

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3298



May 26, 2000

TO: PARTIES OF RECORD IN APPLICATION 99-10-009

Decision 00-05-021 was mailed on May 16, 2000, without the joint dissent of Commissioners Lynch and Wood. Attached herewith is the dissent.

A handwritten signature in black ink that reads "Lynn T. Carew".

Lynn T. Carew, Chief  
Administrative Law Judge

LTC:vdI

Attachment

71423

Partial Dissent of Commissioner Lynch:

I disagree with the specific designation in this decision of the Telecommunications Division to conduct the cost allocation and affiliate transactions audit of SBC and ASI. I have two concerns about the language in this decision.

First, I believe that how we structure our audits, and who should conduct them, should not be identified in a Commission decision. That is a Commission management decision that should be made in the context of assessing the full range of Commission workload and priorities. Should we want to change this element of the decision at some point in the future, we would have to open another proceeding to change the designation made in this legal document. I believe that additional step is an inefficient use of Commission and parties' resources.

Second, designating the Telecommunications Division to perform this audit only adds to the significant workload we have already imposed on the division in other proceedings. That workload includes another audit of Pacific Bell we requested earlier this year. This approach limits our ability to have our professional Telecommunications Division staff focus on other, higher priority and pending matters.

For these reasons, I dissent on this specific element of this decision.

/s/ LORETTA M. LYNCH  
LORETTA M. LYNCH  
Commissioner

I share the concerns expressed by Commissioner Lynch regarding the designation of the Telecommunications Division to conduct the SBC/ASI audit. I join in this partial dissent.

/s/ CARL WOOD  
CARL WOOD  
Commissioner

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3298



May 16, 2000

TO: ALL PARTIES OF RECORD IN APPLICATION 99-10-009

Decision 00-05-021 is being mailed without the Partial Dissents of President Lynch and Commissioner Wood. The Partial Dissents will be mailed separately.

Very truly yours,

A handwritten signature in cursive script, reading "Lynn T. Carew".

Lynn T. Carew, Chief  
Administrative Law Judge

LTC:epg

Decision 00-05-021 May 4, 2000

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of the Application of SBC  
Advanced Solutions, Inc. for a Certificate of  
Public Convenience and Necessity to Provide  
Advanced Data Services as Both an  
Interexchange Carrier and a Competitive Local  
Exchange Carrier Telephone Corporation  
Pursuant to the Provisions of Public Utilities  
Code Section 1001.

Application 99-10-009  
(Filed October 15, 1999)

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## O P I N I O N

### I. Summary

SBC Advanced Solutions, Inc. (applicant) seeks a certificate of public convenience and necessity (CPCN) under Pub. Util. Code Section 1001<sup>1</sup> for authority to provide facilities-based local exchange and intraLATA interexchange telecommunications services. By this decision, we grant the authority requested subject to the terms and conditions set forth below.

### II. Background

By Decision (D.) 84-01-037 (14 CPUC2d 317 (1984)) and later decisions, we authorized interLATA entry generally.<sup>2</sup> However, we limited the authority conferred to interLATA service; and we subjected the applicants to the condition that they not hold themselves out to the public as providing intraLATA service. Subsequently, by D.94-09-065, we authorized competitive intraLATA interexchange services effective January 1, 1995, for carriers meeting specified criteria.

In D.95-07-054 and D.95-12-056, we authorized the filing of applications for authority to offer competitive local exchange service within the territories of Pacific Bell (Pacific) and GTE California Incorporated (GTEC). Applicants who

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<sup>1</sup> All code section references are to the Public Utilities Code.

<sup>2</sup> California is divided into ten Local Access and Transport Areas (LATAs) of various sizes, each containing numerous local telephone exchanges. "InterLATA" describes services, revenues, and functions that relate to telecommunications originating in one LATA and terminating in another. "IntraLATA" describes services, revenues, and functions that relate to telecommunications originating and terminating within a single LATA.

are granted authority to provide competitive local exchange service must comply with various rules, including: (1) the consumer protection rules set forth in Appendix B of D.95-07-054; (2) the rules for local exchange competition set forth in Appendix C of D.95-12-056; and (3) the customer notification and education rules adopted in D.96-04-049.

By D.97-09-115, we extended coverage of our adopted rules for local exchange competition to the service territories of Roseville Telephone Company (RTC) and Citizens Telecommunications Company of California, Inc. (CTC).

In D.99-02-013 in Application (A.) 96-03-007 the Commission granted a CPCN to Southwestern Bell Communications Services (SBCS), an affiliate of Pacific, to offer intraLATA interexchange services. We authorized joint marketing of SBCS's services and imposed safeguards to deter anti-competitive practices. We also imposed an audit requirement to ensure compliance with our affiliate transaction rules and our cost allocation rules. The audits will be undertaken by Office of Ratepayer Advocates (ORA) using independent auditors and paid for by SBCS.

### **III. Overview of the Application**

Applicant, a Texas Corporation, filed A.99-10-009 on October 15, 1999. Applicant seeks authority to provide facilities-based intraLATA interexchange service as a nondominant interexchange carrier (NDIEC), and local exchange services as a competitive local carrier (CLC) throughout Pacific's service territory.

Applicant represents that the formation of applicant and the filing of its application for a CPCN in California, along with similar filings in other states, is the direct product of the approval by the Federal Communications Commission (FCC) of the merger of Ameritech Corp. (Ameritech) and SBC Communications, Inc. (SBC). On October 8, 1999, the FCC released its *Memorandum Opinion and*



*Order* in CC Docket No. 98-141 (FCC 99-279) approving the merger of Ameritech and SBC with certain conditions. The order incorporated a requirement that Ameritech and SBC create, prior to closure of the merger, one or more separate affiliates to provide all advanced services for the combined company. Applicant is that separate affiliate.

Applicant states that the FCC's intent was to force Ameritech/SBC to participate in the growing advanced services market solely through a structurally separate affiliate, and to conduct its business transactions with that affiliate in the same manner that they treat other advanced services carriers.

According to applicant, the FCC directed that the new affiliate would operate largely in accordance with the structural, transactional, and nondiscrimination requirements of Section 272(b), (c), (e), and (g) of the Telecommunications Act of 1996. The FCC also permitted the SBC local exchange carriers (LECs) to transfer to applicant their assets currently used to provide advanced services, and to seek state approval where such approval is needed. After a transitional period, the LECs are to treat requests from applicant for the network elements needed to configure advanced services in the same manner they treat such requests from other carriers. The FCC directed that applicant enter into interconnection agreements (ICAs) with the SBC LECs setting forth the terms and conditions of such provisioning which can be adopted, in whole or in part, by other advanced services carriers.

Applicant states that the FCC's merger conditions provide that certain activities, such as joint marketing of applicant's advanced services by the Ameritech/SBC LECs, will be permitted on an exclusive basis pursuant to written affiliate agreements. They also permit Ameritech/SBC LECs to engage in line sharing with applicant on an exclusive, interim basis as long as they provide unaffiliated entities with a surrogate line sharing discount for the use of

a stand-alone loop to provide advanced services. Generally, however, the FCC has mandated that a separate affiliate, rather than the LEC, must provide these services, and that the relationship of the new affiliate and the LEC must conform to the existing structural separation and affiliate transaction rules.

Applicant represents that while the FCC has already granted applicant the authority to provide advanced services on an interstate basis, its plan requires and anticipates complementary action by state commissions to approve ICAs, grant CPCNs and authorize the transfers of assets to applicant, before it can be truly effective.

#### **IV. Procedural Matters**

In Resolution ALJ 176-3025, dated October 21, 1999, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. All parties agreed that no hearings were necessary, and none were held. Given this status, a public hearing is not necessary, and it is not necessary to alter the preliminary determinations.

#### **V. Comments on the Draft Decision**

The draft of this decision was mailed to the parties in accordance with Pub. Util. Code Section 311(g) and Rule 77.1 of our Rules of Practice and Procedure. Comments and reply comments on the draft decision were filed on April 10, 2000 and April 17, 2000, respectively. In its comments, applicant provided clarification that it request local exchange authority for the Pacific, GTEC, RTC, and CTC service territories. The decision has been revised accordingly.

#### **VI. Procedural Background**

On October 15, 1999, applicant filed an application for registration as a facilities-based intraLATA interexchange carrier.

On October 28, 1999, applicant filed a supplement to its application. The supplement contained the merger conditions imposed on SBC by the FCC in FCC 99-279, which approved SBC's merger with Ameritech.

On November 18, 1999, protests were filed by ORA, Northpoint Communications, Inc., Covad Communications Company, and CTC.<sup>3</sup>

On November 24, 1999, the application was removed from the registration process.

On December 3, 1999, applicant filed its response to the protests.

A prehearing conference (PHC) was held on December 17, 1999.

On January 14, 2000, applicant filed an amendment to its application to include authority to operate as an LEC.

On January 18, 2000, applicant, at the suggestion of the assigned administrative law judge (ALJ), convened a meeting of the parties to discuss the issues in the case. By letter dated January 21, 2000, applicant provided to the ALJ its summary of the discussions of the issues at the meeting.

On January 24, 2000, a second PHC was held. The parties agreed that no hearings were necessary and a briefing schedule was discussed.

On January 27, 2000, an assigned Commissioner's ruling and scoping memo was issued that identified the issues and set the briefing schedule.

Briefs were filed on February 14, 2000, and reply briefs were filed on February 28, 2000.

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<sup>3</sup> CTC's members are Rhythms Links, Inc. (U-5813-C), Covad Communications Company (U-5752-C), AT&T Communications of California (U-5002-C), MCI WorldCom Network Services, Inc. (U-5011-C), Pac-West Telecomm, Inc. (U-5266-C), Sprint Communications Company (U-5112-C), New Edge Networks (U-6226-C), ICG Telcom Group, Inc. (U-5406-C), Time Warner Telecom of California L.P. (U-5358-C), and the California Cable Television Association.

## **VII. Related Proceedings**

Two other proceedings are related to this proceeding. The first is a Section 851 application (A.00-01-023). That application concerns applicant's proposed acquisition of property from Pacific. The second is Pacific's Advice Letter 20785 requesting approval of an ICA between applicant and Pacific.

### **A. Positions of Parties**

#### **1. CTC**

CTC proposes that the Commission postpone issuing a decision on the CPCN until after applicant's Section 851 application and the ICA advice letter filing have been resolved. Alternatively, CTC recommends that approval of the CPCN be conditional upon approval of the Section 851 application and an ICA between applicant and Pacific.

CTC argues that granting the CPCN before the Commission addresses the Section 851 application is legal error because it would prejudge the outcome of the Section 851 application.

CTC argues that the Commission cannot grant the CPCN before addressing the ICA because until the terms of the ICA are known, the Commission cannot determine whether Pacific and applicant will operate in the public interest and in a nondiscriminatory manner.

#### **2. Applicant**

Applicant represents that the CPCN application should be considered separately from the Section 851 application and the ICA. Applicant represents that these are separate proceedings beyond the scope of this proceeding.

## **B. Discussion**

This proceeding addresses applicant's qualifications for a CPCN. It considers applicant's financial qualifications, technical qualifications and fitness to provide the proposed service.

Applicant's Section 851 application requests approval of a specific transfer of property between Pacific and applicant. It addresses the property with which applicant proposes to provide the proposed service.

Pacific's advice letter filing is for approval of an ICA with applicant. It address' the terms by which Pacific will interconnect with applicant. The advice letter was approved by Resolution T-16372.

These three proceedings are related in that applicant cannot provide the proposed service in the manner it proposes without all three approvals. However, these are separate proceedings with separate requirements for approval. The fact that the proceedings are related does not mean that approval of the CPCN constitutes a prejudgment of the Section 851 application.

Therefore, there is no need to delay a decision in this proceeding pending the outcome of the Section 851 application. Likewise, there is no need to condition approval of this application on the outcome of the Section 851 application. We will not do so.

## **VIII. Financial Qualifications**

To be granted a CPCN, an applicant for authority to provide facilities-based local exchange and/or interexchange services must demonstrate that it has a minimum of \$100,000 of cash or cash equivalent to meet the firm's start-up expenses. In addition, an applicant must also demonstrate that it has sufficient additional resources to cover all deposits that may be required by other carriers in order to provide the proposed services. Applicant provided a guarantee from

its parent company, SBC, which demonstrates that it has sufficient cash to meet these requirements. No party disputed applicant's financial qualifications.

We find that applicant has met our requirement that it possesses sufficient financial resources to fund its operations.

## **IX. Technical Qualifications**

Applicants for NDIEC and CLC authority are required to make a reasonable showing of technical expertise in telecommunications or a related field.

### **A. Positions of Parties**

#### **1. CTC**

CTC believes that the Commission cannot logically rule on applicant's technical or managerial capability until it has determined in the Section 851 application what, if any, transfer of assets and personnel to applicant have been approved.

#### **2. Applicant**

Applicant provided information on the backgrounds of its officers and directors. Applicant indicated that it plans to hire personnel from Pacific and other SBC LECs who are familiar with the advanced services it will provide. Applicant also indicated that it will utilize Pacific's services with respect to sales, billing, collection, operations, installation, and maintenance. Therefore, applicant represents that it is technically qualified to provide the proposed services.

### **B. Discussion**

No party has questioned the technical qualifications of applicant's officers and directors. Additionally, the fact that applicant is affiliated with Pacific and will hire knowledgeable personnel from Pacific and other SBC LECs

reinforces applicant's qualifications. We do not need to examine what facilities applicant may acquire from Pacific in order to determine applicant's technical qualifications. Therefore, we conclude that applicant has sufficient technical expertise to meet our requirements.

#### **X. California Environmental Quality Act (CEQA)**

CEQA requires the Commission as the designated lead agency to assess the potential environmental impact of a project in order that adverse effects are avoided, alternatives are investigated, and environmental quality is restored or enhanced to the fullest extent possible. Applicant represented that, with the exception of equipment to be installed in existing buildings or structures, it will not be constructing any facilities for the purpose of providing interexchange or local exchange services. Therefore, it can be seen with certainty that there is no possibility that granting this application will have an adverse effect upon the environment.

By this decision, applicant is authorized to install equipment within existing buildings or structures. It is not authorized to construct other facilities or to undertake construction activities which expand the footprint of existing buildings or structures. It must request additional authority, and submit to any necessary CEQA review, in order to do so.

#### **XI. Affiliate Transaction Rules**

##### **A. Positions of Parties**

##### **1. ORA**

ORA states that is unclear as to whether the affiliate transaction rules will be followed regarding the billing and collections affiliate transactions between Pacific and applicant. Specifically, ORA states that applicant should pay a referral fee (1) when Pacific makes a sale of applicant's services, (2) when

applicant completes a sale to a customer whose call was transferred to applicant by Pacific, and (3) when applicant completes a sale to a customer who was provided applicant's phone number or other information about applicant by Pacific. Additionally, ORA recommends that applicant pay Pacific the higher of the fully distributed cost plus 10% or the market price for joint marketing services.

## **2. Applicant**

Applicant states that the joint marketing services provided by Pacific will be charged to applicant using the Commissions' affiliate transaction rules.

Applicant agrees with ORA that it must pay Pacific for joint marketing services, the higher of the fully distributed cost plus 10% or the market price. Applicant also agrees with ORA that it must pay Pacific a 13% referral fee for new customers obtained for or referred to applicant by Pacific. The 13% referral fee is to be applied to the first month's recurring and non-recurring charge revenue.

## **B. Discussion**

Our affiliate transaction rules apply to transactions between Pacific and its affiliates as agreed to by ORA and applicant. We will confirm this in our order.

## **XII. Audit Requirement**

### **A. Positions of Parties**

#### **1. ORA**

ORA believes that an annual audit of applicant is needed to assure applicant's compliance with the Commission's affiliate transaction rules and cost allocation rules.



ORA recommends that the affiliate audit required by the FCC should conform to the audit requirements adopted in D.99-02-013. ORA believes that the FCC audit will focus on compliance with the Telecommunications Act of 1996 and FCC rules, not the Commission's affiliate transaction rules.

ORA raised this same issue regarding SBCS in A.96-03-007. The Commission, in D.99-02-013 required SBCS to pay for an audit of its compliance with the Commission's affiliate transaction rules and cost allocation rules. ORA recommends that such an audit be done annually.

## **2. TURN**

TURN also recommends that the Commission should require audits of compliance with the Commission's affiliate transaction rules and cost allocation rules consistent with D.99-02-013. TURN recommends the audits because it believes that the same incentives and opportunities for Pacific to violate these rules are present with applicant as are present with SBCS.

## **3. Applicant**

Applicant represents that the Commission has presently a monitoring and reporting system, and has the authority to order an audit whenever it believes one is needed. Additionally, Pacific represents that the FCC has indicated that it will work closely with the states in its compliance audits. Applicant represents that no party has demonstrated that a separate audit requirement is needed. Applicant believes that a separate audit requirement is unnecessary.

Applicant states that, if the Commission orders that audits be done, the Commission's Telecommunications Division should do the audit rather than ORA. Citing D.00-02-047, applicant states that the Telecommunications Division has no stake in the outcome whereas ORA has the appearance of potential bias.

## **B. Discussion**

Applicant will be marketing its services jointly with Pacific. Applicant will be purchasing services such as billing, collection, operations, installation, and maintenance from Pacific. Also, applicant may receive employees from Pacific. It is not unreasonable to assume that errors may occur in affiliate transactions and cost allocations. An audit could detect such errors and permit early correction. However, the FCC audit, as pointed out by ORA, will not focus on the Commission's affiliate transaction rules and cost allocation rules.

This is essentially the same situation we found in A.96-03-007. Therefore, we will adopt the same solution. We believe that a separate periodic audit, conducted at the same time as the FCC audit and in cooperation with the FCC audit, is needed. The audit will address compliance with our affiliate transaction and cost allocation rules. The audit will be paid for by applicant and shall occur at the time of the FCC audit.

In D.00-02-047, we reassigned an audit of Pacific from ORA to our Telecommunications Division. We did this based on two specific facts. The first was that we had experienced continued problems with the scope of the audit proposed by ORA. The second fact was that the auditing firm selected by ORA had hired a subcontractor who had previously advocated against Pacific on ORA's behalf. The subcontractor had also previously worked for Pacific's competitors. We decided that these facts raised the appearance of bias, which ORA could not then repair. Therefore, a reassignment was necessary.

D.00-02-047 in no way precludes future oversight of other audits by ORA. The Commission required that minimization of bias and the appearance of bias be a significant criteria controlling the oversight of audits.

In D.00-02-047, we also stated that the unilateral perception of bias by Pacific or any other party is not a ground for reassignment of an audit away from

ORA. To hold otherwise would encourage parties to raise the specter of bias indiscriminately.

In this instance, the applicant has merely alleged that ORA has the appearance of bias. Applicant has offered no proof of this unsubstantiated claim. Therefore, we find that there is no bias or even the appearance of bias on the part of ORA.

In this instance, the audits that we envision is a compliance audit. The purpose of the audit is to determine compliance with our affiliate transaction and cost allocation rules. The audit addressed in D.00-02-047 was also a compliance audit. While we make no findings here of bias or the appearance of bias, the general principles of independence and objectivity discussed therein apply to any compliance audit.

ORA has not recommended that it perform the audit, and we see no reason to require it to do so. Therefore, we will require that the audit be performed by our Telecommunications Division.

### **XIII. Joint Marketing Safeguards**

#### **A. Positions of Parties**

##### **1. ORA**

ORA recommends that the Commission adopt safeguards for joint marketing. ORA recommends that Pacific should not be allowed to market applicant's services on incoming calls until it has fully addressed, to the customer's satisfaction, the customer's inquiry. Pacific should cease marketing applicant's services if the customer requests that it do so. ORA also recommends that Pacific should present information regarding applicant's service options in a competitively neutral manner.

## **2. TURN**

TURN represents that the FCC's merger order required a separate affiliate because the merger is likely to have discriminatory effects on competition in providing advanced services. Applicant has an advantage over other competitors because Pacific's customer service representatives will be able to identify multi-line customers and focus on them in marketing applicant's services. Therefore, TURN recommends that the Commission require Pacific's customer service representatives to inform customers that they have a choice of digital subscriber line service providers consistent with the requirements imposed in D.99-02-013. The requirement would apply to all inbound calls.

## **3. Applicant**

Applicant has no objection to ORA's recommendation that Pacific must first complete the business raised by the customer on an inbound call before addressing advanced services.

Applicant represents that the advanced services Pacific sells, and that applicant will provide, are local exchange services.

Applicant asserts that Pacific is not currently required to inform customers that other carriers provide the same services or to provide competitor's names. Imposing such a requirement on applicant would be inconsistent with this fact. Applicant also states that SBC was not the first carrier to provide advanced services in California. It states that other carriers, including some of CTC's members, provided broadband services before SBC. Applicant alleges that customers are already aware that there are other advanced service providers to choose from.

## **B. Discussion**

When a customer calls Pacific, regarding a service the customer receives or is considering ordering from Pacific, it is a reasonable assumption that the

customer expects his or her inquiry to be addressed. If the customer is forced to listen to marketing presentations before the customer is allowed to have his or her inquiry addressed, the customer's only alternative is to hang up. In that case, the customer's inquiry would not have been addressed. We believe that this is an unreasonable outcome. Therefore, we will require that, when a customer calls Pacific, the customer's inquiry should be fully addressed before Pacific attempts to market applicant's services. Once the customer indicates that he or she does not want a continuation of Pacific's marketing efforts, Pacific should desist.

ORA and TURN would have us require that Pacific's customer service representatives present information regarding applicant's services in a competitively neutral manner consistent with D.99-02-013. Applicant points out that no such similar requirements exist for Pacific regarding the proposed local exchange services. We are mindful, however, that this application is for local exchange and interexchange authority.

We see no reason to impose upon applicant a requirement that we have not imposed on Pacific for the same local exchange services. Therefore, we will not adopt ORA's and TURN's recommendation that applicant inform callers about other providers of applicant's local exchange services. If, in connection with advanced services or separately, applicant offers long distance services there is no reason to treat applicant differently from SBCS. Therefore, the restrictions imposed in D.99-02-013 on SBCS will also apply to applicant regarding such services.

#### **XIV. Customer Proprietary Network Information (CPNI)**

##### **A. Position of Parties**

###### **1. ORA**

ORA believes that the Commission must consider the customer's right to privacy in evaluating CPNI safeguards. ORA recommends that the Commission should require Pacific to send letters to all existing customers through a bill insert that explains customer CPNI rights and confirms customer approval to use CPNI. The Commission should also require Pacific to send all new customers (customers that do not currently subscribe to Pacific's services or former Pacific customers) who are requesting service, as part of the confirmation letter, written notification of the customer's CPNI rights and confirmation of the customer's approval of the use of CPNI. ORA believes that such notification will help prevent misunderstandings regarding use of CPNI.

###### **2. CTC**

CTC states that Pacific's use of CPNI in marketing applicant's services gives applicant a significant competitive advantage. Therefore, CTC recommends that Pacific be required to use its CPNI in a non-discriminatory manner. CTC says that this is particularly necessary since the FCC's CPNI rules were vacated by the U.S. Court of Appeals, Tenth Circuit, in August of 1999.

CTC states that, in spite of the fact that applicant first sought certification as a non-dominant interexchange carrier, applicant now states that the services it plans to offer are local exchange services and as such, do not require Pacific to seek a customer's permission to use CPNI as part of its sales pitch. Applicant admits that CPNI use in Pacific's marketing of internet services would require a customer's permission. CTC represents that neither Pacific nor applicant indicates whether the Internet component of applicant's service will be

discussed. CTC asserts that this leaves Pacific and applicant free to determine for themselves when, if ever, to seek customer permission for CPNI use.

CTC states that Pacific and applicant should not have such a wide degree of latitude to determine how CPNI will be used. Instead, CTC recommends the adoption of a non-discrimination requirement. Under such a requirement, Pacific would have essentially two choices. Pacific could: (1) use CPNI (assuming it has obtained customer permission) in marketing applicant's data services and make this CPNI available to unaffiliated providers on a non-discriminatory basis; or (2) Pacific could forego the use of CPNI in marketing applicant's services. CTC asserts that either of these two alternatives would ensure that unaffiliated data service providers have the same non-discriminatory access to CPNI as applicant.

### **3. Applicant**

Applicant represents that its customer service representatives are allowed by the FCC to review "loop information" provided that the same information is available to other carriers in the same manner. Applicant also states that its customer service representatives may gather and pass on to applicant relevant information regarding the customer's order.

Applicant represents that the FCC's CPNI order, referred to by CTC, is based on the premise that CPNI should be treated in accordance with customer expectations. Its rationale is that where a customer is discussing the services it receives from a carrier, or related services, it expects that the carrier will access its records to determine how best to provide service. Under that order, local exchange services are to be treated as separate from long distance services. Thus, when a LEC discusses local exchange services with a customer, the customer's permission to use CPNI is implied. In contrast, if the provider of local service is discussing the long distance services of its affiliate, consent to use CPNI is not

implied and must first be obtained from the customer. This approach was reaffirmed by the FCC in its Order on Reconsideration issued in August of 1999, which was not vacated by the U.S. Court of Appeals, Tenth Circuit.

The advanced services that Pacific currently sells to its customers, and that it will jointly market for applicant, are local exchange services. Thus, Pacific is not required to obtain customer approval before using CPNI to market advanced services.

### **B. Discussion**

The FCC's merger approval order allows joint marketing by Pacific and applicant. Therefore, the customer service representative will have access to the customer's CPNI. Customers who are transferred to applicant will expect applicant to have access to their CPNI. We see no reason to impose any new restrictions or requirements on Pacific's use of CPNI in marketing applicant's services so long as the advanced services do not involve long distance service. To the extent that applicant markets advanced services as all, or in part, long distance services, customer consent will be required before the customer's CPNI can be used. Therefore, if applicant offers services that are all, or in part, long distance services, it will have to abide by the restrictions placed on SBCS in D.99-02-013 regarding the use of CPNI.

### **XV. Applicant's Commitments to Parties**

By letter to the assigned ALJ dated January 21, 2000, applicant summarized its January 18, 2000 discussions with the other parties to this proceeding.



## **A. Position of Parties**

### **1. CTC**

CTC recommends that, should the Commission decide to grant the CPCN, the following commitments made by applicant and described in the letter to the assigned ALJ dated January 21, 2000, should be imposed upon applicant:

- SBC LECs, including Pacific, will fully disclose network information regarding deployment of Project Pronto on a non-discriminatory basis;
- Applicant will receive such network information in the same manner as the other CLCs and specifically will not receive advance notice of the location or serving area of Pacific's remote terminals;
- Applicant will receive no advantage with respect to other CLCs in the placement of, or access to and use of, equipment at remote terminals;
- In circumstances where the electronic equipment in a Central Office or remote terminal is owned by Pacific or applicant, access to such equipment will be provided to other carriers under the FCC's unbundling rules;
- Applicant, pursuant to the Merger Conditions, must undergo annual audits, including a separate collocation audit; and
- Applicant may not have access to operational support systems (OSS) information that is not available to others.

CTC recommends that the Commission establish adequate monitoring and enforcement mechanisms to ensure that applicant lives up to these commitments.

CTC states that applicant did not include, in the January 21, 2000 letter, the following additional commitments it made at the January 18, 2000 settlement meeting:

- Non-discriminatory terms and conditions for line sharing;
- Access to draft and/or final Methods and Procedures documents for line sharing and remote terminals (applicant's representatives acknowledge such documents exists); and
- Participation by a CLC representative on core teams established to develop line sharing and remote terminal offerings.

CTC says that these commitments should also be imposed upon applicant as a condition of approval of a CPCN.

## **B. Discussion**

At the end of the first paragraph of the January 21, 2000 letter, applicant states as follows:

"I will briefly summarize below the discussion of the several issues, including ASI's current understanding of how they will be resolved."

The last paragraph on page 4 of the letter states as follows:

"The meeting concluded shortly before Noon. While it did not result in the formal resolution of all of the parties' expressed concerns regarding the ASI application, it clearly afforded an opportunity to discuss the issues and to impart information to the interested parties. With respect to several of the questions, it is ASI's belief that the concerns raised have now been satisfactorily resolved."<sup>4</sup>

We have no evidence in the record as to what commitments may have been made at the January 18, 2000 meeting described in the letter. Applicant's letter indicates that it is a summary of applicant's current understanding of how

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<sup>4</sup> The term "ASI" refers to applicant.

issues will be resolved. Therefore, we will not require applicant to live up to the alleged but undocumented commitments. We do, however, expect applicant to comply with all California and Federal Laws, and the rules and orders of this Commission and the FCC. We will condition our approval of this application on full compliance with such laws, rules and orders.

## **XVI. Additional Conditions**

### **A. Positions of Parties**

#### **1. CTC**

CTC states that the following conditions should be imposed on applicant to ensure that the public interest is served.

- a. Non-discriminatory access to collocation at remote terminals (including access and rate information). This condition is required to implement paragraphs 205-229 of the FCC's Remand Order on Unbundling Obligations and is critical to the continued development of competition for advanced services.
- b. Non-discriminatory access to all OSS available to applicant (including but not limited to Pacific's Service Order Retrieval and Distribution System (SORD)), and Pacific will not transfer OSS functions useful to the preordering and ordering of advanced services to its separate services affiliate. Applicant informed CTC at the January 18, 2000 meeting with parties to this proceeding that SORD will not be made available to CLC's other than applicant. SORD is Pacific's main operations support system for processing customer service orders. CTC states that the merger conditions require Pacific to provide SORD to all CLCs.
- c. The Commission should not issue a CPCN prior to requiring applicant to identify all rates, terms and conditions pertaining to CLC interconnection with applicant for frame relay and asynchronous transfer mode interconnection. The Commission should allow CLCs to

file comments on such rates, terms and conditions to ensure that they are just, reasonable, and non-discriminatory;

- d. The Commission should require Pacific to give notice to all customers prior to transfer of any customer to applicant, and provide each customer a fresh look opportunity to choose their advanced services provider. In addition, customers should be allowed a fresh look period that extends at least six months after line sharing is made available to all CLCs; and
- e. The Commission should require disclosure, with the proper confidentiality protections, of all communications (including email correspondence) that occurred internally between Pacific and applicant during the six-month transition period, so that the Commission can accurately assess the degree of separation to date and can track any anti-competitive actions during the period.

## **2. Applicant**

Applicant represents that many of CTC's proposed conditions relate to the Section 851 application, the ICA or other proceedings outside the scope of this proceeding. As such, they should not be addressed here.

Applicant represents that the FCC's merger conditions specify that, following a transition period of 180 days, applicant must access Pacific's loop information through the same interfaces, OSS, processes and procedures as are made available to other carriers. They also require applicant to do its own provisioning. Applicant intends to comply with that requirement. SORD is an order entry system that is used to provision services. Applicant has purchased SORD from another party and intends to use it to fulfill its obligation to perform its own provisioning. CTC's members may, if they choose, also purchase similar order entry systems.

## **B. Discussion**

Condition a, according to CTC, relates to implementation of the FCC's Remand Order on Unbundling Obligations. It is a given that applicant must comply with all applicable rules and orders of this Commission and the FCC, as well as with all applicable state and federal laws. The specifics of how applicant complies with a particular FCC order is beyond the scope of this proceeding.

Condition b relates to OSS. In order for Pacific to be allowed to compete in the long distance market, Pacific will have to demonstrate to the Commission and the FCC that it is providing non-discriminatory access to OSS. This issue is before us in I.93-04-002 and R.99-04-003, et al., and need not be further addressed here.

As to the transfer of certain OSS functions to applicant, there is no such proposal in this proceeding. Additionally, CTC has not explained why such a restriction is needed. Therefore, this issue will not be addressed in this proceeding.

According to CTC, the merger conditions require SORD to be available to all CLCs. This is the basis of CTC's recommendation. Applicant disagrees. If CTC is correct, the requirement has already been imposed by the FCC and it is not necessary for us to duplicate it. If CTC is not correct, there is no basis for imposing the requirement. Therefore, we will not impose this requirement on applicant.

Condition c relates to the ICA. It is, therefore, beyond the scope of this proceeding.

Condition d relates to the transfer of customers from Pacific to applicant. The transfer will be initiated by Pacific and applicant as a transfer between affiliated entities. The transferred customers are in essence both existing and new customers of applicant. They should not be disadvantaged by

the transfer. Therefore, such customers should receive any benefits that would accrue to them as existing customers of either Pacific or applicant. Additionally, they should receive the same benefits from applicant, as would new customers of applicant. Also, since the customers did not initiate the transfer, they should be advised of the transfer before it occurs and be informed that they can choose to discontinue the service or transfer to another provider. There should be no charge imposed by Pacific or applicant for such discontinuance or transfer of service.

Condition e is a discovery issue that is best addressed in the Commission's audit and the FCC's audit. It need not be addressed in this proceeding.

## **XVII. Conclusion**

We conclude that the application conforms to our rules for certification to provide competitive local exchange and intraLATA interexchange telecommunications services. Accordingly, we shall approve the application subject to the terms and conditions set forth herein.

## **Findings of Fact**

1. The Commission's affiliate transaction rules apply to transactions between Pacific and applicant.
2. Errors may occur in Pacific's and applicant's compliance with the Commission's affiliate transaction rules and cost allocation rules.
3. The FCC audit will not focus on the Commission's affiliate transaction rules and cost allocation rules.
4. A separate audit of Pacific's and applicant's compliance with our affiliate transaction rules and cost allocation rules regarding transactions between Pacific and applicant is necessary.

5. It is reasonable that the compliance audit should adhere to professional accounting standards and norms, and be free of bias or the appearance of bias.

6. ORA and applicant agree that, when a customer calls Pacific, the inquiry should be fully addressed before marketing of applicant's services begins.

7. If in the future applicant offers long distance services, there is no reason to treat applicant differently from SBCS regarding those services.

8. Because the transfer of customers from Pacific to applicant is being initiated by Pacific and applicant, such customers are essentially both existing and new customers of applicant.

9. Notice of the application and the amendment to the application appeared in the Daily Calendar on October 19, 1999, and February 7, 2000, respectively.

10. A hearing is not required.

11. In prior Commission decisions, competition in providing interLATA telecommunications services was authorized, but those offering such services were generally barred from holding out to the public the provision of intraLATA service.

12. In D.94-09-065, the Commission authorized competitive intraLATA services effective January 1, 1995, for carriers meeting specified criteria.

13. In prior decisions the Commission authorized competition in providing local exchange telecommunications service within the service territories of Pacific, GTEC, RTC, and CTC.

14. In D.95-07-054, D.95-12-056, D.95-12-057, and D.96-02-072, the Commission authorized CLCs meeting specified criteria to offer facilities-based services effective January 1, 1996, and resale services effective March 31, 1996.

15. Applicant has a minimum of \$100,000 of cash or cash equivalent that is reasonably liquid and readily available to meet its start-up expenses.

16. Applicant has sufficient additional cash or cash equivalent to cover any deposits that may be required by other telecommunications carriers in order to provide the proposed services.

17. Applicant possesses the requisite experience and knowledge to provide telecommunications services.

18. Applicant will not be constructing any facilities or expanding the footprint of existing buildings or structures, other than equipment to be installed in existing buildings or structures, for the purposes of providing interexchange or local exchange service.

19. As part of its application, applicant submitted a draft of its initial tariff which contained the deficiencies identified in Attachment B to this decision. Except for those deficiencies, applicant's draft tariffs complied with the requirements established by the Commission.

20. Exemption from the provisions of Sections 816-830 has been granted to other NDIECs and CLCs. (See, e.g., D.86-10-007, D.88-12-076, D.97-01-015, and D.96-05-060.)

21. The transfer or encumbrance of property of non-dominant carriers has been exempted from the requirements of Section 851 whenever such transfer or encumbrance serves to secure debt. (See D.85-11-044, D.97-01-015, and D.96-05-060.)

22. By D.97-06-107, all interexchange carriers and CLCs are no longer required to comply with General Order 96-A, subsections III.G(1) and (2), and Commission Rules of Practice and Procedure 18(b).

### **Conclusions of Law**

1. The Telecommunications Division should be directed to arrange an audit of applicant, with emphasis on affiliate transaction and cost allocation



compliance as part of, or the same time as, the FCC audit, with costs to be borne by applicant.

2. The audit should adhere to professional accounting standards and norms, and be free of bias or the appearance of bias.

3. When a customer calls Pacific, the inquiry should be fully addressed before Pacific can attempt to market applicant's services.

4. If, in connection with advanced services or separately, applicant offers long distance services, the restrictions imposed in D.99-02-013 on provision of such services should apply to applicant.

5. Customers transferred from Pacific to applicant should receive any benefits that would accrue to them as existing customers of Pacific or applicant, and should receive the same benefits from applicant as would new customers of applicant.

6. Customers transferred from Pacific to applicant should be advised of the transfer before it occurs and should not be charged by Pacific or applicant if they choose to discontinue service or transfer to another provider.

7. Applicant has the financial ability to provide the proposed service.

8. Applicant has sufficient technical expertise in telecommunications.

9. Public convenience and necessity require the competitive local exchange and intraLATA interexchange services to be provided by applicant, subject to the terms and conditions set forth herein.

10. Applicant is subject to:

- a. The current 0.50% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the Universal Lifeline Telephone Service (Pub. Util. Code § 879; Resolution T-16366, December 2, 1999);
- b. The current 0.192% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by

- D.95-02-050, to fund the California Relay Service and Communications Devices Fund (Pub. Util. Code § 2881; D.98-12-073 and Resolution T-16234, December 17, 1998);
- c. The user fee provided in Pub. Util. Code §§ 431-435, which is 0.11% of gross intrastate revenue for the 1999-2000 fiscal year (Resolution M-4796);
  - d. The current surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California High Cost Fund-A (Pub. Util. Code § 739.30; D.96-10-066, pp. 3-4, App. B, Rule 1.C; set by Resolution T-16380 at 0.0% for 2000, January 20, 2000);
  - e. The current 2.6% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California High Cost Fund-B (D.96-10-066, p. 191, App. B, Rule 6.F., Resolution T-16365 December 2, 1999); and
  - f. The current 0.05% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California Teleconnect Fund (D.96-10-066, p. 88, App. B, Rule 8.G; set by Resolution T-16374, effective December 16, 1999).
11. Applicant should be exempted from Sections 816-830.
12. Applicant should be exempted from Section 851 when the transfer or encumbrance serves to secure debt.
13. Since applicant will not be constructing any facilities or expanding the footprint of existing buildings or structures, other than equipment to be installed within existing buildings or structures, it can be seen with certainty that there will be no significant effect on the environment.
14. The application should be granted to the extent set forth below.
15. Applicant, once granted a CPCN to operate as a CLC, should be subject to the Commission's rules and regulations regarding the operations of CLCs as set forth in D.95-07-054, D.95-12-056, and other Commission decisions.

16. Applicant's initial tariff filing should correct the deficiencies in its draft tariffs as indicated in Attachment B to this decision.

17. Any CLC which does not comply with our rules for local exchange competition adopted in Rulemaking 95-04-043 shall be subject to sanctions including, but not limited to, revocation of its CLC certificate.

18. Because of the public interest in competitive local exchange and interexchange services, the following order should be effective immediately.

## **O R D E R**

### **IT IS ORDERED that:**

1. A certificate of public convenience and necessity (CPCN) is granted to SBC Advanced Solutions, Inc. (applicant) to operate as a facilities-based provider of competitive local exchange and intraLATA interexchange services, subject to the terms and conditions set forth below.

2. Applicant is authorized to provide local exchange service within the service territories of Pacific Bell (Pacific), GTE California Incorporated, Roseville Telephone Company, and Citizen Telecommunications Company of California, Inc.

3. The authority granted today is conditioned upon a periodic audit of applicant's compliance with the Commission's affiliate transaction rules and cost allocation rules to be conducted by the Commission's Telecommunications Division at applicant's expense. The audit will include Pacific's compliance with the rules regarding its dealings with applicant. The audit shall be coordinated with the Federal Communications Commission's (FCC) audit.

4. The audit shall be conducted for the purpose of determining compliance with the Commission's affiliate transaction and cost allocation rules following

professional accounting standards and norms, and in a manner free from bias or the appearance of bias.

5. When a customer calls Pacific regarding a service the customer currently receives or is considering ordering from Pacific, the customer's inquiry must be fully addressed before Pacific can market applicant's services.

6. If, in connection with advanced services or separately, applicant offers long distance services, the conditions imposed on Southwestern Bell Communications Services, Inc. (SBCS) in Decision (D.) 99-02-013 on the provision of long distance services shall apply to applicant's long distance services.

7. Customers transferred from Pacific to applicant shall receive the benefits that would otherwise accrue to them as existing customers of Pacific or applicant, and shall also receive the same benefits from applicant as would new customers of applicant.

8. Customers transferred from Pacific to applicant shall be advised of the transfer before it occurs, and shall not be charged by Pacific or applicant if they choose to discontinue service or transfer to another provider.

9. The authority granted herein is contingent upon applicant's compliance with California and federal law, and the FCC's and this Commission's rules and orders.

10. Applicant shall pay Pacific for joint marketing services the higher of the fully distributed costs plus 10% or the market price.

11. Applicant shall pay Pacific a 13% referral fee for new customers obtained for or referred to applicant by Pacific.

12. Applicant shall file a written acceptance of the certificate granted in this proceeding.

13. Applicant is authorized to file with this Commission tariff schedules for the provision of competitive local exchange and intraLATA interexchange

services with the deficiencies noted in Attachment B corrected. Applicant may not offer services until tariffs are on file. Applicant's initial filing shall be made in accordance with General Order (GO) 96-A, excluding Sections IV, V, and VI. The tariff shall be effective not less than 1 day after tariff approval by the Commission's Telecommunications Division. Applicant shall comply with the provisions in its tariffs.

14. Applicant is a competitive local carrier (CLC). The effectiveness of its future CLC tariffs is subject to the schedules set forth in Appendix C, Section 4.E of D.95-12-056:

"E. CLCs shall be subject to the following tariff and contract filing, revision and service pricing standards:

"(1) Uniform rate reductions for existing tariff services shall become effective on five (5) working days' notice to the Commission. Customer notification is not required for rate decreases.

"(2) Uniform major rate increases for existing tariff services shall become effective on thirty (30) days' notice to the Commission, and shall require bill inserts, or a message on the bill itself, or first class mail notice to customers at least 30 days in advance of the pending rate increase.

"(3) Uniform minor rate increases shall become effective on not less than five (5) working days' notice to the Commission. Customer notification is not required for such minor rate increases.

"(4) Advice letter filing for new services and for all other types of tariff revisions, except changes in text not affecting rates or relocations of text in the tariff schedules, shall become effective on forty (40) days' notice to the Commission.

"(5) Advice letter filings revising the text or location of text material which do not result in an increase in any rate or charge shall become effective on not less than five (5) days' notice to the Commission.

"(6) Contracts shall be subject to GO 96-A rules for NDIECs, except interconnection contracts.

"(7) CLCs shall file tariffs in accordance with Pub. Util. Code Section 876."

15. Applicant is a non-dominant intraLATA interexchange carrier (NDIEC). The effectiveness of its future NDIEC tariffs is subject to the schedules set forth in Ordering Paragraph 5 of D.90-08-032 (37 CPUC2d 130 at 158), as modified by D.91-12-013 (42 CPUC2d 220 at 231) and D.92-06-034 (44 CPUC2d 617 at 618):

"5. All NDIECs are hereby placed on notice that their California tariff filings will be processed in accordance with the following effectiveness schedule:

- "a. Inclusion of FCC-approved rates for interstate services in California public utilities tariff schedules shall become effective on one (1) day's notice.
- "b. Uniform rate reductions for existing services shall become effective on five (5) days' notice.
- "c. Uniform rate increases, except for minor rate increases, for existing services shall become effective on thirty (30) days' notice, and shall require bill inserts, a message on the bill itself, or first class mail notice to customers of the pending increased rates.
- "d. Uniform minor rate increases, as defined in D.90-11-029, for existing services shall become effective on not less than five (5) working days' notice. Customer notification is not required for such minor rate increases.
- "e. Advice letter filings for new services and for all other types of tariff revisions, except changes in text not affecting rates or relocations of text in the tariff schedules, shall become effective on forty (40) days' notice.
- "f. Advice letter filings merely revising the text or location of text material which do not cause an increase in any

rate or charge shall become effective on not less than five (5) days' notice."

16. Applicant may deviate from the following provisions of GO 96-A: (a) paragraph II.C.(1)(b), which requires consecutive sheet numbering and prohibits the reuse of sheet numbers, and (b) paragraph II.C.(4), which requires that "a separate sheet or series of sheets should be used for each rule." Tariff filings incorporating these deviations shall be subject to the approval of the Commission's Telecommunications Division. Tariff filings shall reflect all fees and surcharges to which applicant is subject, as reflected in Conclusion of Law 10.

17. Applicant shall file as part of its initial tariff, after the effective date of this order and consistent with Ordering Paragraph 2, a service area map.

18. Prior to initiating service, applicant shall provide the Commission's Consumer Services Division with the applicant's designated contact person(s) for purposes of resolving consumer complaints and the corresponding telephone number. This information shall be updated if the name or telephone number changes.

19. Applicant shall notify this Commission in writing of the date that local exchange service is first rendered to the public within five days after local exchange service begins.

20. Applicant shall notify this Commission in writing of the date intraLATA interexchange service is first rendered to the public within five days after service begins.

21. Applicant shall keep its books and records in accordance with the Generally Accepted Accounting Principles.

22. In the event the books and records of the applicant are required for inspection by the Commission or its staff, applicant shall either produce such

records at the Commission's offices or reimburse the Commission for the reasonable costs incurred in having Commission staff travel to applicant's office.

23. Applicant shall file an annual report, in compliance with GO 104-A, on a calendar-year basis using the information request form developed by Commission staff contained in Attachment A to this decision.

24. Applicant shall ensure that its employees comply with the provisions of Public Utilities Code Section 2889.5 regarding solicitation of customers.

25. The certificate granted and the authority to render service under the rates, charges, and rules authorized will expire if not exercised within 12 months after the effective date of this order.

26. The corporate identification number assigned to applicant is U-6346-C which shall be included in the caption of all original filings with this Commission, and in the titles of other pleadings filed in existing cases.

27. Within 60 days of the effective date of this order, applicant shall comply with Public Utilities Code Section 708, Employee Identification Cards, and notify the Director of the Telecommunications Division in writing of its compliance.

28. Applicant is exempted from the provisions of Public Utilities Code Sections 816-830.

29. Applicant is exempted from Public Utilities Code Section 851 for the transfer or encumbrance of property, whenever such transfer or encumbrance serves to secure debt.

30. If applicant is 90 days or more late in filing an annual report or in remitting the fees listed in Conclusion of Law 10, the Commission's Telecommunications Division shall prepare for Commission consideration a resolution that revokes the applicant's certificate of CPCN, unless the applicant has received written permission from the Commission's Telecommunications Division to file or remit late.



31. Applicant shall comply with the consumer protection rules contained in Appendix B of D.95-07-054.

32. Applicant shall comply with the Commission's rules and regulations for local exchange competition contained in D.95-07-054, D.95-12-056, and other Commission decisions, including the requirement that CLCs shall place customer deposits in a protected, segregated, interest-bearing escrow account subject to Commission oversight (D.95-12-056, Appendix C, Section 4.F.(15).)

33. Applicant shall comply with the Commission's rules and regulations for NDIECs set forth in D.93-05-010, D.90-08-032, and other Commission decisions.

34. Applicant shall comply with the customer notification and education rules adopted in D.96-04-049 regarding passage of calling party number.

35. Applicant is authorized to install equipment within existing buildings or structures without expanding the footprint of such buildings or structures.

36. Except as authorized above, applicant is not authorized to construct facilities or expand the footprint of existing buildings or structures, and must file an application to amend its CPCN in order to do so.

37. Applicant shall send a copy of this decision to concerned local permitting agencies not later than 30 days from the date of this order.

38. The application is granted, as set forth above.

39. This application is closed.

This order is effective today.

Dated May 4, 2000, at San Francisco, California.

LORETTA M. LYNCH

President

HENRY M. DUQUE

JOSIAH L. NEEPER

RICHARD A. BILAS

CARL W. WOOD

Commissioners

We will file a partial dissent.

/s/ LORETTA M. LYNCH

President

/s/ CARL W. WOOD

Commissioner

## **ATTACHMENT A**

### **INFORMATION REQUESTED OF COMPETITIVE LOCAL CARRIERS AND INTEREXCHANGE CARRIERS**

**TO: ALL COMPETITIVE LOCAL CARRIERS AND INTEREXCHANGE  
CARRIERS**

Article 5 of the Public Utilities Code grants authority to the California Public Utilities Commission to require all public utilities doing business in California to file reports as specified by the Commission on the utilities' California operations.

A specific annual report form has not yet been prescribed for the California interexchange telephone utilities. However, you are hereby directed to submit an original and two copies of the information requested below no later than March 31st of the year following the calendar year for which the annual report is submitted.

Address your report to:

California Public Utilities Commission  
Auditing and Compliance Branch, Room 3251  
505 Van Ness Avenue  
San Francisco, CA 94102-3298

Failure to file this information on time may result in a penalty as provided for in Section 2107 and 2108 of the Public Utilities Code.

If you have any question concerning this matter, please call (415) 703-1961.

To be filed with the California Public Utilities Commission, 505 Van Ness Avenue, Room 3251, San Francisco, CA 94102-3298, no later than March 31st of the year following the calendar year for which the annual report is submitted.

1. Exact legal name and U # of reporting utility.
2. Address.
3. Name, title, address, and telephone number of the person to be contacted concerning the reported information.
4. Name and title of the officer having custody of the general books of account and the address of the office where such books are kept.
5. Type of organization (e.g., corporation, partnership, sole proprietorship, etc.).

If incorporated, specify:

- a. Date of filing articles of incorporation with the Secretary of State.
- b. State in which incorporated.
6. Commission decision number granting operating authority and the date of that decision.
7. Date operations were begun.
8. Description of other business activities in which the utility is engaged.
9. A list of all affiliated companies and their relationship to the utility.  
State if affiliate is:
  - a. Regulated public utility.
  - b. Publicly held corporation.
10. Balance sheet as of December 31st of the year for which information is submitted.
11. Income statement for California operations for the calendar year for which information is submitted.

(END OF ATTACHMENT A)

## **ATTACHMENT B**

The following is a list of deficiencies in the tariffs filed with the application. They should be corrected in the tariff compliance filing.

1. In Schedule A, the Commission's surcharges should be listed for selling services to end-users.
2. In Schedule A, when rates are listed, a separate schedule should be created for NDIEC rates and any different rules that may apply to NDIEC customers. The CLEC tariff pages should be titled, "Competitive Local Carrier Tariff."
3. In Schedule A Section 2.2.5, the second sentence should be modified to recognize that service commitments made to potential customers are to be honored.
4. In Schedule A Section 2.2.3, there appears to be no justification for excepting the 3-month backbilling limitation found in D.86-12-025.
5. In Schedule A Section 2.4, the language of the first paragraph should be modified to acknowledge that promotional offerings are tariff filings approved on a 5-day turnaround.
6. In Schedule A Section 2.9 B, the second to last sentence should be modified to state that LAN services may be assigned to another company subject to the appropriate Commission approval.
7. In Schedule A Section 2.10, the language should be changed to state that customers will receive proper notice of their contracts being replaced by this tariff.
8. In Schedule A Section 4.1.1 paragraph 4, it should state that the consumer protection rules of PacBell's Tariff A-2 will all apply, unless specific exceptions are listed.

**(END OF ATTACHMENT B)**