INTERIM OPINION

Introduction

By this decision, we order all local exchange carriers who offer residential subscribers 976 Information Access Service (IAS) to proceed with central office blocking of 976 IAS service for residential subscribers within 90 days of the effective date of the decision. We also determine that further hearings are necessary to determine the proper allocation of costs for the blocking of 976 IAS.

Under the Commission's Rules of Practice and Procedure, the proposed decision of the administrative law judge (ALJ) for these proceedings was filed with the Commission and mailed to the parties of record on November 6, 1987. Comments on the proposed decision were filed by Pacific Bell (Pacific), General Telephone Company of California (General), Information Providers Association (IPA), Public Advocates, Phone Programs Inc. (PPI), Telephone Information Services, Ltd., and the Division of Ratepayer Advocates (DRA).

After review of the comments, we modify the proposed decision in the following respects: (1) authorize mandatory blocking of all 976 IAS for residential subscribers who have received an adjustment for 976 IAS calls, (2) add more definitive and clarifying language with respect to the type blocking to be offered, and (3) impose a $2.00 charge for blocking for residential customers (free for lifeline customers), a $5 charge for business and commercial customers, and a $5 charge for removal of blocking.

Background

The 976 Information Access Service (976 IAS) is a telephone utility tariffed offering of Pacific Bell (Pacific) and General Telephone Company of California (General) which allows many telephone callers to simultaneously access a selected prerecorded message. The service consists of the telephone company's provision of transport, billing, and collecting in conjunction with the

Process 3

ALJ/BEB/fs

ORIGINAL

Decision 87-12-038 December 9, 1987 -

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into 976 Information Access Service.	I.85-04-047 (Filed April 17, 1985)
	Case 86-06-012 (Filed June 5, 1986)
	Case 86-12-014 (Filed December 5, 1986)
	Case 86-12-062 (Filed December 23, 1986)
	Case 86-12-063 (Filed December 23, 1986)
And Related Matters.	Case 86-12-064 (Filed December 23, 1986)
	Case 87-01-007 (Filed January 7, 1987)
	Case 87-04-009 (Filed April 8, 1987)
	Case 87-04-031 (Filed April 16, 1987)
	Case 87-08-026 (Filed August 14, 1987)

(See Decision 85-11-028 for appearances.)

provision of programming by private entrepreneurs known as information providers (IP's). Past decisions fully cover the history and details of the 976 service, and we do not believe that it is necessary to discuss in detail the various federal and state proceedings leading up to this decision. (For example see Decisions (D.) 85-11-028 and 87-01-042.)

Pacific and the IP's have represented that the 976 IAS service is profitable, producing revenues in excess of costs and that such funds could be utilized to offset utility expenses while contributing to overall revenue requirements. In spite of the alleged profitability and benefits, since its inception 976 IAS service had problems which prompted this Order Instituting Investigation. At the same time, in response to customer concerns, the legislature passed AB 2550 (Chapter 1561 of 1985) which requires that telephone companies which transport 976 IAS also offer a service to subscribers which would enable them to block or delete such service. AB 2550 required that this Commission order the utilities to implement blocking on and after July 1, 1986, or on and after another date or dates which the Commission finds and determines to be appropriate and feasible.

After 25 days of hearing, Interim D.85-11-028 granted the motion of Pacific, General, DRA, and various IP's to approve policy and tariff provisions to Pacific' and General's IAS tariffs on an interim basis. The approved revisions included advertising disclosure standards by IP's, a one-time adjustment policy for utility customers who claim they were unaware of 976 charges, and release of the name and telephone number of the 976 IP. D.87-01-042 dated January 14, 1987 found that 976 IAS was in the public interest if properly regulated and ordered that central office blocking be made available by January 1, 1988 with further hearings to explore the following three types of blocking: (1) central office blocking, (2) customer premise equipment (CPE)

blocking, and (3) personal identification number (PIN) access code system.

Hearings on the three different blocking methods were held in July and September, 1987. Participating in these hearings were Pacific, General, DRA, Public Advocates, Information Providers Association (IPA), Sable Communications, and Phone Programs (PPI). The matter was submitted on September 16, 1987 subject to concurrent briefs to be mailed October 5, 1987. Briefs were filed by Pacific, General, PPI, IPA, Public Advocates and DRA.

On October 19, 1987, PPI filed a request for an oral argument before the full Commission respecting the issue of the appropriateness of blocking access to 976 IAS in light of the briefs submitted by the parties. After considering the request and reviewing the record herein, we are of the opinion that the record on this issue is complete and an en banc hearing would not be productive. This request will be denied.

Position of Parties

Pacific

Pacific proposes that central office based blocking be implemented in its stored program control central offices. It proposes that blocking in other than the stored program control offices be provided by adjunct devices located in those central offices which do not have stored program control. Pacific suggests that those residential customers who desire blocking and are served by a central office that does not have stored program control but which is co-located in a wire center that has such capability, be offered the option of changing their service and telephone number to allow blocking. It proposes that any such change would be considered as part of the cost of blocking and such costs would therefore be borne by the IPs rather than residential telephone subscribers.

Pacific states that AB 2550 (Section 2884 of the Public Utilities Code) mandates an option for customers to elect whether

or not to block 976 and that the customer opting for blocking can be charged $5.00 with additional costs passed on to the affected IP's.[1] Pacific states that blocking for 88% of its residential subscribers could commence by January 1, 1988.

For the 12% of residential customers served by offices which do not have stored program control and thus cannot be offered central office blocking and have no option of changing their service and telephone number, Pacific recommends that two adjustment periods be made available in addition to the current one-time adjustment. As in the case of the one-time adjustments, the additional adjustments would be charged to the applicable IP account.

Pacific states that the suggestion of the IP's that AB 2550 has been preempted as a result of federal legislation (47 U.S.C. Sec. 223(b) and subsequent action by the Federal Communications Commission (FCC)[2] is not accurate. It states that the FCC in its report, which stated that exchange blocking as a regulatory option was both economically and technically infeasible and unnecessarily restrictive, was dealing with the transmission of obscene material to minors whereas AB 2550 is content neutral and a subscriber should have the option to delete access. Pacific further states that the federal goals were aimed at a specific segment of the population and place a burden on the adult consumer

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1 Contrary to the IP position that the additional costs for providing customer blocking should be paid for out the utilities 976 profits, Pacific asserts that AB 2550 specifically refers to "providers of information-access telephone services" for such payment.

2 Section 223(b) of the Federal Communications Act orders the FCC to promulgate regulations relative to the transmission via telephone of obscene or indecent communications for commercial purposes to any person under 18 years of age.

who desires such service, whereas AB 2550 places no burden on anyone wanting the service.

With respect to the argument that AB 2550 violates the First Amendment of the United States Constitution, Pacific states that the state is not mandating that access to adult entertainment or any other 976 program be blocked. It states that the only requirement is that blocking be made available on request and as such is reasonably related to a state purpose and, therefore, does not violate the First Amendment.

Pacific also dismisses as a red herring the assertion that AB 2550 violates the modified final judgment (MFJ) in United States v American Tel. & Tel. 1982 552 F. Supp. 131, D.D.C. because residential subscribers opting for intra-state blocking can still access AT&T 900 service and 976 services in other states. It states a careful reading of the MFJ reveals that there is nothing which requires the Commission or Pacific to treat any information provider the same as AT&T, Sprint or MCI.

Pacific states that, as testified to by its witness, the study conducted by Field Research Corporation[3] shows that 14% of the respondents who were asked said they would order blocking and 10% who were asked about selective blocking stated they would order such. It states the results were surprising since it was

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3 The study by the Field organization was ordered by the administrative law judge in the July hearing to determine the public's opinion and the demand for blocking access to 976. A total of 2,017 interviews of a random cross-section of California residential telephone households were conducted. The sample was divided into two groups with 1,003 respondents asked about total blocking and 1,014 respondents asked about selective blocking. The sample was broken into two subsamples because it was not contemplated that blocking would be offered to customers in both forms--total and selective. Total blocking would block all intrastate 976 calls. Selective blocking would involve some programming on the part of the customer to select which intrastate programs to block and which to allow on his phone.

anticipated the demand for blocking would be much lower. Pacific's witness, when asked whether people informed that they could not block access to 976 number in other states or block access to 900 numbers, stated the results would not be dramatically different. Even though blocking is not total, the witness stated:

> "There is a tendency for some people to block what they can...if this is an issue that they feel strongly about, they might also say, well, I understand it doesn't make sense because I understand that they could also call these out-of-state numbers but, nevertheless, I want to block what I can, take a position. ... If people feel strongly about this, they might just be willing to take what they can realizing that economically it doesn't make sense if it's an emotional issue with them." (Tr. Vol. 37, pp. 5027 and 5028, September 14, 1987.)

Pacific states it considered a range of alternatives including Customer Premises Equipment (CPE), Central Office (CO) blocking, line-side adjunct device, truck-side adjunct device and Personal Identification (PIN) and Access Codes. After an extensive review of the cost and technical specifications and the demand of these various type of blocking, Pacific concluded that central office blocking was the best for the majority of its subscribers.

With respect to the CPE devices, Pacific states this is a device, at the customer's home, that is inserted between the customer's telephone equipment and the utility's network to block access to 976 services. All blocking devices essentially either interfere with the signals going toward the central office, or do not allow the digits to leave the device. Basic features of CPE are as follows: it does not require modifications to the network; is a visible indication that blocking is in place; it can be overridden if the customer wishes to use 976; it is easily defeatable if wired into a jack; it may require a technician to install and if it is battery-dependent it ceases to work when the battery is depleted.

Pacific's witness testified that the availability of CPE devices is still problematical and that there were no devices known to Pacific which met the main criteria of non-defeatability and appropriate blocking method.

With respect to PIN access code blocking, Pacific states it reviewed this method from the points of view of having such codes provided by Pacific or by the subscriber. The codes would require presubscription by the customer to gain access to any 976 service. A customer would have to enter a Personal Identification Number to complete a 976 call. It states that a drawback to this procedure is in the inability of the casual user to access 976. Pacific's Marketing witness had concerns in this regard stating:

> "We believe that the call repression introduced by, and the substantial cost associated with implementation of a PIN/Access Code arrangement would lead to the demise of 976, this would have the effect of causing forfeiture of a substantial amount of 976 revenue for Pacific Bell's ratepayers, impairment of the delivery of information age services for California consumers, and damage to Pacific Bell's overall ability to compete in the information age with resultant negative long term revenue impact."

General

General proposes six-digit screening as the method for central office blocking of 976 service and that the utilities should not be ordered to institute the service less than 90 days after the effective date of the decision ordering blocking. General opposes any other type of blocking or substitute measure such as CPE or PIN. General also proposes that the utilities be authorized to unilaterally block access to 976 service by customers who fail or refuse to pay 976 vendor charges after receiving any one-time adjustment of such charges and the costs associated with such blocking be borne in the same manner as the costs of central office blocking.

Phone Programs

PPI opposes the implementation of any type of blocking. It recommends that the Commission: (1) report to the Legislature that in the Commission's view, government-ordered blocking for 976 IAS is not feasible, but that adequate protection can be afforded to the public by means of separate tariffs for adult entertainment and live programming and (2) the utilities should be ordered to submit: (a) a proposed revision of the existing tariff unequivocally limiting the 976 IAS to prerecorded, non-obscene, non-indecent offerings; (b) a proposed tariff to regulate Dial-A-Porn offerings so that access by minors can be properly and easily limited by parents; and (c) a proposed tariff to regulate live offerings with detailed safeguards.

It is PPI's view that 976 programming which offers information on such diverse subjects as sports, general news, business news, stock exchange reports etc. are separable from live and Dial-A-Porn programming and should require separate tariffs. PPI states that jurisdictions which do not have access to adult programming have little or no program controversy. PPI stresses that in its opinion the live and adult programming are the primary cause of the 976 industry image and problems.

PPI states that the solution - i.e. central office blocking, offered by Pacific is illusory and not a solution at all. It states that because out of state 976 calls and AT&T's 900 programming would still be available to subscribers who want blocking, any person opting for central office blocking as now proposed would be misled into thinking blocking would be total.

PPI also states that AB 2550 is inconsistent with federal law and such should be reported to the state legislature. It states circumstances which have developed since the enactment of AB 2550 render any discernible policy behind the law moot and make it clear that the statute is unlawful and any efforts to comply with it at this time would unquestionably cause needless legal

controversy and expense to all concerned, including the affected telephone companies, information providers, the CPUC, and ultimately the consuming public. It states such a controversy would be needless since there are available avenues through which existing problems can be corrected.

PPI states statewide mandatory blocking is also discriminatory regulation with respect to interstate access in that it (1) gives AT&T 900^{R} an unfair competitive advantage over California 976 IAS IPs and (2) provides no method by which callers in the other 49 states may delete access to Dial-A-Porn. It states that the FCC has found network blocking to be unnecessarily restrictive and that CPE would be similarly flawed.

PPI also states that AB 2550 is in violation of the FCC's regulation in that any government imposed availability of blocking would violate the FCC mandate of no central office or CPE blocking. PPI states AB 976, Stats. 1987, Ch. 1101, which was recently enacted by the California Legislature, codified certain defenses for IP's distributing obscene matter and will generate even more controversy than blocking because while in compliance with state law it could still be in violation of the FCC mandate.

PPI asserts that the combination of central office blocking and CPE blocking is in direct contradiction of the MFJ which requires operating companies to provide access services to interexchange carriers and information service providers which are equal in type, quality and price to the access services provided to AT&T and its affiliates. PPI states it is uncontested that the local telephone utilities bill and collect on behalf of certain interexchange carriers, including AT&T, and that AT&T has established a national network which is a virtual replica (in terms of program offerings) of the local 976 IAS tariffed by the Commission. It states that if blocking is made available for the purpose of deleting access to California's 976 IAS, California's information providers will be victims of a clear and objective kind

of discrimination, when compared with AT&T and/or its providers on the AT&T 900 network. A similar analysis may be applied to the interexchange carriage of 976 programs from other states, whereby all interexchange carriers would be motivated (for the purpose of generating revenues from long distance toll charges) to permit such access from Californians. It states that the facts of this case demonstrate that blocking, as proposed, would violate federal antitrust law.

PPI asserts that in mandating the choice to consumers of blocking all 976, or none of it, the Commission would be erroneously yielding to a perceived threat from pornographers and abusers who have instituted live programming. PPI states that there would be many consumers who, having heard of or experienced problems with pornography or live programming, would "choose" blocking in order to avoid those abuses. It states implementation of central office blocking fails to serve any legislative purpose or the public interest.

PPI also asserts that "by forcing consumers to retain access to all or none of 976 IAS, the CPUC would predictably cause many legitimate IPs to lose revenues. PPI maintains that such an arbitrary imposition would violate its fourteenth amendment due process and equal protection rights."

It states that in regulating a speech-ladened industry such as 976 IAS, the imposition of network blocking would arguably be subject to a review under a standard of strict scrutiny. It states that though purporting to adopt a content neutral philosophy, the facts demonstrate that the imposition of a "choice" of all or nothing constitutes a preference for pornographic offerings. Put another way, the Commission is punishing non-obscene, non-indecent programmers for the public perceptions of Dial-A-Porn providers and access to their programs by children. It states the problems can be avoided by separate tariffs for live and adult entertainment programming.

PPI contends that the content neutral philosophy obligates all consumers who have access to 976 IAS to waive their right under federal law to delete access to obscene or indecent telephone transmissions. It suggests reconsideration of the content neutral philosophy stating direct regulation of Dial-A-Porn is in the public interest, the problem will not disappear with the advent of new technologies, and a separate service - i.e. Tariff, for pornography accompanied by reasonable limits to access by minors will remove a public's taint now associated with 976 service.

PPI argues that central office blocking would not affect interstate access to 976 services nor have the capability of blocking programs offered to AT&T 900 and that any belief of a reasonable partial solution is illusory. It states that the expenditure associated with central office blocking when it will not cure the problem makes no sense.

PPI asserts that a content-neutral policy elevates the ilk of grossly prurient programming to a status equal to the uncontroversial content such as weather and sports, which, by its nature, is not harmful. It states adult offerings should be separately regulated so that access by minors could be properly limited.

With respect to live programming, PPI states it believes the present 976 tariff does not allow such offerings. It states thus as a technological matter, live connections should be quite different from the kind of access which allows for thousands of simultaneous callers to a single 976 number. In short, a separate tariff for live programming should be adopted.

PPI concludes there is a need for protection from live and pornographic offerings and that to meet constitutional challenges, both should be separately regulated.

Public Advocates

Public Advocates favors the adoption of central office blocking to be in effect no later than April 1, 1988. It states such blocking, combined with a liberal refund policy, honest advertising, recorded messages with information on price, and the eventual development of separate prefixes for Dial-A-Porn, should resolve the problems associated with the 976 offering.

Public Advocates argues that the exhibits and testimony of Pacific and General clearly establish the efficacy of central office blocking over the alternatives available. It notes the results of the Field Study and the fact that in recent months, there has been an increase in adjustments by both Pacific and General.

With respect to the position of PPI that blocking is necessary only for Dial-A-Porn programming, Public Advocates, citing Pacific exhibits states that the record is clear that the complaint level of children programming is extraordinarily high.

Public Advocates supports the results of the Field Study pointing out that the projections of 7 to 11% demand compares favorably with the 6.3% of households in Pennsylvania[4] who have secured blocking.

Because only 88% of Pacific's customers can be provided central office blocking, and because of the present unavailability of a CPE device, and the unacceptability of other available alternatives, Public Advocates supports the liberal (three-time) adjustment policy proposed by Pacific until blocking is available for all customers. It cautions that the three-time adjustment should be carefully monitored to avoid customer abuse.

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4 The facts surrounding the state of Pennsylvania blocking experience were introduced by IPA witness Ryan.

Public Advocates states that at present, 976 is a defective product. However, recognizing the role 976 can play in the "information age", Public Advocates makes the same consumer protection recommendation it made in the prior hearings adding the need for a 900-type number with separate prefixes for porno, adult line, children-related, and all other programs.

Public Advocates urges an order for central office blocking before the 1987 Christmas season to enable the utilities to have the blocking in place by April 1, 1988.

Information Providers Association

The Information Providers Association (IPA) opposes blocking of any kind stating the Commission faces virtually certain and protracted First Amendment and antitrust law challenges if it proceeds with blocking as presently envisioned by the utilities and staff. It states blocking will prove to be an expensive, confusing and ineffective solution while driving most, if not all, IP's out of 976 IAS in California.

IPA argues that the six-digit blocking proposed by Pacific and General would be "incomplete" since it would only block 976 within California while interstate and AT&T's 900 service would still be available. Because of the inability to block interstate and the 900 network, IPA argues these providers would have a competitive advantage over California IP.

IPA also states that the customers surveyed by the Field Study should have been questioned about selective blocking and whether the $5 they would pay for blocking would be expected to be the total cost. With respect to cost, IPA states that the per program cost of central office blocking at 7%, 9% and 11% demand rates would be $10,055, $12,476, and $14,896, respectively. For the 12% of Pacific's customers for whom central office blocking would not be available, IPA states that CPE blocking would cost $8,381, $9,878 and $11,109 at demand rate of 7%, 9% and 11%,

> be more clear. Those IPs utilizing AT&T's interstate network or AT&T's 900 network to disseminate their virtually identical programs in California are not subject to having their audience diminished at their own expense, even though it is technologically possible, according to General, to block 900 network calls. (Tr. 5102-5103, 5113.) By contrast, intrastate 976 IPs are forced to pay for reducing their audience.
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> "For this Commission to frustrate the purposes of either the MFJ or the GTE Consent Decree, by ordering Pacific and General to engage in discriminatory practices which violate those decrees, would constitute interference with enforcement of federal antitrust laws. For this reason, as envisioned by the utilities, blocking is preempted by federal law. Capital Cities Cable, Inc. v Crisp, 467 U.S. 691 (1984)."

IPA states that if implemented blocking will be an expensive fiasco since callers will not be prevented from accessing 976-type programs in other states and/or AT&T's 900 network. It states that when residential subscribers are made aware that they will still be fully liable for charges for any calls made to 976-type programs outside of California, they will quickly realize that a $5 investment in blocking will be a complete waste of money.

IPA states that blocking will have a catastrophic effect on the 976 industry in general. With the repression in programs the costs soar to some $53,942 per program. It states that leaving 90% of the cost of blocking within the control of the utilities is an invitation for abuse since given the "ever-present incentives to cross-subsidize, the utilities' costs in this area will be virtually beyond policing; DRA has stated it has no interest in monitoring Pacific's and General's costs." These headaches could be avoided if Pacific and General accepted responsibility for their product and implemented blocking on their own, under circumstances which left them with a direct incentive to keep costs to a minimum.

respectively. It states this cost would result in a tremendous repression of the number of 976 programs available to the public.

Because of the requirement that AB 2550 imposes on the IPs for blocking, they argue they, the IP, must pay the expense of diminishing their own audience and that this is an infringement of First Amendment liberties. It argues that when the blocking proposal is analyzed under fundamental First Amendment principles it is suspect. It states the apparent purpose behind AB 2550 - to help telephone subscribers who cannot control the use of their telephones to avoid high telephone charges for 976 calls - is not a substantial, much less a compelling, governmental interest.

IPA argues that the fundamental flaw of the blocking proposal is that it is simultaneously over-inclusive and under-inclusive. It is over-inclusive because central office blocking would block access to all 976 numbers, and it is under-inclusive because callers would still not be able to block interstate and 900 network calls.

Because central office blocking only blocks intrastate 976, citing Minneapolis Star Tribune v Minnesota Commission of Reduced, 460 U.S. 575, IPA, argues that because out-of-state 976 providers and the 900 network are spared any expense related to blocking these is a clear competitive advantage to the out-of-state providers and the 900 network in violation of the First Amendment.

IPA also argues that subjecting only California IPs to the costs now envisioned for blocking also violates Section II-A of the MFJ which requires Pacific to provide to all information providers "exchange access, information access, and exchange services for such access on an unbundled tariffed basis that is equal in type, quality and price to that provided by AT&T." IPA states:

> "On its face, the blocking scheme envisioned by Pacific and General violates the equal exchange access and equal information access requirements of the MFJ and the GTE Consent Decree. The discrimination could not possibly

Should blocking be ordered, IPA suggests the following:

1. Subscribers be told that central office blocking will not stop calls to interstate 976 numbers and 900 network numbers.

2. The Commission not adopt CPE blocking.

3. Pacific and General should pay for the costs of blocking because they will incur minimal out-of-pocket cash expenses.

4. Presubscription PIN numbers should not be adopted.

5. Should blocking be ordered, the Commission should order mandatory blocking of all 976 calls from telephones of subscribers who refuse to pay for 976 calls whether or not they have been given a one-time adjustment.

6. 976 service should be suspended if there are delays in implementing blocking.

Finally, IPA states the Commission should not stray into the issue of whether 976 IAS programs should be regulated on the basis of content. It states the answer to the blocking dilemma is a new report to the legislature outlining the constitutional and antitrust issues and the catastrophic costs to IPs of implementing blocking at their expense, and requesting appropriate relief.

DRA

DRA proposes that central office blocking be ordered forthwith because it is the most effective and least costly to the consumer while promoting the growth of the information industry. The least preferred methods of blocking according to DRA were PIN access code and CPE equipment. Staff asserts it would be recommending central office blocking notwithstanding the existence of AB 2550.

DRA asserts that the soaring increase in adjustments (less than .5% of all 976 calls in February 1986 to 10-14% per month) for 976 calls is indicative of the need to have a blocking

mechanism in place. In addition to the increase in adjustments, the staff cites the Field Study commissioned by Pacific which shows an 8-12% demand rate for total blocking. The DRA notes that the witness who sponsored the Field Study believed the demand rate for blocking would be higher if it were offered at no cost and that the results of the study would probably not be changed by the fact that blocking would not affect interstate and AT&T 900 calls.

Of the alternatives available, DRA asserts central office blocking is preferred because it is the most effective and least expensive. DRA states the PIN access code is the least preferred because it requires an affirmative request on the part of a subscriber in addition to the cost. (Assuming a 10% demand rate the cost estimated by Pacific would be $25,432,028. Of that amount, $13 million would be non-volume sensitive costs.) DRA also notes the PIN system would still allow circumvention and abuse and provide only one-level screening.

With respect to CPE devices, DRA asserts they are too costly, easily defeatable, and if selective, too difficult to program. It notes that the Field Study confirms that selective blocking does not seem to be a high priority among California consumers. For cost, DRA points out Pacific's data that an 11% demand rate shows costs from a low of $44 million to a high $144 million. DRA states that CPE does not meet the desired criteria of universal design for ease of installation.

DRA supports central office blocking because it is the least expensive for both Pacific and General, is the most effective, virtually foolproof, and from the customer viewpoint easy to implement. Cost wise, at a 10% demand rate, central office blocking would be about $15 per residential line for Pacific. The DRA also supports central office blocking as the best means of consumer protection while allowing expansion of 976 services.

For customers not served out of stored program control (SPC) and thus not able to be offered blocking, DRA proposes that

local exchange carriers (LECs) be required to suspend the offering of 976 IAS to residential customers who cannot be offered optional blocking by April 1, 1988. LECs would apply for exemption to this provision for central offices which will not have optional blocking capability by April 1, 1988 but which will have such capability by October 1, 1988. The suspension would be implemented by blocking all 976 prefix calls originated from the non-conforming central office, and would be in effect until optional blocking becomes available or until the Commission establishes a universal access arrangement for information services. DRA also propose that should adjunct equipment be required to accomplish the limited suspension, the LECs should bear such costs out of the existing contribution margin for 976 IAS.

With respect to the IP's argument that optional blocking infringes on their right to free speech, DRA states that this issue was laid to rest in D.87-01-042 wherein we supported DRA's position that the blocking of 976 only gives the telephone subscriber the option of what he wishes to hear.

DRA notes that the IP's acknowledge blocking already exists in hotels, motels, government agencies, businesses etc. and asserts the free speech is only raised because the IP's are asked to share a portion of the cost to provide blocking.

With respect to the motion that central office blocking will be unable to block interstate and AT&T 900 calls and, therefore, an expensive exercise in futility, DRA asserts it is just another red herring raised by the IPs. DRA states the argument that state regulation which does not cover interstate services is ineffective and, therefore, should not be attempted could be equally applied to federal regulation which does not cover intrastate services. The logical result of such a rationale is that no action should be taken by either the FCC or the state commissions to address the 976 access control problem.

Regarding the FCC's position that network blocking is an unacceptable method of implementing Section 223 of the Federal Communication Act, DRA states such action is irrelevant to California because the FCC action is aimed at only Dial-A-Porn - i.e. content, while this proceeding is aimed at regulating all 976 service and is content neutral.

DRA states that whether or not AB 2550 was law, it would be recommending that central office blocking be offered as a necessary complement to the provision 976 service in California. It states it is not recommending the implementation of central office blocking merely because the Legislature has instructed the Commission to do so. It states the Commission has before it a thorough and compelling record that can only lead to a conclusion that central office blocking is needed as an option for consumers if 976 service is to continue at all.

DRA points out that this investigation into 976 service began before the Legislature acted in the area and in all likelihood will continue long after. It states that with or without the existence of AB 2550, the Commission has ample authority to require the offering of optional blocking as a necessary consumer protection in the offering of 976 service in California.

DRA states that the dramatic increase in requests for adjustments and the findings of the Field Study lead it to recommend that if a final order for blocking cannot be issued by January 1, 1988 or if such blocking is not actually implemented by April 1, 1988, that the Commission order the temporary suspension of existing tariffs for 976 IAS. DRA suggests that the Commission then reopen consideration of 976 IAS to allow argument by staff and other parties that the continued offering of 976 IAS tariffs without adequate consumer protection capabilities is not in the public interest and that the Commission should order those tariffs to be withdrawn or indefinitely suspended.

DRA states it is convinced that in the absence of adequate consumer protections such as optional central office blocking, 976 service is not in the public interest and should not be offered in California.

As a necessary complement to central office blocking, and because blocking does not eliminate the need for a one-time adjustment prior to a customer's awareness of 976 charges, DRA recommends that the adjustment policy adopted in D.87-01-042 be extended indefinitely. If not extended indefinitely, DRA recommends the adjustment policy be continued until the effects of central office blocking can be evaluated.

To ensure that the blocking option is brought to the public's attention, DRA recommends that initial notification include a special mailing to all residential customers served by capable offices, explaining the offering of optional blocking and enclosing a reply card with a postage paid return envelope as was done in the marketing abuse case.

Finally, the staff states that 976 service is only a small part of the overall information and enhanced services now developing and blocking cannot be viewed in isolation. DRA witness stated:

> "I would like to emphasize that the blocking 'solution' recommended by the Staff at this time should not be interpreted as the recommended final disposition of 976 access and blocking issues, but rather as a <u>transition solution</u>. Staff expects that the long-term resolution of the 976 access issue will be determined in the context of the Commission's ongoing development of policies regarding access and billing arrangements for all information and enhanced services, probably within the context of an Open Network Architecture framework. The Public Staff anticipates that at the time that the Commission adopts an overall framework for access, billing and consumer protection for enhanced services, that it would also issue specific direction for the possible

> modification of the current 976 access and billing arrangement to conform with that new framework. Such a modification might view [sic] well take advantage of further developments in network capabilities to require that 976 IAS service be covered by some form of minimal subscription requirement. PSD anticipates that such a modification might be two to three years off in the future, coincident with the implementation of a universal access arrangement for enhanced services provided within the State of California. Accordingly, staff recommends that the Commission make it known that its adoption of a blocking arrangement at this time is a transitional measure and that it may consider modifications of the conditions for providing 976 IAS in a future proceeding."

To ensure blocking is implemented as quickly as possible, DRA made the following recommendations:

(1) Ordering Paragraph 3 of D.87-01-042 should be superseded by the provisions of this order.

(2) Local exchange carriers ("LECs") designated in this order should deploy and make available central office blocking for 976 Information Access Service using software-based six-digit screening for all residential customers served by capable switches.

(3) Access to 976 IAS for residential customers served by "non-conforming" switches should be suspended as of April 1, 1988. LECs shall be allowed to apply for exemption to this provision for switches which will not have optional blocking capability by April 1, 1988 but which will definitely have such capability by October 1, 1988. This suspension should be implemented by blocking all 976 prefix calls originating from the non-conforming switch, and will be in effect as long as the switch is "non-conforming". If adjunct equipment is required to accomplish this limited suspension, the LECs shall file advice letters detailing the costs of such

equipment and bear such costs out of the existing contribution margin for 976 IAS. Costs incurred in the implementation of this ordering paragraph should not be passed on to information providers pursuant to Ordering Paragraph 7.

(4) Affected LECs should begin accepting service orders for six-digit screening within four (4) months of the effective date of this order. LECs should complete the offering to all residential customers served by capable switches within six (6) months of the effective date of this order. Each service order should be fulfilled within thirty (30) days after its receipt.

(5) Affected LECs should provide advance notice to all residential customers of the availability of blocking. Initial notification should include a special mailing to all residential customers served by capable offices, explaining the offering of optional blocking and enclosing a reply card with a postage paid envelope. Additional notice should not be limited to bill inserts, but should be extensive and provided in appropriate languages. Periodic reminder inserts or other measures to continue to publicize the availability of blocking after its initial availability should be authorized. Such specific measures as are needed to effectively implement the intent of this ordering paragraph should be determined by the Commission Advisory and Compliance Division (CACD).

(6) LECs shall charge residential customers a non-recurring fee of five dollars ($5) for an initial order for blocking. Non-recurring fees of five dollars ($5) should also apply to orders for the removal of blocking and reinstallation of blocking. Customers who opt for a number change in order to obtain six-digit screening should not be charged any additional amount for the number change. Affected LECs should

file advice letters to implement such charges within thirty (30) days of the effective date of this order.

(7) Costs incurred by LECs in the provision of blocking to residential customers which are not recovered through charges to those customers should be recovered from information providers subscribing to service under the 976 IAS tariff. Determination of cost allocation should be done in a later phase of the proceeding.

(8) Affected LECs should create and maintain memorandum accounts to record all revenues, investment, and expenses received or incurred in the provision of blocking for information services. Such memorandum accounts should include records of cumulative amounts recovered from all customers and information providers, as well as recorded depreciation charges and plant balances.

(9) Ordering Paragraph 1(b) of D.87-01-042, amended in D.87-04-015, should be further amended to read as follows:

1(b) The adjustment policy should remain in effect indefinitely.

(10) Ordering paragraphs 1 through 8 should be applicable to both Pacific Bell and General Telephone of California and to any other independent LEC choosing to allow 976 access by its residential customers."

Discussion

Pursuant to AB 2550, Ordering Paragraph 3 of D.87-01-042, with an effective date of January 1, 1988, ordered the respondent telephone utilities to provide central office blocking. Pending implementation of central office blocking, we ordered further hearings on the technological and economic feasibility of providing CPE blocking and PIN subscription to block 976 access.

Since issuing D.87-01-042, subsequent events surrounding 976 service convince us that central office blocking ordered in January 1987, should be implemented post haste. Though the number of complaints received by the telephone utilities and the Commission Consumer Affairs Unit may have decreased in volume, there has been an escalation of customer adjustments for 976 calls. For example in February 1986, the adjustment rate for all 976 calls for Pacific was .5% contrasted to an average 10-14% rate today. General's 976 adjustment pattern is the same. When considering the dollar volume involved (Pacific's 976 billed revenue for June 1987 was $7,523,928 and adjusted $1,079,846), it is clear blocking in some form is in order.

The need for some form of blocking is also shown by the Field Study commissioned by Pacific (as ordered by the ALJ). The study was to obtain an estimate of demand for each of two types of blocking services: (1) total blocking, a service/device that would block all 976 calls from a household, and (2) selective blocking, a service/device that would enable customers to indicate which 976 calls should be made. The results of the study show that some 14% would order total blocking and 10% would order selective blocking. This is also an increase over the earlier estimates made by Pacific of the demand for blocking.

Though the Field Study did not ask about interstate and 900 network blocking, the witness stated:

> "And there would be a tendency, I think, and there is a tendency for some people to block what they can. They might do that. I really don't know.
>
> "They might also say--if this is an issue that they feel strongly about, they might also say, well, I understand it doesn't make sense because I understand that they could also call these out of state numbers, but, nevertheless, I want to block what I can, take a position." (Tr. Vol. 37, p. 5027.)

Again, clearly there is a demand for some form of blocking. We conclude that central office blocking is the best solution to ratepayer problems caused by uncontrolled access to 976 programs.

We have arrived at our conclusion on the basis of the evidentiary record developed between the date of the interim order (D.87-01-042) and today. Nonetheless, our actions are also governed by Public Utilities Code section 2884, which requires the Commission to require every telephone company to offer residential ratepayers the option of deleting access to to 976 programs. The Commission is also to establish a charge to the subscriber, of no more than five dollars for the exercise of this option. Any unrecompensed expenses of blocking are to be borne by providers of information-access telephone services, rather than residential telephone subscribers.

Our review of 976 services has been an arduous undertaking, in large part because of the pervasiveness of the service and the variety of interests at stake. 976 is of statewide interest because it is the first product to provide ratepayers access to the "information age" through the local exchange network. However, this experience has not been entirely positive. In some cases, the 976 product has proved so attractive that a number of customers have had difficulty controlling use of 976. Testimony in this case has clearly established that some customers who cannot control access to 976 programs over their phones have accrued phone bills that threaten their financial stability.

All parties agreed that telephone customers should pay the maximum amount we are statutorily authorized to charge for blocking, that is, five dollars per residential subscriber. Even Public Advocates, who represented a number of low income customers who have had difficulties with 976, accepted the one-time five dollar fee. We have considered the record carefully, and conclude

that the full five dollars would not be an appropriate charge at this time.

First, blocking is now an all or nothing proposition; customers must give up access to all 976 services at once. This decreases the value of blocking to customers. Second, there is widespread interest and concern regarding the initial availability of blocking, and we wish to afford every opportunity to customers to solve what, in some cases, has been a long-standing problem.

These concerns do not argue for fully free blocking, however. There is a substantial cost to the implementation of blocking, and customers should understand that their choice to block does require real resources. A charge of some size provides that signal. And, as noted above, every party to this proceeding agreed that a charge is appropriate.

Therefore, we will order Pacific and General to provide blocking of 976 calls for a one-time fee of two dollars per line for residential subscribers. Residential customers on lifeline service should receive blocking free of charge. Business and commercial customers desiring blocking should pay the full five dollars per line.

To discourage frivolous requests for blocking, we also authorize a maximum $5 charge for the removal of blocking from a subscriber who has previously requested and received blocking.

We expect that in the more than three years since the inception of 976 IAS, significant advances in central office equipment should have enabled Pacific to refine and expand the scope of its information access services. We envision a time when the customer may block selectively, based on the assignment of telephone numbers to information vendors. At that time, or sooner, if events warrant, the Commission will reconsider the issue of the need for, availability, and the cost of blocking.

The DRA correctly points out that the provision of blocking is only a temporary means of addressing the issue of which

services are encompassed within basic telephone service. In light of the Open Network Architecture mandated by the FCC, we anticipate that other third parties seeking access to telephone subscribers will require the local exchange companies to provide access and billing services. The issues of whether access is automatic or not and whether subscribers should pay to block access or not, will be revisited. 976 blocking will likewise be reviewed in that overall context.

In the interim and no later than February 1, 1988, the telephone companies shall offer each residential subscriber blocking of all intrastate 976 numbers for a one-time fee of two dollars, or for free for those on lifeline. Business and commercial customers should be offered blocking for five dollars per line. Subscribers should be advised of this option by a notice enclosed with their monthly bills in a timely manner. The notice shall be developed with input from the parties and reviewed by the Office of the Public Advisor, to inform ratepayers of the availability of free blocking. Consumers should be clearly advised that the decision to block will result in the inaccessibility of all 976 programs. The notice may indicate that while when ordering blocking, a consumer may intend only to block certain programs, the result of blocking will be that all 976 programs, regardless of subject matter, type of program, or cost, will be inaccessible. We hope that this "all or nothing" situation will soon be alleviated by the introduction of an information service in a format that enables ratepayers to selectively block. Therefore, the notice shall also apprise the subscriber of the interim nature of the present blocking charge and of the fact that the Commission will, at a later date, revise the blocking service and/or the cost of blocking. At that time, the record should provide us with a basis for establishing a blocking charge which takes into account the costs and revenues derived from each particular type of information program.

The Commission finds that blocking is an appropriate option to assist ratepayers who are unable to control 976 usage. When the offering of information services is refined to the extent that the consumer can elect which type of program he wishes to block, the price of blocking to the consumer will be revisited. We are confident that the industry and the telephone utilities can develop a system whereby each program vendor characterizes its program and based on those designations, the consumer selects which types of programs he or she wants blocked.

We find that the direct costs of blocking should be tracked in a memorandum account by Pacific and General to track those amounts for later recovery. The cost of blocking 976 for lifeline customers shall not be charged against the lifeline account but shall be recovered in the same manner as the cost of blocking other residential customers. The cost of blocking will be amortized when selective blocking is authorized by tariff and available to subscribers. Costs for blocking pursuant to this order will be recovered in the context of the ratemaking mechanisms we ultimately adopt to provide selective blocking. At that time, we will ensure that the utilities are fully compensated for the cost of blocking and that subscribers are indifferent to the tracking mechanism.

With respect to the IP's argument that AB 2550 is inconsistent with federal law and in violation of antitrust law as interpreted by the MFJ, we disagree. First with regard to the inconsistency with federal law, we point out the FCC which found blocking technically and economically infeasible and unnecessarily restrictive was concerned with "Dial-A-Porn" service and the transport of obscene material to minors. Here we are dealing with a content neutral option where the telephone customer decides whether or not information access telephone service is appropriate for that subscriber's family. Again, we stress the word "option".

The residential subscriber must take the initiative to exercise the option to block access to the 976 prefix.

With respect to the argument that optional blocking, as ordered by AB 2550, somehow violates the IP's First Amendment rights, we point out this issue was covered in D.87-01-042 wherein we supported the DRA position stating:

> "In rebuttal to the First Amendment claims of the information providers, the Public Staff argues that under its blocking proposal [central office blocking], the Californian's choice of whether or not to have 976 service come into his home no more infringes on the information provider's right to free speech than does a Californian's choice not to have a phone at all. The Public Staff adds that the often unmentioned corollary to freedom of speech is the freedom not to listen."

and

> "Further, we categorically reject the self-serving viewpoint of some 976 provider interests that customer-initiated blocking in any way infringes on their free-speech rights or anyone else's." (D.87-01-042, mimeo. pp. 16-17.)

Further, we point out that there is no mandatory blocking except after a subscriber receives an adjustment and refuses to pay for 976 calls subsequent to such adjustment. Such action would alleviate the expense of continued adjustments for all parties. The only mandate is that blocking be available at the request of the subscriber. We believe such a requirement is both sound public policy as well as reasonable.

The IP's argument that AB 2550 violates the MFJ is not convincing. What is required of the Bell Operating Companies (BOCs) (including Pacific) is that no BOC shall discriminate between AT&T and its affiliates and other similar providers. It also provides for any "exchange access" or "information access" which is being provided to AT&T and its affiliates must also be

provided to all interexchange carriers and information service providers on an unbundled, tariffed basis that is equal in type, quality and price to that provided to AT&T and its affiliates. "Exchange access" is provided to AT&T and, therefore, such service is provided to all inter-exchange carriers. However, "information access" service is not provided to AT&T and its affiliates and accordingly, there is no requirement that such services be provided to any information service provider.

Having determined that blocking is in order we must look, as ordered in D:87-01-042 the merits of CPE and PIN access codes.

The evidence presented is that there is presently no working CPE device available that is both economic and feasible. No party in the proceeding supported the use of such a device and all witnesses rejected this blocking option. Though the use of a CPE device would not require modification of the network and is a visible indication that blocking is in place; it can be overridden if the customer wishes to use 976, it is easily defeatable if wired into a jack, may require a technician to install, and if battery operated, it will cease operating if the battery is depleted. The most glaring deficiency in the CPE is its easy defeatability and thus lack of customer protection. For the foregoing reasons, we believe the CPE option should not be ordered at this time.

For the use of PIN access code as a possible option to control access to 976, both Pacific and General reviewed its use and supplied data as ordered by D.87-01-042. Pacific investigated two different methods of implementing PIN access concluding it was not the best 976 blocking method available. In reaching its decision, Pacific noted that a PIN system would require use of a touch tone telephone and that 28% of its residential subscribers still employ rotary telephones. General investigated some five different PIN systems before concluding none were as preferable as central office blocking. Like Pacific, General expressed concern that any presubscription system, while much more expensive to

institute, would also inhibit the spontaneous access to the service.

In short, there was no support for a PIN access system because of the inhibiting prospects for 976 service, the high cost of implementing such a system as compared to central office blocking, and because such systems would provide one-level screening which would make them susceptible to circumvention. A more important negative consideration, however, is the fact that a PIN number could be used by any telephone, and its loss or discovery by random dialing could conceivably create a problem akin to that associated with stolen credit cards.

We believe that because of the inherent problems associated with a PIN access code system, implementation of such a system is not warranted at this time.

For the 12% of Pacific's residential telephone subscribers who cannot be offered central office blocking because of constrants in the technology of their local central office, we believe that, with proper safeguards, Pacific's proposal that these subscribers be provided two additional adjustments is a sound approach. Thus, we will not adopt the DRA proposal to suspend 976 service to this segment. Pacific should carefully monitor this program to mitigate the possibility of abuse. The cost of additional adjustments, if necessary, should be apportioned between local exchanges and information providers in accordance with our current adjustment policies.

Pacific and General should begin accepting orders for blocking on February 1, 1988. Since we are ordering blocking, Ordering Paragraph 3 of D.87-01-042 will be superseded by the provision of this order. We adopt the DRA recommendation as to the form of notice, outlined in paragraph (5), above, and order the DRA and CACD staff to work out the details of such notice. The

subscriber's request for blocking should be complied with by Pacific and General within thirty (30) days after receipt of the requires for blocking.

Because the total costs to provide blocking are unknown, further hearing to determine the amount and allocation of costs will be necessary. Both Pacific and General should set up appropriate accounts to record the revenues, investment and expenses to facilitate the final determination of cost allocation.

At this time, the adjustment policy set forth in ordering paragraph (1) of D.87-01-042 shall be continued. The parties should present evidence on whether changes to the Commission's adjustment policy will be appropriate when blocking is in place, as well as the appropriate test for determining that blocking has been successfully implemented.

We would point out that although this decision involves blocking of 976 IAS service, in reality it is, as pointed out by the DRA, a transition decision in the context of the Commission's ongoing development and adoption of policies regarding access and billing arrangements for all information and enhanced services.

Findings of Fact

1. D.87-01-042 ordered that the telephone utilities provide central office blocking of 976 IAS service be made available by January 1, 1988 as mandated by Section 2884 of the Public Utilities Code.

2. There has been a significant increase in the number of adjustments for 976 IAS calls by both Pacific and General.

3. The number of adjustments make the immediate need for blocking access to 976 IAS imperative.

4. Central office blocking of 976 IAS service is the most economical and technically feasible of the available blocking methods.

5. The central office blocking of 976 IAS, to be offered to residential telephone subscribers, is not based on message content.

6. Central office blocking of 976 IAS is an option that requires an affirmative act on the part of the telephone subscriber.

7. Central office blocking access to 976 IAS calls provides the residential telephone subscriber another option of the type of telephone service desired.

8. Providing the residential telephone subscriber the option of deleting access to the 976 IAS service does not impinge on the First Amendment rights of the information providers.

9. Providing the residential telephone subscriber the option to delete access to the 976 IAS service is not anticompetitive to the information providers due to a failure to block interstate 976 calls or AT&T 900 service.

10. Residential subscribers should be offered the option to block access to 976 numbers for a one-time fee of two dollars ($2.00). Residential lifeline customers should be offered blocking free of charge. Business and commercial customers should be offered blocking for five dollars ($5.00) per line. Those electing to block pursuant to this order shall be assessed a five dollar ($5.00) charge to change their blocking service, that is, either to unblock a line or to exercise a selective blocking option that may be provided in the future.

11. Pacific's proposal for two additional adjustments for residential telephone subscribers served by offices not having stored program control and who thus cannot be offered central ofice blocking is reasonable. It is reasonable to apportion the costs of these adjustments between information providers and local exchange carriers in accordance with our current policy regarding such adjustments.

12. Since local exchange carriers have been forbidden to disconnect residential telephone service for nonpayment of 976 IAS charges, after an adjustment for 976 IAS calls pursuant to the adjustment policy established by D.87-01-042 the local exchange

carrier should be authorized to block access to 976 IAS service for customers who do not pay their 976 bills.

13. Pacific and General should offer blocking on or before February 1, 1988.

14. Pacific and General should provide notice to all residential subscribers of the availability of blocking within ninety (90) days of the effective date of this order.

15. Pacific and General should file advice letters to provide for residential subscriber blocking consistent with this order.

16. Pacific and General should set up a memorandum account to record all revenue and direct costs associated with the blocking offer.

17. 976 Information Access Providers are notified that the cost of subscriber blocking as ordered herein may be recovered from them after completion of subsequent proceedings in which they will have an opportunity to be heard.

18. The cost of blocking pursuant to this order shall be recovered in the ratemaking mechanism which we ultimately adopt when selective blocking becomes available. At that time, the utilities will be fully compensated for the cost of blocking, and any prospective subscriber charge for blocking should not recover any amounts tracked in the memorandum account.

19. The record on the issue of blocking is complete. An en banc hearing before the full Commission would not be productive.

Conclusions of Law

1. Public Utilities Code Section 2884 requires local exchange carriers to offer blocking of 976 IAS service to residential telephone subscribers.

2. The most feasible and economic blocking of 976 IAS service is from the local exchange carriers central office.

3. Customer premise device blocking and a PIN access system are not economic or feasible alternatives at the present time.

4. For subscribers wishing to delete 976 access but not served by a central office with stored program control but which is co-located in a wire center with such capability should be offered the option of changing their service and telephone number to allow blocking.

5. For residential customers served by offices which do not have stored program control and which have no option of changing their service and telephone number should be allowed two additional opportunities for adjustments. Such adjustments should be treated the same as adjustments are now treated.

6. Customers who fail or refuse to pay for 976 IAS charges (except for charges for which an adjustment is granted) are subject to mandatory blocking of access to 976 IAS.

7. Further hearings are necessary to determine the amount and allocation of costs for blocking 976 IAS service.

8. Central office blocking is content neutral and is not in conflict with First Amendment rights of free speech, Federal Communication Commission opinions, or the Modified Final Judgement in United States of America v American Telephone and Telegraph Co., 552 F. Supp. 131 (D.D.C. 198), aff'd sub nom. Maryland v United States, (1983) 460 U.S. 1001 and United States of America v GTE Corporation, 1985-1 Trade Cas. (CCH) 64, 771, as modified and approved in United States of America v GTE Corporation, (1984) 603 F. Supp. 730.

9. The provisions of this order should apply to all local exchange carriers who offer residential subscribers 976 IAS service.

10. An en banc hearing on the issue of blocking 976 IAS is not necessary.

INTERIM ORDER

IT IS ORDERED that:

1. All local exchange carriers who offer 976 IAS service to residential subscribers shall offer central office blocking of 976 IAS no later than February 1, 1988. Notice of the availability of central office blocking shall be given by notice pursuant to this order within 90 days after the effective date of this order. Such blocking shall be six-digit screening applied to the ten California area codes. Such blocking shall be provided to customers served by stored program control central offices capable of providing the service.

2. All local exchange carriers offering residential subscribers 976 IAS service shall provide advance notice to all residential customers of the availability of blocking. Initial notification should include a special mailing to all residential customers served by capable offices, explaining the offering of optional blocking. Notice of blocking availability shall not be limited to English. Specifics of the notice shall be coordinated by the Commission Advisory and Compliance Division.

3. Six months after the initial notice, and at least once each calendar year thereafter, affected carriers shall notify all residential customers of the continued availability of blocking.

4. Residential subscribers opting to block 976 IAS service shall be charged a a one-time fee of two dollars ($2.00), except for lifeline customers who will not be charged a fee. Business and commercial customers opting to block 976 shall be charged a one-time fee of five dollars ($5.00) per line. 976 IAS blocking service shall be removed for a fee of five dollars ($5) upon written request from the residential subscriber to the local exchange carrier. A non-recurring fee of five dollars ($5) shall be charged to residential subscribers for any reinstallation of blocking.

5. Residential subscribers served by a non-capable central office who request a change of telephone numbers to be served by a co-located capable central office for the purpose of obtaining 976 IAS blocking service shall not be charged for such number change.

6. Residential subscribers who cannot be offered central office blocking due to constraints in central office technology shall be eligible for two additional adjustments. Pacific shall closely monitor this program to ensure that there is no abuse. Any charge backs will handled according to the current Commission policy regarding adjustments.

7. Respondent local exchange carriers offering 976 IAS service may block access to 976 IAS for customers who fail or refuse to pay 976 IAS charges (except for charges for which an adjustment is granted). All costs for such blocking shall be included with and paid for in the same manner as other blocking costs.

8. Pacific and General shall file within 30 days of the effective date of this order an advice letter implementing blocking as ordered herein.

9. Pacific and General shall maintain accounts of record of income and expenses incurred to provide blocking of 976 IAS services.

10. The cost of blocking 976 for lifeline customers shall not be charged against the lifeline account, but shall be recovered in the same manner as the cost of blocking other residential customers.

11. Further hearings to determine the proper allocation of costs for blocking of 976 IAS should be held within 90 days of the effective date of this order.

12. In addition to Pacific and General, the provisions of this decision apply to any independent telephone exchange carrier opting to provide 976 IAS service to residential subscribers, except that such telephone companies who do not want to

automatically block may file an advice letter with the Commission detailing any history of 976 complaints in their service territory and the costs of compliance.

13. The request for an en banc argument on blocking is denied.

This order is effective today.

Dated December 9, 1987, at San Francisco, California.

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

I dissent in part. I will file a written dissent.
/s/ DONALD VIAL
Commissioner

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

Victor Weisser, Executive Director

I.85-04-047
D.87-12-038

DONALD VIAL, Commissioner, Dissenting in Part:

While I strongly support today's decision giving telephone subscribers the option to have 976 calls blocked, I oppose charging them for exercising that option. The full cost of blocking should be borne by 976 providers as an integral part of the cost of doing business under our 976 tariff arrangements. Such costs are, in reality, a kind of trade off for giving for-profit 976 ventures the potentially lucrative opportunity of linking up with the ubiquitous market of a regulated monopoly telephone utility and attaching their billing for 976 calls directly to the revenue collection of the regulated utility. 976 Providers pay for the arrangement only as 976 calls are made. Their payment to the telephone utility for line usage (transport fee) and the billing service is an offset against the revenues that telephone utilities collect from the phone subscriber and remit to the 976 providers.

It is hard to think of a sweeter business deal. I have no sympathy whatsoever for those 976 entrepreneurs who have flourished on this business arrangement and now act as if charging them for the cost of a subscriber blocking option violates a vested right to access households for 976 calls because of their financial investments in 976 ventures. Outrageous!

Even though the charges in today's decision are modest, for which I am appreciative, the matter should not be treated lightly. That is the reason for this dissent. The issues involved deserve serious thought, because the cost-allocation problem manifested in connection with our 976 tariff is only the tip of the iceberg -- an iceberg that presages a new era of competitive information and "enhanced" telecommunications services to be attached to, and accessed through, the basic regulated services of telephone utilities under the evolving Open Network Architecture (ONA) policies of the FCC and Judge Greene's most recent MFJ decision.

I do not mean to imply in any way that telephone subscribers do not stand to benefit from the availability of 976

services or from the erupting "information age." When the CPUC authorized 976 services, we were focused on this information age and the technology of making information easily and directly accessible from virtually every home and other telephone location in the state. In opening up vast new market vistas to entrepreneurs who have "information" to sell, we gave these business people the potentially lucrative opportunity outlined above to link up with a treasured monopoly market. Even though this link-up of 976 services with basic telephone services might seem highly favorable to the 976 investors -- especially in terms of the low-investment cost for accessing a wide market -- it could be justified from a regulatory viewpoint on the basis of the desirability of giving telephone subscribers direct access to possibly valuable information services, especially if there were some "margin" contribution to maintaining low tariffs for basic telephone services. The Commission saw it as a triple "win" situation -- a "win" for the 976 provider, for a universal telephone system, and for the telephone subscriber.

What the Commission did not fully foresee at the time was just how attractive some types of 976 service might become; nor did we fully appreciate the kinds of problems we might be creating for subscribers to control either the placement of 976 calls or their ultimate telephone bills. Those problems became so great that we found it necessary to provide consumer protections against abusive 976 advertising directed at children, to launch an extensive rebate program for large bills incurred without authorized phone use, and now, by this decision, to finally implement central office blocking under legislative mandate. (We do so, I should add parenthetically, in a manner that fully protects the civil liberties of both providers and ratepayers without involving government in decisions of choice by citizens).

As we know, the tough issue before us is not whether the blocking option should be made available to telephone subscribers. I'm sure all of us regret that it has taken so long to go through the time-consuming effort of determining what type

of blocking would be appropriate to require at this time of the development of blocking technology. The tough issue, as I have indicated, is how the cost of central office blocking adopted today should be allocated. Specifically, should the ratepayer desiring blocking pay for part of the cost incurred by the telephone company or should the blocking costs be treated as a legitimate cost of doing business and charged fully to the 976 providers?

The law permits ratepayers to be charged a maximum of $5 for blocking. It can be argued that this amount or something less than $5 should be paid by ratepayers who request blocking, because they should share in the cost of protecting themselves as consumers if they can't control the use of their own phones. As the argument goes, in the new information age that is upon us, telephone subscribers are just going to have to be more responsible about who uses their telephones. It's that simple. The problem is not new. Telephone subscribers have to control the use of the telephone for long distance calls through carriers that access the local exchange.

This argument has some merit, but it is undermined by the fact that the present control problem for the telephone subscriber who pays the bill is greatly exacerbated when we, the CPUC, allow a whole new group of information providers to attach themselves to a monopoly network for direct telephone access with integrated billing of the telephone subscriber. It seems grossly unfair to charge a telephone subscriber, for example, to block a business enterprise from reaching directly into the home to gain a market for a service that the subscriber has not sought. Should such a subscriber have to pay to block a purveyor of sports "trivia" from being readily accessible in a household that is having trouble containing the 976 calls of an exuberant teenage sports fan? What about sexually-oriented recordings that may be offensive to some telephone subscribers? Shall a subscriber have to pay to keep sexually-oriented messages from coming into his or her home? Or is it more important that we minimize the business

costs of 976 providers by having the ratepayer pick up some portion of the blocking costs.

The issue is not an easy one to resolve even from the point of view of the telephone subscriber. The whole issue of blocking and the allocation of its costs is complicated by the fact that selective blocking is not as yet technically available. Thus, in order to block undesired 976 services, it is also necessary to block other program services that may be desired or not unwanted. Both the decision to block by a telephone subscriber and the regulatory issue of how to allocate blocking costs would be easier to resolve if selective blocking were available now. But it is not, and today we have to make the regulatory decision on allocation while implementing the legislative mandate to provide a blocking option.

As my rejected changes in the ALJ's order proposed, I would have opted to provide for central station blocking without charge to the telephone subscriber pending our revisit of the issue when selective blocking becomes available. A subscriber choosing to block access would not face a charge unless a change in blocking service is ordered; that is, unblock the line or exercise selective blocking when it becomes available.

Also, prior to the availability of selective blocking and in order to minimize any adverse impact of blocking on the business costs of 976 providers, I would provide that the actual cost of central office blocking would be recorded in a memorandum account to be allocated prospectively in the context of the ratemaking mechanism we ultimately must adopt to provide selective blocking when it becomes available.

To sum up, while the majority today established blocking charges to ratepayers less than the legislatively set maximum of $5, I cannot accept the premise that in the absence of selective blocking telephone subscribers should pay anything to prevent 976 markets from being extended into their homes. It is wrong to link-up 976 providers with regulated monopoly telephone services and then charge subscribers to block the link-ups if they are unwanted. It is egregiously wrong when telephone subscribers

don't even have a choice of the kind of link-ups with 976 providers they may want to permit in their homes.

Donald Vial, Commissioner

December 9, 1987
San Francisco, California

ALJ/BEB/fs

Decision 87 12 038 DEC 9 1987

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into 976 Information Access Service.	I.85-04-047 (Filed April 17, 1985)
And Related Matters.	Case 86-06-012 (Filed June 5, 1986) Case 86-12-014 (Filed December 5, 1986) Case 86-12-062 (Filed December 23, 1986) Case 86-12-063 (Filed December 23, 1986) Case 86-12-064 (Filed December 23, 1986) Case 87-01-007 (Filed January 7, 1987) Case 87-04-009 (Filed April 8, 1987) Case 87-04-031 (Filed April 16, 1987) Case 87-08-026 (Filed August 14, 1987)

(See Decision 85-11-028 for appearances.)

INTERIM OPINION

Introduction

By this decision, we order all local exchange carriers who offer residential subscribers 976 Information Access Service (IAS) to proceed with central office blocking of 976 IAS service for residential subscribers within 90 days of the effective date of the decision. We also determine that further hearings are necessary to determine the proper allocation of costs for the blocking of 976 IAS.

Under the Commission's Rules of Practice and Procedure, the proposed decision of the administrative law judge (ALJ) for these proceedings was filed with the Commission and mailed to the parties of record on November 6, 1987. Comments on the proposed decision were filed by Pacific Bell (Pacific), General Telephone Company of California (General), Information Providors Association (IPA), Public Advocates, Phone Programs Inc. (PPI), Telephone Information Services, Ltd., and the Division of Ratepayer Advocates (DRA).

After review of the comments, we modify the proposed decision in the following respects: (1) authorize mandatory blocking of all 976 IAS for residential subscribers who have received an adjustment for 976 IAS calls, and (2) add more definitive and clarifying language with respect to the type blocking to be offered and the $5 charge for installation and removal of blocking.

Background

The 976 Information Access Service (976 IAS) is a telephone utility tariffed offering of Pacific Bell (Pacific) and General Telephone Company of California (General) which allows many telephone callers to simultaneously access a selected prerecorded message. The service consists of the telephone company's provision of transport, billing, and collecting in conjunction with the

unaware of 976 charges, and release of the name and telephone number of the 976 IP. D.87-01-042 dated January 14, 1987 found that 976 IAS was in the public interest if properly regulated and ordered that central office blocking be made available by January 1, 1988 with further hearings to explore the following three types of blocking: (1) central office blocking, (2) customer premise equipment (CPE) blocking, and (3) personal identification number (PIN) access code system.

Hearings on the three different blocking methods were held in July and September, 1987. Participating in the hearing were Pacific, General, PSD, Public Advocates, Information Providers Association (IPA), Sable Communications, and Phone Programs (PPI). The matter was submitted on September 16, 1987 subject to concurrent briefs to be mailed October 5, 1987. Briefs were filed by Pacific, General, PPI, IPA, Public Advocates and PSD.

On October 19, 1987, PPI filed a request for an oral argument before the full Commission respecting the issue of the appropriateness of blocking access to 976 IAS in light of the briefs submitted by the parties. After considering the request and reviewing the record herein, we are of the opinion that the record on this issue is complete and an en banc hearing would not be productive. This request will be denied.

Position of Parties

Pacific

Pacific proposes that central office based blocking be implemented in its stored program control central offices. It proposes that blocking in other than the stored program control offices be provided by adjunct devices located in those central offices which do not have stored program control. Pacific suggests that those residential customers who desire blocking and are served by a central office that does not have stored program control but which is co-located in a wire center that has such capability, be offered the option of changing their service and telephone number

to allow blocking. It proposes that any such change would be considered as part of the cost of blocking and such costs would therefore be borne by the IPs rather residential telephone subscribers.

Pacific states that AB 2550 (Section 2884 of the Public Utilities Code) mandates an option for customers to elect whether or not to block 976 and that the customer opting for blocking can be charged $5.00 with additional costs passed on to the affected IP's.[1] Pacific states that blocking for 88% of its residential subscribers could commence by January 1, 1988.

For the 12% of residential customers served by offices which do not have stored program control and thus cannot be offered central office blocking and have no option of changing their service and telephone number, Pacific recommends that two adjustment periods be made available in addition to the current one-time adjustment. As in the case of the one-time adjustments, the additional adjustments would be charged to the applicable IP account.

Pacific states that the suggestion of the IP's that AB 2550 has been preempted as a result of federal legislation (47 U.S.C. Sec. 223(b) and subsequent action by the Federal Communications Commission (FCC)[2] is not accurate. It states that the FCC in its report, which stated that exchange blocking as a regulatory option was both economically and technically infeasible

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1 Contrary to the IP position that the additional costs for providing customer blocking should be paid for out the utilities 976 profits, Pacific asserts that AB 2550 specifically refers to "providers of information-access telephone services" for such payment.

2 Section 223(b) of the Federal Communications Act orders the FCC to promulgate regulations relative to the transmission via telephone of obscene or indecent communications for commercial purposes to any person under 18 years of age.

and unnecessarily restrictive, was dealing with the transmission of obscene material to minors whereas AB 2550 is content neutral and a subscriber should have the option to delete access. Pacific further states that the federal goals were aimed at a specific segment of the population and places a burden on the adult consumer who desires such service whereas AB 2550 places no burden on anyone wanting the service.

With respect to the argument that AB 2550 violates the First Amendment of the United States Constitution, Pacific states that the state is not mandating that access to adult entertainment or any other 976 program be blocked. It states that the only requirement is that blocking be made available on request and as such is reasonably related to a state purpose and, therefore, does not violate the First Amendment.

Pacific also states that the assertion AB 2550 violates the modified final judgment (MFJ) in United States v American Tel. & Tel. 1982 552 F. Supp. 131, D.D.C. because residential subscribers opting for intra-state blocking can still access AT&T 900 service and 976 services in other states is a red herring. It states a careful reading of the MFJ reveals that there is nothing which requires the Commission or Pacific to treat any information provider the same as AT&T, Sprint or MCI.

Pacific states that, as testified to by its witness, the study conducted by Field Research Corporation[3] shows that 14% of the respondents who were asked said they would order blocking and 10% who were asked about selective blocking stated they would order such. It states the results were surprising since it was anticipated the demand for blocking would be much lower. Pacific's witness, when asked whether people informed that they could not block access to 976 number in other states or block access to 900 numbers, stated the results would not be dramatically different. Even though blocking is not total, the witness stated:

> "There is a tendency for some people to block what they can...if this is an issue that they feel strongly about, they might also say, well, I understand it doesn't make sense because I understand that they could also call these out-of-state numbers but, nevertheless, I want to block what I can, take a position. ... If people feel strongly about this, they might just be willing to take what they can realizing that economically it doesn't make sense if it's an emotional issue with them." (Tr. Vol. 37, pp. 5027 and 5028, September 14, 1987.)

Pacific states it considered a range of alternatives including Customer Premises Equipment (CPE), Central Office (CO) blocking, line-side adjunct device, truck-side adjunct device and

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3 The study by the Field organization was ordered by the administrative law judge in the July hearing to determine the public's opinion and the demand for blocking access to 976. A total of 2,017 interviews of a random cross-section of California residential telephone households were conducted. The sample was divided into two groups with 1,003 respondents asked about total blocking and 1,014 respondents asked about selective blocking. The sample was broken into two subsamples because it was not contemplated that blocking would be offered to customers in both forms--total and selective. Total blocking would block all intrastate 976 calls. Selective blocking would involve some programming on the part of the customer to select which intrastate programs to block and which to allow on his phone.

Personal Identification (PIN) and Access Codes. After an extensive review of the cost and technical specifications and the demand of these various type of blocking, Pacific concluded that central office blocking was the best for the majority of its subscribers.

With respect to the CPE devices, Pacific states this is a device, at the customer's home, that is inserted between the customer's telephone equipment and the utility's network to block access to 976 services. All blocking devices essentially either interfere with the signals going toward the central office, or do not allow the digits to leave the device. Basic features of CPE are as follows: it does not require modifications to the network; is a visible indication that blocking is in place; it can be overridden if the customer wishes to use 976; it is easily defeatable if wired into a jack; it may require a technician to install and if it is battery-dependent it ceases to work when the battery is depleted.

Pacific's witness testified that the availability of CPE devices is still unsure and that there were no devices known to Pacific which met the main criteria of non-defeatability and appropriate blocking method.

With respect to PIN access code blocking, Pacific states it reviewed this method from the points of view of having such codes provided by Pacific or by the subscriber. The codes would require presubscription by the customer to gain access to any 976 service. A customer would have to enter a Personal Identification Number to complete a 976 call. It states that a drawback to this procedure is in the inability of the casual user to access 976. Pacific's Marketing witness had concerns in this regard stating:

> "We believe that the call repression introduced by, and the substantial cost associated with implementation of a PIN/Access Code arrangement would lead to the demise of 976, this would have the effect of causing forfeiture of a substantial amount of 976 revenue for Pacific Bell's ratepayers, impairment of the delivery of information age services for California

consumers, and damage to Pacific Bell's overall ability to compete in the information age with resultant negative long term revenue impact."

General

General proposes six-digit screening as the method for central office blocking of 976 service and that the utilities should not be ordered to institute the service less than 90 days after the effective date of the decision ordering blocking. General opposes any other type of blocking or substitute measure such as CPE or PIN. General also proposes that the utilities be authorized to unilaterally block access to 976 service by customers who fail or refuse to pay 976 vendor charges after receiving any one-time adjustment of such charges and the costs associated with such blocking be borne in the same manner as the costs of central office blocking.

Phone Programs

PPI opposes the implementation of any type of blocking. It recommends that the Commission: (1) report to the Legislature that in the Commission's view, government-ordered blocking for 976 IAS is not feasible, but that adequate protection can be afforded to the public by means of separate tariffs for adult entertainment and live programming and (2) the utilities should be ordered to submit: (a) a proposed revision of the existing tariff unequivocally limiting the 976 IAS to prerecorded, non-obscene, non-indecent offerings; (b) a proposed tariff to regulate Dial-A-Porn offerings so that access by minors can be properly and easily limited by parents; and (c) a proposed tariff to regulate live offerings with detailed safeguards.

It is PPI's view that 976 programming which offers information on such diverse subjects as sports, general news, business news, stock exchange reports etc. are separable from live and Dial-A-Porn programming and should require separate tariffs. PPI states that jurisdictions which do not have access to adult

programming have little or no program controversy. PPI stresses that in its opinion the live and adult programming are the primary cause of the 976 industry image and problems.

PPI states that the solution - i.e. central office blocking, offered by Pacific is illusory and not a solution at all. It states that because out of state 976 calls and AT&T's 900 programming would still be available to subscribers who want blocking, any person opting for central office blocking as now proposed would be misled into thinking blocking would be total.

PPI also states that AB 2550 is inconsistent with federal law and such should be reported to the state legislature. It states circumstances which have developed since the enactment of AB 2550 render any discernible policy behind the law moot and make it clear that the statute is unlawful and any efforts to comply with it at this time would unquestionably cause needless legal controversy and expense to all concerned, including the affected telephone companies, information providers, the CPUC, and ultimately the consuming public. It states such a controversy would be needless since there are available avenues through which existing problems can be corrected.

PPI states statewide mandatory blocking is also discriminatory regulation with respect to interstate access in that it (1) gives AT&T 900^{R} an unfair competitive advantage over California 976 IAS IPs and (2) provides no method by which callers in the other 49 states may delete access to Dial-A-Porn. It states that the FCC has found network blocking to be unnecessarily restrictive and that CPE would be similarly flawed.

PPI also states that AB 2550 is in violation of the FCC's regulation in that any government imposed availability of blocking would violate the FCC mandate of no central office or CPE blocking. PPI states AB 976, Stats. 1987, Ch. ___, which was recently enacted by the California legislature, codified certain defenses for IP's distributing obscene matter and will generate even more controversy

than blocking because while in compliance with state law it could still be in violation of the FCC mandate.

PPI asserts that the combination of central office blocking and CPE blocking is in direct contradiction of the MFJ which requires operating companies to provide access services to interexchange carriers and information service providers which are equal in type, quality and price to the access services provided to AT&T and its affiliates. PPI states it is uncontested that the local telephone utilities bill and collect on behalf of certain interexchange carriers, including AT&T, and that AT&T has established a national network which is a virtual replica (in terms of program offerings) of the local 976 IAS tariffed by the Commission. It states that if blocking is made available for the purpose of deleting access to California's 976 IAS, California's information providers will be victims of a clear and objective kind of discrimination, when compared with AT&T and/or its providers on the AT&T 900 network. A similar analysis may be applied to the interexchange carriage of 976 programs from other states, whereby all interexchange carriers would be motivated (for the purpose of generating revenues from long distance toll charges) to permit such access from Californians. It states that the facts of this case demonstrate that blocking, as proposed, would violate federal antitrust law.

PPI asserts that in mandating the choice to consumers of blocking all 976, or none of it, the Commission would be erroneously yielding to a perceived threat from pornographers and abusers who have instituted live programming. PPI states that there would be many consumers who, having heard of or experienced problems with pornography or live programming, would "choose" blocking in order to avoid those abuses. It states implementation of central office blocking fails to serve any legislative purpose or the public interest.

PPI also asserts that "by forcing consumers to retain access to all or none of 976 IAS, the CPUC would predictably cause many legitimate IPs to lose revenues. PPI maintains that such an arbitrary imposition would violate its fourteenth amendment due process and equal protection rights."

It states that in regulating a speech-ladened industry such as 976 IAS, the imposition of network blocking would arguably be subject to a review under a standard of strict scrutiny. It states that though purporting to adopt a content neutral philosophy, the facts demonstrate that the imposition of a "choice" of all or nothing constitutes a preference for pornographic offerings. Put another way, the Commission is punishing non-obscene, non-indecent programmers for the public perceptions of Dial-A-Porn providers and access to their programs by children. It states the problems can be avoided by separate tariffs for live and adult entertainment programming.

PPI contends that the content neutral philosophy obligates all consumers who have access to 976 IAS to waive their right under federal law to delete access to obscene or indecent telephone transmissions. It suggests reconsideration of the content neutral philosophy stating direct regulation of Dial-A-Porn is in the public interest, the problem will not disappear with the advent of new technologies, and a separate service - i.e. Tariff, for pornography accompanied by reasonable limits to access by minors will remove a public's taint now associated with 976 service.

PPI argues that central office blocking would not affect interstate access to 976 services nor have the capability of blocking programs offered to AT&T 900 and that any belief of a reasonable partial solution is illusory. It states that the expenditure associated with central office blocking when it will not cure the problem makes no sense.

PPI asserts that a content-neutral policy elevates the ilk of grossly prurient programming to a status equal to the uncontroversial content such as weather and sports, which, by its nature, is not harmful. It states adult offerings should be separately regulated so that access by minors could be properly limited.

With respect to live programming, PPI states it believes the present 976 tariff does not allow such offerings. It states thus as a technological matter, live connections should be quite different from the kind of access which allows for thousands of simultaneous callers to a single 976 number. In short, a separate tariff for live programming should be adopted.

PPI concludes there is a need for protection from live and pornographic offerings and that to meet constitutional challenges, both should be separately regulated.

Public Advocates

Public Advocates favors the adoption of central office blocking to be in effect no later than April 1, 1988. It states such blocking, combined with a liberal refund policy, honest advertising, recorded messages with information on price, and the eventual development of separate prefixes for Dial-A-Porn, should resolve the problems associated with the 976 offering.

Public Advocates argue that the exhibits and testimony of Pacific and General clearly establish the efficacy of central office blocking over the alternatives available. It notes the results of the Field Study and the fact that in recent months, there has been an increase in adjustments by both Pacific and General.

With respect to the position of PPI that blocking is necessary only for Dial-A-Porn programming, Public Advocates, citing Pacific exhibits states that the record is clear that the complaint level of children programming is extraordinarily high.

Public Advocates supports the results of the Field Study pointing out that the projections of 7 to 11% demand compares favorably with the 6.3% of households in Pennsylvania[4] who have secured blocking.

Because only 88% of Pacific's customers can be provided central office blocking, and because of the present unavailability of a CPE device, and the unacceptability of other available alternatives, Public Advocates supports the liberal (three-time) adjustment policy proposed by Pacific until blocking is available for all customers. It cautions that the three-time adjustment should be carefully monitored to avoid customer abuse.

Public Advocates states that at present, 976 is a defective product. However, recognizing the role 976 can play in the "information age", Public Advocates makes the same consumer protection recommendation it made in the prior hearings adding the need for a 900-type number with separate prefixes for porno, adult line, children-related, and all other programs.

Public Advocates urges an order for central office blocking before the 1987 Christmas season to enable the utilities to have the blocking in place by April 1, 1988.

Information Providers Association

The Information Providers Association (IPA) opposes blocking of any kind stating the Commission faces virtually certain and protracted First Amendment and antitrust law challenges if it proceeds with blocking as presently envisioned by the utilities and staff. It states blocking will prove to be an expensive, confusing and ineffective solution while driving most, if not all, IP's out of 976 IAS in California.

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4 The facts surrounding the state of Pennsylvania blocking experience were introduced by IPA witness Ryan.

IPA argues that the six-digit blocking proposed by Pacific and General would be "incomplete" since it would only block 976 within California while interstate and AT&T's 900 service would still be available. Because of the inability to block interstate and the 900 network, IPA argues these providers would have a competitive advantage over California IP.

IPA also states that the customers surveyed by the Field Study should have been questioned about selective blocking and whether the $5 they would pay for blocking would be expected to be the total cost. With respect to cost, IPA states that the per program cost of central office blocking at 7%, 9% and 11% demand rates would be $10,055, $12,476, and $14,896, respectively. For the 12% of Pacific's customers for whom central office blocking would not be available, IPA states that CPE blocking would cost $8,381, $9,878 and $11,109 at demand rate of 7%, 9% and 11%, respectively. It states this cost would result in a tremendous repression of the number of 976 programs available to the public.

Because of the requirement that AB 2550 imposes on the IPs for blocking, they argue they, the IP, must pay the expense of diminishing their own audience and that this is an infringement of First Amendment liberties. It argues that when the blocking proposal is analyzed under fundamental First Amendment principles it is suspect. It states the apparent purpose behind AB 2550 - to help telephone subscribers who cannot control the use of their telephones to avoid high telephone charges for 976 calls - is not a substantial, much less a compelling, governmental interest.

IPA argues that the fundamental flaw of the blocking proposal is that it is simultaneously over-inclusive and under-inclusive. Over-inclusive because central office blocking would block access to all 976 numbers and it is under-inclusive because callers would still not be able to block interstate and 900 network calls.

Because central office blocking only blocks intrastate 976, citing Minneapolis Star Tribune v Minnesota Commission of Reduced, 460 U.S. 575, IPA, argues that because out-of-state 976 providers and the 900 network are spared any expense related to blocking these is a clear competitive advantage to the out-of-state providers and the 900 network in violation of the First Amendment.

IPA also argues that subjecting only California IPs to the costs now envisioned for blocking also violates Section II-A of the MFJ which requires Pacific to provide to all information providers "exchange access, information access, and exchange services for such access on an unbundled tariffed basis that is equal in type, quality and price to that provided by AT&T." IPA states:

> "On its face, the blocking scheme envisioned by Pacific and General violates the equal exchange access and equal information access requirements of the MFJ and the GTE Consent Decree. The discrimination could not possibly be more clear. Those IPs utilizing AT&T's interstate network or AT&T's 900 network to disseminate their virtually identical programs in California are not subject to having their audience diminished at their own expense, even though it is technologically possible, according to General, to block 900 network calls. (Tr. 5102-5103, 5113.) By contrast, intrastate 976 IPs are forced to pay for reducing their audience.
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> "For this Commission to frustrate the purposes of either the MFJ or the GTE Consent Decree, by ordering Pacific and General to engage in discriminatory practices which violate those decrees, would constitute interference with enforcement of federal antitrust laws. For this reason, as envisioned by the utilities, blocking is preempted by federal law. Capital Cities Cable, Inc. v Crisp, 467 U.S. 691 (1984)."

IPA states that if implemented blocking will be an expensive fiasco since callers will not be prevented from accessing

976-type programs in other states and/or AT&T's 900 network. It states that when residential subscribers are made aware that they will still be fully liable for charges for any calls made to 976-type programs outside of California, they will quickly realize that a $5 investment in blocking will be a complete waste of money.

IPA states that blocking will have a catastrophic effect on the 976 industry in general with the repression in programs the costs soar to some $53,942 per program. It states that leaving 90% of the cost of blocking within the control of the utilities is an invitation for abuse since given the "ever-present incentives to cross-subsidize, the utilities' costs in this area will be virtually beyond policing; PSD has stated it has no interest in monitoring Pacific's and General's costs." These headaches could be avoided if Pacific and General accepted responsibility for their product and implemented blocking on their own, under circumstances which left them with a direct incentive to keep costs to a minimum.

Should blocking be ordered, IPA suggests the following:

1. Subscribers be told that central office blocking will not stop calls to interstate 976 numbers and 900 network numbers.

2. The Commission not adopt CPE blocking.

3. Pacific and General should pay for the costs of blocking because they will incur minimal out-of-pocket cash expenses.

4. Presubscription PIN numbers should not be adopted.

5. Should blocking be ordered, mandatory blocking of all 976 calls from telephones of subscribers who refuse to pay for 976 calls whether or not they have been given one-time adjustment.

6. The suspension of 976 service should be taken if there are delays in implementing blocking.

Finally, IPA states the Commission should not stray into the issue of whether 976, IAS programs should be regulated on the basis of content. It states the answer to the blocking dilemma is a new report to the legislature outlining the constitutional and antitrust issues and the catastrophic costs to IPs of implements blocking at their expense and ask for appropriate relief.

PSD

PSD proposes that central office blocking be ordered forth with because it is the most effective and least costly to the consumer while promoting the growth of the information industry. The least preferred methods of blocking according to PSD were PIN access code and CPE equipment. Staff asserts it would be recommending central office blocking notwithstanding the existence of AB 2550.

PSD asserts that the soaring increase in adjustments (less than .5% of all 976 calls in February 1986 to 10-14% per month) for 976 calls is indicative of the need to have a blocking mechanism in place. In addition to the increase in adjustments, the staff cites the Field Study commissioned by Pacific which shows an 8-12% demand rate for total blocking. The PSD notes that the witness who sponsored the Field Study believed the demand rate for blocking would be higher if it were offered at no cost and that the results of the study would probably not be changed by the fact that blocking would not affect interstate and AT&T 900 calls.

Of the alternatives available, PSD asserts central office blocking is preferred because it is the most effective and least expensive. PSD states the PIN access code is the least preferred because it requires an affirmative request on the part of a subscriber in addition to the cost. (Assuming a 10% demand rate the cost estimated by Pacific would be $25,432,028. Of that amount, $13 million would be non-volume sensitive costs.) PSD also notes the PIN system would still allow circumvention and abuse and provide only one-level screening.

With respect to CPE devices, PSD asserts they are too costly, easily defeatable, and if selective, too difficult to program. It notes that the Field Study confirms that selective blocking does not seem to be a high priority among California consumers. For cost, PSD points out Pacific's data at an 11% demand rate shows costs from a low of $44 million to a high $144 million. PSD states that CPE does not meet the desired criteria of universally simply design for ease of installation and foolproof enough that it works.

PSD supports central office blocking because it is the least expensive for both Pacific and General, is the most effective, virtually foolproof, and from the customer viewpoint easy to implement. Cost wise, at a 10% demand rate, central office blocking would be about $15 per residential line for Pacific. The PSD also supports central office blocking as the best means of consumer protection while allowing expansion of 976 services.

For customers not served out of stored program control (SPC) and thus not able to be offered blocking, PSD proposes that local exchange carriers (LECs) be required to suspend the offering of 976 IAS to residential customers who cannot be offered optional blocking by April 1, 1988. LECs would apply for exemption to this provision for central offices which will not have optional blocking capability by April 1, 1988 but which will have such capability by October 1, 1988. The suspension would be implemented by blocking all 976 prefix calls originated from the non-conforming central office, and would be in effect until optional blocking becomes available or until the Commission establishes a universal access arrangement for information services. PSD also propose that should adjunct equipment be required to accomplish the limited suspension, the LECs should bear such costs out of the existing contribution margin for 976 IAS.

With respect to the IP's argument that optional blocking infringes on their right to free speech, PSD states that this issue

was laid to rest in D.87-01-042 wherein we supported PSD's position that the blocking of 976 only gives the telephone subscriber the option of what he wishes to hear.

PSD notes that the IP's acknowledge blocking already exists in hotels, motels, government agencies, businesses etc. and asserts the free speech is only raised because the IP's are asked to share a portion of the cost to provide blocking.

With respect to the motion that central office blocking will be unable to block interstate and AT&T 900 calls and, therefore, an expensive exercise in futility, PSD asserts it is just another red herring raised by the IPs. PSD states the argument that state regulation which does not cover interstate services is ineffective and, therefore, should not be attempted could be equally applied to federal regulation which does not cover intrastate services. The logical result of such a rationale is that no action should be taken by either the FCC or the state commissions to address the 976 access control problem.

Regarding the FCC's position that network blocking is an unacceptable method of implementing Section 223 of the Federal Communication Act, PSD states such action is irrelevant to California because the FCC action is aimed at only Dial-A-Porn - i.e. content, while this proceeding is aimed at regulating all 976 service and is content neutral.

PSD states that whether or not AB 2550 was law, it would be recommending that central office blocking be offered as a necessary complement to the provision 976 service in California. It states it is not recommending the implementation of central office blocking merely because the Legislature has instructed the Commission to do so. It states the Commission has before it a thorough and compelling record that can only lead to a conclusion that central office blocking is needed as an option for consumers if 976 service is to continue at all.

PSD points out that this investigation into 976 service began before the Legislature acted in the area and in all likelihood will continue long after. It states that with or without the existence of AB 2550, the Commission has ample authority to requiring the offering of optional blocking as a necessary consumer protection in the offering of 976 service in California.

PSD states that the dramatic increase in requests for adjustments and the findings of the Field Study lead it to recommend that if a final order for blocking cannot be issued by January 1, 1988 or if such blocking is not actually implemented by April 1, 1988, that the Commission order the temporary suspension of existing tariffs for 976 IAS. PSD suggests that the Commission then reopen consideration of 976 IAS to allow argument by staff and other parties that the continued offering of 976 IAS tariffs without adequate consumer protection capabilities is not in the public interest and that the Commission should order those tariffs to be withdrawn or indefinitely suspended.

PSD states it is convinced that in the absence of adequate consumer protections such as optional central office blocking, 976 service is not in the public interest and should not be offered in California.

As a necessary complement to central office blocking, and because blocking does not eliminate the need for a one-time adjustment prior to a customer's awareness of 976 charges, PSD recommends that the adjustment policy adopted in D.87-01-042 be extended indefinitely. If not extended indefinitely, PSD recommends the adjustment policy be continued until the effects of central office blocking can be evaluated.

To ensure that the blocking option is brought to the public's attention, PSD recommends that initial notification include a special mailing to all residential customers served by capable offices, explaining the offering of optional blocking and

enclosing a reply card with a postage paid return envelope as was done in the marketing abuse case.

Finally, the staff states that 976 service is only a small part of the overall information and enhanced services now developing and blocking cannot be viewed in isolation. PSD witness stated:

> "I would like to emphasize that the blocking 'solution' recommended by the Staff at this time should not be interpreted as the recommended final disposition of 976 access and blocking issues, but rather as a transition solution. Staff expects that the long-term resolution of the 976 access issue will be determined in the context of the Commission's ongoing development of policies regarding access and billing arrangements for all information and enhanced services, probably within the context of an Open Network Architecture framework. The Public Staff anticipates that at the time that the Commission adopts an overall framework for access, billing and consumer protection for enhanced services, that it would also issue specific direction for the possible modification of the current 976 access and billing arrangement to conform with that new framework. Such a modification might view well take advantage of further developments in network capabilities to require that 976 IAS service be covered by some form of minimal subscription requirement. PSD anticipates that such a modification might be two to three years off in the future, coincident with the implementation of a universal access arrangement for enhanced services provided within the State of California. Accordingly, staff recommends that the Commission make it known that its adoption of a blocking arrangement at this time is a transitional measure and that it may consider modifications of the conditions for providing 976 IAS in a future proceeding."

To ensure blocking is implemented as quickly as possible, PSD made the following recommendations:

(1) Ordering Paragraph 3 of D.87-01-042 should be superseded by the provisions of this order.

(2) Local exchange carriers ("LECs") designated in this order should deploy and make available central office blocking for 976 Information Access Service using software-based six-digit screening for all residential customers served by capable switches.

(3) Access to 976 IAS for residential customers served by "non-conforming" switches should be suspended as of April 1, 1988. LECs shall be allowed to apply for exemption to this provision for switches which will not have optional blocking capability by April 1, 1988 but which will definitely have such capability by October 1, 1988. This suspension should be implemented by blocking all 976 prefix calls originating from the non-conforming switch, and will be in effect as long as the switch is "non-conforming". If adjunct equipment is required to accomplish this limited suspension, the LECs shall file advice letters detailing the costs of such equipment and bear such costs out of the existing contribution margin for 976 IAS. Costs incurred in the information of this ordering paragraph should not be passed on to information providers pursuant to Ordering Paragraph 7.

(4) Affected LECs should begin accepting service orders for six-digit screening within four (4) months of the effective date of this order. LECs should complete the offering to all residential customers served by capable switches within six (6) months of the effective date of this order. Each service order should be fulfilled within thirty (30) days after its receipt.

(5) Affected LECs should provide advance notice to all residential customers of the availability of blocking. Initial notification should include a special mailing to all residential customers served by capable offices, explaining the offering of optional blocking and enclosing a reply card with a postage paid envelope. Additional notice should not be limited to bill inserts, but should be extensive and provided in appropriate languages. Periodic reminder inserts or other measures to continue to publicize the availability of blocking after its initial availability should be authorized. Such specific measures as are needed to effectively implement the intent of this ordering paragraph should be determined by the Evaluation and Compliance Division.

(6) LECs shall charge residential customers a non-recurring fee of five dollars ($5) for an initial order for blocking. Non-recurring fees of five dollars ($5) should also apply to orders for the removal of blocking and reinstallation of blocking. Customers who opt for a number change in order to obtain six-digit screening should not be charged any additional amount for the number change. Affected LECs should file advice letters to implement such charges within thirty (30) days of the effective date of this order.

(7) Costs incurred by LECs in the provision of blocking to residential customers which are not recovered through charges to those customers should be recovered from information providers subscribing to service under the 976 IAS tariff. Determination of cost allocation should be done in a later phase of the proceeding.

(8) Affected LECs should create and maintain memorandum accounts to record all revenues, investment, and expenses received or incurred in the provision of blocking for information services. Such memorandum accounts should include records of

cumulative amounts recovered from all customers and information providers, as well as recorded depreciation charges and plant balances.

(9) Ordering Paragraph 1(b) of D.87-01-042, amended in D.87-04-015, should be further amended to read as follows:

1(b) The adjustment policy should remain in effect indefinitely.

(10) Ordering paragraphs 1 through 8 should be applicable to both Pacific Bell and General Telephone of California and to any other independent LEC choosing to allow 976 access by its residential customers."

Discussion

Pursuant to AB 2550, Ordering Paragraph 3 of D.87-01-042, with an effective date of January 1, 1988, ordered the respondent telephone utilities to provide central office blocking. Pending implementation of central office blocking, we ordered further hearings on the technological and economic feasibility of providing CPE blocking and PIN subscription to block 976 access.

Since issuing D.87-01-042, subsequent events surrounding 976 service convince us that central office blocking ordered in January 1987, should be implemented post haste. Though the number of complaints received by the telephone utilities and the Commission Consumer Affairs Unit may have decreased in volume, there has been an escalation of customer adjustments for 976 calls. For example in February 1986, the adjustment rate for all 976 calls for Pacific was .5% contrasted to an average 10-14% rate today. General's 976 adjustment pattern is the same. When considering the dollar volume involved (Pacific's 976 billed revenue for June 1987 was $7,523,928 and adjusted $1,079,846), it is clear blocking in some form is in order.

The need for some form of blocking is also shown by the Field Study commissioned by Pacific (as ordered by the ALJ). The study was to obtain an estimate of demand for each of two types of blocking services: (1) total blocking, a service/device that would block all 976 calls from a household, and (2) selective blocking, a service/device that would enable customers to indicate which 976 calls should be made. The results of the study show that some 14% would order total blocking and 10% would order selective blocking. This is also an increase over the earlier estimates made by Pacific of the demand for blocking.

Though the Field Study did not ask about interstate and 900 network blocking, the witness stated:

> "And there would be a tendency, I think, and there is a tendency for some people to block what they can. They might do that. I really don't know.
>
> "They might also say--if this is an issue that they feel strongly about, they might also say, well, I understand it doesn't make sense because I understand that they could also call these out of state numbers, but, nevertheless, I want to block what I can, take a position." (Tr. Vol. 37, p. 5027.)

Again, clearly there is a demand for some form of blocking.

With respect to the IP's argument that AB 2550 is inconsistent with federal law and in violation of antitrust law as interpreted by the MFJ, we disagree. First with regard to the inconsistency with federal law, we point out the FCC which found blocking technically and economically infeasible and unnecessarily restrictive was concerned with "Dial-A-Porn" service and the transport of obscene material to minors. Here we are dealing with a content neutral option where the telephone customer decides whether or not information access telephone service is appropriate for that subscriber's family. Again, we stress the word "option".

The residential subscriber must take the initiative to exercise the option to block access to the 976 prefix and pay $5.00 for the blocking.

With respect to the argument that optional blocking, as ordered by AB 2550, somehow violates the IP's First Amendment rights, we point out this issue was covered in D.87-01-042 wherein we supported the PSD position stating:

> "In rebuttal to the First Amendment claims of the information providers, the Public Staff argues that under its blocking proposal [central office blocking], the Californian's choice of whether or not to have 976 service come into his home no more infringes on the information provider's right to free speech than does a Californian's choice not to have a phone at all. The Public Staff adds that the often unmentioned corollary to freedom of speech is the freedom not to listen."

and

> "Further, we categorically reject the self-serving viewpoint of some 976 provider interests that customer-initiated blocking in any way infringes on their free-speech rights or anyone else's." (D.87-01-042, mimeo. pp. 16-17.)

Further, we point out that there is no mandatory blocking. The only mandate is that blocking be available at the request of the subscriber. We believe such a requirement is both sound public policy as well as reasonable.

The IP's argument that AB 2550 violates the MFJ is not convincing. What is required of the Bell Operating Companies (BOCs) (including Pacific) is that no BOC shall discriminate between AT&T and its affiliates and other similar providers. It also provides for any "exchange access" or "information access" which is being provided to AT&T and its affiliates must also be provided to all interexchange carriers and information service providers on an unbundled, tariffed basis that is equal in type,

quality and price to that provided to AT&T and its affiliates. "Exchange access" is provided to AT&T and, therefore, such service is provided to all inter-exchange carriers. However, "information access" service is not provided to AT&T and its affiliates and accordingly, there is no requirement that such services be provided to any information service provider.

Having determined that blocking is in order we must look, as ordered in D.87-01-042 the merits of CPE and PIN access codes.

The evidence presented is that there is presently no working CPE device available that is both economic and feasible. No party in the proceeding supported the use of such a device and all witnesses rejected this blocking option. Though the use of a CPE device would not require modification of the network and is a visible indication that blocking is in place; it can be overridden if the customer wishes to use 976, it is easily defeatable if wired into a jack, may require a technician to install, and if battery operated, it will cease operating if the battery is depleted. The most glaring deficiency in the CPE is its easy defeatability and thus lack of customer protection. For the foregoing reasons, we believe the CPE option should not be ordered at this time.

For the use of PIN access code as a possible option to control access to 976, both Pacific and General reviewed its use and supplied data as ordered by D.87-01-042. Pacific investigated two different methods of implementing PIN access concluding it was not the best 976 backing method available. In reaching its decision, Pacific noted that a PIN system would require use of a touch tone telephone and that 28% of its residential subscribers still employ rotary telephones. General investigated some five different PIN systems before concluding none were as preferable as central office blocking. Like Pacific, General expressed concern that any presubscription system would inhibit the spontaneous access to the service while much more expensive to institute.

In short, there was no support for a PIN access system because of the inhibiting prospects for 976 service, the high cost of implementing such a system as compared to central office blocking, and because such systems would provide one-level screening which would make them susceptible to circumvention. More important, however, for lack of support of the option is because a PIN number could be used by any telephone and its loss or discovery by random dialing could conceivably create a problem as large or larger as the problem with stolen credit cards.

We believe that because of the inherent problems associated with a PIN access code system, implemenation of such a system is not warranted at this time.

For the 12% of Pacific's residential telephone subscribers who cannot be offered central office blocking, we believe that, with proper safeguards, Pacific's proposal that these subscribers be provided two additional adjustments is a sound approach. Thus, we will not adopt the PSD proposal to suspend 976 service to this segment. To mitigate the possibility of abuse and to give Pacific and General the incentive to monitor the program, the charge-back should be equally divided between the IP and the utility. This proposal would continue to offer 976 IAS service to those subscribers and eliminate any argument of First Amendment rights.

Pacific and General should begin accepting orders for blocking with ninety (90) days from the effective date of this order. (Since we are ordering blocking, Ordering Paragraph 3 of D.87-01-042 will be superseded by the provisions of this order.) Notice of the availability of optional blocking should be noticed to all residential subscribers explaining the options available as well as the cost authorized for blocking ($5) and the removal thereof. The details, as outlined by PSD recommendation 5 above, for the type of notice should be worked with the Evaluation and Compliance Division (E&C) staff. The subscriber's request should

be complied with by Pacific and General within thirty (30) days after receipt of the request for blocking. The offer for blocking should be completed within six (6) months.

Because the total costs to provide blocking are unknown, further hearing to determine the amount and allocation of costs will be necessary. Both Pacific and General should set up appropriate accounts to record the revenues, investment and expenses to facilitate the final determination of cost allocation.

Because there has been no further evidence presented with respect to adjustments, we will not adopt the PSD recommendation to continue the adjustment policy ordered in D.87-01-042 indefinitely at this time.

Findings of Fact

1. D.87-01-042 ordered that the telephone utilities provide central office blocking of 976 IAS service be made available by January 1, 1988 as mandated by Section 2884 of the Public Utilities Code.

2. There has been a significant increase in the number of adjustments for 976 IAS calls by both Pacific and General.

3. The number of adjustments make the immediate need for blocking access to 976 IAS imperative.

4. Central office blocking of 976 IAS service is the most economical and technically feasible of the available blocking methods.

5. The central office blocking of 976 IAS, to be offered to residential telephone subscribers, is not based on message content.

6. Central office blocking of 976 IAS is an option that takes affirmative action on the part of the telephone subscriber.

7. Central office blocking access to 976 IAS calls provides the residential telephone subscriber another option of the type of telephone service desired.

8. Providing the residential telephone subscriber the option of deleting access to the 976 IAS service does not impinge on the First Amendment rights of the information providers.

9. Providing the residential telephone subscriber the option to delete access to the 976 IAS service is not anticompetitive to the information providers because it does not block interstate 976 calls or AT&T 900 service.

10. Pacific's proposal for two additional adjustments for residential telephone subscribers served by offices not having stored program control and thus cannot now be offered central office blocking is reasonable. Any charge back of additional adjustments should be shared equally by the IP and the utility.

11. Pacific and General should provide notice to all residential subscribers of the availability of blocking within ninety (90) days of the effective date of this order.

12. The offer of blocking should be completed within six (6) months.

13. Pacific and General should file advice letters to implement the five ($5) dollar charge for residential blocking.

14. Pacific and General should set up appropriate accounts to record all revenue and expenses associated with the blocking offer.

15. The record on the issue of blocking is complete. An en banc hearing before the full Commission would not be productive.

Conclusions of Law

1. Public Utilities Code Section 2884 requires local exchange carriers to offer blocking of 976 IAS service to residential telephone subscribers.

2. The most feasible and economic blocking of 976 IAS service is from the local exchange carriers central office.

3. Customer premise device blocking and a PIN access system are not economic or feasible alternatives at the present time.

4. For subscribers wishing to delete 976 access but not served by a central office with stored program control but which is

co-located in a wire center with such capability should be offered the option of changing their service and telephone number to allow blocking.

5. For residential customers served by offices which do not have stored property control and have no option of changing their service and telephone number should be allowed two additional adjustment periods. Such adjustments should be treated the same as adjustments are now treated.

6. Further hearings are necessary to determine the amount and allocation of costs for blocking 976 IAS service.

7. Central office blocking is content neutral and is not in conflict with First Amendment rights of free speech, Federal Communication Commission opinions, or the Modified Final Judgement in United States of America v American Telephone and Telegraph Co., 552 F. Supp. 131 (D.D.C. 198), aff'd sub nom. Maryland v United States, (1983) 460 U.S. 1001 and United States of America v GTE Corporation, 1985-1 Trade Cas. (CCH) 64, 771, as modified and approved in United States of America v GTE Corporation, (1984) 603 F. Supp. 730.

8. The provisions of this order should apply to all local exchange carriers who offer residential subscribers 976 IAS service.

9. An en banc hearing on the issue of blocking 976 IAS is not necessary.

INTERIM ORDER

IT IS ORDERED that:

1. All local exchange carriers who offer residential subscribers 976 IAS service shall proceed with central office blocking of 976 IAS service consistent with this opinion with 90 days of the effective date of this order.

2. All local exchange carriers offering residential subscribers 976 IAS service shall provide advance notice to all residential customers of the availability of blocking. Initial notification should include a special mailing to all residential customers served by capable offices, explaining the offering of optional blocking. Notice of blocking availability shall not be limited to English. Specifics of the notice shall be coordinated by Evaluation and Compliance Division.

3. Six months after the initial notice, and at least once each calendar year thereafter, affected carriers shall notify all residential customers of the continued availability of blocking.

4. Residential subscribers opting to block 976 IAS service shall be charged a non-recurring fee of five dollars ($5). A non-recurring fee of five dollars ($5) shall be charged to residential subscribers for the removal of and reinstallation of blocking.

5. Residential subscribers who elect to change telephone numbers to obtain blocking shall not be charged for the change in numbers.

6. Residential subscribers who cannot be offered blocking shall be provided two additional adjustment periods. Pacific shall closely monitor this program to ensure there is no abuse. Any charge back shall be equally divided between the IP and the utility.

7. Pacific and General shall file within 30 days of the effective date of this order an advice letter implementing the five dollar ($5) customer charge for blocking.

8. Pacific and General shall maintain accounts of record of income and expenses incurred to provide blocking of 976 IAS services.

9. Further hearings to determine the proper allocation of costs for blocking of 976 IAS should be held within 90 days of the effective date of this order.

10. In addition to Pacific an General, the provisions of this decision apply to any independent telephone exchange carrier opting to provide 976 IAS service to residential subscribers.

11. The request for an en banc argument on blocking is denied.

This order is effective today.

Dated _____, at San Francisco, California.