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Decision 97-08-059 August 1, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the Commission's Own Motion into Competition for Local Exchange Service.	Rulemaking 95-04-043 (Filed April 26, 1995)
Order Instituting Investigation on the Commission's Own Motion into Competition for Local Exchange Service.	Investigation 95-04-044 (Filed April 26, 1995)

ORIGINAL

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OPINION

I. Introduction

By this decision, we address the outstanding issues regarding the competitive resale of the retail telecommunications services offered by Pacific Bell (Pacific) and GTE California, Inc. (GTEC) which have been designated for resolution in Phase III of this proceeding. This decision addresses: (1) the additional retail services to be offered for resale to competitive local carriers (CLCs); (2) what restrictions on the resale of services are appropriate; and (3) the extent to which wholesale discounts should apply to services subject to resale.

II. Background

We initiated this joint rulemaking and investigation on April 26, 1995, as part of our overall plan to open all telecommunications markets within California to competition. The focus of this rulemaking is on instituting competition in the local exchange sector of the telecommunications market.

We have divided this proceeding into three phases. Phase I addressed issues relating to facilities-based competition. Phase II focused principally on the initiation of resale competition. Phase III was reserved for resolution of all remaining issues within the scope of this proceeding.

We initially opened the local exchange market to resale competition within the service territories of Pacific and GTEC in February 1996 with the issuance of Decision (D.) 96-02-072, in which we approved operating certificates for an initial group of 59 resale-based CLCs.

Later, in D.96-03-020, we adopted interim rules for the competitive resale of local exchange carrier (LEC) service within the territories of Pacific and GTEC by authorizing the resale of a range of LEC services at interim wholesale rates. However, there remained a number of resale-related issues yet to be resolved to allow for fruition of a truly competitive market.

In D.96-03-020, we adopted an interim wholesale discount of 17% for Pacific and 12% for GTEC, and applied these discounts to a range of services to be offered for

resale. For residential services, however, we adopted discounts of 10% for Pacific and 7% for GTEC.[1] Other services, such as Centrex and Customer-owned Pay Telephone (COPT), were offered for resale with no discount pending further review in Phase III. We address the applicability of wholesale discounts to specific services in Section IV.B.2 below.

The wholesale rates we adopted in D.96-03-020 were interim only, with the development of final wholesale rates to be determined in the Open Access and Network Architecture Development (OANAD) proceeding. We also left in place certain restrictions on the resale of some LEC services pending further examination of their necessity in Phase III of this proceeding. For example, we left in place the use-and-user restrictions on the sale of residential access lines. We restricted the resale of Centrex/CentraNet only to single businesses as a business system as well.

By Administrative Law Judge (ALJ) ruling issued on March 28, 1996, parties were directed to file written comments on outstanding Phase III resale issues. Comments were filed on April 18, 1996, and reply comments on April 29, 1996. Parties filing Phase III resale comments included the following:

List of Parties Filing Phase III Resale Comments

- Pacific
- GTEC
- California Telecommunications Coalition (Coalition)
- Office of Ratepayer Advocates (ORA)
- AT&T Communications of California, Inc. (AT&T)/ MCI Communications Companies (MCI)
- Sprint Communications
- MFS Intelenet of California
- Citizens Utilities
- California Cable Television Association
- Time Warner AXS of California
- Telecommunications Resellers Association (TRA)

[1] In D.97-04-090, issued April 23, 1997, regarding Pacific's Application for Rehearing of D.96-03-020, we granted a modification of the residential discount rates to reflect 17% for Pacific and 12% for GTEC.

- California Payphone Association (CPA)
- G-Five Corp and San Diego Payphone Owners Association (G-Five)[2]
- Business Telemanagement, Inc. (BTI)
- Working Assets Funding Service, Inc.

Following receipt of the April 29, 1996, comments, we deferred further action on Phase III resale issues pending regulatory action at the federal level. The resale rules adopted by this Commission must conform to the Federal Telecommunications Act of 1996 (the Act), signed into law on February 8, 1996, and subsequent implementing orders adopted by the Federal Communications Commission (FCC). The Act mandated competition for local exchange service among telecommunications carriers throughout the United States.

On August 8, 1996, the FCC released its First Report and Order implementing rules for local exchange competition, including resale competition, as provided under the Act.[3] In implementing § 251(c)(4) of the Act, the FCC determined that, with the exception of short-term promotions and cross-class selling of *residential* services, all restrictions on resale are presumptively unreasonable. (First Report and Order at ¶ 939.) Accordingly, Pacific or GTEC may impose other restrictions *"only if it proves to the state commission that the restriction is reasonable and nondiscriminatory."* (47 CFR § 51.613(c), emphasis added.)

The First Report and Order also adopted a range of default wholesale discounts of 17%-25%, derived from an avoided cost study MCI submitted, as modified by the FCC. The FCC Order stated that state commissions must use default wholesale

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[2] G-Five Corp is an aggregator of calls from customer-owned pay telephones for routing of such calls to intraLocal Access Transport Area (intraLATA), interLATA, and interexchange carriers (IXCs). San Diego Payphone Owners Association is a trade association of owners of private pay telephones in the San Diego metropolitan area.

[3] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, *Interconnection between Local Exchange Carriers and Commercial Radio Service Providers*, CC Docket No. 95-185, First Report and Order, FCC 96-235 (rel. Aug. 8, 1996).

discounts within the 17%-25% range where a rate established by a state before the release date of the FCC Order was based on a study that did not comply with the criteria described in the FCC Order.

On October 15, 1996, the U.S. Court of Appeals for the Eighth Circuit issued an order which stayed the FCC's pricing rules for unbundled network elements (UNEs), wholesale services, and transport and termination pending a decision on the merits of the appeals of the FCC Interconnection Order filed by several parties.[4] The Circuit Court stayed the FCC's wholesale pricing provisions because it assumed that the petitioners were likely to prevail in arguing that the 1996 Act did not grant the FCC the power to issue pricing rules. The Circuit Court also stayed the FCC's "pick and choose" rule which could allow CLCs to pick and choose portions of other CLCs' interconnection agreements to fashion an agreement of their own. As of this date, the stay remains in effect.

The Circuit Court's stay of the FCC Interconnection Order did not negate the effectiveness of the remaining provisions of the order relating to resale restrictions and resale terms and conditions. The Circuit Court stated:

> "...we have decided to stay the operation and effect of *only* the pricing provisions and the 'pick and choose' rule contained in the FCC's First Report and Order pending our final determination of the issues raised by the pending petitions for review." (Emphasis added.)

The Circuit Court did not stay the FCC's rules prohibiting resale restrictions, except where the restriction could be demonstrated to be reasonable and nondiscriminatory. In addition, the Act, itself, remains in full force and effect.

On September 10, 1996, a subsequent ALJ ruling solicited further comments regarding what changes, if any, in the Commission's adopted resale policies should be implemented to be in compliance with the Act and with the FCC's August 8, 1996, First

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[4] *Iowa Utilities Board v. FCC*, Order filed October 15, 1996 (8th Cir 1996).

Report and Order, as modified by the Circuit Court stay. Comments pursuant to the latter ruling were filed on October 8, 1996 and reply comments on October 18, 1996.

Since the issuance of D.96-03-020, a number of CLCs have entered into contracts with Pacific and GTEC which provide for the resale of various LEC retail services. In instances where CLCs and LECs have been unable to reach mutual agreement on the terms of interconnection and resale arrangements, the contract disputes have been submitted to the Commission for arbitration, pursuant to the provisions of § 252(b)(1) of the Act and our own implementing rules adopted in resolutions ALJ-167 and ALJ-168.

As provided under § 252(d) of the Act, the state commission must resolve arbitrated issues in a manner consistent with the pricing standards contained in the Act. The state commission cannot approve an interconnection agreement arrived at through arbitration that does not meet the requirements of § 251 of the Act and the standards set forth in § 252(d) of the Act relating to pricing for interconnection, network elements, transport and termination, and wholesale rates. (§ 252(e)(2)(B) of the Act.) A number of the resale issues in dispute in this proceeding have been addressed within the limited context of some of the arbitrated agreements approved by the Commission. To the extent the resale rules adopted in this decision are inconsistent with the outcomes reached in the arbitrated agreements, the agreements must be modified.

III. Procedural Issues

A. Parties' Positions

Parties disagree regarding the procedural approach the Commission should use to address remaining disputes over CLC resale issues. Pacific and GTEC believe no further action should be taken in the Local Competition Proceeding regarding resale issues. Pacific and GTEC view negotiations and arbitrations among individual carriers as the appropriate vehicle for resolving currently pending resale disputes. Pacific believes permanent wholesale rates should be determined in the OANAD proceeding.

Given the ongoing arbitration proceedings and the stay of the resale pricing portion of the FCC's First Report and Order, Pacific claims the Commission is

under no obligation, legal or otherwise, to implement the First Report and Order in this proceeding. Pacific believes it would be wasteful of resources to address the same issues in this proceeding that are being resolved through the arbitration process with individual carriers. GTEC claims the Act mandates negotiation by the parties prior to the Commission establishing any terms and conditions for the resale of services. (The Act, § 252(c)(1).) Subsections 251(b)(1) and (c)(4) of the Act set forth the duty of incumbent LECs to negotiate in good faith the particular terms and conditions of resale agreements with other carriers.

In the event the Commission should choose to address further resale issues in this proceeding and to order more LEC services be made available to all CLC resellers at a discount, Pacific believes this action would constitute a change to D.96-03-020. Pacific also argues that the further removal of generic resale restrictions in this proceeding would change D.96-03-020, and that such changes would require further evidentiary hearings. Pacific cites § 728 of the Public Utilities (PU) Code, stating it permits rate changes only "after a hearing." Pacific claims that PU Code § 1708 requires "notice to the parties" and the same "opportunity to be heard" as specified in PU Code § 1705 before a Commission order can be changed. PU Code § 1705 requires that in all hearings, parties are "entitled to be heard and to introduce evidence." Pacific states that mere opportunity to comment on resale issues is not enough, and the phrase "opportunity to be heard" implies that a party must at least be permitted to prove the substance of its protest rather than merely being allowed to submit written objections to a proposal."[5] Pacific cites *City of Los Angeles v. Public Util. Comm'n*, 15 Cal3d 680 (1975), wherein the Supreme Court stated that, "[T]he commission must hold a full hearing before the promulgation of a general rate tariff (PU Code § 1705; Cal. Admin. Code, title 20, §§ 52, 59-61, 64, 68-70, 75-76).[6]

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[5] *California Trucking Ass'n v. Public. Util. Comm'n*, 19 Cal3d 240, 244 (1979).

[6] 15 Cal.3d at 698-99.

Pacific claims that the evidentiary hearing held in Phase II dealt only with evidence on the resale of basic service, and that the record in that phase cannot be the basis for discounting additional services such as Centrex and Private Branch Exchange (PBX) trunks. Pacific claims that resale of Centrex was beyond the scope of the Phase II hearings, and that there are no facts in the record to support a discount on Centrex, nor to support unlimited resale of Centrex.

The Coalition believes that the Commission should resolve the remaining resale terms and conditions issues in this proceeding based on written comments. The Coalition argues that the stay of the FCC order covered only limited provisions, and has no impact on the resale restrictions issues. The Coalition objects to Pacific's proposal to address all remaining resale issues in OANAD. The Coalition states that OANAD was intended to address the unbundling of Pacific's and GTEC's local exchange networks and the establishment of cost-based prices for those network elements. The Commission decided in D.96-03-020 that the issue of permanent wholesale rates should also be addressed in OANAD. The Coalition argues, however, that OANAD was only supposed to address the issue of *permanent* wholesale rates, and that other local competition resale issues, terms, and conditions have always been, and should remain, within the scope of the local competition proceeding.

The Coalition disputes Pacific's claim that evidentiary hearings are required in this proceeding to remove existing resale restrictions and argues that Pacific's reliance on PU Code § 1708 is misplaced. The Coalition argues that Pacific's assertion that hearings are necessary is contradicted by Pacific's own arguments in the OANAD proceeding. In that case, Pacific argued that *permanent* wholesale rates could be set through comment cycles without evidentiary hearings.

GTEC believes the only further action for the Commission to take regarding resale issues is to mediate disputes in negotiations between LECs and resellers, if asked by a party to do so, to approve or reject an agreement, or if the parties cannot reach an accord, to impose resale conditions, pursuant to compulsory arbitration which are applicable only to the parties to the negotiation. GTEC does not believe,

however, the Commission should adopt any further generic resale rules in place of individual negotiations or require the filing of wholesale tariffs.

TRA argues that although arbitrated and negotiated interconnection agreements are publicly available, exclusive use of them for determining terms and prices would prove unwieldy for most parties. Instead of being able to refer to a single, concise compilation of rates, terms, and conditions of service, resellers would have to obtain copies of each of the growing number of interconnection agreements that have been filed and approved by the Commission in order to determine the pricing and terms of the LECs' wholesale offerings. Moreover, while the rates for wholesale services determined in arbitrated agreements will ostensibly be available to other parties under similar terms and conditions, each reseller would still have to go through the process of establishing its own interconnection agreement.

TRA believes that, except for the very largest carriers, most CLCs will not have the capability to effectively negotiate or arbitrate agreements with Pacific or other LECs. They will be outmanned and outfunded on every issue, resulting in delayed market entry for new competitors and a significant, if not complete, barrier to entry by smaller carriers. TRA argues that in order to fully open the local exchange marketplace to competition, Pacific and GTEC must be required to tariff their wholesale offerings.

B. Discussion

We conclude that the instant proceeding is the appropriate docket in which to address all outstanding resale issues, including the propriety of remaining restrictions on the resale of LEC telecommunications services. The only exception will be the determination of permanent wholesale rates, an issue to be resolved in our OANAD rulemaking. We have previously indicated in D.96-03-020 and by ALJ ruling that outstanding issues relating to remaining resale restrictions and the applicability of a wholesale discount would be addressed in Phase III of this proceeding. We find unconvincing the reasons offered by Pacific or GTEC to change our procedural plan at this point. The fact that some of the same resale issues under consideration in this

rulemaking have also been addressed in various arbitration cases does not relieve us of the need to resolve these issues in this rulemaking.

We disagree with GTEC that the process of arbitration is a sufficient procedural vehicle to implement local exchange resale competition. Arbitration does not supersede our generic rulemaking process. There is nothing inconsistent between the use of arbitration to resolve individual disputes and the adoption of generic rules to address some of the same issues resolved in individual arbitration cases. We are not precluded by the Act from adopting generic rules and requiring the LECs to file wholesale tariffs prior to negotiation between LECs and CLCs for resale arrangements. As stated in § 261(c) of the Act:

> "Nothing in this part precludes a State from imposing requirements on a telecommunications carrier for intrastate services that are necessary to further competition in the provision of telephone exchange service or exchange access as long as the state's requirements are not inconsistent with this part or the Commission's regulations to implement this part."

Likewise, the FCC in its First Report and Order acknowledges the authority of the states to conduct their own rulemakings and investigations into costing and pricing. Specifically, the states "may permit recovery of a reasonable share of forward-looking joint and common costs of network elements." (First Report and Order, ¶ 620.)

The outcomes reached in the arbitration cases are not precedent setting, and only apply to the individual carriers involved in the arbitration. The limited time and resource constraints committed to the arbitration cases decided to date have not permitted the opportunity to develop a full record on all of the substantive issues relating to resale of LEC services. Moreover, our arbitration decisions have not produced final guidance on resale issues even within the limited context of the arbitrated agreements. Our arbitration decisions were rendered with the understanding that the interim resolution reached would be subject to modification based on future Commission decisions in our generic road map rulemaking-and-investigation proceedings. (e.g., D.96-12-034 at 11-12).

We disagree with GTEC that contracts for resale are a sufficient means of offering wholesale services to CLCs. As noted by TRA, smaller CLCs in particular may lack the resources to effectively negotiate or arbitrate satisfactory resale agreements with the LECs. In addition, PU Code § 489 requires public utilities to file tariffs containing "rates, tolls, rentals, charges and classifications..." Mere reliance on contracts entered into by various CLCs and LECs through arbitration fails to satisfy the tariff requirements of PU Code § 489. We shall therefore require LECs to file wholesale tariffs for each of the services authorized for resale pursuant to this decision to the extent they have not already done so.

This is also the proper docket to address the applicability of wholesale discounts to those resold services which have not previously been subject to any wholesale discount. However, the determination of final wholesale discounts based upon avoided cost studies belongs in the OANAD proceeding where a further evidentiary record will be developed.

We conclude that further evidentiary hearings on resale issues are not required in order to establish the additional rules regarding resale adopted in this decision. The requirement for hearings under PU Code § 1708 does not apply to the situation we face here. PU Code § 1708 applies to situations where provisions adopted in a Commission order which were based upon evidentiary hearings are being changed without hearings. In this decision, we are not changing any of the provisions of the Phase II order which were based upon evidentiary hearings. In Phase II, we held evidentiary hearings to establish wholesale discount rates for resale services, but relied upon written comments for addressing resale restrictions. Likewise, we conclude that further resolution of resale restrictions can be resolved in Phase III based upon written comments only.

The 12%/17% discounts were established based on Phase II evidentiary hearings. The evidentiary record from Phase II together with filed Phase III comments form a sufficient basis to determine whether the existing avoided-cost discounts should be applied to additional services. Since the avoided costs used to compute the 12% and 17% discount rates were derived based on the aggregate of all LEC services, it is

consistent with the record already developed in Phase II to apply these discounts to all retail services. Since we are not relitigating the amount of the discount for purposes of this decision, but merely applying the previously adopted Phase II discounts to the relevant retail services, there is no requirement for further evidentiary hearing for this limited purpose.

Moreover, we indicated that the interim resale provisions adopted in D.96-03-020 were temporary, and that we would consider making further modifications to the terms and conditions of resale in Phase III of this proceeding. Thus, the provisions of this decision merely carry forward the mandates of the Phase II decision to move ahead with further implementation of resale competition.

IV. Substantive Issues

A. Scope of LEC Services Subject to Resale

D.96-03-020 authorized the resale of certain Category II local exchange services effective March 31, 1996, as set forth in Table 1 below:

Table 1

Category II Services Subject to Resale

- Residential 1FR and 1MR service
- Business 1MB service
- Local usage, Zone Use Measurement (ZUM), and Extended Area Service (EAS)
- All vertical features (except for grandfathered services)
- COPT line and features
- Centrex/CentraNet
- Integrated Services Digital Network (ISDN)
- IntraLATA toll
- Private lines (except grandfathered services)

Since the issuance of D.96-03-020, we have taken further steps to move toward a competitive local exchange resale market. D.96-03-020 limited resale to certain LEC services in existence as of March 31, 1996, the effective date of the decision. By D.96-12-076, granting the Petition to Modify D.96-03-020 filed by Sprint, AT&T, and MCI, we extended the resale authorizations of D.96-03-020 to apply prospectively to all new LEC retail services offered for the first time after March 31, 1996, the effective date

of D.96-03-020. In particular, we directed the LECs to make Caller ID service available for resale effective immediately.

Pacific and GTEC were each also directed to file a report listing any new retail services which became available since the effective date of D.96-03-020 together with their plans for making such services available on a wholesale basis. Such a report was filed on January 6, 1997, by Pacific and GTEC, and is included in Appendix C of this decision. We also ordered that to justify restrictions on the resale of any new retail services, Pacific and GTEC were required to file motions in this docket showing why any proposed resale restrictions on new services were necessary, reasonable or nondiscriminatory pursuant to § 51.613 of the Code of Federal Regulations.

In accordance with the Act, we now consider what additional LEC services should be authorized for resale.

1. Parties' Positions

Parties disagree concerning the specific services which should be made available for resale, as required under the Act. Pacific claims that the Act does not require all retail services to be resold, but only "telecommunications services" as defined by the Act. Pacific claims that certain of its retail services are not "telecommunications services" as defined by the Act, and need not be resold. For example, Universal Lifeline Telephone Service (ULTS) is a state-mandated billing mechanism used in conjunction with Pacific's residential services, and is not itself a telecommunications service, according to Pacific. Pacific argues that resellers can provide ULTS by reselling Pacific's residential services, and by applying to the ULTS Fund for ULTS subsidies for qualifying end users. Pacific objects to makings its ULTS available for resale because it will then have to police resellers and there will be no check to ensure they charge appropriate ULTS rates.

Additionally, Pacific claims enhanced services such as voice mail are not subject to resale, since the Act does not include enhanced services in its definition of "telecommunications services." Pacific claims that inside wiring is not a "telecommunications service," and therefore objects to making the service available for

resale. Pacific claims its competitors have the same ability to offer inside wiring services as does Pacific, because they can hire one of the many companies providing this service or hire their own employees to install and maintain inside wiring. In Appendix B is a list of retail services which Pacific attached to its October 8, 1996, comments, which it claims are not telecommunications services and which it does not intend to offer for resale.

GTEC notes that the FCC found that the following should not be subject to resale:

- exchange access services (Order, ¶ 873, 74);
- services purchased by a party which is not a retail subscriber as described in § 251(c)(4). (Order, ¶ 871.)
- services which do not fall within the definition of "telecommunications services" under § 3(46), including information services, enhanced services such as voice messaging, and "telephone equipment," which is defined separately from services under § 3(50). (Order, ¶ 871.)
- independent public payphone service at a wholesale rate. (Order, ¶ 876.)
- residential services to customers who are ineligible to subscribe to such services from the LEC. (Order, ¶ 962.)
- states may prohibit the resale of lifeline or other means-tested service offered to end users not eligible to obtain from the LEC. (Order, ¶ 962.)
- LEC promotional offerings of up to 90 days need not be offered at a discount to resellers. (Order, ¶ 950.)
- State commissions may determine if there are reasonable resale restrictions on promotions. (Order, ¶ 952.)
- § 251(c)(4) does not require an LEC to disaggregrate a retail service into more discrete retail services. (Order, ¶ 877.)

The Coalition argues that unless all LEC retail services are made available for resale, CLCs will not be able to offer the same services to their customers, which will significantly undermine the CLCs' ability to compete with the LECs. The Coalition argues that consistent with the Act, the LECs should make *all* retail end-user

services available for resale, including discount plans for services such as toll and vertical features, PBX trunks, foreign exchange service, inside wire,[7] voice mail, and promotional offerings. The Coalition claims the LECs have denied CLC resellers the ability to resell inside wire and voice-mail services to gain a competitive advantage over new entrants, and that, without access to voice mail, many customers will be unwilling to switch to a new carrier. Absent the availability of voice mail for resale, CLC resellers will have to purchase data links and multiline hunting group in every end office in order to offer voice mail services. The Coalition argues that it is not economically viable for resellers to offer voice mail from a separate platform given the expenses the reseller will have to incur.

AT&T/MCI dispute Pacific's claim that ULTS is not a telecommunications service, and argue that ULTS is provisioned in exactly the same way as basic exchange service. AT&T/MCI believe that ULTS should be offered for resale subject to the requirement that only qualifying retail customers receive ULTS. Telecommunications Carriers of Los Angeles (TCLA) adds the following services which it believes should be available for immediate resale: Foreign Exchange Line (FEX) service, Remote Call Forwarding (RCF) service (as distinct from Directory Number Call Forwarding), Off-Premise Extension Service, "Number Retention Service," all "Broadband" and "Fast-Packet" services, and Primary Rate ISDN. Working Assets argues that this Commission must guarantee that small companies will have access to all of the products which Pacific sells to its own retail telecommunications customers.

In its April Comments, Pacific asked the Commission to abey the resale of semipublic service until completion of the FCC payphone rulemaking and listed a number of necessary terms and conditions if semipublic service were resold. The FCC decision implementing § 276 of the Act subsequently determined that ILEC payphones are Customer Premises Equipment (CPE). Pacific argues that since the Act

[7] Time Warner does not agree that Pacific's and GTEC's inside wire maintenance plans should be available for resale.

requires resale of only telecommunications services, not CPE, the FCC decision precludes resale of Pacific's semipublic service. Pacific suggests a COPT provider wishing to offer the equivalent of semipublic service can simply place its payphones on Pacific's COPT line or a CLC's COPT line and provide service to the site owner. Consequently, Pacific believes this Commission need not further consider the issue of resale of semipublic service.

ORA does not believe that semipublic telephone service should be authorized for resale at this time. Semipublic telephone service is currently provided by the LECs as a bundled service. Therefore, if this service is subject to resale, the resellers would also need to provide this service as a bundled service, and must first purchase the required basic access line services from the LECs and perhaps the equipment and other features as well.

2. Discussion

In D.96-03-020, we authorized the resale of certain LEC retail services by CLCs. Since the issuance of D.96-03-020, further steps have been taken in progress toward the full opening of telecommunications services to resale. On April 24, 1996, Pacific filed an advice letter to introduce PBX Trunk Line Service, Direct Inward Dialing, and Identified-Outward-Dialing and Supertrunk lines for resale, but with no avoided-cost discount. As noted, D.96-12-076 directed the LECs to make available for resale new retail telecommunications services which were offered to retail customers for the first time after March 31, 1996, the effective date of D.96-03-020. In response to this directive, Pacific made available for resale 56 bps and 64 bps Connection to Switched Multimegabit Data Service, effective April 13, 1996. GTEC filed an advice letter on March 19, 1997, to make the following services available for resale:

- Coin Line Service
- ControLink
- Direct Inward Dialing Service
- Directory Connect Plus
- Exchange Services Mileage
- Foreign Exchange Service
- GTE Dial Data Link Service

- PBX Trunk Service
- PBX Discount Pricing Plan
- Personalized Telephone Number
- Reservation of Telephone Number
- Rotary Service
- Telephone Directory Services
- Verification/Interrupt Service

We conclude that all remaining retail telecommunications services currently being offered by the LECs, including those services summarized in Appendix A, should be made available for resale, subject to the specific exceptions noted in our discussion below.

Parties disagree on whether certain additional services qualify as "telecommunications services" as defined under the Act and whether they should be required for resale. Pacific provided only a bare listing of services in its October 8 comments not to be offered for resale, with no description of what each service involves and no explanation to justify its classification as a nontelecommunications service. Since Pacific has failed to provide this information, we have no basis to evaluate whether any of these services should be restricted. Therefore, except for those services discussed below, we shall defer ruling on whether Pacific's list of services in Appendix B should be exempted from resale pending an augmented showing explaining what each service is, and why it does not qualify as a "telecommunications service" or should not be subject to resale.

Turning to Inside Wire Repair/Maintenance, we shall not require Pacific or GTEC to resell their service plans or maintenance services. Pacific and GTEC currently offer their retail customers the option of paying a fixed amount for a service plan which entitles customers to any necessary maintenance and repair service for inside wiring. If customers do not subscribe to this service plan, a customer needing repair service may pay Pacific or GTEC a separate charge for these services when or if needed, or the customer may call an independent vendor offering this service.

Pacific argues specifically that since there are independent vendors which offer inside wire maintenance service, it is unnecessary for CLCs to rely upon Pacific to make its inside wire repair/maintenance service available for resale.

While we recognize that resellers' ability to compete with the LECs may improve by offering inside wire services, we find no compelling basis to require the LECs to offer their inside wire services for resale to the CLCs as long as there are independent vendors available to CLCs who can provide this service. The incumbent LEC has no competitive advantage over CLCs where an independent source of vendors offering inside wire services is available. Therefore, there is no need to require the LEC to offer its inside wire repair services or service plans for resale to achieve competitive parity. And although the LECs offer inside wire maintenance as part of a bundled local service package, similar to voicemail, the two services can be distinguished. Inside wire maintenance and repair are services which any certified electrician can replicate. There are relatively low technical barriers to enter to this market and a relatively large base of qualified providers.

We make this conclusion to not require. resale of inside wire maintenance and repair services notwithstanding the anachronistic classification of inside wire maintenance service as a Category 11 service. Inside wire maintenance is a competitive service; yet for ratemaking purposes, the revenues and expenses stemming from it are treated "above-the-line" pursuant to our order in D.86-12099. We adopted this policy primarily because of a concern that existed at the time that "the inside wire of residential and business customers might be so integral to the utilities' operation that the utilities would have a natural competitive advantage over other firms in providing maintenance service." (Re Pacific Bell, D.90-06-069, 36 CPUC2d 609,614) The fundamental concern here is for competition in the inside wire market. Our action today to refrain from requiring a discount and resale of inside wire maintenance by the LECs furthers the same goal we attempted to meet in our classification of inside wire maintenance above the line by avoiding the chilling and interventionist effect a mandated resale of this service would create in the inside wire maintenance market.

We shall not require the LECs to offer ULTS for resale. ULTS is not a telecommunications service as defined by the Act, but is a billing mechanism to subsidize low-income customers. In D.96-03-020, we stated that "CLC resellers should receive reimbursement from the [ULTS] fund for the ULTS service they provide to end users." We conclude that this existing arrangement adequately compensates the CLC resellers for providing UTLS exchange service to their qualifying end users and assures that ULTS service is only offered to low income customers and is not provided as a low-priced access-line service to unqualified customers. The existing arrangement places CLCs and LECs on an equal basis with respect to their ability to offer ULTS service. By not requiring the LECs to resell their ULTS service to the CLCs, we relieve the LECs of the burden of monitoring and policing the CLCs to ensure that only qualified end users receive the service.

Likewise, we will not require the resale of semipublic service in light of the comments by both Pacific and ORA. No CLC expressed a particular interest in reselling this service.

Promotional offerings of the LECs must also be made available for resale in a manner consistent with the Act. Under the First Report and Order, an incumbent LEC shall make available for resale at a discount all promotional offerings except those involving rates which will be in effect for 90 days or less. In its First Report and Order, the FCC established a presumption that promotional prices offered for a period of 90 days or less need not be offered at a wholesale discount to resellers. The FCC concluded that promotions of such limited length may serve procompetitive ends by enhancing marketing-based competition. The FCC stated that promotional prices offered for more than 90 days must be offered for resale at wholesale prices pursuant to § 251(c)(4)(A) of the Act. The avoided-cost discount rate shall therefore be applied to the promotional retail rate for all such plans exceeding 90 days.

In recent advice letter filings of Pacific, a question has been raised as to how the terms of resale are affected where Pacific offers a promotional service free of charge for periods exceeding 90 days. We believe it is consistent with the intent of the Act that any promotional offering exceeding 90 days should be offered to resellers at

the price of the promotion, less an avoided-cost discount. In cases where the promotional price approaches or reaches zero, the same principle should apply. The discount on a price of zero is zero. The reseller should therefore be offered the promotional offering at a wholesale price of zero. It would be inconsistent to apply a reseller discount to a LEC's retail promotional price of one cent, but to deny the reseller recognition of the promotional offering merely because the LEC reduced the promotional price from one cent down to zero.

For example, under its "Education First" program, Pacific provides ISDN service to schools and libraries free of installation or service charges for a one-year promotional period.[1] Consistent with the adopted resale policy established here, we shall require that Pacific offer the ISDN "Education First" promotional service to CLCs at no charge for the same period of time the service is available for free to Pacific's retail customers. We shall apply a similar requirement to other promotional programs of Pacific and GTEC which may be offered to retail customers for a prescribed period without charge.

We hereby direct the LECs to offer for resale the additional telecommunications services as requested by TCLA to the extent they have not already done so. These include RCF, Off-Premise Extension Service, "Number Retention" Service, and all "Broadband" and "Fast-Packet" services.

B. Wholesale Discount Rates

We will now address two issues related to wholesale discount rates. First, we must determine if the *amount* of the discount adopted in D.96-03-020 should be changed. Second, we must determine if the wholesale discount should be applied to additional LEC services offered for resale which are not presently subject to the discount.

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[1] See Commission Resolution T-15992, dated March 18, 1997.

In D.96-03-020, we adopted interim wholesale discount rates of 17% for Pacific and 12% for GTEC to be applied to 1MB, local usage, ZUM, EAS, vertical services for features not covered under previously existing wholesale tariffs, and intraLATA toll. These discounts represented our best approximation of the avoided retail costs associated with these services.

For residential 1FR and 1MR service, we adopted discounts of 10% for Pacific and 7% for GTEC.[9] We further ordered in D.96-03-020 that wholesale rates for COPT, Centrex/CentraNet, and private line services were to be set equal to then-existing retail rates pending further Phase III review. We authorized the resale of ISDN at the then-current retail ISDN rate subject to reevaluation once we resolved Pacific's pending ISDN rate A. 95-12-043.[10] Vertical features covered under previously existing wholesale tariffs continued to be priced at then-existing wholesale tariff rates. Directory assistance (DA) and other operator services were not made subject to the avoided-cost discounts at that time.

1. General Issues

a) Parties' Positions

Pacific and GTEC argue that in view of the stay of the resale pricing provisions of the FCC First Report and Order, this Commission is not required to change existing wholesale discount rates to conform to the FCC discounts.

In its April 18, 1996, comments, Pacific initially proposed an 8% discount off the retail price for new services available for resale until it conducts a cost study showing actual avoided costs. Pacific offered to negotiate a different tariffed discount with the CLCs requesting a service be made available for resale. If agreement was not reached, Pacific proposed to arbitrate the appropriate discount before the

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[9] In D.97-04-090 regarding Pacific's Application for Rehearing of D.96-03-020, we revised these discounts to 17% and 12%, respectively.

[10] We have since issued D.97-03-021 in which we adopted revised retail ISDN rates and directed that discounts of 17% for Pacific and 12% for GTEC be applied to set wholesale ISDN rates.

Commission (with resale at the 8% discount in the interim). Pacific also proposed to arbitrate any terms and conditions for the services available for resale, if parties could not agree on them, either.

In its October 1996 comments, Pacific subsequently advocated that the Commission's 17% discount was appropriate on an interim basis pending further determination in OANAD. Pacific believes that in light of its own preliminary cost studies filed in OANAD, this interim discount is acceptable. Pacific argues that the discount rate computed by the FCC is overstated and should not be adopted by this Commission.

Pacific argues that any interim wholesale discount should be subject to a true-up after OANAD determines permanent rates. Pacific states that the interim wholesale discount rate is not based on cost studies of avoidable costs and thus, is inherently flawed. Pacific and GTEC believe that the 17% and 12% wholesale discounts overstate avoided costs. Pacific also claims that applying the 17% discount to the retail *price* rather than the *cost* overstates the avoided costs. Pacific also contends that it double counts and overstates avoided costs to apply the 17% discount to an already discounted pricing plan. Pacific claims the imposition of such an arbitrary interim rate violates its due-process rights and will lead to adverse financial consequences. Pacific claims a true-up requirement will make it whole for the losses suffered during the interim period, and will encourage other parties not to delay the adoption of permanent rates in the OANAD proceeding.

Although the pricing rules, including wholesale discounts, contained in the FCC's First Report and Order implementing the interconnection portions of the Act have been stayed by the Circuit Court, AT&T/MCI argue that the Commission should nonetheless adopt the default discounts calculated by the FCC for Pacific and GTEC. AT&T/MCI claim that the default discounts which the FCC developed were based on a six-month analysis of a robust record containing wholesale discount proposals from all industry group segments, as well as an analysis of the resale orders handed down by various state commissions. Based upon revisions to the avoided cost model supplied by MCI, the FCC calculated specific wholesale discounts

for Pacific and GTE, the latter's based on its national operations, of 24% and 19%, respectively. AT&T/MCI propose that these discounts be adopted by this Commission and applied to all wholesale services, including Centrex/CentraNet, ISDN, Operator Services, DA, and Private Lines. Moreover, they propose the same discounts be applied for services which were not initially made available for resale—most notably PBX trunks.

Time Warner, TCG, Sprint, and CCTA do not agree with the basis for, and amount of, the resale discounts in D.96-03-020. Instead, they believe resale discounts should be determined as part of the costing process in the OANAD proceeding. In light of the Circuit Court's stay, ORA recommends that the interim discounts adopted in D.96-03-020 remain in place until one of the following two events occurs: 1) the First Report and Order is reinstated by court order, *or* 2) the Commission has adopted permanent wholesale discounts in OANAD. ORA agrees with GTEC that the Commission "should not at this time implement changes to its own resale rules" insofar as GTEC refers to resale prices. (GTEC's Opening Comments (OC), p. 3.) In the event that the Commission determines it would be appropriate to revise the interim wholesale discounts prior to resolution of the stay of the First Report or to adoption of permanent discounts in OANAD, ORA recommends the 24% and 19% discounts for Pacific and GTEC, respectively, as derived under the FCC cost methodology.

Both the Coalition and ORA believe it is consistent with the Act to apply avoided-cost discounts to *all* services offered for resale by LECs, without exceptions. Therefore, to the extent that there are currently no services whose retail rates have been adjusted to exclude avoided retailing costs, the Coalition and ORA believe all retail services offered by the LECs for resale should be subject to discounts based on avoided retailing cost.

b) Discussion

We must first determine whether the avoided-cost discounts which we adopted in D.96-03-020 should be modified on an interim basis pending the

development of permanent discounted rates. We previously adopted average interim wholesale discount rates in D.96-030-020 following evidentiary hearings.

We find no basis at this time to either increase or reduce the interim wholesale discount rates of 17% and 12% for Pacific and GTEC, respectively. Our intent in setting interim discount rates was to provide proper economic signals to facilities-based carriers (both LECs and CLCs) and resale-based CLCs offering local exchange services. As prescribed under the Act, the wholesale rate discount is determined on the "basis of the retail rates charged to subscribers for the telecommunications service requested, excluding the portion thereof attributable to any marketing, billing, collection and other costs that will be avoided."[11]

If discount rates were set in excess of avoided costs, facilities-based providers, including the incumbent LECs, would be at an unfair competitive disadvantage relative to resellers, and incentives would be present for economically inefficient pricing and investments. If discount rates have been set too low, incentives would be lacking for the development of a competitive resale market.

We affirm here that the discounts adopted in D.96-03-020 of 17% for Pacific and 12% for GTEC and adjusted in D.97-04-090, offer the proper competitive balance for interim purposes, and shall remain in effect until permanent rates are established in the OANAD proceeding.

We reject the proposal of AT&T and others to increase the LEC discount rates in this proceeding to conform to the discounts computed by the FCC using the MCI cost methodology. In light of the Circuit Court stay of the pricing provisions of the FCC Order, we are under no legal obligation to adopt discount rates within the default discount range set forth in the FCC Order, or make any changes in our adopted wholesale discounts to reflect the FCC methodology. Until or unless the stay of the FCC pricing rules is lifted and those rules are upheld by the Court, we have discretion to determine what discount rates are appropriate. Further, the record in

[11] Act, Section 252(d)(3)

Phase III of this proceeding is not adequate to support our adoption of the FCC price methodology at this time. We are developing our own record on cost-based discounts in the OANAD proceeding.

We will not adopt Pacific's proposal to offer CLCs only an 8% discount for resold services pending the determination of actual avoided costs based on cost studies. Pacific provides no basis to support the 8% discount as a reasonable measure of avoided retail costs. We also are unable to act on Pacific's claims that by applying the adopted 17% discount to the retail *price* rather than the *cost* we overstate true avoided costs. Pacific provides no alternative calculation to restate the amount of the discount to reflect a discount computed against cost instead of retail price. Moreover, since Pacific does not account separately for the individual retail cost of each service it provides, there is no realistic way to separate a "cost" element within each retail price for purposes of applying the discount rate. It was for this reason that we adopted an interim broad average discount rate which was based on all LEC services. Thus, Pacific provides no basis to support a revision to the 17% interim discount rate pending the development of cost studies in OANAD.

In the event the FCC mandates different rates, we shall then consider what further action is appropriate. We reject Pacific's proposal to make the wholesale revenues subject to a true-up mechanism with a retroactive adjustment for the difference between revenues collected under the interim discounts versus the final discounts adopted in OANAD. We conclude that such a provision would create too much uncertainty for CLCs with respect to the rate levels they must pay, and would risk stalling further development of the CLC resale market until permanent rates were established.

We conclude that the proper place for further consideration of changes to the wholesale discounts is in the OANAD proceeding. Therefore, subject to the outcome of the OANAD proceeding, we shall continue to apply the wholesale discounts established in D.96-03-020.

2. Applicability of Wholesale Discounts for Specific Services

a) Parties' Positions

(1) Centrex/CentraNet

ORA believes that use of the current Centrex/CentraNet tariffed rates as interim wholesale rates hinders the development of full competition for these services, and that a wholesale discount is appropriate. ORA is concerned that simply applying the Commission's authorized avoided-cost discounts of 17% for Pacific and 12% for GTEC to the tariffed ceiling rates for these services may not provide the CLCs sufficient margin to compete with Pacific's and GTEC's contracting ability for these services. Therefore, pending resolution of issues relating to imputation, avoided costs, and the setting of wholesale and retail rates based on total-service long-run incremental costs studies in the OANAD proceeding, ORA recommends that Centrex/CentraNet services be offered at wholesale rates equal to the currently authorized statewide average price floors adopted for these services in D.94-09-065.

In D.94-09-065, the Commission adopted Centrex/CentraNet statewide average price floors based on the bundled services' long-run incremental costs plus imputation of the monopoly building blocks' contribution. The corresponding ceiling rates for these services were based on the LECs' reported direct embedded costs for these services.

ORA believes interim Centrex/CentraNet wholesale prices should be set at the price floors adopted in D.94-09-065 for these services, in order to vigorously stimulate competition between Centrex and other business-system services in California.

Pacific objects to the wholesale pricing of Centrex services at existing price floors, arguing that such a "discount" is completely unrelated to actual costs avoided and, therefore, contrary to the Act and the intent of the D.96-03-020. Pacific notes that the avoided costs of selling Centrex to CLCs will be calculated in OANAD. In this proceeding, Pacific claims there is no evidence on record on which to establish a separate discount for Centrex.

(2) PBX Trunks and Super Trunks

Centrex and PBX systems[12] are competing substitutes for, and are discretionary services, to business basic exchange service with added features.[13] In D.96-03-020, the Commission authorized Centrex services for resale by the CLCs, but did not authorize PBX trunks for resale. Pacific subsequently agreed to make PBX trunks available for resale and filed an Advice Letter to effect this, but with the wholesale rates set equal to retail rates. The advice letter was not protested, and has become effective. GTEC subsequently filed an advice letter on March 19, 1997, to make PBX trunks available for resale as well. The remaining dispute concerns the wholesale discount rate applicable to PBX services.

ORA believes that setting the PBX wholesale prices at the currently authorized ceiling rates, less the avoided-cost discounts adopted in D.96-03-020 for business services, will not promote competition for PBX services, since Pacific and GTEC could easily offer PBX services at a much lower price under special and customer-specific contracts.[14] Accordingly, ORA recommends that interim wholesale rates for PBX services be set at Pacific's and GTEC's currently authorized price floors for these services. For the same reasons as noted for Centrex, Pacific objects to ORA's discount proposal.

(3) FEX Services

FEX is a service which allows a customer in one exchange to receive dial tone from another exchange. ORA supports the resale of Pacific's and GTEC's FEX services. For residential FEX services, ORA recommends that,

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[12] PBX service consists of PBX Trunk, Direct Inward Dialing (number block and circuit termination), and Hunting.

[13] D.94-09-065, p. 192.

[14] Under the contracting procedures adopted in D.94-09-065, both Pacific and GTEC have the flexibility to price PBX services below their authorized tariffed rates down to their currently authorized price floors, presently set at LRIC. D.94-09-065, FOF 162.

pending the determination of total-service long-run incremental cost-based retail and wholesale rates for this service, the interim wholesale rates be set equal to the current retail rates, less the avoided-cost discounts adopted in D.96-03-020 for Pacific's and GTEC's residential access lines, respectively. Similarly, for business FEX services, ORA recommends that the interim wholesale rates should be set equal to the current retail rates, less the 17% and 12% avoided-cost discounts adopted in D.96-03-020 for Pacific's and GTEC's business access line services, respectively.

Pacific filed a proposal on March 22, 1996, to grandfather FEX service, and does not plan to offer it for resale unless requested by a CLC. GTEC filed an advice letter on March 19, 1997, electing to offer FEX for resale without an avoided-cost discount.

(4) Private Line/Special Access Services

In IRD, the Commission merged the retail private line tariff into the wholesale special access tariff, and private line customers now purchase the same services which Pacific sells to IXCs. The merging of the tariffs ended the distinction between what was formerly a private line and a special access line. Both private lines and special access have been available for resale since March 31, 1996. Since special access/private lines were already available for resale under the LECs' previously existing wholesale tariff, and there is no corresponding retail tariff, we applied no avoided-cost discount to the LECs' existing special access/private line tariff for purposes of CLC resale as authorized in D.96-03-020. Comments were solicited in Phase III as to whether a further discount would be appropriate.

GTEC states that private lines and special access services are wholesale services sold only to large users or customers such as IXCs, banks, and other businesses. GTEC submits that these are not "subscribers" or end-user customers as that term is used in the Act. While sales forces sell these services to large

customers, GTEC notes that there are also similar sales forces who sell these same services to carriers. While the two services may have different ordering procedures, nothing in the ordering procedure guarantees the ultimate use of the service. GTEC believes that since the services are virtually identical on a retail and wholesale basis, no CLC reseller discount should apply.

Pacific claims that discounts are not required under the Act for services already offered on a wholesale basis. Since private lines and access services are functionally the same and are purchased by both CLCs and retail end users from the same tariff, Pacific claims access services and private line services are therefore not subject to any avoided-cost wholesale discount, and the tariffs for these services need not be revised. Pacific believes the discount required by the Act only has to reflect those net costs that "will be avoided" because Pacific is selling to a reseller rather than to its own subscribers.

Sprint argues that so long as private line services are offered as retail services to end-user customers who are not telecommunications carriers, such lines should be subject to an appropriate wholesale discount. Sprint believes separate tariffs may not be needed for private line and special access services so long as discrete wholesale and retail rates for private lines are clear from the face of an LEC tariff.

(5) COPT Service

COPTs are owned and maintained by entities other than the LECs. The services offered to end users are roughly similar to the LECs' public and semipublic telephone services. The COPT entity must purchase an access line from the LEC which provides the connection between the COPT and the public switched network. The COPT entity uses the access line in conjunction with a telephone instrument furnished at the COPT retailer's expense to provide end-user telephone service. The COPT provider must pay a recurring rate and installation charge in addition to usage or toll rates to the LEC and IXCs for services they supply in handling a COPT call.

In D.96-03-020, we tentatively treated COPT lines sold to COPT providers as a wholesale service. Thus, while authorizing the resale of COPT lines, we did not apply any wholesale discount. COPT providers could not therefore avoid paying current tariff rates simply by becoming certified as a CLC. In the March 28, 1996, ALJ ruling, parties were asked to comment on whether COPT service should prospectively be classified as wholesale or retail, depending upon whether COPT customers function more as end users or as resellers.

Parties disagree over whether COPT should be classified as a retail or wholesale service. Pacific states that COPT lines are sold to COPT providers, not to end users as a retail service. COPT providers use Pacific's COPT line combined with their COPT set and other services to offer pay telephone service to end users. Pacific claims its COPT line is merely a part of the service COPT providers offer to the general public, and, therefore, the COPT line is a wholesale service. Since the Act provides that only "retail rates" be discounted, Pacific does not believe COPT prices need to be discounted. GTEC makes a similar argument. Pacific further explains that the characteristics of COPT service and COPT consumers show that there are no avoided retail costs when it sells COPT lines to a CLC for resale. Pacific has a very small sales force for COPT lines, and the uncollectible factor for COPT lines is about a third of the total uncollectible factor for the entire company (which includes switched access). Pacific does not advertise COPT service. COPT providers order service by facsimile, and COPT providers investigate trouble reports regarding their phones. Furthermore, Pacific claims that, even if avoidable costs are found, COPT providers are not carriers, as defined by the Act, and are not permitted to purchase COPT at discounted wholesale rates.

The interests of COPT owners were represented by CPA and G-Five. CPA and G-Five argue that COPT service should be classified as a retail service subject to CLC resale less the Commission-adopted wholesale discount. CPA notes that current rules, regulations, and rate structures treat COPT providers as retail customers, not telephone corporations. Given their status as retail customers,

CLCs should be entitled to serve COPT providers, employing the LEC access lines necessary to do so at discounted wholesale rates.

According to CPA, since the Commission first established the terms of COPT service in 1985, it has declined to treat COPT providers as telephone corporations providing a public utility service. Rather, the Commission has recognized that many COPT providers operate COPT stations simply as an adjunct to their primary lines of business, and so need not be regulated as public utilities. *See, Re Pacific Bell*, D.85-11-057, 19 CPUC 2d 218, 258-60 (1985). CPA asks the Commission to acknowledge its past treatment of COPT providers as retail customers who are obliged to take service from a retail tariff and pay rates based on retail costs. CPA further urges the Commission to distinguish COPT providers from CLCs that resell LEC services *to* COPT providers, and to set wholesale rates and terms for COPT service consistent with other wholesale services.

G-Five sees no need to develop definitions or other tariff measures to define more precisely what is a "resale" as opposed to a retail COPT service. G-Five argues that the Commission already has in place a program of certificating CLCs. Because certificated CLCs are the proper purchasers of wholesale services, the LECs' resale tariffs could be limited to make wholesale COPT service available only to certificated CLCs. Therefore, G-Five believes no further restriction on resale of COPT service is necessary.

G-Five argues that selling COPT service at wholesale will permit LECs to avoid several types of costs related to providing that service on a retail basis directly to private payphone owners. Examples of such avoided costs are the operator service cost that historically has been included in COPT line charges, and retail marketing costs. Although the LEC will no doubt continue marketing retail COPT service, G-Five argues that retail marketing costs are not properly included in a wholesale rate for the same service. Similarly, costs of service ordering and provisioning for retail COPT consumers would not be included in the wholesale rate for COPT service (although there may be some, lesser cost for service ordering and provisioning that is properly included in the wholesale rate). Also, G-Five believes the

LEC's costs for measuring, recording, and billing for use of COPT service is likely to be significantly lower on a unit basis for resale purposes than for retail service.

CPA notes there is a possibility that a CLC would itself enter into the business of owning and operating COPT stations and would wish to order COPT lines from an LEC at wholesale rates. If the Commission perceives that scenario to be unacceptable, the simplest solution, according to CPA, is to forbid CLCs to own and operate COPT stations. CPA seeks an exception to this requirement, however, if a CLC owns and operates COPT stations through fully separated affiliates or subsidiaries. CPA believes fairness requires that the Commission concurrently impose the same structural-separation requirements on Pacific and GTEC.

(6) Custom Calling Services

TCLA proposes that the Commission change the way in which "Custom Calling" and "CLASS" services are priced to resellers. In D.96-03-020, we noted that Pacific's provisional wholesale Custom Calling tariff omitted key vertical services such as call waiting. We directed Pacific to make call waiting, as well as other Custom Calling Services missing from its then-existing wholesale tariff, available to CLCs effective March 31, 1996, as a supplement to the seven Custom Calling Services in Pacific's then-existing provisional Wholesale Custom Calling Services Tariff. The additional Custom Calling features were to be priced to at least reflect the 17% and 12% discounts off the retail rates as adopted in D.96-03-020.

Therefore, as a result of the wholesale pricing adopted in D. 96-03-020, Pacific's Custom Calling Features were priced at one of three different levels. The first category included those Custom Calling Features in the provisional wholesale tariff which became effective prior to D. 96-03-020 were priced at a wholesale rate of $2.50 each. A second group of Custom Calling Features were those included in the Open Network Architecture (ONA) tariff which were priced at a retail rate of $0.45. The corresponding CLC wholesale rate for such services is $0.45 less the 17% avoided-cost discount. The third category was comprised of all remaining Custom

Calling Features which were priced at a retail rate of $3.49 each. The corresponding CLC wholesale rate is $3.49 less the avoided-cost discount of 17%.

TCLA contends that by using Pacific's own wholesale tariff as the interim price floor for Custom Calling and CLASS features, the Commission created a "third tier" for Custom Calling features such that some features are available to Pacific's retail customers at rates lower than the wholesale rates. TCLA proposes that unless Pacific can show why different rates for certain Custom Calling Features are warranted, all Custom Calling and CLASS features be made available to resellers at the $0.45 ONA rate, representing the lowest price for any Custom Calling Service available to retail customers, less avoided retail costs. As a fall-back position, TCLA proposes that all Custom Calling and CLASS services at least be priced at the Custom Calling Services wholesale tariff rate of $2.50. Without this adjustment, TCLA argues, retail customers and Pacific's own affiliate, Pacific Bell Information Systems, will be able to purchase certain Custom Calling Services at a lower rate than resellers pay for those same services. TCLA argues that resellers will consequently be at a competitive disadvantage.

(7) Operator and DA Service

AT&T contends that DA should be discounted. Pacific objects, arguing that the Act requires resale and discounts only for "telecommunications services," which are defined as "the offering of telecommunications."[13] Pacific claims that DA is not the "offering of telecommunications" because it is the offering of only a telephone number. Pacific notes that many entities which are not telecommunications carriers provide DA. GTEC agrees with Pacific that no discount should be applied on the grounds that operator and DA services are identical on a wholesale and retail basis.

b) Discussion

In D.96-03-020, we applied an avoided-cost discount to certain identified services authorized for resale. We conclude that it is consistent with

[13] The Act, Sections 3(51) and 251(c)(4).

the Act, and with our own mandate within California to promote a competitive local exchange market, to require that a wholesale discount be applied uniformly to all LEC retail services which are authorized for resale, pending further rate setting in OANAD. It is reasonable to apply the adopted 17%/12% discounts uniformly to all retail services offered for resale since the discounts were developed from data which reflected the entire range of regulated LEC operations. As such, the computed discounts represent the avoided costs realized across the spectrum of LEC retail services offered for resale. By definition, the individual avoided costs of specific services making up the average will vary. When viewed in the aggregate, however, the use of an average avoided cost provides a satisfactory measure for wholesale-discount purposes pending development of final rates in the OANAD proceeding.

By applying the 12% and 17% discounts to the additional services in this decision, we are simply conforming to the legal mandate established under the Act that all services offered for resale must be discounted based on avoided retailing cost. We shall not attempt to determine separate retail costs which are avoided for each LEC service authorized for resale.

We have already authorized the interim discounts adopted in D.96-03-020 to apply to the wholesale offering of ISDN in D.97-03-021. We have also authorized that the wholesale discounts shall apply to all new retail telecommunications services offered for resale after March 31, 1996, the effective date of D.96-03-020.

Consistent with this policy, we shall also extend the applicability of the avoided-cost discounts to other retail services, including Centrex/CentraNet, PBX trunks, and FEX services. We find no basis in the record to justify setting the wholesale rates for these services at retail price floors as proposed by ORA. We have already applied, in Section IV.A.2 *supra*, the avoided-cost discount to certain retail services which are not strictly defined as telecommunications services, but which provide enhancements to customers' overall service. Such enhanced or auxillary services include voice mail and inside wiring maintenance. Below we address other issues specific to certain services.

(1) Private Line/Special Access

We conclude that the provisions of the FCC First Report and Order provide useful guidance on the treatment of pricing for Private Lines. The FCC has stated:

> "We find several compelling reasons to conclude that exchange access services should not be subject to resale requirements. First, these services are predominantly offered to, and taken by, IXCs, not end users....The mere fact that fundamentally non-retail services are offered pursuant to tariffs that do not restrict their availability, and that a small number of end users do purchase some of these services, does not alter the essential nature of the services. Moreover, because access services are designed for, and sold to, IXCs as an input component to the IXC's own retail services, LECs would not avoid any 'retail' costs when offering these services at 'wholesale' to those same IXCs." (First Report and Order/874).

Consistent with the reasoning of the FCC, we agree that there is no basis to conclude that there are avoided retail costs for Private Line services when sold to CLCs for resale. Since the service is essentially wholesale in nature, we conclude that the CLC reseller should pay the same rate as the IXC. No further discount is appropriate, and we therefore order no change in the existing tariff.

(2) COPT Service

We conclude that COPT service should be considered a retail service, and thus be eligible for an avoided-cost discount. Based on parties' comments, we conclude that COPT service should be treated as a retail service eligible for an avoided-cost discount as long as it is limited to sale to certificated CLCs for resale. COPT service exhibits the characteristics of retail more than wholesale service. In order to define COPT as a wholesale service, there would need to be a corresponding offering by the COPT provider of a retail telecommunications service. Yet, as noted by CPA, we have not previously treated COPT providers as telephone corporations

providing public utility service. Therefore, since COPT companies are not defined as public utilities, we conclude that there is no subsequent "resale" by those companies. COPT providers are in fact retail customers of the LEC. COPT vendors merely provide an instrument through which members of the public can utilize the LEC's or other carriers' networks to make calls.

COPT providers can be clearly distinguished from CLC resellers which are, in fact, public utility telephone companies engaged in the business of purchasing wholesale and independently selling retail telephone services.

Therefore, we shall classify COPT service as a retail service. We shall direct the LECs to file separate wholesale tariffs for COPT service, including an avoided-cost discount of 17% for Pacific and 12% for GTEC. Only certificated CLC resellers may purchase service under the COPT wholesale tariff. COPT vendors shall not be eligible for wholesale COPT rates, but must purchase service under retail COPT tariffs, with no wholesale discount. We shall not permit CLCs to circumvent this restriction by setting up separate affiliates to own and operate COPT stations. We shall therefore prohibit CLCs from reselling COPT service to any COPT-operating affiliated entities.

(3) Custom Calling Services

At the time that TCLA filed its comments concerning Custom Calling Features, Pacific had in effect a wholesale tariff covering certain Custom Calling Features. That tariff was authorized by Resolution T-15748, dated September 7, 1995, to be effective for only an 18-month provisional period. Since the filing of TCLA's comments, Pacific's provisional wholesale tariff for Custom Calling Features has expired. On July 15, 1996, Pacific filed an advice letter to withdraw the provisional wholesale tariff for Custom Calling Features, noting that it intended to offer all Custom Calling Services under a single resale tariff solution and integrated resale ordering platform. Therefore, in light of the expiration of Pacific's provisional wholesale tariff, TCLA's proposal to price all of Pacific's Custom Calling Features for resale at the wholesale tariff rate of $2.50 is rendered moot since that rate is no longer in effect.

Moreover, we find no basis to require that all Custom Calling Features be priced at the rate of $0.45 less an avoided-cost discount, which currently applies only to those features covered under the ONA tariff. The wholesale pricing of Custom Calling Features should be treated no differently from that of any other wholesale services. Our adopted approach is to apply the avoided-cost discount to the LEC retail price to yield a wholesale price. The wholesale prices for each service should track to the corresponding LEC retail prices, less the avoided-cost discount.

Therefore, for those Custom Calling Features covered under Pacific's ONA tariff, the wholesale price should be equal to the retail rate of $0.45 less the 17% avoided-cost discount. For any other Custom Calling Features, the wholesale price should be equal to Pacific's retail rate for the service, less the avoided-cost discount. A similar pricing principle should apply to the pricing of any Custom Calling Features offered by GTEC.

(4) Operator and DA Service

We shall require that the wholesale discount rates of 12% or 17% be applied to operator and DA services for resale. We acknowledge that these services are not "telecommunications services" as defined by the Act. Yet, apart from the minimum requirements of the Act, we conclude that these services should be offered for resale, with the wholesale discount applied in order to permit resale-based CLCs to compete effectively with LECs at the retail level.

C. Basis for Restrictions on Resale

1. Introduction

In order for resale competition to succeed, CLCs must have the opportunity to offer quality of service on par with that offered by the LECs. Accordingly, any unnecessary restrictions on the resale of its telecommunications services must be removed to enable CLC resellers to compete effectively with the LECs.

In D.96-03-020, we authorized the resale of various LEC services subject to certain restrictions. In this order, we consider whether those restrictions should remain in place, be removed, or whether additional modifications are needed.

Our mandate as set forth in PU Code § 709(e) is "[t]o remove the barriers to open and competitive markets and promote fair product and price competition in a way that encourages greater efficiency, lower prices, and more consumer choice." We are also bound to implement the federal mandate to promote telecommunications competition as provided under the Act. In the local exchange resale market, the Act calls for the removal of all restrictions on resale of telecommunications services unless the LECs are able to provide justification that specific, narrowly tailored restrictions are necessary and nondiscriminatory. Consistent with the provisions of the Act, we have provided the LECs an opportunity in Phase III comments to seek to justify any resale restrictions which they believe are necessary.

The Act obligates LECs "to offer for resale at wholesale rates *any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers.*" (47 USC § 251(c)(4)(A), emphasis added.) In addition, under the Act, Pacific, GTEC, and other LECs have an affirmative *duty* "not to prohibit, and not to impose unreasonable or discriminatory conditions on, the resale of...telecommunications service...." (47 USC § 251(c)(4).) The Act does not permit LECs or the Commission to withhold particular retail telecommunications services from wholesale offerings, nor to impose restrictions on resale except in cases where such restrictions are shown to be both reasonable and nondiscriminatory. The FCC allowed no general exception from this edict for promotional or discount offerings, such as toll discount calling plans, although the FCC did exempt promotional offerings for a period shorter than 90 days. (*Id.*, ¶¶ 948, 950.) The FCC, however, did sanction continued restrictions on the "cross-class" resale of residential services. (*Id.*, at ¶ 962.) Under the First Report and Order, all other resale restrictions are presumptively unreasonable. LECs may rebut this presumption, but only if the restrictions are "narrowly tailored."[16]

[16] First Report and Order ¶ 939.

2. Parties' Positions

Pacific claims the right to rebut the FCC's presumption, and calls for evidentiary hearings to determine the reasonableness of various resale restrictions and establish which tariff terms and conditions are valid "resale restrictions." Pacific believes the resale restrictions currently in place as set forth in D.96-03-020 are reasonable and should remain in force.

GTEC argues that the rebuttable presumption established in the FCC Order does not impose a strict burden of proof on the LEC, but merely a showing by a preponderance of evidence that the proposed resale restriction is reasonable and nondiscriminatory. GTEC claims it has clearly met this burden, and that the Commission should exercise its authority to impose reasonable restrictions and should do so according to GTEC.

The Coalition believes that virtually all resale restrictions contained in the incumbent LECs' resale tariffs should be eliminated. In particular, the Coalition objects to restrictions on CLC aggregation for volume-discount plans, Centrex resale, combinations of resold services and UNEs, and restrictions on PBX trunks and supertrunks. The *only* restrictions that the Coalition believes should be permitted are: 1) a restriction prohibiting resale of residential basic exchange services (i.e., 1FR and 1MR) to business customers, only if the Commission concludes that these services are, in fact, priced below cost; and 2) a restriction prohibiting the provision of resold ULTS to customers who do not qualify under the terms of this program. Both the Act and the FCC's Interconnection Order prohibit LECs from maintaining unreasonable and discriminatory resale restrictions. The Coalition argues that unless and until unreasonable and unlawful restrictions on the resale of incumbent LEC services are remedied, consumers will not benefit from efficiencies and creative marketing that unfettered resale would provide.

MFS and TRA believe that for any resale restrictions other than cross-class restrictions proposed by the LECs, the burden of proving the need for such additional restrictions falls squarely on the LECs. (MFS Comments, p. 12; TRA Comments, p. 9.) TRA recommends that the Commission require an LEC proposing to

establish any limitation or restriction on resale to do so through the application process in order that all interested parties be given an opportunity to be heard. (TRA Comments, p. 9.)

ORA believes the incumbent LECs were afforded the opportunity through filed comments to explain why each resale restriction adopted in D.96-03-020 is reasonable and nondiscriminatory. ORA believes that Pacific took advantage of this opportunity in its opening comments while GTEC did not.

ORA disputes Pacific's claim that the restrictions the Commission adopted in D.96-03-020 are allowable under the FCC's First Report. The FCC's First Report provides no guidance on what "narrowly tailored" restrictions might be acceptable, nor does the FCC suggest what showing would overcome the presumption of unreasonability. Pacific's arguments simply do not demonstrate that the Commission's adopted resale restrictions are reasonable and nondiscriminatory according to ORA. (Pacific's OC, pp. 7-12, 18-21.)

ORA recommends that the Commission remove all resale restrictions except those pertaining to resale of residential basic exchange service and ULTS. ORA believes that the restrictions in place in California on resale of residential and ULTS services comport with the FCC's policies on resale restrictions.

3. Discussion

Under the Act, the burden of proof is on the incumbent LECs to justify the retention of any resale restrictions. We conclude that Pacific and GTEC have justified the retention of certain resale restrictions as set forth in the discussion below. All parties agree that the restriction prohibiting resale of residential basic exchange services to business customers should remain in place for the present. We find this restriction to be reasonable, and shall retain it. We further conclude that retaining certain additional resale restrictions as discussed below will not be discriminatory, and are necessary at least for the present time to promote fair competition between the CLCs and LECs. As to some other resale restrictions, we find that the LECs have failed to meet their burden of proof. In those cases, we shall order the existing restrictions be

removed from the wholesale tariff. We believe that competition will be promoted by allowing competitors the flexibility to offer their end users a range and quality of services generally on par with that of the LECs. This order accomplishes that objective.

D. Specific Restrictions to be Addressed

1. Restrictions on CLCs' Utilization of Wholesale Services

a) Parties' Positions

Pacific expresses concern that large retail customers will become CLCs and buy at wholesale the services those same customers buy today at retail, just to qualify for a wholesale discount. Pacific states that such tariff arbitrage should not be permitted, and argues that its tariff should provide that any resold service is only available to a CLC which sells that services to end users, renders a bill (including all Commission-mandated surcharges), gets paid, and pays the various surcharges to the various funds. If a CLC violates these terms and conditions, Pacific believes the Commission should revoke that CLC's Certificate of Public Convenience and Necessity.

Pacific claims that the requirement to make its retail services available for resale is also susceptible to manipulation by competitors seeking to delay Pacific's interLATA entry. To prevent such gaming, Pacific proposes that the Commission establish a "good-faith" request process requiring that any CLC's initial wholesale request contain (1) a certification that the CLC intends to resell the service in providing a competitive exchange service; (2) a full description of the service and quantity requested; and (3) a commitment to reimburse Pacific for implementing the request if insufficient orders are placed for this service so as to allow recovery of Pacific's implementation costs. Pacific proposes that a standard interval be adopted in which it will inform the requesting CLC of when the service will be available for resale.

The Coalition argues that the LECs should not be allowed to dictate, through wholesale tariff restrictions, how CLC resellers utilize wholesale services. Prohibition of the resale of residential basic services to business customers is the only such restriction contained in LECs' wholesale tariffs acceptable to the

Coalition. The Coalition proposes that all other use-and-user restrictions be deemed unjust, unreasonable and/or discriminatory and immediately removed from LEC tariffs. The Coalition does not believe CLC purchases of wholesale services need to be monitored to ensure that such services are only sold to end-users.

Provided that CLC resellers have been certificated by the Commission to offer local exchange service in California, and that they comply with Commission requirements, the Coalition believes CLC resellers should be free to utilize LEC wholesale service in any manner which allows those CLCs to serve customers most efficiently, and objects to restricting the CLCs' use of a wholesale service.

The Coalition asserts that there is no distinction between a CLC's provisioning of resold services to itself as opposed to an end-user customer. A CLC, utilizing the service for its own purposes by "reselling" the service to itself, would be required to perform the same services that it does for its end-users. The Coalition believes a restriction on CLC use of wholesale services for internal purposes would clearly be discriminatory.

ORA defines a valid "resale service" as a transaction whereby an entity purchases a service from another entity for the "sole" purpose of reselling such service(s) to end users. In ORA's view, a CLC's purchase of services at wholesale rates for its own internal operations does not constitute a valid resale transaction. Therefore, ORA believes CLCs should only be allowed to purchase services at wholesale rates for reselling purposes, and CLCs should be required to purchase services for their internal purposes at the LECs' retail rates for these services.

b) Discussion

We conclude that CLCs should not purchase LEC services under wholesale tariffs for purposes other than resale. This restriction will apply to end users that might elect to become CLCs, such as COPT providers.. The purpose of establishing wholesale tariffs is to open the local exchange market to resale competition. It would circumvent this mandate to spur competition if customers were permitted to exploit the lower rates offered under the wholesale tariffs for purposes other than

resale. Such a misuse of the resale program would distort pricing signals and impede the development of a competitive market. Therefore, it is appropriate to restrict service offered under wholesale tariffs to CLCs for the sole purpose of reselling the service to third party end users not affiliated with the CLC.

The question remains as to whether we should rely on self-policing of CLCs to comply with this restriction, or adopt external monitoring of CLC resale practices. For the present time, we shall rely on CLCs to voluntarily comply with this resale restriction. We conclude that Pacific's proposed "good-faith" eligibility requirements for CLC resellers are unduly burdensome. Our existing rules which require CLCs to go through a certification process serve as a screening device for bogus resale requests. Only certified CLC resellers may purchase wholesale services from the LECs. Beyond the existing certification procedures, we adopt no other prerequisites at this time on the eligibility of a CLC to purchase services from the LEC for resale.

ORA has called for a workshop to develop enforcement procedures for use-and-user restrictions to ensure resale only to permitted classes of end users. We shall direct the ALJ to take further comments on what possible measures, if any, should be adopted to ensure that resellers use wholesale services only for authorized resale as prescribed under the tariff.

Pacific's claim for reimbursement of implementation costs from CLCs for insufficient orders is unreasonable and would require CLCs to subsidize Pacific's own business risk. We shall not impose this burden on CLCs. We instituted a separate process in D.96-03-020 for the LECs to track the costs of implementing local exchange competition in a memorandum account for later disposition in Phase III of this proceeding.

2. Restrictions on End-User Aggregation of Volume Discount Plans

In D.96-03-020, we directed the resale of LEC Optional Calling Plans (OCPs) for toll service by September 1, 1996, subject to a 12% and 17% wholesale discount. We kept in place the restrictions prohibiting end-user aggregation and the resale of the LECs' discounted business calling plans to residential customers. We stated

that in Phase III, we would consider the basis for continuing these resale restrictions on the LECs' toll calling plans.

a) Parties' Positions

Pacific and GTEC offer their large retail business customers various discount plans for high-volume calling usage. GTEC believes that CLCs should be restricted from purchasing any services with volume discounts (GTEC Comments, p. 9.) Pacific proposes that CLC resellers may have access to the same types of discounts which exist for certain of Pacific's services, as long as the reseller's end users reflect the same volume-usage as Pacific's customers receiving those discounts. (Pacific Comments, pp. 10-11.)

Pacific, however, objects to CLC resellers being permitted to qualify for volume discounts by aggregating the calling volume of multiple end users. Pacific states that its own retail customers must individually satisfy minimum calling-volume criteria to qualify for volume discounts. Therefore, Pacific claims that resale-based CLCs should be subject to the same end-user requirements, consistent with the Act. Pacific believes that it would constitute a change in the underlying terms and conditions of service to permit resellers to qualify for volume discounts without the same rules on aggregation applicable to Pacific's end users.

Pacific claims that, if it were forced to sell discounted services to aggregated volumes, it would need to modify its retail services to retain low-volume customers at lower rates, or lose these customers; or else would have to eliminate volume discount plans and risk losing high-volume customers.

Pacific warns that removal of end-user aggregation restriction for volume discounts would also cause it to lose subsidies critical to the maintenance of universal service and low residential rates, which, in turn, would threaten the viability of the Universal Service fund. If resellers are allowed to receive discounted rates for low-volume end-user customers which are currently available only for high-volume customers, Pacific claims it would lose in revenue per year over $200 million from residential usage and approximately $230 million from business usage.

Pacific also claims that the aggregation of multiple end-user volumes to obtain a discount combined with the wholesale discount for OCPs would allow resellers to obtain excessive discounts above and beyond the amount of avoidable costs. Instead of getting the current 17% avoided-cost discount, the reseller would get an additional OCP discount of around 40%, which is not related in any way to costs Pacific avoids. These discounts could be passed on to win Pacific's customers away or used to subsidize other services.

Pacific notes that discounts based on reseller usage volumes, rather than end-user volumes, would violate this Commission's imputation rules. Pacific must set its price floors on the basis of incremental costs plus the contribution from the monopoly building blocks competitors must use to provide service sold to the retail end user. Therefore, for high-volume customers, Pacific imputes the contribution from high-capacity special access services. End-user volume levels determine which end users qualify for the high-capacity service alternative. Pacific states that allowing resellers to resell Pacific's high-volume services to low-volume end users ignores the fact that low-volume customers do not have the high-capacity service alternative. Pacific argues that facilities-based local service providers would therefore be unfairly disadvantaged.

The Coalition argues that resellers should be allowed to obtain the same volume discounts as LEC end users through aggregation of the resellers' end-user volumes. If a CLC reseller is willing to meet the same volume and term commitments as a LEC's retail customer, then the Coalition believes the CLC should receive the same discount as the end-user whether the CLC is reselling the service or not.

The Coalition argues that requiring CLC resellers to qualify for volume discounts based upon the usage of individual end-users, as opposed to a CLC's aggregate usage, effectively limits the discount levels which CLCs can secure, thereby harming both resellers and consumers. The Coalition believes that allowing both Pacific and GTEC to continue denying CLC resellers the ability to aggregate their

usage to qualify for discounts will cause price discrimination against low-volume residential customers.

The Coalition denies that this restriction is required to enable the wholesale service to match the retail counterpart. Because CLC resellers will be purchasing volume-discounted services directly from the LECs, from the perspective of the LECs, CLC resellers should be viewed as large end-user customers, according to the Coalition. As such, the Coalition believes a CLC reseller should receive volume discounts based upon its aggregate usage, just as large, multilocation end-users receive volume discounts from the LECs for the combined usage over all such locations.

The Coalition specifically asks the Commission to order the incumbent LECs to make their large business intraLATA toll offerings, such as Pacific's Business Advantage 1000, available for resale and allow CLC resellers to qualify for volume discount rates by aggregating the intraLATA toll usage of their end-user customers. Unless this policy is adopted, the Coalition claims the LECs will use their pricing flexibility to undermine the development of competition in the local exchange market, thereby keeping resale rates artificially high while undercutting CLCs with lower contract rates to the LEC's own end-user customers. The Coalition believes resellers cannot compete for these customers unless the reseller has access to these lower rates.

The Coalition views the current controversy over restrictions on resale of the LECs' discounted bulk toll offerings as analogous to the struggle to break up AT&T's monopoly over long distance services during the 1970s. The Coalition compares AT&T's attempt to prevent the FCC from invalidating its restrictions on resale with Pacific's and GTEC's current attempts to preserve their resale restrictions. In the 1970s, AT&T had sought to maintain high prices on private line circuits purchased in small volumes by preventing resale of its heavily discounted bulk private line offerings. The FCC found such restrictions unlawful and not in the best interests of those whom regulation was meant to protect—consumers. The Coalition cites Brock's study, *The Telecommunications Industry*, which summarizes the FCC's basis for removing resale restrictions in the interexchange market for the AT&T monopoly:

> "[In 1976], the FCC completed an investigation of the resale restrictions of the telephone carriers. The resale restrictions were a fundamental plank in the carriers' ability to impose discriminatory pricing schemes because otherwise favored customers would resell to less favored ones....The [FCC] ruled that the resale and sharing restrictions were unlawful discrimination and should be removed for all services except MTS and WATS." The fundamental legal principle underlying the decision was a 1911 Supreme Court decision which prohibited the railroads from refusing service to freight forwarders who purchased railroad service shippers. [*ICC v. Delaware L. & W. R.R. Co.*, 220 U.S. 235 (1911).] The FCC ruled that the reselling of communications service was analogous to freight forwarding and could not be prohibited by the carriers. [¶] ...AT&T...was unsuccessful in its attempt to overturn the resale rules...."[11]

Pacific claims the Coalition's argument mixes up pure switchless resale and facilities-based resale. A switchless reseller has no facilities, while a facilities-based reseller has a switch that aggregates traffic and connects to an IXC, purchasing toll service to complete calls.[12] Resellers with a switch qualify for the large-volume discounts while switchless resellers do not. A switchless reseller *cannot* get AT&T's low MEGACOM prices for traffic that goes directly from a low-volume end

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[11] The FCC subsequently removed restrictions on resale and sharing of MTS and WATS in *Regulatory Policies Concerning Resale and Shared Use of a Common Carrier Domestic Public Switched Network Services*, CC Docket 80-54, Report and Order, 83 FCC 2d 167, 175-76 (1980).

[12] Brock, *The Telecommunications Industry—The Dynamics of Market Structure* (Harvard: 1981), at pp. 270-71 (fns. Omitted), citing *Regulatory Policies Concerning Resale and Shared Use of Common Carrier Services and Facilities*, Docket No. 20097, Report and Order, 60 FCC 2d 261, 308-16 (1976), mod'd on recon., 62 FCC 2d 588 (1977), aff'd *AT&T v. FCC*, 572 F.2d 17 (2d Cir), cert. Denied, 439 U.S. 875 (1978).

[13] Dr. Selwyn (for AT&T/MCI) 16 Tr. 2791.

user to AT&T's switch because AT&T's tariff requires the customer to provide its own access to get to AT&T's switch, not by using regular switched access. Without that dedicated access paid for by the reseller, they cannot get MEGACOM prices for usage from an end user. Pacific alleges it has the same problem with its Business Advantage 1000 service, which requires minimum volumes from each end-user location to qualify for the low price. If a reseller has a switch, then that is the location qualifying for the discount; if the reseller cannot aggregate traffic at its own switch, then each of its end users would have to qualify—just as is the case with the IXC's interLATA toll.

Finally, Pacific agrees to make its Business Advantage 1000 service available for resale under the terms and conditions of its retail tariff. This is consistent with cross-class restrictions on volume discount plans.

b) Discussion

We conclude that Pacific has adequately justified the resale restriction on end-user aggregation for volume discounts, as explained below, and we shall maintain the restriction. The LECs should offer for resale their volume-discounted calling plans to CLCs based on the same terms and conditions as the retail offering to promote competitive parity. CLC resellers should neither receive less favorable nor more favorable terms than the LEC accords itself and its customers in the retail offering of volume-discount plans. Thus, where a CLC reseller's customer satisfies the end-user volume criteria which would qualify a LEC retail customer for a volume discount, the resale version of the calling plan must also be offered to the CLC with the same bulk discount rate less the avoided-cost discount. We deny the Coalition's request to permit CLCs to qualify for the volume discounts based on aggregation of calling volumes from multiple end users who individually would not qualify for the LECs' volume discounts.

The end-user restriction is not anticompetitive since it places both LECs and CLCs on a level competitive playing field with respect to their ability to offer discounts based on volume to similarly situated end users. If we were to require LECs to offer bulk discounts to CLC resellers based upon the aggregation of volumes from multiple end users, we would effectively be changing the underlying terms and

conditions of the corresponding LEC retail product. The Act does not require an incumbent LEC to make a wholesale offering of any service which the incumbent LEC does not offer to retail customers. By requiring LECs to offer discounts to CLCs under terms more favorable than are offered to the LECs' own end users, the CLC resellers would be given an unfair advantage relative to the LECs and facilities-based CLCs. The resellers would be able to offer their own low-volume end-user lower discount rates, not based on competitive merit or costs avoided, but merely based on the discounts LECs would be required to offer.

The retention of this restriction is also consistent with the way that volume discounts are determined in the interexchange toll market. As explained by Pacific, customers of switchless resellers in that market that lack dedicated access cannot qualify for volume discounts. Likewise, CLC resellers perform no switching functions that aggregate toll traffic. Therefore, the interexchange toll market provides no basis to justify a volume-based discount for CLCs that aggregate toll volumes.

The losses claimed by the LECs from lost toll revenue have not been substantiated. It is reasonable to conclude, however, that rational consumers would switch from the LECs to CLCs if lower-discount toll plans were offered for essentially the same calling pattern, with some resulting loss of revenue to the LECs. We do not believe that resale restrictions should be kept in place merely to protect the market share of the LECs. On the other hand, we do not believe it is appropriate to disregard the competitive imbalances that could result between LECs and CLCs by creating a disparity between the corresponding retail and resale products. As a result of permitting CLCs to obtain volume discounts based on aggregated volumes, the LECs could be expected to seek realignment of their rate structure with respect to low-volume versus high-volume end users. To minimize losses, the LECs could seek to eliminate, or at least scale back, their volume-discount plans to avoid losing customers. With the LECs' retail version of such plans gone, the CLC resellers would no longer be able to purchase these volume discount plans for resale; this is an undesirable outcome.

3. Cross-Class Calling Restrictions on OCPs

a) Parties Positions

For most of the reasons Pacific supports restrictions on end-user level aggregation, Pacific also believes that cross-class restrictions are also reasonable for its OCPs. In particular, Pacific believes the restriction which prevents residential end users from taking advantage of business OCPs is essential to the definition and purpose of OCPs. Pacific claims that removal of the cross-class restriction from resold OCPs would contravene the Commission's requirements because the retail OCPs would no longer match the resold service. There would also be adverse revenue impact, claims Pacific, as its end users migrated to resellers to take advantage of discounts made more broadly available by removal of such a cross-class restriction.

ORA believes that the limitation on reselling business toll to residence customers should remain because LEC business discount plans compete with the business discount plans of the IXCs.

The Coalition argues that any cross-class restriction which would bar the sale of business services to residential customers should not be allowed. BTI contends that this restriction prevents residential customers from being able to obtain the same price breaks which business customers get, and forces CLC resellers to collude with LECs to keep residential rates higher than necessary (BTI Comments, pp. 22-23). The Coalition believes that such a customer class restriction is inconsistent with the way resale works in the interexchange toll market—where residential customers have access to business customer price breaks—and with the flexibility both Pacific and GTEC will have when they resell interexchange toll services on an out-of-region basis (Coalition Comments, pp. 9-11).

b) Discussion

We agree that the cross-class restrictions prohibiting OCPs to residential customers should remain in place. Since the LECs are restricted from such cross-class selling at the retail level, the wholesale version of the service should contain parallel provisions to promote a level competitive playing field, and to retain

consistency between retail and wholesale offerings. As ORA points out, the business OCPs of the LECs also compete with the business discount plans of the IXCs. Keeping this restriction in place promotes parity among competitors in each of these markets. The wholesale rate for OCPs should incorporate the applicable avoided-cost discount.

4. Multiple Vertical Features

a) Parties' Positions

Both Pacific and GTEC offer end-users discounts on vertical features if the features are ordered in groups of two or more. These discount plans, however, were missing from the tariffs for wholesale vertical features both LECs filed on March 21, 1996.[29] For the reasons discussed above with respect to intraLATA toll volume discount plans, the Coalition argues these vertical feature discount plans must also be made available to CLC resellers.

The Coalition also claims that failing to make vertical multifeature discount plans available to CLC resellers is discriminatory and anticompetitive, and severely handicaps CLC resellers that try to compete for existing LEC customers who may have more than one vertical feature.

Pacific objects to a further discount to CLC resellers for ordering multiple vertical features for resale. Pacific's existing discounts for vertical features ordered in groups of two or more reflect cost savings of taking a single order and installing more than one feature at a time. Thus, Pacific argues that the avoided costs for selling a single vertical feature to a reseller would not be the same as the avoided costs of selling vertical feature discounts requiring ordering of two or more features.

b) Discussion

We shall require Pacific and GTEC to make available their multivertical-feature discount plans for resale to CLCs on the same terms and

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[29] Pacific Advice Letter 12116. GTEC Advice Letter 8036.

conditions under which they are offered to LEC retail customers less the avoided-cost discount. Whether the LEC installs multiple vertical features for its own retail customer, or provides for the installation of the same multiple vertical features under a wholesale tariff for a customer of a CLC reseller, similar cost savings should be realized. On the other hand, the CLC reseller should not be eligible for the multifeature discounts where single vertical features are ordered separately and installed at different times, in a manner which differs from the terms of the LEC retail tariff.

5. Centrex/CentraNet Resale Restrictions

Pacific's Centrex and GTEC's CentraNet serve businesses with multiple telephone stations. The services permit station-to-station dialing within the business, and outside callers may also dial a particular station directly. Optional features like Call Forwarding and uniform call distribution are also available. Centrex competes with PBX equipment available from many suppliers. PBX equipment offers a variety of optional features, but access to the public switched network can be obtained only through a trunk line purchased from the LEC.

In D.96-03-020, we directed that Centrex be resold subject to existing use-and-user restrictions limiting resale only as a business system to single businesses. Centrex was not permitted to be used by CLC resellers as a network-infrastructure toll-aggregation tool based on the premise that to do so would undermine the federal law on presubscription timing.[21] (Section 271(e)(2) of the Act provides that intraLATA presubscription in the territory of an RBOC must await the RBOC's entry into the interLATA market.) We expressed concern in D.96-03-020 that the balance set by the law would be upset if CLCs could provide their customers presubscription through resale of Centrex, and that it would be inappropriate to use resale of Centrex as a tool to aggregate toll from unrelated end users. The "toll

[21] In D.95-05-020, the Commission defined "presubscription as a process which allows an end-user served by a central office to select an IXC to automatically provide interLATA or intraLATA communications." (D.95-05-020.)

aggregation tool" is the Centrex automatic routing feature, Flexible Route Selection (FRS), which was the subject of D.95-05-020.[22] Centrex FRS provides the technical capability to route intraLATA toll calls on a preprogrammable basis over private facilities to competing IXCs, and thus bypassing Pacific. FRS is equivalent to features commonly available in non-utility PBX equipment, which may be used by single customers or by multiple unaffiliated end users in a shared tenant service arrangement. Toll aggregators utilizing the Centrex FRS feature are able to route traffic of smaller end-users to competing IXCs, thus bypassing the LECs. FRS enables end users of Centrex to avoid having to dial their preferred interexchange carrier (PIC) code (10XXX) before dialing an intraLATA toll call, and, instead, to send such intraLATA calls directly to their IXC of choice without the need to dial extra digits. For Centrex resale purposes, we prohibited the use of the Centrex FRS feature, as explained above. Consequently, the only way a retail customer could make use of the Centrex FRS feature was to take service from the LEC. If the retail customer selected a CLC as its local service provider, it could not make use of the Centrex FRS feature.

We stated in D.96-03-020 that we would consider in Phase III what changes to the Centrex/CentraNet services may be necessary to make subject to the wholesale discount. We thus authorized resale of Centrex/CentraNet in D.96-03-020 with no wholesale discount.

a) Parties' Positions

Pacific advocates retention of existing restrictions on the resale of Centrex authorized by D.96-03-020, permitting resale by CLCs only as a business system to single businesses and prohibiting use of its FRS capabilities to aggregate toll traffic to bypass the LEC network. Pacific's chief concern, therefore, is not

[22] D.95-05-020 granted a preliminary injunction pursuant to a complaint brought by MCI against Pacific. MCI alleged that Pacific wrongly refused to allow its Centrex customers with FRS routing features to use those features to route intraLATA toll traffic to the carriers of their choice. The preliminary injunction prohibited Pacific from refusing to connect intraLATA toll calls via Centrex FRS.

merely with the aggregation of toll traffic, as an end in itself. Rather, Pacific is concerned that the aggregation of toll traffic through the Centrex switch is used as a vehicle to bypass Pacific's network and to direct all calls to the networks of competing carriers. Pacific claims the Centrex automatic routing feature effectively enables presubscription. The Act prohibits states from ordering intraLATA presubscription before Pacific has interLATA authority. Pacific argues that aggregation through Centrex resale should therefore not be allowed before it is granted interLATA authority, citing the Act, § 271(e)(2)(B).)

Without the toll aggregation limitation, Pacific claims that CLCs could offer customers one-stop shopping for all their telecommunications needs, including using the CLC as the presubscribed carrier for intraLATA and interLATA calls. According to Pacific, the ability to enjoy one-stop shopping will be the deciding factor in choosing a carrier for a majority of its customers.[23] If the CLCs used Centrex as an aggregation tool and captured just 10% of Pacific's high-volume business and residential toll customers, Pacific claims it would lose $655 million in toll revenues. Further, since the use of the FRS feature bypasses Pacific's switched access service, losing 10% of high-volume toll customers would result in Pacific losing $183 million in switched access charges. Thus, while Pacific would still be providing the switched access service, the usage connecting the station to the FRS bypass facility would be free intercom calling.

Pacific claims toll and switched access revenues provide essential contribution to support low-priced basic residential service and universal service. Consequently, Pacific recommends that the restriction remain. If the restriction is changed, then, before the change becomes effective, Pacific would seek to reprice and restructure the service to account for CLCs using Centrex as an aggregation and arbitrage tool.

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[23] Pitchford (for Pacific) 21 Tr. 3861; *see also* Pitchford (for Pacific) Exh. 75, pp. 7-10.

Pacific also seeks to maintain the restriction that resold Centrex be sold to businesses only and not to residence customers. Pacific claims the average loop costs for residence customers are significantly greater than for business customers.[24] The Centrex tariff does not have prices that vary by loop length, and the Centrex price adopted in the Implementation Rate Design (IRD) decision exceeded the cost of loops provided to business customers to which Pacific normally sells.[25] If CLCs can resell to residence customers under the current tariff, Pacific claims its costs will increase, and that wholesale prices set without relation to the cost is contrary to the Act.[26] Thus, Pacific claims the restriction should either remain in place or further hearings must be held to establish a higher price for resale to customers served by longer loops.

GTEC also claims that the existing restrictions which limit the resale of CentraNet to single business systems in place of premises-based equipment are necessary to restrict CLC resellers from using CentraNet service for redirecting toll traffic to competing carriers via toll aggregation. GTEC's tariff states that CentraNet service is offered to meet individual end-user capacity requirements. Rates listed in GTEC's tariff are applicable for CentraNet service based on individual end-user customer configurations.

The Coalition objects to restrictions which limit Centrex resale to single businesses and prohibit the use of Centrex as an intraLATA toll aggregation tool. The Coalition likewise objects to similar restrictions on GTEC's CentraNet service. The Coalition believes that the Commission needs to remove all restrictions on Centrex/CentraNet resale, arguing such restrictions are anticompetitive and inconsistent with § 251(c)(4) of the Act.

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[24] *See* Declaration of Richard L. Scholl attached as Exhibit 1 to Pacific's Comments.

[25] D.94-09-065, p. 202.

[26] Section 252(d)(3).

Removal of the Centrex restrictions will promote more innovative service offerings by CLCs, according to the Coalition. The Coalition objects to Pacific's claim that the potential for lost revenues justifies keeping restrictions in place. In truly competitive markets, carrier revenues are tied directly to customer satisfaction, according to the Coalition, and not to a monopoly-protected franchise. With the implementation of a competitively-neutral universal funding mechanism, the Coalition argues, Pacific should not be allowed to claim that the loss of *any* service revenues justifies limiting competition. The Coalition claims that Pacific's plea that the contribution lost from low-volume toll users will harm its ability to sustain universal service should be dismissed, since the Commission's universal service rules in Rulemaking (R.) 95-01-020/Investigation (I.) 95-01-021 are intended to protect and promote universal service by the creation of an explicit funding source.

The Coalition also disputes Pacific's assertion that unrestricted Centrex resale undermines presubscription timing.[27] The direct routing of intraLATA toll traffic to a customer's chosen IXC has been authorized for almost two years. In addition, the Coalition states that the use of Pacific's ARS/FRS Centrex features to route intraLATA toll calls to an IXC is not presubscription, as determined by D.95-05-020.

In addition, since GTEC is *not* a "Bell Operating Company," it is not affected by the presubscription timing provisions of the Act. The Coalition believes that by maintaining an intraLATA toll aggregation restriction on CentraNet,

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[27] The Act states that:

> "[e]xcept for single-LATA States and States that have issued an order by December 19, 1995, requiring a Bell operating company to implement intraLATA toll dialing parity, a State may not require a Bell operating company 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 the date of enactment of the Telecommunications Act of 1996, whichever is earlier." The Act, § 271(e)(2)(B).

GTEC can provide intraLATA toll service while significantly limiting the extent to which CLC resellers can provide the same service.

Although CLCs could resell Centrex with the FRS feature as a "tool" to aggregate intraLATA toll usage by end users, BTI claims that requiring Pacific to make Centrex with the FRS option available for resale on such a basis is a far cry from requiring Pacific to provide presubscription. BTI notes that larger businesses with significant intraLATA toll usage already have the option of using PBXs or subscribing to Centrex FRS on an individual basis, either directly from Pacific or from a reseller. The remaining issue is whether or not small customers should have the ability to utilize Centrex with the FRS feature on a joint use or equivalent basis when the service is provided by a reseller instead of Pacific. In BTI's experience, marketing Centrex service to small businesses requires intensive individual customer contact. The effort and expense involved in soliciting such customers' Centrex subscriptions would not justify its use as a *short-term, interim* means to compete against Pacific for direct-dialed intraLATA toll business according to BTI. Moreover, the largest carriers, AT&T, MCI, and Sprint, could be hampered in efforts to engage in one-step shopping by the limitations that are imposed by the Act against their joint marketing of local and interLATA services. Given these factors, BTI does not believe an order requiring Pacific to offer its Centrex services for unrestricted resale would seriously undermine the dialing-parity-timing provisions of the Act.

Additionally, BTI points out that Pacific was made subject to an order requiring it to allow Centrex customers direct access to competitive intraLATA toll carriers using the FRS feature. BTI claims this order, contained in D.95-05-020, is not covered by the dialing parity timing requirements of 47 U.S.C. § 271(e)(2)(B), but instead falls within the exception afforded by that same subsection for "States that have issued an order by December 19, 1995, requiring a Bell operating company to implement intraLATA toll dialing parity." Pacific responds that D.95-05-020 was subsequently dissolved by D.96-07-024 and that BTI's claim therefore has no basis.

Even if the Commission finds that the ability of CLCs to "aggregate toll" using Centrex FRS is tantamount to having dialing parity, BTI argues

that the Commission would not be required to impose use-or-user restrictions. BTI believes that it would be anticompetitive and a violation of the Act for such use-or-user restrictions to be imposed on wholesale Centrex services because those same restrictions are not imposed by Pacific on its equivalent retail Centrex offerings.

TCLA argues that existing resale restrictions on Centrex/CentraNet have created significant inequity in the resale market. TCLA states that Centrex and CentraNet are the most important services that incumbent LECs sell to business customers. Centrex and CentraNet are used by Pacific and GTEC to create dependency on the LECs' own central-office-provided features and services and prevent customers from seeking such features and services elsewhere in the form of PBX equipment and other local exchange providers. TCLA claims, therefore, that an entire class of customers is "locked in" to their existing incumbent LEC services because of the Commission-imposed resale restrictions on Centrex/CentraNet services.

ORA generally agrees with the resale restriction which allows Centrex services to be resold only as a business system service to single customers. However, ORA recommends that no use-and-user restrictions be placed on resellers of Centrex/CentraNet services who have the capability of bundling intraLATA and interLATA services with Centrex/CentraNet FRS or automatic route selection system features.

b) Discussion

While we authorized certain interim restrictions on the resale of Centrex/CentraNet in D.96-03-020, we did so with the proviso that the LECs would be required to provide justification in Phase III of this proceeding that such restrictions were necessary and nondiscriminatory because the Phase II record underlying the decision had not been fully developed with respect to the consequences of removing the interim restrictions. While certain parties presented limited argument regarding the need for Centrex/CentraNet resale restrictions in their comments on the ALJ's proposed Phase II decision, this issue had not been comprehensively addressed as part of the Phase II proceeding. Therefore, in authorizing the resale of

Centrex/CentraNet in D.96-03-020, we permitted the restrictions to remain in place pending the opportunity to develop a complete record on this issue in Phase III.

We conclude that the restriction prohibiting CLC resellers from the use of the Centrex FRS routing feature for the purpose of aggregating toll traffic should be removed with respect to business customers. We shall continue to restrict the resale of Centrex to residential customers, as explained below. We adopted the Centrex resale restriction prohibiting toll aggregation in D.96-03-020 based on the premise that it was necessary to avoid prematurely permitting presubscription. This argument was made by Pacific in its comments on the proposed decision of the ALJ in Phase II. In Phase III of this proceeding, we have had a more thorough opportunity to examine the validity of this premise and the merits of continuing to restrict Centrex resale in this manner.

Pacific's argument regarding the relationship between presubscription and the aggregation of toll traffic using the Centrex FRS feature was previously made in connection with the complaint filed by MCI in C.94-12-032/ C.95-01-009 (MCI v. Pacific) in the context of the terms of Pacific's retail version of the Centrex tariff. In resolving the present dispute over Centrex restrictions in the CLC resale tariff, it is useful to review the MCI complaint.

In the above-referenced complaint, MCI charged Pacific with anticompetitive behavior in refusing to connect intraLATA toll calls through the FRS/ARS features of the Centrex tariff. As noted in D.95-05-020, Pacific claimed competitive harm from removal of the restrictions on Centrex FRS arose from two sources: (1) the loss of intraLATA traffic from high-volume toll users who already have dedicated access to other IXC carriers, and (2) the loss of low-volume toll customers who lack dedicated access but who can bypass Pacific and achieve dialing parity for toll calls by going through a Centrex provider. The toll aggregator can gather the low-volume toll traffic using the FRS feature and redirect it to a competing IXC, without the need for 10XXX dialing, and end users have the same capability.

MCI alleged that Pacific's refusal to route toll traffic under the terms of its Centrex tariff unfairly restricted intraLATA competition by bundling

retail Centrex and intraLATA toll service, and discriminating among carriers by providing some, but not all, with FRS routing to competing intraLATA toll carriers. MCI sought a temporary restraining order enjoining Pacific from this alleged conduct and ordering it to take curative steps. In D.95-05-020, we concluded that MCI had shown that it was likely to prevail on the merits of its arguments after a full hearing and would suffer irreparable injury if Pacific were allowed to refuse to connect intraLATA toll calls through the FRS features of its Centrex tariff. In D.95-05-020, we concluded that the routing of intraLATA toll traffic via the Centrex FRS feature did not constitute presubscription. As we stated therein:

> "As far as we know, presubscription has never been used to allow an end-user to select more than one IEC at a time to provide interLATA services depending on user-provided instructions in various circumstances, like FRS/ARS permits. InterLATA and intraLATA presubscription, rather, establishes the default carrier for all times and all purposes until changed.
>
> "Also...until we authorize presubscription to intraLATA toll carriers, the LECs will continue to be the default provider of intraLATA toll services for calls that are not...10xxx directly dialed calls. 'Default' means no more than its common definition.... Nothing....in IRD precludes customers from making that choice through use of FRS/ARS." (Decision at 54).

We therefore granted a temporary injunction in D.95-05-020 prohibiting Pacific from refusing to connect intraLATA toll calls thorough the FRS features of its Centrex tariff to competing carriers, or from imposing any other restriction upon the use of FRS features that is not contained in Pacific's tariff. The injunction was granted pending full evidentiary hearings to determine whether the provisional relief should be made permanent.

We subsequently lifted the temporary injunction against Pacific in D.96-07-024, not because of any showing by Pacific that the Centrex restrictions were reasonable, but merely due to lack of prosecution on the original

complaint. As we stated in D.96-07-024, we found no basis to continue the injunctions because no party to the complaint sought to pursue evidentiary hearings, and "all of the moving parties lost interest in this case." We noted, however, that "our action in dissolving the preliminary injunction should not be read in a policy light." Moreover, the parties to the complaint had already entered into a separate agreement incorporating the preliminary injunction requirement that Centrex customers with FRS routing features be allowed to route their intraLATA toll traffic to the carrier of their choice.

The same reasoning we applied in D.95-05-020 in concluding that Centrex FRS toll aggregation at the retail level did not constitute presubscription also applies for CLC resale of Centrex in the instant context. The removal of this restriction on CLC resale of Centrex does not change Pacific's status as the default provider of intraLATA toll calls. Nothing in Pacific's Phase III comments refutes the conclusions we reached in D.95-05-020 regarding the applicability of presubscription with respect to Centrex FRS/ARS. We, therefore, determine that removal of the Centrex restriction on the use of FRS/ARS for toll aggregation would not amount to the premature implementation of presubscription. We find no basis to continue the Centrex/CentraNet toll aggregation restriction for resellers based on this claim. The lifting of this restriction is not in conflict with § 271(e)(2) of the Act which provides that intraLATA presubscription in Pacific's territory must await that company's entry into the interLATA market.

We further conclude that the restriction on the use of Centrex's FRS features for routing intraLATA toll traffic as currently in place for CLC resale purposes poses an impediment to the development of a competitive local exchange market. The restriction unfairly handicaps CLCs in seeking to offer competitive Centrex service on par with the LECs. Specifically, the restriction forces retail customers to choose Pacific as their local service provider if they wish to take advantage of the Centrex FRS feature offered under Pacific's retail tariff. The Centrex service available from the CLC reseller is of an inferior quality, inasmuch as CLC

customers cannot use the FRS feature to the extent possible by Pacific's customers, and significantly hampers the ability of the CLC to compete with the LEC.

The removal of this restriction will enable CLC resellers' customers who utilize the Centrex FRS feature to have their toll calls routed to another intraLATA toll provider without the need for 10XXX, dialing in the same manner as a retail customer of the LEC. Thus, whether the customer chooses the LEC or the CLC reseller to provide Centrex service, the customer will be subject to similar terms and conditions. This will promote a more level competitive playing field among CLCs and LECs and will enhance the choices offered to end users. It is our intent that CLCs, themselves, not use the Centrex or CentraNet toll aggregation feature to qualify for volume discounts which are only available to end-user customers.

In the case of GTEC's CentraNet, the presubscription argument has no relevance. Even if Pacific were to prevail in its argument, it would not apply to GTEC since it is not a Bell Operating Company and is unaffected by the presubscription timing provisions of the Act. Moreover, by Commission resolution effective March 1, 1997, presubscription has already become effective within GTEC's service territory. GTEC has also already begun offering long-distance service, and is not constrained as is Pacific in its ability to compete in the long-distance market. Therefore, Pacific's claims regarding presubscription offer no basis to restrict resale of GTEC's CentraNet with respect to aggregation of toll traffic for routing to an alternative carrier.

We recognize that lifting the restriction increases the risk that Pacific and GTEC may lose toll and switched access revenues as a result of CLCs' resale of Centrex and CentraNet. The magnitude of potential losses from this specific cause, however, is speculative at this time. The possibility of competitive losses is one of the risks which firms face in a competitive marketplace. The protection of the incumbent LECs' market share against competition is not a proper justification for a resale restriction. The more important concern is promoting a competitive playing field. We conclude that lifting the restriction furthers this goal. Moreover, to the extent Pacific and GTEC claim that the losses they sustain from the removal of this restriction constitutes a taking of franchise property rights, we have already provided a procedural

mechanism in D.96-09-089 to address these claims and implement any remedies found to be appropriate. We have also set up an Universal Service funding mechanism in D.96-10-066 which is designed to ensure universal service is not jeopardized with the introduction of competition in the local exchange. Thus, Pacific's claims that removal of the restriction on FRS usage will jeopardize universal service funding is not persuasive. Accordingly, we shall direct Pacific and GTEC to terminate this restriction on the resale of Centrex/CentraNet. The removal of this restriction promotes greater competitive parity between LECs and CLCs by removing an impediment on CLCs' ability to compete on a equal basis.

We conclude, however, that it is appropriate to retain the restriction that Centrex and CentraNet be resold only to business customers subject to the avoided-cost discount and not to residential customers. Therefore, the FRS routing feature of Centrex will only be available to business, not residential customers. Until a determination can be made of any cost differences between serving residential versus business customers with Centrex and CentraNet, it would be premature to require the LECs to offer those services for resale to residential customers. We would violate the principle that the wholesale rates of LEC services should correspond to the LEC's cost of providing those services, less the wholesale discount for avoided costs. Once we determine costs for a residential offering of Centrex/CentraNet service, we can authorize their resale to residents. We shall defer this determination to a later proceeding.

6. Operator and DA Service

a) Parties' Positions

The Coalition states that LECs have prevented CLCs from utilizing operator and DA offerings from other carriers. In arbitration proceedings,

Pacific has agreed to provide its resold access line without operator and DA services,[24] and route these calls to the platforms requested by resellers.[25] Pacific claims that the Coalition's comments regarding lack of access to operator and DA services are moot.

With respect to rebranding involving operator, call completion, and DA services, the FCC states:

> "[W]here operator, call completion, or directory assistance service is part of the service or service package an incumbent LEC offers for resale, failure by an incumbent LEC to comply with reseller branding requests presumptively constitutes an unreasonable restriction on resale. This presumption may be rebutted...." (First Report and Order ¶ 971.)

Pacific asserts that it is technically unfeasible to rebrand resold operator and DA services included as part of a resold line. Because resold operator and DA services cannot be rebranded, Pacific states they will be unbranded for resale purposes. Where the LEC accommodates a reseller's branding request, the FCC has indicated that the LEC may impose appropriate charges for such request. Pacific has not yet determined the added costs associated with branding requests. Pacific states that it can offer unbundled operator and DA using dedicated trunks to operator and DA platforms. When this element is provided in this manner, a CLC can choose to have Pacific's operator brand or not brand its calls. Pacific claims that branding of DA on an unbundled basis is not technically feasible except for three locations.

Pacific believes that a reseller is precluded under ¶ 817 of the First Report and Order from combining unbundled operator and DA with a resold access line without operator and DA.

The FCC explained in ¶ 817:

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[24] *Application of MCI Communications of California, Inc. for Arbitration*, Application (A.) 96-08-068, Response Brief of Pacific Bell, Testimony of Thomas H. Warner attached thereto (Sept. 24, 1996), p. 7, n. 7.

[25] Ibid., Testimony of Nancy Lubamersky attached thereto (Sept. 24, 1996), p. 31.

> "The availability of vertical services as part of a wholesale service offering is distinct from their availability as part of the local switching network element. In these circumstances, allowing the new entrant to combine unbundled elements with wholesale services is an option that is not necessary to permit the new entrant to enter the local market."

Based on the FCC's statement, Pacific asks the Commission to order that resellers not be allowed to combine unbundled elements with resold services.

The Coalition disagrees with Pacific's claims that resellers may not mix unbundled elements with resale services pursuant to ¶ 817 from the Interconnection Order. The Coalition argues that the limitations set forth in ¶ 817 concern only the purchase of vertical features as part of a wholesale service offering, which is governed by § 251(c)(4) of the Act and avoided cost pricing. In this particular instance, the FCC has determined that LECs are not under the obligation to further unbundle the vertical features from the unbundled local switching element and offer and allow them to be combined with a wholesale service offering. Rather, "[i]n these circumstances, allowing the new entrant to combine unbundled elements with wholesale services is an option that is not necessary to permit the new entrant to enter the local market."

Thus, the Coalition claims that resellers are permitted to mix unbundled elements with resale services, and that the FCC Interconnection Order only precludes the instance of a reseller's purchase of unbundled vertical features with the local switching element and combining them with unrelated wholesale offerings.

b) Discussion

While Pacific was ordered by the Commission in its arbitration case with MCI to provide its resold access lines without operator and DA services, and to route these calls to platforms requested by MCI, that order applied only to that arbitration case. Therefore, we must formulate generic rules for CLC's access to operator and DA offerings independently of whatever arrangements were adopted in

the arbitrations. We conclude that the CLCs should be able to utilize operator and DA offerings from other carriers to promote competitive parity with the LECs. Therefore, we shall direct the LECs to make available their resold access lines to all CLCs without operator and DA services, and to route calls over such lines to platforms requested by the CLC.

The other remaining controversy involves whether a reseller is precluded from combining unbundled operator and DA with a resold access line without operator and DA. We believe that Pacific's interpretation of ¶ 817 of the First Report and Order is overly broad. We agree with the Coalition that the limitations in ¶ 817 only make reference to vertical features as part of a wholesale offering. Therfore, we find no basis to prohibit CLCs from combining unbundled operator and DA with a resold access line without operator and DA.

7. COPT Restrictions

a) Parties' Positions

With respect to consumer safeguards, the Commission has traditionally regulated COPT providers through restrictions in the LEC's COPT retail tariff. Pacific placed the same restrictions in its COPT resale tariff to put CLCs on an even footing when competing for COPT business. CPA believes that the restrictions should not be in Pacific's resale tariff, but rather, should be contained in the CLCs' tariffs. Pacific supports this proposal for consumer safeguards.

CPA additionally complains about features, such as call screening, which are included in the COPT access line. Pacific states that features such as call screening are not resale restrictions but are part of its COPT service, and so are included in its wholesale service. The FCC has stated that "§ 251(c)(4) does not impose on incumbent LECs the obligation to disaggregate a retail service into more discrete retail services." Accordingly, Pacific objects to CPA's request to strip certain features from Pacific's resold services. CPA also seeks to change the limitations on the type of service sold to COPT providers. Pacific states these limitations are not resale restrictions, but define COPT service, and, thus, should be part of its wholesale service.

b) Discussion

We shall direct the consumer-safeguard provisions of COPT service, which have been included in the LECs' resale tariffs, be placed instead in the CLCs' retail tariffs for COPT service consistent with the proposal of CPA.

We agree with Pacific that the existing features of its COPT service, such as call screening, that are also part of the COPT resale tariff are appropriate since they are defining characteristics of the LECs' underlying retail service. Therefore, Pacific and GTEC will not be required to disaggregate their COPT service into more discrete elements.

8. Contract Offerings

a) Parties' Positions

The First Report and Order requires that contract offerings be made available to resellers at an avoided-cost discount.[30] However, Pacific argues that wholesale discounts should only be applied to contract offerings after the Commission changes its rules which classify certain resold services as Category I services without pricing flexibility.[31] Pacific claims that the discounts off contract offerings cannot be uniformly applied, since each contract offering is potentially unique and may already account for the costs that are avoided with resold services, e.g., lower marketing, ordering, and billing costs. Also, the discounted prices must be at or above applicable price floors approved by the Commission.

For resale of a contract offering, Pacific argues that the terms and conditions of the underlying retail contract offering must be met, including minimum volume commitments, location-specific volume-discount thresholds, call duration requirements, and end-user aggregation requirements. Finally, Pacific

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[30] First Report and Order ¶ 948.

[31] D.96-03-020, p. 54.

advocates that retail contract offerings may only be resold to similarly situated customers.

The Coalition objects to Pacific's proposal to postpone making its contract services available to CLC resellers at wholesale rates until resold services are reclassified by the Commission and given pricing flexibility. (Pacific Comments, p. 23.) Pacific filed a pleading before this Commission seeking such reclassification and pricing flexibility for resale services.[32] The Coalition argues that the Commission should not allow a CLC reseller's lawful ability to purchase contract services at wholesale discounts to be delayed until Pacific receives a favorable resolution to its Petition to Modify. Thus, the Coalition argues that contract offerings must be made available to CLC resellers who meet contract-specific terms and conditions requirements.

b) Discussion

We agree with the Coalition that LEC retail contract offerings should be made available at this time for resale to CLCs at wholesale prices reflecting the avoided-cost discounts of 17% for Pacific and 12% for GTEC. There is no justification for deferring resale until the Commission reclassifies certain resold Category I services which do not currently have pricing flexibility. In the interests of competitive parity, retail contracts should be made available for resale without delay. We agree with Pacific that contracts should only be resold to similarly situated customers under the same terms and conditions as provided under the LEC retail contract offering.

A potential problem arises, however, in the case of contracts involving the resale of a Centrex, CentraNet, or other access lines. In the cases involving retail contracts for such lines with the incumbent LECs, the customer must pay a

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[32] See Petition of Pacific Bell for Modification of D.96-03-020, filed April 12, 1996, pp. 4-5. On May 21, 1997, the Commission issued D.97-05-096, denying Pacific's Petition for Modification with respect to its request for additional pricing flexibility at this time.

Federal Access End User Common Line (EUCL) charge. This EUCL charge is collected as part of the overall retail contract price to reimburse the LEC for the cost of telephone access lines allocated to the interstate jurisdiction. Consequently, based on our wholesale pricing policy which applies an avoided-cost discount to the LEC retail price, the wholesale contract price paid by CLC resellers would already include the provision for a EUCL charge. If the CLC reseller was then required to impose its own additional EUCL charge on the retail customer and remit that amount to the LEC, the resulting retail contract price could become too high to permit the CLC to compete with the LEC.

Accordingly, before we authorize the resale of contracts involving Centrex/CentraNet access lines, we shall direct the ALJ to take comments from the parties on appropriate measures to adopt in order to avoid potentially uncompetitive pricing of such contracts merely as a result of the collection of the EUCL charge.

E. Nonrecurring Charges for LEC/CLC Customer Transfer

In addition to the monthly recurring charges applicable to wholesale service, the LECs incur one-time costs when a LEC customer transfers to a CLC reseller. These costs relate to the administrative work involved in transferring a customer's account from the LEC's retail billing and accounting system to the system developed for the CLC reseller.

In D.96-03-020, the Commission stated that "[a]s an interim measure, we shall limit the amount that LECs may impose as a nonrecurring charge to the existing retail tariff charges applicable to the transfer of a customer account who remains at the same service location, less avoided retailing costs."[33] We adopted changeover charges for Pacific of $4.15 for residential customers and $5.81 for business customers based on the supersedure charge in Pacific's Network and Exchange Services tariff. For GTEC, the corresponding figures were $20.24 for residential customers and $30.36 for business

[33] D.96-03-020, p. 35.

customers. We further indicated that we would examine customer changeover charges in Phase III of the Local Exchange Competition proceeding (R.95-04-043/I.95-04-044)[34] to determine what appropriate nonrecurring charges should be imposed prospectively related to the transfer of a LEC customer account to a CLC reseller. (Decision at 36.)

1. Parties' Positions

Pacific contends that the supersedure charge for the transfer of a LEC customer to a CLC reseller adopted by the Commission is inappropriate, and that the cost of transferring a customer to a CLC is much greater than $5, less our applied 17% discount. Pacific argues that evidentiary hearings are necessary to establish the correct charge.

The Coalition seeks no change in Pacific's interim changeover charge at this time, but believes that GTEC's interim changeover charges should be substantially reduced. AT&T, MCI and CALTEL argue that changeover charges for local exchange services should be similar in magnitude to the $5.00 PIC change charge customers face when changing IXCs. Although the interim charges adopted for Pacific meet this test, GTEC's charges of $20.24 and $30.36 for residential and business customers, respectively, do not. Thus, in order for the LECs to bring their resale tariffs into compliance with the FCC's Order, the Coalition proposes that GTEC's interim changeover charges should mirror Pacific's.

The Coalition argues that permanent changeover charges should be set only after Pacific and GTEC have implemented the operational support systems (OSS) ordered by the FCC in order to allow competitors to perform the functions of pre-ordering, ordering, provisioning, maintenance and repair for wholesale services, as well as unbundled network elements, in substantially the same time and manner as the incumbent LEC can for itself.[35]

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[34] D.96-03-020, p. 36.

[35] FCC Interconnection Order at ¶¶ 518 and 525.

TCLA states that no evidence was presented to justify any application of a charge for migrating a customer from an incumbent LEC to a reseller, and evidentiary hearings should be held to determine what levels are appropriate. Moreover, TCLA believes any changes should apply on a "per customer account" basis and not on "per line" basis as ordered in D.96-03-020. Otherwise, a reseller bears a higher cost to migrate his/her customers just because such customers may have multiple lines. The incumbent LEC's activity to move a customer, as described by the LECs at various of their seminars for resellers, do not appear to be dependent on the number of lines belonging to the migrating customer. TCLA reports that Pacific indicates that it will perform the conversion on an "account" basis and switch the billing for all the lines under that account to be billed to the reseller. In light of this, TCLA argues, the Commission should adopt a "per account" fee that is uniform, regardless of the size of the account.

2. Discussion

We agree that the nonrecurring charges adopted in D.96-03-020 for CLC/LEC customer transfer warrant reexamination. We shall transfer this issue to the wholesale pricing phase of the OANAD proceeding. Until we reach resolution there, the changes adopted in D.96-03-020 shall remain in effect.

Findings of Fact

1. In D.96-03-020, the Commission authorized the resale by CLCs of various retail services offered by Pacific and GTEC, but deferred outstanding issues regarding the removal of restrictions on the resale of, and the application of wholesale discounts to, certain LEC retail services to Phase III of this proceeding.

2. The Act mandates that all LEC retail telecommunications services be authorized for resale.

3. Voice Mail is among the bundle of services offered by the LECs.

4. Voice Mail is a Category III service not subject to price regulation.

5. CLC resellers do not need to resell the LECs' ULTS since the CLCs can receive reimbursement from the ULTS fund.

6. The LEC offers its retail customers inside wire maintenance/repair services either through a tariff plan or through separate charges for technician service time on an as-needed basis.

7. CLCs need access to the LECs' Voice Mail service for resale purposes in order to permit CLCs to offer end users a competitive overall service package.

8. There are independent vendors who can provide inside wire maintenance service.

9. Pacific did not provide justification why the list of services included in the attachment to its comments should be exempted from resale to CLCs.

10. Under the Act, LEC promotional offerings are to be offered for resale at the LEC retail price less a wholesale discount unless they are offered for only 90 days or less.

11. As prescribed under the Act, the LEC wholesale discount is determined on the "basis of the retail rates charged to subscribers for the telecommunications service requested, excluding the portion thereof attributable to any marketing, billing, collection and other costs that will be avoided."

12. For those LEC services which were already being offered on a wholesale basis prior to the adoption of D.96-03-020, there is no avoided retail cost savings to pass on to CLCs.

13.The record in this proceeding does not support changing the interim wholesale discount rates of 12% for GTEC and 17% for Pacific.

14. A true-up mechanism for the difference in revenues collected under interim versus final wholesale rates would introduce significant uncertainty into the CLC resale market and would risk stalling further development of local exchange competition.

15. Since the interim discounts of 17% and 12% adopted in D.96-03-020 reflected total costs of all services, it is consistent to apply the discounts on a uniform basis to all LEC retail services subject to resale.

16. COPT service exhibits the characteristics of retail more than wholesale service.

17. The COPT provider can be clearly distinguished from a CLC reseller which is, in fact, a public utility telephone company engaged in the business of purchasing wholesale and independently selling retail telephone services.

18. Private line service is essentially wholesale in nature, although it may incidentally be offered on a retail basis.

19. The costs incurred to provide Special Access/private line service are not materially different whether the customer is a wholesale or retail customer.

20. On July 15, 1996, Pacific filed an advice letter for the withdrawal of its provisional wholesale tariff for Custom Calling Services.

21. The wholesale rates which CLCs are charged for Custom Calling Services are based on the ONA retail tariff rate for each service less an avoided-cost discount. The wholesale rates for remaining Custom Calling Services not included in the ONA tariff are based on the applicable retail rate less an avoided-cost discount.

22. Nothing in the Act precludes a state from imposing requirements on a telecommunications carrier that are necessary to further competition in the provision of telephone exchange service as long as the state's requirements are not inconsistent with the Act or federal regulations implementing the Act.

23. It would circumvent the mandate to promote competition if customers could purchase LEC services under wholesale tariffs merely for their own internal use rather than for resale.

24. The LECs' volume-based discount calling plans require each end-user to meet certain minimum calling volume requirements in order to qualify for discounts.

25. If the LECs were required to provide the same volume-based discounts to CLCs based upon aggregation of several end users' calling volumes, there would be a disparity between the retail and wholesale service offerings.

26. The end-user aggregation restriction on the resale of volume-based discount calling plans places both LECs and CLCs on a level competitive playing field.

27. The cross-class restrictions on the resale of volume-based discount calling plans promote a level competitive playing field among LECs, CLCs, and IXCs.

28. The LECs' failure to offer multiple-vertical-feature discount plans to CLCs on the same basis as offered to the LECs' retail customers handicaps the CLCs in competing for customers.

29. In D.96-03-020, the resale of Centrex was authorized only as a business system to single businesses, but CLC resellers were not permitted to use the FRS feature of Centrex to route customers' intraLATA toll traffic to a carrier other than Pacific.

30. The premise underlying the prohibition on the use of the Centrex FRS feature to aggregate toll traffic for bypass of Pacific's network was that removal of such a restriction would constitute presubscription.

31. In D.95-02-020, the Commission concluded that the routing of aggregated toll traffic via the Centrex FRS feature did not constitute presubscription since there was no change in the status of Pacific as the default provider of intraLATA toll service.

32. In Phase III of this proceeding, neither Pacific nor GTEC provided any argument to refute the Commission's view in D.95-02-020 regarding the relationship between presubscription and Centrex FRS traffic routing by toll aggregators.

33. Even if Pacific could justify retention of the Centrex restriction on the use of FRS toll aggregation on the claim that it prematurely granted presubscription, the justification would not apply to GTEC's CentraNet service since GTEC is not a Bell Operating Company subject to the presubscription provisions of the Act and since presubscription is already in effect within GTEC's service territory.

34. The removal of the restriction on the use of the FRS routing toll aggregation function will result in competitive parity between the Centrex service offered by Pacific versus the Centrex service offered by resellers.

35. To the extent that there are cost differences between offering Centrex to business versus residential customers, it would produce a distortion in wholesale rates to require Pacific to offer its Centrex business service for resale to residential customers.

36. The FCC First Report and Order (Paragraph 817) only precludes the reseller's purchase of unbundled vertical features with the local switching element and combining them with unrelated wholesale offerings, but does not preclude the mixing of unbundled elements with resale services.

37. The limitations in the LECs' tariffs regarding the features to be included in the COPT access line define the service which is subject to resale.

Conclusions of Law

1. No further evidentiary hearings are required in this proceeding in order to modify the restrictions and applicability of discounts for the CLC resale of LEC retail services.

2. Although the Act requires resale only of LEC retail telecommunications services, it does not prohibit the states from adopting rules which expand the range of services offered for resale to include enhanced or auxillary services offered by the LECs at retail.

3. The PU Code authorizes the Commission to regulate the rates, terms, and conditions of services offered for sale by the LECs, as set forth in various code sections (e.g., § 454, 489, et al.).

4. The additional LEC retail telecommunication services not previously offered for resale, including those set forth in Appendix A, should be made available for resale.

5. ULTS should not be authorized for resale by the LECs since it is not a telecommunications service, but a billing mechanism which is available to CLCs independently of the LECs.

6. Semipublic service should not be offered for resale at this time.

7. Existing rules which require certification of CLCs as a prerequisite to qualifying for purchase of LEC wholesale tariff services are adequate as an interim measure to screen for bogus attempts to purchase retail services at wholesale prices.

8. Consistent with the provisions of the Act, rates for all LEC retail services which are offered to CLCs for resale should incorporate a discount to reflect the avoided retail costs of the wholesale service, except Voice Mail services for which no wholesale discount is prescribed.

9. LECs should charge no more than the retail tariff rate for resold Voice Mail services and should make any discounts on retail Voice Mail available to similarly situated resale customers.

10. To mitigate possible price discrimination, LECs should remove resale restrictions on Voice Mail services from their tariffs.

11. The rates for those retail services which were authorized for resale in D.96-03-020 with no wholesale discount applied should be revised to incorporate an avoided-cost discount of 12% for GTEC and 17% for Pacific.

12. Since private line services are essentially wholesale in nature, CLCs should pay the same rate as IXCs with no additional avoided-cost discount.

13. In light of the Circuit Court stay of the pricing provisions of the FCC Order, the Commission is not obligated by law to adopt any changes in the interim wholesale discounts of 12% and 17% to conform to the cost methodology employed by the FCC.

14. Pacific's proposal to make current wholesale revenues subject to a future true-up mechanism to reflect retroactive application of the wholesale discount rates to be determined in OANAD should be rejected.

15. Consistent with the provisions of the Act, all restrictions on the resale of Pacific's and GTEC's telecommunications services should be removed, subject to the specific exceptions set forth in the decision, or unless at least one of these two companies justifies that specific, narrowly tailored restrictions are necessary and nondiscriminatory.

16. The LECs were provided an opportunity in Phase III of this proceeding to identify any resale restrictions which they believe are appropriate and provide justification for retention of those restrictions consistent with the Act.

17. Further comments should be taken regarding what possible measures, if any, should be adopted to ensure that resellers use wholesale services only for resale as required under the applicable tariff.

18. Except for the resale restrictions specifically identified in the conclusions of law in this decision, all restrictions applicable to the services subject to resale should be removed.

19. The LECs should offer their volume-based discounted calling plans for resale to the CLCs based on the same terms as are applicable to the LECs' own retail customers.

20. CLCs may not qualify for volume-based discounts based on aggregating the traffic volume of multiple small users who individually would not qualify for the LECs' volume-based discounts.

21. The cross-class restriction prohibiting the resale of business volume-based optional calling plans to residential customers is reasonable and should be maintained.

22. Multiple-vertical-feature discount plans should be offered for resale to CLCs on the same terms and conditions as offered to LEC retail customers.

23. The CLC resale restriction should be removed relating to the use of Centrex for purposes of aggregating toll traffic and routing such traffic directly to a competing IXC; however, CLCs themselves shall not use the Centrex or CentraNet toll aggregation feature to qualify for volume discounts which are only available to end-user customers.

24. The use of the Centrex FRS routing feature for aggregating toll traffic does not constitute presubscription as determined in D.95-05-020.

25. The restriction allowing the resale of Centrex only as a business system to single businesses should be retained. The restriction prohibiting the resale of Centrex to residential customers should also be retained pending further determination of the cost differences of providing a residential versus business Centrex service.

26. COPT service should be classified as a retail service, and a wholesale counterpart should be offered for resale, subject to an avoided-cost discount of 17% for Pacific and 12% for GTEC.

27. The wholesale version of COPT service should only be offered to certificated CLC resellers, while COPT providers, including COPT affiliates of a CLC, should not be eligible for wholesale discounts on COPT service. CLCs should be prohibited from reselling COPT service to their own COPT affiliates.

28. Operator and DA should be made available for resale subject to avoided-cost discounts of 17% for Pacific and 12% for GTEC.

29. CLCs should not be prohibited from combining unbundled operator and DA with a resold access line without operator and DA.

30. The consumer safeguard provisions of COPT service which have been previously included in the LECs' resale tariffs should be placed in the CLCs' retail tariffs for COPT service.

31. The LECs should not be required to disaggregate their COPT service into more discrete elements for resale purposes.

32. Any changes in the nonrecurring charges for customer transfers from the LEC to the CLC should be further examined and resolved in the OANAD proceeding.

ORDER

IT IS ORDERED that:

1. Pacific Bell (Pacific) and GTE California, Inc. (GTEC) are directed to file wholesale tariffs in accordance with General Order (GO) 96-A within 40 calendar days of the effective date of this decision which shall offer for resale to competitive local carriers (CLCs) all remaining retail telecommunications services for which tariffs have not previously been filed, including the wholesale services set forth on Appendix A of this order.

2. Pacific is directed to file an amendment to its wholesale tariff for the resale of Centrex service, which shall remove the restriction on the aggregation of business customers' toll traffic for purposes of routing the traffic using the Flexible Route Selection (FRS)/ARS features of the service. The amendment shall be filed within 40 calendar days.

3. Pacific and GTEC shall file amendments to their wholesale tariffs for all retail services authorized for resale to the extent necessary to reflect (1) the terms and conditions outlined in the conclusions of law of this decision and (2) an avoided-cost discount of 17% for Pacific and 12% for GTEC, except for Voice Mail services for which a specific wholesale discount is not set at this time.

4. The Administrative Law Judge (ALJ) shall issue a ruling setting a schedule for further comments on the issue of the appropriate wholesale discount for Voice Mail services.

5. The tariff filings made pursuant to Ordering Paragraphs 1, 2, and 3 above shall be effective 40 days after filing unless protested. If protested, filings will become effective upon issuance of a Commission resolution. Any protests must be filed within 20 days of the tariff filing.

6. To the extent the interim resale rules adopted in this decision are inconsistent with any provisions adopted in individually arbitrated interconnection agreements, parties to those agreements, are directed to execute amendments to those agreements necessary to conform to the provisions of this decision.

7. Within 40 calendar days of this order, Pacific is directed to make a supplemental filing setting forth a description of each of the services in Appendix B (except for Universal Lifeline Telephone Service and inside wiring) and a justification of why the service should not be offered for resale.

8. The ALJ is directed to issue a procedural ruling addressing the need for restrictions on CLCs' utilization of wholesale services fr purposes other than resale.

9. The ALJ shall solicit comments concerning the proper pricing procedures for resale contracts in which the collection of a End User Common Line (EUCL) charge is involved, to address how CLCs can offer prices that are competitive with the LEC while taking into account the appropriate treatment of EUCL charges.

This order is effective today.

Dated August 1, 1997, at San Francisco, California.

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

APPENDIX A

ADDITIONAL RETAIL SERVICES TO BE OFFERED FOR RESALE AT AVOIDED-COST DISCOUNTS

1. Voice Mail*
2. Promotional offerings exceeding 90 days
3. Contract Plans
4. Operator and Directory Assistance
5. Remote Call Forwarding
6. Off-Premise Extension Service
7. Centrex Number Retention Service
8. All Broadband and Fast Packet Services

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* Voice mail is offered for resale at no higher than the retail tariff rate, with retail discounts available to similarly-situated resale customers. No avoided-cost wholesale discount is mandated for Voice Mail, however, at this time.

Preliminary list of products that Pacific Bell will not be offering under resale terms. Subject to change.

Residential Services:

Lifeline Service Subsidy Mechanism
Deaf & Disabled Services: Equipment
Deaf & Disabled: Manual Service
Labor/Network Rearrangements
Visit Charge (trouble identification)
IW: Installation Services
IW: Per Month IW Repair Plans
IW: Per Visit IW Repair Services
Non-Published Number Services
Calling Card
Prepaid Card
Savings Card (VISA / MC)

Preliminary list of products that Pacific Bell will not be offering under resale terms. Subject to change.

Business Services:

Calling Card
Prepaid Card
Savings Card (VISA / MC)
Conduit Leasing
Emergency Customer Service
Late Payment
Pole Attachments
Special Billing Services
Labor/Network Rearrangements
Cable Services: All IW
Centrex Payment Plans
California 900: Billing & Collections
California 976: Billing & Collections
Billing & Collect Service
Local Plus Calling Card: Hotel/Motel Bill
Business List Rental Service
Cordinated End User Service
Call Detail Recording
Microfiche Billing
BAGS
Joint User Arrangements
Public Telephone Service: Equipment
Public Telephone Service: Paging
Statewide Mobile Telephone Service
Maritime Mobile Telephone Service

END OF APPENDIX B

PACIFIC BELL (U 1001 C)

NEW RETAIL SERVICES MADE AVAILABLE SINCE MARCH 13, 1996

RETAIL SERVICE	DATE EFFECTIVE	RESALE SERVICE AVAILABLE
Caller ID (Includes Changes to Blocking Options)	07/08/96	01/01/97
Caller ID Additional Network Access Services	01/01/97	01/01/97

In addition to the two retail services listed above, Pacific has made the following new wholesale special access service available to both carriers and end users. Private Line or Special Access services are available for resale under the existing tariff.

56Kbps or 64Kbps Connection to Switched Multimegabit Data Service, effective 04/13/96

Finally, Pacific has made a new customized billing service available to end users. The new service allows the customer to receive their monthly bill in compact disk format. Billing services are not telecommunication services that must be offered for resale. Resellers bill their end users and can develop and offer their own customized billing services.

Compact Disk Bill, effective 09/11/96

GTE CALIFORNIA
IN COMPLIANCE WITH D.96-12-076
NEW RETAIL SERVICES FILED SINCE D.96-03-020
AND NOT INCLUDED IN GTE'S RESALE TARIFF

Services to be Added to GTE's K-5 Resale Tariff

ADVICE LETTER	SERVICE	RETAIL FILE DATE	RETAIL STATUS	RESALE FILE DATE	RESALE STATUS
8182/A	Caller ID Name and Anonymous Call Rejection	7/16/96	Approved 10/9/96	1/31/97	PENDING
8221	Automatic Call Return/Automatic Busy Redial per Occurrence	08/12/96	Effective 9/25/96	1/31/97	PENDING
8225	Grandfather DCP Plans 1, 2, 3 Res. and Bus. (Add footnote)	08/21/96	Effective 11/26/96	1/31/97	PENDING
8246	Operator Services - (text changes)	09/09/96	Effective 10/19/96	1/31/97	PENDING
8251	CentraNet MultiLocation - Flat Rated	09/11/96	Effective 11/1/96	1/31/97	PENDING
8279	Automated Intercept and Premium Intercept	10/17/96	PENDING	1/31/97	PENDING
8288	MultiLocation CentraNet work-at-home and access to private facilities	10/28/96	PENDING	1/31/97	PENDING
8329	CentraNet Change to 2-Line Minimum	12/23/96	PENDING	1/31/97	PENDING

(END OF APPENDIX C)

Services Added to GTE's K-5 Resale Tariff

ADVICE LETTER	SERVICE	RETAIL FILE DATE	RETAIL STATUS	RESALE FILE DATE	RESALE STATUS
8226	Caller ID - Resale	N/A	N/A	8/23/96	PENDING (1)
8226A	Caller ID/CentraNet Caller ID - Resale - Add Centranet	N/A	N/A	10/25/96	PENDING (1)
8226B	Caller ID/CentraNet Caller ID - Resale - Apply discount	N/A	N/A	12/30/96	PENDING (1)
8266A	Flexible Pricing - Four or More - Resale Supplement	09/24/96	N/A	12/10/96	PENDING (2)
8328	GTE Toll Restructure to Peak and Off-Peak Billing	12/23/96	N/A	12/23/96	PENDING

(1) Anticipate Approval the week of January 6, 1996

(2) Anticipate Approval at next Commission Meeting on January 13, 1996