L/ALJ/lkw **

Decision 90-04-031 April 11, 1990

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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

INTERIM ORDER MODIFYING DECISION (D.) 89-10-031, GRANTING LIMITED REHEARING OF D.89-10-031, AND DENYING REHEARING OF D.89-12-048

Applications for rehearing of Decision (D.) 89-10-031, which established a new regulatory framework for Pacific Bell (Pacific) and GTE California (GTEC), have been filed by MCI,

Toward Utility Rate Normalization (TURN), AT&T-Communications of California, Inc. (AT&T-C), and the Cities of Los Angeles and San Diego jointly (Cities). Pacific and GTEC have filed responses in opposition thereto. In addition, Pacific has filed an application for rehearing of D.89-12-048, the decision implementing D.89-10-031. The Commission's Division of Ratepayer Advocates (DRA) has filed a response, in part supporting and in part opposing Pacific's application. On February 23, 1990, we issued D.90-02-053, which modified D.89-10-031 to make corrections in two surcharge adjustments relating to interLATA access services and intraLATA exchange services, in partial response to Pacific's application for rehearing. In today's order, we consider all remaining issues raised in the above applications.

In addition, petitions for modification of D. 89-10-031 have been filed by Pacific, GTEC, DRA, and TURN. In D.89-12-048, the Commission denied DRA's petition filed November 3, 1989, granted to a limited extent GTEC's petition, and denied portions of TURN's petition. Today's decision addresses DRA's petition filed December 28, 1989, Pacific's petition, and the remaining portions of TURN's petition not addressed in D.89-12-048.

Applications for Rehearing
D.89-10-031

In brief, we find that only one of the allegations raised in the applications presents sufficient grounds for granting rehearing. In addition, we will modify the decision in several respects to reflect minor changes in policy direction. We will also clarify several important aspects of the decision in the discussion which follows.

We first address the arguments of MCI and AT&T-C that we have unlawfully discriminated against interexchange carriers (IECs) by excluding them from the sharing mechanism. We categorically reject such arguments. D.89-10-031 set forth sufficient rationale to support the policy decision to treat end

users differently from IECs, who are not themselves end users but are connecting carriers who pay access charges to connect to the LECs' systems. One of our major concerns in concluding that IECs should be excluded was that because they enjoy pricing flexibility, we would have no assurance that they would pass through any shared earnings to their end users. This would provide a windfall to the IECs which we did not view as beneficial or in keeping with the goals of our new regulatory program.

However, both of these parties have indicated in their applications for rehearing that they expect that market forces may compel them to pass through any shared profits to their own end users. MCI states, at pages 11-12 of its application, that:

> ...given the competitive structure of the interexchange market, a structure that has consistently produced lower prices as costs have declined, it is highly unlikely that refunds of excess LEC revenues would not be passed on by interexchange carriers to their customers.

At page 10 of its application, AT&T-C quotes, even more decisively, its witness Stechert, who testified:

> ...the interexchange carriers are in substantial competition with one another currently in the provision of their services, and whatever cost savings are realized by those carriers, they will use to become more competitive.

AT&T-C further states that "the Commission can order interexchange carriers to reflect shared excess earnings as appropriate reductions in their rates[,]" which would be consistent with other Commission decisions ordering access passthroughs. Id. Both of these parties raised similar arguments in their comments to the ALJ's Proposed Decision.

Having reviewed these arguments further, we are of the view that we need additional information before we will be able to

make a determination whether the IECs should be included within the sharing mechanism, and if so, how to assure ourselves that the IECs are passing through any shared revenues to their customers.

Although it will be some time before Pacific and GTEC file advice letters related to possible sharing of excess earnings, we intend to resolve this matter expeditiously. Because not all IECs have been parties to this proceeding, we will order the Executive Director to serve a copy of today's decision on all IECs operating within California. We will also grant limited rehearing for the purpose of allowing interested parties to file comments on the issues discussed above. Specific points to be addressed in the comments are to be set forth in a ruling by the assigned Administrative Law Judge, to be issued as soon as possible. We recognize that ramifications of whatever sharing policy we adopt for the IECs may well carry over to services for which intraLATA competition may be allowed, an issue in Phase III of this proceeding. Therefore, we put all parties on notice that we will incorporate the comments we receive on the issues discussed above into the record in Phase III, in order that we may refer to them should we find it necessary or useful to do so.

We secondly address AT&T-C's concern that we apply the principles of unbundling, nondiscriminatory access and imputation equally to tariffed services and services offered through special contracts. While these principles were adopted on a general basis in D.89-10-031, the decision discusses primarily the application to tariffed services. It is true, as Pacific points out, that the Commission reviews contracts pursuant to General Order 96-A, and could remedy any abuses discovered during that review. However, we believe it would be more in keeping with the goals we espouse in D.89-10-031 to explicitly apply these principles to special contracts as well. While we do not intend to preclude per se the offering of fixed multi-year rates pursuant to contract, the local exchange carriers (LECs) are put on notice that any such offering will be subject to stringent

review to ascertain whether the adopted imputation principles are properly applied.

Thirdly, we address the arguments of several parties that the evidence and findings are insufficient to support our determinations that a productivity factor of 4.5% and a benchmark rate of return of 150 basis points above the market-based rate of return are reasonable. We reject the arguments presented by these parties. As all of them are well aware, ratemaking is a process which of necessity involves many difficult judgment calls. This is true whatever the regulatory context. The questioned figures were not arrived at in a vacuum, but only after careful review of all the evidence presented and much deliberation about just what combination of factors would be most likely to bring about the result the Commission intended.

The Commission determined early on that inclusion of a productivity factor in the rate setting formula, if set as a target which the LECs had to "stretch" to achieve, would maintain a strong incentive for efficiency and would provide appropriate protection to the LECs' ratepayers. Evidence was presented supporting a productivity factor ranging from 2% to over 6%. The Commission, exercising its judgment in interpreting this evidence, adopted a figure of 4.5%, which in its view would best ensure that both of the above goals could be met.

Evidence was also presented which in concept embraced the adoption of a benchmark rate of return for sharing purposes somewhat above the market based rate of return. We determined that our new framework should include such a benchmark rate of return as a way of balancing the increased risk introduced by the 4.5% productivity factor. We then had to determine at what level the benchmark rate of return should be set so that it would fairly achieve this balance. Once again exercising our judgment in interpreting the evidence presented, we finally decided that a return of 150 basis points above the market-based rate of return of 11.50% would best accomplish this goal.

We recognize that a 150-basis point adder to the rate of return is somewhat higher than the 40-basis point and 30-basis point return on equity increments proposed by Pacific and GTEC respectively. On the other hand, we have adopted a productivity factor substantially higher than that proposed by these parties. In so doing, we have developed a mechanism that embodies significant additional risk not contemplated by them, which, in our view, justifies the increase. In addition, our adopted regulatory framework is a new program with many uncertainties, which puts the LECs into a competitive environment where they not only have the ability to do well, but have an equally great capacity to lose substantial market share if they do not compete successfully. For all of these reasons, we are of the view that a 150-basis point adder is fully within our discretion to authorize.

We cannot stress enough that each of the components of our new framework must be examined in the context of the others, and of the overall structure we have developed. No one of them can be understood standing alone, and no one of them was developed without the rest of the framework in mind. Moreover, the framework and its individual elements are based on the voluminous evidence presented in this case, and reflect the application of our expert judgment to that evidence.

Finally, TURN and the Cities express concern that by eliminating the general rate case process, we have eliminated due process protections for Pacific's and GTEC's ratepayers. Nothing could be further from the truth. The new regulatory framework itself contains many protections to ratepayers, the most notable being the productivity factor, the sharing mechanism, and the earnings cap. Moreover, while it is true that we will no longer have public hearings in the general rate case context, we have already provided for extensive public participation and will continue to provide such as our program unfolds. We have held lengthy public hearings on the two phases of this proceeding completed to date, and we plan to hold additional hearings in

Phase III. In addition, we have opened a new investigation, I.90-02-047, which, as specified in D.89-10-031, "creates a new forum for telecommunications customers, competitors and interested parties who have no other forum to raise issues that would otherwise be addressed in general rate case proceedings of Pacific and GTEC." I.90-02-047, mimeo. p. 1.

Moreover, both the Commission Advisory and Compliance Division (CACD) and DRA are charged with monitoring and reporting to the Commission on the activities of Pacific and GTEC as they proceed with implementing the program. In fact, monitoring is occurring even now, as the details of additional monitoring requirements called for by D.89-10-031 are being worked out. In addition, the Commission will conduct its first triennial review of the program in 1992, which will certainly include public hearings. As we stated at pages 325-326 of D.89-10-031, while this review is not intended to provide a forum for the issue of whether there should be incentive regulation, we do intend it to entail a comprehensive examination of the effectiveness of the various components of our program in achieving the goals we have set forth. Based on the results of such examination, we will make any changes which we find necessary or appropriate to ensure that both ratepayers' and shareholders' interests remain protected. We will give all interested parties a full opportunity to participate in this review. Finally, interested and/or aggrieved parties may also file protests in response to advice letter filings by the LECs, as well as having the full complaint process open to them should specific circumstances warrant use of it.

D.89-12-048

We very briefly address the two remaining contentions raised in Pacific's application for rehearing of D.89-12-048. We do not agree with either contention. We find that the arguments raised merely reflect Pacific's earlier stated positions on both the Uniform System of Accounts Rewrite turnaround and the settlements adjustment surcharge/surcredit, which we have

rejected at pages 36-37 and page 45 of D.89-12-048. Pacific has raised no new arguments which warrant the modifications it seeks.

Petitions for Modification

DRA's December 28, 1989 Petition

DRA asserts that a modification of D.89-10-031 is needed to clearly provide for expansion of all local calling areas within California to 12 miles. DRA believes that Ordering Paragraph 1, as written, would leave 0-to-8 mile routes in non-ZUM areas without Extended Area Service (EAS) increments as toll routes and proposes appropriate language modifications to eliminate any confusion concerning the Commission's intent to expand direct dialed local calling areas to 12 miles.

Since we intended in D.89-10-031 to expand the boundaries of all local calling areas for all customers to 12 miles, we adopt DRA's suggested clarifications to Ordering Paragraph 1.

TURN's November 8, 1989 Petition

In D.89-12-048 we denied those portions of TURN's petition which request that the January 1, 1990 startup revenue adjustments for Pacific and GTEC be based on only the first six months of recorded data for 1989 and that either (a) future cost changes not be considered as exogenous events in the price cap indexing mechanism or (b) forecasts of such future cost changes be trued up at year end. TURN's petition contains several additional issues, which are addressed today. Pacific and GTEC filed responses to TURN's petition.

TURN asks that the Commission limit the number of rate rebalancing applications which Pacific and GTEC are allowed to file, in order to reduce regulatory confusion and accompanying strains on other parties' resources. TURN suggests that following the supplemental rate design proceeding the Commission designate one date every two years when Pacific and GTEC may file an application to rebalance Category I rates.

Pacific responds that TURN's proposal is premature in light of the planned structure of upcoming Phase III implementation and supplemental rate design hearings, citing the November 22, 1989 Assigned Commissioner's Ruling which includes the following issue in the scope of those hearings: "By what procedure should rate design changes among Category I services be considered in the future?" Pacific submits that if TURN so desires, it can make its proposal in that forum. GTEC asserts that it would be a disservice to the local exchange carriers and their ratepayers for the Commission to place arbitrary limits on the ability to file for additional rate rebalancing in the future in response to changing market conditions. GTEC submits that the Commission could address administrative concerns on a case-by-case basis if they arise, and suggests that the nature and frequency of any rebalancing applications could aid in the 1992 evaluation of whether modifications to the new regulatory framework are needed.

We agree with Pacific that a limitation on rate rebalancing proposals would be premature at this time since the topic is slated for further consideration in a later phase of this proceeding. Further, consistent with GTEC's viewpoint, the Commission may take steps to alleviate any administrative burdens if multiple rate rebalancing proposals materialize and become cumbersome. TURN's request that a limit be placed on the number of rate rebalancing applications is denied without prejudice at this time.

TURN also asserts that the Commission prematurely committed itself in D.89-10-031 to a 12 mile local calling area. TURN submits that Phase II was not a rate design proceeding and not all of the parties chose to address this rate design issue. While TURN applauds the Commission's decision to expand the local calling area, it asserts that the 12 mile limit was arbitrarily chosen by Pacific and adopted by the Commission seemingly by default. TURN asserts that the size of the local calling area and the appropriate rate for basic access are inextricably

intertwined and concludes that determination of the appropriate local calling area should be deferred to the supplemental rate design phase of this proceeding, when the Commission will decide whether to increase the rate for basic service and, if so, by how much.

Pacific responds that TURN is merely repeating the same argument it made in Phase II briefs and that the Commission should continue to reject it. As Pacific points out, the Commission has already addressed and rejected TURN's argument that the issue of the size of the local calling area should be deferred to the supplemental rate design phase of this proceeding (D.89-10-031, mimeo. pp. 68, 129). Since TURN has raised no new arguments on this point in its petition, we see no reason to modify D.89-10-031 as TURN requests.

TURN also suggests certain changes to the monitoring plan adopted in D.89-10-031. First, TURN asks that the Commission set forth the criteria which would be used to assess the extent of market power in utility applications to recategorize a service from Category I to Category II, or from Category II to Category III.[1] TURN submits that by setting forth the factors to be considered the Commission would enable CACD and others to maintain relevant competitive information which would save time and energy when recategorization applications are filed. TURN states that, of the market power

1 These categories reflect the amount of pricing flexibility granted. Pacific and GTEC have no pricing flexibility for Category I services, downward pricing flexibility only (from Commission-approved caps) for Category II services, and the maximum pricing flexibility allowed by law for Category III services. A service can be placed in Category III if it has been detariffed due to statutory requirements or federal preemption, or if the local exchange carrier shows that it retains insignificant market power. Category II includes discretionary or partially competitive services for which the carrier retains significant (though perhaps declining) market power. Category I contains all remaining basic monopoly services. (D.89-10-031, mimeo. pp. 151-3.)

factors cited in its petition, the monitoring plan adopted in D.89-10-031 requires collection of only market share information and that this measure will no doubt be inadequate in any future assessment of market power.

Accordingly, TURN recommends that the Commission adopt the following criteria, instructing both CACD and the local exchange carriers to offer the needed information when an application for recategorization is filed:

> Market share;
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> Ease of entry and exit:
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> -Number of competitors, trends,
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> -Estimations of capital investments necessary to compete,
>
> -Status of unbundling efforts by the local exchange carriers;
>
> Facilities ownership;
>
> Size and growth capability of competitors;
>
> Local exchange carrier return on equity:
>
> -Rate of return on marginal investment;
>
> Competitors' earnings (to the extent available);
>
> Substitutable services and studies regarding the cross elasticites of demand;
>
> Rates, terms, and conditions of substitutable services; and
>
> Whether a utility affiliate offers a competitive service.

TURN recognizes that some of this information cannot be effectively tracked or monitored and can only be gathered at the time an application is filed. It asserts, however, that much of

the information can be effectively compiled on an ongoing basis. TURN recommends that the Commission convene workshops to decide how best to collect this data and which party should be responsible for this task.

Pacific opposes adoption of TURN's suggested criteria for measuring market power, pointing out that after studying several market power criteria in D.87-07-017 (addressing pricing flexibility for AT&T-C), the Commission recognized the inherent "difficulties in isolation, measurement, and interpretation of market power measures" (D.87-07-017, mimeo. p. 3) and concluded that "(n)o fixed formula for determination of market power is available" (D.87-07-017, Finding of Fact 1, mimeo. p. 72).

Pacific also points out that the Commission cited several market power criteria in D.89-10-031 and similarly concluded that "(s)ince the appropriate reliance on each of these factors will be very service-specific, we cannot establish definitive guidelines at this time" (D.89-10-031, mimeo. p. 158). Pacific submits that TURN did not demonstrate that its proposed criteria would be useful in all instances and would not be subject to service-specific difficulties. Pacific argues further that it is inappropriate for TURN to recommend adoption of its proposal, since it was never entered into the evidentiary record in this proceeding.

GTEC similarly opposes TURN's monitoring recommendations, pointing out that the Commission found that determining market power will be very service-specific and required that an application to place a service in Category III must set forth the relevant factors (D.89-10-031, mimeo. p. 158). GTEC opposes both the adoption of a rigid set of criteria for determining when a service may be recategorized and any requirement that it undertake the costly and perhaps fruitless attempt to collect the type of detailed data TURN proposes.

Contrary to Pacific's and GTEC's interpretations of TURN's request, it appears to us that TURN stops short of asking that definitive guidelines be adopted for the determination of

market power. Rather, TURN requests that relevant information be collected on an ongoing basis and that this and other information be included in applications for recategorization.

Consistent with our view that "(t)racking requirements should also provide meaningful guidelines that will allow for classification of services among categories, especially those that allow service classification between Category II and Category III" (D.89-10-031, mimeo. p. 306), we agree with TURN that modification to the monitoring program to include information on market power beyond just market share is appropriate. However, as TURN recognizes, ongoing collection of data on some of the criteria it suggests may not be reasonable. As TURN suggests, additional clarification is needed to ensure that market power information is collected in a useful and timely manner. To this end, we broaden the list of measurement data cited in D.89-10-031 regarding financial and rate stability and provide that appropriate collection of information regarding relevant market power criteria be assessed further in the monitoring workshops to be held later this year.

We maintain our earlier views expressed in D.87-07-017 and D.89-10-031 that assessment of market power will likely continue to be a very service-specific undertaking. Because of this, we will not require that data regarding all the market power criteria listed by TURN be included in each and every request to place a service in Category III. However, each such request (whether by application for existing services or by advice letter or Expedited Application Docket filing for new services) should address whether each of these criteria is applicable and, if so, should include the relevant information.

TURN also asks that yearly monitoring reports be required, so that the Commission will have at least two monitoring reports at its disposal at the time of the 1992 review. TURN notes that D.89-10-031 requires at least one interim report (D.89-10-031, mimeo. p. 316), but submits that

additional reports would enable the Commission to better predict trends in the data.

Pacific replies that annual monitoring reports such as requested by TURN are unnecessary. In D.89-10-031, the Commission gave CACD latitude to determine how many reports are necessary. Pacific cites possible administrative burdens that could be caused by multiple interim CACD reports, and concludes that CACD should be allowed sufficient time to prepare a thorough report, asserting that quality is more important than quantity.

TURN does not persuade us that annual monitoring reports should be mandated at this time. Indeed, such a requirement could run counter to one stated focus of the monitoring reports, which is to assess whether the new regulatory framework moves the Commission toward a simpler, more understandable, and low cost regulatory process. We think it preferable to allow CACD to decide whether one or more than one monitoring report prior to 1992 would convey the needed information to the Commission and parties in the most efficient and useful format. We will not modify D.89-10-031 in this respect.

TURN requests that a trigger mechanism to periodically require new cost studies for flexibly priced services be instituted, in order to provide additional protection against predatory pricing and/or cross subsidization. TURN suggests that whenever Pacific or GTEC proposes lowering the rate for a flexibly priced service to within 10% above its direct embedded cost, it should be required to file an application with updated cost studies. TURN submits that an amount 10% above direct embedded costs would still give the local exchange carrier a generous rate range in which to move on 10 days' notice. TURN notes that if the Commission subsequently chooses to use incremental costs as the floor, the trigger could then be set at 10% above the incremental costs. TURN also proposes that new cost studies for flexibly priced services be required at least every two years even if the 10% trigger is not reached.

Pacific opposes TURN's proposal to implement a cost update mechanism, asserting that the Commission has already determined that direct embedded cost floors are conservative and that the provision that floors be increased annually by the Gross National Product Price Index (GNP-PI) provides an additional safeguard. GTEC puts forth similar arguments, asserting that TURN's proposal could significantly impede the local exchange carriers' ability to reduce prices in a timely manner in response to changing market conditions.

In light of the adopted safeguards of direct embedded cost floors for Category II services updated annually by the GNP-PI, TURN does not persuade us that the additional administrative burden of periodic cost studies is warranted. This portion of TURN's petition should be denied.

Pacific's December 14, 1989 Petition

Pacific requests a modification of D.89-10-031 to allow pricing flexibility for Centrex and vertical services to take effect according to terms adopted in D.88-09-059 (the Phase I decision) rather than the superceding terms adopted in D.89-10-031.

In the Phase I decision, issued in September 1988, the Commission adopted a modified settlement of Phase I issues, which allowed among other things pricing flexibility for Centrex and vertical services according to terms adopted on an interim basis pending further consideration in Phase II. In September 1989, Pacific filed Advice Letter No. 15608 and Advice Letter No. 15610 to implement, respectively, Centrex and vertical services pricing flexibility pursuant to the terms of the Phase I decision. However, D.89-10-031 was issued before Pacific's advice letters became effective, adopting differing terms for pricing flexibility for these services and instructing Pacific to amend its advice letters, if needed, to be consistent with the new terms prior to effectiveness of the proposed tariffs (D.89-10-031, mimeo. p. 156 and Ordering Paragraph 5, mimeo. p. 391).

As Pacific notes, D.89-10-031 significantly changes pricing parameters for Centrex and vertical services. It requires that tariffs for these as well as all other flexibly priced services comply with the adopted principles of unbundling, nondiscriminatory access, imputation, and rate structures for monopoly building blocks based on cost. D.89-10-031 also places Centrex local loops in Category I (with no pricing flexibility) since this portion of the service is a basic monopoly function. Under this approach, pricing flexibility is allowed only for competitive Centrex features, not the monopoly local loop portion of the service.

Pacific argues that, if left unchanged, D.89-10-031 will unfairly force Pacific to resubmit and rejustify its pending requests for pricing flexibility for Centrex and vertical services. Pacific asserts that D.89-10-031 should be modified to allow its advice letter proposals to become effective on an interim basis under the Phase I pricing flexibility rules and that Pacific should then be allowed 90 days after the flexible pricing tariffs become effective to file advice letters and/or an application to conform these tariffs with the Phase II pricing flexibility requirements. Pacific submits that the interim tariffs should remain in effect until new tariffs are approved or for a maximum period of one year.

Despite this petition for modification, on December 13 and December 28, 1989 Pacific amended its advice letter for vertical services pricing flexibility to comply with D.89-10-031. Since its amended tariffs for vertical services became effective on January 25, 1990, the portion of Pacific's petition addressing vertical services is moot.

DRA, AT&T-C, MCI, and CENTEX Telemanagement, Inc. (CENTEX) filed oppositions to Pacific's petition. MCI argues that Pacific has provided no justification for its assertion that the Phase II decision is unfair, since the Phase I pricing flexibility rules were specifically adopted only on an interim basis. Along these lines, DRA and AT&T-C point out that Pacific

did not file its advice letters requesting flexible pricing for Centrex and vertical services until a full year after being granted authority to do so, though Pacific was well aware that the Phase I pricing flexibility could be significantly modified in Phase II.

CENTEX believes that Pacific's request would undercut what has been a long and arduous process to develop a new regulatory framework. In D.89-10-031, the Commission agreed with CENTEX and others that regulatory flexibility should be accompanied by safeguards such as the adopted principles of nondiscrimination and unbundling. CENTEX argues that, having found the Phase II rules superior to those adopted on an interim basis in Phase I, the Commission should not now grant Pacific's request to delay their implementation. CENTEX further asserts that Pacific's Centrex advice letter is seriously deficient even in complying with the Phase I pricing flexibility terms. Finally, CENTEX argues that implementation of the new regulatory framework will be difficult enough without requiring the Commission and parties to juggle multiple sets of conflicting regulations, such as would occur if Pacific's petition is granted.

AT&T-C suggests that Pacific's proposed Centrex flexible pricing plan can be readily modified to conform to the unbundling, imputation, and nondiscriminatory access requirements of D.89-10-031. According to AT&T-C, Pacific could readily recalculate its proposed tariffed customer discounts as a percentage of the competitive Centrex features, rather than offering discounts as a percentage of both the monopoly loop and competitive features as proposed in its advice letter. Further, individual discounts based on loop length and number of loops can be eliminated and replaced with discounts based solely on characteristics of the competitive Centrex features. Finally, AT&T-C submits, the discounts can be recalculated to ensure that the maximum available discount does not result in a basic Centrex

features rate which is below the cost of providing these features.

DRA notes that D.89-10-031 expressly directs Pacific to file amendments to its pending flexible pricing advice letters for Centrex and vertical services within 90 days of the date of the order. Recognizing that Pacific has amended its vertical services advice letter as required by D.89-10-031, DRA states that Pacific has until mid-January 1990 to file similar amendments to its proposed Centrex tariff. If it does so, DRA submits that the Commission can then consider the protests and comments to the Centrex advice letter (filed by CENTEX, Telephone Answering Services of California, and AT&T-C) in the context of such an amendment.

If Pacific does not modify its Centrex advice letter by mid-January 1990 in compliance with D.89-10-031 and, after reviewing the protests on file, the Commission is inclined to grant Pacific's petition, DRA recommends the following as an alternative to granting Pacific's petition. The Commission could allow Pacific's proposed Centrex flexible pricing tariff to go into effect on an interim basis but require that it be closed to new subscribers on July 16, 1990 or the effective date of the final approved tariff, whichever is earlier. If this approach is taken, DRA states that Pacific should be directed to file the modifications ordered by D.89-10-031 no later than June 1, 1990. Customers receiving service under the interim tariff could then be given the option of changing to the final tariff when it is approved.

We view the Phase II changes as being significant refinements and improvements over the Phase I pricing flexibility terms, which arose from a settlement among the parties. As CENTEX points out, the Phase II requirements were adopted as important safeguards to ensure that the local exchange carriers do not act anticompetitively by favoring their own competitive services.

We also note that, despite the arguments in its petition for modification, Pacific successfully and on a timely basis amended its advice letter for vertical services pricing flexibility. It has provided no justification why it could not similarly have amended its Centrex advice letter within the time required by D.89-10-031. Indeed, if it had complied with D.89-10-031, Centrex pricing flexibility could already have been implemented.

We disagree with Pacific's assertion that the modifications to its Centrex proposal required by D.89-10-031 would be unfair. As other parties point out, Pacific knew for approximately one year that the Phase I terms were interim in nature; we cannot help but notice that publication of the Administrative Law Judge's proposed Phase II decision in August 1989 undoubtedly alerted Pacific to the fact that significant changes were under consideration. We are left with the inescapable suspicion that for Centrex Pacific simply prefers the Phase I flexibility terms to the more stringent Phase II approach and in filing both the Centrex advice letter and this petition for modification is seeking to lock in the more advantageous Phase I terms for a period of time.

We are not persuaded that Pacific's Centrex proposal should be implemented on an interim basis, either for one year as Pacific proposes or until July 16, 1990 as DRA suggests. As AT&T-C points out, Pacific has been and is still able to negotiate customer-specific Centrex contracts outside the tariffed offerings, and has entered several such contracts. In light of this fact, as well as the fact that Pacific has had ample time to amend its Centrex filing but has chosen not to do so, we see little justification for perpetuating the Phase I pricing approach after we have found that the additional safeguards adopted in D.89-10-031 are in the public interest. Further, without commenting on the accuracy of CENTEX's claim that Pacific's proposal is deficient even compared to Phase I terms, we do not wish to expend further Commission resources in

evaluating Pacific's current filing knowing that further amendments will still be needed at a later date to comply with D.89-10-031. In the interest of furthering the orderly development of a competitive market within the terms and safeguards adopted in D.89-10-031, we find that Pacific's petition should be denied. We will allow Pacific 90 days from the effective date of this order to amend Advice Letter No. 15608 to make its proposed Centrex tariffs consistent with the principles adopted in D.89-10-031.

Findings of Fact

1. MCI and AT&T-C-C indicated in their applications for rehearing of D.89-10-031 that they expect market forces may compel interexchange carriers to pass through any shared profits to their end users.

2. It is in keeping with the goals espoused in D.89-10-031 to extend the application of the principles of unbundling, nondiscriminatory access, and imputation to services provided pursuant to special contract as well as to tariffed services.

3. In D.89-10-031, the Commission adopted Pacific's proposal to expand boundaries of local calling areas for all customers from the present 8 miles to 12 miles.

4. Ordering Paragraph 1 of D.89-10-031 can be interpreted as maintaining toll charges for calls on 0-to-8 mile routes which are not local today. Such an interpretation would be inconsistent with the intent of D.89-10-031.

5. The procedure for consideration of rate design changes for Category I services is slated for further consideration in the upcoming Phase III implementation and supplemental rate design phase of this proceeding.

6. The Commission specifically addressed in D.89-10-031 and rejected TURN's argument that the issue of the size of the local calling area should be deferred to the supplemental rate design phase of this proceeding.

7. In D.89-10-031, the Commission found that tracking requirements should provide meaningful guidelines that will allow for classification of services among pricing categories.

8. Of the market power factors which TURN cites in its petition for modification, the monitoring plan adopted in D.89-10-031 requires collection of only market share information.

9. Some of the market power information cited by TURN cannot be effectively tracked or monitored on an ongoing basis.

10. It is likely that assessment of market power will continue to be a very service-specific undertaking.

11. A requirement that annual monitoring reports be filed could run counter to the goal of a simpler, more understandable, and lower cost regulatory process.

12. In light of the adopted safeguards of direct embedded cost floors for Category II services updated annually by the GNP-PI, the additional administrative burden of periodic cost studies is not warranted.

13. Pacific requests a modification of D.89-10-031 to allow pricing flexibility for Centrex and vertical services to take effect according to terms adopted in D.88-09-059 rather than the superceding terms adopted in D.89-10-031.

14. On December 13 and December 28, 1989 Pacific amended its advice letter for vertical services pricing flexibility to comply with D.89-10-031.

15. Since Pacific's amended tariffs for vertical services comply with D.89-10-031 and became effective on January 25, 1990, the portion of Pacific's petition addressing vertical services is moot.

16. In D.89-10-031 the Commission adopted important safeguards for flexibly priced services to guard against anticompetitive behavior by local exchange carriers.

17. Pacific has provided no justification why it could not amend its Centrex advice letter within the time required by

D.89-10-031.

18. Pacific can negotiate customer-specific Centrex contracts.

19. The complete ordering paragraphs as amended by this decision are set forth in Appendix A.

Conclusions of Law

1. Ordering Paragraph 1 of D.89-10-031 should be modified to clarify that boundaries of local calling areas for all customers are expanded from the present 8 miles to 12 miles, consistent with the intent of D.89-10-031.

2. Ordering Paragraph 2 of D.89-10-031 should be modified to indicate that the principles of unbundling, nondiscriminatory access, and imputation are adopted for services provided under special contract as well as for tariffed services.

3. We need additional information before we can make a determination whether it would be equitable and in keeping with our policy that end users should be the recipients of revenue sharing to include interexchange carriers within the sharing mechanism.

4. TURN's request that a limit be placed on the number of rate rebalancing applications should be denied without prejudice at this time because this issue is slated for further consideration in a later phase of this proceeeding.

5. TURN's request that the size of the local calling area be addressed in the supplemental rate design phase of this proceeding should be rejected because it has raised no new arguments to sway us from our conclusions in D.89-10-031.

6. Because meaningful market power information is needed to allow service classifications for pricing purposes, the monitoring program should be expanded to include a broader range of information on market power.

7. Because some of the market power information cited by TURN cannot be effectively tracked or monitored on an ongoing basis, appropriate collection of market power information should be

assessed further in the monitoring workshops to be held later this year.

8. Because determination of market power is service-specific, inclusion of data on all the market power criteria listed by TURN in each request for recategorization of a service to Category III should not be required.

9. TURN's request that annual monitoring reports be required should be denied because it is preferable to allow CACD to decide the best way to convey the needed information to the Commission and parties in the most efficient and useful format.

10. TURN's request that a trigger mechanism periodically require new cost studies for flexibly priced services should be denied because the additional administrative burden does not appear warranted.

11. The portion of Pacific's petition addressing vertical services should be denied because Pacific amended its vertical services advice letter to comply with D.89-10-031.

12. The portion of Pacific's petition addressing its Centrex services should be denied because D.89-10-031 pricing flexibility terms include important safeguards against local exchange carrier anticompetitive behavior and because Pacific provided no justification why it could not amend Advice Letter No. 15608 to comply with D.89-10-031.

13. Pacific should amend Advice Letter No. 15608 within 90 days to comply with D.89-10-031 terms.

INTERIM ORDER

IT IS ORDERED that:

1. Ordering Paragraph 1 of Decision (D.) 89-10-031 is modified to read as follows:

> "Local calling areas shall be expanded as proposed by Pacific Bell (Pacific) and

residential Touch Tone charges shall be eliminated for all local exchange carriers in California. In metropolitan areas, current Zone Usage Measurement (ZUM) Zone 1 calling areas shall be expanded to include current Zone 2 calling areas. For non-ZUM areas, 0-to-12 mile toll calling bands shall be eliminated for directly dialed calls and Extended Area Service (EAS) charges shall be eliminated for those exchanges where customers currently pay a flat rate EAS increment for 0-to-12 mile routes. Implementation of these changes shall be delayed until statewide revenue impacts are determined in the supplemental rate design proceeding."

2. Ordering Paragraph 2 of D.89-10-031 is modified to read as follows:

"As developed in Section VII.A.5 of this decision, the principles of unbundling, nondiscriminatory access, imputation, and basing rate structures of monopoly utility services on underlying cost structures are adopted in principle. Local exchange carriers shall impute the tariffed rates and charges of any function deemed to be a monopoly building block in the rates and charges for any bundled tariffed service which includes that monopoly function. Pacific and GTE California Incorporated (GTEC) shall use tariffed rates and charges for Basic Service Elements (BSEs) or other monopoly building blocks in allocating costs to below-the-line services, and shall demonstrate as part of any future request to receive pricing flexibility or to provide additional enhanced services or any new services which face competition that such proposals comply with the principles adopted in this Ordering Paragraph. These principles shall be applied to special contracts as well."

3. Item 7 on mimeo. page 314 of D.89-10-031 is modified to read as follows:

"Market share and other relevant market power data for services in Categories II and III."

4. Ordering Paragraph 19(b) of D.89-10-031 is modified to read as follows:

"Any other modifications to local exchange carrier reporting requirements or Commission monitoring activities which CACD recommends, including collection of relevant market power information for Category II and Category III services and reports to be filed regarding annual operating results and an evaluation of whether sharable earnings exist."

5. The last sentence of the first paragraph on mimeo. page 158 of D.89-10-031 is replaced with the following language:

"When proposing that a service be placed in Category III, Pacific or GTEC should address whether various market power criteria are applicable and, if so, should include the relevant information."

6. The last sentence in the first full paragraph on mimeo. page 306 of D.89-10-031 is replaced with the following language:

"Tracking requirements should also provide for the collection of information that will aid in classification of services among categories, with particular focus on assessment of market power and service classification between Category II and Category III."

7. Ordering Paragraph 30 is added to D.89-10-031 as follows:

"If Pacific or GTEC requests that a new or existing service be placed in Category III for pricing purposes, its application or advice letter, as applicable, shall address whether various market power criteria are applicable and, if so, shall include the relevant information. The market power

criteria addressed shall include, but shall not be limited to, the following:

Market share;

Ease of entry and exit:

-Number of competitors, trends,

-Estimations of capital investments necessary to compete,

-Status of unbundling efforts by the local exchange carriers;

Facilities ownership;

Size and growth capability of competitors;

Local exchange carrier return on equity:

-Rate of return on marginal investment;

Competitors' earnings (to the extent available);

Substitutable services and studies regarding the cross elasticities of demand;

Rates, terms, and conditions of substitutable services; and

Whether a utility affiliate offers a competitive service."

8. Pacific shall amend its Advice Letter No. 15608 to comply with D.89-10-031 within 90 days after the effective date of this order. The amended advice letter shall be filed in conformance with General Order 96-A and shall be served at the time of filing on all parties in I.87-11-033 and on anyone requesting such service.

9. Rehearing shall be granted limited to receiving comments from all interested parties on whether interexchange carriers should be included within the sharing mechanism, and if so, how the Commission can assure itself that when and if sharing occurs,

the interexchange carriers will pass through any shared revenues to their customers. The assigned Administrative Law Judge shall prepare, as soon as possible, a ruling setting forth the specific points on which parties should comment. Copies of the comments shall be served separately at the time of filing on the ALJ, the assigned Commissioner, CACD, Legal Division, all parties in I.87-11-033, all IECs operating within California and having tariffs on file with CACD, and on anyone requesting such service.

10. To the extent not granted by this order, the Applications for Rehearing of D.89-10-031, as modified herein, by MCI, Toward Utility Rate Normalization, AT&T-C-Communications of California, and the Cities of Los Angeles and San Diego are denied.

11. To the extent not granted by D.90-02-053, the Application for Rehearing of D.89-12-048 by Pacific Bell is denied.

12. To the extent not otherwise granted by this order, the Petition for Modification of D.89-10-031 by the Division of Ratepayer Advocates of the California Public Utilities Commission filed December 28, 1989 is denied.

13. To the extent not otherwise granted by this order, the Petition of Toward Utility Rate Normalization to Modify D.89-10-031 is denied.

14. The Petition of Pacific Bell for Modification of Decision 89-10-031 is denied.

15. The Executive Director shall cause a copy of this order to be served on all interexchange carriers operating within California which have tariffs on file with the Commission Advisory and Compliance Division.

This order is effective today.

Dated April 11, 1990, at San Francisco, California.

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

Commissioner Stanley W. Hulett, being necessarily absent, did not participate.

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

NEAL J. SHULMAN, Executive Director

APPENDIX A

COMPLETE ORDERING PARAGRAPHS OF D.89-10-031 AS MODIFIED BY D.90-04-031

1. Local callings areas shall be expanded as proposed by Pacific Bell (Pacific) and residential Touch Tone charges shall be eliminated for all local exchange carriers in California. In metropolitan areas, current Zone Usage Measurement (ZUM) Zone 1 calling areas shall be expanded to include current Zone 2 calling areas. For non-ZUM areas, 0-to-12 mile toll calling bands shall be eliminated for directly dialed calls and Extended Area Service (EAS) charges shall be eliminated for those exchanges where customers currently pay a flat rate EAS increment for 0-to-12 mile routes. Implementation of these changes shall be delayed until statewide revenue impacts are determined in the supplemental rate design proceeding.

2. As developed in Section VII.A.5 of this decision, the principles of unbundling, nondiscriminatory access, imputation, and basing rate structures of monopoly utility services on underlying cost structures are adopted in principle. Local exchange carriers shall impute the tariffed rates and charges of any function deemed to be a monopoly building block in the rates and charges for any bundled tariffed service which includes that monopoly function. Pacific and GTE California Incorporated (GTEC) shall use tariffed rates and charges for Basic Service Elements (BSEs) or other monopoly building blocks in allocating costs to below-the-line services, and shall demonstrate as part of any future request to receive pricing flexibility or to provide additional enhanced services or any new services which face competition that such proposals comply with the principles adopted in this Ordering

Paragraph. These principles shall be applied to special contracts as well.

3. All local exchange carriers are authorized to file applications in expedited application dockets to request rate flexibility for Category II services, as provided in Section VII.A.6 of this decision. Applications shall comply with Rules 2 through 8, 15, and 16 of the Rules of Practice and Procedure and shall include proposed tariff schedules. A local exchange carrier shall demonstrate that its application complies with the unbundling, nondiscriminatory access, imputation, and rate structure principles adopted in Ordering Paragraph 2. Copies of the applications shall be served separately at the time of filing on the Commission's Advisory and Compliance Division (CACD), Division of Ratepayer Advocates (DRA), and Legal Division, and shall contain or have attached cost support and workpapers. Copies of the applications shall also be served at the time of filing on all parties in I.87-11-033 and on anyone requesting such service. Local exchange carriers are authorized to submit new cost studies to update rate floors after rate flexibility is implemented through advice letters filed in accordance with General Order 96-A. Copies of the advice letters shall be served at the time of filing on all parties in I.87-11-033 and on anyone requesting such service.

4. Local exchange carriers are authorized to change their rates or charges through advice letter filings for services for which pricing flexibility has been implemented. Sections III, IV, V, and VI of General Order 96-A are waived so that such rate changes are effective on ten days' notice to all affected customers if the rate change is a decrease and on 30 days' notice to all affected customers if the rate change is an increase. Any protests shall be filed within eight days after an advice letter is filed, and CACD shall notify the local exchange carrier within ten days

after an advice letter is filed if its proposed tariff sheets are rejected.

5. The rules adopted in this decision regarding pricing flexibility for Category II services replace on a statewide basis comparable rules adopted in D.88-09-059. In particular, Ordering Paragraphs 2 and 4 and the third sentence of Ordering Paragraph 5 of interim Decision (D.) 88-09-059 are superseded by Ordering Paragraphs 3 and 4 of this order, based on the record developed in Phase II. However, the requirement in D.88-09-059 that connections from an interexchange carrier's or competitor's point of presence to a local exchange carrier's central office be priced at cost in high speed digital special access tariffs for intraLATA purposes is not superceded by this decision. Local exchange carriers shall file advice letters in conformance with General Order 96-A within 90 days after the effective date of this order to conform tariffs of flexibly priced services with the rules adopted in this decision. Copies of the advice letters shall be served at the time of filing on all parties in I.87-11-033 and on anyone requesting such service.

6. Pacific and GTEC shall file applications and supporting testimony annually no later than June 30 of each year, commencing June 30, 1990, for approval of represcription or technical update reviews of depreciation rates to become effective on January 1 of the following year. Applications shall comply with Rules 2 through 8, 15, and 16 of the Rules of Practice and Procedure. Copies of the applications shall be served separately at the time of filing on CACD, DRA, and Legal Division. Copies of the applications shall also be served at the time of filing on all parties in I.87-11-033 and on anyone requesting such service.

7. The Request by the Division of Ratepayer Advocates for Review by the Full Commission of the March 21, 1989 ALJ Ruling

Granting in Part the February 10, 1989 DRA Motion to Compel Production of Documents is denied.

8. The incentive-based price cap regulatory framework developed in this decision and described in Conclusions of Law 23 - 26, 28, 29, 31 - 43, 50, 57 - 61, 65, 68, and 74 is adopted.

9. A productivity adjustment of 4.5% for 1990, 1991, and 1992 is adopted for use in the price cap index.

10. A market-based rate of return of 11.50% is adopted for purposes of determining startup revenue requirements for 1990 and as a basis for the benchmark rate of return.

11. A benchmark rate of return 150 basis points above the adopted market-based rate of return is adopted for use in the adopted sharing mechanism to be effective January 1, 1990.

12. The Federal Communication Commission's (FCC) currently written Part 64 cost allocation rules (47 Code of Federal Regulation § 64.901) and cost manuals currently adopted by the FCC for Pacific (Exhibit A-18) and GTEC (Exhibit A-136) are adopted for use at this time, as modified by Conclusions of Law 44a and 44b, to separate intrastate costs between below-the-line services and those subject to the sharing mechanism. The Part 64 methodology shall be applied using Part 32 (Uniform System of Accounts) as modified and adopted by this Commission.

13. Pacific's proposal to invest $404 million through 1992 to upgrade its network through replacement of electro-mechanical and electronic switches and associated analog carrier interoffice facilities is adopted to the extent that Pacific is authorized to place $11 million of expenses related to switch replacements into rates effective January 1, 1990, as provided in Ordering Paragraph 14.

14. Pacific and GTEC shall make compliance filings in I.87-11-033 no later than October 26, 1989 to implement the adopted startup revenue adjustment on an intrastate ratemaking basis, the

1990 interLATA SPF-to-SLU revenue shift, and the 1990 intraLATA SPF-to-SLU settlements effects, and, for Pacific, to place $11 million of expenses related to switch replacements into rates effective January 1, 1990. In these compliance filings, Pacific and GTEC shall:

a. Propose revenue adjustments which (i) would have yielded the adopted 1990 market-based rate of return in 1989, (ii) reflect an adjustment to rates for the 1990 intraLATA SPF-to-SLU settlements effects, and (iii) reflect an adjustment to rates for the 1990 interLATA SPF-to-SLU revenue shift.

b. Propose further revenue adjustments to (i) apply the adopted price cap indexing mechanism for 1990 and (ii) for Pacific, reflect the adopted $11 million in expenses related to switch replacement.

c. Propose the adjustments required by subparagraphs (a) and (b) above via a bill-and-keep surcredit/surcharge based on recorded customer billings using the same period annualized used for calculation of the startup revenue adjustment. The bill-and-keep surcredit/surcharge shall be applied to intrastate access, intraLATA toll, and local exchange services as discussed in this decision.

d. Use recorded intrastate ratemaking demand, expenses, and revenues (excluding the effects of temporary surcharges/surcredits) for the first eight months of 1989 annualized to make the revenue adjustments.

e. Propose which time period, publisher, and specific measure of GNP-PI should be used in the price cap indexing mechanism.

The compliance filings shall contain or have attached earnings data for the first eight months of 1989, all workpapers,

and proposed tariff schedules. Pacific and GTEC shall file an original and 12 copies of the compliance filings in the Docket Office. The filings shall comply with the applicable rules in Article 2 of the Rules of Practice and Procedure and shall have attached a certificate showing service by mail on all parties in I.87-11-033. Copies of the compliance filings shall also be served at the time of filing on the ALJ, the assigned Commissioner, CACD, Legal Division, and on anyone requesting such service.

Other parties may file comments on the filings no later than November 9, 1989. Copies of the comments shall be served separately at the time of filing on the ALJ, the assigned Commissioner, CACD, Legal Division, all parties in I.87-11-033, and on anyone requesting such service.

15. Beginning in 1990, Pacific and GTEC shall file advice letters in accordance with General Order 96-A no later than October 1 of each year for Commission consideration and approval to update rates for basic monopoly services and non-flexibly priced Category II services and rate caps and floors for flexibly priced services according to the adopted price cap mechanism with new rates, caps, and floors to be effective the following January 1. In these advice letters, Pacific and GTEC shall:

a. Propose adjustments to December 31 rates which reflect on a revenue-neutral basis any rate rebalancing authorized to be effective on January 1 of the coming year.

b. Propose further adjustments to the rates described in (a) to apply the adopted price cap indexing mechanism for the coming year.

c. Base demand estimates used in any rate rebalancing on recorded data for as much of the year as possible, with estimates used for the remaining months.

Copies of the advice letters shall be served at the time of filing on all parties in I.87-11-033 and on anyone requesting such service.

16. Pacific and GTEC shall file advice letters in accordance with General Order 96-A no later than April 1 of each year, commencing in 1991, which evaluate whether the prior year's operations were such that sharable earnings exist and, if so, specify the bill-and-keep surcredit with duration of up to 12 months which should be applied to basic monopoly services except switched and low speed special access and services normally excluded from surcredits. The sharing calculation shall be based on recorded intrastate results that reflect the Commission's ratemaking adjustments, shall compare the adopted benchmark rate of return and earned rates of return, and (if sharable earnings exist) reflect appropriate interest. Interest shall be based on the 90-day commercial paper rate as published by the Federal Reserve Statistical Release and shall be calculated using the methodology and formulas as discussed and set forth in D.88-09-028 for the labor productivity sharing for Pacific and GTEC. Copies of the advice letters shall be served at the time of filing on all parties in I.87-11-033 and on anyone requesting such service.

17. The monitoring and reporting requirements in Section XI.A.2 of this decision are adopted.

18. All local exchange carriers shall cooperate fully with Commission staff in providing information necessary for monitoring, audits, and investigations.

19. CACD shall initiate as soon as feasible and chair workshops to provide more information to the Commission regarding current ratemaking adjustments, the format of annual filings by which Pacific and GTEC should report the prior year's earnings and any sharable earnings which might exist, and reporting requirements necessary to implement the adopted monitoring plan. The workshop

report(s) which CACD shall file as a compliance filing in I.87-11-033 shall include at least the following information:

a. A description of each report currently provided to the Commission, what sections of Commission staff use the report and for what purpose, and CACD's recommendations regarding whether the report should be revised, consolidated with other reports, or eliminated;

b. Any other modifications to local exchange carrier reporting requirements or Commission monitoring activities which CACD recommends, including collection of relevant market power information for Category II and Category III services and reports to be filed regarding annual operating results and an evaluation of whether sharable earnings exist;

c. A description of each current ratemaking adjustment and parties' positions regarding whether each one should be reflected in the sharing calculation;

d. CACD's recommendations regarding service-specific cost allocation and tracking programs.

CACD shall file its workshop report(s) on all parties in I.87-11-033. Parties shall be given an opportunity to file comments and reply comments on CACD's workshop reports, and shall provide detailed reasons for any remaining areas of disagreement. If Pacific or GTEC objects to the collection and/or submission of specific data or reports suggested in CACD's workshop reports, it shall state in its opening comments whether the data is currently collected and shall provide an estimate of the incremental cost of meeting the proposed collection or reporting requirements.

20. Pacific and GTEC are authorized to file applications to request recategorization of existing services for pricing purposes

or to request that existing services be included in the sharing mechanism or, alternatively, be given below-the-line accounting treatment. Applications shall have supporting testimony attached and shall comply with Rules 2 through 8, 15, and 16 of the Rules of Practice and Procedure and, if tariff changes are proposed, shall include proposed tariff schedules. Copies of the applications shall be served separately at the time of filing on CACD, DRA, and Legal Division, and shall contain or have attached cost support and workpapers. Copies of the applications shall also be served at the time of filing on all parties in I.87-11-033 and on anyone requesting such service.

21. If 30-year Treasury bond rates differ from current levels by 250 basis points for at least three consecutive months, Pacific and GTEC shall file applications and supporting testimony within 60 days following the end of the three month period stating their positions regarding whether the benchmark rate of return should be modified. In the first applications, Pacific and GTEC shall each address whether a short-term debt component should be included in the capital structure. In each application, Pacific and GTEC shall submit analyses of the cost effectiveness of both their proposed capital structure and a range of alternate capital structures. Applications shall comply with Rules 2 through 8, 15, and 16 of the Rules of Practice and Procedure. Copies of the applications shall be served separately at the time of filing on CACD, DRA, and Legal Division. Copies of the applications shall also be served at the time of filing on all parties in I.87-11-033 and on anyone requesting such service.

22. Pacific and GTEC shall file applications and supporting testimony no later than May 1, 1992 for review of operations of the adopted incentive-based regulatory framework. Pacific and GTEC shall each include at least the following information in its application:

a. Operating results for 1990 and 1991;

b. Discussion of whether the GNP-PI and the manner in which it is applied in the adopted indexing mechanism provide an adequate reflection of economywide inflation in rates;

c. Review of the productivity adjustment, recommended productivity adjustment for the upcoming period, and discussion of the frequency with which it should be updated;

d. Comparison of service quality measurements before and after implementation of the adopted incentive-based regulatory framework; and

e. Review of monitoring and reporting requirements.

f. Discussion of ongoing need for a sharing mechanism.

Applications shall comply with Rules 2 through 8, 15, and 16 of the Rules of Practice and Procedure. Copies of the applications shall be served separately at the time of filing on CACD, DRA, and Legal Division. Copies of the applications shall also be served at the time of filing on all parties in I.87-11-033 and on anyone requesting such service.

23. Pacific and GTEC are authorized to request authority to provide enhanced services, BSEs, and any new services comparable to BSEs which might be offered due to the adopted unbundling principles through applications processed according to the Expedited Application Docket procedure. Applications shall comply with Rules 2 through 8, 15, and 16 of the Rules of Practice and Procedure and shall include proposed tariff schedules. Copies of the applications shall be served separately at the time of filing on CACD, DRA, and Legal Division, and shall contain or have

attached cost support and workpapers. Copies of the applications shall also be served at the time of filing on all parties in I.87-11-033 and on anyone requesting such service.

24. Pacific and GTEC shall request authority to provide new services dependent on a fiber-to-the-customer infrastructure prior to making any investment in fiber beyond the feeder system, other than small-scale trials or fiber which is cost effective in the provision of traditional local exchange carrier services. Such requests shall be through applications and supporting testimony filed in compliance with Rules 2 through 8, 15, and 16 of the Rules of Practice and Procedure and shall include proposed tariff schedules. Copies of the applications shall be served separately at the time of filing on CACD, DRA, and Legal Division, and shall contain or have attached cost support and workpapers. Copies of the applications shall also be served at the time of filing on all parties in I.87-11-033 and on anyone requesting such service.

25. Pacific and GTEC shall file advice letters in accordance with General Order 96-A to request authority before they invest in fiber beyond the feeder system due to unusual physical conditions. Copies of the advice letters shall be served at the time of filing on all parties in I.87-11-033 and on anyone requesting such service.

26. Pacific and GTEC shall file applications in the Expedited Application Docket to request authority before they invest in fiber beyond the feeder system to provide traditional local exchange carrier services. Copies of the applications shall be served separately at the time of filing on CACD, DRA, and Legal Division, and shall contain or have attached cost support and workpapers. Copies of the applications shall also be served at the time of filing on all parties in I.87-11-033 and on anyone requesting such service.

27. Parties in I.87-11-033 may file comments no later than November 2, 1989 and reply comments no later than November 16, 1989 on the proposed definition of "feeder" set forth in Section XI.B.2 of this decision. Copies of the comments and reply comments shall be served at the time of filing on CACD, Legal Division, all parties in I.87-11-033, and on anyone requesting such service.

28. The Center for Public Interest Law is eligible to request compensation for its participation in I.87-11-033.

29. Pacific's appeal of the March 21, 1989 Administrative Law Judge's ruling regarding receipt into evidence of certain Pacific planning document excerpts as part of the public record in Phase II of I.87-11-033 is granted and the document shall remain under seal.

30. If Pacific or GTEC requests that a new or existing service be placed in Category III for pricing purposes, its application or advice letter, as applicable, shall address whether various market power criteria are applicable and, if so, shall include the relevant information. The market power criteria addressed shall include, but shall not be limited to, the following:

Market share;

Ease of entry and exit:

-Number of competitors, trends,

-Estimations of capital investments necessary to compete,

-Status of unbundling efforts by the local exchange carriers;

Facilities ownership;

Size and growth capability of competitors;

Local exchange carrier return on equity:

-Rate of return on marginal investment;

Competitors' earnings (to the extent available);

Substitutable services and studies regarding the cross elasticities of demand;

Rates, terms, and conditions of substitutable services; and

Whether a utility affiliate offers a competitive service.