

January 30, 1997

EX PARTE

William F. Caton
Acting Secretary
Federal Communications Commission
Mail Stop 1170
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Dear Mr. Caton:

Re: Non-Accounting Safeguards, CC Docket No. 96-149

Yesterday, Robert L. Pettit and Michael Yourshaw of Wiley, Rein and Fielding, Bruce Ramsey, General Counsel, Pacific Bell Interactive Media, and I met with William E. Kennard, General Counsel, Suzanne M. Tetreault, Assistant General Counsel-Administrative Law, and Debra A. Weiner of the Office of General Counsel, to discuss interpretation of Section 272(e)(4) of the Communications Act. Copies of the attached material were distributed. We are submitting two copies of this notice, in accordance with Section 1.206(a)(1) of the Commission's rules.

Please stamp and return the provided copy to confirm your receipt. Please contact me should you have any questions.

Sincerely yours,

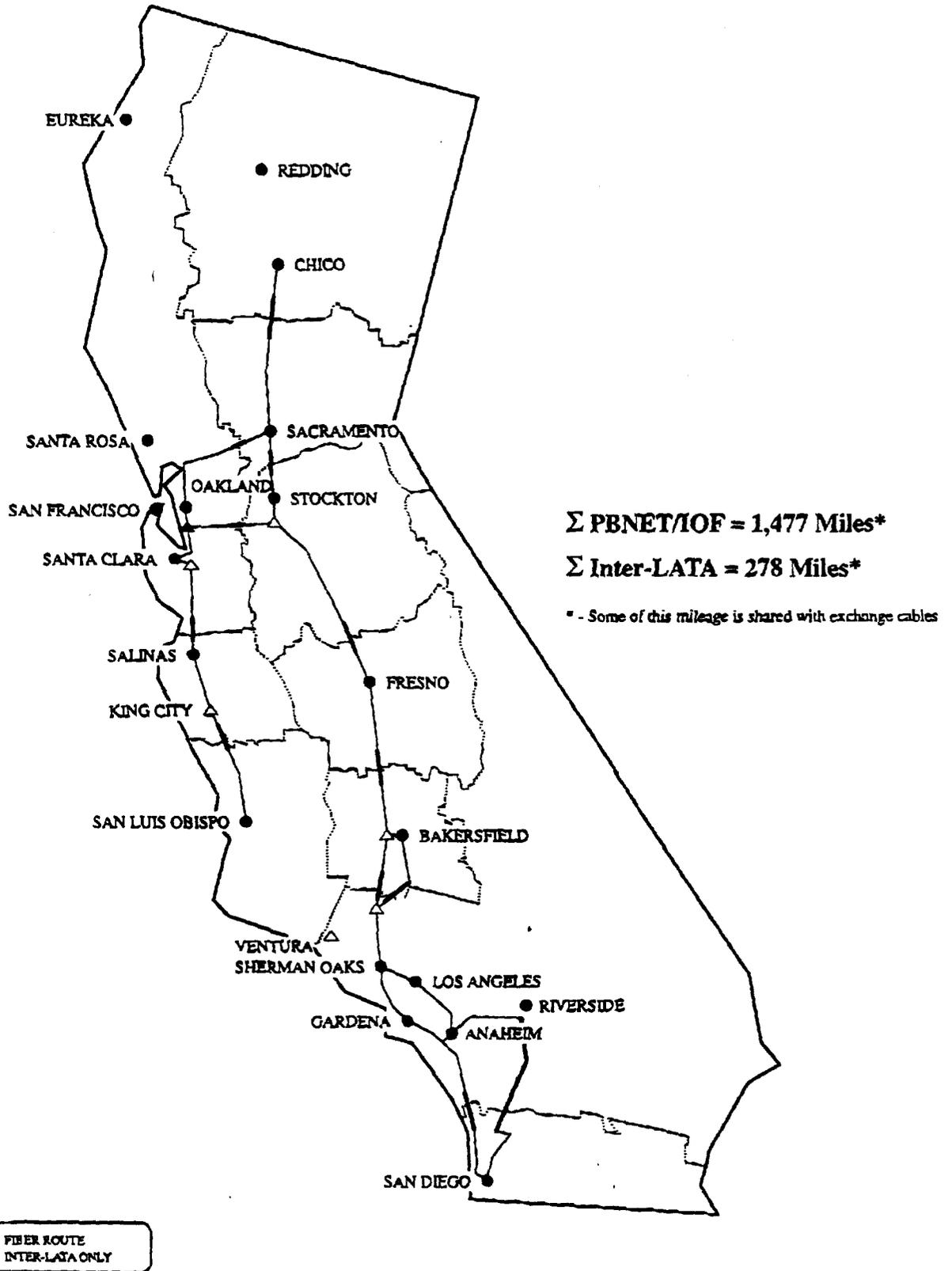
cc: W. Kennard
S. Tetreault
D. Weiner

Attachments

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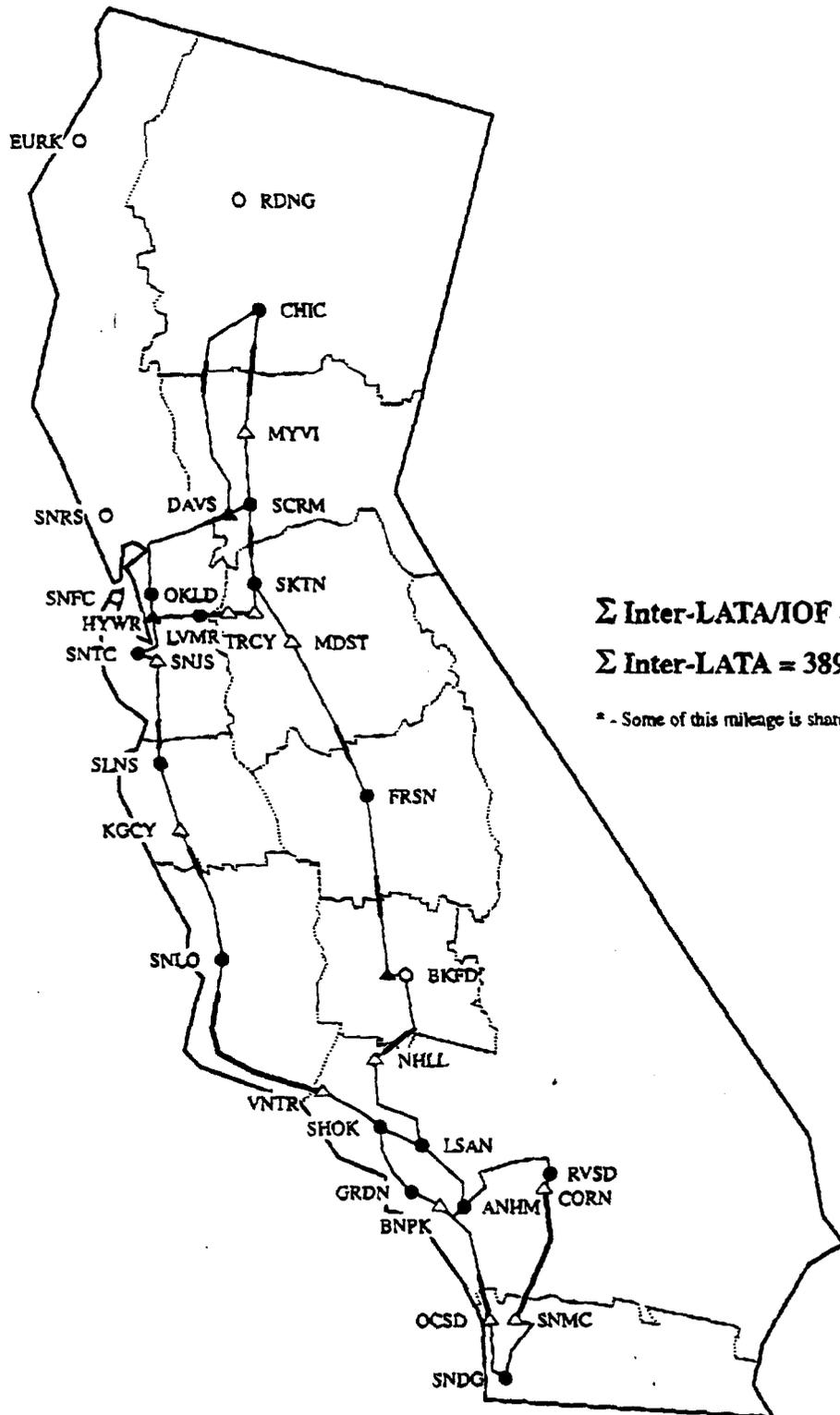
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EXISTING PBNET CONNECTIVITY



PROPRIETARY INFORMATION - Not for use or disclosure outside Pacific Bell except under written agreement

PROPOSED INTER-LATA CONNECTIVITY



Σ Inter-LATA/IOF = 1,871 Miles*

Σ Inter-LATA = 389 Miles*

* - Some of this mileage is shared with exchange cables

— FIBER ROUTE
BOLD INTER-LATA ONLY

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103D CONGRESS }
2d Session

SENATE

{ REPORT
103-367

COMMUNICATIONS ACT OF 1994

Mr. HOLLINGS, from the Committee on Commerce, Science,
and Transportation, submitted the following

REPORT

OF THE

SENATE COMMITTEE ON COMMERCE,
SCIENCE, AND TRANSPORTATION

together with

ADDITIONAL AND MINORITY VIEWS

ON

S. 1822



SEPTEMBER 14 (legislative day, SEPTEMBER 12), 1994.—Ordered to be
printed

U.S. GOVERNMENT PRINTING OFFICE

Not later than 10 days after issuing a determination, the Attorney General and the FCC each shall publish a brief description of the determination in the FEDERAL REGISTER.

A requested authorization is granted only to the extent that both the Attorney General and the FCC each independently approve the authorization and neither of their approvals is vacated, reversed, or remanded as a result of judicial review, or, as a result of such review, both the Attorney General and the FCC approve the requested authorization.

Subsection (d) of new section 236 sets forth the procedures for judicial review of the determinations by the FCC and the Attorney General. No later than 45 days after a determination by the Attorney General or FCC is published in the FEDERAL REGISTER, the BOC or affiliate that applied, or any person who would be threatened with loss or damage as a result of the determination regarding such company's engaging in the requested interLATA activity, may commence an action in any U.S. Court of Appeals against the Attorney General or FCC for judicial review of the determination.

The court shall enter a judgment after reviewing the determination in accordance with section 706 of title 5 of the U.S. Code. Any judgment affirming or reversing the determination shall describe with particularity the nature and scope of the activity, and of each product market or service market, and each geographic market, to which the affirmance of reversal applies.

Subsection (e) sets forth the procedures for enforcement of the determinations of the FCC and the Attorney General. Any person who is injured in its business or property by reason of a violation of this section may bring a civil action in any district court of the United States where the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages sustained, and the costs of suit (including a reasonable attorney's fee). The court may award simple interest on terms set forth in the bill if such award is just in the circumstances. Any person shall be entitled to sue for injunctive relief in any court of the United States having jurisdiction over the parties, against threatened loss or damage by a violation of this section, under the same conditions and principles as under section 16 of the Clayton Act.

Subsection (f) sets forth the safeguards that apply to any interLATA service that a BOC is authorized to provide under subsection (c). Such safeguards do not apply to interLATA service that the BOC is authorized to provide prior to the enactment of this bill, nor to any interLATA services authorized under subsection (h), the so-called incidentals. For instance, BOC provision of interLATA service incidental to cellular or other wireless services would not have to be provided out of a separate subsidiary.

Paragraph (1) of subsection (f) provides that a BOC that provides interLATA service authorized under subsection (c) must do so through a separate subsidiary. Such subsidiary need not be separate from any other subsidiary of the BOC, but it must satisfy all the safeguards in subsection (f). Paragraphs (2) and (3) set forth several safeguards to protect against cross-subsidization or self-dealing. Paragraph (4) provides that a BOC that engages in interLATA services shall obtain and pay for an audit every 3 years

(C) shall provide exchange access to all carriers at rates that are not unreasonably discriminatory and are based on costs and any explicit subsidy;

(D) shall, in any transaction with the subsidiary required by this section, not prefer or discriminate in favor of such subsidiary;

(E) shall not provide any facilities, services, or information concerning its provision of exchange access service to the subsidiary required by this section unless such facilities, services, or information are made available to other providers of interLATA services in that market on the same terms and conditions;

(F) shall not enter into any joint venture or partnership with the subsidiary required by this section; and

(G) shall charge the subsidiary required by this section, and impute to itself or any intraLATA toll affiliate, the same rates for access to its local exchange and exchange access services that it charges other, unaffiliated, toll carriers for such services.

(3) **SEPARATE SUBSIDIARY SAFEGUARDS.**—The separate subsidiary required by this section—

(A) shall carry out its marketing and sales directly and separate from its affiliated Bell operating company or any affiliates of such company;

(B) shall maintain books, records, and accounts in the manner prescribed by the Commission which shall be separate from the books, records, and accounts maintained by its affiliated Bell operating company or any affiliates of such company;

(C) shall charge rates to consumers, and any intraLATA toll affiliate shall charge rates to consumers, for interLATA service and intraLATA toll service that are no less than the rates the Bell operating company charges other interLATA carriers for its local exchange and exchange access services plus the other costs to the subsidiary of providing such services;

(D) shall be permitted to use interLATA facilities and services provided by its affiliated Bell operating company, so long as its costs are appropriately allocated and such facilities and services are provided to its subsidiaries and other carriers on nondiscriminatory rates, terms and conditions;

(E) shall comply with Commission regulations to ensure that the economic risks associated with the provision of interLATA services by such subsidiary are not borne by customers of the company's telephone exchange services; and

(F) shall not obtain credit under any arrangement that would permit a creditor, upon default, to have recourse to the assets of the local exchange carrier.

(4) **TRIENNIAL AUDIT.**—

(A) **GENERAL REQUIREMENT.**—A Bell operating company that engages in interLATA services shall obtain and pay for an audit every 3 years conducted by an independent audi-