

Decision **DRAFT DECISION OF ALJ O'DONNELL** (Mailed 7/8/2002)

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)

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O P I N I O N

I. Summary

By this decision, we adopt rules regarding movement of the Minimum Point of Entry (MPOE) and /or the Local Loop Demarcation Point (LLDP), and the ownership of Service Provisioning Cross-Connects (SPCs). The adopted rules are included as Attachments A and B to this decision.

The Federal Communications Commission (FCC) defines the MPOE as the closest practical point to where the utility's wiring crosses a property line, or enters a multi-unit building or buildings. The LLDP is defined as the point at which the wiring under the control of the utility ends, and the wiring under the control of the property owner begins. The FCC allows the utility to establish the LLDP at the MPOE, but does not require it to do so. The Commission requires the LLDP to be located at the MPOE for copper facilities. No such requirement exists for other types of facilities. Property owners may want to have the utility's MPOE and /or LLDP moved as part of a remodeling of their facilities, or to enhance the ability of tenants to receive telecommunications service from other providers. The Commission previously decided that standards should be developed for relocation of the MPOE and /or LLDP. The rules adopted herein provide that the utility shall relocate the MPOE and /or LLDP at the property owner's request. Since the property owner is the initiator of the request and the beneficiary of the relocation, he or she shall pay the costs of the relocation.

SPCs are wires that connect the utility's network to the property owner's facilities. Specifically, they connect the utility's network access termination point to the building owner's access terminal. These are the wires that may be removed or changed when a customer switches from one provider

to another. The issue before us is access to SPCs. Whoever owns the SPCs has control over access to them. We have jurisdiction over facilities-based carriers, and they have the expertise necessary to properly operate and maintain SPCs. Therefore, the rules adopted herein provide that SPCs shall be owned by the facilities-based carrier providing service.

II. Regulatory Background

In Decision (D.) 99-08-025, the Commission directed that the issue of standards for MPOE relocation be addressed in this docket.

In D.00-04-062, the Commission directed that issues related to access to cross-connects be addressed in this docket.

III. Procedural Background

The assigned Administrative Law Judge (ALJ) issued rulings on June 9, 2000 and October 11, 2000, seeking comments on definitions, criteria and questions relating to the issues in this proceeding. On March 2, 2001, the ALJ issued a ruling requesting comments on proposed rules that were developed based on the comments received in response to the earlier rulings. Subsequently, the parties filed comments and reply comments. No party requested hearings or briefs. This decision addresses the proposed rules and comments on them. A complete listing of the parties who provided comments at any point in the process up to the issuance of the draft decision is included as Attachment C.

IV. Comments on the Draft Decision

The draft decision of the ALJ in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure. Comments were filed on _____, and reply comments were filed on _____.

V. Proposed Rules--MPOE

The March 2, 2001 ALJ ruling proposed the following rules regarding movement of the MPOE:

1. Definition: The MPOE is the point at which the network facilities provided by the utility end and the property owner's facilities begin. It also referred to as the Minimum Point of Presence (MPOP). Note that D.92-01-023 provides that the LLDP is to be located at the MPOE.
2. Applicability: Continuous multi-tenant property.
3. Only the property owner or his or her agent may request relocation of the MPOE.
4. The utility must relocate the MPOE as requested by the property owner provided that the following conditions are met:
 - The property owner agrees, and has the ability, to pay for all relocation expenses reasonably incurred.
 - Relocation is technically feasible. (The utility bears the burden of proving technical infeasibility.)
 - Relocation is not prohibited by applicable local, state or federal laws, rules or regulations.
5. To the extent that the relocation of the MPOE results in utility property being transferred to the property owner, the utility shall charge the property owner the net book value (recorded cost less accumulated depreciation) of the property. The utility need not transfer property to the property owner if it is technically feasible to relocate the MPOE without such transfer, and if no state or federal statute, rule, regulation or order requires such transfer.

6. The utility shall have on file tariffs specifying these rules, its requirements, procedures and charges for relocation of the MPOE in a manner consistent with these rules. Utilities must have approved tariffs, as specified herein, in order to charge for movement of the MPOE.

VI. Parties' Comments on the Proposed Rules

A. Pacific Bell Telephone Company (Pacific)

Pacific proposes that the replacement value for facilities that are transferred to the property owner should be valued at fair market value. Pacific states that use of the net book value would constitute an unlawful taking.

Pacific states that it cannot foresee an instance where movement of the MPOE would not cause it to move its current MPOE to the property line. Therefore, there would always be some property transferred to the property owner. Therefore, Pacific recommends that the second sentence of Rule 5: "The utility need not transfer property to the property owner if it is technically feasible to relocate the MPOE without such transfer, and if no state or federal statute, rule, regulation or order requires such transfer" be removed.

Pacific states that the rules for relocation of the MPOE should not be extended to non-continuous property or single-family properties. As an example, when multiple properties are separated by a road, it is unclear whether Pacific can be required to turn over facilities on a public right of way to the property owner as a result of the relocation. It is also unclear whether such a transfer would be legal. Pacific also represents that relocation of the MPOE for a single-family property could raise problems in finding an appropriate location for the MPOE. Pacific also states that relocation of the MPOE for non-continuous property or single-family properties is beyond the scope of this proceeding.

Pacific opposes elimination of the income tax gross up charge because it merely collects taxes Pacific will have to pay.

Pacific recommends that the rules should apply to all utilities. In particular, allowing competitive local carriers (CLCs) to be exempt would allow CLCs to exclude other carriers from access to customers served by them.

B. Verizon California, Inc. (Verizon)

Verizon believes that facilities that are transferred to the property owner should be valued at fair market value. The use of net book value would constitute an unlawful taking.

Verizon states that it should not be required to relocate an established MPOE on the same property because the rules promulgated by the FCC do not require it to do so.

Verizon states that the rules should apply to all utilities. In particular, allowing competitive local carriers (CLCs) to be exempt would allow CLCs to make access to customers served by them more difficult and expensive.

C. Teligent Services, Inc. (Teligent)

Teligent represents that requiring building owners to pay for relocation of the MPOE would make it harder for a CLC to obtain access to multi-tenant buildings. This is because allowing CLC access, if it entails movement of the MPOE, would increase building owner's costs. Teligent suggests several solutions to this problem. First, the Commission could require building owners to permit CLC access on a reasonable and nondiscriminatory basis. Second, the Commission could require the incumbent utility to pay part of the costs since the choice of the current MPOE configuration was the incumbent's choice. Third, the Commission could require the apportionment of the relocation costs between all utilities serving the property in a manner that does not disadvantage the first

CLC to serve the property. Under such a plan the first CLC to provide service would pay the costs of movement of the MPOE. Subsequent CLCs would be required to provide a proportionate share of the costs that would be paid to the incumbent who would reimburse previous CLCs. Alternatively, incumbents could charge initial connectors a portion of the costs based on the total estimated demand by other carriers for access to the property.

Teligent recommends that the following language be added to Rule 4 in lieu of the requirement that the property owner agrees, and has the ability, to pay for all relocation expenses reasonably incurred:

“The utility may recover on a proportionate and nondiscriminatory basis from other utilities in the building relocation expenses reasonably incurred with such amounts based upon reasonable estimated occupation of the building by additional utilities. The utility must impute to itself a proportionate charge for reasonably incurred relocation expenses. The utility must refund on a proportionate basis to utilities in the building the full amount of charges recovered from subsequently installed utilities that exceed the actual amount of relocation expenses reasonably incurred.”

Teligent suggests that the utility should not be required to transfer facilities to the property owner as a result of the relocation. However, the utility would not be allowed to place restrictions on the removal, modification or replacement of the facilities that would otherwise be transferred. The utilities would also not be allowed to charge for the use of the facilities.

Teligent recommends that tenants and competing carriers should be allowed to request relocation of the MPOE if they have the building owner's approval. The approval should not have to be in writing because the requirement would impose another unnecessary burden on all parties involved.

Teligent believes that the rules should apply to all utilities. This would make it less costly to provide service to properties served by other carriers.

Teligent states that the expedited dispute resolution process adopted in D.98-10-058 for easement disputes should apply to disputes resulting from proposed relocation of the MPOE. This would avoid delays resulting from having to file a formal complaint.

D. Pac-West Telecomm, Inc and WorldCom, Inc. (PWWC)

PWWC takes issue with the definition of the MPOE. PWWC believes that CLCs should not be required to locate the LLDP at the MPOE. PWWC states that the requirement to locate the LLDP at the MPOE, which was imposed on Incumbent Local Exchange Carriers (ILECs) in D.92-02-023, does not apply to CLCs. Requiring CLCs to adhere to this requirement would preclude them from providing existing and future services in the most efficient manner, and could preclude them entirely from providing some services. PWWC states that the purpose of D.92-02-023 was to resolve problems of ownership and control of inside wiring by the ILECs. The requirements have no reasonable application to CLCs.

PWWC states that the fact that D.93-05-014 clarified that D.92-02-023 does not apply to fiber optic facilities creates a bias toward fiber over other technologies such as wireless.

E. U.S. Department of Defense and All Other Federal Executive Agencies (DOD)

DOD distinguished between the LLDP and the MPOE. DOD recommends that movement of the LLDP towards the MPOE would promote competition. Movement of the LLDP away from the MPOE would have anti-competitive effects. Therefore, only movement of the LLDP toward the MPOE

should be allowed. DOD believes that the utility should assume all of the costs of a relocation of the LLDP which it initiates.

DOD recommends that the Commission should resolve all disputes regarding relocation of the LLDP.

DOD recommends that the rules for relocation of the MPOE should apply to any property rather than just continuous multi-tenant property.

F. Cox California Telecom, L.L.C. dba Cox Communications On Behalf of AT&T Communications of California, Inc., the California Cable Television Association, and Time-Warner Telecom of California, L.P. (Cox)

Cox states that the use of net book value for facilities transferred to the property owner as a result of movement of the MPOE is appropriate. The use of net book value has been found reasonable in the past by the Commission and the courts, and should be used here.

Cox asks that the holdings of D.92-01-023 be affirmed except to the extent they are modified herein. In that way, it would be clear that D.92-01-023 is not being replaced in its entirety.

Cox proposes that the MPOE rules should also apply to single-family dwellings. Cox believes that there is no reason not to apply them to single-family dwellings as long as the owner is willing to pay. Single-family dwelling owners may want to move the MPOE to avoid unnecessary entry of utility personnel onto their property, to receive multiple lines from different carriers at a single point, to avoid drop wires coming down to the building from overhead facilities, etc.

Cox proposes that the property owner or his or her agent be allowed to request movement of the MPOE as long as a legitimate agency relationship

exists. Cox also proposes that the agent be allowed to pay for the movement of the MPOE. It should not matter who pays for the movement as long as a legitimate agency relationship exists.

Rule 5 provides that the utility need not transfer property to the property owner if it is technically feasible to relocate the MPOE without such transfer, and if no state or federal statute, rule, regulation or order requires such transfer. Cox believes that these provisions should be removed. Cox states that it is always technically feasible to relocate the MPOE without transferring utility property. Allowing the utility not to transfer the facilities would drive up the costs of relocation. This would make property owners less likely to relocate the MPOE to enhance competition. In addition, D.92-01-023 requires the transfer because it never anticipated that the utility would continue to own facilities on the customer's side of the meter. Such facilities would have to be abandoned if not transferred.

Cox states that Rule 6 should be revised to provide that the income tax gross-up charge should not be applied to MPOE relocation projects. The charge was only intended to apply to special construction projects where the construction results in expansion or improvement of the utility's network facilities. MPOE relocation does not result in expansion or improvement of the utility's network facilities.

Cox proposes that the rules should be revised to provide that disputes over MPOE relocation should be resolved in the same manner as for easement access disputes in the Right-Of-Way Decision (D.98-10-058). The Commission's complaint process is too slow and costly and will allow the serving utility to unnecessarily delay the provision of service by competitors.

VII. MPOE Discussion

A. Definition

The FCC defines the MPOE as the closest practical point to where the utility's wiring crosses a property line or the closest practicable point to where the wiring enters a multiunit building or buildings. The LLDP was defined as the point at which the wiring under the control of the utility ends and the wiring under the control of the property owner begins. The FCC stated that the utility may establish the LLDP at the MPOE, but did not require it to do so.

In D.92-01-023, the Commission adopted the language of a proposed settlement (the settlement itself was not adopted) that provided that the LLDP should be located at the MPOE. This is the definition of the MPOE included in the proposed rules.

In D.93-05-014, the Commission clarified that the requirement in D.92-02-023 that the LLDP shall be located at the MPOE applies only to copper facilities.

At the time D.92-01-023 was adopted, CLCs did not exist. The CLCs believe that D.92-01-023 does not apply to them. The issue here is prospective in nature. We need not address the applicability of D.92-01-023 to CLCs. We must, however, determine what the rules should be for the future.

In order to encourage competition, we seek to ensure a level playing field. This generally means that all utilities should be subject to the same rules. In those instances where we have found that the ILECs have too much of an advantage, we have imposed restrictions on them that were not imposed on CLCs. In this proceeding, we will impose the same rules on all local exchange carriers.

Regarding the location of the LLDP at the MPOE, we see no reason why the same rules should not apply to all carriers. Additionally, there does not appear to be any specific reason why our requirement that the LLDP be at the MPOE should not remain. Therefore, we will require that any relocation of the MPOE or the LLDP result in the location of both at the same place, whether or not they were previously located at the same place.

In D.93-05-014, the Commission clarified that the requirement set out in D.92-02-023, that the LLDP be located at the MPOE, applies only to copper facilities. The proceedings that led to the present proceeding addressed only copper facilities. The determination of whether the LLDP should be located at the MPOE for facilities other than copper, is beyond the scope of this proceeding. Therefore, we will impose this requirement only on copper facilities.

The balance of these rules concern who may request, and who shall pay for, movement of the MPOE and /or the LLDP. There is no reason why these rules should be different depending on the technology used. Therefore, these rules will apply to all technologies, with the exception that the requirement that the LLDP be located at the MPOE shall apply to copper land line facilities only.

B. Movement of an Established MPOE

Verizon states that it should not be required to relocate an established MPOE on the same property because the rules promulgated by the FCC do not require it to do so. Verizon misses the point. The Commission directed that standards for MPOE relocation be developed in this docket. Whether relocation should be allowed at all is beyond the scope of this proceeding.

C. Applicability

Some of the comments received seem to be based on the assumption that these rules would apply only to ILECs. No party has demonstrated why

ILECs should be treated differently from CLCs. Therefore, these rules apply to all local exchange carriers. Specifically, the MPOE/LLDP relocation rules apply equally to any utility that has an MPOE/LLDP.

D. Applicability to Single-Family Dwellings

Cox and DOD argue that these rules should apply to single-family dwellings. This proceeding was initiated to address continuous multi-tenant property. Single-family dwellings are beyond the scope of this proceeding.

E. Applicability to Non-Continuous Multi-Tenant Properties

DOD argues that these rules should apply to non-continuous multi-tenant properties. Pacific points out that it is unclear as to whether a utility can be required to turn over facilities on a public right of way to the property owner as a result of the relocation. It is also unclear whether such a transfer would be legal. This proceeding was initiated to address continuous multi-tenant property. Applicability to non-continuous multi-tenant properties is beyond the scope of this proceeding.

F. Taking

Pacific and Verizon argue that facilities that are transferred to the property owner should be valued at fair market value. They claim that the use of net book value would constitute an unlawful taking.

The value of a business property is, to at least some degree, a function of the revenues it produces. The movement of the MPOE/LLDP will not restrict the incumbent utility's ability to provide service to its customers. Likewise, it will not affect the rates the utility may charge. Therefore, movement of the MPOE/LLDP will not affect the utility's revenues. Movement of the MPOE/LLDP may facilitate competition. If that is the case, it is the utility's

ability to compete that will determine whether it loses or gains customers for its services. Therefore, we conclude that the utility's revenues will not be directly affected by movement of the MPOE/LLDP.

If one looks at the potential market for the facilities to be transferred, one finds that the only potential purchaser of the facilities is the building owner. The building owner's revenues come from rents. Movement of the MPOE/LLDP may make the property more attractive to potential renters. However, the rents that the property owner may charge are based on the market for the rental units. We have no reason to believe that movement of the MPOE/LLDP on a property is likely to affect the local rental market. In addition, movement of the MPOE/LLDP will increase the property owner's costs. Such costs may or may not be recovered through increased rents. In sum, the property owner's costs will likely rise while his or her rents may or may not. Therefore, relocation of the MPOE/LLDP may or may not be in the property owner's financial interest. As a result, we find that there is no significant market for the facilities that will be transferred to the property owner due to movement of the MPOE/LLDP.

Since we believe that there is no significant market for the facilities, and no loss of revenue to the utility, the only thing that remains is to make sure that the utility is no worse off due to the transfer. To make sure the utility is no worse off, the utility must recover its investment in the transferred asset. The remaining unrecovered investment is the net book value. This is the amount that would be recovered from the property owner.

When the value of the transferred facilities is set at the net book value, the utility is no worse off after the transfer of the facilities than it would have been if the facilities were not transferred. Therefore, charging the property

owner the net book value of the transferred facilities does not constitute an unlawful taking.

If we allow the utility to charge an undefined “fair market value” for transferred facilities, we provide the opportunity for the utility to raise the cost of or delay movement of the MPOE/LLDP. To the extent that such movement would encourage competition, this creates the potential for anti-competitive actions by the utility. Such a result would not be in the public interest.

Since the utility owns the existing facilities, it has a monopoly with respect to them. The property owner’s only alternative, if technically feasible, is to build new facilities. Where the utility has a monopoly, the historical practice is to set prices based on cost. In this instance, the cost is net book value.

For all of the above reasons, we believe that net book value constitutes just compensation for facilities transferred to the property owner as a result of movement of the MPOE/LLDP. Therefore, we will require that facilities transferred to the property owner as a result of movement of the MPOE/LLDP be valued at the net book value.

G. Utility Payment of Relocation Costs

Teligent proposes language that would have the utility initially bear the relocation costs. If other utilities use the facilities in the future, the utility would be allowed to recover a portion of the costs from them. However, these rules apply to situations where the relocation is not initiated by the utility. The beneficiary of the relocation is someone other than the utility, and the relocation is not necessary for the utility to provide service. Therefore, there is no reason that the utility should be required to pay for the relocation, and we will not adopt such a proposal.

H. Retention of Facilities by the Utility

Rule 5 provides that “The utility need not transfer property to the property owner if it is technically feasible to relocate the MPOE without such transfer, and if no state or federal statute, rule, regulation or order requires such transfer.” Pacific states that such transfers will always be required, and that this sentence is unnecessary. DOD and Cox contend that the sentence could drive up the costs of some relocations. No party represents that the sentence is necessary. Therefore, we will remove it.

Teligent suggests that the utility should not be required to transfer facilities to the property owner provided that the utility would not be allowed to place restrictions on the removal, modification or replacement of the facilities that would otherwise be transferred. The utilities would also not be allowed to charge for the use of the facilities. Teligent does not explain, for example, who would own facilities that would replace or modify utility facilities, or to what standards such facilities would be built. Also, Teligent does not explain how a utility could be held responsible for the operation of facilities over which it has no control. This proposal is incomplete and unworkable. Therefore, we will not adopt it.

I. Who Can Request Relocation of the MPOE/LLDP?

The rules indicate that only the property owner can request relocation of the MPOE/LLDP. Some parties want tenants and other carriers to be able to request relocation of the MPOE/LLDP with the approval of the property owner.

Because the MPOE/LLDP is located on the owner’s property, the owner’s permission is necessary as a minimum. Tenants will come and go. Existing tenants may have different opinions and needs regarding the location of

the MPOE/LLDP. Different tenants may have competing needs. The tenants' needs and desires are properly part of the landlord-tenant relationship. If there are differences of opinion between tenants regarding relocation, the landlord should be the one to resolve them. Therefore, the property owner should be the one to request relocation of the MPOE/LLDP. There is no reason, however, to prohibit the landlord from designating an agent to work with the utility on relocation of the MPOE/LLDP.

Other carriers only become involved when a tenant or landlord desires their services. They should work with the tenant and the landlord, or his or her agent, to arrange for the provision of their services.

Cox proposes that the property owner's agent be allowed to pay for the relocation. Our intention in allowing the property owner to act through an agent is for the convenience of the property owner. For example, it may be impractical for a property owner who owns many properties or who lives far away to make the arrangements for the relocation. Allowing the use of an agent will facilitate the relocation. Allowing the agent to pay for the relocation brings into question whether it is the property owner who is actually requesting the relocation. We see no reason why it is necessary for someone other than the property owner to pay for the relocation. Therefore, we will retain the requirement that the property owner pay for the relocation.

J. Income Tax Gross-Up Charge

Cox says that Pacific is inappropriately charging an income tax gross-up charge to projects associated with MPOE relocation. Therefore, Cox proposes that the income tax gross up charge not be applicable to MPOE/LLDP relocations because the relocation does not constitute an extension or an improvement. The issue is limited to Pacific, and concerns whether Pacific is in

compliance with D.87-09-026, and / or its tariffs. The issue should be addressed through the filing of a complaint. To the extent that it requires an interpretation of the relevant federal income tax codes, a ruling should be requested from the Internal Revenue Service.

K. Resolution of Disputes

Cox proposes that the rules should be revised to provide that disputes over MPOE/LLDP relocation should be resolved in the same manner as for easement access disputes in the Right-Of-Way Decision (D.98-10-058). Teligent agrees. The purpose of this proceeding is to establish rules for relocation of the MPOE/LLDP. This should result in a reduction of such disputes. There is no reason to believe that there will be a large volume of such disputes that would justify establishing a special process for resolving them. Such disputes can be resolved through the filing of a complaint, or use of the expedited complaint procedure if appropriate.

VIII. Proposed Rules - Cross-Connects

The March 2, 2001 ALJ ruling proposed the following rules regarding cross-connects.

1. Definition: There are two types of cross-connects.
 - A. Wires that connect the utility's building entrance terminal to the utility's network access termination point, e.g., ready access terminals (RATs) or Network Interface Units (NIUs). (These configurations comprise a small portion of the utility's network.) Such cross-connects do not connect directly to the building owner's access terminal. They need not be altered in order for another utility to provide service to customers. Therefore, they need not be accessible to other utilities or the building owner. As a result, such cross-connects are part of the utility's network. These cross-

connects will be identified as Utility Network Cross-Connects (UNCs).

- B. Wires that connect the utility's network access termination point to the building owner's access terminal. These are the cross-connects that may be removed or changed when a customer switches from one provider to another. These cross-connects will be identified as Service Provisioning Cross-Connects (SPCs).
 - C. There are configurations that have no building owner's access terminals. In these cases, the inside wire runs from the customer's equipment directly to the utility network access termination point. No SPC is utilized. Such configurations are beyond the scope of these rules.
- 2. SPCs are intra-building network cable.¹
 - 3. SPCs shall not be owned by utilities.
 - 4. Utilities shall not pay for access to or use of SPCs.
 - 5. Transition of existing utility-owned SPCs:
 - Existing utility-owned SPCs need not be removed until:
 - Requested by the property owner.
 - The tenant served by the SPCs discontinues the service provided by the SPCs.
 - The existing utility-owned SPCs require replacement for operational, maintenance or other purposes.
 - Existing utility-owned SPCs shall not be replaced by utility-owned SPCs.

¹ In the March 2, 2001 ALJ ruling, the term "inter-building" was used. This was a typographical error.

- Utilities that own existing SPCs may not restrict access to their existing utility-owned SPCs.
 - Utilities that own existing SPCs may not charge for their removal except when such removal is due solely to the request of the property owner.
6. When a tenant switches service from one utility to another, the new carrier shall provide at least a 24-hour advance notice to the previous carrier of the disconnection of the SPCs.
7. All facilities-based carriers shall establish and make available to other carriers a phone number where advance notice of disconnection of SPCs can be made. The phone number shall be capable of receiving incoming calls 24 hours per day, seven days per week.

IX. Parties' Comments on the Proposed Rules

A. Pacific Bell

Pacific states that the transition process (Rule 5) is neither necessary nor feasible. Pacific represents that it does not have a tracking system for individual SPCs. Therefore, it could not carry out the transfer process for individual SPCs. Additionally, Pacific points out that Rules 6 and 7 require a process to be set up to enable carriers to tell each other when they have won a customer. Pacific says that carriers do not want to do that. Pacific says that there is no need for a transition. SPCs can immediately revert to the property owner.

Pacific states that bridge clips are nothing but short SPCs, and should be covered by the rules for SPCs.

Pacific recommends that the rules should apply to all utilities. In particular, allowing CLCs to be exempt would allow CLCs to exclude other carriers from access to customers served by them.

B. Verizon

Verizon believes that SPCs should remain the property of the utility. It states that SPCs are a crucial part of the utility's network. Requiring the utilities to relinquish ownership and control of them could compromise the integrity and security of the utility's network.

Verizon states that the 24-hour notice of disconnection of a SPC should be changed to 48 hours. This would allow sufficient lead time to ensure that customer records reflect the carrier change and that customers are not billed by the previous carrier for service after the change.

Verizon recommends that the requirement that carriers establish a phone number where advanced notice of disconnection of SPCs can be made 24 hours per day, seven days per week, should be changed to the utility's regular business hours.

Verizon proposes the following rules governing the removal of utility-owned SPCs.

- The utility must be notified by the incoming carrier at least 48 hours prior to removal of the SPC.
- To avoid continued billing for service, the utility must be notified by the end user at least 48 hours in advance of a request for disconnection of service.
- The removal of an SPC must be done in a manner that prevents harm to the network. More specifically, the SPC must be rolled up and trimmed back to within 12 inches of the utility's serving cross-connection point.
- All technicians provisioning SPCs must tag enhanced services (i.e., services other than those carried over plain old telephone service lines) so that other technicians will

know not to test these lines (testing could damage equipment and impair services).

- CLCs must employ a tracking system that enables them to determine the technician that disconnected an SPC. Those technicians identified as poor performers must be removed from the utility's projects or retrained with a qualified technician.

Verizon states that the rules should apply to all utilities. In particular, allowing CLCs to be exempt would allow CLCs to make access to customers served by them more difficult and expensive.

C. Teligent

Teligent states that property owners may not have an incentive to open their facilities to CLCs if they are not allowed to receive a payment for the use of their facilities. Therefore, it recommends adding the following language:

“Utilities may make payments to property owners for access to or use of SPCs, provided that such payments are assessed and collected in a reasonable and nondiscriminatory manner.”

D. PWWC

PWWC believe that the requirements imposed on ILECs by D.92-02-023, should not apply to CLCs. Requiring them to adhere to these requirements would preclude them from providing existing and future services in the most efficient manner, and could preclude them entirely from providing some services. They state that the purpose of D.92-02-023 was to resolve problems of ownership and control of inside wiring by the ILECs. The requirements have no reasonable applications to CLCs.

E. DOD

DOD believes that the focus of the rules regarding SPCs should be on control of SPCs rather than who owns them. It recommends the following language:

“Building owners control access to SPCs connected to their building access terminals (“BATs”), but they must provide nondiscriminatory access to all utilities serving tenants in their building.”

DOD recommends that when the tenant switches to another carrier, the new carrier shall have the right to disconnect the previous carriers SPCs. It recommends that Rule 6 be amended as follows:

“When a tenant switches service from one utility to another, the new carrier shall provide at least a 24-hour advance notice to the previous carrier before it disconnects the previous carrier’s SPC.”

DOD also recommends that the last utility serving a tenant location be responsible for satisfying the requirements of Public Utilities Code Section 2883.

F. Cox

Cox recommends that the Commission should focus on standards for nondiscriminatory control and access to SPCs rather than ownership. Cox originally viewed the question of ownership as unimportant. Subsequently, it decided that the ownership of SPCs should remain with the utilities to avoid the need to transition ownership to the property owners, and to avoid any legal challenges to whether such a transition would constitute a taking for which just compensation must be paid.

Cox believes that Rule 7 should be revised to allow notice of SPC disconnection by electronic means where such means exist. In such cases, use of a telephone call would be less efficient.

Cox states that billing adjustments routinely occur after the fact and, therefore, there is no reason to delay customer transfers by requiring more than a 24-hour notice to the former carrier.

Cox states that the Commission should move expeditiously to address “bridge clips.” In instances where SPCs are not used, the ILECs use an MPOE device that has two punch-down blocks. One connects the utility’s distribution cable to the MPOE. The other connects the property owner’s wiring to the MPOE. Bridge clips are used to connect the utility’s side of the MPOE to the property owner’s side. Cox states that the ILECs treat bridge clips in the same manner as SPCs.

Cox asks that the holdings of D.92-01-023 be affirmed except to the extent they are modified herein. In that way, it would be clear that D.92-01-023 is not being replaced in its entirety.

X. SPC Discussion

A. Ownership of SPCs

Control of a property is directly related to property ownership. If a property owner does not have reasonable control of the property, the owner cannot ensure that the property is properly operated and maintained. This applies to SPCs as well.

If a utility is allowed to have ownership and, therefore, control of SPCs, it could place restrictions on access to SPCs. If the restrictions are unreasonable, competition could be adversely affected. However, we have the authority and jurisdiction necessary to correct problems if they arise. Property owners already

have control over access to the utility facilities on their property. They too have the ability to place restrictions on access whether or not they own the SPCs. However, unless we were to exert jurisdiction over the property owners, we may not have sufficient ability to directly address problems that may arise if the property owners were allowed to own SPCs. In addition, facilities-based carriers have the expertise necessary to properly operate and maintain SPCs while property owners do not. Therefore, facilities-based carriers should own the SPCs. Resellers are not authorized to own facilities such as SPCs. Therefore, in the case of customers served by resellers, the SPCs shall be owned by the underlying facilities-based carrier.

B. Applicability

Some of the comments received seem to be based on the assumption that these rules would apply only to ILECs. No party has demonstrated why ILECs should be treated differently from CLCs. Therefore, these rules should apply to all local exchange carriers.

C. Transition Process

Since we have decided to have SPCs owned by facilities-based carriers, it is necessary to develop a transition process for existing SPCs not owned by the facilities-based carrier that provides service to the customer. No party has proposed that the facilities-based carrier that provides service to the customer needs to acquire any existing SPCs it does not own. Such acquisitions could result in, among other things, numerous eminent domain proceedings that would cost more than the SPCs are worth. In addition, costs would be incurred to change out the existing SPCs for no other reason than the imposition of a new rule regarding ownership. We believe that it is more reasonable to allow for the change to occur during the normal course of business. Therefore, we will not

require a change of ownership of them. Rather, we will require that when a customer transfers to a new carrier or orders any changes to his or her service that would require movement or removal of existing SPCs, the facilities-based carrier that provides service to the customer shall replace any existing SPCs it does not own. In addition, if existing SPCs must be removed for maintenance, repair, or other legitimate purposes, they shall be replaced with the serving facilities-based carrier's SPCs.

D. Notice of Disconnection of SPCs

Verizon recommends that 48 hours' advance notice of disconnection of SPCs be provided to allow sufficient time to update the customer's records. Verizon also recommends that the phone number where such notice would be made be available only during regular business hours.

Cox states that billing adjustments routinely occur after the fact and, therefore, there is no reason to delay customer transfers as suggested by Verizon.

No other utility supports Verizon's recommendations. If after the fact billing adjustments were a problem, we would expect unanimous support from the other utilities. Therefore, we will not adopt Verizon's recommendations.

Cox recommends that the rules should be revised to allow notice of SPC disconnection by electronic means where such means exist. Our intention is that a phone number be available to provide notification as a minimum. There is no reason that other means cannot be used. We will revise the rules accordingly.

E. Technical Requirements for Disconnection of SPCs

Verizon recommends several technical requirements for disconnection of SPCs. No other party has proposed such requirements with one exception. Cox agrees that SPCs should be tagged. The tags would identify the carrier to

which they belong. Tagging to reflect utility ownership appears to be a good idea. If it is in the utilities' best interest to do so, we expect that they will. We see no need to make this a requirement. As to the other recommendations, we would expect much broader support by the other utilities if such requirements were needed. There is no such support. Therefore, we will not adopt them. However, we believe that it is important that a carrier's removal of existing SPCs be done safely, and in a manner that will not result in damage to another carrier's facilities. Therefore, we will require that whenever a utility removes another carrier's SPCs, it do so in a safe manner that causes no harm to another carrier's facilities.

F. Property Owner Access to SPCs

Cox recommends that the utility have the right to limit access by the property owner to SPCs. This would prevent the property owner from making unnecessary alterations. Only Cox raised this as an issue. If it was a significant problem, we would expect broader utility support. Therefore, we see no reason to address it in the rules.

G. Bridge Clips

Cox recommends that bridge clips be treated in the same manner as SPCs. Pacific states that a bridge clip is merely a type of SPC. No party objected to bridge clips being treated as SPCs. We will do so.

H. D.92-01-023

Cox asks that the holdings of D.92-01-023 be affirmed except to the extent they are modified herein. It is not our intent to address the entirety of D.92-01-023. The rules we address in this proceeding are prospective and supersede previous Commission decisions only to the extent that the previous decisions are contrary to the rules we adopt herein.

I. Public Utilities Code Section 2883

Section 2883 provides, among other things, that telephone utilities shall provide every existing and newly installed residential telephone connection with access to 911 regardless of whether an account has been established. Such service may not be discontinued for nonpayment of a delinquent account or indebtedness to the telephone utility.

DOD recommends that the last utility serving a tenant location be responsible for satisfying the requirements of Section 2883. Implementation of Section 2883 involves much more than just SPCs. Therefore, except as it applies to SPCs, it is beyond the scope of this proceeding. We address it by directing that utilities may not remove or disconnect SPCs if doing so will result in a violation of Section 2883.

XI. Pacific's Balancing Account

Pacific alleges that, before D.97-11-029, it offered its customers inside wire service that included rearranging and providing SPCs. D.97-11-029 concluded that SPCs were utility-owned facilities and ordered Pacific to stop charging for the work it was doing on SPCs at the request of customers. In D.00-04-062, Pacific was authorized to track the revenues it was forgoing in a memorandum account. Pacific states that the rules proposed by the ALJ provide that the building owner own SPCs, and that SPCs are INC. As a result, Pacific would be able to charge for such services under the proposed rules. Therefore, Pacific states that since it cannot go back and charge customers for the work it performed, it should be allowed to recover the amount in the memorandum account by including it in the surcredit calculation for 2002.

Cox opposes Pacific's request. Cox alleges that Pacific has continued to charge for such work and has, therefore, already received compensation. Cox

also states that since rules being addressed in this proceeding are prospective, nothing in the rules that will be adopted would allow Pacific to go back and charge customers or property owners for work done on facilities that were then owned by the utility.

The rules we adopt herein are prospective in nature, and do not change the findings of D.97-11-029. Therefore, Pacific's request will be denied.

Findings of Fact

1. The MPOE is the closest practical point to where the utility's facilities cross a property line or the closest practicable point to where the utility's facilities enter a multiunit building or buildings.

2. The LLDP is the point at which the utilities facilities end and the property owner's facilities begin.

3. In D.92-01-023, the Commission adopted the language of a proposed settlement (the settlement itself was not adopted) that provided that the LLDP should be located at the MPOE.

4. In D.93-05-014, the Commission clarified that the requirement in D.92-02-023, that the LLDP be located at the MPOE, applies only to copper facilities.

5. Movement of the MPOE/LLDP will not result in lost utility revenues.

6. There is no significant market for the facilities that would be transferred to the property owner as a result of movement of the MPOE/LLDP.

7. Use of an undefined "fair market value" for the value of facilities that would be transferred to the property owner as a result of movement of the MPOE/LLDP could inhibit competition.

8. The utility's remaining investment in the facilities that would be transferred to the property owner as a result of movement of the MPOE/LLDP is the net book value.

9. Net book value constitutes just compensation for facilities transferred to the property owner as a result of movement of the MPOE/LLDP.

10. There is no reason not to allow a property owner to act through an agent.

11. The proceedings that led to this proceeding addressed only copper facilities.

12. The determination of whether the LLDP should be located at the MPOE for facilities other than copper, is beyond the scope of this proceeding.

13. There is no reason why the MPOE/LLDP relocation rules should be different depending on the technology used.

14. If the owner of the SPCs does not have reasonable control of the SPCs, the owner cannot ensure that the SPCs are properly maintained.

15. If a utility is allowed to have ownership and, therefore, control of SPCs, it could place restrictions on access to SPCs. If the restrictions are unreasonable, competition could be adversely affected.

16. The Commission has the authority and jurisdiction necessary to correct SPC-related problems if the SPCS are owned by utilities.

17. Property owners have control over access to the utility facilities on their property, and have the ability to place restrictions on access whether or not they own the SPCs.

18. Unless the Commission was to exert jurisdiction over property owners, it may not have sufficient ability to directly address SPC-related problems that may arise if the property owners were allowed to own SPCs.

19. Facilities-based carriers have the expertise necessary to properly operate and maintain SPCs while property owners do not.

20. Resellers cannot own facilities such as SPCs.

21. No party has proposed that utilities need to acquire existing SPCs not owned by the facilities-based carrier that serves the customer.

22. Requiring the facilities-based carrier that serves the customer to acquire existing SPCs it does not own could result in numerous eminent domain proceedings that would cost more than the SPCs are worth.

23. Requiring the facilities-based carrier that serves the customer to acquire existing SPCs it does not own would cause costs to be incurred to change out the existing SPCs for no other reason than the imposition of a new rule regarding ownership.

24. Billing adjustments to reflect the loss of a customer routinely occur after the fact.

25. It is important that a carrier's removal of existing SPCs be done in a safe manner that does not result in damage to another carrier's facilities.

26. A bridge clip is a type of SPC.

27. No party requested hearings or briefs.

28. Hearings are not needed.

Conclusions of Law

1. The rules adopted herein should apply to all utilities.

2. The utility should be required to relocate the MPOE/LLDP as requested by the property owner, or his or her agent, provided that the property owner agrees, and has the ability, to pay for all relocation expenses reasonably incurred, relocation is technically feasible, and relocation is not prohibited by applicable local, state or federal laws, rules or regulations.

3. Use of an undefined “fair market value” for the value of facilities that would be transferred to the property owner as a result of movement of the MPOE/LLDP is not in the public interest.

4. Use of the net book value for the facilities that would be transferred to the property owner as a result of movement of the MPOE/LLDP does not constitute an unlawful taking.

5. Facilities that would be transferred to the property owner as a result of movement of the MPOE/LLDP should be valued at the net book value.

6. Allowing the property owner to use an agent will facilitate arrangements for movement of the MPOE/LLDP.

7. SPCs should be owned by the facilities-based carrier that provides service to the customer.

8. In the case of customers served by resellers, the SPCs should be owned by the underlying facilities-based carrier.

9. When a customer transfers to a new carrier or orders any changes to his or her service that would require movement or removal of existing SPCs, the facilities-based carrier should be required to replace any SPCs it does not own with those it does.

10. If existing SPCs must be removed for maintenance, repair or other legitimate purposes, they should be replaced with the facilities-based carrier's SPCs.

11. Whenever a utility removes another carrier's SPCs, it should be required to do so in a safe manner that causes no harm to another carrier's facilities.

12. The new carrier should provide at least a 24-hour advance notice to the previous carrier of disconnection of SPCs.

13. Utilities should not be allowed to remove or disconnect SPCs if it will result in a violation of Section 2883.

14. Pacific's request for recovery of the revenues included in its memorandum account should be denied.

15. The rules regarding movement of the MPOE/LLDP and SPCs included as Attachments A and B to this decision should be adopted.

16. All utilities should be ordered to file advice letters to revise their tariffs as necessary to reflect the rules adopted herein.

O R D E R

IT IS ORDERED that:

1. The rules for movement of the Minimum Point of Entry (MPOE) and/or the Local Loop Demarcation Point (LLDP), and the ownership of Service Provisioning Cross-Connects (SPCs), included as Attachments A and B to this decision, are adopted for all local exchange carriers.

2. Within 60 days of the effective date of this decision, all local exchange carriers shall file advice letters to revise their tariffs as necessary to reflect the rules adopted herein.

3. This proceeding is closed.

This order is effective today.

Dated _____, at San Francisco, California.

ATTACHMENT A

Relocation of the Minimum Point of Entry (MPOE) and/or the Local Loop Demarcation Point (LLDP)

1. Definition: The MPOE is the closest practical point to where the utility's facilities cross a property line or the closest practicable point to where the utility's facilities enter a multiunit building or buildings. The LLDP is the point at which the utilities facilities end and the property owner's facilities begin. For copper land-line facilities only, the LLDP shall be located at the MPOE.
2. Applicability: Continuous multi-tenant property.
3. Only the property owner or his or her agent may request relocation of the MPOE/LLDP.
4. The utility must relocate the MPOE/LLDP as requested by the property owner, or his or her agent, provided that the following conditions are met:
 - The property owner agrees, and has the ability, to pay for all relocation expenses reasonably incurred.
 - Relocation is technically feasible. (The utility bears the burden of proving technical infeasibility.)
 - Relocation is not prohibited by applicable local, state or federal laws, rules or regulations.
5. To the extent that the relocation of the MPOE/LLDP results in utility property being transferred to the property owner, the utility shall charge the property owner the net book value (recorded cost less accumulated depreciation) of the property.
6. The utility shall have tariffs on file specifying these rules, and its requirements, procedures and charges for relocation of the MPOE/LLDP consistent with these rules. Utilities must have approved tariffs on file, as specified herein, in order to charge for relocation of the MPOE/LLDP.

(END OF ATTACHMENT A)

ATTACHMENT B**Page 1****Service Provisioning Cross-Connects (SPCs)**

1. Definition: There are two types of cross-connects.
 - a. Wires that connect the utility's building entrance terminal to the utility's network access termination point, e.g., ready access terminals (RATs) or Network Interface Units (NIUs). (These configurations comprise a small portion of the utility's network.) Such cross-connects do not connect directly to the building owner's access terminal. They need not be altered in order for another utility to provide service to customers. Therefore, they need not be accessible to other utilities or the building owner. As a result, such cross-connects are part of the utility's network. These cross-connects will be identified as Utility Network Cross-Connects (UNCs).
 - b. Wires that connect the utility's network access termination point to the building owner's access terminal. These are the cross-connects that may be removed or changed when a customer switches from one provider to another. These cross-connects will be identified as Service Provisioning Cross-Connects (SPCs). Bridge clips that connect the utility's network to the building owner's wiring are also SPCs.
 - c. There are configurations that have no building owner's access terminals. In these cases, the inside wire runs from the customer's equipment directly to the utility network access termination point. No SPC is utilized. Such configurations are beyond the scope of these rules.
2. SPCs shall be owned by the facilities-based carrier that provides service to the customer.
3. In the case of customers served by resellers, the underlying facilities-based carrier shall own the SPCs.
4. Utilities shall not remove or disconnect SPCs if it will result in a violation of Public Utilities Code Section 2883.

ATTACHMENT B

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5. Existing SPCs need not be removed and replaced by SPCs owned by the facilities-based carrier that provides service to the customer until:
 - The customer transfers to a new carrier.
 - The customer orders any changes to his or her service that would require movement or removal of existing SPCs.
 - Existing SPCs must be removed for maintenance, repair or other legitimate purposes.
7. When a tenant switches service from one utility to another, the new carrier shall provide at least a 24-hour advance notice to the previous carrier before disconnection of the previous carrier's SPCs. Notice may be made by phone or by any other means where such other means are available and result in at least 24-hours advance notice.
8. Whenever a utility removes another carrier's SPCs, it shall do so in a safe manner that causes no harm to another carrier's facilities.
9. All facilities-based carriers shall establish and make available to other carriers a phone number where advance notice of disconnection of SPCs can be made. The phone number shall be capable of receiving incoming calls 24 hours per day, seven days per week.

(END OF ATTACHMENT B)

ATTACHMENT C

List of Parties Who Provided Comments¹

- AT&T Communications of California
- BroadBand Office Communications, Inc.
- Building Owners and Managers Association of California
- California Cable Television Association
- Cox California Telecom, L.L.C.
- Office of Ratepayer Advocates
- Pacific Bell Telephone Company
- Pac-West Telecomm, Inc.
- Teligent Services, Inc.
- Time-Warner Telecom of California, L.P.
- U.S. Department of Defense and All Other Federal Executive Agencies
- Verizon, California, Inc.
- WorldCom, Inc.

(END OF ATTACHMENT C)

¹ BroadBand Office Communications, Inc., Building Owners and Managers Association of California, and Office of Ratepayer Advocates provided comments in response to earlier rulings, but did not comment on the rules proposed in the March 2, 2001 ALJ ruling.