

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



June 19, 2001

TO: ALL PARTIES OF RECORD IN APPLICATION (A.) 99-09-027
AND A.99-09-031

Decision 01-06-007 is being mailed without the Concurrences of President Loretta Lynch and Commissioner Carl Wood. The Concurrences will be mailed separately, when available.

Very truly yours,

/s/ LYNN T. CAREW
Lynn T. Carew, Chief
Administrative Law Judge

LTC:eap

Decision 01-06-007 June 7, 2001

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Joint Application of Citizens
Telecommunications Company of California, Inc. (U-1024-
C), and GTE California Incorporated (U-1002-C) for
Authority and Approval Under Pub. Util. Code Sections 851
and 854 for GTEC to Sell and Transfer Assets to CTC-
California.

Application 99-09-027
(Filed September 15, 1999)

In the Matter of the Joint Application of Citizens
Telecommunications Company of Golden State, Inc. (U-
1025-C), and GTE West Coast Incorporated (U-1020-C)
for Authority and Approval Under Pub. Util. Code Sections
851 and 854 for GTE West Coast to Sell and Transfer Assets
to CTC-Golden State.

Application 99-09-031
(Filed September 15, 1999)

TABLE OF CONTENTS

TITLE	PAGE
I. Summary	2
II. Procedural Background.....	2
III. Description of the Applicants.....	6
IV. The Proposed Transactions	8
V. Applicable Statutes	11
VI Standard of Review.....	14
VII. Public Interest Criteria.....	18
A. Maintain or Improve Financial Condition.....	18
i. Background	18
ii. Position of the Parties.....	18
iii. Discussion.....	20
B. Maintain or Improve the Quality of Service	33
i. General Quality of Service Issues.....	33
a. Position of the Parties.....	33
b. Discussion.....	35
ii. Bar-O Boys Ranch	40
a. Background	40
b. Position of the Parties.....	40
c. Discussion.....	41
iii. Provision of Service to Indian Tribes.....	42
a. Background	42
b. Position of the Parties.....	43
c. Discussion.....	50
C. Maintain or Improve the Quality of Management	58
i. Background	58
ii. Position of the Parties.....	58
iii. Discussion.....	59
D. Fair & Reasonable to the Affected Utility Employees	60
i. Background	60

ii. Position of the Parties.....	61
iii. Discussion.....	62
E. Fair & Reasonable to a Majority of Utility Stockholders.....	63
i. Background	63
ii. Position of the Parties.....	64
iii. Discussion.....	65
F. Beneficial to State and Local Communities.....	66
i. Background	66
ii. Position of the Parties.....	66
iii. Discussion.....	67
G. Preserve the Jurisdiction of the Commission.....	69
i. Background	69
ii. Position of the Parties.....	69
iii. Discussion.....	70
H. Competitive Effects.....	71
i. Background	71
ii. Position of the Parties.....	71
iii. Discussion.....	72
I. Environmental Assessment.....	73
i. Background	73
ii. Position of the Parties.....	73
iii. Discussion.....	75
VIII. Mitigation Measures.....	78
IX. Whether to Approve the Sale of the GTE Exchanges	78
X. Gain on Sale	83
A. Background	83
B. Position of the Parties.....	84
C. Discussion.....	87
XI. Public Utilities Code Section 311(g)	92
Findings of Fact	93
Conclusions of Law.....	104
ORDER.....	119

A.99-09-027, A.99-09-031 ALJ/TIM/eap ***

Appendix A: Rate Comparison Table

Appendix B: Adopted Conditions

O P I N I O N

I. Summary

This decision authorizes GTE California Incorporated (GTEC) to sell 26 telephone exchanges to Citizens Telecommunications Company of California, Inc. (CTCC), pursuant to Pub. Util. Code § 851.¹ This decision also authorizes GTE West Coast Incorporated (GTEWC) to sell all six of its exchanges to Citizens Telecommunications Company of the Golden State (CTCGS) pursuant to § 851 and § 854.² The authority granted by this decision is subject to the conditions set forth in Appendix B of this decision.

II. Procedural Background

CTCC and GTEC jointly filed Application (A.) 99-09-027 on September 15, 1999. In their application, CTCC and GTEC request authority under § 851 to sell 26 of GTEC's telephone exchanges to CTCC. The 26 exchanges have approximately 37,400 access lines. Six of the exchanges are located in southeast California, and the remaining exchanges are located throughout northern California.

CTCGS and GTEWC jointly filed A.99-09-031 on September 15, 1999. In their application, CTCGS and GTEWC request authority under § 851 and § 854 to sell all six of

¹ All statutory references are to the Public Utilities Code unless otherwise indicated.

² Following the merger of GTE Corporation and Bell Atlantic, GTEC was renamed Verizon California Inc, and GTEWC was renamed Verizon West Coast. For the sake of clarity, this decision shall refer to Verizon California Inc. as GTEC, its name at the time A.99-09-027 was filed. Likewise, this decision shall refer to Verizon West Coast as GTEWC, its name at the time A.99-09-031 was filed.

GTEWC's telephone exchanges to CTCGS.³ The six exchanges are located in northwest California and have approximately 13,300 access lines.⁴

On October 7, 1999, the Commission issued Resolution ALJ 176-3024 in which the Commission preliminarily determined that (1) A.99-09-027 and A.99-09-031 should each be categorized as a ratesetting proceeding, and (2) there was no need for an evidentiary hearing in either proceeding.

On October 18, 1999, the Office of Ratepayer Advocates (ORA) filed a timely protest to A.99-09-027. CTCC and GTEC filed a joint response to ORA's protest on October 28, 2000. On October 20, 1999, ORA filed a timely protest to A.99-09-031. CTCGS filed a response to ORA's protest on November 1, 1999. ORA recommended in its protests that the Applicants should be required to submit additional information; and that approval of A.99-09-027 and A.99-09-031 should be subject to various terms and conditions.

On November 3, 2000, the Applicants held a public meeting in Blythe. The Applicants provided notice of the meeting in local newspapers, on radio stations, and in flyers distributed locally. The Applicants held five more public meetings in March 2000, in the communities of Colfax, Sea Ranch, Garberville, Crescent City and Weaverville. Notice of these meetings was provided in newspapers, radio stations, flyers, and letters mailed to all affected customers.

³ The Applicants subsequently altered their position and argued that § 854 does not apply to the sale of the six GTEWC exchanges.

⁴ GTEC and GTEWC are referred to collectively hereafter as "GTE." CTCC and CTCGS are referred to collectively hereafter as "Citizens." GTE and Citizens are referred to collectively hereafter as "Applicants."

On January 19, 2000, a prehearing conference (PHC) was held in San Francisco for both A.99-09-027 and A.99-09-031.⁵ On January 21, 2000, assigned Administrative Law Judge (ALJ) Kenney instructed the Applicants via e-mail to provide written notice of A.99-09-027 and A.99-09-031 to the customers in the 32 GTE exchanges that are the subject of A.99-09-027 and A.99-09-031. The ALJ also instructed the Applicants to include in the notice a comparison of GTE's and Citizens' rates and charges for local exchange service. On February 4, 2000, the ALJ again instructed the Applicants via e-mail to provide notice of A.99-09-027 and A.99-09-031 to the affected customers of GTE. On February 11, 2000, the Applicants informed the ALJ via telephone that they would provide written notice of A.99-09-027 and A.99-09-031 to the affected customers of GTE. After being reviewed and approved by the Commission's Public Advisor, the notice was sent to the affected customers by direct mail beginning on March 7, 2000.⁶

On February 28, 2000, the assigned Commissioner issued a ruling that (1) consolidated A.99-09-027 and A.99-09-031, (2) established the scope and schedule of the consolidated proceeding, (3) determined that there was no need for an evidentiary hearing, (4) categorized the consolidated proceeding as ratesetting,⁷ and (5) instructed the assigned ALJ to hold a public participation hearing in Crescent City.

On March 20, 2000, the County of Del Norte (Del Norte County) filed a petition to intervene and submit a late-filed protest. The petition was granted by the assigned ALJ in a ruling issued on April 4, 2000.

⁵ The Applicants and ORA filed and served PHC statements on January 12, 2000.

⁶ The Applicants also provided customers with notice of the proposed sale of GTE's exchanges to Citizens in accordance with the regulations of the Federal Communications Commission (FCC). This notice appeared on each bill as a bill imprint, and was sent during GTE's February 2000 billing cycle.

On April 26, 2000, the Commission held a public participation hearing (PPH) in Crescent City. The speakers at the PPH included members of the public, government officials, and business owners. The Commission also received many letters from citizens, government officials, and business owners.

Opening briefs were filed on June 30, 2000, by the Applicants, Del Norte County, and ORA. Reply briefs were filed by these parties on July 18, 2000.⁸

On June 27, 2000, the Hoopa Valley Tribe (Hoopa Tribe) filed a petition to intervene and submit a late-filed protest. The Tribe's petition was initially denied by the ALJ in a ruling issued on July 14, 2000. At the request of the assigned Commissioner, the ALJ reconsidered the petition, which resulted in the petition being granted by the ALJ in a ruling issued on July 28, 2000. Applicants and the Hoopa Tribe filed opening briefs regarding matters related to the Hoopa Tribe's protest on August 11, 2000. The Applicants and the Hoopa Tribe filed reply briefs on August 25, 2000.

On August 14, 2000, the Yurok Tribe filed a petition to intervene and submit a late-filed protest. The Yurok Tribe's petition was granted in a ruling issued by the ALJ on August 23, 2000. Applicants, the Hoopa Tribe, and the Yurok Tribe filed opening briefs regarding matters related to Yurok Tribe's protest on September 1, 2000. The Applicants, ORA, and the Yurok Tribe filed reply briefs on September 15, 2000.

On August 31, 2000, the assigned ALJ issued a ruling that directed the parties to file additional briefs to address the following matters: (i) effect of the proposed transactions

⁷ No party appealed the assigned Commissioner's ruling that categorized the consolidated proceeding as ratesetting.

⁸ The Applicants requested and received several extensions of time in the briefing schedule in order to accommodate settlement negotiations with Del Norte County and ORA. The parties were unable to reach a settlement agreement.

on shareholders, (ii) effect of the proposed transactions on the environment, (iii) effect of the proposed transactions on competition, and (iv) whether the Applicants should be required, as a condition of sale, to provide upgraded service to the Bar-O Boys Ranch and surrounding areas. The Applicants, Del Norte County, the Hoopa Tribe, ORA, and the Yurok Tribe filed opening briefs regarding the designated matters on September 14, 2000. The Applicants filed a reply brief on September 28, 2000.

On October 26, 2000, the assigned ALJ issued a ruling that granted the Applicants' request to file a supplemental brief regarding additional commitments that the Applicants were willing to make to the Hoopa and Yurok Tribes. The Applicants filed their supplemental brief on October 27, 2000. Del Norte County, the Hoopa Tribe, ORA, and the Yurok Tribe filed reply briefs on November 3, 2000.

III. Description of the Applicants

CTCC is a mid-sized incumbent local exchange carrier (ILEC) with 117,615 access lines⁹ in 30 exchanges sprinkled across northern California. The regions served by CTCC consist mostly of rural areas and small towns. CTCC had \$100 million in operating revenues during 1999.¹⁰

CTCGS is a small ILEC with 15,300 access lines¹¹ in eight telephone exchanges. Seven of the exchanges are located in northern California, and one in southeastern

⁹ ORA Opening Brief filed on June 30, 2000, p. 3, Fn. 2.

¹⁰ A.99-09-027, revised Exhibit E.

¹¹ *Federal Universal Service Programs Fund Size Projections and Contribution Base for the First Quarter 2000*. (http://www.fcc/ccb/universal_service/quarterly-filings/2000q1/1q2000report.doc.) This document was prepared for the FCC by the Universal Service Administrative Company pursuant to 47 C.F.R. § 54.709(a)(3), using data provided by the National Exchange Carrier Association, Inc., pursuant to 47 C.F.R. § 36.613. We take official notice of all FCC documents referred to in this decision pursuant to Rule 73.

California. The regions served by CTCGS consist mostly of rural areas and small towns. CTCGS had \$13.6 million in operating revenues in 1998.¹²

CTCC and CTCGS are subsidiaries of Citizens Communications Company (CCC), a publicly held company formerly known as Citizens Utilities Company (CUC).¹³ CCC is a holding company, and does not directly operate or provide utility services. All services are provided through separate subsidiaries. At the time A.99-09-027 and A.99-09-031 were filed, the subsidiaries of CCC, including CTCC and CTCGS, had approximately 1 million access lines in 13 states.

GTEC is a large ILEC with 4,082,000 access lines¹⁴ in 193 exchanges.¹⁵ The territory served by GTEC consists mostly of densely populated areas of Southern California, but GTEC also has many rural exchanges located throughout California. GTEC had \$3.1 billion in operating revenues during 1999.¹⁶

GTEWC is a small ILEC with 13,300 access lines¹⁷ in six telephone exchanges. All six exchanges are located in Northwest California.¹⁸ The territory served by GTEWC

¹² A.99-09-031, Exhibit E.

¹³ At the time A.99-09-027 and A.99-09-031 were filed, CUC owned electric, gas, water and telephone utilities across the United States. CUC subsequently sold many of its non-telephone utilities and used the proceeds to buy additional telephone utilities. On May 18, 2000, CUC changed its name to Citizens Communications Company.

¹⁴ Federal Universal Service Programs Fund Size and Contribution Base for the First Quarter 2000. (http://www.fcc/ccb/universal_service/quarterly-filings/2000q1/1q2000report.doc.)

¹⁵ GTEC tariff schedule Cal. P.U.C. AB, Sheets 1 and 2.

¹⁶ FCC ARMIS Report 43-01, Table I, Row 1090 (<http://www.FCC.gov/ccb/armis/>).

¹⁷ A.99-09-031, p. 5.

consists mostly of rural areas and small towns. GTEWC had \$13.2 million in operating revenues during 1999.¹⁹

GTEWC is a wholly-owned subsidiary of GTE Northwest Incorporated (GTE Northwest). GTE Northwest provides local exchange service in Idaho, Oregon, and Washington, and is a sister company of GTEC. Most of GTEWC's administrative and operational functions are performed by GTE Northwest in offices located in Oregon and Washington.

At the time A.99-09-027 and A.99-09-031 were filed, GTEC and GTE Northwest were subsidiaries of GTE Corporation (GTE). Subsequently, in D.00-03-021, the Commission approved the merger of GTE and Bell Atlantic Corporation (Bell Atlantic). The merger of the GTE and Bell Atlantic resulted in a new entity named Verizon Corporation that owns both GTEC and GTEWC. The ownership structure of the utilities at issue in this proceeding remains unchanged by the merger of GTE and Bell Atlantic. This merger occurred at the parent company level, leaving the individual utility operating companies intact.

IV. The Proposed Transactions

In A.99-09-027, CTCC and GTEC request authority under § 851 for GTEC to sell 26 exchanges to CTCC in accordance with the Asset Purchase Agreement ("CTCC-GTEC Agreement") appended to A.99-09-027.²⁰ Under the Agreement, CTCC will pay

¹⁸ GTEWC's exchanges are as follows: Crescent City, Gasquet, Hiouchi, Klamath, and Smith River in Del Norte County, and Orick in Humboldt County.

¹⁹ GTEWC's 1999 Annual Report filed at the Commission pursuant to General Order 104-A. We take official notice of GTEWC's 1999 Annual Report pursuant to Rule 73.

²⁰ GTEC and CUC signed the CTCC-GTEC Agreement on May 27, 1999. CUC then assigned all of its rights and obligations under the CTCC-GTEC Agreement to CTCC.

\$171 million to purchase 26 exchanges from GTEC.²¹ The 26 exchanges have approximately 37,400 access lines, or less than one percent of GTEC's total access lines. Six of the exchanges are located in southeast California,²² and the remaining 20 exchanges are located throughout northern California.²³ The service territories of the 26 exchanges consist of rural areas and small to medium-sized towns.

The CTCC-GTEC Agreement states that CTCC will acquire virtually all of GTEC's customers, properties, and assets in the 26 exchanges, including: (i) all telephone plant, (ii) end-user accounts receivable, (iii) material and supply inventories, (iv) non-regulated construction work-in-progress, (v) FCC licenses, (vi) assigned contracts; (vii) transferred books and records, (viii) real property leases; and (ix) all other business, property assets, work-in-progress and rights of GTEC that relate primarily to the purchased exchanges.

In A.99-09-031, CTCGS and GTEWC request authority under § 851 and § 854 for CTCGS to acquire, with certain minor exceptions, all of the assets and customers of GTEWC in accordance with the Asset Purchase Agreement ("CTCGS-GTEWC Agreement") appended to A.99-09-031.²⁴ Under the Agreement, CTCGS will pay

²¹ The purchase price is subject to adjustment in accordance with the terms of the CTCC-GTEC Agreement.

²² The six exchanges in southeastern California are: Blythe, Earp, Havasu Landing, Lost Lake, Palo Verde, and Parker Dam.

²³ The exchanges in northern California are: Alderpoint, Cazadero, Colfax, Covelo, Garberville, Hayfork, Hoopa, Knights Landing, Laytonville, Leggett, Mad River, Orleans, Piercy, Robbins, Sea Ranch, Timber Cove, Weaverville, Weimar, Whitehorn, and Willow Creek.

²⁴ GTEWC and CUC signed the CTCGS-GTEWC Agreement on May 27, 1999. CUC then assigned all of its rights and obligations under the Agreement to CTCGS. GTE Northwest, the parent company of GTEWC, also signed the CTCGS-GTEWC Agreement as a guarantor of GTEWC's performance of its obligations under the Agreement.

\$54.6 million²⁵ to acquire GTEWC's six exchanges, including: (i) all telephone plant, (ii) earned end-user accounts receivable, (iii) material and supply inventories, (iv) non-regulated construction work-in-progress, (v) FCC licenses, (vi) assigned contracts; (vii) books and records, (viii) real property leases; and (ix) all other business, property assets, work-in-progress and rights of GTEWC on the closing date that relate primarily to the purchased exchanges.

The CTCC-GTEC Agreement and the CTCGS-GTEWC Agreement are part of a series of transactions between CCC and Verizon in which CCC is purchasing 187,000 lines from Verizon in Arizona, California, and Minnesota for \$664 million in cash.²⁶ CCC expects to temporarily fund the transaction with cash on hand and bank lines of credit; and to permanently fund the transaction with debt and the proceeds from the sale of its non-telecommunications utilities.²⁷ The transaction is part of CCC's strategy to expand its ILEC operations through acquisitions funded by the sale of its non-telecommunications utilities.²⁸ The transaction is also part of Verizon's strategy to sell rural exchanges in order to focus on its core markets in urban and suburban areas.

Applicants state that the 26 GTEC exchanges being purchased by CTCC will fit neatly into the operations of CTCC. Each of the 26 exchanges serves rural areas that are similar to the areas served by CTCC. In addition, most of the 26 GTEC exchanges are located near CTCC's existing service areas. Applicants also state that the GTEWC

²⁵ The purchase price is subject to adjustment based on factors at the time of closing.

²⁶ CUC Form 10-Q for the quarter ending June 30, 2000. Pursuant to Rule 73, we take official notice of all documents filed at the Securities and Exchange Commission (SEC) referred to in this decision.

²⁷ Ibid.

²⁸ In 1999, CCC signed agreements to purchase nearly one million telephone access lines from GTE and US West in transactions valued at \$2.8 billion. (CUC SEC Form 10-K Annual Report for the Year Ended December 31, 1999, Item 1(c).)

exchanges being purchased by CTCGS will fit well with CTCGS's operations for similar reasons.

V. Applicable Statutes

In A.99-09-027, the Applicants request authority under § 851 for GTEC to sell 26 exchanges to CCTC. In A.99-09-031, the Applicants request authority under § 851 and § 854(a)²⁹ for GTEWC to sell all six of its exchanges to CTCGS.³⁰ The Applicants subsequently changed their minds, and now contend that § 854(a) does not apply to the sale of the six GTEWC exchanges.³¹

Sections 851 and 854(a) state, in relevant part, as follows:

§ 851: No public utility...shall sell...the whole or any part of its...plant, system, or other property necessary or useful in the performance of its duties to the public...without first having secured from the commission an order authorizing it so to do. Every such sale...made other than in accordance with the order of the commission authorizing it is void.

§ 854(a): No person or corporation...shall merge, acquire, or control...any public utility organized and doing business in this state without first securing authorization to do so from the commission...Any merger, acquisition, or control without that prior authorization shall be void and of no effect.

No party disputed the Applicants' assertion that § 851 applies to both transactions. However, Del Norte County contends that § 854(b) et seq., is applicable to the proposed sale of the six GTEWC exchanges. The County's contention is addressed in more detail below.

²⁹ In A.99-09-031, the Applicants refer only to "Section 854." Since § 854 has several subsections, we shall assume that Applicants meant to refer to § 854, subsection (a).

³⁰ A.99-09-031, pp. 1, 4, 5, 6, 10 and 11.

³¹ Applicants' Opening Brief, pp. 1, 6, and 9, and Footnotes 6 and 11.

We agree with the Applicants that the proposed sale of the 26 GTEC exchanges and the six GTEWC exchanges is subject to § 851. Section 851 applies where a public utility seeks to sell property that is useful in the performance of its duties to the public. The proposed sale of the 26 GTEC and six GTEWC exchanges falls squarely within the scope of § 851.

We find no merit in the Applicants' assertion that § 854(a) does not apply to the proposed sale of the six GTEWC exchanges to CTCGS. The proposed sale would result in the transfer of all of GTEWC's assets and customers to CTCGS, which is the same as one public utility acquiring another. Consequently, the proposed sale is subject to § 854(a).³²

The County asserts that the proposed sale of the six GTEWC exchanges to CTCGS is also subject to § 854(b) and (c) pursuant to § 854(f). These statutes state, in relevant part, as follows:

§ 854(b): Before authorizing the merger, acquisition, or control of any...utility...where any of the utilities that are parties to the proposed transaction has gross annual California revenues exceeding five hundred million dollars (\$500,000,000), the commission shall find that the proposal does all of the following: (1) Provides short-term and long-term economic benefits to ratepayers. (2) Equitably allocates, where the commission has ratemaking authority, the total short-term and long-term forecasted economic benefits, as determined by the commission, of the proposed merger, acquisition, or control, between shareholders and ratepayers. Ratepayers shall receive not less than 50 percent of those benefits. (3) Not adversely affect competition. In making this finding, the commission shall request an advisory opinion from the Attorney General regarding whether competition will be adversely affected and what mitigation measures could be adopted to avoid this result.

³² Section 854(a) does not apply to the proposed sale of the 26 GTEC exchanges. Section 854(a) applies only to transactions involving the merger, acquisition, or transfer of control of an entire public utility. The proposed sale of the 26 GTEC exchanges falls outside the scope of § 854(a), since the 26 exchanges represent less than one percent of GTEC's access lines and even less of its revenues.

§ 854(c): Before authorizing the merger, acquisition, or control of any...utility...where any of the entities that are parties to the proposed transaction has gross annual California revenues exceeding five hundred million dollars (\$500,000,000), the commission shall consider each of the criteria listed in paragraphs (1) to (8), inclusive, and find, on balance, that the merger, acquisition, or control proposal is in the public interest. (1) Maintain or improve the financial condition of the resulting public utility doing business in the state. (2) Maintain or improve the quality of service to public utility ratepayers in the state. (3) Maintain or improve the quality of management of the resulting public utility doing business in the state. (4) Be fair and reasonable to affected public utility employees, including both union and nonunion employees. (5) Be fair and reasonable to the majority of all affected public utility shareholders. (6) Be beneficial on an overall basis to state and local economies, and to the communities in the area served by the resulting public utility. (7) Preserve the jurisdiction of the commission and the capacity of the commission to effectively regulate and audit public utility operations in the state. (8) Provide mitigation measures to prevent significant adverse consequences which may result.

§ 854(f): In determining whether the **acquiring utility** has gross annual revenues exceeding the amount specified in [§ 854] (b) and (c), the revenues of that utility's affiliates shall not be considered unless the affiliate was utilized for the purpose of effecting the merger, acquisition, or control. (Emphasis added.)

The County asserts that because § 854(f) does not explicitly exclude the acquired utility from the scope of the § 854(f), the statute implicitly requires the Commission to consider the acquired utility's affiliates (i.e., GTEWC's affiliates) for purposes of determining the applicability of § 854(b) and (c). The County states that GTEC has California revenues in excess of \$500 million, which makes the proposed sale of the six GTEWC exchanges subject to § 854(b) and (c). The Applicants strongly disagree with the County.

We find no merit in the County's assertion that the proposed sale of the six GTEWC exchanges to CTCGS is subject to § 854(b) and (c). These statutes apply only where one of the entities to the proposed acquisition has at least \$500 million in California revenues. Neither GTEWC nor CTCGS has annual revenues anywhere close to \$500 million.³³ Furthermore, the County is incorrect that § 854(f) requires the Commission to consider the revenues of the acquired utility's affiliates in determining if the proposed acquisition is subject to § 854(b) and (c). Nowhere does § 854(f) state that the Commission is required to consider the revenues of the acquired utility's affiliates.³⁴ If the Legislature had intended to include this requirement in § 854(f), it would have done so explicitly.³⁵ When statutes are clear in their plain language, as is the case here, it is unnecessary and inappropriate for the Commission to engage in further statutory construction of legislative intent.³⁶

VI. Standard of Review

We conclude in this decision, *supra*, that the proposed sale of 26 GTEC exchanges to CTCC is subject to § 851, and that the proposed acquisition of GTEWC by CTCGS is

³³ The combined annual revenues of CTCC and CTCGS are substantially less than \$500 million. There is no indication in the record of this proceeding that CCC, the parent company of CTCC and CTCGS, has annual California revenues that equal or exceed \$500 million.

³⁴ Assuming *arguendo* that § 854(f) applied to the acquired utility's affiliates used for the purpose of effecting the acquisition, which it does not, § 854(f) would still not apply, since there is no evidence that GTEC was used for the purpose of effecting the proposed sale of GTEWC to CTCGS. Indeed, the record of this proceeding supports the opposite conclusion. To begin with, GTEWC is a separate legal entity from GTEC. Furthermore, GTEWC is owned and operated by GTE Northwest, not GTEC. Finally, GTEC is not a signatory of the agreement for the sale of GTEWC to CTCGS.

³⁵ In interpreting a statute, the cardinal rule to be applied before all others is to presume that the legislation says in statute what it means and means in statute what it says there. (D.97-12-103, 1997 Cal. PUC LEXIS 1226, *16)

³⁶ D.99-11-022, 1999 Cal. PUC LEXIS 855, *38.

subject to § 851 and § 854(a). The purpose of § 851 and § 854(a) is to enable the Commission to review a proposed transaction, before it takes place, in order to take such action as the public interest may require.³⁷

The Commission has broad discretion to determine whether it is in the public interest to authorize a proposed transaction pursuant to § 851 and/or § 854(a).³⁸ The primary standard used by the Commission to determine if a proposed transaction should be authorized pursuant to these statutes is whether the transaction will adversely affect the public interest.³⁹ The Commission may also consider if the transaction will serve the public interest.⁴⁰ Where necessary and appropriate, the Commission may attach conditions to a transaction in order to protect and promote the public interest.⁴¹

In this proceeding we shall use the standard of whether the public interest is better served by granting or denying the applications. In deciding whether this standard has been

³⁷ D.99-02-061, 1999 Cal. PUC LEXIS 56, *12; D.98-07-015, 1998 Cal. PUC LEXIS 526, *7; D.98-02-005, 1998 Cal. PUC LEXIS 320, *8; D.97-12-086, 1997 Cal. PUC LEXIS 1168, *8; and D.3320, 10 CRC 56, 63.

³⁸ D.95-10-045, 1995 Cal. PUC LEXIS 901, *18-19; and D.91-05-026, 40 CPUC 2d 159, 171.

³⁹ D.00-06-079, *mimeo.*, p. 13; D.00-06-057, *mimeo.*, p. 7; D.00-05-047, *mimeo.*, p. 11 and Conclusion of Law 2; D.00-05-023, *mimeo.*, p. 18; D.99-03-019, *mimeo.*, p. 14; D.98-08-068, *mimeo.*, p. 22; D.98-05-022, *mimeo.*, p. 17; D.97-07-060, 73 CPUC 2d 601, 609; D.70829, 65 CPUC 1 637, 637; and D.65634, 61 CPUC 1 160, 161.

⁴⁰ D.00-06-005, 2000 Cal. PUC LEXIS 281, *4; D.99-04-066, *mimeo.*, p.5; D.99-02-036, *mimeo.*, p. 9; D.97-06-066, 72 CPUC 2d 851, 861; D.95-10-045, 62 CPUC 2d 160, 167; D.94-01-041, 53 CPUC 2d 116, 119; D.93-04-019, 48 CPUC 2d 601, 603; D.86-03-090, 1986 Cal. PUC LEXIS 198 *28 and COL 3; D.8491, 19 CRC 199, 200; and D.76704, 70 CPUC 1 639, 640-641, (1970).

⁴¹ D.95-10-045, 62 CPUC 2d 160, 167-68; D.94-01-041, 53 CPUC 2d 116, 119; D.90-07-030, 1990 Cal. PUC LEXIS 612, *5; D.89-07-016, 32 CPUC 2d 233, 242; D.86-03-090, 1986 Cal. PUC LEXIS 198, *84-85 and COL 16; and D.3320, 10 CRC 56, 63.

met, we shall use the same criteria for both A.99-09-027 and A.99-09-031. It is appropriate to use the same criteria to evaluate for both applications, since both involve the sale of complete telephone exchanges, including all related assets, customers, and employees. The specific criteria that we shall use are as follows:

- Whether the sale of the 26 GTEC exchanges to CTCC and the sale of the six GTEWC exchanges to CTCGS will maintain or improve the financial condition of the utilities that are parties to each transaction.
- Whether the proposed sale will maintain or improve the quality of service for the customers of the utilities that are parties to each transaction.
- Whether the proposed sale will maintain or improve the quality of management for the 32 GTE exchanges that are the subject of A.99-09-027 and A.99-09-031.
- Whether the proposed sale will be fair and reasonable to the affected utility employees.
- Whether the proposed sale will be fair and reasonable to a majority of the utility shareholders.
- Whether the proposed sale will be beneficial on an overall basis to state and local economies, and to communities in the area served by 32 GTE exchanges.
- Whether the proposed sale will preserve the jurisdiction of the Commission and its capacity to effectively regulate and audit public utility operations in California.
- Whether the proposed sale will preserve or enhance competition.
- Whether the proposed sale will preserve or enhance the environment.
- Whether the proposed sale provides for mitigation measures to prevent significant adverse consequence that may result.

We recognize that most of the above criteria resemble the criteria contained in § 854(c). Although we are not obligated to apply § 854(c) to either A.99-09-027 or A.99-09-031, since neither application involves the sale or merger of a utility with at least \$500 million in California revenues, the criteria in § 854(c) provide a useful framework for analyzing if it is in the public interest to approve the two Applications. As we noted in

D.97-05-092, the § 854(c) criteria were codified because they were often employed by the Commission to evaluate transactions under § 854(a).⁴² The Commission has also used the § 854(c) criteria in one form or another over the years to evaluate transactions under § 851.⁴³ We emphasize, however, that our use in this proceeding of criteria resembling those in § 854(c) is wholly discretionary and should not be considered as a precedent for future applications that are not otherwise subject to § 854(c).

In the next part of this decision, we shall apply the aforementioned criteria to determine if the proposed sale of the 32 GE exchanges should be authorized, and if so, what conditions, if any, should attach to the transactions. We shall also consider reasonable options to the proposed sale recommended by the parties.⁴⁴

⁴² 1997 Cal. PUC LEXIS 340, *32. We have repeatedly used the § 854(c) criteria to determine if it is in the public interest to authorize transactions that are subject to § 854(a) but not otherwise subject to § 854(c). (See, for example, D.00-06-079, *mimeo.*, pp. 13, 15; D.00-05-023, *mimeo.*, pp. 1, 18, 20; D.98-08-068, *mimeo.*, pp. 22, 24; and D.97-07-060, 73 CPUC 2d 600, 604, 608, 610.)

⁴³ The use of the § 854(c) criteria to evaluate § 851 transactions is not surprising. In D.96-04-045, the Commission held that the “design of . . . § 851 is to prevent the impairment of the public service of a utility by the transfer of its property into the hands of agencies incapable of performing an adequate service at reasonable rates or upon terms which will bring the same undesirable result . . . The obvious purpose of the section is to enable the Commission, before any transfer of public utility property is consummated, to review the situation and to take such action, as a condition of the transfer, as the public interest may require.” (1996 Cal. PUC LEXIS 265, *13, citations omitted) The “design” of § 851, as described in D.96-04-045, is clearly analogous to the purpose of the § 854(c) criteria.

⁴⁴ The Commission must consider alternatives presented and factors warranting adoption of those alternatives. (*United States Steel Corp. v. Pub. Util. Commission* 1981 Cal. LEXIS 156, ***6.) The Commission has a duty to weigh opposing evidence and arguments. (*Industrial Communications Systems, Inc. v. Pub. Util. Commission* (1978) 22 Cal.3d 572, 582.) In addition, § 854(d), which applies to the proposed sale of the six GTEWC exchanges to CTCGS, requires the Commission to consider reasonable options to the proposed sale recommended by other parties.

VII. Public Interest Criteria

A. Maintain or Improve Financial Condition

i. Background

In deciding whether to authorize a proposed sale of part or all of one utility to another, the Commission considers if the proposed sale will maintain or improve the financial condition of the utilities that are parties to the transaction. The purpose of this exercise is to ensure that the proposed sale does not adversely affect the financial ability of the involved utilities to provide safe and reliable service at reasonable rates.⁴⁵

ii. Position of the Parties

Applicants state that CTCC and CTCGS have adequate financial resources to operate the exchanges acquired from GTEC and GTEWC. This is because CTCC and CTCGS are subsidiaries of CCC, a large company that had revenues of \$1.7 billion in 1999.⁴⁶ Applicants also assert that the financial condition of CTCC and CTCGS will be improved by their acquisition of the 32 GTE exchanges. This is because CTCC and CTCGS already own and operate exchanges that are similar to those being acquired from GTE, and the acquisition of the GTE exchanges will enable CTCC and CTCGS to achieve cost-saving synergies. Applicants claim that additional savings will result from the ability of CCC to create economies of scope and scale by consolidating and coordinating resources among its various operating subsidiaries.⁴⁷

⁴⁵ D.89-09-092, 32 CPUC 2d 478; D.80430, 74 CPUC 1 30, 50, modified on other grounds, D.80490, 74 CPUC 1 259 (1972); D.77010, 70 CPUC 1 836, 837 (1970); D.75278, 69 CPUC 1 275, 277 (1969); D.8491, 19 CRC 199, 202 (1920); and D.218, 1 CRC 520, 523-525.

⁴⁶ Applicants' Opening Brief filed on June 30, 2000, p. 11, Fn. 14.

⁴⁷ Economies of scale occur where the unit cost for a product or service declines as the product or service is produced in greater quantity. Economies of scope occur where it costs less to produce two or more products or services together than separately.

Del Norte County states that CTCGS is acquiring the six GTEWC exchanges for a price that is substantially in excess of book value. The County asserts that the high price CTCGS is paying may have two negative consequences. First, it may leave CTCGS with insufficient capital to improve the “antiquated” telecommunications system that currently serves Del Norte County. Second, CTCGS may be forced to raise rates in order to earn an adequate return on its investment.

ORA states that based on its review of the pro forma results of operations for CTCC and CTCGS, ORA does not believe that the financial condition of CTCC and CTCGS will be adversely affected by their acquisition of the GTE exchanges. The pro forma results of operations, which were provided by the Applicants under seal, is a forecast of how the acquisition of the GTE exchanges will affect the rate of return of CTCC and CTCGS. ORA also recommends that the Commission protect the financial condition of ratepayers by requiring CTCC and CTCGS to (1) record the cost of the acquired GTE exchanges at GTE’s net book value for the exchanges; and (2) record the premium (i.e., the excess of the purchase price over net book value) “below-the-line” so that the premium will not be used to set rates. ORA also recommends that the Commission require GTEC to revise its tariffs to reflect changes in GTEC’s billing bases caused by the sale of its exchanges.⁴⁸

The County supports ORA’s recommendation to record the premium below the line. The Applicants state that they are willing to record the premium below the line initially, but reserve the right to propose a different ratemaking treatment in the future.

⁴⁸ The “billing base” is used by the Commission to determine the amount of each surcharge added to customers’ bills, such as the Universal Lifeline Telephone Service surcharge. There are several different surcharges, and each surcharge may have a different billing base.

iii. Discussion

The 26 exchanges that GTEC seeks to sell for \$171 million represent less than 1% of GTEC's access lines and even less of its revenues. Given that GTEC proposes to sell an insignificant part of its operations for \$171 million, we conclude that the sale will improve the financial condition of GTEC. Our conclusion is reinforced by the fact that GTEC will realize a substantial gain from the sale. There is no need to consider how the proposed sale of the six GTEWC exchanges for \$54.6 million will affect the financial condition of GTEWC, since GTEWC will cease to exist if the sale is approved.

We next consider how the purchase of the 32 GTE exchanges will affect the financial condition of CTCC and CTCGS. To determine this effect, we turn to Table 1, below, which shows the historical revenues, operating income, and cash flow for the 26 GTEC exchanges and the six GTEWC exchanges:

Table 1						
	26 GTEC Exchanges *			6 GTEWC Exchanges **		
	1997 (\$000)	1998 (\$000)	1997 + 1998 (\$000)	1997 (\$000)	1998 (\$000)	1997 + 1998 (\$000)
Total Revenues:	26,280	22,810	49,090	16,142	17,835	33,977
Operating Costs & Depreciation:	21,537	24,445	45,982	9,059	7,224	16,283
Operating Income:	4,743	<1,635>	3,108	7,082	10,612	17,694
Interest:	601	802	1,403	510	565	1,075
Income Before Taxes	4,143	<2,437>	1,705	6,573	10,047	16,620
Income After Taxes	2,545	<1,449>	1,096	4,004	5,873	9,877
Cash From Operations:	11,375	4,977	16,352	2,457	6,264	8,721
Capital Expenditures:	<10,886>	<11,175>	<22,061>	<2,956>	<2,428>	<5,384>
Cash <to> from Parent:	<480>	6,198	5,718	499	<3,836>	<3,337>

* A.99-09-027, Exhibit A, Schedule 8.1.21.

** A.99-09-031, Exhibit A, Schedule 8.1.21.

CTCC is acquiring the 26 GTEC exchanges for \$171 million. Table 1 shows that the 26 GTE exchanges generated \$3.108 million in operating income over the two-year period of 1997-1998, which averages to \$1.554 million per year. If the 26 GTEC exchanges generate a similar amount of operating income in the future, then CTCC's annual return on its investment (ROI) of \$171 million would be less than 1% before expenses for interest and income taxes. Table 1 also shows that while the 26 GTEC exchanges produced positive cash flow of \$16.352 million during 1997-1998, this was not enough to fund all capital expenditures, which totaled \$22.061 million over the two-year period. As a result, GTE had to contribute \$5.718 million to fund the capital expenditures. Thus, the 26 GTEC

exchanges had a net negative cash flow during 1997-1998 of \$5.718 million when capital expenditures are taken into account. Given the low ROI and negative cash flow associated with the 26 GTEC exchanges, we conclude that the financial condition of CTCC will be negatively affected by the acquisition of the 26 GTEC exchanges.

We next turn to CTCGS, which is paying \$54.6 million to acquire six GTEWC exchanges. Table 1 shows that the six GTEWC exchanges generated \$17.694 million in operating income over the two-year period of 1997-1998, which averages to \$8.847 million per year. If the six GTEWC exchanges generate a similar amount of operating income in the future, CTCGS's return on its investment of \$54.6 million would be 16.2% before interest and taxes. Table 1 also shows that during the two-year period of 1997-1998, the six GTEWC exchanges generated enough cash to (1) fund operations, (2) pay for all capital expenditures, and (3) pay a net dividend of \$3.337 million to the parent company.⁴⁹ The relatively high ROI and positive cash flow indicates that the financial condition of CTCGS will be positively affected by the acquisition of the six GTEWC exchanges.⁵⁰ However, for the reasons set forth below, CTCGS may be adversely affected by the negative impact that the acquisition of the 32 GTE exchanges will have on the financial condition of CTCGS's parent company.

⁴⁹ If the dividend continues at the same level, the six GTEWC exchanges would provide an annual dividend yield of 3% [(\$3.337 million)/2]/\$54.6 million = 0.0305]. CCC, which is providing the funds to purchase the GTEWC exchanges, may not be satisfied with an dividend yield of 3%, since CCC could earn a higher, risk-free yield by investing in 90-day U.S. Treasury bills that currently provide an annualized yield of over 4%. Therefore, it is possible that CTCGS may take steps to increase the dividend paid by the six GTEWC exchanges. These steps might include cutting capital expenditures and spending less on maintenance and customer service.

⁵⁰ The capacity of the six GTEWC exchanges to generate relatively high earnings and positive cash flow may be waning. GTEWC's 1999 Annual Report filed at the Commission pursuant to General Order 104-A shows that GTEWC's total operating revenues for 1999 were \$13.469 million, which was significantly lower than GTEWC's revenues of \$17.835 million for 1998.

The purchase of the 32 GTE exchanges directly affects the financial condition of CCC, the parent company of CTCC and CTCGS. This is because CCC is providing \$223.6 million to purchase the 32 GTE exchanges.⁵¹ Table 1 shows that the 32 GTE exchanges had a combined operating income of \$20.802 million (\$3.108 million + \$17.694 million) during the two-year period of 1997-1998, which averages to \$10.401 million per year. If the 32 GTE exchanges generate a similar amount of operating income in the future, CCC's annual return on its investment of \$223.6 million would be 4.65% before interest and taxes, which may be less than CCC's cost of capital.⁵² Table 1 also shows that the 32 GTE exchanges had a negative cash flow of \$2.381 million (\$3.337 million - \$5.718 million) during 1997-1998 when capital expenditures are taken into account. Given the relatively low ROI and negative cash flow associated with the 32 GTE exchanges, we conclude that the financial condition of CCC will be negatively affected by the acquisition of the 32 GTE exchanges.⁵³

We are not persuaded by the Applicants' assertion that the significant financial resources of CCC will shield CTCC and CTCGS from any negative financial consequences associated with the acquisition of the 32 GTE exchanges. While CCC does have significant financial resources, there is no guarantee that these resources will be made available to

⁵¹ CCC is financing the purchase of the 32 GTE exchanges with cash on hand, debt, and proceeds from the sale of CCC's non-telecommunications public utilities.

⁵² CTCC's authorized rate of return (ROR) is 9.75% (D.95-11-024, 62 CPUC 2d 244, 266), and CTCGS's is 10% (Resolution T-16380, issued on January 20, 2000, *mimeo.*, p. 5.) Authorized ROR is a utility's cost of capital as determined by the Commission. The interest rate for CCC's outstanding debt ranges from 5.63% to 10.96% (CCC SEC Form 10-K for the year 2000).

⁵³ The higher the ratio of debt to equity that CCC uses to acquire the 32 GTE exchanges, the higher the return that CCC may earn on the equity capital that it uses to acquire the exchanges, all else being equal. However, higher levels of debt also increase interest costs, which reduces the amount of cash available for capital expenditures, all else being equal.

CTCC and CTCGS. Furthermore, CCC might take steps to worsen the financial condition of CTCC and CTCGS. Table 1 shows that the 32 GTE exchanges generated negative cash flow for their parent company. It is possible that CCC, under pressure from its shareholders to realize positive cash flow from its substantial investment in the 32 GTE exchanges, will drain cash from CTCC and CTCGS in an effort to satisfy its shareholders.⁵⁴

We are not persuaded by the Applicants' assertion that Citizens' acquisition of the 32 GTE exchanges will create synergies or economies of scope and scale that will enhance the financial condition of CTCC and CTCGS. In order for CCC to realize a modest 5% annual return on its investment of \$223.6 million, the 32 GTE exchanges would have to pay an annual dividend of \$11.283 million. However, Table 1 shows that the 32 GTE exchanges had a negative cash flow of \$2.381 million during 1998 when capital expenditures are taken into account. Thus, assuming capital expenditures are maintained at current levels, Citizens would have to wring an extra \$13.664 million (\$2.381 million + \$11.283 million) from the 32 GTE exchanges in order for CCC to realize a modest 5% annual return on its investment. This seems improbable, since Table 1 shows that the 32 GTE exchanges had total revenues \$41.645 million during 1998. While it may be possible to produce \$13.664 million of additional positive cash flow from the 32 GTE exchanges through synergies and economies of scope and scale, we believe it is unlikely in the near term given the existing revenue stream.⁵⁵

⁵⁴ CCC has issued a significant amount of new debt to finance its recent multi-billion dollar acquisitions of telephone exchanges across the nation, which has caused the major credit rating services to downgrade their credit ratings for CCC. For example, S&P has downgraded its long-term corporate credit rating for CCC from A+ to A-, Moody's from A2 to Baa2, and Fitch from AA to A+. The downgrades may place added pressure on CCC to realize positive cash flow from its substantial investment in the 32 GTE exchanges.

⁵⁵ Because the Commission regulates the rates of CTCC and CTCGS, there is little likelihood that these companies can significantly increase revenues via rate increases.

We accord little weight to the pro forma results of operations submitted by the Applicants under seal. The pro forma results of operations show that CTCC's acquisition of 26 GTEC exchanges will result in a slight decrease in CTCC's rate of return (ROR); and that CTCGS's acquisition of the six GTEWC exchanges will result a significant increase in CTCGS's ROR.⁵⁶ However, the Applicants did not provide the assumptions they used to prepare the pro forma ROR. In addition, the pro forma ROR does not reflect the large acquisition premium.⁵⁷ As a result, the pro forma ROR is of limited value in determining how the financial condition of CTCC and CTCGS will be affected by their acquisition of the GTE exchanges.

For the preceding reasons, we conclude that the financial condition of CCC and CTCC will be adversely affected by their acquisition of the GTE exchanges. The adverse financial effects could, in turn, cause CCC and/or CTCC to take actions that harm the public interest. For example, CCC may direct CCTC and CTCGS to reduce expenditures on maintenance, repairs, customer service, and and/or new plant and equipment. Therefore, to ensure that Citizens' acquisition of the GTE exchanges is in the public interest, we shall approve A.99-09-027 and A.99-09-031 subject to the following conditions⁵⁸:

1. CCC shall provide CTCC and CTCGS with sufficient equity capital to maintain a reasonable and balanced capital structure.

⁵⁶ ROR is after-tax net income from regulated operations divided by ratebase.

⁵⁷ The acquisition premium, which is the excess of the purchase price over the net book value of the acquired ratebase, is normally excluded from ratebase and the determination of ROR.

⁵⁸ Many of the adopted conditions are similar to conditions adopted by the Commission in one or more of the following decisions: D.00-05-047, Ordering Paragraph (OP) 2a; D.99-04-068, OP 8; D.98-06-068, attached Settlement, Item 11; D.98-03-073, Appendix B, Item IV.A; D.96-07-059, OPs 20 – 23; D.96-07-025, OP 5; D.95-12-018, OPs 5 - 7; D.95-11-024, Finding of Fact 26; D.94-09-080, OP 4; D.91-09-068, OP 1a; D.91-09-067, OP 1a; D.88-01-063, OPs 9 – 12; and D.86-03-090, OPs 12- 15.

2. CCC shall provide CTCC and CTCGS with sufficient equity capital to provide service to the public that is safe, reliable, and in compliance with all applicable statutes and Commission orders.
3. CTCC and CTCGS shall each manage the company's finances on a stand-alone basis (i.e., independent of CCC and other affiliates).
4. CTCC and CTCGS may pay a dividend, loan money, or provide other forms of capital to CCC or other affiliates only if doing so does not jeopardize the utility's ability to provide safe and reliable service at reasonable rates.
5. For ratemaking purposes, CTCC and CTCGS shall record the cost of the exchanges acquired from GTE at GTE's net book value for the exchanges (i.e., GTE's historical cost less depreciation, amortization, and remaining deferred income taxes). GTE shall provide Citizens with access to all books and records necessary to determine the net book value of exchanges.
6. For ratemaking purposes, CTCC and CTCGS shall record the premium (i.e., the excess of purchase price over book value) "below-the-line."
7. CTCC and CTCGS shall not recover in their rates, charges, and fees for intrastate services ("rates") any costs associated with the premium.
8. CTCC, CTCGS, and GTEC shall not recover in their rates any (i) transaction costs associated with the sale/purchase of the GTE exchanges; or (ii) costs caused by negative synergies or diseconomies of scale or negative associated with the sale/purchase of the GTE exchanges.

9. For the five-year period beginning on January 1, 2002, CTCC shall annually spend an amount of money for capital expenditures⁵⁹ that equals or exceeds the annual average of such expenditures by CTCC and the acquired GTEC exchanges during the three-year period ending December 31, 2000. The minimum level of capital expenditures required by this decision is in addition to the capital expenditures that this decision requires for the provision of service to the Hoopa Valley Indian Reservation and the Yurok Indian Reservation.
 - a. To provide flexibility, CTCC may spend less on capital expenditures one year and more the next, so long as the cumulative expenditures for any 3-year period equal 100% of the cumulative expenditures required by this decision for the same 3-year period.

10. For the five-year period beginning on January 1, 2002, CTCGS shall annually spend an amount of money for capital expenditures that equals or exceeds the annual average of such expenditures by CTCGS and the acquired GTEWC exchanges during the three-year period ending December 31, 2000. The minimum level of capital expenditures required by this decision is in addition to the capital expenditures that this decision requires for the provision of upgraded service to customers in the Idlewild area.
 - a. To provide flexibility, CTCGS may spend less on capital expenditures one year and more the next, so long as the cumulative expenditures for any 3-year period equal 100% of the cumulative expenditures required by this decision for the same 3-year period.

11. Within 150 days from the date the sale is closed, the Applicants shall file and serve a compliance report that shows the total annual capital expenditures for each year during the three-year period ending December 31, 2000. The report shall be broken down by capital expenditures made by (1) CTCC, (2) the 26 GTEC exchanges being acquired by CTCC, (3) CTCGS, and (4) the six GTEWC exchanges being acquired by CTCGS. The report shall identify and describe all assumptions used to prepare the

⁵⁹ For the purpose of this decision, capital expenditures are defined as gross additions to USOA Nos. 2110, 2210, 2220, 2230, 2310, 2410, 2680, and 2690.

report. The report shall be examined by Certified Public Accountants who shall attest to the accuracy and fairness of the report. In addition, CTCC, CTCGS, GTEC, and GTEWC shall each have an officer examine those portions of the report that pertain to his or her company. The officer shall sign a verification under penalty of perjury that complies with Rule 2.4. A copy of the signed verification shall be appended to the report.

12. Within 90 days from the date the sale is closed, GTEC, CTCC, and CTCGS shall each file revised tariffs to reflect changes to its various billing bases caused by the sale/acquisition of the GTE exchanges.

As stated previously, the acquisition of the 32 GTE exchanges will negatively affect the financial condition of Citizens, which could, in turn, cause CTCC and CTCGS to reduce expenditures in ways that negatively affect service quality. So that we may monitor service quality, we shall require CTCC and CTCGS to each submit reports that contain the following information pertaining to service quality:

1. All information reported to the Commission pursuant to General Order (GO) 133-B.⁶⁰
2. The number of formal complaints filed with the Commission.
3. The number of informal reports filed with the Commission.
4. All information reported to the FCC in the ARMIS 43-05 Service Quality Report.⁶¹

⁶⁰ GO 133-B requires telephone companies to report information regarding various measures of service quality, including (i) held primary service orders, (ii) installation-line energizing commitments; (iii) customer trouble reports, (iv) dial tone speed; (v) dial service; (vi) toll operator answering time; (vii) directory assistance operator answering time; (viii) trouble report service answering time; and (ix) business office answering time.

⁶¹ The ARMIS 43-05 Service Quality Report contains information regarding (i) installation and repair intervals for (a) interexchange access and (b) local service; (ii) blockages on common trunk groups between the LEC's end office and the access tandem; (iii) total switch downtime; (iv) occurrences of

Footnote continued on next page

The monitoring reports submitted by CTCC and CTCGS shall breakdown information regarding complaints between the Citizen exchanges and the acquired GTE exchanges.

CTCC and CTCGS shall submit their monitoring reports to the Director of the Commission's Consumer Services Division. The first report should cover calendar year 2000, and be submitted no later than 60 days after the sale is closed.⁶² Thereafter, CTCC and CTCGS shall submit their monitoring reports on a calendar year basis no later than four months after the close of the calendar year for which the reports are submitted. The requirement to submit monitoring reports shall end with the reports submitted for calendar year 2005.

In their comments on the draft decision ("comments"), the Applicants assert that the decision erroneously relies on the financial statements for the 32 GTE exchanges included in the Asset Purchase Agreements to determine what effect the acquisition of the 32 exchanges will have on the financial condition of CTCC, CTCGS, and CCC. The Applicants argue that the following disclaimers in the notes to the financial statements and the Asset Purchase Agreements demonstrate that the financial statements for the 32 GTE exchanges include costs that will not occur once Citizens acquires the exchanges:

switch downtimes of two minutes or more; and (v) the number of service quality complaints raised by residential and business customers in the state and interstate jurisdictions.

⁶² So that Citizens may prepare the required monitoring reports, GTE shall provide Citizens with data regarding customer complaints for the 32 GTE exchanges during the years 2000 and 2001.

Basis of Presentation: The accompanying financial statements are a carve-out of amounts reported for GTE California, that have been prepared using exchange-specific information where available (e.g., most revenue and PP&E related accounts) and allocations where data is not maintained on an exchange specific basis with the company's books and records (e.g., operating expense, liability, and capital accounts) . . . Furthermore, the accompanying statements reflect historical GTE ownership and operation, with no pro-forma adjustments for specific contract terms governing transfer to a specific buyer or for any changes in methods of operation. Therefore, actual results could differ significantly from the results portrayed in the accompanying statements. (Notes to Financial Statements)

Financial Statements . . . because the Business represents only a portion of a larger entity, the Financial Statements are based on the extensive use of estimates and allocations. Seller believes these estimates and allocations have been performed on a reasonable basis in accordance with GAAP. However, Buyer acknowledges that because Buyer is not acquiring significant support elements located outside the Purchased Exchanges, and Buyer will operate under new tariffs, carrier contracts, and other conditions that will significantly impact the future revenues of the Business, the Financial Statements may not be representative of the financial performance of the Business during future periods. (Asset Purchase Agreements, Section 8.1.21)

The Applicants state that due to the above disclaimers, "it can be assumed that the expense calculations for [the GTE exchanges] post-acquisition are inflated."

The Applicants mischaracterize the meaning of the disclaimers. The disclaimers do nothing more than state the obvious, i.e., that the financial statements for the 32 GTE exchanges reflect historical GTE ownership and operation, and may not represent the financial performance of the exchanges when owned and operated by Citizens. There is nothing in the disclaimers that indicates the cost of operating the 32 exchanges will be less under Citizens' ownership than GTE's. Indeed, the disclaimers leave open the possibility that it will cost more to operate the exchanges under Citizens' ownership than GTE's. Therefore, we cannot assume "that the expense calculations for [the GTE exchanges] post-acquisition are inflated."

The Applicants next argue in their comments that the decision errs in its failure to recognize that Citizens conducted “the usual due diligence.” According to the Applicants, Citizens determined as result of its due diligence that the acquisition of the GTE exchanges would not harm its financial condition. The Applicants claim that it is a rule of law that unless the Commission has credible evidence that a company’s business decision was wholly irresponsible, the Commission should defer to those business decisions. We find no merit in the Applicants’ argument. Our authority to form our own conclusions is well established.⁶³ Here, the Applicants provided none of the financial due diligence conducted by Citizens. The only financial analysis provided by the Applicants was the pro forma ROR, which the Applicants were compelled to submit. We accord little weight to the pro forma ROR for reasons stated previously in this decision. Given the dearth financial analyses, we conducted our own financial analysis using the financial statements for the 32 GTE exchanges and other credible information. Based on our analysis we conclude, supra, that the high price Citizens is paying to acquire the 32 GTE exchanges will adversely affect the financial condition of Citizens.

The Applicants next argue in their comments that the following condition in the draft decision should not be adopted:

Neither CTCC nor CTCGS shall pay a dividend, loan money, or provide any other forms of capital to CCC or other affiliates if doing so would jeopardize the utility’s ability to provide safe and reliable service at reasonable rates.

⁶³ The Commission may form its own conclusions as to the probative value of the evidence before it. (Market Street Railway v. Railroad Commission (1945) 324 US 548, 89 L ed 1171.) The Commission may choose its own criteria or method of arriving at its decision, even if irregular, providing unreasonableness is not clearly established. (Pacific Tel. & Tel. v. Pub. Util. Commission (1965) 62 Cal 2d 634, 647.)

The Applicants contend that the Commission lacks authority to adopt the above condition. We find no merit in the Applicants' argument. Our authority to attach conditions to the sale of part or all of a public utility is well established,⁶⁴ as is our authority to regulate a utility's financial transactions.⁶⁵ We have repeatedly used our authority to approve the sale or merger of public utilities with the condition that the involved utilities shall not provide capital to affiliates if doing so impairs the ability of a utility to serve the public.⁶⁶ However, in response to the Applicants' comments, we have modified this condition to clarify that CTCC and CTCGS may pay dividends and loan money to CCC or other affiliates, provided that doing so does not jeopardize the utility's ability to provide safe and reliable service at reasonable rates.

Finally, the Applicants assert in their comments that CCC, the parent company of CTCC and CTCGS, will be unable to obtain loans to purchase the 32 GTE exchanges if the Commission adopts a condition that prohibits CTCC and CTCGS from paying a dividend to CCC if doing so impairs the ability of CTCC and CTCGS to provide safe and reliable service at reasonable rates. We see no reason why this condition should prevent CCC from obtaining loans to purchase the 32 GTE exchanges unless the price that Citizens paying to acquire the GTE exchanges is so high that the loans cannot be repaid without impairing the ability of CTCC and CTCGS to provide service. Regardless, we will not compromise the

⁶⁴ D.95-10-045, 62 CPUC 2d 160, 167-68; D.94-01-041, 53 CPUC 2d 116, 119; D.90-07-030, 1990 Cal. PUC LEXIS 612, *5; D.89-07-016, 32 CPUC 2d 233, 242; D.86-03-090, 1986 Cal. PUC LEXIS 198, *84-85 and COL 16; and D.3320, 10 CRC 56, 63.

⁶⁵ Pacific Tel. & Tel. Co. v. Pub. Util. Commission (1965) 62 Cal.2d 634; City of Los Angeles v. Pub. Util. Commission (1972) 7 Cal.3d 331; and General Telephone Company v. Pub. Util. Commission (1983) (1983) 34 Cal.3d 817, 825-825.

⁶⁶ D.96-07-059, OPs 21 and 22; D.96-07-025, OP 5; D.95-12-018, OPs 5 and 6; D.88-01-063, OPS 10 – 12; and D.86-03-090, OPs 13 – 15.

ability of CTCC and CTCGS to provide safe and reliable service at reasonable rates so that CCC can obtain loans to purchase the 32 GTE exchanges.

B. Maintain or Improve the Quality of Service

In deciding whether to authorize the sale of part or all of one utility to another, the Commission considers if the proposed sale will maintain or improve the quality of service to California ratepayers. The primary purpose of this exercise is to ensure that the proposed sale maintains or improves the ability of the involved utilities to provide adequate service at reasonable rates.⁶⁷

In the following sections, we address three issues regarding quality of service. First, we address general quality of service issues raised by the parties. Second, we address quality of service issues specific to the Bar-O Boys Ranch. Finally, we address the provision of service to two Indian Reservations.

i. General Quality of Service Issues

a. Position of the Parties

The Applicants state that Citizens, as a long-time provider of local telephone service, has sufficient managerial, technical, and operational expertise to provide adequate service at reasonable rates to customers in the 32 GTE exchanges. To assure a seamless transfer of customers from GTE to Citizens, the Applicants state that Citizens will retain for six months the GTE intrastate tariffs in effect at the time of acquisition. Citizens will also freeze for 18 months the GTE rates and charges (referred to collectively hereafter as “rates”) in effect at the time of acquisition, except for mandated rate increases⁶⁸ or rate

⁶⁷ D.00-05-027, *mimeo.*, p. 3; D.86-03-090, 1986 Cal. PUC LEXIS 198, *2; and D.218, 1 CRC 520, 524-526.

⁶⁸ Applicants state that the rate cap would not preclude any increase in rates caused by legislative or regulatory initiatives, or force majeure events.

decreases passed through to Citizens' other customers. In addition, Citizens will provide the acquired GTE customers with a "welcome package" that includes telephone numbers to call if a customer has questions or a complaint about service quality.⁶⁹

The Applicants state that sale of the 26 GTEC exchanges will not affect rates or service for the remaining GTEC customers. The Applicants also claim that the acquisition of the GTE exchanges by Citizens will not affect rates or service for the existing customers of CTCC and CTCGS.

ORA recommends that the Commission require Citizens to (1) permanently retain GTE's tariffed Service Guarantee Rules for the customers in the 32 GTE exchanges acquired from GTE, and (2) extend the Service Guarantee Rules to all of Citizens' customers. GTEC's Rule 18 provides residential customers with a credit of \$25.00 if an installation or a repair service is not completed within an agreed timeframe. GTEC's Rule 19 provides business customers with a credit of \$100.00. GTEWC's Sheet No. 73 is similar to GTEC's Rule 18; and GTEWC's Sheet No. 74 is similar to GTEC's Rule 19.

The Applicants agree to implement ORA's recommendation if the Commission approves A.99-09-027 and A.99-09-031. The Applicants state that after the sales transactions are closed, all three of Citizens' California ILECs (i.e., CTCC, CTCGS, and Citizens Telecommunications Company of Tuolumne (CTCT)) will file advice letters to revise their tariffs to include rules similar to the GTE Service Guarantee Rules, thereby extending this benefit to 142,000 customers who would not otherwise receive it. Citizens will also extend the service guarantee to all customers served on the Hoopa and Yurok Reservations, including new customers who will be added once Citizens builds new facilities to serve significant areas of the Reservations that currently lack service.

⁶⁹ Citizens also lists its Customer Care Center number in its telephone books and customer billing statements.

Del Norte County recommends that the Commission require the Applicants, as a condition of sale, to implement the following measures to maintain and improve service in the County:

- Station a fulltime microwave technician in Del Norte County so long as communications in and out of Del Norte County are dependent on microwave transmission. Currently, a microwave technician must travel from Oregon, which prolongs the length of time the microwave link is out of service for maintenance or repair.
- Maintain the current customer service office in Del Norte County, and staff the office with a representative capable of rendering customer assistance.
- Require CTCGS to file a “rate and service operations plan” for its proposed operation of the GTEWC exchanges.
- Offer ISDN service in Del Norte County on a ”regular” or tariffed basis instead of contracts, as is the existing practice.
- Implement DSL service in the Crescent City urban area.

The Applicants state that if the Commission approves A.99-09-027 and A.99-09-031, then CTCGS will: (1) station a qualified microwave technician in Del Norte County; (2) maintain a customer service office in Crescent City where customers can pay bills, ask questions, and view (and order) telephone service and equipment; (3) maintain current ISDN services to those already receiving the service (including renewal of contracts), and offer new service until existing facilities are exhausted or an alternative service is available; and (4) begin the process to deploy DSL to the urban area of Crescent City. The Applicants oppose the County’s proposal to require CTCGS to file a “rate and service operations plan” for its proposed operation of the GTEWC exchanges.

b. Discussion

The 26 exchanges that GTEC proposes to sell represent less than 1% of GTEC’s access lines and even less of its revenues. Since the 26 exchanges are an insignificant part of GTEC’s operations, we conclude that the sale of these exchanges will have no adverse

effect on rates or quality of service for GTEC's remaining customers. In fact, service provided to GTEC's remaining ratepayers might benefit from the proposed sale as a result of GTEC's greater focus on its core business, which is one of the business reasons behind the transaction. There is no need to consider how the proposed sale of the six GTEWC exchanges will affect rates or quality of service provided by GTEWC, since GTEWC will cease to exist if the sale is approved.

No party disputes the Applicants claim that Citizens' acquisition of the GTE exchanges will not affect rates or service for the existing customers of CTCC and CTCGS. To ensure that the claim is realized,⁷⁰ we shall approve A.99-09-027 and A.99-09-031 with the following conditions:

1. CTCC and CTCGS shall not increase rates for customers in their existing exchanges due to costs attributable to the acquired GTE exchanges. To demonstrate their compliance with this condition, CTCC and CTCGS shall establish a system of books and records to allocate revenues and costs between their existing exchanges and the acquired GTE exchanges.
2. CTCC and CTCGS shall maintain quality of service in their existing telephone exchanges at present levels or better.

We recognize that the above two conditions cannot be easily monitored. If rates increase or service quality deteriorates for CTCC's and/or CTCGS's existing exchanges, these companies shall have the burden of demonstrating that the rate increase or deterioration of service was not caused by, or related to, the acquisition of the GTE

⁷⁰ Citizens' acquisition of the 32 GTE exchanges has considerable potential for affecting the rates and quality of service for Citizens' existing customers. This is because the acquisition will significantly increase the size of both CTCC and CTCGS. CTCC's acquisition of 26 GTE exchanges with 37,400 access lines will increase the size of CTCC from 117,615 access lines to 155,015 access lines, or 32%. Similarly, CTCGS's acquisition of six GTEWC exchanges with 13,300 access lines will increase the size of CTCGS from 15,300 access lines to 28,600, or 87%.

exchanges. If we find that the acquisition has contributed to a rate increase or deterioration in service, then Citizens may be subject to monetary penalties under § 2107 for having violated this decision.

We adopt Citizens' offer to extend the GTE Service Guarantee Rules (SGRs) to all customers of CTCC, CTCGS, and CTCT, including customers on the Hoopa Valley Indian Reservation and Yurok Indian Reservation. The SGRs will (i) enhance the quality of service provided to the customers of these ILECs, and (ii) help maintain the existing quality of service for customers in the 32 exchanges acquired by Citizens from GTE. CTCC, CTCGS, and CTCT shall each file an advice letter to implement the SGRs no later than 90 days after the date the sale is closed. The text of the SGRs incorporated into the tariffs of the Citizens ILECs shall mirror GTE's tariff language in all material respects. The Citizens ILECs shall notify their customers about the SGRs via bill imprints or bill inserts for three consecutive billing cycles, and annually thereafter.

No party disputes the Applicants' claim that Citizens has sufficient managerial, technical, and operational expertise to provide adequate service at reasonable rates to the customers in the 32 exchanges acquired from GTE. We agree.⁷¹ However, to ensure that customers in the 32 GTE exchanges continue to receive adequate service at reasonable rates, we will approve A.99-09-027 and A.99-09-031 with the following conditions.⁷²

⁷¹ Statements made by persons at the PPH and in letters to the Commission provide antidotal information that Citizens has provided poor quality of service to some of its customers. This information is insufficient to persuade us that service will deteriorate in the 32 GTE exchanges once Citizens has acquired the exchanges.

⁷² In the near term, service provided to customers in the 32 GTE exchanges acquired by Citizens should continue at existing levels, since service will continue to be provided by the same facilities and personnel. In the long run, service may improve as result of Citizens' strategic focus on rural markets and customers.

First, Citizens shall maintain quality of service in the acquired GTE exchanges at present levels or better.

Second, we adopt the Applicants' proposal for CTCC and CTCGS to retain for six months the GTE tariffs in effect at the time the sale is closed. This condition has the effect of freezing rates in the GTE exchanges for six months. However, the frozen rates may be adjusted up or down, if necessary, to reflect new legislation, Commission decisions, and force majeure events.

Third, we adopt the Applicants' proposal to cap all rates in the 32 GTE exchanges for an additional 12 months, i.e., until 18 months after the sale is closed. The capped rates may be adjusted up or down, if necessary, to reflect new legislation, Commission decisions, and force majeure events. In addition, the capped rates shall be reduced to reflect rate decreases passed through to Citizens' other customers.

Fourth, so that customers in the 32 GTE exchanges do not have to pay higher rates for basic services at the end of the 12-month rate cap, Citizens shall maintain the rate cap for any service listed in Appendix A of this decision if the Citizens rate for the service at the end of the 12-month rate cap is higher than the "capped" GTE rate. The rate cap for the services listed in Appendix A shall remain in effect on a service-by-service basis for a period that begins 18 months from the date the sale is closed, and ends the earlier of (i) 36 months from the date the sale is closed, or (ii) the Citizens rate for a particular service drops below the GTE rate. The capped rate for any service listed in Appendix A does not need to be adjusted downward to reflect rate decreases passed through to Citizens' other customers, as long as the Citizens rate remains higher than the GTE rate. The capped rates for services listed in Appendix A may be increased to reflect (i) legislative or regulatory initiatives, or (ii) force majeure events.

Fifth, we adopt Del Norte County's recommendation to require CTCGS to station a qualified microwave technician in Del Norte County. This condition will provide a needed improvement in the quality of service in Del Norte County. The condition shall remain in

effect until the six exchanges that CTCGS acquires from GTEWC no longer rely on a microwave link for communications with the outside world.

Sixth, we adopt Del Norte County's recommendation to require CTCGS to (i) maintain the existing customer service office in Crescent City, and (ii) staff the office with a representative capable of rendering customer assistance. This condition is necessary to maintain the existing quality of service. We adopt the Applicants' proposal to have the customer service office serve as a location where customers can pay bills, ask questions regarding service, and view (and order) telephone service and equipment.

Finally, we adopt Del Norte County's recommendation to require CTCGS to deploy DSL in the Crescent City urban area. This condition will provide a needed improvement in the quality of service in the Crescent City urban area, since high-speed internet access offered by DSL is increasingly necessary for social, community, and economic development. While the Applicants have committed to begin the "process" of deploying DSL, it is unclear whether the process will actually result in DSL being offered. Thus, to ensure that Del Norte County has access to the substantial benefits that accrue from high-speed access to the internet, we shall require CTCGS to offer DSL throughout the Crescent City urban area no later than two years from the date the sale is closed.

We decline to adopt Del Norte County's recommendation to require CTCGS to offer ISDN service on a "regular" or tariffed basis instead of contracts. Instead, we adopt the Applicants' commitment to (1) maintain current ISDN services to those already receiving the service (including renewal of contracts), and (2) offer new ISDN service until existing facilities are exhausted or an alternative service is available. The Applicants' commitment maintains, if not improves, the existing level of ISDN service.

We decline to adopt the County's recommendation to require CTCGS to file a "rate and service operations plan" for its proposed operation of the GTEWC exchanges. We are not exactly sure what the County is proposing. Furthermore, this decision adopts numerous conditions regarding rates and service for the six GTEWC exchanges acquire by CTCGS.

These conditions are, in effect, a “rate and service operations plan.” Therefore, it is unnecessary, if not redundant, to require CTCGS to file a “rate and service operations plan.”

In sum, we find that Citizens’ acquisition of the 32 GTE exchanges will maintain or improve the quality of service for all customers of the involved utilities. Our finding is based on the conditions already agreed to by the Applicants and the conditions adopted herein.

ii. Bar-O Boys Ranch

a. Background

GTEWC serves a remote region known as Idlewild. To serve Idlewild, GTEWC uses a radiotelephone system called the Basic Exchange Telecommunications Radio Service (BETRS).⁷³ The customers served by the BETRS system include a few private residences, a CalTrans maintenance station, and the Bar-O Boys Ranch (Bar-O Ranch). The Bar-O Ranch is a fulltime facility for male juvenile offenders operated by Del Norte County, and is presently served by one BETRS phone line.

b. Position of the Parties

Del Norte County states that the one BETRS line that serves the Bar-O Ranch is unreliable and of poor quality. According to the County, there have been occasions where it has taken days to restore phone service or where phone service was of such poor quality as to be virtually unusable. The County states that the lack of adequate phone service threatens the health and safety of Bar-O wards and staff. The County states that because of the need for improved service, the Commission should require the Applicants, as a condition of sale,

⁷³ Resolution T-14037, issued on January 24, 1990, authorized GTEWC to use BETRS to serve the Idlewild area. GTEWC maintains a separate tariff schedule for the “Idlewild Radio Service Area” that includes rates and charges specific to BETRS.

to provide expanded and reliable phone service for the Bar-O Ranch and other customers in the Idlewild area. ORA supports the County's recommendation.

The Applicants state if the Commission approves A.99-09-031 on terms that are acceptable to the Applicants, then CTCGS will construct, at the Applicants' own expense, a new telephone system to serve the Bar-O Ranch and other customers in the Idlewild area. The Applicants state that the new system will be sufficient to support: (i) dial-up Internet access, (ii) installation of additional lines, and (iii) projected growth in that area. The Applicants also state that the new system will include a state-of-the-art Spread Spectrum microwave radio system, digital loop carrier equipment near Patricks Creek Lodge, and copper cable from Patricks Creek Lodge to the Bar-O Ranch, the CalTrans Idlewild Station, and residential customers in the area. The Applicants caution that the inherent nature of microwave transmission makes it susceptible to interruption due to atmospheric conditions. Consequently, it is impossible for the Applicants to provide customers in the Idlewild area with the same quality of service as that provided to customers served by landline facilities.

c. Discussion

Del Norte County has convincingly shown that the health and safety of persons at the Bar-O Ranch is jeopardized by the unreliable BETRS system that currently serves the Idlewild area. Therefore, we agree with Del Norte County and ORA that the Applicants should be required, as a condition of sale, to provide improved service to customers in the Idlewild area. The Applicants have presented a proposal to construct, at their own expense, a new telephone system that will provide significantly improved service to the Bar-O Ranch and other customers in the Idlewild area. The proposal is reasonable, and we shall adopt it as a condition for our approving A.99-09-027 and A.99-09-031.

Because of the need for improved service the Idlewild area, we shall require CTCGS to replace the unreliable BETRS system with the new system no later than 18 months from the date the sale is closed. Since the Applicants are constructing the new system at their own expense, CTCGS shall (i) not increase its ratebase or rates to reflect the cost of the

new system⁷⁴; and (ii) offer service with the new system at the same rates and charges in GTEWC's current tariff for the Idlewild Radio Service Area. CTCGS shall cap the existing rates and charges for a period of 18 months from the date that all customers presently served by the BETRS system have access to the new system.⁷⁵

iii. Provision of Service to Indian Tribes

a. Background

The Hoopa Valley Indian Tribe (Hoopa Tribe) and the Yurok Indian Tribe (Yurok Tribe) are federally recognized Indian tribes. The Hoopa Valley Indian Reservation (Hoopa Reservation) is a square-shaped parcel of 144 square miles located in Humboldt County. The Yurok Indian Reservation (Yurok Reservation) begins at the confluence of the Trinity and Klamath Rivers on the northern border of Hoopa Reservation, and extends one mile on either side of the Klamath River to its terminus in Del Norte County – a distance of 47 miles.

Some areas of the Reservations are currently served by GTEC and GTEWC via the Hoopa and Klamath exchanges,⁷⁶ respectively. However, large sections of the Reservations have no telephone service except for cellular service or other forms of wireless communications. The wireless service, where it is available, is often unreliable due to the

⁷⁴ The cost of future additions to, and replacements of, the facilities required by this decision may be included in ratebase and rates applicable to customers in the Idlewild area.

⁷⁵ Elsewhere in this decision, we cap existing rates and charges in the 32 GTE exchanges for a period of 18 months from the date the sale is closed. Here, we conclude that the 18-month clock should start from the date that all customers presently served by the BETRS system have access to the new system.

⁷⁶ In A.99-09-027, GTEC requests authority to sell its Hoopa exchange to CTCC. In A.99-09-031, GTEWC requests authority to sell its Klamath exchange to CTCGS.

mountainous terrain of the Reservations, the lack of repeater stations, and interference from the weather.

In general, the unserved areas are remote, rugged, and sparsely populated. Most, if not all, of the unserved portions of the Reservations are outside the boundaries of GTE's existing service territory. Where telephone service is available, there is often no access to modern features such as Caller ID and DSL.

b. Position of the Parties

The Tribes recommend that the Commission require the Applicants, as a condition of sale, to provide basic telephone service to areas of the Reservations that currently lack telephone service. The Tribes state that the unserved areas include two public schools, a health clinic, a Head Start center, two tribal community centers, a grocery store, and at least 180 homes. The Tribes contend that provision of basic telephone service (including payphones at strategic locations) to unserved areas of the Reservations is vital to the health and safety of persons in these areas. According to the Hoopa Tribe, persons have died in unserved areas because of the delay in obtaining emergency help due to the absence of phone service.

The Tribes also recommend that the Commission require the Applicants, as a condition of sale, to provide the Reservations with access to modern telecommunication services such as Caller ID, DSL, and ISDN.⁷⁷ The Tribes state that broadband internet

⁷⁷ The Hoopa Tribe also asks the Commission to require the Applicants to negotiate in good faith regarding payment for past and future use of a microwave site located on Tribal lands. We decline to consider this matter, since this is fundamentally a contract dispute (i.e., the appropriate terms and conditions for GTE's use of the microwave site). As a general rule, the Commission does not involve itself in contract disputes merely because one party is a public utility. Furthermore, because the Commission has no jurisdiction to award damages, contractual disputes are better addressed through the civil courts. (D.00-10-005, 2000 Cal. PUC LEXIS 817, *5; D.99-11-020, 1999 Cal. PUC

Footnote continued on next page

access via ISDN and DSL is vital to their efforts to reduce the high levels of poverty and unemployment on the Reservations through education, home-based employment, and technology-based businesses.

The Applicants state that if the Commission approves the sale of the 32 GTE exchanges, then the Applicants will build, at their own expense, the infrastructure necessary to provide telephone service to certain areas of the Reservations that currently lack service. The Applicants also promise to help the Tribes in other ways. The Applicants' specific commitments are as follows⁷⁸:

- A. After the Commission approves the sale of the GTE exchanges, Citizens will file an application with the Commission for authority to (1) include the Yurok Reservation as part of its service territory, and (2) build the following infrastructure:
 - i. Install a fiber optic line along existing Pacific Gas & Electric poles starting at the Hoopa Central Office and terminating in the town of Weitchpec, which is located on the Yurok Reservation and borders the Hoopa Reservation.
 - ii. Install terminating equipment and distribution plant in Weitchpec to provide telephone service (including the ability to access dial-up internet service) to the following customers and community facilities:
 - a. The public school in Weitchpec.
 - b. The WCC, which includes the United Indian Health Services Clinic.
 - c. Pearson's local store.

LEXIS 858, *6; D.99-07-014, 1999 Cal. PUC LEXIS 481, *7; D.97-04-084, 1997 Cal. PUC LEXIS 348, *36; and D.96-03-009, 1996 Cal. PUC LEXIS 246, *6.)

⁷⁸ The Applicants' commitments are set forth in their brief filed on October 27, 2000.

- d. All residences located within approximately 3,000 feet of the WCC. Service beyond 3,000 feet will be subject to Citizen's tariffed line extension charges.
 - iii. Install a T-1 data line at the following locations: (a) the WCC, and (b) the Yurok Telecommunications Project microwave site. Citizens will waive the initial installation charges, but the customer will be responsible for paying tariffed monthly rates.
 - iv. Install payphones at the following locations: two payphones each at the WCC and Pearson's store; one payphone at the CalTrans site located outside Weitchpec on State Route 169; and one payphone at the entrance to the public campground located at Tish Tang on the Hoopa Reservation. No payphones exist at these locations, and the addition of payphones will enhance public health and safety by providing access to E911.
 - v. Build radio telecommunications facilities to provide telephone service to the Jack Norton Public School in Pecwan and the Head Start Center in Ke'pel.
- B. CTCC will work towards programming the switch serving the Hoopa Reservation to allow customers on the Reservation to receive CLASS features offered in conjunction with basic service.
 - C. Citizens will investigate the possibility of establishing payment agents in Weitchpec and Hoopa. The payment agents would provide limited customer service and access to an 800 number for further customer service.
 - D. Citizens will work with the Yurok Tribe to evaluate the economic feasibility of providing DSL to customers on the Yurok Reservation served by the Klamath Exchange.
 - E. Citizens will work with each Tribe to develop a procedure for regular communication between CTCC's local manager and each Tribe.
 - F. Citizens will provide limited engineering and technical assistance to help the Yurok Tribe⁷⁹ in applying for public and private grant

⁷⁹ In their opening comments on the draft decision, the Hoopa Tribe state that the Applicants should provide the Hoopa with the same level of assistance in applying for grants that the Applicants provide

Footnote continued on next page

programs.⁸⁰ Such assistance would be similar to the high-level evaluation of the feasibility of providing service to various areas of the Reservation that has resulted in the proposals developed here.

- G. CTCC will work with the Hoopa Tribe to develop a plan to bring advanced services to the Reservation; and will help the Tribe develop and distribute a survey to determine demand and economic support for such services.

The Applicants state that GTE will provide virtually all of the funding for the infrastructure that the Applicants have committed to install, while Citizens will be responsible for fulfilling the commitments.

The Hoopa Tribe states that it welcomes the Applicants' commitments to provide telecommunications infrastructure and services to the Reservations. However, the Hoopa Tribe recommends several modifications to Applicants' commitments. The Tribe states that with these modifications, the Commission should approve the sale of the GTE exchanges. The specific modifications recommended by the Hoopa Tribe are as follows. First, the Hoopa Tribe notes that the Applicants have committed to provide service to all homes within approximately 3,000 feet of the Weitchpec Community Center (which is located on the Yurok Reservation). The Hoopa Tribe states that the Applicants previously committed to provide service to two homes on the Hoopa Reservation that are located more than 3,000 feet from the WCC. The Tribe estimates that one home is less than a mile from

to the Yurok Tribe. In their reply comments on the draft decision, the Applicants agreed to assist the Hoopa Tribe to the same extent the Applicants assist the Yurok Tribe.

⁸⁰ The Applicants have identified the following possible sources of public and private funds to finance the provision of additional telecommunications infrastructure and services: the U.S. Department of Commerce's Technology Opportunities Program, the Wells Fargo American Indian Banking Service Program, Bank of America Rural 2000 Community Development Initiatives (which has created four committees to specifically address lending to Indian Tribes), Washington Mutual's Tribal Lending Initiative, and programs offered through the Native American Banking Association.

the WCC, and the other is 1 ½ miles to 2 miles from the WCC. The Tribe states that because the Applicants promised to serve these two homes, the Applicants should now be ordered to serve these homes.

Second, the Hoopa Tribe recommends that the Commission modify the Applicants' commitment to help the Tribe "develop and distribute a survey to assess demand and economic support" for advanced services on the Hoopa Reservation. The Hoopa Tribe states that while it can help the Applicants to prepare the study, the Tribe does not have the resources to conduct a study on its own. For this reason, the Hoopa Tribe requests that Commission require the Applicants to prepare an economic study with the assistance of the Tribe.

Finally, the Hoopa Tribe recommends that the Commission modify the Applicants' commitment to "work towards programming the switch serving the Hoopa Reservation to allow customers on the Reservation to receive CLASS features offered in conjunction with basic service." The Tribe states that the Applicants previously committed to install service improvements in the Hoopa exchange, such as CLASS features and advanced services, simultaneously with their availability in the Weaverville exchange. The Hoopa Tribe states that the Applicants' commitment to "work towards" the deployment of CLASS features falls well short of the Applicants' prior commitment to the Tribe. Therefore, the Hoopa Tribe asks the Commission to require the Applicants to install service improvements in the Hoopa exchange simultaneously with the availability of the service improvements in the Weaverville exchange.⁸¹

⁸¹ The Applicants did not dispute the Hoopa's assertion that that the Applicants had committed to (i) provide service to two homes on the Hoopa Reservation that are located more than 3,000 feet from the WCC, and (ii) install service improvements in the Hoopa exchange concurrently with their availability in the Weaverville exchange.

The Yurok Tribe states that the Applicants' commitments represent a major step towards meeting the Tribe's goal of providing telephone service for all persons and areas on the Yurok Reservation. Although the commitments would still leave most residents of the upper Yurok Reservation without service, the Yurok Tribe recommends that the Commission adopt the commitments with the following modifications. First, the Yurok Tribe is concerned that processing CTCC's application to expand its service territory could delay the provision of service to the Yurok Tribe. To accelerate the provision of service, the Tribe asks the Commission to use its authority under § 701 and § 762 to require CTCC to immediately include the Yurok Reservation within its service territory.

Second, the Yurok Tribe states that the fiber optic line the Applicants have committed to install should be (1) multi-strand to enhance reliability in the event of a failure of some portion of the line, and (2) capable of handling increases in service demand over the next two decades.⁸²

Third, the Yurok Tribe states the Applicants' proposal to install facilities to serve residences within 3,000 feet of the WCC would reach approximately 23 homes. According to the Tribe, installing facilities to all homes within a one-mile radius would reach approximately 55 homes. Therefore, in order to reach more homes, the Yurok Tribe requests that the Commission require the Applicants to provide service to homes within one mile of the WCC. The Yurok Tribe agrees that homes beyond the initial one-mile hookup range should pay tariffed line extension changes to obtain service.

⁸² The Yurok Tribe also recommends that the fiber optic line (FOL) be capable of supporting DSL. There is no need to address this recommendation, since FOLs and associated digital equipment are inherently capable of supporting DSL.

Fourth, the Yurok Tribe recommends that the Applicants install one payphone each at the Jack Norton Public School and the Judson-Brown Community Center (which is about 50 yards from Ke'pel Head Start Center).

Fifth, the Yurok Tribe accepts the Applicants' commitment to install a T-1 data line to the existing Yurok Telecommunications Project microwave site. However, because the current microwave system is so unreliable, the Tribe suggests that it may be better for the Applicants to install a spread spectrum microwave system with the capacity of a T-1 data line.

Sixth, the Yurok Tribes states that it accepts the Applicants' commitment to provide radio telecommunications infrastructure to serve the Jack Norton School in Pecwan and the Head Start Center in Ke'pel. The Tribe states that its acceptance is conditioned upon representations by the Applicants that the system to be installed will (i) be a spread spectrum microwave system incorporating current technology, (ii) be suited, to the extent possible, to the terrain and weather conditions of the Yurok Reservation, and (iii) accommodate growth in the service load over at least the next 10 years.

Seventh, the Tribe states that it accepts the Applicants' assurances that DSL will be made available to the Reservation to the same extent, and at the same time, that it is provided to areas contiguous to the Reservation.⁸³

⁸³ The Applicants did not dispute the Yurok's assertion that that the Applicants had committed to (i) provide radio telecommunications infrastructure to serve the Jack Norton School in Pecwan and the Head Start Center in Ke'pel that will (a) be a spread spectrum microwave system incorporating current technology, (b) be suited, to the extent possible, to the terrain and weather conditions of the Yurok Reservation, and (c) accommodate growth in the service load over at least the next 10 years; and (ii) provide DSL to the Yurok Reservation to the same extent, and at the same time, that it is provided to areas contiguous to the Reservation.

Finally, the Yurok Tribes recommends that the Commission require the Applicants use their “best efforts” to ensure that subscribers on the Yurok Reservation can call one another and the community of Hoopa without incurring toll charges. The Tribe states that the Applicants have indicated that they would seek to establish (i) the Reservation as a “community of interest,” and (ii) a rate center which would be appropriate to serve that community of interest.

Del Norte County and ORA support the Applicants’ commitments, and recommend that the Commission adopt the commitments as a condition for approving the sale of the GTE exchanges.

c. Discussion

There is an urgent need to provide telephone service to areas of the Hoopa and Yurok Reservations that currently lack service. Within these areas are two public schools, a medial clinic, a public campground, and approximately 180 homes. The lack of telephone service poses an ongoing threat to the health and safety of persons in the unserved areas that should be remedied as soon as possible. Therefore, to expedite the provision of service, we shall approve the sale of the 32 GTE exchanges on the condition that the Applicants install the following infrastructure for the provision of telephone service to major areas of the Hoopa and Yurok Reservations that currently lack service⁸⁴:

⁸⁴ We have authority under Section 214(e)(3) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, to order the Applicants to provide basic service to unserved portions of the Reservations. Section 214(e)(3) states, in relevant part, as follows: “If no common carrier will provide [service] . . . to an unserved community or any portion thereof that requests such service, the [FCC], with respect to interstate services . . . or a State commission, with respect to intrastate services, shall determine which common carrier or carriers are best able to provide such service to the requesting unserved community or portion thereof and shall order such carrier or carriers to provide such service for that unserved community or portion thereof.” (45 U.S.C. 214(e)(3), emphasis added.)

- A. A fiber optic line from the Hoopa Central Office to the village of Weitchpec.
- B. Terminating equipment and distribution plant in Weitchpec to provide telephone service to the following customers and community facilities:
- C. The public school in Weitchpec.
- D. The WCC, which includes the United Indian Health Services Clinic.
- E. Pearson's local store.
- F. All residences located within one mile (5,280 feet) of the WCC, including residences on the Hoopa Reservation located within one mile of the WCC. Applicants may install facilities to residences located more than one mile from the WCC. Otherwise, residences beyond one mile, including residences on the Hoopa Reservation (except those residences identified in the following bullet), will have to pay CTCC's tariffed line extension charges to obtain service.
- G. Two residences located on the Hoopa Reservation. One home may be less than a mile from the WCC, and the other is between a 1 ½ miles and 2 miles from the WCC.
- H. T-1 data line at the WCC.
- I. T-1 data line at the Yurok Telecommunications Project microwave site located near Pearson's store. In lieu of the T-1 line, the Applicants may install a spread spectrum microwave radio system with the capacity of a T-1 line.
- J. A spread spectrum microwave radio system to provide telephone service to the Jack Norton Public School in Pecwan and the Head Start Center in Ke'pel. The microwave system will have capacity to accommodate growth in the service load over the next 10 years.
- K. Payphones at the following locations: two payphones each at the Community Center and Pearson's store in Weitchpec; one payphone at the CalTrans site located outside Weitchpec on State Route 169; one payphone at the entrance to the Tish Tang Campsite located on the Hoopa Reservation; one payphone at the Jack Norton School in Pecwan;

and one payphone at the Judson-Brown Community Center in Ke'pel.
Each payphone shall provide free access to E911.⁸⁵

The above list of infrastructure includes (1) those facilities that the Applicants have agreed to provide if the Commission approves the sale of the 32 GTE exchanges; and (2) those facilities that the Tribes state the Applicants committed to provide, but which were not identified in the Applicants' brief filed on October 27, 2000. The list also includes several additional facilities. First, consistent with the recommendation by the Yurok Tribe, the list includes facilities to provide telephone service to homes within one mile of the WCC instead of 3,000 feet as proposed by the Applicants. Installation of facilities out to one mile may double the number of homes that receive telephone service around the village of Weitchpec, resulting in substantial benefits to the health, safety, and welfare of those who live in or travel through the area.⁸⁶ Conversely, failure to install facilities beyond 3,000 feet may result in many low-income households⁸⁷ in the area not receiving phone service due to their inability to pay CTCC's tariffed line extension charges.⁸⁸

⁸⁵ Payphones must offer coin-free and cost-free access to E-911. (D.90-06-018, 36 CPUC 2d 446).

⁸⁶ The Commission has previously held that expanding the geographic availability of telephone service enhances public health, safety, and welfare. (See, for example, D.96-10-066 (68 CPUC 2d 524, 563-64) and D. 95-07-050, 60 CPUC 2d 536, 568.)

⁸⁷ The Hoopa and Yurok Reservations have the highest levels of poverty and unemployment in Humboldt County. According to the U.S. Census, the rate of poverty and unemployment on Hoopa Reservation is 40.7% and 29.7%, respectively. (Opening Brief of the Hoopa Tribe filed on August 11, 2000, p. 5.)

⁸⁸ CTCC's tariffs provide a free footage allowance to a maximum of 700 feet of line extension and/or 300 feet of service connection. For extensions beyond the free footage allowance, CTCC's tariffed charges are (a) \$100.00 for the first 100 feet or fraction thereof, and (b) \$1.00 for each additional foot. (CTCC Cal. P.U.C. Nos. A2.3.3.1, A.2.3.3.2, and R1.17.A.4.)

Second, consistent with the recommendation by the Yurok Tribe, the list includes one payphone at the Jack Norton School in the village of Pecwan, and another payphone at the Judson-Brown Community Center in the village of Ke'pel. These two payphones are vital to the health, safety, and welfare of those who live in or travel to Pecwan and Ke'pel, since the only other phones in these communities (i.e., those to be installed at the Jack Norton School and the Judson Brown Community Center pursuant to this decision) may not be available during an emergency that occurs at night, on weekends, or during holidays.

We decline to adopt the Yurok Tribe's recommendation to require the Applicants to install a multi-strand fiber optic cable to the town of Weitchpec in order to enhance the reliability of the cable. The Yurok Tribe did not show that a multi-strand cable provides a significant or cost-effective improvement in reliability. Absent this showing, it would be unfair to require the Applicants to incur the additional cost of installing a multi-strand fiber optic cable.⁸⁹

We decline to adopt the Yurok Tribe's recommendation to require the Applicants to install a fiber optic cable that has the capacity to absorb anticipated increases in service demands over the next two decades. This recommendation is too vague to adopt, since there is no record in this proceeding regarding anticipated increases in service demands. Furthermore, the recommendation is probably unnecessary, since fiber optic cables already have a vast capacity, and that capacity is likely grow in the future along with advances in the electronic and optical equipment attached at ends of fiber optic cables.

The Applicants have already agreed to absorb the costs of facilities that they have committed to provide. To the extent this decision requires the Applicants to provide additional facilities, we shall use our authority under §§ 701, 851, and 854 to use the gain from the sale of the GTE exchanges to cover the cost of the facilities.

We find the Applicants' other commitments to provide improved service to the Hoopa and Yurok Reservations are in the public interest. To ensure that the Applicants fulfill their commitments, we will adopt the commitments as conditions for our approval of the sale of the 32 GTE exchanges. The adopted conditions are as follows:

- A. Customers in Weitchpec receiving T-1 service shall not pay any non-recurring installation changes, but shall pay tariffed monthly rates and any other recurring charges.
- B. CTCC shall deploy new service offerings in the Hoopa exchange at the same time they are made available in the Weaverville exchange. For the purpose of this decision, "at the same time" is defined as "within 60 days."
- C. Citizens shall provide DSL service to customers on the Yurok Reservation served by the Klamath exchange at the same time it is provided to areas contiguous to the Reservation. For the purpose of this decision, "at the same time" is defined as "within 60 days."
- D. Citizens shall investigate the possibility of establishing payment agents in Weitchpec and Hoopa. The payment agents would provide limited customer service and access to an 800 number for further customer service.
- E. Citizens shall work with each Tribe to develop a procedure for regular communication between CTCC's local manager and each Tribe.
- F. Citizens shall provide the Hoopa Tribe and the Yurok Tribe with limited engineering and technical assistance to help each Tribe in applying for public and private grant programs.
- G. CTCC shall (i) work with the Hoopa Tribe to develop a plan to provide advanced services to the Reservation, and (ii) help the Hoopa Tribe develop and distribute a survey to determine the demand and economic support for such services.

⁸⁹ CTCC should install a multi-strand fiber optic cable if this is standard industry practice.

The above list of includes (1) the service improvements that the Applicants agreed to provide if the Commission approves the sale of the 32 GTE exchanges; and (2) service improvements that the Tribes state the Applicants have committed to provide, but which were not identified in the Applicants' brief filed on October 27, 2000.

We decline to adopt the Hoopa Tribe's recommendation to require the Applicants to prepare a study regarding the demand for advanced telecommunications services on the Hoopa Reservation. While the Applicants should assist in the preparation of such a study, and we require them to do so in this decision, the ultimate responsibility for preparing the study properly rests with the Hoopa Tribe.

We decline to adopt the Yurok Tribe's recommendation to require the Applicants to use their "best efforts" to establish a rate center that allows telephone subscribers on the Yurok Reservation to communicate with one another and the community of Hoopa without incurring toll charges. This recommendation is too vague to be an enforceable condition. We will evaluate CTCC's proposed rate center to serve the Yurok Reservation if and when it comes before us.⁹⁰

We decline to adopt the Yurok's recommendation to require CTCC to immediately expand its service territory to include all of the Yurok Reservation. We see no point in requiring CTCC to expand its service territory until it has the infrastructure in place to serve the additional territory. Therefore, the expansion of CTCC's service territory shall be governed by General Order (GO) 96-A, Section I.E., which states as follows:

⁹⁰ The record in this proceeding indicates that the Klamath and Hoopa exchanges will serve the Yurok Reservation. Calls between the two exchanges will be subject to Citizens' tariffed rates. If such calls are currently toll calls, it is not apparent at this time how these calls could be rated at local calls without running afoul of § 453(a), which prohibits a utility from granting any preference or advantage as to rates, charges, service, or facilities.

New Territory. The utility shall, before commencing service, file tariff service area maps for extensions into territory contiguous to its line, plant, or system and not theretofore served by a public utility of like character. (Bold font in original.)

CTCC shall consult with the Hoopa Tribe regarding the appropriate boundaries for the newly expanded service area prior to filing the service area map⁹¹ required by GO 96-A.⁹²

We decline to adopt the commitment by the Applicants for CTCC to file an application for authority to (i) extend its service territory, and (ii) construct the previously identified infrastructure. CTCC already has authority under § 1001 to extend its service territory and facilities into any contiguous area that is not served by a public utility of like character.⁹³ We expect CTCC to act expeditiously in providing the previously identified infrastructure and services. However, to ensure that the risks to public health and safety caused by the lack of phone service are remedied as soon possible, we shall require CTCC to complete the installation of the previously identified infrastructure no later than 24 months from the date the sale is closed.⁹⁴

⁹¹ GO 96-A, Section II.A.4 states that service area maps must clearly indicate the boundaries of the service area, the principal streets and other main identifying features therein, and an indication of the general location of the service area in relation to nearby cities, highways, or other well-known reference points.

⁹² This decision requires CTCC, as a condition of sale, to extend its service territory to include at any homes on the Hoopa Reservation that are within one mile of the WCC on the Yurok Reservation. This decision also requires CTCC to serve at least one home on the Hoopa Reservation that is more than one mile from the WCC.

⁹³ See D.97-09-095, D.97-03-028, D.94-01-046, and D.91-02-039. Elsewhere in this decision, we require CTCC to file an application so that the Commission may conduct an environmental review of the proposed construction in accordance with CEQA.

⁹⁴ Pursuant to 45 U.S.C. 214(e)(2), the states are responsible for designating a carrier as “eligible telecommunications carrier” (ETC) in accordance with the criteria set forth in 45 U.S.C. 214(e)(1). CTCC should use the procedures set forth in Resolution T-16086 to seek designation as an ETC for

Footnote continued on next page

Since this decision requires the Applicants to install at their own expense the previously described facilities to serve the Hoopa and Yurok Reservations, the cost of these facilities shall be excluded from CTCC's ratebase and rates. To the extent that CTCC does not recover its reasonable operating costs⁹⁵ to provide basic service to the newly served areas of Hoopa and Yurok Reservations in the rates paid by the customers in these areas, CTCC should seek to recover the shortfall from federal universal service programs. CTCC may seek to recover any remaining shortfall from the California High Cost Fund-B (CHCF-B).

The Commission established the CHCF-B in D.96-10-066. The purpose of the CHCF-B is to subsidize the provision of basic telephone service in high-cost areas of the State. The amount of subsidy is based on previously approved cost studies that take into account depreciation.⁹⁶ Consequently, since CTCC cannot recover depreciation, the existing cost studies cannot be used to determine the amount of CHCF-B support that CTCC should receive to serve the areas of the Hoopa and Yurok Reservations required by this decision. Therefore, once CTCC has initiated service to these areas, it may file an advice letter to seek recovery from the CHCF-B of its recorded operating costs.⁹⁷ The Commission will address CTCC's advice letter in a resolution.

the newly served areas of the Reservations. CTCC has already been designated as an ETC for its existing service territory.

⁹⁵ Reasonable operating costs include costs to operate, maintain, and repair the new facilities required by this decision, but excludes depreciation and cost of capital associated with the new facilities. The cost of future additions to, and replacements of, the facilities required by this decision may be included in ratebase and rates.

⁹⁶ D.96-10-066, *mimeo*. p. 142.

⁹⁷ The advice letter must break down recorded operating costs by Census Block Group. CTCC may recover its recorded operating costs only to the extent these costs exceed the "benchmark" cost of \$20.30/month per line established by D.96-10-066.

In their comments on the draft decision, the Applicants contend that allowing CTCC to recover from the CHCF-B its costs to serve the Reservations provides no benefit to CTCC, since any recovery is automatically passed through to ratepayers in the form of reduced rates. The Applicants apparently do not understand the mechanics of the CHCF-B. In D.98-09-039, the Commission required Citizens to establish a permanent surcredit to offset CTCC's draws from the CHCF-B. The surcredit is fixed, and does not vary with CTCC's actual draws from the CHCF-B.⁹⁸ Accordingly, any additional costs that CTCC recovers from the CHCF-B to serve the Reservations will not be passed through to ratepayers.

C. Maintain or Improve the Quality of Management

i. Background

In deciding whether it is in the public interest to authorize the transfer of part or all of a public utility, the Commission considers if the new owner has adequate technical and managerial competence to continue the kinds and quality of service that customers have experienced in the past.⁹⁹ The Commission also considers if the new owner is experienced, financially responsible, and adequately equipped to continue the business sought to be acquired.¹⁰⁰

ii. Position of the Parties

Applicants state that Citizens has extensive experience in managing exchanges similar to the 32 exchanges that it seeks to acquire from GTE. Applicants claim that this experience demonstrates that Citizens has sufficient competence to maintain or improve

⁹⁸ D.98-09-039, *mimeo.*, p. 10 and OP 15.

⁹⁹ D.83-12-060, 13 CPUC2d 595, 598.

¹⁰⁰ D.38183, 46 CRC 5, 7 (1945).

the current level of management for the 32 GTE exchanges. Applicants also state that because Citizens has significant experience in California, Citizens' management is familiar with all California statutes and regulations affecting the 32 GTE exchanges.

Del Norte County states that the Commission must adopt three conditions in order to find that CTCGS's acquisition of the six GTEWC exchanges will maintain or improve the quality of management for these exchanges. First, the County states that the Commission should require CTCGS, as a condition of sale, to file a "rate and service operations plan" for its proposed operations of the six GTEWC exchanges. Second, the Commission should require Citizens to maintain a customer service office in Del Norte County. Finally, the Commission should require Citizens to adopt GTE's Service Guarantee Rules.

ORA states that it does not have any concerns regarding the managerial competence of Citizens, since Citizens has extensive experience with exchanges that are similar to those it is acquiring from GTE.

iii. Discussion

Citizens has extensive experience in managing telephone exchanges in California. CTCC has 30 exchanges with 117,615 access lines, CTCGS has eight exchanges with 15,300 access lines, and CTCT has three exchanges¹⁰¹ with 6,150 access lines.¹⁰² The areas served by Citizens are similar in many respects to the areas served by the 32 GTE exchanges. In light of Citizens' extensive experience in managing telephone exchanges like

¹⁰¹ CTCT tariff Revised Cal. P.U.C. Sheet No. 964-T.

¹⁰² *Federal Universal Service Support Mechanisms Fund Size Projections and Contribution Base for the First Quarter 2001*. (<http://www.universalservice.org/overview/filings/2000q1/1q2001final11022000t.doc>.)

those it seeks to acquire from GTE, we conclude that Citizens' acquisition of the 32 GTE exchanges will maintain or improve the quality of management for the 32 exchanges.¹⁰³

Del Norte County states that we need to adopt three conditions in order to find that Citizens' acquisition of the six GTEWC exchanges will maintain or improve the quality of management for these exchanges. We adopt two of these conditions elsewhere in this decision. However, we decline to adopt the County's proposed condition of requiring CTCGS to file a rate and service operations plan for the six GTEWC exchanges. If CTCGS were to file such a plan, presumably we would have to review and approve the plan. Given Citizens' extensive experience in operating telephone exchanges, we see no need to engage in this level of oversight. Furthermore, it is unnecessary for CTCGS to file a rate and service operations plan. Elsewhere in this decision, we adopt numerous conditions regarding rates and service for the GTEWC exchanges acquired by CTCGS. These conditions are, in effect, a rate and service operations plan.

D. Fair & Reasonable to the Affected Utility Employees

i. Background

In deciding whether it is in the public interest to authorize the transfer of part or all of a public utility, the Commission may consider if the proposed transfer is fair and reasonable to the affected utility employees.¹⁰⁴ Among the factors the Commission may

¹⁰³ There is no indication in the record of this proceeding that the quality of Citizens' management is any better or worse than GTE's.

¹⁰⁴ D.00-07-047, *mimeo.*, pp. 2, 7, 8, and 10; D. 00-06-079, *mimeo.*, p. 20; D.00-05-047, *mimeo.*, pp. 16, 19, 20, 29, and 31; D.00-05-023, *mimeo.*, pp. 22 and 31; D.00-04-009, *mimeo.*, pp. 3, 5 – 7; D.00-03-021, *mimeo.*, pp. 135, 136, and 163; D.99-03-019, *mimeo.*, p. 17 and 28; D.98-08-068, *mimeo.*, p. 28 and 53; D.98-05-022, *mimeo.*, pp. 20 and 24; D.98-05-022, *mimeo.*, pp. 20 and 24; D.97-03-067, 1997 Cal. PUC LEXIS 629, *136; and D.94-04-083, Cal. PUC LEXIS 342, *71 - *77.

consider is whether and how the proposed transfer will affect employees' jobs, pay, and benefits.¹⁰⁵

ii. Position of the Parties

Applicants state that the proposed sale of the 32 GTE exchanges will be fair and reasonable to all GTE employees affected by the sale. The Applicants note that the sales agreements appended to A.99-09-027 and A.99-09-031 specify that all active GTE employees whose work is related to the 32 exchanges being sold to Citizens will become employees of Citizens in the same or comparable positions at the same or comparable total compensation.¹⁰⁶ The agreements also specify that Citizens will assume all of GTE's contractual obligations relating to conditions of employment, employment separation, severance, and employee benefits that affect the transferred employees. The assumed obligations include Collective Bargaining Agreements and all benefits under GTE's Pension Plans that would have been paid to the transferred employees but for the sale of the exchanges to Citizens.

Del Norte County states that the Commission must adopt two conditions in order to find that CTCGS's acquisition of the six GTEWC exchanges will be fair and reasonable to utility employees. First, the County states that the Commission should require CTCGS, as a condition of sale, to file a rate and service operations plan for the six GTEWC exchanges.

¹⁰⁵ D.00-07-047, *mimeo.*, pp. 2, 7, 8, and 10; D.00-05-047, *mimeo.*, pp. 16, 19, 20, 29, and 31; D.00-05-023, *mimeo.*, pp. 22 and 3; D.00-03-021, *mimeo.*, pp. 135, 136, and 163; D.99-03-019, *mimeo.*, p. 17 and 28; D.98-08-068, *mimeo.*, p. 28 and 53; D.98-05-022, *mimeo.*, pp. 20 and 24; D.98-05-022, *mimeo.*, pp. 20 and 24; D.97-03-067, 1997 Cal. PUC LEXIS 629, *136; D.94-04-083, Cal. PUC LEXIS 342, *71 - *77; and D.91-05-028, 40 CPUC 2d 159, 253 -234.

¹⁰⁶ "Active Employees" includes all employees, full or part-time, who are on legitimate leave from, or on disability with GTE at the closing date.

Second, the Commission should require Citizens to maintain a customer service office in Del Norte County.

ORA states that is has not received any complaints or concerns from GTE employees or Citizens employees regarding the sale of the GTE exchanges.

iii. Discussion

For the following two reasons, we conclude that the sale of the 32 GTE exchanges will be fair and reasonable to all affected employees. First, the employees of Citizens and GTE did not participate in this proceeding on either a formal or informal basis. This suggests that the employees believe the proposed sale is fair and reasonable to affected employees. Second, the sales agreements appended to A.99-09-027 and A.99-09-031 contain provisions that protect GTE employees from any negative changes to their current positions, income, or benefits.¹⁰⁷ More specifically, the sales agreements specify that any GTE employee whose primary work is associated with the 32 GTE exchanges will (1) be employed by Citizens on the same basis at the same or comparable position, (2) receive the same total compensation, (3) receive the same benefits that are comparable in the aggregate to those currently provided by GTE, including the same pension benefit for at least five years after the close; and (4) receive the same recognition for service that the employee would have had under GTE programs.¹⁰⁸ In addition, the sales agreements specify that Citizens will assume union contracts without modification to GTE's obligations set forth in the contracts.¹⁰⁹

¹⁰⁷ Elsewhere in this decision, we conditionally adopt the sales agreements appended to A.99-09-027 and A.99-09-031.

¹⁰⁸ A.99-09-027, Exhibit 1, Article 11, and A.99-09-031, Exhibit 1, Article 11.

¹⁰⁹ Ibid.

Del Norte County states that we need to adopt two conditions in order to find that Citizens' acquisition of the 32 GTE exchanges will maintain or improve the quality of management for these exchanges. We adopt one of these conditions elsewhere in this decision. We decline to adopt the County's proposed condition of requiring CTCGS to file a rate and service operations plan for the six GTEWC exchanges. As described previously, the sales agreement between CTCGS and GTEWC contains provisions that protect the jobs, pay, and benefits of the affected GTEWC employees.¹¹⁰ In our view, the County's proposed plan is unlikely to provide additional assurance that CTCGS's acquisition of the six GTEWC exchanges will be fair and reasonable to the affected utility employees.

E. Fair & Reasonable to a Majority of Utility Stockholders

i. Background

In deciding whether it is in the public interest to authorize the transfer of part or all of a public utility, the Commission may consider if the proposed transfer is fair and reasonable to a majority of the affected utility shareholders. In considering this matter, the Commission does not focus on whether the buyer or seller has made a good deal.¹¹¹ Rather, the Commission considers if all pertinent information regarding the proposed transfer has been disclosed to shareholders,¹¹² and if a majority of shareholders support the transaction.¹¹³

¹¹⁰ There is no evidence in the record of this proceeding that Citizens' acquisition of the 32 GTE exchanges will adversely affect the jobs, pay, or benefits of any employees of Citizens.

¹¹¹ D.90-01-032, Cal. PUC LEXIS 35 at * 3.

¹¹² D.91-05-028, 40 CPUC 2d 159, at 235 and 265.

¹¹³ D.00-03-021, *mimeo.*, at pp. 137 and 163; D.97-03-067, 1997 Cal. PUC LEXIS 629 at *137; and D.94-04-083, 54 CPUC 2d 269, at 293;

ii. Position of the Parties

The Applicants present several reasons why the proposed sale of the 32 GTE exchanges to Citizens is fair and reasonable to a majority of the affected shareholders. First, they state that the officers of each Applicant, who have a fiduciary responsibility to act in the best interest of their shareholders, have concluded that the transaction is fair and reasonable for their shareholders. Second, the buyer and seller are independent of one another and dealing at arm's length. The Applicants claim that this is evidence that the sale is fair to both the buyer and seller. Finally, Applicants claim that the sale serves the interests of the shareholders by advancing the strategies of both the buyer and seller. GTE's strategy is to focus on providing telecommunications services to urban and suburban communities. The 32 GTE exchanges being sold are located outside of GTE's core markets. In contrast, Citizens' strategy is to focus on smaller, more rural communities. The 32 exchanges that it seeks to acquire from GTE fit well with Citizens' business strategy.

Del Norte County states that the sale of the 32 GTE exchanges is an "unbalanced" transaction in which GTE shareholders receive a disproportionate benefit due to the large premium that Citizens is paying to acquire the exchanges. The County is concerned that Citizens will seek to recoup the large premium by raising rates, cutting service, and/or slashing capital expenditures. The County states that in order for the Commission to find that the sale of the six GTEWC exchanges is fair and reasonable to a majority of the affected shareholders, the Commission must require CTCGS to file a rate and service operations plan for the GTEWC exchanges.

The Applicants respond that the County's concern about the size of the premium is irrelevant to the Commission's determination of whether the transaction is fair and reasonable to the shareholders. The Applicants add that it is impossible to purchase telephone exchanges for anywhere close to book value, since the reproduction cost of telephone exchanges is much higher than historical cost. The Applicants also note that the

Commission sets the rates for CTCC and CTCGS, and neither company can increase its rates to reflect the premium unless it is authorized to do so by the Commission.

ORA takes no position on whether the proposed sale of the 32 GTE exchanges is fair and reasonable to a majority of the affected shareholders.

iii. Discussion

For the following reasons, we conclude that the proposed sale is fair and reasonable to a majority of affected shareholders. First, the shareholders have had adequate notice about the details of the proposed sale. The parent companies of Citizens and GTE have disclosed pertinent terms of the proposed sales in their quarterly and annual reports to their shareholders.¹¹⁴ There is no record in this proceeding of any shareholder opposition to the proposed sale. Second, the proposed sale is an arms-length transaction that has the support of each Applicant's management, which suggests that the transaction is fair and reasonable to a majority of shareholders.

We share the County's concern that the large premium that Citizens is paying to acquire the GTE exchanges may induce Citizens to seek rate increases, cut service, and/or reduce capital expenditures. We adopt numerous conditions elsewhere in this decision to mitigate the possible adverse effects caused by the premium. However, we decline to adopt the County's recommendation to require CTCGS to file a rate and service operations plan for its proposed operations of the six GTEWC exchanges. The County did not explain why its recommendation is germane to the issue of whether the proposed sale is fair and reasonable to affected shareholders, and we are unable to infer why the recommendation is relevant to the issue at hand.

¹¹⁴ ALJ ruling issued on August 17, 2000, Fn. 5.

F. Beneficial to State and Local Communities

i. Background

In deciding whether it is in the public interest to authorize the transfer of part or all of a public utility, the Commission may consider if the proposed transfer will be beneficial on an overall basis to (i) state and local economies, and (ii) the communities served by the resulting public utility. In considering this matter, the Commission focuses primarily on the economic effects of the proposed transaction, but the Commission may consider other effects as well.¹¹⁵

ii. Position of the Parties

The Applicants state that the sale of the 32 GTE exchanges will provide tangible benefits to the state and local economies in general, and the communities served by the 32 exchanges in particular. This is because if the sale is approved, the Applicants will build, at their own expense, the infrastructure necessary to provide telephone service to major areas of the Hoopa and Yurok Indian Reservations that currently lack service. The Applicants will also build, at their own expense, a modern telephone system to serve the Bar-O Ranch in Del Norte County and surrounding areas. In addition, the Applicants will provide upgraded access to the internet (e.g., DSL) to customers in Del Norte County. Finally, Citizens will extend GTE's Service Guarantee Rules to all of Citizens' current and acquired customers.

Del Norte County states that the Commission must adopt the following conditions in order to find that CTCGS's acquisition of the six GTEWC exchanges will be beneficial to state and local economies, and to the communities served by the six exchanges: (i) use the

¹¹⁵ D.00-06-079, *mimeo.*, p. 21; D.00-05-023, *mimeo.*, p. 2; D.00-03-021, *mimeo.*, pp. 137, 138, 163, and 164; D.98-08-068, *mimeo.*, pp. 29 and 54; D.97-07-060, 1997 Cal. PUC LEXIS 557, *29 and *79; D.97-03-067, 1997 Cal. PUC LEXIS 629, *138 - *153; D.94-04-083, 1994 Cal. PUC LEXIS 342, *78 - *79; D.94-04-042, 54 CPUC 2d 43, 63; D.91-05-028, 40 CPUC 2d 159, 235-36 and 265; D.8491, 19 CRC 199, 200; and D.218, 1 CRC 520, 526.

gain from the sale of the CTCGS exchanges to establish a fund to pay for capital improvements and to offset future rate increases; (ii) require the premium paid by CTCGS to acquire the six GTEWC exchanges to remain permanently “below the line”; (iii) require Citizens to station a fulltime microwave technician in Del Norte County so long as communications in and out of Del Norte County are dependent on microwave transmission; (iv) require CTCGS to implement DSL in the Crescent City urban area and to “normalize” ISDN contract formations; (v) require CTCGS to maintain a customer service office in Crescent City; (vi) require CTCGS to file a rate and service operations plan for the six GTEWC exchanges; and (vii) require Citizens to adopt GTE’s Service Guarantee Rules.

ORA states that the proposed sale is beneficial on an overall basis to state and local economies, and to the communities served by Citizens and GTE.

iii. Discussion

This decision requires the Applicants, as a condition for our approving A.99-09-027 and A.99-09-031, to provide significant improvements to telecommunications service and facilities. These improvements include: (i) stationing a qualified microwave technician in Del Norte County, (ii) extending GTE’s Service Guarantee Rules to all of Citizens’ customers, (iii) provisioning DSL throughout the Crescent City urban area, (iv) providing service to major areas of the Hoopa and Yurok Indian Reservations that currently lack service, and (v) replacing the unreliable and obsolete BETRS system that currently serves the Idlewild area in Del Norte County with a modern telephone system. The potential adverse impacts from the proposed sale will be mitigated as described elsewhere in this decision.

The Hoopa and Yurok Indian Reservations offer a good example of the significant public benefits that will occur if the sale is approved and consummated. The Reservations are among the poorest areas of the State, with high levels of unemployment and poverty. The lack of phone service for major areas of the Reservations has undoubtedly contributed to the substandard conditions. The proposed sale, if consummated, will result in the

provision of telephone service for many areas of the Reservations that currently lack service. The phone service will provide desperately needed improvements to public health and safety; and also offer substantial economic, educational, social, and other benefits to the Hoopa and Yurok Indian Reservations.

The Bar-O Boys Ranch offers another example of the significant public benefits that will occur if the sale is approved and consummated. The Bar-O Boys Ranch, which is a remotely located juvenile detention facility, is currently served by an obsolete and unreliable radiotelephone system. The proposed sale, if consummated, will result in the provision of a modern telephone system to serve the Bar-O Boys Ranch and other customers in the Idlewild area. The new system will enhance the health and safety of Bar-O staff, their juvenile charges, local residents, the nearby CalTrans facility, passing motorists, and others. The new system will also have much more capacity compared to the one it will replace, which allow simultaneous internet access for multiple users.

For the preceding reasons, we conclude that the sale of the 32 GTE exchanges will be beneficial on an overall basis to (i) state and local economies, and (ii) the communities served by the resulting public utilities.

Elsewhere in this decision, we adopt all but two of the conditions that Del Norte County believes are necessary for the Commission to find that the sale of the GTE exchanges will be beneficial to (i) state and local economies, and (ii) local communities. We decline to adopt the County's proposal to use the gain from the sale of the six GTEWC exchanges to establish a fund to (1) pay for capital improvements and (2) offset future rate increases. It is unnecessary to adopt the County's proposal to establish a fund for capital improvements because this decision requires the Applicants to (i) make significant capital improvements related to the GTEWC exchanges (i.e., the provision of DSL in Crescent City and new facilities to serve the Bar-O Boys Ranch), and (ii) maintain capital expenditures at historical levels, adjusted for inflation. It is also unnecessary to establish a fund to offset future rate increases, since this decision prohibits the Applicants from raising rates to

recover any increased costs that may result from the proposed sale, including any costs associated with the premium.

We also decline to adopt the County's proposal to require CTCGS to file a rate and service operations plan for the six GTEWC exchanges. The plan is unnecessary, since this decision adopts conditions that ensure Citizens' acquisition of the GTE exchanges will be beneficial to (i) state and local economies, and (ii) the communities served by Citizens and GTE.

G. Preserve the Jurisdiction of the Commission

i. Background

In deciding whether it is in the public interest to authorize the transfer of part or all of a public utility, the Commission may consider if the proposed transfer will preserve (1) the jurisdiction of the Commission, and (2) the capacity of the Commission to effectively regulate and audit public utility operations.¹¹⁶

ii. Position of the Parties

The Applicants state that proposed sale of the 32 GTE exchanges will have no impact on the jurisdiction of the Commission or the capacity of the Commission to effectively regulate and audit the public utility operations of any of the involved entities. ORA submits a similar assessment of the proposed sale.

Del Norte County states that the Commission must adopt several conditions in order to find that CTCGS's acquisition of the six GTEWC exchanges will be done in a way that preserves the jurisdiction of the Commission. First, the County states that the Commission

¹¹⁶ D.00-06-079, *mimeo.*, pp. 21-22; D.00-05-023, *mimeo.*, pp. 23-24; D.00-03-021, *mimeo.*, pp. 138-142, and 164; D.98-08-068, *mimeo.*, pp. 25 and 54; D.97-07-060, 1997 Cal. PUC LEXIS 557, *29 and *78; D.94-09-042, 54 CPUC 2d 43, 63-64, and 67; D.94-04-083, 1994 Cal. PUC LEXIS 342, *80 - *85 and *134; and D.91-05-028, 40 CPUC 2d 159, 236 and 265.

should require Citizens to file a rate and service operations plan for the GTEWC exchanges. Second, Citizens should be required to maintain a customer service office in Crescent City. Finally, Citizens should be required to adopt GTE's Service Guarantee Rules.

iii. Discussion

We find that the proposed sale of the 32 GTE exchanges to Citizens will have no adverse effect on our jurisdiction, or our capacity to effectively regulate and audit public utility operations. After the sale is complete, the Public Utilities Code and all Commission decisions and General Orders will continue to apply with full force and effect to the rates, services, and operations of GTEC, CTCC, CTCGS, and the 32 GTE exchanges. For example, after the sale is complete, GTEC, CTCC, and CTCGS must continue to (1) maintain such books and records as the Commission may require to effectively regulate and audit these companies; and (2) provide the Commission with such information as the Commission may require to effectively regulate and audit these companies.¹¹⁷

Del Norte County states that the Commission must adopt three conditions in order to find that Citizens' acquisition of the GTE exchanges will be done in a way that preserves the jurisdiction of the Commission. We adopt two of these conditions elsewhere in this decision. However, we decline to adopt the County's proposal to require CTCGS to file a rate and service plan. It is unclear how the plan would help preserve the Commission's jurisdiction. In any event, the plan is unnecessary, since we find that the proposed sale will have no adverse effect on our jurisdiction.

¹¹⁷ Section 581 et seq., § 701, and § 791 et seq.

H. Competitive Effects

i. Background

In deciding whether it is in the public interest to authorize the sale of part or all of a public utility, the Commission has an obligation to consider whether and how the proposed sale would affect competition.¹¹⁸ In so doing, the Commission is not strictly bound by the dictates of antitrust laws. The Commission can approve actions that otherwise violate antitrust laws when other economic, social, or political considerations are found to be of overriding importance.¹¹⁹ In addition, the Commission does not need to choose another course of action if the proposed course has anti-competitive effects, so long as the chosen course of action is in the public interest.¹²⁰ The Commission may also disprove actions that do not violate antitrust laws.

ii. Position of the Parties

The Applicants state that the proposed sale will have no adverse effects on competition. The Applicants state that the Federal Trade Commission (FTC) and the United States Department of Justice (DOJ) have already reviewed the proposed sale, and neither agency found that the proposed sale would harm competition. Specifically, on July 12, 1999, GTE filed its Hart-Scott-Rodino (HSR) Pre-merger Notification form with the FTC and DOJ for the proposed transactions. Citizens filed its HSR Pre-merger Notification form with the FTC and DOJ on July 9, 1999. After reviewing the matter, the FTC and DOJ approved the transactions in an Early Termination Letter (i.e., the agencies voluntarily closed their review of the transactions before their statutorily allotted 30-day period had expired) dated July 21, 1999. However, under the FTC's rules, this approval became stale

¹¹⁸ D.70829, 65 CPUC 1, 636, 637, Fn.1, and 640-41; and D.91-05-028, 40 CPUC 2d 159, 179.

¹¹⁹ D.91-05-028, 40 CPUC 2d 159, 179.

when the transaction was not closed within one year. As a result, Citizens and GTE each re-filed for approval of the transaction in July 2000. The FTC and DOJ once again granted Early Termination and closed their review of the transaction on July 21, 2000.

The Applicants contend that the actions of the FTC and DOJ demonstrate that the proposed sale will have no adverse affect on competition. Indeed, the Applicants claim the proposed sale will actually benefit competition. This is because the 32 GTE exchanges are being transferred from a larger company, GTE, to a smaller company, Citizens. Thus, the sale would reduce the relative concentration levels as the number of access lines controlled by larger company decreases, and the number of access lines controlled by smaller company increases. The Applicants state that market deconcentration is generally considered to be procompetitive. The Applicants also note that GTEC is authorized to provide service as a competitive local exchange carrier in CTCC's service area. Thus, once A.99-09-027 is approved and the sale is complete, GTEC would become a competitor in the exchanges it just sold CTCC.¹²¹

ORA does not believe that the proposed sale will harm competition. Del Norte County did not express a position on this issue.

iii. Discussion

The FTC and DOJ have reviewed the proposed sale of the 32 GTE exchanges, and have determined that the sale will not harm competition. No party took a contrary position in this proceeding. Based on our own review of the record of this proceeding, we likewise conclude that the proposed sale does not raise any antitrust or anticompetitive issues that warrant our intervention.

¹²⁰ D.93-02-018, 48 CPUC 2d 162.

¹²¹ The service area of GTEWC is not subject to local exchange competition pursuant to the rural exemption in the Telecommunications Act.

I. Environmental Assessment

i. Background

The California Environmental Quality Act (CEQA) requires the Commission to consider the environmental consequences of projects that are subject to the Commission's review and approval.¹²²

ii. Position of the Parties

The Applicants assert that it can be seen with certainty that the sale of the 32 GTE will have no adverse impact on the environment. This is because the sale involves the transfer of existing assets, and the use of such assets will not change as a result of the sale.

The Applicants acknowledge that the construction of new infrastructure to serve the Bar-O Boys Ranch and the Hoopa and Yurok Indian Reservations will require an environmental review under CEQA. The Applicants state that they have not yet had an opportunity to prepare an environmental analysis for these still undefined projects. They state that before construction begins, Citizens will seek and obtain all required government approvals, including approval pursuant to CEQA, if required. Consequently, the Applicants believe that there is no need for the Commission to delay approval of the proposed sale to conduct an environmental review of these projects.

The Applicants state it can be seen with certainty that the provision of DSL in Crescent City will have no significant impact on the environment. This is because DSL utilizes existing outside plant facilities. The only new facilities necessary for DSL consists of equipment installed inside existing central offices and customers' premises. Thus, there will be no direct or reasonably foreseeable indirect impact on the environment. Accordingly, the Applicants believe that no further CEQA analysis of DSL is necessary.

¹²² Pub. Res. Code § 21080.

Del Norte County agrees with the Applicants that neither the sale of the GTE exchanges nor the provision of DSL will have any adverse impacts on the environment. The County also agrees with the Applicants that it is not appropriate at this time to conduct an environmental assessment of other construction projects that the Commission may require the Applicants to undertake as a condition of sale, since the exact nature of these projects, including basic engineering, is not yet known. The County states that it is enough for the Commission to require the Applicants, as a condition of sale, to comply with CEQA when planning and constructing any new infrastructure mandated by the Commission in this proceeding.

The Hoopa Tribe states that the construction of new infrastructure to serve the Hoopa Reservation could have an effect on the environment. However, since there is currently no definite plan for construction, the Hoopa Tribe cannot determine the potential environmental effects of the proposed construction.

The Hoopa Tribe states that CEQA does not apply to any projects located within the Hoopa Reservation. The Hoopa Tribe is treated by the United States Environmental Protection Agency in the same manner as a state. Therefore, the Hoopa Tribe, not the Commission, is fully responsible for all environmental compliance matters within its Reservation, including compliance with the National Environmental Policy Act (NEPA). The Hoopa state that because the Commission does not have jurisdiction to review the potential environmental impacts of construction within the Hoopa Reservation, the Commission need not develop a record on this matter.

The Yurok state that the construction of new facilities to serve the Yurok Reservation will likely require limited clearing of timber, the placement of security fencing, trenching, and grading. The Yurok Tribe does not believe that the construction will result in significant adverse impacts on the environment, but recommends that an environmental assessment be prepared to analyze various alternatives for the development of telecommunication services. The Yurok Tribe states that it is capable of preparing the

environmental assessment and should be considered the lead agency for all on-Reservation projects.

ORA states that once a detailed proposal for expanding and improving services are submitted by the Applicants, the Commission should conduct a formal environmental review to determine how the needs of the Tribes and Del Norte County can be best met without any adverse environmental impacts.

iii. Discussion

We agree with the Applicants and Del Norte County that the sale of the 32 GTE exchanges will not have any adverse environmental consequences. The sale involves the transfer of existing assets, and the use of these assets will not change as a result of the sale. Thus, the sale of the GTE exchanges to Citizens will not result in any greater impact on the environment than would have occurred under GTE's continued ownership of the exchanges. Since the proposed sale will not have an adverse effect on the environment, there is no need for us to conduct further environmental review of the sale.¹²³

We agree with the Applicants and Del Norte County that this decision's requirement for the CTCGS to provide DSL in the Crescent City urban area will not have any adverse environmental consequences. This is because the provision of DSL requires nothing more than the installation of additional equipment inside existing central offices and customers' premises. The installation of additional equipment inside existing structures will have no direct or reasonably foreseeable indirect impact on the environment.

This decision's requirement for the Applicants to construct new facilities to serve the Bar-O Boys Ranch and the Hoopa and Yurok Reservations may cause either a direct

¹²³ Myers v. Board of Supervisors of Santa Clara County, 58 Cal. App. 3d 413, 421-22 (1976), citing No. Oil Inc. v. City of Los Angeles, 13 Cal. 3d 68, 74 (1974). See also D.94-06-017, 55 CPUC 2d 126, 129.

physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. Therefore, the Commission is required by CEQA to conduct an environmental review of these projects. CEQA guidelines expressly recognize that the timing of the environmental review involves a balancing of competing factors, and that such review should occur as early as feasible in the planning process to enable environmental considerations to influence project design, yet late enough to provide meaningful information for environmental assessment.¹²⁴

With the CEQA guidelines in mind, we conclude that it is premature to conduct a CEQA review of the construction projects mandated by this decision. This is because it is uncertain whether the construction will actually occur, since the Applicants may decline to consummate the sale due to the conditions on the sale adopted by this decision. Furthermore, many of the basic details of the projects are unknown at this time, such as the design and engineering of the projects. Consequently, we lack sufficient information to conduct an adequate environmental assessment at this time. Therefore, we shall require CTCC and CTCGS, as a condition of sale, to comply with all applicable environmental laws and regulations when planning and constructing the infrastructure required by this decision. Such conditional approval is commonly imposed and is consistent with Commission precedent under CEQA.¹²⁵

We shall serve as the lead agency for conducting the required CEQA review. Accordingly, once CTCGS has completed a detailed engineering design and environmental

¹²⁴ 14 Cal. Code of Regs. § 15004.

¹²⁵ *Sundstrom v. County of Mendocino*, 202 Cal. App. 3d 292, 308 (1988), citing *Perley v. Board of Supervisors*, 137 Cal. App. 3d 424, 429 (1982). See also D.97-06-020, 1997 Cal. PUC LEXIS 367, *37.

assessment for the construction of new telecommunications facilities to serve the Bar-O Boys Ranch and surrounding areas, CTCGS shall file an application with the Commission for review and approval of the proposed construction under CEQA. Similarly, once CTCC has completed a detailed engineering design and environmental assessment for the construction of telecommunications infrastructure to serve the Hoopa and Yurok Reservations, CTCC shall file an application with the Commission for review and approval of the proposed construction under CEQA. If appropriate, the environmental assessment may be coordinated with any review conducted under NEPA.

The scope of the applications should be limited to an environmental review of the proposed construction. We do not plan to consider as part of these applications whether the proposed facilities will provide adequate service or serve a sufficient number of customers. Such matters should be addressed in a petition to modify this decision or a formal complaint.

We recognize that it is possible that we may conclude as a result of our environmental assessment that the construction required by this decision should not be approved due to adverse environmental impacts that cannot be adequately mitigated on a cost-effective basis. If this occurs, the Applicants shall file within one year from our making this finding a new application that proposes alternate means to provide the public with the same level of benefits that would have been provided by the canceled construction project(s).¹²⁶

Finally, as a condition for approving the sale of the 32 GTE exchanges, we shall require CTCC and CTCGS to comply with (1) all environmental rules and regulations applicable to the operation of the acquired exchanges, and (2) any environmental

¹²⁶ The application should be served on all the parties to this proceeding.

regulations that the Commission may adopt in Rulemaking (R.) 00-02-003 to the extent these new regulations pertain to the acquired exchanges.¹²⁷

VIII. Mitigation Measures

In deciding whether it is in the public interest to authorize the sale of part of all of a public utility, the Commission considers whether the proposed sale provides for mitigation measures to prevent significant adverse consequences that may result from the sale. The Commission may also attach conditions to the proposed sale in order to protect and promote the public interest.¹²⁸

Elsewhere in this decision, we adopt numerous measures to (1) prevent and/or mitigate the significant adverse consequences that may result from the proposed sale, and (2) expand and enhance the public benefits of the proposed sale. The adopted measures are listed in Appendix B of this decision.

IX. Whether to Approve the Sale of the GTE Exchanges

We conclude in this decision, *supra*, that we would rely on 11 criteria to decide whether it is in the public interest to authorize the sale of the 32 GTE exchanges. The first criterion is whether the proposed sale will maintain or improve the financial condition of the involved utilities. The proposed sale fails this criterion, since the sale may adversely affect the financial condition of Citizens due to the high price that Citizens is for the 32 GTE exchanges relative to the cash flow generated by these exchanges. This decision

¹²⁷ The Commission is considering in R.00-02-003 whether to revise its practices and policies for implementing CEQA with respect to telecommunications carriers. (R.00-02-003, OP 1)

¹²⁸ D.95-10-045, 62 CPUC 2d 160, 167-68; D.94-01-041, 53 CPUC 2d 116, 119; D.90-07-030, 1990 Cal. PUC LEXIS 612, *5; D.89-07-016, 32 CPUC 2d 233, 242; D.86-03-090, 1986 Cal. PUC LEXIS 198, *84-85 and COL 16; and D.3320, 10 CRC 56, 63.

adopts numerous conditions to shield ratepayers from potential adverse effects that may result from a deterioration of the financial condition of Citizens.

The second criterion is whether the proposed sale will maintain or improve the quality of service for California ratepayers. The proposed sale satisfies this criterion for two reasons. First, the sale will have no effect on the quality of service for the customers that remain with GTEC after the sale is consummated. Second, this decision adopts the following conditions that are intended to maintain and/or improve the quality of service for all of Citizens' existing customers and all customers in the 32 GTE exchanges acquired by Citizens:

- A requirement for CTCGS to (i) deploy DSL in the Crescent City urban area, (ii) build a new telephone system to provide improved service to the Bar-O Boys Ranch and other customers in the Idlewild area, (iii) station a qualified microwave technician in Del Norte County, and (iv) maintain a customer service center in Crescent City.
- A requirement for CTCC to build infrastructure to provide telephone service to significant areas of the Hoopa and Yurok Indian Reservations that currently lack service.
- A requirement for CTCC, CTCGS, and CTCT to adopt GTE's Service Guarantee Rule for all new and existing customers
- A prohibition on CTCC and CTCGS increasing rates for customers in their existing exchanges due to higher costs caused by the acquisition of the GTE exchanges.
- A requirement for CTCC and CTCGS to maintain quality of service at present levels or better for all customers in their current exchanges and the exchanges acquired from GTE.
- A requirement for CTCC and CTCGS to retain for six months the GTE tariffs in effect at the date the sale is closed, and to cap for an additional 12 months all rates in effect at the date the sale is closed, except for mandated rate increases, or rate decreases passed through to Citizens' other customers.

- A requirement for Citizens, at the end of the general 12-month rate cap, to maintain the rate cap for the services listed in Appendix A of this decision if the corresponding Citizen rate in effect at the time is higher. The rate cap shall remain in effect on a service-by-service basis for a period of 18 months (i.e., until 36 months from the date the sale is closed), or until the corresponding Citizens rate drops below the GTE rate, whichever comes first.
- A requirement for CTCGS to (i) maintain ISDN services to those GTEWC customers already receiving the service (including renewal of contracts), and (ii) offer ISDN service to new customers (or expanded service to existing ISDN customers) until existing facilities are exhausted or a better alternative service is available.

The third criterion is whether the proposed sale will maintain or improve the quality of management for the 32 GTE exchanges. The proposed sale satisfies this criterion, since Citizens has extensive experience in managing telephone exchanges in California that are similar to the 32 GTE exchanges.

The fourth criterion is whether the proposed sale will be fair and reasonable to all affected employees. The proposed sale satisfies this criterion. There was no opposition to the proposed sale by employees of either GTE or Citizens, which suggests that the employees believe the proposed sale is fair and reasonable to affected employees. Furthermore, there is no evidence in the record of this proceeding that any employee of Citizens will be adversely affected by the acquisition of the 32 GTE exchanges. In addition, the sales agreements appended to A.99-09-027 and A.99-09-031 contain provisions that protect GTE employees in the 32 exchanges from negative changes to their current positions, income, or benefits.

The fifth criterion is whether the proposed sale will be fair and reasonable to a majority of utility shareholders. The proposed sale satisfies this criterion. The sale is an arms-length transaction that has the support of each Applicant's management, which indicates that a majority of shareholders support the proposed transaction. In addition, the

shareholders have been informed of the proposed sale, and there is no record in this proceeding of any shareholder opposition to the proposed sale.

The sixth criterion is whether the proposed sale will be beneficial to (i) state and local economies, and (ii) the communities served by the resulting public utilities. The proposed sale, with the conditions adopted by this decision, satisfies this criterion. More specifically, this decision requires the Applicants to make substantial improvements to the telecommunications service and infrastructure that will provide substantial benefits to the state and local economies, as well as the communities served by GTEWC, CTCC, and CTCGS.

The seventh criterion is whether the proposed sale will preserve the jurisdiction of the Commission and its capacity to effectively regulate and audit public utility operations in California. The proposed sale satisfies this criterion. After the sale is complete, all Commission decisions, General Orders, and the Public Utilities Code will continue to apply with full force and effect to the rates, services, and operations of GTEC, CTCC, CTCGS, and the 32 GTE exchanges to be sold. Furthermore, pursuant to §581 et seq., § 701, and § 791 et seq., GTEC, CTCC, and CTCGS must continue to (1) maintain such books and records as the Commission requires to effectively regulate and audit these companies; and (2) provide the Commission with such information as the Commission may require to effectively regulate and audit these companies.

The eighth criterion is whether the proposed sale will preserve or enhance competition. The proposed sale satisfies this criterion. The FTC and DOJ have reviewed the proposed sale of the 32 GTE exchanges, and have determined that the sale will not harm competition. No party took a contrary position in this proceeding. We have also reviewed the proposed sale, and we did not find any antitrust or anticompetitive issues that warrant our intervention.

The ninth criterion is whether the proposed sale will preserve or enhance the environment. The proposed sale, with the conditions adopted by this decision, satisfies this

criterion. The sale of the GTE exchanges to Citizens will not cause any greater impact on the environment than would have occurred under GTE's continued ownership of the exchanges. This decision also requires Citizens to comply with (i) all environmental rules and regulations applicable to the operation of the acquired exchanges, and (ii) any environmental regulations that the Commission may adopt in R.00-02-003 to the extent these new regulations pertain to the acquired exchanges. The only potential impact on the environment, if any, will occur from the construction of new facilities to serve the Bar-O Boys Ranch and the Hoopa and Yurok Indian Reservations. This decision requires CTCC and CTCGS to plan and construct these facilities in accordance with applicable environmental laws and regulations. Any unavoidable adverse impacts on the environment that may result from the construction will be mitigated in accordance with applicable laws and regulations.

The tenth criterion is whether the proposed sale provides for mitigation measures to prevent significant adverse consequences that may result from the sale. The proposed sale, with the conditions adopted by this decision, satisfies this criterion. More specifically, this decision adopts numerous conditions to mitigate the possible adverse impact on (i) the financial condition of CTCC and CTCGS, (ii) service quality, and (iii) the environment. In addition, this decision adopts conditions to enhance the public benefits of the proposed sale, which provide indirect mitigation of the potential adverse impacts of the proposed sale.

The final criterion is whether there are reasonable options to the proposed sale. The proposed sale satisfies this criterion. ORA, Del Norte County, the Hoopa Tribe, and the Yurok Tribe submitted numerous recommendations for altering the terms and conditions of the proposed sale. Many of these recommendations are adopted elsewhere in this decision. Our reasons for not adopting a specific recommendation are also set forth elsewhere in this decision.

In sum, we find the proposed sale, as modified by this decision, will provide substantial benefits to the public. Conversely, denying authority for the sale would deprive the public of significant benefits that will result only if the sale is approved. These benefits include (1) the construction of new infrastructure to serve the Hoopa Reservation, the Yurok Reservation, and the Bar-O Boys Ranch; (2) the deployment of DSL in the Crescent City urban area; (3) the extension of the GTE's Service Guarantee Rules to all of Citizens' customers in California; and (4) the stationing of a microwave technician in Del Norte County. The failure of the proposed sale to satisfy one of the 11 criteria is more than offset by the significant public benefits that will result only if the sale is approved and consummated.

We conclude that the proposed sale of the 32 GTE exchanges, with the conditions adopted by this decision, is balanced, fair, and in the public interest. Therefore, pursuant to § 851, we will approve the sale of the 26 GTEC exchanges to CTCC as set forth in A.99-09-027 and the attached Asset Purchase Agreement, and with the conditions adopted by this decision. We will likewise approve pursuant to § 851 and § 854(a) the sale of the six GTEWC exchanges to CTCGS as set forth in A.99-09-031 and the attached Asset Purchase Agreement, and with the conditions adopted by this decision.

X. Gain on Sale

A. Background

In A.99-09-027, GTEC requests authority to sell 26 exchanges to CTCC for \$171 million.¹²⁹ The 26 exchanges had a net book value of \$24.5 million as of December

¹²⁹ A.99-09-027, Exhibit A, Section 3.1. The purchase price is subject to adjustment in accordance with the terms of the Agreement.

31, 1998.¹³⁰ Thus, GTEC stands to realize of a gain of approximately \$146.5 million before taxes, transaction costs, and contingent adjustments to the purchase price agreed to by GTEC and CTCC. In A.99-09-031, GTEWC requests authority to sell all six of its exchanges to CTCGS for \$52.6 million.¹³¹ The six exchanges had a net book value of \$18.4 million as of December 31, 1998.¹³² Thus, GTEWC stands to realize a gain of approximately \$34.2 million before taxes, transaction costs, and contingent adjustments to the purchase price.

B. Position of the Parties

The Applicants argue that Commission precedent requires that shareholders receive the entire gain from the sale of the 32 GTE exchanges. The Applicants state that the seminal Commission decision regarding gain on sale is D.89-07-016. In that decision, the Commission held that the entire gain from the sale of a utility distribution system accrues to shareholders if all of the following conditions are met: (1) the distribution system is sold to a municipality or other public agency, (2) the distribution system consists of part or all of the utility operating system located in a geographically defined area, (3) the public entity buying the system assumes all responsibility for serving the customers of the system, (4) the ratepayers have not contributed capital to the distribution system, and (5) the remaining ratepayers of the utility are not adversely affected. In D.93-01-025, the Commission expanded the scope of D.89-07-016 to include the sale of a distribution

¹³⁰ A.99-09-027, Exhibit A, Schedule 8.1.21.

¹³¹ A.99-09-031, Exhibit A, Section 3.1. The purchase price is subject to adjustment in accordance with the terms of the Agreement.

¹³² A.99-09-031, revised Exhibit D filed on May 31, 2000. A.99-09-031, Exhibit A, Schedule 8.1.21, shows that the net book value of the GTEWC exchanges was \$14.2 million as of December 31, 2000, which indicates that the gain on sale is approximately \$38.4 million.

system from one utility to another. The Applicants state that the sale of the GTEC and GTEWC exchanges satisfies all the D.89-07-016 conditions, as modified by D.93-01-025.

Del Norte County states that GTEWC's ratepayers should receive at least half, and preferably all, of the gain from the sale of GTEWC's exchanges ("gain on sale").¹³³ Del Norte County asserts that ratepayers are entitled to the gain for the following reasons. First, GTEWC's shareholders have already been fairly compensated for their investment through a fair rate of return. Second, GTEWC is not entitled to the gain because it has provided inferior service at rates higher than the state average. Third, the significant premium that CTCC is paying for the GTEWC exchanges is due to the high rates paid by GTEWC's ratepayers. Since the high rates are the ultimate source of the gain, the ratepayers have acquired a beneficial interest in the gain. Fourth, because CTCC is paying a significant premium, it may not have sufficient capital leftover to upgrade the antiquated telecommunications infrastructure that serves Del Norte County. Thus, the capital for the needed improvements should come from the gain on sale. Finally, if GTEWC were allowed to keep 100% of the gain on sale, it would not be in the public interest to approve the transaction, since there would be no meaningful benefit to ratepayers from the transaction.

ORA recommends that the gain on sale of the 26 GTEC exchanges be shared with GTEC's ratepayers based on a "benchmark" rate of return (ROR) of 15.5%. ORA states that its proposal is consistent with D.94-09-080, which, according to ORA, requires the gain from the sale of GTEC exchanges to be shared with ratepayers in accordance with the New

¹³³ Del Norte County recommends that the gain on sale be distributed as follows: (i) use 25% of the gain for a one-time surcredit; (ii) use 25% of the gain for capital improvements (e.g., fiber optic cable to Brookings, Oregon, new facilities to serve the Bar-O Boys Ranch, and provision of DSL in Crescent City); (iii) use 40% of the gain to offset future rate increases; and (iv) use 10% of the gain for economic development. Because this decision finds that the gain on sale should accrue to shareholders, with certain exceptions, there is no need to consider the details of the County's proposal for how the gain should be distributed.

Regulatory Framework (NRF). Under the NRF in effect at the time D.94-09-080 was issued, all of GTEC's earnings up to a "ceiling" rate of return (ROR) of 15.5% accrued to shareholders, and any earnings in excess of the ceiling ROR accrued to ratepayers.

ORA states that although the Commission suspended the NRF sharing mechanism in D.98-10-026, the Commission did not clarify how gains from the sale of telephone exchanges should be allocated in the absence of the sharing mechanism. In the absence of clear guidance, ORA believes the Commission should rely on the precedent established by D.94-09-080 wherein the gain on sale was allocated between ratepayers and shareholders based on the NRF sharing benchmark of 15.5% ROR. ORA also argues that if the Commission finds that D.94-09-080 is not applicable to the sale at issue here, the public interest requires that ratepayers receive a reasonable portion of the gain from the sale of the 26 GTEC exchanges.

The Yurok Tribe recommends that 100% of the gain on sale of the 26 GTEC exchanges be used to fund the expansion and improvement of the telecommunications infrastructure serving the Yurok Reservation and adjacent communities. The Yurok Tribe's specific funding requests include (1) the provision of basic service to areas of the Yurok Reservation that currently have no service, and (2) rate discounts for the Yurok Tribe and its members.

The Applicants dispute ORA's assertion that NRF precedent governs the gain from the sale of the 26 GTEC exchanges. According to the Applicants, D.89-07-016 and its progeny is the controlling precedent. But even if the NRF precedent were applicable, the Applicants believe that 100% of the gain on sale would still accrue to shareholders. This is because the Commission suspended the NRF sharing benchmark in D.98-10-026, which had the effect of allocating all gains and losses to shareholders. The Applicants argue that it would be grossly unfair to disturb the current NRF mechanism by cherry picking the gain on sale for the benefit of ratepayers while leaving shareholders at risk for all losses.

Applicants state that GTE's gain on sale is not an open checkbook to be used for funding infrastructure developments for property that GTE will no longer own. Rather, it is a source of funding for GTE's strategic and operational goals. The Applicants state that depriving utilities of the gains from the sale of property will chill any further efforts on the part of telecommunications companies in California to reposition themselves to meet competition. Thus, franchise boundaries and owners will tend to remain frozen, with little financial incentive for future sellers to market their properties.

Finally, the Applicants state that the Commission would be setting dangerous precedent if any of the gain on sale were taken from the shareholders. The Applicants state that if this were the rule, no utility would ever again seek to sell property with so many hands reaching to take away any benefit. Furthermore, if GTE were deprived of the benefits of the transaction, then GTE would have to reconsider the sale.

C. Discussion

As a preliminary matter, we note that elsewhere in this decision we require the Applicants to build, at their own expense, substantial new infrastructure to serve the Bar-O Boys Ranch, the Hoopa Reservation, and the Yurok Reservation. This requirement has the effect of allocating to ratepayers a sizeable portion of the gain from the sale of the GTE exchanges. Therefore, the following discussion regarding the allocation of gain on sale applies only to those gains that have not already been allocated to ratepayers by our actions elsewhere in this decision.¹³⁴

We turn first to the allocation of GTEC's gain on sale. In D.94-09-080, the Commission decided an issue identical to the one before us here, namely, the allocation of the gain from the sale of GTEC exchanges to CTCC. The Commission held in D.94-09-080

that the gain from the sale should be treated the same as GTEC's other revenues under NRF.¹³⁵ Under the NRF in effect at the time D.94-09-080 was issued, gain on sale was allocated to ratepayers only to the extent that GTEC's total earnings, inclusive of gain on sale, exceeded a ROR of 15.5%. As it turned out, GTEC's ROR fell short of 15.5%,¹³⁶ resulting in the entire gain on sale going to shareholders.

We find that the precedent established by D.94-09-080 is dispositive of how GTEC's gain on sale should be allocated in this proceeding. Therefore, consistent with D.94-09-080, GTEC's gain on sale in this proceeding shall be treated the same as GTEC's other revenues under NRF. Thus, GTEC shall record the gain on sale "above the line" as operating revenues, and include the gain in the ROR under NRF that GTEC reports to the Commission. However, since none of GTEC's earnings are shared with ratepayers under the revised NRF adopted in D.98-10-026,¹³⁷ the effect of today's decision, like D.94-09-080, is to allocate the entire gain on sale to GTEC's shareholders.

We are not persuaded by ORA's argument that D.94-09-080 established a precedent of allocating gain on sale between GTEC's ratepayers and shareholders based on a "benchmark" ROR. As explained earlier, the ratepayers ultimately received none of the gain on sale at issue in D.94-09-080. Thus, D.94-09-080 did not establish a precedent of using a benchmark ROR to allocate gain on sale. Rather, the precedent established by D.94-09-080 was that gain on sale should be treated the same as any other utility revenues under NRF. This precedent is evident in the following excerpts from D.94-09-080:

¹³⁴ The public may also receive a substantial portion of the gain on sale via the taxes that GTE may have to pay on the gain.

¹³⁵ D.94-09-080, 56 CPUC 2d 539, Conclusion of Law No. 3.

¹³⁶ D.98-10-026, Finding of Fact 26.

¹³⁷ D.98-10-026, OP 1.b.

We concur with GTEC that the decision to convey the exchanges to Citizens is just the kind of management activity we intended to encourage by the adoption of the NRF. Since the gain from that sale is not a Z factor, it should be considered the same as any other positive or negative cash flow to GTEC under the new regulatory framework. It would be inappropriate to single out this transaction from any other management decision to allocate, deploy, convey, or alienate utility resources. (56 CPUC 2d 539, 546-547.)

The disposition of GTEC's gain on sale of exchanges to Citizens should be governed by the principles of the new regulatory framework (NRF) . . . (Id., Conclusion of Law 3)

Under the precedent established by D.94-09-080, gain on sale is shared with ratepayers in accordance with NRF. Under the current NRF adopted in D.98-10-026, ratepayers do not share in GTEC's earnings, including gain on sale.

We next turn to the allocation of the gain from the sale of the GTEWC exchanges. In situations involving the sale of an entire utility, as is the case with the sale of the six GTEWC exchanges, we have always allocated to shareholders the gains and losses from the sale.¹³⁸ Consistent with our precedent, we will allocate to shareholders the gain from the sale of the GTEWC exchanges. But even if the sale of the GTEWC exchanges did not involve an entire utility, our precedent would still indicate that the gain should accrue to shareholders. More specifically, GTEWC, unlike GTEC, is subject to traditional rate of return regulation. The allocation of gains from the sale of "distribution systems" by rate-of-return utilities is a well-settled issue. The seminal decision was D.89-07-016 wherein the Commission held that the entire gain from the sale of a utility distribution system accrues to shareholders if all of the following conditions are met¹³⁹:

¹³⁸ D.98-09-038, 1998 Cal. PUC LEXIS 936, *13; and D.89-07-016, 32 CPUC 2d 233, 235.

¹³⁹ D.89-07-016, 32 CPUC 2d 233, OPs 1 - 4.

1. An electric, gas, or water distribution system is sold to a municipality or other public agency.
2. The distribution system consists of part or all of the utility operating system located in a geographically defined area.
3. The public entity buying the system assumes all responsibility for serving the customers of the system.
4. The ratepayers have not contributed capital to the distribution system.
5. Ratepayers are not adversely affected by the sale.

In D.93-01-025 and D.98-09-038, the scope of D.89-07-016 was expanded to include the sale of distribution systems to other utilities.¹⁴⁰ In D.94-09-080, the Commission recognized that the scope of D.89-07-016 included the sale of telephone exchanges by a utility operating under rate-of-return regulation.¹⁴¹

The record of this proceeding shows that the sale of the GTEWC exchanges to CTCGS clearly satisfies the first three conditions. The sale also satisfies Condition 4, since there is no evidence that ratepayers contributed any capital to the six GTEWC exchanges being sold. In addition, the sale satisfies Condition 5, since this decision adopts conditions to protect ratepayers from being adversely affected by the sale. Therefore, since the sale of the GTEWC exchanges satisfies the conditions adopted in D.89-07-016, as modified by subsequent Commission decisions, we conclude that the gain from the sale of the GTEWC exchanges should accrue to shareholders.¹⁴²

¹⁴⁰ D.93-01-025, 47 CPUC 2d 580, 599-600; and D.98-09-038, 1998 Cal. PUC LEXIS 936, *12, *13, and *19.

¹⁴¹ D.94-09-080, 56 CPUC 2d 539, 545-46.

¹⁴² The Commission has repeatedly relied on the precedent established by D.89-07-016 et seq., to allocate to shareholders the entire gain from the sale of utility distribution systems. See, for example, D.01-05-026, D.00-07-011, D.00-02-022, D.99-06-086, D.99-06-015, D.99-03-047, D.99-03-033, D.98-09-038, D.98-07-081, D.98-07-069, D.98-07-067, D.98-03-029,

Footnote continued on next page

We reiterate that the previous discussion regarding the allocation of the gain from the sale of the GTEC and GTEWC exchanges applies only to those gains that have not been allocated to ratepayers by our actions elsewhere in this decision. The allocation of a portion of the gain to ratepayers is not inconsistent with the previously described precedent that generally requires gain on sale to be allocated to shareholders. Rather, such precedent is subordinate to our duty under § 851 and § 854 to authorize the sale of telephone exchanges only if it is in the public interest to do so. To this end, we may impose conditions on a sale pursuant to our authority under § 701, § 851, and § 854 to ensure that the sale is in the public interest.¹⁴³ Our actions elsewhere in this decision to allocate a portion of the gain on sale to ratepayers were necessary to fulfill our statutory duty to ensure that sale of the GTEC and GTEWC exchanges is in the public interest. That having been accomplished, we may allocate the remainder of the gain on sale to shareholders in accordance with longstanding precedent.

We agree with the arguments advanced by Del Norte County and the Yurok Tribe that the gain from the sale of the GTEC and GTEWC exchanges should be used to improve service. Elsewhere in this decision we require the Applicants to build, at their own expense, significant new infrastructure to substantially improve service. The effect of this requirement is to allocate a significant portion of the gain on sale to ratepayers.

We disagree with Del Norte County and the Yurok Tribe that the entire gain on sale should be allocated to ratepayers. This decision provides a fair and balanced allocation of benefits between the Applicants on the one hand, and the public on the other. In addition,

D.98-03-024, D.98-02-026, D.97-06-030, D.95-12-048, D.95-04-061, D.94-12-033, D.93-09-015, D.90-12-076, D.90-12-068, D.90-10-018, D.90-10-017, D.90-08-054, and D.90-06-073. In D.97-11-019, the Commission apparently relied on D.89-07-016 to allocate to shareholders the entire loss from the sale of a utility distribution system.

¹⁴³ D.89-07-016, 32 CPUC 2d 233, 235.

the Applicants have made it clear that GTE may cancel the sale of its exchanges if it receives none of the gain on sale. Cancellation of the sale would not be in the public interest, since the significant public benefits would be lost if the sale is not consummated. The public benefits that would be lost include (1) the construction of new infrastructure to serve the Hoopa Reservation, the Yurok Reservation, and the Bar-O Boys Ranch; (2) the deployment of DSL in the Crescent City urban area; (3) the extension of the GTE's Service Guarantee Rules to all of Citizens' customers in California; and (4) the stationing of a microwave technician in Del Norte County. Furthermore, allocation of the entire gain on sale to ratepayers would be inconsistent with Commission precedent described previously.

XI. Public Utilities Code Section 311(g)

On April 26, 2001, the draft decision of assigned Commissioner Lynch and the alternate draft decision of assigned Administrative Law Judge Kenney were mailed to the parties in accordance with § 311(g) and Rule 77.1. Section 311(g)(1) and Rule 77.1 require the draft decisions in this proceeding to be (i) served on all parties, and (ii) subject to at least 30 days of public review and comment prior to a vote of the Commission. Section 311(g)(2) and Rule 77.7(g) allow the 30-day period to be reduced or waived upon the stipulation of all parties.

On April 26, 2001, counsel for Applicants submitted an e-mail to the Chief ALJ in which the Applicants state that all parties had agreed to submit opening comments regarding the draft decisions on May 7, 2001, and reply comments on May 11, 2001. The Applicants, Del Norte County, the Hoopa Tribe, ORA, and the Yurok Tribe submitted opening comments on May 7, 2001. The same parties submitted reply comments on May 11, 2001. The opening and reply comments have been reflected, as appropriate, in the final decision adopted by the Commission.

On May 17, the alternate draft decision of Commissioner Bilas was mailed to the parties. Rule 77.6(e) requires that the alternate decision be subject to at least 14 days of public review and comment prior to a vote of the Commission. Comments regarding the

alternate draft decision of Commissioner Bilas were submitted on May 21, 2001, by the Applicants, the Hoopa Tribe, ORA, and the Yurok Tribe. These comments have been reflected, as appropriate, in the final decision adopted by the Commission.

Findings of Fact

1. CTCC is a mid-sized ILEC with 117,615 access lines in 30 exchanges in northern California. The regions served by CTCC consist mostly of rural areas and small towns. CTCC had \$100 million in operating revenues during 1999.

2. CTCGS is a small ILEC with 15,300 access lines in eight telephone exchanges. Seven of the exchanges are located in northern California, and one in southeastern California. The regions served by CTCGS consist mostly of rural areas and small towns. CTCGS had \$13.6 million in operating revenues in 1998.

3. CTCC and CTCGS are subsidiaries of CCC, a publicly held company formerly known as Citizens Utilities Company. At the time A.99-09-027 and A.99-09-031 were filed, the subsidiaries of CCC, including CTCC and CTCGS, had approximately 1 million access lines in 13 states.

4. GTEC is a large ILEC with 4,082,000 access lines in 193 exchanges. The territory served by GTEC consists mostly of densely populated areas of Southern California, but GTEC also has many rural exchanges located throughout California. GTEC had \$3.1 billion in operating revenues during 1999.

5. GTEWC is a small ILEC with 13,300 access lines in six telephone exchanges. All six exchanges are located in Northwest California. The territory served by GTEWC consists mostly of rural areas and small towns. GTEWC had \$13.2 million in operating revenues during 1999.

6. GTEWC is a subsidiary of GTE Northwest Incorporated. GTE Northwest provides local exchange service in Idaho, Oregon, and Washington, and is a sister company of GTEC.

Most of GTEWC's administrative and operational functions are performed by GTE Northwest in Oregon and Washington.

7. In A.99-09-027, CTCC and GTEC request authority under § 851 for GTEC to sell 26 exchanges to CTCC in accordance with the Asset Purchase Agreement appended to A.99-09-027. Under the Agreement, CTCC will pay \$171 million to purchase the 26 exchanges. The 26 exchanges have approximately 37,400 access lines. Six of the exchanges are located in southeast California, and the remaining 20 exchanges are located throughout northern California. The service territories of the 26 exchanges consist of rural areas and small to medium-sized towns.

8. Pursuant to the CTCC-GTEC Agreement, CTCC will acquire virtually all of GTEC's customers, properties, and assets in the 26 GTEC exchanges, including: (i) all telephone plant, (ii) end-user accounts receivable, (iii) material and supply inventories, (iv) non-regulated construction work-in-progress, (v) FCC licenses, (vi) assigned contracts; (vii) transferred books and records, (viii) real property leases; and (ix) all other business, property assets, work-in-progress and rights of GTEC that relate primarily to the purchased exchanges.

9. In A.99-09-031, CTCGS and GTEWC request authority under § 851 and § 854(a) for GTEWC to sell all six of its exchanges to CTCGS in accordance with the Asset Purchase Agreement appended to A.99-09-031. Under the Agreement, CTCGS will pay \$54.6 million to acquire the six GTEWC's exchanges. The Applicants subsequently changed their minds, and now contend that § 854(a) does not apply to A.99-09-031.

10. Pursuant to the CTCGS-GTEWC Agreement, CTCGS will acquire virtually all of GTEWC's customers, properties, and assets in the six exchanges, including: (i) all telephone plant, (ii) earned end-user accounts receivable, (iii) material and supply inventories, (iv) non-regulated construction work-in-progress, (v) FCC licenses, (vi) assigned contracts; (vii) books and records, (viii) real property leases; and (ix) all other

business, property assets, work-in-progress and rights of GTEWC on the closing date that relate primarily to the purchased exchanges.

11. No party disputed the Applicants' assertion that § 851 applies to both A.99-09-027 and A.99-09-031.

12. Both GTEWC and CTCGS have annual revenues of less than \$500 million.

13. There is no evidence in the record of this proceeding that GTEC was used for the purpose of effecting the proposed acquisition of GTEWC by CTCGS.

14. A.99-09-027 and A.99-09-031 are similar in that both applications request authority to sell and transfer complete telephone exchanges, including all related assets, operations, customers, and employees.

15. The 26 exchanges that GTEC seeks to sell for \$171 million represent less than 1% of GTEC's access lines and even less of its revenues.

16. The 26 exchanges that GTEC seeks to sell to CTCC generated \$3.108 million in operating income during the two-year period of 1997-1998, which averages to \$1.554 million per year. If the 26 GTEC exchanges generate a similar amount of operating income in the future, then CTCC's annual return on its investment of \$171 million would be less than 1% before expenses for interest and income taxes.

17. The 26 GTEC exchanges had negative cash flow of \$5.718 million for the two-year period of 1997-1998 when capital expenditures are taken into account.

18. The six GTEWC exchanges generated \$17.694 million of operating income for the two-year period of 1997-1998, which averages to \$8.847 million per year. If the six exchanges generate the same amount of operating income in the future, then CTCGS annual return on its investment of \$54.6 million would be 16.2% before expenses for interest and taxes.

19. During the two-year period of 1997-1998, the six GTEWC exchanges generated enough cash to (i) fund operations, (ii) pay for all capital expenditures, and (iii) pay a net dividend of \$3.337 million to its parent company.

20. If the six GTEWC exchanges continue to pay a dividend of \$3.337 million every two years, CTCGS would receive an annual dividend equal to 3.1% of its investment of \$54.6 million.

21. A dividend yield of 3.1% is less than what could be earned by investing in 90-day U.S. Treasury bills.

22. GTEWC's 1999 Annual Report filed at the Commission pursuant to GO 104-A shows that GTEWC's total revenues for 1999 were \$16.757 million, which was lower than GTEWC's total revenues of \$17.835 million for 1998.

23. CCC is providing \$223.6 million to purchase the 32 GTE exchanges. CCC is financing the purchase with cash on hand, debt, and proceeds from the sale of CCC's non-telecommunications public utilities.

24. CTCC's authorized ROR is 9.75%. CTCGS's authorized ROR is 10.00%.

25. The interest rate for CCC's outstanding debt ranges from 5.63% to 10.26%.

26. The 32 GTE exchanges generated a combined operating income of \$20.802 million during the two-year period of 1997-1998, which averages to \$10.401 million per year. If the 32 GTE exchanges generate the same amount of operating income in the future, then CCC's annual return on its investment of \$223.6 million would be 4.65% before expenses for interest and taxes, which may be less than CCC's cost of capital.

27. The 32 GTE exchanges had negative cash flow of \$2.381 million during the two-year period of 1997-1998 when capital expenditures are taken into account.

28. CCC has issued a significant amount of new debt to finance recent multi-billion dollar acquisitions of telephone exchanges across the nation, which has caused major credit rating services to down grade their credit ratings for CCC.

29. In order for CCC to realize a modest 5% annual dividend on its investment of \$223.6 million, the 32 GTE exchanges would have to pay an annual dividend of \$11.283 million. For the 32 GTE exchanges to provide a 5% annual dividend to CCC, the cash flow provided by the exchanges would have to be increased by \$13.664 million (\$2.381 million + \$11.283 million), assuming capital expenditures remain constant.

30. The 32 GTE exchanges had total revenues \$41.645 million during 1998.

31. The Applicants submitted pro forma results of operations that purport to show what effect the acquisition of the GTE exchanges will have on the ROR earned by CTCC and CTCGS.

32. The Applicants did not provide the assumptions that they used to prepare the pro forma ROR described in the previous Finding of Fact.

33. The acquisition premium, which is the excess of the purchase price over the net book value of the acquired ratebase, is normally excluded from the determination of ratebase and ROR.

34. There is no guarantee that CCC will use its significant financial resources to shield CTCC and CTCGS from any negative financial consequences associated with the acquisition of the 32 GTE exchanges.

35. CTCC's acquisition of 26 GTE exchanges with 37,400 access lines will increase the size of CTCC from 117,615 access lines to 155,015 lines, or 32%.

36. CTCGS's acquisition of six GTEWC exchanges with 13,300 access lines will increase the size of CTCGS from 15,300 access lines to 28,600 lines, or 87%.

37. Citizens has sufficient experience and expertise to provide adequate service at reasonable rates to the customers in the 32 exchanges that Citizens seeks to acquire from GTE.

38. Citizens will retain for six months the GTE intrastate tariffs in effect at the time of acquisition. This will have the effect of freezing rates in the 32 GTE exchanges for six months.

39. Citizens will cap rates in the GTE exchanges for an additional 12 months (i.e., until 18 months after the sale is closed). The capped rates will be adjusted to reflect (i) rate decreases passed through to Citizens' other customers, and (ii) rate increases that result from new legislation, Commission decisions, or force majeure events.

40. No party disputed the Applicants' claim that (i) the sale of the 26 GTEC exchanges to CTCC will not affect rates or service for the remaining customers of GTEC; and (ii) the acquisition of the GTE exchanges by CTCC and CTCGS will not affect rates or service for the existing customers of CTCC and CTCGS.

41. GTEC's Service Guarantee Rules are contained in GTEC's Tariff Rules 18 and 19. Rule 18 provides residential customers with a credit of \$25.00 if an installation or a repair service is not completed within an agreed timeframe. Rule 19 provides business customers with a credit of \$100.00.

42. GTEWC's SGRs are contained in GTEWC Tariff Sheet Nos. 73 and 74. GTEWC's Sheet No. 73 is similar to GTEC's Rule 18. GTEWC's Sheet No. 74 is similar to GTEC's Rule 19.

43. If the Commission approves A.99-09-027 and A.99-09-031, CTCC, CTCGS, and CTCT will file advice letters to revise their tariffs to include SGRs similar to the GTE SGRs, thereby extending this benefit to 142,000 customers who would not otherwise receive it.

44. If the Commission approves A.99-09-031 and A.99-09-031, CTCGS will (i) station a qualified microwave technician in Del Norte County; (ii) maintain a customer service office in Crescent City where customers can pay bills, ask questions, and view (and order) telephone service and equipment; (iii) maintain current ISDN services to those already receiving the service (including renewal of contracts), and offer new service until existing

facilities are exhausted or an alternative service is available; and (iv) begin the process to deploy DSL to the Crescent City urban area.

45. Del Norte County relies on a microwave link for communications in and out of the County. Currently, a microwave technician must travel from Oregon to maintain and repair the microwave link.

46. DSL provides high-speed access to the internet.

47. High-speed internet access aids in social, community, and economic development.

48. The Applicants commitment to (i) maintain current ISDN services to those already receiving the service (including renewal of contracts), and (ii) offer new ISDN service until existing facilities are exhausted or an alternative service is available will maintain, if not improve, the existing level of ISDN service.

49. Resolution T-14037, issued on January 24, 1990, authorized GTEWC to use BETRS to serve the remote Idlewild area. GTEWC maintains a separate tariff schedule for the "Idlewild Radio Service Area" that includes rates and charges specific to BETRS.

50. The customers in the Idlewild area served by BETRS include a few private residences, a CalTrans maintenance station, and the Bar-O Boys Ranch.

51. The Bar-O Boys Ranch is a fulltime facility for male juvenile offenders operated by Del Norte County, and is presently served by one BETRS phone line.

52. The service provided by BETRS to customers in the Idlewild area is unreliable and of poor quality.

53. The unreliable BETRS system jeopardizes the health and safety of persons in the Idlewild area, including the wards and staff at the Bar-O Boys Ranch.

54. If the sale of the six GTEWC exchanges is approved and consummated, CTCGS will construct, at the Applicants' own expense, a new system to serve the Bar-O Boys Ranch and other customers in the Idlewild area. The new system would be sufficient to support: (i) dial-up Internet access, (ii) installation of additional lines, and (iii) projected growth in that

area. The new system would include a state-of-the-art Spread Spectrum microwave radio system, digital loop carrier equipment near Patricks Creek Lodge, and copper cable from Patricks Creek Lodge to the Bar-O Boys Ranch, the CalTrans Idlewild Station, and the residential customers in the area.

55. The new telephone system that the Applicants propose for the Idlewild area would provide significantly improved service compared to BETRS.

56. Some of the more populated areas of the Hoopa Valley Indian Reservation and the Yurok Indian Reservation are currently served by GTEC and GTEWC via the Hoopa and Klamath exchanges, respectively.

57. Large sections of the Hoopa and Yurok Reservations have no telephone service except for cellular service or other forms of wireless communications. Where telephone service is available, there is often no access to modern features such as Caller ID and DSL.

58. The unserved areas of the Hoopa and Yurok Reservations include two public schools, a health clinic, a Head Start center, two tribal community centers, a grocery store, and approximately 180 homes.

59. The provision of basic telephone service to currently unserved areas of the Reservations is vital to the health and safety of persons in these areas.

60. The Hoopa and Yurok Reservations have high levels of poverty and unemployment.

61. Providing the Reservations with access to modern telecommunication services may help to reduce the high levels of poverty and unemployment on the Reservations through on-line education, home-based employment, and internet-based businesses.

62. If the sale of the 32 GTE exchanges is approved and consummated, the Applicants will build, at their own expense, the infrastructure necessary to provide telephone service to certain areas of the Reservations that currently lack service. The Applicants also promise to help the Tribes in other ways if the Commission approves the sale of the GTE exchanges. The Applicants' specific commitments are identified in the body of this decision.

63. GTE will provide virtually all of the funding for the infrastructure that the Applicants have committed to install, while Citizens will be responsible for fulfilling the commitments.

64. The Applicants did not dispute the Hoopa Tribe's assertion that the Applicants have committed to (i) provide service to two homes on the Hoopa Reservation that are more than 3000 feet from the WCC, and (ii) install service improvements in the Hoopa exchange simultaneously with their availability in the Weaverville exchange.

65. The Applicants did not dispute the Yurok's assertion that the Applicants have committed to (i) provide radio telecommunications infrastructure to serve the Jack Norton School in Pecwan and the Head Start Center in Ke'pel that will (a) be a spread spectrum microwave system incorporating current technology, (b) be suited, to the extent possible, to the terrain and weather conditions of the Yurok Reservation, and (c) accommodate growth in the service load over at least the next 10 years; and (ii) provide DSL to the Yurok Reservation at the same time that it is provided to areas contiguous to the Reservation.

66. CTCC's tariffs provide a free footage allowance to a maximum of 700 feet of line extension and/or 300 feet of service connection. For extensions beyond the free footage allowance, CTCC's tariffed charges are (a) \$100.00 for the first 100 feet or fraction thereof, and (b) \$1.00 for each additional foot.

67. CTCC has been designated as an ETC for its existing service territory.

68. The purpose of the CHCF-B is to subsidize the provision of basic telephone service in designated high-cost areas of the State. The amount of subsidy is based on costs studies that take into account depreciation.

69. Citizens has extensive experience in managing telephone exchanges in California. CTCC has 30 exchanges with 117,615 access lines, CTCGS has eight exchanges with 15,300 access lines, and CTCT has three exchanges with 6,150 access lines. The areas served by Citizens are similar in many respects to the areas served by the 32 GTE exchanges.

70. There is no indication in the record of this proceeding that the quality of Citizens' management is any better or worse than GTE's.

71. ORA received no complaints or expressions of concern from GTE employees or Citizens employees regarding the sale of the 32 GTE exchanges.

72. The employees of Citizens and GTE did not participate in this proceeding on either a formal or informal basis.

73. The sales agreements appended to A.99-09-027 and A.99-09-031 specify that any GTE employee whose primary work is associated with the 32 GTE exchanges will (i) be employed by Citizens on the same basis at the same or comparable position, (ii) receive the same total compensation, (iii) receive the same benefits after the closing date that are comparable in the aggregate to those currently provided by GTE, including the same pension benefit for at least five years after the close; and (iv) receive the same recognition for service as if the employee had continued under the GTE programs.

74. The sales agreements appended to A.99-09-027 and A.99-09-031 specify that Citizens will assume union contracts without modification to GTE's obligations set forth in the contracts.

75. There is no evidence in this proceeding that any employees of Citizens or GTE will be adversely affected by the sale of 32 GTE exchanges to Citizens.

76. The parent companies of Citizens and GTE have disclosed pertinent terms of the proposed sale/purchase of the 32 GTE exchanges in their quarterly and annual reports to their shareholders.

77. There is no record in this proceeding of any shareholder opposition to the proposed sale/purchase of the 32 GTE exchanges.

78. The officers of each Applicant, who have a fiduciary responsibility to act in the best interest of their shareholders, have concluded that the proposed sale/purchase of the 32 GTE exchanges serves the interests of their respective shareholders.

79. Del Norte County asserts that the Commission must require CTCGS to file a “rate and service operations plan” in order to find that the sale of the six GTEWC exchanges to CTCGS will: (i) maintain or improve service in the County, (ii) maintain or improve the quality of management for these exchanges, (iii) be fair and reasonable to affected utility employees; (iv) be fair and reasonable to a majority of affected shareholders; (v) be beneficial to state and local economies, and to the communities served by the six exchanges; and (vi) preserves the jurisdiction of the Commission.

80. The Federal Trade Commission and the United States Department of Justice have reviewed the proposed sale of the 32 GTE exchanges. Neither agency has indicated that the proposed sale would harm competition.

81. There is no evidence in the record of this proceeding that the proposed sale/purchase of the 32 GTE exchanges will adversely affect competition.

82. The sale of the 32 GTE exchanges involves the transfer of existing assets, and the use of these assets will not change as a result of the sale.

83. The sale of the 32 GTE exchanges to Citizens will not result in any greater impact on the environment than would have occurred under GTE’s continued ownership of the exchanges.

84. The provision of DSL in the Crescent City urban area requires only the installation of additional equipment inside existing central offices and customers’ premises. The installation of additional equipment inside existing structures will have no direct or reasonably foreseeable indirect impact on the environment.

85. This decision’s requirement for the Applicants to construct new facilities to serve the Bar-O Boys Ranch and the Hoopa and Yurok Reservations may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.

86. The Commission is considering in R.00-02-003 whether to revise its practices and policies for implementing CEQA with respect to telecommunications carriers.

87. If A.99-09-027 is approved, GTEC will realize of a gain of approximately \$146.5 million before taxes, transaction costs, contingent adjustments to the purchase price, and the effects of this decision.

88. If A.99-09-031 is approved, GTEWC will realize a gain of approximately \$34.2 million before taxes, transaction costs, contingent adjustments to purchase price, and the effects of this decision.

89. There is no evidence that ratepayers contributed any capital to the six GTEWC exchanges being sold.

Conclusions of Law

1. Pursuant to § 851, no public utility may sell any property that is necessary or useful in the performance of its duties to the public without first having secured from the Commission an order authorizing it to do so.

2. The proposed sale of 26 GTEC exchanges involves property that is useful in the performance of GTEC's duties to the public.

3. The proposed sale of 26 GTEC exchanges is subject to § 851.

4. The proposed sale of the six GTEWC exchanges involves property that is useful in the performance of GTEWC's duties to the public.

5. The proposed sale of the six GTEWC exchanges is subject to § 851.

6. Pursuant to § 854(a), no person or corporation may merge, acquire, or control any public utility organized and doing business in California without first securing authorization to do so from the Commission.

7. The proposed sale of the 26 GTEC exchanges falls outside the scope of § 854(a), since the 26 exchanges represent less than one percent of GTEC's access lines and even less of its revenues.

8. The proposed sale of the six GTEWC exchanges is subject to § 854(a), since the sale would result in the transfer of all of GTEWC's assets and customers to CTCGS, which is the same as one public utility acquiring another.

9. Sections § 854(b) and (c) apply to transactions involving the merger, acquisition, or transfer of control of a public utility where any of the utilities that is a party to the proposed transaction has gross annual California revenues exceeding \$500 million.

10. The proposed sale of the six GTEWC exchanges to CTCGS is not subject to § 854(b) and (c), since neither GTEWC nor CTCGS has annual revenues anywhere close to \$500 million.

11. Pursuant to § 854(f), the Commission, in determining whether the acquiring utility has gross annual revenues exceeding \$500 million specified in § 854 (b) and (c), shall not consider the revenues of the utility's affiliates unless the affiliate was utilized for the purpose of effecting the merger, acquisition, or transfer of control.

12. Section 854(f), by its very terms, does not apply to the utility being acquired. When statutes are clear in their plain language, as is the case with § 854(f), it is unnecessary and inappropriate for the Commission to engage in further statutory construction of legislative intent.

13. For the following reasons, the Commission is not required by § 854(f) to consider the revenues of GTEC in determining if the proposed acquisition of the six GTEWC exchanges by CTCGS is subject to § 854(b) and (c): (i) § 854(f) does not require the Commission to consider the revenues of the acquired utility's affiliates; (ii) there is no evidence that GTEC was used for the purpose of effecting the proposed sale of the six GTEWC exchanges to CTCGS; and (iii) if the Legislature had intended to include acquired utility's affiliates within the scope of § 854(f), the Legislature would have done so explicitly.

14. The proposed sale of the six GTEWC exchanges to CTCGS is not subject to § 854(b) and (c) pursuant to § 854(f).

15. The purpose of § 851 and § 854(a) is to enable the Commission to review a proposed transaction, before it takes place, in order to take such action as the public interest may require. Where necessary, the Commission may attach conditions to a transaction in order to protect and promote the public interest.

16. The Commission has broad discretion to determine when it is in the public interest to authorize a proposed transaction pursuant § 851 and/or § 854(a).

17. The determination of whether to approve A.99-09-027 and A.99-09-031 should be based on the standard of whether the public interest is better served by granting or denying the applications. To determine if this standard has been met, the same criteria should be used for both A.99-09-027 and A.99-09-031, since both applications involve the sale and transfer of complete telephone exchanges, including all related assets, operations, customers, and employees.

18. For the following reasons, the eleven criteria identified in the body of this decision should be used to determine if A.99-09-027 and A.99-09-031 should be approved: (i) the criteria provide a reasonable framework for determining if it is in the public interest to approve A.99-09-027 and A.99-09-031; and (ii) the criteria have often been employed by the Commission to determine whether to approve an application that is subject to § 851 and/or 854(a).

19. There is no need to consider how the proposed sale of the six GTEWC exchanges will affect the financial condition of GTEWC, since GTEWC will cease to exist if the sale is approved.

20. The proposed sale of the 26 GTEC exchanges will maintain or improve the financial condition of GTEC because (i) the 26 GTEC exchanges represent an insignificant part of GTEC's operations, and (ii) GTEC will receive approximately \$171 million from the sale, which includes a substantial gain on sale.

21. CTCC's purchase of 26 GTEC for \$171 million will negatively affect the financial condition of CTCC because of (i) the low ROI that CTCC may earn on its investment of

\$171 million, and (ii) the negative cash flow associated with the 26 GTEC exchanges when capital expenditures are taken into account.

22. CTCGS's purchase of six GTEWC exchanges for \$54.6 million may positively affect the financial condition of CTCGS, since the purchase may provide CTCGS with a relatively high ROI and positive cash flow. However, for the reasons stated in the following Conclusions of Law, CTCGS may be adversely affected by the negative impact that the acquisition of the 32 GTE exchanges will have on the financial condition of CTCGS's parent company, CCC.

23. The financial condition of CCC will be negatively affected by the acquisition of the 32 GTE exchanges for \$223.6 million because of (i) the relatively low ROI that CCC may earn on its investment of \$223.6 million; and (ii) the negative cash flow associated with the 32 GTE exchanges when capital expenditures are taken into account.

24. Given the existing revenue stream of the 32 GTE exchanges, it is improbable that Citizens' acquisition of the exchanges will result in synergies or economies of scope and scale that will create enough new positive cash flow from the 32 GTE exchanges to maintain or improve the financial condition of CCC.

25. The pro forma ROR submitted by the Applicants should be accorded little weight in determining how the acquisition of the 32 GTE exchanges will affect the financial condition of CTCC and CTCGS. This is because (i) there is no record regarding the assumptions that were used to prepare the pro forma ROR, and (ii) the pro forma ROR does not reflect the acquisition premium.

26. The adverse effects that the acquisition of the 32 GTE exchanges will have on the financial condition of CCC may cause CCC to take actions that may harm the public interest. For example, CCC may direct CCTC and CTCGS to reduce expenditures for maintenance, repair, customer service, and/or plant additions.

27. The adverse effects that the acquisition of the 26 GTEC exchanges will have on the financial condition of CCTC may cause CCTC to reduce expenditures in ways that are

harmful to ratepayers. For example, CCTC may reduce expenditures for maintenance, repair, customer service, and/or plant additions.

28. To protect the public from possible adverse consequences that may stem from the negative effects that the acquisition of the GTE exchanges will have on the financial condition of CTCC and CCC, the sale of the 32 GTE exchanges should be approved with the conditions identified in the body of this decision and Appendix B.

29. Since the 26 GTEC exchanges are an insignificant part of GTEC's operations, the sale of these exchanges to CTCC will have no adverse effect on rates or quality of service for GTEC's remaining customers.

30. There is no need to consider how the proposed sale of the six GTEWC exchanges to CTCGS will affect rates or quality of service provided by GTEWC, since GTEWC will cease to exist if the sale is approved.

31. Citizens' acquisition of the 32 GTE exchanges may affect rates and quality of service for CTCC's and CTCGS's existing customers, since the acquisition will significantly increase the size of both CTCC and CTCGS.

32. To ensure that Citizens' acquisition of the 32 GTE exchanges will not adversely affect rates or service for the customers in CTCC's and CTCGS's current exchanges, A.99-09-027 and A.99-09-031 should be approved with the conditions identified in the body of this decision and Appendix B.

33. CTCC, CTCGS, and CTCT should each file an advice letter to implement the SGRs no later than 90 days after the sale is closed. The text of the SGRs incorporated into the tariffs of CTCC, CTCGS, and CTCT should mirror GTE's tariff language in all material respects.

34. CTCC, CTCGS, and CTCT should notify their customers about the SGRs via bill imprints or bill inserts for three consecutive billing cycles, and annually thereafter.

35. To ensure that customers in the 32 GTE exchanges continue to receive adequate service at reasonable rates, A.99-09-027 and A.99-09-031 should be approved with the conditions identified in the body of this decision and Appendix B.

36. With the conditions agreed to by the Applicants and the additional conditions adopted by this decision, Citizens' acquisition of the 32 GTE exchanges will maintain or improve the quality of service for all customers of the involved utilities.

37. It is unnecessary to adopt the Del Norte County's recommendation to require CTCGS to offer ISDN service on a "regular" or tariffed basis, since the following commitments by the Applicants will maintain, if not improve, the existing level of ISDN service: (i) commitment to maintain current ISDN service to those already receiving the service, and (ii) commitment to offer new ISDN service until existing facilities are exhausted or an alternative service is available.

38. The Applicants have presented a reasonable proposal to improve service in the Idlewild area by constructing, at their own expense, a new telephone system to serve the Idlewild area. To ensure the proposal is implemented, the proposal should be adopted as a condition for approving A.99-09-031.

39. Due to the need for improved service in the Idlewild area, CTCGS should replace the unreliable BETRS system with a new telephone system no later than 18 months from the date the sale is closed.

40. Since the Applicants are constructing at their own expense a new telephone system to serve the Idlewild area, CTCGS should (i) not increase its ratebase or rates to reflect the cost of the new system, and (ii) offer service with the new system at the same rates and charges in GTEWC's current tariff for the Idlewild Radio Service Area.

41. CTCGS should be authorized to include in the ratebase and rates applicable to the Idlewild area the cost of future additions to, and replacements of, the new facilities that the Applicants install to serve the Idlewild area pursuant to this decision.

42. Once the new telephone system is constructed to serve the Idlewild area, CTCGS should cap the existing rates and charges for customers in the Idlewild area for a period of 18 months from the date that all customers presently served by the BETRS system have access to the new system.

43. The Commission has authority under Section 214(e)(3) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, to order the Applicants to provide basic service to unserved portions of the Hoopa and Yurok Indian Reservations.

44. Expanding the geographic availability of telephone service enhances public health, safety, and welfare.

45. There is an urgent need to provide telephone service to areas of the Hoopa and Yurok Reservations that currently lack service. The lack of telephone service poses an ongoing threat to the health, safety, and welfare of persons in the unserved areas that should be remedied as soon as possible.

46. The Commission has authority under §§ 701, 851, and 854 to condition the sale of the GTE exchanges on the Applicants' using a portion of the gain from the sale to pay for the cost of new facilities to provide service to areas of the Hoopa and Yurok Reservations that currently lack service.

47. Except as noted in the following Conclusions of Law, the Applicants' commitment to provide the Hoopa and Yurok Reservations with telecommunications infrastructure, services, and other assistance described in the body of this decision is reasonable and should be adopted.

48. Approval of A.99-09-027 and A.99-09-031 should be conditioned on the Applicants providing those telephone facilities and service improvements for the Hoopa and Yurok Reservations that the Applicants committed to provide, but which were not identified in the Applicants' brief filed on October 27, 2000.

49. For the following reasons, approval of A.99-09-027 and A.99-09-031 should be conditioned on the Applicants installing facilities to provide telephone service to homes within one mile of the WCC instead of 3,000 feet as proposed by the Applicants: (i) provision of service to all homes within a one-mile radius of the FCC may double the number of homes that receive telephone service around the village of Weitchpec, resulting in a substantial improvement in public health, safety, and welfare; and (ii) failure to install

facilities beyond 3,000 feet may result in many low-income households in the area not receiving phone service due to their inability to pay CTCC's tariffed line extension charges.

50. The Applicants should be authorized to install a spread spectrum microwave radio system with the capacity of a T-1 line in lieu of the T-1 line that the Applicants have committed to install at the Yurok Telecommunications Project microwave site located near Pearson's store in Weitchpec.

51. Approval of A.99-09-027 and A.99-09-031 should be conditioned on the Applicants installing one payphone at the Jack Norton School in the village of Pecwan, and another payphone at the Judson-Brown Community Center in the village of Ke'pel. These two payphones are vital to the health, safety, and welfare of those who live in or travel to Pecwan and Ke'pel, since the only other phones in these communities (i.e., those to be installed at the Jack Norton School and the Judson Brown Community Center pursuant to this decision) may not be available during an emergency that occurs at night, on weekends, or during holidays.

52. It is in the public interest to require the Applicants, as a condition for approving A.99-09-027 and A.99-09-031, to provide at their own expense the telecommunications infrastructure to serve the Hoopa and Yurok Reservations that is identified in the body of this decision and Appendix B.

53. Approval of A.99-09-027 and A.99-09-031 should be conditioned on the Applicants providing the Hoopa and Yurok Reservations with the telecommunications services and other assistance identified in the body of this decision and Appendix B.

54. The Yurok Tribe's recommendation to require the Applicants to install a multi-strand fiber optic line (FOL) between the Hoopa Central Office and Weitchpec in order to enhance reliability should not be adopted. The Yurok Tribe did not show that a multi-strand FOL would provide a significant or cost-effective improvement in reliability. Absent this showing, it is unfair to require the Applicants to incur the additional cost of installing a multi-strand FOL.

55. The Yurok Tribe's proposal to require the Applicants to install a FOL that has the capacity to absorb anticipated increases in service demands over the next two decades should not be adopted. This proposal is too vague to adopt, since there is no record in this proceeding regarding anticipated increases in service demands. Furthermore, the proposal is probably unnecessary, since FOLs already have a vast capacity, and that capacity is likely to grow in tandem with advances in the equipment attached at ends of fiber optic cables.

56. The Hoopa Tribe's proposal to require the Applicants to prepare a study regarding the demand for advanced telecommunications services on the Hoopa Reservation should not be adopted. The responsibility for preparing the study properly rests with the Hoopa Tribe.

57. The Yurok Tribe's recommendation to require the Applicants to use their "best efforts" to establish a rate center that allows subscribers on the Yurok Reservation to call one another and subscribers in Hoopa without incurring toll charges should not be adopted. This recommendation is too vague to be an enforceable condition.

58. The Yurok's recommendation to require CTCC to immediately expand its service territory to include all of the Yurok Reservation should not be adopted. There is no point in requiring CTCC to expand its service territory until it has the infrastructure in place to serve the additional territory.

59. GO 96-A, Section I.E., requires a utility, before commencing service, to file service area maps for extensions into territory contiguous to its line, plant, or system and not theretofore served by a public utility of like character.

60. The timing of the expansion of CTCC's service territory to include all of the Yurok Reservation and additional portions of the Hoopa Reservation should be governed by GO 96-A, Section I.E.

61. GO 96-A, Section II.A.4, states that service area maps must indicate the boundaries of the service area, the principal streets, and other main identifying features therein, and an indication of the general location of the service area in relation to nearby cities, highways, or other well-known reference points.

62. CTCC should consult with the Hoopa Tribe regarding the appropriate boundaries for CTCC's newly expanded service area prior to filing the service area map required by GO 96-A.

63. The Commission should not adopt the Applicants' proposal for CTCC to file an application for authority to (i) extend its service territory, and (ii) construct infrastructure for the Hoopa and Yurok Reservations. CTCC has authority under § 1001 to extend its service territory and facilities into any contiguous area that is not served by a public utility of like character.

64. Due to the urgent need for telephone service in areas of the Hoopa and Yurok Reservations that currently lack service, CTCC should complete the provision of the telecommunications infrastructure and services for the Hoopa and Yurok Reservations required by this decision as soon as possible, and no later than 24 months after the sale of the 26 GTEC exchanges is closed.

65. Pursuant to 45 U.S.C. 214(e)(2), the states are responsible for designating a carrier as an ETC in accordance with the criteria set forth in 45 U.S.C. 214(e)(1).

66. CTCC should use the procedures in Resolution T-16086 to seek designation as an ETC for the newly served areas of the Hoopa and Yurok Reservations.

67. The cost of the facilities that the Applicants install at their own expense to serve the Hoopa and Yurok Reservations pursuant to this decision should be excluded from CTCC's ratebase and rates.

68. The cost of future additions to, and replacements of, the facilities required by this decision to serve the Hoopa and Yurok Reservations may be included in CTCC's ratebase and rates.

69. CTCC should be authorized to recover its reasonable operating costs to provide basic exchange service to the newly served areas of Hoopa and Yurok Reservations. To the extent that CTCC does not recover its reasonable operating costs in the rates paid by the customers in the newly served areas, CTCC should seek to recover the shortfall from

federal universal service programs. CTCC should be allowed to seek recovery of any remaining shortfall from the CHCF-B.

70. Reasonable operating costs associated with newly served areas of the Hoopa and Yurok Reservations include costs to operate, maintain, and repair the new facilities required by this decision, but excludes depreciation and the cost of capital associated with the new facilities required by this decision.

71. CTCGS should be allowed to recover its recorded operating costs identified in the two previous Conclusions of Law only to the extent these costs exceed the benchmark of \$20.30/month per line established by D.96-10-066.

72. CTCC should be authorized to file an advice letter (A/L) to seek recovery from the CHCF-B of the recorded operating costs identified in the three previous Conclusions of Law. The A/L should break down recorded operating costs by Census Block Groups. The Commission should address the A/L in a resolution.

73. Citizens' acquisition of the 32 GTE exchanges will maintain or improve the quality of management for the acquired GTE exchanges.

74. The sale of 32 GTE exchanges to Citizens is fair and reasonable to all affected employees of GTE and Citizens.

75. The proposed sale/purchase of the 32 GTE exchanges is fair and reasonable to a majority of affected shareholders because (i) the shareholders have had adequate notice about the details of the transaction, (ii) there is no record in this proceeding of any shareholder opposition to the transaction, and (iii) the proposed sale/purchase is an arms-length transaction that has the support of each Applicant's management.

76. This decision requires the Applicants, as a condition for the Commission approving A.99-09-027 and A.99-09-031, to provide significant improvements to telecommunications services and facilities. These improvements will provide substantial benefits to the public. Because of these benefits, the proposed sale of the 32 GTE exchanges is beneficial on an overall basis to (i) state and local economies, and (ii) the communities served by the resulting public utilities.

77. It is unnecessary to adopt Del Norte County's proposal to establish a fund for capital improvements, since this decision requires the CTCGS to (i) make significant capital improvements, and (ii) maintain capital expenditures at historical levels, adjusted for inflation.

78. It is unnecessary to adopt the County's proposal to establish a fund to offset future rate increases, since this decision prohibits the Applicants from raising rates to recover any increased costs that may result from the proposed sale, including any costs associated with the premium.

79. After the sale of the 32 GTE exchanges is complete, the Public Utilities Code and all Commission decisions and General Orders will continue to apply with full force and effect to the rates, services, and operations of GTEC, CTCC, CTCGS, and the 32 GTE exchanges.

80. After the sale is complete, GTEC, CTCC, and CTCGS will be required under § 581 et seq., § 701, and § 791 et seq., to (i) maintain such books and records as the Commission may require to effectively regulate and audit these companies; and (ii) provide the Commission with such information as the Commission may require to effectively regulate and audit these companies.

81. The proposed sale of the 32 GTE exchanges to Citizens will have no adverse effect on the Commission's jurisdiction or the Commission's capacity to effectively regulate and audit public utility operations.

82. It is unnecessary to adopt Del Norte County's proposal to require CTCGS to file a "rate and service operations plan" for its proposed operations of the six GTEWC exchanges.

83. The proposed sale/purchase of the 32 GTE exchanges does not raise any antitrust or anticompetitive issues that warrant the Commission's intervention.

84. The proposed sale of the 32 GTE exchanges will not have an adverse effect on the environment. Consequently, there is no need to conduct further environmental review of the proposed sale.

85. It is unnecessary to conduct an environmental review of the provision of DSL in the Crescent City urban area, since the installation of additional equipment inside existing structures will have no direct or reasonably foreseeable indirect impact on the environment.

86. The new facilities that this decision requires the Applicants to construct for the provision of service to the Bar-O Boys Ranch and the Hoopa and Yurok Indian Reservations may cause either (i) a direct physical change in the environment, or (ii) a reasonably foreseeable indirect physical change in the environment. Consequently, the Commission is required by CEQA to conduct an environmental review of these facilities.

87. CEQA guidelines expressly recognize that the timing of an environmental review involves a balancing of competing factors, and that such review should occur as early as feasible in the planning process to enable environmental considerations to influence project design and yet late enough to provide meaningful information for environmental assessment.

88. It is premature to conduct a CEQA review of the construction projects mandated by this decision because (i) it is uncertain whether the construction will actually occur, since the Applicants may decline to consummate the sale due to the conditions adopted by this decision; and (ii) the scope of the construction is uncertain, since the projects are undefined at this point in time.

89. Approval of A.99-09-027 and A.99-09-031 should be conditioned on CTCC and CTCGS complying with all applicable environmental laws and regulations when planning and constructing the infrastructure required by this decision. Such conditional approval is commonly imposed and is consistent with Commission precedent under CEQA.

90. Once CTCGS has completed a detailed engineering design and environmental assessment for the construction of new telecommunications facilities to serve the Bar-O Boys Ranch and surrounding areas, CTCGS should file an application with the Commission for review and approval of the proposed construction under CEQA. If appropriate, the environmental assessment may be coordinated with any environmental review conducted under NEPA.

91. Once CTCC has completed a detailed engineering design and environmental assessment for the construction of telecommunications infrastructure to serve the Hoopa and Yurok Reservations, CTCC should file an application with the Commission for review and approval of the proposed construction under CEQA. If appropriate, the environmental assessment may be coordinated with any environmental review conducted under NEPA.

92. If the Commission finds as a result of the applications described in the two previous Conclusions of Law that some or all of the construction required by this decision should not be approved due to adverse environmental impacts that cannot be adequately mitigated on a cost-effective basis, then the Applicants should file within one year from this finding a new application that proposes alternate means to provide the public with the same level of benefits that would have been provided by the canceled construction project(s). The new application should be served on all the parties to this proceeding.

93. CTCC and CTCGS should be required, as a condition for the Commission approving A.99-09-027 and A.99-09-031, to comply with (i) all environmental rules and regulations applicable to the operation of the acquired exchanges, and (ii) any environmental regulations that the Commission may adopt in R.00-02-003 to the extent these new regulations pertain to the acquired exchanges.

94. The mitigation measures adopted in the body of this decision and Appendix B will prevent or adequately mitigate the significant adverse consequences that may result from the sale of the 32 GTE exchanges.

95. This decision considers and adopts all reasonable options to the proposed sale of the 32 GTE exchanges.

96. The Commission has a duty under § 851 and § 854 to authorize the sale of telephone exchanges only if it is in the public interest to do so.

97. It is necessary to adopt the conditions set forth in the body of this decision and Appendix B in order for the sale of the 32 GTE exchanges to be in the public interest. The Commission has authority under § 701, § 851, and § 854 to adopt the conditions in the body of this decision and Appendix B.

98. The proposed sale of the 32 GTE exchanges, as modified by this decision, will provide substantial benefits to the public. Denying authority for the sale would deprive the public of significant benefits.

99. The proposed sale of the 32 GTE exchanges, with the conditions adopted by this decision, is balanced, fair, and in the public interest.

100. The sale of the 26 GTEC exchanges to CTCC as set forth in A.99-09-027 and the attached Asset Purchase Agreement, and with the conditions adopted by this decision, should be authorized pursuant § 851.

101. The sale of the six GTEWC exchanges to CTCC as set forth in A.99-09-031 and the attached Asset Purchase Agreement, and with the conditions adopted by this decision, should be authorized pursuant § 851 and § 854(a).

102. The cost that the Applicants will incur to implement the conditions adopted by this decision has the effect of allocating to ratepayers a portion of the gain from the sale of 32 GTE exchanges. The following Conclusions of Law address how the remaining gain on sale should be allocated.

103. In D.94-09-080, the Commission held that the gain from the sale of GTEC exchanges should be treated the same as GTEC's other revenues under NRF.

104. The precedent established by D.94-09-080 is dispositive of how GTEC's gain on sale should be allocated in this proceeding.

105. Consistent with D.94-09-080, GTEC's gain on sale in this proceeding should be treated the same as GTEC's other revenues under NRF.

106. GTEC currently operates under the revised NRF adopted by the Commission in D.98-10-026. None of GTEC's earnings are shared with ratepayers under the revised NRF adopted in D.98-10-026.

107. Consistent with D.98-10-026, the gain from the sale of the 26 GTEC exchanges to CTCC should be retained by GTEC's shareholders.

108. In D.89-07-016 et seq., the Commission established a policy for allocating the gains from the sale of utility "distribution systems." Under this line of precedent, the entire

gain from the sale of a utility distribution system accrues to shareholders if all of the following conditions are met: (i) the distribution system is sold to another public utility; (ii) the distribution system consists of part or all of the utility's operating system located in a geographically defined area; (iii) the entity buying the system assumes all responsibility for serving the customers of the system; (iv) the ratepayers have not contributed capital to the distribution system; and (v) ratepayers are not adversely affected by the sale.

109. The precedent established by D.89-07-016 et seq., is dispositive of how GTEWC's gain on sale should be allocated in this proceeding.

110. The sale of the six GTEWC exchanges satisfies all applicable conditions established by D.89-07-016 et seq., for allocating the gain from the sale to GTEWC's shareholders.

111. Consistent with D.89-07-016 et seq., the gain from the sale of the six GTEWC exchanges should be retained by the shareholders of GTEWC.

112. To permit prompt consummation of the proposed sale of the 32 GTE exchanges, the following order should be effective immediately.

O R D E R

IT IS ORDERED that:

1. Pursuant to Pub. Util. Code § 851, GTE California Incorporated (GTEC) is authorized to sell 26 telephone exchanges to Citizens Telecommunications Company of California, Inc. (CTCC) as set forth in Application (A.) 99-09-027 and the Asset Purchase Agreement appended to A.99-09-027.

2. Pursuant to Pub. Util. Code § 851 and § 854, GTE West Coast Incorporated (GTEWC) is authorized to sell all six of its exchanges to Citizens Telecommunications Company of the Golden State (CTCGS) as set forth in A.99-09-031 and the Asset Purchase Agreement appended to A.99-09-031.

3. This authority granted by this decision is conditioned upon CTCC, CTCGS, GTEC, and GTEWC complying with the conditions set forth in the body of this decision and Appendix B.

4. The authority granted by this decision shall expire if not exercised within one year from the effective date of this order.

5. GTEC and CTCC shall file with the Commission's Docket Office, for inclusion in the formal file of A.99-09-027, written notice of when the sale of the 26 GTEC exchanges has taken place. This notice shall be filed no later than 30 days after the sale.

6. GTEWC and CTCGS shall file with the Commission's Docket Office, for inclusion in the formal file of A.99-09-031, written notice of when the sale of the six GTEWC exchanges has taken place. This notice shall be filed no later than 30 days after the sale.

7. The gain from the sale of the 26 GTEC exchanges and the six GTEWC exchanges shall accrue to shareholders to the extent the gain is not allocated to ratepayers because of the costs the Applicants incur to implement the conditions in the body of this decision and Appendix B.

8. Application 99-09-027 is closed.

9. Application 99-09-031 is closed.

This order is effective today.

Dated June 7, 2001, at San Francisco, California.

LORETTA M. LYNCH

President

CARL W. WOOD

GEOFFREY F. BROWN

Commissioners

I will file a dissent.

/s/ RICHARD A. BILAS

Commissioner

I will file a dissent.

/s/ HENRY M. DUQUE

Commissioner

I will file a concurrence.

/s/ LORETTA M. LYNCH

President

I will file a concurrence.

/s/ CARL W. WOOD

Commissioner

I will file a concurrence.

/s/ GEOFFREY F. BROWN

Commissioner

Appendix A

Rate Comparison Table				
Source: Compliance Filing Submitted by Applicants on January 28, 2000				
Residential Service	GTEC	CTCC	GTEWC	CTCGS
Measured Service	\$10.00	\$9.60	N/A	\$13.10
Flat-Rate Service	\$16.85	\$17.85	\$16.85	\$18.20
Service Connection Charge	\$23.00	\$14.00	\$15.00	\$14.00
Line Connection Charge	\$42.10	\$23.25	\$20.00	\$23.25
Business Service	GTEC	CTCC	GTEWC	CTCGS
Measured Service	\$29.75	\$20.25	N/A	\$31.40
Flat-Rate Service	N/A	\$38.70	\$33.70	N/A
Service Connection Charge	\$49.57	\$21.50	\$21.00	\$38.50
Line Connection Charge	\$86.64	\$38.50	\$21.00	\$38.50
CentraNet – Flat per Line	N/A	\$41.35	\$49.15	N/A
CentraNet – Meas. per Line	\$29.43	\$22.90	N/A	\$35.15
CentraNet – Service Connection	\$20.00	\$21.50	\$25.00	\$21.50
CentraNet – Line Connection	\$86.46	\$38.50	\$8.50	\$38.50
PBX Line - Flat	N/A	\$38.70	\$67.40	\$31.40
PBX Line – Measured	\$37.25	\$20.25	N/A	N/A
PBX Line – Service Connection	\$50.00	\$21.50	\$25.00	\$21.50
PBX Line – Line Connection	\$86.46	\$38.50	\$21.00	\$38.50

Appendix B

Adopted Conditions

The authority granted by this decision is contingent upon the following conditions:

1. Citizens Communications Company (CCC) shall provide Citizens Telecommunications Company of California, Inc. (CTCC) with sufficient equity capital to enable CTCC to (i) maintain a reasonable and balanced capital structure, and (ii) provide service to the public that is safe, reliable, and in compliance with all applicable statutes and Commission orders.
2. CCC shall provide Citizens Telecommunications Company of the Golden State (CTCGS) with sufficient equity capital to enable CTCGS to (i) maintain a reasonable and balanced capital structure, and (ii) provide service to the public that is safe, reliable, and in compliance with all applicable statutes and Commission orders.
3. CTCC and CTCGS shall each establish and maintain a policy for managing the company's finances on a stand-alone basis (i.e., independent of CCC and other affiliates).
4. CTCC and CTCGS may pay a dividend, loan money, or provide other forms of capital to CCC or other affiliates only if doing so does not jeopardize the utility's ability to provide safe and reliable service to the public at reasonable rates.
5. Within 90 days from the date the sale is closed, CTCC, CTCGS, and GTE California Incorporated (GTEC) shall each file revised tariffs to reflect changes to its various billing bases caused by the sale/acquisition of the GTE exchanges.
6. For ratemaking purposes, CTCC shall record the cost of the exchanges acquired from GTEC at GTEC's net book value for the exchanges (i.e., GTEC's historical cost less depreciation, amortization, and remaining deferred income taxes). GTEC shall provide Citizens with access to all books and records necessary to determine the net book value of exchanges.
7. For ratemaking purposes, CTCGS shall record the cost of the exchanges acquired from GTE West Coast Incorporated (GTEWC) at GTEWC's net book value for the exchanges (i.e., GTEWC's historical cost less depreciation, amortization, and remaining deferred income taxes). GTEWC shall provide

Citizens with access to all books and records necessary to determine the net book value of exchanges.

8. For ratemaking purposes, CTCC and CTCGS shall record the premium (i.e., the excess of purchase price over book value) “below-the-line.”
9. CTCC and CTCGS shall not recover in their rates, charges, and fees for intrastate services (“rates”) any costs associated the premium.
10. CTCC, CTCGS, GTEC, and GTEWC shall not recover in their rates any transactions costs associated with the sale/purchase of the GTE exchanges.
11. CTCC, CTCGS, and GTEC shall not recover in their rates any costs caused by diseconomies of scale or negative synergies associated with the sale/purchase of the GTE exchanges.
12. For the five-year period beginning on January 1, 2002, CTCC shall annually spend an amount of money for capital expenditures that equals or exceeds the sum of the annual average of such expenditures by CTCC and the acquired GTEC exchanges during the three-year period ending December 31, 2000. The minimum level of capital expenditures required by this decision is in addition to the capital expenditures that this decision requires for the provision of service to the Hoopa Valley Indian Reservation and the Yurok Indian Reservation.
 - a. Capital are expenditures is defined as gross additions to USOA Nos. 2110, 2210, 2220, 2230, 2310, 2410, 2680, and 2690.
 - b. CTCC may spend less on capital expenditures one year and more the next, so long as the cumulative expenditures for any 3-year period equal 100% of the cumulative expenditures required by this decision for the same 3-year period.
13. For the five-year period beginning on January 1, 2002, CTCGS shall annually spend an amount of money for capital expenditures that equals or exceeds the annual average of such expenditures by CTCGS and the acquired GTEWC exchanges during the three-year period ending December 31, 2000. The minimum level of capital expenditures required by this decision is in addition to the capital expenditures that this decision requires for the provision of upgraded service to the Bar-O Boys Ranch.
 - a. CTCGS may spend less on capital expenditures one year and more the next, so long as the cumulative expenditures for any 3-year period equal 100% of the cumulative expenditures required by this decision for the same 3-year period.

14. Within 150 days from the date the sale is closed, the Applicants shall file and serve a compliance report that shows the total annual capital expenditures for each year during the three-year period ending December 31, 2000. The report shall be broken down by capital expenditures made by (1) CTCC, (2) the 26 GTEC exchanges being acquired by CTCC, (3) CTCGS, and (4) the six GTEWC exchanges being acquired by CTCGS. The report shall identify and describe all assumptions used to prepare the report. In addition, the report shall be examined by Certified Public Accountants (CPAs) who shall attest to the accuracy and fairness of the report. The CPA's written attestation shall be appended to the report. CTCC, CTCGS, GTEC, and GTEWC shall each have an officer examine those portions of the report that pertain to his or her company. The officer shall sign a verification under penalty of perjury that complies with Rule 2.4. A copy of the signed verification shall be appended to the report.
 - a. The CPA(s) shall conduct the examination in conformance with the Statements on Standards for Attestation Engagements issued under the auspices of the American Institute of Certified Public Accounts.
 - b. The CPA(s) shall express an opinion as to whether the report accurately states, in conformance with generally accepted accounting standards, each Applicant's historical outlays for capital expenditures.
15. CTCC and CTCGS shall each submit monitoring reports that contain the following information pertaining to service quality:
 - a. All information reported to the Commission pursuant to General Order 133-B.
 - b. The number of formal complaints filed with the Commission. This information shall be broken down by Citizen exchanges and the acquired GTE exchanges.
 - c. The number of informal complaints filed with the Commission. This information shall be broken down by Citizen exchanges and the acquired GTE exchanges.
 - d. All information reported to the FCC in the ARMIS 43-05 Service Quality Report.
 - e. The monitoring reports shall be submitted to the Director of the Commission's Consumer Services Division. The first report shall cover calendar year 2000, and be submitted no later than 60 days after the sale is closed. Thereafter, CTCC and CTCGS shall submit their monitoring reports on a calendar year

basis no later than four months after the close of the calendar year for which the reports are submitted.

- i. So that Citizens may prepare the required monitoring reports, GTE shall provide Citizens with data regarding customer complaints for the 32 GTE exchanges during the years 2000 and 2001.
 - f. The requirement to submit monitoring reports shall end with the reports submitted for calendar year 2005.
- 16. For a five-year period beginning on the date the sale is closed, CTCC and CTCGS shall not increase rates for customers in their existing exchanges due to any increase in costs brought about by the acquisition of the GTE exchanges. To demonstrate their compliance with this condition, CTCC and CTCGS shall establish a system of books and records to allocate revenues and costs between their existing exchanges and the acquired GTE exchanges.
 - a. For CTCC, this condition applies to Category I and II services.
 - b. For CTCGS, this condition applies to above the line services.
- 17. For a five-year period beginning on the date the sale is closed, CTCC and CTCGS shall maintain quality of service at present levels or better for all customers in both their existing exchanges as well as the exchanges acquired from GTE.
- 18. CTCC and CTCGS shall retain for six months from the date that the sale is closed the GTE tariffs in effect for the 32 GTE exchanges at the time the sale is closed.
 - a. The frozen rates may be adjusted up or down, if necessary, to reflect new legislation, Commission decisions, and force majeure events.
- 19. At the end of the six-month period, CTCC and CTCGS shall cap all rates in the 32 GTE exchanges for an additional 12 months. During the 12-month across-the-board rate cap, Citizens shall decrease the rates in the 32 GTE exchanges to the same extent that rate decreases are passed through to Citizens' other customers.
 - a. The 12-month across-the-board rate cap does not apply to rate increases or decreases that result from new legislation, Commission decisions, or force majeure events.

20. At the conclusion of the 12-month across-the-board rate cap for customers in the 32 acquired GTE exchanges, CTCC and CTCGS shall maintain the rate cap for any service shown in Appendix A of this decision if the corresponding Citizen rate in effect at the time is higher. The rate cap shall remain in effect on a service-by-service basis for a period of 18 months (i.e., until 36 months after the date the sale is closed), or until the corresponding Citizens rate drops below the GTE rate, whichever comes first.
 - a. The 18-month service-by-service rate cap does not apply to rate increases or decreases that result from new legislation, Commission decisions, or force majeure events.
 - b. During the 18-month service-by-service rate cap, the capped rates do not need to be adjusted downward to reflect rate decreases passed through to Citizens' other customers, so long as the rate paid by Citizens' customers remains higher than the corresponding capped GTE rate.
21. CTCC, CTCGS, and Citizens of the Tuolumne shall adopt GTE's Service Guarantee Rules (SGRs) for all new and existing customers. Each of these companies shall file an advice letter to implement the SGRs no later than 90 days after the date the sale is closed.
22. CTCGS shall station a qualified microwave technician in Del Norte County. This requirement shall end when the six exchanges that CTCGS acquires from GTEWC no longer rely on a microwave link for communications with the outside world.
23. For a five-year period beginning on the date the sale is closed, CTCGS shall maintain a customer service office in Crescent City where customers can pay bills, ask questions regarding service, and view (and order) telephone service and equipment.
24. CTCGS shall offer DSL throughout the Crescent City urban area no later than two years from the date the sale is closed.
25. CTCGS shall (i) maintain current ISDN services to those already receiving the service (including renewal of contracts), and (ii) offer new service until existing facilities are exhausted or an alternative service is available.
26. CTCGS shall construct, at its own expense, an improved telephone system to replace the BETRS system that is currently used to provide service to the Bar-O Boys Ranch and other customers in the Idlewild area.

- a. The new system shall be sufficient to support: (i) dial-up Internet access, (ii) installation of additional lines for existing customers served by the BETRS system, and (iii) projected growth in that area.
 - b. The new system shall include a state-of-the-art Spread Spectrum microwave radio system, digital loop carrier equipment near Patricks Creek Lodge, and copper cable from Patricks Creek Lodge to the Bar-O Boys Ranch, the CalTrans Idlewild Station, and the residential customers in the area.
 - c. CTCGS shall provide service to all existing customers in the Idlewild area using the new system no later than 18 months from the date the sale is closed.
 - d. CTCGS shall offer service with the new system at the same rates and charges found in GTEWC's current tariff for the Idlewild Radio Service Area. Once service is provided to customers in the Idlewild area using the new system, CTCGS shall cap the existing rates and charges for a period of 18 months, and may only change the existing rates and charges after obtaining authorization from the Commission to do so.
 - e. CTCGS shall not increase its ratebase or rates to reflect the cost of the new telephone system. CTCGS may include in its ratebase and rates applicable to customers in the Idlewild area the cost of future additions to, and replacements of, the new telephone system.
27. Within 24 months from the date the sale is closed, the Applicants shall construct, at their own expense, the following infrastructure for the provision of telephone service to portions of the Hoopa and Yurok Reservations:
- a. A fiber optic line from the Hoopa Central Office to the village of Weitchpec.
 - b. Terminating equipment and distribution plant in Weitchpec to provide telephone service to the following customers and community facilities:
 - i. The public school in Weitchpec.
 - ii. The Weitchpec Community Center (WCC).
 - iii. Pearson's local store.
 - iv. All residences located within one mile (5,280 feet) of the WCC, including residences on the Hoopa Reservation located within one mile of the WCC.

- v. Two residences located on the Hoopa Reservation. One home may be less than a mile from the WCC, and the other is between a 1 ½ miles and 2 miles from the WCC.
 - vi. T-1 data line at the WCC and the Yurok Telecommunications Project microwave site located near Pearson's store.
 - 1. In lieu of the T-1 line, the Applicants may install a spread spectrum microwave radio system with the capacity of a T-1 line.
 - 2. Customers in Weitchpec receiving T-1 service shall not pay any non-recurring installation changes, but shall pay tariffed monthly rates and any other recurring charges.
 - vii. A spread spectrum microwave radio system to provide telephone service to the Jack Norton Public School in Pecwan and the Head Start Center in Ke'pel. The microwave system will have capacity to accommodate growth in the service load over the next 10 years.
 - viii. Payphones at the following locations: two payphones each at the Community Center and Pearson's store in Weitchpec; one payphone at the CalTrans site located outside Weitchpec on State Route 169; one payphone at the entrance to the Tish Tang Campsite located on the Hoopa Reservation; one payphone at the Jack Norton School in the village of Pecwan; and one payphone at the Judson-Brown Community Center in the village of Ke'pel. Each payphone shall provide free access to E911.
28. CTCC shall exclude from its rate base and rates the cost of the previously identified facilities that the Applicants install to serve the Hoopa Reservation and the Yurok Reservation. The cost of future additions to, and replacements of, these facilities may be included in rate base and rates.
29. To the extent that CTCC does not recover its reasonable operating costs to provide basic exchange service to the newly served areas of Hoopa and Yurok Reservations in the rates paid by the customers in these areas, CTCC should seek to recover the shortfall from federal universal service programs. CTCC may seek to recover any remaining shortfall from the California High Cost Fund-B (CHCF-B).
- a. Reasonable operating costs include costs to operate, maintain, and repair the new facilities required by this decision, but excludes depreciation and cost of capital associated with the cost of the new facilities.

- b. CTCC may recover its recorded operating costs only to the extent these costs exceed the “benchmark” cost of \$20.30/month per line established by D.96-10-066.
 - c. To recover its recorded operating costs, CTCC shall file an advice letter that breaks down recorded operating costs by Census Block Group. The Commission will address CTCC’s advice letter in a resolution.
30. CTCC shall program the switch serving the Hoopa Reservation to allow customers on the Reservation to receive CLASS features offered in conjunction with basic service.
 31. CTCC shall deploy new service offerings in the Hoopa exchange within 60 days of the time the new service offerings are made available in the Weaverville exchange.
 32. Citizens shall provide DSL service to customers on the Yurok Reservation served by the Klamath exchange within 60 days of the time that DSL is provided to areas contiguous to the Reservation.
 33. Citizens shall investigate the possibility of establishing payment agents in Weitchpec and Hoopa. The payment agents would provide limited customer service and access to an 800 number for further customer service.
 34. Citizens shall work with the Hoopa Tribe and the Yurok Tribe to develop a procedure for regular communication between CTCC’s local manager and each Tribe.
 35. Citizens shall provide limited engineering and technical assistance to help the Hoopa Tribe and the Yurok Tribe in applying for public and private grant programs.
 36. CTCC shall (i) work with the Hoopa Tribe to develop a plan to provide advanced services to the Reservation, and (ii) help the Hoopa Tribe develop and distribute a survey to determine the demand and economic support for such services.
 37. GTE, GTEC, GTEWC, GTE Northwest, CCC, CTCC, and CTCGS shall adhere to all terms and conditions in the sales agreements appended to A.99-09-027 and A.99-09-031, including all provisions in the sales agreements that protect GTE employees in the 32 GTE exchanges from negative changes to their current positions, income, or benefits.

38. CTCC and CTCGS shall comply with all applicable environmental laws and regulations when planning and constructing the telecommunications infrastructure required by this decision.
39. Once CTCGS has completed a detailed engineering design and environmental assessment for the construction of new telecommunications facilities to serve the Bar-O Boys Ranch and surrounding areas, CTCGS shall file an application with the Commission for review and approval of the proposed construction under CEQA. If appropriate, the environmental assessment may be coordinated with any environment review conducted under NEPA.
40. Once CTCC has completed a detailed engineering design and environmental assessment for the construction of telecommunications infrastructure to serve the Hoopa and Yurok Reservations, CTCC shall file an application with the Commission for review and approval of the proposed construction under CEQA. If appropriate, the environmental assessment may be coordinated with any environment review conducted under NEPA.
41. If the Commission concludes as a result of an environmental assessment that the construction required by this decision should not be approved due to adverse environmental impacts that cannot be adequately mitigated on a cost-effective basis, the Applicants shall file within one year from the Commission's finding a new application that proposes alternate means to provide the public with the same level of benefits that would have been provided by the canceled construction project(s). The application should be served on all the parties to this proceeding.
42. CTCC and CTCGS shall comply with all federal, state, and local environmental laws, rules, and regulations applicable to the operation of the 32 exchanges acquired from GTE exchanges.
43. CTCC shall comply with any environmental regulations that may be adopted by the Commission in R.00-02-003 as these regulations pertain to the 26 exchanges acquired from GTEC.
44. CTCGS shall comply with any environmental regulations that may be adopted in R.00-02-003 as these regulations pertain to the six exchanges acquired from GTEWC.

A.99-09-027, A.99-09-031

D.01-06-007

Commissioner Henry M. Duque dissenting:

In the long run, consumers' benefit is directly tied to the long-term benefits of shareholders. A company that does not produce a sustainable value to its shareholders is unlikely to provide sustainable quality service to its customers. In this regard the majority's decision commits two fundamental mistakes. First, it unnecessarily ties dividend payments to shareholders with the quality of service customers receive. In doing so, it fails to recognize that such balancing of priorities is in fact the duty of the company's management. Second, the majority decision micromanages the investment policies of the acquiring company by setting a mandatory capital funding cycle. This regulatory imposed capital spending is restrictive of management's ability to efficiently manage its resources and will lead to inefficient allocation of scarce capital resources. From my perspective such a decision is better left to the company's able management rather than this Commission's prospective planning based on past history of investment. In practice, the companies will make investment according to the realities of the market, which is largely affected by the present and the future rather than recorded investment practices. I find this mandatory investment policy interventionist and detrimental to the creation of a competitive telephone market. In the present, I fear that the conditions contained in the majority decision may cause the sales agreement to fall apart and thus the Yurok and Hoopa tribes may lose a rare opportunity to have access to modern communications.

The issue of capital spending and dividend payment are not just about interpretation of prior decisions, but also about establishing a policy direction in how we deal with risk and reward and regulatory role in the day-to-day management of telephone carriers. Do we choose short-term but politically appealing benefits for consumers in lieu of far reaching, long-term benefits at the cost of foregoing short-term gains?

The decision adopted today conveys a message that we ought to look at the key issues of capital spending and dividend payments, among others, as a short-term zero sum game where either customers or shareholders must lose for the others to gain. I find the approach adopted in the majority decision contrary to the reality of today's telecommunications market and the principles of the regulatory regime this Commission established for NRF regulated companies.

For all these reasons I will respectfully dissent.

/s/ HENRY M. DUQUE

Henry M. Duque
Commissioner

June 7, 2001
San Francisco, California

A.99-09-027, A99-09-031

D.01-06-007

Commissioner Richard A. Bilas, dissenting:

Today the majority has approved an order which puts at risk the substantial benefits of providing service to the Yurok tribe and the Hoopa tribe. The Applicants had voluntarily agreed to serve this area which is in unfiled territory assuming the sale is consummated. However, with all the other conditions in this order, notably extending the required high level of investments to five years and possible review of Citizens' dividend policy, there is a strong possibility that the deal will not be consummated. Should this deal fall apart, I criticize the majority for providing the public with no benefits at all in the quest to squeeze additional benefits out of the deal.

Even if this deal is consummated, the majority should still be criticized for being reckless. The actions of the majority places the substantial benefits at risk due to the conditions imposed by the decision.

One of the stringent conditions is to impose a high level of investment for five years. This condition has been put in place because of the sole negative finding: that the financial condition of Citizens will not be maintained or improved by the transaction. Ironically, the decision's requirement of five years of high capital investment will compound the problem of Citizens' financial condition. My alternate contained a three-year period. This would have been much more appropriate given that there is a separate requirement that imposes a rate freeze.

I also disagree with the precedent being set regarding dividend policy. I see no need to have the California Public Utilities Commission oversee dividend policy. Many of the companies we regulate have parent companies over which we have little or no control. Additionally, many companies are national and even international in scope. I see no reason why a California agency should have a say in the dividend policy of a national or international company.

If the concern is service quality, the Commission should focus upon that fact. Indeed, we already do. General Order 133 sets forth many standards that utilities must meet. If the majority desired additional standards for Citizens to follow, then specific standards could have been proposed. However, to place restrictions on dividends is certainly a roundabout way to try to ensure good service quality.

There is no certainty that this deal will go through. At this time, both options are possible. In reality, neither option is good. If the deal goes through, then optimistically only a little harm has been done. Obviously, the improvements to the Bar-O-Boys ranch and the new service to the Hoopa and Yurok tribes are quite significant. Yet harm has still been done in that future sales and/or mergers are now less likely to occur. If this deal is not consummated, then we have done a great disservice to the Hoopa and Yurok tribes. This once-in-a-lifetime opportunity will not present itself again.

/s/ RICHARD A. BILAS
RICHARD A. BILAS
Commissioner

San Francisco, California
June 7, 2001

A.99-09-027 et al.

D.01-06-007

Commissioner Geoffrey F. Brown, Concurring:

I have supported Administrative Law Judge Tim Kenny's decision in the matter of the Joint Application of Citizens Telecommunications etc., (Application 99-09-027 and 99-09-031, filed September 15, 1999), mindful of certain important implications.

Conditions for Dividends:

Judge Kenny's order states "CTCC and CTCGS may pay a dividend, loan money, or provide other forms of capital to CCC [the parent company] or other affiliates only if doing so does not jeopardize the utility's ability to provide safe and reliable service at reasonable rates (at p. 27, B-1)." At the time I introduced his order, I said that I did not regard that as a pre-approval restriction whereby the company must come to the Commission for approval before the issuance of a dividend. Instead, I understood Judge Kenny's order to be a re-statement of the law on this point. The reason it is stated explicitly, I believe, is to remind the company of its obligation to ratepayers as it undertakes its ambitious plans for improvement of its newly acquired exchanges.

Gain on Sale of Utility Assets

I do not believe that the precedents of the Commission on the issue of gain on sale of acquired properties in utility sales (see p. 93 fn. 142) should be reversed retroactively. PUC Section 854 (f) has set forth the conditions under which the Commission can require gains on sale to be shared between shareholders and ratepayers. This Commission has, in recent years, refused to allow the gain on sale to go to ratepayers, beyond 854 (f) limitation. Ibid. If we reverse our precedent it should be done through a rule-making process, and, in my judgement, prospectively. Because the issue of gain on sale will return to Commission deliberations, I would favor commencing the rulemaking process immediately. After hard analysis and debate, we can decide whether and under what conditions ratepayers should share in gains on utility sales. Such rulemaking will lead clarity to our regulatory process and afford clear guidelines for business decision-making.

./s/ GEOFFREY F. BROWN
GEOFFREY F. BROWN
Commissioner

San Francisco, California

June 7, 2001