charge. The reseller does not, by definition, incur loop costs for which the EUCL is designed to compensate. Therefore, Pacific argues, the fact that resellers must submit the EUCL charges to Pacific does not place resellers at a competitive disadvantage, nor does it result in any double recovery. Consequently, Pacific believes no further Commission action regarding this issue is necessary.

GTEC agrees with Pacific that CLCs should not impose an additional EUCL charge on their end-user customers, since the EUCL is intended to compensate the incumbent LEC for use of its network. The customers of both the LEC and the CLC thus incur the same EUCL charge and neither carrier is competitively disadvantaged with respect to the EUCL.

¹ Interconnection Order, paras. 983-984.

AT&T and MCI believe that the most effective way to ensure that CLCs have an opportunity to compete by reselling LEC contracts is for the Commission to apply the following treatment of the EUCL charge. In cases where the EUCL, or portions of the EUCL, are separate from the overall retail contract rate (i.e., not recovered as part of the access line or feature price), AT&T and MCI propose that the LECs should charge CLCs the undiscounted EUCL rate. CLCs, in turn, would bill end-users for this EUCL rate. AT&T and MCI further propose that, in cases where the recovery of the EUCL charge, or portions of the EUCL charge, are contained within the overall contract price for access lines or features, LECs should charge CLCs the retail rate, less the appropriate avoided cost discount for the portion of the retail rate that does not include EUCL charge recovery. AT&T and MCI believe this pricing approach, which discounts only the non-EUCL portions of retail contracts, will ensure that wholesale rates for contracts are set out on the same basis as all other LEC retail services.

ICG believes the Commission-adopted wholesale discount factor should apply on both the underlying charge for Centrex service and the multi-line EUCL charge.

ICG provides a numerical example to illustrate why it believes the EUCL charge should be subject to the discount. In its example, ICG assumes that the tariffed monthly recurring rate for a Pacific Bell Centrex access line is \$8.35, and that the tariffed monthly recurring rate for basic Centrex features is \$2.58, with a monthly recurring multi-line EUCL charge of \$4.47. The total per line monthly recurring charge for basic Centrex service, absent a contract, would be therefore \$15.40. ICG assumes that Pacific would offer the Centrex customer a contract whereby each Centrex line plus basic Centrex features would be priced at a cost of \$14.47² per month. If the \$14.47 rate were then offered at the 17% wholesale discount to a CLC reseller that had persuaded the same customer to take service on a resale basis, Pacific's wholesale rate to the CLC would be \$12.01 per month. However, ICG argues, if the CLC has an EUCL charge in its own

² This figure of \$14.47 is stated by ICG without a basis for its derivation.

tariff equal to Pacific's multi-line EUCL, the addition of such a charge to the \$12.01 resale rate would increase the CLC reseller's charge to \$16.48, far more than even Pacific's undiscounted tariff rate of \$15.40. ICG claims the CLC would be unable to compete against Pacific in such a circumstance, because the end-user would effectively be forced to pay the EUCL charge twice. ICG claims it would not be fair to the CLC reseller to be charged the full EUCL without discount because it would effectively reduce the average discount factor below the required 17% rate which was previously adopted for Pacific's wholesale services.

Discussion

We conclude based upon review of parties' comments, that while CLCs are obligated to pay the EUCL charge to the LEC, they are not obligated to impose any additional EUCL charge on their own end-user customers. Therefore, the claim of ICG that the end-user of a CLC reseller would have to pay the EUCL charge twice is unfounded. The CLC reseller is not placed at any competitive disadvantage merely by passing through the single EUCL charge which is imposed by the LEC.

Since the EUCL is an interstate charge subject to federal jurisdiction, we also conclude that it is appropriate to follow the federal rule excluding the EUCL charge from the wholesale pricing standard of Section 252(d)(3) of the Act. Therefore, we agree with the pricing treatment advocated by all parties filing comments except ICG whereby the EUCL charge is passed through to resellers with no wholesale discount applied. The exclusion of the EUCL charge from the discount applies whether the charge is billed as a separate amount or is bundled into the aggregate contract charge. In the latter case, it would be necessary to separately calculate the avoided-cost wholesale discount by subtracting the amount attributable to the EUCL charge. The exclusion of the EUCL charge from the wholesale discount applied to CLC resellers is consistent with our past treatment of EUCL charges in connection with the rate adopted for vertical features in D.88-08-059 and D.88-09-059.

We therefore conclude that the current treatment of EUCL charges is appropriate and no change in EUCL cost-recovery procedures is necessary. With this matter

resolved, there is no need to further delay the authorization of the resale of contracts involving access lines. Therefore, we hereby lift the restriction on the resale of Centrex, CentraNet, and other access line contracts which we previously imposed in D.97-08-059 pending resolution of this issue. The LECs are hereby directed to make such contracts available to CLCs on a resale basis without further delay.

Findings of Fact

1. D. 97-08-059 generally authorized the LECs to make their retail contract offerings available for resale, but deferred authorizing the resale of contracts for Centrex/CentraNet and other access lines pending resolution of a question involving the cost recovery of the EUCL charge.

2. The EUCL charge is collected as part of the overall retail contract price to reimburse the LEC for the cost of telephone access lines allocated to the interstate jurisdiction.

3. Under the present billing practice, the LEC charges the CLC reseller the EUCL charge with no wholesale discount applied, and the CLC reseller recovers the charge through billings to its own end-users.

4. The CLC reseller has no obligation to impose any additional EUCL charge of its own since the CLC reseller incurs no loop costs for which the EUCL is designed to compensate.

5. Under federal pricing rules, the ECL charge is not subject to the wholesale pricing standard calling for an avoided-cost discount under Section 252(d)(3) of the Act.

6. The CLC reseller is not competitively disadvantaged under the present procedures for billing and cost recovery of the EUCL charge, and is not subject to double payment for such charges.

Conclusions of Law

1. There is no necessity to change existing procedures for the billing and collection of the EUCL charge.

2. The present practice of passing through the EUCL charge to CLC resellers with no wholesale discount applied is consistent with federal rules.

3. Since the EUCL charge is subject to federal jurisdiction, it is appropriate to follow the federal rule regarding no discounting.

4. There is no reason to further delay the authorization of resale of LEC contracts for Centrex/CentraNet and other access lines.

O R D E R

IT IS ORDERED that Pacific Bell and GTE California Incorporated shall immediately make available for resale to competitive local carriers their contracts for Centrex/CentraNet and other access lines, and the previous deferral of authorization of such contracts pursuant to Decision 97-08-059 is hereby lifted.

This order is effective today.

Dated December 16, 1997, at San Francisco, California.

P. GREGORY CONLON
President
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
RICHARD A. BILAS
Commissioners