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Decision 95-07-054 July 24, 1995

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the Commission's Own Motion into Competition for Local Exchange Service.	R.95-04-043 (Filed April 26, 1995)
Order Instituting Investigation on the Commission's Own Motion into Competition for Local Exchange Service.	I.95-04-044 (Filed April 26, 1995)

I N D E X

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O P I N I O N

I. Introduction

By this order, we take an important step toward our previously stated goal of opening all telecommunications markets to competition. As set forth in Appendices A and B of this order, we adopt initial local competition rules applicable to the service territories of Pacific Bell (Pacific) and GTE California, Inc. (GTEC). The adopted rules authorize prospective competitive local carriers (CLCs) to request certificates of public convenience and necessity (CPCN) to provide local exchange service under the rules outlined in Appendices A and B.

Prospective CLCs are directed to file petitions for CPCN authority by September 1, 1995 to enable us to act upon and approve them in time to allow local exchange competition by facilities-based CLCs to begin by January 1, 1996, and for bundled resale-based competition to begin by March 1, 1996. Only those that file by this deadline will be assured that their petitions will be acted upon prior to January 1, and March 1, 1996, respectively. Applications for CPCN authority filed after September 1, 1995 shall be processed on a first come-first served basis after those filing by September 1 have been processed.

We establish a procedure under this order that (1) adopts initial rules which enable CLCs to immediately begin filing requests for CPCNs, (2) calls for additional rules addressing interconnection and other entry-related issues to be established prior to January 1, 1996, and (3) calls for completed rules prior to March 1, 1996. This order identifies relevant factual disputes for which evidentiary hearings must be held and legal and policy issues for which further comments will be requested. The issues to be addressed in evidentiary hearings include whether the local exchange carriers (LECs) would be deprived of the opportunity to earn a fair return as a result of our regulatory policies, whether the LECs should be granted additional pricing flexiblity in conjunction with the institution of local competition, local number portability funding and rate-setting, and compensation for call termination. A discussion of evidentiary hearing issues is set

forth in Section IV.B.6. By January 1, 1997, we shall resolve remaining outstanding issues to permit the opening of all telecommunications markets, including small and mid-sized LECs, to competition.

We emphasize that the rules adopted herein are interim in nature and subject to subsequent revision, as appropriate, to accommodate the evolving competitive structure of the industry. Any rule changes will be made only upon due notice and opportunity for interested parties to be heard.

II. Procedural Background

The local competition rules set forth herein are adopted pursuant to our joint rulemaking (R.) 95-04-043 and investigation (I.) 95-04-044 instituted on April 26, 1995. This joint proceeding is part of our integrated plan to open all telecommunications markets to competition by January 1, 1997. We stated this intention in our November 1993 report entitled Enhancing California's Competitive Strength: A Strategy For Telecommunications Infrastructure (Infrastructure Report). The California Legislature subsequently adopted Assembly Bill 3606 (Ch. 1260, Stats. 1994) similarly expressing legislative intent to open telecommunications markets to competition by January 1, 1997.

We began the process of opening telecommunications markets to competition with our issuance of Decision (D.) 94-09-065 (Investigation 87-11-033) in which we opened intraLATA toll markets to competition effective January 1, 1995. Subsequently, in D.94-12-053, we formally adopted a preliminary procedural plan to open the local exchange markets to competition. In that order, we endorsed an approach to implementing local competition that involved the formulation of three separate issue areas: (1) Open Access and network Architecture Development (OANAD); (2) local competition rulemaking; and (3) consumer protections and regulatory streamlining.

In accordance with the plan adopted in D.94-12-053, we formally instituted a joint rulemaking and investigation proceeding on April 26, 1995, to further develop rules for local exchange

competition. In conjunction with institution of the rulemaking, we issued proposed interim local exchange rules for comment. A service list for the proceeding was created by ALJ ruling dated May 16, 1995. Parties submitted written comments on May 24 on the proposed rules. We also convened a full panel hearing on June 9 to hear oral statements addressing the merits of the proposed rules. We have reviewed all parties' filed comments and oral presentations as a basis for today's decision adopting initial rules and providing a framework for further development of rules.

III. Overview of Parties' Positions

We present here a general overview of positions of the major parties which filed written comments or presented oral remarks at the full panel hearing regarding the proposed interim rules. We discuss the positions regarding specific issue areas in Section IV.B.6 below.

Parties generally agree in principle that the introduction of true competition into local exchange markets is a desirable policy goal, but differ over the timing and manner in which they believe competition should be implemented. Several parties argue that no rules should be adopted until evidentiary hearings have been conducted on a number of issues. Other parties believe that rules authorizing entry can be adopted now, even if some limited issues require subsequent hearings.

A. Major LECs

The major LECs oppose adoption of the rules in their present form arguing they are unfairly slanted in favor of CLCs. Pacific Bell (Pacific) claims that the proposed rules depart from the goals set forth in the Commission's Infrastructure Report which called for opening all telecommunications markets to competition by January 1, 1997. Pacific perceives the Commission's proposed rules for implementing local competition as accelerating this schedule without resolving necessary issues linked to competition (like universal service and NRF reform). Pacific also finds the rules to be unduly skewed in favor of new competitors to the detriment of

incumbent LECs. In particular, Pacific argues that the proposed rules promote "cream skimming" by permitting CLCs to target only high volume toll customers while requiring LECs to retain the burdens of carrier of last resort with no flexibility to respond competitively. Pacific further claims that the rules mandate unlimited resale while no prices are specified for resold services. Moreover, Pacific finds the proposed rules relating to unbundling, interconnection, and number portability to be insufficiently defined and disagrees with assigning the cost recovery for unbundling and interconnection solely to incumbent LECs. The rules also do not open the protected interLATA markets to competition by LECs. Pacific argues that evidentiary hearings are required to consider facts supporting the proposed rules and the consumer harm that would otherwise result.

GTEC shares Pacific's general views regarding the deficiencies in the proposed rules. GTEC contends that the proposed rules are too one-sided in favor of new entrants while preventing incumbent LECs from making any meaningful competitive response. GTEC argues that evidentiary hearings must be held to resolve a number of issues before local competition is authorized. GTEC incorporates by reference its previous arguments in favor of evidentiary hearings contained in its petition for modification of D.94-12-053 dated March 31, 1995. GTEC filed its petition in I.87-11-033 seeking a clarification, or a modification of D.94-12-053 to reflect that evidentiary hearings shall be held prior to the implementation of the plan for expanded competition as set forth in that decision.

GTEC in its petition argues that the Commission should establish a definite schedule for full evidentiary hearings on each of five broad interrelated issue areas:

- local competition
- universal service
- new regulatory framework (NRF) reform
- unbundling and interconnection
- 1+ presubscription

GTEC states that Rule 14.2(d) states that a Commission decision can be modified by rulemaking only when it was originally adopted by rulemaking. GTEC believes that authorization of local competition as set forth in D.94-12-053 would require the modification of D.89-10-031 and D.94-09-065, neither of which was adopted pursuant to a rulemaking proceeding. GTEC concludes therefore that these decisions cannot be changed by rulemaking, but only through evidentiary hearings as prescribed by Section 1708.

GTEC argues that the proposed rules, if adopted, would be require the modification of D.89-10-031 (which established the NRF framework) because the need for NRF price cap regulation would be eliminated. GTEC further argues that D.94-09-065 (the IRD decision) would be contravened by adoption of the proposed local exchange rules. D.94-09-065 states that "we continue to classify basic exchange services as Category I (monopoly) services only available from the LEC." (Mimeo., p. 23, emphasis added.) GTEC cites similar provisions of the IRD decision which it believes would be changed by adoption of local exchange rules.

GTEC cites the California Supreme Court ruling in California Trucking Association v. Public Utilities Commission, 19 Cal.3d 240, 244-45, 137 Cal.Rptr. 190, 561 P.25 280 (1970) to support its claim that "the opportunity to be heard" under Section 1708 requires an evidentiary hearing in this rulemaking proceeding. The Commission had claimed in the CTA case that the opportunity to comment in writing upon a proposal of the Staff satisfied the command of Section 1708 that parties be granted an "opportunity to

be heard" prior to the modification of an order or decision. (Id.) The Supreme Court disagreed:

> "We cannot agree with this contention. The phrase 'opportunity to be heard' implies at the very least that a party must be permitted to prove the substance of its protest rather than merely being allowed to submit written objections to a proposal. ... equation of permission to merely protest in writing with the requirement of § 1708 that there be afforded an 'opportunity to be heard' clearly cannot be rationalized ....
>
> "Moreover, section 1708 provides that when the Commission alters or rescinds a prior order the opportunity to be heard must be afforded 'as provided in the case of complaints.' The procedure applicable to hearings on complaints filed by the commission on its own motion, as occurred here, is prescribed in section 1701-1706. Section 1705 requires a hearing at which parties are entitled to be heard and to introduce evidence, and the Commission must issue process to enforce the attendance of witnesses."

Accordingly, GTEC argues that evidentiary hearings are required by Section 1708 before the Commission adopts rules which modify D.89-10-031 and D.94-09-065. GTEC further claims that if the Commission decides to open local exchange markets to full competition, the Commission will effectively take GTEC's vested property right to provide exclusive local telephone service in its franchise areas. GTEC argues that its vested property right to be the exclusive provider in its serving area will irrevocably change the social contract and cannot legally be taken away without an evidentiary hearing.

GTEC argues that the regulatory compact under which LECs have historically operated assured the LECs an opportunity to earn a reasonable rate of return on investor-provided capital. The rates which now serve as the basis of the price cap mechanism also assume GTEC's status as monopoly provider of local service. If the

Commission were to terminate this status, without rebalancing rates to reflect GTEC's increased cost of capital posed by the new risk of local competition, GTEC argues that the Commission would be taking a vested property right of GTEC without just compensation, in contravention of the Fifth and Fourteenth Amendments of the U.S. Constitution.

The Fifth Amendment prohibits the taking of private property "for public use without just compensation." This restriction has been held to be implicit in the due process clause of the Fourteenth Amendment, and thus applicable to state action. Chicago Burlington & Quincy Railroad v. Chicago, 166 U.S. 226 (1897).

GTEC also cites Dusquesne Light Co. v. Barasch, 488 U.S. 299, 307-08, 102 L. Ed.2d 646, 656-57, 109 S.Ct. 609 (1989) in which the Supreme Court addressed the application of the Takings Clause of the Fifth Amendment to the property of a public utility. The Court stated that:

> "The guiding principle has been that the Constitution protects utilities from being limited to a charge for their property serving the public which is so 'unjust' as to be confiscatory.... A rate is too low if it is 'so unjust as to destroy the value of [the] property for all the purposes for which it was acquired', and in so doing, 'practically deprive[s] the owner of the property without due process of law.'"

Accordingly, GTEC argues that adoption of the Commission's proposed rules opening local competition deprives GTEC of property by rendering uneconomic its past investments made premised on a regulated, monopoly environment. GTEC further argues that PU Code § 767 requires an evidentiary hearing prior to the Commission's allowance of any other public utility to use GTEC's facilities.

GTEC suggests that the Commission could consider adopting limited, and relatively noncontroversial certification rules for

local competition at this time to be processed during the time leading up to January 1, 1997. In the meantime, the Commission could conduct evidentiary hearings and work out parties' disputes over the implementation of rules.

B. Small/Mid-sized LECs

Comments were filed by various parties on a joint basis representing the small and mid-sized LECs.[1] Citizens Utilities Company (Citizens) filed separate comments. Citizens encompasses within the confines of its own corporate structure interests representing an incumbent LEC, an interexchange carrier, and a CLC. Citizens believes that these multiple interests give it a unique perspective regarding the necessary balancing of significant, competing concerns that must be addressed in the transition to local exchange competition. Citizens generally supports the concepts underlying the proposed interim rules, but notes several specific areas which it believes could be clarified or modified to produce overall, improved competitive equity.

Citizens believes that the local competition rules should be coordinated with other matters being addressed in companion dockets which it sees as inextricably tied to local competition. Citizens further believes the Commission should address recovery of incumbent LEC depreciation reserve imbalances incurred in connection with carrier of last resort obligations in an expedited fashion. Citizens also supports the deferral of local competition rules for mid-sized and small LECs, as set forth under the interim proposed rules. Citizens is currently seeking authority in its ongoing rate case to implement a new regulatory framework, and believes that process should proceed before its market is subjected to local competition.

1 A listing of the small and mid-sized LECs' filing comments is in Appendix D.

Roseville Telephone Company (Roseville) also filed separate comments. Roseville states that it must be permitted to complete the general rate case it recently filed and enter its proposed NRF. Roseville states it is particularly vulnerable to competition because of its small, densely populated service area and the presence of several large, well financed potential competitors in it. Before local exchange competition is permitted in its service territory, Roseville argues that it needs pricing and contract flexibility comparable to that of its initial competitors.

Roseville interprets the Commission's April 26 Order, however, as deciding already that local service competition will be implemented by January 1, 1997 in the service territories of small and mid-sized LECs without a hearing. Roseville argues that such an action cannot legally be taken without resolution of universal service funding issues and the impact of local service competition on the smaller LECs' ratepayers. Roseville also filed a petition to modify D.94-12-053 raising similar issues to those in GTEC's petition.

Roseville argues that hearings are necessary to determine the rules for monitoring of competition. Roseville questions how the Commission's goals of universal service, quality of service, financial health of LECs, infrastructure development, etc. will be achieved unless the impact of competition on these goals can be monitored as competition evolves.

The small LECs support GTEC's and Roseville's petitions to modify and filed joint responses in support. All of the small LECs believe that the adopted interim rules should not apply to them. The small LECs argue that mere Commission review of written comments is not a replacement for full evidentiary hearings. The small LECs state that there are numerous technical issues that must be resolved before local exchange rules can be adopted, and that only through evidentiary hearings can the facts and figures underlying such issues be subjected to true scrutiny. The small

LECs further argue that rules should not be placed into effect until adequate time has been allotted for such hearings to take place.

The small LECs also state that even though the proposed rules would not apply in smaller LECs' service territory, hearings would be needed to determine the impacts on small LECs of adopting the proposed rules in the territories of Pacific and GTEC. Local service competition may impact traffic factors used in various separations and settlement studies and also alter toll and access revenues due to stimulation in demand. The impacts from changes in Commission regulation must be calculated and accounted for as part of the California High Cost Fund process. The small LECs state that the Commission must hold hearings in order to do so.

C. Coalition

The California Telecommunications Coalition (Coalition) represents a broad cross section of telecommunications providers and consumer representatives.[2] The Coalition generally believes the proposed rules encompass all the substantive areas which must be addressed and decided on an interim basis as the Commission moves to authorize local competition. The Coalition supports immediate adoption by the Commission of local competition rules with certain modifications which they believe can be adopted without the need for evidentiary hearings. Following the adoption of these initial rules, the Coalition agrees that limited evidentiary hearings on certain issues are appropriate. The Coalition sees no reason to delay issuing interim rules in the meantime.

The Coalition does not believe that the authorization of local competition prior to the implementation of universal service

2 A listing of the members of the Coalition is set forth in Appendix D.

rules will jeopardize the provision of universal service. The Coalition argues that even if the Commission adopts interim rules for local competition immediately, CLCs must first obtain certification approval and then begin constructing networks and attempt to interconnect with LECs on reasonable terms and conditions. Under this timetable, the Coalition believes that competition of any measurable scope will not be possible until at least the middle of 1996, well within the probable time frame for the adoption of universal service rules.

A joint response in opposition to GTEC's petition to modify D.94-12-053 was filed on May 12, 1995 by the Coalition and DRA. They argue that GTEC's petition is procedurally improper, ignores existing Commission proceedings which provide hearings as may be required by statute or applicable precedent, and ignores the quasi-legislative nature of the Commission's proceedings in this case. The parties argue that GTEC's franchise rights are quite narrow and not exclusive, being largely defined by ongoing Commission regulation. Thus, to the extent any hearing rights may exist, the parties contend they are less expansive than GTEC claims and do not rise to the level of trial-type evidentiary hearings in all circumstances.

While GTEC's pleading asserts that failure to order evidentiary hearings in D.94-12-053 constitutes legal error, such claims belong in an application for rehearing according to the Coalition. Since the 30-day deadline for filing applications for rehearing has passed, the Coalition claims that GTEC's petition is untimely and procedurally improper. Moreover, the Coalition claims GTEC's petition is moot insofar as it affects the issues of interim local competition and universal service since the Commission has already issued two investigation/rulemakings in those proceedings. In both cases, the Commission has provided the opportunity for parties to present arguments as to the need for hearings.

Moreover, the Coalition disagrees that evidentiary hearings are required to adopt local exchange rules under Section 1708 and also disagrees that local competition rules would constitute a modification of D.89-10-031 or D.94-09-065. The Coalition contends that the issue of full local exchange competition simply was not before the Commission in those proceedings and, therefore, adoption of local exchange rules does not constitute a modification of these decisions.

The Coalition cites Section 454(b) noting that it provides for the adoption of rules for each class of public utility "with or without a hearing." The Coalition argues that the Commission's quasi legislative authority permits it to promulgate rules as proposed in its April order which are intended to implement the legislative mandate to open all telecommunications markets to competition by January 1, 1997. See Wood v. Public Util. Comm'n (1971) 4 Cal.3d288, 292; 93 Cal.Rptr. 455, 481 P.2d, appeal dismissed, 404 U.S. 931; 30 L. Ed. 2d 245, 92 S. Ct. 293. ("Where the proceedings are quasi legislative in character, a hearing of a judicial type is not required ...)" Franchise Tax Bd. v. Superior Court (1950) 36 Cal.2d 538, 549; 225 P.2d 905. Independent Roofing Construction v. Department of Industrial Relations, 23 CA 4th 345, 360 (1994). In this context, the Coalition argues that hearings are only required in limited areas where disputed factual or evidentiary questions arise in connection with the issuance of rules.

The Coalition acknowledges that the PU Code does state that a hearing should be held in connection with determining the appropriate rates, including changes and increases, of a public utility. See Cal. Pub. Util. Code §§ 728 & 729; see also § 454(a). Thus, the Coalition believes hearings should be limited to rate-related factual disputes, including rate unbundling, wholesale rates for resale of LEC basic services, and rate treatment for interim number portability. Rates for call termination would also

require evidentiary hearings if the Coalition's "bill-and-keep" proposal for mutual traffic exchange is not adopted.

The Coalition also disagrees that GTEC's vested franchise rights grant it an exclusive right to do business in a given market area. The Coalition further denies that implementation of local competition constitutes a taking under the fifth and fourteenth amendments. The Coalition argues that the decision as to whether a company can compete in local exchange markets is not premised on any statutory franchise, but rather on the Commission's administration and regulation of those markets.

D. DRA

DRA supports the Commission's intent to open local exchange telecommunications markets to competition as being in tne best long-term interest of ratepayers by encouraging greater innovation, technological advancements, and lower rates. DRA believes competition should further the goal of universal service and ensure that all consumer protection safeguards are maintained. DRA argues that all providers of telecommunications services should be afforded an opportunity to compete on an equal basis and to the extent appropriate to promote fair and vigorous competition. As part of its comments, DRA submitted its revised proposed consumer protection rules (previously submitted as Appendix B of DRA's March 10, 1995 comments in the Commission's Universal Service docket). DRA's revised consumer protection rules are intended to essentially clarify and simplify the Commission's proposed rules.

Addressing the Commission's proposed schedule announced in our April 26 Order, DRA does not believe effective competition can be achieved by January 1, 1996. DRA expresses puzzlement over why the April 26 order appears to anticipate that all outstanding issues impeding opening markets to competition shall be resolved by January 1, 1996--a full year earlier than the January 1, 1997 deadline established in the Infrastructure Report. DRA does not believe the Commission's own resources are sufficient to permit

resolution within the remaining portion of 1995. DRA advocates a "critical path" approach which would entail issuance of interim rules in the summer of 1995 limited to general policies governing entry and the shape of the market. The next steps envisioned by DRA would entail resolving higher priority issues regarding unbundling of networks, number portability, interconnection, universal service, and intraLATA equal access. Under DRA's envisioned schedule, the Commission could complete the review of some of these issues before January 1, 1996. DRA believes that other issues which are critical to the success of local competition such as full number portability or the definition of universal service will require more time. DRA regards NRF review as a low-priority item, and proposes the next NRF review be deferred until 1996.

DRA also proposes that the Commission establish procedures for modifying the adopted rules and for handling complaints under the rules. As a model for such procedures, DRA points to the Forum OII which was established shortly after NRF became effective. Accordingly, DRA proposes that a separate docketed proceeding be established for making changes in the rules or handling complaints pertaining specifically to the rules.

DRA interprets the proposed rules as excluding the small and mid-sized LECs from local competition until sometime after January 1, 1997. DRA recognizes that small LECs may not yet be positioned to compete. But if the Commission's interim rules do not allow for competition in the service territories of small and mid-sized LECs, DRA argues that some of the Commission's rules will not be sustainable. DRA warns that ratepayers throughout the state including those served by the small LECs will not be insulated from the effects of local exchange competition authorized only in Pacific's and GTEC's service territory. For example, small LECs may need to request an increase in basic rates or assistance from the California High Cost Fund because of reduced toll revenues

received from Pacific as a result of its own response to competition.

E. Positions of Other Parties

Several other parties filed comments on the proposed rules including consumer groups, governmental agencies, and telecommunications industry trade groups.[3] Because of the volume of comments filed and the similarties in positions, we will not summarize each party's position. Nonetheless, we have reviewed and considered all parties' comments in developing the rules adopted in Appendices A and B, and in assessing the procedural approach to follow in developing further rules in a subsequent order. We note, however, that the positions of the various groups generally are covered by one of the major parties summarized above.

IV. Discussion

A. Procedural Plan for Implementation of Local Exchange Rules

We have taken into account parties' filed comments and also considered the oral comments made at the June 9 full panel hearing in arriving at the findings and conclusions in this order. We reaffirm our previous commitment to achieve implementation of competition in all telecommunications markets by January 1, 1997 consistent with our legislative mandate and our policies.

We fully intend to open all markets, including the mid-size and small LECs, to local exchange competition in accordance with the law of the State as written in AB 3606. We shall not entertain delay tactics aimed at derailing the performance of our statutory duty. However, we will resolve all necessary

3 A detailed listing of the public agencies, consumer groups, trade associations, and other organizations which filed comments is in Appendix D.

implementation issues prior to authorizing competition in these companies' territories.

The task remains as to how to coordinate and sequence the various companion proceedings to achieve this final goal. The implementation of local exchange competition involves interrelated sequential steps which must be properly timed and coordinated. The adoption of local competition rules must be keyed to this sequential process. Thus, while it would be premature at this point to adopt a complete set of rules authorizing local competition immediately, it is unnecessary to wait until all issues are resolved before taking the steps adopted in today's order.

Accordingly, we adopt a balanced approach, recognizing that several issues raised by parties concerning our proposed interim rules require further consideration before our adoption of a complete set of local competition rules. We agree that focused evidentiary hearings on various contested issues relevant to this docket are appropriate and must be concluded before complete rules can be adopted addressing those issues. We summarize these issues below. We must also continue to coordinate our adoption of local competition rules with the progress of companion proceedings.

Consistent with the general approach described in our April 26 order, we adopt initial rules in today's order that will enable competition to begin January 1, 1996. Our adopted rules are set forth in Appendices A and B of this order. In our April 26 order, we solicited parties' comments regarding the need for evidentiary hearings or further comments, and proposals for procedural schedules for the development of further rules. We plan to conduct evidentiary hearings as necessary during the fall of 1995 and to adopt complete local exchange competition rules as a result of those hearings in 1996. As discussed in Section IV.B.3, the actual approval of CPCN filings will be administered through the investigation docket of this proceeding. The actual date of

approval will depend on when a CLC has satisfied all entry requirements, including those under CEQA.

Before January 1, 1997, we expect to resolve all remaining issues which will allow for the opening of all telecommunications markets to competition by January 1, 1997. We agree, however, that local exchange competition should not be allowed to impair universal service provision. The question is whether CLCs will be able to complete all necessary construction or execute necessary contractual and financing arrangements before Universal Service rules are adopted. The Coalition argues that given the time lag involved in CLCs' obtaining certification, and obtaining necessary financing and facilities, local exchange competition will not become a reality before the middle of 1996.

We conclude that interim rules authorizing CLCs to begin offering facilities-based local exchange service by January 1, 1996 and resale competition by March 1, 1996 will not jeopardize universal service provision. We expect to issue a decision establishing a framework in the Universal Service Proceeding in the spring of 1996 and implementation of final rules around June 1996. Realistically, considering the expected lead time involved in preparing to begin actively competing for local exchange business, competition will not become viable before the spring of 1996 in any event. Moreover, the initial rules we adopt in this order require that CLCs must collect surcharges for the Universal Lifeline Telephone Service Fund. (Appendix A-Rule 4.C (3).) In conclusion, parties' claims that universal service will be jeopardized by the initiation of local competition do not convince us to delay the adoption of interim rules.

There is sufficient information before us to adopt initial rules in this decision to authorize prospective competitors to file certification applications for entry into the local exchange market. We also adopt rules that will enable local exchange competition to start in 1996. Lastly, we issue rules

governing consumer protection measures as set forth in Appendix B of this order. The adoption of these rules will permit the gestation of telecommunications competition to move forward without having to wait until all issues have been resolved. No new market entrant will be able, however, to actually begin to offer local exchange service at the earliest until Commission approval of the prospective entrant's CPCN.

We next address the issue of whether evidentiary hearings are required to address the issues raised in various parties' comments, including GTEC's petition regarding compensation for the alleged taking of the LECs' franchise.

The Takings Clause of the Fifth Amendment provides that "private property" may not "be taken for public use, without just compensation." Duquesne Light Co. v. Barasch (1989) 488 U.S. 299. The U.S. Supreme Court recognized that regulated utilities have an unusual "partly public, partly private status" that "creates its own set of questions under the Takings Clause of the Fifth Amendment." Duquesne addressed utility-related taking issues by focusing on whether rates properly compensate utilities for the property they have dedicated to public use. The Court found that extremely low rates were so unjust as to be confiscatory. (Duquesne, supra. 488 U.S. at 307, 310.)

Under the analysis set out in Duquesne, the introduction of competition into the local exchange markets of GTEC and Pacific would not constitute a taking unless utility investors were deprived of the opportunity to earn a fair return on their investment. No particular regulatory regime is required under Duquesne, so long as investors have the opportunity to earn a fair return. Duquesne follows the rule of FPC v. Hope Natural Gas Co. (1944) 320 U.S. 591, 602: "It is not the theory, but the impact of the rate order that counts. If the total effect of the rate order cannot be said to be unreasonable, judicial inquiry is at an end."

Thus, the Commission is not limited in the type of regulation it may endorse. The Commission is limited only as to the result of that regulation: investors must have the opportunity to earn a fair return. In determining a fair rate of return, a court might not even look at the effect of regulation on investment in local exchange service in isolation. Duquesne suggests that a court should ask whether shareholders are earning a fair return on their total investment in utility facilities. Even if regulatory changes in the local exchange sector were detrimental to shareholders, those changes could be offset by beneficial changes in another sector.

The regulatory taking claimed by GTEC thus does not involve any government appropriation of private property for its own use. Rather, the alleged taking results from the manner of regulation imposed. The test which the courts have followed to determine if a taking has occurred in this instance is, "if regulation goes too far it will be recognized as a taking." (Pennsylvania Coal Co. v. Mahon (1922) 260 U.S. 393, 415.)

The Supreme Court states that it "has generally 'been unable to develop any "set formula" for determining when "justice and fairness" require that economic injuries caused by public action be compensated by the government." Rather, it has examined the "taking" questions by engaging in essentially ad hoc, factual inquiries." (Kaiser Aetna v. U.S. (1979) 444 U.S. 164, 175.)

In conclusion, we reject the claim that the LECs have any absolute legal right to an exclusive franchise. Under the applicable case law reviewed above and consistent with PU Code §§ 1001 and 1005, we conclude, however, that a focused evidentiary hearing must be held. We address the scope and nature of the hearings to be held in Section IV.B.6.b. below.

Our decision to grant hearings as prescribed below addresses the substance of GTEC's and Roseville's petitions to modify D.94-12-053 insofar as they relate to issues relevant to

this docket. We conclude that GTEC's and Roseville's petitions were procedurally improper to the extent they sought a modification of D.94-12-053 to explicitly require evidentiary hearings. As noted by the parties in opposition to the petition, the alleged legal error in the decision should have been addressed through an application for rehearing rather than a petition for modification. The time for filing such an application had expired when GTEC and Roseville filed their pleadings. Moreover, the alleged due process harm which concerns GTEC and Roseville had not yet occurred since no local exchange rules had yet been adopted nor had the question of evidentiary hearings previously been decided. In fact, provision had already been made in our issuance of R.95-04-043/I.95-04-044 for evidentiary hearings to the extent necessary prior to adoption of rules. Thus, the proper way to address the issues raised in GTEC's petition was not to modify D.94-12-053, but rather to determine prospectively what substantive issues should be dealt with through evidentiary hearings or other means.

We conclude that evidentiary hearings on other local competition issues are warranted only to the extent there are material factual disputed issues. To the extent Section 1708 has any applicability to the issues in this rulemaking, the hearings granted in this order provide the appropriate remedy. The factual disputes for which evidentiary hearings are granted are summarized IV.B.6 below. Under the Commission's quasi-legislative authority, however, it may adopt rules involving only policy or legal issues without holding evidentiary hearings.

B. Adopted Rules

1. Scope

Our adopted interim rules shall immediately authorize CLCs to begin filing applications for CPCN authority. We shall solicit additional written comments from parties on a schedule to be set by the assigned ALJ on certain prescribed issues. We shall

then issue additional interim rules on interconnection and resale. Because of the number of parties filing comments, we shall not separately address our resolution of each issue raised by every party. Rather, we shall provide a general summary of the major factors we considered in reviewing parties' comments and in determining whether individual proposed interim rules required modification, deletion, or augmentation.

Our adopted rules follow in general format the organization of the proposed rules set forth in our April 26 order. The adopted rules are limited to only the first seven sections of Appendix A and all of the consumer protection sections of Appendix B of the proposed rules in our April 26 order. We shall not adopt any rules in this order covering the remaining issues addressed in Appendix A of the previously proposed rules (e.g., switched access provisioning, universal lifeline service provisioning, etc.) We shall defer adopting rules in these areas until after evidentiary hearings are held or further written comments are filed as directed below.

The adopted rules set forth our overall public policy objectives relating to the competitive provision of local exchange service. The adopted rules prescribe the criteria for CLC certification as well as the required filings of CPUC reports, the remittance of mandated user fees, procedures for filing and revising tariffs, and obligation to serve.

Consistent with our previously proposed rules, the adopted rules shall apply only to competitive entry within the service territories of the two major incumbent LECs, Pacific and GTEC. We shall consider the applicability of these rules, or modifications thereof, to small and midsized LECs in a later phase of this rulemaking.

We shall adopt the general approach followed in the proposed rules which was premised on existing rules for NDIECs and shall use that approach in crafting the rules adopted herein. We

have modified the previous rules where appropriate based upon the comments filed by parties.

Unless otherwise indicated, the existing statutory provisions of the Public Utilities Code as well as the Rules of Practice and Procedure and General Orders of the Commission which apply generally to telecommunications utilities shall also apply to certificated CLCs. The rules we adopt herein either clarify the application of existing statutory provisions to CLCs or address the additional rules required for CLCs which are not already covered in existing rules.

Our adopted rules also include provisions to ensure that CLCs service provisions under the Deaf Equipment Acquisition Fund (DEAF) program are adequate. As set forth in the ordering paragraphs below, we direct that a workshop be held with LECs, CLCs, and other interested parties to determine how the DEAF program should be administered in a competitive environment. We shall further direct the LECs and CLCs to develop a program to address the provision of repair service (i.e., 611) to ensure its integration in a competitive environment.

2. **Applicability of Rules to Wireless Services**

In our April 26 proposed rules, we limited their applicability only to "wireline" service. The Coalition objects to limiting the applicability of the rules only to "wireline" service, and proposes that this reference be eliminated. The Coalition proposes that the rules be clarified to reflect that CLCs may use any technology--wireline, wireless, or both--to provide local service. Although the 1993 Federal Omnibus Budget Act (Budget Act) preempts California from regulating the rates or entry of Commercial Mobile Radio Service (CMRS) providers, the Coalition does not believe the preemption provisions apply in the context of Commission rules for local exchange service. The Coalition believes the key distinction is what service is being offered by the carrier in question.

We do not intend to restrict the type of technology a carrier may employ to offer local service. This is consistent with our recommendation in Enhancing California's Competitive Strength: A Strategy for Telecommunications Infrastructure that California maintain a technology-neutral policy. We shall therefore eliminate the reference to "wireline" in defining the applicability of the rules. The adopted rules shall apply to any CLC irrespective of whether it uses wireline, wireless, or both to provide a service that is equivalent to the current wireline basic telephone service.

At the same time, we are mindful of applicable preemption language contained in the Communications Act, as amended by the Omnibus Budget Reconciliation Act of 1993 ("Budget Act"). That language, set forth in U.S.C. § 332(c)(3)(A), preempts the states from regulating the entry and rates of CMRS providers.

Accordingly, to the extent that a given provider of local exchange services meets the definition of CMRS -- i.e., it is a common carrier because it offers service to the public at a profit, is interconnected with the public switched network, and offers mobile service as defined in Section 153(n) of the Communications Act -- such provider will not be subject to Commission entry and rate regulation.[4]

The Budget Act does permit a state to impose requirements on all providers of telecommunications services, including CMRS "where such services are a substitute for land line telephone exchange service for a substantial portion of the communications

4 Not all providers of wireless services fall within the definition of CMRS. For example, the FCC has expressly found that BETRs is not CMRS because it is a fixed, not mobile service. In the Matter of Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, GN Docket No. 93-252, Second Report and Order, slip op. at ¶ 102. Hence, such service is exempt from the preemptive provisions of the Budget Act.

within [a] state" when "necessary to ensure the universal availability of telecommunications services at affordable rates." (47 U.S.C. § 332 (c)(3)(A).) Thus, those CMRS providers described in Section 332(c)(3)(A) may be subject to Commission requirements or regulations governing universal service that are applicable to other providers of telecommunciations services.

3. Certification Process

We set forth the rules governing the certification of CLCs in Appendix A-Section 4 of this order.[5] In administering the certification process for CLCs, we shall follow an approach similar that of I.92-04-008 which extended authority to intraLATA toll entrants. In that proceeding, we opened a docket to handle certification of the more than 100 petitioners who sought expanded authority to offer intraLATA toll services. They received authority before January 1, 1995, but were not authorized to begin offering service before that date. In similar fashion, we shall use the investigation docket of this proceeding to administer the certification process of all of the initial requests by CLCs to offer local exchange service.

We will set a priority on expedited, streamlined review and approval of the filed CPCNs requests that meet the adopted requirements. We shall direct that candidates for CPCNs file petitions in the investigation docket of this proceeding by September 1, 1995. We shall then process and approve the CPCNs in two consolidated batches for qualifying petitioners. The first

5 Senate Bill (SB) 665 has been signed into law, to become effective January 1, 1996. SB 665 would permit the Commission to exempt certain telephone corporations which lack monopoly power from the requirement to obtain a CPCN and instead subject them to a registration filing as the Commission may determine. The Commission will consider later how to implement the provisions of the bill and examine the applicability of registration procedures to CLCs.

batch, covering facilities-based CLCs, shall be approved to allow for facilities-based local exchange competition to begin by January 1, 1996. We shall approve a second batch, representing CLCs seeking to engage in resale competition, by March 1, 1996.

Applications for CPCN authority filed after September 1, 1995 shall be processed on a first come-first served basis after the first two batches have been processed. Only those that file petitions by this deadline will be assured that their applications will be acted upon so that they may begin to offer service by January 1 or, March 1, 1996, as appropriate.

Calaveras and Roseville argue that the Commission would violate the California Environmental Quality Act (CEQA) if it were to adopt the proposed interim rules before completing the required environmental study. CEQA, Public Resources Code Section 21000 et seq., provides generally that state agencies must prepare environmental impact reports (EIRs) on "projects" that may have a significant effect on the environment. Roseville contends that the proposed rules, if adopted, would constitute a "project" under CEQA since CLCs would be authorized to dig up streets for pole installations and to construct other facilities throughout the state. Roseville further states that the proposed rules fail to address the need for CEQA compliance by individual applicants for CPCNs seeking authority to provide local exchange service. Roseville contends that the proposed rules would be illegal if adopted without defining the obligations of CPCN applicants to submit project information required under CEQA.

We do not agree with Roseville that the act of promulgating the proposed rules is in itself a CEQA project. Contrary to Calaveras' and Roseville's arguments, the rules themselves do not authorize any entity to dig up the streets. Some telephone companies already have this authority and others will need to apply for CPCNs before they are authorized to construct facilities. Although it is true that projects under CEQA need not

have direct physical effects, "CEQA was not intended to and cannnot reasonably be contrued to make a project of every activity of a public agency, regardless of the nature and objective of such activity." (Simi Valley Recreation & Park Dist. v. Local Agency Formation Com. (1975) 51 Cal.App.3d 648, 663.) CEQA project decisions are made on a case by case basis. Because the Commission will fulfill CEQA review requirements before approving any new CPCNs, the interim rules do not constitute a project.

Furthermore, Roseville's references to the Commission's current electric restructuring efforts are misplaced. The electric restructuring contemplates a completely different set of agency actions than those involved here. It also concerns different environmental considerations. The electric restructuring presents a unique set of environmental and regulatory concerns. Even after those issues are resolved, which they have not been, the electric restructuring provides little guidance for CEQA issues in other proceedings.

In the instant case the Commission will have another opportunity after these rules are issued, to consider the environmental effects of newly authorized construction. This opportunity will arise during review of CLC CPCN applications. The rules adopted today by this decision will clarify that all CLC CPCN applicants will need to comply with CEQA at the time of their application pursuant to Commission Rule 17.1. The Commission will perform CEQA review at the application stage at the level it determines is appropriate.[6] There is, therefore, no need to perform environmental review before approving the interim rules.

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6 These levels may be (1) no review, if the project is exempt or if it can be seen with certainty that there is no possibility that the project will have a significant effect on the environement; (2) a negative declaration; or (3) an environmental impact report.

4. Obligation to Serve

We conclude that CLCs should generally be bound by the tariff filing rules set forth in GO 96-A. This means that CLCs shall file service territory maps as prescribed in Section II.A.(4) of GO 96-A. While CLCs are not obligated to serve the same territory served by the LECs, they must designate the service territory they do intend to serve. CLCs shall be authorized to serve only within the service territory designated in its tariff filing, but shall not be obligated to provide facilities-based service more than 300 feet from the area abutting the CLC's facilities. In any event, CLCs shall offer service on a nondiscriminatory basis to all customers within its designated service territory as prescribed by PU Code §§ 453 and 454.

5. Consumer Protection Rules

As stated in our April 26 Order, it is imperative that before local competition is instituted, rules be in place to protect telecommunications consumers against unfair business practices, to assure they receive adequate ongoing disclosure of rates, terms and conditions of service, and to provide for resolution of complaints. We do not believe that evidentiary hearings are required regarding consumer protection rules. We conclude that interim rules can be adopted covering the consumer protection concerns which were previously addressed in Appendix B of our April 26 order. We have taken into account parties comments regarding proposed changes to our proposed consumer protection rules and made revisions, as appropriate. Accordingly, we shall adopt the consumer protection rules as set forth in Appendix B of this order.

6. Issues Deferred for Further Comment or Evidentiary Hearings

As noted above, we shall defer adopting rules covering the remaining categories of local competition rules not resolved in this order until evidentiary hearings have been held or further

comments taken although we shall install some interim measures. As the next step in resolving these remaining areas, we shall direct the assigned ALJ to convene a prehearing conference to address the procedural issues required to gather further comments or to hold evidentiary hearings. We direct that any necessary evidentiary hearings shall be conducted so that a decision can be issued resolving the contested issues outlined below by March 1, 1996.

As directed in our April 26 order, various parties have presented lists of issues which they believe require further written comment or evidentiary hearings before there can be a final resolution. Parties have also presented proposed schedules for hearings and a Commission decision on these matters.

Any adopted evidentiary hearing schedule shall be strictly enforced and focused on resolving essential factual disputes. We shall direct the assigned ALJ to use all appropriate means to streamline the hearing process while reserving due process rights of parties. Where factual disputes require hearings, parties with similar positions should consolidate testimony and cross-examination. Parties should also seek to reach stipulations or settlements where possible.

The ALJ will issue a ruling following the prehearing conference adopting a procedural schedule to address the remaining issues not resolved by the initial rules adopted in this order. The ALJ's adopted schedule shall provide for evidentiary hearings and further written coments on the issues listed below, and on any remaining issues raised in parties' May 24 comments on the proposed interim rules.

Because we propose to provide parties additional opportunity to address outstanding issues, we shall not describe each party's position on every controverted rule in great detail here. We shall focus below only on the essential issues to be resolved through evidentiary hearings or additional comments.

Outstanding issues are summarized below in reference to the applicable rule number identified in our April 26 Order.

a. Rule 4- Entry, Certification, and Regulation of CLCs

(1) CLCs' Financial Requirements

Pacific proposes that a bond requirement be imposed on each CLC of an amount equal to an estimated three months of recurring flat-rated, or usage-based, interconnection charges calculated on the total number of interconnection facilities ordered from the LEC. Pacific contends that this bond requirement is necessary to protect against large LEC losses if new CLCs fail. GTEC proposes a requirement that CLCs post a $1 million performance bond to protect both consumers and other providers from the potentially devastating effects of a CLC's financial insolvency. We will permit parties to file additional comments on Pacific's and GTEC's proposed financial requirements for CLC certification.

(2) Consistency of Rating Areas

Pacific proposes an additional rule (Section 4.E (1.1) which would require consistency in the application of customer rating areas between CLCs and LECs. Pacific argues that this will avoid unnecessary customer confusion when calling customers of other carriers and further the goal of transparent CLC and LEC interconnection. The rule would also assure that the LECs 911 system could recognize and properly route 911 calls. In the interim period, we will direct that CLCs use the LECs' rating areas. We will order evidentiary hearings to determine the long term resolution of the rating area designation of CLCs.

b. Rule 5- Regulation of LECs

(1) LEC Resale Restrictions

Pacific opposes the forced removal of resale restrictions of LECs' local exchange services before Pacific obtains authority to enter the interLATA market and an effective universal service plan is in place. Otherwise, Pacific argues that its market share loss would be irretrievable and subsidy support

flows would be forever imbalanced. The public switched network would consequently lose its funding base, according to Pacific. Once the resale markets are opened, Pacific argues that resale services should be priced at cost, not at a subsidized price. Pacific believes hearings are required to establish whether resale is appropriate, and if so, that resale prices recover their costs. In its January 31 informal comments, Pacific offered to make certain services available for resale in addition to access services which have no resale restriction. The Coalition does not believe hearings are necessary to establish that resale is appropriate, but limited hearings are needed to address the proper wholesale rates for LEC basic exchange services.

Resale of local services is a key component of creating a truly competitive local telecommunications market. It is our intention to allow resale of Pacific's and GTEC's basic service to begin March 1, 1996. However, the question of what is the appropriate rate to be charged for basic service subject to resale must be addressed. The new entrants face a planning choice to build or buy. We need to act quickly to determine interim resale rules and rates so that market participants can move past the planning stage to the actual provision of service in the most economical and efficient manner.

We herein authorize the resale of Pacific and GTEC's basic service effective March 1, 1996. Pacific and GTEC are instructed to take those steps necessary to implement resale by that date, although these companies and other parties are invited to describe in their additional comments any concerns related to the implementation of resale by this date.

We also direct the ALJ to seek comments on whether allowing bundled basic service to be resold at the existing retail rates is reasonable, or whether any other rate would be appropriate for interim purposes. Further, we wish that parties address how we

could reconcile rates other than existing retail rates with our imputation policies expressed in IRD.

The Commission determined in IRD that the price floor for a competitive service must equal the tariffed rate of the monopoly building blocks plus the long-run incremental cost of competitive elements. Parties to this proceeding have argued for bundled resale prices both below and above Pacific's retail rates. If the Commission considers Pacific's and GTEC's basic service a monopoly building block and concludes that presently there are no competitive elements in basic service, then the price of basic service must equal the tariffed rate element of the monopoly building block, the actual price for basic service. We ask the parties to comment on how this analysis can be reconciled with the parties' comments in this case and with the standing policy of pricing basic services "residually."

We also ask the parties to address the issue of fairness raised when a NRF LEC sells basic residential service below cost to competitors in light of the analysis of the pricing of monopoly building blocks. Lastly, we request comment on whether this fairness issue can be addressed by requiring the LEC to resell only business basic service without restrictions. Could such pricing be effectuated without any significant technical or legal issues?

(2) LEC Franchise Impacts

The LECs contend that the introduction of local exchange competition under the terms set forth in the April 26 proposed rules would unfairly deprive them of their exclusive franchise, and hearings should be set to determine an appropriate compensation for the alleged taking of the value of the franchise and its associated revenue stream.

We conclude that there is no statutory requirement to guarantee a prescribed return to the LECs nor to assure that the LECs exactly recover their embedded costs from prior investments.

Nonetheless, the rules should not go so far as to deprive the LECs of the opportunity to earn a fair return on invested capital, as discussed at length in Section IV.A.

Accordingly, we shall grant an evidentiary hearing in this docket on the issue of whether these rules that permit local exchange competition alter our regulatory program so that it no longer affords Pacific and GTEC an opportunity to earn a fair return on invested capital. If we find that there is not such an opportunity to earn a fair return, then we shall consider what measures, if any, are appropriate to ensure the fairness of our regulatory policies. Our granting of this hearing disposes of the due process claims raised by GTEC concerning the requirement for evidentiary hearings to address the alleged taking under the Fifth Amendment. We shall also coordinate this hearing, as necessary, with the NRF review and universal service dockets.

The smaller LECs claim that local service competition may impact traffic factors used in various separations and settlements studies and also alter toll and access revenues due to stimulation of demand. They argue that hearings are required to determine what changes would result and need to be accounted for as part of the California High Cost Fund process. The Universal service proceeding is the appropriate venue to raise issues related to the impacts of local competition on the funding of universal service. If hearings on this issue are warranted, we would expect that they would occur as part of our ongoing universal service proceeding.

(3) LEC Pricing Policies

GTEC argues that prior to the introduction of local competition, LECs need additional pricing flexibility. In particular, GTEC calls for geographic deaveraging of cost studies and prices, recategorization of all LEC services as competitive, and NRF reform, including elimination of earnings caps and productivity factors. Another question is whether LECs should be

granted more flexibility in existing regulatory restrictions including pricing safeguards against discrimination, price squeezes, and cross subsidization. Pacific proposes that the Commission request additional comments on the implications of its proposed rule (Section 5.G) on pricing safeguards before adoption.

For example, Pacific asks, if a Category I service is recategorized to Category II, does this rule mean that prices for the service will remain frozen, or would Pacific have downward pricing flexibility?

We shall hold evidentiary hearings in this docket on the issue of whether additional LEC pricing flexibility should be granted as local competition is instituted, and if so, to what extent. We shall coordinate these hearings with our NRF review docket, as necessary. We shall ensure, however, that hearings are completed in time to allow possible changes to LEC pricing rules, if deemed necessary, to be adopted prior to March 1, 1996 when resale-based competition is scheduled to begin.

(4) CLC Pricing Policies

Roseville argues that hearings are required to determine the basic parameters of CLC pricing rules. Examples of pricing issues include the extent to which CLCs should be granted the flexibility to deaverage rates geographically, to price below cost, to bundle products with services, or be required to submit cost support with filed tariffs. GTEC also proposes that CLCs as well as LECs should be required to produce cost studies to show that rates at least cover long run incremental costs. We shall consider in hearings whether there is evidence that consumer harm would result if CLC cost studies were not required. We shall direct that the schedule for these hearings be timed to ensure that a decision resolving these issues can be adopted no later than March 1, 1996.

c. Rule 6- Numbering Resources and Number Portability

(1) Interim Number Portability

The proposed rules recognized the need for an interim means of providing for portability of a customer's phone number when changing local service providers. The proposed rules provided two short-term alternatives for interim number portability: remote call forwarding (RCF) and direct inward dialing (DID). The proposed rules called for pricing RCF at the LEC's direct embedded cost (DEC). Other parties such as DRA argue that hearings should be held to determine a compensation rate for RCF. The Department of General Services (DGS) is concerned that RCF will negatively impact the 911 system by showing the incorrect location.

As an interim measure, we adopt rules herein stating that compensation for remote call forwarding be set at the LEC's direct embedded cost. We further direct that each of the major LECs set up a memorandum account to track RCF charges to permit a subsequent true-up of recorded charges once a final determination is made concerning the appropriate compensation for RCF. This interim approach will permit CLCs to begin utilizing RCF as an interim number portability solution and begin offering local service by January 1, 1996 without having to wait until final resolution of the issue in evidentiary hearings. We shall direct the ALJ to set subsequent evidentiary hearings addressing the appropriate compensation for RCF and DID, as applicable, and the possible negative impacts of RCF and DID, if any, on the 911 system.

(2) Long-Term Number Portability

The proposed rules called for a long-term solution to number portability through development of a data base, accessed by SS7 links and queried by all LECs, CLCs and interexchange carriers terminating traffic in a competitive local calling area. The proposed rules also had a provision for a full-scale trial of local number portability within one year of the effective date of these

interim rules, with permanent implementation of a data base solution to occur as soon thereafter as possible.

Pacific believes we should defer implementation of the data base until a national data base solution is available while the Coalition supports the California-specific data base rules. Roseville raises uncertainty as to the economic costs and technical viability of long-term provisioning of number portability via a shared data base. Parties also disagree as to how the costs of developing the number portability data base should be funded and recovered. As the next step toward resolving long-term number portability issues, we shall direct the California Local Number Portability Task Force[7] to convene a workshop to scope out technical criteria that need to be formulated to complete a trial test of long-term local number portability. The Task Force shall provide a report to the Commission of the results of the workshop by a date to be determined by ALJ ruling. Factual issues relating to funding and rate setting for long-term number portability shall be addressed through evidentiary hearings.

d. Rule 7- Unbundling

Since unbundling will be addressed in the OANAD proceeding, we need not address this issue in the local exchange rules. We shall coordinate, as necessary, with the OANAD proceeding.

7 The California Local Number Portability Task Force was recently organized by representatives of the telecommunications industry. Its first meeting was announced on May 31, 1995 by a letter from counsel for MCI Telecommunications, Inc. to the service list in this proceeding.

e. Rule 8- Interconnection of Networks for Termination of Local Traffic

(1) Interconnection

Parties disagree regarding the manner and terms under which interconnection of networks should be required or permitted. While the Coalition favors the approach set forth in the proposed rules, i.e., requiring LECs to interconnect with CLCs at any points specified by the CLC, Pacific believes LECs and CLCs should each be able to specify the point of interconnection for traffic sent to the other company. Citizens agrees with the reciprocal approach. GTEC and DRA both believe there should be mutual agreement on where interconnection occurs. DRA believes there should be a minimum of two points.

As prescribed under PU Code § 767, the conditions are set forth under which the Commission may prescribe a reasonable compensation and reasonable terms and conditions for the joint use of facilities whenever the Commission finds that public convenience and necessity require the use by one or more public utilities of all or part of the facilities of another public utility. These conditions are that such use will not result in irreparable injury or substantial detriment to service, and that such public utilities have failed to agree upon such use of the terms and conditions or compensation therefor. Accordingly, in those cases where CLCs are able to reach mutually agreeable terms and conditions for interconnection including compensation, the negotiating parties are free to execute such interconnection agreements without the need for Commission-imposed rules on terms and conditions.[8] We shall adopt rules governing interconnection arrangements to provide

8 Commission approval of such a mutually agreed upon interconnection and compensation arrangement should be sought via an advice letter. Commission review will ensure that the arrangement is not unduly discriminatory nor anti-competitive.

guidance in those cases where parties are unable to negotiate mutually acceptable interconnection terms. Before we adopt rules on the points of interconnection, we shall solicit additional comments from parties under a schedule to be announced by ALJ ruling.

(2) Call Termination

The proposed rules called for a system of reciprocal compensation which allows carriers to charge each other for terminating calls on their respective networks. Without supporting cost data, CLCs could charge no more than LECs currently charge for terminating access. The Coalition proposes a "bill-and-keep" mutual traffic exchange system. Under the bill-and-keep approach, each LEC and CLC would terminate local traffic for all other LECs and CLCs with which it interconnects, bearing any costs associated with these functions. This system of mutual traffic exchange would require that each LEC and CLC perform the same functions for local traffic termination as do all other LECs and CLCs, but would avoid the costs associated with establishing a formal call tracking and billing mechanism for traffic termination.

Pacific and GTEC support the concept of reciprocal compensation for call termination in the April 26 proposed interim rules. Pacific believes the rules should be modified to avoid any unintended discrimination by the CLCs. Pacific proposes that CLCs should not be allowed to charge LECs more than the lesser of what they charge IECs or the amount the LEC currently charges for terminating access. GTEC believes that CLCs should be required to submit supporting cost data for terminating access charges that are higher than LEC charges. GTEC also believes that call termination rates shold be uniform within a geographical area.

We shall adopt the following procedures governing compensation for call termination. As an interim measure, we shall adopt the Coalition's proposal for a bill-and-keep approach as the vehicle for parties' mutual compensation for call termination. The

effective date of the interim rules authorizing CLCs to begin using the bill-and-keep procedure shall be January 1, 1996, when facilities-based competition is scheduled to begin. No CLC shall use the bill-and-keep procedure earlier than January 1, 1996 even if they are otherwise able to enter the local exchange market before this date. This interim measure for call termination compensation shall remain in force for up to one year from January 1, 1996. With adoption of the interim bill-and-keep approach, there is no need for evidentiary hearings at this time to resolve call termination charge compensation issues before CLCs can begin offering local service. However, by the end of the one-year interim period, we shall have concluded necessary hearings to reassess the effectiveness and fairness of the bill-and-keep approach and shall be prepared to decide whether to adopt an alternative call termination approach.

We note the Commission's long standing policy preference in approving tariffs that the prices of services should reflect costs, and we see no other principle consistent with a regulatory-managed transition to market-based competition. It is the policy of this Commission that Commission-approved tariffs for call termination services should be cost-based. Thus, this bill-and-keep interim policy in no way prejudges our final policy choice. Indeed, if a LEC and a CLC are able to agree to a compensation agreement other than bill-and-keep they may seek Commission approval of the agreement via an advice letter filing which we will review to ensure that the agreement is not unduly discriminatory or anti-competitive.

f. Remaining Rules in Appendix A

We have reviewed parties' comments proposing various changes in the remaining Rules as contained in Appendix A of our April 26 Order. While parties disagree over the appropriate changes to be made to these rules, we conclude that no factual disputes are involved requiring evidentiary hearings to resolve

these matters. Accordingly, we will not address the nature of parties' proposals on these rules in this order, but will permit parties to file written comments regarding the April 26 rules not otherwise addressed in this order. We will not, however, provide for evidentiary hearings on these rules.

g. Interconnection Service Order Standards

In Ordering Paragraph 7 of our April 26 Order, we directed the GO 133-B Review Committee to develop additional standards applicable to interconnection service orders, and to report its draft GO 133-B revisions to CACD by December 31, 1995. We also solicited comments on how to reconfigure the representation of the GO 133-B Review Committee to include CLCs.

Pacific responds that there is no need to reconfigure the representation since Section 5.2.b of GO 133-B expressly provides for industry representation on the Committee and that "telephone utilities shall be represented by individuals or joint representatives." DRA agrees with Pacific on this point. DRA also questions the use of the Committee as the appropriate forum for successful negotiating of standards for interconnection service orders. DRA recommends that, if the Committee does not reach consensus by October 1, 1995, it should so notify the Commission. Then, DRA proposes that the Commission should order parties to file written testimony on standards for intercompany interconnection service orders by October 31, 1995. We shall adopt Pacific's and DRA's proposed approach. The ALJ's adopted procedural schedule shall determine the timing of testimony and hearings, if any, related to this issue.

V. Overview of Our Progress: Maintaining Fairness and Balance

On December 21, 1994, we adopted D.94-12-053 in which we outlined an initial procedural plan to facilitate the opening of the local exchange markets to competition by January 1, 1997. Much

has occurred as we have tried to follow this plan closely. Therefore, we believe it helpful to briefly summarize what we have accomplished thus far, and to provide stakeholders with the current state of our procedural plan.

The order we are issuing today is a step forward as we work to enable all Californians to benefit from a modern telecommunications infrastructure, as detailed in Enhancing California's Competitive Strength: A Strategy for Telecommunications Infrastructure, our report to the Governor issued on November 1993 and the statutory requirements expressed in PU Code § 709.5. Taken together with the universal service proposal we adopted on July 19, today's decision helps us meet our legislative mandate to "ensure that competition in telecommunications markets is fair and that the state's universal service policy is observed." (PU Code § 709.5(a).)

We have always held that no single proceeding could serve to meet the obligations imposed by § 709.5. For this reason, we believe it is important to review where this decision leaves us, as well as the decision's relation to other proceedings before us and to developments taking place at the federal level on telecommunications. A brief examination of what we have accomplished today and the tasks that we commit to complete in this proceeding will illustrate our balanced approach to telecommunications reform.

Today's order sets forth the rules which will have to be followed by CLCs to enter, and compete in, the local exchange market. We adopt several interim policies that will enable us to authorize facilities-based competition by January 1, 1996 and bundled-resale-based competition by March 1, 1996. In addition, we grant parties further opportunities to be heard on several key issues. We wish to highlight two very important areas. First, we commit to address through evidentiary hearings whether and how Pacific and GTEC should be granted pricing flexibility in order to

meet the emerging competition, and second, how competitive entry into the local exchange market modifies our regulatory policies. We will decide on these issues no later than March 1, 1996.

We must note the equally relevant steps that we have already undertaken and milestones that we have attained in key related proceedings to ensure a fair and balanced approach to competition.

Coincident with today's order, we must note the important steps that the Commission has already undertaken in key related proceedings to ensure the fair and balanced steps to competition. The universal service rules (R.95-01-020) proposed July 19, 1995, propose mechanisms to ensure that all Californians continue to receive basic telephone service at reasonable rates and that this obligation is fairly shared by all market participants. In particular, we note the proposed universal service program will ensure that the obligation of serving high cost territories and low income residents does not fall unfairly on a single carrier, that all carriers have fair change to serve these customers, and that customers can choose their carrier. Universal service will become an opportunity for all competitors, and an obligation and responsibility shared by all.

Our investigation into open access and network architecture development is another proceeding closely tied to the development of local exchange competition and universal service. The Assigned Commissioner in this case issued a ruling on June 22, 1995 outlining a plan that would lead to the completion of cost studies for Pacific and GTEC during 1996. This will provide us information needed to complete approaches to universal service under consideration in R.95-01-020. Furthermore, the plan calls for the tariffing of unbundled elements of Pacific's and GTEC's networks that remain monopolistic by January 1, 1997. This last step will allow Pacific's and GTEC's rivals to avoid unnecessary

investment in new facilities while ensuring that Pacific and GTEC continue to have the ability to earn reasonable returns on their investments.

On July 19, we also issued a decision accelerating the time table for resolving the most important financial issues related to how we regulate Pacific and GTEC. In summary, we submitted for accelerated consideration whether the inflation and productivity factors in the price cap formula should be modified or removed, whether the price cap formula should continue to be applied to all Category I and II services, and whether relief from the price cap formula should be tied to the LECs achieving certain milestones. We believe that a resolution to these issues will make Pacific and GTEC more vigorous competitors in 1996, at the time when we will be opening one of their last remaining bastions of monopoly power to competition.

We remind parties that we intend to see Pacific and GTEC enter the intrastate interLATA market. To this end, we expect to initiate in August a proceeding that will help us meet our statutory requirement under AB 3720. In this proceeding, we will be directing Pacific to seek relief from the federal mandates that presently keep the company out of the interLATA market. Further, because we wish to establish fair rules for competition, we have asked parties to submit comments by July 31 and reply comments by August 31 on when and how we should implement intraLATA presubscription.

A review of events taking place in the federal arena is important for interpreting today's decision. We must first acknowledge that the FCC announced on July 19, 1995 that it has granted Pacific authority to offer video dialtone services. Given that § 709.5 states that "To the extent possible, competition in intraexchange telecommunications markets shall be coincident with competition in video markets," our decision to enable facilities-based competition by January 1, 1996 takes the steps necessary to ensure the fair competition envisioned in state law. We are also

mindful of the developments in Congress, where S 652 and HR 1555 are seeking to reshape the telecommunications industry.

We understand that this Commission is only a single actor in a complex play of government entities and jurisdictional issues. Under the direction of California's executive and legislative branches, we are moving to meet the mandate that all telecommunications markets in California be opened by January 1, 1997. We are still some distance away from that goal, and we cannot accomplish the goal alone. Federal authorities will have to permit Pacific and GTEC to enter the interLATA market, for example. We are taking an important step that is likely necessary for GTEC and Pacific to gain Federal approval to enter into the interLATA market. We caution against reading this decision without taking into account the context which we have explained herein. Today's action is only a step in a series of steps whose primary goal is to ensure an open and fair market.

Findings of Fact

1. In November 1993, the Commission issued a report entitled Enhancing California's Competitive Strength: A Strategy For Telecommunications Infrastructure (Infrastructure Report) which announced the goal of opening all telecommunications markets in California by January 1, 1997.

2. The California Legislature subsequently adopted Assembly Bill 3606 (Ch. 1260, Stats. 1994) similarly expressing legislative intent to open telecommunications markets to competition by January 1, 1997.

3. AB 3606 also provides that "if any local exchange telephone company obtains the right to offer cable television or video dialtone service within its service territory from a regulatory body or court of competent jurisdiction, any cable television corporation may immediately have the right to enter into the local telecommunications market within the service territory of that local exchange carrier by filing for approval a certificate of

public convenience and necessity, if necessary, which shall be expeditiously reviewed by the commission."

4. On April 26, 1995, the Commission initiated a joint rulemaking and investigation to develop and adopt rules for the provision of local exchange competition in California, and concurrently issued proposed interim rules for comment.

5. Parties were afforded the opportunity to comment on the substantive merits of the proposed rules and to offer procedural approaches to the further development of rules.

6. The comments of parties filed on May 24 were reviewed and considered in developing the rules covering public policy objectives, certification and tariff filing requirements, service obligations, and consumer protection rules as set forth in Appendixes A and B of this order.

7. On July 19, 1995, the FCC announced that it had granted Pacific authority to provide Video Dial Tone service.

Conclusions of Law

1. Competition in the provision of local exchange telecommunications services is in the public interest.

2. Local exchange competition implementation should incorporate rules and regulations which safeguard against anticompetitive conduct by any telecommunications provider and which provide for adequate consumer protection.

3. The Commission's solicitation for written comments on the proposed rules in its April 26 Order Instituting Rulemaking (R.)/ Investigation (I.) constitutes adequate notice and opportunity to be heard as to the adoption of interim local exchange rules in Appendixes A and B of this order.

4. The rules adopted in Appendices A and B provide sufficient authority for prospective competitors to file requests with the Commission for a Certificate of Public Convenience and Necessity (CPCN) to offer local exchange service within the service territories of Pacific Bell and GTE of California.

5. Prospective applicants for local exchange service will have authority to begin offering such service once all certification requirements set forth in Appendix A have been satisfied and a Commission order is issued granting the applicant's request.

6. Because the Commission will require compliance with CEQA requirements prior to authorizing individual CPCNs, the interim rules do not constitute a project.

7. The rules in Appendices A and B of this order are consistent with Commission policy and applicable statutory law and should be adopted.

8. Under Section 1708 of the PU Code, evidentiary hearings are required before the Commission changes a prior decision which was the subject of evidentiary hearings.

9. Evidentiary hearings are warranted to address the question of whether local exchange competition as proposed would impair the major LECs' ability to earn a fair return, and also to address other factual issues that would result in changes of prior decisions or that involve resolution of ratemaking issues.

10. In its quasi-legislative capacity, the Commission may adopt local competition rules without conducting evidentiary hearings on issues in which only questions of law and public policy are involved.

11. The remedies sought in the Petitions to Modify D.94-12-053 filed by GTEC and Roseville Ordering Paragraphs are appropriately dealt with through prospective measures in this rulemaking/investigation rather than retroactive modifications to a prior decision.

O R D E R

IT IS ORDERED that:

1. The "Initial Rules for local Exchange Service Competition in California" (Appendix A) and the "Consumer Protection and Consumer Information Rules for CLCs" (Appendix B) are adopted effective immediately.

2. If prospective competitive local carriers wish to obtain approval of a certificate of public convenience and necessity (CPCN) prior to the January 1, 1996 and March 1, 1996 dates for implementation of facilities based and bundled resale based competition, respectively, they shall file on or before September 1, 1995, a petition in the investigation portion of this proceeding (Investigation 95-04-044) which complies with the Commission's Rules of Practice and Procedure regarding applications for CPCNs and the rules established by this decision.

3. The Docket Office shall assign consecutive numbers to these petitions in the order received.

4. Subsequent rules governing the provision of local exchange service on both a facilities-based and a bundled resale basis shall be adopted by March 1, 1996.

5. For those situations where voluntary agreements governing arrangements for determining points of interconnection cannot be reached, additional rules on this topic shall be adopted no later than January 1, 1996.

6. Effective January 1, 1996, and continuing for a one-year interim period, compensation for call termination shall be provided under the bill-and-keep method as proposed by the California Telecommunications Coalition. No CLC is authorized to use the bill-and-keep method prior to January 1, 1996.

7. A prehearing conference shall be convened by the assigned Administrative Law Judge (ALJ) and a subsequent ALJ ruling issued to determine a procedural schedule to address through evidentiary

hearings the disputed issues of fact as set forth in this order. The ALJ shall also provide a schedule for submitting further written comments on those disputed rulemaking issues raised in parties' May 24, 1995 comments or in this decision for which hearings are not ordered. The procedural schedule shall ensure that the Commission is able to adopt a decision by March 1, 1996 for those issues designated for hearing.

8. The requirement in Ordering Paragraph 7 of Order Instituting Rulemaking 95-04-043 and the related investigation: "DRA shall notify the Commission by October 1, 1995 as to whether the Committee has reached consensus on recommendations for additional standards for interconnection service orders. If no consensus recommendations have been reached, the ALJ will thereafter issue a ruling establishing a date for parties to serve testimony on this issue. If a consensus has been reached by that date, the ALJ will establish a due date for a consensus report to be filed."

9. The assigned ALJ shall schedule a workshop to determine how the Deaf Equipment Acquisition Fund (DEAF) program should be administered to ensure that qualified customers are provided with TDDs (Telecommunications Devices for the Deaf) or other telecommunicaions equipment, to determine how to coordinate operator, directory assistance and long distance access services for deaf and disabled customers; and how to accurately track, monitor, and report equipment provided to deaf and disabled customers in an environment with more than one provider of local exchange service.

10. Following the conclusion of the workshop on the DEAF program administration, a workshop report shall be prepared. Until the Commission has acted on the workshop report, the CLC shall work with the LEC to ensure that qualified customers are provided with TDDs or other telecommunications equipment under the DEAF program.

11. The ALJ shall schedule a date for a report to be filed by the LECs and CLCs regarding the development of a program to address the issues regarding access to repair service (i.e., 611) to ensure its integration in the environment of local exchange competition.

12. The ALJ shall schedule a workshop to be conducted by the California Local Number Portability Task Force to scope out the technical criteria which need to be determined in order to implement a trial test of a long-term number portability solution. The ALJ shall establish a due date for a workshop report which shall address the results of the workshop and any further reporting requirements which may be needed.

This order is effective today.

Dated July 24, 1995, at San Francisco, California.

DANIEL Wm. FESSLER
President
P. GREGORY CONLON
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
Commissioners

Initial Rules for Local Exchange Service Competition in California

1. PUBLIC POLICY PRINCIPLES AND OBJECTIVES

A. It is the policy of the California Public Utilities Commission (Commission) that competition in the provision of local exchange telecommunications services is in the public interest.

B. It is the policy of the Commission that, in an environment of competition for local exchange telecommunications services, telecommunications users shall receive ongoing disclosure of the rates, terms and conditions of service from telecommunications providers and shall benefit from a clear and comprehensive set of consumer protection rules.

C. It is the policy of the Commission that interconnection of the networks of Competitive Local Carriers (CLCs) and Local Exchange Carriers (LECs) should be accomplished in a technically and economically efficient manner.

D. It is the policy of the Commission that all telecommunications providers shall be subject to appropriate regulation designed to safeguard against anti-competitive conduct.

E. It is the policy of the Commission that service provider local number portability should be accomplished.

F. It is the policy of the Commission that networks of dominant providers of local exchange telecommunications services should be unbundled in such a manner that a carrier is provided access to essential facilities on a nondiscriminatory stand alone basis.

G. It is the policy of the Commission that customer privacy rights and concerns be protected in an environment of local exchange competition.

H. It is the policy of the Commission to ensure that local exchange competition does not degrade the reliability of the telecommunications network.

I. It is the policy of the Commission to encourage intercarrier coordination and cooperation.

J. It is the policy of the Commission to monitor, on a periodic basis, the market conditions of the local exchange telecommunications market and reevaluate its policies on local exchange competition accordingly.

K. It is the policy of this Commission that Commission-approved tariffs for call termination should reflect costs.

2. SCOPE OF RULES

These interim rules apply to the provision of local exchange telecommunications services by CLCs, and where applicable, LECs. Local exchange carrier (LEC) as used in these rules refers to only Pacific Bell and GTE California, until further action by the Commission.

3. DEFINITIONS

A. Competitive local carrier (CLC) means a common carrier that is issued a Certificate of Public Convenience and Necessity after the effective date of this order, to provide local exchange telecommunications service for a geographic area specified by such carrier.

B. Local exchange carrier (LEC) means any incumbent carrier listed in Appendix C attached hereto.

C. Minor rate increases are those which are both less than 1% of the CLC's total California intrastate revenues and less than 5% of the affected service's rates. Increases shall be cumulative, such that if the sum of the proposed rate increase and rate increases that took effect during the preceding 12-month period for any service exceeds either parameter above, then the filing shall be treated as a major increase.

D. Major rate increases are increases which are greater than the increases described above.

E. Network component means a functional capability of a network, disaggregated from other network capabilities and made available to other carriers and end users separately from all other network capabilities.

F. Nondominant interexchange carrier (NDIEC) means an interexchange carrier that is considered nondominant under the Commission's decisions.

G. NXX Rating Point means the end office/wire center location designated in the Local Exchange Routing Guide as the assignment point for an NPA-NXX code.

H. NXX Service Area means the geographically-bounded area designated as the area within which a LEC or CLC may provide local exchange telecommunication services bearing a particular NPA-NXX designation.

I. Local telephone number portability means the ability of end users to retain their existing telephone numbers when remaining at a location, or changing their location within the geographic area served by the initial carrier's serving central office, regardless of the LEC or CLC selected.

J. Local exchange loop facility (also known as a basic level network access channel) means a transmission path capable of delivering analog voice grade signals or digital signals at less than 1.544 Mbps between the network interface at a customer's premises and the main distribution frame or any other point of interconnection to the LEC network.

K. A port (also known as a basic level network access channel connection) is the interface between the loop and the appropriate LEC Central Office switching equipment.

L. Nonfacilities-based CLCs are those which do not directly own, control, operate, or manage conduits, ducts, poles, wires, cables, instruments, switches, appurtenances, or appliances in connection with or to facilitate communications within the local exchange portion of the public switched network.

M. Facilities-based CLCs are those which directly own, control, operate, or manage conduits, ducts, poles, wires, cables, instruments, switches, appurtenances, or appliances in connection with or to facilitate communications within the local exchange portion of the public switched network.

N. Service territory means the area in which a CLC is authorized to provide service.

4. ENTRY, CERTIFICATION, AND REGULATION OF CLCs

A. The Commission shall grant a Certificate of Public Convenience and Necessity (CPCN) to any applicant that possesses the requisite managerial qualifications, financial resources, and technical competence to provide local exchange telecommunications services.

B. The Commission shall apply the following financial standards to the certification of CLCs:

(1) All new applicants seeking CPCNs for authority to become facilities-based CLCs, as defined in this decision, shall demonstrate in their applications that they possess a minimum of $100,000 of cash or cash equivalent as defined below, reasonably liquid and readily available to meet the firm's start-up expenses. Such applicants shall also document any deposits required by local exchange companies or interexchange carriers (IECs) and demonstrate that they have additional resources to cover all such deposits.

(2) All new applicants seeking CPCNs for authority to become nonfacilities-based CLCs, as defined in these rules, shall demonstrate in their applications that they possess a minimum of $25,000 of cash or cash equivalent as defined below, reasonably liquid and readily available to meet the new firm's expenses. Such applicants shall also document any deposits required by LECs or IECs and demonstrate that they have additional resources to cover all such deposits.

(3) Applicants for CPCNs as CLCs who have profitable interstate operations may meet the minimum financial requirement by submitting an audited balance sheet and income statement demonstrating sufficient cash flow, as authorized in Decision (D.) 91-10-041 for NDIECs.

(4) New applicants for CPCNs as CLCs shall be permitted to use any of the following financial instruments to satisfy the applicable unencumbered cash requirements established by this order.

(a) Cash or cash equivalent, including cashier's check, sight draft, performance bond proceeds, or traveler's checks;

(b) Certificate of deposit or other liquid deposit, with a reputable bank or other financial institution;

(c) Preferred stock proceeds or other corporate shareholder equity, provided that use is restricted to maintenance of working capital for a period of at least twelve (12) months beyond certification of the applicant by the Commission;

(d) Letter of credit, issued by a reputable bank or other financial institution, irrevocable for a period of at least twelve (12) months beyond certification of the applicant by the Commission;

(e) Line of credit or other loan, issued by a reputable bank or other financial institution, irrevocable for a period of at least twelve (12) months beyond certification of the applicant by the Commission, and payable on an interest-only basis for the same period;

(f) Loan, issued by a qualified subsidiary, affiliate of applicant, or a qualified corporation holding controlling interest in the applicant, irrevocable for a period of at least twelve (12) months beyond certification of the applicant by the Commission, and payable on an interest-only basis for the same period;

(g) Guarantee, issued by a corporation, copartnership, or other person or association, irrevocable for a period of at least twelve (12) months beyond certification of the applicant by the Commission;

(h) Guarantee, issued by a qualified subsidiary, affiliate of applicant, or a qualified corporation holding controlling interest in the applicant, irrevocable for a period of at least twelve (12) months beyond the certification of the applicant by the Commission.

(5) The definitions of certain of the financial instruments listed in 4.B (4) and our intent on nondiscriminatory application of these definitions are clarified as follows:

(a) All unencumbered instruments listed in 4.a. through 4.h. above will be subject to verification and review by the Commission prior to and for a period of twelve (12) months beyond certification of the applicant by the Commission. Failure to comply with this requirement will void applicant's certification or result in such other action as the Commission deems in the public interest, including assessment of reasonable penalties. (See PU Code §§ 581 and 2112.)

(b) Applicants for CPCNs as nonfacilities-based CLCs shall assure that every issuer of a letter of credit, line of credit, or guarantee to applicant will remain prepared to furnish such reports to applicant for tendering to the Commission at such time and in such form as the Commission may reasonably require to verify or confirm the financial responsibility of applicant for a period of at least twelve (12) months after certification of the applicant by the Commission.

(c) All information furnished to the Commission for purposes of compliance with this requirement will be available for public inspection or made public, except in cases where a showing is made of a compelling need to protect it as private or proprietary information.

C. The Commission shall apply the following other standards to its regulation of CLCs:

(1) Applicants which currently hold CPCNs as telecommunications providers should apply as prescribed herein to have their current authority expanded to include operating as a CLC.

(2) Applicants will be required to comply with CEQA as specified in Rule 17.1 of the Commission's Rules of Practice and Procedure

(3) If a CLC is 90 or more days late in filing the annual report required by General Order (GO) 104-A

or in remitting any current or future Commission-mandated surcharge, including but not limited to Universal Lifeline Telephone Service Fund (Public Utilities (PU) Code S 879), DEAF Trust Fund (PU Code S. 2881(d), the California High Cost Fund (PU Code S 739.3), or the user fees on intrastate revenues (PU Code SS 431-435), the Commission Advisory and Compliance Division (CACD) shall prepare a resolution for the Commission's consideration revoking the CLC's CPCN, unless the CLC has received written permission from the CACD to file or remit late.

D. The CACD shall on or before January 1, 1997 and at least one time each year thereafter, prepare a list of all current CLCs in good standing operating in California, including addresses, phone numbers, and the name of the responsible contact person at each such utility, and then disseminate that list to all other telecommunications utilities including the local exchange companies and IECs and will provide the list at the Commission's standard per page charge to any other interested party having requested such list.

E. CLCs shall be subject to the following tariff and contract filing, revision and service pricing standards:

(1) Uniform rate reductions for existing tariff services shall become effective on five (5) working days' notice to the Commission. Customer notification is not required for rate decreases.

(2) Uniform major rate increases for existing tariff services shall become effective on thirty (30) days' notice to the Commission, and shall require bill inserts, or a message on the bill itself, or first class mail notice to customers at least 30 days in advance of the pending rate increase.

(3) Uniform minor rate increases shall become effective on not less than five (5) working days' notice to the Commission. Customer notification is not required for such minor rate increases.

(4) Advice letter filings for new services and for all other types of tariff revisions, except changes in text not affecting rates or relocations of text in the tariff schedules, shall become effective on forty (40) days' notice to the Commission.

(5) Advice letter filings revising the text or location of text material which do not result in an increase in any rate or charge shall become

effective on not less than five (5) days' notice to the Commission.

(6) Contracts shall be subject to GO 96-A rules for NDIECs.

(7) CLCs shall file tariffs in accordance with PU Code Section 876.

F. The following regulations shall apply to CLCs:

(1) CLCs shall be required to serve customers requesting service within their designated service territory on a non-discriminatory basis, but shall not be required to have the same service territory as LEC service territories;

(2) Facilities-based CLCs shall at a minimum serve all customers who request service and whose premises are within 300 feet of the CLC's transmission facilities used to provide service so long as the CLC can reasonably obtain access to the point of demarcation on the customer's premises, but the CLC shall not be required to build out facilities beyond such 300 feet.

(3) CLCs shall file service territory maps with the Commission that detail the area in which the CLC is authorized to provide service.

(4) CLCs shall file quarterly a written description or a map that describes its existing physical facilities.

(5) For any interexchange carrier which subscribes to a CLC's switched access services, the CLC is required to provide 1+ presubscription or 10XXX equal access consistent with the equal access rules of this Commission and of the Federal Communications Commission.

(6) Facilities-based CLCs are required to make all telecommunications service offerings available for resale, only within the same class of service, on a nondiscriminatory basis.

(7) CLCs shall be subject to the obligations of public utilities under the Public Utilities Code, including but not limited to, sections 451 and 453, dealing with the provision of just and reasonable rates and charges;

(8) CLCs must obtain Commission approval before discontinuing service in any part of their service area.

(9) CLCs shall provide 911 and/or E911 service.

(10) To ensure that qualified customers are provided with TDDs or other telecommunications equipment under the DEAF program, a workshop shall be held with LECs, CLCs and other interested parties to determine how the DEAF program should be administered; how to coordinate operator, directory assistance and long distance access services for deaf and disabled customers; and how to accurately track, monitor and report equipment provided to deaf and disabled customers in an environment with more than one provider of local exchange service. Until such time as the Commission has time to act on the workshop report, the CLC shall work with the LEC to ensure that qualified customers are provided with TDDs or other telecommunications equipment under the DEAF program.

(11) LECs and CLCs shall develop a program to address the issues regarding access to repair service, i.e., 611, to ensure its integration in the environment of local exchange competition.

(12) CLCs shall be subject to the consumer protection rules contained in Appendix B.

(13) CLCs shall provide the following reports to the Commission:

(a) On a quarterly basis, a copy of all written notices provided to customers, in accordance with Rules 1, 2 and 6 of the consumer protection rules set forth in Appendix B;

(b) By April 1 of each year a copy of the CLC's annual report;

(c) On a monthly basis, reports regarding major service outages;

(d) Reports required in GO 133-B and GO 152-A; and

(e) Such other reports required by the Commission.

(14) CLCs shall submit all mandated bill insert notices, including notices of basic universal service rate increases, to the Commission's Public Advisor's Office for review and approval, and shall allow the Public Advisor's Office at least five working days to review and approve the proposed bill inserts prior to their issuance to customers.

5. REGULATION OF LECs

A. Incumbent LECs shall have prcvider of last resort responsibilities in their service areas until the Commission makes a decision on the issue in its Universal Service docket.

6. INTERIM NUMBER PORTABILITY

A. In the interim, local number portability shall be provided by Remote Call Forwarding, Direct Inward Dialing (DID), or other equivalent means. CLCs are required to arrange for transport facilities to the central office where portability is sought. CLCs shall reciprocate by offering portability to the LECs.

B. CLCs will be able to purchase remote call forwarding from the LECs at a price equal to Direct Embedded Cost (DEC). The LECs should establish a Memorandum Account to record the difference between the current tariff rate and the rate to be charged to CLCs. The Commission will review the balance in the Memorandum Account and determine what adjustments are to be made in the amounts and if any is to be recovered. the LECs should recover the balance in the account.

7. INTERCONNECTION OF LEC AND CLC NETWORKS FOR TERMINATION OF LOCAL TRAFFIC

A. The interconnection of LEC and CLC networks for the termination of local traffic involves not only the construction and maintenance of the interconnecting facilities, but also the throughput of local terminating traffic across those interconnecting facilities. Local exchange networks shall be interconnected so that customers of any local exchange carrier can seamlessly receive calls that originate on another local exchange carrier's network and place calls that terminate on another local exchange carrier's network without dialing extra digits. In accordance with PU Code 767, parties are encouraged to negotiate interconnection arrangements until mandatory interconnection rules are established. Any interim agreements reached will not be invalidated by these rules.

B. Virtual or physical collocation interconnection arrangements are not precluded, and may be implemented by mutual agreement, but shall not be a mandatory form of LEC-CLC interconnection.

C. Local traffic shall be terminated by LECs for CLCs and by CLCs for the LECs over the interconnecting facilities described in this Section.

D. In the interim, local traffic shall be terminated by the LEC for the CLC and by the CLC for the LEC over the interconnecting facilities described in this Section on the basis of mutual traffic exchange. Mutual traffic exchange means the exchange of terminating local traffic between or among CLCs and LECs, whereby LECs and CLCs terminate local exchange traffic originating from end users served by the networks of other LECs or CLCs without explicit charging among or between said carriers for such traffic exchange.

E. Within 12 months of the date of this order, the Commission will review the appropriateness of a bill and keep system, and modify if necessary.

(END OF APPENDIX A)

Consumer Protection and Consumer Information Rules for CLCs

1.0 PURPOSE AND APPLICABILITY

1.1 PURPOSE

The purpose of these Consumer Protection Regulations is to establish consumer protection/rules and responsibilities of current or potential customers who take service from CLCs registered to operate within the State of California as authorized by the California Public Utilities Commission.

1.2 APPLICABILITY

These Consumer Protection Regulations apply to CLCs and, where noted, to LECs.

The provisions here shall be observed subject to the jurisdiction of the California Public Utilities Commission, except if an exemption is made by the Commission, either on its own motion or after investigation of the facts and circumstances involved in a complaint.

In case of emergency where public interest requires immediate action, the rules shall not prevent immediate corrective action by the CLC; that action, however, shall be subject to review by the Commission.

2.0 DEFINITION AND TERMS

2.1 APPLICANT (Customer)

Any person, corporation or other entity that has applied for service.

2.2 COMMISSION

Public Utilities Commission of the State of California.

2.3 INFORMAL COMPLAINT

Informal request for assistance made to the Commission's Consumer Affairs Branch (CAB) with supporting documentation concerning a CLC's service, rates or other matters. CAB staff investigates and tries to arrive at an informal adjustment without public hearing or Commission order. Informal complaint files are not available for public inspection.

2.4 FORMAL COMPLAINT

A formal charge that a CLC has violated the Public Utilities Code or some order or regulation of the Commission. The complaint must be in writing, be in accordance with the Commission's Rules of Practice and Procedure and made under oath. The proceeding ordinarily requires public hearing and a Commission decision.

2.5 COMPLETED CALL OR TELEPHONIC COMMUNICATION

A call, or other telephonic communication, originated by a person or mechanical/electrical device from a number to another number which is answered by a person or mechanical/electrical device. The numbers may be located any distance apart within California; and the communication may consist of voice, data, the combination of both, or other transmission via a wire or wireless medium; and may be for any duration of time.

2.6 CONSUMER AFFAIRS BRANCH (CAB)

The Consumer Affairs Branch of the California Public Utilities Commission.

2.7 DATE OF PRESENTATION

Postmark date on billing envelope.

2.8 AGENT

A business representative, whose function is to bring about, modify, affect, accept performance of, or terminate contractual obligations between a CLC and applicants or customers.

2.9 MINOR RATE INCREASE

Minor increases are those which are both less than 1% of the CLC's total California intrastate revenues and less than 5% of the affected service's rates. Increases shall be cumulative, such that if the sum of the proposed rate increase and rate increases that took effect during the preceding 12-month period for any service exceeds either parameter above, then the filing shall be treated as a major increase.

2.10 MAJOR RATE INCREASES

Major increases are increases which are greater than the increases described in Section 2.9 of these rules.

3.0 RULES

RULE 1 - CLC INFORMATION

CLCs shall, on request, provide each applicant for service or customer the following:

A. The California Public Utilities Commission identification number of its registration to operate as a telecommunications corporation within California.

B. The address and telephone number of the California Public Utilities Commission to verify its authority to operate.

C. A copy of these Consumer Protection Regulations.

D. A toll-free number to call for service or billing inquiries, along with an address where the customer may write the CLC.

E. A full disclosure of all fictitious i.e., "dba" names.

F. The names of billing agents it uses in place of performing the billing function itself.

G. Rate information as required by Rule 6(A).

RULE 2 - INITIATION OF SERVICE

During the initial contact all applicants for residential service must be given information regarding the Universal Lifeline program and its availability.

Service may be initiated based on a written or oral agreement between the CLC and the customer. In either case, prior to the agreement, the customer shall be informed of all rates and charges for the services the customer desires and any other rates or charges which will appear on the customer's first bill.

If the agreement is oral, within 10 days of initiating the service order, the CLC will provide a confirmation letter setting forth a brief description of the services ordered and itemizing all charges which will appear on the customer's bill. The letter must be in a language other than English if the sale was in another language.

Within 10 days of initiating service, the CLC shall state in writing for all new customers all material terms and conditions that could affect what the customer pays for telecommunications services provided by the CLC.

Potential customers who are denied service for failure to establish credit or pay deposit as described in Rule 12 must be given the reason for the denial in writing within 10 days of service denial.

RULE 3 - SPECIAL INFORMATION REQUIRED ON FORMS

A. Customer Bills

The CLC shall be identified on each bill. Each bill must prominently display a toll-free number for service or billing inquiries, along with an address where the customer may write. If the CLC uses a billing agent, the carrier must also include the name of the billing agent it uses. Each bill for telephone service will contain notations concerning the following areas:

(1) When to pay your bill;

(2) Billing detail including the period of service covered by the bill;

(3) Late payment charge and when applied;

(4) How to pay your bill;

(5) Questions about your bill;

(6) Network access for interstate calling;

(7) In addition to the above, each bill shall include the following statement:

"This bill is now due and payable; it becomes subject to a late payment charge if not paid within 15 [15 days is the minimum number of days in which the CLC can require payment; a CLC may elect to allow customers a longer time to pay the bill.] calendar days of presentation date. Should you question this bill, please request an explanation from (name of CLC).

If you believe you have been billed incorrectly you may file a complaint with the California Public Utilities Commission, Consumer Affairs Branch, 505 Van Ness Avenue, San Francisco, CA 94102, or 107 South Broadway, Room 5109, Los Angeles, CA 90012. To avoid having service disconnected, payment of the disputed bill should be made "under protest" to the CPUC or payment arrangements should be made agreeable to the CLC pending the outcome of the Commission's Consumer Affairs Branch review. The Consumer Affairs Branch shall review the basis of the billed amount, communicate the results of its review to the parties and inform you of your recourse to pursue the matter further with the Commission."

B. Deposit Receipts

Each deposit receipt shall contain the following provisions:

"This deposit, less the amount of any unpaid bills for service furnished by (name of CLC), shall be refunded, together with any interest due, within 30 calendar days after the discontinuance of service, or after 12 months of service, whichever comes first. However, deposits may not receive interest if the customer has received a minimum of two notices of discontinuance of service for nonpayment of bills in a 12-month period.

RULE 4 - CREDIT ESTABLISHMENT

Each applicant for service shall provide credit information satisfactory to the CLC or pay a deposit. Deposits shall not be required if the applicant:

A. Provides credit history acceptable to the CLC. Credit information contained in the applicant's account record may include, but shall not be limited to, account established date, "can-be-reached" number, name of employer, employer's address, customer's driver's license number or other acceptable personal identification, billing name, and location of current and previous service. Credit cannot be denied for failure to provide social security number.

B. A cosigner or guarantor may be used providing the cosigner or guarantor has acceptable credit history with the serving CLC or another acceptable local carrier.

C. A CLC cannot refuse a deposit to establish credit for service. However, it may request the deposit to be in cash or other acceptable form of payment (e.g., cashier's check, money order, bond, letter of credit).

RULE 5 DEPOSITS

In the event the customer fails to establish a satisfactory credit history, deposits are a form of security that shall be required from customers to ensure payment of bills.

Deposits shall be no greater than twice the estimated average monthly bill for the class of service applied for.

In the event a customer requests services in addition to basic service, the average bill will reflect the aggregate services requested by the customer. Deposits will be refunded with interest within 30 days after discontinuance of service or after 12 months of service, whichever comes first. Interest will be added to the deposit using the 3-month commercial paper rate published by the Federal Reserve Board, except under the following conditions: no interest shall be given if the customer has received a minimum of two notices in a 12-month period as provided under Rule No. 6(B)(2).

RULE 6 - NOTICES

Notices provided to the customer by the CLC shall be as follows:

A. Rate Information

(1) Rate information and information regarding the terms and conditions of service shall be provided in writing upon request by a current or potential customer. Notice of major increases in rates shall be provided in writing to customers and postmarked at least 30 days prior to the effective date of the change. No customer notice shall be required for minor rate increases or for rate decreases. Customers shall be advised of optional service plans in writing as they become available. In addition, customers shall be advised of changes to the terms and conditions of service no later than the company's next periodic billing cycle.

(2) When a CLC provides information to a consumer which is allegedly in violation of its tariffs, the consumer shall have the right to bring a complaint against the CLC.

B. Discontinuance of Service Notice

(1) Notice by customers

Customers are responsible for notifying the CLC of their desire to discontinue service on or before the date of disconnection. Such notice may be either verbal or written.

2) Notice by CLC

Rules in Commission Decision 91188, regarding discontinuance of service related to criminal prosecution, will remain in effect for CLCs.

Notices to discontinue service for nonpayment of bills shall be provided in writing by first class mail to the customer not less than 7 calendar days prior to termination. Each notice shall include all of the following information:

1. The name and address of the customer whose account is delinquent.

2. The amount that is delinquent.

3. The date when payment or arrangements for payment are required in order to avoid termination.

4. The procedure the customer may use to initiate a complaint or to request an investigation concerning service or charges.

5. The procedure the customer may use to request amortization of the unpaid charges.

6. The telephone number of a representative of the CLC, who can provide additional information or institute arrangements for payment.

7. The telephone number of the Commission's Consumer Affairs Branch (CAB) where the customer may direct inquiries.

8. Local service may not be discontinued for nonpayment of Category III or other unregulated competitive services.

C. Change in Ownership or Identity Notice

CLCs shall notify their customers in writing of a change in ownership or identity of the customer's service provider on the customers' next monthly billing cycle.

D. Rules for CLC Notices

Notices the CLC sends to customers, or the Commission, shall be a legible size and printed in a minimum point size type of 10 and are deemed made on date of presentation (Sec. 2.7).

RULE 7 - PRORATING OF BILLS

Any prorated bill shall use a 30-day month to calculate the pro-rata amount. Prorating shall apply only to recurring charges. All nonrecurring and usage charges incurred during the billing period shall be billed in addition to prorated amounts.

RULE 8 - DISPUTED BILLS

In case of a billing dispute between the customer and the CLC as to the correct amount of a bill, which cannot be adjusted with mutual satisfaction, the customer can make the following arrangement:

A. First, the customer may make a request, and the CLC will comply with the request, for an investigation and review of the disputed amount.

B. The undisputed portion of the bill must be paid by the Due By Date (No sooner than 15 days of the date of presentation) shown on the bill or the service will be subject to disconnection if the CLC has notified the customer by written notice of such delinquency and impending termination.

C. If there is still disagreement after the investigation and review by a manager of the CLC, the customer may appeal to CAB for its investigation and decision. To avoid disconnection of service, the customer must submit the claim and, if the bill has not be paid, deposit the amount in dispute with CAB within 7 calendar days after the date the CLC notifies the customer that the investigation and review are completed and that such deposit must be made or service will be interrupted. However, the service will not be disconnected prior to the Due By Date shown on the bill.

D. The CLC may not disconnect the customer's service for nonpayment as long as the customer complies with (B) and (C) above.

E. The CLC shall respond to CAB's requests for information within 10 business days.

F. CAB will review the claim of the disputed amount, communicate the results of its review to the customer and CLC and make disbursement of the deposited amount.

G. After the investigation and review are completed by the CLC as noted in (A) above, if the customer elects not to deposit the amount in dispute with CAB, such amount becomes due and payable at once. In order to avoid disconnection of service, such amount must be paid within 7 calendar days after the date the CLC notifies the customer that the investigation and review are completed and that such payment must be made or service will be interrupted. However, the service will not be disconnected prior to the Due By Date shown on the bill.

RULE 9 - BILLS PAST DUE

Bills are due and payable on the date of presentation. A late payment charge may be applied if payment is not received by the utility on or before the late payment date which date will be prominently displayed on the customer's bill. The late payment date will be at least 15 days after the date of presentation on the billing envelope. CLCs shall credit payments within 24 hours of receipt to avoid assessing late payment charges incorrectly.

RULE 10 - DISCONTINUANCE OF SERVICE

A. Service may be discontinued for nonpayment of bills provided:

1. The bill has not been paid by the due date shown on the bill.

2. Notice of the proposed discontinuance is provided pursuant to Rule 6(B)(2).

3. Service is not initially discontinued on any Saturday, Sunday, legal holiday, or any other

day CLC service representatives are not available to serve customers.

B. Fraud

The CLC shall have the right to refuse or discontinue service without advance notice if the acts of the customer are such as to indicate intention to defraud the CLC. This includes fraudulently placing and receiving calls and/or providing false credit information.

C. For residence services disconnected for nonpayment, the CLC must continue to provide access to 911 services to the customer.

RULE 11 - CHANGE OF SERVICE PROVIDER

A. Solicitation of customer authorization for service termination and transfer.

Solicitations by LECs, CLCs, or their agents, of customer authorization for termination of service with an existing carrier and the subsequent transfer to a new carrier must include current rate information on the new carrier and information regarding the terms and conditions of service with the new carrier. Solicitations by LECs, CLCs, or their agents, must conform with California Public Utilities Code Section 2889.5. All solicitations sent by LECs, CLCs or their agents to customers must be legible and printed in a minimum point size type of at least 10 points. A penalty or fine of up to $500 may apply for each violation of this Rule.

B. Unauthorized service termination and transfer ("Slamming")

A LEC or CLC will be held liable for both the unauthorized termination of service with an existing carrier and the subsequent unauthorized transfer to their own service. LECs and CLCs are responsible for the actions of their agents that solicit unauthorized service termination and transfers. A carrier who engages in such unauthorized activity shall restore the customer's service to the original carrier without charge to the customer. All billings during the unauthorized service period shall be refunded to the applicant or customer. A penalty or fine of up to $500 payable to the Commission may apply to each violation of this Rule. As prescribed under PU Code Section 2108, each day of a continuing violation shall constitute a separate

and distinct offense. The LEC or CLC responsible for the unauthorized transfer will reimburse the original carrier for reestablishing service at the tariff rate of the original carrier.

RULE 12 - FAILURE TO ESTABLISH CREDIT OR PAY DEPOSIT

The CLC may refuse service if credit is not established satisfactory to the CLC and may deny or disconnect service if a deposit is not paid as required in Rule 5.

RULE 13 - LIABILITY OF CLC

The CLC shall not be liable for any failure of performance due to causes beyond its control, including, without limitation to, acts of God, fires, floods or other catastrophes, national emergencies, insurrections, riots or wars, strikes, lockouts, work stoppage or other labor difficulties, and any order, regulation or other action of any governing authority or agency thereof.

RULE 14 - PRIVACY

CLCs are restricted from releasing nonpublic customer information in accordance with PU Code Sections 2891, 2891.1, and 2893. For each new customer, and on an annual basis for continuing customers, CLCs shall provide in writing a description of how the carrier handles the customer's private information and a disclosure of any ways that such information might be used or transferred that would not be obvious to the customer. CLCs are subject to the credit information and calling record privacy rules set forth in Appendix B of Decision Nos. 92860 and 93361, except as modified by Decision Nos. 83-06-066, 83-06-073, and 83-09-061.

RULE 15 - BLOCKING ACCESS TO 900 AND 976 INFORMATION SERVICES

At the request of a customer, CLCs shall block that customer's access to 900 and 976 pay-per call telephone information services. CLCs shall inform their customers of the availability of this service at the time service is ordered. This blocking service shall be made available free of charge to residential customers, although CLCs may impose a charge if the customer asks for deactivation of blocking.

(END OF APPENDIX B)

APPENDIX C

CPUC List of Local Exchange Telephone Companies as of January 1, 1995

Calaveras Telephone Company
California Oregon Telephone Company
Citizens Telecommunications Company of California
CP National Corporation
Contel Service Corporation
Ducor Telephone Company
Evans Telephone Company
Foresthill Telephone Company
GTE California Incorporated
GTE West Coast, Inc.
Happy Valley Telephone Company
Hornitos Telephone Company
Kerman Telephone Company
Pacific Bell
Pinnacles Telephone Company
The Ponderosa Telephone Company
Roseville Telephone Company
Sierra Telephone Company, Inc.
The Siskiyou Telephone Company
Tuolumne Telephone Company
The Volcano Telephone Company
Winterhaven Telephone Company

(END OF APPENDIX C)

Summary Listing of Parties Filing of Comments on or Before May 24, 1995

Local Exchange Companies:

Pacific Bell
GTE California, Inc.
Citizens Telecommunications Company of California, Inc.
Roseville Telephone Company
Small LECs represented by Beck and Ackerman: CP National, Evans Telephone Company, GTE West Coat Incorporated, Kerman Telephone Company, Pinnacles Telephone Company, The Siskiyou Telephone Company, Tuolumne Telephone Company, The Volcano Telephone Company
Small LECs represented by Cooper, White & Cooper: Calaveras Telephone Company, California-Oregon Telephone Company, Ducor Telephone Company, Foresthill Telephone Company, Happy Valley Telephone Company, Hornitos Telephone Company, The Ponderosa Telephone Company, Sierra Telephone Company, Inc., and Winterhaven Telephone Company

The California Telecommunications Coalition: AT&T Communications of California, Inc., MCI Telecommunications Corporation, California Association of Long Distance Companies, MFS Intelenet, Inc., California Cable Television Association, Sprint Communications Company, L.P., California Committee for Large Telecommunications Consumers, Teleport Communications Group, California Payphone Association, Time Warner AxS of California, Inc., ICB Access Services, Inc., and Toward Utility Rate Normalization.

Public Agencies and Consumer Groups

U.S. Department of Defense/Federal Executive Agencies
County of Los Angeles
California Department of General Services, Telecommunications Division
California Department of Consumer Affairs
Division of Ratepayer Advocates
Utility Consumers' Action Network
Consumer Action/Consumer Federation of America
Public Advocates, Inc.
Universal Service Alliance
Cal/Nevada Community Action Association
Deaf and Disabled Telecommunications Program Administrative Committee

Trade Associations and Other Organizations

Telecommunications Resellers Association
Association of Directory Publishers
Alliance for Public Technology
Communications Workers of America, AFL-CIO
California Telephone Association
S.P.I.
Nossaman, Guthner, Knox and Elliott
Cox California PCS, Inc.
Metromail Corporation

(END OF APPENDIX D)

State of California
San Francisco

Public Utilities Commission

Remarks of Commissioner Henry M. Duque on Item 6, Local Competition Rules; 7/24/95

Within five weeks of accepting my post on this Commission, I joined my three colleagues to cast a vote that proposes to alter the structure of the electricity industry in California. Now, in my fourth month, I join my colleagues to cast a vote to alter irrevocably the structure of the telecommunications industry in California. Together, these decisions affect the present and future earnings of approximately one hundred billion dollars that individuals have committed to California's energy and communications infrastructure. Together, these decisions affect the prices of approximately fifty billion dollars that Californians pay for energy and communications services.

Each morning I wake up knowing how Atlas felt as he bore the weight of the world on his shoulders. Unlike Atlas, I see no Hercules -- no one to relieve me of the responsibility of ensuring that Californians will have a telecommunications network that is both modern and affordable; that investors in today's and tomorrow's telecommunications firms will have an opportunity to realize reasonable earnings; and that California workers will have the good jobs that this industry provides, both now and in the years to come.

I realize that unlike Atlas, I am not alone with my burden. As I look around this dais, I see three other Commissioners who bear the responsibility of casting a vote to decide the matters before us today. As I look around this auditorium, I see telecommunications professionals who bear responsibilities to corporate stockholders; I see consumer advocates who bear responsibilities to their members; I see civil servants who bear a special responsibility to the citizens of California; and I see reporters who bear the responsibility to inform Californians concerning the complex issues that we resolve today. Sometimes I believe that many of you see your jobs as adding to my burden. Rest assured that I remind myself that part of your job is to ensure that I do mine.

Today we will all put down part of the burden of determining the next steps that we will all take in opening local telecommunications markets. Today, the Commission takes an important and necessary step to open local exchange markets to entry by companies other than Pacific Bell and GTEC. Dramatic changes will certainly follow.

Pacific Bell and GTEC are the companies most affected by today's decision. Now they find the billions of dollars they have invested in California's telecommunications infrastructure facing new risks and opportunities. Pacific Bell and GTEC are now in races to upgrade their telecommunications plants to provide new video and information services. These firms must acquire the nimbleness that markets require, even as they continue to bear the obligations to serve over 93 percent of Californians. Pacific and GTEC have served Californians faithfully and well and I wish you well as you confront the changes that you must make.

Hopeful firms have announced plans to invest billions more in California's infrastructure. They plan to provide new telecommunications, video, and information

services with the latest technologies. These firms have an obligation to serve Californians as faithfully and as well as Pacific and GTEC. I wish you well in your new ventures.

The California Commission's employees are struggling to move social programs and consumer protections from a regulatory edifice that was built on a monopoly foundation. Competition undermines this foundation daily. Even as the Commission's employees struggle to change regulation, they realize that Commission action will forever change the work to which they have devoted years of their lives. These government workers have served Californians well in performing the analytic, legal, technical, clerical, and mechanical tasks that produce the document that this Commission considers today. I thank you for your dedication to public service.

Today, I join my colleagues on this Commission in voting for change. My colleagues have outlined the reasons for supporting this decision and the changes it will bring about. I share most of their reasoning. In a few minutes, I will vote for these changes.

Today, even as I vote for change, I ask myself whether these changes are enough? My answer is no. Today, even as I vote for open markets, I ask myself whether my actions will produce a competitive market? My answer is again no.

Four considerations are especially relevant to my reasoning. First, in a competitive market, firms can assess the potential for reasonable earnings before deciding to enter a market. Second, these firms are then free to provide whatever services they wish. Third, competitive firms can set prices freely at the levels the market requires. Fourth, firms need not provide key services to their competitors at no charge. Let me briefly examine each of these considerations in turn.

First, can Pacific Bell and GTEC freely assess the potential for reasonable earning before deciding to enter this market? No. Pacific Bell and GTEC find themselves already in a market structured by regulatory policies and from which they cannot exit. Today's changes are only a few in a series of changes in regulatory policies -- although perhaps the most important. GTEC has asked that the Commission hold hearings to review whether the changes in regulatory policy continue to offer Pacific and GTEC an opportunity to make reasonable earnings. The document distributed today has changed from the draft released last Wednesday. The new document offers GTEC and Pacific this opportunity, and I firmly support this change.

Second, can Pacific and GTEC freely offer services to their customers? No. Federal restrictions prevent Pacific and GTEC from serving Californians in long distance markets, no matter what the customers desire. Sadly, it is beyond this Commission's authority to address this matter.

Third, can Pacific and GTEC freely set prices at the levels the market requires? No. Pacific and GTEC confront a Rube-Goldberg regulatory contraption including service categories, price caps, price floors, and regulatory reviews that serve to fix their prices. This is particularly unfortunate, for one of the benefits of competition should be lower consumer prices, but today GTEC and Pacific cannot lower their prices. Here again, the document distributed today has changed from the draft released last

Wednesday. The new document promises a Commission decision by March 1 on this issue. I firmly support this change, and wish it were practical to address this matter immediately.

Fourth, are Pacific and GTEC free to determine whether to offer and how to price interconnection services that will aid their competitors? No. Indeed, this decision requires an interim bill-and-keep arrangement that provides no monetary compensation for the services they provide. The document we consider today promises to review this arrangement in hearings. I firmly support this review.

In casting this vote and interpreting the Commission's actions, it is important to understand that the Commission is simultaneously changing regulatory policies in many different areas. The document distributed today has changed from the draft released last Wednesday. It concludes with a review of the many related actions that the Commission is taking in other proceedings. I ask those trying to understand our action today to read this one section.

Finally, in the last five weeks, I have signed over four hundred letters to individuals and groups that have written to me on this single matter. These groups have included local chambers of commerce, chapters of the NAACP, local officials, and private citizens. In my response, I pledged that I would only vote for a decision that introduces fair competition. My vote for this decision is consistent with this pledge, but I realize that it is only one of the steps that I must take to fulfill my promise. I pledge to take all the necessary steps.

Agenda 2927: Item 6 - R-95-04-043/I.95-04-044:

State of California **Public Utilities Commission**
San Francisco

Remarks of Commissioner Jessie Knight on Item 6, Local Competition Rules; July 24, 1995

Current technology has set the stage to bring California a competitive telecommunications market, with more choice, new services and lower costs -- if regulatory policies can keep pace with the rapidly evolving market place. This is why Governor Wilson, in his 1993 State of the State Address, called on the Commission to review its regulation of telecommunications. Governor Wilson and the legislature endorsed our Telecommunications Infrastructure Strategy, and the Governor signed into law AB 3606, which reiterated the state's commitment to opening all markets to competition. Today, we order the opening of the local exchange market to facilities based competition effective January 1, 1996 and resale based competition March 1 of 1996.

California has articulated a compelling vision for telecommunications policy relying on free and fair markets. Free and fair markets are our hope for the future, not reliance on regulatory edicts and intervention.

In our infrastructure report we laid out three important principles that guide our vision: innovation, diversity and access. We know that competition promotes innovation, diversity and access. This decision will lead to innovation of local telecommunications services and the way they are delivered. If California is to be known as a state that welcomes and rewards innovation, the state must commit to open markets in order to attract the billions of dollars of investment that are already in play. Today's decision makes good on that commitment. Every provider, including the present local monopolies will be forced to innovate continually if they are to survive. Customers will demand innovation from their telecommunications providers and providers will demand innovation from their vendors. Local exchange competition will bring the same vigorous innovation that we have seen in the telephone equipment and California's robust computer industries. No doubt we will see markets change and grow at an accelerating pace.

Local competition will promote diversity in the provision and use of telecommunication services and the provision of services that meets the individual needs of California's diverse consumers. The network of competing networks that will evolve as a result of this and other coming Commission decisions will provide customers with a wide array of services and will empower them to choose the mix of services from various suppliers that best fits their needs.

Furthermore, I firmly believe that competition will promote access to advanced telecommunications to all Californians through the creation of new advanced telecommunications services and products. Competition will ensure that these new services are provided in the most economically efficient and most effective manner possible by making them more and more affordable. And last but not least competition will empower individual customers in the market

place by granting them choice to buy telecommunications services that they desire from whoever they want. They will buy the telecommunications that they feel are important, that they feel are necessities, not because we as regulators try to determine what should be classified as essential. In my mind, those that believe that competition will some how reduce the access to advanced, or even basic telecommunications are flat out wrong. Competitors vying to attract and retain customers will result in a more rapid and more efficient access to advanced telecommunications than all of the universal service programs we could ever hope to dream up and develop.

Unfortunately some people have expressed the belief that we are moving too fast to open up markets to competition. They would have us delay until some time in the future when the industry would be "ready for competition". Yet, even since last Wednesday, when we carried this decision over until today, events overtook us. Five days ago, the FCC acted to grant Pacific Bell its long awaited authority to offer video dial tone. This action, opening the video markets to competition, granted the cable companies "the right" according to Public Utilities Code Section 709.5(d) "to enter into the intraexchange market within the service territory of Pacific Bell."

Those that would have California move more slowly in opening markets to competition, should realize that even the ambitious schedule we are pursuing may not be fast enough for us to stay ahead of the power curve of technological advancement and the needed regulatory reform in telecommunications. We dare not dither. For if we do, we risk losing the momentum we have gained from the leadership shown by the Governor, the legislature, and this Commission.

While I support the order that Commissioner Conlon is offering, I regret that we cannot do more at this time. In this order, we have committed to a fast schedule for resolving some contentious issues. We have seen in other states that allowed limited market tests, some of the obstacles that can arise with local exchange competition. We are boldly taking on those challenges right away, so they do not delay us down the line. I will be working closely with my colleagues to ensure that we stick to this aggressive schedule, and bring meaningful competition to California's local exchange markets in a timely fashion.

Meaningful competition will include both the facilities-based and the resale competition discussed in these interim rules. I am pleased that we can proceed with facilities-based competition today, and look forward to quickly resolving some lingering questions about bundled resale competition so it can be in place next spring. In my opinion it would have been ideal today to authorize resale of bundled basic service. Unfortunately, this idea was evolving during our consideration and there are still some lingering questions. I am confident that parties will provide us with the information we need so that we can implement bundled resale next spring.

Having said that, the local telephone companies should not wait until we have that information to begin taking the steps to implement the sale of bundled retail basic services for resale to competitive local service providers.

Resale competition is around the corner, we can assure you. I encourage parties to plan ahead and think creatively about how resale can bring the benefits of competition to a wide range of Californians. This order reflects our commitment to address resale competition sooner rather than later.

In addition, I believe that true competition requires that the local telephone company be able to respond to competition. I am glad that we will explore whether local exchange companies can have pricing flexibility and if so how.

As the assigned Commissioner on Universal Service, I want to highlight how the proposed universal service rules fit with these local exchange competition rules. The universal service rules, as proposed, set up mechanisms to ensure that all Californians continue to receive basic telephone service at reasonable rates. The universal service rules are designed to accommodate the many providers who will be vying for the lucrative telephone business of consumers throughout the state, and to ensure that those providers abide by the same principles and requirements as the incumbent local exchange carriers. Universal service will not be a burden that hampers certain competitors, but rather an obligation and responsibility shared by all participants. As evident in the proposed rules we voted out last Wednesday, we are committed to this fundamental precept.

As we move forward in our efforts to open all markets to competition we seek to do so with a fair and balanced approach. This does not mean that each individual component of our effort must be directly linked and that each action must have an equal and offsetting reaction. Rather, the changes we will institute over the next 17 months will allow for competition to develop in such a way that is fair for all involved. While there are those who would prefer the status quo, the status quo is evaporating before our very eyes. We therefore have no choice but to move ahead aggressively. My colleagues and I must make the tough choices or they will be made for us with possibly very bad economic and market distortions. We recognize that in this new era of telecommunications regulators have less and less ability to control the pace of change or even the full power to shape that change, so we must get out of the way, and get out of the way as soon as possible.

I concur wholeheartedly with Governor Wilson, who stated when he signed AB 3720 ... "government policies that regulate and maintain monopolies only make sense when there is no practical alternative that would promote a competitive market. Consumers lose, businesses lose and California's economy loses as regulation stifles the entrepreneurial drive that makes California a world leader in so many industries". Today, we acted to make his vision a reality. On this day of July 24, 1995, this decision forever ends the protected monopoly of GTE of California and Pacific Bell effective January 1, 1996. To all telecommunication providers around the world I would like to say, The green flag is waving.... the race is on....build us a future!

California is the new frontier. Today is a day that I am happy to share with my colleagues and all Californians.