minutes) for a flat monthly fee.[44] A chart showing both the percentage and dollar savings for customers on the optimal analog package plan versus to the basic rate plan is attached hereto as Appendix D. As the chart demonstrates, depending on their usage, customers on the optimal analog package discount plan can save up to approximately $65.00 or 15% per month on their cellular bills.

Recently BACTC has introduced a number of plans designed to encourage new and existing customers to sign up for digital service. In October 1993 BACTC introduced digital equivalents three of its package plans, the Value, Advantage and Premium plans. These plans offer digital subscribers the same number of included minutes as their analog equivalents at a reduced monthly access and usage rate. See Appendix C. Just last week, BACTC introduced its Digital Flex plan. A brochure describing the Digital Flex Plan is attached hereto as Appendix L. This plan is unique because it has a low monthly access fee of $35.00 with a flexible usage rate that adjusts downwards automatically as usage increases. A chart showing the savings for customers on the Digital Flex plan versus basic rates is attached hereto as Exhibit D. As the chart demonstrates, depending on usage, customers on the Digital Flex Plan can save up to approximately $100 per month or 25% on their cellular bills over current basic rates.

The majority of BACTC's customers receive the benefit of these reduced rates. The percentage of subscribers on BACTC's basic service plan has been declining rapidly -- especially since 1993 when a number of discount rate plans were introduced.

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[44] The Security Plan includes 5 minutes; the Occasional Plan includes 30 minutes; the Standard Plan includes 110 minutes; the Value Plan includes 250 minutes; the Advantage Plan includes 400 minutes; the Premium Plan includes 520 minutes.

Subscribers on BACTC's Basic Plans

	Retail	Wholesale	Total
1989	80.1%	86.0%	83.3%
1990	75.6%	85.0%	80.3%
1991	69.2%	83.0%	75.5%
1992	63.1%	78.2%	69.4%
1993	35.9%	69.7%	49.5%
1994	20.4%	56.7%	25.2% [49]

CPUC also attempts to disparage the amount of savings provided by the discount plans by stating that any rate reduction must be considered in the context of reduced flexibility, risk of termination fees and foregone access to emerging technologies.[50] To the contrary, not all of BACTC's discount plans require a 12-month commitment; accordingly, customers on these plans experience no reduced flexibility or termination fees. On the discount rate plans that do require a 12-month commitment, the "loss of flexibility" is minimal and the termination provisions are not onerous. The CPUC claims that long-term contract plans to prevent customers from switching to alternative technologies is completely unfounded.[51]

Attached hereto as Appendix E are the terms and conditions of BACTC's Discount Contract Rate Plans. Those terms and conditions provide that the customer can cancel the contract plan within the first 60 days without penalty, for any reason. This provision allows the customer adequate opportunity to evaluate the plan and determine if it is right for him or her. In addition, customers may transfer to any other contract rate plan or certain other enumerated plans

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[49] The 1994 numbers are through July, 1994.

[50] Petition at 43.

[51] Petition at 45.

without incurring a termination fee. Customers may also cancel without penalty at any time of they move and transfer to an affiliated system or if their phone is stolen. The maximum termination fee is $100 and that is pro-rated over the last 10 months of the contract. Finally, the maximum contract period is one year; after the conclusion of the contract period the customer receives service under that plan on a month-to-month basis. The CPUC has approved all of these terms and conditions.

There is no evidence in the record that customers find these terms and conditions overly burdensome. To the contrary, as the growing number of subscribers on these plans demonstrates, customers seem to be willing to agree to these terms and conditions to achieve the significant savings offered by those plans. There is similarly no evidence that BACTC created these plans in order to prevent customers from switching to alternative technologies and that is not in fact why BACTC created these plans. BACTC created its contract rate plans in order to reduce the churn of its customers to GTE Mobilnet or from wireless service altogether. When the plans were developed in April 1993, NexTel and ESMR service was only a concept.

D. BACTC Has Also Offered a Number of Promotions That Provide Real Savings to Customers.

In addition to introducing over 20 rate plans that permanently reduced rates for cellular service, BACTC has introduced a number of short-term promotional offerings. A list of BACTC's promotions is attached hereto as Appendix F. As the chart indicates, the promotions include waivers of service establishment fees, charges for features, free usage minutes and airtime credits. Many of these promotions have been directed at new customers to encourage them to subscribe to BACTC's cellular service; other promotions benefitted existing customers. A number of recent promotions have been directed at encouraging new and existing customers to subscribe to digital service. On September 15, 1994, BACTC introduced a promotion that provides $300 of usage credits to new digital subscribers, including existing analog subscribers that move to digital service. See Appendix L. This credit is designed to offset some of the costs associated with the purchase of a new digital phone, which is still significantly more costly than a comparable analog phone.[52] Although these promotions are temporary in nature, they provide real savings to eligible customers. All of these promotions have been market-driven; many have been introduced in direct response to a GTE Mobilnet promotions.[53] As the chart demonstrates, the number of promotions has grown with increases in regulatory flexibility.

E. A Number of BACTC's Rate Reductions Have Been Permanent.

In several places in the Petition, the CPUC expresses its concern that the carriers have allegedly only lowered rates or introduced promotions for a short period of time. Specifically the CPUC states "none of the new or existing plans experienced any permanently lowered wholesale or retail rates under the rate band guidelines."[54] Later in the Petition the CPUC notes that "there has not been a significant sustained reduction in any of the markets that

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[52] Because of the CPUC's anti-bundling prohibition, BACTC cannot make the credit directly contingent on the purchase of a digital phone. Instead BACTC must provide the credit to all subscribers who activate on a digital rate plan.

[53] For example, BACTC's January 6, 1989 and November 16, 1992 airtime credit promotions and its June 6, 1992 service activation credit promotion were in direct response to GTE Mobilnet promotions.

[54] Petition at 18.

lasted for more than three consecutive months." [55] BACTC is deeply troubled by the CPUC's mischaracterization of its tariff. As is explained in section F above, although BACTC has introduced a number of short-term promotional fee waivers and rate reductions, it has also made a number of permanent reductions in its rates, including the introduction of its discount rate plans and all of the reductions listed in Appendix C.[56] Some of these rates were reduced over three years ago and have not been increased.[57] Except for those rates decreased pursuant to the CPUC's rate band guidelines, these rates cannot be increased absent a CPUC decision and are, for all practical purposes permanent reductions in rates.[58]

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[55] Petition at 39.

[56] Appendix C lists the date all of BACTC's retail rate plans first became effective, the CPUC mechanism under which they were filed (e.g. temporary (same-day effective) tariff or rate band pricing guidelines or regular 30-day notice), and any non-promotional rate reductions.

[57] See e.g., BACTC's reductions of its basic rates in April 1991.

[58] For all intents and purposes, BACTC also considers the rate plans it introduced under the rate band guidelines to be permanent rates. See e.g. the Value, Advantage and Premium TDMA Dual-Mode (Digital) Plans. The only reason that BACTC introduced these plans pursuant to the rate band guidelines was because the other available CPUC mechanisms required 30 days (see CPUC General order 96-A) or limited rate reductions to 10%. Once the CPUC revised the temporary (same-day effective) tariff requirements to allow changes of more than 10% and new plans to be introduced (see CPUC Decision 94-04-043), BACTC used a temporary (same-day effective) tariff to permanently introduce a new reduced rate plan. For example, on September 15, 1994, BACTC introduced its Digital Flex plan on a permanent basis under these revised rules.

VI. THE CPUC FAILS TO ESTABLISH THAT CARRIERS' EARNINGS ARE EXCESSIVE OR UNREASONABLE.

The CPUC generically asserts that earning a return consistently above market levels is an indicator of a cellular company's market power.[59] While the CPUC acknowledges that rates of return can and do vary significantly among MSAs, it alleges that the financial accounting data provided by the cellular carriers in the major California MSAs (including BACTC) shows that those carriers had "high returns [as a result of] undue market power."[60] As further support of its proposition, the CPUC alleges that the operating costs of the cellular carriers have not been accompanied by a commensurate decline in basic service rates.[61] Finally, the CPUC contends that excessive earnings are evidenced by the carriers' underutilization of capacity in order to maintain their high rates of return.[62]

BACTC shall not individually refute the economic analysis used by the CPUC, but will defer to AirTouch, McCaw and CCAC to demonstrate the flaws in the CPUC's methods and theories. However, BACTC will disprove the numerous factual errors in the Petition relating to BACTC earnings and capacity utilization. The CPUC's simplistic analysis has serious flaws in its use of data that invalidate its accuracy and efficacy.

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[59] Petition at 46.

[60] Petition at 49.

[61] Petition at 35.

[62] Petition 51-54.

A. **The CPUC's Use of Accounting Data Does Not Support Its Contention That BACTC Has Too High An Economic Rate Of Return.**

The CPUC measures BACTC's rate of return based on the accounting measures submitted annually to the CPUC. The accounting rate of return derived from that data is not comparable to the economic rate of return that the CPUC asserts is a measure of market power. The reports that the CPUC relies on are fraught with problems of definition and measurement. There are different accepted methods to account for assets and sales, depreciation and book value. Moreover, accounting analysis is static: it looks at historical returns on assets and sales but is unable to assess future changes or results. While accountants may ultimately agree upon the appropriate measure for the book value of certain assets or the depreciation methodology, pure accounting treatment of the assets does not capture market variabilities, opportunity costs, the value of the service being offered to the marketplace, future demand projects, new competition, or a number of other considerations. These and other fundamental differences between accounting and economic rate of return analysis distort the real earnings of the cellular industry and skew the market power analysis the CPUC purports to present.

B. **The Data Relied Upon By the CPUC Fails to Establish That BACTC's Operating Costs Have Fallen At A Quicker Rate Than Its Revenues.**

The CPUC's allegation that BACTC's operating costs have been falling and that its basic service rate has not fallen commensurately is specious. As demonstrated above, the CPUC's insistent refusal to accept that BACTC has reduced its basic rate and that it has implemented a myriad of rate plans that offer substantial reductions from the basic rate seriously distorts its analysis. Without adjustment for inflation and ignoring BACTC's 11-16% reduction to its basic rate in 1991-1992, the optimal rate available to customers has dropped by more than 25%

compared to the basic rate plan. Conversely, BACTC's expenses have not declined at the significant rate that the Petition implies.

The data to support the CPUC's conclusion that costs have decreased but rates have not is redacted so BACTC cannot assess the accuracy of the data that is relied upon nor correct errors in understanding or computation. Although the data relied upon by the CPUC to make its calculations is publicly available, it chose to redact that data and its results; accordingly, BACTC cannot meaningfully respond to the actual figures proffered by the CPUC as proof of its assertions. Nonetheless, BACTC has compared its expense growth year over year against its revenue growth year-over-year ("YOY") for the period 1989 to 1993. This data can be derived from the same annual reports used by the CPUC.

That view shows that revenue growth YOY was substantially greater than expense growth YOY in 1989: approximately 42% revenue growth YOY versus 23% expense growth YOY. This is because the average subscriber growth YOY for 1989 was dramatic (over 78%), hence revenue was driven up. It was not accompanied by a commensurate growth in expense that year because BACTC's system was very young and did not require huge network expansion to accommodate the increase in the subscriber growth. Indeed, when the system was initially built, it was designed to handle a large number of customers, both because a certain initial system size was mandated by technical requirements and because the industry was too young to accurately project market demand. BACTC invested nearly $30 million to construct and activate its original system, which began offering service in September 1986, through one Mobile Telecommunications Switching Office ("MTSO") and sixteen cell sites. That original configuration was designed to accommodate approximately 20,000 subscribers for the first 18 months and could easily be expanded to accommodate 40,000 subscribers. Understandably, plant investments were similarly low in 1987, when capital expenditures totaled just over $11 million, mainly to construct new cell sites to extend and enhance the quality of cellular transmission service.

In 1991, the equation was reversed: expense growth YOY (over 30%) outpaced revenue growth YOY (nearly 24%). In the CPUC's terminology, costs per subscriber fell 4.5% while revenues per subscriber fell at a higher rate of 9.3%. The reason is that BACTC's system finally reached its capacity to handle the subscriber growth and required the considerable capital expenditure to increase system size. This trend was repeated in 1993: expense growth YOY grew about 35% while revenue growth grew only 24.5%. In other words, costs per subscriber increased 7% while revenues per subscriber fell by 1.6%. This pattern is to be expected in a young industry that is experiencing rapid growth and variability. BACTC budgets and projects for substantial system increases every two years in order to keep up with the growth and demand, hence its capital expenses increase greatly in those expansion years.

Contrary to the CPUC's assertion (though based on the same annual report data), BACTC's revenue per subscriber in those growth years (1991 and 1993) did not keep pace with its costs per subscriber. The latter fell at a slower rate or even increased while BACTC's revenues decreased. Moreover, the CPUC's comparison of costs to the basic rate is completely misplaced. Reductions in the basic rate do not accurately reflect the total reduction in BACTC's revenue per subscriber. The latter has fallen because of the migration of customers to rate plans that offer substantial discounts over the basic rate. The CPUC's decision to use the basic rate as the target measure is misplaced and fails to prove the very point that they raise.

C. **The CPUC Failed To Establish That Cellular Carriers Have Not Invested In System Expansion.**

The CPUC acknowledges that rates above marginal costs are not per se improper as long as profits from those rates are used to expand capacity and increase service availability to the public.[63] Conversely, the CPUC states that "evidence of such improper pricing would be the pricing of cellular services so high as to discourage full utilization of the system, or failure to invest in system expansion when it is economically justified."[64] This concern was also expressed by the FCC.[65] The CPUC goes on to allege that it has "gathered data" (albeit redacted so that BACTC cannot assess its validity or accuracy) which demonstrates that carriers are not serving at maximum capacity.[66] The CPUC then concludes that "[b]asic economic principles dictate that when excess capacity exists, prices in a competitive market should drop. Price comparisons between GTE [Mobilnet] and BACTC do not conform to this principle."[67] The CPUC's analysis is overly simplistic and flawed in a number of respects.

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[63] Petition at 50.

[64] Petition at 51.

[65] FCC Second Report and Order at ¶ 151.

[66] Petition at 51-54.

[67] Petition at 53. However, the CPUC later contradicts itself by noting that carriers have introduced discount plans to increase usage of existing capacity. Petition at 54.

1. **The CPUC Has Failed to Establish That Carriers Have Priced Services to Discourage Full Utilization of Their Systems.**

The data requested by the CPUC from various carriers including BACTC [68] does not accurately indicate whether a system is operating at maximum capacity. A fundamental principle of cellular system design dictates that system-wide capacity is most accurately determined by looking at the high use sites at peak hours. Cell sites are introduced into a system primarily for two reasons: to add capacity to overused areas of the system and/or to provide greater coverage throughout the system. The latter type of sites, though critical for customer satisfaction and competitive advantage, are often low use sites due to their remote location in the system. Indeed, many low use sites are added to areas of the MSA despite low population and traffic in the area in order to fulfill the carrier's obligations to the FCC, which requires that a cellular licensee provide 32 dbu coverage to 100% of its service area.

The CPUC erroneously concludes that the existence of low use sites is an indication of chronic, system-wide underutilization which should be eliminated by price reduction or other mechanisms. This simplistic analysis ignores the many legitimate reasons why low use cell sites exist in a cellular system and would undermine system engineering requirements. A cellular system must be built to accommodate demand on the most heavily used sites at the busiest hours, otherwise service quality and customer satisfaction will deteriorate; the necessary consequence, however, is that some cell sites will be underutilized at other times of the day and in less trafficked areas. Contrary to the CPUC's implication, cellular carriers have already developed pricing strategies to take advantage of these lower usage hours.

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[68] See Petition at 52, footnote 41.

BACTC has implemented two tiers of rates, peak and off-peak, in order to stimulate system usage in the otherwise lower use hours. In general, BACTC's off-peak rates are one-half the peak rate. Furthermore, upon introducing its digital technology, BACTC simultaneously introduced lower rates for customers using the digital system. Last week, BACTC further lowered its rates for customers utilizing its digital system. See Appendices C, F and L. BACTC's digital technology is designed to have nearly three times the capacity of its current analog system and it was initially added to the highest usage areas of BACTC's system in order to relieve the lack of capacity on the analog system. Contrary to the CPUC's assertions, BACTC has taken steps to reduce rates where and when possible to stimulate demand for its system. BACTC's competitor has taken a different approach, but has similarly attempted to stimulate demand during low use hours: many of GTE Mobilnet's rate plans have the same peak and off-peak rate, but it has implemented a free weekend calling plan designed to reduce rates at low use times.

If a cellular carrier were to adopt the CPUC's premise and lower rates across the board to stimulate demand, demand on all of BACTC's sites would increase, not just the ones in the "low use" category. Those sites that already operate at maximum capacity in the analog mode would quickly become further overburdened and a greater percentage and number of subscribers attempting to make telephone calls could not get access to the system. The only way that BACTC could increase demand at its low use sites while not overburdening its high use sites would be to develop site specific and time-of-day specific rates, i.e., lower rates for low-use cell sites and times and, at least in theory, higher rates for high-use cell sites and times.

Hypothetically, BACTC might charge $1.00 a minute for a call carried by a cell site in downtown San Francisco at rush hour and only $0.20 per minute for a call at its San Pedro cell site carried in an outlying part of the Bay Area. This would be confusing for customers since their service rates would change from location to location, as well as time-of-day. Moreover, BACTC's billing system is presently not capable of rating calls based on the cell site(s) carrying the call. It might be possible to rate the call based on the cell site where the call originated, but that would not accomplish the CPUC's goal since the rate charged would not tie to the utilization of the remaining sites used by the caller. Further, there is no mechanism to indicate to the customer what rate they are being charged.

Rather than adopt the CPUC's simplistic and problematic approach, BACTC has and will continue to target its rate reductions in order to encourage demand and usage where it has excess capacity in all areas, including its most congested and heavily travelled areas: on its digital system. Equally important, however, the CPUC has lost sight of the fact that there is a steady and continuing growth in demand for BACTC's service, measured both by the number of subscribers and the volume of air-time usage. Clearly the reaction of the marketplace supports the conclusion that the pricing of BACTC's services is consistent with the value of those services.

After just three years of system operations, BACTC was furnishing retail service to over 64,000 subscribers. In each year since 1989, the number of BACTC's customers has increased by at least 24 percent per year, with increases in the last several years exceeding 30 percent each year. In addition, the overall use of BACTC's network has continued to grow at a rapid pace. From the 1989 to 1993, the demand placed on BACTC's system by its customer base increased from 4 million erlangs to 17 million erlangs, a increase in this key measure of system demand of 325 percent over a four-year period. BACTC has devoted tremendous effort and a high proportion of its net income to expand its system capacity to keep pace with this rapid increase in demand. Such efforts do not support the CPUC's assertion that BACTC has priced its services inefficiently.

2. The CPUC Failed to Establish That Carriers Have Not Invested in System Expansion When Economically Justified.

The CPUC has not alleged, nor could it, that carriers have not sufficiently invested in their systems. The capital investments required to bring BACTC on line as a cellular carrier and to expand its system's facilities to meet the unexpectedly rapid growth in demand for cellular service have been substantial. As discussed above, BACTC invested nearly $30 million in its inaugural system. Due to the rapid and steady growth in the demand for BACTC's service, at both the wholesale and retail levels, and high customer expectations regarding the quality and reliability of cellular transmission, BACTC has increased the amount of its capital investments in every year but one since 1987 in order to provide the coverage, capacity, and service quality that customers demand.

Since 1986, BACTC's system has expanded to the point that, in early 1994, it includes three MTSOs and over 180 active cell sites. Many cell sites have been subject to enhancement through installation of additional antennas and other equipment. The number of radio channels in use has tripled from 1782 in 1989 to 5429 in 1994. As the best cell sites have been placed into service, the ratio of capital costs to system benefits from additional sites, however necessary, tends to decline. Most recently, BACTC's capital requirements have also been affected by the conversion of its analog system to digital. This new technology was introduced in October 1993 in order to enhance transmission quality, increase network capacity, and open the technological gateway to a broad range of new features and services.

BACTC has initially deployed digital cellular service throughout San Francisco and along major highway corridors around the Bay Area, where usage is high and analog system capacity was or would soon have been constrained. Substantial continuing investments will be required for BACTC to complete the deployment of digital service. Additionally, BACTC is presently embarking on further technological enhancements to its system in order to provide Cellular Digital Packet Data applications to supplement current voice and circuit switched applications. BACTC by no means anticipates that these will be the last network upgrades occasioned by future developments in technology and the requirements of eager customers and a competitive marketplace.

All this recent activity has resulted in the highest capital investment requirements that BACTC has ever experienced. During its eight years of operations, BACTC has invested over $200 million in capital projects, net of accrued depreciation, with ever increasing capital expenditures in recent years. BACTC has consistently plowed more than 50 percent of its pre-tax net income back into capital investments in the expansion of its network capacity to serve increasing customer demand. Indeed, as demonstrated above, this extensive capital investment has resulted in years where expense growth YOY has outpaced revenue growth YOY.

The tangible results of BACTC's major investment in system expansion are portrayed in Appendix G hereto, which presents a series of maps of BACTC's service area showing the distribution of cell sites constructed in each year from 1986 through 1994. The enormous increase in cell site density that has occurred is graphically evident in the progress of these maps from year to year. The numbers are just as impressive: from January 1, 1990, to January 1, 1994, the number of BACTC cell sites nearly tripled from 64 to 183. This increase in cell sites and switching facilities greatly expanded BACTC's transmission capacity and also expanded the area of BACTC's service coverage from approximately 1900 square miles in 1986 to over 3200 square miles at the end of 1993.

The CPUC is factually in error when it asserts that BACTC has excess capacity as a result of artificially high prices and that BACTC has not invested in capacity expansion though economically justified. Capacity utilization cannot be reasonably assessed without recognizing that its is determined by channel capacity in individual cell sites, the time and place of peak demand for system access, and the distribution of that demand throughout the system. The CPUC has ignored each of these factors. The fact that system capacity has kept pace with the tremendous increase in demand for service is not a sign of noncompetitive behavior by carriers, as the CPUC avers, but rather evidence of the extraordinary effort of cellular carriers to invest in their systems and to provide quality service to their customers. Responsiveness to market conditions and proper planning should not be misconstrued as noncompetitive conduct.

VII. THE CPUC HAS NOT ESTABLISHED THAT IT IS IN A BETTER POSITION THAN THE FCC TO ENSURE THAT THE INTERESTS OF CALIFORNIA CELLULAR SUBSCRIBERS ARE PROTECTED.

In its Petition, the CPUC proposes to continue its current regulatory scheme, capping rates at existing level and allowing carriers to reduce their tariffed rates via filings made pursuant to the rate band pricing guidelines.[69] The CPUC has not, however, established that its regulation of rates in California has benefitted customers or provided them with protection from

[69] Petition at 81.

"unjust or unreasonable rates." To the contrary, the Petition is replete with the CPUC's criticism of the level of cellular rates, and thus implicitly of the regulatory scheme which authorized and allowed those rates to become effective. The ineffectiveness of the CPUC's regulatory policies was recently admitted by a senior CPUC staffer:

> "The commission [CPUC] to be honest, is not really doing anything to bring rates down at this time." said Joseph DeUlloa, legal adviser to PUC President Daniel Fessler. "....The greatest protection we offer Californians is that rates are not any higher."[70]

Moreover, BACTC submits that it is not the CPUC that has kept rates from increasing but rather market forces. In this regard, the evidence demonstrates conclusively that even though carriers have not been required by any CPUC decision or order to reduce rates, they have consistently implemented rate reductions in response to market forces. Except in two limited circumstances, no carrier has even ever sought authority to increase rates.[71]

Any benefits from continued regulation must be weighed against the costs. As the FCC has recognized in deciding to forbear from requiring cellular carriers to file tariffs "tariffing imposes administrative costs and can themselves be a barrier to competition."[72] In particular, the FCC noted that requiring tariff filings can: (1) remove carrier's ability to make rapid efficient responses to changes in demand and cost, and remove incentives for carriers to introduce new offerings; (2) impede and remove incentives for competitive price discounting, since all price changes are public and can be quickly matched by competitors; and (3) impose costs on carriers

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[70] September 15, 1994 *San Jose Mercury News* article, Appendix I.

[71] See Petition at 42.

[72] Second Report and Order at ¶ 175.

that attempt to introduce new offerings.[73] The CPUC's tariff filing requirements have had exactly these impacts and the costs associated with complying with these requirements are quite real.

On September 15, 1994, BACTC introduced its Digital Flex rate plan, described in the brochure in Appendix L. Together with the new rate plan, BACTC introduced three promotions aimed at encouraging customers to sign up for digital service: (1) a $300 service activation credit (to offset the relatively high cost of digital equipment); (2) a joint account program, allowing a customers to add a second phone to their account and receive a $10 monthly discount (making it easy for customers to pass along their analog phone when they upgrade to digital technology); and (3) free incoming calls until 1995. None of these plans or promotions were particularly complicated or included lengthy terms and conditions. Nevertheless, the burden and costs associated with making the regulatory filings needed to implement the plan and promotions were substantial. Attached hereto as Exhibit M is a complete copy of the advice letters which BACTC had to file to introduce the Digital Flex rate plan and associated promotions. The filing consists of 16 advice letters and associated tariff sheets (one advice letter for new rate plan and each of the promotions[74] and one for each of the Bay Area markets where BACTC's and its affiliates do business[75]) and totalled approximately 250 pages. Six copies of the

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[73] Id.

[74] Because of the possibilities of protests or CPUC staff concerns BACTC generally files all of its promotions and plans separately.

[75] Although the nonwireline licensees for the adjacent greater Bay Area markets of Salinas/Monterey, Napa and Santa Rosa are under common ownership with BACTC and operate as one system, the CPUC currently requires a separate tariff for each entity. Accordingly, any time a plan or promotion is introduced a minimum of four advice letters must be filed to implement it.

advice letters had to be filed with the CPUC and the advice letters had to be served on 73 parties. BACTC estimates that its regulatory and legal staff spent approximately 130 hours determining how to make the filings consistent with the CPUC rules, drafting the filings, reviewing the filings and distributing them. BACTC's regulatory and legal department was also required to hire a temporary secretary for one week to assist with the filing at an approximate cost of $600. BACTC incurred approximately $1500 in copying and mailing costs associated with the filing. Even before the filing was made, BACTC was deluged with calls from its competitors, GTE Mobilnet and NexTel, requesting copies of the filings. The cellular carriers in the State of California should not have to expend their time and resources complying with such burdensome regulatory requirements when compliance with those requirements provides no demonstrated benefits to consumers.

VIII. CONCLUSION

The CPUC has not met its burden of demonstrating that market conditions will not protect cellular subscribers from unjust and unreasonable rates. Nor has the CPUC established that its continued rate regulation will provide any benefits to California consumers. Accordingly, BACTC respectfully requests that the FCC deny the Petition.

Respectfully submitted,

BAY AREA CELLULAR TELEPHONE COMPANY

Adam A. Andersen
Senior Counsel

Suzanne Toller
Counsel

Adam A. Andersen

September 19, 1994

VERIFICATION

I am the attorney for Bay Area Cellular Telephone Company and am authorized to make this verification on its behalf. I am informed and believe that the statements in the foregoing document are true.

I declare under penalty of perjury the foregoing is true and correct.

Executed on the 19th day of September, 1994 at South San Francisco, California.

Suzanne Toller
Counsel

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

In the Matter of	)	
	)	
Petition of the People of the State	)	
of California and the Public	)	PR File No. 94-SP3
Utilities Commission of the State of	)	
California to Retail State	)	
Regulatory Authority over Intrastate	)	
Cellular Service Rates	)	
______________________________	)	

APPENDICES

TO OPPOSITION OF BAY AREA CELLULAR TELEPHONE COMPANY

BAY AREA CELLULAR TELEPHONE COMPANY

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September 19, 1994

TABLE OF APPENDICES

September 19, 1994

REDACTED DATA IN CPUC PETITION AND APPENDICES

Page	Topic	Confidential Status
29, 32, App.E	carrier market shares	Yes
30	reseller market shares	Yes
33-34	Herfindahl indices	Yes
34,41	percent reductions in average rates for basic plans	No
34, 41-42, 44, App. I	percent variance between competing carriers' basic retail rates	No
35, App. H	revenue, operating expense, plant, and operating income per subscriber (numbers of subscribers redacted from App. G)	Yes
42, 45, 53, 75	PARAGRAPHS ADDRESSING UNKNOWN TOPICS	???
43	basic plan rates per minute	No
43	discounts available under discount plans	No
44, 49	best rates available under discount plans	No
44	percent variance between competing carriers' "best blended rates"	No
51-53, App. M	capacity utilization rates	Yes
53	national average system density (subscribers per cell site)	No
59, 60	percent acquisition by MCI of Nextel, as stated by McCaw	No
App. J	numbers of retail and wholesale customers, by carrier, year and rate plan	Yes
App. J	rate elements for particular carrier rate plans	No
App. J	rates per minute of use for particular carrier rate plans and particular usage levels	No

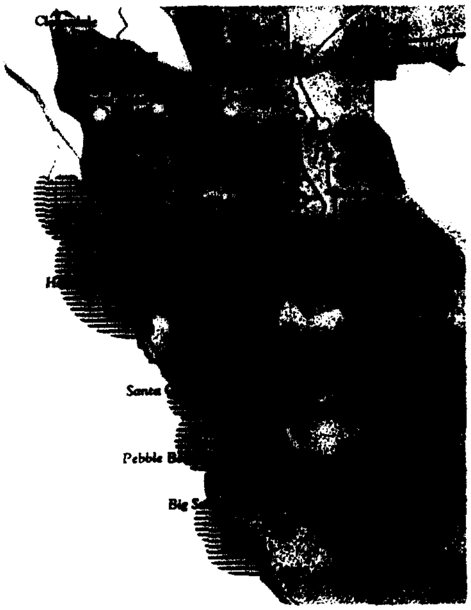
Discount Rate Plans and Coverage Area

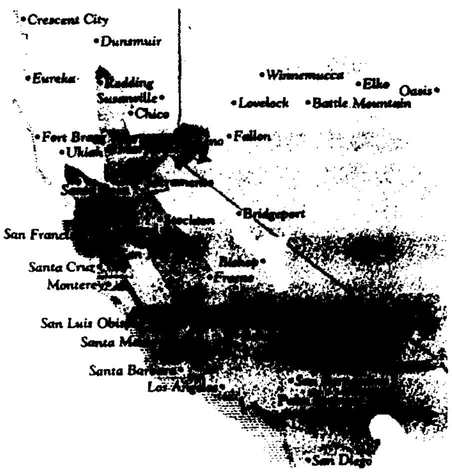
Discount Rate Plans.

Usage Range**		Digital	Analog
520+	Monthly Fixed Fee	$184.99	$199.99
	Monthly Mins.–Free*	520	520
	Peak Airtime	35¢	38¢
	Off-Peak Airtime	20¢	20¢
		Digital	Analog
360-519	Monthly Fixed Fee	$149.99	$159.99
	Monthly Mins.–Free*	400	400
	Peak Airtime	37¢	40¢
	Off-Peak Airtime	20¢	20¢
		Digital	Analog
215-359	Monthly Fixed Fee	$114.99	$119.99
	Monthly Mins.–Free*	250	250
	Peak Airtime	39¢	42¢
	Off-Peak Airtime	20¢	20¢
		Digital/Analog	
110-214	Monthly Fixed Fee	$79.99	
	Monthly Mins.–Free*	110	
	Peak Airtime	44¢	
	Off-Peak Airtime	20¢	
		Digital/Analog	
45-109	Monthly Fixed Fee	$49.99	
	Monthly Mins.–Free*	30	
	Peak Airtime	45¢	
	Off-Peak Airtime	20¢	
		Digital/Analog	
0-44	Monthly Fixed Fee	$29.99	
	Monthly Mins.–Free*	5	
	Peak Airtime	85¢	
	Off-Peak Airtime	20¢	

*Local Calling Area only.
**Total Monthly Minutes. Based on historical peak and off-peak patterns. Plans require a 12 month commitment with an early cancellation fee. If you deactivate within the first 60 days, no penalties will apply. You may change to any of the plans listed above at any time without penalty. A digital phone is required to access Cellular One's Digital Service and to activate under any digital rate plan.

Start of Service: $25
Peak Period: 7:00am to 7:00pm, Monday through Friday.
Off-Peak Period: 7:00pm to 7:00am, Monday through Friday, all day Saturday, Sunday and Holidays: New Year's Day, President's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving, Christmas.





Local Calling Area
Discount plans with free airtime minutes apply

Cellular One's North American Cellular Network
Automatic roaming

Extended Roaming Areas
Direct customer outbound calling, assisted inbound calling

– – Long Distance Charges apply when calling to and from Monterey County

Stay in touch while you travel.

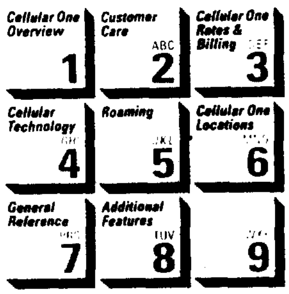
If you're traveling outside the local coverage area or roaming, you can still use your cellular phone in over 1,000 cities nationwide. When you're traveling within the North American Cellular Network, which includes most of California, you can make and receive calls as easily as you do at home.

Digital Joint Accounts Program.

If you choose a Premium, Advantage or Value Digital Discount Rate Plan, you may add a second phone to your account and receive a $10.00 monthly service fee discount on your second phone. The discount applies regardless of which digital or analog discount rate plan you choose for your second phone.*

Information at a touch.

If you'd like to hear more about Cellular One, call Infoline, our automated information service.



Call 415-244-5530 (or *INFO free from a cellular phone) and listen to the prompts.

* Joint Accounts offer good on individual accounts and both phones appear on one bill. Second phone subject to the same terms and conditions as your first phone.

CELLULARONE

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