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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Expedited
Application of Pacific Bell
(U 1001 C), a corporation, for
approval of Store and Forward
Service for Facsimiles.

(EAD)
Application 90-04-052
(Filed April 27, 1990)

- Bruce Ramsey, Attorney at Law, for Pacific Bell, applicant.
- A. J. "Tony" Di Tirro, Attorney at Law, for MCI Telecommunications, Inc., protestant.
- Phyllis Whitten, Attorney at Law, for US Sprint Communications Company, Limited Partnership, interested party.
- Martin O'Donnell, for Division of Ratepayer Advocates, and Mary Jean Purcell, for Commission Advisory and Compliance Division.

I N D E X

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O P I N I O N

In this decision we grant provisional authority for two years to Pacific Bell (Pacific) to offer a new enhanced service, Store and Forward Service for Facsimiles, on a geographically limited basis.

I. Background

Pacific filed this application on April 27, 1990, requesting that it be treated under the Expedited Application Docket (EAD) procedures. Although the EAD created by Resolution ALJ-161 (April 12, 1989) had technically expired, this application was accepted for filing on an expedited basis and treated under the EAD procedures, pursuant to Ordering Paragraph 23 of Decision (D.) 89-10-031.

A timely protest was filed by the Commission's Division of Ratepayer Advocates (DRA), and the late-filed protest of MCI Telecommunications Corporation (MCI) was accepted on motion. An EAD workshop was held on May 29, 1990, which was moderated by Administrative Law Judge Matchett. The workshop participants were Pacific, the two protestants, US Sprint, and the Commission Advisory and Compliance Division (CACD).

The Commission has issued three prior decisions granting Pacific interim authority to offer enhanced services. We granted Pacific interim authority to provide Voice Mail and Protocol Conversion Services subject to several conditions. (D.88-11-027, November 9, 1988.) We granted Pacific interim authority to provide Electronic Messaging Services subject to essentially the same conditions. (D.89-05-020, May 10, 1989.) Similar interim authority to provide Voice Store and Forward Services was granted by D.89-09-049. (September 7, 1989.) Those three decisions were

made in Application (A.) 88-08-031, Pacific's general application for approval of its plan to provide enhanced services.

As noted in those earlier decisions, Pacific's plans to offer enhanced services fall within the Federal Communications Commission's (FCC) Computer Inquiry III framework.¹ Those decisions were made during the pendency of the appeal of the FCC's preemption of state regulation of enhanced services and prohibition of structural separation rules for the Bell Operating Companies, that had been filed by this Commission and other parties.

On June 6, 1990, after all filings on this application had been received and the EAD workshop had been held, the United States Court of Appeals for the Ninth Circuit rendered its decision on the appeal of the Computer III orders, vacating the FCC's Computer III orders, People of California v. FCC, No. 87-7230 (June 6, 1990). The issuance of the Ninth Circuit Court's decision profoundly alters the framework within which we review and decide Pacific's Facsimile Store and Forward Service application. The federal preemption which had prevented us from tariffing these services and from considering whether structural separation is appropriate for enhanced service offerings is now removed. We must also be mindful that at the time we issue this decision the Ninth Circuit Court's opinion is not yet final and unappealable, which leaves some lingering uncertainty as to the final framework within which we will regulate enhanced services.

Major regulatory changes have occurred at the state level as well since we issued our prior enhanced services decisions. The state structure within which we regulate Pacific changed

¹ See D.88-11-026 in 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 issues: Basic Service Elements, and Enhanced Services, respectively.

significantly with the issuance of D.89-10-031, our Interim Opinion on Phase II of Order Instituting Investigation (I.) 87-11-033, adopting a new regulatory framework for Pacific and GTE California, Incorporated. That decision authorized Pacific to request approval of new enhanced services through the EAD procedure utilized in this application. It also resolved some questions left open in our prior interim approvals of enhanced services: the services are excluded from the sharing mechanism (i.e., accounted for "below the line") and a fully allocated cost methodology is to be used. (Mimeo. pp. 200-209.)

Another important feature of the decision, however, has been called into uncertainty by the issuance of the Ninth Circuit Court's order vacating the FCC's Computer III orders. Our Phase II decision, D.89-10-031, determined that enhanced services should be Category III services,² with maximum pricing flexibility, due to the federal preemption of our authority through the FCC's Computer III orders. Since the FCC's order now stands vacated, it can no longer be the basis for our determination of whether enhanced services should receive Category III treatment.

Our prior enhanced services decisions, D.88-11-027, D.89-05-020, and D.89-09-049, placed several conditions on the grant of interim authority for Voice Mail, Protocol Conversion,

² The Phase II decision established three categories of local exchange services to give local exchange carriers expanded pricing flexibility. Basic monopoly services were placed in Category I, and prices for these services are fixed. Category II includes discretionary or partially competitive services for which the local exchange carrier retains significant market power. Category II services have pricing flexibility between a rate cap and a rate floor based on direct embedded costs. Category III services are those which have been detariffed or for which the local exchange carrier retains insignificant market power. Category III services have the maximum pricing flexibility allowed by law. (D.89-10-031, mimeo. pp. 151-59.)

Electronic Messaging Services, and Voice Store and Forward 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.

II. Summary of the Application

Pacific seeks authorization to offer Fax Store and Forward Service (Fax S/F). This is an enhanced service that Pacific would offer through its Information Services Group. Pacific states that the service is intended to increase the utility of existing facsimile (Fax) machines by offering three new functions: Fax Overflow, Fax Mail, and Fax for Information Providers. The service would be provided through what Pacific terms the "Fax Mail Machine." The Fax Mail Machine would be able to take messages for busy Fax machines, including storing Fax messages for later transmission and voice message. A subscriber to this service could also use the Fax Mail Machine to send out Fax messages at a particular time or to multiple recipients. Information providers could store a Fax message in a Fax mailbox that would be available to callers upon request.

Pacific states that this service is offered as a market trial under FCC rules, by which we understand Pacific to say that its proposal is consistent with the conditional authority to conduct enhanced service trials granted by the FCC in its Memorandum Opinion and Order adopted December 29, 1988, in CC

Docket No. 88-616, 4 FCC Rcd 1266.³ Pacific's application also states that after its current FCC market trial authorization expires, it intends to offer Fax S/F consistent with the other relevant FCC Computer Inquiry III decisions, but does not specify how this would change the service offering.

Pacific plans to initiate its Fax S/F service during the third quarter of 1990 in Walnut Creek, California, if necessary regulatory approvals are obtained. Initially, the offering would involve less than 50 subscribers, but later in 1990 Pacific intends to expand the offering to other communities in the San Francisco Bay Area. Pacific indicates no plans to expand the service beyond that area.

Pacific's application states that Pacific intends to offer Fax S/F service on an untariffed basis, in apparent reliance on the FCC's now-vacated Computer III orders.

Pacific requests that this service be treated as a Category III service and excluded from the sharing mechanism,⁴ under the system we adopted in D.89-10-031. Pacific asserts that, as a potential new entrant into this market, it has no market power

3 The FCC's order waives Comparably Efficient Interconnection requirements for any Bell Operating Company, provided that several conditions are met, including: (1) the market trial may last only eight months, (2) the end-user trial participants must be informed that services and prices available during the trial may not be available after the trial, (3) competing enhanced service providers must receive equal access at equivalent prices for basic network services used in the trial, and (4) enhanced service providers must be informed 90 days in advance of a trial.

4 The new regulatory framework established in the Phase II decision is centered around a price cap indexing mechanism with sharing between shareholders and ratepayers of excess earnings above a benchmark rate of return level. (D.89-10-031, mimeo. pp. 2-5.)

and that seven other companies have introduced or have announced plans to introduce a similar service.

Pacific also offers to comply with several of the consumer protection and competitive safeguards that have been imposed in our prior decisions authorizing enhanced services, including: the institution of separate memorandum accounts to track the costs and revenues attributed to Fax S/F, monthly financial reports to CACD, prior CACD approval of the memorandum accounts, customer notification that regulated services will not be disconnected for nonpayment of Fax S/F charges, monthly reports to CACD of end-user complaints about Fax S/F quality or billing, Fax S/F will be charged tariffed rates for tariffed services, and provision of an information package to Commission staff and parties prior to offering the service.

III. Protests

DRA protested Pacific's application on the basis that Fax S/F service could violate Public Utilities (PU) Code § 2893. The statute requires the Commission to require "every telephone call identification service" to "allow a caller to withhold display of the caller's telephone number ... from the telephone instrument of the individual receiving the telephone call placed by the caller." DRA states that the use of Forwarded Call Information in providing Fax S/F raises an issue under the statute because Forwarded Call Information "will provide the enhanced service provider with information about the origination and destination of forwarded call, including the originating line number" (i.e., the calling party's telephone number). DRA also states that the enhanced service provider (ESP) "may DISPLAY the calling party's telephone number: for example, during diagnostics or routine maintenance." In DRA's view such a display of the number would violate § 2893, and this problem cannot be solved by a Commission order that

Pacific permit callers to withhold display of their telephone numbers, because such blocking is not possible with Forwarded Call Information.

Pacific did not submit any written response to DRA's protest. This issue was discussed at the EAD workshop, but no resolution of the issue was achieved there.

MCI filed a protest raising several questions regarding the unbundling of basic service elements to be used in providing Fax S/F and nondiscriminatory access. First, MCI's protest asserted that two of the regulated services that Pacific intended to use to provide Fax S/F, listed in Exhibit II of the application, were not yet available on an unbundled, tariffed basis. At the workshop, MCI withdrew this particular objection, agreeing with Pacific that all the identified services were tariffed, but expressing concern that several of the services were the subject of provisional tariffs. At the workshop US Sprint also expressed concern over the provisional tariffs.

Second, MCI objected to the vague language regarding the technical criteria for deployment of the unbundled tariffed service listed in Exhibit II. MCI points to the Commission's D.88-11-026 (establishing the two-year provisional tariffs for six basic service elements) which required similar language to be revised to include specific technical limitations.

Third, MCI stated that clarification was needed of the accounting treatment to be accorded payments for tariffed services used in offering Fax S/F by Pacific as an ESP, to clearly state that all tariffed services payments by Pacific's ESP would be recorded as Category I revenue. At the workshop, MCI indicated that this concern had been resolved in discussions with Pacific.

Pacific did not file a written response to MCI's objections. MCI's concerns were discussed at the EAD workshop, and as noted above some of the concerns had been resolved by the time of the workshop.

IV. Discussion

This Commission remains committed to the development of valuable new services, including enhanced services. We find ourselves deciding this application while there remains significant uncertainty at the federal level regarding our jurisdiction to regulate intrastate enhanced services. The recent decision of the Ninth Circuit Court is not yet final and unappealable. Any further changes in the federal regulatory scheme could greatly affect any enhanced service we authorize in the interim. Pacific proceeds with this offering and its other enhanced services at its own financial risk.

This decision marks a major departure from our previous enhanced services decisions because it occurs after the elimination of the FCC's asserted preemption of much of our authority over these services. Given the very limited record in this proceeding and the limited nature of the Fax S/F market trial Pacific plans to conduct, we will attempt neither to fully explore the ramifications of the change in our regulatory authority nor to lay out the final course we will follow in regulating enhanced services. Such determinations require input from all affected persons and consideration in a proceeding of larger scope than this limited market trial application. However, we will not put the development of new services and technologies on hold while these determinations are made.

As with our previous enhanced services decisions, we will impose sufficient protections and limitations on this new service offering to allow it to go forward without prejudicing our ability to resolve the uncertainties surrounding it. We remind Pacific that the authority granted here is limited and interim in nature, subject to change as we determine what approach to take in regulating enhanced services in the long run.

A. Tariffing, Pricing and Ratemaking Treatment

D.89-10-031, the Phase II decision, established our new regulatory framework, and that framework is applicable to this new service offering, although some adjustments are necessary to reflect the changed federal regulatory structure. In D.89-10-031, enhanced services were placed in Category III, which provides the maximum pricing flexibility allowed by law, but the stated basis for this categorization was federal preemption. (D.89-10-031, mimeo. pp. 151-520.) This issue had appeared to be settled during the time parties were filing protests and attending the workshop on this application. However, since the federal orders preempting us from tariffing these services have been vacated, the issue is obviously open again. Some categorization of the level of permissible pricing flexibility must be made in order for the Fax S/F service to be offered. In the absence of detariffing by statute or federal preemption, Category III flexibility is reserved for a service for which the local exchange carrier shows it has insignificant market power in each market it intends to serve. (Id., p. 158.) A discretionary or partially competitive service for which the local exchange carrier retains significant market power will be given Category II pricing, which establishes a rate cap and permits downward flexibility to the direct embedded cost floor. The information contained in Pacific's application states that, as a new entrant in Fax S/F, Pacific has no market power and that there is or will be significant competition. These assertions were unchallenged, although other parties likely believed Category III treatment of enhanced services to be a settled issue. We are persuaded, based on Pacific's assertions, the geographically limited market trial proposed in this application, and the one-year limit we will place on this authority (discussed in IV.C. below), that we may properly authorize Category III pricing flexibility for this Fax S/F service. If Pacific later files an application seeking permanent or broader authority to offer Fax S/F, it will be

required to fully justify the level of pricing flexibility it then seeks.

We must also determine whether Fax S/F service will be included in the sharing mechanism established by D.89-10-031. The Phase II decision excluded the four enhanced services already authorized from the sharing mechanism, but did not decide how future services would be treated. The decision stated that this determination would be based on weighing "risks and costs to basic ratepayers and potential harm to competitive markets against potential benefits." Similarity to services in the sharing mechanism and the ability to separate a service's costs and revenues from other utility operations were also identified as likely criteria. (Id., p. 198.)

Pacific proposes to exclude Fax S/F from the sharing mechanism, i.e., treat it below the line, and no party objected to this treatment. Pacific states that it has no market power in the Fax S/F market and that competitors are already in the market. In addition, Pacific points to the risks inherent in a new service, the ease of separately tracking Fax S/F costs, and the similarity of Fax S/F to the other enhanced services, already excluded from sharing. Without responding to each of Pacific's assertions specifically, we concur in general that Fax S/F should be excluded from sharing, at least on an interim basis, because the risks to basic ratepayers of including this service in sharing outweigh the benefits, particularly given the regulatory uncertainties in this market and because this is a growing competitive market.

Because we are no longer subject to asserted federal preemption from tariffing enhanced services, Pacific must file a tariff for this service, consistent with PU Code §§ 489, 491, and 495. Enhanced services have never before been tariffed, and tariff terms and conditions were not a subject of the application or workshop. Rather than reopening the record and requiring Pacific to amend its application to provide a proposed tariff, we will

permit Pacific to file its proposed tariff as an advice letter. Interested persons will have the opportunity to protest the advice letter pursuant to General Order 96-A, and this initial tariff shall not take effect without Commission approval.

Pacific's tariff for Fax S/F should include the rate or rates at which the service will be offered, as well as the terms and conditions of service. These rates must impute the tariffed rates and charges of any monopoly building block functions, as required by D.89-10-031, Ordering Paragraph 2. Pacific may change its Fax S/F rates following the procedures for changing flexibly priced rates established in D.89-10-031, Ordering Paragraph 4. These procedures waive certain portions of General Order 96-A, allowing rate decreases to become effective on 10 days' notice to all affected customers and rate increases to become effective on 30 days' notice and shortening the protest period to eight days. This shortened procedure was adopted primarily with an eye to Category II services. Given the greater pricing flexibility accorded to Category III services, an even more streamlined process for rate changes may be appropriate, but that issue was not addressed by any party in this application proceeding. Changes to the tariff other than rate changes would still be subject to all provisions of General Order 96-A, unless a subsequent Commission decision grants greater flexibility.

B. Use of Caller Number and PU Code § 2893

The record before us clearly indicates that the telephone number of a caller will be transmitted to the provider of Fax S/F service in at least some types of calling arrangements. Pacific's application states that out-of-band (SMDI) signaling "allows the [Fax Mail Machine] to determine both calling and called stations." (App., p. 7.) DRA's protest states that the use of Forwarded Call Information, which is one of the tariffed services that may be used to provide Fax S/F service, will provide the Fax S/F service provider with information about the origination and destination of

forwarded calls, including the caller's telephone number. Thus, the caller's telephone number will be given to the ESP, which may be Pacific's Information Services Group or an independent ESP. A caller may or may not be a Fax S/F subscriber. This certainly raises the question, as DRA's protest points out, of whether such a service should be permitted, if blocking of the caller's telephone number is not feasible as the information we have before us indicates. The issue of available equipment to provide blocking is being addressed currently in another proceeding and the advice letter process.

In 1989, the Legislature adopted Assembly Bill No. 1446 (Eaves Bill), which enacted PU Code § 2893,⁵ which requires the

5 In full, PU Code section 2893 provides:

- (a) The commission shall, by rule or order, require that every telephone call identification service offered in this state by a telephone corporation, or by any other person or corporation that makes use of the facilities of a telephone corporation, shall allow a caller to withhold display of the caller's telephone number, on an individual basis, from the telephone instrument of the individual receiving the telephone call placed by the caller.
- (b) There shall be no charge to the caller who requests that his or her telephone number be withheld from the recipient of any call placed by the caller.
- (c) The commission shall direct every telephone corporation to notify its subscribers that their calls may be identified to a called party either:
 - (1) Thirty or more days before the telephone corporation commences to participate in the offering of a call identification service.
 - (2) By March 1, 1990, if the telephone corporation is participating in a call identification service prior to January 1, 1990.
- (d) This section does not apply to any of the following:
 - (1) An identification service which is used within the same limited system, including, but not

(Footnote continues on next page)

Commission to order that blocking of "display of the caller's telephone number" be available from "every telephone call identification service offered in this state." The statute also requires the Commission to direct telephone corporations to notify subscribers that their calls may be identified to a called party. The statute does not operate directly to bar telephone call identification services that do not permit blocking. Instead, the Commission is charged with issuing an order or ruling to impose blocking.

Thus, the initial question before us is whether we should order blocking of the caller's telephone number as a precondition to approving Fax S/F service, a condition which may effectively ban the service. We do not think such a requirement is appropriate at this time. There is significant uncertainty in the record before us as to both the intended scope of the statute and as to the pervasiveness of the type of telephone technology at issue here that relies on the use of the caller's telephone number. What information we do have suggests that other enhanced services

(Footnote continued from previous page)

- limited to, a Centrex or private branch exchange (PBX) system, as the recipient telephone.
- (2) An identification service which is used on a public agency's emergency telephone line or on the line which receives the primary emergency telephone number (911).
 - (3) Any identification service provided in connection with legally sanctioned call tracing or tapping procedures.
 - (4) Any identification service provided in connection with any "800" or "900" access code telephone service until the telephone corporation develops the technical capability to comply with subdivision (a), as determined by the commission.
- (Emphasis added.)

already in place, and perhaps other existing services as well, are probably using the same or similar technologies. There is also a significant question as to whether the use of caller numbers in the Fax S/F service is a "telephone call identification service" and whether an enhanced service provider is an "individual receiving the telephone call" within the meaning of the statute. In addition, while the statute appears to be concerned about privacy in general, we note Pacific's assertion that only "visual display" of caller numbers falls within the ambit of the statute and that the Fax Mail Machine does not "visually display calling stations."⁶ This uncertainty indicates a need to gather facts in a generic proceeding and seek the input of a broad range of interested parties as to the appropriate interpretation of the statute before we establish rules to implement PU Code § 2893.

We conclude that our examination of this question would not be well served by ordering hearings or further filings in this application, which addresses only the limited introduction of one enhanced service. Instead, we will examine this issue in a proceeding of appropriate scope, perhaps our Investigation into Competitive Access to Customer List Information, I.90-01-033. We note that this issue is being addressed in testimony and briefs in Pacific's A.89-12-010 (Basic Serving Arrangements), and the decision in that application may affect Pacific's Fax S/F service. Pacific's Advice Letter 15719 also raises similar issues of compliance with PU Code § 2893.

Furthermore, Pacific proposes only a geographically limited Fax S/F market trial, which means that we can keep a close eye on the implementation of the service and respond to any

⁶ Even if Pacific's interpretation is correct, DRA's assertion that caller numbers may still be visually displayed during diagnostics or routine maintenance suggests that this interpretation would not resolve the problem.

problems that develop. We will limit the duration of our authorization of the Fax S/F service to one year, to further ensure that these issues are reexamined when more complete information is available to us. In order to expand or make permanent Fax S/F service, Pacific will bear the burden of demonstrating that its service fully complies with the intent of § 2893 and any Commission orders implementing that statute. We also expect Pacific to implement in its Fax S/F service any protection or blocking we order pursuant to § 2893.

We will also give effect to the Legislature's declaration in enacting the Eaves bill: that telephone subscribers have a right of privacy, the protection of which is of paramount state concern and that telephone subscribers must be able to limit the dissemination of their telephone number to exercise their right of privacy. (Stats. 1989, Ch. 483, Sec. 1.) To accord protection to these privacy rights while still permitting introduction of the service, we will require Pacific to notify every potential customer asking for information about Fax S/F, before subscribing to the service, of the specific circumstances and manner in which the subscribing caller's telephone number and the telephone numbers of any nonsubscribing callers will be transmitted to and used by the Fax S/F service provider. This notice shall be on a separate piece of paper and must be approved by our Public Advisor in writing and filed in our Docket Office before Fax S/F service may be initiated. Pacific will also be required to track and report at least quarterly on any customer complaints it receives relating to transmittal or use of the caller's telephone number in the provision of Fax S/F.

Finally, we will restrict the use of the caller's telephone number received or transmitted by the Fax S/F provider to only those uses necessary to the provision of Fax S/F service.

With these protections, we will not interpret PU Code § 2893 at this time to bar Pacific's offering of Fax S/F service.

While we reserve our final judgment on the interpretation of that statute to a later proceeding, for the purposes of this proceeding we note that our decision is consistent with the apparent scope and intent of the statute.

We emphasize that this service is authorized only on a provisional basis, subject to whatever orders or rules we later make in implementing PU Code § 2893.

C. Competitive Access and Nondiscrimination

Pacific states that it will use current tariffed network services for interconnection, which will be purchased under tariff, at the same rates, terms, and conditions available to all other providers of similar enhanced services. The few unresolved concerns raised by MCI's protest focus on the existing tariffs for basic services that will be used by Pacific in offering Fax S/P service. Those issues are more properly addressed in the current application of Pacific for approval of Basic Serving Arrangements, Basic Service Elements and Complementary Network Services (A.89-12-010). We have previously authorized the offering of enhanced services based on the existing tariffs, and no reason has been offered by MCI to treat this proposed service differently. Thus, we find no need to hold hearings in this proceeding to address MCI's concerns.

Pacific has agreed to be bound by essentially the same competitive and ratepayer protections for this enhanced service as we have imposed on the interim authority for voice mail, protocol conversion, electronic messaging services, and voice store and forward. In prior decisions we discussed our concerns surrounding Pacific's use of its regulated bill to collect charges for enhanced services.⁷ We also ordered Pacific not to disconnect local service because of such charges and required it to notify customers

⁷ D.88-11-027, mimeo. pp. 6-8; D.89-05-020, mimeo. pp. 8-9.

of the no-disconnection policy. Because the concerns that led us to impose those conditions originally have not been resolved, we incorporate those conditions in this grant of authority for Fax S/F services.

Findings of Fact

1. Pacific's proposed Fax S/F service is an enhanced service.
2. This application was properly accepted for filing and decided under our EAD procedures pursuant to Ordering Paragraph 23 of D.89-10-031.
3. After the record of this application had closed, the Ninth Circuit Court of Appeals issued a decision vacating the FCC's Computer III orders which had preempted our authority to clarify enhanced services and to require structural separation in the provision of those services.
4. Pacific's offer of Fax S/F meets the FCC's definition of a market trial.
5. Pacific intends only a limited offering of Fax S/F service, first involving less than 50 subscribers in Walnut Creek, and later in 1990 expanding to other San Francisco Bay Area communities.
6. Pacific must file a tariff for this service, consistent with PU Code §§ 489, 491, and 495 before offering the service.
7. The tariff rates must follow the imputation requirement established by D.89-10-031, Ordering Paragraph 2.
8. The tariff rates may be changed through the procedures for changing the rates of flexibly priced services established by D.89-10-031, Ordering Paragraph 4.
9. D.89-10-031 placed enhanced services in Category III based on federal preemption, but that issue is now subject to reconsideration.

10. Based on Pacific's assertions of lack of market power and the geographically limited Fax S/F market trial proposed in this application, Fax S/F should be treated as a Category III service.

11. Fax S/F should be excluded from sharing, i.e. treated below the line, because the risks to basic ratepayers of including the service in sharing outweigh the benefits, particularly given the regulatory uncertainties in this market, and because there is a growing competitive market.

12. The telephone number of a caller will be transmitted to the provider of Fax S/F service in at least some types of calling arrangements and may be subject to visual display, and the record in this proceeding indicates that blocking of the number is not feasible.

13. There is uncertainty as to the intended scope of PU Code § 2893, which requires the Commission to order that telephone call identification services offer blocking of the display of the caller's telephone number and that subscribers receive notice that their calls may be identified.

14. There is uncertainty as to the pervasiveness of the telephone technology at issue here that transmits the caller's telephone number, including in existing services.

15. The scope and effect of PU Code § 2893 should be determined with input from a broad range of parties, and the introduction of new telephone technologies and services should not stand still during that process, provided that adequate limitations are placed on the services.

16. Pacific's Fax S/F service would be appropriately limited by the geographic and other limitations set forth in the application, a one-year limit on the authority, a requirement that potential Fax S/F subscribers receive notice of the circumstances and manner in which callers' telephone numbers will be transmitted to the service provider, and a requirement that a caller's

telephone number be used only as necessary to the provision of Fax S/F service.

17. Pacific intends to use current tariffed network services for interconnection, which will be purchased under tariff, at the same rates, terms, and conditions available to all other providers of similar enhanced services.

18. The few unresolved concerns raised by MCI's protest focus on the existing tariffs for basic services that will be used by Pacific in offering Fax S/F and are already used in the provision of previously authorized enhanced services. These concerns would more properly be addressed in A.89-12-010.

19. Pacific has agreed to be bound by essentially the same competitive and ratepayer protections for this enhanced service as were imposed on the previous grants of interim authority for enhanced services, and those protections are still appropriate.

Conclusions of Law

1. As a condition on any grant of authority to offer Fax S/F service, Pacific should be required to file a Fax S/F tariff by advice letter pursuant to General Order 96-A, which will not take effect without Commission approval.

2. The authority granted in this application should be limited to one year.

3. Pacific should be required to notify potential Fax S/F subscribers of the circumstances and manner in which callers' telephone numbers will be transmitted to the service provider, and to report quarterly on any complaints relating to use of the caller's telephone number in the provision of Fax S/F service.

4. MCI's unresolved concerns about currently tariffed services do not raise issues requiring hearings on this application.

5. The authority to offer Fax S/F service should include the same competitive and ratepayer protections as in our previous decisions granting interim authority to offer enhanced services.

6. The authority granted in this application should be interim only, subject to such changes as the Commission may later find appropriate.

O R D E R

IT IS ORDERED that:

1. Pacific Bell's (Pacific's) request for authority to offer Fax Store and Forward (Fax S/F) service, subject to the geographic and other limitations set forth in the application, is granted on an interim basis, subject to the terms and conditions set forth in this order and consistent with the discussion, findings, and conclusions in this decision. Each of the terms and conditions of this authority is interim only, and subject to such changes as the Commission may find appropriate.

2. This authority shall expire one year from the effective date of this order.

3. This service may only be offered under tariff. Pacific shall file a Fax S/F tariff by advice letter, with 20 days for the filing of any protests, pursuant to General Order 96-A. The initial tariff must be approved by the Commission before taking effect. Changes to the tariff may be made pursuant to General Order 96-A and D.89-10-031, Ordering Paragraph 4.

4. Fax S/F shall be treated as a Category III service.

5. Fax S/F service shall be excluded from the sharing mechanism established in D.89-10-031.

6. Pacific shall notify every potential customer asking for information about Fax S/F, before signing up for the service, of the specific circumstances and manner in which the subscribing caller's telephone number and the telephone numbers of any nonsubscribing callers will be transmitted to and used by the Fax S/F service provider. The notice shall be on a separate piece of paper and must be approved in writing by the Commission's Public

Advisor and filed in our Docket Office before Fax S/F service may be initiated. Pacific shall record and report at least quarterly on any customer complaints it receives relating to use of the caller's telephone number in the provision of Fax S/F.

7. The Fax S/F service provider shall make only such use of caller's telephone numbers received or transmitted by the Fax S/F provider as is necessary to the provision of Fax S/F service.

8. Pacific shall institute separate memorandum accounts following the directives of Ordering Paragraph 8, tracking the complete research, development, deployment, operating and maintenance costs, and all revenues attributed to its Fax S/F service.

9. 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 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. 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 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.

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

11. Pacific shall not disconnect any regulated services solely for nonpayment of Fax S/F service charges. Pacific shall

notify customers receiving bills for Fax S/F 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.

12. Any end-user complaints about service quality or billing matters which are received by Pacific's Fax S/F service 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.

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

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

15. Prior to offering Fax S/F service, Pacific shall submit an information package to the CPUC staff and other parties, pursuant to the rules set forth in its enhanced services application, A.88-08-031. Each customer subscribing to Pacific's Fax S/F service shall receive a copy of the Public Information Package.

16. Any terms and conditions establishing consumer and competitive safeguards or governing access to and use of regulated billing services by Pacific's enhanced services operations shall be considered as interim, pending a review of these issues by the Commission.

This order is effective today.

Dated ~~30~~ 18 1990, at San Francisco, California.

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

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

Neal J. Sulman
NEAL J. SULMAN, Executive Director

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