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ORIGINAL

Decision 88-06-048 June 17, 1988

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
own motion into the proposed separate
billing plan of AT&T COMMUNICATIONS
OF CALIFORNIA, INC., a corporation,
for interstate and interLATA business
and residence toll telecommunications
services within the State of
California (U 5002 C).

I.88-01-007
(Filed January 13, 1988)

INTERIM OPINION

AT&T Communications of California (AT&T) has announced plans to initiate its own billing program designed to bill some of its business and residence customers directly. Currently AT&T uses the tariffed or contract service of California's local exchange telephone companies (LECs), who provide local message and intraLATA toll telephone service, and who include bills for AT&T's interLATA and interstate message toll service in the same envelope with their monthly bills. Because direct billing by AT&T will impact the LECs, their customers, and AT&T's customers this investigation was opened.

The OII noted three areas of concern:

1. The revenue impact on LECs. There are 22 LECs in California, all of whom may lose revenue if they no longer provide billing service for AT&T. The Commission needs information on that revenue impact.

2. The impact, revenue or otherwise, on business and residence telephone customers. Most AT&T customers today receive one combined bill for basic local message, intraLATA, interLATA, interstate, and international telephone service. This combined bill allows them to examine their overall telephone usage at one time each month and pay the entire bill with one check mailed in

one envelope or delivered to the local office or bill payment center of the LEC.

3. The costs, benefits, and other impacts on AT&T resulting from the proposed billing program. It is uncertain whether AT&T's expenses will increase or decrease as a result of its billing takeback. In either case revenues will be affected.

The Commission also sought answers to the following questions: (1) whether this Commission should adopt guidelines for the billing of services that cut across customers of LECs and AT&T; (2) whether or to what extent previous Commission decisions have ratified or incorporated the past or projected impacts of AT&T's separate billing for its services; (3) whether any adjustment to AT&T's billing expense is appropriate; (4) whether separate billing can or should be made optional to customers who may desire separate bills from AT&T; (5) whether a separate bill is superior to other alternatives for use by AT&T to communicate with its customers; and (6) whether there are other separate versus combined billing related matters and/or customers' concerns which may arise during the course of this investigation for either AT&T's or the LECs' services.

In response to the OII, AT&T, the Division of Ratepayer Advocates (DRA), Toward Utility Rate Normalization (TURN), and all LECs filed comments on the issues raised and questions asked by the Commission. A prehearing conference was held where the matter was discussed and where the DRA made a motion for a continuance and other relief. Before considering the DRA's motion it will be helpful to set forth the parties' response to the issues and questions asked.

1. The Revenue Impact on LECs

With the exception of Pacific Bell (PacBell) and GTE California, (GTEC) the position of the LECs is similar. All, except West Coast, join in PacBell's billing and collection (B&C) Tariff No. 175-T and use the same tariff rates as PacBell, in which

they pool their B&C revenue and costs including a common return on their investment. Because of this pooling no LEC (other than PacBell and GTEC) receives any contribution to margin. None of these LECs expect AT&T's takeback to occur, as to them, prior to 1991 and perhaps later, and, therefore, they assert there is no potential revenue effect from AT&T's current plan for a separate billing system; any revenue effect can only be known when the takeback occurs.

GTEC states that its 1987 B&C after tax revenue is \$6.8 million dollars, and that it expects minimal revenue impact between 1988 and 1990. It does, however, foresee a potential reduction in revenue and cost after 1990.

PacBell has by far the largest potential loss of all the LECs. It asks confidentiality for its actual revenues and expenses related to B&C, a request we shall grant. In its response PacBell has stated that the takeback in 1987 will require a revenue adjustment of approximately \$3.8 million and in 1988 approximately \$40 million. Future years' impact may even be greater.

The revenue impact on the LECs from a B&C takeback may be in excess of an annual \$45 million contribution to margin. AT&T has presented no evidence that there will be a concomitant reduction in its revenue requirement and, to the contrary, has requested that the Commission not adjust its rates.

2. The Revenue Impact on Business
and Residential Customers

Other than the reduced revenue to be suffered by the LECs when the takeback occurs, which will be offset by anticipated rate increases, no LEC ventured to assess the impact on business and residential customers. Only one telephone user appeared--the County of Los Angeles--which opposed the takeback and asserted that its costs would increase substantially; at least two additional clerks, with associated overhead, would be required to process the separate AT&T bill. The Los Angeles County representative also

said that he was a director of the Telecommunications Association, a trade group of 2,200 members, and that that group also has grave concerns about AT&T's separate billing.

The revenue impact upon residential and business customers depends upon the assumptions made. AT&T estimates that in 1989 it will have saved through its billing system \$49,300,000 at a cost to its customers of \$14,200,000. Those numbers, which were not tested on this record, assumed an additional 25¢ postage and 16¢ average check charge for each customer who will receive two telephone bills under the takeback.

We have done our own computation under the following assumptions (assumptions 1, 2, and 3 are derived from AT&T's Exhibit 250 in A.85-11-029):

1. 10,000,000 potential AT&T customers in California.
2. 5,300,000 of those customers will be billed directly by AT&T and have two telephone bills.
3. 1,000,000 of the 5.3 million will be billed quarterly.
4. Postage will be 25¢ and average check charges will be 25¢.

4,300,000 customers x 50¢ per month x 12 months =	\$25,800,000
1,000,000 customers x 50¢ per month x 4 months =	<u>2,000,000</u>
	\$27,800,000

Regardless of which cost to the ratepayer is used, AT&T's \$14,200,000 or our \$27,800,000, the costs are high. Over 4.3 million customers will be paying an extra \$6 a year and over 1 million customers will be paying an extra \$2 a year to receive a separate bill from AT&T. AT&T has not offered to reduce rates upon implementation of its program. Nor do those costs include the cost to AT&T's customers from increases in LEC rates to cover reduced revenue caused by the takeback. Increases in LEC rates, if any, cannot be determined until after the takeback occurs and current

contracts expire. Only then will we know how many customers are being billed by AT&T, how many remain with the LECs, and the terms of new agreements between AT&T and the LECs. It is apparent that no immediate LEC rate increase or revenue shortfall will occur as the direct result of AT&T's beginning to bill customers directly. Concerns about such an impact were a primary motivation for the Commission to initiate this investigation. The Commission will have the opportunity to manage any rate or revenue impacts as they occur, in the same way that the revenue impacts of the takebacks that have occurred to date have been managed.

3. The Impact on AT&T

No party, other than AT&T, commented on the impact of the takeback on AT&T. The DRA said it needs more time and information to make an informed analysis. AT&T asserts that it entered into its customer service and billing program as a reasonable market response to the conditions prevailing at and beyond divestiture to achieve two complementary objectives: to control expense and achieve cost-efficiencies; and to satisfy the diverse needs of its customers. AT&T conducted business case analyses (in 1983 and 1985) which demonstrated that it would achieve significant nationwide cost avoidance by implementing an internal billing system, compared to relying exclusively on LEC billing and collection services. In an analysis of the 1987-89 period in California, AT&T asserts that its billing program would be more cost effective than a baseline alternative of January 1986 tariffed LEC rates adjusted for inflation, and that the costs avoided by AT&T far exceed incremental customer expense for postage and checkwriting.

In addition to cost avoidance, AT&T's program provides for direct contact with, and accountability for support of, its own customers, which it says is a commonplace occurrence in any business, and certainly the norm in the long distance industry, where AT&T's principal competitors perform their own billing and

collection functions. By performing its own billing, AT&T expects to offer such innovations as an improved format, quarterly billing frequency, and a combined bill for long distance services and equipment leases. It maintains that its customer research demonstrates the high degree of satisfaction customers have found by interacting with these and other capabilities of AT&T's system. It will not have to be constrained by non-standard and incompatible LEC systems to meet its own customer requirements for billing. AT&T and its customers will also benefit from the more rapid deployment of billing for new AT&T services, optional calling plans, and coordinated introductions of those services.

It further states that it has made reasonable accommodations that recognize the efficiencies of LEC billing for low volume users and that provide appropriate revenue support to LECs consistent with market realities. In 1986, AT&T and PacBell entered into a Specialized Service Arrangement facilitating the introduction of AT&T's direct billing capability for AT&T long distance service and the continued provision of PacBell billing and collection services for low volume toll users. In approving PacBell's advice letter filing substituting this five-year contract for previously tariffed arrangements, the Commission concurred in the recommendations of PacBell and the Commission's Evaluation and Compliance Division that the proposed rates and conditions of the Specialized Service Arrangement were just, reasonable, and consistent with market realities. (Resolution T-11049, June 25, 1986.) Due to the FCC's detariffing of interstate LEC billing and collection services as of January 1, 1987, AT&T's relationships with all LECs for those services are also governed by contracts with reasonable rates and conditions consistent with market realities.

4. Should the Commission Adopt Guidelines for Billing Services?

None of the responders recommend any guidelines or other procedures covering billing services. The DRA recommends that the LECs give as much advance notice as possible if separate billing is implemented by AT&T. This request is reasonable.

5. Have Commission Decisions Ratified or Incorporated the Past or Projected Impacts of AT&T's Separate Billing Plan?

Responders referred to two Commission actions regarding AT&T's separate billing plan. By Resolution T-11049, in 1986, the Commission approved the five-year PacBell-AT&T Specialized Service Arrangement, which set forth the prices, terms, and conditions for conversion of customer accounts to AT&T's billing system, for PacBell's billing of AT&T's customers, and for the transfer of customer accounts between the two billing systems. Later, in A.85-11-029 AT&T showed that the impact of the Specialized Service Arrangement resulted in a reduction of AT&T's 1986 Test Year expenses by \$20.5 million, which the Commission adopted in D.86-11-079. Despite the clear opportunity to do so, the Commission chose not to interfere with AT&T's plan to assume a major portion of its own billing.

6. Is Any Adjustment to AT&T's Billing Expenses Appropriate?

AT&T says no; all the LECs have no opinion; and the DRA and TURN say yes. As discussed below, the DRA requests a continuance to September 15, 1988 during which time it will pursue discovery to get reliable cost information. We, however, do not believe that this OII is the proper vehicle to consider adjusting AT&T's billing expenses. First, there is no test year in which to weigh revenue and expense. To take one item and consider it in a vacuum is not the best way to set rates. Second, AT&T has not implemented its takeback program, therefore, we have no hard

numbers on which to base an adjustment. Third, our view of the takeback program is much different from AT&T's and may cause substantial changes in its program and costs. We will keep this proceeding open to allow AT&T to file additional information on the additional costs it will incur upon implementing its Customer Service and Billing program. This filing shall be not earlier than six months after the full operation of this separate billing program. DRA will have time and has the opportunity under the PU Code to request and receive any additional information it needs to prepare its recommendations to us on that filing.

7. Should Separate Bills be Made an Option at the Election of the Customer?

AT&T plans to take back billing for all residential customers with monthly toll charges of \$5 or more and all business customers with monthly toll charges of \$10 or more. Those customers who now receive a separate bill for their lease of AT&T telephone products will be billed by AT&T for toll service even though they do not meet the minimum amount. And for customers who will be receiving AT&T bills but whose toll usage is \$8 or less per month, AT&T will offer the option of quarterly billing. AT&T asserts it now has over 600,000 business accounts and over 9 million residence accounts in California. Of those accounts the LECs will continue to serve 1/3 of the business accounts and 47% of the residence accounts. The balance will eventually be billed directly by AT&T. AT&T estimates that if the quarterly billing threshold for long distance services is set at \$8 monthly, almost one million AT&T customers in California will qualify for this option.

Under the AT&T plan, in 1989, assuming 25¢ postage and 25¢ average cost to write a check, residential customers who have a \$5 monthly toll bill will pay an additional 50¢ a month to receive a telephone bill directly from AT&T. If they exercise the

quarterly option, their postage and check cost will be reduced by 67%, but if their toll bill is \$8 per month, they must pay the 50¢. This, to us, is unreasonable unless the customer is given the option to choose to be billed by the LEC.

The OII has posed the question whether separate bills should be at the option of the customer. AT&T says it plans to offer the option to customers who would otherwise remain with the LECs; customers in the takeback would not have the option. PacBell has no recommendation and the other LECs oppose on the ground that switching by customers between AT&T and the LECs will be both confusing and costly. There is no evidence in the record from which we can conclude that customers not billed separately by AT&T will or will not choose to be billed by AT&T, but the economics of the situation could influence customers to choose not to be so billed.

AT&T's option plan is a one-way option. Customers whose use is below the takeback level would be given the option of being billed by AT&T, but customers who are within the takeback group could not opt out. In our opinion, the option should work in both directions. Customers in the original takeback should have the option to be billed by their local telephone company, and those customers, at any level of usage, who desire to be billed by AT&T could so choose. There is no hard data in the record upon which to determine whether the LECs would incur increased costs because of this ability to move between companies, but in our judgment the lion's share of switching would be from AT&T to the LECs, thereby benefiting the LECs. Switching at the customers' option could be done once without charge; thereafter at a reasonable charge to the customer paid to the telephone company losing the customer. When a new customer begins service, the customer would be automatically billed by the LEC for three months, after which the customer would be automatically switched to AT&T upon meeting the threshold amount; after having some experience with AT&T's billing the

customer could, without charge, request to be billed solely by its LEC. However, if this market is as competitive as is alleged by AT&T, customers should reap some of the benefits of AT&T's cost savings in terms of lower rates, better service, or even discounts for receiving a direct bill. These are some of the potential advantages that could develop to offset the obvious additional costs of receiving two bills instead of one.

8. Is a Separate Bill Superior to Other Alternatives?

AT&T thinks it is. PacBell states it has conducted no studies on the point and, therefore, has no comment. GTEC believes that it is more effective and the other LECs have no opinion.

AT&T asserts that a separate bill will provide its "customers with the ability to communicate directly with the company that not only provides their interLATA services, but also renders their bills, responds to questions concerning those bills, and receives payment for those services. A separate AT&T bill provides direct customer contact and a continual and frequent means to communicate information effectively in response to customer needs. Moreover, AT&T's carefully designed customer bill--which clearly states what AT&T services were used, what calls were made over what period of time, what the charges are, and what remittance amount is expected--will provide a superior communication of such information to AT&T customers than is possible when AT&T billing data is commingled with LEC billing data."

In our opinion, without considering cost, a separate bill is superior to other methods for AT&T to communicate with its customers. AT&T can use the billing envelope 12 times a year to include marketing information that otherwise would require a separate mailing and would be less likely to be read. But costs must be considered; AT&T, itself, does not want to separately bill its customers when it is not cost effective for both AT&T and the customer. When costs are considered, especially the cost to the

residential customer, it is our opinion that those costs, in most instances, outweigh any benefit that might be received by a customer through a separate bill. AT&T always has the option of a separate mailing to its customers to inform them of new products, rates, etc.

9. Are there Other Separate Versus Combined Billing Related Matters and/or Customer Concerns for Either AT&T or LEC Services?

GTEC points out that there is an ongoing problem that customers experience in having to deal with multiple companies in meeting their telecommunications needs, but this is an industry-wide problem, not one caused by, nor cured by, the takeback. Evans Telephone Co., Capay Valley Telephone System, and Siskiyou Telephone Co. expect that there will be some customer inconvenience and an increase in AT&T's bad debt experience because of separate billing. Confusion will arise when AT&T institutes toll blocking for nonpayment of its bill, while local service and incoming toll service continue. But, because of shortness of time, the most important group which could address this particular question--the telephone customer--was not heard. This lacuna was emphatically stressed by the DRA. However, the business of satisfying its customers is most directly that of AT&T's; also, it is difficult to gauge the impact of events that have yet to occur. It is not clear how customer reaction could be meaningfully assessed at this time.

10. The DRA Position

The DRA says that more information is needed before the questions posed in this OII can be satisfactorily addressed and that comments from telephone customers should be solicited. The DRA, therefore, recommends that the date for filing responses be extended to September 15, 1988 and that all customers be notified of this OII by bill insert.

In its response the DRA asserts, among other things, that:

1. AT&T's billing and collection expenses must be adjusted in an amount to be recommended after the DRA has completed its investigation.
2. The costs of optional separate billing are not determined and could prove to be unreasonable.
3. Separate billing may negate this Commission's [partial] disallowance of marketing and advertising expenses.
4. There is insufficient evidence in the record to determine the prudence of separate billing.
5. Customer reaction to separate billing must be obtained and considered.

The DRA argues that notice to customers is required in this investigation because the result of AT&T's action will be a rate increase: certainly by the LECs as they lose revenue from the takeback and possibly by AT&T if it misjudges the effects and costs of its takeback. Because the takeback could trigger a rate increase the Commission should not permit it without public notice.

In addition to providing time to give notice to customers the DRA says that a continuance to September 15 is needed to permit it to test the assumptions underlying AT&T's Exhibit 250 which, the DRA argues, are not supported by verifiable cost data; nor does the record support AT&T's assertion that separate billing will be cost effective; nor have the DRA data requests to PacBell and other LECs produced adequate cost information. The DRA states that it needs an additional 6 months to complete its discovery and analysis. The DRA points out that delay will not impede AT&T's deployment program as that program has been postponed to late 1988 at the earliest.

Discussion

The Commission's involvement in this proceeding stems from its desire to protect customers rather than as part of an effort to deny the many changes wrought by divestiture. Federal policy makers in the Justice Department, Judge Greene and AT&T

decided that divestiture, despite its costs, would be in the best interests of customers and the economy generally. Analysts and pundits will debate the wisdom of divestiture for years, and an informed consensus as to its actual effects may ultimately emerge. However, for now we cannot escape the conclusion that the federal choice to make AT&T an independent company subject to competition for interLATA services was a choice that could eventually lead to independent billing of customers (just like the other stand-alone functions AT&T now performs that were formerly unified in the Bell System). Currently, AT&T's competitors each have the choice of reaching customers directly or through LEC bills, and they do choose the most attractive option.

So, while divestiture did not dictate the manner or timing of AT&T's assumption of its own billing, it did foreshadow that such a change could occur. However, we still retain full jurisdiction over AT&T's operations, and we will use this jurisdiction to protect customers.

We do not believe a simple continuance of this matter to September is adequate in order to resolve the expense issues posed in this OII, nor do we believe that this proceeding should be prolonged unnecessarily regarding the fundamental question of whether AT&T should have the right to render its own bills. The DRA request is based on a perceived need to obtain more detailed financial data from all telephone companies, and especially AT&T and PacBell, and a need to have customer input on the merits of separate billing. To determine the rate effect of the takeback on AT&T's present revenues and expenses would be more an exercise in speculation than a reasoned decision based on an extrapolation of known costs. As to the LECs, the takeback can only cause them to request a rate increase; that call should be answered when it is placed.

The question of customer reaction to the billing takeback is equally important, especially the reaction of the residential

customer, but, again, we see no need for further evidence at this time. Under our proposed resolution of the issue any customer that wants combined billing by the local carrier can obtain it. If AT&T is correct that there is a felt need for separate billing, ratepayers will stampede to get on its mailing list. Certainly, this Commission will not stand in the way. And, customers can choose not to use AT&T if they are dissatisfied for any reason (including billing); the incentive for AT&T is to treat its customers well, which is also the Commission's basic objective. For those who feel that \$6 a year is too much to pay for the benefit of a separate bill, there is a safe harbor.

Public Utilities Code Section 453 provides:

"(a) No public utility shall, as to rates, charges, service, facilities, or in any other respect, make or grant any preference or advantage to any corporation or person or subject any corporation or person to any prejudice or disadvantage."

* * *

"(c) No public utility shall establish or maintain any unreasonable difference as to rates, charges, service, facilities, or in any other respect, either as between localities or as between classes of service."

One of the stated goals of Commission policy is "to protect the interests of captive customers of utilities' monopoly services." (CPUC 1988 Workplan, p. 51.) AT&T's current dominant position suggests that we pay careful attention to the impacts its actions may have upon customers. While competitive choices are a fact, we should be sensitive to customers who may be ill-informed as to their options. We should also recognize that the need for oversight of such AT&T functions as billing may diminish over time as competitive forces become the primary determinant in the interexchange market. For now, our primary concern is with the out-of-pocket cost to the customer resulting from a separate bill

from AT&T. If AT&T could avoid this cost, our concern would lessen. One method which might serve to lessen this concern is a bank automatic payment plan similar to the one used by Pacific Gas and Electric Company where PG&E sends a bill to the customer but receives payment from an interbank funds transfer from the customer's bank account.

In a companion order which we are issuing today in Phase II of AT&T's test year 1986 rate application A.85-11-029, we have authorized AT&T to place \$9.1 million of development and deployment expenses associated with its Customer Service and Billing program into an interest-bearing memorandum account to accrue interest to the date of full implementation of this program. AT&T should have the opportunity in this proceeding to come before us again and demonstrate the reasonableness of recovering these deferred expenses with accrued interest and adjusted by any savings it experiences from the take-back of the billing services now provided by the LECs. AT&T should present its request after six months or more of actual experience with the full operation of the separate billing program, and DRA will be afforded the opportunity to review that request and make its further recommendations on this program at that time. It should be made clear that the only subject to be held open for further review is the Customer Service and Billing program and any reduced expenses associated with those services which result from the takeback.

On the DRA's other points: If separate billing negates the Commission's partial disallowance of marketing and advertising expenses, then a further adjustment should be made in a future rate case where all of AT&T's expenses can be reviewed. We believe it is reasonable to determine the appropriate level of expenses, in this instance, after the fact. Should AT&T go forward with its plan as modified by this decision, we believe the choice made by customers will show the need for the plan better than any guess the

Commission might hazard. The DRA also asked for a waiver of confidentiality under which AT&T and PacBell submitted their data responses and comments. Because of the view we take of this OII, that data need not be spread on this record, and the DRA request is denied.

Findings of Fact

1. The revenue impact on the small LECs of the AT&T billing plan cannot be known until the plan goes into effect and their contracts expire, not earlier than 1991. The revenue impact on PacBell and GTEC will be in excess of \$45 million annually.

2. The revenue impact of the AT&T billing plan on business and residential customers will range from \$2 to \$6 a year on each customer in the takeback, for a total California impact of \$27,800,000 in additional costs.

3. The estimated impact on AT&T from the implementation of its billing plan will be (i) a savings of \$49.3 million annually, and (ii) better communication with its customers.

4. AT&T has not proposed a rate reduction to coincide with the implementation of its billing plan.

5. Resolution T-11049 and Decision 86-11-079 have recognized that AT&T was planning a billing takeback and approved the revenue impacts taken by the resolution and decision, but neither the resolution nor the decision approved the details of the takeback.

6. A separate bill is superior to other alternatives when cost is not a consideration. When cost is considered, the AT&T plan may not be the best method of communicating with a customer.

7. By a companion order issued today in Phase II of A.85-11-029 we have authorized AT&T to defer \$9.1 million of development and deployment expenses associated with its Customer Service and Billing program in a memorandum interest bearing account.

8. It is reasonable to allow AT&T to present further evidence in this proceeding on its expenses associated with the

full deployment of its separate billing plan, as well as including the \$9.1 million of expenses and interest deferred from test year 1986, together with any savings it will experience from the takeback of these services from the LECs.

9. No changes in rates are necessary until actual experience is gained from the full deployment of this program for reasonable period of time.

10. We do not envision any significant adverse public reaction to the AT&T's takeback under the plan we have outlined. However, any significant unforeseen public reaction will be known shortly after full deployment and can be dealt with at that time.

11. There are no other separate versus combined billing related matters that require discussion at this time.

Conclusions of Law

1. The DRA motion for a continuance is denied.

2. It would be discriminatory and a violation of PU Code § 453 for AT&T to implement the plan proposed in its Exhibit 250 in A.85-11-029.

3. A takeback plan in conformance with this decision would be reasonable and nondiscriminatory.

4. Guidelines more stringent than those imposed by this order are not required should AT&T implement a billing takeback. All LECs should give as much notice of the takeback as possible.

5. No adjustment to AT&T's billing expenses is appropriate at this time. Any adjustment should await the introduction of the actual plan to be implemented.

6. New customers should be automatically billed by the LEC for three months, after which the customer should be automatically switched to AT&T if his or her bill meets the threshold amount. Customers may switch between an LEC and AT&T one time (not including the automatic switch) at no cost; each additional switch should be at a reasonable charge to be paid by the customer to the company losing the customer.

7. AT&T should not take back its billing and collection function from any LEC except upon terms which comply with Conclusion 6.

8. With reasonable care by AT&T in the takeback of its billing services in accordance with the guidelines of this order, adverse public reaction, if any, should be minimal.

9. This proceeding should be held open for the purpose of allowing AT&T and DRA to consider the rate impact of any additional expenses to be incurred by AT&T, including the deferral of \$9.1 million by a companion order today, as well as the offsetting savings resulting from the takeback. ✓

INTERIM ORDER

IT IS ORDERED that:

1. AT&T Communications of California, Inc., for interstate and interLATA business and residence toll telecommunications services within the State of California shall not take back its billing and collection function from any local exchange telephone company except upon terms which comply with Conclusion 6, and upon approval of this Commission by advice letter filing.

2. AT&T shall arrange to provide at least 60 days' advance notice, included with the local exchange telephone company bills, of any pending takeback of billing services. This notice shall be reviewed by the Commission's staff (coordinated with the Public Advisor's Office) prior to being mailed to customers.

3. This investigation will remain open for the limited purpose of determining any revenue, expense, and rate impacts to AT&T's California intrastate operations resulting from AT&T's full implementation of its separate billing program, such determination

shall be considered after six full months of operation of the separate billing program.

This order is effective today.

Dated JUN 17 1988, at San Francisco, California.

STANLEY W. HULETT
President

DONALD VIAL
FREDERICK R. DUDA
G. MITCHELL WILK
JOHN B. OHANIAN
Commissioners

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

SB

Victor Weiss, Executive Director

Decision _____

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In response to the OII, AT&T, the Division of Ratepayer Advocates (DRA), Toward Utility Rate Normalization (TURN), and all LECs filed comments on the issues raised and questions asked by the Commission. A prehearing conference was held where the matter was discussed and where the DRA made a motion for a continuance and other relief. Before considering the DRA's motion it will be helpful to set forth the parties' response to the issues and questions asked.

1. The Revenue Impact on LECs

With the exception of Pacific Bell (PacBell) and GTE California, (GTEC) the position of the LECs is similar. All, except West Coast, join in PacBell's billing and collection (B&C) Tariff No. 175-T and use the same tariff rates as PacBell, in which

they pool their B&C revenue and costs including a common return on their investment. Because of this pooling no LEC (other than PacBell and GTEC) receives any contribution to margin. None of these LECs expect AT&T's takeback to occur, as to them, prior to 1991 and perhaps later, and, therefore, they assert there is no potential revenue effect from AT&T's current plan for a separate billing system; any revenue effect can only be known when the takeback occurs.

GTEC states that its 1987 B&C after tax revenue is \$6.8 million dollars, and that it expects minimal revenue impact between 1988 and 1990. It does, however, foresee a potential reduction in revenue and cost after 1990.

PacBell has by far the largest potential loss of all the LECs. It asks confidentiality for its actual revenues and expenses related to B&C, a request we shall grant. In its response PacBell has stated that the takeback in 1987 will require a revenue adjustment of approximately \$3.8 million and in 1988 approximately \$40 million. Future years' impact may even be greater.

The revenue impact on the LECs from a B&C takeback may be in excess of an annual \$45 million contribution to margin. AT&T has presented no evidence that there will be a concomitant reduction in its revenue requirement and, to the contrary, has requested that the Commission not adjust its rates.

2. The Revenue Impact on Business and Residential Customers

Other than the reduced revenue to be suffered by the LECs when the takeback occurs, which will be offset by anticipated rate increases, no LEC ventured to assess the impact on business and residential customers. Only one telephone user appeared--the County of Los Angeles--which opposed the takeback and asserted that its costs would increase substantially; at least two additional clerks, with associated overhead, would be required to process the separate AT&T bill. The Los Angeles County representative also

said that he was a director of the Telecommunications Association, a trade group of 2,200 members, and that that group also has grave concerns about AT&T's separate billing.

The revenue impact upon residential and business customers depends upon the assumptions made. AT&T estimates that in 1989 it will have saved through its billing system \$49,300,000 at a cost to its customers of \$14,200,000. Those numbers, which were not tested on this record, assumed an additional 25¢ postage and 16¢ average check charge for each customer who will receive two telephone bills under the takeback.

We have done our own computation under the following assumptions (assumptions 1, 2, and 3 are derived from AT&T's Exhibit 250 in A.85-11-029):

1. 10,000,000 potential AT&T customers in California.
2. 5,300,000 of those customers will be billed directly by AT&T and have two telephone bills.
3. 1,000,000 of the 5.3 million will be billed quarterly.
4. Postage will be 25¢ and average check charges will be 25¢.

4,300,000 customers x 50¢ per month x 12 months =	\$25,800,000
1,000,000 customers x 50¢ per month x 4 months =	<u>2,000,000</u>
	\$27,800,000

Regardless of which cost to the ratepayer is used, AT&T's \$14,200,000 or our \$27,800,000, the costs are high. Over 4.3 million customers will be paying an extra \$6 a year and over 1 million customers will be paying an extra \$2 a year to receive a separate bill from AT&T. AT&T has not offered to reduce rates upon implementation of its program. Nor do those costs include the cost to AT&T's customers from increases in LEC rates to cover reduced revenue caused by the takeback. Increases in LEC rates, if any, cannot be determined until after the takeback occurs and current

contracts expire. Only then will we know how many customers are being billed by AT&T, how many remain with the LECs, and the terms of new agreements between AT&T and the LECs. It is apparent that no immediate LEC rate increase or revenue shortfall will occur as the direct result of AT&T's beginning to bill customers directly. Concerns about such an impact were a primary motivation for the Commission to initiate this investigation. The Commission will have the opportunity to manage any rate or revenue impacts as they occur, in the same way that the revenue impacts of the takebacks that have occurred to date have been managed.

3. The Impact on AT&T

No party, other than AT&T, commented on the impact of the takeback on AT&T. The DRA said it needs more time and information to make an informed analysis. AT&T asserts that it entered into its customer service and billing program as a reasonable market response to the conditions prevailing at and beyond divestiture to achieve two complementary objectives: to control expense and achieve cost-efficiencies; and to satisfy the diverse needs of its customers. AT&T conducted business case analyses (in 1983 and 1985) which demonstrated that it would achieve significant nationwide cost avoidance by implementing an internal billing system, compared to relying exclusively on LEC billing and collection services. In an analysis of the 1987-89 period in California, AT&T asserts that its billing program would be more cost effective than a baseline alternative of January 1986 tariffed LEC rates adjusted for inflation, and that the costs avoided by AT&T far exceed incremental customer expense for postage and checkwriting.

In addition to cost avoidance, AT&T's program provides for direct contact with, and accountability for support of, its own customers, which it says is a commonplace occurrence in any business, and certainly the norm in the long distance industry, where AT&T's principal competitors perform their own billing and

collection functions. By performing its own billing, AT&T expects to offer such innovations as an improved format, quarterly billing frequency, and a combined bill for long distance services and equipment leases. It maintains that its customer research demonstrates the high degree of satisfaction customers have found by interacting with these and other capabilities of AT&T's system. It will not have to be constrained by non-standard and incompatible LEC systems to meet its own customer requirements for billing. AT&T and its customers will also benefit from the more rapid deployment of billing for new AT&T services, optional calling plans, and coordinated introductions of those services.

It further states that it has made reasonable accommodations that recognize the efficiencies of LEC billing for low volume users and that provide appropriate revenue support to LECs consistent with market realities. In 1986, AT&T and PacBell entered into a Specialized Service Arrangement facilitating the introduction of AT&T's direct billing capability for AT&T long distance service and the continued provision of PacBell billing and collection services for low volume toll users. In approving PacBell's advice letter filing substituting this five-year contract for previously tariffed arrangements, the Commission concurred in the recommendations of PacBell and the Commission's Evaluation and Compliance Division that the proposed rates and conditions of the Specialized Service Arrangement were just, reasonable, and consistent with market realities. (Resolution T-11049, June 25, 1986.) Due to the FCC's detariffing of interstate LEC billing and collection services as of January 1, 1987, AT&T's relationships with all LECs for those services are also governed by contracts with reasonable rates and conditions consistent with market realities.

4. Should the Commission Adopt
Guidelines for Billing Services?

None of the responders recommend any guidelines or other procedures covering billing services. The DRA recommends that the LECs give as much advance notice as possible if separate billing is implemented by AT&T. This request is reasonable.

5. Have Commission Decisions Ratified
or Incorporated the Past or Projected
Impacts of AT&T's Separate Billing Plan?

Responders referred to two Commission actions regarding AT&T's separate billing plan. By Resolution T-11049, in 1986, the Commission approved the five-year PacBell-AT&T Specialized Service Arrangement, which set forth the prices, terms, and conditions for conversion of customer accounts to AT&T's billing system, for PacBell's billing of AT&T's customers, and for the transfer of customer accounts between the two billing systems. Later, in A.85-11-029 AT&T showed that the impact of the Specialized Service Arrangement resulted in a reduction of AT&T's 1986 Test Year expenses by \$20.5 million, which the Commission adopted in D.86-11-079. Despite the clear opportunity to do so, the Commission chose not to interfere with AT&T's plan to assume a major portion of its own billing.

6. Is Any Adjustment to AT&T's
Billing Expenses Appropriate?

AT&T says no; all the LECs have no opinion; and the DRA and TURN say yes. As discussed below, the DRA requests a continuance to September 15, 1988 during which time it will pursue discovery to get reliable cost information. We, however, do not believe that this OII is the proper vehicle to consider adjusting AT&T's billing expenses. First, there is no test year in which to weigh revenue and expense. To take one item and consider it in a vacuum is not the best way to set rates. Second, AT&T has not implemented its takeback program, therefore, we have no hard

numbers on which to base an adjustment. Third, our view of the takeback program is much different from AT&T's and may cause substantial changes in its program and costs. We will require that AT&T file an advice letter prior to implementing its program at which time we can decide whether to adjust rates, considering the program alone, or wait for a future rate case. But no matter how the matter is handled, the DRA has ample authority under the PU Code to request and receive any information it needs without delaying this proceeding further.

7. Should Separate Bills be Made an Option at the Election of the Customer?

AT&T plans to take back billing for all residential customers with monthly toll charges of \$5 or more and all business customers with monthly toll charges of \$10 or more. Those customers who now receive a separate bill for their lease of AT&T telephone products will be billed by AT&T for toll service even though they do not meet the minimum amount. And for customers who will be receiving AT&T bills but whose toll usage is \$8 or less per month, AT&T will offer the option of quarterly billing. AT&T asserts it now has over 600,000 business accounts and over 9 million residence accounts in California. Of those accounts the LECs will continue to serve 1/3 of the business accounts and 47% of the residence accounts. The balance will eventually be billed directly by AT&T. AT&T estimates that if the quarterly billing threshold for long distance services is set at \$8 monthly, almost one million AT&T customers in California will qualify for this option.

Under the AT&T plan, in 1989, assuming 25¢ postage and 25¢ average cost to write a check, residential customers who have a \$5 monthly toll bill will pay an additional 50¢ a month to receive a telephone bill directly from AT&T. If they exercise the quarterly option, their postage and check cost will be reduced by

67%, but if their toll bill is \$8 per month, they must pay the 50¢. This, to us, is unreasonable unless the customer is given the option to choose to be billed by the LEC.

The OII has posed the question whether separate bills should be at the option of the customer. AT&T says it plans to offer the option to customers who would otherwise remain with the LECs; customers in the takeback would not have the option. PacBell has no recommendation and the other LECs oppose on the ground that switching by customers between AT&T and the LECs will be both confusing and costly. There is no evidence in the record from which we can conclude that customers not billed separately by AT&T will or will not choose to be billed by AT&T, but the economics of the situation could influence customers to choose not to be so billed.

AT&T's option plan is a one-way option. Customers whose use is below the takeback level would be given the option of being billed by AT&T, but customers who are within the takeback group could not opt out. In our opinion, the option should work in both directions. Customers in the original takeback should have the option to be billed by their local telephone company, and those customers, at any level of usage, who desire to be billed by AT&T could so choose. There is no hard data in the record upon which to determine whether the LECs would incur increased costs because of this ability to move between companies, but in our judgment the lion's share of switching would be from AT&T to the LECs, thereby benefiting the LECs. Switching at the customers' option could be done once without charge; thereafter at a reasonable charge to the customer paid to the telephone company losing the customer. When a new customer begins service, the customer would be automatically billed by the LEC for three months, after which the customer would be automatically switched to AT&T upon meeting the threshold amount; after having some experience with AT&T's billing the customer could, without charge, request to be billed solely by its

LEC. However, if this market is as competitive as is alleged by AT&T, customers should reap some of the benefits of AT&T's cost savings in terms of lower rates, better service, or even discounts for receiving a direct bill. These are some of the potential advantages that could develop to offset the obvious additional costs of receiving two bills instead of one.

8. Is a Separate Bill Superior to Other Alternatives?

AT&T thinks it is. PacBell states it has conducted no studies on the point and, therefore, has no comment. GTEC believes that it is more effective and the other LECs have no opinion.

AT&T asserts that a separate bill will provide its "customers with the ability to communicate directly with the company that not only provides their interLATA services, but also renders their bills, responds to questions concerning those bills, and receives payment for those services. A separate AT&T bill provides direct customer contact and a continual and frequent means to communicate information effectively in response to customer needs. Moreover, AT&T's carefully designed customer bill--which clearly states what AT&T services were used, what calls were made over what period of time, what the charges are, and what remittance amount is expected--will provide a superior communication of such information to AT&T customers than is possible when AT&T billing data is commingled with LEC billing data."

In our opinion, without considering cost, a separate bill is superior to other methods for AT&T to communicate with its customers. AT&T can use the billing envelope 12 times a year to include marketing information that otherwise would require a separate mailing and would be less likely to be read. But costs must be considered; AT&T, itself, does not want to separately bill its customers when it is not cost effective for both AT&T and the customer. When costs are considered, especially the cost to the residential customer, it is our opinion that those costs, in most

instances, outweigh any benefit that might be received by a customer through a separate bill. AT&T always has the option of a separate mailing to its customers to inform them of new products, rates, etc.

9. Are there Other Separate Versus
Combined Billing Related Matters
and/or Customer Concerns for
Either AT&T or LEC Services?

GTEC points out that there is an ongoing problem that customers experience in having to deal with multiple companies in meeting their telecommunications needs, but this is an industry-wide problem, not one caused by, nor cured by, the takeback. Evans Telephone Co., Capay Valley Telephone System, and Siskiyou Telephone Co. expect that there will be some customer inconvenience and an increase in AT&T's bad debt experience because of separate billing. Confusion will arise when AT&T institutes toll blocking for nonpayment of its bill, while local service and incoming toll service continue. But, because of shortness of time, the most important group which could address this particular question--the telephone customer--was not heard. This lacuna was emphatically stressed by the DRA. However, the business of satisfying its customers is most directly that of AT&T's; also, it is difficult to gauge the impact of events that have yet to occur. It is not clear how customer reaction could be meaningfully assessed at this time.

10. The DRA Position

The DRA says that more information is needed before the questions posed in this OII can be satisfactorily addressed and that comments from telephone customers should be solicited. The DRA, therefore, recommends that the date for filing responses be extended to September 15, 1988 and that all customers be notified of this OII by bill insert.

In its response the DRA asserts, among other things, that:

1. AT&T's billing and collection expenses must be adjusted in an amount to be recommended after the DRA has completed its investigation.
2. The costs of optional separate billing are not determined and could prove to be unreasonable.
3. Separate billing may negate this Commission's [partial] disallowance of marketing and advertising expenses.
4. There is insufficient evidence in the record to determine the prudence of separate billing.
5. Customer reaction to separate billing must be obtained and considered.

The DRA argues that notice to customers is required in this investigation because the result of AT&T's action will be a rate increase: certainly by the LECs as they lose revenue from the takeback and possibly by AT&T if it misjudges the effects and costs of its takeback. Because the takeback could trigger a rate increase the Commission should not permit it without public notice.

In addition to providing time to give notice to customers the DRA says that a continuance to September 15 is needed to permit it to test the assumptions underlying AT&T's Exhibit 250 which, the DRA argues, are not supported by verifiable cost data; nor does the record support AT&T's assertion that separate billing will be cost effective; nor have the DRA data requests to PacBell and other LECs produced adequate cost information. The DRA states that it needs an additional 6 months to complete its discovery and analysis. The DRA points out that delay will not impede AT&T's deployment program as that program has been postponed to late 1988 at the earliest.

Discussion

We do not believe a continuance to September is needed in order to resolve the issues posed in this OII. The DRA request is based on a perceived need to obtain more detailed financial data from all telephone companies, and especially AT&T and PacBell, and

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Discussion

The Commission's involvement in this proceeding stems from its desire to protect customers rather than as part of an effort to deny the many changes wrought by divestiture. Federal policy makers in the Justice Department, Judge Greene and AT&T

a need to have customer input on the merits of separate billing. This OII is not a rate case and we see no purpose to turn it into one. To determine the rate effect of the takeback on AT&T's revenues and expenses would be more an exercise in speculation than a reasoned decision based on an extrapolation of known costs. As to the LECs, the takeback can only cause them to request a rate increase; that call should be answered when it is placed.

The question of customer reaction to the billing takeback is important, especially the reaction of the residential customer, but, again, we see no need for further evidence at this time. Under our proposed resolution of the issue any customer that wants combined billing by the local carrier can obtain it. If AT&T is correct that there is a felt need for separate billing, ratepayers will stampede to get on its mailing list. Certainly, this Commission will not stand in the way. And, customers can choose not to use AT&T if they are dissatisfied for any reason (including billing); the incentive for AT&T is to treat its customers well, which is also the Commission's basic objective. For those who feel that \$6 a year is too much to pay for the benefit of a separate bill, there is a safe harbor.

Public Utilities Code Section 453 provides:

"(a) No public utility shall, as to rates, charges, service, facilities, or in any other respect, make or grant any preference or advantage to any corporation or person or subject any corporation or person to any prejudice or disadvantage."

* * *

"(c) No public utility shall establish or maintain any unreasonable difference as to rates, charges, service, facilities, or in any other respect, either as between localities or as between classes of service."

One of the stated goals of Commission policy is "to protect the interests of captive customers of utilities' monopoly

decided that divestiture, despite its costs, would be in the best interests of customers and the economy generally. Analysts and pundits will debate the wisdom of divestiture for years, and an informed consensus as to its actual effects may ultimately emerge. However, for now we cannot escape the conclusion that the federal choice to make AT&T an independent company subject to competition for interLATA services was a choice that could eventually lead to independent billing of customers (just like the other stand-alone functions AT&T now performs that were formerly unified in the Bell System). Currently, AT&T's competitors each have the choice of reaching customers directly or through LEC bills, and they do choose the most attractive option.

So, while divestiture did not dictate the manner or timing of AT&T's assumption of its own billing, it did foreshadow that such a change could occur. However, we still retain full jurisdiction over AT&T's operations, and we will use this jurisdiction to protect customers.

We do not believe a continuance to September is needed in order to resolve the issues posed in this OII. The DRA request is based on a perceived need to obtain more detailed financial data from all telephone companies, and especially AT&T and PacBell, and a need to have customer input on the merits of separate billing. This OII is not a rate case and we see no purpose to turn it into one. To determine the rate effect of the takeback on AT&T's revenues and expenses would be more an exercise in speculation than a reasoned decision based on an extrapolation of known costs. As to the LECs, the takeback can only cause them to request a rate increase; that call should be answered when it is placed.

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One of the stated goals of Commission policy is "to protect the interests of captive customers of utilities' monopoly services." (CPUC 1988 Workplan, p. 51.) AT&T's current dominant position suggests that we pay careful attention to the impacts its actions may have upon customers. While competitive choices are a fact, we should be sensitive to customers who may be ill-informed as to their options. We should also recognize that the need for oversight of such AT&T functions as billing may diminish over time as competitive forces become the primary determinant in the interexchange market. For now, our primary concern is with the out-of-pocket cost to the customer resulting from a separate bill from AT&T. If AT&T could avoid this cost, our concern would lessen. One method which might serve to lessen this concern is a bank automatic payment plan similar to the one used by Pacific Gas

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On the DRA's other points: If separate billing negates the Commission's partial disallowance of marketing and advertising expenses, then a further adjustment should be made in a future rate case. There is no quick, economical way to get sufficient information to judge the prudence of AT&T's action prior to its placing its plan in effect and noting the consequences. Prudence, in this instance, should be determined after the fact. Should AT&T go forward with its plan as modified by this decision, we believe the choice made by customers will show the need for the plan better than any guess the Commission might hazard. The DRA also asked for a waiver of confidentiality under which AT&T and PacBell submitted their data responses and comments. Because of the view we take of this OII, that data need not be spread on this record, and the DRA request is denied.

Findings of Fact

1. The revenue impact on the small LECs of the AT&T billing plan cannot be known until the plan goes into effect and their contracts expire, not earlier than 1991. The revenue impact on PacBell and GTEC will be in excess of \$45 million annually.

2. The revenue impact of the AT&T billing plan on business and residential customers will range from \$2 to \$6 a year on each customer in the takeback, for a total California impact of \$27,800,000 in additional costs.

3. The impact on AT&T in the implementation of its billing plan will be (i) a savings of \$49.3 million annually, and (ii) better communication with its customers.

4. AT&T has not proposed a rate reduction to coincide with the implementation of its billing plan.

5. Resolution T-11049 and Decision 86-11-079 have recognized that AT&T was planning a billing takeback and approved the revenue impacts taken by the resolution and decision, but neither the resolution nor the decision approved the details of the takeback.

6. A separate bill is superior to other alternatives when cost is not a consideration. When cost is considered, the AT&T plan may not be the best method of communicating with a customer.

7. There are no other separate versus combined billing related matters that require discussion.

Conclusions of Law

1. The DRA motion for a continuance is denied.

2. It would be discriminatory and a violation of PU Code § 453 for AT&T to implement the plan proposed in its Exhibit 250 in A.85-11-029.

3. A takeback plan in conformance with this decision would be reasonable and nondiscriminatory.

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4. Guidelines should not be imposed should AT&T implement a billing takeback. All LECs should give as much notice of the takeback as possible.

5. No adjustment to AT&T's billing expenses is appropriate at this time. Any adjustment should await the introduction of the actual plan to be implemented.

6. New customers should be automatically billed by the LEC for three months, after which the customer should be automatically switched to AT&T if his or her bill meets the threshold amount. Customers may switch between its LEC and AT&T one time at no cost; each additional switch should be at a reasonable charge to be paid by the customer to the company losing the customer.

7. AT&T should not take back its billing and collection function from any LEC except upon terms which comply with Conclusion 6.

ORDER

IT IS ORDERED that:

1. AT&T Communications of California, Inc., for interstate and interLATA business and residence toll telecommunications services within the State of California shall not take back its billing and collection function from any local exchange telephone company except upon terms which comply with Conclusion 6, and upon approval of this Commission by advice letter filing.

impacts taken by the resolution and decision, but neither the resolution nor the decision approved the details of the takeback.

6. A separate bill is superior to other alternatives when cost is not a consideration. When cost is considered, the AT&T plan may not not be the best method of communicating with a customer.

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7. AT&T should not take back its billing and collection function from any LEC except upon terms which comply with Conclusion 6.

2. This investigation is terminated.

This order is effective today.

Dated _____, at San Francisco, California.

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full deployment of its separate billing plan, as well as including the \$9.1 million of expenses and interest deferred from test year 1986, together with any savings it will experience from the takeback of these services from the LECs.

9. No changes in rates are necessary until actual experience is gained from the full deployment of this program for reasonable period of time.

10. We do not envision any significant adverse public reaction to the AT&T's takeback under the plan we have outlined. However, any significant unforeseen public reaction will be known shortly after full deployment and can be dealt with at that time.

11. There are no other separate versus combined billing related matters that require discussion at this time.

Conclusions of Law

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5. No adjustment to AT&T's billing expenses is appropriate at this time. Any adjustment should await the introduction of the actual plan to be implemented.

6. New customers should be automatically billed by the LEC for three months, after which the customer should be automatically switched to AT&T if his or her bill meets the threshold amount. Customers may switch between its LEC and AT&T one time at no cost; each additional switch should be at a reasonable charge to be paid by the customer to the company losing the customer.

7. AT&T should not take back its billing and collection function from any LEC except upon terms which comply with Conclusion 6.

8. With reasonable care by AT&T in the takeback of its billing services in accordance with the guidelines of this order, adverse public reaction, if any, should be minimal.

9. This proceeding should held open for the purpose of allowing AT&T and DRA to consider the rate impact of any additional expenses to be incurred by AT&T, including the deferral of \$9.1 million by a companion order today, as well as the offsetting savings resulting from the takeback.

INTERIM ORDER

IT IS ORDERED that:

1. AT&T Communications of California, Inc., for interstate and interLATA business and residence toll telecommunications services within the State of California shall not take back its billing and collection function from any local exchange telephone company except upon terms which comply with Conclusion 6, and upon approval of this Commission by advice letter filing.

2. AT&T shall arrange to provide at least 60 days advance notice, included with the local exchange telephone company bills, of any pending takeback of billing services.

3. This investigation will remain open for the limited purpose of determining any revenue, expense, and rate impacts to AT&T's California intrastate operations resulting from AT&T's full implementation of its separate billing program, such determination