

Decision 99-09-036 September 2, 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  
Service.

A.98-02-017  
(Filed 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.

A.98-04-048  
(Filed April 21, 1998)

**ORDER GRANTING LIMITED REHEARING OF  
DECISION (D.) 99-06-053, MODIFYING THE DECISION, AND  
DENYING REHEARING OF THE DECISION, AS MODIFIED.**

**I. SUMMARY**

In this order, we grant limited rehearing of the application filed by The Utility Reform Network (TURN) and the Office of Ratepayer Advocates (ORA) for the rehearing of D.99-06-053 which authorized, among other things, the re-categorization of residential inside wire to Category III and increased the ceiling rate for the service. TURN and ORA (Joint Applicants) object to the Decision's holding regarding residential inside wire repair on the grounds that the Decision violates Public Utilities (PU) Code §1705 in failing to include findings

and conclusions on all material issues. They claim further that certain findings were not supported by substantial evidence. We have carefully considered all of the arguments presented by the Joint Applicants, and are of the opinion that good cause exists for modifying the Decision. As modified, TURN's and ORA's application for the rehearing of D.99-06-053 is otherwise denied.

## **II. BACKGROUND**

This proceeding was initiated with Pacific Bell's (Pacific) filing of applications involving inside wire repair services.<sup>1</sup> The first application, A.98-02-017, filed on February 9, 1998, related to business inside wire repair (BIWR) services. The second application, A.98-04-048, submitted on April 21, 1998, requested the re-categorization of Pacific's residence inside wire repair (RIWR) service from Category II to Category III. Separate prehearing conferences were held on A.98-02-017 on April 17, 1998, and on A.98-04-048 on July 10, 1998. Pursuant to the Assigned Commissioner's Scoping Memo issued on July 23, 1998, the issues to be considered in re-categorizing RIWR are whether Pacific has significant market power in the residence inside wire repair market, and whether inside wire repair service is presently below cost. The applications were consolidated by ALJ ruling of August 3, 1998.

On August 14, 1998, evidentiary hearings were held on BIWR issues, and on August 19, 1998, evidentiary hearings began on RIWR and concluded on August 21, 1998. Upon receipt of concurrent briefs, this consolidated proceeding was submitted on September 14, 1998.

The Assigned ALJ issued his proposed decision on April 13, 1999, denying Pacific's request to recategorize its BIWR and RIWR services from Category II to Category III. The ALJ's Proposed Decision also denied Pacific's request to increase the ceiling rates for its BIWR, but authorized Pacific to

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<sup>1</sup> 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.

increase its RIWR ceiling rate for its WirePro plan from \$0.60 to \$1.00. An Alternate Proposed Decision was issued on the same date. Comments and reply comments were submitted on the proposed decisions.

On June 10, 1999, the Commission issued D.99-06-053 (hereinafter, the Decision) authorizing the re-categorization of Pacific Bell's Pacific's (BIWR) service and RIWR service from Category II to Category III. Category II services are discretionary or partially competitive services in which the local exchange carriers (LECs) retain significant market power. Category III services are fully competitive services with upward and downward price flexibility. The Decision authorized the re-categorization of BIWR and RIWR repair services from Category II to Category III. It approved ceiling rate increases for Pacific's BIWR WirePro plan to \$1.90 per month, and the RIWR WirePro plan to \$1.20 per month, but ceiling rates for Pacific's BIWR Per Visit plan were denied.

On July 9, 1999, TURN and ORA filed a Joint Rehearing Application alleging a violation PU Code §1705 in that the Decision does not contain a separately stated finding that Pacific's RIWR services are offered in two different markets. The Applicants further assert that certain findings were not supported by substantial evidence in light of the whole record.

On July 23, 1999, Pacific filed a Response to the Joint Application for Rehearing, advocating denial of rehearing on the grounds that the claims of error are baseless and wrong.

### **III. DISCUSSION**

The Joint Applicants contest the Decision on the grounds that it violates PU Code §1705 in failing to make a finding that RIWR service is offered in two different markets. They further claim that the Commission's findings that there are no barriers to entry, that alternative vendors exist, and that there are high elasticities of supply and demand are error, and a violation of the "substantial evidence" standard. (Rhig. App. at 3-4.) We disagree. Because ORA and TURN differ with the evidence does not substantiate their charge of purported insufficient

evidence. We concur with Pacific's suggestion in its Rehearing Response that ORA and TURN might have taken the opportunity to explain what the substantial evidence standard is:

"The definition of substantial evidence review in the appellate courts is very well settled...It is an elementary, but often overlooked principle of law, that when a [finding] is attacked as being unsupported, the power of the appellate court begins and ends with a determination as to whether there is any substantial evidence, *contradicted or uncontradicted*, which will support the [finding]. When two or more inferences can be reasonably deduced from the facts, the reviewing court is without power to substitute its deductions for those of the trial court." (Pacific's Rhg Response at 4, citing *Western States Petroleum Assn. v. Superior Court*, 9 Cal.4<sup>th</sup> 559, 571 (Feb. 1995)(emphasis added).)

*Accord Reichardt v. Hoffman* (1997) 52 Cal.App.4<sup>th</sup> 754, 766 which also explains that the court's role "is limited to determining whether the evidence before the trier of fact supports its findings. [citation omitted]." Thus, the court will not substitute its judgment for that of the Commission. (See also, *Strumsky v. San Diego County Employees Retirement Assn.* (1974) 11 Cal.3d 28, 34-35) After a careful review of the record, we conclude that the Decision and its findings are based on substantial evidence.

We further clarify that although we compare California with other jurisdictions, the Decision is based on California data and the regulatory treatment of RIWR in California. Moreover, we conclude that the record does not support a finding that RIWR service is offered in two different markets. We find the RIWR market to be one market with two payment options. However, although the Decision discusses what the relevant RIWR market is, it did not follow through and include a specific finding to that effect. The Decision is vulnerable on that basis, and we grant a limited rehearing to correct this legal deficiency. In addition, Ordering Paragraph 8 should be modified to require Pacific to not only inform customers about a choice between its WirePro and WirePro Plus plans, but also to

inform customers of the availability of other inside wire maintenance and repair vendors. In all other respects, rehearing should be denied.

**A. The Decision Correctly Found that Pacific's RIWR Is One Market With Two Payment Options.**

The Joint Applicants assert that the Commission committed legal error in failing to find that Pacific's RIWR services are offered in two different markets. This contention is wrong, as are the Joint Applicants' claims that the Decision erred in finding no barriers to entry, in asserting the existence of alternative vendors, and in concluding that there are high elasticities of supply and demand.

The Joint Applicants claim that Pacific's WirePro plan, a monthly payment plan for inside wire repair service, is a market distinct from Pacific's Per Visit payment plan.<sup>2</sup> Such a finding was not made by the Commission because the record evidence does not warrant it. The record clearly establishes that Pacific's RIWR service is offered in one market with two payment plans.

To arrive at the conclusion that the RIWR is one market with two payment options, the Commission relied on D.93-05-014 and on Pacific's Tariff No. 8.3, just as it did in its analysis for the BIWR market, to which no one objected in the rehearing application. D.93-05-014 and the tariff identified the RIWR market as a simple inside wire maintenance service having two payments options – monthly or per visit.<sup>3</sup> Because the rationale for concluding that both the BIWR and RIWR markets are the same, the Commission saw no need to restate a full blown analysis for repetition's sake. The Decision's reference to its analysis of the BIWR market and its statement that the reasoning and logic are essentially

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<sup>2</sup> Pacific's customers have two payment options for RIWR. Under the WirePro plan, customers may buy repair insurance that covers diagnostic line testing and repair to inside wire and jacks. The WirePro Plus plan, added in 1998, bundles the WirePro plan with the loan of a telephone for up to 60 days if the customer's phone is malfunctioning. The second payment plan is the Per Visit plan in which customers pay for each repair visit.

<sup>3</sup> The Decision currently shows D.93-04-014, but should be D.93-05-014 (May 7, 1993), which is identified in 49 CPUC 2d 223, but not reported. See D.93-04-014, *mimeo* at 28 for description of RIWR market.

the same, when taken in context with the remainder of the Decision, is sufficient. (Decision at 54.) Furthermore, we are persuaded by expert testimony that payment options do not transform a single service into two different services.<sup>4</sup> Regardless of which payment option is selected by customers, the payment options are designed to resolve the same problem, faulty residential inside wire.

Defining the relevant market is crucial to an accurate analysis of market power, as the Joint Applicants are aware. A relevant market is a set of buyers and sellers whose purchase and production decisions establish the price at which the product or service is sold. Erring in the direction of defining the market too narrowly generally tends to bias the analysis toward a finding of significant market power.<sup>5</sup> Splitting the RIWR market into "Insurance Plan/Per Visit" segments may have distorted the Joint Applicants' conclusions that Pacific has significant market power in the RIWR market. Regardless, we rely on the record evidence to reach a different conclusion, i.e., that Pacific's RIWR service is one market with two payment options.

The Decision's conclusion on page 54 that RIWR is one market with two payment options is eminently reasonable and supported by the facts. Rather than repeat the reasoning, logic, and evidence applicable to this aspect of the BIWR and RIWR markets, the Decision used a shorthand approach in analogizing the two markets in the interest of non-repetitiveness and brevity. This is neither legal error nor a substantive deficiency in the Decision. However, the Applicants' complaint that the Decision should contain a finding as to the relevant RIWR market does have merit. Therefore, a limited rehearing is granted partly on that basis. Accordingly, we delete Finding of Fact 49 and replace it with our finding on the RIWR market. (See Item No. 9 of the Order.)

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<sup>4</sup> Testimony of Pacific's Jerry Hausman at 2 Tr. 167, Exh. E, p. 1.

<sup>5</sup> See M. Landes & Richard A. Posner, *Market Power in Antitrust Cases*, 94 Harv. L. Rev. 937 (1981).

**B. The Decision Is Supported by Substantial Evidence of Pacific's Insignificant RIWR Market Power.**

In order for a service to be placed in Category III, other than those detariffed due to federal preemption or statutory requirements, a local exchange carrier (LEC) must establish that it has or is expected to have insignificant market power in the provision of the service in each market it intends to serve.<sup>6</sup> Having concluded that Pacific's RIWR service is one market with two payment options, we looked at whether Pacific carried its burden of demonstrating that it has insignificant market power. After a thorough review of the record, we conclude that it has.

In D.89-10-031 and D.90-04-031, the Commission weighed several factors, such as market share, ease of entry and exit, facilities ownership, and growth capability of competitors in considering which guidelines should be used for establishing market power. The Commission declined to settle on definitive guidelines holding, rather, that the determination of market power is service-specific.<sup>7</sup> (D.90-04-031, *mimeo* at 13, Finding of Fact 10.) By D.89-10-031, the Commission left to Pacific the responsibility of proposing criteria for assessing market power through the application process. (*Id.*) Pursuant to the aforementioned Commission decisions, Pacific used the *Department of Justice and FTC Horizontal Merger Guidelines, 1992*, without objections from TURN and ORA.<sup>8</sup>

We concur with Pacific's Hausman's testimony that the critical test for market power is "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

<sup>6</sup> *Re Alternative Regulatory Frameworks for Local Exchange Carriers* (D.89-10-031), 33 CPUC 2d 43 at 127.

<sup>7</sup> D.90-04-031 is identified in 36 CPUC 2d (April 11, 1990), but not reported.

<sup>8</sup> TURN and DRA, ORA's predecessor, were parties to D.89-10-031. The functions performed

service.” (Decision at 54, quoting Prof. Hausman’s testimony.) In other words, could Pacific retain its market share in the wake of an attempt to raise prices to above-competitive levels.

The record shows that Pacific has a large portion of the RIWR market, about 60 percent of residential customers subscribing to the WirePro plan and more using Pacific on a Per Visit basis. (Decision at 55; Finding of Fact 73.) However, significant conclusions could not be drawn from Pacific’s market share, as courts have often found firms with greater than a 50 percent share not to have market power.<sup>2</sup> Market share is not the only economic determinant of market power:

“A high market share, though it may ordinarily raise an inference of monopoly power, will not do so in a market with low entry barriers or other evidence of a[n] inability to control prices or exclude competitors...The explanation is simple; where entry barriers are low, market share does not accurately reflect the party’s market power.” (*U.S. v. Syufy Enterprises*, 903 F.2d 659, 664 n. 6 (9<sup>th</sup> Cir. 1990).)

The primary determinants of market power are widely recognized to be supply elasticity, demand elasticity, and market share. Due to regulatory pricing policies, Pacific’s RIWR rates were not at competitive levels. Pacific’s RIWR rates were low in comparison to other state markets, and even less than its own costs (Finding of Fact 72). The ensuing discussion will show that there are no significant barriers to entry in Pacific’s RIWR market, and that supply and demand elasticity are significant enough to substantially limit Pacific’s market power and prevent it from controlling RIWR market prices.

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by DRA were transferred to ORA on September 10, 1996.

<sup>2</sup> Decision at 56, citing Pacific’s Hausman’s testimony referencing the *Kodak* case where Kodak had a near 70 percent share of color firm sales in the U.S. and was found not to have market power. We note, too, that AT&T had a 55 percent of the interexchange market in mid-1997, yet was still classified as a non-dominant carrier. (D.98-07-033, 1998 Cal.PUC LEXIS 352 (July 2, 1998) at 112.)



**1. Findings Concerning No Barriers to Entry and Alternative Vendors Are Supported by Substantial Evidence.**

The Rehearing Applicants single out selected findings relating to barriers to entry and alternative vendors, as an indication that the findings are not supported by substantial evidence in light of the whole record. (Rhg. App. at 7-10.) After carefully reviewing the record in this regard, we conclude that this allegation is without merit. The following Findings of Fact, relating to barriers to entry and alternative vendors, are challenged as not being supported by substantial evidence:

50. There are no barriers that prevent vendors from entering RIWR markets.
51. There are no obstacles to the rapid expansion of services by vendors capable of providing RIWR.
52. The elasticity of supply in California for RIWR service is high.
53. 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.
54. Pacific demonstrated that there are alternative vendors in the RIWR market today.
55. The presence of alternative vendors in the RIWR indicates that the price of elasticity of demand in this market is high.

There is a close nexus and interrelationship between and among all of these findings. The record supports Finding of Fact 50 which states that there are no barriers to entry. The market is open. The record contains undisputed testimony that wiring companies can enter the market quickly and with little or no capital investment.<sup>10</sup> Pacific presented testimony that the RIWR market could be entered with an investment of around \$1,000 which TURN did not dispute. (See Pacific's Ex. E, p. 7 & TURN's TerKeurst at 3 Tr. 341.) There are no facilities-based barriers to entry. There is a high elasticity of supply. Any certified electrician can perform inside wire repair. The evidence shows that competing companies, such as TCI, Cox, Sprint, GTE California and most independent

telephone companies in California either provide or are capable of providing RIWR service. (Decision at 58-59.) This is further evidence of no barriers to entry (Finding of Fact 54). In addition, consumers can do their own repair with the aid of "do-it-yourself" kits, books, or websites. All of these factors lead us to reasonably conclude that there is a high elasticity of supply for RIWR service (Finding of Fact 53), consistent with the ease of entry into the market. There is also ease of exit since the investment is minimal, and the equipment can be resold upon exit.

The Decision correctly notes that there is an interaction between the elasticity of supply and the elasticity of demand. (Decision, *mimeo* at 59.) The more consumers view other sources as viable alternatives, the more elastic the demand. The presence of alternative vendors in the RIWR market contributes to demand elasticity (Finding of Fact 59). High demand elasticity acts to limit market power because attempts to increase prices above competitive levels will result in losses in sales as consumers switch to substitute goods, services, or service providers.

Pacific demonstrated that there are many alternative vendors in the RIWR market (Finding of Fact 58). The Joint Applicants minimize the Decision's affirmation of Pacific's evidence that there are a large number of vendors *capable of providing* RIWR service, as well as a number of companies already offering the service. This factor cannot be discounted since firms not currently providing service could quickly begin serving in the RIWR market if additional profit incentives were created by an increase in the market price.<sup>11</sup> In this situation, the response of potential competitors, as well as current competitors, must be evaluated in assessing the ability Pacific to raise prices above competitive levels. It is also relevant that vendors capable of providing RIWR service can easily expand at low marginal cost since no additional investment in equipment or facilities would be required. Thus, the Commission reasonably and justifiably

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<sup>10</sup> Decision, *mimeo* at 58, citing Pacific's Hausman's Testimony, Ex. E, p. 7.

<sup>11</sup> M. Landes & Richard A. Posner, *Market Power in Antitrust Cases*, *supra* at 938-963.

concluded that these are no obstacles to the rapid expansion of services by vendors capable of providing RIWR (Finding of Fact 52).

ORA and TURN allege that certain attributes that Pacific possesses by virtue of its incumbent LEC status are barriers to entry: 1) Pacific's ability to do diagnostic line testing remotely when a customer calls with a repair problem; 2) the ability of Pacific to bundle its WirePro and WirePro Plus plans with local access service; 3) Pacific's ability to bill for inside wire insurance service on its customers' monthly telephone bills; 4) Pacific's marketing practice of allegedly not telling customers that they have any choice about RIWR repair services; and 5) the extensive infrastructure required to provide the marketing, billing, customer service and other inside wire support functions to a base of customers broad enough to make the provision of an RIWR insurance plan profitable requires significant fixed and joint and common costs. (Rhg. App. at 9-10.) A "barrier to entry," by definition, must prohibit or have the effect of prohibiting the ability of any entity to provide a telecommunications service.<sup>12</sup> The Rehearing Application fails to demonstrate that Pacific used its various abilities and resources as barriers to keep others out of the RIWR market.

However, Item 4 is a different matter in that it alleges that Pacific's marketing practices do not inform customers ordering new service that they have choices with regard to RIWR repair services. (Rhg. App. at 10.) For fear that this may be misleading to customers, the Commission promulgated Ordering Paragraph No. 8 which requires Pacific's service representatives to 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. However, Ordering Paragraph 8 does not go far enough. It should be modified to require Pacific's service representatives not only to inform customers that their options include a choice

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<sup>12</sup> See Section 253 of the Telecommunications Act of 1996, Pub. Law 104-104, 110 Stat. 56, 47 USC §253.

between Pacific's WirePro and WirePro Plus plans, but also to inform them of the availability of other vendors. Informing customers of choice is consistent with Commission precedent on inside wire maintenance services.<sup>13</sup>

**2. The Decision's Findings of High Elasticity of Supply and Demand for RIWR Are Supported by Substantial Evidence.**

Joint Applicants contend that substantial evidence does not support findings of high elasticity of supply and of demand for RIWR. (Rhlg. App. at 10-12.) Accordingly, they delineate the following findings:

57. The high elasticity of supply for RIWR services provides evidence that the price elasticity of demand for RIWR services is also high.
58. 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.
59. The decrease in Pacific Bell's residential repair visits per access line is an outcome consistent with a high elasticity of demand.
60. 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.
61. Since both the elasticity of supply and elasticity of demand in RIWR markets are high, Pacific has insignificant market power in RIWR markets.

Again, the record refutes ORA and TURN. Their attempt to substantiate a claim of insufficient evidence turns on their discredited theory that the RIWR market is two distinct markets. For example, they reject "the Decision's Findings of Fact that there is 'high elasticity of supply' in the Per Visit market." (Rhlg App at 11.) There is no such finding in D.99-06-053, since the Commission rejected their "Insurance Plan/Per Visit" market analysis. Similarly, the Applicants' challenge to the Decision's findings regarding the price elasticity

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<sup>13</sup> In *Re Pacific Bell*, 36 CPUC 2d 609, 626 (1990), the Commission required the utilities to inform their customers that competitive alternatives for inside wire maintenance services may be available.

of demand by means of their "Insurance Plan/Per Visit" market analysis is rejected. Based on the evidence of record, we do not adopt their "two market" analysis in general and, specifically, as applied to supply and demand elasticity.

The Applicants' erroneous "two market" theory aside, the Decision's findings of high elasticity of supply and demand for RIWR are supported by substantial evidence, as previously discussed. On the supply elasticity side, the record shows that most, if not all, independent telephone companies in California either provide, or are capable of providing, RIWR service.<sup>14</sup> Any skilled electrician can provide RIWR service. The record demonstrates that there are about 40,000 electrical and building contractors, of which 19,000 specialize in residential construction. (Decision at 58.) The small investment of \$1,000 allows competitors to enter the market quickly and without sinking huge amounts of capital to get started in the RIWR market. Consumers can also perform their own repairs with the aid of "do-it-yourself" kits, book, and websites. This record contains convincing evidence to support a finding of high elasticity of supply.

The Decision correctly points out the interrelationship between elasticity of supply and elasticity of demand, and memorializes that relationship in Finding of Fact 59. The high elasticity of supply feeds the elasticity of demand, as more consumers view sources other than Pacific as viable alternatives.

### **C. The Decision Is Based on California Markets.**

The Joint Applicants take exception to that portion of D.99-06-053 which they characterize as permitting Pacific to increase its rates for RIWR based on the regulatory treatment of RIWR in other jurisdictions. The findings in question are Findings of Fact Nos. 67 and 68, which provide as follows:

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

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<sup>14</sup> Sprint has filed an advice letter seeking to offer RIWR service, and TCI has also signaled its intention to offer the service by distributing a price list. (Decision, *mimeo* at 58-59; Pacific's Ex. E, pp. 7-8.)

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.

We agree with the Joint Applicants' assertion that any increase in rates for Pacific's RIWR service should be based on California markets and the regulatory treatment of RIWR in California. We cannot rely on the FCC's findings or the action of 47 other states and the District of Columbia to conclude that Pacific has insignificant power in the California inside wire maintenance and repair market. The focus is properly on this proceeding, as it should be.

This proceeding has garnered sufficient California evidence on which to permit recategorization and an increase in the RIWR rates. It has already been demonstrated, without dispute, that competitors need less than \$1,000 to enter the RIWR market. The evidence established that the residential WirePro plan is currently priced below cost (Finding of Fact 72.) ORA itself concluded that Pacific's California-based cost study may support a maximum price increase to \$1.00 for the residential WirePro plan. (Decision at 54.) The Commission, in considering the totality of the evidence, could reasonably differ with ORA as to the amount of increase warranted.

That the Decision compared California to 47 other states and the District of Columbia is harmless. The Decision's reference to evidence in other jurisdictions is cumulative and harmless evidence which was used by way of comparison and example.<sup>15</sup> However, it is not the basis for the Decision, and does not constitute error. The legal test is whether the Decision contains sufficient evidence of market conditions in Pacific's service territories to sustain the re-categorization of RIWR service to Category III. We conclude that it does.

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<sup>15</sup> Independent and competent evidence on the same point is cumulative and harmless. See *Atkins v. Strayhorn*, 223 CA.3d 1380, 1391 (1990).

#### **IV. CONCLUSION**

For the reasons discussed above, we are granting limited rehearing of D.99-06-053 in order to include findings relating to the relevant RIWR market, to modify certain holdings consistent with the discussion in this Decision, to modify Ordering Paragraph 8, and to correct certain minor errors. As modified, rehearing is denied in all other respects.

#### **THEREFORE, IT IS ORDERED:**

1. A limited rehearing is granted to make certain modifications to the decision.
2. On page 37, footnote 30 should read as follows:  
D.93-05-014 (dated May 7, 1993), identified but not reported, 49 Cal PUC 2d 223.
3. In the second paragraph on page 45 of D.99-06-053, beginning with "The FCC's findings," the sentence beginning "Moreover, these actions" and the last sentence should be deleted and replaced with the following:  
While this additional information bolsters our conclusion that this market is competitive, we do not rely on this information as the basis for our decision.
4. Page 48 of D.99-06-053, the paragraph beginning with "We do not concur" should be deleted.
5. Page 56 of D.99-06-053, the next to the last sentence in the second full paragraph beginning "Once again" should read as follows:  
Pacific has shown that there are firms providing this service (2 Tr. 85-88), that expansion is easy, and that firms providing RIWR can readily enter the market.
6. On page 61 of D.99-06-053, the last four lines of the first paragraph, beginning with "Thus, this evidence gives" should be deleted and replaced with the following:  
This comparison of California markets with other state markets lends additional support to our conclusion that the RIWR market in California is competitive, however, our decision is based on California data.
7. Finding of Fact 32 should be corrected to read:

D.93-05-014 and Pacific Bell's tariff identify BIWR service as one service having two payment options.

8. Finding of Fact No. 44 should be deleted and replaced by the following:

The actions of 47 other states in deregulating BIWR provides additional support that is cumulative to California data, but does not form the basis for our conclusion that BIWR should be deregulated in California.

9. The following finding addresses the relevant RIWR market, which is added pursuant to the deletion of Finding of Fact 49 and replaced with the following:

D.93-05-014 and Pacific Bell's tariff identify RIWR service as one market with two payment options, and we find this to be the relevant RIWR market.

10. Finding of Fact 51 should be deleted and replaced with the following:

Many vendors are capable of offering, and many today offer, RIWR services.

11. Finding of Fact 55 should be deleted and replaced with the following:

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

12. Finding of Fact 68 should be deleted and replaced by the following:

The regulatory treatment of RIWR by 47 other states and the District of Columbia provides additional support that is cumulative to California data, but does not form the basis for our conclusion that RIWR should be deregulated in California.

13. The next to the last word in Conclusion of Law 15 should be changed from "BIWR" to "RIWR."

14. Conclusion of Law 17 should be deleted and replaced by the following:

Pacific Bell's service representatives should clearly explain to residential customers that they have options for subscribing to RIWR service, including Pacific's



WirePro plan, Pacific's WirePro Plus plan, other vendors, or may do the repairs themselves.

15. Ordering Paragraph No. 8 should read as follows:

Pacific Bell's service representatives must clearly explain to its residential customers that they have options for the repair and maintenance of inside wire, including Pacific's WirePro plan which covers repair of the customer's inside wire and jacks, Pacific's WirePro Plus plan that covers the use of a loaner telephone instrument for up to 60 days. Customers may also use outside vendors to perform inside wire repair maintenance or may make the repairs themselves.

This order is effective today.

Dated September 2, 1999, at San Francisco, California.

RICHARD A. BILAS  
President  
HENRY M. DUQUE  
JOSIAH L. NEEPER  
JOEL Z. HYATT  
CARL W. WOOD  
Commissioners

### **Draft Energy Advisory Group**

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