

(Telco Act) underwent final revisions.² On February 8, 1996, President Clinton signed the Telco Act into law. The enactment of the Telco Act is intended to promote competition and reduce the regulation of telecommunications services. Among the provisions is the creation of a Federal-State Joint Board (Joint Board) to develop recommended changes to the procedures and regulations regarding universal service. The Joint Board's policies to preserve and advance universal service are to be based on the following principles: (1) quality services at just, reasonable, and affordable rates; (2) access to advanced telecommunications and information services to all regions; (3) access to telecommunications and information services to low income consumers, and those in rural, insular, and high cost areas; (4) equitable and nondiscriminatory contribution by all providers so as to preserve and advance universal service; (5) provide for federal and state mechanisms to preserve and advance universal service; (6) provide schools, health care providers, and libraries with access to advanced telecommunications services; and such other principles that are necessary and appropriate.

With respect to the state's authority to regulate universal service, the Telco Act states:

"(b) State Regulatory Authority.--Nothing in this section shall affect the ability of a State to impose, on a competitively neutral basis and consistent with Section 254, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers." (Telco Act, Sec. 253(b).)

² Telecommunications Act of 1996, Public Law No. 104-104, 110 Stat. 56.

III. Procedural Matters

A. Background

GTE California Incorporated (GTEC) was the only party who submitted transcript corrections. Since no one has objected to GTEC's proposed corrections, those corrections will be adopted and made in the Commission's copy of the reporter's transcript.

Toward Utility Rate Normalization (TURN) requested during the hearings that the model sponsors provide handbooks describing how the two different models operate. The handbook for Pacific Pacific's CPM was marked and received into evidence without objection as Exhibit 116. The handbook for the model sponsored jointly by AT&T Communications of California, Inc. (AT&T) and MCI Telecommunications Corporation (MCI) was marked for identification as Exhibit 117, and was not distributed to the parties until the last day of hearing. Since none of the other parties had an opportunity to review Exhibit 117, the assigned ALJ allowed parties the opportunity to object to the admission of Exhibit 117 in their opening briefs, and to respond to any such objections in their closing briefs.

GTEC objects to the admission of Exhibit 117 on the grounds that it did not have an opportunity to cross examine any witness about the exhibit, and that it is not relevant. GTEC also argues that Exhibit 117 refers to Version 2.2 of the Hatfield proxy model (HPM), and that no one other than the sponsors have been able to test that version. Citizens joins in the objection to the admission of Exhibit 117.

AT&T/MCI argue that GTEC's objection should be overruled. They argue that Exhibit 117 is relevant because the exhibit states that the HPM is being used to develop estimates of the economic costs of providing local telephone services, and that the HPM may be used to determine the subsidy requirements. Also, the exhibit identifies Version 2.2 of the HPM as simply an extension and

refinement of the HPM model that the parties have been concerned with in this proceeding. AT&T/MCI also point out that the assigned ALJ requested that the document be produced.

After the opening briefs were filed, AT&T/MCI filed a June 6, 1996 motion to strike from Pacific's opening brief the references to an article by Dr. Alfred Kahn which was attached to Pacific's opening comments in this proceeding. AT&T/MCI contend that the Kahn article was never offered in evidence during the hearings, and that Pacific's attempt to introduce Kahn's article without the opportunity for cross examination is improper.

AT&T/MCI also seek to strike the references in Pacific's opening brief at pages 23, 42, and 44 about alleged conversations that took place between employees of Pacific, and employees of US West. AT&T/MCI argue that Pacific has offered no citation to the record that such conversations ever took place.

Pacific argues that Kahn's article is part of the record in this proceeding because his article was part of the comments which Pacific had filed in this proceeding. Also, the principles enunciated by Kahn were adopted by Dr. Richard Emmerson in his testimony, who was subject to cross examination. Furthermore, the citation to Kahn's article was simply to point out that Emmerson's position was carefully thought out.

B. Discussion

The objection to the receipt of Exhibit 117 is overruled, and it will be received into evidence. The purpose of Exhibit 117, as well as Exhibit 116, are to provide interested persons with background information as to how the two models are formulated and how they operate.

AT&T/MCI's motion to strike the references in Pacific's opening brief to Alfred Kahn's article is denied. Dr. Kahn's article was part of Pacific's September 1, 1995 comments that had been filed as part of this rulemaking proceeding. (See Rule 14.1.) In addition, the rebuttal testimony of Emmerson, Exhibit 75,

contained two footnotes referring to the Kahn article in Pacific's September 1, 1995 comments.

With respect to AT&T/MCI's motion to strike the references in Pacific's opening brief to alleged conversations between US West and Pacific at pages 23, 42, and 44, we will grant the motion. As AT&T/MCI point out, there is no citation to the record that these alleged conversations ever took place. The sentences at pages 23, 42, and 44 of Pacific's opening brief which reference those alleged conversations shall be stricken.

IV. What Does Universal Service Mean in a Competitive Environment?

As we noted in D.95-07-050 at page 7, and as the Legislature noted in subdivision (a) of Section 1 of AB 3643, universal service has over the years developed a twofold meaning with respect to telecommunications services. The first is that a certain minimum level of telecommunications services must be made available to virtually everywhere in the state. The second meaning of universal service is that the rate for such services remain affordable. By making affordable telephone service ubiquitous in California, all Californians can share in the social and business benefits of the telephone network.

As the marketplace for local telephone exchange service moves from a monopoly provider to multiple providers, the universal service program needs to be readjusted to meet the challenges of increasing competition. Two of the universal service programs that require attention are the Universal Lifeline Telephone Service (ULTS or Lifeline) program, and the subsidy mechanisms which keep rates affordable in high cost areas.

There are several adjustments that need to be made. The first adjustment has to do with the way in which the incumbent LEC is compensated for providing service to customers who qualify for a subsidy under the ULTS program. Prior to the opening of the local

exchange to competition, the incumbent LEC was the only carrier who received the ULTS subsidy because it was the only carrier providing service to ULTS customers. As CLCs start to enter the markets of the incumbent LECs to serve residential customers, the ULTS subsidy needs to be made available to them as well.

The second adjustment that is needed concerns the mechanisms which have allowed the incumbent LECs to offer telephone service to all of their customers in high cost areas at affordable rates. Prior to the opening of the local exchange and toll markets to competition, the incumbent LECs were able to offset the increased cost of doing business in high cost areas by several mechanisms. They were able to have averaged rates throughout their service territory, which enabled the LECs to set a rate which reflected an average of the higher cost exchanges with the more profitable exchanges. The LECs were also able to price certain services above costs so as to subsidize basic local exchange service, which was generally priced below cost. Financial support for high cost areas is also available to the small and mid-size LECs through the California High Cost Fund (CHCF), and the interstate Universal Service Fund (USF).

With the introduction of competition, multiple carriers will be competing for the same customers. The implicit subsidies of averaged rates, and services priced above cost to support services priced below cost, will no longer be sustainable in a competitive market. Therefore, revisions to the mechanisms for the funding of high cost areas are needed so that the CLCs, and the incumbent LECs, can have access to universal service funds on a competitively neutral basis. To that end, as discussed later in this decision, we have created a new explicit subsidy support mechanism for high cost areas of the state. This fund shall be known as the CHCF-B. The purpose of this fund is to replace the implicit subsidies that are used to support universal service, with an explicit funding mechanism.

The proposed universal service rules also distinguishes residential customers from business customers. (D.95-07-050, pp. 34, 48.) The CHCF, which provides funding for the overall company costs of the small and mid-size LECs, does not distinguish between these two classes of customers. As we noted in D.95-12-021 at page 10, some of the commenting parties have suggested that subsidies in high cost areas include business customers as well. The issue of whether business customers in high cost areas should be subsidized is addressed later in this decision.

With respect to residential customers, and the introduction of competition into the local exchange, we need to ensure the continued availability of residential telephone service throughout the state. Residential customers have come to expect a certain minimum level of basic local exchange telephone service (basic service). Although there have been frequent references to the term "basic service" or "basic exchange service" in the past, it was not until the issuance of D.95-07-050 that all of the service elements which make up the definition of basic service appeared in one place.³ Today's decision makes clear what service elements make up the basic service definition for residential customers. The cost of basic service also forms the basis for generating the estimate of the cost to serve and support high cost areas of the state.

Another issue that is raised by the concept of basic service, is what constitutes the minimum level of basic service. As new telecommunications technologies are developed, must the definition of basic service account for these new developments?

³ In D.95-07-050 at page 15, we discussed that the "definition of universal service", as used in subdivision (a)(4) of Section 2 of AB 3643, means the same as our reference to basic service.

In the sections which follow, we address the basic service definition, the provisioning of basic service to high cost areas of the state, the ULTS program, and other related universal service issues raised in AB 3643 and the Telco Act.

V. Basic Service

A. The Definition Of Basic Service

1. Introduction

In order to effectuate a policy of universal service throughout the state, the Commission first needs to develop a list of the service elements which make up residential basic service. If the basic service definition is too narrowly drawn, some service elements that may be essential for participation in society may only be enjoyed by those who can afford it. Or, certain urban areas of the state, may enjoy some essential service elements that customers in more rural areas may not have. In balancing what service elements should be included in the definition of basic service, the Commission must also be cognizant of the extra cost. If too broad of a definition is adopted, consumers may end up paying for service elements that they do not need or want.

In D.95-07-050, proposed rule 4 included the following elements in the basic service definition.

- o Access to single party local exchange service;
- o Access to interexchange carriers;
- o Ability to place and receive calls;
- o Touch tone dialing;
- o Free access to emergency services, 911/E911;
- o Lifeline rate for eligible customers;

- o Customer choice of flat or measured rate service;
- o Access to directory assistance;
- o Access to a directory listing;
- o Access to operator services;
- o Voice grade connection to public switched telephone network;
- o Access to information services and 800 services;
- o One-time free blocking for information services and one-time billing adjustment for charges incurred inadvertently, mistakenly, or that were unauthorized;
- o Access to telephone relay service as provided for in PU Code § 2881;
- o Access to public policy pay telephones;
- o Free access to customer service for information about ULTS, service activation, service termination, service repair, and bill inquiries.

Under our proposed rule, all 16 of the service elements which make up the definition of basic service would have to be provided by all carriers in the state who provide residential service. (Proposed rule 4.A.)⁴

2. Positions of the Parties

Following the issuance of the proposed rules contained in D.95-07-050, interested parties were allowed an opportunity to

⁴ In proposed rule 4 of Appendix A of D.95-07-050, the service element for "access to directory assistance" mistakenly appeared twice.

comment. Generally speaking, the commenting parties were largely supportive of the 16 service elements proposed in the rule.

AT&T Wireless Services, Inc. (AT&T Wireless), formerly known as McCaw Cellular Communications, Inc.⁵ commented that certain aspects of the proposed rules could unduly limit customer choice by creating mechanisms that disadvantage certain carriers and types of communications technologies. With regard to the definition of basic service, AT&T Wireless states that the service element of "customer choice of flat or measured service" results in a competitive disadvantage to carriers that may seek to provide forms of basic service using pricing mechanisms that are different than the traditional flat rate mechanism. AT&T Wireless believes that the unlimited flat rate calling option should only be mandatory where there is only one COLR in a geographic service area (GSA).

The California/Nevada Community Action Association (Cal/Neva) favors expansion of the one-time free blocking and one-time billing adjustments for information services, to include unlimited free blocking and unlimited billing adjustments for unauthorized charges.

The California Department of Consumer Affairs (DCA) suggests that an additional service element be added to the definition of basic service. DCA proposes to add the following element, "access to a local telephone directory at no additional charge."

⁵ AT&T Wireless filed its comments on behalf of its following affiliates, all of whom do business as AT&T Wireless Services: Alpine CA-3, L.P., Chico MSA Cellular, Inc., Fresno Cellular Telephone Company, Oxnard Cellular Telephone Company, McCaw Communications of Stockton, Inc., Redding Cellular Partnership, Sacramento Cellular Telephone Company, and Santa Barbara Cellular Systems Ltd.

DCA also suggests that as more area code splits and area code overlays take place, that there will be an increase in the number of calls to directory assistance. DCA proposes that there be unlimited access to directory assistance at no additional charge, or that there be unlimited access to directory assistance at no additional charge for customers to adjoining areas that once were in the customer's own area code, or that there be a requirement that free telephone directories to all customers in areas where the split or overlay occurred be provided for both area codes.

The California Telecommunications Coalition (Coalition)⁶ proposes the following modifications to some of the service elements which make up the proposed definition of basic service:

- o free touch tone dialing;
- o free access to directory assistance for the first five calls per month;
- o a free directory listing for one name in a subscriber's household;
- o a free white pages telephone directory and a free yellow pages telephone directory.

The Coalition is opposed to Pacific's recommendation that the service element which requires LECs and CLCs to offer flat rate service, be eliminated. The Coalition points out that residential

⁶ At the time this proceeding began, the Coalition was made up of the following: AT&T; California Association of Long Distance Telephone Companies; California Cable Television Association (CCTA); ICG Access Services, Inc. (ICG); MCI; MFS Intelenet, Inc.; Sprint Communications Co., L.P.; Teleport Communications Group (TCG); Time Warner AxS of California, L.P.; and TURN.

customers have had the choice of flat rate service and measured rate service, and that flat rate service is the preferred option.

Citizens Utilities Company (Citizens)⁷ commented that the policy statement in proposed rule 3.A.2. should be deleted. Citizens believes that the definition of basic service should be strictly limited to include only those services provided to residential customers which are so essential to basic network usage, that no customer should be denied access on the grounds of affordability. Citizens fears that this policy statement contains the implication that as technology advances, that there will be an automatic expansion of the definition of basic service. Citizens states that in order to foster a competitive market, it is important to limit and minimize the amount of subsidy required.

The Division of Ratepayer Advocates (DRA)⁸ suggested that several minor changes and clarifications be made to the basic service definition. In DRA's reply comments, DRA stated that it also supports the recommended changes of the Coalition and UCAN to the basic service definition.

GTEC commented that it did not agree with the Coalition's suggestion to add the word "free" to elements 4, 6, 10, and 18 of

⁷ Citizens' comments represent the consolidated position of Citizens' five separate telecommunications entities: Citizens Telecommunications Company of California Inc. (CTCC), an LEC; Citizens Telecommunications Company, d.b.a. Citizens Long Distance Company, an interexchange carrier (IEC); Electric Lightwave, Inc., a CLC; Citizens Telecommunications Company of Tuolumne, a small LEC, which purchased the operations and assets of Tuolumne Company (See D.95-07-037); and Citizens Telecommunications Company of the Golden State, a small LEC, which purchased the operations and assets of CP National: (See D.95-08-026).

⁸ Under the Commission's Vision 2000 reorganization plan, many of the functions of the DRA have been taken over by the Consumer Services Division (CSD) and CSD's Office of Ratepayer Advocacy.

proposed rule 4.B. GTEC stated that all those service elements are part of basic service, but they are not provided for free. GTEC contends that the cost of those service elements should be reflected in the price paid for the basic service package.

Intel Corporation (Intel) believes that services such as Integrated Services Digital Network (ISDN) should not be included in the basic service definition at this time. Intel points out that ISDN is becoming increasingly available, but at a slow rate and at high prices.

Pacific commented that it agreed with the definition of residential basic service, but recommends that the definition should not mandate the offering of both a flat rate and measured service. Pacific proposes that usage revenues and costs be excluded from the calculation of the fund because creative calling plans are likely to be introduced which will have the effect of eliminating distinctions between local and toll calls.

Public Advocates, Inc.'s (Public Advocates)⁹ comments urge the Commission to include in the definition of basic service some access to advanced technology. Public Advocates' suggestions include the provisioning of lines with higher speed and more

⁹ Public Advocates represents the interests of the following groups: Southern Christian Leadership Conference, National Council of La Raza, Korean Youth and Community Center, Filipinos for Affirmative Action, Filipino Civil Rights Advocates, Association of Mexican-American Educators, California Association for Asian-Pacific Bilingual Education, California Association for Bilingual Education, California Rural Indian Health Board, Chicano Federation of San Diego County, Council for the Spanish Speaking, El Proyecto del Barrio, Escuela de La Raza Unida, Foundation Center for Phenomenological Research, Hermandad Mexicana Nacional, Korean Community Center of the East Bay, Lawyers' Committee for Civil Rights of the San Francisco Bay Area, Motivating Adolescents to Succeed, Mountain View Community Health Center, Multicultural Area Health Education Center, Spanish Speaking Citizen's Foundation, and Spanish Speaking Unity Council.

capacity so that transfer of voice, text, and images through the use of computers and telecommunication lines can be more easily accomplished. Another suggestion advanced by Public Advocates is to have CBOs act as the conduit by which the information superhighway is introduced to low income and immigrant communities. Under this proposal, qualified CBOs would receive a discounted rate of 50% for certain advanced telecommunications services. This issue is discussed later in this decision.

The Small LECs commented that they generally concur with the Commission's definition of basic service as set forth in the proposed rule, except for the requirement that companies offer measured rate local service.¹⁰ The Small LECs state that many of them offer only flat rate service, and that the Commission should not require them to add a measured service offering as well. They contend that the addition of measured service will be more costly to provide than flat rate service because of the additional cost of measuring and billing the measured local usage.

The Smaller Independent LECs also generally agree with the proposed definition of basic service, but disagree that public policy pay telephones should be included in the definition.¹¹ They contend that the definition of basic service should encompass the service components that should be provided in connection with each residential and business access line. They believe that the

¹⁰ Our reference to the Small LECs refers to the following entities: CP National, Evans Telephone Company, GTE West Coast Incorporated, Kerman Telephone Company, Pinnacles Telephone Company, the Siskiyou Telephone Company, Tuolumne Telephone Company, and The Volcano Telephone Company.

¹¹ The Smaller Independent LECs refer to the following entities: Calaveras Telephone Company, California-Oregon Telephone Co., Ducor Telephone Company, Foresthill Telephone Co., Happy Valley Telephone Company, Hornitos Telephone Company, The Ponderosa Telephone Co., Sierra Telephone Company, Inc., and Winterhaven Telephone Co.

availability of public pay telephones is not relevant to the scope of basic service, and that public pay telephones should be addressed in the local exchange competition proceeding instead.

In footnote 8 to the Coalition's September 1, 1995 comments, TURN indicated its concern that the customers' local calling area should be at least as large as the current local calling area.

Utility Consumers' Action Network (UCAN) suggests certain clarifications to the proposed rule regarding the definition of basic service. UCAN suggests the following underlined portions be added to the rule:

- o free and unlimited access to 911/E911;
- o free touch tone dialing;
- o Lifeline rate for both monthly service as well as installation for eligible customers;
- o free access to directory assistance for first five calls per month;
- o free access to 800 services and 800 like services.
- o free white pages telephone directory and free yellow pages telephone directory;
- o free access to customer service in both English and non-English formats.

3. Discussion

We believe that it is important to adopt a uniform definition of basic service so that all residential telephone customers, no matter where they live in California, or what their level of income is, can expect a certain minimum level of service. This is especially important in a mobile society where people may move across town, or from one part of the state to another. For the vast majority of telephone customers, they have come to expect and rely on the service elements that we listed in D.95-07-050.

We will adopt some of the suggested revisions to the service elements which make up basic service as suggested by the Coalition, DRA, and UCAN.¹² The suggested revisions are already part of those particular service elements, and by adopting the suggestions of the Coalition, DRA, and UCAN, we are only clarifying what consumers, and our rules, regulations, and decisions, have come to expect.

Some of the revisions suggested by the Coalition and UCAN include the reference to the word "free" for certain services. GTEC points that each service element of basic service has an associated cost, and that the service elements which make up basic service are not free, since customers pay for basic service. Our use of the term in the universal service rules is intended to recognize that as part of the bundled basic service package offering, that "free" means there are no additional charges incurred by the customer when that service element is used by a customer.

One of the suggestions of the Coalition, DCA, and UCAN, is to have a free white pages directory and free yellow pages directory. Telephone customers have become accustomed to receiving a new white pages directory and yellow pages directory every year. Free directories minimize the number of calls made to directory assistance, and promotes the wide distribution of yellow pages advertising. We shall add that service element to the definition of basic service as well.

¹² The adopted rules are attached herein as Appendix B. Any differences between the adopted rules and the proposed rules, which are attached hereto as Appendix A for ease of reference, are highlighted in bold.

As for UCAN's suggestion that there should be free access to customer service in both English and non-English formats, our discussion of bilingual services covers that issue.

We will adopt the suggestion by the Smaller Independent LECs that the proposed service element regarding access to public policy pay telephones, should be deleted. The focus of the basic service definition is to define the service elements that are to be provided to all residential households. Public policy pay telephones are not provided to households. Therefore, we will delete access to public policy pay telephones from our definition of basic service.¹³

We do not adopt the suggestions by Pacific and AT&T Wireless that flat rate service be eliminated. At the PPHs, many consumers expressed satisfaction with having a choice of flat or measured rate service. Depending on their circumstances, some preferred measured rate service, while others preferred flat rate service. The flat and measured rate options preserve customer choice, and provides consumers with a method by which to comparison shop among carriers. We believe that if wireless providers desire to compete in the local exchange market, they should be required to offer basic service in the same type of pricing formats that are offered today.

For the smaller LECs¹⁴ in California, of which there are 17, we shall exempt them from the service element that they be

¹³ Public policy pay telephones play a role in the universal service context because those types of phones are placed where the public safety or convenience requires it. (25 CPUC2d 281, 284, fn. 1.) Those type of telephones raise issues about the availability of such phones, where they should be placed, and who should have to place them there.

¹⁴ The term "smaller LECs" refers to all of the LECs included in the reference to Small LECs, and the Smaller Independent LECs.

required to offer customers the choice of flat or measured rate service, unless the smaller LEC currently offers that option. If, however, a new carrier decides to offer local exchange service in the service areas of these small companies, the new carrier will be required to provide all of the service elements listed in Rule 4 of Appendix B. Once competition arrives in these areas, the incumbent LECs who do not offer measured rate service, will be forced by market considerations to decide whether such an option should be offered to its customers.

As for DCA's recommendations regarding unlimited directory assistance due to area code splits and overlays, we decline to adopt that suggestion. With our adoption of the requirement that customers be provided with a local telephone directory, and the notification process that is put into place before an area code split or overlay is adopted, we do not believe that the allowance for five free directory assistance calls should be increased. The evidence presented during the hearings clearly shows that there are costs associated with the LECs having to provide directory assistance.

We also decline to adopt Cal/Neva's suggestion to have unlimited free blocking and unlimited billing adjustments for unauthorized information services calls. Such a change would invite an avalanche of billing adjustment complaints over whether calls were authorized or not. The end user should be responsible for deciding whether information services calls from their household should be blocked after this problem first occurs.

Citizens' recommendation to delete the policy statement in proposed rule 3.A.2. will not be adopted. Citizens' fear that the policy statement will result in the automatic expansion of the definition of basic service is unfounded. In order for the basic service definition to be expanded, the Commission will review the service in light of the criteria contained in Rule 4.C.3.

TURN raised the concern that with new entrants offering service, a customers' local calling area should be at least as large as the current local calling area. The Coalition, in footnote 13 of its reply comments, stated that CLCs who furnish residential service should be free to offer a flat rate service within a local calling area that differs from the local calling areas for the incumbent LECs. We believe that both of those concerns are more properly addressed in the local competition proceeding rather than here.

Some of the comments made at the PPHs, and in letters to the Commission, suggested that Internet access, certain kinds of custom calling features, and advanced broadband services, such as ISDN, should be incorporated into the basic service definition. We first note that the basic service definition adopted today enables anyone who has the computer hardware and software, to connect to an Internet provider. All that is needed from a telecommunications standpoint is a voice grade telephone line, and touchtone dialing, both of which are included in the basic service definition. Although many have talked about access (or lack thereof) to the Internet and the information superhighway, we must point out that this Commission only has jurisdiction over the telephone companies whose wires connect the computer to the information provider.¹⁵ To broaden the definition of universal service and basic service to

¹⁵ For example, in Public Advocates' survey of community based organizations, a survey question posed the need and demand for Internet service. 37.21% of the respondents had the service. 93.94% of the respondents who did not have the service, responded that they would use the service if it was affordable. The unaffordable portion may be the computer hardware, and the information provider's monthly fee, rather than the monthly cost of the telephone line. (See Public Advocates' Reply Comments, December 1, 1995, Survey attachment.)

include access to a computer, modem, software, and the information provider, is clearly outside this Commission's jurisdiction.

Broadening the definition of basic service to include broadband services, will also impose more costs on the incumbent LEC and the new carriers who want to enter the local exchange market. As some of the speakers mentioned at the PPHs, some customers may not want those services at all. In addition, the funding base would need to be increased as a result. We agree with Intel's comment that to include greater bandwidth services at this time would create a new entitlement, which presently does not exist, and increase the need for additional funding. Before mandating the inclusion of a broadband pipeline into every residential telephone customer's house, and other calling features, we need to keep in mind that a number of households still exist within California that are without the means to afford any telephone service at all. We therefore decline at this time to include any other service elements in the definition of basic service. The service elements which we have included in the definition of basic service are contained in Rule 4.B.

To ensure that all residential telephone customers are provided with the minimum level of service that we adopt today, Rule 4.A. in Appendix B provides that all carriers who provide local exchange residential service shall provide all the service elements of basic service. Such a rule does not prevent carriers from offering more service elements than what the basic service definition requires.

B. Review Of The Basic Service Definition

1. Introduction

AB 3643 states that one of the objectives of the universal service proceeding is to develop a periodic review process to revise the definition of universal service to reflect new technologies and markets. AB 3643 also provides that in order to avoid classes of information rich and information poor

customers, there must be an ongoing evaluation of which services are deemed essential, and therefore a part of universal service. Consistent with those directives, the Commission in D.95-07-050 developed proposed rules for the review of the basic service definition.

2. Positions of the Parties

Citizens suggests that the proponent who desires to include an additional service element into the definition of basic service must file an application, and meet the burden of demonstrating that the service is so fundamental to the use of the network, that as a matter of public policy, no end user should be denied access to that service .

In addition, Citizens does not agree with proposed rule 4.C.2.b., which states that one of the criteria to consider in evaluating whether a service should be added or deleted, is whether a substantial majority, 65%, of residential customers subscribe to the service. Citizens contends that subscribership only reflects the degree to which the service has been successfully marketed, and does not accurately reflect if the service is essential for access to the network.

The Coalition suggests that the three year review period should remain flexible in case an earlier review of the definition of basic service is needed. With respect to the criteria for reviewing the basic service definition, the Coalition recommends that each of the criteria should be considered, and each given the weight that seems appropriate. The Coalition states that the Commission should avoid locking itself into a situation where each criterion must be met.

DCA recommends that the Commission reconsider whether the criteria in proposed rule 4.C.2.d. should be included. DCA indicates that it is unclear to the exact meaning and intent of this criterion.

DRA recommends two clarifying changes to the rules regarding the review of the basic service definition. The first has to do with who can file the petition to review, and the second is to reconcile the petition to review with Rule 47 of the Commission's Rules of Practice and Procedure.

In DRA's reply comments, DRA expressed support for UCAN's recommendation that interested parties should have a right to petition to modify the basic service definition at any time.

As for the four criteria to consider in whether a service element should be added or deleted, DRA believes that the two most important criteria are: that the service is essential for participation in society; and that a substantial majority, 65%, of residential customers subscribe to the service. DRA suggests that the other two criteria should be deleted, or at a minimum, that the phrase "subscription rates" in proposed rule 4.C.2.d. be replaced with the phrase: "the number of subscribers."

DRA also commented that it opposes the recommendation of Roseville and the Smaller Independent LECs to eliminate proposed rule 4.C.3. DRA believes that this proposed rule ensures that the Commission has the necessary information to determine whether the criteria for including a new service element into the basic service definition has been met.

GTEC's comments agreed with the proposed rule for reviewing the basic service definition. GTEC believes that the proposed rule is more preferable than a pure trigger mechanism because of the planning, costing and pricing decisions associated with a change in the definition of basic service.

GTEC commented that the 65% subscription criterion should only be used as a trigger for determining whether or not a review of the basic service elements should occur. Once the review is initiated, GTEC agrees that the Commission needs to: review the quantitative and qualitative benefits of adding a service element; review whether the benefits outweigh the costs; and, determine if

any intervention is necessary to assure continued subscriber growth and availability.

Intel suggests that a party who seeks to expand the basic service definition to include higher bandwidth services, must clearly and convincingly demonstrate that such an expansion will promote the proliferation of higher bandwidth services.

Intel also states that the funding mechanism for universal service be technology indifferent, so as to avoid subjecting new telecommunications services from excessively bearing the burden of funding the universal service program.

Pacific suggests that proposed rule 4.C.3. should be revised to clarify that a service should be added or deleted from the basic service definition only if the Commission determines that all four criteria have been met. This would make clear that satisfying a single criteria is not sufficient to make a service essential, and therefore subject to inclusion in the basic service definition.

Public Advocates disagrees with the the 65% subscribership criterion in proposed rule 4.C.2.b. They argue that access is the key to remaining competitive in the new information age. If access does not become essential for participation until a 65% subscribership level is reached, those without access will be left behind, and a two tiered telecommunications system will develop in California. Public Advocates goes on to state that the 65% subscribership rate is not a relevant criterion to judge whether a service is essential, and may only serve to reinforce redlining patterns.

The Smaller Independent LECs generally concur in the proposed rule regarding the criteria to be considered in determining whether a particular service element should be included in the definition of basic service. They object, however, to the provision in proposed rule 4.C.3 which requires carriers to maintain data sufficient to determine whether the criteria for

evaluating service elements have been met. They point out the following: that several of the criteria cannot be quantified; that it is unreasonable to require LECs and CLCs to provide data on a retroactive basis because it is uncertain as to which services may be the subject of a petition for review; that they will be forced to maintain large amounts of data of all kinds regarding various aspects of future services that may or may not actually be considered by the Commission; and that the proposed rule is unnecessary in light of the Commission's broad authority to request information from carriers. Roseville also recommends that this proposed rule be eliminated on the same grounds.

UCAN comments that the Commission's proposed rule to periodically review the definition of basic service may be inadequate to effectively address the changing needs of universal service. The proposed rule fails to account for the possibility that a service may be designed that should be included in the basic service definition before there is a periodic review. In order to solve this possible lag problem, UCAN suggests that the review process contain a provision that allows interested parties the right to petition for a review of the basic service definition at any time, so long as the service in question meets some or all of the Commission's review requirements.

UCAN also states that the review criteria should be clarified, and that the Commission should be flexible as to the weight to be given to each factor. UCAN recommends that the review criteria be composed of the following:

- "a. the service is essential for participation in society;
- "b. the service will assist in the prevention of stratification due to the creation of information rich and information poor communities;
- "c. a substantial majority, 65%, of residential customers subscribe to the service. Assess:

- 1) availability of the service;
 - 2) the degree to which the service has been promoted by the carrier;
 - 3) the level of customer education which has been provided for the service;
 - 4) the communities which are presently being targeted for marketing and use of the service.
- "d. the qualitative and quantitative benefits of adding the service outweigh the costs;
- "e. availability of the service, or subscription rates would not increase without intervention."

The Universal Service Alliance (USA) proposes that the proposed rule for reviewing the definition of basic service be changed to a procedure whereby there is an ongoing evaluation of services by a committee consisting of community leaders, including representatives of low income, elderly, disabled, and rural consumers. This committee would meet as necessary to keep informed about new services, and to consider on at least an annual basis whether any services should be added to the definition of basic service. Subscription levels would be a consideration, but not necessarily a decisive factor. Other factors the committee could consider are the importance of service to consumers, the cost of providing the service, and whether other alternatives exist. This committee would then report its findings and recommendations to the Commission, which could conduct further proceedings as necessary.

3. Discussion

GTEC, UCAN and the Coalition have all commented on whether there should be an opportunity for an immediate review of the definition of basic service. Upon further review, we agree with UCAN and the Coalition that situations may arise where a service should be included in the definition of basic service without having to wait three years. As part of this immediate review procedure, the proponent for the inclusion of a new service

element shall be permitted to make a showing that at least three of the four review criteria have been met. This alleviates the concern that a proposed service element may be so essential for participation in society, but has not yet reached a 65% subscribership rate in residential households. We will revise rule 4.C to reflect these changes.

In order to ensure that frivolous and meritless petitions for review are kept to a minimum, we will use the summary denial procedure contained in Rule 47(h) of the Commission's Rules of Practice and Procedure. Rule 47(h) will be used when it is clear that the basic service definition should not be expanded or reduced, or in cases where the Commission is not persuaded based on the petition and the responses, that a service element should be included or deleted.

UCAN's suggestion to broaden the type of information to review as part of the 65% criteria will be adopted, as well as its suggestion that the quantitative and qualitative benefits of adding the service to the basic service definition outweigh the costs.

We decline to adopt as part of our review criteria, UCAN's suggestion to include the statement that the service will assist in the prevention of stratification. The review criteria that we adopt today was designed with AB 3643 in mind. We have developed a review process to periodically review and revise the basic service definition to reflect new technology and markets. (AB 3643, Stats. 1994, Ch. 278, Sec. 2(a)(4).) This review process is consistent with PU Code § 709, and the principle enunciated in AB 3643 that "In order to avoid an 'information rich' and 'information poor' stratification, there must be an ongoing evaluation of which services are deemed essential and therefore a part of universal service." (Id., Sec. 2(b)(2).)

We have also considered and adopted most of the changes suggested by DRA.