

**ATTACHMENT C**

**COMMENTS IN OPPOSITION TO  
PACIFIC BELL'S 271 APPLICATION**



of § 271 of the Telecommunications Act of 1996 (the "Act") and § 709.2 of the Public Utilities ("P.U.") Code.

Joint Commentors neither support nor oppose Pacific's motion, and are filing these comments simply to provide the Commission with information that may assist it in resolving any factual issues raised by Pacific's motion. To that end, Joint Commentors have provided information herein concerning their efforts to compete with Pacific in the local telephone exchange service market and to obtain services from Pacific that are required under the terms and conditions of their interconnection agreements with Pacific. Notwithstanding the aforementioned statement, as shown below, Pacific has not met the requirements of §§ 251(c)(2) and 251(d)(1) of the Act.

### **INTRODUCTION**

Cox and MediaOne are both facilities-based competitive local exchange carriers ("CLCs"). Cox provides advanced telecommunications services in Orange County and San Diego, California, to both business and residential customers entirely over its own facilities. Cox is one of the first fully facilities-based carriers offering competitive local telecommunications services in California primarily to residential subscribers. Cox does not currently provide local exchange service via resale of another carrier's bundled services, nor via the purchase of another carrier's unbundled network elements ("UNEs"). Cox does purchase local interconnection trunks, transit service, meet-point trunking arrangements, and local number portability ("LNP") pursuant to its interconnection agreement with Pacific. Declaration of Richard Smith in Support of Cox's Comments ("Smith Declaration"), which is attached hereto as Exhibit 1, at 5.

On July 25, 1996, Cox and Pacific entered into a Local Interconnection Agreement (the "LIA") in order to interconnect their local telephone networks in a technically and economically feasible manner. The LIA was approved by the Commission on October 9, 1996 in D.96-10-040. Smith Declaration at §6 and Attachment A.

MediaOne launched its Digital Telephone Service in April of 1998. MediaOne provides services to residential customers in the greater Los Angeles area of California over its own facilities. MediaOne has its own broadband network, and is minimally reliant on Pacific. As with Cox, MediaOne does not provide local exchange service via resale of another carrier's bundled services, nor via the purchase of another carrier's UNEs. MediaOne needs only to access Pacific's network operations for interconnection (including limited collocation requirements), local number portability and to provide E911 service, directory assistance and white pages listings to its customers. As Continental Cablevision, MediaOne's predecessor in interest, MediaOne entered into an interconnection agreement with Pacific to interconnect their local exchange networks in 1996.

## **FACTUAL BACKGROUND**

### **I. TRUNK PROVISIONING**

Cox purchases interconnection trunks from Pacific for the purpose of transporting traffic to and from customers on Cox's and Pacific's respective networks. Cox needs Pacific to timely provision interconnection trunks for it to properly transport

the traffic generated on Cox's network to Pacific's network. If trunks are not deployed in a timely fashion, the existing trunks become overloaded, and calls are blocked from being completed. Cox has previously reported to the Commission that, due to delays in Pacific's trunk provisioning, Cox's customers have suffered unacceptable levels of call blocking. Cox continues to suffer unacceptable levels of call blocking as a result of delay in Pacific's trunk provisioning. Smith Declaration at 7-8.

Specifically, in the last 30 to 60 days, Pacific has repeatedly failed to install additional interconnection trunks by the due date to which Pacific committed. Pacific has claimed that its failure to provision these trunks on the due date resulted from work-load issues. Smith Declaration at 9.

In addition to these missed due dates, Pacific incorrectly installed an interconnection trunk group in San Diego. Cox ordered a transient meet-point trunk group, and Pacific installed instead a local tandem trunk group. Cox discovered the problem when it reported a trouble ticket on the trunk group. Pacific claimed at that time that it had installed the trunks "as the order was written" and required Cox to issue a disconnect order to have the trunks reinstalled. While Pacific later admitted that the trunks had been installed incorrectly, Pacific has yet to correct the mistake which was reported to it on July 29, 1999. Smith Declaration at 9.

MediaOne's experience also indicates that Pacific has not met the interconnection checklist requirements because it fails to promptly install CLC trunks and it arbitrarily and unilaterally resets critical installation dates. In its comments last year, MediaOne cited difficulty in reaching Pacific personnel who were adequately

trained to assist CLCs.<sup>1</sup> Contrary to Pacific's assertion,<sup>2</sup> there is still a lack of adequate support.

For example, recently, MediaOne determined that it needed to submit an order for an additional DS-3 to Pacific. MediaOne's account manager was on vacation and her back-up person did not know how to complete the order. The MediaOne manager who submitted the order requested assistance from Pacific on completing the order correctly. After two weeks of calling to Pacific without finding someone who could help, MediaOne eventually talked to the trainer who conducted the CESAR order completion training class. An order was submitted on July 7, 1999. Pacific did not issue the firm order confirmation ("FOC") until July 21, 1999, two full weeks later, because the order needed a Billing Account Number ("BAN").<sup>3</sup> Pacific then identified an acceptable due date of July 30, 1999.

Pacific's brief implies that it issues a timely FOC, and if an acceptable due date is assigned, then everything is fine. However, such claims mask the underlying reality that CLCs often face. CLCs must vigilantly monitor each of their orders in Pacific's various systems to ensure they are progressing through Pacific on schedule or if they have been knocked off their due dates without notice or negotiation.

With just days to go before the due date on the order in the example above, MediaOne checked the status of its access serviced request ("ASR") (order) in Pacific's CESAR system. The due date had been *unilaterally* changed by Pacific, with no notice,

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<sup>1</sup> MediaOne April 1998 Comments at 10.

<sup>2</sup> See, Pacific Brief at 6.

<sup>3</sup> See, id. at 46. FOCs are issued "within 4 business days for additions to existing trunk groups and within seven business days for new trunk groups."

to September 3, 1999, because Pacific purportedly claims not to have facilities available. This date is unacceptable to MediaOne. MediaOne has already completed installation on its side of the network and was ready to accept the ordered facilities on the agreed upon due date. It is now expending limited resources working to expedite the due date to meet its business requirements for marketing to new customers and to avoid additional call blockage.

Pacific also notes that it works with CLCs to increase overutilized trunks and to disconnect underutilized trunks.<sup>4</sup> MediaOne is currently working with Pacific on trunks where Pacific argued that MediaOne was underutilizing them. MediaOne agreed to move them. Pacific told MediaOne how to issue an order to reuse the underutilized facilities from one tandem, rename them and terminate them to another tandem (from 54T to 86T). Pacific issued a FOC for the disconnect order but then notified MediaOne that renaming trunks is not available. A new order to disconnect the facilities and trunks was required by Pacific to cancel the previously confirmed orders and start over. In fact, Pacific required two new orders: one to disconnect the underutilized trunks and another to augment the trunk group that experienced the call blockage. Due to Pacific's misinformation, MediaOne lost weeks in which blocked traffic was not relieved.

## **II. CALL BLOCKING**

The LIA between Pacific and Cox requires both to engineer their networks to a call-blocking level of not more than 0.5 percent. Smith Declaration at 10 and Attachment A. Despite this requirement, call blocking at the interconnection point with

Pacific's network has been a continuing problem for Cox since it began providing local exchange telephone service in 1996, and results in the degradation of telephone service to Cox's end users. Cox has received complaints from customers and has lost customers because of call blocking. Smith Declaration at 10.

As one of many possible examples, a customer recently complained to Cox and to the Consumer Affairs Branch of the Commission that he was unable to place telephone calls for up to three hours a day because all the circuits were busy. Cox investigated the problem and determined that, during the period of February 1 through April 30, 1999, it had experienced intermittent call blocking between its network and Pacific's. While Cox immediately installed additional trunks, this effort did not alleviate the problem. Cox then determined that the congestion problem originated in Pacific's network. Smith Declaration at 11. Despite the fact that the customer's problems were a result of Pacific's network failure, the customer associated the problems with Cox's services and has since returned to Pacific for his local exchange service, a result that obviously benefits Pacific. Smith Declaration at ¶ \_\_\_\_.

### **III. NXX CODE OPENING PROBLEMS**

Pacific's approach to NXX code opening procedures is similarly troublesome. MediaOne, as Continental Cablevision has had an interconnection agreement with Pacific since 1996. It "opted in" under Section 252(i) of the Telecommunications Act to the Pacific Bell/AT&T agreement, in March 1999. In both agreements, MediaOne has

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<sup>4</sup> Id. at 44.

retained the same points of interconnection ("POIs") using Common Language Location Identifier ("CLLI") codes agreed to by both parties.

Over the past year, however, Pacific has objected to the CLLI code locations for NXX code openings stating the "A and Z" locations needed to be changed. Pacific complained that its customers' traffic could not otherwise be correctly completed to MediaOne's switch. MediaOne has had no problem terminating traffic to Pacific. Pacific has threatened not to open MediaOne's codes and/or to block MediaOne's terminating traffic.

Additionally, Pacific has frequently opened MediaOne's codes up to 30 days after the due date (as established by industry guidelines and posted in the Local Exchange Routing Guide or "LERG"). Pacific suggested that it could "correct" the alleged problem by taking MediaOne's entire interconnected network down, temporarily, T-1 by T-1, and reassigning trunk termination addresses. MediaOne objected to this proposal because it risks interruption of MediaOne's customers' service and causes a great deal of additional, unnecessary work for MediaOne's technicians. MediaOne suggested that Pacific could order additional trunking from MediaOne if it had concerns with how to terminate Pacific's calls to MediaOne customers. Although the actual traffic, by Pacific's standards, is miniscule, Pacific has stated its intentions to order such trunks on an "interim basis" and then consider whether it will litigate its position via the contract's dispute resolution process or before the Commission. Meanwhile, MediaOne must wait and hope that Pacific opens its codes pursuant to the terms and conditions of its interconnection agreement.

#### **IV. TRANSLATION ERRORS RELATED TO NXX CODE OPENINGS AND OTHER SWITCH TRANSLATION WORK**

Another area of extremely serious concern continues to be translation errors, related to NXX code opening or other switch translation work by Pacific. Pacific claims that it will implement an automated NXX code opening system this month.<sup>5</sup> In that it is yet to be implemented, no comment can be made on its accuracy or value. Comment can be submitted, however, on the ongoing problems with NXX code openings by Pacific under the manual process.

MediaOne's customers have recently experienced several serious service interruptions that stemmed from Pacific NXX code opening and/or other translation errors. In just the past six to seven weeks, MediaOne's customers have experienced at least three separate and wide ranging, service interruption problems, all caused by Pacific. In one situation, all of MediaOne's customers whose prescribed interexchange carrier ("PIC") is AT&T were unable to place *any* interLATA or interstate calls. This interruption occurred on June 24, 1999. Customers flooded MediaOne's customer service desk and 79 trouble reports were immediately generated. The customer service representatives were unable to keep up with the flood of calls that day so more trouble reports would have likely been generated.

Pacific's Local Operations Center ("LOC") acknowledged that there was a problem in Pacific's 86T tandem. A MediaOne manager called the LOC at 4:11 p.m. but could not get a trouble ticket number for a full hour. At 5:11 p.m. a trouble ticket was finally issued with a response commitment of noon the next day. The trouble was

identified as a Pacific translation error and cleared that same evening. Nevertheless, MediaOne was forced to spend inordinate amounts of resources to investigate what the problem was, to deal with Pacific, and to resolve the problem which affected MediaOne's customers' ability to connect to AT&T.

It is noteworthy that Pacific's customers never, to MediaOne's knowledge, experienced a similar problem in reaching their long distance providers. Nor did Pacific take the initiative to notify MediaOne that there was a problem in the 86T tandem. This problem in Pacific's tandem was only remedied after MediaOne's customers were impacted, and MediaOne investigated the problem and identified it as one which resided in Pacific's network.

Just four days later, on June 28<sup>th</sup>, MediaOne identified that Pacific again had a translation error in the same tandem. During this time, MediaOne's customers presubscribed to AT&T had not been able to make international calls and received a "call can't be completed as dialed" recording. Once again, MediaOne did internal testing and analysis. A MediaOne technician tried to place a trouble report to Pacific's LOC, but was refused. When MediaOne's manager called the LOC, at 1:30 p.m. on June 28<sup>th</sup>, the LOC representative took a trouble report and gave a commitment to correct the problem by 5:30 p.m. The trouble was cleared by 5:00 p.m. In the meantime, once again, the customer care center was flooded with customer complaints.

A week later, on July 6<sup>th</sup>, many of MediaOne customers were hit yet again with another, unrelated, Pacific generated network problem. This time, MediaOne customers called into the customer care center complaining that they could not

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<sup>5</sup> Id. at 48.

complete any calls to area code 323, the "0" operator or to 411. Customers heard a "fast busy" signal when they called 323 numbers. Approximately one third of all operator service/directory assistance, meet point billing and interconnection trunks were down to Pacific for nearly an hour.

After MediaOne did emergency diagnostic testing and network review internally, MediaOne technicians identified the problem as one originating in Pacific's network. After MediaOne contacted the LOC, Pacific concurred that it was having a problem. Internal MediaOne work could have been lessened or eliminated had Pacific issued a network outage alert or alarm during the outage and notified MediaOne.

Pacific notes that the LOC is open 24 hours per day and that it and the LSC "have ample capacity to meet all reasonably foreseeable CLEC demand." Pacific Brief at 7. Unfortunately, that has not been MediaOne's experience. Pacific also claims that it has improved access to the Local Service Center. *Id.* at 23. When MediaOne must call the LSC to cancel an order, Pacific *routinely* puts MediaOne's representatives on hold for 45 to 60 minutes. MediaOne must speak to someone at the LSC if it needs to cancel an LNP order on the due date in order to avoid service interruption caused by Pacific working the disconnect order. MediaOne has also been very frustrated in reaching a LOC representative using the 800 number established by Pacific for CLCs to initiate a trouble ticket. MediaOne has recently been trained on using Pacific's automated trouble ticket process (Pacific Bell Service Manager) and is hopeful that it will be more effective.

The Commission should view Pacific's claims that it has "implemented methods and procedures to resolve and network translation problem within 4 hours<sup>6</sup> with a skeptical eye. If the LOC can refuse to accept a trouble ticket *until* it decides to issue a trouble ticket with a four hour commitment, the *actual* resolution to the CLC, and more importantly, as perceived by the CLC's customers, may be much longer. When faced with such service interruptions, especially *repeated service interruptions*, it is understandable that some customers give up and, whether their unhappy experience with MediaOne was Pacific's fault or not, *return to Pacific* for better reliability! It continues to be a bitter irony, that Pacific stands to benefit the most if it fails to provide reliable service to the CLCs, especially in the residential market where it is the only other option available to customers.

## V. CUSTOMER MIGRATION

For interconnection to be accomplished in a manner that satisfies the 14-point checklist set forth in § 271(c)(2)(B) of the Act, Pacific must provide interconnection "on rates, terms and conditions that are just, reasonable and nondiscriminatory . . . ." The Act, § 251(c)(2). Consequently, Pacific must insure that telecommunications carriers who request interconnection are not discriminated against merely because they may win-over customers from Pacific's network to their own.

One area in which Cox has been disadvantaged by Pacific's treatment is where customers who are migrating from Pacific's network to Cox's suffer Pacific's failure to

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<sup>6</sup> Id.

close out the customer's account and Pacific continues to bill them for service even though they have left Pacific's network. For example, Cox has identified over 100 instances where Pacific has continued to bill former customers for local exchange telephone services after those customer have migrated to Cox's network. Smith Declaration at 12. Cox's customers have associated this problem – and the inconvenience of resolving it – with their choice to transfer to Cox's service. Consequently, Cox is disadvantaged and discriminated against as a result of Pacific's refusal to properly terminate the service of migrating customers.

Cox has also had migration problems when Pacific fails to notify the PIC that a customer has terminated Pacific's service on the line which is presubscribed to that carrier. The problem that has resulted from Pacific's failure to notify the PIC that a customer has migrated to another CLC's network is that the PIC continues to bill the customer for service even though the customer has changed local exchange carriers and may have presubscribed its new line to a different PIC. Cox cannot effect the notice to the previous PIC on behalf of the customer because that PIC is presubscribed to a Pacific telephone line and PIC information is considered proprietary. 47 US. C. §222(b). Pacific must notify the PIC that it is no longer the customer's local exchange carrier. This problem has arisen on a number of occasions including that of a customer who filed an informal complaint against Cox with the Commission for this problem, among others. Smith Declaration at 13.

Pacific also continues to work disconnect orders that have been cancelled, unnecessarily putting migrating customers out of service. This month, for example, MediaOne had problems working a customer's order on a Friday and determined that

its technicians would have to return to the customer's home on Monday. At 7:48 p.m., MediaOne contacted the LOC (the LSC closes at 6:00 p.m.) to cancel the disconnect and Local Number Portability ("LNP") order. Pacific went ahead and worked the disconnect order and the customer was out of service over the entire weekend. Not surprisingly, when MediaOne returned on Monday as agreed, the irate customer notified the technician that he was remaining with Pacific due to the loss of service over the weekend. Pacific should be required to review CLC activation of the customer's ported number in the NPAC before setting the ten-digit trigger.

#### **VI. WHITE PAGES DELIVERY**

Cox assures all of its new local exchange telephone service customers that they will receive delivery of the appropriate white and yellow page directories. This is an important service that Cox, Pacific and other CLCs offer to their customers, and is required as a part of basic telephone service under the Commission's rules. D. 96-10-066, Appendix B, Rules 4.(A) and 4(B). Pursuant to its LIA with Pacific, Cox relies upon Pacific to properly deliver telephone directories to its customers. Specifically, § XII(B) of the LIA provides that Pacific's subsidiary Pacific Bell Directory Services ("PBD") is required to deliver to each Cox telephone customer one copy of the appropriate white and yellow page directories at no charge to Cox or the customer. Smith Declaration at 14-15.

Beginning in or about August 1998, Cox began to receive reports from customers that PBD had failed to timely deliver – or failed to deliver altogether – the appropriate white and yellow page directories. In other cases, PBD had simply left

copies of the directories at the gate of a gated community or at the entry to a multi-dwelling unit ("MDU"). At that time, Cox began working with PBD through its 800-number help line to secure the missed deliveries. However, the defective delivery problems continued. Smith Declaration at 16.

In November of 1998, Cox escalated the resolution of the delivery problem to its Pacific account manager. At Pacific's request, Cox provided Pacific with a 30-day follow-up report that showed a number of Cox customers had not received delivery of directories up to four months after the problem had been brought to the attention of PBD. By January 1999, Pacific admitted that a directory delivery problem existed. However, Pacific failed and refused to assure Cox that it would deliver directories to those customers who had not received them. In addition, Pacific failed and refused to assure Cox that Pacific and PBD would take steps to rectify this problem in the future. Smith Declaration at 17.

On February 12, 1999, Cox and Pacific met to discuss how Pacific intended to cure its breach of the LIA by failing to timely deliver directories. During that meeting, Cox informed Pacific that Cox was receiving two to three complaint calls per day resulting from Pacific's failure to deliver the directories. Smith Declaration at 19. As a result of this meeting, Cox and Pacific agreed to take the following steps to resolve the directory delivery problem and to cure Pacific's breach of the LIA:

- At one MDU property with 450 units, Pacific agreed to drop off 275 directories that day with another 100 directories to follow within a week.
- Pacific would provide Cox with an inventory of 500 directories on an interim basis so that Cox could insure that its customers who did not receive directory deliveries from PBD would receive them directly from Cox.

- Pacific directed Cox to take all complaints of delivery failure to PBD using its 800-number service.
- Pacific would provide Cox with a single point of contact at PBD to resolve any dispute with regard to directory deliveries.

Smith Declaration at 19.

After the February meeting, the number of directory delivery complaints from Cox customers fell in the month of March. Cox did not track the number of complaints for April because Pacific had assured Cox's representatives that Pacific would be performing a fresh drop of all directories beginning in April. Smith Declaration at 20.

Beginning in May, the number of complaints received from Cox customers regarding directory delivery problems quadrupled from the reports received in March. Cox's customers continue to suffer PBD's failure to timely deliver white and yellow page directories. As a result, in July, Cox surveyed its new customers and discovered that at 23 MDU properties in Orange County, PBD had failed to deliver directories to a full one-third of Cox's customers responding to the survey. Smith Declaration at 21. In addition, PBD informed Cox that Cox's customers would be charged for yellow page directories requested via PBD's 800-number contrary to the provisions of the LIA. As a result, on August 9, 1999, Cox filed a request for mediation of the interconnection dispute with the Commission as required by Commission Decision ("D.") 95-12-056 and the terms of the LIA.

## **VII. LOCAL NUMBER PORTABILITY PROVISIONING**

Local telephone number portability means the ability of telephone consumers to retain their existing telephone numbers when they change local carriers for service to the same location. The importance of LNP to facilities-based CLCs cannot be overemphasized. Cox has found the ability of customers to "port" their existing telephone number to be a major factor in Cox's ability to compete in the local exchange market. Cox has estimated that over 75 percent of its migrating customers request LNP service. Smith Declaration at 22.

Pacific is required to provide LNP under the terms and conditions of its LIA with Cox. However, Cox has had a number of problems with Pacific's provisioning of LNP. One extreme example of this problem concerns a customer who obtained a telephone number from Pacific in November 1994. In September 1998, the customer migrated his local service to Cox's network. Cox assured the customer that he could retain his telephone number. Smith Declaration at 23.

The customer used the telephone number without incident until May 1999. At that time, Pacific, without the knowledge or consent of the customer or Cox, assigned a telephone number which was the same as Cox's customer's telephone number to a new Pacific customer. Immediately thereafter, and for about two weeks, the customer received numerous calls at this telephone number for another party, because the calls were properly routed through Cox's network. The customer simply believed that the calling party had dialed a wrong number. Smith Declaration at 24.

At or about that time, Pacific called Cox to request that Cox "return" the customer's telephone number to Pacific. Pacific advised Cox that it must "return" the

telephone number because a "win back" had taken place and the customer had decided to resume telephone service with Pacific. As a result, Cox agreed to release the telephone number to Pacific. Smith Declaration at 25. However, upon subsequent investigation, Cox discovered that Pacific's representation that it had won the customer back was false and that the customer continued to use that number to purchase Cox services on Cox's network.

On May 24, 1999, the customer learned for the first time that calls to his telephone number were no longer being routed to his home. The customer called the number from another phone, spoke with Pacific's customer who had the Cox customer's identical number, and determined that Pacific had assigned the number to another party. Cox's customer called Pacific in an attempt to rectify the problem. At that time, Pacific informed Cox's customer that Cox had given his telephone number back to Pacific. Cox's customer then called Cox to complain. Smith Declaration at 26.

Meanwhile, Pacific had informed the customer to whom it had erroneously assigned the Cox customer's number that Cox had wrongly assigned the number to a customer and would not relinquish it back to Pacific. Pacific then gave its customer proprietary carrier-to-carrier contact information for a Cox operations manager, which the customer used to contact Cox's operations personnel and threaten the manager with a lawsuit unless Cox relinquished the telephone number. Eventually, Pacific relented and Cox's customer was able to enjoy the unencumbered use of his telephone number. Smith Declaration at 27.

Another example of Pacific's actions with regard to LNP concerns a telephone number that was assigned by Pacific on January 30, 1999 to one of its customers. On

February 20, 1999, Pacific ported the number to Cox when its customer migrated to Cox. At that time, Cox assured the migrating customer that it could retain its telephone number. Smith Declaration at 28. Within a few days, the customer began receiving harassing telephone calls from a Pacific representative who informed the customer that Pacific intended to "disconnect" the customer's telephone number because it "belongs" to another Pacific customer. After Cox interceded on the behalf of its new customer, Pacific abandoned its harassing efforts to take back the telephone number. Smith Declaration at 29.

In both of these cases, Cox has escalated the disputes to Pacific's vice presidential level for resolution. In both cases, and in numerous other instances where Pacific has failed to respect its number portability obligations, Pacific has claimed that the problem laid with a specific employee who had breached Pacific's policies against making false statements, disparaging competitors and disclosing proprietary information, and who would most certainly be admonished and retrained. However, given that two months passed between these two customer complaints during which time Pacific obviously did nothing to prevent the second egregious act, Cox is concerned that Pacific's commitment to the enforcement of its policies may be inadequate to prevent the reoccurrence of the kind of misconduct revealed by the two examples described here. Smith Declaration at 30.

## VIII NUMBERING RESOURCES

The Commission's final report found that Pacific had met the numbering resources checklist item.<sup>7</sup> While the Joint Commentors agree that Lockheed/Martin has taken over the number administration responsibility from Pacific, Pacific continues to "opt out" of any effort to advance the availability of telephone numbers for competitors. Pacific has refused to participate in any voluntary pooling trials.<sup>8</sup> Regarding rate center consolidation, in response to the Commission's inquiry about possible areas where it could be considered, Pacific responded it could not be tried anywhere in California without serious consequences.<sup>9</sup> Pacific has not changed its position in this regard even in light of Southwestern Bell Corporation's ("SBC's") completing rate center consolidation as ordered in Texas within 90 days. [cite to Texas order] When the industry recently met to discuss the establishment of an emergency pool of codes to address the suspended 424 overlay in Los Angeles, Pacific voted against the development of any such pool. [August 2 conference call, cite to NANPA minutes.] While it does not directly control the distribution of numbers, Pacific is able to continue to delay the availability of numbers for new entrants and veto code conservation initiatives that would enhance local competition.

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<sup>7</sup> D. 98-12-069 at p. 180.

<sup>8</sup> Interim Report of the Numbering Pooling Task Force, R.95-04-043/I.95-04-044 at 2 (March 22, 1999).

<sup>9</sup> Filing of Pacific Bell Pursuant to Ordering Paragraph 2 of Decision 98-08-037, R..95-04-043/I.95-04-044 at 1 (March 14, 1998).

## **IX. ACCESS TO RIGHTS-OF-WAY AT MDU PROPERTIES**

Section 251 (c)(B)(iii) provides that, to meet the 14-point checklist, Pacific must provide “[n]ondiscriminatory access to ... rights-of-way” over which it has control. This nondiscriminatory access to easements and utility closets is particularly essential for California consumers who live at MDU properties. Census counts and statistics maintained by the California Department of Finance show that 33 percent of all California residents live in MDU housing.<sup>10</sup> That rate is even higher in most major metropolitan markets: Los Angeles County, (43 percent); Orange County (35 percent); San Diego County (36 percent); and San Francisco County (69 percent). Recently, Pacific has expended a major effort to stifle local exchange competition by controlling access to the easements and rights-of-way at MDUs.

In Bayside Village v. Pacific Bell (C.95-08-039), complainants were property owners who alleged that Pacific is responsible for attaching cross-connects from the utility’s network access terminal to the building entrance facilities on their properties. Complainants argued that such cross-connects were network terminating wire (“NTW”) and, thus, when installed by Pacific to serve Pacific’s customers were Pacific’s property and responsibility. Pacific disagreed with complainants and argued that the cross-connects are inside wire (“IW”) and the responsibility of the complainants/property owners. Thus, Pacific argued it could properly charge tenants for maintenance work on and installation of the cross-connects.

In its ruling on the complaint the Commission overruled Pacific and found that

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<sup>10</sup> See, California Department of Finance, Demographic Research Unit Web site at <http://www.dof.ca.gov/html/Demograp/E-5> (May 1999).

cross-connects between the building entrance facilities and the utility's network access terminal are NTW and not IW, pursuant to D.92-01-023.<sup>11</sup> D.97-11-029 at \_\_\_\_ (November \_\_, 1997). Thus, the Commission found that the cross-connects are part of Pacific's regulated utility facilities. *Id.* at \_\_\_\_.

Pacific applied for rehearing of D.97-11-029. In its ruling on Pacific's application the Commission granted limited rehearing on certain issues including the issue of how Pacific was to "regain control" over the cross-connects used to serve its customers. D.98-06-029 at \_\_\_\_ (June \_\_, 1998). Pacific filed its Proposal to Implement D.97-11-029 and D.98-06-029 (the "Proposal") on March 31, 1999.

If adopted by the Commission, Pacific's Proposal will affect CLC access to utility closets and rights-of-way as well as the cross-connects and associated customer network interfaces at "412,283 existing building terminals in [its] serving areas." and there can be no doubt that, if adopted, Pacific's proposal will impact local exchange competition throughout the State. In its Proposal, Pacific contends that it must maintain sole and exclusive control over the cross-connects, the punch-down blocks (both its own and the customer's). Pacific proposes that every building entrance terminal location, as well as the utility easement that covers the utility closet where the cross-connects are located, be placed under lock and key to ensure that only Pacific can access the cross-connect facilities. The terms and conditions of the Proposal include the following:

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<sup>11</sup> D.92-01-023, In the Matter of the Application of Pacific Bell for Authority to Increase Certain Intrastate Rates and Charges, 43 C.P.U.C. 2d 115, 121-22 (1992).

- Pacific asks the Commission to order condemnation of cross-connects which were not placed by Pacific and which currently belong to CLCs . As a result, cross-connects placed by Cox and other CLCs will become Pacific's property if its Proposal is adopted, and the CLCs will then be excluded from using the cross-connects to provide their services.
- Pacific asks that the Commission order CLCs to stop using the cross-connects as a means to provide facilities-based exchange services. This provision will guarantee Pacific bottleneck control over access to all tenants at MDUs in Pacific's serving areas.

### **STANDARD OF REVIEW**

#### **I. FOR PACIFIC'S MOTION TO BE GRANTED, PACIFIC MUST PROVIDE INTERCONNECTION IN ACCORDANCE WITH THE REQUIREMENTS OF § 251(c)(2)**

In order for the Commission to grant Pacific's motion, the Commission must first determine that Pacific is providing interconnection in accordance with the requirements of §§ 251(c)(2) and 251(d)(1) of the Act. 47 U.S.C. § 272(c)(2)(B)(i). Section 251(c)(2) requires Pacific to provide for interconnection in a nondiscriminatory manner that: (a) meets the same technical and service standards that Pacific provides for itself and its affiliates; (b) allows interconnection at any technically feasible point; and (c) offers terms and conditions that are just, reasonable and cost-based. D.98-12-069,

Rulemaking on the Commission's Own Motion to Govern Access to Bottleneck Services and Establish a Framework for Network Architecture Development of Dominant Carrier Networks, at 32 (December 17, 1998) .

The Federal Communications Commission ("FCC") has determined that the "equal in quality" standard requires an Incumbent Local Exchange Carrier ("ILEC") to "provide interconnection between its network and that of a requesting carrier that is at

least indistinguishable from that which the incumbent provides itself, a subsidiary, or any other party.” Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, 11 FCC Rcd 15499, 15614-15 (the “Local Competition Order”), *modified on reconsideration*, 11 FCC Rcd 1304 (1996), *vacated in part*, Iowa Board of Utilities v. FCC, 120 F.3d 753 (8<sup>th</sup> Cir. 1997), *reversed in part, affirmed in part*, AT&T Corp. v. Iowa Board of Utilities, 119 S. Ct. 721 (1999).

Pacific has failed to resolve many issues related to the requirements for interconnection under § 251(c)(2), and has failed to comply with the terms and conditions of the LIA. Three years after executing the LIA, Cox is still struggling with Pacific over matters critical to Pacific’s burden of showing that its is providing interconnection with Cox and other CLCs in manner that equals the technical standards and service as it provides to itself. These matters include call trunk provisioning, blocking, customer migration, white pages delivery and disparagement of Cox by Pacific’s employees.

## **II. PACIFIC MUST PROVIDE NONDISCRIMINATORY ACCESS TO RIGHTS-OF-WAY**

The Commission must also find that Pacific is providing CLCs with “nondiscriminatory access to ... rights-of-way” owned or controlled by it. 47 U.S.C. §§271(c)(2)(B)(iii).

Pacific’s efforts in the Bayside Village complaint case belie its claim that it has made rights-of-way available to CLCs on a nondiscriminatory basis. Indeed, in that case Pacific has attempted to maintain sole and exclusive control over the utility closets

that house the cross-connects, as well as the customer's network interface devices. Pacific recommends that the Commission allow it to place every building entrance terminal in every utility closet under lock and key to ensure that only Pacific can access the cross-connect facilities of its own as well as those of CLCs, control and ownership of which Pacific would assume.

Pacific's Proposal, if adopted, will have a devastating impact on local exchange competition for residential customers living in MDUs. The Proposal is unacceptable in a competitive environment because it would allow Pacific to maintain monopoly control over access to at least one-third of the residential local exchange market.

### **CONCLUSION**

The Commission should give due consideration to the matters discussed herein before granting Pacific's motion. From its near 100 percent residential service market share in its former franchise areas to its reluctance to participate in any endeavors that would hasten the opening of local markets, Pacific remains the single most powerful telecommunications service provider in California. Until it has established that it will no longer refuse to take valid trouble tickets when CLCs call the LOC, that it will no longer put CLCs on hold routinely for 45 minutes to an hour when they call the LSC, when it no longer secretly and unilaterally changes due dates on critical trunk orders, when it no longer refuses to cancel a CLC's customer's disconnect order and put that customer out of service or refuses to participate in processes that open the local market, when it no longer attempts to exercise exclusive control over rights-of-way to impair access to cross connects in multiple dwelling units, the Commission cannot not support Pacific's entry into the long distance market.

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Respectfully submitted,

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