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September 30, 2002

Ex Parte Presentation

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: *Application by SBC Communications Inc., et al. for Provision of In-Region, InterLATA Services in California*, WC Docket No. 02-306

Dear Ms. Dortch:

On behalf of SBC Communications Inc. ("SBC"), I am attaching copies of three recent orders of the California Public Utility Commission. SBC referred to the draft versions of each of these orders in its Brief filed on September 20, 2002.

(1) Decision Granting Pacific Bell Telephone Company's Renewed Motion for an Order That It Has Substantially Satisfied the Requirements of the 14-Point Checklist in § 271 of the Telecommunications Act of 1996 and Denying That It Has Satisfied § 709.2 of the Public Utilities Code, Rulemaking on the Commission's Own Motion to Govern Open Access, D.02-09-050 (Cal. PUC Sept. 19, 2002). See Br. 8 n.7. We are also including Commissioner Peevey's separate opinion, in which he concurred in part and dissented in part.

(2) Opinion on Remand Addressing Shared and Common Cost Markup Established in Decision 99-11-050 and Unbundled Network Element Recurring Prices, Joint Application of AT&T Communications of California, Inc. and WorldCom, Inc., D.02-09-49 (Cal. PUC Sept. 19, 2002). See Br. 28 n.23.

(3) Interim Opinion Applying Pacific Bell Telephone Company Interim Switching Discounts to All Port Types, Joint Application of AT&T Communications of California, Inc. and WorldCom, Inc., D.02-09-052 (Cal. PUC Sept. 19, 2002). See Br. 30 n.27.

Ex Parte Presentation

In accordance with the Commission's Public Notice, DA 02-2333 (Sept. 20, 2002), SBC is filing this letter and attachments electronically through the Commission's Electronic Comment Filing System.

Thank you for your kind assistance in this matter.

Sincerely,

Geoffrey M. Klineberg

Attachments

cc: Renée R. Crittendon
Tracey Wilson
Brianne Kucerik
Phyllis White
Qualex International

Attachment 1

STATE OF CALIFORNIA

GRAY DAVIS, *Governor*

PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

September 25,2002

TO: ALL PARTIES OF RECORD IN RULEMAKING 93-04-003 et al.

Decision 02-09-050 is being mailed without the Dissent of President Loretta Lynch and without the Concurrence of Commissioner Michael Peevey. The Dissent and Concurrence will be mailed separately.

Very truly yours,

CAROL A. BROWN, Interim Chief
Administrative Law Judge

CAB/tcg

132158

ALJ/JAR/tcg

Mailed 9/25/2002

Decision 02-09-050 September 19,2002

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Rulemaking on the Commission's Own Motion to Govern Open Access to Bottleneck Services and Establish a Framework for Network Architecture Development of Dominant Carrier Networks.	Rulemaking (R.) 93-04-003 (Filed April, 1993)
Investigation on the Commission's Own Motion into Open Access and Network Architecture Development of Dominant Carrier Networks.	Investigation (I.) 93-04-002 (Filed April, 1993)
Order Instituting Rulemaking on the Commission's Own Motion Into Competition for Local Exchange Service.	R.95-04-043 (Filed April, 1995)
Order Instituting Investigation on the Commission's Own Motion Into Competition for Local Exchange Service.	1.95-04-044 (Filed April, 1995)

DECISION GRANTING PACIFIC BELL TELEPHONE COMPANY'S RENEWED MOTION FOR AN ORDER THAT IT HAS SUBSTANTIALLY SATISFIED THE REQUIREMENTS OF THE 14-POINT CHECKLIST IN § 271 OF THE TELECOMMUNICATIONS ACT OF 1996 AND DENYING THAT IT HAS SATISFIED § 709.2 OF THE PUBLIC UTILITIES CODE

TABLE OF CONTENTS

Title **Page**

DECISION 2
I. Summary 2
II. Background 4
III. Pacific Compliance With § 271(c)(1)(A): Presence of Facilities-Based Competition 8
IV. Pacific Compliance With § 271(c)(2)(B): The Competitive Checklist 10
A. Checklist Item 1-- Interconnection 10
1. Legal Standard 10
a) TA96 and FCC Orders 10
b) California Application of Legal Standards 11
2. Proceeding Record 11
a) Pacific's Position 11
(1) Facilities-Based CLECs 12
(2) Collocation 12
(3) Interconnection Trunking 15
(4) Performance Data Results 15
(a) Quality 16
(b) Timeliness 18
b) Interested Parties' Positions 21
(1) Collocation 21
(2) Interconnection Trunking 23
3. Discussion 25
B. Checklist Item 2 -- Unbundled Network Elements 29
1. Legal Standard 29
a) TA96 and FCC Orders 29
(1) OSS 31
b) California Application of Legal Standards 33
2. Proceeding Record 33
a) Pacific's Position 33
(1) General Access to UNEs 33
(2) UNE Combinations 34
(3) Intellectual Property 35
(a) Discussion 35
(4) Nondiscriminatory Access to OSS 37
(a) OSS Test 37
(b) OSS Test Report Comments 78
(c) Local Service Center (LSC)/OSS – April 2001 Operational Hearings 99

TABLE OF CONTENTS
(Continued)

Title	Page
(5) Pricing	108
(a) Pacific's Position	112
(b) Interested Parties' Positions	115
(c) Discussion	117
C. Checklist Item 3 --Poles. Ducts. Conduits and Rights-of-way	120
1. Legal Standard	121
a) TA96 and FCC Orders	121
b) California Application of Legal Standards	122
2. Proceeding Record	123
a) Pacific's Position	123
b) Interested Parties' Positions	123
c) Discussion	124
D. Checklist Item 4 -- Unbundled Local Loops	125
1. Legal Standard	125
a) TA96 and FCC Orders	125
b) California Application of Legal Standard	127
2. Proceeding Record	127
a) Facility Availability and Quality	127
(1) Pacific's Position	128
(2) Interested Parties' Positions	129
(a) Discussion	131
b) Loop Installation Issues	134
(1) Pacific's Position	134
(2) Interested Parties' Positions	135
(a) Discussion	139
c) Advanced Services	143
(1) Pacific's Position	143
(2) Interested Parties' Positions	145
(a) Discussion	147
d) Integrated Digital Loop Carrier (IDLC)	150
(1) Discussion	150
e) ANSI Standards and Spectrum Management	151
(1) Discussion	152
f) Spectral Interference	152
(1) Discussion	153
E. Checklist Item 5 -- Unbundled Local Transport	153
1. Legal Standard	153
a) TA96 and FCC Orders	153
b) California Application of Legal Standard	154

TABLE OF CONTENTS
(Continued)

Title	Page
2. Proceeding Record	154
a) Pacific's Position	154
(1) Performance Measure Results	156
b) Interested Parties' Positions	156
3. Discussion	158
F. Checklist Item 6 -- Unbundled Local Switching	160
1. Legal Standard	160
a) TA96 and FCC Orders	160
b) California Application of Legal Standards	161
2. Proceeding Record	161
a) Pacific's Position	161
(1) Performance Measure Results	163
b) Interested Parties' Positions	164
3. Discussion	167
G. Checklist Item 7 -- 911, E911, Directory Assistance Services, and Operator Call Completion Services	169
1. Legal Standard	169
a) TA96 and FCC Orders	169
(1) 911 and E911	169
(2) Directory Assistance/Operator Services	170
b) California Application of Legal Standards	171
2. Proceeding Record	172
a) Pacific's Position	172
b) Interested Parties' Positions	173
c) CGE&Y Determination	174
3. Discussion	175
H. Checklist Item 8 -- White Pages Directory Listings	176
1. Legal Standard	176
a) TA96 and FCC Orders	176
b) California Application of Legal Standards	177
2. Proceeding Record	178
a) Pacific's Position	178
(1) Performance Measure Results	179
b) Interested Parties' Positions	179
c) CGE&Y Assessment	180
3. Discussion	181
I. Checklist Item 9 --Access to Telephone Numbers	182
1. Legal Standard	183
a) TA96 and FCC Orders	183
b) California Application of Legal Standards	184

TABLE OF CONTENTS
(Continued)

Title	Page
2. Proceeding Record	184
a) Pacific's Position	184
b) Interested Parties' Positions	185
3. Discussion	185
J. Checklist Item 10 -- Access to Databases and Associated Signaling	187
1. Legal Standard	187
a) TA96 and FCC Orders	187
b) California Application of Legal Standards	188
2. Proceeding Record	188
a) Pacific's Position	188
b) Interested Parties' Positions	189
3. Discussion	190
K. Checklist Item 11 -- Number Portability	192
1. Legal Standard	192
a) TA96 and FCC Orders	192
b) California Application of Legal Standards	193
2. Proceeding Record	194
a) Pacific's Position	194
b) Interested Parties' Positions	196
3. Discussion	198
L. Checklist Item 12 -- Local Dialing Parity	201
1. Legal Standard	201
a) TA96 and FCC Orders	201
b) California Application of Legal Standards	202
2. Proceeding Record	202
a) Pacific's Position	202
b) Interested Parties' Positions	203
3. Discussion	203
M. Checklist Item 13 -- Reciprocal Compensation	204
1. Legal Standard	204
a) TA96 and FCC Orders	204
b) California Application of Legal Standards	205
2. Proceeding Record	206
a) Pacific's Position	206
3. Interested Parties' Positions	207
4. Discussion	207
N. Checklist 14 -- Resale	208
1. Legal Standard	208
a) TA96 and FCC Orders	208
b) California Application of Legal Standard	209

TABLE OF CONTENTS
(Continued)

Title	Page
2. Proceeding Record	210
a) Pacific's Position	210
(1) Performance Results	211
b) Interested Parties' Positions	212
3. Discussion	215
V. CPUC Performance Incentives Plan	221
A. Performance Measurement and Standards	222
B. Performance Assessment	225
C. Performance Incentives	227
VI. California Public Utilities Code Section 709.2	239
A. Background	239
B. Summary of Positions	241
C. Open Access to Exchanges	242
1. Does the record support the determination that all competitors have fair, nondiscriminatory, and mutually open access to exchanges currently subject to the modified final judgment, including fair unbundling of exchange facilities, as prescribed in the Commission's Open Access and Network Architecture Development Proceeding (1.93-04-003 and R.93-04-003)? (§ 709.2(c)(1))	242
2. Discussion	244
D. No Anticompetitive Behavior	245
1. Does the record support the determination that there is no anticompetitive behavior by the local exchange telephone corporation, including unfair use of subscriber information or unfair use of customer contacts generated by the local exchange telephone corporation's provision of local exchange telephone service? (§ 709.2(c)(2))	245
2. Discussion	247
E. No improper cross subsidization	252
1. Does the record support the determination there is no improper cross-subsidization of intrastate interexchange telecommunications service by requiring separate accounting records to allocate costs for the provision of intrastate interexchange telecommunications service and examining the methodology of allocating those costs? (§ 709.2(c)(3))	253
2. Discussion	254

TABLE OF CONTENTS
(Continued)

Title	Page
F. No Substantial Possibility of Harm from Pacific's Entry	258
1. Does the Record Support the Determination that there is No Substantial Possibility of Harm from Pacific's Entry into the Long Distance Market? (§ 709.2(c)(4))	258
2. Discussion	260
VII. Conclusion	267
VIII. Comments on Draft Decision	268
Findings of Fact	269
Conclusions of Law	**304**
ORDER	316

Appendix I - 271 Compliance Requirements Multiple Checklist Items (Appendix B to D.98-12-069)

Appendix II - Pacific Bell Unbundled Network Element Recurring Prices as of 7/15/02

Appendix III - California OSS Performance Measures

Appendix IV - April 2002 Performance Incentives Plan Results

Appendix V - List of Appearances

DECISION GRANTING PACIFIC BELL TELEPHONE COMPANY'S RENEWED MOTION FOR AN ORDER THAT IT HAS SUBSTANTIALLY SATISFIED THE REQUIREMENTS OF THE 14-POINT CHECKLIST IN § 271 OF THE TELECOMMUNICATIONS ACT OF 1996 AND DENYING THAT IT HAS SATISFIED § 709.2 OF THE PUBLIC UTILITIES CODE

I. Summary

Today, we conclude the California chapter of Pacific Bell's (Pacific) six-year journey to long distance authorization. The length of the journey has been as much about the hard work, determination and collaboration of Pacific, the competitive local exchange carriers, interested parties, our staff, and the public, as it has been about accurately assessing compliance with the 14-point checklist in Section 271 of the Telecommunications Act of 1996 in the nation's most populous state. We grant Pacific's renewed motion by this order that assesses its compliance with the 14-point checklist.

We hold that Pacific has successfully passed the independent third-party test of its Operations Support System (OSS). We acknowledge the strong performance results Pacific has achieved across numerous service categories, and make slight modifications to the Performance Incentive Plan that we established. In addition, we determine that Pacific has continued to demonstrate compliance with Access to Rights of Way, Access to Telephone Numbers, Dialing Parity, and Reciprocal Compensation, the four checklist items that we held that it satisfied in Decision (D.) 98-12-069. We also determine that Pacific has satisfied eight additional checklist items as well as the technical compliance requirements set forth in our 1998 decision's Appendix B Roadmap. Those checklist items are: Interconnection, Nondiscriminatory Access to Unbundled Network Elements, Unbundled Loops, Local Transport, Unbundled Switching, Access to 911, E911, Directory Assistance and Operator Call Completion Services, White Pages, and Access to Databases.

Before we verify to the Federal Communications Commission (FCC) Pacific's compliance with Number Portability, Checklist Item 11, we direct Pacific to implement and verify a mechanized enhancement to the Number Portability Administration Center (NPAC) check Pacific has committed to implementation of the enhancement by the end of September 2002. Mechanization of the NPAC check is crucial for competitors as well as customers: it will mechanically delay a Pacific disconnect before a New Service Provider has completed its installation work. The continuing delay of this process presents a critical barrier to entry for the competitive local exchange carriers (CLECs). We do not find that Pacific has complied with the requirements for Resale, Checklist Item 14. Instead, we find that Pacific has erected unreasonable barriers to entry in California's Digital Subscriber Line market both by not complying with its resale obligation with respect to its advanced services pursuant to § 251(c)(4)(A) and by offering restrictive conditions in the SBC Advanced Solutions Inc. (ASI)-CLEC agreements in contravention of § 251(c)(4)(B).

We also deny today Pacific's motion for an order that it has satisfied the requirements of California Public Utilities (Pub. Util.) Code § 709.2. While we make the determination that all competitors have fair, nondiscriminatory, and mutually open access to exchanges, the record does not **support** our making the determinations that Pacific has manifested no anticompetitive behavior, has established no improper cross-subsidization, or poses no substantial possibility of harm to the competitive intrastate interexchange telecommunications markets. We direct Pacific to submit to us a report on the feasibility of structurally

separating the company into wholesale and retail entities. Further, we direct the Telecommunications Division no later than five months from the effective date of this order to submit to prepare for consideration on our meeting agenda an Order Instituting Investigation on the selection and appointment of a competitively neutral third-party Preferred Interexchange Carrier (PIC) administrator for California. Finally, persuaded by Pacific's legal arguments that federal law does not support even a narrow and focused constraint on joint marketing, we shall closely monitor Pacific's compliance with the federal equal access law as it jointly markets the services of its long distance affiliate.

Our findings under Section 709.2 reflect the considerations that California law requires us to weigh and balance. While Pacific largely satisfies the technical requirements of Section 271, in accordance with Section 709.2 we cannot state unequivocally that we find Pacific's imminent entry into the long distance market in California will primarily enhance the public interest. Local telephone competition in California exists in the technical and quantitative data; but it has yet to find its way into the residences of the majority of California's ratepayers. This decision acknowledges the distance Pacific has traveled in order to reach its goal of long distance authorization; and concurrently, it continues to pave the way towards actual and vibrant local competition in California.

II. Background

In March 1998, Pacific filed a Notice of Intent to File a § 271 Application (NOI) and a Draft § 271 Application (Draft Application) in conjunction with its responses to 161 questions eliciting quantitatively-based information on the state of local competition in California and Pacific's compliance with 47 U.S.C. § 271. Pacific made its filing in response to a ruling granting a group of CLECs' request that the California Public Utilities Commission (Commission or CPUC) establish

additional procedures to facilitate its consultative role with the FCC. Over the next two months, the CLECs and other interested parties filed comments on the NOI, Draft Application and Pacific's quantitative responses, and Pacific replied.

From mid-April through mid-May 1998, the CPUC's Telecommunications Division staff (TD staff or staff) held separate weekly informal meetings with Pacific, a group of CLECs and other interested parties reviewing over 16,500 pages of documents that supported and challenged the Draft Application. Guided by staff's initial report on the central issues and problems that emerged from the Draft Application (the Initial Staff Report or ISR), the CPUC convened five weeks' of collaborative workshops with Pacific, staff and interested CLECs.

Assessing the outcome of the collaborative sessions and parties' comments on its notes, staff issued its second major evaluative report (the Final Staff Report or FSR) in October 1998. Staff put forth the report as "a comprehensive list of corrective actions most likely to aid Pacific in complying with § 271 requirements." On December 17,1998, the CPUC issued D.98-12-069, which adopted and modified the FSR, in order to list what we hoped would be "a solid blueprint" for a "future 271 request that this Commission could earnestly and enthusiastically support." (D.98-12-069 *mimeo.* at 71.)

Included in the blueprint were a myriad of technical requirements and the directive that Pacific's Operations Support System (OSS) should undergo independent third party testing. Pacific submitted an OSS Test Plan in January 1999. Staff, with the assistance of a consultant,[2] substantially revised the plan

[1] From July 22,1998 through August 25,1998.

[2] Telecordia

during the spring. In early June 1999,[3] staff conducted an informal collaborative workshop with Pacific and interested CLECs to address technical issues related to the Test Plan. Parties filed comments on the draft plan to validate/assess the operational readiness, performance and capability of Pacific to provide through specified interfaces, pre-ordering, ordering, provisioning, maintenance & repair (M&R) and billing OSS functionality to the CLECs. Following review of the comments, the assigned Commissioner issued the Master Test Plan (MTP)[4] in July 1999.

General Electric Global exchange Services (GXS) was selected as the Test Generator (TG), and Cap Gemini Ernst & Young (CGE&Y) was chosen to be the Test Administrator (TAM) and Technical Advisor (TA). As TAM, CGE&Y built the interface between GXS and Pacific. The test was completed with the release of Cap Gemini's final report in late October 2000. CGE&Y and GXS released their final reports on the Pacific OSS Test in December 2000. In January 2001, the CPUC convened technical workshops on the reports. Pacific and the interested parties filed opening and reply comments on the reports on March 2 and March 9, 2001, respectively.

Pacific submitted compliance filings in support of demonstrating its satisfaction of the fourteen checklist items in July and August 1999, January, March, August, October and December 2000, June 2001 and September 2001. It submitted its California Pub. Util. Code § 709.2 showings in July 1999 and June 2001. Interested parties responded to each submission.

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[3] From June 7, 1999 through June 15, 1999.

[4] Version 3.0.

On April 4, 5, and 12,2001, the assigned Commissioner and Administrative Law Judge (ALJ) for this proceeding convened all-party meetings to address the competitors' contention that Pacific failed to resolve OSS/Local Service Center related CLEC operational problems it caused, and that these unresolved problems represented true obstacles to competition in the local telephone market. During the hearings, 11 CLECs[5] appeared and formally presented the systemic operational problems they had experienced with Pacific. In response, Pacific demonstrated how it resolved such problems. Pursuant to a post-hearing ruling, Pacific updated a staff-created matrix each month[6] to reflect the current resolution status of each operational issue listed, and distributed that update to staff and the CLECs for review and comment.

On November 5 and 14,2001, public participation hearings were held in San Francisco and Los Angeles. On December 3-5,2001, the assigned Commissioner and ALJ entertained oral arguments on issues related to compliance with Pub. Util. Code § 709.2. Following the arguments, the assigned Commissioner issued a ruling imposing "a ban on any and all ex parte communications" in this proceeding.'

---

[5] Allegiance, (Allegiance),Advanced TelCom, Inc., dba Advanced TelCom Group (ATG), AT&T Communications of California, Inc. (AT&T), Cox California Telcom Inc. (Cox),New Edge Network, Inc. (New Edge), Pac-West Telecomm Inc. (Pac-West), Rhythms Link, Inc. (Rhythms),Sprint Communications Company, L.P. (Sprint), WorldCom, Inc. (WorldCom), XO California, Inc. (XO), and Z-Tel Communications, Jnc. (Z-Tel).

[6] Beginning on July 2, 2001 until the present.

[7] The ban was temporarily lifted during the issuance of the draft interim decision on unbundled network element prices, D.02-05-042.

On March 11,2002, ORA filed identical motions' in this docket and the docket considering the review of the regulatory framework under which Pacific operates, the New Regulatory Framework (NRF).[9] ORA sought to lift the suspension on Pacific's sharing mechanism under NRF, and urged this Commission to "suspend processing" Pacific's application for Section 271 approval as an apparent sanction for behavior of Pacific's in the NRF Review proceeding that it deemed anticompetitive, dilatory and defiant. In its comments on the DD, ORA renews its motion and joins with TURN in insisting that its presentation in R.O1-09-001/I.01-09-002 be transplanted into this proceeding without any further examination. Pacific opposed the motion. This docket cannot and will not be the home of every telecommunications proceeding pending before this Commission. **As** appropriate, we are addressing the NRF Review directly in its designated docket, and not in this proceeding. We deny ORA's motion.

111. Pacific Compliance With § 271(c)(1)(A): Presence of Facilities-Based Competition

A Bell Operating Company (BOC) seeking FCC approval to provide in-region inter local access and transport area (LATA) services must demonstrate that it satisfies the requirements of either § 271(c)(1)(A) (Track A) or § 271(c)(1)(B) (Track B).[10] Track A requires the BOC to show the presence of a facilities-based competitor; while Track B requires that it make a showing that no competitor has

[8] "Emergency Motion of the Office of Ratepayer Advocates to Lift the Suspension on Pacific Bell Telephone Company's Sharing Mechanism and Suspend Processing Pacific Bell Telephone Company's Application for Section 271 Approval."

[9] R.01-09-001/I.01-09-002.

[10] 47 U.S.C. § 271(a).

sought access or interconnection. Pacific seeks FCC approval to enter the California interLATA market under Track A.

The CPUC has approved, pursuant to § 252 of TA96, 178[11] binding interconnection agreements between Pacific and unaffiliated competing providers of telephone exchange service. These agreements require Pacific to provide "access and interconnection to its network facilities for the network facilities of one or more unaffiliated competing providers to residential and business subscribers."[12] In 1998, CPUC staff tabulated business and residence data for six facilities-based competitors[13] and found they served about 60,000 access lines in California. Staff concluded that Pacific had met the requirements for providing service to a facilities-based competitor. (D.98-12-069, *rnirneo.* at 69.)

In its July 1999 compliance filing, Pacific asserted that based on the number of resold lines and facilities-based E911 listings, CLECs had won over 819,000 access lines in its California service areas. (Pacific Brief at 4; Curtis L. Hopfinger (Hopfinger) Affidavit (Aff.) ¶ 14 and Attachment A.) In 2001, Pacific identified 47 California facilities-based carriers providing service: forty-one provide local voice service, while the remaining facilities-based carriers appear to provide data or Digital Subscriber Line (DSL) services that, at their option, may be deployed for voice grade service. (David R. Tebeau (Tebeau) Aff. ¶ 12.) Based on its April 2001 E911 database, Pacific estimates that CLECs serve approximately 1,726,048 lines on facilities-based connections. (*Id.* ¶ 6.)

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[11] Includes facilities-based and resale carriers as of July 15,2002.

[12] 47 U.S.C. § 271(c)(1)(A).

[13] Covad Communications Company (Covad), XO, TCG [AT&T], Brooks Fiber, Cox, and MCI WorldCom.

We concur with staff's earlier assessment, and find that Pacific has met the requirements for providing service to a facilities-based competitor. Thus, we conclude that Pacific satisfies the § 271(c)(1)(A) requirement.

IV. Pacific Compliance With § 271(c)(2)(B): The Competitive Checklist

A. Checklist Item 1-- Interconnection

Has Pacific provided interconnection in accordance with the requirements of §§ 251(c)(2) and 252(d)(1), pursuant to § 271(c)(2)(B)(i)?

1. Legal Standard

a) TA96 and FCC Orders

Interconnection refers to the physical linking of facilities and equipment of communication networks for the mutual exchange of traffic. To satisfy Checklist Item 1, Pacific must provide interconnection in accordance with the requirements of sections 251(c)(2) and 252(d)(1) of TA96.[14] Under Section 251(c)(2), Pacific must provide any requesting telecommunications carrier (A) transmission and routing of telephone exchange service and exchange access (B) at any technically feasible point in the network (C) that is at least equal in quality to what Pacific provides itself, its affiliate or any other party (D) at rates, terms, and conditions that are just, reasonable, and nondiscriminatory under section 252(d)(1).[15] A state commission's determination of just and reasonable rates for interconnection (A) shall be (1) based on the cost of providing the

[14] 47 U.S.C. §271(c)(2)(B)(i).

[15] 47 U.S.C. § 251(c)(2).

interconnection, without reference to a rate-of-return or other rate-based proceeding, (2) and nondiscriminatory, and (B) may include a reasonable profit.[16]

b) California Application of Legal Standards

D.98-12-069 directed Pacific to demonstrate compliance with technical requirements covering seven topics[17] under Checklist Item 1.

2. Proceeding Record

a) Pacific's Position

Pacific states that it provides three interconnection options: (1) mid-span fiber interconnection ("MSFI") or "fiber-meet"; (2) collocation interconnection; and (3) leased facilities interconnection. Each of these interconnection arrangements provides a CLEC with the ability to terminate a transport facility in collocation arrangements so that CLEC circuits may be interconnected to the Pacific network. Any, or all, of the above methods of interconnection are available at the trunk side of the local switch, the trunk connection points of a tandem switch, central office (CO) cross-connect points, out-of-band signaling transfer points, and points of access to UNEs. In addition, CLECs may request other technically feasible alternatives via the Bona Fide Request (BFR) process.[18] (William Deere (Deere) Aff. ¶¶ 6-9.)

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[16] 47 U.S.C. § 252(d)(1).

[17] 1) Collocation; 2) Bona Fide Request (BFR) Process, formerly called the Interconnection Network Element Request Process, develops a technically feasible method of interconnecting or combining elements not already provided; 3) Trunk Provisioning; 4) Network Utilization Reports; 5) Provisioning Practices; 6) NXX Code Openings and 7) Frame Relay Network-to-Network Interconnection (NNI).

[18] In accordance with D.98-12-069 and the requirements of TA96.

(1) Facilities-Based CLECs

Pacific reports that facilities-based carriers are providing service in California by building their own networks, by leasing UNEs from it, or by combining these two approaches. The incumbent estimates that CLECs serve 1,726,048 lines on facilities-based connections in the state.[19] Pacific points out that the trunk-to-line ratios" indicate that the total facilities-based CLEC lines served are 3,014,600.[21] However, calculating the approximately 20,080 total Unbundled Network Element-Platform (UNE-P) lines served by California carriers as of April 2001, Pacific computes that CLECs service 3,034,680 facilities-based lines. (Tebeau Aff. ¶ 6.)

(2) Collocation

In 1999, Pacific filed documents addressing approximately 31 collocation-related technical directives delineated by the CPUC. Among the subject matters discussed were: the accessibility of current collocation rules to interested CLECs, the availability of collocation alternatives, common and shared collocation arrangements, and the subletting of collocation cages. (Hopfinger Aff. ¶¶ 70-71, 88-92, 107; Reply Aff. ¶¶ 21-22, 25, 34.)

In its 2001 filing, Pacific indicates that it has provisioned over 3,200 collocation spaces in 341 central offices (CO) in California. Pacific provides both physical and virtual collocation pursuant to its FCC-approved tariff, and its collocation offerings satisfy the requirements of the *Collocation & Advanced*

---

[19] April 2001 E911 Database – Tebeau Aff. ¶ 6.

[20] Used by communications professionals to determine the number of trunks required for delivering traffic to and from telecommunications networks.

[21] 1,096,218 x 2.75 = 3,014,600.

Services Reconsideration Order." (Tebeau Aff., Attachment **A;** Hopfinger 2001 Aff. ¶¶ 31, 69, 82.)

Pacific makes available caged, shared cage, and cageless physical collocation arrangements, all at the option of the CLEC. Adjacent space collocation is available when all space for physical collocation is legitimately exhausted. If space subsequently becomes available in the Eligible Structure, the CLEC may, at its option, relocate its equipment into that interior space. (Hopfinger 2001 Aff. ¶¶ 46, 48-50, 52, 76-77.)

If Pacific must deny a CLEC's request for physical collocation because space is not available, it will notify the CLEC by letter within ten days. The CLEC may tour the structure, and seek review of the denial by the CPUC. Pacific maintains a publicly available document on the Internet indicating when physical collocation space is no longer available in its central offices, pursuant to 47 CFR § 51.321(h). ***(Id.*** ¶¶54, 57-59.)

Security measures for collocators in Pacific's COs reasonably protect Pacific's network and equipment from harm. Consistent with the *Collocation & Advanced Services Order,*[23] Pacific may recover the costs of erecting an interior security partition to separate its own equipment in lieu of the costs of other reasonable security measures. ***(Id.*** ¶¶ 63, 65.)

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[22] Order on Reconsideration and Second Further Notice of Proposed Rulemaking in CC Docket No. 98-147 and Fifth Further Notice of Proposed Rulemaking in CC Docket No. 96-98, *Deployment of Wireline Services Offering Advanced Telecommunications Capability,* 15 FCC Rcd 17806 (2000).

[23] First Report and Order and Further Notice of Proposed Rulemaking, *Deployment of Wireline Services Offering Advanced Telecommunications Capability,* 14 FCC Rcd 4761, 4784-85, ¶ 42, 4788 ¶ 48 (1999), vacated in part sub nom. *GTE Serv. Corp. v. FCC,* 205 F.3d 416 (D.C. Cir. 2000).

Pacific maintains that it does not refuse collocation of equipment that fails to meet Network Equipment and Building Specifications Level 1 safety standards, or other reliability standards. Pacific has modified its internal procedures to ensure that, if it denies collocation because a CLEC's equipment fails to meet applicable safety standards, the FCC-required affidavit contains all information required by the *Collocation & Advanced Services Reconsideration Order.*[24] (*Id.* ¶ 74.)

Pacific submits that it provisions collocation space in conformance with FCC requirements. It responds to requests within 10 days with notification of whether space is available, unless a CLEC places a large number of collocation orders in the same five-business-day period. Where space is available, Pacific delivers a price quote within 30 days of receiving a completed application. In COs with space in the existing collocation area, Pacific completes construction of caged physical collocation space within 120 days from the completion of the application process, and cageless collocation within 110 days. For inactive space, Pacific constructs in 150 days. (*Id.* ¶¶ 35-37, 39, 79.)

[24] 15 FCC Rcd at 17835, ¶ 57 (revising 47 CFR § 51.323(b).

(3) Interconnection Trunking

Pacific provides trunks, when requested, either directly to a CLEC from one of its end-offices or from each access tandem on a trunk group separate from the interLATA meet-point trunk group. InterLATA traffic is transported from Pacific's access tandem over a separate trunk group from local and intraLATA toll traffic. This trunk group may be set up as one-way or *two*-way and can utilize either MF or Signaling System 7 (SS7) protocol signaling. Pacific maintains that it interconnects with competitors using the same facilities, interfaces, technical criteria, and service standards that it applies to itself. (Deere Aff. ¶¶ 23-31.)

Pacific offers four major network rearrangements: 1) combination of trunk groups; 2) tandem "rehomes" (i.e., moving trunk groups from one tandem to another); 3) tandem self-initiatives (i.e., removing Pacific trunks from tandems); and **4)** establishment of direct end-office trunks. ***(Id.*** Aff. ¶ 32.)

(4) Performance Data Results

Pacific reports that performance data from February through April 2001 show that it processed CLEC's requests and delivered price quotes for collocation within the applicable intervals 100 percent of the time. Similarly, within this three-month period, Pacific timely installed 100 percent of CLECs' collocation arrangements. (Gwen Johnson (Johnson) Aff. ¶ 77 & Attachment B.)

Pacific has 13 performance measurements with sub-measures that specifically assess performance for the ordering, provisioning and maintenance of interconnection trunks (##2, 5, 7, 8, 11, 12, 13, 14, 16, 19, 20, 21 and 23). In addition, Measures 24 and 25 assess the level at which Pacific facilitates call processing across common and interconnection trunks and

Measures 28, 30, 31, 32 and 34 track the quality and timeliness of billing associated with interconnection trunking. (*Id.* ¶¶71-72.)

(a) Quality

Measures 24 and 25 demonstrate the quality of CLEC interconnection to Pacific's network, gauged in terms of blocking levels on both common transport and Pacific-controlled interconnection trunks. Pacific met the performance standard for Measure 24 (the percentage of common transport trunk groups experiencing blocking) in each of the 12 months preceding its June 2001 filing. Specifically, for the months of February (1.13%), March (0.88%) and April (0.69%) the results were well within the performance standard of no more than 2% trunk groups with blocking of 2% or higher. Similarly, Measure 25, which evaluates blocking levels on Pacific-controlled CLEC interconnection trunks, indicates that Pacific has met the parity standard and that no blockage has occurred over the past eleven months. (*Id.* ¶76.)

TABLE 1

PM #24 - % Blocking Common Trunks is a benchmark measure of percentages."

Sub-measure 2400100 Common Trunks		
	CLEC %	Benchmark %
Oct 00	0.67	2.00
Nov 00	0.50	2.00
Dec 00	0.93	2.00
Jan 01	0.55	2.00
Feb 01	1.13	2.00
Mar 01	0.88	2.00
Apr 01	0.69	2.00
May 01	0.50	2.00
Jun 01	0.59	2.00
Jul 01	0.95	2.00
Aug 01	0.49	2.00
Sep 01	1.08	2.00

(Source: Gold Report")

The CLEC twelve-month average is 0.75%. The level of blocking was below the benchmark for the whole period, indicating that CLECs have been receiving good service.

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[25] Lower numbers represent better service – a lower percentage of blocked trunks is better.

[26] A Pacific document that lists aggregated CLEC and Pacific performance, color codes passing and failing months, and graphs the available data for each sub-measure. Pacific appended portions of the Gold Report to Gwen Johnson's Affidavit.

TABLE 2

PM #25 - % Blocking Interconnect Trunks is a parity measure of percentages.[27]

Sub-measure 2500700		
Oct 00	0.00	0.67
Nov 00	0.00	0.50
Dec 00	0.00	0.93
Jan 01	0.00	0.55
Feb 01	0.00	1.13
Mar 01	0.00	0.88
Apr 01	0.00	0.69
May 01	0.00	
Jun 01	0.00	
Jul 01	0.00	
Aug 01	0.00	
Sep 01	0.00	

(Source: Gold Report)

(b) Timeliness

Pacific met or surpassed the applicable performance standards for 95% of the provisioning performance measurements from February to April 2001, missing only four of 78 opportunities. These misses occurred for the associated sub-measures in Measure 7—Average Completion Interval; however, they were attributable to a single case, which by the business rules should have been excluded." (*Id.* ¶ 74.)

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[27] Lower numbers represent better service – a lower percentage of blocked trunks is better.

[28] By means of a programming upgrade, Pacific hopes to avoid future miscalculations of this **type.**

PM #7 – Average completed interval is a parity measure of the number of days it takes to provision a service."

TABLE 3

Average Completed Interval in Days			
Region/ Sub-measure		ILEC	CLEC
Bay 705900	Jan-02	56.91	25.29
	Feb-02	22.00	25.50
	Mar-02	64.89	21.56
	Apr-02	18.89	23.19
	May-02	38.07	19.95
North 711800	Jan-02	11.14	22.87
	Feb-02	16.80	24.10
	Mar-02	26.67	21.45
	Apr-02	37.11	25.26
	May-02	30.52	19.67
LA 717700	Jan-02	22.15	23.08
	Feb-02	89.80	23.70
	Mar-02	24.50	21.04
	Apr-02	13.33	23.38
	May-02	22.14	25.87
South 723600	Jan-02	14.00	19.70
	Feb-02	19.00	20.38
	Mar-02	24.67	21.62
	Apr-02	13.40	19.10
	May-02	25.00	19.68

(Source: Gold Report)

In the above table, for all regions together, the CLECs and Pacific each experienced shorter average installation an equal number of times. Installation times were statistically significantly longer for the CLECs in the Bay region in Apr-02, in the North region in Jan-02 and Feb-02, in the South region in Jan-02.

[29] Lower numbers represent better service – i.e., shorter installation times.

The CLECs experienced shorter or non-significantly longer times in all regions in the most recent month available, May-02.

PM #11 - % Missed Due Dates: Appointments are a parity measure of percentages.[30]

TABLE 4

Sub-measure 1102800		
	CLEC %	Pacific %
Jan 01	0.00	10.85
Feb 01	6.67	10.58
Mar 01	11.76	10.52
Apr 01	30.77	9.32
Mav 01	40.00	8.34
Jun 01	0.00	9.62
Jul 01	5.56	8.51
Aug 01	7.14	6.26
Sev 01	8.33	7.59
Oct 01	7.69	8.23
Nov 01	6.25	9.27
Dec 01	13.33	8.50
Jan 02	0.00	7.19
Feb 02	0.00	6.45
Mar 02	0.00	5.52
Apr 02	0.00	5.34

[30] Lower numbers represent better service – a lower percentage of installations *not* completed by the due date is better.

b) Interested Parties' Positions

(1) Collocation

Numerous competitors and ORA disputed Pacific's 1999 compliance showing. Overall, they argued that Pacific's performance was insufficient. (MCJ, App. II at 19-21; ACI, IV. G at 21; AT&T Brief at 34; XO at 19; ORA at 23 (August 16, 1999).)

In its 2001 responsive filing, WorldCom notes that the CPUC has not yet adopted final collocation costs and prices. Thus, it disputes Vandeloop's assertion that Pacific's collocation prices are compliant with cost-based pricing requirements for three reasons: 1) Pacific's current collocation prices improperly include a 19% shared and common cost markup; 2) Pacific's prices are subject to true-up. Hence they are uncertain at best; and 3) Pacific's prior collocation prices improperly classified substantial recurring costs as nonrecurring. Consequently, carriers paid as much as tens of thousands of dollars in nonrecurring charges for existing collocation arrangements.

Now that Pacific has agreed on an interim basis that those costs should be recovered as recurring, competitors are currently paying recurring prices for the same functionality that they already paid up-front. WorldCom urges the CPUC to adopt some sort of refund mechanism to prevent Pacific from double-recovering substantial costs from competitors. (Murray Decl. ¶¶ 165-168.)

ORA rebuts Pacific's claims that it is in conformity with the intervals specified in the *Advanced Services Collocation Waiver Order* because the order allows states to establish their own intervals.[31] The FCC rule is that the

[31] *Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC* Docket No. 98-147, Memorandum Opinion and Order (November 7, 2000).

state must "affirmatively" specify different intervals. According to ORA, there cannot have been an affirmative specification of a different interval if the difference was not evident when the Commission adopted its intervals. (ORA Brief at 27-28.)

Sprint highlights three of Pacific's collocation policies and practices that it considers anti-competitive:

- Its inability to obtain accurate information from Pacific about the interconnection policy at COs where Sprint wants to collocate. Sprint informed Pacific that it would place dark fiber into the first manhole outside of each CO where interconnection was anticipated. Sprint understood that Pacific would pull the fiber from the manhole to Sprint's dedicated space. On July 25,2001, however, Pacific notified Sprint that Sprint would have to pull the fiber from the manhole to the CO cable vault and then Pacific would pull the fiber from the cable vault to Sprint's collocation space. Sprint contends that this is contrary to the policy in the rest of SBC's territory.

  Additionally, Sprint reports that only Pacific-approved vendors are authorized to pull the fiber from the manhole to the cable vault. When it requested a list of approved vendors, Pacific indicated the list was "proprietary" and would not release the information until the issue was escalated to the executive level. Sprint further claims that Pacific required it to prepare new applications reflecting the additional work necessitated by Pacific's revised process.

- Pacific's policy of denying Sprint and other CLECs access to available collocation space that Pacific has reserved for itself. Sprint asserts that Pacific refuses to release such space to competitors notwithstanding the ILEC's ability to shift its reserved space to a CO expansion scheduled for completion before it has need of the reserved space.

- Pacific's failure to provide Sprint with the type and amount of information necessary for it to contest a collocation

denial. The CPUC's rules pursuant to D.98-12-068 provide that when Pacific denies a request for physical collocation space, it is to forward a significant amount of information to both the CPUC and the CLEC. That information includes a detailed floor plan with accurate measurements of the CO in question. Pacific has not forwarded the floor plans to Sprint for disputed COs. Instead, Pacific has only allowed Sprint access to the floor plans on the day of the physical inspection. Sprint maintains that this impairs its ability to conduct a meaningful inspection because it does not have time in advance to study the drawings.

(2) Interconnection Trunking

In its August 2001 comments, AT&T argues that "Pacific has arbitrarily gated[32] the number of interconnection trunks that Pacific will install for a CLEC per day thereby limiting the competition that Pacific will face." (Walker & Fettig Aff. ¶¶ 8-18.) AT&T maintains that Pacific put forth discriminatory interconnection terms. Pacific restricted each CLEC's DS1 orders to 24 per day, and its own installation of CLEC's DS1 to 16 per day. AT&T claims that Pacific imposes these restrictions without consulting the CLECs. It contends that it accrued a backlog of 200 interconnection trunk orders because of Pacific's "gating" policy. (*Id.* ¶ 9.)

AT&T also alleges that Pacific's exception to "gating" policies (for more than 8 DS1s orders) enables the incumbent to limit its interconnection responsibilities. By limiting the number of daily installations, Pacific has precluded an accurate measure of its installation performance. AT&T urges Pacific to adequately staff its Local Service Center (LSC) and Local Operations Center (LOC), thereby avoiding these anti-competitive restrictions. (*Id.* ¶11.)

[32] Limited.

Similarly, AT&T decries the limit Pacific has placed on the number of Internet Protocol (IP) addresses that a CLEC can use to establish OSS connectivity. It asserts that the limitation unduly constrains large competitors. (AT&T Brief at 104-105; Willard Aff. ¶¶ 161-175.)

AT&T further claims that by means of Accessible Letter CLECC01-072 Pacific attempted to charge CLECs for transport by compelling them to designate the trunk termination at the Pacific switch location, rather than the facility termination location. AT&T contends that this violates the AT&T/Pacific Interconnection Agreement (ICA), Attachment 18, Sections 1.3.3.1 and 1.3.3.5. (*Id.* ¶¶ 20-25.) Additionally, AT&T asserts that Pacific has imposed barriers by not providing any guideline to CLECs on how to expediently place local interconnection trunk orders. After March 2001, Pacific provided the guideline with numerous errors, which left the CLECs uncertain about whether and how their orders would be processed. (*Id.* ¶ 27.) Pacific's different interpretation of fields and valid values from the other SBC companies added further delays to AT&T's trunk ordering. (*Id.* ¶ 32.)

WorldCom contends that Pacific fails to provide timely Firm Order Confirmations (FOC), which set the dates for testing and installation of requested facilities. Among its orders by **fax,** one in ten WorldCom trunk orders does not result in a timely FOC. As a result, a significant amount of WorldCom's employees' time is expended handling FOC issues. WorldCom also maintains that Pacific fails to test interconnection trunks on scheduled dates because its technicians do not appear on the agreed-upon date. To reschedule installation dates, Pacific requires supplementation of an original order with new dates. This process enables Pacific to avoid counting missed due dates in its performance results. Essentially, Pacific categorizes WorldCom's revised and corrected supplemental orders as deficient ones. (WorldCom Brief at 89-92 (August 23, 2001).)

ORA argues that the affidavits by Hopfinger, Tebeau, and Deere do not discuss any instances where Pacific has denied any interconnection requests due to technical infeasibility. Consequently, Pacific cannot claim to be satisfying its interconnection obligation since it does not provide parity service to Pacific's OSS. (ORA Brief at 5-6 (August 23, 2001).)

3. Discussion

Pacific is legally obligated to provide physical and virtual collocation pursuant to CPUC-approved interconnection agreements, tariff[33], and FCC rules.[34] (See AT&T ICA, Attachment 10 -- Ancillary Functions, § 4; Level 3 ICA, Appendix-Collocation; FCC Tariff No. 1.) (Hopfinger Aff. ¶ 31.)

Our review of the 1999 compliance filing and responses for Checklist Item 1 indicates that Pacific has complied with each of the associated procedural and policy requirements of D.98-12-069. The competitors continued to report provisioning problems; however, the performance results failed to support the reputed problems. Pacific and the competitors appear to have not yet developed measures to accurately assess some of these problems. Thus, they are difficult to evaluate.

Rebutting Sprint, Pacific says that it has provided the CLEC with hundreds of physical and virtual collocation arrangements in California. Pacific

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[33] Schedule Cal. P.U.C. No. 175T §§ 16.2.22 and 16.8.

[34] First Report and Order and Further Notice of Proposed Rulemaking, *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, 14 FCC Rcd 4761 (1999) *(Advanced Services Order)*; Order On Reconsideration And Second Further Notice Of Proposed Rulemaking In CC Docket No. 98-147 And Fifth Further Notice Of Proposed Rulemaking In CC Docket No. 96-98, *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, 15 FCC Rcd 17806 (2000) *(Advanced Services Reconsideration Order)*.

points out that the tariff under which Sprint purchases collocation clearly states that the collocator is responsible for placing its fiber optic cable from the interconnection point into the CO cable vault. (Hopfinger Reply Aff. ¶ 9.) Sprint conceded that it eventually obtained the vendor list; however, there was some initial misunderstanding.

To Sprint'sassertion of improper denial of collocation space for reserved use, Pacific responds that the FCC rules clearly provide that "[a]n incumbent LEC may retain a limited amount of floor space for its own specific future uses." 47 C.F.R. § 51.323(f)(4). It maintains that it should not have to relinquish validly reserved space merely because a building expansion (that may or may not be timely completed) is underway. ***(Id.)*** Pacific also replies that it provides floor plans only to a CLEC that has properly requested a walk-through of an exhausted collocation space. Pacific states that it will provide floor plans on a going forward basis at the time of a physical collocation space denial, even though it is currently in full compliance with the CPUC's collocation rules.

We agree that validly reserved space should not be relinquished for a building expansion contingency. In addition, Pacific'sprovision of floor plans at the time of space denial should enable carriers to more expeditiously determine alternative spaces. We cannot agree with ORA's interpretation of the provisioning intervals. We believe it is too limiting. Based on the performance results, we find that Pacific is timely managing requests for collocation space and installing collocation arrangements.

The record shows that Pacific currently is offering physical and virtual collocation at interim prices,[35] subject to true up, pending our final determination

[35] Some of the collocation prices reflect a voluntary agreement by Pacific to use AT&T's (jointly sponsored with CLECs')) proposed prices.

on permanent rates, terms and conditions in the Open Access and Network Architecture Development (OANAD)[36] proceeding. WorldCom is an active participant in the proceeding. We will not resolve in this decision the pending collocation issues. At this time, we find the interim prices to be in compliance with the law, subject to our imminent determination of permanent rates, terms and conditions.

Pacific makes trunking available pursuant to CPUC-approved interconnection agreements and FCC rules.[37] (*See* AT&T ICA, Attachment 18--Interconnection §§ 1.1, 1.8, 1.3.3.3.2.1, 1.3.3.2.2 and 4.1 and Level 3 ICA, Appendix ITR, § 4.2.1.) (Deere 2001 Aff. ¶¶ 17, 23-25.)

Pacific refutes AT&T's allegation that it is improperly "gating" interconnection trunks by explaining that the issue arose when it increased the number of DS1 circuits that could be scheduled for installation in a day from eight to twelve. It maintains that it did so to enable all CLECs to have an equal opportunity to access the Pacific network, and to have equal use of the engineering, design and installation resources available. The FCC and Justice Department have evaluated and condoned twelve installations per day in relation to SWBT's Texas 271 authorization. (Deere Reply Aff. ¶¶ 4-8.) We find Pacific's response to be reasonable regarding the daily limit on trunking installations; however, we expect Pacific to further follow the lead of its corporate siblings and work vigilantly to relieve any developing blockages through cooperative planning with AT&T and other affected CLECs. In the

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[36] R.93-04-003/I.93-04-002 (Collocation Phase).

[37] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers,* 11 FCC Rcd 15,499 (1996) *(First Report and Order)* ¶ 184; 47 CFR § 51.305(a).

context of appropriate network management, the policy appears neither discriminatory nor anti-competitive.

In response to AT&T's criticism of limiting CLECs to twelve IP addresses, Pacific contends that supporting unlimited IP addresses would introduce delay, require additional processing and network personnel as well as upgraded software and hardware, and compel it to manage AT&T's network. Pacific notes that only AT&T has complained about this issue. We find that this is a discrete network management matter, which does not pose a significant competitive barrier.

Pacific also denies forcing AT&T to designate trunk termination at its switch location, rather than the facility termination location. It insists that, although requested to, AT&T never provided it with any examples of billing of the extra transport charges. Pacific speculates that AT&T's complaint may be due to its improper attempt to use the local Access Service Request (ASR) ordering system--designed for interexchange carrier operations — to order for its local exchange operations. Pacific maintains that the issue is an isolated problem, which can be circumvented by removing the particular ASR hardcode field. (Id. ¶¶ 9-11.) We find Pacific's response to be reasonable.

Finally, Pacific replies that the issue of the Accessible Letter[x] is one that previously has not been addressed in contract negotiations or arbitrations. However, Pacific claims to have rescinded the Accessible Letter until the matter can be considered and resolved by the T1M1.3 Working Group and the Ordering and Billing Forum (OBF). Pacific has also agreed to rescind Accessible Letter

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[38] Accessible Letter CLECC01-072 addresses the appropriate establishment of what name to use for the switch a trunk terminates in, if that the switch is in a different LATA.

CLECC01-127 (establishing where a CLEC switch is within the LATA, but outside Pacific service area) until the issue can similarly be considered and resolved by the T1M1.3 Working Group and the OBF. (*Id.* ¶¶ 12-14.) We concur with Pacific moving this contested issue into the technical collaborative group.

Accordingly, we find that Pacific provides trunking consistent with the requirements of §§ 251(c)(2) and 252(d)(1); that is, at any technically feasible point, at least equal in quality to that provided to itself, and at reasonable nondiscriminatory rates. In sum, we conclude that Pacific has satisfied the requirements of Checklist Item 1, and we so verify.

B. Checklist Item 2—Unbundled Network Elements

Has Pacific provided nondiscriminatory access to Unbundled Network Elements (UNEs) in accordance with the requirements of sections 251(c)(2) and 252(d)(1), pursuant to section 271(c)(2)(B)(ii)?

1. Legal Standard

a) TA96 and FCC Orders

Section 271(c)(2)(B)(ii) requires Pacific to provide nondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(2) and 252(d)(1). To satisfy this checklist item, Pacific must provide this access to network elements, requested by telecommunications carriers, on an unbundled basis at any technically feasible point. The rates, terms, and conditions must be just, reasonable, and nondiscriminatory pursuant to the terms and conditions of sections 251 and 252; and Pacific must allow requesting carriers to combine UNEs to provide telecommunications services.[39] Section 252(d)(1)

[39] 47 U.S.C. § 251(c)(3).

establishes the pricing standard for network element charges. Just and reasonable rates must be: (i) based on the cost (determined without reference to a rate-of-return or other rate-based proceeding) of providing the network element, (ii) nondiscriminatory, and may include a reasonable profit."

The FCC has identified those network elements that must be provided on a nondiscriminatory basis under section 251(c)(3) as: (1) local loops; (2) network interface devices; (3) local switching; (4) interoffice transmission facilities; (5) signaling networks and call-related databases; (6) operational support systems (OSS); and (7) operator services and directory assistance." Competing carriers must also be provided with nondiscriminatory access to the components of the OSS, to the systems, information, and personnel that support network elements or services offered for resale." The FCC has emphasized that such access is "integral" to competitors' ability to enter the local exchange market and contend with the incumbent carrier."

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[40] 47 U.S.C. § 252(d)(1).

[41] See Implementation of the Local Competition Provisions Of the Telecommunications Act of 1996, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499, 15683 at ¶ 366 (1996) (Local Competition First Report and Order), aff'd in part and vacated in part sub nom, Competitive Telecommunications Ass'n v. FCC, 117 F.3d 1068 (8th Cir. 1997) and Iowa Utils. Bd. v. FCC, 120 F.3d 753 (8th Cir. 1997), aff'd in part and remanded, AT&T v. Iowa Utils. Bd., 525 U.S. 366 (1999).

[42] *See Application* by *Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York,* CC Docket No. 99-295, Memorandum Opinion and Order, 15 FCC Rcd 3953, 3989, ¶ 82 (1999) *(Bell Atlantic New York Order); In the Matter of Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. For Provision of In-Region, InterLATA Services in Louisiana,* CC Docket No. 98-121, Memorandum Opinion and Order, 13 FCC Rcd 20599, 20653, 183 (1998) *(Second BellSouth Louisiana Order).*

[43] *See Second BellSouth Louisiana Order* 13 FCC Rcd at ¶ 83.

Checklist Item 2 requires an assessment of whether Pacific provides nondiscriminatory access to OSS and to combinations of UNEs in accordance with section 251(c)(3) and the FCC's rules. Several of the other checklist items incorporate the duty to provide nondiscriminatory access to OSS functions. We separately set forth the UNEs other than OSS under their appropriate checklist items.

(1) OSS

Under this checklist item, a BOC must demonstrate that it provides nondiscriminatory access to the five OSS functions: (1) pre-ordering; (2) ordering; (3) provisioning; (4) maintenance and repair; and (5) billing." OSS functions include computer systems, databases, and personnel that the ILEC uses to discharge, direct, and coordinate many internal activities necessary to provide service to customers. To adequately compete, a CLEC needs access to the same OSS functions "in order to formulate and place orders for network elements or resale services, to install services for [its] customers, to maintain and repair network facilities, and to bill customers."[45]

The FCC has held that nondiscriminatory access to OSS is essential to the development of meaningful local competition, and without such

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[44] *In the Matter of Joint Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc.d/b/a/Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services in Arkansas and Missouri,* CC **Docket** No. 01-194, Memorandum Opinion and Order, 16 FCC Rcd 20719, 20726 at ¶ 15 (2001) *(SWBT Missouri Arkansas Order), Bell Atlantic New York Order* 15 FCC Rcd at ¶ 82.

[45] *Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas,* Memorandum Opinion and Order, 15 FCC Rcd 18354, 18396, ¶ 92 (2000) *(SWBT Texas Order), Bell Atlantic New York Order* 15 FCC Rcd at ¶ 83.

access a CLEC "will be severely disadvantaged, if not precluded altogether, from fairly competing" in the local exchange market.[46] To satisfy this checklist requirement, Pacific must offer OSS to accommodate each of the three methods of CLEC entry: "competitor-owned facilities, unbundled network elements and resale."[47]

In previous 271 orders, the FCC outlined a two-step approach for determining whether an incumbent LEC has met the nondiscrimination standard for each OSS function. Under this approach, the FCC will first ascertain whether Pacific has deployed necessary systems and personnel to provide sufficient access to each essential OSS function and provided adequate assistance to competing carriers in understanding how to implement and use all available OSS functions.[48] Thus, Pacific must demonstrate it has sufficient electronic and manual interfaces to permit CLECs equivalent access to necessary OSS functions. Pacific must also disclose internal business rules or formatting information needed to ensure every carrier's requests and orders are processed efficiently. Finally, Pacific must show that its OSS functions are designed to accommodate current and projected demand for CLECs to fully access those OSS functions.[49]

The second step assesses whether the OSS functions deployed by an ILEC are operationally ready, as a practical matter. Consequently, the FCC will examine performance measurements and other evidence of commercial readiness in order to gauge how Pacific is handling current demand, and to

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[46] ***Id.***

[47] *SWBT Texas Order* 15 FCC Rcd at ¶ 94.

[48] ***Id.*** at ¶ 96.

[49] ***Id.*** at ¶ **97.**

determine whether Pacific will be able to handle reasonably foreseeable future volumes. Actual commercial usage is the most appropriate evidence that OSS functions are operationally ready; however, without such evidence the FCC considers the results of carrier-to-carrier testing, independent third party testing, and internal testing.[50]

b) California Application of Legal Standards

D.98-12-069 identified five key issues within Checklist Item 2: (1) general access to UNEs; (2) UNE combinations; (3) intellectual property concerns; (4) nondiscriminatory access to OSS,[51] and (5) pricing. In 1998, these issues provoked the most controversy and comment. We directed Pacific to address these issues in its compliance filing. In 2001, interested parties focused most intensely on nondiscriminatory access to OSS and pricing."

2. Proceeding Record

a) Pacific's Position

(1) General Access to UNEs

Pacific maintains that it is in full compliance with the *UNE Remand Order*. Its ICAs with AT&T and Level 3 offer CLECs access to dark fiber, subloop unbundling, local switching, tandem switching, signaling networks, call-related databases, line conditioning, and information on loop qualification. (Deere Aff. ¶¶ 46-52; Hopfinger Aff. ¶¶ 85-86, and AT&T Agreement Attach. 6 - UNE, §§3.0-9.0 & Attach. 7 – OS/DA; Level 3 Agreement App. UNE.)

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[50] *Id.* at ¶ 98.

[51] Approximately 64 technical requirements in Appendix B of the decision address OSS.

[52] We briefly summarize the record presented for the less controversial issues and discuss OSS and pricing more extensively.

(2) UNE Combinations

Pacific asserts that it makes available UNE combinations beyond what is required by the Act. When requested to do *so*, Pacific will combine particular network elements that are not already combined, including new loop and switch port combinations (the UNE Platform or UNE-P) and, under certain conditions, loop to interoffice transport combinations (the Enhanced Extended Loop or EEL). (Hopfinger Aff. ¶ 92.) If a carrier purchases separate UNEs and requests that Pacific combine them, Pacific charges only the sum of the stand-alone nonrecurring charges for each of the UNEs being combined, and no "glue" charge is applied. (Linda Vandeloop (Vandeloop) Aff. ¶¶ 8,11; D.99-11-050, Conclusion of Law 56 (Cal PUC Nov. 18, 1999).)

Pacific has agreed to combine 2- or 4-wire analog loop, unbundled dedicated transport, and the appropriate cross connect. This extended loop is only available to a CLEC when the CLEC is the provider of the end-user's switched local telephone exchange service. (Hopfinger Aff. ¶ 95; AT&T Agreement Attach. 6 UNE, § 5.2.6.)

Pacific does not separate UNEs that it currently combines in its network unless a CLEC requests that it do *so*. (Hopfinger Aff. ¶ 14.) To allow CLECs to combine elements themselves, Pacific makes available collocation arrangements. (Hopfinger Aff. ¶¶46-55.) In addition, it makes available to CLECs access to secured frame rooms or cabinets that are set aside for accomplishing the necessary connections. (Deere Aff. ¶ 56; AT&T agreement; Level 3 Agreement.)

CLECs are not required to own or operate any equipment of their own to combine Pacific's UNEs. The various collocation options, the secured frame option, and Pacific's offer to combine certain UNEs for CLECs provide multiple methods for CLECs to obtain UNEs without owning or controlling any other local exchange facilities. (Hopfinger Aff. ¶ 100.)

(3) Intellectual Property

Pacific maintains that it will utilize its best efforts to obtain any associated intellectual property rights that are necessary for the requesting carrier to use unbundled network elements or ensure that none are required in compliance with the FCC's *Intellectual Property Order*.[53] It is not aware of any action in which a third party intellectual property owner has asserted a claim or a request for payment for a CLEC's use of Pacific's UNEs. (Hopfinger Aff. ¶ 101.)

(a) Discussion

While these three issues provoked numerous comments in 1998 during the collaborative sessions and after, no party commented on Pacific's June 2001 showing for these topics.

On June 17, 2002, XO, Tri-M Communications Inc., d/b/a TMC Communications (TMC), and Anew Telecommunications Corporation d/b/a Call America (Call America) filed a motion in this proceeding for "leave to submit additional briefing and for a limited modification of the current prohibition on ex parte communications." The parties sought to discuss with this Commission the "significance" of the United States Court of Appeals for the District of Columbia Circuit's (D.C. Circuit) decision in *United States Telecom Association v. Federal Communications Commission*, ____ F.3rd ____, 2002 US App. LEXIS 9834 (May 24, 2002) (*USTA*). Quoting language from the decision, XO, TMC and Call America argue that uncertainty has been created about what UNEs "may or may not be available to CLECs in the future." XO, TMC and Call

[53] *Petition of MCI for Declaratory Ruling that New Entrants Need Not Obtain Separate License for Right-to-use Agreements Before Purchasing Unbundled Elements*, Memorandum Opinion and Order, 15 FCC Rcd 13896 (2000) (*Intellectual Property Order*).

America Motion at 3. They urge us, assisted by additional briefings and ex parte discussions, to consider *USTA's* potential impact upon the competitors. Pacific opposed the motion.

We trust that XO, TMC and Call America will properly explore the implications of *USTA's* impact upon themselves and other local exchange carrier competitors at the FCC. Thus, we consider ruminating about how this may eventually be resolved neither "necessary" nor "appropriate" in this proceeding. Therefore, we deny the motion of XO, TMC and Call America for leave to submit additional briefing and for a limited modification of the ex parte ban.

Regarding UNE combinations, our review of Pacific's ICAs, specifically those with AT&T and Level 3, indicate that the terms and conditions associated with Pacific's agreement to assemble new EEL combinations are more generous than the terms required under the *UNE Remand Order,*[54] which addressed only existing combinations of loop and transport. In general, we find that Pacific provides nondiscriminatory access to a comprehensive set of unbundled network elements at terms and conditions that comply with Sections 251 and 252 of TA96 and include all the UNEs from the *UNE Remand Order*. We also find that Pacific has complied with our D.98-12-069 technical requirements regarding general access to UNEs, UNE combinations, and UNE intellectual property issues.

[54] Third Report and Order and Fourth Further Notice of Proposed Rulemaking, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996,* **15** FCC Rcd 3696 (1999) (*UNE Remand Order).*

(4) Nondiscriminatory Access to OSS

(a) OSS Test

(i) Background

In 1998, we directed Pacific to submit its OSS test plan (the Master Test Plan or MTP) in this docket for review and comment. Pacific filed its proposed MTP in January 1999. In August 1999, following comments from TD staff and the interested parties as well as a two-week industry-wide collaborative workshop, the CPUC issued a finalized MTP setting up the test requirements and the need to have outside consultants assist in the test of the Pacific systems. As part of this investigation, we supervised an evaluation of Pacific's OSS, including the interfacing process which allows CLECs to compete with Pacific in providing local telephone service. These OSS include those that the FCC has determined are necessary for the mechanized CLEC interfaces for pre-ordering, ordering, provisioning, maintenance and repair and billing capabilities essential for CLECs to provide local service in Pacific's service area. The evaluation tested whether Pacific's OSS provides the CLECs parity or nondiscriminatory access with a meaningful opportunity to compete.

After issuance of the finalized MTP, the CPUC issued Requests for Proposals for teams to perform the three significant roles of the OSS test: the Test Administrator (TAM), the Technical Advisor (TA) and the Test Generator (TG). The CPUC awarded contracts for the positions of TA and TAM to Cap Gemini Ernst & Young (CGE&Y), and awarded the contract for TG to Global exchange Services (GXS). The TAM administered the actual test effort. They were responsible for defining the test execution and monitoring the consultant selected to act as the TG. The TA provided ongoing support to the CPUC during the term of the test. Comprised of experts in telecommunications and OSS architecture, design, and development, they assisted the CPUC in its

management of the OSS test. The TG acted as CLECs or Pseudo-CLECs[55] during the test effort, and interacted with Pacific by submitting the orders on a day-to-day basis.

The MTP provided the list of services to be tested. CGE&Y generated the test cases and test scripts from the MTP and made necessary modifications.[56] They also supervised the TG execution of the test cases and test scripts that they had created, and validated the generated bills. CGE&Y formed a Test Execution Team to oversee the submission of orders[57] at the TG site. In addition, they generated the daily procedures[58] of the Test, and tracked performance results. CGE&Y formed a statistical team to record and maintain performance measurement statistics based on the test effort. Analysis of the test statistics determined the results of the test and compliance under § 271.

To execute the tests for the CPUC, GXS assumed the role of four Pseudo-CLECs and established the requisite manual and automated interconnections with Pacific for pre-ordering and ordering of various retail UNE

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[55] A Pseudo-CLEC is a company established as a pretend CLEC. It performs the activities of a real CLEC but without real customers or profit. The TG set **up** four Pseudo-CLECs, Blackhawk, Discovery, Camino, and Napa, as independent companies in order to submit orders to Pacific in the same manner as an actual CLEC.

[56] Necessary modifications included identifying the services to be tested, identifying the test participants, coordinating the facilities, and identifying the telephone numbers (TNs) to be utilized.

[57] The submission of the orders was the output of the test cases.

[58] These included policies for the processing of jeopardy issues, escalation of issues, environment cleanup, data purge, expedited Change Management, Technical Advisory Board (TAB) information dissemination, Test Case delivery and monitoring, and Daily Logs.

products. GXS recorded the Pseudo-CLECs' contacts and experiences with Pacific, and interacted with the Pacific-assigned CLEC Account Management Team. It designed and built the technical interface applications and established the processing infrastructure, including communication links and platforms to support the Pseudo-CLEC interconnection. GXS processed the orders (by fax, graphical user interface (GUI), and Electronic Data Interchange (EDI)) provided by the TAM. In addition, GXS worked with the TAM to create the required order tracking mechanisms to log all the order activity. As a member of the TAB, they represented the test execution effort and interacted with the participating CLECs, Pacific, the TAM, **TA,** and the TD staff.

(ii) OSS Test Summary and Findings/Commercial Performance Assessment

In accordance with the established standards for the testing and evaluation of a BOC's Operations Support Systems set forth by the FCC in previously approved § 271 orders, Pacific's OSS Test assessed the results of 1) Functionality Testing,[59] 2) Capacity Testing,[60] and 3) Performance

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[59] The purpose of functionality testing is to determine whether the BOC has developed sufficient electronic functions and manual interfaces to allow competing carriers equivalent access to all of the necessary OSS functions. *(Joint Application by SBC Communications Inc., Southwestern Bell Telephone Co., and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma,* CC Docket No. 00-217, Memorandum Opinion and Order, 16 FCC Rcd 6237, 6285, ¶ 105 (2001) *(Kansas/Oklahoma Order).* In sum, functionality testing determines whether the BOC's OSS work. **As** the FCC has noted, the most probative evidence of whether a BOC's OSS meet the functionality test is actual commercial usage. Where there is insufficient commercial usage, carrier-to-carrier testing and independent third party testing are generally required. *(Id.)*

[60] The purpose of capacity testing is to determine whether the BOC's OSS can handle not only current demand, but reasonably foreseeable future volumes ***(Id.).***

Footnote continued on next page

Measurement Analysis.[61] This testing and evaluation examined the five "critical" OSS functions: pre-ordering (including access to loop qualification information), ordering, provisioning, maintenance and repair, and billing.

(a) Functionality Test

(i) Pre-order/Order/Provisioning Testing

The Functionality test's objective was to assess Pacific's readiness and capability to provide the CLECs with access to Pacific's OSS in order to perform pre-ordering, ordering, provisioning, maintenance and

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Capacity testing has two components, the volume or stress test and a scalability analysis. The stress test deliberately puts high volumes through the BOC's OSS to determine the volume at which OSS performance begins to deteriorate. The scalability analysis assesses the ability of the BOC to increase the capacity of its OSS to meet increasing demand.

[61] The FCC has established two types of performance measurement analysis. The first is for those functions that are like functions that the BOC provides to its retail customers. For those, a BOC must demonstrate that it is providing OSS access to competitors in "substantially the same time manner" as it does for its own retail service. For functions without a retail analog, a BOC must demonstrate that the access it provides offers an efficient carrier a "meaningful opportunity to compete. (*Id.* at ¶¶ 28, 104.)

The FCC has emphasized that performance measurement standards developed through open proceedings with input from both incumbent and competing carriers, can demonstrate compliance with these requirements. To the extent there is no statistically significant difference between a BOC's provision of services to competing carriers, retail customers, or a state's performance benchmark, the FCC has said that it generally will not examine further absent other evidence of discrimination by the BOC. Where there is a statistically significant difference, the FCC will consider the degree and duration of the performance disparity, as well as whether the performance is part of an improving or deteriorating trend. Where there are multiple measures for a Checklist item, the FCC will look at performance demonstrated by all the measurements as a whole (*Id.* at ¶ 32; see *also* ¶136.)

repair activities to customer accounts. To reflect the variety of customer orders for local services that CLECs could place with Pacific, Local Service Requests (LSRs) were generated for both resale and UNE services, as well as for business and residential account types. These service group types were tested by processing LSRs for various activity types.[62] The LSRs were transmitted to Pacific through various media including fax, Graphical User Interface (GUI)[63] - Local Service Request Exchange (LEX)[64] and Electronic Data Interchange (EDI)."

This test focused on the ability of the CLECs to access Pacific's OSS, perform pre-order queries, issue orders and receive responses back from Pacific. Consequently, a total of 2,975 LSRs were recorded as issued, out of which 2,615 completions were received. The Functionality test utilized the basic structure set forth by the MTP. Still, CGE&Y, GXS, Pacific, and the participating CLECs collaboratively labored to establish serving addresses and collocation facilities that would most efficiently support the test environment.

(ii) Maintenance & Repair (M&R) Testing

M&R testing was performed to evaluate the performance of the two different electronic means of issuing trouble reports or "tickets" that Pacific provides to its CLEC customers: Pacific Bell Service

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[62] For example, Conversion, Conversion ASCAPs, Changes, Outside Moves, Suspends and Restores, Record Changes, New Connects, Disconnects, Supplements, Directory Listings and Cancellations.

[63] A simplified method of accessing programs within a computer by using a mouse to point to icons, which in turn causes the programs to perform a specific function.

[64] Ordering interface.

[65] Interface protocol that provides for mechanized order processing.

Manager (PBSM)"and the Electronic Bonding interface (EB).[67] Pacific's ability to receive test "tickets"was documented, as was the final outcome, or resolution, of the tickets. From the information collected, all data relevant to the Performance Measurements" specified in the MTP was assembled and input on a spreadsheet for post-test evaluation and analysis.

The M&R test included the following activities:

- Tested the ability to electronically generate trouble tickets on lines that were installed during Functionality testing. This was tested for both PBSM and EB.
- Tested Pacific's ability to receive the trouble tickets that were created and electronically close the ticket back to the CLEC once the trouble was corrected. This was tested for both PBSM and EB.
- Evaluated Pacific's ability to meet the commitment dates quoted during the trouble ticket submission process. This was tested for both PBSM and EB.
- Evaluated the average amount of time that it took for Pacific to restore a line that was out of service. This was tested for both PBSM and EB.

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[66] PBSM is a system that provides user access through a gateway to Pacific Operating Support Systems and Network Management Systems. Users access PBSM through either a dial-up or a dedicated circuit.

[67] EB is an application-to-application trouble administration system, which is available for use by potentially high-volume CLECs that seek electronic bonding between the local telephone companies systems and the CLEC's own trouble administration application.

[68] The M&R phase examined Performance Measurements 20 through 22.

- Documented the average amount of time it took before Pacific's Line Maintenance Operating System (LMOS) accepted an electronically generated trouble ticket on a newly installed line.
- Evaluated the ability to successfully initiate Mechanized Loop Tests through both the EB and PBSM methods of trouble management.

(iii) M&R Commercial Performance Assessment

In D.98-12-069, we ordered Pacific: 1) to supply performance data showing which interfaces are used by CLECs to place trouble tickets, broken down into the categories of "resale," "unbundled loops" and "UNE combinations," and 2) to demonstrate that it has met the M&R needs of facilities-based carriers by following through on scheduling and publicizing joint meetings about M&R issues with these CLECs.

(a) M&R OSS Functionality for CLECs

Pacific provides CLECs with several options for identifying and reporting customer service troubles and requesting and obtaining maintenance. They can access Pacific's M&R functions electronically through a stand-alone character-based system developed by Pacific (a GUI system), or through an industry standard application-to-application system. In late June 2000, Pacific announced via AL CLECC00-094 the general availability of its Trouble Administration system.[69] Electronic Bonding (EB) interface is Pacific's application-to-application offering. Pacific also offers CLECs the non-mechanized option of reporting M&R troubles by telephone directly to the

[69] A Microsoft Windows based M&R GUI that replaced Pacific Bell Service Manager (PBSM), a GUI in prior use for Pacific and CLECs, in mid-2001.

Pacific Local Operations Center (LOC). (Huston-Lawson Aff. ¶¶ 192-196 (June 2001).)

Our review of the record indicates that Pacific appears to be providing CLECs the same choices it has for pursuing a mechanized or manual approach to dealing with customers' M&R problems. The means that CLECs have to open trouble tickets, perform a Mechanized Loop Test, check the status of an open trouble ticket, and check trouble history, are exactly those that are available to Pacific's retail operations.

(b) Joint Meetings With CLECs About M&R issues

In the spring of 1999, Pacific publicized and conducted joint meetings with resale and facilities-based CLECs about their M&R needs. (See ALs CLECC 99-101,121 and 168.) More recently, Pacific has been conducting broader and ongoing collaborative "User Forum" meetings where CLECs and Pacific deal with CLEC issues that can include M&R problems. (See AL CLECC 00-131.) Pacific has conducted these meetings monthly since late May 2000. The focus of these meetings is on working cooperatively through a defined business/operational problem resolution process on issues (including M&R issues) not addressed in the Change Management Process.

The forum functions through an Executive Steering Committee (ESC) consisting of a representative from each CLEC and one from SBC. The ESC receives and prioritizes issues for discussion and resolution at forum meetings. There is an Issue Submission Form for advancing issues to the ESC for consideration. Any number of CLEC personnel can attend the monthly forum meetings. Issues being considered are logged, tracked and their status reported through closure. (***Id.***, Attachment W at 62-72.)

(c) M&R issues Raised by Parties

Several CLECs allege process failures in both the times it takes to make repairs and the reliability of repairs; thereby, hindering CLECs ability to compete effectively. (See, XO Comments, Sect. II at 31-32 (April 2000); XO Comments at 11, Sect. IIA2 at 10 (August 2001.); (AT&T) Willard Aff. ¶¶ 94-96 (April 2000); WorldCom Comments, App. 2, at 5-6, 15-19 (August 2001).)

Among the more serious CLEC allegations is that Pacific fails to update records in its LMOS" to reflect LJNE Platform (UNE-P) CLECs as the current "owners" of their circuits. According to AT&T, this precludes submitting trouble tickets electronically for these circuits.[71] ((AT&T) Van de Water **Aff.** ¶ 19 (August 2001).) AT&T further claims that LMOS records contain incorrect information on about one in seven of its accounts, but the situation does not cause a rejection of trouble tickets. However, it causes the system to display a message that AT&T believes causes confusion and customer dissatisfaction.[72] ***(Id.*** ¶¶ 74-78.)

Pacific responds that it engaged Ernst & Young to review the way in which records in the LMOS are updated. Ernst & Young, using attestation standards that the FCC has found persuasive in the

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[70] LMOS is the SBC system used to log, track and dispatch POTS and POTS-like trouble tickets.

[71] AT&T contends that its records show that this LMOS problem affects half or more of its UNE-P customers, and also claims that Pacific itself has confirmed that this problem exists.

[72] The message states, "Our records indicate that this telephone number is not a part of your company profile. Do you wish to continue with this transaction?"

past,[73] determined that Pacific's OSS are designed so that service orders on UNE-P conversions correctly update LMOS. This review validated that in August 2001, more than 99.2% of the UNE-P lines billed in Pacific's Carrier Access Billing Systems were correctly shown as working lines in LMOS. Thus, CLECs could electronically open trouble tickets on these lines. The few records that were erroneously in disconnect status in LMOS were updated during the Ernst & Young audit, and the sequencing problems that previously existed in Southwestern Bell Telephone Company's LMOS did not and do not presently affect Pacific's LMOS. (Pacific Reply Comments at 45-46; Motta Aff. ¶¶ 3,5-8, & 11 (September 2001).)

Pacific acknowledges that LMOS allows a CLEC to open a trouble ticket on another's account. This is a result of the Trouble Administration enhancements that allow a CLEC to open a trouble ticket before an order is posted to the billing system, and Pacific asserts that AT&T was aware that this would be a result of that fix. Pacific notes that it is a CLEC's responsibility to ensure it submits trouble tickets on its own lines. (Pacific Reply Brief at 45.)

AT&T also contends that it recently has had to open trouble tickets reporting loss of **dial** tone for its UNE-P customers in increasing numbers. It alleges that Pacific has admitted that at least some of these losses of dial tone problems are caused by the "disconnect" order dropping out of the OSS for manual processing that is completed after the mechanized "connect" order. (Van de Water Aff. ¶¶ 71-73 (August 2001).) AT&T reports that a Performance Measure (PM) data reconciliation effort it conducted last year involving review of its UNE-P orders showed about 40% of its misreported or

[73] See FCC01-29, ¶¶ 107-108.

unreported troubles were due to the lack of proper disconnect and connect order timing or the LMOS "ownership" problem. It insists that Pacific has made an unverified claim that both of these problems were corrected in July 2001; however, these two situations could be responsible for the misrepresentation of some M&R Performance Measures. *(Id.* ¶¶ 44-49, 54-60.)

(d) M&R Performance Results

To determine generally whether Pacific is restoring CLEC customers' service in substantially the same time and manner as it does for its retail customers and performing CLEC M&R work at a similar level of quality, we examine below recent results for the five M&R PMs (PMs 19 through 23)[74] that have been established in California.

In the aggregate, these five M&R PMs cover about **185** resale and wholesale product categories (i.e., submeasures) that CLECs and Pacific may market to their customers. In reality, the data allows analysis of performance in only 85 of these submeasures because there is no data showing

[74] PM 19 (Customer Trouble Reuort Rate) shows a comparison of the monthly statewide customer trouble report rate as a percent of all of the CLECs' versus Pacific's access lines (circuits or UNEs). PM 20 (Percent of Customer Troubles Not Resolved Within Estimated Time) tracks the monthly statewide percent of CLEC versus Pacific trouble reports that are not cleared by the committed time. PM 21 (Average Time to Restore) compares the monthly statewide average duration (in hours) of CLEC customer versus Pacific customer related trouble reports (from the time when the customer trouble ticket is opened until the time the trouble is cleared). PM 22 POTS Out-of-Service Less Than 24 Hours) contrasts the monthly statewide percent of out-of-service related trouble reports on POTS that are cleared in less than a day for CLEC versus Pacific customers. Finally, PM 23 (Frequency of Repeat Troubles in 30-Day Period) tracks the statewide percentage of network trouble reports received within 30 days from a customer with a previous similar report for the CLECs versus Pacific.

commercial activity by the CLECs (or in some cases where ASI is marketing the product, by any CLEC not affiliated with Pacific) in the other 100 submeasures.[75]

Reviewing data collected for the seven months from January through July 2001 shows there is a very solid parity trend (e.g. - CLECs attained parity in all seven months) in the case of 50 of the 85 (or about 59% of the) viable M&R submeasures. The equivalent parity trend breakdown for each PM was as follows:

PM 19 – 78% (18 of 23 Submeasures)
PM 20 – 62% (16 of 26 Submeasures)
PM 21 – 45% (9 of 20 Submeasures)
PM 22 – 75% (3 of 4 Submeasures)
PM 23 – 33% (4 of 12 Submeasures)

There were some submeasures within each of the M&R PMs where CLEC performance was sub-standard over much of the seven-month period analyzed. For example, the PM 19 data, indicated that CLEC customer trouble rates were higher than for Pacific's customers during six of the seven months (all months except July) for the UNE – P submeasure. They were higher for four of the seven months (including July) for the Resale DS1 and the UNE Loop 2 Wire Digital Line Sharing submeasure.

CLECs failed to attain parity with Pacific in expedience in resolving customers' reported troubles (PM 20) during five to six of the seven months examined for the UNE Dedicated Transport and the Resale Residential POTS Not Dispatched submeasures. They failed to do so during five months of the period in the Resale Business POTS Not Dispatched and the Interconnection Trunk submeasures. CLECs also failed to attain parity in three

[75] See Johnson Aff., Attachment A (June 2001); Johnson Reply Aff., Attachment F, for all the performance metrics covering the 15-month period of May 2000 through July 2001.

out of the seven months for the Resale Business POTS Dispatched, Resale Centrex Dispatched and the UNE – P submeasures.

For PM 21, (average time to restore) CLEC customers fared worse than Pacific's for six of the seven months for the UNE Dedicated Transport and the UNE – P submeasures. They did not attain parity with Pacific customers during five of the seven months for the Resale Business POTS Dispatched, UNE Loop 2/4 Wire, and UNE Loop 2 Wire Digital ISDN Capable submeasures. They also fared worse in three months of the seven-month period for the Resale Centrex Dispatched and the UNE Loop 4 Wire Digital 1.544 mbpd Capable HDSL submeasures. There are only four (of five) submeasures showing commercial activity for PM 22 (POTS out-of-service less than a day). Nevertheless, in one key submeasure, Resale Business POTS, CLEC customers were not at parity with Pacific customers during three of the seven months of 2001 analyzed (March, May and July).

Finally, in the case of PM 23 (frequency of repeat troubles), it appears that CLEC customers fared worse than Pacific's during the entire January through July 2001 period for the UNE Loop 2/4 Wire submeasure. CLEC customers had higher percentages of repeat troubles than Pacific's in five of the seven months for the Resale Business POTS, UNE Dedicated Transport DS3, and UNE – P submeasures. They also did poorer in four of the seven months for the Resale Centrex, UNE Loop 2 Wire Digital ISDN Capable, and UNE Dedicated Transport DS1 submeasures. Notably, CLEC customers also failed to attain parity with Pacific customers in this PM for the UNE Loop 2 Wire Digital xDSL Line Sharing submeasure in both June and July.

Overall, CLEC M&R PM data for the first seven months of 2001 may support the possibility that poor M&R access is affecting CLECs on a more widespread basis and is not limited to a few individual CLECs. In fact, the data appears to show that in some important

service areas, the level of M&R access provided CLECs is consistently sub-par vis-à-vis Pacific retail over the five M&R PMs, as evidenced by the information summarized in the table below.

Submeasures Where Aggregate **CLEC** Parity Failures
Occurred During at Least Three Months in More Than
One **M&R** PM Between January Through July 2001

Submeasure	M&R Perf. Measure
Resale Business POTS, Disp. and/or Not Disp.	20, 21, 22, 23
Resale Centrex	20, 21, 23
UNE Dedicated Transp. – DS1 and/or DS3	20, 21, 23
UNE Loop 2 Wire Digital ISDN Capable	21, 23
UNE Loop 2/4 Wire 8 db & 5.5 db	21, 23
UNE Loop 2 Wire Digital Line Sharing	19, 23[76]
UNE – P	19, 20, 21, 23

Pacific addresses some of the above described M&R PM parity failures for CLECs in its June and September 2001 filings. For example, it acknowledges that UNE-P submeasures did not always meet established standards. It claims that a reason for this sub-par performance is that CLECs requests for UNE-P service is only beginning to attain any significant volume, and it acknowledges that it has experienced "a few startup problems." But it further insists that the adverse gap between CLECs and Pacific retail is narrowing as UNE-P order volume rises. (Johnson Aff. ¶ 132 (June 2001).)

[76] CLECs in the aggregate were out of parity for only *two* months for this submeasure in PM 23, but the situation is still notable because the *two* months were June and July 2001, the last *two* months of the observation period.

Pacific also states that it is continuing to refine its maintenance process to more efficiently manage UNE-P trouble resolution. It asserts that it has made an appropriate change to its UNE-P maintenance appointment interval. Prior to May 2001, residential appointment intervals were being applied as the CLEC standard, even though parity performance was being compared to the shorter business customer appointment interval for Pacific retail. Since May 2001, all UNE-P maintenance troubles have been assigned a business POTS appointment interval, so future results should reflect the impact of this change. *(Id.* ¶ **133.)**

Although Pacific acknowledges it did not meet parity for PM 19 until July 2001, the prior months' parity failures were narrow ones. (Johnson Reply Aff. ¶ 55 (September 2001).) Regarding PM 20, March was the only month in which parity was missed from January through May 2001. The only month in which parity was missed for PM 21 (June 2001) was attributable to trouble reports where the CLEC missed the test appointments. Consequently, these should have been excluded from the measurements. *(Id.* ¶¶ 56-57.) Pacific also contends that the primary reason for UNE-P non-parity (for PM 23) in February 2001 was because some CLECs submitted trouble reports erroneously citing "missing features on the line." It cleared up this problem by April 2001. *(Id.* ¶ 58.)

Notwithstanding Pacific's explanations, PM data continues to show that CLECs are often failing to attain M&R parity with Pacific for UNE-P service. They failed in May and June 2001 for PM19, in June for PM 20, in May, June and July for PM 21, and in July for PM 23. Pacific also claimed in June that earlier 2001 CLEC parity failures for the Resale Centrex submeasure in PMs 19 and 23 appeared to be an anomaly that had not been a problem in prior months. (Johnson Aff. ¶156. (June 2001).) But again, the data

on PM results showed continuing CLEC parity failure for Resale Centrex in PM 20 in May 2001, in PM 21 in May and June, and in PM 23 in May and July.

Finally, Pacific noted in June that parity for CLECs was not attained in some earlier months of 2001 for Resale Residential and Business POTS with respect to troubles being resolved in the estimated time (I'M 20) and average time to restore (I'M 21). It alleged that these failures can be traced primarily to circumstances where trouble tickets categorized as "not dispatched" were actually "dispatched" situations. (Johnson Aff. ¶ **157** (June 2001).) In contrast, the data appeared to show continuing CLEC failures in Resale Business POTS submeasures for PM 20 in May and July (for "dispatched") and in May and June (for "not dispatched'), for PM 21 in March through July (for "dispatched") and in June (for "not dispatched"), for PM 22 in May and July, and for PM 23 in June 2001.

(e) ***Discussion***

It seems that Pacific is more than adequately demonstrating a commitment to maintain a process consistent with our directive to collaborate with CLECs to resolve the periodic issues that may arise concerning their M&R needs. Thus, we find that Pacific has satisfied the specific OSS M&R related checklist requirements we set out for it in Appendix B to D.98-12-069. We further find that the OSS test has shown that the M&R systems have basic functionality.

While most of Pacific's rebuttals to the persistent claims that significant aspects of M&R access are not supplied to CLECs' as they are for Pacific retail (in substantially the same time and manner, and with the same quality) appear to be credible, actual CLEC performance vis-à-vis Pacific's actual performance, as evidenced by M&R PM results, do not yet clearly substantiate these rebuttals for key resale business and UNE product PM

submeasures. Therefore, whether the sum of the M&R evidence adequately supports a finding that CLECs are being allowed a meaningful opportunity to compete is still an open question. Still, month-to-month OSS M&R performance parity appears to be being achieved in the large majority of instances, and seems to be growing. Moreover, we have incentives in place to help ensure that Pacific will not backslide in its effort to assure this condition continues for the future.

In its comments to the draft decision, XO disputes that we should accept Pacific's performance on DS1 provisioning, and cites PM 5 and 16 performance data to support its position. However, PM 5 performance provides no such support. During the last twelve months Pacific passed the performance criterion in eight of those months and provided slightly better service to the CLECs in four of those months.[77] While Pacific failed this PM

[77] XO asserts that we have "selectively" used performance results from different months in different analyses, and that a more comprehensive analysis would undermine our conclusions. XO Comm., August 12, 2002, at 9, fn. 22. We have responded to each of its allegedly supporting examples here. Additionally it is important to note that new data becomes available as each month ends. It takes longer than a month to review the data, update the analyses, rewrite tables, and finish other tasks necessary to complete or revise a draft decision. Regardless of the quality of Pacific's performance results, we could never consider the DD if we had to update analyses for all performance results every month, and Pacific's long distance competition would be permanently stalled. So we must perform a "triage," recognizing that the Commission can only update and re-analyze a select few sub-measures each month. Where Pacific has already passed, or where trends show future performance is likely to be acceptable, the added burden of a re-analysis offers relatively little gain. Because of this burden we must rely instead on the anti-backsliding protection of the performance incentives plan. On the other hand, where Pacific's performance has been poor, we update the analysis in fairness to Pacific, which has been working to improve performance. And insofar as time allows, where performance is marginal and variable, we update the analysis to aid our decision-making.

XO also criticizes our use of recent performance data that has not been formally entered in the proceeding record. *Id.* However, as XO points out, the most recent record data is from mid-2001. To include new data formally in the record would cause even more delay to the decision. We would have to allow additional time for the

Footnote continued on next page

5 measure in June and July, they failed by less than one percentage point where performance for both the ILECs and CLECs has varied by about two percentage points from month to month." We have no evidence to suggest that these performance differences are sufficiently egregious to alter our assessment of Pacific's compliance under Checklist Item 2.

PM 16 provisioning performance in the Bay Area region shows a strong improving trend and has passed two consecutive months and three of the last four months.[79] In the North region, Pacific's most recent performance to the CLECs was better than to itself, and Pacific failed only

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parties to review and comment on the augmented record. Again, this would likely result in delays that would effectively prevent Pacific from ever receiving 271 approval, regardless of its performance quality. Additionally, this data has been continuously available to the CLECs on the CLEC website. The parties, and the Commission, have already relied on this data source, and to ignore the more recent data resolves no issue regarding its integrity or utility. Parties have had ample opportunity to comment on the data source itself. A requirement to formally include every new months' data before we can update our review would effectively prevent us from examining recent data and leave us basing our decision more on how Pacific *was* performing than on how Pacific *is* performing.

[78] In June and July 2002, the CLECs' percentages of orders jeopardized were 0.93 and 0.84 percent respectively, whereas Pacific's percentages were 0.24 and 0.22 percent - differences of less than 0.7 percent. For the year covering the last half of 2001 and the first half of 2002, Pacific's performance varied between 0.06 and 1.82 percent, whereas the CLECs' performance varied between 0.00 and 1.67 percent. The CLEC overall average monthly percentage was very close to Pacific's, 0.59 percent to Pacific's 0.49 percent – a difference of 0.1 percent.

[79] In the Bay Area region in the last half of 2001, CLEC performance ranged between 8 and 33 percent, whereas Pacific's performance ranged between 4 and 8 percent. In contrast, in the most recent three months, CLEC performance has ranged between about 5 and 12 percent, and Pacific's has ranged between about 7.5 and 12.5 percent. CLEC performance percentages were 12.0, 12.1, 7.8, and 5.4 for April, May, June, and July 2002, respectively, whereas Pacific's performance percentages were 13.0, 7.5, 12.5, and 7.5.

twice in the last twelve months." In the LA region, Pacific has provided better performance to the CLECs for three consecutive months.[81] In the South region, Pacific last failed in January 2002, has provided better performance in five of the seven months in 2002, and most recently has passed for three consecutive months." This performance summary does not support XO's claims. Additionally, as we have noted earlier, if performance were to fail continuously it would not go unsanctioned; Pacific's incentive payments would periodically double.

(iv) End-User Test

The End-User Test (EUT) was to generate usage and create billing from specified telephone lines at multiple test sites. Accounts were established for the purpose of making and receiving calls during the period of the test effort. The EUTs were based on a predefined set of test cases from the MTP.[83] This test focused on UNE Loop with Port.[84] The Test Team generated usage and billing data, and validated test results in a controlled manner pursuant

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[80] In the North region in May, June, and July 2002, the CLECs' performance was 8.2, 4.1, and 8.3 percent trouble reports respectively, whereas Pacific's performance was 6.7, 13.8, and 10.5 percent.

[81] In the LA region, the CLECs' trouble report rate for May, June, and July, 2002, was 6.76, 7.56, and 5.48, respectively, whereas Pacific's rate was 12.60, 17.86, and 11.89 percent.

[82] In the South region, the CLECs' trouble report rate for May, June, and July, 2002, was 4.0, 5.1, and 7.9, respectively, whereas Pacific's rate was 9.7, 15.8, and 8.3 percent.

[83] § *6.5.5,* the OSS Master Test Plan, Version 3.1, Attachment 1A and the OSS Test Cases Usage (9/30/99).

[84] Tests that covered LNP and UNE Loop (Basic & xDSL) were part of the Pre-order/Order/Provisioning segment, not the EUT.

to the specified test procedures. In addition to making calls to generate usage, calls were made to test the features provisioned on each telephone line. 450 test scripts were executed multiple times at each test site. Calls were made as indicated by the test scripts, the calls were tracked and recorded in call logs capturing date of call, from and to Telephone Numbers, and the start and stop times of the calls. The call data was then loaded into the End-User database, and the call duration was calculated.[85] Overall, the EUT demonstrated that telephone calls could be made to generate usage and billing, and Pacific was able to provide dial tone, features, and services for each Pseudo-CLEC customer and telephone line used in the EUT.

(v) Bill Validation

The primary purpose of Bill Validation was to verify that Pacific, through Carrier Access Billing System (CABS), was able to supply the CLECs with accurate and timely electronic and hard copy bills pursuant to the MTP.[86] This test assessed the accuracy and timeliness of wholesale bills as well as the usage data and billing records for the services, features, network items (e.g. loop, port) and functions that were ordered and provisioned. It also verified that the rate center specific pricing was applied to recurring, non-recurring, usage sensitive and miscellaneous charges.

The CGE&Y Bill Validation team performed 11 activities during the test effort.[87] Each month both electronic and hard copies

[85] The total number of test cases and test scripts executed are included in Table 4.1.3-2 of the Final Report Version 1.2.

[86] MTP § 4.2.5.1.

[87] 1) Usage, 2) Bill Format, 3) Bill Content, 4) Bill Accuracy, 5) Rate Charges, 6) Discounts and Adjustments, 7) Taxes and Surcharges, 8) Proration Accuracy,

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of the bills were sent to the team. In addition, the team received the monthly usage files to validate the end-user calls. The bills received and validated spanned October 1999 through August 2000.

(vi) Billing-Commercial Performance Assessment

The invoices covering Pacific's charges for the products and services it provides CLECs are generated through the Pacific OSS. CLECs also obtain through OSS the customer service usage data necessary to perform such business functions as 1) verifying that their wholesale billings from Pacific and their own billings to end-users are accurate, 2) ensuring that any CLEC customer claims and adjustments can be processed, and **3)** assessing that customers have access. Thus, unless Pacific provides CLECs with OSS billing functionality comparable to the billing functionality that it provides for its own retail operations, these competitors' ability to operate effectively in the local telephone service market is significantly impaired.

To facilitate our effort to determine whether CLECs are receiving an adequate degree of billing functionality from Pacific, in D.98-12-069 we directed Pacific to perform a number of OSS billing related tasks. Specifically, we directed Pacific to 1) sponsor focus groups to identify CLEC billing issues, 2) track bill disputes resolved within thirty days and report results to CLECs, 3) share dispute logs with respective CLECs, 4) advise CLECs within thirty days when a dispute will be resolved and when credit will be issued, 5) consolidate "bill rounds" for small CLECs, and 6) provide proof that it has

9) Accurate Rounding, 10) Accurate Discounts, and 11) Timeliness. § 4.1.4.5 of the Final Report Version 1.2.

resolved the single bill–single tariff problem and has paid any monies due to other carriers.

a) Compliance Showing

Pacific submitted compliance filings in 1999, 2000, and 2001. Our record review indicates that through its "User Forums" with CLECs, where general issues, including billing issues, are raised and resolved, Pacific is demonstrating a clear commitment to maintain a process consistent with the CPUC directive to make collaborative efforts to identify (and resolve) any billing issues as they arise. (See Huston-Lawson Aff., Attachment W, at 62-72. (June 2001).) It also now tracks billing disputes and provides a CLEC its dispute log upon request. (See Murray Aff. ¶ 63 (July 1999); Murray Reply Aff., ¶ 54 (September 1999).)

Pacific contends that when a CLEC disputes a bill it accepts the claim and investigates, attempting to resolve the matter within 30 days. It notes that such quick resolution can be illusive, however, unless the claim is accompanied with correct billing data presented in a valid format. When the billing data is not clearly presented, resolution of the claim can take 90 days or more, depending on the complexity of the issue. Pacific further indicates that in cases where claim resolution will exceed 30 days, it notifies the CLEC about claim status, estimated resolution date, and the date that credit will be issued. (*Id.* ¶¶ 61, 62; Murray Reply Aff. ¶¶ 36-39, 55, 56.) We find that the overall record shows that Pacific has complied with the Commission's directive concerning billing disputes, and that it is making a continuing and concrete effort to maintain a state of compliance.

According to Pacific, UNE bills are consolidated into one of three bill dates in a month by north or south billing region. For resale service users, the Resale Select Bill Date system, which was

instituted in mid-1999 by AL CLECC 99-206, allows CLECs to consolidate resale service bill rounds from as many as 19 for each billing region to as few as one per region. (See Viveros Aff. ¶ 238 (July 1999).) No CLEC has made a material showing on the record refuting this claim. Thus we find that Pacific has properly complied with the CPUC directive to consolidate bill rounds.

Pacific also reports that it began to bill IECs for CLEC originating traffic on their behalf on a single bill-single tariff basis in mid-1999. It further claims it sent a letter to all single bill-single tariff CLECs in March 1999 asking each to contact Pacific in the event it had any outstanding single bill-single tariff issues. No CLEC replied to the letter, according to Pacific. Finally, it notes that all outstanding monies due CLECs with single bill-single tariff meet point billing arrangements with Pacific were paid in June 1999. ***(Id.*** ¶¶ 243-246.) XO stated that it had unresolved single bill-single tariff issues between July 1997 and December 1998. (XO Comments at 58-59 (August 1999).) In rebuttal, Pacific declares it did not pay XO revenues for the traffic in dispute because the CLEC could not submit complete and accurate records for processing. (*Id.* Reply Aff. ¶¶ 96-100 (September 1999).)

In sum, we find that Pacific has generally made the appropriate effort to resolve single bill-single tariff issues with CLECs as we directed in D.98-12-069.

b) Other Billing Issues Raised by Parties

TRA and AT&T specifically complained that they had chronic problems obtaining accurate bills and adequate billing data from Pacific. (TRA Comments at 110-12 (August 1999); Willard Decl., Sect. III (D), ¶¶ 97-100 (April 2000).) Pacific implies that any billing problems of one of these CLECs is due to the CLEC's own lack of pre-production set-up preparation, and responds that its only proactive opportunity to ensure the billing data of a

CLEC will bill and pass correctly is during the CLEC's initial usage feed testing process stage that occurs before it goes into production. (Viveros Reply Aff. ¶ 97 (September 1999).) In fact, the OSS third party test results seem to support the validity of Pacific's rebuttal, in that the test report concludes that where pre-production billing set-up protocols were strictly followed, Pacific supplied timely and accurate electronic and hard copy bills to Pseudo-CLECs during the course of the test. With respect to the other complaint of chronic billing problems, Pacific states that all such problems TRA reported to Pacific prior to its allegation were resolved some time ago. Pacific quotes monthly statistics it keeps to support its track record of resolving these within 30 days. (Henry Reply Aff. ¶¶ 23-24 (April 2000).)

Finally, WorldCom alleges that the OSS billing function represents one of Pacific's worst performance areas. It claims that as a result of this poor general performance, it failed to attain parity with Pacific 28 times during the four-month period of February through March 2001 (this would be about 22% of the time – 28 divided by the product of 29 total billing PM submeasures X 4 months). It notes that 21 (about 71%) of these parity failures are in usage record processing related PM submeasures. WorldCom voices concern that CLECs in the aggregate may be failing to obtain non-discriminatory billing access because, as a group, they also failed to attain parity with Pacific in some PM 28, 31 and 34 submeasures in several months in early 2001. (WorldCom Comments, App. 2, at 9-13 (August 2001).)

Pacific responded that WorldCom is the only one challenging its performance in providing timely and accurate bills to CLECs. (Pacific Reply Brief at 46 (September 2001).) It admitted that some submeasures of PM 28 (Usage Timeliness) have shown a lack of parity for CLECs in the aggregate during the early part of 2001. The cause was a programming problem that allowed usage records to backlog in processing to data exchange,

resulting in a transmission delay of usage records to the CLEC. Pacific claimed to be working to fix this process problem. (Johnson Aff. ¶ 99 (June 2001).) It asserts that the effects of the fix are now evident in PMs. (Johnson Reply Aff. ¶ 28 (September 2001).)

The central issue with PM 31 (Usage Completeness), according to Pacific, has been a set of ill-defined parameters for the measure. The revised JPSA[88] has implemented a new business rule that allows appropriate extra time for processing usage through Carrier Access Billing System, and this has had an immediately positive effect on performance. (*Id.* ¶ 29.) Finally, with respect to PM 34 (Bill Accuracy), Pacific notes that during June and July 2001, there was only one submeasure in 12 where the CLECs failed to attain parity. (*Id.* ¶ 31.)

c) Billing PM Results

In order to make an overall determination of how well Pacific is providing CLECs with timely wholesale bills, and to ascertain if it is providing CLECs with usage data in substantially the same time and manner as it provides such information to itself, we examined results for the six billing PMs (PMs 28, 30, 31, 32, 33, and 34)*[89] that have been established in

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[88] D.O1-05-087 (May 24, 2001).

[89] PM 28 (Usage Timeliness) tracks and compares the monthly average number of days that pass between the date an increment of usage data is ready to be transmitted to CLECs/Pacific, and the date receipt of that usage data increment is recorded. PM 28 breaks its timeliness data down into Resale, Unbundled and Meet Point "submeasures." PM 30 Wholesale Bill Timeliness) measures and compares the monthly percentage of invoices that have been transmitted within 10 days of their availability, and is broken down into Resale, Unbundled and Facilities/Interconnection submeasures. PM 31 (Usage Completeness) compares the number of usage charges on a bill recorded within the last 30 days as a percent of all usage charges on the bill. The data is reported by Resale, Unbundled and Facilities/Interconnection submeasures. PM 32 (Recurring

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California. The review of these data addressed the allegation that the OSS billing function is "one of Pacific's worst performance areas."

In the aggregate, the six billing PMs contain monthly data divided into 29 submeasures. All these data are contained in Pacific's June 2001 Section 271 filing and its September 2001 Reply for the period May 2000 through July 2001. (Johnson Aff., Attachment **A** (June 2001); ***Id.*** Reply Aff., Attachment F.) We reviewed these data with a focus on billing performance during more than half of 2001 (the seven months from January through July 2001) to determine whether parity trends for CLECs as a group have been adequately established.

The latest seven months of data showed that there was a very solid parity trend (e.g. – CLECs attained parity in all seven months) in the case of 17 of the 29 (or about 59% of the) billing submeasures. The equivalent parity trend breakdown for each PM was as follows:

PM 28 – 33% (1 of 3 Submeasures)
PM 30 – 100% (3 of 3 Submeasures)
PM 31 - 0% (0 of 3 Submeasures)
PM 32 - 50% (2 of **4** Submeasures)
PM **33** - 75% (3 of 4 Submeasures)

Charge Completeness) contrasts CLEC versus Pacific bills by measuring the number of fractional recurring charges on the correct bill as a percent of all fractional recurring charges on the bill. The data are segregated into Resale, UNE POTS, UNE Other and Facilities/Interconnection submeasures. PM 33 (Non-Recurring Charge Completeness) compares performance by measuring the number of non-recurring charges on the correct bill as a percent of all non-recurring charges on the bill, and its data are broken down into Resale, UNE POTS, UNE Other and Facilities/Interconnection submeasures. The final PM, PM **34** (Bill Accuracy), is a comparison of CLEC versus Pacific monthly measurements of the monies billed without corrections, as a percent of all monies billed. This PM's data are segregated into Resale, UNE POTS, UNE Other and Facilities/Interconnection submeasures, with the data in each of these four further divided into Usage, Recurring and Non-Recurring categories.

PM 34 - 67% (8 of 12 Submeasures)

To determine if these parity trend rates seemed to be improving, we analyzed three months' of data (May, June and July 2001) for the 12 "non-parity" submeasures. We found that when the billing PM data were viewed over this time frame, and "parity" was redefined to mean that the CLEC aggregate performance showed sustained equivalence with Pacific performance over this period, the situation improved rather dramatically to 83% parity (24 of 29 submeasures in parity), with the following parity percentage breakdown for each PM:

PM 28 – 67% (2 of 3 Submeasures)
PM 30 – 100% (3 of 3 Submeasures)
PM 31 – 67% (2 of 3 Submeasures)
PM 32 – 100% (4 of 4 Submeasures)
PM 33 - 75% (3 of 4 Submeasures)
PM 34 - 83% (10 of 12 Submeasures)

There remained a few billing PM submeasures where the data showed CLEC performance was sub-standard in several months, including at least one of the last three months of our review period.

CLECs failed to attain parity with Pacific with respect to usage timeliness (PM 28) in the Unbundled submeasure during the entire period of February through May 2001. They failed to attain parity in connection with Usage Completeness (PM 31) for the Resale submeasure in February, May and June 2001. Parity was not attained by CLECs in connection with Non-Recurring Charge Completeness (PM 33) for the Resale category during April, May and June 2001. Finally, CLECs failed to attain parity in Billing Accuracy (PM 34) in the UNE POTS/Usage submeasure during May and June 2001, and in the UNE Other/Usage submeasure during March, April and May 2001.

When billing PM data for the remainder of 2001 became available (for August through December 2001), we again reviewed this handful of PM 28, 31, 33 and 34 submeasures in an effort to identify developing parity trends. We found that there was sustained parity for CLECs during the last quarter of the year in all but the PM 31 Resale submeasure.

Overall, the CLEC aggregate billing PM data substantiate the conclusion that CLECs as a group are obtaining adequate OSS billing access. The data also show that virtually all of the billing performance failures for CLECs in the aggregate that WorldCom points to in its August 2001 comments have been eliminated.

d) Discussion

In most instances, the commercial performance data gathered using agreed-upon measurement processes verify that the playing field on which the CLECs and Pacific engage in local competition is becoming a reasonably level one with respect to the billing function.

The numbers of PM submeasures in which CLECs in aggregate appeared to be failing to consistently achieve month-to-month OSS billing parity were relatively few at the end of July 2001 – only five of the 29 monitored. This is a fairly substantial state of parity, which seemed to be improving at year's end, and we have incentives in place to help assure Pacific does not backslide from the level of vigilance necessary to assure continuing substantial OSS performance parity for CLECs. Moreover, we find that Pacific has satisfied all the OSS billing requirements we set out for it in Appendix B to D.98-12-069.

(b) Capacity Test

(i) Volume/Stress Segment)

The Capacity Test assessed whether the relevant Pacific OSS systems had sufficient systems capacity to handle the workload volumes required to support CLEC pre-order and ordering activities. It consisted of three tests that were performed on Pacific's systems. These tests included a Pre-Order test; an Order test; and a Combined Pre-order/Order Volume Stress test. The Capacity Test evaluated the ability of the Pacific OSS and interfaces to: 1) perform in a stable manner under a defined workload, and 2) determine the ability to scale for larger workloads.

The Pre-Order and Order tests analyzed Pacific's OSS by processing a predefined workload of simulated transactions through Pacific's Verigate and DataGate pre-order systems and the LEX and EDI order systems. The results were used to evaluate specified Performance Measures.[90] The Combined Pre-order/Order Volume Stress test incrementally increased the transaction load volumes on Pacific's OSS to identify the limits by which the systems would begin to degrade in performance. This test assessed the capability of Pacific's systems to scale for larger workloads. It also allowed CGE&Y to analyze, based on predicted historical volume trends, how many months of production activity Pacific's systems could sustain under their existing capacity reserve levels.

The Capacity Test[91] was performed on Pacific's live OSS production environment. The capacity tests for the order systems were

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[90] As specified in the JPSA.

[91] The Capacity Test was limited to Automatic Order Generated eligible orders and forced error rejects, although some exception orders were executed during the tests. The test cases for the Capacity tests were to find the quantities of transactions that

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executed through the Service Order Retrieval and Distribution (SORD)system.[92] To accommodate fairness and blindness of the test, neither Pacific nor the CLECs were advised in advance of the actual dates the capacity tests were being performed.

The total number of queries used in the Pre-order test was 42,762 of which **22%** (9,299) were processed through the Verigate system and 78% (33,463) were processed through the application-to-application DataGate interface. The Pre-order test was run over 10-hour period from 7:00 AM to 5:00 PM Pacific time. The mix of pre-order queries was established from a base of 7,340 LSRs that were used to test Pacific's order systems. The volumes were calculated at a ratio of 5.8 pre-orders per LSR order. For the Verigate system, GXS used 10 workstations dialing into Pacific's ToolBar system for 56 kbps modems. The processing of these queries followed approximately the same hourly volume patterns as specified for the order tests in the MTP. The mix of clean queries to forced errors was 94% to 6%, respectively. In general, CGE&Y and GXS found that the pre-orders transmitted to Pacific's system were processed and reported satisfactorily. The pre-order test performance measures for Pacific were within the benchmarks required by the JPSA service levels. For all query types, the average interval times were below the **JPSA** benchmarks set.

The simulated order volume processed for the Order Capacity Test was 7,340 LSRs. Eighty-five percent of the total represented

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comprise the pre-order and order tests. Test case types were selected from the capacity test bed accounts and address locations provided by Pacific.

[92] This includes the backend systems that provided SORD distribution to generate a Firm Order Confirmation (FOC). Pacific's Provisioning, M&R, MS Gateway, Pacific Service Manager, EBI, Billing and Usage, and Carrier Access Billing System were considered to be outside of the scope of the tests, and were not included.

orders executed through Pacific's EDI application interface, the remainder represented orders run through its GUI LEX system. The OSS systems examined during this segment of the test were Pacific's LEX and EDI OSS systems. The Order test was conducted over a 10-hour period during Pacific's peak hourly production times from 7:00 AM to 5:00 PM Pacific time. The number of forced errors generated represented 5% of the total volume of orders processed. The baseline derived was 4,116 daily orders during that period. The number of orders submitted for processing in the test represented 178% of the baseline. In sum, the order test count reconciliation did not identify any major count discrepancies between GXS and Pacific. Orders transmitted to Pacific's order systems through the LEX and EDI interfaces were processed and reported satisfactorily. CGE&Y and GXS found the order test performance measures for Pacific at capacity order volumes of 173% over their existing production baseline to be within the benchmarks required by the JPSA service levels.[93]

The hourly volumes used for the Combined Pre-Order/Order Volume Stress test were significantly higher than Pacific's normal production volumes and ranged from 194% to 777% over their highest average historical hourly volumes. This test focused on executing a high volume of combined flow through transactions through Pacific's DataGate, LEX and EDI systems. The transaction mix consisted of 11,866 flow through queries and 839 forced error rejects. This represented 93.4% and 6.6% for the total 12,705 queries, respectively. The total number of orders executed for this segment of the test was 11,643 with 11,216 of the transactions tested through the EDI interface. The

[93] The service levels for JPSA Measurement 2 (Average FOC Interval for **AOG** Orders) and Measurement 3 (Average Reject Notice Interval) for the Order Capacity Test were below the JPSA requirements of 0.33 hours (20 minutes) for each of these measures.

total of simulated test orders represented 283% of the order baseline of 4,116 orders. Based on a trend analysis of Pacific's historical production volumes and a predicted ability to maintain approximately a 1,000 orders/hour order rate, CGE&Y and GXS found that Pacific's systems have the capacity available to support production volumes for the next ten months.

(c) Scalability Analysis

Pacific's pre-order and order activities depend on the capabilities of certain computer systems. CGE&Y performed a system scalability analysis to determine if Pacific has adequate procedures for scaling its systems to have the capacity to handle the CLECs' loads. The analysis included evaluation of three things: **1)** procedures for tracking OSS loads and capacities; 2) procedures for forecasting future OSS loads; and 3) the process for providing OSS computer growth. Since Pacific's pre-order and order activities depended on manual processes in many cases, CGE&Y produced a staff scalability analysis to determine if Pacific had the ability to increase the number of personnel available to perform these manual functions.[94] After examining the daily data Pacific provided it over an eight-month period, CGE&Y found that Pacific kept a detailed eye on both volumetrics and responsiveness of its OSS. Based on a review of the Capacity Test results, CGE&Y concluded that Pacific's installed capacity stayed well ahead of current demands.

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[94] CGE&Y analyzed: i) documentation for workforce development procedures for CLEC support centers; ii) in-place volume contingency plans to meet dramatic increases in CLEC order volume; iii) disaster recovery plans documentation to assure continued operations; and iv) whether recruiting and training programs could be adjusted to make staff available with the necessary skills to adequately perform the manual support function.

(d) Performance Measurement Evaluation

CGE&Y viewed the statistical analysis of Pacific's performance measured data as "somewhat limited." (Final Report § 3.1 at 34.) It was unable to assess a large amount of CLEC and Pseudo-CLEC performance data because of incomplete Pacific data necessary for comparative analysis. In addition, it was impossible for CGE&Y to perform a statistical analysis of measures adhering to a benchmarks standard because Pacific and the CLECs decided not to use standard deviations from CLEC data. Initially, CGE&Y expressed concerns about the test data validation it had to complete in light of a then-pending Pacific-CLEC data validation dispute. The Commission resolved the dispute, and no party requested a full data reconciliation analysis of the test case data.

(e) Change Management (CM)[95]

Pacific uses its CM process to notify the CLECs of software enhancements. ***An*** integral part of the CM process is the software implementation, which is performed in St. Louis, Missouri and San Ramon, California.[96] OSS changes occur due to modifications requested by CLECs, system upgrades, and regulatory changes. (§ 4.5.4 of the Final Report) CGE&Y describes the process as an interactive one between the ILEC and CLECs, which provides an open avenue of communication. CGE&Y reviewed Pacific's CM process to determine if a valid process was in place; whether or not the process

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[95] In addition to the performance measurement analysis, the FCC considers the BOC's change management process, i.e., the processes the BOC uses to make changes to its OSS, and the technical assistance the BOC provides to competing carriers (*Kansas/Oklahoma Order* 16 FCC Rcd at ¶ 103.)

[96] The software development staff and Internal Test teams are located in St. Louis, and the CLEC Test Coordination team is based in San Ramon.

worked as advertised; and, if it was useful to Pacific's wholesale customers.[97] The evaluation of process functionality took place during a software release in October 1999.[98]

CGE&Y analyzed the interactions between Pacific's CM Team and the CLECs as evidenced by the documentation provided by Pacific in either hard/soft copy or through the Pacific web site, through meetings, and through notifications. It found that Pacific's CM Process document, which is divided into sections that address the various types of changes that can be made, is easy to locate on the web site. CGE&Y reports that regular CM meetings are held on a quarterly basis with notifications sent to the CLECs through Accessible Letters (ALs).[99] These meetings are designed to discuss impending changes to software, changes to the CM process, and problems encountered by Pacific in the CLEC community. The meetings are well attended by the CLEC community with a conference bridge provided for those who cannot attend in person. All voting matters require a quorum of the CLEC voting members.

After the assessment, CGE&Y concluded that the CM process is quite solid and works well as defined for Pacific. CGE&Y

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[97] In examining the usefulness of the CM process, CGE&Y considered its effectiveness in notifying the users and the clarity of its notifications.

[98] This time was selected because the original length of the Test Effort did not cover a time period when a software release was scheduled.

[99] These are the predominant method of formal communication between Pacific and the CLEC community. The letters are electronically mailed (e-mailed) to the CLEC POC and maintained on the Pacific web site. While CGE&Y found that the letters were sent out in a timely manner and accessible to the recipients, it encountered a word processing software problem that affected access to the letters on the web site. See § 4.5.5, Final Report Version 1.2.

recommended that eventually SBC's 13-state process, which affects Pacific, should be evaluated.

(f) CM Process (CMP): Commercial Performance Assessment

In D.98-12-069,[100] we directed Pacific to demonstrate that it has developed and is managing an adequate CMP, and that it has been adhering to that CMP over time. Pacific has declared that its CMP satisfies specific regulatory criteria:'" 1)CLECs have had input into the design and continued operation of the process, 2) the process is memorialized in a basic document, 3) it contemplates a separate forum dealing with CMP disputes, **4)** the process makes available a stable OSS interface testing environment for CLECs that mirrors production, and 5) it allows CLECs access to adequate documentation for the purpose of building an electronic gateway to the OSS.

(i) Development and Function of Pacific's CMP

Pacific and the CLEC community first conducted workshops to discuss change management principles in June 1998. These meetings resulted in Pacific and the CLECs establishing a drafting subgroup or "joint drafting team" to develop CMP documentation. This effort ultimately led to an agreed-upon CMP for California that was filed with the Commission as a Joint Settlement Agreement (JSA),and approved in D.99-11-026'" on November 4,1999. At that time, Pacific maintained that OSS interface development was an evolutionary process, and that it would need to

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[100] See Appendix B.

[101] See FCC99-404, ¶111; FCC00-238 (Texas), ¶ 108.

[102] Issued in R. 97-10-016/I. 97-10-017.

continue to refine and improve its OSS capabilities and corresponding documentation to meet the ever-changing needs of its CLEC customers. It declared that the JSA would serve as the framework to evolve its comprehensive CMP. (Viveros Aff. ¶ 35 (July 1999.)

D.99-11-026 required that when Pacific and a majority of parties present at a quarterly CMP meeting agreed to make a future CMP amendment, the sponsoring party must file a copy of the amended CMP with the CPUC, and serve it on the OSS 011 service list within 10 days of the agreement date. The amendment would be considered effective as of the agreement date unless the CPUC ordered a stay within 30 days of the filing.

(ii) General Aspects of the Process

The CMP covers both application-to-application and GUI interfaces. It provides for the conduct of quarterly CMP (QCMP) meetings,[103] to which Pacific invites all CLECs to attend. The process requires Pacific to solicit CLEC input in the development of QCMP meeting agenda items. It gives notice to CLECs of upcoming QCMP meetings by means of a Pacific Accessible Letter or AL, through which Pacific also solicits agenda input and transmits necessary CMP meeting working documents. (*Id.* ¶¶ 37-39.)

During QCMP meetings, CLECs have the opportunity to review scheduled improvements to the OSS interfaces. This review is aided by a "12 Month Development View," a document that provides a rolling calendar of OSS modifications or enhancement projects tentatively scheduled in the coming 12 months. This document is also distributed to CLECs via AL. When issues raised at a QCMP meeting require additional attention, individual meetings are scheduled between Pacific and interested CLECs, and

[103] Inaugurated in October 1998.

the results of these meetings are distributed to all CLECs by AL.[104] The issues can then again be discussed in subsequent QCMP meetings. Full draft QCMP meeting minutes are circulated among meeting participants to insure an accurate and complete meeting record. The minutes are redistributed to all CLECs in final form via AL. (*Id.* ¶¶ 40-42.)

The CMP includes a provision for dealing with change management disputes. This "Outstanding Issue Solution" process within the CMP can be initiated by a CLEC by providing Pacific with written notification of the outstanding issue, the reason for raising the dispute, and any alternative recommendations. The disposition of the matter is resolved by a vote of a quorum of CLECs. (See D.99-11-026, Appendix **A,** Modified JSA-1, at 22-25; Huston/Lawson Attach. W at 32-38 (June 2001).)

Pacific has incorporated a process called "versioning" into the CMP since mid-August 2000. Under versioning, two consecutive versions of its software for EDI ordering and for EDI and CORBA pre-ordering interfaces (the current and previous versions of each) are up and running at all times so that a CLEC need not switch to the newer interface version immediately in instances where the timing of such an action would disrupt its use of the OSS.[105] Pacific further claims that in the spring of this year,

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[104] Although the CMP contained in JSA-1 (the Pacific Joint Settlement Agreement) does not specifically identify it, Pacific now provides a detailed process for CLECs to individually pursue implementation of changes to the OSS and Local Service Ordering Requirements (LSOR) business rules. This process, called the CLEC Change Request (CCR) process, is facilitated through change management points of contact specifically designated by SBC and each CLEC. The status of an outstanding CCR is included on a CCR log, and its status reviewed at QCMP meetings and also posted on the CLEC Online web site.

[105] This versioning process is identical to the one employed by SWBT in Kansas and Oklahoma. There the FCC found that versioning enhances SWBT's CMP by providing

Footnote continued on ***next page***

SBC began to support three versions of the application-to-application interfaces used in its 13-state area to include one "dot" version (an upgrade) and two Local Service Ordering Guidelines (LSOG) (basic) versions. (*Id.* ¶ 243.)

(iii) Interface Documentation

Pacific declares that it provides CLECs comprehensive and readily available documentation for all of its OSS interfaces. It posts its User Guides, business rules and other information resources on its CLEC Online web site. Although Pacific admits that it has been criticized for not publishing its specific EDI interface documentation there, it claims that such extensive, company specific documentation need not be posted because it strives to closely comply with industry standards. Pacific follows mapping developed by the Service Order Sub-committee of the EDI Committee of the Telecommunications Industry Forum, and places links to the industry forum on its CLEC web site. (*Id.* ¶ 224.) Pacific also notes that it is responding to CLEC requests to provide all mapping information by publishing it in the Local Service Pre-ordering Requirements (LSPOR) and LSOR with the introduction of the uniform LSOG Release 5.'" At the time of release, CLECs will have both SBC's business rules and its EDI mapping in one document for ordering and pre-ordering, respectively. (*Id.* ¶ 227.)

Pacific asserts that the sufficiency of its current hybrid documentation of industry standards and company-specific variances has been verified in practice because 20 CLECs and four Pseudo-CLECs have

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significant additional assurance that changes will not disrupt competing carriers' use of SWBT's OSS. (See *Kansas/Oklahoma Order*, 15 FCC Rcd at ¶ 167; Huston/Lawson Aff. ¶ 244 (June 2001).)

[106] Implemented in the spring of 2002.

successfully constructed EDI ordering gateways, and 15 CLECs have successfully constructed DataGate, EDI or CORBA pre-ordering gateways. (*Id.* ¶ 226.)

(iv) The CMP's Interface Testing Environments

Pacific's CMP provides two joint test[107] environments for CLECs. One environment is for CLECs who need to implement EDI for the first time. The other is for CLECs that want to test new EDI releases. Successful completion of testing in the former environment verifies that a CLEC is ready to submit production orders for the first time. Successful test completion in the latter assures a CLEC that a new software release is ready for its use in production. (*Id.* ¶¶ 234-235.)

Implementation testing first involves connectivity testing, and then the actual transmission of test transactions and responses. After completing implementation testing a CLEC can use a "Managed Introduction" process when it starts to submit actual production transactions. Under Managed Introduction, Pacific monitors the CLEC's transactions and provides feedback and assistance in resolving problems that arise in the first two weeks of its production efforts.

Pacific maintains that it discusses the release testing process with a CLEC prior to its use, covering entrance and exit criteria, test scenarios (including regression testing, if requested), expected errors and time frames. A root cause analysis is performed on any problems that occur during testing to identify which company needs to fix the problem. When a fix needs to be implemented, a re-testing is performed that focuses on the problem

[107] "Joint test" involves the testing CLEC and a Pacific test team.

test case. At the end of the overall release testing process, the CLEC submits a statement that the test has been successfully completed. (*Id.* ¶ 237.)

Pacific notes that some CLECs have claimed that its joint testing environments are unacceptable because LSRs do not flow through and Pacific manually monitors the progress of individual test cases at breakpoints in the test environment. However, Pacific insists, the only breakpoints in the test environment are when the order first enters - and then before it leaves - the test environment. It emphasizes that 17 of the 20 CLECs currently in production using EDI have at one time used the CMP's test environments to implement EDI. Last June, three were testing and five others were scheduled to begin EDI implementation testing. Approximately nine CLECs have used the joint testing environment to test the last three releases of the interface. (*Id.* ¶¶ 238,241.)

(v) CMP Issues Raised by Parties

Of the several CLEC comments on Pacific's CMP, the majority contended that Pacific, on specific occasions, had deviated from the process. In response, Pacific either clarified a misunderstanding or recited a change in procedure that acknowledged the CLEC complaint. Two other comments, in particular, indicate problems with Pacific's interface testing environment and with the CMP used in the OSS test.

AT&T alleges that Pacific's CMP interface testing processes do not provide meaningful opportunity for CLEC testing in pre-release or in production mode because AT&T has submitted transactions containing business rule violations in SWBT territory to determine if they would be rejected and SWBT refused to permit the transactions. It further contends that the CMP test environment is inadequate because it is "static" and does not

simulate commercial experience by offering integrated pre-ordering and ordering functionality. (Willard Decl. ¶¶ 155-160 (August 2001).)

Pacific contends that both it and SWBT accept test transactions that contain purposeful violations of business rules. It cites SBC's CLEC Order and Pre-Order Joint Test Plan Template, which set forth the August 2001 updated policy. Pacific rebuts the claim that its test environment is inadequate by noting that the FCC's requirement that a test environment adequately mirror the production environment does not envision all the functionality or dynamic capability of a production environment. The FCC found "static" test environments adequate in both its Texas and Kansas/Oklahoma 271 Orders. (Huston/Lawson Reply Aff. ¶¶ 112-113 (September 2001).)

AT&T also claims that the CMP included in the OSS test was the 8-state (pre-Ameritech merger) CMP that was never adopted by the California Commission and the current CMP (the post-Ameritech or 13-state) is different than the one reviewed in the OSS test. Although the FCC merger conditions specifically require SBC to offer the 13-state CMP to state commissions for review and approval, Pacific has not made this offer to the CPUC. (Willard Decl. ¶¶ 112-114 (August 2001).) Pacific responded that it has reached agreement with CLECs on the 13-state CMP.

(vi) Discussion

There is no requirement that the CMP interface test environment be dynamic and simulate the commercial experience's integrated pre-ordering and ordering functionality. Thus, we find Pacific's CMP interface test environment to be adequate.

A comparison of the 13-state CMP contained in Pacific's August 2001 filing with the 8-state version in place during the OSS Test

reveals that this latest version is a more thoroughly articulated document than the one we approved in November 1999. Its differences from the JSA version and the later 8-state version appear to be designed to clarify, and more fully memorialize through documentation, a CMP that is increasingly responsive to CLEC needs. Our review of the 13-state CMP verifies that it should function for CLECs at least as well as CGE&Y concluded the 8-state CMP functioned for them during the OSS test effort.[108]

Pacific appears to have responded to CMP issues raised by parties in this proceeding in a way that refutes or mitigates an adverse allegation, or the CLEC concern raised has been remedied as a result of the CMP's evolution. Consequently, we find that Pacific's CMP allows CLECs in California non-discriminatory access to the OSS.

(b) OSS Test Report Comments

Overall, the CLEC comments characterize the OSS Test and the Final Report as unreliable; they allege that CGE&Y failed to follow the Master Test Plan. Set forth below is a summary of the central disputed issues in the comments and replies, and our discussion.

(i) Unbundled Network Element-Platform (UNE-P) Testing Through EDI Interface

In their opening comments, the CLECs assert that the reliability of the EDI interface for the UNE-P "was not adequately tested". (CLECs Opening Comments (OC) at 8.) They maintain that since UNE-P will be the service delivery method used by large CLECs entering the California residential market, the failure to test the ability of Pacific's EDI to process such orders reliably is a significant failure of the test process. (*Id.* at 30.)

[108] The appropriate 13-state CMP was filed with the CPUC on February 11, 2002.

The CLECs also contend that the number of EDI UNE-P test orders and the recorded results indicate that the "test effort was inadequate." Although the vast majority of orders for other products were submitted through EDI rather than LEX GUI, the opposite occurred in the case of UNE-P. Reviewing GXS's reports, the CLECs note that only 6% of the total UNE-P test orders were mechanized orders – an insufficient number to effectively test UNE-P ordering through EDI. They describe the lack of EDI UNE-P test orders as a "major failing" of the OSS Test. (*Id.* at 124.)

The CLECs claim that there is a "glaring discrepancy" between the numbers of orders that received a Firm Order Confirmation and those that received a Service Order Completion.'" It appears Pacific returned fewer Firm Order Confirmations than Service Order Completions for the UNE-P EDI test orders. They state that the Pseudo-CLECs should have received at least as many Firm Order Confirmations as they did Service Order Completions.[110] Consequently, the resulting ratio (assuming that the remaining 63% of UNE-P EDI orders were successful) is clearly too low to demonstrate that the EDI interface will adequately support commercial quantities of residential and small business orders. (*Id.* at 127.)

The CLECs argue that the CPUC should order re-testing to determine the adequacy of Pacific's OSS for processing UNE-P because of its significance to meaningful CLEC competition in the local market. They estimate that the additional testing could be completed quickly. (*Id.* at122.)

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[109] SOC: Service Order Completion; FOC: Firm Order Completion.

[110] CLEC review of GXS's Log indicates only 36 of the local service requests (LSRs) submitted resulted in account activity. Of those 36, 18 of the orders generated no switch activity because they were disconnection orders (to deactivate the test accounts). GXS's tracking data further shows that 37% of the test orders had to be abandoned.

Pacific replies that re-testing of UNE-P through EDI is not required for two reasons. First, the CLECs appear to be using their own facilities as the primary means for market entry. Based on Pacific's E911 database records, California CLECs using their own switching equipment served more than **1.5** million access lines as of the end of January 2001. Second, by virtue of the OSS Test, Pacific has demonstrated its ability to handle commercial volumes of UNE-P orders through EDI. The OSS Test included 3,764 orders submitted through EDI in the Capacity Test. The Capacity Test evaluated both FOC as well as "reject notifications" and analyzed the process all the way through SORD order distribution. Once SORD distributes the order, whether the LSR was originally submitted through EDI or LEX is insignificant. Moreover, Pacific has several thousand UNE-P lines in service that were ordered primarily through EDI. This well exceeds the number of lines that reasonably could be tested. (Pacific Reply Comments (RC) at 8.)

(a) Discussion

We do not find retesting of the UNE-P through EDI interface to be warranted. While we agree the lack of comprehensive UNE-P over EDI interface testing during the functionality phase of the OSS test was a shortcoming in the test, we believe the combined LEX portion of the functionality phase, as well as the EDI UNE-P portion in the capacity phase, offer us a reasonable substitute enabling us to examine how Pacific's system will handle UNE-P orders submitted through the EDI OSS interface.

However, we disagree that the CLECs' utilization of their own facilities to serve their customers excuses not fully testing UNE-P over EDI during the functionality phase of the OSS test. Rather, we found that the design of the capacity UNE-P EDI test, where each unique order was repeated no more than 10 times, provided a good assortment of order types that

could be submitted through the EDI interface. Moreover, the high number of UNE-P orders submitted through LEX allow us a reasonable substitute to gauge how well Pacific's backend system processed UNE-P orders, since both LEX and EDI orders flow into SORD to be further processed and distributed to the field offices for provisioning.

(ii) Testing of DS-1 Loops

The CLECs argue that UNE DS-1[111] was "not adequately tested" during the OSS Test. (CLECs OC at 7.) They note that UNE DS-1 was eliminated from the OSS Test despite a "strongly worded admonition" from the TAM itself to include it, as the MTP mandated. (*Id.* at 30.) The CLECs detail several specific concerns with the Pacific UNE DS-1 testing:

- The commercial UNE DS-1 data is deficient. Virtually all of the commercial data for UNE DS-1 derive from orders placed using the proprietary ordering interface, CESAR, which Pacific retired in early December 2000. Pacific has never disputed this assertion and has stated (without giving an exact breakdown) that the CESAR interface was primarily used to process these orders. The test of UNE DS-1 that the MTP contemplated was designed to assess Pacific's electronic ordering capabilities, not its manual systems. The CPUC should not use performance measure data from orders placed through a now-defunct interface to evaluate whether Pacific is providing nondiscriminatory access to UNE DS-1. ***(Id.)***
- Although the MTP called for extensive third party testing of UNE DS-1 loops, the CPUC unilaterally and inexplicably eliminated AT&T's facilities from UNE

[111] **A** popular high-speed service that enables a CLEC to provide high capacity facilities for local service.

DS-1 testing"' after the TAM's test design was discovered to be faulty. *(Id.)*

- The CPUC's consultant advised it in October 2000 that the test results were without value in assessing UNE DS-1 loops. At best, the small quantity of UNE DS-1 test orders yields nothing other than a minimal qualitative observation. ***(Id.*** at **131.)**

The CLECs urge the CPUC to order UNE DS-1 retesting because of its significance to meaningful local competition. Again, additional testing could be done quickly. *(Id.* at 122.)

In response, Pacific stated that the CPUC had denied the CLECs' request for further UNE DS-1 testing in D.OO-12-029. (Pacific RC at 5, footnote 13.)

(a) Discussion

In D.OO-12-029, we denied seven CLECs' request to expand the testing of DS-1 loops because we expected that the data showing Pacific's commercial DS-1 volumes would inform us whether or not Pacific was providing DS-1 loops to the CLECs on a nondiscriminatory basis. But in December 2000, Pacific's existing commercial DS-1 volumes were an inadequate indicator of how its OSS system was processing and provisioning those orders. At that time, CLECs were submitting DS-1 orders to Pacific through **CESAR,** a semi-mechanized ordering interface retired at the end of 2000, while LEX and EDI, the focal ordering interfaces of the OSS test, processed little to no CLEC DS-**1** orders.

In the second half of 2001, both Pacific's LEX and EDI interfaces began receiving DS-1 orders in volumes sufficient enough to

[112] According to the MTP, these should have accounted for 14% of the test cases. **(Id.** at 130.)

enable assessment of the DS-1 loop order processing quality. Pacific's Fourth Quarter 2001 DS-1 related performance measurement results indicate overall that, with the exception of PMs 5 and 16, Pacific is providing parity DS-1 services to the CLECs. For PM 5 (Percentage of orders jeopardized), from November 2001 through January 2002, Pacific performed below the parity level.[113]

Performance had improved in both February and March 2002. Pacific failed PM 16 (Percentage of troubles in 30 days of new orders) two out of three months in the Los Angeles and Bay Area regions during the Fourth Quarter of 2001. Performance improved in the Los Angeles region in January and February 2002, yet slipped below parity in March 2002. Results for the Bay Area region showed Pacific's performance consistently below parity for the six-month period: from October 2001 to March 2002. While the PM 16 results are troubling because problems with a new order will most probably affect a CLEC's reputation no matter whom is at fault, we note that the results are poorest in one measure in the Bay Area region and find Pacific's overall DS-1 performance results to be acceptable. Thus, with acceptable commercial performance results for DS-1, there is no need to retest it.

In its comments to the draft decision, XO takes issue with our overall positive assessment of Pacific's performance in this section in spite of some OSS M&R performance failures. XO cites performance for PMs 19, 21, and 23 to support its opposition."' While Pacific has continuously failed the referenced PM 19 measure for several consecutive months, the differences

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[113] For three-consecutive-month performance assessment, a critical alpha criterion of 0.20 is used, resulting in a net alpha of 0.008. See D.02-02-023 at 51.

[114] For PM 19, *UNE Loop 4 Wire Digital 1.544 mbps capable/HDSL;* and PMs 21 and 23, *UNE* 2/4 Wire 8 *db and 5.5 db Loops.*

between CLEC and ILEC service have been about one percentage point and improving.[115] We have no evidence to suggest that this level of performance should alter our evaluation of Pacific's compliance with Checklist Item 2. For PM 21, the most recent months of data show that the CLECs are receiving slightly better service than the ILECs.[116] For PM 23, even though Pacific continuously failed this service type through June 2002, performance has been improving, the percentage discrepancies have been shrinking and Pacific passed the sub-measure according to the most recent performance results, July 2002.[117]

None of these performance examples are sufficiently egregious to stop Pacific from proceeding, and they are failures that will not go unsanctioned. Although they are not sufficient to overshadow our general assessment here, they will significantly add to Pacific's incentive plan payments. This is especially the case for the continuous failures. We have added a new feature to the performance incentives plan to periodically double Pacific's incentive payments in the case of continuously failed performance, as discussed, *infra.*

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[115] For PM 19 we note, for example, that the trouble report rates for the CLECs were 2.88, 2.38, 2.33, 1.99 for April, May, June, and July 2002, respectfully, and that the corresponding ILEC trouble report rates were 1.24, 1.34, 1.34, and 1.28.

[116] For I'M 21 we note that the average time to restore for the CLECs was 7.58, 7.40, 8.15, and 6.95 for April, May, June, and July 2002, respectively, and that the corresponding ILEC average time to restore was 7.99, 8.24, 8.41, and 8.13.

[117] For I'M 23 in the last half of 2001, CLEC repeated trouble percentages ranged between 12 to 14 percent, whereas ILEC percentages were just below 10 percent with only one exception. In contract, during the most recent three months, CLEC percentages ranged between 9 and 10 percent, and ILEC percentages were fairly steady at about 8 percent. In July 2002 the CLEC percentage was 9.43 percent and Pacific's percentage was 8.49 percent, which does not represent a statistically significant difference.

(iii) LNP Only Orders

The CLECs maintain that with respect to "LNP only'' orders, CGE&Y "failed to verify that Pacific properly provisioned the services requested in the LSR. The TAM's evaluation essentially ended with the receipt of a SOC."(CLECs OC at 35.)

Pacific replies that the porting of the telephone number and the provision of dial tone are responsibilities of the receiving CLEC, not it. CGE&Y and GXS correctly noted that its LNP work was complete with the receipt of the Service Order Confirmation, and passed Pacific on this task of the test. (Pacific RC at 6.)

(a) Discussion

Under § 6.3.5.3 of the MTP, "[p]rovisioning is considered complete once a SOC is received by the CLEC." Thus, CGE&Y's evaluation was to conclude with the receipt of a Service Order Confirmation response from Pacific's OSS. It did. We find that CGE&Y has satisfied the requirements and intent of the MTP regarding "LNP only" orders.

(iv) Pre-Order/Ordering Integration

The CLECs also contend that the "testing of Pre-Order/Ordering Integration was not adequately performed." Specifically, they assert that CGE&Y's Pre-order/Ordering Integration testing did not follow the MTP, produced "unusable results and was inadequate."(CLECs OC at 13, 30.)

First, the "[t]est Generator did not directly rely on the information it obtained from the Verigate and Datagate interfaces when completing LSRs".(*Id.* at 133.) For address validation, GXS imported service address information from Datagate into its Test Generator database and then used that data to complete the LSRs. In contrast, CLECs use the information directly from pre-ordering interfaces such as Datagate or Verigate. GXS also

acknowledged "it could not rule out the possibility that the process of using its own database positively affected" the frequency with which the customer information properly fit into the LSR. *(Id.)*

Second, CGE&Y provided information to GXS so that it was not dependent on information from the CSR. GXS had no need to parse the CSR with the SBC documentation it obtained, because CGE&Y provided customer information and service address information was available through the Address Validation functionality of Datagate. *(Id.* at 133,134.)

Under actual commercial operations, while the CLECs may obtain some information directly from customers, it is often incomplete or erroneous. Generally, they must rely on the information from the CSR in the pre-ordering process, which is something that GXS did not do. *(Id.* at 134.)

According to the CLECs, GXS should have conducted an end-to-end test "beginning with pre-ordering through provisioning and billing, and maintenance and repair." Instead, CGE&Y's delivery of pre-validated order information was a disruption of the pre-ordering steps. Thus, the test transactions did not meet the definition of end-to-end testing. *(Id.* at 133,134.) To remedy this, the CLECs urge us to order the limited retesting of Pre-Order/Ordering Integration"' ***(Id.)***

In reply, Pacific states that "integration was never even part of the MTP." (Pacific RC at 5.) Using the documentation that Pacific provides regularly to the CLECs, GXS was able to integrate pre-order and ordering functionality, and "automatically populate pre-order information on its

[118] Such retesting should cover address verification/dispatch, service availability/product feature availability, and PIC/LPIC/CIC selection. (Id. at **13,135.)**

LSRs." *(Id.)* Pacific maintains that this demonstrates that its OSS has made successful integration possible for the CLECs. *(Id.* at 5, 6.)

(a) Discussion

A review of the MTP and the underlying documentation confirm that pre-order/ordering integration was not part of the requirements of the MTP. Moreover, we are satisfied that GXS was able to demonstrate that pre-order/ordering integration can be reasonably accomplished by an efficient CLEC. While GXS did not accomplish pre-order/ordering integration using the same methodologi(es) that the commenters either selected or preferred, the methodology it chose is just as valid and probative. Consequently, we find that a limited retesting of Pre-Order/Ordering integration is unnecessary.

(v) Flow-Through

The CLECs assert that actual flow-through of orders was not observed in this test. (CLECs OC at **7.)**

Pacific responds that although GXS did not calculate the percent of flow-through in the Capacity Test, it was tracked, as required by the MTP. The raw data it provided enables the calculations to be made without any need for retesting. (PacificRC at 9.)

(a) Discussion

CGE&Y detailed in the Final Report § **3.1,** Item C, its monitoring of test order submissions and its observations of Pacific and GXS order entry personnel. While it was not possible to detect from looking at an order whether it flowed through or was manually processed, there was a general test guideline. Receipt of an order FOC within the Performance Measure # 2 benchmark of 20 minutes, absent errors from the time of LSR issuance until the

time of FOC receipt, indicated that the mechanized LSR had flowed through without human intervention.

During the Capacity phase of the OSS test, CGE&Y recorded tens of thousands of flow-through orders. Using the 20-minute response time for FOC flow-though, it is highly unlikely that there was any significant unperceived manual intervention of orders passing through Pacific's OSS system. Therefore, we find CGE&Y acted reasonably in its flow-through assessment during the test, and see no need for retesting this aspect.

(vi) Backend Processing

The CLECs identify three backend processing issues (post-SOC) that they assert are unresolved or remain untested. (CLEC OC at 34.) First, they allege that CGE&Y failed to verify that Pacific properly provisioned the services requested in the LSR after the receipt of a Pacific SOC. Since CGE&Y did not review post-SOC activity and was not "comprehensively verifying that the ordered services were actually provisioned," the test "did not even come close to achieving the goal described in the MTP." CGE&Y should have directed Pacific to "verify the translations for all UNE-P orders in the switch to determine whether the downstream systems actually provisioned the orders correctly" in order to show that Pacific's OSS actually supports the migration of customers from the ILEC to the CLEC. *(Id.)*

To remedy this problem, the CLECs urge Pacific to send a post-provisioning notice'[119] to CLECs when "all functionalities are available to

[119] Such notice should confirm: 1) all of the requested features and charges have been correctly entered and accepted; 2) all relevant end-user information (such as billing and E911) has been updated; 3) all necessary changes have been made to discontinue Pacific's current billing of the end-user; and 4) billing OSS has been updated to enable the CLEC to correctly bill the end-user. (Id. at 37.)

serve the end user" and the responsibility of billing the end-user has transferred to the CLEC.'" *(Id.)* The CLECs also request that a billing completion notice be implemented as soon as the CPUC approves the 2001 JPSA update,[121] and that verification of timeliness, PM 35, be included in the test. *(Id.)*

The CLECs ask that a data collection and analysis of provisioning accuracy be performed during additional re-testing to uncover problems that may remain hidden. This retesting would confirm whether features are actually provisioned, "LSR submission to SOC issuance" elapsed times, and "SOC issuance to completion of provisioning" lapsed times. If the Commission does not order retesting, the CLECs ask for an analysis of the commercial CLEC order data for which LSRs are issued, using specified metrics. *(Id.* at 38.)

The CLECs further insist that the OSS Test shows that Pacific has made changes to customer accounts after migrating them to CLECs. Such changes indicate that the services provisioned differed from the services requested by CLECs on the LSR, and resulted in rejected change orders from Pseudo-CLECs when Pacific's systems changed the service type (business/residential) without notifying the Pseudo-CLEC. *(Id.* at 39.) To rectify this, the CLECs ask Pacific to make specific procedural and methodological changes.[122] *(Id.)*

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[120] This position endorses and expands upon TAM recommendation 37, which highlighted "the need for an additional notification from Pacific to signal the actual conclusion of activities related to establishing the end-user as CLEC's customer."(Id.)

[121] The update was issued in D.01-05-087 (May 24,2001).

[122] "No changes to CLEC accounts, either automatic or manual, shall be made unless the CLEC has authorized the change. Upon the issuance of a SOC, the account should be protected from any automatic changes. If modification to the account is required,

*Footnote **continued** on next page*

The CLECs assert that the additional backend system processing that occurs (post-SOC) limits their ability to compete with Pacific, and compromises the value of the SOC notification to the CLEC as a definitive sign of order completion. Specifically, the post-SOC processing is too slow, which, in turn, negatively impacts the billing and maintenance and repair processes. (*Id.* at 41, 42.) Consequently, the CLECs strongly endorse the TAM's recommendation[123] resolving this. (*Id.* at 9.)

In reply, Pacific notes its commercial experience, where in "over 40,000 Service Order Completion ("SOCs") notifications in January 2001, more than 99% of the SOCs were issued within 24 hours." (Pacific RC at 7.) Pacific states that it has addressed the CLECs' concerns about post-SOC confirmation of backend system updates in the CLEC User Forum. In conjunction with the CLECs, Pacific has established a process that will provide billing completion notices[124] to the CLECs as service orders are completed. Pacific

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Pacific must send a written and verbal notice and explanation of the proposed modification to the CLEC that owns the account. Only after receiving written authorization from the CLEC, unless service interruption is imminent or the existing account is impairing existing service, may Pacific make the account modification. Upon completion of the modification a Pacific shall issue a supplemental notice of completion."(Id. at 41.)

[121] **TAM** Recommendation 30 urges Pacific to shorten the interval between order completion and the updating of the backend system, in order to make the account available for subsequent orders.

[124] The billing notice confirms that the updates to the backend systems are complete. (Id.)

asserts that then-proposed PM 35[125] should assist further. It also contends that post-SOC processing does not impact the effectiveness of the SOC.[126] *(Id.)*

(a) Discussion

After reviewing the Test Report and MTP, we find that some aspects of the back-end process testing was beyond the scope of the OSS test.'" Thus, there is no need to retest this area. In response to CLEC comments, Pacific has implemented a procedure, which provides advance CLEC notice and confirmation of any of its changes to customer account information after migration.'" In addition, Pacific has addressed post-SOC confirmation of backend system updates in another forum. Consequently, we find that the existing test results and analysis indicate that Pacific's backend processing is adequate.

(vii) Inadequate Billing Review

According to the CLECs, the "adequacy of Pacific's billing was to be determined by a review of two bill cycles applied to the functionality test. The completeness of usage, recurring, and non-recurring charges was also to be tracked and evaluated. Similarly, the timeliness of both usage and wholesale bills was to be tracked and evaluated. The record

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[125] Added in D.O1-05-087.

[126] CLECs can issue subsequent orders after issuance of an SOC, but prior to the completion of all updates in Pacific's backend systems, and not affect the due date. Additionally, Pacific insists, "CLECs are not at risk of being double billed … by CABS, as they allege, because CABS billing begins with the Effective Bill Date provided on the SOC, regardless of when the backend processing completes." (Id. at 7, Appendix 2, Rec. 30.)

[127] Pursuant to MTP § 6.3.5.3.

[128] This has been verified in accordance with Recommendation 21.

demonstrates, however, that these objectives were not achieved". (CLECs OC at 87.)

(a) Discussion

The Final Report shows that CGE&Y validated that the end user calls appeared on the Daily Usage File in a timely manner. While the MTP required that CGE&Y review two billing cycles, it validated all bills for October 1999 through August 2000. The Final Report also notes that CGE&Y validated recurring and non-recurring charges, and tracked the timeliness of the usage[129] as well as the receipt of both hardcopy and electronic wholesale bills. We find that CGE&Y satisfied the MTP in its analysis of Pacific's billing performance.

(viii) Statistical Methodology

The CLECs fault CGE&Y for using a statistical methodology that "conflicts with the Commission's January [2001] adoption of a statistical model for determining compliance with performance standards."(CLEC OC at 6.)

Pacific replies that it was "not feasible" to incorporate the statistical methodologies adopted by the Commission in January 2001. It also notes that when CGE&Y convened a special meeting to discuss potentially using other statistical methodologies in the OSS Test, the CLECs strongly resisted a change in statistical methodologies. (Pacific RC at 16-17.)

(a) Discussion

CGE&Y utilized the statistical method adopted after discussions with the CLECs and Pacific at the start of the OSS test process.

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[129] For the end-user calls, as stated above.

The MTP required only that the statistical analysis of the performance measurement data be "consistent with the business rules, method of calculation and measurable standards as defined by the Amended JPSA.[130]" Moreover, the Final Report was issued approximately a month before we adopted, in D.01-01-037, the statistical methodology (or "performance criteria") that is in place now.[131] All parties were familiar with the methodology adopted and used by CGE&Y in the Final Report. We cannot fault CGE&Y for the statistical methodology it utilized in the Report. Rather, we find that CGE&Y's statistical analysis in the Final Report is in accordance with the MTP.

(ix) Aggregated Analysis

The CLECs argue that "harmful ILEC performance in small, new or innovative niches, or harmful ILEC performance to smaller CLECs could be masked by larger market samples or larger CLEC samples when the results for CLECs are combined ("aggregated")." (CLECs OC at 117.)They assert that this concern is consistent with the consensus decision to have four pseudo-CLECs submitting orders for the OSS Test. Pacific and the CLECs reached this decision during a collaborative MTP drafting session. But, CGE&Y aggregated all the Pseudo-CLEC data and then conducted its statistical analysis. The CLECs maintain that the results of the aggregated analysis ignore the fact that the aggregation of data can mask deviations from the mean and large variance within smaller populations. ***(Id.)***

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[130] MTP § 6.5.3.3

[131] The model was slightly modified in D.02-03-023.

(a) Discussion

The CLECs contend that CGE&Y inappropriately aggregated the results of the four Pseudo-CLECs for use in its statistical analysis. However, the MTP provides for the aggregation of performance data to ensure sufficient sample sizes. Specifically, MTP 4.0 § 6.5.3.1 states that: "[t]he Test Administrator agrees to distinguish LSR orders by four unique Operating Company Numbers (OCNs). The results of these LSRs will be combined for evaluation against Performance Measures." Thus, we find CGE&Y's aggregation of the four Pseudo-CLECs' performance data to be in accordance with the requirement of the MTP.

(x) Data Validation

The CLECs argue that CGE&Y did not satisfy the MTP's specifications for statistical analysis of Pacific's OSS Data. They claim that the MTP required "full data validation." (CLECs OC at 95.)

In reply, Pacific attests that a jointly selected[132] independent third-party auditor, PricewaterhouseCoopers (PWC), has audited Pacific's processes. It notes that in December 2000, PWC concluded that Pacific had complied, without exception, with the business rules set forth in the JPSA. Pacific submits that the PWC attestation report satisfies the MTP's data validation requirement. (Pacific RC at **15.)**

[132] By Pacific and the CLECs.

(a) Discussion

The MTP did not require CGE&Y to perform full data validation. Instead, it describes specific tasks the TAM was to complete as part of the validation. CGE&Y completed these specific tasks. Thus, we find no violation of the MTP regarding data validation, and conclude that CGE&Y's data validation was in accordance with the MTP.

(xi) Assumption of Data Accuracy

The CLECs allege that, during the test, CGE&Y assumed that Pacific properly excluded[133] some missing data.[134] Such an assumption ignores the purpose of data validation and the requirements of the MTP. (CLECs OC at 98.) Under the business rules, without a reconciliation of excluded orders with the orders present in GXS' database, CGE&Y could not verify the accuracy of the Rose Reports.'" **(Id.)**

(a) Discussion

The issue of revalidating the business rules used to exclude data from performance measurement was also an issue in the Performance Measurement Phase of the OSS OI I (R.97-10-016/I.97-10-017). In that proceeding, the Assigned Commissioner determined that PriceWaterhouseCoopers had validated the business rules in question in accordance with the joint Pacific-CLEC audit plan. Accordingly, we find that

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[133] Pursuant to the business rules in the JPSA

[134] Such as information on orders excluded for customer-caused delays or certain other discrepancies.

[135] The Rose Reports were SBC internally published reports, which listed performance measure data broken down by submeasure and specific CLEC. The PM data included CLEC and ILEC numerators, denominators, and averages, as well as any applicable benchmarks, z-tests, and standard deviations.

CGE&Y's assumption, pursuant to the business rules, that Pacific properly excluded certain missed data was reasonable and satisfied the requirements of the MTP.

(xii) MTP Variances

The CLECs claim that CGE&Y's actual data tracking and validation fell "woefully short" of what the MTP required. They assert that the test cases, as well as various aspects of the statistical tests that CGE&Y used varied from the MTP; consequently, CGE&Y failed to take into account important factors threatening the reliability of the analysis results. (CLECs OC at 24, 91, 96.)

(a) Discussion

The initial MTP authorized the TAM to clarify several crucial components of the OSS test that were not sufficiently detailed. It also directed the TAM to vary what was necessary in order to meet the goals of the test. Consequently, CGE&Y completed the details of the test cases and filled in the technical particulars of the test plan as part of its earliest duties here. After reviewing the relevant test records, we find that CGE&Y appropriately exercised its authority to modify aspects of the MTP, and find no support for the allegations regarding CGE&Y's analysis.

(xiii) 271 Testing Approach

The CLECs contend that the CPUC specifically required the MTP to be based on the plan that KPMG developed for Bell Atlantic's OSS test. They claim that Pacific's OSS test departed from certain key aspects of both the CPUC's and the FCC's requirements. According to the CLECs, Pacific's OSS test failed to adhere strictly to the KPMG approach because: 1) the test was not blind to Pacific and 2) the CLECs were not permitted to actively participate in the OSS test process. (CLECs OC at 23-26.)

Pacific replied that the CLEC allegation falsely implies that Pacific unilaterally developed the MTP, without the full collaboration of the CLECs, and without the approval of the Commission. Pacific believes that the scope of the OSS test was more comprehensive than either the Texas or New York tests.

(a) Discussion

There is no MTP and/or CPUC requirement that this test be performed based on the New York (NY) test. CGE&Y and GXS did not detect any violation of the test's blindness requirement through Pacific OSS test and Account Management Teams releasing inappropriate information to other Pacific resources processing the test orders. CLECs actively participated in workshops during the planning of the MTP. They also participated in weekly informal sessions with CGE&Y. They were given ample opportunity to alert the CGE&Y to objectives of the test that were important to them, and to provide information that would assist it. We find that the OSS test did not need to follow KPMG's NY OSS testing approach exactly, and that "blindness" was properly maintained during the California test.

(xiv) Limited CLEC Involvement in Test

The CLECs state that they were not permitted to participate actively in the OSS test process. CGE&Y and GXS maintained a level of "blindness" during the test that only permitted minimal CLEC participation. (CLECs OC at **24-25.)** In addition, the test excluded the CLECs from most of the discussions that occurred over the 12-month testing and evaluation period, and which resulted in significant changes to the MTP. ***(Id.)***

Pacific responds that the CLECs had "substantial involvement" throughout the test. It maintains that the CPUC offered the CLECs

the opportunity to participate directly in carrier-to-carrier testing; however, they declined the invitation. (Pacific RC at 4.)

(a) Discussion

The CLECs actively participated in the testing process through their service on the test's Technical Advisory Board (the "TAB"), which met regularly and addressed the majority of substantive issues. CLECs also met in informal sessions with CGE&Y and/or GXS, outside the presence of Pacific representatives, to offer comments and recommendations on various aspects of the testing process and methodologies. It appears that the CLECs were part of many, though not all, aspects of the testing process. There is no evidence to support the assertion that significant changes were made to the MTP or that discussions, from which the CLECs were excluded, regularly took place during the test. We find no evidence that CGE&Y and GXS exceeded their authority in the balance they struck during the testing process between test security and accessibility; therefore, we find the level of CLEC participation to have been reasonable.

(xv) Military Style Testing

The CLECs contend that CGE&Y failed to comply with the MTP because it "failed to perform root-cause analysis," violating the military-style testing the MTP required. (CLECs OC at 26.)

(a) Discussion

The MTP did not require root-cause analysis. Instead, it obligated CGE&Y only to identify compliance exceptions. The MTP required Pacific to determine the cause of, and fix, any identified problems during the OSS testing. (See MTP at Appendix C.) We find no merit in the allegation that CGE&Y violated the MTP-required "style" of testing.

(xvi) End-to-End Testing

The CLECs contend that GXS should have conducted an end-to-end test beginning with preordering through provisioning, billing, and maintenance and repair. However, CGE&Y's delivery of pre-validated order information disrupted and replaced the preordering step such that test transactions were not truly "end-to-end." (CLECs OC at 134-135.)

(a) Discussion

The pre-validation conducted by CGE&Y was to determine that test participant data was adequate and reliable; it was not a substitute for preordering. CGE&Y's test scripts to GXS represented the data a CLEC Customer Service Representative would gather from its customers. GXS always evaluated the test scripts provided by CGE&Y through the preordering functionality. GXS rejected scripts and sent them back to CGE&Y when the test script data: 1)was not valid; 2) did not match the preordering evaluation; or 3) caused errors in the LSR. Notwithstanding CGE&Y's pre-validation steps, review of the record as a whole indicates that GXS conducted a reasonable end-to-end test in California.

In sum, we can conclude from the Final Report that Pacific's OSS is commercially available and sufficient to handle reasonable, anticipated commercial volumes.

(c) Local Service Center (LSC)/OSS – April 2001 Operational Hearings

One of the recurring themes of competitors' comments in this proceeding has been that Pacific fails to resolve the OSS/LSC related CLEC operational problems it causes, and that these unresolved problems represent true obstacles to competition in the local telephone market. In an effort to address these comments, the CPUC convened all-party hearings on April 4, 5, and 12,2001, to allow the CLECs the opportunity to appear and formally present

systemic operational issues on the record. These hearings also were designed to allow Pacific an opportunity to show how effectively it can remedy such problems.

The 11 CLECs that participated identified dozens of then current operational issues and, as the hearings progressed, Pacific memorialized them in an issues "matrix" document. Over the course of the hearings, it became clear that there is – and post-Section 271 will continue to be – a need to rely on some systematic, well-documented processes to resolve both operational problems experienced only by individual CLECs, and more pervasive ones experienced by several competitors simultaneously. It also became evident that there are evolving processes already in place that can be used to deal with both of these categories of operational problems. Pacific assigns an account team to each CLEC so that any individual service problem that a CLEC is experiencing can be worked to resolution collectively. For dealing with a problem that several CLECs face, such as inefficiency in an ordering process, Pacific has implemented a CLEC User Forum process. The forum is comprised of Pacific and CLEC representatives that meet monthly with subject matter experts from both camps to work toward devising and implementing solutions to the multi-CLEC problem.'"

The April hearings allowed us to take a "snapshot" of a point in time where the operational problems then existing were documented, and thus establish a baseline from which to monitor Pacific's problem resolving

[136] There is, of course, also the CMP, which can and does often serve as a forum for raising and correcting OSS interface matters that may otherwise adversely affect CLECs' local service ordering efforts. The issues raised at these hearings were largely, if not exclusively, outside the scope of the problem solving mechanisms (such as the CCR process) of the CMP.

processes. We can now gauge both how effective they function, and how willingly, quickly, and effectively Pacific is inclined to work toward CLEC problem resolution.

(i) The Process for Monitoring Issues Resolution

After the all-party hearings concluded, the Assigned Commissioner issued a ruling that set forth the process to be followed to monitor the further efforts of parties in resolving the identified problems. Consistent with the ruling, Pacific submitted an updated problem matrix to the TD staff and other parties on May 29,2001. By June 11, interested CLECs served Pacific and the TD staff with their clarifying comments on Pacific's May 29 matrix. TD staff compiled a final "problems matrix" based on Pacific's and the CLECs' input, and distributed that document on June 21.

The Commissioner's ruling directed Pacific to 1) update the TD staff's June 21 matrix each month to reflect the current resolution status of each operational issue listed, and 2) distribute that update to TD staff and CLECs for review and comment. Pacific distributed the first update on July 2,2001.

(ii) Identified Issues

The "baseline" matrix staff distributed in June indicated that there were 76 "problems" raised at the hearings. Only 68, however, could be reasonably categorized as operational in nature.[137] These 68 problems fell into 13

[137] Actually, there are 81 issue entries in this matrix. In addition to the 68 operational issue entries, there are four cross-references to issues that have been re-categorized and moved to more appropriate locations of the document, one inadvertent duplicate of another issue, three entries raising UNE pricing issues, two entries of issues that are Section 271 proceeding process matters, and three entries that are administrative directives to Pacific from the hearing officer to supply staff with information to facilitate its efforts to analyze the issues.

different issue categories, but the three most important ones to CLEC service ordering and provisioning (the Database & Documentation, Installation, and Order Due Date categories) include 44 (about 2/3rds) of the identified problems.

The subject range of the group of 68 issues was broad.'"

At the time, only a couple of the issues were being pursued to resolution using the CLEC User Forum process.[139] According to the June 21,2001 baseline, **27** identified operational problems (about four of every 10 identified) were resolved during, or soon after, the mid-April hearings.

[1"] Examples of issues that seemed particularly important to more than one CLEC were: Issue #1, that raised the need to incorporate "line loss" notifications into EDI to minimize the likelihood of double billing of migrating customers; Issue #2 (and related Issues #16 and #17), that focused on various order quality problems caused by the conversion from the CESAR to the EXACT interface; Issue #3, that highlighted the need for Pacific to electronically transmit its Features and Capability Reports to CLECs; Issue #13, which identified the need for Pacific to move from an uncoordinated, three-step order process for line splitting to a more efficient electronic single-step one; Issues #19, #34 and #34A, that focused on either insuring timely and accurate customer directory listings, or on insuring that directories are properly delivered to customers, and; Issue #26, that was raised by several CLECs who insisted that there is a need for escorted access to Pacific's facilities to ensure, for example, that Carrier Facility Assignment data is correct so that a problem that causes a "no dial tone" condition for a customer is not first discovered on the day of a scheduled cut.

[139] When staff compiled the June **21** baseline matrix, it attempted to match issues on the matrix with ongoing "Action Items" then being worked in the CLEC User Forum. **It** identified only matrix Issues #13 and #26 as matches. In fact, Issue #13 – which raises the need to streamline the ordering process for line-splitting into a one-step process – turned out not to be included as a User Forum Action Item, but nevertheless appears to be the kind of matter that the CLECs should bring to that forum. Also, matrix Issue **#37** was later identified as being related to a User Forum Item in Pacific's September 10 matrix update, so there continues to be two matrix issues being worked in the User Forum.

(iii) The Parties' Interactions

Over the two weeks following the staff's June 21 matrix distribution, only one CLEC, Z-Tel Communications Inc. (Z-Tel), submitted written comments on whether it accurately reflected the issues and their status. Z-Tel's June 25 comments focused on clarifying the matrix's statements of its issues, and on ensuring that its understanding of its issues' resolution status was memorialized properly, but it made no claim that any reference to an issue being resolved was inaccurate. Z-Tel's comments suggested that some clarifications needed to be made to Issues #38, #39, #59A, #60A, and #60B.

Pacific's first (July 2) matrix update incorporated the substance of Z-Tel's comments discussed above. Pacific also claimed that an additional five problems had been resolved since June 21. According to this update, resolved matters now numbered **32** (about 47%), or nearly half of all operational problems identified in April.

About a week later, on July 10, two more CLECs submitted comments on the matrix update. One addressed an operational issue,[140] the other submitted clarifications or status updates on its open issues.[141] When Pacific distributed its second issues matrix update on July 30, it showed that an additional 11 operational problems had been resolved since July 2. Pacific's claimed success rate had increased to 43 of 68 issues (or about 63%)

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[140] Sprint's Issue #46 in the matrix: the claim that Pacific needs to modify its collocation space reservation policy so that available Central Office space earmarked for future, but not imminent, Pacific expansion can be allocated to imminent CLEC collocation projects. Based on Pacific's claim to that effect, its status has been shown as resolved since staff's initial matrix distribution. Sprint insists that there has been no resolution.

[141] AT&T's issues #2, #3, #44, #60 and #63. Staff recorded AT&T's comments and requested their incorporation into the July 30 updated matrix.

closed. But scrutiny of the update showed that some of the success in improving statistics was gained simply because of the consolidation of tracked issues.[142]

On September 7, four CLECs filed a motion claiming that Pacific's updated matrix had been inaccurate since its inception.[143] They asked that staff, rather than Pacific, be designated to serve as the final editor of future matrix updates, because Pacific was ignoring their comments. Pacific filed its next matrix update on schedule on September 10. Although it never filed any comments on the CLECs' motion, Pacific's September 10 update reopened some issues.[144] The update also showed an increased issues resolution rate of about 69% (47 of the 68 issues resolved).[145]

On October 10, Pacific again submitted its monthly matrix update. This update claimed that an additional seven issues had been closed for a resolution rate of about 79% (54 of the 68 issues resolved). Two of the seven issues Pacific considered to have been resolved during the September

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[142] For example, Pacific's general effort to address CESAR to EXACT conversion issues not within the scope of the CMP, and its attempt to work with the WorldCom account team to resolve that CLEC's EXACT related order quality issues (Issues #2 and #17), appeared to have been closed because they were related to Pacific's attempts to address WorldCom's EXACT related ASR reject problem (Issue #16) and deemed redundant after an EXACT forum was conducted. Pacific was also claiming closure of some issues because, even though solutions to the problems would not be implemented for some months, those solutions had been identified and apparently agreed upon (Issues #1 and #3, for example, which concerned transmission of line loss notifications and Features & Capability Reports). AT&T complained that two of its issues (Issues #1 and #3) were closed prematurely, and its comments were not being incorporated into the updates.

[143] The motion was filed by Pac-West, AT&T, New Edge and Sprint.

[144] Issues #2 and #46

[145] Pacific showed six more issues closed minus the two reopened, for a net gain from September 10 of four closed issues.

to October period were previously reopened.[146] On November 8, WorldCom submitted written comments to staff and Pacific on its differing understanding of the status of some issues that Pacific updated in October.[147] In response to one of WorldCom's requests, Pacific agreed in the November 9 matrix update to keep an issue open until January 2002."' Pacific reported that about 82% of the operational issues identified in April had been resolved.

(iv) Discussion

While CLECs continue to allege that LSC personnel too often fail to properly process service orders, the root cause of any such improper processing activities does not appear to be related to the major areas of concern identified in the December 1998 decision; namely, the possibility of inadequately trained LSC staff or deficient Pacific training processes. Consequently, we find that Pacific has satisfied all significant aspects of the LSC and OSS Appendix related checklist directives we established for it in our December 1998 decision.

We regard the fact that about 40% of the issues identified by CLECs at the April hearings were quickly resolved after being brought to Pacific's attention as a positive sign that Pacific has some degree of resolve to serve CLECs as wholesale business clients. That only *two* of the 68 operational issues identified at the hearings have been brought before the CLEC User Forum for resolution may be a reasonable condition. Only ten of the 68 (about 15%)

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[146] Issues #2 and #46

[147] For example, in a November 8,2001 letter from WorldCom to Mike Amato of the Telecommunications Division, which the CLEC also copied to Jim Young of Pacific, WorldCom claimed that Issue #18 concerning Pacific's failure to document ASR related deviations from the ASOG (which Pacific had considered resolved since July) should be deemed still open until Pacific agrees to incorporate EXACT into the CMP.

[148] Issue #59 A (concerning the E911 database).

were ones raised by more than a single CLEC. Apparently, it proved possible and practical to readily identify a common satisfactory solution – even if not an agreeably timely one - to at least some of the multi-CLEC issues outside the forum context.[149] Pacific's decision to consolidate issues by only keeping one issue open, when there were two or more on the list that were closely related, arguably made the real issues that remained open more easily and clearly understood.

But the practice results in making the statistics appear to show Pacific making better than actual monthly progress in responding to the concerns of its wholesale customers. It also clouds true issue resolution. During the past year of monitoring the status of these operational issues, we have been disappointed with Pacific's response to CLEC input. Earlier on in the resolution process, Pacific was acknowledging and reflecting input from CLECs, but then began disregarding that input. Only once it became clear that its "deaf ear" concerned the CPUC did Pacific again begin making a reasonable effort to document such input in the matrix.

In part in response to Pacific's periodic lapse of attention to issues, and in part as a result of their belief that existing problem resolution processes are failing to promptly cope with some critical operational matters, several CLECs involved in the April hearings have called for an expedited dispute resolution process for operational matters. Most of their recommendations for such a process shared this common profile:

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[149] Issue #3, for example, raised the need for Pacific to provide CLECs the Features & Capability Report. Moreover, it seems that the forum process is not an avenue for a CLEC to pursue if it wants to quickly solve the problem.

- The process would be limited for use only on CLEC/ILEC issues that were of direct impact to provisioning or maintaining an end-user's service.
- It would be available for use only after a reasonable attempt had been made to resolve an issue business-to-business.
- The mediator involved would be an impartial (CPUC or private) third party.
- There would be tight timelines for completing the steps within the mediation process, so that the issue would be mediated within two to three weeks.
- A party could subsequently file a formal complaint with the CPUC concerning the result of the mediation, but the mediator's decision would be binding on parties and in effect pending any future formal result.

Pacific appears to have taken every opportunity to impart a positive spin on the status of its progress in resolving the CLECs' April operational problems (e.g. – consolidating similar issues on the Issues Matrix and then identifying the eliminated issues as resolved). Nevertheless, even discounting the number of issues truly resolved, the record still shows that Pacific has made meaningful and steady quantitative progress in this area during the last six months.[150]

The Issues Matrix was an important tool in helping us to track how Pacific addresses operational problems; however, it was meant to be -- and was-- diagnostic and static. We believe that the parties would benefit from

[150] In its July 2 matrix update, Pacific claimed about 47% of the April issues had then been resolved. It showed 63% had been closed by July 30, 69% by September 10, 79% by October 10 and 82% as of November 9, 2001. When these statistics are adjusted to reflect a re-opening of a handful of issues where CLECs argue that closure by Pacific was arbitrary, they still seem to evidence at least marginally reasonable progress.

the crafting of a workable expedited dispute process for operational problems, and the parties seem closer to developing one than at any time in the past few years. In accordance with a schedule to be set out by the assigned ALJ, the parties shall present a joint proposal for the dispute process. A mutually agreed upon dispute process could focus in on and resolve problems before they became full blown formal complaints, but the parties must decide that they will work together to create it. At this point, we find that the Issues Matrix has served its purpose, and direct Pacific to submit the final version 30 days after the effective date of this order.[151]

(5) Pricing

In late 1999, we issued D.99-11-050,[152] which set prices for UNEs offered by Pacific. In this order, we acknowledged that the Total Element Long Run Incremental (TELRIC) costs that we adopted in 1998[153] and used to set the UNE prices were "based largely on data that had not been updated since 1994," and noted "there is evidence that some of these costs may be changing rapidly." (D.99-11-050, *mime.o* at 168.)

Consequently, we established a process in the order that invited carriers with interconnection agreements with Pacific to annually nominate up to two UNEs for consideration of their costs by the CPUC. We directed that a party nominating a UNE for review must include a summary of evidence

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[151] We deny as moot the September 2001 motion filed by Pac-West, AT&T, New Edge and Sprint to have TD staff designated final editor of future matrix updates.

[152] In our Rulemaking (R.) and Investigation (I.) to Govern Open Access to Bottleneck Services and Establish a Framework for Network Architecture Development of Dominant Carrier Networks, R. 93-04-003/I.93-04-002 (the "OANAD proceeding").

[153] D.98-02-106.

demonstrating a cost change of at least 20% (up or down) from the costs approved in D.98-02-106 for the UNE to be eligible for nomination.

In February 2001, the CPUC received four separate requests[154] to nominate UNEs for cost reexamination. On June 14,2001, an assigned Commissioner and ALJ Ruling denied Pacific's request to defer the UNE Reexamination proceeding, and stated that the CPUC should proceed with its review of selected UNEs rather than await the outcome of federal litigation'" so that competitors would not have to pay prices for another year based on 1998-adopted costs. The Ruling also determined that the summary of evidence presented by the joint applicants led to a reasonable presumption that costs may have declined for unbundled switching and unbundled loops. Accordingly, the Assigned Commissioner and ALJ found sufficient justification to review these two UNEs and initiate the UNE Reexamination proceeding.

In July, the Assigned Commissioner and ALJ reiterated an earlier ruling denying the joint applicants' request for leave to file a competing cost model to that which Pacific would file. They maintained that it was appropriate to limit the scope of the proceeding to review of Pacific's model as

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[154] 1)**A.01-02-024,**filed jointly by AT&T and WorldCom, requesting the reexamination of the recurring costs and prices of unbundled local and tandem switching; 2) A.01-02-034, filed by The Telephone Connection Local Services, LLC, requesting that the reexamination of the recurring costs and prices of the **DS-3** entrance facility without equipment; 3) A.O1-02-035, filed by Joint Applicants, requesting the reexamination of the costs and prices of unbundled loops; and 4) a motion by Pacific requesting a deferral of any reexamination of UNE costs and prices until after the United States Supreme Court had completed its consideration of the challenge to the Eighth Circuit's order on the FCC's TELRIC cost standards, or alternatively, reexamination of the cost of the Expanded Interconnection Service Cross Connect .

[155] *Iowa Utilities Bd. v. F.C.C.,* 219 F.3d 744 (8th Cir. July 18, 2000), *cert. granted, AT&T Corp. V. Iowa Utilities Bd.,* 121S.Ct. 878, 69 U.S.L.W. 3283 (U.S. Jan. 22,2001) (No. 00-590).

long as it met three criteria. Specifically, Pacific's cost models and cost studies had to allow parties to: 1) reasonably understand how costs are derived for unbundled loops and switching; 2) generally replicate Pacific's calculations; and 3) propose changes in inputs and assumptions in order to modify the costs produced by these models. The Assigned Commissioner and ALJ Ruling further required Pacific to provide requesting parties with an advance electronic copy of the cost model or studies that it would use as the starting point for its cost filing.

In response to Pacific's advance "starting point," commenters asserted that Pacific's submission did not meet the three cost model criteria because it was not an actual cost model, but merely a set of adjustments to the outputs of the models used to develop costs and prices in prior OANAD decisions, specifically, D.98-02-106 and D.99-11-050. They also claimed that several of the prior models were no longer available and it was not possible to re-run them with new inputs. Pacific's reply did not dispute the commenters' assertions, but it insisted that its filing met the three criteria.

On August 20, 2001, the joint applicants filed a Motion for Interim Relief, asking that Pacific be ordered to offer UNE prices for unbundled switching and unbundled loops at proposed interim rates. Specifically, they proposed an interim reduction of 36% in **Pacific's** UNE loop rates based, in part, on estimates of Pacific's forward-looking costs using the HAI model. For unbundled switching UNE rates, they proposed that Pacific set rates equivalent to either of two rate proposals made by Pacific's affiliate, SBC-Ameritech, in Illinois. If adopted, the Illinois switching rates would amount to essentially a 70% reduction from the then-current local switching rates. The joint applicants supported their request using the HAI model as well as the FCC's Synthesis

Model. In addition, they asked that the interim rates be subject to "true-down[156]" as a sanction against Pacific for alleged misleading statements regarding its cost studies and delays in the proceeding. In September, the assigned Commissioner and ALJ issued a joint ruling stating a desire to consider interim relief since Pacific's cost filing failed to meet the required three criteria.

In October, Pacific filed a Notice of Discounted Switching Prices [157] in this proceeding, and a motion to vacate[158] the September ruling as moot in the UNE reexamination proceeding. In the pleading, Pacific offers a 20 percent discount of its "UNE-P" rates. Specifically, the discount[159] is approximately a 44 percent reduction of Pacific's switching rates. The proposal further provides that the rates will not be available until thirty days after the CPUC approves Pacific's Section 271 request. Pacific offers the reduced rates for one year unless the FCC approves its 271 application. If the FCC approves the application, Pacific's offer extends the discount for an additional year.

In response, the competitors, TURN and ORA characterize the proposal as unilateral, inadequate, not cost-based, and preemptive of issues

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[156] A "true-down" means that if final rates are lower than interim rates, Pacific Bell should provide refunds to those who purchase unbundled loops or switching UNEs, but if rates are ultimately higher than any interim rate, buyers of these UNEs would not owe any additional payment.

[157] On October 15,2001, Pacific filed a Motion to Notify Parties of Discounted Switching UNE Prices, with an Addendum on October 19,2001.

[158] "Pacific Bell Telephone Company's Motion to Vacate the Assigned Commissioner's And Administrative Law Judge's Ruling Of September 28,2001 As Moot," October 19, 2001.

[159] Pacific states that it will make the reduction available by "executing an amendment to the [interested competitor's] interconnection agreement." Notice of Discounted Switching Prices at 2.

being decided in the UNE Reexamination. AT&T and WorldCom note that in spite of the offer, Pacific continues to insist in the UNE Reexamination proceeding that "no significant reduction in its switching rate is necessary and its loop rates should be increased." (Response of Joint Applicants to Notice and Motion to Vacate at 8 (November 5, 2001).) They also decry that the proposed discount will not be offered subject to true-up, because they believe that permanent updated cost-based UNE rates will be substantially lower. (*Id.* at 7.) Sage Telecom, Inc. (Sage) declares that Pacific's offer is an attempt to usurp the CPUC's rate authority. (Sage Reply at 6.) All urge the CPUC to grant interim relief for the switching and loop rates as soon as possible.

(a) Pacific's Position

In its June 2001 filing, Pacific asserted that it had developed UNE rates that complied with the TELRIC methodology as previously articulated by the FCC. (Scholl Aff. ¶¶ 13-91; Vandeloop Aff. ¶¶ 8-20.) Pacific maintained that it provides CLECs even lower rates than they would be eligible to receive under the 1996 Act, as interpreted by the Eighth Circuit.

It argued that the prices established by the CPUC fully comply with the requirements of sections 251(c)(2), 251(c)(3) and 251(d)(1)[160], and the final rates adopted reflected no embedded or *sunk* costs. (Scholl Aff. ¶ 8.) The rates were incorporated into existing interconnection agreements and have been used in all subsequent interconnection agreements. (Vandeloop Aff. ¶ 9.) No one has challenged the rates in federal district court under section 252(e)(6).

Pacific specifically contends that the prices of certain individual UNEs are in compliance with the Act:

[160] As stated in D.99-11-050, Ordering Paragraphs 1 & 2 at 275.

(i) Unbundled local loops

Pacific noted that in the Pacific-AT&T arbitration proceeding, the CPUC adopted prices for unbundled local loops in three defined geographic areas. (Vandeloop Aff. ¶ 12.) These rates were based on its TELRIC cost studies. Pacific gathered its loop data and determined the average loop UNE TELRIC costs for its wire centers (Scholl Aff. ¶ 86.) The wire centers were separated into one of three zones based on the average UNE loop cost within each wire center. The same rates adopted in the Pacific/AT&T interconnection agreement are available pursuant to D.02-05-042 and through Pacific's Accessible Letter, CLECC 00-039.

Pacific insisted that its loop prices fell squarely within the range of reasonableness that a proper application of TELRIC would produce. The California statewide average loop rate of $11.70 is considerably lower than average loop rates in states where interLATA relief has already been granted. For example, the weighted average loop rate in New York is $14.50; Massachusetts, $15.66; Texas, $14.11; and Kansas, $13.30.

(ii) Unbundled DSL-Capable Loops

Pacific attested that it makes DSL-capable loops readily available to any requesting carrier pursuant to D.OO-09-074. It noted that the CPUC is scheduled to establish permanent prices as part of the Line Sharing Phase of OANAD sometime in 2002.

(iii) Unbundled Transport

Pacific stated that it recovers its dedicated transport facilities costs through flat-rated charges, while the costs of shared transport facilities are recovered through usage sensitive charges. The CPUC adopted the prices for most commonly used transport elements in D.99-11-050. In D.00-08-

011, the Pacific-AT&T arbitration decision, the CPUC established interim prices for optical level dedicated transport rate elements.

(iv) Switching Rate

Pacific asserted that it recovered its unbundled local switching costs through a combination of flat-rated charges and usage charges with call set-up and duration rate elements, in accordance with 47 C.F.R. § 51.509(e). In analyzing the appropriate cost for switch investments, Pacific contended that the CPUC determined that switch discounts should reflect the prices that Pacific can actually expect to pay over the entire life cycle of digital switching technology. The CPUC determined that the modeling reflected in Pacific's January 13,1997 TELRIC studies came much closer to meeting this objective than the approach advocated by AT&T and MCI. (D.96-08-021 *(Cost Methodology lnterim Decision)* at 46 and Conclusions of Law 22.) Pacific made certain corrections to its switching investment cost study that parties had identified (Scholl Aff. ¶ 33) and the CPUC made additional adjustments. In particular, the CPUC identified that 40 percent of Pacific's digital lines should be valued at replacement prices, while 60 percent should be valued at growth or add-on prices. (D.96-08-021, Conclusion of Law 31.) (*Id.*)

(v) UNE Platform

Pacific contended that to compare rates for the UNE platform (UNE-P), it was necessary to make certain assumptions. For example, a typical residential flat rate customer makes 151 local calls per month, lasting a total of 571 minutes per month with an average call duration of 3.8 minutes. Assuming this customer also used Internet dial-up for a total of 829 minutes per month, which equates to a monthly total of 1,400 local minutes, 300 toll minutes and approximately 178 separate calls. Relying on these assumptions, a UNE-P

rate of $21.30 compares favorably to the UNE-P rate in other states? in Oklahoma the UNE-P would cost $22.11; in New York, $24.23; in Massachusetts, $26.48; and in Texas, $19.01. (Vandeloop Aff. ¶¶ 26-27.)

(b) Interested Parties' Positions

Several parties (AT&T, WorldCom, ASCENT, Tri-M, Z-Tel, XO, TURN and ORA) filed comments asserting that Pacific's UNE rates were not cost-based in compliance with Sections 251(c)(3) and 252(d)(1). According to AT&T, Pacific's rates were so out of line with SBC's rates for the same functions in other SBC states, that there could be no finding that those UNE rates complied with TELRIC principles.

Z-Tel and Tri-M claimed that Pacific's excessive UNE prices impaired the ability of carriers to compete. Z-Tel argued that the rates Pacific charges for UNEs are clearly excessive under the FCC's TELRIC pricing standard. Applying its TELRIC test in the orders approving 271 applications in Oklahoma/Kansas and Massachusetts, the FCC found that as long as rate differentials between states are supportable by cost differentials, UNE rates are TELRIC compliant. Z-Tel performed the FCC's TELRIC Test on California's LJNE switching rates and determined that Pacific's UNE switching rates were not TELRIC compliant and were approximately two times forward-looking costs.

Tri-M stated that while Pacific's application included affidavits purportedly demonstrating that its prices were comparable to those in some other states, it failed to distinguish between states where competitors have

[161] Pacific asserts that its rates were established using the TELRIC methodology, and it has not relied on any presumption of TELRIC compliance by adopting the rates of another state. Thus, while Pacific's rates compare favorably to those of other states, such a comparison is both unnecessary and inappropriate under these circumstances.

been able to successfully enter the market in a meaningful way, and those where they have not. Tri-M stressed that California fell into the latter category.

WorldCom stated that Pacific's excessive prices for unbundled loops and switching harm California consumers in at least two ways. First, prices that far exceed Pacific's forward-looking economic costs have a chilling effect on competitive entry. The lack of entry, in turn, reduces customer choice and reduces the competitive pressure on Pacific to lower its retail prices. Second, Pacific's inflated prices for unbundled loops and switching can lead directly to increases in the prices most California consumers and businesses pay for local phone service.

WorldCom stated the minimum price that a competitor would pay Pacific for the three elements that the CPUC identified in D.99-11-050 as monopoly building blocks was $14.98 per month ($11.70 for an unbundled loop, $2.88 for an unbundled switch port and $0.40 for a White Pages listing). Hence, a competitor's cost for access to those monopoly building blocks alone would exceed Pacific's retail prices for residential and single-line business service. In other words, the competitor would already be facing a loss on the sale of local exchange service at Pacific's prices before it spent a single penny for its own retailing costs and overhead expenses. AT&T insists that given Pacific's overstated UNE prices, it is not surprising that a margin analysis reveals that statewide residential UNE-based competition is not viable in California. In two of the three California UNE rate zones, a competitor would lose money on each residential line it serves, even if its internal costs of running its business were excluded. (Lieberman Decl. ¶¶ 3-7.)

XO and ORA asserted that Pacific's DS-3 UNE loop prices are not in compliance with Sections 251(c)(3) and 252(d)(1). (Comments of XO et

al.[162] at 2-8; ORA Brief at 8.) The CPUC did not review DS3 UNE loop prices in the OANAD proceeding, and has never made a determination that Pacific's rates are cost-based. Further, the price of a DS-3 UNE loop in California is substantially more than it is in Texas. XO presented data that the DS-3 monthly recurring prices are two to three times as high in California, which more than offsets the lower non-recurring prices in California. XO concluded that Pacific's DS-3 UNE loop prices could not possibly be TELRIC based, and urged the CPUC to examine those costs in its UNE Re-look proceeding before it rules on Pacific's 271 filing.

Finally, AT&T and WorldCom expressed concern that many of Pacific's California rates are interim rates that have not been fully reviewed by the California PUC. They urge the implementation of permanent rates for all UNEs to avoid the risk that the FCC will reject Pacific's application since it is based on so many interim rates.

(c) Discussion

Pacific emphatically disputed the interested parties' UNE pricing arguments. To AT&T and WorldCom's claims that its switching rates are higher than the costs that Ameritech has sought to recover in Michigan and Illinois, Pacific responded that some switching costs do parallel the costs submitted in Michigan and Illinois. A significant difference in the prices is the result of the fact that the rate structure adopted in California is different from those adopted in other states. According to Pacific, its switching UNE rate includes recovery for numerous costs that the CPUC properly associated with

[162] Pac-West Telecomm, Inc., ICG Telecom Group, Inc., and Advanced Telcom, Inc. d/b/a Advanced Telcom Group.

switching, but that other jurisdictions have assigned elsewhere. (Scholl Reply Aff. ¶ 85.)

Pacific defended its loop rates stating that the 38% fill factor was comparable to that in Massachusetts where the FCC approved Verizon's 271 application. Moreover, the CPUC adopted a fill factor five percentage points higher than Pacific's existing fill factor at the time. In any event, the appropriate fill factor will be part of the CPUC's loop rate reexamination.

Pacific also defended the use of interim rates for some UNEs by asserting that the FCC has determined that reliance on interim rates is appropriate, provided that "the uncertainty surrounding the interim rates has been minimized and [the FCC has] confidence that the [state commission] will set permanent rates that are in compliance with the Act and [its] rules." (*SWBT Texas Order*, 15 FCC Rcd at ¶ 90.)

Pacific rebutted AT&T and WorldCom's contentions that its UNE prices are too high to permit them to turn a profit in the California local market. Both companies provide local service to hundreds of thousands of California end users, which belies their assertion that UNE prices are too high to permit them to enter the California market. Moreover, the assertion is legally irrelevant. The FCC has stated that a "profitability argument' is not part of the section 271 evaluation of whether an applicant's rates are TELRIC-based. (*Verizon Massachusetts Order*[163], 16 FCC Rcd at ¶ 41; *Kansas/Oklahoma Order*, 16 FCC Rcd at ¶¶ 65,92.)

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[163] *Application of Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions) And Verizon Global Networks Inc., for Authorization to Provide In-Region, InterLATA Services in Massachusetts*, CC Docket 01-9, Memorandum Opinion and Order, 16 FCC Rcd 8988 (2001) *(Verizon Massachusetts Order).*

To XO's and ORA's allegations that its DS3 loop prices are too high, Pacific responded that since there is no difference between a DS3 entrance facility and a DS3 loop, their rates are the same. The CPUC set rates for DS1 and DS3 entrance facilities in the OANAD proceeding, and that rate is appropriate to use for a DS3 loop. Pacific also disputed XO's claim that it should provide deaveraged DS3 loop prices, noting that its DS3 loops are provided using multi-node fiber rings, which have no material geographic cost differences between them. (Scholl Reply Aff. ¶ 150,152.)

In D.02-05-042,[164] we set interim rates for unbundled loops and unbundled local and tandem switching. We found that Pacific's cost study inadequacies resulted in delays and the need to examine competing cost models, which made interim rates necessary. For unbundled loops, we adopted an interim discount of 15.1% from Pacific's then-loop price for the basic (2-wire) loop, resulting in an interim loop rate[165] of $9.93. We applied this discount to the deaveraged loop rates adopted in D.02-02-047. For unbundled switching, we applied a 69% discount to then local switching rates and a 79% reduction to then tandem switching rates. (See Appendix III.) The UNE Re-look docket will be kept open to set final rates for unbundled loops and unbundled switching. Our interim rates are subject to adjustment, either up or down, from the effective date of the order until we adopt final rates.

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[164] Issued May 16,2002.

[165] Joint Applicants had requested a 36% reduction, based on a trend analysis of 1994 and 2000 loop cost data using the HAI Model version 5.2a (HAI model or HAI). After consideration of this approach, we made adjustments to the HAI model. We altered Joint Applicants' line counts to reflect physical facilities rather than "voice grade equivalents." We also removed the effects of the investment/expense factor approach from the HAI trend analysis by holding expenses per loop constant. (See D.02-05-047, Appendix B.)

Needless to say, we find Pacific's discount switching proposal to be far from TELRIC compliant, fraught with mathematical errors, and substantially inadequate in view of the record in the UNE Re-look proceeding. We are mindful of the importance of adopting permanent rates for the entire spectrum of UNEs; and we are setting forth to accomplish this as expeditiously as possible. However, costing proceedings, by their nature, are time and resource intensive. At present, we have a number of crucial issues in California competing for time and resources. As stated above, we established a process in D.99-11-050, which enables us to review two qualifying UNEs a year. We will continue with this process, and be much less tolerant of delaying tactics and insufficient showings in the future.

We have and shall continue to adopt cost-based, TELRIC compliant UNE rates in California. We have made interim adjustments where we have found the most significant disparities, and will move steadfastly to adopt permanent rates. Overall, we submit to the FCC our evaluation and conclusion that Pacific's UNE rates conform to its requirements.

Accordingly, based on our assessment of Pacific's complete showing for this item, we find that Pacific has demonstrated that it provides nondiscriminatory access to unbundled network elements, at just and reasonable rates, terms, and conditions. Thus, we conclude that Pacific satisfies the requirements of Checklist Item 2 and we verify its compliance.

C. Checklist Item 3 -- Poles, Ducts, Conduits and Rights-of-way

Has Pacific provided nondiscriminatory access to the poles, ducts, conduits, and rights-of-way owned or controlled by Pacific at just and reasonable rates, pursuant to section 224 of the Communications Act of 1934, as amended by section 271(c)(2)(B)(iii)?

1. Legal Standard

In 1978, Congress enacted the Pole Attachments Act, 47 U.S.C. § 224 (Section 224), establishing FCC jurisdiction over access to utility poles and conduit by cable television operators.

a) TA96 and FCC Orders

Section 271(c)(2)(B)(iii) requires a BOC to provide "[n]ondiscriminatory access to the poles, ducts, conduits, and rights-of-way'" owned or controlled by [the BOC] at just and reasonable rates in accordance with the requirements of section 224."

As amended by TA96, Section 224(f)(1) expanded the scope of the law to require a utility to provide the nondiscriminatory access to ducts and ROW as well as to both cable television operators and telecommunications carriers.

In its *Second BellSouth Louisiana* decision,[167] the FCC found that BellSouth Louisiana had satisfied Checklist Item 3 through a *prima facie* showing.

In its Michigan 271 decision,'" the FCC found that Ameritech "appear(ed) to satisfy" the TA96's rights-of-way (ROW) requirement by providing nondiscriminatory access through three means: (1) by providing access to maps and records; (2) by employing a nondiscriminatory methodology for assigning spare capacity between competing carriers; and (3) by ensuring comparable treatment in completing the steps for access to these items. (¶¶ 117-

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[166] ROW

[167] *Second BellSouth Louisiana Order*, 13 FCC Rcd at ¶¶ 176-182.

[1''] *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended*, CC Docket No. 97-137, 12 FCC Rcd 20543 (1997) *(Ameritech Michigan Order)*.

118.) The FCC noted that Ameritech further agreed to comply with any state requirements.

b) California Application of Legal Standards

In 1980, as permitted under Section 224(c) of the Pole Attachments Act, the California Legislature enacted Pub. Util. Code § 767.5, regulating cable system attachments to utility poles and conduit. For more than 20 years, pursuant to Section 224 and Pub. Util. Code § 767.5, Pacific provided third parties surplus space on poles and in conduits under various agreements.

In October 1998, the CPUC assumed jurisdiction over access to poles, ducts, conduits and ROW by telecommunications carriers. (See D.98-10-058.) At the same time, we adopted and administered a set of rules that encouraged "preferred outcomes" in ROW access agreements. In doing so, we noted that "[i]t is unrealistic to expect that all ROW access agreements will be uniform with respect to prices, terms, or conditions, [d]ifferences are acceptable as long as they are justified by the particular circumstances of each situation, and do not merely reflect anticompetitive discrimination among similarly situated carriers." (*Id.* at 12-13.)

In the 1998 Initial Staff Report, staff determined that Pacific either had responded adequately to competitors' allegations regarding noncompliance with Checklist Item 3, or had substantiated that specific incidents were isolated occurrences that had been resolved. Staff also determined that Pacific was providing nondiscriminatory access to the three necessary ROW elements outlined in the FCC's *Ameritech Michigan Order:* (1) by providing competitors with access to maps and records; (2) by employing a nondiscriminatory methodology for assigning spare capacity between competing carriers; and (3) by ensuring comparable treatment in completing the steps for access to these items. In the Final Staff Report, staff reiterated its initial conclusion and recommended

that the CPUC find that Pacific had satisfied the requirements of this checklist item. We adopted staff's recommendation in D.98-12-069, and held that Pacific had demonstrated compliance with Checklist Item 3.

2. Proceeding Record

a) Pacific's Position

Pacific reports that through April 30,2001, it has entered into agreements with 44 CLECs for access to its poles, ducts, conduits, and ROW. (Reed A. Reisner Aff. ¶ 10). Pacific also contends that it has furnished CLECs with 36,366 pole attachments and provided access to approximately 14.12 million duct-feet of California conduit space. (Reisner Aff. ¶ 13; David Tebeau Aff. Attachment **A.)**

Pacific maintains that it makes unassigned pole, duct, conduit, or ROW space available to all telecommunications carriers and cable operators, including itself, on a first-come, first-served basis. (Reisner Aff. ¶¶ 14-26.) It provides access through its nine regional single points of contact that administer all structure licenses and ROW agreements. *(Id.* ¶ 15.) Pacific generally responds to applications within a 45-day interval; advises what modifications, if any, are necessary; and what the estimated costs for those modifications will be. (See Reisner Aff. ¶¶ 22-23; D.98-10-058, App. **A,** Rule IV.B.1; AT&T Agreement Attach. 10, § 3.3.1.) It bases the denial of access on lack of capacity, safety, reliability, or generally applicable engineering purposes. Pacific contends that it notifies the applicant in writing, with explanations, and arranges for a timely discussion of alternatives. (Reisner Aff. ¶23.) The CLEC Handbook sets forth the access process. *(Id.* ¶ 15.)

b) Interested Parties' Positions

In 1999, Cox and MediaOne argued, citing several then pending complaint cases, that Pacific has stifled local exchange competition through its

control of access to the easements and rights-of-way at Multi-tenant Dwelling Units (MDUs). Cox alleged that Pacific held monopoly control over access to at least one-third of the residential local exchange market. (See July 1999 Comments to 271 Compliance Filings, Volume 2 of 2, Cox Telecommunications/Media One at 21-26.)

In its August 2001 comments, Cox argued that Pacific, even where it owns and controls easements, will neither assert its property rights against certain property owners nor make access available to CLECs under nondiscriminatory terms and conditions. It contends that Pacific is aware that a specific property owner has blocked Cox's access and has refused to fulfill its affirmative duty under California law. Consequently, Cox insists, Pacific cannot claim in good faith that it has made its poles, conduits and rights-of-way accessible to competitors as required by Section 271(c)(2)(B)(iii).[169]

ORA commented that its review of the Reisner Affidavit indicated that Pacific likely continues to be in compliance with the requirements of Checklist Item 3.[170]

c) Discussion

Pacific asserts that it has entered into interconnection agreements, approved by the CPUC under Section 252, that require it to provide nondiscriminatory access to its poles, ducts, conduits, and rights-of-way. Those agreements constitute Pacific's legal obligation to provide Checklist Item 3.

Our review of the record indicates that Pacific continues to provide access to the necessary maps and records; uses a neutral method to assign spare

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[169] Cox California Telecom Comments at **4-11 (August** 23,2001).

[170] ORA Brief at 3-4 (August 23,2001).

capacity among competitors; and treats its access applicants comparably. With respect to Cox's contention, this Commission has addressed the core issue in separate complaint proceedings.[171] We find no evidence of bad faith in Pacific's compliance with this checklist item. Rather, we find that Pacific has shown that it continues to provide nondiscriminatory access to the poles, ducts, conduits, and ROW that it owns or controls, at just and reasonable rates, terms, and conditions. Thus, we conclude that Pacific continues to satisfy the requirements of Checklist Item 3, and we verify its compliance.

D. Checklist Item 4 -- Unbundled Local Loops

Has Pacific provided access and interconnection to local loop transmission from the central office to the customer's premises, unbundled from local switching or other services, pursuant to section 271(c)(2)(B)(iv)?

1. Legal Standard

a) TA96 and FCC Orders

Section 271(c)(2)(B)(iv) of TA96 requires Pacific to provide or offer to provide access to "local loop transmission from the central office to the customer's premises, unbundled from local switching or other services."[172] Nondiscriminatory access to this network element must be in accordance with Sections 251(c)(3) and 252(d)(1). In addition, this access must be "on an

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[171] *Cox California Telcom, L.L.C. dba Cox Communications (U-5684-C), Complainant vs. Crow Winthrop Development Limited Partnership, Defendant,* Case No. 00-05-022, D.00-11-038 (November 21,2000); *State of California Department of Transportation, Cox California Telecom, L.L.C. dba Cox Communications (U-5684-C) and Coxcom, Inc. dba Cox Communications of Orange County, Complainants us. Crow Winthrop Development Limited Partnership, and Pacific Bell (U-1001-C), Defendants,* Case No. 00-05-023, D.01-08-061 (August 23,2001).

[172] 47 U.S.C. § 271(c)(2)(B)(iv).

unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of the agreement and requirements of [section 251] and section 252."[173]

The FCC defined the local loop as "a transmission facility between a distribution frame, or its equivalent, in an incumbent LEC central office, and network interface device at the customer premises."[174] The definition includes a number of loop types, such as "two-wire and four-wire analog voice-grade loops, and two-wire and four-wire loops that are conditioned to transmit the digital signals needed to provide services such as ISDN,[175] ADSL[176], HDSL[177], and DS 1-level signals."[178] Dark fiber and loop conditioning are among the features, functions and capabilities of the loop.[179] Under FCC rules, Pacific must deliver the unbundled loop to the competing carrier within a reasonable time frame, with a minimum of service disruption, and of the same quality as the loop the BOC uses to provide service to its own customers.[180]

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[173] 47 U.S.C. § 251(c)(3).

[174] *Local Competition First Report and Order,* 11 FCC Rcd at ¶ 380; *SWBT Texas Order,* 15 FCC Rcd at ¶ 246 and n. 697.

[175] Integrated Services Digital Network

[176] Asynchronous Digital Subscriber Line

[177] High-bit-rate Digital Subscriber Line

[178] *Local Competition First Report and Order,* 11 FCC Rcd at ¶ 380; *SWBT Texas Order,* 15 FCC Rcd at ¶ 246 and n. 697.

[179] SWBT *Texas Order,* 15 FCC Rcd at ¶ 246 and n. 697.

[180] 47 C. F. R. § 51.313(b); 47 C. F. R. § 51.311(b); *Local Competition First Report and Order,* 11 FCC Rcd at ¶ ¶ 312-16.

b) California Application of Legal Standard

In D.98-12-069, we directed Pacific to show compliance with approximately twenty-seven technical and procedural requirements arrayed among five topics: 1) Determination of facility availability and quality; 2) Loop Installation Problems; 3) Loop Technical Specifications; 4) Digital Subscriber Lines (DSL) and Spectrum Management; and 5) Integrated Digital Loop Carrier (IDLC). (See Appendix I.) Interested parties comments' appeared to center primarily on issues subsumed within these topics.

2. Proceeding Record

Pacific submitted documentation at several junctures[181] to demonstrate compliance with the requirements of Checklist Item 4.

a) Facility Availability and Quality

In the 1998 decision, we directed Pacific to provide the K1023 process,[182] which determines loop characteristics for the marketing of advanced services such as xDSL,[183] to the CLECs. The K1023 query process is done on a manual basis for CLECs.

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[181] Pacific filed in June and September 1999, March, April and September 2000, and June and September 2001.

[182] Established in March 1998, Pacific's K1023 process allows CLECs to access information on loop characteristics on a pre-ordering basis. This information is necessary to facilitate the provision of high-speed digital services. The specific loop characteristics available in the K1023 query process are: media (copper or pair gain), length (range of less than 12,000 feet or greater than 17,500 feet), presence of conditioning devices (load coils, repeaters or bridge taps) and equivalency (gauge).

[183] A generic term for all forms of digital subscriber lines spanning transmission speeds from 128 kilobits per second (kbps) to 52 megabits per second (mbps).

(1) Pacific's Position

Pacific asserts that its "New K1023 Request Form - California"[184] has been available to the CLECs since May 1999. The form, which is used generally to request facility availability and pre-qualification of xDSL loops, also appears in the CLECs' Handbook. To facilitate xDSL loop qualifications, Pacific contends that it has electronically tabulated information regarding ADSL-capable Central Offices.[185] Currently, the CLECs can request xDSL pre-order qualification electronically to determine loop length, locations, availability, customer locations and other loop characteristics by way of the electronic pre-order interfaces, Verigate and Datagate. CLECs who elect not to retrieve this information electronically have manual options.[186] (Christopher J. Viveros (Viveros) Aff. ¶ 69 (July 16, 1999).)

Pacific contends that it has offered the CLECs the opportunity to identify COs where the CLECs plan to offer xDSL technologies so that Pacific can load an equivalent loop length indicator into PREMIS"'. (*Id.* ¶ 69.) As of May 31,1999, eight CLECs have requested the loop length indicator be loaded into approximately 213 COs where they intended to deploy xDSL services. (*Id.* ¶ 70.)

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[184] Published in Accessible Letter 99-169 (May 13,1999).

[185] Accessible Letter 98-093 (October 1,1998).

[186] They can contact the Facilities Local Service Center's (FLSC) Customer Care group or fax the information request to the FLSC using a K1023 CLEC Request Form to obtain xDSL-capable loop characteristics at specified COs. (*Id.* ¶ 68.)

[187] "PREMIS" or PREMises Information System is a database system used to set up residential and small business services by Pacific and CLECs. PREMIS performs the street address validation and telephone number selection functions.

Pacific states that it revised and improved its wholesale processes and provisioned about 85,000 stand alone UNE loops between July 1999 and January 2000. It implemented a flexible due date with a minimum 3-day commitment for most 2-wire analog loop orders. (*Id.* Supplemental Aff. ¶¶ pp. 65-67.) Pacific claims that this new process was implemented in three phases and allows CLECs to provide effective and reliable due dates to their end users. To further develop the operational and technical framework for the CLECs' xDSL provisioning, Pacific executed a line sharing trial between March and June 2000. (Hopfinger Aff. ¶ 26.) With 30 CLEC participants, the trial identified critical parameters for line sharing, i.e. location, ownership, installation, repair, maintenance of splitter, ordering and provisioning, flow-through processes, billing capability, and technical operations. Practical experience gained from the trial has motivated Pacific and CLECs to refine their interconnection and line sharing agreements. ***(Id.)***

(2) Interested Parties' Positions

In response to Pacific's January 2000 update, the CLECs generally maintained that Pacific's electronic loop qualification system was unreliable and did not provide adequate DSL loop make-up information. WorldCom contended that Pacific's **loop** qualification system was slow and cumbersome. Sprint described the loop qualification processes as unacceptable, imposing unreasonable costs on CLECs, unreliable, cumbersome, restrictive, and virtually guaranteeing poor customer service. (Response of Sprint to Supplemental Compliance Filing at 31-35 (April 5, 2000).) AT&T insisted that the process Pacific developed was still not a fully mechanized/electronic one. CLECs are required to access preordering and ordering forms on the website, which must be printed, filled out manually, and faxed to Pacific. (AT&T

Response to Pacific Supplementary 271 Compliance Filing: Declaration of C. Michael Pfau and Julie S. Chambers ¶ 20 (April 5, 2000).)

WorldCom and the Competitive Telecommunications Association (CompTel) also alleged that SBC/Pacific discriminated against the CLECs by providing them with information different in content and manner from that provided to ASI. (Joint Reply of MCI WorldCom and CompTel at 111-114 (April 5, 2000).) In 1999, ACI similarly contended that Pacific discriminates by denying CLECs equivalent access to critical pre-ordering and ordering loop make-up information required to provide DSL. (Opening Brief of ACI Corp. at 40-42 (August 16, 1999).) At that time, Northpoint[188] also asserted that Pacific's Geo Mapping system did not provide competitors with sufficient information,[189] and thus, should not be allowed as a substitute for the K1023 process. Northpoint further urged that the CLECs' be granted access to all Pacific database systems in parity with ASI. (Northpoint Comments at 9-10.) WorldCom, Northpoint and ORA each criticized Pacific's satisfaction of the CPUC's K1023 requirements. (WorldCom Comments at § II (4)(B) (2) at 71-75 and § II (4)(B)(5) at 82; Northpoint Comments at 4-12; ORA Comments at 31-33.)

Covad submitted 1999 comments strongly criticizing Pacific's xDSL loop acceptance testing technicians, procedures and provisioning practices. It claimed that these factors significantly impeded the CLECs ability to compete and contributed to the high failure rates of the CLECs DSL services. Covad did not file comments in 2001.

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[188] Northpoint filed for bankruptcy and ceased operations on January 16,2001.

[189] Concerning loop length, cable gauge, presence of alternative copper loops or DLC at customer premises, bridge taps, load coils, repeaters, and other preconditioning requirements for DSL services.

(a) Discussion

Pacific replied that it has developed fully mechanized loop qualification tools and processes that give the CLECs the capability to pre-qualify DSL-capable loops. It continues to upgrade its systems to enable online and electronic loop pre-qualification, pre-ordering, and ordering functions. Pacific has deployed the RTX indicators,[190] which CLECs can access electronically via Verigate, Datagate, EDI or CORBA or they can phone, fax, or e-mail requests to the Facility Local Service Center (FLSC). (Viveros Aff. ¶¶ 50-56; Murray ¶¶ 64-65 (1999).)

Pacific reasserted the integrity and reliability of its Verigate and Datagate interfaces for DSL loop qualification, but conceded that these systems provide only 30% of actual DSL-capable loop information and 70% designed DSL-capable loop information.'" When a CLEC accesses the designed loop make-up information, and the electronic process has not provided it sufficient loop make-up information, the CLEC could request a manual verification, which could take up to 6 hours to process. Once the actual loop make-up information has been provided, however, it is stored in Pacific's database and is available electronically for future CLECs' inquiries. Through this ongoing process, Pacific will continually update the Verigate and Database systems with loop make-up information as it provisions DSL services to the CLECs.

On May 27,2000, Pacific deployed enhanced electronic DSL loop qualification systems capable of providing 45 data information elements.

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[190] These divide loop length into three categories (12kft, 17kft, and 18kft), and provide loop length indications from a given CO to the customer's premise.

[191] Designed loop is the longest loop serving a customer's distribution area.

Pacific asserted that these 45 data point enhancements sufficiently allows the CLECs to qualify DSL capable loops and determine whether they want to provide DSL to a given customer or not. These system upgrades have resulted in system reliability, reduction in pre-qualification and ordering times, and reduction in installation and repair problems. To allegations that the processes Pacific provides to the CLECs are not in parity with those it offers to ASI, Pacific contends that the CLECs have access to the same loop qualification systems and processes that are available to Pacific and ASI. Pacific's service representatives and ASI utilize the same K1023 qualification forms and other electronic and/or manual processes for DSL products that the CLECs use. Moreover, Pacific's service representatives process loop qualification information for ASI's xDSL products substantially within the same amount of time and in the same manner as they process the CLECs' loop qualification orders.

In D.00-09-074,[192] we ordered Pacific to make available to the CLECs all information contained in its LFACS, FACS, TIRKS, APTOS, IFGS, DSTS, and other relevant systems, in parity with the manner in which it uses these systems for itself and for ASI to provision xDSL services. We also directed Pacific to offer acceptance testing in a timely fashion, without charge.

Our review of the performance results for the months June, July, and August 2001, indicate that Pacific failed to meet the parity requirements for the pre-ordering qualification (K1023) process for xDSL loops. The Average Response Time to Pre-order Queries (in seconds) for the CLECs in aggregate for xDSL loop qualification was 9.72, 6.67 and 4.20 for the respective months. The average response time to pre-order queries (in seconds) for ASI for xDSL loop qualification was 5.72, 3.05 and 2.44 for the same three months. These results

[192] Issued September 21,2000.

show that the CLECs pre-ordering process for xDSL loops qualification took approximately twice the amount of time that it took ASI to perform the same functions.

The results of two other associated measures,[193] however, indicated that CLECs' performance had generally exceeded the parity or benchmark standard. It appears that the longer response interval for the CLECs' pre-ordering process, when compared to ASI's, could be attributed to the types of system interface that the CLECs employ for these functions. ASI has xDSL service arrangements with Pacific; thus, Pacific's technical representatives perform ASI's xDSL loop qualification queries. In contrast, the CLECs connect with Pacific's K1023 processes by means of their respective ordering systems. This significant distinction would produce longer query and response intervals.

We find that Pacific has met the fundamental technical requirements for this topic. Though certain orders for voice grade, DS1, and DSL loops are not fully electronic, the mechanized and semi-mechanized process instituted by Pacific seems to allow the CLECs to serve their end-users within the same relative time frame as Pacific or ASI. Our analysis of the performance measures associated with the ordering and provisioning intervals for voice grade, DS1 and xDSL services indicates that Pacific, though faltering in some months, has largely satisfied the standards.

A parity comparison with ASI serves as the measurable standard for DSL loop qualification. Our analysis of the evidence indicates that ASI uses the same loop qualification processes as the CLECs. The performance

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[193] The Average Firm Order Confirmation /Local Service Center Notice Interval (in Hours): electronically and manually and The Average Reject Notice Interval (in Hours): electronically and manually. (See Appendix I.)

results, covering the months of June, July and August 2001, reveal that Pacific has largely met or exceeded the parity requirements for this service. Accordingly, we find that Pacific has satisfied the technical and performance requirements for DSL loop qualification. Nevertheless, it is apparent that actual loop make-up information in Verigate would eliminate manual intervention and enhance efficiency in the loop qualification process. Consequently, we direct Pacific to expeditiously improve the ratio of the actual loop make-up information in its Verigate, Datagate, EDI, and CORBA systems.

In its Opening Comments to the DD, Pacific submitted its plans for updates to the loop qualification database, as directed. It states that consistent with FCC requirements, SBC Pacific provides and will provide, electronic access to loop information in Automated Records and Engineering Systems to unaffiliated CLECs and its separate advanced services affiliate on a nondiscriminatory basis.

b) Loop Installation Issues

(1) Pacific's Position

Pacific reports that its Local Ordering Center (LOC)[194] serves as the single point of contact for CLECs regarding the provisioning, maintenance, and repair of interconnection facilities, resale services, UNEs, and Local Number Portability (LNP) products and services ordered through the Local Service Center. The LOC's purpose is to ensure that CLECs receive high quality provisioning, maintenance and repair services in the same time and manner as Pacific Bell's retail operations. Pacific maintains that it is committed to providing

[194] The LOC is made up of three separate facilities in Pasadena, Riverside and Reseda. The Pasadena and Riverside LOCs focus solely on servicing CLECs' maintenance and repair needs. The Reseda Center supports CLECs' provisioning activities.

sufficient resources to meet the needs and demands of CLECs. (David Ross Smith (Smith) Aff. ¶¶ 6-8, 15.)

With respect to LNP conversions from an old to a new phone system, Pacific offers California CLECs a choice between two different methods of coordinated conversions: the fully coordinated "to be called cut" (TBCC)[195] process and the frame due time (FDT) hot cut[196] process. These two methods allow CLECs to select the process that best fits their resources and priorities. (Smith Aff. ¶ 20; Rick Motta Aff. ¶ 16.)

TBCC orders are manually handled in Pacific's Reseda LOC, and require coordination and communication between Pacific and the CLEC during the cutover of the end-user. The FDT process, however, does not include any coordination activities during the cutover. Instead, Pacific's provisioning work groups complete the requisite activities at the time designated on the service order, including the transference of the physical circuit from Pacific's switching equipment to the CLEC's collocation cage. While this process does not include giving the ongoing status of the order to the CLEC, it provides a commitment of the time, on the due date, when Pacific will transition the service. (*Id.*)

(2) Interested Parties' Positions

AT&T alleges that Pacific is unable to coordinate hot cuts (CHC) in a timely fashion, and has not demonstrated that it can provision UNE

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[195] TBCC in California is analogous to the coordinated hot cut (CHC) process in the SWBT states. Smith **Aff. ¶ 4.)**

[196] The conversion from an old to a new phone system which occurs instantly as one is removed from the circuit and the other is brought in. Newton's Telecom Dictionary at 409 (2000).

Loop CHC on a reasonable commercial basis. It points to Pacific's provisioning errors[197] as the cause of about 23% of the outages and other service problems that AT&T customers have experienced. CHC requires effective coordination between Pacific and AT&T technicians to complete the loop cutover. This involves significant resources, time, and costs. AT&T prefers the FDT method for loop cutover, because it takes place at a mutually pre-established time, with minimum or no additional communications between the carriers at the time of the cutover. Still, AT&T maintains that Pacific lacks a properly functioning FDT process, *so* it must use the more costly CHC approach, at an average cost of $50 per line. Since Pacific has refused to correct the problems inherit in the FDT process and continues to surcharge the CLECs for the use of the CHC process, AT&T has been unable to compete effectively, particularly for the critical small and mid-sized business customers, or obtain nondiscriminatory access to unbundled loops. (Mark Van de Water (Van de Water) Aff. ¶¶ 22-31. 8/21/01)

AT&T reports that it ordered a number of loop cutovers via the FDT process in April 2001 and approximately 23.8% of these loops experienced outages. Some of the affected customers lost service for about 7 hours, with the average outage lasting more than 3½ hours. With the FDT process *so* flawed,[198] CLECs have no other loop ordering **and** provisioning alternatives but Pacific's

[197] Such as loop wired on the wrong facilities; loop wired incorrectly at the CO; loop wired incorrectly at the customers' premises; LNP translation errors; loop and LNP cut prematurely or late; and other errors.

[198] AT&T claims that Pacific requires the CLECs to order loop cutovers manually 48 hours in advance of the actual installation date. Pacific affiliate companies SWBT and Ameritech do not require advance cutover notices, but rely mainly on the established due dates and cutover time on the FOC. Advanced notification is redundant; the result of internal communication failures, and it imposes additional burdens on the CLECs.

high cost CHC process. AT&T asserts that Pacific's deliberate refusal to implement a reliable, sustainable, and less costly FDT method for loop cutover is a significant disincentive to market entry by the CLECs. AT&T urges the CPUC to require Pacific to implement a reliable FDT loop provisioning process and refund all CHC charges imposed by Pacific on the CLECs since 1998. *(Id.)*

AT&T also contends that Pacific: 1)lacks an established process for ordering and provisioning loop cut-over; 2) lacks an effective and reliable pre-installation and dial tone/ANI testing procedure; 3) has not consistently and reliably issued FOCs; and 4) has numerous unresolved provisioning troubles. AT&T accuses Pacific of confirming orders without first conducting pre-installation testing on the loop to ensure reliable dial tone or customer ANI. It recommends that the CPUC require Pacific to implement a statewide pre-installation testing process and ensure adequate CLECs' commercial experience with it before the Commission makes a determination on the effectiveness of Pacific's UNE provisioning process. *(Id.* ¶¶ 32-54.)

To illustrate Pacific's ongoing problems with FOCs for CHC and FDT orders, AT&T notes that 9.1% of its CHC orders and 8.5% of its FDT orders in July 2001 were returned with incorrect FOCs. Similarly, 3.1%and 5.1%, respectively, of AT&T's CHC orders in July and August 2001 were returned with incorrect FOCs. Finally, AT&T states that misrepresentation of the status of provisioning trouble tickets continues to be a problem. *(Id.* ¶¶ 49, 55-56.)

WorldCom maintains that Pacific has not met the CPUC's performance standards for ordering and provisioning of UNEs, specifically for the 2-wire 8db loop. In February, March, April, and May, 2001, Pacific took approximately twice the time to provision a UNE loop for WorldCom's and other CLECs' customers than it did to provision comparable service for its own retail customers. In its comments, WorldCom analyzed the February through May 2001 UNE loops provisioning results and the average installation intervals for

Brooks in the North region and MFS in the Los Angeles area. It concluded that Pacific did not meet the parity requirements for "CLECs in the Aggregate" in any of its four regions for basic 8db UNE loops for the months of February, March, and April 2001. (WorldCom Comments at 13-14 (August 23, 2001).)

WorldCom also contends that Pacific has not met the parity provisioning standards for the UNE-Platform (UNE-P). It did not provide parity service to the "CLECs in the Aggregate" for UNE-P provisioning orders requiring no field work in any of its four regions during February and March 2001. In addition, Pacific failed to meet the parity standards for Measure 11 (Percentage Due Dates Missed) for UNE-P orders requiring field work for the Bay region in February and April 2001, in the Los Angeles region for March and April 2001, and in the South region in April 2001. (*Id.* at 15-16.)

For Measure 16 (Percent Troubles in 30 days), WorldCom alleges that the 17.65% installation trouble rate for MFS UNE Dedicated Transport was more than double the rate for Pacific's analogous retail service. Pacific also missed the performance standard, for MFS and Brooks, in April and May 2001, for Measure 19 (Customer Trouble Report Rate), Measure 20 (Percent of Customer Troubles Not Resolved within Estimated Time), and Measure 21 (Average Time to Restore). Pacific resolved non-dispatch trouble reports for its retail customers within an hour and a half in April 2001, and in less than an hour in May 2001. For Brooks' customers, Pacific took more than 5 hours to resolve similar trouble reports in April, and took nearly 3 hours to resolve them in May. (*Id.*)

For "CLECs in the Aggregate," WorldCom notes that Pacific significantly failed to meet service parity requirements for UNE Dedicated Transport in April 2001 for Measure 20, and in February and March 2001 for Measure 21. It also failed to satisfy parity requirements for Basic UNE Loops for Measure 23 in February, March, and April 2001. Finally, in February through

April 2001, Pacific failed to meet maintenance commitments for "CLECs in the Aggregate" for POTS and UNE-P and did not provide parity for rate of repeat troubles in February and March 2001 for UNE-P.
(*Id.* at 13-14.)

XO asserts that regardless of Pacific's benchmark or at-parity performance results for CLECs in the aggregate, its own experience indicates that the CLEC aggregate data masks significant discriminatory performance. Thus, aggregate results alone should not be the basis for concluding that Pacific meets the checklist requirements. The data for XO reveal that Pacific's performance continues to fall short of the requirements of Section 271. It further points out that the data XO has access to on SBC's website[199] is not the same data Pacific relies on in its application. (XO Comments at 23. (August 23,2002)) By XO's analysis, Pacific's data identify consistent performance weaknesses, which the Commission must interpret to indicate that Pacific has not yet met the requirements of Section 271. (***Id.*** at 26.)

(a) Discussion

We find that Pacific has established the Local Operations Center (LOC) process, directed in Appendix B of D.98-12-069, to resolve and track problems associated with the initial loop installations. Thus, Pacific has satisfied the related compliance requirements.

In response to AT&T's allegations about its FDT and CHC processes, Pacific maintains that under daily monitoring, FDT has steadily

[199] XO cites Pacific's explanation that the compliance rates shown in the attachments to their application "differ slightly from those displayed on Pacific Bell's Performance Measurement website due to the fact that compliance is assessed, for the website results, using statistical methodologies that pre-date the CPUC's Interim Order (D.01-01-037)." Johnson Aff. ¶ 30 (footnote omitted).

improved with robust volumes and on-time orders completion. It completed 12,000 to 15,000 orders in February 2001. Associated installation troubles then averaged less than 2%, and back-up orders dropped from 43 in February 2001 to 19 in June 2001. Pacific asserts that it has met parity requirements on the CHC and FDT processes, and commits to ongoing improvement in the loop cutover processes. (Motta at ¶¶ 10-13).

The performance reports for the months of June, July, and August 2001 indicate that Pacific completed a substantial percentage of CHC loop orders within a reasonable time interval. For CLEC business service conversions, Pacific completed, in time on average, 99.74% in June, 99.67% in July, and 99.63% in August. By comparison, Pacific reported an average completion rate of 86.78% in June, 86.89% in July and 87.72% in August for its retail business CHC. For residence service, the average percentage completion for the CLECs' loop conversion was 80.80%, 85.69%, and 94.68% for June, July, and August, respectively, compared to the benchmark of 95.0%. Pacific maintains that performance results appear lower than the established benchmark because over 80% of the CLECs' residential loop cutovers involve local number portability, which adds additional time and work functions.

The quantitative data indicates that Pacific is provisioning hot cuts for unbundled voice grade loops to the CLECs in a timely fashion. The statewide average time interval to provision CLECs' aggregate hot cut orders for analog 8db and 5.5db loops was 2.88 days during the months of June, July and August 2001. For Pacific, it was 2.77 days during the same period for similar services.[200]

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[200] For the period June, July and August 2001, Pacific reported average completion interval (in days) for CLECs loops provisioning of 3.17, 2.88, 2.71, and 2.77 for the Bay,

Footnote continued on *next* page

Comparably, the statewide average percentage completion within standard time for CHC and FDT for the CLECs' in aggregate hot cut loop orders was approximately 93.37% during the months June, July, and August 2001; for Pacific it was approximately 87.13%. Pacific missed about 0.90% of the due dates for CLECs' statewide aggregate hot cut orders for the 8db and 5.5db loops, compared to 6.24% for itself.[201] Based on the performance data for hot cut provisioning and based on statistical benchmark and parity standards, Pacific has met the compliance requirements for the provisioning of the voice grade loops. The record evidence supports the assertion that Pacific uses the same CHC and FDT processes in serving the CLECs that it uses for itself.

The performance reports for repeat troubles provided for the months of March, April and May 2001 confirm that Pacific uses the same hot cut processes for itself and for the CLECs' service conversions for voice grade loops.[202] Pacific reported that about 1.45% in Bay, 1.02% in the North, 1.04% in LA, and 0.92% in the South regions of the total CLECs in aggregate hot cuts voice grade loops experienced service problems within 30 days of the service conversion. This compared with Pacific's own hot cut activities of 2.96, 2.83, 3.01, and 2.84 percent for the Bay, North, LA, and South regions, respectively during the same period. The statewide average, during the same period, was 1.11% for the CLECs and 2.91% for Pacific's aggregate hot cuts for voice grade loops.

North, LA, and South regions, respectively. For Pacific, they were 3.17, 3.17, 2.05, and 2.70 for the Bay, North, LA, and South regions, respectively, during the same period.

[201] During the period June, July and August 2001, Pacific reported for the CLECs in Aggregate, average percentage due dates missed of 1.18, 1.14, 0.29, and 0.97 for the Bay, North, LA, and South regions, respectively. For Pacific they were 8.13, 9.53, 2.89, and 4.46 for the Bay, North, LA, and South regions, respectively, during the same period.

[202] The current available data.

Similarly, the average statewide customer trouble report rate and repeat troubles were 0.42% and 12.53%, respectively, for the CLECs during the months of June, July, and August 2001. For Pacific, they were 0.56% and 10.58% during the same period. The performance results substantiate that Pacific's hot cut quality of service, practices, and performance standards adequately satisfy the compliance requirements for this checklist item.[203]

Pacific states that the performance results for MFS's and Brooks' UNE loops service orders for February, March, and May 2001 were inadvertently categorized as "projects" instead of as "complete." The coding errors have since been rectified. Consequently, the corrected performance results for ordering and provisioning intervals for the two covering these months met or exceeded the parity requirements for basic LJNE loop provisioning. (Johnson Reply Aff. at ¶¶ 24-25.)

Pacific also contradicts WorldCom's UNE-P provisioning performance results assessment, and maintains that the performance misses for LJNE-P provisioning intervals (Measure 7) from February through July 2001 were

[203] The average percentage troubles in 30 days for new orders were 7.04, 5.56, and 3.28 for the Bay for the months of June, July, and August 2001, respectively; for LA, they were 3.51, 3.77, and 2.74 for the same period; for the North, they were 5.15, 7.0, and 3.23; and for the South, they were 5.56, 4.06, and 3.32 for the same period. The equivalent average percentage troubles within 30 days of service repairs for Pacific were 11.33, 11.75, and 10.63 for Bay for the months of June, July, and August 2001, respectively; for LA, they were 14.06, 12.32, and 12.02 for the same period; for the North, they were 13.16, 11.61, and 12.36 and for the South, they were 12.62, 11.93, and 11.06 for the same period. The statewide trouble report rate for UNE loops was 0.45, 0.37, and 0.44 for the CLECs for months of June, July, and August, 2001 and 0.57, 0.54, and 0.56 for Pacific during that same period. In NY, the acceptable report rates were 0.34, 1.26, and 0.51 for July, August and September 1999. In Kansas and Oklahoma, the acceptable average trouble rates were 2.75% and 2.32% for the period July through October 2000, respectively. Based on these comparative performance statistics, the CPUC finds that Pacific has met the compliance requirement for hot cuts.

extremely minor. It also notes that the average percent due dates missed (Measure 11)for the CLECs in aggregate was about 1%or less for all months from January to July 2001. In the North area, there were no misses at all, and in the South area, the only miss was in April 2001. In that instance, the average percent due dates missed was 0.31% for the CLECs and 0.06% for Pacific's retail service. Pacific states that it has achieved parity for the UNE-P product in each month since April 2001 for aggregate CLEC results for Measure 11. Pacific describes XO's company-specific results as an anomaly. We find Pacific's assessment to be persuasive because it is most consistent with our analysis of the overall performance results for provisioning, including 5.5 dB and 8 dB loops. Thus, we find that Pacific's UNE-P provisioning performance meets the compliance requirements.

c) Advanced Services

(1) Pacific's Position

Pacific provisions xDSL-capable loops for CLECs under terms and conditions negotiated in interconnection agreements. Any CLEC can negotiate its own agreement with Pacific, or can simply adopt the interconnection, service and/or network element arrangements contained in existing approved agreements. (Carol Chapman (Chapman) **Aff. ¶ *53.)***

It unbundled and offers the High Frequency Portion of the Loop (HFPL) UNE, also known as "line sharing," as required by the FCC and the CPUC.[204] This HFPL UNE was developed in collaboration with interested CLECs and modeled after the Texas xDSL-capable loop offering. **As** part of the collaborative development, Pacific participated in a multi-regional SBC line

[204] Third Report and Order in CC Docket No. 98-147 and Fourth Report and Order in CC Docket No. 96-98, 14 FCC Rcd 20912 (1999) *(The Line Sharing Order)* and D.00-09-074.

sharing trial prior to release "in order to facilitate a smoother roll-out of Pacific's HFPL UNE. *(Id.* ¶ 63.)

Pacific also reports that it supports line splitting'" in which a CLEC purchases separate elements (including unbundled loops, unbundled switching, and cross-connects for these UNEs) and combines them with their own (or a partner CLEC's) splitter in a collocation arrangement. The company contends that its current California offerings meet all requirements for line splitting. *(Id.* ¶¶ 93,100.)

Pacific declared that SBC Advanced Solutions, Inc. (ASI), a Delaware corporation established pursuant to the *SBC/Ameritech Merger Order,*[206] has a certificate of authority to operate in California and a CPUC-approved ASI-Pacific interconnection agreement. ASI operates by: **(1)** performing network planning and engineering functions related to Advanced Services; (2) using the interfaces, processes, and procedures made available by Pacific for placing orders for network elements and access services that are necessary for the provision of Advanced Services; (3) designing the Advanced Services that it wishes to offer; (4) assigning the ASI equipment necessary to provide Advanced Services; and **(5)** creating and maintaining all records associated with its customers' Advanced Services Accounts. (John Habeeb (Habeeb) **Aff.** ¶¶ 3 and 5.)

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[205] Line splitting is the shared use of an unbundled loop for the provision of voice and data services.

[206] Memorandum Opinion and Order, *Applications of Ameritech Corp., Transferor, and SBC Communications Inc., Transferee, For Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 301(d) of the Communications Act and Parts 5, 22, 24,* 25, *63, 90, 95 and 101 of the Commission's Rules,* 14 FCC Rcd 14,712, 14,964, Appendix C (1999) (*SBC/Ameritech Merger Order), vacated in part, Association of Communications Enterprises v. FCC,* 235 F.3d 662 (D.C. Cir. 2001), *(ASCENT).* Appendix C to the SBC/Ameritech Merger Order contains the SBC/Ameritech Merger Conditions *(Merger Conditions).*

ASI uses the interfaces Pacific provides for access to its OSS for the pre-ordering, ordering, provisioning, maintenance and repair, and billing functions. ASI has an arrangement with Pacific for billing and collection services that is memorialized in a Billing and Collections Agreement.[207] Under this Agreement, ASI forwards billing data daily to Pacific by means of electronic transfers.[208] (*Id.* ¶¶ 6 and 12.)

ASI's interconnection agreement with DSLnet Communications, LLC (DSLnet) contains binding legal commitments addressing ASI's section 251(c) obligations'" related to Advanced Services offerings. ASI presents interested CLECs the option of (1) entering into its multi-state generic interconnection agreement? (2) adopting the ASI-DSLnet Agreement pursuant to section 252(i); or (3) negotiating their own terms and conditions directly with ASI. (*Id.* ¶¶13-14.)

(2) Interested Parties' Positions

WorldCom and AT&T maintain that Pacific will not commit to a timeline for implementing a single-order process for ordering line splitting'" in

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[207] The ASI-Pacific Billing and Collections Agreement is posted on the SBC web site. (Habeeb Aff. ¶ 12.)

[208] ASI's charges are then placed on a separate bill page with ASI's name that goes to its customers. (Id.)

[209] Sections 11, 15, 28 and 29 of the ASI/DSLnet Agreement contain terms and conditions regarding resale of ASI's retail telecommunications services for wholesale discount (§ 251(c)(4)), interconnection (§ 251(c)(2)), unbundling (§ 251(c)(3)), and collocation (§ 251(c)(6)).

[210] The ASI 8-state Generic **ICA.**

[211] Line splitting enables a CLEC (either alone or in partnership with another CLEC) to provide both voice and data services over a single loop.

California. In contrast, SBC has agreed to implement a single-order process in other states by October 2001. Pacific's current "three-step-process" for ordering line splitting is inefficient, cumbersome and discriminatory. The process is discriminatory because Pacific offers a single-step method to its voice customers for line sharing ordering and provisioning. AT&T urges the Commission to require SBC to implement a single-Local Service Request (LSR) process for line splitting. Both WorldCom and AT&T contend that Pacific's refusal to allow a voice CLEC to utilize the UNE-P is anticompetitive and discriminatory. They allege that Pacific is imposing inordinate costs on the voice CLECs by requiring them to reassemble or recombine all the network elements that would otherwise be available through the UNE-P. WorldCom also accuses Pacific of refusing to provide splitters to the CLECs for line splitting. (WorldCom Comments at 97-98; AT&T Finney Aff. ¶¶ 2-11 (8/23/01).)

AT&T also maintains that contrary to the FCC Line Sharing Reconsideration Order, Pacific has failed to provide line sharing to the CLECs on an unbundled basis over fiber-fed DLC loops.[212] AT&T calls Pacific's offer to allow CLECs to collocate Digital Subscriber Line Access Multiplexers at Pacific's CO and provide subloops for CLECs' access to the copper portion of the loops insufficient. AT&T seeks to provide DSL service via fiber-fed, DLC-equipped loops from Pacific's CO, which is the service equivalent to what Pacific offers ASI. (AT&T Finney Aff. ¶¶ 11-18.)

ORA, PacWest and XO assert that California does not have a competitive market for advanced services for residential and business customers.

[212] Digital Loop Carrier is network transmission equipment used to provide pair gain on a local loop.

Pacific met or exceeded the parity requirements for the CLECs. For one xDSL-associated provisioning measure, "Frequency of Repeat Troubles in 30 Day Period," Pacific failed the parity requirements from a statistical parity standard. Reported on a statewide basis, the measurement identifies the number of troubles communicated within 30 days after service maintenance or repairs for xDSL loops. From the disseminated aggregate performance data, the CLECs reported an average 34% of continuing problems after a repair service, while ASI reported an average of 23% of repeat troubles after a repair visit.[214] The CLECs' reported more cases of repeat troubles after service repairs than ASI did. However, our analysis of the results of this submeasure indicates that it may be significantly influenced by the magnitude of the underlying commercial volume. Overall, we find that Pacific's provisioning of xDSL is more than satisfactory.

However, as we discuss further in the section on Checklist Item 14-Resale, we do not believe that competition in the advanced services market, particularly xDSL services, has developed in California at this time. While California has the greatest number of high-speed Internet access lines in

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0.51, 0.45 and 0.15 for the Bay, LA, North, and South, respectively. For ASI, the equivalent average troubles reported within 30 days of new service installations were 1.48, 1.82, 1.23 and 1.12 for the Bay, LA, North, and South regions, respectively for the same period. For this period, CLECs experienced fewer service outages within 30 days of new service installations than **ASI.** 5.) Average Time to Restore Service fin Hours): Reported on a statewide basis, the performance data for this measure revealed that for service maintenance, Pacific responded to and restored customer service within an average of 11.23hours for the CLECs and 16.43hours for ASI during June, July, and August 2001. For that period, the average restoration time interval for ASI exceeded that of the CLECs.

[214] The Frequency of Repeat Troubles in 30 day Period reported for the CLECs were 21.43, 13.11, and 18.99 for the months of June, July, and August 2001, respectively. For ASI, they were 21.85, 25.62 and 18.99 for June, July, and August 2001, respectively.

the nation, equaling nearly a fifth of all such lines, Pacific and its affiliate, ASI, own more than 80% of these lines.

d) Integrated Digital Loop Carrier[215] (IDLC)

If Pacific's IDLC serves a customer and a CLEC converts that customer to its local service, Pacific contends that it unbundles the loop from its switch where possible. In other words, if there is universal DLC (UDLC) operating parallel to an IDLC, Pacific moves the customer's service to the DLC facility and cross connects it to a point of access. Pacific maintains that its analyses show that the CLECs' UDLC services are statistically in parity with its IDLC service quality. Pacific claims to consistently submit quarterly IDLC loop deployment reports to the Telecommunications Division of the Commission. (Deere Attachment W (July 16, 1999).)

WorldCom asserts that Pacific deployment of IDLC for ADSL service is increasing; yet, the incumbent repeatedly denies CLECs access to IDLC. Sprint urges the CPUC to direct Pacific to make its IDLC deployment quarterly reports publicly available.

(1) Discussion

Currently, Pacific provides xDSL over IDLC.[216] In D.OO-09-074, we directed Pacific to provide the CLECs xDSL services over IDLC under the same terms, conditions, and prices as it provides to itself and its affiliates. At present, there is no specific performance measure assessing the quality of Pacific's service over IDLC. Still, examining the results of Pacific's overall

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[115] A switched digital transmission network capable of handling voice and data traffic.

[116] Commonly referred to as Project Pronto, Pacific did not provide xDSL over IDLC in July 1999.

measures for stand-alone and line-shared xDSL services' provisioning, it appears that Pacific is complying with this D.98-12-069 requirement.

e) ANSI[217] Standards and Spectrum Management

When loops adjacent to one another in a binder group are used to provide divergent technologies (e.g., ADSL and SDSL[218]), the *two* xDSL signals can interfere with one another. Pacific reports that it has complied with ANSI standards for xDSL services. It has also cooperated with the CLECs to develop a neutral spectral management program, which allows Pacific and the CLECs to provide the widest possible array of xDSL services with any chosen technology. Pacific maintains that it will adopt and implement any additional standards promulgated to address emerging technologies. (Chapman Aff. ¶¶ 90-92 (July 16,2001); Deere Aff. ¶¶90-91, 93 (July 15,1999))

WorldCom and ACI submitted that Pacific had added its own standards to the national and international ones. Sprint alleged that Pacific had not defined xDSL compatible loops in accordance with the industry standards. Northpoint maintained that Pacific's ICA proposals omitted xDSL loop types, which could hamper innovation in DSL technologies. (MCI WorldCom Comments, App. III at 5, 7; ACI Comments § (B)(i) at 28; Sprint Comments § II (B)3 at 11-12, §V. B (c) at 38-41; and Northpoint Comments at 13-15 (1999).)

In response, Pacific argued that its spectral management program is intended to minimize service degradation or failure to xDSL customers,

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[217] American National Standards Institute is a standards-setting, non-government organization, which develops and publishes standards for transmission codes, protocols and high-level languages for "voluntary" use in the United States. *Newton's Telecom Dictionary* at 57 (2000).

[218] Asymmetric Digital Subscriber Line and Symmetrical Digital Subscriber Line.

regardless of whether the service is provided by Pacific or the CLECs. Thus, deviation from national and international standards would be unwise. Pacific claims that its DSL classifications include low, mid and high band DSL categories; it will continue to monitor the status of the spectrum management standards and will incorporate any modifications into its spectral management program.

(1) Discussion

We find no evidence that Pacific has imposed additional conflicting standards for xDSL services, or has disregarded national and international ones. Rather, we find it reasonable for Pacific to add to the national and international standards for xDSL services when prudent, consistent with the type of xDSL service provisioned or technology deployed.

f) Spectral Interference

No CLEC has been denied loop deployment because of spectral interference. Pacific states that it has cooperatively worked with the CLECs to develop a standardized reporting format to notify them of service request denials because of spectral interference.

Pacific maintains that it would allow the CLECs to deploy any DSL technologies and equipment to provision any DSL services to their end-users in accord with the FCC's spectral compatibility directive in the *Advanced Services Order*. Pacific states that it has not and will not reject any CLEC's DSL order based on DSL type or technology. Where a CLEC's DSL technology is incompatible with Pacific's existing loop design, Pacific and the CLEC negotiate mutually acceptable provisions in the interconnection agreement. ACI alleges that Pacific has precluded CLECs from deploying their xDSL technologies over Pacific's ADSL-only binder group. Pacific refutes the allegation as unsupported.

(1) Discussion

We find that the performance results for order reject notices satisfy the parity and benchmark requirements. In addition, we find no evidence that Pacific has rejected any CLEC's DSL order based on DSL type or technology. Our review of the record shows that Pacific has binding legal obligations to provide unbundled local loops pursuant to CPUC-approved interconnection agreements in accordance with § 252 of TA96.

In sum, Pacific has satisfied the D.98-12-069 technical requirements for unbundled loops. The record evidence, including the overall performance results, supports the finding that Pacific complies with the requirements of Checklist Item 4. Thus, we verify Pacific's compliance.

E. Checklist Item 5 -- Unbundled Local Transport

Has Pacific provided access and interconnection that includes local transport (from the trunk side of a wireline local exchange carrier switch) unbundled from switching or other services, pursuant to section 271(c)(2)(B)(v)?

1. Legal Standard

a) TA96 and FCC Orders

Under Section 271(c)(2)(B)(v) of the Act, Pacific must provide or offer to provide local transport from the trunk side of a wireline local exchange carrier switch, unbundled from switching or other services. Transport can be dedicated to a particular carrier or shared by multiple carriers including the ILEC, pursuant to Sections 251(c)(3) and 252(d)(1). To satisfy the requirements of Checklist Item 5, Pacific must provide transport to a competing carrier under terms and conditions that are equal to the terms and conditions under which Pacific provisions such elements to itself.

b) California Application of Legal Standard

In 1998, we set forth four technical requirements for Pacific to demonstrate compliance with in its Checklist Item 5 showing. (See Appendix I.) In July 1999, Pacific submitted documents addressing our local transport compliance directive.

2. Proceeding Record

a) Pacific's Position

To show compliance with the CPUC's requirement that Pacific demonstrate the ability of CLECs to obtain meet point unbundled transport, Pacific reported that it had issued Accessible Letters CLECC 98-116 and CLECC 99-112[219] to address cross-boundary dedicated transport. It also claimed to be providing cross-boundary unbundled transport to three CLECs. (Deere Aff., ¶¶ 106-107.) The Accessible Letters specified that a CLEC that wants to purchase cross-boundary unbundled dedicated transport must have a provision for that type of unbundled transport in its interconnection agreement. Accessible Letter CLECC 99-112 set forth Pacific's proposed generic language for including cross-boundary unbundled transport in a CLEC's interconnection agreement. *(Id.*, ¶ 108.)

Pacific reported that Optical Carrier[m] level–3 and Optical Carrier level-12 services are available at TELRIC prices. Optical Carrier level-48 is offered on an Individual Case Basis. Accessible Letter CLECC 99-163'" advised

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[219] Dated October 30, 1998 and April 1, 1999, respectively.

[220] A Synchronous Optical NETwork (SONET) physical interface, optical line rates

[221] Issued May 11, 1999.

CLECs how to obtain Optical Carrier level-3 and Optical Carrier level-12 services. (Hopfinger Aff., ¶ 153.)

Pacific attested to its ability to produce timely and accurate bills for the transport UNE by noting that eight performance measurements have been implemented that are designed to assess the quality, timeliness and overall effectiveness of its billing processes for CLEC customers. Pacific contended that it had made significant enhancements to the billing systems and improved its billing performance since the 1998 271 Workshops. (Johnson Aff., ¶¶ 24-27.)

In its June 2001 filing, Pacific declared that it offers dedicated transport at standard transmission speeds of up to Optical Carrier level-48, which is available between Pacific's and a CLEC's wire centers or switches. In the future, it will provide higher speeds as they become technically feasible. (Deere 2001 Aff. ¶¶ 98-99.) Pacific also maintained that it permits CLECs to use dark fiber as an unbundled element to provide dedicated transport, in conformance with the *UNE Remand Order*. (*Id.* ¶¶ 103-104.)

In accordance with the requirements of the *UNE Remand Order*, Pacific makes available shared transport between Pacific's central office switches, between Pacific's tandem switches, and between Pacific's tandem and central office switches. (Hopfinger 2001 Aff. ¶ 104; Deere 2001 Aff. ¶ 97.) This shared transport offering enables CLECs to have their traffic carried on the same transport facilities that Pacific uses for its own traffic.

(1) Performance Measure Results

For the period February through April 2001, Pacific reported that it achieved parity or met the benchmark for 95 percent of all provisioning and maintenance sub measures associated with unbundled transport. (Johnson 2001 Aff. ¶ 133.)

b) Interested Parties' Positions

In 1999, WorldCom maintained that Pacific's meet point unbundled transport offering fell short because it included only DS1 and DS3 transmission speeds[222]. WorldCom wanted Optical Carrier level-3, Optical Carrier level-12, and Optical Carrier level-48, and argued that while Pacific has made those speeds available for unbundled dedicated transport, it has not made them available for cross-boundary transport. (WorldCom §(II)(5)(B), at 97-100.)

WorldCom also asserted that Pacific's Accessible Letter contained model contract language that was imposed unilaterally and precluded negotiations. Both WorldCom and ORA alleged that Pacific failed to specify the circumstances in which CLECs must negotiate an amendment to their ICA with it. (WorldCom, §II (5)(B) at 98-99; ORA at 33-34.)

WorldCom stated that it had not seen Pacific's cost studies for Optical Level bandwidth services to determine whether or not the proposed prices are TELIUC-based. (WorldCom, §II (5)(B) at 97-100.) ORA also asserted that it was not clear that the prices for higher bandwidth services comported with TELRIC pricing principles. (ORA at 33.)

[222] In North America, Digital Signal, level 1 is 1.544 million bits per second; Digital Signal, level 3 is the equivalent of 28T-1 channels, operating at a total signaling rate of 44.736 Mbps.

In 1999, WorldCom further claimed that Pacific was not separately identifying UNE access traffic from all of the other access records for which Pacific bills it. Thus, WorldCom was unable to either verify the access traffic associated with UNEs, or bill interexchange carriers in turn for this access. It insisted that Pacific had not reported the percent of transmittals within 5 days for resale and UNE for the three recorded months. Moreover, Pacific had not been billing WorldCom for recurring charges at the same level of service as it provides for itself, and was not meeting the Commission's adopted benchmarks. (WorldCom §II (5)(B) at 101-102.) ORA maintained that Pacific has failed to comply with the requirement for timely, accurate billing for the transport UNE. (ORA at 34.)

In August 2001, Z-Tel argued that Pacific's refusal to permit UNE-P carriers to use the shared transport UNE to provide intraLATA toll service in California constitutes an unlawful use restriction on UNEs. Rather than permit CLECs to utilize shared transport to provide intraLATA toll service, Pacific requires them to route intraLATA toll traffic to interexchange carriers so that it can levy switched access charges on the traffic. According to Z-Tel, all other BOCs permit such access. The FCC's implementing rules mandate that a telecommunications carrier may use UNEs to **provide** any telecommunications service, including intraLATA toll service. Section 51.309(a) of the FCC's rules, in relevant part, provides:

> An incumbent LEC shall not impose limitations, restrictions, or requirements on requests for, or the use of, unbundled network elements that would impair the ability of a requesting carrier to offer a

> telecommunications service in the manner that the requesting telecommunications carrier intends.[223]

3. Discussion

The record indicates that Pacific currently provides unbundled local transport in accordance with interconnection agreements and tariff.'" (See e.g. AT&T, Attachment 6 -- UNE §§ 5.9.1.1, 5.9.1.2, 7.1.2, 7.1.2.3, 7.2.1, 7.3.1 and 7.4.1.1 and Level 3, Appendix UNE §§ 5.4.2,18.2.1, 18.6.1 and 18.7.2.)

Responding to WorldCom's 1999 comments, Pacific noted that the three CLECs that have ordered and been provisioned with meet-point dedicated transport demonstrate its compliance with our meet-point transport requirement. It asserted that all speeds of dedicated transport are also available for cross-boundary transport. A CLEC may order in DS1, DS3, Optical Carrier level-3 and Optical Carrier level-12. (Deere Reply Aff. ¶¶ 71-73.) We recognized in D.98-12-069 that higher speeds, such as Optical Carrier level-48, might only be available on an Individual Case Basis. Pacific reiterated that it looks to ICA amendment whenever a CLEC's agreement is silent on meet-point unbundled transport. CLECs may either accept Pacific's Accessible Letter language or negotiate other terms. Pacific contended that WorldCom had neither incorporated nor negotiated these terms into its ICA. (Deere 2001 Reply Aff. ¶¶ 13-14.) Accordingly, we find that Pacific has shown that CLECs are able to obtain meet-point unbundled transport, and it has also detailed when a CLEC must amend its ICA by negotiated terms or proposed language.

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[223] 47 CFR § 51.309(a).

[224] Deere 2001 Aff. ¶¶ 95-105.

In response to WorldCom's and ORA's criticisms of the prices of its Optical Carrier-level transport services, Pacific insists that they are based on TELRIC plus joint and common costs. (Hopfinger Reply Aff. ¶ 7; Deere Reply Aff., ¶ 72 (1999).) At present, Pacific offers OC-level services at interim rates. While we have not yet reviewed these higher-level optical transport rates, the protests and challenges in the record are largely speculative, and are not supported by any costing analysis.

Pacific rebuts WorldCom's contentions about its treatment of UNE access traffic by explaining that it separately identifies such traffic from all other access traffic by sending it in a detached distinctly identified file. In WorldCom's case, that file is sent daily via the Network Data Mover. The UNE file contains both end-user billable records and access records for accounts that are identified as UNEs. The two types of records are assigned different categories to eliminate confusion. (Viveros Reply Aff., ¶¶90-91; Murray Reply Aff., ¶ 35 (1999).) We find Pacific's explanation persuasive, it appears that WorldCom should be able to differentiate UNE access traffic from other access traffic in the files that Pacific provides.

Pacific disputes ORA's claim that it has failed to produce accurate and timely bills for the transport UNE, and notes that no CLEC has raised the issue with Pacific. *(Id.)* We would agree that ORA's comments on the issue go to the adequacy of the performance measures, not Pacific's ability to bill for the transport UNE.

Pacific submits that Z-Tel's shared transport complaint is moot. The CPUC has addressed Z-Tel's issue in another proceeding, and Pacific has committed in its ICA with AT&T to permit the use of shared transport to route intraLATA toll traffic where AT&T purchases unbundled switching and customized routing Option C. (Hopfinger 2001 Reply Aff. ¶¶ 25-26.) We find that Pacific's reply convincingly refutes Z-Tel's comments. In the AT&T

arbitration, the arbitrator permitted the use of transport for a carrier that purchases customized routing Option C from Pacific. However, in the Pacific/MCIm arbitration, the issue was framed more broadly to allow any "MCIm local service customer" to choose Pacific as its intraLATA toll pre-subscribed carrier. (Pacific/MCIm **FAR** at 129-132.) Other carriers may opt-in to that provision under § 252(i).

We find that Pacific has satisfied our D.98-12-069 compliance requirements for unbundled local transport. We also find that Pacific has demonstrated that it has made unbundled local transport available to CLECs in a nondiscriminatory manner. Thus, we conclude that Pacific satisfies the requirements of Checklist Item **5,** and we verify its compliance.

F. Checklist Item 6 -- Unbundled Local Switching

Has Pacific provided access and interconnection that includes local switching unbundled from transport, local loop transmission, or other services, pursuant to section 271(c)(2)(B)(vi)?

1. Legal Standard

a) TA96 and FCC Orders

Section 271(c)(2)(B)(vi) requires a BOC to provide "local switching unbundled from transport, local loop transmission, or other services."[225] To comply with Checklist Item 6, Pacific must provide unbundled local switching that includes line-side and trunk-side facilities, as well as the features, functions, and capabilities of the switch. When transferring a customer's local service to a competing carrier only requires a software change, Pacific must be able to make the transfer within the same time period it takes Pacific to transfer end-users

[225] 47 U.S.C. §271(c)(2)(B)(vi).

between interexchange carriers.[226] When unbundled local switching requires Pacific to make physical modifications to its network, Pacific must demonstrate that it provisions this element under terms and conditions no less favorable to the requesting CLEC than to itself.[227]

b) California Application of Legal Standards

In 1998, the CPUC set forth ten technical requirements for Pacific to demonstrate compliance with in its Checklist Item 6 showing. (See Appendix I.) We discuss below only those compliance requirements on which interested parties commented.

2. Proceeding Record

a) Pacific's Position

Pacific informed all CLECs of updated generic contract language available to estimate unbundled switch port terminating usage.[228] Since February 3,1997, Pacific has had an interconnection agreement with WorldCom that incorporates the proposal for estimating terminating usage to UNE switch ports. On March 19,1999, Pacific sent a letter to AT&T confirming conversations and requesting an agreement on the factor for estimating terminating charges. AT&T did not respond to that letter or a June 4,1999 follow-up letter. (Hopfinger **Aff.,** ¶¶ 60-61, (July 16, 1999).)

Pacific offers three routing configurations for unbundled switching under existing interconnection agreements, designated as Options A, B, and C. It also offers Resale Operator Alternate Routing (ROAR). As of

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[226] 47 C. F. R. § 51.319(c)(1) (ii); *Local Competition* ***Order,*** 11 FCC Rcd at ¶ 421.

[227] 47 C. F. R. § 51.313(b); *Local Competition* ***Order,*** **11 FCC** Rcd at ¶¶ 315,421.

[228] Accessible Letter CLECC 99-155 (May 6,1999).

May 31,1999, CLECs had submitted Access Service Requests for Option A in 138 switches. Pacific has also provisioned line-side requests from three CLECs for a total of 49 Option A switch ports. These ports, which include shared transport, are combined with loops. As of May 31,1999, no CLEC had ordered Option B or C. In February 1998, Pacific provisioned ROAR in six different switches for one CLEC. (Deere Aff., ¶ 117 (July 16, 1999).)

On May 10,1999, Pacific informed CLECs that particular technically feasible custom routing functions were available[E9]: (1) converting 411 calls to 900-555-4411 and routing them to an AT&T switched access service trunk group and (2) routing FNPA 555-1212 calls to AT&T's directory assistance platform. On the same date, Pacific updated the CLEC Handbook, UNE, § 2.2.2 to include the information on these local directory assistance routing options. As of June 30, 1999, no CLEC had ordered either of these arrangements. (Deere Aff., ¶ 136 (July 16, 1999).)

In its June 2001 draft application filing, Pacific asserts that it provides CLECs unbundled switching capability with the same features and functions available to Pacific's own retail operations, in a nondiscriminatory manner. (Deere 2001 Aff. ¶¶ 106-129.) Pacific's offerings include, among other things, the connection between a loop termination and a switch line card, the connection between a trunk termination and the trunk card, all vertical features the switch is capable of providing, and any technically feasible routing features. (Deere 2001 Aff. ¶¶ 107-109.) Pacific also provides CLECs access to all call origination and completion capabilities of the switch and furnishes CLECs with usage records that enable them to collect from their customers all retail, exchange access, and reciprocal compensation charges associated with these capabilities.

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[229] Accessible Letter CLEC if C 99-161.

(Flynn Aff. ¶ 11.) CLECs using unbundled local switching may have calls "custom routed" according to their own specifications.

(1) Performance Measure Results

In conjunction with this checklist item, Pacific reported performance measure results associated with loop and port combinations or UNE-platforms (LJNE-P). Noting that CLECs had only begun ordering LJNE-P service from Pacific in January 2001, it discussed its provisioning and maintenance performance from February through April 2001. (Johnson Aff. ¶¶ 128-133.) Pacific's provisioning performance for basic UNE Platforms, as assessed in Measures 5, 7, 11, 12, 13, 14, and 16, was 88%.[230]

No performance misses occurred for Measures 5, 12, 13, 14 or 16 during this time. For Measure 7 (Average Completed Interval), which accounted for nine of the total 14 misses that occurred during February through April, no misses took place in April. ***(Id.)*** Pacific asserted that each month's provisioning results steadily improved for Measure **7.** For Measure **11** (% Due Dates Missed), in the Bay, Los Angeles and South regions during February and April, Pacific did not achieve parity on LJNE-P orders requiring no fieldwork.[231] Its performance for CLECs, particularly for Measure **11,** was slightly lower than that provided to its own retail customers. In those months where parity was not achieved, the

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[230] 38 provisioning sub-measures tracked for three months comprise 114 opportunities, of which 100 were met. *(Id.* ¶ 128.)

[231] Parity was achieved for all sub-measures related to UNE-Platform service requiring fieldwork. Pacific later determined that the performance misses involving UNE-P orders requiring no fieldwork were either CLEC-caused and could not be re-classified as customer misses, or an isolated programming design problem. The programming design problem, which caused some UNE-P orders not to be sent to technicians for provisioning by the due date, was identified and resolved in April 2001. *(Id.* ¶¶ 129-130.)

percent of no fieldwork LJNE-P orders not completed by the due date was less than 0.5%. (*Id.* ¶ 131.)

According to Pacific, its UNE-P maintenance performance, as reflected in the February through April 2001 results for Measures 19, 20, 21, 22, and 23, was inconsistent but improving. It did not meet the parity standard for Measure 19 (Customer Trouble Report Rate) for the three-month period; however, Pacific nearly achieved parity in April. In February, the trouble report rate for the UNE-P service was 1.08 and for its retail equivalent 0.74. Although volumes of such orders more than tripled between February and April 2001, the trouble report rate declined to 0.73, with the retail analog only slightly less at 0.60. During the same time period, the maintenance service levels assessed in Measures 22 and 23 trended upward, and the parity standard was achieved that April. (*Id.* ¶ 132.)

b) Interested Parties' Positions

In August 1999, WorldCom reported that Pacific had unilaterally determined a factor for estimating terminating usage. The WorldCom-Pacific ICA assumes for billing purposes that terminating usage will equal originating usage, but that was a temporary fix to an issue that needs a long-term solution. (WorldCom (MCI), § II (6) at 109-110 (August 23, 1999).)

WorldCom also maintained that while Pacific had begun to comply with a customized routing request of AT&T, it had not yet advanced the availability of unbundled switching for other CLECs. It alleged that Pacific refused to accommodate CLECs' use and need for unbundled switching with a Feature Group D (FGD) or Advanced Intelligence Network (AIN) solution. WorldCom proposed third party testing of an AIN solution that would offer unbundled switching to all CLECs. (WorldCom, § II (6) at 100-110.) WorldCom also noted that the Commission had ordered Pacific to conduct technical trials,

during the February 1999 switching workshop, to determine whether Pacific could route intraLATA FNPA directory assistance traffic to the CLEC local unbundled switching customer's pre-subscribed intraLATA toll carrier. (WorldCom, § II (6) at 108)

In its 2001 response to Pacific's draft application, WorldCom indicates that its current request for custom-routing is the same basic request it made to Pacific back in 1997. WorldCom maintains that it performed tests in its labs and proved conclusively that it is technically feasible to perform customized routing using FGD signaling with the necessary switch translations. WorldCom acknowledges, however, that implementation is easier for Directory Assistance (DA) than for Operator Services (OS), and easier in some switch types than others.

WorldCom states that it recently received a letter from Pacific asking for nearly $400,000 just to test WorldCom's customized routing request. (Lehmkuhl Decl. at 12.) WorldCom insists that Pacific's proposal to charge for customized routing is not cost-based as required by the Act, because the CPUC determined that CLECs already pay for customized routing capability as part of the recurring price adopted for the switching UNE. (See D.98-12-079 at 65.) WorldCom contends that until Pacific provides WorldCom with its requested customized routing, Pacific must provide access to its Operator Service and Directory Assistance service at UNE prices in order to be in compliance with Checklist Item 7.

Pacific refuted WorldCom's characterization of its proposal as "unilateral" since any CLEC purchasing unbundled switching could notify the Account Manager whether the factoring proposal was acceptable or whether it wanted to propose an alternate proposal for Pacific's consideration. Currently no CLEC, including WorldCom, has proposed an alternative factor to the one Pacific suggested for use in estimating this traffic. Pacific concurred that it had intended

the factor in its ICA with WorldCom to be temporary in nature; however, it notes that WorldCom has not sought to negotiate the factor. (Hopfinger Reply Aff., ¶ 9.)

At the February 1999 switching workshop, Pacific presented test results demonstrating that WorldCom's FGD request was not technically feasible. At the workshop, WorldCom replaced its FGD proposal with an AIN proposal for customized routing. Pacific noted that a subsequent ALJ Ruling[232] determined that WorldCom's AIN proposal was beyond the scope of Pacific's 271-compliance filing. (Deere Reply Aff., ¶ 74.)

Pacific disputed WorldCom's assertion that the CPUC ordered it to test routing of intraLATA FNPA directory assistance traffic in connection with unbundled local switching at the February 1999 workshop. After the Lucent test had already been completed, AT&T requested and Pacific agreed to test FNPA-555-1212 routing as part of both the Lucent and Nortel test plans. Pacific completed those tests and reported the results to the Director of the CPUC's Telecommunications Division on July 13, 1999. (Deere Reply Aff., ¶ 75.)

In its September 13, 2001 reply, Pacific maintained that WorldCom's witness recently testified during arbitration hearings that WorldCom and Nortel have not yet discovered a solution to make routing over FGD trunks technically feasible for Operator Service traffic routed via Nortel switches. (Deere 2001 Reply Aff. ¶ 20.) WorldCom's witness acknowledged that although it had presented Pacific a solution for Directory Assistance traffic via Nortel switches early last year, it would require a change to each Pacific Nortel switch used to route such traffic.

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[232] March 2, 1999.

Pacific and WorldCom are setting up a field trial to test the ordering, provisioning, and billing functions of WorldCom's requested routing scheme, which Pacific has agreed to do at a reasonable cost.[233] *(Id.* ¶¶ 21-22.) According to Pacific, WorldCom expects it to absorb the entire cost of this work, claiming that such costs may only be recovered via the standard nonrecurring charges for provisioning switching. However, making special translations to the switch and the establishment of entirely new operating and billing system modifications are beyond the intended scope of those nonrecurring charges. Pacific contends that WorldCom should bear the reasonable cost of performing such specialized work. *(Id.* ¶¶ 27-28.)

3. Discussion

The record indicates that Pacific has a legal obligation to provide unbundled local switching pursuant to its interconnection agreements. (See e.g. AT&T ICA, Att. 6 -- UNE §§ 6.1, 6.2.1, 6.2.9, 6.3.2, 6.5.1, 6.5.2 and 6.5.3.)

The CLECs have not formally suggested a different estimating factor; however, there is a temporary factor in place. We find that Pacific has satisfied our requirement in this regard since it has indicated that it will negotiate any temporary factor.

The March 2,1999 **ALJ** Ruling held that WorldCom 's **AIN** proposal was a new custom routing request that was outside the scope of mandated testing of technical feasibility in the **271** proceeding. However, the ruling encouraged the parties to work cooperatively on testing WorldCom 's proposed AIN solution, and ordered Pacific and WorldCom to make monthly progress

[233] "[T]he cost for a field-testing is $550. The remainder of the estimated $383,082 is the cost to develop billing, translations and operations systems to implement the requested changes in California." Id. ¶ 22.

reports. Review of the monthly reports filed with the CPUC's Telecommunications Division over the period April - September 1999 on the progress on the AIN test indicates that WorldCom did not actively pursue its request and never supplied Pacific with trigger information necessary to develop a test. We note that Pacific has participated in cooperative tests on the technical feasibility of particular custom routing options.

Most recently, WorldCom has acknowledged that there are technical problems relating to the routing of Operator Service traffic in Nortel switches, and it and Pacific are working on the solution. Until Pacific has implemented the specific type of custom routing requested, it must provide WorldCom with Operator Services and Directory Assistance as UNEs, pursuant to the *UNE Remand Order*.[234] (D.01-09-054, Pacific Bell/MCIm Arbitration at 11-12.)

Analysis of November 2001 through January 2002 UNE-P performance results for Measures 7, 11, and 19 through 23 shows continuing improvement in Measures 7, 11, 20 and 22, but persistent problems in the maintenance related Measures 19 (Trouble Report Rate), 21 (Average Time to Restore), and 23 (Repeat Troubles). Overall, Pacific's Measure 7 performance has been consistent, and does not appear to be substantially worse than the service it gives to its own retail analog. The instances where Pacific failed to meet the parity standard were neither numerous nor severe. There were no reports of UNE-P chronic failures under Measure 11. On the other hand, Pacific continued to report failures for the basic UNE-P product under several maintenance measures with the only apparent mitigating factor being relatively low CLEC volumes for Measures 21 and 23. Thus, maintenance for this product continues to be an issue.

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[234] 15 FCC Rcd 3696 (1999).

However, weighing all factors and as a legal and practical matter, we find that Pacific has demonstrated that it has made unbundled switching available to CLECs in a nondiscriminatory manner. Therefore, we conclude that Pacific satisfies the requirements of Checklist Item 6, and we verify the company's compliance.

G. Checklist Item 7 -- 911, E911, Directory Assistance Services, and Operator Call Completion Services

Has Pacific provided nondiscriminatory access to (a) 911 and E911 services; (b) directory assistance services; and (c) operator call completion services, pursuant to section 271(c)(2)(B)(vii)?

1. Legal Standard

a) TA96 and FCC Orders

Section 271(c)(2)(B)(vii) requires a BOC to provide "nondiscriminatory access to (I) 911 and E911 services; (11) directory assistance services to allow [competitors'] customers to obtain telephone numbers; and (111) operator call completion services."

(1) 911 and E911

To comply with the law, Pacific must provide nondiscriminatory access, at parity, to 911 and E911 services. Pacific "must maintain the 911 database entries for competing LECs with the same accuracy and reliability that it maintains the database entries for its own customers."[235] In addition, Pacific must provide facilities-based competitors with 911 interconnection through the use of dedicated trunks from the requesting carrier's

[235] *Ameritech Michigan Order*, 12 FCC Rcd at ¶256 (1997).

switching facilities to the applicable 911 control office, at parity with what Pacific provides to itself.*

(2) Directory Assistance/Operator Services

TA96 requires all LECs to permit nondiscriminatory access to "operator services, directory assistance, and directory listing, with no unreasonable dialing delays."[236] The FCC has held that to satisfy the requirements of § 271(c)(2)(B)(viii)(I) and (11), a BOC must be in compliance with regulations implementing § 251(b)(3). Nondiscriminatory access to directory assistance and directory listings means that customers of all telecommunications service providers should be able to access each LEC's directory assistance service and obtain a directory listing without differentiation, notwithstanding the identity of the telephone service providers of either the requesting customers or the customer whose directory listing is requested.[238]

In addition, the BOC "must provide nondiscriminatory access to the directory assistance service provider selected by the customer's local service provider regardless of whether the competitor provides such service itself; selects the BOC to provide such services; or, chooses a third party to provide such services."[239] Where technically feasible, a BOC must make available unbranded or rebranded directory assistance services.[240]

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[236] *Id.*

[237] 47 U.S.C. § 251(b)(3).

[238] 47 C.F.R. § 51.217(a)(2).

[239] *Second BellSouth Louisiana Order*, 13 FCC Rcd at ¶ 241, n. 765.

[240] *Local Competition First Report and Order*, 11 FCC Rcd at ¶¶ 537, 971; *Local Competition Second Report and Order*, 11 FCC Rcd at ¶ 148.

In terms of operator services, a customer, regardless of its serving carrier, must be able to connect to a local operator by dialing "0" or "0 plus the desired phone number".[241] The access must be to the operator service provider selected by the customer's carrier, "regardless of whether the competitor provides such service itself, selects the BOC to provide such services, or chooses a third party to provide such services."[242] Where technically feasible, a BOC must make available unbranded or rebranded operator services.[243]

b) California Application of Legal Standards

In our 1998 decision, we adopted the FSR's analysis that access to and the fitness of Pacific's OSS were inextricably linked to its compliance with Checklist Item 7 as well as several other checklist items. We also adopted most of the FSR's corresponding OSS recommendations in order to facilitate the establishment of user-friendly interfaces between Pacific's and the competitors' systems. For Checklist Item 7, we directed Pacific, among other things, to work collaboratively with its competitors[244] to resolve a number of related access issues; to implement a functional flow through mechanism; to integrate E911 order entry, and to implement an automated reject and jeopardy system.

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[241] *Local Competition Second Report and Order,* 11 FCC Rcd at ¶¶ 112-118; *see also* 47 C. F. R. § 51.217(c)(2).

[242] *Second BellSouth Louisiana Order,* 13 FCC Rcd at ¶ 241, note 767.

[243] Local Competition First Report and Order, 11 FCC Rcd at ¶¶ 537,971; Local Competition Second Report and Order, 11 FCC Rcd at ¶ 128.

[244] Pacific and the competitors established a "Fix-It Team" composed of each organization's 911, Directory Assistance and Directory Listings subject matter experts to review and analyze problems in the respective subjects; to identify the cause of errors; and to recommend corrective action.

2. Proceeding Record

a) Pacific's Position

D.98-12-069 directed Pacific to demonstrate that it has clear guidelines for service address validation. Pacific reported that it has provided such guidelines for address validation, as well as guidelines for discrepancies between addresses that pass Service Order Retrieval and Distribution (SORD),[245] but not E911 validation processes, in an early 1999 Fix-It meeting. (Viveros Aff. ¶143 (July 15, 1999).)

Pacific integrated the "E911 and Listings Integration" (ELI) into the LEX and EDI ordering interfaces through a third-quarter 1999 software release. (*Id.* ¶132.) Through ELI, CLECs can choose, on an order-by order basis, whether to provide listings and E-911 information. (Pacific Supplemental Brief at 5 (March 7, 2000).) Pursuant to the CPUC's order, Pacific held quarterly Pacific /CLEC E911 Database Forums, and distributed the minutes through Accessible letters (*Id.* ¶151). It also makes E911 staff available to assist CLECs in resolving related issues or pursuing alternate approaches to data entry/data management, and has developed standards[246] for peer-to-peer interface for the entry of E911 data. (Deere Aff. ¶160; Viveros ¶156.)

Pacific maintains that it provides CLECs access to **911** and **E911** in the same manner that it obtains such access. It has implemented comprehensive procedures and systems for validating, updating, and processing rejected 911 customer records. (Deere Aff. ¶¶ 130-156.) At a CLEC's request, Pacific stores CLEC customer information in its E911 Database Management System,

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[245] An electronic interface that is capable of ordering functions for resold and UNE services. Its capabilities include some functions too complex for EDI or LEX.

[246] CLECC 99-173, E911 Enhanced File Transfer Specifications (May 17, 1999.)

transports E911 calls to its control office, switches those calls to the appropriate Public Safety Answering Point, and transmits the relevant customer information to that point along with the E911 call. *(Id.* ¶ 154.) Pacific provides, as well as maintains, all equipment essential to the services. *(Id.)* It also maintains dedicated E911 circuits to meet the CLECs' specifications. *(Id.* ¶ 155.) To serve the CLECs, Pacific has installed more than 3,000 E911 trunks in California. (Tebeau Aff. Attachment A.)

Both resale CLECs and switch-based CLECs may choose to provide operator services (OS) and/or directory assistance (DA) services themselves, use a third-party OS/DA provider, custom route their subscriber OS/DA calls to themselves or to a third party provider they designate. (Jan D. Rogers Aff. ¶¶ 14-15.) Pacific offers nondiscriminatory access to OS and DA by processing all calls from all customers on a first-come, first-served basis. ***(Id.*** ¶ 33.) Pacific offers CLECs that provide their own DA services direct access to its DA database, where they may obtain listing information by searching the same DA database on a query-by-query basis in the identical format that Pacific's DA operators use. *(Id.* ¶ 31.) Pacific also makes available DA listings in bulk with daily updates to CLECs that want to utilize Pacific's listings to provide DA services to their own customers. *(Id.* ¶ 28.) It offers all **the** listings in its **DA** database to requesting CLECs in the state. *(Id.;* see *BellSouth* Louisiana *11* ***Order,*** 13 FCC Rcd at ¶ 249.) In addition, Pacific provides carrier-specific branding for DA and OS, regardless of whether the requesting carrier is a resale or switch-based CLEC. (*Id.*¶ 18.)

b) Interested Parties' Positions

In 1999, Sprint maintained that it had been plagued by incorrect address validations, incorrect directory listings and inaccurate E911 listings. (Sprint Response at ***52*** (August, 1999).) ORA stated that Pacific had not

demonstrated compliance by sharing a "Job Aid" and issuing Accessible Letters (ORA Response at 9 (August, 1999).) Genesis noted that a CLEC could not use normal mailing addresses in Pacific's systems. (TRA Brief at 9 (August, 1999).) In 2000, AT&T commented that Pacific had not provided CLECs with the information that would enable them to use ELI. (Willard Decl. ¶ 61 (April 5, 2000).)

Pacific responded that Sprint had neither approached its E911 team about these problems nor substantiated the allegations. It also asserted that it provided guidelines that had proved useful to Pacific employees. (Viveros Aff. ¶¶74-75.) Pacific maintained that it offered CLEC training on the use of ELI on the LEX ordering interface. (Ham Supp. Reply Aff. ¶16 (April 25, 2000).)

c) CGE&Y Determination

GXS noted that while the E911 gateway was part of the OSS test in a limited number of transactions, the CLECs had shown no interest in using the E911 gateway. As a matter of efficiency and practicality, the CLECs seem to prefer to let Pacific perform the update via the Local Service Request. At testing time, no CLEC ordering UNE port was performing updates via the gateway.[247] GXS reported that during the test it found entering transactions was easy once it achieved system access through the gateway. (Test Generator Final Report, Section 4.5.5 at 24; Section 5.5.5 at 69.)

CGE&Y analyzed the results of Performance Measures 38[248] and 39,[249] which relate to E911 database updates. For Performance Measure 38, there was

[247] For Performance Measure # **39,** there was no direct gateway update to cancel for the pseudo-CLEC versus commercial CLEC comparison.

[248] Performance Measure 38 reports the percentage of 911 database updates completed without error, customer-caused errors excluded. This measure adheres to the parity standard for all disaggregation.

pseudo-CLEC activity for 911 databases by service order generated updates (LSR). For Performance Measure 39, there was pseudo-CLEC activity for both service order generated and direct gateway input updates. Since there are no commercial CLEC activities by means of the MS Gateway, CGE&Y analyzed the performance measurement results involving only the pseudo-CLECs. Accordingly, CGE&Y concluded that Pacific accurately updates the E911 database. (TAM Final Report, Section 4.4.4.20 and 4.4.4.21 at 199.)

3. Discussion

The record shows that Pacific has a legal obligation to provide 911, E911,[250] Directory Assistance, and Operator Call Completion pursuant to Pacific's tariff[251] and interconnection agreements[252] approved by the CPUC, and that the company is complying with that obligation.

We find that Pacific has complied with our directive for clear guidelines that address the discrepancy between addresses that pass SORD but not E911. We accept Pacific's demonstration of compliance through Accessible letters and "Job Aids." Further, we do not require Pacific to use "normal" addressing conventions in its systems. Pursuant to our requirement, Pacific's ELI integrates E911 data entry into the order entry process for loop with port UNE

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[249] Performance Measure 39 reports the percentage of E911/911 database updates completed within **48** hours. This measure is reported on a statewide basis and adheres to the parity standard for service order generated updates and a benchmark standard for direct gateway input updates.

[250] California state legislators enacted laws to ensure basic 911 service would be available by the end of 1985. Pacific completed implementation of statewide E911 in November 1992.

[251] For E911, see Pacific Bell tariff, Schedule CAL. P.U.C. No. A9.

[252] See e.g. AT&T ICA, Appendix Resale of the Level 3 ICA

combinations, and stand-alone UNE port orders. Pacific has well documented its training opportunities for the use of the interface, and the CLECs appear to be using ELI. It has also developed adequate standards for peer-to-peer interface for the entry of E911 data.

In the OSS Test Report, CGY&E positively evaluated Pacific's updating of the E911 database.

By virtue of the OSS Test results as well as the monthly Performance Measurement data, Pacific has demonstrated the accuracy and integrity of its 911/E911 database. It has also shown that it provides nondiscriminatory access to the directory listings in its directory assistance databases and to the operator services supplied by Pacific Bell. Therefore, the CPUC concludes that Pacific satisfies the requirements of Checklist Item 7, and we verify its compliance.

H. Checklist Item 8 – White Pages Directory Listings

Has Pacific provided white pages directory listings of customers of the other carriers' telephone exchange service, pursuant to section 271(c)(2)(B)(viii)?

1. Legal Standard

a) TA96 and FCC Orders

Section 271(c)(2)(B)(viii) of **TA96** requires a BOC to provide "[w]hite pages directory listings for customers of the other carrier's telephone exchange service." In the *Second BellSouth Louisiana Order*, the FCC defined "white pages" as "the local alphabetical directory that includes the residential and business listings of the customers of the local exchange provider."[253] Moreover, it

[253] 13 FCC Rcd at ¶ 255. The FCC noted the similarity of this language with that of 47 U.S.C. § 251(b)(3), which obligates all LECs to grant competitive providers of telephone exchange service nondiscriminatory access to directory listings.

concluded that "directory listing"[254] embraced, "at a minimum, the subscriber's name, address, telephone number, or any combination thereof."[255]

b) California Application of Legal Standards

In D.98-12-069, we directed Pacific to make three system and process changes to enable it to offer nondiscriminatory access to directory listings and white pages.[256] The CPUC ordered Pacific to demonstrate, first, that it has integrated the ordering of UNE combinations and stand-alone UNEs with the processing of directory listings and white pages. Second, Pacific was to document its active participation in the "Fix-It" team's[257] efforts to gather data as well as recommend and implement corrective actions to reduce or eliminate rejections of, and errors in, directory listings and white pages' orders. Third, the CPUC required Pacific to demonstrate that it offers a web-based database to CLECs to enable them to verify both directory and white pages listings.

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[254] In the *Local Competition Second Report and* ***Order***, the FCC correlated the term with "subscriber list information" under 47 U.S.C. § 222(f)(3): "**(A)** identifying the listed names of subscribers of a carrier and such subscribers' telephone numbers, addresses, or primary advertising classifications (as such classifications are assigned at the time of the establishment of such service), or any combination of such listed names, numbers, addresses or classifications; and (B) that the carrier or an affiliate has published, caused to be published, or accepted for publication in any directory format."

[255] *Id.*

[256] Appendix B at 1.

[257] The "Fix-It" team, initiated during the 1998 collaborative, was designed to examine process improvements to reduce the fallout of CLECs' orders/database entries from Pacific's systems for both resold services and UNEs. FSR at 21 (October 5, 1998).

2. Proceeding Record

a) Pacific's Position

In 1999, Pacific submitted documents attesting that it had complied with each of the CPUC's Checklist Item 8 technical directives. Pacific reported that it had established a "Fix-it" team, and had utilized this team process to find root causes, to take corrective actions in order to increase the CLECs' ease of doing business, and to reduce listing errors and rejects by 20 percent. (Christopher J. Viveros Aff. ¶139 (July 16, 1999).)

In June 2001, Pacific stated that in accordance with the Act, it lists CLECs' customers on the same basis as its own retail customers in Pacific's White Pages directories, and CLEC customers receive copies of the directories in a nondiscriminatory manner during the annual distribution of the newly published books. (See Jan D. Rogers Aff. ¶¶ 35-49; Opening Brief at 74-75.) Pacific offers White Pages listings for the end-users of both resellers and facilities-based CLECs. CLECs have the same listing options for their customers, as Pacific makes available to its retail customers. (Rogers Aff. ¶¶ 35-37; 38-42.) Pacific gives facilities-based CLECs the choice of having their customers' listings interspersed with or printed separately from Pacific's listings. At a facilities-based CLEC's request, Pacific will also transmit the CLEC's listings to **third-party** directory publishers. (*Id.* ¶¶ 37, 49.) Through April 2001, Pacific claims to have provided California CLECs with over 634,000 White Pages directory listing records. (See Tebeau Aff. Attach. A.)

(1) Performance Measure Results

From February through April 2001, Pacific reports that it met or exceeded the prescribed standards of performance for the sub-measures included in Measures 37[258] and 38[259] that are associated with White Pages directory listings. (See Johnson Aff. ¶ 143.) In these measures, Pacific assesses the timeliness and quality of listings updates processed by it on behalf of CLECs (through the service order procedure) as well as the timeliness of converting listings updates submitted by CLECs directly through Pacific's listings gateway.[260] *(Id.)*

Pacific states that from February to April 2001, it processed CLECs' service order generated listings updates, on average, in less than two days in each month, well below the average of five days for Pacific's retail customers. Pacific completed these updates with 100% quality in each of the three months. In addition, it posted direct input updates to the listings data nearly 100% of the time within the established interval,[261] which is above the required standard of 95% within the standard interval. *(Id.)*

b) Interested Parties' Positions

In 1999, Sprint asserted that "Pacific has continued to struggle with OSS-related problems... including... incorrect directory listings." (Sprint at 52) In April 2000, XO[262] commented that Pacific incorrectly populated the Directory

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[258] Measure 37: Database Update Interval.

[259] Measure 38: Percent Database Accuracy.

[260] The quality of direct gateway listings updates are reported, since the quality of the updates is under the control of the CLECs. *(Id.)*

[261] February-99.89%, March-99.99% and April-100%. *(Id.)*

[262] At that time, XO's corporate name was NEXTLINK.

Assistance database for partial migrations. (XO (NEXTLINK) Brief at 13-14 (April 5, 2000).)

During the April 2001 operational hearings,[263] Cox and XO reported problems with obtaining timely and accurate customer directory listings from Pacific. Cox stated that it had experienced difficulties getting assurances that Pacific would properly deliver directories to its customers.

Pacific maintained that Sprint was unable to substantiate its listings allegation. It later responded that XO's problems were isolated, and most likely caused by the carrier itself. Pacific pointed to its Listing Error Correction Unit as an aid to reduce CLEC listing errors. (Pacific Reply Brief at 19-20 (April 25, 2000).) Pacific maintained that the instances raised during the April 2001 operational hearings were not universal, and could be sufficiently addressed through the Account Team structure.

c) CGE&Y Assessment

In the OSS Test, the target percentage of total orders for Stand Alone Directory Listings was **4%** pursuant to MTP Table 6-1. For this product, 5% of total orders[264] were submitted and completed. All stand-alone directory listings were processed through the Local Exchange (LEX) interface.

Performance Measure **37** reports the average time to update the directory assistance/listings database. This measure is reported on a statewide basis and adheres to the parity standard for service order generated updates. CGE&Y's final report indicated that Pacific met the parity requirement for all months tested.

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[263] April 4,5 and 12,2001.

[264] 142 directory-listing orders. *See* TG Final Report, Section 5.8.2.4 at 90 (February 13, 2001).

Performance Measure 38 reports the percentage of directory assistance/listings[265] database updates completed without error, customer-caused errors excluded. This measure is reported on a statewide basis and adheres to the parity standard. CGE&Y's final report indicated that Pacific met the parity requirement in all but 1 month tested.

Based on the verified accuracy of the directory listings, and the positive performance reflected from Performance Measures 37 and 38, CGE&Y reported that Pacific accurately and efficiently performed Directory Listings in the OSS Test.

3. Discussion

Our review of the ICAs that Pacific has entered into with its competitors indicates that Pacific has a specific legal obligation to provide white pages listings to their customers. (See AT&T ICA, Attachment 4 and Level 3 ICA, Appendix WP and Appendix Resale.)

After having thoroughly examined Pacific's 1999 and 2000 Appendix B compliance submissions, the CPUC finds that Pacific has satisfied the technical directives of D.98-12-069. Pacific's 2001 Performance Measure #4 data shows some amount of flow-through for directory service requests; thus, Pacific has met our implementation requirement for this item. Moreover, we find that CLECs either could not substantiate the earlier listings problems cited or could not refute Pacific's contention that the problems were carrier-caused input errors. The April 2001 problems, while troubling, do not appear to be systemic. Pacific has held a number of meetings with Cox in an attempt to resolve its directory and listings concerns, and met with and made training available to XO in an

[265] As well as 911.

effort to resolve XO's listings problems. CGY&E positively evaluated Pacific's performance regarding directory listings during the OSS Test.

Pacific has documented that the white pages directory listings that it provides for its competitors' are comparable in appearance to the listings of Pacific customers. Thus, Pacific has demonstrated that it has satisfied the FCC's requirement that it provide listings that are nondiscriminatory in appearance and integration.[266] In addition, Pacific has documented that via several gateways[267] it has established a mechanism for providing CLECs with the ability to confirm the accuracy of their customers' entries prior to publication in the directory. By so doing, Pacific satisfies the FCC's requirement that a BOC must provide directory listings with the same accuracy and reliability that it provides to its own customers. Therefore, we conclude that Pacific satisfies the requirements of Checklist Item 8, and we verify Pacific's compliance.

I. Checklist Item 9-- Access to Telephone Numbers

Has Pacific provided nondiscriminatory access to telephone numbers for assignment to the other carriers' telephone exchange service customers, pursuant to section 271(c)(2)(B)(ix)?

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[266] *Second BellSouth Louisiana Order*, 13 FCC Rcd at ¶ 256.

[267] UNE-based CLECs are able to submit their end-user listing information through Pacific's Local Service Center, through Pacific's Listings Gateway or through an electronics operations support system, i.e. Service Order Retrieval and Distribution System (SORD), Electronic Data Interchange (EDI) or Local Exchange (LEX) for Resale or UNE transactions. Switch-based CLECs are able to transmit their subscribers' directory listings electronically through Pacific's Listings Gateway. (*See* Rogers **Aff.** ¶¶ 46-47.)

1. Legal Standard

a) TA96 and FCC Orders

Section 271(c)(2)(B)(ix) of **TA96** requires a BOC to provide "nondiscriminatory access to telephone numbers for assignment to the other carrier's telephone exchange service customers," until "the date by which telecommunications numbering administration, guidelines, plan, or rules are established."[268] Following that date, the BOC must demonstrate compliance with "such guidelines, plan, or rules."

Under the *Local Competition Second Report and Order,* nondiscriminatory access to telephone numbers means that a local exchange carrier providing access to telephone numbers must give CLECs the same access to telephone numbers as it provides itself.[269] In accordance with section 271(c)(2)(B)(ix), the date that central office code responsibility transferred from the BOC to a neutral third party establishes the compliance date for the numbering administration guidelines.[270] Consequently, Pacific must show that, thereafter, it has observed the industry's central office code administration guidelines, and the FCC's rules, including those sections requiring the accurate reporting of data to the central office code administrator.[271]

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[268] 47 U.S.C. § (c)(2)(B)(ix).

[269] 11 FCC Rcd at ¶106.

[270] *In the Matter of Administration of the North American Numbering Plan,* Report and Order, 11 *FCC* Rcd 2588,2632 (1995) (*NANP Order),* the FCC transferred the number administration functions formerly performed by the incumbent LECs to a new NANP administrator.

[271] *Second BellSouth Louisiana Order,* 13 FCC Rcd at ¶265.

b) California Application of Legal Standards

On April 30,1998, NeuStar,[272] gradually began to assume responsibility for the administration and assignment of central office codes in California. Pacific continued to perform code administration functions until completion of the transition on March 19,1999. In D.98-12-069, the CPUC found that Pacific had complied with the requirements of Checklist Item 9.

2. Proceeding Record

a) Pacific's Position

Pacific states that when it served as Central Office Code Administrator in its region, it followed numbering administration guidelines published by the Industry Numbering Committee. In accordance with those industry-standard procedures, Pacific assigned 1,575 NXX[273] central office codes representing 15.75 million telephone numbers to 31 CLECs in California. (Jeffrey **A.** Mondon Number Administration Aff. ¶ 13.) It also asserts that it used identical standards and procedures for processing all number requests, notwithstanding the requesting party, and did not charge any fees for activating central office codes. Pacific maintains that it responded to any valid requests for NXX code assignments, other than in the course of implementing jeopardy plans[274] for number conservation that had been developed with industry participants. (*Id.* ¶ 13-14.)

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[272] The FCC-selected NANP Administrator, formerly known as Lockheed Martin Information Management Services.

[273] In a ten-digit telephone number, the "NXX" is the second set of three digits, which constitute the Central office code. Any number from **2** to 9 may represent "N," and any number from 0 to 9 may represent "X."

[274] A jeopardy plan or "Jeopardy NPA" is defined in the NPA Relief Guidelines as occurring when "the forecasted and/or actual demand for NXX resources will exceed

*Footnote **continued** on next page*

On April 22 1998, NeuStar Inc. (formerly Lockheed Martin **N S)** assumed central office code administration responsibilities in California. Pacific has had no responsibility for number administration since the completion of this transition. (*Id.*¶ 18.) Although Pacific is no longer a central office code administrator, nor performs any functions with regard to number administration or assignment, it submits that as a service provider it continues to adhere to numbering administration rules and industry guidelines. ***(Id.)***

b) Interested Parties' Positions

In comments filed in 1999, Cox admitted that NeuStar had taken over the number administration responsibility from Pacific; nevertheless, it cited Pacific for having a post-transition attitude that was not supportive of number pooling. (Cox Telecommunications' Comments at 21-26 (Vol. 2, August 16, 1999).)

No commenters addressed Pacific's June 2001 demonstration of compliance with Checklist Item 9.

3. Discussion

Prior to the transfer of central office code responsibility to NeuStar, Pacific had a legal obligation to make telephone numbers available on a nondiscriminatory basis pursuant to its interconnection agreements. Following the transfer of responsibility," Pacific remains subject to the FCC's rules

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the known supply during the planning/implementation interval for relief." (Mondon Aff. ¶ 14.)

[275] In addition, the current generic SBC-13 State interconnection agreement obligates Pacific pursuant to the Appendix Numbering. See *e.g.* Interconnection Agreement between Pacific Bell and CityNet Telecommunications, Inc., Advice Letter No. 22460 (November 30, 2001).

requiring compliance with code administration guidelines, as well as the duty under § 251(b)(3) to permit nondiscriminatory access to telephone numbers.

In its 1998 Initial Staff Report, CPUC staff determined that Pacific had met this checklist requirement.[276] Competitors had presented no current or timely examples of noncompliance. The record on access to telephone numbers contained anecdotal incidents and allegations that Pacific manipulated the numbering process, both overtly and covertly. CLECs asserted that because the code administrator was a Pacific employee, that relationship allowed the company access to information not available to all other parties. The allegations against Pacific included: causing a shortage of telephone numbers by stockpiling NXX codes; manipulating the jeopardy process; and offering second line promotions to their own customers while CLECs were awaiting NXX assignments.

As the incumbent, Pacific had access to the greatest number of NXX codes. Despite apparent historical inequities, the Initial Staff Report concluded that on a going forward basis, the transfer of the code administrator function to a neutral third party would mitigate any influence that Pacific may have had over the process. The 1998 Final Staff Report concurred with the Initial Staff Report findings.[277] D.98-12-069 adopted the recommendation of the Final Staff Report, and held that Pacific had met the requirements of Checklist Item 9. Pacific has demonstrated that it has complied with the current number administration rules, regulations and guidelines established by the various regulatory agencies as well

[276] Initial Staff Report at 64 (July 10, 1998).

[277] Final Staff Report at 124 (October 5, 1998).

as the industry numbering forums.[278] Thus, we conclude that Pacific continues to satisfy the requirements of Checklist Item 9, and so verify.

J. Checklist Item 10 -- Access to Databases and Associated Signaling

Has Pacific provided nondiscriminatory access to databases and associated signaling necessary for call routing and completion, pursuant to 271(c)(2)(B)(x)?

1. Legal Standard

a) TA96 and FCC Orders

Section 271(c)(2)(B)(x) requires Pacific to offer "nondiscriminatory access to databases and associated signaling necessary for call routing and completion."[279]

In the *Local Competition First Report and Order,* the FCC defined call-related databases as databases, other than operations support systems, that are used in signaling networks for billing and collection or the transmission, routing, or other provision of telecommunications service.[280] The FCC required ILECs to provide unbundled access to their call-related databases, including but not limited to: the Line Information Database (LIDB), the Toll Free Calling database, the Local Number Portability database, and Advanced Intelligent Network databases.[281]

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[278] Its compliance has been supported by CGE&Y's findings and has not been rebutted by any other party.

[279] 47 U.S.C. § 271(c)(2)(B)(x).

[280] *Local Competition First Report and Order,* 11 FCC Rcd at 15741, note 1126; *UNE Remand Order,* 15 FCC Rcd at 3875, ¶403.

[281] *Local Competition First Report and Order,* 11 FCC Rcd at 15741-42, ¶484.

In the *Second BellSouth Louisiana Order,* the FCC required BellSouth to demonstrate that it provided requesting carriers with nondiscriminatory access to: "(1) signaling networks, including signaling links and signaling transfer points; (2) certain call-related databases necessary for call routing and completion, or in the alternative, a means of physical access to the signaling transfer point linked to the unbundled database; and (3) service management systems (SMS);"[282] and to design, create, test, and deploy AIN based services at the SMS through a service creation environment (SCE). In the *LINE Remand Order,* the FCC clarified that the definition of call-related databases "includes, but is not limited to, the calling name (CNAM) database, as well as the 911 and E911 databases."[283]

b) California Application of Legal Standards

For Checklist Item 10, the CPUC set forth in D.98-12-069 seven detailed requirements for Pacific to satisfy in order to demonstrate its compliance. (See Appendix I.) Pacific submitted evidence showing how it had complied with each requirement. (See, Deere Aff. ¶ ¶ 158 (June 2001), 195-198, 200-201 and Hopfinger Aff. ¶ 28 (1999).)

2. Proceeding Record

a) Pacific's Position

Pacific maintains that when a CLEC purchases unbundled local switching from it, the CLEC automatically obtains the same access to Pacific's signaling network as Pacific provides itself. (Pacific Brief at 76; Deere Aff. ¶ 159.) Pacific notes that CLECs can use this unbundled access to furnish Signaling

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[282] *Second BellSouth Louisiana Order,* 13 FCC Rcd at 20753.

[283] *UNE Remand Order,* 15 FCC Rcd at 3875, ¶403.

System 7 (SS7)-based services for their own end-user customers' calls or the calls of end-user customers of other carriers. *(Id.;* ***Id.*** ¶ 158.) SS7 signaling is available between CLEC switches, between CLEC switches and Pacific switches, or between CLEC switches and the networks of other carriers connected to Pacific's SS7 network. *(Id.)*

Pacific asserts that it offers CLECs nondiscriminatory access to a variety of call-related databases. Specifically, Pacific states that it provides competitors access to its Line Information Database (LIDB), calling name databases (CNAM), toll-free databases, service management systems (SMS)[284] and Advanced Intelligence Network (AIN). (See, Deere ¶¶ 162-185.)

b) Interested Parties' Positions

WorldCom claims that Pacific currently imposes an unreasonable restriction on access to CNAM and LIDB by limiting it only to "per query" access. WorldCom insists that the underlying database is the UNE, not "per query access." WorldCom further maintains that Pacific's refusal to provide it "batch" access to LIDB and CNAM, as opposed to the more limited "per query" access, violates the requirements of Checklist Item 10. (WorldCom Reply Brief at 124 & 125 (June 2001).)

WorldCom contends that Pacific justifies restricting it to "dip" or "query-by-query" access to the CNAM database by claiming that this is the same access that Pacific has. While Pacific's operators may use the database on a query basis, any owner of a database would retrieve information from that database through "batch" access rather than through the more limited "per query" access. WorldCom alleges that Pacific is able to manipulate the data within the database

[284] SMS are used to create, modify, and update information in the call-related databases.

and use the database in any lawful way it likes. Pacific utilizes the database to support the telecommunications services it provides, and profits through charging other carriers for its use. WorldCom seeks to utilize the CNAM and LIDB databases in the same way Pacific is able to use them. WorldCom also insists that Pacific garners critical proprietary and competitive information through the "dip" process. By requiring "dip"-only access, Pacific is able to follow a competitor's use of this database, which reflects competitive information on a user's overall service and growth. (WorldCom Brief, at 124-127, (August **23,** 2001).)

3. Discussion

Our review of the interconnection agreements between Pacific and its competitors shows that Pacific has specific legal obligations to provide databases and signaling. These commitments are also in the CLEC Handbook, Interconnection, section 5.0.

Based on the currently available service information, we find that Pacific demonstrates that it provides the CLECs nondiscriminatory access to its databases and associated signaling necessary for call routing and completion, in satisfaction of the requirements of Checklist Item 10. Currently, there is no performance measure associated with this checklist item.

The application for AIN services along with the process to be used for service creation is contained in the CLEC Handbook.[285] Since August 31,1998, it appears that Pacific has successfully implemented and maintained the necessary process improvements for ordering, provisioning, and maintaining database-driven features such as LIDB, CNAM, and Customer Local Area Signaling

[285] Interconnection, section 5.0.

Services.[286] Pacific has developed and implemented methods and procedures for multiple workgroups to ensure on-time, complete and accurate implementation of these database services.

Pacific refutes WorldCom's assertion that it is able to manipulate the data within the database. Pacific maintains that although it is able to administer its data in the database, such ability is a function of the administrative system, not the database. Pacific also states that it has offered WorldCom the ability to administer its data through direct, unbundled electronic interfaces that would give it the same data administering capabilities as Pacific. (Pacific Reply, Deere Aff. ¶ 75 (September 2001)). In response to WorldCom's claim that Pacific should be required to provide it with "batch" or "bulk" access to these databases as long as it is technically feasible to do *so*, Pacific replies that the FCC did not define the data as the UNE. We agree. In D.O1-09-054, we affirmed the arbitrator's holding that allowing MCImetro to download the LIDB and CNAM databases would depart from the FCC's definition of the "access to database" UNE. Section 51.319(e)(2)(A) of the FCC's rules regarding call-related databases states:

[286] CLASS

> For purposes of switch query and database response through a signaling network, an incumbent LEC shall provide access to its call-related databases, including but not limited to, the Calling Name Database, 911 Database, E911 Database, Line Information Database, Toll Free Database, Advanced Intelligence Network Databases, and downstream number portability databases by means of physical access at the signaling transfer point [STP] linked to the unbundled databases.

The FCC has defined this particular UNE narrowly to include access to databases at the STP.[287] Such limited access at the STP would not cover downloading of the entire database. Thus, the rule does not require Pacific to provide CLECs with access to any information contained in the database on a bulk basis. Accordingly, we conclude that Pacific is in compliance with the requirements of Checklist Item 10, and we so verify.

K. Checklist Item 11 -- Number Portability

Has Pacific provided number portability, pursuant to 271(c)(2)(B)(xi)?

1. Legal Standard

a) TA96 and FCC Orders

Section 271(c)(2)(B)(xi) requires Pacific to comply with the FCC's number portability regulations promulgated pursuant to Section 251.[288] TA96 defines number portability as "the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without

[287] *See, SWBT Texas Order,* 15 FCC Rcd at ¶¶ 189,364 and *Kansas/Oklahoma Order,* 16 FCC Rcd at ¶ 255.

[288] 47 U.S.C. § 251(b)(2).

impairment of quality, reliability, or convenience, when switching from one telecommunications carrier to another."[289]

To prevent the cost of number portability from frustrating local competition, Congress enacted Section 251(e) (2), which requires that "the cost of establishing telecommunications numbering administration arrangements and number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission."[290] In accordance with this and the above-cited statutory provisions, the FCC requires LECs to offer interim number portability "to the extent technically feasible."[291] It also mandates that LECs gradually replace interim number portability with permanent number portability. The FCC has set forth guidelines for states to follow in mandating a competitively neutral cost-recovery mechanism for interim number portability, and designed a competitively neutral cost-recovery mechanism for long-term number portability.

b) California Application of Legal Standards

For Checklist Item 11, the CPUC set forth in Appendix B of D.98-12-069 seven detailed requirements for Pacific to satisfy in order to demonstrate its compliance. (See Appendix I.) Pacific submitted documents showing how it had complied with each requirement.

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[289] 47 USC § 153(30).

[290] *Id.* at § 251(e)(2); see *also Second BellSouth Louisiana Order,* 13 FCC Rcd at 20757, ¶ 274; *In the Matter of Telephone Number Portability,* Third Report and Order, 13 FCC Rcd 11701, 11702-04 (1998) *(Third Number Portability Order); In the Matter of Telephone Number Portability,* Fourth Memorandum Opinion and Order on Reconsideration, CC Docket No. 95-116, at ¶¶ 1, 6-9 (June 23, 1999) *(Fourth Number Portability Order).*

[291] *Fourth Number Portability Order* at ¶ 10; *In re Telephone Number Portability,* First report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 8352, ¶¶ 110-116 (1996) *(First Number Portability Order); see also* 47 U.S.C. § 251(b)(2).

2. Proceeding Record

a) Pacific's Position

In July 1999, Pacific filed affidavits attesting that it had satisfactorily met four of the CPUC's D.98-12-069 compliance requirements.[292] For the remaining three requirements, Pacific submitted a showing explaining its Frame Due Time (FDT) and To Be Called Cut (TBCC) processes, and how it had complied with the CPUC's directives regarding these processes. (See Tenerelli Aff. ¶¶ 21, 32; Tenerelli Reply Aff. ¶¶ 31-35, 36-45, 48-52; Fleming Aff. ¶¶ 21-24.)

In its June 2001 filing, Pacific maintains that it has fulfilled its obligations in the deployment of interim and long-term number portability in California, pursuant to TA96, Checklist Item 11, and all applicable FCC rules. It claims to have implemented LNP in accordance with the prescribed performance criteria and has complied with switch selection, implementation, and LNP deployment requirements. Pacific also asserts that it has adhered to the technical, operational, architectural, and administrative requirements established by the FCC. It avers compliance with the FCC rules on cost recovery, and reports

[292] Pacific submitted: 1.) Accessible Letter CLECC 99-046 (February 15, 1999), which notified CLECs regarding after hour cuts that they would be allowed to call off a cut without charges until 3 PM on the day of the cut. (Sam Tenerelli (Tenerelli) Aff., ¶ 28); 2.) Pacific did not charge RCF tariff rates for CLECs remaining on INP longer than 90 days. Pacific claimed to negotiate with each CLECs, regarding the 90 day INP to LNP conversion window based on individual volumes and CLEC needs. (Hopfinger Aff. ¶27); 3.) Pacific filed its Operations/Implementation (OP/I) subcommittee report with the CPUC on February 16,1999. Pacific's Accessible Letter CLECC 99-046, (*infra*) detailed its policy regarding compliance with the OPI requirements. (Gary A. Fleming (Fleming) Aff. ¶ 18); and 4.) Pacific published the 1998 FSR collaboratively-adopted matrix in Accessible Letter CLECC 99-019, (January 27,1999) and referenced it in the CLEC Handbook, *Number Portability*, section 3.2.2, Policy of Coordinated Cuts for LNP. (Tenerelli Aff. ¶ 30.)

continuing active participation in industry and regulatory activities that address LNP policy matters. (See Mondon LNP Aff. ¶ 28.)

Pacific submits that every number ported by it represents one or more existing Pacific lines lost to a CLEC. It further states that CLECs served over 700,000 ported Pacific numbers as of the end of April 2001. (See Mondon LNP Aff. ¶ 5; Tebeau Aff. Attach. **A.)** It equipped all of its switches with LNP capabilities by January 31,1999. (Mondon LNP Aff. ¶¶ 5, 16.) Pacific contends that it offers CLECs LNP, with or without an unbundled loop, through its LEX interface or EDI Gateway. ***(Id.)***

To minimize disruptions of service while numbers are being ported, Pacific reports using an unconditional ten-digit trigger (UCT) process. (Mondon LNP Aff. ¶ 20.[293]) UCT is activated on the customer's number upon receipt of the initial porting order. ***(Id.)*** When the CLEC activates its switch port, calls to the customer's telephone number are routed automatically to the CLEC's switch. ***(Id.)*** Pacific asserts that this obviates the need for it to coordinate LNP cutovers with a CLEC on a minute-to-minute basis. ***(Id.)***

To quantitatively assess performance related to number portability, Pacific reports data on the timeliness of processing requests for number porting (PM 2), the timeliness of stand-alone LNP conversions (PM 9), the timeliness of updating Pacific's SS7 network (PM 10), the quality of Pacific Bell's provisioning process for LNP (PMs 15 and 16), and for troubles associated with Pacific's

[293] Affiant Mondon specifies that the UCT process is available for all orders except Direct Inward Dial ("DID), Private Branch Exchange ("PBX"), Integrated Service Digital Network Primary Rate Interface ("ISDN PRI"), and Automatic Call Distribution ("ACD) directory numbers. On these orders Pacific conducts coordinated LNP conversions with CLECs. (*Id.*)

network that impact ported services: maintenance timeliness and quality (PMs 19 to 23). (See Johnson Aff. ¶¶ 145-147.)

b) Interested Parties' Positions

In its August 2001 comments on Pacific's filing, AT&T claims that deficiencies in Pacific's systems have caused an unexpected loss of dial tone for a high percentage of AT&T's end -user customers (primarily residential). This, in turn, reflects negatively on AT&T as a new entrant in the market place and interferes with AT&T's ability to operate as an efficient competitor. AT&T maintains that it has attempted to work with Pacific for the last year to improve its number portability processes. However, to date, Pacific has refused to implement a mechanized Number Portability Administration Center (NPAC)[294] check that at least one other RBOC (Bell South) has had in place for the past 3 years. AT&T claims that Pacific could implement the changes sought quickly and virtually guarantee that end-users would never again unexpectedly lose dial tone. (AT&T, Sarah DeYoung (DeYoung) Aff. ¶¶ 12-14.)

AT&T also contends that Pacific's existing number porting process significantly impairs the quality, reliability and convenience of AT&T's two competing local phone services[m5] AT&T further reports that, in contrast to information in the CLEC handbook, a Pacific representative erroneously informed it that Pacific's systems could disconnect a migrating customer any

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[294] The neutral third party database that administers local number portability throughout the United States.

[295] AT&T Broadband and AT&T Fixed Wireless. On July 9,2001, AT&T Fixed Wireless became a separate company. However, AT&T continues, by contract, to be responsible for negotiating with Pacific on any issues that arise concerning the associated interfaces. (Id. ¶ 12.)

time on the due date because LNP orders "flow through." AT&T maintains that the assertion makes no sense. *(Id.* ¶ 35.)

On April 3,2001, Pacific met with AT&T and conceded that its number porting process could be improved by adding a mechanized NPAC check similar to that done by BellSouth. It committed to performing a "cost and time" study to determine whether and when it could complete the process. *(Id.* ¶ 40.) A month and a half later, Pacific presented its design for a mechanized process for checking the NPAC for CLEC activation prior to its disconnection of any customer. At the same time, Pacific advised AT&T that it would take 12 to 18 months from the time it completed the cost studies to implement the mechanized process. To date, Pacific has not provided the cost studies. *(Id.* ¶ 43.)

AT&T asserts that the system changes required to institute a NPAC check prior to disconnection are relatively simple and could be completed in 3 to 6 months. It maintains that by refusing to even offer a timeline for implementation of the process, let alone actually putting an NPAC check in place, Pacific is knowingly allowing a barrier to effective competition to exist. AT&T urges the CPUC to find that Pacific has not satisfied the requirements of Checklist Item 11. *(Id.)*

Cox/California Cable Television Association (CCTA) also alleges that Pacific has chronic problems with its systems and LNP process. It maintains that under the current LNP process if a customer cancels or fails to show up for an installation appointment, the CLEC cannot perform the necessary cutover work. The customer's existing service may then be cut off by Pacific if the CLEC is unable to call or reschedule the LNP order before 10.00 p.m. on the due date. (Cox/CCTA Comment, § 2 at 4 (August 23,2001)).

In its September 2001 reply, Pacific maintains that it has shared with the National Number Portability Operations Team that it is working on a

mechanized enhancement to address the few instances where timely notice is not provided and some customers could lose dial tone for a brief period with a last minute rescheduling or cancellation. This enhancement proposes to mechanically delay the Pacific disconnect if the activation of the NPAC porting request has not been completed by the scheduled due date.

Pacific states that when it completes the proposal, the high level design will be shared with all CLECs in order to obtain the requisite industry concurrences and to prevent negative impacts on other LNP processes. If an internal business case is approved and it is economically feasible, Pacific estimates that implementation of a long-term mechanized enhancement could take 9-12 months and not 12-18 months. While it has agreed to follow up on the mechanized NPAC check, Pacific insists that its processes and systems are fully compliant with industry agreements and FCC rules and it has satisfied Checklist Item 11's requirements. (Pacific Reply, Mondon Aff. ¶¶ 7, 11, and 18.)

3. Discussion

Our review of the interconnection agreements between Pacific and its competitors indicates that Pacific has assumed specific legal obligations to provide number portability. (See, e.g. AT&T, Attachment 15: LNP and Number Assignment 14.7.)

The LNP process is labor-intensive and requires careful coordination between the carriers. Overall, the record shows that there have been problems, particularly in the use of the FDT process; however, Pacific has made efforts to isolate the problems and correct them. Unfortunately, it appears that the CLECs have been inconsistent in reporting LNP problems to the Local Operating Center (LOC). Pacific's statistics indicate that the error rates for the first half of 1999 were very low. Moreover, Pacific shows a 0.58% (on average) trouble report rate

for PM 15[296] for AT&T's LNP orders from May through July 2001. While this figure is well below the measure's benchmark of 1.00%, as noted above, PM 15 does not capture service outages for LNP orders either rescheduled or canceled at the last minute.

During the April 2001 hearings on operational issues, AT&T detailed its request for Pacific to modify its Number Portability process and make system changes to institute a mechanized NPAC check so that the Old Service Provider (here Pacific) does not disconnect end-users before the New Service Provider (here AT&T) has completed its installation work. Pacific agreed to this LNP mechanization process, and advised AT&T by letter dated October 5,2001, that implementation would be complete by September 2002. In response to CPUC staff's request for a description of the LNP project and justification for the September 2002 implementation date, Pacific stated that it was committed to introducing the new functionality by the end of third-quarter and listed five critical elements[297] in the timeline.

Mechanization of the NPAC check is crucial. This enhancement will mechanically delay a Pacific disconnect if the activation of the NPAC porting request has not been completed by the due date. We find that Pacific's justification for the September 2002 scheduled completion, given that a **NPAC** feed to its system already exists, does not explain why implementation of a

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[296] PM 15, which captures data on service outages, is one of the key performance measures relating to LNP installation.

[297] 1.) High level business requirements (completed);2.) detailed business rules and specifications (in progress); **3.)** modifications to existing systems will be scheduled throughout the development period; **4.)** deployment of WFA-DO (currently scheduled for 2Q02) and **5.)** deployment of Lines Per Minute (estimates five months following deployment of WFA-DO).

mechanized enhancement to the NPAC check should take almost a year. At present, the CLECs do not have certain knowledge of when Pacific will disconnect certain customers, and cannot maintain the integrity of these end-users' dial tones. The continuing delay of this process presents a critical barrier to entry for the CLECs.

In its comments on the DD, Pacific maintains that a mechanized enhancement to the NPAC check has not been required in prior FCC decisions for Section **271** compliance. Further, Pacific noted that it had committed to implement this enhancement by September 30,2002, and states that it intends to fulfill its commitment. Pacific details that implementation will require SBC to integrate new software from Telcordia with SBC Pacific Bell's provisioning systems. After SBC installs the software in the production environment, it must test the software among OSS applications in order to ensure that it does not jeopardize existing regulatory and industry requirements. AT&T concurs that the enhancement is a critical entry tool; yet, takes the DD to task for directing implementation of the mechanized LNP process no later than the date that opening comments were due on the DD. AT&T agrees with Pacific's assertion that implementation of the enhancement should be careful and deliberate. Rushed implementation, it cautions, "could result in confusion, customer **delays** and outages...." AT&T Opening Comments on the DD at 7. AT&T and ORA urge implementation and verification that the process works properly before we find that Pacific is in compliance with Checklist Item **11.**

We have fully discussed Pacific's Checklist Item 11 showing in the section above. Nevertheless, we cannot find and/or verify that Pacific has satisfied the compliance requirements for Checklist Item 11 until it implements and verifies this essential element of local number portability in California. To verify implementation, Pacific shall provide this Commission with confirmation including 30 days operational data.

L. Checklist Item 12 -- Local Dialing Parity

Has Pacific provided nondiscriminatory access to such services or information as are necessary to allow the requesting carrier to implement local dialing parity in accordance with the requirements of section 251(b)(3) of TA96, pursuant to section 271(c)(2)(B)(xii)

1. Legal Standard

a) TA96 and FCC Orders

Checklist Item 12 requires that Pacific provide nondiscriminatory access to such services or information as are necessary to allow the requesting carrier to implement local dialing parity in accordance with the requirements of section 251(b)(3) of TA96.[298] For its part, section 251(b)(3) imposes on all local exchange carriers the duty to furnish to competing providers nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listing, with no unreasonable delays.[299] Under Section 3(a)(39) of TA96, dialing parity means that:

> "a person that is not an affiliate of a local exchange carrier is able to provide telecommunications services in such a manner that customers have the ability to route automatically, without the use of any access code, their telecommunications to the telecommunications service provider of the customer's designation from among two or more telecommunications services providers (including such local exchange carrier)."[300]

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[298] 47 USC § 271(c)(2)(B)(xii).

[299] 47 U.S.C. § 251(b)(3).

[300] 47 U.S.C. § 153(15).

b) California Application of Legal Standards

In D.98-12-069, the CPUC found that Pacific had complied with the requirements of Checklist Item 12.

2. Proceeding Record

a) Pacific's Position

Pacific states that its interconnection arrangements do not require any CLEC to use access codes or additional digits to complete local calls to Pacific customers. Pacific customers also do not have to dial any access codes or additional digits to complete local calls to the customers of any CLEC. (William C. Deere Aff. ¶ 192.) From a customer's perspective, the interconnection of the Pacific network and the network of CLECs appears seamless. Because the CLEC central office switches are connected to the trunk side of the Pacific tandem or central office switches in the same manner as Pacific and other local exchange carriers, there are no differences in dialing requirements or built-in delays for a CLEC customer. *(Id.)*

Pacific also maintains that it provides toll carriers intraLATA dialing parity pursuant to § 251(b)(3). The company implemented intraLATA presubscription (ILP)[301] in California on May 7,1999, as directed by the FCC and CPUC.[302] Pacific reports that it "implemented ILP in all of its switches using the

[301] ILP allows customers to pre-select their intraLATA toll provider, just as they have pre-selected their interLATA long distance provider. It allows customers to make intraLATA toll calls using their chosen provider without having to dial extra digits.

[302] Section 271(e)(2)(B) prohibits a state from ordering a Bell Operating Company to implement dialing parity before it enters the long distance market or before three years following enactment of TA96, whichever occurs earlier; the states may adopt rules regarding the terms and conditions for implementing intraLATA dialing parity. In D.97-04-083, the CPUC established the terms and conditions that California local exchange carriers, including Pacific, must meet when implementing intraLATA dialing parity.

full 2-PIC technology, which permits customers to select the same or different providers to handle their intraLATA toll calls and/or interLATA long distance calls." (*Id.* ¶ 193.) According to the *Pacific INTER/INTRALATA Subscription Activity Report*, during the period April 1,2001 to May 1,2001, Pacific listed a total of 1,531,894 PIC changes. This included 833,262 intraLATA PIC changes during that period.

b) interested Parties' Positions

No commenter raised allegations that Pacific was not in compliance with this Checklist Item.

3. Discussion

Our review of the interconnection agreements between Pacific and its competitors shows that Pacific has specific legal obligations to provide local dialing parity. Accessible Letter EA99-030, dated May 5,1999, and Pacific's presubscription tariff, Schedule Cal. P.U.C. No. 175-T, section 13, effective May 7, 1999,[303] confirms the availability of ILP.

Pursuant to the 1998 Initial Staff Report, CPUC staff determined that Pacific had demonstrated compliance with this checklist requirement. D.98-12-069 adopted the Final Staff Report evaluation, which concurred with the Initial Staff Report findings." Neither then nor subsequently has any commenter presented evidence that local customers of CLECs either experienced dialing delays or had to dial additional digits to make local calls. We find that Pacific has demonstrated that it continues to provide nondiscriminatory access to such services or information as are necessary to allow a requesting carrier to

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[303] Submitted as Advice Letter No. 20217 filed April 30,1999.

[304] D.98-12-069 at 60-61 (December 17,1998).

implement local dialing parity pursuant to TA96. Thus, we conclude that Pacific has satisfied the requirements of Checklist Item 12, and we so verify.

M. Checklist Item 13 -- Reciprocal Compensation

Has Pacific provided reciprocal compensation arrangements in accordance with the requirements of section 252(d)(2) of TA96 pursuant to section 271(c)(2)(B)(xiii)?

1. Legal Standard

a) TA96 and FCC Orders

Checklist Item 13 requires Pacific to enter into reciprocal compensation arrangements that meet TA96's pricing standards.[305] Those standards, set forth in § 252, delineate that terms and conditions for reciprocal compensation may be considered just and reasonable only if they "(i) provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier," and "determine such costs on the basis of a reasonable approximation of the additional costs of terminating such calls."[306] Still, these requirements do not preclude "the mutual recovery of costs through the offsetting of reciprocal obligations, including arrangements that waive mutual recovery (such as bill-and-keep arrangements)."[307]

The FCC has held that Internet service provider (ISP) bound traffic is not subject to the reciprocal compensation provisions of sections 251(b)(5) and

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[305] 47 U.S.C. § 271(c)(2)(B)(xiii).

[306] 47 U.S.C. § 252(d)(2)(A).

[307] 47 U.S.C. § 252(d)(2)(B)(i)

252(d).[308] In its *Reciprocal Compensation Order on Remand,* the FCC reaffirmed the holding and found that ISP-bound traffic is information access traffic under section 251(g) and, therefore, not subject to reciprocal compensation.[309]

b) California Application of Legal Standards

In the 1998 Initial Staff Report, the CPUC staff determined that Pacific had not demonstrated compliance with this checklist item. In response to competitors' contentions that Pacific had not provided adequate traffic data reports, staff found that Pacific needed to "provide additional information on the availability of traffic studies" before it could prove compliance. The Initial Staff Report also noted that Pacific should provide appropriate traffic records to all CLECs to facilitate the payment of mutual compensation for calls. Staff proposed that participants review the traffic data needs of CLECs, determine whether Pacific is providing parity treatment, and, if not, how it could provide adequate reports.[310]

In the Final Staff Report, staff recommended that Pacific was in compliance with this checklist item because it determined that the issues raised were OSS billing issues relating to switched access traffic not local traffic. In D.98-12-069, the CPUC adopted the Final Staff Report 's recommendation and

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[308] *See Implementation of the Local Competition Provisions in the Telecommunications Act of 2996: Inter-Carrier Compensation for JSP-Bound Traffic,* Declaratory Ruling in CC Docket No. 96-98 and Notice of Proposed Rulemaking in CC Docket No. 96-98, 14 FCC Rcd 3689 at 3706, ¶ 26 n.87 (1999) *(Reciprocal Compensation Declaratory Ruling), rev'd and remanded sub nom. Bell Atlantic Tel. Cos. v. FCC,* 206 F.3d 1 (D.C. Cir. 2000).

[309] *See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Inter-Carrier Compensation for ISP-Bound Traffic,* Order on Remand and Report and Order, CC Docket Nos. 96-98 and 99-68, 16 FCC Rcd 9151,9167,9171-72, ¶¶ 35, 44 (2001).

[310] D.98-12-069 at 69-70.

held that Pacific had satisfied the requirements of Checklist Item 13: "as long as Pacific can demonstrate that it is in compliance with D.98-10-057, this Commission's ISP decision, they [sic] will have met this checklist item. Compliance with the decision includes making back payments for monies owed to CLECs."[311]

2. Proceeding Record

a) Pacific's Position

Pacific declares that its CPUC-approved interconnection agreements contain clearly defined reciprocal compensation arrangements for each party to pay the other for traffic exchanged between their respective networks.[312] Under these arrangements, from January 1997 through April 2001, Pacific and California CLECs exchanged more than 51.7 billion minutes of local traffic. (Tebeau Aff., Attachment A-3.)

Pacific submits that it offers a CLEC two alternatives for establishing the terms and conditions for reciprocal compensation: (1) they may be based on rates established by the CPUC pursuant to a forward-looking cost methodology, or (2) at the CLEC's option, they may be the product of negotiation, and if necessary, arbitration.[313] (Hopfinger Aff. ¶ 21.) The company also switches local transit traffic to allow CLECs to interconnect indirectly with other local carriers

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[311] *Id.* at 139-140.

[312] See Hopfinger Aff. ¶ 107; AT&T Agreement, Attachment 18-Interconnection, ¶ 3.6 and Attachment 8-Pricing, Appendix D; Level 3 Agreement, Attachment Reciprocal Compensation § 2 & Appendix Pricing; *Second BellSouth* Louisiana ***Order***, 13 FCC Rcd 20599, 20773, ¶ 299.

[313] During the negotiation and arbitration, the parties exchange traffic under an interim bill-and-keep arrangement, subject to true up under the final agreement terms.

using Pacific's facilities under the Transit Traffic rate element.[314] By offering this arrangement, Pacific asserts, it enables one CLEC to send traffic to another local carrier's network through Pacific's tandem switch, thereby relieving the CLEC of the expense of investing in facilities necessary to interconnect to all other local carriers in a local calling area. *(Id.* ¶ 114.)

3. Interested Parties' Positions

In its August 23,2001 comments, ORA maintains that if Pacific witness Hopfinger's statement about the payment status of all undisputed reciprocal compensation amounts is accurate, then it appears that Pacific is currently in compliance with Checklist Item 13. ORA notes that the *ISP Remand Order* has been appealed.

4. Discussion

Our review of the interconnection agreements between Pacific and its competitors indicates that Pacific has specific legal obligations to provide reciprocal compensation arrangements. (See AT&T Agreement *supra;* Level **3** Agreement *supra.)*

A number of parties took exception to staff's 1998 Final Staff Report finding and recommendation that Pacific had satisfied the requirements of Checklist Item 12 since one of the significant reciprocal compensation issues, i.e., compensation for calls to ISPs, was a pending issue before the Commission at the time. Staff advised that if Pacific demonstrated compliance with our then just-issued ISP decision, it would meet this checklist item.

From the *Bell Atlantic New York Order* on through the most recent 271 FCC orders, the FCC has stated that reciprocal compensation for ISP-bound

[314] The originating CLEC is responsible for paying the appropriate rates.

traffic "is not governed by section 251(b)(5), and therefore, is not a checklist item."[315] The *Order on Remand*[316] reaffirmed this holding. Still, no commenter rebuts Hopfinger's contention that "[f]or those CLECs in California that have been exchanging traffic with Pacific and have accurately billed Pacific for traffic originated on Pacific's network through March 31 2001, Pacific has paid the undisputed amounts due for reciprocal compensation for local traffic."[317] We find that Pacific has shown that it continues to have in place reciprocal compensation arrangements in accordance with section 252(d)(2). Therefore, we conclude that Pacific has satisfied the requirements of Checklist Item 13, and we so verify.

N. Checklist 14 -- Resale

Are Pacific's telecommunications services available for resale in accordance with sections 271(c)(2)(B)(xiv), 251(c)(4) and 252(d)(3) of TA96?

1. Legal Standard

a) TA96 and FCC Orders

Under this checklist item, Pacific must offer CLECs, for resale at wholesale rates, any telecommunications service it (as the incumbent) provides at retail to subscribers who are not telecommunications carriers.[318] Wholesale rates are retail rates charged to subscribers for the telecommunications service requested, excluding the portion attributable to costs that will be avoided by the

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[315] *Bell Atlantic New York Order*, 15 FCC Rcd at 4142, ¶ 377.

[316] *In the Matter of Implementation of the Local Competition Provisions in the Federal Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic, CC* Docket Nos. 96-98 and 99-68, *Order on Remand and Report and Order*, FCC 01-131 (2001) *(Order on Remand)*.

[317] Hopfinger Aff. ¶ 118.

[318] 47 U.S.C. §§ 251(c)(4)(A), 271(c)(2)(B)(xiv).

local exchange carrier, such as marketing, billing, and collection costs.[319] Pacific has a duty not to impose unreasonable or discriminatory limitations or conditions on resale. A state commission, consistent with FCC regulations, can prohibit a reseller that obtains a telecommunications service at wholesale rates, from offering such service to a different category of subscribers than those to whom the ILEC made the service available at retail rates.[320]

In its *Local Competition First Report and Order,* the FCC established several rules delineating the scope of the resale requirement and permissible restrictions on resale that an LEC may impose.[321] Significantly, resale restrictions are presumed to be unreasonable unless the LEC "proves to the state commission that the restriction is reasonable and non-discriminatory."[322]

b) California Application of Legal Standard

In D.98-12-069, we directed Pacific to satisfy seven conditions regarding resale promotional offerings in order to show compliance with the requirements of Checklist Item 14. (*See* Appendix I.)

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[319] 47 U.S.C. § 252(d)(3).

[320] 47 U.S.C. §251(c)(4)(B).

[321] *See, e.g.,* 47 C.F.R. §§ 51.613-51.617. In *Iowa Utilities Board,* the Eighth Circuit affirmed the FCC's authority to promulgate such rules, and specifically upheld the sections of the FCC's rules concerning resale of promotions and discounts. *Iowa Utilities Board,* 120 F.3d at 818-19 (1997).

[322] *See* 47 C. F. R. § 51.613(b).

2. Proceeding Record

a) Pacific's Position

In its July 15,1999 filing,[323] Pacific detailed how it had met our compliance conditions for this item. No party responded to the submission.

CLECs are currently reselling more than 303,000 lines in California. (Tebeau Aff. Attach. A.) The CPUC has established a wholesale discount rate of 17 percent (Scholl Aff. ¶ 115; Vandeloop Aff. ¶ 22.) Pacific attests to making available for resale the same services that it furnishes its own retail customers. (Hopfinger Aff. ¶ 119.) It offers wholesale discounts on promotional offerings lasting more than 90 days. (*Id.* ¶ 123.) Moreover, Pacific's customer-specific arrangements are available for resale subject to terms and conditions approved by the FCC. (*Id.* ¶ 134.)

On January 9,2001, the United States Court of Appeals for the D.C. Circuit issued its *ASCENT* decision in which it effectively concluded that ASI, Pacific's separate advanced services affiliate, was obligated under section 251(c), to sell to competing carriers at a wholesale discount the advanced services it provides at retail. (*ASCENT*, 235 F.3d at 668.) In order to comply with this new requirement, ASI has negotiated and entered into an interconnection agreement with DSL.net to offer advanced services under terms and conditions that are consistent with section 251(c). Pacific submitted that agreement to the CPUC for approval. (Habeeb Aff.)

[323] As well as in September 7,1999 reply, March 6,2000 supplemental and April 25,2000 supplemental reply filings.

(1) Performance Results

Pacific reports eight sub-measures monthly in the billing category of resale performance measures. Of the 24 billing opportunities, Pacific missed two between February and April 2001, for a 91.7% overall performance. It did not achieve the parity standard for resale services' billing on two occasions: in February for Measure 31 (Usage Completeness), and in April for Measure 33 (Non-recurring Charge Completeness). In the first instance, Pacific's performance measured 99.00% and the performance measurement for the CLECs was 98.78%. For the second instance, Pacific attributed the lower results to one-time adjustments for National Directory credits and the reconciliation of some errors in certain CLECs' initial resale bills. (Johnson Aff. ¶¶ 95-97.)

Pacific also reports a total of 425 sub-measures per month for ordering, provisioning and maintenance of resale services. Overall, from February through April 2001, Pacific met 96.9% of the 1275 opportunities with resale in all process categories. (*Id.* ¶ 148.) For provisioning, Pacific stated that its total performance of resale services met the established standards 98% of the time. However, Measure 5 (Percent of Orders Jeopardized) for resale Private Branch Exchange (PBX) services did not meet the parity standard in February and April. Of the 216 opportunities in Measure 7 for resale services, during this same time period, all but seven met the parity standard, with a corresponding percent of 97% met. (*Id.* ¶ 151.) All but four of the 216 opportunities for Measure 11 (Percent of Due Dates Missed) were met. Measure 12 (Percent of Missed Due Dates Due to a Lack of Facilities) accounted for four missed resale services' sub measures. (*Id.* ¶ 152-153.) Finally, for Measure 16 (Percent of Troubles in 30 Days for New Orders) provisioning of resale services achieved compliance 94% of the time. Of the 108 opportunities for this measure, only seven opportunities were not met. Pacific detailed the causes of each of the missed sub measures. In sum, Pacific asserted that its resale services' performance results demonstrated

that it had consistently provided these services to CLECs in a nondiscriminatory manner. (*Id.* ¶ 148.)

b) Interested Parties' Positions

In their August 23,2001 responses, the CLECs and ORA allege that Pacific is not reselling Digital Subscriber Line (DSL)[324] service at wholesale rates and has evaded its resale obligation in the provision of DSL services.

According to AT&T, Pacific has consistently violated or circumvented the Act's resale requirements in an effort to impede competition in the provision of DSL Service. Under Checklist Item 14, Pacific is to fully implement the resale obligation of advanced services in accordance with Section 251(c)(4). AT&T maintains that by vacating the specific portion of the *SBC/Ameritech Merger Order* that it did, the US Court of Appeals for the District of Columbia Circuit asserted that the "Congress did not treat advanced services differently from other telecommunications services" in TA96, and SBC could not avoid its obligations under Section 251(c) by creating the subsidiary, Advance Solutions Inc. (ASI). (AT&T Brief at 70 (August 23, 2001).)

AT&T argues that Pacific appears to base its position on the notion that ASI provides no retail DSL service to customers. Up until May 2001, Pacific directly marketed DSL service, not only to ISPs, but also to end-user customers. Pacific offered DSL on its California web site both as a "service package" of DSL transport and Internet access and as a stand-alone service, which it described as "Custom service-DSL service only. Connect to your own Internet Service

[324] DSL is a technology used to bring high-bandwidth information to homes and businesses over ordinary copper telephone lines. Carriers can provide DSL service via existing phone lines as well as over dedicated lines.

In early June 2001, Pacific eliminated the "DSL service only" offering. Later that month, SBC announced that it would end all split billing arrangements with ISPs by the end of 2001. AT&T alleges that as late as August Pacific was billing end-users directly for DSL as a stand-alone service. Under the FCC's *Second Advanced Services Order,* Pacific is required to offer stand-alone DSL transport for resale at a wholesale discount because it offers it at retail to residential and business end-users. AT&T also contends that ASI's ICA with DSLnet Communications LLC (DSLnet) contains unreasonable and discriminatory terms. (*Id.* at 75.)

XO asserts that neither ASI's ICA with DSLnet, nor the generic ICA available for negotiation, automatically demonstrates that Pacific is providing advanced services in compliance with the FCC requirements. The restricted ICA between ASI-DSLnet deprives CLECs of competition using SBC-ASI's services. (XO 2001 Comments at 35-36.) WorldCom maintains that restricting resale service is an improper way for Pacific to control the market through vertical integration down to the retailer level, and is contrary to FCC precedent promoting resale of telecommunications services. (WorldCom 2001 Comments at **131.)**

The Association of Communications Enterprises (ASCENT) states that competitors are looking to advanced services, rather than the traditional low speed spectrum of the public switched network, as a means to offer their own bundled telecommunications, Internet, and other enhanced service products in competition with ILECs. Among the services that ILECs must offer to competitors on a wholesale basis are xDSL-based advanced services. While an ILEC may provide such services exclusively through an affiliate, the Court of

[325] AT&T: Gregory H. Hoffman Decl. ¶ 3 and Ex. 1 (August 23,2001).

Appeals has held that such an arrangement does not allow the ILEC to avoid its wholesale service obligations under the Act. (ASCENT Comments[326] at Section II.)

ASCENT also points out that the SBC-ASI multi-state generic ICA referenced in Habeeb's Affidavit only allows resale of its DSL Transport Services "over a SBC ILEC-provided (not resold, non-UNE-P) retail Plain Old Telephone Services (POTS) line." Thus, competitive carriers are not allowed to provide resold xDSL based advanced services to their current voice customers or to offer prospective customers a range of services equivalent to those that Pacific can offer in conjunction with ASI. ASCENT submits that Pacific is utilizing an affiliate to avoid its section 251(c) obligations, which is the type of conduct the court ruled unlawful in the ASCENT decision. (*Id.* at Section II.)

Citing California data, ORA argues that Pacific has failed to provide DSL in a competitive manner in the market. Instead of a competitive DSL market in California, Pacific's DSL market dominance (97% of the market) has been growing while the DSL market share of Pacific's competitors is shrinking. The majority of California ratepayers have no provider choice other than Pacific for DSL access service. ORA noted that Pacific limited its discussion of provisioning of resale DSL issues and ASI to assertions about the DSLnet agreement. Moreover, Pacific's compliance filing did not mention that the DSLnet agreement requires the CLEC signatory to agree to support SBC's federal 271 application. (ORA 2001 Brief at 16-18.)

[326] Includes concurrence by the California Association of Competitive Telecommunications Companies.

3. Discussion

Our record review shows that Pacific is legally obligated to make retail telecommunications services available for resale in accordance with interconnection agreements and tariff.[327] (See, e.g. Pacific-AT&T Interconnection Agreement, Attachments 5 (Resale) and 8 (Pricing) ¶ 2.1 and Schedule Cal. P. U. C. No. 175-T.)

In its September 13,2001 comments, Pacific responds that ASI is required to offer for resale its retail telecommunications services but not "advanced services" sold to ISPs. In order to comply with the *ASCENT* decision, ASI put forth an ICA through which DSLnet and other CLECs can resell ASI's retail telecommunications services. Those that dispute the adequacy of the DSLnet agreement ignore the limited scope of ASI's retail service offerings. The services subject to the resale provisions of Section 251(c)(4) are those telecommunications services that an ILEC provides at retail to subscribers who are not telecommunications carriers. Today in California, ASI offers three DSL-related services that fall into this category: grand-fathered residential DSL transport services, intrastate DSL transport service provided under ASI's DSL intrastate tariff, and customer service arrangements with business end-users. Pacific makes each of these categories of service available to CLECs at the wholesale discount required by law. (Habeeb Reply Aff. ¶¶ 3 and 7.)

Pacific denies that it is obligated to offer at wholesale discount the information services that its Internet affiliate, PBIS, provides at retail. It contends that the FCC has consistently found that "Internet access services are appropriately classed as information, rather than telecommunication services." Pacific also disputes the commenters' assertion that, under the terms of the

[327] Scholl Aff. ¶ 109; Vandeloop Aff. ¶ 22 and Hopfinger Aff. ¶ 121.

ASCENT decision, ASI is required to offer for resale not just its retail telecommunications services but its wholesale services as well. It insists that under the FCC's rules, telecommunications services offered as a component of the ISP's retail Internet service offering are outside the purview of Section 251(c)(4). (*Id.* at ¶ 3.)

In order to remove any confusion surrounding the wholesale nature of its DSL transport service, ASI has taken the step of eliminating the "split billing" option for ISPs. (*Id.* at 8.) While AT&T and XO take issue with the precise terms that ASI has negotiated with DSLnet, Pacific declares that AT&T has not sought to negotiate different terms with ASI. The Act sets forth procedures for negotiating, and if necessary, arbitrating interconnection agreements. Either of the two is the appropriate forum for resolving the issues AT&T raises. (*Id.* at ¶ 9.)

With respect to this checklist item, there are two critical questions before us. First, what is Pacific required to provide pursuant to § 271(c)(2)(B)(xiv) in light of the recent FCC Orders granting RBOCs entry into the long distance market and the ASCENT decision? Second, is Pacific reselling DSL at wholesale rate under § 251(c)(4)(A), without imposing discriminatory conditions on the resale of DSL in accordance with § 251(c)(4)(B)?

The January 2001 ASCENT decision held that "an ILEC [may not be permitted] to avoid § 251 (c) obligations as applied to advanced services by setting up a wholly owned affiliate to offer those services."[328] The FCC has found compliance with all the checklist items in seven of its 271 Orders (applicable to nine states). Still, in four post-ASCENT 271 Orders, the FCC has raised concerns about the RBOCs' resale of advanced services.

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[328] ASCENT, 235 F.3d at 668.

In the *Verizon Connecticut Order*,[329] the FCC ordered Verizon to make the voice and DSL service package that it provides to its own retail end-user customers available to resellers at a wholesale discount. The FCC did not accept Verizon's contention that it was not required to provide the resale of DSL services unless it also provided voice service on the line involved. The FCC, instead, required Verizon to demonstrate that its affiliate, Verizon Advanced Data Inc. (VADI), provides DSL and other advanced services following the dictates of the *ASCENT* Order consistent with Section 251(c)(4), which states that ILECs must offer for resale at wholesale rates any telecommunications service that they provide at retail:

> Verizon and VADI that are subject to same resale obligations, currently provide local exchange and DSL services to retail customers over the same line. Therefore...on a retail basis, these services are eligible for a wholesale discount under section 251(c)(4). [*Verizon Connecticut Order, 16* FCC Rcd at ¶ 30 (July 20, 2001).]

The *Verizon Connecticut Order* also questioned the line sharing arrangement Verizon had with VADI, based on their understanding that the FCC's line-sharing rules only required VADI to provide access to the high frequency portion of the loop for resale, when Verizon provided the underlying voice service over the line involved. Thus, VADI did not resell its DSL service when a CLEC provided voice service over the line involved. The FCC's *Verizon Connecticut Order* stated that Verizon had misapplied the FCC's line-sharing rules. It clarified that the DSL resale obligation extended to VADI irrespective of

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[329] *Application of Verizon New York Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc. and Verizon Select Services, Inc. for Authorization to Provide In-Region, InterLATA Services in Connecticut,* CC Docket *01-100,* Memorandum Opinion and Order, 16 FCC Rcd 14147, 14160-14163 ¶¶ 28-33 (2001) *(Verizon Connecticut Order).*

whether an ILEC or CLEC provides voice service over the line and concluded "in the light of the ASCENT decision, that VADI must permit resale of DSL by a CLEC over lines on which the CLEC provides voice service through Verizon service."[330]

The *Verizon Pennsylvania Order*[331] authorized Verizon's entry into that long distance market but, consistent with the *Verizon Connecticut Order*, stated that under Sections 251(c)(4) and 252(d)(3) of the Act, Verizon could not limit the resale of DSL to customers that also received Verizon retail voice service. (*Verizon Pennsylvania Order*, 16 FCC Rcd at ¶ 93.)

In the *Arkansas/Missouri Order*,[332] the FCC noted the number of unresolved DSL issues but concluded, "neither the Act [Telecommunications Act of 1996] nor Commission precedent explicitly addresses the unique facts or legal issues raised in the case. The Commission [FCC] has not addressed the situation where an incumbent LEC does not offer DSL transport at retail, but instead offers only an Internet access service." (*Arkansas/Missouri Order*, 16 FCC Rcd at ¶82.) The FCC authorized SBC to enter the long distance markets in those states but stated that it would open a separate proceeding to look into the advanced services issues.

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[330] *Id.*, 16 FCC Rcd at ¶ **33.**

[331] *Application of Verizon Pennsylvania Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks, Inc., and Verizon Select Common services Inc. for Authorization To Provide In-Region, InterLATA Services in Pennsylvania,* CC Docket No. 01-138, Memorandum Opinion and Order, 16 FCC Rcd (2001) (Verizon Pennsylvania Order).

[332] *In the Matter of Joint Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Arkansas and Missouri,* CC Docket No. 01-194, Memorandum Opinion and Order, 16 FCC Rcd 20719 (2001) (*Arkansas/Missouri Order*).

Pacific insists that it does not provide retail DSL service because ASI's business consists of selling wholesale DSL Transport services to ISPs, and wholesale services are not subject to the resale obligation, and required wholesale discount, under Section 251(c)(4). ISPs who purchase DSL Transport service from ASI bundle that service with their own Internet access services and sell the resulting service, DSL Internet Access Service, to end-user customers. DSL Internet access service is an information service and not a telecommunications service. Thus, Pacific claims that neither service - from ASI or PBIS - is subject to § 251(c)(4) under the *Second Report.*[333]

While it is clear that as a facilities-based carrier the services PBIS offers by itself are not telecommunications services, PBIS also does not offer DSL services "at retail" as defined by the *Second Report.* However, we must read the *Second Report* in conjunction with the subsequently issued *ASCENT* decision. In *ASCENT,* the court vacated the portions of the FCC Merger Order, which "permitted the new company to offer advanced services through a separate affiliateand, by doing so, avoid § 251(c)'s duties." The Court held that since Congress "prescribed no such affiliate structure for advanced services, we must assume that Congress did not intend for § 251(c)(4)'s obligations to be avoided by the use of such an affiliate."

The record, which includes Pacific's statements and the marketing information from its web site, demonstrates that PBIS' services are designed for, and sold to residential and business end-users. The DSL Transport Services provided to PBIS by ASI, are telecommunications services that enable PBIS to offerits services to end-users. Without the DSL Transport Services provided to

[333] Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147, Second Report and Order, 14 FCC Rcd 19237 (1999) (Second Report).

PBIS by ASI, PBIS could not reach its end-users. Under *ASCENT*, an ILEC cannot set up a wholly owned affiliate that offers advanced services in order to avoid its resale obligations under § 251(c)(4). Notwithstanding the *Second Report's* definition of "at retail," current law does not allow an ILEC to achieve with two affiliates what it cannot achieve with one.

PBIS is not simply an ISP that combines DSL service with its own Internet service. Pacific affiliate PBIS receives DSL services from Pacific affiliate ASI, and those advanced telecommunications services become PBIS' retail services. Indeed, it is the affiliation between the three -- Pacific, ASI and PBIS -- that effectively creates Pacific's provision of DSL Transport Services at retail. The *Second Report* and 47 C.F.R. § 51.605(c) do not alter this fact.

California is the nation's most populous state. Representing the world's sixth largest economy, with a gross state product of $1.21 trillion, there is significant potential for the growth of advanced services here. Pacific's DSL market dominance in California is increasing while its competitors' DSL market share is shrinking. **As** ORA notes, the majority of California ratepayers have no provider choice other than Pacific for DSL access service. In the absence of a discounted DSL market, competition in California will fester in the midst of the Pacific, **ASI,** and PBIS integration. Thus, we find that Pacific has erected unreasonable barriers to entry in California's DSL market both by not complying with its resale obligation with respect to its advanced services pursuant to § 251(c)(4)(A) and by offering restrictive conditions in the ASI-CLEC agreements in contravention of §251(c)(4)(B). To be in full compliance with the requirements of Checklist Item 14, Pacific must remove the barriers to entry of the California DSL market and meet its resale obligation of advanced services. Accordingly, we find that Pacific has not satisfied the requirements of Checklist Item 14, and we decline to verify compliance thereof.

V. CPUC Performance Incentives Plan

Beginning with April 2002 performance, Pacific implemented the OSS performance monitoring and enforcement mechanisms contained in the Commission's performance incentives plan ("PIP")." To ensure that an ILEC's application for Section 271 approval is in the public interest, the FCC has listed five important characteristics for a performance incentives plan.'" The CPUC's performance incentives plan has these characteristics.

- potential liability that provides a meaningful and significant incentive to comply with the designated performance standards;
- clearly-articulated, pre-determined measures and standards, which encompass a comprehensive range of carrier-to-carrier performance;
- a reasonable structure that is designed to detect and sanction poor performance when it occurs;
- a self-executing mechanism that does not leave the door open unreasonably to litigation and appeal;
- and reasonable assurances that the reported data is accurate.

The PIP was developed in three parts: performance measurement and standards, performance assessment, and performance incentives. On August 5, 1999 we adopted the parties' Joint Partial Settlement Agreement (*JPSA*) in D.99-08-020, which established performance measurements and standards for Pacific.[336] We established the basic performance assessment methods, including

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[334] Established in D.02-03-023.

[335] ***Bell Atlantic*** *New York Order*, 15 FCC Rcd at ¶ 433.

[336] On May 24,2001, **we** adopted changes to the *JPSA* in D.O1-05-087. Although not as complete, performance measurements and standards for Verizon California were also established in the *JPSA*.

statistical tests and criteria, in D.O1-01-037, on January 18,2001. We completed a performance incentives plan for Pacific on March 6,2002, in D.02-03-023 by establishing the monetary incentive amounts to be generated by deficient performance. We refer the reader to these decisions for details of the performance incentives plan.'" Some of the highlights of the plan are as follows.

A. Performance Measurement and Standards

Extensive collaboration between the parties in this proceeding resulted in a set of forty-four OSS performance measures that cover a wide range of OSS performance. These measures track performance in nine areas: pre-ordering, ordering, provisioning, maintenance, network performance, billing, database updates, collocation, and interfaces. Appendix III lists the measures in each area. Where applicable, these measures are broken down into sub-measures. Sub-measures were constructed to track performance separately for different service types, for different regions, and for other service distinctions such as the necessity for fieldwork or line conditioning. For example, provisioning time is tracked with separate sub-measures for different service types such as *Resale Business POTS, Resale Residential POTS, Resale Centrex, Resale PBX, Resale DSZ, UNE loop 8db weighted 2/4 wire analog basic/coin, UNE Loop 2 wire Digital xDSL capable,* and many others. For many measures, complete sets of sub-measures track performance separately for four regions, **LA,** Bay Area, North, and South regions.[338] Two examples of separate sub-measures with service type, regional,

[337] We also make several updates or modifications to the PIP, *infra.*

[338] North and South regions encompass the North and South portions of the state except for the LA and San Francisco/Oakland Bay areas. Measures for statewide services, such as billing, interface availability, and network performance are only measured statewide and not regionally.

and other service distinctions are: *Bay Area Resale Business POTS No Field Work, Bay Area Retail Business POTS Field Work.*

Not all measures or sub-measures are included in the PIP. By design some measures were excluded by parties' agreement that they were either duplicative of other measures or currently used only for diagnostic purposes. Out of the forty-four measures, thirty-nine are used in the PIP.'" In April 2002, with 126 active CLECs, 592 sub-measures produced testable data, resulting in 5867 CLEC-specific performance results.[340]

The performance measures consist of two basic types: "parity" and "benchmark" measures. Parity measures are used where Pacific's performance to CLEC customers can be compared to Pacific's performance to its own customers because these measures are only possible where Pacific provides the same service for its own customers, termed a "retail analog." Absolute "benchmark" measures are used where there is no retail analog. For example, where a retail analog exists, a parity standard might compare the average time to provision a new service for CLEC customers to the average time for the same activity for Pacific's customers. In contrast, where there is no retail analog, a benchmark might require that ninety-five percent of new CLEC installations be completed within five days.

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[339] Three of these thirty-nine measures are not currently operational in the PIP. Measure 4 *(Percentage of Flowthrough Orders)* produces performance data, but has not been implemented in the PIP because parties have not agreed on the respective standards for this measure. Measures 29 *(Accuracy of Usage* Feed) and *36 (Accuracy of Mechanized Bill Feed)* depend on data from the CLECs that the CLECs currently are not submitting.

[340] While there are over 1,500 possible sub-measures, many are not utilized in the PIP due to CLEC inactivity, and some are not utilized because the respective standards have yet "to be determined."

Performance is measured in five ways for parity and benchmark measures: averages, percentages, rates, indexes, and counts.[341] The following examples illustrate these measures.[342] An average measure compares the average service installation time for CLEC customers either to the average installation time for Pacific's customers (parity) or to a specific average (benchmark). A percentage measure compares the percentage of due dates missed for CLEC customers either to the percentage of due dates missed for Pacific's customers (parity) or to a specific percentage (benchmark). A rate measure compares CLEC customer trouble report rates either to Pacific's customer trouble report rates (parity) or to a specific rate (benchmark). An index measure compares the percentage of time an interface is available to the CLECs either to an index of the time it is available to Pacific (parity), or to a specific percentage (benchmark). The index measure differs from percentage measures in the way it is assessed, as discussed *infra*. **A** count measure allows a certain number of events, such as no more than one repeat trouble in a 30-day period.

As discussed, *supra,*[343] the measurements and the rules established to generate the reported performance data have been audited and determined to be consistent with the rules that define and make the measures operational. Additionally, aided by an external consultant, staff conducted an accuracy check of the data and found problems that were corrected. (Initial Report *on* OSS Performance Results Replication *and* Assessment, ("Replication Report") Telecommunications Division, (June 15, 2001).)

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[511] One exception is that there is no "count" measure for parity comparisons.

[342] These descriptions are simplified for the purpose of illustrating the measures and do not necessarily document actual measure specifications.

[343] See the earlier section discussing the PriceWaterhouseCoopers' audit.

B. Performance Assessment

While the parties agreed on many issues, they were unable to agree on a complete set of performance assessment methods and criteria. To resolve the disputes that remained, we constructed the final assessment method and established the test criteria. We briefly describe the assessments we established.

Different measures require different tests to identify deficient performance, or "failures." Statistical tests are applied to parity measures to distinguish differences likely caused by random variation from differences likely caused by poor performance to CLEC customers. *(Interim Opinion on Performance Incentives,* D.O1-01-037 at 58 - 129 (January 18, 2001).)[344] For average-based measures, a t-test is applied to log-transformed scores. Log transformations are used for time-measure data since the distribution of raw scores is skewed, as is typical for time-to-complete-task data. The transformations bring the data closer to the normal curve distribution that is assumed for the *t*-test.[345] For percentage-based parity measures, a Fisher's Exact Test is used on the original non-transformed data. For rate-based measures, a binomial exact test is used, also on the original non-transformed data.

Different critical alpha levels are used in an attempt to control the Type I error probabilities without allowing excessive Type 11 error, or beta levels. *Id.* at 83-98. We selected a default critical alpha level of 0.10, because we discovered that the beta levels were considerably greater than the conventional 0.05 alpha levels. ***Id.*** at 92-93. While a 0.10 alpha level still does not balance the two types

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[344] Readers unfamiliar with statistics, or those who prefer a more detailed description of these tests, should refer to these decision pages.

[345] See Id. at **113** – 116 and **App.** J for a detailed discussion of log transformations.

of error, it reduces the imbalance.[346] For assessments of performance in consecutive months, we selected a 0.20 alpha level because the test requirement for consecutive "failures" greatly reduces the net alpha level. *(Opinion on the Performance Incentives Plan for Pacific Bell Telephone Company* D.02-03-023 at 39-41, 51-52 (March 6, 2002).) *(Plan Opinion).* We selected a 0.20 alpha level for individual CLEC small sample tests for sub-measures where the CLEC industry aggregate failed. The likelihood of a Type II error increases with small samples and where information suggests that the overall process is not in parity. *(Incentives Opinion* at 66, *Plan Opinion* at 39-41.) In a complementary fashion we selected a 0.05 alpha level for the largest samples, and for moderately large samples where the CLEC industry aggregate "passed."

Benchmark assessments are simple comparisons without statistical tests. For the larger samples, performance to CLEC customers is compared to the specific standard as established in the *JPSA.* For the smaller samples, a "small sample adjustment table" is used to account for the fact that even when CLEC customers as a whole receive performance easily meeting the benchmark, small samples can fail the benchmark. For example, if twenty CLECs each placed one order, and only one of those twenty orders was not completed with in the specified time, 95% of the orders would have been completed within the allowed time. With a benchmark of 90%, overall performance would easily pass. However, at the individual CLEC level, nineteen would pass and one would fail. The failure is inevitable in this case since with only one order, the CLEC with the order not completed within the allowed time would have a zero-percent result.

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[346] Calculation of beta levels assumes a certain level of deficient performance for statistical detection. We refer the reader to sections on critical alphas and beta levels in D.O1-01-037 and D.02-03-023 for the assumptions behind our findings regarding beta levels.

Small sample adjustment tables adjust for this problem by allowing a few more "misses" than allowed by the benchmark.[347]

Index measures are similar to parity and benchmark measures except that they have neither statistical tests nor small sample adjustment tables. Count measures also do not have statistical tests or small sample adjustment tables.

We established two "consecutive failure" definitions. First, if a sub-measure "fails" three months in a row, it is termed a "chronic failure." Second, if a sub-measure fails five or six out of six months it is termed an "extended chronic failure.""

C. Performance incentives

Instead of outright payments to CLECs or the state general fund as many other states have required, our incentives are billing credits to CLECs and ratepayers. Monetary amounts generated by deficient performance to individual CLECs become billing credits to those CLECs (Tier I). Amounts generated by deficient performance to the CLEC industry as a whole become billing credits to the ratepayers (Tier 11). If the amount to be credited to a CLEC exceeds the CLEC's billing, the excess amount is credited to the ratepayers.

We have established limits, or caps, to the credits that Pacific must issue. First, the overall annual cap equals thirty-six percent of Pacific's annual net return from local exchange service in California. The FCC has approved several other states' performance incentive plans with this same percentage of net return liability, viewing it as a reasonably sufficient amount to motivate OSS performance. *(Plan Opinion* at *82.)*

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[247] Small sample adjustment tables are not used when the aggregate result fails.

Additionally, as discussed in this decision *infra*, we add a third consecutive failure definition, "continuing extended chronic failure."

Thirty-six percent of net return from local exchange service in 2001 equals approximately $601 million. The cap applies monthly at one-twelfth of this amount: approximately $50 million. Second, credits are capped at about $16.4 million per month without formal review. We allow Pacific a formal review before requiring incentive amounts between $16.4 and $50 million per month. The credit amounts to individual CLECs are only limited by their billing totals.

Our plan is self-executing. Data recording, assessment, and credit generation is automated. Incentive credits are made without further review, unless the procedural caps are reached.

Our incentive amounts are scaled to performance in a "curvilinear" fashion. Our plan generates relatively smaller percentages of the cap for smaller failure rates and then accelerates the incentive percentages as performance worsens. That is, rather than requiring ten percent of the cap to be credited for a ten percent failure rate, twenty percent of the cap for a twenty percent failure rate, and so forth, we have targeted a four percent incentive amount for a ten percent failure rate, a sixteen percent amount for a twenty percent failure rate, a thirty percent amount for a twenty-five percent failure rate, up to 100 percent of the cap for a fifty percent failure rate. (*Plan Opinion* at 46.)

Our PIP was not scaled to absolute amounts; it was scaled to match specific percentages of deficient performance with specific percentages of net return. (Id. at 46 - 48 and App. G.) In the *Plan Opinion*, we explicitly required Pacific to update the incentive cap after new ARMIS data is posted each April. (*Id.* at 21 and App. J at 1.) We did not *explicitly* require that the incentive amounts themselves be updated even though they are based on the cap. ARMIS data shows that Pacific's annual net return increased by 9.28 percent from 2000 to

2001.[349] However, Pacific has informally agreed to adjust incentive amounts that are less than the cap. We will make this requirement explicit as well, *infra*. Pacific shall update these amounts beginning with the May 2002 performance. The caps, the base amount and the parity simulation payment-reduction amount will be increased by 9.28 percent for the months of May 2002 through April 2003, and will be adjusted with the same timing and method thereafter.

We also recognize that even with perfect performance, residual Type I errors could result in Pacific having to credit significant amounts to the CLECs and ratepayers even though they experienced no actual performance discrimination. To provide some mitigation for this event, we allow Pacific to discount the credit amounts generated by the plan when performance reaches performance levels matching or exceeding the parity simulations we established in D.02-03-023. (*Id.* at App. J, § 3.9.) The discount is designed to match the amount generated by the plan so Pacific will not be liable for giving credits to the CLECs and ratepayers when performance is optimal.

Pacific implemented our performance incentives plan beginning with performance for the month of April 2002. Pacific's "failure rate" for individual CLEC results in Category A was **6.7** percent, and the plan generated incentive amounts totaling $673,390. Pacific credited $532,880 to the CLECs and $140,510 to the ratepayers.[350] A more detailed summary of the credits from the first month's implementation is provided in Appendix IV.

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[349] Pacific's net return from local exchange service in California was $1,527,942,000 in 2000, and $1,669,771 in 2001. See http://www.fcc.gov/wcb/annis/db/ and the *Incentives Opinion*, **App. C.**

[350] Preliminary figures indicate lesser rates and amounts for May performance, likely because April performance included a conversion to a new OSS system, causing performance decrements, which were resolved by May.

Parties have raised concerns that our PIP does not provide sufficiently strong incentives for chronically deficient performance. *(Application for Rehearing of Opinion on the Performance Incentives Plan for Pacific Bell Telephone Company,* ("CLEC Appl. Rehear."), Participating CLECs[351] at 13 (April 8, 2002).) The possibility remains that Pacific could treat the incentive credits generated by extended chronic failures as the "cost of doing business." While this issue may have seemed moot insofar as we have only constructed a plan for an initial six-month implementation period, we find it prudent to establish a contingency mechanism to fill any gap that may arise between the end of the six-month period and the adoption of any necessary revisions. In this regard, we find that it is important to continue the current PIP until it is revised regardless of the time it might take to revise it. Additionally, we find it important to add an additional treatment for deficient performance that may continue beyond the six-month period.

It is difficult to know with confidence what incentive amounts will actually motivate the desired OSS performance. However, if OSS performance for a particular sub-measure continued to be deficient for longer than six consecutive months,"' it would be reasonably clear that the amounts were too low, and that Pacific may be treating the incentive amounts as the "cost of doing business." To provide stronger incentives when such performance continues past six months, it will be reasonable to increase the incentive amount for any such sub-measure. Not only are such continuing performance "failures" increasingly accurate

[351] AT&T, New Edge Networks, PacWest, WorldCom, and XO.

[352] Or continues to be an "extended chronic failure," which is identified as five "failures" in any consecutive six-months, with the higher incentive amounts continuing in months that "fail" until two consecutive months "pass."

assessments, but they also represent increasing competitive harm. To provide incentives to prevent such continuous deficient performance we will automatically increase the payments for months with deficient performance when an "extended chronic failure" continues.[353] When an extended chronic failure continues[354] three or more months in a row after it is initially established,[355] payments for a failure will be doubled from that required for an extended chronic failure for that month.[356] Every three months thereafter, incentive amounts will be doubled again for continuing extended chronic failures.[357] For

[353] We will apply this feature to both Tier I and Tier II assessments, even though currently there is no "extended chronic failure" assessment for Tier II. This feature will be applied beginning at the ninth month "as if" Tier II had "extended chronic failure" assessments.

[354] In the draft opinion, we used the word "occurs" in the text here instead of "continues" as we used in the ordering paragraph. Pacific interpreted this feature to require three consecutive failures in the seventh, eighth, and ninth months. Pacific Comm. at 7. We have changed the text here to be consistent with the ordering paragraph and our intention to only require an extended chronic failure condition to be *continuing,* and not to require a failure each month.

[355] To better clarify in which month increases are first required, we have added this clause to the draft decision.

[356] For this to occur, performance would have to have been identified as failing eight or nine months in a nine-month period. The ninth month is the first month eligible for these increased incentive amounts.

[357] In our review of the parties comments regarding this feature, we recognized that after an initial doubling of incentives, the feature would allow a doubling of incentives even though performance was only failing every other month. This was not our intention for this feature. We have clarified our intention and the respective definitions as follows. An extended chronic failure continues until two consecutive months "pass." The "continuing extended chronic failure" continues until the most recent six months, viewed alone, would not be identified as an "extended chronic failure." No incentive credits are generated for the single months where performance is not identified as failing. The following ten-month examples provide clarification with " F representing a

Footnote continued on next page

example, after twelve or fifteen months of continuing extended chronic failures, the incentive credits would be four or eight times the amount required for extended chronic failure for those months, respectively.[358] Additionally, since continuing extended chronic failures would indicate that Pacific is not providing parity OSS performance, Pacific should not be eligible for mitigation under section 3.9 of the PIP. (See *Plan Opinion* at App. J. at 10.)

In its comments to the draft decision, Pacific opposes this "continuing extended chronic failure" ("continuing failure") feature. Explaining its opposition, Pacific asserts: (1) that the new feature "upsets the careful balance" that was struck by the Commission in D.02-03-023, (2) that it is not appropriate to add this feature in this proceeding, (3) that the new feature is being added "without due process," and (4) that the record does not support our conclusions regarding continuing performance failures. SBC Pacific Bell Telephone

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monthly failure, **"p"** representing a pass, and "CECF representing a "continuous extended chronic failure":

FFFFFFpFFF = CECF, incentive credits increased for ninth and tenth months

FFFFFFppFF = no CECF-increased incentive credits in 9" or 10' months

FFFFFFFFpF = CECF-increased incentive credits only in 10th, not 9th, month

FFFFFFpFpF = no CECF in 9' or 10" month

FFFpFFFFpF = CECF-increased incentive credits in 10th month

[358] The probability of a Type I error, or net critical alpha, decreases as the test requires failures in more consecutive months. For example, with a single-month 0.20 critical alpha, under parity conditions, failing five or more times out of six consecutive months has a probability of 0.0016; failing eight or more times out of nine consecutive months has a probability of 0.000019; failing ten or more times out of twelve consecutive months has a probability of 0.0000045; and failing twelve or more times out of fifteen consecutive months has a probability of 0.000001.

Company's (U 1001 C) Opening Comments ("Pacific Comm."), August 12,2002, at 7-9.[359]

However, separate from the balance we struck for the performance incentives plan in D.02-03-023, this new feature targets a different problem. The balance we struck consisted of a targeted "curvilinear" "scaling" of monthly total incentive amounts to *overall* performance across *all* sub-measures for each CLEC separately and for all CLECs combined. The "continuing extended chronic failure" feature addresses a different problem, a problem that was raised at numerous times in the performance incentives proceeding.[360] If Pacific provided excellent service for a high percentage of sub-measures but continuously failed particular sub-measures, incentive amounts for the failed sub-measures would be low and relatively unlikely to motivate corrective action."[361] The continuing

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[359] AT&T and XO filed reply comments supporting the addition of this feature. *Reply Comments of AT&T Communications of California, Inc. (U 5002 C) on the Draft Decision Granting Pacific Bell Telephone Company's Renewed Motion for an Order that It Has Substantially Satisfied the Requirements of the 14-Point Checklist in Section 271 of the Telecommunications Act of 1996 and Denying that It Has Satisfied Section 709.2 of the Public Utilities Code,* August 19,2002, at 2-3; *Reply Comments of XO California, Inc. (U 5553 C) on Draft Decision Granting Pacific Bell's Renewed Motion for an Order that It Has Satisfied §271 of the Telecommunications Act and Denying that It Has Satisfied §709.2 of the California Public Utilities Code,* August 19,2002, at 5.

[360] For example, see *Assigned Commissioner's Ruling on Performance Incentives,* (R.97-10-016/I.97-10-017), November 22,1999, at 12-13, 15-16; *Replication Report* at 7-9; *Interim Opinion* at 97; *Administrative Law Judges' Ruling,* (R.97-10-016/I.97-10-017), March 2,2001, Workpaper #17, item 8, Workpaper #18, item 3d, Workpaper #24 at 8, Workpaper #21 at 4, Workpaper #27 at 4, Workpaper #28 at 14; *Comments of the Participating Competitive Local Exchange Carriers Regarding Performance Remedies Plans,* (R.97-10-016/I.97-10-017), May 18,2001, at 4, 9; *Replication Report* at 7-9; *Plan Opinion* at 32-35, 37; CLEC Appl. for Rehear. at 5-9, 13.

[361] Incentive amounts are increased by a multiplier derived from overall performance. The multiplier is the overall percentage, in percentage points, of identified failures for either individual CLECs (Tier I) or all CLECs (Tier 11). *Plan Opinion* at 47-48 and App. J,

Footnote continued on next page

failure feature corrects this deficiency and ensures that any continuously poor performance on an individual sub-measure generates increasing incentives until such time as it is corrected. The primary goal of the performance incentives plan is not to maintain a balance established without information about what Pacific will do, but to motivate good OSS performance for *each* sub-measure.[362] The new feature fills a potential gap in the plan by addressing problems at the individual sub-measure level. The balance that Pacific cites is preserved unless Pacific chooses not to correct continuously identified failing performance. Given such a choice, it would be evident that the balance did not meet the goals of the plan and should be altered.

Adding this feature in this proceeding is appropriate. The performance incentives plan is the primary tool to ensure the public interest after Pacific gains 271 approval.[363] Without a comprehensive plan that adequately addresses future possibilities, the public interest would be in doubt. Adding this feature now before the FCC reviews Pacific's application will enable the FCC to make a more

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Sections 1.5, 3.6.13, 3.73, and 3.8.5. When Pacific's overall failure percentage is low, even persistently bad performance will have a relatively small multiplier, and thus relatively low incentive amounts. See also *Plan Opinion* at **32-33.**

[362] By "good" performance, we refer to the FCC's guidelines. *Bell Atlantic New York Order* at ¶ **44.** See also, ***Id.*** at **App.** B, ¶¶ 2-4, 13-17. While the FCC recognized that before making a separate determination of discrimination it would consider more than just the statistical test result ("the totality of the evidence" fn. 45), such analysis is not possible in a self-executing plan, which must rely on these tests. Any additional evidence must be automated into the plan along with corresponding test criteria. Neither the cited New York plan nor our plan has the automated evidence or criteria features that Pacific desires – features that identify "slight" and "likely transparent." statistically significant differences. See Pacific Comm. at **9;** *Bell Atlantic New York Order,* App. *B.;* and *Incentive Opinion* at 100.

[363] See *Bell Atlantic New York Order* at ¶¶ **429,433.**

complete review and should give them greater confidence that future performance has comprehensive assurances.

Pacific has been afforded due process. All parties have had the opportunity to review and comment on the new plan feature. Additionally, the issues behind the feature have been raised, reviewed, and commented on during the collaborative sessions and in previous reports, comments, and decisions."

The record supports the addition of the continuous failure feature. In that we cannot **know** the future, we cannot cite evidence here of future performance or evidence for the future effects of our plan on Pacific's performance.[365] We have added this feature so that *if* future performance provides such evidence, then the plan will automatically increase the amounts. These increased incentive amounts will not be imposed without the new evidence that Pacific is not correcting performance failures. Nine months of virtually continuous failures will be sufficient evidence to show that an incentive amount is insufficient to motivate performance corrections.

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[364] For example, see text and cites in *Assigned Commissioner's Ruling on Performance Incentives*, (R.97-10-016/I.97-10-017), November 22,1999, at 12; *Interim Opinion* at 59-69, 83-102,117-122, and App. K at 1-10; *Replication Report* at 7-9; *Plan Opinion* at 28-38, 50-54.

[365] However, we note that recent evidence indicates that although Pacific's overall single-month performance is approaching the levels predicted in the parity simulations, the longer-term repeated-failure levels are much higher than would be expected by these same simulations. In November 2001, the actual extended chronic failure rates (Cat. **A,** 0.0108) were over twenty times the corresponding simulated parity rates (0.0005). *Plan Opinion* at **37.** These high rates occurred even as Pacific anticipated the imminent adoption of our performance incentives plan. The parties' final data runs, proposals, and comments for a plan were completed in June 2001 *(Plan Opinion* at 7), the plan's draft decision was mailed in November 2001 *(Draft Decision of ALJ Reed,* R.97-10-016/I.97-10-017, November 21, 2001), the plan was adopted in March 2002 *(Plan Opinion* at 98), and was implemented for April 2002 performance (*Id.; Administrative Law Judge's Ruling* to *Facilitate Implementation of the Operations and Support System Performance Incentives Plan for Pacific Bell Company,* R.97-10-016/I.97-10-017, April 29,2002).

Pacific asserts that because performance can statistically fail with "slight" differences, no incentive amount increases should be imposed, and consequently the record does not support adding the continuing failure feature. In arguing their position, Pacific asserts that such "slight" but statistically significant differences can occur even though performance to both Pacific's customers and CLEC customers was "excellent." Pacific Comm. at 8-9. This problem is most likely to occur for large samples. *Interim Opinion* at 95. We have deliberated this issue at length in resolving similar problems. For example, addressing large sample problems would likely exacerbate small sample problems. The record contains considerable discussion of the problem where reducing one error type increases another.[366] To not increase incentive amounts because we might increase penalties for Pacific's statistically failing, but "good" performance, would likely also result in no increased penalties for any persistently bad performance. In establishing our plan we cannot go forward treating identified failures as if they are not failures. *Plan Opinion* at 73, fn. 55. During the first review we may discover a better way to accomplish this balance between erroneously treating good performance as bad or bad performance as good. However, in the interim, it will be important to address continuing failures. Our interim approach is a cautious one, with little chance for Type I error.[367]

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[366] For example, see the text and cites in *Assigned Commissioner's Ruling on Performance Incentives*, (R.97-10-016/I.97-10-017), November 22, 1999, at 12; *Interim Opinion* at 84-85, 90, 95-96, 119-121, **App.** K at 1; and the *Plan Opinion* at 28, 39-41.

[367] Type I error would disadvantage Pacific. The probability of a Type I error is very low for nine-month continuing-failure identifications (less than one chance in 10,000), and considerably lower for longer continuing-failure identifications. See *infra*. In contrast, the chance of statistical error that disadvantages the CLECs, Type II error, is very high for this feature, and may approach certainty. See *Plan Opinion* at 51-52.

Fine adjustments to the continuing failure feature are difficult. We have previously considered assessing "material differences," a potential solution for "slight" but statistically significant differences. Pacific Comm. at 9; *Interim Opinion* at 94-95, 98-100. The parties suggested ways to implement a "material difference" feature that would automatically account for identified performance differences that were not of sufficient magnitude to be harmful. See *Interim Opinion* at 94-95, 98-100. However, none of these suggestions led to complete proposals, although we encouraged parties to develop "material difference" proposals for possible adoption at the end of the initial implementation period. ***Id.*** The fact that we cannot at this time impose a perfect remedy for continuously failing performance should not cause us to neglect the potential problem.

Pacific is concerned that the new feature will increase incentives for sub-measures where performance parity is beyond their control or where performance differences are too small to be harmful. See Pacific Comm. at 9. Where performance sub-measures fail continuously from circumstances beyond Pacific's control, the measures should be amended. *Plan Opinion* at 73, fn. 55. This realization is likely what motivated Pacific to file a motion requesting the performance measure changes we subsequently adopted in D.02-06-046." Where statistically significant performance differences are "slight" or "transparent" and caused by different workloads for Pacific's tasks versus CLEC

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[368] *Opinion Modifying Decision 01-05-087 to Update Performance Measures for the Performance Incentive Plan for Pacific Bell Telephone Company*, D.02-06-046, June 27, 2002. Performance differences were caused by the fact that Pacific customer UNE loop provisioning typically does not require LNP scheduling and activating, whereas CLEC customer provisioning does require the LNP work. Because an independent third-party organization takes an industry-standard minimum of three days to activate LNP, and Pacific's provisioning for its own customers takes only about two days, the sub-measures always failed. D.02-06-046 changed the parity standard to a benchmark standard to better reflect Pacific's actual Performance. ***Id.*** at **3-4.**

tasks, Pacific should work with the parties and the Commission to amend the measures.[369] To "fix" these problems instead by ignoring ***all*** continuously failing sub-measures would neither be appropriate nor in the public interest.

For all the above reasons we are not persuaded by Pacific's assertions, and we adopt the continuous failure provisions. However, we note that there may be time to "fine tune" or adjust these provisions before they can increase incentive amounts for any future continuous failures. We ask the parties to examine these provisions in the six-month review and craft better provisions if possible. At the same time we ask the parties to correct performance measurement problems that may lead to continuous failures not reflective of Pacific's performance. We understand that parties are currently examining and negotiating performance measure modifications in anticipation of completing work for the periodic review of those measures.[370]

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[369] Pacific states that compared to Pacific's queries, CLEC pre-ordering loop qualification queries are more often multiple-line queries and consequently take more time. Pacific Comm. at 9. While Pacific's assertions, that the differences are "slight" and "likely transparent" and represent "excellent performance," seem plausible and reasonable, we make no findings regarding these assertions. For example, the approximately thirty percent increased time (estimated from Pacific's figures, ***Id.)*** may be an increment to other delays, which in total are perceptible, or may result in extra costs for the CLECs, and thus present an impediment to competition. These issues should be discussed and resolved in the performance measures review.

[370] E-mail from Gwen Johnson of Pacific Bell to the parties in R.97-10-016/I.97-10-017, "SBC/Pacific Bell's proposed changes to the **CA** I'M JI'SA" dated June 14,2002; e-mail from Evelyn Lee of WorldCom to the parties in R.97-10-016/I.97-10-017, "OSS OII: Rule 51.1 Notice re Formal JPSA Review" dated June 25,2002; e-mail from Diane Ottinger of Verizon to the parties in R.97-10-016/I.97-10-017, "CA071502 Verizon JPSA," dated July 15,2002.

VI. California Public Utilities Code Section 709.2

A. Background

California Public Utilities Code Section 709.2 (Section 709.2),[371] enacted in 1994, requires the CPUC to make four essential determinations prior to "authorizing or directing competition" in the intrastate interLATA market. These determinations include: 1) that competitors have fair, nondiscriminatory access to exchanges; 2) that there is no anticompetitive behavior by the local exchange telephone corporation, including unfair use of subscriber contacts generated by the provision of local exchange telephone service; 3) that there is no improper cross-subsidization of interexchange telecommunications service; and 4) that there is "no substantial possibility of harm" to the competitive intrastate interexchange telecommunications markets. (§§ 709.2(c)(1)-(4).)

The complex relationship between §§ 709.2 and 271 merits discussion. Apart from the jurisdictional distinction, the key difference between the two code sections lies in the sector of the telecommunications market each one addresses. Section 271 approaches the accessibility of the local exchange market through satisfaction of the 14-point checklist. It also allows consideration of the public interest assessment of a BOC's entry into the long distance market. Section 709.2 addresses the health of the intrastate interLATA telecommunications, or IEC, market, and assesses the public interest from that perspective.

Signed into law two years before TA96, the language in § 709.2 borrows heavily from the Modified Final Judgment (MFJ),[372] the federal decision that structurally separated AT&T. Because TA96 "replaced" the MFJ, the parties have

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[371] Also referred to as the "Costa Bill," AB 3720.

[372] *United States v. AT&T*, 552 F. Supp. 131,227 (D.D.C. 1982) (*MFJ Decision*), *aff'd mem.*, 460 U.S. 1001 (1983).

vigorously debated the validity of applying competitive standards lifted from the MFJ in determining satisfaction of § 709.2 requirements. The competitors urge going back to various terms within the MFJ in order to understand the context of the words used. Pacific insists that § 709.2 can only be read in the shadow of § 271,"[373] although since the passage of Section 271 there has been no amendment of the state law.

Heretofore, the CPUC has addressed § 709.2 only to a limited extent. In 1998, in this docket, we indicated that our § 709.2 assessment would be performed in a separate phase. (D.98-12-069, *mimeo.* at 199.) While the parties in Pacific Bell Communications' (PBCom)[374] 1996 application for a certificate of public convenience and necessity[375] to provide long distance invoked § 709.2, we made no findings of fact or conclusions of law regarding that section in D.99-02-013. Instead, we stated that we would make determinations regarding Pacific's compliance with § 709.2 in a separate forum. Finally, by ruling in March 2001, the Assigned Commissioner affirmed that § 709.2 would be addressed herein.

In May 2001, the Assigned Commissioner adopted a two-step process to focus the issues of the assessment phase. First, he directed Pacific to file "in support of its showing, copies of the particular documents, affidavits, statements, exhibits, etc. that it intends to rely upon to enable [the CPUC] to the make the

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[373] Pacific Bell Brief on Section 709.2 at 2-5; Young Declaration generally.

[374] PB COM's name was eventually changed to SBC Long Distance.

[375] *Application of Pacific Bell Communications for a Certificate of Public Convenience and Necessity to Provide InterLATA, IntraLATA and Local Exchange Telecommunications Services Within the State of California*, A.96-03-007, D.99-02-013, 1999 Cal. PUC LEXIS 13 (February 4, 1999).

four required determinations." *(Assigned Commissioner's Ruling* on *the Motion Regarding Public Utilities Code Section 709.2* at *6* (May 4, 2001).) Then, he set a schedule for the other parties to submit their fully documented responsive cases.

In June, Pacific separately filed its Section 709.2 showing concurrent with the copy of its draft Section 271 application. Interested parties responded in August, and Pacific replied in September. The parties presented oral arguments on their § 709.2 submissions before the Assigned Commissioner and ALJ on December 3-5,2001.

B. Summary of Positions

Pacific argues that § 709.2 was litigated in the PB Com proceeding, and was resolved in its favor. (§ 709.2 Showing, § I at 2-5.) It also asserts that the Section 271 record overall satisfies the requirements of the state law. And, any CPUC finding imposing conditions, other than those contained in the 14-point checklist, on Pacific's entry into the long distance market would be contrary to law and preempted. **(Id.,** section II, A-D at 5-12; section III at 12-13.)

Some respondents insist that the CPUC did not determine Pacific's § 709.2 compliance in the PB Com case, noting the absence of associated findings of fact and/or conclusions of law. Others, citing the more than five-year old data on which the PB Com decision was based, contend Pacific's compliance under § 709.2 merits renewed analysis and nothing in the code section or D.99-02-013 precludes or prevents the CPUC from doing such. (AT&T Brief at 7-8; Comments of WorldCom at 4-5.)

Respondents also contend that TA96 neither subsumes nor preempts § 709.2 because § 271 does not address interexchange carriers, and § 253(b),[376] 261 (b),[377] and 601(c)(1),[378] of the Act permit the CPUC to carry out its state responsibilities under § 709.2. (Response of Pac-West and Working Assets Long Distance[379] at 9; ORA Brief at 49-52; Comments of CCTA at 7-10; AT&T Brief at 7-8; and Comments of WorldCom at 5-11 (August 23, 2001).)

C. Open Access to Exchanges

1. Does the record support the determination that all competitors have fair, nondiscriminatory, and mutually open access to exchanges currently subject to the modified final judgment, including fair unbundling of exchange facilities, as prescribed in the Commission's Open Access and Network Architecture Development Proceeding (1.93-04-003380 and R.93-04-003)? (§ 709.2(c)(1))

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[376] Section 253(b): "Nothing in this section shall affect the ability of a State to impose, on a competitively neutral basis and consistent with § 254, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers."

[377] Section 261(b): "Nothing in this part shall be construed to prohibit any State commission from enforcing regulations prescribed prior to the date of enactment of the Telecommunications Act of 1996, or from prescribing regulations after such date of enactment, in fulfilling the requirements of this part, if such regulations are not inconsistent with the provisions of this part."

[378] Section 601(c)(1) states: "This Act and the amendments made by this Act shall not be construed to modify, impair, or supersede Federal, State or local law unless expressly so provided in such Act or amendments."

[379] The Pac-West/Working Assets Long Distance response is cited as Pac-West/WA throughout this section.

[380] The actual docket number is 1.93-04-002.

Pacific states that the record before the CPUC establishing compliance with § 271 likewise supports a determination that it provides nondiscriminatory access to facilities, including unbundling as prescribed in the OANAD Proceeding. It maintains that it has put forth documents demonstrating that it has provided interconnection that is at least "equal in quality" to that provided to itself or to any subsidiary, on nondiscriminatory terms and conditions.'" (See Hopfinger Aff. ¶¶ 30-84; Deere Aff. ¶¶ 14-35.) Pacific also provides nondiscriminatory access to network elements, polls, ducts, conduits, local loop transmission, local transport, 911 and E911 services, directory assistance, and operator call completion. (See Hopfinger Aff. ¶¶ 85-106; Deere Aff. ¶¶ 36-156; Vandeloop Aff.; Young Declaration, Exhibit D; see generally Huston/Lawson Joint Aff. (OSS); Flynn Aff. (billing).) In addition, it provides nondiscriminatory access to white page directory listings, telephone numbers, telephone number portability, information necessary to provide dialing parity, databases, and associated signaling for call routing. (See Deere Aff. ¶¶ 157-185, 186-199; see generally Rogers Aff.; Mondon Number Admin. Aff.; Mondon LNP Aff.)

The competitors argue that Pacific has failed to satisfactorily open its exchange to competition. (AT&T Brief at 14-20; WorldCom Comments at 59-63; Pac-West/WA at 11-14.) They contend that separate OSS systems present an inherent inequality in the way that Pacific handles access to its exchanges in a competitive environment. (Pac-West/WA Response at 12.) They also insist that several currently open CPUC proceedings are essential to determining the openness of Pacific's network. Such proceedings include Collocation, Geographic Loop Deaveraging, Line Splitting and Line-Sharing, OSS

[381] 47 U.S.C. §§ 271(c)(2)(B)(i), 251(c)(2), 252(d)(1).

Performance Incentives, and Revised UNE Pricing. Without the resolution of these proceedings any judgment about Pacific's satisfaction of the requirements of section 709.2 will be inadequate. (Pac-West/WA Response at 13-14.)

2. Discussion

In specifically analyzing this docket's sizeable record in the above § 271 chapters, we find that Pacific has demonstrated that it has provided substantially fair, nondiscriminatory, open access to exchanges, including fair unbundling of exchange facilities. While we understand parties' frustrations with the time that it has taken to resolve a number of the integral telecommunications proceedings, we have issued decisions on geographic deaveraging, performance incentives and revised UNE pricing[382] within the last year. In addition, we have interim collocation rates in place; we have interim rates and terms on line splitting and line sharing,[383] and a draft decision establishing permanent rates for line sharing[384] is currently before the CPUC. Thus, we have sufficient data to determine the openness of Pacific's network. Overall, we find that all competitors generally have fair, nondiscriminatory, and mutually open access to exchanges[385] and interexchange facilities, including fair unbundling of exchange facilities, as prescribed in the CPUC's OANAD proceeding.

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[382] With the full cooperation of the parties, we intend to move forward on permanent UNE prices as expeditiously as we can schedule it.

[383] Pursuant to D.00-09-074.

[384] The draft adopts permanent UNE rates for the High Frequency Portion of the Loop for both Pacific and Verizon California Inc.

[385] Section 709.2(c)(1) specifies exchanges "currently subject to the modified final judgment." Such exchanges are now subject to TA96.

D. No Anticompetitive Behavior

1. Does the record support the determination that there is no anticompetitive behavior by the local exchange telephone corporation, including unfair use of subscriber information or unfair use of customer contacts generated by the local exchange telephone corporation's provision of local exchange telephone service? (§ 709.2(c)(2))

Pacific maintains that the CPUC in the PB Com proceeding adopted specific conditions to address any of its alleged anticompetitive behavior,[386] or concluded that proper safeguards were already in place. Moreover, TA96 was designed to prevent and detect such alleged behavior by BOCs and has been implemented by the FCC to that end. (Pacific Compliance Brief at 8.) In PB Com, the CPUC held that it would adopt the 'guidelines of the FCC's CPNI Order[387] in dealing with Pacific Bell's marketing of its own services and use of customer records' and that this was 'fair both for purposes of the Telecommunications Act and California's Costa Bill.' (*Id.* at 9.)

TA96 has established structural and transactional requirements, operational independence, separate books and records, audits, and nondiscrimination safeguards to prevent anticompetitive behavior. And, Pacific asserts that it complies with these safeguards. (See generally Heinrichs **Aff.;** Yohe Aff.; Carrisalez Aff.) Finally, California's adopted performance measures and incentive plan will disclose, and allow competitors and the CPUC to correct

[386] "[A]lleged misuse of market power in local exchange markets or long distance markets, alleged price squeezes, discrimination in providing services, and alleged cross subsidies." (Pacific's Section 709.2 Compliance Brief at 8.)

[387] Customers' Proprietary Network Information

any real performance problems, whether the result of anticompetitive conduct or otherwise. (See Johnson Aff. ¶¶ 7-8, 15-45, 153-175.)

In response, the interested parties enumerate ongoing and recently past practices of Pacific and SBC that they characterize as anticompetitive. They also discuss putative Pacific plans for the future that cause them great concern. Several parties contend that Pacific has misused customer contact and CPNI data in the past, and plans to use inappropriate customer contact to sell its long distance affiliate's service. (AT&T Brief at 27-36 ; TCIXC at 2-3, 5-6; CISPA at 15-16; Pac-West/WA at 15, Selwyn Aff.) Certain parties regard the deficiencies Pacific has not addressed in the CLEC forum as indicative of anticompetitive behavior. (Pac-West/WA at 15; AT&T Brief at 31.) Pac-West/WA alleges that Pacific unilaterally discontinued the CESAR system used by CLECs because of contractual misunderstandings. This discontinuation has disadvantaged the CLECs. It also condemns Pacific's joint marketing activities and structure. (Pac-West/WA at 15, 18, Sprague Aff.)

Pac-West/WA and AT&T urge the CPUC to consider recent and past behavior of Pacific's parent, SBC, in its assessment of Pacific pursuant to § 709.2(c)(2). They note that SBC and its affiliates have incurred more than $100 million in fines for failure to meet federal regulatory requirements. SBC material submitted in two 271 applications was investigated for misinformation by the FCC.[388] According to the two competitors, SBC considers fines for failure to meet regulatory requirements a cost of business. (Pac-West/WA at 16-18;

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[388] We take official notice that on May 28, 2002, the FCC entered into a Consent Decree with SBC resolving two FCC investigations concerning inaccurate information SBC submitted to the FCC in affidavits supporting two separate section 271 applications to provide long distance service in Missouri, Oklahoma and Kansas. SBC agreed to pay $3.6 million to the U.S. Treasury under the decree. (See FCC 02-153 (May 22, 2002).)

AT&T at 31, 33-36.) Pac-West/WA asserts that SBC has raised rates in states where it has gained long distance entry.

2. Discussion

Section 709.2(c)(2) directs us to determine that there is no evidence of anticompetitive behavior by Pacific. The parties have presented evidence of recent and past anticompetitive behavior by Pacific and its parent, SBC, in California and elsewhere in the nation. They have also presented evidence of current and past behavior by Pacific that can most appropriately be characterized as "aggressively competitive" rather than anticompetitive in fact.

Our record includes documents regarding a 1996 federal lawsuit that AT&T, MCI[389] and Sprint brought against Pacific and its affiliates, seeking among other things "a preliminary injunction preventing Pacific's planned use of the long distance carriers' billing information in connection with the Pacific Bell Extras program.[390]" (*Id.* at 28-29.) On July 3, 1996, the U.S. District Court for the Northern District of California found for the interexchange carriers on three grounds[391] and granted their preliminary injunction. The court's order was

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[389] Prior to its merger with WorldCom.

[390] As described by AT&T, the program "awarded 'points' to customers for every dollar billed by Pacific, including long distance services provided by AT&T and other interexchange carriers. Before the customer could receive points, however, Pacific required the customer to complete an 'enrollment' form. Buried at the bottom of the form, in tiny print, was language that purportedly 'authorized Pacific to use 'any and all' information from the customer's telephone bill for any purpose it wanted, and further authorized Pacific to provide information to any of its affiliates, including its long distance affiliate, Pacific Bell Communications. There were no restrictions on how Pacific and its affiliates could use the information." (AT&T's Opposition to Pacific's Section 709.2 Showing at 28.)

[391] 1) A breach of the billing agreements; 2) "a violation of section 222(a) of the Communications Act of 1934, as amended by the 1996 Act, which requires every telecommunications carrier to protect the confidentiality of proprietary information of

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subsequently appealed to the U.S. Court of Appeals for the 9th Circuit, which remanded the case to the District Court for further hearing. The matter was settled prior to that hearing.

The record also includes statements recounting the December 2000 jury verdict in the CalTech International Telecom Corporation (CalTech International) proceeding:[392] which found Pacific liable for unlawful monopolization of the local exchange telephone market in California under 15 U.S.C. § 2 and awarded money damages to CLEC CalTech International. The parties ultimately settled the case, and a judgment was not entered against Pacific.

Pacific replies that the competitors have collected a series of past occurrences, anecdotal complaints and disgruntled policy views to support their position. We find that the record contains more than that. Although eventually settled, the two federal court proceedings present findings of anticompetitive conduct. The case regarding AT&T, MCI and Sprint also involved the "unfair use of customer contacts generated ... by the provision of local exchange telephone service." (Section 709.2(c)(2).) The CalTech International case found "unlawful monopolization," and was rendered less than two years ago. Still, even if we were to consider these two cases too remote for consideration, this record contains matters that **we** must weigh in their stead.

The parties have presented evidence of Pacific's joint marketing plans as well as future opportunities of which Pacific will take advantage to the detriment of its local and intrastate long distance competitors. Pacific's response to the joint marketing allegations and the substantiating evidence submitted is to

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other telecommunications carriers"; and 3) a misappropriation of trade secrets in the form of proprietary billing databases. (Id.)

[392] Case No. 97-2105-CAL.

state that its proposed marketing plan is consistent with § 272 of TA96. We are mindful that federal law does not proscribe Pacific jointly marketing PBLD's service to its inbound callers; and that joint marketing of incumbent long distance services is the tradeoff for Pacific to provide competitors access to its unbundled local network facilities at regulated rates. However, we differ from the FCC's view that permitting the incumbent to joint market its long distance affiliate's services to incoming callers is a harmless and nondiscriminating advantage. Specifically, we are mindful that unrestricted use of customer contacts could be unfair and jeopardize customer service. However, there are ways of addressing this issue through marketing rules and equal access disclosure.

Pacific's Tariff Rule 12 requires Pacific to resolve a customer's service request, indicate that the order is complete, seek permission to present marketing information on other services, and present marketing information only if the customer agrees.[393] This rule also precludes Pacific from forcing customers to listen to marketing pitches or to be subject to CPNI release requests while they are placed on hold prior to reaching a customer service agent. This rule was specifically designed and recently enacted to protect customers from abusive marketing practices, such as one described by a CLEC witness.[394] Clearly, Tariff Rule 12 will apply to Pacific's joint marketing of long distance services, including long distance service packages. We clarify how Pacific must apply Tariff Rule 12

[393] Pacific Tariff A.2 2.1, Rule 12, effective May 2002, adopted in Decision No. 01-09-058, The Utility Consumers' Action Network vs. Pacific Bell.

[394] Pac-West/WA Brief at 21; Selwyn Affidavit ¶¶ 54-55.

during a customer's PIC/LPIC selection when establishing a new phone line.[395] Per Tariff Rule 12, Pacific must "first provide the service requested by the customer and describe options for purchasing any requested service beginning with the least expensive option" for each service - such as when establishing a new phone line, where the representative guides the customer through the selection of basic service type, installation of inside wire (if necessary), identifying the PIC/LPIC selection, assigning a telephone number, providing an installation date, and quoting the monthly recurring and non-recurring charges - prior to marketing of optional vertical services and packages including optional services. Because establishing a new line is a customer service request, during the critical PIC/LPIC selection phase (as in the entire phase) Pacific is prohibited from marketing its optional or affiliate services unless specifically requested by the customer.

[395] Tariff Rule 12 requires Pacific to "first provide the service requested by the customer and describe options for purchasing any requested service beginning with the least expensive option".

Pacific's entry into the long distance market does not absolve it of competitive equal access responsibilities when establishing a customers new service connection. Such responsibilities require that it market its affiliates interLATA services to an "inbound caller" subject to the condition that it "also inform [ ] such customers of their right to select the interLATA carrier of their choice"[396] We clarify that Pacific must inform customers of their right to select an interLATA carrier of their choice prior to stating that they offer long-distance services. Specifically, we adopt the following language, "You have many companies to choose from to provide your long distance and local toll service including (Pacific Bell Long distance). If you like, I can read from a list of available carriers and provide their telephone numbers." We clarify that Pacific must also provide an opportunity for the customer to make their selection, thereby Pacific must follow the prior statement with the question, "who would you like **as** your long distance carrier and local toll carrier?" Further, Pacific must respect the selection of the customer should the customer select another long-distance service provider. If the customer requests or selects PBLD as the provider, Pacific, per Tariff Rule 12, must describe the calling plan with the lowest price – e.g., having the lowest monthly recurring cost. The Tariff Rule 12 requirement ***to*** distinguish customer service from marketing shall not **be** abrogated as a result of Pacific being granted 271 authority. Unless, specifically requested by the customer, Pacific's opportunity to market optional services and bundled service calling plans, per Tariff Rule 12 is prohibited until completing

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[396] 11 FCC Rcd. At 22046. P 292. In its South Carolina Order, the Commission concluded that a BOC may market its long-distance affiliate's service during inbound calls as long as it also "offers to read, in random order, the names and, if requested, the telephone numbers of all available interexchange carriers." South Carolina Order, 13 FCC Rcd at 671-72, P239.

the entire customer service request. Further, we clarify that use of the term "long-distance" does not assume "local toll". This particular regulatory nuance will hopefully change as industry structures and regulatory practices catch up with popular notions of what constitutes long distance service. Until such time, Pacific must clearly receive a customer's agreement for long-distance service (PIC) and local toll (LPIC) before changing a PIC and LPIC.

In its written submissions and its oral presentations responding to the other allegations that it will wield its pivotal bottleneck role with increasing financial and market share self-interest, Pacific generally scoffed at the suggestions that it would ever do such things. Pacific rarely acknowledged the possibility that its future actions might be anything but proper. As noted above, its one concession to the pessimistic perspective was its counsel that anticompetitive behavior would be captured and sanctioned in accordance with the performance incentive plan. Pacific was silent as to the inference that we should take from the millions of dollars[397] that SBC's affiliates have paid to the FCC for variously failing to meet the required performance obligations under the Ameritech Merger Conditions.

Quite frankly, the voluminous record in this proceeding reveals several aspects of Pacific's behavior: some positive, some negative. However, the record does not support the finding that there is no possibility of anticompetitive behavior by Pacific Bell. Regulatory enforcement of our rules and oversight of Pacific's activities does provide a reasonable check on such possibilities.

E. No improper cross subsidization

[397] AT&T reported in August 2001 that SBC had thus far paid $23 million in penalties. (AT&T Opposition to Pacific's § 709.2 Showing at 35.)

1. Does the record support the determination there is no improper cross-subsidization of intrastate interexchange telecommunications service by requiring separate accounting records to allocate costs for the provision of intrastate interexchange telecommunications service and examining the methodology of allocating those costs? (§ 709.2(c)(3))

Pacific argues that the separate affiliate safeguards of TA96's Section 272, which were designed to prevent any cross-subsidization, are more comprehensive than the provisions of Section 709.2(c)(3). Section 709.2(c)(3) addresses the need to prevent "improper cross-subsidization" of intrastate long distance service by requiring "separate accounting records to allocate costs…" In addition to other safeguards not contained in the state law, § 272(b) specifically addresses separate accounting. It requires Pacific's long distance entity to maintain "books, records and accounts... which shall be separate from the books, records and accounts maintained by the Bell operating company of which it is an affiliate." Further, those books, records and accounts must be maintained in the manner prescribed by the FCC. (Pacific § 709.2 Compliance Brief at 9-10.)

Pacific points out that the FCC has issued its own comprehensive rules addressing the above requirements in the *Accounting Safeguards Order.*[398] It also advises that TA96 imposes a joint federal/state audit requirements to ensure compliance with the accounting and structural safeguards and the FCC rules implementing safeguards, with the results reported to the FCC as well as the CPUC. The CPUC ordered, in the *PB Com* proceeding, a further audit to be conducted as part of the joint FCC audit or as a separate audit for compliance

[398] *In the Matter of Implementation of the Telecommunications Act of 1996; Accounting Safeguards Under the Telecommunications Act of 1996, Report and Order, 11* FCC Rcd. 17539 (1996).

with the CPUC's affiliate transaction and cost accounting rules. (*Id.* at 11; Young Declaration Exhibit C at 55-56.) Pacific submits that these clearly satisfy the accounting requirements of § 709.2.

In its written and oral submissions, Pac-West/WA detailed confidential portions[m] of PBLD/Pacific's proposed joint marketing plan in support of its position that Pacific is structuring its long distance affiliate to enable cross-subsidization.[400] It presented putative training scripts and business plans designated for "Attorney Only" viewing. (Pac-West/WA at 19-24.) Pac-West/WA contends that, if implemented, Pacific's joint marketing schemes could lessen ratepayers' choices without their knowledge and keep long distance prices up. (*Id.* at 21.)

WorldCom accuses Pacific of price squeezing: particularly in its 800 query or "800 database Service" charges. It also claims that California's imputation standard is not sufficient to protect competition in the state. (WorldCom at 88-93.)

2. Discussion

Section 709.2(c)(3) requires us to determine that there is "no improper cross-subsidization of intrastate interexchange telecommunications service by requiring separate accounting records to allocate costs for the provision of intrastate interexchange telecommunications service and examining the methodology of allocating those costs." In the PB Com proceeding, we

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[399] Relevant sections of the pleadings, affidavits, and transcript have been sealed.

[400] Pac-West also offers the plans in support of its position that Pacific's entry into the long distance will substantially harm the competitive intrastate long distance market.

[401] The parties argued that the prevailing switching and loop UNE prices further contributed to the price squeeze that Pacific exerted.

considered the record before us, including prevailing federal policy, over a period of close to three years.[402] In short, the proceeding was anything but static. The proposed joint marketing by Pacific and PBLD of PBLD's long distance services was a controversial issue that we ultimately resolved in conformance with the FCC's CPNI and Non-Accounting Safeguards Orders.

At that time, we were persuaded that Pacific would need to compete aggressively in order to gain a hold in the long distance market. We were also willing to believe that joint marketing on inbound calls from Pacific customers struck an appropriate balance between the opening of the local market and the additional interconnection and unbundling requirements of TA96. Likewise in our decision, we acknowledged and followed the FCC's rationale in the CPNI Order[403] that "this 'total service approach' offers convenience for the customer while preventing use of CPNI in ways the customer would not expect." (1999 Cal. LEXIS 13, 67.)

Time and documentary evidence have better informed our views. Nationally, the RBOCs have proven themselves to be formidable entrants into the long distance market. SBC-LD currently serves over 2.8 million access lines in Texas, Kansas and Oklahoma, three states in its region where it has authority

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[402] Pacific applied for the certificate and evidentiary hearings were held in 1996; the record was reopened in 1997 to receive supplemental evidence; proposed and alternate decisions were issued and withdrawn in 1997; the record was again reopened and further briefing was entertained in 1998; and the decision was issued in 1999.

[403] Under the FCC **rules,** before ILEC representatives may refer to customer proprietary records to market the long distance affiliate's service, they must ask the customer for permission to do so. Customer authorization may be granted orally, in writing, or electronically. In order to ensure that customers are informed of their statutory rights before granting approval, carriers are further required to provide a one-time notice of customers' CPNI rights prior to any solicitation for approval. (CPNI Order ¶¶ 53-57.)

to offer interLATA services. It reached this amount one year after winning 271 approvals.[404] Pac-West/WA declares that through its position as the incumbent, SBC-LD obtains marketing access to millions of potential interLATA customers at a cost that is far below either the cost to the RBOC to produce the joint marketing service, or the fair market value of that service.[405]

They assert that Pacific's proposed marketing agreements indicate that this strategy will be used in California. According to Pac-West/WA, the cross-subsidy will occur when Pacific is not properly compensated for its joint marketing services, to the economic detriment of the local ratepayers. In reply, Pacific does not focus on the costing elements of its proposed marketing scheme. Instead, it reiterates that its joint marketing agreement with PBLD is in accordance with TA96 and the CPUC's decisions.

We held oral arguments on § 709.2; but we did not have evidentiary hearings. While our examination of the documents submitted in this proceeding show a difference in the proposed joint marketing plans of the PB Com proceeding and the 2001 proposed joint marketing plans, the documents were not compared and analyzed through cross-examination. In 1996 and 1997, Pacific presented costing support for its joint marketing proposal that we found satisfied our affiliate transaction rules. We note that Pacific has stated that its current plans have not yet been thoroughly studied by its legal department. Pac-West/WA's costing discussion and comparison regarding the proposed joint

[404] "SBC Communications, Investor Briefing No. 226, 7 (July 25, 2001)."

[405] Pac-West/WA states that new customer acquisition costs are commonly known in the industry to range from $300-$500. It documents that Pacific's proposed plans show that PBLD will pay Pacific approximately $3.54 per sale to consumer and nothing for sales attempts. (Stephen C. Gunn Affidavit at 17.)

marketing plan demonstrates cross-subsidization, may exist, and we find it very troubling.

Accordingly, we will require Pacific to carefully track the time its customer representatives spend marketing PBLD's services regardless of whether the marketing was successful or not, and to routinely re-examine and report this cost element in its affiliate transaction report each year. As our confidence in non-structural safeguards has waned significantly over the past years, we will request Commission staff to audit Pacific's joint marketing arrangement with PBLD as part of its next schedule audit in compliance with Section 314.5 and 797.[406] At a minimum, we would expect this audit would verify the creditability of Pacific's time records and resulting cost allocations to PBLD. We will require Pacific to pay for all costs associated with this audit (and allocate them appropriately to PBLD), including reimbursements to the Commission for any audit consultant fees incurred. Should the audit uncover cost allocation or other improprieties from the joint marketing arrangement between Pacific and PBLD, we will not hesitate to take the strongest action. As staffing permits, Commission staff may also seek to participate with the FCC on accounting safeguard audits covering joint marketing issues between Pacific and PBLD.[407]

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[406] Section 314.5 directs the Commission to audit the books and records of corporations under its jurisdiction every three years, whereas Section 797 directs the Commission to audit affiliate transactions of those corporations.

[407] The Commission stated in D.99-02-033, "Section 272(d) of the Telecommunications Act requires that a Bell affiliate like PB Corn Shall obtain and pay for a joint federal/state audit every two years conducted by an independent auditor to determine whether such company has complied with the accounting and structural safeguards required by the Act, and to report the results of that audit both to the FCC and this Commission." (Application of PB Corn for a Certificate of Public Convenience and Necessity to Provide InterLATA, IntraLATA and Local Exchange Telecommunications Services Within the State of California, p.55.)

The record before us simply does not support the finding that there is no possibility of improper cross-subsidization anywhere within Pacific's proposal to provide long distance telephone service within California. Rather, the record includes documents that purport to show compliant costing allocations as well as documents that purport to show inappropriate allocations and underlying methodology. **As** of this date, the mandated audits have not yet been performed. However, we do find that our requirements for separate accounting records and for the examination of the cost allocation methodology for the provision of intrastate interexchange telecommunications service, pursuant to our affiliate transaction and cost allocation rules and O.P. 8 and 18 of D.99-02-013,[408] will be integral in preventing, identifying and eliminating improper cross-subsidization.

F. No Substantial Possibility of Harm From Pacific's Entry

1. Does the Record Support the Determination that there is No Substantial Possibility of Harm from Pacific's Entry into the Long Distance Market? (§ 709.2(c)(4))

Pacific asserts that the CPUC resolved this issue in the PB Com proceeding. In doing so, it addressed the initial claims of the competitors', granted PB Com's CPCN application subject to various conditions, and

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[408] O.P. 8 states, "[t]he authority granted today is conditioned upon a periodic audit to be conducted, at SBCS expense, under auspices of the Commission's Office of Ratepayer Advocates (ORA) of SBCS's compliance with the Commission's affiliate transaction rules and cost allocation rules. The ORA is directed to consult with the Federal Communications Commission (FCC) Common Carrier Bureau to coordinate the audit with the joint FCC/state audit to be conducted by the Common Carrier Bureau."

O.P. 18 states, "SBCS shall keep its books and records in accordance with the Uniform System of Accounts specified in Title 47, Code of Federal Regulations, Part 32."

concluded that Pacific's entry into long distance markets was beneficial. (Pacific at 12.) Pacific states that the CPUC "found that 'before it authorizes intraLATA long distance' service, it had to determine 'that there is no substantial possibility of harm to competitive intrastate telephone markets.'[409]" *(Id.;* Young Declaration, Exhibit E at 1.) Pacific maintains that since the CPUC denied AT&T and WorldCom's applications for rehearing in the PB Com case, the competitors cannot relitigate the 709.2 issues here. Finally, Pacific notes that "[c]laims of harm to competition and/or competitors are generally raised at the FCC in connection with its public interest analysis of section 271 applications." *(Id.* at 11-12.)

AT&T maintains that Pacific's monopoly control of the local exchange market gives it the ability to harm interexchange competition. (AT&T at 21-27.) Moreover, access charges that are not cost-based, such as the Network Interconnection Charge, represent an anti-competitive price squeeze, if Pacific's long distance affiliate sets its in-region interexchange prices at or below its access prices and forces competitors to operate at a loss or face losing market share. *(Id.* at 22-23, 40-41; WorldCom at 27-30, 36-40.) SBC and Pacific have abused market power, in California and elsewhere, in the past and do so now. *(Id.* at 27-36.) These abuses include the 1996 "Pacific Bell Extras" program, described above, which inappropriately authorized Pacific to provide CPNI to its affiliates including its long distance company, thereby violating § 222(a) of TA96 as well as CPNI-related agreements between Pacific, AT&T, WorldCom and Sprint. The

[409] Citing Finding No. 14, D.99-02-013, *mimeo.* at 63.

court enjoined Pacific for these actions.[410] (*Id.* at 28-30.) In 2000, a California jury found against Pacific in an antitrust suit[411] for violating 15 U.S.C. § 2.[412] (*Id.* at 31.)

AT&T also argues that once interLATA equal access was implemented in California the intraLATA toll PIC (LPIC) disputes rose significantly. In response, the CPUC's Consumer Services Division (CSD) requested an audit of intraLATA LPIC disputes at Pacific's expense. (*Id.* at 30.)

AT&T alleges that Pacific limits competition by gating interconnection trunks by CLEC per day. It further insists that SBC has shut competition out of its advanced services markets. (*Id.* at 31-32.) Finally, it criticizes the pace at which Pacific has addressed the over 20 operational deficiencies reported by the CLECs during the April 2001 operational hearings. (*Id.*, Attachment G.)

2. Discussion

Section 709.2(c)(4) requires us to determine that there is "no substantial possibility of harm to the competitive intrastate interexchange telecommunications markets." Pacific's primary position on § 709.2 has been to assert that the CPUC already reached the central issues in its PB Com case in 1999. Consequently, Pacific painstakingly examined and interpreted PB Com's record and decision, arguing in the alternative, that its § 271 showing equally satisfied its burden of proof under § 709.2. Still, Pacific was able to present neither findings, conclusions of law, nor ordering paragraphs to support its case. We find that, particularly with respect to § 709.2(c)(4), Pacific failed to show that there is no substantial possibility of harm to the competitive intrastate

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[410] This matter was settled out of court.

[411] Case Number 97-2105-CAL.

[412] The parties also settled this case.

interexchange telecommunications market by its long distance entry in California.

The interexchange carriers argue that there is an inherent tension caused by the fact that Pacific will serve as a neutral PIC administrator after its long distance affiliate enters the intrastate interexchange telephone market. That tension is between Pacific's duty to administer PIC changes in a competitively neutral way and its interest in winning customers. During oral argument, AT&T's counsel stated: "This means that when Pacific enters the long-distance market, it has control of the customers' vital telecommunications records, and the interexchange carriers have to trust Pacific to not only execute the carrier switches in an unbiased manner, which is the PIC change, the resultant possibility of PIC disputes, but also exchange information in an unbiased manner also." (Section 709.2 Tr. at 152, ll. 4-10 (December 5, 2001).)

In response, Pacific failed to offer any assurance that it would perform its LPIC role with any safeguards of neutrality or sensitivity to competitor concerns. Pacific's counsel replied to the competitors' call for a third-party PIC Administrator with the comment during oral argument that he was "... frankly confused about how a third-party PIC administrator would solve the problems that Mr. Deutsch described. I still have the same questions. Mr. Deutsch said that in the long run a third-party PIC administrator will cut down on PIC disputes and cut down on slamming allegations. That is where I really get lost because he talked about Pacific calling a customer when that customer leaves Pacific and goes to another carrier. We are going to continue to do that even with a third-party PIC administrator." (*Id.* at 175, ll. 13-15; 176, ll. 7-13.) The limited CSD audit indicates that there were problems with a significant

percentage of Pacific's reporting of intraLATA LPIC disputes after we approved intraLATA competition.[413] Pacific denies that there were problems.

There is no allegation, nor evidence that in the competitive intraLATA marketplace Pacific failed to switch an LPIC as requested by a competitive carrier. We trust Pacific will administer PIC assignments presented by its competitors in the same manner as it has for LPICs, just as we trust CLECs to administer their PIC and LPIC assignments requested by their competitors.

However, we are concerned about certain PIC administration related issues raised by AT&T. There is a reasonable question as to the appropriateness of relying on Pacific to determine a PIC/LPIC dispute, and to assess a slamming switching fee onto competing interexchange carriers.'" Further, it is reasonable to question the appropriateness of the Commission's enforcement staff continued reliance on Pacific's PIC dispute reports.[415] We find that absent competitively neutral and nondiscriminatory PIC dispute reporting and administration there is a possibility that the interstate interexchange market will be harmed through increasing carrier conflicts.

The significant advantage afforded Pacific's long distance affiliate by Pacific's ability to market its affiliate's service to several million incoming customer service calls per year from its existing local service customers will

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[413] Complaint case C.99-12-029, and counter claim C. 00-02-027, allege slamming between AT&T and Pacific. The draft decision finds error with some PIC disputes and orders a thorough audit.

[414] Pacific Bell Tariff, CAL PUC 175-T, 6th Revised Sheet, 595-D.

[415] The Commission, in D.OO-03-020 established complaint reporting rules for billing telephone companies, and limited service provider change requests to be submitted within 90 days after the customer's authorization. The Commission requires billing telephone companies to report PIC disputes of all carriers for which it bills including its affiliates.

unquestionably affect the other interexchange carriers. No other interLATA competitor in California has any similar massive opportunity to address incoming calls from potential interLATA customers. PBLD's potentially swift dominance of the intrastate interexchange telephone market could detrimentally impact competition in that sector, However, PBLD's gains will to some extent be moderated by interexchange carrier entry into the local telephone market.

Overall, the interested parties are pragmatic in their proposals regarding what the CPUC should do if it is not able to affirmatively render the determinations required pursuant to § 709.2. Contrary to expectations, they do not all urge us to defy our findings pursuant to § 271 in favor of our § 709.2 findings. Instead, they acknowledge that in reading § 709.2 in conjunction with § 271, we should look to ways in which we can align our state public interest findings with our federal technical assessment.

Our findings under § 709.2 reflect the considerations that California law requires **us** to weigh and balance. While Pacific largely satisfies the technical requirements of § 271, in accordance with § 709.2, we cannot state unequivocally that we find Pacific's imminent entry into the long distance market in California will primarily enhance the public interest. Local telephone competition in **California** exists in the technical and quantitative data; but it **has** yet **to** find its way into the residences of the majority of California's ratepayers. Only time and regulatory vigilance will determine if it ever arrives. We expect that the public interest will be positively served in California by the addition of another experienced, formidable competitor in the intrastate interexchange market. At the same time, we foresee the harm to the public interest if actual competition in California maintains its current anemic pace, and Pacific gains intrastate long distance dominance to match its local influence.

The interested parties do not ask **us** to bar Pacific's entry into the intrastate interexchange market. Instead, they ask us to apply conditions that

they contend will counter the potential harm that Pacific poses to the interLATA market. First, they urge us to seriously consider the complete structural separation of Pacific into two parts[416] and the divestiture of Pacific Wholesale. They contend that this is most likely to result in increased competition in both California's local and interLATA telecommunications markets. They also report that a recent Senate bill includes an RBOC structural separation proposal,"[417] and structural separation investigations are taking place in a dozen states.

During oral argument, the interested parties acknowledged that structural separation would be neither swift nor inexpensive. Consequently, they propose that the CPUC take a gradual and phased approach starting with a feasibility study that would set forth the costs of the structural separation plan. At present, we have Pacific's out of hand dismissal of the proposal, but no responsive substantiating data. Therefore, we find that the preparation of such a study would be reasonable, and direct Pacific to file six months from the effective date of this decision a report or study detailing the costs of separating Pacific into two parts and divesting the segment covering wholesale network operations. Interested parties shall have an opportunity to review the study or report and comment on it. Following our review of the study and comments, we shall advise whether structural separation appears feasible or not, and we shall determine whether to hold evidentiary hearings on the study.

The interested parties also propose that we investigate the costs and feasibility of selecting a competitively neutral third-party PIC administrator.

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[416] Wholesale network operations (Pacific Wholesale) and retail marketing service provision (Pacific Retail).

[417] Telecommunications Fair Competition Enforcement Act of 2001, S. 1364, 107th Congress. (Pac-West/WA at 28.)

Again, the interested parties acknowledge that the appointment of a neutral third-party administrator is not an immediate step that the CPUC can or should take."[418] Like the structural separation plan, the issue of the neutral third-party administrator requires analysis, discussion, and a strategy. As stated above, Pacific's dismissive rejection of the interested parties' proposals lacked not only supporting data but also any willingness to address the parties' concerns or perceptions.

Moreover, we are mindful that at one time the RBOC was the presumed administrator for numbering. With time, this presumption changed. A neutral third-party administrator may be necessary in the new environment. Accordingly, we find that it is reasonable to investigate the costs and feasibility of selecting a competitively neutral third-party PIC administrator. We direct the Telecommunications Division staff under the supervision of its Director to prepare for consideration on the CPUC's meeting agenda, an Order Instituting Investigation to examine the efficacy, feasibility, structural implementation, and selection criteria for selecting a competitively neutral third-party PIC administrator for California, no later than five months from the effective date of this order.

Finally, the interested parties' offer several proposals to counter the significant advantage that PBLD will have as a result of its joint marketing arrangements with Pacific. First, they call on the CPUC "to order Pacific to establish a separate sales force to handle Pacific Bell long-distance service sales." (Id. at 145, l. 28-146, ll. 1-2.) WA notes "[s]ubtle messages, slight suggestions of

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[418] Although Pac-West/WA press for the independent third-party PIC administrator to be "established and operational prior to the commencement of retail long-distance services," we find such a schedule to be impractical and unreasonable. (Section 709.2 Tr. at 145, ll. 3-5.)

possible complications or delay due to the use of competitor services, access to CPNI that is not available to competitors, and similar obvious possibilities of abuse are of the nature that the regulatory process will be unlikely to monitor or control." (Id. at 146, ll. 22-27.) Second, as a more moderate solution, the interested parties suggest that Pacific be required to establish a separate telephone number for end-users to call on their own if they want Pacific's long distance affiliate's services. With a separate number, the consumer is in control and not potentially coerced into changing interexchange carriers. In fact, he or she could call any interexchange carrier. The interested parties envision script-only changes under this option, which avoids subjecting customers who call in seeking unrelated customer service to unwanted marketing efforts. Third, they encourage us to permit Pacific representatives to "offer to provide a warm transfer, an on-the-same-call transfer, to an interexchange carrier of the end-user's choice. Either Pacific Bell Long Distance or any other interexchange carrier who is willing to participate can pay the same cost." (*Id.* at 146, ll.18-24.)

Pacific insists that federal law permits its joint marketing. Yet, it offers no other defense of the substantial marketing advantage that it has over the interexchange carriers. We note that the PB Com Decision specifically "permits the Pacific Bell representative to directly market the affiliate's Long Distance service and, with the verbal consent of the customer, to access the customer's Proprietary records."[419] The PB Com Decision preceded recent Tariff Rule 12 revisions which impact how and when Pacific can market its affiliate services. We reject proposals to establish a separate sales force to market Pacific's long distance service on outgoing calls and on incoming calls to Pacific Bell. The Telecom Act identified a tradeoff in opening all markets to competition - where

[419] PB Com, p. 52.

incumbents would open their network facilities to competitors at regulated rates in trade for the ability of the incumbent to joint market its long distance services. Further, we find that the Tariff Rule 12 marketing restraints applicable to Pacific and its long distance affiliate's joint marketing, and the requirement for Pacific to track and report its marketing of long distance service, and for staff to initiate an audit of Pacific's affiliate transaction marketing costs are sufficient to protect customers from unwanted and abusive marketing, and to prevent harm to California's intrastate interexchange telecommunications market due to cross-subsidy. The Commission will closely monitor Pacific's marketing activities and will use its statutory authority if Pacific fails compliance.

VII. Conclusion

Pacific has demonstrated through its satisfaction of twelve of the fourteen checklist items of § 271, compliance with a significant majority of our D.98-12-069 technical requirements, positive OSS Test results, and generally strong performance results that it has vastly progressed in opening access to its network in the more than three years since we drafted our blueprint to long distance authorization. While Pacific's progress has been vast, it has been neither perfect nor complete. We are keenly aware that § 271 authorization does not require perfection; yet, Pacific's less than complete progress has given California technical, not actual, local telephone competition. Pub. Util. Code § 709.2 requires us to not only foster local telephone and local long distance competition but also to assess their impacts on the intrastate interexchange telecommunications market. And, we do so here not to thwart Pacific's § 271 quest, but to fulfill our obligation to safeguard California's telecommunications market as best we can. Thus, pursuant to Pacific's compliance with the directives set forth in our Order today, we grant its renewed motion for an Order that it has

satisfied a substantial majority of the 14-point checklist in § 271 of the Telecommunications Act of 1996.

VIII. Comments on Draft Decision

The draft decision of ALJ Jacqueline Reed in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Commission's Rules of Practice and Procedure. Comments were filed on August 12,2002, and reply comments on August 19,2002. We have reviewed the comments, and taken them into account, as appropriate, in finalizing this order.

In conjunction with their comments on the DD, a number of parties[420] who had not filed appearances in this proceeding prior to the issuance of the DD sought to intervene. At this juncture, we do not find it appropriate to grant these post-submission and post-issuance requests, some of which seek to introduce new evidence. However, we shall place all such comments in the Correspondence file for this docket. Therefore, the various motions for post-submission and post-issuance intervention are denied.

The alternate draft decision of Commissioner Geoffrey Brown was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Commission's Rules of Practice and Procedure. Comments were filed on September 12,2002, and reply comments on September 17,2002. Parties filing comments on the Brown Alternate Decision included AT&T, Greenlining/LIF

[420] On August 12,2002, the California State Conference of the National Association for the Advancement of Colored People, the Community Technology Policy Council, and U.S.TelePacific Corp. moved to intervene and concurrently submitted opening comments on the DD. On August 19,2002, Teltrex Management Corp. d/b/a as Creative Interconnect Telemanagement and the Communication Workers of Cap America also moved to intervene in conjunction with its submission of Reply Comments on the DD. NeuStar, Inc. and the Commission'sConsumer Protection and Safety Branch submitted opening and reply comments, but did not seek to formally intervene.

jointly, TURN/ORA jointly, PAC-West/Working Assets/XO jointly, Pacific and Worlcom. The parties' comments have been reflected, as appropriate, in the final decision adopted by the Commission.

Findings of Fact

1. Pacific seeks FCC approval to enter the California interLATA market under 47 U.S.C. § 271(c)(1)(A), which requires it to show the presence of a facilities-based competitor.

2. On March 11,2002, ORA filed identical motions in this docket and the docket considering the review of the regulatory framework under which Pacific operates, the New Regulatory Framework (NRF), seeking to lift the suspension on Pacific's sharing mechanism under NRF, and urging the Commission to "suspend processing" Pacific's application for Section 271 approval as an apparent sanction for behavior of Pacific's in the NRF Review proceeding that it deemed anticompetitive, dilatory and defiant.

3. The CPUC has approved, pursuant to § 252 of TA96, 166 binding interconnection agreements between Pacific and unaffiliated competing providers of telephone exchange service.

4. In 1998, CPUC staff tabulated business and residence data for six facilities-based competitors and found they served about 60,000 access lines in California.

5. In its July 1999 compliance filing, Pacific asserted that based on the number of resold lines and facilities-based E911 listings, CLECs had won over 819,000 access lines in its California service areas.

6. In 2001, Pacific identified 47 California facilities-based carriers providing service: forty-one provide local voice service, while the remaining facilities-based carriers appear to provide data or Digital Subscriber Line (DSL) services that, at their option, may be deployed for voice grade service.

7. We concur with staff's earlier assessment, and find that Pacific has met the requirements for providing service to a facilities-based competitor.

8. D.98-12-069 directed Pacific to demonstrate compliance with technical requirements covering seven topics under Checklist Item 1.

9. Pacific has 13 performance measurements with sub-measures that specifically assess performance for the ordering, provisioning and maintenance of interconnection trunks (##2, 5, 7, 8, 11, 12, 13, 14, 16, 19, 20, 21 and 23).

10. Measures 24 and 25 demonstrate the quality of CLEC interconnection to Pacific's network, gauged in terms of blocking levels on both common transport and Pacific-controlled interconnection trunks.

11. Pacific met the performance standard for Measure 24 (the percentage of common transport trunk groups experiencing blocking) in each of the 12 months preceding its June 2001 filing.

12. Similarly, Measure 25, which evaluates blocking levels on Pacific-controlled CLEC interconnection trunks, indicates that Pacific has met the parity standard and that no blockage has occurred over the past eleven months.

13. Pacific met or surpassed the applicable performance standards for 95% of the provisioning performance measurements from February through April 2001, missing only four of 78 opportunities.

14. The competitors continued to report provisioning problems; however, the performance results failed to support the reputed problems.

15. Pacific and the competitors appear to have not yet developed performance measures to accurately assess some of these problems. Thus, the provisioning problems are difficult to evaluate.

16. Validly reserved space should not be relinquished for a building expansion contingency.

17. Pacific's provision of floor plans at the time of space denial should enable carriers to more expeditiously determine alternative spaces.

18. Based on the performance results, Pacific is timely managing requests for collocation space and installing collocation arrangements.

19. The record shows that Pacific currently is offering physical and virtual collocation at interim prices subject to true-up, pending our final determination on permanent rates, terms and conditions in the OANAD proceeding.

20. Pacific's response regarding the daily limit on trunking installations is reasonable; however, we expect Pacific to further follow the lead of its corporate siblings and work vigilantly to relieve any developing blockages through cooperative planning with AT&T and other affected CLECs.

21. Limiting CLECs to twelve IP addresses is a discrete network management matter, which does not pose a significant competitive barrier.

22. AT&T's claim that it was forced to designate trunk termination at its switch location, rather than the facility termination location, appears an isolated problem, and Pacific's response appears reasonable.

23. It is appropriate that Pacific move the contested issue of establishing where a CLEC switch is within the LATA, but outside Pacific's service area (Accessible Letter CLECC01-127) into the technical collaborative group.

24. Pacific provides collocation and trunking consistent with the requirements of §§ 251(c)(2) and 252(d)(1); that is, at any technically feasible point, at least equal in quality to that provided to itself, and at reasonable nondiscriminatory rates.

25. D.98-12-069 identified five key issues within Checklist Item 2, and directed Pacific to show compliance: (1) general access to UNEs; (2) UNE combinations; (3) intellectual property concerns; (4) nondiscriminatory access to OSS, and (5) pricing.

26. In 2001, interested parties focused most intensely on nondiscriminatory access to OSS and pricing.

27. On June 17,2002, XO, Tri-M Communications Inc., d/b/a TMC Communications (TMC), and Anew Telecommunications Corporation d/b/a Call America (Call America) filed a motion in this proceeding for "leave to submit additional briefing and for a limited modification of the current prohibition on ex parte communications."

28. Regarding UNE combinations, our review of Pacific's ICAs, specifically those with AT&T and Level 3, indicate that the terms and conditions associated with Pacific's agreement to assemble new EEL combinations are more generous than the terms required under the *UNE Remand Order*, which addressed only existing combinations of loop and transport.

29. In 1998, we directed Pacific to submit its OSS test plan (the Master Test Plan or MTP) in this docket for review and comment.

30. Pacific filed its proposed MTP in January 1999.

31. In August 1999, following comments from TD staff and the interested parties as well as a two-week industry-wide collaborative workshop, the CPUC issued a finalized MTP setting up the test requirements and the need to have outside consultants assist in the test of the Pacific systems.

32. We supervised an evaluation of Pacific's OSS, including the interfacing process which allows CLECs to compete with Pacific in providing local telephone service.

33. These OSS include those that the FCC has determined are necessary for the mechanized CLEC interfaces for pre-ordering, ordering, provisioning, maintenance and repair and billing capabilities essential for CLECs to provide local service in Pacific's service areas.

34. The evaluation tested whether Pacific's OSS provides the CLECs parity or nondiscriminatory access with a meaningful opportunity to compete.

35. After issuance of the finalized MTP, the CPUC issued Requests for Proposals for teams to perform in the three significant roles of the OSS test: the TAM, TA, and TG.

36. The CPUC awarded contracts for the positions of TA and TAM to CGE&Y, and awarded the contract for TG to GXS.

37. The MTP provided the list of services to be tested.

38. CGE&Y generated the test cases and test scripts from the MTP and made necessary modifications.

39. CGE&Y also supervised the TG execution of the test cases and test scripts that they had created, and validated that the generated bills were correct.

40. CGE&Y formed a statistical team to trace and maintain performance measurement statistics based on the test effort.

41. Analysis of the test statistics determined the results of the test and compliance under § 271.

42. To execute the tests for the CPUC, GXS assumed the role of four Pseudo-CLECs and established the requisite manual and automated interconnections with Pacific for pre-ordering and ordering of various retail UNE products.

43. GXS designed and built the technical interface applications and established the processing infrastructure, including communication **links** and platforms to support the Pseudo-CLEC interconnection.

44. Pacific's OSS Test assessed the results of 1)Functionality Testing, 2) Capacity Testing and *3)* Performance Measurement Analysis.

45. The Functionality test's objective was to assess Pacific's readiness and capability to provide the CLECs with access to Pacific's OSS in order to perform pre-ordering, ordering, provisioning, maintenance and repair activities to customer accounts.

46. The Functionality test focused on the ability of the CLECs to access Pacific's OSS, perform pre-order queries, issue orders and receive responses back from Pacific.

47. A total of 2,975 LSRs were recorded as issued, out of which 2,615 completions were received.

48. M&R testing was performed to evaluate the performance of the two different electronic means of issuing trouble reports that Pacific provides to its CLEC customers: Pacific Bell Service Manager and the Electronic Bonding interface.

49. Pacific provides CLECs with several options for identifying and reporting customer service troubles and requesting and obtaining maintenance.

50. Pacific appears to be providing CLECs the same choices it has for pursuing a mechanized or manual approach to dealing with customers' M&R problems, since the means that CLECs have to open trouble tickets, perform a Mechanized Loop Test, check the status of an open trouble ticket, and check trouble history, are exactly those that are available to Pacific's retail operations.

51. In the spring of 1999, Pacific publicized and conducted joint meetings with resale and facilities-based CLECs about their M&R needs.

52. More recently, Pacific has been conducting broader and ongoing collaborative "User Forum" meetings where CLECs and Pacific deal with CLEC issues that can include M&R problems.

53. Reviewing data collected for the seven months from January through July 2001 shows there is a very solid parity trend in the case of 50 of the 85 (or about 59% of the) viable M&R submeasures.

54. The data appeared to show continuing CLEC failures in Resale Business POTS submeasures for I'M 20 in May and July (for "dispatched") and in May and June (for "not dispatched'), for PM 21 in March through July (for

"dispatched") and in June (for "not dispatched"), for PM 22 in May and July, and for PM 23 in June 2001.

55. Pacific has satisfied the specific OSS M&R related checklist requirements we set out for it in Appendix B to D.98-12-069.

56. The OSS test has shown that the M&R systems have basic functionality.

57. Still, month-to-month OSS M&R performance parity appears to be being achieved in the majority of instances, and seems to be growing.

58. We have incentives in place to help ensure that Pacific will not backslide in its effort to ensure this condition continues for the future.

59. The End-User Test was to generate usage and create billing from specified telephone lines at multiple test sites.

60. Overall, the EUT demonstrated that telephone calls could be made to generate usage and billing, and Pacific was able to provide dial tone, features, and services for each Pseudo-CLEC customer and telephone line used in the EUT.

61. The primary purpose of Bill Validation was to verify that Pacific, through CABS, was able to supply the CLECs with accurate and timely electronic and hard copy bills pursuant to the MTP.

62. Unless Pacific provides CLECs with OSS billing functionality comparable to the billing functionality that it provides for its own retail operations, these competitors' ability to operate effectively in the local telephone service market is significantly impaired.

63. Our record review indicates that through its "User Forums" with CLECs, where general issues, including billing issues, are raised and resolved, Pacific is demonstrating a clear commitment to maintain a process consistent with the CPUC directive to make collaborative efforts to identify (and resolve) any billing issues as they arise.

64. Pacific has properly complied with the CPUC directive to consolidate bill rounds.

65. Pacific has generally made the appropriate effort to resolve single bill-single tariff issues with CLECs as we directed in D.98-12-069.

66. The latest seven months of data, from January through July 2001, showed that there was a very solid parity trend in the case of 17 of the 29 (or about 59% of the) billing submeasures.

67. When the billing PM data were viewed over a three month time frame, and "parity" was redefined to mean that the CLEC aggregate performance showed sustained equivalence with Pacific performance over this period, the situation improved rather dramatically to 83% parity (24 of 29 submeasures in parity).

68. Overall, the CLEC aggregate billing PM data substantiate the conclusion that CLECs as a group are obtaining adequate OSS billing access.

69. The data also show that virtually all of the billing performance failures for CLECs in the aggregate that WorldCom points to in its August 2001 comments have been eliminated.

70. The numbers of PM submeasures in which CLECs in aggregate appeared to be failing to consistently achieve month-to-month OSS billing parity were relatively few at the end of July 2001 – only five of the 29 monitored.

71. The Capacity Test assessed whether the relevant Pacific OSS systems had sufficient capacity to handle the workload volumes required to support CLEC pre-order and ordering activities.

72. The total number of queries used in the Pre-order test was 42,762 of which 22% (9,299) were processed through the Verigate system and 78% (33,463) were processed through the application-to-application DataGate interface.

73. The mix of pre-order queries was established from a base of 7,340 LSRs that were used to test Pacific's order systems.

74. In general, CGE&Y and GXS found that the pre-orders transmitted to Pacific's system were processed and reported satisfactorily.

75. The pre-order test performance measures for Pacific were within the benchmarks required by the JPSA service levels.

76. For all query types, the average interval times were below the **JPSA** benchmarks set.

77. In sum, the order test count reconciliation did not identify any major count discrepancies between GXS and Pacific.

78. Orders transmitted to Pacific's order systems through the LEX and EDI interfaces were processed and reported satisfactorily.

79. CGE&Y and GXS found the order test performance measures for Pacific at capacity order volumes of 173% over their existing production baseline to be within the benchmarks required by the JPSA service levels.

80. Based on a trend analysis of Pacific's historical production volumes and a predicted ability of maintaining an approximate 1,000 orders/hour order rate, Pacific's systems have the capacity available to support production volumes for the next ten months.

81. The OSS Test report observed that Pacific kept a detailed eye on both volumetrics **and** responsiveness of its OSS.

82. Pacific uses its Change Management process to notify the CLECs of software enhancements.

83. **An** integral part of the CM process is the software implementation, which is performed in St. Louis, Missouri and San Ramon, California

84. OSS changes occur due to modifications requested by CLECs, system upgrades, and regulatory changes.

85. The OSS Test Report indicated that the CM process is quite solid and works well as defined for Pacific.

86. The Change Management Process for California was filed with the Commission as a JSA, and approved in D.99-11-026.

87. The CMP covers both application-to-applicationand GUI interfaces.

88. Pacific has incorporated a process called "versioning" into the CMP since mid-August 2000.

89. Under versioning, two consecutive versions of its software for EDI ordering and for EDI and CORBA pre-ordering interfaces (the current and previous versions of each) are up and running at all times so that a CLEC need not switch to the newer interface version immediately in instances where the timing of such an action would disrupt their use of the OSS.

90. Pacific's CMP interface test environment is adequate.

91. A comparison of the 13-state CMP contained in Pacific's August 2001 filing with the 8-state version in place during the OSS Test reveals that this latest version is a more thoroughly articulated document than the one we approved in November 1999.

92. Pacific appears to have responded to CMP issues raised by parties in this proceeding in a way that refutes or mitigates an adverse allegation, or the CLEC concern raised has been remedied as a result of the CMP's evolution.

93. While we agree the lack of comprehensive UNE-P over EDI interface testing during the functionality phase of the OSS test was a shortcoming in the test, we believe the combined LEX portion of the functionality phase, as well as the EDI **LJNE-P** portion in the capacity phase offer us a reasonable substitute enabling us to examine how Pacific's system will handle UNE-P orders submitted through the EDI OSS interface.

94. The CLECs' utilization of their own facilities to serve their customers does not excuse fully testing UNE-P over EDI during the functionality phase of the OSS test.

95. In D.OO-12-029, we denied seven CLECs' request to expand the testing of DS-1 loops because we expected that the data showing Pacific's commercial DS-1 volumes would inform us whether or not Pacific was providing DS-1 loops to the CLECs on a nondiscriminatory basis.

96. In December 2000, Pacific's existing commercial DS-1 volumes were an inadequate indicator of how its OSS system was processing and provisioning those orders.

97. In December 2000, CLECs were submitting DS-1 orders to Pacific through CESAR, a semi-mechanized ordering interface retired at the end of 2000, while LEX and EDI, the focal ordering interfaces of the OSS test, processed little to no CLECs' DS-1 orders.

98. In the second half of 2001, both Pacific's LEX and EDI interfaces began receiving DS-1 orders in volumes sufficient enough to enable assessment of the DS-1 loop order processing quality.

99. Pacific's Fourth Quarter 2001 DS-1 related performance measurement results indicate overall that, with the exception of PMs 5 and 16, Pacific is providing parity DS-1 services to the CLECs; performance had improved in both February and March 2002.

100. Pacific failed PM 16 (Percentage of troubles in 30 days of new orders) two out of three months in the Los Angeles and Bay Area regions during the Fourth Quarter of 2001.

101. Performance improved in the Los Angeles region in January and February 2002, yet slipped below parity in March 2002.

102. Results for the Bay Area region showed Pacific's performance consistently below parity for the six-month period: from October 2001 to March 2002.

103. While the PM 16 results are troubling, because problems with a new order will most probably affect a CLEC's reputation no matter whom is at fault,

we note that the results are poorest in one measure in the Bay Area region and find Pacific's overall DS-1 performance results to be acceptable.

104. Under § 6.3.5.3 of the MTP, "[p]rovisioning is considered complete once a Service Order Completion is received by the CLEC," and CGE&Y's evaluation concluded with the receipt of a SOC response from Pacific's OSS.

105. A review of the MTP and the underlying documentation confirm that pre-order/ordering integration was not part of the requirements of the MTP.

106. We are satisfied that GXS was able to demonstrate that pre-order/ordering integration can be reasonably accomplished by an efficient CLEC.

107. While GXS did not accomplish pre-order/ordering integration using the same methodologi(es) that the commenters either selected or preferred, the methodology it chose is just as valid and probative.

108. Receipt of an order Firm Order Confirmation within the Performance Measure # 2 benchmark of 20 minutes, absent errors from the time of LSR issuance until the time of FOC receipt, indicated that the mechanized LSR had flowed through without human intervention.

109. During the Capacity phase of the OSS test, CGE&Y recorded tens of thousands of flow-through orders.

110. Using the 20-minute response time for FOC flow-though, it is highly unlikely that there was any significant unperceived manual intervention of orders passing through Pacific's OSS system.

111. After reviewing the Test Report and MTP, we find that some aspects of the back-end process testing was beyond the scope of the OSS test; therefore, there is no need to retest this area.

112. The Final Report shows that CGE&Y validated that the end user calls appeared on the Daily Usage File in a timely manner.

113. While the MTP required that CGE&Y review two billing cycles, it validated all bills for October 1999 through August 2000.

114. The Final Report also notes that CGE&Y validated recurring and non-recurring charges, and tracked the timeliness of the usage as well as the receipt of both hardcopy and electronic wholesale bills.

115. CGE&Y utilized the statistical method adopted after discussions with the CLECs and Pacific at the start of the OSS test process.

116. The MTP required only that the statistical analysis of the performance measurement data be "consistent with the business rules, method of calculation and measurable standards as defined by the Amended JPSA."

117. The Final Report was issued approximately a month before **we** adopted, in D.O1-01-037, the statistical methodology (or "performance criteria") that is in place now.

118. All parties were familiar with the methodology adopted and used by CGE&Y in the Final Report.

119. The MTP provides for the aggregation of performance data to ensure sufficient sample sizes.

120. The MTP did not require CGE&Y to perform full data validation; instead, it describes specific tasks the **TAM** was to complete as part of the validation, and CGE&Y completed them.

121. There was no violation of the MTP regarding data validation.

122. The issue of revalidating the business rules used to exclude data from performance measurement was also an issue in the Performance Measurement Phase of the OSS 0 1 I (R.97-10-016/I.97-10-017).

123. In the OSS 0 1 I, the Assigned Commissioner determined that PriceWaterhouseCoopers had validated the business rules in question in accordance with the joint Pacific-CLEC audit plan.

124. The initial MTP authorized the TAM to clarify several crucial components of the OSS test that were not sufficiently detailed.

125. The initial MTP also directed the TAM to vary what was necessary in order to meet the goals of the test.

126. CGE&Y completed the details of the test cases and filled in the technical particulars of the test plan as part of its earliest duties here.

127. There is no MTP and/or CPUC requirement that this test be performed based on the New York test.

128. CGE&Y and GXS did not detect any violation of the test's blindness requirement through Pacific OSS Test and Account Management Teams releasing inappropriate information to other Pacific resources processing the test orders.

129. CLECs actively participated in workshops during the planning of the MTP.

130. The CLECs also participated in weekly informal sessions with CGE&Y.

131. CLECs were given ample opportunity to alert the CGE&Y to objectives of the test that were important to them, and to provide information that would assist it.

132. The CLECs actively participated in the testing process through their service on the Test's Technical Advisory Board (the "TAB"), which met regularly and addressed the majority of substantive issues.

133. CLECs also met in informal sessions with CGE&Y and/or GXS, outside the presence of Pacific representatives, to offer comments and recommendations on various aspects of the testing process and methodologies.

134. It appears that the CLECs were part of many, though not all, aspects of the testing process.

135. The MTP did not require root-cause analysis; rather, it obligated CGE&Y only to identify compliance exceptions.

136. The pre-validation conducted by CGE&Y was to determine that test participant data was adequate and reliable; it was not a substitute for pre-ordering.

137. CGE&Y's test scripts to GXS represented the data a CLEC Customer Service Representative would gather from its customers.

138. GXS always evaluated the test scripts provided by CGE&Y through the pre-ordering functionality.

139. GXS rejected scripts and sent them back to CGE&Y when the test script data: 1)was not valid; 2) did not match the pre-ordering evaluation; or 3) caused errors in the LSR.

140. One of the recurring themes of competitors' comments in this proceeding has been that Pacific fails to resolve the OSS/LSC related CLEC operational problems it causes, and that these unresolved problems represent true obstacles to competition in the local telephone market.

141. To address these comments, the CPUC convened all-party hearings on April 4, 5, and 12,2001 to allow the CLECs the opportunity to appear and formally present systemic operational issues on the record.

142. These hearings also were designed to allow Pacific an opportunity to show how effectively it can remedy such problems.

143. Over the course of the hearings, it became clear that there is – and post-§ 271 will continue to be – a need to rely on some systematic, well-documented processes to resolve both operational problems experienced only by individual CLECs, and more pervasive ones experienced by several competitors simultaneously

144. It also became evident that there are evolving processes already in place that can be used to deal with both of these categories of operational problems.

145. The April hearings allowed us to take a "snapshot" of a point in time where the operational problems then existing were documented, and thus establish a baseline from which to monitor Pacific's problem resolving processes.

146. We can now gauge both how effective they function, and how willingly, quickly, and effectively Pacific is inclined to work toward CLEC problem resolution.

147. After the all-party hearings concluded, the Assigned Commissioner issued a ruling that set forth the process to be followed to monitor the further efforts of parties in resolving the identified problems.

148. The Commissioner's ruling directed Pacific to: 1) update the TD staff's June 21 matrix each month to reflect the current resolution status of each operational issue listed, and 2) distribute that update to TD staff and CLECs for review and comment.

149. Pacific commenced the updating process on July 2, 2001.

150. The subject range of the group of 68 issues was broad; only a couple of the issues were being pursued to resolution using the CLEC User Forum process.

151. While CLECs continue to allege that LSC personnel too often fail to properly process service orders, the root cause of any such improper processing activities does not appear to be related to the major areas of concern identified in the December 1998 decision; namely, the possibility of inadequately trained LSC staff or deficient Pacific training processes.

152. We regard the fact that about 40% of the issues identified by CLECs at the April hearings were resolved quickly after being brought to Pacific's attention as a positive sign that Pacific has some degree of resolve to serve CLECs as wholesale business clients.

153. That only two of the 68 operational issues identified at the hearings have been brought before the CLEC User Forum for resolution may be a reasonable

situation because only ten of the 68 (about 15%)were ones raised by more than a single CLEC.

154. Pacific's consolidation of issues on the operational matrix results in the statistics appearing to show Pacific making better than actual monthly progress in responding to the concerns of its wholesale customers, and it clouds true issue resolution.

155. During the past year of monitoring the status of these operational issues, we have been disappointed with Pacific's response to CLEC input.

156. Earlier on in the resolution process, Pacific was acknowledging and reflecting input from CLECs, but then began disregarding that input.

157. Only once it became clear that its "deaf ear" concerned the CPUC did Pacific again begin making a reasonable effort to document such input in the matrix.

158. Even discounting the number of issues truly resolved, the record still shows that Pacific has made meaningful and steady quantitative progress in this area during the last six months.

159. The Issues Matrix was an important tool in helping us to track how Pacific addresses operational problems; however, it was meant to be -- and was-- diagnostic and static.

160. In September 2001, Pac-West, AT&T, New Edge and Sprint moved to have TD staff designated final editor of future matrix updates.

161. We believe that the parties would benefit from the crafting of a workable expedited dispute process for operational problems, and the parties seem closer to developing one than at any time in the past few years.

162. At this point, the Issues Matrix has served its purpose.

163. In late 1999, we issued D.99-11-050, which set prices for UNEs offered by Pacific.

164. We acknowledged that the Total Element Long Run Incremental (TELRIC) costs that we adopted in 1998 and used to set the UNE prices were "based largely on data that had not been updated since 1994," and noted "there is evidence that some of these costs may be changing rapidly."

165. Consequently, we established a process in the order that invited carriers with interconnection agreements with Pacific to annually nominate up to two UNEs for consideration of their costs by the CPUC.

166. In February 2001, the CPUC received four separate requests to nominate UNEs for cost reexamination, filed by AT&T, WorldCom, Telephone Connection Local Services, and Pacific; we granted two of the requests to look at switching and unbundled loops.

167. On August 20,2001, AT&T and WorldCom filed a Motion for Interim Relief, in the UNE Relook proceedings, asking that Pacific be ordered to offer UNE prices for unbundled switching and unbundled loops at proposed interim rates.

168. In October, Pacific filed a Notice of Discounted Switching Prices in this proceeding, and offered a 20 percent discount of its "UNE-P" rates, which is approximately a 44 percent reduction of Pacific's switching rates.

169. **The** proposal further provided that the rates **would** not be available until thirty days after the CPUC approved Pacific's § 271 request. It offered the reduced rates for one year unless the FCC approves its 271 application, at which point the discount is extended for an additional year.

170. In D.OO-09-074, the CPUC established interim rates for DSL-capable loops.

171. In the Pacific-AT&T arbitration, D.99-11-050, the CPUC established interim prices for optical level dedicated transport rate elements.

172. In D.02-05-042, we set interim rates for unbundled loops and unbundled local and tandem switching.

173. For unbundled loops, we adopted an interim discount of 15.1% from Pacific's then-loop price for the basic (2-wire) loop, resulting in an interim loop rate of $9.93.

174. We applied this discount to the deaveraged loop rates adopted in D.02-02-047.

175. For unbundled switching, we applied a 69% discount to then-local switching rates and a 79% reduction to then-tandem switching rates.

176. Pacific's discount switching proposal is far from TELRIC compliant, is fraught with mathematical errors, and is substantially inadequate in view of the record in the UNE Reexamination proceeding.

177. On August 6,2002, the U.S. District Court for the Northern District of California remanded this Commission's calculation of the total direct cost of providing UNEs in an Order on Cross-Motions for Summary Judgment in *AT&T Communications of California Inc. et al., v. Pacific Bell Telephone Company, et al.,* No. C01-02517 (CW).

178. We are addressing the Court's remand in A.01-02-024/A.01-02-035/A.02-02-031, and the appropriate actions that we take in compliance with the Court's order do not alter our findings here.

179. We have made interim adjustments where we have found the most significant disparities, and will move steadfastly to adopt permanent rates.

180. Pacific has demonstrated that it provides nondiscriminatory access to unbundled network elements, at just and reasonable rates, terms, and conditions.

181. We adopted staff's recommendation in D.98-12-069, and held that Pacific had demonstrated compliance with Checklist Item 3.

182. Our review of the record indicates that Pacific continues to provide access to the necessary maps and records; uses a neutral method to assign spare capacity among competitors; and treats its access applicants comparably.

183. Our review of the performance results for the months June, July, and August 2001, indicates that Pacific failed to meet the parity requirements for the pre-ordering qualification(K1023) process for xDSL loops.

184. These results show that the CLECs pre-ordering process for xDSL loops qualification took approximately twice the amount of time that it took ASI to perform the same functions.

185. The results of two other associated measures, however, indicated that CLECs' performance had generally exceeded the parity or benchmark standard.

186. Pacific has met the fundamental technical requirements for XDSL loop qualification.

187. A parity comparison with ASI serves as the measurable standard for DSL loop qualification.

188. Our analysis of the evidence indicates that ASI uses the same loop qualification processes as the CLECs.

189. The performance results, covering the months of June, July and August 2001, reveal that Pacific has largely met or exceeded the parity requirements for DSL loop qualification.

190. It is apparent that actual loop make-up information in Verigate would eliminate manual intervention and enhance efficiency in the loop qualification process.

191. Pacific has established the LOC process, directed in Appendix B of D.98-12-069, to resolve and track problems associated with the initial loop installations.

192. The performance reports for the months of June, July, and August 2001 indicate that Pacific completed a substantial percentage of coordinated hot cut loop orders within a reasonable time interval.

193. The quantitative data indicates that Pacific is provisioning hot cuts for unbundled voice grade loops to the CLECs in a timely fashion.

194. The performance reports for repeat troubles provided for the months of March, April and May 2001 confirm that Pacific uses the same hot cut processes for itself and for the CLECs' service conversions for voice grade loops.

195. Pacific's UNE-P provisioning performance results assessment is persuasive because it is most consistent with our analysis of the overall performance results for provisioning, including 5.5 dB and 8 dB loops.

196. California has the greatest number of high-speed internet access lines of any state and accounts for nearly a fifth of all high-speed internet access lines in the nation.

197. California's high-speed Internet access lines serve more than a million residential and business customers.

198. Pacific is providing the CLECs nondiscriminatory access to its OSS and other network systems for loop qualification, pre-ordering, and ordering of DSL services.

199. The CLECs' reported more cases of repeat troubles after service repairs than ASI did.

200. Our analysis of the results of "Frequency of Repeat Troubles in 30 **Day** Period" indicates that it may be significantly influenced by the magnitude of the underlying commercial volume.

201. Overall, Pacific's provisioning of xDSL is more than satisfactory; however, we do not believe that competition in the advanced services market, particularly xDSL services, has developed in California at this time.

202. While California has the greatest number of high-speed Internet access lines in the nation, equaling nearly a fifth of all such lines, Pacific and its affiliate, ASI, own more than 80% of these lines.

203. In D.OO-09-074, we directed Pacific to provide the CLECs xDSL services over IDLC under the same terms, conditions, and prices as it provides to itself and its affiliates.

204. At present, there is no specific performance measure assessing the quality of Pacific's service over IDLC.

205. We find no evidence that Pacific has imposed additional conflicting standards for xDSL services, or has disregarded national and international ones.

206. The performance results for order reject notices for XDSL satisfy the parity and benchmark requirements.

207. In 1998, we set forth four technical requirements for Pacific to demonstrate compliance with in its Checklist Item 5 showing.

208. Pacific has shown that CLECs are able to obtain meet-point unbundled transport, and it has also detailed when a CLEC must amend its ICA by negotiated terms or proposed language.

209. While we have not yet reviewed the higher-level optical transport rates, the protests and challenges in the record are largely speculative, and are not supported by any costing analysis.

210. Since Pacific separately identifies UNE access traffic from all other access traffic by sending it in a detached distinctly identified file, it appears that WorldCom should be able to differentiate UNE access traffic from other access traffic in the files that Pacific provides.

211. ORA's claim that Pacific has failed to produce accurate and timely bills for the transport UNE, go to the adequacy of the performance measures, not Pacific's ability to bill for the transport UNE.

212. We have addressed Z-Tel's shared transport complaint in another proceeding, and Pacific has committed in its **ICA** with AT&T to permit the use of shared transport to route intraLATA toll traffic where AT&T purchases unbundled switching and customized routing Option C.

213. Pacific has demonstrated that it has made unbundled local transport available to CLECs in a nondiscriminatory manner.

214. Review of the monthly reports filed with the CPUC's Telecommunications Division over the period April - September 1999 on the progress on the Advanced Intelligence Network test indicates that WorldCom did not actively pursue its AIN proposal and never supplied Pacific with trigger information necessary to develop a test.

215. Pacific has participated in cooperative tests on the technical feasibility of particular custom routing options.

216. Most recently, WorldCom has acknowledged that there are technical problems relating to the routing of OS traffic in Nortel switches, and it and Pacific are working on the solution.

217. Analysis of November 2001 through January 2002 UNE-P performance results for Measures 7,11 and 19 through 23 shows continuing improvement in Measures 7, 11, 20 and 22, but persistent problems in the maintenance related Measures 19 (Trouble Report Rate), 21 (Average Time to Restore), and 23 (Repeat Troubles).

218. In general, Pacific's Measure 7 performance has been consistent, and does not appear to be substantially worse than the service it gives to its own retail analog.

219. The instances where Pacific failed to meet the parity standard for switching were neither numerous nor severe.

220. There were no reports of UNE-P chronic failures under Measure 11. On the other hand, Pacific continued to report failures for the basic UNE-P product under several maintenance Measures, with the only apparent mitigating factor being relatively low CLEC volumes for Measures 21 and 23.

221. Pacific has demonstrated that it has made unbundled switching available to CLECs in a nondiscriminatory manner.

222. For Checklist Item 7, we directed Pacific, among other things, to work collaboratively with its competitors, to resolve a number of related access issues;

to implement a functional flow through mechanism; to integrate E911order entry, and to implement an automated reject and jeopardy system.

223. CGE&Y noted that while the E911 gateway was part of the OSS test in a limited number of transactions, the CLECs had shown no interest in using the E911 gateway.

224. As a matter of efficiency and practicality, the CLECs seem to prefer to let Pacific perform the update via the Local Service Request. In fact, at testing time, no CLEC ordering UNE ports was performing updates via the gateway.

225. TG reported during the test that once it achieved system access through the gateway, entering transactions were easy.

226. Based on performance results, the TAM concluded that Pacific accurately updates the E911 database.

227. Pacific has complied with our directive for clear guidelines that address the discrepancy between addresses that pass Service Order Retrieval and Distribution (SORD)but not E911.

228. Pacific has well documented its training opportunities for the use of the interface, and the CLECs appear to be using ELI.

229. Pacific has also developed adequate standards for peer-to-peer interface for the entry of E911 data.

230. Pacific has demonstrated the accuracy and integrity of its 911/E911 database.

231. Pacific has also shown that it provides nondiscriminatory access to the directory listings in its directory assistance databases and to the operator services supplied by Pacific.

232. Based on the verified accuracy of the directory listings, and the positive performance reflected from Performance Measures 37 and 38, CGE&Y reported that Pacific accurately and efficiently performed Directory Listings in the OSS Test.

233. Our review of the ICAs that Pacific has entered into with its competitors indicates that Pacific has a specific legal obligation to provide white pages listings to their customers.

234. Pacific addressed the technical directives of D.98-12-069 in its 1999 and 2000 Appendix B compliance submissions.

235. CLECs either could not substantiate the earlier listings problems cited or could not refute Pacific's contention that the problems were carrier-caused input errors.

236. The April 2001 operational problems, while troubling, do not appear to be systemic.

237. CGY&E positively evaluated Pacific's performance regarding directory listings during the OSS Test.

238. Pacific has documented that the white pages directory listings that it provides for its competitors' are comparable in appearance to the listings of Pacific customers.

239. Pacific has documented that via several gateways it has established a mechanism for providing CLECs with the ability to confirm the accuracy of their customers' entries prior to publication in the directory.

240. In D.98-12-069, the CPUC found that Pacific had complied with the requirements of Checklist Item 9.

241. No commenters addressed Pacific's June 2001 demonstration of compliance with Checklist Item 9.

242. Pacific has demonstrated that it has complied with the current number administration rules, regulations and guidelines established by the various regulatory agencies as well as the industry numbering forums.

243. Based on the currently available service information in the record, Pacific has demonstrated that it provides the CLECs nondiscriminatory access to its

databases and associated signaling necessary for call routing and completion, in satisfaction of the requirements of Checklist Item 10.

244. For Checklist Item 11, the CPUC set forth in Appendix B of D.98-12-069 seven detailed requirements for Pacific to satisfy in order to demonstrate its compliance.

245. Our review of the interconnection agreements between Pacific and its competitors indicates that Pacific has assumed specific legal obligations to provide number portability.

246. The LNP process is labor-intensive and requires careful coordination between the carriers.

247. Overall, the record shows that there have been problems, particularly in the use of the Frame Due Time process; however, Pacific has made efforts to isolate the problems and correct them.

248. During the April 2001 hearings on operational issues, AT&T detailed its request for Pacific to modify its Number Portability process and make system changes to institute a mechanized Number Portability Administration Center (NPAC) check so that the Old Service Provider (here Pacific) does not disconnect end-users before the New Service Provider (here AT&T) has completed its installation work.

249. Pacific agreed to this LNP mechanization process, and advised AT&T by letter dated October 5,2001, that implementation would be complete by September 2002.

250. Mechanization of the NPAC check is crucial.

251. Mechanized enhancement of the NPAC check will mechanically delay a Pacific disconnect if the activation of the NPAC porting request has not been completed by the due date.

252. Pacific's justification for the September 2002 scheduled completion, given that a NPAC feed to its system already exists, does not explain why

implementation of a mechanized enhancement to the NPAC check should take almost a year.

253. At present, the CLECs do not have certain knowledge of when Pacific will disconnect certain customers, and cannot maintain the integrity of these end-users' dial tones.

254. In its comments on the DD, Pacific maintains that a mechanized enhancement to the NPAC check has not been required in prior FCC decisions for Section 271 compliance.

255. Pacific noted that it had committed to implement this enhancement by September 30,2002, and states that it intends to fulfill its commitment.

256. Our review of the interconnection agreements between Pacific and its competitors shows that Pacific has specific legal obligations to provide databases and signaling. These commitments are also in the CLEC Handbook.

257. Since August 31,1998, it appears that Pacific has successfully implemented and maintained the necessary process improvements for ordering, provisioning, and maintaining database-driven features such as LIDB, CNAM, and Customer Local Area Signaling Services.

258. Pacific has developed and implemented methods and procedures for multiple workgroups to ensure on-time, complete and accurate implementation of these database services.

259. Access to databases at the STP would not cover downloading of the entire database.

260. In D.98-12-069, we found that Pacific had complied with the requirements of Checklist Item 12.

261. Neither in 1998 nor subsequently has any commenter presented evidence that local customers of CLECs either experienced dialing delays or had to dial additional digits to make local calls.

262. Our review of the interconnection agreements between Pacific and its competitors shows that Pacific has specific legal obligations to provide local dialing parity.

263. Accessible Letter CLECC99-030, dated May 5,1999, and Pacific's presubscription tariff, Schedule Cal. P.U.C. No. 175-T,§ 13effective May 7,1999, confirms the availability of ILP.

264. In D.98-12-069, the CPUC held that Pacific had satisfied the requirements of Checklist Item 13.

265. Our review of the interconnection agreements between Pacific and its competitors indicates that Pacific has specific legal obligations to provide reciprocal compensation arrangements.

266. In D.98-12-069, we directed Pacific to satisfy seven conditions regarding resale promotional offerings in order to show compliance with the requirements of Checklist Item 14.

267. No party responded to Pacific's July 15,1999 filing detailing how it had met our compliance conditions for this item.

268. In their August 23,2001 responses, the CLECs and ORA allege that Pacific is not reselling DSL service at wholesale rates and has obstructed its resale obligation in the provision of DSL services.

269. Our record review shows that Pacific is legally obligated to make retail telecommunications services available for resale in accordance with interconnection agreements and tariff.

270. The record, which includes Pacific's statements and the marketing information from its web site, demonstrates that PBIS' services are designed for, and sold to residential and business end-users.

271. The DSL Transport Services provided to PBIS by ASI, are telecommunications services that enable PBIS to offer its services to end-users.

272. Without the DSL Transport Services provided to PBIS by ASI, PBIS could not reach its end-users.

273. PBIS is not simply an ISP that combines DSL service with its own Internet service.

274. Pacific affiliate PBIS receives DSL services from Pacific affiliate ASI, and those advanced telecommunications services become PBIS' retail services.

275. It is the affiliation between the three -- Pacific, ASI and PBIS -- that effectively creates Pacific's provision of DSL Transport Services at retail.

276. Representing the world's sixth largest economy, with a gross state product of $1.21 trillion, there is significant potential for the growth of advanced services in California.

277. Pacific's DSL market dominance in California is increasing while its competitors' DSL market share is shrinking.

278. In the absence of a discounted DSL market, competition in California will fester in the midst of the Pacific, ASI, and PBIS integration.

279. Beginning with April 2002 performance, Pacific has implemented the CPUC's OSS performance monitoring and enforcement mechanisms, the "PIP" established in D.02-03-023.

280. The FCC has listed five important characteristics for a performance incentives plan: (1) potential liability that provides a meaningful and significant incentive to comply with the designated performance standards; (2) clearly-articulated, pre-determined measures and standards, which encompass a comprehensive range of carrier-to-carrier performance; (3) a reasonable structure that is designed to detect and sanction poor performance when it occurs; (4) a self-executing mechanism that does not leave the door open unreasonably to litigation and appeal; and (5) reasonable assurances that the reported data is accurate.

281. The Commission's PIP has thirty-nine OSS performance measures that cover OSS performance in nine areas: pre-ordering, ordering, provisioning, maintenance, network performance, billing, database updates, collocation, and interfaces.

282. The Commission's PIP performance measures are broken down into sub-measures to track performance separately for different service types, for different regions, and for other service distinctions such as the necessity for fieldwork or line conditioning.

283. In April 2002,126 CLECs had OSS performance generating performance measure results.

284. In April 2002,592 OSS performance sub-measures produced testable data, resulting in 5867 CLEC-specific performance results.

285. An independent auditor, PriceWaterhouseCoopers, audited the measurements and the rules established to generate the reported performance data and determined them to be consistent with the rules that define and make the measures operational.

286. Additionally, aided by an external consultant, staff conducted an accuracy check of the data and found problems that were corrected.

287. The parties were unable to agree on a complete set of performance assessment methods and criteria.

288. The Commission constructed the final OSS performance assessment method and established the test criteria in D.O1-01-037 and D.02-03-023.

289. The Commission's PIP established two "consecutive failure" definitions: 1)If a sub-measure "fails" three months in a row, it is termed a "chronic failure" and 2) If a sub-measure fails five or six out of six months it is termed an "extended chronic failure."

290. The Commission's PIP incentives are billing credits to CLECs and ratepayers where deficient performance to individual CLECs generates billing

credits to those CLECs (Tier I) and deficient performance to the CLEC industry as a whole generates billing credits to the ratepayers (Tier 11).

291. In the Commission's PIP, if the amount to be credited to a CLEC exceeds the CLEC's billing, the excess amount is credited to the ratepayers.

292. The FCC has approved several other states' performance incentive plans with the same liability the Commission's PIP provides, thirty-six percent of an ILEC's annual net return from local exchange service.

293. Thirty-six percent of net return from local exchange service equals approximately $601 million for the current year.

294. The Commission's PIP cap applies monthly at one-twelfth of the annual cap amount: approximately $50 million per month.

295. The Commission's PIP total incentive credits are capped at about $16.4 million per month without formal review.

296. The Commission's PIP is self-executing with automated data recording, with automated assessment, and with credits made without further review unless the procedural caps are reached.

297. The Commission's PIP was not scaled to absolute amounts; it was scaled to match specific percentages of deficient performance with specific percentages of net **return.**

298. The Commission's PIP explicitly requires Pacific to update the incentive cap after new ARMIS data is posted each April.

299. The Commission's PIP did does not *explicitly* require that the incentive amounts themselves be updated even though they are based on the cap.

300. According to ARMIS data, Pacific's annual net return from local exchange service in California increased by 9.28 percent from 2000 to 2001.

301. Pacific has informally agreed to adjust incentive amounts that are less than the cap to the new ARMIS data each year beginning with May 2002 performance.

302. Pacific implemented our performance incentives plan beginning with performance for the month of April 2002.

303. For April 2002 performance, Pacific's "failure rate" for individual CLEC results in Category A was 6.7 percent.

304. For April 2002 performance, the Commission's PIP generated incentive amounts totaling $673,390, with $532,880 credited to the CLECs and $140,510 credited to the ratepayers.

305. Parties to this proceeding raised concerns that our PIP does not provide sufficiently strong incentives for chronically deficient performance.

306. Pacific could treat the incentive credits generated by extended chronic failures as the "cost of doing business."

307. If OSS performance for a particular sub-measure continues to be deficient for longer than six consecutive months, it would be reasonably clear that the amounts were too low, and that an ILEC may be treating the incentive amounts as the "cost of doing business."

308. "Continuing extended chronic failures" are increasingly accurate assessments.

309. Continuing extended chronic failures represent increasing competitive harm. For a continuing extended chronic failure to occur, performance would have to be identified as failing eight or nine months in a nine-month period.

310. The probability of a Type I error, or net critical alpha, decreases as a test requires failures in to more consecutive months.

311. Under parity conditions, with a single-month 0.20 critical alpha, failing five or more times out of six consecutive months has a probability of 0.0016; failing eight or more times out of nine consecutive months has a probability of 0.000019; failing ten or more times out of twelve consecutive months has a probability of 0.0000045; and failing twelve or more times out of fifteen consecutive months has a probability of 0.000001.

312. Continuing extended chronic failures would indicate that Pacific is not providing complete parity OSS performance.

313. California Pub. Util. Code § 709.2, enacted in 1994, requires the CPUC to make four essential determinations prior to "authorizing or directing competition" in the intrastate interLATA market.

314. Apart from the jurisdictional distinction, the key difference between the Pub. Util. Code § 709.2 and § 271 lies in the sector of the telecommunications market each one addresses.

315. Section 271 approaches the accessibility of the local exchange market through satisfaction of the 14-point checklist. It also allows consideration of the public interest assessment of a BOC's entry into the long distance market.

316. Section 709.2 addresses the health of the intrastate interLATA telecommunications, or IEC, market, and assesses the public interest from that perspective.

317. In 1998, in this docket, we indicated that our Section 709.2 assessment would be performed in a separate phase.

318. While the parties in Pacific Bell Communications' (PB Com) 1996 application for a certificate of public convenience and necessity to provide long distance invoked Section 709.2, we made no findings of fact or conclusions of law regarding that section in D.99-02-013.

319. Overall, all competitors have generally fair, nondiscriminatory, and mutually open access to exchanges and interexchange facilities, including fair unbundling of exchange facilities, as prescribed in the CPUC's OANAD proceeding.

320. The parties have presented evidence of recent and past anticompetitive behavior by Pacific and its parent, SBC, in California and elsewhere in the nation.

321. The record does not support the finding that there is no anticompetitive behavior by Pacific Bell.

322. The proposed joint marketing by Pacific and PBLD of PBLD's long distance services was a controversial issue that we ultimately resolved in conformance with the FCC's CPNI and Non-Accounting Safeguards Orders.

323. Time and documentary evidence have better informed our views that joint marketing on inbound calls from Pacific customers strikes an appropriate balance between the opening of the local market and the additional interconnection and unbundling requirements of TA96.

324. Nationally, the RBOCs have proven themselves to be formidable entrants into the long distance market.

325. SBC-LD currently serves over 2.8 million access lines in Texas, Kansas and Oklahoma, three states in its region where it has authority to offer interLATA services; it reached this amount one year after winning 271 approvals.

326. The record before us simply does not support the finding that there is no possibility of improper cross-subsidization anywhere within Pacific's proposal to provide long distance telephone service within California.

327. Our requirements for separate accounting records and for the examination of the cost allocation methodology for the provision of intrastate interexchange telecommunications service, pursuant to our affiliate transaction and cost allocation rules and this order, will be integral in preventing, identifying and eliminating improper cross-subsidization.

328. Pacific painstakingly examined and interpreted PB Com's record and decision, arguing in the alternative that its § 271 showing equally satisfied its burden of proof under Section 709.2; still, Pacific was able to present neither findings, conclusions of law, nor ordering paragraphs to support its case.

329. Particularly with respect to § 709.2(c)(4), Pacific failed to show that there is no substantial possibility of harm to the competitive intrastate interexchange telecommunications market by its long distance entry in California.

330. We are persuaded by the interested parties' showing that a substantial possibility of harm to the intrastate long distance telephone market exists from Pacific's continuing role as the PIC administrator.

331. Pacific failed to offer any assurance that it would perform its LPIC role with any safeguards of neutrality or sensitivity to competitor concerns.

332. The significant advantage afforded Pacific's long distance affiliate by Pacific's ability to market its affiliate's service to several million incoming customer service calls per year from its existing local service customers will unquestionably affect the other interexchange carriers.

333. No other interLATA competitor in California has any similar massive opportunity to address incoming calls from potential interLATA customers.

334. PBLD's potentially swift dominance of the intrastate interexchange telephone market could detrimentally impact competition in that sector, but PBLD's gains to some extent will be moderated by interexchange carrier entry into the local telephone market.

335. While Pacific largely satisfies the technical requirements of § 271, in accordance with § 709.2 we cannot state unequivocally that we find Pacific's imminent entry into the long distance market in California will primarily enhance the public interest.

336. Local telephone competition in California exists in the technical and quantitative data; but it has yet to find its way into the residences of the majority of California's ratepayers. Only time and regulatory vigilance will determine if it ever arrives.

337. We expect that the public interest will be positively served in California by the addition of another experienced, formidable competitor in the intrastate interexchange market.

338. At the same time, we foresee the harm to the public interest if actual competition in California maintains its current anemic pace, and Pacific gains intrastate long distance dominance to match its local influence.

339. A neutral third-party administrator maybe necessary in the new environment.

340. The ALJ in the PB Com proceeding specifically found in the draft decision that very real risks to the competitiveness of the long distance market resulting from unregulated joint marketing activities should be reduced by separation of Pacific and its affiliate's sales forces, but that finding was rejected by the Commission in its final decision.

341. The Commission established sufficient rules that protect consumers from abusive or unwanted sales pitches by separating customer service from marketing, in D.O1-09-058.

342. The Tariff Rule 12 distinction of customer service from marketing presents an opportunity for Pacific to track the time its customer service representative spend marketing affiliate long-distance services.

Conclusions of Law

1. We conclude that Pacific satisfies the § 271(c)(1)(A) requirement.

2. This docket cannot and should not be the home of every telecommunications proceeding pending before this Commission. It is appropriate that we address the NRF Review directly in its designated docket, and not in this proceeding.

3. Pacific is legally obligated to provide physical and virtual collocation pursuant to CPUC-approved interconnection agreements, tariff, and FCC rules.

4. Our review of the 1999 compliance filing and responses for Checklist Item 1 indicates that Pacific substantiated its satisfaction of each of the associated procedural and policy requirements of D.98-12-069.

5. We will not resolve in this decision the pending collocation issues.

6. At this time, we find the interim prices to be in compliance with the law, subject to our imminent determination of permanent rates, terms and conditions.

7. Pacific makes trunking available pursuant to CPUC-approved interconnection agreements and FCC rules

8. In the context of appropriate network management, the daily limit on trunking installations appears neither discriminatory nor anti-competitive.

9. Pacific has satisfied the requirements of Checklist Item 1, and we so verify.

10. In general, Pacific provides nondiscriminatory access to a comprehensive set of unbundled network elements at terms and conditions that comply with § 251 and 252 of TA96 and include all the UNEs from the *UNE* ***Remand Order.***

11. Ruminating about *USTA*'s potential impact upon the competitors and how it will be resolved is neither "necessary" nor "appropriate" in this proceeding.

12. Pacific has complied with our D.98-12-069 technical requirements regarding general access to UNEs, UNE combinations, and UNE intellectual property issues.

13. Pacific's OSS Test was designed in accordance with the established standards for the testing and evaluation of a BOC's OSS set forth by the FCC in previously approved § 271 orders.

14. Whether the sum of the M&R evidence adequately supports a finding that CLECs are being allowed a meaningful opportunity to compete is still an open question.

15. The overall record shows that Pacific has complied with the Commission's directive concerning billing disputes, and that it is making a continuing and concrete effort to maintain a state of compliance.

16. In most instances, the commercial performance data gathered using agreed upon measurement processes verify that the playing field on which the CLECs and Pacific engage in local competition is becoming a reasonably level one with respect to the billing function.

17. Pacific has satisfied all the OSS billing requirements we set out for it in Appendix B to D.98-12-069.

18. Since there is no requirement that the CMP interface test environment be dynamic and simulate the commercial experience's integrated pre-ordering and ordering functionality, Pacific's test environment is adequate.

19. Pacific's CMP allows CLECs in California non-discriminatory access to the OSS.

20. Retesting of the LJNE-P through EDI interface is not warranted.

21. Given acceptable commercial performance results for DS-1, there is no need to retest it.

22. CGE&Y has satisfied the requirements and intent of the MTP regarding "LNP only" orders.

23. A limited retesting of Pre-Order/Ordering integration is unnecessary.

24. CGE&Y acted reasonably in its flow-through assessment during the test, and we see no need for retesting this aspect.

25. The existing test results and analysis indicate that Pacific's backend processing is adequate.

26. CGE&Y satisfied the MTP in its analysis of Pacific's billing performance.

27. We cannot fault CGE&Y for not utilizing the statistical methodology we approved a month after the Final Report was issued; rather, we consider

CGE&Y's statistical analysis in the Final Report to be in accordance with the MTP.

28. CGE&Y's aggregation of the four pseudo-CLECs' performance data is in accordance with **§ 6.5.3.1** of the MTP 4.0.

29. CGE&Y did not violate the MTP with respect to data validation but acted in accordance thereof.

30. CGE&Y's assumption, pursuant to the business rules, that Pacific properly excluded certain missed data, was reasonable and satisfied the requirements of the MTP.

31. Based on the relevant test records, CGE&Y appropriately exercised its authority to modify aspects of the MTP, and there is no support for the allegations regarding CGE&Y's analysis.

32. The OSS test did not need to follow KPMG's NY OSS testing approach exactly, and "blindness" was properly maintained during the California test.

33. There is no evidence to support the assertion that significant changes were made to the MTP or that discussions from which the CLECs were excluded regularly took place during the test.

34. There is no evidence that CGE&Y and GXS exceeded their authority in the balance they **struck** during the testing process between test security and accessibility; therefore, the level of CLEC participation was reasonable.

35. The MTP required Pacific to determine the cause of, and fix, any identified problems during the OSS testing; thus, there is no merit in the allegation that CGE&Y violated the MTP-required "style" of testing.

36. Notwithstanding CGE&Y's pre-validation steps, review of the record as a whole indicates that GXS conducted a reasonable end-to-end test in California.

37. It is reasonable to conclude from the Final Report that Pacific's OSS is commercially available and sufficient to handle reasonable, anticipated commercial volumes.

38. Pacific has satisfied all significant aspects of the LSC and OSS Appendix related checklist directives we established for it in our December 1998 decision.

39. **A** mutually agreed upon dispute process could focus in on and resolve problems before they became full blown formal complaints, but the parties must decide that they will work together to create it.

40. Since the Issues Matrix was a static and diagnostic tool, it is reasonable to have Pacific submit the final version **30** days after the effective date of this order.

41. It is reasonable to deny as moot the September 2001 motion to designate TD staff final editor of future issues matrices because Pacific will submit its final version 30 days from the effective date of this order.

42. The CPUC has adopted, and shall continue to adopt cost-based, TELRIC compliant UNE rates in California in accordance with TA96 and the rules of the FCC.

43. Through Pacific's complete showing for this item, it has demonstrated that it provides nondiscriminatory access to unbundled network elements, at just and reasonable rates, terms, and conditions.

44. Pacific satisfies the requirements of Checklist Item 2 and we verify its compliance.

45. Pacific has shown that it continues to provide nondiscriminatory access to the poles, ducts, conduits, and ROW that it owns or controls, at just and reasonable rates, terms, and conditions.

46. Pacific continues to satisfy the requirements of Checklist Item 3, and we verify its compliance.

47. **Our** analysis of the performance measures associated with the ordering and provisioning intervals for voice grade, DS1 and xDSL services indicates that Pacific, though faltering in some months, has largely satisfied the standards.

48. Pacific has satisfied the technical and performance requirements for DSL loop qualification.

49. Since actual loop make-up information in Verigate would eliminate manual intervention and enhance efficiency in the loop qualification process, it is reasonable that Pacific should be directed to expeditiously improve the ratio of the actual loop make-up information in its Verigate, Datagate, EDI, and CORBA systems.

50. Pacific has satisfied the compliance requirements related to resolving and tracking problems associated with the initial loop installations, pursuant to Appendix B of D.98-12-069.

51. Based on the performance data for hot cut provisioning and based on statistical benchmark and parity standards, Pacific has met the compliance requirements for the provisioning of the voice grade loops.

52. The record evidence supports the assertion that Pacific uses the same CHC and FDT processes in serving the CLECs that it uses for itself.

53. The performance results substantiate that Pacific's hot cut quality of service, practices, and performance standards adequately satisfy the compliance requirements for Checklist Item 4.

54. Pacific's UNE-P provisioning performance meets the compliance requirements.

55. A complete analysis of the currently available service information and performance results in the record shows that Pacific provides the CLECs with nondiscriminatory access to its network systems for preordering, ordering, and provisioning of xDSL services.

56. The xDSL services' performance results also show that Pacific is providing adequate customer service groups (i.e., account teams, LSCs, LOCs) to assist and facilitate CLECs for xDSL ordering and provisioning.

57. Our review of five performance measures associated with xDSL provisioning for the months of January through August 2001 revealed that Pacific met or exceeded the parity requirements for the CLECs.

58. Examining the results of Pacific's overall measures for stand-alone and line-shared xDSL services' provisioning, it appears that Pacific is complying with this D.98-12-069 requirement.

59. It is reasonable for Pacific to add to the national and international standards for xDSL services when prudent, consistent with the type of xDSL service provisioned or technology deployed.

60. Our review of the record shows that Pacific has binding legal obligations to provide unbundled local loops pursuant to CPUC-approved interconnection agreements in accordance with § 252 of TA96.

61. Pacific has satisfied the D.98-12-069 technical requirements for unbundled loops.

62. Based on the record evidence, including the overall performance results, Pacific is in compliance with the requirements of Checklist Item 4.

63. Pacific currently provides unbundled local transport in accordance with interconnection agreements and tariff.

64. Pacific has satisfied our D.98-12-069 compliance requirements for unbundled local transport.

65. Pacific satisfies the requirements of Checklist Item 5, and we verify its compliance.

66. Pacific has a legal obligation to provide unbundled local switching pursuant to its interconnection agreements.

67. Since Pacific has indicated that it will negotiate any temporary factor for estimating terminating usage, it has satisfied our requirement in this regard.

68. Until Pacific has implemented the specific type of custom routing requested, it must provide WorldCom with Operator Services and Directory Assistance as UNEs, pursuant to the UNE *Remand Order*.

69. Weighing all factors, as a legal and practical matter, Pacific has demonstrated that it has made unbundled switching available to CLECs in a nondiscriminatory manner.

70. Pacific satisfies the requirements of Checklist Item 6, and we verify the company's compliance.

71. Pacific has a legal obligation to provide 911, E911, Directory Assistance, and Operator Call Completion pursuant to its tariff and interconnection agreements, approved by the CPUC, and it is complying with that obligation.

72. Pacific satisfies the requirements of Checklist Item **7,** and we verify its compliance.

73. The thorough examination of Pacific's 1999 and 2000 Appendix **B** compliance submissions shows that Pacific has satisfied the technical directives of D.98-12-069.

74. Pacific's 2001 Performance Measure #4 data shows some amount of flow-through for directory service requests; **thus,** Pacific has met our implementation requirement for this item.

75. Pacific's documentation that the white pages directory listings that it provides for its competitors' are comparable in appearance to the listings of Pacific customers demonstrates that it has satisfied the FCC's requirement that it provide listings that are nondiscriminatory in appearance and integration.

76. Pacific documentation that it has established, via several gateways, a mechanism for providing CLECs with the ability to confirm the accuracy of their customers' entries prior to publication in the directory, satisfies the FCC's requirement that a BOC must provide directory listings with the same accuracy and reliability that it provides to its own customers.

77. Pacific satisfies the requirements of Checklist Item 8, and we verify Pacific's compliance.

78. Prior to the transfer of central office code responsibility to NeuStar, Pacific had a legal obligation to make telephone numbers available on a nondiscriminatory basis pursuant to its interconnection agreements.

79. Following the transfer of responsibility, Pacific remains subject to the FCC's rules requiring compliance with code administration guidelines, as well as the duty under § 251(b)(3) to permit nondiscriminatory access to telephone numbers.

80. Pacific continues to satisfy the requirements of Checklist Item 9, and we so verify.

81. Based on the currently available service information, Pacific demonstrates that it provides the CLECs nondiscriminatory access to its databases and associated signaling necessary for call routing and completion, in satisfaction of the requirements of Checklist Item 10.

82. The FCC's rule on limited access at the STP does not require Pacific to provide CLECs with access to any information contained in the database on a bulk basis.

83. Pacific is in compliance with the requirements of Checklist Item 10, and we so verify.

84. The continuing delay of a mechanized enhancement to the NPAC check presents a critical barrier to entry for the CLECs.

85. Pacific should complete implementation of the mechanized LNP process no later than the date that opening comments are due on the draft of this decision.

86. Pacific has not satisfied the compliance requirements for Checklist Item 11 until it implements and verifies this essential element of local number portability in California, and we will not verify compliance until Pacific does so.

87. Pacific has demonstrated that it continues to provide nondiscriminatory access to such services or information as are necessary to allow a requesting carrier to implement local dialing parity pursuant to TA96.

88. Pacific has satisfied the requirements of Checklist Item 12, and we so verify.

89. Pacific has shown that it continues to have in place reciprocal compensation arrangements in accordance with § 252(d)(2).

90. Pacific has satisfied the requirements of Checklist Item 13, and we so verify.

91. The affiliation between Pacific, ASI and PBIS effectively creates Pacific's provision of DSL Transport Services at retail, and the ***Second Report*** and 47 C.F.R. § 51.605(c) do not alter this fact.

92. Pacific has erected unreasonable barriers to entry in California's DSL market both by not complying with its resale obligation of its advanced services pursuant to § 251(c)(4)(A) and by offering restrictive conditions in the ASI-CLEC agreements in contravention of § 251(c)(4)(B).

93. To be in full compliance with the requirements of checklist Item 14, Pacific must remove the barriers to entry of the California DSL market and meet its resale obligation of advanced services.

94. Pacific has not satisfied the requirements of Checklist Item 14, and we decline to verify compliance thereof.

95. The Commission should establish a contingency mechanism to fill any performance enforcement gap that may arise between the end of the six-month initial implementation period and the adoption of any necessary revisions.

96. The Commission should continue the current PIP until it is revised.

97. The Commission should add an additional treatment for deficient performance that may continue beyond the initial implementation six-month period.

98. To provide stronger incentives when deficient performance continues past six months for a sub-measure, it will be reasonable to increase the incentive amount for any such sub-measure.

99. To provide incentives to prevent continuous deficient performance we should automatically increase the payments for sub-measures with deficient performance when an "extended chronic failure" continues for that sub-measure.

100. When an extended chronic failure continues three or more months in a row, payments for that failure should be doubled from that required for the extended chronic failure for that month.

101. The increasing incentive amounts should be applied to continuing extended chronic failures for both Tier I and Tier 11 assessments, applying to Tier II assessments "as if" Tier II had "extended chronic failure" assessments.

102. Every three months thereafter, incentive amounts should be doubled again for continuing extended chronic failures.

103. Since continuing extended chronic failures would indicate that Pacific is not providing parity OSS performance, Pacific should not be eligible for mitigation under § 3.9 of the PIP when continuing extended chronic failures occur.

104. The PIP establishes a potential liability that provides a meaningful and significant incentive to comply with the designated performance standards.

105. The PIP has clearly articulated, pre-determined measures and standards, which encompass a comprehensive range of carrier-to-carrier performance.

106. The PIP has a reasonable structure that is designed to detect and sanction poor performance when it occurs.

107. The PIP is a self-executing mechanism that does not leave the door open unreasonably to litigation and appeal.

108. Third party and staff audits have provided reasonable assurances that the reported data used for the PIP is accurate.

109. The PIP meets the FCC's criteria for an OSS performance monitoring and enforcement mechanism being in the public interest.

110. Heretofore, the CPUC has addressed Section 709.2 only to a limited extent.

111. Specifically analyzing this docket's sizeable record in the § 271 chapters, Pacific has demonstrated that it has provided substantially fair, nondiscriminatory, open access to exchanges, including fair unbundling of exchange facilities.

112. Absent competitively neutral and nondiscriminatory intraLATA LPIC administration, there is a substantial possibility that the intrastate interexchange telecommunications market will be harmed through increasing customer dissatisfaction and carrier conflicts.

113. Pacific's proposed joint marketing plans also pose a substantial possibility of harm to the intrastate long distance telephone market.

114. The preparation of a feasibility study that would set forth the costs of a structural separation plan would be reasonable in light of the record.

115. It is reasonable to investigate the costs and feasibility of selecting a competitively neutral third-party PIC administrator.

116. Tariff Rule 12 marketing restraints applicable to Pacific and its long distance affiliate's joint marketing, and the requirement for Pacific to prepare revised affiliate transaction marketing costs are sufficient to protect customers from unwanted and abusive marketing, and to prevent harm to California's intrastate interexchange telecommunications market due to any marketing cross-subsidy.

117. This order should be effective immediately in accordance with the public interest.

O R D E R

IT IS ORDERED that:

1. The Office of Ratepayer Advocates' March 11,2002 motion to lift the suspension on Pacific Bell Telephone Company's (Pacific) sharing mechanism under the New Regulatory Framework, and "suspend processing" Pacific's application for Section 271 approval is denied.

2. The June 17,2002 motion of XO Communications, Tri-M Communications Inc., d/b/a TMC Communications, and Anew Telecommunications Corporation d/b/a Call America for leave to submit additional briefing and for a limited modification of the ex parte ban is denied.

3. Pacific shall submit the final version of the Operational Issues Matrix thirty (30) days after the effective date of this order.

4. The September 2001 motion filed by Pac-West Telecomm, Inc., AT&T Communications of California, Inc., New Edge Network, Inc. and Sprint Communications, L.P. is denied as moot.

5. In accordance with a schedule to be set by the assigned Administrative Law Judge, interested parties in the instant proceeding shall present a joint proposal for review and eventual implementation of a workable expedited dispute process for operational problems arising between Pacific and competitive local exchange carriers.

6. To verify implementation of the mechanized Local Number Portability process, Pacific shall provide this Commission with confirmation including 30 days operational data.

7. The Commission's performance incentives plan ("PIP"),as updated by this decision, shall continue in effect until revised by the Commission.

8. The monetary caps, the base amount, and the parity simulation payment-reduction amount shall be updated for the months of May 2002 through April

2003 based on April 2002 ARMIS data for the year 2001, and shall be adjusted with the same timing and method each year thereafter.

9. Based on April 2002 ARMIS data for the year 2001, the monetary caps, the base amount, and the parity simulation payment-reduction amount shall be increased by 9.28 percent for the months of May 2002 through April 2003.

10. The Commission's PIP for Pacific shall be augmented so that when an extended chronic failure continues three or more months in a row ("continuing extended chronic failure"), incentive amounts for that failure will be doubled from that originally required for the extended chronic failure for that month. Every three months thereafter, incentive amounts shall be doubled again for that continuing extended chronic failures.

11. The continuing extended chronic failure incentive amount increases shall apply to both Tier I and Tier II assessments by applying to Tier II assessments "as if" Tier II had "extended chronic failure" assessments.

12. Incentive credit increases shall continue for continuing extended chronic failures until the most recent six months, viewed alone, would not be identified as an "extended chronic failure." No incentive credits are generated for the single months where performance is not identified as failing.

13. When Pacific has any continuing extended chronic failures it shall not be eligible for mitigation credits under § 3.9 of the PIP.

14. The continuing extended chronic failure credit increases shall be applied to performance in the ninth month of the PIP's implementation, January 2003, and thereafter.

15. Pacific shall file a report or study detailing the costs of separating itself into two parts and divesting the segment covering wholesale network operations six months from the effective date of this decision. Interested parties shall have an opportunity to review the study or report and comment on it, pursuant to the schedule to be set by the assigned Administrative Law Judge.

16. The Telecommunications Division staff under the supervision of its Director shall prepare for consideration on the Commission's meeting agenda, an Order Instituting Investigation to examine the efficacy, feasibility, structural implementation, and selection criteria for selecting a competitively neutral third-party Preferred Interexchange Carrier administrator for California, and the desirability of continuing PIC and LPIC distinctions, no later than five months from the effective date of this order.

17. Pacific shall state the consumer's equal access right to a long distance carrier of their choice prior to identifying its long-distance services and offer the customer the opportunity to select a carrier of their choice. Pacific shall include in its customer service scripts for new service connections the following: "You have many companies to choose from to provide your long distance and local toll service including (Pacific Bell Long distance). If you like, I can read from a list of available carriers and provide their telephone numbers. Who would you like as your long distance and local toll carrier?"

18. Pacific must clearly receive a customer's agreement for long-distance service (PIC) and local toll (LPIC) before assigning a PIC and LPIC.

19. Pacific shall submit within 20 days to the Telecommunications Division for their review and approval revised marketing scripts that comport with Ordering Paragraphs 17-18 of this decision.

20. Pacific shall carefully track the time its customers representatives spend marketing PBLD's services regardless of whether the marketing was successful or not, and to routinely re-examine and report this cost elements in its affiliate transaction report.

21. Pacific shall pay any necessary costs of the audit of the records, in conjunction with staff's efforts to audit them pursuant to Sections 314.5 and 797.

22. Pacific shall track the time its customer service representatives spend marketing PBLD services regardless of whether the marketing was successful or

not, and re-examine and report this cost element in its affiliate transaction report each year.

This order is effective today.

Dated September 19,2002, at San Francisco, California.

HENRY M. DUQUE
CARL W. WOOD
GEOFFREY F. BROWN
MICHAEL R. PEEVEY
Commissioners

I will file a dissent.

/s/ LORETTA M. LYNCH
President

I will file a partial dissent.

/s/ HENRY M. DUQUE
Commissioner

I will file a concurrence.

/s/ MICHAEL R. PEEVEY
Commissioner

APPENDIX I

271 COMPLIANCE REQUIREMENTS MULTIPLE CHECKLIST ITEMS (Appendix B to D.98-12-069)

271 COMPLIANCE REQUIREMENTS MULTIPLE CHECKLIST ITEMS

Operations Support Systems (OSS)

Pre-Ordering Functions

Service Address Validation

- Pacific shall demonstrate that it has clear guidelines for address validation. These guidelines should address the discrepancy between addresses that pass SORD, but not E911 validation processes.

Enhanced 911(E911)

Pacific shall institute three system improvements in a cooperative manner with CLCs:

- Integrate E911 data entry into the order entry process for loop with port UNE combinations and stand alone UNE port orders;
- Work with smaller facilities-based CLCs to improve the E911 data entry gateway's ability to meet the needs of those carriers;
- Develop standards for peer-to-peer interface for the entry of E911 data.

Directory Listings and White Pages

Pacific shall make three system and process changes that will enable Pacific to offer non-discriminatory access to directory listings and white pages. Pacific shall demonstrate that:

- it has integrated the ordering of UNE combinations and stand alone UNEs with the processing of directory listings and white pages. This will allow carriers to use one gateway and one electronic Local Service Record (LSR) to order both a resold service and directory listing or a UNE combination and directory listing. All parties agreed that the Change Management Process shall be followed, and Pacific indicated that it would likely roll-out this improvement in the first half of 1999.
- Effective September 1, 1998, Pacific will offer a web-based database which CLCs can use to verify directory listings and white page listings.

Integration of Pre-Ordering and Ordering Interfaces

- Pacific shall demonstrate that it has provided sufficient documentation such that an independent entity could create an integrated pre-ordering and ordering interface that would be consistent with all relevant business rules.
- Pacific shall demonstrate, either through an independent test consistent with recommendations in the interface testing section or through the actual experience of a CLC that has created an integrated interface, that Pacific has provided the reasonable documentation CLCs require.
- If in either conducting a test or assisting a CLC to implement an integrated interface, Pacific modifies either its business rules or documentation, Pacific shall demonstrate that those changes have been shared with other CLCs.
- Pacific shall make a showing that its side of the interface is fully operational and consistent with published business rules.

Ordering

"Fix-It" Team

- Pacific shall demonstrate that it has actively participated in the "Fix-It" team and its efforts to gather data, recommend and implement corrective actions that will reduce or eliminate rejections of and errors in directory listings, white pages and E911 orders.
- Pacific shall demonstrate that it has implemented corrective actions identified by the team.

Mechanized Rejects and Jeopardy Notices

- Pacific shall implement a fully automated reject and jeopardy notice process for any order that involves a UNE or resold services.

Automated Firm Order Confirmations (FOCs)

- Pacific shall demonstrate that either it has automated **loss** notifications or that CARE records provided by Pacific supply CLCs with substantially similar information as contained in a **loss** notice, in a format that is easily utilized.

Flow Through

Pacific shall demonstrate that it:

- is following flow through principles;
- has defined xDSL compatible loops in cooperation with CLCs, or according to industry standards;
- has submitted a plan for implementing of flow-through for xDSL capable two-wire loops with and without LNP by the end of 1999.
- has implemented flow through for:
- loop and port combinations;
- two-wire basic and assured loops with and without LNP;
- directory service requests;
- standalone LNP;
- resale.
- has explored relaxing or eliminating each of the following exceptions to flowthrough: project quantity, supplemental orders, and partial account conversion, for each **of** the order types listed above to which they apply.
- it has either (1) taken action to significantly relax or eliminate the exceptions to flow through described above or *(2)* explain why it is not technically feasible or practical to do so. Pacific shall also supply minutes from the quarterly change management meeting where the exception to flow through issue was addressed and resolved.
- Pacific shall make any necessary changes to LEX and EBI to provide real-time processing or orders in a manner equivalent to that employed by Pacific to process its own retail orders.

Maintenance and Repair

- Pacific shall clearly indicate through any performance data which interface was used to place trouble tickets, and an approximate break-down for resale, unbundled loops, and unbundled network element combinations.
- Pacific shall demonstrate that it has met the needs of facilities - based carriers by following through on scheduling and publicizing any joint meetings with CLCs.

Billing

Pacific can demonstrate compliance by:

- satisfactory billing-performance measures;
- sponsoring focus groups to identify billing issues;
- tracking bill disputes resolved within thirty days and report results to CLCSs;
- sharing dispute **logs** with respective CLCs;
- advising CLCs within thirty days when a) dispute will be resolved and b) when credit will be issued;
- consolidating bill rounds for small CLCs;
- providing **proof** that it has resolved the single bill - single tariff problem and has paid any monies due to other carriers.

Change Management

- Pacific shall demonstrate that it is adhering to the change management process developed in the OSS OII as discussed in the collaborative process.

Local Service Center (LSC) Performance and Anti-Competitive Behavior

Pacific shall demonstrate that:

- it has participated in the proposed LSC issue forum;
- LSC representatives have access to appropriate Accessible Letters;

- it has explored cross-referencing the LSC methods and procedures with the CLEC Handbook when the LSC M&Ps are placed on its internal Web;
- it has notified CLCs that records of first level escalations in the LSC are available upon request;
- what additional training in GUI interfaces LSC Help Desk representatives have received.
- its firewall between wholesale and retail information is effective.

OSS Appendix: Access *to* Interfaces, Training, and Evaluation

Pacific shall demonstrate that:

- it has adopted the revised OSS Appendix negotiation template attached as Appendix D to the FSR.
- it is offering an MOA covering training independent of the full OSS Appendix.
- it has instituted a training feedback process;
- it has shared the results of EDI operational readiness testing with the CLCs engaged in the test, and shared key learnings from the test with other CLCs.
- has notified CLCs of its two 90-day promotional offerings for OSS access and indicate that Pacific will provide 14-days notice prior to withdrawing the offer.

Interface Testing

Pacific shall:

- submit a detailed test plan with the Commission and interested parties describing the scope and methodology of the test. This test plan shall:
- identify the scope of the test by:
- enumerating the order types and permutations of order types it plans to test;
- delineating the order types which the company believes it does not need to test because it has sufficient commercial volumes and three months worth of performance measures;

- indicating the end-to-end process it proposes to test and how the proposed test will simulate this end-to-end process;
- showing how specific interfaces will be tested;
- explaining the method for conducting the test and the methodology for compiling and analyzing results;
- describing the benchmarks for evaluating the test;
- comparing its test plan to the Bell Atlantic OSS Evaluation Project Master Test Plan developed in New York;
- providing any other information the company believes **is** relevant.

Performance Measures

- Pacific shall use the performance measures developed in the OSS OII if these have been adopted by the Commission by the time of its compliance filing.
- If the Commission has not yet adopted performance measures as part of the OSS OII, Pacific's compliance filing shall include three months of data, using the most robust available measures, based on its participation in the OSS OII.
- Pacific shall make its performance measurement reports for its affiliates open to public inspection.

Incentives

- Once the Commission has adopted performance incentives in the OSS 011, Pacific shall demonstrate that it is complying with the mechanism.

Collocation

- Pacific shall demonstrate that it has solicited input from CLCs to clarify the Interconnector's Collocation Service Handbook (Collocation Handbook) to ensure that it is a useful reference tool for collocators.
- Pacific shall place its Collocation Handbook on its web site and apprise **all** CLCs of that website address.
- Pacific shall institute a revision system that prospectively shows, on each section, the date of the latest change.

- Pacific shall keep the Handbook on the website up to date. The website shall include a summary of all Handbook changes made over the preceding two months, unless the industry agrees to a longer period of time.

- Pacific shall demonstrate that it is issuing Accessible Letters for all changes in its collocation rules, and sending those Accessible Letters to all collocators.

- Pacific shall provide alternatives to its current physical collocation offerings: common area collocation and cages with less than 100 square feet for those offices where less than 100 square feet is available.

- Pacific shall allow CLCs to sublease collocation space to other carriers, and Pacific will deal directly with sub-leasing carriers for ordering UNEs.

- Pacific shall make every effort to assist carriers who wish to interconnect at adjacent locations.

- As part of any process developed for the Commission to determine whether space is available in particular COs, Pacific shall provide information on space used in that office for provisioning its own ADSL service.

- Pacific shall demonstrate in any walkthrough of an exhausted CO, the location of its own equipment used to provision ADSL service.

- In any CO in which all options for physical collocation offered by Pacific have been exhausted, Pacific shall not be permitted to provide additional space in that CO for any of its affiliates.

- Since amendments to ICAs can be problematic, Pacific shall develop a template for various types of collocation and for cage-to-cage connections, which is readily available to CLCs upon request.

- Pacific shall, within 15 days of a request, provide cage-to-cage connections between collocation cages leased by two or more CLCs.

- Pacific shall allow CLCs to augment their collocation space when they reach a 60% utilization rate and shall allow CLCs to begin the application process prior to reaching the 60% utilization rate if the CLC expects to achieve 60% utilization before the process is completed.

- Pacific shall refund nonrecurring charges for cage installation to carriers which surrender their collocation space, if that space is needed by another carrier.

- Pacific shall allow carriers the option of submitting a bond to cover the 50 percent advance payment, in lieu of a check. Pacific would cash the bond if the CLC did not submit the required 50 percent down payment within 30 days of the commencement of construction. Pacific shall file an Advice Letter to make this change to its collocation tariff.

- If CLCs determine some timeframe other than 30 days is acceptable for submitting the check or security bond, Pacific shall change its policy to reflect the shortened time period recommended by CLCs.

- Pacific shall accept applications and payment in advance of its Advice Letter becoming effective. However, no construction work shall commence until the Advice Letter is approved.

- To the extent possible, Pacific shall not fill cages consecutively but fill in cages in a manner that would allow for contiguous growth. However, if other carriers want to collocate in that CO and the unassigned contiguous space is needed, the space will be granted to the first carrier filing an application and submitting the requisite deposit or bond. Pacific shall notify the carrier which requested reservation of contiguous space that the contiguous space is no longer available.

- Pacific shall demonstrate that it completes physical collocation installations within the 120-day provisioning timeframe established in its 175-T tariff, and in accordance with time frames established in its ICAs with CLCs.

- If Pacific falls behind in the physical collocation process, it shall issue weekly status reports to the requesting carrier.

- Pacific's floor plans shall be provided to CLCs prior to any walktrough and shall include square footage as well as note the location of its equipment used to provide ADSL service and an indication of whether equipment is in use, idle or obsolete.

- Pacific shall post on its web site any CO which Pacific has determined has no space available for physical collocation.

- Pacific shall continue to allow CLCs to collocate RSMs for purposes of accessing UNEs.

- Pacific shall reserve space for dissimilar equipment for no more than five years. Dissimilar equipment shall be limited to switching equipment, MDfs and power.

- Pacific shall reserve space for similar equipment (e.g., transmission equipment) for no longer than 12 months, but only if collocators are also permitted to reserve space for the same length of time.

- Pacific, CLCs and Pacific's affiliates shall all have the right to reserve space for a 12-month planning horizon.

- Any entity, including Pacific Bell, which wants to reserve space shall provide Pacific with a $2,000 nonrefundable deposit. In the case of CLCs or other non-affiliated companies, the $2,000 shall be applied against the collocation construction fee. Any entity, including Pacific Bell, which does not use the reserved space within the nine month time-frame will forfeit its deposit. Such forfeitures will be credited against the collocations charges of the next carrier to collocate in that particular CO.

Interconnection Network Element Request (INER) Process

Pacific shall:

- publish the INER process in an Accessible Letter and the CLEC Handbook with the exact processes, timelines, escalation procedures and response detail parameters.
- be required to utilize standardized forms for INER requests from CLCs and for responses from Pacific.

For INER requests Pacific shall:

- provide "no" responses within 15 days. If Pacific says "no," citing technical problems, Pacific is required to provide a detailed reason why the request is not technically feasible. Additionally, Pacific can refer the CLC to an alternative to the UNE or interconnection requested with the proviso that if the referral is made, Pacific must be able and willing to provide that alternative in a timely manner. Pacific shall provide details on provision of the suggested alternative within the same 15 days as the "no" response to an INER request.
- provide "yes" responses within 30 days and will include high level cost categories (labor, equipment, etc.) for provision. If wholesale construction is necessary, cost support shall be supplied within an additional 24 days. Any cost support information provided by Pacific shall be in sufficient detail to allow the CLC to negotiate for provision of the UNE.
- Pacific shall develop a generic appendix of generally available UNEs, which obviates the use of INER for those elements. The appendix shall be updated as UNEs become defined.
- Pacific shall require use of the INER process only in cases where UNEs have not been previously defined.
- Pacific shall report to the Commission the number of INERs processed, the time elapsed for each INER processed, the results of the INERs processed and whether the INER resulted in a UNE being provided, by CLC, from the date of this order.
- Pacific shall demonstrate that it has streamlined the INER process by providing the standardized forms, timelines, and notification procedures used in the process.

Expedited Dispute Resolution

- Pacific shall allow a CLC to re-negotiate its ICA to include any or all of the dispute resolution processes in ICAs it has executed with CLCs in California.

SECTION 271 CHECKLIST ITEMS

ITEM ONE − Interconnection

Trunk Provisioning

Joint and Cooperative Planning Process

- As part of the Joint and Cooperative Planning Process (JCP), Pacific shall meet with individual CLCs to discuss specific projects, forecasting, network architecture details and or plan and initiate projects.
- In the JCP process Pacific and CLCs shall jointly assess forecasts provided. Pacific shall integrate such forecasts with other information in Pacific's construction plans.
- Pacific shall publish sample forms to be used in the JCP for interconnection trunk forecasting ("Local Network Interconnection Trunk Forecast") and network planning ("Pacific Bell CLEC Network Information Sheet"). These forms shall be published in the CLEC Handbook with descriptions and instructions for completion, shall be included in an Accessible Letter to all CLCs, and shall be made available electronically to all CLCs.
- Trunk Group Service Report
- Pacific shall alert CLCs if interconnection trunks are either being over-utilized or under-utilized using the Trunk Group Service Report (TGSR). The following applies to the TGSR process:
- The TGSR process shall be used to provide notification of under- or over- utilized trunk groups. Written responses -- except in blocking situations – shall be sent within the industry standard (10-20 days). In a blocking situation Pacific shall attempt to call the CLC prior to issuing the TGSR and shall accept trouble tickets at the LOC regarding the trunk blockage. Pacific shall report the resolution of the blockage situation back to the CLC.
- Pacific shall demonstrate that it is enforcing ICA provisions regarding under-utilized trunks as follows:
- Pacific will not enforce ICA provisions regarding taking back under-utilized trunks automatically; it will first consult with CLC or issue TGSR;

- Pacific shall have a JCP meeting with the CLC to attempt to resolve that TGSR;
- if the CLC has adequate reason for keeping trunks operational, Pacific shall accommodate.

Network Utilization Reports

- Pacific shall provide CLCs with four other network utilization reports, as described below and shall publish sample copies of the these reports, in the format presented in the collaborative process, in the CLEC Handbook. Pacific shall inform all CLCs of the availability of the various traffic reports via Accessible Letter.

Pacific shall provide the following:

- the common transport data that it currently provides to the interexchange carriers. This report will be provided on a monthly basis to the CLC via its account manager.
- TIKI reports monthly to all requesting CLCs via their account managers.
- electronic exchange data (DIXC) (on a reciprocal basis) for trunk traffic data on a weekly basis to CLCs who make electronic exchange arrangements.
- ad hoc point-to-point traffic studies for use in JCP meetings as **appropriate.**

Provisioning Practices

Pacific shall adopt the following business practices to mitigate problems associated with the timely and efficient provisioning of interconnection trunks:

- Pacific shall provide firm order commitments (FOCs) for trunks within 4 business days for augments, and 7 business days for establishing new trunk groups.
- If there is a facility or switching equipment shortage, Pacific shall include a status for a relief date. “Remarks” field of FOC to be expanded to include the cause of the shortage.

- If no relief date is available, "further status due date" shall be provided.
- Pacific shall discontinue use of "9/9/99" as an indicator of "no relief date." (e.g. "No digital equipment available at this time.")
- Remarks portion of the FOC shall state an expected status for the relief date and shall provide a contact name and number for the CLC to review held-order status.
  1. By 5 p.m. on the day that the status is due, Pacific shall re-FOC with current information.
  2. Pacific shall call CLCs on "Held order-denied," as needed.
  3. Pacific shall meet with CLCs and provide an explanation Pacific's system of assigning CFA and TCIC numbers so that CLC's and Pacific's systems can be "mapped."
  4. If one-way analog trunks are offered by Pacific and accepted by CLCs, the held order for digital trunks shall maintain its place on the "held order" list pending completion of the switch replacement.
- Pacific shall publish and transmit to all CLCs the Accessible Letter regarding customer not ready (CNR), as in the FSR at page 87.

NXX Code Openings

- Pacific shall verify all new NXX code openings with Tru-call in the month following each code opening.
- A single trouble ticket submitted to the LOC shall simultaneously initiate the Tru-call testing and the LOC repair process. If the problem is network translations, it shall be resolved within four hours. CLCs are responsible for providing Pacific with functioning test call numbers with every request for new NXX codes.
- Pacific shall provide positive notification of NXX openings on a real-time basis (i.e. website) within 24 hours of opening. The website shall contain information about new NXX openings at each CO with the date and time the code was opened.
- Pacific shall implement an automated system for opening NXX codes and providing positive notification to CLCs of code openings.
- Pacific and CLCs shall provide a single point of contact for immediate resolution of any problem that would prevent Pacific from performing

complete testing in conjunction with an NXX code opening. Pacific shall notify the affected CLC within 24 hours if it determines that the CLC has no trunking established to a particular tandem switch.

- Pacific shall notify all CLCs of these changes regarding NXX code openings through Accessible Letters and through updating the CLEC Handbook.

Frame Relay Network-to-Network Interconnection (NNI)

- Pacific shall demonstrate that it is negotiating with, and providing any CLC with frame relay network-to-network interconnection under Sections 251 and 252 of the Act.

ITEM TWO – Unbundled Network Elements

When a CLC purchases a UNE involving access to intellectual property,

Pacific shall provide:

- A list of the software vendors;
- A description of the specific license agreements for each type of software, i.e., specific uses, limits on number of users, or number of minutes. Pacific shall contact the switch vendors to determine if the switch vendors want the CLC to sign a nondisclosure agreement to obtain the information.
- At the written request of the CLC, Pacific shall negotiate any necessary RTU agreements for use of the software which parallels that in its own agreement with the vendor. Since Pacific is already recovering this cost in its UNE prices, Pacific shall not charge CLCs for negotiations or the RTU fees.
- Pacific shall demonstrate that it has developed and shared with CLCs a list of the ancillary equipment necessary for CLCs to provide certain UNEs or UNE combinations. Pacific shall also demonstrate that CLCs are able to order and obtain use of the ancillary equipment.
- Pacific shall provide any pieces of equipment which are required to make a UNE function as specified in the CLC's ICA at no charge because any costs associated with providing the UNE are captured in the price.

- Pacific shall provide ancillary equipment to make a UNE exceed its performance specifications or to combine UNEs. **CLCs** should pay cost based rates for such equipment.
- Pacific and **CLCs** shall negotiate any pricing issues relating to the equipment list.
- Pacific shall demonstrate that it has made the extended link **UNE** — which consists of the loop functionality delivered to a distant central office—available to **CLCs.**

ITEM THREE – Rights-of-way

No requirements for this checklist item.

ITEM FOUR – Unbundled Local Loop

Determining Facility Availability and Quality: The K1023 Process

Pacific shall demonstrate that it has:

- made the loop length indicator it has loaded into PREMIS available to **CLCs** in DataGate and Verigate at the same time;
- offered **CLCs** the opportunity to identify COs where the **CLCs** plan to offer xDSL *so* that it can load the loop length indicator for those COs;
- loaded the indicator for COs where **CLCs** have indicated they intend to offer xDSL.
- at a minimum, made the manual K1023 process available to **CLCs** to determine facility availability and to inform the **CLC** of approximate **loop** length, presence of pair gain and load coils, and equivalency factors.
- provided a detailed report to the Commission on the prospects for electronic access to loop quality information and the K1023 process. In this report, Pacific shall explain:
- the type of information that it has in APTOS, LFACs and any other system that indicate relevant information on the length, quality and availability of loops.

- how its marketing and retail representatives make use of this information to determine the availability of loops for its ADSL products.
- the K1023 process, comparing the retail and wholesale processes. Pacific shall note where electronic systems are accessed and the degree of automation.
- how it could provide CLCs with electronic access to APTOS, LFACs and any other relevant system for determining loop quality and availability as well as electronic processing of K1023 requests.

Integrated Digital Loop Carrier (IDLC)

Pacific shall:

- provide CLCs with functioning unbundled loops, using copper or ULDC, where customers must be moved from IDLC loops. Where Pacific provisions this loop to a CLC using ULDC, Pacific shall not require that an INER be filed, since the UDLC technology already exists in the network.
- provide quarterly reports to the Director of the Telecommunications Division on its deployment of IDLC loops so that the Commission can monitor IDLC penetration in Pacific's network. Pacific shall provide the report for three years unless renewed by Commission action.
- demonstrate that the quality of service that is provided to CLCs on UDLC or alternative technology is equivalent to the quality that Pacific's customers receive on IDLC.

Digital Subscriber Lines and Spectrum Management

- Pacific shall alert all CLCs, via Accessible Letter, of the update to its technical publication on xDSL standards in Technical Publication 76730 at page **12.**
- Pacific shall adopt national standards, as adopted by ANSI, for the provision of xDSL services.

- Pacific shall demonstrate in a compliance filing that the spectral management program that it employs to manage the deployment of xDSL services in the network is competitively neutral between Pacific's retail service offering and CLC's service offerings. In its compliance filing, Pacific shall address the following issues:
  - Pacific shall provide test data as well as all supporting data and assumptions used to develop its Binder Group Management process.
  - That the spectral management program that Pacific employs allows the widest possible deployment of xDSL type services;
- Pacific shall provide standardized reporting format to CLCs as to why requests for loops are denied for spectral interference reasons.
- CLCs are responsible for designating the type of xDSL they intend to deploy over the loop at the time they place their order. Pacific shall treat any information communicated by CLCs about xDSL products or services they wish to deploy or any associated orders as proprietary information that is not be shared with any of Pacific's retail operations or its affiliates.

Loop Installation Problems

- Pacific shall implement a process in the LOC to resolve and track problems associated with the initial loop installations and treat those as provisioning, not maintenance problems. The process shall include the following:
  - Pacific shall initiate a split between the maintenance and provisioning groups in the LOC, with the latter handling the loop installation process.
  - If the loop was never functional, Pacific shall resolve the problem using the LOC provisioning process.
  - If the loop is functional during CLC testing but is non-functional after the testing technician leaves, Pacific shall resolve the problem using the LOC provisioning process if the problem was identified on the due date, otherwise it shall be referred to the LOC repair process.
  - Pacific shall provide and publish an 800 number for the LOC provisioning process for non-functioning loops at installation.

- Pacific shall tag the demarcation point for CLC identification, clearly and visibly, at the **SNI** or equivalent minimum point of entry that contains a minimum of 10 loops.
- Pacific shall update the methods and procedures that define this process in the CLEC Handbook and through Accessible Letter with descriptions and instructions for referring loop installation problems to the LOC.

Loop Technical Specifications

- Pacific shall provide a clear understanding of the use of NC codes for ordering unbundled loops. Toward that end, Pacific shall conduct meetings with industry participants for the purpose of defining loop technical specifications using NC codes and report the results to the Commission.

ITEM FIVE – Local Transport

Pacific shall:

- make a showing that CLCs are able to obtain meet point unbundled transport;
- demonstrate the specific circumstances in which a CLC would be required to negotiate an amendment to its ICA in order to implement meet point unbundled transport;
- demonstrate that it has made higher bandwidth transport services such as Optical Level bandwidths available to CLCs. Even if only available on an Individual Case Basis (ICB), pricing for these services shall be based on TELRIC principles, as required for UNEs.
- demonstrate that it can produce timely, accurate bills for the transport UNE.

ITEM SIX – Unbundled Switching

Pacific shall demonstrate compliance by:

- demonstrating that parties have developed a factor for estimating terminating charges for local calls when a CLC provides unbundled switching.

- demonstrating that it has made unbundled switching available to CLCs as a legal and practical matter;
- providing custom routing functions which CLCs have requested which are technically feasible, as required by the FCC.
- allowing CLCs' traffic from dedicated transport facilities to overflow to Pacific's shared transport network;
- conducting any technical trials, which staff determine are necessary, of Switching Options B and C and 2-PIC in conjunction with staff and CLCs and provide the results of those technical trials to the Director, Telecommunications Division;
- not re-instituting the conditions in its 8/21/97 letter for instances involving collapsing switches;
- informing a CLC of the number of VTEs available to CLCs in the new switch in cases where a CLC retains its VTE in the analog switch, when the new digital switch is installed;
- allowing CLCs with VTEs in the analog switch to reserve a VTE in the new digital switch, at no charge. If VTEs are in short supply in the digital switch, the CLC will have the option of installing its footprint in the digital switch before the VTE is given to another CLC;
- not charging CLCs the cost of the footprint in a dial-with-dial switch replacement;
- developing M&Ps for ordering and provisioning unbundled switching, on a standalone basis or in combination with other UNEs.

ITEM SEVEN – Nondiscriminatory Access to 911 and E911, Directory Assistance Services, and Operator Call Completion Services.

See *OSS* he-Ordering Section.

ITEM EIGHT – White Pages

See *OSS* Pre-Ordering Section.

ITEM NINE – Access to Telephone Numbers

No requirements for this checklist item.

ITEM TEN – Access to Databases

- Pacific shall demonstrate that AIN is available as a legal and practical matter;
- Unless no CLC follows through with ordering AIN SCE functionality, Pacific must prove that the processes it has developed for AIN deployment are fair and nondiscriminatory. The best method of proof is to be able to chronicle the process used to provide particular CLCs with the functionalities they want;
- Pacific shall demonstrate that it has improved its communication with CLCs so that CLCs are fully informed about changes in Pacific's service offerings;
- Pacific shall not charge CLCs for regulatory costs associated with making AIN capabilities available;
- Pacific shall make the Bellcore AIN services which can be supported by Pacific's network infrastructure available to CLCs.
- Pacific shall demonstrate that the process improvements it implemented have prevented **SS7** problems, similar to those reported by MediaOne and Nextlink, from occumng;
- Pacific shall demonstrate that it has maintained the process improvements in place and make any further improvements needed to prevent reoccurrence of **SS7** problems;

ITEM ELEVEN – Number Portability

- For after hour cuts, CLCs shall be allowed to call off a cut, without charges, until 3 p.m. the day of the cut;
- Until three months after California's largest MSAs are converted to LNP (March/ April, 1999), **FDT** shall he monitored, and Pacific shall demonstrate that it performs adequately;
- Because the FDT process will be replaced with the 10-digit trigger process, Pacific shall prove that the 10-digit trigger is effective. Pacific shall provide substantive data that 10-digit trigger is functional and providing parity treatment;

- Since it will remain in use after LNP implementation, focus shall remain on the TBCC process. Pacific shall prove – with three months of data and on-going performance measures -- that TBCC performs adequately and will continue to perform adequately. Specifically, CLCs shall be assured that Pacific does not make the cut without waiting for the CLC's "all clear" phone call;
- Pacific shall not charge RCF tariff rates for CLCs remaining on INP longer than 90 days;
- Pacific shall adhere to the recommendations issued by the OP/I Subcommittee of the LNP Task Force regarding the issues referred to OP/I from the collaborative process;
- Pacific shall provide CLCs with the collaboratively adopted matrix shown on page 133 of the FSR, without changes.

ITEM TWELVE – Dialing Parity

No requirements for this checklist item.

ITEM THIRTEEN – Reciprocal Compensation

No requirements for this checklist item.

ITEM FOURTEEN – Resale

- Pacific shall provide evidence that, from the date of the Final Staff Report, that it has not violated the FCC's and the CPUC's rules regarding promotional offerings;
- Pacific shall state clearly in the text of each Advice Letter or Memorandum Notice whether the particular promotion is available to resellers;
- For promotions in effect for more than 90 days, Pacific shall state clearly on each of its retail tariff sheets that the promotion is available for resale;
- For promotions in effect for more than 90 days, Pacific shall include the appropriate 175-T tariff sheet in each advice letter covering a promotional offering for resellers;

- Pacific shall indicate on the **175-T** tariff sheet the specific rate(s) or charge(s) that resellers will pay;
- In cases involving bundles of both telecommunications and non-telecommunications services, Pacific shall offer the telecommunications portion for resale and clearly specify which components of the retail offering are available for resale;

In cases where Pacific extends a promotion, the Memorandum Notice shall specify the total length of time the promotion will have been in effect, including the extension.

(END OF APPENDIX I)

APPENDIX II

PACIFIC BELL UNBUNDLED NETWORK ELEMENT RECURRING PRICES AS OF 7/15/02

Pacific Bell Unbundled Network Element
Recurring Prices as of 7/15/02

Elements		*Monthlv UNE Price*
Link		
Basic or Assured Link (2-Wire) *	$	9.93
Zone 1 *	$	8.38
Zone 2 *	$	11.27
Zone 3 *	$	19.63
PBX Trunk Option **	$	2.18
Coin Option **	$	2.93
ISDN Option **	$	4.44
Digital 1.54 Mbps (DS-1) **	$	94.43
4-Wire Link **	$	37.26
4-Wire CO Facility Interface Connection **	$	15.35
Entrance Facilities		
Voice Grade (4W)	$	46.90
DS1	$	153.46
DS3 **	$	1,837.18
Multiplexing		
DS0/DS1	$	255.58
DS1/DS3	$	287.88
Switching		
Ports		
2-Wire Ports *	$	0.88
Coin Port **	$	3.81
Centrex Port **	$	4.37
DID Port **	$	4.18
DID Number Block **	$	1.00
ISDN Port **	$	14.10
Switch Usage		
Interoffice originating		
setup per attempt *	$	0.001817
holding time per MOU *	$	0.000563
Interoffice termination		
setup per attempt *	$	0.002142
holding time per MOU *	$	0.000572
Intraoffice		
setup per attempt *	$	0.004280
holding time per MOU *	$	0.001108
Tandem Switching		
setup per attempt *	$	0.000155
setup per completed msg *	$	0.000234
holding time per MOU *	$	0.000139

Tandem Switching Overflow		
setup per attempt **	$	0.005520
setup per completed msg **	$	0.009520
holding time per MOU **	$	0.005650
Switch Features		
Call Forward Variable *	$	0.174
Busy Call Forwarding*	$	0.171
Delayed Call Forwarding*	$	0.171
Call Waiting *	$	0.171
Three Way Calling *	$	0.174
Call Screen*	$	0.193
Message Waiting Indicator*	$	0.171
Repeat Dialing*	$	0.199
Call Return*	$	0.199
Call Forward Busy/Delay *	$	0.171
Speed Calling 8 *	$	0.171
Speed Calling 30 *	$	0.171
Intercom*	$	0.190
Intercom Plus *	$	0.190
Remote Access to Call Forward*	$	0.184
Direct Connect -shared *	$	0.171
Direct Connect -unshared *	$	0.171
Select Call Forwarding*	$	0.184
Call Trace *	$	0.174
Speed Call 6 *	$	0.171
Call Restriction*	$	0.269
Distinctive Ringing*	$	0.171
Directed Call Pickup*	$	0.174
WATS Access per Port *	$	0.171
WATS Access per Group *	$	0.530
Caller ID*	$	0.223
Caller ID Blocking*	$	0.178
Call Hold*	$	0.171
Remote Call Forwarding*	$	0.285
Hunting*	$	0.089
DNCF'	$	**0.294**
Trunk Port Termination		
End Office Termination **	$	20.99
Tandem Termination **	$	142.82
Interoffice Transmission Facilities		
Switched Transport - Shared		
Fixed Mileage per MOU	$	0.001259
Variable Mileage per MOU per Mile	$	0.000021
Switched Transport - Shared - Overflow		
Fixed Mileage per MOU	$	0.011360
Variable Mileage per MOU per Mile	$	0.000021
Switched Transport - Common		
Fixed Mileage per MOU	$	0.001330
Variable Mileage per MOU per Mile	$	0.000021

Dedicated Transport -Voice Grade		
Fixed Mileage**	5	3.22
Variable Mileage per Mile**	5	0.19
Dedicated Transport - DS-1		
Fixed Mileage**	$	32.32
Variable Mileage per Mile**	5	1.84
Dedicated Transport - DS-3		
Fixed Mileage**	5	372.70
Variable Mileage per Mile**	5	35.72
Expanded Interconnection Service Cross-Connect (EISCC)		
Voice Grade /ISDN		
EISCC	$	0.44
Jack Panel	5	1.79
DSO		
EISCC	5	26.07
Jack Panel	5	5.60
DS1		
EISCC	5	16.52
Jack Panel	$	2.49
Repeater	5	24.15
DS3		
EISCC	$	45.80
Jack Panel	5	25.88
Repeater	5	101.36
White Paae LIstInas		
CLEC Listings	$	0.40
Operator Services		
Directory Assistance per Call	$	0.39494
Operator Services per work second	$	0.02952
ss7		
STP Port	$	263.76
Additional Elements		
SS7		
SS7 Links		
Voice Grade		
Fixed Mile	5	3.22
Variable Mile	$	0.19
DS-1		
Fixed Mile	$	32.32
Variable Mile	5	1.84
Database Query		
800 Database - per Query	5	0.00219
Line Identifier Database (LIDB) - per Query	5	0.00256

Entrance Facility		
2-Wire Voice Grade	$	23.45
DS-3 without Equipment	$	724.04
Unbundled Loops provided over DLC lo an Entrant as a Digital Facility		
per Digital Facility	$	24.41
per Voice Line Activated	$	5.71
Digital Cross-Connect Svstem (DCS)	$	16.52
Multiplexing		
DS-0/DS-1 per Channel	$	10.65
DS-1/DS-3 per Channel	$	12.00
Switching		
Ports		
DS-1 Port	$	20.99
Shared Common Allocator:		19.00%

Notes:

- Interim rates from D.02-05-042 (subject to true-up)

** Rates subject to change (currently under review)

APPENDIX III

CALIFORNIA OSS PERFORMANCE MEASURES

In PIP'	alifornia OSS Performance Measures	
	re-Ordering	
X	1	Average Response Time (to Pre-Order Queries)
	rdering	
X	2	Average FOC/LSC Notice Interval
X	3	Average Reject Notice Interval
X	4	Percentage of Flowthrough Orders
	rovisioning	
X	5	Percentage of Orders Jeopardized
X	6	Average Jeopardy Notice Interval
X	7	Average Completed Interval
	8	Percent Completed Within Standard Interval
X	9	Coordinated Customer Conversion as a Percentage On-Time
X	9a	Coordinated Frame Due Time Cutovers as a Percentage On-Time
X	10	PNP Network Provisioning
X	11	Percent of Due Dates Missed
	12	Percent of Due Dates Missed Due to Lack of Facilities
	13	Delay Order Interval to Completion Date (For Lack of Facilities)
X	14	Held Order Interval
X	15	Provisioning Trouble Reports (Prior to Service Order Completion)
	15a	Average Time to Clear
X	16	Percentage Troubles in 30 Days for New Orders
X	17	Percentage Troubles in 10 Days for Non-Special Orders
X	18	Average Completion Notice Interval
	faintenance	
X	19	Customer Trouble Report Rate
X	20	Percentage of Customer Trouble Not Resolved Within Estimated Time
X	21	Average Time to Restore
	22	POTS Out of Service Less Than 24 Hours
X	23	Frequency of Repeat Troubles in 30 Day Period
	'etwork Performance	
X	24	Percent Blocking on Common Trunks
X	25	Percent Blocking on Interconnection Trunks
X	26	NXXs Loaded by LERG Effective Date
	27	Network Outage Notification
	illing	
X	28	Usage Timeliness
X	29	Accuracy of Usage Feed
X	30	Wholesale Bill Timeliness
X	31	Usage Completeness
X	32	Recurring Charge Completeness
X	33	Non-Recurring Charge Completeness
X	34	Bill Accuracy
X	35	Timeliness of Billing Completion Notices
X	36	Accuracy of Mechanized Bill Feed
	atabase Updates	
X	37	Average Database Update Interval
X	38	Percent Database Accuracy
X	39	E911/911 MS Database Update Average
	ollocation	
X	40	Average Time to Respond to a Collocation Request
X	41	Average Time to Provide a Collocation Arrangement
	iterfaces	
X	42	Percentage of Time Interface is Available
	43	Average Notification of Outages
X	44	Center Responsiveness

* Measure ıarked by an " X are included in the Commission's performance incentives plan (PIP)

APPENDIX IV

APRIL 2002 PERFORMANCE INCENTIVES PLAN RESULTS

April 2002 Performance Incentives Plan Results			
Reference number of observations			**5867**
Tier I	Category A	**Failures**	302
		Observations	4491
		Rate	**6.7%**
		Ordinary	$ 78,908
		onic	**$** 62,660
		Extended	**$**
		Credit	$247,234
	Category B	**Failures**	19
		Observations	88
		Rate	**21.6%**
		Ordinary	$ 110,761
		Chronic	$ 116,590
		Extended	$ 58,295
		Credit	$285,646
Tier II	Category C	**Failures**	51
		Observations	441
		Rate	**11.6%**
		Ordinary	**$** -
		Chronic	$ 140,510
		Extended	**$** -
		Credit	$ 140,510
		To Ratepayers	$140,510
		Total	$ 673,390

APPENDIX V

LIST OF APPEARANCES

APPENDIX V

LIST OF APPEARANCES

Respondent Applicant: James P. Young, Ed Kolto, and L. Nelsonya Causby, Attorneys at Law, for Pacific Bell.

Interested Parties: Randolph W. Deutsch, Gregory Hoffman, and David J. Miller, Attorneys at Law, for AT&T Communications of California, Inc.; Richard B. Severy, William C. Harrelson, and Evelyn C. Lee, Attorneys at Law, for WorldCom, Inc.; Stephen P. Bowen and Anita Taff-Rice, Attorneys at Law, for Rhythms Links, Inc.; Mary E. Wand and Howard J. Siegel, Attorneys at Law, for IP Communications Corporation, d/b/a California IP Communications; Morrison & Foerster, LLP, by James M. Tobin, Attorney at Law, for Pac-West Telecomm, Inc., and Theresa L. Cabral, Attorney at Law, for Working Assets Long Distance and New Edge Network, Inc.; MBV Law LLP, by David A. Simpson, Kristopher E. Twomey and Andrew Ulmer, Attorneys at Law, for the California ISP Association, Inc. and The Telephone Connection IXC Services, LLC; Goodin, MacBride, Squeri, Ritchie & Day, LLP, by John L. Clark, Attorney at Law, for Allegiance Telecom of California, Inc., the Association of Communications Enterprises., the California Association of Competitive Telecommunications Companies, Premiere Network Service, Inc., TRI-M Communications, Inc. (d/b/a TMC Communications) and Z-Tel Communications, Inc.; Karen Potkul and Melissa Waksman, Attorneys at Law, for XO California, Inc.; Earl Nicholas Selby, Attorney at Law, for ICG Telecom Group, Inc.; Ferris & Britton, by Lee Burdick, Attorney at Law, for Cox California Telcom, LLC; Stephen H. Kukta, Attorney at Law, for Sprint Communications Company L.P.; Christine Mailloux, Attorney at Law, and Regina Costa, for The Utility Reform Network; and Hanson, Bridgett, Marcus, Vlahos & Rudy, by Glenn Stover, Attorney at Law, for Sage Telecom, Inc.

Office of Ratepayer Advocates: Darwin Farrar, Attorney at Law, and Natalie Billingsley.

(END OF APPENDIX V)

Commissioner Henry M. Duque dissenting in part:

In Greek legend Sisyphus was punished in Hades for his misdeeds in life by being condemned eternally to roll a heavy stone up a hill. As he neared the top, the stone rolled down again, so that his labor was everlasting and futile. After nearly five years of litigious, protracted and costly proceeding Pacific has managed to eke out a nearly clean pass on Section 271 requirements, only to face further litigation or outright rejection. Pacific's long distance aspirations may be facing Sisyphean fate if the decision's Section 709.2 analysis and findings remain uncorrected.

I will dissent in part with respect to the analysis and findings on California Public Utilities Code Section 709.2 because the proposed decision's advisory opinion on this statute is redundant, supererogatory, and in error. In a last-ditch effort, the statute that the Legislature enacted in 1994 to permit local exchange telephone corporations' to offer intrastate interexchange telecommunications service ahead of the 1996 Telecommunications Act is now used in this decision as an attempt to thwart Pacific's entry into intrastate long distance market.

Section 709.2 is the state's equivalent of the 1996 Telco Act's Section 271 provisions. It was enacted in 1994 two years before the 1996 Telecommunications Act became law. It is ironic that the statue that would expand competition in the long distance market and open the local exchange service for competition ahead of the federal government's program is now manipulated in this order to forestall robust competition in California's intrastate interexhange market. If the findings of Section 709.2 succeed, Californians will stand by far to be the biggest losers.

Section 709.2 directs the Commission to authorize Pacific to enter the intrastate interexchange market conditioned upon a set of four general evaluative and partly implementation criteria. It requires: 1) non-discriminatory open access to exchanges; (2) a determination that there *is* no anticompetitive behavior by the local exchange carrier; **(3)** a determination that there *is* no improper cross-subsidization of intrastate exchange by requiring separate accounting records to allocate costs; and (4) a determination that there is no substantial possibility of harm to the competitive intrastate interexchange markets. None of these requirements establish a standard of perfect historical record and the absence of any allegations of wrongdoing on each item in order for Pacific to meet its statutory obligations before entering the long distance market. The decision misapplies these four criteria by relying on anecdotal past, specious

[1] "It is the intent of the Legislature in enacting this act that, in permitting local exchange telephone corporations to provide intrastate interexchange telecommunications service, jobs be created for California residents." SECTION **2,** (j), Legislative Counsel Digest, AB **3720.**
"It is the intent of the Legislature in enacting this act that California consumers of intrastate long-distance services will benefit from increased competition in the marketplace and lower intrastate interexchange rates that should result from entry of additional competitors, such as local exchange carries, into the intrastate interexchange market." SECTION **2, (k),** Id.

evidence and tenuous predictions to decline an affirmative finding for three of the four criteria. By doing this, this decision stands to create an unprecedented legal battle for California interexchange market defying the intents of the Legislature and the U.S. Congress to open telephone markets for more competition.

Ironically, this Commission in a previous order, after extensive and robustly litigated proceedings, had granted an affiliate of Pacific the authority to provide in-region long distance service subject to compliance with the Section 271 requirements of the Telecommunication Act. In addition, to the extent the requirements of Section 709.2 are relevant in this phase of our advisory opinion, the underlying review criteria under this statute are essentially and in greater detail subsumed and properly addressed within the various and broader requirements of Section 271. Therefore, Section 709.2, as a matter of fact and procedure should have never been rejoined and revisited with Section 271 analysis. As laid out, the decision not only fails to make affirmative determinations on the three criteria but also neglects what Pacific must do in order to meet the decision's peculiar interpretation of the requirements aside from the implied message of "change your history" or prove a negative. Let me mention a couple of examples.

On the issue of determining whether "there is no anticompetitive behavior" by Pacific, the decision never addresses what criteria it would apply to evaluate Pacific's behavior in its dealings with competitors. Without any effort to distinguish between aggressively competitive behavior from anticompetitive behavior, the decision simplistically relies on two federal lawsuits that were filed in 1996 and 1997 by long distance carriers. One of the lawsuits was vacated on appeal. The other was remanded. Both were later settled. No findings of anticompetitive behavior were made in these cases that withstood further legal review. Citing these old and settled cases, the decision finds the "record does not support a finding that there is no anticompetitive behavior by Pacific" implying that Pacific's *present* behavior must not be free from anti-competitive acts. The decision provides no guidance to Pacific as to how it can reverse this finding.

On the issue of improper cross-subsidization (Section 709.2 (c) (3)), the FCC has adopted requirements in its Accounting Safeguards Order that go as far as auditing Pacific's long distance affiliate transactions periodically in addition to establishing detailed accounting separation requirements. This Commission previously adopted these standards in its order authorizing Pacific's affiliate to enter the intrastate long distance market. This decision reiterates federal equal access law, and, among others, orders Pacific to submit all scripts for long distance marketing. A straightforward reading of this section leads me to believe that if the Commission adopts the proper safeguards, Pacific would satisfy this requirement. And yet, the decision, in an apparent discounting of these facts, veers off to anecdotal and

specious evidence of Pacific's future behavior to decline an affirmative finding. Here again, the order fails to state what Pacific must do in the future to reverse this finding.

In another more ominous analysis (of Section 709.2(c)(4)), regarding whether the record supports a finding that there is no substantial possibility of harm from Pacific's entry into the long distance market, the order completely ignores the reality of the long distance telephone market. The decision finds that there is a substantial possibility of harm to long distance market due to Pacific's entry and its role as PIC administrator in a sector of the market where the classic economic definition of competition can be directly applied. It reaches this conclusion by imposing on Pacific the burden of proving the negative, that there is no substantial possibility of harm to the competitive intrastate interexchange telecommunications market.

The long distance market is a sector where there are an abundance of competitors, enormous supply in capacity, and unrestricted access to consumers, where competition has progressively pushed prices downward to unprecedented levels. The decision ignores the reality that Pacific's affiliate has zero market shares in the long distance market to begin with, whereas incumbent long distance carriers possess collectively 100% of that market. It ignores the fact that incumbent long distance providers are trying to shore up their losses to competitors by bundling their long distance services with local services and aggressively entering the local market. It ignores the fact that California's UNE prices, following the recent discounts are possibly the lowest in the nation, which provides an ideal entry point for long-distance market into the local market ahead of Pacific's entry into the long-distance market. Notwithstanding these and other crucial realities of today's regulatory and competitive environment the decision throws a potential roadblock to Pacific's entry in the long distance market by stating that there could be "a substantial possibility of harm" if it enters that market. The order equates a substantial possibility of harm to long-distance carriers' market share self-interest with **a** substantial possibility of harm to the consuming public interest.

Yes, generally, it is going to be possibly harmful to the self-interest of long distance service providers to lose some or any market share in that sector, just as Pacific would consider it harmful to lose any amount of its market share in the local market. To the contrary, the interest of the public is furthered when there is more competition in the long-distance market as well as in the local market as envisioned by the Telecommunications Act of 1996. The quid pro quo approach of establishing an irreversible competitive market in the local market is to be simultaneously reciprocated by granting authority to Pacific to enter the long distance market. It is expected and desirable, for that matter, that each side experiences what they might consider out of self-interest 'harmful' market losses, which each side can shore up by picking up market share in their respective new sectors. This is what our section 271 is all

about. There is a trade-off. The public interest is served well when consumers have greater and more viable options including lower prices.

The order confuses these market protection arguments of substantial possibility of harm from long distance carriers with a possibility of 'a substantial harm' to the long distance market and thus inserts a monkey wrench in an otherwise lucid and credible analysis of Section 271. Thus, regrettably this is cause for me to dissent, in part, because I believe with respect to Section 709.2, the proposed order is seriously flawed and is in want of an immediate fix.

I file this partial dissent not just as a protest but also as a means to convey my grave concerns about the analysis and findings of Section 709.2 to the Commission. The flaws of Section 709.2 analysis are jeopardizing years of efforts by the State of California to open up the local telephone market for full competition, and to enhance competition in the long distance telephone market. I urge the Commission to immediately reopen this part of the decision prior to the FCC's completion of its review and revisit these issues, examine the full record, and make the necessary affirmative determinations the statute requires us to make on Section 709.2(c) (2), (3), and (4).

For all these reasons I will respectfully dissent in part.

/s/ HENRY M. DUOUE
Henry M. Duque
Commissioner

September 19, 2002
San Francisco, California

STATE OF CALIFORNIA GRAY DAVIS, *Governor*

PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

September 30, 2002

TO: ALL PARTIES OF RECORD IN RULEMAKING 93-04-003 et al.

Decision 02-09-050 was mailed without the concurrence of Commissioner Michael Peevey. Attached herewith is the concurrence.

Very truly yours,

/s/ CAROL A. BROWN
CAROL A. BROWN, Interim Chief
Administrative Law Judge

CAB/tcg

Commissioner Peevey, concurring opinion with partial dissent:

I concur with almost the entirety of today's historic decision. The decision finds that Pacific Bell has fully complied with 12 of the 14 checklist items of the Telecommunications Act of 1996. The remaining two items have partial compliance. Additionally, one of the items, mechanization of the Number Portability Administration Center, is expected to be in compliance in a few weeks. The decision also finds that Pacific Bell has passed a third-party test of its Operations Support System and that a strong Performance Incentives Plan is in place.

The California Commission is justifiably proud of the quality that is exhibited by the decision. Each item that will be considered by the Federal Communications Commission (FCC) has been thoughtfully analyzed and clearly explained. California has done a responsible job in opening up the competitive market. The decision's findings indicate our readiness to provide a recommendation to the Federal Communications Commission that Pacific Bell should be allowed into the long distance market.

However, I must dissent in part. My disagreement focuses on one issue: the interpretation of California Public Utilities Code Section 709.2. Subsection "c" states in full,
"No commission order authorizing or directing competition in intrastate interexchange telecommunications shall be implemented until the commission has done all of the following, pursuant to the public hearing process:

(1) Determined that all competitors have fair, nondiscriminatory, and mutually open access to exchanges currently subject to the modified final judgment and interexchange facilities, including fair unbundling of exchange facilities, as prescribed in the commission's Open Access and Network Architecture Development Proceeding (I.93-04-003 and R.93-04-003).
(2) Determined that there is no anticompetitive behavior by the local exchange telephone corporation, including unfair use of subscriber information or unfair use of customer contacts generated by the local exchange telephone corporation's provision of local exchange telephone service.
(3) Determined that there is no improper cross-subsidization of intrastate interexchange telecommunications service by requiring separate accounting records to allocate costs for the provision of intrastate interexchange telecommunications service and examining the methodology of allocating those costs.
(4) Determined that there is no substantial possibility of harm to the competitive intrastate interexchange telecommunications markets."

The decision finds that Pacific Bell has satisfied only the first criterion and that it has failed the remaining three criteria.

I disagree with the decision for three reasons. First, Public Utilities Code Section 709.2 does not control our decision because the Commission did not provide authorization to Pacific Bell to provide intrastate, interexchange service. Second, the clear intent of Section 709.2 is to open the interexchange market, not to restrict entry. Third, even if Section 709.2 is applicable, the fact is that Pacific has met all four criteria. To expand on each of these points:

- Regarding my first point, that Public Utilities Code Section 709.2 is not controlling, the code suggests that this Commission may be required to issue a separate order "authorizing or directing competition in intrastate interexchange telecommunications". Without intending any disrespect to the hard work put in by

our employees, the decision's review of the FCC's checklist is analogous to a pilot's review of a pre-flight checklist. Continuing this analogy, the decision does not authorize any flight. Ending the analogy and to be as clear as possible, today's decision does not authorize or direct competition. The FCC is the regulatory agency that has the discretion to authorize Pacific Bell's entry into the long distance market.

- Regarding my second point, the intent behind Section 709.2 is to open the interexchange market, not to restrict competition. This intent is quite clear from a plain reading of the code and the bill that created the code, AB 3720 (Costa). Providing further clarification, former Assemblymember Costa, now Senator Costa, sent a letter dated March 21, 2001, that states "if the Commission determines that the local exchange company has complied with the requirements of the Telecommunications Act and the FCC, it would likewise satisfy the letter and spirit of my bill." From a policy point of view, it is at least inconsistent, and at worst arrogant, for a state agency to interpret a code in such a way as to be exactly the opposite of the clear intent. This Commission should avoid such a stance.
- Regarding my third point, there is ample evidence that Pacific Bell has satisfied the four criteria of Section 709.2. Assuming arguendo that the first two points are not valid, the decision comes to an incorrect finding that Pacific Bell has satisfied only criterion (1).

Criterion (2) deals with anticompetitive behavior. The decision looks at Pacific Bell and its parent, SBC, in California and elsewhere in the nation. For support that Pacific is acting in an anticompetitive manner, the decision finds two federal court cases. Both court cases were settled and are old. One was filed in 1996 while the other was filed in 1997. One wonders how much time must pass before the decision would consider a more contemporary review. The decision also looks at actions taken by SBC outside of California as potentially indicative of what Pacific Bell may do in terms of anticompetitive activity. The decision tries to rely on such facts as SBC's filing of inaccurate information in the 271 applications of Missouri, Oklahoma, and Kansas. (Note: In all three states SBC has been authorized by the FCC to provide long distance service.) Similarly, the decision raises as relevant the fines that SBC has had to pay in regard to the Ameritech Merger Conditions. The benefit of comparing California's Pacific Bell against other states is marginal at best. The decision also criticizes the plans of Pacific Bell to jointly market services. This argument should be moot due to the fact that the majority voted upon alternate pages that put in place restrictive terms on joint marketing. All of the findings, after being looked at closely, lead to a conclusion that Pacific Bell has acted "aggressively competitive". Indeed, this term is used by the decision itself regarding other allegations of anticompetitive behavior.

Criterion (3) covers the issue of cross-subsidization. Specifically, the criterion requires separate accounting records and an examination of the cost allocation methodology. In line with the thoughts of Senator Costa that meeting the Telecommunications Act's requirements would satisfy his bill, Section 272(b) of the Telecommunications Act sets forth rules requiring separate accounting. Parties do not appear to take issue with Pacific Bell's claims that it will have separate accounting records nor with the cost allocation methodology. Instead, parties suggest that Pacific Bell plans to joint market services that will not account for all appropriate costs. Again, the majority adopted alternate pages that put in place restrictions on joint marketing. Also, the decision finds that the Commission can audit Pacific Bell on several grounds, such as the Telecommunications Act's requirement for a joint federal/state audit, an audit as ordered in PB Com, and an audit to check on compliance with affiliate transaction and cost accounting rules. The decision's finding that these mandated audits have not been performed are not a failure of Pacific

Bell. Criterion (3)'s requirement for separate accounting records and an examination of cost allocation have been satisfied.

Criterion (4) deals with a substantial possibility of harm to the competitive intrastate interexchange market. The decision appears to make a critical mistake. It employed a different standard. In the discussion section of this issue, the decision finds that "we cannot state *unequivocally* that we find Pacific's imminent entry into the long distance market in California *will primarily enhance the public interest*." (emphasis added) First, the standard in the Public Utilities Code is to find that it will not harm the interexchange market. Second, the Code specifically states that the Commission's duty is to find that there is no "substantial" possibility of harm as opposed to the decision's benchmark which would have us state "unequivocally" that Pacific Bell's entry is in the public interest. This error is repeated as Finding of Fact 336. Even if the words were changed, the error suggests the benchmark that the decision employed. Indeed, a public interest test is a part of the review that will be undertaken by the FCC. This test is contrasted against the requirement in the Public Utilities Code which requires a look at potential harm to the interexchange market.

An overview of the current interexchange market can put this all in perspective. California has certificated several hundred long distance companies ranging in size from the large carriers (AT&T, Worldcom/MCI, Sprint) to very small niche companies. At the present time, Pacific Bell has a zero market share. The question is, "Is there a substantial possibility that Pacific Bell can harm the competitive interexchange market?" The answer hinges on whether Pacific Bell is able to use its market power as a local exchange carrier. Some factors that would work against this possibility is that many interexchange carriers also offer local service and have been offering bundled service, that this Commission has in place accounting oversight, and that the Commission employs a more rigorous regulatory environment for Incumbent Local Exchange Carriers (such as Pacific Bell) than on any other type of telecommunications provider. Actually, common sense dictates that an additional entrant will *improve* the competitive market. Customers will have another provider offering more choices.

In summary, I find that the decision makes a major error on the issue of Section 709.2. On a legal basis, the Code is not applicable. On a policy basis, the outcome is contradictory to the clear intent of the section. And, if one were to presume, for the moment, that Section 709.2 was applicable, then Pacific Bell meets all four of the criteria contained within it. It is vital that the 709.2 issues be clarified. I strongly encourage the assigned commissioner to immediately act in order to resolve this issue.

/s/ MICHAEL R. PEEVEY
MICHAEL R. PEEVEY
Commissioner

San Francisco, California
September 19, 2002

Attachment 2

Mailed 9/23/2002

Decision 02-09-049 September 19, 2002

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF ALIFORNIA

Joint Application of AT&T Communications of California, Inc. (U 5002 C) and WorldCom, Inc. for the Commission to Reexamine the Recurring Costs and Prices of Unbundled Switching in Its First Annual Review of Unbundled Network Element Costs Pursuant to Ordering Paragraph 11 of D.99-11-050.	Application 01-02-024 (Filed February 21, 2001)
Application of AT&T Communications of California, Inc. (U 5002 C) and WorldCom, Inc. for the Commission to Reexamine the Recurring Costs and Prices of Unbundled Loops in Its First Annual Review of Unbundled Network Element Costs Pursuant to Ordering Paragraph 11 of D.99-11-050.	Application 01-02-035 (Filed February 28, 2001)
Application of The Telephone Connection Local Services, LLC (U 5522 C) for the Commission to Reexamine the Recurring Costs and Prices of the DS-3 Entrance Facility Without Equipment in Its Second Annual Review of Unbundled Network Element Costs Pursuant to Ordering Paragraph 11 of D.99-11-050.	Application 02-02-031 (Filed February 28, 2002)

Application of AT&T Communications of California, Inc. (U 5002 C) and WorldCom, Inc. for the Commission to Reexamine the Recurring Costs and Prices of Unbundled Interoffice Transmission Facilities and Signaling Networks and Call-Related Databases in Its Second Annual Review of Unbundled Network Element Costs Pursuant to Ordering Paragraph 11 of D.99-11-050.	Application 02-02-032 (Filed February 28, 2002)
Application of Pacific Bell Telephone Company (U 1001 C) for the Commission to Reexamine the Costs and Prices of the Expanded Interconnection Service Cross-Connect Network Element in the Second Annual Review of Unbundled Network Element Costs Pursuant to Ordering Paragraph 11 of D.99-11-050.	Application 02-02-034 (Filed February 28, 2002)
Application of XO California, Inc. (U 5553 C) for the Commission to Reexamine the Recurring Costs of DS1 and DS3 Unbundled Network Element Loops in Its Second Annual Review of Unbundled Network Element Costs Pursuant to Ordering Paragraph 11 of D.99-11-050.	Application 02-03-002 (Filed March 1, 2002)

OPINION ON REMAND ADDRESSING SHARED AND COMMON COST MARKUP ESTABLISHED IN DECISION 99-11-050 AND UNBUNDLED NETWORK ELEMENT RECURRING PRICES

I. Summary

This decision addresses a remand ordered by the U.S. District Court for the Northern District of California. (*AT&T Communications of California Inc. et al., v. Pacific Bell Telephone Company, et al.*, Order on Cross Motions for Summary Judgment, No. C01-02517 (CW)(N.D. Cal. August 6, 2002)("Remand Order"). In response to the Remand Order, this decision modifies the shared and common cost markup percentage, which is a component of the price of unbundled network elements (UNEs) that Pacific Bell Telephone Company (Pacific) charges competing local telephone carriers for use of its network. The shared and common cost markup that was originally adopted in Decision (D.) 99-11-050 is increased from 19% to 21%. This increase results from removal of $537.8 million in non-recurring UNE costs that appear to have been inadvertently double-counted in D.99-11-050.

This decision also orders modification to Pacific's monthly UNE recurring charges. The Commission concludes that the total direct UNE cost figure that the Court remanded for review was also used to set Pacific's monthly recurring charges. Therefore, the double-counting must be remedied in those charges as well. The decision calculates the amount of overstatement in recurring costs and directs Pacific to remove 13% from the expense portion of its UNE recurring costs. The Commission will review and adopt these changes after further filings by the parties in response to today's order.

The changes ordered by this decision to the markup and recurring costs shall be made on a prospective basis from the effective date of this order. The implementation of the 2% increase in the markup is stayed pending resolution of the amount of adjustment needed to monthly recurring charges so that both of these changes can be implemented simultaneously. Once the adjustment to

recurring costs is identified, all UNE rate changes ordered today will be implemented with today's effective date. Pacific is directed to track the UNEs purchased by other carriers that are impacted by these UNE rate changes so that once the net rate change is identified, it can be made effective today.

II. Background

In D.99-11-050,[1] the Commission adopted prices for the unbundled network elements, or UNEs, that Pacific sells to competitors who use portions of its network. One aspect of the prices adopted in that order involved a percentage markup over the forward-looking cost of UNEs to recover Pacific's "shared and common costs."[2] The Commission adopted a markup percentage of 19% based on a calculation of Pacific's shared and common costs divided by the total direct costs of UNEs and total non-recurring costs of UNEs.[3] This means

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[1] D.99-11-050 was issued in the Commission's Rulemaking and Investigation to Govern Open Access to Bottleneck Services and Establish a Framework for Network Architecture and Development of Dominant Carrier Networks (Rulemaking 93-04-003/Investigation 93-04-002) ("OANAD proceeding").

[2] Shared and common costs are defined in Appendix C of D.95-12-016. According to page 6 of Appendix C, shared costs are defined as "costs that are attributable to a group of outputs but not specific to any one within the group, which are avoidable only if all outputs within the group are not provided." Common costs are defined as "costs that are common to all outputs offered by the firm." The Federal Communications Commission (FCC) has defined "forward-looking common costs" as "economic costs efficiently incurred in providing a group of elements or services (which may include all elements or services provided by the incumbent [local exchange carrier]) that cannot be attributed directly to individual elements or services." (47 C.F.R. 51.505(c)(1).)

[3] Specifically, the Commission found that to calculate the markup percentage, the $996 million total of shared and common costs for all UNEs should be divided by the sum of (a) the total direct TELRIC costs for all UNEs of $4.814 billion (as approved in D.98-02-106 and related compliance filings), plus (b) total non-recurring costs of $375 million (adopted in D.98-12-079). (D.99-11-050, *mimeo.*, p. 72, and p. 257.) TELRIC refers to the "total element long run incremental cost" methodology.

that for each UNE that Pacific sells to competitors, the cost of that UNE is increased by 19% to establish a UNE price.

In D.99-11-050, the Commission noted the need to review the status of the UNE prices it was setting. Therefore, the order established a process for an annual reexamination of the costs of no more than two UNEs, but limited the scope of the review to bar requests to reconsider the 19% markup percentage.[4] The Commission's first annual reexamination proceeding commenced in February 2001, when AT&T Communications of California, Inc. and WorldCom, Inc. (hereinafter referred to as "Joint Applicants") filed applications nominating specific UNEs for review.[5]

In the fall of 2001, AT&T Communications of California, Inc., MCI Worldcom Network Services, Inc. and MCImetro Access Transmission Services LLC (jointly "Plaintiffs") filed a suit in U.S. District Court seeking to overturn aspects of D.99-11-050 related to the shared and common cost markup. Plaintiffs argued that the Commission improperly determined Pacific's firm-wide shared and common costs and unreasonably allocated these costs only to UNEs. (Remand Order, p. 23.)

In a cross-motion, Pacific argued, among other things, that the Commission had double-counted non-recurring costs in its calculation of the shared and common cost markup. Specifically, Pacific claimed that the

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[4] The Commission based this prohibition on the logic that reexamination of the markup would require reconsideration of all of Pacific's TELRIC costs and would be a "daunting task." (D.99-11-050, p. 169, n. 155, and p. 272.)

[5] The original applications (A.01-02-024 and A.01-02-035) were later consolidated with four applications filed in 2002. These six applications comprise the current "2001/2002 UNE Reexamination Proceeding."

denominator used in the markup calculation was unreasonably inflated because the Commission added non-recurring costs of $375 million, as adopted in D.98-12-079, despite Pacific's assertions that non-recurring costs were already included in Pacific's original estimate of direct UNE costs. (*Id.*, p. 18.) Pacific explained that its original cost study claimed a total of $4.83 billion in direct UNE costs, which included both recurring costs and a $583 million estimate of non-recurring costs. In D.98-02-106, the Commission adopted a total direct UNE cost amount of $4.814 billion. According to Pacific, it is mathematically impossible to subtract $583 million from $4.83 billion and arrive at a result of $4.814 billion, even with the other adjustments ordered by the Commission to Pacific's original cost estimate.[6] Because none of the adjustments ordered by the Commission dealt with removal of non-recurring costs, Pacific reasons that the Commission failed to remove the $583 million in non-recurring costs despite the Commission's assertions that the $4.814 billion adopted in D.98-02-106 did not include non-recurring costs. (*Id.*) To correct the situation, Pacific suggests the

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[6] As Pacific explained to the District Court, compliance filings provided by Pacific to the Commission between the January 1997 Cost Study and D.99-11-050 identify those few instances in which Pacific adjusted the total direct cost of UNEs used in the denominator of the markup. Pacific claims that none of these adjustments required Pacific to remove, or even addressed, non-recurring costs. The required adjustments involved reducing loop-related repair expenses, adjusting Pacific's fill factor, correcting errors in the modeling of switching investment and switch vendor prices, revising the loop study to include unintentionally omitted wire centers, and adjusting Pacific's product management expenses. (*See* Pacific Comments, 8/28/02, p. 5, n. 17.) Pacific also argued to the District Court that if the Commission had excluded non-recurring costs from Pacific's original estimate, it would have begun with $4.2927 billion and would have had to order more than $521 million in increases to Pacific's total cost figure. Yet the adjustments the Commission ordered involved a net decrease of $17 million. (*See* Pacific Reply Comments, 9/4/02, p. 6, n. 13).

Commission should have substituted the $375 million non-recurring cost amount adopted in D.98-12-079 for the earlier $583 million estimate.

On August 6, 2002, the U.S. District Court issued its Remand Order. The court denied all of Plaintiffs' claims and denied all but one of Pacific's claims. The court agreed with Pacific that the Commission had double-counted non-recurring costs when it calculated Pacific's total direct costs of UNEs. Specifically, the court concluded that the Commission had failed to remove Pacific's original $583 million estimate of non-recurring costs when it added $375 million to Pacific's cost of providing UNEs. In the Remand Order, the Court essentially agreed with the reasoning offered by Pacific and found that the Commission's arguments that it had not engaged in double-counting failed based on simple arithmetic. (*Id.*, p. 37) As part of its analysis, the Court noted that the Commission adopted the $4.814 billion amount from Pacific's revised cost studies after making adjustments that did not include removing the non-recurring cost estimate. (*Id.*, pps. 37-38.) In effect, the court found that the denominator of the markup calculation was inflated, and the markup percentage thereby lowered, due to this error. The order states, "The [Commission's] determination of Pacific's direct cost of providing UNEs (the denominator of the common cost markup), and any decision which relies on this determination, must be vacated and remanded, so that the double-counting can be remedied." (*Id.*, p. 38.)

On August 22, 2002, the Commission issued D.02-08-073 in the UNE Reexamination Proceeding, removing the restriction contained in D.99-11-050 that precluded review of the 19% shared and common cost markup in annual cost reexamination proceedings. The decision directed the Commission to

review the shared and common cost markup within the scope of this 2001/2002 UNE Reexamination Proceeding to comply with the Remand Order.

On August 15, 2002, the assigned ALJ in the UNE Reexamination Proceeding issued a ruling in anticipation of the issuance of D.02-08-073 that initiated the comment process ultimately directed by that order.[7] Specifically, the ruling requested comments on the correct methodology to adjust the denominator of the markup calculation given the Court's finding of double-counting. Further, the ruling requested comments on what decisions the Commission needed to vacate and/or adjust in order to comply with Court's Remand Order. Finally, the ruling also asked whether any adjustments to the markup calculation should be made on a retroactive basis, or only on a prospective basis.

In response to the August 15th ruling, Allegiance Telecom of California, Inc. (Allegiance), Joint Applicants, Pacific, and XO California, Inc. (XO) filed comments. Joint Applicants, Pacific, and XO filed reply comments.

III. Removal of Double-Counting in the Shared and Common Cost Markup

Pacific's Position

Pacific maintains that the Commission need only make a simple arithmetical correction to the markup calculation to comply with the Remand Order. Specifically, Pacific states that given the Court's finding that the denominator of the markup calculation double-counted non-recurring costs, the Commission should subtract from the denominator the estimate of non-recurring

[7] *See*, "ALJ's Ruling Requesting Comments on Remand of the Shared and Common Cost Markup," August 15, 2002.

costs that Pacific originally included in its estimate of total direct UNE costs. Since the Commission separately found in D.98-12-079 that non-recurring costs

were $375 million, the original estimate of non-recurring costs that was included in the total direct UNE costs should be removed. Pacific explains that its original estimate for non-recurring costs was $583 million, but this figure was later revised downward to $537.8 million based on a "labor rate adjustment" of $45.5 million.[8] Therefore, Pacific maintains that the Commission should now subtract $537.8 million from the denominator.

To support this approach, Pacific explains that in the Remand Order, the Court agreed with Pacific and found that the total direct UNE cost figure in the denominator of the markup calculation (i.e. $4.814 billion) was based directly on revised cost studies provided by Pacific after making Commission ordered adjustments that did not include removing the non-recurring cost estimate. (Remand Order, pps. 37-38.)

According to Pacific, once the non-recurring cost estimate of $537.8 million is appropriately subtracted, the denominator of the markup calculation would be reduced from the $5.189 billion[9] set forth in D.99-11-050 to $4.65 billion. To recalculate the markup percentage, total shared and common costs of $996 million would be divided by $4.65 billion, yielding a markup percentage of 21.4%, which rounds down to 21%.

Pacific states that once this correction to the shared and common cost markup is made, the Commission should order revisions to both the permanent rates set in D.99-11-050 and the interim rates adopted in D.02-05-042 so that the

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[8] *See* Pacific Bell Comments, 8/28/02, Addendum, Tab D-5, pg. 2, line 27 and p. 7, lines 9-11.

[9] $4.814 billion + $375 million = $5.189 billion. (D.99-11-050, p. 72).

recalculated markup can be corrected in UNE prices in all interconnection agreements between Pacific and other carriers.

Joint Applicants' and Other Competitive Carriers' Positions

Contrary to Pacific's comments, Joint Applicants do not agree that any double counting has occurred and they notice their intent to appeal the Remand Order. They fundamentally disagree that the Commission can correct any double-counting error in the markup calculation through a simple mechanical adjustment to the denominator of the markup. Rather, Joint Applicants contend that a complete reexamination of the record from the OANAD proceeding is required before any adjustments can be made.

Joint Applicants maintain that Pacific's current position regarding the double-counting of non-recurring costs, and its position before the U.S. District Court, is directly contrary to statements of its cost expert, Richard Scholl, during the OANAD proceeding. According to Joint Applicants, Scholl testified under oath at a deposition that there were no non-recurring costs included in the recurring cost study used to calculate total direct UNE costs. (See Joint Applicants Comments, 8/28/02, Exh. D. "Deposition of Richard Scholl, 3/22/96" and Joint Applicants Reply Comments, 9/4/02, Exh. A.) Joint Applicants claim this testimony contradicts Pacific's current claims that the total direct UNE cost figure of $4.814 billion included $537.8 million in non-recurring costs.

Because of this contradiction, Joint Applicants argue that the Commission must now decide between three courses of action. First, the Commission could rely on the sworn deposition testimony of Pacific's own witness Scholl and thereby ignore Pacific's current claims regarding double-counting. This would result in no changes to the markup calculation. Second, the Commission could ignore Scholl's testimony and remove double-counting from the markup and

from Pacific's UNE recurring costs.[10] Third, the Commission could avoid deciding between these two contradictory positions entirely by instead removing any double-counting through an update to the markup using current cost data.

In support of this third option, Joint Applicants maintain that the only proper method to correct any double-counting is to set a new shared and common cost markup and new recurring costs, and prices, based on current cost data. They contend that Pacific's shared and common costs have significantly decreased since studied in 1994 because of SBC's 1997 merger with Pacific Telesis and its 1999 merger with Ameritech. Joint Applicants describe how SBC justified these mergers with forecasts that they would result in substantial overhead cost savings. Specifically, SBC claimed $1 billion in expense savings from the merger with Pacific Telesis and $1.7 billion in cost savings from the Ameritech merger. (Joint Applicants Comments, 8/28/02, pps. 17-18.) Moreover, Joint Applicants state that Pacific's own ARMIS[11] data for corporate overhead expenses show a decrease of 12% from 1994 to 2000. (*Id.*)

Joint Applicants contend that calculating shared and common, or overhead, costs is the least complex part of a recurring cost study since overhead costs are simply high level company expenses projected on a forward-looking basis. Joint Applicants propose a formula for this purpose that uses publicly

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[10] This proposal to adjust recurring UNE prices is discussed in Section IV.

[11] ARMIS (Automated Reporting Management Information System) is a data collection and information system maintained by the FCC. It contains data that incumbent local exchange carriers such as Pacific provide to the FCC pursuant to FCC reporting requirements.

available ARMIS data for a simple calculation that provides a ratio of overhead costs to total costs.[12]

XO and Allegiance express support for the Joint Applicants' position that the Commission should comprehensively review the shared and common cost markup calculation based on current data rather than simply making mathematical corrections to the former calculation.

Pacific opposes Joint Applicants' proposal that the Commission abandon its methodology for calculating the shared and common cost markup for a new method using ARMIS data. Pacific notes that aside from the mathematical error regarding double counting, the current methodology was upheld by the Court as fully consistent with the 1996 Telecommunications Act and FCC rules. Pacific states that Joint Applicants' proposal violates the FCC's TELRIC standards because it is based on an average of data for all Bell companies, it relies on historical rather than forward-looking data, and it uses revenues rather than costs as required by Section 252(d)(2) of the 1996 Telecommunications Act. (47 U.S.C § 252(d)(2)) Fundamentally, Pacific characterizes Joint Applicants as attempting to throw out the entire OANAD record and start over. Pacific states that Joint Applicants provide no basis for this "extraordinary suggestion" to cast aside the entire OANAD proceeding and recalculate everything.

Further, Pacific argues it is too late to raise arguments about mergers that took place prior to the adoption of the markup in D.99-11-050. According to Pacific, the current markup incorporates a forward-looking analysis that

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[12] The proposed formula is:

$$\frac{\text{Total Regulated Corporate Operations Expense}}{(\text{Total Regulated Operating Revenues} - \text{Total Regulated Corporate Operations Expense})}$$

assumed Pacific would realize substantial future overhead savings. Pacific contends there is no reasoning to support the suggestion that the mergers have resulted in more savings than was built into the common cost figures used in D.99-11-050. (Pacific Reply Comments, 9/4/02, p. 11.)

With regard to the deposition testimony of its witness Scholl, Pacific implies that Joint Applicants are only attempting to "muddy the waters" with information outside the record of the original OANAD proceeding that is more properly the subject of an appeal of the Remand Order. Pacific states that Scholl's deposition was never introduced into the record of OANAD and the cost study he refers to in his testimony was superseded by a subsequent version that specifically delineated recurring and non-recurring costs.

Discussion

We regret that we find ourselves in the position of having to revisit the shared and common cost markup originally calculated in D.99-11-050. The parties and the Commission expended enormous effort to perform and analyze the cost studies that led to the 19% markup and the UNE prices ultimately adopted in that order. We do not wish to devalue the extraordinary efforts of so many people during the course of the OANAD proceeding by opening up old wounds, particularly to put a hasty patch over them. Indeed, we are hesitant to make these changes after the passage of so much time because there is a dangerous potential that, in presenting mere excerpts from spreadsheets, testimony, and all of the other components of the prior OANAD record, parties can now take bits of information, potentially out of context, to support vastly different outcomes years later. Nevertheless, the Remand Order, and its finding that the Commission could not adequately explain whether or how non-

recurring costs were removed from Pacific's total direct UNE cost estimates, force us to review the markup percentage and its origins.

Despite our hesitation at undertaking this exercise on an expedited basis, the principal question before us in responding to the Remand Order is whether we should make a simple and quick arithmetical correction to remove the double-counting found by the Court, or whether we should take a fresh look at the markup percentage based on current data. The first option, while quick and relatively simple, is complicated by the testimony of Pacific's own witness that there were no non-recurring costs included in calculations that underlie the adopted total direct UNE cost figure of $4.814 billion. The latter option, namely calculating an entirely new shared and common cost markup with current ARMIS data, holds some appeal because of the potential that Pacific's overhead costs have changed since cost studies were last performed based on 1994 data. On the other hand, there is no question that this endeavor would require more time and involve more resources than the mathematical correction proposed by Pacific. If we were to entertain entirely new markup methodologies, we need time to iron out the details.

Although both options are problematic, we refuse to see these two options as mutually exclusive. In view of the Remand Order, we will opt to make an immediate correction to the markup calculation made in D.99-11-050 to remove the double-counting found by the Court. At the same time, we realize that a complete review of Pacific's shared and common costs would be wise. Unfortunately, we cannot commit the resources at this time to such a resource-intensive endeavor.

Therefore, to comply with Remand Order, we find that we should promptly correct the denominator of the markup percentage that the Court

found had double-counted non-recurring costs. Pacific has reasonably shown that the number we adopted for total direct UNE costs of $4.814 billion was based on its cost studies submitted in 1997 and revised by further filings. Pacific's original estimate included $583 million in non-recurring costs, which was later adjusted to $537.8 million based on a the "labor rate adjustment." We find that none of the revisions to the 1997 filing removed either this $583 million or $537.8 million in non-recurring costs that were included in the original total direct UNE cost estimate. Therefore, to remove double counting of non-recurring costs in the denominator of the markup, we should subtract the original $537.8 million estimate of non-recurring costs that is embedded in the $4.814 billion total direct UNE cost figure because it was replaced with the new amount of $375 million that was adopted in D.98-12-079.

When we perform this subtraction, the $4.814 billion figure is reduced to $4.65 billion,[13] which becomes the new denominator in our calculation of the shared and common cost markup. To complete the markup calculation, we substitute the new figure of $4.65 billion into the formula we used in D.99-11-050. Specifically, we start with the $996 million in total shared and common costs for all UNEs,[14] and divide by $4.65 billion in total direct UNE costs and non-recurring costs. This computation results in a markup of 21.4%, which consistent with prior Commission practice, rounds down to 21%.

We make this correction to the markup calculation despite Joint Applicants' numerous arguments that there was no double-counting in D.99-11-050. Principally, Joint Applicants rely on the conflicting deposition

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[13] $4.814 billion - $537.8 million + $375 million = $4.651 billion

testimony provided in 1996 by Pacific's witness Scholl to argue against modifications to the markup. Pacific charges, and Joint Applicants do not deny, that the deposition was never introduced into the original OANAD proceeding. Despite this, Joint Applicants ask that it now be considered. We agree with Joint Applicants that Scholl's testimony contradicts Pacific's current position regarding double-counting of non-recurring costs because he states there are no non-recurring costs in the recurring cost study used to develop the $4.814 billion in total direct UNE costs.[15] With all due respect to Mr. Scholl, his testimony is directly contradicted by the figures contained in the cost filings filed in 1997, which includes line items for non-recurring costs. We should not consider the Scholl testimony because it was not on the record of the original OANAD proceeding. Even if we did consider it, we would give greater weight to the actual cost filing that occurred after the date of the Scholl deposition than to deposition testimony taken a year in advance of that filing. We note that the

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[14] D.99-11-050, p. 72.

[15] Scholl's testimony directly relates to output pages from Pacific's recurring cost study. These output pages are labeled as "PBON 001684" through "PBON 001746." (*See* Joint Applicants Comments, 8/28/02, Exh. C and Exh. D, p. 776, lines 19-20). Pacific's 1997 Cost Filing indicates that the "Sum of Operating Expense from PBON 001684 through PBON 001746" is the source for the $4.139 billion in "1994 Total Regulated Operating Expenses" (*Id.*, Exh. A, Tab D-5, p. 8, line 17). This $4.139 billion factors into Pacific's estimate of $4.83 billion in total direct UNE costs. Indeed, Pacific's own filings before the District Court identify the same 1994 Total Regulated Operating Expense Figure and stated that the figure "includes both recurring and non-recurring costs." (*See* Addendum to Pacific Bell Comments, 8/28/02, "Opposition to Plaintiff's Motion for Summary Judgment and Memorandum in Support of Cross-Motion for Summary Judgment," p. 26.) Thus, while Scholl says the output pages ultimately used to calculate the total direct UNE costs do not include non-recurring costs, Pacific now indicates non-recurring costs are included here.

Court relied on the actual cost filings when deciding the double-counting issue in the Remand Order and Scholl's testimony was never raised.

Further, Joint Applicants imply that the Commission must have converted some of what Pacific labeled non-recurring costs into recurring costs. Even if this were the case, there is no support in D.99-11-050 or elsewhere for this claim. Joint Applicants' assertions that Pacific did not prove there was double counting are more appropriate for an appeal of the District Court's Remand Order. If there were support for this contention, there would likely have been no Remand Order in the first place. The fact is that the Commission used Pacific's estimated total direct UNE costs as a starting point for the numbers used in the markup calculation. Pacific has sufficiently shown how the figure of $4.814 billion used in the markup calculation can be traced directly back to Pacific's original total direct UNE cost estimate of $4.83 billion. Pacific's calculations and its support for all of the figures used in these calculations are summarized in Appendix A.

As we stated above, we will make the correction described above to the denominator and increase the shared and common cost markup from 19% to 21%. This change shall be effective with this order. We will also endeavor to review Pacific's shared and common costs based on current information at some future date. We will not commit resources at this time to this effort, but we will consider it as we set our telecommunications priorities for the future. Although Joint Applicants would prefer that we take a fresh look at shared and common costs immediately, using their new methodology, we believe that consideration of their new methodology would be a complicated task and divert significant time and resources from other current priorities. We opt to make arithmetical adjustments to the method that we used in D.99-11-050 rather than undertake a fresh look at the markup right now. It is our view that the actions we take today,

namely a quick correction coupled with a future review of the markup, are adequate and fully comply with the Remand Order. We will, however, not foreclose Joint Applicants from resubmitting their proposal when we review the markup at some future date.

IV. Removal of Non-Recurring Charges from Recurring Costs

Joint Applicants' Position

According to Joint Applicants, if the Commission finds that it must remove non-recurring costs from Pacific's total direct cost of UNEs, these same non-recurring costs were inappropriately included in Pacific's recurring costs as well. Joint Applicants claim that the source of the non-recurring costs is the 1994 Total Regulated Operating Expenses of $4.139 billion set forth in Pacific's 1997 Cost Study.[16] Joint Applicants' explain that the 1994 Total Regulated Operating Expenses Figure contained in the 1997 cost filing is the only expense figure large enough to potentially include $583 million in non-recurring costs. They maintain that this $4.139 billion amount is precisely the same expense amount that figures into the expense portion of Pacific's recurring costs. Pacific's 1997 cost filing shows that the $4.139 billion expense figure is a building block of the $4.814 billion in total direct UNE costs adopted in D.99-11-050. (*Id.*) Thus, if the Commission finds that there are non-recurring costs included in the $4.139 billion 1994 Total Regulated Operating Expenses, then it must conclude that these same non-recurring costs made their way into recurring charges.

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[16] The source of this $4.139 billion is described on p. 8 of Tab D-5 as "Sum of Operating Expenses from PBON 001712 through PBON 001746," which are pages of Pacific's 1997 Cost Study. (*See* Joint Applicants Comments, 8/28/02, Exh. A, Tab D-5, p. 8, line 17.)

For recurring costs, Joint Applicants suggest that if the Commission cannot commit the resources to reviewing all recurring costs with new data, it could implement a simple fix to the current recurring costs. This simple fix would

involve calculating the average overstatement of recurring costs based on the $583 million in non-recurring costs originally included in Pacific's total direct UNE costs.[17]

Pacific's Response

Pacific disagrees with Joint Applicants' suggestion that UNE recurring charges also require adjustment based on the Remand Order. Pacific maintains that the recurring costs set in D.98-02-106 are final, were affirmed on rehearing, and the Remand Order has no bearing on them. Accordingly, Pacific argues that Joint Applicants may not circumvent the proper appeal procedure and challenge the recurring costs in this manner. In addition, Pacific rebuts Joint Applicants' claims regarding recurring costs by alluding to a subsequent cost study that specifically delineated recurring and non-recurring costs. (Pacific Reply Comments, 9/4/02, p. 9, n. 19) Pacific alleges that nonrecurring costs were excluded from the direct costs of individual UNEs that formed the basis of D.98-02-106.

Discussion

We find Joint Applicants' assertions quite compelling. If non-recurring costs were included in Pacific's estimate of total direct UNE costs, these same non-recurring costs had to have been included in all of Pacific's recurring costs that were established based on this same total direct UNE cost estimate.

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[17] Joint Applicants suggest calculating this overstatement by taking $583 million in non-recurring costs allegedly included in 1994 Total Regulated Operating Expenses and dividing this by 1994 Total Regulated Operating Expenses. (The figure for 1994 Total Regulated Operating Expenses can be found in Joint Applicants' Comments, 8/28/02, Exhibit A, Tab D-5, p. 8, line 17.)

Before turning to the substance of our reasoning, we disagree with Pacific that Joint Applicants are circumventing the proper appeal procedures and it is too late for Joint Applicants to challenge recurring UNE costs and request adjustments. The Remand Order specifically vacates and remands the Commission's "determination of Pacific's direct cost of providing UNEs (the denominator of the common cost markup), *and any decision which relies on this determination*…" (Remand Order, p. 38.)(emphasis added) The $4.814 billion direct cost of providing UNEs that is referred to by the Court is identical to the $4.814 billion figure used in D.98-02-106 and related compliance filings to set recurring costs. (D.99-11-050, p. 72, n. 72) By its own wording, the Remand Order directs that any decision relying on the direct cost of providing UNEs must be remedied. The Commission cannot look at a correction to the $4.814 billion direct cost of providing UNEs in isolation and ignore the direct and substantial impact that a correction to that figure might have on other decisions that were based on that same calculation of $4.814 billion. Therefore, the Commission must address the direct cost of providing UNEs used in D.98-02-106. Joint Applicants' current claim, which arises from the Remand Order's finding of double recovery of non-recurring costs in the total direct UNE cost figure, is not inappropriate.

More substantively, Pacific states that there was a "subsequent cost study" that formed the basis of the recurring costs set in D.98-02-106 and, therefore, the Commission should ignore Joint Applicants' assertions about the need to revise recurring charges. Pacific provides no citations or references to support its claims about a "subsequent cost study" and we cannot rely on these unsupported assertions. As we explain below, we find that the computations underlying Pacific's 1997 cost study that lead us to find double counting of

non-recurring costs in the markup are exactly the same calculations that were used to develop the $4.814 billion in total direct UNE costs approved in D.98-02-106 and related compliance filings, and later used to set recurring prices in D.99-11-050.[18]

Overall, we find that since we have already concluded that the $4.814 direct cost of providing UNEs included $537.8 million in non-recurring costs, these non-recurring costs were also incorporated into the recurring costs adopted in D.98-02-106 and related compliance filings. Joint Applicants have shown that the $4.139 billion estimate of 1994 Total Regulated Operating Expenses is a component of Pacific's 1997 total direct UNE cost estimate of $4.83 billion. Joint Applicants' have also shown, and Pacific's court filings support, that the 1994 Total Regulated Operating Expenses Figure contained in the 1997 cost filing is the only expense figure large enough to potentially include over $500 million in non-recurring costs.[19] The $4.83 billion originally estimated by Pacific was revised downward to $4.814 billion and used to calculate UNE costs in D.98-02-106. (D.99-11-050, p. 72). Pacific has already shown to the District Court and now to this Commission that the $4.83 billion included non-recurring costs and

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[18] For a summary of these calculations, see Appendix A.

[19] Pacific does not dispute this. As we have indicated above in footnote 15, Pacific's own statements to the District Court referred to the same 1994 Total Regulated Operating Expense Figure and stated that the figure "includes both recurring and non-recurring costs." (See Addendum to Pacific Bell Comments, 8/28/02, "Opposition to Plaintiff's Motion for Summary Judgment and Memorandum in Support of Cross-Motion for Summary Judgment", p. 26.) As Joint Applicants note, all the other figures contained in that cost filing which figure into the calculation of Total direct UNE costs are either investment figures that do not involve non-recurring costs or are too small to include an amount of that magnitude.

none of the downward revisions to that figure involved removal of non-recurring costs. (*See* Pacific Comments, 8/28/02, p. 5, n. 17, and Pacific's Reply Comments, 9/4/02, p. 6, n. 13.) Thus, recurring prices established using that same $4.139 billion in 1994 Total Regulated Operating Expenses also include the same $537.8 million original estimate of non-recurring costs.[20] In other words, Pacific is double-recovering non-recurring costs because $537.8 million in non-recurring costs is included in recurring prices, while at the same time, Pacific is charging separate non-recurring prices based on the finding of $375 million in non-recurring costs in D.98-12-079. Based on the same logic that non-recurring costs must be removed from the $4.814 billion total direct cost of UNEs, we should remove any non-recurring costs in the recurring costs adopted based on the $4.814 billion.

To remedy this double recovery, Joint Applicants have proposed that the Commission review all of Pacific's recurring UNE costs, or in the alternative, implement a simplified fix to the current recurring costs. We opt for the simplified fix for the same reasons that we are making the simplified fix to the markup calculation. We do not believe that a complete review of all UNE recurring prices is a wise use of our resources at this time.

The simple fix proposed by Joint Applicants involves calculating the average overstatement in recurring costs caused by the inclusion of $537.8 million in the $4.139 in 1994 Total Regulated Operating Expenses. In other words, we should reduce the expense component of UNE recurring costs by the percent that expenses were overstated. When we divide $537.8 million by $4.139

[20] We will assume the same labor rate adjustment that lowered the $583 million to $537.8 million.

billion, this yields 12.9% which rounds to 13%. Thus, operating expenses were overstated by 13% when recurring costs were adopted in D.98-02-106. To correct

this 13% overstatement, we shall direct Pacific to submit its calculation of the reduction to the expense portion of the recurring costs of each of its UNEs. Pacific should submit its calculations, fully supported with workpapers and appropriate documentation, as a filing in this docket within 30 days of this order.

V. Retroactive Adjustment

Parties' Positions

Joint Applicants oppose the concept of any retroactive adjustment to the shared and common cost markup, stating that this would entail not only abysmal public policy leading to "crippling uncertainty" in competitive telecommunications markets, but also retroactive ratemaking in which the Commission is not authorized to engage.[21] Further, Joint Applicants argue that a retroactive adjustment to rates in light of the Remand Order would be inequitable given that other UNE rate changes have not been made retroactively, even where the Commission's has found that UNE rates were inflated.

Likewise, XO urges the Commission not to apply any changes to the markup calculation retroactively because a retroactive adjustment would have a devastating impact on the development of local exchange competition in California. Similar to Joint Applicants, XO considers the idea of a retroactive correction poor public policy because it would jeopardize future reliance on Commission orders. Allegiance echoes the comments of Joint Applicants and XO that any adjustment should apply prospectively only.

Pacific suggests that any UNE price adjustments based on the Remand Order should be implemented prospectively for now, and that the question of

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[21] Joint Applicants' Comments, 8/28/02, pps. 24-25, citing *Pacific Telephone & Telegraph Co. v. Pub. Util. Comm. of Calif.*, 62 Cal.2d 634, 650 (1965).

whether UNE prices should be revised retroactively can be addressed later. Pacific disagrees that a retroactive adjustment to UNE rates would constitute "retroactive ratemaking." Rather, Pacific maintains that the Commission, pursuant to federal law, has the authority to "undo what is wrongfully done by virtue of its order," even where its statutory authority to fix rates is "prospective only." (*United Gas Improvement Co. v. Callery Properties, Inc.*, 382 U.S. 223, 229-30 (1965). According to Pacific, the Commission has the authority to implement a retroactive adjustment when its rates are judicially reversed. (*See Natural Gas Clearinghouse v. FERC*, 965 F.2d 1066, 1073-4 (D.C. Cir. 1992).

Discussion

We agree with Pacific that the Commission has the authority to order retroactive rate adjustments in responding to the Court's Remand Order. In *United Gas*, the Supreme Court upheld FERC-ordered[22] refunds that FERC approved on remand of a rate order that had been overturned by a reviewing court. The Supreme Court made clear that FERC had the authority to order such refunds without violating the rule against retroactive ratemaking, and it also found that FERC's exercise of such authority was a matter of discretion.

Several years later, in *Exxon Company, USA v. FERC*, 182 F.3d 30 (D.C. Cir. 1999), the D.C. Circuit stated that while "FERC does have a measure of discretion in determining when and if a rate should apply retroactively, … such discretion is not without its limits." (*Id.* at 49.) The court explained that:

[22] The Federal Energy Regulatory Commission (FERC) was known as the Federal Power Commission at the time of this case.

> "[t]here is … a strong equitable presumption in favor of retroactivity that would make the parties whole. As we have stated, "when the Commission commits legal error, the proper remedy is one that puts the parties in the

> position they would have been in had the error not been made. *CPUC*, 988 F.2d at 168."

At the same time, the *Exxon* court made clear that the agency could consider equitable factors in determining whether to apply a rate retroactively. "This is not to say that FERC must do so in every case if the other considerations properly within its ambit counsel otherwise." (*Id.*)

The D.C. Circuit reiterated the principles in the above cases most recently in *Verizon Telephone Cos. v. FCC*, 269 F.3d 1098 (D.C. Cir. 2001). Among other things, the court reiterated that an agency's decision to make retroactive adjustments in the wake of a court order was a matter of discretion. "We have previously held that administrative agencies have greater discretion to impose their rulings retroactively when they do so in response to judicial review, that is, when the purpose of retroactive application is to rectify legal mistakes identified by a federal court." (*Id.*, at 1111.)

Given the foregoing, we will exercise our discretion in this case to not retroactively adjust rates in response to the Remand Order. Although we are aware of the strong equitable presumption in favor of retroactivity that would make the parties whole, we find that there are equitable considerations that militate against making retroactive adjustments to UNE rates at this time. First, we note the recent spate of bankruptcies in the telecommunications sector that have placed many of the competitive carriers that would be impacted by a retroactive UNE rate adjustment into bankruptcy proceedings. It is reasonable to conclude that any carriers currently under bankruptcy protection would have difficulty making any back payments to Pacific for monies owed retroactively to 1999 when the 19% markup was originally adopted.

Second, we agree with those who have commented that it would be bad public policy to inject further uncertainty into the competitive telecommunications sector by leaving the question of retroactive rate adjustments to a future date, or by ordering retroactive UNE rate payments at this time. We base this opinion on the current and well-documented negative market conditions affecting the sector. To leave the issue open, as Pacific suggests, would be even worse than ordering retroactive adjustments because the uncertainty alone would likely undermine the ability of these emerging competitors to gain access to needed investment capital. We cannot in good conscience order a retroactive adjustment, or leave the question open, because of the harm this would cause to the competitive telecommunications sector. This is consistent with our duty under Section 709 of the Public Utilities Code to encourage the development and deployment of new telecommunications technologies, promote economic growth and job creation, and to remove barriers to open and competitive telecommunications markets.

Third, we agree with Joint Applicants that it would be illogical to order retroactive payments to Pacific to cover the increase in the markup when the Commission found earlier this year that certain UNE rates were too high and it ordered downward adjustments to these rates. In D.02-05-042, the Commission found that UNE loop and switching rates should be lowered on an interim basis based on evidence of cost declines. In addition, the Commission has now expanded its review of UNE loop and switching rates to include other UNEs as well based on a preliminary showing that these rates may be above cost. The rates under review form the majority of UNEs purchased by interconnecting carriers. A retroactive adjustment to raise the markup would be contrary to the

Commission's conclusions regarding the price of these UNEs relative to their cost.

Finally, since we have found in today's order that the markup should be increased while at the same time finding that recurring prices should be decreased, these changes largely offset each other and the administrative burden of making these offsetting changes retroactively outweighs the benefit. With the two offsetting changes, any adjustments would probably balance out to a great extent. Indeed, the net effect of the changes might prove to mean payments by Pacific back to competitors. We do not believe that it would be a good use of resources to track the net effect of all of these changes retroactively, especially given the degree to which the changes offset each other.

Therefore, the adjustments to the markup calculation and to UNE recurring prices that we make by this order should apply prospectively from the effective date of this order. We will exercise our discretion and not require any retroactive adjustments.

In addition, we will stay implementation of the increase to the markup pending resolution of the decreases to UNE recurring prices that are discussed above. We would prefer that both of these rate changes go into effect simultaneously. Hence, although both rate changes will apply as of today's date, they will not be implemented until the actual change to the recurring prices has been determined based on additional filings ordered herein.

VI. Comments on Draft Decision

Pursuant to Rule 77.7(f)(9) of the Commission's Rules of Practice and Procedure, the Commission may reduce or waive the period for public comment on draft decisions when the public necessity to act in less than 30 days outweighs the public interest in the normal comment period. The Remand Order vacated

the total direct cost of UNEs in D.99-11-050 and all decisions that rely on it. This has created uncertainty over the UNE prices contained in D.99-11-050, D.02-05-042, and interconnection agreements between Pacific and competitive local carriers. We find that the public necessity in resolving this uncertainty outweighs the public interest in the normal comment period. Therefore, we will reduce the standard time frame for comments on this order so that we can act on this matter at our next Commission meeting and resolve any uncertainty over UNE prices caused by the Remand Order. Parties shall have five days to comment on this order, and one day to file reply comments.

Comments were filed by Joint Applicants, Pacific, and XO. Reply comments were filed by Joint Applicants and Pacific.

Joint Applicants and XO

Joint Applicants claim that the draft decision denies them due process by ignoring the Commission's own rules and unnecessarily abbreviating the comment period on the draft decision. Joint Applicants contend that the draft decision dealing with the Remand Order does not meet the Commission's definition of an emergency because the Court set no deadline for Commission action. Therefore, Joint Applicants request the normal five days for filing reply comments.

Further, Joint Applicants contend the draft decision commits legal error because it sets a shared and common cost markup based on eight year old data rather than undertaking a fresh look at the markup using new information. They request that the Commission modify the draft decision to adopt a markup pursuant to the methodology they presented in comments, or expand the scope of the 2001/2002 UNE Reexamination to include updating of the markup. XO

echoes this latter request for an immediate review of the markup using new information.

We disagree that Joint Applicants have been denied due process because of the shortened period for comments on the draft decision. Joint Applicants plead for more time to reply to Pacific's comments on the draft decision, but we are not persuaded by Pacific's comments and we leave the draft decision unchanged. Thus, we find Joint Applicants are not harmed by the shortened reply comment period. Indeed, Joint Applicants prevail in today's order with regard to their argument on the need for revisions to UNE recurring costs. We have made minor modifications to our rationale for why the Remand Order should be dealt with on an expedited basis, but we do not change our conclusion that a shortened comment period is warranted on this matter.

In addition, we disagree with Joint Applicants that it would be legal error to increase the existing markup from 19% to 21% rather than begin an entirely new review of the markup. The Remand Order affirmed the Commission's shared and common cost markup methodology used in D.99-11-050. Given this affirmation by the Court, it is not a violation of TELRIC to keep this methodology in place until a later date. Nothing in the comments persuades us we should undertake an immediate and fresh review of the markup in the UNE Reexamination proceeding.

Along with their reply comments, Joint Applicants filed a motion to strike the attachments to Pacific's September 16 comments on the Draft Decision. Joint Applicants contend that the attachments violate Commission Rule 77.3 because they contain 90 pages of appendices which far exceed the 15 page limit for comments, include documents outside the record or from unrelated phases of OANAD, and raise new information and arguments untested by cross-

examination. According to Joint Applicants, all of these documents and arguments could have been submitted earlier during the comment cycle and prior to the issuance of the Draft Decision. If these attachments are not stricken, Joint Applicants request to supplement their reply comments so as to respond to the new information in Pacific's comments.

We agree that Pacific's attachments to its comments do not meet the requirements of Rule 77.3 because they exceed the page limit, contain new information, and contain information not clearly within the OANAD record. We will grant Joint Applicants' motion to strike in part and strike certain pages of Pacific's attachments, specifically the 1994 Total Operating Expense Report on addendum pages 18 through 53 and the deposition transcripts on pages 79 through 83, because Pacific has not shown that these pages were admitted to the OANAD record. Just as we cannot rely on the Scholl deposition provided by Joint Applicants, we cannot rely on these pages. On the other hand, we have dealt with this Remand Order under a very abbreviated time frame. Therefore, we are inclined to waive aspects of Rule 77.3 on this occasion, and we will not strike all of Pacific's attachments, particularly those that are merely attached for our convenience as copies or excerpts of documents already filed in earlier phases of OANAD. Although we will leave the information attached to Pacific's comments, this does not mean we will give it the same weight as other information, provided on a more timely basis.

Pacific

Pacific maintains that the draft decision erroneously concludes that recurring costs should be adjusted along with any changes to the denominator of the markup calculation. First, Pacific argues that the Remand Order is narrow and pertains only to the denominator of the markup calculation, as set forth in

D.99-11-050. Pacific contends the Commission cannot use the Remand Order to justify modifying recurring costs adopted 21 months earlier in D.98-02-106. We find that Pacific merely reargues its earlier comments in this regard. We have already explained why the Commission cannot consider corrections to the $4.814 billion figure in isolation due to the substantial and direct impacts that corrections to that figure might have on other decisions. Further, it is inaccurate to claim that the $4.814 billion direct cost of UNEs was set in D.99-11-050 when it was actually adopted in D.98-02-106 and its compliance filings, and then merely used again in D.99-11-050 to calculate the markup.

Second, Pacific asserts in its comments that the record from OANAD makes clear that its 1997 recurring cost study does not include non-recurring costs. To support its claims, Pacific presents a 90 page addendum to its comments, purporting to show that non-recurring costs were not included in the recurring cost studies. Pacific claims that any adjustments to recurring costs conflicts with Commission precedents in D.98-12-079, where the Commission considered and rejected the same claim now made by Joint Applicants that the 1997 recurring cost study captured non-recurring costs. According to Pacific, the Draft Decision "fails to identify a single non-recurring cost that was included in the 1997 recurring cost study" and that no such costs exist. (Pacific Bell Comments on Draft Decision, 9/16/02, p. 6.) Pacific asserts that in moving from the 1994 Total Operating Expense report to the 1997 recurring cost study, Pacific removed all non-recurring costs. (*Id.*, p. 5.)

We find Pacific's comments puzzling because as a whole, the comments attempt to demonstrate that there are no non-recurring costs in the $4.814 billion direct cost of UNEs. If so, then that would mean the Commission should not increase the markup by 2%. Pacific asserts repeatedly that non-recurring costs

were removed from its 1997 recurring cost study that led to the recurring costs adopted in D.98-02-106 and its compliance filings. This directly contradicts Pacific's claims that the markup double counts non-recurring costs because the 1997 cost studies included them. Despite what Pacific claims is a clear chain of events, Pacific asks us to believe that in the time span between February 1998 and November 1999, the Commission staff intimately involved with these orders ignored or forgot this clear chain of events and left non-recurring costs in the $4.814 billion used in the markup calculation. If it were so obvious that non-recurring costs were removed from the 1997 cost studies, as Pacific asserts in its comments, why wouldn't the Commission have been able to use successfully this same line of reasoning to defend its markup calculation in Federal District Court?

Indeed, the Commission did try to use this same line of reasoning in Federal District Court and did not prevail. The Commission asserted that the original 19% markup was correct because it had stated in D.99-11-050 that D.98-02-106 only dealt with recurring costs and D.98-12-079 only dealt with non-recurring costs.[23] At the time, the Commission satisfied itself that its decisions adequately separated recurring and non-recurring costs and there was no double counting. This is the same argument that Pacific is putting forth now because it wants us to now rely on the findings and conclusions from D.98-12-079 and D.98-02-106 that we tried to rely on in defending the markup calculation. Yet the Court rejected the Commission's reasoning as circular because it failed in the face of simple arithmetic. (Remand Order, p. 37.) Similarly, we find that Pacific's

[23] See D.99-11-050, p. 71, n. 71.

assertions are not supported by any mathematical calculations. Just as the Court wanted a mathematical explanation of how non-recurring costs were removed from the $4.814 billion figure, we would need a mathematical explanation today to be satisfied that the $4.814 billion used to set recurring costs did not include $537.8 million in non-recurring costs. Pacific's comments have not provided this.[24]

Pacific argues that it is unreasonable to assume the parties and Commission staff missed over half a billion dollars in non-recurring costs when adopting recurring costs. Yet, the Court was persuaded that an oversight of over half a billion dollars had indeed occurred in the calculation of the markup. Because we now rely on Pacific's 1997 cost studies as documentation of this oversight, we conclude that a corresponding adjustment needs to be made in the recurring cost studies.

We agree with Joint Applicants that statements by Pacific's witness Scott Pearsons in the non-recurring cost phase of OANAD do not resolve this controversy either. (*See* Pacific Comments on Draft Decision, 9/16/02, Addendum p.14.) In fact, the Pearsons declaration from that phase of OANAD merely contradicts once again Pacific's current stance that the markup needs correcting. We are reluctant to rely solely on the Pearsons declaration absent a

[24] In its reply comments on the draft decision, Pacific inserts a new argument that "multiplication of [the recurring costs established in D.98-02-106] by volumes reflected in Pacific's cost filings – which are part of the record in OANAD – yields a total of approximately $3.6 billion." (Pacific Reply Comments to Draft Decision, 9/17/02, p. 4, n. 28.) Thus, Pacific claims this is further verification that the recurring costs do not include non-recurring costs. Not only is this new argument raised inappropriately in reply comments on a draft order, but we have no means to validate this claim and we have no idea what "volumes" Pacific is referring to.

mathematical showing of the removal of the non-recurring costs at issue from the $4.814 used to set recurring costs.

Pacific claims that the Commission has no evidence that non-recurring costs were included in the 1997 recurring cost study. But in fact, this order relies on the same evidence that Pacific used to convince the Court that the markup calculation was wrong. Pacific asks us to accept that non-recurring costs were not included in the 1997 recurring cost study, but it uses the same 1997 cost study to convince the Court and the Commission that non-recurring costs were included in the $4.814 total direct cost of UNEs. We cannot reconcile these two positions.

Pacific is merely expanding on its unsupported "subsequent cost study" argument that it made earlier. We cannot verify Pacific's assertions regarding the removal of non-recurring costs because Pacific provides no citation or reference showing how the calculations were performed. The Court agreed with Pacific that non-recurring costs were included in its 1997 cost study. By the same logic and based on the same evidence that the Court used to make this finding, we find that non-recurring costs are part of the $4.814 billion direct cost of UNEs used to set recurring costs.

Findings of Fact

1. The Commission adopted a shared and common cost markup of 19% in D.99-11-050.

2. In its Remand Order, the U.S. District Court found that the Commission had double-counted non-recurring costs in the denominator of the shared and common cost markup.

3. The Remand Order vacated and remanded to the Commission the $4.814 billion total direct UNE costs used in the denominator of the markup calculation, and any decision that relied on the $4.814 billion.

4. Pacific included $583 million in non-recurring costs in its original $4.83 billion estimate of total direct UNE costs.

5. The $583 million estimate was decreased to $537.8 million based on a labor rate adjustment.

6. Pacific's original $4.83 billion estimate of total direct UNE costs was revised to $4.814 billion through compliance filings with the Commission, and the revisions did not remove either $583 or $537.8 million in non-recurring costs.

7. The deposition testimony of Pacific's witness Scholl, in which he testified regarding PBON 001684 through PBON 001746 and stated that non-recurring costs were not included in the recurring cost study, was never introduced into the record of the OANAD proceeding.

8. Pacific's 1997 cost filing indicates PBON 001684 through PBON 001746 as the source for $4.139 billion in 1994 Total Regulated Operating Expenses.

9. 1994 Total Regulated Operating Expenses are comprised of recurring costs and $537.8 million in non-recurring costs.

10. 1994 Total Regulated Operating Expenses of $4.139 billion are a component of the $4.814 billion total direct UNE costs.

11. The $4.814 billion total direct UNE cost adopted in D.98-02-106 and related compliance filings was used to calculate the 19% shared and common cost markup and recurring charges in D.99-11-050.

12. In D.98-12-079, the Commission adopted $375 million in non-recurring costs, which was used to set Pacific's non-recurring charges.

13. Addendum pages 18 through 53 and 79 through 83 of Pacific's comments on the Draft Decision were not included in the record of OANAD.

Conclusions of Law

1. The Commission should subtract $537.8 million in non-recurring costs from the $4.814 billion total direct cost of UNEs in the denominator of the markup calculation.

2. Pacific's shared and common cost markup, originally calculated in D.99-11-050 (Conclusion of Law 19), should now be calculated by dividing $996 million in shared and common costs by $4.651 billion ($4.814 billion in total direct UNE costs minus $537.8 million in non-recurring costs plus $375 million in non-recurring costs (adopted in D.98-12-079). The result of this calculation, 21.4%, should be rounded to the nearest whole percentage point, which results in a markup of 21%.

3. Pacific's shared and common cost markup should be increased from 19% to 21%.

4. We should not rely on Scholl's deposition testimony because it was not introduced in the original OANAD record.

5. Because $537.8 million in non-recurring charges are included in $4.139 billion in 1994 Total Regulated Operating Expenses, and this $4.139 billion was used to calculate $4.814 billion in total direct UNE costs, $537.8 million in non-recurring costs are included in $4.814 billion total direct UNE costs.

6. In response to the Remand Order, the Commission should remedy any decision that relies on the $4.814 billion direct UNE cost, including D.98-02-106 and its compliance filings that used this figure to calculate UNE recurring costs.

7. Pacific is double recovering non-recurring costs because there are $537.8 million in non-recurring costs contained in the to $4.814 billion total direct cost of

UNEs, and Pacific is also charging non-recurring prices based on non-recurring costs adopted in D.98-12-079.

8. The $537.8 million in non-recurring costs included in the $4.139 billion 1994 Total Regulated Operating Expenses (which is a component of the $4.814 billion total direct UNE costs), should be removed from Pacific's recurring UNE costs.

9. The Commission should calculate the amount that the expense component of recurring costs was overstated by dividing the $537.8 million in non-recurring costs by the $4.139 billion in 1994 Total Regulated Operating Expenses, which yields 12.9%, or 13%.

10. Pacific should reduce the expense portion of its recurring costs for each UNE by 13% to remove non-recurring costs included in the $4.814 billion total direct cost of UNEs.

11. The Commission has discretion to determine when and if to order retroactive rate adjustments in response to the Remand Order.

12. Bankrupt telecommunications carriers might have difficulty paying retroactive adjustments to UNE rates.

13. Retroactive UNE rate adjustments would be inconsistent with the Commission's duties under Pub. Util. Code § 709 because retroactive payments would be likely to cause regulatory and financial uncertainty and restrict access to capital.

14. Retroactive UNE rate adjustments would not be a good use of resources since the net adjustments are likely to largely offset each other.

15. The Commission should not make retroactive adjustments to rates in response to the Remand Order due to telecommunication carrier bankruptcies, the effect of uncertainty caused by retroactive payments and its effect on the

struggling telecommunications sector, the recent findings regarding UNE rates in D.02-05-042 and the UNE Reexamination proceeding, and the fact that the net rate changes probably offset each other to a great degree.

16. The changes to the shared and common cost markup and recurring costs adopted in this order should be made on a prospective basis and be effective on the same date as this order.

17. The actual implementation of the increase to the markup should be stayed pending final determination by the Commission, through additional filings ordered herein, of changes to recurring costs based on the 13% adjustment to the expense portion of recurring costs.

18. The period for public review of the draft decision should be reduced because the public necessity in resolving uncertainty over UNE prices created by the Remand Order outweighs the public interest in the 30-day comment period.

19. Addendum pages 18 through 53 and 79 through 83 of Pacific's comments on the Draft Decision should be stricken.

O R D E R

IT IS ORDERED that:

1. The shared and common cost markup that was originally adopted in Decision (D.) 99-11-050, and which is a component of Pacific Bell Telephone Company's (Pacific's) unbundled network element (UNE) prices, shall be increased from 19% to 21%.

2. The expense portion of Pacific's UNE costs adopted in D.98-02-106 shall be modified to incorporate a 13% reduction as set forth in this order.

3. Within 30 days of this order or as otherwise directed by the Administrative Law Judge (ALJ), Pacific shall submit a filing in this proceeding calculating a 13% reduction in the expense portion of each of the recurring costs adopted in

D.98-02-106 and calculating the net impact on all of its UNE prices of the markup and recurring cost changes ordered herein. Pacific's filing should be fully supported with workpapers and appropriate documentation, and these workpapers and documentation should be made available to parties, subject to applicable nondisclosure agreements, upon request. Interested parties may file comments on Pacific's filing 20 days thereafter, unless a revised schedule is set by the ALJ.

4. The changes adopted by this order to Pacific's shared and common cost markup and to the expense portion of its UNE recurring costs shall be effective on the date this order is effective, but implementation of these rate changes shall be stayed pending final determination by the Commission of the actual rate changes.

5. In order to make the UNE price changes effective as of today's order, Pacific shall track UNEs purchased by interconnecting carriers from the date of this order until the Commission determines the net effect of the UNE price changes resulting from this order.

6. Pacific shall make all billing adjustments necessary to ensure that this effective date is accurately reflected in bills applicable to the UNE prices modified by this order.

7. The motion of AT&T Communications of California, Inc. and WorldCom, Inc. to strike Pacific's comments on the Draft Decision is granted in part, and denied in all other respects.

This order is effective today.

Dated September 19, 2002, at San Francisco, California.

LORETTA M. LYNCH
President

CARL W. WOOD
GEOFFREY F. BROWN
Commissioners

We will file partial dissents.

/s/ HENRY M. DUQUE
Commissioner

/s/ MICHAEL R. PEEVEY
Commissioner

Appendix A

Pacific's Calculation of $4.814 Billion Direct Cost of UNEs[1]

Step 1:
Calculation of Total Service Long Run Incremental Cost (TSLRIC)

Total Capital Costs	$3,077[2]
Operating Expenses	3,900[3]
	6,977
Less Shared and Common	2,206
Total Estimated TSLRIC	**$4,770**

(Source: Pacific Bell Comments, 8/28/02, Addendum p. 8, "1997 Cost Study, Tab D-5, pg. 8.")

Step 2:
Transformation of TSLRIC to TELRIC

Total Estimated TSLRIC (From Step 1 above)[4]	$4,770.
Add spare capacity	383.2

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[1] These figures are all taken directly from Pacific's 1997 Cost Filing, filed January 13, 1997 in the OANAD proceeding. All of the figures in this appendix were originally stamped by Pacific as proprietary and confidential and were filed under seal. Nonetheless, Pacific filed these figures in its 8/28/02 public comments in response to the August 15th ALJ ruling on the Remand Order without requesting that they be filed under seal.

[2] All dollars in millions unless otherwise noted.

[3] This figure is derived starting with $4.139 billion in 1994 Total Regulated Operating Expenses, to which certain additions and subtractions are made. Pacific agrees that $4.139 billion contains recurring and non-recurring costs. *(See* Pacific Bell Comments, 8/28/02, Addendum p. 15.)

[4] There is no explanation in Tab D-5 for the difference between 4,770 on pg. 8 and 4770.5 used on pg. 2.

Add COPT Coin/Public		102.7
Other additions	100.2	
Other removals	525.9[5]	
Total Estimated TELRIC	**$4,830.7**	

(Source: Pacific Bell Comments, 8/28/02, Addendum p. 2, "1997 Cost Study, Tab D-5, pg. 2.")

Step 3:
Adjustments to Pacific's $4.830 billion Total Direct Cost of UNEs[6]

Total Estimated TELRIC	$4,830.7
Plus Loop Repair trending	29.9
Minus Loop repair trending	42.5
Minus Shared Family Fiber Ring Spare	59.9
Adjusted TELRIC	**$4,758.2**
Plus PIM Reassignment	55.5
Adjusted TELRIC	$4,813.7

(Source: Pacific Bell Comments, 8/28/02, Addendum p. 24, "Compliance Filing for Advice Letter 19306, March 6, 1998," and Addendum p. 28, "Compliance Filing for Advice Letter 19306B, October 29, 1998.")

(END OF APPENDIX A)

[5] This figure is a summation of removals for service specific advertising, 9-12 Kft adjustment, loop repair trending, labor rate adjustment, rearrangement adjustment, and retail billing inquiries.

[6] Pacific explains that none of the adjustments shown in Step 3 involve removal of the original $583 million estimate of non-recurring costs. (Pacific Comments, 8/28/02, p. 5, n. 17.)

A.01-02-024 et al.
D.02-09-049

Commissioner Henry M. Duque dissenting in part:

The analysis concerning the proposed 13% adjustment to Pacific's recurring costs is as unconvincing as the case made by both sides of the argument in this limited and truncated process. The question regarding whether or not non-recurring costs have are present in the recurring costs has not been adequately addressed in this order. I will support the order in so far as the adjustments relate to what the court found for non-recurring costs, but I will dissent in part with respect to recurring costs adjustments. I believe a legal error may have been committed in this order, which I hope the Commission will correct before the orders goes into effect.

For the above reason I will respectfully dissent in part.

/s/ HENRY M. DUQUE

Henry M. Duque

Commissioner

September 19, 2002
San Francisco, California

A.01-02-024 et al.
D.02-09-049

Commissioner Peevey, concurring opinion and partial dissent:

I concur with part of today's decision. The U.S. District Court for the Northern District of California vacated and remanded back to us the issue of the UNE shared and common allocator because the court found that this Commission had double-counted non-recurring costs. The decision does a thorough job of remedying the double-counting by changing the shared and common cost allocator from 19% to 21%. Many parties filed technical workpapers that had to be reviewed and analyzed. The decision performs the appropriate analysis and makes the proper adjustment to the shared and common allocator. I wished the decision had stopped here; if it had, I would fully support it.

I dissent, in part, because the decision goes on to order a 13% decrease to be applied to expenses. This was not the intent of the court order. Page 38 of the court's order states "The [Commission's] determination of Pacific's direct cost of providing UNEs (the denominator of the common cost markup), and any decision which relies on this determination, must be vacated and remanded, *so that the double-counting can be remedied*." (emphasis added) From the plain words of the court order, the intent clearly is to correct the double-counting. Therefore, any action beyond the correction of double-counting was not required, is unnecessary, unwarranted and gratuitous.

Hypothetically, if the root of the double-counting leads to other errors, we can and should correct them. However, the court did not order such an undertaking, nor should such a task be rushed. The proper procedure (should there be a belief that this hypothetical may exist) would be simply to correct the double-counting and then continue the proceeding to investigate if there are other errors.

/s/ MICHAEL R. PEEVEY
MICHAEL R. PEEVEY
Commissioner

San Francisco, California

September 19, 2002

Attachment 3

Decision 02-09-052 September 19, 2002

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Joint Application of AT&T Communications of California, Inc. (U 5002 C) and WorldCom, Inc. for the Commission to Reexamine the Recurring Costs and Prices of Unbundled Switching in Its First Annual Review of Unbundled Network Element Costs Pursuant to Ordering Paragraph 11 of D.99-11-050.	Application 01-02-024 (Filed February 21, 2001)
Application of AT&T Communications of California, Inc. (U 5002 C) and WorldCom, Inc., for the Commission to Reexamine the Recurring Costs and Prices of Unbundled Loops in Its First Annual Review of Unbundled Network Element Costs Pursuant to Ordering Paragraph 11 of D.99-11-050.	Application 01-02-035 (Filed February 28, 2001
Application of The Telephone Connection Local Services, LLC (U 5522 C) for the Commission to Reexamine the Recurring Costs and Prices of the DS-3 Entrance Facility Without Equipment in Its Second Annual Review of Unbundled Network Element Costs Pursuant to Ordering Paragraph 11 of D.99-11-050.	Application 02-02-031 (Filed February 28, 2002)
Application of AT&T Communications of California, Inc. (U 5002 C) and WorldCom, Inc., for the Commission to Reexamine the Recurring Costs and Prices of Unbundled Interoffice Transmission Facilities and Signaling Networks and Call-Related Databases in Its Second Annual Review of Unbundled Network Element Costs Pursuant to Ordering Paragraph 11 of D.99-11-050.	Application 02-02-032 (Filed February 28, 2002)

Application of Pacific Bell Telephone Company (U 1001 C) for the Commission to Re-Examine the Costs and Prices of The Expanded Interconnection Service Cross-Connect Network Element in the Second Annual Review of Unbundled Network Element Costs Pursuant to Decision 99-11-050.	Application 02-02-034 (Filed February 28, 2002)
Application of XO California, Inc. (U 5553 C) for the Commission to Reexamine the Recurring Costs of DS1 and DS3 Unbundled Network Element Loops provided by Pacific Bell Telephone Company, as and for the Commission's Second Triennial Review of Recurring Unbundled Network Element Costs Pursuant to Ordering Paragraph 11 of D.99-11-050.	Application 02-03-002 (Filed March 1, 2002)

INTERIM OPINION
APPLYING PACIFIC BELL TELEPHONE COMPANY INTERIM SWITCHING DISCOUNTS TO ALL PORT TYPES

I. Summary

This decision applies the interim switching discounts recently adopted in Decision (D.) 02-05-042 to all of the Pacific Bell Telephone Company (Pacific) ports listed in Appendix A of D.99-11-050. The interim port rates adopted by this decision are subject to adjustment when the Commission completes its assessment of new cost studies for Pacific's loop and switching unbundled network elements (UNEs).

II. Background

In D.02-05-042, the Commission adopted interim discounts to Pacific's unbundled loop and switching rates due to delays in this proceeding to

reexamine Pacific's UNE rates. The delays were caused by certain deficiencies in Pacific's cost filing and the need to examine competing cost models. Specifically, the Commission adopted an interim discount of 69.4% to local switching rates and 79.3% to tandem switching rates. This interim discount resulted in a corresponding 69.4% discount to the basic (2-wire) port rate that had previously been set in D.99-11-050 in the Commission's Open Access and Network Architecture Development proceeding. (*See* Appendix A of D.99-11-050)

The level of the switching discount was based, in part, on application of an evidence sanction against Pacific for failing to comply with discovery rulings in the course of the proceeding. Pacific's failure to provide certain cost information resulted in the Commission deeming the missing material to support Joint Applicant's claim that switching rates should be lowered from the levels adopted in D.99-11-050. The Commission also found evidence to support the contention that switching prices for Illinois proposed by Pacific's sister corporation, SBC-Ameritech, either equal or exceed the appropriate cost-based rates in California. (See D.02-05-042, mimeo. at 48.) This evidence included public data showing uniformity across geographic regions in switching cost trends, and Pacific's admissions that it buys switches for use in California at prices that are equal to, or more favorable than, the prices at which it can buy switches for use in Illinois. (Id.)

Parties commenting on the draft order before its adoption by the Commission maintained that the 69.4% switching discount should apply to all port types priced in Appendix A of D.99-11-050 rather than just the basic port. In D.02-05-042, the Commission declined this request, noting that Pacific was not given notice that the Commission might adopt an interim rate for anything other

than the basic port. The order directed the administrative law judge (ALJ) to solicit comments on this issue by further ruling.

The ALJ issued a ruling shortly thereafter inquiring whether it would be appropriate to apply the interim port discount of 69.4% to all port types. Pacific, AT&T Communications of California, Inc. and WorldCom Inc. (collectively "Joint Applicants"), Office of Ratepayer Advocates (ORA), The Utility Reform Utility TURN, Z-Tel Communications, Inc. (Z-Tel), Tri-M Communications d/b/a TMC Communications (TMC), and Anew Telecommunications Corporation d/b/a Call America (Call America) filed comments. Pacific and Joint Applicants filed reply comments. In response to an ALJ ruling seeking further information from the first round of filings, Joint Applicants and Pacific filed additional declarations from their respective witnesses.

The ports for which a discount is currently under consideration, and the current rates for these port, are as follows:

Table 1
Current Non-Basic Port Rates

Port Type	Current Rate
Coin Port	$3.81
Centrex Port	4.37
Direct Inward Dial (DID) Port	4.18
DID Number Block	1.00
Integrated Services Digital Network (ISDN) Port	14.10
Trunk Port Termination:	
End Office Termination	20.99
Tandem Termination	142.82
DS-1 Port	20.99

III. Positions of Parties

Pacific contends there is no evidence that costs for ports other than the basic port have declined and that the Commission cannot presume, as other parties urge, that the same pressures that have driven reductions in switching rates also apply to the non-basic ports. Pacific maintains that there are physical network differences between the basic port and other port types. Specifically, Pacific describes the different hardware requirements of ports such as Centrex, ISDN, DID, and Coin, and these varying ports switch resource needs. For example, Pacific describes how ISDN ports require different line cards than the basic port, how Centrex ports require a "Common Block" to provide Centrex-like services, and how Coin ports require unique signaling equipment. Further, Pacific explains that DID ports require a trunk-side switch connection that differs from the line-side switch connection of the basic port.

Pacific asserts that application of the discount would only be justified if all the port types used the same switching equipment and consumed switching resources in the same quantities. According to Pacific, this is not the case and therefore, the 69.4% interim discount should not apply to the non-basic ports.

In contrast, Joint Applicants maintain that network facilities, both hardware and software, are the same for basic ports and all other port types, except for Centrex and ISDN ports. According to Joint Applicants, all ports except Centrex and ISDN are merely rearrangements of the same components and capabilities for which the Commission has already reduced costs in D.02-05-042. In contrast to Pacific's argument that ports with trunk side connections should not receive the same discount as the basic port, Joint Applicants contend that the Commission has already reduced the usage rate elements that reflect the costs of equipment components beyond mere line-side

ports. According to Joint Applicants, the trunk port elements are the same trunk equipment components included in end-office and tandem usage rate elements. (Joint Applicants' Reply Comments, 6/12/02, p. 3.)

For Centrex, Coin, and ISDN Ports, Joint Applicants acknowledge that these ports use some unique software, signaling equipment, and/or hardware. Nevertheless, they recommend that the Commission can reasonably infer that these unique costs have declined in a fashion similar to the cost declines found for the equipment and facilities used by the basic port. Specifically, Joint Applicants allege that Pacific has increased purchasing power since the merger of its parent company, SBC, with Ameritech, and that any unique Centrex and ISDN expenses are part of the overall reduction in switching related expenses shown in SBC's public data and referred to in D.02-05-042. (*See* D.02-05-042, *mimeo* at 14 and 46.)

ORA, TURN, Z-Tel, TMC and Call America all support application of the interim basic port discount to the other port types. ORA notes that the record shows that other SBC states do not make distinctions among various port types when pricing UNEs. ORA also states that given the true-up mechanism adopted in D.02-05-042, Pacific will not be harmed by the interim port discount. Z-Tel claims that absent application of the same discount to all port types, UNE rates will be discriminatory. Furthermore, Z-Tel argues that the Commission has no record to justify discounted analog port rates while digital port rates remain at the levels set in 1999. TMC and Call America request that the Commission apply the same rate to basic and Centrex ports, or in the alternative, the same discount. They contend that D.02-05-042 found evidence that Centrex and basic port rates were proposed at equal levels by Pacific's affiliate SBC-Ameritech in Illinois. TMC and Call America also suggest that proper application of the issue sanction

adopted in D.02-05-042 requires the Commission to assume that basic and Centrex ports are equal.

IV. Discussion

When we adopted an interim switching discount of 69.4% for local switching and ports and 79.3% for tandem switching, we based this on evidence that switching prices proposed by SBC's affiliate in Illinois either equal or exceed the appropriate cost-based rates for California. The switching discounts were also based on public data showing uniformity across regions in switching cost trends. Parties now ask that we apply these same discounts to the other port types for which we set rates in D.99-11-050.

We must essentially decide whether it is reasonable that the non-basic ports would be similarly impacted by the cost declines we found in D.02-05-042, or whether these non-basic ports are so significantly different in terms of hardware, software and switch usage that there is no correlation between the discounts affecting the basic port and the other ports.

We find that there is a correlation between the basic port and the other port types and that the discount we adopted for the basic port should extend to the other port types listed in Table 1.

In the declaration of Scott Pearsons provided by Pacific, Mr. Pearsons admits that Centrex and basic ports do share most of the same equipment, even though they do not share all of the same equipment. (Pearsons Declaration, 7/11, p. 2) He also agrees with Joint Applicants that the Common Block feature used by the Centrex port resides in the same memory chips that are used for basic call processing. (Id., p. 3) Because of these admissions, we find that the basic port discount should apply to the Centrex port as well.

Mr. Pearsons also agrees that the Coin Port, DID Port, DID Number Block, ISDN Port, Trunk Port Terminations and DS-1 Ports have some equipment and facilities in common with the basic port, although each port has unique equipment requirements. (Id.) In the declaration of Catherine Pitts presented by Joint Applicants, Ms. Pitts describes specific equipment commonalities between the basic and non-basic ports. For example, she describes how the Coin and Centrex Ports share a main distributing frame (MDF) termination, line card, and a portion of the line peripheral with basic ports. (Pitts Declaration, 7/11/02, p. 2.) A chart provided by Pacific's witness Mr. Pearsons substantiates these commonalities. Ms. Pitts states that the DID Number Block uses the same memory components to store a DID number as the Centrex Common Block and all other information stored in the switch's memory. (Id., p. 2, footnote 4.). In addition, she states that ISDN Ports also use a MDF termination and line peripheral in common with the basic port. (Id., p. 3.)

While Mr. Pearsons describes specific differences and unique switching equipment used by some of these ports, we find that the existence of some commonality, as detailed by Ms. Pitts and Mr. Pearsons, whether it be use of line cards, memory chips, or MDF terminating equipment, makes it reasonable to extend the basic port discount to all port types. Furthermore, we think there are sound policy reasons to maintain the general pricing differentials that existed among the port types prior to our adoption of an interim discount to the basic port in D.02-05-042. By discounting the basic port, and not the other port types, we have skewed the pricing structure that existed before. With the statements from Mr. Pearsons that these other port types do have some equipment and facilities in common with the basic port, there is ample reason to extend the basic

port discount to the non-basic ports and by doing so, reinstate the pricing differentials among these port types that we adopted in D.99-11-050.

We do not agree with Pacific's assertion that the Commission can only extend the discount to non-basic ports if they use all of the same switch equipment and resources as the basic port. It is not necessary for there to be exact replication of all switch equipment and resources. As long as non-basic ports use some of the same switch equipment and resources that were found to have declining costs in D.02-05-042, we find it reasonable that non-basic port prices should decline by the same percentages that were found to apply to basic ports.

With regard to trunk ports (i.e. DID, end-office and tandem trunk port terminations, and DS-1 ports), Ms. Pitts contends they should be discounted the same as the basic port because they use the same equipment components that are included in interoffice usage rates which were discounted in D.02-05-042. At first glance, Pacific appears to take a contradictory position, stating that trunk ports are not a subset of usage. We find that the difference in these positions is one of semantics. Pacific does not directly dispute Joint Applicants' implication that trunk port rates are derived from the same equipment components that are already included in the interoffice usage rate elements. While Pacific states that trunk port costs are not a subset of interoffice usage rates, it does not contradict the assertion that the equipment from which usage costs are derived is also used to derive costs for trunk ports. If it is true, as Joint Applicants state in their declaration, that trunk port costs and usage costs use the same equipment components, then we should extend the usage discounts to trunk port terminations as well. We find Ms. Pitts declaration credible on this matter.

Therefore, we will extend the basic port discount to trunk ports as set forth in Table 2 below.

We deny the request of TMC and Call America to lower all port rates to the same rate as the basic port. This would eliminate the differential in prices that was established in D.99-11-050. The declarations provided by both Pacific and Joint Applicants only support applying the same interim discounts to all the port types. The evidence thus far does not support equalizing these rates. Moreover, we decline to adopt the suggestion of TMC and Call America to extend the issue sanction applied in D.02-05-042 to non-basic port rates.

Finally, we disagree with Pacific's claims that its due process rights are violated if the Commission were to discount non-basic rates in what Pacific calls an "abbreviated fashion," based on a single set of opening and reply comments, particularly when it took over a year to establish the interim prices in D.02-05-042. The comment period in this case has afforded Pacific ample opportunity to make its case, just as it was given that opportunity when interim rates were considered in D.02-05-042. A comparison of the time taken to adopt interim switching and loop rates with the time taken to then apply that same discount to other port types is not a fair comparison, particularly when the effort to establish interim rates did not begin in earnest until six months into the UNE reexamination proceeding.

In summary, the following interim discounts should apply to the port rates established in D.99-11-050:

Table 2
Non-Basic Port Discounts

Port Type	Interim Discount	Interim Rate
Coin Port	69.4%	$1.17
Centrex Port	69.4	1.34
DID Port	69.4	1.28
DID Number Block	69.4	.31
ISDN Port	69.4	4.31
Trunk Port Termination:		
End Office	69.4	6.42
Tandem	79.3	29.56
DS-1 Port	69.4	6.42

These interim rates shall be subject to adjustment, either up or down, once final rates for basic and non-basic port types are adopted in the next phase of this proceeding. Therefore, we require Pacific to establish a balancing account to track the revenues received from these interim port rates. The balancing account should begin tracking revenues on the same date the interim rates become effective, which is the effective date of this order.

Comments on Draft Decision

The draft decision of the ALJ in this matter was mailed to the parties in accordance with Section 311(g)(1) of the Public Utilities Code and Rule 77.7 of the Rules of Practice and Procedure. Comments were filed by Pacific. Reply comments were filed by Joint Applicants.

Pacific argues the draft commits legal error because it lowers all port prices without any evidence of cost declines to the specialized equipment used by non-basic ports. Joint Applicants respond that the decision lowers non-basic port

prices based on proven equipment commonalities and preserves the existing port pricing differentials to account for specialized equipment. We agree with Joint Applicants and, therefore, there are no changes to the order in response to comments.

Findings of Fact

1. The non-basic ports listed in Table 1 have some equipment and facilities in common with the basic port even though each port has some unique equipment requirements.

2. Centrex and basic ports share most of the same equipment, even though they do not share all of the same equipment.

3. The Common Block feature used by the Centrex port resides in the same memory chips that are used for basic call processing.

4. Coin and Centrex Ports share a MDF termination, line card, and a portion of the line peripheral with basic ports.

5. The DID Number Block uses the same memory components as a Centrex Common Block.

6. ISDN Ports use a MDF termination and line peripheral in common with the basic port.

7. The equipment from which switching usage costs are derived is also used to derive costs for trunk ports.

Conclusions of Law

1. Because the non-basic port types listed in Table 1 use some of the same equipment as the basic port, including line cards, memory chips, and MDF terminations, there is a correlation between the basic port and other port types and the discount adopted for the basic port should extend to the other port types listed in Table 1.

2. By discounting the basic port, and not the other port types, we have skewed the pricing structure that was established in D.99-11-050.

3. For policy reasons, the Commission should retain the general pricing differentials that existed among the port types when rates were adopted in D.99-11-050.

4. Once final port rates are adopted in a further phase of this proceeding, the interim port rates adopted in this order should be adjusted, either up or down, from the effective date of this order.

INTERIM ORDER

IT IS ORDERED that:

1. The monthly recurring prices for the ports offered by Pacific Bell Telephone Company (Pacific) that are set forth in Table 2 of this order satisfy the requirements of Sections 251(c)(2), 251(c)(3), and 252(d)(1) of the Telecommunications Act of 1996 and are hereby adopted on an interim basis.

2. The interim unbundled network element (UNE) prices for ports adopted in this order shall be effective on the date this order is effective.

3. Pacific shall prepare amendments to all interconnection agreements between itself and other carriers substituting the interim monthly recurring prices for UNE ports set forth in Table 2 of this order for the UNE prices set forth in such interconnection agreements. Such amendments shall be filed with the Commission's Telecommunications Division, pursuant to the advice letter process set forth in Rules 6.2 and 6.2 of Resolution ALJ-181, within 30 days after the effective date of this order. The amendments do not require a signature of the carriers involved as long as the amendments are limited to substituting the

port rates adopted in today's order. Unless protested, such amendments will become effective 30 days after filing.

4. Pacific shall have 60 days from the date of this order to complete all billing program changes necessary to ensure that an effective date of today is accurately reflected in bills applicable to these UNEs. Upon completion of said billing program changes, Pacific shall notify the Director of the Telecommunications Division in writing that all of the necessary billing program changes have been completed.

5. Within 10 days of the effective date of this order, Pacific shall file an advice letter to establish a balancing account to track the revenues received from these interim UNE port rates, beginning on the same date the interim rates become effective. The balancing account should accrue interest at the three-month commercial paper rate. Unless protested, the advice letter shall become effective five days after filing.

This order is effective today.

Dated September 19, 2002, at San Francisco, California.

LORETTA M. LYNCH
President
HENRY M. DUQUE
CARL W. WOOD
GEOFFREY F. BROWN
MICHAEL R. PEEVEY
Commissioners