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September 3, 1998

Memorandum of Ex Parte Communication

ORIGINAL

Ms. Magalie Salas
Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Dear Ms. Salas:

Re: *CC Docket No. 96-262 - Access Charge Reform*
CC Docket No. 94-1/- Price Cap Performance Review for
Local Exchange Carriers

On Thursday, September 3, 1998, representatives of SBC Communications, Inc. (SBC) met with members of the Commission's Competitive Pricing Division. Attending from the Competitive Pricing Division were Mr. Jay Atkinson, Mr. Aaron Goldschmidt, Mr. Rich Lerner and Ms. Tamara Preiss. Attending on behalf of SBC were Mr. David Hostetter, Mr. Paul Zacher and the undersigned

The purpose of the meeting was to provide an overview of the pricing flexibility within the states served by SBC's local exchange companies. The attached written materials were distributed and discussed during the meeting.

We are submitting the original and one copy of this Memorandum to the Secretary in accordance with Section 1.1206(b)(2) of the Commission's rules.

Please stamp and return the provided copy to confirm your receipt. Please contact me at (202) 326-8889 should you have any questions

Sincerely,

A handwritten signature in cursive script, appearing to read "Jay Bennett", written in black ink.

cc: J. Atkinson, A. Goldschmidt, R. Lerner, T. Preiss (w/o attachment)

SBC Communications, Inc.

State Pricing Flexibility

September 3, 1998

Pricing Flexibility Not Related to Service Category

- **Customer Specific Pricing** (Contract Pricing with price minimum based on Incremental Unit Costs or established cost floors)
 - Arkansas
 - All Business Services
 - Kansas
 - Central Office Based PBX Service and High Speed Private Line Services, Special Access
 - Other Services deemed “Competitive by PUC”
 - Missouri
 - Central Office Based PBX Service, Private Line Services, Special Access
 - Oklahoma
 - Central Office Based PBX Service, High Capacity Private Line, ISDN Primary Rate Interface and Special Access
 - Texas
 - High Speed Private Line, Central Office Based PBX (>200 Stations), Billing & Collection Service, ISDN Primary Rate Interface (5 Or More), Select Data (31 or more of Volume Package), and Special Access
 - California
 - All Category II and Category III Services (defined @ page 7)
 - Nevada
 - Central Office based PBX, High Capacity Private Line and Custom Networks

- **Volume and/or Term Pricing (Specified per Tariff)**
 - Arkansas
 - Intellinumber, Area Wide Networking, Disaster Routing, Intelligent Redirect, ISDN-basic, Digital Loop, DID, Frame Relay, Analog PBX, Customer Billing Reports, ISDN Primary Rate Interface, Select Video, IntraLata Long Distance, Central Office Based PBX, 800 Service
 - Kansas
 - Intellinumber, Area Wide Networking, Disaster Routing, Intelligent Redirect, ISDN-basic, Digital Loop, DID, Frame Relay, Customer Billing Reports, ISDN Primary Rate Interface, Select Video, IntraLata Long Distance, Central Office Based PBX, 800 Service
 - Missouri
 - Intellinumber, Area Wide Networking, Disaster Routing, Intelligent Redirect, ISDN-basic, Digital Loop, Frame Relay, Customer Billing Reports, ISDN Primary Rate Interface, Select Video, IntraLata Long Distance, Central Office Based PBX, 800 Service
 - Oklahoma
 - Intellinumber, Area Wide Networking, Disaster Routing, Intelligent Redirect, ISDN-basic, Digital Loop, DID, Customer Billing Reports, ISDN Primary Rate Interface, Select Video, Central Office Based PBX, 800 Service, Megalink I & II
 - Texas
 - Intellinumber, Area Wide Networking, Disaster Routing, Intelligent Redirect, ISDN-basic, Digital Loop, Customer Billing Reports, ISDN Primary Rate Interface, Select Video, IntraLata Long Distance, Central Office Based PBX, 800 Service, Megalink I & II
 - California
 - ISDN Primary Rate Interface, IntraLATA Long Distance, Residential Optional Plans, Central Office Based PBX, 800 Service, allowed
 - Nevada
 - ISDN Primary Rate Interface, IntraLATA Long Distance, Central Office Based PBX, 800 Service

- **Promotions** (Temporary Financial Incentive to Purchase)
 - State Regulatory Notification
 - Arkansas - 1 day prior
 - Kansas - 20 days prior
 - Missouri - 10 to 30 days prior
 - Oklahoma - 30 days prior
 - Texas - 21 days prior
 - California - 5 days or less
 - Nevada - 1 day prior
 - Promotion Period (Length of promotion)
 - Arkansas, Kansas, Missouri, Oklahoma, Texas
 - No specific limitations
 - California and Nevada
 - Initial promotion period limited to 120 days with 120 day extension permissible
 - Consecutive Promotions (Repeat Promotion without interruption)
 - Arkansas, Kansas, Missouri, Oklahoma, Texas
 - No specific limitations
 - California & Nevada
 - For Category II services a stand down (no promotions) period is required following completion of the promotion

Competitive
Service Classifications

Arkansas

Group 1
Group 2

Kansas

Basket I
Basket II
Basket III
Sub-Basket III

Missouri

Basic
Non-Basic

Oklahoma

Not Applicable

Texas

Basic
Discretionary
Competitive

California

Category I
Category II
Category III

Nevada

Essential
Discretionary
Competitive

Services or Service Groups by Competitive Classification

Arkansas

Group 1

Local Exchange Service
Touch-Tone Calling Service
Switched Access Service

Group 2

All Other Tariffed Services

Kansas

Basket I

Local Exchange Services
Optional Local Calling Plans
Touch-Tone Service
Lifeline Service

Basket II

Switched Access Service

Basket III

All Other Tariffed Services

Sub-Basket III

Competitive Services

Missouri

Basic

Local Exchange Services
Switched Access Service

Non-Basic

All Other Tariffed Services

Services or Service Groups by Competitive Classification

Texas	California	Nevada
<p data-bbox="607 382 670 403">Basic</p> <p data-bbox="435 437 784 667">Local Exchange Service, Touch-Tone, Coin Access, Trap/Trace, Switched Access, CLEC Interconnection, EAS (Mandatory), Mobile Interconnection, Directory Assistance, Pre-sub IntraLATA Long Distance</p>	<p data-bbox="1030 382 1151 403">Category I</p> <p data-bbox="903 437 1252 611">Network Connection Charge (NIC), Colocation, Public Policy Telephones, Switching Portion of Switched Access, E911, CNSs, BSEs, Multi-line Call Detail, Resale Services</p>	<p data-bbox="1446 382 1548 403">Essential</p> <p data-bbox="1353 437 1707 526">Local Exchange Service, Access Service, Private Line Service, and other tariffed services.</p>
<p data-bbox="564 731 713 751">Discretionary</p> <p data-bbox="435 785 784 987">Pre-sub IntraLATA Long Distance (with 2 pic Equal Access), Operator Services, Custom Calling, Call Control Options, C.O. Based PBX, Billing & Collections, ISDN, New Services</p>	<p data-bbox="1026 731 1151 751">Category II</p> <p data-bbox="903 785 1252 1111">Local Exchange Service, Private Coin Access, Directory Assistance (local&IntraLATA), Misc. Svc., Custom Calling, Call Control Options, Billing, C.O. Based PBX, Operator Services, FX, FSO, EAS, OCPs, WATS, 800, PBX Trunks, Special Access, Hi-speed PL, Inf. Access, Local Transport, ISDN, Inside Wire Maintenance, SMDS, Frame Relay, ATM Cell Relay</p>	<p data-bbox="1425 731 1571 751">Discretionary</p> <p data-bbox="1353 785 1707 872">Custom Calling 2000 Features, OCPs, Express Call Completion, ISDN Primary Rate Interface</p>
<p data-bbox="573 1175 707 1195">Competitive</p> <p data-bbox="435 1219 784 1364">WATS, 800, Foreign Exchange, Private Line, Special Access, Public Telephone Service, Paging, IMTS, 911 Premises Equipment, Speed Dialing, Three-way Calling,</p>	<p data-bbox="1019 1175 1159 1195">Category III</p> <p data-bbox="903 1219 1252 1345">Voice Mail, Call Mgmt., Electronic Messaging, Public Packet Switching, Directory Advertising, Simple Inside Wire Installation</p>	<p data-bbox="1435 1175 1569 1195">Competitive</p> <p data-bbox="1353 1219 1707 1345">C.O. Based PBX, Custom Calling Services, Yellow Pages, Frame Relay, Inside Wire, Voice Messaging</p>

Requirements for Change of Service Category

- Arkansas and Oklahoma
 - Not applicable
- Kansas
 - Number of Alternate Providers
 - Type of Alternate Provider
 - Substitutable Services
 - Comparable Products
 - Availability of Competitive Services
- Missouri

Services shall be classified as competitive in any exchange where an alternate local exchange provider has been certified under section 392.455 and has been providing basic local exchange service for at least 5 years.
- Texas
 - Meet Competitive Safeguards
 - Meet Public Interest
 - Alternative Facility Based Provider (available to 60% Or more of served access lines)
 - No substantial barriers to market entry
 - Must not have market power to control price
- California
 - Must demonstrate lack of significant market power and requires formal application with PUC
- Nevada
 - Clear and convincing evidence that the affected service is competitive

Service Category Related Pricing Flexibility

- **Arkansas & Oklahoma**
 - Not applicable
- **Kansas**
 - Basket I
 - Services may be rate re-balanced within the basket
 - Services within the basket are subject to Price Cap Formulas in the aggregate
 - Basket II
 - Services are required to be in parity with Interstate
 - Basket III
 - Zone Pricing may be implemented (different prices for different exchanges or groups of exchanges)
 - Services within the Basket are subject to Price Cap Formulas in the aggregate. Sub-Basket III services are not included in the Price Cap Formula for Basket III
 - Competitive Sub-Basket of Basket III
 - Flexible Zone Pricing (within price ceiling and price floor)
 - Individual Customer Pricing
 - Commission may price deregulate a given service in given geography

- Missouri
 - Basic Services
 - Capped at existing rates until January 1, 2000
 - Subject to Price Cap formula for subsequent increases
 - Non-Basic Services
 - Prices capped at existing rates until January 1, 1999. After this time, prices may be increased at a level not to exceed 8% annually
 - Competitive
 - Services deemed “Competitive” are subject to increases at the discretion of the LEC with LRIC as the price floor.

- Texas
 - Basic
 - Prices are capped until September 1999
 - Discretionary
 - Prices may be adjusted between the price ceiling and LRIC (price floor)
 - Price ceiling is price in effect at time of September 1995
 - Price changes subject to meeting Competitive Safeguards
 - Prices can be adjusted upward a maximum of 10% per year
 - Competitive
 - No Price Ceiling exists, only a price floor at LRIC
 - Price changes subject to meeting Competitive Safeguards

- California
 - Category I
 - Price Change only through Commission order.
 - Category II
 - Prices can be moved within a floor and ceiling. Price increases are effective on 30 days notice, price decreases on 5 days notice.
 - Category III
 - Prices can be moved between a floor and the ceiling at the company's discretion. Changes are effective on one days notice.
 - Maximum Prices can be increased with written notification (Advice Letter)
 - Become effective in 5 days if increase is 5% or less
 - Become effective in 30 days if greater than a 5% increase
- Nevada
 - Essential
 - Basic Sub-Basket (Basic Exchange Service)
 - Prices capped through 2001 (alternative regulation plan expires)
 - Prices can be decreased without formal PUC approval up to 10%
 - Prices can be decreased with formal PUC approval at levels greater than 10%
 - Essential-Other
 - Prices can be moved between the ceiling and floor price without formal PUC approval. Such price changes must be revenue neutral to the LEC (within the Essential Services category)
 - Increases to any given product are limited to 20% for the period of the alternative regulation plan
 - Discretionary
 - Prices can be moved between the ceiling and floor upon filing with the PUC (ten days notice)
 - Competitive
 - Prices can be changed without regulatory approval. Reasonable customer notification is required

23.108. Reclassification of Telecommunications Services for Electing Incumbent Local Exchange Carriers (ILECs).

- (a) **Purpose.** The provisions of this section:
- (1) establish the minimum criteria and standards for reclassifying a basic network service as a discretionary service or competitive service; or a discretionary service as a competitive service, pursuant to the Public Utility Regulatory Act (PURA) §58.024; and
 - (2) to establish the procedures to be followed in petitioning for reclassification.
- (b) **Definitions.** The following words and terms when used in this section shall have the following meaning unless the context clearly indicates otherwise:
- (1) **Basic network services (BNS)** — Those services as defined in PURA §58.051, and any other service the commission subsequently categorizes as a basic network service.
 - (2) **Competitive services (CS)** — Those services as defined in PURA §58.151, and any other service the commission subsequently categorizes as a competitive service.
 - (3) **Discretionary services (DS)** — Those services as defined in PURA §58.101, and any other service the commission subsequently categorizes as a discretionary service.
 - (4) **Electing ILEC** — An electing ILEC is an incumbent local exchange company that has filed the notification of election referenced in PURA §58.021.
 - (5) **Exchange area** — That definition given in §23.3 of this title (relating to Definitions).
 - (6) **Facilities-based provider** — A telecommunications provider that provides telecommunications services using facilities that it owns or leases or a combination of facilities that it owns and leases, including unbundled network elements.
 - (7) **Incumbent local exchange company (ILEC)** — That definition given in §23.3 of this title.
 - (8) **Reclassification area** — The geographic area within the electing ILEC's territory, consisting of one or more exchange areas, for which it seeks reclassification of a service.
- (c) **Application.** This section applies to electing ILECs.
- (d) **General standards for reclassification of a service.** The following conditions must be satisfied in order to reclassify a service:
- (1) **Prerequisite for reclassification of a service.** The commission may not reclassify a service until each competitive safeguard prescribed by PURA Chapter 60, Subchapters (B) through (H), is fully implemented.
 - (2) **Designation of reclassification area.** An electing ILEC must designate the exchange areas for which it is seeking to reclassify each service. A reclassification area must contain the entire territory of each exchange area designated.
 - (3) **Identification of services to be reclassified.** An electing ILEC must identify each service which it is seeking to reclassify and specify, for each service, whether the service is for residential lines, business lines, or both.
 - (4) **Public interest standard.** The reclassification of the service is just and reasonable, is not unreasonably preferential, prejudicial, or discriminatory, or predatory or anti-competitive, and is in the public interest.
 - (5) **Rate changes.** Rate changes shall be contemplated by the commission, in a separate proceeding, after reclassification has occurred.
- (e) **Standards for reclassification of a basic network service as a discretionary service.** In addition to meeting the requirements in subsection (d), the following conditions must be satisfied in order to reclassify a basic network service as a discretionary service:
- (1) The service is not necessary to complete a telephone call; and
 - (2) Public policy determines that the service does not need to remain in a basic network service classification.

- (f) **Standards for reclassification of a basic network service or discretionary service as a competitive service.** In addition to meeting the requirements in subsection (d), the following conditions must be satisfied in order to reclassify a basic network service as a competitive service or to reclassify a discretionary service as a competitive service:
- (1) There is an alternative facilities-based provider offering the same, equivalent, or substitutable service at comparable rates, terms, and conditions in the reclassification area;
 - (2) At least 60% of access lines of the type, either residential, business, or both, for which the service is provided that are located in the reclassification area have access to alternative, facilities-based providers;
 - (3) Substantial barriers to entry do not exist for the relevant market;
 - (4) The existing competitors have or can easily obtain additional capacity, or new competitors may easily enter the market in response to an increase in price of the electing ILEC's rates; and
 - (5) The electing ILEC does not have market power sufficient to control, in a manner that is adverse to the public interest, the price of the service in the reclassification area.
- (g) **Requirements for notice and contents of the application in compliance with this section.**
- (1) **Notice of Application.** The electing ILEC shall provide direct notice to all Certificate of Convenience and Necessity, Service Provider Certificate of Operating Authority and Certificate of Operating Authority holders offering service in the reclassification area and direct notice to all the ILEC's customers in the reclassification area. The notice shall include a description of the requested reclassification, the service, the proposed rates, the reclassification area, other terms of the service, the types of customers likely to be affected if the application is approved, the proposed effective date for the application, the following language: "Persons who wish to comment on this application should notify the commission by (specified date, 10 days before the proposed effective date), and any other item required by the presiding officer. Requests for further information should be mailed to the Public Utility Commission of Texas, P. O. Box 13326, Austin, Texas 78711-3326, or you may call the Public Utility Commission's Office of Customer Protection at (512) 936-7120. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136."
 - (2) **Contents of application for each electing ILEC seeking a service reclassification.** In addition to the commission's filing requirements, one copy of the application shall be delivered to the Office of Regulatory Affairs and one copy shall be delivered to the Office of Public Utility Counsel. The application shall contain the following:
 - (A) A showing by the electing ILEC that the competitive safeguards in PURA, Chapter 60, Subchapters (B) through (H) have been met;
 - (B) For each exchange in the reclassification area, a description of the reclassification sought, the service(s) and the rates, terms, and conditions under which the service(s) is currently provided and how the proposed reclassification of the service(s) is just and reasonable and is not unreasonably preferential, prejudicial, or discriminatory, or predatory or anti-competitive;
 - (C) A description of the reclassification area, specifying the exchange area or areas, for which the reclassification is requested;
 - (D) The proposed effective date of the reclassification;
 - (E) A statement detailing the method and content of the notice, if any, the utility has provided or intends to provide to the public regarding the application and a brief statement explaining why the electing ILEC's notice proposal is reasonable and that the electing ILEC's notice proposal complies with applicable law;
 - (F) A copy of the text of the notice, if any;
 - (G) A showing that the relevant standards required under subsection (e) or (f) of this section, whichever is applicable, have been satisfied for each exchange in the reclassification area:
 - (i) An estimate of the number and size of alternative facilities-based providers offering the service to be reclassified for each exchange in the reclassification area;

needed for the fund for the next calendar year and the recommended percentage rate to be assessed on intrastate retail revenues not later than 120 days before the beginning of the next calendar year. The commission will issue an order regarding the report filed by the administrator pursuant to this section within 90 days after the date on which the report is filed.

7. The commission may:

(a) For the initial year of operation of the fund for universal service, specify different deadlines for the filings pursuant to NAC 704.6804 to 704.68056, inclusive; and

(b) Grant a deviation or waiver from the deadlines for the filings pursuant to NAC 704.6804 to 704.68056, inclusive, to the extent it determines that the deviation or waiver is in the public interest.

(Added to NAC by Pub. Service Comm'n, eff. 10-25-95)

Providers of Telecommunication Services: Classification

and Provision of Services of Provider of

Last Resort of Basic Service

704.6806 Applicability. The provisions of NAC 704.6806 to 704.6808, inclusive, apply to a provider of last resort of basic service in any exchange.

(Added to NAC by Pub. Service Comm'n, eff. 10-25-95)

704.68062 Application for approval to classify or reclassify service.

1. Any person may apply to the commission to classify a new service or to classify or reclassify an existing service, provided by a provider of last resort of basic service, as essential, discretionary, competitive, or deregulated. The service to be classified or reclassified must be provided in a market whose size is no smaller than a wire center, and no larger than the entire area of service of the provider. The applicant has the burden of demonstrating that the classification or reclassification will not unfairly or unreasonably impede competition. Except as otherwise provided in subsection 2, the application must:

(a) Fully identify and describe the service proposed to be classified or reclassified, including the:

(1) Technical and common names of the service;

(2) Number of units of the service currently provided within the market for which classification or reclassification is sought;

(3) Facilities and equipment used in providing the service;

(4) Nature and extent of the market in which the service is or will be provided, including the type of subscribers for that service, the source of revenues for that service and the geographic regions in which the service is or will be provided; and

(5) Current price which a subscriber is charged for that service.

(b) Specify the proposed classification of the service and provide all facts necessary to support that classification including facts to support the findings required in NAC 704.68068 to 704.68076, inclusive, as appropriate.

- (c) Specify the specific market area for which the classification or reclassification is being sought.
- (d) Specify a method of accounting for the service to be classified or reclassified which satisfies the requirements of NAC 704.68492 for large providers of last resort of basic service or NAC 704.68066 for small providers of last resort of basic service, as appropriate.
- (e) For a service proposed to be reclassified as competitive or discretionary which does not include a component classified, or proposed to be classified as an essential service, provide an analysis which demonstrates that the price which the reclassified service will recover is equal to or greater than the total service long-run incremental cost associated with that service.
- (f) If the application proposes to reclassify a service as a competitive or discretionary service that includes a component classified, or proposed to be classified, as an essential service, provide information sufficient to demonstrate that the price for the service covers the combined tariffed rates for all components of the service classified, or proposed to be classified, as an essential service plus the total service long-run incremental cost of those components which are not classified, or proposed to be classified, as an essential service. If there is a substantial difference in cost between providing a component of essential service to a competitor and providing the same component to itself, the provider may, upon the approval of the commission, impute the cost of providing that essential service to itself to reflect the difference in cost. The provider may make such an imputation upon a clear and convincing demonstration to the commission:
- (1) Of the existence and substantiality of the difference in cost;
 - (2) That the difference in cost is not the result of discriminatory and preferential treatment in the design of its network for the provision of essential service components; and
 - (3) That the imputation of the cost will not unfairly or unreasonably impede competition.
- (g) If the application proposes to classify a service as a discretionary service, show that the cost which is incurred directly and indirectly from the provision of each unit of that service, including the price of components for essential services as described in paragraph (f) of this subsection, where appropriate, have been used to establish the minimum price which must be charged for each unit of service.
- (h) If the application proposes to classify a service as a competitive or deregulated service, include a plan which sets forth the procedures which the provider will use for the protection, use, sharing, and issuance of information regarding its competitors and customers and the services they request or receive. The procedures must include:
- (1) The terms and conditions governing access by the provider and other persons to that information if the information is used to promote or provide competitive services; and
 - (2) The manner in which the provider will obtain authorization from the customer to release the information.
- (i) If the application proposes to classify a service as a deregulated service, include the information and documentation which must be filed with the annual report pursuant to subsection 1 of NAC 704.68078.
- (j) If the application proposes to classify a service as a discretionary or competitive service, include the information and documentation which must be filed pursuant to subsection 2 of NAC 704.68078 if the provider is a large provider of last resort of basic service with 50,000 or more access lines, or pursuant to NAC 704.68072 if the provider is a large provider of last resort of basic service with less than 50,000 access lines or a small provider of last resort of basic service.
- (k) Include plans which set forth safeguards to ensure that the provider will not unfairly or unreasonably impede competition.

(l) If the application proposes to classify a service as a discretionary service, specify the proposed minimum and maximum rates to be charged if the application to classify the service as discretionary is approved.

2. An application to classify a service that is filed by a person other than the provider of the service is exempt from the requirements set forth in paragraphs (d) to (k), inclusive, of subsection 1.

3. As used in this section, "wire center" means the geographic area encompassing all customers who may be served from a building which contains one or more central offices of a provider of last resort of basic service. A wire center is part of an exchange.

(Added to NAC by Pub. Service Comm'n, eff. 10-25-95)

704.68064 Time for action upon application. The commission will act upon an application filed pursuant to NAC 704.68062 within 90 days after it is filed unless a protest is received from:

1. The staff of the commission;
2. A person given permission to intervene by the commission;
3. The advocate for customers of public utilities; or
4. The provider of last resort of basic service who is providing the service to be classified or reclassified.

If a protest is filed, the commission will act upon an application within 180 days after the date on which the application is filed.

(Added to NAC by Pub. Service Comm'n, eff. 10-25-95)

704.68066 Maintenance of separate accounting records for competitive and deregulated services.

1. A provider shall identify and keep separate all accounting records, pursuant to the Uniform System of Accounts, for the plant, expenses and all other activities that relate to the provision of a service that has been classified as competitive or deregulated.

2. The commission will not classify a service as deregulated or competitive if the accounting records which relate to that service are not kept separate from the accounting records which relate to the regulated operations of the provider.

(Added to NAC by Pub. Service Comm'n, eff. 10-25-95)

→ **704.68068 Classification of service as discretionary.** The commission will classify a service as discretionary if it finds that:

1. The service is not a basic service or is not necessary to the provision of a basic service;
2. The service is not necessary for other providers of telecommunication service, including hotels, motels, hospitals, or other similar aggregators of telecommunication services for transient customers, to connect their transient customers with the public switched network;
3. The service is not reasonably necessary to the operations of a majority of subscribers to the service; and
4. Based on its consideration of all other matters considered to be relevant by the commission, the service is deemed to be of a discretionary nature.

(Added to NAC by Pub. Service Comm'n, eff. 10-25-95)

704.6807 Classification of service as competitive.

1. An applicant who requests the commission to classify a service as competitive shall file the following information:

- (a) The number of alternative providers of the service, or a comparable service, available in the relevant geographic market;
- (b) The percentage of the households or businesses, or both, in the relevant geographic market which have the service, or a comparable service, available from alternative providers; and
- (c) The percentage of the market share of the relevant geographic market held by alternative providers of the service and comparable services.

2. To determine if a service may be classified as competitive, the commission will consider the following factors:

- (a) Whether a comparable service is available;
- (b) Whether subscribers of the service to be classified as deregulated may reasonably obtain that service from a provider other than a regulated provider of the service;
- (c) The ability of the regulated provider to determine or control the price of the service;
- (d) The prices, terms, conditions, and availability of similar competitive and alternative services;
- (e) The need for approval by the commission of the price of the service to be classified as deregulated;
- (f) The ability of other providers of the service to enter the market to provide the service;
- (g) The likelihood that other providers of the service will enter the market;
- (h) The suitability of substituting a comparable service for the service to be classified as deregulated;
- (i) The share of the market for the service held by competitors providing alternative services;
- (j) The extent of the entry into the market by providers of alternative or competitive services;
- (k) The extent to which competition exists in the geographic area for which a certificate of public convenience and necessity is issued to a provider to provide the service;
- (l) Whether the service is reasonably necessary to the operations of a subscriber to the service; and
- (m) Any other factors considered to be relevant by the commission.

3. In making a determination, it is not necessary for the commission to find in favor of a party on a majority of the factors set forth in subsection 2, except that the commission will classify a service as competitive if:

- (a) The service, or a comparable service, is available from at least two alternative providers in the relevant geographic market;
- (b) The service, or a comparable service, is available from alternative providers to more than 50 percent of the households or businesses, or both, in the relevant geographic market; and

(c) All alternative providers of the service and comparable services have a market share of the relevant geographic market of 15 percent or more if the relevant geographic market is an exchange or larger, or a market share of the relevant geographic market of 30 percent or more if the relevant geographic market is smaller than an exchange.

4. For the purposes of this section, the commission will determine a market share by using one of the following measurements, as deemed appropriate by the commission:

(a) The number of households or businesses, or both, in a relevant geographic market supplied with a service by a provider will be divided by the total number of households or businesses, or both, in the same relevant geographic market supplied with the service and all comparable services by all providers; or

(b) The number of units of the service supplied to households or businesses, or both, in a relevant geographic market by a provider will be divided by the total number of units of the service and all comparable services supplied to households or businesses, or both, in the same relevant geographic market by all providers of these services.

5. As used in this section:

(a) "Alternative provider" means an entity that is not affiliated with or under the common control with another alternative provider or with a provider of last resort. As used in this paragraph, "affiliation" and "control" have the meaning ascribed to them in 47 C.F.R. Part 32.9000, as that section exists on October 25, 1995.

(b) "Relevant geographic market" means the geographic area for which the classification of a service as competitive is sought pursuant to NAC 704.68062.

(Added to NAC by Pub. Service Comm'n, eff. 10-25-95)

704.68072 Classification of comparable service as discretionary or competitive based on comparable services offered.

1. If a small provider of last resort of basic service, or a large provider of last resort of basic service with less than 50,000 access lines regulated pursuant to NAC 703.2501 to 703.2688, inclusive, 703.2691 and 703.2711, applies to have a service classified as discretionary or competitive, the commission may, in lieu of the factors specified in NAC 704.68068 and 704.6807, consider whether a comparable service offered by another provider of last resort of basic service has been classified as discretionary or competitive. If the applicant can demonstrate that a comparable service provided by a provider of last resort of basic service has been classified as discretionary or competitive, and that it is reasonable to apply that classification to service provided by the applicant, the requested classification may be authorized. The applicant has the burden of demonstrating that the classification will not unfairly or unreasonably impede competition.

2. A small provider of last resort of basic service and a large provider of last resort of basic service with less than 50,000 access lines regulated pursuant to NAC 703.2501 to 703.2688, inclusive, 703.2691 and 703.2711 shall include in its regulated results of operation:

(a) All revenues and costs associated with services related to inside wiring pursuant to NAC 704.681 to 704.683, inclusive, and yellow pages; and

(b) All revenues and cost associated with services classified as discretionary or competitive pursuant to this section.

(Added to NAC by Pub. Service Comm'n, eff. 10-25-95)

704.68074 Classification of service as deregulated. A service will be classified as a deregulated

On December 20, 1995, the CPUC issued a decision that modified the price cap formula for Pacific Bell. The decision does away with general revenue reductions (that would have resulted from the efficiency factor exceeding the inflation factor) for the next three years, i.e., through 1998. This action has been referred to as a "freeze" on Category I and II prices. In this context, the phrase "freeze" is accurate. Category I prices and Category II price ceilings were frozen at the tariff rates in effect at the time the decision was adopted, and will not be modified due to the relationship between inflation and efficiency targets. The flexibility to move between the new price ceiling and the price floor remains in effect for Category II prices. It is important to note that Pacific Bell is not precluded from proposing service specific price changes for Category I nor from proposing increases to Category II price ceilings using the existing application process.

Establishing and changing categories

Categories for new services are established as part of the initial Advice Letter process. Changing the category of an existing service requires a formal application. **The Commission has established a check list of points that should be addressed in order to demonstrate the lack of significant market power on the part of the LEC before it will approve Category III treatment.** These include:

- Identification of substitutable services, their rates, terms and conditions, and studies regarding the cross elasticity of demand.
- LEC market share, including the combined market share of the LEC and an affiliate if the affiliate offers a competitive service.
- Ease of entry and exit including estimates of the capital investments necessary to compete an the number of competitors, their size and growth capability, and competitive trends.
- The status of facilities ownership and of LEC unbundling efforts..
- The LEC return on equity and the rate of return on marginal investment.
- Competitor's earnings to the extent available.

Other CPUC imposed safeguards

Affiliate Transactions: Transfer pricing rules for non-tariffed services provided by Pacific for affiliates require that they be priced at the **higher** of fully distributed cost **plus 10%** or market. A market study is required whenever Pacific provides more than \$100,000 annually in a particular service to all affiliates in the aggregate. Services provided to Pacific by affiliates are priced at the **lower** of fully distributed cost or market. Successful referrals from Pacific to an affiliate must be compensated for by a 13% sales referral fee in addition to the labor costs accounted for under affiliate transactions. Transfer of personnel from Pacific to an affiliate triggers a "fee" equal to 25% of the individuals annual salary. Proprietary information given to an affiliate must be tracked and valued in order to compensate Pacific.

Transfer or leasing of assets: Section 851 of the Public Utilities Code requires Commission approval prior to selling or leasing any asset necessary of useful in the performance of a utilities duties to the public. The process typically takes between nine and eighteen months. If it is determined that an asset is not "necessary or useful" and it is being transferred to an affiliate, the Commission must be notified at least thirty days in advance if the value exceeds \$100,000.

Summary of Pacific Bell's
Category I, II, III, Miscellaneous & Unregulated Services

	<u>Basis</u>
Category I	
Basic Monopoly services:	
Network Connection Charge (NIC)	D.96-03-020
Collocation Arrangements	D.96-03-020
Public Policy Payphones	
(OII Pending re: Status of Public Policy Payphones)	D.96-03-020
Switching Portion of Switched Access	D.96-03-020
E-911 Service	D.89-10-031
Basic Service Elements	
(& other Open Network Architecture Services)	D.89-10-031
Pacific's Multiple Line Call Detail Service	D.93-11-014
All Ordered Wholesale (i.e., Resale) Services	D.96-03-020
CLC - Remote Call Forwarding	D.96-03-020

Category II

Discretionary or partially competitive services

Basic Exchange Service	D.96-03-020
Customer-Owned Pay Telephone (COPT) Access Line	D.96-03-020
IntraLATA Directory Assistance	D.96-03-020
Local Measured Usage	D.96-03-020
Zone Unit Measurement (ZUM)	D.96-03-020
Extended Area Service	D.96-03-020
Foreign Exchange Service	D.96-03-020
Foreign Prefix Service	D.96-03-020
Directory Listing Service	D.94-09-065
IEC directory assistance	D.94-09-065
Operator Services (O+)	D.94-09-065
Operator Services (O-)	D.94-09-065
IntraLATA Message Toll (Direct Distance Dialed or DDD)	D.94-09-065
Optional Calling Plans (OCPs)	D.94-09-065
Custom 8 (800, 888, 877)	D.94-09-065
WATS	D.94-09-065
Operator-Handled Calls (OPH)	D.94-09-065
Calling Card	D.94-09-065
Custom Calling/Vertical Services	D.89-10-031
Centrex Features	D.89-10-031
Centrex/PBX Loops	D.94-09-065
PBX Trunk Line Service	D.94-09-065
Special Access	D.94-09-065
High Speed Digital Private Line	D.89-10-031
Information Access Services	D.89-10-031
High Speed Special Access	D.89-10-031
Billing & Collection services (except Multiple Line Call Detail Service & Private Label Billing)	D.89-10-031
Local Transport (except the Network Interconnection Charge [NIC])	D.96-03-020
ISDN (PRI & BRI)	D.96-03-020
Simple Inside Wire Maintenance	D.90-06-069
SMDS	
Frame Relay Service	T15408
ATM Cell Relay	T15969

Category III

Preempted of Fully Competitive services

Private Label Billing Service	Oct. 1997 (new product)
Voice Mail	
• Message Center (Residence)	D.89-10-031
• Pacific Bell Voice Mail (Business)	D.89-10-031
Pacific Bell Call Management	D.89-10-031
Pacific Bell Connection (Electronic Messaging)	D.89-10-031
X.25 (Public Packet Switching)	D.89-10-031, D.90-05-045
Directory Assistance Listing Information (DALIS)	Dec. 1996 (new product)
Directory Advertising Services (Yellow Pages)	D.89-10-031
Simple Inside Wire Installation	D.89-10-031

Miscellaneous

Multimedia Products - Outside Sales
Training Services
Software sales

Unregulated

Semipublic Telephone Service	FCC Preempted - 96-128
Coin	FCC Preempted - 96-128
Joint Marketing of CPE	FCC Preempted-CPE
Communications Management Services	FCC Preempted-CPE
Vendor Alliance Program	FCC Preempted-CPE
Payphones	FCC Preempted-CPE
Fax Phone	FCC Preempted-CPE
DataCom - Video Teleconferencing	FCC Preempted-CPE
DataCom - LAN Integration	FCC Preempted-CPE
DataCom - Facsimile	FCC Preempted-CPE
DataCom - Desktop Video Conferencing	FCC Preempted-CPE
Inmate Pay Phone System	FCC Preempted-CPE
Caller ID CPE Alliance	FCC Preempted-CPE
Loaner Phone	FCC Preempted-CPE
Gel Cords	FCC Preempted-CPE
HiCap Premise Multiplexer	FCC Preempted-NCTE
One Way Paging	FCC Preempted - Wireless

SENATE SUBSTITUTE
FOR
SENATE COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 507

AN ACT

To repeal sections 386.020, 392.180, 392.200, 392.220, 392.410, 392.450, and 392.530, RSMo 1994, relating to the regulation of telecommunications companies, and to enact in lieu thereof fifteen new sections, relating to the same subject.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI, AS FOLLOWS:

1 Section A. Sections 386.020, 392.180, 392.200, 392.220,
2 392.410, 392.450, and 392.530, RSMo 1994, are repealed and
3 fifteen new sections enacted in lieu thereof, to be known as
4 sections 386.020, 392.180, 392.185, 392.200, 392.201, 392.220,
5 392.245, 392.246, 392.248, 392.410, 392.450, 392.451, 392.455,
6 392.475 and 392.530, to read as follows:

7 386.020. As used in this chapter, the following words and
8 phrases mean:

9 (1) "Alternative local exchange telecommunications
10 company", a local exchange telecommunications company certified
11 by the commission to provide basic or non-basic local
12 telecommunications service or switched exchange access service,
13 or any combination of such services, in a specific geographic
14 area subsequent to December 31, 1993.

15 (2) "Alternative operator services company", any
16 certificated interexchange telecommunications company which
17 receives more than forty percent of its annual Missouri
18 intrastate telecommunications service revenues from the provision

1 of operator services pursuant to operator services contracts with
2 traffic aggregators;

3 [(2)] (3) "Basic interexchange telecommunications
4 service", includes, at a minimum, two-way switched voice service
5 between points in different local calling scopes as determined by
6 the commission and shall include other services as determined by
7 the commission by rule upon periodic review and update;

8 [(3)] (4) "Basic local telecommunications service",
9 two-way switched voice service within a local calling scope as
10 determined by the commission[;] comprised of any of the following
11 services and their recurring and non-recurring charges:

12 (a) Multiparty, single line, including installation,
13 touchtone dialing, and any applicable mileage or zone charges;

14 (b) Assistance programs for installation of, or access to,
15 basic local telecommunications services for qualifying
16 economically disadvantaged or disabled customers or both,
17 including, but not limited to, lifeline services and link-up
18 Missouri services for low income customers or dual-party relay
19 service for the hearing impaired and speech impaired;

20 (c) Access to local emergency services including, but not
21 limited to, 911 service established by local authorities;

22 (d) Access to basic local operator services;

23 (e) Access to basic local directory assistance;

24 (f) Standard intercept service;

25 (g) Equal access to interexchange carriers consistent with
26 rules and regulations of the Federal Communications Commission;

27 (h) One standard white pages directory listing.

28 Basic local telecommunications service does not include optional