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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Pacific Bell (U 1001 C), a corporation, for authority to increase intrastate rates and charges applicable to telephone services furnished within the State of California.	Application 85-01-034 (Filed January 22, 1985; amended June 17, 1985 and May 19, 1986)
Application of General Telephone Company of California (U 1002 C), a California corporation, for authority to increase and/or restructure certain intrastate rates and charges for telephone services.	Application 87-01-002 (Filed January 5, 1987)
In the Matter of Alternative Regulatory Frameworks for Local Exchange Carriers.	I.87-11-033 (Filed November 25, 1987)
And Related Matters.	I.85-03-078 (Filed March 20, 1985) OII 84 (Filed December 2, 1980) C.86-11-028 (Filed November 17, 1986) I.87-02-025 (Filed February 11, 1987) C.87-07-024 (Filed July 16, 1987)

(See Appendix A in Decision 88-08-024 for appearances.)

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INTERIM OPINION ON PHASE I SETTLEMENT IN I.87-11-033

I. Summary of Decision

We examine a settlement which was reached by many of the parties in Phase I of Investigation (I.) 87-11-033.[1] The settlement would allow limited downward pricing flexibility for local exchange carriers' vertical services, centrex services, and high speed digital private line services, and would extend interim guidelines for special contracts developed for Pacific Bell (Pacific) to all local exchange carriers. Competition in intraLATA high speed digital private line services would also be allowed subject to certain conditions.

Our assessment of the settlement has been greatly aided by extensive written comments and reply comments provided both by parties which entered into the settlement and by a number of parties which are opposed to adoption of the settlement.

We find the general structure and most of the major provisions of the settlement to be reasonable, and commend parties on the delicate balance of interests achieved in the settlement. However, several factors prevent us from adopting the settlement exactly as written. We propose a number of modifications to the settlement which fall into three general categories. First, we delete certain provisions which are unlawful, in particular, the requirements that negotiated centrex service agreements and other information be confidential and that interLATA carriers be allowed to provide intraLATA high speed digital private line services without further action to modify their interLATA certificates of

1 The term "OII" refers to the Commission order instituting the investigation; "I.87-11-033" and "the investigation" refer to the investigation itself.

public convenience and necessity (CPCNs). Procedural changes are also needed to make the settlement comport with deferral of the supplemental rate design proceeding for Pacific effected by Decision (D.) 88-08-024 on August 10, 1988. Finally, minor changes are proposed to clarify, maintain consistency among the sections of the settlement, and ease its implementation.

With these revisions, we find that all parties would receive significant benefits if the revised settlement is adopted. Customers stand to benefit if the allowed pricing flexibility succeeds in reducing uneconomic bypass and therefore allows continuation of significant contribution from these competitive or potentially competitive services toward keeping basic rates low. The pricing flexibility would at the same time allow local exchange carriers to respond more readily to increasing competitive pressures and other changes in market conditions. Finally, potential competitors would be allowed entry into the intraLATA high speed digital private line market, and certain disputes in this area would be resolved in a manner acceptable to all parties.

Since the settlement provides that its terms shall not become effective unless the signatories agree to any modifications or conditions proposed by the Commission and since we propose numerous (though often minor) changes, we ask parties to the settlement to indicate whether the revised settlement in Appendix A is acceptable to them. Such parties are required to make a joint filing no later than September 7, 1988 in which they convey whether the proposed modifications are acceptable. If the response is positive, we plan to issue a followup decision at our September 14, 1988 meeting which would make effective the modified Phase I settlement.

II. Background

The Commission instituted I.87-11-033 on November 25, 1987 to reconsider the regulatory framework within which local exchange carriers are regulated, and structured the investigation in three phases.[2] The first phase was to address issues of pricing flexibility for services subject to competition. Phase I testimony and reply testimony was submitted by 36 witnesses on behalf of 33 parties during January and February of 1988. A prehearing conference for Phase I was held before assigned Commissioner Wilk and Administrative Law Judge (ALJ) Ford on January 29, 1988. Twenty-one days of Phase I evidentiary hearings were scheduled to commence on March 15, 1988.

On March 15, 1988, as evidentiary hearings were about to begin, DRA and other parties proposed that hearings be recessed so that parties could commence settlement negotiations on Phase I issues in a workshop format. This request was granted, and the parties reported back to the ALJ on March 17, March 22, and March 30, 1988 regarding progress in the negotiations. On March 31, 1988, the parties reported that a settlement among many of the parties was expected to be signed later that day. Based on that representation, the ALJ took the evidentiary hearings off calendar.

On April 1, 1988, DRA filed a Motion to Adopt Settlement Agreement and Stipulation to which it attached a Settlement Agreement and Stipulation signed by certain of the parties. In two subsequent ALJ rulings, parties were instructed to file comments on the settlement by May 2, 1988 and reply comments by May 17, 1988. Any party which did not sign the settlement prior to its filing was

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2 In D.88-08-024 issued August 10, 1988, we modified the structure of I.87-11-033 and consolidated it with Application (A.) 85-01-034, A.87-01-002, and related proceedings.

allowed to join in the settlement by notification to the ALJ and all parties.

The ALJ also instructed parties to the settlement to answer two sets of questions contained in the second ruling. The first 21 questions were aimed at clarifying portions of the settlement. Since these questions appeared to be noncontroversial, parties to the settlement were asked to file a single consensus response by April 22, 1988. Each party to the settlement was also required to separately answer ten additional questions in its May 2, 1988 comments. Parties not joining in the settlement were also invited to address the ALJ's questions.

The ALJ also requested that the Commission's Advisory and Compliance Division (CACD) provide comments on the settlement, and distributed CACD's comments to all parties on April 29, 1988. Parties were allowed to respond to CACD's comments in their reply comments filed on May 17, 1988.

The following parties joined in the settlement:

AT&T Communications of California, Inc. (AT&T)
Bay Area Teleport (BAT)
California Bankers Clearing House Association and the Tele-Communications Association (CBCHA/TCA)
Citizens Utilities Company of California (Citizens)
Contel of California, Inc. (Contel)
DRA
GTE California Incorporated (GTEC)
MCI Telecommunications Corporation (MCI)
Northern Telecom
Pacific
Roseville Telephone Company (Roseville)
Smaller Independent Telephone Companies (Smaller Independents):
- Calaveras Telephone Company
- California-Oregon Telephone Company
- CP National
- Ducor Telephone Company
- Foresthill Telephone Company
- GTE West Coast Incorporated
- Happy Valley Telephone Company
- Hornitos Telephone Company

Kerman Telephone Company
Pinnacles Telephone Company
The Ponderosa Telephone Company
Sierra Telephone Company
The Siskiyou Telephone Company
Tuolumne Telephone Company
The Volcano Telephone Company
US Sprint Communications Company (US Sprint)

The following parties did not join in the settlement but filed comments:

API Alarm Systems (API)
California Cable Television Association (CCTA)
City of Los Angeles (Los Angeles)
Consumers Union, Public Advocates, and Center for Public Interest Law (CU/PA/CPIL)
Department of Defense and all other Federal Executive Agencies (DOD/FEA)
Honorable Gwen Moore (Assemblywoman Moore)
Toward Utility Rate Normalization (TURN)
Wang Communications, Inc. (WCI)
Western Burglar & Fire Alarm Association (WBFAA)

III. Summary of the Phase I Settlement

The settlement would allow limited downward pricing flexibility for local exchange carriers' vertical services, centrex services, and high speed digital private line services, and would extend interim guidelines for special contracts developed for Pacific to all local exchange carriers. Competition in intraLATA high speed digital private line services would also be allowed subject to certain conditions. The parties to the settlement state that the negotiations were "bottom line" in nature and that the terms of the settlement, if adopted, would be implemented on an interim basis pending permanent resolution of broader regulatory issues in subsequent phases of this proceeding.

Under the settlement, the local exchange carriers could vary the price for a covered service between a cap equal to the rate in effect when the settlement is approved and a floor based on

either direct or fully allocated embedded costs. The floor may be either a public floor published in the local exchange carrier's tariff schedules or a nonpublic floor whose level would be available only to Commission staff and to parties which sign a protective agreement for access to this confidential information. The settlement allows the local exchange carrier to request both a public and a nonpublic floor for centrex and high speed digital private line services.

Following the establishment of a Commission-approved floor, the local exchange carrier could then vary tariffed rates between the cap and floor with reduced procedural requirements ranging from 10 days written notice to CACD to an advice letter filing requiring Commission approval, depending on the service and the type of floor.

The settlement allows a series of floors for centrex prices set to reflect actual costs, with the floors based, for example, on the number of features, the number of centrex lines, the costs of loops, or the length of the contract. In addition to setting tariffed rates between the current price and the new floors, the local exchange carrier could also negotiate customer-specific discounts within the Commission-approved bands for centrex services. The resulting customer-specific service agreements would be given proprietary treatment and not reflected in tariff schedules.

The settlement also provides for restructuring, in a supplemental rate design proceeding, of each local exchange carrier's high speed digital intraLATA private line and special access tariff schedules. The local exchange carrier would be required to have uniform prices in its private line and special access tariff schedules for service from an end user's premises to the local exchange carrier's central office (the end user-to-CO link). In addition, the connection between the local exchange carrier's central office and an interexchange carrier's point of

presence (the CO-to-POP link) would be priced in the special access tariff at either fully allocated or direct embedded cost. The local exchange carrier would also be allowed to propose in the supplemental rate design proceeding that its high speed digital private line services be deaveraged (except for the CO-to-POP link).

Competitive entry and local exchange carrier pricing flexibility for intraLATA high speed digital private line services would be allowed only after the tariff schedules are restructured in the supplemental rate design proceeding. If the supplemental rate design is not completed by January 1, 1989, the local exchange carriers could file for separate expedited consideration of these changes. The settlement also provides that the local exchange carriers can request an interim surcharge on rates to offset the rate reductions for the end user-to-CO and CO-to-POP links described above.

Finally, the interim special contract guidelines for Pacific developed by CACD as a result of D.87-12-027 would be continued in effect with certain modifications and extended to all local exchange carriers. The provision in General Order (G.O.) 96-A that utilities may provide contract services at reduced rates to governmental agencies would be modified to require that such prices be above embedded costs except in emergency conditions. The current G.O. 96-A exemption of government contracts from Commission preapproval requirements would also be removed. The settlement provides that CACD would hold workshops if a local exchange carrier proposes new costing, streamlining, or tracking procedures for approving special contracts.

IV. Opposition to the Settlement

CCTA, DOD/FEA, Los Angeles, Assemblywoman Moore, TURN, WCI, and WBFAA state that they oppose adoption of the settlement.

TURN notes, however, that it could foresee supporting a version of the settlement if the following modifications were made: public policy questions in the OII are addressed on the record first; a cushion of perhaps 10 percent above embedded costs is employed in setting the price floors to avoid the risk of cross subsidization; and applications rather than advice letters are employed in implementing the pricing flexibility allowed by the settlement.

Two other parties filed comments which criticize the settlement but stop short of expressing opposition. API states that it is unable to sign the settlement because several key areas of concern to API are not addressed in the agreement. However, API believes no evidentiary hearing is necessary to address its concerns, stating that written comments are adequate. Consumers Union urges that consideration of the settlement be deferred until after Phase II issues have been heard.

Some of the parties opposing the settlement characterize it as an agreement between the local exchange carriers, which want flexibility to decrease prices for certain customers, and their competitors, who "want a piece of the telecommunications action," with DRA "acting as referee." They take sharp exception to the whole procedure of the negotiations leading to the settlement, arguing that DRA and other parties put expediency ahead of due process. They assert that the Commission should not accept a settlement such as this one which was not joined by major parties such as consumer groups.

TURN, Los Angeles, and Assemblywoman Moore express concern that the pricing flexibility provided in the settlement may harm residential ratepayers by reducing the contribution which these services provide to basic rates. They oppose the confidential treatment afforded cost data, the nonpublic rate floors, and centrex customer-specific service agreements, arguing that nondisclosure of such information is both unlawful and

contrary to the public interest. These parties question the reliability of the cost data to be used to set rate floors.

While these parties believe that any pricing flexibility is premature until the Commission is assured that basic rates are adequately protected, DOD/FEA asserts that the settlement does not allow enough pricing flexibility. In its view, prices for the services covered by the settlement should be based on their incremental or marginal costs, which appear to be below embedded costs. It argues that the settlement perpetuates "the unreasonable shackles of antiquated fully allocated or direct embedded cost standards to virtually preclude the [local exchange carriers] from [effectively] competing to provide any of these services." DOD/FEA also expresses its view that the proposed modifications to G.O. 96-A would preclude consideration of local exchange carriers for most federal government contracts.

API is concerned that the settlement fails to address implementation of Open Network Architecture (ONA) or certain services which are jointly provided by Pacific and GTEC. API also points out what it characterizes as certain omissions in the agreement which either fail to meet Commission concerns expressed in the OII and/or hinder API's ability to determine the settlement's effects on API.

CCTA believes that the settlement improperly limits competitive entry for private line services to high speed digital services connecting end user premises, and states that competition should be allowed for lower speed services and for connections to interexchange carriers as well. It agrees with TURN and other parties that rate floors should not be allowed to go below fully allocated embedded costs, arguing that local exchange carrier prices below that level would close economic alternatives out of the market even if entry barriers are lifted.

WCI opposes the settlement because it would delay approval of WCI's A.87-02-033 requesting statewide authority to

provide intraLATA high speed digital private line services until implementation of the intraLATA entry, unbundling and deaveraging, and pricing flexibility provisions of the settlement.

Most of the parties opposing the settlement also express concerns that the settlement does not address the generic questions raised in the OII regarding, for example, standards for evaluation of whether certain services are competitive and implementation of consumer safeguards.

These parties' concerns, as well as those raised by CACD in its comments and the ALJ in her rulings, will be addressed in more detail in the remainder of this decision.

V. Procedure for Consideration of the Settlement

The Commission is in the process of formulating guidelines to be included in our Rules of Practice and Procedure which will govern negotiations of settlements in our proceedings. The guidelines will also set procedures by which the Commission will receive written comments on any settlement presented to it, determine whether hearings are needed, and proceed to consideration of the merits of the settlement. We first published proposed rules in D.87-11-053 for comment. In response to the comments received, we made several substantive modifications, publishing revised rules and asking for additional comments in D.88-04-059. Further action on the rules is pending.

In D.88-04-059, we state that the proposed rules will be applied liberally to cases in progress. To do otherwise could effectively suspend any negotiations until final settlement rules are adopted. Since settlements and stipulations, if handled properly, can promote the overall efficiency of the regulatory process and be in the public interest, we do not wish to discourage them while our rulemaking is pending.

In evaluating the Phase I settlement, we conclude that strict compliance with the proposed rules, first published last November with revisions published in April after the settlement was filed for Commission consideration, would be inappropriate. Rather, evaluation should be based on the specific facts at hand.

Los Angeles and Assemblywoman Moore complain that inadequate notice of the settlement negotiations was given to parties. Parties first brought the fact that negotiations were beginning to the ALJ's attention when they asked for a delay in hearings on March 15, 1988. At that time the ALJ instructed DRA to notify all parties of the negotiations and to invite their participation, and DRA did so. We note that this notice and invitation to participate exceed requirements in the proposed rules. Thus, while some parties may not have received as much notice as they would have liked, we see no reason to refuse to consider the settlement on this basis.

The settlement agreement states that its signatories stipulate to the terms of the settlement on the basis that all of the elements of the agreement must be adopted, without modification of any individual element of the agreement. The settlement provides that if the Commission imposes any modifications or conditions on the settlement, the terms shall not become effective unless the signatories agree in writing to accept the modifications or conditions.

Several factors prevent us from adopting the settlement exactly as written, as discussed throughout this decision. Most importantly, we find that a number of its provisions are unlawful, e.g., proprietary treatment of customer-specific service agreements, cost data, and special contracts, as well as the expansion of interexchange carriers' operating authority to encompass intraLATA service without CPCN applications on their part. We cannot adopt these unlawful portions of the settlement.

Secondly, we decided in D.88-08-024, based partly on a motion by DRA, that the supplemental rate design phase of Pacific's general rate case should be deferred until after Phase II of the investigation. This runs counter to the provision in the settlement that various centrex and private line rate design issues would be addressed in the supplemental rate design proceeding in 1988. Parties were asked to comment on the proposed restructuring through a Joint Assigned Commissioners' Ruling dated July 11, 1988. In their comments, no party suggested that this would be an unacceptable modification to the settlement. Rather, they made a variety of suggestions regarding how the rate design issues discussed in the settlement could be dealt with separately from the supplemental rate design proceeding, so that the substantive terms of the settlement could be implemented without undue delay.

Finally, there are a number of minor changes which need to be made to the settlement for clarification and to make the various sections consistent. Parties to the settlement recognize that there are a number of minor inconsistencies in the document, arising in general from coordination problems as parties strived to complete the negotiations in a timely manner. Parties have clarified such areas in their comments and reply comments, and we have incorporated the clarifications in Appendix A. We also make several other minor changes, for example, additions to filing requirements, which we believe will ease implementation of the settlement or make it easier to understand. We do not consider any of these changes to be substantive.

In summary, the modifications we make to the settlement in Appendix A fall into three categories: changes necessary to make it lawful; changes to reflect restructuring of the proceeding adopted in D.88-08-024 to which the parties have acquiesced; and minor changes to clarify, maintain consistency among the sections, and ease implementation of the settlement.

Because of the extent of these modifications, we will allow parties to the settlement to indicate by a joint filing no later than September 7, 1988 whether the modified settlement contained in Appendix A is acceptable to them. If the response is positive, we plan to issue a followup decision at our September 14, 1988 meeting which would make the terms of the modified settlement effective immediately. This would allow Pacific and GTEC to file their private line proposals in time for workshops to be held, if needed, before hearings commence in Phase II of the investigation. If parties to the settlement do not find Appendix A acceptable, we will reassess our options following their September 7, 1988 filing.

VI. Evaluation of the Settlement

A. General Comments

The ALJ, CACD, and some of the parties ask for certain clarifications and point out a number of apparent inconsistencies in the settlement document. CACD complains that terms are used interchangeably and are not defined, and that the language in some sections is ambiguous and unclear. In response, parties to the settlement clarify a number of points in their consensus filing and their reply comments. GTEC states that many of the inconsistencies in the settlement arose simply because different people were responsible for drafting different parts of the settlement and time constraints prevented complete consistency. In its view, no particular significance should be attached to such inconsistencies. GTEC states that it would have no objection to making the slight rewording necessary to provide uniform expression of the settlement's intent from service to service.

It would be unduly cumbersome to address each request for clarification and the parties' replies in this decision. Instead, as GTEC has suggested, we incorporate the provided clarifications in our description of the settlement in this decision and, to the

extent appropriate, in the modified version of the settlement attached as Appendix A.

In evaluating the settlement, we address first certain aspects of the settlement which are common threads throughout, e.g., proprietary treatment of several items, pricing flexibility provisions, and monitoring procedures. Next we look at other settlement components unique to specific services. We indicate certain modifications to the settlement provisions which we deem necessary to allow adoption of the settlement as a whole. Finally, we evaluate whether the settlement, with the indicated modifications, is in the public interest and should be adopted.

B. Proprietary Treatment of Centrex Service Agreements, Nonpublic Floors, and Cost Data

The settlement would require proprietary treatment of customer-specific agreements for centrex services; all nonpublic floors (and underlying flexible pricing proposals) for vertical services, centrex services, and high speed digital private line services; and all information provided to the Commission regarding the costs of these services and of services provided pursuant to special contracts under terms and conditions deviating from filed tariff schedules. The customer-specific centrex service agreements would not be filed for Commission approval or made available to any party; the settlement states that they would not be covered by the "Contracts" section of the settlement. Nonpublic floors and all cost data would be provided only to parties which sign protective agreements. The ALJ asked the parties to address the legality of these components of the settlement, as well as whether they are reasonable and in the public interest.

CACD states that simultaneous public and nonpublic floors for a single service would cause confusion. In its view, this settlement provision does not appear to serve any useful purpose, since a separate advice letter would be required anyway to lower the public floor toward the nonpublic floor. The ALJ required the

parties to address whether allowance of simultaneous public and nonpublic floors for a single service is in the public interest.

We find it helpful to present a brief overview of related statutory requirements and prior Commission actions cited by the parties before proceeding to consideration, in turn, of proprietary service agreements, nonpublic floors, and confidential treatment of cost data.

1. Statutory Requirements and Commission Precedent

The Commission's G.O. 96-A governs utilities' filings of rates, rules, and contracts relating to rates. It provides for tariff schedules as required by Public Utilities (PU) Code Section (§) 489 and establishes the procedure to be followed in the filing and publishing of tariff schedules in compliance with §§ 491, 454, and 455, and in requesting authorization under particular circumstances to depart from tariff schedules as allowed by § 532.

PU Code § 489 establishes the basic requirement that a utility file and make public its rates, rules, and contracts related to rates, providing in part as follows:

> "The commission shall...require every public utility other than a common carrier to file with the commission...and to print and keep open to public inspection, schedules showing all rates, tolls, rentals, charges, and classifications collected or enforced, or to be collected or enforced, together with all rules, contracts, privileges, and facilities which...affect or relate to rates, tolls, rentals, classifications, or service."

PU Code § 491 provides that a public utility may not change its rates except after 30 days' notice to the Commission and to the public. PU Code § 454 governs utility requests for rate increases and requires explicit Commission findings that the increases are justified. For requests for tariff changes other than rate increases, § 455 provides that such changes become effective 30 days after their filing unless the Commission suspends them and initiates a hearing. PU Code § 532 requires that

utilities not deviate from their effective filed tariff schedules without Commission approval.

G.O. 96-A provides that all tariff sheets shall be transmitted by advice letters and contains requirements regarding, for example, content, notice, protests, and effective dates of the requested tariff changes. It requires that utility requests to increase rates or impose more restrictive service conditions, except where the changes are minor in nature, be made by formal application rather than by advice letter. Section X requires that a utility obtain prior authorization from the Commission before making effective any contract arrangement or other deviation from its filed tariff schedules, with an exception for service to government agencies. Section IX provides that customer-specific contracts relating to the quantity or duration of service or the installation of equipment which are required by a tariff schedule as a condition of service need not be filed, as long as a copy of the general form of the contract is part of the tariff schedule. Section XV allows the Commission to authorize exceptions to G.O. 96-A provisions upon a proper showing by an interested party.

PU Code § 583 addresses confidentiality of utility information provided to the Commission, and provides as follows:

> "No information furnished to the commission by a public utility..., except those matters specifically required to be open to public inspection by this part, shall be open to public inspection or made public except on order of the commission..."

Separate requirements regarding access to public information are contained in the California Public Records Act, codified in §§ 6250 et seq. of the California Government (Gov't) Code, and are enforced through our G.O. 66-C. The Public Records Act requires that all public records be open to public inspection, defining public records as follows:

> "'Public records' includes any writing containing information relating to the conduct

> of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics." (Gov't Code § 6252(d).)

Various exemptions to the disclosure requirements are allowed, with two in particular being of interest in this case. The first is the exemption in Gov't Code § 6254(k) for:

> "Records the disclosure of which is exempted or prohibited pursuant to provisions of federal or state law..."

Second, Gov't Code § 6255 allows an agency to justify withholding records if, on the facts of a particular case, the public interest served by not making the records public clearly outweighs the public interest served by disclosure of the records.

G.O. 66-C provides similar exceptions to its accessibility requirements. Two exceptions potentially relevant are provided for "(r)ecords or information specifically precluded from disclosure by statute" and "(r)ecords or information of a confidential nature furnished to, or obtained by the Commission," including "reports, records, and information requested or required by the Commission which, if revealed, would place the regulated company at an unfair business disadvantage."

Los Angeles cites two Commission decisions which, in its view, establish that use of an unpublished contract where there are no unusual or exceptional circumstances violates PU Code § 489. In Carnation Co. v. Pacific Gas and Electric (1977) 81 Cal. P.U.C. 581, the Commission concluded that PG&E could not implement a special charge to defray costs of constructing extra gas main capacity needed to serve additional demand by an existing customer, since the development of capacity constraints as a result of new demand is not unusual or exceptional. The Commission concluded that, "(w)ithout finding an exceptional or unusual circumstance there can be no lawful authorization of a deviation from an applicable tariff rate. . .If there were no requirement for an

exceptional circumstance, a utility could require a deviation contract from every member of a class of ratepayers. . .If the Commission were to establish an 'exception' from a generally applicable tariff rule for a customer who was not somehow dissimilarly situated from others who pay the tariff rate, it would be promoting rather than preventing discrimination."

In Stanislaus Food Products Co. v. Pacific Gas and Electric (1979) 2 Cal. P.U.C. 2d 304, a similar situation arose. However, the Commission revisited Carnation Co. and concluded that where projected revenues from a new service are inadequate to cover the costs of constructing the facilities necessary to provide such service, exceptional circumstances are presented and such costs are appropriately shared by the utility and customer. It reiterated its earlier conclusion that utilities must provide service in accord with their filed tariff except in the event that unusual circumstances render application of general tariff provisions unreasonable or impractical.

Some parties cited D.86-03-045 and D.87-03-044, in which we modified D.85-12-102 and D.86-12-009, respectively, to eliminate provisions for confidential treatment of certain natural gas transmission contracts. In D.87-03-044, we agreed with petitioners that those confidentiality provisions would violate PU Code § 489 and were not supported by the Public Records Act.

Finally, DRA cites D.87-12-027. Pacific had requested processing under G.O. 96-A of customer-specific contracts combining tariffed and special nontariffed conditions and services. In D.87-12-027, we noted that we have for several years allowed energy utility companies to use customer-specific contracts for the provision of tariffed energy services at less than tariffed rates, in order to prevent bypass of the utility system in an increasingly competitive energy market. We found that competitive conditions in telecommunications services are similar, and concluded that Pacific should be given similar flexibility, as allowed by § 532, to

deviate from filed tariffs under such unusual or exceptional circumstances, pending further consideration in this investigation.

2. Proprietary Service Agreements

Most of the parties to the settlement argue that the proprietary customer-specific centrex service agreements allowed by the settlement are lawful and in the public interest. GTEC states that, though lawful, it has no plans to use such proprietary service agreements. Two parties to the settlement, US Sprint and BAT, state that they are not proponents of proprietary service agreements, but do not offer an opinion on their legality. Los Angeles, which did not join in the settlement, asserts that proprietary service agreements are not lawful.

Positions of the Parties

Parties to the settlement present several arguments to support their position that proprietary service agreements would comply with § 489. While AT&T recognizes that proprietary service agreements would contain actual rates charged a customer, it states that a Commission-approved centrex tariff schedule with the approved discount bands set forth in it would be the published schedule required by § 489. It concludes that any customer-specific service agreement would fall within the published band and hence would not violate § 489.

Pacific argues that the § 489 requirement to "keep open to public inspection...all...contracts...which in any manner affect or relate to rates" applies only to contracts that deviate from rates or conditions set forth in filed tariff schedules. In Pacific's view, Section IX of G.O. 96-A provides that contracts that are authorized by tariff schedules need not be filed with the Commission.

The Smaller Independents recognize that § 489 requires that utilities file and make publicly available all rate schedules and related contracts. However, they argue that this provision for

public inspection of rate and contract information is balanced with the provisions of G.O. 66-C which protect proprietary information.

GTEC states that, when applying § 489 to the issue of legality of proprietary service agreements, the general purpose of public tariffs must be kept in mind. In GTEC's opinion, tariff schedules constitute the contract between a public utility and its customer and the primary purpose of making those tariffs public is to provide customers notice of the rates which the Commission has decided the local exchange carrier may lawfully charge for a particular service. GTEC concludes that this customer notice policy is fully served by setting forth the allowable cap and floor prices in the tariff schedule, with no need for the specific negotiated rate to be published. In fact, it asserts, no legitimate purpose could possibly be served by any particular customer finding out that another customer had done a better job of negotiating centrex rates.

Pacific states similarly that § 489 is intended to ensure that public utility customers may determine, by inspecting filed tariffs and documents, that they are being lawfully charged in accordance with filed tariff schedules. It argues that, by reference to the discount ranges to be published in the centrex tariff schedules, all customers can determine the maximum discounts they can achieve through negotiation and similarly ensure that negotiated prices fall within the tariffed range.

DRA states that the customer-specific service agreements are not contracts and that, while the Commisison has determined that customer-specific service contracts cannot be proprietary, the Commission has not reached similar conclusions regarding customer-specific service agreements. DRA believes that no Commission ruling or California statute is violated by such proprietary agreements, and thus that the Commission may find that they are lawful.

Pacific and AT&T draw a distinction between the customer-specific service agreements provided in the Phase I settlement and the situation addressed in D.87-03-044, stating that in the natural gas case the Commission did not require that an authorized "range of reasonableness" of prices for negotiated contracts be included in the publicly-filed tariff schedule.

Regarding the notice requirements of § 491, parties to the settlement contend that customer-specific service agreements would not constitute rate changes and thus that § 491 is not applicable. They point out that the rate bands would remain unchanged absent further formal Commission action with related notice requirements.

Pacific and AT&T state that there are no due process concerns with respect to the proprietary service agreements since the Commission-approved discount range would be publicly filed and open to inspection. Because, in Pacific's view, any price that falls within the authorized range would be conclusively valid, it concludes that there is no opportunity for the local exchange carrier to charge an unfair or unreasonably discriminatory rate.

Parties to the settlement present two independent arguments that the Public Records Act does not apply to the proprietary centrex service agreements allowed by the settlement. First, they assert that proprietary service agreements fall within the confidentiality requirements of PU Code § 583 and thus are exempt from the Public Records Act under Gov't Code § 6254(k). Second, GTEC notes that the settlement does not require that customer-specific service agreements be filed with the Commission. GTEC submits that the fact that the Public Record Act only requires information in the possession of state agencies to be made publicly available provides a separate basis for concluding that the Public Records Act does not apply.

Los Angeles contends that nondisclosure of customer-specific service agreements would be unlawful, arguing that the

statutory obligation set forth in § 489 is clear and unambiguous. Its view is that a utility which enters into a contract to provide service to a portion of the public must set forth the terms of the contract in its tariff. Los Angeles submits that the desire of local exchange carriers or customers to enter into a confidential agreement in no way justifies evasion of what it views as a clearly prescribed statutory duty of public disclosure. Los Angeles asserts that the utility must demonstrate to the Commission that use of an unpublished contract is justified by an unusual circumstance, and that use of an unpublished contract where there are no unusual or exceptional circumstances violates § 489. Carnation Co., supra; Stanislaus Food Products Co., supra.

Los Angeles believes that the notice requirements of § 491 impose an equally straightforward obligation to publicly disclose all changes in rates and classifications. It further argues that proprietary service agreements cannot and should not be reconciled with the due process rights of ratepayers to scrutinize and gather all pertinent data to which they are entitled. In its view, nondisclosure of such agreements would effectively estop ratepayers from legitimately prosecuting a complaint, for example. It further contends that proprietary treatment of this information would inappropriately hamstring the efforts of interested parties to subject utilities to proper review during subsequent rate proceedings.

Los Angeles argues that information received by the Commission clearly constitutes a public record and is thus subject to mandatory public disclosure absent a specific exemption pursuant to Gov't Code § 6254. It further states that Gov't Code § 6254 provides no statutory basis whatsoever for the proprietary treatment of utility service agreements and/or rate floors.

Finally, Los Angeles asserts that we should follow our own "clearly established precedent" in D.87-03-044 and D.86-03-045 in which we concluded that confidential treatment of certain gas

contracts would violate § 489, and reject the settlement as contrary to law.

In response to the ALJ's query regarding the reasonableness (aside from the question of lawfulness) of proprietary service agreements, many of the parties reply that proprietary customer-specific service agreements would promote the ability of regulated utilities to compete on equal terms with competitors which have the power to keep their customer identification and prices confidential. DRA believes that customer-specific service agreements would be in the public interest because they would allow rates closer to customer-specific costs and help prevent uneconomic bypass, thus promoting economic efficiency. Proprietary treatment of such agreements would also be in the public interest, according to DRA, if this allows the local exchange carrier to charge the highest possible price to each customer, thus maximizing the amount of contribution to be retained. Pacific states similarly that, if negotiated service agreement prices were made public, prospective customers could demand that they receive the identical price received by others, despite the reasonableness of all prices within the Commission-approved discount range. Pacific reassures us that the settlement provides for protection of the public interest through Commission review and approval of the price caps and floors.

Discussion

Many of the legal arguments put forth by the parties center on whether a pricing mechanism in which a "zone of reasonableness" approved by the Commission is published in a utility's tariff schedules and the utility is then allowed to negotiate, on a confidential basis, customer-specific rates within that band complies with the PU Code § 489 requirement that each utility "file...and keep open to public inspection...all rates...together with all...contracts...which...affect or relate to rates..."

Pacific argues that the customer-specific agreements, with pricing bands stated in the tariff schedules, fall within Section IX of G.O. 96-A, which specifies that certain contracts expressly provided for by a utility's filed tariff sheets do not have to be filed with the Commission. However, close reading of Section IX reveals that it applies only to contracts relating to the quantity or duration of service or the installation of equipment required by the tariff. The centrex service agreements would set forth actual rates to be charged; we conclude that they do not fall within the Section IX exemption from § 489.

DRA, on the other hand, takes the view that the centrex service agreements are not contracts. This semantic argument is not convincing. A contract is generally recognized to be any agreement which creates an obligation to do or not to do a particular thing, with the essentials being competent parties, subject matter, a legal consideration, mutuality of agreement, and mutuality of obligation. The centrex service agreements exhibit all these characteristics. We note that Pacific's arguments regarding the applicability of Section IX of G.O. 96-A assume that the centrex service agreements are contracts; GTEC recognizes in its comments that tariff schedules themselves are contracts. We conclude that there is no basis for distinguishing the proposed centrex service "agreements" from "contracts" in general. In a nutshell, the proposed centrex service agreements would be special contracts in which the utilities deviate from their filed tariff schedules. They must be evaluated as such.

Parties argue that publication of the rate cap and floor, rather than the actual rate charged the customer under a customer-specific service agreement, is sufficient to comply with § 489. The language of § 489, however, is clear and unambiguous in its requirement that <u>all</u> rates and <u>all</u> contracts be filed and made public. There is no provision for a public zone of reasonableness

or any other alternative. The jump in the parties' logic escapes us.[3]

Pacific asserts that the intent of § 489 is met by publication of the approved cap and floor; GTEC similarly discusses the purpose of filed tariffs. The Smaller Independents talk about balancing the § 489 provisions for public inspection of rates and related contracts against protection of proprietary information. None of these arguments allows us to escape the clear, unqualified language of § 489.

Pacific and AT&T attempt to distinguish between the case before us, with Commission-approved caps and floors, and the situation in D.87-03-044, in which we did not require a range of reasonableness to be published in the tariff schedules. These parties do not mention that in D.87-03-044 we established in principle a band of rate flexibility, with a ceiling of embedded costs and a floor of short-run marginal costs. We have also established similar electricity pricing guidelines in D.88-03-008. While admittedly not in the tariff schedules, information about the natural gas and electricity pricing bands is publicly available. While inclusion of the centrex pricing bands in the filed tariff would provide greater assurance that customers are not in an unfair bargaining position, this distinguishing factor would not overcome the § 489 requirement that each rate itself be filed and open to public inspection.

We have examined in turn each of the parties' arguments that the centrex service agreements would not be subject to § 489

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3 We note that § 454.2 allows a "zone of rate freedom" for passenger stage transportation services operating in competitive conditions, within which rate increases may be made without a showing of reasonableness. The lack of comparable language in § 489 reinforces our conclusion that the filing requirements in § 489 apply to the rates themselves and are not met by specification of a rate band.

and find no supportable basis for this contention. We conclude that the local exchange carriers would be required to file them with the Commission pursuant to § 489.

Since we specifically find that § 489 requires these agreements to be open to public inspection, it follows that § 583 by its terms does not apply, nor, as a result, does the Gov't Code § 6254(k) exemption from the Public Records Act. GTEC's secondary argument that the Public Records Act does not apply to information not in our possession is also made moot. We conclude that the Public Records Act parallels § 489 in its disclosure requirements in this instance. Our findings are consistent with D.87-03-044.

Since it would be unlawful, we cannot approve the portion of the settlement that would allow proprietary treatment of customer-specific centrex service agreements. We turn now to the question of whether the remainder of the settlement's rules regarding these agreements which deviate from tariff schedules would be acceptable. Our general standard in allowing tariff deviations is that unusual or exceptional circumstances must exist, as exemplified in the two decisions cited by Los Angeles.[4] We have already recognized, in D.87-12-027 and elsewhere, that competitive conditions are such that contracts which deviate from filed tariff schedules may be appropriate to stave off uneconomic bypass of the local exchange carriers' systems. It is widely recognized that centrex services face direct and active competition from PBX alternatives. We agree with DRA that customer-specific

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4 In its argument, Los Angeles contrasts a filed tariff schedule and what it calls an "unpublished contract." We note that the cited cases address the conditions under which a utility may enter into a contract deviating from the filed tariff schedules, not whether that contract can receive proprietary treatment, as asserted by Los Angeles.

centrex contracts would allow rates to be based on customer-specific costs and that the resulting increased economic efficiencies would enhance the public interest.

Inherent in the settlement's provisions regarding customer-specific centrex contracts is that they would not be subject to the G.O. 96-A requirement that Commission authorization be obtained. We note that § 532 allows us to establish exceptions to this requirement, and that, for example, we allow natural gas utilities to enter into transportation or gas procurement contracts of less than 5 years duration which are not subject to prior Commission approval (these contracts must, however, be filed with CACD and made available for public inspection if requested).

We see little to be gained from requiring Commission approval of customer-specific centrex contracts. Other provisions in the settlement would establish Commission-approved caps and floors within which the negotiated rates must fall. We believe that this requirement, coupled with the § 489 requirements that the rates be public, would provide assurance that other ratepayers will not be harmed by negotiated centrex contracts. Commission approval appears to serve no useful purpose and, to the contrary, would strain staff resources. We conclude that, within the context of the overall settlement, customer-specific centrex service agreements are reasonable if they are filed with CACD and made available for public inspection if requested.

3. Nonpublic Floors

Parties' positions regarding the acceptability of the settlement's nonpublic floor provisions are very similar to those put forth regarding proprietary customer-specific centrex service agreements. Two parties which do not take a position on customer-specific service agreements, Assemblywoman Moore and TURN, join Los Angeles in opposition to nonpublic floors.

Parties to the settlement draw one important distinction between nonpublic floors and the centrex service agreements: that

is, the nonpublic floors would not themselves be rates charged to customers. Instead, parties assert, nonpublic floors would be just preapproved cost information on file with CACD.

Since nonpublic floors would not be rates, parties conclude that §§ 489, 491, 454 and other PU Code provisions relating to rate changes are not applicable. AT&T asserts that all parties are provided due process through review and comment on the cost studies forming the basis for nonpublic floors before such floors are adopted by the Commission. Parties note that all changes in the offered rate when there is a nonpublic floor would be made under current G.O. 96-A advice letter procedures, which comply with § 491 notice requirements.

Pacific and GTEC argue that § 583 creates an exemption for nonpublic floors, through Gov't Code § 6254(k), from the Public Records Act.

Los Angeles presents much the same arguments in its assertions that both nonpublic floors and proprietary service agreements are unlawful. It concludes that ratepayers are best served by and are legally entitled to complete public disclosure of all relevant information, including proprietary service agreements and nonpublic rate floors.

Joining Los Angeles, TURN asserts that nonpublic floors violate § 489, and states that the Commission has decided this issue before in D.86-03-045 and D.87-03-044. TURN recognizes that a local exchange carrier could not price a service at the nonpublic floor without first filing an advice letter to reduce the tariffed rate to that level, but it argues that this advice letter process would not command the amount of scrutiny necessary to protect ratepayers.

Assemblywoman Moore argues similarly that the concept of a nonpublic floor does not square with §§ 489, 491, and 495. She states that one important purpose of the referenced sections of the PU Code is to minimize the opportunities for invidious

discrimination between customers and among customer classes. In her view, it is not good enough to say that the Commission may circumvent the language and policy of these statutes by characterizing the issue as one of "mixed law and policy," with the implication that the Commission may disregard the language if it dislikes the policy.

Regarding whether nonpublic floors are in the public interest, parties to the settlement stress that preapproval of local exchange carrier cost information would expedite later changes in the public floors or in tariffed rates. DRA states that this would be in accordance with the goal of streamlined regulation. Parties also reiterate views similar to those cited regarding customer-specific service agreements, e.g., that nonpublic floors would optimize contributions, provide valuable marketing options, and promote the ability of utilities to compete on equal terms with competitors. DRA comments that establishment of both a public and a nonpublic floor for a service would allow a local exchange carrier to implement a rate band, with its associated public interest advantages, without requiring it to make public its underlying cost information. DRA concludes that the public interest is served if the nonpublic floor causes a local exchange carrier to implement a rate band when it would not have otherwise. Pacific states that Commission review and approval of the nonpublic floors, as well as subsequent notice to customers and the Commission of movement within the approved caps and floors, would provide protection of the public interest.

TURN shares CACD's concerns about simultaneous public and nonpublic floors, and states emphatically that preestablished nonpublic cost floors serve no useful purpose. TURN raises a concern that obsolete cost data may be employed if a local exchange carrier chooses to lower the public floor to the nonpublic floor several months or years after the nonpublic floor is established. It asserts that ratepayers would be better served by public cost

floors determined by an application process at the time they are employed. As additional protection, TURN believes that there should be a reliable mechanism for raising the cost floor should costs rise in the future.

Discussion

Evaluation of the lawfulness of the nonpublic floors allowed by the settlement would be easier if we had a better understanding of their intended purpose. It is clear that a tariffed rate or public floor could not go below the nonpublic floor. However, exactly what the Commission is being asked to do when it approves a nonpublic floor is not so clear. Are parties asking for a commitment that rates could be set at any point between the cap and the nonpublic floor at the utility's request? Or do parties simply want the Commission to adopt cost estimates for the services? This could be an important distinction.

Under either interpretation, the nonpublic floor would not itself be a rate charged to customers. Thus, it would not be subject to the § 489 requirement that all rates be filed and open to public inspection. However, § 489 also requires that all "rules" which "relate to rates, tolls, rentals, classifications, or service" be filed and open to public inspection as well. If the local exchange carriers want assurance that rates or public floors could be lowered toward or set equal to nonpublic floors, that appears to constitute a rule whose disclosure would be required under § 489. Cost information per se, on the other hand, would not fall within the scope of § 489.

Assuming arguendo that parties have in mind only prereview of cost data, we turn to assessment of the applicability of § 583 and the Public Records Act. Parties to the settlement assert that § 583 creates an exemption from the Public Records Act. However, we see a bit of a "chicken and egg" situation. PU Code § 583 requires that information furnished to the Commission not be opened to public inspection except on order of the Commission.

Thus, § 583, read by itself, gives us discretion in this area. However, it does not excuse us from our separate duties under the Public Records Act, as carried out through G.O. 66-C. In the Public Records Act, Gov't Code § 6255 requires that justification for withholding a public record be on one of two grounds: either an exemption granted under express provisions of the Public Records Act or alternatively a finding by the agency on the facts of a particular case that the public interest served by not making the record public clearly outweighs the public interest served by disclosure of the record.

We apply our rule in G.O. 66-C precluding disclosure of information of a confidential nature if it would place the utility at an unfair business disadvantage in the context of Gov't Code § 6255, i.e., we look at the facts of a particular case to determine whether disclosure of information claimed by the utility to be confidential would disadvantage the utility. A claim by the utility alone that information is confidential and should not be disclosed does not suffice.

In practice, parties to a proceeding often reach an informal agreement regarding the conditions under which information is divulged to nonutility parties. Resolution of a utility's claim of confidentiality often occurs when the other parties enter a protective agreement; in such cases the controversy does not reach the Commission. However, if a party does not agree to the terms proffered by the utility, that party may choose to bring the issue before the Commission for resolution.

We have before us a situation in which some, but not all, of the parties have essentially agreed to not contest the local exchange carriers' assertions that nonpublic floor information is proprietary; in return the local exchange carriers allow access under the terms of a protective agreement. However, this agreement does not deprive parties not entering into the settlement of their rights to request the information under the Public Records Act; nor

does it relieve us from the obligation under Gov't Code § 6255 to make findings regarding the public interest if a party requests us to do so.

We are well aware that competitive conditions exist (to greater or lesser extent) in the telecommunications markets covered by the settlement; this investigation itself is testament to our concerns that the local exchange carriers maintain a healthy presence in these markets. We are also cognizant of the carriers' concerns about possible detrimental effects of unrestrained dissemination of their cost information. At the same time, we do not have enough information at this time about the proposed nonpublic floors or about the effects of their disclosure, to support the findings which would be required by Gov't Code § 6255.

It would be acceptable to us to allow a local exchange carrier to request that nonpublic floors be established. If it does so, it should be very specific about the requested role of the nonpublic floor in implementation of pricing flexibility. More information is required before we can rule on whether nonpublic floors are lawful or in the public interest. In its request, a local exchange carrier should address both the lawfulness of its request and why nonpublic floors would be in the public interest. Other parties may, if they wish, challenge the confidential nature of the nonpublic floors or information underlying the nonpublic floors. We would address such requests on a case-by-case basis as they arise.

4. Protective Agreements for Cost Data

The ALJ asked parties to the settlement to provide the legal basis for the apparent presumption in the settlement that certain cost data and workpapers are proprietary. In their responses, parties are divided regarding whether the settlement's requirement that parties sign protective agreements to gain access to this information is based on a legal presumption that the information is proprietary.

GTEC states that there is a legal presumption that a person's or a company's information is entitled to confidentiality, and that any disclosure requirements come only from specific, duly enacted statutory authority. In its view, § 583 and G.O. 66-C recognize this legal presumption.

Contel presents a similar view that, when there is a claim that information is proprietary, the presumption should be in favor of confidential treatment. It states that a requirement that the local exchange carrier prove the need for confidential treatment should only be invoked if there is a challenge to confidentiality which has not been satisfactorily resolved by the parties pursuant to a confidentiality agreement. To do otherwise would waste Commission time, in its view. Contel concludes that G.O. 66-C and § 1040 of the Evidence Code authorize the claim of confidentiality contemplated by the settlement and that, absent an unresolved challenge to that claim, the Commission should give it effect.

The Smaller Independents also cite G.O. 66-C to support their claim that proprietary restrictions promote a fair competitive environment and reduce the opportunity for abuse of Commission procedures which protect public and business interests. They state that the interest in making information available is balanced with the interest in preserving confidentiality. They assert that access to such information by a competitor would create an unfair advantage to a nonregulated competitor whose own cost data are proprietary. By entering into protective agreements, competitors would be prevented from using the information for their own benefit. The Smaller Independents conclude that fair competition would be encouraged by equal treatment and proprietary protections for both regulated and nonregulated competitors.

In addition to citing G.O. 66-C, MCI references § 1060 of the Evidence Code and § 3426 of the Civil Code which, it asserts, recognize the public policy advantages inherent in according

confidential treatment to material when disclosure of such material would confer an economic advantage on persons other than the owner of the information.

Pacific takes quite a different view from GTEC, Contel, the Smaller Independents, and MCI, stating that the settlement does not specifically treat any cost data or workpapers as proprietary nor adopt or assert any presumption that any information is proprietary. In its view, in any case where information is provided and the utility states that the information is considered proprietary, any party may challenge the utility's assertion. Pacific submits that the burden would then be on the utility to demonstrate the proprietary nature of the information.

Roseville also disagrees with the ALJ's implication that the treatment of cost data and workpapers as proprietary within the terms of the settlement is based on a presumption that they are proprietary. In Roseville's view, the agreed-upon treatment is fair and reasonable, but does not affect the treatment of cost data and workpapers outside the scope of the settlement. Roseville states that the parties agreed to this general approach to expedite pricing flexibility rather than endure ad hoc procedures which could lead to undue contention and delay.

AT&T agrees with Pacific that, under the settlement, the burden to demonstrate the proprietary nature of the information would be, as now, on the local exchange carrier. AT&T states that the settlement does not expand the Commission's rules regarding proprietary data, since proprietary protection is routinely invoked for data responses, advice letters, and evidence submitted in hearings.

Of the settlement's opponents, Assemblywoman Moore alone took issue with the proprietary treatment of cost data and workpapers. She asserts that limiting access to this data to persons who have signed a protective agreement in a rate increase

case would violate §§ 454 and 455, which require the Commission to publicly hear and decide upon such increases.

Discussion

This issue has effectively been resolved by our discussion in the prior section regarding nonpublic floors. Parties disagree about whether there is a legal presumption that cost data is entitled to confidentiality, and whether the settlement's treatment of cost data is based on such a presumption. Neither of these points needs to be resolved at this time.

Roseville states that the parties to the settlement agreed on the general approach in which access to utility data is provided through protective agreements as a practical resolution of the issue. That is fine. However, as noted above, such an agreement does not abridge other parties' rights to request the data on other terms if they wish to do so. We will entertain any such requests if they arise, and deal with them on a case-by-case basis.

C. Rate Floors and Pricing Flexibility

The settlement provides for public or nonpublic floors, set at or above direct embedded costs or fully allocated embedded costs, at the local exchange carrier's discretion. The settlement does not provide for simultaneous public and nonpublic floors for vertical services, but allows both a nonpublic floor and a higher public floor for centrex and high speed digital private line services. The related issues raised by opponents of the settlement center around the proposed levels of the rate floors and how they would be implemented.

1. Levels of Rate Floors

Many of the parties opposed to the settlement take issue with the settlement's provision that rate floors be based on direct or fully allocated embedded costs. DOD/FEA characterizes both direct and fully allocated embedded costs as "economic shackles" which would "almost certainly" prevent the local exchange carriers

from competing for customers. It believes that both types of embedded costs are well above current economic costs and that their use for pricing purposes is contrary to the Commission's own position in the OII that incremental costs should be used.

On the other hand, CCTA and TURN assert that prices should be at or above fully allocated embedded costs. The position of CCTA is that use of direct embedded costs would cause basic services to subsidize the services covered in the settlement. CCTA argues that a competitor must be able to charge rates which cover its administrative costs in order to survive, and that the local exchange carriers should similarly be required to charge rates which include their administrative costs. In its view, effective competition will never develop if local exchange carriers are allowed to shift administrative costs away from their competitive services. CCTA argues that the Commission has a duty to protect the ratepayer from cross subsidizing competitive services and to allow fair competition for competitive services. It concludes that the settlement fails on both of these crucial points.

TURN recognizes that direct embedded or even incremental costs might be a logical cost floor if the local exchange carriers were facing competition for these services. However, TURN believes that application of such "textbook economic theory" would be flawed here for several reasons. Residential customers would be required to carry a greater load of common costs which, in TURN's view, should be shared equally. Further, TURN states that there is no evidentiary record documenting the extent or even the existence of competition for these services which would justify "competitive" pricing. Finally, TURN asserts that there is no reliable cost data available at this time upon which to base such price changes. It charges that parties must either use faulty cost data formulated over the past year or two or, where there are gaps, provide new embedded cost estimates. TURN complains that the settlement gives no direction as to how embedded costs should be calculated. TURN

argues that the implementation provisions in the settlement afford other interested parties little opportunity to contest the validity of the local exchange carriers' cost estimates and sees the fact that no mechanism is provided for raising adopted floors should costs rise as a serious failing of the settlement.

Echoing TURN's concerns regarding the accuracy of existing cost estimates, CACD recommends that any adopted rate floors should be set above embedded cost estimates, perhaps by 10 percent or more. It asserts that direct and fully allocated embedded costing methods should be more clearly defined and further that the Commission should specify when direct or fully allocated costs should be used, rather than allowing the local exchange carriers discretion in this matter.

CACD also remarks that allowing a local exchange carrier to drop its rates to direct or fully allocated embedded costs in one step does not seem to fit the strategy of "take small steps and monitor the results" stated in the OII at page 10. TURN concurs, stating that if the Commission foregoes hearings in Phase I contrary as TURN's primary recommendation, then only small, carefully measured steps should be take in implementing initial pricing flexibility.

Parties to the settlement reply that direct embedded costs are not anticompetitive, agreeing with DOD/FEA that current costs of providing these services are well below direct embedded costs and that incremental costs are the proper economic price. Pacific and GTEC state that they entered into the settlement as a compromise, so that at least a limited degree of flexibility would become available. GTEC reports that the costing approach was a point of substantial controversy during the negotiations, in particular the lack of experience with incremental costs. GTEC expects that it can provide price reductions to its customers even with a direct embedded cost floor. Parties point out that other

costing methodologies including use of incremental costs may be considered in later phases of the investigation.

DRA argues that downward flexibility may result in increased rather than decreased contributions to basic rates, because additional sales may be stimulated by the reduced prices. It recognizes that if demand is not elastic then downward pricing flexibility may result in lower revenues, as contended by TURN. However, it concludes that local exchange carriers have a self-interest to not reduce prices in such situations, since they would bear the risk of such losses.

Parties to the settlement also argue that the procedures in the settlement for establishment of the floors give interested parties full opportunity to review and comment on the cost data. Interested parties can review and protest price floor proposals if they are not satisfied with the cost studies or other data in the filings.

In response to CACD's recommendation that a cushion be built into price floors, Pacific and GTEC assert that this would be unnecessary and inappropriate, pointing out that there is always some degree of uncertainty with any process where cost estimates are required. They believe that the local exchange carriers and CACD can make reasonably accurate cost determinations. The cost support provided by the local exchange carriers will be subject to complete review and any floor must be approved by the Commission. Further, they assert that direct or fully allocated embedded costs are conservative costing measures which already provide assurance that prices will be above incremental costs.

Regarding CACD's request for clear definitions of the costing procedures, some parties to the settlement reply that the Commission and the parties have enough experience with these costing methodologies that they are now reasonable benchmarks. However, GTEC agrees with CACD that there should be mutually accepted definitions, and proposes the Price Waterhouse definitions

included as part of Pacific's testimony submitted in Phase I. GTEC is confident that acceptable definitions can be agreed upon by the parties and that fine tuning of the application of such definitions can occur on a case-by-case basis if need be. Pacific states that the parties to the settlement did not see a need to incorporate specific conditions under which direct or fully allocated embedded costs should be used and that CACD has not set forth any rationale for such a requirement.

DRA asserts, contrary to CACD's suggestion that an immediate move to embedded cost pricing may be too large a step, that the overall framework for rate bands established in the settlement is a conservative, small step. It believes that the resulting lower rates would benefit consumers and serve economic efficiency objectives as long as rates are at or above costs. Pacific similarly replies that the flexibility provided by the settlement is extremely limited and is consistent with the intent of the OII. Pacific emphasizes that the Commission must specifically approve any proposed caps and floors and that subsequent notice of price changes within the preapproved band would then be merely an administrative function.

Discussion

While recognizing that incremental cost pricing may be the economic ideal, we find that the settlement's provisions that floors be based on fully allocated or direct embedded costs are acceptable as a practical alternative, at least until incremental cost methodologies are better developed. The settlement does not require that floors be set equal to the embedded cost estimates, and we caution that there may be reasons why the Commission would choose to set the floors somewhat above these estimates.

We share some parties' concerns regarding the reliability of cost estimates. Another factor is the intended role of the floor. For public floors, the local exchange carriers appear to want flexibility to subsequently set rates anywhere between the cap

and the floor upon notice without further justification needed. The role of nonpublic floors is not clearly defined in the settlement, however. The size of the resulting rate bands is also an issue in setting the floor. The local exchange carriers' floor proposals will be subject to scrutiny by all parties and to approval by the Commission prior to implementation. We believe that questions regarding reliability of cost estimates and, if relevant, the implied band size are best examined in the context of a specific utility proposal. These factors may well militate against setting the floor prices equal to embedded cost estimates.

We will review carefully the cost data submitted for each service and will decide, on a case-by-case basis, whether the floors should be set equal to the embedded cost estimates or somewhat higher. We note that a relatively small rate band in the spirit of the Observation Approach developed in D.87-07-017 may be most appropriate, as suggested by CACD, as a practical solution to ensure against anticompetitive pricing without the necessity of protracted hearings hammering out more precise cost estimates.

2. Implementation of Floors and Pricing Flexibility

Depending on the service and the type of pricing flexibility chosen by the local exchange carrier, the settlement proposes different procedures for implementing the rate floors and subsequent pricing flexibility. The settlement's general approach to implementation of pricing flexibility is as follows.

If the local exchange carrier chooses to use a public floor for a service, it first submits an advice letter proposal including the proposed floor(s) and initial rates to CACD with notice to all parties. Once CACD is satisfied with the proposal, the local exchange carrier may then file its advice letter formally, with service of the advice letter on all parties. Comments and reply comments would be allowed. A Commission resolution would be required for approval of the public floor and its reflection in the tariff schedules.

Once a public floor is in place, the local exchange carrier would be allowed to change actual prices between the cap (prices in effect at time of approval of the settlement or as otherwise determined by the Commission) and the floor simply by sending a letter to CACD, which would place the letter in that local exchange carrier's advice letter binder, and notifying its customers. The notice period required would depend on the service and whether the rate change is an increase or a decrease.

If a local exchange carrier wishes to implement a nonpublic floor, a similar procedure would be followed. The parties chose the term "flexible pricing letter" to describe the procedure. The local exchange carrier would submit a flexible pricing letter proposal to CACD with notice to all parties, followed by a flexible pricing letter served on all parties. Comments and reply comments would be allowed. A Commission resolution, which would not state the nonpublic floors, would be required to approve the nonpublic floors.

The requirements for changing a rate when a nonpublic floor has been approved are more stringent than when there is a public floor. The local exchange carrier could only request such changes through the standard advice letter procedure in G.O. 96-A.

The settlement also provides that a local exchange carrier may choose to have both a nonpublic floor and a higher public floor for centrex and high speed digital private line services, with each established as described above. In that situation, the existence of a nonpublic floor would not affect the manner in which rate changes could be implemented. Rates could only be set between the cap and the public floor.

The local exchange carriers could initiate establishment of rate floors and pricing flexibility for vertical services and centrex services immediately after Commission approval of the settlement. However, this process could not begin for high speed digital private line services until after a Commission order in the

supplemental rate design proceeding restructuring these tariffs. Alternatively, the local exchange carriers could initiate the process so that the new rates could be effective by January 1, 1989. (The settlement provides that local exchange carriers which receive pricing flexibility must address the issue of a comparable element for centrex and PBX tariffs in the supplemental rate design proceeding; carriers could also propose centrex loop deaveraging in that proceeding. However, pricing flexibility for centrex services would not be delayed for this purpose.)

After initial establishment, changes in either a public or nonpublic floor could be proposed by the local exchange carrier using the same procedure as for initial establishment, i.e., an advice letter or flexible pricing letter. The settlement does not provide for any changes in the rate caps from those in place at the time the settlement is approved. Pacific notes in response to a CACD query that such changes could be made following already-existing procedures in rate cases.

The assigned ALJ asked the parties to address whether G.O. 96-A should be modified to accommodate the revisions to advice letter procedures proposed by the settlement. She also inquired why the term "flexible pricing letter" is used rather than "advice letter" in establishment of nonpublic floors.

CACD is concerned that the letter to CACD informing it of rate changes when there is a public floor in place would not effect revisions to the tariff schedules. In its view, there may be confusion even if the letter of notification is filed in the advice letter binder with the related tariff schedules. CACD fears that this deviation from established procedures could create a great chance that the local exchange carriers might inadvertently use obsolete tariff rates.

For centrex services and high speed digital private line services, the settlement provides that rate changes proposed by the local exchange carrier would be published in the Commission's Daily

Calendar. CACD expresses concerns that such publication could take too much space.

Comments of the Parties

The parties are in general agreement that G.O. 96-A does not require modification (except regarding special contracts, as discussed in a later section of this decision), noting that the Commission has authority to order procedures for specific filings different from G.O. 96-A's procedures. While some parties state that the Commission may wish to modify G.O. 96-A to reflect the terms of the Phase I settlement, others believe that such modifications could be premature at this time until further experience with the settlement is gained and Phase II and Phase III are completed.

The parties offer several explanations of the differentiation between advice letters and flexible pricing letters in the settlement. Some parties point out that the flexible pricing letter is a procedure for prereview of costs, not a request for a change in a tariffed rate or rate band. According to other parties, the main reason for the distinction is that the flexible pricing letter is confidential and proprietary. Other parties simply contend that the flexible pricing letter is not intended to be an advice letter and that its characterization as such would be unnecessary and inappropriate.

DRA submits that there is no need to change the tariff schedules when rates are changed, because the rates will be within the tariffed cap and floor. In its view, the letter of notification suffices to inform interested parties of the changes in rates. Taking a different view, Pacific states that it intends to file an update of its tariff schedule when it notifies CACD of a rate change within the approved rate band. GTEC similarly replies that it would be agreeable to submitting revised tariff sheets for filing in this circumstance.

TURN argues that the advice letter process, including the suggested variations thereof, is a totally inappropriate mechanism for modifying price flexibility rate bands. In its view, the local exchange carriers will eventually seek upward flexibility above the cap and downward flexibility below embedded costs down to incremental costs. TURN asserts that the advice letter process does not command the necessary amount of scrutiny for changes with such far-reaching impacts. TURN recommends that the carriers be required to file applications rather than advice letters to establish or change the rate bands. In its view, an application would provide greater detail than required by the advice letter process. Further, TURN states that interested parties generally have greater access to utility information and greater input into the final result through the application process.

In response to TURN, parties to the settlement state that the settlement does not allow upward flexibility beyond the cap or downward flexibility below direct embedded costs. DRA anticipates that such requests, if they occur, would be made through an application as TURN envisions. Pacific also points out that certain portions of the implementation procedure exceed G.O. 96-A requirements. For example, parties can receive price floor proposals prior to the advice letter filing, and have 30 days rather than the standard 20 days to comment on the proposals.

Deferral of the Supplemental Rate Design Proceeding

In D.88-08-024 issued on August 10, 1988, we deferred until after Phase II the supplemental rate design proceeding which had been planned to follow Phase I. This deferral runs contrary to the expectation in the settlement that a comparable element for centrex and PBX tariff schedules and centrex loop deaveraging would be considered and that tariff schedules for high speed digital services would be restructured in the supplemental rate design proceeding, with private line pricing flexibility and competitive

entry delayed until the restructured private line tariff schedules are approved.

In a Joint Assigned Commissioners' Ruling dated July 11, 1988, Commissioner Vial and Commissioner Wilk proposed a package of procedural changes for the investigation as well as for Pacific's and GTEC's ongoing general rate cases. Part of their proposal was the deferral of Pacific's supplemental rate design and consolidation with comparable rate design efforts for GTEC. The Joint Ruling recognized that this deferral would be inconsistent with the Phase I settlement. The Joint Ruling allowed parties to comment on the overall restructuring proposal and specifically asked parties to comment on a DRA recommendation, made in a motion filed in Pacific's general rate proceeding in which DRA requested deferral of the supplemental rate design proceeding, that the centrex and private line rate design issues planned for the supplemental rate design proceeding be considered instead in separate applications or advice letters. Parties' comments on the Joint Ruling were filed by July 28, 1988.

In its comments on the Joint Ruling, DRA elaborates on its earlier recommendation. It now recommends that the Commission order Pacific to file, by September 15, 1988, new private line tariff schedules which restructure and provide pricing flexibility and that a workshop on the tariff filing be held on October 3, 1988. Participants in the workshop could then provide recommendations to the Commission by October 31, 1988. If Pacific does not file its tariff schedules providing for pricing flexibility on or before September 15, 1988, or does not comply with the spirit and intent of the Phase I settlement, DRA recommends that the Commission move to open entry in high speed digital private line markets on January 1, 1989 even if Pacific's private line tariff schedules are not at that time changed to permit pricing flexibility. Recognizing that this would be contrary to the provisions of the settlement, DRA states that the

Commission would have to take appropriate procedural steps to implement open entry without pricing flexibility. It concludes, however, that such action would be fully consistent with the intent of the settlement.

None of the parties which joined in the settlement takes the position in its comments that deferral of the supplemental rate design proceeding, which would prevent the Phase I settlement from being carried out exactly, would require the settlement to be scuttled. To the contrary, each party either supports DRA's proposed implementation of the rate design changes in the settlement or recommends other alternatives which, in its view, would effect the intent of the settlement. Pacific agrees with DRA that separate applications or advice letters would be appropriate. GTEC states that the rate redesign contemplated by the Phase I settlement could be accomplished for GTEC within its pending rate case, with the proceeding consolidated with Pacific's comparable proceeding for this limited purpose if desirable.

AT&T, in a response to DRA's motion, first recommended that a prehearing conference be held in the investigation to establish a framework for addressing the rate restructuring. In its reply to the Joint Ruling, however, AT&T now believes that, in order to expedite the process further, a filing date for the local exchange carriers to propose new tariff schedules should be set and hearings scheduled immediately so that the new service elements could be available by January 1, 1989. AT&T submits that separate applications or advice letters would unnecessarily extend the time needed to implement the proposals and would raise the potential for only limited participation by interested parties.

MCI agrees with AT&T that requiring the filing of separate applications might unnecessarily prolong the resolution of the issues. MCI also expresses concern that use of advice letters might not grant interested parties sufficient procedural and substantive protections. On balance, MCI concludes that the

Commission should require the local exchange carriers to file advice letters by September 1, 1988, and should specifically provide for hearings on those advice letters in the event of any protest. Such hearings should be scheduled in time for the Commission to render a final decision by the end of the year.

BAT recommends that the Commission order Pacific to file, as soon as possible, an advice letter implementing, at a minimum, the unbundling of high speed digital private line tariff schedules. In BAT's view, these tariff changes would be limited in scope and comparatively easy to accomplish. BAT recommends that Pacific and GTEC file further proposals to deaverage these tariff schedules and implement pricing flexibility, as provided by the settlement, in either a separate application or a separate advice letter filing since, in its view, these changes could be far more complex and controversial than the unbundling portion of the restructuring proposed by the settlement.

Discussion

In the spirit of maintaining the integrity of the settlement to the extent possible, we concur with its overall procedural approach regarding implementation of pricing flexibility. It is reasonable for local exchange carriers to propose pricing flexibility for vertical services and centrex services through advice letters and flexible pricing letters as provided in the settlement.

Changes need to be made to the settlement, however, to comport with deferral of the supplemental rate design proceeding. Parties recommend various procedural alternatives that could be used to restructure tariff schedules for centrex and high speed digital services and provide pricing flexibility for high speed digital private line services. We are concerned that advice letters, suggested by MCI and others, may not be an adequate approach for such major tariff changes. Advice letters are intended, for example, for implementation of already-approved

Commission rate changes, changes in the conditions of service, and introduction of new services. CACD reviews an advice letter and prepares a resolution, if called for by G.O. 96-A, to place on the Commission's agenda. Parties may file protests, but advice letters have no assigned Commissioner, no ALJ, no hearings, and no forum other than written protests for parties to air concerns they may have.

At the same time, we see no apparent need for evidentiary hearings, and fear that our standard application process might unnecessarily delay completion of the private line modifications beyond the January 1, 1989 implementation date contemplated by the settlement. We conclude that an expedited application procedure similar to that adopted in Resolution ALJ-159 on June 15, 1987 for certain natural gas and electric matters should be used to restructure the tariff schedules for centrex and high speed digital services and implement pricing flexibility for high speed digital private line services.

Pacific and GTEC should file their complete proposals for private line services no later than September 20, 1988 to allow implementation by January 1, 1989. We will not impose filing deadlines for other carriers, nor for proposals to restructure centrex tariff schedules.

Following the procedure in Resolution ALJ-159, parties may file protests within 20 days after an application is filed in an expedited application docket. If a protest is received or if CACD so requests, the assigned ALJ would moderate a workshop where the local exchange carrier would address questions about the proposal and supporting cost data. The ALJ would then confer with the assigned Commissioner to determine whether the matter is sufficiently controversial to warrant a regular hearing process. If not, the ALJ would prepare a proposed Commission decision. The expedited application procedure is set forth in more detail in Appendix A.

It is our intent that this procedure will provide a forum conducive to open discussion among the parties so that resolution of the local exchange carriers' proposals can be resolved without resort to evidentiary hearings. Parties are reminded that the pricing packages resulting from the settlement are interim in nature and that ongoing changes in the regulatory structure, if warranted, will be developed in Phase II. We do not wish to see Phase I implementation bogged down in unproductive controversy. There is value in allowing speedy implementation of such limited flexibility so that experience can be gained prior to consideration of broader regulatory changes in Phase II.

We have no objection to the settlement's provision that rates may be changed through an expedited process with reduced notice requirements after a public floor has been established. Since all rates must be included in the tariff schedules pursuant to PU Code § 489, the local exchange carriers should attach updated schedules to the letters to CACD changing rates, as suggested by Pacific and GTEC. We also have no objection to use of advice letters to change rates when only a nonpublic floor is in place.

We share CACD's concerns that space in the Daily Calendar could be a problem, and see no reason to publish the actual proposed rates changes. For our administrative convenience, we propose that the settlement be modified in this respect. Under current procedures, all advice letters are noticed on the Daily Calendar. We would also provide that flexible pricing letters and letters to CACD notifying it of rate changes between caps and public floors be cited in the Daily Calendar as well. Parties could then ask the local exchange carriers for more information if they wish to do so.

We see no need to modify G.O. 96-A to incorporate the procedures adopted by this decision for implementation of the Phase I settlement. These changes are adopted on an interim basis. As this investigation proceeds, experience gained with these procedures will give guidance regarding whether they should be made

permanent. If appropriate, we may modify G.O. 96-A to incorporate these or other procedures once more experience is gained and we are more confident that the changes will be more longlasting.

D. Monitoring

The settlement would impose different monitoring requirements depending upon the service in question. A local exchange carrier would include details of its proposed tracking program in its advice letter or flexible pricing letter requesting pricing flexibility.

For vertical services, the local exchange carrier would be required to track on a monthly basis in-service and inward movement volumes, recurring and nonrecurring billings, and recurring and nonrecurring costs for each vertical service for which pricing flexibility is granted. The settlement states that this information shall be retained by the local exchange carrier for five years and shall be provided to the Commission and/or the Commission staff upon request.

For centrex services, the local exchange carrier would track on a monthly basis in-service and inward movement volumes and recurring and nonrecurring billings. The carrier would propose a method to track centrex costs in its advice letter or flexible pricing letter filing.

For private line services, each local exchange carrier is required to file the following data regarding high speed digital service tariffs modified pursuant to the settlement: revenues, costs, and information regarding the number and nature of service complaints. This information would be filed on a semiannual basis beginning 180 days following the effective date of tariff changes. Local exchange carriers which simply concur in the tariffs of other local exchange carriers would not be required to file the cost and revenue data, but would still have to report on the nature and number of service complaints.

CACD believes that monthly tracking results should be filed with CACD at least on an annual basis and that the first filing should have the same data for the year prior to implementation of rate flexibility.

TURN complains that monitoring receives little attention in the settlement. In its view, the Commission should require, at a minimum, that the costs of each service be developed, analyzed, and filed on a regular basis before the Commission even considers the proposed settlement. In addition, TURN believes that customer complaints should be systematically filed with the Commission in order to monitor any possible degradation of service. TURN notes that, in contrast to this settlement, the Commission established a monitoring plan for AT&T in I.85-11-013 first and is only now addressing the issue of how much pricing flexibility should be granted. A monitoring plan for AT&T was developed by all of the interested parties through several workshops. Under that plan, cost components and service complaints will be monitored on a quarterly basis and a survey will measure customer satisfaction. TURN concludes that, while the AT&T monitoring plan is not ideal, it offers considerably more than does this settlement.

Pacific submits that the settlement's monitoring provisions are sufficient to address CACD's concerns. Pacific notes that it may not be possible to provide prior-year information and states that requests for monitoring information beyond that required by the settlement can be pursued by CACD through data requests.

Since the pricing flexibility provided by the settlement is an interim measure, we do not believe that a modification to the settlement to require development of a monitoring program such as that requested by TURN is warranted. However, any data that may be potentially useful in evaluating Phase II proposals should be gathered. CACD should work with the local exchange carriers to

establish additional monitoring procedures, if needed, beyond those provided in the settlement.

E. Vertical Services

The settlement allows the local exchange carriers to apply for rate flexibility for the following vertical services:

Call Waiting
Call Forwarding
Busy Call Forwarding
Busy Call Forwarding--Extended
Delayed Call Forwarding
Three-Way Calling
Speed Calling
Intercom
Direct Connection
Call Restriction, except 976 blocking
Call Hold
Call Pickup

The terms and implementation of rate flexibility for vertical services are as described previously, i.e., tariffed rates may vary between a cap of current rates and a public or nonpublic floor (but not both) based on direct or fully allocated embedded costs.

No party's comments addressed any issue specific to vertical services. We find no reason to reject this portion of the settlement.

F. Centrex Services

The terms and implementation of rate flexibility provided in the settlement for centrex services are similar to those for vertical services, with a few exceptions. A more complex floor structure would be allowed, with a series of discounts rather than a single floor, to recognize different costs incurred by the local exchange carrier. The discounts may be based, for example, on the number of features, the number of centrex lines, the cost of loops, and the length of the contract. The discounts would be based on direct or fully allocated embedded costs, and could not allow the total price per line for the centrex service to fall below the sum

of the single-line business service rate and the multi-line End-User Customer Access Line Charge (EUCL). A local exchange carrier may choose to implement both a public and a nonpublic floor, with the public floor set above the nonpublic floor. Notice requirements are not as restrictive, in recognition of the facts that centrex customers tend to be more sophisticated and the market is likely to be more competitive.

In addition to tariffed rate flexibility, a local exchange carrier would be allowed to negotiate customer-specific service agreements within the established cap and a public floor. (If only a nonpublic floor is established, then the local exchange carrier cannot negotiate customer-specific service agreements.) The settlement provides that such customer-specific agreements would not fall within the guidelines for special contracts discussed later in this decision, and that they would be proprietary, as discussed elsewhere in this decision.

If pricing flexibility is granted for a local exchange carrier's centrex services, the carrier must also offer certain PBX options to customers as well. In measured rate exchanges, customers would be given the option to order either a PBX trunk, or single line business service plus Direct Inward Dialing (if the capabilities of such service meets the customer's needs). Further, local exchange carriers with centrex pricing flexibility are required to address in the supplemental rate design proceeding the issue of comparable elements for centrex and PBX customers.

Parties' comments relating to centrex services focus on the appropriateness of proprietary treatment of customer-specific service agreement, as well as broader issues such as use of public and nonpublic floors. These issues have been dealt with in other sections of this decision. We see no reasons to reject centrex-related portions of the settlement, except as discussed elsewhere in this decision.

G. High Speed Digital Services

1. Competitive Entry

The settlement would allow competition in intraLATA high speed digital private line services[5] and specifies that competitive carriers may provide multiplexing services for voice and/or data at the end user's premises as long as the transmission from or to the end user's premises is at 1.544 mbps or above. Competitive entry would be allowed coincident with the effective date of the unbundling and deaveraging of the local exchange carriers' tariffs for high speed digital services provided for by the settlement.

The settlement also addresses requests for intraLATA authority already granted or pending for WCI, BAT, and MCI. WCI's A.87-02-033 in which it requests statewide intraLATA high speed digital private line authority would be granted and restrictions on the existing intraLATA authority of BAT and WCI would be removed, so that such authority is not more restrictive than entry allowed under the settlement. MCI would also be allowed to provide interim interLATA Vnet service (a virtual private network service) to customers in addition to those specifically identified in its motion for interim authority dated September 18, 1987.[6]

The settlement describes conditions under which entry would be allowed. Carriers which are already certificated to provide interLATA services would not be required to file applications to receive separate authority to provide intraLATA high speed digital private line services, but instead could

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5 The settlement defines "high speed digital service" as service at 1.544 megabits per second (mbps) and above. An "intraLATA high speed digital private line" is defined as the dedicated connection of two or more end user premises within a LATA for the purpose of providing intraLATA nonswitched services.

6 We note that, since the settlement was signed, D.88-07-034 has granted MCI the requested authority.

commence service upon approval of tariff schedules filed by advice letter. Other potential carriers would have to comply with existing requirements to receive CPCNs. AT&T would be granted intraLATA pricing flexibility equal to that provided for local exchange carriers in the settlement. Carriers other than AT&T would be regulated in the streamlined fashion now accorded interLATA resellers.

The ALJ instructed parties to comment on the legality of expanding the authority of WCI, BAT, MCI, and other interLATA carriers as contemplated by the settlement, and questioned whether PU Code § 1001 would require separate applications by each carrier.

Comments of the Parties

CCTA protests that the settlement restricts competitive entry to only high speed services between end user premises. Its view is that, absent a strong factual showing to the contrary, competitive entry should be allowed for other services, e.g., data transmission below 1.544 mbps and private lines furnished to interexchange carriers or other intraLATA competitors. In particular, it is concerned that cable companies should be allowed to provide two-way low speed telecommunications services.

AT&T replies that some parties to the settlement, including AT&T, support competitive entry for lower speed private line services but that deferral of this issue to Phase III was a necessary concession to achieve an agreement. Its view is that such deferral does not unduly compromise the public interest. Taking an opposite view, GTEC states that it does not believe that any intraLATA competition is in the public interest, and that it withdrew its opposition to intraLATA high speed digital private line competition only as a "significant concession" in the context of the "delicately balanced" negotiations resulting in the settlement. Parties note that any potential competitor can apply separately for authority to offer services below 1.544 mbps, since the settlement does not address competitive entry for such services at all.

Regarding CCTA's comments about connections to interexchange carriers, Pacific stresses that the settlement provisions apply only to intraLATA private line services. They do not cover or affect an end user's existing ability to connect to an interexchange carrier's point of presence for completion of interLATA traffic. Pacific asserts that connection to an interexchange carrier's switch for intraLATA purposes would constitute the provision of intraLATA switched service, not intraLATA private line service, the subject of this portion of the settlement.

WCI states that the sole reason for its opposition to the settlement is the provision linking approval of A.87-02-033 to allowance of intraLATA entry for other carriers. WCI states that it is unwilling to stipulate to any delay in A.87-02-033.

Only parties to the settlement address the legality of the manner in which the settlement would expand competition in intraLATA high speed digital private line services. These parties offer differing viewpoints regarding the applicability of PU Code § 1001, which states in relevant part as follows:

> "No...telephone corporation...shall begin the construction of...a line, plant, or system, or of any extension thereof, without having first obtained from the commission a certificate that the present or future public convenience and necessity require or will require such construction.
>
> "This article shall not be construed to require any such corporation to secure such certificate for an extension within any city or city and county within which it has theretofore lawfully commenced operations, or for an extension into territory either within or without a city or city and county contiguous to its...line plant, or system, and not theretofore served by public utility of like character, or for an extension within or to territory already served by it, necessary in the ordinary course of its business."

DRA notes that § 1001 does not require an application for an extension to contiguous territory not previously served by a public utility of like character or extension in the ordinary course of business. Without drawing conclusions, DRA states that the Commission must decide whether the expanded authority allowed by the settlement is an extension for which further certification is required.

Pacific cites, on the other hand, the portion of § 1001 which provides that a telephone corporation need not obtain a CPCN for an extension within territory already served by it. Pacific concludes that if a carrier is already lawfully providing services within the territories within which it seeks to provide intraLATA high speed digital private line services, it does not need to make a CPCN application.

Along this same line, AT&T states that § 1001 does not require that a company file a separate application to have a service restriction removed. AT&T stresses that WCI, BAT, MCI, and other interLATA carriers already have authority from the Commission to operate in California. Since the Commission explicitly stated in the OII that the current restrictions on intraLATA authority would be addressed in this investigation, AT&T's view is that, to the extent that parties have determined that the restrictions should be lifted, the Commission can determine that the settlement is in the public interest and remove such restrictions at this time.

BAT and US Sprint largely mirror AT&T's views in this matter. BAT recognizes that § 1708 may require a hearing before the Commission may modify earlier decisions, but believes that the ALJ's requirement that any party which wants a hearing on the settlement must specify in its comments the particular issues it wants heard is aimed at satisfying the "opportunity to be heard" portion of that statute.

MCI highlights the settlement's proposed treatment of MCI's Vnet service. Since that issue has been mooted by

D.88-07-034, MCI's position is not detailed here. MCI also states that the Commission clearly has the authority to remove restrictions imposed on WCI and BAT by approving the settlement. MCI asserts that in D.84-06-113 the Commission determined that the public interest would benefit from intraLATA competition for digital high speed private line services. It concludes that no new applications should be required to effectuate what it terms a basic policy decision made by the Commission in D.84-06-113 and ratified by the parties in the settlement.

Of the commenting parties, GTEC alone states that § 1001 could possibly require a new filing by most interLATA carriers to gain the intraLATA authority discussed in the settlement. It points out that WCI and MCI have proceedings pending in which the terms of the settlement could be recognized. GTEC states that adoption of the settlement would, in effect, result in the withdrawal of GTEC's and Pacific's protests to WCI's A.87-02-033. In GTEC's opinion, the settlement would have a similar effect regarding MCI's pending Vnet application. Since BAT and the other interLATA carriers have no comparable proceeding presently pending, GTEC concludes that they may have to file applications to modify their present authority. Citizens suggests that, if carriers are required to submit separate applications, an expedited procedure for considering such applications should be adopted for carriers which do not request authority in excess of that contemplated by the settlement.

Discussion

It was our intent that competition for all private line services be addressed in Phase I. However, as D.88-08-024 suggests, we believe that reassessment of the broader regulatory framework for local exchange carriers is a more pressing matter at this time. Given our limited resources, we conclude that deferral of generic consideration of competitive entry into private line services not covered by the settlement is in the public interest. This issue will be revisited later in this investigation.

Parties have presented two basic arguments in support of the settlement's provision that an interexchange carrier may provide intraLATA high speed digital private line service without filing a separate application for an intraLATA CPCN. Some argue that this falls within an exemption from CPCN requirements delineated in § 1001. Others state that the Commission can simply modify existing restrictions placed on the carrier's CPCN.

We will look at the exemptions from CPCN requirements cited in § 1001 in turn. A carrier's provision of intraLATA private line services is clearly not "an extension into territory...contiguous to its...system...and not theretofore served by public utility of like character." Nor would it be "an extension...necessary in the ordinary course...of business," since the business of interexchange carriers is interLATA (and often interstate) telecommunications. The only remaining exemption is for "an extension within any city or city and county within which it has theretofore lawfully commenced operations." We do not believe that this exemption would apply to a carrier's operations which have not yet been authorized.

Other parties state that the Commission can simply modify the existing CPCNs to expand the authority granted to include intraLATA services. A review of the procedure by which interexchange carriers have obtained intrastate operating authority is helpful in evaluating such a position. In their applications for CPCNs, the carriers typically requested authority to provide only intercity or, if after divestiture, interLATA telecommunications services within California. Generally, they did not request authority to provide intraLATA services.

PU Code § 1005(a) covers actions the Commission may take *in response to an application for a CPCN:*

> "The Commission may...issue the certificate as prayed for, or refuse to issue it, or issue it for the construction of a portion only of the contemplated...system, or extension thereof, or for the partial exercise only of the right or privilege, and may attach to the exercise of the rights...such terms and conditions...as in

its judgment the public convenience and necessity require..."

We conclude that expansion of authority beyond that requested in an application for CPCN would run counter to § 1005.

We note that this situation is quite different from an interexchange carrier's request to commence a new interLATA service within the scope of an existing CPCN. Then, a request for approval of tariffs through an advice letter filing is usually sufficient.

In conclusion, we agree with GTEC that § 1001 requires a separate application by an interexchange carrier to expand its authority to allow provision of intraLATA high speed digital private line services.

Citizens suggests an expedited procedure for consideration of such applications if they are required. We do not believe that specific provisions for expedited treatment are needed. Adoption of the settlement would authorize intraLATA competition in high speed digital private line services. That issue will not require relitigation for each application. As a result, we contemplate that carriers' applications for authority to provide intraLATA high speed digital private line services within the scope of the settlement will be processed quickly.

The settlement provides that WCI's A.87-02-033 would be granted concurrently with the allowance of intraLATA entry for other carriers. Adoption of the settlement would not grant WCI's requested authority since there were hearings in that application and the case is subject to the requirements of PU Code § 311. However, we are certainly prepared to take the settlement's provisions into account in reaching a decision in that case. (We note also that the settlement may affect C.87-07-024, which has been consolidated with this investigation.)

The settlement also would remove restrictions on the existing intraLATA authority of BAT. Consistent with our conclusions that interexchange carriers must file separate applications for expansion of their authority, we cannot approve

this portion of the settlement absent an application from BAT requesting a new CPCN or a modification to its existing CPCN.

Finally, the settlement would expand MCI's interim Vnet authority. As noted earlier, D.88-07-034 has made this portion of the settlement moot:

The settlement provides that intraLATA competition would be authorized coincident with the effective date of the unbundling and, if requested by the local exchange carrier, deaveraging of its tariffs for high speed digital services. As discussed elsewhere in this decision, we provide that changes to the tariff schedules for high speed digital services shall be proposed through an expedited application docket. It is our intent that such changes for Pacific and GTEC become effective by January 1, 1989. We do not intend to allow delay in such proceedings to delay the effectiveness of competitive entry. Assuming that parties to the settlement accept the modifications we make in the settlement, potential competitors may file applications for CPCNs covering intraLATA high speed digital private line services as soon as they wish after the modified settlement is made effective. It is our intent to coordinate the effectiveness date of any authorization granted with the effectiveness of changes in the local exchange carriers' tariff schedules.

Other than overall opposition to the settlement in its entirety, no party filed comments opposing the allowance of competitive entry for intraLATA high speed digital private line services. We find that, as part of the overall settlement package and with the modifications imposing separate application requirements for already certificated interexchange carriers, this portion of the settlement is acceptable.

2. Restructure of High Speed Digital Services

The settlement requires that each local exchange carrier restructure its tariff schedules for intraLATA high speed digital private line and special access services. The restructured offerings must contain a common element for service from an end

user's premises to the local exchange carrier's central office (the end user-to-CO link) which is priced the same in both private line and special access tariffs. The special access tariff must also provide a distinct element for service from the central office to an interexchange carrier's point of presence (the CO-to-POP link) which is priced at fully allocated or direct embedded cost. The local exchange carriers may propose a simultaneous rate increase on a surcharge basis to offset any rate reductions authorized for the end user-to-CO link and the CO-to-POP link.

In addition to this mandatory restructuring, a local exchange carrier may also propose to deaverage rates for intraLATA high speed digital private line and special access services. The local exchange carrier may also propose to make its interLATA special access tariffs consistent with its new intraLATA special access tariffs.

Currently, smaller local exchange carriers concur in the private line and special access tariff schedules of Pacific and GTEC. The settlement allows such carriers to propose restructuring their own tariffs, concur in the deaveraged tariffs approved for Pacific and GTEC, or continue to use existing averaged tariffs. The settlement specifies that if Pacific and GTEC implement deaveraged tariffs, they must retain existing averaged tariffs which may be applied by the smaller local exchange carriers.

Under the settlement, no pricing flexibility would be permitted for analog private line services or for any special access services at this time. These issues, along with intraLATA competition for analog private line services and issues of whether and how to merge private line and special access tariffs would be addressed no later than Phase III of this investigation.

The ALJ asked whether customers should be notified of rate increase proposals made to offset rate reductions in the high speed digital services tariffs. She also raised concerns about possible "tariff shopping" between high speed digital private line and special access tariffs, since pricing flexibility would be

allowed for private line services but not for special access services. CACD similarly inquires about possible price discrimination problems which might arise due to this difference in treatment of the two services.

CACD also expresses concern that maintenance of two sets of tariffs by Pacific and GTEC (one averaged, the other one deaveraged) with only the deaveraged set applicable to their own subscribers and where smaller companies may concur with either set could be confusing and potentially lead to misapplication of the tariffs.

Comments of the Parties

CCTA objects to the restructuring and deaveraging of high speed digital private line and special access services, as well as to pricing flexibility with floors based on direct embedded costs, on the grounds that the resulting price reductions would work to eliminate the social purpose of the current above-cost pricing for these services. It speculates that interexchange carriers may have endorsed the settlement simply because of the promised reductions in the CO-to-POP link in the special access tariff. CCTA contends that it is improper to deaverage rates for access services when, as here, competition will not be allowed and such deaveraging will result in rate increases for other users. It urges the Commission to reject the settlement on these grounds and reschedule hearings to determine how to link pricing flexibility to the introduction of competition.

Pacific responds that these provisions of the settlement will help the local exchange carrier preserve subsidies, not erode them, because they will discourage uneconomic bypass. It states that interested parties will have a full opportunity to address any specific deaveraging proposal after filing by the local exchange carrier. AT&T rebuts CCTA's statement that there is no competition allowed for special access services, stating that no such restrictions exist for access services and, in fact, the Commission has unequivocally allowed for alternative provision of access

services. GTEC comments that CCTA's seeming concerns about maintaining socially beneficial subsidies may in reality be a self-serving attempt to keep private line rates high so that local exchange carriers are at a competitive disadvantage.

Most parties agree that the increased potential for tariff shopping resulting from differences in treatment of private line and special access services is not of great concern. Several point out that interexchange carriers must purchase only special access services and thus cannot tariff shop. On the other hand, end users already have significant discretion to choose among the tariff schedules since the local exchange carrier simply accepts its customer's designation of the schedule under which a circuit is to be provided. Parties assert that the settlement does not greatly increase this incentive, since the only portion of high speed digital private lines for which pricing flexibility would be allowed is the link between central offices. Pacific and GTEC promise that they will endeavor to reduce the economic incentive to tariff shop in their proposals to restructure these tariffs.

AT&T and the Smaller Independents assert that pricing flexibility should be granted for special access as well as private line services in order to deter tariff shopping. MCI characterizes differences between the tariffs as discriminatory and urges that the Commission eliminate all differences. Several parties point out that pricing distortions may be short lived, since pricing flexibility for special access services and possible merging of special access and private line tariff schedules will be addressed no later than Phase III of this investigation under the terms of the settlement.

Regarding potential confusion due to retention of both averaged and deaveraged tariffs, GTEC sympathizes with CACD's concerns, stating that this outcome resulted from the give-and-take of negotiations. It believes, however, that any possible confusion can be mitigated or eliminated by accurate tariff administration. GTEC states that the local exchange carriers might consider adding

some precautionary advisory language to the tariff sheets in question.

Regarding notice of the proposed rate increases, parties generally state that a local exchange carrier should notify customers when it proposes the rate design changes in the supplemental rate design proceeding. Parties note also that Pacific's customers have received notice of its rate design proceeding. Further, all local exchange carriers' customers have received bill inserts outlining the scope of Phase I of the investigation. The Small Independents and AT&T note that there would be no aggregate revenue requirement increase, but a shift from private line and special access tariffs to other services.

Discussion

CCTA opposes pricing flexibility and unbundling in the absence of competitive forces. However, there are benefits which accrue from movement toward cost-based pricing even in the absence of immediate competitive threat, e.g., more efficient use of the telecommunications network.

CCTA states that it is concerned about lost contribution due to the rate restructuring proposed in the settlement for high speed digital services, which would allow the CO-to-POP link in special access tariffs to be based on embedded costs and would also allow pricing flexibility for portions of private line services, with floors similarly based on embedded costs.

We believe that CCTA's concerns about lost contribution are best evaluated and dealt with in the context of specific proposals to be tendered by the local exchange carriers. We have already discussed elsewhere in this decision our own concerns in this regard, and have stated that while accepting the concept of cost-based floors, we expect to take into account the accuracy of underlying cost data and the size of potential price changes in establishing the extent of pricing flexibility allowed. In addition to these factors, the provision that local exchange carriers may request a rate surcharge to offset reductions in rates

for high speed digital services creates a third factor which might influence our approval of proposed restructurings. Since revenue from these services is a small percentage of total revenue, we expect that the proposed surcharge will be relatively small. However, we reserve the option of modifying a local exchange carrier's proposal on this basis, depending on the specifics of the proposal.

We note that, of all the pricing changes allowed by the settlement, only the reductions resulting from price changes in the end user-to-CO link and the CO-to-POP link would be offset by a rate increase, implemented on a surcharge basis. In response to an ALJ query, parties drew a distinction between these and other changes. These aspects of the restructuring of the high speed digital services tariffs would be mandatory under the settlement; parties concluded that the local exchange carriers should be compensated for resulting lost revenues. On the other hand, the other pricing provisions are discretionary; parties thought it best to leave the local exchange carriers at risk for revenue losses stemming from such changes. We have no objection to this division of the risk, on an interim basis. We will revisit in Phase II the issue of risk due to increased regulatory flexibility.

Parties have satisfactorily addressed the potential notice problem raised by the ALJ. While notice to some extent has already been given regarding Pacific's rate design proceeding and the local exchange carriers' proposals in Phase I, we conclude that additional notice should be provided of any surcharge proposals at the time that a carrier files its application in an expedited application docket.

Parties have also provided a useful discussion of the possibilities and perils of tariff shopping. It appears that the settlement provisions are not likely to worsen significantly the existing problem. However, the local exchange carriers should include in their applications a clear comparison of rates for comparable high speed digital private line and special access

service, along with a discussion of any perceived tariff shopping problem. Again, this is a problem best evaluated with regard to a specific proposal.

Finally, addition of precautionary advisory language to the tariff schedules, as suggested by GTEC, should be adequate to reduce the possibility of confusion due to maintenance of separate averaged and deaveraged rate schedules.

In conclusion, we see no reason to disagree with this portion of the settlement, other than the procedural changes detailed elsewhere which are necessitated by deferral of the supplemental rate design proceeding.

H. Special Contracts

G.O. 96-A requires that utilities receive prior Commission authorization before making effective any contract to provide public utility services under terms deviating from filed tariff schedules. Such special contracts are allowed only in unusual or exceptional circumstances. Section X of G.O. 96-A sets out the advice letter process for obtaining Commission approval of special contracts, and allows certain exemptions from the preapproval requirement.

In D.87-12-027 we granted a request by Pacific to allow special contracts to combine tariffed and nontariffed services, terms, and conditions. Such contracts are subject to Commission approval under the terms of G.O. 96-A. We also instructed CACD and Pacific to develop standardized filing requirements for advice letters requesting special contract approval, to be used pending further consideration in this investigation. The resulting contract guidelines which have been developed specify that the advice letter filings and the contracts are to be made public but that workpapers and supporting cost documentation are to be given confidential treatment. The guidelines require that contract prices be above fully allocated embedded costs and specify that certain tariffed local services (for example, residential subscriber service) cannot be included in special contracts.

The settlement would modify the interim guidelines developed by CACD and Pacific and would extend them to all local exchange carriers. One proposed revision is that only a contract summary, rather than the entire document, must be attached to the advice letter as a public document. The revised contract guidelines would also impose additional price restrictions on contracts for centrex services. For Pacific, the price could not go below the single line business rate plus the multi-line EUCL. For other local exchange carriers, the price could not go below fully allocated or direct embedded costs plus the multi-line EUCL. Further, upon customer request, the local exchange carrier would be required to offer PBX trunks at a rate determined by the same cost methodology used to determine the centrex line price.

The revised guidelines would permit local exchange carriers to enter into special contracts for high speed digital private line services only after pricing flexibility and intraLATA competition have been authorized. Such contracts would not be allowed to deviate from tariffed rates for the end user-to-CO portion of these services.

The settlement would modify Section X of G.O. 96-A to exclude telecommunications utilities, except under emergency conditions, from the provision which exempts government contracts from the preapproval requirement and allows service under such contracts to be at free or reduced rates. As a result, government contracts for telecommunications services would have to comply with the same pricing guidelines and preapproval requirements already applicable to contracts with nongovernmental entities.

Under the settlement, local exchange carriers would be allowed to submit proposals to modify the special contract guidelines in order to streamline contract review and tracking procedures and to implement costing methodologies based on direct embedded costs. The proposals may also request that additional services be offerable under contract and that contracts be permitted in a broader range of circumstances. CACD would hold

workshops within 30 days after a proposal is submitted. After the workshop, CACD would make recommendations to the Commission regarding appropriate guidelines. Parties would be allowed to comment on the CACD recommendations within 30 days of their issuance. Such guidelines would then be subject to Commission approval by resolution action.

In its comments, CACD reiterates its view that prices should be set somewhat above embedded cost estimates to allow for uncertainties in the estimates and to lessen controversy in the approval process. CACD is also concerned that the settlement may increase its workload and cautions that unless additional staff is provided the review and preapproval period for contracts could stretch out, thus exacerbating parties' primary objection to preapproval, which is that it takes too long.

CACD also asks for clarification regarding what is expected in the contract workshops. It believes that setting general tracking requirements would be ineffective, and recommends instead that tracking requirements be determined on a case-by-case basis. CACD does not believe that workshops would expedite approval of contracts, citing insufficient staff and inadequate documentation by the local exchange carrier as the two culprits generally responsible for delays in approval.

Comments of the Parties

DOD/FEA voices the most stringent objections to this portion of the settlement. In particular, it states that the proposed modification to Section X of G.O. 96-A would preclude local exchange carriers from consideration for most federal government contracts. According to DOD/FEA, removal of the current exemption of federal contracts from Commission preapproval requirements would run counter to federal procurement law, which requires that each party be bound by the conditions of the contract when signed. Federal agencies would thus treat any bid subject to preapproval as nonresponsive since the local exchange carrier could not be bound to its bid even if a contract is signed.

DOD/FEA further complains that the settlement's requirements prohibit the local exchange carrier from bidding its services based on marginal or incremental costs. It asserts that an embedded cost pricing requirement makes it unlikely that the local exchange carriers would be successful in a bid for a federal contract.

DOD/FEA contemplates that a local exchange carrier might submit its bid for Commission preapproval prior to finalizing a contract, so that it could then be bound by the preapproved bid. However, DOD/FEA states that in this situation the public advice letter, which would contain a contract summary, would allow a local exchange carrier's competitors to change their bids to be more competitive with the local exchange carrier. It concludes that the requirement that the advice letter be a public document is anticompetitive because it gives competitors valuable, detailed information about the local exchange carrier's provision of service. DOD/FEA further asserts that a competitor could protest the advice letter in order to delay approval beyond the required bid submission date.

In response, DRA recognizes that contract preapproval requirements may slow the responsiveness of local exchange carriers in bidding for government contracts. However, DRA sees this requirement as minimizing anticompetitive behavior because it eliminates the current favored status of government contracts and requires Commission review for cost coverage. It notes that the contemplated workshops could develop standard procedures and guidelines to speed Commission preapproval of contracts.

Responding to DOD/FEA's allegation that competitors could protest advice letters merely to delay their approval, Pacific notes that a protest does not require the Commission to delay approval of an advice letter. It cautions that the Commission and the local exchange carriers must be mindful of any misuse of Commission procedures for strategic, competitive reasons.

GTEC points out that the local exchange carriers agree with DOD/FEA on the issue of contract preapproval. Nevertheless, it states, this point was a major issue with some of the parties and was resolved as part of the overall negotiations. GTEC would be willing to pursue this issue further after approval of the settlement. If the settlement is adopted, GTEC suggests that DOD/FEA may also need to work with the Commission staff and the local exchange carriers to modify its contract processing procedures to mitigate some of its concerns.

API states that the settlement fails to address whether special contracts could be negotiated for services jointly provided by Pacific and GTEC. API submits that failure to allow special contracts for jointly provided services could severely undercut the utilization of contract pricing in the Southern California metropolitan area, where services are often provided jointly by Pacific and GTEC.

In their reply comments, Pacific and GTEC respond that the settlement, while not addressing joint services specifically, would not prevent joint service contracts assuming other criteria governing contracts are met.

In its own reply comments, API states that since the filing of its initial comments it has met with Pacific regarding Pacific's billing practices for services jointly provided with GTEC; however, it was not satisfied with the outcome of its meeting. API now contends that hearings are necessary to explore Pacific's intended billing practices for jointly provided services before allowing Pacific to engage in flexible pricing of such services.

Regarding CACD's suggestion that contracts should be set somewhat above embedded cost estimates, the parties reiterate their arguments put forth in response to CACD's similar position that rate floors should have a cushion built in. These arguments will not be repeated here.

Regarding CACD's concerns about the time delays which could be caused by expanding current contract preapproval requirements to include government contracts, DRA responds that, in its view, the only reasonable alternative to preapproval is post-approval. DRA believes that post-approval would present too much risk to ratepayers at this time since experience with contracts is very limited. On the other hand, GTEC states that post-approval would be appropriate and that this alternative can be explored after adoption of the settlement. Pacific comments that review of the contracts can be prioritized so as to avoid unnecessary delay.

DRA states that contract workshops are intended to allow parties to work out an acceptable method for using direct embedded costs for contracts. It further believes that refinement of a standard contract proposal format could simplify and expedite the contract review process. Pacific states similarly that a generally accepted set of guidelines would allow quick review of a contract. It reassures CACD that this portion of the settlement does not conflict with CACD's recommendation that tracking requirements be determined on a case-by-case basis.

Discussion

There are two aspects of the settlement's treatment of contracts which concern us; these are the imposition of preapproval requirements on government contracts and the automatic granting of confidential treatment to contracts, cost data, and workpapers. We have already discussed our inability to endorse blanket confidentiality of information regarding services covered by the settlement which has yet to be provided. Parties may challenge any local exchange carrier claim regarding proprietary information on a case-by-case basis. We also find that all contracts, not just contract summaries, must be filed with the advice letters, pursuant to § 489.

In light of our general perception that benefits will flow from expanded pricing flexibility, if properly crafted, we hesitate to impose additional restrictions on government contracts.

Based on DOD/FEA's comments, it appears that imposition of a preapproval requirement could exclude local exchange carriers from competing for contracts with the federal government, at least until federal procurement rules could be modified.

We do agree with the portion of the settlement that requires that government contracts be priced at or above fully allocated embedded costs. We see no reason to distinguish between government and nongovernment contracts in this respect.

We recognize that the settlement was the result of give and take among the participating parties and that the settlement is a balancing of varied and competing interests. Overall, we do not believe that the issue of preapproval of government contracts is of sufficient magnitude to warrant denial of the entire settlement. As a result, we are willing to modify G.O. 96-A as provided by the settlement to allow the modified settlement to become effective.

GTEC suggests that the federal government may be able to modify its contract processing procedures to avoid conflict with this new requirement. We encourage DOD/FEA to explore this possibility, and also urge California parties to consider any modifications to the special contract guidelines which might alleviate DOD/FEA's concerns.

CACD recommends that prices in contracts be some amount above embedded cost estimates. As long as the pricing guidelines are based on fully allocated embedded costs, there is less concern about underpricing of services provided under contract. However, the problem may become of greater concern if we approve use of direct embedded costs. We have already discussed CACD's position in the section regarding establishment of price floors, and similar logic applies here. We will look at the supporting cost data on a case-by-case basis to determine if the prices are reasonable, taking into account any questions about the accuracy of the cost estimates. If in the interim we adopt rate floors based on embedded costs for vertical services, centrex services, or private line services pursuant to the settlement, such floors may provide

useful guidance in assessing the reasonableness of prices in special contracts for these services.

CACD appears less optimistic than some of the parties regarding the usefulness of contract workshops. However, it appears that workshops could prove an appropriate forum for refining the current guidelines and developing direct embedded costing methodologies. We agree with this portion of the settlement. We note that procedurally it may be more advantageous to fold further consideration of contract guidelines into Phase II of the investigation. Local exchange carriers are free to make their proposals either in Phase II, consistent with D.88-08-024, or separately as contemplated by the settlement.

It is not clear to us whether API's concerns about billing for joint services raised in its reply comments are limited to special contract situations or apply to the cap-and-floor pricing flexibility provisions of the settlement. If limited to special contract situations, API should be able to clarify the local exchange carrier's intended billing procedure as it negotiates a contract. On the other hand, cap-and-floor pricing flexibility could raise some interesting issues if contemplated for jointly provided services. If a local exchange carrier proposes to implement pricing flexibility for any jointly provided service, it should clearly state this in its filing requesting such flexibility and should also explain how billing for such services would be performed.

I. Is the Settlement in the Public Interest?

A number of arguments regarding specific aspects of the settlement are discussed in prior sections of this decision, and we have concluded that certain modifications are necessary to make the settlement lawful and to alleviate certain procedural problems. This section focuses on more general issues raised by the parties which bear on whether the settlement, as modified, is in the public interest and should be approved.

Parties state in the settlement document that it is an equitable compromise that will reduce costs to ratepayers and avoid litigation. The parties entered into the agreement to avoid the expense, delay, and uncertainty of litigation, and submit that its approval would reduce the substantial burden which hearings would impose, and would allow the parties to concentrate their efforts on the continuing proceedings relating to a new regulatory framework for the telecommuncations industry in California. Further, they submit that the terms of the settlement would facilitate observation of the effects of additional competition and the flexibilities granted to the local exchange carriers.

The ALJ asked that parties to the settlement provide in their filed comments their individual views regarding why Commission adoption of the settlement would be in the public interest. A wide range of responses was received, many of which have already been discussed. Parties which did not join in the settlement were equally responsive in providing their views regarding why the settlement may not be in the public interest.

A number of parties which did not join in the settlement are concerned that consumer interests be protected. Consumers Union urges that consideration of the settlement be delayed until consumer safeguards are adequately considered. It submits that the local exchange carriers and DRA should meet with consumer and ratepayer groups to develop full consumer safeguards. Los Angeles concurs that adequate safeguards must be established to protect residential and other consumers as the revenue impacts of deregulation are realized in the future. Both TURN and Assemblywoman Moore express concern that the small ratepayer may be required to make up any revenue shortfall resulting from the pricing flexibility. In TURN's view, the Commission would convey a dangerous message to the local exchange carriers if pricing flexibility is permitted before a proper allocation of the resulting risk is made.

Regarding consumer safeguards, parties to the settlement stress what they see as significant safeguards built into the settlement. Pacific points out that the allowed flexibility is downward only, that the flexible pricing proposals can be reviewed by all parties and must receive Commission approval, and that the settlement includes extensive monitoring and tracking requirements. DRA states that it plans to devote a major portion of its Phase II filing to consumer safeguards. In its view, the settlement does not increase risk to ratepayers and includes several important consumer safeguards. In particular, DRA cites that the local exchange carriers bear risk for much of the potential revenue losses and that the embedded costs used in setting floors are a conservative measure of costs. GTEC joins DRA in emphasizing the safeguards inherent in the settlement, and similarly states that its Phase II proposal will contain specific proposals for insulating basic ratepayers from any revenue losses which GTEC might suffer in regard to services covered by the settlement.

Several parties express concern that the settlement does not address the Phase I questions specified in the OII. DOD/FEA asserts that these questions must be answered so that it is clear what the "rules of the game" are not only for the regulators and the regulated but also for the user. Los Angeles is concerned that major policy queries are being shunted aside, deferred, or simply ignored. TURN and WBFAA question how the Commission can ascertain which services are ripe for flexibility or determine the appropriate flexibility without first making an effort to assess the sustainability and level of competition.

Pacific replies that deferral of Phase I policy issues is appropriate, and that the settlement recognizes that Phase I issues and other issues slated for later consideration are interrelated. It believes that adoption of the settlement would promote a thorough examination of the relevant policy issues in subsequent phases of the investigation.

In response to TURN's view that competition should be a precondition of flexibility, CBCHA (the only end user group which joined in the settlement) states that it had a similar position going into the negotiations, but realized during the course of the negotiations that the flexibility being proposed is very limited and does not expose ratepayers to the risk of rapid rate increases. CBCHA is now convinced that the flexibility granted by the settlement deals appropriately with the bypass problem and in fact allows for an increase in revenue contribution from the services for which flexibility is allowed. CBCHA concludes that the settlement is in the public interest.

DOD/FEA contends that the settlement does not avoid expense or delay. Significant expenditures have already been incurred in preparing for hearing; further, at the time comments were filed, it appeared that hearings on the settlement itself might occur. Pacific replies that full evidentiary hearings, followed by a briefing schedule, possible oral arguments, and opening and reply comments on an ALJ's proposed decision would have increased parties' expense and also delayed resolution of the issues for a far greater length of time that did the settlement process.

Discussion

In evaluating the settlement, we are struck by the delicate balance of interests involved. All parties receive some benefits.

First, customers of basic residential and business services stand to benefit if the pricing flexibility allowed for competitive or potentially competitive services covered by the settlement succeeds in reducing uneconomic bypass and therefore allows continuation of significant contribution toward keeping basic rates low. Purchasers of the services for which flexibility is granted will also enjoy lower rates and a wider choice of service options from the local exchange carriers. And from a broader perspective, all ratepayers and society as a whole benefit

from the settlement's movement toward cost-based pricing and the resulting more efficient use of the local exchange carriers' networks.

It appears that safeguards in the settlement adequately protect basic ratepayers in light of the limited downward pricing flexibility granted. The adopted pricing floors will be based on embedded costs, with the local exchange carriers' cost estimates scrutinized before any flexibility is authorized. This provides reasonable assurance, in light of the practical difficulties involved in estimating incremental costs accurately, that rates for these services will not be subsidized to the detriment of basic ratepayers and potential competitors. We also believe that the sharing of revenue risks in the settlement, in which rates may be adjusted for revenue losses due to certain mandatory restructuring of high speed digital services tariff schedules but shareholders bear the risk of other revenue losses, is fair and equitable.

The settlement also provides benefits to the providers of telecommunications services. Local exchange carriers will be able to respond more readily and in a more focused manner to increasing competitive pressures and other changes in market conditions. Potential competitors also benefit from the competitive entry allowed for high speed digital private line services. We find that this simultaneous provision of pricing flexibility and loosened entry requirements will promote development of a viable competitive marketplace and is in the public interest.

Certain parties protest that the allowed competition does not go far enough, since competitive provision of low speed digital and analog private line services is not allowed. However, this quite controversial issue could require significant hearing time. It will be addressed no later than Phase III of the investigation. In the interest of proceeding with other, broader topics in the investigation, deferral of this issue is reasonable.

The parties to the settlement submit that adoption of the settlement would reduce the expense and delay associated with

litigation of Phase I issues and would prevent duplication of efforts between Phase I and Phase III, since Phase I was to address competition in non-toll services and Phase III was largely devoted to competition in toll and toll-related services. Under the settlement, the broad policy topics would be deferred until they could be considered for all potentially competitive services on a consolidated basis. Finally, the parties assert that the settlement allows parties and the Commission to focus attention and resources on the broader topics planned for Phase II and the supplemental rate design proceeding.

We do not believe that reducing litigation costs, in and of itself, is an adequate justification for a settlement in this proceeding. The entire structure of regulation for local exchange carriers is at stake here; we are willing to undertake hearings and incur expenses as needed to ensure that any changes to the regulatory framework are positive steps to make regulation more, rather than less, responsive to the needs of ratepayers, local exchange carriers, and potential competitors. Only in this way can we ensure an orderly development of the regulated telecommunciations industry in a way that provides benefits to society as a whole.

We are more receptive to the arguments that a speedy resolution of Phase I allows us to move on to the broader issues in Phase II. One of our primary intents in structuring the investigation as we did in the OII, with consideration given first to pricing flexibility for potentially competitive nontoll services, was that we saw a pressing need in this area. The settlement provides an acceptable solution which appears to meet the most urgent needs of the current market. While we had anticipated a more comprehensive resolution of issues in Phase I, the settlement puts something practical in place relatively quickly.

In the overall scheme, this may be a more desirable result than protracted hearings with the related briefs and ALJ

proposed decision. The local exchange carriers are given some needed flexibility on an interim basis, but the flexibility is limited enough so that precise determination of the extent of existing competition is not needed. Such broad, far-reaching questions are deferred for future consideration. The experience gained in implementing the limited flexibility will undoubtedly prove useful as we deliberate taking more permanent steps in Phase II and beyond.

In summary, we conclude that the settlement, with the modifications proposed in this decision, strikes a fair balance among the needs of diverse parties and would be in the public interest. The rewritten regulatory package, incorporating the modifications discussed throughout this decision, is contained in Appendix A.

Findings of Fact

1. Some of the parties in I.87-11-033 reached a settlement on Phase I issues, which DRA filed attached to a Motion to Adopt Settlement Agreement and Stipulation on April 1, 1988.

2. A number of parties in I.87-11-033 oppose adoption of the settlement.

3. The settlement would allow limited downward pricing flexibility for local exchange carriers' vertical services, centrex services, and high speed digital private line services and the restructuring of tariff schedules for centrex and high speed digital services.

4. The settlement would permit a local exchange carrier to negotiate proprietary customer-specific centrex service agreements.

5. The settlement would require proprietary treatment of all nonpublic floors, flexible pricing proposals, cost data, special contracts, and data responses related to the settlement.

6. The settlement would modify and extend interim guidelines for special contracts developed for Pacific to all local exchange carriers.

7. The settlement would allow competition in intraLATA high speed digital private line services, and would allow interexchange carriers to provide intraLATA high speed digital private line services upon approval of tariff schedules filed by advice letter.

8. Parties to the settlement intend that its terms be implemented on an interim basis pending resolution of broader regulatory issues in subsequent phases of this proceeding.

9. The signatories of the settlement stipulate to the terms of the settlement on the basis that all of the elements of the agreement must be adopted, without modification of any individual element of the agreement. The settlement provides that if the Commission imposes any modifications or conditions on the settlement, the terms shall not become effective unless the signatories agree in writing to accept the modifications or conditions.

10. Pacific's supplemental rate design proceeding was deferred by D.88-08-024.

11. Parties filed comments on the settlement by May 2, 1988 and reply comments by May 17, 1988.

12. A Joint Commissioners' Ruling asked for comments on the effect of deferral of Pacific's supplemental rate design proceeding on the settlement, and comments were filed by July 28, 1988.

13. Parties to the settlement which filed comments in response to the Joint Commissioners' Ruling recommend alternatives to the supplemental rate design proceeding which would effect the intent of the settlement.

14. It is widely recognized that centrex services face direct and active competition from PBX alternatives.

15. Commission-approved caps and floors would provide assurance that other ratepayers would not be harmed by negotiated centrex service agreements.

16. Advice letters have no assigned Commissioner, no ALJ, no hearings, and no forum other than written protests for parties to air concerns they may have.

17. Use of a standard application to request changes to the tariff schedules for high speed digital services might delay completion of these modifications past January 1, 1989.

18. Publication of proposed rate changes in the Daily Calendar could take up too much space.

19. The settlement provides that WCI's A.87-02-033 would be granted concurrently with the allowance of intraLATA entry for other carriers.

20. There were evidentiary hearings in A.87-02-033.

21. Under the settlement, a local exchange carrier could request a rate increase on a surcharge basis to offset any rate reductions authorized for the end user-to-CO link and the CO-to-POP link portions of high speed digital services.

22. Customers of basic residential and business services stand to benefit from the modified settlement if the allowed pricing flexibility succeeds in reducing uneconomic bypass and therefore allows continuation of significant contribution toward keeping basic rates low.

23. Under the modified settlement, purchasers of the covered services would enjoy lower rates and a wider choice of service options.

24. All ratepayers and society as a whole would benefit from the modified settlement's movement toward cost-based pricing.

25. Under the terms of the modified settlement, local exchange carriers could respond more readily and in a more focused manner to competitive pressures and other changes in market conditions.

26. Under the terms of the modified settlement, conditions of competitive provision of high speed digital private line services would be resolved in a manner acceptable to all parties.

Conclusions of Law

1. The parties which entered into the Phase I settlement should be allowed to indicate by a joint filing whether the

modifications to the settlement proposed in this opinion are acceptable to them.

2. Proprietary customer-specific centrex service agreements would violate PU Code § 489 and would not be consistent with the Public Records Act.

3. Customer-specific centrex service agreements must be filed with the Commission and kept open to public inspection.

4. As part of the modified settlement, it is reasonable to allow local exchange carriers to negotiate customer-specific centrex service agreements.

5. It is reasonable to exempt customer-specific centrex contracts from the G.O. 96-A requirement that Commission approval be obtained.

6. An agreement among some parties to not contest a local exchange carrier's request for proprietary treatment of certain information does not deprive other parties of their rights to request the information under the Public Records Act.

7. Use of an expedited application procedure similar to that adopted in Resolution ALJ-159 is reasonable to restructure tariff schedules for centrex and high speed digital services and provide pricing flexibility for high speed digital private line services.

8. Provision of intraLATA high speed digital private line services by an interexchange carrier is not exempt from the CPCN requirements of PU Code § 1001.

9. Expansion by the Commission of the authority of an interexchange carrier beyond that requested in its application for a CPCN would run counter to PU Code § 1005.

10. An interexchange carrier must request Commission authorization to provide intraLATA high speed digital private line services, pursuant to PU Code § 1001.

11. A.87-02-033 is subject to the requirements of PU Code § 311.

12. Customer notice should be provided if a local exchange carrier requests a rate increase to offset lost private line revenues.

13. Special contracts entered into under the guidelines adopted in the settlement must be filed with the Commission and kept open for public inspection.

14. The terms of the modified settlement in Appendix A to this decision would be reasonable and in the public interest if they are satisfactory to the parties which entered into the settlement.

15. In order to allow expeditious processing of the Phase I settlement, this order should be effective today.

INTERIM ORDER

IT IS ORDERED that:

1. Each party which entered into the Phase I settlement shall provide to the Division of Ratepayer Advocates (DRA) no later than September 5, 1988 a written acceptance or rejection of the Modified Phase I Settlement contained in Appendix A to this decision.

2. DRA shall file a response no later than September 7, 1988 in which it indicates whether the Modified Phase I Settlement in Appendix A is acceptable to all of the parties which entered into the Phase I settlement. DRA shall file with the Docket Office an original and 12 copies of the response, including the originals of all letters of acceptance or rejection of the Modified Phase I Settlement. The response shall comply with the applicable rules in Article 3 of the Rules of Practice and Procedure and shall have

attached a certificate showing service by mail on the assigned Administrative Law Judge and all parties on the service list established in Phase I of Investigation 87-11-033.

This order is effective today.

Dated AUG 24 1988 at San Francisco, California.

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

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

Victor Weisser, Executive Director

Modified Phase I Settlement

I. General Provisions

A. Applicability

This document is applicable to all local exchange carriers (LECs). The Commission may determine whether to continue or amend the procedures described herein in a subsequent phase of Investigation (I.) 87-11-033 or in the supplemental rate design proceeding.

B. Confidentiality Provisions

An LEC may request confidential treatment of advice letter proposals, flexible pricing proposals, nonpublic floor rates and charges, submitted cost data, and responses to data requests, and must substantiate such requests. The parties to the settlement (except the Division of Ratepayer Advocates (DRA)) must execute protective agreements to obtain this information.

C. Notice on Daily Calendar

Notice of advice letter filings, flexible pricing letter filings, applications in an expedited application docket, and letters to the Commission's Advisory and Compliance Division (CACD) providing notification of rate changes between caps and public floors will appear on the Commission's Daily Calendar.

D. Rate Flexibility

The rate flexibility described herein is authorized for, but not required of, all LECs. An LEC may file an advice letter (for public floors) or a flexible pricing letter (for nonpublic floors) to request rate flexibility for vertical services or centrex services, and may file an application in an expedited application docket to request rate flexibility for high speed digital private line services. (The expedited application docket procedure will also be used to restructure tariff schedules for centrex and private line high speed digital services, as discussed in Section III and Section IV of this document.)

Rates may vary between a cap, which is the rate in effect when the request for rate flexibility is approved unless further Commission order provides otherwise, and a floor. The LEC may request either a public or nonpublic floor, and may request both public and nonpublic floors for centrex and high speed digital private line services.

The cap, the tariffed rates and charges, and any public floor shall be filed with the Commission and included in the LEC's tariff schedules.

The provided cost support must be either a direct embedded cost or fully allocated embedded cost analysis, at the LEC's discretion. All floor rates and charges will be set at or above these costs.

To the extent that costing methodologies and/or cost data are relied upon in establishing pricing flexibility, the use of a particular methodology or cost data should not be construed to be a finding that the data or methodology is appropriate or sufficient for purposes of other proceedings or filings absent a Commission order explicitly adopting such methodology and/or costs.

If a local exchange carrier proposes to implement pricing flexibility for any jointly provided service, it shall clearly state this in its filing and shall explain how billing for such services would be performed.

The general procedures for advice letters, flexible pricing letters, and applications in expedited application dockets are set forth below. Any additional requirements unique to a specific service are included in later sections of this document.

1. Advice Letter Filings

Advice letter filings shall be used to establish pricing flexibility for vertical services and centrex services when public floors are requested, and for centrex services when both public and nonpublic floors are requested.

An LEC must submit an advice letter proposal containing the cap, initial rates or charges, floors, proposed tariff schedules, and cost support to CACD. Notice of submittal of the proposal shall be provided to all parties in I.87-11-033 at the time of submittal to CACD. Parties may request copies of the proposal and supporting cost data either before or after the submittal is made.

The LEC must respond within 5 working days to written or oral data requests by the Commission staff and to written data requests by other parties. Parties may request copies of data requests and responses either before or after the submittal is made.

After review, CACD will indicate to the LEC if the proposal is suitable for filing. If so, the LEC may file an advice letter, which must be served on all parties in I.87-11-033 in conformance with the provisions of General Order (G.O.) 96-A, Section III.G.1 - 4.

Parties may file comments or protests on the advice letter filing within 30 days of the filing. The LEC has 10 days to respond to comments or protests.

CACD will recommend to the Commission whether the advice letter should be approved. A Commission resolution is necessary for the revised tariff schedules to become effective.

2. Flexible Pricing Letter Filings

Flexible pricing letter filings shall be used to establish pricing flexibility for vertical services and centrex services when only nonpublic floors are requested.

This procedure is identical to that for advice letter filings, except that the term "flexible pricing letter" will be used. The Commission Resolution authorizing the cap and floor will not state the floor rates and charges.

If an LEC requests a nonpublic floor in either an advice letter filing or a flexible pricing letter filing, the LEC will detail the requested role of the nonpublic floor and will address both the lawfulness of its request and why nonpublic floors would be in the public interest.

3. Expedited Application Docket Procedure

Applications filed in an expedited application docket shall be used to establish pricing flexibility for high speed digital private line services and for restructuring of tariff schedules for centrex and high speed digital services.

An application, titled Expedited Application Docket, will be filed in original and 12 copies with the Commission's Docket Office. Each application will receive a separate number, preceded by the prefix "EAD."

The application shall comply with Rules 2 through 8, 15, and 16 of the Rules of Practice and Procedure (e.g., signature, verification, and format) and shall include proposed tariff schedules.

If an LEC proposes changes to tariff schedules for its high speed digital services, it shall include a comparison of rates for private line and special access services and a discussion of any perceived tariff shopping problems.

If the LEC requests pricing flexibility for high speed digital private line services, the application shall contain the cap, the initial rates and charges, and, unless confidentiality is requested, the floor rates.

Copies of the application shall be served separately on CACD, DRA, and Legal Division, and shall contain or have attached cost support and workpapers. Copies of the application shall also be served on all parties in I.87-11-033 and on anyone requesting such service. Unless the LEC makes a claim of confidentiality, the application shall contain the cost support and a statement that workpapers are available on request.

A workshop will automatically be set and noticed for the first Tuesday not less than 27 days after filing, or as soon thereafter as possible if this requirement would schedule more than one workshop for applications made in an EAD docket on the same day.

The application will be assigned to an administrative law judge who will act as workshop moderator and to a Commissioner.

Protests or comments may be filed 20 calendar days after the application is filed. Protests must request the opportunity to question the LEC about the application and must set out disputed issues of fact to be explored at the workshop. For protests that request evidentiary hearings, good cause for the hearing must be shown.

All other responsive pleadings (e.g., answers to protests and requests for further discovery) may be made either in writing before the workshop or orally at the workshop and, if necessary, argued at that time. The LEC shall respond within 5 working days to either written or oral data requests by the Commission staff and to written data requests by other parties. Parties may request copies of all data requests and responses.

The LEC shall produce a knowledgeable person to explain the application and answer questions about it at the workshop. The workshop moderator may accept written or oral statements by workshop participants. The moderator may also require the applicant to file any additional documentation or explanation necessary for the Commission to reach an informed opinion on the matter at issue.

Workshops will ordinarily be limited to a single day, and will be reported. Facts disclosed at the workshop are privileged. Except by agreement, they shall not be used against participating parties, before the Commission or elsewhere, unless proved by evidence other than that employed in disclosing such facts.

If there are no protests to the application and CACD does not request a workshop, the workshop will be cancelled and an ex parte order will be prepared and placed on the Commission's agenda.

At the close of the workshop, the moderator will confer immediately with the assigned Commissioner if it appears that the matter is sufficiently controversial to warrant the regular hearing process.

If the matter is ready for decision at the close of the workshop, it will be placed on the next public agenda and a draft decision will be prepared. Since no hearing has been held, no witnesses sworn, and no testimony taken, the proposed decision will not be circulated to workshop participants for comment prior to Commission action.

Rule 76.51 et seq. respecting compensation shall apply to the Expedited Application Docket.

4. Rate Changes

If an LEC has received approval of pricing flexibility, the LEC may change the rates or charges between the authorized cap and floor as follows:

Public Floor. The LEC shall provide a letter to CACD, with tariff sheet revisions attached. For a rate or charge increase, the LEC must provide at least 10 days' notice (30 days' notice for vertical services) to all affected customers and the new rates and charges will become effective 10 days (30 days for vertical services) following submittal to CACD. This procedure also applies if both a public floor and a nonpublic floor have been established for centrex or high speed digital private line services.

Nonpublic Floor. The LEC shall make an advice letter filing as provided by G.O. 96-A. No proposal is required before filing the advice letter.

II. Vertical Services

A. Definitions

For purposes of this document vertical services are limited to the following existing services as presently defined in the LECs' tariff schedules:

Call Waiting
Call Forwarding
Busy Call Forwarding
Busy Call Forwarding--Extended

Delayed Call Forwarding
Three-Way Calling
Speed Calling in all forms
Intercom
Direct Connection in all forms
Call Restriction in all forms, except 976 blocking
Call Hold
Call Pickup

B. Pricing Flexibility

All customers receive the tariffed rates and charges. The procedure for receiving pricing flexibility and implementing subsequent rate changes is set forth in Section I.D of this document.

C. Monitoring

Upon filing flexible vertical services tariff schedules, the LEC shall track on a monthly basis in-service and inward movement volumes; recurring and non-recurring billings; and recurring and non-recurring costs for each vertical service offered. The LECs shall propose a method for determination of such costs in their filings requesting rate flexibility. All the above information shall be retained by the LEC for 5 years and shall be provided to the Commission and/or the Commission staff upon request.

III. Centrex Services

A. Definition

For the purposes of this document, the term "centrex" will apply to the Centrex service of Pacific Bell (Pacific), or any other similar service of an LEC.

B. PBX Trunk Rates

This section is applicable only to LECs which apply for and are granted pricing flexibility for centrex as provided in this document.

In measured rate exchanges, PBX customers will have the option to order either the PBX trunk at the established tariff rates and charges, or single line business service plus Direct Inward Dialing

(at established tariff rates and charges) if the capabilities of such service meets the customer's needs.

An LEC may propose a unified tariff for a comparable element for centrex and PBX in an application filed in an expedited application docket; alternatively, an LEC which has been granted pricing flexibility for centrex services must do so in the supplemental rate design proceeding.

C. Pricing Flexibility

In its filing requesting pricing flexibility, as provided in Section I.D of this document, an LEC may propose discounts for centrex services based on its incurred costs, including discounts based on the number of features, the number of centrex lines, the cost of loops, and the length of the contract. An LEC may propose loop deaveraging in an application filed in an expedited application docket or in the supplemental rate design proceeding.

No such discounts shall allow the total price per line for the centrex service to fall below the sum of the single-line business service rate and the multi-line End-User Customer Access Line Charge (EUCL). Any discounts for any centrex feature which incorporate an EUCL as part of the rate for that feature cannot discount the EUCL portion of the rate.

If the LEC's centrex rate per line is at or is established by the Commission at a rate less than the sum of the appropriate flat or measured single-line business service rate and the EUCL, the centrex rate per line may remain at this level, notwithstanding the above provisions. However, in this case there shall be no pricing flexibility for the centrex service unless future rate changes place the centrex rate per line above the sum of the appropriate flat or measured single-line business service rate and the EUCL.

A tariffed level of each discount shall be maintained. An LEC may request public and/or nonpublic floors for these discounts in its filing for centrex pricing flexibility.

If an LEC has received approval for centrex pricing flexibility with a public floor, the LEC may also negotiate the discounts for a specific customer. Any negotiated discount for each discounted element must fall within the Commission-established band applicable to the customer. The service agreement that is negotiated must

show each discount separately. Such a service agreement is a special contract and must be filed with CACD and made available for public inspection; however, an LEC is not required to seek Commission approval under G.O. 96-A and the provisions in Section V of this document do not apply to customer-specific centrex service agreements which meet the requirements of this paragraph.

D. Monitoring

For LECs which implement pricing flexibility for centrex services, the LEC shall, on a monthly basis, track in-service and inward movement centrex volumes, and recurring and non-recurring billings. In its filing requesting centrex pricing flexibility, the LEC shall propose a method to track centrex costs.

E. Franchise Applicability

Nothing in this document shall be construed to permit an LEC to offer centrex service within the franchise territory of another LEC.

IV. Private Line Services

A. High Speed Digital Private Line Services

1. IntraLATA Entry

a. Non-LEC Entrants

Subject to the conditions contained herein, competition for intraLATA high speed digital private line service is permitted. Competitive providers in high speed digital markets may hold out the availability of and provide multiplexing equipment or services, including voice services, as part of such high speed digital services.

For purposes of this document, digital private line services at 1.544 megabits per second (mbps) or above are considered to be "high speed digital private line" service. As used herein, "intraLATA high speed digital private line" service is defined as the dedicated connection of two or more end user premises within a

LATA for the purpose of providing intraLATA high speed digital non-switched services. Competitive carriers may provide multiplexing service for voice and/or data at the end user's premises such that the transmission speed from or to the end user's premises is at 1.544 mbps or above.

This document does not permit the transport from or to the end user's premises for intraLATA service of either analog or digital transmissions at speeds less than 1.544 mbps. Nothing herein, however, should be interpreted to mean that speeds below 1.544 mbps may not be considered high speed by the Commission in a subsequent order. Further, nothing in this document precludes any competitor from applying for authority to offer intraLATA high speed services at levels below 1.544 mbps pursuant to Decision (D.) 84-06-113. Similarly, nothing in this document prohibits any party from objecting to another party's request to offer high speed services at levels below 1.544 mbps on an intraLATA basis.

Nothing in this document affects intraLATA authority already granted by Commission orders, except that (1) parties to the Phase I settlement agree that Wang Communications, Inc.'s (WCI) Application 87-02-033 should be granted and (2) WCI and Bay Area Teleport may request that restrictions on their existing intraLATA authority be removed so that such authority is not more restrictive than that allowed by this document and the Commission should grant such requests. Parties agree that these changes should be effective coincident with the effectiveness of entry allowed in this document and pursuant to timing considerations in Section IV.A.5.

This document does not affect existing restrictions or create any new restrictions on the holding out of intraLATA services not otherwise authorized by the Commission (e.g., MTS, WATS-like, and 800-like services).

b. LEC Entry

Nothing in this document should be construed to permit an LEC to offer high speed digital services within the franchise territory of another LEC.

2. Unbundling and Deaveraging of Tariffed Rates

Pacific and GTEC California Incorporated (GTEC) shall each propose to make the changes in this section in an application to be filed

by September 20, 1988 in an expedited application docket as provided in Section I.D. Other LECs with high speed digital tariff schedules shall file comparable applications, but do not have to meet the September 20, 1988 filing date.

Each LEC shall propose that its high speed digital service tariff schedules (intraLATA private line and special access tariff schedules) be restructured to contain an element consisting of the line and end points of high speed digital service from the end user's premises to the LEC central office serving the end user (the end user-to-CO link). This element will be priced at the same rate, whether provided by the LEC to an end user as part of the LEC's end-to-end intraLATA service or whether provided by the LEC to a competitor as part of the access service connecting the competitor's network to the competitor's customer.

The LEC shall also propose a second distinct element in the special access tariff for high speed digital services which will consist of the connection from an interexchange carrier's or competitor's point of presence (POP) to the LEC's central office serving the POP (the CO-to-POP link) for intraLATA purposes; the rate for this element will be adjusted so that the rates for such connections will be set at fully allocated or direct embedded cost. The cost methodology will be consistent with the cost methodology utilized for determining the costs of other elements of the same service.

The LEC may propose a surcharge to offset the lower revenue associated with rate reductions for the end user-to-CO link and the CO-to-POP link. The surcharge will apply to LEC services according to the then-applicable tariff schedule for billing surcharges pursuant to Pacific's Rule 33 or comparable tariff schedules for other LECs.

Except for the CO-to-POP link, the LEC may, at its discretion, propose to deaverage tariffed rates and charges for high speed digital private line services. If the LEC deaverages high speed digital private line services, it must also deaverage the corresponding element in the same manner and simultaneously in the high speed digital special access tariff schedule for intraLATA purposes. The LEC's deaveraging proposal may not result in rate increases of more than 20 percent for any single service element within a tariff schedule.

The LEC may also propose changes in its high speed digital special access tariff schedule for interLATA purposes to make the interLATA and intraLATA special access tariffs consistent.

3. Pricing Flexibility

Other than the end user-to-CO link, the LECs are permitted pricing flexibility for high speed digital private line services. Pricing flexibility is not authorized for any special access services provided by the LECs. An LEC's proposal for pricing flexibility, if it desires such flexibility, shall be included in its application which it must file in an expedited applicaton docket to propose restructuring and (at its discretion) deaveraging of high speed digital services as provided in Section IV.A.2.

A tariffed level of each rate or charge shall be maintained. An LEC may request public and/or nonpublic floors for private line high speed digital private line service elements other than the end user-to-CO link.

The LEC may not negotiate customer-specific rates for high speed digital services, except under the special contract guidelines in Section V. This document does not affect existing procedures established for SSEs, ICBs, and SSAs established by existing tariffs.

4. Application to Small Local Exchange Companies

LECs other than Pacific and GTEC may continue to concur in the tariffs of the large LECs. Nothing in this document shall affect GTEC's present tariff schedule Cal. P.U.C. No. GG, Sheet 1. If the large LECs file deaveraged tariffs, they will retain existing averaged tariffs which may be applied by the small LECs until such time that such arrangements are changed by Commission order or agreements between the LECs. Customers of the LEC may not avail themselves of averaged and/or deaveraged rates optionally.

Existing pooling arrangements will continue in effect unless and until the Commission orders changes to those arrangements or they are superseded by utility agreements.

5. Timing

IntraLATA competition as described in Section IV.A.1 shall be authorized coincident with the effective date of changes made as a result of an LEC's application in an expedited application docket for changes discussed in Sections IV.A.2 and IV.A.3.

Parties desiring to offer intraLATA high speed digital services must comply with existing CPCN requirements to offer such services and must file tariff schedules for such services. Carriers which are certified to provide interLATA services must file separate applications to provide intraLATA services. Competitors other than AT&T Communications of California, Inc. (AT&T) may change tariff rates and conditions by advice letter on 5 days' notice to CACD without cost support. AT&T is granted intraLATA tariffed pricing flexibility equal to that of the LECs. In its CPCN application, AT&T may propose a pricing flexibility package, including initial rate caps and cost support. Once pricing flexibility is approved, AT&T may change rates by the procedure established for LECs. This document does not otherwise affect the resolution of issues in AT&T's application for regulatory flexibility filed as a result of I.85-11-013 nor any Commission order in that proceeding.

6. Monitoring

Each LEC filing tariff schedules pursuant to this document shall submit to CACD and DRA the following data regarding the modified high speed digital service tariff schedules: revenues, costs, and information regarding the number and nature of service complaints. The data shall be submitted on a semi-annual basis beginning 180 days following the effective date of the pertinent Commission order approving the modified tariff schedules.

LECs concurring in the tariffs of other LECs are not required to submit the above-referenced cost and revenue data, but are required to report to the Commission on the nature and number of service complaints.

B. Analog Private Line and Special Access Services

No pricing flexibility will be permitted for analog private line or special access services at this time. Pricing flexibility for analog private line and special access services and intraLATA competition for analog private line services and issues of whether and how to merge private line and special access tariff schedules will be addressed no later than Phase III of I.87-11-033.

V. Special Contracts

A. General Order 96-A

As competitive telecommunicatons services may be offered at free or reduced rates under G.O. 96-A, Section X, and because such pricing may be anticompetitive, Section X.B of G.O. 96-A is amended and Section X.C is added for telecommunications utilities as follows:

> B. Governmental Agencies. Notwithstanding the provisions contained in subsection A hereof, a public utility of a class specified herein, except telecommunications utilities may, if it so desires, furnish service at free or reduced rates or under conditions otherwise departing from its filed tariff schedules to the United States and to its departments and to the State of California and its political subdivisions and municipal corporations, including the departments thereof, and to public fairs and

celebrations. The utility shall promptly advise the Commission thereof by Advice Letter and, where a contract has been entered into, submit four copies of such contract and Advice Letter for filing. The Commission may, in an appropriate proceeding in the exercise of its jurisdiction, determine the reasonableness of such service at free or reduced rates or under conditions departing from its filed tariff schedules. This subsection shall not be construed as applicable to contracts for resale service.

C. **Emergency Service.** Under emergency conditions, such as natural disasters and war, a telecommunications utility may provide service to government agencies, as defined in section X.B above, at free or reduced rates or under conditions departing from its filed tariff schedules without prior Commission approval. The telecommunications utility shall promptly notify the Commission thereof by Advice Letter. The Commission may, in an appropriate proceeding in the exercise of its jurisdiction, determine the reasonableness of such service.

B. Contract Guidelines

All contracts, except government contracts entered into under the terms of the added Section X.C of G.O. 96-A, will be submitted for preapproval in proposal form using existing CACD proposal guidelines. Preapproval is defined in G.O. 96-A as amended, and means that a Commission resolution approving the contract is required before such contracts become effective.

The advice letter shall include the contract, but need not include the underlying cost support, and will be a public document. Any party may protest such advice letter filings under existing provisions of G.O. 96-A. The LEC will request an effective date, and the Commission resolution will contain the effective date.

LECs may request confidential treatment of workpapers and supporting cost documentation. Parties to the Phase I settlement, other than DRA, must enter into protective agreements to obtain such information.

An LEC will serve its first advice letter filing requesting approval of a special contract under these guidelines on all

parties in I.87-11-033 and will include a statement that subsequent filings will be made available upon request.

Government contracts entered into in emergency situations will be processed in accordance with the provisions of Section X.C of G.O. 96-A and will be filed for Commission review within 30 days of signature. The documentation for these contracts shall use the same format as contracts filed according to Section X.A and shall be filed with the contract. Other government contracts will be processed in accordance with the provisions of Section X.A of G.O. 96-A.

A new tariff schedule will be created which lists all contracts entered into as a result of D.87-12-027 or this document.

Contracts can contain "appropriate" tariffed and nontariffed services. Items deemed inappropriate are:

-Residential subscriber service
-MTS including WATS and 800 service
-ZUM
-Billed local
-Basic exchange services:
    -Business trunks
    -Business lines
    -Semipublic

All contracts, except as provided for in Section X.C of G.O. 96-A, shall cover costs. When contracts include multiple service categories each service category for each contract shall cover its costs as those costs are defined below. Total contract costs shall be determined by either a fully allocated embedded cost or direct embedded cost analysis. For Pacific's centrex, the price may in no event go below the price of the single line business rate, plus the multi-line EUCL, per line.

LECs other than Pacific may also offer centrex contracts at a per line price below the single line business rate plus the multi-line EUCL. In that event, the per line price floor is the appropriate cost (fully allocated embedded cost or direct embedded cost) plus the multi-line EUCL. However, upon request the LEC must also offer the customer PBX trunks at a rate determined by the same cost methodology used to determine the centrex line price.

Tracking procedures will be set up to validate costs.

Contracts are to be used only in unusual or exceptional circumstances. The LEC shall have the burden of demonstrating the existence of such circumstances and the reasons why service cannot be provided as a generally tariffed offering. The LEC shall state

such circumstances and reasons in the advice letter transmitting any contract for Commission approval. "Unusual or exceptional circumstances" may include, but are not limited to, such situations as the LEC's inability to provide the requested service over existing facilities or unexpected and unforeseen customer-specific service requirements.

A contract in which parts or all of the services are currently tariffed must be justified in detail:

-How does it qualify as "unusual or exceptional circumstances"?

-A comparison of tariffed charges versus contract charges must be provided.

-If competition is a factor, the extent of the competition must be clearly documented, including an estimate of what the LEC thinks its most competitive competitor will bid.

C. Processing

Contracts for high speed digital private line services will be permitted only after flexible pricing and intraLATA high speed digital private line competition are authorized in accordance with Section IV of this document. Such contracts may be used to deviate from tariffed rates for all elements of high speed digital private line service except for the end user-to-CO link.

Other than this restriction on contracts for high speed digital private lines, contracts on a fully allocated cost basis may be submitted now.

D. Workshops

LECs may submit proposals to CACD and all parties in I.87-11-033 for costing, streamlining, and tracking procedures. CACD will hold workshops within 30 days of submittal of such a proposal. This workshop is not to be used to evaluate a specific contract or contract proposal. Because expeditiousness is desired, this workshop will focus on direct embedded costing. Determining any additional services offerable under contract and consideration of other circumstances for which contracts are permitted are also appropriate subjects of this workshop. After the workshop, CACD will make recommendations to the Commission as to appropriate guidelines. Parties may comment on the CACD recommendations within 30 days of their issuance. Such guidelines shall be subject to Commission approval by resolution action.

Other costing methodologies may also be appropriate. Discussion and development of these alternative costing methodologies are deferred until Phase II or Phase III of I.87-11-033 or by other formal application.

INTERIM OPINION ON PHASE I SETTLEMENT IN I.87-11-033

I. Summary of Decision

We examine a settlement which was reached by many of the parties in Phase I of Investigation (I.) 87-11-033.[1] The settlement would allow limited downward pricing flexibility for local exchange carriers' vertical services, centrex services, and high speed digital private line services, and would extend interim guidelines for special contracts developed for Pacific Bell (Pacific) to all local exchange carriers. Competition in intraLATA high speed digital private line services would also be allowed subject to certain conditions.

Our assessment of the settlement has been greatly aided by extensive written comments and reply comments provided both by parties which entered into the settlement and by a number of parties which are opposed to adoption of the settlement.

We find the general structure and most of the major provisions of the settlement to be reasonable, and commend parties on the delicate balance of interests achieved in the settlement. However, several factors prevent us from adopting the settlement exactly as written. We propose a number of modifications to the settlement which fall into three general categories. First, we delete certain provisions which are unlawful, in particular, the requirements that negotiated centrex service agreements and other information be confidential and that interLATA carriers be allowed to provide intraLATA high speed digital private line services without further action to modify their interLATA certificates of

1 The term "OII" refers to the Commission order instituting the investigation; "I.87-11-033" and "the investigation" refer to the investigation itself.

It is our intent that this procedure will provide a forum conducive to open discussion among the parties so that resolution of the local exchange carriers' proposals can be resolved without resort to evidentiary hearings. Parties are reminded that the pricing packages resulting from the settlement are interim in nature and that ongoing changes in the regulatory structure, if warranted, will be developed in Phase II. We do not wish to see Phase I implementation bogged down in unproductive controversy. There is value in allowing speedy implementation of such limited flexibility so that experience can be gained prior to consideration of broader regulatory changes in Phase II.

We have no objection to the settlement's provision that rates may be changed through an expedited process with reduced notice requirements after a public floor has been established. Since all rates must be included in the tariff schedules pursuant to PU Code § 489, the local exchange carriers should attach updated schedules to the letters to CACD changing rates, as suggested by Pacific and GTEC. We also have no objection to use of advice letters to change rates when only a nonpublic floor is in place.

We share CACD's concerns that space in the Daily Calendar could be a problem, and see no reason to publish the actual proposed rates changes. For our administrative convenience, we propose that the settlement be modified in this respect. Under current procedures, all advice letters are noticed on the Daily Calendar. We would also provide that any letters to CACD notifying it of rate changes between caps and public floors be cited in the Daily Calendar as well. Parties could then ask the local exchange carriers for more information if they wish to do so.

We see no need to modify G.O. 96-A to incorporate the procedures adopted by this decision for implementation of the Phase I settlement. These changes are adopted on an interim basis. As this investigation proceeds, experience gained with these procedures will give guidance regarding whether they should be made

CACD believes that monthly tracking results should be filed with CACD at least on an annual basis and that the first filing should have the same data for the year prior to implementation of rate flexibility.

TURN complains that monitoring receives little attention in the settlement. In its view, the Commission should require, at a minimum, that the costs of each service be developed, analyzed, and filed on a regular basis before the Commission even considers the proposed settlement. In addition, TURN believes that customer conplaints should be systematically filed with the Commission in order to monitor any possible degradation of service. TURN notes that, in contrast to this settlement, the Commission established a monitoring plan for AT&T in I.85-11-013 first and is only now addressing the issue of how much pricing flexibility should be granted. A monitoring plan for AT&T was developed by all of the interested parties through several workshops. Under that plan, cost components and service complaints will be monitored on a quarterly basis and a survey will measure customer satisfaction. TURN concludes that, while the AT&T monitoring plan is not ideal, it offers considerably more than does this settlement.

Pacific submits that the settlement's monitoring provisions are sufficient to address CACD's concerns. Pacific notes that it may not be possible to provide prior-year information and states that requests for monitoring information beyond that required by the settlement can be pursued by CACD through data requests.

Since the pricing flexibility provided by the settlement is an interim measure, we do not believe that a modification to the settlement to require development of a monitoring program such as that requested by TURN is warranted. However, any data that may be potentially useful in evaluating Phase II proposals should be gathered. CACD should work with the local exchange carriers to

commence service upon approval of tariff schedules filed by advice letter. Other potential carriers would have to comply with existing requirements to receive certificates of public convenience and necessity (CPCNs). AT&T would be granted intraLATA pricing flexibility equal to that provided for local exchange carriers in the settlement. Carriers other than AT&T would be regulated in the streamlined fashion now accorded interLATA resellers.

The ALJ instructed parties to comment on the legality of expanding the authority of WCI, BAT, MCI, and other interLATA carriers as contemplated by the settlement, and questioned whether PU Code § 1001 would require separate applications by each carrier.

Comments of the Parties

CCTA protests that the settlement restricts competitive entry to only high speed services between end user premises. Its view is that, absent a strong factual showing to the contrary, competitive entry should be allowed for other services, e.g., data transmission below 1.544 mbps and private lines furnished to interexchange carriers or other intraLATA competitors. In particular, it is concerned that cable companies should be allowed to provide two-way low speed telecommunications services.

AT&T replies that some parties to the settlement, including AT&T, support competitive entry for lower speed private line services but that deferral of this issue to Phase III was a necessary concession to achieve an agreement. Its view is that such deferral does not unduly compromise the public interest. Taking an opposite view, GTEC states that it does not believe that any intraLATA competition is in the public interest, and that it withdrew its opposition to intraLATA high speed digital private line competition only as a "significant concession" in the context of the "delicately balanced" negotiations resulting in the settlement. Parties note that any potential competitor can apply separately for authority to offer services below 1.544 mbps, since the settlement does not address competitive entry for such services at all.

its judgment the public convenience necessity require..."

We conclude that expansion of authority beyond that requested in an application for CPCN would run counter to § 1005.

We note that this situation is quite different from an interexchange carrier's request to commence a new interLATA service within the scope of an existing CPCN. Then, a request for approval of tariffs through an advice letter filing is usually sufficient.

In conclusion, we agree with GTEC that § 1001 requires a separate application by an interexchange carrier to expand its authority to allow provision of intraLATA high speed digital private line services.

Citizens suggests an expedited procedure for consideration of such applications if they are required. We do not believe that specific provisions for expedited treatment are needed. Today's decision authorizes intraLATA competition in high speed digital private line services. That issue will not require relitigation for each application. As a result, we contemplate that carriers' applications for authority to provide intraLATA high speed digital private line services within the scope of the settlement will be processed quickly.

The settlement provides that WCI's A.87-02-033 would be granted concurrently with the allowance of intraLATA entry for other carriers. Today's decision does not grant WCI's requested authority since there were hearings in that application and the case is subject to the requirements of PU Code § 311. However, we are certainly prepared to take the settlement's provisions and today's decision into account in reaching a decision in that case. (We note also that the settlement may affect C.87-07-024, which has been consolidated with this investigation.)

The settlement also would remove restrictions on the existing intraLATA authority of BAT. Consistent with our conclusions that interexchange carriers must file separate applications for expansion of their authority, we cannot approve

attached a certificate showing service by mail on the assigned Administrative Law Judge and all parties listed in Appendix A of D.88-08-024.

This order is effective today.

Dated _____ at San Francisco, California.

Parties may file comments or protests on the advice letter filing within 30 days of the filing. The LEC has 10 days to respond to comments or protests.

CACD will recommend to the Commission whether the advice letter should be approved. A Commission resolution is necessary for the revised tariff schedules to become effective.

2. Flexible Pricing Letter Filings

Flexible pricing letter filings shall be used to establish pricing flexibility for vertical services and centrex services when only nonpublic floors are requested.

This procedure is identical to that for advice letter filings, except that the term "flexible pricing letter" will be used. The Commission Resolution authorizing the cap and floor will not state the floor rates and charges.

In its flexible pricing letter filing, the LEC will detail the requested role of the nonpublic floor and will address both the lawfulness of its request and why nonpublic floors would be in the public interest.

3. Expedited Application Docket Procedure

Applications filed in an expedited application docket shall be used to establish pricing flexibility for high speed digital private line services and for restructuring of tariff schedules for centrex and high speed digital services.

An application, titled Expedited Application Docket, will be filed in original and 12 copies with the Commission's Docket Office. Each application will receive a separate number, preceded by the prefix "EAD."

The application shall comply with Rules 2 through 8, 15, and 16 of the Rules of Practice and Procedure (e.g., signature, verification, and format) and shall include proposed tariff schedules.

If an LEC proposes changes to tariff schedules for its high speed digital services, it shall include a comparison of rates for private line and special access services and a discussion of any perceived tariff shopping problems.

If the LEC requests pricing flexibility for high speed digital private line services, the application shall contain the cap, the initial rates and charges, and, unless confidentiality is requested, the floor rates.

At the close of the workshop, the moderator will confer immediately with the assigned Commissioner if it appears that the matter is sufficiently controversial to warrant the regular hearing process.

If the matter is ready for decision at the close of the workshop, it will be placed on the next public agenda and a draft decision will be prepared. Since no hearing has been held, no witnesses sworn, and no testimony taken, the proposed decision will not be circulated to workshop participants for comment prior to Commission action.

Rule 76.51 et seq. respecting compensation shall apply to the Expedited Application Docket.

4. Rate Changes

If an LEC has received approval of pricing flexibility, the LEC may change the rates or charges between the authorized cap and floor as follows:

> Public Floor. The LEC shall provide a letter to CACD and the Docket Office, with tariff sheet revisions attached. For a rate or charge increase, the LEC must provide at least 10 days' notice (30 days' notice for vertical services) to all affected customers and the new rates and charges will become effective 10 days (30 days for vertical services) following submittal to CACD. This procedure also applies if both a public floor and a nonpublic floor have been established for centrex or high speed digital private line services.
>
> Nonpublic Floor. The LEC shall make an advice letter filing as provided by G.O. 96-A. No proposal is required before filing the advice letter.

II. Vertical Services

A. Definitions

For purposes of this document vertical services are limited to the following existing services as presently defined in the LECs' tariff schedules:

> Call Waiting
> Call Forwarding
> Busy Call Forwarding
> Busy Call Forwarding--Extended

LATA for the purpose of providing intraLATA high speed digital non-switched services. Competitive carriers may provide multiplexing service for voice and/or data at the end user's premises such that the transmission speed from or to the end user's premises is at 1.544 mbps or above.

This document does not permit the transport from or to the end user's premises for intraLATA service of either analog or digital transmissions at speeds less than 1.544 mbps. Nothing herein, however, should be interpreted to mean that speeds below 1.544 mbps may not be considered high speed by the Commission in a subsequent order. Further, nothing in this document precludes any competitor from applying for authority to offer intraLATA high speed services at levels below 1.544 mbps pursuant to Decision (D.) 84-06-113. Similarly, nothing in this document prohibits any party from objecting to another party's request to offer high speed services at levels below 1.544 mbps on an intraLATA basis.

Nothing in this document affects intraLATA authority already granted by Commission orders, except that (1) parties to the Phase I settlement agree that Wang Communications, Inc.'s (WCI) Application 87-02-033 should be granted and (2) WCI and Bay Area Teleport may request that restrictions on their existing intraLATA authority be removed so that such authority is not more restrictive than that allowed by this document. Parties agree that these changes should be effective coincident with the effectiveness of entry allowed in this document and pursuant to timing considerations in Section IV.A.5.

This document does not affect existing restrictions or create any new restrictions on the holding out of intraLATA services not otherwise authorized by the Commission (e.g., MTS, WATS-like, and 800-like services).

b. LEC Entry

Nothing in this document should be construed to permit an LEC to offer high speed digital services within the franchise territory of another LEC.

2. Unbundling and Deaveraging of Tariffed Rates

Pacific and GTEC California Incorporated (GTEC) shall each propose to make the changes in this section in an application to be filed