ALJ/BWM/pc *

Mailed

MAR 15 1991

Decision 91-03-021 March 13, 1991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of US Telecom, Inc., doing business as Sprint Services, for a Certificate of Public Convenience and Necessity to Provide InterLATA Telecommunications Services within the State of California.	Application 89-09-012 (Filed September 11, 1989)
Application of AT&T Communications of California, Inc. (U 5002 C) for Authority to Provide Intrastate AT&T MultiQuest^{sm} Services.	Application 89-10-019 (Filed October 6, 1989)
Application of MCI Telecommunications Corporation (U 5011 C) Under Rule 15 of the Commission's Rules of Practice and Procedure for Authority to Provide Intrastate 900 Service.	Application 89-11-019 (Filed November 20, 1989)
In the Matter of the Investigation and Suspension on the Commission's own motion of tariffs filed by Advice Letters Nos. 8 and 9 of Telesphere Network, Inc.	(I&S) Case 89-11-020 (Filed November 20, 1989)
Order Instituting Investigation into the rates, charges, and practices of local exchange carriers in California.	I.90-12-040 (Filed December 19, 1990)

(See Attachment A for appearances.)

I N D E X

Subject	Page
OPINION	2
I. Summary of Decision	2
II. Background and Procedural History	4
A. 900 Services Generally	4
B. Pacific 976/900 Service, Decision (D.) 89-02-066 and D.89-03-061	6
C. Applications of Sprint, AT&T, and MCI	7
1. Sprint	7
2. AT&T	
3. MCI	9
D. Telesphere Advice Letter, Suspension and D.90-03-030	10
E. Workshop	11
F. Prehearing Conference	12
G. Consumer Action Request for Finding of Eligibility for Compensation	13
H. Motion for Interim Authority	13
I. Petition to Suspend Hearings	15
J. Hearings and Briefs	15
K. Motions to Strike Portions of Briefs	15
1. Consumer Action Brief	15
2. DRA's Brief	16
3. Discussion	16
L. Motion for Extension of Comment Period	17
M. Order Instituting Investigation 90-12-040	17
N. GTEC Motion to File Reply Comments Late	19
O. Consumer Action Motion to Accept Reply in Excess of Five Pages	20
P. Comments on the Proposed Decision of the ALJ and the Commission Decision	20
1. Changes Made	20
2. Other Comments	24
III. Positions of Parties and Overview of Issues	26
A. Applicants and Lo-Ad Communications	27
B. Pacific, GTEC, DRA, and Consumer Action	28
C. Overview of Issues	30
IV. Burden of Proof and Consistency Between Programs	31
A. Applicants' Burden of Proof	31
1. Sprint	31
2. AT&T	32
3. MCI	33
4. Telesphere	33

5. Summary 34
B. Role of Pacific's Safeguards 34
C. Consistency Between 900 Programs 35

V. Evaluation of Proposed 900 Service 37
A. General Comments 37
B. Consistency with the Law 37
1. Harmful Matter 37
a. Separate Prefix and Blocking 37
b. Subscription 40
c. Billing and Collection 42
d. Summary 43
2. Disclosure Message and Delay Before Billing Begins 44
a. SB 2765, Disclosure Messages and Billing Delay Periods 44
b. Disclosure Message Override 50
3. Complaint Procedure and Adjustment Policy 51
4. Blocking 51
a. To all IPs 51
b. If Central Office Blocking is Unavailable 52
c. Nonresidential Blocking 53
d. Charge to Remove Blocking 54
5. Caller Identification Blocking 54
6. PU Code Section 2884 55
C. Service in the Public Interest 55
1. Overview 55
a. Specific Investigations of Certain IPs 56
b. Sprint 57
c. AT&T 59
d. MCI 60
e. Telesphere 61
f. Conclusions 63
2. Information Charges 64
a. Children's Programs 64
(1) Price Limit 64
(2) Age of Children 66
b. All Other Programs 67
(1) Background and Positions of Parties .. 67
(2) Discussion 71
3. Advance Notification 73
a. Background and Positions of Parties 73
b. Discussion 76
4. Separate Prefixes and Selective Blocking 79
5. Complaint Procedure and Adjustment Policy 82
a. Balancing Benefits and Risks 83
b. Current Program 84

c. Complaint Procedure and Adjustment Policy 85
6. IP Name on Request 92
7. Billing in 30-second Increments 94
8. Billing and Collection for Charitable Contributions, Information, or Services Over Telephone 96
9. Require Disclosure of Amount Going to Charity 97
10. Nondisconnect for Failure to Pay 98
11. Billing and Collection in Tariff 99
12. Advertising Guidelines 100
13. Other Safeguards 102

VI. IntraLATA Service 105

VII. Reasonable Rates and Economic Feasibility 113

VIII. LEC Cost Recovery 115

IX. Monitoring 116
A. Monthly and First-year Reports 116
B. Industry Status Report 118

X. Implementation 120
A. Customer Education 120
B. Commission Enforcement 122

XI. Other Issues 123
A. Sprint CPCN 123
B. Consumer Action Request for Finding of Eligibility for Compensation 124
1. Purpose 124
2. Party and Customer 125
3. Time for Filing 125
4. Items in Request 125
a. Significant Financial Hardship 126
b. Statement of Issues 128
c. Estimate of Compensation 129
d. Budget 129
5. Common Legal Representative 129
6. Conclusion 129
C. Applicability of Decision to Each Applicant 130
D. Sequence of Events 130

Findings of Fact 131

Conclusions of Law 139

ORDER 145

ATTACHMENT A: List of Appearances

ATTACHMENT B: Advertisement

ATTACHMENT C: Monitoring Reports

ATTACHMENT D: Complaint Procedure and Adjustment Policy

O P I N I O N

I. Summary of Decision

This decision grants four interexchange carrier (IEC) utilities the authority to offer intrastate, interLATA information services using the 900 area code. These utilities are: US Telecom, Inc., doing business as Sprint Services (Sprint); AT&T Communications of California, Inc., (AT&T); MCI Telecommunications Corporation (MCI); and Telesphere Network, Inc. (Telesphere).[1]

In order to ensure that the authorized services conform to all statutory requirements and that such services are operated in the public interest, this decision requires that such services be offered under specific terms and conditions, including the following:

(1) applicants' offering of this service must include a separate prefix for information providers (IPs) of harmful matter (harmful matter is matter covered by PU Code § 2884(d)) and allow selective blocking to harmful matter IPs;

(2) billing and collection for harmful matter IPs will be a matter of contractual arrangement between applicant and IP until July 1, 1991;

(3) a disclosure message is required at the beginning of all programs, with a delay after the disclosure message of no less than three seconds before charges may begin, and with a minimum delayed timing period of 12 seconds;

---

1 These four companies are collectively referred to as "applicants" in this decision.

(4) a disclosure message override procedure may be identified at the end of the program to be used for future calls, but the override must be disabled 5 days before and 15 days after any price change;

(5) the option to block access to all IPs must be available to subscribers in all areas in which applicants may offer 900 service;

(6) information charges which may be collected by applicants on behalf of IPs are limited for children's programs to $2.00 per minute and $4.00 per call;

(7) information charges which may be collected by applicants on behalf of IPs for all other programs are limited to $5.00 for the first minute, $2.00 for each additional minute, and $50.00 per call;

(8) advance notification to callers when their charges for 900 services reach specific limits is required (e.g., $75 and $150);

(9) a specific complaint procedure and adjustment policy is required;

(10) applicants must require their billing agent--and applicants are similarly required--to disclose the name, address, and business telephone number of an IP upon the request of any caller (at applicant's expense);

(11) billing for IPs is limited to nonprofit charitable contributions, information provided over the telephone, or services provided over the telephone;

(12) applicants must require IPs collecting for charity to disclose the amount going to charity, and the name of the charity, in any print, audio or video advertising, and also in the disclosure message;

(13) disconnection of basic telephone service for failure to pay 900 charges is not permitted and applicants must so inform callers;

(14) billing and collection provisions will be included in the tariff (billing and collection services for harmful matter IPs are excepted until July 1, 1991);

(15) specific advertising guidelines and other safeguards are required as minimum standards;

(16) applicants must not hold themselves out to be carriers of intraLATA traffic;

(17) a monitoring program is directed;

(18) applicants are required to notify California customers of their new provision of intrastate, interLATA 900 service, and the accompanying specifics of this offering, including safeguards.

Finally, Consumer Action is found eligible to submit a request for compensation for its participation in these proceedings.

II. Background and Procedural History

Some familiarity with the history of 976/900 service is useful in understanding the issues raised in these proceedings.

A. 900 Services Generally

900 services are information, entertainment, and fund-raising services provided to callers (also called consumers or end-users) by IPs using the 900 area code. 900 services can also include billing and collection services by a telephone corporation for an IP. In fact, a primary aspect of 900 service is this billing and collection feature.

The dialing pattern is 1-900-NXX-XXXX. Each carrier (e.g., Pacific Bell (Pacific), Sprint, AT&T, MCI, Telesphere) is assigned carrier specific NXXs. This allows the LEC to identify and route the 900 call to the proper carrier and finally to the IP.

The IP pays tariffed rates for transport service performed by the LEC or IEC. Whether the IP collects revenues for the information provided or offers the information for free, the IP is responsible for payment of the tariffed transport cost. The IP may bill the caller by sending a bill, charging the cost to the caller's credit card, or using the LEC or IEC billing and collection service.[2] If the IP elects to use the LEC and/or IEC for billing and collection, the charge to the caller is assessed on the caller's telephone bill.

LEC and IEC tariffed charges to IPs may include nonrecurring charges, a monthly recurring charge and a per call transport charge (generally assessed in cents per minute). IECs may charge IPs a billing and collection fee in addition to transport rates.

The IP's charge to callers may be assessed on a per minute rate or a flat fee. IP charges to callers per minute for interstate calls may range from $0.50 for the first minute and free additional minutes, to $10.00 for the first minute, and $10.00 for each additional minute. Flat rates may range from $0.50 per call to $99.99 per call.

2 In at least some cases, the use of the 800 area code is less expensive to the IP if the IP elects to do his or her own billing and collection (e.g., by sending the caller a bill, or charging the caller's credit card). The benefit to the IP of the 900 service, therefore, includes the billing and collection option offered by applicants with the 900 services.

900 service provides callers access to such items as news, weather, financial, entertainment, consulting, and promotional information. The information may be in the form of voice or data, may be live or recorded, and may be interactive or passive.

900 services have evolved through three distinct phases. They began in 1980 as a polling device. They entered their second phase in 1982 for the release of information and entertainment. 900 became known as a passive form of entertainment, since the caller could only listen to--not interact with--a prerecorded message. The third phase began in 1987 when 900 services became interactive, allowing the caller to get information, make choices, or access computer or live operators by pushing keys on a Touch-Tone phone, or by using a computer with a modem.

B. Pacific 976/900 Service, Decision (D.) 89-02-066 and D.89-03-061

Pacific began offering 976 service in September 1983. This service expanded Pacific's traditional role of transporting calls. It permitted Pacific to provide a billing and collection service to IPs desiring to sell information, entertainment, and services by telephone. Similar to 900, the 976 service used the prefix 976 rather than the area code 900.

The service was plagued with numerous serious problems, particularly during its first 18 months of operation. We established specific consumer safeguards to address these problems through a series of decisions implementing legislation and the results of our own investigations.

In early 1988 Pacific filed advice letters requesting authorization to begin 900 service. Protests were filed on issues of monitoring, advertising standards, message content, blocking, bill adjustments, and disconnections for tariff violations. Pacific withdrew the advice letters and filed Application No. (A.) 88-04-004 on April 1, 1988.

Pacific and other parties to the proceeding expressed interest in developing a proposed settlement. A schedule was adopted to permit the parties to conduct settlement discussions. A settlement agreement was reached between Pacific, the Commission's Division of Ratepayer Advocates (DRA) and the Information Providers Association (IPA), and was filed with the Commission by DRA on September 1, 1988. Comments and objections on the settlement agreement were filed, followed by hearings on the proposed service.

We rejected the settlement agreement in D.89-02-066. We found, however, that the settlement would be reasonable if modified in specific respects. We permitted each party to the settlement to file written acceptance or rejection of a modified settlement. Upon receipt of the parties' comments, we issued D.89-03-041 authorizing Pacific's 900 service based upon the specific terms set forth in D.89-02-066. Pacific's 900 tariff became effective July 14, 1989.

C. Applications of Sprint, AT&T, and MCI

1. Sprint

Sprint filed an application on September 11, 1989 for a certificate of public convenience and necessity (CPCN) to provide interLATA 900 service within California, along with a request for ex parte relief. Protests were filed by AT&T on October 6, 1989, Pacific on October 27, 1989, and DRA on November 7, 1989.[3]

The protests raised issues of equal regulatory treatment among all providers of 900 service, consumer safeguards, monitoring of safeguard effectiveness, the provision of unlimited credit, applicant's furnishing of intraLATA service concurrent with

3 Pacific filed a motion to receive its protest late, at least in part due to the earthquake of October 17. DRA filed a motion for leave to file its protest late. Both motions are granted.

its interLATA service without blocking or compensation to the LEC, the failure to provide proposed tariffs, and objections to ex parte relief. DRA requested that either hearings be held or that Sprint provide additional information on the proposed service, and the Commission condition approval upon the adoption of certain safeguards. Pacific requested hearings to allow full consideration of the issues.

Sprint replied to the protests on December 13, 1989, and urged the Commission to consider the application on an ex parte basis. Sprint requested that the Commission grant interim authority to provide the services not subject to serious controversy should the Commission determine to hold hearings.

2. AT&T

AT&T filed an application on October 6, 1989, pursuant to Rules 15 and 18 of the Commission's Rules of Practice and Procedure ("Rules"), for authority to provide intrastate interLATA 900 service under the name MultiQuest. Protests were filed timely in November by MCI, Sprint, DRA, Pacific, and GTE California Incorporated (GTEC). The protests raised issues similar to those in the protests of the Sprint application, plus raised objection to AT&T's request for rate flexibility and the use of incremental costs.

AT&T replied to the protests on December 8, 1989. AT&T agreed to modify some of its safeguards and investigate the feasibility of other safeguards.[4] AT&T argued that the

---

4 For example, AT&T agreed to modify its disclosure message to apply to all programs, not just some (e.g., programs for children and games of chance). AT&T indicated it did not have the capability to offer an 18-second delay before charges would begin, but it would investigate. AT&T agreed to contact the customer when the customer's bill reached the same levels included in Pacific's

(Footnote continues on next page)

Commission had sufficient information with AT&T's reply to act expeditiously to approve MultiQuest without hearing. AT&T urged the Commission to order a workshop or hearing in the immediate future, to the extent questions remained.

3. MCI

MCI filed Advice Letter No. (AL) 85 on October 31, 1989, to introduce MCI 900 service on five days' notice.[5] The Commission rejected MCI's advice letter on November 3, 1989 by Resolution T-14021, finding that:

> "...the potential negative impacts of 900 service on children and consumers are so serious that a five-day effective advice letter is not appropriate to assure that consumer safeguards are in place and adequate."

MCI filed an application on November 20, 1989 (under Commission Rule 15) for authority to provide intrastate interLATA 900 service. MCI simultaneously filed a motion for interim authority to provide intrastate 900 service on a limited test basis incidental to MCI's interstate 900 service. Protests were filed timely in December by DRA and Pacific, raising issues similar to those in the protests of the Sprint application. Further, both DRA and Pacific opposed MCI's request for interim authority.

MCI responded to the protests on January 4, 1990. MCI agreed to at least one additional provision (a disclosure message), and to modify its intrastate tariff accordingly. MCI did not

---

(Footnote continued from previous page)

tariff. AT&T would not agree to an automatic one-time adjustment as proposed by DRA, nor to limits on the price that an IP could charge (except to a $4.00 per call limit for programs directed to children under the age of 12).

5 D.84-01-037 authorized non-dominant IECs to file advice letters effective five days from filing.

believe it had the capability at that time to provide a delay after the disclosure message before charges would begin, but undertook to explore the possibility. MCI requested that its motion for interim authority, as supplemented by its response to the protests, be approved without delay. MCI stated that it would not oppose a workshop or hearings as soon as possible, to the extent the Commission believed that additional issues remained.

D. Telesphere Advice Letter, Suspension and D.90-03-030

Telesphere filed AL 8 on November 6, 1989, to set forth rates for an interLATA intrastate 900 Services Plan effective November 11. Protests were filed by AT&T on November 8, and Pacific and DRA on November 9.

Protestants asked that the Commission reject AL 8 and require Telesphere to file an application. The Commission Advisory and Compliance Division (CACD) wrote Telesphere on November 9, advising Telesphere that AL 8 was considered unsatisfactory in light of Resolution T-14021, and that CACD would recommend that the Commission proceed accordingly.

Telesphere responded by letter dated November 13. Telesphere reiterated its belief that the service is fundamentally interstate in nature and outside the Commission's jurisdiction,[6] that Telesphere had met the requirements of the Public Utilities Code and Commission decisions, and offered to provide additional provisions not in AL 8 (e.g., disclosure message for certain types of programs, block access to some subscribers who incur very large charges in a short period). Telesphere filed AL 9 on November 17

6 Telesphere asserts that it filed AL 8 to avoid a formal complaint by AT&T alleging unlawful intrastate 900 service by Telesphere.

(to become effective on November 22) to include selected consumer safeguards with its filed tariff.

The Commission issued Order of Investigation and Suspension Case No. (C.) 89-11-020 on November 22, 1989. This order suspended ALs 8 and 9 pending the outcome of an investigation to determine whether these advice letters are unreasonable or unlawful in any respect.

Telesphere filed a petition for stay of the suspension on December 4, 1989, and an application for rehearing of C.89-11-020 on December 6, 1989. We granted the application for rehearing on January 9, 1990 (D.90-01-022), for the limited purpose of holding a hearing to determine whether ALs 8 and 9 should be suspended pending the outcome of the investigation.

The limited rehearing was held on January 24, 1990. Briefs were filed February 2, 1990. The Administrative Law Judge (ALJ) issued a proposed decision on February 22, 1990, with a shortened comment period. We issued D.90-03-030 on March 14, 1990 suspending ALs 8 and 9.

E. Workshop

The ALJ issued a ruling on January 26, 1990 setting a date and agenda for a workshop. The workshop was convened to determine whether contested issues remained. CACD was directed to prepare a report at the conclusion of the workshop that would identify the following: concerns and issues in the provision of 900 service; solutions to the concerns and issues supported by most if not all participants; issues still in dispute with options recommended by the participants for the resolution of these issues; and the advantages and disadvantages of each option.

The workshop was held on March 1, 8, and 9. Position papers were submitted on March 26. A draft workshop report was issued to all participants for comment on April 19. The final workshop report was issued May 10. The final report identified

several areas of agreement, but also noted several areas of disagreement.

F. Prehearing Conference

A prehearing conference (PHC) was held May 4, 1990. One issue in the applications and Telesphere's suspension is the role of the Pacific safeguards. At the PHC the ALJ noted that the Commission's decisions in establishing Pacific's 900 service would serve as the foundation for the Commission's consideration of the matters in these proceedings. The ALJ noted the Commission's position from D.90-03-030, in which we said:

> "The point must not be lost in this debate that the PacBell safeguards are adopted to address specific concerns. In D.89-02-066 we found that certain minimum requirements are necessary for 900 service tariffs to be found in the public interest, and therefore just and reasonable. We refused to approve PacBell's proposed tariffs with these provisions missing. D.89-02-066 specifically rejects the proposed settlement and explains the reasons at some length. D.89-03-061 approves a 900 program for PacBell after comment by the parties. To the extent Telesphere's tariffs fail to contain these minimum protections explained in D.89-02-066 and D.89-03-061, we believe it is substantially likely that we will reject Telesphere's tariffs as unjust and unreasonable just as we did similar tariffs in D.89-02-066. Thus, we hold Telesphere accountable to address at a minimum all the underlying concerns and safeguards in the PacBell 900 program. The burden will be on Telesphere (or any party seeking changes) in the investigation to convincingly argue for any deviations from the safeguards adopted for the PacBell 900 program." (Mimeo. p. 26.)

The ALJ indicated that, to the extent any party seeks to simply repeat the arguments considered and rejected by the Commission in D.89-03-061, those arguments would likely fail. The Commission would consider arguments for a different 900 program, but the burden in these proceedings would be on proponents of

something different than contained in the Pacific 900 program. Equally so, however, the ALJ cautioned any party that would seek applicants adopt the existing safeguards. Those parties could not simply argue the current program is inviolate, according to the ALJ, but they would be expected to present facts and expert opinion in support of that proposition.

G. Consumer Action Request for Finding of Eligibility for Compensation

Consumer Action filed a request for finding of eligibility for compensation on June 4, 1990, with a supplement filed on June 20. Sprint filed an opposition to Consumer Action's request on July 5, arguing that Consumer Action had not shown that its participation will constitute a substantial contribution to the proceedings. Consumer Action filed a reply on July 31, arguing Consumer Action's request complies with each element specified for such a filing in the Commission's rules, and that Consumer Action believes it will make a substantial contribution.

H. Motion for Interim Authority

On June 6, 1990, applicants filed a joint motion for interim authority to provide 900 services within the state of California. Applicants offered to supplement their original filings--to the extent they may not have included these items--with four additional safeguards: (1) an introductory message; (2) a delay after the introductory message before charges would begin; (3) blocking of access to 900 services and establishment of separate prefixes for harmful matter programs if such programs are offered; and (4) a one-time adjustment for customers who complain of inadvertent use.

Applicants noted in the joint motion that while they agree to these provisions for interim authorization, they may individually propose in the general proceeding conditions that differ from those agreed in the joint motion. For example, in the general proceeding (to establish permanent arrangements for 900

service), one or more may argue against the introductory message. Further, AT&T agreed to modify its MultiQuest proposed tariff to eliminate the requested pricing flexibility for the interim period.

Applicants specifically noted in the joint motion that they could not agree to the price-limit safeguard. Applicants further commented that interim authorization would not prevent intraLATA calls, but applicants would include "holding out" restrictions in their tariffs.[7]

A response to the motion was filed by Pacific on June 18, and oppositions to the motion were filed by Consumer Action on June 20, GTEC on June 21, and DRA on June 22. Opponents of the motion argue that: (1) the arrangements proposed by the applicants are not satisfactorily developed to conform with the Pacific safeguards required by the Commission; (2) other safeguards not found in the motion cannot be overlooked; (3) neither the applicants nor LECs can block applicants' intraLATA traffic; (4) applicants seek to offer intrastate 900 services prior to full consideration of all the serious issues raised with the protests to the initial applications; and (5) the requested interim authority is not supported by any compelling public need.

Applicants filed a reply on June 29. Applicants argue that there are technical and operational differences between IEC and LEC 900 service that make uniformity impossible, there are sound policy reasons why the IECs cannot agree to identical restrictions applicable to Pacific, applicants' proposed conditions adequately protect consumers, and IEC 900 service will not violate Commission policies regarding intraLATA competition.

---

7 This is a provision wherein the applicant agrees to not hold itself out to any IP that it may carry intraLATA calls. Applicant would advise the IP that intraLATA calls may not lawfully be placed over applicant's networks and that the call should be placed over the facilities of the LEC.

The Assigned Commissioner denied the motion by ruling dated August 8, 1990. The Commissioner noted:

> "Although the policy of the Commission is to foster new services, I do not believe we have reached the point where we can issue interim rules satisfactory to all parties to the proceeding or to the consumers who will use the service."
>
> * * *
>
> "...because of the numerous outstanding complex issues, including some pending in Phase III of I.87-11-003 [e.g., intraLATA competition], it would not be prudent to grant interim authority now." (Ruling, p. 3.)

I. Petition to Suspend Hearings

Applicants jointly filed a petition on July 20 seeking a suspension of hearings (with a request that the first day of hearing be rescheduled from July 30 to September 13), given the then pending motion for interim authority. The ALJ denied the applicants' petition to suspend hearings by a ruling dated July 24.

J. Hearings and Briefs

Seven days of hearing were held between July 30 and August 8. Thirty-five exhibits were received, including 15 filed after the close of hearing at the request of the ALJ. Ten witnesses presented testimony. The proceedings were submitted for decision on September 10 upon the receipt of concurrent briefs.

K. Motions to Strike Portions of Briefs

AT&T filed a motion on September 12 to strike the brief of Consumer Action and a portion of the brief of DRA.

1. Consumer Action Brief

AT&T argues that Consumer Action's brief is replete with statements and allegations never offered into evidence or tested in the evidentiary hearings. AT&T contends that while technical rules of evidence are not strictly adhered to in Commission proceedings,

the Consumer Action brief constitutes a sufficient violation of AT&T's rights to a fair hearing as to violate Rule 64 of the Rules.

Consumer Action responded on October 1. Consumer Action argues that it took the industry positions one at a time and provided Consumer Action's insights based on the information from the hearings.

2. DRA's Brief

AT&T argues that the portion of DRA's brief, and Attachment 1 thereto, which introduces argument from the DRA closing brief in another proceeding should be stricken. Alternatively, AT&T asks that Exhibit 7 from A.88-04-004 be considered (which addresses DRA's new material).

DRA answered AT&T's motion by a letter dated September 27. DRA said it would not be filing a response to AT&T's motion because DRA views AT&T's motion as an opposition to DRA's request that the Commission take official notice of a portion of DRA's brief in A.88-04-004. DRA asserts that AT&T seeks official notice be taken of Exhibit 7 in A.88-04-004, to which DRA does not object. No other parties filed motions, objections or replies regarding our taking notice or consideration of either Attachment 1 to DRA's brief or Exhibit 7 in A.88-04-004.

3. Discussion

AT&T's motion is of serious concern to us. The same matter was before us in D.85-12-084, regarding a motion by Pacific Gas and Electric Company (PG&E) to strike portions of the briefs of the Public Staff Division (predecessor to DRA), consumer groups, and others. PG&E claimed the briefs cited and argued from matters not in evidence. As we said in D.85-12-084:

> "In a court of law it [PG&E's motion] may have some validity...Although we do try to follow closely the rules of evidence, there is no question that the Commission has been most lenient in applying strict procedures to those who come before it, particularly those persons from the general public who are not familiar with Commission rules and procedures or public

> utility law. This is the public's utilities commission, set up so that any person of whatever legal ability can come before it and be heard. We have intensified our efforts to afford easy access to our forums, including remuneration for persons appearing who could not do so if it were not for such assistance. We consider briefs to be documents which assist us with defining the positions of the parties, allow parties to critique the positions of their adversaries, and argue for particular results. There is not doubt parties filing briefs often stray from the strict record of the proceeding. We don't expect those parties who have sophisticated legal staffs to do so more than occasionally; those not having such sophistication are still entitled to be heard. We are quite capable of delineating fact from fiction and evidence from argument. PG&E's motion...is denied." (19 CPUC 2d 517, 533.)

For the same reason, AT&T's motion is denied.

L. Motion for Extension of Comment Period

The proposed decision of the ALJ was filed on December 10, 1990. Comments of the parties were due on December 31, 1990, under Rule 77.2. Applicants filed a joint motion on December 13, 1990, however, asking for an extension of the comment period to January 14, 1991. Applicants averred they would accept any burden placed on them by the delay. Further, applicants asked for a determination that the comments should be limited to 25 (rather than 15) pages. The Assigned Commissioner granted the motion on December 18, 1990, and specified that reply comments were due January 22, 1991.

M. Order Instituting Investigation 90-12-040

We issued Order Instituting Investigation (I.) 90-12-040 on December 19, 1990, and consolidated the investigation with A.89-09-012, A.89-10-019, A.89-11-019, and C.89-11-020. I.90-12-040 was instituted to provide a procedural forum and vehicle to fully act on aspects of LEC operations which relate to the authorities requested by applicants. In particular, the

investigation provided the vehicle to order LECs, if needed, to provide services or arrangements that would permit applicants to conform to conditions we may order in the applications, such as access tariffs. Each LEC under our jurisdiction was named a respondent, and comments were directed to be filed by January 4, 1991. Upon a request by Pacific, the comment deadline was extended to January 11, 1991.

Applicants filed a motion on January 8, 1991 for a stay of the comment period until after the issuance of a final Commission decision in A.89-09-012, A.89-10-019, A.89-11-019, and C.89-11-020. Applicants argue that consideration of respondents' comments before a final decision in the IEC 900 proceedings is premature and effectively denies applicants due process. Further, applicants contend the investigation is overly broad and nonspecific. Finally, applicants assert that consideration of respondents' comments in the investigation would prejudge applicants' comments on the proposed decision of the ALJ and preclude impartial Commission review of applicants' proceedings on IEC provision of 900 service before rendering a final decision. Applicants request that any comments filed prior to the filing of their motion be stricken and parties be directed to file comments on a date certain after the Commission decision in the IEC 900 proceedings. No replies to the motion were received.

Applicants originally recommended that the Commission approve Pacific's AL 15395, providing access to IECs for IEC 900 intrastate interLATA service. (Applicants' Joint Reply to Responses Regarding Motion For Interim Authority To Provide 900 Services Within The State Of California, June 29, 1990). However, applicants later reversed themselves and said:

> "...the Proposed Decision also requires local exchange carriers (LECs) to file 900 access tariffs within 60 days...There is no evidence in the record on such a need for 900 access nor do the Applicants understand or support such a need. The record is replete with evidence that

the LECs now provide interstate 900 access in California today. This access is purchased out of the LECs' interstate access tariff. The Applicants are unaware of a unique need for a separate 900 access tariff. This requirement should...be deleted from the Commission's final decision." (Joint Comments of Sprint Services, AT&T, MCI, and Telesphere on the Proposed Decision of ALJ Mattson, January 14, 1991, p. 14.)

Pacific disagrees and indicates that:

"Applicants, for the first time, raise an objection to Pacific's advice letter to modify its intrastate access tariffs to provide originating access for 900 service. (Joint Comments, p. 14.) This objection makes no sense. Pacific's interstate tariffs today provide for an originating access service for interstate 900 service. Clearly, Pacific must modify its intrastate tariffs to reflect a similar service to serve carriers who offer 900 on an intrastate basis. Without such tariff authority, Pacific would have no means to allocate to the intrastate jurisdiction its costs and revenues for originating 900 access where the call is intrastate in nature." (Pacific Bell's Reply Comments on the Proposed Decision of ALJ Mattson Mailed December 10, 1990, January 22, 1991, p. 3.)

The motion was granted in part by ALJ Ruling on January 30, 1991. The comments received in the investigation are not stricken, the comment period remains open, and allowance will be made by subsequent ruling for additional comments after issuance of this decision.

N. GTEC Motion to File Reply Comments Late

GTEC filed its reply comments on January 23, 1991 along with a motion for leave to file its reply comments late. GTEC's motion is granted.

O. Consumer Action Motion to Accept Reply in Excess of Five Pages

Consumer Action filed reply comments on January 23, 1991, along with a motion to accept reply comments in excess of five pages. Consumer Action's motion is granted.

Consumer Action's comments were filed late but are received. We note above that we are "...lenient in applying strict procedures to those who come before" us. We do not expect parties to stray from strict application of our rules more than occasionally. In this case, however, no party is disadvantaged by Consumer Action's reply comments being one day late. Nonetheless, Consumer Action is warned, along with all other parties, that compliance with our rules is necessary, and exceptions are generally possible only upon a showing of good cause.

P. Comments on the Proposed Decision of the ALJ and the Commission Decision

Comments were filed by applicants, Pacific, GTEC, Consumer Action, Roseville Telephone Company, Calavaras Telephone Company, California-Oregon Telephone Co., Ducor Telephone Company, Foresthill Telephone Co., Happy Valley Telephone Company, Hornitos Telephone Company, The Ponderosa Telephone Co., The Volcano Telephone Company, and Winterhaven Telephone Company. Reply comments were filed by applicants, Pacific, GTEC, DRA, and Consumer Action.

This matter is now ready for decision. We have carefully considered the ALJ's proposed decision and each and every comment and reply comment filed by the parties.

1. Changes Made

We modify the proposed decision of the ALJ in the following ways. We increase the price limits (for programs not directed to children) to $5.00 for the first minute, $2.00 for additional minutes, and $50.00 total per program. We eliminate the requirement for applicants to provide compensation for intraLATA

traffic, and the parallel direction to negotiate this level of compensation for inclusion in access tariffs. We direct the filing of access tariffs by Pacific and GTEC, with direction on what is to be included, but eliminate the requirement for all other LECs to file access tariffs (unless they do not concur with Pacific's). We clarify the events that must occur before tariffs may become effective (both LEC access tariffs and IEC tariffs for intrastate, interLATA 900 service), and direct that no tariffs will take effect until further order by this Commission. We reduce the mailing requirement for serving the advice letters. We keep C.89-11-020 open so our order to show cause why Telesphere should not be held in contempt may proceed.

We require that IPs provide a copy of the advertising layout to applicants with their applications for service, and copies of a sample of printed, published advertisements within 30 days of operation. We change the data to be filed in monitoring reports and eliminate the requirement to file national data. We modify the requirement for the applicant or billing agent to immediately release the IP name, business address, and business telephone number to a caller, by requiring that it be provided in a reasonable amount of time. We continue to order subscription to harmful matter IPs administered by the LECs, but suspend our order in recognition of the injunction in Westpac Audiotext V. Wilk, et al., in the United States District Court for the Northern District of California. We note that PU Code § 2884 becomes inoperative on July 1, 1991, but find that the consumer protections in § 2884 are in the public interest even after July 1, 1991 and therefore continue those provisions. Further, we note that PU Code § 2884.2 becomes inoperative on July 1, 1991 and that billing and collection practices by applicants for providers of harmful matter are subject to Commission jurisdiction. Therefore, billing and collection for harmful matter IPs will be included in applicants' tariffs on and after July 1, 1991.

We do not require that the total amount due on the bill (which if unpaid will subject the subscriber to disconnection of basic service) exclude 900 charges, but require a clear statement (e.g., on the back of the bill) that nonpayment of 900 charges will not result in disconnection of basic service. We modify the dispute resolution portion of the adjustment policy to become a complaint procedure for execution in conjunction with the adjustment policy. We define the billing cycle. We delete the requirement for a full disclosure of the customer's billing rights with each bill for 900 services, but in its place require a short description (e.g., on the back of the bill) of the customer's billing rights along with an address and telephone number to lodge complaints. A full explanation of the subscriber's billing rights must be given to the subscriber upon lodging a complaint. We clarify that adjustments are unlimited, but are to be granted (beyond the waiver for the first occasion of unauthorized, inadvertent or mistaken use) only when justified. We also clarify that a subscriber may request an adjustment for any 900 charge on bills received in the last 60 days. We continue to require as part of the complaint procedure that applicant mail an explanation that sets forth the findings of the investigation, but do not require that they be separately stated findings.

We specify that automatic disconnection for inactivity is limited to interactive video or audiotext programs, not all live programs. We clarify the requirement for the IP program name, category, and/or short description on the bill is no less than one of the three items (i.e., the requirement specifies "or") and that it may be limited to available space on the current bill (e.g., ten characters for GTEC).

We will not direct blocking of access to applicant's harmful matter prefix where it is not possible, but we direct that applicants may not offer 900 services in areas where blocking to its harmful matter prefix is infeasible. We direct business

blocking as well as residential blocking. We clarify that moving a subscriber to allow blocking may be to a blocking-capable switch within a central office as well as to another central office. We also clarify that since all 900 blocking is possible if harmful matter prefix blocking is possible, and we require harmful matter prefix blocking availability before 900 service may be offered in any particular area, that all 900 blocking is therefore similarly required. This makes moot the question of whether to require an entire central office to be blocked to provide blocking to one customer rather than a more liberal adjustment policy for the customer so that all other customers may obtain 900 service. Further, we authorize applicants to charge for removing blocking.

We require advance notification, but encourage carriers to explore new technologies to enhance customer-directed control capabilities. Advance notification is to be for all subscribers, not simply residential. We clarify that LECs as billing agents are involved in the advance notification. We specify that the advance notification requirement is to be carried out by the billing agent (accumulating all 900 charges for all carriers for which the billing agent bills). We authorize Telesphere to notify its 900 customers who have already had large undisputed 900 bills in a nondisruptive way.

We allow 900 programs to include fund raising for nonprofit charities which qualify for tax exempt status under Internal Revenue Service code section 501(c)(3). We clarify that some safeguards need not be in applicant's tariff if applicant does not and will not carry certain program types. We delete the requirement that applicant and/or its billing agent connect a subscriber by conference call with an IP. We clarify the Commission's role in investigations of IPs. We clarify that applicant's responsibility to reverse charges during a past period to callers for any IP that is found to be conducting fraudulent or unlawful business is to be a reasonable effort.

We direct CACD to prepare a report at the end of one year on the status of the 900 information services industry in California. We continue to order a comprehensive consumer education campaign through bill inserts, but note that one or more consumer groups may submit a proposal to the Telecommunications Education Trust for funding a multimedia effort. We clarify that each order in this decision applies equally to each applicant, but applicants may explore joint compliance where reasonable (e.g., a joint customer education bill insert). Finally, various other minor substantive and procedural changes as well as clarifications and typographical corrections are made as needed.

2. Other Comments

We will address five of the other comments we received. First, GTEC asserts in its comments that, as the billing agent, it will be extremely costly to implement the consumer protection safeguards ordered for the IECs, and it will take two years or more before the protections can be in place. We reiterate what is already in the decision for the LECs' and IECs' benefit: the IEC must pay all reasonable costs the LECs incur in providing services to the IECs for the IECs' 900 service. We adopt GTEC testimony in this regard. While GTEC testified that it believed many safeguards under consideration are unnecessary, it indicated that if adopted "...and the LEC incurs additional costs to administer these provisions due to IEC 900 calls, the IEC should reimburse the LEC for the additional costs." (Exhibit 9, p. 8.)

If it takes the LEC two years or more to provide the necessary services, the IEC may wish to consider its options (e.g., using another billing agent, billing itself). In no event, however, may an IEC offer California intrastate 900 service without the required consumer protections.

Second, applicants object to the tariffing of IEC billing provisions and rates. DRA agrees, arguing that billing provisions and rates should be by contract and, if tariffed, would be difficult to administer. Applicants seek permission for 900 service, including a tariff of the transport rate for the call (e.g., Sprint proposes 35 cents for the initial minute and 28 cents for additional minutes for Sprint Network 900), but not the rate for billing and collection. AT&T, for example, charges 10% of the IP's charge to callers for each call made during the billing period. (Exhibit 2, Attachment 3A, item 3.A.5.) That is, when an IP charges a caller $20, AT&T charges the IP $2.00 for billing and collection in addition to the transport cost of the call (30 cents for the first minute and 25 cents for each additional minute in AT&T's proposal.

We find that tariffing all billing and collection terms, conditions, and rates is necessary for equitable and nondiscriminatory application of billing and collection. One unique aspect of 900 service from the IP's perspective is that the IEC will conduct the billing and collection. To ensure that this unique feature (which distinguishes 900 from other service) is clearly understood and applied equitably to all IPs, we will require tariffing all terms, conditions, and rates for billing and collection.

Third, parties assert that the decision is not based on the record and that solutions to concerns raised were not presented by any witness. We have carefully considered the testimony and applied the recommendations of the parties as appropriate. The Commission, however, is not limited in the exercise of its expertise and statutory authority to the strict recommendations of the parties. We may fashion our own solutions to controversies and problems as necessary to carry out our regulatory responsibilities. (Market Street R. Co. v. Railroad Commission of California, 324 U.S. 548, 560-61; City of Visalia (1969) 69 CPUC 311, 319;

Farrington v. Citizens Utilities of California (1988) 27 CPUC 2d 308; Pacific Land Corporation v. Pacific Gas and Electric Company (1988) 27 CPUC 2d 558.)

Fourth, we will not direct that applicants prefile a confidential copy of their proposed tariffs with the LECs so the LECs can prepare access tariffs. Rather, this Commission decision, along with any necessary and appropriate discussions with applicants, will be sufficient for Pacific and GTEC to determine what is needed to file access tariffs. Furthermore, Pacific and GTEC may amend their access tariffs as necessary if applicants' 900 services tariffs include provisions that could not be foreseen as a result of this decision and discussions with applicants.

Finally, applicants ask that the requirement for a tone at the end of the delayed timing period be phased in over a reasonable time period and not be mandated before 900 service can begin. We will not phase this implementation. The tone will be a statutory requirement July 1, 1991, under Senate Bill (SB) 2765. Phasing in this requirement would give applicants and IPs an insignificant amount of additional time. Phasing in the requirement would at best benefit only a subset of IPs that do not now have the equipment. As we discuss below, we find a disclosure message is a vital part of a safeguard package, and a tone to indicate to callers when the delayed timing period is over is an important component.

III. Positions of Parties and Overview of Issues

While positions on specific details differ, the parties generally support one of two positions: that the Commission should either (1) approve the applications although the terms and conditions of the proposed services will differ from Pacific's 900 service, or (2) approve the applications contingent upon all terms and conditions of service being the same for Pacific and all 900

service providers. The parties similarly align on the issues of intraLATA compensation and monitoring of safeguard effectiveness.

A. Applicants and Lo-Ad Communications

Applicants argue that their service is an add-on to already authorized interstate service (authorized by the Federal Communications Commission (FCC)). They claim that the markets for their add-on service are different than those served by Pacific. According to applicants, Pacific serves a local or regional market, while their service will appeal primarily (if not exclusively) to IPs seeking a national market. They do not seek or plan to offer a stand-alone 900 service for California only. If an IP selects their 900 service, applicants contend that the IP will have customers from around the nation.[8] Consequently, applicants argue that IPs will advertise nationally if they subscribe to an IEC carrier.

Further, most applicants believe that the terms and conditions of service need not be uniform among all LEC and IEC carriers of 900 service in California. Rather, applicants argue that as long as each carrier meets the underlying concern, any number of ways to satisfy a concern may be reasonable. Applicants contend that mechanical application of exactly equal 900 safeguards and business practices by all intrastate carriers is micromanagement and overregulation. Applicants claim excessive safeguards will result in IPs shopping for states with less safeguards, and the IPs will locate in those states. Applicants assert that they have been offering interstate 900 service for

8 MCI includes in its proposed tariff a feature called "tailored call coverage." This feature would allow the IP to block calls from one or more specific originating areas. The areas are large, and do not correspond to LATA or state boundaries. MCI is the only applicant to indicate that the IP can reduce the IP's coverage area to less than that of the entire United States.

nearly two years with reasonable safeguards--even if different than Pacific's--without significant consumer complaints. Applicants do not argue against all consumer protections, but they argue the need for flexibility in implementation. Further, applicants argue that it is not technically feasible for them to implement some safeguards that are required of Pacific. If required to enforce the same safeguards, some applicants believe they will not be able to provide intrastate service and will have to consider their options.

Lo-Ad Communications (Lo-Ad, a broad spectrum service bureau for audiotext services) argues for 900 industry self-regulation and against government overregulation. Lo-Ad supports flexible pricing, less restrictive price caps, and the safeguards proposed by the IECs. More restrictive safeguards will eliminate business and consulting 900 services, according to Lo-Ad, and make IPs consider either taking their business out-of-state or developing other marketing plans.

Applicants acknowledge their 900 service will result in their carrying some intraLATA traffic, but they oppose either paying compensation for what they term "incidental" intraLATA carriage or forming a complementary service with Pacific. Applicants agree to pay LECs whatever reasonable costs the LECs incur in providing service to the IECs. Applicants oppose a monitoring plan to the extent it is burdensome, and argue that the number of complaints received by the Commission is an adequate measure of safeguard effectiveness.

B. Pacific, GTEC, DRA, and Consumer Action

Pacific, GTEC, DRA, and Consumer Action basically all argue that whatever the safeguards, they should be applied uniformly to all carriers in California. Callers have no reasonable way to identify the carrier of a 900 call, according to this position. The caller simply seeks certain information or entertainment from an IP. The caller does not know or care if the

carrier is an LEC or IEC, they argue. Therefore, to the extent a consumer safeguard or consumer-oriented business practice makes sense for one carrier, it must make sense for all carriers, according to these parties.

Further, these parties in general argue that the competitive playing field should be level for all competitors. A level playing field requires the same safeguards and business practices, they contend. These parties argue that the markets are not distinctly different but are either the same market or largely overlap. Regardless of the perceived market differences, consumers require the same amount and type of protection, according to this argument.

Moreover, the only real issue here, these parties claim, is the use of the LEC for billing and collection. There are no services provided by the use of the 900 area code that cannot be provided by an 800 number or a regular telephone number, with the billing and collection by some other method (e.g., U.S. mail, credit card), according to this line of reasoning.

On specific safeguards, GTEC opposes advance notification[9] and price limits, supports applicants being required to utilize most of the other of Pacific's safeguards, and supports compensation for intraLATA traffic being paid to LECs. In general, Pacific, DRA, and Consumer Action support applicants' requests conditioned on their utilizing the same safeguards and business practices as Pacific, plus making payment to the LECs for intraLATA traffic and submitting the same monitoring reports as Pacific.

---

9 A safeguard wherein the telephone company notifies the caller when the total 900 charges exceed some specified amount, such as $75.

C. Overview of Issues

We must consider the following issues in reaching this decision authorizing applicants' 900 service. What is the applicants' burden of proof and what role is served by the Pacific safeguards, including D.89-02-066 and D.89-03-061. What safeguards, terms, and conditions are needed with the provision of 900 service for that service to be lawful, just, reasonable, and in the public interest. What intraLATA traffic will applicants carry in their provision of interLATA intrastate 900 service, and are either compensation or a complementary service necessary. Are the proposed transport rates reasonable and the service economically feasible. Will the LECs' costs be compensated for providing 900 services to IECs. What monitoring of applicants' 900 services is necessary. What actions are required, if any, to inform callers about the newly authorized 900 services by applicants. Finally, is Consumer Action eligible to file a compensation request for its participation in this proceeding.

While some differences remain, applicants have agreed to many of the safeguards, terms, and conditions in the Pacific 900 program. While accepting many, Sprint does not agree, however, with price limits on the amount the IP can charge, the advance notification requirement, limiting 900 billing to charity and information provided over the telephone, blocking the entire central office where individual blocking is not available, providing the IP name and address to the caller without a written request, detailed monitoring reports, nor either paying compensation or a complementary service for intraLATA calls.

AT&T primarily objects to price limits on the amount the IP can charge, advance notification at specified bill amounts, being required to follow what it calls "Pacific's 8 business practices" (although AT&T implements many on its own), detailed monitoring reports, and compensation or complementary service for intraLATA calls.

MCI disagrees with price caps (including those on children's programs), being required to follow Pacific's 8 business practices, billing in 30-second increments, advance notification, separate prefixes by program type, a requirement that a fund-raising IP must state the amount going to charity, and others, but MCI observes:

> "...there are no significant differences between MCI's proposal and that of Pacific's, in spite of Pacific's attempts to create significant differences. In fact there is only one notable difference between MCI proposed safeguards and the safeguards addressed by Pacific, price caps." (Exhibit 17, p. 16.)

Telesphere objects to price caps, an introductory message, an 18-second delay before charges may begin, separate prefixes for live versus prerecorded programs, billing in 30-second increments, advance notification, being required to follow Pacific's 8 business practices, and paying compensation or a complementary service for intraLATA carriage.

IV. Burden of Proof and Consistency Between Programs

Parties argue about the burden of proof and whether the Pacific safeguards are precedential. Applicants assert that each application must be assessed on its own merits. Parties dispute whether different carriers might reasonably have different safeguards and business practices for their 900 service. We will address those issues here.

A. Applicants' Burden of Proof

1. Sprint

Sprint has filed for a CPCN. Sprint, as applicant, has the burden of proof. Sprint must demonstrate that the public convenience and necessity require the service it proposes. (Public Utilities (PU) Code § 1001.) Sprint must prove that its proposed rates, services, and rules are just and reasonable. (PU

Code § 451). It must demonstrate that its rates or classifications in connection with the proposed service, and the rules, practices or contracts affecting such rates or classifications, are sufficient, lawful, just, reasonable, nondiscriminatory, and nonpreferential. (PU Code § 728.) Further, Sprint must demonstrate compliance with specific sections of the PU Code that deal with 900 service (e.g., §§ 2884, 2884.2, 2884.5, regarding harmful matter, complaint procedures, waiver of charges, billing and collection). In short, Sprint must demonstrate that its proposed rates and service are reasonable and in the public interest.

We will determine reasonableness and the public interest for Sprint just as we did for Pacific in D.89-02-066 and D.89-03-061. That is, we will review Sprint's application to determine if it is in compliance with the law, if the proposed service is reasonably protective of consumer interests, IPs, and the overall public (i.e., it is in the public interest), and if the rates are reasonable.

2. **AT&T**

AT&T submitted its application under Commission Rules 15 and 18. Rule 15 specifies contents for applications generally. Rule 15 requires that the application cite the statutory provision or other authority under which Commission authorization is sought. AT&T's application cites neither statutory provision nor other authority.

Rule 18 covers requirements of applications for CPCNs. AT&T indicates that it has a CPCN for intrastate interLATA telecommunications service and is not seeking to broaden its certificated authority in this application. Rather, AT&T says:

> "As a conservative approach in order to provide the Commission with complete information,...AT&T herein has provided the information required by both Rules 15 and 18..." (Application, footnote, p. 3.)

AT&T as applicant has the burden of proof. As with Sprint, AT&T has the burden to show its proposed rates and service are lawful, just, and reasonable. (PU Code §§ 451, 728, 2884, 2884.2, 2884.5.) We will use the same factors in assessing AT&T's application as we did for Pacific, as noted in D.89-02-066 and D.89-03-061. That is, we will review AT&T's application to determine if it is reasonable and in the public interest. We particularly assess whether it is in compliance with the law, if the proposed service is in the consumer, IP, and overall public interest, and if the rates are reasonable.

3. MCI

MCI filed its application under Commission Rule 15. MCI does not cite any statutory provision or other authority under which Commission authorization is sought. Nonetheless, as with Sprint and AT&T, we find that MCI as applicant has the burden of proof. MCI must demonstrate its application is lawful, just, reasonable, and in the public interest. (PU Code §§ 451, 728, 2884, 2884.2, 2884.5.) We will use the same factors for MCI as we did for Pacific, and as we do for AT&T.

4. Telesphere

Telesphere filed ALs 8 and 9 in November 1989 to avoid litigation of the jurisdictional nature of its service, even though Telesphere believes its service may be jurisdictionally interstate. We suspended those advice letters, and in C.89-11-020 instituted an investigation to determine whether the tariff sheets filed under ALs 8 and 9 are unreasonable or unlawful in any respect. In determining whether Telesphere's proposed tariffs are reasonable and lawful, we will again use the same tests we used in determining whether Pacific's proposed tariffs were reasonable and lawful, and as we use for assessing the proposals of Sprint, AT&T, and MCI. In our investigation of Telesphere's tariffs, Telesphere--as respondent--has a burden in the investigation to justify that its tariffs are neither unreasonable nor unlawful.

5. Summary

In summary, each applicant and the respondent have the burden to show that their proposed rates and service are lawful, just, reasonable, and in the public interest. These are the same tests we applied to Pacific's proposed 900 rates and service.

B. Role of Pacific's Safeguards

The ALJ indicated at the PHC that the Pacific 900 program would serve as the foundation for review of the issues in these proceedings, citing D.89-03-061. (See discussion above.) As he explained, that means arguments for a different 900 program would be considered. It also means these arguments would likely fail to the extent any party would seek to simply repeat the arguments already considered and rejected by the Commission in D.89-02-066 and D.89-03-061. The burden would be on proponents of something different to justify those differences. Equally, no party could argue the Pacific program was inviolate, but would be expected to support the Pacific program.

Applicants argue that the Pacific 900 service is the result of a settlement and by our own rules cannot be precedential. As explained in D.89-03-061, however, we followed Rule 51.7, whereby we specifically rejected a settlement. Therefore, the Pacific 900 service is not the result of a settlement agreement. To the extent we have addressed and decided issues, those decisions may be applied to similar issues in comparable tariffs.

AT&T argues that the use of the Pacific 900 program as the foundation for the Commission's consideration of AT&T's application is in error. In support, AT&T cites the "Answer of Respondent California Public Utilities Commission to Petition for Writ of Review of Telesphere Network, Inc." before the California Supreme Court (C. S016480), dated August 10, 1990. AT&T claims the Commission denied that Telesphere's tariffs are being judged against the Pacific 900 service in the Commission's answer to the Supreme Court. Further, in that answer AT&T claims the Commission

rejected the standard used by the ALJ and said no burden of proof applied to Telesphere.

AT&T's argument is moot since the Supreme Court has refused to hear the matter. Nonetheless, for clarification we offer the following.

In the answer to the Supreme Court we pointed out that in the hearing January 24, 1990 on whether to suspend Telesphere's tariffs, those tariffs were not at that time held to the Pacific standard. Further, no burden of proof was imposed on Telesphere at that time. Clearly, in the current applications and investigation a standard and burden is applied. There is no inconsistency or legal error.

Despite the fact we may use the exact safeguards and practices in Pacific's 900 service as the basis against which to test other tariffs, we do not. In these proceedings the standard is not one of requiring applicants' tariffs to mirror those of Pacific. Rather, we are holding applicants to the same standards to which we held Pacific: that their proposed rates and service be in compliance with the law, be just, reasonable, and in the public interest. But applicants' tariffs need not be a line-for-line mirror image of Pacific's. Provisions in applicants' tariffs may differ from those of Pacific as long as each tariff is lawful, just, reasonable, and in the public interest, if reasons support such differences.

C. Consistency Between 900 Programs

Applicants argue that their programs need not mirror Pacific's as long as they meet necessary consumer safeguards. Applicants argue that their proposed services are add-on to interstate services and will serve different markets. Telesphere argues for consistency between programs, however. Telesphere testifies that:

> "...the interstate nature of 900 program services dictates that individual state regulations must be consistent with each other to not only prevent consumer confusion, but

> also to avoid a trend toward 'forum shopping' by IPs seeking to locate in states with less restrictive regulations." (Exhibit 5, p. 6, emphasis in original.)

We agree consistency is desirable to prevent confusion and forum shopping. As pointed out by DRA and others, the caller is very unlikely to know which of several companies is carrying a 900 call. In fact, we see no reason why a caller would care which LEC or IEC is carrying the call as long as the quality of service between carriers is the same. The caller would care only if the carriers provide a different quality of service, such as different consumer safeguards that could result in more or less information and protection to the caller (e.g., an introductory message, adjustment policy differences). Furthermore, if any consumer protections are sensible, consumers require the same amount and type of protection for each 900 call and carrier. This may not mean exact mirror images of each safeguard applied by all carriers. But each carrier must have a safeguard that reasonably addresses each consumer protection need.

We adopted the Pacific safeguards after careful consideration. Consistency with the Pacific safeguards are desirable for just the reasons cited by Telesphere. Consistency between jurisdictions is desirable for the same reasons. We cannot, however, control the safeguards adopted by other jurisdictions. We do not consider it responsible public policy for us to be driven to adopt the safeguards in another jurisdiction just to be consistent.

Therefore, we will adopt standards that we find necessary, whether or not they are utilized in other jurisdictions. We will adopt standards that are consistent within our jurisdiction, even if they are not mirror images of each other.

V. Evaluation of Proposed 900 Service

We will now evaluate the proposed 900 services to determine whether they are lawful, just, reasonable, and in the public interest.

A. General Comments

900 services offer consumers significant new opportunities for information, conversation, and entertainment, as we noted in D.89-02-066. Benefits include access that is convenient, casual, automatic, and anonymous. These services offer new opportunities and convenience, but also impose new risks and obligations (e.g., the need to guard against unauthorized use, compulsive use, misunderstandings about the cost or content of calls, and the inability to examine the service before making the purchase since the charges accrue automatically as the service is rendered). (D.89-02-066, mimeo. pp. 36-40.) In assessing whether the proposed services are just, reasonable, and in the public interest we must balance the benefits and the risks, consistent with the law.

B. Consistency with the Law

1. Harmful Matter

a. Separate Prefix and Blocking

PU Code § 2884(b) says:

> "The commission shall require every telephone corporation which furnishes information-access telephone service to make available a separate, easily distinguishable telephone prefix number for information providers which provide messages which constitute harmful matter and for those who provide other than messages which constitute harmful matter, and to request every information provider to designate which prefix corresponds to the type of messages it proposes to provide...The commission shall require the telephone corporation to offer residential subscribers the option of deleting access [blocking] to the telephone prefix number by which messages constituting harmful matter are accessed, pursuant to subdivision (a)..."

Subdivision (a) indicates that in requiring blocking the Commission shall take "...into consideration the operational requirements of the various types of telephone equipment in use..."

MCI proposes prefix 745 for harmful matter programs. This prefix is not now loaded in MCI's switches, but has been reserved and will be made available if necessary. Sprint, AT&T, and Telesphere indicate they either do not believe harmful matter IPs will elect their service (because they will not bill and collect for them) or they will not carry harmful matter IPs. If they ever do carry a harmful matter IP, however, they will comply with the law. Applicants indicate blocking should, in general, be provided by the LEC.

Sprint testifies that it will cost approximately $340,000 for it to establish a new NXX prefix for harmful matter programs. Since Sprint does not intend to carry harmful matter IPs, Sprint argues the Commission should not require it to spend this money needlessly. If Sprint ever does carry a harmful matter IP, Sprint will obtain a separate prefix.

AT&T indicates it will not now set aside a separate prefix. AT&T argues a separate prefix for harmful matter will require the separation of 10,000 numbers per carrier, or 40,000 for the 4 applicants, which no carrier intends to use, and no IPs will select. AT&T asserts this is a terrible waste of resources for an academic exercise and should not be ordered.

We find that the PU Code requires us to in turn require every telephone corporation which provides 900 service to make available a separate, easily distinguishable telephone prefix for IPs which provide harmful matter messages that is different than the prefix(es) used by IPs providing other than harmful matter messages. Therefore, we require each applicant to obtain a separate prefix for harmful matter IPs, and state this prefix in their tariff, before their interLATA 900 service may begin in California.

We find that the PU Code requires us to in turn require every telephone corporation to offer residential subscribers the option of deleting access to the telephone prefix by which harmful matter messages are accessed, taking into consideration the operational requirements of the various types of telephone equipment in use throughout the state. As applicants observe, deletion of access to harmful matter prefixes is most effective if done by each LEC through which a subscriber may reach an IP carried by applicant. Therefore, we will require each applicant to arrange with each LEC from which applicant's 900 service may be reached to provide residential subscribers the option of deleting access to applicant's harmful matter prefix, and so state in applicant's tariff.

We will similarly direct this result for nonresidential (business) subscribers. We found the need to block business subscribers in D.89-02-066 and have no information to reach a contrary conclusion here.

GTEC testified that at this time it can only provide an option to block all 900 or none, but did not explain what limitations or cost, if any, there may be in providing a harmful matter blocking option. GTEC reiterates in its comments on the proposed decision of the ALJ that to replace or enhance the switching network components to do such blocking would be extremely costly and take time, but neither provides data nor makes an offer of proof. We direct applicants to arrange with each LEC to provide the deletion of access option for residential subscribers to harmful matter IPs. If operational requirements of the various types of telephone equipment prevent this option, applicants will need to present the information, data, cost, and other relevant factors to support that contention. Until such time as applicants present information to demonstrate infeasibility in consideration of the operational requirements of the equipment and we so find,

applicants shall not offer 900 service where such blocking is not available.

Finally, the PU code requires that we determine and implement a method by which a telephone corporation shall be recompensed for the expenses of providing this deletion of access option. That is before us in I.85-04-047, and we will determine blocking cost recovery there.

b. Subscription

PU Code § 2884.5 requires that access to harmful matter IPs be furnished on a subscription basis only. Applicants all indicate that they will require subscription if and when they have a harmful matter prefix and/or a harmful matter IP.

MCI indicates, however, that it can implement subscription to its 745 prefix only for those callers presubscribed to MCI. MCI testifies that it does not believe its own ability to require subscription for harmful matter complies with the goals of § 2884.5, since those callers represent only a portion of the potential calling public. No other applicant indicates its own ability to block is any different than MCI's. MCI proposes to comply by asking the LECs to add 745 to their harmful matter prefixes and block access as they would to their own designated prefixes.

The law requires access to harmful matter IPs by subscription. IECs cannot block access to their harmful matter prefix except for callers that are presubscribed to their long distance company. The ALJ proposed that we require each applicant contract with each LEC from which each applicant's 900 service may be reached by end-users to provide subscription to applicant's harmful matter prefix. The ALJ proposed that each applicant's tariff must state that access to harmful matter IPs is available only by subscription (consistent with the applicant's agreement with the LEC) before we can find applicant's proposed 900 service complies with the law.

Comments on the proposed decision of the ALJ suggest that the IP should be responsible for subscription, not the IEC or LEC. Pacific says that its tariff imposes the subscription obligation on the IP and that Pacific cannot and does not offer to arrange subscription on behalf of the IP. Pacific asserts it is not possible to selectively unblock lines to specific 900 numbers in many types of switches, and it would be exorbitantly and prohibitively expensive to do so.

We note that the constitutionality of the subscription statute (PU Code $ 2884.5) is before the United States District Court for the Northern District of California in WestPac Audiotext v. Wilk, et al., Case No. 89-2962 FMS. If the court finds the subscription statute unconstitutional, our requirement for subscription is moot.

On the other hand, if the statute is determined constitutional, we find that the law does not indicate who is responsible for the subscription. It may be the IEC, the LEC or the IP. Since IEC subscription would not be sufficiently effective, as we indicate above, either the LEC or IP must require subscription. We believe the LEC can and should perform subscription. Therefore, we will adopt the recommendation of the ALJ, whereby each applicant must arrange with each LEC to provide subscription to applicant's harmful matter prefix.

We therefore direct subscription through the LEC, but suspend that order in recognition of the injunction issued in Westpac. IECs may file tariffs without a requirement for subscription. If the injunction on Pacific is lifted, we will issue a further order to direct IECs to add subscription to their tariffs. We direct Pacific to submit a letter to the Executive Director (with a copy to the ALJ in I.90-12-040) within five days of any further order issued in Westpac finding the subscription statue constitutional.

We note that applicants and LECs had the opportunity at hearing to provide evidence on the cost and time to implement a separate prefix, blocking, and subscription for harmful matter IPs, but did not do so. Appeals to this requirement must include an offer of proof if further hearing is requested.

c. Billing and Collection

PU Code § 2884.2(a) provides that billing and collection for harmful matter IPs are not subject to the jurisdiction and control of the Commission but are a matter for contractual arrangement between the telephone corporation and the IP. PU Code § 2884.2(d) indicates that subdivision (a) applies only to information access furnished within a LATA.

Sprint indicates that it will not allow harmful matter IPs, so billing and collection are moot. AT&T indicates it will not bill and collect for harmful matter IPs. AT&T proposes we approve AT&T billing and collection for intrastate interLATA service consistent with AT&T's interstate non-tariffed Premium Billing service (i.e., that it be non-tariffed). As a non-tariffed service, AT&T may then determine eligibility to use Premium Billing. AT&T indicates Premium Billing need not, and will not, be offered to all IPs (e.g., harmful matter IPs).

AT&T argues that a literal reading of PU Code §§ 2884.2 (a) and (d) gives the Commission jurisdiction over billing and collection for interLATA intrastate harmful matter IPs. But AT&T points out the intent of the law was to give utilities more flexibility in dealing with harmful matter IPs. It should not be read to preclude the Commission from using its own judgment in determining the extent of regulation or regulatory forbearance to be applied, according to AT&T. AT&T points out the Commission has chosen regulatory forbearance in regulating some or all of the rates, tariffs, and practices of LECs, AT&T, non-dominant IECs (NDIECs), radio common carriers, and cellular carriers.

MCI indicates it will provide billing and collection if the IP program meets LEC billing requirements. Telesphere testifies that if it is required to carry harmful matter IPs, it will offer billing and collection only on a contractual basis, not by tariff.

We find that sections 2884.2 (a) and (d) could be read together to suggest that the Commission has jurisdiction over billing and collection for intrastate interLATA harmful matter IPs. Sections 2884.2 (a) and (d), however, were passed by the legislature to protect children. As we said in D.89-02-066, "the state's interest in protecting minors from harmful matter is quite compelling." (31 CPUC 2d 118, 135.) We see no distinction in protecting children between whether the harmful matter IP is being carried intraLATA or interLATA which would justify disparate treatment. Therefore, the billing and collection of harmful matter IPs will be a matter for contractual arrangement between applicant and the IP (consistent with our treatment of LEC billing and collection for harmful matter IPs). We note that the Westpac court has enjoined PU Code $ 2884.2 with respect to Pacific and GTEC. Further, however, we note $ 2884.2 becomes inoperative July 1, 1991, and is repealed as of January 1, 1992. Therefore, we direct applicants' tariffs to include billing and collection terms, conditions and rates for harmful matter IPs effective July 1, 1991.

d. Summary

In summary, to be in compliance with these portions of the law, each applicant's tariff must do the following:

1. The tariff shall define the contents of one specific 900 prefix (NXX) to contain only messages or services which contain harmful matter. All other 900 programs will be placed on one or more other prefixes. Each applicant must arrange with each LEC from which each applicant's 900 service may be reached by subscribers to provide subscribers the system to block access to harmful matter IPs. Each applicant must include in its tariff that such blocking is

available from the LEC (consistent with the applicant's agreement with the LEC).

2. The tariff shall not apply to the billing and collection of services which contain harmful matter until July 1, 1991. Billing and collection for harmful matter services are a matter for contractual arrangement between the telephone corporation and the IP until July 1, 1991, after which it will be included in applicant's tariff.

2. Disclosure Message and Delay Before Billing Begins

a. SB 2765, Disclosure Messages and Billing Delay Periods

SB 2765 (Killea) adds PU Code § 2889. In adding § 2889 the legislature finds that certain IPs are misleading consumers. The legislature seeks to ensure that users of IPs are protected from deceptive practices. Section 2889 requires that an IP engaged in furnishing an audiotext program shall provide a (1) delayed timing of information charges, and (2) price disclosure message. The delayed timing period shall be a minimum of 12 seconds. During this period the IP shall inform the caller of:

(1) the name of the program;

(2) the information charge for the call;

(3) the date the information was recorded, if the information is a recorded message; and

(4) that if the caller disconnects within the delayed timing period, there will be no charge for the call.

Further, this section provides that at least three seconds shall be allowed at the end of the message within the delayed timing period for the consumer to hang up without being charged, and that the IP shall provide a tone to indicate the end of the delayed timing period. The section does not apply to audiotext programs with restricted access via personal

identification number code or special password. The section becomes effective July 1, 1991.

A disclosure message has been one of the most contentious issues in this proceeding. None of the original applications required the IP to include a disclosure message for all IP programs. AT&T and MCI, in reply to the original protests, agreed to require a disclosure message, but indicated a need to explore the technical feasibility of a billing delay. Applicants' joint motion for interim authority (June 6, 1990) provided that all four applicants would require an introductory message and a delay before charges would begin. They noted in the joint motion, however, they might argue against a disclosure message in the general proceeding.

At hearing, those opposed to the disclosure message basically argued that advertising guidelines (e.g., requiring the price to be placed prominently in the advertisement) along with a reasonable adjustment policy are sufficient safeguards. A disclosure message would be unnecessary and excessive given the other safeguards, they contend. They point to successful interstate 900 operation with minimal complaints even though a disclosure message is not required of IP's carried interstate.

At the conclusion of hearing Sprint agrees to an introductory message for all children's programs, all general audience programs priced above $5 per minute or $20 per call, and delayed billing for the longer of 6 seconds or the introductory message. AT&T agrees to an introductory message and delayed billing for all IPs, but suggests that calls below $2 per call be exempted. MCI agrees to a disclosure message and a delayed billing for all IPs. Telesphere agrees to an introductory message for all Group Access Bridging (GAB) programs and an 18-second billing delay for GAB programs, but no others.

We currently require of Pacific's 900 service that all IPs have a disclosure message that includes at least:

(1) the name of the program;

(2) that minors should seek parental permission (if the program is directed at minors);

(3) that minors should hang up (if the program is adult in nature); and

(4) the cost of the call.

The requirement for a disclosure message and billing delay will be statutory effective July 1, 1991. We see no reason to authorize applicants' 900 service with this safeguard postponed. Those applicants not wanting this safeguard did not argue they needed more time, only that other safeguards are sufficient. Neither did any party arguing for or against disclosure messages make any distinction between audiotext or any other type of IP.

We believe that an introductory message is a vital safeguard. A 900 call is a commercial transaction. Consumers have the right to know every time they consider transacting (or in fact do transact) business with an IP that they have reached the IP they intended and what the cost will be. A disclosure message protects callers by providing basic information that promotes an informed decision whether to transact business with the IP. It provides current information, as opposed to relying on print advertising that may be out of date (e.g., the price of the call may have changed if the caller is relying on an "old" ad). It protects consumers who may get the 900 number secondhand. It protects illiterate or functionally illiterate callers.

We will require applicants to include a disclosure message and a minimum of a 12-second delay before charges may begin, for all IP programs. Charges may not begin before at least three seconds have passed after the end of the disclosure message, to allow a reasonable time for the caller to hang up before charges begin. The IP must provide a tone to indicate the end of the delayed timing period. These requirements will not apply to

audiotext programs with restricted access via personal identification number code or special password.

The disclosure message shall contain at least the following:

(1) the name of the program;

(2) the information charge and billing increment for the call;

(3) the date the information was recorded, if the information is a recorded message;

(4) that if the caller disconnects within the delayed timing period, there will be no charges for the call;

(5) that minors must seek parental permission (if the program is directed at minors);

(6) that the cost of the call will be on the parent's telephone bill (if the program is directed at minors);

(7) that minors should hang up if the program is adult in nature; and

(8) disclose any additional charges that the consumer must incur to get the full information or service.

We add to the disclosure information of SB 2765 for the following reasons. As we explain later in this decision, unless told the caller has no ability to inherently know the billing increment for the call. Particularly for what may be expensive calls, the caller needs to know the billing increment in order to make an informed decision of which carrier and IP to choose in a competitive environment. This competition we intend to maintain and foster.

Consistent with our findings for the Pacific 900 program, minors need to be warned to seek parental permission. MCI adopted the Children's Advertising Review Unit's (CARU) proposed guidelines, and AT&T's guidelines were developed with input from

the CARU.[10] Those guidelines include a warning to seek parental permission. We find this is a necessary protection for children.

Further, we find that the message to obtain parental permission shall state "must" rather than "should." This message needs to be emphatic, and not suggest to the child that it is discretionary. In answering questions of the ALJ, Sprint agrees with the message being emphatic. The Pacific 900 tariff requires that all communication directed to minors state the child must have parental permission. (Rule 9.5.3.C.2.c.(7).) The CARU proposed guidelines use "must":

> "And, instead of 'Ask your parent's permission,' the audio language should be simplified and state rather than ask that, 'Your mom or dad must say it's okay before you call.'" (Exhibit 1, Attachment C, item 3 to NAD Case Report; emphasis added.)

Similarly, we direct applicants to require IPs to inform minors that the cost of the call will be on the parent's telephone bill. A rebellious child may make a call to an IP, but may think twice when it is made clear before charges begin that the parent will certainly find out because it will be on the parent's telephone bill. In answering questions of the ALJ, Sprint agrees.

Programs that are adult in nature (whether harmful matter or not) must have a warning to minors to hang up. This is in the Pacific 900 program. No party argued against this specific provision. We require below that each applicant's tariff include a complaint procedure and adjustment policy.

---

10 The CARU is an organization comprised of Better Business Bureau members, child psychologists, and other concerned professionals. (AT&T application, October 6, 1989, p. 1 of attachment to Attachment E.)

Finally, we find below that cross-promotions must include the price of the program being promoted. This is simply truthful advertising. An introductory message for a program that has a charge, but for which additional charges apply for the caller to get the full benefit, is similar to cross-promotion. We find that the IP must be truthful to the caller to give the caller the minimum necessary price information to make an informed decision before beginning to incur any cost. That information must be in any cross-promotions and in all introductory messages (e.g., not only that a call to an IP may cost $2 per minute, but that it will cost the caller $49.95 to call another 900 number for more information and/or a $300 minimum deposit to secure the service, such as a credit card).

We note that if the disclosure message and 3 second delay take longer than 12 seconds, an IP may be inclined to record the disclosure message at high speed. In no case may the disclosure message be inaudible or incomprehensible and comply with our disclosure message requirement.

Conversely, some IPs may be inclined to make the disclosure message excessively long. This might be true since the IP is paid from the time the call is connected (including the disclosure and delayed billing time) when the caller stays on the line past the delayed billing period. That is why we limit Pacific's 900 delayed timing period to no more than 18 seconds. We will not set a maximum time for the delayed timing period here given we require additional information be disclosed, and we have no information and data on what is a reasonable maximum delayed timing period. Nonetheless, we will be watchful of this area, and will require applicants to file data on the delayed timing period that is used by their IPs.

b. Disclosure Message Override

Technology exists to allow callers to bypass the introductory message (e.g., press the star button and the message skips directly to another part of the program). Sprint indicates it will require an introductory message override to be disabled during a period before and after the IP changes the price of the call. AT&T and MCI indicate that they will not refuse to allow an IP to install an override feature, but an override and disabling of the override is an individual company business practice and should not be decided by this Commission. Telesphere agrees that if an introductory message is required, a disabling of the override is appropriate during price changes.

SB 276 requires a disclosure message and a billing delay for audiotext IPs. It neither specifically provides for nor prohibits an avoidance (override) of the disclosure message and billing delay. It is in the public interest to allow informed callers to avoid the disclosure message and billing delay. This is so because the caller is charged from the time the call is connected when the delayed timing period is exceeded. Repeat calls to an IP for current information (e.g., stock market data) would burden an informed caller with charges for a disclosure message and billing delay with each call.

We will not allow an override to be offered to callers in the disclosure message itself, since we find that the caller must hear the disclosure information at least once to be informed and to comply with PU Code § 2889. However, the IP may provide information at the end of the program on how to avoid the disclosure message for future calls.

Because our allowing an override is predicated on the caller being informed, we will require the disclosure message override to be disabled when the price is changed. This disabling of the override must be for a period no less than 5 days before, and 15 days after the price change.

3. Complaint Procedure and Adjustment Policy

PU Code § 2884(c) provides that the Commission shall require telephone corporations to have a complaint procedure, which shall include provision of a waiver of certain or all charges for IP services for the first occasion of inadvertent or mistaken use. Applicants all testify that they have complaint procedures and authorize their billing agents to waive charges for the first inadvertent or mistaken use. AT&T's and MCI's proposed tariffs do not contain this provision. We require below that each applicant's tariff include a complaint procedure and adjustment policy.

4. Blocking

a. To all IPs

PU Code § 2884 (a) requires us to require telephone corporations to provide residential customers an option to block access to all 900 providers, taking into consideration the operational requirements of various types of telephone equipment. (Blocking to harmful matter IPs was discussed above.) Applicants indicate this option is available--or should be made available--through the LEC. Some applicants can individually block subscribers to their individual company, but that denies access to only a subset of potential callers. No party argued against LECs performing this delection of access option. GTEC can block access to all 900 services.

We agree that blocking should be provided by the LEC for it to be meaningful. Therefore, we will require applicant to arrange with each LEC from which applicant's 900 service may be reached by subscribers to provide residential subscribers the option to block access to all IPs. Each applicant must include in its tariff that such blocking is available from the LEC, consistent with applicant's agreement with the LEC.

Section 2884(a) requires the blocking to be at no charge to the residential customer, and for the Commission to determine cost recovery for the blocking. This is before us in I.85-04-047, and we will determine blocking cost recovery there.

b. If Central Office Blocking is Unavailable

AT&T indicates that if blocking is not available at a central office, AT&T will not offer 900 service unless (1) blocking can be provided from another end-office from which the customer may be served, or (2) two additional adjustments for inadvertent, mistaken or unauthorized use are available. MCI supports the LEC policy of moving the end-user to another central office from which blocking can be provided. Telesphere offers its own blocking upon customer request for customers served by central offices without blocking capabilities.

Sprint argues that central office blocking is not in the public interest. That is, if a customer who desires blocking cannot be blocked, the decision must be made to delete access for all callers through that central office or no callers. Sprint argues that blocking all customers is a broadbrush approach which denies access to those who want 900 service. The benefits of access outweigh the problems, which can be readily corrected through Sprint's one-time adjustment policy, according to Sprint. Sprint currently offers interstate 900 services to California exchanges which do not have end-user blocking capabilities and has not received any significant adverse customer reaction.

Consumer Action argues that blocking is a vital part of any set of consumer safeguards. Consumer Action asserts that two additional adjustments are not sufficient to protect individual consumers. Unlimited refunds are the only acceptable alternative, according to Consumer Action.

We find that blocking is a vital part of any set of consumer safeguards. We direct above that 900 service cannot be provided in any area in which blocking to harmful matter prefixes is not possible. Whether 900 service may then be offered to any area without central office blocking to all 900 numbers becomes moot. It is moot because there are no areas where harmful matter

blocking is possible and central office blocking to all 900 numbers is not. Therefore, we reject applicants' arguments that it is in the public interest to allow 900 service in an area where central office blocking to all 900 numbers is not available, whether applicant offers additional adjustments or not.

Applicants are not authorized to provide 900 service in any area in which subsribers may not be blocked. The blocking requirement may be met by moving any subscriber who desires blocking to another central office that is blocking-capable, as long as all such customers can be accomodated. Moving a subscriber to a blocking-capable switch within a central office may be a substitute for moving the subscriber to another central office. Consistent with PU Code 2884(a), this is to be done for residential subscribers and without cost to the customer being moved. Further, as we order for Pacific, there will similarly be no charge to move a business customer.

c. Nonresidential Blocking

We direct the availability of blocking nonresidential (business) subscribers as well as residential subscribers. We found the need for business blocking in D.89-02-066, and have no information to reach a contrary conclusion here. As we said in D.89-02-066:

> "the rationale that customers who have not requested a service should not bear the cost of refusing the service applies with equal persuasiveness to blocking of business...phones." (31 CPUC 2d 118, 154.)

Also as we found in D.89-02-066, we will not require nonresidential blocking for free. We will allow nonresidential customers to be assessed a small charge for initiating blocking as a reasonable balance between requiring nonresidential customers to bear the full cost of blocking and the policy in D.88-03-042 that would place the cost on the IP. We will allow a charge of $1.00 per line when the subscriber makes the request timely (when

economies of scale let the carrier block the line at the lowest possible cost). We will allow a charge of $15.00 per line at other times. Consistent with the policy in D.89-02-066, the $1.00 per line charge should be allowed for at least 60 days from its first being announced, and it must be announced as part of the bill insert with the customer education campaign explained later in this decision (see "Implementation").

d. Charge to Remove Blocking

Blocking is to be provided free to residential customers, and at either $1.00 or $15.00 per line for business customers. We authorize applicants to assess a charge to remove blocking of $5.00 for residential customers and $15.00 per line for business customers, unless the utility had initiated the blocking. This is consistent with the level of charges authorized for Pacific, and will provide a small incentive for subscribers to avoid needless reversals of their blocking decision.

5. Caller Identification Blocking

PU Code § 2893 requires that callers must have the right without charge to withhold their telephone number, on an individual basis, from the telephone instrument of the individual receiving the call placed by the caller. This section does not apply, however, to 900 service until the telephone corporation develops the technological capability to comply, as determined by the Commission.

Applicants all indicate that either they do not offer caller identification, or they will comply when the blocking technology is available. No party claimed that the blocking technology is available and not being used. Therefore, we find that the applicants are in compliance with this section of the code. Applicants' tariffs do not all contain language indicating such compliance, however, but once the tariffs contain this language they will be in compliance.

6. PU Code Section 2884

We note that PU Code § 2884 becomes inoperative on July 1, 1991 and is repealed January 1, 1992. Section 2884 provides, among other things, for the option of free residential blocking to 900 services, a separate prefix for harmful matter programs, an option for free residential blocking to harmful matter prefixes, that the Commission direct a method for LEC and IEC cost recovery for blocking, and a complaint procedure which includes a waiver for the first occasion of inadvertent or mistaken use. To the extent we order these and any other safeguards addressed by § 2884 in this decision, we order these safeguards to be effective not only until July 1, 1991, but after July 1, 1991 as well. We find these safeguards are in the public interest and should not expire.

C. Service in the Public Interest

1. Overview

Applicants testified that they monitor the advertising and programs of their IPs.[11] Each applicant testified that it does not now carry harmful matter IPs.

---

11 Sprint, for example, enforces its own advertising guidelines. Sprint reviews IP advertising and asks IPs to bring noncomplying advertising into compliance or terminates the IP's service. Sprint monitors all programs on a daily or weekly basis to ensure IPs are providing information consistent with Sprint standards. IPs not in compliance are terminated if they fail to comply.

AT&T reviews IP ads with the application for service from AT&T, and then on a random sample basis thereafter. IPs are warned to bring noncomplying ads into compliance with AT&T requirements and are terminated for failure to do so.

Telesphere reviews IP ads when the IP applies for service, upon complaint, and on a continuous random sample basis. Telesphere monitors all of its 1,400 to 1,500 IPs for technical factors (e.g., transmission quality) as well as content on an average of every other day. IPs in violation are warned and terminated if they do not comply.

Applicants in general do not believe they have the primary responsibility to ensure that advertising and programs are in compliance.

Applicants investigated certain IPs at the direction of the ALJ, and filed exhibits after the close of hearing on these investigations. From these exhibits we conclude that it is questionable any applicant can provide 900 service in a manner consistent with the public interest. For example, we question whether (1) applicants can effectively enforce their own standards, (2) applicants have an effective process for investigating and responding to complaints, and (3) AT&T and MCI will cooperate with efforts of other agencies to monitor and enforce consumer protection laws and all relevant laws, regulations, tariffs, and rules.

Applicants have the burden to prove they can and will provide 900 services in the public interest. We conclude applicant's proposals are not in the public interest unless conditioned as we do below. Because applicants' investigations of certain IPs in part lead us to this conclusion, we first discuss examples of these investigations before addressing specific safeguards below (e.g., information charges, advance notification).

a. Specific Investigations of Certain IPs

Applicants were asked to provide material in three areas. First, they were each asked to provide a transcript and advertising of an IP program they are proud to carry that is representative of the type of programming they seek to carry as a result of these proceedings.

Second, applicants were directed to investigate between two and five potentially problem IPs (Sprint five; AT&T three; MCI three; Telesphere two). Applicants were directed to provide a copy of the advertising, transcript or tape, and any catalogue or brochure that accompanies the program, the date the program was terminated if terminated, and, if terminated, the status of payments due to, or chargebacks due from, the IP.

Third, because each applicant testified that it monitors the advertising and programs of its IPs, and none subscribe nor carry harmful matter IPs, each applicant was asked to investigate one applicant-specific 900 number that may be carrying harmful matter. If the IP is carrying harmful matter, applicant was asked to report its position on that, and what they are doing. If not, applicant was asked to report how management determined from the IP's original application that it was not carrying harmful matter and what applicant's current position is based on any routine investigation or as a result of the investigation ordered by the ALJ. Further, each applicant was asked to provide a copy of the latest advertising available to applicant for the IP in question.

b. Sprint

Sprint investigated five potentially problem IPs, and a sixth that may be carrying harmful matter. Sprint reports that four of the five potential problem numbers were in violation of Sprint's advertising guidelines. These IPs were notified to bring their advertising into compliance and forward a copy of the new advertising to Sprint. Sprint did not indicate that it terminated the program until the advertising was brought into compliance. Rather, Sprint allowed the programs to continue.

Sprint testifies that it uses "good business sense and our own integrity" to determine when a program is objectionable, misleading or harmful in any way. (Tr. 2:132.) One of these five IPs advertises exclusively on matchbook covers. Sprint indicates that a copy of the current ad is not available, but the IP indicates that the current matchbooks do not meet Sprint's April 6, 1990 advertising guidelines. The next printing of matchbook covers will include the necessary information (e.g., that additional charges apply beyond the cost of the call). Sprint does not indicate how long it may be before the next printing.

We do not know what the ad promises since the ad is unavailable. The number, however, is 900-230-CASH, suggesting it has to do with money. The program transcript shows that the introduction says "You are about to receive information on how to receive loans and major credit cards regardless of your past credit history." It appears we will get information on how to get loans and major credit cards. The program then covers four areas. It first identifies one bank to contact for an application. We do not know specifically what the application is for since the the transcript indicates the program is unclear. Sprint does not indicate that it contacted the IP to require the IP make the program audible.

Second, it promotes a home-based multi-level business marketing opportunity. For $45 the caller can become an independent distributor of life extension nutritional products. The caller is referred to a regular toll number in area code 212 for more information. We are struck that the caller is paying to get loan and major credit card information but has now paid to hear something different.

Third, the IP provides information on obtaining loans for $1 or less for low-income families, referring the caller to the address of the U.S. Department of Housing and Urban Development. This seems to relate at least in part to the promise in the introductory message.

Finally, the program discusses how to adopt a horse by writing to the U.S. Department of Interior. We are stuck again by the fact the caller is being charged but not getting information

about loans or major credit cards.[12] The program ends by wishing the caller "Good Luck."

We do not make a decision about the merits of the information vended by this IP. We are concerned, however, that Sprint, as the carrier, seems to believe this program is providing what the introductory message promises. The caller may be paying per minute for information about a home-marketing business and how to adopt a horse, neither of which have to do with getting a loan or a major credit card. Even if the caller is not being charged per minute, the information is not consistent with the promise. Moreover, Sprint allows this IP to vend its service even when the program is inaudible.

c. AT&T

AT&T investigated three potentially problem IPs and one that may be carrying harmful matter. One IP is a loan/credit program. AT&T's witness Miller reported that he "...didn't realize a real value from this particular program," but that none of the safeguards advanced in this proceeding other than a liberal adjustment policy would protect callers. (Tr. 3:313.) Some callers may get value from this program, according to Miller.

The ALJ asked AT&T to provide a copy of the advertising and transcript. AT&T did not provide a copy of the advertising. Further, AT&T indicated that the IP refused to provide a complete transcript of its program for introduction into this record, and objects to a recording of the program being introduced. AT&T's Legal Department determined that it is inappropriate to offer a recording over the objections of the IP.

---

12 Even if the program is not charging by the minute, half of the program (two out of four items) is not what the program professes to vend.

A second number AT&T was ordered to investigate is now disconnected. AT&T did not provide a copy of the transcript or most recent advertising from the program when it was operating, nor any catalogues or brochures that accompanied the program. Nor did AT&T report the date the program was terminated. Nor did AT&T report the status of payments due to, or chargebacks due from, the IP.

AT&T was asked to investigate a number that may be carrying harmful matter. AT&T did not report on its management review process upon the IPs application, as directed. AT&T reported on its current investigation and determined it is not carrying harmful matter. AT&T did not provide a copy of an actual printed advertisement, even though it successfully understood the request to do so in other cases.

d. MCI

One of four numbers investigated by MCI is an IP promising to provide a detailed informational guide on how to obtain substantial refunds from certain retail finance contracts and mortgages. The IP asks the caller to leave his or her name and address to receive the guide. MCI was directed by the ALJ to provide a copy of the ad, a transcript, and any follow-up material sent by the IP. MCI indicated they would do so if they could obtain permission from the IP. MCI filed a transcript and copy of the ad, but not the guide. We assume the IP did not give permission.

MCI failed to provide a copy of the advertisement for a second operational number, although MCI was able to do so for the number of which it is proud. In the alternative, if the material submitted on this number is an ad, it is very confusing.

A third number MCI was ordered to investigate is now disconnected. MCI did not provide a copy of the transcript or most recent advertising from the program when it was operating, nor any catalogues or brochures that accompanied the program. Nor did MCI

report the date the program was terminated. Nor did MCI report the status of payments due to, or chargebacks due from, the IP. MCI indicated only that since it was terminated, "...MCI has not provided a separate transcript for this number as part of Exhibit 39."

MCI was asked to investigate a possible harmful matter provider. MCI management did not find the IP's application to be for the vending of harmful matter. MCI concludes the same upon its further investigation.

MCI did not provide a copy of an actual printed advertisement. MCI did provide the language for a sample ad, which indicates in relevant part:

> "Do you have a secret? (Visual about...darkened liaisons between two lovers...)...Call 'Deep Dark Secrets' and hear all the intimate details about what America is whispering about. To hear the secrets of men, call 1 900 555 HUSH. To hear the secrets of women, call 1 900 555 HUSH." (Exhibit 39A.)

The number MCI was directed to investigate was 900-988-4874. The advertisement is for 900-555-HUSH. It is not clear if the ad MCI provided is really for the number they were ordered to review or is actually the number it claims to be.

e. Telesphere

Telesphere found no problem with the program of the first of three IPs it investigated, but did find a problem with the ad. The ad failed to reference an additional charge of $30.00 beyond the $49.95 cost of the call which must be incurred to obtain a credit card from the IP. The $30.00 is to cover the cost of a "Gold Card" and a catalogue from which the caller may buy items on credit using the gold card. Telesphere notified the IP that the program would be terminated until the advertisements were changed to be consistent with the script. The IP complied, and Telesphere reports the line has been reinstated.

A copy of the revised ad is attached as Attachment B. The reference to the $30.00 is: "$30 Cat Fee." It is too small to be readable in the actual reproduction of the ad submitted by Telesphere as part of Exhibit 40. Even if a consumer may read the $30 cat fee, we do not know what a "cat fee" is. We fail to see how this ad is forthright to consumers.

Telesphere reported on a second IP. The IP number is 900-USA-RICH. Telesphere indicates the line was terminated on August 2, 1990. According to Telesphere:

> "...it was apparent that this IP was not providing any useful information for the $2.00/min. that was being charged. The IP has since provided Telesphere with new scripts. This program remains under review." (Exhibit 40.)

Telesphere has a screening process when an IP applies for service, and an ongoing monitoring program. We wonder how this IP was provided service if Telesphere's screening and monitoring is adequate.

Telesphere provided a copy of the ad, the old script and the revised script. We also note that this IP requires callers to incur another $29.95 to take advantage of certain programs. The $29.95 extra cost is not contained in the advertisement.

Telesphere was ordered to investigate a potentially harmful matter IP. Telesphere did not report on their management's initial review of the IP's application, as directed. Telesphere reports that its current investigation revealed the number is not vending harmful matter. Telesphere indicates:

> "Although Telesphere does not believe this program contained harmful matter, consistent with Telesphere's high programming standards, Telesphere notified the information provider that its program would be temporarily terminated pending modification of its script to conform to Telesphere's guidelines. The script was changed to the satisfaction of Telesphere and the program is operational." (Exhibit 40A.)

Telesphere provided no further explanation. For example, we do not know how Telesphere's standards vary from those contained in Telesphere's reference to the determination of harmful matter (California Penal Code § 313). If the program was not vending harmful matter, we do not understand what led Telesphere to exercise its ultimate power: to terminate the IP until its script was changed. Further, Telesphere did not provide a copy of the advertising.

f. Conclusions

Applicants were requested to conduct specific investigations. Applicants failed to comply. Given applicants failure to follow directions under the scrutiny of a public forum, we have little confidence in their capability to respond meaningfully to individual consumer complaints.

What is the responsibility of a utility in its provision of 900 services? Is it merely an incidental agent of the IP, with no responsibility for the acts of the IP? Or does applicant utility have a greater responsibility to the consumer to ensure that the programs for which it bills and collects are lawful, truthful, and offer fair value for the dollar? We hold utilities to high business standards because of their unique position in society. We will require applicants to hold businesses for which they will provide billing and collection using their public utility bill to the same high standards.

Applicants urge the Commission to defer to their "good business sense and integrity." Unfortunately, applicants have failed to demonstrate on this record that they are capable of exercising good business sense and integrity in the provision of 900 services. In almost each instance where we probed this business acumen (by asking simple questions about applicants' exercise of business judgment), applicants provided incomplete or evasive answers. Where applicants did respond, the response failed to demonstrate good judgment or integrity.

For example, Sprint found programs to violate its advertising guidelines. Sprint requested that the violations be corrected, but Sprint also allowed the programs to continue indefinitely under the noncomplying advertisement.

As another example, Telesphere found an ad to violate its guidelines. Telesphere directed the IP to prepare a new ad and disconnected the service until the ad was corrected. However, when the new ad was issued, it provided disclosure of the additional costs in print too small to read and in vague language. Telesphere found this ad in compliance with its guidelines.

AT&T and MCI have failed to cooperate with the Commission in our investigation of specific programs. They have thus failed to meet their burden of proof to demonstrate that they are capable of investigating or correcting potentially fraudulent or unlawful programs.

Applicants have the burden of proof to demonstrate that the services they seek authority to provide will be provided in the public interest. We conclude applicants' proposals are not in the public interest unless conditioned as we do below.

2. Information Charges

This was another of the most contentious issues in these proceedings. Recommendations differ based on whether the program is directed to children or not. We will discuss charges for children's programs first.

a. Children's Programs

(1) Price Limit

Applicants do not all agree to price limits on IP programs directed to children. Sprint currently applies a price limit of $1.50 per minute and $3.00 per call, unless the IP obtains

specific Sprint management approval to charge more.[13] Sprint asserts that a mandatory price cap set by the Commission is unnecessary, but if one is set, Sprint recommends a cap of $2.00 per minute and $4.00 per call. AT&T has a $4.00 per call price cap on its interstate service. MCI believes price caps are unnecessary because of other safeguards (e.g., introductory messages and billing delays). Telesphere does not offer programming oriented to children, but does not oppose price limits on such programming.

Consumer Action argues that no other service or product purchase can be made by a child without the parent's permission and yet the parent incurs the financial obligation. Consumer Action argues that the introductory message and billing delay safeguards will not adequately protect a parent from a young child incurring charges for high-priced children's programs. Consumer Action believes programs directed solely to children must abide by a price cap of $3.00 per call, consistent with Pacific's 900 service.

We believe that a price limit for children's programs is necessary. The proposed CARU guidelines provide that a price limit should be applied, and say that:

> "This ceiling on the amount which can be charged per call is extremely important, since we know that young children do not understand the relationship between time and incremental charges." (Exhibit 1, Attachment C, item 2 after p. 4.)

AT&T currently applies a limit per call of $4.00. Sprint recommends a price limit of $2.00 per minute and $4.00 per call. Consumer Action argues for a limit of $3.00, indicating that Pacific now applies a $3.00 per call limit. Pacific's tariffs do

---

13 For programs to exceed the Sprint price limit, programming material and advertising must be reviewed by senior Sprint management. The programming material must demonstrate sufficient value to the consumer to warrant exceeding the price guidelines.

not contain a $3.00 limit. Therefore, we will authorize applicants' tariffs only if prices that may be charged for programs directed to children are limited to $2.00 per minute and $4.00 per call.

(2) Age of Children

Applicants differ on how children's programs will be determined. Sprint classifies children as those under 13. AT&T defines children's programs as those aimed at children under the age of 12. MCI does not have a specific age-based definition. Telesphere uses 14 years' old, consistent with Penal Code § 26. Telesphere argues that there is great cross-elasticity in demand for programming between teenagers aged 14-18 and those over 18. Telesphere points out that true children's programming will not appeal to those above 14 while many general interest programs will (e.g., sports).

Consumer Action argues that the issue is the age at which a person can legally contract for services. Consumer Action believes 18 is that age and any program directed to those below 18 must include a disclosure message to seek parental approval. Pacific's tariff does not define children, but does define a minor (for purposes of harmful matter and adjustments) as persons under the age of 18.

The issue is at what age should the price limits apply and the caller be warned that parental approval must be obtained. The age should be as old as possible as long as the parent (i.e., subscriber) bears the liability for the bill. This is true whether or not there is substantial cross-elasticity in demand between programs appealing to teenagers and those over 18. The eldest age proposed by the parties is 18. We will adopt the age of 18.

b. All Other Programs

(1) Background and Positions of Parties

In D.89-02-066 and D.89-03-061 we found no evidence that proposed information charges of up to $10.00 for the first minute and up to $5.00 for each additional minute ($305 per hour) for mass market, prerecorded audiotext messages are in the public interest. Pacific stressed that the purpose of 900 service is to provide casual mass market access to inexpensive, cost-effective programs. We rejected the high charges in the proposed settlement as not compatible with Pacific's marketing goals. We found that price limits of $5.00 for the first minute, $1.00 for each additional minute, and $20.00 per call are reasonable.

We similarly rejected proposed high rates for fund raising because Internal Revenue Service regulations require receipts for deducting large contributions. We reasoned that a caller to a 900 fund-raising IP would have no such receipt or record of the transaction showing its charitable purpose, thus making 900 service an inappropriate vehicle for large charitable contributions.

Applicants in these proceedings are unanimous in opposition to price caps on programs not directed to children. Applicants argue that price caps are not necessary, and become duplicative and excessive regulation given other safeguards (e.g., advertising guidelines, introductory messages on higher-priced programs, and a consistent adjustment policy). Applicants contend that price caps will prevent the offering of valuable new 900 services, such as business and consulting services. Applicants claim the markets are different between LEC and IEC providers of 900 services, and the imposition of price caps will directly interfere with the development of a nationwide 900 service.

AT&T points out it does not have a price cap on its nationwide service, wherein calls may cost more than $20 per call. Five percent of programs now carried by AT&T would exceed the $20 cap imposed by Pacific, according to AT&T. AT&T asserts it has carried these programs on a nationwide basis for nearly two years, including interstate into California, without any adverse consumer reaction. AT&T argues that a price cap does not add meaningful consumer protection but it would be counter-productive. A price cap:

> "...precludes offering the legitimate high value programs that AT&T and the rest of the industry would like to see dominate 900 service...such as software technical support, audiotext business advice and fundraisers..." (AT&T Brief, p. 21.)

AT&T says the Commission should recognize that the types of programs that cause the greatest complaints are the entertainment and GAB programs that are priced at $2 or $3. These lower price programs encourage callers to call many times generating very large bills, according to AT&T. All that a price cap would do is limit 900 service to those type of programs, claims AT&T.

AT&T further argues that even Pacific's witness indicated that the price cap should be revisited. AT&T claims the only apparent justification for a price cap is that some consumers may not see a value in the higher-priced programs. AT&T asserts that judgment should be left to the individual consumer, and, with the protections of clear advertising and a one-time adjustment, consumers are not threatened by the lack of a price cap.

MCI similarly argues that low price limits attract inexpensive, unsophisticated programs, while more sophisticated programs will not be able to operate profitably. Low price caps will attract businesses which will attempt to find other methods to increase revenues, such as encouraging many repeat calls.

MCI points out that like AT&T it currently provides interstate 900 services to IPs with prices exceeding Pacific's price caps. Pacific's price caps would exclude valuable information services from California-based IPs because MCI cannot tell if the incoming call is intrastate or interstate on a real time basis, according to MCI. Therefore, MCI asserts that IPs located in California would be required to restrict prices on all calls--interstate as well as intrastate. This would directly interfere with interstate 900 service, according to MCI.

Telesphere similarly argues that IEC 900 services are basically interstate. If California requires a price cap there is a great likelihood that many California IPs will migrate to other states and offer their programs to California consumers on an interstate basis, without any of California's safeguards, according to Telesphere.

Telesphere argues that if price caps are intended to protect end-users from large bills, a liberal adjustment policy combined with blocking provides even better protection. Telesphere testifies that it is the content of the program rather than the price that generates most complaints. Telesphere argues that:

> "If the market perceives a value, the program will be successful and if it does not find value in the program, it will not be successful. The risk is on the IP and the carrier and not the consumer who may seek adjustments if dissatisfied." (Telesphere Brief, p. 12.)

Telesphere testified that consumers apparently perceive a value to quick and easy access to information. Overnight mail at $14.00 compared to $0.25 was considered ridiculous not long ago, but is now widely used, according to Telesphere. In the case of direct-response telephone calls, service means not having to wait on "hold" until the next representative is available, Telesphere asserts.

Telesphere points out that the safeguards developed during the Pacific hearings were necessarily somewhat speculative because Pacific did not have a 900 service at the time. Telesphere claims the adjustment policy and blocking are more than sufficient protection against large bills. Whatever the benefits of price caps in addition to adjustments and blocking, they are outweighed by the negative impact on the development of a nascent competitive industry.

GTEC argues for consistency between all providers of 900 service, but against price caps for the reasons cited by applicants. Price caps will drive to other jurisdictions high-priced business, training and professional services, and reduce California's control over these services, according to GTEC. Lo-Ad argues for flexible end-user pricing and less restrictive price caps.

Pacific argues price caps help protect customers from large bills. Pacific contends that applicants' position on price caps fails to make much sense since most of applicant-carried programs are within the current Pacific price caps, applicants agreed that more expensive services could find another way to bill (e.g., use of credit card), and applicants agree that some price limits are a good idea (e.g., Telesphere testified that price limits can be a good business practice, and AT&T and Sprint have price caps for children's programs, according to Pacific). Finally, Pacific claims that applicants do not present convincing arguments against Pacific's price caps, but if applicants prevail, the Commission should similarly change Pacific's price caps.

DRA believes higher-priced programs result in more adjustments, and therefore DRA suspects that price caps will lower adjustments. Further, DRA asserts that price caps reduce the amount of credit extended to customers on the regulated bill and are necessary just for that reason. DRA and Consumer Action have no objection to IP charges over $20, only that these charges should

not be placed on the bill of regulated LECs. Consumer Action points out there is nothing that prevents an IP from using alternative means of billing in excess of the price cap.

(2) Discussion

We will require applicants to apply price limits on programs not directed to children of: $5.00 for the first minute, $2.00 per minute thereafter, with a maximum total of $50.00. Calls must be rated in increments of time. That is, we do not authorize an IP assessment of a flat $50.00 per call, for example, which is assessed upon connection. Rather, the most that may be charged is $5.00 for the first minute and $2.00 for each additional minute, with the total per call not to exceed $50.00.

We find that even with these price limits there is nothing that prevents an IP from charging above those limits. For example, the IP can rely on the U.S. mail to send a follow-up bill or ask the caller's permission to bill on a credit card for excess charges.

The real issue is the use of the LEC bill for IP revenue collection. A price cap by itself will not prevent, eliminate or in any way negatively impact the availability of any IP that is truly wanted and/or needed by society. This is so because there is nothing that prevents an IP from using area code 800, or a regular telephone number, and collecting its revenues in some way other than the LEC bill, or using 900 with a price limit and collecting the extra charges in another way. In fact, it may be particularly appropriate for a high-cost IP to bill the caller for the extra charges by mail, credit card or in some way other than high 900 charges. This would ensure that the IP has the caller's permission for the extra charges (up to $300 per hour or more). Disputes could then be subject to other established dispute resolution mechanisms.

Nonetheless, applicants argue they have been providing interstate 900 service to California with IPs that charge in excess of $20.00 per call for over one year without significant adverse consumer reaction.[14] DRA testified that a carrier with lower revenue adjustments (i.e., refunds to customers) might have a more effective safeguard package. DRA testified that Sprint, AT&T, and MCI have lower adjustment rates than does Pacific. Although the period of the data is very short, and there is no assurance that the period is representative for Pacific compared to applicants', it is an indication of moderate problems with higher priced calls. We do not go so far as to conclude that the entire safeguard package is superior to Pacific's on such sparse data, but we do use this as one factor in deciding to raise the limit compared to Pacific.

Telesphere testifies that applicants and IPs take the risk on high-cost/high-priced programs, because callers can seek an adjustment if dissatisfied. We are not convinced that this is true for their service as proposed, particularly given their performance on the few numbers they were asked to investigate for us. But with the complaint procedure and adjustment policy we order herein, callers will be more fully protected. This will substantially shift the risk in the direction of applicants and IPs, and away from callers.

We also consider testimony that there may be valuable services that could successfully use the LEC for billing and collection. We do not need to decide if high-cost IPs will flourish with a low price cap by billing in another way or if they need the ability to use the LEC bill. But there may be high-cost

---

14 Sprint has been providing 900 service interstate since April 1989 (Tr. 1:39); AT&T since February 1989 (Exhibit 1, Attachment 1, p. 1); and Telesphere around Chicago since late 1987, subsequently expanded to interstate (Exhibit 5, p. 3).

IPs that the market will support when bills are collected by the LEC bill. We note Telesphere's testimony that overnight letters at 56 times the cost of a regular first-class letter ($14.00 compared to $0.25) at first seemed excessive to some, but has been well accepted by the public. High-priced IPs may seem excessive to some, but may be as successful as overnight mail. We simply do not need to make that determination. And we do not need to block market experimentation as long as there is a balance of the increased risk of high-cost IPs with other safeguards. We modify the adjustment policy below to balance that risk.

Raising the limit on prices IPs carried by applicants may charge compared to those carried by Pacific, however, increases risks to callers (e.g., unauthorized use, compulsive use, misunderstandings about prices or content, blind purchasing of the information or service). We will raise the price limit these IPs may charge as long as there are other safeguards that mitigate this risk to callers. The risk can be mitigated by an improved complaint procedure and adjustment policy, which we will discuss below. Further, we will address below mitigating risk by automatic blocking when the caller receives one adjustment for inadvertent, mistaken or unauthorized use and refuses to pay 900 charges a second time for these same reasons.

3. Advance Notification

a. Background and Positions of Parties

Pacific notifies subscribers by letter the first time their total charges for combined 976/900 service within a billing period reach $75 ($30 for lifeline subscribers). Pacific will determine whether they qualify for an adjustment and will offer blocking upon contact from the customer. Pacific contacts the subscriber by telephone the first time their total bill exceeds $150 in any billing period. If Pacific is unable to make immediate contact, the subscriber is temporarily blocked until contact is

made and the subscriber desires to resume service. This safeguard is intended to address unauthorized use, lack of information about the terms and cost of calls, children's use, and the advancement of unlimited credit.

Applicants unanimously oppose advance notification and blocking the first time subscribers reach certain specified billing limits. Applicants argue the administrative burden of attempting to carry out this requirement in a meaningful way far outweighs any benefits. Applicants assert that this safeguard can only be effective if it combines all carriers. Combining all carriers would require the notification be done by the LEC, according to applicants. Applicants testify that the time it would take them to send billing information to the LECs varies from 3 to 21 days.[15] The delay in getting the information to the subscriber would make this ineffective as a safeguard, according to applicants.

Applicants claim that it would be difficult for each LEC to manage the billing records of four competing IECs regarding intrastate 900 use. GTEC shares this concern. AT&T points out that the data provided by Pacific on advance notification show only eight percent of contacted customers requested blocking. Absolutely no action was taken on the majority of customers contacted and even a majority of customers who were involuntarily blocked did not want that blocking, according to AT&T.

AT&T argues that advance notification in no way reasonably impacts the issuance of credit. An end-user need not respond to the $75 notification letter, and at the $150 level all the end-user need do is state he or she does not want to be blocked

---

15 Sprint: 5 to 10 days for equal-access offices, 12 to 21 days for nonequal-access offices.
AT&T: Up to a week or more.
MCI: Within three to seven days.
Telesphere: At least one week.

and service will continue, according to AT&T. AT&T points out that telecommunications charges for local and long distance calls can easily accumulate to hundreds of dollars, yet the Commission has never deemed it necessary to provide special warnings to customers. Advance notification is more burdensome than beneficial when the customer has price information from advertising and there is an effective adjustment policy.

MCI argues that it has agreed to an introductory message, a delay before charges begin and blocking through the LEC. These safeguards protect against unauthorized use, according to MCI. MCI believes that to the extent advance notification is a safeguard at all, it protects the carrier (against inadvertent or unauthorized use, which may be eligible for an adjustment), not the caller.

GTEC opposes advance notification for all the reasons cited by applicants. GTEC argues that advance notification which is not really very advanced creates a false sense of security against unchecked 900 service billings. GTEC asks that the notification be done as part of the normal billing cycle if ordered at all, not on a daily basis.

Pacific argues this safeguard protects subscribers against unauthorized use and those who are unaware of the accrued IP charges, with the temporary blocking preventing a larger accumulation of charges while the customer decides if he or she wants permanent blocking. Pacific points out we have viewed this feature as analogous to a limit on third party credit. (D.89-02-066, p. 54; D.90-03-030, p. 28.) Pacific points out that while applicants argue this safeguard would be costly and the costs would outweigh the benefits, none of the applicants produced any quantitative support for this position.

Pacific asserts that concerns about late notification were raised in Pacific's proceeding on 900 service, but were rejected in D.89-02-066. Late notification is better than none, according to Pacific.

Pacific also points out that comparison between message toll service (MTS) calls and 900 is misplaced, because 900 maximum charges are much higher, 900 service anonymity and recorded message use makes identifying unauthorized users more difficult, and IPs use more aggressive advertising than do providers of MTS and long distance services. Finally, Pacific claims that since the LECs would be doing the notifications, there is no practical reason for the applicants to oppose this safeguard.

DRA argues that despite any delays in gathering the necessary information, depending on where in the billing cycle the notification is made, the notification can still be very useful.

Consumer Action argues that this is nearly the only safeguard that protects customers from unauthorized use after the one-time refund is exhausted. Further, Consumer Action agrees that IPs are charged back the cost of refunds, so that this safeguard can work to the benefit of IPs (by reducing IP liability for unauthorized calls). Consumer Action agrees with others that a delayed notification is better than none.

b. Discussion

The benefits of advance notification outweigh the costs. Thus, we will direct applicants to undertake advance notification.

We found in D.89-02-066 that the risk of large bills was somewhat moderated by the price limits selected for Pacific's 900 program. Still, we felt advance notification was necessary to mitigate unauthorized use and lack of awareness of mounting charges. We analogized the blocking at $150 to the limit commonly placed on credit cards at some amount. We also found that advance notification and automatic blocking was a benefit to IPs by reducing potentially large adjustments.

We were concerned about the delay to notification in Pacific's program, but determined that the benefits outweighed the delay. Here, the delay is compounded. The delay that the billing agent (e.g., LEC) incurs is in addition to the time it takes

applicants to notify the billing agent. But delayed notification is better than no notification. We expect applicants to take all reasonable steps to reduce the time it takes to notify subscribers through the billing agent. In addition, there is nothing to prevent applicants from notifying subscribers when their bills exceed some specified limit of 900 charges through that one carrier. Indeed, Sprint's proposed tariff contains a provision to establish a monthly credit limit and, when reached, to block further access to 900 providers through the subscriber's LEC (although Sprint has not determined those limits).

Moreover, applicants claim the costs of advance notification exceed the benefits. Applicants presented no data to support this claim.

Applicants argue that they do not have advance notification in other states and have suffered no adverse customer reaction. Applicants present no data to support this claim. Applicants argue that only eight percent of Pacific customers notified requested blocking. We do not find that eight percent is an insignificant number. Moreover, whatever the benefit of other safeguards, advance notification promotes customer protection even after an adjustment has been given.

Telesphere argues that some of its current customers now routinely exceed $150 per month in 900 charges, and it will inconvenience them to be notified and/or blocked until contacted. Notification is only for the first occurrence, and being notified once is not a burdensome inconvenience. Nonetheless, we authorize Telesphere to contact these specific customers once before each of the $75 and $150 limits are next reached to confirm that the subscriber desires to continue service, performed in a manner that will not inconvenience the customer.

We will direct each applicant to notify its customers through its billing agent when the cumulative bill in one billing cycle reaches certain limits. We will also direct that 900 service

charges be continuously provided to applicants' billing agents. Applicants tariffs will provide that their billing agents will accumulate all 900 service charges and notify subscribers at certain limits. The delay at this time is about one week (except for Sprint from nonequal access offices). While a delay less than one week would be desirable (and we expect applicants to work to that end), a delay of one week is better than a delay of one month.

Therefore, we will direct that each applicant include in its tariff a provision that it will contact each subscriber through its billing agent by letter the first time the subscriber's charges for all 900 services exceed $75 ($30 for lifeline subscribers). Applicant will contact the subscriber by telephone the first time the subscriber's total bill for 900 services exceeds $150, and temporarily block the subscriber if applicant is unable to make immediate contact, until contact is made and the subscriber desires to resume service. Further, applicant's tariff will provide that on behalf of applicant the billing agent will accumulate the total 900 charges for each subscriber from all carriers.

Applicants suggested in their comments on the proposed decision of the ALJ that they read the advance notification requirement to allow applicant to choose to perform the advance notification itself or elect to have it done by the billing agent. We clarify here that the advance notification is not optional through the billing agent. Advance notification must be performed through the billing agent. This does not prevent any other notifications that applicant may wish to make (e.g., at other bill limits).

We recognize that there are some flaws with the customer bill notification process as it will be practiced for interexchange carrier 900 service. Nonetheless, we are persuaded to order it because of the benefits that even a less-than-optimal approach will produce. Thinking more broadly, and beyond the record in this

proceeding, we note that new technology such as common channel signalling may permit more useful and immediately effective options for customer notification and control of the use of the telephone. For example, new technology may permit customers to designate certain time periods during which 900 calls could occur, with access blocked at other times. Alternatively, an upsurge in 900 usage beyond preset limits could lead to immediate automated customer notification or temporary blocking without the delays inherent in current procedures.

We wish to encourage the local telephone companies to direct part of their efforts into the development of new technology towards the creation of enhanced customer-directed control capabilities such as suggested above. We look forward to additional information from the utilities and other interested parties as to how these capabilities may be developed or deployed.

4. Separate Prefixes and Selective Blocking

DRA and Pacific argue that, similar to Pacific's 900 service, applicants should have separate prefixes by program type (e.g., harmful matter, prerecorded, group bridging). Separate prefixes allow for customer education and possible selective blocking by program type.

Applicants argue against a requirement for separate prefixes by program type. Sprint argues that a separate prefix for GAB programs should be required only if a carrier carries GAB programs. Since Sprint does not intend to carry GAB, Sprint contends this safeguard should not apply to Sprint. Sprint asserts that a separate prefix for live programs (other than GAB) is unnecessary and a waste of resources, claiming Sprint finds no evidence to indicate this safeguard provides any type of consumer benefit.

AT&T argues that AT&T cannot divide its programs into three separate prefixes as does Pacific. AT&T organizes its prefixes by the price charged by the IP. AT&T has over 1,000

programs nationwide on over 35 active prefixes. AT&T is proposing an add-on service, not a California stand-alone service. AT&T asserts it is is highly unlikely that AT&T could comply with a separate prefix requirement and provide service to California.

Further, it is not possible for all carriers to use the same prefix by program type, according to AT&T, since the prefix is used by the telephone companies in routing and billing of calls. If one NXX is used for all programs of one type, the calls would all be routed and billed to the one carrier assigned that NXX. To further screen calls at the appropriate central offices would be prohibitively expensive, according to AT&T. AT&T claims even if consumers could educate themselves to distinguish among three Pacific 900 prefixes, it is highly unlikely that end-users would be able to do so for five separate carriers, given the need for different prefixes between carriers (even if each carrier uses only one prefix for each program type). Finally, AT&T claims that DRA's fundamental argument that callers cannot distinguish between 900 numbers and providers contradicts an argument in favor of separate prefixes for different types of programs.

DRA argues in general that applicants have not met their burden of proof to show why their service should differ from Pacific's. The Commission has approved each element of Pacific's 900 service either through decision or resolution (approving advice letters), and has therefore established a minimum standard for all carriers, according to DRA. Applicants reply that the Commission allows different business practices between the utilities it regulates, some of which are approved by advice letter, and the mere approval of an advice letter does not elevate a business practice of one utility to a universal standard to be required of all.

Other than for harmful matter, we will not require applicants to utilize separate prefixes to distinguish IPs by program type. Separate prefixes are most useful when they can be

utilized for either customers' education (for easy identification of programs by type) or for blocking by program type. Easy identification of programs by type is severely hampered if a separate prefix is needed by each carrier. Five prefixes would be needed (one for each applicant and Pacific) for each separate program type. For three program types, 15 prefixes are needed. Easy identification is lost as the number of prefixes increases.

Blocking by program type is another possible reason to require separate prefixes. We expressed interest in this option in D.87-12-038:

> "We envision a time when the customer may block selectively, based on the assignment of telephone numbers to information vendors. At that time, or sooner, if events warrant, the Commission will reconsider the issue of the need for, availability, and the cost of blocking." (26 CPUC 2d, 192, 206.)

Blocking by information vendor may be desirable. Applicants oppose separate prefixes by program type (which would be necessary to make available blocking by IP type), and no party identified the benefits of such blocking relative to the costs. We will reconsider this issue again when we have more information on selective blocking, including the need, availability, cost, and benefits. Other than blocking of either harmful matter or all IPs, which we will require, we will not require further selective blocking by program type.

Moreover, other than the requirement for a separate prefix for harmful matter programs, we see no need to possibly disrupt AT&T's organization of its 900 prefixes by price at this point. While a separate prefix requirement might not disturb AT&T's existing system (since that system is interstate and we are authorizing intrastate service), AT&T does not seek to create a stand-alone California operation. While we require safeguards that may be unique for California in some areas because we find they are required under the law or are in the public interest, a separate

prefix requirement for program types other than harmful matter would unnecessarily isolate AT&T's California operations.

The benefits of consumer education, easy identification, and selective blocking that are lost by the elimination of a requirement for a separate prefix by program type make other safeguards even more important. An appropriate complaint procedure and adjustment policy will help offset the lost benefits of no separate prefixes (except harmful matter), which we discuss below.

5. Complaint Procedure and Adjustment Policy

Applicants all have a complaint procedure that includes a one-time adjustment for inadvertent or mistaken use. Telesphere will make adjustments beyond the first occasion of inadvertent or mistaken use. AT&T indicates that it has a liberal adjustment policy for 900 charges. MCI indicates it has an ongoing adjustment policy on a case-by-case basis. In general, applicants indicate that their applications should be approved without additional safeguards because they monitor their IPs (e.g., advertising and content) and have appropriate complaint and adjustment procedures when there are problems.

Consumer Action points out that applicants' adjustment policies differ, are vague, and provide considerable discretion to the individual service representative. Consumer Action argues that such policies can only lead to customer confusion and make difficult any education campaign that explains consumers' rights. Consumer Action asserts that all carriers must be held to a specific refund procedure governed by Commission regulation. At the minimum, it should be a one-time refund for unauthorized or inadvertent use, according to Consumer Action. Finally, Consumer Action argues that a consumer should be eligible for a one-time refund from each carrier, whether or not that customer has received a refund previously for another pay-per-call service.

We find it questionable whether any applicant can effectively enforce its own 900 services program and whether any applicant has an effective process for investigating and responding to complaints. We find that applicants' adjustment policies differ, are vague, and provide considerable discretion to the individual service representative. This could produce inequitable and discriminatory results. We find that each carrier should have a specific complaint and refund procedure governed by the Commission.

a. Balancing Benefits and Risks

In approving applicants' requests for authority we must balance the benefits with the increased risks. Telephone subscribers potentially benefit by convenient, casual, anonymous access to 900 services, but incur greater risks of large bills from inadvertent, mistaken, misdialed, or unauthorized use. Moreover, disputes are certain to occur over whether the IP provided value commensurate with the price, no matter what level of price.[16] In such cases, subscribers' risk increases as the price per call increases. Even with a cap of $50.00 per call there is greater risk when doing business with an IP that charges $50.00 compared to one that charges $1.00. This is particularly true since charges accrue as the program or service is vended. The caller has not yet

16 For example, AT&T's witness Miller investigated three potentially problem IP programs and reported on his investigations at hearing. Miller reported that he did not receive value from one of the programs investigated (Tr. 3:313), although other callers might get value. (Tr. 3:313.)

Telesphere reported in Exhibit 40 that one IP it investigated at the request of the ALJ was terminated. Telesphere says that "[a]fter investigation, it was apparent that this IP was not providing any useful information for the $2.00/minute that was being charged."

heard the information, and incurs a risk that the information to come will not be worth the total charge.

We do not require separate prefixes by program types (other than harmful matter), which prevents some education and/or blocking by prefix. An educational opportunity is thereby lost and callers face incrementally greater risk with 900 use.

Subscribers' risk also increases to the extent carriers are not able to successfully monitor the IPs they carry. As we explained above, we question whether any applicant is effectively enforcing its own standards and whether any applicant has an effective process for investigating and responding to complaints. This places subscribers at risk for IPs that are violating either our, or the carrier's, rules.

Thus, the 900 services we authorize promise greater benefits but also greater risks. These risks can be reasonably balanced with the benefits by modifying the refund/adjustment policy to recognize the varied interests over the range of IPs, carriers, and subscribers.

b. Current Program

We require in Pacific's 900 service a one-time waiver for inadvertent, mistaken or unauthorized use. We allow mandatory blocking by carriers if a subscriber refuses to pay for 900 calls after the subscriber receives the one-time waiver. We provide for free residential caller-initiated blocking. We require Pacific to either relocate a subscriber (at no cost to the subscriber) to a central office capable of blocking when a subscriber asks to be blocked, or require two additional adjustments if the subscriber cannot be moved. This adjustment policy balances the interests of the parties in the Pacific 900 program.

In D.89-02-066 we discussed the differences between the rights and remedies available to users of credit cards compared to 900 telephone numbers. We noted that 900 services often compete directly with other credit devices, such as credit cards. In many

cases, consumers will be directly asked to make a conscious choice between charging the service or charitable donation to one of two numbers: (1) their credit card number or (2) their telephone number. We discussed the four significant ways that federal consumer credit laws differ from Pacific's 900 credit and billing services. One significant way concerns the resolution of billing errors. We noted:

> "Under the CCPA [Consumer Credit Protection Act], a consumer has the right to notify the creditor of a billing error. Billing errors may involve issues ranging from improperly posted amounts to the customer's dissatisfaction with the product or service. The creditor is required to undertake a reasonable investigation of the dispute and either correct the customer's account, or mail a written clarification or explanation to the customer explaining the basis for the charge." (Mimeo. p. 69.)

c. Complaint Procedure and Adjustment Policy

We did not suggest that 900 billing and collection practices conform to federal consumer credit protection laws in D.89-02-066, but promised to address the broad range of policy issues bearing on the use of LEC billing services and related network functions in a subsequent billing investigation or rulemaking proceeding. That billing proceeding has not yet been undertaken. We will not defer approval of the authorities requested by applicants, however, because we have not yet undertaken our billing proceeding. Rather, we will incorporate specific aspects of federal consumer protection regulations (12 CFR 226.13) where necessary to ensure that the 900 services authorized in this decision are in the public interest.

First, we continue to require waiver of 900 charges for the first occasion of inadvertent, mistaken or unauthorized use. Applicants are authorized to block a subscriber's access to all 900

services (but not basic telephone service) upon a subscriber's refusal to pay 900 charges based on continuing inadvertent, mistaken or unauthorized use after the first waiver for one or more of these reasons.

Second, we require applicants to provide more than one refund when justified. We require applicants to investigate all complaints and either issue a correction on the bill (refund) or provide a written explanation to the subscriber within two billing cycles. Applicants are authorized to block access to all 900 services upon a subscriber's refusal to pay 900 charges if the subscriber reasserts substantially the same billing error a second time on a disputed charge once applicant has provided a written explanation. This policy largely corresponds to applicants' current practices and takes account of the following.

Applicants all indicated that they now perform some sort of investigation on disputed calls. Applicants all indicated that they basically want satisfied callers, since satisfied callers call again and increase applicants' profits. Applicants in general all characterized their refund/adjustment policies as liberal. Also, applicants would not object to more than one adjustment if justified on a case-by-case basis.

Furthermore, Telesphere argues that the risk of high-priced programs is on the IP and the carrier, "...not the consumer who may seek adjustments if dissatisfied." (Telesphere Brief, p. 12.) We agree the risk should be on the IP and the carrier, not the caller. Dissatisfied customers--dissatisfied for any reason--should be eligible for unlimited refunds if justified.

Applicants testified that none of the safeguards at issue in these proceedings would protect callers from problems or alleged problems uncovered in the investigations of the potentially problem IPs (e.g., price limits and introductory messages would not protect customers from either high bills or not getting what they thought

they were buying). AT&T, however, testified regarding its own investigation that:

> "But my point, your Honor, is that an adjustment policy, liberal adjustment policy, a policy that is based on attempting to satisfy customers, that is what would protect me from this type of call, where if I came away feeling there was no value received, I would have some recourse. And that recourse would be AT&T's consumer sales and service center. So that is the main lesson that I got from that particular example." (Tr. 3:314.)

AT&T's Billing Service Agreement between the IP and AT&T provides that:

> "AT&T will undertake good faith efforts to collect your charges from your Callers. However, AT&T may remove from Caller's bill any amounts associated with the Offer(s) [IP programs] which the Caller disputes or refuses to pay." (Exhibit 2, Attachment 3A, p. 2, item 2.)

We find this reasonable. Therefore, applicants will all include a provision in their tariffs that applicants or their billing agents may remove from a caller's bill any amount associated with an IP program which the caller disputes or refuses to pay. This is a dispute or refusal to pay for any reason.

Comments on the proposed decision of the ALJ indicate applicants believe this requires that they must remove all charges which a caller disputes or refuses to pay. We note that the operative word of the required provision is "may," and clarify that we require applicants to adjust calls beyond the "one-time waiver" only when the dispute or refusal to pay is justified.

Justified disputes or refusals to pay should make the subscriber eligible for unlimited refunds/adjustments without mandatory blocking. This determination must be made on a case-by-case basis. IPs must not be subject to fraudulent claims for refunds from customers, but callers must not be obligated to pay

for calls to IPs when the charges are not justified. We find that if applicants desire to provide 900 services in California, the public interest requires that applicants conduct investigations when disputes arise as part of a complaint procedure and adjustment policy.

We note that as proposed, at least one applicant would not authorize adjustments in cases of disputes on program content or fraud, but would refer the complainant elsewhere and discuss the matter with the IP.[17] We find that if applicants desire to provide the services they propose, the public interest requires that applicants do more than just refer complainants elsewhere and seek to rectify the problem with the IP. Rather, applicants must investigate and assist callers as well. Similar to federal law, we will require that each applicant and/or its billing agent has a burden to undertake a reasonable investigation of the dispute, either correcting the customer's account or providing an explanation of the basis for the charge. We will require that the charge either be reversed or an explanation provided within two billing cycles (no later than 90 days) of first being notified of a billing error.

This procedure will balance the interests of callers obtaining necessary and appropriate refunds with the interest of IPs avoiding fraudulent chargebacks. Applicants are in the best position to undertake the investigation to determine if the IP is not in compliance with all applicable laws and rules which govern the tariff (e.g., advertising; disclosure message; separate prefix

17 MCI indicates that it would refer a complaint on program content (e.g., alleged obscene programming) to the FCC, Commission, or other appropriate agency. MCI would refer a complainant of misleading advertising to the Federal Trade Commission. In both cases, MCI will also record the relevant information and follow-up with the IP to rectify any problems.

for harmful matter; IP providing no value for the charge) or whether the caller's claim may be invalid (e.g., the caller demonstrates a pattern of abuse of 900 adjustments). Applicants may perform this function in partnership with their billing agents.

Under this procedure, a subscriber shall have the right to notify the applicant and/or its billing agent orally or in writing of a "billing error" within 60 days of the receipt of a bill. A billing error may be (but is not limited to) poor transmission quality, dissatisfaction with the quality or value of the information or service received, or disputes over the amount(s) posted to the bill. Subscribers who raise a dispute on one bill may initiate a complaint on any 900 charge on bills received in the immediately preceding 60 days.

Applicant and/or its billing agent may respond orally to oral notifications, and must respond in writing to written notifications. Applicant and/or its billing agent shall mail written acknowledgement of receipt of a subscriber's written notification within 30 days, unless the matter is resolved consistent with the procedures below. Applicant and/or its billing agent will have two billing cycles (but in no event longer than 90 days) after receiving subscriber's notification (oral or written) to comply with the resolution procedures below. A billing cycle is the time between applicant and/or its billing agent mailing to one individual customer the normal, routine bill (in contrast to an extraordinary bill, such as nonroutine late payment bill) and the mailing to the same customer the next normal, routine bill (generally a 30-day period).

While a bill is in dispute, applicant and/or its billing agent will notify subscriber that subscriber is not required to pay the amount in dispute, nor is the amount in dispute subject to any late payment charges until the completion of the complaint procedure. Nor is applicant and/or its billing agent allowed to make or threaten to make an adverse report to any person about

subscriber's credit standing, or report that an amount is delinquent.

Upon receipt of subscriber's notification of a billing error, if applicant and/or its billing agent determine that the billing error occurred as asserted, applicant and/or its billing agent will correct the billing error and credit subscriber's account with the disputed amount and any other related charges (e.g., late payment charges). The correction will be shown on the subscriber's bill at the end of that billing cycle. If applicant and/or its billing agent determine, after conducting a reasonable investigation, that no billing error occurred, or that a different billing error occurred than asserted, applicant and/or its billing agent shall within two billing cycles (no later than 90 days) of subscriber's notification, mail an explanation that sets forth findings of the investigation, the reasons for applicant's or its billing agent's belief that the billing error alleged is incorrect in whole or in part, and what actions, if any, have been taken as a result of the investigation. (This response may be oral to oral notifications by subscriber.) Applicant and/or its billing agent shall furnish copies of any relevant documents if the subscriber so requests. If a different billing error occurred than asserted, applicant and/or its billing agent will correct the billing error determined to have occurred and credit subscriber's bill with the amount determined in error plus related charges (e.g., late payment charges), along with the written explanation explained above.

If any amount remains due and payable after a reasonable investigation, applicant and/or its billing agent will notify subscriber in writing (or orally to oral notifications) of the amount and the date when payment is due before any additional charges may be assessed (e.g., late payment charges). The date payment is due will be no less than 10 days from the date of the notification by applicant and/or its billing agent. Beyond the payment due date, applicant and/or its billing agent may report to

any person the delinquent amount, but will report the amount that still is in dispute if subscriber again notifies applicant and/or its billing agent within 30 days of receipt of applicant's and/or its billing agent's notice. Further, applicant and/or its billing agent will advise the subscriber of all persons notified that the account is delinquent, and promptly report any subsequent resolutions to any person to whom the applicant and/or its billing agent has made a report, with a confirming notification to the subscriber.

Applicant and/or its billing agent have complied with this procedure and have no further responsibilities (except with regard to proper notification to any person to whom they have notified the amount that is delinquent, as explained above) if the subscriber reasserts substantially the same billing error, except for the following. If subscriber reasserts substantially the same billing error, applicant and/or its billing agent will notify subscriber of his or her rights of any further avenues for dispute resolution (e.g., appeals to Commission), after first exhausting all reasonable appeals within applicant's and/or its billing agent's company. Applicant may block access to 900 service upon subscriber's refusal to pay by the date payment is due (no less than than 10 days after notification of that date by applicant to billing agent).

If applicant and/or its billing agent discover upon investigation that the IP has conducted fraudulent or unlawful business, applicant will immediately terminate service. Further, applicant and/or its billing agent will make a reasonable effort to reverse charges to all subscribers who called that IP within a reasonable past period.

Finally, consistent with our authorization for Pacific, and as part of a complete program for adjustments, we require applicant and/or its billing agent to obtain a signed declaration from subscribers seeking an adjustment of $100 or more, on a

standard preprinted form. The declaration should both ensure that the customer is qualified for a refund and that applicant and/or its billing agent has properly informed the subscriber of his or her rights and responsibilities regarding refunds and appeals. The declaration must inform the caller of the options to block without cost, and the caller's liability for future 900 calls. It must explain that callers may get more than one refund if justified and the procedure applicant and/or its billing agent must follow in handling billing errors.

We will require below that each applicant inform all callers of the newly authorized 900 intrastate service. That notification will include disclosure of the safeguards contained in this decision, including the complaint procedure and adjustment policy. We will describe the details of this notification process under implementation below. Further, the cost of investigations conducted by LECs as billing agents for IECs, or for IECs themselves, will be addressed below under reasonable rates and LEC cost recovery.

Each applicant will include the procedure for investigating and resolving subscriber's complaints in its tariff. Failure to respond timely to complaints may result in termination by the Commission of the authority to operate intrastate 900 service.

6. IP Name on Request

Applicants generally agree to place a caller in contact with an IP if the caller so wishes.[18] Applicants object, however, to being required to give a caller the name, address, and business office telephone number of the IP, unless the request is in

---

18 The record is not clear if this is immediately by telephone upon the caller's inquiry, or if applicants take the caller's name, address, and/or telephone number for the IP to either call or write at the IP's convenience.

writing. Applicants point to the potential misuse of such proprietary information in a competitive environment, particularly by a competing LEC according to Telesphere. Applicants generally believe that if they are willing to resolve consumer questions or place the consumer in contact with the IP via a conference call, there should be no need for a requirement to freely release the IP name, address, and telephone number on request.

AT&T provides the IP name, address, and telephone number on written request. AT&T asserts that it would be difficult for all of its Consumer Sales and Service Center employees to have current IP information, and it would need to be provided from a centralized location. AT&T indicates that in an emergency, the appropriate AT&T product manager may assist the customer to get in contact with the IP. AT&T prefers that an initial complaint be lodged with AT&T, with the appropriate AT&T number obtained from the LEC or on the bill.

Consumer Action believes consumers have the right to know the IP name, address, and telephone number. Consumer Action believes the consumer may want to contact the IP before incurring charges for certain calls, or to lodge a complaint. Requiring a written request discourages the consumer, and makes it more difficult for the consumer to lodge a complaint with the Commission or the FCC, according to Consumer Action.

We find that the consumer has a right to know the identity of any business with which he or she may do, or has done, business. We are not persuaded by claims that competitors may steal IPs. We are creating competitive environments in many markets we regulate, commensurate with proper consumer protections. Competition between LECs and IECs for IPs is healthy and should be encouraged.

No applicant objects to providing the name of the IP on written request. This may slow competitors, since they may need to find other ways to uncover the identity of IPs. But given there

may be thousands of dollars of revenues and profits at stake, a slight delay will not discourage most competitors to the point they will give up. Moreover, the job of identifying IPs may not be too difficult since most IPs will be interested in making themselves known to carriers so they may be pursued with the best price/service combinations.

But requiring a written request may discourage consumers. A consumer must weigh whether it is worth his or her time to write a letter (putting off resolving a question or problem for weeks), compared to what he or she hopes to get. If there is a low-cost program at issue, the consumer may decide it is not worth the trouble. This might, in fact, encourage IPs of marginal value.

There is no public interest in protecting or shielding the identities of IPs from anyone. In fact, the public interest is served by just the opposite: easy access to the identity of anyone with whom business is about to be, or has been, transacted. We do not believe that any responsible businessperson--IP or not--vending a product or service of which he or she is proud, would seek to have their identity made difficult to uncover. The only possible reason to require a written request is for the protection of the LEC or IEC from competition. We find that reason wanting.

Therefore, we condition approval of these services on applicants and their billing agents providing the name, address, and business telephone number of an IP to a caller within a reasonable time upon oral or written request. If that means applicant or the billing agent must refer the caller with an oral request to a central location where such information is kept current (or that the billing agent must refer the call to applicant), that is acceptable as long as such referral is toll free to the caller.

7. Billing in 30-second Increments

Applicants seek to bill IPs in increments of either one minute (Sprint, AT&T, Telesphere) or six seconds after the first

minute (MCI). Applicants will bill callers for IPs in increments of one minute or per call.

Applicants argue that billing increments should be an internal business decision and be regulated by the competitive marketplace, as long as they are clearly communicated to the IP and the caller. Clear communication to the caller is required by advertising guidelines, according to applicants. Applicants argue that it would be prohibitively expensive to convert their national billing schemes to 30-second increments to satisfy a California requirement.

AT&T asserts that a requirement to bill in 30-second increments will preclude AT&T from serving California, because of the expense of converting its national MultiQuest from a 60- to a 30-second increment. AT&T points out that consumers are interested in the total cost of the call and are unlikely to know if the call is being billed in 30- or 60-second increments. AT&T claims it is unlikely that the consumer makes a decision to call an IP based on the billing increment of the call.

We authorize Pacific's billing of both IPs and subscribers in 30-second increments. (D.89-03-061, Conclusion of Law, item k.) We see no public interest need to require applicants to each adopt the same billing increment, as long as the billing increment they choose is clearly communicated to IP and caller. The competitive environment will determine the best billing increment.

Competition only works, however, if consumers have reasonable information. Remarkably, AT&T points out that a caller has no reasonable way to know the billing basis for a call. And this despite applicants' claims of adequate self-imposed advertising guidelines. To remedy this, we will require that the disclosure message and advertising of IP programs include the billing increment so consumers can have that information upon which

to help determine not only which IP to call but how long to stay on the line.

8. **Billing and Collection for Charitable Contributions, Information, or Services Over Telephone**

AT&T and MCI agree that billing and collection should be only for charity, or information or services provided over the telephone. Sprint and Telesphere argue that billing and collection should not preclude the offering of incidental follow-up information or material (e.g., brochures, catalogues, discount coupons for products discussed in the information provided by the IP).

By D.89-02-066 we require Pacific's tariff to specifically preclude billing and collecting through the 900 tariff for anything other than communication services or charitable contributions. We require this to ensure that Pacific's 900 program is exempt from federal truth in lending laws. (Mimeo. pp. 65-66.) We similarly believe applicants' tariffs should preclude the billing and collection for anything other than communication services or charitable contributions. We clarify charities to be nonprofit charities which qualify for tax exempt status under Internal Revenue Service code section 501(c)(3).

We are struck by what Telesphere apparently believes is "incidential follow-up information or material," as provided by Telesphere in Exhibit 40 for one of its potential problem IPs. The IP advertises only on matchbook covers, offering "Valuable Money Making Information and the ABC's of Receiving FREE Money from the Government." (Emphasis in the original.) Callers get a follow-up brochure with information and applications for a signature loan and credit cards. As part of the "credit package," either or both 80-page and 95-page booklets are sent upon request. Brochures of 80 and 95 pages hardly seem to be incidental follow-up material. Therefore, we will require applicants' tariffs to preclude the

billing and collection for anything other than communication services, or charitable contributions.

9. Require Disclosure of Amount Going to Charity

Sprint currently requires its fund-raising IPs to state that "a portion of the proceeds may go to charity." (Exhibit 41, p. 8.) Sprint argues that this is an individual carrier business practice, however, and should not be a regulatory requirement.

AT&T opposes a requirement that fund-raising IPs state the amount going to charity, claiming such requirement is completely unenforcible and unnecessary. AT&T will investigate any complaints by an end-user that a fund-raising IP program is misleading or fraudulent. AT&T indicates it cannot audit every charity program and doubts Pacific does either. AT&T states: "The public should be allowed to use its own judgment on whether to contribute to a charity." (AT&T Brief, p. 29.)

MCI opposes a regulatory requirement for disclosure of the amount going to charity, arguing it should be a business decision. Telesphere claims existing California law regulating fund raising protects consumers sufficiently.

Consumer Action argues that a consumer considering making a 900 call to contribute to charity has a right to know what percent of the price of the call will go to charity. Furthermore, Consumer Action argues that the name of the charity, along with the percent of the call going to charity, should be in the ad itself, so the consumer is not deceived as to what percent of the cost goes to the IP and what percent to which charity. Finally, Consumer Action argues that the IP should be required to show proof that it has a contract with the charity which indicates how much of each call will go to the charity.

We agree with AT&T that "the public should be allowed to use its own judgment on whether to contribute to a charity," but the public can make a judgement on the amount to give only if the IP reveals how much of the call will go to which charity compared

to how much the IP will retain. Sprint's suggestion that the ad reveal that a "portion" of the cost of the call "may" go to charity is inadequate.

We approved Pacific's tariff requiring certain conditions on Pacific's fund-raising IPs. For example, they must submit a written agreement between the IP and the organization receiving the contribution that includes the amount or percentage of each call that will be paid. The written agreement must be provided to Pacific before the IP service is established, and a copy of the agreement shall be made available by the IP to any person on request. These provisions are in the public interest, and we will require applicants to include the provisions we require of Pacific in their tariffs for 900 service.

Further, advertising guidelines we require for Pacific's 900 service in turn require IP advertising for fund raising to state the amount of money per call which will go to the charity or fund-raising cause. Similarly, we will require applicants to carry fund-raising IPs only if the IP reveals in all advertisements and in the disclosure message the percentage of the price of the call, or the dollar amount of the total price of the call, that will go to charity, and name the charity.

10. Nondisconnect for Failure to Pay

Applicants all agree that subscribers are not subject to disconnection of basic telephone service for failure to pay 900 charges. No party argues otherwise. We agree. While we will allow the total amount due on a periodic bill to include 900 charges, we will require applicants to include in their bills to subscribers (e.g., on the back of the bill) a statement that the LEC will not disconnect basic telephone service solely for nonpayment of 900 charges which the subscriber disputes.

In addition, as explained below, we will require applicants to inform callers of their rights and obligations under applicants' approved tariffs. As part of that notification, we

will require applicants to make clear to subscribers that nonpayment of 900 charges may result in blocking access to 900 providers, but will not result in termination of the basic service. Further, we authorize blocking of future access to 900 only after the completion by applicant and/or its billing agent of the complaint procedure described above. We allow blocking only if applicant finds the caller is liable for the call but caller refuses to pay reasserting substantially the same billing error.

11. Billing and Collection in Tariff

Applicants generally argue that billing and collection for other than harmful, as well as harmful, matter IPs should be non-tariffed. AT&T, for example, argues that the Commission should consider regulatory forbearance and elect to not require a tariff for billing and collection of intrastate interLATA harmful matter IPs (which a literal reading of the code may require). Similarly, AT&T argues the same regulatory forbearance should be exercised in not requiring billing and collection terms and conditions for intrastate, interLATA other than harmful matter IPs in AT&T's tariff.

AT&T asserts that it requires its IPs who elect to buy MultiQuest Premium Billing to sign a nationwide contract. AT&T avers it is willing to include the California consumer safeguards in the contract for IPs located in California, but that AT&T will not have an intrastate Premium Billing contract solely for California. AT&T points out it is difficult to isolate intrastate billing. AT&T says that its tariff will provide transport rates for tariffed IP transport service, but that AT&T's billing of IP charges does not belong in that tariff. AT&T suggests that the Commission state all required consumer protection requirements in the order approving MultiQuest, and allow AT&T to incorporate these in its national Premium Billing contract, but not require them in an intrastate tariff.

Pacific disagrees. Pacific points out that many of the safeguards proposed by applicants are not in their proposed tariffs, but are in separate contracts with IPs for billing and collection, or are applicants' "business practices." Pacific argues that the Commission can be assured that the required safeguards will be implemented in a nondiscriminatory fashion if the safeguards are explicitly set forth in applicants' 900 services tariffs.

We agree with Pacific. We will require applicants' billing and collection practices (except for harmful matter programs before July 1, 1991) to be included in applicants' intrastate, interLATA tariff.

12. Advertising Guidelines

We have approved several advertising guidelines in Pacific's 900 services tariff. These are:

(1) Every advertisement or other communication which is intended to promote the IP's program shall clearly and conspicuously display and/or disclose the maximum information charge per initial and subsequent minute, or per call;

(2) All advertisements must display and/or provide a voice-over with the phrase "Service may not be available in some areas";

(3) Advertising for fund-raising programs will state the amount of money per call which will go to the charity or fund-raising cause;

(4) IP television advertisements must provide a voice-over announcement and visual display of the applicable maximum information charge per initial and subsequent minute, or per call;

(5) Television advertisements directed to minors must include an admonition to seek parental permission before calling including a voice-over;

(6) IP programs directed to minors which contain an inducement or "teaser" to call back shall include an admonition to seek parental permission before calling back, and all programs encouraging a call back shall quote the maximum information charge per initial and subsequent minute, or per call;

(7) Advertisements or other communications directed to minors will inform minors that they must have parental approval;

(8) IP programs containing cross-promotions to another program shall include an announcement of the maximum information charge per initial and subsequent minutes or per call, and cross-promotions directed to minors shall include an admonition to seek parental permission before calling; and

(9) Cross-promotions or referrals from general audience programs to harmful matter programs shall not be permitted.

Applicants argue that many, if not all, of these guidelines are contained in their own business practices for IPs, are properly within the province of each carrier's business practices with its IPs, and need not be included in their tariffs. Further, Sprint and AT&T, for example, cite their compliance with the CARU proposed standards for children's programs, which contain specific and sufficient protections.

We will not rely solely on each applicant's business judgement in adopting advertising guidelines. We do not seek to limit applicants' advertising guidelines, but will require as a minimum the same standards as included in Pacific's tariff, with one exception. Applicants need not require IPs to disclose that the program may not be available in some areas unless it is in fact limited geographically. Furthermore, applicant's advertising guidelines will be consistent with other elements of this decision (e.g., fund raising limited to nonprofit charities with tax exempt

status under Internal Revenue Service code section 501(c)(3); disclosure of prices per minute and total).

We will require that cross-promotions clearly reveal the price of the follow-up call. Since cross-promotions are essentially advertisements for another program, and we require all advertisements to clearly reveal the charges for the program, we require cross-promotions to include the price of the promoted program. This is simply truthful advertising. We also require that all advertisements reveal the full costs that are required to obtain the information or service promoted, just as we require that in the disclosure message at the beginning of the call.

Further, we require that each applicant include in its tariff that a violation of the advertising guidelines by the IP is a violation of the tariff and the IP is subject to immediate disconnection.

13. Other Safeguards

Several other safeguards were debated at hearing. Applicants generally argued that they fall into the category of business practices and should be left to the decision of each applicant's management and the competitive marketplace. AT&T argues that it will not provide certain programming (e.g., GAB) and should not be required to have safeguards for programs it will not carry just for the sake of consistency within California. Pacific, DRA, and Consumer Action generally argue that the other safeguards are reasonable, in the public interest and should be required.

We agree that the additional safeguards should not be left to each applicant's business practices. The additional safeguards are in the public interest and should be required to be stated in each applicant's tariff. Therefore, we require applicant's tariff to include the following provisions:

(1) Automatic disconnection after a period of inactivity on interactive video or audiotext programs, a live moderator for live programs (two or more callers) and a warning tone on GAB programs at increments of five minutes or less;

(2) IP must declare program content to the carrier, along with a copy of the proposed advertising layout, upon application for service and when making any change in program content, and the IP must send copies from a sample of published, printed advertisements to the IEC carrier within 30 days after the IP begins operation;

(3) The customer's bill must contain the 900 program name, and/or category, and/or short description of the program, limited to space available on the bill;

(4) Videotext programs must show the total time and charges at log off; and

(5) Directory listing must state additional charges apply.

The safeguards on live GAB, audiotext, and videotext programs need not be contained in applicant's tariff if applicant does not and will not carry such IP programming.

We are not convinced that applicants are adequately monitoring advertising, based on our experience with the late-filed exhibits. Therefore, we require applicants to have IPs provide applicant a copy of the advertising layout before operation, and copies from a sample of actual published, printed advertisements within 30 days of IP operation. We expect applicants to thoroughly and properly monitor the IPs they carry for compliance with applicant's tariff, including advertising.

We are not persuaded by AT&T that the IP program name, category, and/or description need not be placed on the bill. Indeed, Sprint and Telesphere indicate that the name of the program will be placed on the bill for IPs carried by Sprint and Telesphere. AT&T argues that there is no caller demand for this information, and there is no information about the cost of this provision by applicants' billing agents, if it can be done at all. AT&T claims a cost-benefit assessment is necessary before this requirement is established.

There is no doubt that the 900 program name, category or a short description is useful to callers. Sprint and Telesphere have already concluded that there is interest in this information, and that it can cost-effectively be placed by the LEC on the bill. We believe this information will assist callers make sure inadvertent, mistaken or unauthorized use of their telephone has not occurred, and that this information is in the public interest. Therefore, we require each applicant and/or its billing agent to provide the IP name, category, and/or a short description on the caller's bill for each 900 call. We note that this requirement is for one of the three items (name, category or description), and we will limit the requirement to space now available on the bill (e.g., ten characters for GTEC).

Sprint argues that directory listings are just another form of advertising and, as such, should state that additional charges apply. We agree. AT&T argues that such language would be confusing, since additional charges apply to many calls made by telephone (e.g., zone-use measurement charges, toll charges). Furthermore, AT&T claims that the disclosure message at the commencement of the program along with at least three seconds after the disclosure message to hang up without charge is sufficient protection to make sure callers know charges apply. Moreover, opponents to this safeguard say applicants do not control directories.

Listings for 976 numbers in Pacific's directories include a statement that "there is a charge to dial this number." This statement is not confusing. Since 800 area code numbers are free to callers, not all calls to numbers with area codes contain charges. Some local calls are not individually charged, and others are. Knowing which calls have separate charges is sometimes confusing. As such, there is no harm, and a public interest benefit, in revealing to callers which calls are sure to cost extra. Further, we require applicants to exercise control over

some basic aspects of IP advertising, and we similarly find that applicants should require IP directory listings to indicate that additional charges apply.

VI. IntraLATA Service

Applicants seek permission to provide intrastate, interLATA 900 service. Applicants, however, indicate they do not have the ability to block intraLATA 900 calls which will occur on their systems. Applicants cannot tell the location of the call origination, only that it has been received at their point of presence. Similarly, LECs cannot tell the final destination of an originating 900 call in order to screen and divert intraLATA 900 calls to their own networks.

Sprint and AT&T offer to include a "holding out" restriction in their tariffs. This restriction would be one wherein applicant would aver to not hold itself out to IPs as a provider of intraLATA service. Rather, applicant would advise the IP that intraLATA service may not lawfully be placed over their networks and the call should be placed over the facilities of the LEC. Sprint and AT&T oppose a requirement to pay compensation to LECs for what they assert is only incidental intraLATA traffic, and similarly oppose a requirement to join with the LECs in a complimentary service arrangement[19].

---

19 A complementary service would be one where the IEC carries the interLATA traffic and the LEC carries the intraLATA traffic. Pacific estimates it would take up to two years to prepare the necessary data base to implement a complementary service, although Pacific indicates it would not seek compensation in the interim for intraLATA traffic from an IEC participating in the complementary service. The Commission approved a complementary arrangement between AT&T and Pacific for Readyline service (D.90-04-023), as a result of a settlement between AT&T and Pacific.

MCI's application proposed that it would abide by a holding out restriction. MCI reverses this position in its testimony. MCI asserts that a holding out restriction is not relevant in the context of 900 services because the IEC 900 market is national and the LEC 900 market is regional. Furthermore, MCI claims there is no existing base of 900 revenues upon which universal service objectives rest that might otherwise support a holding out restriction. Telesphere objects to a holding out restriction for the same reasons as MCI, arguing that any intraLATA traffic is incidental to its interstate service.

Pacific argues that the Commission has not allowed unconditional intraLATA competition, and should not here. Pacific points out that very few exceptions to the intraLATA service ban have been authorized, and in each case appropriate conditions have been required. Pacific estimates it will loose $7.9 million in 1991 and $18.3 million in 1992 as contributions to universal service if applicants' requests are granted without appropriate conditions and compensation. Pacific recommends that the Commission condition authorization to provide 900 service on applicants either (1) paying LECs a negotiated amount for each minute of intraLATA 900 traffic they carry or (2) participating in a complementary service arrangement.

GTEC argues that applicants should be required to block intraLATA traffic. In the alternative, GTEC agrees with DRA and Pacific that applicants should be required to pay LECs compensation for lost contribution to margin LECs suffer from lost intraLATA traffic carried by the IECs.

We will require applicants to not hold themselves out as carriers of intraLATA traffic, even though this requirement may not prevent some intraLATA traffic being carried by applicants. Applicants must advise the IP that an incoming intraLATA call cannot be legally carried, and refer the IP to the LEC. We expect applicants to specifically decline carriage that is reasonably

likely to be primarily intraLATA. Some IP applications will clearly be of local interest (e.g., poll on a local election issue). If approached by an IP who seeks to terminate calls within the LATA of the local interest, applicants must decline carriage, and refer the IP to the LEC.

We expect applicants to administer this provision to limit the intraLATA traffic they carry. But we recognize that some intraLATA traffic may still be carried by applicants. Nonetheless, we are not convinced that Pacific or other LECs will lose contribution to universal service, and therefore we need not order blocking or a complementary service. LEC access tariffs will contain access rates to adequately compensate LECs. Moreover, when Pacific's rate design was last revised there was no contribution from 900 service.

Pacific points out we need to approve Pacific's AL 15395 before Pacific can provide intrastate access to applicants. AL 15395 makes changes to Pacific's Schedule California Public Utilities Commission No. 175-T to establish equal access 900 service, and will not only authorize access but provide compensation through access rates.

Applicants originally recommended that the Commission approve Pacific's AL 15395. (Applicants' Joint Reply To Responses Regarding Motion For Interim Authority To Provide 900 Services Within The State Of California, June 29, 1990). However, applicants later reversed themselves and said:

> "...the Proposed Decision also requires local exchange carriers (LECs) to file 900 access tariffs within 60 days... There is no evidence in the record on such a need for 900 access nor do the Applicants understand or support such a need. The record is replete with evidence that the LECs now provide interstate 900 access in California today. This access is purchased out of the LECs' interstate access tariff. The Applicants are unaware of a unique need for a separate 900 access tariff. This requirement should...be deleted from the Commission's final

decision." (Joint Comments of Sprint Services, AT&T, MCI, and Telesphere on the Proposed Decision of ALJ Mattson, January 14, 1991, p. 14.)

Pacific disagrees and indicates that:

"Applicants, for the first time, raise an objection to Pacific's advice letter to modify its intrastate access tariffs to provide originating access for 900 service. (Joint Comments, p. 14.) This objection makes no sense. Pacific's interstate tariffs today provide for an originating access service for interstate 900 service. Clearly, Pacific must modify its intrastate tariffs to reflect a similar service to serve carriers who offer 900 on an intrastate basis. Without such tariff authority, Pacific would have no means to allocate to the intrastate jurisdiction its costs and revenues for originating 900 access where the call is intrastate in nature." (Pacific Bell's Reply Comments on the Proposed Decision of ALJ Mattson Mailed December 10, 1990, January 22, 1991, p. 3.)

Furthermore, applicants filed a motion to delay the comment period in I.90-12-040, and therefore delay Commission action on all LEC access tariffs for IEC 900 service. The motion was granted to the extent that the comment period will remain open for supplemental comments.

AL 15395 was initially filed in 1988, and supplemented three times. Circumstances have nonetheless changed since the last supplement. Therefore, we reject AL 15395 without prejudice and direct Pacific to file a new AL to provide equal access 900 service reflective of the current facts. We do this because we agree with Pacific that an access tariff is necessary before applicants can implement the authority granted herein, and we do not want to see that authority delayed by lack of LEC access tariffs. Moreover, access tariffs will contain rates to compensate LECs for the services provided to the IECs. Pacific may not, however, include rates in its new access tariff for lost contribution to universal

service from intraLATA traffic carried by the IECs. We order this based on the following considerations.

AT&T estimates that 30% of its 900 intrastate traffic would be intraLATA, but that only 5% of the 30% would be cross-elastic with Pacific's 900 service (with the rest coming from AT&T "saves, winbacks and stimulation"). We reject applicants' arguments that the 900 markets sought by Pacific and applicants' are entirely separable. These markets largely overlap. But they do not perfectly overlap, and there will be some IPs that seek only a local or regional market, while others seek a national or multi-state market. Therefore, the cross-elastic portion may not be 100%, but it is unlikely to be as low as 5%.

Pacific estimates its lost contribution to universal service from applicants' intraLATA carriage of 900 traffic to be $7.9 million in 1991 and $18.3 million in 1992. We agree with applicants that these estimates are generous. Pacific assumes no impact of a no holding out restriction, for example.

Moreover, Pacific's estimate does not include the contribution applicants will make via the access tariff plus billing and collection payments for interLATA traffic. Pacific argues this is properly excluded since this revenue will be earned by interLATA traffic due to new services or increased volumes in any event. To the contrary, if these applications are not approved, intrastate interLATA service will not be approved. Pacific will not earn any intrastate interLATA 900 access revenues plus billing and collection revenues from applicants. While we agree with Pacific that Pacific will lose contribution to margin from intraLATA traffic carried by applicants, Pacific will gain contribution from access tariffs plus payments for billing and collection.

Furthermore, Pacific's estimate includes revenues from 976 service. Applicants have no interest in providing 976 service. 900 and 976 services are not perfect substitutes, and Pacific

therefore overestimates the impact on Pacific of applicant's 900 service.

Even at the full estimate of $7.9 million, the contribution to universal service is negligible. Pacific testified that the total contribution to universal service is $1.2 billion. A contribution of $8 million would be 0.67% (i.e, much less than 1%). At a reduced estimate to reflect some (but not perfect) cross-elasticity and contribution from other sources, the percent contribution to universal service is even less. If the process envisioned in D.90-08-066 moves forward and we allow intraLATA competition by 1992--subject to realignment of access tariffs consistent with reductions in other rates--there will be no lost contribution to Pacific by 1992.

Most importantly, however, current Pacific rates are based on test year studies done before Pacific initiated 900 service. Rates for basic exchange service are not directly impacted by Pacific's 900 revenues. If 900 contributes to Pacific's customers' rates in the future, it will be as a result of the sharing mechanism in the new regulatory framework beyond specified rates of return. Sharing with ratepayers will be 50% of earnings above one rate of return and 100% beyond a higher level. Therefore, 900 makes no direct contribution to universal service now, and not all of the 900 contribution will necessarily be available to be used to reduce rates in the future. Therefore, we do not find that there will be any lost contribution to Pacific's universal service if applicants exercise the authority granted herein for intrastate interLATA 900 service.

With respect to the need for a 900 access tariff, all LECs are in a similar situation as Pacific. Therefore, we will direct the other LECs to file access tariffs so applicants may obtain access, but those access tariffs may not include rates for any estimated lost contribution to universal service.

All LECs except GTEC concur in Pacific's access tariffs according to comments received by the LECs on the proposed decision of the ALJ. It is therefore unnecessary to provide extra time for the smaller LECs to file these tariffs. Thus, we direct Pacific and GTEC to file access tariffs within 60 days of the effective date of this decision. We direct that any LEC not concurring in Pacific's or GTEC's access tariff file its own access tariff within 90 days of the effective date of this decision.

The access tariff rates will be at levels equal or similar to those for similar access tariffs, adjusted to reflect the additional costs imposed on LECs by this decision. The LEC access tariffs will include provisions consistent with the orders in this decision, not limited to:

a. IECs for whom access is provided must carry IP programs vending harmful matter on a separate prefix from all other programs;

b. LECs will provide an option for residential and nonresidential subscriber blocking to all 900 programs or to the harmful matter prefix(es) of the applicant, and will not provide service in areas where harmful matter blocking cannot be offered;

c. Billing and collection until July 1, 1991 for harmful matter programs will be by contractual arrangement between the IEC and IP, not by tariff, while on and after July 1, 1991 it must be by tariff;

d. IECs for whom access is provided must carry programs that abide by all the orders in this decision, not limited to:

   1) A disclosure message, delayed timing period, tone at the end of the delayed timing period and disclosure override as specified in this decision;

   2) Information charges as specified in this decision;

   3) Advertising guidelines as specified in this decision;

4) Other safeguards as specified in this decision;

e. Residential blocking is available free to the subscriber for blocking access to all 900 programs, or only to harmful matter programs; nonresidential blocking is available at rate levels determined by the Commission for blocking access to all 900 programs or only to harmful matter programs;

f. If the LEC is the billing agent, the LEC will provide as specified in this decision:

1) Advance notification;

2) Complaint procedure and adjustment policy;

3) Provision of the IP name, address, and business telephone number within a reasonable time to any caller;

4) Billing and collection will only be accomplished for charitable contributions, information provided over the telephone, or service provided over the telephone;

g. Failure of a subscriber to pay 900 charges will not result in disconnection of basic telephone service;

h. 900 charges may not be included in the amount which must be paid to avoid disconnection of basic service, or in the calculation of deposits to reconnect or establish service; subscriber access to 900 may be blocked until unpaid 900 charges are paid;

i. LEC provision of certain data to IECs needed for IEC monitoring reports to the Commission;

j. LEC provision of data on the availability and execution of subscriber blocking, and the issuance and disposition of advance notifications to subscribers;

k. Coordination with the IEC on, and use of LEC bills for, customer education as ordered in this decision.

The LEC will develop rate elements in its access tariff as necessary to recover expenses incurred as a result of performing functions required by law and Commission order or rule.

VII. Reasonable Rates and Economic Feasibility

Applicants filed proposed tariffs which include proposed rates. GTEC testifies that applicants should be required to include in their applications a demonstration of economic feasibility. DRA argue that applicants should be ordered to submit cost studies. DRA seeks to determine how applicants cover the cost of 900 service, and access any potential anticompetitive behavior or predatory pricing impacts that might result if revenues do not recover costs. DRA asserts the Commission should at the very least require a cost study for AT&T as the dominant carrier.

We will not require cost studies. AT&T submitted a cost study with its application (Attachment G to its application), indicating that the study was proprietary and was "provided only to Commission staff." GTEC did not approach the ALJ to direct AT&T to provide a copy (e.g., an order to release data, a protective order). GTEC could have pursued its interest in a demonstration of economic feasibility but did not.

DRA had the opportunity to review the cost study with the application and raise any concerns at the hearing. If the cost study provided by AT&T was determined by DRA to be inadequate, DRA could have approached the ALJ for an order directing AT&T to provide further information. At this point, DRA seeks a general order for further cost data. DRA's request is too general and untimely. We find AT&T has met its burden.

We will not require the NDIECs to file cost data. We do not regulate NDIECs on the basis of rate of return regulation.[20] We do not need cost studies to determine the reasonableness of the proposed 900 services. If NDIEC applicants seek to sell 900 services at a loss, that will inure to the detriment of their stockholders and to the benefit of IPs and consumers. NDIECs are not in a position to exercise predatory pricing (selling below cost to drive out all competition and become the monopoly provider). We will not require cost studies.

Other than the request for cost studies, there is no opposition to the rates proposed by applicants.[21] We therefore approve the rates requested, subject to the following two modifications.

First, Telesphere must delete the "special bids" portion of its tariff. Telesphere proposes with special bids that "the carrier reserves the right to alter these rates on an individual case basis." We find that rates which differ to similarly situated customers without a cost basis are discriminatory. We find that Telesphere must charge the same rates to all IP customers equally, unless they have requested, and we have approved, a deviation.

Second, applicants will file advice letters with proposed tariffs that comply with the orders in this decision. Those proposed tariffs may include rates which reflect costs commensurate with safeguards required by this order that were not contemplated by applicants in the rates proposed in their applications. Similarly, to the extent the applications did not include rates for billing and collection (because applicants sought for that service

---

20 See, for example, D.90-08-032, Finding of Fact No. 8.

21 AT&T originally requested rate flexibility within a band of rates. After protest, AT&T agreed to modify its application and withdraw the rate flexibility request.

to be non-tariffed), but we require intrastate billing and collection by tariff (except harmful matter before July 1, 1991), those provisions and rates shall be included in the tariffs submitted by advice letter. The advice letters will be filed in compliance with GO 96-A and served on all parties to these proceedings but will not become effective until further order.

VIII. LEC Cost Recovery

Applicants are unanimous in agreeing that LECs should be compensated for the additional expenses they incur in providing IEC access and safeguards for IEC 900 services. That cost recovery may be by either (1) access tariffs, (2) billing and collection agreements, (3) blocking cost recovery (which we will decide in I.85-04-047), or (4) special contracts. Applicants disagree on the vehicle for cost recovery (except for blocking cost recovery).

Pacific states it must be compensated for its additional cost, and cites the need for the Commission to approve AL 15395. Apparently Pacific is satisfied with access rates (along with our forthcoming blocking cost-recovery decision), as the vehicle for cost recovery. GTEC supports LECs being compensated, but does not propose any amounts or the vehicles to accomplish compensation.

The ALJ asked each applicant and LEC to propose mechanisms and procedures for cost recovery. Further, the ALJ asked the LECs to propose costs to accompany safeguards at issue in these proceedings. If necessary, the ALJ indicated that balancing accounts and interim cost recovery could be authorized in this proceeding subject to reconciliation in a subsequent proceeding.

No party recommended mechanisms, procedures or specific rates for LEC cost recovery. We will authorize applicants and LECs to utilize the four vehicles for cost recovery identified above (access tariffs, billing and collection agreements, blocking cost recovery, and special contracts). We will not specifically address

LEC cost recovery further unless brought to us by application, advice letter, or complaint, except to the extent already covered and ordered above (wherein LECs are directed to file access tariffs which include rates to recover costs incurred for performing services to IECs) and as will be addressed in our decision on blocking cost recovery in I.85-04-047.

IX. Monitoring

A. Monthly and First-year Reports

DRA recommends applicants be ordered to file monthly reports. These reports would be used to monitor the status and effectiveness of applicants' 900 program and safeguards. DRA recommends a comprehensive filing of 17 items that is consistent with the monthly tracking report filed by Pacific for Pacific's 976/900 services. These items include total revenues of IPs and carriers, adjustments, uncollectibles, numbers of IPs, charges of IPs, total complaints, total numbers of advance notifications, total numbers of blocking and unblocking, blocking revenues, costs of complaint procedures, intraLATA calls completed, and intraLATA traffic compensation paid to LECs.

Pacific agrees with the need for a monitoring report and testifies on its reporting requirements. Pacific states:

> "There is no compelling reason of which Pacific Bell is aware for...the reporting requirements to be different for the IECs." (Exhibit 8, p. 18.)

Consumer Action agrees that the same data filed by Pacific should be filed by applicants monthly with DRA so the Commission may evaluate the effectiveness of the safeguards.

Applicants all agree to reasonable monitoring requirements and offer that complaints filed with the Commission are the best source of data on consumer complaints and safeguard effectiveness. Applicants oppose burdensome and unnecessary

reporting requirements that will increase the cost of providing 900 service, and ultimately the cost the consumer will pay.

AT&T argues that much of the data sought by DRA is simply not collected by applicants, and it will be costly to do so if the data can be obtained at all. Further, AT&T states that the data DRA seeks is not meaningful in the context of applicants' 900 service. The more meaningful data is found in the complaints filed with the Commission itself, according to AT&T. It was through this mechanism that the Commission learned of the problems with Pacific's 976 service and this was effective, AT&T concludes.

Telesphere concurs that the data in general is either not available or inapplicable to IEC 900 service. Telesphere further objects to a filing requirement that it believes is more burdensome than that for Pacific when Pacific is supposedly a more regulated utility than are the NDIECs. GTEC believes that complaints filed at the Commission are an adequate measure of safeguard effectiveness.

We will require applicants to file data monthly which measures the effectiveness of the safeguards and program we authorize. We do this because we need to monitor the program we establish and have information available which may support needed modifications. While complaints filed with the Commission are an important measure, most complaints are lodged with LECs, IEC, or IPs. We need information beyond complaints filed at the Commission to be adequately informed. We point out to applicants that this could mean relaxation of some safeguards, if experience so indicates.

Applicants' comments on the proposed decision of the ALJ object to the monitoring proposed by the ALJ, but indicate that applicants will agree to the monitoring proposal of Pacific. Pacific's testimony, however, was that applicants should be required to file the same data as Pacific, but presented only a summarization of that data requirement. The full data requirement

was presented by DRA, as contained in large measure in the proposed decision of the ALJ.

Nonetheless, we will not require the same data we require of Pacific, since the safeguards are different for applicants (e.g., no separation of programs by prefix, except for harmful matter). We tailor the monitoring report to the unique program we authorize for applicants. We specify the data we will require monthly from applicants in Attachment C. We modify the requirements proposed by the ALJ based on the comments. We will not require national data, for example, and we will require applicants to finalize the tracking plan and report format within 60 days of the date of this order, or prior to the effective date of their individual 900 tariffs, whichever is later. To the extent applicants do not now have this data, they will need to make arrangements internally and/or with their billing agents. In addition, we will require applicants to file supplemental data at the end of the first year to assist CACD in preparing an industry status report.

B. Industry Status Report

We authorize applicants' 900 service because it promises to offer benefits to California telephone users. On the other hand, as we have noted above, it also places certain new risks on those users. We authorize this service with safeguards that will balance the benefits and risks. We have ordered monthly monitoring reports for continuous monitoring, so we may be in a position to make changes when necessary. We will also direct the preparation of a more comprehensive report at the end of the first year of IEC operation. This report will be a status report on the industry and our regulation.

We ask CACD to prepare a draft report within 75 days of the receipt of 12 months of the monthly reports from applicants. We ask that the report include all 900 service carriers, and therefore should not only include applicants but also Pacific. The

draft report should summarize the data from the monthly reports. It should review carrier compliance with its tariffs, including safeguards. It should analyze the manner in which our regulation is influencing the development of this industry. It should address problems that have occurred with the safeguards we have, or problems that may need to be addressed by new or modified safeguards. It should include a list of possible safeguards to be adopted or modified for each problem identified, along with the advantages and disadvantages for each safeguard, without recommendations. It should point out where safeguards may no longer be necessary and the pros and cons of their deletion, but should not present recommendations. And it should include any other data and material CACD determines is necessary to present a full and complete picture of the 900 services industry in California one year after applicants begin operation.

The draft report will be circulated for comments to applicants, Pacific and the service list in I.90-12-040. CACD may hold a workshop or meeting if necessary. Comments will be due on the draft report 30 days after it is distributed for comment. CACD will review and incorporate reasonable and relevant comments. The final report will be prepared within 45 days after receipt of the comments. An original and 12 copies of the final report will be filed with Docket Office and it will be served on the service list in I.90-12-040. All parties to I.90-12-040 may file comments on the CACD report within 15 days after the CACD report is filed with the Commission.

The Commission will consider the CACD report plus the comments of the parties, and may act on its own initiative to modify 900 regulation. Alternatively, parties may submit advice letters, complaints, or applications to seek further changes in 900 tariffs. In either event, the Commission fully intends to continue consideration of necessary changes in our regulation of 900 service, and make changes as appropriate.

X. Implementation

A. Customer Education

Pacific suggests the Commission consider a customer education program if applicants' requests are granted. Pacific points out that as a result of its own education program at Commission direction the public has certain expectations of safeguards on 900 programs, regardless of carrier.

Consumer Action argues that an education campaign similar to that employed by Pacific should be undertaken regardless of the level of consumer safeguards the Commission mandates. The education should include:

(1) what are 900 services;

(2) the range of costs to callers;

(3) how interstate and intrastate 900 calls differ;

(4) what consumer safeguards apply to carrier intrastate 900 services;

(5) how applicants' safeguards differ from those of Pacific;

(6) blocking options; and

(7) refund policies.

Consumer Action recommends the educational campaign be comprehensive and include newspaper, radio, and television advertising as well as printed educational materials, and it should be conducted in all major languages. Consumer Action suggests applicants consult with consumer groups and the Commission's Public Advisor in putting the educational campaign together.

While we do not order a multi-media campaign, we note that Consumer Action and/or other consumer groups may wish to file a proposal with the Telecommunications Education Trust for such consumer education. We order a comprehensive educational campaign

in all major languages to be conducted through bill inserts. Applicants are directed to consult with CACD and the Commission's Public Advisor on what major languages to include and the method to accomplish this information in several major languages. Applicants will make arrangements for bill inserts in all California LEC bills for LECs through which access to applicant-carried IPs is possible. Applicants will also include a bill insert in applicants' and/or their billing agent's bills if different than the LEC bills. The bill inserts will be included in customer bills no later than the commencement of applicants' 900 intrastate interLATA service. Applicants are directed to consult with Consumer Action and other consumer groups in developing the bill insert. After review by the consumer groups and incorporation of their comments as appropriate, applicants will submit a copy of the proposed bill insert to CACD and the Commission's Public Advisor for review and comment. The bill insert will include the seven items identified above by Consumer Action.

Further, the bill insert will explain that nonpayment of 900 charges may result in blocking of access to 900 providers, but will not result in termination of basic service. The insert will state that a caller can get the name, address, and business telephone number of any IP upon request from either the IEC or its billing agent, and whom to call for that information (toll free). The insert shall also explain the complaint procedure and adjustment policy.

We will also direct applicants to inform callers with every 900 bill of their billing rights. Comments on the proposed decision of the ALJ complained that this requirement (which may require a bill insert) will be costly and difficult. We relax the requirement as proposed by the ALJ to be a simpler notice which may be placed on the back of the bill. The notice will indicate to subscribers that basic telephone service will not be disconnected for nonpayment of 900 charges. The notice will also indicate to

whom the subscriber should call or write to dispute 900 charges, and that this must be done within 60 days of receipt of the bill.

When the IEC and/or its billing agent receives a written complaint, we will require that the IEC and/or its billing agent send a copy of the complaint procedure and adjustment policy to the subscriber. This same information must be provided orally to subscribers who lodge their complaint orally.

B. Commission Enforcement

An additional implementation measure deals with Commission enforcement. The Commission must be in a position to investigate applicant's 900 service. A complete investigation may require listening to the IP program to ensure that applicant is administering its 900 service consistent with the conditions with which it is authorized (e.g., harmful matter prefix; disclosure message; delayed timing period; tone at end of delayed timing period; disclosure message that is comprehensible; proper placement of override information; justification for caller dissatisfaction leading to refusal to pay; vending only for charitable contributions, information or services; automatic disconnection after a period of inactivity for certain programs; total time and charges at log off for videotext programs; no holding out as an intraLATA carrier in general and specifically for calls which are reasonably likely to be of local interest and primarily intraLATA).

Therefore, each applicant's authorization is further conditioned on applicant's tariff providing applicant will connect the Commission and/or its staff with the IP program and/or the IP at applicant's expense when the Commission and/or its staff is undertaking an investigation. Further, the tariff will provide that the applicant shall produce a transcript or recording of the program, plus copies of the advertising, to the Commission and/or its staff upon request.

XI. Other Issues

A. Sprint CPCN

Sprint Services (referred to as "Sprint" in this decision) was created as a division of US Telecom, Inc., in October 1988. Sprint was created to complement the long distance communication services provided by its affiliate, US Sprint Communications Company Limited Partnership (U-5112-C) ("US Sprint"). US Telecom, Inc., is certified to do business in the State of California. United Telecommunications, Inc., is the common corporate parent of US Telecom, Inc., and US Sprint.

Sprint requests a CPCN to provide 900 service. Sprint seeks authority to operate as an IEC providing 24-hour intrastate interLATA long distance telephone service. Applicant will operate under the name Sprint Services, but will market its 900 services under the name "Sprint Gateways," an operating unit of Sprint Services. Applicant does not plan to construct or extend any facilities in California to implement and provide the service for which it seeks authority. Applicant will lease and use the existing network of US Sprint Communications Company Limited Partnership. No party recommends denial of Sprint's request for a CPCN, only that approval be conditioned on safeguards and implementation requirements.

Sprint's application demonstrates Sprint has the necessary experience, management proficiency, technical expertise, and financial resources to provide the proposed service in California, as demonstrated by the experience and resources of United Telecom (the common corporate parent of US Telecom, Inc., and US Sprint). The application satisfies the requirements of the PU Code and Rule 18. Sprint's proposed tariff--once modified consistent with the orders in this decision--will be lawful, just, reasonable, and in the public interest. We find that Sprint's

application for a CPCN should be granted conditioned upon Sprint's compliance with the orders in this decision.

Sprint requests that, in addition to the exemptions from GO 96-A set forth in D.84-06-113, Sprint be granted an ongoing deviation from the following items in GO 96-A:

(1) paragraph II(C)(1)(b), which requires consecutive sheet numbering and prohibits the reuse of sheet numbers; and

(2) paragraph II(C)(4), which requires that "a separate sheet or series of sheets should be used for each rule."

These deviations are granted.

B. Consumer Action Request for Finding of Eligibility for Compensation

On June 4, 1990, Consumer Action filed a request for finding of eligibility for compensation, pursuant to Article 18.7 (Rules 76.51 through 76.62) of the Rules. On June 20, 1990, Consumer Action filed a supplemental request (which included the balance sheet from the previous year and the budget for the coming year both referenced, but mistakenly omitted, from the original filing). Sprint filed an opposition to Consumer Action's request on July 5, 1990. Consumer Action responded on July 31, 1990. We will discuss in turn the elements of eligibility.

1. Purpose

Rule 76.51 contains the purpose:

> "...to provide compensation for reasonable advocate's fees, reasonable expert witness fees, and other reasonable costs...of participation or intervention in any proceeding of the Commission...to modify a rate or establish a fact or rule that may influence a rate."

These proceedings are to determine whether applicants' 900 services should be authorized and, if so, what, if any, terms and conditions should condition that authorization. Specifically,

these proceedings are to consider granting a CPCN to Sprint, granting authorization to AT&T and MCI, and lifting the suspension of Telesphere's advice letters. These proceedings may modify a rate, or establish a fact or rule that may influence a rate, and therefore fall within the definition of applicable proceedings.

2. Party and Customer

Consumer Action is an interested party appearance in these proceedings and, therefore, is a party under Rule 76.52(d). Consumer Action is a nonprofit organization with 2,000 members throughout California. Consumer Action is a customer under Rule 76.52(e) because it represents consumers of a telephone corporation subject to the jurisdiction of the Commission.

3. Time for Filing

Rule 76.54 requires that any filing of a request for eligibility be filed within 30 days of the first PHC or within 45 days of the close of the evidentiary hearing record. Consumer Action's request was filed timely because it was filed within 30 days of the PHC.

4. Items in Request

Rule 76.54(a) requires that a request for eligibility include four items:

> "(1) A showing by the customer that participation in the hearing or proceeding would pose a significant financial hardship. A summary of the finances of the customer shall distinguish between grant funds committed to specific projects and discretionary funds...;
>
> "(2) A statement of issues that the customer intends to raise in the hearing or proceeding;
>
> "(3) An estimate of the compensation that will be sought;
>
> "(4) A budget for the customer's presentation."

The adequacy of Consumer Action's filing on each of these items is addressed in turn.

a. Significant Financial Hardship

Rule 76.52(f)(1) and (2) define "significant financial hardship" to mean both:

> "(1) That, in the judgment of the Commission, the customer has or represents an interest not otherwise adequately represented, representation of which is necessary for a fair determination of the proceeding; and,
>
> "(2) Either that the customer cannot afford to pay the costs of effective participation, including advocate's fees, expert witness fees, and other reasonable costs of participation and the cost of obtaining judicial review, or that, in the case of a group or organization, the economic interest of the individual members of the group or organization is small in comparison to the costs of effective participation in the proceeding."

The first element of a demonstration of significant financial hardship is a showing that:

> "...the customer has or represents an interest not otherwise adequately represented, representation of which is necessary for a fair determination of the proceeding."

Consumer Action argues that it represents the interest of residential ratepayers, an interest that would not otherwise be adequately represented. Consumer Action points to its long history of involvement in 976/900 matters, including its objection to the "900 Settlement" signed by DRA, Pacific, and IPA in Pacific's 900 proceeding. Consumer Action indicates its intention to use insights and research from two surveys to support its positions in these proceedings. The later survey Consumer Action indicated would be released to the media in June 1990, and includes data on nationwide 900 services, types of programs, prices, whether content

matched advertising claims, and the types of disclosures. Consumer Action argues that it is the only consumer group in these proceedings.

Sprint objects, pointing out that applicants themselves advance consumer safeguards in their applications, and that DRA will ensure that ratepayers are protected. DRA made no comments on Consumer Action's participation.

Consumer Action responds that it applauds DRA's work, but DRA's duty is to the long-term interests of all ratepayers. DRA's participation does not diminish the need for representation by particular segmented interests of the larger body of ratepayers, according to Consumer Action. That Consumer Action and DRA may represent their respective groups differently is quite clear from their respective actions in the Pacific 900 proceedings, Consumer Action claims. Consumer Action also points out that because Sprint has voluntarily proposed safeguards does not negate the need for Consumer Action to represent residential ratepayers.

We conclude that Consumer Action represents an interest that, although it may overlap with parts of DRA's and applicants' interests (in protecting residential ratepayers), is an interest not otherwise adequately represented. Consumer Action has met the first prong of the significant financial hardship test.

The second prong of the significant hardship test requires Consumer Action to either demonstrate that it cannot afford to pay the costs of effective participation, or as a group that the interest of the individual members is small in comparison to the costs of effective participation. As part of this test, Consumer Action must provide a summary of finances distinguishing between grant funds committed to specific projects and discretionary funds. Consumer Action indicates that its budget for the coming year (through March 31, 1991) is $450,000, of which only $67,000 is not committed to specific projects. Consumer Action asserts that its funds come from membership dues and donations.

The funds support membership and general public services (e.g., eight issues of Consumer Action News, three state-wide banking fee surveys, research and printing of a guide to California complaint handling agencies, staffing of a complaint and information switchboard). Consumer Action claims its discretionary funds are not sufficient to support its ongoing work plus underwrite adequate representation of residential ratepayers in these proceedings. Consumer Action indicates it is able to "front" the money for participation in these proceedings, but needs to recoup the funds at the end of the proceedings. As discussed below, Consumer Action indicates that its budget for participation in these proceedings is preliminary and subject to significant change, but is estimated to be $55,550.

Consumer Action asserts that the economic interests of the individual members is small compared to the cost of effective participation, but makes no showing to support that assertion.

We find that participation would pose a significant financial hardship to Consumer Action. Spending $55,550 out of $67,000 in discretionary funds, would leave only $11,450 in reserves. It would be imprudent for Consumer Action to have so little in reserves. Therefore, we find participation would pose a significant financial hardship.

b. Statement of Issues

Rule 76.54(a)(2) requires a statement of issues that the party intends to raise. In its request, Consumer Action states it intends to address each issue set forth in the ALJ ruling establishing the workshop. Consumer Action indicates it will argue that the safeguards with Pacific's 900 service are the floor, and more stringent safeguards are necessary in many areas. Consumer Action, therefore, meets this requirement.

c. Estimate of Compensation

Rule 76.54(a)(3) requires Consumer Action to provide an estimate of the compensation it will seek to recover. Consumer Action's request indicates that Consumer Action intends to fully participate in all issues and will seek full compensation for its work where it "substantially contributes." Consumer Action indicates it is too early to know what these issues will be. Consumer Action does not submit a specific estimate.

d. Budget

Rule 76.54(a)(4) requires a budget for the party's presentation. Consumer Action submits the following budget:

Advocate Fees 300 hours at $135 per hour	$40,500
Consultant Fees 100 hours at $100 per hour	$10,000
Other Fees and expenses at 10%	5,050
TOTAL	$55,550

5. Common Legal Representative

Rule 76.54(b) allows other parties to comment on the request, including a discussion of whether a common legal representative under Rule 76.59 is appropriate. Under Rule 76.55 our decision on the request may designate a common legal representative.

Consumer Action does not believe that it is appropriate to designate a common legal representative. No other party commented on this issue. Therefore, we find no current need to designate a common legal representative in this proceeding.

6. Conclusion

We find that these proceedings fall within the definition of applicable proceedings, that Consumer Action is a party and a customer for the purposes of these proceedings, and that Consumer

Action filed its request timely. We find that Consumer Action represents an interest that, although it may overlap with the interests of other parties, is not otherwise adequately represented. We find that there is no need to designate a common legal representative. We find that Consumer Action has shown that its participation would pose a significant financial hardship and that it has submitted a statement of issues and budget. Therefore, we find that Consumer Action's eligible to file a request for compensation. We make this finding for this proceeding only.

Consumer Action is placed on notice that it may be subject to audit or review by CACD; therefore, adequate accounting records and other necessary documentation must be maintained by the organization in support of all claims for intervenor compensation. Such record keeping systems should identify specific issues for which compensation is being requested. The actual time spent by each employee, the hourly rate paid, fees paid to consultants, and any other costs incurred for which compensation may be claimed.

C. Applicability of Decision to Each Applicant

This decision applies to each applicant equally. Each applicant must comply with the orders herein. Applicants may choose to comply by joint efforts where they can, such as in the consumer education bill insert. If two or more applicants agree, for example, those two or more may combine to comply with this order by one joint bill insert, thereby conserving resources and saving costs.

D. Sequence of Events

Each applicant's service may not become effective until several events occur: (1) the LECs' access tariffs are effective; (2) the customer education by bill inserts has been completed; and (3) applicant has an approved, effective tariff for intrastate, interLATA 900 service. The LECs have a role in providing many of the safeguards we order. The LECs will perform these safeguards and ensure they are accomplished via their access tariffs. The LEC

access tariffs must therefore be filed and effective before applicant may begin service. Similarly, we direct that consumers be educated about the service before the service may begin. Finally, each applicant must have an approved, effective tariff for their 900 service. We note that these items may be undertaken simultaneously and parties may strive for as nearly as possible a simultaneous completion and effective date.

Findings of Fact

1. Consistency in regulation of 900 services is desirable.

2. Callers may be indifferent over who carries their 900 call if there are no differences in service between the carriers; however, callers may not be indifferent between carriers if different services are offered, such as different consumer safeguards.

3. Where consumer protections are needed, they should be consistent for each 900 call and carrier, even if the method of addressing the concern may differ between carriers.

4. We cannot control the consumer protections adopted in other jurisdictions, and it is not responsible public policy for us to be driven to adopt the safeguards in another jurisdiction just to be consistent.

5. Benefits of 900 service include access to information, entertainment or services which is convenient, casual, automatic, and anonymous. Risks include access which is unauthorized, compulsive, misunderstood (e.g., cost or content of call), or blind (e.g., unable to examine the information or service before making the purchase).

6. Applicants can block access to harmful matter prefixes only for callers who subscribe to their long distance company. Other callers can use applicant's services but cannot have their 900 numbers blocked.

7. Applicants do not argue that the requirement for a disclosure message should be delayed, but that it should not be a required safeguard.

8. The requirement for a disclosure message, followed by a delay message before charges may begin, will be statutory (SB 2765) effective July 1, 1991, and there is no reason to authorize applicants' 900 service with this safeguard postponed.

9. Consumers have the right to know each time they consider transacting, or do transact, business with an IP that they have reached the IP they intended and what the cost will be.

10. A disclosure message protects callers by providing the basic information needed to make an informed decision.

11. Minors need to be warned to seek parental permission before calling or incurring charges for an IP program. The CARU-proposed guidelines recommend a provision warning children to seek parental permission.

12. The warning for children to seek parental permission must be emphatic, consistent with Pacific's 900 tariff and the CARU-proposed guidelines.

13. IPs should warn minors that the cost of the call will be on their parent's telephone bill.

14. No party argued against a provision requiring programs that are adult in nature to warn minors to hang up, and this provision is necessary to protect children.

15. An introductory message for a program that has an initial charge, followed by additional charges for the caller to get the full benefit, is similar to cross-promotion, wherein all charges must be disclosed.

16. No distinction made at hearing of an override to the introductory message applying to audiotext versus other IP programs. There is no reason for a distinction between program types in allowing or not allowing the use of an override.

17. Blocking of access to IPs carried by IECs must be provided by LECs for it to be meaningful.

18. Blocking is a vital part of any set of consumer safeguards.

19. There is a need for nonresidential as well as residential blocking.

20. Two adjustments beyond the one-time waiver are an inadequate safeguard for callers who request blocking where blocking is not available but who cannot be moved to a blocking-capable switch or central office.

21. Applicants all indicate that either they do not offer caller identification or they will comply with PU Code § 2893 (blocking caller identification) when caller identification blocking technology is available. No party presented evidence that the technology is available and not being used by applicants.

22. Sprint recommends that the price for IP programs directed to children be limited to $2.00 per minute and $4.00 per call, and AT&T currently applies a price limit for its interstate IPs of $4.00 per call.

23. The CARU-proposed guidelines say a price limit is extremely important for programs directed to children because children do not understand the relationship between time and incremental charges.

24. The age beyond which a price limit need not apply and the caller need not be warned to obtain parental permission (for programs directed to younger people) should be as old as possible as long as the parent (i.e., subscriber) bears liability for the bill, whether there is substantial cross-elasticity in demand between programs appealing to teenagers and those over 18 or not.

25. A child is any person below the age of 18 for purposes of price limits on IP programs.

26. A price cap will not prevent, eliminate, or in any way reduce the availability of any IP that is truly wanted or needed by society because an IP can always use area code 800 or a regular telephone number and collect its revenue in some way other than the LEC bill (e.g., U.S. mail, credit card); or the IP can use 900 with a price limit and collect the extra charges in some other way.

27. DRA data on revenue adjustments is an indication of moderate problems with higher-priced IP calls.

28. Applicants and IPs will take substantially more of the risk on high-cost/high-priced programs with a complaint procedure and adjustment policy that allow adjustments when the caller is justifiably dissatisfied with the IP program.

29. Overnight letters at 56 times the cost of regular first-class mail at first seemed excessive to some, but have been accepted by the public. Similarly, higher priced IP programs may meet a need for some callers.

30. A policy that permits all justified adjustments balances the risk of higher-priced IP programs for some callers with their benefits to other callers.

31. Delayed notification of high 900 charges is better than no notification (until the end of the billing cycle).

32. Eight percent of Pacific's customers notified about high 900 charges requested blocking; this is not an insignificant number.

33. Separate prefixes to distinguish IPs by program type are useful for customer education (easy identification of programs by type), but such identification is severely hampered if a separate prefix is needed by each carrier.

34. It is not feasible for all carriers to use the same prefix to distinguish one type of IP program due to the resulting difficulties in call routing and billing.

35. Separate prefixes to distinguish IPs by program type are useful for selective blocking of IPs.

36. It is not feasible, however, at this time to use separate prefixes by IP program type (except for harmful matter prefixes) to facilitate selective blocking.

37. Subscribers' risk with 900 use increases as (a) the price per call increases, (b) separate prefixes by program type (except for harmful matter) are not used, and (c) as carriers fail to successfully monitor the IPs they carry, effectively enforce their own standards, effectively investigate and respond to complaints, and cooperate with other agencies investigating IPs.

38. Dissatisfied customers of an IP should be eligible for unlimited refunds if and when justified.

39. IPs must not be subject to fraudulent claims for refunds from customers, but callers must not be obligated to pay for calls to IPs when the charges are not justified.

40. The market should determine whether IP programs are successful, with the risk placed on the IP and carrier, not the consumer. The consumer should be eligible for an adjustment if dissatisfied with an IP program for any justifiable reason.

41. None of the other proposed safeguards can protect callers from problems with 900 calls as well as an adjustment policy that provides unlimited refunds when justified.

42. A caller's refusal to pay 900 charges should be eligible for unlimited adjustments without mandatory blocking as long as the adjustments are justified, with that determination made on a case-by-case basis.

43. The adopted complaint procedure and adjustment policy will balance the interests of callers obtaining necessary and appropriate refunds with the interests of IPs avoiding fraudulent chargebacks.

44. Applicants are in the best position to undertake the investigation as part of the complaint procedure to determine if the IP is in compliance with all applicable laws and rules which govern the tariff or whether the caller's claim may be valid.

45. The consumer has the right to know the identity of any entity with which he or she may do, or has done, business. Requiring a written request to obtain this information may discourage consumers.

46. Competition between LECs and IECs for IPs is healthy and should be encouraged. Claims that competitors may steal IPs as a reason for applicants to withhold the identity of an IP, unless the request is in writing, are inconsistent with the competition we are creating in many markets we regulate.

47. There is no public interest need to require applicants to each adopt the same billing increment applied to IP rates, and a consistent billing increment for charges assessed subscribers, as long as the billing increments are clearly communicated to the IP and caller.

48. Callers have no reasonable way of knowing the billing increment basis for a call to an IP unless the IP disclosure message and program advertising provide this information.

49. The public should be allowed to use its own judgment on whether to contribute to a charity, but it can do so only if the IP reveals how much of the call will go to which charity and how much will be retained by the IP.

50. Many of applicants' proposed safeguards are in their proposed nontariffed billing and collection agreements or are part of applicants' business practices, and are not contained in applicants' proposed tariffs for intrastate interLATA 900 service.

51. It is useful for subscribers to have the 900 program name, category, and/or a short description on their bill, to assist in identification of inadvertent, mistaken, or unauthorized use of their telephone and to provide a receipt of a contribution to charity.

52. Some numbers listed in directories cost extra for a subscriber to call and others do not. There is no harm, but rather a benefit in, revealing in directory listings which calls are sure to cost extra.

53. It is necessary to require specific safeguards and terms and conditions of service in applicants' tariffs to ensure that applicants' 900 service is provided consistent with the public interest.

54. Telesphere AL 8 and 9 do not contain all the terms, conditions, and rates that are required by this decision.

55. Applicants' adoption of a holding-out restriction will limit the intraLATA traffic they carry in their provision of interLATA intrastate 900 service.

56. Pacific and other LECs will not lose contribution to universal service by applicants' provision of interLATA intrastate 900 service, since access tariffs will provide compensation for access and Pacific's rates were last made without any contribution from 900 service.

57. LECs must file tariffs before applicants may use the LECs' facilities in provision of 900 service.

58. AT&T's proposed service is economically feasible.

59. We do not regulate NDIECs on the basis of rate of return regulation and it is unnecessary for NDIEC applicants to submit economic-feasibility evidence for their proposed service.

60. While complaints filed with the Commission are an important measure of the effectiveness of consumer safeguards with 900 service, the Commission needs information about the complaints filed with applicants and their billing agents, plus data on 900 services, program operation, and adjustments to be adequately informed.

61. Sprint will not engage in the construction or extension of any any facilities in California and thus it can be seen with certainty that there is no possibility that this authority, if granted, will adversely affect the environment.

62. Sprint has the necessary experience, management proficiency, technical expertise, and financial resources to provide the proposed service in California.

63. Sprint should be subject to the 3.4% surcharge on gross intrastate revenues as established by Commission decisions and resolutions pursuant to PU Code § 879.

64. Sprint should be subject to the three-tenths of 1% (0.3%) surcharge on gross intrastate revenues to fund Telecommunications Devices for the Deaf. This surcharge became effective on July 1, 1989 as set forth in Resolution T-13061 dated April 26, 1989 and issued pursuant to PU Code § 2881.

65. Sprint should be subject to the user fee as a percentage of gross intrastate revenue pursuant to PU Code § 431-435. The fee is currently 0.1% for the 1990-91 fiscal year.

66. Consumer Action submits that its participation may cost $55,550, while $67,000 of Consumer Action's budget is not already committed to other specific projects.

67. Consumer Action's request for eligibility was timely filed and addresses all four elements required by Rule 76.54(a) of the Commission's Rules of Practice and Procedure.

68. Consumer Action represents the interests of individual residential customers not otherwise adequately represented in these proceedings.

69. Consumer Action has demonstrated that its participation in these proceedings would pose a significant financial hardship under Rules 76.52(f) and 76.54(a)(1).

70. There is no need at this time to designate a common legal representative for the interest Consumer Action represents in these proceedings.

Conclusions of Law

1. Sprint has the burden to prove that its application is in the public convenience and necessity, lawful, just, reasonable, and in the public interest; AT&T and MCI each have the burden to prove that their applications are lawful, just, reasonable, and in the public interest; and Telesphere as respondent has the burden to prove that its advice letters are not unreasonable or unlawful in any respect (i.e., that they are lawful, just, reasonable, and in the public interest).

2. The standards we require for Pacific's 900 service are not the result of a settlement. Rather, we specifically rejected a proposed settlement as inconsistent with the public interest under Rule 51.7 of the Commission's Rules of Practice and Procedure. We proposed alternative terms for comment by the parties and, after consideration of those comments, we approved Pacific's 900 services.

3. Applicants' tariffs for 900 service may differ from Pacific's as long as they are lawful, just, reasonable, and in the public interest, with reasons to justify the differences.

4. It is reasonable that the tariff shall define the contents of one specific 900 prefix (NXX) to contain only messages or services which contain harmful matter. All other 900 programs will be placed on one or more other prefixes. It is reasonable that each applicant must arrange with each LEC from which each applicant's 900 service may be reached by subscribers to provide subscribers the option to block access to harmful matter IPs. Each applicant's tariff must state that such blocking is available from the LEC (consistent with applicant's agreement with the LEC).

5. It is reasonable to not allow applicants to offer 900 service where applicant cannot offer blocking to harmful matter programs.

6. The tariff shall not apply before July 1, 1991 to the billing and collection of services which contain harmful matter. Billing and collection for harmful matter services are subject to contractual arrangement between applicant and the IP until July 1, 1991.

7. It is reasonable and in the public interest to require for all IP programs (except audiotext programs with restricted access via personal identification number or special password):

a. a disclosure message which contains at least the following:

1) the name of the program;

2) the information charge and billing increment for the call;

3) the date the information was recorded, if the information is a recorded message;

4) that if the caller disconnects within the delayed timing period there will be no charges for the call;

5) that minors must seek parental permission (if the program is directed to minors);

6) that the cost of the call will be on the parent's telephone bill (if the program is directed to minors);

7) that minors should hang up if the program is adult in nature; and

8) that the caller will incur additional charges to obtain the full information or service, when additional charges apply.

b. a minimum of a 12-second delayed timing period;

c. during the delayed timing period the disclosure message shall be given, followed by at least three seconds within which the caller can hang up without charge; and

d. a tone to indicate the end of the delayed timing period.

8. PU Code § 2998 (SB 2765) requires a disclosure message and a billing delay for audiotext IPs, but neither provides for nor prohibits an avoidance (override) of the disclosure message and billing delay.

9. It is reasonable and in the public interest to allow an override to the disclosure message and delayed billing period as long as the caller is informed.

10. It is reasonable and in the public interest for LECs to perform blocking of access to all IPs carried by IECs, and for applicants' tariffs to provide this option through the LEC.

11. Moving a subscriber from a switch in a central office that cannot provide individual subscriber blocking to a blocking-capable switch in that central office or to a central office that can provide blocking at no cost to the subscriber is reasonable.

12. It is reasonable to not allow 900 service to be provided in areas where callers may not block access to 900 IPs.

13. It is reasonable and in the public interest that applicants provide a separate prefix for harmful matter programs; that applicants provide to residential customers the option of free blocking of access to all IPs or harmful matter programs; and that applicants have a complaint and adjustment policy that provides without further justification a waiver for the first occasion of inadvertent, mistaken or unauthorized use.

14. It is reasonable for residential blocking to be provided without charge; business blocking to be provided at $1.00 per line (if requested by a subscriber no less than 60 days after being advised of its availability or $15.00 per line at other times); removal of residential blocking to be provided at a charge of

$5.00; and removal of business blocking to be provided at a charge of $15.00 per line.

15. Applicants' tariffs must indicate they will provide caller-identification blocking when the technology is available.

16. A price limit of $2.00 per minute and $4.00 per call is reasonable for programs directed to persons below the age of 18, and it is reasonable for these programs to warn callers that they must have parental permission to complete the call.

17. It is reasonable for IP prices for programs not directed to children to be limited to $5.00 for the first minute, and $2.00 for additional minutes, with a maximum total of $50.00 per call.

18. It is reasonable to require advance notification to callers when a caller's bill reaches certain predetermined amounts for the first time.

19. It is reasonable to not require applicants to use separate prefixes by IP program type (except for harmful matter).

20. If applicants desire to provide 900 information services, the public interest requires that applicants have a positive responsibility to undertake and administer a reasonable complaint procedure and adjustment policy.

21. It is reasonable that applicants obtain a signed declaration from subscribers seeking an adjustment of $100 or more, on a standard preprinted form that ensures the subscriber is qualified for a refund and properly informs the subscriber of his or her rights and responsibilities regarding refunds and appeals.

22. It is reasonable to require applicants or their billing agents to reveal the name, address, and business telephone number of the IP to a caller within a reasonable time upon request.

23. It is reasonable to require IP advertising to include the billing increment for the call so callers know what time increment is used for assessing charges.

24. It is reasonable to require applicant's fund-raising IPs to reveal in advertisements and disclosure messages the amount of

the charge (either dollar amount or percentage) that will go to which charity, submit a written agreement between the IP and organization receiving the contribution that includes the amount or percentage of each call that will be paid, with a copy of the written agreement provided to applicant before the IP service is established, and require a copy of the agreement to be made available by the IP to any person on request.

25. It is reasonable to require that applicants' safeguards, terms, conditions, and rates for 900 service (including billing and collection) be included in their tariffs for 900 service, except for billing and collection for harmful matter IPs which will not be required until July 1, 1991, and except for terms and conditions for programs which will not be carried by applicants.

26. Telesphere AL 8 and 9 are unlawful and unreasonable.

27. It is reasonable to require all billing and collection terms, conditions, and rates to be tariffed to promote equity and nondiscriminatory treatment.

28. It is reasonable to require that the subscriber's bill contain the 900 program name, category, and/or short description within the currently available space on the bill.

29. It is reasonable to require that IP directory listings indicate that additional charges will apply for IPs that charge for calls.

30. It is reasonable for LECs to file proposed access tariffs for IEC provision of 900 service.

31. Rates which differ to similarly situated customers without a cost basis are discriminatory.

32. Telesphere's proposal for "special bids" would allow Telesphere to charge different rates to similarly situated customers without a cost basis and is, therefore, discriminatory.

33. It is reasonable for applicants to file advice letters with rates that include the costs of safeguards and other requirements of this decision.

34. It is reasonable for applicants to pay LECs the costs LECs incur in providing services to applicants for applicants' provision of 900 service. These costs will be recovered by (1) access tariffs, (2) billing and collection agreements, (3) blocking cost recovery, or (4) special contracts.

35. It is reasonable for applicants to undertake a consumer education campaign in all major languages via inserts in the billing envelopes of California LECs through which access to applicant-carried IPs is possible (and their own bills or the bills of their billing agents if different than the LEC bill) no later than the commencement of applicants' 900 service. The insert shall include:

a. an explanation of 900 services;

b. the range of costs to callers;

c. how interstate and intrastate 900 calls differ;

d. what consumer safeguards apply to applicant's intrastate 900 services;

e. how applicants' safeguards differ from those of Pacific;

f. blocking options;

g. refund policies;

h. an explanation that nonpayment of 900 charges will not result in termination of basic service, but can result in blocking of access to 900 providers after the first waiver for inadvertent, mistaken or unauthorized use;

i. that a caller may obtain the name, address, and business telephone number of any IP upon oral request from the IEC or its billing agent at no cost and whom they should contact (toll free); and

j. the caller's rights and responsibilities under the complaint procedure and adjustment policy.

36. It is reasonable and in the public interest for applicants to provide full disclosure of the complaint procedure and adjustment policy when a caller first lodges a complaint.

37. It is reasonable to require applicants to connect the Commission and/or its staff during an investigation of an IP with that IP program and the IP at applicant's expense, and to provide a transcript or recording of the program plus copies of advertising, to facilitate investigations.

38. Sprint's application for a CPCN should be granted subject to the conditions contained in this decision.

39. Consumer Action should be found eligible under Article 18.7 of our rules to claim compensation for its participation in this proceeding.

O R D E R

IT IS ORDERED that:

1. US Telecom, Inc., doing business as Sprint Services (Sprint), is granted a certificate of public convenience and necessity to provide interLATA information access service using the 900 area code within California subject to the terms and conditions established in this decision.

2. AT&T Communications of California, Inc. (AT&T) and MCI Telecommunications Corporation (MCI) are authorized to provide interLATA information access service using the 900 area code within California subject to the terms and conditions established in this decision.

3. Telesphere Network, Inc. (Telesphere) Advice Letter Nos. 8 and 9 are rejected. Telesphere is authorized to provide interLATA information access service using the 900 area code within California subject to the terms and conditions established in this decision, and to submit new tariffs as provided below.

4. Sprint, AT&T, MCI, and Telesphere (applicants) tariffs for 900 service shall contain and provide for the following:

a. The tariff shall define the contents of one specific 900 prefix (NXX) to contain only messages or services which contain harmful matter (harmful matter is matter covered by PU Code § 2884(d)). All other 900 programs will be placed on one or more other prefixes. Each applicant must contract with each local exchange carrier (LEC) from which each applicant's 900 service may be reached by end-users to provide blocking to either harmful matter information providers (IPs) or all IPs. Each applicant's tariff must state that such blocking is available from the LEC (consistent with the applicant's agreement with the LEC).

b. The tariff shall specify that applicants may not provide 900 services in areas where blocking to both harmful matter prefix(es) and all 900 prefixes is not available.

c. The tariff shall not apply to the billing and collection of services which contain harmful matter provided before July 1, 1991. Billing and collection for harmful matter services are subject to contractual arrangement between the telephone corporation and the IP until July 1, 1991. The tariff shall contain terms, conditions, and rates for billing and collection of services which contain harmful matter on and after July 1, 1991.

d. The tariff shall require a disclosure message which contains at a minimum all of the following:

1) the name of the program;

2) the information charge and billing increment for the call;

3) the date the information was recorded, if the information is a recorded message;

4) that if the caller disconnects within the delayed timing period there will be no charges for the call;

5) that minors must have parental permission (if the program is directed to minors);

6) that the cost of the call will be on the parent's telephone bill (if the program is directed to minors);

7) that minors should hang up if the program is adult in nature;

8) any additional charges that the caller must incur to obtain the full information or service; and

9) the dollar amount (or percent of the total price of the call) that will go to which charity, if the IP is fund raising.

The disclosure message is not required for audiotext programs with restricted access by personal identification number code or special password.

e. The tariff shall specify the following delayed timing period requirements:

1) the tariff shall require a minimum of a 12-second delay as a delayed timing

period (except for audiotext programs with restricted access by personal identification number code or special password);

2) the delayed timing period includes the disclosure message followed by at least 3 seconds. During this delayed timing period, the caller can hang up without charge; and

3) the tariff shall require the IP to provide a tone to indicate the end of the delayed timing period.

f. The tariff shall allow the use of an override mechanism to the disclosure message and billing delay period, as long as the override procedure (1) is not included in the disclosure message but is at the end of the program and (2) is disabled from no less than 5 days before until 15 days after any price changes.

g. The tariff shall specify the following blocking provisions:

1) the tariff shall indicate that free residential blocking is available through the LEC, in conjunction with applicant, either for all 900 numbers or for harmful matter numbers, and that a charge of $5.00 will be assessed to remove blocking;

2) a subscriber who desires blocking but who is located in a central office that cannot provide individual customer blocking will be moved at no charge to a blocking-capable switch if it is feasible to do so;

3) the tariff shall indicate that nonresidential blocking is available through the LEC, in conjunction with applicant, for all 900 numbers or for harmful matter numbers, at a cost of $1.00 per line if the subscriber makes the request timely, and $15.00 per line at all other times. The $1.00 rate for

blocking will be offered for no less than 60 days after it is announced in bill inserts as part of the customer education campaign. A charge of $15.00 per line will be assessed to remove blocking; and

4) the tariff must state that caller identification blocking will be provided when technologically feasible.

h. Prices IPs may charge callers and have billed and collected through applicant are limited to $2.00 per minute and $4.00 per call for programs directed to persons below the age of 18. These programs will warn callers that they must have parental approval to complete the call.

i. Prices IPs may charge callers and have billed and collected through applicant are limited to $5.00 for the first minute and $2.00 for each additional minute, with a maximum total per call not to exceed $50.00, for all programs not directed to children.

j. Applicant will notify each subscriber by letter through its billing agent the first time the subscriber's charges for all 900 services reach $75 in one billing period ($30 for lifeline subscribers). Applicant through its billing agent will contact subscriber by telephone the first time the subscriber's total bill for all 900 services exceeds $150 in one billing cycle, and if subscriber cannot be reached immediately, applicant shall temporarily block subscriber's access to 900 services until contact is made and subscriber indicates the desire to resume service. On behalf of applicant, applicant's billing agent will accumulate the total 900 charges for each subscriber for all carriers and notify and/or block the subscriber when the above limits are reached.

k. The tariff shall require a waiver of 900 charges for the first occasion of inadvertent, mistaken, or unauthorized use. Applicant may block subscriber's access to all 900 services (but not basic telephone service) if inadvertent, mistaken, or unauthorized use recurs after the first waiver and subscriber refuses to pay the charges.

l. The tariff shall provide that applicants may remove from caller's bill any amount which the caller disputes or refuses to pay, and that callers are eligible for an adjustment if dissatisfied with an IP program for any justified reason.

m. The tariff shall include a complaint procedure and adjustment policy which contains all the provisions in Attachment D. Applicants may block subscriber's access to the 900 area code for subscriber's refusal to pay 900 charges only after completion by applicant and/or its billing agent of the complaint procedure and adjustment policy in Attachment D, but only if applicant finds subscriber is liable for the disputed call and subscriber refuses to pay reasserting substantially the same billing error.

n. The tariff shall specify that applicant will immediately terminate service to any IP found to be conducting fraudulent or unlawful business, and that applicant will make a reasonable effort to reverse charges to all subscribers who called that IP within a reasonable past period.

o. The tariff shall provide that applicants obtain a signed declaration on a standard preprinted form from subscribers seeking an adjustment of $100 or more that properly informs the subscriber of his or her rights and responsibilities regarding refunds, appeals, blocking, and liability for future 900 calls; explains that subscribers may get more than one refund if justified; and explains the procedure applicant or its

billing agent must follow in handling billing errors.

p. Applicants and/or their billing agents will reveal the name, address, and business telephone number of an applicant-carried IP to a caller within a reasonable time upon either oral or written request, at no cost to the caller.

q. The tariff shall limit billing and collection to information provided over the telephone, services provided over the telephone, or charitable contributions to nonprofit charities which qualify for tax exempt status under Internal Revenue Services code section 501(c)(3)).

r. The tariff must require that IPs fund raising for charity submit to applicant a written agreement between the IP and the organization receiving the contribution that includes the amount or percentage of each call that will be paid to the organization. The written agreement must be provided before IP service is established, and a copy of the agreement shall be made available by the IP to any person on request.

s. The tariff must state that carriers may block access to 900 providers if the subscriber refuses to pay additional charges as covered in the complaint procedure and adjustment policy; that the carrier shall not block access during any investigation of disputed charges until the completion of the complaint procedure and adjustment policy; that nonpayment of 900 charges will not result in the termination of basic telephone service; and 900 charges shall not be included in the calculation of deposits to reconnect or establish service.

t. All billing and collection terms, conditions, and rates will be included in the tariff (except for billing and collection services provided harmful matter IPs before July 1, 1991).

u. The tariff will require IP advertising to conform to the following guidelines:

1) every advertisement or other communication which is intended to promote the IP's program shall clearly and conspicuously display and/or disclose the maximum information charge per initial and subsequent minute, and per call;

2) all advertisements must display and/or provide a voice-over with the phrase "Service may not be available in some areas" (unless there are no geographic limitations);

3) advertising for fund-raising programs will state the amount of money per call (dollars or percent) which will go to the charity, and the name of the charity;

4) IP television advertisements must provide a voice-over announcement and visual display of the applicable maximum information charge per initial and subsequent minutes, and per call;

5) television advertisements directed to minors must include an admonition that minors must have parental permission before calling including a voice-over;

6) IP programs directed to minors which contain an inducement or "teaser" to call back shall include an admonition that minors must have parental permission before calling back, and all programs encouraging a call back shall quote the maximum information charge per initial and subsequent minute, and per call;

7) advertisements or other communications directed to minors will inform minors that they must have parental approval;

8) IP programs containing cross-promotions to another program shall state the maximum information charge per initial and subsequent minute and per call. Cross-promotions directed to minors shall include an admonition that they must obtain parental permission before calling;

9) cross-promotions or referrals from general audience programs to harmful matter programs shall not be permitted; and

10) advertisements must include the increment of time (e.g., 6 seconds, 30 seconds, 1 minute) in which the call will be billed.

v. The tariff shall require the following:

1) automatic disconnection after a period of inactivity on interactive video or audiotext programs; a live moderator for live programs (two or more callers); and a warning tone on group access bridging (GAB) programs at increments of five minutes or less;

2) IP must declare program content to the carrier, along with a copy of the proposed advertising layout, upon application for service and when making any change in program content, and the IP must send copies from a sample of published, printed advertisements to the IEC carrier within 30 days after the IP begins operation;

3) the customer's bill must contain the 900 program name, and/or category, and/or short description of the program, limited to space available on the bill;

4) videotext programs must show the total time and charges at log off if applicant carries this type of program; and

5) IP directory listing must state that additional charges apply.

These safeguards are not required on live, GAB, interactive audiotext, or interactive videotext programs if applicant does not and will not carry such IP programming.

w. A violation by the IP of any requirements of the tariff, including the advertising guidelines, is a violation of the tariff and the IP is subject to immediate termination.

x. Applicant shall not hold itself out as a carrier of intraLATA calls. Applicant must advise IP customers that intraLATA calls may not lawfully be placed over applicant's network and the call must be placed over the facilities of the LEC.

5. Pacific Bell (Pacific) Advice Letter No. 15395 is rejected without prejudice.

6. Pacific and GTE California Incorporated (GTEC) are directed to file advice letters with access tariffs for interexchange carrier (IEC) access for 900 service within 60 days of the effective date of this order. The access tariffs shall include at a minimum all the items enumerated for inclusion in this order (pp. 111-113). All LECs under our jurisdiction (except Pacific and GTEC) shall file advice letters with access tariffs within 90 days of the effective date of this order if the LEC does not concur with Pacific's access tariff. The advice letters will be filed in compliance with General Order (GO) 96-A, but will not become effective until further order of the Commission. Protests must be filed within 20 days, and replies within 5 business days, consistent with GO 96-A. The advice letters will be served on the service list to these proceedings.

7. Sprint, AT&T, MCI, and Telesphere shall file advice letters for intrastate, interLATA 900 services which comply with this order no sooner than 5 days after the effective date of this decision. Telesphere's tariff may not contain a provision for "special bids" (wherein Telesphere reserves the right to alter its rates on an individual case basis). The rates in the tariffs for Sprint, AT&T, MCI, and Telesphere may include the costs carriers will incur as a result of the safeguards ordered herein. Tariffs must include provisions, terms, conditions, and rates for transport billing and collection (billing and collection for harmful matter programs is excepted until July 1, 1991). Sprint, AT&T, MCI, and Telesphere shall serve copies of the advice letters on all parties to these proceedings no sooner than 5 days after the effective date of this decision. Each filing shall be in accordance and processed consistent with GO 96-A, but the tariffs shall not become effective until approved by further order of the Commission. Protests to the advice letters must be filed within 20 days and replies within 5 business days, consistent with GO 96-A.

8. If Sprint, AT&T, MCI, and Telesphere fail to file tariffs within 180 days of the effective date of this order, Sprint's certificate, and AT&T, MCI, and Telesphere's authorizations will expire.

9. Sprint, AT&T, MCI, and Telesphere will each file monitoring reports as specified in Attachment C.

10. The Commission Advisory and Compliance Division (CACD) will prepare a report on the status of the 900 industry in California upon receipt of one year of monthly data from applicants and the supplemental first-year data. The report will cover all 900 providers in California, including Pacific. CACD will prepare a draft of the report covering the topics covered in this decision, circulate it for comment, and prepare a final as discussed in this decision. An original and 12 copies of the final report will be filed with Docket Office in I.90-12-040, and a copy will be served on the service list in I.90-12-040. All parties to I.90-12-040 may

file comments on the CACD final report within 15 days after the report is filed with the Commission.

11. Sprint, AT&T, MCI, and Telesphere shall conduct an educational campaign by inserts in LEC bills in each area in California from which a caller may reach a 900 number carried by Sprint, AT&T, MCI, and/or Telesphere. Sprint, AT&T, MCI, and Telesphere shall also include an insert in their own bill, and/or their billing agents' bills, if different than the LEC bills. Sprint, AT&T, MCI and Telesphere shall not begin intrastate, interLATA 900 service before the bill insert education campaign is complete. The insert will be in all major languages (after consultation with the CACD and the Commission's Public Advisor), and will be included in bills no later than the commencement of applicant's intrastate operations. Applicants will consult with Consumer Action and other consumer groups in preparation of the bill inserts. After review by the consumer groups and incorporation of their comments as appropriate, applicants will submit a copy of the proposed bill insert to CACD and the Public Advisor for review and comment. The bill insert shall contain at a minimum all of the following:

a. a description of 900 services;

b. the range of costs;

c. how interstate and intrastate 900 calls differ;

d. what consumer safeguards apply to applicant's intrastate 900 services;

e. how applicants' safeguards differ from those of Pacific;

f. blocking options;

g. refund policies;

h. an explanation that nonpayment of 900 charges may result in blocking of access to 900 providers, but will not result in termination of basic service;

i. a statement that the caller may get the name, address, and business telephone number of any IP upon request from the IEC or its billing agent at no cost, and whom to call; and

j. an explanation of the customer's rights and carrier's responsibilities under the complaint procedure and adjustment policy.

12. Sprint, AT&T, MCI, and Telesphere will each provide at least the following information with every bill for 900 service: that basic telephone service will not be disconnected for nonpayment of 900 charges, that the subscriber should write or call a specified address and telephone number to dispute 900 charges, and that the complaint must be lodged within 60 days of receipt of the bill. When applicant and/or its billing agent(s) receives a written complaint, applicant and/or its billing agent(s) must send a copy of the full complaint procedure and adjustment policy to the subscriber. This information must be provided orally to subscribers lodging their complaint orally.

13. Sprint, AT&T, MCI, and Telesphere will connect the Commission and/or Commission staff with the IP program and/or the IP at the applicant's expense when the Commission and/or its staff is undertaking an investigation, and applicant shall provide a transcript or tape of the program plus copies of relevant advertising upon request.

14. Sprint is authorized to deviate on an ongoing basis from the requirements of GO 96-A in the following manner:

a. to deviate from paragraph II(C)(1)(b) which requires consecutive sheet numbering and prohibits the reuse of sheet numbers, and

b. to deviate from the requirements set forth in paragraph II(C)(4) that "a separate sheet or series of sheets should be used for each rule."

Tariff filings incorporating these deviations shall be subject to the approval of CACD's Telecommunications Branch. Tariff filings shall reflect the surcharges ordered below.

15. Sprint is subject to the 3.4% surcharge applicable to gross revenues of intrastate services as established by Commission decisions and resolutions pursuant to Public Utilities (PU) Code $ 879, the 0.3% monthly surcharge to fund the Telecommunications Devices for the Deaf as outlined in Resolution T-13061 dated April 26, 1989 pursuant to PU Code $ 2881, and the user fee as a percent of gross intrastate revenue pursuant to PU Code $$ 431-435.

16. The corporate identification number assigned to Sprint is U-5231-C. This number shall be included in the caption of all original filings to this Commission, and in the titles of other pleadings filed in existing cases.

17. Consumer Action is eligible to claim compensation for its participation in this proceeding.

18. The determination that Consumer Action has met its burden of showing that its participation in this proceeding would pose a substantial financial hardship is made for this proceeding only.

19. Pacific shall submit a letter to the Executive Director (with a copy to the administrative law judge in I.90-12-040) within 5 days of any order finding Public Utilities Code section 2884.5 constitutional in Westpac Audiotext v Wilk, et al., Case No. 89-2962 FMS, United States District Court for the Northern District of California.

20. Application (A.) 89-09-012, A.89-10-019, and A.89-11-019 are closed.

21. The Executive Director shall mail copies of this order to the persons on the service list in these proceedings, and all LECs under Commission jurisdiction.

This order is effective today.

Dated March 13, 1991, at San Francisco, California.

PATRICIA M. ECKERT
President
G. MITCHELL WILK
JOHN B. OHANIAN
DANIEL WM. FESSLER
NORMAN D. SHUMWAY
Commissioners

I will file a written concurring opinion.
G. MITCHELL WILK
Commissioner

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

NEAL J. SHOEMAKER, Executive Director

A.89-09-012
D.91-03-021

G. MITCHELL WILK, Commissioner, concurring.

This is a complicated decision on a complicated issue. I wish to emphasize two points regarding my support for the decision.

First, I place great importance on the followup report to be prepared by CACD regarding the state of the industry. We should regard this service as still developing, and we should be willing to fine-tune our regulations depending on experience. The Commission should be open to revising this decision to the extent appropriate following the CACD report or when other events dictate. I am particularly interested in addressing the differences between this decision and Pacific Bell's 900 service, with an eye towards moderating the differences between Pacific's requirements and the interexchange model adopted today.

Secondly, I fully recognize that many 900 information providers may continue to ignore our safeguards by offering service out-of-state and out of our jurisdiction. It is a shame when irresponsible members of a new industry ignore even the most basic consumer protections and information that ought to be a part of the service. However, it is my hope that this decision may help encourage Congress and the Federal Communications Commission to impose nationally at least some of what we have required in California. In that regard, the contrast between our rules and the current lack of regulatory oversight of the interstate service might prove educational for all concerned.

G. MITCHELL WILK
Commissioner

March 13, 1991
San Francisco, California

ATTACHMENT A

List of Appearances

Applicants: Seth M. Lubin, Attorney at Law, for US Sprint Communications Company, Limited Partnership and United Telecom, Inc., dba Sprint Services; Randolph Deutsch, Attorney at Law, for AT&T Communications of California; and Alan M. Weiss, Attorney at Law, for MCI Telecommunications Corporation.

Respondent: Messrs. Armour, Goodin, Schlotz & MacBride, by Thomas MacBride and Barbara Snider, Attorneys at Law, for Telesphere Network, Inc.

Protestant: Bonnie Packer, Attorney at Law, for Pacific Bell.

Interested Parties: C. Hayden Ames, Attorney at Law, for Chickering & Gregory; Eileen Arbues, for LO-AD Communications; Messrs. Hansen, Bridgett, Marcus, Vlahos & Rudy, by Daniel W. Baker, Attorney at Law, for Network Telephone Services, Inc.; Messrs. Beck, Young, French & Ackerman, by Jeffrey F. Beck and Sheila A. Brutoco, Attorneys at Law, for CP National, Citizens Utilities Company of California, GTE West Coast Incorporated, Kerman Telephone Co., Pinnacles Telephone Company, Sierra Telephone Company, Inc., The Siskiyou Telephone Company, and Tuolumne Telephone Company; Peter A. Casciato, Attorney at Law, for himself; Gene Chamson, for Automated Call Processing; John H. Engel, Attorney at Law, for Citizens Utilities Company; Law Offices of Thomas Steel, by Jeremy Friedman, Attorney at Law, for Cinema 7, Inc.; Messrs. Orrick, Herrington & Sutcliffe, by Robert J. Gloistein, for Contel of California, Inc.; Preston Janes, for Information Provider Action Committee; Ken McEldowney, for Consumer Action; Kenneth K. Okel and Kathleen S. Blunt, Attorneys at Law, for GTE California Incorporated; Law Offices of Earl Nicholas Selby, by Earl Nicholas Selby and Richard G. Avila, for Omniphone, Inc.; Messrs. Cooper, White & Cooper, by E. Garth Black and Mark P. Schreiber, for Roseville Telephone Company, Calaveras Telephone Company, California-Oregon Telephone Co., Ducor Telephone Company, Foresthill Telephone Co., Happy Valley Telephone Company, Hornitos Telephone Company, The Ponderosa Telephone Co., The Volcano Telephone Company, and Winterhaven Telephone Company; Messrs. Dinkelspiel, Donovan & Reder, by David A. Simpson, Attorney at Law, for Associated Communications of Los Angeles, Inc.; A. J. Smithson, for Citizens Utilities Company of California; and Jeff Takeyama, for Jeff Takeyama CPA.

Division of Ratepayer Advocates: Janice Grau, Attorney at Law, and Tom Doub and J. C. Jong.

Commission Advisory and Compliance Division: Kevin P. Coughlan and Martha Sullivan.

(END OF ATTACHMENT A)

ATTACHMENT B

900-456-4995

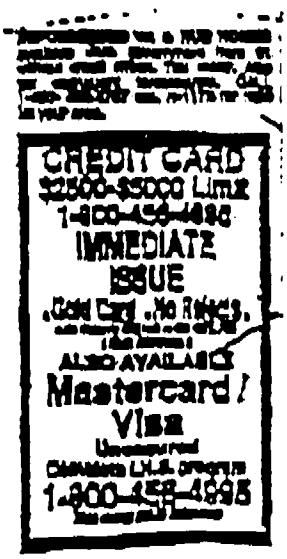
Script of Advertisement reads as follows:

Credit Card
$2500-$5000 Limit
1-900-456-4995
Immediate
Issue
*Gold Card*No Rejects*
$30 Cat Fee
$ Cash Advance!
Also Available
Mastercard
Visa
Unsecured
Complete I.H.S. Program
1-900-456-4995
Telco charge $49.95 Refundable

This ad runs in local newspapers such as the PennySaver.

The size of the ad is one column in width, and 3" in height.

Copy of actual ad:



(END OF ATTACHMENT B)

ATTACHMENT C
Page 1

Monitoring Reports

Monthly Reports

Applicants must collect data from their own, or their billing agent's, records and provide the following data on intrastate service to the Commission Advisory and Compliance Division (CACD) within 45 days of the end of each month, along with a copy to the Division of Ratepayer Advocates:

1. Number and percentage of programs by program type and total, with price range and median (for the first minute, additional minutes, and total) for each program type and for total programs;

2. Revenues of information providers (IPs) (in dollars and percent) by program type and total, monthly, and year-to-date;

3. Revenues of the applicant (in dollars and percent) by type of service (e.g., transport, billing, and collection), monthly and year-to-date;

4. Number and percentage of calls and minutes by program type and total, monthly, and year-to-date;

5. Number and percentage of access lines by program type, monthly, and year-to-date;

6. Number and dollar amount of caller bill adjustments, percent of total IP revenue adjusted and percent of total calls adjusted, by program type and total, monthly and year-to-date;

7. Number and percent of complaints registered (with the applicant or billing agent, including via CPUC or other agency), categorized by complaint reasons, monthly

and year-to-date, and as a percent of total 900 calls;

8. Tariff violations by IPs as a percent of total 900 calls;

9. Number of advance notifications at $30, $75, and $150 levels and disposition at $150 level, monthly, and year-to-date;

10. List the LEC territories in which applicant's 900 service is available, highlighting additions in the reported month, prospective additions, and any problems, restrictions or limitations encountered.

The applicant's tracking plan and report format must be finalized with CACD within 60 days of the effective date of this order or prior to the effective date of applicant's 900 tariff, whichever is later.

First-year Report

Applicants must also provide the following information within 45 days of the end of the first year of experience to assist CACD in preparing the industry status report for the Commission:

1. Number of programs by advertised program charge (for the first minute, additional minutes, and program total);

2. Number of IPs by program type identified by each second increment of delayed timing period (e.g., number at 12 seconds, number at 13 seconds).

(END OF ATTACHMENT C)

ATTACHMENT D

Complaint Procedure and Adjustment Policy

Under this procedure, a subscriber shall have the right to notify the applicant and/or its billing agent orally or in writing of a "billing error" within 60 days of the receipt of a bill. A billing error may be (but is not limited to) poor transmission quality, dissatisfaction with the quality or value of the information or service received, or disputes over the amount(s) posted to the bill.

Applicant and/or its billing agent may respond orally to oral notifications, and must respond in writing to written notifications. Applicant and/or its billing agent shall mail written acknowledgement of receipt of a subscriber's written notification within 30 days, unless the matter is resolved consistent with the procedures below. Applicant and/or its billing agent will have two billing cycles (but in no event longer than 90 days) after receiving subscriber's notification (oral or written) to comply with the resolution procedures below. A billing cycle is the time between applicant and/or its billing agent mailing to one individual customer the normal, routine bill (in contrast to an extraordinary bill, such as a nonroutine late payment bill) and the mailing to the same customer the next normal, routine bill (generally a 30-day period).

While a bill is in dispute, applicant and/or its billing agent will notify subscriber that subscriber is not required to pay the amount in dispute, nor is the amount in dispute subject to any late payment charges until the completion by applicant and/or its billing agent of the complaint procedure. Nor is applicant and/or its billing agent allowed to make or threaten to make an adverse report to any person about subscriber's credit standing, or report that an amount is delinquent.

Upon receipt of subscriber's notification of a billing error, if applicant and/or its billing agent determine that the billing error occurred as asserted, applicant and/or its billing agent will correct the billing error and credit subscriber's account with the disputed amount and any other related charges (e.g., late payment charges). The correction will be shown on the subscriber's bill at the end of that billing cycle. If applicant and/or its billing agent determine, after conducting a reasonable investigation, that no billing error occurred, or that a different billing error occurred than asserted, applicant and/or its billing agent shall within two billing cycles (no later than 90 days) of subscriber's notification, mail an explanation that sets forth findings of the investigation, the

reasons for applicant's or its billing agent's belief that the billing error alleged is incorrect in whole or in part, and what actions, if any, have been taken as a result of the investigation. (This response may be oral to oral notifications by subscriber.) Applicant and/or its billing agent shall furnish copies of any relevant documents if the subscriber so requests. If a different billing error occurred than asserted, applicant and/or its billing agent will correct the billing error determined to have occurred and credit subscriber's bill with the amount determined in error plus related charges (e.g., late payment charges), along with the written explanation detailed above.

If any amount remains due and payable after a reasonable investigation, applicant and/or its billing agent will notify subscriber in writing (or orally to oral notifications) of the amount and the date when payment is due before any additional charges may be assessed (e.g., late payment charges). The date payment is due will be no less than 10 days from the date of the notification by applicant and/or its billing agent. Beyond that date, applicant and/or its billing agent may report to any person any remaining delinquent amount, but will report the amount that still is in dispute if subscriber again notifies applicant and/or its billing agent within 30 days of receipt of applicant's and/or its billing agent's notice. Further, applicant and/or its billing agent will advise subscriber of all persons notified that the account is delinquent, and promptly report any subsequent resolutions to any person to whom the applicant and/or its billing agent has made a report, with a confirming notification to the subscriber. Applicant and/or its billing agent have complied with this procedure and have no further responsibilities (except with regard to proper notification to any person to whom they have notified the amount that is delinquent, as explained above) if the subscriber reasserts substantially the same billing error, except for the following. If subscriber reasserts substantially the same billing error, applicant and/or its billing agent will notify subscriber of his or her rights of any further avenues for dispute resolution (e.g., appeals to the Commission), after first exhausting all reasonable appeals within applicant's and/or its billing agent's company.

If applicant and/or its billing agent discover upon investigation that the information provider has conducted fraudulent or unlawful business, applicant will immediately terminate service. Further, applicant and/or its billing agent will make a reasonable effort to reverse charges to all subscribers who called that information provider within a reasonable past period.

(END OF ATTACHMENT D)