> subscriber list information gathered in its capacity as a provider of such service on a timely and unbundled basis, under nondiscriminatory and reasonable rates, terms, and conditions, to any person upon request for the purpose of publishing directories in any format."

Pacific disagrees with ADP that its members require nonpublished addresses from the LECs, arguing there are a number of other potential sources of the address information which independent publishers desire. According to Pacific, information may be available from electric, gas, and water utilities, and from cable TV or newspaper companies. Pacific further argues that this issue has been adjudicated elsewhere, and the prevailing is that subscriber information is not an "essential facility".[5]

Pacific claims that access enabling third-party distributors to deliver ADP-members' telephone books to the addresses of nonlisted subscribers is not within the Act's definition of subscriber-list information, is confidential under PU Code §§ 2891 and 2891.1 and Pacific's Tariff Rules 34 and 35, (see Pacific Schedule A2 1st Revised Sheet 136 2.1.34 A.1.a.) and therefore, cannot be released.

GTEC contends that ADP's request for nonpublished addresses is contrary to § 222(f)(2) of the Act. This Section defines "subscriber list information" that must be made available to others for purposes of publishing directories as only those subscriber names, addresses and telephone numbers which the carrier or an affiliate thereof has published in any directory format. Since GTEC does not publish the addresses of its subscribers who have nonlisted service, GTEC contends those addresses are thus

5 See Directory Sales Management Corp. v. Ohio Bell Telephone Co., 833 F2d 606 (6th Cir. 1987); White Directory of Rochester, Inc. v. Rochester Telephone Corp., 714 F.

unavailable to independent directory publishers under § 222(e) and (f) of the Act. In addition, § 222(a) places upon each telecommunications carrier the duty to protect the confidentiality of such proprietary customer information. GTEC contends that it would violate the privacy rights underlying nonpublished service, as well as the express provisions of the Act, to require GTEC to provide the address on nonlisted subscribers to independent directory publishers.

ADP disputes Pacific's claim that release of this information is contrary to PU Code §§ 2891 and 2891.1, and Pacific's Rules 34 and 35. ADP claims §§ 2891 and 2891.1 only proscribe the provision of unpublished telephone numbers of residential subscribers and do not prohibit the release of address information for delivery purposes only. Similarly, ADP asserts that Pacific Rule 35 do not prohibit the release of the address information, while Pacific Rule 34 -- which governs nonpublished service -- proscribes the listing of "customer name, address, and telephone number" absent customer request. ADP does not seek access to either the customer name or telephone number of nonpublished customers. By seeking access to <u>only</u> the nonpublished address, ADP does not believe there is any violation of Rule 34.

ADP also disputes Pacific's claim that mere release of this address information for directory-delivery purposes violates federal customer proprietary network information (CPNI) requirements. ADP notes that Ameritech, one of the Regional Bell Operating Companies (RBOCs) offers this address information to independent directory publishers for delivery purposes only. Bell Atlantic subsidiaries such as Bell of Pennsylvania also offer this service.

Pacific claims that the issue of who owns subscriber list information and what rights such ownership entails was fully addressed by the parties in the <u>Customer List OII</u> (I.90-01-033) and is not a relevant issue to local exchange competition. Pacific

claims that customer information gathered by the utility is owned by the utility. Pacific claims that ownership of customer listing information is specifically reserved to it in its tariff,[6] and that ownership of telephone numbers is specifically denied to customers in its tariffs.[7] Utility tariffs have the force and effect of law.[8] Ownership of customer information is held by the gathering company in nonregulated industries.[9] Under the law, public utilities own their assets in the same manner as private businesses.[10]

ORA is concerned about the potential negative privacy implications of releasing subscriber information to any third party. Nonetheless, ORA is also concerned about the ability of competitors to gain a foothold in the marketplace. Therefore, ORA supports a Commission rule requiring provision of the subscriber address only to independent directory publishers or their delivery-service providers solely for the purpose of directory delivery.

2. **Access to Updates of Published White Page Listings**

ADP also claims that Pacific refuses to provide white-page updates of its published address listings to independent

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6 Cal. P.U.C. Schedule No. A12.1.1.C.7

7 Cal. P.U.C. Schedule No. A2.1.17.

8 See Colich & Sons v. Pacific Bell, 198 Cal.App.3d 1232 (1988) and citations herein contained.

9 Person v. Dodd, 410F.2d 701, 807 (D.C. Cir. 1969), cert. denied 89 Ct. 2021 (1969) ("Where information is gathered and arranged at some cost and sold as a commodity on the market, it is properly protected as property.")

10 Duquesne Light Company v. Barasch, 488 U.S. 229, 307 L.Ed.2d 646, 109 S.Ct. 609 (1989). ("Although [utility] assets are employed in the public interest to provide consumers of the state with electric power, they are owned and operated by private investors.").

directory publishers in violation of Local Competition Rule 8.J.(1) and the Act.

Thus, not only is Pacific denying independent directory publishers the ability to deliver their directories to nonpublished telephone subscribers, it is also preventing delivery of independent directories to publicly listed customers who change locations, according to ADP. Published directories contain a substantial amount of obsolete data that further deteriorates over time. ADPs' concern is the timeliness of data provided.

Pacific replies that it currently provides directory publishers listing updates for business subscribers only. Pacific does not provide daily or weekly updates of the Subscriber List Information for residential subscribers to third-party vendors nor its own directory affiliate, nor does Pacific have the system capabilities to provide such updates. Because only 30% of its residential subscribers publish their addresses, Pacific claims that a published update of daily residential-listing activity would have limited usefulness to independent directory publishers. Pacific does, however, provide its own directory affiliate with a daily service order activity file with subscribers' service addresses from which secondary directory-delivery service is provided.

F. Rates for Third-Party Access to LEC Directory Listings

ADP objects to the rates charged by Pacific for access to its directory listings. ADP observes that Bell South prices its directory listings at only $0.04 per initial listing, yet Pacific has been charging approximately $0.17 and filed an advice letter to

lower this to $0.10 per listing.[11] ADP believes that its members should be entitled to acquire such information merely for the incremental cost of reproducing the information--which the LECs have acquired only as a result of the provision of monopoly local exchange service--plus the minimum allowed rate of return. In that regard, ADP claims Pacific's $0.10 rate is excessive, while Bell South's rate, though still high, is minimally acceptable. The costing analysis prepared by the Florida Public Service Commission indicates that Bell South's cost per listing was $0.003 for the Directory Publisher's Database Service (DPDS), while the cost per Business Activity Report was $0.004. Hence, the $0.04/listing charge allowed by the Florida Commission was over 1200% above cost, yet still $0.06/listing <u>less</u> than the provisional rate allowed Pacific.

Citing the legislative history of § 222(e) of the Act, ADP contends that charges to independent directory publishers must be based on the "actual or incremental cost of providing the listing to the independent directory publisher...." (<u>See</u> Statement of Representatives Paxon and Barton, House Conferees for A96, § 222(e).)

Pacific claims the issue of what should determine reasonable rates for the provision of subscriber-listing information to independent directory publishers was resolved in D.96-02-072. The Commission states in D.96-02-072: "We find that Pacific's proposed revisions to its Reproduction Rights Tariff are

11 ADP protested Pacific's advice letter on May 1, 1996, for its failure to comply with Local Competition Rule 8.J.(1) and § 222(e) of the Act. By letter dated June 11, 1996, from the Director of the Telecommunications Division to the ADP Counsel, Pacific's proposed rate of $0.10 per listing has been made effective. ADP was advised that it may utilize additional remedies available under the Commission's rules of Practice and Procedure if it believed further Commission actions on its protest was required.

reasonable and should be adopted." (Decision at 48.) Therefore, since the Commission found certain tariff revisions proposed by Pacific to be reasonable, Pacific claims that its overall rates (filed via Advice Letter 18155 on April 11, 1996) are market priced and reasonable for the provision of subscriber-listing information to independent directory publishers. Pacific filed its tariff offering for subscriber-listing information to be used for DA applications on August 21, 1996, with an effective date of October 1, 1996.

G. **Access to LEC/CLC Subscriber Database for DA**

GTEC claims any CLC which obtains GTEC's subscriber-listing information pursuant to § 222(e) of the Federal Telecommunications Act of 1996 must use such information only for "purpose of publishing directories," and not for other ends such as DA. Section 222(e) recognizes that such directories may be in "any format," which includes traditional paper directories, as well as on-line access, electronic media, or CD-ROM.

GTEC contends that this requirement of § 222(e) moots the request of Metromail that it be allowed to obtain GTEC's DA-list information not for "purpose of publishing directories," but for DA purposes. Moreover, in D.96-02-072, the Commission reviewed the issues surrounding the provisioning of DA service, and made no provision requiring GTEC to accede to Metromail's request.

GTEC further believes that insertion of this issue in this proceeding is inappropriate and has little relevance to local competition since Metromail is not a CLC, and the sale of DA listings is not a "telecommunications service" as defined under the Act. GTEC denies that access to its DA listings is necessary for Metromail to conduct its business, for Metromail has managed to obtain listing from a variety of sources up to this point. The fact that Pacific may choose to sell its directory listings to third parties is a business decision of that company. GTEC denies it has any duty to do likewise.

Metromail disagrees with GTEC's claims regarding DA. While GTEC claims that Sec. 222(e) of the Act moots Metromail requests for DA listings, Metromail responds that § 222(e) is irrelevant since Metromail bases its request on the requirements of § 251(b)(3) and § 251(c) of the Telecommunications Act, and not on § 222(e).

Metromail states that nondiscriminatory access to directory listings is also required by the FCC in its adopted order implementing the local-competition provisions of the Act (CC Docket 96-98).

Paragraph 101 of the FCC order concludes that:

> The term 'nondiscriminatory access' means that a LEC that provides telephone numbers, operator services, DA, and/or directory listings ("providing LEC") must permit competing providers to have access to those services that is at least equal in quality to the access that the LEC provides to itself.

Metromail states that under § 251(b)(3) of the Act, LECs, must share subscriber listing information with their competitors, in "readily accessible" tape or electronic formats, and in a timely fashion upon request. The FCC's in requiring "readily accessible" formats was to ensure that no LEC, either inadvertently or intentionally, provided subscriber listings in formats that would require the receiving carrier to expend significant resources to enter the information into its systems.

Metromail notes that in recent arbitration orders the Commission has recognized directory listings as a "network element" to be unbundled and provided "by magnetic tape and that Entrant will reimburse incumbent for the cost of the medium and reasonable shipping and handling." (A.96-08-068.) Under the Act, § 251(c) requires that all "Network Elements" be made available on a unbundled basis.

While Metromail does not dispute the fact that it is not a "competing provider" of local exchange or toll service, Metromail

contends that this point is irrelevant. In its order, the FCC rejected proposals to limit the application of § 251(b)(3) to competing providers of exchange and/or resellers of toll service (See 117 and 136.) Metromail argues that Paragraph 101 of the FCC order defined the term "competing providers" in a much broader scope:

> Such competing providers may include, for example, other LECs, small business entities entering the market as resellers, or CMRS providers.

Metromail does not believe that the statutory and regulatory requirements permit GTEC to "pick and choose" who is and who is not a competitor. Metromail contends it is a competing provider of DA service to GTEC.

Metromail argues that in order to comply with the Act and the FCC order and to be consistent with the Commission's intent to unbundle competitive services and the Commission, at a bare minimum, must require that subscriber-list information be made available on a nondiscriminatory basis for DA.

III. Discussion

A. Interrelationship of Issues Common to the List OII (I.90-01-033)

As a procedural matter, we note that certain issues that have been raised in parties' comments substantially overlap with issues which were previously designated for consideration in I.90-01-033 regarding competitive access to customer-list information. I.90-01-033 was instituted on January 24, 1990; it has been dormant for approximately the last five years. Nonetheless, we recognize that the issues over competitive access to directory-listing information currently being addressed in the local competition rulemaking were also previously raised I.90-01-033. Thus, to avoid duplication or fragmented treatment of

the same issues in two separate dockets, by this decision we shall formally move the issue of competitive access to telecommunication directory information from I.90-01-033 to the local competition rulemaking and investigation. In this way, we can resolve the related issues which are common to these separate proceedings in the most efficient manner.

Because I.90-01-033 has been an inactive docket for a number of years, we intend to review any remaining issues in that docket to determine if they should be reassigned to another proceeding, or otherwise disposed of. Following this review of outstanding List OII issues, we may consider whether to merge the List OII with this proceeding or to close the List OII proceeding.

B. LEC/CLC Reciprocal Access to Directory Listings Database

To resolve the issue of CLCs' access to the LECs' local exchange subscriber information, we must first address the issue of who owns the directory listing information. This issue was previously identified in I.90-01-033. We recognize that each LEC and CLC has a valid ownership interest in the directory listing information of its own respective subscribers. The subscriber information is used for billing purposes to derive revenue for the LEC or CLC that serves the subscriber. The listing information also has potential commercial value both to other telecommunications providers as well as independent directory vendors that would like to compete for the subscriber's business.

Accordingly, we conclude that both the LECs and the CLCs are entitled to be compensated for providing access to each other's directory-listing information. If the LECs charge CLCs for access to their directory-listing information, then they must also compensate the CLCs for the LECs' access to CLC directory-listing information. Where the CLC provides listing information to the LEC for inclusion in the LEC's directory, the CLC does not cease to have an ownership interest in the listing information. Thus, the receiving party shall not furnish listing information provided by

another carrier to third-party vendors without the express permission of the owner of the listing information and a mutually agreeable arrangement for compensation to the owner for provision of such information. If the CLC and LEC cannot reach an agreement, then the listing information should not be released by the LEC. It will be the responsibility of the CLC to independently arrange for third-party access to its subscriber listing information. The CLCs are under the same obligation as the LECs in this regard to comply with Commission Rule 8J regarding nondiscriminatory access to their listing information by third-party publishers.

While the CLC is entitled to compensation, we shall not mandate that the CLC's compensation for access to its directory listings exactly match that of the LECs. In a competitive market, differences can be expected in the prices competitors may charge for directory-access services due to differences in costs as well as bargaining effectiveness.

C. **Third-Party Directory Database Administrator**

In D.96-02-072, we asked parties to consider whether customer databases should be controlled by an independent third party in similar fashion to what was proposed for the area code administrator. We directed that parties consider in Phase III workshops measures to ensure reciprocal access to data consistent with proprietary rights. (Decision at 39). This issue is still unresolved.

Pacific and GTEC object to the establishment of a neutral third-party database administrator, arguing that no justification has been provided for such a measure. Pacific raises a number of unresolved issues to be addressed before it believes such a step could be considered. In particular, Pacific states that creating such an administration would be unlawful in the absence of evidentiary hearings and a Commission finding that directory listings are essential facilities. The issue of whether LEC directory listings constitute an essential service is pending

before us in ADP's Petition for Modification of D.96-02-072 filed November 13, 1996. We shall defer a decision on the database-administrator issue pending further consideration of the issues raised by the parties.

D. CLC Informational Listing in LEC Directories

Another outstanding issue relates to the terms and pricing of CLCs' informational listing in the customer-guide pages of the LECs' telephone directories. This issue was discussed at the April 16, 1996, workshop, and further addressed in the comments filed on June 10, 1996. A related issue has more recently been raised in an advice letter protest filed by Cox California Telecom, Inc. (Cox).

On January 3, 1997, Cox filed a protest to Pacific's Advice Letter No. 18609. Pacific filed this advice letter requesting approval of language "to clarify the application of rates to the purchase of partial or full pages in Customer Guide" of Pacific's directories. In the advice letter, Pacific proposes to add a definition for the word "sheet" to mean a two-sided page.

By defining "page" to mean only one side of a page, and "sheet" to mean both sides of a page, Pacific is effectively cutting its CLC obligations in half, and doubling the cost of Customer Guide pages anticipated in the interconnection agreements, according to Cox. Thus, though its "clarification of the application of rates," Cox claims that Pacific has effectively doubled the charges associated with CLC listings in its directories.

The issue to be resolved in the Cox protest involves whether a one-page informational listing allowance should be defined to include printing on both sides of a page of paper or only printing on one side of a page of paper, and how this affects rates. We intend to adddress this dispute further in the context of the Cox advice letter protest. As an interim measure, however, a "page" should be defined as one printed side of sheet of paper for purposes of determining CLC informational listings. We conclude that, for the present time, two printed pages per CLC is a

reasonable limit for the CLC informational listing to be included within the LEC's directory customer guide pages.

The purpose of the CLC informational listing in the LEC's White Page Directory Information Guide is to provide key information that will permit a customer to contact the CLC provider. The listing shall not be used by CLCs for promotional purposes, and the Coalition has indicated that CLCs do not seek to use the listing for this purpose. Therefore, our order is a permissible time, place or manner restriction on speech (Consolidated Edison Co. v. Public Service Comm'n of N.Y., (1980) 447 U.S. 530, 535) since the mere requirement that GTEC provide a neutral informational listing for each CLC does not force GTEC "to alter [its] speech to conform with an agenda [it has] not set". Pacific Gas & Electric Company v. Public Utilities Commission, (1985) 475 U.S. 1, 9. Furthermore, we have the authority to require that a minimum page allowance be required for CLC informational listings in order to promote a level competitive playing field among LECs and CLCs. Our action is serving a compelling state interest (Consolidated Edision Co. v. Public Service Comm'n of N.Y., supra at 535) articulated by both federal (Federal Telecommunications Act of 1996) and state law (Public Utilities Code section 709.5) directing us to promote competition.

Regarding parties' disputes over the number of pages which should be allotted for each CLC's informational listing, we shall adopt the Coalition's proposal for a two-page allowance. We believe that the number of required pages should be kept to a minimum to avoid making the directories more bulky than they already are. The page allotment should be sufficient, however, to provide critical information enabling the customer to identify the CLC and their contact numbers for the business office, billing, and repair or service problems. We also believe it is important that customers understand what charges might be assessed on their bills and have disclosure in the Information Guide as to what the CLC's local calling area is. We therefore adopt a two-page allowance for CLC listings in consideration of MCI's statement that a single page

is insufficient space to provide disclosure of what CLC calling areas are rated as local calls and which are not.

We conclude that the LECs should base their charges for inclusion of the CLCs' informational listing on the costs which the LECs themselves, incur to provide their own informational listings. We find that GTEC's proposed 35% discount of the yellow pages' one-page price does not meet this standard since it is based on retail advertising rates rather than GTEC's own cost. We thus direct GTEC to revise its proposed rate for CLC informational listings accordingly.

E. Independent Third-Party Access to LEC/CLC Subscriber Information for Directory Publishing

Regarding ADP's claim that it should be provided with only the address of unpublished subscribers, we must consider two countervailing interests: (1) nondiscriminatory access to subscriber information to promote a level competitive playing field, and (2) nondisclosure of confidential subscriber information to protect the privacy rights of individual subscribers.

As ADP noted in the Feist case, cited previously, the U.S. Supreme Court has concluded that directory publishers lack independent access to subscriber-listing information on an equivalent basis vis-a-vis to the LECs. Moreover, in Great Western Directories v. Southwestern Bell Telephone.[12] The United States Court of Appeals held that Southwestern Bell and its affiliates had anticompetitively monopolized the directory market, stating that:

> "without sharing this updated information with competing directory publishers, telephone companies are able to leverage their monopoly position in the telephone service area into the competitive directory market." Id.

12 63 F.3d 1378, 1386 (5th Cir. 1995), vacated and remanded, in part, on other grounds 74 F.3d 613 (5th Cir. 1996).

The trial court, in Great Western, explained how vital it is that independent directory publishers receive all of the same timely listing information the LECs accord themselves, as well as how independent directory publishers are disavantaged if the LECs arrogate to themselves that information, its compilation, and the terms of its sale.

We therefore agree with ADP that LECs' withholding of the service addresses of unpublished telephone subscribers gives the LECs a competitive advantage over third-party vendors in providing timely and comprehensive delivery of directories. Nonetheless, third-party vendors' rights to directory-listing information is not unlimited, but is subject to the customers' rights of privacy.

Customers' privacy rights with respect to directory listing disclosure are protected as provided in §§ 2891 and 2891.1, as well as Pacific's tariff Rules 34 and 35. We conclude that the mere provision of an anonymous address is not explicitly prohibited under §§ 2891 and 2891.1. While Pacific's Rule 34 precludes the bundled release of "customer name, address, and telephone number," it does not explicitly prohibit the unbundled provision of an anonymous address only. Therefore no changes to Rule 34 or 35 are necessary in order to require access to anonymous address information only.

Accordingly, we conclude that the LECs should be required to provide to third-party independent publishers the address, but not the name and telephone number, of unpublished LEC subscribers that move and change their address, for the limited purpose of delivering directories. The timely provision of this address information is necessary to prevent discriminatory treatment of third-party vendors in competing with LECs which are able to furnish their directories virtually immediately to such subscribers. Without access to these addresses, independent directory publishers cannot deliver their directories on a timely

basis to those California subscribers who move to a new address with unlisted telephone numbers.

We have previously addressed the importance of safeguarding consumers' privacy rights in the List OII. We conclude that merely providing third parties with the address, exclusive of the name or telephone number, of nonpublished LEC subscribers for the sole purpose of delivering the vendors' directory will not violate consumers' privacy rights. The vendors shall not have access to either the name or the phone number of the nonpublished subscriber, but will only have the address to be used for directory delivery. Even Pacific agrees that the mere delivery of telephone-company books to nonpublished customers does not violate the consumers' privacy expectations. As noted by Pacific, the delivery of telephone directories to nonpublished customers is an established practice which has occurred for many years.

Any use of the anonymous address information by third-party vendors for any purpose beyond directory delivery could, however, potentially be used to intrude on the privacy of subscribers unless restrictions are put in place. As a condition of receiving these anonymous addresses, therefore, we shall require each third-party vendor to restrict the use of that information solely for the purpose of delivering that vendor's published directory to the address. The anonymous address information must be held in strict confidence by the vendor and shall not be provided to any other party or used for any other marketing purpose. We shall also require that any directory publisher, including Pacific and GTEC, delivering directories to anonymous subscribers shall provide a toll-free number printed on the first page of the directory which the recipient can call to inform the vendor not to deliver its directory to that address in the future. Any directory vendor must discontinue deliveries of directories to any subscriber who requests that such deliveries be discontinued. Subject to the terms and conditions outlined above, we shall direct

that the LECs and CLCs shall provide access to the anonymous addresses of their unpublished customers that change residences.

We also conclude that independent publishers should be provided with the same updated information for the published residential address information which is made available to the LEC directory affiliate for purposes of secondary delivery of directories. We shall direct the LECs to provide such information as set forth in our order below.

F. Independent Third-Party Vendors' Access to LEC/CLC Directory Databases for DA Service

We agree with Metromail that third-party independent vendors as well as CLCs and other competitors should have nondiscriminatory access to the LECs' DA database as required under the Act and FCC order. As noted in Paragraph 101 of the FCC Order cited previously, the definition of "competing providers" of directory services is not limited merely to CLCs, but includes other entities such as, for example, CMRS providers. We believe it is consistent with the FCC order to apply a broad interpretation to the term "competing providers" as used in Paragraph 101 of the FCC Order, and to include independent third-party database vendors such as Metromail within that definition.

We conclude for purposes of our generic rules that listings for DA purposes should be provided to third-party database vendors in readily accessible tape or electronic format, with appropriate cost recovery for the preparation and delivery of the information.[13] This treatment is consistent with § 251(c) of the

13 We have recently examined the means by which LEC database access is to be provided in recent arbitrations of interconnection agreements. D.96-12-034 (the Pacific/AT&T arbitration), as well as the Arbitrator's Report in A.96-08-041 (the GTEC/AT&T arbitration), both grant access to listing databases for DA purposes, and state

(Footnote continues on next page)

Act which requires that all "Network Elements" be made available on an unbundled basis. Further, access to database listings for DA purposes should be the same for and between all competing providers, including third-party database vendors. It is important to many California consumers to be able to contact their provider to gain access to ubiquitous DA information. Such information is important to quality telephone service.

While we recognize that GTEC maintains a separate database for DA service distinct from its directory-publishing database, we find no basis to restrict competitors' access to either database. GTEC shall therefore provide third-party access to each of its directory databases that is equal in quality to the access that GTEC provides to itself.

G. **Rates for Third-Party Access to Directory Listings**

We also note that ADP has raised questions concerning the reasonableness of Pacific's tariffed rate for directory access. While we concluded that certain proposed changes by Pacific in its reproduction rights tariff were reasonable in D.96-02-072, we did not prejudge the overall reasonableness of Pacific's complete tariff. In its subsequent advice letter filing, Pacific failed to provide adequate workpapers to support its contention that its rates properly reflected only the incremental or actual costs of providing the service. While Pacific's advice letter filing of its telephone Directory Reproduction Rights tariff has become

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(Footnote continued from previous page)
that listings for DA purposes should be provided at the cost of the transfer media (magnetic tape), plus reasonable costs for preparation and shipping of the media. (See A.96-08-040, Dec. at 12-14, A.96-08-041, Arb. Rept. at 5.)

effective, we did not rule out the opportunity for ADP to pursue any remaining issues over the reasonableness of the tariff rate through this rulemaking. Accordingly, given the concerns raised by ADP over the reasonableness of Pacific's tariff rate, we shall direct the assigned ALJ to issue a procedural ruling to provide parties the opportunity to be heard on whether the existing LEC tariff rates for directory access should be made provisional and subject to a memo account with provisions for a true up once final rates are established. We expect to examine the LECs' costs of directory access and establish appropriate prices in the OANAD proceeding.

Findings of Fact

1. The Commission established interim rules for LECs and CLCs with respect to access to directory databases in Rule 8 F, and for the publishing of telephone directories in Rule 8 J of Appendix E of D.96-02-072.

2. Outstanding issues relating to directory-database access and directory-publishing issues which were not resolved in D.96-02-072 were deferred to Phase III of the proceeding.

3. Technical workshops were held on April 1-3 and April 16, 1996 to provide further information regarding directory-database access and directory-publishing issues and facilitate consensus among the parties.

4. As a result of the technical workshops on directory issues, parties narrowed the focus of disputed issues and clarified the scope in further written comments on outstanding issues.

5. Parties remain in dispute over rights of access to LEC-directory databases and provision for CLC informational listings in LEC directories.

6. D.96-02-072 required LECs to include CLCs' customers' telephone numbers in their "White Pages" and directory listings associated with the areas in which the CLC provides local exchange

services, except for CLC customers wishing to be unlisted. (Rule 8.J.2)

7. D.96-02-072 did not explicitly define what reciprocal rights and obligations the LECs and CLCs have concerning the access, use, and dissemination of each others' customer listings.

8. Directory listing information has commercial value to competing telecommunications providers as well as third-party database vendors.

9. Access to directory databases involves issues that relate to competition among local-exchange-service providers as well as among third-party database vendors and directory publishers.

10. While Pacific utilizes one unified database both for DA and publishing its subscriber directories, GTEC maintains two separate databases, each of which is independently accessed, maintained, and updated.

11. Pacific provides its own directory affiliate with subscribers' service addresses though its independent contractor from which secondary directory delivery is provided.

12. Independent directory publishers have been denied access to the addresses of new LEC customers who receive nonpublished service, and have also been denied timely updates of Pacific's published white-page-directory listings.

13. Pacific currently provides independent publishers listing updates for business subscribers only, but does not provide them with daily or weekly updates for new residential subscribers.

14. Pacific provides its own directory affiliate with a daily service order activity file containing subscribers' service addresses from which secondary-directory-delivery service is provided.

15. LECs' withholding of the service addresses of unpublished telephone subscribers and the withholding of file updates for published subscribers gives the LECs a competitive advantage over

third-party vendors in providing timely and comprehensive delivery of directories.

16. The mere provision of an anonymous address to directory publishers is not prohibited by §§ 2891 and 2891.1 of the PU Code.

17. While Pacific's Rule 34 precludes the bundled release of "customer name, address, and telephone number," it does not explicitly prohibit the unbundled provision of an anonymous address only.

18. Pacific has not provided adequate documentation to justify that its reproduction-rights tariffed rates reflect only its incremental or actual costs.

19. D.96-02-072 required that LECs provide space in their directory-information guide to each requesting CLC serving the area covered by the directory to disclose key information about the CLC.

20. The purpose of the CLC informational listing in the LEC's White Page Directory Information Guide is to provide key information to permit a customer to contact the CLC provider, and to determine what exchanges would be rated as local calls.

21. Disputes over the terms and content of CLC informational listings involve both Pacific and GTEC in contention with the CLCs.

22. GTEC volunteers to make available one free page in its directory information guide for the listing of key customer information about each CLC. GTEC also offers to sell additional pages to the CLC to list promotional information at a rate equal to 65% of GTEC's market rate for yellow-page advertising.

23. GTEC seeks control over the sorts of promotional information contained in the CLC listing and objects to inclusion of comparative rate information.

24. A two-page limit for CLC informational listings in LEC directories would provide adequate space for the CLC to furnish essential information to the public concerning its service.

25. GTEC's proposed discount of 35% for CLC informational listings is based upon retail advertising rates and may be inconsistent with cost-based pricing.

26. Parties are in dispute over whether a neutral database administrator is needed or is practical in order to provide for competitively neutral access by all service providers to directory-database listings.

27. The question of whether a neutral database administrator is needed is related to the pending issue of whether LEC directory listings constitute an essential facility.

Conclusions of Law

1. Both the LECs and the CLCs are entitled to be compensated for providing access to their directory-listing information and may charge each other for access to directory information.

2. The LEC shall not provide CLC listing information to third-party vendors without the express permission of the CLC and a mutually agreeable arrangement for compensation to the CLC for provision of such information.

3. Third-party vendors' rights to nondiscriminatory access of directory listing information is subject to the customers' rights of privacy, and limited to use in the publishing of directories.

4. LECs and CLCs should be required to provide access to the anonymous address of nonpublished subscribers to independent publishers for the purpose of directory delivery only.

5. Independent database vendors or directory publishers should not have access to either the name or the phone number of nonpublished subscribers to protect privacy rights.

6. Independent directory publishers should be provided with the same updated information for published residential addresses on the same terms and conditions as the information is made available to the LEC directory affiliates.

7. The timely provision by Pacific and GTEC of anonymous address information of nonpublished subscribers to third-party vendors is necessary to prevent discrimination in competing with the LECs.

8. Without access to the anonymous addresses of Pacific's and GTEC's nonpublished subscribers, independent directory publishers cannot deliver their directories to subscribers on the same timely basis as the LECs.

9. Merely providing third parties with the anonymous address of unpublished LEC subscribers for the sole purpose of delivering the vendor's directory will not violate privacy rights.

10. Any use of the anonymous address information by third-party vendors for any purpose beyond directory delivery could potentially could violate privacy rights unless restrictions are imposed.

11. Consistent with the provisions of federal regulations, Pacific, GTEC, as well as CLCs should provide competing service providers with nondiscriminatory access to their directory-listing databases, both those used for DA as well as for the publishing of directories.

12. Competing service providers entitled to nondiscriminatory access to LEC/CLC directory databases should include third-party vendors of DA and directory-publishing services.

13. Nondiscriminatory access to directory databases includes the ability of all competing providers to have reciprocal access among themselves that is at least equal in quality to that of the providing LEC or CLC.

14. Access to DA listings should be provided by magnetic tape, with the determination of appropriate cost recovery for the preparation and delivery of the information to be addressed in the OANAD proceeding.

15. Nonpublished customer names and telephone numbers should be excluded from the requirement to provide access to directory listings for DA or directory publishing purposes.

16. Resolution of the dispute over whether a neutral directory-database administrator is warranted relates to the issue of whether LEC directory listings constitute essential facilities.

17. The question of whether LEC directory listings constitute essential facilities is currently before the Commission in a pending Petition for Modification of D.96-02-072 filed by ADP.

18. The Commission's decision as to whether or not to establish a neutral directory-database administrator should be deferred pending further consideration of the relevant issues.

19. Since the informational listing in LEC directory-information guides will not be used by CLCs for promotional purposes, but merely as a neutral informational listing, the LECs' First Amendment rights of free speech are not at issue by allotting space to the CLCs.

20. A two-page informational listing in the Pacific and GTEC directory-information guides should be authorized to identify each CLC serving the area covered by the directory and the CLC contact telephone numbers including the numbers for the business office, billing, and repair or service problems.

21. It is important that customers understand what charges might be assessed on their bills and have disclosure in the Information Guide as to what the CLC's local calling area is.

O R D E R

IT IS ORDERED that:

1. Pacific Bell (Pacific) and GTE California, Inc. (GTEC) shall be required to compensate competitive local carriers (CLCs) for access to CLC directory listings to the extent either LEC

charges the CLC for access to the local exchange carriers (LECs) directory listings.

2. Pacific and GTEC shall not release CLC directory-listing information to third-party publishers or directory assistance (DA) providers absent the express consent of the CLC and a mutually agreeable compensation to the CLC.

3. Each CLC and LEC shall be required to provide to third-party database vendors nondiscriminatory access to its directory-listing information subject to the privacy rights of subscribers.

4. Pacific and GTEC shall provide the anonymous address, i.e., without name and telephone number, of unpublished LEC subscribers who move to a new location to third-party independent directory publishers for the sole purpose of delivering directories, subject to the conditions outlined below.

5. As a condition of receiving anonymous nonpublished addresses, each third-party vendor must hold the information in strict confidence, and restrict its use solely for the purpose of delivering that vendor's published directory to those addresses.

6. Any directory publisher, including the incumbent LECs, delivering directories to anonymous subscribers shall provide a toll-free number printed on the inside first page of the directory which the recipient can call to discontinue further directory deliveries by that publisher.

7. Pacific and GTEC shall provide to CLCs and third-party database vendors nondiscriminatory access to published directory-listing-address information that the LECs provide to their own directory publishing agents, including daily service-order updates for secondary directory delivery.

8. Pacific and GTEC shall provide nondiscriminatory access to their DA database listings to all competitors including third-party database vendors and shall provide access by readily accessible tape or electronic format to be provided in a timely

fashion upon request with the determination of appropriate cost recovery for the preparation and delivery of the information to be addressed in the OANAD proceeding.

9. The Administrative Law Judge is directed to issue a procedural ruling calling for comments on whether to make existing directory access rates provisional and to establish a memorandum account to keep track of billings for access to directory databases for the purpose of truing up the charges once final rates are determined in the OANAD proceeding.

10. CLCs shall be allowed a two-page limit in Pacific's and GTEC's directory informational listings to provide key information regarding the CLC's offered services and what the CLC's local calling area is.

11. LECs' charges for CLC's inclusion in the customer guide pages of their directories shall be based on the LECs' cost to provide their own informational listings.

12. Issues relating to competitive access to telecommunications directory information designated for consideration in I.90-01-033 (Customer List OII), shall be transferred into this proceeding effective immediately. This order is effective today.

Dated January 23, 1997, at San Francisco, California.

P. GREGORY CONLON
President
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
RICHARD A. BILAS
Commissioners