ALJ/KH/rsr

Decision 88 11 051 NOV 23 1988

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

NOV 2 3 1988 ORIGINAL

Investigation instituted on the Commission's own motion into the operations, practices and regulation of coin and coinless customer-owned pay telephone service.	I.88-04-029 (Filed April 13, 1988)
In the Matter of Investigation and Suspension on the Commission's own motion of tariffs authorizing the network connection of customer-owned instrument-implemented coin telephones, and the sale by Pacific Bell of such telephones and of booths and associated equipment, under Advice Letter No. 14876.	(I&S) Case 85-02-051 (Filed February 21, 1985)
National Pay Telephone Corp., Complainant, v. Pacific Bell (U 1001 C), Defendant.	Case 85-07-048 (Filed July 17, 1985)

(See Appendix A for appearances.)

INTERIM OPINION ON COMPENSATION FOR NON-SENT-PAID CALLS

I. Summary

Today's decision grants, in part, California Payphone Association (CPA's) request for compensation for non-sent-paid calls made over customer-owned pay telephone (COPT) instruments.

We limit compensation to a share of operator surcharge revenue, since that alone was the issue set for rehearing by Decision (D.) 87-08-052. Today's decision adopts the Division of Ratepayer's Advocates (DRA's) recommended level for compensation of 6 cents per-non-sent-paid call. We order the Local Exchange Carriers (LECs), Pacific Bell (Pacific), General Telephone Company of California (GTE-C), and Contel of California (Contel), to institute this compensation program within 90 days of this order.

II. Background

By D.85-11-057, as modified by D.86-01-059, (dealing with issues unrelated to compensation for non-sent paid calls) we authorized Pacific to offer a new service allowing non-utility-owned pay telephones to be connected to Pacific's network. This new service was designated as COPT service.

CPA filed a petition for modification of D.87-11-057 in March 1987, seeking, in part, compensation for non-sent-paid intraLATA toll calls. Such calls consist of credit card, third-party, and person-to-person calls. By D.87-08-052, we ordered the proceeding reopened "to receive evidence only on whether COPT operators should be entitled to a share of Pacific Bell's surcharge applicable to non-sent-paid calls, in those instances where a COPT instrument is employed by an end-user." (Ordering Paragraph 3, mimeo. p. 24.)

D.87-08-052 also specifically named GTE California Incorporated[1] (GTE-C) a respondent to the COPT proceeding while authorizing GTE-C's COPT service tariff with some variations from Pacific's tariff.

A prehearing conference (PHC) was held on October 30, 1987, to set dates for hearings on the issue of compensation for non-sent-paid calls.[2] Hearings were set for January to mid-February, 1988. The parties, particularly CPA and Pacific, engaged in settlement negotiations which resulted in extensions in the designated schedule. Prepared testimony was filed by Pacific, GTE-C, and CPA in March, 1988, with hearings rescheduled to start April 11, 1988. Again, CPA and Pacific requested a continuance of the hearings which was granted until May 9, 1988.

Meanwhile, we issued Order Instituting Investigation (OII) I.88-04-029 addressing a wide variety of issues related both to COPT service and payphone services generally. The OII divided the issues into three phases, including in Phase III an examination of whether revenues on non-sent-paid calls should be shared by the LECs and COPT operators. Pacific, GTE-C, and Contel were all named respondents to the OII. We consolidated Case (C.) 85-02-051 and C.85-07-048 with the OII stating that the hearings scheduled on the rehearing issues shall be conducted as scheduled. However, since the compensation issue was specifically mentioned in the OII while the other rehearing issues were not, the then assigned Administrative Law Judge (ALJ) removed that issue from the scope of the May 9, 1988 hearings.

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1 GTE California Inc. was then known as General Telephone Company of California.

2 By D.87-08-063 other issues were set for rehearing which are not addressed here.

CPA filed a motion to reset hearings on the compensation issue as soon as all LECs named as respondents in the OII could be noticed.[3] CPA argued that it was our intent to go forward with hearings on consideration of a compensation plan for COPT operators for intraLATA non-sent-paid calls, "but possibly only on an interim basis pending broader consideration of the issue in the OII" (CPA Motion to Reset Hearings, p. 4).

Pacific opposed consideration of any compensation for non-sent-paid calls outside the scope of the entire OII. Both sides argued their positions at the May 9 hearing. In addition, the parties requested an opportunity to try to settle the other rehearing issues (related to call routing). Once again, the hearings were postponed per the parties' request. The ALJ ruled that if the call routing issues could not be settled by the end of May, they would be considered with other issues in Phase III of the OII. Since no settlement was filed, we understand those routing issues are being addressed in the ongoing OII workshops and need not be mentioned further here.

On May 13, 1988, the newly assigned ALJ issued a ruling granting CPA's motion as to interim consideration of the non-sent-paid call issue only. Hearings were scheduled to begin June 1, 1988, limited to consideration of an interim solution to the non-sent-paid call issue, to be nonprecedential and applicable to all three named respondents in I.88-04-029: Pacific, GTE-C, and Contel. Parties were urged to continue working toward a settlement. At the June 1, 1988 hearings CPA and Pacific again requested a continuance of the hearings to continue settlement negotiations. All other parties present concurred with the continuance and it was granted until July 11, 1988.

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3 Up until this time, Contel had not participated in the rehearing issue of compensation for non-sent-paid calls.

Ultimately, the parties were unable to close on their settlement, so hearings went forward on the non-sent-paid calling issue as scheduled on July 11, 1988 and concluded July 14, 1988. We note that CPA emphasizes in its brief that some 18 months have passed since its original petition for modification was filed. It is obvious from the above recitation that much of the delay was requested by CPA to further its unfortunately unsuccessful efforts to settle this matter.

The following parties presented testimony at the hearings: CPA by Thomas R. Keane, a member of CPA's board of directors and chief executive officer of PayTel Phone Systems; Pacific by its employees Judith A. Nyberg, Raymond T. Ruiz, James Forbes, and rebuttal testimony by Dr. William E. Taylor, a consulting economist; GTE-C by Roger Smith; and Contel by Paul T. Montsinger. Thirty exhibits were received in evidence.

All of the above parties submitted opening and reply briefs. In addition, Towards Utility Rate Normalization (TURN), National Association of Truck Stop Operators, and the National Association of Convenience Stores (NATSO and NACS), and DRA filed opening briefs. The matter was formally submitted on August 29, 1988.

Comments

Comments on the ALJ's proposed decision were filed by Pacific, CPA, GTE-C, Contel, DRA, Intellicall, Inc., and TURN. These comments have been reviewed and carefully considered by the Commission. Any changes required by the comments have been incorporated in this interim decision.

In addition, Public Telephone Council (PTC) filed a Motion for Leave to Intervene on November 14, 1988. That motion is denied since PTC's area of concern, namely whether the Commission's ban on intraLATA competition applies to operator and billing services, has been deleted in its entirety from this decision.

We now proceed to discuss the merits of the non-sent-paid calling compensation issue before us.

III. Should Compensation For Non-Sent-Paid Calls Be Given To COPT Operators And, If so, At What Level?

A. Arguments For and Against Compensation

1. CPA's Position

CPA argues that equitable considerations require that COPT operators receive a share of LEC revenues derived from non-sent-paid intraLATA calls placed from their COPT instruments. CPA maintains that the COPT operator provides a valuable service to the LEC in making its stations available to its customers for access to the LEC's network. COPT operators bear the capital, operating, and maintenance expenses delivering non-sent-paid calls to a LEC's network without receiving revenue from such traffic. CPA claims that the placement of COPT instruments relieves the LEC of the need to undertake similar efforts and expenses, in the nature of marketing efforts, equipment installation costs, capital costs for the pay-station equipment, and commission payments to the station agents.

CPA asserts that receiving no revenue from non-sent-paid calls is particularly inequitable given that Pacific does in fact pay its own station agents a commission based on both sent-paid and non-sent-paid calling. This was made clear in the testimony of Pacific's witness James Forbes describing the commissions paid currently and in the past by Pacific to its own station agents. The commissions range between zero and 25% applied to non-sent-paid as well as sent-paid revenue.

CPA acknowledges that where a COPT instrument is installed, Pacific reasonably offers no compensation on sent-paid revenue because that revenue is completely retained by the COPT operator. However, the logic of denying compensation with respect to non-sent-paid calling is less than clear, in that all of these revenues continue to flow to the LEC, while the LEC is relieved of the entire burden of acquiring rights to the site and installing

and maintaining the instrument. CPA believes it is appropriate to equate the COPT operator with Pacific station agents in that both provide access to the LEC network for the public.

Pacific and the other utilities try to equate COPT operator service with that of any other business customer. CPA disputes the utility's analogy. The public service character of the access service which COPT operators provide to LECs is demonstrated by the fact that COPT stations may be disconnected by the LEC if certain minimum standards of service are not maintained. CPA claims that this feature significantly distinguishes the COPT operator from other business service subscribers. CPA witness Keane testified that while other businesses use the services of the network to further their own business interests, the COPT operators use the network services to conduct 100% of their business. The significant difference is that if COPT operators do not maintain that set in an appropriate fashion for the general public, it can be disconnected by the utility.

For purposes of assessing the equitable entitlement of COPT operators to compensation, COPT operators should be viewed as network service providers to the LECs instead of competitors of the LECs. COPT operators seek a share in non-sent-paid revenues as compensation for the important access service which COPT operators provide to the LEC thereby facilitating use of the LEC's network services by third parties. CPA argues that Pacific's compensation of station agents for a similar but more limited access service indicates that such compensation is in fact appropriate in the pay telephone market.

The inequity of the current arrangement is further aggravated by the fact that while a non-sent-paid call is being made from a COPT instrument, no other revenue-producing call can be placed from that station. Thus, the "opportunity cost" to the COPT

for a non-local intraLATA coin-sent-paid call. COPT operators had advocated in that proceeding that the "marketplace" should decide the rates COPT operators charged for their phones. However, DRA's (then Public Staff Division) and TURN's arguments were adopted that imposed limits on COPT operators' charges in order to avoid customer confusion, to maintain access to the network for nonsubscribers, and to avoid exploitation of customers in locations where utility-owned coin telephones are not conveniently available. (D.85-11-057, mimeo. pp. 90-92, Conclusion of Law 31.) D.87-05-061 continued the same surcharge structure for coinless COPT phones.

For better or worse, CPA maintains that COPT operators find it impractical to impose this surcharge on end users. As CPA witness Keane testified, "Early experience with charging the 10-cent surcharge on non-sent-paid calls has indicated that damage to COPT equipment by irate customers and dissatisfaction on the part of station agents and end users in general far outweigh the slight revenue available from such charges". (Tr. 2789.)

Keane's own company, PayTel, has discovered a positive correlation between the number of maintenance visits required and whether the station agent is attempting to collect the 10-cent surcharge on non-sent-paid calls. Imagine the frustration of a person attempting to make a credit-card call and then being asked to insert 10 cents into the COPT phone. CPA asserts that this is yet another factor that was not considered in D.87-11-057 when the COPT tariff was originally devised.

CPA strongly disputes Pacific's attempted characterization of the high profit margins which COPT operators derive on sent-paid-calling. CPA claims that both the revenues and expenses of COPT operators are incompletely and inaccurately shown in Pacific's Exhibit 4. The revenues shown in Exhibit 4 are incorrect, in CPA's opinion, because there is an assumption that the 10-cent surcharge is collectible by COPT operators. Likewise the expenses shown in Pacific's Exhibit 4 do not include any

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operator of a non-sent-paid call is the revenue that a COPT operator would have earned had a revenue-producing call been placed.

CPA witness Keane testified that while a person was placing a non-sent-paid call on a COPT instrument, someone else with coins in his pocket could be driving up the street to a different payphone. The COPT operator has incurred some opportunity cost because the person with the coins in his pocket has gone to make his call elsewhere. This opportunity cost is significant because, overall, CPA believes a high proportion of all revenue generated by a pay telephone station for Pacific is non-sent-paid revenue.

CPA presented evidence calculating the percentage of non-sent-paid revenue generated by COPT stations. Based on Pacific's data responses CPA witness Keane determined that 58% of the revenues generated for Pacific by COPT instruments came from non-sent-paid calling. CPA strenuously objects to receiving none of that revenue.

CPA further argued that the magnitude of the ratio of non-sent-paid revenue to total revenue was not in the record on which the Commission relied in D.85-11-057. CPA argues that all parties' attention was focused primarily on the use of pay telephone for sent-paid calling or call-in-the-box calling. Thus, CPA argues that equity demands that an adjustment be made to the original way of handling sharing of compensation between COPT operators and the LECs.

CPA stresses that COPT operators derive no revenue from non-sent-paid calls at the present time. The utilities make much of the COPT operators' right to collect a 10-cent surcharge on each non-sent-paid call. D.85-11-057 authorized COPT operators to charge up to 5 cents above the exchange carrier's tariffed rate for a local coin call and up to 10 cents above the exchange carrier's tariffed rate for the same distance, time-of-day, and day-of-week

for a non-local intraLATA coin-sent-paid call. COPT operators had advocated in that proceeding that the "marketplace" should decide the rates COPT operators charged for their phones. However, DRA's (then Public Staff Division) and TURN's arguments were adopted that imposed limits on COPT operators' charges in order to avoid customer confusion, to maintain access to the network for nonsubscribers, and to avoid exploitation of customers in locations where utility-owned coin telephones are not conveniently available. (D.85-11-057, mimeo. pp. 90-92, Conclusion of Law 31.) D.87-05-061 continued the same surcharge structure for coinless COPT phones.

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allocation of the installation charge, the monthly line charge, or the customer access line charge which the COPT operator must pay the LEC. Exhibit 4 excludes the capital cost of the COPT equipment, the commission payments the COPT operator must make to the premises' owner, the operation and maintenance expenses and the administrative and general expenses of running a COPT business. CPA alleges that this exhibit is fatally flawed and should be disregarded by the Commission. CPA believes that Pacific's calculation of COPT operator margins found in Exhibit 4 only confuses the record and attempts to divert our attention from the central issue: COPT operators provide a valuable service to Pacific for which Pacific provides inadequate compensation. CPA further asserts that compensation would not render pay-phone service unprofitable to the LECs. A substantial proportion of COPT installations are at "void locations" (where no pay station was previously installed) so that the COPT operator increases the total availability of payphones, thereby stimulating greater usage of highly profitable intraLATA toll and interLATA access services. Pacific's own witness testified to the fact that 35% of COPT installations are at these "void" locations. CPA witness Keane testified that the installation of COPT sets at new locations can be expected to create new calls for the LEC as well as for interexchange carriers, thus generating increases in intraLATA toll and interLATA access revenue for the LEC. Witness Keane testified as follows:

> "As a company, as we place phones we have found that void locations are every bit as busy on average as every regrade or replacement location...my assumption, then, is that they have created new calls, not just diluted a fixed number of calls." (TR. 2753.)

CPA contends that compensation for non-sent-paid calling will allow COPT operators to lower the threshold at which they accept a potential location. CPA witness Keane finds this more

likely than Pacific's allegation that additional revenues gained from compensation will merely result in increased commissions to station agents by COPT operators.

Regarding COPT operators' association with Alternate Operators Service (AOS) providers, CPA argues that Pacific's attempt to discredit COPT operators was ineffective and irrelevant in this proceeding. CPA asserts that Pacific's data regarding overcharging and intraLATA bypass by COPT operators in connection with AOS providers was outdated. CPA states that these concerns have been largely addressed and resolved through informal procedures coordinated by our staff.

Likewise Pacific's efforts to discredit CPA witness Keane's testimony by showing past overcharging by AOS providers on his phone lines, was, in CPA's opinion, outdated and irrelevant material. For both AOS companies involved with witness Keane's company PayTel, the calling record pre-dated changes made by both AOS providers and their decision to discontinue the handling of any intraLATA calls. In addition, CPA claims that the numerous duplicative listings on the call reports throws the accuracy of Pacific's overall study into question. (Exhibits 13 and 14.) Witness Keane provided evidence showing that in fact Pacific had delayed his company from ending their relationship with the AOS providers in question. Keane's company made repeated requests to have Pacific resubscribe its COPT instruments to AT&T. (Exhibits 23 through 30.)

CPA acknowledges that it is appropriate that compensation be granted on an interim basis only, given the pending OII into the pay telephone industry generally. CPA originally requested in its petition for modification a sharing of 50% of the operator surcharges that Pacific collects on calls made from COPT instruments. That, in fact, is the issue that was set for rehearing. During the hearings, CPA modified its proposal for

sharing compensation by asking for either 50% of operator surcharges or 25% of total revenues (operator surcharge plus toll revenue) that Pacific receives on each non-sent-paid call made from a COPT instrument. CPA argues that a 25% share of total non-sent-paid revenue would approximate what Pacific currently offers its major station agents.

CPA contends that the Commission's policy on intraLATA competition permits COPT operators to do their own billing for intraLATA non-sent-paid calls or have it done for them by an AOS provider or other billing agent.[4] A COPT operator who chooses to perform the billing function independently of the LEC should not, in CPA's opinion, be entitled to the same level of compensation payment, but argues it would still be reasonable to pay a lower level of compensation in recognition of the toll service revenue generated for the LEC by delivery of the call to the LEC's network. CPA states that because of the higher revenue-to-cost ratio for message toll service than for operator services, the COPT operator who performs his own billing should receive at least half the compensation otherwise payable.

Further, CPA acknowledges that the appropriate level of compensation is a matter of judgment which we must determine based upon consideration of many relevant factors. CPA emphasizes that what it seeks is simply a fair share of the revenue that COPT operators' efforts make available to the LEC.

Finally, CPA disputes any suggestion that compensation be paid on a dollars-per-set basis. CPA claims that payment of compensation at the same dollar level per COPT station would be unfair and might create uneconomic incentives. CPA notes that the suggestion of a dollar-per-set compensation scheme was made by Pacific because of its claim that a usage sensitive compensation

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4 This position is discussed more fully in Section IV below.

plan would take 9 to 12 months to institute. CPA points out that if this Commission gives this project high priority, so will Pacific.[5] Thus the supposedly long implementation period suggested by Pacific's witness could easily be avoided.

2. **National Association of Truck Stop Operators and the National Association of Convenient Stores' Position**

NATSO and NACS essentially adopt the position of CPA in their brief. These parties presented no witnesses and were not present at the hearings held in July. The members of NATSO and NACS are potentially customers of both COPT operators and Pacific and other LECs. NATSO and NACS are in favor of the same level of compensation for non-sent-paid calling advocated by CPA. NATSO and NACS spend a great deal of time in their brief discussing the record from Phase I of the Commission's original customer-owned payphone investigation dating back to 1985. NATSO and NACS believe that the evidence in Phase I strongly supports the compensation now requested by CPA. Unfortunately we find the references to the Phase I record largely unhelpful and will consider NATSO and NACS' brief as standing for the wholesale endorsement of CPA's position. Thus, no further summary of their independent position is necessary here.

3. Pacific's Position

Pacific recommends that the Commission defer ruling on the issue whether there should be shared compensation for non-sent-paid calling until after Phase III of the OII.

Pacific submits that what is already known about the payphone market argues against further stimulation of the private

5 There is no evidence regarding the time it would take GTE-C and Contel to implement a usage-sensitive compensation plan.

payphone industry with compensation, or in its view, ratepayer subsidies.

Pacific claims that no studies exist to suggest that the more payphones there are, the more telephone calls will be made. Instead, the cumulative number of available payphones has increased at about the same rate before, and after, the introduction of COPT service, and that rate approximates the overall growth in population and network usage. Pacific emphasizes that two-thirds of new COPTs instruments simply replace preexisting Pacific pay telephones. Pacific asserts that even though 35% of COPT instruments are in "void" locations, there is no evidence showing an overall increase in network calling.

Pacific provided testimony to address the issue of the effect of a compensation plan on revenues as required by D.87-08-052. Pacific Witness Nyberg examined the cost to Pacific of processing non-sent-paid operator-handled calls. She found the average operator surcharge revenue per non-sent-paid call was 35 cents. The average operator handling and mechanized calling card service (MCCS) cost per non-sent-paid call is 29 cents. Thus, the revenue-to-cost ratio for the operator surcharge for non-sent-paid-calls is 1.2.

Revenue from operator services provided to COPTs would be decreased if CPA's request for 50% of the intraLATA non-sent-paid surcharge was granted. The revenue-to-cost ratio would be lowered from 1.2 to .6, according to Pacific witness Nyberg. The total cost includes the operator work time and the investment-related cost to support the toll operator services network. Thus, under CPA's proposal, it would become unprofitable to provide this operator service to COPTs and would require a subsidy from some other source. Based on COPTs current volume for non-sent-paid calling, Pacific would lose an approximate $2.5 million in annual revenue. Pacific claims that no costs could be avoided if compensation for non-sent-paid calls (or surcharge revenue sharing)

was required. Pacific claims it would have to provide all work functions identified in the operator surcharge cost study. (Exhibit 8.) Further, Pacific alleges that if surcharge revenue sharing were ordered, it would incur additional costs required to initiate and administer that program.

Pacific considers the sharing of the surcharge for non-sent-paid calls as lost contribution that must be made up elsewhere. This loss would have to be made up by other Pacific ratepayers, resulting in a subsidy by ratepayers to COPT operators. Pacific witness Forbes also concluded that sharing of surcharge revenues would have a negative impact on Pacific's ratepayers. (Exhibit 16.)

Pacific believes that COPT operators should collect the 10-cent surcharge on non-sent-paid calls over and above Pacific or AT&T's rates, currently allowed under the pursuant to D.85-11-057. In fact, Pacific offered to assist in the billing and collection of this additional surcharge so long as its own costs for that billing and an appropriate rate of return were recovered. Pacific witness Forbes gave a very rough estimate that this billing and collection service on the 10-cent surcharge probably would cost the COPT operators no more than 5 cents. (Tr. 2982.)

Pacific views the payment of surcharge revenues at the level requested to COPT operators as an inappropriate shifting of costs to general ratepayers. Pacific further argues that the sharing of surcharge revenues would accelerate the entry of COPT operators into Pacific's most lucrative pay telephones markets. Pacific is concerned that this would further erode the contribution from its own instruments that helps subsidize lower paying pay-phones. (Exhibit 16, testimony of James Forbes.)

Pacific asserts that COPT penetration in the market is currently growing at a rate of about 10,000 new installations per year. Pacific acknowledges that 35% of those locations are at "void" or new locations. Pacific expects that COPT operators

will use all or a portion of the additional revenue they would receive under a compensation plan to offer even greater commissions to station agents. Pacific then would either have to raise its own commissions to keep pace, or if it does nothing, would watch many more station agents or property owners switch to COPT operators, despite the fact that, in Pacific's view, those locations are more profitable to Pacific and its ratepayers with a Pacific station in place. Pacific believes the move of more Pacific payphones to COPT operators will cause a reduction in the contribution of Pacific's coin telephones to Pacific's revenue requirements and net income. It views this as less money to pay for the franchise obligations which Pacific has, but which COPT operators do not. In Pacific's opinion the cost of increased competition made possible by compensation for non-sent-paid calls will be borne by Pacific's ratepayers, rather than by the COPT operators who benefit from it.

Additionally, Pacific asserts that CPA (representing COPT operators) came before this Commission with "unclean hands." The general principle guiding actions in equity is that those seeking equity must come with clean hands. Pacific argues CPA should be denied any relief in this proceeding because of the "unclean hands" of COPT operators throughout the state. The "unclean hands" are caused by the practices of COPT operators in conjunction with AOS providers in two areas: The misrouting of intraLATA and operator traffic, or bypass of Pacific's network, and secondly, overcharging customers. Pacific states that all intraLATA and certainly "zero" traffic is supposed to be routed through Pacific, but in some cases is routed through the AOS providers. Further, the rates that COPT operators are supposed to charge are clearly set forth in this Commission's orders and tariffs, but in many cases have been deliberately ignored.

Pacific points to the widespread bypass of the network by COPT operators via AOS providers as grounds for denying any sharing of non-sent-paid calling surcharges. Pacific's data from

December 1987 through mid-May 1988 shows an increase in intraLATA calling via AOS providers. Pacific's most recent study, presented through its witness Ruiz, covered April 10th to May 15th, 1988. (Exhibit 12.) That study indicated that 55% of the COPT intraLATA calls billed by Pacific for AOS providers were overcharged. While this showed a decrease in overcharging taking place from some months before, it indicated a dramatic growth in the total number of intraLATA calls carried by AOS providers. Pacific also found occurrences of bypass and overcharging by CPA's witness Keane's own company, PayTel. The relevance of this data will be addressed in our discussion to follow.

In its case against compensation, Pacific also relies heavily on a comparison chart prepared by its witness Ruiz to show gross margins potentially earned by COPT operators. (Exhibit 4.) Pacific claims that this exhibit demonstrates that the margins already available to COPT operators range from 6% to as high as 57%. Pacific uses Exhibit 4 to argue that any COPT operator not making a profit with these margin potentials is simply inefficient and deserves to be driven out of the market.

Finally, Pacific recommends that if any form of interim compensation is granted to the COPT industry, it be structured on a dollars-per-set per-month basis. Under this proposal, each COPT line would receive the same compensation regardless of calling volumes. Pacific prefers this to any usage-sensitive compensation plan (such as on a cents-per-call basis), claiming any usage-sensitive plan would take from 9 to 12 months to develop. Since this proceeding is specifically focused on a decision for interim compensation pending the results of the OII, Pacific believes it would be imprudent to order a compensation plan that would take 9 months to implement.

As support for its 9-month estimate, Pacific claims it would have to gather data not currently gathered by COPT line. Currently it does not bill non-sent-paid calls to the end user. It

does not relate those calls to an individual line. Pacific would have to develop a methodology for capturing that data, capture it and render payment on a recurring basis.

In addition, such a program would have to be worked into Pacific's existing CRIS accounting system, which is already backlogged with requested changes. Due to its backlog and priorities on backlogged projects for the CRIS system, Pacific estimates that a usage-sensitive compensation plan would take between 9 months to one year to implement. However, Pacific witness Forbes acknowledged on cross-examination that the Commission could order changes in those priorities, thus speeding up the process. Finally, Mr. Forbes estimated that the cost to develop such an interim compensation plan on a usage-sensitive basis would be approximately $250,000.

3. GTE-C's Position

GTE-C is also opposed to any compensation for COPT operators from non-sent-paid calling. GTE objects to CPA's attempt to expand the issue for hearings to include revenue from the toll portion of non-sent-paid calling. GTE believes the hearings were confined to the issue of whether compensation for the operator surcharge should be allowed. GTE-C views giving any money to the COPT operators from non-sent-paid calls as a subsidy passing from ratepayers to the COPT industry. GTE-C believes that this is a fundamental departure in our policy regarding the COPT industry. Like Pacific, GTE-C believes that the proper context for exploring any compensation issue is within the ongoing OII.

GTE-C argues that any payment to COPT operators from the operator surcharges must be offset by authorizing the utility to collect an equivalent amount from some other source. (Exhibit 19, p. 4.) Merely shifting revenues from the utility to private enterprise without allowing the utility to recover the expense would be improper ratemaking, in GTE-C's view.

In a regulated setting, expenses of the utility are ultimately borne by the utility's ratepayers. GTE-C claims that the expense of providing compensation to COPT operators must be spread among other rates, meaning that other ratepayers are assessed the costs of the payment to COPT operators. GTE-C concludes that the net result is that the general body of ratepayers would be directed to subsidize private enterprise, the COPT operators.

GTE-C does not believe that CPA has made a showing that COPT service has generated additional traffic over the LEC's network. Thus, GTE-C argues there is no evidence to support the conclusion that the placing of additional COPT instruments results in the production of more revenue for the phone companies.

GTE-C disagrees with CPA's characterization that they provide a valuable service equivalent to an access service to the LECs. GTE-C views this position as "utter nonsense". (GTE-C's opening brief, p. 14). GTE-C states that there is nothing about COPT operators that entitles them to different treatment than the LEC's other business customers.

GTE-C alleges that paying COPT operators a portion of the non-sent-paid revenues would be contrary to Public Utilities (PU) Code §§ 453 and 532.[6] GTE-C claims that those code sections

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6 PU Code § 453 reads as follows:

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

(b) No public utility shall prejudice, disadvantage, or require different rates or deposit amounts from a person because of race, religious creed, color, national origin, ancestry, physical handicap, medical condition, occupation, sex, marital status or

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change in marital status. A person who has exhausted all administrative remedies with the commission may institute a suit for injunctive relief and reasonable attorney's fees in cases of an alleged violation of this subdivision. If successful in litigation, the prevailing party shall be awarded attorney's fees.

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

(d) No public utility shall include with any bill for services or commodities furnished any customer or subscriber any advertising or literature designed or intended (1) to promote the passage or defeat of a measure appearing on the ballot at any election whether local, statewide, or national, (2) to promote or defeat any candidate for nomination or election to any public office, (3) to promote or defeat the appointment of any person to any administrative or executive position in federal, state or local government, or (4) to promote or defeat any change in federal, state, or local legislation or regulations.

(e) The commission may determine any question of fact arising under this section.

PU Code § 532 states:

Except as in this article otherwise provided, no public utility shall charge, or receive a different compensation for any product or commodity furnished or to be furnished, or for any service rendered or to be rendered, than the rates, tolls, rentals, and charges applicable thereto as specified in its schedules on file and in effect at the time, nor shall any public utility engaged in furnishing or rendering more than one product, commodity, or service, charge, demand, collect, or receive a different compensation for the collective, combined, or contemporaneous furnishing or rendition of two or more of such products, commodities, or services, than the aggregate of the rates, tolls, rentals, or charges specified in its schedules on file and in effect at the time, applicable to each such product, commodity, or service when separately furnished or rendered, nor

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prohibit a public utility from giving any preference or any advantage to any person or corporation, to charge any rate different from its tariffed rates, or to refund directly or indirectly any portion of the rates charged. GTE-C says that CPA is essentially asking for a wholesale rate to be charged to them so that they may in turn charge the retail tariff rate to the end user. GTE-C says that this boils down to a demand for a discount, refund, or rebate on the rates charged to all other business customers.

GTE-C states that any large business customer of the telephone company could make the same claim for compensation as does CPA. The argument would be that any large business entity which provides its own instruments for its employees should get a rebate on the calls that its employees make which would not otherwise be generated and sent over the LEC's network.

Additionally, GTE-C argues that no urgency has been shown by CPA for the requested relief. They argue that the evidence presented by CPA does not demonstrate that COPT operators cannot make a reasonable profit under the present business structure.

GTE-C presented no evidence regarding their revenue-to-cost ratios for operator services on non-sent-paid calls. GTE-C did express concern that revenue collected from message toll-related services which is subject to settlement agreements among all local exchange carriers in California, would be affected if some percentage of that toll revenue is first paid to COPT operators.

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shall any such public utility refund or remit, directly or indirectly, in any manner or by any device, any portion of the rates, tolls, rentals, and charges so specified, nor extend to any corporation or person any form of contract or agreement or any rule or regulation or any facility or privilege except such as are regularly and uniformly extended to all corporations and persons. The commission may by rule or order establish such exceptions from the operation of this prohibition as it may consider just and reasonable as to each public utility.

While GTE-C is firmly opposed to any compensation for COPT operators for non-sent-paid calling, it does suggest that the simplest method for granting compensation would be a reduction in the monthly rate COPT operators pay the utility for the COPT or the business line. The advantage of this approach would be fast implementation. This proposal would treat each COPT line the same regardless of its calling volumes.

Finally, GTE-C urges us not to adopt any compensation from the utility as a method to support the COPT operator. A far better method in GTE's view would be to raise the rate that COPT operators could charge end users. In GTE-C's view an increase in rates would not entail any form of subsidy from the ratepayer, nor would it require the utility to give an advantage to one customer or class of service not generally afforded to other customers. GTE-C suggests that COPT operators should be encouraged to simply use sources of revenue the Commission has already placed at their disposal, meaning the 10-cent surcharge for non-sent-paid calls that CPA claims is currently uncollectable.

4. Contel's Position

Contel agrees with Pacific and GTE-C that any compensation to COPT operators for non-sent-paid calling is inappropriate. Contel believes that CPA has not demonstrated that the currently allowable 10-cent surcharge is in fact inadequate or uncollectable. Contel argues that CPA witness Keane was unable to show any study as to the alleged uncollectability of the 10-cent surcharge. Similarly, CPA had no data which would establish that damage to payphones was in fact any way connected to the 10-cent surcharge, according to Contel. Further, Contel argues that CPA's testimony regarding the uncollectability of that 10-cent surcharge is based on a very small portion of CPA's members. Contel argues that the experience of such a small sector of the COPT industry cannot provide a valid basis to claim that the surcharge is, in fact, uncollectable.

Contel further argues that CPA has presented no evidence to show that the installation of COPT payphones has increased the volume of traffic on Pacific's network. Even if one were to assume that the volume has increased, CPA's argument would only apply to increased traffic generated by CPA phones located where no phone existed previously. By CPA's own calculations, only 35% of their phones have been placed in new locations. Therefore, even if CPA's position regarding the increase in the volume of traffic is correct, only 35% of the COPT payphones could account for the increased volume. CPA's proposal to receive 50% of the operator surcharge does not take these statistics into account, according to Contel.

Finally, Contel argues that the revenues derived from interLATA calls are a source of revenue used to meet the revenue requirements of the intraLATA toll settlement pool. Therefore, if CPA's request were to be granted and its members given a percentage of the intraLATA revenues, the revenue requirements of the toll pool would have to be made up elsewhere. Contel argues that can only be done through an increase in someone's rates. In Contel's view, it is patently unfair to require the general ratepayer to subsidize COPT operators.

Contel, whose COPT tariff is fairly recent, presented no cost data of its own regarding the revenue-to-cost ratio for operator surcharges for non-sent-paid calls.

5. TURN's Position

TURN opposes any interim compensation for COPT operators from the non-sent-paid revenues received by Pacific. TURN believes that the COPT industry as represented by CPA is requesting an extraordinary increase in its payphone revenues at the expense of Pacific, and ultimately the ratepayer. TURN believes that we were ill-advised to go forward with this proceeding despite the numerous fundamental questions on the entire payphone industry currently under review in the OII.

TURN emphasizes that some 65% of COPT phones have replaced former Pacific telephones. Further, as to the 35% figure that CPA uses for new locations, CPA's witness was unable to define exactly what a new location was. Thus, a "void" location could be just a few feet away from an existing Pacific payphone. In TURN's view, without more empirical data, that "35% new locations" statistic is meaningless. TURN points out that CPA's witness could not offer any fundamental evidence as the overall minutes of use for all payphones since the beginning of COPT service.

Similarly, TURN claims that this same lack of evidence plagues CPA's claim that COPT competition has nurtured technological advancement in the industry. TURN finds no evidence that payphone technology is advancing any faster than it did prior to the birth of the COPT industry. As yet, the most advanced payphones are considerably more expensive than the standard models and are confined to high-revenue locations such as large hotels and airports. As such, these phones are of little benefit to most consumers. (TURN Opening Brief, p. 5.)

TURN further questions CPA's dubious assertion that it hopes to make greater inroads in low income areas if additional revenue from COPT instruments is forthcoming. TURN believes it more likely that an increase in revenue will fuel competition with Pacific through commissions for the high-revenue locations.

TURN contends that the underlying flaw for CPA's case is the paucity of evidence it presented before this Commission. TURN states that CPA witness Keane relied in great part on his own experience for his own company rather than any industrywide statistics.

Finally, TURN believes that if any additional revenue is granted to the COPT industry, the added surcharges to consumers should be removed. TURN had vehemently opposed any variations in payphone rates between LECs and COPT pay stations. Nevertheless, we granted COPT operators the right to charge an extra nickel on local calls and an extra dime on toll calls in D.85-11-057. TURN believes that these charges impose an unfair burden on the consumer who rarely has a choice among payphones in a particular area. TURN requests that if the Commission is intent on granting COPT operators a greater share of Pacific's revenues then it should at least remove the additional charges presently allowed.

6. DRA's Position

Like TURN, DRA provided no witnesses during the hearings, but developed its recommendation based on the record. DRA believes that COPT operators provide the general public with additional access to the telecommunications network and thus they should receive an incentive in the form of compensation for offering access to Pacific's intraLATA non-sent-paid calling options. DRA points out that D.85-11-057 does not require COPT operators to give callers access to Pacific's operator services in order to use intraLATA non-sent-paid calling payment options available through Pacific. Although COPT operators do provide such access, their cooperation is voluntary.

DRA points out that COPT operators have the option to block intraLATA non-sent-paid calling from their instruments. If they did so, these COPT operators would unreasonably restrict customers' access to the network. Payment by coin is an option available only to those customers who have coins in hand. If end

users do not have coins, they have to rely on other payment options through operator services in order to complete calls. The Commission, in DRA's view, should acknowledge that COPT operators provide a valuable service by offering the general public access to Pacific's non-sent-paid payment options for intraLATA calls. DRA agrees with CPA's characterization that COPT operators incur an opportunity cost if they allow access to non-sent-paid intraLATA calling. As DRA states, if a customer makes a non-sent-paid intraLATA call from a COPT station, COPTs cannot derive revenue for sent-paid calls for the duration of that call. Currently, the Commission permits COPT operators to charge 10 cents in coin for that opportunity cost. Practically, that charge is difficult to collect. DRA agrees with CPA that customers expect to be able to make non-sent-paid calls without use of a coin.

DRA points out that if COPT operators blocked customer access to Pacific's intraLATA non-sent-paid calling services, Pacific would receive no revenue from those calls. Thus, some sharing of that revenue is reasonable.

DRA believes that the profitability of Pacific's individual payphones is irrelevant to this proceeding. DRA claims that the Commission acknowledged in D.85-11-057 that there is a subsidy flow from Pacific's profitable stations to other pay stations which do not break even, but do serve a public need. DRA believes the proper forum to address the issue of public payphones is in Phase II of the OII. There, any problems created by the grant of compensation to COPT operators can be resolved.

DRA urges that interim compensation for operator surcharge revenues be limited to 6 cents per call. DRA believes that CPA's request for 50% of the operator surcharge revenues as compensation for non-sent-paid intraLATA calls is too high. Pacific testified that its average operator revenue per call was 35 cents, and that its average operator cost per call was 29 cents. (Figures are rounded to the nearest penny.)

The difference is the operator surcharge margin or 6 cents per call. DRA argues that CPA offered no rebuttal testimony to contradict Pacific's figures. Therefore, in DRA's view, interim compensation must be limited to the difference between the average operator-revenue-billed per-call, and the average operator-handled cost-per-call, equalling a maximum of 6 cents per-non-sent-paid intraLATA call. DRA notes that if Pacific paid 50% of the operator surcharge as CPA requests, its payments would be 17.5 cents, or 11.5 cents below its cost of 29 cents per call. This 11.5 cents would have to come from other regulated services. DRA believes that compensation at this level would not be in the interest of the ratepayers.

DRA disagrees with Pacific's suggestion that if compensation be granted it be done on a dollars-per-set-per-month basis. DRA believes that Pacific did not provide sufficient evidence to support its contention that it would take 9 to 12 months to develop any usage-sensitive compensation plan. Further, DRA believes that a dollars-per-set interim compensation plan would not be equitable, since payphone sets which generate a high volume of non-sent-paid calling would receive the same amount of compensation as those sets that may generate little or no non-sent-paid calling.

DRA is also concerned about Pacific's offer to bill and collect the currently allowed 10-cent surcharge on non-sent-paid calls authorized by D.85-11-057. DRA points out that there has been no cost study to determine if Pacific billing and collecting charges would exceed the 10-cent surcharge. Without this cost study, DRA believes a more appropriate place to consider this proposal is in the context of the ongoing OII workshops.

DRA believes that CPA's amended request for either a 50% share of the operator surcharge or 25% of total revenues for non-sent-paid calls is beyond the scope of this proceeding. DRA believes this proceeding is properly limited to the question

whether COPT operators are entitled to a share of operator surcharge only. In addition, DRA argues that we should not grant CPA a share of toll revenues for policy reasons because toll rates are currently subject to downward pressure. In D.88-07-022, the recent Pacific rate design decision, the Commission adjusted toll or MTS rates downward closer to costs in order to discourage bypass. MTS revenues traditionally have kept basic rates from rising significantly. To grant COPT operators a share of MTS billed revenues at a time when those revenues are declining could pressure an increase in basic rates which would threaten universal service. DRA opposes taking this risk and argues that CPA has made no compelling argument for including toll revenues in its compensation plan.

B. Discussion

Reviewing all the evidence and the parties' arguments, we believe that some level of compensation for COPT operators for non-sent-paid calling is appropriate at this time. As CPA acknowledged, this is a judgment call for us to make based on equitable arguments.

We find Pacific's argument of "unclean hands" on the part of the COPT operators an unconvincing reason to grant no compensation at all. Pacific's data regarding overcharging and intraLATA bypass by AOS providers servicing COPT instruments is outdated given recent Commission actions in this area since mid-May 1988. Our actions include the granting of a certificate of public convenience and necessity (CPC&N) to National Telephone Services (one of the key AOS providers in Pacific's testimony) which forbids any intraLATA calling by that company as a condition of its CPC&N.[7] However, the past practices of the COPT industry and AOS

7 See D.88-06-025.

providers are legitimate factors in determining the level of compensation that we will authorize at this time. Further, we wish to send a signal to the COPT industry and the LECs to continue to cooperate in the ongoing OII workshops in an effort to resolve the many issues regarding payphone service pending before us today.

As we stated in D.87-08-052, which set this issue for rehearing, we are concerned with the impact of any compensation plan or revenue sharing on Pacific's revenues. We believe DRA's proposed 6 cent-per-call compensation plan takes this concern into account. This 6 cent-per-call amount will not bring Pacific's revenue-to-cost ratio for operator surcharges below 1. This compensation shall apply to completed calls. We note that Pacific incurs costs but no revenues for attempted calls. While we have concerns regarding the accuracy of some of Pacific's statistical analysis, we believe that this revenue-to-cost ratio of 1.2 for operator surcharges held up well during cross-examination.

Further, several parties have pointed out that this rehearing was limited to an exploration of whether it was appropriate to share the operator surcharge portion of revenues for non-sent-paid calls. We believe it is inappropriate for CPA to attempt to expand the issues to request a blanket 25% share of all revenues (including toll) from non-sent-paid calls. We ordered rehearing "to receive evidence only on whether COPT operators should be entitled to a share of Pacific Bell's surcharge applicable to non-sent-paid calls, in those instances where a COPT instrument is employed by an end-user." (D.87-08-052, Ordering Paragraph 3, mimeo. p. 24.) Thus, sharing of operator surcharge revenue is the only issue presently before us.

We reject GTE-C's arguments that payment to COPT operators of a portion of the non-sent-paid operator surcharges is contrary to PU Code §§ 453 and 532. The principle has long and firmly been established that it is only unjust or unreasonable discrimination which renders a rate or charge unlawful. The

However, it is doubtful that either this Commission or the public itself would find that COPT phones which block caller access to intraLATA non-sent paid calling would serve the public interest.

We note that no party disputes that the compensation we order today is on an interim basis only and is nonprecedential to the resolution of compensation issues in the ongoing OII. At issue is whether COPT operators may collect revenues for each non-sent paid call in addition to the $.10 surcharge for intraLATA calls authorized in the original COPT tariff. CPA has testified as to the difficulty faced by operators in collecting that surcharge. In the face of the failure of COPT operators to collect revenues as we had envisioned, we believe that interim relief in the form of this limited sharing of LEC operator surcharge should be granted. Other forms of compensation may ultimately be approved as a result of this OII. Thus, this compensation plan adopted today will last only until a final order issued by this Commission in the ongoing OII directs otherwise.

In adopting DRA's suggested 6 cents-per-call usage-sensitive compensation plan we have necessarily rejected Pacific's suggested dollar per-set-per-month plan. We find Pacific's arguments that it would take 9 to 12 months to institute a usage-sensitive plan unpersuasive. We therefore order Pacific and the other LECs, GTE-C, and Contel, to make the necessary changes in their accounting systems so that they may begin compensating COPT operators within 90 days of this order. We realize this is a much shorter timeframe than that proposed by Pacific. But we are willing to assist Pacific in prioritizing its "backlog" for its CRIS accounting system through our directives in this decision. Any further delay would make interim relief meaningless given the current schedule for the completion of the OII.

CORRECTION

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BEEN REPHOTOGRAPHED

TO ASSURE

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providers are legitimate factors in determining the level of compensation that we will authorize at this time. Further, we wish to send a signal to the COPT industry and the LECs to continue to cooperate in the ongoing OII workshops in an effort to resolve the many issues regarding payphone service pending before us today.

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Further, several parties have pointed out that this rehearing was limited to an exploration of whether it was appropriate to share the operator surcharge portion of revenues for non-sent-paid calls. We believe it is inappropriate for CPA to attempt to expand the issues to request a blanket 25% share of all revenues (including toll) from non-sent-paid calls. We ordered rehearing "to receive evidence only on whether COPT operators should be entitled to a share of Pacific Bell's surcharge applicable to non-sent-paid calls, in those instances where a COPT instrument is employed by an end-user." (D.87-08-052, Ordering Paragraph 3, mimeo. p. 24.) Thus, sharing of operator surcharge revenue is the only issue presently before us.

We reject GTE-C's arguments that payment to COPT operators of a portion of the non-sent-paid operator surcharges is contrary to PU Code §§ 453 and 532. The principle has long and firmly been established that it is only unjust or unreasonable discrimination which renders a rate or charge unlawful. The

question whether unreasonable rate discrimination has occurred depends upon all the surrounding circumstances and conditions. In the present case, the compensation to be paid will be provided in the tariffs of the particular exchange carrier, and so, even if the compensation were to be considered a reduction in otherwise applicable rates, it would be an element of the tariff rates applicable to the COPT service subscriber. Thus, no discrimination would occur. The so-called "discrimination" effected by such a tariff change would not be "undue" but rather would be specifically calculated and intended to rectify, on an interim basis, the inequity and unfairness inherent in the present structure of the payphone services marketplace. Therefore, such a compensation arrangement would not constitute an unlawful preference or advantage to the COPT operator in comparison to any other customer or class of customers of the LEC. If we decide that equity requires the payment of compensation to COPT operators for their role in delivering non-sent-paid intraLATA traffic to the LEC network, then the payment of such compensation by the LECs, in accordance with tariff changes implemented in compliance with our order, will not constitute a violation of PU Code §§ 453 and 532.

We disagree with the characterization that CPA seeks a subsidy or a kickback for COPT operators. The relief given today is more appropriately viewed as interim compensation for an access function that COPT operators provide and is of value to the LECs. The COPT operator places his equipment in a public location at his own expense and maintains and repairs that equipment as a service to the public. A substantial portion of the use made of that equipment is for non-sent-paid intraLATA calling. While there is conflicting evidence on exactly what proportion of total calling is non-sent-paid calling, no party has argued that it is an unimportant share. We agree with the characterization of the use of the COPT station for the placement of such calls as constituting an opportunity cost to the COPT operator in strict economic terms.

However, it is doubtful that either this Commission or the public itself would find that COPT phones which block caller access to intraLATA non-sent paid calling would serve the public interest.

We note that no party disputes that the compensation we order today is on an interim basis only and is nonprecedential to the resolution of compensation issues in the ongoing OII. At issue is whether COPT operators may collect revenues for each non-sent paid call in addition to the $.10 surcharge for intraLATA calls authorized in the original COPT tariff. CPA has testified as to the difficulty faced by operators in collecting that surcharge. In the face of the failure of COPT operators to collect revenues as we had envisioned, we believe that interim relief in the form of this limited sharing of LEC operator surcharge should be granted. Other forms of compensation may ultimately be approved as a result of this OII. Thus, this compensation plan adopted today will last only until a final order issued by this Commission in the ongoing OII directs otherwise.

In adopting DRA's suggested 6 cents-per-call usage-sensitive compensation plan we have necessarily rejected Pacific's suggested dollar per-set-per-month plan. We find Pacific's arguments that it would take 9 to 12 months to institute a usage-sensitive plan unpersuasive. We therefore order Pacific and the other LECs, GTE-C, and Contel, to make the necessary changes in their accounting systems so that they may begin compensating COPT operators within 90 days of this order. We realize this is a much shorter timeframe than that proposed by Pacific. But we are willing to assist Pacific in prioritizing its "backlog" for its CRIS accounting system through our directives in this decision. Any further delay would make interim relief meaningless given the current schedule for the completion of the OII.

Findings of Fact

1. COPT operators provide access to the LEC's network for non-sent-paid calling through their instruments.

2. Currently, COPT operators receive no share of the revenue for that non-sent-paid calling because it is impractical to collect the currently authorized 10-cent surcharge.

3. COPT operators incur "opportunity costs" when their instruments are used to place non-sent-paid calls because sent-paid calls cannot be made by end users with coins in hand.

4. COPT operators could block access to the LEC's intraLATA non-sent-paid calling options if they chose to do so.

5. Pacific's revenue-to-cost ratio for its operator surcharges received for non-sent-paid calls is 1.2.

6. DRA's recommended compensation at a level of 6 cents-per-call for non-sent-paid calls is supported by the record.

7. DRA's recommended compensation of 6 cents-per-call would not bring Pacific's revenue-to-cost ratio for operator surcharges below 1.

8. CPA requests compensation at a level of 50% of the operator surcharge or 25% of total revenues for non-sent-paid calls.

9. Pacific presented data regarding COPT operators overcharging and intraLATA bypass via AOS providers.

10. The most recent data on overcharging and bypass was through May 15, 1988.

11. This data does not take into account recent Commission action regarding the AOS industry.

12. We disagree with GTE-C that payment to COPT operators of a portion of the non-sent-paid revenues would violate PU Code §§ 453 and 532 because no discrimination between customers will occur.

13. We disagree with Pacific, GTE-C, Contel, and TURN that any grant of compensation is a form of subsidy from the ratepayers to the COPT industry.

14. All parties agree that the relief sought here is interim in nature.

15. Pacific claims that a usage-sensitive plan would take 9 to 12 months to implement.

16. While opposing any compensation, Pacific recommends that compensation on a dollars-per-set basis is faster to implement.

17. Pacific acknowledges that this Commission could set priorities that would speed up the implementation timeframe.

18. Neither GTE-C nor Contel submitted cost data in this proceeding.

Conclusions of Law

1. COPT operators should receive some level of compensation for non-sent-paid calls made over their instruments.

2. The level of compensation is a matter of judgment for this Commission to decide.

3. Pacific has not made a showing of "unclean hands" on the part of COPT operators which would justify the granting of no compensation.

4. This proceeding is properly limited to compensation of operator surcharge revenues for non-sent-paid calls.

5. CPA's request for 25% of total revenues of non-sent-paid calls would improperly expand the scope of this proceeding.

6. The fact that the $.10 surcharge on intraLATA calls cannot be effectively collected at this time in the case of non-sent paid intraLATA calls is a reason for adopting interim compensation in the form of a portion of the LEC operator surcharge on non-sent paid calls.

7. We should select a level of compensation that does not bring Pacific revenue-to-cost ratio for operator surcharges below 1.

8. DRA's proposal of compensation at a level of 6 cents-per-call would keep Pacific's revenue-to-cost ratio for operator surcharges at 1 and therefore should be adopted.

9. If so ordered by this Commission, Pacific should be able to implement a usage-sensitive compensation plan in substantially less than 9 months.

10. Our ordering of compensation for non-sent-paid calling will not violate PU Code §§ 453 and 532.

INTERIM ORDER

IT IS ORDERED that:

1. Pacific Bell (Pacific), General Telephone Company of California (GTE-C), and Contel of California (Contel) shall implement a compensation plan for non-sent-paid calls for COPT operators at a level of 6 cents-per-non-sent-paid completed call.

2. Within 45 days of the effective date of this order, Pacific, GTE-C, and Contel shall each file separate advice letters, with service to all parties of record, containing revisions of all relevant tariffs covering COPT service to implement a compensation plan for COPT operators at a level of 6 cents-per-non-sent paid call. These tariff revisions will become effective 45 days after filing.

3. The compensation plan ordered in this decision is on an interim and nonprecedential basis only, pending further direction on this issue after resolution in I.88-04-029.

This order is effective today.

Dated November 23, 1988, at San Francisco, California.

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

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

Victor Weisser, Executive Director

APPENDIX A

LIST OF APPEARANCES

Respondents: Marlin D. Ard, Attorney at Law, John W. Bogy and Timothy S. Dawson, for Pacific Bell; Peter K. Plaut, Attorney at Law, for GTE California; and Orrick, Herrington & Sutcliffe, by Catherine O'Connell and Robert Gloistein, Attorneys at Law, for ConTel of California, Inc.

Interested Parties: Mark Barmore, Attorney at Law, for Toward Utility Rate Normalization (TURN); Pelavin, Norberg & Beck, by Alvin H. Pelavin, Jeffrey F. Beck, and Lizbeth M. Morris, Attorneys at Law, for Calaveras Telephone Company, California-Oregon Telephone Company, Citizens Utilities Company of California, CP National, Ducor Telphone Company, Foresthill Telephone Company, 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, and The Volcano Telephone Company; Jackson, Tufts, Cole & Black, by William M. Booth, and Joseph S. Faber, Attorneys at Law, for National Telephone Services; Peter A. Casciato, P.C., Attorney at Law, for Central Corp.; Randy Deutsch, Attorney at Law, and Charmagne T. Freeman, for AT&T Communications; John H. Engel, Attorney at Law, for Citizens Utilities Company of California, A. J. Smithson, for Citizens Utilities Company of California; Gauthier & Hallett, by Mary Lynn Gauthier, for herself; Cooper, White & Cooper, by Mark P. Schreiber, Attorney at Law, and A. A. Johnson, for Roseville Telephone Company; Graham & James, by Martin A. Mattes, Attorney at Law, and Michael P. Hurst, and Thomas Keane, for California Payphone Association; Thomas J. MacBride, Jr., Attorney at Law, and David A. Simpson, for International Telecharge, Inc., and AOS Continental of California, Inc.; Ken McEldowney, for Consumer Action; Cooper, White & Cooper, by Mark P. Schreiber, Attorney at Law, for Roseville Telephone Company; Leonard L. Snaider, Attorney at Law, for Louise Renne, City Attorney, City and County of San Francisco; Southmayd, Powell & Taylor, by Alan T. Thiemann, Attorney at Law, for National Association of Truck Stop Operators, National Association of Convenience Stores, and Airport Operators Council International; and Ronald F. Evans, for Com Systems, Inc.

Division of Ratepayer Advocates: Janice Grau, Attorney at Law, and Chris Ungson.

(END OF APPENDIX A)

We limit compensation to a share of operator surcharge revenue, since that alone was the issue set for rehearing by Decision (D.) 87-08-052. Today's decision adopts the Division of Ratepayer's Advocates (DRA's) recommended level for compensation of 6 cents per-non-sent-paid call. We order the Local Exchange Carriers (LECs), Pacific Bell (Pacific), General Telephone Company of California (GTE-C), and Contel of California (Contel), to institute this compensation program within 75 days of this order.

Finally, we clarify that our current ban on intraLATA competition extends to operator and billing functions as well as transmission or routing of the calls. We invite parties to participate in I.87-11-033, our investigation into New Regulatory Frameworks, if they wish to advocate changes regarding that intraLATA ban on competition.

II. Background

By D.85-11-057, as modified by D.86-01-059, we authorized Pacific to offer a new service allowing non-utility-owned pay telephones to be connected to Pacific's network. This new service was designated as COPT service.

CPA filed a petition for modification of D.87-11-057 in March 1987, seeking, in part, compensation for non-sent-paid intraLATA toll calls. Such calls consist of credit card, third-party, and person-to-person calls. By D.87-08-052, we ordered the proceeding reopened "to receive evidence only on whether COPT operators should be entitled to a share of Pacific Bell's surcharge applicable to non-sent-paid calls, in those instances where a COPT instrument is employed by an end-user." (Ordering Paragraph 3, mimeo. p. 24.)

We limit compensation to a share of operator surcharge revenue, since that alone was the issue set for rehearing by Decision (D.) 87-08-052. Today's decision adopts the Division of Ratepayer's Advocates (DRA's) recommended level for compensation of 6 cents per-non-sent-paid call. We order the Local Exchange Carriers (LECs), Pacific Bell (Pacific), General Telephone Company of California (GTE-C), and Contel of California (Contel), to institute this compensation program within 75 days of this order.

II. Background

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Ultimately, the parties were unable to close on their settlement, so hearings went forward on the non-sent-paid calling issue as scheduled on July 11, 1988 and concluded July 14, 1988. We note that CPA emphasizes in its brief that some 18 months have passed since its original petition for modification was filed. It is obvious from the above recitation that much of the delay was requested by CPA to further its unfortunately unsuccessful efforts to settle this matter.

The following parties presented testimony at the hearings: CPA by Thomas R. Keane, a member of CPA's board of directors and chief executive officer of PayTel Phone Systems; Pacific by its employees Judith A. Nyberg, Raymond T. Ruiz, James Forbes, and rebuttal testimony by Dr. William E. Taylor, a consulting economist; GTE-C by Roger Smith; and Contel by Paul T. Montsinger. Thirty exhibits were received in evidence.

All of the above parties submitted opening and reply briefs. In addition, Towards Utility Rate Normalization (TURN), National Association of Truck Stop Operators, and the National Association of Convenience Stores (NATSO and NACS), and DRA filed opening briefs. The matter was formally submitted on August 29, 1988.

We now proceed to discuss the merits of the non-sent-paid calling compensation issue before us.

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All of the above parties submitted opening and reply briefs. In addition, Towards Utility Rate Normalization (TURN), National Association of Truck Stop Operators, and the National Association of Convenience Stores (NATSO and NACS), and DRA filed opening briefs. The matter was formally submitted on August 29, 1988.

Comments

Comments on the ALJ's proposed decision were filed by Pacific, CPA, GTE-C, Contel, DRA, Intellicall, Inc., and TURN. These comments have been reviewed and carefully considered by the Commission. Any changes required by the comments have been incorporated in this interim decision.

We now proceed to discuss the merits of the non-sent-paid calling compensation issue before us.

and maintaining the instrument. CPA believes it is appropriate to equate the COPT operator with Pacific station agents in that both provide access to the LEC network for the public.

Pacific and the other utilities try to equate COPT operator service with that of any other business customer. CPA disputes the utility's analogy. The public service character of the access service which COPT operators provide to LECs is demonstrated by the fact that COPT stations may be disconnected by the LEC if certain minimum standards of service are not maintained. CPA claims that this feature significantly distinguishes the COPT operator from other business service subscribers. CPA witness Keane testified that while other businesses use the services of the network to further their own business interests, the COPT operators use the network services to conduct 100% of their business. The significant difference is that if COPT operators do not maintain that set in an appropriate fashion for the general public, it can be disconnected by the utility.

For purposes of assessing the equitable entitlement of COPT operators to compensation, COPT operators should be viewed as network service providers to the LECs instead of competitors of the LECs. COPT operators seek a share in non-sent-paid revenues as compensation for the important access service which COPT operators provide to the LEC thereby facilitating use of the LEC's network services by third parties. CPA argues that Pacific's compensation of station agents for a similar but more limited access service indicates that such such compensation is in fact appropriate in the pay telephone market.

The inequity of the current arrangement is further aggravated by the fact that while a non-sent-paid call is being made from a COPT instrument, no other revenue-producing call can be placed from that station. Thus, the "opportunity cost" to the COPT

for a non-local intraLATA coin-sent-paid call. COPT operators had advocated in that proceeding that the "marketplace" should decide the rates COPT operators charged for their phones. However, DRA's (then Public Staff Division) and TURN's arguments were adopted that imposed limits on COPT operators' charges in order to avoid customer confusion, to maintain access to the network for nonsubscribers, and to avoid exploitation of customers in locations where utility-owned coin telephones are not conveniently available. (D.85-11-057, mimeo. pp. 90-92, Conclusion of Law 31.) D.87-05-061 continued the same surcharge structure for coinless COPT phones by

For better or worse, CPA maintains that COPT operators find it impractical to impose this surcharge on end users. As CPA witness Keane testified, "Early experience with charging the 10-cent surcharge on non-sent-paid calls has indicated that damage to COPT equipment by irate customers and dissatisfaction on the part of station agents and end users in general far outweigh the slight revenue available from such charges". (Tr. 2789.)

Keane's own company, PayTel, has discovered a positive correlation between the number of maintenance visits required and whether the station agent is attempting to collect the 10-cent surcharge on non-sent-paid calls. Imagine the frustration of a person attempting to make a credit-card call and then being asked to insert 10 cents into the COPT phone. CPA asserts that this is yet another factor that was not considered in D.87-11-057 when the COPT tariff was originally devised.

CPA strongly disputes Pacific's attempted characterization of the high profit margins which COPT operators derive on sent-paid-calling. CPA claims that both the revenues and expenses of COPT operators are incompletely and inaccurately shown in Pacific's Exhibit 4. The revenues shown in Exhibit 4 are incorrect, in CPA's opinion, because there is an assumption that the 10-cent surcharge is collectible by COPT operators. Likewise the expenses shown in Pacific's Exhibit 4 do not include any

was required. Pacific claims it would have to provide all work functions identified in the operator surcharge cost study. (Exhibit 8.) Further, Pacific alleges that if surcharge revenue sharing were ordered, it would incur additional costs required to initiate and administer that program.

Pacific considers the sharing of the surcharge for non-sent-paid calls as lost contribution that must be made up elsewhere. This loss would have to be made up by other Pacific ratepayers, resulting in a subsidy by ratepayers to COPT operators. Pacific witness Forbes also concluded that sharing of surcharge revenues would have a negative impact on Pacific's ratepayers. (Exhibit 16.)

Pacific believes that COPT operators should collect the 10-cent surcharge on non-sent-paid calls over and above Pacific or AT&T's rates, currently allowed under the pursuant to D.85-11-057. In fact, Pacific offered to assist in the billing and collection of this additional surcharge so long as its own costs for that billing and an appropriate rate of return were recovered. Pacific witness Forbes gave a very rough estimate that this billing and collection service on the 10-cent surcharge probably would cost the COPT operators at least 5 cents. (Tr. 2982.)

Pacific views the payment of surcharge revenues at the level requested to COPT operators as an inappropriate shifting of costs to general ratepayers. Pacific further argues that the sharing of surcharge revenues would accelerate the entry of COPT operators into Pacific's most lucrative pay telephones markets. Pacific is concerned that this would further erode the contribution from its own instruments that helps subsidize lower paying pay-phones. (Exhibit 16, testimony of James Forbes.)

Pacific asserts that COPT penetration in the market is currently growing at a rate of about 10,000 new installations per year. Pacific acknowledges that 35% of those locations are at "void" or new locations. Pacific expects that COPT operators

users do not have coins, they have to rely on other payment options through operator services in order to complete calls. The Commission, in DRA's view, should acknowledge that COPT operators provide a valuable service by offering the general public access to Pacific's non-sent-paid payment options for intraLATA calls. DRA agrees with CPA's characterization that COPT operators incur an opportunity cost if they allow access to non-sent-paid intraLATA calling. As DRA states, if a customer makes a non-sent-paid intraLATA call from a COPT station, COPTs cannot derive revenue for sent-paid calls for the duration of that call. Currently, the Commission permits COPT operators to charge 10 cents in coin for that opportunity cost. Practically, that charge is difficult to collect. DRA agrees with CPA that customers expect to be able to make non-sent-paid calls without use of a coin.

DRA points out that if COPT operators blocked customer access to Pacific's intraLATA non-sent-paid calling services, Pacific would receive no revenue from those calls. Thus, some sharing of that revenue is reasonable.

DRA believes that the profitability of Pacific's individual payphones is irrelevant to this proceeding. DRA claims that the Commission acknowledged in D.85-11-057 that there is a subsidy flow from Pacific's profitable stations to other pay stations which do not break even, but do serve a public need. DRA believes the proper forum to address the issue of public payphones is in Phase II of the OII. There, any problems created by the grant of compensation to COPT operators can be resolved.

DRA urges that interim compensation for operator surcharge revenues be limited to 6 cents per call. DRA believes that CPA's request for 50% of the operator surcharge revenues as compensation for non-sent-paid intraLATA calls is too high. Pacific testified that its average operator revenue per call was 35 cents, and that its average operator cost per call was 29 cents.

providers are legitimate factors in determining the level of compensation that we will authorize at this time. Further, we wish to send a signal to the COPT industry and the LECs to continue to cooperate in the ongoing OII workshops in an effort to resolve the many issues regarding payphone service pending before us today.

As we stated in D.87-08-052, which set this issue for rehearing, we are concerned with the impact of any compensation plan or revenue sharing on Pacific's revenues. We believe DRA's proposed 6 cent-per-call compensation plan takes this concern into account. This 6 cent-per-call amount will not bring Pacific's revenue-to-cost ratio for operator surcharges below 1. While we have concerns regarding the accuracy of some of Pacific's statistical analysis, we believe that this revenue-to-cost ratio of 1.2 for operator surcharges held up well during cross-examination.

Further, several parties have pointed out that this rehearing was limited to an exploration of whether it was appropriate to share the operator surcharge portion of revenues for non-sent-paid calls. We believe it is inappropriate for CPA to attempt to expand the issues to request a blanket 25% share of all revenues (including toll) from non-sent-paid calls. We ordered rehearing "to receive evidence only on whether COPT operators should be entitled to a share of Pacific Bell's surcharge applicable to non-sent-paid calls, in those instances where a COPT instrument is employed by an end-user." (D.87-08-052, Ordering Paragraph 3, mimeo. p. 24.) Thus, sharing of operator surcharge revenue is the only issue presently before us.

We reject GTE-C's arguments that payment to COPT operators of a portion of the non-sent-paid operator surcharges is contrary to PU Code §§ 453 and 532. The principle has long and firmly been established that it is only unjust or unreasonable discrimination which renders a rate or charge unlawful. The question whether unreasonable rate discrimination has occurred depends upon all the surrounding circumstances and conditions. In

the present case, the compensation to be paid will be provided in the tariffs of the particular exchange carrier, and so, even if the compensation were to be considered a reduction in otherwise applicable rates, it would be an element of the tariff rates applicable to the COPT service subscriber. Thus, no discrimination would occur. The so-called "discrimination" effected by such a tariff change would not be "undue" but rather would be specifically calculated and intended to rectify, on an interim basis, the inequity and unfairness inherent in the present structure of the payphone services marketplace. Therefore, such a compensation arrangement would not constitute an unlawful preference or advantage to the COPT operator in comparison to any other customer or class of customers of the LEC. If we decide that equity requires the payment of compensation to COPT operators for their role in delivering non-sent-paid intraLATA traffic to the LEC network, then the payment of such compensation by the LECs, in accordance with tariff changes implemented in compliance with our order, will not constitute a violation of PU Code §§ 453 and 532.

We disagree with the characterization that CPA seeks a subsidy or a kickback for COPT operators. The relief given today is more appropriately viewed as compensation for an access function that COPT operators provide and is of value to the LECs. The COPT operator places his equipment in a public location at his own expense and maintains and repairs that equipment as a service to the public. A substantial portion of the use made of that equipment is for non-sent-paid intraLATA calling. While there is conflicting evidence on exactly what proportion of total calling is non-sent-paid calling, no party has argued that it is an unimportant share. We agree with the characterization of the use of the COPT station for the placement of such calls as constituting an opportunity cost to the COPT operator. We agree with DRA's assessment that the COPT operator is not compelled to make his stations available for placing such calls.

question whether unreasonable rate discrimination has occurred depends upon all the surrounding circumstances and conditions. In the present case, the compensation to be paid will be provided in the tariffs of the particular exchange carrier, and so, even if the compensation were to be considered a reduction in otherwise applicable rates, it would be an element of the tariff rates applicable to the COPT service subscriber. Thus, no discrimination would occur. The so-called "discrimination" effected by such a tariff change would not be "undue" but rather would be specifically calculated and intended to rectify, on an interim basis, the inequity and unfairness inherent in the present structure of the payphone services marketplace. Therefore, such a compensation arrangement would not constitute an unlawful preference or advantage to the COPT operator in comparison to any other customer or class of customers of the LEC. If we decide that equity requires the payment of compensation to COPT operators for their role in delivering non-sent-paid intraLATA traffic to the LEC network, then the payment of such compensation by the LECs, in accordance with tariff changes implemented in compliance with our order, will not constitute a violation of PU Code §§ 453 and 532.

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We note that no party disputes that the compensation we order today is on an interim basis only and is nonprecedential to the resolution of compensation issues in the ongoing OII. Thus, this compensation plan adopted today will last only until a final order issued by this Commission in the ongoing OII directs otherwise.

In adopting DRA's suggested 6 cents-per-call usage-sensitive compensation plan we have necessarily rejected Pacific's suggested dollar per-set-per-month plan. We find Pacific's arguments that it would take 9 to 12 months to institute a usage-sensitive plan unpersuasive. We therefore order Pacific and the other LECs, GTE-C, and Contel, to make the necessary changes in their accounting systems so that they may begin compensating COPT operators within 75 days of this order. We realize this is a much shorter timeframe than that proposed by Pacific. But we are willing to assist Pacific in prioritizing its "backlog" for its CRIS accounting system through our directives in this decision. Any further delay would make interim relief meaningless given the current schedule for the completion of the OII.

IV. The Issue Of Whether The Current Ban On IntraLata Competition Applies To Billing Functions Is Beyond The Scope Of This Proceeding, But Nonetheless Should Be Discussed Pending Resolution In I.87-11-033

A. Parties' Positions

CPA argued during the hearings, and again in its briefs that our policy of limiting competition in intraLATA "transmission" services does not extend to the billing function provided by utility operators or independent operator services. (Tr. 2655, 2728, CPA Opening Brief, p. 53, and CPA Closing Brief, p. 11.) CPA believes that our current policy requires COPT-originated intraLATA calls to be delivered to the LEC to be "processed through" the LEC network, while leaving the COPT operator free to employ alternative

assessment that the COPT operator is not compelled to make his stations available for placing such calls.

We note that no party disputes that the compensation we order today is on an interim basis only and is nonprecedential to the resolution of compensation issues in the ongoing OII. Thus, this compensation plan adopted today will last only until a final order issued by this Commission in the ongoing OII directs otherwise.

In adopting DRA's suggested 6 cents-per-call usage-sensitive compensation plan we have necessarily rejected Pacific's suggested dollar per-set-per-month plan. We find Pacific's arguments that it would take 9 to 12 months to institute a usage-sensitive plan unpersuasive. We therefore order Pacific and the other LECs, GTE-C, and Contel, to make the necessary changes in their accounting systems so that they may begin compensating COPT operators within 90 days of this order. We realize this is a much shorter timeframe than that proposed by Pacific. But we are willing to assist Pacific in prioritizing its "backlog" for its CRIS accounting system through our directives in this decision. Any further delay would make interim relief meaningless given the current schedule for the completion of the OII.

Findings of Fact

1. COPT operators provide access to the LEC's network for non-sent-paid calling through their instruments.

2. Currently, COPT operators receive no share of the revenue for that non-sent-paid calling because it is impractical to collect the currently authorized 10-cent surcharge.

3. COPT operators incur "opportunity costs" when their instruments are used to place non-sent-paid calls because sent-paid calls cannot be made by end users with coins in hand.

4. COPT operators could block access to the LEC's intraLATA non-sent-paid calling options if they chose to do so.

arrangements to the extent feasible for billing and collecting end-user revenue on such calls. CPA alleges that AOS providers are one such alternative arrangement. However, CPA acknowledges that the AOS providers' abandonment of the intraLATA market as a condition to obtaining their CPC&Ns has rendered this issue academic.

CPA relies on D.87-05-061 which, in its view, never specifically foreclosed the right or ability of any person to perform such billing functions. CPA claims that billing responsibilities simply were not addressed, while acknowledging that intraLATA calls were to be routed back to the originating central office for call completion.

CPA argues that Pacific's attempt to extend its intraLATA monopoly to billing functions contradicts Pacific's own proposal in our Alternative Regulatory Framework proceeding (I.87-11-033) that its intraLATA monopoly be gradually dismantled.

Pacific disagrees with CPA's characterization that our decisions implicitly allow COPT operators to "direct their calling so that Pacific handles the toll, but that someone else or themselves handle the operator service functions." (CPA witness Keane, Tr. 2655.) Pacific believes that the current ban on intraLATA competition includes a prohibition against alternate operator or billing functions for intraLATA calls. Pacific also cites D.87-05-061 (the Phase II COPT decision) in support of its position. Additionally, Pacific cites our recent decision granting a CPC&N to AOS Continental of California, Inc., on the condition that AOS Continental adheres to the ban on intraLATA competition, specifically, including intraLATA operator-handled calls. (D.88-05-062.)

Pacific is particularly distressed by CPA's offer that directing intraLATA calls to the LEC could be made a condition of accepting any compensation for non-sent-paid calls. Pacific believes that COPT operators are already required to send all intraLATA calls to the LECs for routing, operator and billing

5. Pacific's revenue-to-cost ratio for its operator surcharges received for non-sent-paid calls is 1.2.

6. DRA's recommended compensation at a level of 6 cents-per-call for non-sent-paid calls is supported by the record.

7. DRA's recommended compensation of 6 cents-per-call would not bring Pacific's revenue-to-cost ratio for operator surcharges below 1.

8. CPA requests compensation at a level of 50% of the operator surcharge or 25% of total revenues for non-sent-paid calls.

9. Pacific presented data regarding COPT operators overcharging and intraLATA bypass via AOS providers.

10. The most recent data on overcharging and bypass was through May 15, 1988.

11. This data does not take into account recent Commission action regarding the AOS industry.

12. We disagree with GTE-C that payment to COPT operators of a portion of the non-sent-paid revenues would violate PU Code §§ 453 and 532 because no discrimination between customers will occur.

13. We disagree with Pacific, GTE-C, Contel, and TURN that any grant of compensation is a form of subsidy from the ratepayers to the COPT industry.

14. All parties agree that the relief sought here is interim in nature.

15. Pacific claims that a usage-sensitive plan would take 9 to 12 months to implement.

16. While opposing any compensation, Pacific recommends that compensation on a dollars-per-set basis is faster to implement.

17. Pacific acknowledges that this Commission could set priorities that would speed up the implementation timeframe.

18. Neither GTE-C nor Contel submitted cost data in this proceeding.

functions. Pacific argues that to allow CPA to impose as a "condition" of receiving compensation that which is already required of COPT operators will only encourage COPT operators to continue to seek means to accomplish intraLATA bypass.

Contel observed in its brief that the proper forum for CPA to air its "dissatisfaction" with the existing ban on intraLATA competition is in I.87-11-033.

B. Discussion

While we believe this issue is not critical to a determination of whether COPT operators deserve compensation for non-sent-paid calls, the parties obviously need guidance on this point or both sides will continue to believe that theirs is the correct view. These differing views could result in a conflict situation if the ability to bill for intraLATA calls changes from an "academic" consideration to a real one. Hopefully, the conflict will not materialize until resolution of the issue of intraLATA competition in Phase III of I.87-11-033. However, we see no benefit in leaving this question open, in the interim, for continued argument between the parties.

We disagree with CPA's interpretation of our prior decisions implicitly allowing competition for intraLATA billing functions merely because billing functions weren't specifically included in the overall ban on intraLATA competition. We believe our intention was and is, pending review in I.87-11-033, for the intraLATA ban to encompass transmission, operator, and billing functions. We urge parties, particularly CPA, who wish to advocate a different system to participate in I.87-11-033.

Conclusions of Law

1. COPT operators should receive some level of compensation for non-sent-paid calls made over their instruments.

2. The level of compensation is a matter of judgment for this Commission to decide.

3. Pacific has not made a showing of "unclean hands" on the part of COPT operators which would justify the granting of no compensation.

4. This proceeding is properly limited to compensation of operator surcharge revenues for non-sent-paid calls.

5. CPA's request for 25% of total revenues of non-sent-paid calls would improperly expand the scope of this proceeding.

6. We should select a level of compensation that does not bring Pacific revenue-to-cost ratio for operator surcharges below 1.

7. DRA's proposal of compensation at a level of 6 cents-per-call would keep Pacific's revenue-to-cost ratio for operator surcharges at 1 and therefore should be adopted.

8. If so ordered by this Commission, Pacific should be able to implement a usage-sensitive compensation plan in substantially less than 9 months.

9. Our ordering of compensation for non-sent-paid calling will not violate PU Code §§ 453 and 532.

INTERIM ORDER

IT IS ORDERED that:

1. Pacific Bell (Pacific), General Telephone Company of California (GTE-C), and Contel of California (Contel) shall implement a compensation plan for non-sent-paid calls for COPT operators at a level of 6 cents-per-non-sent-paid completed call.

We also note that several AOS providers have implicitly acknowledged this ban in agreeing to an intraLATA ban for operator services as a condition of receiving their CPC&N on an expedited basis.[8]

Findings of Fact

1. COPT operators provide access to the LEC's network for non-sent-paid calling through their instruments.

2. Currently, COPT operators receive no share of the revenue for that non-sent-paid calling because it is impractical to collect the currently authorized 10-cent surcharge.

3. COPT operators incur "opportunity costs" when their instruments are used to place non-sent-paid calls because sent-paid calls cannot be made by end users with coins in hand.

4. COPT operators could block access to the LEC's intraLATA non-sent-paid calling options if they chose to do so.

5. Pacific's revenue-to-cost ratio for its operator surcharges received for non-sent-paid calls is 1.2.

6. DRA's recommended compensation at a level of 6 cents-per-call for non-sent-paid calls is supported by the record.

7. DRA's recommended compensation of 6 cents-per-call would not bring Pacific's revenue-to-cost ratio for operator surcharges below 1.

8. CPA requests compensation at a level of 50% of the operator surcharge or 25% of total revenues for non-sent-paid calls.

9. Pacific presented data regarding COPT operators overcharging and intraLATA bypass via AOS providers.

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8 See D.85-05-062 (AOS Continental of California, Inc.); D.88-06-025 (National Telephone Services, Inc.), and D.88-08-019 (Elcotel LD*)S, Inc.).

2. Within 45 days of the effective date of this order, Pacific, GTE-C, and Contel shall each file separate advice letters, with service to all parties of record, containing revisions of all relevant tariffs covering COPT service to implement a compensation plan for COPT operators at a level of 6 cents-per-non-sent paid call. These tariff revisions will become effective 45 days after filing.

3. The compensation plan ordered in this decision is on an interim and nonprecedential basis only, pending further direction on this issue after resolution in I.88-04-029.

This order is effective today.

Dated NOV 23 1988, at San Francisco, California.

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

10. The most recent data on overcharging and bypass was through May 15, 1988.

11. This data does not take into account recent Commission action regarding the AOS industry.

12. We disagree with GTE-C that payment to COPT operators of a portion of the non-sent-paid revenues would violate PU Code §§ 453 and 532 because no discrimination between customers will occur.

13. We disagree with Pacific, GTE-C, Contel, and TURN that any grant of compensation is a form of subsidy from the ratepayers to the COPT industry.

14. All parties agree that the relief sought here is interim in nature.

15. Pacific claims that a usage-sensitive plan would take 9 to 12 months to implement.

16. While opposing any compensation, Pacific recommends that compensation on a dollars-per-set basis is faster to implement.

17. Pacific acknowledges that this Commission could set priorities that would speed up the implementation timeframe.

18. CPA and Pacific disagree over whether our current ban on intraLATA competition extends to operator and billing functions.

19. I.87-11-033 is the appropriate proceeding for parties to advocate changes to our policy on intraLATA competition.

20. Neither GTE-C nor Contel submitted cost data in this proceeding.

Conclusions of Law

1. COPT operators should receive some level of compensation for non-sent-paid calls made over their instruments.

2. The level of compensation is a matter of judgment for this Commission to decide.

3. Pacific has not made a showing of "unclean hands" on the part of COPT operators which would justify the granting of no compensation.

4. This proceeding is properly limited to compensation of operator surcharge revenues for non-sent-paid calls.

5. CPA's request for 25% of total revenues of non-sent-paid calls would improperly expand the scope of this proceeding.

6. We should select a level of compensation that does not bring Pacific revenue-to-cost ratio for operator surcharges below 1.

7. DRA's proposal of compensation at a level of 6 cents-per-call would keep Pacific's revenue-to-cost ratio for operator surcharges at 1 and therefore should be adopted.

8. If so ordered by this Commission, Pacific should be able to implement a usage-sensitive compensation plan in substantially less than 9 months.

9. Our ordering of compensation for non-sent-paid calling will not violate PU Code §§ 453 and 532.

10. Our current ban on intraLATA competition extends to operator and billing functions.

INTERIM ORDER

IT IS ORDERED that:

1. Pacific Bell (Pacific), General Telephone Company of California (GTE-C), and Contel of California (Contel) shall implement a compensation plan for non-sent-paid calls for COPT operators at a level of 6 cents-per-non-sent-paid call.

2. Within 30 days of the effective date of this order, Pacific, GTE-C, and Contel shall each file separate advice letters, with service to all parties of record, containing revisions of all relevant tariffs covering COPT service to implement a compensation plan for COPT operators at a level of 6 cents-per-non-sent paid call. These tariff revisions will become effective 45 days after filing.

3. The compensation plan ordered in this decision is on an interim and nonprecedential basis only, pending further direction on this issue after resolution in I.88-04-029.

This order is effective today.

Dated _____, at San Francisco, California.

APPENDIX A

LIST OF APPEARANCES

Respondents: Marlin D. Ard, Attorney at Law, John W. Bogy and Timothy S. Dawson, for Pacific Bell; Peter K. Plaut, Attorney at Law, for GTE California; and Orrick, Herrington & Sutcliffe, by Catherine O'Connell and Robert Gloistein, Attorneys at Law, for ConTel of California, Inc.

Interested Parties: Mark Barmore, Attorney at Law, for Toward Utility Rate Normalization (TURN); Pelavin, Norberg & Beck, by Alvin H. Pelavin, Jeffrey F. Beck, and Lizbeth M. Morris, Attorneys at Law, for Calaveras Telephone Company, California-Oregon Telephone Company, Citizens Utilities Company of California, CP National, Ducor Telphone Company, Foresthill Telephone Company, 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, and The Volcano Telephone Company; Jackson, Tufts, Cole & Black, by William M. Booth, and Joseph S. Faber, Attorneys at Law, for National Telephone Services; Peter A. Casciato, P.C., Attorney at Law, for Central Corp.; Randy Deutsch, Attorney at Law, and Charmagne T. Freeman, for AT&T Communications; John H. Engel, Attorney at Law, for Citizens Utilities Company of California, A. J. Smithson, for Citizens Utilities Company of California; Gauthier & Hallett, by Mary Lynn Gauthier, for herself; Cooper, White & Cooper, by Mark P. Schreiber, Attorney at Law, and A. A. Johnson, for Roseville Telephone Company; Graham & James, by Martin A. Mattes, Attorney at Law, and Michael P. Hurst, and Thomas Keane, for California Payphone Association; Thomas J. MacBride, Jr., Attorney at Law, and David A. Simpson, for International Telecharge, Inc., and AOS Continental of California, Inc.; Ken McEldowney, for Consumer Action; Cooper, White & Cooper, by Mark P. Schreiber, Attorney at Law, for Roseville Telephone Company; Leonard L. Snaider, Attorney at Law, for Louise Renne, City Attorney, City and County of San Francisco; Southmayd, Powell & Taylor, by Alan T. Thiemann, Attorney at Law, for National Association of Truck Stop Operators, National Association of Convenience Stores, and Airport Operators Council International; and Ronald F. Evans, for Com Systems, Inc.

Division of Ratepayer Advocates: Janice Grau, Attorney at Law, and Chris Ungson.

(END OF APPENDIX A)