

APR 25 1997

Decision 97-04-083 April 23, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of Alternative
Regulatory Frameworks for Local
Exchange Carriers.

And Related Matters.

(IntraLATA Presubscription Phase)

ORIGINAL
I.87-02-025
(Filed November 25, 1987)

Application 85-01-034
(Filed January 22, 1985;
amended June 17, 1985 and
May 19, 1986)
Application 87-01-002
(Filed January 5, 1987)
I.85-03-078
(Filed March 20, 1985)
I.87-02-025
(Filed February 11, 1987)
Case 87-07-024
(Filed July 16, 1987)

(See Appendix B for list of appearances.)

I N D E X

<u>Subject</u>	<u>Page</u>
INTERIM OPINION	2
1. Summary	2
2. Background	2
2.1 Historical Perspective	2
2.2 Procedural History	5
3. Issues Deemed Resolved	8
3.1 Issues Mooted by Telecommunications Act	8
(1) Necessity for 1-Plus Dialing	8
(2) Cost/Benefit Analysis	9
(3) Timing of 1-Plus Presubscription With Market Parity	9
(4) Timing of 1-Plus Presubscription With Regulatory Parity	10
3.2 Issues Upon Which Parties Agree	10
(1) Balloting	10
(2) PIC Methodology	11
(3) Customer PIC Changes	12
(4) Customers Who Do Not Select a PIC Change	13
4. Processing Change Orders	13
4.1 Liquidated Performance Remedies	15
5. Notice Provisions	16
5.1 Discussion	17
5.2 PIC Freeze Implications	19
6. Simultaneous Toll and Long Distance Changes	21
7. Implementation Costs	22
7.1 Cost Recovery Mechanism	23
7.2 Cost Recovery Period	26
7.3 Cost Review	27
8. Sales and Marketing Practices	30
8.1 Discussion	32
9. Operator Service Calls	33
10. Pay Telephone	34

INTERIM OPINION

1. Summary

This decision directs Pacific Bell to make intraLATA equal access--the ability to place local toll calls through another telephone carrier without having to dial additional numbers--available to all of its California customers. The date of implementation will be the date that a Pacific Bell affiliate begins competition in the long distance market, which is expected to occur this year. An earlier decision authorized intraLATA equal access for subscribers in the GTE service areas. The decision also establishes the means by which Pacific Bell and other local exchange carriers may recover the costs of introducing the toll call option, and it establishes marketing safeguards intended to encourage vigorous competition and lower consumer costs in providing toll service. With some exceptions, the same rules adopted today also will apply to small and mid-sized local exchange telephone companies throughout California.

2. Background

2.1 Historical Perspective

Prior to divestiture in 1984, the American Telephone and Telegraph Company, now known as AT&T, owned both long distance and local telephone operations. When the District of Columbia federal court approved a modified settlement agreement between the company and the U.S. Department of Justice, it divested AT&T of its local telephone operations. The territorial United States was divided into 163 geographic areas, referred to in the decree as "exchanges" and in the industry as Local Access and Transport Areas (LATAs).¹

¹ 1982 Decree § IV(G), United States v. AT&T (D.D.C. 1982) 552 F.Supp. 131, 226.

The LATAs were divided among the 22 Bell operating companies created in the divestiture. California has 11 LATAs, served primarily by Pacific Bell (the California subsidiary of Pacific Telesis) and GTE California Incorporated (GTEC).

Calls within a LATA, referred to as intraLATA calls, were (and for the most part still are) generally carried by local exchange carriers like Pacific Bell and GTEC. Calls between LATAs, referred to as interLATA calls, were carried exclusively by long distance, or interexchange, carriers. The local exchange carriers provided local distribution services, or carrier access, for both intraLATA and interLATA calls.

Since divestiture, both state and federal governments have sought to increase competition in the telecommunications industry. As we stated in the Implementation Rate Design (IRD) proceeding²:

"The role of the Commission since divestiture has increasingly been to manage this transition from monopoly to competitive telecommunications services. In managing this transition we have tried to assure that competition between the [local exchange carriers, or LECs] and their new competitors is fair, that profits from monopoly services are not used to subsidize the LECs' offerings in competitive markets, and that telecommunications companies under our jurisdiction do not engage in anticompetitive practices." (56 CPUC2d 117, 141.)

In 1993, we stated our intention to open all telecommunications markets to competition by January 1, 1997.³ The California Legislature subsequently adopted Assembly Bill 3606 (also known as the Costa Bill), codified as Public Utilities Code

² Re Alternative Regulatory Frameworks for Local Exchange Carriers, 56 CPUC2d 117 (1994), Decision (D.) 94-09-065.

³ Enhancing California's Competitive Strength: A Strategy for Telecommunications Infrastructure (Commission Infrastructure Report, November 1993).

§ 709.5, which expresses legislative intent to open telecommunications markets to competition by January 1, 1997. With the IRD decision in 1994, we opened intraLATA toll markets to competition effective January 1, 1995. Subsequently, in Decision (D.) 94-12-053, we formally adopted procedural plans to open the local exchange markets to competition, focusing on open access and network architecture development (OANAD), local competition rulemaking, and consumer protection and regulatory streamlining. In December 1995, we established the rules for facilities-based local exchange competition with service territories of Pacific and GTEC. In March 1996, in Re Competition for Local Exchange Service, 169 PUR4th 83, we adopted interim rules and established wholesale rates for the resale of local exchange services by competitive local exchange carriers within the service areas of Pacific Bell and GTEC.

Last year, Congress overwhelmingly passed, and President Clinton signed, the Telecommunications Act of 1996.⁴ The 1996 Act represents the first comprehensive revision of American communications law since the Communications Act of 1934, and it grants the Federal Communications Commission (FCC) broad powers over the development of competitive telecommunications markets, while maintaining state authority over most intrastate matters, including dialing parity for intrastate calls. The Act envisions, among other things, that long distance companies will be able to

⁴ Pub.L.No. 104-104, 110 Stat. 56, codified at 47 U.S.C.A. §§ 151, et seq. (1996).

compete in local exchange and intraLATA service, and that local exchange companies will be able to compete in long distance service.⁵

2.2 Procedural History

Competition in the provision of intraLATA service is designated as "dialing parity," "intraLATA presubscription," "intraLATA equal access" and "1-plus dialing." It refers to the ability of a telephone customer to designate (or presubscribe to) a communications carrier, and thereafter dial calls within a LATA by dialing the digit "1," the area code, and the called number or, where parties are in the same area code, by dialing the 7-digit called number. Generally, an intraLATA toll call is one placed within a service area but beyond the 12 to 16 miles within which local exchange calls are made without additional charge. Without presubscription to another carrier, customers seeking to place intraLATA toll calls using toll carriers other than their local exchange carriers are required to dial a 5-digit carrier access code (i.e., 10-288 for AT&T, 10-222 for MCI, and 10-333 for Sprint) prior to dialing the called party's area code and 7-digit telephone number.

On April 5, 1996, four long distance carrier parties filed a joint petition in this docket seeking an order that would require

⁵ Bell operating companies are permitted to enter the long-distance market for calls originating in their service areas after satisfying a 14-point competitive checklist, which is designed to demonstrate that they have opened their networks to facilities-based competition for local service. (Pub.L.No. 104-104, § 151, 110 Stat. 56 (1996), adding new §§ 271-272 to Title 47 of the U.S. Code.)

GTEC immediately to implement intraLATA equal access.⁶ On April 11, 1996, Pacific Bell filed a motion seeking a procedural order commencing the intraLATA presubscription phase of this proceeding. By administrative law judge ruling dated May 17, 1996, the joint petition as to GTEC and Pacific Bell's motion were consolidated, pursuant to Rule 55 of the Rules of Practice and Procedure. During a prehearing conference, the administrative law judge scheduled an intraLATA equal access workshop, which was conducted in July 1996 by Commission staff. At the instigation of GTEC, settlement discussions also took place.

The legal bases upon which the parties proceeded are different for GTEC and Pacific Bell. Under § 251(b)(3) of the Telecommunications Act, both GTEC and Pacific Bell are required "...to provide dialing parity to competing providers of telephone exchange and telephone toll service." Under FCC interpretation, the GTE companies were required to implement dialing parity no later than August 8, 1997.⁷ However, § 271(e)(2) of the Telecommunications Act requires that Pacific Bell provide intraLATA dialing parity coincident with its entry into the interLATA market. Pacific Telesis intends to enter the interLATA market through a subsidiary, Pacific Bell Communications, during 1997.

Beginning in May 1996, GTEC and its affiliated companies, GTE West Coast Incorporated (GTEWC) and Contel of California Inc.

⁶ Amended Joint Petition for an Order Requiring GTE California to Immediately Implement IntraLATA Equal Access, filed by AT&T Communications of California, Inc., MCI Telecommunications Corporation, Sprint Communications Company L.P., and the California Association of Long Distance Companies (CALTEL).

⁷ "A LEC, other than a [Bell Operating Company], that begins to provide in-region, interLATA or in-region interstate toll services in a state before August 8, 1997, must implement intraLATA and interLATA toll dialing parity based on LATA boundaries by August 8, 1997." Second Report and Order, FCC 96-333, § 62(c).

(Contel), referred to collectively as the GTE companies, each filed an Advice Letter requesting approval of a tariff schedule to implement intraLATA equal access in their respective service areas. Each of the Advice Letters was provisionally approved by the Commission, pending any changes ordered in this proceeding.⁸

On September 5, 1996, four long distance carrier parties and the Commission's Division of Ratepayer Advocates (the name was subsequently changed to Office of Ratepayer Advocates, or ORA⁹) entered into a settlement agreement with the GTE companies resolving most of the issues in this proceeding regarding intraLATA equal access in the service areas of the GTE companies. The issues which remain unresolved by the settlement agreement are: (1) the type of notice (bill insert or direct mail) that should be given to customers regarding the availability of intraLATA presubscription; (2) the appropriate intraLATA presubscription cost recovery mechanism; and (3) the selection of an intraLATA carrier for pay telephones. The settlement agreement was approved by the Commission on December 20, 1996.

Meanwhile, eight days of evidentiary hearings were conducted between September 24 and October 21, 1996, to resolve intraLATA issues involving Pacific Bell and other local exchange carriers in California and to deal with the three issues left open in the GTE settlement. The Commission heard from 15 witnesses, and received 29 exhibits into evidence. The matter was taken under submission subject to the filing of concurrent opening briefs on November 22,

⁸ GTEC's Advice Letter was approved on July 17, 1996, in Resolution T-15934. GTEWC's Advice Letter was approved on August 2, 1996, in Resolution T-15951. Contel's Advice Letter was approved on September 20, 1996, in Resolution T-15956.

⁹ As part of a reorganization of the Commission, advocacy functions of the former Division of Ratepayer Advocates were transferred on September 10, 1996, to ORA, a new organization.

1996, and concurrent reply briefs on December 11, 1996. Parties active in these proceedings include Pacific Bell, the GTE companies, AT&T Communications of California Inc. (AT&T), MCI Telecommunications Corporation (MCI), Sprint Communications Company L.P. (Sprint), the California Payphone Association (CPA), Citizens Utilities Company, the Roseville Telephone Company, nine small independent local exchange companies ranging in size from 500 to 17,000 access lines, and the ORA.

3. Issues Deemed Resolved

Following the GTE settlement discussions and an industry workshop, the Commission's telecommunications staff reported on July 31, 1996, that parties had reached agreement on intraLATA issues in two broad categories. First, parties agreed that four issues had been made moot by the Telecommunications Act. Second, parties identified four other issues upon which the telephone companies and consumer advocates generally agreed. Finally, staff reported, the parties identified numerous disputed issues that would require evidentiary hearing. A brief discussion of the mooted issues and the agreed-upon issues follows:

3.1 Issues Mooted by Telecommunications Act

(1) Necessity for 1-Plus Dialing

Initially, there was dispute as to the necessity of intraLATA equal access, since customers today can select another carrier for intraLATA calls by first dialing the digits "10," followed by a three-digit carrier identification code, followed by the area code and telephone number of the called party (or the 7-digit called number within the same area code). Sections 251(b)(3) and 271(e)(2)(A) of the Telecommunications Act make clear that both Bell and non-Bell local exchange carriers must make dialing parity available to competing carriers. The FCC in its Second Report and Order interpreted the words "dialing parity" as contained in the Telecommunications Act to mean "that customers of these competitors should not have to dial extra digits to have

their calls routed over that [local exchange carrier's] network."¹⁰

(2) Cost/Benefit Analysis

The federal government, the California Legislature and most state utilities commissions, including this Commission, have determined that the benefits of competition in telecommunications services outweigh the costs of implementing competition. Section 252 of the Telecommunications Act provides that agreements on interconnection, resale and the purchase of unbundled network elements will depend, in the first instance, on private negotiations without government intrusion. To the extent that negotiations fail, carriers may request state commissions to mediate or arbitrate disputes.

(3) Timing of 1-Plus Presubscription With Market Parity

Section 271(e)(2)(B) of the Telecommunications Act provides that "...a State may not require a Bell operating company [like Pacific Bell] to implement intraLATA toll dialing parity in that State before a Bell operating company has been granted authority under this section to provide interLATA services originating in that State or before 3 years after February 8, 1996, whichever is earlier." For Pacific Bell, therefore, implementation of intraLATA presubscription may be required coincident with authorization of long distance service by its affiliate, Pacific Bell Communications.¹¹ The GTE companies, which are not Bell operating companies, were authorized by this Commission in

¹⁰ Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Second Report and Order and Memorandum and Order, CC Docket No. 96-98 (August 8, 1996).

¹¹ Authorization for long distance service is being sought by Pacific Bell Communications in Application 96-03-007. Three weeks of hearings in that proceeding ended on December 20, 1996, and final briefs were due on February 14, 1997.

D.96-12-078 (December 20, 1996) to implement intraLATA equal access in all their end offices by March 1997.

(4) Timing of 1-Plus Presubscription, Regulatory Parity

We have in the past commented on the "inevitable tension" caused by efforts to open telecommunications to competition and at the same time maintain affordable basic service for all Californians.¹² These are common objectives of all of our telecommunications proceedings, including Local Exchange Competition, Rulemaking 95-04-043, Open Access and Network Architecture Development, Rulemaking 93-04-003, and the several arbitration proceedings filed pursuant to § 252 of the Telecommunications Act. Pacific Bell initially asked whether 1-plus dialing should be considered in conjunction with cost and pricing proceedings in the event it faced intraLATA competition and loss of business before it could compete in the interLATA market,¹³ or before regulatory safeguards were in place to protect Pacific Bell's revenue. Since Pacific Bell will not be required to implement 1-plus dialing until it is authorized (through an affiliate) to compete in long distance service, this issue is no longer before us.

3.2 Issues Upon Which Parties Agree

(1) Balloting

Balloting is a process in which telephone subscribers would be asked to choose from a menu of intraLATA toll carriers. Such a process was employed in the mid-1980s, when subscribers were asked to choose a long distance carrier for interLATA equal access. Parties here agree that balloting for an intraLATA carrier would be confusing to customers, costly, and would force consumers to make

12 Re Alternative Regulatory Frameworks for Local Exchange Carriers (1994) 56 CPUC2d 117, 145.

¹³ Motion of Pacific Bell for a Procedural Order, at D-5.

selections before they might otherwise choose to do so. As one commentator observed in the FCC proceedings:

"(t)he long-distance market today differs markedly from the situation in the mid-1980's, when non-dominant carriers were virtually unknown to most consumers and balloting was mandated as a way of educating consumers to their ability to choose a carrier. No such education is needed today, because most consumers are well aware of their long-distance choices, and the carriers have readily available means of contacting those who are not."¹⁴

We agree with the parties that balloting is not necessary for the introduction of intraLATA competition, and that the notice provisions discussed elsewhere in this decision, along with the marketing efforts of intraLATA competitors, will be sufficient to apprise consumers of their ability to choose an intraLATA carrier.

(2) PIC Methodology

Parties agreed that what is called the "full 2-PIC methodology" should be applied in introducing intraLATA equal access. PIC is an acronym for "primary" or "preferred" interexchange carrier. The full 2-PIC methodology allows a customer to presubscribe to a telecommunications carrier for all interLATA long distance calls and to presubscribe to another telecommunications carrier for all intraLATA toll calls.

The FCC purports to adopt the full 2-PIC method as the minimum presubscription standard, noting that the technology for this method is widely available.¹⁵ The so-called "multi-PIC" or "smart-PIC" methods, which would permit presubscription to multiple

¹⁴ FCC Second Report and Order, ¶ 78.

¹⁵ Id., ¶ 49.

carriers for specified components of toll traffic, may be considered in the future as technology permits. Meanwhile, our order today adopts the full 2-PIC methodology as the presubscription method for California.

(3) Customer PIC Changes

Parties agreed in workshop that, once intraLATA presubscription is available, a customer should be permitted one intraLATA PIC change without charge (that is, a customer would be permitted to switch once to another intraLATA toll service provider at no additional cost to the customer).

For the GTE companies, which already have introduced intraLATA presubscription, the "free" PIC change may be made at any time by existing customers and within 90 days for new customers. Pacific Bell would require that the "free" change be made within six months after intraLATA presubscription is offered by that carrier. For both the GTE companies and Pacific Bell, subsequent PIC changes after the initial free PIC change would carry a charge equal to that for changing interLATA long distance carriers (currently \$4.46 for GTE and \$5.26 for Pacific Bell).

Obviously, intraLATA competition will be encouraged if a customer can make an initial change without charge. Our order today adopts the parties' proposal, and applies the six-month "free" intraLATA PIC change requirement to all local exchange carriers that have yet to introduce intraLATA presubscription. Based on our experience with interLATA long distance competition, we anticipate that competitors for intraLATA business will find ways to absorb the cost of subsequent PIC changes or offer consumers other money-saving reasons to make such a change.

The parties did not agree on the charge that should be assessed when a customer makes a change in intraLATA carrier and elects to change an interLATA carrier at the same time. That issue is discussed in Section 6 of this decision.

(4) Customers Who Do Not Select a PIC Change

Parties at the workshop agreed that current customers who do not elect to change their intraLATA toll provider should continue to receive their intraLATA toll service from their local exchange carrier, as is the case in most instances today. The alternatives (i.e., requiring a current customer to dial a 10-XXX number before making an intraLATA call) would be cumbersome and inconvenient for current customers. We agree, and our decision today adopts the rule that current customers who do not select a different intraLATA toll carrier will "default" to their current carrier.

Since the time of the workshop, the FCC has adopted a different rule for new customers who call to begin telephone service but fail to affirmatively select an intraLATA toll carrier. As to new customers, the FCC has interpreted the Telecommunications Act to require that "such nonselecting customers would dial a carrier access code to route their intraLATA toll or intrastate toll calls to the carrier of their choice until they make a permanent, affirmative selection."¹⁶ Presumably, these new customers after a time would either call their local exchange carrier to select an intraLATA carrier, or call an intraLATA carrier directly and ask that it make the change through the local exchange carrier.

4. Processing Change Orders

The GTE companies elected to phase in the ability of their 4 million subscribers to take advantage of intraLATA presubscription. The equipment changes began in September 1996 and were to be completed in March 1997. By contrast, Pacific Bell, with approximately 15 million lines statewide, has elected to implement intraLATA presubscription for all of its customers on the

¹⁶ Id., § 81.

same date, a process called a "flashcut" changeover. Witness Eva Low, director of switching engineering for Pacific Bell, said that work on the company's 475 host switches began late last year and is to be completed in the second quarter of 1997. Pacific Bell's intent is to make intraLATA presubscription available on the same date that its affiliate, Pacific Bell Communications, begins offering interLATA long distance service.

Low testified that Pacific Bell will be able to process between 50,000-80,000 PIC changes daily, and up to 120,000 changes on most Sundays. Change requests would be made in the order in which they are received.

Both ORA and AT&T objected to the flashcut changeover, arguing that a high volume of change requests early in the process could overwhelm Pacific Bell's capabilities, generating lengthy delays in a customer's request to presubscribe to another intraLATA carrier. They argued also that Pacific Bell would have an incentive to process change orders of its own affiliate ahead of the orders of competitors. Pacific Bell responded that it would not discriminate in processing orders, and that it was confident that it would be able to handle all change requests promptly.

In a proposal supported by most of the long distance companies, ORA urged that Pacific Bell be subject to a liquidated damages "penalty" for each intraLATA PIC change that is not processed within three working days. On October 9, 1996, the administrative law judge directed parties to meet informally to discuss the issue of liquidated damages. The administrative law judge stated that, since Pacific Bell had elected to flashcut its changeover rather than to phase it in, Pacific Bell should be prepared to offer assurance to other parties that it would be motivated to process change orders promptly even if it faces a large number of orders initially.

The parties began informal meetings on this issue on October 16, 1996. Shortly before Christmas, Pacific Bell, ORA and

the major long distance companies announced that they had reached a settlement agreement on these issues.

4.1 Liquidated Performance Remedies

The settlement agreement on the issue of Pacific Bell performance standards in processing change orders is attached to this decision as Appendix A. Essentially, the agreement provides that Pacific Bell will process changes in the order received within three business days, will report weekly to Commission staff on the number of days required to process PIC changes, and will submit to a third-party audit in the event of a good-faith challenge to its change order procedures. For orders not processed within three days, Pacific Bell would pay a "liquidated remedy" for each day of delay beginning at \$8 and increasing \$2 daily thereafter to a maximum of \$50 per delayed order. Pacific Bell would be granted a certain number of "grace days" for delays in processing orders caused by conditions beyond the company's reasonable control. Any such liquidated damages would be paid to the Commission's Universal Lifeline Telephone Service Fund.

The parties agreed that Pacific Bell's costs in tracking and reporting on change order data, estimated at \$120,000, will be recoverable as part of intraLATA implementation costs. The settlement agreement provides for a term of six months over which such liquid remedy will be levied, automatically extending to 12 months if liquidated damages payments exceed \$75,000.

We have carefully examined the settlement agreement under the guidelines of Rule 51 of our Rules of Practice and Procedure. We find that the agreement responds to legitimate concerns for an incentive to further encourage Pacific Bell to respond to intraLATA change requests as promptly as practical. At the same time, it protects Pacific Bell from claims by competitors. Together with other measures adopted in this decision, it fosters our goal of providing meaningful competition in the intraLATA toll market. The settlement is reasonable in light of the whole record, consistent

with law, and in the public interest. Our order today approves the settlement agreement without change.

5. Notice Provisions

In its interpretation of the Telecommunications Act, the FCC requires each local exchange carrier to submit to the state regulatory agency a plan for implementing toll dialing parity, including "a proposal for timely notification of its subscribers and the methods it proposes to use to enable subscribers to affirmatively select an intraLATA toll service provider." (47 CFR § 51.213(b)(2).)

Pacific Bell proposes to send customers two notices of the pending availability of their choice of intraLATA carriers: a 45-day pending-service-change notice via bill message as part of the customers' billing package, and a 10-day prior-to-service notice by direct mail. In addition, the company plans to notify other carriers 30 days in advance of implementation of intraLATA presubscription. Mark D. Pitchford, a Pacific Bell vice president responsible for consumer communications, testified that customers will receive additional information from other sources, commenting:

"Because of the expected onslaught of mass advertising and telemarketing from other carriers, and the expected media attention presubscription will get in newspapers and on television, the 45- and 10-days notices will be ample for customers. Customers will want to know that 'Presubscription is available now.' We do not believe that customers want to receive a notice informing them that presubscription is available in the distant future." (Exhibit 19, pp. 16-17; emphasis in original.)

In their settlement agreement, the GTE companies agreed to give customers approximately 60 days' notice of intraLATA presubscription by way of bill insert. The settling parties left open the question of whether the GTE companies should be required to send a second notice to customers by way of direct mail in

addition to the bill insert. Mid-sized and smaller local exchange carriers propose to notify customers of intraLATA presubscription in their service areas through two messages inserted in bill envelopes. David Tutt, a witness for nine small local exchange carriers, testified that direct mailings are unnecessary for the small companies, in part because they are located adjacent to areas served by Pacific Bell or GTEC and their customers see the advertising and education programs of both those companies and the interexchange carriers.

ORA generally supports Pacific Bell's proposal of two customer notifications, one of them by direct mail. ORA notes that existing customers of Pacific Bell and the GTE companies will default to those companies for their intraLATA service (that is, their intraLATA service will remain as it is today) unless they affirmatively choose another intraLATA carrier. Because of this, ORA witness Natalie Billingsley urged that at least one direct mail notice be sent to customers because it is more likely to attract a customer's attention than is a billing message.

AT&T and other long distance companies also support direct mail notice by the local exchange carriers, commenting that the cost will be shared by all carriers as part of the implementation cost recovery. They urge, however, that Pacific Bell be required to give other carriers more than 30 days' notice of the likely date of intraLATA presubscription so that competitors can begin preparing and ordering their advertisements and other marketing efforts. AT&T also urged the Commission to review the content of the notices to assure that the content is competitively neutral.

5.1 Discussion

We will adopt, for the most part, the notice recommendations of Pacific Bell and the ORA. All parties agree on the importance of notice to consumers of this new choice that they have or soon will have in telephone service. Most parties agree that direct

mail, as opposed to a bill insert or a message in the billing document, is more likely to be read and considered by consumers. We note, for example, that we required use of direct mail to notify customers of their choice of interLATA long distance companies and their options with respect to Caller ID.

We disagree with ORA that direct-mail notice is required for small and medium-sized local exchange carriers. As discussed further in Section 11 of this decision, the FCC has concluded that most of the smaller local exchange carriers that do not offer long distance service need not begin intraLATA presubscription until February 8, 1999. (47 CFR § 51.211(c).) Presumably, intraLATA equal access will be a more familiar concept by that time, and two billing insert reminders prior to implementation should be sufficient to alert consumers to this option.

For those local exchange companies that have not yet implemented intraLATA direct dialing, we will require that they give at least 45 days' notice to other carriers of the date on which they intend to implement this option. Since the first notice to subscribers is to be sent 45 days in advance of presubscription, it cannot be burdensome to provide similar notice to competitors. We believe that this, along with the notice likely to be provided in tariff filings and other Commission proceedings, will give other carriers sufficient time to prepare their competitive response.

Accordingly, our order today adopts the following notice requirements:

* All local exchange carriers that have not yet implemented intraLATA presubscription shall notify existing customers of the date or the time frame in which intraLATA equal access will be available. An initial notice in the form of a bill message or bill insert shall take place at least 45 days prior to implementation, with a second notice to be provided on or about 10 days prior to implementation. Except in the case of Pacific Bell and the GTE companies, the second notice may take the form of a bill message or a bill insert.

* Pacific Bell shall notify its customers through a bill message at least 45 days prior to its implementation of intraLATA equal access, with a subsequent direct-mail notice provided at least 10 days prior to implementation. Such notice shall be substantially in the form set forth as Attachment 2 to Exhibit 19 in this proceeding, provided, however, that Pacific Bell shall delete the reference to "PIC freeze" procedures contained in Attachment 2.

* The GTE companies (GTEC, GTEWC and Contel) shall provide notice of intraLATA presubscription pursuant to the terms of the settlement approved in D.96-12-078. Additionally, the GTE companies shall provide a direct-mail notice to customers within 30 days of the effective date of this order. The direct-mail notice shall be substantially in the form set forth in Exhibit A of the settlement agreement.

* Prior to distribution, all proposed customer notices shall be submitted for review to the Telecommunications Division of the Commission and to the Commission's Public Advisor, and shall be deemed approved 10 working days thereafter unless otherwise notified by the Telecommunications Division or the Public Advisor.

* Each local exchange carrier that has not yet implemented intraLATA presubscription shall notify other carriers at least 45 days prior to the date of intended implementation of intraLATA presubscription.

5.2 PIC Freeze Implications

Thousands of California telephone subscribers have been victimized by "slamming," the unauthorized switch of their long distance service, often to lesser-known and higher-priced long

distance providers.¹⁷ To prevent unauthorized switching, subscribers can call their local exchange carriers and request a freeze on interLATA PIC switches, thus blocking a switch unless a subscriber personally requests it. Without a freeze, a change can be directed by another telephone carrier that represents that it has the customer's authorization. For Pacific Bell, 400,000 residential subscribers and 240,000 businesses have authorized PIC freezes.

Because a PIC freeze applies only to interLATA long distance service, and not to intraLATA toll service, Pacific Bell proposed notifying all subscribers as part of its intraLATA notice that a PIC freeze could also be requested for intraLATA service. ORA and long distance carriers objected, arguing that this would block legitimate changes in intraLATA service. ORA notes that, initially, local exchange carriers would be the beneficiaries of PIC freezes because they have most of the customer base.

AT&T notes that the Illinois Commerce Commission recently found that an Illinois Bell Telephone bill insert suggesting intraLATA PIC freezes prior to equal access implementation was anti-competitive and "was designed to help maintain Respondent's monopoly in the intra[LATA] and local market in Illinois."¹⁸ While acknowledging the need for action against slamming, AT&T urges that such action be kept separate from the introduction of intraLATA equal access. MCI goes further. Its witness, Roy Lathrop, senior manager in the law and public policy group, recommended that PIC freezes be prohibited for at least six months

¹⁷ See, generally, Public Utilities Code § 2889.5; In re Cherry Communications, D.96-09-041.

¹⁸ Order in consolidated Illinois Commerce Commission Dockets 96-0075 and 96-0084, p. 6.

following implementation of equal access "in view of the anti-competitive potential that PIC freezes pose." (Exhibit 12, pp. 19-20.)

We agree with AT&T that this is not the proceeding in which to substantively address the slamming problem. There is no evidence of record that slamming in the intraLATA toll market will be as troublesome as it has been in the interLATA long distance market. Moreover, as MCI notes, Senate Bill 1140 this year amended Public Utilities Code § 2889.5 to require independent third-party verification for PIC changes, and this, along with our aggressive enforcement actions, may further curb the slamming abuses. Accordingly, our order adopts an ORA recommendation, and provides that no local exchange carrier shall solicit PIC freezes during the introduction of intraLATA presubscription. We permit, but will not require, local exchange companies to do a separate mailing to subscribers with PIC freezes advising them that the freeze does not apply to intraLATA presubscription, but the costs of such notice will not be recoverable in the cost recovery mechanism for intraLATA introduction.

6. Simultaneous Toll and Long Distance Changes

The parties have agreed that a customer's first change in an intraLATA toll provider should be made without charge to the customer. However, they disagreed on what charges should apply thereafter when a customer elects at the same time to change both intraLATA and interLATA service to a single provider. The record is clear that, as competition develops, many telephone carriers will seek to persuade customers to select a single carrier for both toll and long distance calls.

Pacific Bell asserts that a service order containing both an interLATA and intraLATA PIC change to the same carrier should generate two charges (\$5.26 per change under current tariffs), noting testimony that simultaneous changes generate two transactions in many switches. By contrast, AT&T witness Walter L.

Mosley, manager of state government affairs, urged that local exchange carriers be required to apply a single charge to simultaneous choices, adding

"...it appears that the efficiencies in processing two changes simultaneously, as opposed to a customer calling twice and requesting a PIC change the first time and an IPIC (incumbent PIC) change the second, are obvious." (Exhibit 16, p. 16.)

ORA notes that the settlement agreement with the GTE companies calls on those local exchange companies to charge a customer the full interLATA PIC change charge and one-half the intraLATA PIC change charge when the changes are made at the same time to a single carrier. Customers who select different inter- and intraLATA carriers, or who select the same carrier but make their selections at different times, will be charged the full PIC change charge for each transaction. ORA urges that the same rule be applied to all local exchange carriers.

We will adopt the ORA recommendation. Neither Pacific Bell nor the interexchange carriers have presented cost evidence to support their positions. Local exchange carriers have not shown that simultaneous PIC changes to the same carrier double the costs of processing. Interexchange carriers have not shown that simultaneous changes generate the same costs as a single change. ORA's position is a reasonable one. It has the advantage of consistency for the industry, and it encourages competition among telephone service providers.

7. Implementation Costs

The FCC's Second Report and Order suggests that local exchange carriers like Pacific Bell and the GTE companies are entitled to recover "the incremental costs of dialing parity-specific switch software, any necessary hardware and signaling system upgrades, and consumer education costs that are strictly

necessary to implement dialing parity."¹⁹ All of the parties agree that these are the appropriate cost categories, although AT&T and MCI challenge specific cost items proposed by Pacific Bell within given categories.

There are three issues that we must address in dealing with recovery of implementation costs for intraLATA presubscription. These are (1) the cost recovery mechanism (including identification of the parties that will pay the costs); (2) the cost recovery time period, and (3) the method of weighing costs subject to recovery.

7.1 Cost Recovery Mechanism

Through its settlement agreement, the GTE companies currently are recovering estimated costs through an equal access recovery charge, also called an EARC, imposed on all intrastate switched access and toll minutes of use originating in their service areas. This recovery mechanism was accepted by the Commission on a provisional basis when it approved the advice letters filed by the GTE companies. GTE began collecting the recovery charge when its end offices began converting to equal access.

Pacific Bell proposes a similar recovery mechanism. It and the GTE companies argue that this is the appropriate method of cost recovery and fairly allocates the costs of implementing intraLATA equal access among all service providers. The position is supported by ORA (except as to cost review and start of collection), Sprint and Roseville. The position is opposed by AT&T and MCI, which argue that implementation costs should be recovered only from originating intraLATA switched access and toll minutes.

We find the rationale for the broad-based cost recovery method is compelling. In its Second Report and Order, the FCC

¹⁹ FCC Second Report and Order, ¶ 95.

concluded that the costs of implementing intraLATA equal access should be recovered on a competitively neutral basis. Specifically, the FCC stated that the cost recovery mechanism should (1) not give one service provider an appreciable, incremental cost advantage over another service provider, and (2) not have a disparate effect on the ability of competing service providers to earn a normal return.²⁰ The FCC also concluded that "[t]hese costs must be recovered from all providers of telephone exchange service and telephone toll service in the areas served by a LEC, including the LEC, using a competitively-neutral allocator established by the state."²¹

In providing intraLATA equal access, a local exchange carrier will incur expenses that directly benefit its competitors in the intraLATA toll market. If the costs were recovered just from originating intraLATA toll and switched access minutes of use, the local exchange carriers, as the incumbent intraLATA toll providers, would bear a disproportionate share of the costs. ORA comments:

"Use of the larger intrastate MOU (minutes of use) pool rather than just intraLATA MOUs will provide a broader base for surcharge collection, thus reducing the financial impact on any particular end user or class of end users. Additionally, inclusion of intrastate interLATA MOUs in the surcharge base will distribute some of the cost of implementing equal access to interexchange carriers and CLCs [competitive local carriers], who will be the primary service provider beneficiaries of intraLATA equal access." (ORA Opening Brief, p. 5.)

The cost recovery method proposed by Pacific Bell and the GTE companies significantly reduces the amount of the charge on a per

²⁰ Id., § 94.

²¹ Id., § 95.

minute of use basis that would otherwise have to be borne by the various market participants. If the revenue is applied to both inter- and intraLATA switched access and toll minutes of use, the charge is approximately half of what it would be if imposed only on intraLATA switched access and toll minutes of use. For Pacific Bell, proposing a three-year recovery period, the rate paid by itself and by other carriers would be \$0.00041 per originating switched access minute of use and toll minute. For GTEC, the rate would be \$0.00030. In both cases, the recovery charge represents approximately a 1% increase in the carrier's average intrastate originating switched access minute of use rate.

AT&T contends for the first time on brief that the FCC's rules prohibit this Commission from ordering recovery of any part of the costs of implementing intraLATA equal access from interstate interLATA minutes of use. Even if we, were to assume that the FCC's views on cost recovery for intraLATA dialing parity were binding on this Commission, AT&T's argument is based on a strained reading of § 95 of the Second Report and Order, which requires cost recovery from all telephone service providers "in the area served by a LEC, including the LEC, using a competitively-neutral allocator established by the state." AT&T reasons that since the area serviced by a local exchange carrier is a LATA, only intraLATA minutes of use were contemplated for cost recovery. We disagree. Had that been the FCC's intent, it would have said so clearly, especially since a number of states already have adopted recovery methods broader than intraLATA minutes of use. We agree with GTE that the better interpretation is that the reference is to carriers that provide service in the local exchange carrier's service areas.

The record in this proceeding shows the equity of subjecting all originating intrastate switched toll and access minutes of use to the recovery charge. Incumbent local exchange carriers do not directly benefit from intraLATA equal access, although its implementation opens the way for them to compete in interLATA long

distance service. The direct beneficiaries of intraLATA equal access are new market entrants like AT&T, MCI and Sprint, which will compete for and take part of the local exchange carriers' toll market revenue. In recognition of this, the broad-based cost recovery method has been adopted in a number of other states, including Washington, North Carolina, Nebraska and Hawaii. Other states have gone further, imposing all or most of the cost burden only on interexchange carriers on the grounds that they are the primary beneficiaries of intraLATA equal access.²²

The cost recovery method recommended by Pacific Bell, the GTE companies, and ORA fairly allocates the costs of implementing intraLATA equal access among all market participants and does not result in imposing a disproportionate percentage of the costs on the local exchange carriers--the companies most likely to experience financial impact as they lose toll market share to new intraLATA participants. Our order today adopts the Pacific Bell and GTE cost recovery proposal.

7.2 Cost Recovery Period

Most of the parties agreed that three years represents a reasonable period for recovery of costs of implementing intraLATA equal access. Roseville and smaller local exchange carriers supported a one-year recovery period, but their justification for that was administrative convenience rather than economics. MCI proposed a longer recovery period of five to eight years, but, as noted by ORA, this could needlessly drive up the interest cost

²² In Pennsylvania, the state commission imposed the recovery charge solely on non-local exchange intraLATA minutes. (Re Investigation Into IntraLATA Interconnection Arrangements, Pa. Pub. Util. Comm., Opinion and Order, Docket No. I-00940034, adopted July 18, 1996.) In Florida, the state commission imposed the charge solely on interLATA minutes. (Re Investigation Into IntraLATA Presubscription, Fla. Pub. Serv. Comm., Order No. PSC-95-0203-FOF-TP, issued February 13, 1995.)

component of the amount to be recovered. Since virtually all of the costs of presubscription will be incurred by the local exchange carriers before implementation, and since the largest of the local exchange carriers are prepared to be reimbursed over a three-year period, we will adopt that standard for cost recovery. As discussed below, a three-year period also permits a true-up of costs and adjustments in the recovery charge in the third year of recovery.

7.3 Cost Review

Pacific Bell estimates that the cost of implementing intraLATA equal access will total \$34.7 million, primarily in software and network changes, which would equate to a surcharge of \$0.00041 per originating switched access minute of use and toll minute. Richard L. Scholl, director of cost analysis for Pacific Bell, testified that the estimate includes only incremental costs, that is, additional costs that

"are only associated with implementing intraLATA presubscription. One way to think of them is as project costs. They are the costs of the project to implement intraLATA presubscription. They specifically do not include ongoing costs of providing intraLATA presubscription, for example. [The test for including costs in the estimate] is whether or not Pacific would have incurred the cost otherwise." (Transcript, pp. 32265-66.)

Scholl testified that while the costs of intraLATA equal access are less complicated than those for interLATA long distance presubscription, his estimates nevertheless are likely to be understated. He recommended that Pacific Bell track its actual costs in memorandum tracking accounts and, after two years, the recovery charge be increased or decreased accordingly for the final year of recovery.

AT&T attacks the Pacific Bell estimate as unverifiable and, in some instances, "grossly overstated," particularly in the area of employee training. ORA urges the Commission to reject Pacific

Bell's request for approval of its cost estimates, as it did in the Local Competition proceeding (D.96-03-020, slip op. at 91), requiring instead that the utility track recorded costs for later recovery after submitting a petition for cost review. ORA acknowledges that the GTE companies are being permitted to recover intraLATA cost estimates now, with a true-up and surcharge adjustment at the beginning of the third year of recovery.

Pacific Bell seeks to include in its cost recovery charge the \$5.26 charge for the one free intraLATA PIC change permitted for customers. By contrast, the GTE companies seek no recovery for the forfeited PIC change charge in their service areas. The Pacific Bell proposal is opposed only by ORA, which argues that the free PIC change has not been clearly identified as a recoverable charge. ORA also urges that recovery of implementation costs be permitted only when intraLATA presubscription is complete, a recommendation that would apply at this time only to the GTE companies, since they are phasing in presubscription. Since Pacific Bell plans to flashcut its implementation, its collection of the surcharge would begin then, on the day that intraLATA presubscription is available throughout its system.

We are persuaded by Pacific Bell's evidence that the utility's method of estimating the incremental costs of introducing intraLATA equal access is a reasonable method. This is not to say that all of its estimated costs will withstand scrutiny when we conduct a cost review, nor does it suggest that all of Pacific Bell's expenditures will be deemed reasonably necessary in the implementation of equal access. Accordingly, we will approve Pacific Bell's cost estimate in this proceeding and authorize imposition of an equal access recovery charge on all intrastate switched access and toll minutes of use originating in its service area on the day that intraLATA equal access is available systemwide.

For both Pacific Bell and the GTE companies, we will require the submission 18 months after completion of intraLATA presubscription of a detailed analysis of actual expenditures as tracked in those companies' memorandum tracking accounts for incremental expenditures for intraLATA presubscription, with notice to all parties in this proceeding. These cost analyses will be submitted to the Commission's Telecommunications Division and the ORA and will be available (with appropriate safeguards for proprietary information) to all other parties to this proceeding. If objections to the cost analyses are filed within 30 days, the Telecommunications Division shall recommend appropriate action to the Commission, including, if necessary, further briefing or hearings, to determine adjustments, if any, in the third year of equal access recovery charge collection for those companies with disputed cost analyses.

We will permit Pacific Bell and other local exchange carriers which have yet to implement intraLATA presubscription to include in their implementation recovery charge the actual cost to such carriers of waived initial PIC charges. We select actual cost (as opposed to the tariff charge of \$5.26 for Pacific Bell, for example) because the recovery charge is intended to include only actual incremental costs to the local exchange carriers of implementing intraLATA equal access. Since the GTE companies elected to forgo recovery of the waived PIC charge as part of its settlement with other parties, we will not disturb that resolution of the matter.

We decline the recommendation of ORA and the interexchange carriers to require Pacific Bell to submit a petition for cost recovery prior to assessing the recovery charge on itself and other carriers. We will be performing a cost review after 18 months, when actual costs rather than estimates will be available, and we will adjust the cost recovery charge downward for the third year of recovery if we find that Pacific Bell's estimates have been

excessive or unreasonable. The costs that Pacific Bell or any other local exchange carrier can assess are narrowly proscribed and, spread over broad-based minutes of use, result in only about a 1% increase in the switched access rate. We are not persuaded that an earlier review, when actual costs are not fully known, will serve purposes that justify the further proceedings and delay that would likely occur.

8. Sales and Marketing Practices

Pacific Bell argues that it should be subject to few if any marketing restrictions in persuading customers to continue to receive their intraLATA toll service from Pacific Bell. Pacific Bell witnesses testified that the market is or soon will be fully competitive, and restrictions should no more be imposed on it than they are on other telephone carriers. Pacific Bell's marketing witness testified that if interexchange carriers are free to market all their intraLATA and other services on inbound calls, full competition would suffer if Pacific Bell is not granted equal capability.

The interexchange carriers and ORA disagree. ORA notes that Pacific Bell, because of its historic monopoly in intraLATA service, today has 94% of the residential intraLATA market in its service territory. Since Pacific Bell controls the facilities by which intraLATA changes are made, it serves by necessity as the intraLATA PIC change administrator. ORA states:

"When a customer calls Pacific or GTEC to initiate a PIC change, or even just to obtain information about options, the customer will be vulnerable to pressure tactics by the incumbent LEC. Customer inertia is a powerful force which competitors must overcome. Once a customer expresses interest in changing carriers, and contacts the incumbent provider, ORA believes it would be inappropriate for that provider to use the opportunity to influence the customer to remain with the incumbent."
(Opening Brief of ORA, pp. 25-26.)

In the GTE settlement, the GTE companies agreed to restrict the marketing activities of their customer service representatives on calls requesting intraLATA information, and to submit to the Commission's advocacy staff competitively neutral scripts that service representatives would follow in responding to calls. This procedure is to remain in place for one year after full intraLATA presubscription becomes available on the GTE systems. ORA recommends that similar procedures be applied to Pacific Bell and to small and mid-sized local exchange carriers that have not yet implemented intraLATA presubscription.

AT&T and MCI go further. They urge that Pacific Bell PIC administrators be prohibited from marketing the company's services. Instead, they would transfer customers requesting information on Pacific Bell's offerings to a designated marketing specialist. AT&T states:

"Customers who initiate inquiries about Pacific's intraLATA offerings should be transferred from the PIC administrator to a marketing specialist, but customers inquiring about the intraLATA offerings of other carriers would be referred to that carrier's 800 number. Customers asking about carrier options should be read the names of available providers from a frequently resequenced list which includes the name of the incumbent. Pacific's PIC administrators should not be permitted to market Pacific's services directly." (Opening Brief of AT&T, p. 7, citing the testimony of AT&T witness Mosley.)

MCI witness Lathrop testified that separation of functions is the only way to guarantee that customer service representatives perform their role of processing customer PIC orders in a competitively neutral manner. He added that since Pacific Bell's service representatives have direct access to customer proprietary network information (CPNI), separation of functions is the only sure way to prevent the service

representative from accessing CPNI in order to persuade a caller to remain with Pacific Bell's intraLATA service.

8.1 Discussion

We are reluctant on this record to dictate to Pacific Bell a division of its customer service workforce, with the additional costs and confusion that would be incurred. On the other hand, we agree with ORA and the interexchange carriers that, without restrictions, Pacific Bell customer service representatives obviously will be motivated to urge callers to use their company's intraLATA service rather than that of competitors. While it may be true, as Pacific Bell's evidence indicates, that 95% of long distance PIC changes are made to Pacific Bell by long distance carriers, rather than by individual customers, it also appears true, as AT&T's evidence suggests, that nearly 50% of customers contacting Pacific Bell for new service make their long distance selection in that call. (Exhibit 18.) It is clear that when intraLATA presubscription is introduced, Pacific Bell will receive many calls asking for information about this new option. If objective information is sought, then Pacific Bell in its role as intraLATA PIC administrator should try to furnish that information objectively.

Accordingly, we will require the competitively neutral business office procedures that ORA and AT&T describe as the "minimum" for handling intraLATA PIC change requests. We also will require that within 30 days of the effective date of this decision, Pacific Bell submit to our Telecommunications Division copies of scripts that will be used by customer service representatives when handling questions about intraLATA toll service. These restrictions are to remain in effect for one year following the conversion of Pacific Bell's end offices to intraLATA equal access. If ORA or a competitor at any time believes that it can show that

Pacific Bell has used its intraLATA marketing power in an anti-competitive manner, it can bring that to our attention through a complaint or other appropriate pleading.

The neutral business office procedures that we adopt today for Pacific Bell in its handling of intraLATA PIC change calls are set forth in our ordering paragraphs. Generally, these are similar to the procedures that are in effect for one year for the GTE companies. These procedures also apply to small and medium-sized local exchange carriers that have not yet implemented intraLATA presubscription. These carriers, however, may at the time of tariff filing for intraLATA presubscription propose alternative marketing safeguards on a showing that the restrictions set forth here are unnecessary or are unduly burdensome.

9. Operator Service Calls

Pacific Bell, alone among local exchange carriers, proposes that 0- calls be routed to a customer's presubscribed intraLATA carrier.²³ All other parties in this proceeding either recommend or acquiesce in routing such calls to the local exchange carrier.

Pacific Bell's witness claims that most customers call 0- in order to ask questions about rates, collect calls or calling card calls, all of which are functions of intraLATA service. He acknowledged that some operator calls are made in lieu of 911 calls to request emergency assistance. AT&T witness Mosley testified that his company believes that "customers associate dialing 0 with their local exchange operator services, just as they associate dialing 00 with their interexchange [long distance] carrier's services." He added that the "overwhelming number of...customers

²³ A 0- call designates a call made to reach an operator. A 0+ call designates a call that, followed by a 7- or 10-digit number, is made for an alternatively billed service, such as calling card, collect or third-party billed calls.

expect to reach a local operator by dialing 0, not an interexchange carrier whose operators may not even be located in state."

(Exhibit 16, pp. 20-21.) MCI witness Lathrop agreed that "customers are accustomed to reaching the local...operator when dialing 0." (Exhibit 12, p. 15.)

Our order today makes no change in the routing of 0-calls. The record before us is insufficient to conclude that 0-traffic should be routed to the presubscribed intraLATA toll carrier, except in the case of pay telephones. Pacific Bell's recommendation is unsubstantiated and could have unintended effects on public safety. According to MCI's testimony, few if any other intraLATA service providers have contemplated offering local operator response as part of their service. There may come a time when this issue should be revisited, but that is not likely to occur until development of full facilities-based intraLATA toll competition.

10. Pay Telephones

An unresolved issue at the start of hearings was preselection of the intraLATA toll carrier for public pay telephones and semi-public pay telephones. Some guidance has been provided by FCC orders dealing with pay telephones under the Telecommunications Act.²⁴ Those orders provide, among other things, that payphone service providers have the right to negotiate with payphone location providers concerning the intraLATA carriers presubscribed to their payphones. IntraLATA carriers presubscribed to payphones are required to meet minimum standards for routing and handling emergency calls. With minor exceptions, states are

²⁴ Implementation of Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, Report and Order adopted September 20, 1996, in CC Docket 96-128, FCC 96-388, and Order on Reconsideration adopted November 8, 1996, in CC Docket 96-128, FCC 96-439.

preempted from requiring the routing of intraLATA calls to the incumbent local exchange carrier. (FCC 96-388, §§ 259-263.) The federal regulations give location providers the ultimate decision in selecting intraLATA carriers for payphones through their selection of a payphone service provider. Existing contracts between telephone companies and location providers in those agreements would continue until contract expiration. (FCC 96-388, § 263.)

The Commission has long encouraged competition in the provision of pay telephone service.²⁵ Testimony at hearing made clear that competition in the field is healthy. Pacific Bell operates 90,000 public pay phones and 30,000 semi-public pay phones (20,000 of them in inmate institutions). Additionally, there are 70,000 independent pay telephones operated by 5,000 carriers in Pacific Bell's territory. The GTE companies have 27,600 public pay telephones and 9,050 semi-public pay phones in their territories, augmented by 7,300 customer-owned pay telephones provided by 240 carriers.

The California Payphone Association (CPA) asks that we comment generally on presubscription contract issues in payphone location contracts involving local exchange carriers. We decline to do so on this record, which is devoid of any specific evidence of contract language or contract disputes. The CPA also urges that we confirm our prior determination that 0- calls from a pay telephone may be directed to a carrier or operator services provider other than the local exchange carrier, so long as the alternative provider is qualified to process emergency calls reliably and efficiently. We agree with CPA that our Implementation Rate Design decision ordered 0- services open to

²⁵ See, e.g., Alternative Regulatory Frameworks, 56 CPUC2d 117 (1994).

competition effective July 1, 1995,²⁶ and we find nothing in the FCC regulations that contradicts our earlier order.

Apart from these findings, we conclude that, in view of the Telecommunications Act and the FCC's recent orders, and considering the highly competitive nature of the pay telephone business in California, the selection of the presubscribed intraLATA toll provider for pay telephones should be determined through negotiations between location providers and pay telephone providers, subject to any existing contracts between them.

11. Small and Mid-Sized Local Exchange Carriers

The Telecommunications Act, as interpreted by the FCC's Second Report and Order, requires all local exchange carriers to implement intraLATA equal access. For most of the 17 smaller local exchange carriers and three medium-sized local exchange carriers, the date for introducing dialing parity is either February 8, 1999, or the date, if earlier, on which such carriers begin to provide interLATA long distance or interstate toll service.²⁷ Under § 251(f)(2) of the Telecommunications Act, local exchange carriers with fewer than 2% of the nation's subscriber lines may petition this Commission for further time if they can show good cause for the delay.

Thirteen small and medium-sized local exchange carriers took an active part in this proceeding. David Tutt, a management consultant, testified on behalf of nine smaller carriers,²⁸ urging

²⁶ Id., Ordering Paragraphs 26, 27.

²⁷ FCC Second Report and Order, ¶ 59.

²⁸ The nine smaller carriers are Calaveras Telephone Company, California-Oregon Telephone Co., Ducor Telephone Company, Foresthill Telephone Co., Happy Valley Telephone Company, Hornitos Telephone Company, The Ponderosa Telephone Co., Sierra Telephone Company, Inc., and Winterhaven Telephone Company.

the Commission to affirm the FCC's timetable and to provide relief in intraLATA presubscription requirements in recognition of the size and limited resources of these smaller companies. Specifically, the carriers ask that they not be subject to restrictions on their intraLATA marketing efforts, that they not be required to use direct mail in notifying subscribers, and that they be permitted to recover costs of implementing intraLATA presubscription over a period of one year instead of three years. Tutt testified that all of the carriers he represents, with one exception, intend to implement intraLATA equal access in 1999.²⁹ Similar recommendations were made by Ron Miller, rates and tariff manager for Roseville Telephone Company, a medium-sized local exchange company with 95,000 access lines in and around Roseville, California.

ORA opposes any exceptions to the rules adopted here that are applicable to Pacific Bell and the GTE companies. ORA argues that the smaller companies have presented no definitive evidence justifying exceptions. AT&T urges that the Commission establish a common schedule for investigation of implementation costs for the small and mid-sized local exchange carriers. MCI in its brief proposed that the Commission require Roseville to implement intraLATA presubscription immediately, but it did not provide reasons for this request.

We are presented with no evidence that would justify a requirement that small and medium-sized local exchange carriers

²⁹ An affiliate of Sierra Telephone Company, Inc., received authority last year to provide intraLATA and interLATA interexchange services. (D.96-09-003.) At time of hearing the affiliate had not commenced such service. Accordingly, Sierra states that it will implement intraLATA presubscription either coincident with its affiliate's provision of toll services or as of August 8, 1997, based on Sierra's interpretation of the FCC's Second Report and Order, § 62.

implement intraLATA equal access at dates earlier than those mandated by the Telecommunications Act, as interpreted in the FCC's Second Report and Order. Therefore, small and medium-sized carriers will be required to implement the intraLATA option at the time that they engage in long distance service, or by February 8, 1999, absent an exception granted by this Commission to carriers with less than 2% of the nation's subscriber lines. Our order today relieves small and medium-sized local exchange carriers from the requirement that one of their two intraLATA notices to subscribers be by direct mail, since the cost of direct mail (about \$1 per subscriber) may be unduly burdensome and since intraLATA equal access will be better known to the public by the time these carriers implement it.

We decline to change the implementation cost recovery schedule for these carriers. The evidence shows that the equal access recovery charge assessed on minutes of use of both local exchange and long distance companies is small, and the recovery schedule permits a true-up at the beginning of the third year. Like the larger carriers, small and medium-sized carriers will be required to track actual costs of implementation and provide a cost report 18 months following implementation of intraLATA equal access. We decline AT&T's proposal for a prospective review of costs, for the same reasons that we declined this proposal for the larger local exchange carriers, but we note that objections to costs may be made when the smaller carriers file their advice letters seeking intraLATA presubscription. All other rules adopted in this proceeding for intraLATA implementation, including those applicable to customer service representatives, shall apply to small and medium-sized local exchange carriers. However, small and medium-sized local exchange carriers at the time of filing their intraLATA tariffs may propose alternative marketing safeguards on a showing that the restrictions set forth here are unnecessary or unduly burdensome.

Citizens Utilities Company, appearing on behalf of its five telecommunications companies,³⁰ urges the Commission to make clear that the rules adopted in this proceeding are prospective in nature and, therefore, not applicable to Citizens.

Telecommunications Company of California, Inc. (CTC-California), a mid-sized local exchange company. CTC-California is in a unique position in this proceeding because it voluntarily opened its operating territory to full 2-PIC intraLATA equal access on October 1, 1995. Authority for this was granted by the Commission as part of CTC-California's application for New Regulatory Framework regulation.³¹ No party opposes Citizens' request that CTC-California be exempted from the rules established today, and both AT&T and ORA indicate that they have no issues to raise with respect to this carrier. Our order provides that CTC-California is exempted from the intraLATA presubscription rules. The rules will apply, of course, to Citizens' two small local exchange carriers.

12. Competitive Local Carriers

Pacific Bell proposed that rules adopted here also be made applicable to competitive local carriers. Competitive local carriers offer local exchange residential service but, unlike the state's 22 incumbent local exchange carriers, are not designated by this Commission as the carriers of last resort in their respective

³⁰ The five companies are Citizens Telecommunications Company of California, Inc., a mid-sized local exchange company; Citizens Telecommunications Company, doing business as Citizens Long Distance, a long distance carrier; Electric Lightwave, Inc., a competitive local carrier; Citizens Telecommunications Company of Tuolumne, a small local exchange carriers, and Citizens Telecommunications Company of the Golden State, also a small local exchange carrier.

³¹ See final order granted in D.95-11-024 in CTC-California's Application 93-12-005.

service areas.³² The evidence before us shows that competitive local carriers have had little impact on California's telecommunications market to date, and there is no evidence that they are likely to exercise any degree of market power in the near future. We decline at this time to apply the intraLATA presubscription rules in this decision to competitive local carriers. We note, however, that the competitive local carriers are required to obtain this Commission's approval for their plans for implementing intraLATA presubscription.³³ Accordingly, we have directed our Telecommunications Division to prepare proposed rules for competitive local carriers to follow in seeking Commission approval, and we have directed the assigned administrative law judge to issue a ruling in this docket seeking comments on those proposed rules. We intend then to adopt final rules for the guidance of competitive local carriers.

13. Comments on Proposed Decision

The proposed decision of the administrative law judge in this matter was mailed to the parties in accordance with Public Utilities Code § 311 and Rule 77.1 of the Rules of Practice and Procedure. Comments were required within 20 days of mailing, and replies to comments were permitted 5 days thereafter. Several parties noted technical errors or imprecise language in the proposed decision, and we have made corrections where warranted to reflect those comments. We have clarified that cost analyses to be submitted by local exchange carriers may be done by Advice Letter filing, which presumably could be converted to applications if

³² See e.g., In re Universal Service, D.96-10-066 in Rulemaking 95-01-020.

³³ See, e.g., Second Report and Order § 62(c), which requires all local exchange carriers to obtain state approval of their intraLATA presubscription implementation plans.

hearings are deemed necessary. Additionally, we have made two substantive changes:

- * Competitive local carriers are required by the FCC to submit to this Commission their plans for implementing intraLATA presubscription. Because the record provides little guidance on this subject, we have directed the Telecommunications Division to draft proposed rules for these carriers, and we have directed the administrative law judge to request comments on those proposed rules, after which we intend to adopt appropriate guidelines to assist the competitive local carriers in their required filings.
- * The GTE companies argue persuasively that a requirement in the proposed decision that they delete their corporate logotype on a direct-mailed notice to customers would be unfair and unreasonable, in that no other carrier would be precluded from using its corporate symbol on such correspondence. The GTE companies are correct, and we have deleted this provision in the final decision.

Pacific Bell claims that the FCC's recent Non-Accounting Safeguards order, FCC Order 96-149, issued on December 24, 1996, precludes some or all of the competitively neutral business office practices set forth in the decision. We do not agree. The FCC order dealt with joint marketing practices of Pacific Bell and its long distance affiliate, Pacific Bell Communications. The order is inapposite in this proceeding.

More persuasively, Pacific Bell notes that it should be permitted to market its intraLATA services on inbound general service calls, just as the GTE companies are permitted to do. ORA does not oppose this position, and we have added appropriate language in conformance with this suggestion. Pacific Bell also points out, correctly, that some of the neutral business practice requirements refer to interLATA long distance service, and that interLATA

service was not an issue in this proceeding. We agree, and we have deleted those references in the final decision.

Other comments by the parties simply reargue positions that we considered on brief, or they introduce new concepts not previously raised or not supported by evidence of record. Pursuant to Rule 77.3, these comments are given no weight.

Findings of Fact

1. On April 5, 1996, long distance carrier parties filed a joint petition seeking an order that would require GTEC to implement intraLATA presubscription.

2. On April 11, 1996, Pacific Bell filed a motion seeking a procedural order commencing the intraLATA presubscription phase of this proceeding.

3. On May 17, 1996, the administrative law judge consolidated the petition and motion and scheduled a prehearing conference to consider intraLATA presubscription.

4. Settlement discussions involving GTEC and an intraLATA workshop were conducted by the parties in July 1996.

5. On September 5, 1996, a settlement was reached on most issues regarding implementation of intraLATA presubscription by GTEC and its affiliated companies. The settlement agreement was approved by the Commission on December 20, 1996.

6. Eight days of hearings were conducted between September 24 and October 21, 1996, to deal with presubscription issues as to Pacific Bell and other local exchange carriers and to deal with three issues left unresolved in the GTEC settlement.

7. Parties agreed that the Telecommunications Act of 1996 made moot four intraLATA issues: necessity for 1-plus dialing, cost/benefit analysis, timing of presubscription with market parity, and timing of presubscription with regulatory parity.

8. Parties agreed on four other issues: balloting should not be required; the full 2-PIC methodology should apply; subscribers should be permitted one PIC change without charge;

existing customers who do not select a different intraLATA carrier after notice should continue to receive that service from their local exchange carrier.

9. The GTE companies elected to phase in intraLATA presubscription between September 1996 and March 1997.

10. Pacific Bell elected to flashcut its implementation of intraLATA presubscription on the same date that Pacific Telesis begins long distance service through a subsidiary, Pacific Bell Communications.

11. Pacific Bell states that it will be able to process between 50,000 to 80,000 PIC changes daily, and up to 120,000 changes on most Sundays, once intraLATA presubscription begins.

12. In December 1996, Pacific Bell reached settlement with other parties on a process for assessing a performance penalty on Pacific Bell if it does not process intraLATA PIC change orders within three days of receipt. The settlement agreement is attached to his decision as Appendix A.

13. Pacific Bell proposes to send customers two notices of the pending availability of their choice of intraLATA carriers: a 45-day notice as part of the billing package, and a 10-day notice by direct mail.

14. ORA and most other carriers generally support the customer notice proposal of Pacific Bell. Most parties agree that an intraLATA PIC freeze should not be marketed by local exchange carriers during the introduction of intraLATA presubscription.

15. Pacific Bell proposed two PIC change charges for simultaneous changes in inter- and intraLATA PIC carriers; other parties sought a discounted charge for simultaneous PIC changes to the same carrier.

16. Local exchange carriers are entitled to recover incremental costs of intraLATA presubscription, limited by the FCC to incremental costs of specific switch software, necessary

hardware and signaling system upgrades, and consumer education strictly required to implement dialing parity.

17. Local exchange carriers seek to recover intraLATA presubscription costs through an equal access recovery charge imposed on all intrastate switched access and toll minutes of use originating in their service areas; AT&T and MCI urge that implementation costs be recovered only from originating intraLATA switched access and toll minutes.

18. Most parties agree that three years represents a reasonable period for recovery of costs of implementing intraLATA presubscription.

19. Pacific Bell estimates that the cost of implementing intraLATA equal access will total \$34.7 million.

20. Most parties agree that actual costs of presubscription should be tracked by local exchange carriers for purposes of a true-up of the implementation cost in the final year of recovery.

21. Pacific Bell proposes that it be subject to few, if any, restrictions in its marketing of its intraLATA service; ORA and long distance carriers favor restrictions in view of Pacific Bell's role as PIC change administrator.

22. Pacific Bell proposes that 0- calls be routed to a customer's presubscribed intraLATA carrier; most other parties propose that such calls be routed to the local exchange carrier.

23. An FCC order adopted on September 20, 1996, acknowledges that location providers shall have the ultimate decision in selecting intraLATA carriers for payphones through their selection of a payphone service provider.

24. Small and medium-sized local exchange carriers are required to implement intraLATA presubscription in their systems no later than February 8, 1999, absent a petition to this Commission for additional time.

Conclusions of Law

1. The Telecommunications Act of 1996 requires all local exchange carriers to implement direct dialing, or intraLATA presubscription.
2. The GTE companies were required to implement intraLATA presubscription by August 8, 1997.
3. Pacific Bell is required to implement intraLATA presubscription coincident with its parent company's entry into the long distance market.
4. The parties' agreement--on the issues of balloting, 2-PIC methodology, one intraLATA PIC change without charge, and default to existing intraLATA provider after notice--is a reasonable one and should be approved.
5. The parties' settlement agreement on liquidated performance remedies for Pacific Bell intraLATA PIC changes is reasonable in light of the whole record, consistent with law, and in the public interest, and should be approved.
6. Pacific Bell's proposal for the timing and method of notice to customers of the availability of intraLATA presubscription should be approved.
7. The GTE companies should be required to send a direct-mail notice to customers advising them of the availability of intraLATA presubscription.
8. Small and medium-sized local exchange carriers should be required to send two bill notices to customers advising them of the availability of intraLATA presubscription.
9. PIC freezes should not be marketed by local exchange carriers during the introduction of intraLATA presubscription.
10. Where inter- and intraLATA PIC changes to the same carrier are made simultaneously, a local exchange carrier should charge the full tariff price for the interLATA change and half the tariff price for the intraLATA change.

11. The incremental costs of implementing intraLATA presubscription should be recovered by local exchange carriers through an equal access recovery charge imposed on all intrastate switched access and toll minutes of use originating in their service areas.

12. The cost recovery period should be three years.

13. Local exchange carriers should be required to track actual implementation costs and report on those costs 18 months after completing the implementation of intraLATA presubscription.

14. Local exchange carriers should be subject to restrictions in their marketing of intraLATA toll service.

15. Operator service calls should continue to be routed to the local exchange carrier rather than to the presubscribed intraLATA carrier.

16. Pay telephones should be subject to intraLATA presubscription in the manner set forth in FCC 96-388.

17. Small and medium-sized local exchange carriers should be subject to the same intraLATA presubscription requirements as other local exchange carriers, except that they should be relieved of the requirement to give direct-mail notice to subscribers.

18. The intraLATA presubscription rules adopted today are prospective in nature and should not be applicable to CTC-California, which has completed implementation of intraLATA presubscription.

INTERIM ORDER

IT IS ORDERED that:

1. Local exchange carriers in California shall implement direct dialing, or intraLocal Access and Transport Area (intraLATA) presubscription, in accordance with the requirements set forth in

the Telecommunications Act of 1996, and the rules set forth in this intraLATA presubscription proceeding.

2. IntraLATA presubscription will be offered by local exchange carriers without balloting of subscribers.

3. IntraLATA presubscription will be offered by local exchange carriers pursuant to the so-called "full 2-PIC methodology," which permits customers to presubscribe to a telecommunications carrier for all inter-Local Access and Transport Area (interLATA) calls and to presubscribe to another telecommunications carrier, including but not limited to the customer's local exchange carrier, for all intraLATA toll calls. The acronym "PIC" designates "primary" or "preferred" interexchange carrier.

4. For a period of at least six months following implementation of intraLATA presubscription, local exchange carriers shall permit each subscriber to make one change in the subscriber's intraLATA toll provider without charge to the subscriber.

5. Existing local exchange carrier customers who do not elect to change their intraLATA toll provider shall continue to receive intraLATA toll service from their current provider. New customers of a local exchange carrier will be required to dial a carrier access code to route their intraLATA toll calls until they make a selection of an intraLATA toll carrier.

6. Pacific Bell shall use best efforts to process all orders for intraLATA carrier changes within three days of the receipt of such orders.

7. The settlement agreement related to liquidated performance remedies as to Pacific Bell in processing intraLATA change orders, attached hereto as Appendix A, is approved, and its provisions are made part of this order as though set forth in full herein.

8. All local exchange carriers that have not yet implemented intraLATA presubscription shall notify existing customers of the date or the time frame in which intraLATA presubscription will be available. An initial notice in the form of a bill message or bill insert shall take place at least 45 days prior to implementation, with a second notice to be provided on or about 10 days prior to implementation. Except in the case of GTE California Incorporated and affiliates (GTE companies) and Pacific Bell, the second notice may take the form of a bill message or a bill insert.

- (a) Pacific Bell shall notify its customers through a bill message at least 45 days prior to introduction of intraLATA equal access, with a subsequent direct-mail notice provided at least 10 days prior to implementation. Such notice shall be substantially in the form set forth as Attachment 2 to Exhibit 19 in this proceeding; provided, however, that Pacific Bell shall delete the reference to "PIC freeze" procedures contained in Attachment 2.
- (b) The GTE companies shall provide notice of intraLATA presubscription pursuant to the terms of the settlement approved in Decision 96-12-078. Additionally, the GTE companies shall provide a direct-mail notice to customers within 30 days of the effective date of this order. The direct-mail notice shall be substantially in the form set forth in Exhibit A of the settlement agreement.
- (c) Prior to distribution, all proposed customer notices shall be submitted for review to the Telecommunications Division of the Commission and shall be deemed to be approved 10 working days thereafter unless the submitting carrier is otherwise notified by the Telecommunications Division.

- (d) Each local exchange carrier that has not yet implemented intraLATA presubscription shall notify other carriers at least 45 days prior to the date of intended implementation of intraLATA presubscription.

9. No local exchange carrier shall solicit Primary Interexchange Carrier (PIC) freezes during the period of introduction of intraLATA presubscription. The period of introduction of intraLATA presubscription shall be deemed for purposes of this provision to be 45 days before and 45 days after implementation. Nothing herein shall preclude a local exchange carrier, at any time, from doing a separate mailing to subscribers with interLATA PIC freezes advising them that they must take further action for the freeze to apply to intraLATA toll service.

10. Following the initial no-charge intraLATA change request, when a subscriber's interLATA and intraLATA service is changed to a single carrier in the same call or transaction, a local exchange carrier shall charge the full tariffed interLATA change charge and one-half the full tariffed intraLATA change charge.

11. Local exchange carriers may recover through an equal access recovery charge the incremental costs of intraLATA presubscription-specific switch software, necessary hardware and signaling system upgrades, and consumer education costs strictly necessary to implement intraLATA presubscription. Local exchange carriers, with the exception of the GTE companies, may include in the equal access recovery charge the actual cost to the carrier of waived initial intraLATA changes.

- (a) The equal access recovery charge shall be imposed on all intrastate switched access minutes of use sold by the local exchange carrier and intrastate intraLATA and interLATA (when approved) toll minutes of use provided by the local exchange carrier originating in the local exchange carrier's service area, including minutes of use covered by contracts.

- (b) Prior to implementation of intraLATA presubscription, a local exchange carrier shall submit to the Commission a detailed estimate of its costs of implementing intraLATA presubscription.
- (c) The equal access recovery charge shall be in effect for three years.
- (d) A local exchange carrier shall track actual costs of implementing intraLATA presubscription and, 18 months after implementing intraLATA presubscription, shall file with the Commission, with a copy to the Office of Ratepayer Advocates, a cost analysis and a proposed tariff adjusting the equal access recovery charge for the third year of assessment in accordance with the carrier's cost analysis. The Telecommunications Division shall review the filing and recommend appropriate action to the Commission.

12. The estimate by Pacific Bell of \$34,739,000 as the cost of implementing intraLATA presubscription is approved as the equal access recovery charge for that carrier, subject to the provisions of Ordering Paragraph 11 above.

13. Each local exchange carrier, except as to the GTE companies and except as otherwise provided in this order, shall be subject to the following neutral business office procedures for a period of one year following implementation of intraLATA presubscription:

- (a) In dealing with a carrier's service representative, both new and existing customers who raise the subject of intraLATA presubscription shall be advised that they have a choice of service providers for intraLATA services, including the local exchange carrier.
- (b) If a new customer asks for a specific company to be his/her intraLATA provider, the service representative will not attempt to persuade the customer to choose another carrier unless the carrier requested does not provide service in the

customer's service area. In the latter case, the procedures set forth in the next subparagraph will apply.

- (c) If a new customer has not decided upon a specific carrier for intraLATA service, or if the intraLATA provider requested does not provide service in the customer's area, the service representative will provide the customer with a list of available carriers from a list that is randomly generated. The choices will be read off the list in the order that they appear on the representative's screen.
- (d) If a new customer requests more information about an intraLATA carrier other than the existing carrier, the service representative will provide the caller with the carrier's 800 number if one has been provided by the carrier.
- (e) If a customer contacts the service representative to advise of an address change, with or without a number change, the caller will be treated as a new customer.
- (f) If a caller reports trouble in placing intraLATA toll calls, the service representative first will determine whether the customer is presubscribed to an intraLATA toll provider. If so, the call will be handled as a service complaint pursuant to the procedure in effect with that provider. If the customer is not presubscribed, the customer will be so advised and will be asked to select a provider either by name or, if the customer has no preference, then from a randomly generated list as discussed above.
- (g) Service representatives may sell or market their intraLATA toll services if the caller agrees to hear information about toll services available from the called provider.

- (h) Service providers shall not use customer provided network information (CPNI) in any manner that violates § 702 of the Telecommunications Act of 1996.
- (i) Local exchange carrier customer contact personnel may market their company's intraLATA service when handling "general service" calls. A general service call is a call to the local exchange company requesting general information about the company's services, the establishment or removal of the company's services, billing inquiries, or calls relating to any other aspects of a customer's service provided by the company. General service calls do not include calls requesting a specific PIC change, address change requests from existing customers (whether or not a number change is involved), and initial requests for service. These non-general service calls will be handled in accordance with the competitively neutral procedures described above.

14. At least 30 days prior to the implementation of intraLATA presubscription, each local exchange carrier will provide to the Commission Telecommunications Division and the Commission's Public Advisor copies of scripts that will be used by customer service representatives when handling questions regarding intraLATA presubscription. Staff will perform a one-time review of the scripts to assess whether they are competitively neutral, and will advise the carrier of any concerns it may have. Scripts will be deemed confidential, and the contents thereof will not be disclosed unless the Telecommunications Division seeks an order instituting investigation or takes further action with respect to such scripts before the Commission.

15. Calls to a local operator, designated as "0- calls," shall be routed to a customer's local exchange carrier, except in the case of pay telephones where calls can be routed differently through the use of smart sets, or some other functional equivalent.

16. Implementation of intraLATA presubscription shall apply to public pay telephones and semi-public pay telephones in the manner set forth in the Federal Communications Commission Report and Order adopted September 20, 1996, in CC Docket 96-128, FCC 96-388, and Order on Reconsideration adopted November 8, 1996, in CC Docket 96-128, FCC 96-439.

17. Rules governing intraLATA presubscription shall apply to California small and medium-sized local exchange carriers; provided, however, that such carriers need not use direct mail to notify customers of the availability of intraLATA presubscription; and, provided further, that such carriers at the time of filing tariffs for intraLATA presubscription may propose alternative marketing safeguards on a showing that restrictions set forth here are unnecessary or unduly burdensome.

18. This order shall not apply to Citizens Telecommunications Company of California, Inc., which opened its operating territory to intraLATA equal access on October 1, 1995.

19. The Telecommunications Division is directed to prepare proposed rules for competitive local carriers to follow in seeking Commission approval of their plans for implementing intraLATA presubscription; the assigned administrative law judge shall issue a ruling in this docket seeking comments on those proposed rules.

20. The intraLATA presubscription phase of this proceeding shall remain open solely for the purpose of addressing rules applicable to competitive local carriers in implementing intraLATA presubscription.

This order is effective today.

Dated April 23, 1997, at San Francisco, California.

P. GREGORY CONLON
President
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
RICHARD A. BILAS
Commissioners

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of Alternative
Regulatory Frameworks for Local
Exchange Carriers.

And Related Matters.

) I. 87-11-033

) Application 85-01-034

) Application 87-01-002

) I. 85-03-078

) Case 86-11-028

) I. 85-03-078

) I. 87-02-025

) Case 87-07-024

SETTLEMENT AGREEMENT

SETTLEMENT AGREEMENT

This settlement agreement (the "Agreement"), executed this 19th day of December 1996, is entered into by and among the following parties (the "Parties") to the above-consolidated proceedings:

- Pacific Bell
- The California Public Utilities' Commission Office of Ratepayer Advocates
- AT&T Communications of California, Inc.
- MCI Telecommunications Corporation
- Sprint Communications Company, L.P.

WHEREAS, on April 11, 1996, MCI Telecommunications Corporation ("MCI"), AT&T Communications of California, Inc. ("AT&T"), Sprint Communications Company, L.P. ("Sprint") and the California Association of Long Distance Companies ("CALTEL") filed a joint petition (the "Joint Petition") for an order requiring GTB California Incorporated to immediately implement intraLATA equal access;

WHEREAS, on April 11, 1996, Pacific Bell filed a motion for a procedural order commencing the intraLATA presubscription phase ("ILP Phase") of this proceeding;

WHEREAS, on May 17, 1996, an Administrative Law Judge's ("ALJ") ruling was issued consolidating the above-described motion and petition for consideration pursuant to Rule 55 of the Commission's Rules of Practice and Procedure;

WHEREAS, on September 11, 1996, opening testimony was submitted by the Parties in the ILP Phase of this proceeding;

WHEREAS, on September 19, 1996, reply testimony was submitted by the Parties in the ILP Phase of this proceeding;

WHEREAS, on September 24, 1996, hearings commenced on the ILP Phase of this proceeding;

WHEREAS, Pacific Bell advanced in its testimony its position supporting implementation of intraLATA presubscription ("ILP") in California on a flashcut basis;

WHEREAS, certain Parties advanced in their testimony their position that Pacific Bell should be subjected to liquidated remedies in the event that Pacific Bell flashcuts ILP and cannot process intraLATA PIC changes within certain time limits;

WHEREAS, certain Parties advanced in their testimony their position that Pacific Bell should be subjected to liquidated remedies in the event that Pacific Bell favors PB Communications Inc. ("PBCom") in the implementation of PIC changes;

WHEREAS, on October 9, 1996, the ALJ asked the Parties to meet informally and explore the possibility of resolving among themselves any issues regarding the liquidated remedies proposed by certain Parties;

WHEREAS, on October 16, 1996, certain Parties met informally to discuss the issues relating to the proposed liquidated remedies;

WHEREAS, the Parties thereafter met on a number of occasions to hold settlement negotiations properly noticed under Rule 51.1(b)-(c) of the Commission's Rules of Practice and Procedure; and

WHEREAS, the Parties have negotiated in good faith, in accordance with the Commission's desire to resolve matters through alternatives to litigation, to reach a settlement regarding the proposed liquidated remedies issues, and have settled those issues.

NOW THEREFORE, the Parties agree as follows:

I. LIQUIDATED PERFORMANCE REMEDIES: PARITY STANDARD.

A. Equal Treatment (Parity) Standard.

1. **Standard.** In processing intraLATA and interLATA PIC-change orders, Pacific Bell shall treat all carriers equally and shall not discriminate in favor of any of its affiliates. For purposes of this liquidated remedy, a violation of this standard shall be defined as the deliberate processing of Pacific Bell's affiliates' PIC-change requests in a manner that is systematically more expeditious than for other carriers and inconsistent with the processes described immediately below.

a. **CESAR Orders.** All PIC-change orders processed through CESAR by Pacific Bell are processed first-in-first-out by day, and by switch, in the following manner:¹ All PIC-change orders received by CESAR within a given day for a particular switch are processed after any PIC-change orders received on earlier dates, and prior to any PIC-change orders received on subsequent dates for the same switch. Pacific Bell will not deliberately process its affiliates' PIC change orders received by CESAR in a manner more favorable to the affiliate, as measured from the date of receipt by CESAR to the completion date.

¹ Pacific Bell may in the future develop new systems by which to handle mechanized PIC change requests or other orders. Should CESAR process less than 90% of all mechanized (i.e., non-business-office orders) PIC change requests over two consecutive reporting periods, Pacific Bell will notify ORA. Should the Parties fail to resolve any concerns that arise over such change in processing, such dispute shall be submitted to arbitration in accordance with the arbitration provision contained herein.

b. **Business Office Orders.** PIC changes not processed through CESAR by Pacific Bell are processed through its business office. Pacific Bell will not deliberately process its affiliates' PIC change orders received by the business office in a manner more favorable to the affiliate, as measured from the date of contact with the business office to the completion date.

2. **Commission Ordered or Authorized Expedited Orders.** Should the Commission, or any other relevant governing body of competent jurisdiction, issue an order or ruling that, or should any Parties hereto enter into a valid and enforceable agreement providing that, service orders, including PIC-change requests or selections, may be expedited, the standards herein shall be modified accordingly for those particular orders, and no performance violations will result from the expediting of such orders, so long as the expedited processing is available on a nondiscriminatory basis.

B. Verification and Compliance.

1. **Audit Procedure.** Any Party that has a good faith reason to believe that Pacific Bell is discriminating in favor of any of its affiliates in processing intraLATA or interLATA PIC-change orders shall have the right to request that Pacific Bell's PIC-change records be audited by a mutually agreed upon accounting firm (the "auditing party"). The auditing party shall sign a non-disclosure agreement prior to reviewing any of Pacific Bell's confidential records. Any documents generated or produced by the auditing party shall be available for review by the Parties hereto subject to the terms of a non-disclosure agreement (containing terms substantially similar to the agreement previously executed by several of the parties in the ILP phase of these proceedings).

Should the auditing party determine that Pacific Bell has not discriminated in favor of any of its affiliates, the Party requesting the audit shall be liable for all reasonable costs and fees incurred in connection with the audit. Should the auditing party determine that Pacific Bell has discriminated in favor of any of its affiliates, Pacific Bell shall be liable for all reasonable costs and fees incurred in connection with the audit, in addition to the liquidated remedy described below.

2. **Reports.** Pacific Bell will generate two weekly reports, one for CESAR orders and one for business office orders, that show, by switch and by carrier, the number of days required to process PIC-change requests. Data for five carrier groups will be reflected in the report: PBCOM, AT&T, MCI, Sprint and all other carriers. The form of the proposed report is attached hereto.

The reports will be sent to ORA and will be maintained as confidential. The reports will also be made available to the auditing party in connection with any audits requested pursuant to the foregoing provisions and shall likewise be treated as confidential.

A masked version of the reports will also be made available to the Parties' counsel and one non-marketing person under the terms of a nondisclosure agreement (containing terms substantially similar to the agreement previously executed by several of the parties in the ILP phase of these proceedings). The masked version will not reveal the identities of the five carrier groups. However, the Parties may contact Pacific Bell or ORA to determine the identities of the masked entities, and said information shall be conveyed subject to the terms of the nondisclosure agreement. The intent of this procedure is to ensure that only one unmasked report is disseminated, that copy being sent to ORA.

C. Liquidated Performance Remedies.

Should the auditing party determine that Pacific Bell has discriminated in favor of any of its affiliates, as defined above, Pacific Bell agrees to pay liquidated damages in the amount of \$75 for each PIC-change request that the auditing party determines Pacific Bell has processed in violation of the preceding subsections. Any such liquidated damages will be paid to the Commission's Universal Lifeline Telephone Service Fund within 45 days after the auditing party's final determination is issued.

D. Sunset.

The foregoing provisions shall sunset 6 months after the first day that Pacific Bell begins offering intraLATA presubscription. However, should Pacific Bell incur over \$75,000 in liquidated performance remedies under the foregoing provisions relating to PIC change orders processed during the first six months of implementation, said provisions shall automatically be extended an additional six months.

II. LIQUIDATED PERFORMANCE REMEDIES: VOLUME STANDARD.

A. Performance Standard.

Pacific Bell shall have 3 business days within which to process PIC-change request orders, subject to the exceptions and conditions set forth herein. A "business day," for purposes of this Agreement, shall mean Monday through Friday, inclusive, excluding holidays.

B. Measuring Compliance.

1. **Measurement.** Pacific Bell's compliance with the performance standard shall be measured by earmarking, each day, all PIC-change requests received that day as "New." Requests earmarked as "New" must be processed within the required time period. "New" requests not processed within required time period shall be subject to the liquidated performance remedies set forth below, except to the extent they are excused by the "Grace Day" provisions contained herein.

a. **CESAR Orders.** For CESAR orders, the relevant measurement will commence on the date of receipt by CESAR.

b. **Business Office Orders.** For business office orders, the relevant measurement will commence as of the negotiated due date. In other words, Pacific Bell shall not incur any liquidated performance remedies for business office orders until 3 business days after the negotiated due date.

2. **Grace Days.** Pacific Bell shall be relieved from meeting its performance standard by the occurrence of any of the following events:

a. If the number of total accepts² processed by any of the switches³ exceeds 1,000 on a given day(s) (the "Switch Grace Day"), Pacific Bell shall be relieved of any liquidated performance standards for the Switch Grace Day in the following manner:

1) Any unprocessed requests earmarked as "New" at that switch on the Switch Grace Day shall be treated as having arrived on the next business day;

2) Any unprocessed requests at that switch on the Switch Grace Day, for which time was accruing for purposes of determining whether a liquidated remedy should be assessed and in what amount, shall be granted an additional business day for processing.

b. If the number of total accepts processed by any of the MARCH systems⁴ on a given day(s) (the "MARCH Grace Day") exceeds 20,000 accepts,⁵ Pacific Bell shall be relieved of any liquidated performance standards for the MARCH Grace Day in the following manner:

1) Any unprocessed requests earmarked as "New" on the MARCH Grace Day, at any switches served by the MARCH system(s) that processed more than 20,000 accepts,⁶ shall be treated as having arrived on the next business day;

2) Any unprocessed requests at that switch on the MARCH Grace Day, at any switches served by the MARCH system(s) that processed more than 20,000 accepts,⁷ for which time was accruing for purposes of determining whether a liquidated remedy should be assessed and in what amount, shall be granted an additional business day for processing.

² An "accept" is an acknowledgment from the switch that the message (translation change) has been completed. One service order may correspond to one or more accepts. Our switch-processing capability assumes processing time of one accept per minute. In this context, "total accepts" refers to all types of service orders, not just PIC changes.

³ Pacific Bell currently has about 475 switches.

⁴ MARCH translates line-related service order data (i.e., USOCs and FIDs) into switch provisioning messages, and then transmits these messages to the appropriate switch on the due date.

⁵ The 20,000 limitation applies to all of our MARCH systems except for the MARCH system that serves all of the Nevada switches and certain eastern California switches. The MARCH system that serves that region (PBHYMW) has a limitation of 14,000 accepts per day, and that limitation shall serve as the performance standard for that particular system.

⁶ See previous footnote.

⁷ See previous footnote.

c. If the number of total service orders¹ processed by either of Pacific Bell's SORD systems² on a given day(s) (the "SORD Grace Day") exceeds 95,000 orders, Pacific Bell shall be relieved of any liquidated performance standards in the following manner:

1) Any unprocessed requests earmarked as "New" on the SORD Grace Day, at any switches served by the SORD system(s) that processed more than 95,000 orders, shall be treated as having arrived on the next business day;

2) Any unprocessed requests on the SORD Grace Day, at any switches served by the SORD system(s) that processed more than 95,000 orders, for which time was accruing for purposes of determining whether a liquidated remedy should be assessed and in what amount, shall be granted an additional business day for processing.

d. If an act of God (e.g., fire, earthquake, tornado, flood, lightning) or an act of aggression or sabotage prevents Pacific Bell on a given day(s) (the "Force Majeure Grace Day") from operating at full capacity, Pacific Bell shall be relieved of any liquidated performance standards in the following manner:

1) Any unprocessed requests earmarked as "New" on the Force Majeure Grace Day, at any switch affected by the event, shall be treated as having arrived on the next business day;

2) Any unprocessed requests on the Force Majeure Grace Day, at any switch affected by the event, for which time was accruing for purposes of determining whether a liquidated remedy should be assessed and in what amount, shall be granted an additional business day for processing.

e. If any obligations emanating from an order issued by the California Public Utilities Commission or the Federal Communications Commission, including but not limited to Local Number Portability (TRIMS repack and switch upgrades that are LNP-related are included), switch unbundling and NPA splits, prevent Pacific Bell on a given day(s) (the "Commission Grace Day") from operating at full capacity, Pacific Bell shall be relieved of any liquidated performance standards in the following manner:

1) Any unprocessed requests earmarked as "New" on the Commission Grace Day, at any switch affected by the event, shall be treated as having arrived on the next business day;

2) Any unprocessed requests on the Commission Grace Day, at any switch affected by the event, for which time was accruing for purposes of determining whether a liquidated remedy should be assessed and in what amount, shall be granted an additional business day for processing.

¹ "Total service orders" means all types of orders, not just PIC changes.

² SORD is an on-line system for service order entry, storage, retrieval and distribution. It is used by both staff and field personnel to input customer orders. SORD's major function is to process service orders for the installation, modification, or disconnection of telephone and related services provided by Pacific. A service order is used to provide data to all applicable departments within Pacific for the provisioning and billing of telephone service and the related services. Pacific has two SORDs: one which serves the northern part of the state, and one which serves the southern part.

Pacific Bell will notify all parties in writing 30 days prior to taking any Commission Grace Day that such a day will be taken, and the reason therefor. The actual date on which the grace day is taken may vary from the date noticed due to circumstances beyond Pacific Bell's control (e.g., vendor changes date). Under such circumstances, Pacific Bell will renote the date of the grace day if the change in date varies materially from the originally noticed date. Should the Commission require Pacific Bell to undertake any obligation covered hereunder without providing Pacific Bell with 30-days' notice, Pacific Bell shall be relieved of the 30-day notice requirement. However, under such circumstances, Pacific Bell shall promptly send the required notice to the Parties.

If any Party disputes the validity of Pacific Bell's proposed taking of a Commission Grace Day, that Party shall notify Pacific Bell, ORA and the Director of the Telecommunications Division of the California Public Utilities Commission (the "Director of Telecommunications Division") in writing within 10 days of the date of Pacific Bell's notice. Should the Parties fail to resolve any disputes relating thereto, the Parties shall submit their dispute for resolution to a staff member selected by the Director. The Parties waive their rights to have any such determination reviewed through the appropriate channels, unless they respond timely to the aforementioned 30-day notice sent by Pacific Bell.

f. If Pacific Bell performs any dial-for-dial conversions, Pacific Bell shall be granted four grace days ("Dial-for-dial Grace Days"), and Pacific Bell shall be relieved of any liquidated performance standards in the following manner:

- 1) Any unprocessed requests earmarked as "New" on the four Dial-for-dial Grace Days, at any switch affected by the event, shall be treated as having arrived on the first business day after the last Dial-for-dial Grace Day;
- 2) Any unprocessed requests on the Dial-for-dial Grace Days, at any switch affected by the event, for which time was accruing for purposes of determining whether a liquidated remedy should be assessed and in what amount, shall be granted an additional four business days for processing.

Pacific Bell will notify ORA in writing, 30 days prior to taking the Dial-for-dial Grace Days, that such days will be taken by Pacific Bell.

g. In the event Pacific Bell experiences a switch or system failure that causes any translation or other electronic data to be lost, Pacific Bell shall notify the affected carriers promptly of the failure, and the notice shall include a description of the nature of the failure and the time at which the failure occurred. Pacific Bell shall be relieved of any liquidated performance standards until the affected carrier retransmits the data for the lost orders, and no time shall elapse for purposes of calculating performance remedies from the date that Pacific Bell notifies the affected carrier, to the date the data has been restored. Pacific Bell shall notify the affected carriers promptly when such retransmitted data is restored.

C. Reports.

Pacific Bell will generate weekly reports that reflect Pacific Bell's compliance with the standard set forth herein. The report will state whether any grace days were taken and the reasons therefor. The reports will also state the number of orders that were subject to grace days during the reporting period. The form of the proposed reports are attached hereto.

The reports will be sent to ORA and shall be treated as confidential. The reports will also be made available to the Parties' counsel and one non-marketing person under the terms of a nondisclosure agreement (containing terms substantially similar to the agreement previously executed by several of the parties in the ILP phase of these proceedings).

D. Liquidated Performance Remedies.**1. Measurement.**

Subject to the foregoing provisions and exceptions, Pacific Bell shall pay a liquidated performance remedy for each PIC-change order not processed within three business days, starting at \$8 on the fourth business day and increasing two dollars per business day until the order is actually processed. The remedy shall not be cumulative (e.g., the remedy for orders processed on the sixth business day shall be \$12, not \$12 plus \$10 plus \$8). In addition, the remedy shall not exceed \$30, unless the carrier for whom the PIC change should have been processed gives written notice to Pacific Bell at least two business days prior to the fifteenth business day after the PIC change was submitted to Pacific Bell that the change remains unprocessed. In no event shall the liquidated remedy exceed \$50. Any such liquidated damages will be paid to the Commission's Universal Lifeline Telephone Service Fund within 45 days after the last day of the relevant reporting period.

2. Notification Requirements.

When carriers submit orders to Pacific Bell for processing in the form of electronic data, Pacific Bell's processing system automatically generates a notice acknowledging receipt of said data (Bellcore document acknowledging mechanized batch file transfer). The notice is dispatched by the system to the carrier promptly upon the system's acceptance of the data. If any Parties submitting such data to Pacific Bell do not receive a notice of acknowledgment of receipt, such Party shall be required to notify Pacific Bell within three business days that they have not received said notice. In the event that any Party fails to send Pacific Bell the aforementioned notice, Pacific Bell shall be relieved of any liquidated performance remedies relating to the subject orders.

If Pacific Bell notifies any Party that a tape or other form of electronic transmission was lost or otherwise needs to be retransmitted, that Party shall promptly retransmit said data. For purposes of calculating any liquidated performance remedies, no time shall be deemed to elapse from the date Pacific Bell notifies the affected Party of the need for retransmission, to the date

such data is retransmitted to Pacific Bell. Pacific Bell shall notify the affected Party promptly when such retransmitted data has been received by Pacific Bell.

E. Sunset.

The foregoing provisions in Part II shall sunset 6 months after the first day that Pacific Bell begins offering intraLATA presubscription.

III. ADDITIONAL PROVISIONS.

A. Flashcut Condition. Pacific Bell agrees to the performance standards and remedies set forth herein only on condition that Pacific Bell is permitted to implement intraLATA presubscription on a flashcut basis. Should Pacific Bell be required by rule or order of the Commission, or any other relevant governing body of competent jurisdiction, to phase in intraLATA presubscription, or implement presubscription in any manner that is materially inconsistent with a flashcut, this Agreement and all of its terms shall become null and void.

B. Recoverable Costs. The Parties agree that the costs incurred by Pacific Bell in tracking and reporting the data necessary to demonstrate compliance with the parity and volume-based performance standards set forth herein shall be deemed recoverable costs. Any such cost recovery shall be made by Pacific Bell pursuant to the manner approved by the Commission for Pacific Bell's recovery of other implementation costs. Pacific Bell currently estimates that the tracking and reporting costs will be on the order of \$120,000, which includes the costs for development, programming, testing and monitoring for six months.

C. Good Faith And Prompt Transmission Of Orders. All Parties agree to act in good faith in connection with the Agreement. Among other things, the IEC Parties agree to transmit PIC-change requests to Pacific Bell promptly, without any undue delay, and will work in a cooperative manner to resolve any potential concerns that may arise.

D. Effect Of Other Agreements. The scope of this Agreement does not apply to the processing of any PIC change or PIC selection orders that are the express subject of any performance standards contained in any other agreements between any of the Parties, including resale agreements for local service.

E. Arbitration. The signatories to this Agreement have the right to seek arbitration of any disputes or claims arising out of or relating to the interpretation or enforcement of this agreement, subject to the written concurrence of two-thirds of the signatories to this agreement. Any arbitration initiated under this agreement shall be submitted to and conducted under the rules of the American Arbitration Association, in San Francisco. The prevailing party in any such arbitration shall be entitled to all reasonable costs, including attorneys' fees. Non-signatories shall not have rights under this general arbitration clause, and shall have no right

to arbitrate any issues relating to this Agreement except as expressly provided elsewhere in this Agreement.

F. Commission Approval. This Agreement is subject to approval by the California Public Utilities Commission. The Parties agree to file or join in the filing of a Joint Motion with the Commission to request approval of the Agreement.

G. Commission Jurisdiction. The Parties agree that the California Public Utilities Commission shall have jurisdiction over this Agreement, and that any disputes arising out of or relating to the interpretation or enforcement of this Agreement may be submitted to the Commission for review.

H. No Personal Liability. The Parties agree that no signatory to this Agreement or any member of the staff of the California Public Utilities Commission assumes any personal liability as a result of or by the terms of this Agreement, and that no action or claim arising out of or relating to the terms of this Agreement may be instituted in any forum against any individual signatory to this Agreement.

I. Proper Settlement Notice. The Parties noticed and convened settlement conferences in accordance with Rule 51.1(b)-(c) prior to the execution of this Agreement.

J. Related Documents. The Parties agree to execute and/or cause to be executed any other documents, and to take any other action as be necessary, to effectively consummate the subject matter of this Agreement.

K. No Joint Venture. This Agreement shall not establish, be interpreted as establishing, or be used by any Party to establish or to represent their relationship as any form of agency, partnership or joint venture. No Party shall have any authority to bind the other or to act as an agent for the other unless such authority or agency is created through a writing separate from this Agreement.

L. Successors. This Agreement and all covenants set forth herein shall be binding upon and shall inure to the benefit of the respective Parties hereto, their successors, heirs, assigns, partners, representatives, executors, administrators, parent companies, subsidiary companies, affiliates, divisions, units, agents, attorneys, officers, directors and shareholders.

M. No Constructions Against Drafter. This Agreement was drafted by and through the cooperation of all the Parties. Accordingly, neither this Agreement nor any of its terms shall be construed or interpreted for or against any Party hereto on the basis that such Party, or that Party's legal representative, was a drafter hereof.

N. Choice of Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of California and the rules, regulations and General Orders of the California Public Utilities Commission.

O. **No Severability.** The provisions of this Agreement are not severable. Should the Commission, or any court or relevant governing body of competent jurisdiction, rule that any material provisions hereto are invalid or unenforceable, or materially modify any material provisions hereto, then this Agreement shall be deemed rescinded and the Parties returned to the status quo as of the date of the execution hereof.

P. **Knowing and Voluntary Execution.** The Parties acknowledge each has read this Agreement, that each fully understands the rights, duties and privileges created hereunder, and that each enters this Agreement freely and voluntarily. Each Party further acknowledges that it has had the opportunity to consult with counsel and discuss the provisions hereof and the consequences of signing this Agreement, and that each Party or their counsel have made such investigation of the facts and law pertaining to the matters herein as they deem necessary, and that they have not relied and do not rely upon any statement, promise or representation by any other party or its counsel, whether oral or written, except as specifically set forth in this Agreement. The Parties each expressly assume the risk of any mistake of law or fact made by them or their counsel.

Q. **Authority to Execute Agreement.** The undersigned acknowledge and covenant that they have been duly authorized to execute this Agreement on behalf of their respective principals and that such execution is made within the course and scope of their respective agency or employment.

R. **Execution in Counterparts.** This Agreement may be executed by any of the Parties in counterparts with the same effect as if all Parties had signed one and the same document. All such counterparts shall be deemed to be an original and shall together constitute one and the same Agreement.

The Parties have executed this Agreement on the pages that follow.

PACIFIC BELL

By: _____
David P. Discher
Its Attorney

**THE CALIFORNIA PUBLIC
UTILITIES COMMISSION'S
OFFICE OF RATEPAYER
ADVOCATES**

By: _____
Helen M. Mickiewicz
Its Attorney

**AT&T COMMUNICATIONS OF
CALIFORNIA, INC.**

By: _____
William A. Ettinger
Its Attorney

**SPRINT COMMUNICATIONS
COMPANY, L.P.**

By: _____
Renee van Dieën
Its Attorney

MCI TELECOMMUNICATIONS INCORPORATED

By: _____
Karen Potkul
Its Attorney

PACIFIC BELL - CARRIER/HARB ORDERS
CARRIER INITIATED PIC CHANGES - 10 OF RECEIPT TO COMPLETION
PIC CHANGES COMPLETED DURING WEEK ENDING XX-XX-XX

CARRIER : XXX
NOTE: POSSIBLE VALUES ARE
ATK/MCI/UTC/PBX/MISC/ALL

SWITCH	1 DAY VOL/PCT	2 DAY VOL/PCT	3 DAY VOL/PCT	4 DAY VOL/PCT	5 DAY VOL/PCT	6-7 DAYS VOL/PCT	8-10 DAYS VOL/PCT	11-30 DAYS VOL/PCT	304 DAYS VOL/PCT	TOTAL VOL/PCT
001	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/100.00%
002	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/100.00%
003	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/100.00%
004	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/100.00%
005	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/100.00%
006	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/100.00%
007	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/100.00%
008	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/100.00%
009	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/100.00%
010	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/100.00%
011	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/100.00%
012	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/100.00%
013	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/100.00%
014	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/100.00%
015	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/100.00%
016	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/100.00%
017	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/100.00%
018	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/100.00%
019	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/100.00%
020	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/100.00%
021	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/100.00%
022	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/100.00%
023	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/100.00%
024	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/100.00%
025	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/100.00%
999	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/100.00%
TOTAL	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/XX.XX	NNN/100.00%

NOTE: POSSIBLE VALUES ARE
ATX/MCI/UTC/PBX/MISC/ALL

PACIFIC BELL - BUSINESS OFFICE CLOSURE
BUSINESS OFFICE INITIATED PIC 11/15 - DUE DATE TO COMPLETION
PIC CHANGES COMPLETED FORCING WEEK ENDING 10/22/88

et al. /ALJ/GEW/sid

Page 15

[illegible]

PACIFIC BELL - CARRIER/MAIL ORDERS
CARRIER INITIATED PIC CHANGES - DATE OF RECEIPT TO COMPLETION
LIQUIDATED DAMAGE REPORT FOR WALK BUILDING 100-25-100

[illegible]

PACIFIC BELL
BUSINESS OFFICE INITIATED VIC-001 X - THE DATE TO COMPLETION'
LYCATED DAMAGE REPORT FOR-SEEK ENDING XX-XX-XX

[illegible]

PACIFIC BELL - GRACE DAY REPORT
GRACE DAYS TAX BY SWITCH
GRACE DAYS DURING WEEK ENDING XX-XX-XX

SWITCH JD	SWITCH CAPACITY	MARCH CAPACITY	BOND CAPACITY	FORCE PAJBORE	PDC ORDER	DIAL -FOR- DIAL
AAAAAAAAAA	X	X	X	X	X	X
ABBBBBBBB	X	X	X	X	X	X
CCCCCCCCC	X	X	X	X	X	X
DDDDDDDDD	X	X	X	X	X	X
EEEEEEEEEE	X	X	X	X	X	X
FFFFFFFFFFFF	X	X	X	X	X	X
GGGGGGGGGG	X	X	X	X	X	X
HHHHHHHHHH	X	X	X	X	X	X
IIIIIIIIII	X	X	X	X	X	X
JJJJJJJJJJ	X	X	X	X	X	X
KKKKKKKKKK	X	X	X	X	X	X
LLLLLLLLLL	X	X	X	X	X	X
MMMMMMMMMM	X	X	X	X	X	X
NNNNNNNNNN	X	X	X	X	X	X
OOOOOOOOOO	X	X	X	X	X	X
PPPPPPPPPP	X	X	X	X	X	X
QQQQQQQQQQ	X	X	X	X	X	X
RRRRRRRRRR	X	X	X	X	X	X
SSSSSSSSSS	X	X	X	X	X	X
TTTTTTTTTT	X	X	X	X	X	X
UUUUUUUUUU	X	X	X	X	X	X
VVVVVVVVVV	X	X	X	X	X	X
WWWWWWWWWW	X	X	X	X	X	X
XXXXXXXXXX	X	X	X	X	X	X
YYYYYYYYYY	X	X	X	X	X	X
ZZZZZZZZZZ	X	X	X	X	X	X

PACIFIC BELL - GRACE DAY VOLUME REPORT
 NUMBER OF ORDERS BY SWITCH
 ORDERS HAVING GRACE DAYS DURING WEEK ENDING XX-XX-XX

SWITCH ID	1 GRACE DAY	2 GRACE DAYS	3 GRACE DAYS	4 GRACE DAYS	5 GRACE DAYS	OVER 5 GRACE DAYS
AAAAA	XXX	XXX	XXX	XXX	XXX	XXX
BBBBB	XXX	XXX	XXX	XXX	XXX	XXX
CCCCC	XXX	XXX	XXX	XXX	XXX	XXX
DDDDD	XXX	XXX	XXX	XXX	XXX	XXX
EEEEEE	XXX	XXX	XXX	XXX	XXX	XXX
FFFFFF	XXX	XXX	XXX	XXX	XXX	XXX
GGGGG	XXX	XXX	XXX	XXX	XXX	XXX
HHHHH	XXX	XXX	XXX	XXX	XXX	XXX
IIIIII	XXX	XXX	XXX	XXX	XXX	XXX
JJJJJJ	XXX	XXX	XXX	XXX	XXX	XXX
KKKKKK	XXX	XXX	XXX	XXX	XXX	XXX
LLLLLL	XXX	XXX	XXX	XXX	XXX	XXX
NNNNNN	XXX	XXX	XXX	XXX	XXX	XXX
OOOOOO	XXX	XXX	XXX	XXX	XXX	XXX
PPPPPP	XXX	XXX	XXX	XXX	XXX	XXX
QQQQQQ	XXX	XXX	XXX	XXX	XXX	XXX
RRRRRR	XXX	XXX	XXX	XXX	XXX	XXX
SSSSSS	XXX	XXX	XXX	XXX	XXX	XXX
TTTTTT	XXX	XXX	XXX	XXX	XXX	XXX
UUUUUU	XXX	XXX	XXX	XXX	XXX	XXX
VVVVVV	XXX	XXX	XXX	XXX	XXX	XXX
WWWWWW	XXX	XXX	XXX	XXX	XXX	XXX
XXXXXX	XXX	XXX	XXX	XXX	XXX	XXX
YYYYYY	XXX	XXX	XXX	XXX	XXX	XXX
ZZZZZZ	XXX	XXX	XXX	XXX	XXX	XXX

(END OF APPENDIX A)

APPEARANCE LIST
I. 87-11-033, et al. - Presubscription Phase

Glenn Walker
Administrative Law Judge
State of California
Public Utilities Commission
505 Van Ness Avenue, Room 5111
San Francisco, CA 94102

Garth Black, Esq.
Cooper, White & Cooper
201 California Street, 17th Floor
San Francisco, CA 94111

John Clark, Esq.
Goodin, MacBride, Squeri, Schlötz & Ritchie
505 Sansome Street, Suite 900
San Francisco, CA 94111

Richard Purkey
Sprint Corporation
1850 Gateway Drive
San Mateo, CA 94404

William A. Ettinger
AT&T Communications of California
795 Folsom Street
San Francisco, CA 94107

William Irvine, Esq.
Peter A. Casciato, Esq.
9 California Street, Suite 701
San Francisco, CA 94111

Ed Kolto-Winninger, Esq.
Pacific Bell
140 New Montgomery, Room 1322
San Francisco, CA 94105

Martin A. Mattes, Esq.
Graham & James
1 Maritime Plaza, Suite 300
San Francisco, CA 94111

Helen Mickiewicz
Public Utilities Commission
State of California
505 Van Ness Avenue, Room 5131
San Francisco, CA 94102

William Harrelson, Esq.
MCI Telecommunications Corp.
201 Spear Street, 9th Floor
San Francisco, CA 94105

Barbara Snider
Citizens Telephone Company
8920 Emerald Park Drive, Suite 0
Elk Grove, CA 95625

Jerry Varcak
Bank of America
P.O. Box 37000
Dept. 13892
San Francisco, CA 94137

Appearance List - I. 87-11-033 (Presubscription Phase)
Page 2

Jeff Beck, Esq.
Jillisa Bronfman, Esq.
Beck and Ackerman
Four Embarcadero Center, Suite 760
San Francisco, CA 94111

Rodney L. Jordan
Regulatory Director
Citizens Telecommunications Company
of California
1035 Placer Street
Redding, CA 96001

David Discher, Esq.
Pacific Bell
140 New Montgomery Street, Room 1322
San Francisco, CA 95105

Earl M. Selby, Esq.
Law Offices of Earl M. Selby
420 Florence St., Suite 200
Palo Alto, CA 94301

Renee van Dieen, Esq.
Sprint Communications Company
1850 Gateway Drive
San Mateo, CA 94404-2467

Leo M. Bloomfield, Esq.
Young Vogl Harlick Wilson & Simpson
425 California St., Suite 2500
San Francisco, CA 94104

Helen Mickiewicz
Division of Ratepayer Advocates
State of California
Public Utilities Commission
505 Van Ness Avenue, Room 5131
San Francisco, CA 94102

Lorann King
State of California
Public Utilities Commission
505 Van Ness Avenue, Area 3-D
San Francisco, CA 94102

Risa Hernandez
State of California
Public Utilities Commission
505 Van Ness Avenue, Room 3204
San Francisco, CA 94102

Lester Wong
State of California
Public Utilities Commission
505 Van Ness Avenue, Room 3203
San Francisco, CA 94102

Appearance List - I. 87-11-033 (Presubscription Phase)
Page 3

Natalie Billingsley
State of California
Public Utilities Commission
505 Van Ness Avenue, Room 4003
San Francisco, CA 94102

Jim McVicar
State of California
Public Utilities Commission
505 Van Ness Avenue, Room 3200
San Francisco, CA 94102

Barbara Ortega
State of California
Public Utilities Commission
107 S. Broadway, Room 5109
Los Angeles, CA 90012

Kenneth K. Okel, Esq.
GTE California
One GTE Place
Thousand Oaks, CA 91362

(END OF APPENDIX B)