

C. The Text Of The PD Should Be Clarified To State That MBB Used For Imputation Purposes Is The MBB Used By Competitors In Providing The Competitive Service.

One issue which consumed a large amount of time in the IRD hearings was the issue of whether imputation should be based on the MBB used by the ILEC in providing the competitive service at issue, or the MBB used by the competitor. The Commission there decided that the MBB used by the competitor was the correct MBB. However, there are passages in the text of the PD and in COL 59 which refer to imputing the contribution of the MBB used by the ILEC.<sup>26</sup> These passages should be clarified to reflect the IRD decision, so that this issue is not inadvertently reopened.

D. The Commission Should Clarify That Existing Price Floors For Contracts Should Remain Effective Until New Price Floors Under This Decision Are Established.

Ordering Paragraph 10 states:

10. When proposing price floors in the future for services that have been newly recategorized as Category II services, or for customer-specific contracts or express contracts pursuant to the procedures outlined in D.94-09-065 (56 CPUC 2d at 238-242), Pacific shall use the price floor formula set forth in COL 71.<sup>27</sup>

The Ordering Paragraph leaves open the opportunity for gaming through protests filed on contracts using the new price floors. Through protests, Pacific's contracts could be placed in abeyance pending review and resolution of these protests. The Commission should not permit Pacific's contracting authority

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<sup>26</sup> PD, p. 186 (i.e., the volume-sensitive portion of a service's TSLRIC, plus the contribution from MBBs used to provide the service).

<sup>27</sup> See also *id.* at 186, 224 (COL 85).

to be interfered with where there are already price floors in place, as is the case, for example, with Centrex and toll. The Commission should add language to Ordering Paragraph 10 which keeps existing price floors in effect pending approval of the new price floors mandated by this decision.<sup>28</sup>

VI. THE ADDITIONAL COSTS PROPOSED FOR CERTAIN ELEMENTS SHOULD BE ADJUSTED TO IMPROVE THEIR ACCURACY.

A. Reasonable DSL Conditioning Prices Should Be Established And Made Subject To A Retroactive True-Up.

The PD correctly finds that it would be unfair to require Pacific to furnish DSL-capable loops that require conditioning without receiving some compensation for this work.<sup>29</sup> The PD therefore determines that Pacific should receive the ISDN non-recurring loop charge on loops that require conditioning and the basic 2-wire loop non-recurring charge for loops that require no conditioning. The PD is in error because, although it finds that some compensation is appropriate, the proposed prices actually provide Pacific with no compensation for conditioning. This occurs because the ISDN non-recurring charge is \$0.01 less than the 2-wire loop non-recurring charge. This error in the PD should be corrected by setting nominal prices for loop qualification and loop conditioning and making the prices subject to retroactive true-up once permanent prices are adopted.

Pacific also urges the Commission to add the adopted DSL loop prices to Appendices A and B or to create a separate new Appendix showing the adopted

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<sup>28</sup> This change is consistent with the PD's clear intention that it not disrupt the contracting flexibility granted to the ILECs in previous decisions, such as the portion of the IRD decision cited in O.P. 10 of the PD.

<sup>29</sup> PD, p. 94.

DSL loop recurring and non-recurring prices. The lack of any specific price reference can cause confusion as to the appropriate DSL loop recurring and non-recurring prices. For example, there is confusion in the industry as to whether the DSL loop recurring price is equal to the basic loop or ISDN loop recurring price when conditioning is required. Listed prices in the decision would eliminate any potential confusion.

B. DS-1 Port.

The PD defines the DS-1 Port by using the DS-1 Trunk Port as a surrogate. This definition of the DS-1 Port proffered by the other parties is recognizable to us only if it is the same thing as the switch portion of our "Supertrunk" offering. Using the DS-1 Trunk Port as a surrogate for costing purposes is acceptable for the Supertrunk switch functionality.

C. The Decision Incorrectly Calculates Costs For DS-3 Entrance Facilities Without Equipment Costs.

The PD proposes prices for DS-3 entrance facilities without equipment.<sup>30</sup> However, the PD takes the "without equipment" aspect too far. The standard industry definition of DS-3 entrance facilities without equipment only excludes the remote equipment at the customer location. The termination electronics at the central office is included. The PD incorrectly proposes to eliminate the equipment at both ends. This creates "dark fiber," not a DS-3 entrance facility. The decision needs to add back the central office equipment for

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<sup>30</sup> Id. at 89.

the UNE to function, consistent with the industry definition and Pacific's approved TSLRICs for similar special access services.<sup>31</sup>

D. The PD Incorrectly Calculates The Cost For A DLC Loop.

The PD calculates a price for a "DLC Loop."<sup>32</sup> This is error, since no DLC Loop was brought forward through the OANAD cost study process, and none exists in interconnection agreements. The DLC Loop should be deleted from the decision.

In addition, in calculating the cost of a DLC loop, the PD omits the electronics required between the 24 pairs of distribution cable and the feeder plant (that might be copper or fiber) to convert the 24 analog channels to a DS-1 signal.<sup>33</sup> It also includes copper costs when in fact this would be a fiber-fed element. The PD should omit this element entirely, but if it retains it, it should calculate the costs as follows:

This UNE is technology-dependent, requiring fiber feeder facilities, which is unique among the UNE's. Thus, costs for DLC should only be provided for loops with feeder greater than 12Kft and then where applicable. For the recurring cost portion, the Commission should start with the 2-wire voice-grade link. For the element labeled "per-voice line activated" on p. 4 of Appendix A, the distribution portion of the 2-wire voice-grade link should be used. For the "per Digital Facility" rate element on p. 4 of Appendix A, the Commission should use only the fiber

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<sup>31</sup> See p. TSLRIC 000006, DS-3 Service - With Terminal Equipment and DS-3 Service - Without Terminal Equipment.

<sup>32</sup> PD, pp. 88-9.

<sup>33</sup> Id.

portion of the feeder costs from the approved basic 2-wire link, to reflect 100% fiber occurrence. The loop electronics should also be adjusted to reflect 100% fiber occurrence. The combined fiber feeder and loop electronics results should be multiplied by 24 to include the required DS-1 level channels used with digital facilities.

For non-recurring costs, the Commission should start with the non-recurring cost for the 2-wire basic link, then adjust the work-group occurrence factor for the NOTG group to 100%, to reflect the need to involve that group each time a DLC loop would be provisioned.

E. The PD Sets An Incorrect Price For SS7 Link.

The PD shows the price for an SS7 link on a per-minute of use (MOU) basis.<sup>34</sup> However, SS7 links are billed per-circuit, not per-minute. The SS7 link price should be changed to agree with the dedicated transport prices shown on page 3 of the Appendix.

F. The Decision Does Not Reflect Prices For Multiplexing DS-0/DS-1 And DS-1/DS-3.

The PD adds prices for DCS capability, including multiplexing.<sup>35</sup> However, prices for multiplexing where a DCS is not used are still required. Prices for basic multiplexing need to be added using the adopted TELRICs.

In addition, the PD, without explanation, divides the adopted TELRIC prices for multiplexing by 24 circuits so that the CLEC is charged by the lower

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<sup>34</sup> Id. at Appdx. A, p. 4.

<sup>35</sup> Id. at Appdx. B, p. 4.

bandwidth circuit (DS-0) rather than the higher bandwidth circuit (DS-1). This is inconsistent with the fill assumptions in the adopted TELRIC studies and the interim price structure in the existing arbitrated agreements. When a CLEC orders multiplexing and connects the higher speed circuit, the multiplexing unit necessarily becomes dedicated to the CLEC, since the higher bandwidth circuit of a MUX can only go to one location. Charging by the lower speed circuit fails to recover the incurred costs. Pacific knows of no testimony in the record suggesting this change. The PD should be corrected to agree with the adopted TELRIC and arbitrated price structure.

G. The Decision Fails To Identify Non-Recurring Charges For Some Of The Additional UNEs Included In Appendix A.

Appendix A lists recurring charges for additional UNEs that did not have adopted recurring TELRICs.<sup>36</sup> Some of these additional UNEs have non-recurring prices shown in Appendix B. However, there are no associated non-recurring prices shown in Appendix B for unbundled loops provided over DLC, DS-1 switch port, and digital cross-connect (DCS).<sup>37</sup> The decision needs to specify the missing non-recurring prices. Above, we recommended non-recurring costs for DLC loops and DS-1 switch ports. For DCS, the Commission should start with the non-recurring cost for Pacific's Digital Cross-Connect Service DCS. The cost for that service should be used as the cost for the "initial" channel of the DCS UNE.

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<sup>36</sup> Id. at Appdx. A, p. 4.

<sup>37</sup> Non-recurring prices are not required for 800 and LIBD queries. Appdx. B already shows prices for voice-grade entrance facility at page 12, DS-3 entrance facility without equipment at page 11, multiplexing at page 4, and SS7 link at page 20.

"Additional" channels of that UNE appearing on the same service order would have these costs reduced by the travel time included in the cost of the initial channel.

## VII. TECHNICAL ISSUES.

### A. The Decision Reflects An Incorrect Price For Switched Usage Interoffice-Originating Setup.

Appendix A shows the price for interoffice-originating setup on a per-attempt basis.<sup>38</sup> Pacific cannot bill UNE switching at a per-attempt rate. Although the TELRIC results were stated as per-attempt, Pacific's TELRIC price proposal recognized the billing limitation and converted the per-attempt TELRIC to a per-call price. The PD needs to be corrected to convert the per-attempt price to a per-call price.

### B. The Decision Does Not Reflect A Price For 2-Wire Entrance Facilities.

Appendix A reports a price for 4-wire voice-grade entrance facilities,<sup>39</sup> but nowhere shows a value for 2-wire voice-grade entrance facilities. The AT&T arbitrated UNE price appendix lists both 2-wire and 4-wire voice-grade entrance facilities, with a price for 2-wire and a "to be determined" notation for 4-wire. Based on the objective in the decision to list UNE prices for all UNEs reflected in the AT&T and MCI agreements, the PD needs to state a price for a 2-wire entrance facility. We recommend that the price be the price for the 4-wire entrance facility, divided by two.

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<sup>38</sup> PD, Appdx. A, p. 2.

<sup>39</sup> Id. at 1. 4.

C. The Labeling Of Tandem Switching Should Be Changed To Avoid Confusion.

Appendix A shows prices under the heading "Tandem Switching (shared transport)."<sup>40</sup> This is nomenclature we created, but which has caused confusion in the industry. The heading should be changed to "Tandem Switching." The prices shown are for use of Pacific's tandem switch, which normally include associated charges for common transport, but not for shared transport. The shared transport prices are separately stated and already include an average occurrence of tandem switching. To avoid confusion, the reference to shared transport should be dropped from the tandem switching heading.

D. The Price Scenarios In Appendix C Are Incorrect And Should Be Changed To Avoid Confusion.

Appendix C shows how the non-recurring charges proposed by the PD should be applied using various scenarios. However, the charging reflected in Appendix C is inconsistent with Appendix B. A note at the bottom of each page in Appendix B indicates that non-recurring charges for connect and disconnect are applied separately at the time of occurrence. The price-outs in Appendix C apply both connect and disconnect charges at the time of the connect occurrence. Pacific assumes that Appendix B is correct and that Appendix C incorrectly applies both connect and disconnect charges. The price-outs in Appendix C should be corrected to avoid confusion.

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<sup>40</sup> Id. at 2.

**E. Price Scenario # 1 In Appendix C Is Not Correct.**

Appendix C Scenarios 1 and 1A incorrectly portray the relationship between the loop and the NID. The scenarios incorrectly show the NID as a separate item. The loop includes the NID and therefore a CLEC is not required to separately order the NID.<sup>41</sup>

**F. Price Scenario # 5 In Appendix C Is Not Correct.**

Appendix C Scenario 5 depicts the situation of a migration of an existing POTS line to an ISDN service. The price-out fails to reflect the charges incurred to change the loop from a basic loop to an ISDN loop. More importantly, the basic assumption that this scenario is a migration of an existing platform of network elements is incorrect. The requirement to change from POTS to ISDN breaks apart the UNEs connected in the POTS platform. The existing platform of network elements is a basic loop connected to a 2-wire voice-grade switch port. Once either element is changed, the existing connection of elements is disconnected. The correct characterization of this scenario is a connection of a stand-alone ISDN loop with the ISDN port UNE.

**G. Price Scenario # 6 In Appendix C Is Confusing, Misleading And Should Be Deleted.**

The presence of an EISCC in Scenario #6 suggests that it depicts an existing combination of UNEs in use by one CLEC that is migrating to a different CLEC. However, "migration" rates should only be allowed where the ILEC is one of

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<sup>41</sup> The only application of the UNE NID that Pacific is aware of where a NID might be separately ordered is the situation where the CLEC is providing its own loop but wants unbundled access to Pacific's NID in order to connect to the customer's inside wire. This is a different situation from that shown in Scenario #1.

the parties. Where a CLEC is the incumbent carrier, it is completely out of the CLEC's control whether the incumbent CLEC will disconnect the UNEs and break apart the existing platform of UNEs prior to the changeover. This Scenario should be deleted until rules regarding changeovers between CLECs can be established.

VIII. IMPLEMENTATION ISSUES: PACIFIC WILL NEED A REASONABLE AMOUNT OF TIME TO IMPLEMENT THE NEW UNE PRICES INTO ITS BILLING SYSTEMS.

The PD requires Pacific to substitute the OANAD UNE prices for all interim UNE prices reached through arbitration. Because they were individually negotiated, the billing for each interconnection agreement is programmed separately from the others. As a result, Pacific will require a reasonable amount of time to implement the 11,000 individual rate changes required by the new prices. The task is complicated by the fact that not all agreements and UNE prices are affected by the change. In addition, the decision will require Pacific to make changes to its billing program to implement adopted rate structure changes. For example, there will be a change from a single service order charge to a three-level charge structure, depending upon the ordering method used by the CLEC. There will also be changes to enable billing for a UNE platform migration. Pacific requests that new rates be made effective Oct. 4, 1999 which is the next scheduled date for billing program changes.

IX. CONCLUSION

The Commission should re-examine and revise its proposed UNE prices to reflect recent regulatory developments and the market conditions existing in the transport and usage markets. The Commission should also make the technical corrections recommended herein.

Dated at San Francisco, California, this 4th day of June, 1999.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Tim Dawson", with a long horizontal flourish extending to the right.

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**Pacific Bell's Proposed Revisions to May 10, 1999  
Draft Decision of ALJ McKenzie  
In OANAD (UNE Pricing Phase)**

unredacted contents of this CRD will be made available only to parties who have entered into an appropriate nondisclosure agreement with Pacific. (*Mimeo.* at 9-10). The form of this nondisclosure agreement is set forth in the Administrative Law Judges' Ruling Concerning Proposed Protective Order of GTE California Incorporated, issued on November 16, 1995 in this docket (November 16, 1995 ALJs' Ruling). Parties entitled who are entitled to access to the unredacted version of the CRD because they have signed such a nondisclosure agreement with Pacific may obtain a copy of the CRD by contacting the Telecommunications Division.

### **Findings of Fact**

1. On February 19, 1998, the Commission issued D.98-02-106, which adopted TELRIC costs for Pacific for the UNEs specified in 47 C.F.R. § 51.319.

2. On March 4, 1998, the assigned ALJ issued a ruling convening a PHC to discuss issues likely to arise at the supplementary pricing hearings held to determine how the TELRIC costs adopted by the Commission should be translated into prices for Pacific's UNEs.

3. On March 16, 1998, the PHC to discuss issues for the supplementary pricing hearings was held.

4. At the March 16 PHC, the assigned ALJ ruled that parties should submit new testimony on all issues for the supplementary pricing hearings, owing to the many changes that had occurred in telecommunications regulation since the 1996 pricing hearings.

5. On March 27, 1998, the assigned ALJ issued a ruling dealing with issues discussed at the March 16 PHC, and describing issues the ALJ wanted the parties to address in their hearing testimony.

o. On April 8, 1998, parties filed their opening testimony on all hearing issues.

7. On April 28, 1998, parties filed their reply testimony on all hearing issues.

8. On May 4, 1998, various parties filed extensive motions to strike portions of the opening and reply hearing testimony.

9. On May 11, 1998, parties filed responses to the motions to strike hearing testimony.

10. On May 15, 1998, the assigned ALJ issued a ruling dealing with certain hearing issues and ruling on the motions to strike the testimony of Dr. Jerry Hausman and portions of the motion to strike the testimony of Dr. Lee Selwyn.

11. The supplementary pricing hearings for Pacific began on May 18 and ended on June 10, 1998.

12. Parties filed their opening briefs concerning hearing issues on July 10, 1998.

13. All parties except ORA filed their reply briefs concerning hearing issues on July 31, 1998.

14. With the permission of the assigned ALJ, ORA filed a reply brief on hearing issues on August 3, 1998.

15. On January 25, 1999, the United States Supreme Court issued its decision in *AT&T Corp v. Iowa Utilities Board (AT&T-Iowa)*.

16. In *AT&T-Iowa*, the Supreme Court held that the FCC's rulemaking power under § 201(b) of the 1934 Telecommunications Act extends to the local competition provisions set forth in §§ 251 and 252 of the Telecommunications Act of 1996.

17. In *AT&T-Iowa*, the Supreme Court held that § 2(b) of the Communications Act of 1934 does not prohibit the FCC from promulgating regulations implementing the local competition provisions in §§ 251 and 252 of the Telecommunications Act of 1996.

18. In *AT&T-Iowa*, the Supreme Court vacated FCC Rule 319 (47 C.F.R. § 51.319) on the ground that the FCC had failed to give adequate consideration to the requirement of § 251(d)(2) that access to proprietary network elements should be given only if "necessary," and if failure to give access to a particular network element would "impair," competing carriers from offering telecommunications services.

19. In *AT&T-Iowa*, the Supreme Court ruled that the definition of "network element" in the 1996 Telecommunications Act was broad enough to justify the FCC's inclusion of OSS, operator services, directory assistance and vertical switching functions within the list of network elements that must be offered on an unbundled basis, assuming the requirements of § 251(d)(2) could be met with respect to these elements.

20. In *AT&T-Iowa*, the Supreme Court ruled that the FCC had not acted improperly in requiring that ILECs make UNEs available to competing carriers without any requirement that these competing carriers own facilities of their own.

21. In *AT&T-Iowa*, the Supreme Court held that the FCC had acted within its jurisdiction in promulgating Rule 315(b), which prohibits ILECs from separating, except upon a competing carrier's request, network elements that the ILEC combines for itself.

22. In *AT&T-Iowa*, the Supreme Court reinstated the FCC's "pick and choose" rule, finding that because it tracked the language of § 252(i) of the 1996 Act almost exactly, it was the most readily apparent interpretation of the statute.

23. Pacific proposes that the price for each UNE should be set no lower than its adopted TELRIC cost, plus a markup of 22% to cover shared and common costs.

24. The markups proposed by Pacific in setting UNE prices range from 22% over adopted TELRIC costs to 9900% over adopted TELRIC costs.

25. Pacific's claim that there is a risk of stranded, unrecoverable investment in providing UNEs is based on the concern that a CLEC purchasing UNEs may suddenly decide to stop serving its customers through UNEs and begin serving them instead through the CLEC's own facilities, once the CLEC has enough customers to make such a switch economic.

26. The risk of stranded, unrecoverable investment described in Finding of Fact (FOF) 25 can allegedly be eliminated through an adder calculated by multiplying the investment component of a UNE's TELRIC by a factor of 3.3, as described by Dr. Hausman. The price of a UNE is then determined by taking the sum of (a) the aforesaid adder, (b) the element's TELRIC, and (c) a markup to cover shared and common costs.

27. An alternative method of reducing the alleged risk of stranded, unrecoverable investment described in FOF 25 is to require the CLEC purchasing UNEs from an ILEC to enter into a contract to purchase the UNEs for a fixed term rather than month-to-month.

28. Pacific's pricing witnesses did not propose markups for UNEs that reflected the adder described in FOF 26, because these witnesses did not believe that the Commission would accept such high markups.

29. Pacific's witnesses did not offer any concrete proposals for making UNEs available to CLECs through fixed-term contracts.

30. Demand for UNEs is only one of the reasons why Pacific is likely to build plant in the future, and thus is only one of the reasons why such plant might become stranded.

~~31. Regulatory requirements seem likely to play at least as important a role in the future investment decisions of ILECs as the demand for UNEs by CLECs.~~

~~32. To the extent that CLECs must advance construction costs for new facilities that they order, it is unlikely that UNEs will be ordered in geographic areas that are unprofitable or only marginally profitable.~~

33. It is unlikely that plant installed to satisfy demand for UNEs in less-populated geographic areas will become stranded, because the most intense local exchange competition in the near future is likely to be for business customers and high-volume residential customers, most of whom are found in low-cost, densely settled geographic areas.

34. In the densely populated areas where most of the competition for business and residential customers is likely to occur in the near future, Pacific's risks of stranded investment are more likely to be connected with the provision of retail service than with the provision of UNEs.

35. For the purpose of recovering shared and common costs, Pacific advocated a markup of 22% over the TELRIC costs adopted in D.98-02-106, to be applied uniformly to all UNEs.

36. Most of the UNE prices proposed by Pacific fell somewhere between the price that would have been justified under the approach described in FOF 26 and TELRIC plus 22%.

37. Many of the UNE prices proposed by Pacific are close to those set forth in Pacific's current tariffs and interconnection agreements.

38. The degree of wholesale competition that now exists between Pacific and CLECs is small.

39. All non-ILEC parties agreed that Pacific's UNE prices should be set by imposing a uniform markup to cover shared and common costs over the TELRICs adopted in D.98-02-106. The only exception to this was for residential loops, which AT&T/MCI wanted to price below the applicable TELRIC.

40. The non-ILEC parties differed sharply over the extent of the uniform markup appropriate to cover Pacific's shared and common costs, with recommendations ranging from 3% to 15%.

41. Pacific's net revenues from Yellow Pages have been taken into account in setting the price of basic residential service.

42. AT&T/MCI and Pacific agree that in the situation where a CLEC serves residential customers through a combination of its own facilities and UNEs purchased from Pacific, anomalies can arise from the fact that UNE prices are being set in this proceeding on a statewide-average basis, while funding for Universal Service under the CHCF-B is apportioned on a geographically-deaveraged basis.

43. AT&T/MCI propose to deal with the anomalies described in FOF 42 by applying a surcredit of \$2.64 to each loop UNE that is purchased.

44. Pacific proposes to deal with the anomalies described in FOF 42 by dividing the CHCF-B subsidy between the CLEC and Pacific according to a formula that focuses on the cost of the loop.

45. D.98-02-106 did not adopt TELRIC costs for DS-1 line ports, 4-wire entrance facilities, the DS-3 entrance facility without equipment, unbundled loops provided over digital loop carrier and delivered to the entrant as a digital facility, SS7 links, digital cross-connect systems (DCS), and LIDB and 800 database queries.

46. Pacific's TELRIC studies for dedicated transport reflect the benefits of SONET technology.

47. The loop conditioning costs in the ADSL tariff filed by Pacific with the FCC reflect embedded rather than forward-looking costs.

48. In its decision in *Iowa Utilities Board*, the Eight Circuit concluded (at 120F.3d 813) that the FCC could not prohibit ILECs from tearing apart

combinations of UNEs that the ILECs use themselves, because § 251 (c)(3) of the Act does not require ILECs to offer UNEs on a combined basis, and because prohibiting the disassembly of UNE platforms could obliterate the distinction in the Telecommunications Act between access to UNEs at cost-based rates (on the one hand) and the purchase at wholesale rates of the ILEC's retail services (on the other).

49. In the Spring of 1998, Pacific entered into partially-secret Memoranda of Understanding with AT&T, MCI and Sprint which provided that in exchange for the agreement of these carriers to change from the CABS billing system to the CRIS billing system, Pacific would continue to provide AT&T, MCI and Sprint with the UNE combinations specified in their respective interconnection agreements at the rates specified in said agreements, notwithstanding the legal right that Pacific claimed it had under the Eight Circuit decision in *Iowa Utilities Board* to discontinue providing such UNE combinations.

50. The Memorandum of Understanding between Pacific and AT&T provided that Pacific would continue to provide UNE combinations upon the terms set forth therein regardless of any regulatory, legislative or judicial change or ruling, unless such continued performance was expressly prohibited by such a change or ruling.

51. Pacific's Memoranda of Understanding with MCI and Sprint contained provisions comparable although not identical to the provision described in FOF 50.

52. Of the five "points of access" proposed by Pacific, one depends upon extending UNEs requiring cross-connection to a point of termination in a CLEC's collocation cage, and a second requires extending UNEs requiring cross-connection to the common frame in a collocation common area.

53. It is possible that degradation of telephone service might result from combining UNEs in the manner required under the points-of-access proposal described in FOF 52.

54. In remand proceedings before the Eighth Circuit following *AT&T-Iowa*, the parties have disagreed whether the Eight Circuit's vacation of FCC Rules 315(c)-(f) was challenged in the petitions for certiorari filed in the Supreme Court, and assuming it was, whether the reasoning given by the Supreme Court for reinstating Rule 315(b) applies to Rules 315(c)-(f) as well.

55. Only Pacific attempted to submit model tariff language with its testimony, in the form of a generic appendix that Pacific proposed to include with future interconnection agreements.

56. The parties who participated in the pricing hearings disagreed over whether this Commission has authority under the Telecommunications Act to require that UNE prices be set forth in tariffs.

57. In D.89-10-031, the Commission concluded that it was necessary to set price floors for Category II (partially-competitive) services.

58. In D.89-10-031, the Commission required LECs to set price floors by imputing into the tariffed rate for any bundled service, the tariffed rate of any function deemed a monopoly building block (MBB) that is necessary to provide the bundled service.

59. In D.94-09-065, the Commission approved an alternative form of imputation known as the "contribution" method, under which the price floor for a service equals the sum of (a) the long run incremental cost (LRIC) of the bundled Category II service, and (b) the difference between the tariffed rate of any MBB used in the service and the MBB's LRIC. The second factor is called the "contribution" from the MBB. <sup>that</sup>  
by a competing

60. D.96-03-020 reclassified certain local exchange services as Category II services, and ruled that price floors for these services would be set in the OANAD proceeding after TSLRICs were adopted for them. The services so reclassified were: basic flat rate residential access line service (1 FR), basic measured residential access line service (1 MR), basic business access line service (1 MB), business and residence ISDN feature, business and residence ZUM usage, business and residence local usage, and coin operated pay telephone service.

61. The ALJ ruling issued in this docket on December 18, 1996 determined that price floors for the services set forth in FOF 58 would be set in the pricing hearings following the Commission's decision choosing between the TSLRIC and TELRIC methodologies.

62. The prices of firms in competitive markets do not include arbitrary allocations of shared and common costs.

63. The volume-sensitive portion of the TSLRIC costs adopted in D.96-08-021 do not include any shared or common costs.

64. The fiber loops characterized by Dr. Tardiff as alternatives to Pacific's copper loops are, as a general matter, available only to business customers in California's larger cities.

65. Dr. Tardiff offered no estimate of how many business lines in California actually use fiber loops.

66. Dr. Tardiff failed to demonstrate that either the "wireless loop" offered by Winstar or the "Digital Link" service offered by AT&T is available to a significant number of Pacific's customers.

67. In 1996-1997, Pacific's share of the total market for loops in its service area exceeded 99%.

68. At the present time, a CLEC that leases loops in a central office where it is not economic for the CLEC to collocate ~~has no practical choice but to lease switching from the ILEC providing the loops~~ may reach its switch via the *Extend Link*.

69. At the present time, CLECs are collocated in only 86 of the 700-plus central office buildings that Pacific has in its service territory, which is less than 15% of such central offices.

70. The data used to produce white page listings is expensive and difficult to produce.

71. Without a single source for white page listings, the utility of both CLEC and ILEC white pages would be reduced.

72. Access to white page listings is one of the items on the 14-point competitive checklist included in § 271 of the Telecommunications Act.

73. Transport that is competitive with Pacific's is widely available in California. Most of this alternative transport occurs through fiber, although it is also offered via HFC, microwave and SONET.

74. Directory assistance and operator services are available from a significant number of vendors other than Pacific.

75. Pacific's price floor approach assumes that the total revenues from a service are sufficient to cover the non-volume sensitive costs attributable to the service.

76. Pacific proposes to use a series of cross-subsidy tests to ensure that each service's non-volume sensitive costs are recovered as described in FOF 75.

77. The cross-subsidy tests advocated by Pacific involve a large degree of subjectivity in placing services into "service groups," and in determining how the 20 shared family cost categories should be allocated among the 40 service groups.

78. Verifying that Pacific's proposed cross-subsidy tests were satisfied each time approval was sought for a new price floor would be a very labor-intensive task for Commission staff and the affected parties.

79. D.89-10-031 states that the price floor for an ILEC service should include some of the overheads applicable to the service.

### Conclusions of Law

1. It will take some time for the full implications of *AT&T-Iowa* to work their way through the interconnection agreements that have been approved and the UNE costs and prices that have been determined since 1996.

~~2. It is uncertain whether Pacific and other ILECs will continue to honor their existing interconnection agreements in light of the Supreme Court's decision that the FCC must reconsider Rule 319 to take account of the possibility that the network elements specified therein can be obtained from other suppliers or can be self-provisioned.~~

3. This case is not the appropriate forum in which to decide whether Pacific is obliged to continue performing under its existing interconnection agreements while the FCC reconsiders Rule 319.

4. In light of the facts that (a) this Commission did not adopt geographically-deaveraged costs in D.98-02-106, and (b) this Commission and other state commissions have asked the FCC for additional time to implement the geographic deaveraging requirement in the First Report and Order, it is not appropriate to adopt geographically-deaveraged UNE prices at this time.

5. Dr. Hausman's proposal for an adder on UNE prices to account for the risk of future stranded investment is ultimately based on the assumption that the TELRIC methodology does not adequately distinguish between fixed and sunk costs. As such, it represents an improper collateral attack on the decision in D.98-02-106 to use TELRIC costs for UNE pricing. *should be factored into the*

~~6. Dr. Hausman's proposal for an up front adder on UNE prices to account for the risk of future stranded investment is inconsistent with how this Commission ruled in Ordering Paragraph (OP) 7 of D.96-09-089 that it would handle similar stranding claims arising from "franchise impacts."~~

~~7. For the reasons set forth in FOFs 30-34, it is unlikely that Pacific will incur any stranded investment in the near future that is solely attributable to its obligation to provide UNEs to requesting telecommunications carriers.~~

8. Dr. Hausman's proposal to include an adder in the price of UNEs to account for the alleged risk of future stranded investment, as described in FOF 26, should ~~not~~ be adopted.

~~9. The UNE prices proposed by Pacific should not be adopted because they are not based on any consistent markup approach, and because they would confer an unreasonably large amount of pricing discretion on Pacific.~~

10. The price for each UNE offered by Pacific should be equal to the TELRIC of the element as determined in D.98-02-106 and subsequent compliance filings, plus a markup to cover the shared and common costs approved by this Commission, ~~This markup should be uniform for all UNEs.~~ *plus a reasonable profit.*

11. The total of non-recurring costs adopted in D.98-12-079, \$375 million, should be included in the denominator of the fraction used to compute the uniform markup, *in place of the amount of non-recurring costs currently included*

12. It would be unreasonable to include retail costs in the denominator of the fraction used to compute the uniform markup (as advocated by AT&T/MCI), *the fr.* because no retail costs were included in the shared and common costs approved for Pacific in D.98-02-106 and subsequent compliance filings.

13. It would be unreasonable to include the total forward-looking costs for all of Pacific's Category III and non-regulated services in the denominator of the

**fraction used to compute the uniform markup, as advocated by AT&T/MCI, because these services have their own separate shared and common costs.**

**14. The markup formula advocated by the FBC should not be adopted because it ignores the shared and common cost determinations made in D.98-02-106 and subsequent compliance filings.**

**15. The ARMIS data relied on by Sprint to support its recommendation of a 15% markup is historical cost data, rather than the forward-looking cost data required by the TELRIC methodology.**

**16. Sprint's experience as a local exchange service provider is of little relevance in determining the shared and common costs that a large firm like Pacific is likely to incur.**

**17. Sprint's recommendation of a 15% uniform markup to recover shared and common costs should not be adopted.**

**18. The uniform markup that Pacific should be allowed to add to its TELRIC costs for the purpose of recovering shared and common costs should be computed by dividing the total shared and common TELRIC costs adopted for Pacific's UNEs (\$996 million) by the sum of (a) the total direct TELRIC costs approved for these UNEs (\$4.814 billion), plus (b) the total NRCs adopted in D.98-12-079 (\$375 million).**

**19. The uniform markup computed as set forth in Conclusion of Law (COL) 18 should be rounded to the nearest whole percentage point, which results in a uniform markup of ~~19%~~ 21%.**

**20. Non-recurring charges for UNEs should be determined by adding the ~~19%~~ 21% uniform markup described in COLs 18 and 19 to the non-recurring costs approved in D.98-12-079.**

**21. Pub. Util. Code § 728.2(a) does not require that Pacific's Yellow Page net revenues be taken into account when setting UNE prices.**