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Decision 99-06-053 June 10, 1999

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Pacific Bell (U 1001 C), a Corporation, for Authority to Categorize Business Inside Wire Repair, Interexchange Carrier Directory Assistance, Operator Assistance Service and Inmate Call Control Service as Category III Services.	Application 98-02-017 (February 9, 1998)
In the Matter of the Application of Pacific Bell (U 1001 C), a Corporation, for Authority to Categorize Residential Inside Wire Repair as a Category III Service.	Application 98-04-048 (April 21, 1998)

FORMAL FILE COPY

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Paul Stein, Attorney at Law, for The Utility Reform Network; and, Peter A. Casciato, a Professional Corporation, by Peter Casciato, Attorney at Law, for California Cable Television Association; interested parties.

Laura Tudisco, Attorney at Law, for the Office of Ratepayer Advocates.

TABLE OF CONTENTS

OPINION

Summary

By this decision we grant Pacific Bell's request to re-categorize its business Interexchange Carrier Directory Assistance (IECDA) service and certain business Operator Assistance Services Billing Alternatives (OASBA) services from Category II to Category III. We grant Pacific Bell's request to increase the ceiling rates for its IECDA service. However, we deny Pacific Bell's request to increase the ceiling rates for its OASBA services, with the exception of Person-to-Person service.

We also grant Pacific Bell's request to re-categorize its Business Inside Wire Repair (BIWR) and Residential Inside Wire Repair (RIWR) services from Category II to Category III. We authorize Pacific Bell to increase the ceiling rates for its business WirePro plan to $1.90 per month, but deny Pacific Bell's request to increase the ceiling rate for its per visit BIWR service. We authorize Pacific Bell to increase its RIWR ceiling rate for its WirePro plan from $0.60 to $1.20, and note that at this new rate it will still rank as the lowest rate among the 44 states whose rates are on record in this proceeding. Pacific Bell is also authorized to increase its residential WirePro plan price floor to cover cost. We require Pacific Bell's service representatives to explain clearly to residential customers that they may subscribe either to the residential WirePro plan which covers repair of the customer's inside wire and jacks or to the WirePro Plus plan that covers the use of a loaner telephone instrument for up to 60 days and its residential WirePro plan.

Jurisdiction

Pacific Bell is a public utility telephone corporation, as defined in § 234 of the Pub. Util. Code, subject to the jurisdiction of this Commission. Pacific Bell filed these applications for authority to re-categorize certain Category II business and residential telecommunication services to Category III, pursuant to Rule 42 of the Commission's Rules of Practice and Procedure (Rules) and Ordering Paragraph 20 of Decision (D.) 89-10-031.[1]

The business services which Pacific Bell seeks to re-categorize are IECDA, certain OASBA, and simple BIWR. The residential service which Pacific Bell seeks to re-categorize is its RIWR.

Telecommunication services are classified into three distinct categories: Category I for services deemed to be basic monopoly services; Category II for discretionary or partially competitive services in which the Local Exchange Carriers (LECs) retain significant, though perhaps a declining, market power; and Category III for fully competitive services with upward and downward price flexibility.

The rates and charges for services classified as Category I and Category II can only be set or changed upon our approval. Category III provides Pacific Bell with upward and downward price flexibility provided that it meets certain requirements. These requirements are addressed in our discussion of price flexibility.

Pursuant to D.89-10-031,[2] Pacific Bell must demonstrate that it does not have significant market power for the services it seeks to re-categorize from Category II to Category III.

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[1] 33 Cal PUC2d 43 at 235 (1989).

[2] Id at 145.

Price Flexibility

The requested re-categorization of services will provide Pacific Bell with pricing flexibility it does not currently have. This is because rate changes set below the ceiling rate for Category III services are not subject to protests and may be changed upon one-day's notice.[3] Subsequent changes to the ceiling rate of a Category III service which decrease the ceiling rate or increase the ceiling rate less than 5% become temporarily effective on one-day's and five days' notice, respectively, and are made permanent on the twentieth day after filing, if not protested. A 5% or greater increase in the ceiling rate becomes temporarily effective on 30 days' notice and permanent on the thirtieth day after filing, if not protested. Protested changes in the ceiling rate remain temporary until the protest is withdrawn or resolved by Commission action. However, if the protest is not withdrawn or resolved, the ceiling rate reverts to its previously authorized level.

Rate changes for Category II services must occur by advice letter and price reductions at or above the price floor[4] become effective on five days' notice while price increases up to the approved ceiling rate are effective on 30 days' notice.[5] The currently effective prices for Category II services were capped as price ceilings for calendar years 1996, 1997, and 1998 with the exception of Z-factor adjustments and Commission approved applications for increases above the rate

[3] Resolution T-15139, dated March 24, 1993.

[4] Price floor is the lower of the long run incremental cost (LRIC) or direct embedded costs (DEC) for a specific rate element (D.94-09-065, 56 Cal PUC2d 117 at 263).

[5] D.94-09-065, 56 Cal PUC2d 117 at 264 (1994), and D.96-03-020.

caps.[6] Subsequent to the submittal of this proceeding Z-factor adjustments are being phased out.[7] Hence, the Z-factor exception is no longer applicable.

Proceeding Type

Pursuant to Rule 6(a)(1), Pacific Bell requested that this matter be classified as a rate-setting proceeding and that hearings not be held because the applications can be decided on their own merits. By Resolution ALJ 176-2987, dated February 19, 1998, and ALJ 176-2992, dated May 7, 1998, the Commission ratified the preliminary determination that these applications are rate-setting proceedings. However, by the same resolutions, the Commission determined that hearings may be necessary.

Prehearing Conferences and Proceeding Staff

Separate Prehearing Conferences (PHC) were held on Pacific Bell's applications before assigned Commissioner Gregory Conlon and ALJ Galvin in San Francisco. PHCs addressing Pacific Bell's Application (A.) 98-02-017 and A.98-04-048 were held on April 17, 1998, and July 10, 1998, respectively.

Subsequent to the filing of A.98-02-017, Pacific Bell filed an April 9, 1998, motion to withdraw its Inmate Call Control Service (ICCS) re-categorization request because the Federal Communications Commission (FCC) deregulated ICCS, pursuant to its Docket No. RM-8181, and because the Commission has approved Pacific Bell's Advice Letter No. 19224, effective March 1, 1998, removing ICCS from Pacific Bell's tariffs. ICCS is an inmate payphone service providing call handling features that allow prison inmates to place collect calls

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[6] D.95-12-052, 63 Cal PUC 2d 377 at 406 (1995).

[7] OIR into Third Triennial Review of the Regulatory Framework, D.98-10-026, mimeo., at 93.

over the Pacific Bell network from authorized telephones in a prison administration controlled environment.

Absent any objection from interested parties at the A.98-02-017 PHC, the ALJ granted Pacific Bell's motion to withdraw its ICCS re-categorization request. Hence, the re-categorization of Pacific Bell's ICCS is not an issue in this consolidated proceeding.

With the departure of Commissioner Conlon at the expiration of his term, the proceeding was reassigned to Commissioner Duque.

Supplemental Application

Pacific Bell requested above-the-line accounting treatment for the business services it seeks re-categorized from Category II to Category III because it wanted resolution of its applications expedited. However, because the above-the-line treatment became an issue at the PHC, on April 28, 1998, Pacific Bell filed a supplement to its application requesting that its OASBA and IECDA services be accorded below-the-line accounting treatment. Attached to the supplemental application were cost and revenue calculations to demonstrate that there is no need to adjust OASBA and IECDA regulated rates because ratepayers are not subsidizing these services. These cost and revenue calculations were placed under seal.

Presiding Officer and Scope of Proceeding

Separate scoping memos were issued by the assigned Commissioner that affirmed the preliminary rate-setting category of both applications, designated ALJ Galvin as the principal hearing officer, confirmed the need for evidentiary hearings, and determined the proceedings' scope. An April 22, 1998, Assigned Commissioner's Scoping Memo identified two issues to be considered in re-categorizing the business services identified in A.98-02-017. These issues were market power and the effects of treating the requested business services above-the-line versus below-the-line.

A July 23, 1998, Assigned Commissioner's Scoping Memo also identified two issues to be considered in re-categorizing the residential service identified in A.98-04-048. These issues were market power and an assessment of whether inside wire repair is presently below cost.

Consolidation of Applications

The consolidation of these two applications became an issue at the A.98-04-048 PHC. All A.98-04-040 parties concurred that the market power issue is prevalent in both proceedings, and that parties intending to provide market power testimony would be using the same witnesses for both proceedings. Accordingly, the parties concurred that the two proceedings should be consolidated.

Because all A.98-02-017 parties were not present at the A.98-04-048 PHC, a July 21, 1998, ALJ Ruling invited all A.98-02-017 parties to comment on the consolidation issue. With no comments received on the consolidation issue, an August 3, 1998, ALJ ruling consolidated A.98-04-048 with A.98-02-017, pursuant to Rule 55. Altogether, the Commission held five days of hearings in this proceeding, and Commissioner Colon was present for four of the five days. The final decision is issued well before the 18-month time period set forth in SB 960, Section 1 (ch. 96-0856, uncodified portion).

Evidentiary Hearing

Evidentiary hearings began on August 14, 1998, and continued through August 21, 1998. Pacific Bell and The Utility Reform Network (TURN) participated in the business and residential issues identified in the Assigned Commissioner's Scoping Memo. The Office of Ratepayer Advocates (ORA) limited its participation in this consolidated proceeding to the residential issues identified in the Assigned Commissioner's Scoping Memo.

Eight witnesses testified in this consolidated proceeding with 47 exhibits received into evidence. Pacific Bell's witnesses consisted of: Market Communications Consultant James R. Kieff, Jerry A. Hausman, MacDonald Professor of Economics at the Massachusetts Institute of Technology, Southwest Bell Telephone Company's Operator Services Director Nelson W. Cain, SBC Telecommunications, Inc.'s Senior Product Management Director Katherine Hansell, Pacific Bell's Cost Manager Judith A. Timmermans, and Pacific Bell's Business Marketing Acting Executive Director Sheri Cunningham-Detlefsen. TURN's and ORA's witnesses consisted of Consultant Charlotte F. Terkeurst, and Regulatory Analyst IV Kelly E. Boyd, respectively.

Pacific Bell, TURN, the California Cable Television Association, and ORA filed concurrent briefs. This consolidated proceeding was submitted upon receipt of the September 14, 1998, concurrent briefs.

Pending Motions

Subsequent to the conclusion of evidentiary hearings, ORA filed a September 14, 1998, motion for leave to submit under seal a non-redacted version of its concurrent brief and a May 3, 1999 motion for leave to submit under seal its non-redacted comments to the proposed decision in this proceeding. The non-redacted version contained information previously determined to be proprietary and placed under seal by a May 13, 1998, ALJ ruling in response to Pacific Bell's motion to file its cost studies under seal. There was no opposition to ORA's motion.

Consistent with the May 13, 1998, ALJ ruling, ORA's motion to place the non-redacted version of its brief and comments under seal should be granted. All data placed under seal in the proceeding should remain sealed for a period of one year from the date of this order. The sealed data should not be made accessible or disclosed to anyone other than Commission staff during the one year time period except on the execution of a mutually acceptable nondisclosure agreement or on further order or ruling of the Commission or the ALJ then designated as the Law and Motion Judge, the assigned ALJ, or the assigned Commissioner.

Market Power Criteria

Market power is the pivotal issue in this consolidated proceeding because it is the only criteria that Pacific Bell needs to meet for re-classifying a service to Category III. By definition, a service will be placed in Category III for either of two reasons: if it has been detariffed due to statutory requirements or federal preemption, or if the local exchange carrier shows that "it has or is expected to have insignificant market power in the provision of the service in each market it intends to service."[8] Because the services identified in this consolidated proceeding are not detariffed or preempted by the FCC, the burden of proof lies with Pacific Bell to substantiate that it has or is expected to have "insignificant market power" for the services it wants re-classified to Category III.

Pacific Bell

In this proceeding, Pacific Bell selected the "1992 Horizontal Merger Guidelines of the U.S. Department of Justice and the Federal Trade Commission," hereinafter referred to as the Merger Guidelines, to demonstrate that it has insignificant market power in its IECDA, OASBA, BIWR, and RIWR services. The Merger Guidelines framework requires an assessment be made to determine

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[8] D.89-10-031, 33 Cal PUC2d 43 at 127 (1989).

whether Pacific Bell has the ability to exercise unilateral market power. That is, whether Pacific Bell has the ability to increase the price for a service above the competitive level for a significant amount of time. Pacific Bell utilized three steps to accomplish this assessment. These steps were to identify and assess the demand[9] and supply[10] elasticity of substitutes for its services; determine the ease of entry into and exit from the markets at issue; and conduct further economic analysis should Pacific Bell's market share for a specific service be significant.

TURN

TURN objected to the use of the Merger Guidelines to assess Pacific Bell's market power because it believes that the market power assessment should be based on criteria developed in prior Commission decisions. TURN recommended that the criteria to assess market power should be as set forth in D.87-07-017.[11] That is, the Commission should assess Pacific Bell's market share, extent of facilities ownership by competitors, ease of market entry and exit, extent of competitors' size and growth potential, and consumer views on the substitutability of services offered by competitors.

ORA

ORA also objected to the use of the Merger Guidelines for assessing market power. ORA believes that it is more appropriate for the Commission to rely on criteria it has applied in prior proceedings rather than to "mechanically" apply

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[9] Demand elasticity is demonstrated when customers switch to competing suppliers as relative prices change.

[10] Supply elasticity demonstrates the willingness of suppliers to enter the market or expand their service or product offering in a response to price changes for the service.

[11] D.87-07-017, 24 Cal PUC2d 541 at 579 (1987).

the Merger Guidelines to assess Pacific Bell's market power. ORA recommended that we rely on the D.87-07-017 criteria, as affirmed and expanded by D.93-02-010[12] to include the determination of the relevant market, earnings, and technical features.

Discussion

The market power assessment recommended by TURN and ORA resulted from a Commission investigation into the appropriate framework for considering whether and on what terms regulatory flexibility might be granted to AT&T Communications of California, Inc. (AT&T-C), the dominant firm in the interLATA telecommunications market. That investigation resulted in a decision (D.87-07-017) establishing optional approaches for measuring AT&T-C's market power: the Observation Approach, which TURN recommends be applicable to Pacific Bell in this consolidated proceeding; and the Prediction Approach, a determination of anticompetitive behavior that most likely would occur either through higher prices or through damage to the competitive industry structure that has developed to date. That decision also authorized AT&T-C to file an application for nondominant interLATA carrier status using either the Observation or Prediction Approach. Unlike AT&T-C, Pacific Bell had no benefit of a preliminary proceeding to determine the market power criteria it should use to substantiate that it has insignificant market power for the requested Category III services.

[12] D.93-02-010, 48 Cal PUC2d 31 (1993).

Parties to the proceeding that adopted price flexibility for Category III services (D.89-10-031), including TURN and ORA,[13] recommended that we adopt several factors to assess market power for those services a LEC may want re-categorized to Category III. The recommended market power criteria included current market share, investment required, barriers to entry, and competitive bidding. Although these recommendations were considered, we concluded that any reliance on such criteria would be very service-specific. Hence, we specifically chose not to establish definitive criteria to determine insignificant market power. Instead, Pacific Bell was directed to propose criteria for assessing market power at the time it seeks to re-categorize a service to Category III.[14]

Subsequently, in response to applications for rehearing, D.90-04-031 affirmed that assessment of market power will likely continue to be a very service-specific undertaking. Because of this, we did not require that data regarding all market power criteria listed by TURN[15] be included in each and every request to place a service in Category III. However, each such request for recategorization should address whether each of these criteria is applicable and,

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[13] Although ORA did not participate in the proceeding leading to D.89-10-031, the Commission's Division of Ratepayer Advocates (DRA) did. By action of the Executive Director, the Commission's DRA ceased to exist as a staff unit on September 10, 1996, and the functions performed by DRA were transferred to a new organization named the Commission's ORA.

[14] D.89-10-031, 33 Cal PUC2d 43 at 127 (1989).

[15] The criteria included market share; easy of entry and exit; facilities ownership; size and growth capability of competitors; local exchange carrier return on equity; competitors' earnings; substitutable services; rates, terms, and conditions of substitutable services; and whether a utility affiliate offers a competitive service.

if so, included in the relevant information. To require a mindless submission of extensive data on every single criteria would result in cumbersome and lengthy proceedings. Such an outcome would defeat one of the very goals our policies on re-categorization of services seek to meet – permitting carriers the ability to change prices of services offered in competitive markets in response to market conditions in a timely way.

Pacific Bell did address the criteria identified in D.90-04-031 in its testimony and brief. D.90-04-031 only requires a discussion of these criteria. I requires that an application to include relevant information only when various market power criteria are applicable. The testimony and the brief of Pacific explained which criteria were relevant, which were not and provided material information for those criteria that were relevant[16] To the extent that Pacific Bell concluded that certain criteria were relevant it provided additional information. For example, Pacific Bell considered and concluded the market share measurements were not needed to perform a market power analysis. Pacific notes that DOJ's merger Guidelines also recognize that market share data provide only a starting point for analyzing the competitive impact of a merger.

The market power analysis that Pacific Bell performed is consistent with the type of market power analysis used in D.87-07-017 and discussed in D.90-04-031. Pacific Bell also analyzed substitutes in the market, demand and supply elasticities, and barriers to entry and exit. These are adequate indicators of market power, and permit the development of a record sufficient for us to make a determination of the market power of Pacific for specific service offerings.

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[16] See e.g. Concurrent Brief of Pacific, pp. 9-10, where Pacific explained how Professor Haussman's market power analysis addressed the criteria in Decision 87-07-017, which, as TURN concedes, are very similar to the criteria listed in Decision 90-04-031.

Pacific Bell considered and concluded that other criteria such as equal access and network facilities ownership, cited in D.90-04-031, were not applicable to the services it seeks to be re-categorized in this proceeding. Although Pacific Bell considered competitors earnings it did not provide such information because it had no way of accumulating that information. Some parties, such as CCTA, comment that our failure to require the submission of evidence that is impossible to obtain constitutes legal error. Such an argument, based on language in D.90-04-031 ignores other sections of this decision that state:

> "We maintain our earlier views expressed in D.87-07-017 and D.89-10-031 that assessment of market power will likely be a very service-specific undertaking. Because of this, we don not require that data regarding all the market power criteria listed by TURN be included in each and every request to place a service in Category III."[17]

Thus, the CCTA's reasoning is flawed, for D.90-04-031 requires the submission of extensive data only when "market power criteria are applicable."[18] CCTA essentially urges us to adopt an interpretation of past Commission decisions that we have already rejected. Moreover, CCTA's proposed interpretation would make it impossible to ever re-categorize telecommunications services. We note that we are setting pricing policies for dynamic telecommunications markets, not engaging in legal scholasticism.

Conclusion

D.89-10-031 left the responsibility of proposing criteria for assessing market power to Pacific Bell through the application process and D.90-04-031

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[17] D.90-04-031, p.13

[18] D.90-04-031, p.25-6.

identified criteria to be considered in evaluating a request for services to be placed in Category III Pacific Bell has complied with the market power criteria set forth in D.89-10-031 and D.90-04-031 by assessing the need to address such criteria. Testimony provided by Pacific Bell on the market-power criteria, coupled with its Merger Guidelines study, enable us to assess whether to re-categorizing these services from Category II to Category III.

Below-the-Line

We also concluded in D.89-10-031 that there should be no cross-subsidies of competitive services at the expense of basic ratepayers. Hence, as a general rule, services placed in Category III based on a showing that a utility has insignificant market power are accounted for as below-the-line services. However, if a utility wishes to include a fully competitive (Category III) service above-the-line, it would need to overcome the presumption that such a service should be excluded.[19]

Hence, a secondary issue must be resolved for those services for which Pacific Bell successfully demonstrates it has insignificant market power and should be re-classified to Category III. That issue is whether the Category III service should be accounted for above- or below-the-line. Absent a positive showing, a Category III service shall be treated as a below-the-line service, pursuant to D.89-10-031.

Interexchange Carrier Directory Assistance

Pacific Bell provides Interexchange Carrier Directory Assistance (IECDA) service to interexchange carrier's (IECs) on a wholesale basis. Those IECs' end

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[19] Id at 145.

users requesting Directory Assistance (DA) from IECs subscribing to Pacific Bell's IECDA are routed from the IEC to the appropriate Pacific Bell DA office that handles the directory for the requested numbering-plan-area. Pacific Bell's DA operator obtains the listing from its DA database if the number is listed, and provides the IEC's end user customer with the listing information for up to three requests per call. The IEC may use either a direct access connection or route its calls through Pacific Bell's access tandem(s).

Pacific Bell's IECDA service is classified as Category II. IECs using this service are billed, in addition to applicable transport charges, a $0.29 DA service call charge for each IECDA call. This $0.29 IECDA charge, established prior to 1994, is also the currently authorized ceiling rate. Although Pacific Bell does not propose to increase its IECDA tariff charge, it does seek authority to increase its ceiling rate from $0.29 to $0.39.

Pacific Bell was the only party submitting IECDA market testimony. Other than Pacific Bell, no party addressed the IECDA service in briefs. Despite the lack of opposition to Pacific Bell's request to re-categorize its IECDA service, the burden of proof remains with Pacific Bell to substantiate that its IECDA service is fully competitive.

Pacific Bell's Position

Pacific Bell contends that competition in its IECDA market began in 1984 at the time we addressed the proper rates for IECDA and found that it was appropriate for IECs to charge their end users for DA. At that time, AT&T-C was the only IEC offering DA service. Other IECs such as MCI Communications Corporation (MCI) and GTE Sprint Communications Corp. (Sprint) subscribed to AT&T-C's resold DA service.

In 1985, both MCI and Sprint established their own inter-Local Access and Transport Area (interLATA) DA services. Subsequently, in 1989, GTE California

Inc. (GTEC) initiated its own intrastate interLATA DA service in competition with Pacific Bell.[20] At that time, the Commission found that barriers to entry into the IECDA market were low and that any number of telecommunications firms, both utilities and unregulated entities, could provide IECDA service. The only components needed to provide competitive IECDA service is the right equipment, some staff, and an IEC access connection.

Subsequently, in 1994, the IECDA service was re-categorized from Category I to Category II upon a Commission finding that the service is partially competitive.[21]

Consistent with its Merger Guidelines' market power criteria, Pacific Bell conducted a demand and supply elasticity study of its IECDA service. Its study demonstrated a significant price elasticity of demand for its IECDA service. Pacific Bell contends that this is primarily attributable to AT&T changing IECDA providers from Pacific Bell to an independent IECDA provider, resulting in a substantial reduction in the use of Pacific Bell's IECDA service. The study also found that Pacific Bell's IECDA volume decreased at least 56% from 1992 to 1997, resulting in an IECDA market share of no more than 44%. However, Pacific Bell believes that its market share is even lower if the increasing number of Intra-Local Access and Transport (intraLATA) and interLATA calls of approximately 11% and 8% a year, respectively, are factored into its study.

Pacific Bell also found that its IECDA supply elasticity is high because of the number of competing suppliers in the business, including Internet DA services and "CD ROM" services. Pacific Bell concluded that the high supply

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[20] D.89-03-051, 31 Cal PUC2d 370 at 386 (1989).

[21] D.94-09-065, 56 Cal PUC2d 117 at 165 (1994).

elasticity for IECDA service enabled independent companies to compete with its IECDA service and competitors to expand capacity at a low margin cost should Pacific Bell increase its IECDA tariff charge above competitive levels.

Market Power

The undisputed evidence shows that there are few market barriers to enter the IECDA market and that new entities are willing and able to enter and remain in the market: from AT&T-C in 1984, IECs in 1985, and GTEC in 1989, to other IECs and the more recent entry of Internet DA and CD ROM providers. This willingness of new entities to enter and their ability to remain in the IECDA market demonstrates the supply elasticity of the IECDA market. It also has substantially impacted the demand elasticity of the IECDA service and eliminated the monopoly power Pacific Bell once had. This is demonstrated by its reduced market share from 100% in 1992 to less than 44% in 1997, despite Pacific's maintaining a constant $0.29 tariff rate during this time period. This substantial reduction in volume and constant tariff rate substantiates the high supply and demand elasticity of the IECDA market.

Ceiling Rate Change

Although Pacific Bell's $0.29 rate for its IECDA service will not change, it seeks authority to raise the ceiling rate for this service to $0.39. There is no opposition to raising the ceiling rate for this service. Further, undisputed cost data, placed under seal, demonstrate that its requested ceiling rate is reasonable.

Conclusion

Pacific Bell substantiated that it does not have a significant market share in the IECDA market and that its IECDA service should be re-categorized from Category II to Category III. Pacific Bell should be authorized to establish its requested $0.39 ceiling rate for this service, as supported by its undisputed cost studies. Pacific Bell's IECDA service should also be treated as a below-the-line service. This exclusion of IECDA service from the sharing mechanism is consistent with the requirement set forth in our prior below-the-line discussion.

Operator Assistance Services Billing Alternatives

The Operator Assistance Services Billing Alternatives (OASBA) services Pacific Bell wants re-categorized from Category II to Category III are Dial (Credit) Calling Card Station Service ("Calling Card"), Operator Assisted Station Service ("Collect Calls"), Operator Assisted Station Service ("Bill-to-Third Number"), and Operator Assisted Service ("Person-to-Person"). Each of these OASBA services has been classified as Category II since 1994 (D.94-09-065, 56 Cal PUC2d 117 at 286 (1994)).

The Calling Card service enables the calling party to charge the call to a calling card account. With a Collect Call, a Pacific Bell end user typically dials O plus the called number and requests that the number called accept all charges. For Bill-to-Third Number calls, the calling party requests that all charges associated with the call be billed to a third telephone number. Finally, Person-to-Person service is provided to end users who call the operator and ask the operator to complete the call to a specific person as opposed to a certain number.

Consistent with its IECDA tariff charge position, Pacific Bell does not propose to change its tariff rate for re-categorized OASBA services. This tariff rate has not changed since OASBA services were classified to Category II in 1994. However, Pacific Bell seeks authority to establish Category III ceiling rates for its OASBA services. The current authorized and ceiling rates and requested ceiling rate for its OASBA services are as follows:

Service	Current Rate	Current Ceiling Rate	Requested Ceiling Rate
Calling Card	$0.35	$0.35	$0.60
Collect Calls	0.95	0.95	1.60
Bill-To-Third Number	0.95	0.95	1.60
Person-To-Person	2.95	2.95	4.00

Pacific Bell and TURN presented testimony on Pacific Bell's Category III request for its OASBA services. ORA took no position on the re-categorization of OASBA services.

Pacific Bell's Position

Pacific Bell contends that its OASBA services are fully competitive because of the existence of competitors within its OASBA market and the substantial loss in its OASBA sales volume between 1992 and 1997. Pacific Bell defined the competitive market for each of its individual OASBA services subject to this application. The calling card market was defined to include widely advertised 1-8XX and 10XXX long distance calling card companies and prepaid cards, introduced in 1993 by the LECs and IECs. The sales of calling card services have increased from zero in 1992 to a forecast of over $4 billion in 2001, the rates and terms of which are not currently regulated.[22]

The collect call and bill-to-third-number competitive market was defined to include 1-8XX companies, 10XXX, and pre-paid long distance cards, of which two

[22] Limited regulation on consumer disclosure becomes effective on July 1, 1999 as set forth in Section 17538.9 to the Business and Profession Code and approved by the Governor on September 23, 1998 (AB 1994).

major competitors were estimated to be spending approximately $24 million per year in California to promote their 1-8XX collect calling services.

The competitive market for Person-to-Person calling was defined to include IEC calling card long distance companies and 10XXX. Pacific Bell acknowledged that this service is being used much less than in previous years because of the availability of various dial-around services. For example, the IEC calling card long distance companies typically charge approximately $0.50 per calling card call plus $0.25 per minute or less that enables a caller to make 4-5 calls using an IEC calling card while failing to reach the person before finding it worthwhile to use Pacific Bell's $2.95 Person-to-Person call.

Pacific Bell conducted an OASBA market study to demonstrate the ease of entry and expansion into its OASBA market and the existence of a high demand and supply elasticity for its OASBA services. It also relied on D.90-08-066[23] which found that barriers to entry of operator services are low; that IECs stand ready to introduce operator services for intraLATA calls almost immediately; and, that there are no impediments to the authorization of operator services competition independent of the authorization of competition for intraLATA switched toll services.

Pacific Bell's OASBA market study showed that its usage volume for calling card, collect call, bill-to-third-party, and Person-to-Person declined approximately 59.2%, 69.4%, 68.3%, and 79.6%, respectively, from 1992 to 1998. This decrease in usage volume does not reflect any impact from a 13% increase in Pacific Bell's access lines over the same time period.

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[23] 37 Cal PUC2d 227 at 303 (1990).

Pacific Bell concluded that it has an insignificant market share in the OASBA market because of the existence of competitors and the results of its market study. The competition for its calling card and collect services come from many competitors including long distance calling cards being offered by almost all long distance companies; and competition for collect and bill-to-third-party number services comes from 800 and 888 collect call services and 10XXX dial around competitors. Pacific Bell concludes its market study substantiates that a high demand and supply elasticity exists for its OASBA services because its competitors are able to expand their respective services at a very low marginal cost as demonstrated by the drop in demand for Pacific Bell's OASBA services from 1992 to 1998. Hence, it seeks to re-categorize its OASBA services to Category III.

TURN's Position

TURN disputes Pacific Bell's insignificant market power claim on the basis that Pacific Bell did not provide adequate reliable date to permit a comprehensive independent market power evaluation for its OASBA services. TURN contends that Pacific Bell relied on broad generalities and on the fact that its OASBA usage volumes for calling card, collect call, bill-to-third-party, and Person-to-Person have declined from 1992 to 1998 rather than on specifics, such as defining and providing market share data on a service by service basis.

TURN does not believe that the decline in usage volumes relied on by Pacific Bell necessarily equates to a loss of market share. Rather, it contends that the decline in volume may be attributable to other factors, such as reduced demand. For example, Person-to-Person calling, as acknowledged by a Pacific Bell witness, is used less than in previous years. Hence, this reduced demand for Person-to-Person service, in itself, does not equate to a loss in market share.

Another factor leading TURN to conclude that insufficient market share information was provided by Pacific Bell is that the OASBA cost studies, except for Person-to-Person calls, are priced significantly above Pacific Bell's incremental costs, indicate that the OASBA market is not fully competitive.

However, should the Commission approve re-categorization of any OASBA services, TURN recommended that the associated costs and revenues continue to be maintained above-the-line. This is because the OASBA services are well-established services that have been offered for decades with a well-understood level of consumer demand and, except for Person-to-Person service, are already priced significantly above their costs.

TURN doesn't believe that the proposed ceiling rate increases to Pacific Bell's OASBA services would serve the public interest. Hence, TURN recommended that Pacific Bell should set the ceiling rates for each reclassified OASBA service at the current tariff rate, except possibly for Person-to-Person calls that may be priced below incremental costs.

Finally, TURN recommends that Pacific Bell not be allowed to disconnect customers for nonpayment of Category III OASBA services. TURN believes that the appropriate remedy for non-payment of OASBA charges in a competitive market is to institute a collection action, not to coerce payment by threatening access to local phone service.

Market Power

Although there is a dispute as to whether sufficient information has been provided to assess Pacific Bell's OASBA market power, there is no dispute on the ease of entry into and exit from the OASBA market. We previously confirmed this ease of entry into and exit from the OASBA market in 1990 when we found that operator services are separable in an operational and financial sense from other intraLATA services and could be provided competitively even while many other intraLATA services remained monopolies.[24]

Contrary to TURN's position, Pacific Bell did define what it considers to be the relevant market for each of its OASBA services. For example, it defined the calling card market to include 1-8XX and 10XXX long distance calling card companies, and prepaid cards.

We acknowledge that Pacific Bell's market share data was restricted to an analysis of its own usage volume for each individual OASBA service from 1992 to 1998. We would have preferred a more comprehensive analysis of the OASBA market in California and the relationship of Pacific Bell's market share to the remaining California market. However, we recognize that competitors do not freely disclose their respective revenue, expense, volume, and market share information for specific services to competitors because of potential adverse competitive action to their market and pricing strategies. Hence, we were not surprised that Pacific submitted its revenue, cost, and volume data for scrutiny in this consolidated proceeding under seal without protests. For the same reason we were not surprised that Pacific Bell did not submit a statewide OASBA market study.

TURN acknowledged that Pacific Bell's OASBA usage volumes have declined and that facilities-based carriers, payphones, and prepaid calling cards compete with Pacific Bell's OASBA services. Although Pacific Bell did not provide specific evidence to demonstrate that the volume reduction for each of its OASBA services translated into loss of market share, it did provide collaborative evidence. This collaborative evidence included research reports

[24] Id.

projecting a compounded annual growth rate for a mature operator services market between 3.8% and 6.7%; data submitted to the FCC for the funding of interstate telecommunications relay services indicating that four large IECs reported a 53.3% market share of total intrastate operator services revenue in 1995; and the spending of hundreds of millions of dollars by competitors to advertise dial-around alternatives such as 1-8XX, 10XXX, and credit cards.

Pacific Bell substantiated that the competitive entities and dial-around services, acknowledged by TURN to exist, coupled with our prior OASBA conclusions discussed in D.90-08-066 and the substantial reduction in volume usage of OASBA services (from 100% in 1992 to less than 41% for calling card, 31% for collect call, 32% for bill-to-third-party, and 21% for Person-to-Person) while maintaining a constant tariff rate for each service since at least 1994, have substantially impacted the OASBA market power Pacific Bell once had.

Below-the-Line

Pacific Bell provided no evidence to justify the inclusion of OASBA services above-the-line. However, TURN provided evidence it believes substantiates that the accounting treatment for OASBA services should depend on the degree of risk that the individual services will be unable to cover costs. That is, OASBA services should be classified below-the-line if there is a high risk that the OASBA services will not cover costs. Conversely, the OASBA services should be classified above-the-line if there is a high likelihood that they will cover costs. Hence, any presumption in favor of below-the-line treatment for Category III services should be outweighed by the well-established nature of the OASBA services, offered for decades with a well-understood level of consumer demand, and their relatively low level of financial risk. TURN also contends that the failure to record OASBA services above-the-line would provide Pacific Bell with a strong incentive to artificially dampen its above-the-line earnings to justify future claims for "franchise impacts."

The criteria established in D.89-10-031 require a Category III service to be excluded from above-the-line treatment unless the service can overcome the presumption that such a service should be recorded below-the-line. This requirement is designed to preserve our regulatory goal of preventing cross-subsidies of competitive services at the expense of basic ratepayers.

There is no basis, other than TURN identifying the possibility that Pacific Bell would be provided with a strong incentive to artificially dampen its above-the-line earnings to justify future claims for "franchise impacts," to conclude that OASBA services can overcome the presumption that such services should be recorded below-the-line. We do not act on speculation that an event may occur in the future. Hence, Category III OASBA services should be recorded below-the-line.

Collection Action

TURN recommended that Pacific Bell be required to replace its ability to disconnect customers' local telephone service for nonpayment of any reclassified OASBA service with a collection procedure similar to its OASBA competitors. This recommendation was proposed by TURN because it believes that Pacific Bell would have an unfair advantage over its competitors if it continued to have the ability to disconnect local service for nonpayment of OASBA charges.

TURN contends that the establishment of a competitive collection procedure would enable Pacific Bell to collect any unpaid OASBA charges because customers want to maintain clean credit reports. TURN also contends that the collection procedure for nonpayment of Category III OASBA services should be consistent with the procedures being considered for nonpayment of toll charges in a nonrelated proceeding (Rulemaking (R.) 97-08-001 and Investigation (I.) 97-08-002).

Pacific Bell opposed TURN's collection procedure proposal because OASBA charges are charges for telephone calls, and because the proposed change would increase basic telephone service for all customers by the cost Pacific Bell would need to spend to recover its bad debts.

We share TURN's concern that Pacific Bell's OASB collection procedures should be similar to the collection procedures available to its OASBA competitors. However, no party presented evidence on the collection procedures available to or being used by Pacific Bell's OASBA competitors. We also share Pacific Bell's concern that the cost of segregating and collecting OASBA charges from OASBA associated telephone calls may increase basic telephone service for all customers.

Absent evidence on competitive OASBA collection procedures, customers' willingness to settle unpaid bills to maintain a clean credit report, cost of separating OASBA charges from associated calls, Pacific Bell's experience in the use of its disconnect procedure, and collection procedure for nonpayment of toll charges, we should not consider changing Pacific Bell's current OASBA collection procedure. We also reject TURN's proposal to require Pacific Bell to use the same collection procedure, if any, as required in R.97-08-001, a proceeding not currently addressing OASBA collection procedures.

Ceiling Rate Change

Given that Pacific Bell experienced a substantial loss in volume of its OASBA services to competition between 1992 to 1998 while maintaining a constant tariff rate for its OASBA services during most of this time period, we would expect Pacific Bell to either lower its OASBA rates, increase its marketing expenditures, and/or establish alternative services to keep its market share from decreasing further. The only evidence provided by Pacific Bell supporting its need to increase ceiling rates, other than costing data placed under seal, is its need to remain competitive.

Cost data supports TURN's contention that Pacific Bell's authorized OASBA ceiling rates are already substantially above its incremental costs except for Person-to-Person service. Based on the evidence presented in this proceeding, it is logical to conclude that Pacific Bell would continue to lose market share should it decide to increase its tariff charges to its requested ceiling rates. Hence, it does not appear to be in Pacific Bell's interest to increase in OASBA rates at this time.

However, Pacific Bell apparently has no plan to raise its OASBA rates in the near term. This was confirmed at the April 17, 1998 PHC, in response to a question from the then assigned Commissioner, when Pacific Bell stated that new ceiling rates were requested because it was required to do so and that the ceiling rates were based on a forward look years and years down the line. Hence, there is no need to consider raising the OASBA ceiling rates at this time. Absent a positive showing by Pacific Bell to substantiate a need to increase its OASBA ceiling rates, we concur with TURN's proposal to keep Pacific Bell's ceiling rates at its currently authorized rates.

Conclusion

Pacific Bell substantiated that it possesses an insignificant market share in the OASBA market for those OASBA business services it seeks to re-categorize from Category II to Category III. Hence, its calling card, collect calls, bill-to-third-number, and Person-to-Person OASBA services should be re-categorized from Category II to Category III. However, except for Person-to-Person service, Pacific Bell has not substantiated a need to increase its OASBA ceiling rate. The current Category II tariff ceiling rate for calling card, collect calls, bill-to-third-number, and Person-to-Person OASBA services should remain in effect as its Category III ceiling rates. Our denial of Pacific Bell's request to increase its OASBA ceiling rates other than Person-to-Person service doesn't preclude Pacific Bell from seeking future approval. As addressed in our Price Flexibility discussion, Pacific Bell may seek an increase in the OASBA ceiling rates as set forth in Resolution T-15139, dated March 24, 1998 and our other Category III policies.

Pacific Bell's OASBA service should also be treated as a below-the-line service. This exclusion of OASBA services from above-the-line services is consistent with the requirement set forth in our prior below-the-line discussion.

Business Inside Wire Repair

The simple Business Inside Wire Repair (BIWR) service Pacific Bell wants reclassified to Category III is its business inside wire[25] repair (WirePro) plan and per visit inside wire repair (per visit) service. Under the business WirePro plan, customers pay a monthly fee so that Pacific Bell will diagnose and fix all simple inside wire-related problems at no additional charge. The business per visit service requires the customer to pay Pacific Bell an hourly charge to diagnose and repair all simple inside wire-related problems. Pacific Bell's complex BIWR[26] service was previously classified as a Category III detariffed service.

Both the business WirePro plan and per visit service have been categorized as Category II services since 1990. Pacific Bell last increased its business WirePro

[25] Inside wire consists of telephone wire beginning from the telephone company's Demarcation Point between the customer's and telephone company's facilities and ending at a location within the customer's location where the customer's telephone equipment is connected.

[26] Complex inside wire connects station components to each other or to common equipment of a PBX or key system.

plan tariff rate in 1993 by $.30,[27] an increase from $1.00 to $1.30 per month. Its business per visit rate has remained at a constant $103.00 hourly rate since at least 1993.

Consistent with its position on IECDA and OASBA tariff charges, Pacific Bell intends to continue providing its BIWR service at its current tariff rates. The BIWR service current authorized and ceiling rates; and requested ceiling rate are as follows:

[27] Advice Letter 16555A, dated May 10, 1993.

Service	Current Rate	Current Ceiling Rate	Requested Ceiling Rate
Business & Landlord			
WirePro	$1.30	$1.30	$2.50
Per Visit			
1st 15 minutes	55.00	55.00	80.00
Each Additional 15 minutes	16.00	16.00	25.00
Private Line			
WirePro	3.50	3.50	4.50
Per Visit			
1st 15 minutes	55.00	55.00	80.00
Each Additional 15 minutes	20.00	20.00	30.00

Pacific Bell and TURN presented testimony on Pacific Bell's request to re-categorize its simple BIWR service to Category III. ORA took no position on Pacific Bell's request to re-categorize its simple BIWR service.

Pacific Bell's Position

Pacific Bell presents evidence on the ease of market entry in California and on supply and demand elasticities in the California BIWR market. Pacific cites prior findings of the FCC and this Commission. Pacific further notes that BIWR is detariffed and/or deregulated in 47 other states and the District of Columbia. Pacific concludes that this evidence concerning California markets and markets in other states substantiates that its BIWR service is fully competitive and that the ceiling rates for its BIWR service should be increased.

Pacific Bell relied on the results of two market studies conducted by an independent consultant to corroborate Pacific Bell's claim that its BIWR service is fully competitive. One study surveyed BIWR vendors, and the other study surveyed BIWR users in Pacific Bell's service territory.

The vendor survey was conducted by telephone using a computer assisted telephone interviewing technique on three groups of potential vendors within Pacific Bell service territory. These groups of vendors were electricians/electrical contractors, telecommunications vendors, and eight large competitors (AT&T, MCI, GTE, Sprint, LDDS, NETCOM, UUNET, and PSINET). No data was received from the large competitors because those that responded indicated that their firms didn't offer installation and repair services or they refused to answer key questions. Hence, information was compiled from the other two groups of potential vendors.

The vendor survey showed that there are 1,794 electrical firms in the installation business, of which 1,471 firms are in both the installation and repair business and that these alternative vendors' hourly rates are lower than Pacific Bell's hourly rates. For example, Pacific Bell's BIWR hourly rate is $103 compared to the electricians and telecommunications vendors BIWR hourly rates of $51 and $65, respectively. These vendors have a combined total of 23,835 employees installing and repairing inside wire as compared to Pacific Bell's 3,500 employees, or 12.8% of the employees providing BIWR services in its operating area.

Based on vendor estimates of their 1996 installation and repair billings, the vendor survey showed that Pacific Bell had at most 21% of the installation market and 24% of the repair market. The billings were derived by multiplying the mean billing estimate times the number of firms in each area and further reduced by the percentage of the market that provided billing estimates. Pacific

Bell represents that the results demonstrate that there is a substantial elasticity of substitute vendors for its service and that the results satisfy the supply elasticity criteria of the merger guidelines.

The vendor survey also showed that 31% of electricians and 39% of telecommunications vendors have been in business for less than ten years. Pacific Bell attributed the large influx of vendors in recent years to the low cost of entry into the BIWR market. This is because companies need little, if any, extra equipment to compete in this market. Less than 40% of the vendors surveyed felt they needed any additional equipment to provide BIRW services. Among the minority of vendors who felt they needed more equipment, forty-two percent of the vendors believed that any additional BIWR equipment they might need would cost less than $1,000. Hence, Pacific Bell concludes that its BIWR services satisfy the merger guidelines ease of entry criteria.

A user survey was also conducted by telephone using a computer assisted telephone interviewing technique. The user market was segmented into four regions for study purposes: San Francisco Metro, other Northern California, Los Angeles Metro, and other Southern California.

The user survey showed that approximately 40% of users would consider calling telecommunications vendors or other telephone companies, 32% would call an electrician, almost 24% would deal with the issue themselves or with their staff, while 13% would call the building owner or manager. Almost 82% would consider calling Pacific Bell for an installation. For repair, a slightly lower percentage would consider Pacific Bell, 78%, but 36% would consider telecommunications vendors, 37% other telephone companies, and 28% electricians. In addition, 91% of the users expect to use the same vendor for both installation and repair work.

Although Pacific Bell acknowledged that users consider Pacific Bell the most for installation and repair of inside wire, it contends that its user study substantiates that users are aware of alternative vendors. This is because the user survey also showed that approximately 70% of the users do not believe that any one company has the ability to control installation or repair prices and that Pacific Bell had approximately 18% and 7% of the installation and repair market, respectively, based on the user study results showing how much users spent in 1996 for BIWR services. Telecommunications vendors had 37% and 44% of the installation and repair market, respectively, Electricians had 16% and 22% of the installation and repair market, respectively, while other telephone companies, building owners or managers, and users themselves have the remaining 29% and 27% of the installation and repair market, respectively.

The combined installation and repair market results of the user study showed that Pacific Bell has approximately 15% of the BIWR market. Hence, Pacific Bell concluded that there is sufficient demand elasticity in the BIWR market to satisfy the merger guidelines.

Pacific also relied on previous Commission decisions that contain statements indicating that it deems this market competitive. The prior Commission decisions relied on by Pacific Bell to corroborate its inside wire maintenance and repair service competitive claim were the reconsideration of the regulatory status of inside wire maintenance[28] and the August 1997 Resale Decision.[29]

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[28] Re Pacific Bell, 115 P.U.R. 4th 225, 233 (1990).

[29] OIR/OII on Competition in the Local Exchange, D.97-08-059, mimeo., at 20-21.

TURN's Position

TURN contends that Pacific Bell's BIWR market power analysis is flawed with respect to competitors in the marketplace, barriers to entry and exit, and willingness of consumers to use the products of its competitors.

TURN views Pacific Bell's business WirePro plan and per visit service as two distinctive services that should be considered as separate sub-markets in assessing the extent of Pacific Bell's market power and in determining the appropriate regulatory treatment for its BIWR services.

It also disputed the results of the market studies because of an increased demand for Pacific Bell's business WirePro plan from 1992 to 1997 and per visit repair service from 1996 to 1997. Even with the $0.30 increase in Pacific Bell's business WirePro tariff rate to $1.30 in 1993, demand for the business WirePro plan increased, an indication that Pacific Bell maintains significant market power in the BIWR market. Other reasons for disputing the results of Pacific Bell's market studies were: Pacific Bell's per visit service cost exceeds its actual per visit revenues; user expenditures for repair services by "other telephone companies" exceed Pacific Bell's comparable amount without identifying which large telephone companies are included in the "other telephone companies" category; projected market shares are based on unreliable estimates by users; and Pacific Bell's 15% to 24% market share can not be reconciled with the fact that an increasingly large percentage of its access line customers are subscribers to its WirePro Plan.

Absent substantive testimony on Pacific Bell's business WirePro market share, TURN concluded that Pacific Bell's business WirePro plan should remain in Category II because Pacific Bell maintains significant market power for the provision of inside wire insurance services and because significant barriers to entry exist. However, should the Commission conclude that Pacific Bell's business WirePro plan should be re-classified to Category III, TURN recommended that the Category III ceiling rate be set no greater than the currently authorized ceiling rate, that Pacific Bell not be allowed to disconnect a customer's local phone service for nonpayment of its business WirePro charges, and that customers be informed of the infrequent occurrence of inside wire repairs and average costs of such repairs.

TURN also concluded that Pacific Bell's BIWR per visit service should remain in Category II. This is because Pacific Bell retains significant market power for its per visit services through its established relationship with customers, consisting of almost 100% of all LEC customers located within its service territory, and their customers being accustomed to dialing 611 for phone service problems. However, if we conclude that Pacific Bell's BIWR per visit service should be re-categorized to Category III, similar to its business WirePro plan recommendation, TURN recommended that the Category III ceiling rate be set no greater than the currently authorized ceiling rate and that Pacific Bell not be allowed to disconnect a customer's local phone service for nonpayment of per visit service charges.

Market Power

Is Pacific Bell's business WirePro plan and per visit service one market or two distinctively separate markets? Pacific Bell conducted its market power study on the basis that its BIWR service is one market having two payment options, WirePro plan and per visit service. However, TURN contends that Pacific Bell should have conducted two distinctly separate market power studies, one for the business WirePro plan and the other for its per visit service. This is because TURN classified the WirePro plan and per visit service as two very different services from both a consumer perspective and a supplier perspective. TURN identified the WirePro plan as an insurance program designed to protect customers against a one-time large repair bill. In such a situation, the success of competitors requires a broad base of customers to pay for unexpected events incurred by a subset of those customers. TURN identified the per visit service as a service providing immediate corrective action, of which competitors need only invest up to $1,000 in tools to enter the BIWR market.

To resolve this BIWR market dispute we turn to our decision in the Order Instituting Investigation (OII) into the accounting for station connections and related ratemaking effects and the economic consequences of customer-owned premise wiring, [30] and to Pacific Bell's October 6, 1997 inside wire repair Tariff No. 8.3, as attached to its BIWR application.

Both the decision and Pacific Bell's tariff identify BIWR service as one service having two payment options. The parties to our OII decision, including TURN, agreed at that time, that simple inside wire maintenance is offered pursuant to tariff with two payment options, monthly or per visit.[31] Consistent with that decision, by tariff, inside wire repair is defined to give Pacific Bell's customers the opportunity to subscribe to either a plan or service under which Pacific Bell will repair their inside wire. These repair options are identified as WirePro plan and per visit inside wire repair service. Irrespective of which payment option is selected by customers, the payment options are designed to resolve the same problem, faulty inside wire. Hence, we conclude from this that the market power analysis for the BIWR service should be based on one market with two payment options, WirePro plan and per visit service.

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[30] 49 Cal PUC 2d 223 identified but not reported, D.93-05-015, dated May 7, 1993.

[31] Id at Appendix A, page 10.

In addition, Pacific's market witness, Professor Jerry Haussman, has provided additional testimony to the effect that payment options do not cause a single service to become two different services. His logic is convincing, and we conclude once again that BIWR is one service with two payment options, the WirePro plan and per visit service.

In 1986, the FCC detariffed inside wire based on comments by parties that showed competition and potential competition for inside wire services, the proliferation of inside wiring "do-it-yourself" kits, and the fact that many states had already detariffed or deregulated inside wire repair.[32] In response to our challenge to the FCC's jurisdiction over inside wire, the U.S. Court of Appeals ruled that the FCC's preemption of state authority over maintenance of inside wire was not justified to establish a competitive market and remanded the case to the FCC.[33] We initially placed all inside wire maintenance services in Category III because of the FCC's detariffing order. However, the inside wire preemption decision allowed us to find that simple inside wire must be tariffed, pursuant to Pub. Util. Code § 489, and we subsequently classified simple inside wire as Category II.[34]

The Commission decisions relied on by Pacific Bell to substantiate that its BIWR service is competitive acknowledge that inside wire maintenance and repair services are competitive. However, the 1990 reconsideration order found

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[32] In the Matter of Detariffing the Installation and Maintenance of Inside Wiring, CC Docket No. 19-105, FCC No 86-63, 51 Fed. Reg. 8498 (February 24, 1998).

[33] National Association of Regulatory Utility Commissions v. Federal Communications Commission, 880 F.2d 422, 431 (1989); see also People of State of California v. F.C.C., 905 F.2d 1217, 1241-1246 (June 6, 1990).

[34] Re Pacific Bell, 115 P.U.R. 4th 225, 233 (1990).

that, because of the prior monopoly position of the LECs, Pacific Bell retains significant market power, or at least that the service is not as yet fully competitive.

Clearly, the seven years that have passed since we last considered how market conditions warrant the classification of this service is an extremely long time in telecommunications markets. Subsequently, in the D.97-08-059 resale decision dated August 1, 1997, we found no compelling basis to require the LECs to offer their inside wire services for resale to the Competitive Local Carriers (CLCs) who can provide this service. We reached this conclusion to avoid the chilling effect a mandated resale of this service would create in the inside wire maintenance and repair market

Although these decisions found that the inside wire maintenance and repair market is competitive, they did not establish that the level of competition in the inside wire repair market warrant re-categorization of this service Therefore, we now turn to an assessment of California markets to determine whether Pacific's market power for BIWR is sufficiently limited to warrant reclassification of this service to Category III. We once again return to the merger guideline criteria (ease of market entry, supply elasticity, and demand elasticity) to assess this market.

There is no dispute that competitors of inside wire maintenance and repair services need less than $1,000 in tools to enter the market. However, there is a dispute as to whether competitors can remain in the BIWR market with ease. TURN does not believe so unless the competitors have access to a substantial amount of capital to provide competitive insured services and a customer service representative network to inform customers of the availability of competitive repair services, to build brand name awareness, and to establish a more pervasive product offering in competition with Pacific Bell.

Although TURN claims that there is a lack of ease to enter the inside wire maintenance and repair market in this proceeding, it provided no new evidence on this issue. Instead, it asserts that Pacific's brand name, ability to bundle, extensive marketing, billing and customer service infrastructure create a barrier to entry. TURN further argues that we ignore this evidence. (Comments, p. 3). We disagree. TURN's testimony possesses a fundamental flaw – it fails to understand that prices in competitive markets are set at the margin, by the marginal customer and the marginal supplier. Even if TURN has shown that Pacific has market advantages, its evidence has failed to provide any information that indicates that Pacific has pricing power. Thus, we did not ignore TURN's evidence, but have determined that it does not bear on the decision we must make.

In contrast, Pacific Bell provides testimony by Professor Haussman, an internationally known expert on telecommunications markets, who provides a marginal analysis of supply conditions in BIWR markets. He states:

> "Many telecommunications vendors and independent electricians and electrical contractors currently provide BIWR service in competition with Pacific. However, some providers of business inside wire installation service do not provide repair service. Nevertheless, these providers should be considered to be in the market for BIWR. These providers can extend their business from installation to repair service without the need to make any significant sunk cost investment. Thus, in response to a non-transitory price increase in BIWR, these installation providers would begin to provide BIWR because they would earn an increase profit." (Exhibit C, pp. 20-21.)

In addition, a Vendor Survey conducted by Pacific indicated that fewer than 13% of unregulated vendors believe $1000 or more in additional equipment is needed to serve this market. (Exhibit A, p.4) Taken together with the fact that there are many vendors of these services already in the market, we can only conclude that there are no barriers to entry or to the expansion of supply at the margins. Pacific Bell has satisfied the ease of entry criteria.

Next, we turn to an analysis of the elasticities of supply and demand. Pacific Bell testifies that the results of its vendor and user market studies, based on revenue estimates, show that there is sufficient supply and demand elasticity and demonstrate the existence of a fully competitive BIWR market within Pacific Bell's service territory.

As brought out by TURN, the results of these studies are not without limitation. Although TURN would use the natural defects of any survey to discredit all the information provided, such an approach makes little sense. As Aristotle has said, "Our discussion will be adequate if it has as much clearness as the subject-matter admits of, for precision is not to be sought for alike in all discussions." (Nicomachean Ethics, 1094)

Surveys must be interpreted with care, particularly surveys concerning market share in a competitive market. Only in monopoly markets can we have a comprehensive picture of everything that goes on. As an administrative agency, the interpretation of survey data on market share falls well within our competence and we apply it in our assessment of the survey evidence.

TURN emphasizes that the BIWR study results showing that Pacific Bell has an overall 24% share of the BIWR market is surpassed by the percentage of Pacific Bell's actual business access line customers subscribing to its business WirePro plan. This result suggests that either Pacific Bell serves a portion of the market with repair costs below the average, or that market share estimates based on vendor reports are unreliable. In our experience, self-reports of sales by vendors deserve a measure of skepticism. Therefore, we attach little weight to the market shares that arise from the vendor survey.

On the other had, the vendor study provides important information in identifying a significant number of firms that offer inside services at rates that provide small businesses with a rich set of alternative vendors and with evidence that entry barriers are low. Thus, our chief use of the vendor study is to demonstrate once again that there are no barriers to market entry and a high elasticity of supply.

TURN has pointed out that that Pacific Bell is experiencing a growth in its business Wire Pro plan and per visit repair service. This growth has occurred in spite of Pacific Bell raising the business WirePro plan monthly rate from $1.00 to $1.30 in 1993 and its substantial per visit repair hourly rate of $103 (compared to the study results showing that electricians and telecommunication vendors charge an hourly rate of $52 and $65, respectively, for inside wire repairs).

Although some use the increase in Pacific's business to conclude that Pacific has market power in BIWR markets, the observation of an increase in business does not rule out other explanations consistent with our finding that Pacific lacks market power. In particular, this result could be explained by a number of different hypotheses. It could arise if vendors are systematically underreporting their hourly billing rates, if vendors take longer to repair a given problem than Pacific and therefore produce a higher bill, if the rising California economy increases the demand for repair services from all vendors (including Pacific), as well as the hypothesis that Pacific has market power.

The large number of vendors providing services, the lower rates that these vendors charge, and the experiences in the 47 of other states that have deregulated or detariffed this service, however, make the market power explanation implausible. Thus, even while the growth in Pacific Bell's business WirePro plan is surprising, this increase provides no evidence that indicates that

Pacific Bell possesses market power and does not contradict our conclusion that the BIWR market is characterized by a high elasticity of supply

Pacific Bell 's user study, on the other hand, showed that within Pacific Bell's service territory, Pacific had a 7% share of the BIWR market, or 15% if Pacific Bell's business Wire Pro service is included. Although a survey of users carries its own limitations, it provides a more reliable estimate of market share than a vendor survey. In particular, while it is hard to find the universe of vendors of inside wire services from which to draw a sample, Pacific Bell's white page listings – which segregate business and residential customers -- make the identification of the users of BIWR services a far simpler task.

As always, no survey is without its own limitations. Pacific Bell's marketing consultant James Kieff, testified he had no idea which telephone companies are included in a category that accounts for a 22% share of the BIWR market. Although Pacific Bell stated that AT&T is included in this category, the evidence presented in this proceeding demonstrates that AT&T's BIWR market share should be zero because it is not in the business of making available its BIWR service to Pacific Bell's customers. This is because AT&T restricts its BIWR service to its own business local service customers. Although some would use this to discredit the study, a simpler explanation is possible. In particular, it is very likely that there is customer confusion between AT&T and Lucent (which were once the same company). Customer confusion on this particular point does not provide a credible reason for rejecting the entire study.

There is also a large unexplained disparity between the telecommunication vendors and end users' revenue estimates for inside wire repairs, as shown in the following tabulation. This is most likely impossible to resolve, for the difference between revenues identified by vendors and revenues identified by an end user's recollection of an expenditure are clearly two very different things.

	Vendor Estimate	End User Estimate	Difference
	(Millions of Dollars)		
Electricians	$45	$ 33	$12
Telecommunication Vendors	19	66	47

Although TURN would use these and other anomalies between the vendor and customer studies to discredit both, such a rejection of survey evidence on markets makes little sense. Pacific's witness adequately explains that with two different populations surveyed, it is not unreasonable to get disparate results among some measures. (1 Tr. 20). Moreover, the important facts for our consideration, those on market shares, are broadly consistent. We conclude that 7 percent of those surveyed claim Pacific as its BIWR vendor, and when added to the WirePro data, the best estimate of Pacific Bell's share of the market is 15%. Even with traditional reporting error, the survey shows that Pacific Bell's share of the market is small. The small share of Pacific Bell in the BIWR market leads us to conclude that the price elasticity of demand that Pacific Bell faces is high.

To contradict this strong showing, TURN cites a proprietary survey that shows a large percentage of telephone customers would call the local carrier when seeking assistance on an inside wire repair as evidence of Pacific Bell's market power. This, however, does not provide evidence of market power. Although It does show that Pacific has a competitive advantage in name recognition, it provides no indication of the behavior of the marginal customer. Moreover, name recognition is only one factor that a firm brings to market. Thus, we conclude that TURN's showing is flawed and does not cast doubt on the market evidence and testimony presented by Pacific.

Since we did not require Pacific Bell to resell its BIWR and RIWR services to CLCs, the future entry of these carriers into local markets will bring customers still more choices concerning inside wire repair services. This is because the CLCs are slowly entering the market within Pacific Bell's service territory and currently have a miniscule share of intraLATA customers. Hence, the CLCs' share of the BIWR market, is likely to be growing.

In summary, Pacific's evidence shows that the BIWR market is open, that competitors face low costs to enter this market, that Pacific has a small market share, that the BIWR has a high elasticity of supply and high elasticity of demand, and that Pacific lacks the power to control prices in this market.

The FCC's findings and the action of 47 other states in detariffing and/or deregulating inside wire indicate that these regulatory bodies have also concluded that market conditions no longer warrant close regulatory scrutiny to ensure that BIWR rates are reasonable. The actions of these regulatory bodies, however, provides further support for our conclusion that this market is competitive. Moreover, these actions make us ask whether and why market conditions in California could enable Pacific to continue to possess market power over a service that 47 other states and the District of Columbia see no need to regulate. We cannot think of any such factor.

In conclusion, Commission decisions and Pacific Bell's vendor studies confirm that competition exists in the BIWR market within its service territory, that barriers to entry are low, and that the elasticities of supply and demand that Pacific face are high. In addition, 47 other states and the District of Columbia have deregulated or detariffed these services. The testimony of Professor Haussman accurately states our conclusion: "Thus, market evidence has already demonstrated that the demand elasticity (cross price elasticity) for Pacific BIWR service is high and the supply elasticity for Pacific's competitors in providing BIWR is high." (Exhibit C, p. 21). Thus, in light of the evidence in the entire record, we reach the same conclusion, that Pacific Bell has an insignificant power in a fully competitive BIWR market. Therefore, re-categorization of BIWR services to Category III is reasonable.

Below-the-Line

BIWR service, currently classified as a Category II service, is treated above-the-line for intrastate ratemaking purposes pursuant to D.86-12-099 and Pub. Util. Code § 461.2. By statute, the treatment of simple inside wire is an exception to the general rule we established in D.89-10-031. That general rule required that services placed in Category III, based on a showing that a utility has insignificant market power, are to be recorded as below-the-line services absent a positive showing that the service should be recorded above-the-line.

For the purpose of establishing rates for a telephone corporation, Pub. Util Code § 461.2 requires all revenues and expenses from the installation and maintenance of simple inside wire subject to the order of the FCC deregulating that wiring to be recorded above-the-line. Hence, irrespective of whether BIWR is classified as Category II or Category III, it must be treated as an above-the-line service.

Collection Action

TURN recommended that Pacific Bell change its collection policy for failure to pay BIWR services with a collection procedure if such services are re-classified to Category III. We see no reason to change the billing and collection relationship between Pacific Bell and its customers. No other Category III service has the collection procedure that TURN recommends.

Ceiling Rate Change

Pacific Bell has requested a change in its BIWR service ceiling rates as part of its application for authority to re-categorize its BIWR service from Category II to Category III.

The only evidence provided by Pacific Bell supporting its need for increased BIWR ceiling rates is its need to remain competitive. However, Pacific Bell's own market research indicates that its hourly BIWR labor rates are significantly above those of its competitors. Thus, it is difficult to understand what market reasons would cause Pacific to seek authority to raise the per visit rate ceiling from $55 to $80 for the first 15 minutes, and from $16 to $25 for subsequent 15 minute intervals. Similarly, Pacific also requests to raise the per visit rate for private line repair from $55 to $80 for the first 15 minutes, and from $20 to $30 for subsequent 15 minute periods.

Pacific also seeks to raise the ceiling rates for its WirePro plans. It seeks to raise the ceiling for the business WirePro plan from $1.30 to $2.50 and to increase its ceiling rates for Private Line WirePro from $3.50 per month to $4.50.

Despite Pacific's requests to change its ceiling rates, Pacific Bell has no plan to raise its BIWR rates in the near term, as discussed in our OASBA ceiling rate discussion. Perhaps because Pacific Bell does not contemplate raising prices for its BIWR services in the near term, it has failed to provide a comprehensive basis for raising the ceiling rate for all BIWR services to the levels it has requested.

Since no price change has occurred in the last six years for BIWR, an increase in the ceiling rate is clearly reasonable. We cannot, however, find any basis in the record to support Pacific's request for a change in the ceiling rate to $2.50. Instead, we decide to preserve the differential between the monthly BIWR and the RIWR that exists today, a difference of 70 cents per month. Pacific has, however, provided substantial evidence concerning market rates concerning

RIWR throughout the country.[35] In light of the evidence on costs, on market prices, and our past pricing actions concerning this service, when we set a new ceiling rate for the residential WirePro plan below, we will also act to maintain a 70 cents pricing differential between these two services. Beyond this , however, we cannot raise the BIWR ceiling rates to the levels requested by Pacific at this time.

We do not concur with TURN's proposal to keep Pacific Bell's ceiling rates at its currently authorized rates, for the evidence concerning RIWR monthly plan rates in markets throughout the country demonstrates that an increase in the BIWR WirePro monthly rate is indeed reasonable.

Pacific Bell's request to increase its BIWR ceiling rates for its WirePro plan should be limited at this time to a level 70 cents above the rate we adopt for RIWR – or, based on the discussion below, to a level of $1.90 per month. We deny Pacific Bell's request to increase its BIWR ceiling for per visit rates because it has provided no evidence to indicate that these rates are reasonable. However, this denial does not preclude Pacific Bell from seeking future approval to increase its BIWR ceiling rates. Pacific Bell may seek an increase in its Category III BIWR ceiling rates through the advice letter process, as set forth in D.95-12-052, dated December 20, 1995.[36]

Conclusion

Pacific Bell has met its burden of proof to substantiate that it possesses insignificant market power in the BIWR market, as required by D.89-10-031 and consistent with the criteria in D.90-04-031. Its request to re-categorize BIWR to a

[35] Exhibit I, Attachment A.

[36] 63 Cal PUC2d 377 at 406 (1995).

Category III service is approved. Hence, Pacific Bell should classify its BIWR services as a Category III service.

Pacific has provided no other basis for adopting its proposed ceiling of rate of $2.50 for business WirePro plan monthly rates. We instead conclude that it is reasonable to maintain the 70 cent monthly differential between RIWR and the BIWR WirePro monthly rate. For this reason, the new ceiling rate for the business WirePro plan, based on the ceiling adopted below for residential WirePro, will be $1.90 per month. All other BIWR ceiling rates should continue in effect until altered through the standard Category III advice letter filing.

Residential Inside Wire Repair

Like its BIWR service, Pacific Bell's Residential Inside Wire Repair (RIWR) service consists of both WirePro and per visit inside wire repair service. The only difference between the two services is that RIWR is applicable to residential customers and BIWR is applicable to business customers. Both the residential WirePro and per visit service have been classified as Category II services since 1990. Pacific Bell's last residential WirePro plan tariff change occurred in 1992, when the monthly rate was increased by $0.10 from $0.50 to $0.60 per month. The per visit service rate for residential customers has remained at $93.00 since at least 1993.

Pacific Bell seeks to re-categorize its residential WirePro plan and per visit service to Category III. It also seeks to increase the tariff ceiling rate for its residential WirePro plan from $0.60 to $1.50 a month. However, it does not propose to change the tariff ceiling rate for its residential per visit service. The following tabulation compares Pacific Bell's authorized current and ceiling tariff rates, and requested ceiling rate change for its residential WirePro plan and per visit service.

Service	Current Rate	Current Ceiling Rate	Requested Ceiling Rate Change
WirePro - per month	$ .60	$ .60	$ 1.50
Per Visit			
1st 15 minutes	45.00	45.00	
Each Additional 15 minutes	16.00	16.00	

Pacific Bell, TURN, and ORA presented testimony on Pacific Bell's request to re-categorize its simple RIWR service to Category III.

Pacific Bell's Position

Pacific Bell argues that RIWR is a fully competitive service.

Pacific Bell supported its request for an increase the RIWR WirePro ceiling with a detailed cost showing, submitted under seal. The cost study indicates that the current price of RIWR is far below its costs.

Pacific Bell supported its claim that it lacks market power in the RIWR market by demonstrating that it lacks the power to set prices and/or the power to exclude competitors from the market —the keys to any showing concerning market power. Pacific Bell presented testimony that RIWR customers can either repair their own residential inside wire or hire outside vendors. First, Pacific supported its argument through testimony that identified several texts offering help for the do-it-yourself individual and located an internet site that provides information to guide do-it yourself repairs.

Second, Pacific provided evidence that the elasticity of supply of RIWR services is high. Pacific Bell utilized the Yellow Pages and a Dun and Bradstreet publication to identify potential competitive inside wire repair vendors and to substantiate the supply elasticity of its RIWR market. The residential inside wire vendor list was supplemented at the evidentiary hearing with a list of local telephone exchange companies providing similar services. The purpose of this testimony was to demonstrate that any market entrant can provide inside wire repair services and that there are no barriers to entry.

Pacific thus shows that marginal customers unwilling to pay a high price can either provide the service themselves or seek an alternative vendor. Such testimony on do-it-yourself and alternative suppliers indicates that the price elasticity of demand that Pacific would face when market prices reflect costs will be high.

Finally, as with BIWR, Pacific presented the testimony Professor Haussman, who interpreted the factual evidence presented by Pacific's technical witnesses. Professor Haussman testified that the RIWR market is competitive and Pacific lacks market power within this market.

Pacific also relied on the findings of the FCC and this Commission, and the detariffed and/or deregulated action of 47 other states and the District of Columbia, to indicate that its RIWR market is fully competitive. In this context, Pacific presented evidence that Pacific's WirePro plan is priced at rates that are far below those prevailing in other states. Indeed, doubling Pacific's rate would leave it equal to the lowest known rate in other states, and less than those prevailing in 42 of the 43 states whose rates are part of the record in this proceeding

Pacific Bell does not know the number of residential customers who either repair their own inside wire or hire outside vendors. Although Pacific Bell conducted no study to determine why the number of residential repair visits has decreased the past three years, it presented the following tabulation of its declining residential repair visits for the last three years. Pacific used this tabulation to support its conclusion that it has already lost shares of its RIWR service to competitors.

	1994	1995	1996	1997
Total Repair Visits	463,000	612,000	439,000	430,000
Total Access Lines	9,484,000	9,691,000	10,014,000	10,309,000
% Repair Visits Per Access Line	4.9%	6.3%	4.4%	4.2%

Pacific argued that this evidence of falling repair visits provided evidence that Pacific was losing market share.

TURN's Position

Like its position regarding the BIWR market, TURN contends that Pacific Bell's residential WirePro plan and per visit service should be treated as distinctively separate markets in assessing the extent of Pacific Bell's market power and in determining the appropriate regulatory treatment for its RIWR service.

TURN disagreed with Pacific Bell's claim that the declining number of residential repair visits supports its contention that the market is fully competitive. TURN contends that Pacific Bell provided no evidence to demonstrate that its RIWR service is fully competitive, other than to assume that this was the case.

TURN also disputed Pacific Bell's RIWR service competitiveness claim, irrespective of whether the residential WirePro and per visit service are treated as one or two markets. This is because TURN concluded that Pacific Bell failed to undertake supply and demand elasticity studies and failed to provide support for its assumption that the RIWR is a fully competitive market.

With regard to increasing the residential WirePro ceiling rate, TURN disputes Pacific Bell's claim that the service is currently priced below cost. TURN argued that Pacific Bell's cost study contained flaws, and that Pacific's requested price of $1.50 per month is not a competitive price.

TURN concluded that Pacific Bell's RIWR service should not be re-categorized to Category III and that the ceiling rate for its residential WirePro plan should not be increased until such time that Pacific Bell provides detailed support for its request. TURN also concluded that Pacific Bell's RIWR remains an integral part of its dominant local access service, as previously found by the Commission in D.89-10-031.

ORA's Position

Consistent with TURN's position, ORA contended that Pacific Bell's residential WirePro plan and per visit service should be distinctively separate service markets in assessing the extent of Pacific Bell's RIWR market power. ORA also contended that an additional inside wire service of Pacific Bell's, WirePro Plus,[37] should be included in any analysis of the residential WirePro market.

Irrespective of how the RIWR market is analyzed, ORA contends that Pacific Bell's request to re-categorize its RIWR is incompatible with its current marketing practices and existing market share in the RIWR market. Although ORA contends that a residential WirePro plan's maximum price increase to $1.50 is excessive, it acknowledged that Pacific Bell's cost study for that plan demonstrates that it is currently priced below cost, when no other Category I or

[37] WirePro Plus is a service that includes use of a loaner telephone in addition to the basic WirePro repair service.

Category II services are considered. ORA concludes that Pacific Bell's cost study may support a maximum price increase to $1.00 for the residential WirePro plan.

ORA also concludes that Pacific Bell's requested re-categorization of its RIWR service and increased residential Wire Pro plan ceiling rate should not be approved because Pacific Bell has failed to substantiate that it does not have significant market power in the RIWR market.

Market Power

We previously concluded in our BIWR market power discussion that Pacific Bell's Business WirePro plan and per visit service is one market with two payment options. The evidence and reasoning presented concerning RIWR are essentially the same. The logic that we used in assessing BIWR leads us to conclude that RIWR is one market with two payment options and we will not repeat that analysis here.

We now turn to whether the market for RIWR is competitive. Concerning the competitiveness of markets, Pacific's market witness, Professor Haussman, testified:

> "The correct manner to assess whether Pacific has the ability to exercise market power is to ascertain whether, if Pacific attempted to restrict its supply to increase the price of its RIWR service above competitive levels, could other providers increase their supply sufficiently to defeat the attempted price increase and customers would find this competitive supply to be an acceptable substitute service."[38]

[38] This testimony essentially restates the procedure outline by the Department of Justice and the Federal Trade Commission Horizontal Merger Guidelines.

We concur. This is the critical test for market power, and is especially critical in our assessment of this market that is so distorted by regulatory pricing policies that have made many traditional measures of market power meaningless.

As an example of the complications that arise from the distortion of regulatory pricing, let us briefly consider California pricing policy and its interaction with the issue of market share. Concerning RIWR, TURN provides evidence indicating that Pacific serves a large proportion of the market for residential repair, with approximately 60% of residential customers subscribing to the WirePro plan and still more using Pacific on a per vist basis. Under any analysis, this is a large proportion of the market.

What significance does Pacific's large market share have in determining the level of competition in the RIWR market? In an unregulated market, a market share this large would raise suspicions concerning the level of competition.[39] On the other hand, if Pacific's portion of the residential market were as low as that for BIWR, we could reasonably conclude that the market is competitive. But what conclusions can we draw from Pacific's60-90% market share?

Unfortunately, we cannot draw significant conclusions from this market share. Since Pacific's RIWR rates are far less than those prevailing in other state markets and even less than its own costs, it is not surprising that Pacific would garner a large portion of the market. Thus, in this context, Pacific's large market share does not provide evidence of market power. Indeed, when a company has the resources to meet the needs of a large portion of the market with prices set

[39] See, for example, the discussion in Department of Justice and Federal Trade Commission Horizontal Merger Guidelines (Merger Guidelines), April 2, 1992, pp. 25-32.

below cost and far below the market prices for similar services, it is surprising Pacific does not have all of this market. Market share data, in this circumstance, demonstrates little concerning the competitive structure of the RIWR market.

Since the provision of a service at a price far below costs both drives competitors out of the market and results in an inflated market share, unlike the case for BIWR, Pacific cannot directly show the presence of a large number of vendors currently providing RIWR services[40], nor can it demonstrate a small market share for its provision of this service.

In response, TURN points out that there is no evidence that in other states which have deregulated inside wire repair, that incumbent utilities have lost significant market share. Although true, this point is irrelevant. As Pacific's market witness, Professor Haussman, testified:

> "Courts have often found firms with greater than a 50% share not to have market power; a recent example occurred where Kodak had a near 70% share of color film sales in the U.S. while it was found not to have market power. . . . Market shares are not a reliable indication regarding the presence or absence of significant market power as has long been recognized." (Exhibit F, p. 3).

Thus, we do not need to analyze further what market share is today or speculate what it would be at market prices. Pacific clearly has a very large market share, but this evidence of a large market share alone will neither prove nor disprove propositions concerning Pacific's market power.

Before turning to the evidence provided on market power, there is one other consequence of regulating RIWR at rates that are low and unchanging that

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[40] Although, consistent with the Merger Guidelines, Pacific identified many firms who could readily enter this market.

requires discussion. TURN, in particular, faults Pacific for not providing a detailed study of the price elasticity of demand for RIWR services. This criticism, although true, is disingenuous. The estimation of the elasticity of demand requires a variation in both price and quantity. For the last seven years, this Commission has held the RIWR price at 60 cents per month. The absence of price variation violates one of the five basic assumptions required to make statistical estimations.[41] Thus, in a regulated market with Pacific possessing almost the entire market and with prices invariant (and set at a fraction of market levels), it is not possible to conduct a statistically valid study that would enable us to draw conclusions regarding the price elasticity of demand. Similarly, with such a large market share, a vendor study would be difficult to perform. Moreover, since prices are so far below costs, a vendor study would have limited value. For these reasons, it is not possible to meet the evidentiary standard proposed by TURN. Clearly, this Commission should not impose impossible burdens of proof on the utilities that it regulates.

We now turn to an analysis of the elasticity of supply and elasticity of demand for RIWR services based on the evidence provided in the record concerning conditions in the California market. First, concerning supply, Pacific has presented evidence that there are a large number of vendors **capable** of providing RIWR service and a number of companies already offering this service. To demonstrate the supply elasticity in the RIWR market, Pacific Bell relied on an

[41] See, for example, Jan Kmenta, Elements of Econometrics (NY: MacMillan, 1971), which states, "Finally, the requirement that $(1/n)\ \Sigma(X_i$ - average $X)^2$ be a finite number different from zero means that the values of X in the sample must not all be equal to the same number, and that they cannot grow or decline without limit as the sample size increase."

analysis of the Yellow Pages and a Dun and Bradstreet publication on electrical and building contractors to identify the existence of approximately 40,000 Electrical and Building Contractors capable of offering RIWR service, of which 19,000 specialize in residential construction. These vendors are listed in the Yellow Pages under the headings Telecommunication Carriers, Telecommunication Wiring & Cabling, Telephone, Telecommunications Installation & Repair, and Electrical Contractors. Pacific's Professor Haussman had a research assistant call vendors listed to determine whether they actually provided residential inside wire repair service. (2 Tr. 85-88). He testified that a significant proportion of those called said that they provide RIWR service. (2. Tr. 85). In a market where regulation has held prices so far below costs, this approach to determining the elasticity of supply is perhaps the only feasible approach possible using California data.

Pacific's Haussman, while not claiming that the vendors hold a large share of RIWR services, points out that:

> "Companies that provide residential (and business) inside wire installation service can enter the market for RIWR quickly and with little or no capital investment. Electricians and electrical contractors have also entered the RIWR market quickly and at low cost." (Exhibit E, p. 7.)

We conclude that Pacific has met its burden of showing that the market for RIWR is characterized by a high supply elasticity and that there are no barriers to entry.

Evidence introduced at the hearings showed that TCI, Cox Communications, Sprint, GTE California, Inc. and most, if not all, independent telephone companies in California either provide or are capable of providing

RIWR service.[42] This evidence documents that there are no barriers to the supply of RIWR services by competing telecommunications companies.

Next we turn to a consideration of the elasticity of demand. First, we note that there is an interaction between the elasticity of supply and the elasticity of demand. Since vendors can readily enter the market, Pacific faces a particularly high -price elasticity of demand. Thus, Pacific's evidence on the ease of expanding supply and entering the market indicates that the price elasticity of demand is high.

Once again, however, with Pacific's RIWR prices so far below costs, it is not now possible, nor will it ever be possible, for Pacific to demonstrate that the price elasticity of demand is high by showing that there are many vendors in the residential inside wire market. Thus, faulting Pacific for failing to demonstrate the current existence of a large number of firms providing this service today holds Pacific to a standard of proof that would be impossible to meet, no matter how competitive the market. Pacific has shown that there are firms providing this service (2 Tr. 85-88), that expansion is easy, and that firms providing BIWR can readily enter the market. This pattern of evidence indicates that the price elasticity of demand is high.

In addition to Pacific's argument based on the ease of expanding the supply of RIWR, Pacific presents evidence that the number of repair visits per access line is decreasing. This is a fact that would be consistent with a loss of market share. TURN, in response, rightly points out that this is not evidence that Pacific is losing market share to competitors, for an exogenous change in the

[42] TCI distributes a price list offering inside wire maintenance for $1.75 per month (Ex. CC); Sprint filed an advice letter to offer RIWR for $2.50 per month (Sprint Advice letter No. 292 D., filed July 13, 1998); TURN (3 Tr. 375-376); and Pacific (2 Tr. 199).

rate of inside wire failure is a possibility. Pacific's market witness, in response, points out the major change in telecommunications markets, internet usage, makes greater demand on the acoustic quality of lines, and that, unless there were t a loss of market share, an increase in RIWR visits should result. (2 Tr. 112-115).

In our assessment, the evidence that Pacific provides does not conclusively demonstrate a loss of market share. Nevertheless, the outcome that Pacific has documented is consistent with a high elasticity of demand and part of an evidentiary pattern that either provides evidence indicating a high elasticity of demand or documents market outcomes consistent with a high price elasticity of demand.

Pacific presents a third piece of evidence relevant to the price elasticity of demand. Pacific shows that do-it-yourself repairs are feasible for this service. Although there is no evidence that do-it-yourself repairs meet a large portion of the demand for RIWR service, the ability of the <u>marginal</u> customer to make inside wire repairs is the relevant factor for determining the elasticity of demand and a check on the power of any vendor to set price. Thus, the ability of do-it-yourself repairs for residential inside wire provides further evidence indicating that the elasticity of demand is high. In this, Pacific essentially repeats the reasoning that the FCC previously used in its efforts to deregulate inside wire repair.

Therefore, based on a consideration of the market for the supply of inside wire services, the trends in repairs per access line, and the ability of do-it-yourself repairs for residential inside wire, we conclude that the price elasticity of demand is sufficiently high to prevent Pacific from exercising market power.

We also previously noted in our BIWR market power discussion that the FCC and this Commission have found that the inside wire maintenance and repair market is competitive, and that 47 other states and the District of Columbia have detariffed and/or deregulated inside wire. Once again, California, we have no reason to believe that California's markets are so different from those in other states that a service as simple as RIWR would prove competitive in 47 states but not California. Thus, this evidence gives further support that the only reasonable conclusion to draw from the pattern of evidence provided in the record of this proceeding is that the RIWR market in California is competitive, just like the markets in 47 other states.

In summary, the evidence provided in this proceeding leads us to conclude that the RIWR is easy to enter and that both a high supply and a high demand elasticity characterize the California market. Based on this evidence, we find that Pacific has met its burden of proof of showing that it has insignificant power in the RIWR market. For this reason, it is reasonable to classify RIWR as Category III – a competitive service.

ORA raised the issue of whether a third residential inside wire repair service of Pacific Bell's, WirePro Plus, should be included in the RIWR market analysis and be marketed as a bundled inside repair plan. This is because ORA believed that the 1998 introduction of a WirePro Plus plan, at $2.25 a month, was being offered by Pacific Bell to give it revenue relief for its residential service by migrating existing residential WirePro customers to its WirePro Plus plan.

ORA's understanding of the WirePro Plus plan comes from a Pacific Bell data response explaining how service order representatives market inside wire repair service to Pacific Bell's residential customers. That data response substantiates that Pacific Bell's service order representatives promote the WirePro Plus plan over the residential WirePro plan. Service order representatives tell Pacific Bell's residential customers that, of the two inside repair plans offered, the best inside wire coverage is the WirePro Plus plan for $2.25 a month. However, if the residential customer thinks that the WirePro Plus plan costs too much, the service representative recommends, as a fallback, the $0.60 monthly residential WirePro plan that covers repairs on jacks and inside wiring.

ORA believes that the residential WirePro Plus plan covers the repair to inside wire, repair or replacement of jacks, and the use of a replacement telephone for up to 60 days if the customer's telephone is malfunctioning. However, Pacific Bell clarified through rebuttal testimony that its residential WirePro Plus plan does not replace and is not in competition with its residential WirePro Plan. Rather, it bundles its repair service with an additional service, that additional service being the availability of a loaner telephone for up to sixty days should the residential customer's telephone instrument malfunction.

Residential WirePro Plus customers are charged a $2.25 monthly rate. However, of that monthly rate, $0.60 is identified as a residential WirePro plan monthly fee and applied to the residential WirePro plan while the remaining $1.65 of the monthly rate is identified as a residential WirePro Plus monthly fee and applied to the WirePro Plus plan for a loaner telephone instrument, as substantiated by Exhibit X sponsored by Pacific Bell on August 21, 1998. Hence, the residential WirePro Plus plan is not an alternative to the WirePro plan and should not be included in the RIWR market analysis as a third inside wire repair service of Pacific Bell's.

However, we do concur with ORA that the marketing script provided by Pacific Bell to its service representatives for promoting the residential WirePro and WirePro Plus plans may be misleading to residential customers. This is because residential customers are only informed of the residential WirePro option as a "fallback" to the WirePro Plus plan. Pacific Bell's service representatives should clearly explain to its residential customers that they have an option of subscribing to either the residential WirePro plan which covers repair of the customer's inside wire and jacks or its WirePro Plus plan that also offers the residential WirePro plan plus the use of a loaner telephone instrument for up to 60 days.

Below-the-Line

Similar to Pacific Bell's BIWR service, its RIWR is recorded as an above-the-line service for intrastate ratemaking purposes pursuant to D.86-12-099 and Pub. Util. Code § 461.2. Hence, irrespective of whether its RIWR service is classified as Category II or Category III, it should continue to be recorded as an above-the-line service.

Collection Action

TURN recommends that Pacific Bell change its collection policy for a residential customer's failure to pay for RIWR service with a collection procedure if such services are re-classified to Category III. Once again, we see no reason to change the billing and collection relationship between Pacific Bell and its customers. No other Category III service has the collection procedure that TURN recommends.

Ceiling Rate and Price Floor

As addressed in our BIWR ceiling rate change discussion, it is appropriate to address Pacific Bell's request to change its RIWR WirePro service.

Although Pacific Bell doesn't plan to raise its price for RIWR service in the near term, it seeks authority to raise its residential WirePro plan ceiling rate from $0.60 to $1.50 a month. The proposed ceiling rate was based on a range of competitive RIWR prices in states other than California.

In addition, to substantiate its requested ceiling rate and to demonstrate that its residential WirePro plan is currently priced below its incremental cost, Pacific Bell conducted a Total Service Long Run Incremental Costs (TSLRIC) study using the approved Open Access and Network Architecture Development (OANAD) methodology.[43] Pacific Bell updated the OANAD methodology with externally provided data for volumes, task related duration, and labor rates.

TURN disputed Pacific Bell's residential WirePro plan TSLRIC study results because the primary cost drivers, average repair time and frequency of repairs were significantly different between the residential WirePro plan and per visit service. Although TURN contends that these cost drivers should be the same for residential customers under either the residential WirePro plan or per visit service, it provided no evidence to substantiate that Pacific Bell data, based on actual experience, was flawed. Hence, we reject TURN's contention that Pacific Bell's TSLRIC study is flawed.

Irrespective of its dispute with the TSLRIC study result, TURN does not object to an increase in the residential WirePro plan monthly rate to bring it up to cost, provided that Pacific Bell reduces rates for other, non-specified, services by an equivalent amount.

ORA acknowledged that Pacific Bell's TSLIRC study demonstrates that its residential WirePro plan is priced below cost. Although ORA doesn't believe that the TSLIRC study sustains a $1.50 monthly rate for Pacific Bell's residential Wire Pro Plan, ORA does believe that the upper limit should be increased to $1.00.

Our own analysis of the market data provided in this proceeding indicate that not only are Pacific Bell's RIWR WirePro rates far below that of all other states, a doubling the WirePro rate to $1.20 a month would still cause it to rank as

[43] The principles that govern such a study are set forth in Appendix C of D.95-12-016. We discussed Pacific Bell's 1996 TSLRIC studies in D.96-08-021.

the lowest of the 45 other states for which witnesses presented pricing information. Moreover, a price set at this level is also reasonable in light of the costs incurred in providing this service. Thus, balancing our market and cost analysis with a concern for potential shocks to customers of sharp pricing changes, we find it is reasonable to set an initial ceiling for this Category III service at $1.20 per month.

Pacific Bell's TSLRIC study substantiates that its residential WirePro plan is currently priced below cost. Pacific Bell should be authorized to raise its residential WirePro plan price floor to the rate set forth in sealed Exhibit No. 11 and its ceiling rate from $0.60 to $1.20 and may maintain a $0.60 price floor, its currently authorized residential WirePro plan rate.

Finally, consistent with the discussion of BIWR above, we maintain the current 70 cents per month differential between BIWR and RIWR by raising the ceiling rate for BIWR to $1.90 per month.

Conclusion

Pacific Bell has met its burden of proof to substantiate that it possesses insignificant market power in the RIWR market, as required by D.89-10-031 and consistent with the criteria in D.90-04-031. Hence, Pacific Bell's request to re-categorize its RIWR service from Category II to Category III is granted. A ceiling for the RIWR WirePro plan is set at $1.20 per month, and a ceiling for BIWR WirePro plan is set at $1.90 per month to maintain the 70 cent rate differential between these two services.

Pacific Bell's service representatives should clearly explain to its residential customers that they have an option of subscribing to either the WirePro plan which covers repair of the customer's inside wire and jacks or the WirePro Plus plan that covers the use of a loaner telephone instrument for up to 60 days and Pacific Bell's residential WirePro plan.

Pacific Bell substantiated that its residential WirePro plan ceiling rate is below cost. The price floor for residential WirePro service should be set at $0.60, the current tariff rate. Residential WirePro plan price increases up to the $1.20 ceiling rate and Business WirePro plan price increases should each be requested consistent with the Category III procedures, as set forth in Resolution T-15139.

Comments on Proposed Decisions

The assigned ALJ's proposed decision and assigned Commissioner's alternate proposed decision on this matter were filed with the Docket Office and mailed to all parties of record on April 13, 1999, in accordance with Pub. Util. Code Section 311 and Rule 77.1 of the Rules of Practice and Procedure. Comments and reply comments to the proposed and alternate decision were timely filed by the California Cable Television Association, Pacific Bell, TURN, and ORA.

Rule 77.3 of the Commission's Rules of Practice and Procedure specifically requires Section 311 comments to focus on factual, legal or technical errors in the proposed Decision and in citing such errors requires the party to make specific references to the record. Comments which merely reargue positions taken in briefs are accorded no weight and should not be filed. Nevertheless, when such comments identify either a lack of clarity in the proposed decision or a misunderstanding of its logic and reasoning, the proposed decision has been modified to remove any doubt and to demonstrate that all arguments and evidence were considered. Rule 77.4 further requires that comments proposing specific changes to the proposed decision include supporting findings of fact and conclusions of law.

The comments filed by the parties to this proceeding have been carefully reviewed and considered. To the extent that such comments required discussion or changes to the proposed decision, the discussion or changes have been incorporated into the body of this order. Comments which have not complied with Rule 77.3 were not considered unless they gave evidence of a misunderstanding of the proposed decision and its reasoning.

Findings of Fact

1. Pacific Bell is a public utility telephone corporation, as defined in § 234 of the Pub. Util. Code, subject to the jurisdiction of this Commission.

2. Pacific Bell filed its applications for authority to re-categorize certain Category II business and residential telecommunication services to Category III, pursuant to Rule 42 of the Commission's Rules and Ordering Paragraph 20 of D.89-10-031.

3. Telecommunication services are classified into three distinct categories: Category I for services deemed to be basic monopoly services; Category II for discretionary or partially competitive services; and, Category III for fully competitive services.

4. Pacific Bell's applications were consolidated pursuant to Rule 55 of the Commission's Rules.

5. Pacific Bell, TURN, the California Cable Television Association, and ORA were the only parties participating in this proceeding.

6. ORA limited its participation in this consolidated proceeding to the residential issues identified in the Assigned Commissioner's Scoping Memo.

7. An ORA motion for authority to file a non-redacted version of its concurrent brief under seal is pending.

8. A service is categorized as Category III upon the local exchange carrier substantiating that it retains insignificant market power for a service.

9. The burden of proof is on Pacific Bell to substantiate that it has or is expected to have an insignificant market power for the services it wants reclassified to Category III.

10. D.89-10-031 left the responsibility of proposing criteria for assessing market power to Pacific Bell through the application process.

11. Although TURN and ORA were parties to D.89-10-031, neither filed an application for rehearing or a petition for modification of that decision, which established a procedure for seeking authority to place a service in Category III.

12. Services placed in Category III based on a showing that a utility has insignificant market power are accounted for as below-the-line services.

13. Category III services are accounted for as above-the-line services upon the utility's ability to overcome the presumption that such services should be excluded from above-the-line accounting.

14. Public Utilities Code § 461.2 requires above-the-line accounting for BIWR and RIWR services.

15. There are few market barriers to enter into the IECDA market.

16. AT&T-C entered the IECDA market in 1984, IECs in 1985, and GTEC in 1989.

17. Pacific Bell's IECDA market share decreased from 100% in 1992 to less than 44% in 1997.

18. Pacific Bell submitted cost studies under seal to substantiate an increase in its IECDA ceiling rate.

19. Pacific Bell's usage volumes for calling card, collect call, bill-to-third party, and Person-to-Person declined approximately 59.2%, 69.4%, 68.3%, and 79.6%, respectively, from 1992 to 1998.

20. There are few market barriers to enter into the OASBA market.

21. Pacific Bell's market share data consisted of an analysis of its own usage volume for each individual OASBA service from 1992 to 1998.

22. Competitors do not freely disclose their respective revenue, expense, volume, and market share information for specific services to competitors.

23. Facilities-based carriers, payphone, and prepaid calling cards compete with Pacific Bell's OASBA services.

24. Pacific Bell provided collaborative evidence to demonstrate that the volume reduction in Pacific Bell's OASBA services translated into loss of market share.

25. Pacific Bell provided no evidence to justify the inclusion of its OASBA services above-the-line.

26. With the exception of Pacific Bell's Person-to-Person service, which is priced below cost, Pacific Bell's OASBA services are priced above cost.

27. Regardless of whether Pacific Bell's OASBA services are placed above or below-the-line, its ratepayers would not be subsidizing such services.

28. Pacific Bell has the ability to disconnect local service for non-payment of OASBA charges.

29. With the exception of Pacific Bell's Person-to-Person service, Pacific Bell's OASBA ceiling rates are substantially above its incremental costs.

30. With the exception of Pacific Bell's Person-to-Person service, Pacific Bell has no plans to raise its OASBA rates in the near term.

31. No data was received from the large competitors of BIWR service because those that responded indicated that their firms did not offer installation and repair services or refused to answer key questions.

32. D.93-05-015 and Pacific Bell's tariff identifies BIWR service as one service having two payment options.

33. The Commission's 1990 reconsideration order found that Pacific Bell retains significant market power, or at least that the service is not yet fully competitive.

34. Forty-seven other states and the District of Columbia have either deregulated or detariffed BIWR services.

35. No evidence presented in this proceeding indicates that California markets for BIWR are structurally different from BIWR markets in other states.

36. D.97-08-059 found that any certified electrician can replicate inside wire repair and maintenance services, that there exists relatively low technical barriers to enter this market, and that there exists a relatively large base of qualified providers for the inside wire repair business.

37. The capital required to enter a BIWR market is small.

38. There are no barriers to the entry of vendors into the BIWR market.

39. Because of the ready availability of alternative provides of BIWR services, the elasticity of supply and elasticity of demand faced by Pacific are high.

40. Pacific Bell's market share of BIWR is approximately 15%.

41. Because of the lack of barriers to entry, the high elasticity of supply and demand, Pacific Bell has insignificant market power in the BIWR market.

42. The BIWR market in California is competitive.

43. Pacific's 15% market share of the BIWR provides further evidence supporting our conclusion that the BIWR repair market in California is competitive.

44. The actions of 47 other states in deregulating BIWR and the failure of this record to identify special circumstances that make California markets different provides further evidence that the BIWR market is competitive.

45. Pacific Bell's BIWR $103 hourly rate is substantial when compared to the BIWR hourly rates of $51 and $65, of electricians and telecommunications vendors, respectively.

46. The BIWR survey of end-users found that Pacific Bell has an overall 24% share of the revenues in BIWR market.

47. Pacific Bell has no plan to raise its BIWR rates in the near term.

48. Pacific Bell's business WirePro plan is priced 70 cents per month higher than its residential WirePro plan.

49. A large number of vendors have the capability of providing RIWR.

50. There are no barriers that prevent vendors from entering RIWR markets.

51. Many vendors offer RIWR services today.

52. There are no obstacles to the rapid expansion of services by vendors capable of providing RIWR.

53. The elasticity of supply in California for RIWR service is high.

54. The offering of RIWR services to their customers by competing local exchange carriers provides further evidence that there are no barriers preventing entry to the market for RIWR services.

55. The regulation of RIWR rates at a fixed price below costs makes it impossible to conduct a statistical study of the price elasticity of demand.

56. Pacific's large portion of the RIWR market provides no conclusive evidence concerning the competitiveness of the RIWR market.

57. The high elasticity of supply for RIWR services provides evidence that the price elasticity of demand for RIWR services is also high.

58. Pacific demonstrated that there are alternative vendors in the RIWR market today.

59. The presence of alternative vendors in the RIWR indicates that the price elasticity of demand in this market is high.

60. The ability of customers to repair their own residential inside wire reduces the pricing power of all vendors of RIWR services and increases the price elasticity of demand

61. Books and web sites offer information to the do-it-yourself person on how to repair inside wire.

62. The number of Pacific Bell's residential repair visits per access line has decreased over the past three years.

63. The decrease in Pacific Bell's residential repair visits per access line is an outcome consistent with a high elasticity of demand.

64. The evidence provided in the record concerning the high elasticity of supply of RIWR services, the ability of do-it-yourself repair to provide RIWR, and the decrease in the number of residential repair visits per access line make it reasonable to conclude that the price elasticity of demand for RIWR is high.

65. Since both the elasticity of supply and elasticity of demand in RIWR markets are high, Pacific has insignificant market power in RIWR markets.

66. Forty-seven other states and the District of Columbia have either deregulated or detariffed RIWR services.

67. No evidence presented in this proceeding indicates that California markets for RIWR are structurally different from RIWR markets in other states.

68. The regulatory treatment of RIWR by 47 other states and the District of Columbia and the lack of evidence indicating that California markets for RIWR differ from those in other states provide further support for the conclusion that California's RIWR markets are competitive.

69. Pacific Bell's residential WirePro plan is priced at half the rate prevailing in the lowest of the forty four states for which rate evidence was presented.

70. A doubling of Pacific Bell's residential WirePro plan would still cause Pacific Bell's rates to equal or fall below the rates of the forty four states for which rate evidence was presented.

71. Pacific Bell's cost study for its residential service was based on its actual repair time and frequency of repairs.

72. The residential WirePro plan is currently priced below cost.

73. Approximately 60% of Pacific Bell's residential customers subscribe to its residential WirePro plan.

74. Pub. Util. Code § 461.2 requires Pacific Bell to record its simple RIWR service as an above-the-line service.

75. Pacific Bell established its WirePro Plus plan in 1998.

76. Pacific Bell's service order representatives promote its WirePro Plus plan over its residential WirePro plan.

77. The WirePro Plus plan bundles Pacific Bell's residential WirePro plan with the availability of a loaner telephone for up to 60 days should the residential customer's telephone instrument malfunction.

78. Clear and accurate information on prices and services helps competitive markets to function.

Conclusions of Law

1. ORA's motion to submit a non-redacted version of its concurrent brief and comments to the proposed decision in this proceeding under seal should be granted.

2. Pacific Bell's consideration of D.90-04-031 market power criteria and its use of the Merger Guidelines complies with the Commission's market power criteria and may be used to determine whether it has insignificant market power in the services it wants to re-categorize to Category III.

3. Absent a positive showing, Category III services in this proceeding should be accounted for as below-the-line services.

4. Pacific Bell should be authorized to re-categorize its requested IECDA service from Category II to Category III and to establish a $0.39 ceiling rate for this service.

5. Pacific Bell should record its IECDA service, re-categorized to Category III, as a below-the-line service.

6. Pacific Bell's OASBA services consisting of calling card, collect calls, bill-to-third number, and Person-to-Person should be re-categorized to Category III.

7. OASBA services re-categorized to Category III should not be recorded above-the-line on speculation that an event may occur in the future.

8. The OASBA collection procedure should not be changed without an analysis of Pacific Bell's current collection procedure and its competitors' collection procedures.

9. The ceiling rates for OASBA services re-categorized to Category III should not be changed without a positive showing by Pacific Bell to substantiate a need to change its ceiling rates.

10. Pacific Bell made a positive showing that its Person-to-Person service is priced below its incremental cost and has a ceiling below incremental cost. It would be reasonable, therefore, to raise the ceiling for Person-to-Person to $4.00.

11. The market power analysis for the BIWR service should be based on one market with two payment options, business WirePro plan and per visit service.

12. Pacific Bell should be authorized to re-categorize its BIWR service from Category II to Category III and to establish a $1.90 per month ceiling rate for its business WirePro plan because it has demonstrated that it has insignificant market power in the BIWR market.

13. Pacific Bell's request to increase its ceiling rate for per visit inside wire repair service should be denied.

14. Pacific should record revenues from BIWR services above-the-line.

15. Pacific Bell should be authorized to re-categorize its RIWR service from Category II to Category III; to increase its WirePro price floor to cover cost, and to

establish a $1.20 per month ceiling rate for its residential WirePro plan because it has demonstrated that it has insignificant market power in the BIWR market.

16. Pacific should record revenues from RIWR services above-the-line.

17. Pacific Bell's service representatives should clearly explain to residential customers that they have an option of subscribing to either the WirePro Plus plan or the residential WirePro plan.

18. Pacific Bell's yellow page directories should direct customers seeking inside wire repair services to the appropriate service categories.

19. The residential WirePro plan's floor rate should cover cost.

ORDER

IT IS ORDERED that:

1. The Office of Ratepayer Advocates (ORA) motion to place the non-redacted version of its concurrent brief under seal shall be granted.

2. All data placed under seal in the proceeding shall remain sealed for a period of one year from the date of this order. The sealed data should not be made accessible or disclosed to anyone other than Commission staff during the one year time period except on the execution of a mutually acceptable nondisclosure agreement or on further order or ruling of the Commission or the administrative law judge then designated as the Law and Motion Judge.

3. Pacific Bell is authorized to re-categorize its Interexchange Carrier Directory Assistance (IECDA) service from Category II to Category III and is authorized to increase its ceiling rate from $0.29 to $0.39. Upon re-categorization of its IECDA service to a Category III service, its IECDA service shall be accounted for as a below-the-line service.

4. Pacific Bell is authorized to re-categorize its business Operator Assistance Service Billing Alternatives (OASBA) consisting of Dial (Credit) Calling Card Station Service ("Calling Card"), Operator Assisted Station Service ("Collect Calls"), Operator Assisted Station Service ("Bill-to-Third Number"), and Operator Assisted Service ("Person-to-Person") from Category II to Category III. Upon re-categorization of these OASBA services to Category III, such OASBA services shall be accounted for as below-the-line services.

5. Except for Pacific Bell's request to change its Person-to-Person ceiling rate, Pacific Bell's request to change its OASBA ceiling rates are denied. Our denial of Pacific Bell's request to increase its OASBA ceiling rates shall not preclude Pacific Bell from seeking such approval in the future.

6. Pacific Bell is authorized to re-categorize its Business Inside Wire Repair (BIWR) service to Category III and is authorized to increase its ceiling rate for business WirePro plan to $1.90 per month. Pacific's request to raise the per visit charges for BIWR service is denied.

7. Pacific Bell is authorized to re-categorize its Residential Inside Wire Repair (RIWR) service to Category III; and is authorized to increase its ceiling rate for its residential WirePro plan to $1.20 per month and to increase its residential WirePro price floor to cover cost as set forth in Sealed Exhibit No. 11.

8. Pacific Bell's service representatives must clearly explain to its residential customers that they have an option of subscribing to either its residential WirePro plan which covers repair of the customer's inside wire and jacks or its WirePro Plus plan that covers the use of a loaner telephone instrument for up to 60 days and its residential WirePro plan.

9. Pacific Bell's Yellow Page directories shall direct customers seeking inside wire repair services to the appropriate service categories.

10. Pacific Bell is authorized to file revised tariffs with the Commission's Telecommunications Division for the re-categorization of its IECDA and OASBA services to Category III and to increase its IECDA, business WirePro plan, and residential WirePro plan ceiling rates consistent with this order. The revised tariffs shall become effective when authorized by the Commission's Telecommunications Division, but not less than 5 days after filing, and shall apply after the effective date of this order.

11. The authority granted in this order will expire if not exercised within 12 months after the effective date of this order.

12. The consolidated application is granted to the extent set forth above.

13. Application (A.) 98-02-017 and A.98-04-048 are closed.

This order becomes effective immediately.

Dated June 10, 1999, at San Francisco, California.

RICHARD A. BILAS
President
HENRY M. DUQUE
JOSIAH L. NEEPER
Commissioners

I dissent.

/s/ LORETTA M. LYNCH
Commissioner

I abstain.

/s/ JOEL Z. HYATT
Commissioner

Certified as a True Copy
of the Original

ASST. EXECUTIVE DIRECTOR, PUBLIC UTILITIES COMMISSION
STATE OF CALIFORNIA

APPENDIX A
Page 1

TABLE OF ACRONYMS AND ABBREVIATIONS

A.	Application
ALJ	Administrative Law Judge
AT&T-C	AT&T Communications of California, Inc.
BIWR	Business Inside Wire Repair
CLCs	Competitive Local Carriers
Cox	Cox Communications, Inc.
D.	Decision
DA	Directory Assistance
DRA	Division of Ratepayer Advocates
DEC	direct embedded costs
FCC	Federal Communications Commission
GTEC	GTE California, Inc.
I.	Investigation
ICCS	Inmate Call Control Service
IECs	Interexchange Carriers
IECDA	Interexchange Carrier Directory Assistance
InterLATA	Inter-Local Access and Transport Area
IntraLATA	Intra-Local Access and Transport Area
LECs	Local Exchange Carriers
LRIC	long-run incremental cost
Merger Guidelines	"1992 Horizontal Merger Guidelines of the U.S. Department of Justice and the Federal Trade Commission"

APPENDIX A
Page 2

MCI	MCI Telecommunications Corporation
OANAD	Open Access and Network Architecture Development
OASBA	Operator Assistance Billing Alternative
OII	Order Instituting Investigation
ORA	Office of Ratepayer Advocates
Per Visit	Per Visit Inside Wire Repair
PHC	Prehearing Conference
R.	Rulemaking
RIWR	Residential Inside Wire Repair
Rules	Rules of Practice and Procedure
Sprint	GTE Sprint Communications Corp.
TSLRIC	Total Service Long Run Incremental Costs study
TURN	The Utility Reform Network
Wire Pro	Per Month Inside Wire Repair Plan

(END OF APPENDIX A)

PROOF OF SERVICE BY MAIL

I, L. Escandor, declare:

I am over the age of 18 years, not a party to this proceeding, and am employed by the California Public Utilities Commission at 505 Van Ness Avenue, San Francisco, California.

On 6/11/99, I deposited in the mail at San Francisco, California, a copy of:

D 99-06-053

(DECISION NUMBER OR TYPE OF HEARING)

JUNE 10, 1999

(DATE OF HEARING)

A 98-02-017, A 98-04-048

(APPLICATION/CASE/OII/OIR NUMBER)

in a sealed envelope, with postage prepaid, addressed to the last know address of each of the addressees in the attached list.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on 6/11/99, at San Francisco, California.

Lpd *

*Signature
9/92

A.98-02-017
A.98-04-048

ITEM ~~4~~
~~5/13/99~~

H6a
6/10

DECISION: 99- 06- 053

MAIL DATE: 6/11 /99

Copy of **"OPINION" and order** mailed to the following.

SEE ATTACHED LIST FOR APPEARANCES, STATE SERVICE

Count______

4/30/99
lpd

doc #15576 (rev. 3/4/98)

************ SERVICE LIST *************

Last updated on 13-APR-1999 by: CPL
A9802017 LIST
A9804048

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