

Decision 89 09 049 SEP 7 1989

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
Pacific Bell (U 1001 C) for approval, )  
to the extent required or permitted )  
by law, of its plan to provide )  
enhanced services. )

SEP 8 1989

Application 88-08-031  
(Filed August 15, 1988)

(See Appendix A for List of Appearances.)

THIRD INTERIM OPINION

In this third interim decision, we grant Pacific Bell (Pacific) interim authority to provide enhanced services as requested in its Motion for Interim Authority to Provide Voice Store and Forward Services (motion) filed May 24, 1989, subject to several conditions outlined below.

Background

The Commission has issued two prior interim decisions regarding Pacific's enhanced services. On November 9, 1988, we granted Pacific interim authority to provide Voice Mail and Protocol Conversion Services subject to several conditions. (Decision (D.) 88-11-027, November 9, 1988.) On May 10, 1989, we granted Pacific interim authority to provide Electronic Messaging Services subject to essentially the same conditions. (D.89-05-020, May 10, 1989.)

As described in those previous decisions, Pacific seeks approval of its plan to provide enhanced services within the

Federal Communications Commission's (FCC) Computer Inquiry III framework.<sup>1</sup>

The legal and regulatory uncertainties surrounding the FCC's Computer Inquiry III framework have not changed since the issuance of D.88-11-027 last November and D.89-05-020 in May. This Commission, along with a number of other parties, appealed the FCC's preemption of state regulation of enhanced services and prohibition of structural separation rules for the Bell Operating Companies. The United States Ninth Circuit Court of Appeals has heard oral argument. This review is still pending at this time.<sup>2</sup>

However, as stated in D.88-11-027:

"It appears that under the status quo the Commission may have authority to determine the accounting treatment of enhanced services, including whether or not revenues and expenses are included in utility revenue requirements. In addition, the Commission may be able to prescribe 'non-structural safeguards' as long as they are not inconsistent with the FCC's provisions. The Commission may also specify terms and conditions regarding the price and usage of basic network services which underlie the provision of intrastate enhanced services. Finally, the Commission may wish to prescribe additional provisions to address areas not covered by the FCC rules, e.g. billing and other consumer protection measures." (Mimeo., p. 2.)

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<sup>1</sup> See D.88-11-026 in Application (A.) 88-07-011 also issued November 9, 1988 for a brief discussion on the FCC's Computer Inquiry III framework. D.88-11-026 and D.88-11-027 were issued the same day, dealing with open network architecture (ONA) issues: Basic Service Elements, and Enhanced Services, respectively.

<sup>2</sup> People of the State of California v Federal Communications Commission, Case Nos. 87-7230 et al., Ninth Circuit Court of Appeals.

D.88-11-027 and D.89-05-020 placed several conditions on the grant of interim authority for voice mail, protocol conversion, and electronic messaging service, including: the creation of separate memorandum accounts and the tracking of costs and revenues for each enhanced service; a "no-disconnection" policy of any regulated service due to nonpayment of enhanced service charges; notification of customers of this no-disconnection policy; recording and reporting of end-user complaints regarding service quality or billing matters; a requirement that Pacific's enhanced services operation pay tariffed rates in all instances where tariffed services are available; and adoption of additional billing and consumer safeguards as the Commission may later determine necessary.

As ordered in D.88-11-027, hearings were scheduled to consider billing and consumer protection for enhanced services. These hearings were held in April 1989 focusing on Pacific's proposed Gateway and Voice Store and Forward (VSF) enhanced services, because these were services which Pacific expected to arouse objection from the interested parties. Participants in those hearings included: Pacific, the Division of Ratepayer Advocates (DRA), the County of Los Angeles (County), the Reuben H. Donnelley Corporation (RHD), VISA U.S.A., Inc. (VISA), California Bankers Clearing House Association (CBCHA), Telenet Communications Corporation (Telenet) and API Alarm Systems (API). The hearings focused almost exclusively on billing and consumer safeguards issues regarding Pacific's gateway service rather than on VSF service.

Comments on the ALJ's proposed decision were filed by Pacific, DRA, and Intellicall. (Intellicall actually filed a "Motion for Clarification" which we will treat as comments to the proposed decision.) Additionally, Pacific filed reply comments addressing the comments of DRA and Intellicall. All of the comments, including Intellicall's Motion for Clarification, have

been reviewed and carefully considered by the Commission. Any changes required by the comments have been incorporated in this interim decision.

Pacific's Motion for Interim Authority to Provide Voice Store and Forward Service

Despite the fact that VSF service had been the subject of hearings, Pacific filed a motion requesting interim authority for VSF service on May 24, 1989. Pacific had contacted the active parties and agreed to an extension of the briefing schedule set at the close of the April hearings so that parties could respond to Pacific's motion. Pacific filed the motion because it did not want interim authority for VSF to be delayed while a decision on the controversial topic of the April hearings, gateway service, was written. The motion was prompted by the FCC's approval of Pacific's Comparably Efficient Interconnection (CEI) plan for VSF on May 15, 1989. In addition, Pacific claims it had been requested to respond to competitive bids for VSF services and several businesses have indicated a desire to obtain such services. In light of the de minimis amount of questions raised at hearings regarding its VSF service, Pacific believes a separate, expedited interim decision is warranted.

Description of VSF Service

Pacific's VSF services will be used to allow Enhanced Service Providers (ESP) to facilitate the exchange of information between individuals and businesses. Pacific's VSF services will allow ESPs and end users to store and forward information electronically. End users will dial a telephone number to access the ESP's information service. The ESP's information may originate as voice or data and it may reside on Pacific's or the ESP's storage system. However, the ESP information will be delivered to the end user in voice form. Although the original information itself may not always reside on Pacific's storage system, the

software program which delivers the ESP's information service to the end user will always reside on Pacific's storage system.

There are primarily two distinct uses of Pacific storage system which an ESP may utilize to offer its information services: information retrieval and information deposit. These capabilities are discussed in more detail below. In addition, both can be combined with tariffed network services, such as call forwarding or call transfer, so as to increase the efficiency of end users' telecommunications systems (e.g. automated attendant applications, overflow answering of calls, or after-hours answering of calls).

Pacific describes information retrieval as allowing end users to interact with an audiotex program to obtain information provided by the ESP. The information provided by the ESP may be specific to the end user, such as the end user's savings account information or the end user's frequent flyer mileage. The information could also be of a general appeal, such a business hours of operation or current specials. The information provided by the ESP may or may not be stored on Pacific's storage system. If the information is not stored on Pacific's storage system, the ESP software program stored on Pacific's storage system will enable Pacific's storage system to retrieve the information from the ESP's storage system.

Information deposit allows end users to interact with the ESP's audiotex program to deposit end user generated information with the ESP. Pacific's storage system will store the deposited information for retrieval by the ESP. Pacific asserts its storage system will not alter the information deposited by the end user. Examples of information deposit include communicating personal opinions (poll-taking), answering verbal questionnaires for market research, and report taking such as sales contact reporting. The end user's information deposited may result in the ESP taking specific actions. Examples of these telephone-based transactions include end users ordering specific catalog items; signing up for

specific services; directing that account balances be changed (audiotex-based home banking); paying bills and pledging contributions.

An ESP using Pacific's storage system will be able to develop and employ its own application software thereby creating a unique audiotex program. ESPs will also be able to employ application software previously developed by Pacific. Finally, ESPs will be able to have Pacific develop new application software or modify existing Pacific application software thereby creating a customized program. In all cases, Pacific states that the ESP will determine the content of the information presented to the end user.

Pacific's customers for voice store and forward service will be ESPs. ESPs will be charged a fee for the voice store and forward services they use.

The ESP must order access arrangements to connect its information service to the network. The choice of these arrangements may affect the charges that end users experience in calling the ESP's service. For instance, if the ESP elects to use an "800" service there would be no charges to the end user. However, if the ESP elects to use a "900" or "976" service, there would be a fixed charge to the end user for each call to the service. In cases where 976 or 900 is the access service, the 976 and 900 charges, as well as the safeguards, as set forth in the applicable tariffs and Commission decisions, would apply. In situations where the access arrangement has an applicable end user charge, such as a message unit charge, that charge will be billed to the end user at the tariffed rate.

Consumer Safeguards in  
Pacific's VSF Proposal

In its motion for interim authority, Pacific refers to the testimony of Keith J. Epstein (Exhibit 1 in this proceeding) regarding the consumer safeguards Pacific is proposing for its VSF service. First, Pacific's customer for VSF service is the ESP, not

end users. Second, Pacific asserts it will not provide VSF to ESPs who provide illegal, pornographic, or harmful matter as defined by California Penal Code Section 313. Third, Pacific agrees that during the interim authority period it will not provide end user billing services to ESPs purchasing Pacific's VSF services, other than those billing services associated with existing tariffed services, such as 900 or 976. In those cases where billing services associated with existing tariffed services are provided, the disclosure, adjustment, blocking, and other relevant safeguards associated with those tariffed services would apply.

In addition, Pacific is willing to comply with the applicable conditions that the Commission imposed on Pacific's interim authority for voice mail, protocol conversion, and electronic messaging services.

Finally, Pacific acknowledges that it realizes the authority sought is truly interim in nature and may be altered in the Commission's decision granting final authority, a billing OII decision, or any other relevant decision.

Pacific alleges competitive harm if its entrance into the VSF market is unduly delayed, arguing that no other provider is subject to regulatory approvals.

#### Opposition to Pacific's Motion

Only two parties filed responses to Pacific's motion, DRA and Intellicall, Inc. (Intellicall). In addition, only one party, the County of Los Angeles, specifically addressed VSF service in its brief submitted after the hearings.

#### DRA

DRA reiterates its position that billing name and address (BNA) not be offered to ESPs at this time. DRA believes providing BNA to ESPs raises important privacy concerns for California consumers which should be addressed in the Commission's upcoming billing decision. This is consistent with DRA's view in hearings

that BNA should not be made available to any ESPs until the issue is resolved in the upcoming billing investigation

Additionally, DRA is concerned that Pacific is considering having an entity other than itself bill its VSF charges based on Pacific's CEI plan filing before the FCC. DRA opposes leaving monopoly ratepayers with stranded investment from any modifications made to the regulated bill for enhanced services and later abandoned by Pacific. DRA recommends that the Commission order Pacific to provide the Commission with tracking data for direct and allocated costs incurred to date for modifying existing Pacific systems to provide billing service, not only for VSF, but all other enhanced services. Further, DRA recommends that the Commission notify Pacific that it will disallow all costs associated with billing system modifications to accommodate billing for enhanced services should Pacific elect to use an alternate billing mechanism.

Finally, DRA does not oppose a separate decision on VSF interim authority so long as the Commission resolves its concerns about BNA and potential stranded investment in the billing system.

#### Intellicall

On June 8, 1989 Intellicall filed a motion for leave to intervene or, alternatively, for leave to participate through submission of comments on Pacific's motion. Intellicall states it did not previously participate in this proceeding because it had no reason to believe that its ability to compete with Pacific in the provision of certain VSF services on a level playing field would be hampered. Intellicall alleges that it was only after Pacific signed a Settlement Agreement on May 11, 1989 in I.88-04-029, Customer Owned Pay Telephone (COPT) proceeding, that Intellicall's ability to compete fairly with Pacific in the VSF marketplace was potentially compromised. Intellicall asserts that if the Commission adopts the Settlement Agreement in the COPT proceeding, COPT providers would be effectively prohibited from furnishing any



VSF services which Intellicall has installed in its "smart" pay phones, IntelliSTAR™. Intellicall argues that while it is opposing the adoption of the Settlement Agreement in the COPT proceeding, it also is entitled to interested party status with respect to Pacific's motion to provide VSF services. Intellicall alleges the grant of Pacific's motion would cause substantial and possibly irrevocable harm to the nascent VSF market in California.

Intellicall's IntelliSTAR™ furnishes automated "0+" calling by using a circuit board in the telephone instrument to record and store billing information for end users desiring to place 0+ calls. After the end user inputs the relevant billing information, the telephone instrument places the call over the public switched telephone network as a standard "1+" call carried by Pacific.

Intellicall alleges that its IntelliSTAR™ phone currently provides what it considers an innovative VSF service, automated collect calling capability. The IntelliSTAR™ furnishes automated collect calling simply by downloading speech and program files into the telephone instrument.

Intellicall claims it will have another VSF service, an automated coin messaging capability deployed in all its existing IntelliSTAR™ phones in the third quarter of 1989. Intellicall plans to offer this capability to callers who receive no answer or a busy signal. A synthesized voice will ask the caller whether he wishes to leave a message for attempted delivery to the called party every 15 minutes for a specified number of hours or until the message is received. The synthesized voice will instruct the caller to press a particular digit on the telephone key pad to activate the capability. If the caller presses that digit, a voice will then instruct the caller to leave the message. The message will be recorded and a call placed to the called party every 15 minutes for a specified time period. The message will be delivered upon completing a call to the desired number.

Intellicall states that VSF services fulfill an important public need and should be made commercially available as soon as feasible. However, Intellicall does oppose permitting Pacific to furnish VSF services after it has swept the field of competing COPT providers. Intellicall asserts that permitting COPT providers to use VSF technology to furnish automated call competition and billing services in no way infringes upon the current ban on intraLATA competition.

Therefore, Intellicall submits that the Commission should grant Pacific's motion, but only on the condition that Pacific delete from the Settlement Agreement those provisions which preclude COPT operators from utilizing VSF technology to furnish automated call completion and billing services to the public. Because Pacific was the only local exchange carrier which required such protection against COPT providers, Intellicall believes the deletion of those provisions at Pacific's behest presumably will not undermine the viability of the Settlement Agreement. In the alternative, the Commission should reserve granting the interim authority requested by Pacific until such time as the Commission has issued a final decision on the proposed Settlement Agreement in I.88-04-029.

In a letter to the assigned administrative law judge (ALJ) dated June 30, 1989 (and served only on Pacific), Intellicall proposed specific conditioning language that, if included in the VSF interim opinion, would resolve Intellicall's concerns in this docket. The proposed condition would prevent Pacific from offering any VSF services from or over any pay telephone instrument or associated apparatus, from the central office or through use of ESPs or other third parties. Specifically, Intellicall proposed the following language:

"Pacific Bell shall not provide, or cause or permit to be provided, any voice store and forward services, including but not limited to voice messaging, collect calling or third party calling, from any pay telephones, whether

owned, operated or controlled by Pacific Bell or its affiliate or by parties not affiliated with Pacific Bell. Nor shall Pacific Bell in any way assist or participate in, or otherwise offer or provide any services which involve, the provision of such voice store and forward services by an enhanced services provider or any other party. At Pacific Bell's request, this condition shall be removed by the Commission upon a showing by Pacific Bell that customer-owned pay telephone providers are not restricted in any way, either through instrument-implemented pay telephones or otherwise, from furnishing any such voice store and forward services in competition with Pacific Bell by any order, decision or other action of this Commission or by the terms of any signed or proposed settlement agreement in any proceeding."

Intellicall acknowledges that the above condition will inhibit the immediate introduction of VSF services from pay telephones in Pacific's territory. However, Intellicall argues that this condition will protect VSF competition in the pay telephone industry without impeding Pacific's ability to deliver other VSF services to the public on an expeditious basis.

County of Los Angeles

While the County failed to file opposition to Pacific's motion, it did address its concerns regarding Pacific's VSF service in its opening brief after hearings. The County argues that the Commission should not authorize VSF until Information Services call blocking for business customers has been completely implemented. The County points out that Pacific has recently begun to accept orders from business customers wishing to block access to 976 Information Access Services and 900 Information Calling Services, as required by D.89-02-066. The County states mailers regarding availability were being received as of the date of the brief (June 19). Further, the County states that the mailer indicates that blocking for Simple Business Service will be effective about 30 days after receipt of the reply card. The County argues it will

be at least several bill rounds before business customers will know whether their requests for blocking have been implemented. The County points out that blocking for Complex Business Service will not be available until October 1, 1989. In addition, the County notes the prices Centrex customers must pay for blocking are rather steep--a one-time charge of at least \$500 and a monthly recurring charge of at least \$250.75, irrespective of the number of lines. Thus, the County argues a 100 line Centrex customer would pay the equivalent monthly charge of \$2.51 per line. The County contrasts this to no monthly blocking charges for other classes of service.<sup>3</sup>

In conclusion, the County urges that interim or final approval of VSF be contingent upon Pacific's modification of its blocking services to provide for the complete denial of access to such services.

#### Pacific's Response

##### Response to DRA

Pacific filed a response on June 15, 1989, to the comments of DRA. Pacific states it is prepared to meet both of DRA's concerns regarding the release of BNA and prevention of stranded investment in the billing system.

Pacific agrees with DRA that end user billing for VSF applications will only be offered by Pacific through its 900 and

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<sup>3</sup> During Pacific's effort to obtain all parties' stipulation to waiving the Public Utilities Code § 311 requirement of an ALJ proposed decision published 30 days before Commission action in this matter, Pacific and the County reached an agreement for Pacific to modify its Information Service Call Blocking tariff to allow Complex Business Service call blocking on the same basis as call blocking for Simple Business Service, i.e., a \$1.00 per line non-recurring charge during a sixty-day window of opportunity. Pacific ultimately failed to obtain a stipulation from all parties agreeing to waive § 311. This "311" issue will be discussed in greater detail later in this decision.

976 tariffs, both of which provide for billing by Pacific under a number of conditions found in the tariffs. No additional expense or investment has been incurred for VSF end user billing via 976/900 services. Alternatively, billing may be performed directly by the Information Provider (IP) or its agent. Second, IPs will be billed directly by Pacific for VSF services. In either case, BNA will not be made available to the IP, and Pacific has no intention of making BNA available until the issue is generally clarified in this or some other proceeding. To date, Pacific claims there has been no expense incurred to modify the existing billing system to do VSF billing.

As for DRA's concerns over stranded investment, Pacific disagrees that any such event has or will occur. Furthermore, by offering end user billing for VSF applications through existing tariffed service, Pacific alleges there will be no change in how Pacific bills for this service. Pacific can agree that this issue remains open, and VSF may be affected by the outcome of billing issues awaiting decision. With these conditions, Pacific asserts DRA's concerns should be fully addressed and should not be the basis for delaying interim approval of the service.

#### Response to Intellicall

Pacific takes issue with Intellicall's attempt to participate in this proceeding arguing that Intellicall has little, if any, interest in Pacific's VSF service but rather is disgruntled with a settlement reached in the COPT proceeding, I.88-04-029. Pacific denies that its VSF service has anything to do with pay telephones.

First, Pacific claims there is no basis for comparing two of the services (0+ calling and collect calling) Intellicall proposes with the VSF services contemplated by Pacific. Pacific is asking for interim approval to provide VSF for ESPs to offer services described in the CEI plan filed with the FCC. Its plans do not include installing equipment in coin instruments to perform

billing functions for O+ or collect calls. These services are traditional regulated offerings, and no one has suggested they are "enhanced services" as defined by the FCC. Pacific argues that Intellicall provides no authority to support its suggestion that these two services are enhanced, and its attempt to compare the billing for O+ and collect calling with Pacific's VSF services is factually wrong and legally irrelevant. Pacific states that these Intellicall services compete with regulated services of Pacific, and nothing in either the COPT settlement or Pacific's VSF motion forecloses, as Intellicall improperly alleges, competition for VSF services.

As for the third service Intellicall describes (coin messaging, where uncompleted voice calls are stored in the coin instrument and re-delivered at a later point to the called party), Pacific has no objection to Intellicall offering this service, and it can do so for intraLATA and interLATA calling. Pacific does not read the COPT settlement as affecting this type of service, with the understanding that the settlement clearly does prevent billing for intraLATA O+ and collect calls until the ban on intraLATA competition is ended or modified.

Intellicall's other point that the COPT settlement effectively precludes the development of all of its proposed services, including the one Pacific does not oppose, is also untrue in Pacific's view. Pacific alleges the O+ billing and collect calling that Intellicall describes can be (and are today) offered for interLATA calling, and nothing in the COPT settlement precludes such services. The machines described by Intellicall can be programmed to prevent the intraLATA calling that should not be occurring. Pacific concludes that Intellicall is free, under the COPT settlement, to offer all of its services. However, according to Pacific, Intellicall must, like all other providers of telecommunication services in California, not offer or hold out intraLATA services. Pacific points out the question of intraLATA

competition, and its impact on Pacific and its ratepayers if permitted, is a matter reserved for Phase III of I.87-11-033. Pacific suggests that Intellicall, along with everyone else, can address that issue there, and by doing so, the introduction the services it proposes will not be impeded.

Section 311 Issue

Pacific argued in its response that Public Utilities Code § 311 (§ 311) should not apply to its request for interim authority for VSF service. § 311 reads in pertinent part:

" . . . The Commission shall issue its decision not sooner than 30 days following filing and service of the proposed decision by the administrative law judge, except that the 30-day period may be reduced or waived by the Commission in an unforeseen emergency situation or upon the stipulation of all parties to the proceeding." (Emphasis added.)

Further, Pacific argues that the Commission's Rules of Practice and Procedure (Rule 77 and 77.1) applies this process to matters that have been "submitted", i.e., when briefs have been filed. Pacific suggests that since briefs had not yet been filed at the time of its filing of its motion that § 311 therefore was inapplicable.

In Pacific's opinion, the parties implicitly agreed to stipulate to waive § 311 requirements of an ALJ proposed decision when they agreed to the extension of the briefing schedule so that Pacific could file its motion.

Finally, Pacific alleged an "emergency" situation existed under § 311 in that Pacific had submitted a bid for a major VSF project and if successful would need to implement its VSF service by August 1, 1989.<sup>4</sup>

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<sup>4</sup> Counsel for Pacific subsequently informed the assigned ALJ that Pacific was not successful in that bidding process.

The assigned ALJ informed Pacific that its arguments of an "implicit" waiver by the parties who participated in the hearing did not fulfill the requirements of § 311. § 311 requires stipulation by all parties which includes any party who has filed an appearance in the proceeding whether or not that party participated in a particular portion of the hearings.

In response to the ALJ's statement that an explicit § 311 stipulation was necessary from all parties, Pacific determined to contact the "active" parties (those who participated in the hearings) and sent a letter on June 27, 1989 to all other appearances requesting that the party contact Pacific within three days if it did not consent to waiving the ALJ proposed decision requirement of § 311.

Pacific's June 27 letter caused a flurry of activity among some parties. The ALJ received correspondence from four parties<sup>5</sup> and phone calls from others regarding this matter, generally questioning the burden placed on them to contact Pacific if they did not consent. However, only one party, the County, as of June 30, 1989 had informed the ALJ and Pacific that it would not stipulate to a § 311 waiver.

Meanwhile, Pacific sent the ALJ a letter on June 29, 1989 (and June 30, correcting a typographical error) listing the active parties who did not oppose Commission action on Pacific's VSF motion without an ALJ proposed decision. The County's opposition was not mentioned in the letter.

The County and Pacific continued negotiating and on July 5, 1989 the ALJ received a letter from the County stating that it would stipulate to a waiver of § 311 if certain tariff

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<sup>5</sup> US Sprint, Intellicall, County of Los Angeles, and Information Providers Association all sent letters.



modifications discussed earlier in this decision (Footnote 3) were made by Pacific.

On July 13, 1989, the ALJ received a letter from Information Providers Association (IPA) stating emphatically that it does not consent to a waiver of the notice of an ALJ proposed decision provision of § 311. IPA additionally objected to the way in which Pacific sought to obtain the "non-active" parties consent (by requiring them to contact Pacific). More importantly, IPA strenuously objected to the "private deal" struck between the County and Pacific. IPA argued that since its membership may ultimately pay for the costs of business blocking which Pacific does not receive from those ordering it, any reduction in the price of blocking adversely affects IPA.

At this point, the ALJ determined that the "311 stipulation" process had clearly failed and that an ALJ proposed decision filed 30 days in advance of Commission action, as required by § 311 absent a stipulation by all parties, would be mailed on Pacific's VSF motion. Hence, a proposed decision was mailed August 8, 1989.

#### Discussion

We reiterate our position that we are interested in promoting the development of valuable new services, including enhanced services. (D.88-11-027, mimeo. p. 4; D.89-05-020, mimeo. p. 7.) We believe the granting of interim authority for individual enhanced services in no way prejudices our careful policy considerations at a future date. The outcome of the pending appeal in the Ninth Circuit Court of Appeals regarding the degree of our jurisdiction over regulating intrastate enhanced services could greatly affect our final disposition of this application. In the interim, we are concerned that we not prejudice our eventual consideration of these issues, yet not delay the offering of valuable new services to California consumers. This interim authority is not an endorsement of any of Pacific's proposed

enhanced services offerings. Pacific proceeds with these offerings at its own financial risk.

As we have previously stated, the issue of whether enhanced services should be treated above or below the line for ratemaking purposes has already been referred to Phase II of Order Instituting Investigation 87-11-033. (D.88-11-027, mimeo. p. 4; D.89-05-020, mimeo. p. 8.) Since the publication of the ALJ's proposed decision for Pacific's VSF service, the proposed decision in Phase II of I.87-11-033 has also been published (mailed August 17, 1989). Because that proposed decision recommends "below the line" ratemaking treatment for Pacific's enhanced services which have already been granted interim authority, voice mail, protocol conversion, and electronic messaging services, Pacific requests similar treatment for its VSF service in its comments on the ALJ's proposed decision in this docket. In the alternative, Pacific proposes that the final decision in I.87-11-033 includes VSF service in its discussion on ratemaking for enhanced services.

DRA points out in its comments on the ALJ's proposed decision for VSF service that while a proposed decision is published in I.87-11-033, no final Commission decision has been issued. DRA proposes that the following language be added to today's decision:

"Ratemaking issues affecting any enhanced services which are not resolved in I.87-11-033 shall be reviewed in A.88-08-031 at a later date."

While we can understand why Pacific and DRA both raised the issue of ratemaking in light of the publication of the ALJ's proposed decision in I.87-11-033, it is premature to address the issue in this proceeding. Obviously, the publication of an ALJ's proposed decision does not resolve any issue, only issuance of a Commission decision can. Likewise, this is not the appropriate forum to argue for any changes to the proposed decision in I.87-11-033; the comment process for that proposed decision should

be utilized. We note that in light of today's decision, VSF service will join Pacific's other enhanced services (voice mail, protocol conversion, and electronic messaging services) which have obtained interim authority prior to Commission action on the proposed decision in I.87-11-033. Therefore, as to ratemaking issues, we make no changes to the ALJ's proposed decision in the decision we issue today.

The only authority we grant at this time is for Pacific to institute separate tracking or memorandum accounts recording the complete research, development, deployment, operating and maintenance costs, and revenues of its VSF service. It is our understanding that Pacific and the DRA have finally reached agreement on the appropriate tracking mechanisms that should be employed for enhanced services. As we did in both prior interim decisions, we condition the authority granted today on the approval of the format of the memorandum accounts by the Commission Advisory and Compliance Division (CACD). Once again, we reserve the right to alter or add to this tracking procedure in our grant of final authority at a later date.

In its motion, Pacific agrees to be bound by the conditions we placed on interim authority for voice mail, protocol conversion, and electronic messaging services. In both the prior interim decisions we issued, we discussed extensively our concerns surrounding Pacific's use of its regulated bill to collect charges for enhanced services. We ordered Pacific not to disconnect local service because of such charges and required it to notify customers of the no-disconnection policy. We incorporate those conditions in this grant of interim authority for VSF services.

The hearings ordered by D.88-11-027 on billing and consumer safeguards were held in April 1989. In D.89-05-020 we specifically put parties on notice that the long-term treatment of billing for enhanced services will be the subject of policies developed in an upcoming billing proceeding. We reiterate that the

decision resulting from the April hearings on billing issues will, like this one, be interim in nature and subject to change depending on both the outcome of our jurisdictional dispute at the Ninth Circuit Court of Appeals and the upcoming billing proceeding.

DRA filed comments to this motion expressing concern that BNA not be provided to ESPs pending resolution of the issue either in the forthcoming decision on the April hearings or in the billing proceeding. As we did in our May decision, we do not authorize any change to the availability of BNA for purposes of the interim authority granted today. (D.89-05-020, mimeo. p. 10.)

Additionally, we endorse Pacific's proposal for interim authority to only provide end user billings through existing 976 or 900 tariffs, thereby incorporating the existing consumer protections the Commission has previously ordered for those services.

DRA also expressed concern regarding the danger of stranded investment in billing system modifications made for enhanced services if Pacific later decides to have another entity provide its billing services. Pacific rebutted this, stating that no modifications to the billing system will be made for VSF service. Pacific is required to track all of its costs associated with all the thus far permitted enhanced services vis a vis its billing system, whether modifications are made or not. The interim tracking accounts will allow us to later determine the disposition of stranded investment if it in fact materializes.

Despite all these uncertainties, we will allow Pacific to go forward at its own risk regarding use of its regulated bill for VSF service. Pacific is warned not to argue at a future date that a final resolution of billing issues should necessarily be governed by what has been allowed for this interim authority

We now turn to Intellicall's motion to intervene and its objections to the grant of interim authority for Pacific's VSF service. We believe Intellicall has made a sufficient showing of interest to grant its request for party status in this proceeding

and we do so in this order. However, we believe the conditioning language proposed by Intellicall to prevent any VSF service from or over any pay telephone to be overly broad to protect its interests in this proceeding. Additionally, we discourage parties from submitting proposed language for a decision in letter form, particularly when it is only served on one party to the proceeding. We will only forbid Pacific from installing equipment in any of its own pay phone instruments that has VSF capability as a condition of interim authority. We see no reason to extend this ban to VSF service that may be available from a pay phone through an ESP. We note that Intellicall's concerns regarding the COPT settlement will be addressed in that forum. In the interim, we will only forbid Pacific from competing directly with Intellicall via a "smart" pay phone with VSF capability in Pacific's pay phones. We do this to maintain the status quo while Intellicall's objections to the COPT settlement are dealt with in that proceeding.

In its Motion for Clarification on the ALJ's proposed decision, Intellicall again argues for an overbroad ban on Pacific's ability to provide VSF service through its central office equipment. We note that hearings have been scheduled in the COPT proceeding to address Intellicall's objections to the settlement in that proceeding. Pending resolution in that proceeding we believe the ALJ's proposed decision provided adequate relief for Intellicall by the language set forth below in Ordering Paragraph 13.

As to the County's concerns that VSF interim authority not be granted until blocking is available for all classes of customers, we are sympathetic to the ongoing problems the County has experienced with unauthorized 976 calling by employees. However, the time lag between the grant of interim authority for VSF and blocking availability is relatively short and does not warrant any additional conditions being placed on VSF service.

Since the conditions negotiated between the County and Pacific regarding a reduction in the price of Centrex blocking were conditioned on a 311 stipulation occurring, we will not order their inclusion in this order. We urge Pacific and the County to continue to try to work out their concerns in this area, involving IPA and other interested parties in the process.

We also wish to briefly comment on the problems which arose regarding the 311 stipulation process in hopes of giving parties guidance for future endeavors. First, Pacific's analysis of § 311 and the Commission's Rules 77 and 77.1 are clearly incorrect. The requirement of an ALJ proposed decision applies to any matter that has been "heard", except for complaint proceedings. Pacific's argument that this requirement does not apply until a proceeding is submitted, i.e. briefs are filed, misses the point that the triggering factor for § 311 purposes is holding a hearing, not submittal of briefs.

Pacific clearly needed to obtain a stipulation from all parties in order for the Commission to waive the 30 day waiting period between publication of the ALJ proposed decision and Commission action under § 311. The only thing the Commission has the authority to waive is the timing of the publication of the ALJ proposed decision, not the issuance of a proposed decision at all. A waiver of the full 30 days could result in the ALJ proposed decision being published on the same day as the Commission acts, but nonetheless must occur once a matter has gone to hearing.

Second, all parties to the proceeding must stipulate to waiving the 30-day publication requirement. In light of the problems that arose, we must agree with the parties who objected to Pacific's attempt to shift the burden from itself to the other parties by requiring that they register their objection to a stipulation by a certain date. The statute is quite clear where it states that all parties must stipulate before the Commission can waive the § 311 requirements of filing of an ALJ proposed decision

when hearings have been held. To differentiate between active and non-active parties in the manner in which the stipulation is sought is not contemplated by the statute. We could interpret the statute as requiring a written stipulation, but will not do so at this time. However, in the future, the party seeking the stipulation must affirmatively contact each and every party to the proceeding, obtain their consent, and represent in writing to the assigned ALJ the position taken by each party. We hope this will prevent the situation that arose in this proceeding from arising again. If problems continue to arise, we may be forced to consider a written stipulation requirement.

Finally, we reserve the right to address additional issues or make changes in the interim authority granted today should circumstances change due to action by the FCC or the federal courts.

#### Findings of Fact

1. The Commission has been preempted from requiring tariffs, structural separation, or inconsistent nonstructural competitive safeguards for Pacific's enhanced services pending our appeal of these issues in the Ninth Circuit Court of Appeals.

2. The Commission issued D.88-11-027 and D.89-05-020 in this proceeding granting interim authority for voice mail, protocol conversion, and electronic messaging enhanced services subject to several conditions.

3. Interim authority for Pacific's VSF service was one of the subjects for hearings held in this docket in April 1989.

4. Pacific filed a motion for interim authority for VSF service on May 24, 1989.

5. Because VSF service was the subject of hearings, Pacific needed to obtain the stipulation of all parties before the Commission could waive the § 311 requirement of an ALJ proposed decision being filed at least 30 days before Commission action.

6. Pacific failed to obtain such stipulation from all parties and therefore the Commission cannot waive the § 311 requirement.

7. Pacific asserts it has customer demand for its VSF service which it is unable to fill without the regulatory approval it seeks.

8. Pacific asserts that its competitors neither seek nor obtain regulatory approval before offering competing enhanced services in California.

9. VSF service was the subject of little discussion in the April hearings or briefs submitted thereafter.

10. The Commission does not endorse Pacific's VSF service at this time.

11. Hearings regarding billing and consumer safeguards for enhanced services as ordered by D.88-11-027 were held in April 1989.

12. The Commission intends to open a generic billing investigation and/or rulemaking in the near future to assure that Pacific's customers and competitors are treated fairly.

13. It is reasonable to grant interim authority today pending resolution of issues discussed in Findings of Fact 11 and 12, so long as no issues are prejudged by that interim authority.

14. Provision of BNA by Pacific to other enhanced service providers at this time would prejudge the issue.

15. The ability to disconnect regulated services for nonpayment of enhanced service charges would be a competitive advantage for Pacific vis a vis its enhanced service competitors.

16. Disconnection of regulated customers for nonpayment of enhanced service charges would raise serious consumer protection concerns.

17. Intellicall has made a sufficient showing of interest in this proceeding to have its motion to intervene granted because



Intellicall's contentions are reasonably pertinent to the issues already presented and do not unduly broaden them.

18. Intellicall's interests in this proceeding can be protected by forbidding Pacific from placing equipment with VSF capability directly in pay phones.

Conclusions of Law

1. Interim authority to provide electronic messaging services pursuant to Pacific's motion should be granted subject to the conditions adopted in D.88-11-027 and D.89-05-020 as modified below in the ordering paragraphs.

2. This interim authority shall have no precedential effect with regard to other enhanced services which Pacific may wish to have authorized in this application, or with regard to the conditions for permanent authority under the application.

3. The Commission should issue an ALJ proposed decision in this matter because Pacific was unable to obtain a stipulation from all parties to allow the Commission to waive the Public Utilities Code § 311 requirements.

4. The Commission should grant Intellicall's motion for leave to intervene.

5. Consistent with Pacific's request for interim procedures pending resolution of accounting treatment and other issues, the Commission should grant interim authority to provide enhanced services with the understanding that no decision is being made about the accounting treatment of intrastate enhanced services at this time, and that all services provided pursuant to the interim authority will be subject to the appropriate accounting treatment determined by the Commission when a final decision on the application is made. The utility in exercising this interim authority will accept the financial risk associated with proceeding under this uncertainty about the eventual accounting treatment and its impact on interim operations. The accounting treatment issues being deferred include whether the revenues, investment, and other

expenses of each service will be included in any revenue requirement or other measure used for ratemaking purposes. In addition, procedures for determining what specific amount of total utility costs will be included or excluded from intrastate revenue requirements or other measures used for intrastate ratemaking is also deferred.

6. Pending final resolution of the Commission's policy regarding the ratemaking treatment of enhanced services, Pacific should make no effort to recover the costs through ratemaking associated with enhanced services provided pursuant to interim authority.

7. Interim authority for Pacific to set up memorandum accounts for enhanced services should be granted to the extent set forth below.

8. Pacific should be ordered not to disconnect regulated services for nonpayment of enhanced service charges, and affected customers should be given clear and regular notice in this regard.

9. Pacific should not provide BNA to any other enhanced service provider pursuant to its tariffs until it receives further direction on this subject from the Commission.

10. Pacific should follow the procedures set forth in its application for the submission of information packages to the Commission staff and all parties herein prior to the introduction of services, as set forth in the ordering paragraphs.

11. The Commission reserves the right to change and, if appropriate, impose additional requirements at any time in the future whether before or after the "final" disposition of the application for good cause including a change in the Commission's legal options as a result of developments in the Ninth Circuit Court of Appeals case, or further action by the FCC or the Consent Decree Court.

12. In addition to the uncertainties mentioned in Conclusion of Law 11, Pacific should be aware that the Commission's own

upcoming billing proceeding could affect and/or alter some aspects of the interim authority granted today.

THIRD INTERIM ORDER

IT IS ORDERED that:

1. Pacific Bell (Pacific) shall institute separate memorandum accounts following the directives of Ordering Paragraph 2, tracking the complete research, development, deployment, operating and maintenance costs, and all revenues attributed to its voice store and forward (VSF) service.
2. All revenue, investment, and other expense amounts which are directly or indirectly incurred or otherwise might be associated via cost allocation with the service offered under this interim authority shall be placed in separate tracking accounts and reported monthly to the Commission Advisory and Compliance Division (CACD). Wherever estimated or allocated amounts are involved, the methodology used for such estimation or allocation shall be described and worksheets detailing computations shall be provided. Separate accounts shall be maintained for each enhanced service offered under this interim authority. For tracking purposes, all revenues received and investment and other expenses incurred from the date that planning, research, or development began for each service should be included. If this date for any given service is prior to the date of this decision, a summary report of all amounts incurred prior to the date of this decision shall be provided within 90 days from today. All amounts incurred from the effective date of this decision forward shall be reported within 45 days of the close of the month in which the revenues or expenses accrue. In addition, Pacific shall set up such accounts for each other enhanced service for which it begins, or has begun, planning, research, or development.

3. Pacific shall obtain CACD's written approval of its proposed memorandum accounts prior to their implementation.

4. All of Pacific's rates subject to regulation (including rates subject to potential regulation contingent on the outcome of judicial appeal) from the effective date of this decision forward are subject to refund based on ratemaking adjustments as a result of the final disposition of the issue of whether some or all of Pacific's enhanced services should be accounted for above or below the line.

5. Pacific shall not disconnect any regulated services solely for nonpayment of enhanced services charges. Pacific shall notify customers receiving bills for enhanced services of this rule when customers receive the first such bill, and at least each 6 months thereafter. As it did for its other approved enhanced services, Pacific shall coordinate this notice with the Commission's Public Advisor.

6. Any terms and conditions governing access to and the use of regulated billing services by Pacific's enhanced services operations shall be considered as interim pending a review of billing services issues by the Commission.

7. Any end-user complaints about service quality or billing matters which are received by Pacific's enhanced services operations or Pacific's regulated business offices shall be recorded as to number and nature and reported to CACD within 45 days of the close of the month in which the complaints are received.

8. Any existing consumer and competitive safeguards shall be considered to be interim. The Commission will consider applying additional or complementary safeguards in its final decision on the application or in the resolution of its upcoming billing proceeding.

9. In all instances where tariffed services are available, Pacific's enhanced services operations shall pay tariffed rates for the use of such services.

10. Pacific shall not provide billing name and address to any enhanced services provider for purposes of this interim authority.

11. Pacific shall only provide end user billings through existing 976 and 900 tariffs.

12. Intellicall, Inc.'s motion for leave to intervene is granted.

13. Pacific shall not install equipment that has VSF capability in any Pacific pay phone instrument pending further direction from the Commission.

14. In the future, the Commission may revise or modify any or all aspects of Pacific's interim authorization to bill for enhanced services.

This order is effective today.

Dated SEP 7 1989, at San Francisco, California.

G. MITCHELL WILK  
President  
FREDERICK R. DUDA  
STANLEY W. HULETT  
JOHN B. OHANIAN  
PATRICIA M. ECKERT  
Commissioners

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

- 29 -

*Wesley Franklin*  
WESLEY FRANKLIN, Acting Executive Director  
PB

APPENDIX A  
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List of Appearances

**Applicant:** Marlin Ard, Bruce Ramsey, and Theresa L. Cabral,  
Attorneys at Law, for Pacific Bell.

**Protestants:** Squire, Sanders & Dempsey, by Stephen R. Bell,  
Attorney at Law, and Charles M. Faubion, Attorney at Law, for  
Tymnet-McDonnell Douglas Network System Company; Jackson, Tufts,  
Cole & Black, by William H. Booth, Attorney at Law, for  
California Bankers Clearing House Association; Phyllis Whitten  
and Craig Dingwall, Attorneys at Law, for US Sprint  
Communications Company; Philip M. Walker, Attorney at Law, for  
Telenet Communications Corporation; and Alan Weiss, Attorney at  
Law, for MCI Telecommunications Corporation.

**Interested Parties:** Davis, Young & Mendelson, by Jeffrey F. Beck,  
Attorney at Law, for CP National, Citizens Utilities Company of  
California, Happy Valley Telephone Company, Hornitos Telephone  
Company, Kerman Telephone Company, Pinnacles Telephone Company,  
Sierra Telephone Company, The Siskiyou Telephone Company,  
Tuolumne Telephone Company, The Volcano Telephone Company, and  
Winterhaven Telephone Company; John Coate, for The Well; Richard  
A. Bromley and Randolph W. Deutsch, Attorneys at Law, for AT&T  
Communications of California, Inc.; Richard A. Elbrecht,  
Attorney at Law, for California Department of Consumer Affairs;  
John H. Engel, Attorney at Law, for Citizens Utilities Company  
of California; William G. Irving, for County of Los Angeles;  
Willkie, Farr & Gallagher, by Peter A. Casciato, Philip L.  
Verveer, and Theodore Whitehouse, for The Reuben H. Donnelley  
Company, a subsidiary of Dun & Bradstreet Corporation; Thomas J.  
MacBride, Jr., Attorney at Law, for Telephone Answering Services  
of California; Kim C. Mahoney, for CP National Corporation;  
Pelavin, Norberg, a Professional Corporation, by Alvin H.  
Pelavin, Attorney at Law, in association with Cooper, White &  
Cooper, by E. Garth Black and Mark P. Schreiber, Attorneys at  
Law, for Calaveras Telephone Company, California-Oregon  
Telephone Company, Ducor Telephone Company, Foresthill Telephone  
Company, and The Ponderosa Telephone Company; Richard E. Potter,  
and Kenneth K. Okel, Attorneys at Law, for GTE California  
Incorporated; Cooper, White & Cooper, by E. Garth Black and Mark  
Schreiber, Attorneys at Law, for Roseville Telephone Company;  
August A. Sairanen, Jr., for State of California, Department of  
General Services, Telecommunications Division; Law Office of  
Earl Nicholas Selby,

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by Nick Selby, Attorney at Law, for Information Providers Association; Graham & James, by Martin A. Mattes and Rachelle B. Chong, Attorneys at Law, for California Payphone Association; Morrison & Foerster, by Debra L. Lacapa, Attorney at Law, for VISA U.S.A., Inc. and Mastercard International, Inc.; Jerry O'Brien and Diane Martinez, for API Alarm Systems; and Robert Ferrary, for Public Advisor's Office.

Commission Advisory and Compliance Division: Kevin P. Coughlan.

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

(END OF APPENDIX A)

Decision PROPOSED DECISION OF ALJ KIERNAN-HARRINGTON (Mailed 8/8/89)  
BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
Pacific Bell (U 1001 C) for approval, )  
to the extent required or permitted )  
by law, of its plan to provide )  
enhanced services. )

Application 88-08-031  
(Filed August 15, 1988)

(See Appendix A for List of Appearances.)

THIRD INTERIM OPINION

In this third interim decision, we grant Pacific Bell (Pacific) interim authority to provide enhanced services as requested in its Motion for Interim Authority to Provide Voice Store and Forward Services (motion) filed May 24, 1989, subject to several conditions outlined below.

Background

The Commission has issued two prior interim decisions regarding Pacific's enhanced services. On November 9, 1988, we granted Pacific interim authority to provide Voice Mail and Protocol Conversion Services subject to several conditions. (Decision (D.) 88-11-027, November 9, 1988.) On May 10, 1989, we granted Pacific interim authority to provide Electronic Messaging Services subject to essentially the same conditions. (D.89-05-020, May 10, 1989.)

As described in those previous decisions, Pacific seeks approval of its plan to provide enhanced services within the



Federal Communications Commission's (FCC) Computer Inquiry III framework.<sup>1</sup>

The legal and regulatory uncertainties surrounding the FCC's Computer Inquiry III framework have not changed since the issuance of D.88-11-027 last November and D.89-05-020 in May. This Commission, along with a number of other parties, appealed the FCC's preemption of state regulation of enhanced services and prohibition of structural separation rules for the Bell Operating Companies. The United States Ninth Circuit Court of Appeals has heard oral argument. This review is still pending at this time.<sup>2</sup>

However, as stated in D.88-11-027:

"It appears that under the status quo the Commission may have authority to determine the accounting treatment of enhanced services, including whether or not revenues and expenses are included in utility revenue requirements. In addition, the Commission may be able to prescribe 'non-structural safeguards' as long as they are not inconsistent with the FCC's provisions. The Commission may also specify terms and conditions regarding the price and usage of basic network services which underlie the provision of intrastate enhanced services. Finally, the Commission may wish to prescribe additional provisions to address areas not covered by the FCC rules, e.g. billing and other consumer protection measures." (Mimeo., p. 2.)

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<sup>1</sup> See D.88-11-026 in Application (A.) 88-07-011 also issued November 9, 1988 for a brief discussion on the FCC's Computer Inquiry III framework. D.88-11-026 and D.88-11-027 were issued the same day, dealing with open network architecture (ONA) issues: Basic Service Elements, and Enhanced Services, respectively.

<sup>2</sup> People of the State of California v Federal Communications Commission, Case Nos. 87-7230 et al., Ninth Circuit Court of Appeals.

D.88-11-027 and D.89-05-020 placed several conditions on the grant of interim authority for voice mail, protocol conversion, and electronic messaging service, including: the creation of separate memorandum accounts and the tracking of costs and revenues for each enhanced service; a "no-disconnection" policy of any regulated service due to nonpayment of enhanced service charges; notification of customers of this no-disconnection policy; recording and reporting of end-user complaints regarding service quality or billing matters; a requirement that Pacific's enhanced services operation pay tariffed rates in all instances where tariffed services are available; and adoption of additional billing and consumer safeguards as the Commission may later determine necessary.

As ordered in D.88-11-027, hearings were scheduled to consider billing and consumer protection for enhanced services. These hearings were held in April 1989 focusing on Pacific's proposed Gateway and Voice Store and Forward (VSF) enhanced services, because these were services which Pacific expected to arouse objection from the interested parties. Participants in those hearings included: Pacific, the Division of Ratepayer Advocates (DRA), the County of Los Angeles (County), the Reuben H. Donnelley Corporation (RHD), VISA U.S.A., Inc. (VISA), California Bankers Clearing House Association (CBCHA), Telenet Communications Corporation (Telenet) and API Alarm Systems (API). The hearings focused almost exclusively on billing and consumer safeguards issues regarding Pacific's gateway service rather than on VSF service.

Pacific's Motion for Interim Authority to  
Provide Voice Store and Forward Service

Despite the fact that VSF service had been the subject of hearings, Pacific filed a motion requesting interim authority for VSF service on May 24, 1989. Pacific had contacted the active parties and agreed to an extension of the briefing schedule set at

the close of the April hearings so that parties could respond to Pacific's motion. Pacific filed the motion because it did not want interim authority for VSF to be delayed while a decision on the controversial topic of the April hearings, gateway service, was written. The motion was prompted by the FCC's approval of Pacific's Comparably Efficient Interconnection (CEI) plan for VSF on May 15, 1989. In addition, Pacific claims it had been requested to respond to competitive bids for VSF services and several businesses have indicated a desire to obtain such services. In light of the de minimis amount of questions raised at hearings regarding its VSF service, Pacific believes a separate, expedited interim decision is warranted.

#### Description of VSF Service

Pacific's VSF services will be used to allow Enhanced Service Providers (ESP) to facilitate the exchange of information between individuals and businesses. Pacific's VSF services will allow ESPs and end users to store and forward information electronically. End users will dial a telephone number to access the ESP's information service. The ESP's information may originate as voice or data and it may reside on Pacific's or the ESP's storage system. However, the ESP information will be delivered to the end user in voice form. Although the original information itself may not always reside on Pacific's storage system, the software program which delivers the ESP's information service to the end user will always reside on Pacific's storage system.

There are primarily two distinct uses of Pacific storage system which an ESP may utilize to offer its information services: information retrieval and information deposit. These capabilities are discussed in more detail below. In addition, both can be combined with tariffed network services, such as call forwarding or call transfer, so as to increase the efficiency of end users' telecommunications systems (e.g. automated attendant applications, overflow answering of calls, or after-hours answering of calls).

Pacific describes information retrieval as allowing end users to interact with an audiotex program to obtain information provided by the ESP. The information provided by the ESP may be specific to the end user, such as the end user's savings account information or the end user's frequent flyer mileage. The information could also be of a general appeal, such a business hours of operation or current specials. The information provided by the ESP may or may not be stored on Pacific's storage system. If the information is not stored on Pacific's storage system, the ESP software program stored on Pacific's storage system will enable Pacific's storage system to retrieve the information from the ESP's storage system.

Information deposit allows end users to interact with the ESP's audiotex program to deposit end user generated information with the ESP. Pacific's storage system will store the deposited information for retrieval by the ESP. Pacific asserts its storage system will not alter the information deposited by the end user. Examples of information deposit include communicating personal opinions (poll-taking), answering verbal questionnaires for market research, and report taking such as sales contact reporting. The end user's information deposited may result in the ESP taking specific actions. Examples of these telephone-based transactions include end users ordering specific catalog items; signing up for specific services; directing that account balances be changed (audiotex-based home banking); paying bills and pledging contributions.

An ESP using Pacific's storage system will be able to develop and employ its own application software thereby creating a unique audiotex program. ESPs will also be able to employ application software previously developed by Pacific. Finally, ESPs will be able to have Pacific develop new application software or modify existing Pacific application software thereby creating a

customized program. In all cases, Pacific states that the ESP will determine the content of the information presented to the end user.

Pacific's customers for voice store and forward service will be ESPs. ESPs will be charged a fee for the voice store and forward services they use.

The ESP must order access arrangements to connect its information service to the network. The choice of these arrangements may affect the charges that end users experience in calling the ESP's service. For instance, if the ESP elects to use an "800" service there would be no charges to the end user. However, if the ESP elects to use a "900" or "976" service, there would be a fixed charge to the end user for each call to the service. In cases where 976 or 900 is the access service, the 976 and 900 charges, as well as the safeguards, as set forth in the applicable tariffs and Commission decisions, would apply. In situations where the access arrangement has an applicable end user charge, such as a message unit charge, that charge will be billed to the end user at the tariffed rate.

Consumer Safeguards in  
Pacific's VSF Proposal

In its motion for interim authority, Pacific refers to the testimony of Keith J. Epstein (Exhibit 1 in this proceeding) regarding the consumer safeguards Pacific is proposing for its VSF service. First, Pacific's customer for VSF service is the ESP, not end users. Second, Pacific asserts it will not provide VSF to ESPs who provide illegal, pornographic, or harmful matter as defined by California Penal Code Section 313. Third, Pacific agrees that during the interim authority period it will not provide end user billing services to ESPs purchasing Pacific's VSF services, other than those billing services associated with existing tariffed services, such as 900 or 976. In those cases where billing services associated with existing tariffed services are provided,

the disclosure, adjustment, blocking, and other relevant safeguards associated with those tariffed services would apply.

In addition, Pacific is willing to comply with the applicable conditions that the Commission imposed on Pacific's interim authority for voice mail, protocol conversion, and electronic messaging services.

Finally, Pacific acknowledges that it realizes the authority sought is truly interim in nature and may be altered in the Commission's decision granting final authority, a billing OII decision, or any other relevant decision.

Pacific alleges competitive harm if its entrance into the VSF market is unduly delayed, arguing that no other provider is subject to regulatory approvals.

#### Opposition to Pacific's Motion

Only two parties filed responses to Pacific's motion, DRA and Intellicall, Inc. (Intellicall). In addition, only one party, the County of Los Angeles, specifically addressed VSF service in its brief submitted after the hearings.

#### DRA

DRA reiterates its position that billing name and address (BNA) not be offered to ESPs at this time. DRA believes providing BNA to ESPs raises important privacy concerns for California consumers which should be addressed in the Commission's upcoming billing decision. This is consistent with DRA's view in hearings that BNA should not be made available to any ESPs until the issue is resolved in the upcoming billing investigation.

Additionally, DRA is concerned that Pacific is considering having an entity other than itself bill its VSF charges based on Pacific's CEI plan filing before the FCC. DRA opposes leaving monopoly ratepayers with stranded investment from any modifications made to the regulated bill for enhanced services and later abandoned by Pacific. DRA recommends that the Commission order Pacific to provide the Commission with tracking data for

direct and allocated costs incurred to date for modifying existing Pacific systems to provide billing service, not only for VSF, but all other enhanced services. Further, DRA recommends that the Commission notify Pacific that it will disallow all costs associated with billing system modifications to accommodate billing for enhanced services should Pacific elect to use an alternate billing mechanism.

Finally, DRA does not oppose a separate decision on VSF interim authority so long as the Commission resolves its concerns about BNA and potential stranded investment in the billing system.

Intellicall

On June 8, 1989 Intellicall filed a motion for leave to intervene or, alternatively, for leave to participate through submission of comments on Pacific's motion. Intellicall states it did not previously participate in this proceeding because it had no reason to believe that its ability to compete with Pacific in the provision of certain VSF services on a level playing field would be hampered. Intellicall alleges that it was only after Pacific signed a Settlement Agreement on May 11, 1989 in I.88-04-029, Customer Owned Pay Telephone (COPT) proceeding, that Intellicall's ability to compete fairly with Pacific in the VSF marketplace was potentially compromised. Intellicall asserts that if the Commission adopts the Settlement Agreement in the COPT proceeding, COPT providers would be effectively prohibited from furnishing any VSF services which Intellicall has installed in its "smart" pay phones, IntelliSTAR™. Intellicall argues that while it is opposing the adoption of the Settlement Agreement in the COPT proceeding, it also is entitled to interested party status with respect to Pacific's motion to provide VSF services. Intellicall alleges the grant of Pacific's motion would cause substantial and possibly irrevocable harm to the nascent VSF market in California.

Intellicall's IntelliSTAR™ furnishes automated "O+" calling by using a circuit board in the telephone instrument to

record and store billing information for end users desiring to place 0+ calls. After the end user inputs the relevant billing information, the telephone instrument places the call over the public switched telephone network as a standard "1+" call carried by Pacific.

Intellicall alleges that its IntelliSTAR<sup>™</sup> phone currently provides what it considers an innovative VSF service, automated collect calling capability. The IntelliSTAR<sup>™</sup> furnishes automated collect calling simply by downloading speech and program files into the telephone instrument.

Intellicall claims it will have another VSF service, an automated coin messaging capability deployed in all its existing IntelliSTAR<sup>™</sup> phones in the third quarter of 1989. Intellicall plans to offer this capability to callers who receive no answer or a busy signal. A synthesized voice will ask the caller whether he wishes to leave a message for attempted delivery to the called party every 15 minutes for a specified number of hours or until the message is received. The synthesized voice will instruct the caller to press a particular digit on the telephone key pad to activate the capability. If the caller presses that digit, a voice will then instruct the caller to leave the message. The message will be recorded and a call placed to the called party every 15 minutes for a specified time period. The message will be delivered upon completing a call to the desired number.

Intellicall states that VSF services fulfill an important public need and should be made commercially available as soon as feasible. However, Intellicall does oppose permitting Pacific to furnish VSF services after it has swept the field of competing COPT providers. Intellicall asserts that permitting COPT providers to use VSF technology to furnish automated call competition and billing services in no way infringes upon the current ban on intraLATA competition.



Therefore, Intellicall submits that the Commission should grant Pacific's motion, but only on the condition that Pacific delete from the Settlement Agreement those provisions which preclude COPT operators from utilizing VSF technology to furnish automated call completion and billing services to the public. Because Pacific was the only local exchange carrier which required such protection against COPT providers, Intellicall believes the deletion of those provisions at Pacific's behest presumably will not undermine the viability of the Settlement Agreement. In the alternative, the Commission should reserve granting the interim authority requested by Pacific until such time as the Commission has issued a final decision on the proposed Settlement Agreement in I.88-04-029.

In a letter to the assigned administrative law judge (ALJ) dated June 30, 1989 (and served only on Pacific), Intellicall proposed specific conditioning language that, if included in the VSF interim opinion, would resolve Intellicall's concerns in this docket. The proposed condition would prevent Pacific from offering any VSF services from or over any pay telephone instrument or associated apparatus, from the central office or through use of ESPs or other third parties. Specifically, Intellicall proposed the following language:

"Pacific Bell shall not provide, or cause or permit to be provided, any voice store and forward services, including but not limited to voice messaging, collect calling or third party calling, from any pay telephones, whether owned, operated or controlled by Pacific Bell or its affiliate or by parties not affiliated with Pacific Bell. Nor shall Pacific Bell in any way assist or participate in, or otherwise offer or provide any services which involve, the provision of such voice store and forward services by an enhanced services provider or any other party. At Pacific Bell's request, this condition shall be removed by the Commission upon a showing by Pacific Bell that customer-owned pay telephone providers are not restricted in any way, either through

instrument-implemented pay telephones or otherwise, from furnishing any such voice store and forward services in competition with Pacific Bell by any order, decision or other action of this Commission or by the terms of any signed or proposed settlement agreement in any proceeding."

Intellicall acknowledges that the above condition will inhibit the immediate introduction of VSF services from pay telephones in Pacific's territory. However, Intellicall argues that this condition will protect VSF competition in the pay telephone industry without impeding Pacific's ability to deliver other VSF services to the public on an expeditious basis.

County of Los Angeles

While the County failed to file opposition to Pacific's motion, it did address its concerns regarding Pacific's VSF service in its opening brief after hearings. The County argues that the Commission should not authorize VSF until Information Services call blocking for business customers has been completely implemented. The County points out that Pacific has recently begun to accept orders from business customers wishing to block access to 976 Information Access Services and 900 Information Calling Services, as required by D.89-02-066. The County states mailers regarding availability were being received as of the date of the brief (June 19). Further, the County states that the mailer indicates that blocking for Simple Business Service will be effective about 30 days after receipt of the reply card. The County argues it will be at least several bill rounds before business customers will know whether their requests for blocking have been implemented. The County points out that blocking for Complex Business Service will not be available until October 1, 1989. In addition, the County notes the prices Centrex customers must pay for blocking are rather steep--a one-time charge of at least \$500 and a monthly recurring charge of at least \$250.75, irrespective of the number of lines. Thus, the County argues a 100 line Centrex customer would pay the

equivalent monthly charge of \$2.51 per line. The County contrasts this to no monthly blocking charges for other classes of service.<sup>3</sup>

In conclusion, the County urges that interim or final approval of VSF be contingent upon Pacific's modification of its blocking services to provide for the complete denial of access to such services.

#### Pacific's Response

##### Response to DRA

Pacific filed a response on June 15, 1989, to the comments of DRA. Pacific states it is prepared to meet both of DRA's concerns regarding the release of BNA and prevention of stranded investment in the billing system.

Pacific agrees with DRA that end user billing for VSF applications will only be offered by Pacific through its 900 and 976 tariffs, both of which provide for billing by Pacific under a number of conditions found in the tariffs. No additional expense or investment has been incurred for VSF end user billing via 976/900 services. Alternatively, billing may be performed directly by the Information Provider (IP) or its agent. Second, IPs will be billed directly by Pacific for VSF services. In either case, BNA will not be made available to the IP, and Pacific has no intention of making BNA available until the issue is generally clarified in

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3 During Pacific's effort to obtain all parties' stipulation to waiving the Public Utilities Code § 311 requirement of an ALJ proposed decision published 30 days before Commission action in this matter, Pacific and the County reached an agreement for Pacific to modify its Information Service Call Blocking tariff to allow Complex Business Service call blocking on the same basis as call blocking for Simple Business Service, i.e., a \$1.00 per line non-recurring charge during a sixty-day window of opportunity. Pacific ultimately failed to obtain a stipulation from all parties agreeing to waive § 311. This "311" issue will be discussed in greater detail later in this decision.

this or some other proceeding. To date, Pacific claims there has been no expense incurred to modify the existing billing system to do VSF billing.

As for DRA's concerns over stranded investment, Pacific disagrees that any such event has or will occur. Furthermore, by offering end user billing for VSF applications through existing tariffed service, Pacific alleges there will be no change in how Pacific bills for this service. Pacific can agree that this issue remains open, and VSF may be affected by the outcome of billing issues awaiting decision. With these conditions, Pacific asserts DRA's concerns should be fully addressed and should not be the basis for delaying interim approval of the service.

Response to Intellicall

Pacific takes issue with Intellicall's attempt to participate in this proceeding arguing that Intellicall has little, if any, interest in Pacific's VSF service but rather is disgruntled with a settlement reached in the COPT proceeding, I.88-04-029. Pacific denies that its VSF service has anything to do with pay telephones.

First, Pacific claims there is no basis for comparing two of the services (O+ calling and collect calling) Intellicall proposes with the VSF services contemplated by Pacific. Pacific is asking for interim approval to provide VSF for ESPs to offer services described in the CEI plan filed with the FCC. Its plans do not include installing equipment in coin instruments to perform billing functions for O+ or collect calls. These services are traditional regulated offerings, and no one has suggested they are "enhanced services" as defined by the FCC. Pacific argues that Intellicall provides no authority to support its suggestion that these two services are enhanced, and its attempt to compare the billing for O+ and collect calling with Pacific's VSF services is factually wrong and legally irrelevant. Pacific states that these Intellicall services compete with regulated services of Pacific,

and nothing in either the COPT settlement or Pacific's VSF motion forecloses, as Intellicall improperly alleges, competition for VSF services.

As for the third service Intellicall describes (coin messaging, where uncompleted voice calls are stored in the coin instrument and re-delivered at a later point to the called party), Pacific has no objection to Intellicall offering this service, and it can do so for intraLATA and interLATA calling. Pacific does not read the COPT settlement as affecting this type of service, with the understanding that the settlement clearly does prevent billing for intraLATA 0+ and collect calls until the ban on intraLATA competition is ended or modified.

Intellicall's other point that the COPT settlement effectively precludes the development of all of its proposed services, including the one Pacific does not oppose, is also untrue in Pacific's view. Pacific alleges the 0+ billing and collect calling that Intellicall describes can be (and are today) offered for interLATA calling, and nothing in the COPT settlement precludes such services. The machines described by Intellicall can be programmed to prevent the intraLATA calling that should not be occurring. Pacific concludes that Intellicall is free, under the COPT settlement, to offer all of its services. However, according to Pacific, Intellicall must, like all other providers of telecommunication services in California, not offer or hold out intraLATA services. Pacific points out the question of intraLATA competition, and its impact on Pacific and its ratepayers if permitted, is a matter reserved for Phase III of I.87-11-033. Pacific suggests that Intellicall, along with everyone else, can address that issue there, and by doing so, the introduction the services it proposes will not be impeded.

Section 311 Issue

Pacific argued in its response that Public Utilities Code § 311 (§ 311) should not apply to its request for interim authority for VSF service. § 311 reads in pertinent part:

" . . . The Commission shall issue its decision not sooner than 30 days following filing and service of the proposed decision by the administrative law judge, except that the 30-day period may be reduced or waived by the Commission in an unforeseen emergency situation or upon the stipulation of all parties to the proceeding." (Emphasis added.)

Further, Pacific argues that the Commission's Rules of Practice and Procedure (Rule 77 and 77.1) applies this process to matters that have been "submitted" i.e., when briefs have been filed. Pacific suggests that since briefs had not yet been filed at the time of its filing of its motion that § 311 therefore was inapplicable.

In Pacific's opinion, the parties implicitly agreed to stipulate to waive § 311 requirements of an ALJ proposed decision when they agreed to the extension of the briefing schedule so that Pacific could file its motion.

Finally, Pacific alleged an "emergency" situation existed under § 311 in that Pacific had submitted a bid for a major VSF project and if successful would need to implement its VSF service by August 1, 1989.<sup>4</sup>

The assigned ALJ informed Pacific that its arguments of an "implicit" waiver by the parties who participated in the hearing did not fulfill the requirements of § 311. § 311 requires stipulation by all parties which includes any party who has filed

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<sup>4</sup> Counsel for Pacific subsequently informed the assigned ALJ that Pacific was not successful in that bidding process.

an appearance in the proceeding whether or not that party participated in a particular portion of the hearings.

In response to the ALJ's statement that an explicit § 311 stipulation was necessary from all parties, Pacific determined to contact the "active" parties (those who participated in the hearings) and sent a letter on June 27, 1989 to all other appearances requesting that the party contact Pacific within three days if it did not consent to waiving the ALJ proposed decision requirement of § 311.

Pacific's June 27 letter caused a flurry of activity among some parties. The ALJ received correspondence from four parties<sup>5</sup> and phone calls from others regarding this matter, generally questioning the burden placed on them to contact Pacific if they did not consent. However, only one party, the County, as of June 30, 1989 had informed the ALJ and Pacific that it would not stipulate to a § 311 waiver.

Meanwhile, Pacific sent the ALJ a letter on June 29, 1989 (and June 30, correcting a typographical error) listing the active parties who did not oppose Commission action on Pacific's VSF motion without an ALJ proposed decision. The County's opposition was not mentioned in the letter.

The County and Pacific continued negotiating and on July 5, 1989 the ALJ received a letter from the County stating that it would stipulate to a waiver of § 311 if certain tariff modifications discussed earlier in this decision (Footnote 3) were made by Pacific.

On July 13, 1989, the ALJ received a letter from Information Providers Association (IPA) stating emphatically that it does not consent to a waiver of the notice of an ALJ proposed

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<sup>5</sup> US Sprint, Intellicall, County of Los Angeles, and Information Providers Association all sent letters.

decision provision of § 311. IPA additionally objected to the way in which Pacific sought to obtain the "non-active" parties consent (by requiring them to contact Pacific). More importantly, IPA strenuously objected to the "private deal" struck between the County and Pacific. IPA argued that since its membership may ultimately pay for the costs of business blocking which Pacific does not receive from those ordering it, any reduction in the price of blocking adversely affects IPA.

At this point, the ALJ determined that the "311 stipulation" process had clearly failed and that an ALJ proposed decision filed 30 days in advance of Commission action, as required by § 311 absent a stipulation by all parties, would be mailed on Pacific's VSF motion. Hence, a proposed decision was mailed August 8, 1989.

#### Discussion

We reiterate our position that we are interested in promoting the development of valuable new services, including enhanced services. (D.88-11-027, mimeo. p. 4; D.89-05-020, mimeo. p. 7.) We believe the granting of interim authority for individual enhanced services in no way prejudices our careful policy considerations at a future date. The outcome of the pending appeal in the Ninth Circuit Court of Appeals regarding the degree of our jurisdiction over regulating intrastate enhanced services could greatly affect our final disposition of this application. In the interim, we are concerned that we not prejudice our eventual consideration of these issues, yet not delay the offering of valuable new services to California consumers. This interim authority is not an endorsement of any of Pacific's proposed enhanced services offerings. Pacific proceeds with these offerings at its own financial risk.

As we have previously stated, the issue of whether enhanced services should be treated above or below the line for ratemaking purposes has already been referred to Phase II of Order



Instituting Investigation 87-11-033. (D.88-11-027, mimeo. p. 4; D.89-05-020, mimeo. p. 8.) The only authority we grant at this time is for Pacific to institute separate tracking or memorandum accounts recording the complete research, development, deployment, operating and maintenance costs, and revenues of its VSF service. It is our understanding that Pacific and the DRA have finally reached agreement on the appropriate tracking mechanisms that should be employed for enhanced services. As we did in both prior interim decisions, we condition the authority granted today on the approval of the format of the memorandum accounts by the Commission Advisory and Compliance Division (CACD). Once again, we reserve the right to alter or add to this tracking procedure in our grant of final authority at a later date.

In its motion, Pacific agrees to be bound by the conditions we placed on interim authority for voice mail, protocol conversion, and electronic messaging services. In both the prior interim decisions we issued, we discussed extensively our concerns surrounding Pacific's use of its regulated bill to collect charges for enhanced services. We ordered Pacific not to disconnect local service because of such charges and required it to notify customers of the no-disconnection policy. We incorporate those conditions in this grant of interim authority for VSF services.

The hearings ordered by D.88-11-027 on billing and consumer safeguards were held in April 1989. In D.89-05-020 we specifically put parties on notice that the long-term treatment of billing for enhanced services will be the subject of policies developed in an upcoming billing proceeding. We reiterate that the decision resulting from the April hearings on billing issues will, like this one, be interim in nature and subject to change depending on both the outcome of our jurisdictional dispute at the Ninth Circuit Court of Appeals and the upcoming billing proceeding.

DRA filed comments to this motion expressing concern that BNA not be provided to ESPs pending resolution of the issue either

in the forthcoming decision on the April hearings or in the billing proceeding. As we did in our May decision, we do not authorize any change to the availability of BNA for purposes of the interim authority granted today. (D.89-05-020, mimeo. p. 10.)

Additionally, we endorse Pacific's proposal for interim authority to only provide end user billings through existing 976 or 900 tariffs, thereby incorporating the existing consumer protections the Commission has previously ordered for those services.

DRA also expressed concern regarding the danger of stranded investment in billing system modifications made for enhanced services if Pacific later decides to have another entity provide its billing services. Pacific rebutted this, stating that no modifications to the billing system will be made for VSF service. Pacific is required to track all of its costs associated with all the thus far permitted enhanced services vis a vis its billing system, whether modifications are made or not. The interim tracking accounts will allow us to later determine the disposition of stranded investment if it in fact materializes.

Despite all these uncertainties, we will allow Pacific to go forward at its own risk regarding use of its regulated bill for VSF service. Pacific is warned not to argue at a future date that a final resolution of billing issues should necessarily be governed by what has been allowed for this interim authority

We now turn to Intellicall's motion to intervene and its objections to the grant of interim authority for Pacific's VSF service. We believe Intellicall has made a sufficient showing of interest to grant its request for party status in this proceeding and we do so in this order. However, we believe the conditioning language proposed by Intellicall to prevent any VSF service from or over any pay telephone to be overly broad to protect its interests in this proceeding. Additionally, we discourage parties from submitting proposed language for a decision in letter form, particularly when it is only served on one party to the proceeding.

We will only forbid Pacific from installing equipment in any of its own pay phone instruments that has VSF capability as a condition of interim authority. We see no reason to extend this ban to VSF service that may be available from a pay phone through an ESP. We note that Intellicall's concerns regarding the COPT settlement will be addressed in that forum. In the interim, we will only forbid Pacific from competing directly with Intellicall via a "smart" pay phone with VSF capability in Pacific's pay phones. We do this to maintain the status quo while Intellicall's objections to the COPT settlement are dealt with in that proceeding. This is adequate relief for Intellicall in this proceeding pending resolution of the COPT settlement.

As to the County's concerns that VSF interim authority not be granted until blocking is available for all classes of customers, we are sympathetic to the ongoing problems the County has experienced with unauthorized 976 calling by employees. However, the time lag between the grant of interim authority for VSF and blocking availability is relatively short and does not warrant any additional conditions being placed on VSF service.

Since the conditions negotiated between the County and Pacific regarding a reduction in the price of Centrex blocking were conditioned on a 311 stipulation occurring, we will not order their inclusion in this order. We urge Pacific and the County to continue to try to work out their concerns in this area, involving IPA and other interested parties in the process.

We also wish to briefly comment on the problems which arose regarding the 311 stipulation process in hopes of giving parties guidance for future endeavors. First, Pacific's analysis of § 311 and the Commission's Rules 77 and 77.1 are clearly incorrect. The requirement of an ALJ proposed decision applies to any matter that has been "heard", except for complaint proceedings. Pacific's argument that this requirement does not apply until a proceeding is submitted, i.e. briefs are filed, misses the point

that the triggering factor for § 311 purposes is holding a hearing, not submittal of briefs.

Pacific clearly needed to obtain a stipulation from all parties in order for the Commission to waive the 30 day waiting period between publication of the ALJ proposed decision and Commission action under § 311. The only thing the Commission has the authority to waive is the timing of the publication of the ALJ proposed decision, not the issuance of a proposed decision at all. A waiver of the full 30 days could result in the ALJ proposed decision being published on the same day as the Commission acts, but nonetheless must occur once a matter has gone to hearing.

Second, all parties to the proceeding must stipulate to waiving the 30-day publication requirement. In light of the problems that arose, we must agree with the parties who objected to Pacific's attempt to shift the burden from itself to the other parties by requiring that they register their objection to a stipulation by a certain date. The statute is quite clear where it states that all parties must stipulate before the Commission can waive the § 311 requirements of filing of an ALJ proposed decision when hearings have been held. To differentiate between active and non-active parties in the manner in which the stipulation is sought is not contemplated by the statute. We could interpret the statute as requiring a written stipulation, but will not do so at this time. However, in the future, the party seeking the stipulation must affirmatively contact each and every party to the proceeding, obtain their consent, and represent in writing to the assigned ALJ the position taken by each party. We hope this will prevent the situation that arose in this proceeding from arising again. If problems continue to arise, we may be forced to consider a written stipulation requirement.

Finally, we reserve the right to address additional issues or make changes in the interim authority granted today

should circumstances change due to action by the FCC or the federal courts.

Findings of Fact

1. The Commission has been preempted from requiring tariffs, structural separation, or inconsistent nonstructural competitive safeguards for Pacific's enhanced services pending our appeal of these issues in the Ninth Circuit Court of Appeals.

2. The Commission issued D.88-11-027 and D.89-05-020 in this proceeding granting interim authority for voice mail, protocol conversion, and electronic messaging enhanced services subject to several conditions.

3. Interim authority for Pacific's VSF service was one of the subjects for hearings held in this docket in April 1989.

4. Pacific filed a motion for interim authority for VSF service on May 24, 1989.

5. Because VSF service was the subject of hearings, Pacific needed to obtain the stipulation of all parties before the Commission could waive the § 311 requirement of an ALJ proposed decision being filed at least 30 days before Commission action.

6. Pacific failed to obtain such stipulation from all parties and therefore the Commission cannot waive the § 311 requirement.

7. Pacific asserts it has customer demand for its VSF service which it is unable to fill without the regulatory approval it seeks.

8. Pacific asserts that its competitors neither seek nor obtain regulatory approval before offering competing enhanced services in California.

9. VSF service was the subject of little discussion in the April hearings or briefs submitted thereafter.

10. The Commission does not endorse Pacific's VSF service at this time.

11. Hearings regarding billing and consumer safeguards for enhanced services as ordered by D.88-11-027 were held in April 1989.

12. The Commission intends to open a generic billing investigation and/or rulemaking in the near future to assure that Pacific's customers and competitors are treated fairly.

13. It is reasonable to grant interim authority today pending resolution of issues discussed in Findings of Fact 11 and 12, so long as no issues are prejudged by that interim authority.

14. Provision of BNA by Pacific to other enhanced service providers at this time would prejudice the issue.

15. The ability to disconnect regulated services for nonpayment of enhanced service charges would be a competitive advantage for Pacific vis a vis its enhanced service competitors.

16. Disconnection of regulated customers for nonpayment of enhanced service charges would raise serious consumer protection concerns.

17. Intellicall has made a sufficient showing of interest in this proceeding to have its motion to intervene granted because Intellicall's contentions are reasonably pertinent to the issues already presented and do not unduly broaden them.

18. Intellicall's interests in this proceeding can be protected by forbidding Pacific from placing equipment with VSF capability directly in pay phones.

#### Conclusions of Law

1. Interim authority to provide electronic messaging services pursuant to Pacific's motion should be granted subject to the conditions adopted in D.88-11-027 and D.89-05-020 as modified below in the ordering paragraphs.

2. This interim authority shall have no precedential effect with regard to other enhanced services which Pacific may wish to have authorized in this application, or with regard to the conditions for permanent authority under the application.

3. The Commission should issue an ALJ proposed decision in this matter because Pacific was unable to obtain a stipulation from all parties to allow the Commission to waive the Public Utilities Code § 311 requirements.

4. The Commission should grant Intellicall's motion for leave to intervene.

5. Consistent with Pacific's request for interim procedures pending resolution of accounting treatment and other issues, the Commission should grant interim authority to provide enhanced services with the understanding that no decision is being made about the accounting treatment of intrastate enhanced services at this time, and that all services provided pursuant to the interim authority will be subject to the appropriate accounting treatment determined by the Commission when a final decision on the application is made. The utility in exercising this interim authority will accept the financial risk associated with proceeding under this uncertainty about the eventual accounting treatment and its impact on interim operations. The accounting treatment issues being deferred include whether the revenues, investment, and other expenses of each service will be included in any revenue requirement or other measure used for ratemaking purposes. In addition, procedures for determining what specific amount of total utility costs will be included or excluded from intrastate revenue requirements or other measures used for intrastate ratemaking is also deferred.

6. Pending final resolution of the Commission's policy regarding the ratemaking treatment of enhanced services, Pacific should make no effort to recover the costs through ratemaking associated with enhanced services provided pursuant to interim authority.

7. Interim authority for Pacific to set up memorandum accounts for enhanced services should be granted to the extent set forth below.

8. Pacific should be ordered not to disconnect regulated services for nonpayment of enhanced service charges, and affected customers should be given clear and regular notice in this regard.

9. Pacific should not provide BNA to any other enhanced service provider pursuant to its tariffs until it receives further direction on this subject from the Commission.

10. Pacific should follow the procedures set forth in its application for the submission of information packages to the Commission staff and all parties herein prior to the introduction of services, as set forth in the ordering paragraphs.

11. The Commission reserves the right to change and, if appropriate, impose additional requirements at any time in the future whether before or after the "final" disposition of the application for good cause including a change in the Commission's legal options as a result of developments in the Ninth Circuit Court of Appeals case, or further action by the FCC or the Consent Decree Court.

12. In addition to the uncertainties mentioned in Conclusion of Law 11, Pacific should be aware that the Commission's own upcoming billing proceeding could affect and/or alter some aspects of the interim authority granted today.

### THIRD INTERIM ORDER

IT IS ORDERED that:

1. Pacific Bell (Pacific) shall institute separate memorandum accounts following the directives of Ordering Paragraph 2, tracking the complete research, development, deployment, operating and maintenance costs, and all revenues attributed to its voice store and forward (VSF) service.

2. All revenue, investment, and other expense amounts which are directly or indirectly incurred or otherwise might be associated via cost allocation with the service offered under this



interim authority shall be placed in separate tracking accounts and reported monthly to the Commission Advisory and Compliance Division (CACD). Wherever estimated or allocated amounts are involved, the methodology used for such estimation or allocation shall be described and worksheets detailing computations shall be provided. Separate accounts shall be maintained for each enhanced service offered under this interim authority. For tracking purposes, all revenues received and investment and other expenses incurred from the date that planning, research, or development began for each service should be included. If this date for any given service is prior to the date of this decision, a summary report of all amounts incurred prior to the date of this decision shall be provided within 90 days from today. All amounts incurred from the effective date of this decision forward shall be reported within 45 days of the close of the month in which the revenues or expenses accrue. In addition, Pacific shall set up such accounts for each other enhanced service for which it begins, or has begun, planning, research, or development.

3. Pacific shall obtain CACD's written approval of its proposed memorandum accounts prior to their implementation.

4. All of Pacific's rates subject to regulation (including rates subject to potential regulation contingent on the outcome of judicial appeal) from the effective date of this decision forward are subject to refund based on ratemaking adjustments as a result of the final disposition of the issue of whether some or all of Pacific's enhanced services should be accounted for above or below the line.

5. Pacific shall not disconnect any regulated services solely for nonpayment of enhanced services charges. Pacific shall notify customers receiving bills for enhanced services of this rule when customers receive the first such bill, and at least each 6 months thereafter. As it did for its other approved enhanced

services, Pacific shall coordinate this notice with the Commission's Public Advisor.

6. Any terms and conditions governing access to and the use of regulated billing services by Pacific's enhanced services operations shall be considered as interim pending a review of billing services issues by the Commission.

7. Any end-user complaints about service quality or billing matters which are received by Pacific's enhanced services operations or Pacific's regulated business offices shall be recorded as to number and nature and reported to CACD within 45 days of the close of the month in which the complaints are received.

8. Any existing consumer and competitive safeguards shall be considered to be interim. The Commission will consider applying additional or complementary safeguards in its final decision on the application or in the resolution of its upcoming billing proceeding.

9. In all instances where tariffed services are available, Pacific's enhanced services operations shall pay tariffed rates for the use of such services.

10. Pacific shall not provide billing name and address to any enhanced services provider for purposes of this interim authority.

11. Pacific shall only provide end user billings through existing 976 and 900 tariffs.

12. Intellicall, Inc.'s motion for leave to intervene is granted.

13. Pacific shall not install equipment that has VSF capability in any Pacific pay phone instrument pending further direction from the Commission.

14. In the future, the Commission may revise or modify any or all aspects of Pacific's interim authorization to bill for enhanced services.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.

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List of Appearances

**Applicant:** Marlin Ard, Bruce Ramsey, and Theresa L. Cabral,  
Attorneys at Law, for Pacific Bell.

**Protestants:** Squire, Sanders & Dempsey, by Stephen R. Bell,  
Attorney at Law, and Charles M. Faubion, Attorney at Law, for  
Tymnet-McDonnell Douglas Network System Company; Jackson, Tufts,  
Cole & Black, by William H. Booth, Attorney at Law, for  
California Bankers Clearing House Association; Phyllis Whitten  
and Craig Dingwall, Attorneys at Law, for US Sprint  
Communications Company; Philip M. Walker, Attorney at Law, for  
Telenet Communications Corporation; and Alan Weiss, Attorney at  
Law, for MCI Telecommunications Corporation.

**Interested Parties:** Davis, Young & Mendelson, by Jeffrey E. Beck,  
Attorney at Law, for CP  
National, Citizens Utilities Company of California, Happy Valley  
Telephone Company, Hornitos Telephone Company, Kerman Telephone  
Company, Pinnacles Telephone Company, Sierra Telephone Company,  
The Siskiyou Telephone Company, Tuolumne Telephone Company, The  
Volcano Telephone Company, and Winterhaven Telephone Company;  
John Coate, for The Well; Richard A. Bromley and Randolph W.  
Deutsch, Attorneys at Law, for AT&T Communications of  
California, Inc.; Richard A. Elbrecht, Attorney at Law, for  
California Department of Consumer Affairs; John H. Engel,  
Attorney at Law, for Citizens Utilities Company of California;  
William G. Irving, for County of Los Angeles; Willkie, Farr &  
Gallagher, by Peter A. Casciato, Philip L. Verveer, and Theodore  
Whitehouse, for The Reuben H. Donnelley Company, a subsidiary of  
Dun & Bradstreet Corporation; Thomas J. MacBride, Jr., Attorney  
at Law, for Telephone Answering Services of California; Kim C.  
Mahoney, for CP National Corporation; Pelavin, Norberg, a  
Professional Corporation, by Alvin H. Pelavin, Attorney at Law,  
in association with Cooper, White & Cooper, by E. Garth Black  
and Mark P. Schreiber, Attorneys at Law, for Calaveras Telephone  
Company, California-Oregon Telephone Company, Ducor Telephone  
Company, Foresthill Telephone Company, and The Ponderosa  
Telephone Company; Richard E. Potter, and Kenneth K. Okel,  
Attorneys at Law, for GTE California Incorporated; Cooper, White  
& Cooper, by E. Garth Black and Mark Schreiber, Attorneys at  
Law, for Roseville Telephone Company; August A. Sairanen, Jr.,  
for State of California, Department of General Services,  
Telecommunications Division; Law Office of Earl Nicholas Selby,

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by Nick Selby, Attorney at Law, for Information Providers Association; Graham & James, by Martin A. Mattes and Rachelle B. Chong, Attorneys at Law, for California Payphone Association; Morrison & Foerster, by Debra L. Lagana, Attorney at Law, for VISA U.S.A., Inc. and Mastercard International, Inc.; Jerry O'Brien and Diane Martinez, for API Alarm Systems; and Robert Ferraro, for Public Advisor's Office.

Commission Advisory and Compliance Division: Kevin P. Coughlan.

Division of Ratepayer Advocates: Janice Gray, Attorney at Law.

(END OF APPENDIX A)