

Decision **DRAFT DECISION OF ALJ PULSIFER** (Mailed 1/9/2004)**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking on the
Commission's Own Motion into Competition for
Local Exchange Service.

Rulemaking 95-04-043
(Filed April 26, 1995)

Order Instituting Investigation on the
Commission's Own Motion into Competition for
Local Exchange Service.

Investigation 95-04-044
(Filed April 26, 1995)

**OPINION ADOPTING WHOLESALE
DIRECTORY ASSISTANCE LISTING PRICES**

TABLE OF CONTENTS

TITLE	PAGE
OPINION ADOPTING WHOLESALE DIRECTORY ASSISTANCE LISTING PRICES	2
I. Summary	2
II. Historical Framework.....	2
III. Procedural Background	6
IV. Positions of Parties	8
A. Position of SBC	8
B. Position of Joint Parties	11
V. Discussion	12
A. Pricing Standard for DALIS	12
B. Wholesale Assumptions Underlying TELRIC	18
C. Review of Individual Cost Elements.....	21
1. Data Acquisition Costs	21
2. Data Storage Costs	22
3. Labor Cost for Data Storage and Database Maintenance	24
4. Cost of Computer Processing Time	25
5. Number of DALIS Records Processed Per Month	26
6. Costs of Manually Processing Physical Tapes	27
D. Conclusion	28
VI. Assignment of Proceeding	29
VII. Comments on the Draft Decision	29
Findings of Fact.....	32
Conclusions of Law	35
ORDER	36

OPINION ADOPTING WHOLESALE DIRECTORY ASSISTANCE LISTING PRICES

I. Summary

By today's decision, we establish wholesale rates applicable to the provisioning of service under Pacific Bell Telephone Company's dba SBC California (SBC) Directory Assistance Listing Information Service (DALIS) tariffs. DALIS is a wholesale service offered to third-party vendors whereby SBC furnishes directory assistance (DA) data (*i.e.*, listed names, addresses, and telephone numbers) for third-party vendors' use in providing directory assistance services to retail customers. Third-party vendors that utilize DALIS include competitive local exchange carriers (CLECs), other telecommunications carriers, and other independent DA vendors.

The prices we adopt are based upon review of the DALIS study submitted by SBC as well as responsive comments, declarations, discovery and depositions submitted by opposing interests, designated as the "Joint Parties."¹ Of the two DALIS pricing proposals before us, we conclude that the prices proposed by the Joint Parties offer the more reasonable choice. Accordingly, we adopt the DALIS prices proposed by the Joint Parties, as set forth in the order of this decision.

II. Historical Framework

This decision is the culmination of a series of steps to implement competitive pricing for DA services. SBC implemented the wholesale provisioning of DALIS through an advice letter filing in December 1996. The

¹ The Joint Parties consist of LSSI Corp, Metro One Telecommunications, Inc., and WorldCom, Inc.

wholesale prices implemented in SBC's DALIS tariff were provisional, however, and subject to further review and true up. In Decision (D.) 97-01-042, issued January 23, 1997, we directed the Administrative Law Judge (ALJ) to conduct a further inquiry into the wholesale pricing and provisioning of DA listings to third party vendors.

Shortly before issuance of D.97-01-042, the Commission determined in arbitration proceedings under § 252 of the 1996 Telecommunications Act that SBC (then known as Pacific Bell) and Verizon California, Inc. (then known as GTE California, Inc.) should provide DA listings to CLECs "at the cost of the transfer media (electronic tape) plus reasonable costs for preparation and shipping of the media."² We ordered that "the determination of appropriate cost recovery for the preparation and delivery of the [DA] information . . . be addressed in the [Open Access Network Architecture and Development] OANAD proceeding."³

² D.97-01-042, fn. 13, referencing D. 96-12-034 (re: the Pacific / AT&T Arbitration), and the Arbitrator's Report in Application (A.) 96-08-041 (re:GTEC / AT&T Arbitration).

³ D.97-01-042, Ordering Paragraph (OP) 8.

Following the issuance of D.97-01-042, certain parties sought to negotiate interim rates for access for SBC and Verizon's DA databases. SBC initially indicated that the rate would be \$0.0059 per listing, which two DA competitors, InfoNXX,⁴ and Metro One indicated was acceptable.⁵ However, before formal agreements could be established, SBC's DALIS tariff took effect, and thereafter, Pacific only offered to furnish InfoNXX and Metro One with access to DA listings in accordance with their DALIS tariff which established pricing in excess of the rate promised to InfoNXX and Metro One.

In December 1997, by D.97-12-042, the Commission required the incumbent local exchange carriers (ILECs) to furnish independent third-party DA providers with nondiscriminatory access to DA listings. The Commission stated that "access to database listings for DA purposes should be the same for and between all competing providers, including third-party database vendors."

By D.98-01-022, the Commission permitted SBC's DALIS tariff rates to be used on an interim basis, however, subject to true-up, notwithstanding the tariff's differences from the rates that SBC was charging CLECs for access to the same data under interconnection agreements. This interim arrangement was found not to constitute undue discrimination because rates in the interconnection agreements were "part of an integral package of terms and conditions

⁴ In December 1999, InfoNXX's affiliate, InfoNXX Carrier, Inc., assumed responsibility for acquisition of data necessary for the provision of DA service. As a certificated competitive local carrier, InfoNXX Carrier has obtained such data from SBC pursuant to an interconnection agreement rather than pursuant to D.97-01-042. Accordingly, InfoNXX's interest at this juncture is simply in obtaining a true-up of amounts paid prior to December 1999.

⁵ Comments of Metro One to OP 9 of D.97-01-042 Concerning Directory Listing Issues, August 15, 1997, at p. 4.

specifically negotiated by the parties,” and [i]t would not be appropriate to arbitrarily single out one term of such interconnection agreements and apply that term to other competitors that were not bound by the comprehensive terms of any one interconnection contract.”⁶ Moreover, the Commission concluded that while “the parties [had] raised valid questions over the reasonableness of the ILEC’s directory-access rate,” third-party DA service providers would not be harmed because amounts collected from them would be recorded in a memorandum account subject to a true-up, with any excess refunded with interest at the three-month commercial paper rate, once permanent rates were established.⁷

Once appropriate DALIS rates were adopted in the OANAD proceeding, the ILECs would true up the accrued revenues in the memorandum account. In the event that final adopted DALIS prices turned out to be below the provisional rates, the ILECs would be required to compute an appropriate credit to be refunded to those competitors that were previously billed using the provisional prices. If the adopted DALIS prices turned out to be higher than the provisional rates, the ILECs would be permitted to recover the difference.

The Directory Listing Order, issued by the Federal Communications Commission (FCC) on January 23, 2001,⁸ held that third-party DA service providers acting as agents or independent contractors for CLECs, or who

⁶ D.98-01-022, *mimeo.*, p. 5.

⁷ D.98-01-022, *mimeo.*, pp. 5-7.

⁸ *Provision of Directory Listing Information under the Telecommunications Act of 1934, as Amended*, CC Docket No. 99-273, First Report and Order, FCC 01-27 (released January 23, 2001).

provide call completion services, are entitled to access DA database listings under the same rates, terms, and conditions that apply to CLECs. ILECs must also file agreements establishing rates, terms, and conditions for DA data basis access pursuant to Section 252 of the 1996 Act and third-party DA service providers meeting the FCC's criteria are entitled to opt into such prices, terms, and conditions.⁹ The FCC has not yet determined whether these same rules must be extended to include DA database access afforded to third-party DA service providers who are neither carriers nor acting on behalf of carriers. Nonetheless, Petitioners argue that it is discriminatory not to require that the same rates, terms, and conditions be extended to all DA service providers.

On February 7, 2002, we issued D.02-02-025 in response to a joint party petition to modify D.98-01-022 seeking a Commission order to implement immediate reductions in DALIS prices. While not granting the immediate DALIS price reductions requested in the petition, D.02-02-025 did acknowledge that the final determination of prices for DALIS had been significantly delayed beyond the period originally anticipated in D.98-01-022. We thus made provision in D.02-02-025 for moving forward with the determination of prices for DA services by transferring the issue from OANAD to the instant docket (*i.e.*, the "Local Competition" proceeding Rulemaking (R.) 95-04-043 / Investigation (I.) 95-04-044).

III. Procedural Background

By ALJ ruling, dated February 21, 2002, a schedule was set for SBC to submit a DALIS cost study to update for changed conditions since the former study previously submitted in OANAD, and for parties to file comments in response. Prior to the ALJ ruling, the most recent DA cost studies for SBC and

⁹ *Id.* at para. 36.

Verizon had been last submitted to the Commission in 1999. SBC had filed its DALIS cost study in the OANAD proceeding on April 6, 1999. It was revised on August 18, 2000. Verizon (then known as GTE California, Inc.) submitted a DA cost study on April 6, 1998, which it last updated on September 15, 1999.

SBC filed an updated DALIS cost study in the instant proceeding on March 25, 2002. On April 17, 2002, Joint Parties filed a motion to compel a response to discovery concerning the DALIS cost studies prepared by SBC-affiliated companies in other states. An ALJ ruling dated April 23, 2002 granted the motion to compel.

In reliance on SBC's representation that an amendment to its March 25, 2002 Update would be filed on or about May 13, 2002, Joint Parties postponed depositions pending review of this further amendment. SBC actually filed its amendment to the cost study update on June 6, 2002, providing new cost study data.

On August 8, 2002, Joint Parties filed a joint motion to strike new cost study material in SBC's June 6, 2002 amendment. An ALJ ruling, issued on October 21, 2002, denied the motion to strike, but permitted Joint Parties to conduct further discovery and to take depositions relating to the new material in Pacific's update. In response to Joint Parties' request, the ALJ deferred setting submission date for replies to SBC's cost study pending the conclusion of depositions and further discovery.

Joint Parties then conducted further discovery and depositions. By letter to the ALJ dated March 20, 2003, counsel for Metro One Telecommunications, Inc. confirmed that the active parties' discovery had been completed, and indicated that the parties would be prepared to file comments on SBC's revised cost study on April 17, 2003.

SBC submitted its revised DALIS cost study and pricing proposal on April 17, 2003. Pacific's filing included supporting materials in the form of data responses and depositions of certain SBC representatives.¹⁰ Comments in response to the cost study were concurrently submitted by Joint Parties on the same date. Attached to the filed comments, the Joint Parties provided Declarations of its consultants. Joint Parties' filing also included copies of data responses provided by SBC as well as depositions of SBC representatives.¹¹

None of the active parties have requested evidentiary hearings to resolve disputes as to DALIS prices, but have offered written filings, including sworn declarations and attached deposition transcripts, as a basis for Commission deliberation and adoption of prices. Accordingly, we hereby adopt DALIS prices as set forth in the ordering paragraphs of this decision based upon review of the cost study and related written materials filed by parties.

IV. Positions of Parties

A. Position of SBC

SBC proposes that DALIS prices be based upon what it characterizes as a "market-based" approach, and argues that such pricing is appropriate for DALIS in California. SBC claims that wholesale directory assistance provisioning constitutes a competitive market, and that other currently available commercial sources of directory listings compete with SBC. SBC identifies various former wholesale customers of its DALIS that now receive SBC West listings from other sources.

¹⁰ Pacific filed comments both in a public version, on a redacted basis, and under seal in a confidential unredacted version.

¹¹ Joint Parties also filed comments in both a public version, on a redacted basis, and under seal in a confidential unredacted version.

SBC thus proposes DALIS prices that incorporate a price floor set at its estimated “Total Service Long-Run Incremental Cost” (TSLRIC), with actual prices based on what SBC characterizes as a “market-based” valuation. The price plan proposed by SBC is equivalent to the rates for DA service approved by the FCC in the X2A Agreements in SBC’s 271 applications in the states of Missouri, Oklahoma, Kansas, Arkansas, and Texas. The X2A Agreements are the state-commission-approved interconnection agreements that resulted from CLEC collaboration in each specific state.

SBC’s proposed pricing plan for DALIS as follows:

Rate Per Listing (for initial load)	\$0.0585
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Rate Per Listing (for each update)	\$0.5285
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SBC argues that its pricing proposal conforms with the FCC adopted standard that merely requires DALIS pricing and availability to be “at nondiscriminatory and reasonable rates...”¹² SBC opposes the use of a “Total Element Long Run Incremental Cost” (TELRIC) approach for DALIS pricing, arguing that TELRIC is intended only for the pricing of unbundled network elements (UNEs). Since DALIS is not a UNE, SBC believes that the use of TELRIC pricing is unwarranted. Nonetheless, in order to address the claims by Joint Parties that TELRIC pricing should be used, SBC produced an updated

¹² In the Matter of Provision of Directory Listing Information Under the Telecommunications Act of 1934, as Amended, etc. Third Report and Order in CC Docket No. 95-115, Second Order on Reconsideration of the Second Report and Order in CC Docket No. 96-98, and Notice of Proposed Rulemaking in CC Docket No. 99-273, FCC No. 99-227, para. 35 (rel. Sep. 9, 1999).

study reflecting prices based on both the estimated TSLRIC and TELRIC for DALIS.

SBC prepared its 2002 DALIS cost study (initially in March 2002, and further revised in June 2002) updated to reflect what it considers to be relevant changes in circumstances and assumptions since its last update in August 2000.

SBC's cost study is based upon the activities and related resource times identified by its subject matter experts for the tasks that SBC claims are required to provide DALIS. These task times were applied to associated unit costs to compute total costs separately stated for recurring and nonrecurring activities. SBC includes a definitive separation of recurring and non-recurring tasks performed for DALIS.

SBC identified the following TSLRIC categories of DALIS functions and related costs:

- Customer Support; Client subscription and Extract Criteria
- Database Maintenance for DALIS Master File Tape
- Preparation, Billing, and Shipping

SBC separately produced a study of additional costs that would be required in the event that DALIS were costed on a TELRIC basis.

SBC identified the following TELRIC-related costs elements for DALIS:

- Data Acquisition - Initial
- Data Acquisition - Ongoing
- Data Storage
- Data Maintenance / Update

The essential difference between the TSLRIC and TELRIC approach used by SBC is that the TELRIC reflects higher costs that SBC claims it would incur by assuming a wholesale-only environment for provisioning DALIS. In other words, SBC computed TELRIC on a hypothetical basis assuming no SBC retail operations existed. On this basis, SBC computed the TELRIC that the

hypothetical wholesale-only unit would incur for obtaining listing information, assuming no access to SBC retail end-user listings data.

B. Position of Joint Parties

A response to SBC's cost study was filed by the Joint Parties. Joint Parties' response includes transcripts of depositions (filed under seal) taken from officers and employees of SBC as well as declarations of its own consultants.

The Joint Parties disagree with the approach upon which SBC based its DALIS pricing study. The Joint Parties argue that DALIS should be priced based upon a TELRIC approach, as adopted by the FCC for UNEs and interconnection, reflecting the forward-looking economic cost of provisioning DALIS. The Joint Parties object to using SBC's approach, arguing that such pricing standard far exceeds the costs claimed by SBC as required to provide DALIS, and violates the nondiscrimination requirements of the Act and the FCC's orders.

The Joint Parties argue that SBC's proposed DALIS price of \$0.0585 per listing bears no congruity to SBC's own claimed forward-looking economic cost for DALIS. Even after adding the currently authorized shared and common cost markup of 21% to SBC's claimed per-listing TSLRIC estimate for DALIS, Joint Parties claim that the resulting price would still be roughly an order of magnitude lower than SBC's proposed "market-based" price. The Joint Parties contend moreover that SBC has failed to show that its proposed DALIS prices reflect prices in a competitive market.

Moreover, the parties argue that market-based pricing is not an appropriate standard upon which to set tariff prices for DALIS because of the lack of a fully competitive market in California. The Joint Parties argue that

DALIS should be priced based upon the forward-looking economic cost as determined under the TELRIC pricing approach.

The Joint Parties propose prices incorporating recurring and nonrecurring TELRIC elements plus a mark-up of 21% for shared and common costs, as set forth below. Because certain DALIS customers prefer to use tape delivery as an alternative means of acquiring DA listing data, parties propose an optional per-tape delivery rate. Joint Parties' proposed DALIS rates are as follows:

Joint Parties' Proposed DALIS Rates:

<u>Rate Element:</u>	<u>Units</u>	TELRIC <u>Cost</u>	<u>Price</u>
Recurring (Update Listing Files)	Per Listing	\$0.00072	\$0.00087
Optional Tape Delivery	Per Tape	\$13.32	\$16.12
Non-Recurring (Base File)	Per Order	\$2,954.37	\$3,574.79

V. Discussion

A. Pricing Standard for DALIS

As a threshold matter, we address the dispute concerning the appropriate standard for the pricing of DALIS. The dispute focuses on whether DALIS should be priced based upon a TELRIC standard or whether the alternative "market based" standard proposed by SBC should be used, which corresponds to the rate for DA listing service that SBC affiliates charge in other jurisdictions.

In its UNE Remand Order, the FCC stated that the obligation of LECs to provide nondiscriminatory access to DALIS already existed in Section 251(b)(3) of the 1996 Act, although it declined to include DALIS in the definition of a UNE. The nondiscrimination standard prescribed by Section 251(b)(3) of the Telecommunications Act of 1996 requires that the DALIS prices charged by SBC must avoid granting preferential treatment in transactions with SBC's own

operations in comparison to those of third party DA vendors. The DALIS prices set in this order are focused on nondiscrimination in this context, that is, between the SBC, as the dominant ILEC provider of DA, and competing third party DA vendors. In setting DALIS prices in this context, therefore, we do not focus on potential differences in prices experienced among different competing DA vendors other than the ILEC. For example, some DA providers may pay prices based upon the terms of interconnection agreements with the ILEC that is set independently of the terms in the DALIS tariff. The prices that we set in today's order apply to SBC's DALIS tariff, but do not change whatever prices may otherwise apply in any existing interconnection agreement. To the extent differences thus may exist in DA prices that third party competitor's pay, such differences are not a source of anticompetitive pricing discrimination as identified in Section 251(b)(3). Thus, any differences between prices under the DALIS tariff and DA pricing provisions in currently effective interconnection agreements do not have a bearing upon the DALIS prices that we adopt herein in accordance with nondiscriminatory pricing standards.

We agree that a DALIS price based merely upon market forces could be nondiscriminatory if the market were truly competitive. SBC argues that the wholesale provisioning of DA listings in California is competitive, noting that companies such as WorldCom purchase SBC California's DA listings and sell them to other carriers on a wholesale basis. Although sources of directory listings are available to competitors apart from SBC, no showing has been made that such sources permit service equivalent in quality or comprehensiveness to DA listing services available through SBC. On the other hand, as we previously noted in D.01-09-054:

The FCC found that incumbents enjoy a competitive advantage with respect to the provision of directory assistance service as a result of their legacy as monopoly providers of local exchange service, and their “dominant position in the local exchange and exchange access markets.”¹³

Given the dominant position that Pacific still continues to enjoy through its legacy as a former monopoly provider of local exchange service, as referenced in D.01-09-054, we find no basis to conclude that the market for the wholesale provision of DA listings has now become fully competitive. SBC provided no price data from alternative wholesale DA service providers within California nor any comparison of terms and conditions of such alternative services to demonstrate that California competitors’ DA offerings equals that of SBC in quality. Instead, SBC merely applied prices that its affiliates charge outside of California, as approved by the FCC in the X2A Interconnection Agreements in SBC’s 271 applications in the states of Missouri, Oklahoma, Kansas, Arkansas, and Texas. These interconnection agreements resulted from CLEC collaborative processes and were approved by each of the respective state commissions. We find no basis, however, to conclude that such prices from other jurisdictions represent competitive or nondiscriminatory prices for the provision of DALIS within the California market, or reasonably reflect the costs that SBC California incurs for acquiring and processing DA listings for its own use.

¹³ D.01-09-054 at 7, quoting FCC Forbearance Order at fn. 42.

SBC may not use its market power to extract excessive DALIS prices at a level that would unfairly discriminate against competitors. In this respect, the Commission has previously stated in D.01-09-054:

Even if [Directory Assistance Listing] DAL is not a UNE, pricing of DAL is subject to strict nondiscrimination requirements under the Act and FCC orders. As the FCC recognized in its DAL Provisioning Order,¹⁴ this nondiscriminatory access requirement extends to pricing. In its order, the FCC recognized that ILECs continue to charge competing DA providers discriminatory and unreasonable rates for DAL. Although the FCC declined to support a specific pricing structure for DAL, it encouraged states to set their own rates consistent with the nondiscrimination and reasonable pricing requirements of Section 251(b)(3).¹⁵

Given that we find no basis to conclude that the California wholesale market for DALIS is fully competitive, we cannot simply assume the prices

¹⁴ Provision of Directory Listing Information under the Telecommunications Act of 1934, As Amended, CC-Docket No. 99-273, FCC 01-27, released January 23, 2001 (“DAL Provisioning Order”).

¹⁵ See D.01-09-054 at 7, re: arbitrated Interconnection Agreement between Pacific Bell Telephone Company and MCImetro Access Transmission Services, L.L.C.

charged by SBC affiliates in other jurisdictions are a reasonable proxy of competitive market prices for DALIS in California. We find that the best proxy for nondiscriminatory pricing of DALIS is one that is based on forward-looking economic cost. As explained in the Declaration of Terry L. Murray,¹⁶

¹⁶ See Murray Declaration, page 12.

forward-looking economic cost establishes an economically meaningful benchmark for nondiscrimination that promotes fair competition, and prevents SBC from exerting market power from its legacy position as a former monopoly provider. Moreover, the best available measure of forward-looking economic cost is embodied in the TELRIC-based methodology which has been used for pricing UNEs.

We recognize that DALIS is not recognized as a UNE under FCC rules. Nonetheless, nothing in the FCC rules preclude this Commission from exercising discretion to apply a TELRIC-based pricing approach for purposes other than UNE pricing, where appropriate. In this instance, we conclude that TELRIC-based pricing offers the best available means to satisfy the “nondiscriminatory” pricing standard required for DALIS.

TELRIC provides the best approximation of cost that SBC actually incurs for DA listings to provide services to its own retail customers. The same level of cost should be applied in making DALIS available to competitors. TELRIC-based prices approximate the prices that a firm operating in a competitive market might be able to charge. This principle has been articulated by the FCC in implementing TELRIC-based pricing for UNEs. The FCC stated:

Adopting a pricing methodology based on forward-looking economic costs replicates, to the extent possible, the conditions of a competitive market. In addition, a forward-looking cost methodology reduces the ability of an incumbent LEC to engage in anti-competitive behavior. . . Because a pricing methodology based on forward-looking costs simulates the conditions in a competitive marketplace, it allows the requesting carrier to

produce efficiently and to compete effectively, which should drive retail prices to their competitive levels.¹⁷

TELRIC pricing provides for a return on SBC's economic costs, as reflected in the 21% shared-and-common-cost markup currently set by the Commission. (See D.02-09-042 at 2.) To the extent that SBC's proposed DALIS prices would yield a return significantly in excess of what a competitive market would support, such prices are not indicative of a competitive market. Rather, such prices reflect surplus economic rents that can only be extracted where a market is not truly competitive. We conclude that the markup proposed by Joint Parties is reasonable since it is based upon what we have previously authorized under TELRIC pricing, and thus neither overcompensates nor undercompensates SBC.

No superior standard other than TELRIC that has been offered by any party as a basis for setting DALIS prices. DALIS prices shall therefore be based upon a TELRIC standard to promote a competitive pricing approach and to guard against an unlevel playing field in which the incumbent enjoys an unfair advantage by virtue of obtaining most directory listings "for free" as an artifact of its legacy role of LEC provider to most Californians.

B. Wholesale Assumptions Underlying TELRIC

Having determined that DALIS pricing shall be based upon a TELRIC standard, we next address the issue of what underlying assumptions should be applied. Parties are in dispute as to the proper basis for computing the TELRIC

¹⁷ First Report and Order, In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 (CC Docket No. 96-98); Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers) CC Docket No. 95-185), FCC No. 96-325 (rel. Aug. 8, 1996) at § 679.

related to DALIS. SBC uses an approach characterized as “wholesale-only” in computing TELRIC under which SBC’s entire retail operation and all related outputs are assumed not to exist. As such, SBC assumes that it could only offer DALIS by first purchasing listings from whatever entity theoretically would replace SBC California as the provider of retail basic exchange service.

SBC does not simply deduct retail costs from its TELRIC analysis, but adds a new layer of costs that it assumes would be incurred by a theoretical “wholesale-only” company provisioning DA listings independently from SBC retail operations. By assuming no retail operations exist, SBC excludes any economies of scope and scale that are available in provisioning DALIS as a result of its retail business. SBC assumes this theoretical wholesale company would have no access to SBC retail DA listings from its end-users, but would have to acquire and maintain all DA data independently. As a result, SBC assumes significantly higher costs for the theoretical company than the actual costs computed by SBC representing its actual operations.

In support of this approach, SBC relies upon language from a federal district court decision¹⁸ stating that:

“[T]he TELRIC methodology calculates forward looking cost to ILECs of providing UNEs in a hypothetical competitive market in which the ILEC is a wholesaler, leasing UNEs to CLECs. The ILEC’s retail operations (selling telephone services to consumers) are therefore irrelevant to the TELRIC pricing method, and must be excluded.”

¹⁸ See *AT&T Communications of California, Inc., et al., v. Pacific Bell Telephone Company et al.*, Civ. No. C. 01-02517 CW (N.D. Cal., Aug 6, 2002), *mimeo.*, p. 7.

As noted by Joint Parties, however, the court decision's discussion of TELRIC was presented in the context of how to calculate *common* costs and *not* how to calculate the *direct* costs of UNEs. By excluding retail-related cost items, such as marketing and billing, in the calculation of common costs, the TELRIC methodology, as discussed in the federal court decision, avoids double counting of common costs that are relevant on a wholesale basis. Yet, we find no sanction in the federal court decision to ignore the existence of the retail arm of SBC in determining the *direct* costs of DALIS. SBC's approach, however, does just that in applying its wholesale-only approach to direct DALIS costs. We find no basis in the court decision, or elsewhere, to ignore the economies of scale and scope of providing DALIS in determining the direct costs of TELRIC.

By creating a hypothetical construct of direct costs based on an assumption that SBC retail operations do not exist, SBC ignores economies of scale and scope associated with its actual combined operations. The ability to share the cost of obtaining directory listings between the retail local exchange operations and all other related lines of business constitutes one of the key economies of scope and scale enjoyed by SBC and its affiliates. These are the very sort of scale and scope economies that the FCC intended to capture in TELRIC-based pricing. As stated by the FCC in its First Report and Order, “[a]s a result of the availability to competitors of the incumbent LEC’s unbundled elements at their economic cost, consumers will be able to reap the benefits of the incumbent LECs’ economies of scale and scope, as well as the benefits of competition.”¹⁹

¹⁹ Local Competition First Report and Order at § 679.

By charging DALIS costs while ignoring the scale and scope economies enjoyed by SBC and its affiliates in the ability to share the cost of acquiring directory listings, SBC would deprive its competitors of nondiscriminatory pricing. This approach would artificially inflate TELRIC with costs that do not, in fact, exist.

C. Review of Individual Cost Elements

Having determined that the TELRIC standard shall be applied by taking into account the scale and scope economies associated with Pacific's combined operations, we next consider the DALIS cost elements identified by Pacific on an individual basis.

1. Data Acquisition Costs

The DALIS price proposed by SBC does not distinguish the cost of listings it acquires from other incumbents versus those that it obtains from its own subscribers. In its assumed "wholesale-only" environment, SBC assumes that the total number of DA listings initially required would mirror the total number of listings held by SBC, and that ongoing update acquisition would mirror the number of updated listings per month received by SBC. SBC's claimed "data acquisition" costs under its "wholesale-only" assumption are based on a "weighted average" cost per record for an initial load and for additional listings multiplied by total listings from both SBC-retail LEC operations and nonaffiliated ILECs. SBC assumes that the weighted-average cost of acquiring all of these records (including those of SBC) equals the weighted average cost that it currently pays other incumbents to purchase their listing records.

The Joint Parties claim that SBC's DALIS cost is overstated in this regard in that it lumps together listings that SBC acquires from other incumbents

together with those that it enters from its own database. Joint parties argue that this weighted average cost is unreasonably high because it is dominated by the \$0.04 cost per listing paid to Verizon. The vast majority of records that SBC acquires comes from Verizon. Joint parties argue that the Verizon payments are not a realistic proxy for the acquisition cost of SBC's own listings or those provided free of charge by CLECs. The Joint Parties propose that wholesale DALIS customers be given the option of either paying or declining a separate per-listing charge for those listings.

We find no reasonable basis to assume an acquisition cost of nearly \$0.04 for SBC to acquire its own listings or listings provided for free by CLECs. This assumption is inconsistent with fact that SBC incurs no cost to obtain the listings of its own local exchange customers, and that CLECs currently give SBC listings data for their customers at no charge. It is unreasonable to adopt a data acquisition cost component for DALIS for nonexistent costs.

We agree that since DALIS customers can and do obtain directory assistance listings from incumbents other than SBC, loading such costs into the SBC DALIS results in a needless additional layer of costs. We shall therefore adopt the proposal of Joint Parties not to require DALIS customers to acquire non-SBC listings from SBC, but to make the acquisition of such listings optional.

2. Data Storage Costs

SBC computes data storage costs based on its subject matter experts' input concerning storage requirements of current SBC California listings, and included room for growth and other required database functionality. SBC also included labor requirements for management, application development and upgrading, testing, and other support functions.

Joint Parties take issue with the SBC assumed data storage costs, arguing that SBC does not take into account any economies of scale associated with a combined retail and wholesale operation, nor economies of scope associated with offering multiple wholesale products. In this respect, SBC assumes costs would be incurred not only with a “wholesale-only” operation, and also with a “DALIS-only” operation.

Joint Parties also take issue with SBC’s data storage costs to the extent they are predicated on the cost of mid-range computers. SBC admits this would not be the least-cost choice for a company that uses computers for tasks other than processing DALIS data. SBC admits that even the mid-range computers assumed in its TELRIC study would not be required full-time for DALIS processing, but could also support other operations with the spare capacity. WorldCom presented the Declaration of Jason Knapp addressing why SBC’s data storage assumptions, such as its estimate of the computing resources required to process the assumed volume of records and related costs, are overstated. Joint Parties argue that even assuming a wholesale-only operation, SBC would still necessarily use mainframe computers for other tasks, such as maintaining loop inventory, and that assigning 100% of the computer capacity to DALIS would thus be unrealistic. Terry Murray, in her Declaration, recommends that the Commission exclude all of the costs identified in SBC’s study for “data storage.”

As noted in the Declaration of Ms. Murray, SBC already recovers the cost of its retail DA operations from retail customers. Assignment of the same cost to a hypothetical “TELRIC” on a “wholesale only” basis would constitute double recovery of costs. As noted above, we reject the premise that hypothetical additional costs should be recovered from DALIS customers based on the

premise of a “wholesale-only” operation without access to the scale and scope economies of the retail operation. Thus, we shall adopt the recommendation of the Joint Parties to exclude the “data storage” costs from the TELRIC allowance.

3. Labor Cost for Data Storage and Database Maintenance

SBC assumes that two dozen full-time employees would be required to manage computer processing and updating for a wholesale-only DALIS offering.

Joint Parties offered the Declaration of Jason Knapp, Software Applications Developer for MCI, to challenge SBC’s assumptions regarding the number of employees required for data storage and maintenance as reflected in SBC’s cost study. Knapp states that he is “suspicious” of the number of employees assumed for data storage and maintenance in view of his experience with SBC working only with one SBC employee on all DA-database related issues. Moreover, Knapp states that the SBC employee assumptions seem suspect because it reflects twice the number of employees to administer one-tenth the amount of data that MCI maintains. Joint Parties argue that the description of the personnel as being “on-call” suggests that they would not be fully occupied with day-to-day provision of DALIS.

Joint Parties argue that SBC assumes excessive and inefficient work effort associated with DALIS. WorldCom witness Knapp identifies only four instances in all of 2002 during which he contacted SBC customer service representative concerning issues with DALIS and estimates that the total time spent during those contacts was approximately 8 hours. Joint Parties argue that the lack of specificity in SBC’s estimates of work effort makes it difficult for parties to verify or contest the reasonableness of the assumptions. Joint Parties recommend a 25% downward adjustment to SBC’s estimated labor costs for

customer support, which it represents as a conservative disallowance in relation to the amount implied by witness Knapp's testimony.

We agree with the Joint Parties that the labor costs assumed by SBC appear excessive in the context of the experience presented by WorldCom witness Knapp. The lack of available data make it difficult to determine a precise labor allowance for DALIS purposes. In the absence of a better record, however, we find the Joint Parties' recommendation provides an acceptable alternative. The proposed 25% downward adjustment, as proposed by Joint Parties, appears to be conservative in light of WorldCom's experience. Accordingly, we shall adopt the 25% downward adjustment to SBC's estimated labor costs for customer support.

4. Cost of Computer Processing Time

SBC reflects a cost of computer processing time valued at \$500 per hour based on citation to an "AT&T Bill Collection" study completed in the late 1980s. The Joint Parties argue that the cost of computers, particularly as a function of processing time, has plunged since the 1980s. Joint Parties argue that the price that WorldCom pays its vendors should capture the drop in the costs of current computer equipment relative to SBC's \$500 figure. Joint parties, based on the testimony of Ms. Murray, recommend replacing the \$500 per-hour with a \$100 per-hour cost assumption for computer processing time. WorldCom witness Caputo also provided testimony concerning comparable mainframe computer processing time that it can obtain from its own vendors.

Based on the declarations of Ms. Murray and Mr. Caputo, we agree that reliance on a cost source for computer processing time using 1980s technology results in an outdated cost assumption. As Caputo indicates, carriers and DA providers have largely automated both the initial load and daily update

process in recent years as computer equipment and electronic storage have become cheaper and computer data bases have become more sophisticated. It is reasonable that these economies be reflected in the price of DALIS charged to competitors. Accordingly, we reject the \$500 per hour figure offered by SBC on the basis that it reflects outdated technology. The alternative computer processing cost of \$100 per-hour proposed by Joint Parties represents the use of more contemporary technology that reflects a more relevant measure of DALIS-related computer processing time compared to the figure assumed by SBC. We shall thus adopt the \$100 per-hour cost of computer processing time for DALIS costing and pricing purposes.

5. Number of DALIS Records Processed Per Month

SBC developed its study assuming 3.6 million total DALIS update records per month based on the average total monthly listings provided to the seven “current” DALIS customers (excluding one customer that was no longer obtaining DALIS from SBC California at the time of the cost study) during three of the 10 months preceding the study. SBC excluded the other seven months of data on the basis that months were presumed to be “atypical” and may have represented initial loadings of the customers in question.

The Joint Parties argue that SBC incorporates inconsistent assumptions concerning the number of DALIS records that it provides each month. In the portion of its study showing costs based on its currently configured system, SBC indicates that about 514,000 DALIS records are provided per month to each DALIS customer. Yet, in the portion of its study based on the wholesale-only hypothetical operations, SBC assumes about 1.3 million updated records would be required to keep the DALIS product current.

An accurate figure for the number of DALIS records processed per month is important in determining the correct cost per listing. Because SBC divides an estimate of its total monthly recurring DALIS costs by an estimated total monthly update listings provided, variations in the latter figure will impact the per-listing cost. Yet, SBC has not provided a convincing rationale for its assumption of the number of monthly listings processed. As noted by the Joint Parties, SBC fails to explain why the seven “current” DALIS customers receive, on average, less than half of the total number of DALIS listings necessary to keep the database up to date. The Joint Parties argue that SBC may actually provide far more update listings than its average sample for non-randomly selected months shows. WorldCom witness Knapp explains that WorldCom processed an average of 1.3 million daily update listings each month from SBC.

We shall adopt the Joint Parties’ recommendation that an average figure of 1.3 million update listings per month for each DALIS customer be used for developing the recurring cost per listing. This figure corresponds closely to the number that SBC’s subject matter expert indicated as being necessary to maintain an up-to-date database.²⁰ We shall adopt this assumption for DALIS costing and pricing purposes.

6. Costs of Manually Processing Physical Tapes

SBC includes the cost of manually processing physical tapes for each and every DALIS customer, yet DALIS customers can also obtain the data electronically and many choose to do so. Joint Parties request the Commission to require SBC to eliminate the tape preparation costs from its basic per-listing charge for DALIS. If SBC continues to offer physical tapes as an alternative

delivery mechanism, then Joint Parties ask that it be reflected as a separate optional service option. Only those customers that choose the tape delivery option would pay the corresponding rate element.

We find the Joint Parties' recommendation for a separate pricing provision for physical tape processing to be reasonable and shall adopt it. Customers that choose to obtain DALIS data electronically should not have to pay for tape preparation costs that SBC will not incur on their behalf. We shall direct SBC to reflect physical tape delivery as an optional alternative to direct electronic delivery in its tariff. We shall therefore adopt the cost and price for physical tape delivery as set forth in the Joint Parties' recommendation.

D. Conclusion

Based upon the findings, conclusions, and analysis discussed above, we conclude that the DALIS pricing sponsored by the Joint Parties represents a more reasonable proposal than that offered by SBC. Accordingly, we adopt the TELRIC-based costs and prices proposed by the Joint Parties, and direct SBC to file DALIS tariffs implementing the revised pricing structure. The adopted prices thus are as follows:

Rate Element:	<u>Units</u>	TELRIC-based	
		<u>Cost</u>	<u>Price</u> (@ 21% shared & common cost mark-up)
Recurring (Update Listing Files)	Per Listing	\$0.00072	\$0.00087
Optional Tape Delivery	Per Tape	\$13.32	\$16.12
Non-Recurring (Base File)	Per Order	\$2,954.37	\$3,574.79

²⁰ Murray Declaration at p. 41.

As mentioned previously, the DALIS prices that have been in effect up until now have been permitted only on a provisional basis. As prescribed in D.98-01-022, SBC shall be required to perform a true up of past DALIS charges to adjust them in light of the DALIS charges we approve in the instant order. As part of its tariff Advice Letter filing, SBC shall be required to reflect the appropriate provision to reflect the true up in accordance with D.98-01-022.

VI. Assignment of Proceeding

Michael R. Peevey is the Assigned Commissioner and Thomas R. Pulsifer is the assigned Administrative Law Judge in this proceeding.

VII. Comments on the Draft Decision

The Draft Decision of Administrative Law Judge Thomas R. Pulsifer in this matter was mailed to the parties in accordance with Section 311(g)(1) of the Pub. Util. Code and Rule 77.7 of the Rules of Practice and Procedure. Comments were filed on January 29, 2004, and reply comments were filed on February 6, 2004.

Only SBC filed opening comments on the Draft Decision. Various parties filed reply comments in opposition to SBC. We have reviewed parties' comments and find in them no basis to change the substantive outcomes reached in the Draft Decision. In the interests of clarity, however, we review some of the arguments presented in the comments and explain why we are not persuaded thereby to substantively modify the Draft Decision. In its comments, SBC argues that the Draft Decision's reliance on TELRIC as a pricing standard is contrary to federal law and is preempted. SBC argues that Section 251(b)(3) of the Act does not permit application of TELRIC pricing because such pricing only applies to UNEs, as determined by the FCC. Since DALIS is not a UNE, SBC argues that TELRIC pricing is not permitted. Nonetheless, we find that the principles of

TELRIC pricing remain a relevant consideration in the pricing of DALIS, independently of UNE pricing.

Notwithstanding SBC's claims, no federal law prohibits this Commission from setting DALIS prices on a cost basis, to the extent that it achieves nondiscriminatory pricing. Even if DALIS is not a UNE, its pricing remains subject to strict nondiscrimination requirements under the Act and FCC orders. As the FCC recognized in its DAL Provisioning Order,²¹ this nondiscriminatory access requirement extends to pricing. In its order, the FCC recognized that ILECs continue to charge competing DA providers discriminatory and unreasonable rates for DAL. Although the FCC declined to support a specific pricing structure for DAL, it encouraged states to set their own rates consistent with the nondiscrimination and reasonable pricing requirements of Section 251(b)(3). We conclude that TELRIC-based pricing provides the best proxy of the cost the SBC actually incurs to use DA listings to provide its own services, and as such, appropriately satisfies the nondiscriminatory pricing standard.

On this basis, there is no FCC prohibition against a finding that the most reasonable cost proxy for such nondiscriminatory pricing of DALIS is forward-looking economic costs represented in TELRIC. In this regard, the FCC has stated:

“[O]ur decision not to impose a specific pricing structure on directory assistance notwithstanding our [FCC] jurisdiction over DA does not preclude a state commission from doing so.

²¹ Provision of Directory Listing Information under the Telecommunications Act of 1934, As Amended, CC-Docket No. 99-273, FCC 01-27, released January 23, 2001 (“DAL Provisioning Order”).

In such cases, the Commission would adopt the state rate as its own, subject to the Title II requirements of reasonableness and nondiscrimination as set forth in this [FCC] order.”²²

Moreover, nothing in the DAL Provisioning Order precludes adoption of TELRIC-based price for DALIS. The DAL Provisioning Order was issued more than a year after the FCC’s 1999 UNE Remand Order that did not expand the list of UNEs to include DAL. Thus, there is no basis to conclude that the UNE Remand Order prohibits this Commission from adopting a pricing structure based on TELRIC under the Title II requirements of reasonableness and nondiscrimination. Likewise, nothing in the FCC Triennial Review Order (TRO) preempted the Commission with respect to exercising discretion in determining the pricing structure for DALIS, even though it is not defined as a UNE. The states have the discretion to adopt TELRIC to achieve nondiscriminatory pricing, apart from whether DALIS is a UNE. TELRIC achieves nondiscriminatory pricing by providing the best approximation of the cost that SBC actually incurs to use those listings to provide its own DA services.

SBC also claims that it is inconsistent to apply a TELRIC standard that assumes that SBC will maintain its current market position and attain its current listings for free. SBC argues that TELRIC should be adjusted to reflect the risks of the competitive market that TELRIC assumes. We find nothing inconsistent in our application of TELRIC in assuming that SBC continues to attain current DA listings from competitors for free. The resulting prices produce no inconsistencies in assumptions, but merely enable final consumers of such

²² DAL Provisioning Order at para. 38.

listings to obtain the information from other competitors while still being able to benefit from SBC's economies of scale and scope in obtaining such listings.

SBC also takes issue with various other cost adjustments incorporated in the draft decision. SBC's criticisms regarding adopted cost estimates essentially amount to disagreement as to how the evidence in the record was weighed and applied. We find nothing in SBC's comments, however, that warrant a change in the DALIS cost estimates that are adopted in the Draft Decision.

SBC takes issue with the requirement set forth in the Draft Decision for SBC to true up any provisional rates in effect for wholesale DA listing service since the passage of the Telecommunications Act of 1996 (Act). SBC argues that it is retroactive ratemaking to order refunds applicable to the period prior to January 1998 when D.98-01-022 was issued. Contrary to SBC's claims, the true up requirement covering the period since the passage of the Act does not constitute retroactive ratemaking. On February 7, 2002, we issued D.02-02-025 which stated that once the Commission establishes permanent DALIS rates in this proceeding, SBC would be required to implement applicable refunds to DALIS customers to true up the provisional rates back to the effective date of the Act. D.02-02-025 has already addressed the issue of the appropriate effective date for the true up. The provisional DALIS rates were never approved by the Commission, and there is no retroactive ratemaking involved merely in implementing a true up that has already been ordered in prior decisions.

Findings of Fact

1. SBC submitted an initial revised DALIS cost study on April 17, 2003, and an update to its revised DALIS cost study on June 6, 2003.

2. SBC's proposed DALIS prices incorporate a floor set at its estimated TSLRIC with actual prices based on SBC's estimation of market value of the DALIS service.

3. The DALIS prices proposed by SBC are equivalent to the prices for similar services approved by the FCC in the X2A Agreements in SBC's 271 applications in the states of Missouri, Oklahoma, Kansas, Arkansas, and Texas.

4. Although SBC characterizes its proposed DALIS prices as "market-based," SBC has not presented a comparison of what prices competing marketers charge for DA service within California, nor a comparison of the quality, timeliness, or comprehensiveness of DA service offered by California DA competitors.

5. Given the dominant position that SBC continues to enjoy through its legacy as a former monopoly provider of local exchange service and absent affirmative evidence of a fully competitive market, there is no basis to conclude that the market for DA services within California is fully competitive.

6. Given the lack of a fully competitive market for DA services within California, SBC's proposal to rely on prices charged by SBC affiliates in other jurisdictions would not lead to a competitive or nondiscriminatory price.

7. A pricing methodology based on forward-looking economic costs, as reflected in the "Total Element Long-Hour-Run Incremental Cost" methodology, reasonably represents the conditions of a competitive market, and reduces the ability of an incumbent LEC to price in an anticompetitive manner.

8. SBC's cost study is based upon the activities and related resource times identified for the tasks presumed to be required to provide DALIS, and applies related unit costs to derive recurring and nonrecurring costs.

9. In deriving DALIS prices on a TELRIC basis, SBC applies a “wholesale-only” standard that assumes its entire retail operation and all related outputs do not exist.

10. By creating a hypothetical construct of costs based on an assumption that SBC retail operations did not exist, SBC ignores economies of scale and scope between its retail and wholesale DALIS operations.

11. TELRIC pricing applicable to DALIS includes a provision for return on SBC’s economic costs, as reflected in the 21% shared-and-common-cost markup currently set by the Commission as adopted in D.02-09-004.

12. DALIS pricing proposed by SBC does not distinguish the cost of listings acquired from other incumbents versus those that SBC obtains from its own subscribers.

13. SBC’s “data acquisition” costs are based on a “weighted average” cost per record for initial load and for additional listings multiplied by the total listings for both SBC and non-SBC ILECs.

14. SBC’s “data storage” costs are predicated on the cost of mid-range computers which would not be the least-cost choice for a company that uses computers for tasks other than processing DALIS data.

15. SBC assumption that two dozen full-time employees would be required to manage a wholesale-only DALIS product significantly exceeds SBC’s actual California DALIS workforce.

16. SBC’s assumed cost of computer processing time valued at \$500 per hour is based on outdated information from an “AT&T Bill Collection” study completed in the late 1980s.

17. While SBC provides about 514,000 DALIS records per month to each DALIS customer based on its currently configured system, SBC assumes that

about 1.3 million updated records would be required to keep the DALIS product current assuming wholesale-only operations.

18. SBC includes the cost of manually processing physical tapes for each DALIS customer, even though such customers can also obtain the data electronically.

Conclusions of Law

1. The FCC UNE Remand Order determined that the obligation of all LECs to provide nondiscriminatory access to DALIS already existed in Section 251(b)(3) of the 1996 Act, and declined to include DALIS in the definition of a UNE.

2. Even though DALIS is not defined as a UNE, TELRIC is still an appropriate standard to use for DALIS pricing.

3. Adopting a pricing methodology for DALIS based on forward-looking economic TELRIC replicates, to the extent possible, the conditions of a competitive market.

4. SBC has failed to show that its proposed DALIS prices satisfy the “nondiscriminatory pricing” standard required by the FCC or that they reflect prices that would prevail in a fully competitive California market for DALIS.

5. SBC may not use its market power to set DALIS at a price that would unfairly discriminate against competitors in comparison to SBC’s own affiliates.

6. SBC’S pricing standard underlying its proposed DALIS prices results in charges that exceed the reasonable costs required to provide DALIS and violates the nondiscrimination requirements of the Act and the FCC’s orders.

7. SBC should be required to implement DALIS pricing consistent with the TELRIC-based components as set forth in the order below.

8. The prices proposed by the joint parties provide a reasonable estimate of TELRIC-based elements forming a basis for adoption of DALIS prices to be charged by SBC as set forth below.

9. The TELRIC-based prices, as set forth below, should be adopted for SBC DALIS pricing purposes.

O R D E R

IT IS ORDERED that:

1. Pacific Bell Telephone Company, doing business as SBC California (SBC) is hereby directed to file amended tariffs for Directory Assistance Listing Information Service (DALIS) in accordance with General Order 96-A within 20 business days to reflect the adopted pricing elements set forth as follows:

<u>Rate Element</u>	<u>Units</u>	<u>Cost</u>	<u>Price</u>
Recurring (Update Listing Files)	Per Listing	\$0.00072	\$0.00087
Optional Tape Delivery	Per Tape	\$13.32	\$16.12
Non-Recurring (Base File)	Per Order	\$2,954.37	\$3,574.79

2. SBC is directed to perform the necessary calculations to determine the appropriate true up of DALIS customer billings for past periods in accordance with Decision 98-01-022, based on the billing amounts adopted herein. SBC shall incorporate appropriate measures in its filed tariff versions to implement any necessary billing adjustments as a result of the true up.

This order is effective today.

Dated _____, at San Francisco, California.