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Decision 92-10-026 October 6, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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| Investigation on the Commission's own motion into the regulation of cellular radiotelephone utilities. | ) | I.88-11-040 (Filed November 23, 1988) |
| And Related Matter. | ) | Application 87-02-017 (Filed February 6, 1987) |

(See Appendix A for appearances.)

# I N D E X

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# O P I N I O N

## 1. Summary

By this decision we conclude our investigation into the regulation of cellular radiotelephone utilities which began on November 23, 1988. Specifically, we are:

a. Rejecting the reporting requirements for the assessment and monitoring of cellular capacity utilization and capacity expansion proposed by the various parties;

b. Amending the facilities-based carriers' Uniform System of Accounts (USOA) to incorporate cost allocations to segregate retail activities from wholesale and non-operating activities;

c. Allowing resellers to petition to modify their Certificate of Public Convenience and Necessity (CPCN) to perform switching functions currently provided by the facilities-based carriers;

d. Requiring the facilities-based carriers to unbundle their wholesale tariff; and

e. Continuing the current ban on reseller affiliates of facilities-based carriers to provide service in the same markets where their affiliated facilities-based carrier provides retail services.

In concluding these proceedings, we have exhausted the steps we devised in D.90-06-025 to improve the original regulatory framework for cellular adopted by the Commission in 1984. We remain concerned about the actual level of competition in the facilities-based portion of the cellular market, and based on our experience in Phase III, about whether we can in fact obtain the intelligence about the operation of the duopoly market on which D.90-06-025 relied.

We also observe that the demand for cellular has expanded to the point where there are signs we may be reaching a broader

market more quickly than we anticipated. Finally, we note the impending entry of alternative providers of mobile telephone services such as so-called specialized mobile radio carriers and personal communications services. All of these factors lead us to conclude that our regulation of the marketplace for mobile communications will require further examination.

2. Background

The Federal Communications Commission (FCC) established 18 metropolitan statistical areas (MSAs) and 12 rural statistical areas (RSAs) in California for the provision of cellular service. Within each of the 30 designated California statistical areas, the FCC issued two permits based on a lottery, thereby, creating a new duopoly telecommunications service. The FCC structured its issuance of permits so that each statistical area would have a nonwireline (Block A) carrier and a wireline (Block B) carrier.

The first applications to provide cellular service in California came from the Los Angeles MSA permit holders in 1983. Subsequently, by Decision (D.) 84-04-014, we authorized cellular carriers to set rates on what the market would bear.

With the experience of several years of cellular service in California, on November 23, 1988, we opened this investigation to assess whether the cellular radiotelephone regulatory framework established by the 1984 decision was meeting Commission objectives and if changes to the regulatory framework were warranted. To obtain maximum input into this investigation, we named as respondents all facilities-based cellular radiotelephone utilities, cellular resellers, and local exchange carriers (LECs) providing interconnection for cellular carriers.

The investigation was bifurcated. The first phase addressed generic regulatory goals. The second phase addressed specific regulatory policies for cellular wholesalers and resellers. In considering these issues, we kept in mind the

continuing essential fact of this industry--a regulatory program based on the duopoly wholesale carriers licensed by the FCC.

D.90-06-025 (36 CPUC 2d 464) addressed the Phase I and Phase II issues. By that decision the cellular regulatory framework was modified to provide benefits of competition to the extent that they are achievable under the FCC's duopoly facilities-based market structure. The decision also expanded the investigation into a third phase to address the following issues that impact cellular competition:

a. A streamlined certification process for RSAs facilities-based carriers;

b. Duopoly carriers' reporting requirements that will enable us to assess and monitor on a twice-yearly basis cellular capacity utilization, capacity expansion, development of cellular services in rural areas, and prices charged for cellular services;

c. Modification of the USOA to include cost allocation methods for a carrier's wholesale and retail operations;

d. The ability of cellular resellers to perform switching functions currently provided by the cellular carriers and the unbundling of the wholesale tariff rate element; and

e. Whether a facilities-based carrier's affiliate should be prohibited from reselling in markets where the facilities-based carrier provides retail services.

3. Prehearing Conference

A prehearing conference (PHC) was held on November 1, 1990 before Administrative Law Judge (ALJ) Galvin in San Francisco. At this PHC, the Commission's Advisory and Compliance Division (CACD) was delegated the responsibility of coordinating a workshop.

The purpose of the workshop was to lessen and, if possible, to resolve the five issues remaining in the investigation.

4. Workshop Report

The workshop, held March 4 through March 8, 1991, resulted in the parties' filing of a joint workshop report on May 31, 1991. Although the workshop did not resolve the issues before us, significant progress was made in narrowing the issues.

5. Second PHC

Subsequent to receipt of the workshop report, the ALJ held a second PHC on July 19, 1991 to schedule evidentiary hearings and to establish a briefing schedule. As summarized in the joint workshop report, the parties agreed that delays in certification of RSAs were attributable primarily to the length of time required for cellular sitting and environmental reviews imposed by General Order (GO) 159 and the California Environmental Quality Act, neither of which are subjects for modification in this investigation. Further, a majority of the RSAs permit holders had already received their operating authority prior to the second PHC. Accordingly, the establishment of a streamlined certification process for RSAs facilities-based carriers became irrelevant for this proceeding.

Parties concurred that the fifth issue, whether a facilities-based carrier's affiliate should be prohibited from reselling in markets where the facilities-based carrier provides retail service, need only be addressed in briefs and that an evidentiary hearing was not necessary. Accordingly, the affiliate issue was deferred to the briefing stage of this investigation.

6. Evidentiary Hearing

Evidence on the duopoly carriers' reporting requirements and on the USOA cost allocation methods was heard August 19 through August 23, 1991. Cellular Resellers Association (CRA), Cellular Dynamics Telephone Company of Los Angeles, Inc., Cellular Dynamics Telephone Company of San Francisco, Inc., and Cellular Dynamics Telephone Company of San Diego, Inc. (jointly Cellular Dynamics),

the Division of Ratepayer Advocates (DRA), PacTel Cellular Corporation and its subsidiaries (PacTel Cellular), and McCaw Cellular Communications, Inc. (McCaw) provided testimony on the reporting requirements and USOA cost allocation methods.

Evidence on the ability of cellular resellers to perform switching functions and the unbundling of the wholesale tariff rate element was heard September 30 through October 4, 1991. Witnesses for Cellular Service, Inc. (CSI), US West Cellular of California, Inc. (US West), PacTel Cellular, Los Angeles Cellular Telephone Company (LA Cellular), McCaw, and DRA testified on the reseller switch and unbundling issue.

Briefs were filed on November 7, 1991 and the proceeding was submitted upon the filing of reply briefs on December 5, 1991. However, by a March 6, 1992 ALJ ruling, submission of this investigation was set aside to address a supplemental brief and request for official notice tendered by CRA on February 12, 1992, approximately two months after this investigation was submitted. The ALJ reopened the investigation, rejected CRA's supplemental brief and request for official notice, and resubmitted the investigation effective March 6, 1992.

7. CRA's Motion for Commission Review of an ALJ Ruling

Subsequently, on March 30, 1992, CRA filed a motion for Commission review of the assigned ALJ's March 6, 1992 ruling. CRA asserted that the ALJ ruling was in legal error for two reasons: first, because judicial notice of the requested documents is mandatory under Sections 451 through 453 of the California Evidence Code, as adopted by Commission Rule 73; secondly, because the ALJ failed to make any findings of fact in his ruling. According to CRA, a long list of California Supreme Court opinions require the Commission to make separately stated findings of fact and conclusions of law on all material issues.

On April 15, 1992, GTE Mobilnet filed a reply stating that the ALJ's ruling was procedurally and substantively correct. GTE Mobilnet asserted that CRA was incorrect in that the Commission is not required to take official notice of documents. Further, GTE Mobilnet asserted that ALJs are not required to state specific findings of facts or explain the basis of their evidentiary rulings.

Subsequent to GTE Mobilnet's reply, CRA and GTE Mobilnet participated in an exchange of letters and filings regarding this matter.

Contrary to CRA's assertion, the Commission is not required to take official notice of documents. Rule 73 of the Commission's Rules of Practice and Procedure explicitly provides that official notice may be taken of such matters as may be judicially noticed by the courts of the State of California. Rule 73 is permissive. The documents requested for official notice, annual reports on file with the Commission, by their very nature would not be subject to mandatory judicial notice even by a court pursuant to Sec. 451 of the Evidence Code.

CRA sought to include two pages of Mobilnet's 1989 and 1990 annual report as official notice and to submit a supplemental brief after the proceeding was submitted which argued, among other matters, that Mobilnet does not currently allocate any administrative and general (A&G) costs to Mobilnet's retail operations. Although these documents were in existence at the time of the evidentiary hearing, CRA did not move to take official notice or make a motion while the proceeding was open to establish a procedure to take official notice of documents after the matter was submitted.

Official notice is generally accorded to facts and propositions of generalized knowledge that are so universally known that they cannot reasonably be the subject of dispute. However, this is not the case in this instance, as evidenced by Mobilnet's

reply to CRA's request for official notice and supplemental brief. Official notice of the documents should not be taken without an explanation of how the documents were prepared, and the supplemental brief should not be allowed without affording all parties equal opportunity to submit supplemental briefs. To do otherwise will deprive other parties of their right to cross-examine or to rebut a fact that is really an issue.

Further, in its original notice filed in its appeal of the ALJ's ruling, CRA was attempting to alert the ALJ and the Commission to information on the Annual Reports which, in CRA's view demonstrated problems with use of the facilities-based carriers' proposed avoided cost methodology, as allegedly implemented by a cellular carrier. However, CRA had previously challenged the use of an avoided cost methodology in supporting applications for rehearing of D.90-06-025, and that decision stands until modified by the Commission consistent with Section 1708. Therefore, the ALJ's decision not to consider the proffered materials was consistent with D.90-06-025.

CRA's second basis for legal error is also wrong. CRA, as an active participant in Commission proceedings, should be well aware that there is no requirement that ALJ rulings include separately stated findings of fact or conclusions of law and that it is common practice, that ALJs make oral and written rulings without stating findings of fact or conclusions of law.

We affirm the ALJ's March 6, 1992 ruling.

8. Reporting Requirement

As we have discussed in D.90-06-025, id at 495 and 513, it is the proper public policy to forebear from any rate of return or profit-based regulation of cellular wholesalers (facilities-based carriers) that are pricing their services competitively. However, we would be disposed quite differently towards a facilities-based carrier that violated the public trust by withholding service to make extra profits. If such an instance

occurred, we would initiate an investigation of the rates of the carrier in question and impose an appropriate and punitive constraint on its profits.

Although there was no evidence in Phase II of this investigation to convince us that such an investigation should be opened, we concluded at that time that a monitoring program should be devised to keep us apprised of market developments and to give carriers some reasonable expectations of the performance we seek. Specifically, two questions need to be answered on an ongoing basis. These questions are whether the cellular system capacity is being reasonably fully utilized and whether the cellular system is being expanded at a reasonable pace. Therefore, we concluded that this final phase of the investigation should address facilities-based carriers' reporting requirements that will enable us to attempt to assess and monitor on a twice-yearly basis cellular capacity utilization, capacity expansion, development of cellular service in rural areas, and prices charged for cellular services to answer our two questions. Since the facilities-based carriers are already required to file tariffs which identify the prices they are authorized to charge for cellular service, no additional reporting requirement on the prices charged for cellular services should be required of the facilities-based carriers. These tariffs are readily available for review and analysis at any time.

8.1 Workshop Results

At the conclusion of the workshops, all parties concurred that McCaw's proposed reporting format presented at the workshop should serve as a starting point to all cellular carriers filing reports with the Commission. The report provided for specific measurements, such as the number of cell sites in service, number of switches in service on a system-wide basis, system peak period call blocking rate, and the voice grade equivalent "RF" channels. However, CRA was opposed to McCaw's proposal to collect data on a beginning-of-period and end-of-period reporting format. CRA

proposed that the carriers provide monthly data, pointing out that a report containing end of the period data or averages over a six-month period would provide an inconclusive view of the system's utilization. According to CRA, capacity utilization must be viewed over the entire six month reporting period.

The parties also concurred that cell site information should be provided in certain instances. The trigger for reporting of cell site information would be on an exception basis, i.e., only for those sites meeting specified criteria, for ten percent (10%) of the most utilized cells and 10% of the most underutilized, and for those cell cites where the quality of service has deteriorated to a level unacceptable to the Commission. The parties agreed that the Commission should establish a service quality standard for exception reporting.

In addition to the dispute as to whether carriers should report monthly data or beginning and end-of-period information in the semi-annual reporting cycle, workshop participants disagreed on the reporting of customer complaints.

8.2 Evidentiary Hearing

McCaw revised its proposed reporting requirement format at the evidentiary hearing to incorporate additional information suggested by DRA at the workshop. McCaw included measurements for the percent of peak hour calls dropped, and the number of outages and remedies. The only DRA recommendation not incorporated into McCaw's revised reporting format was tracking the number of customer complaints and responses to those complaints.

Both DRA and CRA were adamant on the need for the Commission to receive service quality complaint information in order to understand capacity and utilization measurements. Even McCaw's Kirkpatrick confirmed that degradation of service is likely to occur in an overutilized system.

CRA and Cellular Dynamics asserted that the semiannual reporting of monthly averages is necessary for the Commission to

review the entire six-month reporting period for abnormalities in usage, complaints, and outages and to properly assess the facilities-based carriers' operations. CRA and Cellular Dynamics also asserted that additional detailed system-wide, switch, and cell site information from the facilities-based carriers is needed to monitor capacity utilization. CRA's Charles W. King and Harry Midgley recommended that the facilities-based carriers' first report include as much historical data as possible. King believes that this should include a three-year history of semiannual observations of markets, defined as customers, calls, and air time; prices for wholesale service; return on investment on a MSAs basis using the facilities-based carriers' current separations process; investment in facilities and equipment, and measures of utilization.

8.3 Reporting Requirement Discussion

In establishing the need for a reporting requirement in D.90-06-025, our expectation was that we would obtain answers to the following questions:

1. Whether the cellular system capacity is being fully utilized, and

2. Whether the cellular system is being expanded at a reasonable pace.

McCaw proposed certain data for our consideration. DRA and CRA, to varying degrees, differed with McCaw only in the amount of detail and frequency of data. While the proposed data discussed by the parties may be informative, we are still left far short of our primary inquiry of addressing the reasonableness of capacity utilization and pace of expansion. Instead of standards or acceptable levels of service (such as we have in General Order 133), we received recommendations for data. Assuming arguendo that we were to receive the data in a form proposed by one of the parties, we would still be unable to assess that data without a standard of care.

Clearly, reporting the proposed data on a routine basis is troublesome for two reasons. First, this collection of data as currently proposed could well be considered micromanagement of an industry rather than effective regulatory policymaking. Second, the collection of these data by the carriers and the review by staff would be burdensome--and may well bring us no further towards answering our initial two inquiries. Until such time that we can establish standards of reasonable system utilization and expected pace of expansion, it would be premature of us to establish a reporting requirement. The cart, unfortunately, was placed before the horse. Therefore, we will not adopt any reporting requirements at this time. However, we remind the industry that Commission staff, pursuant to PU Code § 581, is entitled to access to records on request.

9. USOA Modifications

In D.90-06-025, (id at 500-503 and 512) we informed the cellular carriers that we wanted to control potential cross-subsidy problems between a facilities-based carrier's operations and its resale operations directly. We stated that we would not impose specific margins or price limits on these carriers' retail operations. However, we would require the facilities-based carriers' retail operations to at least break even on a rational business basis. If the retail operations cover all direct costs with that business, then we can conclude that the carrier is not pricing predatorily towards the resellers, and that the cellular retail market can function like any competitive market with the customer base and earnings going to the firms that offer the best service at the lowest cost.

We concluded that the USOA would be the appropriate tool to attempt to determine the facilities-based carriers' cost to provide wholesale and retail services. However, the existing USOA was not in a form conducive to our break-even criteria. Therefore, we deferred a revision of the facilities-based carriers' USOA to

incorporate cost allocation methods for the carriers' wholesale and retail operations to this phase of the investigation.

Specific guidance for the revised USOA was provided. First, cost allocation procedures should be implemented. From a rational business perspective, costs incurred by a carrier due to its offering of wholesale service should be properly allocated or assigned in their entirety to the wholesale side if those costs could not be avoided if the carrier discontinued retail service (id at 500-503). Secondly, sales commissions to agents should be included on the retail side unless the carrier pays them to all who deliver new customers (including resellers). To maintain a rational business perspective, the USOA should permit commissions to be amortized over the expected period of time the customer stays with the carrier. Thirdly, retail costs should include a rate of return on investments dedicated to retail service that would not be needed for wholesale-only operations.

We also informed carriers in D.90-06-025 (id) that, upon adoption of a revised USOA, facilities-based carriers would be required to report their retail revenues and expenses each six months. If retail revenues do not equal (break even) or exceed retail expenses, then the carrier will lose its ability to reduce the retail margin through temporary tariff filings.[1] If a carrier's retail expenses exceed its retail revenues for two consecutive six-month periods, then an investigation should be opened in which the carrier will have the burden of explaining why its retail operations have not been compensatory to cover operating costs.

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1 By D.90-06-025 (id at 486-493 and 516), facilities-based carriers were precluded from using a temporary tariff procedure established in that decision to reduce the current margin between wholesale and retail rates until a revised USOAs is put in place.

Carriers were also informed that compliance with the allocation methods adopted in this final phase of the investigation should be verified annually by external auditors. This auditor's opinion should be automatically filed each year with CACD within 30 days of execution, but no later than March 31 of each year.

CACD received advance notice in D.90-06-025 (id at 500-503) that CACD would be responsible for receiving the facilities-based carriers' semiannual reports, and be delegated the ministerial duty of verifying the carriers' calculations and certifying, by letter, their current status of either unrestricted temporary tariff authority or restricted temporary tariff authority. CACD would also be responsible for recommending the issuance of investigations on a facilities-based carrier that fails the cross-subsidy test.

9.1 Workshop Results

Although D.90-06-025 provided guidance in developing cost allocation methods, this topic was a major area of contention in the workshop. Key issues developed in the workshop included the definition of "avoided costs" and its applicability to accounting methodology, and how to specifically modify the current USOA.

Resellers interpreted the D.90-06-025 (id) cost allocation method[2] as costs that relate solely to wholesale service such as antennas, mobile telephone switching offices (MTSOs), and landline connection facilities.

Advocating another point of view, the facilities-based carriers' proposal allocates to the wholesale side costs that the carriers could not avoid today if they were to divest themselves of their retail operations today.

2 Costs that the carrier must incur due to offering wholesale service are properly allocated or assigned in their entirety to the wholesale side if those costs could not be avoided if the carrier discontinued retail service.

Other key issues pertained to cost allocation methods that should be employed for commissions, advertising, customer service representatives, management information systems and billing, bad debts, sale of nonregulated services and equipment, depreciation and amortization, personnel, A&G expenses, rate of return, logos and royalties, and business acquisition costs.

Based on parties' positions regarding these issues, we received testimony on four distinct USOA modification proposals in the evidentiary phase of this proceeding. DRA submitted one plan. CRA proposed a second, which Cellular Dynamics adopted with modifications of its own. McCaw and the other facilities-based carriers jointly submitted the fourth proposal.

9.2 DRA's Position

DRA recommended that we adopt "Part 64"[3] methodology, in this final phase of the investigation, to be used to establish a detailed allocation methodology applicable to all facilities-based carriers. Part 64 is based on a fully allocated or fully distributed cost methodology whereby all costs, including overheads, are allocated to service based on the relative amount of usage.

Also, DRA recommended that a task force be comprised of representatives from the cellular carriers and DRA to develop a revised USOA, and that the task force retain the services of a consultant to implement the cost allocation principles established in this investigation. DRA believes that the cost of the task force should be funded by the cellular industry.

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3 Part 64 is a FCC cost allocation standard used by telephone corporations under FCC jurisdiction for recording transactions between regulated telephone utilities and their corporate affiliates.

DRA opposes the use of avoided cost for cost allocations per a USOA because it is not a cost accounting concept and is difficult to implement.

9.3 CRA's Position

CRA recommended specific changes to the current USOA adopted in D.86-01-043 (20 CPUC 2nd 401) for facilities-based carriers. Specifically CRA's avoided cost allocation methodology recommends that the USOA be revised to allocate all costs to wholesale that would still be incurred in their entirety by the carriers if they offered only wholesale service. Wholesale service would be assigned all investment and operating expenses associated with cellular call transmission, switching, and landline interconnection. Remaining investments in building and leasehold improvements that are used for providing both wholesale and retail service would be allocated to retail usage based on square-footage usage. Investments in vehicles, office furniture and equipment would be allocated in accordance with the relative use for wholesale and retail activities. Expense accounts would be subdivided for wholesale and retail activities, and A&G accounts would be allocated in the same proportion to wholesale and retail services as the underlying costs.

CRA's USOA modification also provides for the inclusion of a rate of return on investment dedicated to retail service, an imputed income tax charge, imputed wholesale charges to reflect the sale of wholesale cellular service by a carriers' wholesale operations to its retail operations, and the establishment of a "Royalty for Trademark Name and Logo" account to reflect an imputed charge to the facilities-based carriers' retail operations for the use of any such name and logo.

In summary, CRA's costing approach provides for costs exclusively incurred for retail operations to be assigned directly as a retail cost, costs exclusively incurred for wholesale operations to be assigned directly as a wholesale cost, and costs

that are shared between retail and wholesale service apportioned according to their relative incurrence.

9.4 Cellular Dynamics' Position

Cellular Dynamics' proposal is substantially the same as CRA's. However, Cellular Dynamics recommends that, if the facilities-based carriers' proposed method is adopted, avoided costs should be defined as those costs that would have been avoided if the carrier had never instituted retail operations. Cellular Dynamics' avoided costs definition conflicts with D.90-06-025 because it relies on the premise that retail activities never existed as opposed to the decision's direction that retail activities are discontinued.

Although parties filed petitions for modification and rehearing with the Commission, and filed a petition for writ of review with the State Supreme Court, the requirement that wholesale costs be based on the assumption that retail activities have been "discontinued" was not changed. Therefore, Cellular Dynamics' avoided costs definition should not be considered in this proceeding.

9.5 McCaw and Other Facilities-Based Carriers' Position

At the workshops held prior to the evidentiary hearing on this issue, McCaw proposed that each facilities-based carrier prepare a cost allocation manual for the facilities-based carrier's individualized operation for approval by the Commission. McCaw's reasoning for separate manuals was that each facilities-based carrier conducts its business, maintains records for other than regulatory purposes, and collects statistical information based on that carrier's unique circumstances.

However, because of DRA's workshop position that uniform allocation procedures should be established, McCaw conferred with other facilities-based carriers and modified its individualized cost allocation manual to incorporate generic allocation

procedures. The other facilities-based carriers support McCaw's revised cost allocation manual, hereinafter referred to as the facilities-based carriers' manual.

The facilities-based carriers' USOA manual for cost allocation procedures is based on an avoided cost standard that is quite different from CRA's. Wherever possible, costs are directly assigned. Those costs which are shared by the wholesale and retail operations, such as advertising, customer service, and billing, are allocated based on measures of activities and the application of the facilities-based carriers' definition of an avoided cost standard. The standard applied required an imputation of hypothetical costs that a carrier might incur if its existing retail customers were served by independent resellers buying wholesale service from the cellular carrier. The carriers would add these imputed costs to wholesale expenses and subtract them from retail expenses.

The facilities-based carriers' proposed USOA manual provides a number of subaccounts to provide additional detail beyond that included in the existing USOA. It also provides an assignment or allocation procedure for each USOA revenue and operating expense account.

Consistent with the current USOA, the facilities-based carriers' USOA includes accounts for noncellular activities. Noncellular activities are those operations over which the Commission does not exercise accounting jurisdiction, such as the sale or repair of customer premise equipment. Similar to the allocation of costs between wholesale and retail activities, noncellular operations' costs are directly assigned where appropriate. The remaining costs are assigned through the use of allocation mechanisms such as special analysis, activity based allocations, or based on the apportionment of previously assigned amounts.

## 9.6 USOA Modification Discussion

Of the 3 proposals left for analysis, DRA's is the least appropriate in this instance because it does not resolve the USOA issue and because it does not recognize that all parties were notified well in advance, by D.90-06-025 in June 1990, of our intent to modify and incorporate a cost allocation method into the facilities-based carriers' USOA in this final phase of the investigation. If DRA felt strongly enough about an industry task force to develop a revised USOA, it should have made its position known through a petition for modification shortly after D.90-06-025 was issued.

To adopt DRA's industry task force concept at this late date would require us to ignore the detailed comments and reply comments filed by interested parties prior to the workshop, the workshop process, the evidentiary hearing process, and the amount of time, effort, and money several parties, including the Commission, dedicated to this issue for more than a year. It is apparent from the results of the workshop and evidentiary hearing that additional hearings would be needed to resolve disputes that would more than likely occur within the industry task force, resulting in a substantial delay. Further, the record before us is sufficient to implement modifications to the USOA at this time.

In addition, DRA's "Part 64" concept was previously recommended by CRA in CRA's July 30, 1990 comments supporting applications for rehearing of D.90-06-025. Although some modifications to the decision were made pursuant to D.90-10-047, the avoided cost language was not changed and Part 64 was not incorporated into the decision. Consistent with D.90-06-025, by this decision we will modify the USOA.

The remaining two proposals before us are based on different interpretations of an avoided cost standard. McCaw and other facilities-based cellular carriers have suggested one version, while CRA has submitted another.

As explained at the beginning of our USOA Modification discussion, D.90-06-025, 36 CPUC 2d 464 at 500-513, sought cost allocation methods that, from a rational business perspective, provided for all costs a carrier must incur due to its offering of wholesale service to be allocated or assigned in their entirety to the wholesale side if those costs could not be avoided if the carrier discontinued retail service.

Parties to this proceeding have taken an inordinate amount of time attempting to determine the meaning of the phrase "avoided cost." The phrase has frequently been taken out of context, thereby obscuring our intent. In the discussion relating to the USOA in D.90-06-025, we indicated our intent to control any cross-subsidy on the part of the facilities based carriers. Avoiding cross-subsidization is a primary reason for modifying the USOA, and we will not adopt any proposal which does not meet that goal. Further, we stated that we would require a carrier's retail operations to break even on a rational business basis. If a carrier's retail operations are covering all of the costs directly associated with that business, then the carrier is not cross-subsidizing retail out of wholesale revenues or earnings. (36 CPUC 2nd at 501)

McCaw's avoided cost approach fails under the goals set forth in D.90-06-025 because it does not ensure that all of the costs directly associated with its retail operations are allocated to the retail side. Under McCaw's proposal, the costs of the facilities-based carriers' retail operation would be artificially low because it allows certain accounts that are common to both wholesale and resale to be lumped into the wholesale side.

McCaw's Kirkpatrick provided a good example of how the facilities-based carriers' avoided cost concept would be applied. If a facilities-based carrier had only one vehicle driven 60% of the time by its wholesale field engineer and driven 40% of the time by its retail manager, the cost of the vehicle and the cost to

operate the vehicle should be allocated 100% to wholesale operations because, according to Kirkpatrick, the facilities-based carrier would need that vehicle for wholesale operations even if it discontinued its retail operations. But under this method, the retail operation of a facilities-based carrier would receive the benefit of the use of the vehicle without having to report it as a cost of doing business. This methodology does not meet our stated intent that the retail operation cover all costs associated with the retail business and would encourage cross-subsidy rather than prevent it.

Additionally, a carrier would not have just one vehicle, but would have a fleet of vehicles. We can use the same figures as above with a fleet, with the wholesale side utilizing the fleet 60% of the time and the retail side 40%. From a rational business perspective, if the carrier divested itself of its retail arm, it would divest itself of 40% of its fleet. Similarly, with office space, if a carrier divested itself of its retail arm, it could lease the office space utilized by the retail operations at the going market rate which would either include overheads such as building maintenance, or the lessee would be responsible for its own overheads such as building maintenance. Therefore, allocating building space, including associated overheads, based on square footage of usage will accurately reflect the true costs for both retail and wholesale operations.

The facilities-based carriers' manual is flawed in one other respect. It will not ensure standardized reporting because the manual allows for individual variations in the style and format of reporting among the carriers. The manual contains the following caveat:

> It should be noted that assignment and allocation methods described by account are provided only as examples for implementation of the Commission's avoidable cost standard. Carriers may employ different assignment and allocation methods which would also be

consistent with the commission's avoidable cost approach.

Therefore, we also reject the facilities-based carriers' plan on practical grounds. In D.90-06-025 we stated that CACD will be responsible for enforcing this monitoring requirement by receiving the periodic filings. The carriers' proposal allows for individual variations in style and format among the carriers' reports. However, common sense dictates that standardized reporting by the carriers is necessary for CACD to perform its function efficiently. Consistent filings not only allow quick and accurate comparisons to be made but also facilitate reference to common specific data. The facilities-based carriers' plan is contrary to these principles and would therefore place an unnecessary burden on this Commission's staff.

Additionally, the carriers' proposal allows the submission of estimates of many costs rather than the actual historical data. Under their plan, the facilities-based carriers would be permitted to submit data from a hypothetical model to estimate what their costs would be if they were a wholesale-only business. Yet, CACD must know the actual costs that were incurred, not hypothetical costs, if it is to successfully monitor the carriers. Analyzing recorded data is an essential element of determining compliance with Commission directives. In this regulatory scheme, we prefer to review actual historical data over hypothetical models.

CRA's proposal meets the objective for a modified USOA that we set forth in D.90-06-025 of minimizing the potential of cross-subsidies (id at 501). It also is an avoided cost allocation methodology, and thus complies with the guidelines that were set forth in D.90-06-025(id). It is not, as some have suggested, a "fully allocated costing" approach because it recognizes that the costs of certain physical facilities, such as antennas and landline connections, are assignable in their entirety to wholesale operations. This is because these facilities are investments and

expenses that would be borne by a wholesale carrier, whether or not it were offering retail service. Under a fully allocated approach, however, these costs would be allocated between wholesale and retail operations.

CRA suggests that costs associated exclusively with retail operations be assigned entirely to retail business and costs exclusively incurred for wholesale operations be assigned in their entirety to wholesale. Accounts that include both retail and wholesale costs should be segregated based on their respective incurrence. By allocating costs as they were actually incurred on the wholesale and retail sides, CRA's avoided cost reporting plan minimizes the potential of cross-subsidization because it forces retail operations to accurately report their actual costs.

The McCaw witness' vehicle example described earlier illustrates this principle well. Under CRA's avoided cost methodology, if a facilities-based carrier had only one vehicle driven 60% of the time by its wholesale field engineer and driven 40% of the time by its retail manager, the cost of the vehicle and the cost to operate the vehicle would be allocated 60% to the wholesale side and 40% to retail. Thus, each side is accurately reporting what its actual cost of doing business was.

Since CRA's proposal is the only plan before us that meets the goal set forth by D.90-06-025 (id at 500-502) of an avoided cost methodology that minimizes the potential for cross-subsidization, we will adopt this proposal, Appendix B to this order, as a modification to the USOA adopted by D.86-01-043, 20 CPUC 2d 401. Our adoption of these modifications does not preclude us from making alterations at a later date should a condition warrant such a change.

Several parties have commented that there should be guidance for allocating between cellular and noncellular. Additionally, McCaw's proposed manual provided specific

instructions for those allocations between cellular and non-cellular. The current USOA has provisions for allocations between cellular and noncellular, in that there are specific subaccounts for noncellular. However, guidance is not provided on how the cellular and noncellular shared revenues and expenses should be allocated. To help ensure that the carrier is not cross-subsidizing noncellular out of wholesale revenues or earnings, we will adopt guidelines for allocating between cellular and non-cellular. Any revenues and costs that can be directly assigned to cellular and noncellular should be done first. Then, any cellular and noncellular shared revenues and expenses should be allocated in the same manner prescribed for allocating between cellular wholesale and retail. However, the allocation between cellular and noncellular should take place before any further allocation between cellular wholesale and retail.

Consistent with our stated goal that the USOA be used to attempt to police predatory pricing, the USOA should, except for imputed wholesale customer revenues from a facilities-based carriers' retail operations for reselling wholesale service, reflect actual costs. The revised USOA should be applied on a consistent basis so that the specific assignment and allocation procedures distribute no more and no less than 100% of the facilities-based recorded revenues and expenses among the facilities-based carriers' noncellular, wholesale, and retail activities.

With the adoption of these modifications to the USOA, CACD can begin to attempt to efficiently monitor the cellular industry for predatory pricing. The facilities-based carriers may then utilize the temporary tariff procedure established by D.90-06-025, 36 CPUC 464 at 500-503 and 510, to reduce their retail margin upon submission of their first USOA report to CACD and acknowledgement from CACD that their retail revenues equal (break even) or exceed their retail expenses.

9.7 Rate of Return Component

In D.90-06-025, (36 CPUC 2nd at 501) we stated that the facilities-based carriers must at least break even on a rational business basis to reduce the retail-wholesale margin through temporary tariff filings. Specifically we stated that retail costs should include a rate of return on investment dedicated to retail service that would not be needed for wholesale-only operations. CRA has correctly asserted that a rate of return component is part of our required break-even analysis.

To satisfy this guideline CRA proposed that a fixed 14% rate of return, which CRA asserted is consistent with the maximum rate of return, after sharing, authorized to Pacific Bell in the incentive regulatory framework proceeding, be imputed into the break-even formula. Actually, the maximum rate of return authorized in that proceeding is 14.75%.[4]

The facilities-based carriers were quick to point out that cost of service regulation was previously found to not be appropriate for the cellular industry. However, LA Cellular conceded in its brief that it is appropriate to impose a requirement that retail rates be high enough to recover actual interest payments related to assets directly used in retail operations. LA Cellular asserted that there is no basis for imposing an arbitrary rate of return where assets have been paid for with equity dollars.

Rate of return, which is expressed as a percentage, reflects payment for the use of capital (both debt and equity) and is traditionally used in cost of service regulation of monopoly enterprises. However, utilizing a rate of return as a measurement

4 This absolute cap equals the benchmark rate of return (13.00%) plus half the sharable earnings between the benchmark and pre-sharing rate of return cap of 16.50% (1.75%).

for the break-even analysis as required by D.90-06-025 is not an implementation of cost-of-service regulation.

We stated in D.90-06-025 (id at 501) that a carrier is not predatorily pricing towards the resellers, if a carrier's retail operations are covering all of the costs directly associated with that business. The cost of capital (both equity and debt) is merely one of the costs of doing business.

From a rational business perspective, a firm must recover its operating expenses, including interest (payment for the use of debt capital), and taxes, as well as a payment for the use of equity capital. A competitive firm that is not engaged in predatory pricing will not only cover all of its operating costs but will also attempt to cover a normal return on its equity capital. Otherwise the owners that provide the capital to the non-predatory pricing firm will choose to invest where they can at least earn the prevailing market return on invested capital with similar risk.

Parties were put on notice by D.90-06-025 that retail costs should include a rate of return on investment dedicated to retail service that would not be needed for wholesale-only operations. During the current proceeding the parties had an opportunity to provide testimony on and cross examine CRA's witness on whether or not the maximum rate of return authorized in the incentive regulatory framework proceeding is the appropriate rate to use for the break-even analysis. However, the only rate of return proposed was by CRA. CRA's witness was not cross-examined on whether the top rate of return, after sharing, authorized to Pacific Bell in the incentive regulatory framework proceeding is appropriate, and testimony was not provided as to why this particular rate would be inappropriate other than to purport that the Commission should not adopt an arbitrary rate of return to use for the break-even analysis. Nor was this specific rate addressed in the briefs by the facilities-based carriers.

Therefore, we find that the rate proposed by CRA is reasonable, as adjusted to reflect the true cap on the rate of return after sharing as adopted in the incentive regulatory framework proceeding.

We will require, therefore, that the revised USOA adopted by this order include the break-even analysis generally as proposed by CRA. The rate of return to be used in the break-even analysis is 14.75%.

We will also require the facilities-based carriers to provide, on the USOA adopted basis, semiannual reports addressed in D.90-06-025 (id at 500-503) to CACD's Director no later than 45 days after the last day in the semiannual reporting period. These should continue to be prepared and mailed until the facilities-based carriers are notified in writing by the Executive Director that the semiannual reports no longer need to be mailed to the CACD Director. The semiannual reports should cover the periods from January 1 to June 30 and from July 1 to December 31, with the first required report to be mailed to CACD covering the period July 1, 1992 to December 31, 1992.

10. Reseller Switch

CRA proposed in the early stages of this investigation that cellular wholesale utilities be required to offer unbundled access to certificated resellers so that resellers could perform their own switching functions. Resellers asserted that such a requirement would lead to lower rates, a greater availability of innovative services, and greater competitiveness than now occurs or is likely to occur under the duopoly wholesale market structure.

However, the record developed by CRA and resellers in the prior phases of this investigation did not clearly show that CRA's reseller switch proposal was feasible. Therefore, a Commissioner's ruling issued on December 11, 1989 provided the resellers an opportunity to present a more detailed account of their reseller switch proposal in a subsequent phase of this investigation. The

ruling also provided other interested parties an opportunity to present their points of view and relevant facts in the subsequent phase of the investigation. Consistent with the Commissioner's ruling, Ordering Paragraph 23 of D.90-06-025 incorporated the resellers' switch issue as a Phase III issue (id at 518).

No reseller came forward with a generic switch proposal. However, CSI did provide a specific proposal to be implemented for itself in the San Francisco and in the Los Angeles/San Diego MSAs. Specifically, CSI proposed to install two switches, one in each of the identified markets.

The CSI switch would interconnect with facilities-based carriers' switches. It would also interconnect with the public switched telephone network (PSTN), consisting of the LECs and the interexchange carriers (IEXs) via Type 2A trunk groups[5] and tandem switches in the San Francisco and the greater Los Angeles area. LECs operators' service and emergency services would be available via a Type 1 trunk group.

CSI's switch, with associated data bank, would absorb the number administration, most billing functions, vertical services, call recordation and verification, and routing functions currently being performed by the facilities-based carriers in these MSAs. In addition, CSI would take over responsibility for the interconnection between the facilities-based carriers' MTSOs and the LECs and the IEXs points of presence. All interconnections would be at a "T1" or a higher basis.

CSI presented four witnesses to substantiate the need for a reseller switch. These witnesses testified on the engineering feasibility, technical feasibility, greater availability of innovative service offerings, and the economic justification for a

5 Direct connections with an LECs tandem office.

reseller switch. The facilities-based carriers countered with their own witnesses who rebutted assertions of CSI's witnesses.

Although CSI intends to take over functions from the facilities-based carriers, it is not clear to what extent this would occur. For example, connections to the PSTN vertical services would be eliminated entirely, according to CSI's Midgley, a communications consultant. However, the facilities-based carriers would need to replace that function with a connection to CSI.

Another example is CSI's call recordation and billing function proposed. Midgley asserted that the facilities-based carriers will be able to substantially reduce their billing records. CSI will not need detailed billing records which currently identify the unit that placed the calls or the length of the calls for the particular units. CSI will only require a bill showing the total accumulated usage of air time.

The facilities-based carriers indicated that some form of detailed billing records, albeit not at the current detail level, will need to be maintained if the proper end user is to be charged and credited for usage adjustments, and we concur that this will result in duplication of some functions.

CSI's witness Widmar testified on the innovative service offerings that cellular subscribers would receive upon the implementation of a reseller switch. Among these innovative services are limited calling areas, incoming call screening, distinctive call signaling, priority call waiting, cellular extension, cellular private branch exchange, cellular centrex, voice mail enhancements, dual-system access, custom directory service, cellular secretary, multi-line hunting, and billing format design.

According to King, president of an economic consulting firm, CSI's switch proposal will provide competition in areas of cellular service where such competition is technically feasible.

Although technical innovations would continue to come from the manufacturers, service innovations would come from resellers such as CSI, currently restricted to "retail activities," that is, the solicitation of end-user customers, the initiation of their service, and the administration of their accounts.

To ensure an equal footing in the cellular switch market, CSI requested that the Commission unbundle wholesale rates, provide resellers the ability to connect with the LECs, and provide resellers with the ability to acquire exchange codes (NXX) from Pacific Bell (Pacific) on the same basis as the facilities-based carriers.

10.1 Resellers' Switch Discussion

The reseller switch issue was incorporated into this phase of the investigation at the urging of the resellers so that the resellers could present a detailed account of their switch proposal. During the comment process prior to the workshop, the resellers provided very little in the way of a proposal that the facilities-based carriers could evaluate. Therefore, the facilities-based preworkshop comments listed a series of questions which they felt needed to be answered to determine the feasibility of a reseller switch. At the workshop, CSI responded to the facilities-based carriers' questions. However, CSI still did not provide a sufficient amount of specificity about its switch proposal. The facilities-based carriers were looking for details such as the specific type of switch, the method of interconnection, the manufacturer or size of the switch, the number of connections needed, the type of trunking needed, and whether individual numbers or blocks of numbers are needed for roamers.

The workshop devoted to the reseller switch proposal was productive to the extent that LA Cellular acknowledged that a reseller switch may be technically feasible. LA Cellular invited CSI to present a written proposal for the connection of a specified model switch by specified links to specified LA Cellular locations,

with an identification of all relevant requirements for LA Cellular. DRA and facilities-based carriers, however, concluded that CSI left many questions unanswered including the following: the type of switch, the method of interconnection, the manufacturer or size of the switch, the number of connections needed, the type of trunking needed, and whether individual numbers or blocks of numbers are needed for roamers.

During the workshops Pacific raised the issue of whether cellular resellers should be able to acquire interconnected NXX codes on the same basis as the carriers since cellular resellers are not Part 22 licensees. However, Ordering Paragraph 10 of D.90-06-025 (id at 516) clearly requires interconnection arrangements between cellular carriers and LECs to be offered on a nondiscriminatory basis. There is nothing in the decision that restricts interconnection arrangements to only facilities-based carriers. King testified that CSI is committed to abide by the code utilization rules that apply to all carriers. Therefore, by D.90-06-025, resellers already have the right to interconnection arrangements and NXX codes on the same basis as facilities-based carriers.

The reseller industry did not make a proposal for a generic reseller switch. The only proposal came from CSI and was specifically for CSI. This may be because most resellers do not have access to sufficient funds to purchase a switch. The projected cost ranges from $1.3 million to $3.0 million, depending on whether reliance is placed on CSI's estimate or U.S. West's estimate. If this is the case, there may be a very limited reseller switch market, but the number of switches resellers might install is not at issue here.

Nonetheless, we have CSI's switch proposal concept before us for consideration. CSI's proposal relies upon capabilities of switches and switch software that have not yet been developed, tested, or made available on the open market. However, from the

evidence presented in this investigation, it is very apparent that technical innovation is accelerating to the extent that a reseller switch proposal may be technically viable in the very near future. Therefore, consistent with our goal of increasing the competitive forces for cellular service, we will authorize resellers to provide cellular switch facilities and will establish a procedure for resellers to follow.

Those resellers that want to provide switching services currently being provided by facilities-based carriers should file a petition to modify their current certificate of public convenience and necessity (CPCN) to operate as a switch reseller. One purpose in modifying the CPCNs is to eliminate any language in the current CPCNs that prohibits resellers from operating facilities. A second purpose is to ensure compliance with the California Environmental Quality Act (CEQA). As part of its petition to modify, a reseller must comply with Rule 17.1 and include a Proponent's Environmental Assessment (PEA) as part of its filing for review by Commission staff. Resellers are reminded that cellular facilities they wish to install subsequent to that covered in the CPCN modification proceeding are subject to General Order 159.

Resellers will not be required to prove the technical feasibility of their proposed switches, just as the facilities-based carriers are not required to do so when they install a switch. We will rely on market forces and technological advances to influence when resellers decide they are ready to move into the market as switch resellers. Parties obviously disagree as to whether a reseller switch is technically feasible at the present time. While issues of switch incompatibility and protocol converters may exist, we believe that resellers will not invest between $1.3 million to $3.0 million to develop and install a reseller switch that cannot communicate with the switches already installed by the facilities-based carriers. The sizable up-front investment required precludes resellers from investing in a switch

until resellers themselves are confident that the reseller switch concept can be successfully implemented.

11. Unbundled Tariffs

Having resolved CSI's interconnection arrangement and NXX concerns, we are left with CSI's unbundled tariff requirement to address. King developed unbundled wholesale rates for the carriers to charge CSI based on what King believed to be the carriers' own costs and what would result in an economically efficient transfer of monopoly profits from the carriers to the general public.

The economic justification for the reseller switch is measurable, according to King, by calculating the incremental cost on a forward-looking basis. King described incremental cost as derived by considering a given growth path for a service over time (ten to 15 years) to perturb the expected growth path by 1% or more, and the increase in present discounted cost over a sufficiently long-time horizon so that all capital and A&G costs become variable.

However, King's unbundled rates were flawed because he relied on "rough estimates" and on technical matters provided by CSI's engineers Midgley, Widmar, and Raney to develop the unbundled rates. Among the deficiencies in King's economic cost analysis were a failure to reflect the additional hardware and software costs to be incurred by the facilities-based carriers to implement CSI's switch proposal, the cost to implement the IS-41 and/or black boxes upon the completion of field tests, and a realistic idea of the functions that the facilities-based carriers would not need to duplicate such as the extent of call and bill details.

Irrespective of CSI's flawed calculations, both CSI and PacTel Cellular's economic witnesses agree that the basis for establishing unbundled wholesale rates should be long-run incremental costs. However, a dispute lies in King's extension of the incremental cost definition to include average cost in those situations where there are no identifiable economies-of-scale such

as in the switching function, and CSI's assertion that resellers not be charged any access fees.

We concur with DRA that the wholesale services being sold on a bundled basis by the facilities-based carriers can be unbundled. Absent unbundled rates, it is difficult, if not impossible, for resellers to assess the viability of a reseller switch. Further, any failure to unbundle wholesale rates runs counter to our Phase I goal of increasing the competitive forces for cellular service and encouraging the most rapid expansion of cellular service and new technology that is reasonably possible.

The facilities-based carriers should be required to unbundle and tariff their wholesale rates into specific subcomponents. The cost methodology recommended in the ALJ 311 decision was incremental cost. However the use of incremental cost methodology was conditioned on all parties agreeing on a concise definition in their 311 comments. Absent any consensus on a definition, parties were ordered to file unbundled tariffs based on direct cost methodology.

The comments and reply comments indicate that although there is general agreement that incremental cost methodology may be the most appropriate methodology, there is certainly no consensus on a standard definition nor even agreement on what constitutes an incremental cost methodology. Hausman (PacTel) for example states that King's (CSI) proposed methodology is not an incremental cost methodology, but a fully allocated cost methodology (12 11:2 and Exhibit W-11 pg. 8), yet King's definition was taken word for word from Hausman's testimony in I. 88-11-033, Implementation Rate Design (IRD) for LECs. Part of the problem, as pointed out by PacTel Cellular and GTE Mobilnet in their 311 filings, concerns their unresolved dispute with King's extension of the incremental cost definition to include average cost in those situations where there are no identifiable economies of scale such as in the switching function, and the assertion that resellers not be charged

any access fee. A review of the definitions submitted shows no real agreement on a standard definition as shown in the following examples:

> Hausman: For incremental cost, a growth rate over the next 5 to 10 years would be chosen for cellular in a given market, and the present discounted cost of meeting this growth would be estimated. A comparison calculation would then be made with a different and lower growth rate (which could be negative) for the carriers' wholesale customers with the remaining customers buying service from the CSI switch. The comparison of this present discounted cost compared with the first estimated cost divided by the number of customers who buy service from the CSI switch would give an estimate of long run incremental costs. (Exh. W-11 pg. 5)
>
> King: The best way to estimate long-run incremental cost is to consider a given growth path for a service over time, to perturb the expected growth path by 1% or more, and to calculate the increase in present discounted cost over a sufficiently long-time horizon so that all capital costs become variable. A period of 10 to 15 years will usually suffice for the calculation. (Tr. 935.)
>
> LA Cellular: Long run incremental costs (LRIC) are the additional costs the company will incur on a long-run basis because of a new business decision, such as introducing a new service offering or changing an existing tariffed rate. If the new business decision has no impact on the company's existing cost structure, there will be no LRIC incurred by the company. In short LRIC can be defined as the difference between total costs with and without implementation of the new business decision. (311 Comments.)

In addition to the lack of an agreement on a standard definition and methodology for incremental cost, we have other concerns with the incremental cost methodology and definitions being proposed by the various parties in this proceeding. One is the inconsistency of some of those definitions with the standard

economic definition or those from other proceedings. LA Cellular proposes using the adopted definition in Decision 90-11-029 (AT&T's Readyline, Pro Wats and Megacom services). However, we did not adopt a definition for incremental cost in AT&T's proceeding. The definition LA Cellular wants us to adopt in the current proceeding is that proposed by DRA in AT&T's proceeding. We only stated in Finding 19 of D.90-11-029 that "all parties in this proceeding, with the exception of U.S. Sprint, agree that some adaptation of LRIC is a proper cost standard for determination of minimum rate levels for services in a competitive market." Setting minimum rate levels (i.e. floors) for unbundled rate elements such as airtime using LRIC may not be fair to the facilities-based carriers in the short run. That is because we stated in D. 90-06-025 that we believe the costs of providing cellular service should drop substantially in the future with the conversion of the analog portions of the network to digital, increasing capacity by three to four times. We will consider incremental definitions, methodologies and guidelines in our IRD proceeding and are not anxious to adopt a definition and methodology in this proceeding that may be unique to the cellular industry. There is not sufficient record or justification for such a determination.

Another concern with using the incremental cost methodology definitions proposed by the various parties is the difficulty of obtaining reliable cost estimates based on uncertain, long-term forecasts. An example is Hausman's definition of incremental cost which not only requires an estimate of cellular growth of customers and usage for each cellular carrier in the cellular market over the next 5 to 10 years, but also the growth rate of the customers and usage of those resellers who choose to be connected to CSI's switch. The cellular market's growth rates, which have been irregular and highly dynamic in the past, would have to include possible effects of new technologies like digital, new services, emergence of possible new competing technologies like

personal communications networks, and the emergence of possible other private competitors like Fleet Call. Even Hausman, on page 5 of his Exhibit W-11, indicates the high uncertainty of forecasting future growth and costs. He also notes (Exhibit O pg. 4) the need to average appropriately among the additional increment of new demand which it will serve, the required lumpy investments to obtain the incremental costs. It is our opinion that use of long-term estimates would be difficult, unreliable and result in a high level of controversy.

For the above reasons, the use of incremental cost methodology for unbundling would in our opinion create a great deal of controversy and result in lengthy delays. The delays would certainly be counter to our afore-mentioned Phase I goal of increasing the competitive forces for cellular services and encouraging the most rapid expansion of cellular service and new technology that is reasonably possible. Therefore, we will adopt the use of direct embedded cost methodology for the unbundling applications. Direct embedded cost methodology has been the costing methodology used in telecommunications utilities for many years. It is well understood, less controversial, and will provide reasonable and fair rates for unbundling the bottleneck wholesale rates. We will adopt the following definition from Decision 91-01-018 for direct embedded costs:

> Direct embedded costs include all costs of the company including maintenance expense, capital related expenses including return and income tax and depreciation, administrative costs, other operational expenses such as right to use fees, and wage-related expenses including relief, pension, and Social Security taxes, except some common corporate overheads.

The adoption of direct embedded costs methodology in this particular instance does not foreclose our option to consider incremental cost for unbundling the cellular wholesale access rates in the future. Nor does it indicate a change in our policy and

direction. We believe that incremental costing methodology is normally the most appropriate costing methodology for competitive services, but do not believe it is appropriate for unbundling wholesale tariffs at this time for the reasons discussed above. We have learned in past and ongoing proceedings how long, difficult and controversial proceedings involving incremental cost methodologies can be for telecommunications services. As mentioned previously, we will be reviewing incremental cost methodologies in the IRD proceeding which could provide a standard definition with guidelines that could be applicable to the cellular industry. We will agree, however, to review an incremental cost methodology, in addition to the direct embedded methodology, at hearings on the applications for unbundling the wholesale tariff. This is conditioned on submission at the time of the application filing of an agreement signed by all parties, on an incremental cost definition and detailed methodology.

For unbundling, the ALJ 311 decision required distinctive subcomponents for air time, billing, interconnections, transmission, and other identifiable service components. Several of the comments in the 311 filings on these components indicate a need for clarification. For example, McCaw Cellular incorrectly interprets transmission to apply only to facilities which currently exist between the cellular switch and the switches of the LEC and IEC, and states the cost study methodology should only be used to determine the cost of unbundled features obviated by the reseller switch.

Our reason for requiring the unbundling of wholesale rates is to promote increased efficiency and innovative use of the cellular network by opening up the network to additional competition. The best method to achieve that goal is to allow competitors to interconnect, on a cost supported basis, to those facilities that only the facilities-based carriers are allowed to provide under FCC rules because of the scarcity of radio frequency

spectrum. We therefore unbundle into wholesale rate elements only those functions that cannot be provided by competitors, that is the portion of the network between the mobile unit and the switch, and certain switching functions. It is that portion of the network that should be cost based, not the portion of the network that will be opened up to competition. We see no need to unbundle wholesale rates into rate elements for services that competitors can provide because we want that portion of the network to be market priced (i.e., the existing wholesale and retail rates).

It is certainly not our intent to get involved in rate based regulation of existing wholesale and retail customer rates. We are only setting up cost-based rate elements on bottleneck facilities for competitors following the FCC concept on open network architecture (ONA), which we believe is appropriate for telecommunications networks. King agrees (Tr. 964) that using the ONA principles on cellular would stimulate maximum innovation and reduce costs to consumers. For example, Pacific Bell is no longer a rate based LEC, yet we ordered them to provide cost-based rate elements to competitors for portions of their network that can't be provided by competition. A recent example is the LEC-provided interconnection rate elements necessary for RTUs to connect their network to the LEC networks in D.91-01-016.

We agree with DRA that the unbundled rates should include a reasonable return to the facilities-based carriers no matter which cost methodology is used. Therefore, in their unbundling applications the facilities-based carriers should use a 14.75% return, which is discussed in Section 9.6 of this decision. This set return will ensure consistency and comparability between the filings of different utilities. Parties who believe a different return should be allowed should justify their proposed returns in their applications on unbundling or in protests to the applications.

In order to reduce the misunderstandings and assure more consistency and uniformity among the application filings, which should reduce the application processing time, we will make the following guidelines applicable:

1. Workpapers supporting the cost studies should be made available to interested parties under a nondisclosure agreement at the time of the application filing, and will be protected under the rules of General Order 66-C. Workpapers should be clear, detailed and well organized, with assumptions, cross-referencing, and information resources shown.

2. The cost studies should be based on the study year 1993, reflecting the actual operations (e.g., cost levels, volumes, investment level, etc., for 1993). They should include any direct embedded costs that in any way can be identified and attributed by reasonable persons to the provision of the service elements described in 3 below.

3. Applications will contain the proposed recurring and nonrecurring tariffed rate elements for the following subcomponents, which can be subdivided into more detailed rate elements if applicants desire:

   a. Airtime--shall only include on a cost per minute basis all the direct embedded costs of providing the communication channel between the subscriber's mobile telephone and interface at the facilities based switch, including terminal equipment necessary for transmitting, receiving, etc. the channel.

   b. Interconnection--shall only include a rate element(s) for the direct embedded cost of providing the interface connection to the reseller supplied trunks at the facilities-based carrier's switch.

c. Switching--shall only include a rate element(s) to include the direct embedded costs of providing those functions at the facilities based carrier's switch to recognize the reseller number and route the call to the reseller's trunk, and set up a call coming from a reseller switch to the facilities based carrier's switch. It should include the costs of any protocol or switch modifications.

d. Billing--shall only include the direct embedded costs of providing summary billing to resellers for the above rate elements.

4. It will be assumed that the reseller will purchase its own NXX codes and handle its own number administration and customer services so these related access costs should not be included.

Consistent with our Phase I goal of encouraging the most rapid expansion of cellular service and new technology possible through competition, facilities-based carriers operating in MSAs with resellers should file applications unbundling their wholesale rates within 120 days after the effective date of this order. In recognition of the diversity of cellular service between MSAs and RSAs, the RSAs (and MSAs without existing resellers) should file an application unbundling their wholesale rates within 120 days after the filing date of an application from a reseller proposing to provide switched cellular service within the RSA's service area.

We remind the parties that § 2113 of the Public Utilities Code provides that any violation of any part of any of our orders constitutes contempt of the Commission. Any such violation may be punishable by a fine of up to $2,000 per day under §§ 2107 and 2108, in addition to contempt penalties.

The facilities-based carriers, in their 311 comments, protested the inclusion of the condition delaying the elimination of the margin requirement until the unbundled rates are in place.

They claim that this condition is unrelated to bundling and is inconsistent with the Phase II decision. We disagree. Encouraging competition is a key policy in the Phase II decision. This condition, which we adopt, will provide a strong incentive to the facilities-based carriers to implement the unbundled rates quickly which should increase competition in this industry. The condition will also maintain some stability in the marketplace until the resellers have the opportunity to compete. The consequences in the Phase II decision for operating the facilities-based retail arm below cost are not sufficient to eliminate market abuse. It would take over a year before the Commission could start a proceeding to evaluate whether this anti-competitive practice was taking place, and would be of little value to the reseller who was put out of business as a result. Our insistence on introducing added competition quickly is important in that it will allow us to consider further streamlining of our regulatory rules, reducing the regulatory oversight and rules and requirements for cellular service providers.

12. Facilities-Based Carriers' Affiliate Operations

By D.84-06-027 of Application 84-03-68, PacTel Mobile Access was denied authority to resell cellular service in the same territory in which Los Angeles SMSA Limited Partnership was authorized to provide resale services. Los Angeles SMSA Limited Partnership's general partner, Los Angeles CGSA was a wholly owned subsidiary of PacTel Mobile Access. This policy of precluding a facilities-based carrier's affiliate from competing with the facilities-based carrier, with the exception of one instance, has remained in effect since the issuance of D.84-06-027 to discourage anticompetitive and cross-subsidization practices.

The exception pertains to PacTel Mobile Services (PTMS), an entity which is owned 100% by PacTel Corporation, the parent of PacTel Cellular. PacTel Cellular in turn, owns approximately 62%

of the equity and 65% voting interest of Bay Area Cellular Telephone Company (BACTC), the Block A carrier in the San Francisco and San Jose market, and which has been allowed to compete in that market pursuant to D.86-05-010.

PacTel Cellular filed A.87-02-017 to obtain Commission approval for its acquisition of an additional interest in BACTC. At the time of the application, PacTel Cellular and its affiliate owned a 47.0 percent interest in BACTC. By the application, PacTel Cellular sought to acquire an additional 14.1 percent interest from Cellular Mobile Systems of the Bay Area, Inc. We previously gave notice in D.86-05-010 when we allowed PTMS and BACTC to compete in the Bay Area of our intent to revisit the issue if PacTel Cellular obtained more than a 47.0 percent interest in BACTC. The assigned ALJ in A.87-02-017 raised the issue during the course of that proceeding and was informed that PTMS would seek the transfer of its Bay Area customers to BACTC or to another entity not affiliated with PacTel Cellular, subject only to BACTC's approval and approval by this Commission.

In D.87-09-028, PacTel Cellular was granted authority to purchase the additional 14.1 percent interest in BACTC and PacTel Cellular was ordered to make a compliance filing within 120 days regarding the proposed transfer of PTMS' customers to BACTC. However, PacTel Cellular's minority partner in BACTC, California Celcom Communications Corp., refused to approve the transfer of PTMS' customers to BACTC. The transfer never took place and PTMS continues to compete with BACTC in the Bay Area.

To resolve the issue of reseller affiliates competing in the same area, A.87-02-017 was consolidated with this investigation.

As part of our current investigation we wanted to assess whether facilities-based carriers' affiliates should continue to be prohibited from reselling in markets where the carrier provides

retail service and to determine if PTMS, which continues to have customers in the Bay Area, is in violation of that policy.

Although the issue of reseller affiliates was addressed in the first phase of this investigation, a question remained as to whether the FCC has preempted us in this matter.

12.1 Workshop Results

At the workshop, parties concurred that FCC policy does not currently preempt us from either continuing our current resell policy or from relaxing the prohibition. All parties, including CRA, recommended a relaxation of the current resale policy, with appropriate cross-subsidization controls in place.

CRA in its comments to the workshop report filed on May 31, 1991 indicated that the policy behind the prohibition on facilities-based carrier affiliate resale is to discourage anti-competitive and cross-subsidization practices.

CRA concurred with the other workshop participants that facilities-based carrier retail affiliate operations could exist if:

a. They are subject to the same rigorous accounting allocations and obligations on an MSA-by-MSA basis;

b. They are treated in precisely the same manner as independent resellers without access to switch and other carrier wholesale information unless that information is also provided to independent resellers; and

c. The facilities-based carrier chooses to have either a retail division or structurally separate affiliate to avoid carrier packing of an MSA by adding multiple retail affiliates with differing rate structures.

However, parties' comments indicate that item (b.) above was seen as difficult or impossible to implement. LA Cellular in its Workshop comments stated that the proposal was impractical. LA

Cellular indicated that one of the economies that could be enjoyed if a reseller affiliate operated in the same market is that existing staff could manage both operations. LA Cellular goes on to state:

> There is no practical way that the Commission can monitor information transfers between facilities-based carriers and resale affiliates when the same people perform functions for both.

McCaw indicated that there is no basis to attempt to control information flow between affiliated companies in the cellular business, and indicated that despite any safeguards put in place, information would undeniably be available to the affiliate in any event. The comments concluded that any such restriction would be "unenforceable" and would not serve any legitimate Commission policy.

12.2 Prehearing Conference

At the July 19, 1991 PHC parties concurred that evidentiary hearings were not needed to address the resale issue. Accordingly, the matter was set for briefing at the end of the Phase III hearings.

12.3 Facilities-Based Carrier Affiliate Operations Discussion

In the early days of the cellular industry, we recognized the potential for anti-competitive behavior and cross-subsidization between affiliated companies, and thus established this prohibition. While the industry has matured over the past several years, we do not want to change the current policy unless we are certain that it will not be detrimental to competition in this industry.

While the Workshop parties appeared to reach consensus on some issues, that consensus contained enough basic differences to be meaningless. One major area of difference which emerged during the workshops and which continued throughout the remainder of the

proceeding related to CRA's insistence of the need to implement proprietary information safeguards for information flowing from the carrier to its reseller affiliate. Carriers insisted that no amount of safeguards would prevent the flow of information between entities under the same corporate umbrella.

In reviewing the issues in this situation, we are unwilling to make changes to our current policy when the potential for anti-competitive behavior exists. Parties' positions solidified early on, and have not changed much during the course of the proceeding. Also, with the Workshop and various opportunities for briefings, parties have been given an adequate opportunity to make their positions clear on this issue, even in the absence of evidentiary hearings. Therefore, we will continue the current prohibition on an affiliate reseller providing service in the same market where the facilities-based carrier provides retail service.

This brings us to the issue of what to do about PTMS' customers in the Bay Area, where it is operating in competition with BACTC, in which PacTel Cellular has been the majority partner since 1987. We made our intent clear in D.87-09-028 that PTMS' Bay Area customers should be sold to BACTC or some other cellular entity. However, that customer transfer never occurred, and PTMS continues to provide service to customers in competition with BACTC. By this order we are reaffirming our understanding stated in D.87-09-028 that PTMS sell its Bay Area customer base. PTMS by this order is given 120 days to transfer its Bay Area customers either to BACTC or another cellular company. Noncompliance with this order will result in fines under PU Code 2107 for every day that PTMS is not in compliance.

Any customer base transfer, whether in part or in whole, must have Commission approval prior to the transfer occurring. Approval for the transfer shall be obtained via the advice letter or application process, depending on the circumstances involved. An application would be required if the transfer results in a

tariff rate increase, more restrictive tariff terms and conditions, a change in conditions of service, or withdrawing service completely.

This order prohibits affiliate resale in the same market. However, we still see the need to monitor affiliate transactions in this industry. On August 11, 1992 we issued a rulemaking in the subject of affiliate transactions which applies to electric, gas and telecommunications utilities, and in R.92-08-008 implemented interim reporting requirements to be followed. This rulemaking was initiated after the close of this proceeding, but since its provisions are applicable to cellular companies, we hereby take official notice of that document, and put cellular companies on notice of the need to comply with the interim reporting requirements delineated in Appendix A to that order.

We are aware of one other instance of a reseller affiliate operating in the same area as its facilities-based carrier affiliate. GTE Mobilnet of California, Inc. (GTEM-CA) is licensed by this Commission as a reseller of cellular telephone service. GTEM-CA is an affiliate of GTE Mobilnet Ltd. which currently provides wholesale and retail cellular service in the greater San Francisco-San Jose areas.

In D.92-05-021, we granted GTEM-CA authority to provide GTEM-CA to offer cellular service, limited to credit card telephones installed in rental cars, public transportation vehicles such as limousines and vans, offshore drilling platforms, and other such similar locations in the same northern California markets in which its affiliated entity, GTE Mobilnet Ltd. currently provides wholesale and retail cellular service. This authority was conditioned on disposition of the affiliate competition issue in this phase of I.88-11-040.

The credit card telephone operations offered by GTEM-CA will make no use of any recording, rating, or other billing related functions provided by GTE Mobilnet Ltd. or its mobile telephone

switching office, nor is there any other commonality of functions between the GTEM-CA credit card operation and GTE Mobilnet Ltd.'s operation. The authority granted was very narrow in scope and could not be perceived to be contrary to the public interest or present realistic opportunities for cross-subsidization or any other anti-competitive practices. Therefore, it is appropriate not to change the authority granted to GTEM-CA in D.92-05-021, provided that GTEM-CA and GTE Mobilnet Ltd. continue to comply with that order, and GTE Mobilnet Ltd. continues to be considered a dominant carrier for purposes of affiliate transaction requirements adopted in R.92-08-008.

13. 311 Comments

The ALJ's proposed decision on this matter was filed with the Docket Office and mailed to all parties of record on June 12, 1992, pursuant to Rule 77 of the Commission's Rules of Practice and Procedure.

Comments from CRA, CSI, DRA, Fresno MSA Limited Partnership and Contel Cellular of California, Inc., GTE Mobilnet of California Limited Partnership and GTE Mobilnet of Santa Barbara Limited Partnership (GTEM), LA Cellular, McCaw, Nationwide Cellular Service, Inc., PacTel Cellular, and US West were timely filed with the Docket Office on July 2, 1992.

However, McCaw filed a motion to strike a portion of CRA's comments because CRA's filing exceeded the 25-page limit provided for in Rule 77.3 by 28 pages, and because the 28 pages proposed specific changes to the cost allocation manual which purportedly reflected CRA's position for the first time in this proceeding. McCaw requested that CRA's Modified Appendix C be stricken from the record and that no weight be accorded such comments.

CRA replied that it submitted its Appendix C in response to Rule 77.4 which requires that comments proposing specific changes to the proposed decision shall include supporting findings

of fact and conclusions of law. However, Appendix C was not identified or purported to be findings of fact or conclusions of law. Such findings and conclusions were set forth in CRA's Appendix A.

CRA was on the other side of this 25-page limit issue in the second phase of this investigation. In that phase, CRA filed a motion to strike the appendices attached to LA Cellular's 311 comments, 36 CPUC 2d 464 at 508.

Although we accepted LA Cellular's 311 comments, we granted CRA's motion and rejected the appendices attached to LA Cellular's comments. In rejecting the appendices we stated that although there are no page limits on appendices, Rule 77.3 does not provide for additional comments to be incorporated into appendices. To do so would negate the intent of restricting comments. Appendices are restricted for findings of fact and conclusions of law, id at 509. We also warned all parties that any continuance of this procedure may result in rejection of comments.

Rule 77.3 limits the filing of comments in major generic proceedings, such as in this proceeding, to 25 pages plus a subject index listing the recommended changes to the proposed decision, a table of authorities, and an appendix setting forth findings of fact and conclusions of law. However, in this instance, CRA went beyond the statutory filing requirement. Not only did CRA include 28 pages of additional comments as Appendix C, it crafted a two-page summary of its comments, apparently not detected by McCaw or other parties, within CRA's subject index as pages iii and iv, raising CRA's total comment page count from 53 pages (25 pages of identified comments and 28 pages of Appendix C) to a total of 55 pages, exceeding the allowable comment page count by 30 pages.

Had CRA worked within the legal process and filed a timely motion to extend the comment page limit citing circumstances for the need of an extended page limit, we would have considered such a motion, and upon the demonstration of good cause granted

some relief to the page limit, such as we did in the Southern California Edison and San Diego Gas and Electric Company merger proceeding, D.91-05-028.

CRA's comments goes well beyond the proper legal standard for the filing of 311 comments and does not comport with Rule 77.3's comment and page allowance. CRA is not new to Commission proceedings and should be well versed on our rules. CRA should be admonished for such an inappropriate filing. Absent a timely request and authority for extended comments, we should reject CRA's comments and afford such comments no weight.

However, because we accepted LA Cellular's comments in the prior phase of this proceeding, equal treatment should be afforded CRA to the extent possible. Therefore, CRA's Appendix C should be rejected. This leaves CRA's two-page summary buried in its index and 25 pages of comments that need to be sized down to the allowable 25-page count. Rather than rejecting CRA's remaining 27 pages of comments for failure to follow the rule we will, for this proceeding only, allow the first 25 pages of CRA's comments. This means that CRA's two-page summary and 23 subsequent pages of comments should be accepted. CRA's last two pages of identified comments, pages 24 and 25, should be rejected because they exceed the allowable page count.

On the same motion that McCaw objected to CRA's extended page limit, McCaw objected to CSI's comments regarding events that have developed subsequent to the closing of the record and two partial newspaper/magazine articles attached to CSI's comments as Appendices B and C dated June 1992 and May 1992, respectively. In support of its objection, McCaw cited Rule 77.3 which states that new factual information, untested by cross-examination, shall not be included in comments and shall not be relied on as the basis for assertions made in post-publication comments.

McCaw requested that CSI's Appendices B and C, together with related portions of its comments be stricken. To do otherwise

would, according to McCaw make the hearing process meaningless, because a party could merely ignore the record and submit allegedly accurate and relevant materials after the fact.

Comments, such as CSI's Appendices B and C with related portions of its comments, which provided new factual information, untested by cross-examination were not considered by this Commission pursuant to Rule 77.3.

Comments were also filed by BACTC on July 3, 1992. However, BACTC's comments are rejected because they were not filed within 20 days of the date the ALJ's proposed decision was mailed, pursuant to Rule 77.2, and because BACTC did not request or receive an extension of time to file its comments.

Reply comments from CRA, CSI, DRA, GTE Mobilnet of California Limited Partnership, and GTEM, LA Cellular, McCaw, National Cellular Services, Inc., and PacTel Cellular were timely filed with the Docket Office.

We have carefully reviewed the comments and reply comments filed by the parties to this proceeding that focused on factual, legal or technical errors in the proposed decision and in citing such errors made specific references to the record, pursuant to Rule 77.3. To the extent that these comments and reply comments required discussion, or changes to the proposed decision, the discussion or changes have been incorporated into the body of this order. Comments and reply comments which merely reargued positions taken in briefs were not considered.

**Findings of Fact**

1. A majority of RSAs permit holders had received their operating authority prior to the second PHC.

2. The establishment of a streamlined certification process for RSAs facilities-based carriers is moot.

3. It is proper public policy to forebear from any rate of return or profit-based regulation of cellular wholesalers that are pricing their services competitively.

4. We will not adopt reporting requirements for the assessment and monitoring of cellular capacity utilization and capacity expansion at this time.

5. The Commission is not required to take official notice of documents.

6. Rule 74 explicitly provides that official notice may be taken of such matters as may be judicially noticed by the courts of the State of California.

7. We affirm the ALJ's March 6, 1992 ruling denying CRA's request that official notice be taken of a Commission's Legal Division memo dated December 16, 1991 and that official notice be taken of GTE Mobilnet of California Limited Partnership's annual reports for 1989 and 1990.

8. The purpose of the modified USOA will be to attempt to police predatory pricing.

9. The USOA is the appropriate tool to determine the facilities-based carriers' cost to provide wholesale and retail services.

10. The existing USOA is not in a form conducive to segregating retail, wholesale and noncellular activities in order to make a retail break-even analysis.

11. Costs incurred by a carrier due to its offering of wholesale service should be properly allocated or assigned in their entirety to the wholesale side if those costs could not be avoided if the carrier discontinued retail service.

12. If a carrier's retail operations are covering all of the costs directly associated with that business, then the carrier is not cross-subsidizing retail out of wholesale revenues or earnings.

13. Costs exclusively incurred for retail operations of a carrier should be allocated directly as a retail cost, costs exclusively incurred for wholesale operations should be allocated directly as a wholesale cost, and costs that are shared between

retail and wholesale service should allocated according to their relative incurrence.

14. Facilities-based carriers will lose their ability to reduce the retail margin of their wholesale operations through a temporary tariff filing if their retail revenues do not equal (break even) or exceed their retail expenses.

15. Part 64 is based on a fully allocated or fully distributed cost methodology where all costs are allocated to service based on the relative amount of usage.

16. Using the Part 64 methodology, costs associated with the physical handling of cellular radiotelephone calls would be allocated between wholesale and retail operations.

17. Cellular Dynamics' avoided costs definition relies on the premise that retail activities never existed.

18. There has been no change to the requirement that facilities-based wholesale costs allocation be based on the assumption that retail activities have been discontinued.

19. D.90-10-047 denied Advantage Group's application for rehearing of the avoided cost method.

20. The facilities based carriers' USOA cost allocation manual is based on the facilities-based carriers' definition of avoided cost.

21. The facilities-based carriers' USOA cost allocation manual allows classification of costs which are shared between wholesale and retail to be allocated in their entirety to the wholesale side.

22. The facilities-based carriers' USOA cost allocation manual does not meet the requirement that retail operations cover all of the costs directly associated with retail business.

23. The facilities-based carriers USOA cost allocation manual does not prevent cross-subsidization.

24. CRA's proposed modifications to the USOA are based on an avoided cost standard.

25. CRA's costing approach provides for costs exclusively incurred for retail operations to be assigned directly in their entirety as a retail cost, and costs exclusively incurred for wholesale operations to be assigned in their entirety as a wholesale cost, including costs that are associated with the physical handling of cellular radiotelephone calls. Costs that are shared between retail and wholesale service are apportioned according to their relative use.

26. CRA's modifications to the USOA is the only proposal which utilizes the avoided cost method and also meets the requirement that retail operations cover all costs associated with the retail side of the business.

27. Assignment between cellular and noncellular should be accomplished up front in the allocation process.

28. Accounts should be distributed to noncellular and cellular operations by direct assignment where appropriate and by allocation for any remaining amounts in the same fashion prescribed for allocating between wholesale and retail.

29. The purpose of a break-even analysis of the facilities-based carriers' retail operation is to discourage cross-subsidies.

30. CACD received advance notice in D.90-06-025 that it would be delegated the responsibility of monitoring the facilities-based carriers' operations for cross-subsidies.

31. Except as provided in Finding 55, a facilities-based carrier may use the temporary tariff procedure to reduce its retail margin upon acknowledgement by CACD that the USOA report the carrier submitted shows that its retail revenues equal (break-even) or exceed its retail expenses.

32. Retail costs for purposes of the break-even analysis should include a rate of return on investment dedicated to retail service that would not be needed for wholesale-only operations.

33. Utilizing a rate of return for the break-even analysis as required by D.90-06-025 is not an implementation of cost of service regulation.

34. Rate of return, which is expressed as a percentage, reflects payment for the use of capital, both debt and equity.

35. A carrier is not predatorily pricing towards the resellers, if a carrier's retail operations are covering all of the costs directly associated with that business.

36. From a rational business perspective, the cost of capital, both equity and debt, is merely one of the costs of doing business.

37. The rate of return cap, after sharing, as adopted in the incentive regulatory framework proceeding, is a reasonable rate of return to use for the break-even analysis.

38. Resellers that want to provide switching services may file a petition for modification of their certificate of public convenience and necessity to operate as a switch reseller.

39. CSI provided a reseller switch proposal for its own specific operations.

40. CSI's switch proposal relies upon capabilities of switches and switch software that have not yet been developed, tested, and made available on the open market.

41. Technical innovation is accelerating to the extent that a reseller switch proposal may be technically viable in the very near future.

42. Cellular facilities, including switches, are subject to the requirements of Commission Rule 17.1 and G.O. 159.

43. Cellular resellers do not have to prove the engineering or technological feasibility of their switches.

44. There is no incentive for resellers to install a switch that is not technically and economically feasible and which cannot communicate with the switches of facilities-based carriers.

45. Wholesale services being sold by facilities-based carriers can be unbundled.

46. The unbundling of wholesale rates is consistent with our Phase I goal of increasing the competitive forces for cellular service and encouraging the most rapid expansion of cellular service and new technology that is reasonably possible.

47. The unbundling of wholesale rates must be accomplished before resellers can evaluate the economic viability of a reseller switch.

48. There is no consensus among the parties on a standard definition of incremental cost or an incremental cost methodology for unbundling wholesale rates for the reseller switch.

49. The incremental cost methodologies proposed by the parties would result in a great deal of controversy and would not produce reasonable tariffed rates because of the difficulty in making long-term estimates for this industry.

50. The adoption of an incremental cost methodology using the definitions proposed by the parties would delay the implementation of unbundled tariffs and be inconsistent with the Phase I goal of encouraging the most rapid expansion of cellular service and new technologies through competition.

51. The use of direct embedded cost methodology is less controversial and will result in fair and reasonable unbundled tariff rates.

52. It is reasonable to utilize a 14.75% rate of return for unbundling wholesale tariffs.

53. A 14.75% rate of return will ensure consistency and comparability.

54. The unbundling of wholesale rates for competitors into cost-based rate elements for those functions that competitors cannot provide does not constitute rate base regulation. Existing retail and wholesale rates will remain market priced.

55. The MSAs with resellers may not use the advice letter process to reduce their retail margin until they have approved unbundled wholesale tariffs in order to encourage quick implementation of unbundled tariffs to promote competition.

56. Encouraging additional competition in the cellular industry will allow future streamlining of regulatory rules, reducing regulatory oversight for cellular service providers.

57. Ordering Paragraph 10 of D.90-06-025 requires interconnection arrangements between cellular carriers and LECs to be offered on a nondiscriminatory basis. The term cellular carriers is not restricted to only facilities-based carriers.

58. The FCC does not preempt us from either continuing our current resell policy of prohibiting a facilities-based carrier from competition with itself in the same market through a reseller affiliate or from relaxing the ban.

59. There is no practical way the Commission can monitor information transfers between carriers and resale affiliates when the same people perform functions for both.

60. Despite any safeguards put in place, information transfers between facilities-based carriers and reseller affiliates would still likely occur.

61. It is potentially anti-competitive to have an affiliate of a facilities-based carrier providing resale service in the same territory as the facilities-based carrier.

62. D.87-09-028 stated this Commission's intent that PTMS should divest itself of its Bay Area customers.

63. PTMS has not complied because BACTC's minority partner refused to approve the customer transfer.

64. On August 11, 1992 we issued an order instituting rulemaking on reporting requirements for affiliate transactions.

65. The interim affiliate transaction rules adopted in the order specifically apply to cellular facilities-based carriers.

66. McCaw filed a motion to strike a portion of CRA's comments because CRA exceeded the 25-page limit provided for in Rule 77.3.

67. Rule 77.3, in relevant part, limits the filing of comments in major generic proceedings, such as in this proceeding, to 25 pages plus a subject index listing the recommended changes to the proposed decision, a table of authorities, and an appendix setting forth findings of fact and conclusions of law.

68. CRA's comment page count totaled 55 pages, which exceeded the allowable comment page count by 30 pages.

69. Had CRA filed a timely motion to extend the comment page limit, we would have considered such a motion, and upon determination of good cause granted some relief to the page limit.

70. McCaw objected to CSI's comments regarding events that have developed subsequent to the closing of the record and two partial newspaper articles attached to CSI's comments.

71. Rule 77.3 states, in pertinent part, that new factual information, untested by cross-examination, shall not be included in comments and shall not be relied on as the basis for assertions made in post-publication comments.

72. BACTC filed comments to the proposed decision on July 3, 1992.

73. Rule 77.2 required comments to the ALJ's proposed decision to be filed by July 2, 1992.

74. BACTC did not request or receive an extension of time to file its comments to the ALJ's proposed decision.

Conclusions of Law

1. A streamlined certification process for RSAs facilities-based carriers should not be adopted at this time.

2. Reporting requirements for the assessment and monitoring of cellular capacity utilization and capacity expansion should not be adopted at this time.

3. Facilities-based carriers should be required to report their retail revenues and expenses each six months.

4. Cellular Dynamics' definition of avoided cost should not be adopted.

5. Cellular Dynamics' USOA proposal should not be adopted.

6. The facilities-based carriers' USOA manual should not be adopted.

7. CRA's modifications to the USOA should be adopted, as discussed in this order.

8. Facilities-based carriers operating in MSAs with resellers that want to use the temporary tariff process to reduce the retail margin, should first have unbundled wholesale tariffs in place and also have acknowledgement from CACD that the adopted USOA reports submitted to CACD demonstrate that their retail operation is operating at a break-even basis. Carriers in RSAs and MSAs without resellers need only do the latter unless they are notified that a reseller wants to provide a switch.

9. Retail costs should include a rate of return on investment dedicated to retail service that would not be needed for wholesale-only operations.

10. A 14.75 percent rate of return should be included in the break-even analysis.

11. CRA's proposed break-even analysis as modified to reflect a 14.75% rate of return should be adopted.

12. Cellular resellers should be allowed to acquire interconnected NXX codes on the same basis as the facilities-based carriers.

13. Procedures should be established for resellers that want to provide their own switches.

14. Parties have not agreed on a single definition of long-run incremental costs to be used as the basis for unbundling wholesale rates. Therefore, direct embedded costs should be the basis for unbundling wholesale rates.

15. The facilities-based carriers' rates should be unbundled for competitors.

16. Violation of any part of any of our orders constitutes contempt of the Commission. Any such violation may be punishable by a fine of up to $2,000 per day under §§ 2107 and 2108, in addition to contempt penalties.

17. The ban on facilities-based carriers' affiliates providing resale service within the facilities-based carriers' territory should not be lifted.

18. Facilities-based carriers should not be allowed to have reseller affiliates in the same market because the potential exists for anti-competitive behavior and cross-subsidization.

19. PTMS should sell its Bay Area customers to BACTC or some other cellular company.

20. The underlying reasons for the ban on affiliate competition do not apply in GTEM-CA's provision of cellular service through credit card telephones installed in rental cars, public transportation vehicles such as limousines and vans, offshore drilling platforms, and other such similar locations, in the same northern California markets in which GTE Mobilnet Ltd. now operates.

21. Absent a timely request and authority for extended comments we should reject CRA's comments and afford such comments no weight. However, we should afford CRA's comments similar treatment given to LA Cellular's 311 comments filed in the prior phase of this investigation.

22. CSI's Appendices B and C with related portions of comments in CSI's comments to the proposed decision should not be considered.

23. BACTC's comments should be rejected.

## O R D E R

IT IS ORDERED that:

1. A streamlined certification process for Federal Communications Commission Rural Statistical Areas (RSAs) permit holders shall not be adopted at this time.

2. The USOA for facilities-based carriers shall be modified to incorporate the avoided cost methodology appended to this order as Appendix B.

3. Assignment between cellular and noncellular shall be accomplished up front in the allocation process.

4. Accounts shall be distributed to noncellular and cellular operations by direct assignment where appropriate and by allocation for any remaining amounts in the same fashion prescribed for allocating between wholesale and retail.

5. The USOA shall, except for imputed wholesale customer revenues from a facilities-based carriers' retail operations for reselling wholesale service, reflect actual costs. The cost allocation modifications identified in Ordering Paragraph 2 shall be applied on a consistent basis so that the specific assignment and allocation procedures distribute no more and no less than 100% of recorded (actual) revenues and expenses among the facilities-based carriers' wholesale, retail, and nonregulated activities.

6. The facilities-based carriers shall provide, on the adopted USOA allocation basis, semiannual financial reports to CACD's Director no later than 45 days after the last day in the semiannual period and shall continue to be prepared and provided until notified by the Executive Director in writing that the semiannual reports no longer need be prepared and provided to CACD. The semiannual report shall cover the periods from January 1 through June 30 and from July 1 through December 31, with the first required report to be mailed to CACD covering the period July 1,

1992 through December 31, 1992. The semiannual financial statements shall be made available for public inspection by CACD upon request.

7. Cellular carriers required to utilize the USOA, as modified by this order, shall provide within 30 days of attestation but not later than March 31, a statement from their independent auditors attesting that the cellular carrier's financial statements for each 6-month period of the prior year, were prepared in accordance with the revised USOA, and utilized the avoided cost methodology adopted by this order.

8. The facilities-based carriers shall unbundle their wholesale rates into specific subcomponents on a direct embedded cost basis which shall be tariffed as discussed in Section 11 of this decision. Distinctive subcomponents shall be established for air time, billing, switching and interconnection. Facilities-based carriers in MSAs with resellers shall tender for filing applications unbundling their wholesale rates within 120 days after the effective date of this order. Facilities-based carriers in RSAs and carriers operating in MSAs without resellers shall file applications to unbundle their rates within 120 days after the filing of an application by a reseller requesting authority to provide switched cellular services within the MSA's or RSA's service territory.

9. Cellular Service, Inc.'s (CSI) switch proposal shall not be adopted at this time.

10. Any certificated switchless reseller or new cellular reseller applicant that desires to own, control, operate, or manage its own cellular switch should file a petition for modification of its certificate of public convenience and necessity to provide such service. It shall serve this Petition for Modification on the service list for this proceeding. (I.88-11-040, A.87-02-017)

11. Facilities-based carriers operating in MSAs with resellers that want to use the temporary tariff procedure to reduce

the retail margin, shall first have unbundled wholesale tariffs in place and also have acknowledgement from CACD that the adopted USOA reports submitted to CACD demonstrate that their retail operation is operating at a break-even basis. Carriers in RSAs and MSAs without resellers need only do the latter unless they are notified that a reseller wants to provide a switch.

12. Affiliates of facilities-based carriers shall not be authorized to provide resale service in the same territory as the facilities-based carrier.

13. PacTel Mobile Services shall have 120 days from the effective date of this order to transfer its Bay Area customers to either BACTC or another cellular company. PacTel Mobile Services shall notify the CACD Director of its compliance with this order within 15 days of compliance.

14. GTEM-CA is granted a waiver from the ban on affiliate resellers to continue its credit card cellular service adopted by D.92-05-021, as long as GTEM-CA and GTE Mobilnet Ltd. continue to comply with that order and GTE Mobilnet Ltd. continues to be considered a dominant carrier for affiliate transaction requirements adopted in R.92-08-008.

15. Application 87-02-017 is closed.

16. This investigation shall remain open to solely address the rehearing of Resolution T-14619 regarding Ordering Paragraph 9 of D.90-06-025, as granted by D.92-04-081.

17. Cellular Resellers Association, Inc.'s comments to the Administrative Law Judge's (ALJ) proposed decision on pages 24, 25, and Appendix C are rejected.

18. CSI's Appendices B and C with related portions of comments in CSI's comments to the ALJ's proposed decision is rejected.

19. Bay Area Cellular Telephone Company's comments to the ALJ's proposed decision are rejected.

This order becomes effective 30 days from today.

Dated October 6, 1992, at San Francisco, California.

DANIEL Wm. FESSLER
President
JOHN B. OHANIAN
NORMAN D. SHUMWAY
Commissioners

I abstain.
/s/ PATRICIA M. ECKERT
Commissioner

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

NEAL J. SHULMAN, Executive Director

List of Appearances

Respondents: Jackson, Tufts, Cole & Black, by William H. Booth, Joseph S. Faber, and Evelyn K. Elsesser, Attorneys at Law, for US West Cellular of California, Inc.; Peter A. Casciato, Attorney at Law, for Cellular Resellers Association, Inc. and Cellular Service Inc.; Pillsbury, Madison & Sutro, by Mary B. Cranston, Maria M. Astengo, and Megan Pierson, Attorneys at Law, for PacTel Cellular Corporation and its subsidiaries, Los Angeles SMSA Limited Partnership, PacTel Mobile Service, and Sacramento Valley Limited Partnership; Orrick, Herrington & Sutcliffe, by Robert J. Gloistein, Attorney at Law, for Fresno MSA Limited Partnership; Graham & James, by Martin A. Mattes, Rachelle B. Chong, and Adam Andersen, Attorneys at Law, for Bay Area Cellular Telephone Company; David Discher, Attorney at Law, for Pacific Bell; Gold, Marks, Ring & Pepper, by Alan L. Pepper and Joshua L. Rosen, Attorneys at Law, for Cellular Dynamics Telephone Company of San Francisco, Inc., Cellular Dynamics Telephone Company of Los Angeles, Inc., and Cellular Dynamics Telephone Company of San Diego, Inc.; Cooper, White & Cooper, by E. Garth Black and Mark P. Schreiber, Attorneys at Law, for Roseville Telephone Company; Armour, Goodin, Schlotz & Mac Bride, by James D. Squeri, Barbara L. Snider, and John L. Clark, Attorneys at Law, for GTE Mobilnet of California and GTE Santa Barbara Limited Partnership; Morrison & Forester, by James M. Tobin and Dhruv Khanna, Attorneys at Law, for McCaw Cellular Communications, Inc. and affiliates; Dinkelspiel, Donovan & Reder, by David M. Wilson, Attorney at Law, for Los Angeles Cellular Telephone Company; Roger P. Downs, Attorney at Law, for PacTel Cellular and its affiliated cellular partnerships; Jake Werksman, Attorney at Law, and Jennifer S. Pomeroy, for US West Cellular of California, Inc.; Jerome Sanders, for Nationwide Cellular Service, Inc.; and Ralph W. Schultheis, for Mission Bell Telecommunications.

Interested Parties: Cooper, White & Cooper, by E. Garth Black and Mark P. Schreiber, Attorneys at Law, for Calaveras Telephone Company, California-Oregon Telephone Company, Ducor Telephone Company, Foresthill Telephone Company, Happy Valley Telephone Company, Hornitos Telephone Company, The Ponderosa Telephone Company, The Volcano Telephone Company, and Winterhaven Telephone Company; Chickering & Gregory, by C. Hayden Ames, Attorney at Law, for Chickering & Gregory; Beck, Young, French & Ackerman, by Jeffrey F. Beck and Sheila A. Brutoco, Attorneys at

Law, for CP National, Citizens Utilities Company of California, Evans Telephone Company, GTE West Coast, Incorporated, Kerman Telephone Company, Pinnacles Telephone Company, Sierra Telephone Company, Inc., The Siskiyou Telephone Company, and Tuolumne Telephone Company; Randolph W. Deutsch, Attorney at Law, for AT&T Communications of California, Inc.; Meserve, Mumper & Hughes, by Morley G. Mendelson, Attorney at Law, for Celluphone, Inc.; Pougiales & Haller, by Ann M. Pougiales, Attorney at Law, for California Cellular Agents Association; Josh Stearn, for O'Rourke & Company; L. Russel Mitten and Mark T. Shine, appearing for Citizens Utilities Company of California; and Sidney J. Webb, for himself.

Division of Ratepayer Advocates: James S. Rood, Attorney at Law.

(END OF APPENDIX A)

# MODIFICATIONS TO THE UNIFORM SYSTEM OF ACCOUNTS FOR CELLULAR COMMUNICATIONS LICENSEES

Page 24, Paragraph D:

D. In those instances in which the licensee conducts both wholesale and retail cellular operations, if the state regulatory commission exercises accounting jurisdiction over both wholesale and retail cellular operations, a segregation of intangible assets, plant investment, revenues and expenses shall be maintained between the two kinds of cellular services in accordance with procedures set forth herein with respect to each account.

Note: Modifications to the existing USOA are underscored.

Addition to page 42:

102 Allowance for Uncollectible Accounts

* * *

C. The following subaccounts of this account shall be maintained.

102.1 Allowance for Uncollectible Accounts - Wholesale Customers

102.2 Allowance for Uncollectible Accounts - Retail Customers

102.3 Allowance for Uncollectible Accounts - Other

Addition to page 48

112 Intangible Assets

A. This account ... of public convenience and necessity. The foregoing costs shall be treated as assets related to wholesale service. This account shall also include the cost of acquiring end-use customers or customer lists, which costs shall be treated as assets related to retail service.

Addition to page 53

125 Cellular Communications Plant Acquisition Adjustment

* * *

B. This account shall be subdivided so as to show the amounts included herein for each property acquisition. These amounts shall be further subdivided so as to show the value of acquiring end-use customers or customer lists, which shall be treated as an asset related to retail service.

Addition to page 67

302 Buildings

* * *

D. Building cost shall be allocated between wholesale and retail activities in proportion to the square feet of floor space devoted to wholesale and to retail operations.

Addition to page 68

304 Leasehold Improvements

C. Leasehold improvements shall be allocated between wholesale and retail acording to the relative usage of the improved property in terms of suare feet of floor space devoted to wholesale and to retail operations.

Addition to pge 70

314 Vehicles

A. This account shall include the cost of passenger and service vehicles and other vehicular work equipment.

B. The costs in this account shall be allocated between wholesale and retail operations according to the assignment of the vehicles to wholesale and retail actvities. When a vehicle is used for both wholesale and retail purposes, the cots shall be allocated according to the mileage incurred in connection with wholesale and retail activities.

318 Office Furniture and Equipment

A. This account shall include the cost of office furniture.

B. The costs in this account shall be allocated between wholesale and retail operations in accordance with the relative use of the items for wholesale and retail activities.

Page 78, Account 502, Wholesale Customer Revenues

... The licensee shall separately identify revenue from sales to its own retail operation or affiliates and revenue from sales to certificated resellers.

Additions and Changes to page 83

621 Customer Accounts and Service Expense

621.1 Wholesale Customer Accounts and Billing Expense

This subaccount shall include the cost of generating the billing tapes that are provided to resellers and to carrier's retail operations. It shall also include the cost of generating the invoices that are rendered to resellers.

621.2 Retail Customer Accounts and Billing Expense

This account shall include the cost of all other (non-wholesale) labor, materials ushed and expenses incurred ...

623 Bad Debt Expense

A. This account shall be charged ...

B. The following subaccounts shall be maintained

623.1 Bad Debt Expense - Wholesale Customers

623.2 Bad Debt Expense - Retail Customers

623.3 Bad Debt Expense - Other

Additions and Changes to page 83

625 Sales Promotion and Advertising Expenses

625.1 Wholesale sales, promotion and advertising expenses

This subaccount shall include the cost of personnel devoted to sales to resellers. It shall also include promotional and advertising programs that are jointly supported by resellers, that promote cellular service without reference to the carrier's retail operations or its agents, or that identify all potential retail outlets of the carrier's cellular service, including resellers.

625.2 Retail Sales, Promotion and Advertising Expenses, Excluding Commissions

This subaccount shall include the costs of labor, materials used and expenses, excluding commissions, incurred in the performance of marketing, sales promotion and advertising that identifies or pertains to the carrier's retail outlets or its agents.

Additions to pge 83 (cont'd)

625.3 Retail Commissions

This subaccount shall include commissions to agents unless such commissions are paid on a comparable basis to all entities, including resellers, that deliver new customers.

Note A: Carriers may record commission expenses as they are incurred or may amortize commissions over a period not greater than the subscription life of the average customer. If the carrier changes procedure, however, it must restate its commission expense to reflect the condition that would exist had the new procedure been in effect in all previous time periods.

Addition to page 84

627 General and Administration Expenses

* * *

Note C: This account shall be allocated between wholesale and retail operations in the same proportion as the wholesale-to-retail allocation of the underlying direct costs, or if no direct costs can be identified, with remainder of Account 401.

New page 87

644 Imputed Wholesale Charges

This account shall include the charges at tariffed wholesale rates for the cellular radiotelephone services sold by the carrier's retail operations or affiliates.

645 Royalty for Trademarked Name and Logo

This account shall include an imputed charge to the carrier's retail operaions for the use of any trademarked name, logo or other identifier belonging to the carrier, the carrier's parent or other affiliated organization.

NOTE: The amount of the royalty shall reflect the market value of the carrier's trademark as established by an independent trademark appraiser.

# PROCEDURES FOR ANALYZING THE PROFITABILITY OF CELLULAR CARRIER WHOLESALE AND RETAIL OPERATIONS

| A. | Investment Base | | Wholesale | | Retail |
|---|---|---|---|---|---|
| 1. | 300 Land | | xxx | | |
| 2. | 302 Buildings | | xxx | | xxx |
| 3. | 304 Leasehold Improvements | | xxx | | xxx |
| 4. | 305 Antennae | | xxx | | |
| 5. | 306 Power Equipment | | xxx | | |
| 6. | 307 Switching Equipment | | xxx | | |
| 7. | 308 Base Site Controller | | xxx | | |
| 8. | 309 Towers | | xxx | | |
| 9. | 310 RF Channel Equipment | | xxx | | |
| 10. | 312 Transmission Equipment | | xxx | | |
| 11. | 314 Vehicles | | xxx | | xxx |
| 12. | 316 Tools & Equipment | | xxx | | |
| 13. | 318 Office, Furniture & Equip. | | xxx | | xxx |
| 14. | Total Plant in Service | | xxx | | xxx |
| 15. | Less Accumulated Depreciation | - | xxx | - | xxx |
| 16. | Equals Net Plant Investment | = | xxx | = | xxx |
| 17. | Plus Working Capital | + | xxx[1] | + | xxx[2] |
| 18. | Plus Unamortized Intangible Value | | [3] | | xxx |
| 19. | Less Customer Deposits | | | - | xxx |
| 20. | Plus Unamortized Commissions | | | + | xxx |
| 21. | Equals Investment Base | | xxx | | xxx |
| 22. | Minimum Rate of Return | | | * | 14.75% |
| 23. | Required Return | | | = | xxx |
| 24. | Income Tax Factor | | | * | |
| 25. | Equals Imputed Income Tax | | | = | xxx |
| 26. | Required Return + Tax | | | | xxx |

[1]30 days wholesale revenues.

[2]60 days retail revenues.

[3]Excluded pursuant to Commission policy.

| B. | | Expenses | Wholesale | Retail |
|---|---|---|---|---|
| 26. | 610 | System Maintenance | xxx | |
| 27. | 613 | Depreciation | xxx | xxx |
| 28. | 615 | Amortization-Leasehold | xxx | xxx |
| 29. | | Amortization-Commissions | | xxx |
| 30. | 616 | Amortization of Plant Acquisition & Intangibles | [4] | xxx |
| 31. | 617 | Real Estate Acquisition Charges | xxx | xxx |
| 32. | 619 | Telecommunications Direct Operations | xxx | |
| 33. | 621.1. | Customer Accounts & Service Wholesale | xxx | |
| 34. | 621.2 | Customer Accounts & Service Retail | | xxx |
| 35. | 623 | Bad Debt Expense | xxx | xxx |
| 36. | 625.1 | Sales Promotion & Advertising Wholesale | xxx | |
| 37. | 625.2 | Sales Promotion & Advertising Retail | | xxx |
| 38. | 625.3 | Commissions | | xxx |
| 39. | 627 | General & Administrative | xxx | xxx |
| 40. | 631 | Damages & Claims | xxx | xxx |
| 41. | 633 | Pension & Benefits | xxx | xxx |
| 42. | 635 | Rental Expense | xxx | xxx |
| 43. | 639 | Other Taxes | xxx | xxx |
| 44. | 641 | Gain or Loss on Cellular Plant | xxx | |
| 45. | 643 | Expenses Charged Construction (CR) | (xxx) | |
| 46. | 644 | Imputed Wholesale Charges to Retail | | xxx |
| 47. | 645 | Royalty for Trademarked Name or Logo | ___ | xxx |
| 48. | | Total Operating Expenses | xxx | xxx |

[4]Excluded pursuant to Commission Policy.

| | C. Revenues | Wholesale | Retail |
|---|---|---|---|
| 49. | 501 Retail Customer Revenues | | xxx |
| 50. | 502.1 Wholesale Customer Revenues | xxx | |
| 51. | 502.2 Imputed Revenue from Retail Operations | xxx | |
| 52. | 503 Roamer Revenues | xxx | |
| 53. | 405 Commission Revenues | xxx | |
| 54. | 505 Other Operating Revenues | xxx | xxx |
| 55. | Total Revenues | xxx | xxx |

| | D. Retail Analysis | Wholesale | Retail |
|---|---|---|---|
| 56. | Retail Return & Tax Requirements (L26) | | xxx |
| 57. | Retail Operating Expenses (L48) | | xxx |
| 58. | Retail Break-even Revenue Requirement (161-L62) | | xxx |
| 59. | Retail Revenues (L55) | | xxx |
| 60. | Retail Surplus or (Deficiency) (L59-L58) | | xxx |

| | E. Wholesale Analysis | Wholesale | Retail |
|---|---|---|---|
| 61. | Wholesale Revenue (L56) | xxx | |
| 62. | Wholesale Operating Expenses (L48) | - xxx | |
| 63. | Wholesale Net Operating Income (L61-L62) | = xxx | |
| 64. | Imputed Income Tax Rate | 14.75% | |
| 65. | Imputed Income Taxes | = xxx | |
| 66. | Wholesale Net Income (L63-65) | xxx | |
| 67. | Wholesale Investment Base (L21) | xxx | |
| 68. | Wholesale Return on Investment (L66/67) | xxx | |

(END OF APPENDIX B)