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Shared Tenant
Service
Decision

ALJ/RTB/md/rr

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Decision 87-01-063 January 28, 1987

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
The Pacific Telephone and Telegraph)
Company, a corporation, for authority)
to adopt intrastate access charge)
tariffs applicable to telephone)
services furnished within the State)
of California.)

Application 83-06-65
(Filed June 30, 1983)

Investigation on the Commission's own)
motion into the rates, tolls, rules,)
charges, operations, costs,)
separations, inter-company settle-)
ments, contracts, service, and)
facilities of The Pacific Telephone)
and Telegraph Company, a California)
corporation; and of all the telephone)
corporations listed in Appendix A,)
attached hereto.)

OII 83-04-02
(Filed April 20, 1983)

(For appearances see Decisions 83-04-021, 83-12-025,
84-06-111, and 85-01-010.)

Additional Appearances

Theresa L. Cabral, Attorney at Law, for Pacific Bell,
applicant.

Reboul, Mac Murray, Hewitt, Maynard & Kristol, by
Barbara J. Blau and Robert M. Peak, Attorneys
at Law, for GTE Sprint Communications Corporation;
Mc Kenna, Wilkinson & Kittner, by Peter C. Kenney,
Jr., for American Broadcasting Companies, Inc.,
and CBS, Inc.; Daniel A. Huber, for Honeywell,
Inc.; Jerry E. Chase, for American Teleshare,
Inc.; Blumenfeld & Cohen, by Jeffrey Blumenfeld and
Gary M. Cohen, Attorneys at Law, for Centex
Telecommunications, Inc.; Pepper, Hamilton &
Scheetz, by Jean L. Kiddoo, Attorney at Law, for
SBS Real Estate Communications Company and Telecom
Plus Shared Tenant Services, Inc.; interested
parties.

Lionel B. Wilson, Jr., Attorney at Law, for the
Commission staff.

O P I N I O N

Background

Pacific's intrastate access charges proceeding began in 1983 when Pacific's application (A.) 83-06-65 was filed. Intrastate access charges were approved on an interim basis in Decision (D.) 83-12-024. That decision also indicated several broad issues for consideration in 1984. Two sets of hearings, Phase II-A (urgent issues) and Phase II-B (further issues) were held during 1984. It was during the Phase II-B hearings that the issue of shared services first arose. This issue involves the proper application of Pacific's joint use tariff in the context of sharing of services. In Exhibit 812 Pacific's witness Oliver was asked for some examples of carrier bypass. He stated that: "A good example of a carrier bypass opportunity can be found in multi-tenant operations, where the owner installs his own PABX." He then quoted an interview with Doctor Jerome G. Lucas in Computer World on Communications wherein Lucas was quoted as saying:

" . . . The most extensive use of bypass for the remainder of the 80's will be from intelligent buildings to points of presence... In a skyscraper with one million square feet of office space, up to \$5 million of long distance calls originate. With that concentration of long distance traffic, you can afford bypass technologies that go right from the building to a long distance carrier, thereby bypassing the local phone companies." (Exhibit 812, pp. 15-16.)

Oliver also testified that some resellers have been using intraLATA foreign exchange (FX) service, sometimes under "joint use" provisions, to pick up originating interLATA traffic from distant end users. In Oliver's opinion this is an improper use of the joint use provisions. Although Oliver's original references to joint use

related to bypass by "smart" buildings and to interLATA resellers who improperly used foreign exchange services under the joint use tariff, Centex's witness, Glynn, in his direct testimony in Phase II-B urged the Commission not to take any action which would be detrimental to the interests of joint user management service companies, such as Centex or Pacific's own multi-tenant marketing group until after public hearings had been held with due notice to the affected parties.

On October 4, 1984 Centex's witness, Glynn, cross-examined Pacific's witness, Oliver, on his testimony in Exhibit 812. The thrust of that cross-examination was to determine if Oliver intended his testimony to include companies such as Centex or other joint user management companies. Oliver stated that he was aware of Centex's involvement with Pacific's interexchange carrier marketing group but he was not familiar with the operational configurations that Centex uses nor the types of traffic that Centex tries to complete. Glynn tried to get Oliver to distinguish between legitimate joint user management companies operating under Pacific's tariffs and resellers. However, Oliver would not agree that there was such a customer by category. He would only say that there are customers who are using joint use services, some of them legitimately and some of them not legitimately. He was not sure how a joint user management firm fit into that conclusion. Oliver stated that the whole thrust of his testimony had to do with certified intraLATA carriers. Using joint use as an example he stated that his testimony was to the effect that intraLATA foreign exchange service cannot be used on a joint service basis to gather the originating usage for purposes of completing interLATA calls. Oliver further testified that the access tariff is the proper tariff that describes how interLATA access is provided. The intraLATA foreign exchange tariff, 34-T, and the

joint use tariff, 20-T, have absolutely nothing to do with interLATA access. Those tariffs describe strictly intraLATA services. Oliver was asked the question does Pacific have any plans to change the foreign exchange or joint use tariff to restrict joint users from managing calls within the LATA? Oliver responded that his testimony dealt only with interLATA access and he had no change in mind for the intraLATA foreign exchange service. (Tr. 129:16366-16372.)

Paul Popenoe of the Commission staff filed rebuttal testimony in response to Oliver's Exhibit 812, pp. 14-16, on the question of multi-tenant shared services in a building or other complex such as a business or industrial park. The purpose of Popenoe's testimony was to define what multi-tenant services can and cannot do under existing tariffs and Commission rulings. Popenoe prepared a compilation of rules applicable to multi-tenant communication systems, which document has become the focal point in Phase III-B of these proceedings. (Exhibit 899.) In his compilation he sets forth a series of guidelines which placed the existing tariff rules in a common framework with the Commission's competition ruling in D.84-06-113. The guidelines include some areas of interpretation to extend existing rules to the multi-tenant service provider environment. In Popenoe's view a multi-tenant service provider which observed his guidelines would be operating in a legitimate manner. Popenoe's guidelines are as follows:

1. A multi-tenant service provider is a person or firm which operates and manages a PBX-type switch to provide telephone service to tenants of a building or building complex such as a business or industrial park which is under common ownership. Under Joint User tariffs the multi-tenant service provider is the customer of the utility.
2. Multi-tenant service providers are not subject to CPUC regulation if they operate under the following guidelines.

3. The service provider may charge for its management and billing services and for use of its facilities in any manner it deems appropriate including flat or measured service charges.
4. All charges for service from the telephone utility or from a long-distance carrier shall be directly rebilled to tenants on a flow-through or prorated basis and shall be separately stated on the bill.
5. Each tenant using the common system shall subscribe to joint-user service of the telephone utility.
6. Service may be extended to residential premises, but business rates will apply to PBX trunks and other facilities.
7. Any specific multi-tenant system shall be limited to providing service only to tenants within a specific building or building complex under common ownership or management, except that off-premises extensions may be provided to tenants of a specific complex at locations away from that complex.
8. The property owner or manager shall place no restrictions on tenants who desire service directly from the telephone utility in addition to or in lieu of service provided by the multi-tenant service provider.
9. The property owner or manager or service provider shall place no impediments on the telephone utility where it furnishes service directly to a tenant.
10. The service provider shall not resell intrastate long distance service other than at flow-through rates or prorated except as it obtains a certificate of public convenience and necessity from the Commission pursuant to D.84-06-113 and files tariffs pursuant thereto.

11. In no event shall the service provider resell intraLATA service or provide it other than through the local telephone utility.
12. The multi-tenant service provider shall be responsible for collection of moneys from tenants and payment of all amounts billed for service, including joint user service, furnished to the building or complex.
13. Any billing disputes by tenants or joint users shall be taken up with the multi-tenant service provider not with the utility or the Commission. Only the service provider shall have standing to file billing complaints with the utility or the Commission. (Exhibit 899, pp. 3-4.)

It is significant to note that the above guidelines as originally published and mailed to the parties to these proceedings defined multi-tenant service provider to include a person or firm which "manages a shared centrex arrangement." However, between the time the guidelines were first published and circulated and the time that they became an exhibit in these proceedings the staff apparently reconsidered the applicability of the guidelines to shared centrex arrangements. In the guidelines as they appear in the official copy of Exhibit 899 the phrase "or manages a shared centrex arrangement," as it appeared originally in guideline No. 1, has been blacked out. The result is that "multi-tenant service provider," as defined in Exhibit 899, includes only persons or firms which operate and manage a PBX switch to provide telephone service to tenants of a building or building complex, etc.

Pacific's witness Oliver also filed rebuttal testimony which more directly addressed the topic of joint use and the distinction between joint users (shared services providers) and resellers. (Exhibit 893.) However, in D.85-06-115 the Commission rejected the staff's and Pacific's request to resolve the shared

tenant services issue by adopting Popenoe's guidelines on an interim basis. Instead the Commission ordered interested parties to submit written comments on the Popenoe guidelines within 90 days after the effective date of D.85-06-115. The Commission also established a third and final phase of the proceeding to deal with certain enumerated issues, including the establishment of guidelines to define the proper application of access charges in the context of joint use of multi-tenant communication systems and the proper limits to the scope of such services. (Ordering Paragraph 28, D.85-06-115.)

As required by Ordering Paragraph 25 of D.85-06-115, Pacific and several other parties submitted comments on the Popenoe guidelines in September 1985. Some of these documents have become exhibits in this proceeding.

Three prehearing conferences were held: October 3, 1985; January 30, 1986; and February 18, 1986. The shared tenant services issue was split off from the remaining issues in these proceedings and set for hearing in March 1986 before Administrative Law Judge (ALJ) Robert T. Baer. The remaining issues were heard separately before ALJ Alison Colgan. Public hearings were held March 10 - 14, 17, and 18, 1986. On March 18 the case was submitted subject to the filing of concurrent opening and closing briefs on May 5 and June 6, 1986, respectively. Pacific, General Telephone Company of California (General), staff, Centex, Realcom Communications Corporation and Telecom Plus Shared Tenant Services, Inc. (Realcom et al.), and California BramTel, Inc. (BramTel) filed opening and closing briefs.

Issues

The following issues must be resolved in Phase III-A of these proceedings:

1. What, if any, guidelines should govern the behavior of multi-tenant service providers? Do the Popenoe guidelines, the Pacific guidelines, or the General guidelines offer an appropriate framework to achieve this end?
2. Should any guidelines or regulations be imposed on centrex-based joint use managers?

We will address the second issue first since its resolution may simplify the consideration of the first issue.

Guidelines for Centrex-Based Joint-Use Managers

The staff position is that this proceeding was intended to deal solely with guidelines for providers of multi-tenant telephone services using PBXs. In its opening brief the staff argues that Ordering Paragraphs 25 and 28 of D.85-06-115 clearly limit the scope of these proceedings to the proper application of access charges in the context of the joint use of multi-tenant communications systems and the proper limits to the scope of such service. The staff, citing the testimony of staff witness Popenoe and the witnesses for Centex, also argues that the service provided to tenants in a building or complex of buildings through a PBX is different from the service offered by managers of Pacific's Centrex. Centex agrees with the staff position on the scope of these proceedings and supported its view through testimony and brief. Centex argues that there is no justification for imposing a new regime of regulation, on Centrex-based joint use managers such as Centex. Whatever regulatory concerns may arise with respect to multi-tenant service providers, using PBX equipment, those concerns are not germane to the very different operations of Centrex-Based Joint Use Managers, according to Centex.

RealCom and Telecom Plus concede that Centrex and PBX sharing arrangements are clearly different services. However, they argue that the same types of policy considerations should apply to both types of arrangements. RealCom and Telecom Plus argue that since these two types of private-sharing arrangements provide many of the same types of service to the same types of customers, the Commission should insure a "level playing field" for the two types of arrangements. They believe that because of the fundamental differences between the two services, the rules appropriate for each type of service will not necessarily be coextensive. Moreover, RealCom and Telecom Plus maintain that the rules adopted by the Commission for each type of service should be implemented separately. The central concern of RealCom and Telecom Plus seems to be that joint use managers reselling excess Centrex switching capacity of the local exchange carrier not receive a favored or special regulatory status.

BramTel did not address the issue of guidelines for Centrex-Based Joint Use Managers.

Discussion of Issue No. 2

In his prepared testimony and in answers to questions on cross-examination the PSD witness Paul Popenoe stated repeatedly his reasons for proposing his guidelines and to whom they related. Popenoe stated that "...the shared tenant service operator is, in essence, a provider of customer premises equipment, and therefore, we don't regulate him, and the purpose of providing guidelines was to set forth the parameters under which the operator would operate that would keep him clean, ..., as a customer-premise equipment operator." In other words, Popenoe's guidelines were an attempt to describe how a provider of customer premise equipment, specifically a owner or manager of a PBX, could share the services provided by that PBX with

a number of tenants in a building or complex without becoming a telephone company. As an owner or provider of customer premise equipment the shared tenant service operator would not be subject to our regulation. However, if his service extended beyond Popenoe's guidelines, then he would become a telephone company subject to our regulation. Popenoe further testified that services provided by Pacific Bell to Centrex, a manager of services provided through Pacific Bell's centrex switches, should not come within his guidelines, because in his view his guidelines relate only to the providers of customer premises equipment which we do not regulate.

Popenoe did not direct his testimony toward the provision of Centrex service. He did not consider the factual aspects of Centrex service when developing his guidelines, nor would he concede that any of his guidelines were appropriate for Centrex Service unless he first had the opportunity to see Pacific Bell's proposed Centrex Tariff. Popenoe did not have any recommendation with regard to Centrex sharing, since it seemed to him that it was up to the utility to decide what sort of tariffs they want to file on Centrex sharing. To Popenoe Centrex service and shared tenant service through a customer-owned PBX are two different animals. In his view Pacific should set forth what they believe to be appropriate guidelines for the joint use of Centrex service in an advice letter and tariff filing and not attempt to tie Centrex service to the provision of customer premises equipment by making the Popenoe guidelines or a version of them applicable to both kinds of service.

We believe that are several good reasons why the scope of this proceeding should be limited to Popenoe's guidelines as they apply to shared tenant services provided through a customer-owned PBX. First the phrasing of Ordering Paragraph 28 in Decision (D.) 85-06-115 shows that shared Centrex service was not the focus of this

proceeding. This proceeding was established to define the proper application of access charges in the context of joint use of multi-tenant communication systems and the proper limits to the scope of such services. Access charges are of course not an issue with Centrex service. Centrex is a service offered by Pacific Bell, which controls the features and the scope of the service through its tariffs. Companies such as Centrex merely act as agents or managers of the service on behalf of the ultimate consumer. They do not provide the service itself.

Second, we intended in our D.85-06-115 that Popenoe's guidelines should be the focus of this proceeding. Those guidelines by their terms addressed only shared-tenant services provided by owners and operators of PBX equipment.

Third, since our staff has not considered the application of the Popenoe guidelines to the sharing of Centrex service, it would not be prudent to expand this proceeding to include the application of those guidelines to Centrex service. We wish to have the well-considered judgment of our expert staff members before we establish the parameters of any regulated service.

Fourth, the expansion of the proceeding to apply Popenoe's guidelines to Centrex service, as proposed by Pacific Bell, is procedurally somewhat irregular. We believe as a general rule the scope of our proceedings should be fixed by the initiatory pleadings. The expansiveness of this proceeding and its division into various phases and subphases, has taken us away from the traditional format where a proceeding is begun by an application, complaint, or initiatory order which in turn controls its scope. However, Popenoe's guidelines in D.85-06-115 have taken the place of the usual pleadings in one of our proceedings. They have become the focal point of this proceeding. To allow the focal point to shift

from Popenoe's guidelines to the version provided by Pacific Bell's witness, applicable to both PBXs and Centrex service, or to the proposed tariff rule submitted by Pacific Bell late in this proceeding, but rejected by the ALJ, only provides a moving target for the other parties in the case. If this proceeding is ever to terminate, it must be decided in discrete pieces and in an orderly fashion.

We therefore conclude that the scope of this proceeding should be limited to Popenoe's guidelines and revisions thereto, as they apply to shared tenant services provided to tenants by customer-owned PBX equipment. If it is appropriate to apply similar guidelines to the sharing of Centrex service, that can be done in a later proceeding arising out of a tariff filing, a complaint, or an application.

Discussion of Issue No. 1

We will now address each of the Popenoe guidelines in the order in which they appear in the record. Since Exhibit 899 became a part of the record, Popenoe has amended certain of the guidelines. Those amendments appear in Exhibit 917 as underscored material.

Guideline No. 1, as revised in Exhibit 917, is as follows:

"A multi-tenant service (also known as shared-tenant service) provider is a person or firm which operates and manages a PBX-type switch to provide telephone service to tenants of a building or building complex such as a business or industrial park which is under common ownership or management. Under Joint User Tariffs the multi-tenant service provider is the customer of the utility." (Exhibit 917.)

Pacific does not recommend a geographic limitation. Rather it suggests a guideline that provides that jointly used/shared services may be provided to end users who are directly connected (hardwired) as station users to the shared switch.¹ Pacific's proposed guideline regarding hardwire connection is as follows:

"Jointly used/shared services may be provided and managed by shared services providers or managers to customers directly connected (hardwired) as station users to a switch."

Pacific believes that the hardwire connection requirement is essential for two purposes. First, it is a means of distinguishing resellers from shared services providers, since resellers generally use dial-up as the primary means of access to their services. One of the purposes of the guidelines is to establish the parameters within which shared services providers can operate without becoming resellers requiring a certificate of public convenience and necessity (CPC&N). The hardwire station user connection requirement is one step in drawing those parameters.

The second purpose of the hardwire station user connection requirement, according to Pacific, is to limit the scope of the shared service provider so that it does not become, in essence, a small telephone company which aggregates a larger and larger amount of traffic, thereby jeopardizing a larger and larger amount of revenue and NTS contribution.

¹ It should be remembered in considering any of the guidelines that Pacific's guidelines reflect its belief that the guidelines should apply both to joint use of customer-owned PBXs and sharing of services provided by Pacific or General.

Pacific's proposed Guideline No. 1 originally contained a common ownership and geographic limitation as a means of limiting the scope of the shared services providers. After consideration, Pacific eliminated this requirement. Pacific believes a common ownership and a geographic limitation restricting which customers can be connected to the shared switch is inappropriate. However, Pacific recognizes that there is a need to put some limitation on the amount of aggregation that is permitted. The hardwire station user connection requirement is an approach which fulfills that purpose, since the capacity of a shared services provider's switch to handle hardwire station user connections provides a practical limitation on the amount of possible aggregation of traffic.

General also recommends a guideline containing a geographical limitation applicable both to shared tenant services and jointly used services provided by the telephone company. General's guideline is as follows:

"A Shared System Service Provider (SSSP) is an individual or firm which owns or manages a shared Electronic Business System Service (EBSS)/Centrex or other multi-line business arrangement to provide telecommunications service to a single building or complex of buildings on continuous property. The SSSP's complex will be considered as on continuous property if the edge or boundary of the parcels shared contain buildings where the tenants/owners contribute to the maintenance of: (1) the common areas; and (2) communications facilities which owned or managed by the SSSP. Such property may be intersected by a public thoroughfare or by a public right-of-way if the segments created by the thoroughfare or right-of-way would be joined in the absence of the thoroughfare or right-of-way. The SSSP is the customer of the utility."

General's guideline is intended to limit the ability of SSSPs to, in effect, create telephone networks within the exchange areas of local exchange carriers.

Centex does not propose any guidelines, since its position is that no guidelines should apply to Centrex-based joint use managers such as Centex. We have adopted Centex's position in the first part of this decision.

RealCom and Telecom Plus believe that the PSD's proposed guidelines in Exhibit 917 reasonably established the permissible scope of STS arrangements, with certain minor exceptions. The first exception relates to PSD Guideline 7, a guideline related to Guideline 1. In our discussion of Guideline 7 we will satisfy RealCom and Telecom Plus' concern.

RealCom and Telecom Plus also request that the Commission, in its findings and conclusions, expressly clarify that the geographic limitations adopted do not preclude or restrict the interconnection of STS switches at separate locations for the purpose of signaling between the switches. This data link, according to RealCom and Telecom Plus, would be used for the purpose of connecting a small PBX (a remote switch) to the data base, memory, and processing features--such as Station Message Detail Recording (SMDR) and (least cost routing algorithms) of a more sophisticated PBX (the host switch or central processor). By establishing this type of arrangement, an STS provider can substantially reduce its cost by not having to duplicate the host switch's data base, memory, and processing features at the remote PBX and, by virtue of such cost reductions, will be able to offer service to customers at locations which it might not otherwise serve. Both the host and remote STS arrangements would be separate and subject to the adopted geographic limitations, and all traffic required to be carried by the local

exchange carrier (LEC) would be delivered to the LEC at the point of origination. In these circumstances, it is clear that a host/remote configuration would lead to a substantial reduction in capital costs without leading to networking of SDS switches.

The PSD does not object to the RealCom and Telecom Plus proposal as long as it is clear that such a connection is for signaling purposes only and not for the purpose of carrying voice or data traffic. PSD states in its closing brief that it should be made clear that under the RealCom and Telecom Plus proposal the STS provider should still be required to deliver all voice and data traffic to the local exchange at the remote PBX.

Pacific's reaction to the RealCom and Telecom Plus proposal is ambivalent. Although it states some reservations, it does not propose that the Commission deny the proposal. On the one hand Pacific believes that to the extent that the host and remote switches are located on commonly owned premises within a single exchange, they would fit within the scope of Pacific's limited exception to its proposal limiting the networking of switches.

According to Pacific that exception should not be broadened to allow connection between premises not commonly owned nor to allow such connection outside a single exchange, because each of those factors begins to impermissably widen the scope in range of the aggregation of the shared services provider. Pacific also argues that RealCom has stated that the connection would be used only for signalling between the switches, and that voice traffic would not be carried. Pacific observes however, that it would be extremely difficult, if not impossible, for Pacific to determine what traffic was actually being transmitted. It states in conclusion that the Commission cannot reasonably be expected to rely on the unverifiable assurances of an interested party. Pacific thus concludes its

discussion of RealCom and Telecom Plus' proposal without making a recommendation to the Commission on whether that proposal should be adopted, rejected, or adopted with modifications. Since the other parties do not object to the proposal of RealCom and Telecom Plus and since Pacific's response is ambiguous, we will adopt the proposal subject to the following conditions suggested by Pacific:

1. A signalling circuit between a host switch and a remote switch should not be allowed between premises not commonly owned or commonly managed; and
2. A signalling circuit between a host switch and a remote switch should not be allowed outside a single exchange.

BramTel in its opening brief endorsed the staff's Exhibit 917 guidelines, stating that they provide workable guidelines for shared tenant services. BramTel recommends that the guidelines set forth in Exhibit 917 be adopted by the Commission.

Discussion of Guideline No. 1

RealCom and Telecom Plus and staff in their opening briefs preferred or did not object to the Commission adopting General's version of Guideline 1, the common ownership guideline. In addition the staff stated that it had no objection to Pacific's proposal requiring all-joint users of a PBX switch to be hard-wired as station users. Thus, the only issue remaining to be decided regarding Guideline 1 is whether a geographical guideline is necessary or whether Pacific's alternate guideline regarding the hard-wiring of station users to the PBX switch would suffice. The weight of the evidence clearly supports a geographical limitation on shared tenant services. Staff, General, RealCom and Telecom Plus, and BramTel all support either the staff's or General's geographical limitation. Pacific's alternate seems to be designed to recognize both PBX-based sharing and Centrex-based sharing, since Pacific's position is that the guideline should apply to both. Clearly a

geographical guideline would be difficult to apply to Centrex-based shared service managers like Centex. Those customers of Centex sharing a single Centrex switch could come from a number of different buildings in a single area owned or managed by different persons or corporations. Thus a geographical limitation that would be appropriate for PBX-based shared service providers, if applied to Centrex-based shared services managers, could very seriously interrupt the relationships between managers and their customers that have evolved over the last few years. However, since we have decided to limit the scope of the guidelines to PBX-based shared service providers, a geographical limitation seems entirely appropriate to us for the reasons stated by staff and General. A PBX-based shared service provider could, using his excess PBX capacity, send out lines to buildings surrounding his building or complex under common ownership or management and thus become a miniature telephone company. We will therefore adopt a geographical limitation and, as the staff suggests, also adopt Pacific's proposed alternate involving hardwiring of station users to the PBX switch. While this may appear to be a belt and suspenders approach, we see no harm in that. Since the staff does not object to General's formulation of a geographical limitation, we will adopt General's language with some modifications to eliminate references to Centrex-based shared service managers.

Staff Guideline No. 7

The adoption of General's Guideline No. 1, with modifications, eliminates the need for much of staff's Guideline 7. It also eliminates RealCom and Telecom Plus' criticism of the last sentence of staff Guideline 7, since that language has now been omitted in favor of General's language. We will, however, retain a non-controversial portion of Guideline 7 as follows:

"7. Off-premises extensions may be provided to tenants of a single building or complex of buildings at locations away from that building or complex of buildings."

The remainder of staff Guideline 7 is superfluous in light of our adoption of General's Guideline 1.

Staff Guideline No. 2

Staff Guideline 2 is as follows: .

"Multi-tenant service providers are not subject to CPUC regulation if they operate under the following guidelines."

Pacific has consolidated staff Guideline 2 and 3 and added an additional guideline dealing with Commission monitoring of shared services. Pacific's Guideline 2 is as follows:

"Shared services providers are not subject to CPUC regulation if they operate under these guidelines, and may charge for management and billing services and for use of their facilities as they deem appropriate. As a condition of receiving service, a shared services provider shall notify the California Public Utilities Commission and Pacific Bell when it begins operations in California. Such notification shall include: the locations being served by the shared services provider, the names of the shared services provider and developer and their business locations, whether the shared services are limited to a single building, whether any involved buildings will be retrofitted, and whether the shared services provider is associated with a certificate interLATA reseller using the same switch."

Staff and RealCom and Telecom Plus oppose the notice requirement arguing that Pacific is in a position to determine from its own records any information that it desires to obtain from current or potential shared tenant service providers.

General neither suggests a notice requirement nor does it comment on Pacific's proposal. BramTel's briefs do not mention the subject of notice at all.

Discussion of Guideline No. 2

There is basically no controversy as to staff Guideline 2 except for Pacific's proposal to add a notice requirement to it. Pacific argues that its additional requirements will provide a means for the Commission to evaluate the scope and development of this industry and to determine whether the guidelines are operating as expected.

Staff is opposed to the Pacific proposal, since it would require the Commission to monitor the STS industry and then to prepare a study of it at the end of one year. Mr. Popenoe testified that since the Commission does not regulate private PBX service, it would be improper for the Commission to monitor this service. According to the staff it would not be necessary for the Commission to monitor the industry or to enforce the guidelines since the telephone companies will be dealing directly with STS providers. They would therefore more appropriately be in a position to monitor their customers and study the progress of the shared tenant service industry and could bring any of their concerns before the Commission as they arose.

We are persuaded by the staff's testimony and reasoning and will therefore adopt staff Guideline 2 without the additions proposed by Pacific.

Staff Guideline No. 3

Staff Guideline 3 is as follows:

"The service provider may charge for its management and billing services and for use of its facilities in any manner it deems appropriate including flat or measured service charges."

Pacific advocates a similar guideline as part of its proposed Guideline 2, as follows:

"Shared services providers...may charge for management and billing services and for use of their facilities as they deem appropriate.
. . ."

General does not comment on staff Guideline 3 nor suggest a guideline of its own related thereto. BramTel endorsed all of the staff's guidelines. RealCom and Telecom Plus support Guideline 3. They state in their opening brief that the record demonstrates that the tenants' option of obtaining direct access from the local exchange carrier obviates the need for regulatory oversight of an STS provider's charges, and no useful purpose would be served by Commission regulation in this area. Pacific states that the management, billing, and facilities fees are unrelated to the telecommunications services acquired from Pacific or an interexchange carrier, so there is no reason to place restrictions or limitations on those fees to the shared services group members. According to Pacific, Guideline 3 should be adopted in order to provide clarity to the application of the other guidelines. We will adopt staff Guideline 3.

Staff Guideline No. 4

Staff Guideline 4 is as follows:

"All charges for service from the telephone utility or from a long-distance carrier shall be directly rebilled to tenants on a flow-through or pro rata basis and shall be separately stated on the bill."

Pacific's proposed Guideline 3 is virtually identical to the staff's Guideline 4, as follows:

"All charges for service from the telephone utility or from an interexchange carrier or reseller shall be directly rebilled to shared services group members on a flow-through or pro rated basis and shall be separately stated on the bill."

General does not support Guideline 4, arguing that it is not necessary in light of the geographical limitation in Guideline 1 and in light of Guidelines 8 and 9 allowing the telephone company to compete directly with the provider of shared tenant services.

RealCom and Telecom Plus also oppose Guideline 4, arguing that since shared tenant service providers are not public utilities, their billing methods should not be regulated by the Public Utilities Commission. Staff points out in its closing brief that RealCom and Telecom Plus' position hinges on its premise that STS providers are not public utilities. The briefs of RealCom and Telecom Plus and staff contain lengthy dissertations on this point. It will however, suffice to say that the record does not support a finding that STS

providers are not public utilities. We are not in the business of issuing declaratory judgments on abstract questions of law. When a particular provider comes before us and the issue is raised whether that provider is operating as a public utility, the particular facts of its operation can be explored and a determination made whether it is in fact acting as a public utility. We have no facts of this sort before us in this case.

These guidelines are proposed by our staff to implement our prohibition against intraLATA competition and the requirement that all resellers of interLATA telecommunication services obtain a certificate of public convenience and necessity. Guideline 4 is designed to distinguish resellers of interLATA telecommunications services from customers of the regulated telephone companies. We believe that Guideline 4 is a reasonable way to distinguish between resellers and customers that will not place onerous or impractical restrictions on STS providers. Accordingly, we will adopt Guideline 4.

Staff Guideline No. 5

Staff Guideline 5 is as follows:

"Each tenant using the common system shall subscribe to the joint-user service of the telephone utility."

Pacific Bell's proposed Guideline 4 contains similar provisions, as follows:

"Services provided by shared services providers are subject to schedule Cal. P.U.C. No. 80.5.6.1., the joint-user tariff, and its charges. Therefore, each member of the shared services group must be on record with Pacific Bell as a joint user and must pay the monthly joint-user fee. The shared services provider is the customer of Pacific Bell."

General does not have any corresponding proposed guideline nor does it comment on Guideline 5 in its briefs. RealCom and Telecom Plus agree that service under Pacific's joint-user tariff is appropriate for STS providers. However, they note that General does not currently have a joint-user tariff in effect. Instead, STS providers obtain service under General's shared systems listing service tariff. Accordingly, RealCom and Telecom Plus recommend that Guideline 5 should be clarified to include the shared systems listing service tariff as an offering under which an STS provider may obtain service.

We will adopt Pacific's Guideline with modifications and we will also include the proviso that STS providers may obtain service from General under its shared systems listing service tariff.

Staff Guideline No. 6

Staff Guideline 6 is as follows:

"Service may be extended to residential premises located in the specific complex, but business rates will apply to PBX trunks and other facilities."

Pacific's Proposed Guideline 5 is similar as follows:

"Service may be extended to residential premises. Business rates, including joint-user fees, will apply to all services provided."

General does not oppose staff Guideline 6 or Pacific's Proposed Guideline 5 nor does it propose a similar guideline. Its briefs do not address this guideline at all. RealCom and Telecom Plus do not mention Staff Guideline 6 in their briefs.

Since Staff Guideline 6 is noncontroversial we will adopt it. Pacific's Proposed Guideline does not include a geographical limitation in keeping with Pacific's position that its proposed

requirement to hard-wire station user connections to the shared switch obviates the necessity for a geographical limitation. Since we have rejected Pacific's position elsewhere, we will adopt the staff's proposed language which includes a geographical limitation. Staff Guidelines Nos. 8 and 9

Staff Guideline 8 is as follows:

"The property owner or manager shall place no restrictions on tenants which desire service directly from the telephone utility in addition to or in lieu of service furnished by the multi-tenant service provider."

Since Guideline 9 contains matters similar to Guideline 8, we will consider the two guidelines together. Staff Guideline 9 is as follows:

"The property owner or manager or service provider shall place no impediments on the telephone utility where it furnishes service directly to a tenant."

Pacific's Proposed Guideline 7 is similar to staff's proposed Guidelines 8 and 9 as follows:

"The property owner or manager furnishing shared services to occupants of a given building or complex shall place no restrictions on tenants desiring service directly from the utility or from any other shared services provider. No impediments of any kind shall be placed on the utility or vendor where it furnishes service directly to a tenant."

General recommends guidelines similar to those of the staff and Pacific, as follows:

"No restrictions shall be placed by the SSSP, or property owner, on customers who request telecommunications services directly from the utility in addition to or in lieu of service furnished by the SSSP.

"Neither the SSSP nor the property owner shall place impediments on the utility's ability to furnish service directly to the customer. The SSSP and/or property owner shall provide reasonable access to utility personnel for the repair and maintenance of the utility-provided facilities and services."

RealCom and Telecom Plus agree that staff Guidelines 8 and 9 are reasonable. They submit, however, that, when a telephone utility elects to use inside wiring and related facilities which an STS provider chooses to make available, the STS provider should be reasonably compensated for the use of those facilities. This clarification does not appear controversial. Accordingly, we will adopt Guidelines 8 and 9 of the staff with the modification proposed by RealCom and Telecom Plus.

Staff Guidelines 10 and 11

Staff Guidelines 10 and 11 are as follows:

"10. The service provider shall not resell intra-state long-distance service other than at flow-through rates or prorate (sic) except as it obtains a certificate of public convenience and necessity from the Commission pursuant to Decision No. 84-06-113 and files tariffs pursuant thereto."

"11. In no event shall the service provider resell intraLATA service or provided other than through the local telephone utility."

These two staff guidelines are meant to reflect existing rules and Commission orders regarding resale of intrastate long-distance service without a certificate and competition for intraLATA telephone traffic between the local telephone utility and others. The staff's purpose in suggesting these guidelines was to allow STS systems to operate without a certificate of public convenience and necessity. The staff does not believe that it is in the public interest to attempt to ban certain aspects of STS. However, it appears to the staff that some STS services go beyond sharing and into resale of telephone service. The staff's guidelines are intended to distinguish between sharing of service, which does not require a certificate under current Commission rules, and resale of utility services, which does require such a certificate.

Pacific's proposed Guidelines 8, 9, and 10 address the same general area as staff Guidelines 10 and 11. They are as follows:

- "8. In no event shall the shared services provider resell intraLATA service or provide it other than through the local telephone utility.
- "9. Consistent with the prohibition on resale and the Commission's decision on intraLATA competition (Decision No. 84-06-113, dated June 13, 1984), shared services providers may not hold themselves out as providers of intraLATA service in California or represent that they offer any services in competition with Pacific, for example, by claiming any discounts over Pacific's intraLATA services.
- "10. An entity will not be allowed to serve both as a shared services provider and as an interLATA reseller out of the same switch unless it can be demonstrated that the switch is partitioned such that traffic for the different classes of customers (joint users and otherwise) can be and is clearly segregated for purposes of applying the rules, regulations, orders, decisions, and

tariffs applicable to each class of traffic. In the event that proof of partitioning cannot be established, the shared services provided can no longer obtain intraLATA services from Pacific Bell for joint use. Joint users could be a customer of the reseller portion of the switch, but the reseller may not utilize any services intended for use by the joint use part of the switch."

General does not offer any proposed guidelines as alternatives to staff proposed Guidelines 10 and 11, nor does it discuss those staff guidelines in its brief.

RealCom and Telecom Plus contend that the staff's guidelines, particularly Guidelines 10 and 11, propose to determine whether STS providers should be subject to certification and tariff requirements on the basis of whether or not they mark up (resell) the cost of the underlying service. They argue that this interpretation is contrary to California law and would impermissably interfere with the manner in which STS providers choose to bill for their services. We disagree.

Marking up services provided by the local exchange carrier is in and of itself a form of holding out. It is a way of expressing to the tenant that "We (the STS providers) offer intraLATA service or intrastate long distance service." When those services are marked up, they become the services of the STS provider, not those of the local exchange carrier. It is to avoid this transmutation that the staff proposed its guidelines. Those guidelines are designed to distinguish between providers of customer premise equipment (e.g., PBX-type switches) and provider of telephone services (telephone corporations as defined by PU Code § 234). The former would not be regulated, while the latter would be.

It is noteworthy that the legislature has recognized that reselling of telephone services endangers a person's or corporation's unregulated status; it exempted hospitals, hotels, and motels from the definition of "telephone corporation". (PU Code § 234; Stats. 1982, Ch. 653.) Now, when those or similar businesses "owning or

operating message switching or billing systems solely for the purpose of reselling services provided by a telephone corporation to their patients or guests" offer and provide those telephone services on a resale basis they no longer fall within the definition of "telephone corporation". Accordingly, they are no longer subject to the Commission's regulation. Other resellers not falling within the exemption language, are subject to our regulation.

The staff's Guidelines 10 and 11 offer a sound basis for distinguishing between telephone equipment providers and telephone corporations and we will adopt them, with Pacific's partitioned switch requirement.

Staff Guidelines 12 and 13

Staff Guidelines 12 and 13 are as follows:

"12. The multi-tenant service provider shall be responsible for collection of moneys from tenants and payment of all amounts billed for service, including 'joint user service,' furnished to the building or complex.

"13. Any billing disputes by tenants or joint users shall be taken up with the multi-tenant service provider not with the utility or the Commission. Only the services provider shall have standing to file billing complaints with the utility or the commission."

Pacific's proposed Guidelines 11 and 12 are identical to the staff's except that Pacific adds to staff Guideline 13 a concluding proviso: "except for services received directly from the telephone utility." General's Guideline 5 covers the same ground as staff's 12 and 13 and Pacific's 11 and 12 and is not inconsistent. RealCom and Telecom Plus agree with staff Guidelines 12 and 13. Their sole suggestion with respect to Guideline 13 is covered by the Pacific proviso. We will adopt staff's Guideline 12 and also staff's Guideline 13, with Pacific's proviso.

Other Proposed Guidelines

As discussed above, the staff agrees with Pacific's proposed guideline that: "All joint users of the STS provider shall be hard wired as station users to the shared switch." We will therefore adopt this guideline as No. 14.

The staff also agrees with two other Pacific proposals, as follows:

"In no event shall STS providers hold themselves out as providers of intraLATA services, nor shall they represent that they offer any services in competition with the local utility."

"No intraLATA or interLATA networking of shared switches is permitted. IntraLATA private line service between exchanges may be obtained by the joint user directly from the utility and terminated at the joint user's premises for unshared use."

General proposed a number of guidelines relating to utility access to the property or facilities of the property owner or STS provider. These proposals are more specific expansions of subjects addressed in our adopted guidelines. To the extent that General's proposals are not inconsistent with our adopted guidelines General may wish to propose them as tariff provisions by advice letter. However, we believe that our adopted guidelines adequately treat the subjects that General's proposed guidelines address. Accordingly, we will not adopt them.

Findings of Fact

1. Shared tenant service (STS) is a service provided through a PBX-type switch owned or operated by a customer of a telephone corporation.

2. Centrex service is a tariffed service offered by Pacific or other telephone corporations to its customers. The Centrex switch is owned, operated, managed, and controlled by the telephone corporation and the service provided through the Centrex switch is regulated by the Commission.

3. Geographical and common ownership limitations would be impractical to apply to Centrex service.

4. Geographical and common ownership limitations will prevent owners of PBX-type switches from providing telephone service to the public.

5. Some STS arrangements use a host/remote switch configuration, whereby a remote switch at one location is connected to a host switch at another location by a data link to provide the remote with the same data base, switching and memory capabilities as the host. Such a host/remote configuration facilitates provision of advanced PBX services to small and medium sized businesses because the capital costs of a full-size PBX can be avoided at the remote location.

6. STS providers are customers of the telephone utilities.

7. Telephone utilities have the ability to study the characteristics of various classes of their customers and to make recommendations to the Commission concerning the service rendered to those classes.

8. There is insufficient evidence in the record for the Commission to determine whether or not STS providers are as a class public utilities.

Conclusions of Law

1. The Popenoe guidelines are limited by their terms to providers of STS through customer owned or operated PBX-type switches.

2. Access charges pertain to shared tenant services through PBX-type switches, but not to Centrex based services.

3. Our prior orders limit these Phase III-B proceedings to the consideration of guidelines for using PBX-type switches.

4. The scope of Phase III-B of this proceeding should not be expanded to include the establishment of guidelines for Centrex-based services.

5. Provision of shared tenant services through a host/remote configuration does not violate the Commission's rules if: (a) each such STS arrangement is confined to the geographical and common ownership limitations in our adopted guideline, (b) each switch in fact delivers all end user traffic required to be carried by the local exchange carrier to such carrier at the point of origination, and (c) the signalling circuit between a host and a remote switch is within a single exchange.

6. The staff should not be required to monitor STS providers, nor should the Commission require STS providers to file reports or information with the Commission.

7. The flow-through requirement of Guideline 4 is a reasonable means of implementing our prohibition against intraLATA competition and our requirement that resellers of interLATA telephone services obtain a certificate.

8. If a telephone utility uses inside wiring or related facilities made available by the STS provider, the telephone utilities should compensate the STS provider for such use.

9. Marking up services provided by the local exchange carrier is a form of holding out such services.

10. Staff Guidelines 10 and 11 offer a sound basis for distinguishing between unregulated telephone equipment providers and regulated telephone corporations.

11. The modified Popenoe Guidelines, as set forth in the Appendix, should be adopted.

O R D E R

IT IS ORDERED that the guidelines for Shared Tenant Service Providers, as set forth in the Appendix, are adopted and Phase III-B of these proceedings is terminated.

This order becomes effective 30 days from today.

Dated January 28, 1987, at San Francisco, California.

STANLEY W. HULETT
President
DONALD VIAL
FREDERICK R. DUDA
G. MITCHELL WILK
Commissioners

Certified as a True Copy
of the Original

APPENDIX A

Page 1

ADOPTED GUIDELINES

1. A multi-tenant or shared-tenant service provider (provider) is a person or firm that owns or manages a PBX-type switch and provides telephone service to tenants in a single building or complex of buildings on continuous property. A complex of buildings is on continuous property if the boundary of the involved parcels contains buildings where the tenants or owners contribute to the maintenance of: (a) common areas; and (b) communications facilities that are owned or managed by the provider. Such property may be intersected by a public thoroughfare or right-of-way, if the segments created would be joined in the absence of the thoroughfare or right-of-way. The provider is the customer of the utility.
2. Providers are not subject to CPUC regulation if they operate under these guidelines.
3. The provider may charge for its management and billing services and for use of its facilities in any manner it deems appropriate including flat or measured service charges.
4. All charges for service from the telephone utility or from a long-distance carrier shall be directly rebilled to tenants on a flow-through or prorata basis and shall be separately stated on the bill.
5. Services provided by multi-tenant or shared tenant services providers are subject to Pacific Bell's schedule Cal. P.U.C. No. 80.5.6.1., the joint user tariff, and its charges, General Telephone's shared systems listing service tariff, or the joint-user service tariff of other telephone utilities. Therefore, each customer of a provider must be on record with the telephone utility as a joint-user and must pay the monthly joint-user fee, if any.
6. Service may be extended to residential premises located in the specific complex, but business rates will apply to PBX trunks and other facilities.
7. Off-premises extensions may be provided to tenants of a single building or complex of buildings at locations away from that building or complex of buildings.
8. The property owner or manager shall place no restrictions on tenants which desire service directly from the telephone utility in addition to or in lieu of service furnished by the provider.

APPENDIX A

Page 2

9. The property owner or manager or provider shall place no impediments on the telephone utility where it furnishes service directly to a tenant. When a telephone utility elects to use inside wiring and related facilities that a provider chooses to make available, the provider should be compensated for their use.
10. The provider shall not resell intrastate long distance service other than at flow-through rates or prorata except as it obtains a certificate of public convenience and necessity from the Commission pursuant to Decision 84-06-113, files tariffs pursuant thereto, and partitions its switch.
11. In no event shall the service provider resell intraLATA service or provide it other than through the local telephone utility.
12. The provider shall be responsible for collection of moneys from tenants and payment of all amounts billed for service, including joint user service, furnished to the building or complex.
13. Any billing disputes by tenants or joint users shall be taken up with the provider not with the utility or the Commission. Only the provider shall have standing to file billing complaints with the utility or the commission.
14. All joint users of the provider shall be hard wired as station users to the shared switch.
15. In no event shall providers hold themselves out as providers of intraLATA services, nor shall they represent that they offer any services in competition with the local utility.
16. IntraLATA or interLATA networking of shared switches is not permitted. IntraLATA private line service between exchanges may be obtained by the joint user directly from the utility and terminated at the joint user's premises for unshared use.

(END OF APPENDIX A)