Decision **DRAFT DECISION OF ALJ REED (Mailed 7/23/02)**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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

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

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I. Summary

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

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

Directory Assistance and Operator Call Completion Services, White Pages, and Access to Databases.

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

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

separating the company into wholesale and retail entities. Further, we direct the Telecommunications Division no later than five months from the effective date of this order to submit to prepare for consideration on our meeting agenda an Order Instituting Investigation on the selection and appointment of a competitively neutral third-party Preferred Interexchange Carrier (PIC) administrator for California. Finally, we apply a narrow and focused constraint on joint marketing to inbound customer calls, and direct Pacific to include in its final joint marketing plans and/or agreements one of two specified options.

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

II. Background

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

the NOI, Draft Application and Pacific's quantitative responses, and Pacific replied.

From mid-April through mid-May 1998, the CPUC's Telecommunications Division staff (TD staff or staff) held separate weekly informal meetings with Pacific, a group of CLECs and other interested parties reviewing over 16,500 pages of documents that supported and challenged the Draft Application. Guided by staff's initial report on the central issues and problems that emerged from the Draft Application (the Initial Staff Report or ISR), the CPUC convened five weeks[1] of collaborative workshops with Pacific, staff and interested CLECs.

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

Included in the blueprint were a myriad of technical requirements and the directive that Pacific's Operations Support System (OSS) should undergo independent third party testing. Pacific submitted an OSS Test Plan in January 1999. Staff, with the assistance of a consultant,[2] substantially revised the plan during the spring. In early June 1999,[3] staff conducted an informal collaborative

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

[2] Telecordia

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

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

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

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

On April 4, 5, and 12, 2001, the assigned Commissioner and Administrative Law Judge (ALJ) for this proceeding convened all-party meetings to address the competitors' contention that Pacific failed to resolve OSS/Local

[4] Version 3.0.

Service Center related CLEC operational problems it caused, and that these unresolved problems represented true obstacles to competition in the local telephone market. During the hearings, 11 CLECs[5] appeared and formally presented the systemic operational problems they had experienced with Pacific. In response, Pacific demonstrated how it resolved such problems. Pursuant to a post-hearing ruling, Pacific updated a staff-created matrix each month[6] to reflect the current resolution status of each operational issue listed, and distributed that update to staff and the CLECs for review and comment.

On November 5 and 14, 2001, public participation hearings were held in San Francisco and Los Angeles. On December 3-5, 2001, the assigned Commissioner and ALJ entertained oral arguments on issues related to compliance with Pub. Util. Code § 709.2. Following the arguments, the assigned Commissioner issued a ruling imposing "a ban on any and all ex parte communications" in this proceeding.[7]

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

A Bell Operating Company (BOC) seeking FCC approval to provide in-region inter local access and transport area (LATA) services must demonstrate

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

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

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

that it satisfies the requirements of either § 271(c)(1)(A) (Track A) or § 271(c)(1)(B) (Track B).[8] Track A requires the BOC to show the presence of a facilities-based competitor; while Track B requires that it make a showing that no competitor has sought access or interconnection. Pacific seeks FCC approval to enter the California interLATA market under Track A.

The CPUC has approved, pursuant to § 252 of TA96, 178[9] binding interconnection agreements between Pacific and unaffiliated competing providers of telephone exchange service. These agreements require Pacific to provide "access and interconnection to its network facilities for the network facilities of one or more unaffiliated competing providers to residential and business subscribers."[10] In 1998, CPUC staff tabulated business and residence data for six facilities-based competitors[11] and found they served about 60,000 access lines in California. Staff concluded that Pacific had met the requirements for providing service to a facilities-based competitor. (D.98-12-069, *mimeo* at 69.)

In its July 1999 compliance filing, Pacific asserted that based on the number of resold lines and facilities-based E911 listings, CLECs had won over 819,000 access lines in its California service areas. (Pacific Brief at 4; Curtis L. Hopfinger (Hopfinger) Affidavit (Aff.) ¶ 14 and Attachment A.) In 2001, Pacific identified 47 California facilities-based carriers providing service: forty-one provide local voice service, while the remaining facilities-based carriers appear to

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[8] 47 U.S.C. § 271(a).

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

[10] 47 U.S.C. § 271(c)(1)(A).

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

provide data or Digital Subscriber Line (DSL) services that, at their option, may be deployed for voice grade service. (David R. Tebeau (Tebeau) Aff. ¶ 12.) Based on its April 2001 E911 database, Pacific estimates that CLECs serve approximately 1,726,048 lines on facilities-based connections. (*Id.* ¶ 6.)

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

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

A. Checklist Item 1-- Interconnection

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

1. Legal Standard

a) TA96 and FCC Orders

Interconnection refers to the physical linking of facilities and equipment of communication networks for the mutual exchange of traffic. To satisfy Checklist Item 1, Pacific must provide interconnection in accordance with the requirements of sections 251(c)(2) and 252(d)(1) of TA96.[12] Under Section 251(c)(2), Pacific must provide any requesting telecommunications carrier (A) transmission and routing of telephone exchange service and exchange access (B) at any technically feasible point in the network (C) that is at least equal in quality to what Pacific provides itself, its affiliate or any other party (D) at rates, terms, and conditions that are just, reasonable, and nondiscriminatory under

[12] 47 U.S.C. §271(c)(2)(B)(i).

section 252(d)(1).[13] A state commission's determination of just and reasonable rates for interconnection (A) shall be (1) based on the cost of providing the interconnection, without reference to a rate-of-return or other rate-based proceeding, (2) and nondiscriminatory, and (B) may include a reasonable profit.[14]

b) California Application of Legal Standards

D.98-12-069 directed Pacific to demonstrate compliance with technical requirements covering seven topics[15] under Checklist Item 1.

2. Proceeding Record

a) Pacific's Position

Pacific states that it provides three interconnection options: (1) mid-span fiber interconnection ("MSFI") or "fiber-meet;" (2) collocation interconnection; and (3) leased facilities interconnection. Each of these interconnection arrangements provides a CLEC with the ability to terminate a transport facility in collocation arrangements so that CLEC circuits may be interconnected to the Pacific network. Any, or all, of the above methods of interconnection are available at the trunk side of the local switch, the trunk connection points of a tandem switch, central office (CO) cross-connect points, out-of-band signaling transfer points, and points of access to UNEs. In addition,

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[13] 47 U.S.C. § 251(c)(2).

[14] 47 U.S.C. § 252(d)(1).

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

CLECs may request other technically feasible alternatives via the Bona Fide Request (BFR) process.[16] (William Deere (Deere) Aff. ¶¶ 6-9.)

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

(1) Facilities-Based CLECs

Pacific reports that facilities-based carriers are providing service in California by building their own networks, by leasing UNEs from it, or by combining these two approaches. The incumbent estimates that CLECs serve 1,726,048 lines on facilities-based connections in the state.[17] Pacific points out that the trunk-to-line ratios[18] indicate that the total facilities-based CLEC lines served are 3,014,600.[19] However, calculating the approximately 20,080 total Unbundled Network Element-Platform (UNE-P) lines served by California carriers as of April 2001, Pacific computes that CLECs service 3,034,680 facilities-based lines. (Tebeau Aff. ¶ 6.)

(2) Collocation

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

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

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

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

[19] 1,096,218 x 2.75 = 3,014,600.

Services Reconsideration Order.[20] (Tebeau Aff., Attachment A; Hopfinger 2001Aff. ¶¶ 31, 69, 82.)

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

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

Security measures for collocators in Pacific's COs reasonably protect Pacific's network and equipment from harm. Consistent with the *Collocation & Advanced Services Order*,[21] Pacific may recover the costs of erecting an interior security partition to separate its own equipment in lieu of the costs of other reasonable security measures. (*Id.* ¶¶ 63, 65.)

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

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

Pacific maintains that it does not refuse collocation of equipment that fails to meet Network Equipment and Building Specifications Level 1 safety standards, or other reliability standards. Pacific has modified its internal procedures to ensure that, if it denies collocation because a CLEC's equipment fails to meet applicable safety standards, the FCC-required affidavit contains all information required by the *Collocation & Advanced Services Reconsideration Order*.[22] (*Id.* ¶ 74.)

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

(3) Interconnection Trunking

Pacific provides trunks, when requested, either directly to a CLEC from one of its end-offices or from each access tandem on a trunk group separate from the interLATA meet-point trunk group. InterLATA traffic is transported from Pacific's access tandem over a separate trunk group from local and intraLATA toll traffic. This trunk group may be set up as one-way or two-way and can utilize either MF or Signaling System 7 (SS7) protocol signaling.

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[22] 15 FCC Rcd at 17835, ¶ 57 (revising 47 CFR § 51.323(b).

Pacific maintains that it interconnects with competitors using the same facilities, interfaces, technical criteria, and service standards that it applies to itself. (Deere Aff. ¶¶ 23-31.)

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

(4) Performance Data Results

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

Pacific has 13 performance measurements with sub-measures that specifically assess performance for the ordering, provisioning and maintenance of interconnection trunks (##2, 5, 7, 8, 11, 12, 13, 14, 16, 19, 20, 21 and 23). In addition, Measures 24 and 25 assess the level at which Pacific facilitates call processing across common and interconnection trunks and Measures 28, 30, 31, 32 and 34 track the quality and timeliness of billing associated with interconnection trunking. (*Id.* ¶¶71-72.)

(a) Quality

Measures 24 and 25 demonstrate the quality of CLEC interconnection to Pacific's network, gauged in terms of blocking levels on both common transport and Pacific-controlled interconnection trunks. Pacific met the

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

TABLE 1

PM #24 - % Blocking Common Trunks is a benchmark measure of percentages.[23]

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

(Source: Gold Report[24])

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

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

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

TABLE 2

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

Sub-measure 2500700 Interconnection Trunks (Total Trunk Groups)		
	CLEC %	Pacific %
Oct 00	0.00	0.67
Nov 00	0.00	0.50
Dec 00	0.00	0.93
Jan 01	0.00	0.55
Feb 01	0.00	1.13
Mar 01	0.00	0.88
Apr 01	0.00	0.69
May 01	0.00	
Jun 01	0.00	
Jul 01	0.00	
Aug 01	0.00	
Sep 01	0.00	

(Source: Gold Report)

(b) Timeliness

Pacific met or surpassed the applicable performance standards for 95% of the provisioning performance measurements from February to April 2001, missing only four of 78 opportunities. These misses occurred for the associated sub-measures in Measure 7—Average Completion Interval;

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

however, they were attributable to a single case, which by the business rules should have been excluded.[26] (*Id.* ¶ 74.)

PM #7 – Average completed interval is a parity measure of the number of days it takes to provision a service.[27]

TABLE 3

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

(Source: Gold Report)

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

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

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

PM #11 - % Missed Due Dates: Appointments are a parity measure of percentages.[28]

TABLE 4

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

(Source: Gold Report)

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

In the above table, Pacific has missed a greater percentage of due dates for the CLECs' customers than it has for its own customers, in March 2001, April 2001, May 2001, August 2001, September 2001, and December 2001. However, the differences were statistically significantly different only in the months of April 2001, and May 2001. Additionally, the trend shows improving performance with strong "passing" performance in January 2002 through April 2002.

b) Interested Parties' Positions

(1) Collocation

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

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

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

ORA rebuts Pacific's claims that it is in conformity with the intervals specified in the *Advanced Services Collocation Waiver Order* because the order allows states to establish their own intervals.[29] The FCC rule is that the state must "affirmatively" specify different intervals. According to ORA, there cannot have been an affirmative specification of a different interval if the difference was not evident when the Commission adopted its intervals. (ORA Brief at 27-28.)

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

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

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

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

process.

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

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

(2) Interconnection Trunking

In its August 2001 comments, AT&T argues that "Pacific has arbitrarily gated[30] the number of interconnection trunks that Pacific will install for a CLEC per day thereby limiting the competition that Pacific will face." (Walker & Fettig Aff. ¶¶ 8-18.) AT&T maintains that Pacific put forth discriminatory interconnection terms. Pacific restricted each CLEC's DS1 orders to 24 per day, and its own installation of CLEC's DS1 to 16 per day. AT&T claims that Pacific imposes these restrictions without consulting the CLECs. It

[30] Limited.

contends that it accrued a backlog of 200 interconnection trunk orders because of Pacific's "gating" policy. (*Id.* ¶ 9.)

AT&T also alleges that Pacific's exception to "gating" policies (for more than 8 DS1s orders) enables the incumbent to limit its interconnection responsibilities. By limiting the number of daily installations, Pacific has precluded an accurate measure of its installation performance. AT&T urges Pacific to adequately staff its Local Service Center (LSC) and Local Operations Center (LOC), thereby avoiding these anti-competitive restrictions. (*Id.* ¶11.) Similarly, AT&T decries the limit Pacific has placed on the number of Internet Protocol (IP) addresses that a CLEC can use to establish OSS connectivity. It asserts that the limitation unduly constrains large competitors. (AT&T Brief at 104-105; Willard Aff. ¶¶ 161-175.)

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

WorldCom contends that Pacific fails to provide timely Firm Order Confirmations (FOC), which set the dates for testing and installation of requested facilities. Among its orders by fax, one in ten WorldCom trunk orders

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

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

3. Discussion

Pacific is legally obligated to provide physical and virtual collocation pursuant to CPUC-approved interconnection agreements, tariff[31], and FCC rules.[32] (See AT&T ICA, Attachment 10 -- Ancillary Functions, § 4; Level 3 ICA, Appendix-Collocation; FCC Tariff No. 1.) (Hopfinger Aff. ¶ 31.)

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

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

Footnote continued on next page

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

Rebutting Sprint, Pacific says that it has provided the CLEC with hundreds of physical and virtual collocation arrangements in California. Pacific points out that the tariff under which Sprint purchases collocation clearly states that the collocator is responsible for placing its fiber optic cable from the interconnection point into the CO cable vault. (Hopfinger Reply Aff. ¶ 9.) Sprint conceded that it eventually obtained the vendor list; however, there was some initial misunderstanding.

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

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

The record shows that Pacific currently is offering physical and virtual collocation at interim prices,[33] subject to true up, pending our final determination on permanent rates, terms and conditions in the Open Access and Network Architecture Development (OANAD)[34] proceeding. WorldCom is an active participant in the proceeding. We will not resolve in this decision the pending collocation issues. At this time, we find the interim prices to be in compliance with the law, subject to our imminent determination of permanent rates, terms and conditions.

Pacific makes trunking available pursuant to CPUC-approved interconnection agreements and FCC rules[35]. (*See* AT&T ICA, Attachment 18 -- Interconnection §§ 1.1, 1.8, 1.3.3.3.2.1, 1.3.3.2.2 and 4.1 and Level 3 ICA, Appendix ITR, § 4.2.1.) (Deere 2001 Aff. ¶¶ 17, 23-25.)

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

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

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

Pacific refutes AT&T's allegation that it is improperly "gating" interconnection trunks by explaining that the issue arose when it increased the number of DS1 circuits that could be scheduled for installation in a day from eight to twelve. It maintains that it did so to enable all CLECs to have an equal opportunity to access the Pacific network, and to have equal use of the engineering, design and installation resources available. The FCC and Justice Department have evaluated and condoned twelve installations per day in relation to SWBT's Texas 271 authorization. (Deere Reply Aff. ¶¶ 4-8.) We find Pacific's response to be reasonable regarding the daily limit on trunking installations; however, we expect Pacific to further follow the lead of its corporate siblings and work vigilantly to relieve any developing blockages through cooperative planning with AT&T and other affected CLECs. In the context of appropriate network management, the policy appears neither discriminatory nor anti-competitive.

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

Pacific also denies forcing AT&T to designate trunk termination at its switch location, rather than the facility termination location. It insists that, although requested to, AT&T never provided it with any examples of billing of the extra transport cha therges. Pacific speculates that AT&T's complaint may be due to its improper attempt to use the local Access Service Request (ASR) ordering system--designed for interexchange carrier operations—to order for its

local exchange operations. Pacific maintains that the issue is an isolated problem, which can be circumvented by removing the particular ASR hardcode field. (*Id.* ¶¶ 9-11.) We find Pacific's response to be reasonable.

Finally, Pacific replies that the issue of the Accessible Letter[36] is one that previously has not been addressed in contract negotiations or arbitrations. However, Pacific claims to have rescinded the Accessible Letter until the matter can be considered and resolved by the T1M1.3 Working Group and the Ordering and Billing Forum (OBF). Pacific has also agreed to rescind Accessible Letter CLECC01-127 (establishing where a CLEC switch is within the LATA, but outside Pacific service area) until the issue can similarly be considered and resolved by the T1M1.3 Working Group and the OBF. (*Id.* ¶¶ 12-14.) We concur with Pacific moving this contested issue into the technical collaborative group.

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

B. Checklist Item 2—Unbundled Network Elements

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

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

1. Legal Standard

a) TA96 and FCC Orders

Section 271(c)(2)(B)(ii) requires Pacific to provide nondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(2) and 252(d)(1). To satisfy this checklist item, Pacific must provide this access to network elements, requested by telecommunications carriers, on an unbundled basis at any technically feasible point. The rates, terms, and conditions must be just, reasonable, and nondiscriminatory pursuant to the terms and conditions of sections 251 and 252; and Pacific must allow requesting carriers to combine UNEs to provide telecommunications services.[37] Section 252(d)(1) establishes the pricing standard for network element charges. Just and reasonable rates must be: (i) based on the cost (determined without reference to a rate-of-return or other rate-based proceeding) of providing the network element, (ii) nondiscriminatory, and may include a reasonable profit.[38]

The FCC has identified those network elements that must be provided on a nondiscriminatory basis under section 251(c)(3) as: (1) local loops; (2) network interface devices; (3) local switching; (4) interoffice transmission facilities; (5) signaling networks and call-related databases; (6) operational support systems (OSS); and (7) operator services and directory assistance.[39]

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[37] 47 U.S.C. § 251(c)(3).

[38] 47 U.S.C. § 252(d)(1).

[39] *See Implementation of the Local Competition Provisions Of the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499, 15683 at ¶ 366 (1996) (*Local Competition First Report and Order), aff'd in part and vacated in part sub nom, Competitive Telecommunications Ass'n v. FCC*, 117 F.3d 1068

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Competing carriers must also be provided with nondiscriminatory access to the components of the OSS, to the systems, information, and personnel that support network elements or services offered for resale.[40] The FCC has emphasized that such access is "integral" to competitors' ability to enter the local exchange market and contend with the incumbent carrier.[41]

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

(1) OSS

Under this checklist item, a BOC must demonstrate that it provides nondiscriminatory access to the five OSS functions: (1) pre-ordering; (2) ordering; (3) provisioning; (4) maintenance and repair; and (5) billing.[42] OSS

(8th Cir. 1997) and *Iowa Utils. Bd. v. FCC*, 120 F.3d 753 (8th Cir. 1997), *aff'd in part and remanded, AT&T v. Iowa Utils. Bd.*, 525 U.S. 366 (1999).

[40] *See Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York,* CC Docket No. 99-295, Memorandum Opinion and Order, 15 FCC Rcd 3953, 3989, ¶ 82 (1999) (*Bell Atlantic New York Order*); *In the Matter of Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. For Provision of In-Region, InterLATA Services in Louisiana,* CC Docket No. 98-121, Memorandum Opinion and Order, 13 FCC Rcd 20599, 20653, ¶ 83 (1998) (*Second BellSouth Louisiana Order*).

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

[42] *In the Matter of Joint Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services,*

Footnote continued on next page

functions include computer systems, databases, and personnel that the ILEC uses to discharge, direct, and coordinate many internal activities necessary to provide service to customers. To adequately compete, a CLEC needs access to the same OSS functions "in order to formulate and place orders for network elements or resale services, to install services for [its] customers, to maintain and repair network facilities, and to bill customers."[43]

The FCC has held that nondiscriminatory access to OSS is essential to the development of meaningful local competition, and without such access a CLEC 'will be severely disadvantaged, if not precluded altogether, from fairly competing' in the local exchange market.[44] To satisfy this checklist requirement, Pacific must offer OSS to accommodate each of the three methods of CLEC entry: "competitor-owned facilities, unbundled network elements and resale."[45]

In previous 271 orders, the FCC outlined a two-step approach for determining whether an incumbent LEC has met the nondiscrimination standard for each OSS function. Under this approach, the FCC will first ascertain

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

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

[44] *Id.*

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

whether Pacific has deployed necessary systems and personnel to provide sufficient access to each essential OSS function and provided adequate assistance to competing carriers in understanding how to implement and use all available OSS functions.[46] Thus, Pacific must demonstrate it has sufficient electronic and manual interfaces to permit CLECs equivalent access to necessary OSS functions. Pacific must also disclose internal business rules or formatting information needed to ensure every carrier's requests and orders are processed efficiently. Finally, Pacific must show that its OSS functions are designed to accommodate current and projected demand for CLECs to fully access those OSS functions.[47]

The second step assesses whether the OSS functions deployed by an ILEC are operationally ready, as a practical matter. Consequently, the FCC will examine performance measurements and other evidence of commercial readiness in order to gauge how Pacific is handling current demand, and to determine whether Pacific will be able to handle reasonably foreseeable future volumes. Actual commercial usage is the most appropriate evidence that OSS functions are operationally ready; however, without such evidence the FCC considers the results of carrier-to-carrier testing, independent third party testing, and internal testing.[48]

b) California Application of Legal Standards

D.98-12-069 identified five key issues within Checklist Item 2: (1) general access to UNEs; (2) UNE combinations; (3) intellectual property

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[46] *Id.* at ¶ 96.

[47] *Id.* at ¶ 97.

[48] *Id.* at ¶ 98.

concerns; (4) nondiscriminatory access to OSS,[49] and (5) pricing. In 1998, these issues provoked the most controversy and comment. We directed Pacific to address these issues in its compliance filing. In 2001, interested parties focused most intensely on nondiscriminatory access to OSS and pricing.[50]

2. Proceeding Record

a) Pacific's Position

(1) General Access to UNEs

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

(2) UNE Combinations

Pacific asserts that it makes available UNE combinations beyond what is required by the Act. When requested to do so, Pacific will combine particular network elements that are not already combined, including new loop and switch port combinations (the UNE Platform or UNE-P) and, under certain conditions, loop to interoffice transport combinations (the Enhanced Extended Loop or EEL). (Hopfinger Aff. ¶ 92.) If a carrier purchases separate UNEs and requests that Pacific combine them, Pacific charges only the sum of the stand-alone nonrecurring charges for each of the UNEs being

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

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

combined, and no "glue" charge is applied. (Linda Vandeloop (Vandeloop) Aff. ¶ ¶ 8,11; D.99-11-050, Conclusion of Law 56 (Cal PUC Nov. 18, 1999).)

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

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

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

(3) Intellectual Property

Pacific maintains that it will utilize its best efforts to obtain any associated intellectual property rights that are necessary for the requesting carrier to use unbundled network elements or ensure that none are required in

compliance with the FCC's *Intellectual Property Order*.[51] It is not aware of any action in which a third party intellectual property owner has asserted a claim or a request for payment for a CLEC's use of Pacific's UNEs. (Hopfinger Aff. ¶ 101.)

(a) Discussion

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

Regarding UNE combinations, our review of Pacific's ICAs, specifically those with AT&T and Level 3, indicate that the terms and conditions associated with Pacific's agreement to assemble new EEL combinations are more generous than the terms required under the *UNE Remand Order*[52], which addressed only existing combinations of loop and transport. In general, we find that Pacific provides nondiscriminatory access to a comprehensive set of unbundled network elements at terms and conditions that comply with Sections 251 and 252 of TA96 and include all the UNEs from the *UNE Remand Order*. We also find that Pacific has complied with our D.98-12-069 technical requirements regarding general access to UNEs, UNE combinations, and UNE intellectual property issues.

(4) Nondiscriminatory Access to OSS

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

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

(a) OSS Test

(i) Background

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

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

and OSS architecture, design, and development, they assisted the CPUC in its management of the OSS test. The TG acted as CLECs or Pseudo-CLECs[53] during the test effort, and interacted with Pacific by submitting the orders on a day-to-day basis.

The MTP provided the list of services to be tested. CGE&Y generated the test cases and test scripts from the MTP and made necessary modifications.[54] They also supervised the TG execution of the test cases and test scripts that they had created, and validated the generated bills. CGE&Y formed a Test Execution Team to oversee the submission of orders[55] at the TG site. In addition, they generated the daily procedures[56] of the Test, and tracked performance results. CGE&Y formed a statistical team to record and maintain performance measurement statistics based on the test effort. Analysis of the test statistics determined the results of the test and compliance under § 271.

To execute the tests for the CPUC, GXS assumed the role of four Pseudo-CLECs and established the requisite manual and automated

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

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

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

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

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

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

In accordance with the established standards for the testing and evaluation of a BOC's Operations Support Systems set forth by the FCC in previously approved § 271 orders, Pacific's OSS Test assessed the results of: 1) Functionality Testing,[57] 2) Capacity Testing,[58] and 3) Performance

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

Measurement Analysis.[59] This testing and evaluation examined the five "critical" OSS functions: pre-ordering (including access to loop qualification information), ordering, provisioning, maintenance and repair, and billing.

(a) Functionality Test

(i) Pre-order/Order/Provisioning Testing

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[58] The purpose of capacity testing is to determine whether the BOC's OSS can handle not only current demand, but reasonably foreseeable future volumes (*Id.*). Capacity testing has two components, the volume or stress test and a scalability analysis. The stress test deliberately puts high volumes through the BOC's OSS to determine the volume at which OSS performance begins to deteriorate. The scalability analysis assesses the ability of the BOC to increase the capacity of its OSS to meet increasing demand.

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

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

The Functionality test's objective was to assess Pacific's readiness and capability to provide the CLECs with access to Pacific's OSS in order to perform pre-ordering, ordering, provisioning, maintenance and repair activities to customer accounts. To reflect the variety of customer orders for local services that CLECs could place with Pacific, Local Service Requests (LSRs) were generated for both resale and UNE services, as well as for business and residential account types. These service group types were tested by processing LSRs for various activity types.[60] The LSRs were transmitted to Pacific through various media including fax, Graphical User Interface (GUI)[61] - Local Service Request Exchange (LEX)[62] and Electronic Data Interchange (EDI).[63]

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

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

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

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

[62] Ordering interface.

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

M&R testing was performed to evaluate the performance of the two different electronic means of issuing trouble reports or "tickets" that Pacific provides to its CLEC customers: Pacific Bell Service Manager (PBSM)[64] and the Electronic Bonding interface (EB).[65] Pacific's ability to receive test "tickets" was documented, as was the final outcome, or resolution, of the tickets. From the information collected, all data relevant to the Performance Measurements[66] specified in the MTP was assembled and input on a spreadsheet for post-test evaluation and analysis.

The M&R test included the following activities:

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

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

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

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

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

(iii) M&R Commercial Performance Assessment

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

(a) M&R OSS Functionality for CLECs

Pacific provides CLECs with several options for identifying and reporting customer service troubles and requesting and obtaining maintenance. They can access Pacific's M&R functions electronically through a stand-alone character-based system developed by Pacific (a GUI system), or through an industry standard application-to-application system. In late June 2000, Pacific announced via AL CLECC00-094 the general availability of

its Trouble Administration system[67]. Electronic Bonding (EB) interface is Pacific's application-to-application offering. Pacific also offers CLECs the non-mechanized option of reporting M&R troubles by telephone directly to the Pacific Local Operations Center (LOC). (Huston-Lawson Aff. ¶¶ 192-196 (June 2001).)

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

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

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

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

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

(c) M&R Issues Raised by Parties

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

Among the more serious CLEC allegations is that Pacific fails to update records in its LMOS[68] to reflect UNE Platform (UNE-P) CLECs as the current "owners" of their circuits. According to AT&T, this precludes submitting trouble tickets electronically for these circuits.[69] ((AT&T) Van de Water Aff. ¶ 19 (August 2001)) AT&T further claims that LMOS records contain incorrect information on about one in seven of its accounts, but the situation does not cause a rejection of trouble tickets. However, it causes the

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

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

system to display a message that AT&T believes causes confusion and customer dissatisfaction.[70] (*Id.* ¶¶ 74-78.)

Pacific responds that it engaged Ernst & Young to review the way in which records in the LMOS are updated. Ernst & Young, using attestation standards that the FCC has found persuasive in the past,[71] determined that Pacific's OSS are designed so that service orders on UNE-P conversions correctly update LMOS. This review validated that in August 2001, more than 99.2% of the UNE-P lines billed in Pacific's Carrier Access Billing Systems were correctly shown as working lines in LMOS. Thus, CLECs could electronically open trouble tickets on these lines. The few records that were erroneously in disconnect status in LMOS were updated during the Ernst & Young audit, and the sequencing problems that previously existed in Southwestern Bell Telephone Company's LMOS did not and do not presently affect Pacific's LMOS. (Pacific Reply Comments at 45-46; Motta Aff. ¶¶ 3,5-8, & 11 (September 2001).)

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

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

[71] See FCC01-29, ¶¶ 107-108.

AT&T also contends that it recently has had to open trouble tickets reporting loss of dial tone for its UNE-P customers in increasing numbers. It alleges that Pacific has admitted that at least some of these losses of dial tone problems are caused by the "disconnect" order dropping out of the OSS for manual processing that is completed after the mechanized "connect" order. (Van de Water Aff. ¶¶ 71-73 (August 2001).) AT&T reports that a Performance Measure (PM) data reconciliation effort it conducted last year involving review of its UNE-P orders showed about 40% of its misreported or unreported troubles were due to the lack of proper disconnect and connect order timing or the LMOS "ownership" problem. It insists that Pacific has made an unverified claim that both of these problems were corrected in July 2001; however, these two situations could be responsible for the misrepresentation of some M&R Performance Measures. (*Id.* ¶¶ 44-49, 54-60.)

(d) M&R Performance Results

To determine generally whether Pacific is restoring CLEC customers' service in substantially the same time and manner as it does for its retail customers and performing CLEC M&R work at a similar level of quality, we examine below recent results for the five M&R PMs (PMs 19 through 23)[72] that have been established in California.

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[72] PM 19 (Customer Trouble Report Rate) shows a comparison of the monthly statewide customer trouble report rate as a percent of all of the CLECs' versus Pacific's access lines (circuits or UNEs). PM 20 (Percent of Customer Troubles Not Resolved Within Estimated Time) tracks the monthly statewide percent of CLEC versus Pacific trouble reports that are not cleared by the committed time. PM 21 (Average Time to Restore) compares the monthly statewide average duration (in hours) of CLEC customer versus Pacific customer related trouble reports (from the time when the customer trouble ticket is opened until the time the trouble is cleared). PM 22 (POTS Out-of-Service Less Than 24 Hours) contrasts the monthly statewide percent of out-of-

Footnote continued on next page

In the aggregate, these five M&R PMs cover about 185 resale and wholesale product categories (i.e., submeasures) that CLECs and Pacific may market to their customers. In reality, the data allows analysis of performance in only 85 of these submeasures because there is no data showing commercial activity by the CLECs (or in some cases where ASI is marketing the product, by any CLEC not affiliated with Pacific) in the other 100 submeasures.[73]

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

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

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

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service related trouble reports on POTS that are cleared in less than a day for CLEC versus Pacific customers. Finally, PM 23 (Frequency of Repeat Troubles in 30-Day Period) tracks the statewide percentage of network trouble reports received within 30 days from a customer with a previous similar report for the CLECs versus Pacific.

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

were higher for four of the seven months (including July) for the Resale DS1 and the UNE Loop 2 Wire Digital Line Sharing submeasure.

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

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

Finally, in the case of PM 23 (frequency of repeat troubles), it appears that CLEC customers fared worse than Pacific's during the entire January through July 2001 period for the UNE Loop 2/4 Wire submeasure. CLEC customers had higher percentages of repeat troubles than Pacific's in five of the seven months for the Resale Business POTS, UNE

Dedicated Transport DS3, and UNE – P submeasures. They also did poorer in four of the seven months for the Resale Centrex, UNE Loop 2 Wire Digital ISDN Capable, and UNE Dedicated Transport DS1 submeasures. Notably, CLEC customers also failed to attain parity with Pacific customers in this PM for the UNE Loop 2 Wire Digital xDSL Line Sharing submeasure in both June and July.

Overall, CLEC M&R PM data for the first seven months of 2001 may support the possibility that poor M&R access is affecting CLECs on a more widespread basis and is not limited to a few individual CLECs. In fact, the data appears to show that in some important service areas, the level of M&R access provided CLECs is consistently sub-par vis-à-vis Pacific retail over the five M&R PMs, as evidenced by the information summarized in the table below.

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

Submeasure	M&R Perf. Measure
Resale Business POTS, Disp. and/or Not Disp.	20, 21, 22, 23
Resale Centrex	20, 21, 23
UNE Dedicated Transp. – DS1 and/or DS3	20, 21, 23
UNE Loop 2 Wire Digital ISDN Capable	21, 23
UNE Loop 2/4 Wire 8 db & 5.5 db	21, 23
UNE Loop 2 Wire Digital Line Sharing	19, 23[74]
UNE – P	19, 20, 21, 23

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

Pacific also states that it is continuing to refine its maintenance process to more efficiently manage UNE-P trouble resolution. It asserts that it has made an appropriate change to its UNE-P maintenance appointment interval. Prior to May 2001, residential appointment

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

intervals were being applied as the CLEC standard, even though parity performance was being compared to the shorter business customer appointment interval for Pacific retail. Since May 2001, all UNE-P maintenance troubles have been assigned a business POTS appointment interval, so future results should reflect the impact of this change. (*Id.* ¶ 133.)

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

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

Finally, Pacific noted in June that parity for CLECs was not attained in some earlier months of 2001 for Resale Residential

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

(e) Discussion

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

While most of Pacific's rebuttals to the persistent claims that significant aspects of M&R access are not supplied to CLECs' as they are for Pacific retail (in substantially the same time and manner, and with the same quality) appear to be credible, actual CLEC performance vis-à-vis Pacific's actual performance, as evidenced by M&R PM results, do not yet clearly substantiate these rebuttals for key resale business and UNE product PM submeasures. Therefore, whether the sum of the M&R evidence adequately supports a finding that CLECs are being allowed a meaningful opportunity to compete is still an open question. Still, month-to-month OSS M&R performance parity appears to be being achieved in the large majority of instances, and seems

to be growing. Moreover, we have incentives in place to help ensure that Pacific will not backslide in its effort to assure this condition continues for the future.

(iv) End-User Test

The End-User Test (EUT) was to generate usage and create billing from specified telephone lines at multiple test sites. Accounts were established for the purpose of making and receiving calls during the period of the test effort. The EUTs were based on a predefined set of test cases from the MTP.[75] This test focused on UNE Loop with Port.[76] The Test Team generated usage and billing data, and validated test results in a controlled manner pursuant to the specified test procedures. In addition to making calls to generate usage, calls were made to test the features provisioned on each telephone line.

450 test scripts were executed multiple times at each test site. Calls were made as indicated by the test scripts, the calls were tracked and recorded in call logs capturing date of call, from and to Telephone Numbers, and the start and stop times of the calls. The call data was then loaded into the End-User database, and the call duration was calculated.[77] Overall, the EUT demonstrated that telephone calls could be made to generate usage and billing, and Pacific was able to provide dial tone, features, and services for each Pseudo-CLEC customer and telephone line used in the EUT.

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[75] § 6.5.5, the OSS Master Test Plan, Version 3.1, Attachment 1A and the OSS Test Cases Usage (9/30/99).

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

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

(v) Bill Validation

The primary purpose of Bill Validation was to verify that Pacific, through Carrier Access Billing System (CABS), was able to supply the CLECs with accurate and timely electronic and hard copy bills pursuant to the MTP.[78] This test assessed the accuracy and timeliness of wholesale bills as well as the usage data and billing records for the services, features, network items (e.g. loop, port) and functions that were ordered and provisioned. It also verified that the rate center specific pricing was applied to recurring, non-recurring, usage sensitive and miscellaneous charges.

The CGE&Y Bill Validation team performed 11 activities during the test effort.[79] Each month both electronic and hard copies of the bills were sent to the team. In addition, the team received the monthly usage files to validate the end-user calls. The bills received and validated spanned October 1999 through August 2000.

[78] MTP § 4.2.5.1.

[79] 1) Usage, 2) Bill Format, 3) Bill Content, 4) Bill Accuracy, 5) Rate Charges, 6) Discounts and Adjustments, 7) Taxes and Surcharges, 8) Proration Accuracy, 9) Accurate Rounding, 10) Accurate Discounts, and 11) Timeliness. § 4.1.4.5 of the Final Report Version 1.2.

(vi) Billing-Commercial Performance Assessment

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

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

a) Compliance Showing

Pacific submitted compliance filings in 1999, 2000, and 2001. Our record review indicates that through its "User Forums" with CLECs, where general issues, including billing issues, are raised and resolved, Pacific is demonstrating a clear commitment to maintain a process consistent

with the CPUC directive to make collaborative efforts to identify (and resolve) any billing issues as they arise. (See Huston-Lawson Aff., Attachment W, at 62-72. (June 2001).) It also now tracks billing disputes and provides a CLEC its dispute log upon request. (See Murray Aff. ¶ 63 (July 1999); Murray Reply Aff., ¶ 54 (September 1999.))

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

According to Pacific, UNE bills are consolidated into one of three bill dates in a month by north or south billing region. For resale service users, the Resale Select Bill Date system, which was instituted in mid-1999 by AL CLECC 99-206, allows CLECs to consolidate resale service bill rounds from as many as 19 for each billing region to as few as one per region. (See Viveros Aff. ¶ 238 (July 1999).) No CLEC has made a material showing on the record refuting this claim. Thus we find that Pacific has properly complied with the CPUC directive to consolidate bill rounds.

Pacific also reports that it began to bill IECs for CLEC originating traffic on their behalf on a single bill-single tariff basis in

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

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

b) Other Billing Issues Raised by Parties

TRA and AT&T specifically complained that they had chronic problems obtaining accurate bills and adequate billing data from Pacific. (TRA Comments at 110-12 (August 1999); Willard Decl., Sect. III (D), ¶¶ 97-100 (April 2000).) Pacific implies that any billing problems of one of these CLECs is due to the CLEC's own lack of pre-production set-up preparation, and responds that its only proactive opportunity to ensure the billing data of a CLEC will bill and pass correctly is during the CLEC's initial usage feed testing process stage that occurs before it goes into production. (Viveros Reply Aff. ¶ 97 (September 1999).) In fact, the OSS third party test results seem to support the validity of Pacific's rebuttal, in that the test report concludes that where pre-production billing set-up protocols were strictly followed, Pacific supplied timely and accurate electronic and hard copy bills to Pseudo-CLECs during the course

of the test. With respect to the other complaint of chronic billing problems, Pacific states that all such problems TRA reported to Pacific prior to its allegation were resolved some time ago. Pacific quotes monthly statistics it keeps to support its track record of resolving these within 30 days. (Henry Reply Aff. ¶¶ 23-24 (April 2000).)

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

Pacific responded that WorldCom is the only one challenging its performance in providing timely and accurate bills to CLECs. (Pacific Reply Brief at 46 (September 2001).) It admitted that some submeasures of PM 28 (Usage Timeliness) have shown a lack of parity for CLECs in the aggregate during the early part of 2001. The cause was a programming problem that allowed usage records to backlog in processing to data exchange, resulting in a transmission delay of usage records to the CLEC. Pacific claimed to be working to fix this process problem. (Johnson Aff. ¶ 99 (June 2001).) It asserts that the effects of the fix are now evident in PMs. (Johnson Reply Aff. ¶ 28 (September 2001).)

The central issue with PM 31 (Usage Completeness), according to Pacific, has been a set of ill-defined parameters for the measure. The revised JPSA[80] has implemented a new business rule that allows appropriate extra time for processing usage through Carrier Access Billing System, and this has had an immediately positive effect on performance. (*Id.* ¶ 29.) Finally, with respect to PM 34 (Bill Accuracy), Pacific notes that during June and July 2001, there was only one submeasure in 12 where the CLECs failed to attain parity. (*Id.* ¶ 31.)

c) Billing PM Results

In order to make an overall determination of how well Pacific is providing CLECs with timely wholesale bills, and to ascertain if it is providing CLECs with usage data in substantially the same time and manner as it provides such information to itself, we examined results for the six billing PMs (PMs 28, 30, 31, 32, 33, and 34)*[81] that have been established in

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[80] D.01-05-087 (May 24, 2001).

[81] PM 28 (Usage Timeliness) tracks and compares the monthly average number of days that pass between the date an increment of usage data is ready to be transmitted to CLECs/Pacific, and the date receipt of that usage data increment is recorded. PM 28 breaks its timeliness data down into Resale, Unbundled and Meet Point "submeasures." PM 30 (Wholesale Bill Timeliness) measures and compares the monthly percentage of invoices that have been transmitted within 10 days of their availability, and is broken down into Resale, Unbundled and Facilities/Interconnection submeasures. PM 31 (Usage Completeness) compares the number of usage charges on a bill recorded within the last 30 days as a percent of all usage charges on the bill. The data is reported by Resale, Unbundled and Facilities/Interconnection submeasures. PM 32 (Recurring Charge Completeness) contrasts CLEC versus Pacific bills by measuring the number of fractional recurring charges on the correct bill as a percent of all fractional recurring charges on the bill. The data are segregated into Resale, UNE POTS, UNE Other and Facilities/Interconnection submeasures. PM 33 (Non-Recurring Charge Completeness) compares performance by measuring the number of non-recurring charges on the correct bill as a percent of all non-recurring charges on the bill, and its data are broken

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

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

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

PM 28 – 33% (1of 3 Submeasures)
PM 30 – 100% (3 of 3 Submeasures)
PM 31 - 0% (0 of 3 Submeasures)
PM 32 - 50% (2 of 4 Submeasures)
PM 33 - 75% (3 of 4 Submeasures)
PM 34 - 67% (8 of 12 Submeasures)

To determine if these parity trend rates seemed to be improving, we analyzed three months' of data (May, June and July

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down into Resale, UNE POTS, UNE Other and Facilities/Interconnection submeasures. The final PM, PM 34 (Bill Accuracy), is a comparison of CLEC versus Pacific monthly measurements of the monies billed without corrections, as a percent of all monies billed. This PM's data are segregated into Resale, UNE POTS, UNE Other and Facilities/Interconnection submeasures, with the data in each of these four further divided into Usage, Recurring and Non-Recurring categories.

2001) for the 12 "non-parity" submeasures. We found that when the billing PM data were viewed over this time frame, and "parity" was redefined to mean that the CLEC aggregate performance showed sustained equivalence with Pacific performance over this period, the situation improved rather dramatically to 83% parity (24 of 29 submeasures in parity), with the following parity percentage breakdown for each PM:

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

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

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

When billing PM data for the remainder of 2001 became available (for August through December 2001), we again reviewed

this handful of PM 28, 31, 33 and 34 submeasures in an effort to identify developing parity trends. We found that there was sustained parity for CLECs during the last quarter of the year in all but the PM 31 Resale submeasure.

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

d) Discussion

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

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

(b) Capacity Test

(i) Volume/Stress Segment)

The Capacity Test assessed whether the relevant Pacific OSS systems had sufficient systems capacity to handle the workload

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

The Pre-Order and Order tests analyzed Pacific's OSS by processing a predefined workload of simulated transactions through Pacific's Verigate and DataGate pre-order systems and the LEX and EDI order systems. The results were used to evaluate specified Performance Measures.[82] The Combined Pre-order/Order Volume Stress test incrementally increased the transaction load volumes on Pacific's OSS to identify the limits by which the systems would begin to degrade in performance. This test assessed the capability of Pacific's systems to scale for larger workloads. It also allowed CGE&Y to analyze, based on predicted historical volume trends, how many months of production activity Pacific's systems could sustain under their existing capacity reserve levels.

The Capacity Test[83] was performed on Pacific's live OSS production environment. The capacity tests for the order systems were

[82] As specified in the JPSA.

[83] The Capacity Test was limited to Automatic Order Generated eligible orders and forced error rejects, although some exception orders were executed during the tests. The test cases for the Capacity tests were to find the quantities of transactions that comprise the pre-order and order tests. Test case types were selected from the capacity test bed accounts and address locations provided by Pacific.

executed through the Service Order Retrieval and Distribution (SORD) system.[84] To accommodate fairness and blindness of the test, neither Pacific nor the CLECs were advised in advance of the actual dates the capacity tests were being performed.

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

The simulated order volume processed for the Order Capacity Test was 7,340 LSRs. Eighty-five percent of the total represented orders executed through Pacific's EDI application interface, the remainder

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

represented orders run through its GUI LEX system. The OSS systems examined during this segment of the test were Pacific's LEX and EDI OSS systems. The Order test was conducted over a 10-hour period during Pacific's peak hourly production times from 7:00 AM to 5:00 PM Pacific time. The number of forced errors generated represented 5% of the total volume of orders processed. The baseline derived was 4,116 daily orders during that period. The number of orders submitted for processing in the test represented 178% of the baseline. In sum, the order test count reconciliation did not identify any major count discrepancies between GXS and Pacific. Orders transmitted to Pacific's order systems through the LEX and EDI interfaces were processed and reported satisfactorily. CGE&Y and GXS found the order test performance measures for Pacific at capacity order volumes of 173% over their existing production baseline to be within the benchmarks required by the JPSA service levels.[85]

The hourly volumes used for the Combined Pre-Order/Order Volume Stress test were significantly higher than Pacific's normal production volumes and ranged from 194% to 777% over their highest average historical hourly volumes. This test focused on executing a high volume of combined flow through transactions through Pacific's DataGate, LEX and EDI systems. The transaction mix consisted of 11, 866 flow through queries and 839 forced error rejects. This represented 93.4% and 6.6% for the total 12, 705 queries, respectively. The total number of orders executed for this segment of the test was 11, 643 with 11,216 of the transactions tested through the EDI interface. The total of simulated test orders represented 283% of the order baseline of 4,116

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

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

(c) Scalability Analysis

Pacific's pre-order and order activities depend on the capabilities of certain computer systems. CGE&Y performed a system scalability analysis to determine if Pacific has adequate procedures for scaling its systems to have the capacity to handle the CLECs' loads. The analysis included evaluation of three things: 1) procedures for tracking OSS loads and capacities; 2) procedures for forecasting future OSS loads; and 3) the process for providing OSS computer growth. Since Pacific's pre-order and order activities depended on manual processes in many cases, CGE&Y produced a staff scalability analysis to determine if Pacific had the ability to increase the number of personnel available to perform these manual functions.[86] After examining the daily data Pacific provided it over an eight-month period, CGE&Y found that Pacific kept a detailed eye on both volumetrics and responsiveness of its OSS. Based on a review of the Capacity Test results, CGE&Y concluded that Pacific's installed capacity stayed well ahead of current demands.

(d) Performance Measurement Evaluation

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

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

(e) Change Management (CM)[87]

Pacific uses its CM process to notify the CLECs of software enhancements. An integral part of the CM process is the software implementation, which is performed in St. Louis, Missouri and San Ramon, California.[88] OSS changes occur due to modifications requested by CLECs, system upgrades, and regulatory changes. (§ 4.5.4 of the Final Report) CGE&Y describes the process as an interactive one between the ILEC and CLECs, which provides an open avenue of communication. CGE&Y reviewed Pacific's CM process to determine if a valid process was in place; whether or not the process

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

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

worked as advertised; and, if it was useful to Pacific's wholesale customers.[89] The evaluation of process functionality took place during a software release in October 1999.[90]

CGE&Y analyzed the interactions between Pacific's CM Team and the CLECs as evidenced by the documentation provided by Pacific in either hard/soft copy or through the Pacific web site, through meetings, and through notifications. It found that Pacific's CM Process document, which is divided into sections that address the various types of changes that can be made, is easy to locate on the web site. CGE&Y reports that regular CM meetings are held on a quarterly basis with notifications sent to the CLECs through Accessible Letters (ALs).[91] These meetings are designed to discuss impending changes to software, changes to the CM process, and problems encountered by Pacific in the CLEC community. The meetings are well attended by the CLEC community with a conference bridge provided for those who cannot attend in person. All voting matters require a quorum of the CLEC voting members.

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

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

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

After the assessment, CGE&Y concluded that the CM process is quite solid and works well as defined for Pacific. CGE&Y recommended that eventually SBC's 13-state process, which affects Pacific, should be evaluated.

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

In D.98-12-069,[92] we directed Pacific to demonstrate that it has developed and is managing an adequate CMP, and that it has been adhering to that CMP over time. Pacific has declared that its CMP satisfies specific regulatory criteria[93]: 1) CLECs have had input into the design and continued operation of the process, 2) the process is memorialized in a basic document, 3) it contemplates a separate forum dealing with CMP disputes, 4) the process makes available a stable OSS interface testing environment for CLECs that mirrors production, and 5) it allows CLECs access to adequate documentation for the purpose of building an electronic gateway to the OSS.

(i) Development and Function of Pacific's CMP

Pacific and the CLEC community first conducted workshops to discuss change management principles in June 1998. These meetings resulted in Pacific and the CLECs establishing a drafting subgroup or "joint drafting team" to develop CMP documentation. This effort ultimately led to an agreed-upon CMP for California that was filed with the Commission as a Joint Settlement Agreement (JSA), and approved in

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[92] See Appendix B.

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

D.99-11-026[94] on November 4, 1999. At that time, Pacific maintained that OSS interface development was an evolutionary process, and that it would need to continue to refine and improve its OSS capabilities and corresponding documentation to meet the ever-changing needs of its CLEC customers. It declared that the JSA would serve as the framework to evolve its comprehensive CMP. (Viveros Aff. ¶ 35 (July 1999.)

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

(ii) General Aspects of the Process

The CMP covers both application-to-application and GUI interfaces. It provides for the conduct of quarterly CMP (QCMP) meetings,[95] to which Pacific invites all CLECs to attend. The process requires Pacific to solicit CLEC input in the development of QCMP meeting agenda items. It gives notice to CLECs of upcoming QCMP meetings by means of a Pacific Accessible Letter or AL, through which Pacific also solicits agenda input and transmits necessary CMP meeting working documents. (*Id.* ¶¶ 37-39.)

During QCMP meetings, CLECs have the opportunity to review scheduled improvements to the OSS interfaces. This review is aided by a "12 Month Development View," a document that provides a

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

[95] Inaugurated in October 1998.

rolling calendar of OSS modifications or enhancement projects tentatively scheduled in the coming 12 months. This document is also distributed to CLECs via AL. When issues raised at a QCMP meeting require additional attention, individual meetings are scheduled between Pacific and interested CLECs, and the results of these meetings are distributed to all CLECs by AL.[96] The issues can then again be discussed in subsequent QCMP meetings. Full draft QCMP meeting minutes are circulated among meeting participants to insure an accurate and complete meeting record. The minutes are redistributed to all CLECs in final form via AL. (*Id.* ¶¶ 40-42.)

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

Pacific has incorporated a process called "versioning" into the CMP since mid-August 2000. Under versioning, two consecutive versions of its software for EDI ordering and for EDI and CORBA pre-ordering interfaces (the current and previous versions of each) are up and

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

running at all times so that a CLEC need not switch to the newer interface version immediately in instances where the timing of such an action would disrupt its use of the OSS.[97] Pacific further claims that in the spring of this year, SBC began to support three versions of the application-to-application interfaces used in its 13-state area to include one "dot" version (an upgrade) and two Local Service Ordering Guidelines (LSOG) (basic) versions. (*Id.* ¶ 243.)

[97] This versioning process is identical to the one employed by SWBT in Kansas and Oklahoma. There the FCC found that versioning enhances SWBT's CMP by providing significant additional assurance that changes will not disrupt competing carriers' use of SWBT's OSS. (See *Kansas/Oklahoma Order*, 15 FCC Rcd at ¶ 167; Huston/Lawson Aff. ¶ 244 (June 2001).)

(iii) Interface Documentation

Pacific declares that it provides CLECs comprehensive and readily available documentation for all of its OSS interfaces. It posts its User Guides, business rules and other information resources on its CLEC Online web site. Although Pacific admits that it has been criticized for not publishing its specific EDI interface documentation there, it claims that such extensive, company specific documentation need not be posted because it strives to closely comply with industry standards. Pacific follows mapping developed by the Service Order Sub-committee of the EDI Committee of the Telecommunications Industry Forum, and places links to the industry forum on its CLEC web site. (*Id.* ¶ 224.) Pacific also notes that it is responding to CLEC requests to provide all mapping information by publishing it in the Local Service Pre-ordering Requirements (LSPOR) and LSOR with the introduction of the uniform LSOG Release 5.[98] At the time of release, CLECs will have both SBC's business rules and its EDI mapping in one document for ordering and pre-ordering, respectively. (*Id.* ¶ 227.)

Pacific asserts that the sufficiency of its current hybrid documentation of industry standards and company-specific variances has been verified in practice because 20 CLECs and four Pseudo-CLECs have successfully constructed EDI ordering gateways, and 15 CLECs have successfully constructed DataGate, EDI or CORBA pre-ordering gateways. (*Id.* ¶ 226.)

[98] Implemented in the spring of 2002.

(iv) The CMP's Interface Testing Environments

Pacific's CMP provides two joint test[99] environments for CLECs. One environment is for CLECs who need to implement EDI for the first time. The other is for CLECs that want to test new EDI releases. Successful completion of testing in the former environment verifies that a CLEC is ready to submit production orders for the first time. Successful test completion in the latter assures a CLEC that a new software release is ready for its use in production. (*Id.* ¶¶ 234-235.)

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

Pacific maintains that it discusses the release testing process with a CLEC prior to its use, covering entrance and exit criteria, test scenarios (including regression testing, if requested), expected errors and time frames. A root cause analysis is performed on any problems that occur during testing to identify which company needs to fix the problem. When a fix needs to be implemented, a re-testing is performed that focuses on the problem test case. At the end of the overall release testing process, the CLEC submits a statement that the test has been successfully completed. (*Id.* ¶ 237.)

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

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

(v) CMP Issues Raised by Parties

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

AT&T alleges that Pacific's CMP interface testing processes do not provide meaningful opportunity for CLEC testing in pre-release or in production mode because AT&T has submitted transactions containing business rule violations in SWBT territory to determine if they would be rejected and SWBT refused to permit the transactions. It further contends that the CMP test environment is inadequate because it is "static" and does not simulate commercial experience by offering integrated pre-ordering and ordering functionality. (Willard Decl. ¶¶ 155-160 (August 2001).)

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

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

(vi) Discussion

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

A comparison of the 13-state CMP contained in Pacific's August 2001 filing with the 8-state version in place during the OSS Test reveals that this latest version is a more thoroughly articulated document than the one we approved in November 1999. Its differences from the JSA version

and the later 8-state version appear to be designed to clarify, and more fully memorialize through documentation, a CMP that is increasingly responsive to CLEC needs. Our review of the 13-state CMP verifies that it should function for CLECs at least as well as CGE&Y concluded the 8-state CMP functioned for them during the OSS test effort.[100]

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

(b) OSS Test Report Comments

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

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

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

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

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

The CLECs claim that there is a "glaring discrepancy" between the numbers of orders that received a Firm Order Confirmation and those that received a Service Order Completion.[101] It appears Pacific returned fewer Firm Order Confirmations than Service Order Completions for the UNE-P EDI test orders. They state that the Pseudo-CLECs should have received at least as many Firm Order Confirmations as they did Service Order Completions.[102] Consequently, the resulting ratio (assuming that the remaining 63% of UNE-P EDI orders were successful) is clearly too low to demonstrate that the EDI interface will adequately support commercial quantities of residential and small business orders. (*Id.* at 127.)

The CLECs argue that the CPUC should order re-testing to determine the adequacy of Pacific's OSS for processing UNE-P because of its

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

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

significance to meaningful CLEC competition in the local market. They estimate that the additional testing could be completed quickly. (*Id.* at122.)

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

(a) Discussion

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

However, we disagree that the CLECs' utilization of their own facilities to serve their customers excuses not fully testing UNE-P over EDI during the functionality phase of the OSS test. Rather, we found that

the design of the capacity UNE-P EDI test, where each unique order was repeated no more than 10 times, provided a good assortment of order types that could be submitted through the EDI interface. Moreover, the high number of UNE-P orders submitted through LEX allow us a reasonable substitute to gauge how well Pacific's backend system processed UNE-P orders, since both LEX and EDI orders flow into SORD to be further processed and distributed to the field offices for provisioning.

(ii) Testing of DS-1 Loops

The CLECs argue that UNE DS-1[103] was "not adequately tested" during the OSS Test. (CLECs OC at 7.) They note that UNE DS-1 was eliminated from the OSS Test despite a "strongly worded admonition" from the TAM itself to include it, as the MTP mandated. (*Id.* at 30.) The CLECs detail several specific concerns with the Pacific UNE DS-1 testing:

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

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

- Although the MTP called for extensive third party testing of UNE DS-1 loops, the CPUC unilaterally and inexplicably eliminated AT&T's facilities from UNE DS-1 testing[104] after the TAM's test design was discovered to be faulty. (*Id.*)
- The CPUC's consultant advised it in October 2000 that the test results were without value in assessing UNE DS-1 loops. At best, the small quantity of UNE DS-1 test orders yields nothing other than a minimal qualitative observation. (*Id.* at 131.)

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

In response, Pacific stated that the CPUC had denied the CLECs' request for further UNE DS-1 testing in D.00-12-029. (Pacific RC at 5, footnote 13.)

(a) Discussion

In D.00-12-029, we denied seven CLECs' request to expand the testing of DS-1 loops because we expected that the data showing Pacific's commercial DS-1 volumes would inform us whether or not Pacific was providing DS-1 loops to the CLECs on a nondiscriminatory basis. But in December 2000, Pacific's existing commercial DS-1 volumes were an inadequate indicator of how its OSS system was processing and provisioning those orders. At that time, CLECs were submitting DS-1 orders to Pacific through CESAR, a semi-mechanized ordering interface retired at the end of 2000, while LEX and

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

EDI, the focal ordering interfaces of the OSS test, processed little to no CLEC DS-1 orders.

In the second half of 2001, both Pacific's LEX and EDI interfaces began receiving DS-1 orders in volumes sufficient enough to enable assessment of the DS-1 loop order processing quality. Pacific's Fourth Quarter 2001 DS-1 related performance measurement results indicate overall that, with the exception of PMs 5 and 16, Pacific is providing parity DS-1 services to the CLECs. For PM 5 (Percentage of orders jeopardized), from November 2001 through January 2002, Pacific performed below the parity level.[105]

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

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

(iii) LNP Only Orders

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

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

(a) Discussion

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

(iv) Pre-Order/Ordering Integration

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

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

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

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

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

According to the CLECs, GXS should have conducted an end-to-end test "beginning with pre-ordering through provisioning and billing, and maintenance and repair." Instead, CGE&Y's delivery of pre-validated order information was a disruption of the pre-ordering steps. Thus, the test transactions did not meet the definition of end-to-end testing. (*Id.* at 133,134.) To remedy this, the CLECs urge us to order the limited retesting of Pre-Order/Ordering Integration[106] (*Id.*)

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

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

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

(a) Discussion

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

(v) Flow-Through

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

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

(a) Discussion

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

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

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

(vi) Backend Processing

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

To remedy this problem, the CLECs urge Pacific to send a post-provisioning notice[107] to CLECs when "all functionalities are available to

[107] Such notice should confirm: 1) all of the requested features and charges have been correctly entered and accepted; 2) all relevant end-user information (such as billing and E911) has been updated; 3) all necessary changes have been made to discontinue

Footnote continued on next page

serve the end user" and the responsibility of billing the end-user has transferred to the CLEC.[108] (*Id.*) The CLECs also request that a billing completion notice be implemented as soon as the CPUC approves the 2001 JPSA update,[109] and that verification of timeliness, PM 35, be included in the test. (*Id.*)

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

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

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Pacific's current billing of the end-user; and 4) billing OSS has been updated to enable the CLEC to correctly bill the end-user. (Id. at 37.)

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

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

this, the CLECs ask Pacific to make specific procedural and methodological changes.[110] (*Id.*)

The CLECs assert that the additional backend system processing that occurs (post-SOC) limits their ability to compete with Pacific, and compromises the value of the SOC notification to the CLEC as a definitive sign of order completion. Specifically, the post-SOC processing is too slow, which, in turn, negatively impacts the billing and maintenance and repair processes. (*Id.* at 41, 42.) Consequently, the CLECs strongly endorse the TAM's recommendation[111] resolving this. (*Id.* at 9.)

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

[110] "No changes to CLEC accounts, either automatic or manual, shall be made unless the CLEC has authorized the change. Upon the issuance of a SOC, the account should be protected from any automatic changes. If modification to the account is required, Pacific must send a written and verbal notice and explanation of the proposed modification to the CLEC that owns the account. Only after receiving written authorization from the CLEC, unless service interruption is imminent or the existing account is impairing existing service, may Pacific make the account modification. Upon completion of the modification a Pacific shall issue a supplemental notice of completion."(Id. at 41.)

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

billing completion notices[112] to the CLECs as service orders are completed. Pacific asserts that then-proposed PM 35[113] should assist further. It also contends that post-SOC processing does not impact the effectiveness of the SOC.[114] (*Id.*)

(a) Discussion

After reviewing the Test Report and MTP, we find that some aspects of the back-end process testing was beyond the scope of the OSS test.[115] Thus, there is no need to retest this area. In response to CLEC comments, Pacific has implemented a procedure, which provides advance CLEC notice and confirmation of any of its changes to customer account information after migration.[116] In addition, Pacific has addressed post-SOC confirmation of backend system updates in another forum. Consequently, we find that the existing test results and analysis indicate that Pacific's backend processing is adequate.

(vii) Inadequate Billing Review

According to the CLECs, the "adequacy of Pacific's billing was to be determined by a review of two bill cycles applied to the

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

[113] Added in D.01-05-087.

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

[115] Pursuant to MTP § 6.3.5.3.

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

functionality test. The completeness of usage, recurring, and non-recurring charges was also to be tracked and evaluated. Similarly, the timeliness of both usage and wholesale bills was to be tracked and evaluated. The record demonstrates, however, that these objectives were not achieved". (CLECs OC at 87.)

(a) Discussion

The Final Report shows that CGE&Y validated that the end user calls appeared on the Daily Usage File in a timely manner. While the MTP required that CGE&Y review two billing cycles, it validated all bills for October 1999 through August 2000. The Final Report also notes that CGE&Y validated recurring and non-recurring charges, and tracked the timeliness of the usage[117] as well as the receipt of both hardcopy and electronic wholesale bills. We find that CGE&Y satisfied the MTP in its analysis of Pacific's billing performance.

(viii) Statistical Methodology

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

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

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

(a) Discussion

CGE&Y utilized the statistical method adopted after discussions with the CLECs and Pacific at the start of the OSS test process. The MTP required only that the statistical analysis of the performance measurement data be "consistent with the business rules, method of calculation and measurable standards as defined by the Amended JPSA.[118]" Moreover, the Final Report was issued approximately a month before we adopted, in D.01-01-037, the statistical methodology (or "performance criteria") that is in place now.[119] All parties were familiar with the methodology adopted and used by CGE&Y in the Final Report. We cannot fault CGE&Y for the statistical methodology it utilized in the Report. Rather, we find that CGE&Y's statistical analysis in the Final Report is in accordance with the MTP.

(ix) Aggregated Analysis

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

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[118] MTP § 6.5.3.3

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

aggregation of data can mask deviations from the mean and large variance within smaller populations. (*Id.*)

(a) Discussion

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

(x) Data Validation

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

In reply, Pacific attests that a jointly selected[120] independent third-party auditor, PricewaterhouseCoopers (PWC), has audited Pacific's processes. It notes that in December 2000, PWC concluded that Pacific had complied, without exception, with the business rules set forth in the JPSA. Pacific submits that the PWC attestation report satisfies the MTP's data validation requirement. (Pacific RC at 15.)

(a) Discussion

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

(xi) Assumption of Data Accuracy

The CLECs allege that, during the test, CGE&Y assumed that Pacific properly excluded[121] some missing data.[122] Such an assumption ignores the purpose of data validation and the requirements of the MTP. (CLECs OC at 98.) Under the business rules, without a reconciliation of excluded orders

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[120] By Pacific and the CLECs.

[121] Pursuant to the business rules in the JPSA

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

with the orders present in GXS' database, CGE&Y could not verify the accuracy of the Rose Reports.[123] (*Id.*)

(a) Discussion

The issue of revalidating the business rules used to exclude data from performance measurement was also an issue in the Performance Measurement Phase of the OSS OI I (R.97-10-016/I.97-10-017). In that proceeding, the Assigned Commissioner determined that PriceWaterhouseCoopers had validated the business rules in question in accordance with the joint Pacific-CLEC audit plan. Accordingly, we find that CGE&Y's assumption, pursuant to the business rules, that Pacific properly excluded certain missed data was reasonable and satisfied the requirements of the MTP.

(xii) MTP Variances

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

(a) Discussion

The initial MTP authorized the TAM to clarify several crucial components of the OSS test that were not sufficiently detailed. It

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

also directed the TAM to vary what was necessary in order to meet the goals of the test. Consequently, CGE&Y completed the details of the test cases and filled in the technical particulars of the test plan as part of its earliest duties here. After reviewing the relevant test records, we find that CGE&Y appropriately exercised its authority to modify aspects of the MTP, and find no support for the allegations regarding CGE&Y's analysis.

(xiii) 271 Testing Approach

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

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

(a) Discussion

There is no MTP and/or CPUC requirement that this test be performed based on the New York (NY) test. CGE&Y and GXS did not detect any violation of the test's blindness requirement through Pacific OSS test and Account Management Teams releasing inappropriate information to other Pacific resources processing the test orders. CLECs actively participated in workshops during the planning of the MTP. They also participated in weekly informal sessions with CGE&Y. They were given ample opportunity to alert the

CGE&Y to objectives of the test that were important to them, and to provide information that would assist it. We find that the OSS test did not need to follow KPMG's NY OSS testing approach exactly, and that "blindness" was properly maintained during the California test.

(xiv) Limited CLEC Involvement in Test

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

Pacific responds that the CLECs had "substantial involvement" throughout the test. It maintains that the CPUC offered the CLECs the opportunity to participate directly in carrier-to-carrier testing; however, they declined the invitation. (Pacific RC at 4.)

(a) Discussion

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

security and accessibility; therefore, we find the level of CLEC participation to have been reasonable.

(xv) Military Style Testing

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

(a) Discussion

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

(xvi) End-to-End Testing

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

(a) Discussion

The pre-validation conducted by CGE&Y was to determine that test participant data was adequate and reliable; it was not a substitute for preordering. CGE&Y's test scripts to GXS represented the data a CLEC Customer Service Representative would gather from its customers. GXS always evaluated the test scripts provided by CGE&Y through the preordering functionality. GXS rejected scripts and sent them back to CGE&Y when the test script data: 1) was not valid; 2) did not match the preordering evaluation; or

3) caused errors in the LSR. Notwithstanding CGE&Y's pre-validation steps, review of the record as a whole indicates that GXS conducted a reasonable end-to-end test in California.

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

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

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

The 11 CLECs that participated identified dozens of then current operational issues and, as the hearings progressed, Pacific memorialized them in an issues "matrix" document. Over the course of the hearings, it became clear that there is – and post-Section 271 will continue to be – a need to rely on some systematic, well-documented processes to resolve both operational problems experienced only by individual CLECs, and more pervasive ones experienced by several competitors simultaneously. It also became evident that there are evolving processes already in place that can be used to deal with both of these categories of operational problems. Pacific assigns an account team to each CLEC so that any individual service problem that a CLEC is experiencing

can be worked to resolution collectively. For dealing with a problem that several CLECs face, such as inefficiency in an ordering process, Pacific has implemented a CLEC User Forum process. The forum is comprised of Pacific and CLEC representatives that meet monthly with subject matter experts from both camps to work toward devising and implementing solutions to the multi-CLEC problem.[124]

The April hearings allowed us to take a "snapshot" of a point in time where the operational problems then existing were documented, and thus establish a baseline from which to monitor Pacific's problem resolving processes. We can now gauge both how effective they function, and how willingly, quickly, and effectively Pacific is inclined to work toward CLEC problem resolution.

(i) The Process for Monitoring Issues Resolution

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

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

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

(ii) Identified Issues

The "baseline" matrix staff distributed in June indicated that there were 76 "problems" raised at the hearings. Only 68, however, could be reasonably categorized as operational in nature.[125] These 68 problems fell into 13 different issue categories, but the three most important ones to CLEC service ordering and provisioning (the Database & Documentation, Installation, and Order Due Date categories) include 44 (about 2/3rds) of the identified problems.

The subject range of the group of 68 issues was broad.[126] At the time, only a couple of the issues were being pursued to resolution using

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

[126] Examples of issues that seemed particularly important to more than one CLEC were: Issue #1, that raised the need to incorporate "line loss" notifications into EDI to minimize the likelihood of double billing of migrating customers; Issue #2 (and related Issues #16 and #17), that focused on various order quality problems caused by the conversion from the CESAR to the EXACT interface; Issue #3, that highlighted the need for Pacific to electronically transmit its Features and Capability Reports to CLECs; Issue #13, which identified the need for Pacific to move from an uncoordinated, three-step order process for line splitting to a more efficient electronic single-step one; Issues #19, #34 and #34A, that focused on either insuring timely and accurate customer directory listings, or on insuring that directories are properly delivered to customers, and; Issue #26, that was raised by several CLECs who insisted that there is a need for escorted

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the CLEC User Forum process.[127] According to the June 21, 2001 baseline, 27 identified operational problems (about four of every 10 identified) were resolved during, or soon after, the mid-April hearings.

(iii) The Parties' Interactions

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

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

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access to Pacific's facilities to ensure, for example, that Carrier Facility Assignment data is correct so that a problem that causes a "no dial tone" condition for a customer is not first discovered on the day of a scheduled cut.

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

About a week later, on July 10, two more CLECs submitted comments on the matrix update. One addressed an operational issue,[128] the other submitted clarifications or status updates on its open issues.[129] When Pacific distributed its second issues matrix update on July 30, it showed that an additional 11 operational problems had been resolved since July 2. Pacific's claimed success rate had increased to 43 of 68 issues (or about 63%) closed. But scrutiny of the update showed that some of the success in improving statistics was gained simply because of the consolidation of tracked issues.[130]

On September 7, four CLECs filed a motion claiming that Pacific's updated matrix had been inaccurate since its inception.[131] They asked that staff, rather than Pacific, be designated to serve as the final editor of

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

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

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

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

future matrix updates, because Pacific was ignoring their comments. Pacific filed its next matrix update on schedule on September 10. Although it never filed any comments on the CLECs' motion, Pacific's September 10 update reopened some issues.[132] The update also showed an increased issues resolution rate of about 69% (47 of the 68 issues resolved).[133]

On October 10, Pacific again submitted its monthly matrix update. This update claimed that an additional seven issues had been closed for a resolution rate of about 79% (54 of the 68 issues resolved). Two of the seven issues Pacific considered to have been resolved during the September to October period were previously reopened.[134] On November 8, WorldCom submitted written comments to staff and Pacific on its differing understanding of the status of some issues that Pacific updated in October.[135] In response to one of WorldCom's requests, Pacific agreed in the November 9 matrix update to keep an issue open until January 2002.[136] Pacific reported that about 82% of the operational issues identified in April had been resolved.

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[132] Issues #2 and #46

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

[134] Issues #2 and #46

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

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

(iv) Discussion

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

We regard the fact that about 40% of the issues identified by CLECs at the April hearings were quickly resolved after being brought to Pacific's attention as a positive sign that Pacific has some degree of resolve to serve CLECs as wholesale business clients. That only two of the 68 operational issues identified at the hearings have been brought before the CLEC User Forum for resolution may be a reasonable condition. Only ten of the 68 (about 15%) were ones raised by more than a single CLEC. Apparently, it proved possible and practical to readily identify a common satisfactory solution – even if not an agreeably timely one - to at least some of the multi-CLEC issues outside the forum context.[137] Pacific's decision to consolidate issues by only keeping one issue open, when there were two or more on the list that were closely related, arguably made the real issues that remained open more easily and clearly understood.

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

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

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

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

Pacific appears to have taken every opportunity to impart a positive spin on the status of its progress in resolving the CLECs' April operational problems (e.g. – consolidating similar issues on the Issues Matrix and then identifying the eliminated issues as resolved). Nevertheless, even discounting the number of issues truly resolved, the record still shows that Pacific has made meaningful and steady quantitative progress in this area during the last six months.[138]

The Issues Matrix was an important tool in helping us to track how Pacific addresses operational problems; however, it was meant to be -- and was-- diagnostic and static. We believe that the parties would benefit from the crafting of a workable expedited dispute process for operational problems, and the parties seem closer to developing one than at any time in the past few years. In accordance with a schedule to be set out by the assigned ALJ, the parties shall present a joint proposal for the dispute process. A mutually agreed upon dispute process could focus in on and resolve problems before they became full blown formal complaints, but the parties must decide that they will work together to create it. At this point, we find that the Issues Matrix has served its purpose, and direct Pacific to submit the final version 30 days after the effective date of this order.[139]

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

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

(5) Pricing

In late 1999, we issued D.99-11-050,[140] which set prices for UNEs offered by Pacific. In this order, we acknowledged that the Total Element Long Run Incremental (TELRIC) costs that we adopted in 1998[141] and used to set the UNE prices were "based largely on data that had not been updated since 1994,"and noted "there is evidence that some of these costs may be changing rapidly." (D.99-11-050, *mime.o* at 168.)

Consequently, we established a process in the order that invited carriers with interconnection agreements with Pacific to annually nominate up to two UNEs for consideration of their costs by the CPUC. We directed that a party nominating a UNE for review must include a summary of evidence demonstrating a cost change of at least 20% (up or down) from the costs approved in D.98-02-106 for the UNE to be eligible for nomination.

In February 2001, the CPUC received four separate requests[142] to nominate UNEs for cost reexamination. On June 14, 2001, an assigned

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

[141] D.98-02-106.

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

Commissioner and ALJ Ruling denied Pacific's request to defer the UNE Reexamination proceeding, and stated that the CPUC should proceed with its review of selected UNEs rather than await the outcome of federal litigation[143] so that competitors would not have to pay prices for another year based on 1998-adopted costs. The Ruling also determined that the summary of evidence presented by the joint applicants led to a reasonable presumption that costs may have declined for unbundled switching and unbundled loops. Accordingly, the Assigned Commissioner and ALJ found sufficient justification to review these two UNEs and initiate the UNE Reexamination proceeding.

In July, the Assigned Commissioner and ALJ reiterated an earlier ruling denying the joint applicants' request for leave to file a competing cost model to that which Pacific would file. They maintained that it was appropriate to limit the scope of the proceeding to review of Pacific's model as long as it met three criteria. Specifically, Pacific's cost models and cost studies had to allow parties to: 1) reasonably understand how costs are derived for unbundled loops and switching; 2) generally replicate Pacific's calculations; and 3) propose changes in inputs and assumptions in order to modify the costs produced by these models. The Assigned Commissioner and ALJ Ruling further required Pacific to provide requesting parties with an advance electronic copy of the cost model or studies that it would use as the starting point for its cost filing.

In response to Pacific's advance "starting point," commenters asserted that Pacific's submission did not meet the three cost model criteria because it was not an actual cost model, but merely a set of adjustments to the

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

outputs of the models used to develop costs and prices in prior OANAD decisions, specifically, D.98-02-106 and D.99-11-050. They also claimed that several of the prior models were no longer available and it was not possible to re-run them with new inputs. Pacific's reply did not dispute the commenters' assertions, but it insisted that its filing met the three criteria.

On August 20, 2001, the joint applicants filed a Motion for Interim Relief, asking that Pacific be ordered to offer UNE prices for unbundled switching and unbundled loops at proposed interim rates. Specifically, they proposed an interim reduction of 36% in Pacific's UNE loop rates based, in part, on estimates of Pacific's forward-looking costs using the HAI model. For unbundled switching UNE rates, they proposed that Pacific set rates equivalent to either of two rate proposals made by Pacific's affiliate, SBC-Ameritech, in Illinois. If adopted, the Illinois switching rates would amount to essentially a 70% reduction from the then-current local switching rates. The joint applicants supported their request using the HAI model as well as the FCC's Synthesis Model. In addition, they asked that the interim rates be subject to "true-down[144]" as a sanction against Pacific for alleged misleading statements regarding its cost studies and delays in the proceeding. In September, the assigned Commissioner and ALJ issued a joint ruling stating a desire to consider interim relief since Pacific's cost filing failed to meet the required three criteria.

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

In October, Pacific filed a Notice of Discounted Switching Prices [145] in this proceeding, and a motion to vacate[146] the September ruling as moot in the UNE reexamination proceeding. In the pleading, Pacific offers a 20 percent discount of its "UNE-P" rates. Specifically, the discount[147] is approximately a 44 percent reduction of Pacific's switching rates. The proposal further provides that the rates will not be available until thirty days after the CPUC approves Pacific's Section 271 request. Pacific offers the reduced rates for one year unless the FCC approves its 271 application. If the FCC approves the application, Pacific's offer extends the discount for an additional year.

In response, the competitors, TURN and ORA characterize the proposal as unilateral, inadequate, not cost-based, and preemptive of issues being decided in the UNE Reexamination. AT&T and WorldCom note that in spite of the offer, Pacific continues to insist in the UNE Reexamination proceeding that "no significant reduction in its switching rate is necessary and its loop rates should be increased." (Response of Joint Applicants to Notice and Motion to Vacate at 8 (November 5, 2001).) They also decry that the proposed discount will not be offered subject to true-up, because they believe that permanent updated cost-based UNE rates will be substantially lower. (*Id.* at 7.) Sage Telecom, Inc. (Sage) declares that Pacific's offer is an attempt to usurp the

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

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

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

CPUC's rate authority. (Sage Reply at 6.) All urge the CPUC to grant interim relief for the switching and loop rates as soon as possible.

(a) Pacific's Position

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

It argued that the prices established by the CPUC fully comply with the requirements of sections 251(c)(2), 251(c)(3) and 251(d)(1)[148], and the final rates adopted reflected no embedded or sunk costs. (Scholl Aff. ¶ 8.) The rates were incorporated into existing interconnection agreements and have been used in all subsequent interconnection agreements. (Vandeloop Aff. ¶ 9.) No one has challenged the rates in federal district court under section 252(e)(6).

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

(i) Unbundled local loops

Pacific noted that in the Pacific-AT&T arbitration proceeding, the CPUC adopted prices for unbundled local loops in three defined geographic areas. (Vandeloop Aff. ¶ 12.) These rates were based on its TELRIC cost studies. Pacific gathered its loop data and determined the average loop UNE TELRIC costs for its wire centers (Scholl Aff. ¶ 86.) The wire centers were separated into one of three zones based on the average UNE loop cost within each wire center. The same rates adopted in the Pacific/AT&T interconnection

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

agreement are available pursuant to D.02-05-042 and through Pacific's Accessible Letter, CLECC 00-039.

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

(ii) Unbundled DSL-Capable Loops

Pacific attested that it makes DSL-capable loops readily available to any requesting carrier pursuant to D.00-09-074. It noted that the CPUC is scheduled to establish permanent prices as part of the Line Sharing Phase of OANAD sometime in 2002.

(iii) Unbundled Transport

Pacific stated that it recovers its dedicated transport facilities costs through flat-rated charges, while the costs of shared transport facilities are recovered through usage sensitive charges. The CPUC adopted the prices for most commonly used transport elements in D.99-11-050. In D.00-08-011, the Pacific-AT&T arbitration decision, the CPUC established interim prices for optical level dedicated transport rate elements.

(iv) Switching Rate

Pacific asserted that it recovered its unbundled local switching costs through a combination of flat-rated charges and usage charges with call set-up and duration rate elements, in accordance with 47 C.F.R. § 51.509(e). In analyzing the appropriate cost for switch investments, Pacific contended that the CPUC determined that switch discounts should reflect the prices that Pacific can actually expect to pay over the entire life cycle of digital

switching technology. The CPUC determined that the modeling reflected in Pacific's January 13, 1997 TELRIC studies came much closer to meeting this objective than the approach advocated by AT&T and MCI. (D.96-08-021 (*Cost Methodology Interim Decision*) at 46 and Conclusions of Law 22.) Pacific made certain corrections to its switching investment cost study that parties had identified (Scholl Aff. ¶ 33) and the CPUC made additional adjustments. In particular, the CPUC identified that 40 percent of Pacific's digital lines should be valued at replacement prices, while 60 percent should be valued at growth or add-on prices. (D.96-08-021, Conclusion of Law 31.) (*Id.*)

(v) UNE Platform

Pacific contended that to compare rates for the UNE platform (UNE-P), it was necessary to make certain assumptions. For example, a typical residential flat rate customer makes 151 local calls per month, lasting a total of 571 minutes per month with an average call duration of 3.8 minutes. Assuming this customer also used Internet dial-up for a total of 829 minutes per month, which equates to a monthly total of 1,400 local minutes, 300 toll minutes and approximately 178 separate calls. Relying on these assumptions, a UNE-P rate of $21.30 compares favorably to the UNE-P rate in other states[149]: in Oklahoma the UNE-P would cost $22.11; in New York, $24.23; in Massachusetts, $26.48; and in Texas, $19.01. (Vandeloop Aff. ¶¶ 26-27.)

(b) Interested Parties' Positions

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

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

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

Tri-M stated that while Pacific's application included affidavits purportedly demonstrating that its prices were comparable to those in some other states, it failed to distinguish between states where competitors have been able to successfully enter the market in a meaningful way, and those where they have not. Tri-M stressed that California fell into the latter category.

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

directly to increases in the prices most California consumers and businesses pay for local phone service.

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

XO and ORA asserted that Pacific's DS-3 UNE loop prices are not in compliance with Sections 251(c)(3) and 252(d)(1). (Comments of XO et al.[150] at 2-8; ORA Brief at 8.) The CPUC did not review DS-3 UNE loop prices in the OANAD proceeding, and has never made a determination that Pacific's rates are cost-based. Further, the price of a DS-3 UNE loop in California is substantially more than it is in Texas. XO presented data that the DS-3 monthly recurring prices are two to three times as high in California, which more than

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

offsets the lower non-recurring prices in California. XO concluded that Pacific's DS-3 UNE loop prices could not possibly be TELRIC based, and urged the CPUC to examine those costs in its UNE Re-look proceeding before it rules on Pacific's 271 filing.

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

(c) Discussion

Pacific emphatically disputed the interested parties' UNE pricing arguments. To AT&T and WorldCom's claims that its switching rates are higher than the costs that Ameritech has sought to recover in Michigan and Illinois, Pacific responded that switching costs do parallel the costs submitted in Michigan and Illinois. The difference in the prices is the result of the fact that the rate structure adopted in California is different from those adopted in other states. According to Pacific, its switching UNE rate includes recovery for numerous costs that the CPUC properly associated with switching, but that other jurisdictions have assigned elsewhere. (Scholl Reply Aff. ¶ 85.)

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

Pacific also defended the use of interim rates for some UNEs by asserting that the FCC has determined that reliance on interim rates is appropriate, provided that "the uncertainty surrounding the interim rates has

been minimized and [the FCC has] confidence that the [state commission] will set permanent rates that are in compliance with the Act and [its] rules." (*SWBT Texas Order*, 15 FCC Rcd at ¶ 90.)

Pacific rebutted AT&T and WorldCom's contentions that its UNE prices are too high to permit them to turn a profit in the California local market. Both companies provide local service to hundreds of thousands of California end users, which belies their assertion that UNE prices are too high to permit them to enter the California market. Moreover, the assertion is legally irrelevant. The FCC has stated that a "profitability argument' is not part of the section 271 evaluation of whether an applicant's rates are TELRIC-based. (*Verizon Massachusetts Order* [151], 16 FCC Rcd at ¶ 41; *Kansas/Oklahoma Order*, 16 FCC Rcd at ¶¶ 65,92.)

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

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

In D.02-05-042,[152] we set interim rates for unbundled loops and unbundled local and tandem switching. We found that Pacific's cost study inadequacies resulted in delays and the need to examine competing cost models, which made interim rates necessary. For unbundled loops, we adopted an interim discount of 15.1% from Pacific's then-loop price for the basic (2-wire) loop, resulting in an interim loop rate[153] of $9.93. We applied this discount to the deaveraged loop rates adopted in D.02-02-047. For unbundled switching, we applied a 69% discount to then local switching rates and a 79% reduction to then tandem switching rates. (*See* Appendix III.) The UNE Re-look docket will be kept open to set final rates for unbundled loops and unbundled switching. Our interim rates are subject to adjustment, either up or down, from the effective date of the order until we adopt final rates.

Needless to say, we find Pacific's discount switching proposal to be far from TELRIC compliant, fraught with mathematical errors, and substantially inadequate in view of the record in the UNE Re-look proceeding. We are mindful of the importance of adopting permanent rates for the entire spectrum of UNEs; and we are setting forth to accomplish this as expeditiously as possible. However, costing proceedings, by their nature, are time and resource intensive. At present, we have a number of crucial issues in

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[152] Issued May 16, 2002.

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

California competing for time and resources. As stated above, we established a process in D.99-11-050, which enables us to review two qualifying UNEs a year. We will continue with this process, and be much less tolerant of delaying tactics and insufficient showings in the future.

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

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

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

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

1. Legal Standard

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

a) TA96 and FCC Orders

Section 271(c)(2)(B)(iii) requires a BOC to provide "[n]ondiscriminatory access to the poles, ducts, conduits, and rights-of-way[154] owned or controlled by [the BOC] at just and reasonable rates in accordance with the requirements of section 224."

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

In its *Second BellSouth Louisiana* decision,[155] the FCC found that BellSouth Louisiana had satisfied Checklist Item 3 through a *prima facie* showing.

In its Michigan 271 decision,[156] the FCC found that Ameritech "appear(ed) to satisfy" the TA96's rights-of-way (ROW) requirement by providing nondiscriminatory access through three means: (1.) by providing access to maps and records; (2.) by employing a nondiscriminatory methodology for assigning spare capacity between competing carriers; and (3.) by ensuring comparable treatment in completing the steps for access to these items. (¶¶ 117-118.) The FCC noted that Ameritech further agreed to comply with any state requirements.

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[154] ROW

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

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

b) California Application of Legal Standards

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

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

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

item. We adopted staff's recommendation in D.98-12-069, and held that Pacific had demonstrated compliance with Checklist Item 3.

2. Proceeding Record

a) Pacific's Position

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

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

b) Interested Parties' Positions

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

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

In its August 2001 comments, Cox argued that Pacific, even where it owns and controls easements, will neither assert its property rights against certain property owners nor make access available to CLECs under nondiscriminatory terms and conditions. It contends that Pacific is aware that a specific property owner has blocked Cox's access and has refused to fulfill its affirmative duty under California law. Consequently, Cox insists, Pacific cannot claim in good faith that it has made its poles, conduits and rights-of-way accessible to competitors as required by Section 271(c)(2)(B)(iii).[157]

ORA commented that its review of the Reisner Affidavit indicated that Pacific likely continues to be in compliance with the requirements of Checklist Item 3.[158]

c) Discussion

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

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

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

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

capacity among competitors; and treats its access applicants comparably. With respect to Cox's contention, this Commission has addressed the core issue in separate complaint proceedings.[159] We find no evidence of bad faith in Pacific's compliance with this checklist item. Rather, we find that Pacific has shown that it continues to provide nondiscriminatory access to the poles, ducts, conduits, and ROW that it owns or controls, at just and reasonable rates, terms, and conditions. Thus, we conclude that Pacific continues to satisfy the requirements of Checklist Item 3, and we verify its compliance.

D. Checklist Item 4 -- Unbundled Local Loops

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

1. Legal Standard

a) TA96 and FCC Orders

Section 271(c)(2)(B)(iv) of TA96 requires Pacific to provide or offer to provide access to "local loop transmission from the central office to the customer's premises, unbundled from local switching or other services."[160] Nondiscriminatory access to this network element must be in accordance with Sections 251(c)(3) and 252(d)(1). In addition, this access must be "on an

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

[160] 47 U.S.C. § 271(c)(2)(B)(iv) .

unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of the agreement and requirements of [section 251] and section 252."[161]

The FCC defined the local loop as "a transmission facility between a distribution frame, or its equivalent, in an incumbent LEC central office, and network interface device at the customer premises."[162] The definition includes a number of loop types, such as "two-wire and four-wire analog voice-grade loops, and two-wire and four-wire loops that are conditioned to transmit the digital signals needed to provide services such as ISDN,[163] ADSL[164], HDSL[165], and DS 1-level signals."[166] Dark fiber and loop conditioning are among the features, functions and capabilities of the loop.[167] Under FCC rules, Pacific must deliver the unbundled loop to the competing carrier within a reasonable time frame,

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[161] 47 U.S.C. § 251(c)(3).

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

[163] Integrated Services Digital Network

[164] Asynchronous Digital Subscriber Line

[165] High-bit-rate Digital Subscriber Line

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

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

with a minimum of service disruption, and of the same quality as the loop the BOC uses to provide service to its own customers.[168]

b) California Application of Legal Standard

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

2. Proceeding Record

Pacific submitted documentation at several junctures[169] to demonstrate compliance with the requirements of Checklist Item 4.

a) Facility Availability and Quality

In the 1998 decision, we directed Pacific to provide the K1023 process,[170] which determines loop characteristics for the marketing of advanced

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[168] 47 C. F. R. § 51.313(b); 47 C. F. R. § 51.311(b); *Local Competition First Report and Order*, 11 FCC Rcd at ¶ ¶ 312-16.

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

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

services such as xDSL,[171] to the CLECs. The K1023 query process is done on a manual basis for CLECs.

(1) Pacific's Position

Pacific asserts that its "New K1023 Request Form - California"[172] has been available to the CLECs since May 1999. The form, which is used generally to request facility availability and pre-qualification of xDSL loops, also appears in the CLECs' Handbook. To facilitate xDSL loop qualifications, Pacific contends that it has electronically tabulated information regarding ADSL-capable Central Offices.[173] Currently, the CLECs can request xDSL pre-order qualification electronically to determine loop length, locations, availability, customer locations and other loop characteristics by way of the electronic pre-order interfaces, Verigate and Datagate. CLECs who elect not to retrieve this information electronically have manual options.[174] (Christopher J. Viveros (Viveros) Aff. ¶ 69 (July 16, 1999).)

Pacific contends that it has offered the CLECs the opportunity to identify COs where the CLECs plan to offer xDSL technologies so that Pacific

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

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

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

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

can load an equivalent loop length indicator into PREMIS[175]. (*Id.* ¶ 69.) As of May 31, 1999, eight CLECs have requested the loop length indicator be loaded into approximately 213 COs where they intended to deploy xDSL services. (*Id.* ¶ 70.)

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

(2) Interested Parties' Positions

In response to Pacific's January 2000 update, the CLECs generally maintained that Pacific's electronic loop qualification system was unreliable and did not provide adequate DSL loop make-up information.

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

WorldCom contended that Pacific's loop qualification system was slow and cumbersome. Sprint described the loop qualification processes as unacceptable, imposing unreasonable costs on CLECs, unreliable, cumbersome, restrictive, and virtually guaranteeing poor customer service. (Response of Sprint to Supplemental Compliance Filing at 31-35 (April 5, 2000).) AT&T insisted that the process Pacific developed was still not a fully mechanized/electronic one. CLECs are required to access preordering and ordering forms on the website, which must be printed, filled out manually, and faxed to Pacific. (AT&T Response to Pacific Supplementary 271 Compliance Filing: Declaration of C. Michael Pfau and Julie S. Chambers ¶ 20 (April 5, 2000).)

WorldCom and the Competitive Telecommunications Association (CompTel) also alleged that SBC/Pacific discriminated against the CLECs by providing them with information different in content and manner from that provided to ASI. (Joint Reply of MCI WorldCom and CompTel at 111-114 (April 5, 2000).) In 1999, ACI similarly contended that Pacific discriminates by denying CLECs equivalent access to critical pre-ordering and ordering loop make-up information required to provide DSL. (Opening Brief of ACI Corp. at 40-42 (August 16, 1999).) At that time, Northpoint[176] also asserted that Pacific's Geo Mapping system did not provide competitors with sufficient information,[177] and thus, should not be allowed as a substitute for the K1023 process. Northpoint further urged that the CLECs' be granted access to all Pacific

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

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

database systems in parity with ASI. (Northpoint Comments at 9-10.) WorldCom, Northpoint and ORA each criticized Pacific's satisfaction of the CPUC's K1023 requirements. (WorldCom Comments at § II (4)(B) (2) at 71-75 and § II (4)(B)(5) at 82; Northpoint Comments at 4-12; ORA Comments at 31-33.)

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

(a) Discussion

Pacific replied that it has developed fully mechanized loop qualification tools and processes that give the CLECs the capability to pre-qualify DSL-capable loops. It continues to upgrade its systems to enable online and electronic loop pre-qualification, pre-ordering, and ordering functions. Pacific has deployed the RTX indicators,[178] which CLECs can access electronically via Verigate, Datagate, EDI or CORBA or they can phone, fax, or e-mail requests to the Facility Local Service Center (FLSC). (Viveros Aff.¶¶ 50-56; Murray ¶¶ 64-65 (1999).)

Pacific reasserted the integrity and reliability of its Verigate and Datagate interfaces for DSL loop qualification, but conceded that these systems provide only 30% of actual DSL-capable loop information and 70% designed DSL-capable loop information.[179] When a CLEC accesses the designed

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

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

loop make-up information, and the electronic process has not provided it sufficient loop make-up information, the CLEC could request a manual verification, which could take up to 6 hours to process. Once the actual loop make-up information has been provided, however, it is stored in Pacific's database and is available electronically for future CLECs' inquiries. Through this ongoing process, Pacific will continually update the Verigate and Database systems with loop make-up information as it provisions DSL services to the CLECs.

On May 27, 2000, Pacific deployed enhanced electronic DSL loop qualification systems capable of providing 45 data information elements. Pacific asserted that these 45 data point enhancements sufficiently allows the CLECs to qualify DSL capable loops and determine whether they want to provide DSL to a given customer or not. These system upgrades have resulted in system reliability, reduction in pre-qualification and ordering times, and reduction in installation and repair problems. To allegations that the processes Pacific provides to the CLECs are not in parity with those it offers to ASI, Pacific contends that the CLECs have access to the same loop qualification systems and processes that are available to Pacific and ASI. Pacific's service representatives and ASI utilize the same K1023 qualification forms and other electronic and/or manual processes for DSL products that the CLECs use. Moreover, Pacific's service representatives process loop qualification information for ASI's xDSL products substantially within the same amount of time and in the same manner as they process the CLECs' loop qualification orders.

In D.00-09-074,[180] we ordered Pacific to make available to the CLECs all information contained in its LFACS, FACS, TIRKS, APTOS, IFGS, DSTS, and other relevant systems, in parity with the manner in which it uses these systems for itself and for ASI to provision xDSL services. We also directed Pacific to offer acceptance testing in a timely fashion, without charge.

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

The results of two other associated measures,[181] however, indicated that CLECs' performance had generally exceeded the parity or benchmark standard. It appears that the longer response interval for the CLECs' pre-ordering process, when compared to ASI's, could be attributed to the types of system interface that the CLECs employ for these functions. ASI has xDSL service arrangements with Pacific; thus, Pacific's technical representatives

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[180] Issued September 21, 2000.

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

perform ASI's xDSL loop qualification queries. In contrast, the CLECs connect with Pacific's K1023 processes by means of their respective ordering systems. This significant distinction would produce longer query and response intervals.

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

A parity comparison with ASI serves as the measurable standard for DSL loop qualification. Our analysis of the evidence indicates that ASI uses the same loop qualification processes as the CLECs. The performance results, covering the months of June, July and August 2001, reveal that Pacific has largely met or exceeded the parity requirements for this service. Accordingly, we find that Pacific has satisfied the technical and performance requirements for DSL loop qualification. Nevertheless, it is apparent that actual loop make-up information in Verigate would eliminate manual intervention and enhance efficiency in the loop qualification process. Consequently, we direct Pacific to expeditiously improve the ratio of the actual loop make-up information in its Verigate, Datagate, EDI, and CORBA systems.

b) Loop Installation Issues

(1) Pacific's Position

Pacific reports that its Local Ordering Center (LOC)[182] serves as the single point of contact for CLECs regarding the provisioning, maintenance, and repair of interconnection facilities, resale services, UNEs, and Local Number Portability (LNP) products and services ordered through the Local Service Center. The LOC's purpose is to ensure that CLECs receive high quality provisioning, maintenance and repair services in the same time and manner as Pacific Bell's retail operations. Pacific maintains that it is committed to providing sufficient resources to meet the needs and demands of CLECs. (David Ross Smith (Smith) Aff. ¶¶ 6-8, 15.)

With respect to LNP conversions from an old to a new phone system, Pacific offers California CLECs a choice between two different methods of coordinated conversions: the fully coordinated "to be called cut" (TBCC)[183] process and the frame due time (FDT) hot cut[184] process. These two methods allow CLECs to select the process that best fits their resources and priorities. (Smith Aff. ¶ 20; Rick Motta Aff. ¶ 16.)

TBCC orders are manually handled in Pacific's Reseda LOC, and require coordination and communication between Pacific and the CLEC

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

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

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

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

(2) Interested Parties' Positions

AT&T alleges that Pacific is unable to coordinate hot cuts (CHC) in a timely fashion, and has not demonstrated that it can provision UNE Loop CHC on a reasonable commercial basis. It points to Pacific's provisioning errors[185] as the cause of about 23% of the outages and other service problems that AT&T customers have experienced. CHC requires effective coordination between Pacific and AT&T technicians to complete the loop cutover. This involves significant resources, time, and costs. AT&T prefers the FDT method for loop cutover, because it takes place at a mutually pre-established time, with minimum or no additional communications between the carriers at the time of the cutover. Still, AT&T maintains that Pacific lacks a properly functioning FDT process, so it must use the more costly CHC approach, at an average cost of $50 per line. Since Pacific has refused to correct the problems inherit in the FDT process and continues to surcharge the CLECs for the use of the CHC process,

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

AT&T has been unable to compete effectively, particularly for the critical small and mid-sized business customers, or obtain nondiscriminatory access to unbundled loops. (Mark Van de Water (Van de Water) Aff. ¶¶ 22-31. 8/21/01)

AT& T reports that it ordered a number of loop cutovers via the FDT process in April 2001 and approximately 23.8%of these loops experienced outages. Some of the affected customers lost service for about 7 hours, with the average outage lasting more than 3 ½ hours. With the FDT process so flawed,[186] CLECs have no other loop ordering and provisioning alternatives but Pacific's high cost CHC process. AT&T asserts that Pacific's deliberate refusal to implement a reliable, sustainable, and less costly FDT method for loop cutover is a significant disincentive to market entry by the CLECs. AT&T urges the CPUC to require Pacific to implement a reliable FDT loop provisioning process and refund all CHC charges imposed by Pacific on the CLECs since 1998. (*Id.*)

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

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

with it before the Commission makes a determination on the effectiveness of Pacific's UNE provisioning process. (*Id.* ¶¶ 32-54.)

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

WorldCom maintains that Pacific has not met the CPUC's performance standards for ordering and provisioning of UNEs, specifically for the 2-wire 8db loop. In February, March, April, and May, 2001, Pacific took approximately twice the time to provision a UNE loop for WorldCom's and other CLECs' customers than it did to provision comparable service for its own retail customers. In its comments, WorldCom analyzed the February through May 2001 UNE loops provisioning results and the average installation intervals for Brooks in the North region and MFS in the Los Angeles area. It concluded that Pacific did not meet the parity requirements for "CLECs in the Aggregate" in any of its four regions for basic 8db UNE loops for the months of February, March, and April 2001. (WorldCom Comments at 13-14 (August 23, 2001).)

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

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

For "CLECs in the Aggregate," WorldCom notes that Pacific significantly failed to meet service parity requirements for UNE Dedicated Transport in April 2001 for Measure 20, and in February and March 2001 for Measure 21. It also failed to satisfy parity requirements for Basic UNE Loops for Measure 23 in February, March, and April 2001. Finally, in February through April 2001, Pacific failed to meet maintenance commitments for "CLECs in the Aggregate" for POTS and UNE-P and did not provide parity for rate of repeat troubles in February and March 2001 for UNE-P.
(*Id.* at 13-14.)

XO asserts that regardless of Pacific's benchmark or at-parity performance results for CLECs in the aggregate, its own experience indicates that the CLEC aggregate data masks significant discriminatory performance. Thus, aggregate results alone should not be the basis for concluding that Pacific meets the checklist requirements. The data for XO reveal that Pacific's performance

continues to fall short of the requirements of Section 271. It further points out that the data XO has access to on SBC's website[187] is not the same data Pacific relies on in its application. (XO Comments at 23. (August 23, 2002)) By XO's analysis, Pacific's data identify consistent performance weaknesses, which the Commission must interpret to indicate that Pacific has not yet met the requirements of Section 271. (*Id.* at 26.)

(a) Discussion

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

In response to AT&T's allegations about its FDT and CHC processes, Pacific maintains that under daily monitoring, FDT has steadily improved with robust volumes and on-time orders completion. It completed 12,000 to 15,000 orders in February 2001. Associated installation troubles then averaged less than 2%, and back-up orders dropped from 43 in February 2001 to 19 in June 2001. Pacific asserts that it has met parity requirements on the CHC and FDT processes, and commits to ongoing improvement in the loop cutover processes. (Motta at ¶¶ 10-13).

The performance reports for the months of June, July, and August 2001 indicate that Pacific completed a substantial percentage of CHC

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

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

The quantitative data indicates that Pacific is provisioning hot cuts for unbundled voice grade loops to the CLECs in a timely fashion. The statewide average time interval to provision CLECs' aggregate hot cut orders for analog 8db and 5.5db loops was 2.88 days during the months of June, July and August 2001. For Pacific, it was 2.77 days during the same period for similar services.[188]

Comparably, the statewide average percentage completion within standard time for CHC and FDT for the CLECs' in aggregate hot cut loop orders was approximately 93.37% during the months June, July, and August 2001; for Pacific it was approximately 87.13%. Pacific missed about 0.90% of the due dates for CLECs' statewide aggregate hot cut orders for the 8db and 5.5db

[188] For the period June, July and August 2001, Pacific reported average completion interval (in days) for CLECs loops provisioning of 3.17, 2.88, 2.71, and 2.77 for the Bay, North, LA, and South regions, respectively. For Pacific, they were 3.17, 3.17, 2.05, and 2.70 for the Bay, North, LA, and South regions, respectively, during the same period.

loops, compared to 6.24% for itself.[189] Based on the performance data for hot cut provisioning and based on statistical benchmark and parity standards, Pacific has met the compliance requirements for the provisioning of the voice grade loops. The record evidence supports the assertion that Pacific uses the same CHC and FDT processes in serving the CLECs that it uses for itself.

The performance reports for repeat troubles provided for the months of March, April and May 2001 confirm that Pacific uses the same hot cut processes for itself and for the CLECs' service conversions for voice grade loops.[190] Pacific reported that about 1.45% in Bay, 1.02% in the North, 1.04% in LA, and 0.92% in the South regions of the total CLECs in aggregate hot cuts voice grade loops experienced service problems within 30 days of the service conversion. This compared with Pacific's own hot cut activities of 2.96, 2.83, 3.01, and 2.84 percent for the Bay, North, LA, and South regions, respectively during the same period. The statewide average, during the same period, was 1.11% for the CLECs and 2.91% for Pacific's aggregate hot cuts for voice grade loops. Similarly, the average statewide customer trouble report rate and repeat troubles were 0.42% and 12.53%, respectively, for the CLECs during the months of June, July, and August 2001. For Pacific, they were 0.56% and 10.58% during the same period. The performance results substantiate that Pacific's hot cut quality of

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

[190] The current available data.

service, practices, and performance standards adequately satisfy the compliance requirements for this checklist item.[191]

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

Pacific also contradicts WorldCom's UNE-P provisioning performance results assessment, and maintains that the performance misses for UNE-P provisioning intervals (Measure 7) from February through July 2001 were extremely minor. It also notes that the average percent due dates missed (Measure 11) for the CLECs in aggregate was about 1% or less for all months from January to July 2001. In the North area, there were no misses at all, and in

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

the South area, the only miss was in April 2001. In that instance, the average percent due dates missed was 0.31% for the CLECs and 0.06% for Pacific's retail service. Pacific states that it has achieved parity for the UNE-P product in each month since April 2001 for aggregate CLEC results for Measure 11. Pacific describes XO's company-specific results as an anomaly. We find Pacific's assessment to be persuasive because it is most consistent with our analysis of the overall performance results for provisioning, including 5.5 dB and 8 dB loops. Thus, we find that Pacific's UNE-P provisioning performance meets the compliance requirements.

c) Advanced Services

(1) Pacific's Position

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

It unbundled and offers the High Frequency Portion of the Loop (HFPL) UNE, also known as "line sharing," as required by the FCC and the CPUC.[192] This HFPL UNE was developed in collaboration with interested CLECs and modeled after the Texas xDSL-capable loop offering. As part of the collaborative development, Pacific participated in a multi-regional SBC line sharing trial prior to release "in order to facilitate a smoother roll-out of Pacific's HFPL UNE. (*Id.* ¶ 63.)

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

Pacific also reports that it supports line splitting[193] in which a CLEC purchases separate elements (including unbundled loops, unbundled switching, and cross-connects for these UNEs) and combines them with their own (or a partner CLEC's) splitter in a collocation arrangement. The company contends that its current California offerings meet all requirements for line splitting. (*Id.* ¶¶ 93, 100.)

Pacific declared that SBC Advanced Solutions, Inc. (ASI), a Delaware corporation established pursuant to the *SBC/Ameritech Merger Order*,[194] has a certificate of authority to operate in California and a CPUC-approved ASI-Pacific interconnection agreement. ASI operates by: (1) performing network planning and engineering functions related to Advanced Services; (2) using the interfaces, processes, and procedures made available by Pacific for placing orders for network elements and access services that are necessary for the provision of Advanced Services; (3) designing the Advanced Services that it wishes to offer; (4) assigning the ASI equipment necessary to provide Advanced Services; and (5) creating and maintaining all records associated with its customers' Advanced Services Accounts. (John Habeeb (Habeeb) Aff. ¶¶ 3 and 5.)

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

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

ASI uses the interfaces Pacific provides for access to its OSS for the pre-ordering, ordering, provisioning, maintenance and repair, and billing functions. ASI has an arrangement with Pacific for billing and collection services that is memorialized in a Billing and Collections Agreement.[195] Under this Agreement, ASI forwards billing data daily to Pacific by means of electronic transfers.[196] (*Id.* ¶¶ 6 and 12.)

ASI's interconnection agreement with DSLnet Communications, LLC (DSLnet) contains binding legal commitments addressing ASI's section 251(c) obligations[197] related to Advanced Services offerings. ASI presents interested CLECs the option of: (1) entering into its multi-state generic interconnection agreement,[198] (2) adopting the ASI-DSLnet Agreement pursuant to section 252(i); or (3) negotiating their own terms and conditions directly with ASI. (*Id.* ¶¶13-14.)

(2) Interested Parties' Positions

WorldCom and AT&T maintain that Pacific will not commit to a timeline for implementing a single-order process for ordering line splitting[199] in

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

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

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

[198] The ASI 8-state Generic ICA.

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

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

AT&T also maintains that contrary to the FCC Line Sharing Reconsideration Order, Pacific has failed to provide line sharing to the CLECs on an unbundled basis over fiber-fed DLC loops.[200] AT&T calls Pacific's offer to allow CLECs to collocate Digital Subscriber Line Access Multiplexers at Pacific's CO and provide subloops for CLECs' access to the copper portion of the loops insufficient. AT&T seeks to provide DSL service via fiber-fed, DLC-equipped loops from Pacific's CO, which is the service equivalent to what Pacific offers ASI. (AT&T Finney Aff. ¶¶ 11-18.)

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

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

(ORA Brief at 14-15; PacWest Sprague Aff. at p.89; Pac West Selwyn Aff. at pp. 27-28; and XO Comments at 37-38.)

ORA further alleges that ASI does not rely on unbundled service offerings, but can rely on Pacific's Broadband Service alone. ORA notes that the FCC did not grant SBC and its affiliates a waiver to own the packet switching components, i.e., line cards and Optical Concentration Devices (OCDs), of the Broadband Service. ORA also states that CLECs using Pacific's Broadband Service offering do not have the ability to offer advanced services different from Pacific's. (ORA Brief at 19.)

(a) Discussion

Pacific submits that California has the greatest number of high-speed internet access lines of any state and accounts for nearly a fifth of all high-speed internet access lines in the nation. California's high-speed Internet access lines serve more than a million residential and business customers. (Chapman Reply Aff. ¶ 4.)

Pacific denies ORA's assertion that ASI relies on its Broadband Service alone and does not also rely on the UNE-P. Broadband Service is generally not an option for either ASI or CLECs seeking to serve customers who live close to COs. It is more practical and economical to serve these customers via the HFPL UNE and CO-based Digital Subscriber Line Access Multiplexers. (Chapman Reply Aff. ¶ 8.)

Pacific also refutes ORA's assertions about the significance of SBC obtaining a waiver from the FCC to own the packet switching components of Broadband Service. Absent the waiver, ASI and the CLECs would not be able to own and install their own line cards in Pacific's Next Generation Digital Loop Carrier (NGDLC) equipment. Without the waiver, Pacific would not have been able to own the Optical Concentration Devices

(OCDs) in the central office or the line cards integral to any CLEC offering DSL service. (Chapman Reply Aff. ¶ 9.)

A complete analysis of the currently available service information and performance results in the record shows that Pacific provides the CLECs with nondiscriminatory access to its network systems for pre-ordering, ordering, and provisioning of xDSL services. We also find that Pacific is providing the CLECs nondiscriminatory access to its OSS and other network systems for loop qualification, pre-ordering, and ordering of DSL services. The xDSL services' performance results also show that Pacific is providing adequate customer service groups (i.e., account teams, local service centers (LSCs), local ordering centers (LOCs)) to assist and facilitate CLECs for xDSL ordering and provisioning.

Our review of five[201] performance measures associated with xDSL provisioning for the months of January through August 2001 revealed that

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[201] 1.) Average Completion Interval (in days): Pacific provisioned the line-shared xDSL loops the CLECs' ordered in an average of 3.16 days in the Bay, 3.15 days in LA, and 3.14 days in both North and South, respectively, during the months of June, July and August 2001. For ASI, the average completion intervals were 4.38, 3.48, 3.63, and 3.45 days for the Bay, LA, North, and South regions, respectively, for the same period. Average completion intervals for the CLECs were relatively lower than those for ASI.; 2.) Percentage Completion within Standard Interval**:** For the months of June, July, and August 2001, 99.97% of the CLECs' orders were completed within standard time interval in the Bay, and 100% in LA, the North, and the South, respectively. In contrast, 95.56% of ASI's orders in the Bay, 98.30%in LA, 97.67% in the North, and 98.67% in the South were completed within standard time interval during the same period. Results for this measure were notably higher for the CLECs than for ASI; 3.) Percentage of Installation Due Dates Missed: The statewide average percentage due dates (PDD) missed for the CLECs' orders for June, July, and August 2001 were 2.05, 1.11, 4.48 and 1.27 for the Bay, LA, North, and South, respectively. For ASI, they were 6.05, 2.74, 8.33, and 3.25 for the same period for the Bay, LA, North, and South regions, respectively. The average PDD for ASI exceeded those for the CLECs. 4.) Percentage Troubles in 30 Days: The average percentage of troubles reported within 30 days of new service

Footnote continued on next page

Pacific met or exceeded the parity requirements for the CLECs. For one xDSL-associated provisioning measure, "Frequency of Repeat Troubles in 30 Day Period," Pacific failed the parity requirements from a statistical parity standard. Reported on a statewide basis, the measurement identifies the number of troubles communicated within 30 days after service maintenance or repairs for xDSL loops. From the disseminated aggregate performance data, the CLECs reported an average 34% of continuing problems after a repair service, while ASI reported an average of 23% of repeat troubles after a repair visit.[202] The CLECs' reported more cases of repeat troubles after service repairs than ASI did. However, our analysis of the results of this submeasure indicates that it may be significantly influenced by the magnitude of the underlying commercial volume. Overall, we find that Pacific's provisioning of xDSL is more than satisfactory.

However, as we discuss further in the section on Checklist Item 14-Resale, we do not believe that competition in the advanced services market, particularly xDSL services, has developed in California at this time.

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installations or provisioning for the CLECs for June, July, and August 2001 were 0.41, 0.51, 0.45 and 0.15 for the Bay, LA, North, and South, respectively. For ASI, the equivalent average troubles reported within 30 days of new service installations were 1.48, 1.82, 1.23 and 1.12 for the Bay, LA, North, and South regions, respectively for the same period. For this period, CLECs experienced fewer service outages within 30 days of new service installations than ASI. 5.) Average Time to Restore Service (in Hours): Reported on a statewide basis, the performance data for this measure revealed that for service maintenance, Pacific responded to and restored customer service within an average of 11.23 hours for the CLECs and 16.43 hours for ASI during June, July, and August 2001. For that period, the average restoration time interval for ASI exceeded that of the CLECs.

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

While California has the greatest number of high-speed Internet access lines in the nation, equaling nearly a fifth of all such lines, Pacific and its affiliate, ASI, own more than 80% of these lines.

d) Integrated Digital Loop Carrier[203] (IDLC)

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

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

(1) Discussion

Currently, Pacific provides xDSL over IDLC.[204]
In D.00-09-074, we directed Pacific to provide the CLECs xDSL services over IDLC under the same terms, conditions, and prices as it provides to itself and its affiliates. At present, there is no specific performance measure assessing the

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

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

quality of Pacific's service over IDLC. Still, examining the results of Pacific's overall measures for stand-alone and line-shared xDSL services' provisioning, it appears that Pacific is complying with this D.98-12-069 requirement.

e) ANSI[205] Standards and Spectrum Management

When loops adjacent to one another in a binder group are used to provide divergent technologies (e.g., ADSL and SDSL[206]), the two xDSL signals can interfere with one another. Pacific reports that it has complied with ANSI standards for xDSL services. It has also cooperated with the CLECs to develop a neutral spectral management program, which allows Pacific and the CLECs to provide the widest possible array of xDSL services with any chosen technology. Pacific maintains that it will adopt and implement any additional standards promulgated to address emerging technologies. (Chapman Aff. ¶¶ 90-92 (July 16, 2001); Deere Aff. ¶¶90-91, 93 (July 15, 1999))

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

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

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

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

(1) Discussion

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

f) Spectral Interference

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

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

that Pacific has precluded CLECs from deploying their xDSL technologies over Pacific's ADSL-only binder group. Pacific refutes the allegation as unsupported.

(1) Discussion

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

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

E. Checklist Item 5 -- Unbundled Local Transport

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

1. Legal Standard

a) TA96 and FCC Orders

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

terms and conditions that are equal to the terms and conditions under which Pacific provisions such elements to itself.

b) California Application of Legal Standard

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

2. Proceeding Record

a) Pacific's Position

To show compliance with the CPUC's requirement that Pacific demonstrate the ability of CLECs to obtain meet point unbundled transport, Pacific reported that it had issued Accessible Letters CLECC 98-116 and CLECC 99-112[207] to address cross-boundary dedicated transport. It also claimed to be providing cross-boundary unbundled transport to three CLECs. (Deere Aff., ¶¶ 106-107.) The Accessible Letters specified that a CLEC that wants to purchase cross-boundary unbundled dedicated transport must have a provision for that type of unbundled transport in its interconnection agreement. Accessible Letter CLECC 99-112 set forth Pacific's proposed generic language for including cross-boundary unbundled transport in a CLEC's interconnection agreement. (*Id.*, ¶ 108.)

Pacific reported that Optical Carrier[208] level–3 and Optical Carrier level-12 services are available at TELRIC prices. Optical Carrier level-48 is

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

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

offered on an Individual Case Basis. Accessible Letter CLECC 99-163[209] advised CLECs how to obtain Optical Carrier level-3 and Optical Carrier level-12 services. (Hopfinger Aff., ¶ 153.)

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

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

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

(1) Performance Measure Results

[209] Issued May 11, 1999.

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

b) Interested Parties' Positions

In 1999, WorldCom maintained that Pacific's meet point unbundled transport offering fell short because it included only DS1 and DS3 transmission speeds[210]. WorldCom wanted Optical Carrier level-3, Optical Carrier level-12, and Optical Carrier level-48, and argued that while Pacific has made those speeds available for unbundled dedicated transport, it has not made them available for cross-boundary transport. (WorldCom §(II)(5)(B), at 97-100.)

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

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

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

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

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

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

> telecommunications service in the manner that the requesting telecommunications carrier intends.[211]

3. Discussion

The record indicates that Pacific currently provides unbundled local transport in accordance with interconnection agreements and tariff.[212] (*See* e.g. AT&T, Attachment 6 -- UNE §§ 5.9.1.1, 5.9.1.2, 7.1.2, 7.1.2.3, 7.2.1, 7.3.1 and 7.4.1.1 and Level 3, Appendix UNE §§ 5.4.2,18.2.1, 18.6.1 and 18.7.2.)

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

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[211] 47 CFR § 51.309(a).

[212] Deere 2001 Aff. ¶¶ 95-105.

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

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

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

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

that Pacific's reply convincingly refutes Z-Tel's comments. In the AT&T arbitration, the arbitrator permitted the use of transport for a carrier that purchases customized routing Option C from Pacific. However, in the Pacific/MCIm arbitration, the issue was framed more broadly to allow any "MCIm local service customer" to choose Pacific as its intraLATA toll pre-subscribed carrier. (Pacific/MCIm FAR at 129-132.) Other carriers may opt-in to that provision under § 252(i).

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

F. Checklist Item 6 -- Unbundled Local Switching

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

1. Legal Standard

a) TA96 and FCC Orders

Section 271(c)(2)(B)(vi) requires a BOC to provide "local switching unbundled from transport, local loop transmission, or other services."[213] To comply with Checklist Item 6, Pacific must provide unbundled local switching that includes line-side and trunk-side facilities, as well as the features, functions, and capabilities of the switch. When transferring a customer's local service to a competing carrier only requires a software change, Pacific must be able to make

[213] 47 U.S.C. §271(c)(2)(B)(vi).

the transfer within the same time period it takes Pacific to transfer end-users between interexchange carriers.[214] When unbundled local switching requires Pacific to make physical modifications to its network, Pacific must demonstrate that it provisions this element under terms and conditions no less favorable to the requesting CLEC than to itself.[215]

b) California Application of Legal Standards

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

2. Proceeding Record

a) Pacific's Position

Pacific informed all CLECs of updated generic contract language available to estimate unbundled switch port terminating usage.[216] Since February 3, 1997, Pacific has had an interconnection agreement with WorldCom that incorporates the proposal for estimating terminating usage to UNE switch ports. On March 19, 1999, Pacific sent a letter to AT&T confirming conversations and requesting an agreement on the factor for estimating terminating charges. AT&T did not respond to that letter or a June 4, 1999 follow-up letter. (Hopfinger Aff., ¶¶ 60-61, (July 16, 1999).)

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[214] 47 C. F. R. § 51.319(c)(1) (ii); *Local Competition Order*, 11 FCC Rcd at ¶ 421.

[215] 47 C. F. R. § 51.313(b); *Local Competition Order*, 11 FCC Rcd at ¶¶ 315, 421.

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

Pacific offers three routing configurations for unbundled switching under existing interconnection agreements, designated as Options A, B, and C. It also offers Resale Operator Alternate Routing (ROAR). As of May 31, 1999, CLECs had submitted Access Service Requests for Option A in l38 switches. Pacific has also provisioned line-side requests from three CLECs for a total of 49 Option A switch ports. These ports, which include shared transport, are combined with loops. As of May 31, 1999, no CLEC had ordered Option B or C. In February 1998, Pacific provisioned ROAR in six different switches for one CLEC. (Deere Aff., ¶ 117 (July 16, 1999).)

On May 10, 1999, Pacific informed CLECs that particular technically feasible custom routing functions were available[217]: (1) converting 411 calls to 900-555-4411 and routing them to an AT&T switched access service trunk group and (2) routing FNPA 555-1212 calls to AT&T's directory assistance platform. On the same date, Pacific updated the CLEC Handbook, UNE, § 2.2.2 to include the information on these local directory assistance routing options. As of June 30, 1999, no CLEC had ordered either of these arrangements. (Deere Aff., ¶ 136 (July 16, 1999).)

In its June 2001 draft application filing, Pacific asserts that it provides CLECs unbundled switching capability with the same features and functions available to Pacific's own retail operations, in a nondiscriminatory manner. (Deere 2001 Aff. ¶¶ 106-129.) Pacific's offerings include, among other things, the connection between a loop termination and a switch line card, the connection between a trunk termination and the trunk card, all vertical features the switch is capable of providing, and any technically feasible routing features.

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

(Deere 2001 Aff. ¶¶ 107-109.) Pacific also provides CLECs access to all call origination and completion capabilities of the switch and furnishes CLECs with usage records that enable them to collect from their customers all retail, exchange access, and reciprocal compensation charges associated with these capabilities. (Flynn Aff. ¶ 11.) CLECs using unbundled local switching may have calls "custom routed" according to their own specifications.

(1) Performance Measure Results

In conjunction with this checklist item, Pacific reported performance measure results associated with loop and port combinations or UNE-platforms (UNE-P). Noting that CLECs had only begun ordering UNE-P service from Pacific in January 2001, it discussed its provisioning and maintenance performance from February through April 2001. (Johnson Aff. ¶¶ 128-133.) Pacific's provisioning performance for basic UNE Platforms, as assessed in Measures 5, 7, 11, 12, 13, 14, and 16, was 88%.[218]

No performance misses occurred for Measures 5,12, 13, 14 or 16 during this time. For Measure 7 (Average Completed Interval), which accounted for nine of the total 14 misses that occurred during February through April, no misses took place in April. (*Id.*) Pacific asserted that each month's provisioning results steadily improved for Measure 7. For Measure 11 (% Due Dates Missed), in the Bay, Los Angeles and South regions during February and April, Pacific did not achieve parity on UNE-P orders requiring no fieldwork.[219] Its performance

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[218] 38 provisioning sub-measures tracked for three months comprise 114 opportunities, of which 100 were met. (*Id.* ¶ 128.)

[219] Parity was achieved for all sub-measures related to UNE-Platform service requiring fieldwork. Pacific later determined that the performance misses involving UNE-P orders requiring no fieldwork were either CLEC-caused and could not be re-classified

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for CLECs, particularly for Measure 11, was slightly lower than that provided to its own retail customers. In those months where parity was not achieved, the percent of no fieldwork UNE-P orders not completed by the due date was less than 0.5%. (*Id.* ¶ 131.)

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

b) Interested Parties' Positions

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

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as customer misses, or an isolated programming design problem. The programming design problem, which caused some UNE-P orders not to be sent to technicians for provisioning by the due date, was identified and resolved in April 2001. (*Id.* ¶¶ 129-130.)

WorldCom also maintained that while Pacific had begun to comply with a customized routing request of AT&T, it had not yet advanced the availability of unbundled switching for other CLECs. It alleged that Pacific refused to accommodate CLECs' use and need for unbundled switching with a Feature Group D (FGD) or Advanced Intelligence Network (AIN) solution. WorldCom proposed third party testing of an AIN solution that would offer unbundled switching to all CLECs. (WorldCom, § II (6) at 100-110.) WorldCom also noted that the Commission had ordered Pacific to conduct technical trials, during the February 1999 switching workshop, to determine whether Pacific could route intraLATA FNPA directory assistance traffic to the CLEC local unbundled switching customer's pre-subscribed intraLATA toll carrier. (WorldCom, § II (6) at 108)

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

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

customized routing, Pacific must provide access to its Operator Service and Directory Assistance service at UNE prices in order to be in compliance with Checklist Item 7.

Pacific refuted WorldCom 's characterization of its proposal as "unilateral" since any CLEC purchasing unbundled switching could notify the Account Manager whether the factoring proposal was acceptable or whether it wanted to propose an alternate proposal for Pacific's consideration. Currently no CLEC, including WorldCom, has proposed an alternative factor to the one Pacific suggested for use in estimating this traffic. Pacific concurred that it had intended the factor in its ICA with WorldCom to be temporary in nature; however, it notes that WorldCom has not sought to negotiate the factor. (Hopfinger Reply Aff., ¶ 9.)

At the February 1999 switching workshop, Pacific presented test results demonstrating that WorldCom's FGD request was not technically feasible. At the workshop, WorldCom replaced its FGD proposal with an AIN proposal for customized routing. Pacific noted that a subsequent ALJ Ruling[220] determined that WorldCom 's AIN proposal was beyond the scope of Pacific's 271-compliance filing. (Deere Reply Aff., ¶ 74.)

Pacific disputed WorldCom's assertion that the CPUC ordered it to test routing of intraLATA FNPA directory assistance traffic in connection with unbundled local switching at the February 1999 workshop. After the Lucent test had already been completed, AT&T requested and Pacific agreed to test FNPA-555-1212 routing as part of both the Lucent and Nortel test plans. Pacific

[220] March 2, 1999.

completed those tests and reported the results to the Director of the CPUC's Telecommunications Division on July 13, 1999. (Deere Reply Aff., ¶ 75.)

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

Pacific and WorldCom are setting up a field trial to test the ordering, provisioning, and billing functions of WorldCom's requested routing scheme, which Pacific has agreed to do at a reasonable cost.[221] (*Id.* ¶¶ 21-22.) According to Pacific, WorldCom expects it to absorb the entire cost of this work, claiming that such costs may only be recovered via the standard nonrecurring charges for provisioning switching. However, making special translations to the switch and the establishment of entirely new operating and billing system modifications are beyond the intended scope of those nonrecurring charges. Pacific contends that WorldCom should bear the reasonable cost of performing such specialized work. (*Id.* ¶¶ 27-28.)

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

3. Discussion

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

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

The March 2, 1999 ALJ Ruling held that WorldCom 's AIN proposal was a new custom routing request that was outside the scope of mandated testing of technical feasibility in the 271 proceeding. However, the ruling encouraged the parties to work cooperatively on testing WorldCom 's proposed AIN solution, and ordered Pacific and WorldCom to make monthly progress reports. Review of the monthly reports filed with the CPUC's Telecommunications Division over the period April - September 1999 on the progress on the AIN test indicates that WorldCom did not actively pursue its request and never supplied Pacific with trigger information necessary to develop a test. We note that Pacific has participated in cooperative tests on the technical feasibility of particular custom routing options.

Most recently, WorldCom has acknowledged that there are technical problems relating to the routing of Operator Service traffic in Nortel switches, and it and Pacific are working on the solution. Until Pacific has implemented the specific type of custom routing requested, it must provide WorldCom with

Operator Services and Directory Assistance as UNEs, pursuant to the *UNE Remand Order*.[222] (D.01-09-054, Pacific Bell/MCIm Arbitration at 11-12.)

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

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

[222] 15 FCC Rcd 3696 (1999).

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

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

1. Legal Standard

a) TA96 and FCC Orders

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

(1) 911 and E911

To comply with the law, Pacific must provide nondiscriminatory access, at parity, to 911 and E911 services. Pacific "must maintain the 911 database entries for competing LECs with the same accuracy and reliability that it maintains the database entries for its own customers."[223] In addition, Pacific must provide facilities-based competitors with 911 interconnection through the use of dedicated trunks from the requesting carrier's switching facilities to the applicable 911 control office, at parity with what Pacific provides to itself.[224]

(2) Directory Assistance/Operator Services

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

[224] *Id.*

TA96 requires all LECs to permit nondiscriminatory access to "operator services, directory assistance, and directory listing, with no unreasonable dialing delays."[225] The FCC has held that to satisfy the requirements of § 271(c)(2)(B)(viii)(I) and (II), a BOC must be in compliance with regulations implementing § 251(b)(3). Nondiscriminatory access to directory assistance and directory listings means that customers of all telecommunications service providers should be able to access each LEC's directory assistance service and obtain a directory listing without differentiation, notwithstanding the identity of the telephone service providers of either the requesting customers or the customer whose directory listing is requested.[226]

In addition, the BOC "must provide nondiscriminatory access to the directory assistance service provider selected by the customer's local service provider regardless of whether the competitor provides such service itself; selects the BOC to provide such services; or, chooses a third party to provide such services."[227] Where technically feasible, a BOC must make available unbranded or rebranded directory assistance services.[228]

In terms of operator services, a customer, regardless of its serving carrier, must be able to connect to a local operator by dialing "0" or "0

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[225] 47 U.S.C. § 251(b)(3).

[226] 47 C.F.R. § 51.217(a)(2).

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

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

plus the desired phone number".[229] The access must be to the operator service provider selected by the customer's carrier, "regardless of whether the competitor provides such service itself, selects the BOC to provide such services, or chooses a third party to provide such services."[230] Where technically feasible, a BOC must make available unbranded or rebranded operator services.[231]

b) California Application of Legal Standards

In our 1998 decision, we adopted the FSR's analysis that access to and the fitness of Pacific's OSS were inextricably linked to its compliance with Checklist Item 7 as well as several other checklist items. We also adopted most of the FSR's corresponding OSS recommendations in order to facilitate the establishment of user-friendly interfaces between Pacific's and the competitors' systems. For Checklist Item 7, we directed Pacific, among other things, to work collaboratively with its competitors[232] to resolve a number of related access issues; to implement a functional flow through mechanism; to integrate E911order entry, and to implement an automated reject and jeopardy system.

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

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

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

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

2. Proceeding Record

a) Pacific's Position

D.98-12-069 directed Pacific to demonstrate that it has clear guidelines for service address validation. Pacific reported that it has provided such guidelines for address validation, as well as guidelines for discrepancies between addresses that pass Service Order Retrieval and Distribution (SORD),[233] but not E911 validation processes, in an early 1999 Fix-It meeting. (Viveros Aff. ¶143 (July 15, 1999).)

Pacific integrated the "E911 and Listings Integration"(ELI) into the LEX and EDI ordering interfaces through a third-quarter 1999 software release. (*Id.* ¶132.) Through ELI, CLECs can choose, on an order-by order basis, whether to provide listings and E-911 information. (Pacific Supplemental Brief at 5 (March 7, 2000).) Pursuant to the CPUC's order, Pacific held quarterly Pacific/CLEC E911 Database Forums, and distributed the minutes through Accessible letters (*Id.* ¶151). It also makes E911 staff available to assist CLECs in resolving related issues or pursuing alternate approaches to data entry/data management, and has developed standards[234] for peer-to-peer interface for the entry of E911 data. (Deere Aff. ¶160; Viveros ¶156.)

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

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

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

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

Both resale CLECs and switch-based CLECs may choose to provide operator services (OS) and/or directory assistance (DA) services themselves, use a third-party OS/DA provider, custom route their subscriber OS/DA calls to themselves or to a third party provider they designate. (Jan D. Rogers Aff. ¶¶ 14-15.) Pacific offers nondiscriminatory access to OS and DA by processing all calls from all customers on a first-come, first-served basis. (*Id.* ¶ 33.) Pacific offers CLECs that provide their own DA services direct access to its DA database, where they may obtain listing information by searching the same DA database on a query-by-query basis in the identical format that Pacific's DA operators use. (*Id.* ¶ 31.) Pacific also makes available DA listings in bulk with daily updates to CLECs that want to utilize Pacific's listings to provide DA services to their own customers. (*Id.* ¶ 28.) It offers all the listings in its DA database to requesting CLECs in the state. (*Id.*; *see BellSouth Louisiana II Order*, 13 FCC Rcd at ¶ 249.) In addition, Pacific provides carrier-specific branding for DA and OS, regardless of whether the requesting carrier is a resale or switch-based CLEC. (*Id.*¶ 18.)

b) Interested Parties' Positions

In 1999, Sprint maintained that it had been plagued by incorrect address validations, incorrect directory listings and inaccurate E911 listings.

(Sprint Response at 52 (August, 1999).) ORA stated that Pacific had not demonstrated compliance by sharing a "Job Aid" and issuing Accessible Letters (ORA Response at 9 (August, 1999).) Genesis noted that a CLEC could not use normal mailing addresses in Pacific's systems. (TRA Brief at 9 (August, 1999).) In 2000, AT&T commented that Pacific had not provided CLECs with the information that would enable them to use ELI. (Willard Decl. ¶ 61 (April 5, 2000.))

Pacific responded that Sprint had neither approached its E911 team about these problems nor substantiated the allegations. It also asserted that it provided guidelines that had proved useful to Pacific employees. (Viveros Aff. ¶¶74-75.) Pacific maintained that it offered CLEC training on the use of ELI on the LEX ordering interface. (Ham Supp. Reply Aff. ¶16 (April 25, 2000.))

c) CGE&Y Determination

GXS noted that while the E911 gateway was part of the OSS test in a limited number of transactions, the CLECs had shown no interest in using the E911 gateway. As a matter of efficiency and practicality, the CLECs seem to prefer to let Pacific perform the update via the Local Service Request. At testing time, no CLEC ordering UNE port was performing updates via the gateway.[235] GXS reported that during the test it found entering transactions was easy once it achieved system access through the gateway. (Test Generator Final Report, Section 4.5.5 at 24; Section 5.5.5 at 69.)

[235] For Performance Measure # 39, there was no direct gateway update to cancel for the pseudo-CLEC versus commercial CLEC comparison.

CGE&Y analyzed the results of Performance Measures 38[236] and 39,[237] which relate to E911 database updates. For Performance Measure 38, there was pseudo-CLEC activity for 911 databases by service order generated updates (LSR). For Performance Measure 39, there was pseudo-CLEC activity for both service order generated and direct gateway input updates. Since there are no commercial CLEC activities by means of the MS Gateway, CGE&Y analyzed the performance measurement results involving only the pseudo-CLECs. Accordingly, CGE&Y concluded that Pacific accurately updates the E911 database. (TAM Final Report, Section 4.4.4.20 and 4.4.4.21 at 199.)

3. Discussion

The record shows that Pacific has a legal obligation to provide 911, E911,[238] Directory Assistance, and Operator Call Completion pursuant to Pacific's tariff[239] and interconnection agreements[240] approved by the CPUC, and that the company is complying with that obligation.

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[236] Performance Measure 38 reports the percentage of 911 database updates completed without error, customer-caused errors excluded. This measure adheres to the parity standard for all disaggregation.

[237] Performance Measure 39 reports the percentage of E911/911 database updates completed within 48 hours. This measure is reported on a statewide basis and adheres to the parity standard for service order generated updates and a benchmark standard for direct gateway input updates.

[238] California state legislators enacted laws to ensure basic 911 service would be available by the end of 1985. Pacific completed implementation of statewide E911 in November 1992.

[239] For E911, *see* Pacific Bell tariff, Schedule CAL. P.U.C. No. A9.

[240] *See* e.g. AT&T ICA, Appendix Resale of the Level 3 ICA

We find that Pacific has complied with our directive for clear guidelines that address the discrepancy between addresses that pass SORD but not E911. We accept Pacific's demonstration of compliance through Accessible letters and "Job Aids." Further, we do not require Pacific to use "normal" addressing conventions in its systems. Pursuant to our requirement, Pacific's ELI integrates E911 data entry into the order entry process for loop with port UNE combinations, and stand-alone UNE port orders. Pacific has well documented its training opportunities for the use of the interface, and the CLECs appear to be using ELI. It has also developed adequate standards for peer-to-peer interface for the entry of E911 data.

In the OSS Test Report, CGY&E positively evaluated Pacific's updating of the E911 database.

By virtue of the OSS Test results as well as the monthly Performance Measurement data, Pacific has demonstrated the accuracy and integrity of its 911/E911 database. It has also shown that it provides nondiscriminatory access to the directory listings in its directory assistance databases and to the operator services supplied by Pacific Bell. Therefore, the CPUC concludes that Pacific satisfies the requirements of Checklist Item 7, and we verify its compliance.

H. Checklist Item 8 – White Pages Directory Listings

Has Pacific provided white pages directory listings of customers of the other carriers' telephone exchange service, pursuant to section 271(c)(2)(B)(viii)?

1. Legal Standard

a) TA96 and FCC Orders

Section 271(c)(2)(B)(viii) of TA96 requires a BOC to provide "[w]hite pages directory listings for customers of the other carrier's telephone exchange service." In the *Second BellSouth Louisiana Order*, the FCC defined "white pages"

as "the local alphabetical directory that includes the residential and business listings of the customers of the local exchange provider."[241] Moreover, it concluded that "directory listing"[242] embraced, "at a minimum, the subscriber's name, address, telephone number, or any combination thereof."[243]

b) California Application of Legal Standards

In D.98-12-069, we directed Pacific to make three system and process changes to enable it to offer nondiscriminatory access to directory listings and white pages.[244] The CPUC ordered Pacific to demonstrate, first, that it has integrated the ordering of UNE combinations and stand-alone UNEs with the processing of directory listings and white pages. Second, Pacific was to document its active participation in the "Fix-It" team's[245] efforts to gather data as well as recommend and implement corrective actions to reduce or eliminate rejections of, and errors in, directory listings and white pages' orders. Third, the

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[241] 13 FCC Rcd at ¶ 255. The FCC noted the similarity of this language with that of 47 U.S.C. § 251(b)(3), which obligates all LECs to grant competitive providers of telephone exchange service nondiscriminatory access to directory listings.

[242] In the *Local Competition Second Report and Order*, the FCC correlated the term with "subscriber list information" under 47 U.S.C. § 222(f)(3): "(A) identifying the listed names of subscribers of a carrier and such subscribers' telephone numbers, addresses, or primary advertising classifications (as such classifications are assigned at the time of the establishment of such service), or any combination of such listed names, numbers, addresses or classifications; and (B) that the carrier or an affiliate has published, caused to be published, or accepted for publication in any directory format."

[243] *Id.*

[244] Appendix B at 1.

[245] The "Fix-It" team, initiated during the 1998 collaborative, was designed to examine process improvements to reduce the fallout of CLECs' orders/database entries from Pacific's systems for both resold services and UNEs. FSR at 21 (October 5, 1998).

CPUC required Pacific to demonstrate that it offers a web-based database to CLECs to enable them to verify both directory and white pages listings.

2. Proceeding Record

a) Pacific's Position

In 1999, Pacific submitted documents attesting that it had complied with each of the CPUC's Checklist Item 8 technical directives. Pacific reported that it had established a "Fix-it" team, and had utilized this team process to find root causes, to take corrective actions in order to increase the CLECs' ease of doing business, and to reduce listing errors and rejects by 20 percent. (Christopher J. Viveros Aff. ¶139 (July 16, 1999).)

In June 2001, Pacific stated that in accordance with the Act, it lists CLECs' customers on the same basis as its own retail customers in Pacific's White Pages directories, and CLEC customers receive copies of the directories in a nondiscriminatory manner during the annual distribution of the newly published books. (*See* Jan D. Rogers Aff. ¶¶ 35-49; Opening Brief at 74-75.) Pacific offers White Pages listings for the end-users of both resellers and facilities-based CLECs. CLECs have the same listing options for their customers, as Pacific makes available to its retail customers. (Rogers Aff. ¶¶ 35-37; 38-42.) Pacific gives facilities-based CLECs the choice of having their customers' listings interspersed with or printed separately from Pacific's listings. At a facilities-based CLEC's request, Pacific will also transmit the CLEC's listings to third-party directory publishers. (*Id.* ¶¶ 37, 49.) Through April 2001, Pacific claims to have provided California CLECs with over 634,000 White Pages directory listing records. (*See* Tebeau Aff. Attach. A.)

(1) Performance Measure Results

From February through April 2001, Pacific reports that it met or exceeded the prescribed standards of performance for the sub-measures included in Measures 37[246] and 38[247] that are associated with White Pages directory listings. (*See* Johnson Aff. ¶ 143.) In these measures, Pacific assesses the timeliness and quality of listings updates processed by it on behalf of CLECs (through the service order procedure) as well as the timeliness of converting listings updates submitted by CLECs directly through Pacific's listings gateway.[248] (*Id.*)

Pacific states that from February to April 2001, it processed CLECs' service order generated listings updates, on average, in less than two days in each month, well below the average of five days for Pacific's retail customers. Pacific completed these updates with 100 % quality in each of the three months. In addition, it posted direct input updates to the listings data nearly 100% of the time within the established interval,[249] which is above the required standard of 95% within the standard interval. (*Id.*)

b) Interested Parties' Positions

In 1999, Sprint asserted that "Pacific has continued to struggle with OSS-related problems… including…incorrect directory listings."(Sprint at 52) In April 2000, XO[250] commented that Pacific incorrectly populated the Directory

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[246] Measure 37: Database Update Interval.

[247] Measure 38: Percent Database Accuracy.

[248] The quality of direct gateway listings updates are reported, since the quality of the updates is under the control of the CLECs. (*Id.*)

[249] February-99.89%, March-99.99% and April-100%. (*Id.*)

[250] At that time, XO's corporate name was NEXTLINK.

Assistance database for partial migrations. (XO (NEXTLINK) Brief at 13-14 (April 5, 2000).)

During the April 2001 operational hearings,[251] Cox and XO reported problems with obtaining timely and accurate customer directory listings from Pacific. Cox stated that it had experienced difficulties getting assurances that Pacific would properly deliver directories to its customers.

Pacific maintained that Sprint was unable to substantiate its listings allegation. It later responded that XO's problems were isolated, and most likely caused by the carrier itself. Pacific pointed to its Listing Error Correction Unit as an aid to reduce CLEC listing errors. (Pacific Reply Brief at 19-20 (April 25, 2000).) Pacific maintained that the instances raised during the April 2001 operational hearings were not universal, and could be sufficiently addressed through the Account Team structure.

c) CGE&Y Assessment

In the OSS Test, the target percentage of total orders for Stand Alone Directory Listings was 4% pursuant to MTP Table 6-1. For this product, 5% of total orders[252] were submitted and completed. All stand-alone directory listings were processed through the Local Exchange (LEX) interface.

Performance Measure 37 reports the average time to update the directory assistance/listings database. This measure is reported on a statewide basis and adheres to the parity standard for service order generated updates.

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[251] April 4, 5 and 12, 2001.

[252] 142 directory-listing orders. *See* TG Final Report, Section 5.8.2.4 at 90 (February 13, 2001).

CGE&Y's final report indicated that Pacific met the parity requirement for all months tested.

Performance Measure 38 reports the percentage of directory assistance/listings[253] database updates completed without error, customer-caused errors excluded. This measure is reported on a statewide basis and adheres to the parity standard. CGE&Y's final report indicated that Pacific met the parity requirement in all but 1 month tested.

Based on the verified accuracy of the directory listings, and the positive performance reflected from Performance Measures 37 and 38, CGE&Y reported that Pacific accurately and efficiently performed Directory Listings in the OSS Test.

3. Discussion

Our review of the ICAs that Pacific has entered into with its competitors indicates that Pacific has a specific legal obligation to provide white pages listings to their customers. (*See* AT&T ICA, Attachment 4 and Level 3 ICA, Appendix WP and Appendix Resale.)

After having thoroughly examined Pacific's 1999 and 2000 Appendix B compliance submissions, the CPUC finds that Pacific has satisfied the technical directives of D.98-12-069. Pacific's 2001 Performance Measure #4 data shows some amount of flow-through for directory service requests; thus, Pacific has met our implementation requirement for this item. Moreover, we find that CLECs either could not substantiate the earlier listings problems cited or could not refute Pacific's contention that the problems were carrier-caused input errors. The April 2001 problems, while troubling, do not appear to be systemic. Pacific

[253] As well as 911.

has held a number of meetings with Cox in an attempt to resolve its directory and listings concerns, and met with and made training available to XO in an effort to resolve XO's listings problems. CGY&E positively evaluated Pacific's performance regarding directory listings during the OSS Test.

Pacific has documented that the white pages directory listings that it provides for its competitors' are comparable in appearance to the listings of Pacific customers. Thus, Pacific has demonstrated that it has satisfied the FCC's requirement that it provide listings that are nondiscriminatory in appearance and integration.[254] In addition, Pacific has documented that via several gateways[255] it has established a mechanism for providing CLECs with the ability to confirm the accuracy of their customers' entries prior to publication in the directory. By so doing, Pacific satisfies the FCC's requirement that a BOC must provide directory listings with the same accuracy and reliability that it provides to its own customers. Therefore, we conclude that Pacific satisfies the requirements of Checklist Item 8, and we verify Pacific's compliance.

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[254] *Second BellSouth Louisiana Order*, 13 FCC Rcd at ¶ 256.

[255] UNE-based CLECs are able to submit their end-user listing information through Pacific's Local Service Center, through Pacific's Listings Gateway or through an electronics operations support system, i.e. Service Order Retrieval and Distribution System (SORD), Electronic Data Interchange (EDI) or Local Exchange (LEX) for Resale or UNE transactions. Switch-based CLECs are able to transmit their subscribers' directory listings electronically through Pacific's Listings Gateway. (*See* Rogers Aff. ¶¶ 46-47.)

I. Checklist Item 9-- Access to Telephone Numbers

Has Pacific provided nondiscriminatory access to telephone numbers for assignment to the other carriers' telephone exchange service customers, pursuant to section 271(c)(2)(B)(ix)?

1. Legal Standard

a) TA96 and FCC Orders

Section 271(c)(2)(B)(ix) of TA96 requires a BOC to provide "nondiscriminatory access to telephone numbers for assignment to the other carrier's telephone exchange service customers," until "the date by which telecommunications numbering administration, guidelines, plan, or rules are established."[256] Following that date, the BOC must demonstrate compliance with "such guidelines, plan, or rules."

Under the *Local Competition Second Report and Order*, nondiscriminatory access to telephone numbers means that a local exchange carrier providing access to telephone numbers must give CLECs the same access to telephone numbers as it provides itself.[257] In accordance with section 271(c)(2)(B)(ix), the date that central office code responsibility transferred from the BOC to a neutral third party establishes the compliance date for the numbering administration guidelines.[258] Consequently, Pacific must show that,

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[256] 47 U.S.C. § (c)(2)(B)(ix).

[257] 11 FCC Rcd at ¶106.

[258] *In the Matter of Administration of the North American Numbering Plan*, Report and Order, 11 FCC Rcd 2588,2632 (1995) (*NANP Order*), the FCC transferred the number administration functions formerly performed by the incumbent LECs to a new NANP administrator.

thereafter, it has observed the industry's central office code administration guidelines, and the FCC's rules, including those sections requiring the accurate reporting of data to the central office code administrator.[259]

b) California Application of Legal Standards

On April 30, 1998, NeuStar,[260] gradually began to assume responsibility for the administration and assignment of central office codes in California. Pacific continued to perform code administration functions until completion of the transition on March 19, 1999. In D.98-12-069, the CPUC found that Pacific had complied with the requirements of Checklist Item 9.

2. Proceeding Record

a) Pacific's Position

Pacific states that when it served as Central Office Code Administrator in its region, it followed numbering administration guidelines published by the Industry Numbering Committee. In accordance with those industry-standard procedures, Pacific assigned 1,575 NXX[261] central office codes representing 15.75 million telephone numbers to 31 CLECs in California. (Jeffrey A. Mondon Number Administration Aff. ¶ 13.) It also asserts that it used identical standards and procedures for processing all number requests, notwithstanding the requesting party, and did not charge any fees for activating

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[259] *Second BellSouth Louisiana Order*, 13 FCC Rcd at ¶265.

[260] The FCC-selected NANP Administrator, formerly known as Lockheed Martin Information Management Services.

[261] In a ten-digit telephone number, the "NXX" is the second set of three digits, which constitute the Central office code. Any number from 2 to 9 may represent "N," and any number from 0 to 9 may represent "X."

central office codes. Pacific maintains that it responded to any valid requests for NXX code assignments, other than in the course of implementing jeopardy plans[262] for number conservation that had been developed with industry participants. (*Id.* ¶ 13-14.)

On April 22 1998, NeuStar Inc. (formerly Lockheed Martin IMS) assumed central office code administration responsibilities in California. Pacific has had no responsibility for number administration since the completion of this transition. (*Id.*¶ 18.)Although Pacific is no longer a central office code administrator, nor performs any functions with regard to number administration or assignment, it submits that as a service provider it continues to adhere to numbering administration rules and industry guidelines. (*Id.*)

b) Interested Parties' Positions

In comments filed in 1999,Cox admitted that NeuStar had taken over the number administration responsibility from Pacific; nevertheless, it cited Pacific for having a post-transition attitude that was not supportive of number pooling. (Cox Telecommunications' Comments at 21-26 (Vol. 2, August 16, 1999).)

No commenters addressed Pacific's June 2001 demonstration of compliance with Checklist Item 9.

3. Discussion

Prior to the transfer of central office code responsibility to NeuStar, Pacific had a legal obligation to make telephone numbers available on a

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[262] A jeopardy plan or "Jeopardy NPA" is defined in the NPA Relief Guidelines as occurring when "the forecasted and/or actual demand for NXX resources will exceed the known supply during the planning/implementation interval for relief." (Mondon Aff. ¶ 14.)

nondiscriminatory basis pursuant to its interconnection agreements. Following the transfer of responsibility,[263] Pacific remains subject to the FCC's rules requiring compliance with code administration guidelines, as well as the duty under § 251(b)(3) to permit nondiscriminatory access to telephone numbers.

In its 1998 Initial Staff Report, CPUC staff determined that Pacific had met this checklist requirement.[264] Competitors had presented no current or timely examples of noncompliance. The record on access to telephone numbers contained anecdotal incidents and allegations that Pacific manipulated the numbering process, both overtly and covertly. CLECs asserted that because the code administrator was a Pacific employee, that relationship allowed the company access to information not available to all other parties. The allegations against Pacific included: causing a shortage of telephone numbers by stockpiling NXX codes; manipulating the jeopardy process; and offering second line promotions to their own customers while CLECs were awaiting NXX assignments.

As the incumbent, Pacific had access to the greatest number of NXX codes. Despite apparent historical inequities, the Initial Staff Report concluded that on a going forward basis, the transfer of the code administrator function to a neutral third party would mitigate any influence that Pacific may have had over the process. The 1998 Final Staff Report concurred with the Initial Staff Report

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[263] In addition, the current generic SBC-13 State interconnection agreement obligates Pacific pursuant to the Appendix Numbering. *See e.g.* Interconnection Agreement between Pacific Bell and CityNet Telecommunications, Inc., Advice Letter No. 22460 (November 30, 2001).

[264] Initial Staff Report at 64 (July 10, 1998).

findings.[265] D.98-12-069 adopted the recommendation of the Final Staff Report, and held that Pacific had met the requirements of Checklist Item 9. Pacific has demonstrated that it has complied with the current number administration rules, regulations and guidelines established by the various regulatory agencies as well as the industry numbering forums.[266] Thus, we conclude that Pacific continues to satisfy the requirements of Checklist Item 9, and so verify.

J. Checklist Item 10 -- Access to Databases and Associated Signaling

Has Pacific provided nondiscriminatory access to databases and associated signaling necessary for call routing and completion, pursuant to 271(c)(2)(B)(x)?

1. Legal Standard

a) TA96 and FCC Orders

Section 271(c)(2)(B)(x) requires Pacific to offer "nondiscriminatory access to databases and associated signaling necessary for call routing and completion."[267]

In the *Local Competition First Report and Order*, the FCC defined call-related databases as databases, other than operations support systems, that are used in signaling networks for billing and collection or the transmission, routing, or other provision of telecommunications service.[268] The FCC required ILECs to

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[265] Final Staff Report at 124 (October 5, 1998).

[266] Its compliance has been supported by CGE&Y's findings and has not been rebutted by any other party.

[267] 47 U.S.C. § 271(c)(2)(B)(x).

[268] *Local Competition First Report and Order*, 11 FCC Rcd at 15741, note 1126; *UNE Remand Order*, 15FCC Rcd at 3875, ¶403.

provide unbundled access to their call-related databases, including but not limited to: the Line Information Database (LIDB), the Toll Free Calling database, the Local Number Portability database, and Advanced Intelligent Network databases.[269]

In the *Second BellSouth Louisiana Order*, the FCC required BellSouth to demonstrate that it provided requesting carriers with nondiscriminatory access to: "(1) signaling networks, including signaling links and signaling transfer points; (2) certain call-related databases necessary for call routing and completion, or in the alternative, a means of physical access to the signaling transfer point linked to the unbundled database; and (3) service management systems (SMS);"[270] and to design, create, test, and deploy AIN based services at the SMS through a service creation environment (SCE). In the *UNE Remand Order*, the FCC clarified that the definition of call-related databases "includes, but is not limited to, the calling name (CNAM) database, as well as the 911 and E911 databases."[271]

b) California Application of Legal Standards

For Checklist Item 10, the CPUC set forth in D.98-12-069 seven detailed requirements for Pacific to satisfy in order to demonstrate its compliance. (*See* Appendix I.) Pacific submitted evidence showing how it had complied with each requirement. (*See*, Deere Aff. ¶ ¶ 158 (June 2001), 195-198, 200-201 and Hopfinger Aff. ¶ 28 (1999).)

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269 *Local Competition First Report and Order*, 11 FCC Rcd at 15741-42, ¶484.

270 *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20753.

271 *UNE Remand Order*, 15 FCC Rcd at 3875, ¶403.

2. Proceeding Record

a) Pacific's Position

Pacific maintains that when a CLEC purchases unbundled local switching from it, the CLEC automatically obtains the same access to Pacific's signaling network as Pacific provides itself. (Pacific Brief at 76; Deere Aff. ¶ 159.) Pacific notes that CLECs can use this unbundled access to furnish Signaling System 7 (SS7)-based services for their own end-user customers' calls or the calls of end-user customers of other carriers. (*Id.*; *Id.* ¶ 158.) SS7 signaling is available between CLEC switches, between CLEC switches and Pacific switches, or between CLEC switches and the networks of other carriers connected to Pacific's SS7 network. (*Id.*)

Pacific asserts that it offers CLECs nondiscriminatory access to a variety of call-related databases. Specifically, Pacific states that it provides competitors access to its Line Information Database (LIDB), calling name databases (CNAM), toll-free databases, service management systems (SMS)[272] and Advanced Intelligence Network (AIN). (*See*, Deere ¶¶ 162-185.)

b) Interested Parties' Positions

WorldCom claims that Pacific currently imposes an unreasonable restriction on access to CNAM and LIDB by limiting it only to "per query" access. WorldCom insists that the underlying database is the UNE, not "per query access." WorldCom further maintains that Pacific's refusal to provide it "batch" access to LIDB and CNAM, as opposed to the more limited "per query"

[272] SMS are used to create, modify, and update information in the call-related databases.

access, violates the requirements of Checklist Item 10. (WorldCom Reply Brief at 124 & 125 (June 2001).)

WorldCom contends that Pacific justifies restricting it to "dip" or "query-by-query" access to the CNAM database by claiming that this is the same access that Pacific has. While Pacific's operators may use the database on a query basis, any owner of a database would retrieve information from that database through "batch" access rather than through the more limited "per query" access. WorldCom alleges that Pacific is able to manipulate the data within the database and use the database in any lawful way it likes. Pacific utilizes the database to support the telecommunications services it provides, and profits through charging other carriers for its use. WorldCom seeks to utilize the CNAM and LIDB databases in the same way Pacific is able to use them. WorldCom also insists that Pacific garners critical proprietary and competitive information through the "dip" process. By requiring "dip"-only access, Pacific is able to follow a competitor's use of this database, which reflects competitive information on a user's overall service and growth. (WorldCom Brief, at 124-127, (August 23, 2001).)

3. Discussion

Our review of the interconnection agreements between Pacific and its competitors shows that Pacific has specific legal obligations to provide databases and signaling. These commitments are also in the CLEC Handbook, Interconnection, section 5.0.

Based on the currently available service information, we find that Pacific demonstrates that it provides the CLECs nondiscriminatory access to its databases and associated signaling necessary for call routing and completion, in satisfaction of the requirements of Checklist Item 10. Currently, there is no performance measure associated with this checklist item.

The application for AIN services along with the process to be used for service creation is contained in the CLEC Handbook.[273] Since August 31, 1998, it appears that Pacific has successfully implemented and maintained the necessary process improvements for ordering, provisioning, and maintaining database-driven features such as LIDB, CNAM, and Customer Local Area Signaling Services.[274] Pacific has developed and implemented methods and procedures for multiple workgroups to ensure on-time, complete and accurate implementation of these database services.

Pacific refutes WorldCom's assertion that it is able to manipulate the data within the database. Pacific maintains that although it is able to administer its data in the database, such ability is a function of the administrative system, not the database. Pacific also states that it has offered WorldCom the ability to administer its data through direct, unbundled electronic interfaces that would give it the same data administering capabilities as Pacific. (Pacific Reply, Deere Aff. ¶ 75 (September 2001)). In response to WorldCom's claim that Pacific should be required to provide it with "batch" or "bulk" access to these databases as long as it is technically feasible to do so, Pacific replies that the FCC did not define the data as the UNE. We agree. In D.01-09-054, we affirmed the arbitrator's holding that allowing MCImetro to download the LIDB and CNAM databases would depart from the FCC's definition of the "access to database" UNE. Section 51.319(e)(2)(A) of the FCC's rules regarding call-related databases states:

For purposes of switch query and database response through

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[273] Interconnection, section 5.0.

[274] CLASS

> a signaling network, an incumbent LEC shall provide access to its call-related databases, including but not limited to, the Calling Name Database, 911 Database, E911 Database, Line Information Database, Toll Free Database, Advanced Intelligence Network Databases, and downstream number portability databases by means of physical access at the signaling transfer point [STP] linked to the unbundled databases.

The FCC has defined this particular UNE narrowly to include access to databases at the STP.[275] Such limited access at the STP would not cover downloading of the entire database. Thus, the rule does not require Pacific to provide CLECs with access to any information contained in the database on a bulk basis. Accordingly, we conclude that Pacific is in compliance with the requirements of Checklist Item 10, and we so verify.

K. Checklist Item 11—Number Portability

Has Pacific provided number portability, pursuant to 271(c)(2)(B)(xi)?

1. Legal Standard

a) TA96 and FCC Orders

Section 271(c)(2)(B)(xi) requires Pacific to comply with the FCC's number portability regulations promulgated pursuant to Section 251.[276] TA96 defines number portability as "the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without

[275] *See*, *SWBT Texas Order*, 15 FCC Rcd at ¶¶ 189, 364 and *Kansas/Oklahoma Order*, 16 FCC Rcd at ¶ 255.

[276] 47 U.S.C. § 251(b)(2).

impairment of quality, reliability, or convenience, when switching from one telecommunications carrier to another."[277]

To prevent the cost of number portability from frustrating local competition, Congress enacted Section 251(e) (2), which requires that "the cost of establishing telecommunications numbering administration arrangements and number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission."[278] In accordance with this and the above-cited statutory provisions, the FCC requires LECs to offer interim number portability "to the extent technically feasible."[279] It also mandates that LECs gradually replace interim number portability with permanent number portability. The FCC has set forth guidelines for states to follow in mandating a competitively neutral cost-recovery mechanism for interim number portability, and designed a competitively neutral cost-recovery mechanism for long-term number portability.

b) California Application of Legal Standards

For Checklist Item 11, the CPUC set forth in Appendix B of D.98-12-069 seven detailed requirements for Pacific to satisfy in order to demonstrate its

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[277] 47 USC § 153(30).

[278] *Id.* at § 251(e)(2); *see also Second BellSouth Louisiana Order*, 13 FCC Rcd at 20757, ¶ 274; *In the Matter of Telephone Number Portability*, Third Report and Order, 13 FCC Rcd 11701, 11702-04 (1998) (*Third Number Portability Order*); *In the Matter of Telephone Number Portability*, Fourth Memorandum Opinion and Order on Reconsideration, CC Docket No. 95-116, at ¶¶ 1, 6-9 (June 23, 1999) (*Fourth Number Portability Order*).

[279] *Fourth Number Portability Order* at ¶ 10; *In re Telephone Number Portability*, First report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 8352, ¶¶110-116 (1996) (*First Number Portability Order*); *see also* 47 U.S.C. § 251(b)(2).

compliance. (*See* Appendix I.) Pacific submitted documents showing how it had complied with each requirement.

2. Proceeding Record

a) Pacific's Position

In July 1999, Pacific filed affidavits attesting that it had satisfactorily met four of the CPUC's D.98-12-069 compliance requirements.[280] For the remaining three requirements, Pacific submitted a showing explaining its Frame Due Time (FDT) and To Be Called Cut (TBCC) processes, and how it had complied with the CPUC's directives regarding these processes. (*See* Tenerelli Aff. ¶¶ 21, 32; Tenerelli Reply Aff. ¶¶ 31-35, 36-45, 48-52; Fleming Aff. ¶¶ 21-24.)

In its June 2001 filing, Pacific maintains that it has fulfilled its obligations in the deployment of interim and long-term number portability in California, pursuant to TA96, Checklist Item 11, and all applicable FCC rules. It claims to have implemented LNP in accordance with the prescribed performance criteria and has complied with switch selection, implementation, and LNP deployment requirements. Pacific also asserts that it has adhered to the

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[280] Pacific submitted: 1.) Accessible Letter CLECC 99-046 (February 15, 1999), which notified CLECs regarding after hour cuts that they would be allowed to call off a cut without charges until 3 PM on the day of the cut. (Sam Tenerelli (Tenerelli) Aff., ¶ 28); 2.) Pacific did not charge RCF tariff rates for CLECs remaining on INP longer than 90 days. Pacific claimed to negotiate with each CLECs, regarding the 90 day INP to LNP conversion window based on individual volumes and CLEC needs. (Hopfinger Aff. ¶27); 3.) Pacific filed its Operations/Implementation (OP/I) subcommittee report with the CPUC on February 16, 1999. Pacific's Accessible Letter CLECC 99-046, (*infra*) detailed its policy regarding compliance with the OPI requirements. (Gary A. Fleming (Fleming) Aff. ¶ 18); and 4.) Pacific published the 1998 FSR collaboratively-adopted matrix in Accessible Letter CLECC 99-019, (January 27, 1999) and referenced it in the CLEC Handbook, *Number Portability*, section 3.2.2, Policy of Coordinated Cuts for LNP. (Tenerelli Aff. ¶ 30.)

technical, operational, architectural, and administrative requirements established by the FCC. It avers compliance with the FCC rules on cost recovery, and reports continuing active participation in industry and regulatory activities that address LNP policy matters. (*See* Mondon LNP Aff. ¶ 28.)

Pacific submits that every number ported by it represents one or more existing Pacific lines lost to a CLEC. It further states that CLECs served over 700,000 ported Pacific numbers as of the end of April 2001. (*See* Mondon LNP Aff. ¶ 5; Tebeau Aff. Attach. A.) It equipped all of its switches with LNP capabilities by January 31, 1999. (Mondon LNP Aff. ¶¶ 5, 16.) Pacific contends that it offers CLECs LNP, with or without an unbundled loop, through its LEX interface or EDI Gateway. (*Id.*)

To minimize disruptions of service while numbers are being ported, Pacific reports using an unconditional ten-digit trigger (UCT) process. (Mondon LNP Aff. ¶ 20.[281]) UCT is activated on the customer's number upon receipt of the initial porting order. (*Id.*) When the CLEC activates its switch port, calls to the customer's telephone number are routed automatically to the CLEC's switch. (*Id.*) Pacific asserts that this obviates the need for it to coordinate LNP cutovers with a CLEC on a minute-to-minute basis. (*Id.*)

To quantitatively assess performance related to number portability, Pacific reports data on the timeliness of processing requests for number porting (PM 2), the timeliness of stand-alone LNP conversions (PM 9), the timeliness of

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[281] Affiant Mondon specifies that the UCT process is available for all orders except Direct Inward Dial ("DID"), Private Branch Exchange ("PBX"), Integrated Service Digital Network Primary Rate Interface ("ISDN PRI"), and Automatic Call Distribution ("ACD") directory numbers. On these orders Pacific conducts coordinated LNP conversions with CLECs. (*Id.*)

updating Pacific's SS7 network (PM 10), the quality of Pacific Bell's provisioning process for LNP (PMs 15 and 16), and for troubles associated with Pacific's network that impact ported services: maintenance timeliness and quality (PMs 19 to 23). (*See* Johnson Aff. ¶¶ 145-147.)

b) Interested Parties' Positions

In its August 2001 comments on Pacific's filing, AT&T claims that deficiencies in Pacific's systems have caused an unexpected loss of dial tone for a high percentage of AT&T's end -user customers (primarily residential). This, in turn, reflects negatively on AT&T as a new entrant in the market place and interferes with AT&T's ability to operate as an efficient competitor. AT&T maintains that it has attempted to work with Pacific for the last year to improve its number portability processes. However, to date, Pacific has refused to implement a mechanized Number Portability Administration Center (NPAC)[282] check that at least one other RBOC (Bell South) has had in place for the past 3 years. AT&T claims that Pacific could implement the changes sought quickly and virtually guarantee that end-users would never again unexpectedly lose dial tone. (AT&T, Sarah DeYoung (DeYoung) Aff. ¶¶ 12-14.)

AT&T also contends that Pacific's existing number porting process significantly impairs the quality, reliability and convenience of AT&T's two competing local phone services[283] AT&T further reports that, in contrast to

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[282] The neutral third party database that administers local number portability throughout the United States.

[283] AT&T Broadband and AT&T Fixed Wireless. On July 9, 2001, AT&T Fixed Wireless became a separate company. However, AT&T continues, by contract, to be responsible for negotiating with Pacific on any issues that arise concerning the associated interfaces. (Id. ¶ 12.)

information in the CLEC handbook, a Pacific representative erroneously informed it that Pacific's systems could disconnect a migrating customer any time on the due date because LNP orders "flow through." AT&T maintains that the assertion makes no sense. (*Id.* ¶ 35.)

On April 3, 2001, Pacific met with AT&T and conceded that its number porting process could be improved by adding a mechanized NPAC check similar to that done by BellSouth. It committed to performing a "cost and time" study to determine whether and when it could complete the process. (*Id.* ¶ 40.) A month and a half later, Pacific presented its design for a mechanized process for checking the NPAC for CLEC activation prior to its disconnection of any customer. At the same time, Pacific advised AT&T that it would take 12 to 18 months from the time it completed the cost studies to implement the mechanized process. To date, Pacific has not provided the cost studies. (*Id.* ¶ 43.)

AT&T asserts that the system changes required to institute a NPAC check prior to disconnection are relatively simple and could be completed in 3 to 6 months. It maintains that by refusing to even offer a timeline for implementation of the process, let alone actually putting an NPAC check in place, Pacific is knowingly allowing a barrier to effective competition to exist. AT&T urges the CPUC to find that Pacific has not satisfied the requirements of Checklist Item 11. (*Id.*)

Cox/California Cable Television Association (CCTA) also alleges that Pacific has chronic problems with its systems and LNP process. It maintains that under the current LNP process if a customer cancels or fails to show up for an installation appointment, the CLEC cannot perform the necessary cutover work. The customer's existing service may then be cut off by Pacific if the CLEC

is unable to call or reschedule the LNP order before 10.00 p.m. on the due date. (Cox /CCTA Comment, § 2 at 4 (August 23, 2001)).

In its September 2001 reply, Pacific maintains that it has shared with the National Number Portability Operations Team that it is working on a mechanized enhancement to address the few instances where timely notice is not provided and some customers could lose dial tone for a brief period with a last minute rescheduling or cancellation. This enhancement proposes to mechanically delay the Pacific disconnect if the activation of the NPAC porting request has not been completed by the scheduled due date.

Pacific states that when it completes the proposal, the high level design will be shared with all CLECs in order to obtain the requisite industry concurrences and to prevent negative impacts on other LNP processes. If an internal business case is approved and it is economically feasible, Pacific estimates that implementation of a long-term mechanized enhancement could take 9-12 months and not 12-18 months. While it has agreed to follow up on the mechanized NPAC check, Pacific insists that its processes and systems are fully compliant with industry agreements and FCC rules and it has satisfied Checklist Item 11's requirements. (Pacific Reply, Mondon Aff. ¶¶ 7, 11, and 18.)

3. Discussion

Our review of the interconnection agreements between Pacific and its competitors indicates that Pacific has assumed specific legal obligations to provide number portability. (See, e.g. AT&T, Attachment 15: LNP and Number Assignment 14.7.)

The LNP process is labor-intensive and requires careful coordination between the carriers. Overall, the record shows that there have been problems, particularly in the use of the FDT process; however, Pacific has made efforts to isolate the problems and correct them. Unfortunately, it appears that the CLECs

have been inconsistent in reporting LNP problems to the Local Operating Center (LOC). Pacific's statistics indicate that the error rates for the first half of 1999 were very low. Moreover, Pacific shows a 0.58% (on average) trouble report rate for PM 15[284] for AT&T's LNP orders from May through July 2001. While this figure is well below the measure's benchmark of 1.00%, as noted above, PM 15 does not capture service outages for LNP orders either rescheduled or canceled at the last minute.

During the April 2001 hearings on operational issues, AT&T detailed its request for Pacific to modify its Number Portability process and make system changes to institute a mechanized NPAC check so that the Old Service Provider (here Pacific) does not disconnect end-users before the New Service Provider (here AT&T) has completed its installation work. Pacific agreed to this LNP mechanization process, and advised AT&T by letter dated October 5, 2001, that implementation would be complete by September 2002. In response to CPUC staff's request for a description of the LNP project and justification for the September 2002 implementation date, Pacific stated that it was committed to introducing the new functionality by the end of third-quarter and listed five critical elements[285] in the timeline.

Mechanization of the NPAC check is crucial. This enhancement will mechanically delay a Pacific disconnect if the activation of the NPAC porting

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[284] PM 15, which captures data on service outages, is one of the key performance measures relating to LNP installation.

[285] 1.) High level business requirements (completed); 2.) detailed business rules and specifications (in progress); 3.) modifications to existing systems will be scheduled throughout the development period; 4.) deployment of WFA-DO (currently scheduled for 2Q02) and 5.) deployment of Lines Per Minute (estimates five months following deployment of WFA-DO).

request has not been completed by the due date. We find that Pacific's justification for the September 2002 scheduled completion, given that a NPAC feed to its system already exists, does not explain why implementation of a mechanized enhancement to the NPAC check should take almost a year. At present, the CLECs do not have certain knowledge of when Pacific will disconnect certain customers, and cannot maintain the integrity of these end-users' dial tones. The continuing delay of this process presents a critical barrier to entry for the CLECs. Therefore, Pacific shall complete implementation of the mechanized LNP process no later than the date that opening comments are due on the draft of this decision. We cannot find and/or verify that Pacific has satisfied the compliance requirements for Checklist Item 11 until it implements this essential element of local number portability in California.

L. Checklist item 12-- Local Dialing Parity

Has Pacific provided nondiscriminatory access to such services or information as are necessary to allow the requesting carrier to implement local dialing parity in accordance with the requirements of section 251(b)(3) of TA96, pursuant to section 271(c)(2)(B)(xii)

1. Legal Standard

a) TA96 and FCC Orders

Checklist Item 12 requires that Pacific provide nondiscriminatory access to such services or information as are necessary to allow the requesting carrier to implement local dialing parity in accordance with the requirements of section 251(b)(3) of TA96.[286] For its part, section 251(b)(3) imposes on all local exchange carriers the duty to furnish to competing providers nondiscriminatory

[286] 47 USC § 271(c)(2)(B)(xii).

access to telephone numbers, operator services, directory assistance, and directory listing, with no unreasonable delays.[287] Under Section 3(a)(39) of TA96, dialing parity means that:

> "a person that is not an affiliate of a local exchange carrier is able to provide telecommunications services in such a manner that customers have the ability to route automatically, without the use of any access code, their telecommunications to the telecommunications service provider of the customer's designation from among two or more telecommunications services providers (including such local exchange carrier)."288

b) California Application of Legal Standards

In D.98-12-069, the CPUC found that Pacific had complied with the requirements of Checklist Item 12.

2. Proceeding Record

a) Pacific's Position

Pacific states that its interconnection arrangements do not require any CLEC to use access codes or additional digits to complete local calls to Pacific customers. Pacific customers also do not have to dial any access codes or additional digits to complete local calls to the customers of any CLEC. (William C. Deere Aff. ¶ 192.) From a customer's perspective, the interconnection of the Pacific network and the network of CLECs appears seamless. Because the CLEC central office switches are connected to the trunk side of the Pacific tandem or

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[287] 47 U.S.C. § 251(b)(3).

[288] 47 U.S.C. § 153(15).

central office switches in the same manner as Pacific and other local exchange carriers, there are no differences in dialing requirements or built-in delays for a CLEC customer. (*Id.*)

Pacific also maintains that it provides toll carriers intraLATA dialing parity pursuant to § 251(b)(3). The company implemented intraLATA presubscription (ILP)[289] in California on May 7, 1999, as directed by the FCC and CPUC.[290] Pacific reports that it "implemented ILP in all of its switches using the full 2-PIC technology, which permits customers to select the same or different providers to handle their intraLATA toll calls and/or interLATA long distance calls." (*Id.* ¶ 193.) According to the *Pacific INTER/INTRALATA Subscription Activity Report*, during the period April 1, 2001 to May 1, 2001, Pacific listed a total of 1,531,894 PIC changes. This included 833,262 intraLATA PIC changes during that period.

b) Interested Parties' Positions

No commenter raised allegations that Pacific was not in compliance with this Checklist Item.

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[289] ILP allows customers to pre-select their intraLATA toll provider, just as they have pre-selected their interLATA long distance provider. It allows customers to make intraLATA toll calls using their chosen provider without having to dial extra digits.

[290] Section 271(e)(2)(B) prohibits a state from ordering a Bell Operating Company to implement dialing parity before it enters the long distance market or before three years following enactment of TA96, whichever occurs earlier; the states may adopt rules regarding the terms and conditions for implementing intraLATA dialing parity. In D.97-04-083, the CPUC established the terms and conditions that California local exchange carriers, including Pacific, must meet when implementing intraLATA dialing parity.

3. Discussion

Our review of the interconnection agreements between Pacific and its competitors shows that Pacific has specific legal obligations to provide local dialing parity. Accessible Letter EA99-030, dated May 5, 1999, and Pacific's presubscription tariff, Schedule Cal. P.U.C. No. 175-T, section 13, effective May 7, 1999,[291] confirms the availability of ILP.

Pursuant to the 1998 Initial Staff Report, CPUC staff determined that Pacific had demonstrated compliance with this checklist requirement. D.98-12-069 adopted the Final Staff Report evaluation, which concurred with the Initial Staff Report findings.[292] Neither then nor subsequently has any commenter presented evidence that local customers of CLECs either experienced dialing delays or had to dial additional digits to make local calls. We find that Pacific has demonstrated that it continues to provide nondiscriminatory access to such services or information as are necessary to allow a requesting carrier to implement local dialing parity pursuant to TA96. Thus, we conclude that Pacific has satisfied the requirements of Checklist Item 12, and we so verify.

M. Checklist Item 13—Reciprocal Compensation

Has Pacific provided reciprocal compensation arrangements in accordance with the requirements of section 252(d)(2) of TA96 pursuant to section 271(c)(2)(B)(xiii)?

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[291] Submitted as Advice Letter No. 20217 filed April 30, 1999.

[292] D.98-12-069 at 60-61 (December 17, 1998).

1. Legal Standard

a) TA96 and FCC Orders

Checklist Item 13 requires Pacific to enter into reciprocal compensation arrangements that meet TA96's pricing standards.[293] Those standards, set forth in § 252, delineate that terms and conditions for reciprocal compensation may be considered just and reasonable only if they "(i) provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier," and "determine such costs on the basis of a reasonable approximation of the additional costs of terminating such calls."[294] Still, these requirements do not preclude "the mutual recovery of costs through the offsetting of reciprocal obligations, including arrangements that waive mutual recovery (such as bill-and-keep arrangements)."[295]

The FCC has held that Internet service provider (ISP) bound traffic is not subject to the reciprocal compensation provisions of sections 251(b)(5) and 252(d).[296] In its *Reciprocal Compensation Order on Remand*, the FCC reaffirmed the

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[293] 47 U.S.C. § 271(c)(2)(B)(xiii).

[294] 47 U.S.C. § 252(d)(2)(A).

[295] 47 U.S.C. § 252(d)(2)(B)(i)

[296] *See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996: Inter-Carrier Compensation for ISP-Bound Traffic*, Declaratory Ruling in CC Docket No. 96-98 and Notice of Proposed Rulemaking in CC Docket No. 96-98, 14 FCC Rcd 3689 at 3706, ¶ 26 n.87 (1999) (*Reciprocal Compensation Declaratory Ruling*), *rev'd and remanded sub nom. Bell Atlantic Tel. Cos. v. FCC*, 206 F.3d 1 (D.C. Cir. 2000).

holding and found that ISP-bound traffic is information access traffic under section 251(g) and, therefore, not subject to reciprocal compensation.[297]

b) California Application of Legal Standards

In the 1998 Initial Staff Report, the CPUC staff determined that Pacific had not demonstrated compliance with this checklist item. In response to competitors' contentions that Pacific had not provided adequate traffic data reports, staff found that Pacific needed to "provide additional information on the availability of traffic studies" before it could prove compliance. The Initial Staff Report also noted that Pacific should provide appropriate traffic records to all CLECs to facilitate the payment of mutual compensation for calls. Staff proposed that participants review the traffic data needs of CLECs, determine whether Pacific is providing parity treatment, and, if not, how it could provide adequate reports.[298]

In the Final Staff Report, staff recommended that Pacific was in compliance with this checklist item because it determined that the issues raised were OSS billing issues relating to switched access traffic not local traffic. In D.98-12-069, the CPUC adopted the Final Staff Report 's recommendation and held that Pacific had satisfied the requirements of Checklist Item 13: "as long as Pacific can demonstrate that it is in compliance with D.98-10-057, this Commission's ISP decision, they [sic] will have met this checklist item.

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[297] *See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Inter-Carrier Compensation for ISP-Bound Traffic*, Order on Remand and Report and Order, CC Docket Nos. 96-98 and 99-68, 16 FCC Rcd 9151, 9167, 9171-72, ¶¶ 35, 44 (2001).

[298] D.98-12-069 at 69-70.

Compliance with the decision includes making back payments for monies owed to CLECs." [299]

2. Proceeding Record

a) Pacific's Position

Pacific declares that its CPUC-approved interconnection agreements contain clearly defined reciprocal compensation arrangements for each party to pay the other for traffic exchanged between their respective networks.[300] Under these arrangements, from January 1997 through April 2001, Pacific and California CLECs exchanged more than 51.7 billion minutes of local traffic. (Tebeau Aff., Attachment A-3.)

Pacific submits that it offers a CLEC two alternatives for establishing the terms and conditions for reciprocal compensation: (1) they may be based on rates established by the CPUC pursuant to a forward-looking cost methodology, or (2) at the CLEC's option, they may be the product of negotiation, and if necessary, arbitration.[301] (Hopfinger Aff. ¶ 21.) The company also switches local transit traffic to allow CLECs to interconnect indirectly with other local carriers using Pacific's facilities under the Transit Traffic rate element.[302] By offering this arrangement, Pacific asserts, it enables one CLEC to send traffic to another local

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[299] *Id.* at 139-140.

[300] *See* Hopfinger Aff. ¶ 107; AT&T Agreement, Attachment 18-Interconnection, ¶ 3.6 and Attachment 8-Pricing, Appendix D; Level 3 Agreement, Attachment Reciprocal Compensation § 2 & Appendix Pricing; *Second BellSouth Louisiana Order*, 13 FCC Rcd 20599, 20773, ¶ 299.

[301] During the negotiation and arbitration, the parties exchange traffic under an interim bill-and-keep arrangement, subject to true up under the final agreement terms.

[302] The originating CLEC is responsible for paying the appropriate rates.

carrier's network through Pacific's tandem switch, thereby relieving the CLEC of the expense of investing in facilities necessary to interconnect to all other local carriers in a local calling area. (*Id.* ¶ 114.)

3. Interested Parties' Positions

In its August 23, 2001 comments, ORA maintains that if Pacific witness Hopfinger's statement about the payment status of all undisputed reciprocal compensation amounts is accurate, then it appears that Pacific is currently in compliance with Checklist Item 13. ORA notes that the *ISP Remand Order* has been appealed.

4. Discussion

Our review of the interconnection agreements between Pacific and its competitors indicates that Pacific has specific legal obligations to provide reciprocal compensation arrangements. (*See* AT&T Agreement *supra*; Level 3 Agreement *supra*.)

A number of parties took exception to staff's 1998 Final Staff Report finding and recommendation that Pacific had satisfied the requirements of Checklist Item 12 since one of the significant reciprocal compensation issues, i.e., compensation for calls to ISPs, was a pending issue before the Commission at the time. Staff advised that if Pacific demonstrated compliance with our then just-issued ISP decision, it would meet this checklist item.

From the *Bell Atlantic New York Order* on through the most recent 271 FCC orders, the FCC has stated that reciprocal compensation for ISP-bound traffic "is not governed by section 251(b)(5), and therefore, is not a checklist item."[303] The *Order on Remand*[304] reaffirmed this holding. Still, no commenter

[303] *Bell Atlantic New York Order*, 15 FCC Rcd at 4142, ¶ 377.

rebuts Hopfinger's contention that "[f]or those CLECs in California that have been exchanging traffic with Pacific and have accurately billed Pacific for traffic originated on Pacific's network through March 31 2001, Pacific has paid the undisputed amounts due for reciprocal compensation for local traffic."[305] We find that Pacific has shown that it continues to have in place reciprocal compensation arrangements in accordance with section 252(d)(2). Therefore, we conclude that Pacific has satisfied the requirements of Checklist Item 13, and we so verify.

N. Checklist 14—Resale

Are Pacific's telecommunications services available for resale in accordance with sections 271(c)(2)(B)(xiv), 251(c)(4) and 252(d)(3) of TA96?

1. Legal Standard

a) TA96 and FCC Orders

Under this checklist item, Pacific must offer CLECs, for resale at wholesale rates, any telecommunications service it (as the incumbent) provides at retail to subscribers who are not telecommunications carriers.[306] Wholesale rates are retail rates charged to subscribers for the telecommunications service requested, excluding the portion attributable to costs that will be avoided by the

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[304] *In the Matter of Implementation of the Local Competition Provisions in the Federal Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic,* CC Docket Nos. 96-98 and 99-68, *Order on Remand and Report and Order*, FCC 01-131 (2001) (*Order on Remand*).

[305] Hopfinger Aff. ¶ 118.

[306] 47 U.S.C. § § 251(c)(4)(A), 271(c)(2)(B)(xiv).

local exchange carrier, such as marketing, billing, and collection costs.[307] Pacific has a duty not to impose unreasonable or discriminatory limitations or conditions on resale. A state commission, consistent with FCC regulations, can prohibit a reseller that obtains a telecommunications service at wholesale rates, from offering such service to a different category of subscribers than those to whom the ILEC made the service available at retail rates.[308]

In its *Local Competition First Report and Order*, the FCC established several rules delineating the scope of the resale requirement and permissible restrictions on resale that an LEC may impose.[309] Significantly, resale restrictions are presumed to be unreasonable unless the LEC "proves to the state commission that the restriction is reasonable and non-discriminatory."[310]

b) California Application of Legal Standard

In D.98-12-069, we directed Pacific to satisfy seven conditions regarding resale promotional offerings in order to show compliance with the requirements of Checklist Item 14. (*See* Appendix I.)

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[307] 47 U.S.C. § 252(d)(3).

[308] 47 U.S.C. §251(c)(4)(B).

[309] *See*, *e.g.*, 47 C.F.R. §§ 51.613-51.617. In *Iowa Utilities Board*, the Eighth Circuit affirmed the FCC's authority to promulgate such rules, and specifically upheld the sections of the FCC's rules concerning resale of promotions and discounts. *Iowa Utilities Board*, 120 F.3d at 818-19 (1997).

[310] *See* 47 C. F. R. § 51.613(b).

2. Proceeding Record

a) Pacific's Position

In its July 15, 1999 filing,[311] Pacific detailed how it had met our compliance conditions for this item. No party responded to the submission.

CLECs are currently reselling more than 303,000 lines in California. (Tebeau Aff. Attach. A.) The CPUC has established a wholesale discount rate of 17 percent (Scholl Aff. ¶ 115; Vandeloop Aff. ¶ 22.) Pacific attests to making available for resale the same services that it furnishes its own retail customers. (Hopfinger Aff. ¶ 119.) It offers wholesale discounts on promotional offerings lasting more than 90 days (*Id.* ¶ 123.) Moreover, Pacific's customer-specific arrangements are available for resale subject to terms and conditions approved by the FCC. (*Id.* ¶ 134.)

On January 9, 2001, the United States Court of Appeals for the D.C. Circuit issued its *ASCENT* decision in which it effectively concluded that ASI, Pacific's separate advanced services affiliate, was obligated under section 251(c), to sell to competing carriers at a wholesale discount the advanced services it provides at retail. (*ASCENT*, 235 F.3d at 668.) In order to comply with this new requirement, ASI has negotiated and entered into an interconnection agreement with DSL.net to offer advanced services under terms and conditions that are consistent with section 251(c). Pacific submitted that agreement to the CPUC for approval. (Habeeb Aff.)

(1) Performance Results

[311] As well as in September 7, 1999 reply, March 6, 2000 supplemental and April 25, 2000 supplemental reply filings.

Pacific reports eight sub-measures monthly in the billing category of resale performance measures. Of the 24 billing opportunities, Pacific missed two between February and April 2001, for a 91.7% overall performance. It did not achieve the parity standard for resale services' billing on two occasions: in February for Measure 31 (Usage Completeness), and in April for Measure 33 (Non-recurring Charge Completeness). In the first instance, Pacific's performance measured 99.00% and the performance measurement for the CLECs was 98.78%. For the second instance, Pacific attributed the lower results to one-time adjustments for National Directory credits and the reconciliation of some errors in certain CLECs' initial resale bills. (Johnson Aff. ¶¶ 95-97.)

Pacific also reports a total of 425 sub-measures per month for ordering, provisioning and maintenance of resale services. Overall, from February through April 2001, Pacific met 96.9% of the 1275 opportunities with resale in all process categories. (*Id.* ¶ 148.) For provisioning, Pacific stated that its total performance of resale services met the established standards 98% of the time. However, Measure 5 (Percent of Orders Jeopardized) for resale Private Branch Exchange (PBX) services did not meet the parity standard in February and April. Of the 216 opportunities in Measure 7 for resale services, during this same time period, all but seven met the parity standard, with a corresponding percent of 97% met. (*Id.* ¶ 151.) All but four of the 216 opportunities for Measure 11 (Percent of Due Dates Missed) were met. Measure 12 (Percent of Missed Due Dates Due to a Lack of Facilities) accounted for four missed resale services' sub measures. (*Id.* ¶ 152-153.) Finally, for Measure 16 (Percent of Troubles in 30 Days for New Orders) provisioning of resale services achieved compliance 94% of the time. Of the 108 opportunities for this measure, only seven opportunities were not met. Pacific detailed the causes of each of the missed sub measures. In sum, Pacific asserted that its resale services' performance results demonstrated

that it had consistently provided these services to CLECs in a nondiscriminatory manner. (*Id.* ¶ 148.)

b) Interested Parties' Positions

In their August 23, 2001 responses, the CLECs and ORA allege that Pacific is not reselling Digital Subscriber Line (DSL)[312] service at wholesale rates and has evaded its resale obligation in the provision of DSL services.

According to AT&T, Pacific has consistently violated or circumvented the Act's resale requirements in an effort to impede competition in the provision of DSL Service. Under Checklist Item 14, Pacific is to fully implement the resale obligation of advanced services in accordance with Section 251(c)(4). AT&T maintains that by vacating the specific portion of the *SBC/Ameritech Merger Order* that it did, the US Court of Appeals for the District of Columbia Circuit asserted that the "Congress did not treat advanced services differently from other telecommunications services" in TA96, and SBC could not avoid its obligations under Section 251(c) by creating the subsidiary, Advance Solutions Inc. (ASI). (AT&T Brief at 70 (August 23, 2001).)

AT&T argues that Pacific appears to base its position on the notion that ASI provides no retail DSL service to customers. Up until May 2001, Pacific directly marketed DSL service, not only to ISPs, but also to end-user customers. Pacific offered DSL on its California web site both as a "service package" of DSL transport and Internet access and as a stand-alone service, which it described as "Custom service-DSL service only. Connect to your own Internet Service

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[312] DSL is a technology used to bring high-bandwidth information to homes and businesses over ordinary copper telephone lines. Carriers can provide DSL service via existing phone lines as well as over dedicated lines.

Provider."[313] In early June 2001, Pacific eliminated the "DSL service only" offering. Later that month, SBC announced that it would end all split billing arrangements with ISPs by the end of 2001. AT&T alleges that as late as August Pacific was billing end-users directly for DSL as a stand-alone service. Under the FCC's *Second Advanced Services Order*, Pacific is required to offer stand-alone DSL transport for resale at a wholesale discount because it offers it at retail to residential and business end-users. AT&T also contends that ASI's ICA with DSLnet Communications LLC (DSLnet) contains unreasonable and discriminatory terms. (*Id.* at 75.)

XO asserts that neither ASI's ICA with DSLnet, nor the generic ICA available for negotiation, automatically demonstrates that Pacific is providing advanced services in compliance with the FCC requirements. The restricted ICA between ASI-DSLnet deprives CLECs of competition using SBC-ASI's services. (XO 2001 Comments at 35-36.) WorldCom maintains that restricting resale service is an improper way for Pacific to control the market through vertical integration down to the retailer level, and is contrary to FCC precedent promoting resale of telecommunications services. (WorldCom 2001 Comments at 131.)

The Association of Communications Enterprises (ASCENT) states that competitors are looking to advanced services, rather than the traditional low speed spectrum of the public switched network, as a means to offer their own bundled telecommunications, Internet, and other enhanced service products in competition with ILECs. Among the services that ILECs must offer to

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[313] AT&T: Gregory H. Hoffman Decl. ¶ 3 and Ex. 1 (August 23, 2001).

competitors on a wholesale basis are xDSL-based advanced services. While an ILEC may provide such services exclusively through an affiliate, the Court of Appeals has held that such an arrangement does not allow the ILEC to avoid its wholesale service obligations under the Act. (ASCENT Comments[314] at Section II.)

ASCENT also points out that the SBC-ASI multi-state generic ICA referenced in Habeeb's Affidavit only allows resale of its DSL Transport Services "over a SBC ILEC-provided (not resold, non-UNE-P) retail Plain Old Telephone Services (POTS) line." Thus, competitive carriers are not allowed to provide resold xDSL based advanced services to their current voice customers or to offer prospective customers a range of services equivalent to those that Pacific can offer in conjunction with ASI. ASCENT submits that Pacific is utilizing an affiliate to avoid its section 251(c) obligations, which is the type of conduct the court ruled unlawful in the ASCENT decision. (*Id.* at Section II)

Citing California data, ORA argues that Pacific has failed to provide DSL in a competitive manner in the market. Instead of a competitive DSL market in California, Pacific's DSL market dominance (97% of the market) has been growing while the DSL market share of Pacific's competitors is shrinking. The majority of California ratepayers have no provider choice other than Pacific for DSL access service. ORA noted that Pacific limited its discussion of provisioning of resale DSL issues and ASI to assertions about the DSLnet agreement. Moreover, Pacific's compliance filing did not mention that the

[314] Includes concurrence by the California Association of Competitive Telecommunications Companies.

DSLnet agreement requires the CLEC signatory to agree to support SBC's federal 271 application. (ORA 2001 Brief at 16-18.)

3. Discussion

Our record review shows that Pacific is legally obligated to make retail telecommunications services available for resale in accordance with interconnection agreements and tariff.[315] (*See*, e.g. Pacific-AT&T Interconnection Agreement, Attachments 5 (Resale) and 8 (Pricing) ¶ 2.1 and Schedule Cal. P. U. C. No. 175-T.)

In its September 13, 2001 comments, Pacific responds that ASI is required to offer for resale its retail telecommunications services but not "advanced services" sold to ISPs. In order to comply with the *ASCENT* decision, ASI put forth an ICA through which DSLnet and other CLECs can resell ASI's retail telecommunications services. Those that dispute the adequacy of the DSLnet agreement ignore the limited scope of ASI's retail service offerings. The services subject to the resale provisions of Section 251(c)(4) are those telecommunications services that an ILEC provides at retail to subscribers who are not telecommunications carriers. Today in California, ASI offers three DSL-related services that fall into this category: grand-fathered residential DSL transport services, intrastate DSL transport service provided under ASI's DSL intrastate tariff, and customer service arrangements with business end-users. Pacific makes each of these categories of service available to CLECs at the wholesale discount required by law. (Habeeb Reply Aff. ¶¶ 3 and 7.)

Pacific denies that it is obligated to offer at wholesale discount the information services that its Internet affiliate, PBIS, provides at retail. It contends

[315] Scholl Aff. ¶ 109; Vandeloop Aff. ¶ 22 and Hopfinger Aff. ¶ 121.

that the FCC has consistently found that "Internet access services are appropriately classed as information, rather than telecommunication services." Pacific also disputes the commenters' assertion that, under the terms of the *ASCENT* decision, ASI is required to offer for resale not just its retail telecommunications services but its wholesale services as well. It insists that under the FCC's rules, telecommunications services offered as a component of the ISP's retail Internet service offering are outside the purview of Section 251(c)(4). (*Id.* at ¶ 3.)

In order to remove any confusion surrounding the wholesale nature of its DSL transport service, ASI has taken the step of eliminating the "split billing" option for ISPs. (*Id.* at 8.) While AT&T and XO take issue with the precise terms that ASI has negotiated with DSLnet, Pacific declares that AT&T has not sought to negotiate different terms with ASI. The Act sets forth procedures for negotiating, and if necessary, arbitrating interconnection agreements. Either of the two is the appropriate forum for resolving the issues AT&T raises. (*Id.* at ¶ 9.)

With respect to this checklist item, there are two critical questions before us. First, what is Pacific required to provide pursuant to § 271(c)(2)(B)(xiv) in light of the recent FCC Orders granting RBOCs entry into the long distance market and the *ASCENT* decision? Second, is Pacific reselling DSL at wholesale rate under § 251(c)(4)(A), without imposing discriminatory conditions on the resale of DSL in accordance with § 251(c)(4)(B)?

The January 2001 *ASCENT* decision held that "an ILEC [may not be permitted] to avoid § 251 (c) obligations as applied to advanced services by

setting up a wholly owned affiliate to offer those services."[316] The FCC has found compliance with all the checklist items in seven of its 271 Orders (applicable to nine states). Still, in four post-*ASCENT* 271 Orders, the FCC has raised concerns about the RBOCs' resale of advanced services.

In the *Verizon Connecticut Order*[317], the FCC ordered Verizon to make the voice and DSL service package that it provides to its own retail end-user customers available to resellers at a wholesale discount. The FCC did not accept Verizon's contention that it was not required to provide the resale of DSL services unless it also provided voice service on the line involved. The FCC, instead, required Verizon to demonstrate that its affiliate, Verizon Advanced Data Inc. (VADI), provides DSL and other advanced services following the dictates of the *ASCENT* Order consistent with Section 251(c)(4), which states that ILECs must offer for resale at wholesale rates any telecommunications service that they provide at retail:

> Verizon and VADI that are subject to same resale obligations, currently provide local exchange and DSL services to retail customers over the same line. Therefore…on a retail basis, these services are eligible for a wholesale discount under section 251(c)(4). [*Verizon Connecticut Order*, 16 FCC Rcd at ¶ 30 (July 20, 2001).]

The *Verizon Connecticut Order* also questioned the line sharing arrangement Verizon had with VADI, based on their understanding that the

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316 *ASCENT*, 235 F.3d at 668.

317 *Application of Verizon New York Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc. and Verizon Select Services, Inc. for Authorization to Provide In-Region, InterLATA Services in Connecticut*, CC Docket 01-100, Memorandum Opinion and Order, 16 FCC Rcd 14147,14160-14163 ¶¶ 28-33 (2001) (*Verizon Connecticut Order*).

FCC's line-sharing rules only required VADI to provide access to the high frequency portion of the loop for resale, when Verizon provided the underlying voice service over the line involved. Thus, VADI did not resell its DSL service when a CLEC provided voice service over the line involved. The FCC's *Verizon Connecticut Order* stated that Verizon had misapplied the FCC's line-sharing rules. It clarified that the DSL resale obligation extended to VADI irrespective of whether an ILEC or CLEC provides voice service over the line and concluded "in the light of the ASCENT decision, that VADI must permit resale of DSL by a CLEC over lines on which the CLEC provides voice service through Verizon service."[318]

The *Verizon Pennsylvania Order*[319] authorized Verizon's entry into that long distance market but, consistent with the *Verizon Connecticut Order*, stated that under Sections 251(c)(4) and 252(d)(3) of the Act, Verizon could not limit the resale of DSL to customers that also received Verizon retail voice service. (*Verizon Pennsylvania Order*, 16 FCC Rcd at ¶ 93.)

In the *Arkansas/Missouri Order*[320], the FCC noted the number of unresolved DSL issues but concluded, "neither the Act [Telecommunications Act

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[318] *Id.*, 16 FCC Rcd at¶ 33.

[319] *Application of Verizon Pennsylvania Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks, Inc., and Verizon Select Common services Inc. for Authorization To Provide In-Region, InterLATA Services in Pennsylvania*, CC Docket No. 01-138, Memorandum Opinion and Order, 16 FCC Rcd (2001) (Verizon Pennsylvania Order).

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

of 1996] nor Commission precedent explicitly addresses the unique facts or legal issues raised in the case. The Commission [FCC] has not addressed the situation where an incumbent LEC does not offer DSL transport at retail, but instead offers only an Internet access service." (*Arkansas/Missouri Order*, 16 FCC Rcd at ¶82.) The FCC authorized SBC to enter the long distance markets in those states but stated that it would open a separate proceeding to look into the advanced services issues.

Pacific insists that it does not provide retail DSL service because ASI's business consists of selling wholesale DSL Transport services to ISPs, and wholesale services are not subject to the resale obligation, and required wholesale discount, under Section 251(c)(4). ISPs who purchase DSL Transport service from ASI bundle that service with their own Internet access services and sell the resulting service, DSL Internet Access Service, to end-user customers. DSL Internet access service is an information service and not a telecommunications service. Thus, Pacific claims that neither service - from ASI or PBIS - is subject to § 251(c)(4) under the *Second Report*.[321]

While it is clear that the services PBIS offers by itself are not telecommunications services, PBIS also does not offer DSL services "at retail" as defined by the *Second Report*. However, we must read the *Second Report* in conjunction with the subsequently issued *ASCENT* decision. In *ASCENT*, the court vacated the portions of the FCC Merger Order, which "permitted the new company to offer advanced services through a separate affiliate and, by doing so, avoid § 251(c)'s duties." The Court held that since Congress "prescribed no such

[321] Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147, Second Report and Order, 14 FCC Rcd 19237 (1999) (Second Report).

affiliate structure for advanced services, we must assume that Congress did not intend for § 251(c)(4)'s obligations to be avoided by the use of such an affiliate."

The record, which includes Pacific's statements and the marketing information from its web site, demonstrates that PBIS' services are designed for, and sold to residential and business end-users. The DSL Transport Services provided to PBIS by ASI, are telecommunications services that enable PBIS to offer its services to end-users. Without the DSL Transport Services provided to PBIS by ASI, PBIS could not reach its end-users. Under *ASCENT*, an ILEC cannot set up a wholly owned affiliate that offers advanced services in order to avoid its resale obligations under § 251(c)(4). Notwithstanding the *Second Report*'s definition of "at retail," current law does not allow an ILEC to achieve with two affiliates what it cannot achieve with one.

PBIS is not simply an ISP that combines DSL service with its own Internet service. Pacific affiliate PBIS receives DSL services from Pacific affiliate ASI, and those advanced telecommunications services become PBIS' retail services. Indeed, it is the affiliation between the three -- Pacific, ASI and PBIS -- that effectively creates Pacific's provision of DSL Transport Services at retail. The *Second Report* and 47 C.F.R. § 51.605(c) do not alter this fact.

California is the nation's most populous state. Representing the world's sixth largest economy, with a gross state product of $1.21 trillion, there is significant potential for the growth of advanced services here. Pacific's DSL market dominance in California is increasing while its competitors' DSL market share is shrinking. As ORA notes, the majority of California ratepayers have no provider choice other than Pacific for DSL access service. In the absence of a discounted DSL market, competition in California will fester in the midst of the Pacific, ASI, and PBIS integration. Thus, we find that Pacific has erected

unreasonable barriers to entry in California's DSL market both by not complying with its resale obligation with respect to its advanced services pursuant to § 251(c)(4)(A) and by offering restrictive conditions in the ASI-CLEC agreements in contravention of §251(c)(4)(B). To be in full compliance with the requirements of Checklist Item 14, Pacific must remove the barriers to entry of the California DSL market and meet its resale obligation of advanced services. Accordingly, we find that Pacific has not satisfied the requirements of Checklist Item 14, and we decline to verify compliance thereof.

V. CPUC Performance Incentives Plan

Beginning with April 2002 performance, Pacific implemented the OSS performance monitoring and enforcement mechanisms contained in the Commission's performance incentives plan ("PIP").[322] To ensure that an ILEC's application for Section 271 approval is in the public interest, the FCC has listed five important characteristics for a performance incentives plan.[323] The CPUC's performance incentives plan has these characteristics.

- potential liability that provides a meaningful and significant incentive to comply with the designated performance standards;
- clearly-articulated, pre-determined measures and standards, which encompass a comprehensive range of carrier-to-carrier performance;
- a reasonable structure that is designed to detect and sanction poor performance when it occurs;
- a self-executing mechanism that does not leave the door open unreasonably to litigation and appeal;

[322] Established in D.02-03-023.

[323] *Bell Atlantic New York Order*, 15 FCC Rcd at ¶ 433.

- and reasonable assurances that the reported data is accurate.

The PIP was developed in three parts: performance measurement and standards, performance assessment, and performance incentives. On August 5, 1999 we adopted the parties' Joint Partial Settlement Agreement (*JPSA*) in D.99-08-020, which established performance measurements and standards for Pacific.[324] We established the basic performance assessment methods, including statistical tests and criteria, in D.01-01-037, on January 18, 2001. We completed a performance incentives plan for Pacific on March 6, 2002, in D.02-03-023 by establishing the monetary incentive amounts to be generated by deficient performance. We refer the reader to these decisions for details of the performance incentives plan.[325] Some of the highlights of the plan are as follows.

A. Performance measurement and standards

Extensive collaboration between the parties in this proceeding resulted in a set of forty-four OSS performance measures that cover a wide range of OSS performance. These measures track performance in nine areas: pre-ordering, ordering, provisioning, maintenance, network performance, billing, database updates, collocation, and interfaces. Appendix III lists the measures in each area. Where applicable, these measures are broken down into sub-measures. Sub-measures were constructed to track performance separately for different service types, for different regions, and for other service distinctions such as the necessity for fieldwork or line conditioning. For example, provisioning time is

[324] On May 24, 2001, we adopted changes to the *JPSA* in D.01-05-087. Although not as complete, performance measurements and standards for Verizon California were also established in the *JPSA*.

[325] We also make several updates or modifications to the PIP, *infra.*

tracked with separate sub-measures for different service types such as *Resale Business POTS*, *Resale Residential POTS*, *Resale Centrex*, *Resale PBX*, *Resale DS1*, *UNE loop 8db weighted 2/4 wire analog basic/coin*, *UNE Loop 2 wire Digital xDSL capable*, and many others. For many measures, complete sets of sub-measures track performance separately for four regions, LA, Bay Area, North, and South regions.[326] Two examples of separate sub-measures with service type, regional, and other service distinctions are: *Bay Area Resale Business POTS No Field Work, Bay Area Retail Business POTS Field Work.*

Not all measures or sub-measures are included in the PIP. By design some measures were excluded by parties' agreement that they were either duplicative of other measures or currently used only for diagnostic purposes. Out of the forty-four measures, thirty-nine are used in the PIP.[327] In April 2002, with 126 active CLECs, 592 sub-measures produced testable data, resulting in 5867 CLEC-specific performance results.[328]

The performance measures consist of two basic types: "parity" and "benchmark" measures. Parity measures are used where Pacific's performance to CLEC customers can be compared to Pacific's performance to its own

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[326] North and South regions encompass the North and South portions of the state except for the LA and San Francisco/Oakland Bay areas. Measures for statewide services, such as billing, interface availability, and network performance are only measured statewide and not regionally.

[327] Three of these thirty-nine measures are not currently operational. Measure 4 (*Percentage of Flowthrough Orders*) has not been implemented because parties have not agreed on its definition. Measures 29 (*Accuracy of Usage Feed*) and 36 (*Accuracy of Mechanized Bill Feed*) depend on data from the CLECs that the CLECs currently are not submitting.

[328] While there are over 1,500 possible sub-measures, many are not utilized due to CLEC inactivity or definitions yet "to be determined."

customers because these measures are only possible where Pacific provides the same service for its own customers, termed a "retail analog." Absolute "benchmark" measures are used where there is no retail analog. For example, where a retail analog exists, a parity standard might compare the average time to provision a new service for CLEC customers to the average time for the same activity for Pacific's customers. In contrast, where there is no retail analog, a benchmark might require that ninety-five percent of new CLEC installations be completed within five days.

Performance is measured in five ways for parity and benchmark measures: averages, percentages, rates, indexes, and counts.[329] The following examples illustrate these measures.[330] An average measure compares the average service installation time for CLEC customers either to the average installation time for Pacific's customers (parity) or to a specific average (benchmark). A percentage measure compares the percentage of due dates missed for CLEC customers either to the percentage of due dates missed for Pacific's customers (parity) or to a specific percentage (benchmark). A rate measure compares CLEC customer trouble report rates either to Pacific's customer trouble report rates (parity) or to a specific rate (benchmark). An index measure compares the percentage of time an interface is available to the CLECs either to an index of the time it is available to Pacific (parity), or to a specific percentage (benchmark). The index measure differs from percentage measures in the way it is assessed, as discussed *infra*. A

[329] One exception is that there is no "count" measure for parity comparisons.

[330] These descriptions are simplified for the purpose of illustrating the measures and do not necessarily document actual measure specifications.

count measure allows a certain number of events, such as no more than one repeat trouble in a 30-day period.

As discussed, *supra*,[331] the measurements and the rules established to generate the reported performance data have been audited and determined to be consistent with the rules that define and make the measures operational. Additionally, aided by an external consultant, staff conducted an accuracy check of the data and found problems that were corrected. (*Initial Report on OSS Performance Results Replication and Assessment*, Telecommunications Division, (June 15, 2001).)

B. Performance Assessment

While the parties agreed on many issues, they were unable to agree on a complete set of performance assessment methods and criteria. To resolve the disputes that remained, we constructed the final assessment method and established the test criteria. We briefly describe the assessments we established.

Different measures require different tests to identify deficient performance, or "failures." Statistical tests are applied to parity measures to distinguish differences likely caused by random variation from differences likely caused by poor performance to CLEC customers. (*Interim Opinion on Performance Incentives*, D.01-01-037 at 58 - 129 (January 18, 2001).)[332] For average-based measures, a *t*-test is applied to log-transformed scores. Log transformations are used for time-measure data since the distribution of raw scores is skewed, as is typical for time-to-complete-task data. The transformations bring the data closer

[331] See the earlier section discussing the PriceWaterhouseCoopers' audit.

[332] Readers unfamiliar with statistics, or those who prefer a more detailed description of these tests, should refer to these decision pages.

to the normal curve distribution that is assumed for the *t*-test.[333] For percentage-based parity measures, a Fisher's Exact Test is used on the original non-transformed data. For rate-based measures, a binomial exact test is used, also on the original non-transformed data.

Different critical alpha levels are used in an attempt to control the Type I error probabilities without allowing excessive Type II error, or beta levels. *Id.* at 83 - 98. We selected a default critical alpha level of 0.10, because we discovered that the beta levels were considerably greater than the conventional 0.05 alpha levels. *Id.* at 92 - 93. While a 0.10 alpha level still does not balance the two types of error, it reduces the imbalance.[334] For assessments of performance in consecutive months, we selected a 0.20 alpha level because the test requirement for consecutive "failures" greatly reduces the net alpha level. (*Opinion on the Performance Incentives Plan for Pacific Bell Telephone Company* D.02-03-023 at 39 - 41, 51- 52 (March 6, 2002).) (*Plan Opinion*). We selected a 0.20 alpha level for individual CLEC small sample tests for sub-measures where the CLEC industry aggregate failed. The likelihood of a Type II error increases with small samples and where information suggests that the overall process is not in parity. (*Incentives Opinion* at 66, *Plan Opinion* at 39 - 41.) In a complementary fashion we selected a 0.05 alpha level for the largest samples, and for moderately large samples where the CLEC industry aggregate "passed."

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[333] See Id. at 113 – 116 and App. J for a detailed discussion of log transformations.

[334] Calculation of beta levels assumes a certain level of deficient performance for statistical detection. We refer the reader to sections on critical alphas and beta levels in D.01-01-037 and D.02-03-023 for the assumptions behind our findings regarding beta levels.

Benchmark assessments are simple comparisons without statistical tests. For the larger samples, performance to CLEC customers is compared to the specific standard as established in the *JPSA*. For the smaller samples, a "small sample adjustment table" is used to account for the fact that even when CLEC customers as a whole receive performance easily meeting the benchmark, small samples can fail the benchmark. For example, if twenty CLECs each placed one order, and only one of those twenty orders was not completed with in the specified time, 95% of the orders would have been completed within the allowed time. With a benchmark of 90%, overall performance would easily pass. However, at the individual CLEC level, nineteen would pass and one would fail. The failure is inevitable in this case since with only one order, the CLEC with the order not completed within the allowed time would have a zero-percent result. Small sample adjustment tables adjust for this problem by allowing a few more "misses" than allowed by the benchmark.[335]

Index measures are similar to parity and benchmark measures except that they have neither statistical tests nor small sample adjustment tables. Count measures also do not have statistical tests or small sample adjustment tables.

We established two "consecutive failure" definitions. First, if a sub-measure "fails" three months in a row, it is termed a "chronic failure." Second, if a sub-measure fails five or six out of six months it is termed an "extended chronic failure."[336]

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[335] Small sample adjustment tables are not used when the aggregate result fails.

[336] Additionally, as discussed in this decision *infra*, we add a third consecutive failure definition, "continuing extended chronic failure."

C. Performance incentives

Instead of outright payments to CLECs or the state general fund as many other states have required, our incentives are billing credits to CLECs and ratepayers. Monetary amounts generated by deficient performance to individual CLECs become billing credits to those CLECs (Tier I). Amounts generated by deficient performance to the CLEC industry as a whole become billing credits to the ratepayers (Tier II). If the amount to be credited to a CLEC exceeds the CLEC's billing, the excess amount is credited to the ratepayers.

We have established limits, or caps, to the credits that Pacific must issue. First, the overall annual cap equals thirty-six percent of Pacific's annual net return from local exchange service in California. The FCC has approved several other states' performance incentive plans with this same percentage of net return liability, viewing it as a reasonably sufficient amount to motivate OSS performance. (*Plan Opinion* at 82.)

Thirty-six percent of net return from local exchange service in 2001 equals approximately $601 million. The cap applies monthly at one-twelfth of this amount: approximately $50 million. Second, credits are capped at about $16.4 million per month without formal review. We allow Pacific a formal review before requiring incentive amounts between $16.4 and $50 million per month. The credit amounts to individual CLECs are only limited by their billing totals.

Our plan is self-executing. Data recording, assessment, and credit generation is automated. Incentive credits are made without further review, unless the procedural caps are reached.

Our incentive amounts are scaled to performance in a "curvilinear" fashion. Our plan generates relatively smaller percentages of the cap for smaller failure rates and then accelerates the incentive percentages as performance worsens. That is, rather than requiring ten percent of the cap to be credited for a

ten percent failure rate, twenty percent of the cap for a twenty percent failure rate, and so forth, we have targeted a four percent incentive amount for a ten percent failure rate, a sixteen percent amount for a twenty percent failure rate, a thirty percent amount for a twenty-five percent failure rate, up to 100 percent of the cap for a fifty percent failure rate. (*Plan Opinion* at 46.)

Our PIP was not scaled to absolute amounts; it was scaled to match specific percentages of deficient performance with specific percentages of net return. (Id. at 46 - 48 and App. G.) In the *Plan Opinion*, we explicitly required Pacific to update the incentive cap after new ARMIS data is posted each April. (*Id.* at 21 and App. J at 1.) We did not *explicitly* require that the incentive amounts themselves be updated even though they are based on the cap. ARMIS data shows that Pacific's annual net return increased by 9.28 percent from 2000 to 2001.[337] However, Pacific has informally agreed to adjust incentive amounts that are less than the cap. We will make this requirement explicit as well, *infra.* Pacific shall update these amounts beginning with the May 2002 performance. The caps, the base amount and the parity simulation payment-reduction amount will be increased by 9.28 percent for the months of May 2002 through April 2003, and will be adjusted with the same timing and method thereafter.

We also recognize that even with perfect performance, residual Type I errors could result in Pacific having to credit significant amounts to the CLECs and ratepayers even though they experienced no actual performance discrimination. To provide some mitigation for this event, we allow Pacific to discount the credit amounts generated by the plan when performance reaches

[337] Pacific's net return from local exchange service in California was $1,527,942,000 in 2000, and $1,669,771 in 2001. See http://www.fcc.gov/wcb/armis/db/ and the *Incentives Opinion*, App. C.

performance levels matching or exceeding the parity simulations we established in D.02-03-023. (*Id.* at App. J, § 3.9.) The discount is designed to match the amount generated by the plan so Pacific will not be liable for giving credits to the CLECs and ratepayers when performance is optimal.

Pacific implemented our performance incentives plan beginning with performance for the month of April 2002. Pacific's "failure rate" for individual CLEC results in Category A was 6.7 percent, and the plan generated incentive amounts totaling $673,390. Pacific credited $532,880 to the CLECs and $140,510 to the ratepayers.[338] A more detailed summary of the credits from the first month's implementation is provided in Appendix IV.

Parties have raised concerns that our PIP does not provide sufficiently strong incentives for chronically deficient performance. (*Application for Rehearing of Opinion on the Performance Incentives Plan for Pacific Bell Telephone Company*, Participating CLECs[339] at 13 (April 8, 2002).) The possibility remains that Pacific could treat the incentive credits generated by extended chronic failures as the "cost of doing business." While this issue may have seemed moot insofar as we have only constructed a plan for an initial six-month implementation period, we find it prudent to establish a contingency mechanism to fill any gap that may arise between the end of the six-month period and the adoption of any necessary revisions. In this regard, we find that it is important to continue the current PIP until it is revised regardless of the time it might take to revise it. Additionally,

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[338] Preliminary figures indicate lesser rates and amounts for May performance, likely because April performance included a conversion to a new OSS system, causing performance decrements, which were resolved by May.

[339] AT&T, New Edge Networks, PacWest, WorldCom, and XO.

we find it important to add an additional treatment for deficient performance that may continue beyond the six-month period.

It is difficult to know with confidence what incentive amounts will actually motivate the desired OSS performance. However, if OSS performance for a particular sub-measure continued to be deficient for longer than six consecutive months,[340] it would be reasonably clear that the amounts were too low, and that Pacific may be treating the incentive amounts as the "cost of doing business." To provide stronger incentives when such performance continues past six months, it will be reasonable to increase the incentive amount for any such sub-measure. Not only are such continuing performance "failures" increasingly accurate assessments, but they also represent increasing competitive harm. To provide incentives to prevent such continuous deficient performance we will automatically increase the payments for months with deficient performance when an "extended chronic failure" continues.[341] When an extended chronic failure occurs three or more months in a row, payments for a failure will be doubled from that required for an extended chronic failure for that month.[342] Every three months thereafter, incentive amounts will be doubled again for

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[340] Or continues to be an "extended chronic failure," which is identified as five "failures" in any consecutive six-months, with the higher incentive amounts continuing in months that "fail" until two consecutive months "pass."

[341] We will apply this feature to both Tier I and Tier II assessments, even though currently there is no "extended chronic failure" assessment for Tier II. This feature will be applied beginning at the ninth month "as if" Tier II had "extended chronic failure" assessments.

[342] For this to occur, performance would have to have been identified as failing eight or nine months in a nine-month period.

continuing extended chronic failures.[343] For example, after twelve or fifteen months of continuing extended chronic failures, the incentive credits would be four or eight times the amount required for extended chronic failure for those months, respectively.[344] Additionally, since continuing extended chronic failures would indicate that Pacific is not providing parity OSS performance, Pacific should not be eligible for mitigation under section 3.9 of the PIP. (See *Plan Opinion* at App. J. at 10.)

VI. California Public Utilities Code Section 709.2

A. Background

California Public Utilities Code Section 709.2 (Section 709.2)[345], enacted in 1994, requires the CPUC to make four essential determinations prior to "authorizing or directing competition" in the intrastate interLATA market. These determinations include: 1) that competitors have fair, nondiscriminatory access to exchanges; 2) that there is no anticompetitive behavior by the local exchange telephone corporation, including unfair use of subscriber contacts generated by the provision of local exchange telephone service; 3) that there is no improper

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[343] An extended chronic failure continues until two consecutive months "pass," even though no incentive credits are generated for the single months where performance is not identified as failing.

[344] The probability of a Type I error, or net critical alpha, decreases as the test requires failures in more consecutive months. For example, with a single-month 0.20 critical alpha, under parity conditions, failing five or more times out of six consecutive months has a probability of 0.0016; failing eight or more times out of nine consecutive months has a probability of 0.000019; failing ten or more times out of twelve consecutive months has a probability of 0.0000045; and failing twelve or more times out of fifteen consecutive months has a probability of 0.000001.

[345] Also referred to as the "Costa Bill," AB 3720.

cross-subsidization of interexchange telecommunications service; and 4) that there is "no substantial possibility of harm" to the competitive intrastate interexchange telecommunications markets. (§§ 709.2(c)(1)-(4).)

The complex relationship between §§ 709.2 and 271 merits discussion. Apart from the jurisdictional distinction, the key difference between the two code sections lies in the sector of the telecommunications market each one addresses. Section 271 approaches the accessibility of the local exchange market through satisfaction of the 14-point checklist. It also allows consideration of the public interest assessment of a BOC's entry into the long distance market. Section 709.2 addresses the health of the intrastate interLATA telecommunications, or IEC, market, and assesses the public interest from that perspective.

Signed into law two years before TA96, the language in § 709.2 borrows heavily from the Modified Final Judgment (MFJ),[346] the federal decision that structurally separated AT&T. Because TA96 "replaced" the MFJ, the parties have vigorously debated the validity of applying competitive standards lifted from the MFJ in determining satisfaction of § 709.2 requirements. The competitors urge going back to various terms within the MFJ in order to understand the context of the words used. Pacific insists that § 709.2 can only be read in the shadow of § 271,[347] although since the passage of Section 271 there has been no amendment of the state law.

Heretofore, the CPUC has addressed § 709.2 only to a limited extent. In 1998, in this docket, we indicated that our § 709.2 assessment would be

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[346] *United States v. AT&T*, 552 F. Supp. 131, 227 (D.D.C. 1982) (*MFJ Decision*), *aff'd mem.*, 460 U.S. 1001 (1983).

[347] Pacific Bell Brief on Section 709.2 at 2-5; Young Declaration generally.

performed in a separate phase. (D.98-12-069, *mimeo.* at 199.) While the parties in Pacific Bell Communications' (PB Com)[348] 1996 application for a certificate of public convenience and necessity[349] to provide long distance invoked § 709.2, we made no findings of fact or conclusions of law regarding that section in D.99-02-013. Instead, we stated that we would make determinations regarding Pacific's compliance with § 709.2 in a separate forum. Finally, by ruling in March 2001, the Assigned Commissioner affirmed that § 709.2 would be addressed herein.

In May 2001, the Assigned Commissioner adopted a two-step process to focus the issues of the assessment phase. First, he directed Pacific to file "in support of its showing, copies of the particular documents, affidavits, statements, exhibits, etc. that it intends to rely upon to enable [the CPUC] to the make the four required determinations." (*Assigned Commissioner's Ruling on the Motion Regarding Public Utilities Code Section 709.2* at 6 (May 4, 2001).) Then, he set a schedule for the other parties to submit their fully documented responsive cases.

In June, Pacific separately filed its Section 709.2 showing concurrent with the copy of its draft Section 271 application. Interested parties responded in August, and Pacific replied in September. The parties presented oral arguments on their § 709.2 submissions before the Assigned Commissioner and ALJ on December 3-5, 2001.

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[348] PB COM's name was eventually changed to SBC Long Distance.

[349] *Application of Pacific Bell Communications for a Certificate of Public Convenience and Necessity to Provide InterLATA, IntraLATA and Local Exchange Telecommunications Services Within the State of California,* A.96-03-007, D.99-02-013, 1999 Cal. PUC LEXIS 13 (February 4, 1999).

B. Summary of Positions

Pacific argues that § 709.2 was litigated in the PB Com proceeding, and was resolved in its favor. (§ 709.2 Showing, § I at 2-5.) It also asserts that the Section 271 record overall satisfies the requirements of the state law. And, any CPUC finding imposing conditions, other than those contained in the 14-point checklist, on Pacific's entry into the long distance market would be contrary to law and preempted. (*Id*., section II, A-D at 5-12; section III at 12-13.)

Some respondents insist that the CPUC did not determine Pacific's § 709.2 compliance in the PB Com case, noting the absence of associated findings of fact and/or conclusions of law. Others, citing the more than five-year old data on which the PB Com decision was based, contend Pacific's compliance under § 709.2 merits renewed analysis and nothing in the code section or D.99-02-013 precludes or prevents the CPUC from doing such. (AT&T Brief at 7-8; Comments of WorldCom at 4-5.)

Respondents also contend that TA96 neither subsumes nor preempts § 709.2 because § 271 does not address interexchange carriers, and § 253(b),[350] 261 (b),[351] and 601(c)(1),[352] of the Act permit the CPUC to carry out its state

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[350] Section 253(b): "Nothing in this section shall affect the ability of a State to impose, on a competitively neutral basis and consistent with § 254, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers."

[351] Section 261(b): "Nothing in this part shall be construed to prohibit any State commission from enforcing regulations prescribed prior to the date of enactment of the Telecommunications Act of 1996, or from prescribing regulations after such date of enactment, in fulfilling the requirements of this part, if such regulations are not inconsistent with the provisions of this part."

responsibilities under § 709.2. (Response of Pac-West and Working Assets Long Distance[353] at 9; ORA Brief at 49-52; Comments of CCTA at 7-10; AT&T Brief at 7-8; and Comments of WorldCom at 5-11 (August 23, 2001).)

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[352] Section 601(c)(1) states: "This Act and the amendments made by this Act shall not be construed to modify, impair, or supersede Federal, State or local law unless expressly so provided in such Act or amendments."

[353] The Pac-West/Working Assets Long Distance response is cited as Pac-West/WA throughout this section.

C. Open Access to Exchanges

1. Does the record support the determination that all competitors have fair, nondiscriminatory, and mutually open access to exchanges currently subject to the modified final judgment, including fair unbundling of exchange facilities, as prescribed in the commission's Open Access and Network Architecture Development Proceeding (I.93-04-003354 and R.93-04-003)? (§ 709.2(c)(1))

Pacific states that the record before the CPUC establishing compliance with § 271 likewise supports a determination that it provides nondiscriminatory access to facilities, including unbundling as prescribed in the OANAD Proceeding. It maintains that it has put forth documents demonstrating that it has provided interconnection that is at least "equal in quality" to that provided to itself or to any subsidiary, on nondiscriminatory terms and conditions.[355] (See Hopfinger Aff. ¶¶ 30-84; Deere Aff. ¶¶ 14-35.) Pacific also provides nondiscriminatory access to network elements, polls, ducts, conduits, local loop transmission, local transport, 911 and E911 services, directory assistance, and operator call completion. (See Hopfinger Aff. ¶¶ 85-106; Deere Aff. ¶¶ 36-156; Vandeloop Aff.; Young Declaration, Exhibit D; see generally Huston/Lawson Joint Aff. (OSS); Flynn Aff. (billing).) In addition, it provides nondiscriminatory access to white page directory listings, telephone numbers, telephone number portability, information necessary to provide dialing parity, databases, and associated signaling for call routing. (See Deere Aff. ¶¶ 157-185, 186-199; see generally Rogers Aff.; Mondon Number Admin. Aff.; Mondon LNP Aff.)

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354 The actual docket number is I.93-04-002.

355 47 U.S.C. §§ 271(c)(2)(B)(i), 251(c)(2), 252(d)(1).

The competitors argue that Pacific has failed to satisfactorily open its exchange to competition. (AT&T Brief at 14-20; WorldCom Comments at 59-63; Pac-West/WA at 11-14.) They contend that separate OSS systems present an inherent inequality in the way that Pacific handles access to its exchanges in a competitive environment. (Pac-West/WA Response at 12.) They also insist that several currently open CPUC proceedings are essential to determining the openness of Pacific's network. Such proceedings include Collocation, Geographic Loop Deaveraging, Line Splitting and Line-Sharing, OSS Performance Incentives, and Revised UNE Pricing. Without the resolution of these proceedings any judgment about Pacific's satisfaction of the requirements of section 709.2 will be inadequate. (Pac-West/WA Response at 13-14.)

2. Discussion

In specifically analyzing this docket's sizeable record in the above § 271 chapters, we find that Pacific has demonstrated that it has provided substantially fair, nondiscriminatory, open access to exchanges, including fair unbundling of exchange facilities. While we understand parties' frustrations with the time that it has taken to resolve a number of the integral telecommunications proceedings, we have issued decisions on geographic deaveraging, performance incentives and revised UNE pricing[356] within the last year. In addition, we have interim collocation rates in place; we have interim rates and terms on line splitting and line sharing,[357] and a draft decision establishing permanent rates for line

[356] With the full cooperation of the parties, we intend to move forward on permanent UNE prices as expeditiously as we can schedule it.

[357] Pursuant to D.00-09-074.

sharing[358] is currently before the CPUC. Thus, we have sufficient data to determine the openness of Pacific's network. Overall, we find that all competitors generally have fair, nondiscriminatory, and mutually open access to exchanges[359] and interexchange facilities, including fair unbundling of exchange facilities, as prescribed in the CPUC's OANAD proceeding.

D. No Anticompetitive Behavior

1. Does the record support the determination that there is no anticompetitive behavior by the local exchange telephone corporation, including unfair use of subscriber information or unfair use of customer contacts generated by the local exchange telephone corporation's provision of local exchange telephone service? (§ 709.2(c)(2))

Pacific maintains that the CPUC in the PB Com proceeding adopted specific conditions to address any of its alleged anticompetitive behavior,[360] or concluded that proper safeguards were already in place. Moreover, TA96 was designed to prevent and detect such alleged behavior by BOCs and has been implemented by the FCC to that end. (Pacific Compliance Brief at 8.) In PB Com, the CPUC held that it would adopt the 'guidelines of the FCC's CPNI Order[361] in dealing with Pacific Bell's marketing of its own services and use of customer

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[358] The draft adopts permanent UNE rates for the High Frequency Portion of the Loop for both Pacific and Verizon California Inc.

[359] Section 709.2(c)(1) specifies exchanges "currently subject to the modified final judgment." Such exchanges are now subject to TA96.

[360] "[A]lleged misuse of market power in local exchange markets or long distance markets, alleged price squeezes, discrimination in providing services, and alleged cross subsidies." (Pacific's Section 709.2 Compliance Brief at 8.)

[361] Customers' Proprietary Network Information

records' and that this was 'fair both for purposes of the Telecommunications Act and California's Costa Bill.' (*Id.* at 9.)

TA96 has established structural and transactional requirements, operational independence, separate books and records, audits, and nondiscrimination safeguards to prevent anticompetitive behavior. And, Pacific asserts that it complies with these safeguards. (See generally Heinrichs Aff.; Yohe Aff.; Carrisalez Aff.) Finally, California's adopted performance measures and incentive plan will disclose, and allow competitors and the CPUC to correct any real performance problems, whether the result of anticompetitive conduct or otherwise. (*See* Johnson Aff. ¶¶ 7-8, 15-45,153-175.)

In response, the interested parties enumerate ongoing and recently past practices of Pacific and SBC that they characterize as anticompetitive. They also discuss putative Pacific plans for the future that cause them great concern. Several parties contend that Pacific has misused customer contact and CPNI data in the past, and plans to use inappropriate customer contact to sell its long distance affiliate's service. (AT&T Brief at 27-36 ; TCIXC at 2-3, 5-6; CISPA at 15-16; Pac-West/WA at 15, Selwyn Aff.) Certain parties regard the deficiencies Pacific has not addressed in the CLEC forum as indicative of anticompetitive behavior. (Pac-West/WA at 15; AT&T Brief at 31.) Pac-West/WA alleges that Pacific unilaterally discontinued the CESAR system used by CLECs because of contractual misunderstandings. This discontinuation has disadvantaged the CLECs. It also condemns Pacific's joint marketing activities and structure. (Pac-West/WA at 15, 18, Sprague Aff.)

Pac-West/WA and AT&T urge the CPUC to consider recent and past behavior of Pacific's parent, SBC, in its assessment of Pacific pursuant to § 709.2(c)(2). They note that SBC and its affiliates have incurred more than $100 million in fines for failure to meet federal regulatory requirements. SBC

material submitted in two 271 applications was investigated for misinformation by the FCC.[362] According to the two competitors, SBC considers fines for failure to meet regulatory requirements a cost of business. (Pac-West/WA at 16-18; AT&T at 31, 33-36.) Pac-West/WA asserts that SBC has raised rates in states where it has gained long distance entry.

2. Discussion

Section 709.2(c)(2) directs us to determine that there is no evidence of anticompetitive behavior by Pacific. The parties have presented evidence of recent and past anticompetitive behavior by Pacific and its parent, SBC, in California and elsewhere in the nation. They have also presented evidence of current and past behavior by Pacific that can most appropriately be characterized as "aggressively competitive" rather than anticompetitive in fact.

Our record includes documents regarding a 1996 federal lawsuit that AT&T, MCI[363] and Sprint brought against Pacific and its affiliates, seeking among other things "a preliminary injunction preventing Pacific's planned use of the long distance carriers' billing information in connection with the Pacific Bell Extras program.[364]" (*Id.* at 28-29.) On July 3, 1996, the U.S. District Court for the

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[362] We take official notice that on May 28, 2002, the FCC entered into a Consent Decree with SBC resolving two FCC investigations concerning inaccurate information SBC submitted to the FCC in affidavits supporting two separate section 271 applications to provide long distance service in Missouri, Oklahoma and Kansas. SBC agreed to pay $3.6 million to the U.S. Treasury under the decree. (See FCC 02-153 (May 22, 2002).)

[363] Prior to its merger with WorldCom.

[364] As described by AT&T, the program "awarded 'points' to customers for every dollar billed by Pacific, including long distance services provided by AT&T and other interexchange carriers. Before the customer could receive points, however, Pacific required the customer to complete an 'enrollment ' form. Buried at the bottom of the form, in tiny print, was language that purportedly 'authorized' Pacific to use 'any and

Footnote continued on next page

Northern District of California found for the interexchange carriers on three grounds[365] and granted their preliminary injunction. The court's order was subsequently appealed to the U.S. Court of Appeals for the 9th Circuit, which remanded the case to the District Court for further hearing. The matter was settled prior to that hearing.

The record also includes statements recounting the December 2000 jury verdict in the CalTech International Telecom Corporation (CalTech International) proceeding,[366] which found Pacific liable for unlawful monopolization of the local exchange telephone market in California under 15 U.S.C. § 2 and awarded money damages to CLEC CalTech International. The parties ultimately settled the case, and a judgment was not entered against Pacific.

Pacific replies that the competitors have collected a series of past occurrences, anecdotal complaints and disgruntled policy views to support their position. We find that the record contains more than that. Although eventually settled, the two federal court proceedings present findings of anticompetitive conduct. The case regarding AT&T, MCI and Sprint also involved the "unfair use of customer contacts generated... by the provision of local exchange

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all' information from the customer's telephone bill for any purpose it wanted, and further authorized Pacific to provide information to any of its affiliates, including its long distance affiliate, Pacific Bell Communications. There were no restrictions on how Pacific and its affiliates could use the information." (AT&T's Opposition to Pacific's Section 709.2 Showing at 28.)

[365] 1) A breach of the billing agreements; 2) "a violation of section 222(a) of the Communications Act of 1934, as amended by the 1996 Act, which requires every telecommunications carrier to protect the confidentiality of proprietary information of other telecommunications carriers"; and 3) a misappropriation of trade secrets in the form of proprietary billing databases. (Id.)

[366] Case No. 97-2105-CAL.

telephone service." (Section 709.2(c)(2).) The CalTech International case found "unlawful monopolization," and was rendered less than two years ago. Still, even if we were to consider these two cases too remote for consideration, this record contains matters that we must weigh in their stead.

The parties have presented evidence of Pacific's joint marketing plans as well as future opportunities of which Pacific will take advantage to the detriment of its local and intrastate long distance competitors. Pacific's response to the joint marketing allegations and the substantiating evidence submitted is to state that its proposed marketing plan is consistent with § 272 of TA96. We are mindful that federal law does not proscribe Pacific jointly marketing PBLD's service to its inbound callers; however, we do not consider such activity to be a "fair" usage of either "subscriber information" or "customer contacts." We differ from the FCC's view that permitting the incumbent to joint market its long distance affiliate's services to incoming callers is a harmless and nondiscriminating advantage. And we agree with Pac-West/WA's Affiant Selwyn that the ability to address incoming calls from customers with local service issues, and the customer's perception that these issues will now be addressed only if the customer cooperates with a PBLD sales pitch, is far different than making millions of outgoing cold calls.[367]

Likewise in its written submissions and its oral presentations responding to the other allegations that it will wield its pivotal bottleneck role with increasing financial and market share self-interest, Pacific generally scoffed at the suggestions that it would ever do such things. Pacific rarely acknowledged the possibility that its future actions might be anything but

[367] Pac-West/WA Brief at 21; Selwyn Affidavit ¶¶ 54-55.

proper. As noted above, its one concession to the pessimistic perspective was its counsel that anticompetitive behavior would be captured and sanctioned in accordance with the performance incentive plan. Pacific was silent as to the inference that we should take from the millions of dollars[368] that SBC's affiliates have paid to the FCC for variously failing to meet the required performance obligations under the Ameritech Merger Conditions.

Quite frankly, the voluminous record in this proceeding reveals several aspects of Pacific's behavior: some positive, some negative. However, the record does not support the finding that there is no anticompetitive behavior by Pacific Bell.

E. No improper cross subsidization

1. Does the record support the determination there is no improper cross-subsidization of intrastate interexchange telecommunications service by requiring separate accounting records to allocate costs for the provision of intrastate interexchange telecommunications service and examining the methodology of allocating those costs? (§ 709.2(c)(3))

Pacific argues that the separate affiliate safeguards of TA96's Section 272, which were designed to prevent any cross-subsidization, are more comprehensive than the provisions of Section 709.2(c)(3). Section 709.2(c)(3) addresses the need to prevent "improper cross-subsidization" of intrastate long

[368] AT&T reported in August 2001 that SBC had thus far paid $23 million in penalties. (AT&T Opposition to Pacific's § 709.2 Showing at 35.)

distance service by requiring "separate accounting records to allocate costs…" In addition to other safeguards not contained in the state law, § 272(b) specifically addresses separate accounting. It requires Pacific's long distance entity to maintain "books, records and accounts... which shall be separate from the books, records and accounts maintained by the Bell operating company of which it is an affiliate." Further, those books, records and accounts must be maintained in the manner prescribed by the FCC. (Pacific § 709.2 Compliance Brief at 9-10.)

Pacific points out that the FCC has issued its own comprehensive rules addressing the above requirements in the *Accounting Safeguards Order*.[369] It also advises that TA96 imposes a joint federal/state audit requirements to ensure compliance with the accounting and structural safeguards and the FCC rules implementing safeguards, with the results reported to the FCC as well as the CPUC. The CPUC ordered, in the *PB Com* proceeding, a further audit to be conducted as part of the joint FCC audit or as a separate audit for compliance with the CPUC's affiliate transaction and cost accounting rules. (*Id.* at 11; Young Declaration Exhibit C at 55-56.) Pacific submits that these clearly satisfy the accounting requirements of § 709.2.

In its written and oral submissions, Pac-West/WA detailed confidential portions[370] of PBLD/Pacific's proposed joint marketing plan in support of its position that Pacific is structuring its long distance affiliate to enable cross-

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[369] *In the Matter of Implementation of the Telecommunications Act of 1996; Accounting Safeguards Under the Telecommunications Act of 1996, Report and Order*, 11 FCC Rcd. 17539 (1996).

[370] Relevant sections of the pleadings, affidavits, and transcript have been sealed.

subsidization.[371] It presented putative training scripts and business plans designated for "Attorney Only" viewing. (Pac-West/WA at 19-24.) Pac-West/WA contends that, if implemented, Pacific's joint marketing schemes could lessen ratepayers' choices without their knowledge and keep long distance prices up. (*Id.* at 21.)

WorldCom accuses Pacific of price squeezing,[372] particularly in its 800 query or "800 database Service" charges. It also claims that California's imputation standard is not sufficient to protect competition in the state. (WorldCom at 88-93.)

2. Discussion

Section 709.2(c)(3) requires us to determine that there is "no improper cross-subsidization of intrastate interexchange telecommunications service by requiring separate accounting records to allocate costs for the provision of intrastate interexchange telecommunications service and examining the methodology of allocating those costs." In the PB Com proceeding, we considered the record before us, including prevailing federal policy, over a period of close to three years.[373] In short, the proceeding was anything but static. The proposed joint marketing by Pacific and PBLD of PBLD's long distance

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[371] Pac-West also offers the plans in support of its position that Pacific's entry into the long distance will substantially harm the competitive intrastate long distance market.

[372] The parties argued that the prevailing switching and loop UNE prices further contributed to the price squeeze that Pacific exerted.

[373] Pacific applied for the certificate and evidentiary hearings were held in 1996; the record was reopened in 1997 to receive supplemental evidence; proposed and alternate decisions were issued and withdrawn in 1997; the record was again reopened and further briefing was entertained in 1998; and the decision was issued in 1999.

services was a controversial issue that we ultimately resolved in conformance with the FCC's CPNI and Non-Accounting Safeguards Orders.

At that time, we were persuaded that Pacific would need to compete aggressively in order to gain a hold in the long distance market. We were also willing to believe that joint marketing on inbound calls from Pacific customers struck an appropriate balance between the opening of the local market and the additional interconnection and unbundling requirements of TA96. Likewise in our decision, we acknowledged and followed the FCC's rationale in the CPNI Order[374] that "this `total service approach' offers convenience for the customer while preventing use of CPNI in ways the customer would not expect." (1999 Cal. LEXIS 13, 67.)

Time and documentary evidence have better informed our views. Nationally, the RBOCs have proven themselves to be formidable entrants into the long distance market. Pac-West/WA cites, and Pacific does not dispute, that SBC-LD currently serves over 13 million access lines in Texas, Kansas and Oklahoma, three states in its region where it has authority to offer interLATA services. It reached this amount one year after winning 271 approvals.[375] Pac-West/WA declares that through its position as the incumbent, SBC-LD obtains marketing access to millions of potential interLATA customers at a cost

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[374] Under the FCC rules, before ILEC representatives may refer to customer proprietary records to market the long distance affiliate's service, they must ask the customer for permission to do so. Customer authorization may be granted orally, in writing, or electronically. In order to ensure that customers are informed of their statutory rights before granting approval, carriers are further required to provide a one-time notice of customers' CPNI rights prior to any solicitation for approval. (CPNI Order ¶¶ 53-57.)

[375] Citing "SBC Communications, Investor Briefing No. 226, 7 (July 25, 2001)." Pac-West/WA at 19.

that is far below either the cost to the RBOC to produce the joint marketing service, or the fair market value of that service.[376]

They assert that Pacific's proposed marketing agreements indicate that this strategy will be used in California. According to Pac-West/WA, the cross-subsidy will occur when Pacific is not properly compensated for its joint marketing services, to the economic detriment of the local ratepayers. In reply, Pacific does not focus on the costing elements of its proposed marketing scheme. Instead, it reiterates that its joint marketing agreement with PBLD is in accordance with TA96 and the CPUC's decisions.

We held oral arguments on § 709.2; but we did not have evidentiary hearings. While our examination of the documents submitted in this proceeding show a difference in the proposed joint marketing plans of the PB Com proceeding and the 2001 proposed joint marketing plans, the documents were not compared and analyzed through cross-examination. In 1996 and 1997, Pacific presented costing support for its joint marketing proposal that we found satisfied our affiliate transaction rules. We note that Pacific has stated that its current plans have not yet been thoroughly studied by its legal department.

Pac-West/WA's costing discussion and comparison regarding the proposed joint marketing plan clearly demonstrates cross-subsidization, and we find it very troubling. We trust that Pacific will very carefully re-examine the cost elements of its proposed joint marketing plan to ensure full compliance with our rules. Moreover, we reaffirm the auditing requirements that we designed in

[376] Pac-West/WA states that new customer acquisition costs are commonly known in the industry to range from $300-$500. It documents that Pacific's proposed plans show that PBLD will pay Pacific approximately $3.54 per sale to consumer and nothing for sales attempts. (Stephen C. Gunn Affidavit at 17.)

D.99-02-013 for Pacific and PBLD's joint marketing arrangements.[377] Our confidence in non-structural safeguards has waned significantly over the last few years. Thus, if our required audits uncover cost allocation improprieties in the final joint marketing agreements, we will not hesitate to take the strongest action.

The record before us simply does not support the finding that there is no improper cross-subsidization anywhere within Pacific's proposal to provide long distance telephone service within California. Rather, the record includes documents that purport to show compliant costing allocations as well as documents that purport to show inappropriate allocations and underlying methodology. As of this date, the mandated audits have not yet been performed. However, we do find that our requirements for separate accounting records and for the examination of the cost allocation methodology for the provision of intrastate interexchange telecommunications service, pursuant to our affiliate transaction and cost allocation rules and O.P. 8 and 18 of D.99-02-013,[378] will be integral in preventing, identifying and eliminating improper cross-subsidization.

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[377] Ordering Paragraph (O.P.) 8.

[378] O.P. 8 states, "[t]he authority granted today is conditioned upon a periodic audit to be conducted, at SBCS expense, under auspices of the Commission's Office of Ratepayer Advocates (ORA) of SBCS's compliance with the Commission's affiliate transaction rules and cost allocation rules. The ORA is directed to consult with the Federal Communications Commission (FCC) Common Carrier Bureau to coordinate the audit with the joint FCC/state audit to be conducted by the Common Carrier Bureau."

O.P. 18 states, "SBCS shall keep its books and records in accordance with the Uniform System of Accounts specified in Title 47, Code of Federal Regulations, Part 32."

F. No Substantial Possibility of Harm From Pacific's Entry

1. Does the Record Support the Determination that there is No Substantial Possibility of Harm from Pacific's Entry into the Long Distance Market? (§ 709.2(c)(4))

Pacific asserts that the CPUC resolved this issue in the PB Com proceeding. In doing so, it addressed the initial claims of the competitors', granted PB Com's CPCN application subject to various conditions, and concluded that Pacific's entry into long distance markets was beneficial. (Pacific at 12.) Pacific states that the CPUC "found that 'before it authorizes intraLATA long distance' service, it had to determine 'that there is no substantial possibility of harm to competitive intrastate telephone markets.'[379] " (*Id.*; Young Declaration, Exhibit E at 1.) Pacific maintains that since the CPUC denied AT&T and WorldCom's applications for rehearing in the PB Com case, the competitors cannot relitigate the 709.2 issues here. Finally, Pacific notes that "[c]laims of harm to competition and/or competitors are generally raised at the FCC in connection with its public interest analysis of section 271 applications." (*Id.* at 11-12.)

AT&T maintains that Pacific's monopoly control of the local exchange market gives it the ability to harm interexchange competition. (AT&T at 21-27.) Moreover, access charges that are not cost-based, such as the Network Interconnection Charge, represent an anti-competitive price squeeze, if Pacific's long distance affiliate sets its in-region interexchange prices at or below its access prices and forces competitors to operate at a loss or face losing market share. (*Id.*

[379] Citing Finding No. 14, D.99-02-013, *mimeo* at 63.

at 22-23, 40-41; WorldCom at 27-30, 36-40.) SBC and Pacific have abused market power, in California and elsewhere, in the past and do so now. (*Id.* at 27-36.) These abuses include the 1996 "Pacific Bell Extras" program, described above, which inappropriately authorized Pacific to provide CPNI to its affiliates including its long distance company, thereby violating § 222(a) of TA96 as well as CPNI-related agreements between Pacific, AT&T, WorldCom and Sprint. The court enjoined Pacific for these actions.[380] (*Id.* at 28-30.) In 2000, a California jury found against Pacific in an antitrust suit[381] for violating 15 U.S.C. § 2.[382] (*Id.* at 31.)

AT&T also argues that once interLATA equal access was implemented in California the intraLATA toll PIC (LPIC) disputes rose significantly. In response, the CPUC's Consumer Services Division (CSD) requested an audit of intraLATA LPIC disputes at Pacific's expense. (*Id.* at 30.)

AT&T alleges that Pacific limits competition by gating interconnection trunks by CLEC per day. It further insists that SBC has shut competition out of its advanced services markets. (Id. at 31-32.) Finally, it criticizes the pace at which Pacific has addressed the over 20 operational deficiencies reported by the CLECs during the April 2001 operational hearings. (Id., Attachment G.)

2. Discussion

Section 709.2(c)(4) requires us to determine that there is "no substantial possibility of harm to the competitive intrastate interexchange

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[380] This matter was settled out of court.

[381] Case Number 97-2105-CAL.

[382] The parties also settled this case.

telecommunications markets." Pacific's primary position on § 709.2 has been to assert that the CPUC already reached the central issues in its PB Com case in 1999. Consequently, Pacific painstakingly examined and interpreted PB Com's record and decision, arguing in the alternative, that its § 271 showing equally satisfied its burden of proof under § 709.2. Still, Pacific was able to present neither findings, conclusions of law, nor ordering paragraphs to support its case. We find that, particularly with respect to § 709.2(c)(4), Pacific failed to show that there is no substantial possibility of harm to the competitive intrastate interexchange telecommunications market by its long distance entry in California.

We are persuaded by the interested parties' showing that a substantial possibility of harm to the intrastate long distance telephone market exists from Pacific's continuing role as the Preferred Interexchange Carrier (PIC) administrator as well as from Pacific's proposed joint marketing plans. The interexchange carriers argue that there is an inherent tension caused by the fact that Pacific will serve as a neutral PIC administrator after its long distance affiliate enters the intrastate interexchange telephone market. That tension is between Pacific's duty to administer PIC changes in a competitively neutral way and its interest in winning customers. During oral argument, AT&T's counsel stated: "This means that when Pacific enters the long-distance market, it has control of the customers' vital telecommunications records, and the interexchange carriers have to trust Pacific to not only execute the carrier switches in an unbiased manner, which is the PIC change, the resultant possibility of PIC disputes, but also exchange information in an unbiased manner also." (Section 709.2 Tr. at 152, ll. 4-10 (December 5, 2001).)

In response, Pacific failed to offer any assurance that it would perform its LPIC role with any safeguards of neutrality or sensitivity to competitor

concerns. Pacific's counsel replied to the competitors' call for a third-party PIC Administrator with the comment during oral argument that he was "... frankly confused about how a third-party PIC administrator would solve the problems that Mr. Deutsch described. I still have the same questions. Mr. Deutsch said that in the long run a third-party PIC administrator will cut down on PIC disputes and cut down on slamming allegations. That is where I really get lost because he talked about Pacific calling a customer when that customer leaves Pacific and goes to another carrier. We are going to continue to do that even with a third-party PIC administrator." (*Id.* at 175, ll. 13-15; 176, ll. 7-13.) The limited CSD audit indicates that there were problems with a significant percentage of Pacific's intraLATA LPIC disputes after we approved intraLATA competition. Pacific denies that there were problems. We find that absent competitively neutral and nondiscriminatory intraLATA LPIC administration, there is a substantial possibility that the intrastate interexchange telecommunications market will be harmed through increasing customer dissatisfaction and carrier conflicts.

We find that Pacific's proposed joint marketing plans, detailed above in relation to § 709.2(c)(3), also pose a substantial possibility of harm to the intrastate long distance telephone market. The significant advantage afforded Pacific's long distance affiliate by Pacific's ability to market its affiliate's service to several million incoming customer service calls per year from its existing local service customers will unquestionably affect the other interexchange carriers. No other interLATA competitor in California has any similar massive opportunity to address incoming calls from potential interLATA customers. PBLD's potentially swift dominance of the intrastate interexchange telephone market could detrimentally impact competition in that sector.

Overall, the interested parties are pragmatic in their proposals regarding what the CPUC should do if it is not able to affirmatively render the determinations required pursuant to § 709.2. Contrary to expectations, they do not all urge us to defy our findings pursuant to § 271 in favor of our § 709.2 findings. Instead, they acknowledge that in reading § 709.2 in conjunction with § 271, we should look to ways in which we can align our state public interest findings with our federal technical assessment.

Our findings under § 709.2 reflect the considerations that California law requires us to weigh and balance. While Pacific largely satisfies the technical requirements of § 271, in accordance with § 709.2, we cannot state unequivocally that we find Pacific's imminent entry into the long distance market in California will primarily enhance the public interest. Local telephone competition in California exists in the technical and quantitative data; but it has yet to find its way into the residences of the majority of California's ratepayers. Only time and regulatory vigilance will determine if it ever arrives. We expect that the public interest will be positively served in California by the addition of another experienced, formidable competitor in the intrastate interexchange market. At the same time, we foresee the harm to the public interest if actual competition in California maintains its current anemic pace, and Pacific gains intrastate long distance dominance to match its local influence.

The interested parties do not ask us to bar Pacific's entry into the intrastate interexchange market. Instead, they ask us to apply conditions that they contend will counter the potential harm that Pacific poses to the interLATA market. First, they urge us to seriously consider the complete structural

separation of Pacific into two parts[383] and the divestiture of Pacific Wholesale. They contend that this is most likely to result in increased competition in both California's local and interLATA telecommunications markets. They also report that a recent Senate bill includes an RBOC structural separation proposal,[384] and structural separation investigations are taking place in a dozen states.

During oral argument, the interested parties acknowledged that structural separation would be neither swift nor inexpensive. Consequently, they propose that the CPUC take a gradual and phased approach starting with a feasibility study that would set forth the costs of the structural separation plan. At present, we have Pacific's out of hand dismissal of the proposal, but no responsive substantiating data. Therefore, we find that the preparation of such a study would be reasonable, and direct Pacific to file six months from the effective date of this decision a report or study detailing the costs of separating Pacific into two parts and divesting the segment covering wholesale network operations. Interested parties shall have an opportunity to review the study or report and comment on it. Following our review of the study and comments, we shall advise whether structural separation appears feasible or not, and we shall determine whether to hold evidentiary hearings on the study.

The interested parties also propose that we investigate the costs and feasibility of selecting a competitively neutral third-party PIC administrator. Again, the interested parties acknowledge that the appointment of a neutral

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[383] Wholesale network operations (Pacific Wholesale) and retail marketing service provision (Pacific Retail).

[384] Telecommunications Fair Competition Enforcement Act of 2001, S. 1364, 107th Congress. (Pac-West/WA at 28.)

third-party administrator is not an immediate step that the CPUC can or should take.[385] Like the structural separation plan, the issue of the neutral third-party administrator requires analysis, discussion, and a strategy. As stated above, Pacific's dismissive rejection of the interested parties' proposals lacked not only supporting data but also any willingness to address the parties' concerns or perceptions.

Moreover, we are mindful that at one time the RBOC was the presumed administrator for numbering. With time, this presumption changed. A neutral third-party administrator appears necessary in the new environment. Accordingly, we find that it is reasonable to investigate the costs and feasibility of selecting a competitively neutral third-party PIC administrator. We direct the Telecommunications Division staff under the supervision of its Director to prepare for consideration on the CPUC's meeting agenda, an Order Instituting Investigation to examine the feasibility, structural implementation, and selection criteria for selecting a competitively neutral third-party PIC administrator for California, no later than five months from the effective date of this order.

Finally, the interested parties' offer several proposals to counter the significant advantage that PBLD will have as a result of its joint marketing arrangements with Pacific. First, they call on the CPUC "to order Pacific to establish a separate sales force to handle Pacific Bell long-distance service sales." (Id. at 145, l. 28 -146, ll. 1-2.) WA notes "[s]ubtle messages, slight suggestions of possible complications or delay due to the use of competitor services, access to

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[385] Although Pac-West/WA press for the independent third-party PIC administrator to be "established and operational prior to the commencement of retail long-distance services," we find such a schedule to be impractical and unreasonable. (Section 709.2 Tr. at 145, ll. 3-5.)

CPNI that is not available to competitors, and similar obvious possibilities of abuse are of the nature that the regulatory process will be unlikely to monitor or control." (Id. at 146, ll. 22-27.) Second, as a more moderate solution, the interested parties suggest that Pacific be required to establish a separate telephone number for end-users to call on their own if they want Pacific's long distance affiliate's services. With a separate number, the consumer is in control and not potentially coerced into changing interexchange carriers. In fact, he or she could call any interexchange carrier. The interested parties envision script-only changes under this option, which avoids subjecting customers who call in seeking unrelated customer service to unwanted marketing efforts. Third, they encourage us to permit Pacific representatives to "offer to provide a warm transfer, an on-the-same-call transfer, to an interexchange carrier of the end-user's choice. Either Pacific Bell Long Distance or any other interexchange carrier who is willing to participate can pay the same cost." (Id. at 146, ll.18-24.)

Pacific insists that federal law permits its joint marketing. Yet, it offers no other defense of the substantial marketing advantage that it has over the interexchange carriers. We note that the ALJ in the oft-cited PB Com proceeding specifically found that very real risks to the competitiveness of the long distance market resulting from unregulated joint marketing activities should be reduced by separation of Pacific and its affiliate's sales forces. The ALJ concluded that "[a]s a condition of approval of the application of SBCS,[386] its local exchange affiliate Pacific Bell should be required, for an initial period of three years, to establish a separate sales force to market SBCS long distance service on outgoing calls and on incoming calls to Pacific Bell." In light of the substantial risk of harm

[386] Presently PBLD

to California's intrastate interexchange telecommunications market evidenced in this record, we find that there should be some restraint on Pacific and its long distance affiliate's free-form joint marketing.

Accordingly, we apply a narrow and focused constraint on joint marketing to inbound customer calls, and direct Pacific to include in its final joint marketing plans and/or agreements one of the two following options. Either Pacific shall establish a separate telephone number for end-users to call on their own when referring such end-users to the services of Pacific's long distance affiliate, or Pacific's representatives shall offer the incoming caller an on-the-same-call transfer to an interexchange carrier of the caller's choice. Pacific Bell Long Distance and any other interexchange carrier who is willing to participate shall pay the same cost. Pacific shall select one of the two options and so advise the CPUC in conjunction with its comments on the draft decision.

VII. Conclusion

Pacific has demonstrated through its satisfaction of twelve of the fourteen checklist items of § 271, compliance with a significant majority of our D.98-12-069 technical requirements, positive OSS Test results, and generally strong performance results that it has vastly progressed in opening access to its network in the more than three years since we drafted our blueprint to long distance authorization. While Pacific's progress has been vast, it has been neither perfect nor complete. We are keenly aware that § 271 authorization does not require perfection; yet, Pacific's less than complete progress has given California technical, not actual, local telephone competition. Pub. Util. Code § 709.2 requires us to not only foster local telephone and local long distance competition but also to assess their impacts on the intrastate interexchange telecommunications market. And, we do so here not to thwart Pacific's § 271 quest, but to fulfill our obligation to safeguard California's telecommunications

market as best we can. Thus, pursuant to Pacific's compliance with the directives set forth in our Order today, we grant its renewed motion for an Order that it has satisfied a substantial majority of the 14-point checklist in § 271 of the Telecommunications Act of 1996.

VIII. Comments on Draft Decision

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

Findings of Fact

1. Pacific seeks FCC approval to enter the California interLATA market under 47 U.S.C. § 271(c)(1)(A), which requires it to show the presence of a facilities-based competitor.

2. The CPUC has approved, pursuant to § 252 of TA96, 166 binding interconnection agreements between Pacific and unaffiliated competing providers of telephone exchange service.

3. In 1998, CPUC staff tabulated business and residence data for six facilities-based competitors and found they served about 60,000 access lines in California.

4. In its July 1999 compliance filing, Pacific asserted that based on the number of resold lines and facilities-based E911 listings, CLECs had won over 819,000 access lines in its California service areas.

5. In 2001, Pacific identified 47 California facilities-based carriers providing service: forty-one provide local voice service, while the remaining facilities-based carriers appear to provide data or Digital Subscriber Line (DSL) services that, at their option, may be deployed for voice grade service.

6. We concur with staff's earlier assessment, and find that Pacific has met the requirements for providing service to a facilities-based competitor.

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

8. Pacific has 13 performance measurements with sub-measures that specifically assess performance for the ordering, provisioning and maintenance of interconnection trunks (##2, 5, 7, 8, 11, 12, 13, 14, 16, 19, 20, 21 and 23).

9. Measures 24 and 25 demonstrate the quality of CLEC interconnection to Pacific's network, gauged in terms of blocking levels on both common transport and Pacific-controlled interconnection trunks.

10. Pacific met the performance standard for Measure 24 (the percentage of common transport trunk groups experiencing blocking) in each of the 12 months preceding its June 2001 filing.

11. Similarly, Measure 25, which evaluates blocking levels on Pacific-controlled CLEC interconnection trunks, indicates that Pacific has met the parity standard and that no blockage has occurred over the past eleven months.

12. Pacific met or surpassed the applicable performance standards for 95% of the provisioning performance measurements from February through April 2001, missing only four of 78 opportunities.

13. The competitors continued to report provisioning problems; however, the performance results failed to support the reputed problems.

14. Pacific and the competitors appear to have not yet developed performance measures to accurately assess some of these problems. Thus, the provisioning problems are difficult to evaluate.

15. Validly reserved space should not be relinquished for a building expansion contingency.

16. Pacific's provision of floor plans at the time of space denial should enable carriers to more expeditiously determine alternative spaces.

17. Based on the performance results, Pacific is timely managing requests for collocation space and installing collocation arrangements.

18. The record shows that Pacific currently is offering physical and virtual collocation at interim prices subject to true-up, pending our final determination on permanent rates, terms and conditions in the OANAD proceeding.

19. Pacific's response regarding the daily limit on trunking installations is reasonable; however, we expect Pacific to further follow the lead of its corporate siblings and work vigilantly to relieve any developing blockages through cooperative planning with AT&T and other affected CLECs.

20. Limiting CLECs to twelve IP addresses is a discrete network management matter, which does not pose a significant competitive barrier.

21. AT&T's claim that it was forced to designate trunk termination at its switch location, rather than the facility termination location, appears an isolated problem, and Pacific's response appears reasonable.

22. It is appropriate that Pacific move the contested issue of establishing where a CLEC switch is within the LATA, but outside Pacific's service area (Accessible Letter CLECC01-127) into the technical collaborative group.

23. Pacific provides trunking consistent with the requirements of §§ 251(c)(2) and 252(d)(1); that is, at any technically feasible point, at least equal in quality to that provided to itself, and at reasonable nondiscriminatory rates.

24. D.98-12-069 identified five key issues within Checklist Item 2, and directed Pacific to show compliance: (1) general access to UNEs; (2) UNE combinations; (3) intellectual property concerns; (4) nondiscriminatory access to OSS, and (5) pricing.

25. In 2001, interested parties focused most intensely on nondiscriminatory access to OSS and pricing.

26. Regarding UNE combinations, our review of Pacific's ICAs, specifically those with AT&T and Level 3, indicate that the terms and conditions associated with Pacific's agreement to assemble new EEL combinations are more generous than the terms required under the *UNE Remand Order*, which addressed only existing combinations of loop and transport.

27. In 1998, we directed Pacific to submit its OSS test plan (the Master Test Plan or MTP) in this docket for review and comment.

28. Pacific filed its proposed MTP in January 1999.

29. In August 1999, following comments from TD staff and the interested parties as well as a two-week industry-wide collaborative workshop, the CPUC issued a finalized MTP setting up the test requirements and the need to have outside consultants assist in the test of the Pacific systems.

30. We supervised an evaluation of Pacific's OSS, including the interfacing process which allows CLECs to compete with Pacific in providing local telephone service.

31. These OSS include those that the FCC has determined are necessary for the mechanized CLEC interfaces for pre-ordering, ordering, provisioning, maintenance and repair and billing capabilities essential for CLECs to provide local service in Pacific's service areas.

32. The evaluation tested whether Pacific's OSS provides the CLECs parity or nondiscriminatory access with a meaningful opportunity to compete.

33. After issuance of the finalized MTP, the CPUC issued Requests for Proposals for teams to perform in the three significant roles of the OSS test: the TAM, TA, and TG.

34. The CPUC awarded contracts for the positions of TA and TAM to CGE&Y, and awarded the contract for TG to GXS.

35. The MTP provided the list of services to be tested.

36. CGE&Y generated the test cases and test scripts from the MTP and made necessary modifications.

37. CGE&Y also supervised the TG execution of the test cases and test scripts that they had created, and validated that the generated bills were correct.

38. CGE&Y formed a statistical team to trace and maintain performance measurement statistics based on the test effort.

39. Analysis of the test statistics determined the results of the test and compliance under § 271.

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

41. GXS designed and built the technical interface applications and established the processing infrastructure, including communication links and platforms to support the Pseudo-CLEC interconnection.

42. Pacific's OSS Test assessed the results of: 1) Functionality Testing, 2) Capacity Testing and 3) Performance Measurement Analysis.

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

44. The Functionality test focused on the ability of the CLECs to access Pacific's OSS, perform pre-order queries, issue orders and receive responses back from Pacific.

45. A total of 2,975 LSRs were recorded as issued, out of which 2,615 completions were received.

46. M&R testing was performed to evaluate the performance of the two different electronic means of issuing trouble reports that Pacific provides to its

CLEC customers: Pacific Bell Service Manager and the Electronic Bonding interface.

47. Pacific provides CLECs with several options for identifying and reporting customer service troubles and requesting and obtaining maintenance.

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

49. In the spring of 1999, Pacific publicized and conducted joint meetings with resale and facilities-based CLECs about their M&R needs.

50. More recently, Pacific has been conducting broader and ongoing collaborative "User Forum" meetings where CLECs and Pacific deal with CLEC issues that can include M&R problems.

51. Reviewing data collected for the seven months from January through July 2001 shows there is a very solid parity trend in the case of 50 of the 85 (or about 59% of the) viable M&R submeasures.

52. The data appeared to show continuing CLEC failures in Resale Business POTS submeasures for PM 20 in May and July (for "dispatched") and in May and June (for "not dispatched'), for PM 21 in March through July (for "dispatched") and in June (for "not dispatched"), for PM 22 in May and July, and for PM 23 in June 2001.

53. Pacific has satisfied the specific OSS M&R related checklist requirements we set out for it in Appendix B to D.98-12-069.

54. The OSS test has shown that the M&R systems have basic functionality.

55. Still, month-to-month OSS M&R performance parity appears to be being achieved in the majority of instances, and seems to be growing.

56. We have incentives in place to help ensure that Pacific will not backslide in its effort to ensure this condition continues for the future.

57. The End-User Test was to generate usage and create billing from specified telephone lines at multiple test sites.

58. Overall, the EUT demonstrated that telephone calls could be made to generate usage and billing, and Pacific was able to provide dial tone, features, and services for each Pseudo-CLEC customer and telephone line used in the EUT.

59. The primary purpose of Bill Validation was to verify that Pacific, through CABS, was able to supply the CLECs with accurate and timely electronic and hard copy bills pursuant to the MTP.

60. Unless Pacific provides CLECs with OSS billing functionality comparable to the billing functionality that it provides for its own retail operations, these competitors' ability to operate effectively in the local telephone service market is significantly impaired.

61. Our record review indicates that through its "User Forums" with CLECs, where general issues, including billing issues, are raised and resolved, Pacific is demonstrating a clear commitment to maintain a process consistent with the CPUC directive to make collaborative efforts to identify (and resolve) any billing issues as they arise.

62. Pacific has properly complied with the CPUC directive to consolidate bill rounds.

63. Pacific has generally made the appropriate effort to resolve sb-st issues with CLECs as we directed in D.98-12-069.

64. The latest seven months of data, from January through July 2001, showed that there was a very solid parity trend in the case of 17 of the 29 (or about 59% of the) billing submeasures.

65. When the billing PM data were viewed over a three month time frame, and "parity" was redefined to mean that the CLEC aggregate performance showed sustained equivalence with Pacific performance over this period, the situation improved rather dramatically to 83% parity (24 of 29 submeasures in parity).

66. Overall, the CLEC aggregate billing PM data substantiate the conclusion that CLECs as a group are obtaining adequate OSS billing access.

67. The data also show that virtually all of the billing performance failures for CLECs in the aggregate that WorldCom points to in its August 2001 comments have been eliminated.

68. The numbers of PM submeasures in which CLECs in aggregate appeared to be failing to consistently achieve month-to-month OSS billing parity were relatively few at the end of July 2001 – only five of the 29 monitored.

69. The Capacity Test assessed whether the relevant Pacific OSS systems had sufficient capacity to handle the workload volumes required to support CLEC pre-order and ordering activities.

70. The total number of queries used in the Pre-order test was 42,762 of which 22% (9,299) were processed through the Verigate system and 78% (33,463) were processed through the application-to-application DataGate interface.

71. The mix of pre-order queries was established from a base of 7,340 LSRs that were used to test Pacific's order systems.

72. In general, CGE&Y and GXS found that the pre-orders transmitted to Pacific's system were processed and reported satisfactorily.

73. The pre-order test performance measures for Pacific were within the benchmarks required by the JPSA service levels.

74. For all query types, the average interval times were below the JPSA benchmarks set.

75. In sum, the order test count reconciliation did not identify any major count discrepancies between GXS and Pacific.

76. Orders transmitted to Pacific's order systems through the LEX and EDI interfaces were processed and reported satisfactorily.

77. CGE&Y and GXS found the order test performance measures for Pacific at capacity order volumes of 173% over their existing production baseline to be within the benchmarks required by the JPSA service levels.

78. Based on a trend analysis of Pacific's historical production volumes and a predicted ability of maintaining an approximate 1,000 orders/hour order rate, Pacific's systems have the capacity available to support production volumes for the next ten months.

79. The OSS Test report observed that Pacific kept a detailed eye on both volumetrics and responsiveness of its OSS.

80. Pacific uses its Change Management process to notify the CLECs of software enhancements.

81. An integral part of the CM process is the software implementation, which is performed in St. Louis, Missouri and San Ramon, California

82. OSS changes occur due to modifications requested by CLECs, system upgrades, and regulatory changes.

83. The OSS Test Report indicated that the CM process is quite solid and works well as defined for Pacific.

84. The Change Management Process for California was filed with the Commission as a JSA, and approved in D.99-11-026.

85. The CMP covers both application-to-application and GUI interfaces.

86. Pacific has incorporated a process called "versioning" into the CMP since mid-August 2000.

87. Under versioning, two consecutive versions of its software for EDI ordering and for EDI and CORBA pre-ordering interfaces (the current and previous versions of each) are up and running at all times so that a CLEC need not switch to the newer interface version immediately in instances where the timing of such an action would disrupt their use of the OSS.

88. Pacific's CMP interface test environment is adequate.

89. A comparison of the 13-state CMP contained in Pacific's August 2001 filing with the 8-state version in place during the OSS Test reveals that this latest version is a more thoroughly articulated document than the one we approved in November 1999.

90. Pacific appears to have responded to CMP issues raised by parties in this proceeding in a way that refutes or mitigates an adverse allegation, or the CLEC concern raised has been remedied as a result of the CMP's evolution.

91. While we agree the lack of comprehensive UNE-P over EDI interface testing during the functionality phase of the OSS test was a shortcoming in the test, we believe the combined LEX portion of the functionality phase, as well as the EDI UNE-P portion in the capacity phase offer us a reasonable substitute enabling us to examine how Pacific's system will handle UNE-P orders submitted through the EDI OSS interface.

92. The CLECs' utilization of their own facilities to serve their customers does not excuse fully testing UNE-P over EDI during the functionality phase of the OSS test.

93. In D.00-12-029, we denied seven CLECs' request to expand the testing of DS-1 loops because we expected that the data showing Pacific's commercial DS-1 volumes would inform us whether or not Pacific was providing DS-1 loops to the CLECs on a nondiscriminatory basis.

94. In December 2000, Pacific's existing commercial DS-1 volumes were an inadequate indicator of how its OSS system was processing and provisioning those orders.

95. In December 2000, CLECs were submitting DS-1 orders to Pacific through CESAR, a semi-mechanized ordering interface retired at the end of 2000, while LEX and EDI, the focal ordering interfaces of the OSS test, processed little to no CLECs' DS-1 orders.

96. In the second half of 2001, both Pacific's LEX and EDI interfaces began receiving DS-1 orders in volumes sufficient enough to enable assessment of the DS-1 loop order processing quality.

97. Pacific's Fourth Quarter 2001 DS-1 related performance measurement results indicate overall that, with the exception of PMs 5 and 16, Pacific is providing parity DS-1 services to the CLECs; performance had improved in both February and March 2002.

98. Pacific failed PM 16 (Percentage of troubles in 30 days of new orders) two out of three months in the Los Angeles and Bay Area regions during the Fourth Quarter of 2001.

99. Performance improved in the Los Angeles region in January and February 2002, yet slipped below parity in March 2002.

100. Results for the Bay Area region showed Pacific's performance consistently below parity for the six-month period: from October 2001 to March 2002.

101. While the PM 16 results are troubling, because problems with a new order will most probably affect a CLEC's reputation no matter whom is at fault, we note that the results are poorest in one measure in the Bay Area region and find Pacific's overall DS-1 performance results to be acceptable.

102. Under § 6.3.5.3 of the MTP, "[p]rovisioning is considered complete once a Service Order Completion is received by the CLEC," and CGE&Y's evaluation concluded with the receipt of a SOC response from Pacific's OSS.

103. A review of the MTP and the underlying documentation confirm that pre-order/ordering integration was not part of the requirements of the MTP.

104. We are satisfied that GXS was able to demonstrate that pre-order/ordering integration can be reasonably accomplished by an efficient CLEC.

105. While GXS did not accomplish pre-order/ordering integration using the same methodologi(es) that the commenters either selected or preferred, the methodology it chose is just as valid and probative.

106. Receipt of an order Firm Order Confirmation within the Performance Measure # 2 benchmark of 20 minutes, absent errors from the time of LSR issuance until the time of FOC receipt, indicated that the mechanized LSR had flowed through without human intervention.

107. During the Capacity phase of the OSS test, CGE&Y recorded tens of thousands of flow-through orders.

108. Using the 20-minute response time for FOC flow-though, it is highly unlikely that there was any significant unperceived manual intervention of orders passing through Pacific's OSS system.

109. After reviewing the Test Report and MTP, we find that some aspects of the back-end process testing was beyond the scope of the OSS test; therefore, there is no need to retest this area.

110. The Final Report shows that CGE&Y validated that the end user calls appeared on the Daily Usage File in a timely manner.

111. While the MTP required that CGE&Y review two billing cycles, it validated all bills for October 1999 through August 2000.

112. The Final Report also notes that CGE&Y validated recurring and non-recurring charges, and tracked the timeliness of the usage as well as the receipt of both hardcopy and electronic wholesale bills.

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

114. The MTP required only that the statistical analysis of the performance measurement data be "consistent with the business rules, method of calculation and measurable standards as defined by the Amended JPSA."

115. The Final Report was issued approximately a month before we adopted, in D.01-01-037, the statistical methodology (or "performance criteria") that is in place now.

116. All parties were familiar with the methodology adopted and used by CGE&Y in the Final Report.

117. The MTP provides for the aggregation of performance data to ensure sufficient sample sizes.

118. The MTP did not require CGE&Y to perform full data validation; instead, it describes specific tasks the TAM was to complete as part of the validation, and CGE&Y completed them.

119. There was no violation of the MTP regarding data validation.

120. The issue of revalidating the business rules used to exclude data from performance measurement was also an issue in the Performance Measurement Phase of the OSS OI I (R.97-10-016/I.97-10-017).

121. In the OSS OI I, the Assigned Commissioner determined that PriceWaterhouseCoopers had validated the business rules in question in accordance with the joint Pacific-CLEC audit plan.

122. The initial MTP authorized the TAM to clarify several crucial components of the OSS test that were not sufficiently detailed.

123. The initial MTP also directed the TAM to vary what was necessary in order to meet the goals of the test.

124. CGE&Y completed the details of the test cases and filled in the technical particulars of the test plan as part of its earliest duties here.

125. There is no MTP and/or CPUC requirement that this test be performed based on the New York test.

126. CGE&Y and GXS did not detect any violation of the test's blindness requirement through Pacific OSS Test and Account Management Teams releasing inappropriate information to other Pacific resources processing the test orders.

127. CLECs actively participated in workshops during the planning of the MTP.

128. The CLECs also participated in weekly informal sessions with CGE&Y.

129. CLECs were given ample opportunity to alert the CGE&Y to objectives of the test that were important to them, and to provide information that would assist it.

130. The CLECs actively participated in the testing process through their service on the Test's Technical Advisory Board (the "TAB"), which met regularly and addressed the majority of substantive issues.

131. CLECs also met in informal sessions with CGE&Y and/or GXS, outside the presence of Pacific representatives, to offer comments and recommendations on various aspects of the testing process and methodologies.

132. It appears that the CLECs were part of many, though not all, aspects of the testing process.

133. The MTP did not require root-cause analysis; rather, it obligated CGE&Y only to identify compliance exceptions.

134. The pre-validation conducted by CGE&Y was to determine that test participant data was adequate and reliable; it was not a substitute for pre-ordering.

135. CGE&Y's test scripts to GXS represented the data a CLEC Customer Service Representative would gather from its customers.

136. GXS always evaluated the test scripts provided by CGE&Y through the pre-ordering functionality.

137. GXS rejected scripts and sent them back to CGE&Y when the test script data: 1.) was not valid; 2.) did not match the pre-ordering evaluation; or 3.) caused errors in the LSR.

138. One of the recurring themes of competitors' comments in this proceeding has been that Pacific fails to resolve the OSS/LSC related CLEC operational problems it causes, and that these unresolved problems represent true obstacles to competition in the local telephone market.

139. To address these comments, the CPUC convened all-party hearings on April 4, 5, and 12, 2001 to allow the CLECs the opportunity to appear and formally present systemic operational issues on the record.

140. These hearings also were designed to allow Pacific an opportunity to show how effectively it can remedy such problems.

141. Over the course of the hearings, it became clear that there is – and post-§ 271 will continue to be – a need to rely on some systematic, well-documented processes to resolve both operational problems experienced only by individual CLECs, and more pervasive ones experienced by several competitors simultaneously.

142. It also became evident that there are evolving processes already in place that can be used to deal with both of these categories of operational problems.

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

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

145. After the all-party hearings concluded, the Assigned Commissioner issued a ruling that set forth the process to be followed to monitor the further efforts of parties in resolving the identified problems.

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

147. Pacific commenced the updating process on July 2, 2001.

148. The subject range of the group of 68 issues was broad; only a couple of the issues were being pursued to resolution using the CLEC User Forum process.

149. While CLECs continue to allege that LSC personnel too often fail to properly process service orders, the root cause of any such improper processing activities does not appear to be related to the major areas of concern identified in the December 1998 decision; namely, the possibility of inadequately trained LSC staff or deficient Pacific training processes.

150. We regard the fact that about 40% of the issues identified by CLECs at the April hearings were resolved quickly after being brought to Pacific's attention as a positive sign that Pacific has some degree of resolve to serve CLECs as wholesale business clients.

151. That only two of the 68 operational issues identified at the hearings have been brought before the CLEC User Forum for resolution may be a reasonable

situation because only ten of the 68 (about 15%) were ones raised by more than a single CLEC.

152. Pacific's consolidation of issues on the operational matrix results in the statistics appearing to show Pacific making better than actual monthly progress in responding to the concerns of its wholesale customers, and it clouds true issue resolution.

153. During the past year of monitoring the status of these operational issues, we have been disappointed with Pacific's response to CLEC input.

154. Earlier on in the resolution process, Pacific was acknowledging and reflecting input from CLECs, but then began disregarding that input.

155. Only once it became clear that its "deaf ear" concerned the CPUC did Pacific again begin making a reasonable effort to document such input in the matrix.

156. Even discounting the number of issues truly resolved, the record still shows that Pacific has made meaningful and steady quantitative progress in this area during the last six months.

157. The Issues Matrix was an important tool in helping us to track how Pacific addresses operational problems; however, it was meant to be -- and was-- diagnostic and static.

158. In September 2001, Pac-West, AT&T, New Edge and Sprint moved to have TD staff designated final editor of future matrix updates.

159. We believe that the parties would benefit from the crafting of a workable expedited dispute process for operational problems, and the parties seem closer to developing one than at any time in the past few years.

160. At this point, the Issues Matrix has served its purpose.

161. In late 1999, we issued D.99-11-050, which set prices for UNEs offered by Pacific.

162. We acknowledged that the Total Element Long Run Incremental (TELRIC) costs that we adopted in 1998 and used to set the UNE prices were "based largely on data that had not been updated since 1994,"and noted "there is evidence that some of these costs may be changing rapidly."

163. Consequently, we established a process in the order that invited carriers with interconnection agreements with Pacific to annually nominate up to two UNEs for consideration of their costs by the CPUC.

164. In February 2001, the CPUC received four separate requests to nominate UNEs for cost reexamination, filed by AT&T, WorldCom, Telephone Connection Local Services, and Pacific; we granted two of the requests to look at switching and unbundled loops.

165. On August 20, 2001, AT&T and WorldCom filed a Motion for Interim Relief, in the UNE Relook proceedings, asking that Pacific be ordered to offer UNE prices for unbundled switching and unbundled loops at proposed interim rates.

166. In October, Pacific filed a Notice of Discounted Switching Prices in this proceeding, and offered a 20 percent discount of its "UNE-P" rates, which is approximately a 44 percent reduction of Pacific's switching rates.

167. The proposal further provided that the rates would not be available until thirty days after the CPUC approved Pacific's § 271 request. It offered the reduced rates for one year unless the FCC approves its 271 application, at which point the discount is extended for an additional year.

168. In D.00-09-074, the CPUC established interim rates for DSL-capable loops.

169. In the Pacific-AT&T arbitration, D.99-11-050, the CPUC established interim prices for optical level dedicated transport rate elements.

170. In D.02-05-042, we set interim rates for unbundled loops and unbundled local and tandem switching.

171. For unbundled loops, we adopted an interim discount of 15.1% from Pacific's then-loop price for the basic (2-wire) loop, resulting in an interim loop rate of $9.93.

172. We applied this discount to the deaveraged loop rates adopted in D.02-02-047.

173. For unbundled switching, we applied a 69% discount to then-local switching rates and a 79% reduction to then-tandem switching rates.

174. Pacific's discount switching proposal is far from TELRIC compliant, is fraught with mathematical errors, and is substantially inadequate in view of the record in the UNE Reexamination proceeding.

175. We have made interim adjustments where we have found the most significant disparities, and will move steadfastly to adopt permanent rates.

176. Pacific has demonstrated that it provides nondiscriminatory access to unbundled network elements, at just and reasonable rates, terms, and conditions.

177. We adopted staff's recommendation in D.98-12-069, and held that Pacific had demonstrated compliance with Checklist Item 3.

178. Our review of the record indicates that Pacific continues to provide access to the necessary maps and records; uses a neutral method to assign spare capacity among competitors; and treats its access applicants comparably.

179. Our review of the performance results for the months June, July, and August 2001, indicates that Pacific failed to meet the parity requirements for the pre-ordering qualification (K1023) process for xDSL loops.

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

181. The results of two other associated measures, however, indicated that CLECs' performance had generally exceeded the parity or benchmark standard.

182. Pacific has met the fundamental technical requirements for XDSL loop qualification.

183. A parity comparison with ASI serves as the measurable standard for DSL loop qualification.

184. Our analysis of the evidence indicates that ASI uses the same loop qualification processes as the CLECs.

185. The performance results, covering the months of June, July and August 2001, reveal that Pacific has largely met or exceeded the parity requirements for DSL loop qualification.

186. It is apparent that actual loop make-up information in Verigate would eliminate manual intervention and enhance efficiency in the loop qualification process.

187. Pacific has established the LOC process, directed in Appendix B of D.98-12-069, to resolve and track problems associated with the initial loop installations.

188. The performance reports for the months of June, July, and August 2001 indicate that Pacific completed a substantial percentage of coordinated hot cut loop orders within a reasonable time interval.

189. The quantitative data indicates that Pacific is provisioning hot cuts for unbundled voice grade loops to the CLECs in a timely fashion.

190. The performance reports for repeat troubles provided for the months of March, April and May 2001 confirm that Pacific uses the same hot cut processes for itself and for the CLECs' service conversions for voice grade loops.

191. Pacific's UNE-P provisioning performance results assessment is persuasive because it is most consistent with our analysis of the overall performance results for provisioning, including 5.5 dB and 8 dB loops.

192. California has the greatest number of high-speed internet access lines of any state and accounts for nearly a fifth of all high-speed internet access lines in the nation.

193. California's high-speed Internet access lines serve more than a million residential and business customers.

194. Pacific is providing the CLECs nondiscriminatory access to its OSS and other network systems for loop qualification, pre-ordering, and ordering of DSL services.

195. The CLECs' reported more cases of repeat troubles after service repairs than ASI did.

196. Our analysis of the results of "Frequency of Repeat Troubles in 30 Day Period" indicates that it may be significantly influenced by the magnitude of the underlying commercial volume.

197. Overall, Pacific's provisioning of xDSL is more than satisfactory; however, we do not believe that competition in the advanced services market, particularly xDSL services, has developed in California at this time.

198. While California has the greatest number of high-speed Internet access lines in the nation, equaling nearly a fifth of all such lines, Pacific and its affiliate, ASI, own more than 80% of these lines.

199. In D.00-09-074, we directed Pacific to provide the CLECs xDSL services over IDLC under the same terms, conditions, and prices as it provides to itself and its affiliates.

200. At present, there is no specific performance measure assessing the quality of Pacific's service over IDLC.

201. We find no evidence that Pacific has imposed additional conflicting standards for xDSL services, or has disregarded national and international ones.

202. The performance results for order reject notices for XDSL satisfy the parity and benchmark requirements.

203. In 1998, we set forth four technical requirements for Pacific to demonstrate compliance with in its Checklist Item 5 showing.

204. Pacific has shown that CLECs are able to obtain meet-point unbundled transport, and it has also detailed when a CLEC must amend its ICA by negotiated terms or proposed language.

205. While we have not yet reviewed the higher-level optical transport rates, the protests and challenges in the record are largely speculative, and are not supported by any costing analysis.

206. Since Pacific separately identifies UNE access traffic from all other access traffic by sending it in a detached distinctly identified file, it appears that WorldCom should be able to differentiate UNE access traffic from other access traffic in the files that Pacific provides.

207. ORA's claim that Pacific has failed to produce accurate and timely bills for the transport UNE, go to the adequacy of the performance measures, not Pacific's ability to bill for the transport UNE.

208. We have addressed Z-Tel's shared transport complaint in another proceeding, and Pacific has committed in its ICA with AT&T to permit the use of shared transport to route intraLATA toll traffic where AT&T purchases unbundled switching and customized routing Option C.

209. Pacific has demonstrated that it has made unbundled local transport available to CLECs in a nondiscriminatory manner.

210. Review of the monthly reports filed with the CPUC's Telecommunications Division over the period April - September 1999 on the

progress on the Advanced Intelligence Network test indicates that WorldCom did not actively pursue its AIN proposal and never supplied Pacific with trigger information necessary to develop a test.

211. Pacific has participated in cooperative tests on the technical feasibility of particular custom routing options.

212. Most recently, WorldCom has acknowledged that there are technical problems relating to the routing of OS traffic in Nortel switches, and it and Pacific are working on the solution.

213. Analysis of November 2001 through January 2002 UNE-P performance results for Measures 7,11 and 19 through 23 shows continuing improvement in Measures 7, 11, 20 and 22, but persistent problems in the maintenance related Measures 19 (Trouble Report Rate), 21 (Average Time to Restore), and 23 (Repeat Troubles).

214. In general, Pacific's Measure 7 performance has been consistent, and does not appear to be substantially worse than the service it gives to its own retail analog.

215. The instances where Pacific failed to meet the parity standard for switching were neither numerous nor severe.

216. There were no reports of UNE-P chronic failures under Measure 11. On the other hand, Pacific continued to report failures for the basic UNE-P product under several maintenance Measures, with the only apparent mitigating factor being relatively low CLEC volumes for Measures 21 and 23.

217. Pacific has demonstrated that it has made unbundled switching available to CLECs in a nondiscriminatory manner.

218. For Checklist Item 7, we directed Pacific, among other things, to work collaboratively with its competitors, to resolve a number of related access issues;

to implement a functional flow through mechanism; to integrate E911order entry, and to implement an automated reject and jeopardy system.

219. CGE&Y noted that while the E911 gateway was part of the OSS test in a limited number of transactions, the CLECs had shown no interest in using the E911 gateway.

220. As a matter of efficiency and practicality, the CLECs seem to prefer to let Pacific perform the update via the Local Service Request. In fact, at testing time, no CLEC ordering UNE ports was performing updates via the gateway.

221. TG reported during the test that once it achieved system access through the gateway, entering transactions were easy.

222. Based on performance results, the TAM concluded that Pacific accurately updates the E911 database.

223. Pacific has complied with our directive for clear guidelines that address the discrepancy between addresses that pass Service Order Retrieval and Distribution (SORD) but not E911.

224. Pacific has well documented its training opportunities for the use of the interface, and the CLECs appear to be using ELI.

225. Pacific has also developed adequate standards for peer-to-peer interface for the entry of E911 data.

226. Pacific has demonstrated the accuracy and integrity of its 911/E911 database.

227. Pacific has also shown that it provides nondiscriminatory access to the directory listings in its directory assistance databases and to the operator services supplied by Pacific.

228. Based on the verified accuracy of the directory listings, and the positive performance reflected from Performance Measures 37 and 38, CGE&Y reported

that Pacific accurately and efficiently performed Directory Listings in the OSS Test.

229. Our review of the ICAs that Pacific has entered into with its competitors indicates that Pacific has a specific legal obligation to provide white pages listings to their customers.

230. Pacific addressed the technical directives of D.98-12-069 in its 1999 and 2000 Appendix B compliance submissions.

231. CLECs either could not substantiate the earlier listings problems cited or could not refute Pacific's contention that the problems were carrier-caused input errors.

232. The April 2001 operational problems, while troubling, do not appear to be systemic.

233. CGY&E positively evaluated Pacific's performance regarding directory listings during the OSS Test.

234. Pacific has documented that the white pages directory listings that it provides for its competitors' are comparable in appearance to the listings of Pacific customers.

235. Pacific has documented that via several gateways it has established a mechanism for providing CLECs with the ability to confirm the accuracy of their customers' entries prior to publication in the directory.

236. In D.98-12-069, the CPUC found that Pacific had complied with the requirements of Checklist Item 9.

237. No commenters addressed Pacific's June 2001demonstration of compliance with Checklist Item 9.

238. Pacific has demonstrated that it has complied with the current number administration rules, regulations and guidelines established by the various regulatory agencies as well as the industry numbering forums.

239. Based on the currently available service information in the record, Pacific has demonstrated that it provides the CLECs nondiscriminatory access to its databases and associated signaling necessary for call routing and completion, in satisfaction of the requirements of Checklist Item 10.

240. For Checklist Item 11, the CPUC set forth in Appendix B of D.98-12-069 seven detailed requirements for Pacific to satisfy in order to demonstrate its compliance.

241. Our review of the interconnection agreements between Pacific and its competitors indicates that Pacific has assumed specific legal obligations to provide number portability.

242. The LNP process is labor-intensive and requires careful coordination between the carriers.

243. Overall, the record shows that there have been problems, particularly in the use of the Frame Due Time process; however, Pacific has made efforts to isolate the problems and correct them.

244. During the April 2001 hearings on operational issues, AT&T detailed its request for Pacific to modify its Number Portability process and make system changes to institute a mechanized Number Portability Administration Center (NPAC) check so that the Old Service Provider (here Pacific) does not disconnect end-users before the New Service Provider (here AT&T) has completed its installation work.

245. Pacific agreed to this LNP mechanization process, and advised AT&T by letter dated October 5, 2001, that implementation would be complete by September 2002.

246. Mechanization of the NPAC check is crucial.

247. Mechanized enhancement of the NPAC check will mechanically delay a Pacific disconnect if the activation of the NPAC porting request has not been completed by the due date.

248. Pacific's justification for the September 2002 scheduled completion, given that a NPAC feed to its system already exists, does not explain why implementation of a mechanized enhancement to the NPAC check should take almost a year.

249. At present, the CLECs do not have certain knowledge of when Pacific will disconnect certain customers, and cannot maintain the integrity of these end-users' dial tones.

250. Our review of the interconnection agreements between Pacific and its competitors shows that Pacific has specific legal obligations to provide databases and signaling. These commitments are also in the CLEC Handbook.

251. Since August 31, 1998, it appears that Pacific has successfully implemented and maintained the necessary process improvements for ordering, provisioning, and maintaining database-driven features such as LIDB, CNAM, and Customer Local Area Signaling Services.

252. Pacific has developed and implemented methods and procedures for multiple workgroups to ensure on-time, complete and accurate implementation of these database services.

253. Access to databases at the STP would not cover downloading of the entire database.

254. In D.98-12-069, we found that Pacific had complied with the requirements of Checklist Item 12.

255. Neither in 1998 nor subsequently has any commenter presented evidence that local customers of CLECs either experienced dialing delays or had to dial additional digits to make local calls.

256. Our review of the interconnection agreements between Pacific and its competitors shows that Pacific has specific legal obligations to provide local dialing parity.

257. Accessible Letter CLECC99-030, dated May 5, 1999, and Pacific's presubscription tariff, Schedule Cal. P.U.C. No. 175-T, § 13 effective May 7, 1999, confirms the availability of ILP.

258. In D.98-12-069, the CPUC held that Pacific had satisfied the requirements of Checklist Item 13.

259. Our review of the interconnection agreements between Pacific and its competitors indicates that Pacific has specific legal obligations to provide reciprocal compensation arrangements.

260. In D.98-12-069, we directed Pacific to satisfy seven conditions regarding resale promotional offerings in order to show compliance with the requirements of Checklist Item 14.

261. No party responded to Pacific's July 15, 1999 filing detailing how it had met our compliance conditions for this item.

262. In their August 23, 2001 responses, the CLECs and ORA allege that Pacific is not reselling DSL service at wholesale rates and has obstructed its resale obligation in the provision of DSL services.

263. Our record review shows that Pacific is legally obligated to make retail telecommunications services available for resale in accordance with interconnection agreements and tariff.

264. The record, which includes Pacific's statements and the marketing information from its web site, demonstrates that PBIS' services are designed for, and sold to residential and business end-users.

265. The DSL Transport Services provided to PBIS by ASI, are telecommunications services that enable PBIS to offer its services to end-users.

266. Without the DSL Transport Services provided to PBIS by ASI, PBIS could not reach its end-users.

267. PBIS is not simply an ISP that combines DSL service with its own Internet service.

268. Pacific affiliate PBIS receives DSL services from Pacific affiliate ASI, and those advanced telecommunications services become PBIS' retail services.

269. It is the affiliation between the three -- Pacific, ASI and PBIS -- that effectively creates Pacific's provision of DSL Transport Services at retail.

270. Representing the world's sixth largest economy, with a gross state product of $1.21 trillion, there is significant potential for the growth of advanced services in California.

271. Pacific's DSL market dominance in California is increasing while its competitors' DSL market share is shrinking.

272. In the absence of a discounted DSL market, competition in California will fester in the midst of the Pacific, ASI, and PBIS integration.

273. Beginning with April 2002 performance, Pacific has implemented the CPUC's OSS performance monitoring and enforcement mechanisms, the "PIP" established in D.02-03-023.

274. The FCC has listed five important characteristics for a performance incentives plan: (1) potential liability that provides a meaningful and significant incentive to comply with the designated performance standards; (2) clearly-articulated, pre-determined measures and standards, which encompass a comprehensive range of carrier-to-carrier performance; (3) a reasonable structure that is designed to detect and sanction poor performance when it occurs; (4) a self-executing mechanism that does not leave the door open unreasonably to litigation and appeal; and (5) reasonable assurances that the reported data is accurate.

275. The Commission's PIP has thirty-nine OSS performance measures that cover OSS performance in nine areas: pre-ordering, ordering, provisioning, maintenance, network performance, billing, database updates, collocation, and interfaces.

276. The Commission's PIP performance measures are broken down into sub-measures to track performance separately for different service types, for different regions, and for other service distinctions such as the necessity for fieldwork or line conditioning.

277. In April 2002, 126 CLECs had OSS performance generating performance measure results.

278. In April 2002, 592 OSS performance sub-measures produced testable data, resulting in 5867 CLEC-specific performance results.

279. An independent auditor, PriceWaterhouseCoopers, audited the measurements and the rules established to generate the reported performance data and determined them to be consistent with the rules that define and make the measures operational.

280. Additionally, aided by an external consultant, staff conducted an accuracy check of the data and found problems that were corrected.

281. The parties were unable to agree on a complete set of performance assessment methods and criteria.

282. The Commission constructed the final OSS performance assessment method and established the test criteria in D.01-01-037 and D.02-03-023.

283. The Commission's PIP established two "consecutive failure" definitions: 1) If a sub-measure "fails" three months in a row, it is termed a "chronic failure" and 2) If a sub-measure fails five or six out of six months it is termed an "extended chronic failure."

284. The Commission's PIP incentives are billing credits to CLECs and ratepayers where deficient performance to individual CLECs generates billing credits to those CLECs (Tier I) and deficient performance to the CLEC industry as a whole generates billing credits to the ratepayers (Tier II).

285. In the Commission's PIP, if the amount to be credited to a CLEC exceeds the CLEC's billing, the excess amount is credited to the ratepayers.

286. The FCC has approved several other states' performance incentive plans with the same liability the Commission's PIP provides, thirty-six percent of an ILEC's annual net return from local exchange service.

287. Thirty-six percent of net return from local exchange service equals approximately $601 million for the current year.

288. The Commission's PIP cap applies monthly at one-twelfth of the annual cap amount: approximately $50 million per month.

289. The Commission's PIP total incentive credits are capped at about $16.4 million per month without formal review.

290. The Commission's PIP is self-executing with automated data recording, with automated assessment, and with credits made without further review unless the procedural caps are reached.

291. The Commission's PIP was not scaled to absolute amounts; it was scaled to match specific percentages of deficient performance with specific percentages of net return.

292. The Commission's PIP explicitly requires Pacific to update the incentive cap after new ARMIS data is posted each April.

293. The Commission's PIP did does not *explicitly* require that the incentive amounts themselves be updated even though they are based on the cap.

294. According to ARMIS data, Pacific's annual net return from local exchange service in California increased by 9.28 percent from 2000 to 2001.

295. Pacific has informally agreed to adjust incentive amounts that are less than the cap to the new ARMIS data each year beginning with May 2002 performance.

296. Pacific implemented our performance incentives plan beginning with performance for the month of April 2002.

297. For April 2002 performance, Pacific's "failure rate" for individual CLEC results in Category A was 6.7 percent.

298. For April 2002 performance, the Commission's PIP generated incentive amounts totaling $673,390, with $532,880 credited to the CLECs and $140,510 credited to the ratepayers.

299. Parties to this proceeding raised concerns that our PIP does not provide sufficiently strong incentives for chronically deficient performance.

300. Pacific could treat the incentive credits generated by extended chronic failures as the "cost of doing business."

301. If OSS performance for a particular sub-measure continues to be deficient for longer than six consecutive months, it would be reasonably clear that the amounts were too low, and that an ILEC may be treating the incentive amounts as the "cost of doing business."

302. "Continuing extended chronic failures" are increasingly accurate assessments.

303. Continuing extended chronic failures represent increasing competitive harm. For a continuing extended chronic failure to occur, performance would have to be identified as failing eight or nine months in a nine-month period.

304. The probability of a Type I error, or net critical alpha, decreases as a test requires failures in to more consecutive months.

305. Under parity conditions, with a single-month 0.20 critical alpha, failing five or more times out of six consecutive months has a probability of 0.0016;

failing eight or more times out of nine consecutive months has a probability of 0.000019; failing ten or more times out of twelve consecutive months has a probability of 0.0000045; and failing twelve or more times out of fifteen consecutive months has a probability of 0.000001.

306. Continuing extended chronic failures would indicate that Pacific is not providing complete parity OSS performance.

307. California Pub. Util. Code § 709.2, enacted in 1994, requires the CPUC to make four essential determinations prior to "authorizing or directing competition" in the intrastate interLATA market.

308. Apart from the jurisdictional distinction, the key difference between the Pub. Util. Code § 709.2 and § 271 lies in the sector of the telecommunications market each one addresses.

309. Section 271 approaches the accessibility of the local exchange market through satisfaction of the 14-point checklist. It also allows consideration of the public interest assessment of a BOC's entry into the long distance market.

310. Section 709.2 addresses the health of the intrastate interLATA telecommunications, or IEC, market, and assesses the public interest from that perspective.

311. In 1998, in this docket, we indicated that our Section 709.2 assessment would be performed in a separate phase.

312. While the parties in Pacific Bell Communications' (PB Com) 1996 application for a certificate of public convenience and necessity to provide long distance invoked Section 709.2, we made no findings of fact or conclusions of law regarding that section in D.99-02-013.

313. Overall, all competitors have generally fair, nondiscriminatory, and mutually open access to exchanges and interexchange facilities, including fair

unbundling of exchange facilities, as prescribed in the CPUC's OANAD proceeding.

314. The parties have presented evidence of recent and past anticompetitive behavior by Pacific and its parent, SBC, in California and elsewhere in the nation.

315. The record does not support the finding that there is no anticompetitive behavior by Pacific Bell.

316. The proposed joint marketing by Pacific and PBLD of PBLD's long distance services was a controversial issue that we ultimately resolved in conformance with the FCC's CPNI and Non-Accounting Safeguards Orders.

317. Time and documentary evidence have better informed our views that joint marketing on inbound calls from Pacific customers strikes an appropriate balance between the opening of the local market and the additional interconnection and unbundling requirements of TA96.

318. Nationally, the RBOCs have proven themselves to be formidable entrants into the long distance market.

319. SBC-LD currently serves over 13 million access lines in Texas, Kansas and Oklahoma, three states in its region where it has authority to offer interLATA services; it reached this amount one year after winning 271 approvals.

320. The record before us simply does not support the finding that there is no improper cross-subsidization anywhere within Pacific's proposal to provide long distance telephone service within California.

321. Our requirements for separate accounting records and for the examination of the cost allocation methodology for the provision of intrastate interexchange telecommunications service, pursuant to our affiliate transaction and cost allocation rules and O.P. 8 and 18 of D.99-02-013, will be integral in preventing, identifying and eliminating improper cross-subsidization.

322. Pacific painstakingly examined and interpreted PB Com's record and decision, arguing in the alternative that its § 271 showing equally satisfied its burden of proof under Section 709.2; still, Pacific was able to present neither findings, conclusions of law, nor ordering paragraphs to support its case.

323. Particularly with respect to § 709.2(c)(4), Pacific failed to show that there is no substantial possibility of harm to the competitive intrastate interexchange telecommunications market by its long distance entry in California.

324. We are persuaded by the interested parties' showing that a substantial possibility of harm to the intrastate long distance telephone market exists from Pacific's continuing role as the PIC administrator as well as from Pacific's proposed joint marketing plans.

325. Pacific failed to offer any assurance that it would perform its LPIC role with any safeguards of neutrality or sensitivity to competitor concerns.

326. The significant advantage afforded Pacific's long distance affiliate by Pacific's ability to market its affiliate's service to several million incoming customer service calls per year from its existing local service customers will unquestionably affect the other interexchange carriers.

327. No other interLATA competitor in California has any similar massive opportunity to address incoming calls from potential interLATA customers.

328. PBLD's potentially swift dominance of the intrastate interexchange telephone market could detrimentally impact competition in that sector.

329. While Pacific largely satisfies the technical requirements of § 271, in accordance with § 709.2 we cannot state unequivocally that we find Pacific's imminent entry into the long distance market in California will primarily enhance the public interest.

330. Local telephone competition in California exists in the technical and quantitative data; but it has yet to find its way into the residences of the majority

of California's ratepayers. Only time and regulatory vigilance will determine if it ever arrives.

331. We expect that the public interest will be positively served in California by the addition of another experienced, formidable competitor in the intrastate interexchange market.

332. At the same time, we foresee the harm to the public interest if actual competition in California maintains its current anemic pace, and Pacific gains intrastate long distance dominance to match its local influence.

333. A neutral third-party administrator appears necessary in the new environment.

334. The ALJ in the PB Com proceeding specifically found in the draft decision that very real risks to the competitiveness of the long distance market resulting from unregulated joint marketing activities should be reduced by separation of Pacific and its affiliate's sales forces.

Conclusions of Law

1. We conclude that Pacific satisfies the § 271(c)(1)(A) requirement.

2. Pacific is legally obligated to provide physical and virtual collocation pursuant to CPUC-approved interconnection agreements, tariff, and FCC rules.

3. Our review of the 1999 compliance filing and responses for Checklist Item 1 indicates that Pacific substantiated its satisfaction of each of the associated procedural and policy requirements of D.98-12-069.

4. We will not resolve in this decision the pending collocation issues.

5. At this time, we find the interim prices to be in compliance with the law, subject to our imminent determination of permanent rates, terms and conditions.

6. Pacific makes trunking available pursuant to CPUC-approved interconnection agreements and FCC rules

7. In the context of appropriate network management, the daily limit on trunking installations appears neither discriminatory nor anti-competitive.

8. Pacific has satisfied the requirements of Checklist Item 1, and we so verify.

9. In general, Pacific provides nondiscriminatory access to a comprehensive set of unbundled network elements at terms and conditions that comply with § 251 and 252 of TA96 and include all the UNEs from the *UNE Remand Order*.

10. Pacific has complied with our D.98-12-069 technical requirements regarding general access to UNEs, UNE combinations, and UNE intellectual property issues.

11. Pacific's OSS Test was designed in accordance with the established standards for the testing and evaluation of a BOC's OSS set forth by the FCC in previously approved § 271 orders.

12. Whether the sum of the M&R evidence adequately supports a finding that CLECs are being allowed a meaningful opportunity to compete is still an open question.

13. The overall record shows that Pacific has complied with the Commission's directive concerning billing disputes, and that it is making a continuing and concrete effort to maintain a state of compliance.

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

15. Pacific has satisfied all the OSS billing requirements we set out for it in Appendix B to D.98-12-069.

16. Since there is no requirement that the CMP interface test environment be dynamic and simulate the commercial experience's integrated pre-ordering and ordering functionality, Pacific's test environment is adequate.

17. Pacific's CMP allows CLECs in California non-discriminatory access to the OSS.

18. Retesting of the UNE-P through EDI interface is not warranted.

19. Given acceptable commercial performance results for DS-1, there is no need to retest it.

20. CGE&Y has satisfied the requirements and intent of the MTP regarding "LNP only" orders.

21. A limited retesting of Pre-Order/Ordering integration is unnecessary.

22. CGE&Y acted reasonably in its flow-through assessment during the test, and we see no need for retesting this aspect.

23. The existing test results and analysis indicate that Pacific's backend processing is adequate.

24. CGE&Y satisfied the MTP in its analysis of Pacific's billing performance.

25. We cannot fault CGE&Y for not utilizing the statistical methodology we approved a month after the Final Report was issued; rather, we consider CGE&Y's statistical analysis in the Final Report to be in accordance with the MTP.

26. CGE&Y's aggregation of the four pseudo-CLECs' performance data is in accordance with § 6.5.3.1 of the MTP 4.0.

27. CGE&Y did not violate the MTP with respect to data validation but acted in accordance thereof.

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

29. Based on the relevant test records, CGE&Y appropriately exercised its authority to modify aspects of the MTP, and there is no support for the allegations regarding CGE&Y's analysis.

30. The OSS test did not need to follow KPMG's NY OSS testing approach exactly, and "blindness" was properly maintained during the California test.

31. There is no evidence to support the assertion that significant changes were made to the MTP or that discussions from which the CLECs were excluded regularly took place during the test.

32. There is no evidence that CGE&Y and GXS exceeded their authority in the balance they struck during the testing process between test security and accessibility; therefore, the level of CLEC participation was reasonable.

33. The MTP required Pacific to determine the cause of, and fix, any identified problems during the OSS testing; thus, there is no merit in the allegation that CGE&Y violated the MTP-required "style" of testing.

34. Notwithstanding CGE&Y's pre-validation steps, review of the record as a whole indicates that GXS conducted a reasonable end-to-end test in California.

35. It is reasonable to conclude from the Final Report that Pacific's OSS is commercially available and sufficient to handle reasonable, anticipated commercial volumes.

36. Pacific has satisfied all significant aspects of the LSC and OSS Appendix related checklist directives we established for it in our December 1998 decision.

37. A mutually agreed upon dispute process could focus in on and resolve problems before they became full blown formal complaints, but the parties must decide that they will work together to create it.

38. Since the Issues Matrix was a static and diagnostic tool, it is reasonable to have Pacific submit the final version 30 days after the effective date of this order.

39. It is reasonable to deny as moot the September 2001 motion to designate TD staff final editor of future issues matrices because Pacific will submit its final version 30 days from the effective date of this order.

40. The CPUC has adopted, and shall continue to adopt cost-based, TELRIC compliant UNE rates in California in accordance with TA96 and the rules of the FCC.

41. Through Pacific's complete showing for this item, it has demonstrated that it provides nondiscriminatory access to unbundled network elements, at just and reasonable rates, terms, and conditions.

42. Pacific satisfies the requirements of Checklist Item 2 and we verify its compliance.

43. Pacific has shown that it continues to provide nondiscriminatory access to the poles, ducts, conduits, and ROW that it owns or controls, at just and reasonable rates, terms, and conditions.

44. Pacific continues to satisfy the requirements of Checklist Item 3, and we verify its compliance.

45. Our analysis of the performance measures associated with the ordering and provisioning intervals for voice grade, DS1 and xDSL services indicates that Pacific, though faltering in some months, has largely satisfied the standards.

46. Pacific has satisfied the technical and performance requirements for DSL loop qualification.

47. Since actual loop make-up information in Verigate would eliminate manual intervention and enhance efficiency in the loop qualification process, it is reasonable that Pacific should be directed to expeditiously improve the ratio of the actual loop make-up information in its Verigate, Datagate, EDI, and CORBA systems.

48. Pacific has satisfied the compliance requirements related to resolving and tracking problems associated with the initial loop installations, pursuant to Appendix B of D.98-12-069.

49. Based on the performance data for hot cut provisioning and based on statistical benchmark and parity standards, Pacific has met the compliance requirements for the provisioning of the voice grade loops.

50. The record evidence supports the assertion that Pacific uses the same CHC and FDT processes in serving the CLECs that it uses for itself.

51. The performance results substantiate that Pacific's hot cut quality of service, practices, and performance standards adequately satisfy the compliance requirements for Checklist Item 4.

52. Pacific's UNE-P provisioning performance meets the compliance requirements.

53. A complete analysis of the currently available service information and performance results in the record shows that Pacific provides the CLECs with nondiscriminatory access to its network systems for preordering, ordering, and provisioning of xDSL services.

54. The xDSL services' performance results also show that Pacific is providing adequate customer service groups (i.e., account teams, LSCs, LOCs) to assist and facilitate CLECs for xDSL ordering and provisioning.

55. Our review of five performance measures associated with xDSL provisioning for the months of January through August 2001 revealed that Pacific met or exceeded the parity requirements for the CLECs.

56. Examining the results of Pacific's overall measures for stand-alone and line-shared xDSL services' provisioning, it appears that Pacific is complying with this D.98-12-069 requirement.

57. It is reasonable for Pacific to add to the national and international standards for xDSL services when prudent, consistent with the type of xDSL service provisioned or technology deployed.

58. Our review of the record shows that Pacific has binding legal obligations to provide unbundled local loops pursuant to CPUC-approved interconnection agreements in accordance with § 252 of TA96.

59. Pacific has satisfied the D.98-12-069 technical requirements for unbundled loops.

60. Based on the record evidence, including the overall performance results, Pacific is in compliance with the requirements of Checklist Item 4.

61. Pacific currently provides unbundled local transport in accordance with interconnection agreements and tariff.

62. Pacific has satisfied our D.98-12-069 compliance requirements for unbundled local transport.

63. Pacific satisfies the requirements of Checklist Item 5, and we verify its compliance.

64. Pacific has a legal obligation to provide unbundled local switching pursuant to its interconnection agreements.

65. Since Pacific has indicated that it will negotiate any temporary factor for estimating terminating usage, it has satisfied our requirement in this regard.

66. Until Pacific has implemented the specific type of custom routing requested, it must provide WorldCom with Operator Services and Directory Assistance as UNEs, pursuant to the UNE Remand Order.

67. Weighing all factors, as a legal and practical matter, Pacific has demonstrated that it has made unbundled switching available to CLECs in a nondiscriminatory manner.

68. Pacific satisfies the requirements of Checklist Item 6, and we verify the company's compliance.

69. Pacific has a legal obligation to provide 911, E911, Directory Assistance, and Operator Call Completion pursuant to its tariff and interconnection agreements, approved by the CPUC, and it is complying with that obligation.

70. Pacific satisfies the requirements of Checklist Item 7, and we verify its compliance.

71. The thorough examination of Pacific's 1999 and 2000 Appendix B compliance submissions shows that Pacific has satisfied the technical directives of D.98-12-069.

72. Pacific's 2001 Performance Measure #4 data shows some amount of flow-through for directory service requests; thus, Pacific has met our implementation requirement for this item.

73. Pacific's documentation that the white pages directory listings that it provides for its competitors' are comparable in appearance to the listings of Pacific customers demonstrates that it has satisfied the FCC's requirement that it provide listings that are nondiscriminatory in appearance and integration.

74. Pacific documentation that it has established, via several gateways, a mechanism for providing CLECs with the ability to confirm the accuracy of their customers' entries prior to publication in the directory, satisfies the FCC's requirement that a BOC must provide directory listings with the same accuracy and reliability that it provides to its own customers.

75. Pacific satisfies the requirements of Checklist Item 8, and we verify Pacific's compliance.

76. Prior to the transfer of central office code responsibility to NeuStar, Pacific had a legal obligation to make telephone numbers available on a nondiscriminatory basis pursuant to its interconnection agreements.

77. Following the transfer of responsibility, Pacific remains subject to the FCC's rules requiring compliance with code administration guidelines, as well as

the duty under § 251(b)(3) to permit nondiscriminatory access to telephone numbers.

78. Pacific continues to satisfy the requirements of Checklist Item 9, and we so verify.

79. Based on the currently available service information, Pacific demonstrates that it provides the CLECs nondiscriminatory access to its databases and associated signaling necessary for call routing and completion, in satisfaction of the requirements of Checklist Item 10.

80. The FCC's rule on limited access at the STP does not require Pacific to provide CLECs with access to any information contained in the database on a bulk basis.

81. Pacific is in compliance with the requirements of Checklist Item 10, and we so verify.

82. The continuing delay of a mechanized enhancement to the NPAC check presents a critical barrier to entry for the CLECs.

83. Pacific should complete implementation of the mechanized LNP process no later than the date that opening comments are due on the draft of this decision.

84. Pacific has not satisfied the compliance requirements for Checklist Item 11 until it implements this essential element of local number portability in California, and we will not verify compliance until Pacific does so.

85. Pacific has demonstrated that it continues to provide nondiscriminatory access to such services or information as are necessary to allow a requesting carrier to implement local dialing parity pursuant to TA96.

86. Pacific has satisfied the requirements of Checklist Item 12, and we so verify.

87. Pacific has shown that it continues to have in place reciprocal compensation arrangements in accordance with § 252(d)(2).

88. Pacific has satisfied the requirements of Checklist Item 13, and we so verify.

89. The affiliation between Pacific, ASI and PBIS effectively creates Pacific's provision of DSL Transport Services at retail, and the *Second Report* and 47 C.F.R. § 51.605(c) do not alter this fact.

90. Pacific has erected unreasonable barriers to entry in California's DSL market both by not complying with its resale obligation of its advanced services pursuant to § 251(c)(4)(A) and by offering restrictive conditions in the ASI-CLEC agreements in contravention of § 251(c)(4)(B).

91. To be in full compliance with the requirements of checklist Item 14, Pacific must remove the barriers to entry of the California DSL market and meet its resale obligation of advanced services.

92. Pacific has not satisfied the requirements of Checklist item 14, and we decline to verify compliance thereof.

93. The Commission should establish a contingency mechanism to fill any performance enforcement gap that may arise between the end of the six-month initial implementation period and the adoption of any necessary revisions.

94. The Commission should continue the current PIP until it is revised.

95. The Commission should add an additional treatment for deficient performance that may continue beyond the initial implementation six-month period.

96. To provide stronger incentives when deficient performance continues past six months for a sub-measure, it will be reasonable to increase the incentive amount for any such sub-measure.

97. To provide incentives to prevent continuous deficient performance we should automatically increase the payments for sub-measures with deficient performance when an "extended chronic failure" continues for that sub-measure.

98. When an extended chronic failure occurs three or more months in a row, payments for that failure should be doubled from that required for the extended chronic failure for that month.

99. The increasing incentive amounts should be applied to continuing extended chronic failures for both Tier I and Tier II assessments, applying to Tier II assessments "as if" Tier II had "extended chronic failure" assessments.

100. Every three months thereafter, incentive amounts should be doubled again for continuing extended chronic failures.

101. Since continuing extended chronic failures would indicate that Pacific is not providing parity OSS performance, Pacific should not be eligible for mitigation under § 3.9 of the PIP when continuing extended chronic failures occur.

102. The PIP establishes a potential liability that provides a meaningful and significant incentive to comply with the designated performance standards.

103. The PIP has clearly articulated, pre-determined measures and standards, which encompass a comprehensive range of carrier-to-carrier performance.

104. The PIP has a reasonable structure that is designed to detect and sanction poor performance when it occurs.

105. The PIP is a self-executing mechanism that does not leave the door open unreasonably to litigation and appeal.

106. Third party and staff audits have provided reasonable assurances that the reported data used for the PIP is accurate.

107. The PIP meets the FCC's criteria for an OSS performance monitoring and enforcement mechanism being in the public interest.

108. Heretofore, the CPUC has addressed Section 709.2 only to a limited extent.

109. Specifically analyzing this docket's sizeable record in the § 271 chapters, Pacific has demonstrated that it has provided substantially fair, nondiscriminatory, open access to exchanges, including fair unbundling of exchange facilities.

110. Absent competitively neutral and nondiscriminatory intraLATA LPIC administration, there is a substantial possibility that the intrastate interexchange telecommunications market will be harmed through increasing customer dissatisfaction and carrier conflicts.

111. Pacific's proposed joint marketing plans also pose a substantial possibility of harm to the intrastate long distance telephone market.

112. The preparation of a feasibility study that would set forth the costs of a structural separation plan would be reasonable in light of the record.

113. It is reasonable to investigate the costs and feasibility of selecting a competitively neutral third-party PIC administrator.

114. In light of the substantial risk of harm to California's intrastate interexchange telecommunications market evidenced in this record, there should be some restraint on Pacific and its long distance affiliate's free-form joint marketing.

115. It is reasonable that we should a narrow and focused constraint on joint marketing to inbound customer calls.

116. This order should be effective immediately in accordance with the public interest.

O R D E R

IT IS ORDERED that:

1. Pacific Bell Telephone Company (Pacific) shall submit the final version of the Operational Issues Matrix thirty (30) days after the effective date of this order.

2. The September 2001 motion filed by Pac-West Telecomm, Inc., AT&T Communications of California, Inc., New Edge Network, Inc. and Sprint Communications, L.P. is denied as moot.

3. In accordance with a schedule to be set by the assigned Administrative Law Judge, interested parties in the instant proceeding shall present a joint proposal for review and eventual implementation of a workable expedited dispute process for operational problems arising between Pacific and competitive local exchange carriers.

4. Pacific shall file with its opening comments on the draft decision for this order the projected plan and schedule for improving the ratio of the actual loop make-up information in its Verigate, Datagate, Electronic Data Interchange (EDI), and Common Object Request Broker Architecture (CORBA) systems on or before December 31, 2002.

5. Pacific shall complete implementation of the mechanized Local Number Portability process no later than the date that opening comments are due on the draft of this decision.

6. The Commission's performance incentives plan ("PIP"), as updated by this decision, shall continue in effect until revised by the Commission.

7. The monetary caps, the base amount, and the parity simulation payment-reduction amount shall be updated for the months of May 2002 through April

2003 based on April 2002 ARMIS data for the year 2001, and shall be adjusted with the same timing and method each year thereafter.

8. Based on April 2002 ARMIS data for the year 2001, the monetary caps, the base amount, and the parity simulation payment-reduction amount shall be increased by 9.28 percent for the months of May 2002 through April 2003.

9. The Commission's PIP for Pacific shall be augmented so that when an extended chronic failure continues three or more months in a row ("continuing extended chronic failure"), incentive amounts for that failure will be doubled from that originally required for the extended chronic failure for that month. Every three months thereafter, incentive amounts shall be doubled again for that continuing extended chronic failures.

10. The continuing extended chronic failure incentive amount increases shall apply to both Tier I and Tier II assessments by applying to Tier II assessments "as if" Tier II had "extended chronic failure" assessments.

11. Incentive credit increases shall continue for continuing extended chronic failures until two consecutive months "pass," even though no incentive credits are generated for the single months where performance is not identified as failing.

12. When Pacific has any continuing extended chronic failures it shall not be eligible for mitigation credits under § 3.9 of the PIP.

13. The continuing extended chronic failure credit increases shall be applied to performance in the ninth month of the PIP's implementation, January 2003, and thereafter.

14. Pacific shall file a report or study detailing the costs of separating itself into two parts and divesting the segment covering wholesale network operations six months from the effective date of this decision. Interested parties shall have

an opportunity to review the study or report and comment on it, pursuant to the schedule to be set by the assigned Administrative Law Judge.

15. The Telecommunications Division staff under the supervision of its Director shall prepare for consideration on the Commission's meeting agenda, an Order Instituting Investigation to examine the feasibility, structural implementation, and selection criteria for selecting a competitively neutral third-party Preferred Interexchange Carrier administrator for California, no later than five months from the effective date of this order.

16. Pacific shall include in its final intrastate interLATA joint marketing plans and/or agreements one of the two following options:

a. Either Pacific shall establish a separate telephone number for end-users to call on their own when referring such end-users to the services of Pacific's long distance affiliate, or

b. Pacific's representatives shall offer the incoming caller an on-the-same-call transfer to an interexchange carrier of the caller's choice. Pacific Bell Long Distance and any other interexchange carrier who is willing to participate shall pay the same cost.

Pacific shall select one of the two options and so advise the Commission in conjunction with its comments on the draft decision.

This order is effective today.

Dated _____, at San Francisco, California.