

ALJ/KIM/jt

Mailed
NOV 27 1990.

Decision 90-11-076 November 21, 1990

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Application)
of Pacific Bell, a corporation,)
for approval of Basic Serving)
Arrangements, Basic Service)
Elements and Complementary Network)
Services.)
_____)

ORIGINAL

Application 89-12-010
(Filed December 5, 1989)

(See Appendix A for appearances.)

I N D E X

<u>Subject</u>	<u>Page</u>
INTERIM OPINION	2
I. Background	2
II. Computer Inquiry III	3
III. Description of Services	5
A. ONA Services	5
B. Answer Supervision	5
C. Warm Line	6
D. FCI-nCTX	6
E. MLHG	7
IV. Discussion	8
A. Does Pacific Propose Adequate Protections Against Discriminatory Treatment Between its ISG and other ESPs?	8
1. MCI	8
2. TASC	9
3. CPA	10
4. API	11
5. Centex	11
6. DRA	11
7. Pacific	12
8. Discussion	12
B. Are Pacific's Proposed Services Reasonably Priced?	15
1. MCI	16
2. DRA	16
3. CPA	16
4. Pacific	16
5. Discussion	17
C. Would Pacific's Offering of FCI-nCTX Violate Section 2893?	19
1. Pacific	19
2. DRA	20
3. Discussion	20
V. Conclusion	22
Findings of Fact	23
Conclusions of Law	24
INTERIM ORDER	25
APPENDIX A	

INTERIM OPINION

This decision resolves issues in Phase I of Pacific Bell's (Pacific) application for approval of certain Basic Serving Arrangements (BSA), Basic Service Elements (BSE), and Complementary Network Services (CNS). These services are part of what has been termed "open network architecture" (ONA).

By this decision, we grant interim approval of Pacific's proposed Answer Supervision service and Warm Line service subject to certain conditions designed to assure nondiscriminatory provisioning to competitors. We also approve the minor tariff change Pacific requests for Multiline Hunt Group (MLHG). We approve Pacific's Forwarded Call Information for non-Centrex (FCI-nCTX) customers conditional on Pacific's blocking of caller information which would otherwise be transmitted to FCI-nCTX users. The service, as proposed, would violate Public Utilities Code Section 2893.

I. Background

Pacific filed this application for authority to offer (1) seventeen BSAs (all are part of existing tariffs); (2) twenty-five BSEs (twenty-two are included in existing tariffs, one is a tariff modification, one is an unbundled tariff element, and one is a new service); and (3) sixteen CNSs (fifteen existing tariffed items and one a new service). The application also proposes a 120-day process by which enhanced service providers (ESPs) can request new or unbundled services. Pacific classifies ONA services as Category I under Decision (D.) 89-10-031 and proposes a tracking system to demonstrate nondiscriminatory practices.

The application, if approved, would "unbundle" three service elements. This unbundling would provide Pacific and its

competitors access to capabilities which may permit them to offer new and enhanced services. Enhanced services are generally telecommunications services which are ancillary to basic network services. They are commonly competitive or potentially competitive. The Commission has recently granted Pacific authority to offer several enhanced services, including Voice Mail, Fax Store and Forward, and Protocol Conversion.

Several parties protested Pacific's application, including MCI Telecommunication Corporation (MCI), the Division of Ratepayer Advocates (DRA), Centex Telemanagement, Inc. (Centex), California Payphone Association (CPA), API Alarm Systems (API), and the Telephone Answering Services of California (TASC). Following a workshop and a prehearing conference, the proceeding was divided into two phases. In Phase I, which is the subject of this decision, the Commission considers issues arising out of Pacific's request for approval of specific services. Those services are FCI-nCTX, Warm Line, and Answer Supervision. Also included as part of Phase I is a minor tariff modification for Pacific's NLHG.

Phase II is designed to consider broader policy issues and services which may be offered in the future and which are not subjects specific to Pacific's request for approval of this application. Approval of any services in Phase I would be interim and subject to change following resolution of Phase II issues.

II. Computer Inquiry III

We consider Pacific's application in the context of recent federal policy and court action.

The Federal Communications Commission (FCC) has for several years considered the appropriate regulatory treatment of enhanced services. In its Computer Inquiry III (Computer-III) proceeding, the FCC generally concluded in several decisions that Pacific could offer enhanced services if several safeguards were

put into place. ONA is one of the safeguards required by the FCC in order for Pacific and other Bell Operating Companies (BOC) to offer enhanced services without structurally separating related operations. The FCC intended that ONA would provide Pacific's competitors with comparable access to Pacific's basic network. The FCC partially approved Pacific's plan for implementing ONA in November 1988 (Filing and Review of Open Network Architecture Plans, CC Docket 88-2, Phase I, Memorandum Opinion and Order, released December 22, 1988).

This Commission appealed the Computer-III decisions to the Ninth Circuit Court of Appeals, arguing that the FCC had violated the Federal Communications Act when it preempted state authority to regulate ONA and enhanced services. On June 6, 1990, the Court found in favor of the Commission in People of the State of California, et al. v. FCC 905 F.2d 1217 (9th Cir. 1990) stating that the FCC had failed to show that preemption orders were necessary to avoid frustrating federal regulatory goals. The Court also found in favor of MCI which argued that the FCC's grant of authority for the BOCs to offer enhanced services without structural separations was "arbitrary and capricious." The FCC's Computer-III was vacated and remanded back to the FCC.

The future of the FCC's regulation of ONA and enhanced services is unclear. The United States Department of Justice plans to file an appeal on November 3, 1990. The FCC intends to reconsider its ONA framework with additional evidence. This Commission filed comments September 10, 1990 on the subject of future FCC treatment of ONA. Today's decision is based on the record in this proceeding and assumes that FCC policies have no preemptive effect.

III. Description of Services

A. ONA Services

The purpose of ONA, as the FCC has designed it, is to provide ESPs with access to the utility network so that they may compete on an equal footing with the utilities in enhanced services markets. In the context of the FCC framework, ONA is comprised of three types of services - BSAs, BSEs, and CNSs.

Pacific defines BSAs as tariffed network switching and transport services which allow an ESP to communicate with its customers through the utility network. A BSA is a mandatory service since an ESP and its customers must purchase a BSA in some form in order for a customer to receive specific services. Examples of BSAs are lineside and trunkside circuit switched services and local private line services.

A BSE, according to Pacific, is a tariffed network capability associated with a BSA that an ESP may use in configuring (from an engineering standpoint) an enhanced service. A BSE is an optional service. Examples of BSEs include Activate Message Waiting Indicator, MLHG, and conditioning for private line services.

Pacific describes CNSs as tariffed services that end users may obtain from a carrier to receive enhanced services. CNSs are optional services such as stutter dial tone.

Organizationally, Pacific would offer BSEs, BSAs, and CNSs. Pacific markets enhanced services to end users through its Information Services Group (ISG). The ISG is a department or division within Pacific which markets enhanced services to customers.

B. Answer Supervision

Answer Supervision is a service with the capability to deliver an "off hook" signal from a Pacific end office to an ESP over a lineside connection. The signal would indicate the moment

when the called party has answered an incoming call. Pacific classifies Answer Supervision as a BSE.

Currently, Feature Group "B" and "D" customers receive an Answer Supervision function as an integrated part of their service. Pacific now seeks to unbundle the service and to offer it on a lineside connection in addition to its availability on a trunkside connection.

Pacific seeks to offer Answer Supervision as a Category I service with an installation charge of \$10 and a monthly rate of \$5.75 per line.

C. Warm Line

Warm Line is a central office based automatic dialing feature with a time delay. When the end user of the service goes off hook, a predetermined number will be automatically dialed by the central office equipment if the end user does not initiate dialing within the delay period. If dialing is initiated within the delay period, the call will proceed normally as dialed. The time delay can be specified by the subscriber within the range of 4 to 9 seconds. The Warm Line service is considered a CNS.

Pacific proposes Warm Line as a Category I service with proposed charges of \$5 for installation and a monthly charge of \$2.50.

D. FCI-nCTX

FCI-nCTX, like the Forwarded Call Information (FCI) service bundled with Centrex, provides signaling information, in data format, to the subscriber of FCI-nCTX such as an ESP. The signaling information contains data about calls that were forwarded to the subscriber from another telephone number served by the same central office switch. In other words, FCI-nCTX transmits caller information to a third party's equipment so that information may be retrieved by the third party. It also provides the capability for an ESP to signal the serving central office switch to activate or

deactivate an audible message waiting signal (called "stutter dial-tone") on the end user's telephone line served by that switch. Pacific classifies FCI-nCTX as a BSE.

A typical use for FCI-nCTX is where an ESP, such as a Voice Mail Provider, arranges with end users to forward their calls to a telephone number with FCI-nCTX. The "forwarded to" number will consist of several access lines, arranged together in an MLHG. The end user telephone lines must be served by the same serving central office switch as the "forwarded to" telephone lines with the FCI-nCTX.

When a call is forwarded to the ESP's line, the ESP will receive, via a separate data channel, the following information about the origin and destination of forwarded calls:

- o The number of the line that forwarded the call;
- o Originating line number;
- o Type of call forwarding feature used;
- o Indication of MLHG;
- o Identity of the specific line within the MLHG that received the forwarded call.

Pacific proposes FCI-nCTX as a Category I service for pricing purposes. The proposed rates and charges for FCI-nCTX are an installation charge of \$2,500 and a monthly charge of \$350.

E. MLHG

Pacific requests a minor tariff change to MLHG which would specify that MLHG is available without changing the rate, charges, or other terms of the tariff. MLHG is designated as a BSE.

IV. Discussion

Several questions arose in the course of considering the three new services proposed by Pacific in this proceeding:

Does Pacific propose adequate protections against discriminatory treatment between its ISG and other ESPs?

Are Pacific's proposed services reasonably priced?

Would Pacific's offering of FCI-nCTX violate Section 2893?

A. Does Pacific Propose Adequate Protections Against Discriminatory Treatment Between its ISG and other ESPs?

Several parties to this proceeding argue that Pacific's offerings, as they are designed, will be discriminatory. For example, they raise concerns that the services are designed mainly to serve ISG's requirements rather than those of competing ESPs. They believe selective deployment provides an advantage to ISG, and that ordering processes and marketing information are available to Pacific's ISG that are not available to competitors on an equal basis.

1. MCI

MCI argues that Pacific's application is not, as characterized by Pacific, an ONA filing. MCI comments that the Commission has not defined ONA, adopted policies relating to ONA, or approved the "ONA model" that is referenced in Pacific's application. MCI believes that the model would permit too much bundling and permits discriminatory treatment between ISG and its competitors.

Evidence that Pacific has failed to fulfill the FCC's ONA objectives, according to MCI, is the fact that Pacific is only offering three new services to ESPs four years after the ONA process began even though over 100 service requests have been

presented. For this reason, MCI believes the Commission should consider the application as a proposal to offer three new services, and not as an application for applying ONA principles. In fact, according to MCI, the basic ONA principles were adopted in D.89-10-031.

MCI also believes Pacific's services will be offered on a discriminatory basis because its own ISG will have access to company information not available to other ESPs. Pacific has no procedures or policies which would prevent unequal treatment between ISG and ESPs.

MCI states that FCI-nCTX service as proposed is unlikely to be useful to ESPs because it would only be available on an intra-central office basis. MCI comments that consequently information could be forwarded only to telephone stations that are served by the same central office that serves the calling party. MCI observes that existing Direct Inward Dial services provide the same function to ESPs without requiring a presence in each central office.

MCI questions the usefulness of the FCI-nCTX and Answer Supervision because they would be available only in areas whose end office are equipped with DMS 100 switches, which serve only about 20% of Pacific's customers. Accordingly, the value of the service is uncertain.

In general, MCI believes the opportunity for anti-competitive activity can only be mitigated by a requirement that Pacific's ESP be made part of a fully separated subsidiary.

2. TASC

TASC believes that Pacific's application is an attempt to foster the growth of its own ESP while it continues to ignore the service and network needs of competitors. TASC also believes Pacific's marketing and operational practices are discriminatory.

TASC states the services Pacific proposes to offer are of little value to any ESP except ISG. TASC states its

representatives have met with Pacific seeking ONA services, but that Pacific has taken no action to fulfill the needs of TASC's members. According to TASC, Warm Line was not developed to include the capabilities that TASC's members would find useful although TASC has requested that Pacific provide those capabilities. TASC believes the proposed Answer Supervision service is useful only to ISG and a handful of hotel and COPT (customer owned pay telephones) customers. It is not, according to TASC, a service that will be useful to most ESPs.

Similarly, TASC believes FCI-nCTX is not useful to any ESP except ISG. According to TASC, this is so because in order to use the service, an ESP would have to have a presence in every central office within its market area, a presence which only ISG has.

TASC also believes Pacific permits its ISG to obtain information about switch deployment before the information is available to competitors. On the basis of Pacific's testimony, TASC believes the ISG might have access to customer proprietary network information (CPNI) as a result of its ability to use the Pacific's internal computerized ordering system. TASC believes ISG's access to this system may also provide it with other marketing and operational information that is not available on an equal basis to Pacific's competitors.

3. CPA

CPA argues that the limited deployment of Answer Supervision proposed by Pacific, according to CPA, will limit the usefulness of the service to pay phone providers and results from poor planning. CPA states that it requires Answer Supervision for its pay phones in order that the pay station may accurately calculate the duration of the call and require payment of the call. CPA points out that Pacific stipulated to providing the service over a year ago and has been aware of possible technical

limitations which would have to be worked out, but failed to make any inquiries until June 1990.

Pacific should, according to CPA, be required to inform interested customers promptly as additional central offices are equipped to provide the new service.

4. API

API's comments are similar to those of TASC and MCI on subjects concerning discriminatory treatment. API also believes Pacific should be required to show how any ONA services will be affected by joint provisioning with GTE California, Inc. (GTEC).

5. Centex

Centex shares the concerns of API, MCI, and TASC, and argues that the Commission should not grant final approval of the three new services. Centex does not object to interim authority for the three proposed services if certain safeguards are also adopted. It supports MCI's proposal to require Pacific to include in its tariffs deployment plans, including a definition of the network point of access and timing of the "roll-out."

Centex argues Pacific's discretion to determine the types of access lines over which the new services will be available may be anticompetitive. It urges the Commission to require Pacific to specify technical limitations impeding the combination of new services with existing access line services and the procedures Pacific employs for expanding the availability of these services.

Finally, Centex argues that Pacific's ISG should not be able to use internal computer systems to order new services until and unless the same ordering processes are available to competitors.

6. DRA

DRA supports interim authority for Answer Supervision, Warm Line, and MLHG assuming the Commission orders the same conditions for those services as it has applied to other enhanced services. DRA recommends that service conditions adopted in

Phase II of this proceeding should be applied to services with interim authority. It would also have the Commission require Pacific to track and report to the Commission the provisioning, maintenance, repair, volumes ordered, revenues, costs, investment, customer complaints, and any further monitoring requirements resulting from the workshops ordered by D.89-10-031.

7. Pacific

Pacific states the services it proposes in Phase I are to be offered on a nondiscriminatory basis. They will, according to Pacific, be deployed in every switch where technically available. Pacific states its policy is to provide deployment information to its own enhanced service operation, ISG, and other ESPs "in the same manner." It believes the services will be useful to many ESPs, not just ISG, on the basis of information it received from ESPs during the course of the FCC's ONA proceeding.

Pacific opposes MCI's proposal to adopt the FCC's guidelines for ordering the proposed services. The guidelines require Pacific's enhanced service operations (i.e., its ISG) to take the same access Pacific provides independent ESPs. Pacific argues the FCC's guidelines do not recognize that comparable ordering processes may be achieved as long as "the performance and functionality" are comparable between the ISG and independent ESPs. Pacific's ability to directly input orders for CNSs is not discriminatory because ISG must still go through its account team and installation for the ISG is the same as for other ESPs.

Pacific states Answer Supervision is proposed in response to requests for the functionality of a lineside connection and that no parties ultimately objected to the terms or conditions under which Pacific proposes the service.

8. Discussion

Several parties to this proceeding believe that Pacific may implement its new services in a discriminatory manner. Specifically, the parties refer to Pacific's ISG using the computer

ordering system called "SORD," which is not available to competitors. They raise concerns over ISG's exclusive use of CPNI and ISG's receiving deployment information before the information is available to other ESPs.

We too are concerned with the potential for discriminatory treatment between ISG and Pacific's competitors. First, we cannot tell by the record in this proceeding whether the services in question are responsive to ESP needs. Pacific's witness stated that certain studies had shown that competitors were interested in the proposed services. On the other hand, several competitors testified that the services were deficient. Because the idea of ONA is to provide competing ESPs with options for using the network, we are concerned that Pacific be responsive to ESP requirements as well as those of its own marketing group. Procedures for assuring competitive provisioning are a matter that we intend to address in more detail in Phase II of this proceeding.

In addition, Pacific's testimony in this proceeding does not satisfy us that Pacific has set forth procedures which would protect against anticompetitive activity. While Pacific states that it has a policy against discriminatory treatment, it does not deny that ISG has access to information and services that are either not available to competitors or are not available on the same basis. In its reply brief, Pacific argues that its access to information and procedures is not discriminatory because no disadvantage to a competing party results.¹

Since Pacific does not justify its exclusive access to certain information and procedures on the basis of public policy,

¹ This issue was not addressed from the standpoint of the potential inherent efficiencies which Pacific may recognize as the monopoly provider of ONA services. Such economies of scope may justify some differing treatment of Pacific's providers, but were not considered by the parties in Phase I of this proceeding.

we must assume that it does obtain some marketing advantage from that access.

We will address this issue in substantial detail when we consider broader ONA policy issues. In the meantime, we will condition approval of any new services. Pacific should, as DRA recommends, track and report to the Commission the provisioning, maintenance, repair, volumes ordered, revenues, costs, investment, customer complaints, and any further monitoring requirements resulting from the workshops ordered by D.89-10-031.

In addition, Pacific's tariffs shall set forth the deployment plans for each service, that is, the tariffs will include estimated dates on which the service will be available at each end office. The information may be supplied by way of a letter appended to the tariffs, and need not go through a formal filing procedure. The deployment dates identified in the tariffs need not be exact, but should be within 5 days of the date Pacific expects to activate a service at a particular switch.

TASC and the parties that supported its position have made a persuasive case on this record for requiring that ISG no longer use CPNI and SORD for marketing and order processing for the services authorized in this decision. However, in previous orders we have authorized ISG to provide other services for which we did not order such restrictions. From an operational point of view, it may cause more harm than good for the time being to place fundamentally different operating conditions on ISG's provision of various services. For example, it would be unclear how ISG should market and provide a set of services to a single customer where only some of those services were subject to these restrictions.

We will again consider the use of CPNI and SORD by ISG in the context of broader ONA policy. We will then be in a position to order appropriate restrictions upon ISG's overall operations, rather than just the services addressed in this decision.

Finally, we respond to Pacific's comments to the proposed decision. In its comments, Pacific argues that the issues relating to Pacific's use of SORD and CPNI are outside the scope of this proceeding and therefore cannot lawfully be resolved. To the contrary, however, an ALJ ruling dated March 26, 1990 authorized the parties to raise any issue in Phase I which relates to the proposed four services. Issues such as SORD and CPNI, as applied to the four services, are therefore within the scope Phase I of the proceeding. Moreover, Pacific moved to strike certain testimony submitted by TASC which addressed SORD and CPNI. The motion was made on the grounds that those topics were outside the scope of the proceeding. The ALJ denied the motion. Pacific had an opportunity to cross-examine the TASC witness but did not do so. Its own witness was cross-examined on CPNI and SORD and Pacific addressed the issues on brief. It has therefore had ample opportunity to be heard on issues which are clearly within the scope of the proceeding.

Pacific's comments also present substantive arguments against the treatment of CPNI and SORD proposed by the ALJ decision. These arguments, which include references to "gateway access," FCC views, requisite employee training, and "four basic CPNI safeguards," rely on information which Pacific did not offer into evidence. Rule 77.3 states,

"New factual information, untested by cross-examination, shall not be included in comments (on the proposed decision) and shall not be relied on as the basis for assertions made in post publication comments.

Pacific's comments are inappropriate and may not lawfully form the basis for our decision.

B. Are Pacific's Proposed Services Reasonably Priced?

Several parties expressed concern that Pacific failed to provide appropriate cost support for the rates and charges it proposes for the three new services.

1. MCI

MCI is critical of Pacific's failure to provide cost information. MCI cannot understand why Pacific would claim this information to be proprietary if it is for monopoly services.

Because the information was not presented, Pacific cannot, according to MCI, be found to be in compliance with the imputation principles set forth in D.89-10-031. MCI's witness testified that in order for Pacific to comply with D.89-10-031, Pacific must charge its own enhanced service the same price that other customers pay for identical network elements. MCI believes that to demonstrate compliance with this requirement, Pacific must identify those services which employ the three network elements that are proposed in this application. Pacific has not satisfied this requirement, according to MCI.

2. DRA

DRA raises concerns that Pacific's cost studies are inconsistent and may be improper. It states it does not believe Phase I of this proceeding is the appropriate place for developing ONA pricing policies, but believes the Commission should not "lose track" of the issue in Phase II of this proceeding or in an Order Instituting Rulemaking which the Commission may issue.

3. CPA

CPA argues that Pacific did not demonstrate that its proposed rates were reasonable. CPA suggests the Commission require Pacific to present a cost study for Commission review at the earliest possible time.

4. Pacific

Pacific objects to applying imputation principles adopted in D.89-10-031 to the services at hand, as MCI proposes. Pacific believes D.89-10-031 did not intend that monopoly services, such as those which are the subject of Phase I, should be subject to imputation principles. According to Pacific, MCI's proposal would also improperly require Pacific to show that all bundled service

using the proposed unbundled monopoly service cover the cost of the "network element."

5. Discussion

Ordering Paragraph 23 states:

"Pacific and GTEC are authorized to request authority to provide enhanced services, BSEs, and any new services comparable to BSE 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 Practices and Procedure and shall include proposed tariff schedules. Copies of the application shall be served separately at the time of filing on CACD, DRA, and Legal Division, and shall contain or have attached cost support 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." (Emphasis added.)

Pacific interprets this language to mean that it must serve cost information only on Commission Advisory and Compliance Division, DRA, and Legal Division. The language may be interpreted to mean the cost information should be served on all parties or only on CACD, DRA, and Legal Division. It was our intent, however, to require such workpapers be included only on copies of applications served on Commission staff, consistent with our general policy for general rate applications.

Although Pacific need only serve Commission staff with the cost data as part of its application, other parties may be entitled to review the information as part of the discovery process.

Pacific argues that providing cost information to Commission staff but not to others is "longstanding practice" for proprietary data. The burden of showing that cost information for the three subject services is proprietary, however, is on Pacific.

In the future, if Pacific believes the cost information subject to Ordering Paragraph 23 is proprietary, it shall bring its concern to the forefront for consideration by the Commission. In any event, we are unlikely to permit nondisclosure of costing information for services which are by their nature not competitive. The services which are the subject of this application are not competitive. They are monopolistic. It is not longstanding practice to withhold from the public cost information for monopolistic services.

Even though Pacific provided some cost data to Commission staff, it appears the information was not useful to staff in determining whether Pacific's proposals are reasonable. Moreover, Pacific did not provide cost support for its proposed services as part of the record. For these reasons, we do not know the relationship between the proposed rates and charges and the costs of service. We will not deny approval of the services on this basis because the authority requested is interim in nature, and subject to future conditions which the Commission may adopt. In future applications, however, we expect Pacific to provide evidence that its rates and charges will bear some reasonable relationship to costs. Moreover, we will require Pacific to file cost information for the services we may approve today before permanent authority is granted for those services.

On a related issue, MCI proposes to determine whether appropriate costs are imputed to all services which use the subject service element. We agree that we would ideally require such imputation. At this time, however, MCI's approach is impractical for applying to the three new services on an interim basis. We are interested in considering in our future investigation whether and how MCI's proposal should be put into place.

C. Would Pacific's Offering of FCI-nCTX Violate Section 2893?

The administrative law judge (ALJ) requested that Pacific analyze the lawfulness of its proposed FCI-nCTX service in light of Section 2893 which requires the Commission to order individual customer blocking for services which display the caller's telephone number. The section requires the Commission to:

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.

1. Pacific

Pacific argues that Section 2893 does not apply in the case of FCI-nCTX. According to Pacific, the purpose of Section 2893 is to allow a calling party to restrict display of his or her telephone number on the telephone instrument of the called party at the time the call is made. Generally, states Pacific, an ESP will use FCI-nCTX to provide Voice Mail. Viewing Section 2893 as applied to this circumstance, Pacific makes a distinction between the purpose of Section 2893 which is to allow blocking of information to an "intended called party" and the literal reading of that section which is to allow blocking of information to the individual receiving the call. FCI-nCTX, according to Pacific, only provides the calling party's number to the ESP over a data channel.

Pacific also believes FCI-nCTX is not within Section 2893 because it does not display the calling number on the "telephone instrument" of the party receiving the call. The data is provided to the ESP via the separate channel and is collected by voice messaging equipment.

Pacific is unaware of any current technology by which FCI-nCTX could provide the calling party's number to the party whom the calling party intended to receive the call. Pacific does not know of any existing switching technology which would block calls as envisioned by Section 2893.

2. DRA

DRA objects to approval of the FCI-nCTX service because it fails to comply with Section 2893. According to DRA, the service would violate the Code because it would provide the ESP with information about the origination and destination of forwarded calls, including the originating line number.

DRA believes the technology is available for permitting individual blocking of the forwarded information, as required by Section 2893. It cites GTEC's application to provide voice messaging services, Application (A.) 90-07-048, which proposes the service with a blocking capability.

3. Discussion

An important issue in this proceeding concerns whether FCI-nCTX may be offered as proposed because of privacy concerns which are the subject of Section 2893.

Pacific argues that the intent of Section 2893 is to permit blocking to an intended called party rather than the individual receiving the call, where that individual is, for example, a Voice Mail provider. For this reason, Pacific argues, Section 2893 does not apply to FCI-nCTX. It also argues that FCI-nCTX does not display the calling number on the "telephone instrument" of the party receiving the call, but rather is provided to voice messaging equipment.

In our view, Pacific's interpretation is inconsistent with both the intent and plain meaning of the statute. Section 2893 does not refer to an intended called party, but the "individual receiving the telephone call." A voice message provider receiving the call is clearly an individual receiving the

call. We can hardly infer from the language that the Legislature intended to protect a caller's privacy interests from a known called party but not from an unknown third party service provider.

We do not believe that the statute intended to make subtle distinctions between telephone instruments and voice messaging equipment, considering that the bill intends to protect consumer privacy. Whether traditional telephone instruments or voice messaging equipment are used, some party is provided with information about the calling party. In either case, the utility has no control over the use of the information by the called party. Moreover, distinctions between telephone instruments and equipment used in processing telecommunications are increasingly fuzzy from a technological standpoint. Pacific does not even identify how it believes telephone instruments differ from voice messaging equipment for purposes of interpreting Section 2893 beyond stating that FCI-nCTX does not "display" the telephone number on voice messaging equipment. However, Pacific provided no evidence that the ESP receiving the information could not display the information over its voice messaging equipment. In any event, we would be hesitant to permit transmittal of information otherwise protected under Section 2893 on the grounds that it is technically not "displayed" if that information is readily available to the called party as if it were displayed.

DRA has stated its belief that blocking technology may be available for services like FCI-nCTX. We encourage Pacific to investigate the availability of blocking for FCI-nCTX and related services. Our approval of FCI-nCTX will be contingent upon Pacific's blocking the transmittal of all information regarding call origination or offering individual customer blocking pursuant to Section 2893.

Pacific's reply brief states that if FCI-nCTX is not approved, ESPs will be forced to purchase the higher priced FCI. The record in this proceeding does not permit us to determine the

applicability of Section 2893 to FCI; if, however, FCI and FCI-nCTX offer the same functions, our interpretation of Section 2893 may apply to FCI and Pacific should implement measures for complying with the Code.

We do not intend an expansive interpretation of Section 2893. While we are aware that this reading of it goes beyond what some believe the Legislature intended, we must interpret the law as written. Parties interested in clarifying the exact scope of Section 2893 may wish to go back to the Legislature to sponsor appropriate amendments.

V. Conclusion

The parties to this proceeding agree that the unbundling principles set forth in D.89-10-031 should be put into place as soon as possible. ESPs want to offer new services which can only be made available if the local exchange companies make them available. Pacific may increase its revenues and improve customer convenience by expanding the services it offers.

Our objective is to assure that ONA is implemented fairly and efficiently. This part of the proceeding demonstrates, however, that a piecemeal approach will not satisfy our objectives, especially where Pacific is itself marketing enhanced services through ISG. The issues raised by the parties need to be considered in the context of an entire ONA framework, and cannot be resolved by considering three new services in isolation.

Unfortunately, Pacific's application does not permit us to consider the reasonableness of Pacific's ONA plans. The application does not propose a comprehensive ONA program (whether or not Pacific has developed one) and provides little information regarding Pacific's ONA plans. The application merely proposes three new services which several parties argue are of little value

to competing ESPs, and lists several other services which it appears to believe are already adequately unbundled.

The FCC required an ONA framework as the quid pro quo for permitting the local exchange companies to market enhanced services, rather than requiring them to be structurally separated. The FCC has reviewed and commented on Pacific's ONA proposals in an ongoing effort to develop an ONA framework. This Commission, however, has not considered Pacific's plan for deploying unbundled services or established its own policies for ONA, except to the extent that it endorsed unbundling in D.89-10-031.

We view this portion of this proceeding as very limited. We will approve Pacific's proposals for Warm Line, Answer Supervision, and MLHG, with the conditions listed in Section IV.A. of this decision. The ALJ has structured a second phase of this proceeding which would consider broader ONA issues.

Findings of Fact

1. By this application, Pacific seeks approval for offering three new services and a minor tariff change for a fourth service. It also seeks approval of other ONA services for which tariff changes are not required.

2. In Phase I of this proceeding, the Commission considers Pacific's interim proposals for Answer Supervision, Warm Line, MLHG, and FCI-nCTX. The intended purpose of Phase II of this proceeding is to consider broader issues regarding ONA.

3. The Ninth Circuit Court of Appeals vacated the FCC's ONA decisions on June 6, 1990 (People of the State of California, et al. v. FCC, Nos. 87-7230 et al.).

4. Pacific's ISG has access to certain support services and marketing information which are either not available to competitors or not available to competitors on an equal basis.

5. Pacific did not, in Phase I of this proceeding, present cost information to support its pricing proposals for Answer Supervision, FCI-nCTX, or Warm Line.

6. FCI-nCTX would transmit the number of the call originator to ESPs who would use FCI-nCTX for Voice Mail applications. The record does not show that such information cannot be displayed on ESP equipment.

7. GTEC has filed A.90-07-048 which DRA believes proposes a blocking technology that could be applied to Pacific's FCI-nCTX service.

Conclusions of Law

1. The Commission should conditionally approve Pacific's proposal to provide Answer Supervision and Warm Line on an interim basis.

2. Pacific should be required to track and report to the Commission the provisioning, maintenance, repair, volumes ordered, revenues, costs, investment, customer complaints, and any further monitoring requirements resulting from the workshops ordered by D.89-10-031. The reports should be filed on the same basis as required by the workshops.

3. Pacific's tariffs should include dates upon which Answer Supervision and Warm Line are estimated to be available in each end office.

4. The Commission should approve Pacific's proposed tariff language changes for MLHG.

5. The Commission should not grant permanent authority for Answer Supervision, Warm Line, or FCI-nCTX until Pacific has presented cost information for the services which would support Pacific's rates and charges.

6. The Commission is required by Section 2893 to require telephone corporations to offer individual blocking of services which would otherwise display the caller's telephone number on the called party's telephone equipment.

7. Pacific's proposal for FCI-nCTX would result in a violation of Section 2893.

8. The Commission should condition approval of the proposed FCI-nCTX on Pacific's blocking transmission of all caller telephone numbers to the FCI-nCTX subscriber.

INTERIM ORDER

IT IS ORDERED that:

1. Pacific Bell's (Pacific) request for interim approval of its proposed Answer Supervision, Forwarded Call Information/non-centrex (FCI-nCTX) and Warm Line services is granted subject to the following conditions:

Pacific shall track and report to the Commission the provisioning, maintenance, repair, volumes ordered, revenues, costs, investment, customer complaints, and any further monitoring requirements resulting from the workshops ordered by D.89-10-031. The reports shall be filed on the same basis as required by the workshops.

Pacific's tariffs shall include dates upon which Answer Supervision, FCI-nCTX and Warm Line are estimated to be available in each end office.

Authority is granted on an interim basis for a 2-year period, subject to any conditions which the Commission may impose following a broader investigation in this or any related proceeding.

Pacific shall present cost information when it seeks permanent authority for the services authorized by this order.

For FCI-nCTX, Pacific shall block at its central office switches the calling number identification of calls to members of FCI-nCTX subscriber user groups.

2. Pacific's request for authority to make minor changes to its tariff for Multiline Hunt Group is granted.

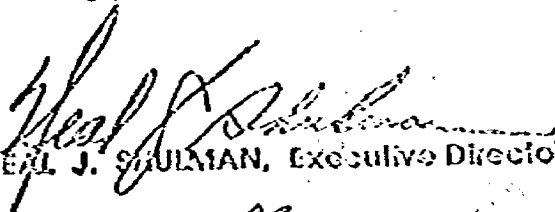
This order becomes effective 30 days from today.

Dated November 21, 1990, at San Francisco, California.

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

Commissioner Frederick R. Duda,
being necessarily absent, did
not participate.

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


NEAL J. SULMAN, Executive Director

APPENDIX A
Page 1

List of Appearances

Applicant: Mary L. Vanderpan, Attorney at Law, for Pacific Bell.

Protestants: Tony Di Tirro, for MCI Telecommunication Corporation; Messrs. Squire, Sanders & Dempsey, by Stephen R. Bell, Attorney at Law, and Charles M. Faubion, Attorney at Law, for BT Tymnet, Inc.; and Phyllis Whitten, Attorney at Law, for US Sprint Communications Company.

Interested Parties: Mark Barnore, Attorney at Law, for Toward Utility Rate Normalization; Randolph Deutsch, Attorney at Law, for AT&T Communications of California; Ben Dickens, Attorney at Law, for Messrs. Blooston, Mordkofsky, Jackson & Dickens; John H. Engel, Attorney at Law, and A. J. Smithson, for Citizens Utilities Company of California; Messrs. Jackson, Tufts, Cole & Black, by Joseph S. Faber and William H. Booth, Attorneys at Law, for California Bankers Clearing House Association and County of Los Angeles; Messrs. Orrick, Herrington & Sutcliffe, by Robert J. Gloistein, Attorney at Law, for Contel of California, Inc.; Robert Herrera, Attorney at Law, for GTE California, Inc.; William G. Irving, for County of Los Angeles; Messrs. Graham & James, by Martin A. Mattes and Richard Goldberg, Attorneys at Law, and Alan J. Gardner, Attorney at Law, for California Cable Television Association; Messrs. Beck, Young, French & Ackerman, by Steven D. Mellema, Attorney at Law, for Smaller LECs; Jerry M. O'Brien and Diane Martinez, for API Alarm Systems; Steven Ruetters, for Contel Service Corporation; Earl Nicholas Selby, Attorney at Law, for Bay Area Teleport; Norman T. Stout, for Northern California; Messrs. Cooper, White & Cooper by E. Garth Black, Alvin H. Pelavin, and Mark P. Schreiber, Attorneys at Law, for Roseville Telephone Company, Calaveras Telephone Company, California-Oregon Telephone Company, Ducor Telephone Company, Foresthill Telephone Company, Happy Valley Telephone Company, Hornitos Telephone Company, The Ponderosa Telephone Company, Winterhaven Telephone Company, and The Volcano Telephone Company; Messrs. Armour, St. John, Wilcox, Goodin & Schlotz, by Thomas MacBride and Barbara Snider, Attorneys at Law, for Telephone Answering Services of California; Messrs. Morrison & Foerster, by James Tobin and Dhruv Khanna, Attorneys at Law, for McCaw Cellular Communications, Inc.; and Christopher R. Ungson, and Messrs. Blumenfeld & Cohen, by Jeffrey Blumenfeld, Attorney at Law, for Centex Telemanagement, Inc.

APPENDIX A
Page 2

List of Appearances

Division of Ratepayer Advocates: Janice Grau, Attorney at Law,
Marty O'Donnell, and Tom Lew.

Commission Advisory and Compliance Division: Kevin P. Coughlan.

Public Advisor's Office: Robert Feraru.

(END OF APPENDIX A)