

1 (e) PacWest must provide equal and uniform
2 service throughout its license area, while SCT is permitted
3 under the MOU to vary its rates and services within its license
4 area. (SCT Ex. EE at 18; SCT Ex. HH at 9.) Under this section
5 of the agreement, SCT was able to go forward with its scheme to
6 drive PacWest out of business through a policy of predatory
7 pricing.

8 24. The Governmental Entities did not want
9 competition in the cable television market in Sacramento and
10 permitted PacWest to apply for a license only because required
11 to do so as a result of the *PacWest I* case. (PacWest Ex. 31 at
12 01524.) Their intent towards PacWest was specifically expressed
13 by a member of the Cable Commission who informed PacWest's
14 offices of the desire of the Governmental Entities to see
15 PacWest go out of business. (PacWest Ex. 12 at Vol. 1:76-77,
16 83-84, Vol. 2:66-69.) Further evidence of this goal can be seen
17 in the way the Cable Commission has enforced the Licensing
18 Ordinance against PacWest, particularly the bonding and joint
19 trenching requirements. (See section II, *infra*.)

20 25. The Governmental Entities' desire and goal of
21 keeping PacWest out of the market was shared by SCT, which
22 attempted to scare PacWest off from actually building in
23 Sacramento by threatening competition against its business
24 interests elsewhere. For example, within a couple of weeks of
25 the entry of the jury verdicts in the *PacWest I* case, SCT sent
26 letters to several cities and counties where companies in which
27 Rod Hansen (president of PacWest) held major ownership
28 interests, operated cable television systems, and expressed its

1 intent to build cable systems in those areas. (PacWest Ex. 32;
2 PacWest Ex. 33; PacWest Ex. 34; and PacWest Ex. 35 at 66.)
3 SCT's actions, clearly not in the ordinary course of business
4 for the company since SCT concedes it rarely competes head to
head with other cable companies. (PacWest Ex. 35 at 75, 76.)

1 decl., ¶4, PacWest Ex. 14.) PacWest's participation in joint
2 trench activity involved only laying empty conduit trenches.
3 The company did not have the capacity to access these conduits
4 with its head-end or microwave facilities, and it would not be
5 using these conduits until several years later. However, the
6 Commission requirements meant that PacWest had to obtain the
7 Commission license, and maintain costly performance bonds on the
8 license until the company's entire cable system was completed.
9 (Jarvis decl., ¶13., PacWest Ex. 13.)

10 28. The Commission's licensing procedures were costly
11 and time consuming. (Jarvis decl., ¶¶7, 11, 13, PacWest Ex.
12 13.) Joint trench activity was typically organized by the
13 Sacramento Municipal Utilities District ("SMUD"). In order to
14 participate in joint trench activity PacWest had to comply with
15 both SMUD's often accelerated construction schedule, and the
16 Commission's schedule for conducting business in which it could
17 take as long as 52 days for a license to be issued. (Jarvis
18 decl., ¶¶6, 7, PacWest Ex. 13.) The Commission's
interpretation of the licensing process did not accommodate

1 30. Even in instances where PacWest obtained licenses
2 and participated in the joint trenching activity, the costs of
3 following the Commission's licensing procedure were enormous.
4 By mid-September 1988, PacWest was forced to file over 150
5 applications in order to meet the licensing requirements at a
6 cost in excess of \$12,000 in application fees alone by November
7 1988. (Jarvis decl., 11, PacWest Ex. 13; Ferkovich decl., ¶13,
8 PacWest Ex. 15.)

9 31. As of November 1988, PacWest had been required to
10 post bonds amounting to \$4,816,574 solely attributable to
11 PacWest's participation in joint trenching activity.
12 (Ferkovich decl., ¶2, PacWest Ex. 15.) Premiums for these
13 bonds amounted to \$91,283. (Ferkovich decl., ¶2, PacWest Ex.
14 15.) The value of the performance equalled ten times the
15 actual cost of laying conduit in the trenches, and actually
16 reflected the total cost of the cable system. (Jarvis decl.,
17 ¶13, PacWest Ex. 13.) Furthermore, the Commission's bond
18 requirement is an unnecessary precaution in light of the fact
19 that, given SMUD's coordination of the joint trench activity,
20 there was no chance that trenches would be left open. (Jarvis
21 decl., ¶15, PacWest Ex. 13.)

22 III. SCT'S PREDATORY PRACTICES

23 A. SCT's Use of "Territorial Marketing" Strategy to 24 Undercut Competitors

25 32. In the PacWest-Arden area and the area serviced
26 by Cable Americal before it was bought out by SCT, SCT employed
27 a "territorial management" marketing strategy. Territorial
28 management involved having one sales manager, Doug Ferguson, in

1 charge of the PacWest-Arden area and in the North Highlands
2 area where SCT competed with Cable Americal, and continuously
3 employing intense promotional efforts in those areas, rather
4 than waiting the usual four months between sales efforts.

5 33. A territory management strategy had been employed
6 by SCT a year earlier in Natomas but was abandoned after two
7 months because it did not increase SCT's penetration of the
8 market there. (Ferguson depo., 30:15-31:11, PacWest Ex. 7.)
9 From this and other territory management projects employed in
10 early 1988, SCT found that it was not as cost effective to work
11 an area with a territory manager. (Ferguson depo., 34:12-37:12,
12 46:11-13, PacWest Ex. 7.)

13 34. Ferguson's responsibilities included all of the
14 following in the PacWest-Arden area: marketing, telephone
15 representatives, customer service representatives, office
16 procedures and operation of the Country Club Plaza office
17 location. (Lewis depo., 84:7-17, PacWest Ex. 10.) SCT only
18 utilized this arrangement for cable television marketing in the
19 PacWest-Arden area, and specifically did so because it faced
20 competition there. (Lewis depo., 64:4-12, PacWest Ex. 10.)

21 35. Ferguson was put in charge of the territorial
22 management project covering the PacWest and Cable Americal
23 areas around March, 1988. (Ferguson depo., 13:25-14:3, 101:4-6,
24 PacWest Ex. 7.) Ferguson was compensated on the basis of a
25 salary plus an annual bonus. (Ferguson depo., 87:14-88:10,
26 PacWest Ex. 7.) His bonus was based on a formula in which 50%
27 of the bonus was based on SCT's penetration rate county-wide
28 and 50% based on SCT's penetration rate in the PacWest-Arden

1 area. (Ferguson depo., 87:20-97:19, PacWest Ex. 7.) In the
2 past Ferguson's bonus had always been based on SCT's
3 penetration rate for homes passed, but sometimes was also based
4 on revenue per subscriber. (Ferguson depo., 88:24-89:11,
5 PacWest Ex. 7.)

6 36. Prior to the onset of competition, SCT's typical
7 marketing strategy had involved sending out salespeople to
8 designated areas in a manner that would result in each
9 household in the area being solicited one time. When the area
10 was being marketed for the first time, it was called "new
11 build" marketing. When residents in the area were being
12 solicited for the second time it was termed "remarket."
13 Typically, SCT would not conduct a remarket of the area until
14 at least two months after new build marketing had been
15 completed. (Lewis depo., 39:24-25, PacWest Ex. 10.) Typically
16 each remarket after the first would then occur three to six
17 months later. (Lewis depo., 40:28-41:8, PacWest Ex. 10.)

18 37. During new build phases salespeople earned
19 commissions based on a set amount per service sold, which
20 equaled approximately 50% of the price of the services sold,
21 excluding any installation charges. (Ferguson depo.,
22 19:15-23:7, PacWest Ex. 7.) There were some exceptions with
23 regard to this commission structure: salespeople would earn no
24 commissions for the sale of pay services beyond the second one
25 sold (i.e., commissions were capped at two pay services)
26 (Ferguson depo., 22:19-20, PacWest Ex. 7), no commissions were
27 paid when customers used pay per view movies (Ferguson depo.,
28 22:24-27, PacWest Ex. 7), a \$20 commission was paid for sales

1 of full season subscriptions of Giantsvision, and \$10 for half
2 seasons (Lewis depo., 53:3-10, PacWest Ex. 10), and sales of
3 limited basic service earned a commission of \$1.00 (Lewis
4 depo., 41:9-11, 52:2, PacWest Ex. 10.)

5 38. During remarket phases the commission structure
6 was similar -- only the amounts earned per sale differed.
7 (Ferguson depo., 23:8-24:3, PacWest Ex. 7.) On remarket
8 salespeople earned more per service sold because it was more
9 difficult to sell so that they sold fewer subscriptions on
10 remarket. (Ferguson depo., 24:11-15, PacWest Ex. 7.) On
11 remarket the commissions for sales of Giantsvision
12 subscriptions was the same as during new build. (Lewis depo.,
13 53:3-10, PacWest Ex. 10.) Commissions for sales of limited
14 basic subscriptions on remarket were \$2.00. (Lewis depo., 52:2,
15 PacWest Ex. 10.)

16 39. During periods where free trial offers were made
17 by SCT, sales people earned lower commissions per sale. (Lewis
18 depo., 66:5-68:17.) The reason commissions were lowered during
19 free trial offers was that it was easier for sales people to
20 sell subscriptions with free trial offers. (Lewis depo.,
21 69:19-22.) The total compensation for sales reps during sales
22 of free trial offers was the same or higher as when they were
23 making regular non-free trial sales. (Lewis Depo at 70:5-10.)
24 This was the goal that SCT sought by lowering their commission
25 levels during free trial offer periods. (Lewis Depo., 70:5-10.)

26 40. Also SCT often paid salespeople bonuses. There
27 were two bonus systems, each sometimes employed during new
28 build or remarketing. (Ferguson depo., 24:16-25:23, PacWest Ex.

1 7.) One bonus system was based on the percent of penetration
2 in the market SCT achieved during the calendar year. The other
3 was based on the number of sales made by that salesperson
4 during a set period of time. (Ferguson depo., 25:2-8, PacWest
5 Ex. 7.)

6 41. Whether working on new build or remarket, and
7 whether a good or average salesperson, all SCT people who were
8 compensated by commission and bonus earned approximately 80-85%
9 of their compensation through commissions and 15-20% through
10 bonuses. (Ferguson depo., 25:26-26:28, PacWest Ex. 7.)

11 42. SCT would typically assign salespeople with the
12 expectation that each salesperson would pass approximately 200
13 households per week. (Lewis depo., 48:25-49:27, PacWest Ex.
14 10.)

15 43. Because SCT expected their territorial management
16 strategy to result in salespeople making fewer sales than
17 usual, salespeople who worked under territorial management
18 projects were compensated on a salary basis, so that their
19 earnings were roughly the same as when they worked on
20 commission in typical new build or remarket sales. (Reynolds
21 depo., 129:22-130:26, PacWest Ex. 11.)

22 44. During the spring of 1988, SCT salespeople in the
23 PacWest-Arden area were paid by bonus as well as commission.
24 Their bonus was calculated in a similar manner as that of
25 Ferguson's. It was based on a combination of the penetration
26 rate in Sacramento County overall and the penetration rate in
27 the PacWest-Arden area. (Ferguson depo., 107:5-19, PacWest Ex.
28 7.)

1 45. In the PacWest-Arden area salespeople were left
2 on commission but were also given a salary roughly equal to the
3 amount they would likely lose in commission earnings because of
4 the likelihood of less sales under the territorial management
5 strategy. (Reynolds depo., 129:22-130:26, 131:15-17, PacWest
6 Ex. 11.)

7 46. By early January 1988 the PacWest Arden area was
8 100% stranded and 95% cabled, and would be "all activated by
9 1/29." Id. The Land Park area was 100% stranded and 5% cabled,

1 49. Ferguson was given the opportunity to choose the
2 direct salespeople he wanted to work with. (Reynolds depo.,
3 129:28, PacWest Ex. 11; Lewis depo., 34:1-6, PacWest Ex. 10.)
4 The salespeople who worked under Ferguson were among the best
5 salespeople who worked for SCT. (Reynolds depo., 129:1-10,
6 PacWest Ex. 11.) When they first began working under Ferguson,
7 the salespeople were retained on straight commission. (Ferguson
8 depo., 105:24, PacWest Ex. 7; Reynolds depo., 129:19-20,
9 PacWest Ex. 11.)

10 50. Around the summer of 1988, salespeople in the
11 PacWest Arden area were broken up into territorial segments.
12 (Ferguson depo., 106:8, 107:1, PacWest Ex. 7.) At this time
13 they received a commission on the same basis as those outside
14 the area, but also received a base salary equal to about 50% of
15 the average commission they earned previously. Therefore, 50%
16 of their income was now derived from the new base salary, and
17 50% from commission. (Reynolds depo., 129:22-131:27, PacWest
18 Ex. 11.)

19 51. The purpose of assigning a separate group of
20 customer service representatives to the PacWest-Arden area was
21 to expedite phone service to customers in the area. (Reynolds
22 depo., 127:15-18, PacWest Ex. 11.) Indeed, the representatives
23 covering the PacWest Arden area received around 25% fewer calls
24 per person than other SCT customer representatives. (Reynolds
25 depo., 127:19-27, PacWest Ex. 11.)

26 52. There was also one other person directly involved
27 in the PacWest-Arden area, Cal Faulkner, who is SCT's general
28 manager of SMATV. In the PacWest-Arden area, Faulkner's

1 responsibilities were to keep on top of the installations
2 process and make sure that when appointments for installations
3 were missed, the installation would be done as soon as
4 possible. Faulkner has assumed this role since March 1, 1988,
5 and this is the only time a process like this has been utilized
6 at SCT. (Ferguson depo., 105:1-19, PacWest Ex. 7.)

7 53. Toward the end of summer 1988, when it appeared
8 that PacWest could finally proceed with its make-ready work,
9 (Iacopi decl., ¶39, PacWest Ex. 3.), SCT decided to change the
10 focus of salespeople in the PacWest-Arden area to retention
11 efforts, aimed at SCT's existing subscribers (Reynolds depo.,
12 131:28-134:8, PacWest Ex. 11; Ferguson depo., 107:20, PacWest
13 Ex. 7). The purpose of SCT's retention efforts in the
14 PacWest-Arden area, which went on for the remainder of 1988 and
15 into 1989, was to "maximize [SCT's] market share in [the
16 PacWest-Arden] area." (Reynolds depo., 133:20-134:9, PacWest
17 Ex. 11.)

18 54. Initially, salespeople working on SCT's retention
19 strategy in the PacWest-Arden area were distributed as
20 follows: Mary Moran was responsible for remarketing in the
21 north side of El Camino, Frank Bistile was responsible for
22 sales in the south of El Camino, and Denbeck and Rathbun
23 concentrated on the corner of El Camino and Watt. (Ferguson
24 depo., 108:15-20, PacWest Ex. 7.) Denbeck and Rathbun were
25 working on a salary basis only at this point. (Ferguson depo.,
26 109:1-5, PacWest Ex. 7.) The area around El Camino and Watt
27 was targeted particularly because this is the area where
28 PacWest could actually serve subscribers during the fall of

1 1988. (Ferguson depo., 110:1-4, PacWest Ex. 7.) In October
2 1988, each Arden area salesperson was assigned to constantly
3 remarket only 700 homes; and in December 1988, 1,000 homes.
4 (Ferguson depo., 110:9-18, PacWest Ex. 7.)

5 55. Beginning in early 1989, Rathbun and Moran were
6 concentrated on the El Camino/Watt section of the PacWest Arden
7 area, and were paid on a salary basis. (Ferguson depo., 111:15,
8 PacWest Ex. 7.) They were kept on a salary because that area
9 had been intensely marketed during the last 12 months, and SCT
10 knew that a commission basis would not have provided
11 appropriate earnings. (Ferguson depo., 111:27, PacWest Ex. 7.)

12 56. SCT spent more money per subscriber in the
13 PacWest-Arden area territory management project than in any
14 other area. (Ferguson depo., 113:1-4, PacWest Ex. 7.) At the
15 same time, SCT was fully aware that as time went on it would be
16 tougher for the company to obtain new subscribers in the
17 PacWest-Arden area than in other areas. (Ferguson depo.,
18 113:5-22, PacWest Ex. 7.)

19 1. SCT's Campaign to Undercut Cable Americal

20 57. Cable Americal received a license from the
21 Sacramento Metropolitan Cable Television Commission in August,
22 1987 to serve a small portion of the North Highlands area.
23 (PacWest Ex. 39.)

24 58. Sometime between October 1987 and February 1988,
25 SCT began employing one salesperson, Gordon Rathbun to solicit
26 potential subscribers in the North Highlands area on a
27 continual basis under a territory management program. (Ferguson
28 depo., 30:2-14, 43:4-24, PacWest Ex. 7.)

1 59. Rathbun was compensated on a salary basis while
2 working in SCT's Cable Americal area territory management
3 project. (Ferguson depo., 44:27-45:27, PacWest Ex. 7.)
4 Rathbun's earnings from work in the Cable Americal area were
5 relatively the same as earnings he made before and after being
6 territorially assigned to the Cable Americal area (Ferguson
7 depo., 46:14-47:14, PacWest Ex. 7) even though fewer
8 subscribers and less revenue were attributable to his work.
9 The area Rathbun covered in the Cable Americal area included
10 only four hundred households or "passings" total. (Ferguson
11 depo., 44:21-26, PacWest Ex. 7.)

12 60. By February 1988 SCT had been employing separate
13 telephone lines for customers in the Cable Americal area.
14 (PacWest Ex. 50 - P.43.) At a March 2, 1988 SCT staff meeting
15 a new "service improvement task force" was set up for the
16 area. (PacWest Ex. 50 - P.47.) It was also reported that
17 "SMATV offices will become competition offices," and that, for
18 the "interim," Lewis would be the "Competition/Ling Chief."
19 (Id.)

20 61. Around March 1988 it was decided that Rathbun
21 would report to Doug Ferguson, an SCT sales manager. (Ferguson
22 depo., 27:16-21, 40:23-42:17, 43:4-8, PacWest Ex. 7.) At that
23 time Ferguson was also put in charge of the territory
24 management project covering the PacWest Arden area. (Ferguson
25 depo., 13:25-14:3, 101:4-6, PacWest Ex. 7.) The advantage of
26 having Rathbun report to Ferguson was that when a potential
27 subscriber agreed to purchase service from SCT but insisted on
28 having installation in three days instead of the usual eight

1 days, Rathbun could notify Ferguson and Ferguson could make
2 sure the request was satisfied. (Ferguson depo., 42:18-43:3,
3 PacWest Ex. 7.) Under the regular remarket sales system
4 Rathbun could not otherwise ensure that such requests were
5 satisfied. (Ferguson depo., 42:25-43:3, PacWest Ex. 7.)

6 62. By the time Rathbun began reporting to Ferguson,
7 Cable Americal was already offering service to customers in the
8 areas where it competed with SCT, and SCT was charging SCT
9 customers in the Cable Americal area a nominally "reduced rate"
10 for basic service lower, than that charged by SCT to customers
11 elsewhere in Sacramento. (Ferguson depo., 64:16-28, 72:1-8,
12 PacWest Ex. 7; Davis depo., 43:2-22, 62:1-10, PacWest Ex. 8;
13 PacWest Ex. 48.) In fact, however, subscribers paid nothing
14 under SCT's "promotional" offerings. (Ferguson depo.,
15 55:27-56:1.) SCT's policy of charging different rates to
16 customers in the Cable Americal area than to other customers
17 was common knowledge among SCT personnel. (Ferguson depo.,
18 72:1-20, PacWest Ex. 7.) The separate telephone number SCT
19 published for customers in the Cable Americal area enabled
20 customers to reach service representatives who were more
21 familiar with the rates being charged by SCT in the Cable
22 Americal area. (Ferguson depo., 75:22-76:3, PacWest Ex. 7.)

23 63. Rathbun worked exclusively in the Cable Americal
24 area until the summer of 1988. (Ferguson depo., 47:15-28,
25 PacWest Ex. 7.) SCT acquired Cable Americal in the summer of
26 1988. (PacWest Ex. 40.)

27 64. For the duration of Rathbun's marketing effort in
28 the Cable Americal area, SCT offered a 90-day free promotion.

1 (Ferguson depo., 55:27-56:1, PacWest Ex. 7.) Under this offer,
2 potential subscribers were offered free installation and a
3 90-day free offer with their choice of services, with no
4 payment required up front. (Ferguson depo., 49:26-28, 50:13,
5 PacWest Ex. 7.) Rathbun was authorized to offer a second
6 90-days free to subscribers if necessary to keep them from
7 disconnecting. (Ferguson depo., 83:27-84:10, PacWest Ex. 7.)

8 65. SCT had not offered a 90-day free offer anywhere
9 else prior to the use of that promotion in the Cable Americal
10 area. (Ferguson depo., 54:17-20, PacWest Ex. 7.) The only
11 other 90-day free offers by SCT were in the PacWest area and in
12 Carmichael. (Ferguson depo., 54:21-55:2, PacWest Ex. 7.)

13 66. At the same time the 90-day free offer was
14 available in the Cable Americal area, SCT offered it in the
15 Carmichael area. (Ferguson depo., 48:22-25, 49:13, PacWest Ex.
16 7.) However, in that case, the offer was only available for 30
17 days in February, 1988, the time it took for SCT to make the
18 offer once to each household in the area. (Ferguson depo.,
19 56:2-9, 56:14-57:1, PacWest Ex. 7.) In the Cable Americal
20 area, in contrast, Rathbun was authorized to promote the 90-day
21 free offer as often as he deemed worthwhile, for the duration
22 of the time he solicited sales in the area. (Ferguson depo.,
23 57:2-12, PacWest Ex. 7.)

24 67. Another special offer made to customers in the
25 Cable Americal area was a \$4.25 credit. (Ferguson
26 depo., 61:23-62:7, PacWest Ex. 7.) The only other area in which
27 this offer was ever made was in the PacWest license area.
28 (Ferguson depo., 63:3-9, PacWest Ex. 7.) The purported reason

1 for the credit was that customers were given the opportunity to
2 try one pay-per-view movie per month at no charge. (Ferguson
3 depo., 62:4-5, PacWest Ex. 7.) However, whether or not
4 customers actually purchased a movie, the \$4.25 was credited to
5 their account every month. (Ferguson depo., 63:16-21, PacWest
6 Ex. 7; PacWest Ex. 41.) Cable Americal did not offer
7 pay-per-view television. (Ferguson depo., 82:14-18, PacWest
8 Ex. 7.) Cable Americal also did not offer Giantsvision.
9 (Ferguson depo., 82:19-21, PacWest Ex. 7.)

10 68. Rathbun was also authorized to tell customers
11 that SCT would match any price or promotional offer made by
12 Cable Americal (Ferguson depo., 76:4-7, PacWest Ex. 7.),
13 regardless of whether the quality of service was different or
14 whether Cable Americal had or had not matched SCT's offers.
15 This authorization came from SCT's Chief Executive Officer,
16 Richard Davis. (Ferguson depo., 76:14-16, 77:4-6, PacWest Ex.
17 7.)

18 69. During the summer of 1988, Cable Americal entered
19 into a settlement agreement in which SCT acquired the Cable
20 Americal system. (PacWest Ex. 40.) Once SCT acquired Cable
21 Americal, SCT's territory management project in the Cable
22 Americal area ceased because SCT knew that territory management
23 was not cost effective. (Ferguson depo., 46:6-13, PacWest Ex.
24 7.) The area in which SCT formerly competed with Cable
25 Americal was put back into the regular remarketing system since
26 "regular reporting on the area" was no longer needed.
27 (Ferguson depo., 86:19-87:10, PacWest Ex. 7.)
28



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1 "overstaffing/underutilizing talent to set up [the] service
2 center[s]." (Id.) The separate installation group was "to
3 start now." (PacWest Ex. 50 - P.38.) Also, "SRO's" in the
4 competition area were to be identified and given special
5 attention. (Id.)

6 75. On January 20, discussion about plans for the
7 competition areas continued at the staff meeting. (PacWest Ex.
8 50 - P.39 to 40.) Reference was made under the heading
9 "PacWest" to a "special co[mpany] debt to counter
10 competition." There was also discussion about the search for
11 storefronts, and mention of "Arden area 4-5 sites." (Id.)
12 There was also discussion about planning a "special offer in
13 Land Park." (Id.)

14 76. By February 10, 1988 a one-month free trial offer
15 was going on in Land Park, and "1 mo. free on remarket" in the
16 PacWest Arden area. (PacWest Ex. 50 - P.43.) At this time
17 PacWest was still in possession of a license which covered not
18 only the Arden area, but also Land Park, Oak Park and Curtis
19 Park. (PacWest Exs. 36 and 37.) In February and March, 1988
20 SCT offered 30-day free trials with free installation in North
21 Highlands, Land Park and Curtis Park. (Lewis depo.,
22 57:18-58:26, 74:27-28, PacWest Ex. 10.)

23 77. SCT offered many special promotions in the
24 PacWest-Arden area which were not offered elsewhere. At least
25 since March 1988, offers in the PacWest-Arden area have always
26 included free installation. (Ferguson depo., 115:2-5, PacWest
27 Ex. 7.) Installation of any new cable service, including the
28 \$0.25 limited basic service, costs SCT an average of \$55-\$66

1 per subscriber, excluding the cost of the converter. (Reynolds
2 depo., 108:2, 109:12-110:2, PacWest Ex. 11.)

3 78. The exception to SCT's free installation policy
4 in the PacWest-Arden area was that free installation was not
5 formally offered with \$0.25 limited basic service until August
6 or September, 1988. (Reynolds depo., 114:15-22, PacWest Ex.
7 11.) Even before then, nevertheless, Ferguson was authorized
8 to waive installations for subscribers purchasing limited basic
9 when he believed that would help SCT obtain the customer.

10 (Ferguson depo., 115:7-20, PacWest Ex. 7.) If a customer only
11 wanted limited basic with free installation, and not full
12 basic, Ferguson probably waived the installation fee.

13 (Ferguson depo., 117:3-14, PacWest Ex. 7.) Alternatively, SCT
14 would sometimes give PacWest-Arden area customers the free
15 90-day offer, as regular basic subscribers and receive free
16 installation, and then when it came time to charge the
17 customer, dropped that customer to limited basic at the
18 subscribers' demand, yet never charge that customer for
19 installation. (Ferguson depo., 116:11-20, PacWest Ex. 7.) The
20 decision never to change for installations for limited basic
21 subscriptions in the PacWest-Arden area beginning in August
22 1988 was made by Davis, Reynolds, and Lewis in June or July
23 1988. (Reynolds depo., 114:23-28, PacWest Ex. 11.)

24 79. Also different from the situation in other areas,
25 SCT waived wall fische charges in the PacWest-Arden area.

26 (Ferguson depo., 119:21, PacWest Ex. 7.) "Wall fische" [or
27 "fish"] is a special instruction in which wires are installed
28 [or "fished"] between interior and exterior walls at the

1 subscriber's request. (Ferguson depo., 119:10, PacWest Ex.
2 7.) Wall fische charges were also waived in the Cable Americal
3 area. (Ferguson Depo 119:21, PacWest Ex. 7.) The normal SCT
4 policy was to first avoid wall fisches and second, charge for
5 them. Salespeople could only waive charges for wall fisches
6 when, after a customer insisted on receiving free wall fische,
7 the salesperson or installer received permission from his or
8 her supervisor in each case. (Ferguson depo., 120:3-122:13,
9 PacWest Ex. 7.) In the PacWest-Arden area, in contrast, Davis
10 made a decision never to charge for wall fisches; salespeople
11 were told ahead of time that there would be no charges for wall
12 fische. (Ferguson depo., 122:14-20, 123:22-23, PacWest Ex. 7.)

13 80. In March or April 1988, long before PacWest was
14 able to commence offering service, SCT began offering a 30-day
15 free trial period with no installation charge in the
16 PacWest-Arden area. (Ferguson depo., 114:8-10, PacWest Ex. 7.)

17 81. By June 23, 1988, SCT had finalized plans to open
18 its Country Club Plaza office in the PacWest-Arden area on July
19 5, 1988 and have a grand opening on July 8, 1988. (PacWest Ex.
20 50 - P.56.) SCT celebrated the grand opening of its Country
21 Club Plaza office on July 8, 1988 by giving away free Disney
22 memorabilia. (PacWest Ex. 41.)

23 82. Notes taken at a June 29, 1988 SCT staff meeting,
24 state the following: "PacWest - not look good for settlement -
25 Oct. [before] they put subs[cribers] on line. Intensify
26 Competition!" (PacWest Ex. 50 - P.59.)

1 83. During the summer of 1988, SCT's top management
2 discussed the prospect of formally charging lower prices than
3 PacWest. (Reynolds depo., 97:19-28, PacWest Ex. 11.)

4 84. The summer of 1988 also marked the beginning of
5 SCT's "Cablegram" which SCT distributed only to residents of
6 the PacWest-Arden area. (Davis depo. at 95, PacWest Ex. 8.)
7 The second and third issue included a "match this offer" coupon
8 wherein SCT stated that it would match any competitor's offer
9 upon receipt of a description from the customer. (PacWest Exs.
10 41 and 42.)

11 85. Beginning on July 1, 1988, SCT changed from
12 offering a 30-day free trial period to a 60-day free trial
13 period in the PacWest-Arden area in order to remarket a
14 different offer to the same people already solicited.
15 (Ferguson depo., 128:17, PacWest Ex. 7.)

16 86. Among the reports about PacWest at a July 22,
17 1988 SCT meeting, it was noted that PacWest "Plan[s] on store
18 in Country Club Center." (PacWest Ex. 50 - P.64.) Also noted
19 about PacWest: "Bell has cleared them for work. MWC - lawyers
20 do not get too aggressive." (Id.)

21 87. At the end of July SCT subscribers in the PacWest
22 Arden area were treated to several specials at the same time as
23 SCT informed them that PacWest "may offer cable service in your
24 area" and reminded, "Sacramento Cable will not be undersold!"
25 (PacWest Ex. 44.) The specials included "FREE" access to
26 Giantsvision for the remainder of the year and a \$4.25 monthly
27 credit to PacWest-Arden area subscribers' bills. (PacWest Exs.
28 41 at 2-3 and 44.) In its "Cablegram" newsletter SCT not only

1 noted that subscribers would receive the \$4.25 credit
2 regardless of whether they selected a movie, but also that the
3 offer was "a 'thank-you-for-your-business' gesture.'" (PacWest
4 Ex. 41 at 3.)

5 88. The free Giantsvision promotion described in
6 Davis' letter was only offered to SCT subscribers in the
7 PacWest Arden area. (Ferguson depo., 125:3-5, PacWest Ex. 7.)
8 In August and September 1988, SCT gave away Giantsvision free
9 to 700 subscribers all in the PacWest-Arden area (Hartzell
10 depo., 24:9-11; 27:11-12, PacWest Ex. 9). SCT's programming
11 cost was at least the \$21,840 it paid to Giantsvision
12 attributable to those subscribers. (Hartzell depo.,
13 27:24-28:8, PacWest Ex. 9.) SCT made this promotional offer
14 without obtaining the permission of Giantsvision. (Hartzell
15 depo., 20:22-28, PacWest Ex. 9.) SCT thereby violated its
16 agreement with Giantsvision, which required that SCT submit its
17 promotional materials using Giantsvision's name to Giantsvision
18 for prior review. (Hartzell depo., 29:6-26, PacWest Ex. 9.)
19 Furthermore, under its agreement with Giantsvision, SCT was
20 required to charge subscribers a minimum of \$78 for a full
21 season package. (Hartzell, depo., 16:14-25, PacWest Ex. 9.)

22 89. On August 5, 1988 Davis sent a letter
23 specifically appealing to former SCT subscribers in the Arden
24 area with a "spectacular 'get re-acquainted' offer." (PacWest
25 Ex. 45; Lewis depo., 78:16, 80:11, PacWest Ex. 10.) The offer
26 included: free installation, first 60 days of cable service
27 free, free pay-per-view movie per month through December, and
28

1 free Giantsvision for the remainder of the season. (PacWe
2 Ex. 45.)

3 90. In August 1988, SCT learned that PacWest was
4 offering three months for the price of one, and SCT decided to
5 "come back" with a four months for the price of one offer.
6 (PacWest Ex. 50-P.73.) People who did not live in the PacWest
7 Arden area and attempted to take advantage of SCT's offer of
8 three months of free cable were told that they could not do so
9 because they did not live in the specific area. (Hansen depo.,
10 198:9-19, PacWest Ex. 12.) In all cases of trial offers made
11 by SCT, no money was due to SCT until the end of the free trial
12 period. (Ferguson depo., 128:28-129:4, PacWest Ex. 7.) Since
13 SCT heavily marketed the entire area before PacWest ever began
14 marketing, this meant that all residents with any interest at
15 all in cable television service would already be receiving
16 SCT's service before PacWest even arrived.

17 91. At the end of August SCT instituted a "one-time
18 amnesty program" for former subscribers who were disconnected
19 for nonpayment. (PacWest Ex. 46.)

20 92. As part of its fall, 1988 subscriber retention
21 strategy, SCT started a "special Autumn Customer Retention
22 Offer" for certain SCT subscribers in the PacWest-Arden area,
23 which included several offers to undercut PacWest's
24 competition. (PacWest Ex. 47.) First, this promotion offered
25 four months of Sacramento Cable TV service for the price of
26 one. Id. This offer was made with full knowledge by SCT
27 management and marketing personnel that PacWest was conducting
28 a campaign at the same time, offering only three months of

1 PacWest Cable TV service for the price of one. (PacWest Ex. 50
2 - P.73.)

3 93. In its "Autumn Customer Retention Offer," SCT
4 also offered the 1989 full season of Giantsvision at a price of
5 "just \$25.50." (PacWest Ex. 47.) Under its agreement with
6 Giantsvision, SCT was not supposed to offer Giantsvision
7 to subscribers for under \$78.00 for the 1989 season. (Hartzell
8 depo., 16:14-17:7, PacWest Ex. 9.)

9 94. SCT also offered for free, in its "Autumn
10 Customer Retention Offer," to replace customers' cable remote
11 converter boxes with new ones that offered the capability to
12 change volume from the cable remote control box. (PacWest Ex.
13 47.) At this time, volume control remote was only available to
14 SCT subscribers in the PacWest-Arden area. (Reynolds depo.,
15 104:4-105:9, PacWest Ex. 11.) Volume remote control became
16 available to SCT subscribers throughout Sacramento County in
17 December 1988. Id. Throughout its franchise area, except in
18 the PacWest-Arden area, SCT charged customers a \$20 one-time
19 installation fee for the volume remote control. Id. SCT
20 provided the volume remote control to its customers in the
21 PacWest-Arden area for free. Id.

22 95. In SCT's "Autumn Customer Retention Offer"
23 letter, Davis made sure customers were aware that SCT was
24 undercutting PacWest offers. Davis noted "Sacramento Cable
25 offers considerably more channels at an equal or lower price."
26 (PacWest Ex. 47.) He also enclosed a comparison of the two
27 companies' prices. (PacWest Ex. 47 at 2.) Whereas PacWest
28 offered a 21 channel limited basic for \$3.50, SCT offered a 27

1 channel Limited Basic for only \$0.25. Further, although the
2 two companies both charged a nominal rate of \$13.50 for basic
3 (including the remote), SCT's basic service was really at \$9.25
4 once the monthly \$4.25 credit is considered, and SCT offered 48
5 channels while PacWest's offered only 44 channels. (Id.)