Decision 88 09 059 SEP 28 1988

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of Alternative Regulatory Frameworks for Local Exchange Carriers.	I.87-11-033 (Filed November 25, 1987)
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)
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.)

INTERIM OPINION ADOPTING MODIFIED PHASE I SETTLEMENT IN I.87-11-033

In Decision (D.) 88-08-059 issued August 24, 1988, we examined a settlement which was reached by many of the parties in Phase I of Investigation (I.) 87-11-033. This 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.

We found in D.88-08-059 that the general structure and most of the major provisions of the Phase I settlement are reasonable, but that several factors prevent adoption of the settlement. As a result, we proposed a number of modifications to the settlement, and concluded that the modified Phase I settlement contained in Appendix A of D.88-08-059 would be reasonable and in the public interest if agreed to by the parties.

Since the settlement as entered into by the parties provides that its terms shall not become effective unless the signatories agree to any modifications or conditions proposed by the Commission, we asked parties to the settlement to indicate whether the revised settlement is acceptable to them. The parties were required to make a joint filing by September 7, 1988 (later extended to September 9, 1988 at the request of the Division of Ratepayer Advocates (DRA)) in which they were to convey whether the proposed modifications are acceptable.

Summary of the Parties' Responses

DRA filed the joint response as required by D.88-08-059 on September 9, 1988. It reports that all but one of the signatories to the Phase I settlement accept the modifications

proposed in D.88-08-059. Bay Area Teleport (BAT) alone does not agree to the modifications. AT&T Communications of California, Inc. (AT&T) also conditions its acceptance on certain understandings of the modified settlement, as discussed below. Other parties also comment on various aspects of the proposed modifications.

In declining to join in the modified settlement, BAT contends that the Commission has essentially withdrawn those items in the settlement which were of benefit to BAT and other interexchange carriers and, as a result, the modified settlement would make it far less likely that competition can successfully develop in California's intraLATA telecommunications marketplace. BAT submits that the workshops provided by the expedited application process adopted in the modified settlement will not be productive, and that the Commission would have done better simply to accept or reject the original settlement. BAT concludes that the Commission should now return to Phase I and identify the services subject to competition before commencing Phase II of the investigation.

AT&T accepts the modified settlement conditioned on Commission endorsement of AT&T's current understanding regarding two aspects of its implementation. First, AT&T finds unacceptable the fact that the modified settlement did not impose a deadline by which Pacific, in particular, must file proposals to restructure its centrex and PBX tariffs. AT&T conditions its acceptance of the modified settlement on Pacific filing a comparable element for centrex and PBX tariff schedules to be effective on or before January 1, 1989. According to AT&T, Pacific has informed AT&T that it intends to make such a filing. AT&T states that the tariffs of GTE California Incorporated (GTEC) are sufficiently comparable with respect to equal pricing of common elements so that AT&T would not reject the modified settlement based on GTEC's tariffs.

Second, AT&T asks for assurance that competition and local exchange carrier pricing flexibility for intraLATA high speed digital private line services will be implemented concurrently[1] and that the applications for intraLATA authority by certificated interexchange carriers will only be subject to an examination for consistency with D.88-08-059. AT&T states that it could not continue to support pricing flexibility for these services if the Commission envisions other substantive public convenience and necessity issues that could deny adequate competition.

Although not a condition of acceptance, AT&T also requests reconsideration of the Commission's refusal to grant confidential treatment of special contracts. If the Commission reaffirms that it cannot legally refuse to allow interested parties to review contracts, AT&T asks alternatively that such parties be required to execute a proprietary agreement, which would at least provide some measure of protection.

While not rejecting the settlement, MCI contests the conclusion in D.88-08-059 that Public Utilities Code Section 1001 requires a separate application by certificated interexchange carriers to provide intraLATA high speed digital private line services. MCI argues alternatively that the Commission could grant intraLATA authority to MCI without further filings on MCI's part based on MCI's request in its initial application for authority to provide intercity (instead of interLATA) service on a statewide basis without regard to geographic or other boundaries.[2]

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1 MCI Telecommunications Corporation (MCI), US Sprint Communications Company (US Sprint), and DRA join AT&T in this request, but do not make this a condition of their acceptance of the modified settlement.

2 MCI filed its application before LATAs were created.

Contel of California, Inc. (Contel) accepts the modified settlement but reiterates the caveats in the original settlement that the settlement would not be viewed as a precedent or as representative of any party's position regarding underlying principles, nor restrict any party's right to request alternative regulatory treatment in the future.

DRA expresses several concerns with the manner in which we processed the settlement, "in a spirit of helpful comment and assistance in handling future settlement proposals." DRA asserts that Commission changes to a settlement such as those proposed in D.88-08-059 could discourage parties from entering into settlements in the future. It complains that the changes were made without benefit of an evidentiary proceeding or the participation of the parties to the settlement.[3] In DRA's view, the Commission's action appears to be in direct conflict with the previously stated policy that "(w)e accept, in basic fairness to the settling parties, that a settlement which was negotiated as a package should be considered as an indivisible whole." (D.88-04-059, mimeo. p. 13.)

DRA submits that, if the Commission wishes to encourage settlement agreements in the future, it should not change the terms of a settlement unilaterally. DRA urges the Commission to convene workshops or hearings with interested parties in cases where it does not understand or accept settlement provisions. Otherwise, DRA believes the settlement process will be abandoned.

DRA also expresses concern that the passage of almost five months between filing of the settlement and Commission action in D.88-08-059 could adversely affect the possibility of future

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3 US Sprint similarly contends that D.88-08-059 does not allow an adequate notice and comment procedure on the proposed modifications.

settlement negotiations. In its view, this period of time could have been used by the parties to refine the settlement or hold hearings.

Discussion

As a preliminary matter, it has come to our attention that two parties should be added to the list in D.88-08-059 of parties joining in the Phase I settlement: the County of Los Angeles and Telephone Answering Service of California (TASC).

Before we address the responses of BAT and AT&T regarding the substance of modifications we propose to the Phase I settlement, we believe it useful to discuss DRA's concerns with the process by which we reviewed and responded to the settlement.

DRA characterizes the proposed modifications as unilateral and in apparent conflict with the policy set in D.88-04-059 of treating a settlement as a whole. We disagree. We examined the settlement and the extensive comments and reply comments and, after much careful thought, concluded that its shortcomings were such that the settlement, as a whole, must be rejected.

In evaluating what steps to take next, we considered options such as a simple rejection, workshops, or hearings, along with the route we chose of proposing a set of modifications which would result in a regulatory package acceptable to us. In other situations we might well go another route. It was our view that, given the time already consumed by submission of the settlement and the comment process,[4] the chosen approach would best meet our goal of providing timely implementation of regulatory changes which

4 We note that comments and reply comments on the settlement were filed by May 17, 1988. However, the restructuring of the proceeding proposed by DRA in mid-June and discussed in a later Joint Assigned Commissioners' Ruling entailed concomitant changes in the settlement; additional comments were received in late July.

are needed in the current market. In providing an opportunity for parties to accept or reject the alternative settlement, we believe that our approach adequately protects the parties' due process interests, is fair to the settling parties, and is fully consistent with D.88-04-059.

We turn now to issues raised by the parties regarding the substance of the proposed modifications. AT&T attaches certain conditions to its acceptance of the modified settlement. It wants assurance that Pacific will file an application to provide a comparable element in centrex and PBX tariff schedules in time so that new tariff schedules can be effective on or before January 1, 1989. In a September 23, 1988 letter to the assigned administrative law judge, Pacific has confirmed that its current intent (assuming the modified Phase I settlement is adopted) is to make such a filing by October 25, 1988. This should permit a decision to be reached within AT&T's requested timeframe if the application does not require hearing.

AT&T also asks that we specify that competition and local exchange carrier pricing flexibility for intraLATA high speed digital private line services will be implemented concurrently. It further requests that we commit that the only issue in applications for intraLATA authority by certificated interexchange carriers to provide these services will be whether they are consistent with D.88-08-059. In that decision, we recognized that interexchange carriers' applications for authority within the scope of the adopted settlement should be processed quickly; we also expressed an intent to coordinate the effectiveness of any authorization granted for intraLATA competition with the effectiveness of changes in the local exchange carriers' tariff schedules. Evidently such assurances are not adequate to ease AT&T's mind.

With today's adoption of the modified settlement with its provision that competition for intraLATA high speed digital private line services is permitted, we see no difference in the issues in

an application for authority to provide this as opposed to any interLATA telecommunications service. A certificated interexchange carrier whose ability to render service has not substantively deteriorated since it received its interLATA certificate of public convenience and necessity (CPCN) should encounter no obstacle to speedy receipt of an intraLATA CPCN if its application is in full compliance with the requirements of our Rules of Practice and Procedure. Since the assurances in D.88-08-059 do not appear to be adequate to AT&T, we will agree, as suggested by MCI, to both take action on all conforming applications filed no later than October 31, 1988 by currently certificated interexchange carriers and make any resulting authorizations effective coincident with the effectiveness of local exchange carrier pricing flexibility for intraLATA high speed digital private line services which is authorized as a result of the modified settlement. This is fully consistent with the modified settlement.

AT&T and MCI repeat prior arguments regarding the lawfulness of portions of the original settlement allowing confidential treatment of special contracts and provision of intraLATA services without further certification of interexchange carriers. Their arguments are not convincing. We note that, while MCI is correct that it requested intercity authority in its original application, it did not request intracity authority, which would also be included in the intraLATA authority now at issue. We confirm our earlier conclusion that MCI must file a new application for intraLATA authority.

BAT alone of the parties to the Phase I settlement declines to join in the modified settlement, based on its view that interexchange carriers lost most of their benefits inherent in the settlement negotiated by the parties. We note, however, that all the other interexchange carriers agreed to the proposed modifications; evidently they find that the modified settlement is still in their interest. In light of the acceptance of the

proposed modifications by all the other parties to the settlement, we do not find BAT's opposition sufficient to outweigh the benefits to be gained by adoption of the modified settlement. In addition, BAT will have a forum in Phase II, as provided in D.88-08-024, to raise the issues it now urges the Commission to consider in a reopened Phase I, i.e., the identification of services subject to competition.

One minor change to the modified settlement is needed. Because this decision was not issued in mid-September as anticipated in D.88-08-059, the filing date for Pacific's and GTEC's applications to restructure high speed digital private line tariffs should be changed to October 5, 1988. The assigned administrative law judge may, on motion and for good cause, extend this filing deadline.

We wish to reiterate that in D.88-08-059 we made three types of changes to the original settlement reached by the parties: (1) those needed to make it lawful; (2) changes to reflect restructuring of the proceeding; and (3) minor changes to clarify, maintain consistency among the sections, and ease implementation of the settlement. Changes of the first two types were discussed explicitly in D.88-08-059. However, many of the numerous changes of the third type appeared only in the proposed modified settlement in Appendix A. We wish to emphasize that changes of the third type were meant to be nonsubstantive; we do not view them as changing the intent of the original settlement.

Based on our discussion and findings herein and in D.88-08-059, we conclude that the modified settlement in Appendix A to this decision, which is identical to that in D.88-08-059 except for the one changed filing date, is reasonable and in the public interest and should be adopted. BAT will not be considered a party to the adopted settlement.

Findings of Fact

1. The County of Los Angeles and TASC joined in the Phase I settlement.

2. BAT declines to join in the modified settlement proposed in D.88-08-059, but in light of the acceptance of the proposed modifications by all other parties, its opposition is not sufficient to outweigh the benefits to be gained by adoption of the modified settlement.

3. AT&T conditions its acceptance of the settlement on Commission agreement with AT&T's current understanding regarding two aspects of its implementation.

4. All parties to the Phase I settlement other than BAT and AT&T accept the modified settlement.

5. Pacific states that it intends to file an application addressing a comparable element for centrex and PBX by October 25, 1988, barring unforeseen circumstances. This should permit a decision to be reached within AT&T's requested timeframe if the application does not require hearing.

Conclusions of Law

1. Competition to provide intraLATA high speed digital private line services as provided in Appendix A is in the public interest and should be authorized.

2. It is reasonable to coordinate the effectiveness of any authorization granted to provide intraLATA high speed digital private line services with the effectiveness of local exchange carrier pricing flexibility for such services.

3. The terms of the modified settlement in Appendix A to this decision are reasonable and in the public interest and should be adopted.

4. The local exchange carriers should file applications in expedited application dockets to restructure tariff schedules for high speed digital private line services. Pacific and GTEC should file such applications no later than October 5, 1988.

5. In order to provide timely implementation of regulatory changes needed in the current market, this order should be effective today.

INTERIM ORDER

IT IS ORDERED that:

1. The modified Phase I settlement in Appendix A to this decision is adopted.

2. Local exchange carriers are authorized to file advice letters (for public floors) or flexible pricing letters (for nonpublic floors) to request rate flexibility for vertical services and centrex services, as provided in Appendix A.

3. Local exchange carriers are authorized to file applications in expedited application dockets to restructure tariff schedules for centrex and PBX services, as provided in Appendix A. Applications shall comply with Rules 2 through 8, 15, and 16 of the Rules of Practice and Procedure and shall include proposed tariff schedules. Copies of the applications shall be served separately on the Commission's Advisory and Compliance Division (CACD), the Division of Ratepayer Advocates (DRA), and Legal Division, and shall contain or have attached cost support and workpapers. Copies of the applications shall also be served on all parties in Investigation (I.) 87-11-033 and on anyone requesting such service.

4. Local exchange carriers are authorized to change the rates or charges for services for which pricing flexibility is implemented by letter to CACD (for public floors) or advice letter (for nonpublic floors), as provided in Appendix A.

5. Local exchange carriers shall file applications in expedited application dockets to restructure high speed digital private line services. Pacific Bell (Pacific) and GTEC California Incorporated (GTEC) shall file such applications no later than October 5, 1988. Local exchange carriers are also authorized to

request deaveraging and pricing flexibility for these services in their applications, as provided in Appendix A. Applications shall comply with Rules 2 through 8, 15, and 16 of the Rules of Practice and Procedure and shall include proposed tariff schedules. Copies of the applications shall be served separately on CACD, DRA, and Legal Division, and shall contain or have attached cost support and workpapers. Copies of the applications shall also be served on all parties in I.87-11-033 and on anyone requesting such service.

6. Local exchange carriers are authorized to negotiate discounts for specific centrex customers after they have received approval for centrex pricing flexibility with a public floor, as provided in Appendix A. The requirement in General Order (G.O.) 96-A that Commission approval be obtained is waived for such special contracts.

7. Competition for intraLATA high speed digital private line services is authorized, as provided in Appendix A. AT&T Communications of California, Inc. (AT&T) is authorized to request intraLATA tariffed pricing flexibility for these services. Other carriers which request and receive certificates of public convenience and necessity are authorized to change tariff rates and conditions by advice letter on 5 days' notice without cost support.

8. 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.

9. Local exchange carriers are authorized to enter into special contracts according to the guidelines in Appendix A. Each local exchange carrier shall serve its first advice letter filing requesting approval of a special contract on all parties in I.87-11-033 and shall include a statement that subsequent filings will be made available upon request.

This order is effective today.

Dated SEP 28 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

Victor Weisser, Executive Director

Adopted 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 October 5, 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 October 5, 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 application 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 telecommunications 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.

(END OF APPENDIX A)