

# Large Filing Separator Sheet

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appropriate so there is no reason to argue the merits in this arbitration case. However, if the Commission does establish a charge for access to Pacific's OSS system, it is appropriate that that decision (as required under Preface § 8.3) should be reflected in this ICA. Pacific's proposed language accomplishes that outcome and should be adopted. In its Comments, AT&T argues that the Draft erred in treating AT&T's language in § 8 of Attachment 8 as mutually exclusive of Pacific's language in § 10 of Attachment 9. Pacific's language actually concedes that there are no charges for access to OSS other than those outlined in the ICA, which means AT&T's language for Attachment 8 is correct. If the arbitrator is concerned that the language somehow qualifies Pacific's right to seek such charges in the manner it has chosen, the remedy would be to add a phrase at the end of § 8 of Attachment 8: "except as determined pursuant to any Commission action, as described in § 10 of Attachment 9."

AT&T's proposed § 8 of Attachment 8 is adopted with the language change described above. It adds clarity to the issue.

#### **Issue 145**

**Should Pacific's proposed charge for manual processing of AT&T's trouble tickets be adopted?**

#### **AT&T's Position:**

AT&T asserts that Pacific proposes to insert an entire section concerning charges for manual processing of trouble tickets. Pacific implies that the proposed charges are based on TELRIC (*Response* at 111) but Pacific presented no cost studies in support of these charges in response to AT&T's data requests. In addition to the lack of cost support for the proposed charges, Pacific does not, to AT&T's knowledge, assess this charge on other CLECs. Unless Pacific provides appropriate cost support and applies the charges in a nondiscriminatory manner, Pacific's proposal should be rejected.

**Pacific's Position:**

Pacific states that AT&T's proposed language in Section 4.9 of Attachment 9 requires Pacific to provide AT&T with various electronic interfaces so that AT&T can place and check the status of trouble reports. Pacific is proposing to add a new section, 4.10, that specifies the charges that will apply if AT&T fails to use effectively the mechanized trouble reporting processes provided and instead, uses manual processes to report troubles. When AT&T sends manual trouble tickets to Pacific, Pacific incurs additional costs on behalf of AT&T. AT&T should compensate Pacific for these additional costs.

According to Pacific, AT&T contends that no charges should apply until the Commission adopts charges based on TELRIC cost studies, which is unsupportable. It would be a violation of the Act to order Pacific to provide this aspect of the OSS UNE at no cost, even on an interim basis. It would be an unconstitutional taking of Pacific's property in violation of the 5<sup>th</sup> and 14<sup>th</sup> Amendments to the U.S. Constitution. Pacific has adopted TELRIC labor rates that can serve as the basis for the costs of the manual trouble ticket activity at issue here.

**Discussion:**

Section 4.9 of Attachment 9, which contains no disputed language, requires Pacific to provide access to three electronic interfaces for placing and checking the status of trouble reports for resale, UNE, and Local Number Portability (LNP). In the following section, Pacific sets charges for each trouble report reported by manual means, rather than through one of the three electronic systems. While AT&T criticizes that the charges Pacific proposes are not TELRIC-based, Pacific responds that its adopted TELRIC labor rates served as the basis for the manual trouble ticket activity.

In its Comments, AT&T asserts that Pacific's proposed § 4.10 is an improper attempt to import into the ICA a prior settlement of a disputed claim under the 1996 ICA between Pacific and AT&T. Most of AT&T's comments on this issue are proprietary, so the following summarizes only the public portions of AT&T's Comments. According to AT&T, Pacific bolsters its position by stating that the \$5.00 and \$10.00 charges are based on TELRIC. Pacific failed to provide cost studies, or even to mention these charges, in response to AT&T's data request for cost studies supporting all of Pacific's proposed rates. According to AT&T, this alone should be considered conclusive evidence that the rates are not based on TELRIC.

According to AT&T, Pacific complains that it violates the Act to order Pacific to provide this aspect of the OSS UNE at no cost, even on an interim basis. Pacific is well aware that no other CLEC pays that charge, except AT&T. Pacific could have submitted cost studies and argued its case on this point in OANAD, but elected not to.

It violates the nondiscrimination requirements of the Act to order AT&T and TCG to pay the manual trouble ticket charge under the ICA when Pacific does not charge any other CLEC for this service. Pacific cannot single out AT&T for assessment of this charge.

AT&T's position is adopted, and Pacific's proposed § 4.10 shall be deleted from the ICA. It is discriminatory to single out one CLEC for assessment of the charge. Also, AT&T presents convincing evidence that Pacific's rates are not based on TELRIC. If Pacific believes it is entitled to recover the costs of processing manual trouble tickets, it should submit a cost study and pursue the issue in a generic proceeding.

**I. Attachment 10: Ancillary Functions**

**Issue 148**

**Should the ICA include Pacific's or AT&T's proposal for collocation?**

**AT&T's Position:**

AT&T contends that the Commission should adopt the detailed, comprehensive and well-considered contract terms that it presented to Pacific months ago and which it repeatedly attempted to negotiate. Because Pacific refused to negotiate any contract terms for physical collocation, the choice between Pacific's one-paragraph proposal and AT&T's proposal is the only decision to be made in this arbitration with respect to physical collocation.

AT&T contends that Pacific has proposed a complicated, one-sided arrangement in which the terms and conditions for collocation are scattered throughout an outdated tariff, an unapproved advice letter, various Pacific "Accessible Letters" that have no legal standing, and a Collocation Handbook that Pacific changes at will, and which does not legally bind Pacific. AT&T contends that the terms Pacific dictates would become increasingly one-sided in the future because no CLEC would ever have the opportunity to negotiate or arbitrate them. AT&T asserts that Pacific's proposed scheme is a clear violation of § 251(c)(1) of the Act, which requires Pacific to negotiate "particular terms and conditions" of agreements.

AT&T contends that it has proposed detailed and comprehensive contract terms for all forms of collocation, based on Pacific's proposed Advice Letter 20412, with modifications necessary to conform to existing law and to meet AT&T's business needs.

AT&T also contends that Pacific has introduced additional complications into the collocation process by insisting on different general terms and conditions for microwave and virtual collocation than for other types of collocation. AT&T,

on the other hand, has presented a comprehensive set of terms and conditions for all types of collocation.

Pacific argues that, by allowing collocation to be provided under contracts rather than tariffs, the Commission would lose a degree of regulatory oversight. (*Response* at 112-113.) AT&T contends that nothing could be further from the truth. The Commission must approve ICAs and must also arbitrate issues that the parties are unable to agree on. The fact that Pacific's Advice Letter on collocation was filed in July 1999 and still has not been approved, demonstrates the difficulty the Commission has had in dealing with inappropriate, one-sided tariffs.

Pacific says that it cannot efficiently provision collocation without uniform rules that apply to all CLECs. (*Response* at 112.) However, AT&T asserts that there is no single set of uniform terms and conditions for collocation today since a large portion of the terms and conditions appear in Pacific's Collocation Handbook. These terms and conditions do not apply to CLECs like AT&T that have objected to them, however, because the Commission has ruled that Pacific cannot impose objectionable terms and conditions merely by including them in the Handbook. (D.98-12-069 at 118). AT&T has objected to a large portion of the terms and conditions in the Collocation Handbook and, presumably, other CLECs have as well. AT&T contends that absolute uniformity clearly is not required.

Pacific also suggests that if contract terms for collocation are approved now, before the Commission issues a final decision on collocation issues in OANAD, the contract would forever be out of synch with the Commission's final decision. However, AT&T's proposed change-in-law provision in § 8.3 would address just such a situation. Also, the Commission could approve this ICA with express instructions that it be modified to conform with the final decision in the Collocation Phase of OANAD, to the extent that there are any conflicts.

AT&T also points out that after the close in hearings in this arbitration, the United States Court of Appeals, District of Columbia Circuit, issued an order affirming most of the FCC's *Advanced Services Order* concerning collocation, but reversing and remanding limited portions of that order for reconsideration by the FCC.<sup>69</sup> AT&T asserts that the likely result of the remand is that the FCC will provide additional explanations for its decisions, and the existing rules will stand. In the meantime, the Commission is free to independently establish requirements similar to those established by the remanded portions of the *Advanced Services Order*, either on an interim basis during the remand period, or permanently.

AT&T also contends that the collocation issues in this arbitration are not "governed" by the decision in the MFS WorldCom arbitration, as Pacific's witness argued. (Ex. 219 at 2.) That was not a rulemaking proceeding in which all interested parties had an opportunity to participate.

**Pacific's Position:**

Pacific contends that the essential question is whether physical collocation should be governed by Pacific's collocation tariff or by a completely different set of terms offered by AT&T that will differ from the rest of the industry. The Commission endorsed the concept of referencing Pacific's collocation tariff in the MFS WorldCom arbitration. Pacific asserts that AT&T seeks to carve out its own special rules when other CLECs are obtaining collocation under the tariff language. Pacific cannot efficiently provision collocation without uniform rules that apply to all CLECs.

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<sup>69</sup> *GTE Service Corp., et. al. v. Federal Communications Commission*, 2000 WL 255470 (D.C. Cir. March 17, 2000)("GTE v. FCC").

Pacific asserts that the Commission has stated that it intends to have collocation governed by tariff language. In the Collocation Phase of OANAD, the Commission asked the parties to formulate tariff language for final rates, terms and conditions of collocation. The language resulting from OANAD will ultimately make it into the very tariff Pacific seeks to incorporate by reference into this ICA.

Serious policy considerations also militate against adopting the AT&T approach. Pacific contends that the Commission maintains an important role in regulating the terms and prices that apply to the telecommunications industry. Under AT&T's proposal, a precedent would be set that CLECs can circumvent the tariff process through ICAs. Pacific cautions that other CLECs would follow suit and the Commission will lose a degree of regulatory oversight.

**Discussion:**

A thorough review of AT&T's proposed physical collocation provisions, shows several areas where AT&T's rules would provide the company preferential treatment over CLECs covered by Pacific's tariff provisions. A significant number of Pacific's central offices in key urban areas are at or near exhaust, so the ability to gain space in the offices is critical for CLECs. In Section 4.2.31 AT&T proposes provisioning intervals for various types of collocation, which are much shorter than the intervals in Pacific's collocation tariff. For example, caged collocation is to be available in 90 days if site preparation is required, and in 30 days, if it is not. This compares with Pacific's tariff provisions which set 110 days for cageless collocation and 120 days for caged, once the proper infrastructure is in place.<sup>70</sup>

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<sup>70</sup> Exhibit 219 Testimony of Matthew A. Adams for Pacific Bell, p.15.

These provisions which AT&T has carved out for itself, give AT&T a decided advantage over its CLEC competitors that are subject to the terms of Pacific's tariff. If Pacific has to expend resources to provision collocation in an unrealistically short period of time for AT&T, it may well be at the expense of other CLECs. If AT&T and "ABC" CLEC both apply for collocation on the same day, and are granted space by Pacific, AT&T would be able to have its collocation arrangement finished and offer service earlier than ABC CLEC. If shorter provisioning intervals are appropriate, they should be examined in a generic proceeding and adopted for all CLECs.

Does this mean that collocation must be a "one size fits all CLECs" offering? The answer is, "Not in all respects." The specific terms AT&T requests in Issues 149-160 are not all automatically rejected because of the decision to reference Pacific's tariff and other outside documents. There may be some specific requests AT&T is making which should be granted and included in this ICA as supplemental physical collocation terms. While Pacific cites the need for total uniformity, that may not be appropriate in all cases.

AT&T argues that Pacific's current collocation rules are contained in its tariff, in the Collocation Handbook, in an unapproved Advice Letter, and in unilateral "Accessible Letters." AT&T is reminded that the Collocation Phase of OANAD is in the process of setting final TELRIC-based prices and terms and conditions of service which will presumably result in a single set of rules.

Pacific's proposed language in § 4.1.1 is adopted, with one exception. AT&T's proposed language that states that collocation arrangements are those "in or near" Pacific's eligible structures is also adopted. Adjacent-on-site collocation would be "near," but not part of, Pacific's eligible structure. Pacific's proposed language would appear to exclude adjacent on-site collocation.

Pacific's proposed language in § 4.1.2 is adopted. AT&T's proposed language would not allow Pacific to reserve space in its eligible structures.

Pacific's proposed § 4.3 entitled Physical Collocation, is adopted with modifications. Physical collocation is not provided exclusively pursuant to Pacific's physical collocation tariff. In Issue 155, AT&T's proposed security provisions relating to physical collocation are adopted, and in Issue 116, AT&T's interim collocation rates are adopted. The second sentence needs to be revised to indicate that Pacific's tariff does not cover all aspects of physical collocation. Also, the sentence relating to Advice Letter No. 20412 shall be deleted. The Advice Letter has not been approved, and its security provisions and pricing are not applicable, even on an interim basis, in this ICA.

Pacific's proposed General Terms and Conditions Applicable to Microwave and Virtual Collocation (§ 4A.4) is adopted with modifications. Section 4A.4.14 shall be deleted since AT&T's proposed security procedures for all types of collocation were adopted in Issue 155. Section 4A.4.23 shall be modified as follows: Bullet number 2 shall be modified to indicate that AT&T has 45 days to cure a breach. This is consistent with § 2.4 in the Preface. The third bullet shall be deleted. This section allows Pacific to cancel collocation service if AT&T fails to immediately correct any security violation. This could be problematic since "immediately" is not defined. Also, it would penalize AT&T equally for both major and minor security violations.

The second paragraph under § 4A.4.24 shall be deleted. That section allows Pacific to terminate collocation for "any breach of the provisions contained in Pacific's tariffs." That language could apply to *any* of Pacific's tariffs, not just its collocation tariffs. This section is too one-sided and vague and does not protect AT&T's interests as the collocator.

**Issue 149**

**Should Pacific offer the option of obtaining a 200-amp DC power feed for its Caged, Shared Caged and Common Cage collocation arrangements with standard pricing rather than ICB pricing?**

**AT&T's Position:**

In the past Pacific has quoted ICB non-recurring charges as high as \$217,400 and \$429,000 for 200-amp DC power feeds. (Ex. 129.) This compares to a non-recurring rate of \$246.25 under the CCM approved by the Commission in the OANAD proceeding. AT&T contends that this clearly demonstrates only that 200 amp DC power feeds should be subject to standard pricing. AT&T also contends that this demonstrates that if any services are left to ICB pricing, they will be unavailable to AT&T or any other CLEC at a reasonable price.

**Pacific's Position:**

Pacific's brief indicates that this issue was settled, but it does not show as settled in the Disputed Issues Matrix.

**Discussion:**

The sentences from AT&T's proposed subsection 4.3.23.1 which read: "For AT&T's caged arrangements, Pacific shall offer power increments of 40, 100 and 200 AMPS. PACIFIC shall provide the necessary back-up power to ensure against power outages," are adopted. However, the references to the use of industry standards for the power equipment shall be deleted.

This is one area where a tariff exception is appropriate. AT&T has demonstrated through the CCM that 200 amp DC power feeds should be subject to standard pricing and be made available to AT&T on that basis. ICB pricing should be used only when necessary. It delays the process of obtaining services under the ICA and could lead to discriminatory rates.

**Issue 150**

**Should equipment bays where Pacific places its own telecommunications equipment be assigned to AT&T for Cageless Collocation?**

**AT&T's Position:**

Because of the scarcity of suitable collocation space in certain central offices, AT&T seeks the option of collocating in any unused space in Pacific's premises. Pacific appears to agree in principle (*Response* at 114-115), but objects to including contract language on this point.<sup>71</sup>

**Pacific's Position:**

Pacific contends that AT&T's proposed language violates the direct mandate of the D.C. Circuit Court of Appeals decision. The court determined that the ILEC, not the CLEC, should decide where to locate CLEC equipment on its premises.<sup>72</sup> Thus, Pacific contends that AT&T has no right to dictate where its collocation equipment will be located in Pacific's central offices, including whether it be placed in Pacific's line-ups, in a separate room or any other location.

Even so, Pacific has assigned CLEC bays for cageless physical collocation within the line-ups of its own equipment when no alternative space is available.

**Discussion:**

Pacific's position is adopted, and AT&T's proposed Section 4.3.4 will not be included in the ICA. AT&T's proposed language violates the recent D.C. Circuit decision in *GTE*. The court made it clear that the ILEC property owner,

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<sup>71</sup> AT&T indicates that if Pacific objects on the grounds that portions of the FCC's *Advanced Services Order* were reversed and remanded, the Commission should follow the procedures described in the discussion of Issue 148.

<sup>72</sup> *GTE, supra*, 2000 WL 255470 at \*11 (the Court vacated para. 42 of the *Advanced Services Order* "insofar as it embraces...sweeping rules" that favor CLECs).

not the CLEC, should be able to control the use of its own property. "The FCC offers no good reason to explain why a competitor, as opposed to the LEC, should choose where to establish collocation on the LEC's property..."<sup>73</sup>

**Issue 151**

**Should Pacific share information with AT&T that Pacific gathers in the course of preparing a response to AT&T's collocation applications?**

**AT&T's Position:**

AT&T merely asks that, in responding to collocation applications, Pacific provide information about the amount of conditioned space available, a detailed quote showing the rate elements and quantities Pacific used to develop the lump sum quote, and a floor plan. AT&T asserts that it needs this information for planning purposes and to verify price quotes.

**Pacific's Position:**

Pacific contends that the information that AT&T requests has either been rejected by the Commission or makes no sense in light of information AT&T already has at its disposal. For example, the Commission has determined that there is no reason to give CLECs floor plans unless an office is space-exhausted.<sup>74</sup> A CLEC is not entitled to Pacific's floor plans if the CLEC is not denied access to an office. This is further reinforced by the opinion in *GTE*, where the D.C. Circuit stated that the ILEC, not the CLEC should ultimately decide where to locate CLEC equipment on its premises.<sup>75</sup> Pacific asserts that the only reason AT&T wants floor plans is to question Pacific's collocation placement in a central office.

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<sup>73</sup> *Id.*

<sup>74</sup> D.98-12-068, App. A.

<sup>75</sup> *GTE, supra*, 2000 WL 255470 at \*11.

Because the D.C. Circuit has ruled that this determination should be at the sole discretion of the ILEC, AT&T has no basis for its request.

With regard to AT&T's request to force Pacific to undergo the process of providing price quotes for every collocation request, AT&T's witness could not explain why this information is needed when AT&T already has the price lists contained in the CCM.<sup>76</sup> The CCM is a model sponsored by AT&T in OANAD that is being used to determine collocation prices in California. The CCM clearly lists the prices for all the items that can be ordered.

**Discussion:**

In its Comments, AT&T asserts the arbitrator erred in her determination on this Issue. The Draft claims that AT&T should be able to check Pacific's cost proposal without additional information from Pacific. However, that is not the case. Pacific provides a lump-sum quote, so AT&T cannot determine which components have been included in the quote.

AT&T states that its witness, Ms. Fettig, testified that collocation quotes often contain multiple errors, making it impossible for AT&T to replicate the lump-sum quote that Pacific provides, even when AT&T knows the CCM rates and which components it believes should be included.

Without a detailed quote, it is impossible to determine where the errors occurred, says AT&T.

AT&T has provided convincing evidence of the need for a detailed quote. Section 4.2.24.1 shall be modified to address the issue of the detailed quote:

When responding to an application when the collocation space is available, PACIFIC shall provide a detailed quotation setting forth charges for each applicable rate element,

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<sup>76</sup> See , e.g., 8 Tr. 885-887 (Ms. Fettig for AT&T)

including but not limited to the rate elements set forth below and any adopted by the Commission. Where charges are based on linear feet, PACIFIC shall include the number of linear feet used for each rate element calculation:

Planning  
Infrastructure Area Charge  
Cage Preparation  
Land & Building  
Cable Racking  
Entrance Fiber  
Power Delivery  
Power Consumption  
Security Access Cards  
HVAC  
Relay Rack  
Equipment Bay  
Network Cabinet  
AC Outlet  
POT Frame Enclosure  
Timing Lead Network Equipment Bay Rack  
Network Cabinet Bay Rack.

Other portions of Section 4.2.24 are deleted, since time limits for responding to quotes, etc. are covered in Pacific's collocation rules. AT&T's request for floor plans is also denied. In light of *GTE*, AT&T does not have the right to determine where its collocation arrangement should be located; that decision is exclusively at Pacific's discretion. Since that is the case, AT&T has no legitimate need for the floor plans of the central office.

**Issue 152**

**Should Pacific provide Off-site Adjacent Collocation?**

(See Issue 78 in Attachment 6)

**AT&T's Position:**

AT&T asserts that this Commission has effectively rejected Pacific's objections because it has already approved the CCM which includes off-site

adjacent collocation. Pacific claims to justify its objection by stating the CLEC is not located "within or on" Pacific's premises. AT&T contends that the bright line distinction Pacific attempts to make between "on-site" and "off-site" is unrealistic and impractical. Pacific has refused to negotiate contract terms for any aspect of this arrangement, and that refusal is impermissible under federal law.

**Pacific's Position:**

Pacific contends that AT&T seeks to define interconnection occurring near but not on Pacific's property as "adjacent off-site collocation." By definition, collocation is an "on-site" arrangement. Section 251(c)(6) of TA96 defines collocation as the locating of a CLEC's equipment "at the premises of the local exchange carrier."

Pacific asserts that in *GTE*, the D.C. Circuit Court unequivocally stated that "all that is required by the statute is that " 'adjacent' properties all are on the LEC's 'premises.' "77

**Discussion:**

See also Issue 78 in Attachment 6. Pacific has interpreted *GTE* too narrowly. The court was responding to petitioners' claim that the FCC lacks authority to require LECs to make available adjacent on-site collocation. The court concluded that the FCC's rule to permit collocation in adjacent controlled environmental vaults or similar structures was reasonable and clearly furthers the purposes underlying § 251(c)(6). The court concluded that petitioners could find no argument to show that the FCC's rule requiring adjacent on-site collocation was impermissible under § 251(c)(6) since the adjacent properties "all are on the

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<sup>77</sup> *GTE, supra*, 2000 WL 255470 at 9.

LECs' 'premises,' which is all that is required by the statute." In that case, the court was looking at the narrow issue of adjacent on-site collocation, and was not presented with an issue regarding adjacent off-site collocation, and did not reach a conclusion on that issue.

Pacific is required to provide off-site adjacent collocation pursuant to D.98-12-069, the Commission's interim 271 decision. The difference in semantics is addressed in part in the January 13, 2000, "Assigned Commissioner's Ruling" in the Collocation Phase of the OANAD proceeding. Footnote 2 on page 4 of that ruling states as follows:

Pacific has argued that adjacent off-site is an interconnection arrangement, not a form of collocation; the Joint Submitters argue that adjacent off-site is a form of collocation. Our record in the collocation phase shows that off-site arrangements are being offered by both Pacific and GTEC and I therefore find this arrangement should be considered as a collocation option in order to ensure competitors can collocate in Pacific and GTEC central offices in a timely and affordable manner.

The OANAD proceeding is the appropriate place to determine whether this off-site arrangement should be called "interconnection" or "collocation." However, the Act requires that interconnection occur at "any technically feasible point."<sup>78</sup> The arrangement AT&T is requesting is clearly allowable as a form of interconnection. For purposes of this arbitration, the off-site arrangement AT&T requests will be adopted, in the interest of providing as many options as possible for accessing Pacific's central offices where collocation space is at a premium.

AT&T's proposed language in Section 4.1.1 and 4.3.7 shall be adopted.

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<sup>78</sup> Section 251(c)(2)(B).

**Issue 153**

**Where Pacific and AT&T share central office space in a condominium arrangement, should the equipment AT&T places in its own space on a different floor from Pacific's equipment be considered collocated equipment?**

**AT&T's Position:**

AT&T contends that there are no technical impediments to establishing collocation arrangements in "condominium" buildings. AT&T asserts that Pacific's purpose in objecting to collocation in condominium arrangements is simply to impose additional costs on AT&T.

**Pacific's Position:**

Pacific contends that a condominium arrangement is not collocation because the CLEC's equipment is not on the ILEC's premises. In AT&T's condominium arrangement, AT&T's equipment would be on its own floor in a building where Pacific also happened to be leasing space. As Pacific's Mr. Adams testified, AT&T's equipment would not be on Pacific's floor in the building so it would not be on Pacific's premises and, as such, would not constitute collocation.

**Discussion:**

AT&T's proposed § 4.3.9 is adopted, with modifications, for the same reasons described in Issue 152. Section 4.3.9 shall be modified to reflect the fact that in the condominium arrangement, AT&T has the right to interconnect with Pacific.

In its Comments, AT&T points out that the arbitrator's ruling on Issue 153 should be consistent with the ruling on Issue 152. AT&T is correct. The OANAD proceeding is the appropriate place to determine whether an off-site arrangement, such as a condominium arrangement, should be called "interconnection" or "collocation." Section 4.3.9 shall be modified accordingly.

**Issue 154**

**Should Pacific's or AT&T's collocation utilization language be adopted, when the language differs with regard to whether Pacific implements and enforces utilization rules or whether the parties jointly implement the rules?**

**AT&T's Position:**

The Commission has stated the following with respect to utilization rates: "Pacific shall allow CLCs to augment their collocation space when they reach a 60% utilization rate and shall allow CLCs to begin the application process prior to reaching the 60% utilization rate if the CLC expects to achieve 60% utilization before the process is completed." D.98-12-069, Appendix B, at 2. AT&T contends that it attempted to negotiate contract terms to implement this rule, but Pacific refused to negotiate contract provisions regarding space utilization for physical collocation. Instead, Pacific seeks to use the Collocation Handbook and its unapproved Advice Letter 20412. In both cases, Pacific takes it upon itself unilaterally to interpret the Commission's rule and define what it means for space to be "efficiently used." Under Pacific's proposal, this would be left to Pacific's sole judgment and discretion. AT&T asserts that its proposal attempts to implement the Commission's rule in a more even-handed way.

**Pacific's Position:**

Pacific contends that AT&T's proposed language would give AT&T the right to self-determine when it has utilized enough space in an existing collocation arrangement to justify a second arrangement in that central office. Pacific asserts that this would set a dangerous precedent, and would allow AT&T to encroach on Pacific's right to control space use in an office. It would also give AT&T the ability to inappropriately warehouse space to the detriment of other CLECs and Pacific.

Pacific contends that the FCC has determined that the ILEC may impose reasonable restrictions on the warehousing of space by collocators, and that it is not unreasonable for ILECs to reclaim space that is either not being used or not being used efficiently.<sup>79</sup>

To allow CLECs to self-determine their utilization rates could potentially lead to a different standard for every CLEC. For example, AT&T has requested and received 400 square foot cages in many locations and has only utilized a small fraction of those cages in the lengthy timeframes they have controlled the space. If AT&T were to self-determine that it met the 60% utilization rate in these offices based on its own reasoning that it "plans" to fill the space to 60% in the near term, it could then warehouse more massive quantities of space to the detriment of other CLECs.

**Discussion:**

The Draft adopted Pacific's position and deleted AT&T's proposed § 4.2.26. In its Comments, AT&T asserts that the arbitrator reached the wrong conclusion based on Pacific's misrepresentation of AT&T's proposed contract language. AT&T claims that a review of AT&T's language demonstrates that it does not allow AT&T to "self-determine" when it has used enough space in a collocation arrangement to justify ordering another or allow AT&T to engage in "warehousing of scarce collocation space."

AT&T is correct. AT&T based its augmentation language on the Commission's interim 271 decision, D.98-12-069, and it is appropriate to include

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<sup>79</sup> *In re Local Exchange Carriers' Rates, Terms, and Conditions for Expanded Interconnection through Physical Collocation for Special Access and Switched Transport*, CC Dkt. No. 93-162, *Second Report and Order*, 12 FCC 18730, FCC No. 97-208 (rel. June 13, 1997) ("Second Expanded Interconnection Order"), para. 330.

that language in the ICA. The language says nothing about AT&T having the unilateral right to “self-determine” when it needs additional collocation space. AT&T’s proposed § 4.2.26 is adopted.

**Issue 155**

**Should Pacific’s or AT&T’s security language be adopted, when the language differs with regard to the types and levels of security measures that can be imposed by Pacific and which party bears the cost?**

**AT&T’s Position:**

AT&T’s security provisions are reasonable and consistent with existing law and were presented for negotiation and arbitration. They are clearly laid out in the ICA. AT&T contends that Pacific’s proposed collocation tariff violates the FCC’s rules by requiring AT&T to comply with security arrangements that increase AT&T’s security costs without providing a “concomitant benefit of providing necessary protection” of Pacific’s equipment.<sup>80</sup> Further, the FCC’s rules leave the approval for recovery of security costs to state commissions,<sup>81</sup> but Pacific’s proposed collocation tariff would grant Pacific authority to recover the costs of its excessive and wasteful security measures from AT&T<sup>82</sup> without prior Commission review of their reasonableness. Pacific also seeks to dictate AT&T’s employment practices by requiring felony background checks and employee drug testing even when AT&T’s own policies may not permit this. (Ex. 128, Attachment 2, at 70.)

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<sup>80</sup> First Report and Order and Further Notice of Proposed Rulemaking, *In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Cc Docket No. 98-147, 14 FCC Rcd 4761 (rel. March 31, 1999) (“Advanced Services Order”), at ¶ 47.

<sup>81</sup> *Id.*, ¶ 48.

<sup>82</sup> Advice Letter 20412.

Many of the provisions that AT&T has proposed in § 4.2.15 are taken directly from Attachment 16 of the existing ICA, with minor modifications needed to conform it to the FCC's *Advanced Services Order*.

**Pacific's Position:**

Pacific contends that AT&T has included a laundry list of security language that does not comply with the Act. AT&T has taken the position that Pacific may not secure its own equipment by enclosing it in a cage,<sup>83</sup> despite the fact that the *Advanced Services Order* states that an ILEC can do just that—"to protect its own equipment [by] enclosing the equipment in its own cage."<sup>84</sup> AT&T justified this position by arguing that it is bound only by the Code of Federal Regulations (CFRs) promulgated pursuant to the *Advanced Services Order*.<sup>85</sup> Pacific contends that AT&T's argument is legally indefensible. In fact, in the recent *GTE* opinion, the D.C. Circuit vacated portions of the *Advanced Services Order*.<sup>86</sup> Pacific asserts that a court would not need to vacate portions of an order unless they were legally valid and enforceable.

Pacific also points out that AT&T's proposed security language does not even grant Pacific the rights that are contained in the CFRs. For instance, AT&T chose to omit language from Attachment 10 that would allow Pacific to use security cameras to protect its equipment, even though AT&T admits that the

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<sup>83</sup> 8 Tr. 873-875 (Ms. Fettig for AT&T)

<sup>84</sup> *Advanced Services Order*, para. 42 (portions of para. 42, unrelated to the security language cited here, were vacated by the DC Court in *GTE*).

<sup>85</sup> 8 Tr. 872-875 (Ms. Fettig for AT&T)

<sup>86</sup> *GTE*, *supra*, 2000 WL 255470 at \*11.

CFRs allow ILECs to use security cameras. Ms. Fettig acknowledged that it was an "omission" for AT&T to leave out security cameras from its language.<sup>87</sup>

Pacific asserts that the presence of CLECs and their equipment within Pacific's premises creates new security concerns that did not exist prior to collocation. Pacific also contends that the FCC allows Pacific several rights concerning security.<sup>88</sup> First, the FCC allows Pacific to recover the costs of implementing reasonable security measures that result from the presence of collocation. Second, the FCC allows Pacific to require collocators to follow the same security requirements and procedures that Pacific uses for its employees. The FCC has defined reasonable security measures to include a cage around the ILEC's equipment, installing security cameras or other monitoring systems and using badges with computerized tracking systems. Pacific's existing Commission approved collocation tariff and its Advice Letter 20412 set forth the permissible security requirements of the FCC and D.C. Circuit Court. Pacific contends that those requirements should apply to this ICA.

**Discussion:**

In this arbitration, there are two alternative sets of security provisions, both of which have their flaws. As Pacific points out, AT&T has neglected to include a provision for security cameras, which are one of the security measures mentioned specifically in the *Advanced Services Order*.<sup>89</sup> Therefore, AT&T's proposal is incomplete.

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<sup>87</sup> 8 Tr. 880

<sup>88</sup> See *Advanced Services Order*, para. 46 *et seq.*

<sup>89</sup> *Id.*, para. 48.

On the other hand, the specific security provisions and rates in Pacific's unapproved Advice Letter 20412 have not been approved by the Commission, as required by the FCC, nor has the Commission made a finding pursuant to ¶ 47 that Pacific's proposed security plan does not impose discriminatory security requirements that result in increased costs without the concomitant benefit of providing necessary protection of the incumbent LEC's equipment. The specific issue of which security arrangements are appropriate and the prices for them is being examined in the Collocation Phase of OANAD. The final security arrangements applicable to this ICA will be determined in OANAD.

AT&T's position is adopted with modification. Section 4.2.15 should be modified to include a provision for security cameras. There is insufficient record in this arbitration proceeding to rule on Pacific's proposed security measures or their costs.

#### **Issue 156**

**Should collocation installation intervals account for the availability of conditioned space and variations in the work Pacific must complete prior to turning over a collocation arrangement?**

#### **AT&T's Position:**

Pacific has not proposed installation intervals for inclusion in the ICA. AT&T has proposed a two-tier provisioning schedule that provides for a shorter interval as to when Pacific assigns conditioned space. The shorter intervals take into account that less work is required between application and turnover when the space is already conditioned. The intervals also reflect that less work is required for cageless and virtual arrangements, as compared to caged collocation, where the cage itself must be constructed. AT&T's proposed intervals also take into account the limited work – primarily cabling—that Pacific performs for adjacent collocation arrangements. (Ex. 127 at 37-43.)

**Pacific's Position:**

Pacific contends that AT&T's proposed intervals are unreasonably short. Pacific recognizes that shorter intervals are appropriate when space is conditioned and provides statistics that demonstrate that collocation provisioning takes less time when the space has been conditioned.

AT&T also asks the Commission to adopt specific intervals for different types of collocation. Provisioning intervals are being considered in the Collocation Phase of OANAD since they are necessary to meet the "minimum requirements" of the *Advanced Services Order*. Pacific contends that adopting AT&T's proposed interval language in this arbitration may lead to conflict with the intervals that are ultimately adopted in OANAD. Pacific's contract language references the collocation tariff that is being updated in OANAD so the intervals adopted by the Commission in OANAD will govern the relationship between Pacific and AT&T.

As to the merits of the proposed intervals, Pacific asserts that its intervals are more reasonable than AT&T's and are more consistent with the industry. The interval information AT&T provided for other ILECs is misleading because Pacific does not require a separate interval for quotation of charges in addition to the provisioning interval. AT&T states that US West has agreed to provide caged collocation in 90 days upon receipt of a 50% payment of the estimated nonrecurring charges. However, the standard time frame for US West is really 125 days: 10 days to determine if space is available, 25 days to provide an estimated quotation of charges, and finally 90 days for provisioning.

Pacific also contends that AT&T's witness was unable to explain how shorter intervals are possible or why they are reasonable. During cross-examination, the witness was unable to describe how a collocation arrangement is

built.<sup>90</sup> Without an understanding of how a collocation arrangement is built, AT&T cannot possibly comprehend how long it takes to build one.

**Discussion:**

For the reasons discussed in Issue 148 above, Pacific's position is adopted. Shorter provisioning intervals for AT&T discriminates against other CLECs who are covered by Pacific's tariffs. If AT&T believes that shorter provisioning intervals are appropriate, it should pursue that position in the Commission's OANAD proceeding which is looking at various collocation issues. Any provisioning intervals adopted in that generic proceeding would apply to all CLECs.

**Issue 157**

**Should the ICA incorporate AT&T's proposed language regarding central office inspections?**

**AT&T's Position:**

AT&T has proposed language in § 4.3.12 to clarify and implement the Commission's rules regarding inspections in offices where AT&T has been denied space.

**Pacific's Position:**

Pacific contends that AT&T's proposed language does not seek to "clarify" policies of the FCC and this Commission. Instead, AT&T seeks to "add" new rules to the space exhaustion and denied office requirements, including such unreasonable dictates as sanctions against Pacific. Pacific contends that it is improper to attempt to revamp those rules in the arbitration process.

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<sup>90</sup> 8 Tr. 834-843 (Ms. Fettig for AT&T)

**Discussion:**

Pacific's position is adopted, and AT&T's proposed § 4.3.12 will not be included in the ICA. In this section, AT&T seeks to supplement the denied office rules the Commission adopted in D.98-12-068, and has superimposed its own rules over the Commission's rules. If AT&T would like to expedite the denied office process established by the Commission, it should propose changes in the Local Competition docket where the Commission adopted its rules. Then, any changes in the process would apply to all CLECs.

The adoption of AT&T's rules would give AT&T more information about an exhausted office than is available to other CLECs. This would provide an advantage for AT&T over other CLECs that would like to collocate in a particular central office.

**Issue 158**

**Should AT&T's provision regarding financial incentives for space availability reports be adopted?**

**AT&T's Position:**

AT&T seeks to provide incentives for Pacific to refrain from wrongfully denying collocation applications on the grounds of space exhaustion or technical infeasibility. AT&T contends that without financial incentives, there is very little reason for Pacific to refrain from wrongfully denying applications. Even if Pacific is unable to justify its denial of collocation space, it has still succeeded in delaying a CLEC's collocation, with a consequent delay in CLEC market entry or expansion.

**Pacific's Position:**

Pacific contends that AT&T's witness acknowledged during cross-examination that AT&T's proposed penalty provision was above and beyond what

the Commission had adopted in a prior proceeding.<sup>91</sup> Moreover, AT&T's proposed penalty of \$20,000 per month is excessive and unrelated to what AT&T's actual damages might be, making it an unenforceable penalty under California Civil Code Section 1671.

**Discussion:**

AT&T's proposed section 4.3.12.5 is rejected. If incentives are set which apply only to AT&T, it would provide a strong incentive for Pacific to meet the ICA requirements and accede to AT&T's requests, at the expense of other CLECs. This one-sided incentive program is potentially discriminatory against other CLECs and will be rejected. If AT&T believes incentives are appropriate, it should address the issue in a generic proceeding where the outcome will apply to all CLECs.

**Issue 159**

**Should AT&T's language regarding removal of obsolete equipment be adopted?**

**AT&T's Position:**

AT&T contends that Pacific has mis-stated AT&T's proposal. AT&T's proposed § 4.3.15 requires Pacific to remove unused obsolete equipment prior to denying AT&T's collocation application for lack of space. AT&T contends that this language is reasonable and consistent with existing law.

**Pacific's Position:**

AT&T seeks to have a standing request that Pacific remove obsolete unused equipment, as well as underutilized equipment, for all premises. The FCC determined that "ILECs must remove obsolete unused equipment from their premises upon reasonable request by a competitor or upon the order of a state

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<sup>91</sup> 8 Tr. 897 (Ms. Fettig for AT&T)

commission.”<sup>92</sup> Pacific asserts that it complies with this rule. AT&T seeks to expand the rule and have Pacific remove such equipment when space is not an issue. Moreover, if Pacific was required to removed “underutilized” equipment, it would be removing quite a bit of CLEC collocated equipment from its offices.

**Discussion:**

Pacific’s position is adopted. Pacific has *not*, as AT&T says, mis-stated AT&T’s proposal. AT&T has gone beyond the FCC’s requirement that ILECs remove “obsolete unused” equipment, when it adds the following proposed language in Section 4.3.15: “PACIFIC shall also remove underutilized and/or idle equipment from the Eligible Structures where AT&T has submitted a collocation application prior to denying AT&T’s application on the grounds there is a lack of space.”

**Issue 160**

**Should Pacific’s obligation to provide maintenance and repair services for virtual collocation at parity with what Pacific provides itself be dependent on AT&T training the number of technicians that Pacific may request AT&T to train at any given time?**

**AT&T’s Position:**

AT&T agrees to train up to four technicians at the time of installation, unless a different number is mutually agreed upon. Thereafter, AT&T contends that Pacific should meet its training needs through a train-the-trainer program. Pacific is unwilling to place any limit on the number of technicians AT&T would be required to train throughout the term of the collocation arrangement. AT&T merely seeks to place some reasonable limits on its training obligations.

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<sup>92</sup> *Advanced Services Order*, para. 60.

**Pacific's Position:**

To achieve parity in maintaining and repairing AT&T's virtually collocated equipment, Pacific requires that AT&T pay for training the proper number of Pacific technicians to achieve AT&T's request. Pacific argues that AT&T wants to minimize training expenses, yet maximize the service they receive on their designated equipment.

**Discussion:**

AT&T's position is adopted with modifications. AT&T has not provided any information on why four technicians is an adequate number to be trained to work on its virtual collocation equipment. Pacific has recommended that five technicians should be trained for each central office, and Pacific should have a better idea of what staffing is required in its central offices on particular pieces of equipment. Therefore, Pacific's requirement that five technicians be trained should be approved.

However, Pacific's proposed language leaves the training of additional technicians too open-ended. Pacific can only "recommend" that additional employees be trained, but if AT&T chooses not to have additional technicians trained, the established MTRI would not apply. That clause does not leave AT&T any option but to approve the training of additional technicians, and, as AT&T states, there are no limits on the number Pacific could ask to be trained.

AT&T's proposal that Pacific use a "train the trainer" approach is appropriate. The technical staff that receive the initial training can share their knowledge with other technicians, if additional coverage is needed. AT&T's subsection 4.5.11.6 is adopted with the modification that the number of technicians to be trained should be increased to five.

**Microwave Collocation**

**Issue 161(a)**

**What general items and conditions should apply to microwave collocation?**

**AT&T's Position:**

AT&T proposes that the ICA include one set of general terms and conditions applicable to all types of collocation. AT&T asserts that introducing a different set of general terms of conditions for microwave collocation, as Pacific proposes, is merely a way to complicate the contract and make implementation more difficult.

**Pacific's Position:**

Pacific contends that AT&T failed to address microwave issues in this arbitration, and that AT&T offered only three pages of testimony addressing microwave collocation. Pacific asserts that the Commission has no record evidence to support any claim of reasonableness of AT&T's position on the numerous of microwave issues that are being litigated. Pacific, on the other hand, contends that it has offered testimony supporting the reasonableness of all of its microwave language.

**Discussion:**

AT&T proposes that the same general set of terms and conditions apply to all types of collocation, including microwave collocation. However, in Issue 148, the arbitrator rejected AT&T's proposal to include the provisions of physical collocation in the ICA and instead adopted Pacific's position to reference its tariffs. Therefore, AT&T's proposed general terms and conditions have been eliminated from the ICA. Pacific's proposed terms and conditions applicable to microwave and virtual collocation are adopted, with some modifications as outlined below.

**Issue 161(b)**

**Should AT&T be able to collocate its microwave equipment pursuant to the prices, terms and conditions upon which Pacific allows its affiliates to place similar equipment in and on Pacific's premises?**

**AT&T's Position:**

AT&T contends that it should be allowed to collocate microwave equipment on a parity basis with Pacific's affiliates. Although Pacific argued for the first time in its *Response* that microwave collocation really is not collocation, Pacific willingly negotiated the contract terms for microwave collocation (Ex. 127 at 8; Ex. 128 at 1-2), and the Collocation Handbook includes a description of microwave collocation (Ex. 128, Attachment 2 at 19-20). AT&T also points out that Pacific did not take the position during negotiations that microwave collocation is not a form of collocation. (Ex. 128 at 1-2).

**Pacific's Position:**

Pacific contends that its affiliates do not place microwave equipment in Pacific's central offices for the same purpose that AT&T seeks to place such equipment. In other words, we are not comparing apples to apples.

Pacific argues that what has been termed microwave "collocation" really is not collocation. Instead, microwave is used as an entrance facility into the CLEC's collocation arrangement. Pacific stresses that this distinction is important because entrance facilities are subject to a different set of rules than collocation.

Pacific's wireless affiliates place their radio or microwave equipment on Pacific's premises under the prices, terms and conditions of a leased space agreement specific to Commercial Mobile Radio Systems (CMRS) carriers. The CMRS carriers, however, are not collocating in Pacific's premises as contemplated by the *Advanced Services Order*, and are not using microwave as an access facility to collocated equipment. Pacific also asserts that there is no evidence in the record as to what terms and conditions are used by Pacific's affiliates.

**Discussion:**

Pacific's position is adopted. According to Pacific, Pacific's affiliates do not place microwave equipment in Pacific's central offices for the same purposes that AT&T intends. Rather, AT&T plans to use microwave collocation as an entrance facility to its collocation arrangement. Also, as Pacific states, there is no evidence in the record as to what terms and conditions are used by Pacific's affiliates which would facilitate a comparison with the proposed terms and conditions which apply to AT&T.

**Issue 161(c)**

**Should Pacific be responsible for providing unobstructed line-of-sight?**

**AT&T's Position:**

AT&T's proposed language says that Pacific "shall provide" unobstructed line-of-sight for their microwave entrance facility. Pacific proposes to water down AT&T's proposed language by saying that Pacific will "take reasonable steps" to provide unobstructed line-of-sight. AT&T acknowledges that unobstructed line-of-sight is not guaranteed, but if it is technically feasible for Pacific to provide unobstructed line-of-sight, it should do so.

**Pacific's Position:**

Pacific contends that it is not Pacific's responsibility to design and engineer AT&T's microwave installation, and factors impacting line-of-sight are often beyond Pacific's control. Pacific contends that its language is reasonable, essentially obligating Pacific to do everything feasible within its control to provide AT&T with line-of-sight. For example, Pacific can ensure AT&T's unobstructed line-of-sight by avoiding the placement of subsequent customers in that line-of-sight. However, it would be unreasonable to require Pacific to relocate already existing equipment to provide AT&T with unobstructed line-of-sight.

**Discussion:**

AT&T's position relating to line-of-sight in Section 4.4.1 is adopted. AT&T's language requires that Pacific provide unobstructed line-of-sight where technically feasible. If another carrier already has placed a microwave facility, it may not be technically feasible to provide unobstructed line-of-sight to AT&T. With AT&T's proposed language, Pacific is precluded from placing subsequent customers where they would obstruct AT&T's line-of-sight for its installed microwave equipment, and AT&T should have that assurance. The remainder of Pacific's proposed language in Section 4.4.1 is to be deleted. It is clear that the parties dispute whether microwave collocation is collocation or if it should be regarded as an entrance facility. AT&T should not be forced to adopt Pacific's definition in order to receive the service.

**Issue 161(e)**

**What should be the charges for microwave collocation site visits by AT&T?**

**AT&T's Position:**

AT&T proposes a charge of \$250 for a site visit, with additional hourly labor charges for one technician if the site visit exceeds two hours. AT&T asserts that this is very generous since the hourly labor rate for collocation is approximately \$45.00 (see Attachment 8, Appendix B), and only one technician is needed for a site visit. Pacific, on the other hand, has proposed a rate of \$356.33 per hour for site visits. (Attachment 8, Appendix A-1).

**Pacific's Position:**

Pacific requests that AT&T pay the appropriate labor rates found in Attachment 8 for site visits. Pacific asserts that it is unreasonable to select an arbitrary flat fee, such as \$250, when the cost of each site visit will likely vary. Pacific has many central offices located in places that are not easily accessible by

automobile so extra transportation expenses will likely be incurred, and visits to those offices will likely take more than two hours to complete.

**Discussion:**

In its Comments, AT&T asserts that the Draft erred in asserting that AT&T proposes a flat rate for site visits. The language AT&T proposed provides for a charge of \$250 for site visits up to two hours, with site visits that take longer than two hours charged on a per-hour basis. The rate would be the rate in Attachment 8, Appendix B for a security escort, which is \$44.22 per hour.

AT&T terms Pacific's \$356.33 per hour charge for microwave site visits "shocking." AT&T asserts that to justify this rate, Pacific would have to send an average of eight employees on the site visits. Pacific presented no evidence or arguments why this rate is reasonable.

AT&T's proposed language in § 4.4.2 is adopted, with modification. Pacific presented no evidence to justify an hourly rate of \$356.33, and it is difficult to believe that Pacific must charge that much to recover its actual hourly costs for a microwave site visit. Pacific claims AT&T sets a flat fee, which may not cover the costs of longer site visits. However, as AT&T points out, the \$250 flat charge applies only to site visits lasting less than two hours.

Section 4.4.2 states, "Charges for site visits that take longer than two hours will be charged by Pacific to AT&T on a per hour basis." This language must be clarified or it will lead to disputes between the parties. Based on this language, a 3-hour site visit would cost \$132.66,<sup>93</sup> which is less than the flat charge for a site visit lasting up to two hours. The hourly charges should apply only when a site visit lasts more than two hours. The above sentence is modified as follows: "For

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<sup>93</sup> 3 x \$44.22 = \$132.66

site visits that take longer than two hours, Pacific will charge AT&T on a per hour basis for each hour after the first two hours.”

**Issue 161(f)**

**Should the application form for AT&T's use be mutually agreeable?**

**AT&T's Position:**

AT&T contends that the application form for microwave collocation should be established by mutual agreement, not unilaterally by Pacific. AT&T asserts that Pacific has previously misused the application form to gain sensitive information from CLECs. (Ex. 128 at 6-9.) Pacific's assertion that the application forms used by all CLECs must be uniform is baseless. Non-monopolist providers accept orders from their customers in a variety of ways.

**Pacific's Position:**

Pacific contends that the application forms are to be used by all CLECs and, therefore, must be uniform. The form for microwave entrance facilities already exists as part of the physical or virtual collocation form that AT&T has used in the past. AT&T had an opportunity to suggest changes when Pacific's Collocation Services Group held an Application Forum in July 1999 and asked for suggestions from the CLECs as to how the Physical Collocation Application Form could be improved. The CLECs suggested that the application form be revised to include a reference to microwave entrance facilities, and Pacific implemented that suggestion.

**Discussion:**

Pacific's proposed language in § 4.4.3 relating to the application form is adopted. Pacific has certain information that it needs in order to process a request for microwave collocation and Pacific is in the best position to develop a form that could be used by all potential collocators. As Pacific indicates, it has solicited input from CLECs in the past on how to improve the application form and

incorporated changes that the CLECs proposed. If, as AT&T says, Pacific uses the application form to attempt to gather sensitive information from CLECs, AT&T can raise that type of anti-competitive issue to the Commission.

**Issue 161(g)**

**Should changes to the agreed upon application form be mutually agreeable?**

**AT&T's Position:**

AT&T contends that once the microwave collocation application form is agreed upon, it should not be changed in ways that are unacceptable to either party.

**Pacific's Position:**

It is Pacific's position that application forms should not be subject to changes in an interconnection agreement arbitration. Pacific, however, solicits input from CLECs on the content of the application form.

**Discussion:**

Pacific's position is adopted, for the reasons discussed in Issue 161(f) above.

**Issue 161(h)**

**What type of fees, and in what amounts, should AT&T pay when requesting placement of microwave equipment on Pacific's premises?**

**AT&T's Position:**

The charges AT&T proposed for On-Site Adjacent Collocation should apply. The CCM includes all the elements necessary to establish rates for microwave collocation. AT&T contends the rates Pacific proposed in Attachment 10 and Attachment 8 do not conform to the CCM.

**Pacific's Position:**

Pacific contends that the appropriate fees depend on the nature of AT&T's request. If AT&T requests microwave as an entrance facility as part of its initial

virtual or physical collocation application, AT&T should pay the appropriate virtual or physical application fee. If AT&T makes a subsequent request for microwave entrance facilities for an existing physical or virtual collocation arrangement, AT&T should pay the appropriate augment project coordination fee, which reflects Pacific's costs to manage the provisioning of subsequent requests.

**Discussion:**

AT&T's position is adopted, and § 4.4.3 shall be modified to reflect AT&T's position. According to AT&T, and which Pacific does not refute, Pacific's proposed rates do not conform to the CCM. Pacific has presented no evidence that its proposed rates are TELRIC-based. AT&T's proposed rates conform to the CCM and should be used on an interim basis until final rates are adopted in OANAD.

**Issue 161(I)**

**Should a 20-day or 30-day interval for Pacific to respond to a quote be adopted?**

**AT&T's Position:**

AT&T contends that the time for responding to quotes should be 20 days. Pacific claims that it needs 30 days to assess the application and respond, but this is simply a way to delay the process.

**Pacific's Position:**

Pacific contends that a 20-day period is not reasonable for the following reasons: (1) The placement of microwave facilities requires a complex site assessment and analysis; (2) Each site may have different engineering requirements and problems, and (3) Pacific must determine whether the building roof, or structure, will support the microwave equipment, and if not, must determine the work to be performed on the structure to support microwave equipment. Pacific asserts that the placement of microwave equipment has

numerous variables, and a 30-day period for providing a quote is extremely reasonable. AT&T presented no evidence to the contrary.

**Discussion:**

Pacific's proposed language in § 4.4.5.1 is adopted. AT&T did not justify its 20 days based on any objective criteria, such as the specific work to be done. Pacific, on the other hand, provided a specific analysis of the steps required, and justifies the 30 days on the basis of the complexities involved in the site assessment and analysis.

**Issue 161(m)**

**Should Pacific recover its costs for observing AT&T and its sub-contractors' work activities?**

**AT&T's Position:**

AT&T contends that Pacific has no need to observe Installation Vendor (IVEN)-approved contractors when they install microwave equipment on a roof top, and the law provides no right for Pacific to demand payment from AT&T if Pacific decides to undertake this unnecessary activity. Because the contractors are already certified, there would be nothing for Pacific's observer to do other than assure that the equipment is being installed in the proper location. That would take only a few moments and could be done by the person who provides the contractor with access to the site.

**Pacific's Position:**

To the extent this work activity impacts the integrity of Pacific's building and safety of personnel, pedestrians, etc., Pacific must be able to monitor AT&T's installation work. Also, Pacific monitors contractors who perform the same or similar work for itself or its affiliates. It is only fair that AT&T pay this cost.

**Discussion:**

Pacific's position is adopted. Pacific's proposed § 4.4.8.4 is adopted and § 4.4.5.2 is to be modified to reflect this outcome. As Pacific says, it monitors contractors who perform the same or similar work for Pacific or its affiliates. It is reasonable to treat AT&T's contractors the same.

**Issue 161(n)**

**Should AT&T be required to use Pacific-approved or IVEN approved contractors for construction of the microwave facilities?**

**AT&T's Position:**

During negotiations, Pacific never proposed any approval criteria for contractors installing microwave equipment. Instead, Pacific proposed that the ICA grant it the right to exercise unfettered and completely subjective approval rights over AT&T's contractors. AT&T contends that Pacific could introduce delays by rejecting contractors who fail to meet some criteria Pacific might decide to impose. Since Pacific declined to offer reasonable, subjective criteria, the ICA should require only that AT&T use IVEN-approved contractors. If Pacific subsequently requests that AT&T select contractors that meet certain objective criteria, AT&T undoubtedly would comply since AT&T has no interest in allowing sub-standard work in the placement of its microwave equipment.

**Pacific's Position:**

Pacific objects to the use of IVEN-certified contractors because they are not certified to perform roof construction. Roof construction requires a separate, unique expertise, which includes knowledge of outside building construction and radio interference. Pacific itself uses special Pacific-approved contractors, not IVEN-certified contractors, for this type of work.

**Discussion:**

Pacific's position is adopted. Sections 4.4.5.2, 4.4.10, and 4.4.15.8 shall be modified to show that AT&T is required to use Pacific-approved contractors.

AT&T proposes to use IVEN-certified contractors, but Pacific says those contractors are not certified to perform roof construction. Pacific itself uses special contractors, not IVEN-certified contractors for this type of work. To expedite the process for AT&T, Pacific shall provide AT&T a list of its approved contractors to assist AT&T in finding contractors which meet Pacific's requirements.

**Issue 161(o)**

**Should Pacific recover from AT&T the costs incurred to perform necessary work outside the microwave collocation arrangement (including work associated with power and building modifications)?**

**AT&T's Position:**

AT&T states that no retrofitting is required for microwave collocation. Moreover, if it were, charges for the retrofits would not be permitted under the TELRIC/Consensus Costing Principles (CCP) standards the Commission has adopted for collocation costing. Pacific's proposed language in § 4.4.5.2 allowing Pacific to charge AT&T at ICB rates for retrofit work must be rejected as inconsistent with the CCM.

**Pacific's Position:**

If Pacific prepares the site in order to accommodate AT&T's request for microwave entrance facilities, such as installing shielding against radio interferences or shielding-off from other antennae, Pacific contends that it should recover its costs associated with such modifications. Under cost causation principles, AT&T clearly caused Pacific to incur the cost of site preparation, and Pacific is entitled to recover those costs.

**Discussion:**

Pacific's position is adopted, and § 4.4.5.2 shall reflect that outcome. Pacific is entitled to recover those specific site preparation costs.

**Issue 161(p)**

**Under what circumstances should Pacific be able to modify its quotes based on the actual field conditions encountered during construction?**

**AT&T's Position:**

AT&T relies on Pacific's quote in making a business decision about whether to proceed with the collocation arrangement. If the quote were higher, AT&T might make a different decision. Pacific's proposed language in § 4.4.5.2 would mean that Pacific could raise AT&T's costs to an uneconomical level after AT&T has purchased equipment and has sunk costs in the microwave collocation arrangement, even though Pacific was in the best position to assess field conditions all along.

**Pacific's Position:**

Pacific will evaluate each request on its own merits and provide a quotation in good faith. However, Pacific may encounter unforeseeable field conditions during construction that increase Pacific's costs. Pacific asserts that it should have the ability to modify the quote if the field conditions differ from the original estimate or if the environmental impact laws change to include new requirements.

**Discussion:**

AT&T's position is adopted. As AT&T says, it is making a business decision based on Pacific's quote, and if Pacific's quote greatly understates the actual costs, AT&T could decide not to install the facility. Finding out, after the fact, that the quote understated the actual costs to a significant degree, leaves AT&T holding the bag. Pacific needs to ensure that its quote is based on an adequate survey of the site and takes all site preparation tasks into account. Section 4.4.5.2 shall be modified to reflect this outcome.

**Issue 161(r)**

**Should the form of statement of technical feasibility be mutually agreed upon by the parties or determined solely by Pacific?**

**AT&T's Position:**

AT&T's proposed language in § 4.4.6.1 takes the statement of technical feasibility out of Pacific's unilateral control and makes it subject to mutual agreement.

**Pacific's Position:**

Pacific asserts that AT&T's proposed language is unreasonable. Because the statement of technical feasibility should be applied uniformly to all CLECs, there is no reason why Pacific should use a different form for AT&T than for other CLECs. Moreover, Pacific is the responsible party for determining what factors to use to assess technical feasibility because those factors are based on Pacific's property and potential impacts could affect Pacific's property.

**Discussion:**

Pacific's proposed § 4.4.6.1 is adopted. The statement of technical feasibility does not apply only to AT&T, but to all CLECs. It must be set uniformly for all CLECs.

**Issue 161(s)**

**Should Pacific's quote be valid for 45 days for applications involving placement of microwave equipment on Pacific's premises?**

**AT&T's Position:**

When AT&T applies for microwave collocation to supplement an existing collocation arrangement, 45 days is a reasonable time in which to evaluate a quote. For entirely new arrangements, a longer time may be required.

**Pacific's Position:**

Pacific asserts that AT&T tries to limit the time a quote is valid to augment situations only. The 45-day period is used for all applications, whether for virtual

or physical collocation. AT&T has not provided a reason why the limitation should be applicable only in an augment situation. Further, Pacific should not be required to guarantee the validity of a quote beyond 45 days because Pacific may receive applications from other CLECs.

**Discussion:**

Pacific's proposed language in § 4.4.7 is adopted. While AT&T says it needs a longer period of time to analyze new arrangements, it has not proposed a specific time limit for its review and essentially set no specific review period. It is not reasonable to allow AT&T an unlimited amount of time to determine if it wants to proceed, which could keep other CLECs from using the space.

**Issue 161(u)**

**What should be the standard of the electrical modifications for grounding--Bellcore standards or Pacific's proprietary standards?**

**AT&T's Position:**

AT&T contends that all technical requirements should be based on industry standards. Allowing Pacific to impose other standards is merely a way for Pacific to unnecessarily increase CLEC costs. Pacific has not cited a single example of inadequacies in industry standards. Industry standards are uniform, by definition.

**Pacific's Position:**

Pacific contends that the standard for electrical modifications required for grounding should be TP76200MP and BSP802-001-180 MP. Both standards apply to CLECs. Pacific contends it must maintain uniformity in its CLEC offerings and cannot provision differently to AT&T.

**Discussion:**

Pacific's proposed § 4.4.8.3 is adopted. The place to argue the standards for grounding is in a generic proceeding where the outcome would apply to all

CLECs. It is not reasonable to adopt one technical standard in this arbitration, and to have another for all other CLECs.

**Issue 161(v)**

**What prices should apply to various items associated with microwave collocation?**

**AT&T's Position:**

Section 4.4.8.4 allows Pacific to charge AT&T for monitoring installation of AT&T's equipment by a contractor selected and approved by Pacific. This monitoring is entirely unnecessary and should not be chargeable to AT&T.

Section 4.4.8.5 allows Pacific to charge AT&T for construction of "new, secure access to the Microwave Collocation arrangement" when Pacific deems such access necessary. Typically, access to the roof of a central office is via a ladder secured to the exterior of the building. The ladder is locked and is only available for AT&T's use when a Pacific employee unlocks it. Even when access to the roof is through the interior of the building, the arrangement is generally the same. This access is already "secure", and there is no need to construct and charge AT&T for some other type of access.

Section 4.4.8.6 allows Pacific to charge AT&T for time spent by Pacific personnel reviewing permitting materials and attending hearings on permit applications. This is addressed in Issue 161(x). AT&T is responsible for obtaining permits and therefore should not be required to reimburse Pacific for reviewing permitting materials and attending hearings, unless AT&T expressly requests that Pacific undertake these activities in support of AT&T's application.

Section 4.4.9.1 allows Pacific to charge AT&T for reviewing architectural plans. Since AT&T's microwave arrangements will not involve building modifications or any type of structural work, this work is unnecessary. Even if it

were necessary, charges for retrofitting would be disallowed under the CCM, as explained in Issue 161(o).

Section 4.4.9.2 allows Pacific to charge for permitting review work.

Section 4.4.9.4 allows Pacific to charge AT&T for monitoring installation work performed by AT&T's contractors. This is addressed in Issue 161(m). Pacific has no need to observe AT&T's IVEN-approved contractors when they place microwave equipment on a rooftop.

In § 4.4.9.6 Pacific proposed that all non-recurring charges for microwave collocation arrangements be ICB. ICB charges are not necessary under the CCM and would allow Pacific to game the process. AT&T's proposal is based on the approved CCM.

Pacific objects to AT&T's proposed language in proposed § 4.4.9.7 for recurring charges for "Track B" quotes. AT&T contends that its proposed language is consistent with the CCM and should be approved. Pacific's proposed rooftop space rental fee is not consistent with the CCM.

In § 4.4.15.3 Pacific is attempting to charge AT&T for Pacific's participation in the permitting process. For the reasons explained above, AT&T should not be charged for this.

**Pacific's Position:**

Pacific has proposed reasonable cost items and has submitted cost data to AT&T. AT&T has offered no workable alternatives that correlate to the manner in which microwave is provisioned. In numerous areas of Attachment 10, AT&T has attempted to deprive Pacific of its right to recover valid costs incurred as a result of AT&T's microwave requests.

**Discussion:**

In its Comments, AT&T asserts the threshold issue is whether Pacific should be performing the identified functions at all and, if so, whether it has demonstrated an adequate basis for the charges it proposes. In its Brief, AT&T demonstrated that Pacific need not perform a number of the functions it seeks to charge AT&T for, and the Draft errs in failing to consider and evaluate each of these arguments, says AT&T. The arbitrator needs to rule on each of the 10 clauses disputed.

Moreover, says AT&T, the FAR should not approve rates that Pacific has not shown to meet relevant cost standards. A true-up does not compensate AT&T for the cost of money tied up while the parties litigate prices in the Collocation Phase. Also, some items may not be covered in OANAD. Pacific's sole justification for the rates is that it provided the cost basis to AT&T. Pacific made no effort to show that its proposed prices were derived from or in any way consistent with the CCM, states AT&T.

AT&T does not present a compelling argument when it says a particular element was not included in the CCM. The Commission has not ruled that all appropriate functions have been included in the CCM. It may well be that some of the functions which Pacific performs on AT&T's behalf, and for which Pacific should be compensated, were omitted from the CCM. That does not mean that Pacific should be barred from recovering those costs. The Commission has not yet had an opportunity to rule on the adequacy of the CCM as it relates to microwave collocation.

Pacific's proposed language makes it clear that it charges AT&T only when particular functions are actually performed on AT&T's behalf. While AT&T may not see the need for some of those functions, Pacific does, and we are dealing here with AT&T's use of Pacific's property.

Following is the outcome on the specific ICA sections covered by Issue 161(v):

Section 4.4.8.4: Pacific's proposed language is adopted. Pacific has the right to monitor installation performed by Pacific's contractor. This section limits monitoring to a maximum of two hours per day (except under special circumstances), so Pacific does not intend to have its real estate specialists or project managers oversee every minute of the installation process. This language is appropriate. Pacific has a right to oversee construction work performed on its premises.

Section 4.4.8.5: Pacific's proposed language is adopted. This clause does not apply unless Pacific "demonstrates that new, secure access to the Microwave Collocation" location is reasonably necessary." The ladder access that AT&T addresses in its Brief may well constitute adequate access, and the burden is on Pacific to demonstrate that a new method of access is necessary. This outcome is reasonable and shall be adopted.

Section 4.4.8.6: This section was addressed under Issue 161(x), which the parties settled.

Section 4.4.9.1: Pacific's language is adopted. AT&T states that microwave arrangements will not involve building modifications or any structural work. Pacific obviously thinks that building modifications may be needed, and has, therefore, included this cost element. If there are no architectural plans to review, Pacific will not be able to charge AT&T. If there are architectural plans to review, Pacific should be compensated for its employees' time to review those plans. As with other sections relating to microwave collocation, Pacific has limited its review time. Pacific indicates it will charge no more than two hours for the review, unless it can demonstrate that additional time is warranted. That puts reasonable limits on the time Pacific can charge for performing this function.

Section 4.4.9.2: This section was addressed under Issue 161(x), which the parties settled.

Section 4.4.9.3: In its Comments on Issue 282, AT&T points out that Section 4.4.9.3 is really a truncated version of Section 4.4.9.6. Section 4.4.9.3 will be deleted, as AT&T suggests.

Section 4.4.9.4: Pacific's proposed language is adopted. This is the "Track B" equivalent of § 4.4.8.4. See comments under § 4.4.8.4.

Section 4.4.9.5: Pacific's proposed language is adopted. This is the "Track B" equivalent of § 4.4.8.5. See comments under § 4.4.8.5.

Section 4.4.9.6: AT&T states for a "Track B" quote, AT&T is responsible for installation and Pacific provides cabling. Pacific proposes to delete AT&T's language because the pricing for microwave is addressed in other portions of Attachment 10. AT&T attempts to restate the parameters of the quote process and adds a requirement that AT&T not be required to pay an application fee for microwave arrangements. The quote process details all applicable charges and results in ICB pricing for those cost items adopted in the Draft. This process is consistent with the FCC rules, which require that microwave be addressed on an individual case basis:

[W]e note that we modified our requirements for microwave interconnection in the Virtual Collocation Order. In that order, we stated that microwave interconnection must be tailored to specific interconnectors and to specific central offices and that it does not readily lend itself to uniform tariff arrangements. We found that the LECs must tariff microwave interconnection on a central office-specific, individual case basis, in response to bona fide requests. (FCC's Collocation Second Report and Order, ¶ 38).

The first two sentences of AT&T's proposed § 4.4.9.6 are adopted. Pacific does not address this portion of § 4.4.9.6, only the pricing issues. This section allows AT&T to perform some of the work associated with microwave

collocation, "unless the parties agree otherwise." In that case, Pacific will provide a quote for certain types of work. The last two sentences of AT&T's proposed § 4.4.9.6 shall be deleted, since they overlap with other sections relating to the quote process.

Section 4.4.9.7: AT&T says its proposed language is consistent with the CCM and should be approved. Pacific's proposed monthly recurring roof-top space rental fee is not consistent with the CCM, says AT&T. Pacific's proposed language sets recurring charges for roof-top space and escort charges. According to Pacific, AT&T's proposed language in § 4.4.9.7 ignores these cost elements. These charges are consistent with other pricing language already adopted in the DAR; the CCM does not price roof top space.

Pacific's proposed language in § 4.4.9.7 is adopted. AT&T's proposed language does not recognize the costs of renting roof-top space, apparently because the CCM does not price roof top space. As stated previously, the CCM may have excluded some cost items for which Pacific is entitled to recover its costs. If AT&T has a microwave site on Pacific's roof, Pacific is entitled to be compensated for that space on a recurring basis.

All microwave collocation rates and charges will be interim, and subject to true-up.

#### **Issue 161(w)**

**Should Pacific have final approval authority on all proposed conditions imposed by relevant jurisdictions?**

#### **AT&T's Position:**

In §§ 4.4.8.6 and 4.4.9.2, Pacific seeks to grant itself approval authority on proposed conditions imposed by governmental bodies in granting permits necessary for microwave collocation. AT&T asserts that Pacific should not be granted this veto power. It will give Pacific an excuse to prevent microwave collocation any time a government body proposes conditions on the permit, no

matter how reasonable those conditions might be. Pacific has proposed no criteria on which its approval would be based.

**Pacific's Position:**

Pacific contends that it should have a right to exercise final approval authority on all conditions imposed by relevant jurisdictions because those conditions will have an impact on Pacific's property. In *GTE*, the D.C. Circuit Court struck down rules that went too far in granting CLECs rights relative to ILEC property.<sup>94</sup> Here is another example where AT&T is attempting to make decisions about Pacific's own property. Pacific's proposed language states that Pacific will not unreasonably withhold its approval.

**Discussion:**

Pacific's proposed language in §§ 4.4.8.6 and 4.4.9.2 relating to this issue, is adopted. In light of *GTE*, Pacific must have the right to exercise final approval on all conditions imposed by local jurisdictions because those conditions will have an impact on Pacific's property.

**Issue 161(y)**

**Should third party applications for placement of equipment that would obstruct an existing line of sight for AT&T equipment be denied unless all three parties agree to move an existing arrangement to allow for a clear line of sight?**

**AT&T's Position:**

Once AT&T has made the investment in an unobstructed line-of-sight microwave arrangement, Pacific should not be allowed to diminish or eliminate the value of the investment by subsequently granting a third-party the right to obstruct that line-of-sight. .

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<sup>94</sup> *GTE, supra*, 2000 WL 255470 \*10.

**Pacific's Position:**

In Attachment 10, § 4.4.15.9, AT&T seeks to restrict third-party rights to establish their own microwave arrangements. Pacific contends that it is inherently unfair to restrict the rights of entities that are not parties of this litigation.

**Discussion:**

AT&T's proposed language in § 4.4.15.9 is adopted. Once AT&T has installed its microwave facility, Pacific should not allow a third party to obstruct AT&T's line-of-sight. Collocation is granted on a first come, first served basis, and subsequent collocators should not be allowed to diminish the rights of the carrier already collocated.

**Issue 161(z)**

**Should microwave collocation equipment remain AT&T property?**

**AT&T's Position:**

As a general rule, title to microwave equipment should remain with AT&T. However, the language that Pacific proposed in § 4.4.14 could be interpreted to override language in § 4.2.29, stating that AT&T will have no obligation to remove cabling, wiring or conduit installed in connection with a collocation arrangement. Section 4.2.29 provides that AT&T must remove other collocation equipment within 30 days after discontinuing a collocation arrangement, and removal of the equipment is the only real issue Pacific is attempting to address in the last sentence of § 4.4.14. AT&T asserts that since the ICA already has specific provisions for removal of equipment, there is no need for the less precise statement proposed by Pacific concerning title to the equipment.

**Pacific's Position:**

The microwave equipment AT&T is using as entrance facilities should remain AT&T's property and should not become a fixture to Pacific's property.

Otherwise, AT&T would be permitted to burden Pacific with the cost of removing the microwave equipment should AT&T choose to discontinue its use.

**Discussion:**

Pacific's proposed § 4.4.14 is adopted. AT&T raises concern that Section 4.4.14 could be interpreted to override language in Section 4.2.29, but since Pacific's proposed general terms and conditions were adopted in Issue 161(a), Section 4.2.29 is no longer part of the ICA. Pacific's section 4A.4.24 regarding Discontinuance and Termination of a Collocation Arrangement explains the process for removing equipment from the site and explains what happens if AT&T does not remove its equipment within the required time period. There is no conflict between the two provisions.

**Issue 161(aa)**

**Should the maximum number of microwave antennae within a 5x5 square foot area be two or six?**

**AT&T's Position:**

AT&T contends that technical feasibility should be the only limitation on the number of microwave antennae that AT&T places in its collocation space. Pacific concedes that four antennae can be placed in the space. (*Response* at 131.) Microwave collocation should be provided on a first-come, first-served basis just like every other type of collocation. Pacific is not allowed to deny or limit AT&T's collocation requests on the grounds that it is holding space in reserve for subsequent requests. Since it is technically feasible to place up to six antennae in a 5x5 square foot space, AT&T should be allowed to do so.

**Pacific's Position:**

AT&T's proposal to place up to six microwave antennae in a 5x5 square foot area is unreasonable and would deprive other CLECs of line-of-sight on the rooftop. Based upon Pacific's technical assessment of the use of microwave

entrance facilities for a collocation arrangement, two microwave antennae in a 5x5 space should be sufficient. In any event, due to physical site limitations, AT&T cannot place more than four antennae in a 5x5 square foot area. AT&T has presented no evidence to the contrary.

**Discussion:**

The parties disagree on the technical feasibility of how many antennas can be placed in a 5x5 square foot space. The parties have provided little information on why it is technically feasible or infeasible to place a particular number of antennae. Pacific states that due to physical site limitations, AT&T cannot place more than four antennae in a 5x5 square foot area, but states that two antennae should be sufficient. In light of Pacific's concerns, Section 4.4.11 shall be modified to provide for the placement of no more than four microwave antennae.

**Issue 161(bb)**

**Should Pacific be able to prohibit AT&T from using Pacific's property in a way that conflicts with applicable law and affects the condition, use or occupancy of the property? Should the ICA specify that AT&T shall not commit nuisance on Pacific's property?**

**AT&T's Position:**

AT&T contends that the issue is not whether the ICA should address these topics but whether it should address them differently for microwave collocation than for other types of collocation, as proposed by Pacific. It should not, and Pacific has offered no reasons why it should. AT&T addresses compliance with applicable laws in the General Terms and Conditions § 5 (Responsibilities of Each Party). AT&T addresses waste and nuisance in § 4.2.16.<sup>95</sup> AT&T asserts that there is no need to carve out special, unnecessary rules for microwave collocation.

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<sup>95</sup> Pacific addresses waste and nuisance in § 4A.3.26, using the same language AT&T uses in § 4.2.16.

**Pacific's Position:**

Pacific's proposed language is reasonable because Pacific must have recourse against AT&T if its agents or equipment cause any of these acts.

**Discussion:**

Pacific's proposed § 4.4.15.1 is adopted. AT&T does not dispute the inclusion of the "nuisance" section, but argues that it belongs in a set of general terms and conditions that relate to all collocation arrangements. However, since AT&T's General Terms and Conditions on collocation were not adopted, this specific provision which applies to microwave collocation should be included in the ICA.

**Issue 161(cc)**

**Should AT&T's obligations upon termination/expiration of a microwave arrangement be the same as upon termination of any collocation arrangement, or should the obligations be different, as proposed by Pacific?**

**AT&T's Position:**

AT&T's obligations should be the same as upon termination of any other collocation arrangement. Imposing different obligations for microwave collocation, as Pacific proposes, merely complicates the contract, with no offsetting benefit to anyone.

**Pacific's Position:**

Pacific contends that AT&T should bear the costs of returning the microwave site to its original condition. The installation site is Pacific's property. If AT&T does not require the microwave installation any longer, AT&T should be required to remove the installation or pay Pacific for removal costs and any costs for damage beyond normal wear and tear. Pacific should be able to choose to retain such microwave equipment and acquire all rights to such equipment if AT&T abandons the equipment.

**Discussion:**

Pacific's proposed § 4.4.15.5 is adopted for the same reasons discussed in Issue 161(bb) above. AT&T's General Terms and Conditions for all types of collocation were not adopted and are not part of the ICA.

**Issue 161(dd)**

**Should AT&T's obligation to maintain its microwave equipment and the collocation space be the same as for other collocated equipment and collocation space, or should the obligations be different, as proposed by Pacific?**

**AT&T's Position:**

AT&T's obligation to maintain its microwave equipment and the collocation space should be the same as for other types of collocated equipment and collocation space. Again, imposing different obligations for microwave collocation merely complicates the contract, with no offsetting benefits.

**Pacific's Position:**

AT&T's obligations for maintaining its microwave equipment are consistent with those for physical collocation. AT&T is responsible for the microwave equipment and will maintain it with a Pacific escort. If AT&T fails to maintain its space in a neat and orderly manner, Pacific contends that it should be able to clean up AT&T's space (if after 10 days written notice from Pacific, AT&T fails to do so). Because it is AT&T's obligation to maintain its equipment, it is reasonable that Pacific be reimbursed for any costs incurred by Pacific in maintaining AT&T's space.

**Discussion:**

Pacific's proposed § 4.4.15.6 is adopted, for the same reasons discussed in Issues 161(bb) and (cc) above.

**Issue 161(ee)**

**Should security measures for access to Pacific's premises in connection with placement of microwave equipment be the same as for collocation arrangements, or should the security measures be different, as proposed by Pacific?**

**AT&T's Position:**

AT&T contends that security measures should be the same as for other types of collocation arrangements. Once again, Pacific offers no justification for insisting on different security measures, and a different contract section, for microwave collocation.

**Pacific's Position:**

Pacific asserts that it should be able to enforce security measures regarding access to Pacific's premises.

**Discussion:**

Pacific's proposed § 4.4.15.7 is adopted, for the same reasons discussed in Issues 161(bb) and (cc) above. Since AT&T's General Terms and Conditions were rejected, it is appropriate to add specific sections relating to various elements of microwave collocation.

**Issue 163**

**Should references to proprietary Pacific Bell technical publications be included in the ICA for virtual collocation, or should technical requirements be based on industry standards?**

**AT&T's Position:**

Contrary to Pacific's assertion, AT&T contends that it never asked that Pacific's technical publications be included in the agreement. Instead, AT&T asked that technical requirements be based on industry standards, rather than Pacific's proprietary standards that have not been endorsed by the industry. As explained in Issue 161(u), Pacific's insistence on use of its own proprietary

standards is a matter of convenience for Pacific, and an inconvenience for CLECs who need to rely on accepted industry standards.

**Pacific's Position:**

Pacific contends that the Commission approved the use of technical publication references in the MFS WorldCom arbitration. The contract here will reference the Handbook and TechPubs in the form in which they existed at the time that the contract negotiations were concluded. Any subsequent changes will not automatically become part of the contract, but must be mutually negotiated with AT&T before such changes may be incorporated into the ICA.

**Discussion:**

Pacific's proposed language in §§ 4.51, 4.5.4.2, and 4.5.8.3 is adopted. As mentioned in the discussion in Issue 161(u), if AT&T believes that national standards should apply over Pacific's proprietary standards, the company should raise that issue in one of the Commission's generic proceedings, where the outcome could be applicable to all CLECs.

**Issue 164**

**Should Pacific's or AT&T's service order and provisioning requirements for the installation of circuit packs and plug-ins be adopted?**

**AT&T's Position:**

AT&T has requested that expedited plug-in and circuit pack installations be completed within two days from the date of AT&T's written request.

**Pacific's Position:**

Pacific is willing to install plug-ins or circuit packs on an expedited basis within three business days. The provisioning process for plug-ins and circuit packs takes three days to complete, and any shortening of the interval by a day would not provide Pacific with sufficient time to complete the installation.

**Discussion:**

Pacific's proposed language in § 4.5.2.2.2 is adopted. AT&T has presented no evidence that Pacific should be able to install plug-ins or circuit packs within two days, instead of the three days which Pacific proposes. Pacific is doing the work and is, therefore, in a better position to estimate the time required.

**Issue 165**

**Should Pacific's provision describing provisioning of plug-ins and circuit packs within equipment bays be adopted?**

**AT&T's Position:**

AT&T contends that it is in the best position to determine when, and how many, plug-ins and circuit packs should be added. Pacific's proposal to add its unreasonable requirement in §§ 4.5.2.1.1, 4.5.2.1.2 and 4.5.2.2 should be rejected.

**Pacific's Position:**

Pacific argues that populating a full shelf at one time is preferred because it reduces the number of times a technician must install plug-ins or circuit packs for a particular shelf. *Response* at 134. Pacific wants AT&T to completely populate a shelf when Pacific has been asked to provision a circuit pack or plug-in, to avoid the need for repeated expedite requests. Such a process will allow AT&T to ensure that it has enough capacity for near-term growth.

**Discussion:**

AT&T's position is adopted, and Pacific's proposed language in §§ 4.5.2.1.1, 4.5.2.1.2, and 4.5.2.2 is rejected. As AT&T states, it is a waste of plug-ins and circuit packs to fully populate a shelf when the additional equipment is not needed. AT&T is in the best position to determine when, and how many, plug-ins and circuit packs should be deployed.

**Issue 166**

**Should AT&T's tracking requirements regarding use of circuit packs and plug-ins for repair be adopted?**

**AT&T's Position:**

AT&T asserts that Pacific claims that AT&T should manage its own inventory (*Response* at 135), but at the same time Pacific refuses to allow AT&T access to inspect its virtually collocated equipment and spare parts more than once per year. See Issue 171, and § 4.5.6.2. AT&T can attempt to track its inventory without Pacific's assistance, but without periodic physical inventories the process can never be reliable.

**Pacific's Position:**

Pacific will be using circuit packs and/or plugs-ins during maintenance and repair processes solely at AT&T's direction. Accordingly, Pacific contends that inventory management of AT&T's equipment should be AT&T's responsibility. Forcing Pacific to manage AT&T's own inventory places an unnecessary burden on Pacific and adds unnecessary cost to the virtual collocation process. Pacific has offered to confirm during the repair process what AT&T-owned spare equipment Pacific has used for the repair (as directed by AT&T on the call). AT&T may use this information to manage its inventory.

With respect to test equipment, Pacific will only use this equipment when instructed to do so by AT&T during a repair call. If Pacific finds that the collocated test equipment does not work, Pacific will notify AT&T of the need to repair or replace the collocated test equipment.

**Discussion:**

Pacific's proposed language in § 4.5.2.3.6 is adopted. It is burdensome for Pacific to have to maintain a record of AT&T's inventory. However, since Pacific does not want to allow AT&T to inspect its virtual collocation sites more than

once per year, AT&T is not in a good position to manage its own inventory. Therefore, to allow AT&T better control over its inventory, AT&T's request in Issue 171 to be allowed to inspect its virtual collocation sites on a quarterly basis is granted. This will allow AT&T to develop and maintain a more accurate record of its inventory.

**Issue 167**

**Should AT&T's language regarding performance of functions by Pacific at no charge unless a charge is expressly provided for be adopted?**

**AT&T's Position:**

AT&T contends that its proposed language in § 4.5.3.1 merely clarifies that Pacific cannot assess *additional* charges for the items listed under its responsibilities unless the agreement itself expressly provides for an additional charge. That is how commercial contracts are typically structured.

**Pacific's Position:**

Pacific contends that this is another instance of AT&T seeking a free ride. AT&T would like to enlist Pacific personnel to perform collocation functions at no charge. There is no reasonable explanation why Pacific's valid costs should not be recovered.

**Discussion:**

AT&T's proposed language in § 4.5.3.1 is adopted for the reasons discussed in Issue 135. Any charges need to be negotiated and explicitly stated in the contract.

**Issue 168**

**Should Pacific's or AT&T's language on how far in advance of turnover CFA information should be provided be adopted?**

**AT&T's Position:**

AT&T proposes that Pacific provide the site-specific cable and frame assignments (CFA) at least 30 days prior to turnover. Pacific proposes 14 days. AT&T contends it must have the CFA, however, before it can place orders for network facilities, and the provisioning interval for those facilities is nearly always longer than 14 days. The result is that under Pacific's proposal, AT&T would be paying for the collocation space while the equipment sits idle due to lack of facilities.

**Pacific's Position:**

Pacific contends that AT&T has presented no evidence justifying how or why 30 days is reasonable. It is not reasonable to provide CFA earlier than 14 days prior to turnover because Pacific has not completed its facilities work 30 calendar days before turnover. Prior to that time, the information is either not available or may be subject to change until Pacific completes facilities installation. Moreover, a 14-day notification is consistent with Pacific's policy of providing CFA in 14 day for all forms of collocation.

**Discussion:**

Pacific's proposed language in § 4.5.3.1.4 is adopted. Pacific says the CFA information either is not available or may be subject to change until Pacific completes the facilities installation, and a 14-day notification period is consistent with Pacific's practice with other forms of collocation. AT&T does not explain why the interval for virtual collocation should be different than for other forms of collocation.

**Issue 169**

**Should the ICA reflect Pacific's proposed language limiting 7x24 coverage if AT&T has not trained the number of technicians that Pacific requests on an ongoing basis?**

**AT&T's Position:**

As explained in the discussion of Issue 160, Pacific is unwilling to place any limit on the number of technicians AT&T would be required to train. AT&T seeks to place some reasonable limits on its training obligations, while Pacific seeks to ensure that AT&T's obligations are limitless and entirely within Pacific's control.

**Pacific's Position:**

AT&T seeks to limit the number of Pacific technicians that will be trained to work on AT&T's virtual equipment at each central office, but AT&T demands 7x24 coverage at each central office. Pacific is not able to assure 7x24 coverage if an adequate number of technicians have not been trained. Moreover, the "adequate" number is going to vary by central office, depending on (a) the type of equipment AT&T intends to install; (b) whether Pacific uses that equipment in the same central office in the same configuration that AT&T deploys; and, (c) the geographic location of the central office. Pacific does not staff as many technicians in remote central offices, and instead assigns a small group of technicians to cover a wide geographic area. Pacific asserts that AT&T should be required to pay its fair share.

**Discussion:**

AT&T's proposed language in § 4.5.3.1.9 is adopted. Issues 160 and 178 require that five technicians be trained initially. According to Pacific, that is the number required to ensure 7x24 coverage, so AT&T should be guaranteed that 7x24 coverage. Any additional technicians will be trained under the "train the trainer" approach described in Issue 160.

**Issue 170**

**What intervals for application, quote and installation for virtual collocation should apply?**

**AT&T's Position:**

AT&T contends that the intervals for responding to applications and providing quotes should be no different for virtual collocation than for any other type of collocation. AT&T has proposed ten days for notification of whether space is available (§ 4.2.23) and twenty days for quotes (§ 4.2.24.1). While there is agreement on the latter, Pacific proposes much longer intervals for responding to applications when multiple applications are submitted within a ten-day period. Pacific offers no justification for this, and there appears to be none. Responding to the application means nothing more than advising a CLEC whether space is available or not. Ten days is sufficient time to do this even when multiple applications are submitted, particularly since virtual collocation should almost never be denied on the basis of space exhaust.

AT&T has proposed that provisioning be completed within fifteen days after AT&T delivers the virtual collocation equipment. Some of the tasks which Pacific says are required for virtual collocation, would be unnecessary for a typical arrangement (e.g., "real estate site preparation must be designed."). (Ex. 218 at 8.) Many of the tasks would be AT&T's responsibility, not Pacific's (e.g., "IVEN-certified vendor must be hired", and "vendor work must be scheduled"). AT&T, not Pacific, would typically be responsible for having AT&T's equipment installed and for constructing cross-connects. (Ex. 127 at 43.) Pacific would be responsible for extending power cabling to the arrangement and providing an AC outlet and telephone service, and for completing the necessary cabling after AT&T has the equipment installed. (Ex. 127 at 43.) Listing half a page of tasks that someone must sometimes perform in connection with a virtual collocation arrangement does not justify a 110-day interval.

**Pacific's Position:**

As mentioned in connection with Issue 156, the Commission does not need to reach the merits of whose intervals are more appropriate in this proceeding. Pacific points out that the provisioning intervals are being considered in the Collocation Phase of OANAD.

In attempting to create unreasonably short intervals, AT&T glosses over the complex and multi-faceted process of virtual collocation installation. Pacific's experience has been that the 110 and 140-day intervals are needed to accomplish these tasks. AT&T lacks a fundamental understanding of the basics of virtual collocation, as well as the length of time needed to accomplish the many requisite collocation installation tasks.

**Discussion:**

As discussed in Issue 156, provisioning intervals should be addressed in a generic proceeding, where the outcome will apply to all CLECs. AT&T proposes that the intervals that apply to virtual collocation be those in its proposed General Terms and Conditions for collocation. However, as stated previously, that section was not adopted, so it is necessary to adopt separate terms and conditions for the virtual collocation process. Pacific's proposed Section 4.5.5 is adopted.

**Issue 171**

**How frequently should AT&T be permitted to inspect its virtually collocated equipment?**

**AT&T's Position:**

AT&T may not actually inspect the equipment once a calendar quarter, but AT&T's quality assurance program for network equipment requires that the option be available. Although Pacific claims that it would be burdensome to give AT&T this right, that is not the case. When AT&T exercises the right, it will pay for a

Pacific escort at the appropriate rates, and a minimal amount of time will be involved.

**Pacific's Position:**

AT&T gives no valid reason why a quarterly inspection is necessary in a virtual arrangement in which Pacific is responsible for maintenance of the equipment. Once the equipment is properly installed and is physically stable, there should be nothing to inspect. Pacific contends that an inspection every three months imposes an unnecessary burden on Pacific. The real issue is control. AT&T wants control over its virtually collocated equipment similar to its physically collocated equipment.

**Discussion:**

AT&T's position is adopted for the reasons given in Issue 166. Section 4.5.6.2 should be modified to reflect this outcome. AT&T needs to be able to inspect its virtual collocation facilities more than once a year to maintain an accurate inventory, and for quality assurance purposes. AT&T has to pay a Pacific escort when it visits a virtual collocation site so the visits place no cost burden on Pacific.

**Issue 173**

**How much access to Pacific property should AT&T be permitted for purposes of troubleshooting problems in collocation areas?**

**AT&T's Position:**

AT&T seeks contract language establishing that AT&T may elect to assist if Pacific is not meeting mean time to respond intervals (MTRI) and when Pacific fails to clear service-affecting troubles within a reasonable time. In these situations, AT&T's presence at the equipment location may well result in quicker repairs and shorter periods of service loss or degradation for AT&T's customers.

**Pacific's Position:**

Pacific's language in Attachment 10, § 4.5.12.5 provides that AT&T may enter eligible structures for troubleshooting when both parties agree that it is necessary. It is Pacific, not AT&T, that is ultimately responsible for maintenance in a virtual setting. AT&T is improperly demanding unilateral authority to determine when it should be permitted on site at a Pacific eligible structure when any problem occurs.

**Discussion:**

AT&T's proposed § 4.5.12.5 is adopted. As a general rule, AT&T should not be involved in the repair of its virtually collocated equipment, but if Pacific is not clearing service-affecting troubles within a reasonable period of time, it is AT&T's customers that suffer. AT&T should have the right to assist in the repair process, in an attempt to expedite the repairs.

**Issue 174**

**What procedure for Installation Audit and Acceptance Testing for virtual collocation should apply?**

**AT&T's Position:**

In order to avoid multiple trips by AT&T employees and AT&T's installation vendor, AT&T proposes to conduct installation audits and acceptance testing sequentially on the same day. Pacific points out that Pacific's technicians could have unproductive down time--presumably at AT&T's expense--if problems were discovered with the installation work during the audit. Ex. 218 at 11. However, Pacific has made no claim—and presented no evidence-- that installation problems are discovered with any regularity. On the other hand, AT&T and its vendor will always have to make multiple trips if the installation audit and acceptance testing are not scheduled sequentially on the same day.

**Pacific's Position:**

The installation audit is conducted between AT&T and AT&T's installation contractor or vendor, and Pacific is not involved in the process. Pacific asserts that if there are any problems with the installation work, AT&T and its contractor must work out those issues before scheduling the cooperative acceptance testing with Pacific. If the acceptance testing were scheduled at the same time as the installation audit and problems arose during the audit, Pacific would waste time and resources either waiting for the problem to be rectified or rescheduling the acceptance testing. The unnecessary time spent by Pacific's technicians would add unnecessary cost to the virtual collocation process.

It is Pacific's experience that it takes more than one installation audit and non-cooperative acceptance test before the parties are ready for cooperative acceptance testing. When a vendor or contractor installs equipment for Pacific, Pacific's technicians responsible for acceptance testing are not present during the installation audit.

**Discussion:**

Pacific's proposed language in §§ 4.5.6.1, 4.5.8.4 and 4.5.9 relative to this issue, is adopted. As Pacific says, Pacific's technicians responsible for acceptance testing are not present during the installation audit, which is conducted between AT&T and AT&T's installation contractor. In Pacific's experience, it takes more than one installation audit and non-cooperative test before the parties are ready for cooperative acceptance testing, which means that Pacific's technicians would have wasted time waiting for that process to complete.

**Issue 175**

**How should restoral costs and fees where collocated equipment is removed be determined?**

**AT&T's Position:**

There should be no restoral fees for virtual collocation. AT&T pays an approved contractor to remove the equipment when a virtual collocation arrangement is terminated, and that is all that is required. The space will be reused by other collocators, or by Pacific itself, with little or no modification. AT&T asserts that Pacific's proposed language regarding restoral fees is inconsistent with the CCM.

**Pacific's Position:**

Under AT&T's proposal, if no restoral fees are stated in response to the application, none will be paid when equipment is removed. Pacific cannot determine restoral costs until the time that virtually collocated equipment must be removed, basing its pricing on the specific collocation arrangement and how that arrangement has developed over time. Pacific contends that it is virtually impossible to predict future restoral costs based on an unknown arrangement. AT&T should not be permitted to avoid paying these fees by demanding that they be calculated up front or be forfeited.

**Discussion:**

Pacific's proposed § 4.5.10.2 is adopted. There are costs associated with restoring an area, such as removal of cabinets and cabling. AT&T, as the cost causer, should pay the reasonable charges Pacific actually incurs to restore the site.

**Issue 176**

**What level of training for Pacific personnel on AT&T equipment that is virtually collocated should be adopted?**

**AT&T's Position:**

Pacific's language would allow it to impose extra training costs on AT&T whenever AT&T's configuration is not identical to Pacific's. AT&T asserts that technicians do not need to be trained anew each time they encounter a new configuration. If a configuration used by AT&T is so different from Pacific's as to require additional training, AT&T would agree to the training out of its own self interest in having the equipment properly maintained.

**Pacific's Position:**

Pacific's proposal for a reasonable level of training is appropriate. If Pacific has not used the equipment in the central office, its technicians that work in that central office likely will not understand how to operate the equipment. Similarly, if AT&T's equipment is configured differently from Pacific's configurations, or if the equipment is connected to equipment different from the equipment used by Pacific, Pacific's technicians will require training to understand these intricacies. Pacific has liability concerns for harm to AT&T's equipment or other equipment if its technicians are not properly trained.

**Discussion:**

Pacific's proposed language in § 4.5.11.1 is adopted. It is reasonable that Pacific's technicians will require training in those cases where AT&T's equipment is configured differently than Pacific's.

**Issue 177**

**Should AT&T be required to train Pacific technicians on online documentation or schematics that are commonly used in the industry, if they are not commonly used by Pacific?**

**AT&T's Position:**

Pacific's technicians should be able to use on-line documentation and schematics without additional training paid for by AT&T. Requiring AT&T to pay to train Pacific's technicians on competencies that they should—and probably do—already have is one more way for Pacific to shift costs to AT&T.

**Pacific's Position:**

AT&T's language at Attachment 10, § 4.5.11.2 seeks to limit training on documentation to that not commonly used in the industry. Pacific needs training on the manufacturer's documentation as well as any AT&T documentation specific to the configuration it expects Pacific to maintain. Again, as discussed above in connection with Issue 176, lack of training compromises many aspects of the central office and the entities occupying space there.

**Discussion:**

Pacific's proposed language in § 4.5.11.2 is adopted. Pacific's technicians need training on the specific equipment not used by Pacific. Pacific's technicians cannot reasonably be expected to be familiar with equipment "commonly used in the industry," if that equipment is not used by Pacific.

**Issue 178**

**How many Pacific Bell employees should receive training on AT&T equipment that is virtually collocated?**

**AT&T's Position:**

AT&T has agreed to train up to four of Pacific's technicians responsible for repair and maintenance of AT&T's virtually located equipment, and more upon mutual agreement. For training needs beyond that, Pacific should use a train-the-

trainer approach. Pacific would have AT&T train a minimum of five technicians at the time of installation and more upon Pacific's request. It is unreasonable for Pacific to ignore its obligation to repair AT&T's equipment at parity with its own simply because AT&T does not agree to pay for unlimited training at Pacific's request.

**Pacific's Position:**

AT&T wants 7x24 support and expects MTRI to be met. Based on Pacific's experience in maintaining virtual equipment, it calculates that a minimum of five technicians should be trained. If AT&T requires 7x24 technical support, additional technicians may also need to be trained, otherwise Pacific cannot guarantee 7x24 support or MTRI. In refusing to accept Pacific's language, AT&T ignores the realities of technicians being on vacation, sick or trouble tickets coming in outside technician work shifts.

**Discussion:**

AT&T's proposed § 4.5.11.6, is adopted, with the modification discussed in Issue 160. AT&T must train five Pacific technicians initially. However, as with Issue 160, AT&T's proposal to use the "train the trainer" approach will be adopted for subsequent training.

**Issue 179**

**Should AT&T pay for wage expense for Pacific personnel being trained on AT&T virtually collocated equipment?**

**AT&T's Position:**

AT&T contends that the hourly charge for technician training time should be the same as the CCM rate for escort and maintenance services. In both cases, a technician's time is required. Pacific's proposed language would require AT&T to reimburse Pacific for the wage expenses of its employees, as well as paying the

hourly CCM rates. Pacific's proposed language in § 4.5.11.7 results in an unreasonable double recovery.

**Pacific's Position:**

AT&T should pay the wages of technicians for time spent in training. Pacific would not send technicians to be trained on AT&T equipment were it not for AT&T's collocation arrangement. Pursuant to cost causation principles, AT&T has caused Pacific to incur the cost and Pacific is entitled to recover the cost. In addition, Pacific expects AT&T to pay applicable per diem, mileage, and/or meal allowances just as Pacific does when it has its technicians trained on Pacific's equipment.

**Discussion:**

AT&T's proposed language in § 4.5.11.7 is adopted. The parties agree that AT&T will reimburse Pacific for travel expense, lodging, or meals that Pacific personnel incur as a result of training. AT&T also agrees to provide all training materials and instructors. On top of that, Pacific wants AT&T to reimburse the wages of its employees since they will not be engaged in productive work for Pacific while they are being trained on AT&T's equipment. Pacific is responsible for its employees' wages. The training that Pacific's employees receive to work on AT&T's equipment enhances their skills and, therefore, is of benefit to Pacific as an employer.

**Issue 180**

**Should Pacific be required to provide AT&T with information about the level of training of Pacific personnel on collocated equipment in central offices which AT&T has not indicated it will request collocation?**

**AT&T's Position:**

AT&T proposes to exchange information that would allow AT&T to plan its virtual collocation in a way that minimizes training costs. AT&T will provide a

list of equipment it expects to install in Pacific's central offices within the next six months. Pacific will then advise AT&T of central offices where technicians would require training if this equipment were installed.

Pacific will not provide information about its training needs until AT&T submits an application for virtual collocation at a particular central office. This restrictive approach will not allow AT&T to take training costs into account in deciding how, when and where to virtually collocate its equipment. Pacific seeks to operate in a way that is burdensome for AT&T, rather than allocate even a small amount of resources to provide information AT&T needs for planning purposes.

**Pacific's Position:**

Pacific should not have to expend time and resources developing information on the level of training of Pacific personnel for central offices where AT&T has not expressed any intention of virtually collocating. This information should only be provided on a need to know basis, i.e., where AT&T has submitted an application for virtual collocation. Moreover, training information of this nature could help a competitor determine what equipment was located in a particular office. A CLEC could then determine the current and potential types of services that Pacific offers at a certain location.

**Discussion:**

Pacific's position is adopted, and AT&T's proposed § 4.5.11.8 shall be deleted. This is a fishing expedition on AT&T's part. Pacific should not have to compile the information, without some indication that AT&T intends to virtually collocate in a particular central office.

**Issue 181**

**May AT&T employ third-party contractors to perform maintenance and repair on its virtually-located equipment if Pacific employs third-party contractors to repair and maintain its equipment?**

**AT&T's Position:**

If Pacific uses third party contractors, it would be less expensive for AT&T to do the same instead of using Pacific's technicians, AT&T should be allowed to use third party contractors just as Pacific does.

**Pacific's Position:**

The FCC's rules state that ILECs are responsible for providing maintenance and repair on CLECs' virtually collocated equipment. As such, Pacific has the right to determine the personnel to do the required maintenance and repair work. It is Pacific that is ultimately responsible for the accuracy and reliability of the maintenance. If Pacific requires assistance, then AT&T may designate a third party contractor to assist Pacific.

**Discussion:**

Pacific's position is adopted, and AT&T's proposed § 4.5.12.2 shall be deleted. In a virtual collocation arrangement, it is Pacific, not AT&T that has the responsibility to repair and maintain the equipment. AT&T does not have the right to take over that function, even if Pacific chooses to employ third parties to care for AT&T's equipment.

**Issue 187**

**What should be the adopted MTRI for Priority 1 trouble calls?**

**AT&T's Position:**

AT&T proposes a MTRI of one hour for Priority 1 trouble calls, which are serious, service-affecting problems that must be addressed as quickly as possible. Pacific proposes a MTRI of 1.5 hours Monday to Friday between 8:00 a.m. and

5:00 p.m., and 3 hours at all other times. AT&T contends that these times are simply too long to begin the response to a service-affecting problem

**Pacific's Position:**

The problem with AT&T's proposal is that not every technician in a central office will be trained on AT&T's equipment. In some cases, Pacific will have to locate an AT&T trained technician and have that technician travel to the appropriate central office. Travel times may vary depending on the traffic situation and on the location of the central office.

**Discussion:**

AT&T's proposed language in § 4.5.13.3 is adopted. Pacific has indicated that training five technicians in a particular central office is an adequate number. Given that fact, it is not reasonable to allow as long as three hours MTRI for Priority 1 trouble calls which are serious, service-affecting problems.

**Issue 188**

**Should ICB rates apply when AT&T deploys nonstandard size equipment that cannot be accommodated in a standard equipment bay?**

**AT&T's Position:**

Pacific's proposed contract language and the *Response* are inconsistent on this issue. Section 4.5.19 of the contract states that the standard rack size is 7'X25-15/16" X12". The *Response* says that Pacific offers two sizes of floor space for bays: 20 square feet and 18 square feet. (*Response* at 146.) Either way, charges should be based on the CCM. ICB rates are allowed only if there is no way to determine a standard rate under the CCM. For that reason, the last sentence Pacific proposes in § 4.5.19 should be rejected.

**Pacific's Position:**

There are only two sizes of floor space for bays: 10 square feet and 18 square feet. Prices for both of these footprints are available on the application. If

**Discussion:**

Pacific's proposed § 4.5.20 is adopted. It would discriminate against other CLECs waiting for a physical collocation space in a central office if AT&T could obtain a virtual arrangement, and then convert that space to a physical collocation arrangement. This is a clear violation of the "first come, first served" rule adopted by both the FCC and this Commission.

**Issue 310**

**Should microwave collocation be subject to the FCC's collocation rules or should it be treated as entrance facilities?**

**AT&T's Position:**

Microwave collocation should be treated as a form of collocation, as it already is in Pacific's Collocation Handbook and the Collocation Cost Model. As explained in the discussion of Issue 161(b), Pacific's attempt to re-characterize microwave collocation as something else is really an attempt to dodge its parity obligations.

**Pacific's Position:**

Pacific contends that microwave collocation should be treated as an entrance facility. As discussed in connection with Issue 161(b), microwave arrangements are not collocation. As such, these arrangements should not be subject to collocation rules. It is irrelevant if the arrangement has been called "microwave collocation" in the past. Calling it collocation does not make it collocation.

**Discussion:**

In its Comments, Pacific acknowledges that the Draft adopted the position that placement of microwave arrangements on Pacific's premises should be labeled a form of collocation. However, the arbitrator also acknowledged that a microwave arrangement does serve as an entrance facility to a collocation cage. Pacific asks the arbitrator to clarify this ruling by affirmatively stating that the

definition of a microwave arrangement is "an entrance facility to a collocation arrangement." According to Pacific, this definition would be consistent with the FCC's treatment of microwave as an entrance facility.

The Collocation Phase of OANAD is the appropriate place to adopt a definition for microwave collocation. Therefore, the arbitrator will not rule on a definition for microwave collocation in this arbitration proceeding. Pacific's proposed language in Section 4.4.1 of Attachment 10, which states that microwave collocation is not a form of collocation, shall be deleted.

**Issue 278**

**Should terms and conditions regarding termination of virtual collocation arrangements be the same as for other collocation arrangements, or should the terms and conditions be different, as proposed by Pacific?**

**AT&T's Position:**

Termination issues are common to all forms of collocation. Accordingly, AT&T has proposed a single set of provisions for termination in §§ 4.2.29 and 4.2.30. The Commission should reject Pacific's unnecessary proposal for termination provisions unique to virtual collocation.

**Pacific's Position:**

Pacific contends that the procedure for termination of virtual collocation arrangements is the same as for the termination of physical collocation arrangements. AT&T needs to remove their equipment upon such termination in a reasonable time frame.

**Discussion:**

Pacific's proposed § 4.5.10 is adopted. Since AT&T's General Terms and Conditions for all forms of collocation were not adopted, it is reasonable to add specific provisions for virtual collocation arrangements.

**Issue 280**

**Should Pacific be required to provide DS0, STS1 or STS3 cabling or cross connections to physical arrangements?**

**AT&T's Position:**

AT&T requires facilities at these transmission levels to support its operations. Pacific says it currently does not offer these products. (*Response at 189.*) AT&T is asking that Pacific start offering these products since it is technically feasible for Pacific to do so, and it is necessary for AT&T's operations.

**Pacific's Position:**

Pacific does not currently offer these products. AT&T has presented no evidence on the record explaining why such cabling or cross-connects should be provided.

**Discussion:**

In its Comments, AT&T refutes the Draft's finding that Pacific need not provide DS0, STS1 and STS3 cabling and cross connects on the grounds that Pacific does not currently offer these products. Pacific's reference to "these products" is ambiguous; it could simply mean Pacific has not tariffed cabling and cross-connects at the specified transmission levels. The relevant inquiry, says AT&T, is whether Pacific uses these transmission levels in its network and, thus, maintains cabling and/or cross connects for its own use at these transmission levels. According to AT&T, Pacific uses DS0 cross connections to connect the DS0 special access trunks that CLECs purchase as "E911 trunks" to Pacific's E911 selective routers. However, AT&T does not address Pacific's use of STS1 or STS3 in its network.

AT&T's proposed language in Section 4.5.22 is adopted, with modification. Since AT&T has demonstrated that Pacific does use DS0 cross connects, the reference to DS0 will be retained. However, AT&T provides no

evidence that Pacific uses either STS1 or STS3 in its network so those references shall be deleted.

**General Collocation Issues:**

Issues 282-292

**AT&T's Position:**

AT&T contends that this is a dumping ground for all the changes Pacific would like to make to AT&T's proposed agreement without justifying those changes. Some of these issues involve changes to as many as eighteen different sections of the ICA, with no explanation. Further, many of them pertain to language that Pacific was forced to withdraw in light of the Arbitrator's ruling that Pacific must file a version of Attachment 10 reflecting the language that Pacific seeks to have appear in the ICA. (Tr. 3.)

**Issue 282**

**Should the arbitrator adopt additional language changes proposed by Pacific?**

**Pacific's Position:**

Pacific contends that there are many areas in section 4 that require some minor language clarifications. Oftentimes, the language changes are merely made to make the contract consistent and easier to understand.

**Discussion**

With regard to Sections 4.2.13, 4.2.15.2, 4.3.1, 4.3.16, 4.3.17, 4.3.21.1, and 4.3.30, this issue is moot since AT&T's proposed General Terms and Conditions for collocation in §§ 4.2 and 4.3, were not adopted.

Following is the disposition of other contract sections listed under Issue 282:

Section 4.4.1 was addressed in Issue 161(c).

Section 4.4.2 was addressed in Issue 161(e).

Section 4.4.9.3: This was addressed in Issue 161(v).

Section 4.4.14: Pacific's language is adopted, with the exception of the initial clause "notwithstanding anything contained herein to the contrary," which does not add to the clarity of the subsection.

Section 4.5.4.3: Pacific's position is adopted. It seems appropriate to have AT&T's installation vendor be responsible for equipment replacement.

Section 4.5.6.1: AT&T's proposed language is adopted. AT&T should have the right to enter Pacific's eligible structure for an initial inspection of its virtually collocated equipment.

Section 4.6: The phrase "General Terms and Conditions" is more descriptive of the purpose of the initial section of the ICA. However, Pacific's proposed "financial remedies" shall be used in lieu of penalties since § 14 is titled "Service Performance Measures and Financial Remedies."

Sections 5.2 and 5.3.1: AT&T and Pacific have settled their dispute. The agreed-upon language shall be included in the ICA.

### **Issue 283**

**Should the arbitrator adopt ICA provisions proposed by Pacific regarding recovery from AT&T of costs incurred as a result of AT&T's collocation arrangement?**

#### **Pacific's Position:**

Throughout Attachment 10, §§ 4.2 and 4.3, AT&T wants Pacific to incur most or all costs resulting from its collocation arrangement. Pacific incurs real costs to prepare a collocation arrangement for CLECs and expects to recover those costs as they are incurred. In various places throughout the ICA, AT&T has attempted to deprive Pacific of its right to recover actual costs incurred in collocation provisioning.

**Discussion:**

This issue is moot since AT&T's proposed General Terms and Conditions for collocation in §§ 4.2 and 4.3, were not adopted.

**Issue 284**

**Should the arbitrator adopt ICA provisions proposed by Pacific regarding security standards?**

**Pacific's Position:**

See Issue 155. Throughout Attachment 10, §§ 4.2 and 4.3, AT&T has attempted to place unreasonable language that does not comply with the Act.

**Discussion:**

This issue is moot since AT&T's proposed General Terms and Conditions for collocation in §§ 4.2 and 4.3, were not adopted.

**Issue 285**

**Should the arbitrator adopt ICA provisions proposed by Pacific regarding collocation space usage standards?**

**Pacific's Position:**

See Issue 154. AT&T has attempted to place unreasonable language that does not comply with the Act.

**Discussion:**

This issue is moot since AT&T's proposed General Terms and Conditions for collocation in §§ 4.2 and 4.3, were not adopted.

**Issue 286**

**Should the arbitrator adopt ICA provisions proposed by Pacific regarding access to Pacific's facilities?**

**Pacific's Position:**

Pacific's Advice Letter 20412 provides access language compliant with the *Advanced Services Order*. Pacific will provide reasonable access to basic

facilities, such as restrooms and parking. AT&T has suggested access language similar to the language in Advice Letter 20412.

**Discussion:**

This issue is moot since AT&T's proposed General Terms and Conditions for collocation in §§ 4.2 and 4.3, were not adopted.

**Issue 287**

**Should the arbitrator adopt ICA provisions proposed by Pacific regarding reservation of space by Pacific in its own central offices?**

**Pacific's Position:**

AT&T wants to limit Pacific's right to reserve space in its own central office for future growth, in direct contradiction to FCC and CPUC rules. Pacific's reserved space is not eligible for any type of physical collocation. However, Pacific is required to relinquish any reserved space before denying virtual collocation.

**Discussion:**

With one exception, this issue is moot since AT&T's proposed General Terms and Conditions for collocation in §§ 4.2 and 4.3, were not adopted. Pacific's proposed language in § 4.1.2 is adopted. Pacific is allowed to reserve space for itself and its affiliates.

**Issue 288**

**Should the arbitrator adopt ICA provisions proposed by Pacific regarding the collocation application process?**

**Pacific's Position:**

AT&T seeks to negotiate its own special application rules. For all forms of collocation, Pacific needs to maintain its uniform application and provisioning process. If AT&T and other CLECs request special rules, it would lead to confusion in the process and clearly hinder Pacific's ability to handle applications efficiently without error.

**Discussion:**

This issue is moot since AT&T's proposed General Terms and Conditions for collocation in §§ 4.2 and 4.3, were not adopted.

**Issue 289**

**Should the arbitrator adopt ICA provisions proposed by Pacific regarding termination of collocation arrangements?**

**Pacific's Position:**

Pacific should be able to terminate collocation if AT&T breaches any provision of the ICA, including a failure to pay any rate or charge. If AT&T commits a major security violation or fails to immediately correct a minor security violation, Pacific should have the right to protect its facilities by ending the collocation arrangement. If a law, judicial ruling or regulatory determination changes the face of collocation service such that continuing to provide collocation conflicts with the new law, Pacific should be able to end collocation. Finally, in the future, it may become financially prudent in certain markets for Pacific to enter into sale-lease back arrangements with third parties. Under such circumstances, it would be unfair for Pacific to be bound by the ICA when Pacific no longer maintains control over the facilities. In these situations, AT&T should be required to negotiate with the new owner.

**Discussion:**

This issue is moot since AT&T's proposed General Terms and Conditions for collocation in §§ 4.2 and 4.3, were not adopted.

**Issue 290**

**Should the arbitrator adopt the ICA provisions proposed by Pacific regarding cabling requirements?**

**Pacific's Position:**

AT&T wants to impose cabling requirements on Pacific that deviate from the cabling requirements used with other CLECs. Pacific restricts the entrance

facilities to fiber instead of copper or coaxial because of the capacity and efficiency of fiber and the space issues and limitations within Pacific's entrance manholes and vault entrances.

**Discussion:**

This issue is moot since AT&T's proposed General Terms and Conditions for collocation in §§ 4.2 and 4.3, were not adopted.

**Issue 291**

**Should the arbitrator adopt ICA provisions proposed by Pacific regarding equipment standards?**

**Pacific's Position:**

AT&T's proposed language at Attachment 10, §§ 4.2.11, 4.2.34, 4.2.36 and 4.3.15 attempts to deprive Pacific of the right to determine appropriate equipment standards. The D.C. Circuit Court's opinion in *GTE* redefined the meaning of "necessary" as it is used in the Act to describe the type of equipment that a CLEC may collocate on an ILEC's premises. The Court vacated the FCC's "used or useful" language. In order to comply with the *GTE* Court's ruling here, Pacific suggests that the Commission modify language in Attachment 10 to reflect this change. Thus, all references to equipment that is "used or useful" to interconnection or access should be changed to equipment that is "necessary or indispensable."<sup>97</sup>

**Discussion:**

This issue is moot since AT&T's proposed General Terms and Conditions for collocation in §§ 4.2 and 4.3, were not adopted.

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<sup>97</sup> The "used or useful" language appears in the following subsections of Attachment 10: 4.1.1, 4.2.35, 4.3.9, 4A.3.29, 4.4.1, and 4.5.1.

**Issue 292**

**Should the arbitrator adopt the ICA provisions proposed by Pacific regarding collocation terms and conditions that it has applied to the CLEC community on a uniform basis?**

**Pacific's Position:**

AT&T wants to impose collocation terms and conditions on Pacific that deviate from the terms and conditions applied to other CLECs. There are a number of areas in AT&T's Attachment 10 that contain language that would deprive Pacific of its ability to maintain fair, reasonable and uniform collocation rules applicable to the entire CLEC community.

**Discussion:**

This issue is moot since AT&T's proposed General Terms and Conditions for collocation in §§ 4.2 and 4.3, were not adopted.

**Issue 293**

**Should Pacific's or AT&T's "Provision of Ancillary Functions Section" be adopted?**

**AT&T's Position:**

AT&T proposes to retain the introductory sections of Attachment 10 (Ancillary Functions) of the existing ICA, but with the addition of E911 arrangements as an Ancillary Function. Pacific agrees with this addition, but wants to make a number of other changes to the introductory sections of Attachment 10. The existing provisions have served the parties well, and there is no justification for this "take back" that Pacific seeks. AT&T's proposed language in §§ 2.1 and 2.2 which tracks the existing ICA, should be retained.

**Pacific's Position:**

Pacific contends that AT&T's proposed language is vague and goes far beyond what the law requires. This also relates to Issue 9 which is the issue regarding the proper definition of "Ancillary Functions." Pacific's definition, on

the other hand, is precise and clear and yet allows the parties to expand it by mutual agreement.

**Discussion:**

AT&T's proposed § 2.1 and 2.2 are is adopted. Pacific's proposed language in both Sections 2.1 and 2.2 is too restrictive. Pacific would require that any new ancillary functions AT&T proposes be "mutually agreeable" or required by law. AT&T's language, on the other hand, would allow AT&T to identify some new feature or function it wants to offer and then the parties would cooperate in an effort to negotiate terms. If the parties do not agree on terms, either one may invoke the Alternative Dispute Resolution procedures outlined in Attachment 3. AT&T's approach would enhance AT&T's ability to initiate innovative service offerings for its customers.

**Issue 192**

**Should Pacific advise CLECs of "E911 split rate centers" (where two or more E911 service providers operate an E911 selective router and associated Automatic Location Identifier ("ALI") database for different parts of the same rate center)?**

**AT&T's Position:**

AT&T asks that Pacific advise AT&T of rate centers in which E911 service is provided by Pacific in one part of the rate center, and by another E911 provider in other parts of the rate center. Even though there are only two E911 service providers in the state, Pacific insists that AT&T establish lines of communications with the various entities that provide database management services in the areas where CLECs offer local service. (*Response* at 151.) That is exactly what AT&T is attempting to do. Pacific also continues to claim that it does not have the information. (*Response* at 151.)

AT&T contends that notice about split rate centers is critically important because CLECs typically route E911 calls to the appropriate selective router based

on rate centers. When a rate center is split, an alternative method of routing must be developed and programmed into the CLEC's switch. If Pacific does not provide information about split rate centers, emergency calls may be delivered to the wrong selective router and then routed to a default Public Service Answering Point (PSAP) without information about the calling party's number and location. Even if there are no split rate centers today, the contract language is necessary to ensure that Pacific advises AT&T if any rate centers are split during the term of the ICA.

**Pacific's Position:**

Pacific's existing selective router maps already provide AT&T with the information that AT&T seeks. The maps indicate the geographic boundary of all of Pacific's rate centers in California and would allow AT&T to determine whether a particular rate center had split. While the maps may be ordered at a tariffed rate, Pacific also plans to post and make the maps available on Pacific's web site beginning in April 2000. Pacific should not have to go to any additional lengths to notify AT&T in the event that a rate center splits.

**Discussion:**

AT&T's proposed § 5.3.2.5 is adopted with modification. It is not reasonable to expect AT&T to review maps looking for split rate centers. However, in its comments Pacific asserts that it should not be required to notify AT&T of split rate centers in situations where Pacific is not the E911 provider. Pacific's proposed modification is reasonable. In the event of a split in a rate center where Pacific is one of the E911 providers, Pacific will be aware of that split and should notify AT&T. Section 5.3.2.5 shall be modified accordingly.

**Issue 193**

**Should Pacific provide sufficient ports on its E911 selective routers so that AT&T can utilize a minimum of two trunks for each switch from which AT&T provides local exchange service, and as many additional trunks as required to maintain the P.01 grade of service required by the State of California?**

**AT&T's Position:**

AT&T asserts that it manages its trunks to achieve an appropriate level of diversity, and ordering trunks in pairs is part of how AT&T accomplishes that. The second sentence in § 5.3.8 makes it clear that AT&T intends to establish path and route diversity when possible, and that AT&T seeks Pacific's cooperation in achieving this.

**Pacific's Position:**

Pacific already provides AT&T with interconnection of a minimum of two E911 trunks per trunk group and as many additional trunks as required to maintain the P.01 grade of service. Indeed, it is required by the E9-1-1-Technical Interface Specifications document provided in Pacific's CLEC Handbook. As such, it does not need to be repeated in the ICA. Moreover, to ensure that E911 service is provided to all CLECs in a consistent manner and on the same terms and conditions, technical specifications such as those at issue here should not be included in individual ICAs.

Pacific contends that the remainder of AT&T's proposed language in § 5.3.8 should be rejected, as it inappropriately seeks to allow AT&T to install additional trunks in pairs for diversity. A pair of trunks does not automatically provide diversity; rather, diversity is provided by the routing of the facility. AT&T does not dispute this fact. AT&T should not be allowed to oblige Pacific to provision available ports as AT&T sees fit.

**Discussion:**

In its Comments, AT&T refutes the Draft's finding that AT&T's proposed language is not necessary since the issues AT&T's addresses are already covered in Pacific's CLEC Handbook. AT&T points out the CLEC Handbook is not a binding legal document; there is no way AT&T could enforce Pacific's obligation. Moreover, says AT&T, since the CLEC Handbook is a Pacific proprietary document, Pacific could change it unilaterally, at any time. Non-binding offers that Pacific can unilaterally withdraw without consequences do not meet Pacific's obligations under the Act, says AT&T.

AT&T's proposed language in § 5.3.8 is adopted. AT&T makes a convincing argument that Pacific's legal obligations need to be delineated in a binding document, rather than in a document that is subject to unilateral change by Pacific.

**Issue 194**

**Should Pacific provision trunks to its E911 selective router within 30 business days, as required by the Commission's Local Competition Rules?**

**AT&T's Position:**

Pacific claims that a contract provision requiring that E911 trunks be provisioned within thirty days is superfluous because this requirement appears in its tariff. (*Response* at 152.) AT&T does not agree that Pacific can avoid its duty to negotiate contract terms by referring to a non-negotiable tariff. Even if Pacific were to reference its tariff, inclusion of this requirement in the ICA is harmless and will make the contract easier to use by the employees charged with implementing it. They can simply refer to the contract, rather than trying to track down language in the tariff.

**Pacific's Position:**

This language is not necessary because, in adherence to its E911 tariff, Pacific already provisions trunks to its E911 Selective Router within 30 business days. Reference to Pacific's tariff is the only way to ensure consistency and parity among all customers of the E911 service.

**Discussion:**

Pacific's position is adopted, and AT&T's proposed § 5.3.7 will be deleted. This ICA references Pacific's E911 tariff so there is no need to include a provision in the ICA that trunks be provisioned in 30 days, since the tariff has the same requirement.

**Issue: 195**

**How should the prices, terms and conditions for Pacific's E911 services be reflected in the Agreement?**

**AT&T's Position:**

AT&T contends that the prices, terms and conditions for all services covered by the agreement should be set forth in the ICA itself, except when the parties mutually agree to incorporate other documents by reference. In D.95-12-056 the Commission required Pacific and GTEC to offer E911 interconnection through tariffs, based on its "belief that the local exchange companies will retain monopoly market power over the provisioning of E-911 service". (D.95-12-056 at 49.) Pacific now turns that on its head and argues that E911 arrangements can be provided only under tariffs, even when negotiated and arbitrated contract terms would result in a fairer, more pro-competitive arrangement.

**Pacific's Position:**

Pacific contends that the prices, terms and conditions should be incorporated by reference to Pacific's E911 tariffs, Pacific's Tech Pubs. and the CLEC Handbook. With regards to E911 service, it is imperative that Pacific have a consistent offering for all CLECs. In the MFS WorldCom arbitration, Pacific

won this issue, and the FAR pointed to the need for uniformity in the E911 service offering for CLECs.<sup>98</sup>

Pacific asserts that it is critical that Pacific have the ability to update its E911 system with new technology and equipment as they become available, and to implement regulatory mandates and changes that may occur on the federal and state level. Absent the ability to incorporate these changes and updates into Pacific's Tech Pubs document, the E911 service could be jeopardized. Given the highly sensitive nature of E911 service, Pacific should not have to negotiate changes with each CLEC with whom it interconnects before it may implement changes and improvements to the system.

Also, it is critical to the integrity of the 911 system that it receive uniform network handling. Applying the procedures in the Handbook uniformly to all CLECs ensures that 911 will work without interruption.

**Discussion:**

Pacific's language in § 5.3.5 is adopted. AT&T's proposed § 5.3.2 shall be deleted, with the exception of the following subsections: 5.3.2.5, 5.3.2.6, and 5.3.2.9, which were adopted elsewhere in this Report.

The operation of the E911 system is critical for Pacific and for all CLECs. It is important to ensure the integrity of the system, and having a uniform service offering to all CLECs helps ensure that integrity. Also, as Pacific says, it should not have to negotiate changes with each CLEC with whom it interconnects before implementing changes and improvements to the system.

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<sup>98</sup> MFS WorldCom FAR, p. 74.

**Issue 196**

**Should Pacific provide CLECs with the same list of 10-digit emergency contact numbers that Pacific provides to its own operator services organization for handling emergency calls?**

**AT&T's Position:**

The current ICA already requires Pacific to provide this information. Pacific objects to this provision on the basis that it does not "officially and systematically" maintain such a list. (*Response* at 54.) AT&T's witness, Mr. Willard, contacted the State Emergency Telephone Services 911 Program Office and learned that the "Program Contact List for PSAPs"<sup>99</sup> that Pacific refers to is not intended to be complete or to be used to satisfy the ten-digit number requirement. (Ex.105 at 4.) Nor is that office aware of any source, other than Pacific and GTEC, for a complete list of PSAP ten-digit telephone numbers. (Ex. 105 at 4.) As the E911 service provider, Pacific has contact numbers for all the PSAPs in the geographic area it covers. If Pacific does not currently compile a list of ten-digit telephone numbers for PSAPs, it certainly has the ability to do so.

**Pacific's Position:**

As discussed in Pacific's position on Issue 50, Pacific does not have the information requested and should not be ordered to provide it.

**Discussion:**

In its Comments, Pacific asserts it has submitted "undisputed evidence" that Pacific is unable to provide this information in the form requested by AT&T. Specifically, Pacific's witness indicates Pacific simply does not have the information AT&T seeks. (2 Tr. 198 Ms. Fischer for Pacific). AT&T did not cross-examine Ms. Fischer on this point. Pacific states that AT&T did not present

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<sup>99</sup> Public Safety Answering Points.

evidence, other than AT&T's witness Mr. Willard's bald assertions, which do not constitute evidence, disputing this fact.

The arbitrator gave considerable weight to the evidence presented by Mr. Willard. While his conversation with the state's E-911 program office could be construed as hearsay, Pacific did not ask to have his statements stricken on that basis. Therefore, Mr. Willard's testimony stands and will be considered in deciding this issue. According to his contact at the E-911 program office, Pacific and GTEC are the only known sources for a list of PSAP 10-digit telephone numbers.

Also, as AT&T points out, this requirement is included in the current ICA. Pacific, as one of the two 911 providers in the state, must be able to compile that information and should already have done so for its own use. In any event, Pacific as a 911 provider, certainly has the information necessary to compile the list, while AT&T does not. AT&T's proposed section 5.3.2.9 is adopted.

#### **Issue 197**

**Should AT&T be allowed to self-provision interconnection trunks to Pacific's E911 selective routers, or to purchase UNE dedicated transport for that purpose, rather than purchasing E911 trunks from Pacific's tariff?**

#### **AT&T's Position:**

In its *Response* Pacific stated: "AT&T can provide their own transport facilities up to an interconnection point at the location of the Selective Router. However AT&T cannot terminate their facilities directly on Pacific's router. In order to ensure system integrity, only Pacific's facilities can be connected to the 911 Selective Router." (*Response* at 155.) Apparently, this means that if AT&T provides its own facilities, it must purchase a cross connect from Pacific. However, Pacific has proposed no contract language to implement this. Because

Pacific has offered no workable alternative. AT&T contends that its proposed language should be adopted.

**Pacific's Position:**

In order to ensure the integrity of the E911 system, Pacific does not permit CLECs to provision their own trunks to Pacific's selective routers. As the FCC has noted, Pacific is not obligated to reconfigure its E911 network in order to provide access to CLECs, inasmuch as "reconfiguration of the BOCs' E911 service could compromise system integrity and reliability, which would be contrary to the fundamental purpose of E911."<sup>100</sup>

**Discussion:**

In its Comments, AT&T asserts the issue is one of pricing, not of "system integrity and reliability." AT&T currently pays for E911 trunks at tariffed access facility rates. That is why AT&T sought either to self-provision the trunks or to purchase the trunks as UNE Dedicated Transport. In reality, the E911 trunks are nothing more than dedicated transport between AT&T's switches and Pacific's E911 switches. The arbitrator should adopt the dedicated transport UNE rate as an interim rate until a permanent TELRIC rate is adopted for this 911 UNE.

AT&T's proposed § 5.3.7 is adopted, with modification. There can be no issue of system integrity and reliability if Pacific is installing the UNE trunks at the router. There is no reason why AT&T should not be allowed to purchase unbundled interoffice transport at TELRIC prices to carry traffic from its switch to Pacific's selective router. However, in the interest of maintaining system integrity

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<sup>100</sup> *In re Bell Operating Companies Petitions for Forbearance from the Application of Section 272 of the Communications Act of 1934, As Amended, to Certain Activities*, CC Dkt. No. 96-149, Memorandum Opinion and Order, 13 FCCR 2627 FCC DA No. 98-220 (rel Feb. 6, 1998) para. 51.

and reliability, Pacific should not be required to allow AT&T to self-provision facilities to the router, or procure them from a third party. Therefore, the final sentence of AT&T's proposed § 5.3.7 is deleted.

**Issue 198**

**Should AT&T be allowed to use UNE loops to obtain connectivity between its customer locations and Pacific Bell's E911 selective router, and allow access to the ALI database as needed to provide services comparable to Pacific's Private Switch Automatic Location Identification service?**

**AT&T's Position:**

Private Switch Automatic Location Identification (PS/ALI) is a service Pacific offers to its own retail customers. AT&T seeks the ability to offer a competitive service to its own local customers. In order to do so, AT&T must be able to obtain UNE loops with appropriate signaling between AT&T customer locations and Pacific's E911 selective routers, as well as access to the ALI database. Contrary to Pacific's assertion, there is nothing unclear or superfluous about AT&T's language.

**Pacific's Position:**

Pacific already provides the opportunity for AT&T to provide PS/ALI to its customers. Moreover, AT&T's proposed language is confusing as Pacific has no idea what AT&T means by the phrase, "when combined with other unbundled network elements." As discussed in Issue 195, the terms and conditions of Pacific's E911 service should be incorporated by reference into the ICA to ensure parity and consistency.

**Discussion:**

In its Comments, AT&T states it wants to be able to provide service the same as Pacific's PS/ALI service. This service allows a PSAP to identify specific Direct Inward Dialing (DID) stations served by a private switch. Private switch

providers that might subscribe to the service include schools, nursing homes, hospitals, and residential multi-tenant service providers. In order for AT&T to provide an equivalent service, AT&T states it needs to purchase the appropriate types of trunks between its customer premises and Pacific's 911 selective routers at TELRIC rates, and needs the ability to load the station numbers in the Pacific 911 database at TELRIC rates.

According to AT&T, Pacific has not provided the specific requirements for the service. That is why AT&T has proposed contract language requiring Pacific to provide "PS/ALI interface information." AT&T has been unable to get that information from Pacific.

In its Comments, Pacific provides additional information on its PS/ALI service. It is a tariffed service that provides the 911 caller's callback number and precise location to the PSAP receiving the call. The State of California owns the database and pays for the customer information database storage, just as it does for all end user 911 records. The State does not prohibit AT&T from adding PBX PS/ALI information to the database.

According to Pacific, there are two tariffed components to the PS/ALI service: a network connection from the customer's PBX to Pacific's 911 selective router and the PBX DID customer data. In order for AT&T to provide this service to its own end users that is "equivalent to the PS/ALI and PRI with informed 911 services provided by Pacific, it would have to send the AT&T PBX DID customer information data through the Management System Gateway for inclusion in the 911 DBMS just as Pacific would do for the PS/ALI. Also, the PBX customer would have to have a 911 network connection. The PBX customer may purchase the connection from the PBX to Pacific's 911 selective router from Pacific. Pacific proposes that AT&T's language be deleted.

AT&T's proposed language is adopted, with one caveat. There is great benefit to being able to offer this service. Schools, hospitals, etc. which own their

own PBX's may not want to change service providers, if the CLEC could not provide that service. Competitive equity requires that AT&T be able to offer an equivalent service to its own local customers. AT&T's proposed language includes the phrase, "when combined with other network elements," and AT&T makes it clear in its Comments that it plans to purchase trunks from the customer's PBX to Pacific's selective router at TELRIC prices. In the *Local Competition Order*, the FCC defined dedicated interoffice transmission facilities as "incumbent LEC transmission facilities dedicated to a particular customer or carrier that provide telecommunications between wire centers owned by incumbent LECs or requesting telecommunications carriers, or between switches owned by incumbent LECs or requesting telecommunications carriers." (*Local Competition Order*, ¶ 440). In its *UNE Remand Order*, the FCC reaffirmed that definition. (*UNE Remand Order* ¶ 323). AT&T is not entitled to purchase unbundled dedicated transport from a *customer* location to a carrier's switch. The arbitrator did not delete the phrase "when combined with other network elements" from AT&T's proposal because AT&T would be entitled to access to the 911 database at TELRIC prices.

#### Issue 199

**Should the section of the agreement on 911 arrangements contain liability and indemnification provisions separate from and additional to those negotiated for the agreement as a whole?**

#### **AT&T's Position:**

Pacific argues that its proposed liability and indemnification provisions should be included because Pacific prevailed on this issue in the MFS WorldCom arbitration. As explained many times already, that outcome has no bearing on this arbitration. Nor did Pacific explain why the general limitation of liability sections in the ICA are inadequate. The language Pacific presented in Attachment 10 § 5.5 is tariff language, not contract language.

Pacific's proposed language would require AT&T to discover the negligence, report it to Pacific, and go through a waiting period before any liability would arise. AT&T is not responsible for monitoring and reporting on Pacific's conduct. Pacific limits its liability to charges for the "service affected," but it is not clear what service that would be. The purpose of the proposed language is to assure that Pacific never has any liability for its negligent acts or omissions. That simply is not appropriate.

Pacific's language requires AT&T to release all claims against Pacific. That is neither appropriate nor necessary. AT&T places limitations on liability in its own tariffs, thereby limiting the amount of direct damages AT&T might suffer as a result of paying out claims to end users based on Pacific's acts or omissions. That, in turn, limits the amount of claims AT&T might have against Pacific for damages. This is a far more appropriate solution than simply demanding that AT&T release all claims.

Pacific's proposed language would require AT&T to indemnify Pacific against third party claims. AT&T has no control over third parties who might seek to make claims directly against Pacific and no control over Pacific's actions that might give rise to those claims. It would be unfair to require AT&T to indemnify Pacific (i.e., pay for Pacific's legal defense and pay any judgments that might be awarded) against such claims when AT&T never had any control over the actions of either Pacific or the claimant.

**Pacific's Position:**

The disputed language is contained in Attachment 20, Section 5.4. The arbitrator in the MFS WorldCom arbitration ruled in Pacific's favor, citing the sensitivity and high-risk nature of the service. AT&T has not presented any specific criticisms to Pacific's language, merely stating that the language is unnecessary because the General Terms and Conditions section already addresses

limitation of liability issues generally. Pacific's need for a separate limitation section is justified and should be adopted.

**Discussion:**

Pacific's proposed § 5.4 is adopted. Pacific says that its proposed language should be adopted because the MFS WorldCom arbitrator ruled in its favor on this issue. However, as stated earlier, the outcome in other arbitration cases does not set a precedent that must be followed in subsequent arbitrations. The record of this arbitration case is not the same as the record in the MFS WorldCom arbitration. While AT&T believes the general liability and indemnification sections in the Preface are adequate to cover E911 service, the unique service provided and the consequences of error associated with provision of the service warrant special liability and indemnification provisions specifically for 911 service.

**Issue 200**

**Should Pacific rely on the CLEC Handbook and tariffs created by Pacific to supply terms and conditions for E911 services, instead of specifying such terms and conditions in the ICA?**

**AT&T Position:**

This issue has been addressed elsewhere in both general terms (Issue 6) and with specific reference to E911 arrangements (Issue 195). The language Pacific proposes in Section 5.3.3.5, 5.3.4, 5.3.5, 5.3.6 and 5.3.19 should be rejected.

**Pacific's Position:**

See Pacific's response to Issue 195.

**Discussion:**

In Issue 195, Pacific's position was adopted. The ICA will reference Pacific's E-911 tariff, rather than contain the specific provisions within the ICA itself. Pacific's position in Issue 200 is adopted. The disputed provisions, which contain references to Pacific's E911 tariff and technical publications, are adopted.

However, since AT&T is entitled to purchase UNE transport in lieu of E911 trunks, that fact should be reflected in the ICA. See Issue 197.

**Issue 202**

**Should the terms and conditions for E911 be reciprocal?**

**AT&T's Position:**

AT&T does not provide E911 service, and there is no way of knowing whether the terms and conditions of this ICA would be applicable if AT&T did. The introduction of multiple E911 providers, as Pacific seems to contemplate, would undoubtedly require structural and process changes in how emergency telephone service is provided. It is impossible to evaluate terms and conditions in a vacuum like this.

**Pacific's Position:**

MFS WorldCom voluntarily agreed to similar language during the course of negotiations. Pacific's proposed language merely provides that, to the extent that AT&T offers the type of services covered by this Attachment to any company, AT&T should offer those services to Pacific under the same terms and conditions contained in Attachment 10.

**Discussion:**

AT&T's position is adopted, and Pacific's proposed § 5.6 will be deleted. As AT&T says, at this point there is no way of knowing whether the terms and conditions of this ICA would be appropriate if AT&T did offer E911 service.

**Issue 203**

**Should AT&T's proposed section on Pacific's compliance to the National Emergency Number Association (NENA) standards be adopted?**

**AT&T's Position:**

NENA standards affect CLECs as well as Pacific. CLECs need to be able to rely on uniform, predictable standards for data exchange, so they are not

required to design and modify their own systems at the whim of ILECs, who, as competitors, may prefer not to adhere to standards that are important to CLECs. AT&T contends that where standards exist and affect both parties, Pacific should adhere to those standards unless otherwise mutually agreed upon. AT&T realizes that across-the-board adherence to NENA standards may not always be appropriate, and therefore has included the language that Pacific will adhere to the standards "unless otherwise mutually agreed."

**Pacific's Position:**

Pacific contends that NENA standards are recommendations and guidelines only, not mandates. While Pacific does generally adhere to NENA standards, Pacific cannot, as a practical matter, blindly implement these standards. Rather, before any such adoption, Pacific first must evaluate how a NENA standard will affect related systems, determine whether adoption of such a standard is technologically and economically feasible, ascertain what impact the standard will have on Pacific's PSAP customers and their equipment, etc.

**Discussion:**

Pacific's proposed language in § 5.3.22 is adopted. It is appropriate for Pacific to evaluate particular NENA standards before implementing them. It is not reasonable that, under the terms of this ICA, AT&T would have to agree before Pacific could deviate from the NENA standard. One CLEC should not have veto power something that affects all CLECs.

**J. Attachment 13: Billing and Recording**

**Issue 206**

**What is the appropriate procedure for the parties to use for the resolution of billing disputes?**

**AT&T's Position:**

See discussion under Issue 307 relating to the Preface.

**Pacific's Position:**

Billing disputes should be accomplished by means of the dispute resolution provisions contained in Attachment 3. In Attachment 13, Section 12, AT&T proposes to include specific language governing the resolution of billing disputes. AT&T has not established why a separate dispute resolution procedure is necessary.

Pacific's proposed Attachment 3 addresses all kinds of disputes including, expressly, "billing disputes." For consistency and logic's sake, the dispute resolution language must be contained in Attachment 3 and, if AT&T also want to refer to that language in Attachment 13, that should be done through incorporation by reference in order to avoid inconsistencies.

**Discussion:**

This issue was resolved under Issue 307. AT&T's proposed sections 12.1 and 12.2 will be included in Attachment 13.

**Issue 207**

**Should the parties be allowed to withhold payment for disputed portions of bills?**

**AT&T's Position:**

AT&T objects to Pacific's attempt to change the status quo on withholding payment and believes that the current practice should be formalized in the ICA in Attachment 13, § 12.2.1. Today, AT&T usually pays Pacific's bills in full and, if needed, raises any disputes later. AT&T believes it is fair and reasonable, however, to have a withholding clause in the ICA to permit withholding for those few and rare occasions where there is a need for it.

Under the current practice, the parties withhold payment for challenged parts of bills until those challenges are resolved. If the challenge is found to be groundless, the disputing party must pay the billing party the amount withheld

plus late charges imposed by the agreement. There is no incentive to dispute in order to get float or settlement leverage.

In its Comments, AT&T points out that the Draft did not include a statement noting AT&T's response to Pacific's accusations regarding AT&T's payment record. AT&T refuted those statements at the arbitration hearing and asks that the following statement be incorporated into the FAR:

AT&T maintains that, throughout the negotiations, Pacific described AT&T's payment record as excellent. AT&T denies that it has ever wrongfully withheld any ICA payments from Pacific or that AT&T was ever ordered to stop withholding any such payments. AT&T maintains that, in a sealed portion of the record, it demonstrated that Pacific misstated the record of private arbitrations under the ICA and misstated AT&T's payment record.

AT&T's proposed § 12.2.1 is balanced and reasonable, and contains built-in safeguards against any potential abuse. AT&T's proposal only allows withholding after a party initiates dispute resolution.

Pacific proposes that disputed amounts be put in escrow until resolution of the dispute. That would confer no benefit on either party, and would entail significant additional cost. Establishing and maintaining escrow accounts is expensive, and is totally unnecessary given AT&T's excellent payment history. It is apparent that Pacific's concerns stem from other CLECs who might adopt this ICA in whole or in part under § 252(i). That is not a valid reason for imposing inappropriate terms on AT&T.

**Pacific's Position:**

Permitting withholding of a disputed payment without requiring the disputed amount to be paid into an interest-bearing third party escrow account would be an enormous loophole for an unscrupulous CLEC. The CLEC could

avoid payment, avoid the deposit provisions and avoid the nonpayment disconnect provisions simply by disputing its bills.

Pacific's proposed contract provision would adopt the "pay and dispute" approach, requiring disputed amounts to be paid into a third party escrow, collecting interest, until the dispute is resolved. Pacific asserts that this is a fair proposition whether the ILEC or CLEC prevails and, moreover, protects against the possibility of the losing party becoming judgment proof.

MFS WorldCom agreed to the "pay and dispute" approach voluntarily in negotiations with Pacific. Pacific further notes that, despite its pious protests, AT&T wrongfully has withheld payment of amounts owing to Pacific on several occasions since 1996. In each instance, AT&T disgorged the funds only after Pacific initiated a formal proceeding.

**Discussion:**

Pacific's position is adopted, and AT&T's proposed § 12.2.1 is deleted. As Pacific says, an unscrupulous CLEC could take advantage of a contract provision that allows the CLEC to withhold payment during a billing dispute. To the extent that other CLECs MFN into this agreement, it is prudent to put provisions in place to protect Pacific. Pacific has very little control over which CLECs MFN into its agreements. AT&T complains that the escrow process is expensive, but AT&T does not have to employ that option. Instead, AT&T can pay and dispute, as it generally has in the past.

The impact of MFNing CLECs was not an issue in the previous ICA between the parties because at the time the arbitration, the Eighth Circuit had stayed the "pick and choose" rules which the FCC established to implement Section 252(i). Since the Supreme Court reinstated the "pick and choose" rule, this adds a dimension to interconnection agreements that was not present in the last round of negotiations.

**Issue 209**

**What language should be included in the agreement regarding payment of deposits?**

**AT&T's Position:**

The current ICA does not include language requiring deposits and AT&T does not believe such language is needed in light of the history and ongoing relationship between AT&T and Pacific. There is no question of AT&T's creditworthiness or payment history, the only valid justifications for a deposit requirement.

AT&T, in the spirit of compromise, has proposed contract language in Attachment 13, § 11.3, which responds to Pacific's concerns. AT&T's language allows a party to request a deposit under delineated and predictable circumstances. Pacific already agreed to a similar approach in its ICA with AT&T Wireless, which the Commission approved.

In contrast, Pacific's proposed deposit language (Attachment 13 § 11A) is lengthy, very difficult to understand and grants Pacific unilateral power to impose deposit requirements on AT&T.

**Pacific's Position:**

Section 11A of Pacific's proposed Attachment 13 provides that, in the event that AT&T (or a CLEC MFNing into the AT&T ICA) has not established a minimum of 12 consecutive months good credit history with Pacific or fails to maintain timely compliance with its payment obligations, AT&T (or the MFNing CLEC) shall provide a security deposit. This section is necessary to protect Pacific's financial interests. Absent this protection, Pacific cannot and should not be expected to furnish resale service or network elements to a CLEC lacking a good credit history.

In practice, this language will have no impact on AT&T or an MFNing CLEC as long as they timely pay their bills. AT&T's proposed language on deposits is inadequate and commercially unreasonable for three reasons. (1) It provides an exception for amounts "disputed" without requiring those disputed amounts to be paid into escrow; (2) It provides an exception for CLECs with parent corporations with "C" or better credit ratings. It is well-established law that a creditor of a subsidiary normally cannot get access to the assets of a parent corporation. Thus, the creditworthiness of the parent is not relevant, absent a guarantee by the parent; and (3) "Each Party acknowledges" that the other does not "have a proven history of late payments." That provision is not commercially reasonable in the context of the MFN laws. That language would force Pacific to agree that every MFNER does not "have a proven history of late payments," including an MFNing CLEC that did, in fact, have a history of late payments.

**Discussion:**

Pacific's proposed language in § 11A adopted, with modifications. The current ICA between the parties does not contain a deposit section, but since other CLECs could MFN into this agreement, it would be prudent to add such a provision to protect Pacific's financial interests. AT&T will not be harmed by the deposit rules if it pays its bills on time. If AT&T does not timely pay its bills, it will be required to pay a deposit. That provision is appropriate for AT&T as well as any CLEC that MFNs into the ICA. Pacific has pointed out fatal flaws in AT&T's proposed deposit section, so AT&T's proposed language in Section 11.3 is rejected.

The final portion of Section 11A.7, which begins, "plus the amount of any charges that would be applicable..." shall be deleted to be consistent with the revised language in Section 15. Pacific is not permitted to charge AT&T for

transferring AT&T's customers over to Pacific, in the event that Pacific terminates service pursuant to the terms of Section 15.

**Issue 210**

**What language should be included in the agreement regarding termination of service for nonpayment?**

**AT&T's Position:**

The current ICA does not include language allowing Pacific to terminate service to AT&T's end user customers in the event that AT&T fails to make payments owed to Pacific, and such language is unnecessary in light of the history and ongoing relationship between AT&T and Pacific. AT&T agrees, however, that there is no absolute right to continue receiving service if payments are not made, and so, in the spirit of compromise, proposes reasonable contract language. AT&T's language protects parties by imposing a method of resolving nonpayment issues short of immediate termination of service. It also ensures that innocent end users are not harmed.

Pacific's confusing proposal allows it to disconnect a CLEC on a mere 15-days' notice, without the moderating influence of the Commission or other third party or the completion of any dispute resolution process whatsoever. Disconnected AT&T customers then become Pacific's customers. See Attachment 13, §§ 15.1-15.12 (PAC).

Pacific seems motivated by so-called "MFN concerns." Such concerns are wholly inadequate to justify Pacific's unreasonable disconnection language, especially when AT&T has offered a far more reasonable alternative.

**Pacific's Position:**

The purpose of Pacific's "Nonpayment and Procedures for Disconnection" language is to provide Pacific with recourse in the event that AT&T (or an MFNing CLEC) fails to pay for the services rendered under this ICA.

Under the terms of Pacific's proposed language, if charges remain unpaid past the due date, Pacific will send a notice of the delinquency and of the possibility of disconnection with a demand that the charges be paid to Pacific or, if disputed, into escrow. If that notice is unsuccessful, then Pacific's proposed Section 15 sets forth a detailed and careful process that leads either to payment or disconnection, while still protecting the interests of affected end users. CLECs, including AT&T and others, who pay their bills are not impacted by this proposed language.

AT&T's proposed language on "nonpayment disconnect" is totally inadequate and commercially unreasonable because it does not require disputed amounts to be paid into escrow. As pointed out regarding Issues 207 and 209, an MFNing CLEC that is unscrupulous will simply dispute all payments. Companies can go bankrupt even faster than the fastest dispute resolution process, and it is not commercially reasonable to impose that risk on Pacific. Pacific and its affiliates have had numerous instances of CLECs not paying their bills and have absorbed many hundreds of thousands of dollars of loss as a result.

**Discussion:**

Pacific points to significant flaws in AT&T's proposal, which would allow unscrupulous CLECs to avoid disconnection for nonpayment of bills, merely by disputing all charges. During the pendency of the billing dispute, Pacific would not be able to discontinue service to AT&T. AT&T's language leaves too big a loophole and defeats the purpose of including a provision for termination of service for nonpayment.

However, a thorough review of Pacific's proposed language shows that Pacific's proposal is not satisfactory from the Commission's perspective. The Commission has not adopted generic rules for how to deal with CLECs (and their end-user customers) when the CLEC stops paying Pacific for service. However,

the Commission did take a position in the case of one CLEC, Genesis Communications International, Inc., as a result of Genesis' delinquency in paying Pacific. In Resolution T-16139, the Commission determined that Genesis' end users would be given 30 days to switch to an alternative local exchange provider. However, if they did not choose another carrier, the end users would continue to be served by Pacific, at Pacific's retail rates and terms and conditions.<sup>101</sup>

In §§ 15.9 and 15.11 of this ICA, Pacific makes it clear that it is not obligated to continue service to AT&T's end-user customer, if the customer does not select a new local service provider. Section 15.11 states: "Nothing in this Agreement shall be interpreted to obligate PACIFIC to continue to provide service to any transferred End User beyond the thirty (30) calendar day selection period provided for under Section 15.8." This language is not acceptable to the Commission and shall be deleted. Pacific, as carrier of last resort, has an obligation to continue service to those end-user customers, with no deadline for transferring to another local service provider.

In §§ 15.5 and 15.6, Pacific says it will give notice to "the Commission" regarding an imminent disconnection. That provision should be modified to specify that the notice will be made to the Commission's Telecommunications Division Director, since it is the responsibility of that Division to work with both carriers to ensure that end-user needs are being met.

In § 15.7, Pacific indicates that it intends to charge AT&T the applicable conversion charges and service establishment charges for converting those end users from AT&T to Pacific. AT&T should be under no obligation to pay to have its customers transferred over to become Pacific's customers.

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<sup>101</sup> Resolution T-16139, March 26, 1998, Appendix B, Sections I and II.

In its Comments, AT&T asserts the required escrow procedure adopted in Issue 107 removes the entire basis for the arbitrator's objection to AT&T's proposed clause. AT&T points out that in two separate subsections, Pacific's clause would authorize it to disconnect multiple services for nonpayment of one service. Another subsection would allow Pacific to stymie unrelated service by freezing customer orders.

AT&T is correct that Pacific should not be allowed to disconnect multiple services for failure to pay for one service. In § 15.7, delete the phrase, "and may discontinue any other service provided to AT&T pursuant to this Agreement." Disconnection will be limited to those resale services or network elements with undisputed unpaid charges.

Section 15.10 shall be modified to delete the phrase "any service provided to AT&T pursuant to this Agreement" and replace it with "resale services or network elements."

Section 15.12 shall be modified to delete the phrase "or other services from AT&T." Pacific can refuse to accept orders for resale services or network elements until the disputed charges are paid. However, Pacific cannot refuse to accept orders for other services. With those changes, Pacific's proposed Section 15 is adopted.

Pacific's proposed § 15 is to be modified as indicated above. The modified language shall be included in the ICA. In the event that the Commission adopts generic rules for termination of service to CLECs, those provisions will be reflected in this ICA.

**Issue 211**

**What are appropriate time limits on the backbilling of connectivity charges?**

**AT&T's Position:**

Pacific's demand that the backbilling period be increased from 60 days to six months is unreasonable and unjustifiable. The current ICA between AT&T and Pacific sets a 60-day backbilling limit. In a spirit of compromise, AT&T agreed to increase this interval in the new ICA to 90 days. Despite this concession by AT&T, Pacific insists that it needs a six-month backbilling period for rate restructures and introduction of new services.

Not only is Pacific's proposal excessive, it is also unworkable. It would set radically different time limits for backbilling of rate changes (90 days) and rate restructuring (six months). Pacific's witness admitted that Pacific's proposal fails to explain the difference between a rate change and a rate restructuring. Tr. 985-86. It also fails to properly define new product introductions. As a result, there is no way for AT&T to determine with certainty when the 90-day or six-month period would apply. (*Id.* at 983-86.)

Pacific's proposal would also treat AT&T far worse than Pacific treats its own retail customers. The standard backbilling time period for Pacific's retail customers is three months (90 days) with limited exceptions that do not include rate restructures.

**Pacific's Position:**

Pacific needs up to six months to implement billing system changes. Billing system changes associated with implementing regulatory price structure changes and new UNEs require an extensive amount of work, such as establishing Uniform Service Order Codes (USOCs), updating Methods and Procedures, training, changing the billing platform and conducting system training.

AT&T is offering only 90 days, which is unreasonable and should be rejected in favor of Pacific's six month proposal. Ninety days is no greater than the agreement would permit for on-going billing after all the developmental work described above has been completed.

**Discussion:**

AT&T's proposed language in § 2.7 is adopted. The current ICA has a limit of 60 days for backbilling, so an increase to 90 days will give Pacific more time to implement its billing changes than it has under the current agreement. AT&T cites difficulties in determining the difference between a "rate change" and a "rate restructure" and uncertainty about how to treat new product offerings, which would make it difficult to determine which time period would apply in a particular instance.

**Issue 217**

**Should Pacific's or AT&T's section on adjustments be adopted?**

**AT&T's Position:**

This is an editorial not a substantive point. Pacific proposes to "collapse" two subsections of Attachment 13 into a single section. The reason for the separate subsections is the words are not fully reciprocal, that is, not all the listed types of charges are charges that each party bills the other (e.g., Pacific bills "connectivity charges" as that term is defined in agreed-upon language in section 2.1). The parties should be able to resolve issue 217 cooperatively. [AT&T's Brief shows this issue as settled, but it does not show as settled in the Matrix of Disputed Issues, and Pacific provided a position in its brief. Therefore, the arbitrator determined that it is necessary to rule on the issue.]

**Pacific's Position:**

Issue 217 was settled, except as to whether billing adjustments would be made subject to the limitation of liability provision contained in Section 11A of

the Preface of this Agreement. The adjustments referred to in the Adjustments section of Attachment 13, § 14.1 are the type of charges that are subject to limitation of liability provisions in commercial agreements.

**Discussion:**

AT&T's position is adopted. Pacific's proposed Limitation of Liability provisions in § 11A of the Preface were not adopted in Issue 14, so § 11A should not be referenced here.

**K. Attachment 16: Security**

**Issue 223**

**Should AT&T's Attachment 16, Sections 1 and 2 language be adopted (and also cross-referenced in Attachment 10 (collocation section), see Issue 155)?**

**AT&T's Position:**

AT&T and Pacific agreed to the detailed and reasonable security provisions contained in the current ICA. (Ex. 118, Attachment 16, §§ 1, 2.) Pacific proposes to remove virtually all security provisions from the ICA and use its unapproved tariff, CLEC Handbook and other such documents unilaterally to establish security requirements that serve only Pacific's interests, while unnecessarily burdening AT&T.

Pacific's proposed collocation tariff (which would control under Pacific's proposal) would authorize it to implement a number of security measures, such as fencing off its own equipment, using security cameras and other monitoring devices, identification badges that would allow employee movement to be tracked electronically, identification swipe cards, keyed access, and/or access logs—all to be implemented, or not, as Pacific sees fit. Pacific also seeks to impose unilaterally unapproved security requirements in its Collocation Handbook (Ex. 128 at Attachment 2, pp. 66-72), where it adds additional requirements that would interfere with AT&T's own employment and contracting practices (e.g., requiring

felony background checks or drug testing before issuing photo ID cards). (*Id.* at 70.)

Though it has no authority to do so without Commission approval, Pacific intends to impose the costs of its unapproved security measures on AT&T. Under Pacific's proposed tariff, AT&T would be forced to pay for whatever security arrangements Pacific may decide to implement. FCC rules, however, leave approval for recovery of security costs to state commissions. (*Advanced Services Order* at ¶ 48.) The Commission has not approved the expenditures Pacific proposes.

The arbitrator should adopt AT&T's proposed language in §§ 1 and 2 of Attachment 16 because these previously-negotiated terms provide reasonable security for both Pacific and AT&T, and do so without allowing one party to dictate what security will or will not be provided, and because they comply with the FCC rules.

**Pacific's Position:**

The relevant contract language is at Attachment 16, Sections 1-2 and Attachment 10, Section 2.2. See Pacific's position in response to Issue 155 above.

**Discussion:**

Attachment 16, §§ 1 and 2: AT&T's position is adopted, and the specific security provisions will be included in the ICA.

Attachment 10, Section 2.2: Pacific's proposed Section 2.2 does not reference security issues, but AT&T's Section 2.2 concludes with the following: "Security procedures agreed to by PACIFIC and AT&T for the protection of both Parties' service and property, including collocation spaces, and procedures for law enforcement interface are described in Attachment 16." AT&T and Pacific have *not* agreed on many of the specific security procedures in Attachment 16, so that statement is incorrect and should be deleted.

**Issue 224**

**If adopted, should Section 1.7 be edited to clarify that the parties must comply with the security and safety procedures and requirements stated in this Agreement?**

**AT&T's Position:**

AT&T's proposed § 1.7 will make it clear that the ICA—and not Pacific's internal policies—govern security issues between Pacific and AT&T. Under the proposed terms, Pacific may not apply internally-developed security procedures to AT&T personnel unless the ICA authorized those procedures. The modifications AT&T proposes to § 1.7 from the current ICA clarify that security provisions are to be governed by the ICA and not by one party's handbooks, forms and other internal documents. Terms and conditions related to security should not appear only in a document that one party can change unilaterally.

**Pacific's Position:**

This language is not needed in order to ensure that the parties abide by the security and safety procedures contained in the ICA with respect to equipment, support equipment systems, tools and the like. It is superfluous and only serves to complicate the ICA.

**Discussion:**

AT&T's proposed § 1.7 is adopted. In Issue 155, AT&T's security provisions were adopted, which means that the security provisions will be contained in the ICA itself, rather than through reference to Pacific's tariffs or other publications. Section 1.7 merely states that each party shall comply with the security and safety procedures stated in the ICA. Since those provisions will be included in the ICA itself, it is appropriate to include AT&T's proposed Section 1.7 in Attachment 16.

**L. Attachment 18: Interconnection**

**Issue 228**

**Should the agreement provide that the parties will interconnect on an equitable basis?**

**AT&T's Position:**

Issue 228 relates to four disputed terms in Attachment 18: §§ 1.3.2, 1.3.3.1, 1.4.3, and 1.4.4. First, Pacific proposes a new section that would require the parties to develop a "physical architecture plan for each LATA" in Pacific's California serving areas. The parties have been successfully exchanging traffic for the past three years under the current ICA, which has no such plan. Pacific presented no testimony setting out the business need for such a plan.

Pacific's preferred interconnection plan entails each party building 50% of the facilities required for interconnection, even if one party (Pacific today) accounts for 80% of the originating traffic and the other only 20% (AT&T today). (Tr. 395.) Under AT&T's network architecture plan, by contrast, there would be no need for the joint network architecture plan by LATA that Pacific proposes because each party is 100% responsible for constructing facilities for delivering originating traffic to the other party. (*Id.*)

Another aspect of equitable interconnection that is not produced by Pacific's network architecture is comparable interconnection. Pacific's plan entails AT&T picking up and delivering traffic deep into Pacific's network, at its hundreds of central offices. Since, as noted above, Pacific's customers originate 80% of the traffic that the parties exchange, AT&T is receiving the bulk of the traffic--and receiving it at a point distant from its switching centers--whereas Pacific is receiving far less traffic, and is receiving it at the closest point to Pacific's customers. Pacific, thus, has to use far less transport to deliver the traffic

from AT&T's customers than AT&T has to use to deliver traffic from Pacific's customers.

To render the interconnection equitable, the parties will need to adjust their interconnection plan so that each party delivers traffic to the "top" of each other's network. Said another way, the parties' points of interconnection would be at the "tops" of each network. The parties' networks differ radically: Pacific has a traditional end-office/tandem structure with many end-offices; AT&T has only a few switches, by comparison, that serve both end-office and tandem functions. In Pacific's network, the "top" is found at the tandem switch; the "top" of AT&T's network is at each of its switches. In AT&T's proposed § 1.3.3.1 of Attachment 18, if parties cannot agree as to the quantity or location of their Points of Interconnection (POIs), the default locations will be a POI at each Pacific tandem switch and a POI at each AT&T switching center. This establishes the first and primary aspect of "equivalent interconnection."

The other aspect of "equivalent interconnection" concerns each party's financial burden for providing facilities for interconnection. Equitable interconnection can only be achieved when each party contributes interconnection facilities in proportion to the traffic that it delivers to the other party for completion. (Ex. 113 at 6.) Since 80% of the traffic is delivered from Pacific to AT&T, under AT&T's equivalent interconnection principle, Pacific would bear 80% of the expense of facilities needed for interconnection. On the other hand, Pacific says that the parties should each bear 50% of the cost of interconnection facilities. Under Pacific's proposal, if one party originates a disproportionate percentage of the traffic, it receives a substantial subsidy from the other party in the form of interconnection facilities construction costs avoided.

**Pacific's Position:**

Pacific asserts that equal sharing of facilities costs and two-way trunking is a fair and proper approach, and also leads to the most efficient network design. AT&T proposes that the equitable share of interconnection facilities be based on each party's share of originating traffic. However, a significant amount of the traffic originating from Pacific, perhaps 80% to 90%, is incoming Foreign Exchange (FEX) ISP Internet calling to AT&T's ISP customers purchasing FEX service from AT&T. AT&T's proposal is a blatant attempt to cause Pacific to incur additional costs associated with AT&T's service. If AT&T wants equity, then equity would dictate that AT&T provide all the facilities associated with their incoming FEX service, since AT&T is the party receiving the revenue for the service and causing the traffic to be on the network.

AT&T's proposal should be rejected. AT&T is proposing to provide interconnection for its outgoing traffic only to Pacific's tandem. AT&T attempts to justify part of this obvious imbalance by saying the facilities are proportional to call volumes. Yet AT&T reaches this conclusion by incorrectly identifying the massive ISP FEX traffic coming into AT&T's switching center as being the responsibility of Pacific, rather than that of AT&T and its ISP customers.

AT&T's proposal is to interconnect at what it calls the top of its network. AT&T's witness acknowledged that the most efficient engineering practice is to interconnect switches at every level through direct trunking where traffic volumes justify a T-1 circuit. Moreover, AT&T's contention that AT&T's network is flat while Pacific's is hierarchical turns out to be wrong. AT&T's witness admitted that AT&T sends calls from its local switches to its 4Es--just as Pacific does.<sup>102</sup>

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<sup>102</sup> 4 Tr. 497-498 (Mr. Talbott for AT&T).

He also admitted that Pacific's network is not as hierarchical as his diagrams made it seem due to the high incidence of direct trunking between Pacific's end-offices. His acknowledgement that Pacific's network is a "network that's two-thirds flat versus [AT&T's] network that is completely flat" concedes that there is no substance to his "top of the network" proposal.<sup>103</sup>

**Discussion:**

AT&T's proposal for equivalent interconnection is adopted, at least in part. AT&T can save substantially on its interconnection costs if it is not required to interconnect with each Pacific end-office, and AT&T is in the best position to analyze its traffic volumes and decide whether, in some instances, it is more economical to interconnect to an end-office. The default, however, for each POI will be at AT&T's switch and Pacific's tandem. For traffic that originates from AT&T and is delivered to Pacific's tandem, AT&T will be responsible for paying the appropriate charges to deliver that traffic to the end-office where the call terminates.

*Section 1.3.2: Pacific's position is rejected. It is based on the network interconnection plan proposed by Pacific, which is not being adopted.*

*Section 1.3.3.1: AT&T's position is adopted. This provision sets the default POI at Pacific's tandem and at each of AT&T's switches.*

*Section 1.4.3: In their Comments, both AT&T and Pacific addressed the outcome of this issue. Pacific indicates it supports the Draft's finding that each party engineer its own trunks, but both parties share in the cost of the underlying facilities. Pacific states that this outcome acknowledges that the traffic volumes generated by AT&T are actually higher than Pacific's when the FX traffic*

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<sup>103</sup> 4 Tr. 496 (Mr. Talbott for AT&T)

generated by AT&T's ISP customers is properly considered AT&T's responsibility. Pacific urges that the arbitrator retain the language that parties share equally in the cost of the underlying facilities, if one-way trunking continues to be required.

AT&T asserts the proposed determination to adopt Pacific's equal-investment approach to facilities construction defeats the purpose of adopting one-way trunking and connecting at the "top" of each carrier's network. One-way trunking means that trunks carry only one carrier's traffic and, logically, the construction and maintenance of those trunks is the responsibility of that carrier. AT&T's advocacy of a proportional-responsibility rule<sup>104</sup> was intended to apply only if Pacific's two-way trunking position was adopted.

AT&T points out the FCC has been clear that, when a CLEC uses one-way trunks, it will not be required to pay for any portion of an ILEC's one-way trunks used to deliver ILEC-originated traffic to the CLEC. In the *Local Competition Order* at ¶ 1062, the FCC states:

...if the providing carrier provides one-way trunks that the inter-connecting carrier uses exclusively for sending terminating traffic to the providing carrier, then the interconnecting carrier is to pay the providing carrier a rate that recovers the full forward-looking economic cost of those trunks. The interconnecting carrier, however, should not be required to pay the providing carrier for one-way trunks in the opposite direction, which the providing carrier owns and uses to send its own traffic to the interconnecting carrier.

According to AT&T, the FCC speaks directly to the issue. The arbitrator must correct the internally-inconsistent ruling that AT&T may use one-way trunks

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<sup>104</sup> By "proportional-responsibility rule," AT&T refers to a system under which each party pays for interconnection facilities in proportion to its proportion of originating traffic.

to deliver traffic to Pacific but bears some financial responsibility for Pacific's one-way trunks delivering Pacific's traffic to AT&T.

AT&T's proposed language in § 1.4.3 is adopted, and each party will be responsible for constructing and maintaining its own trunks. It is inconsistent with FCC requirements to require AT&T to pay for any portion of the facilities which carry traffic from Pacific to AT&T.

Section 1.4.4: AT&T's position is adopted. This provision is appropriate, given the fact that AT&T's proposal for one-way trunking is adopted in Issue 230.

#### **Issue 229**

**What reciprocal compensation rate components should apply for local calls terminated by AT&T?**

#### **AT&T's Position:**

This issue turns on FCC Rule 711(a)(3) which provides: "Where the switch of a carrier other than an incumbent LEC serves a geographic area comparable to the area served by the incumbent LEC's tandem switch, the appropriate rate for the carrier other than the incumbent LEC is the incumbent LEC's tandem interconnection rate."

AT&T has presented detailed information that demonstrates that the switches in each of its two networks serve geographic areas that are roughly equivalent to the geographic areas served by Pacific's tandems, as Rule 711 requires in order for AT&T to be entitled to tandem switching and transport as reciprocal compensation. See Attachments 11 through 38 to Exhibit 114. The transparencies that AT&T has provided show that the geography that each AT&T-C switch covers is substantially larger than the geography Pacific's tandems cover. This is, in part, because AT&T-C's 4ESS switches serve the entire state of California, while Pacific's serving areas are generally limited to the geographic around the state's major cities. Again, looking at the state as a whole, there is the

same number of AT&T-C switches as there are Pacific tandems. See Attachment 14 to Ex. 103. Thus, AT&T-C's network is clearly entitled to the tandem compensation rate under FCC Rule 711(a)(3).

The situation with the TCG network is even clearer. TCG has only ten switches in California, compared to Pacific's 22 tandems. In six LATAs TCG has no switches. In both San Francisco and Los Angeles, TCG has four deployed switches compared to Pacific's six tandems. (Attachment 14 to Ex. 113 (as corrected, Tr. 1039, 1087). There is no question that TCG's switches cover an equal or greater geographic area than Pacific's tandems.

AT&T's two networks fundamentally differ. AT&T-C uses AT&T's long distance (4ESS) switches to provide local service to customers that are connected to the AT&T long distance network using high-capacity, dedicated facilities. The TCG switches provide a variety of traditional local services throughout California using Class 5 local switches. The TCG switches also support the provision of residential cable telephony service by TCI. The local service networks of AT&T-C and TCG are distinct, non-integrated networks owned by separate subsidiaries of AT&T Corp. Even if the company were to be viewed as a whole, the combined total of AT&T-C's and TCG's switches – 32 – does not drastically exceed the number of Pacific tandems in the state, 22.

Pacific alleges that AT&T's switches have about the same coverage as Pacific's end-offices. (*Response* at 174.) Pacific can only make that claim by focusing on number of customers, rather than geographic area. The FCC's rule, however, does not base the eligibility for tandem switching as reciprocal compensation on number of customers; it speaks of "geographic area." Thus, even if it is true, as Pacific's witness testified, that AT&T serves only a few customers in the more remote reaches of a particular LATA, it is still covering that

entire LATA, while Pacific's tandems generally serve considerably less than an entire LATA. (See Attachments 11-38 to Ex. 114.)

Pacific alleges that AT&T is attempting to justify tandem routed compensation based on its non-traffic sensitive loop facilities from its switch to its customer's premises and says the FCC's tandem routed rule does not apply to non-traffic sensitive loop facilities. (Ex. 216 at 6.) This is wrong. Rule 711(a)(3) contains no reference to "loop" or "non-traffic sensitive" facilities of any kind. Pacific is actually referring to the fiber rings that TCG uses to transport calls to nodes on its network. (See Attachment 3 to Ex. 114.) These fiber rings are transport facilities --not loop facilities. There are "drops" off of the fiber rings that are analogous to loop facilities, but Pacific is simply attempting to squeeze AT&T's network architecture into a mold it does not fit.

**Pacific's Position:**

AT&T is not entitled to receive the tandem switching and transport rate elements as part of reciprocal compensation. The ability of CLECs to receive the tandem switch rate element for reciprocal compensation derives from the FCC's *First Report and Order* ¶1090. The FCC adopted this approach in rule 51.711(a)(3), which is quoted above.

In addition to the above rule, in the *First Report and Order*, the FCC determined that reciprocal compensation should only be paid for traffic-sensitive costs, and not for non-traffic sensitive costs.

We find that, once a call has been delivered to the incumbent LEC end-office serving the called party, the "additional cost" to the LEC of terminating a call that originates on a competing carrier's network primarily consists of the traffic-sensitive component of local switching. The network elements involved with the termination of traffic include the end-office switch and local loop. The costs of local loops and line ports associated with local switches do not vary in proportion to the number of calls terminated over these facilities.

We conclude that such non-traffic sensitive costs should not be considered 'additional costs' when a LEC terminates a call that originated on the network of a competing carrier. For the purposes of setting rates under Section 252(d)(2), only the portion of the forward-looking, economic cost of end-office switching that is recovered on a usage-sensitive basis constitutes an "additional cost" to be recovered through termination charges.<sup>105</sup>

The Commission has already had an opportunity to apply these principles. In the MFS WorldCom arbitration, the analysis of the facts and law showed that MFS WorldCom was not entitled to tandem compensation. (MFS FAR, pp. 79-80). Thus, in order for AT&T to qualify for the tandem-switched rate, it must show both that its switches operate as a tandem by serving comparable geographic areas, and that its network is providing traffic-sensitive transport rather than the equivalent of the local loop, which is non-traffic sensitive and not eligible for reciprocal compensation.

Pacific contends that the testimony of AT&T's Mr. Talbott on this issue was littered with mistakes and misrepresentations and should be disregarded on its entirety. He changed his testimony on no fewer than six occasions. During cross-examination, Mr. Talbott repeatedly admitted that his testimony was wrong. For example, he admitted that switches on his maps were shown in wrong locations.<sup>106</sup> The count of AT&T switches on Attachment 14 of his Direct Testimony was wrong.<sup>107</sup> During redirect examination, he offered that the number of TCG switches on Attachment 14 to Mr. Talbott's direct testimony also was wrong.<sup>108</sup>

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<sup>105</sup> *First Report and Order*, para. 1057.

<sup>106</sup> 10 Tr. 1027-1028, 1039-1040 (Mr. Talbott for AT&T)

<sup>107</sup> 10 Tr. 1039 (Mr. Talbott for AT&T)

<sup>108</sup> 10 Tr. 1086-1088 (Mr. Talbott for AT&T).

His voluntary confession appears to be an attempt to rehabilitate his testimony, but there is no reason to believe that the numbers AT&T hurriedly supplied at the end of the hearing were any more accurate than the mistaken numbers provided in their prepared testimony. Many of the mistakes appeared to be due to the fact the witness was unfamiliar with the subject matter of his testimony and that it had been prepared by other persons. For example, he testified to being unfamiliar with the Local Exchange Routing Guide (LERG) even though it is the definitive source for the location of switches.<sup>109</sup>

Although the inaccuracies in this sworn testimony are sufficient to cause the Commission to disregard it as unreliable, an equally important problem with the Talbott testimony is its effort to mislead the Commission on the tandem compensation issue. The question here is whether AT&T's switches cover the same geographic areas as Pacific's tandems. The location of all AT&T switches is integral to this analysis, but AT&T purposely hid the fact that it, as well as TCG, had 5E switches serving local customers. AT&T's Mr. Talbott testified in his first cross-examination that AT&T had no 5E switches serving local customers, subject to check, but did not subsequently report that his answer was incorrect.<sup>110</sup> The switches were not disclosed in data request responses although they unquestionably were requested.<sup>111</sup> They were not shown on any of the maps provided by AT&T which were intended to compare the relative geographic coverage of the companies.<sup>112</sup>

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<sup>109</sup> 4 Tr. 450 (Mr. Talbott for AT&T); 10 Tr. 1032 (Mr. Talbott for AT&T).

<sup>110</sup> 4 Tr. 446-447 (Mr. Talbott for AT&T)

<sup>111</sup> Exh. 214C (Initial Response of AT&T to Fourth Set of Data Requests by Pacific Bell, Nos. 1 and 2).

<sup>112</sup> 10 Tr. 1058-1059 (Mr. Talbott for AT&T)

AT&T belatedly offered a response to a Pacific transcript request which disclosed that the 5E switches were, in fact, not on the maps and therefore misrepresented AT&T's network.<sup>113</sup>

Looking at all the facts, AT&T is not providing tandem switching capability over a geographic area equivalent to what Pacific's tandems serve as required by FCC Rule 51.711(a)(3). Although AT&T's actual switch count remains a mystery, Attachment 14 to Mr. Talbott's Direct Testimony shows 18 switches in Los Angeles, and only 8 Pacific tandems.<sup>114</sup> In other words, AT&T already has two times more switches in Los Angeles than Pacific has tandems. With the admitted growth rate for AT&T/TCG switches disclosed in discovery,<sup>115</sup> the geographic coverage of AT&T's switches will be more akin to Pacific's end-offices than to its tandems.

AT&T attempted to portray itself as operating two different networks, its own and the one it acquired from TCG, but Mr. Talbott admitted that AT&T and TCG switches are connected to one another and pass calls back and forth.<sup>116</sup> AT&T switches are collocated with TCG switches in buildings through which TCG fiber rings pass.<sup>117</sup>

Further, AT&T's claims that its transmission of traffic over fiber rings constitutes compensable transport for reciprocal compensation purposes is wrong.

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<sup>113</sup> 10 Tr. 1022-1025, 1058-1059 (Mr. Talbott for AT&T)

<sup>114</sup> Mr. Talbott (for AT&T), Exh. 113, p. 41.

<sup>115</sup> Exh. 214C (Initial Responses of AT&T to Fourth Set of Data Requests by Pacific Bell, Nos. 1 and 2)

<sup>116</sup> 10 Tr. 1048-1049 (Mr. Talbott for AT&T)

<sup>117</sup> 10 Tr. 1051 (Mr. Talbott for AT&T)

First, AT&T does not even attempt to argue that it is providing transport as it is generally understood: where AT&T would establish POIs at Pacific end-offices and carry traffic to its switching center. Rather, AT&T's proposed network architecture places a single POI at its own switch.

Second, the "transport" AT&T claims to provide involves its fiber rings running between AT&T's switching centers and some of its customers. However, these rings are actually non-traffic sensitive loop plant not eligible for reciprocal compensation. Mr. Talbott agreed, during the panel discussion, that fiber ring costs are non-traffic sensitive.<sup>118</sup> And, he agreed that Pacific's local loop plant is not eligible for reciprocal compensation.<sup>119</sup>

Third, these fiber rings do not cover enough territory to resemble the LATA coverage provided by Pacific's tandems. During his second cross-examination, Mr. Talbott was shown AT&T-prepared maps produced in discovery depicting TCG's fiber rings. Mr. Talbott agreed that the rings on the maps did not extend beyond the boundaries on the maps.<sup>120</sup> He acknowledged that the Bay Area<sup>121</sup> ring ran to about San Rafael. LATA 1, in contrast, goes to the Oregon border.<sup>122</sup>

Finally, although AT&T is claiming compensation for tandem-switched transport on every call it terminates, about 80% of the traffic AT&T terminates is ISP FEX traffic, and a significant (but proprietary) number of customers

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<sup>118</sup> 4 Tr. 484-486 (Mr. Talbott for AT&T)

<sup>119</sup> 4 Tr. 484-485 (Mr. Talbott for AT&T)

<sup>120</sup> 10 Tr. 1051-1053 (Mr. Talbott for AT&T)

<sup>121</sup> 10 Tr. 1053 (Mr. Talbott for AT&T)

<sup>122</sup> 10 Tr. 1053-1054 (Mr. Talbott for AT&T)

collocated in the AT&T switching center are ISPs.<sup>123</sup> For the traffic terminating to these customers, no fiber ring is used, and no transport of any kind is being provided.

Generally speaking, the factual situation here is not appreciably different from that present in the MFS WorldCom arbitration, where MFS WorldCom was denied tandem compensation.

**Discussion:**

Pacific's position is adopted. Both parties agree that this issue is governed by FCC Rule 711(a)(3), but they differ as to whether AT&T has met the requirement of the FCC's rule. The burden of proof is on AT&T to establish that its switches serve geographic areas similar to those served by Pacific's tandem switches. AT&T has not met that burden here.

The actual count of AT&T switches was a moving target during the proceeding. However, review of Exhibits 113 (Mr. Talbott's Direct Testimony) and 222 (Switch data from the LERG), shows that AT&T and TCG together have more switches than Pacific has tandems in two major LATAs: San Francisco and Los Angeles. The count for AT&T in San Francisco is 8 or 9 switches (8 in Exh. 113, 9 in Ex. 222), compared to six Pacific tandems. The disparity in Los Angeles is even greater: 16 or 18 switches for AT&T (18 in Exh. 113, 16 in Ex. 222), compared to Pacific's 7 tandems. As Pacific says, AT&T's switches operate more like Pacific's end-office switches than its tandem switches. While the above information combines TCG and AT&T-C switches, there are still discrepancies if the data are disaggregated. One needs specific, accurate switch counts in order to make a comparison with Pacific's tandems.

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<sup>123</sup> Exh. 117-C (Further Responses of AT&T to Fourth Set of Data Requests by Pacific Bell, No. 9)

In addition, AT&T has not met its burden of proof that its switches cover a comparable geographic area. The transparencies in Exh. 114C show where AT&T's switches are located, but not their geographic coverage.

In its Comments, AT&T asserts the Draft erred in its finding that AT&T's transparencies in Exh. 114C show where AT&T's switches are located but not their geographic coverage. The light green shading shows the areas served by the switches, says AT&T. AT&T is incorrect. What the transparencies show is the location of various AT&T switches, with an entire LATA shown as "light green." There is no indication of the coverage of specific switches. Without that specific information, AT&T cannot prove its case.

#### **Issue 230**

**Should trunks for interconnection of AT&T's and Pacific's networks be provisioned as one-way or two-way?**

#### **AT&T's Position:**

This issue is a corollary to the above-described network architecture position, specifying that each party should bear interconnection facility costs in proportion to the percentage of originating traffic for which its customers are responsible. One-way trunks do this intrinsically. If traffic were perfectly in balance, then establishing two-way trunks would also be equitable. Two-way trunks will always place an unfair financial burden on the party originating less traffic. Ex. 113 at 17.

One-way trunks are simple to establish and administer. Every augmentation of two-way trunks today requires a negotiation between the parties based on whose traffic is causing the augmentation. Third, in using one-way trunks, each party would establish and manage its own network without interference from the other party. While there is a modest, short-term reduction in technical efficiency that each party would experience as a result of converting the

current two-way trunking to one-way, AT&T believes that this would be vastly outweighed by the substantial improvement in the fairness of interconnection overall.

**Pacific's Position:**

The Commission's local competition rules endorse two-way trunking<sup>124</sup> and two-way trunks are more efficient than one-way trunks, and are the standard configuration now in place. Changing to one-way trunks as the industry standard would be expensive, while detracting from the efficiency of the network.

Through comments filed by the California Telecommunications Coalition in the Commission's Local Competition docket, AT&T urged the Commission to require engineering efficiency in network interconnection. In those Coalition comments, AT&T specifically asserted:

“[T]wo-way trunks are more efficient than one-way trunks because traffic traveling in one direction on the trunk group can use capacity not currently in use by traffic travelling in the opposite direction.”<sup>125</sup>

AT&T's testimony, aimed at minimizing the “splintering penalty” associated with two-way trunking was withdrawn as mistaken.<sup>126</sup> There remains no analysis on the record supporting the efficiency and advantages of one-way trunking. At any rate, Mr. Talbott's analysis was misleading because it failed to show the results when his calculations for each trunk group are multiplied by the thousands of trunks involved in interconnection with the CLECs. Viewed correctly

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<sup>124</sup> D.96-02-072, *mimeo*, App. E, p. 12 (“Two-way trunking will be more conducive to efficient network utilization in a competitive environment”).

<sup>125</sup> “Phase I Comments of the California Telecommunications coalition,” filed Oct. 6, 1995 in *Local Competition Implementation* (R.95-04-043/I.95-04-044).

<sup>126</sup> 4 Tr. 380 (Mr. Talbott for AT&T)

in the aggregate, the splintering penalty is significant. Since AT&T has failed to rebut the efficiency advantages of two-way trunking, its proposal for one-way trunking interconnection should be rejected.

**Discussion:**

In its Comments, Pacific asserts the Draft's requirement for one-way trunking is not supported by the record. Pacific's witness testified that substantial trunking inefficiencies would occur if one-way trunking were established. AT&T's testimony rebutting this was withdrawn.

Pacific states that its witness Lube testified that the transition costs to transition to one-way trunking are significant if undertaken statewide. AT&T did not provide testimony rebutting that position. Since the New Regulatory Framework was established in D.89-10-031, network efficiency has been a goal of the Commission. The decision to allow one-way trunking is contrary to that efficiency goal.

In its Comments, AT&T points to FCC Rule 305(f) which compels the result ordered by the arbitrator. That Rule directs that "an incumbent LEC shall provide two-way trunking upon request." The FCC has been quite clear that the directionality of trunking is at a CLEC's option, so long as the CLEC's request is technically feasible, says AT&T.

Paragraph 219 in the *Local Competition Order* supports AT&T's contention that the method of interconnection should be at the CLEC's option. The FCC states, "We conclude here, however, that where a carrier requesting interconnection pursuant to section 251(c)(2) does not carry a sufficient amount of traffic to justify separate one-way trunks, an incumbent LEC must accommodate two-way trunking upon request where technically feasible." In the early days of local competition, both this Commission and the FCC expressed concern that the

two-way trunking option should be available to new entrants, since their traffic flows could not justify the expense of one-way trunking.

Pacific points to inefficiencies to the establishment of one-way trunking, and AT&T does not refute that those inefficiencies exist. However, Pacific overstates their importance. Whatever inefficiencies exist clearly affect both Pacific and AT&T, but, in spite of that, AT&T has determined that one-way trunking best meets its needs. Pacific overlooks the efficiency gains that result from each carrier managing its own network. If a carrier has total responsibility for the facilities needed to carry traffic from its customers, that carrier is able to manage its own network in the most efficient and cost-effective manner possible.

AT&T's proposal in § 1.1 to adopt one-way trunking is adopted. Pacific cites AT&T's comments from 1995 and a Commission order from early 1996 which endorse two-way trunking. However, four years have passed since the Commission endorsed two-way trunking in the early days of competition in California. During that time, CLECs have had an opportunity to develop their networks and to evaluate the efficiency of two-way trunking. AT&T has determined that one-way trunking better meets its business needs in the year 2000. As AT&T states, two-way trunks place a greater financial burden on the party originating less traffic, and the record in this case shows that Pacific originates significantly more traffic than AT&T. While there are some inefficiencies in the use of one-way trunks, they allow each party to manage its own network, without frequent and contentious discussions about when upgrades are necessary.

**Issue 231**

**Should the ICA include a transition plan for establishing one-way interconnection trunks and mutually agreeable POIs for each party?**

**AT&T's Position:**

This issue is a corollary to the preceding issue, as well as to AT&T's "top of the network" POI proposal. By adopting this architecture, the Commission would be assigning to each party the responsibility for determining the least costly means of delivering its own traffic to the other party's POI. Each party is in the best position to determine that for itself. The same principle applies to any one-time costs each party will incur to implement AT&T's proposed interconnection arrangement. If the Commission accepts the premise that each party is in the best position to determine the least costly interconnection arrangement for itself, then it should apply the principle to any transition costs each party would incur, as well, and make each party responsible for its own transition costs.

**Pacific's Position:**

Pacific opposes the adoption of one-way trunks as the primary form of interconnection. Staying with two-way trunking avoids the transition costs and transition planning AT&T's proposal entails. These costs would be substantial, including order entry, redesign of the trunks, translations changes in the switches, possible cross-connection of additional trunk terminations, and trunk testing. Given these potential costs, there is no need at this time to completely re-engineer existing interconnection arrangements.

**Discussion:**

AT&T's proposed Section 1.15 is adopted. That section provides for a transition plan to convert existing two-way trunks to one-way trunks. It is appropriate to adopt this provision, since AT&T's proposal to convert to one-way trunks has been adopted. (Issue 230, above). Each party will bear its own costs of

converting over to one-way trunking. That gives both parties an incentive to minimize their costs.

**Issue 232**

**Should the parties be allowed to continue combining local and intraLATA calls with access calls on the same trunks, applying factors as necessary for compensation purposes?**

**AT&T's Position:**

AT&T won the right in the 1996 arbitration to combine local and intraLATA toll calls with access calls on the same trunks, and provides percentage-local-usage (PLU) factors to Pacific so that Pacific can exempt that percentage of traffic from the application of access charges. When Pacific challenged AT&T's right to combine traffic in this manner, it won a private arbitration over this same subject. Pacific offers only one basis for discontinuing this practice: the access gravy train.

The notion of separate networks for "access services," on the one hand, and all other services, on the other, is simply incompatible with a competitive telecommunications market in which boundaries of all kinds among services are increasingly breaking down. Moreover, the addition of intraLATA traffic, both toll and local to Pacific's access network has improved the efficiency of that network and lowered its per-unit costs. Pacific has been coping with AT&T's increasing use of Pacific's access network for the carriage of intraLATA traffic, and that practice should be allowed to continue.

**Pacific's Position:**

Local interconnection trunk groups should be used solely for the exchange of local and intraLATA toll traffic between the two parties' networks. Carrying these different types of traffic on separate trunk groups permits both parties to accurately track and bill the various forms of traffic. Local interconnection traffic cannot be distinguished if it rides the Feature Group D access trunk group.

AT&T's proposal to apply a factor to distinguish interconnection traffic carried on FGD trunks from access traffic is unworkable and should be discontinued. The switched access billing record does not carry the information needed to bill the call, making it impossible to verify AT&T's factor. In addition, a tandem switch cannot take originating FGB/FGD traffic and point it to the same trunk group that carries non-FGB/FGD traffic which the tandem has received from within the LATA. This arrangement would violate the technical specifications for FGD. Given these problems, local interconnection traffic and access traffic should be carried on separate trunk groups.

**Discussion:**

AT&T's position in Section 1.1 relating to intraLATA traffic is adopted. As AT&T says, this provision is in the current ICA, and while Pacific cites what it perceives to be technical problems in routing traffic properly, Pacific does not indicate that calls have been mis-routed under the current arrangement.

**Issue 235**

**Should the following provision proposed by Pacific be included in the ICA section concerning the future technical feasibility of routing originating meet point traffic from the tandem of one party to the tandem of the other party for purposes of delivering traffic to switched access customers:**

**"AT&T agrees that when Pacific's tandem switching and common transport access services are used by a third party, Pacific will receive its full tariff prices for these services."**

**AT&T's Position:**

AT&T contends that the agreed-upon language preceding Pacific's proposed section makes its addition unnecessary. In Section 4.6 of Attachment 18, the parties have agreed to cooperate in determining the future technical feasibility of routing originating Meet Point Billing traffic routed via tandems to a

switched access customer. If it is found to be technically feasible, the parties “will cooperate in implementing the arrangement, including the adoption of appropriate compensation terms.” By its language, Pacific seeks to pre-determine the outcome of any such “cooperation.” Pacific’s language contradicts the agreed-upon language to discuss the matter further.

**Pacific’s Position:**

Pacific has added language to the ICA providing that it will receive its switched access tariff rate for providing tandem switching where this situation occurs. Regardless of the origin of switched access traffic using Pacific’s tandem, the same tariffed rates should apply to all calls traveling through the tandem. The calls at issue here still cause Pacific to incur tandem costs, even if they have been through a prior AT&T tandem.

**Discussion:**

AT&T’s position in § 4.6 is adopted. Since Pacific has agreed to discuss “the adoption of appropriate compensation terms,” Pacific cannot in the next sentence mandate that its tariff rate be used.

**Issue 236**

**Should bill and keep compensation apply to all interconnection calls (to and from) whenever AT&T serves the end-user using unbundled switching?**

**AT&T’s Position:**

AT&T’s approach is simple and straightforward, whereas Pacific’s language is overly complex and convoluted. AT&T’s testimony established that, in the case where AT&T is purchasing UNEs from Pacific and providing local service in this way, AT&T would not have the information to handle reciprocal compensation arrangements and would have to receive a substantial amount of information from Pacific simply to know who originated and terminated calls delivered to or originated by AT&T customers. (Ex. 119 at 5.) Pacific admits this

same problem when it is on the reciprocal side of the transaction. (Ex. 216 at 9-10.)

AT&T proposes that when AT&T provides local service using Pacific's UNEs, "bill and keep" will apply. Pacific, on the other hand would require one outcome when the calls in question originate and terminate in the same switch, a second outcome when AT&T's customer calls a Pacific customer, and a third outcome when a Pacific customer calls an AT&T customer.

Pacific makes no attempt to explain how AT&T is going to know, when it is purchasing switching from Pacific (and, thus, Pacific's switch is performing all recording functions), that a call is "intra-switch" or "inter-switch." Also, Pacific's proposal does not adequately explain how AT&T would identify traffic to or from other carriers that use Pacific's local switching network element (LSNE), or deal with calls from numbers which may have previously resided in a Pacific switch but now reside in another service provider's switch because of number portability. (Ex. 119 at 5.) By contrast, when there is a problem of information for Pacific, under Pacific's proposal, no charges apply.

Each proposal places the other party in a difficult spot with regard to the information needed to implement it. AT&T would not object to the arbitrator inserting a provision requiring AT&T to provide all information in its possession necessary for Pacific to implement AT&T's contract clause, and has drafted language to make the requirement reciprocal, "the parties will exchange all information each records that is useful in implementing this provision."

**Pacific's Position:**

Local calls made from unbundled switching purchased by AT&T should be subject to the same reciprocal compensation that applies to all other local calls. With respect to a call placed by a Pacific end-user to an AT&T end-user served with unbundled switching, billing system limitations require modified treatment.

No detailed call record is created where the call terminates to an AT&T end-user served with unbundled switching. To overcome this problem, Pacific proposes that, since a call record cannot be created to allow AT&T to collect reciprocal compensation, that the UNE charges for the unbundled switching element be waived as an offset. This approach keeps carrier-to-carrier rates in sync with the retail rates to end-users: the originating customer pays for the call and the terminating customer pays nothing.

AT&T's proposal ignores the billing problems with UNE switching. AT&T's proposal calls for Pacific to bill UNE rates for calls terminating to UNE switching elements, which cannot be done. Moreover, AT&T's proposal is not truly "bill and keep." If a call from an AT&T end-user passes through Pacific's network and terminates at another CLEC, Pacific may owe reciprocal compensation to that carrier, although it will have received no compensation from AT&T on the call. Finally, because AT&T's proposal mismatches retail revenues and carrier-to-carrier payments, gaming will be incited. For example, CLECs would find measured business line customers that make many outgoing calls inordinately attractive. The CLEC could charge per-minute retail rates for the entire end-to-end connection. It would only have to pay Pacific, however, for origination and transport and not for termination.

**Discussion:**

In its Comments, AT&T states the only basis for the Draft's rejection of AT&T's proposed clause is the "possibility" that AT&T would seek customers that would maximize the reciprocal compensation payments it receives from Pacific. No evidence was presented that AT&T has any plans to do so.

AT&T also states there is no evidence that Pacific's sharing of information with AT&T would solve the problem of calls originating from or terminating to third-party carriers that are also using Pacific's switching UNE, nor of calls

originating from or terminating to numbers that previously belonged to a Pacific customer, but that the customer has ported to a third-party carrier.

AT&T says its proposal is simple and straightforward to implement and requires neither party to trust the other.

Pacific's proposal would mandate different treatment for intra-switch and inter-switch local calls, but AT&T asserts that it does not have that information. When AT&T buys LSNE from Pacific, it is Pacific, not AT&T, that has access to the call information recorded by the switch. In order to implement Pacific's § 3.7, Pacific must provide certain information to AT&T. AT&T suggests that the arbitrator add additional language requiring that Pacific provide timely, complete and correct information which allows AT&T to treat calls appropriately. In an effort to minimize disputes between the parties, the following language shall be added to § 3.7: "Pacific is required to provide AT&T with timely, complete and correct information, which enables AT&T to meet the requirements of this section."

Pacific is concerned that AT&T's proposal would lead to arbitrage. With AT&T's proposed "bill and keep" arrangement, AT&T could find customers (such as telemarketers) that make many outgoing calls that would make that arrangement attractive. The FCC determined in the First Report and Order that a bill and keep arrangement is only appropriate when traffic is in balance,<sup>127</sup> and AT&T's proposal could lead to a situation where the traffic is not in balance. The lack of balance could result from a number of factors, including the possibility of arbitrage. AT&T's proposed language does not present an alternative if traffic becomes out of balance. It violates the FCC's Rule to implement a system of bill

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<sup>127</sup> Section 51.713(b).

and keep, regardless of whether or not traffic is in balance. Therefore, AT&T's proposed language is rejected.

Pacific's proposed § 3.7 is adopted, with the modification listed above. The two parties are to share the call information that each has, as necessary to implement this section.

#### **Issue 237**

**Should Pacific be allowed to condition payment of reciprocal compensation for traffic bound to ISPs on AT&T's agreement to provide a retroactive refund in the event of a future change in the Commission's order directing payment of such compensation?**

#### **AT&T's Position:**

AT&T contends that it is important to consider Issues 237, 238, 240 and 259 together.<sup>128</sup> Pacific, in this arbitration is attempting to make an end run on the outcome of R.00-02-005 (filed February 3, 2000) in which the Commission is comprehensively considering each of the issues listed above. The arbitrator should apply the current law and Commission policies in choosing contract clauses unless and until the Commission changes its policies in R.00-02-005.

Further, Pacific bases its argument that it should not pay reciprocal compensation for calls to information service providers on the FCC's ruling that such calls are jurisdictionally interstate.<sup>129</sup> Since calls to ISPs, thus, are not "local" calls, Pacific maintains that they should not be subject to reciprocal

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<sup>128</sup> AT&T presents its position on all four issues combined so AT&T's position from Issue 237 is incorporated by reference into Issues 238, 240 and 259.

<sup>129</sup> Declaratory ruling in CC Docket No. 96-98, *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications act of 1996*, CC Docket No. 96-98 (released February 26, 1999)("FCC Declaratory Ruling").

compensation. The US Court of Appeals for the DC Circuit, however, recently vacated the FCC's ruling on the grounds, essentially, that it is both internally inconsistent and inconsistent with other related FCC decisions. (*Bell Atlantic Telephone Companies v. FCC*, No. 99-1094 (DC Cir. March 24, 2000).) In light of the DC Circuit's vacating of the FCC ruling, there is no longer any justification for Pacific's position. Local calls to ISPs are just that, local, and subject to the Act's reciprocal compensation provisions.

This is, moreover, confirmed by all of this Commission's decisions to date.<sup>130</sup> Each of these decisions rules that reciprocal compensation is owed, even if the CLEC uses disparate rating and routing points to deliver traffic to the ISP. (*Id.*) In its recent *Order Instituting Rulemaking* in R.00-02-005 (*mimeo* at 1), the Commission found specifically: "Current policy on reciprocal compensation adopted by the Commission in D.98-10-057 as modified by D.99-07-047, and in D.99-09-029, will continue to be in effect unaffected by this OIR until such time as the Commission determines otherwise."

Under this state of the law, it is clear that the arbitrator cannot accept Pacific's suggestion to rule that Pacific need not pay AT&T reciprocal compensation for local traffic bound to ISPs. (Issue 259) Second, there is no more basis to require AT&T to provide a retroactive refund of any reciprocal compensation Pacific pays to AT&T for the termination of ISP-bound calls than there is to rule in Pacific's favor and require Pacific to pay reciprocal compensation retroactively to AT&T in the event the Commission rules in AT&T's favor in R.00-02-005. (Issue 237) The same arguments hold for Pacific's request that AT&T be required to post some form of security for the repayment of any reciprocal compensation AT&T receives between the effective

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<sup>130</sup> AT&T cites D.98-10-057, D.99-07-047, and D.99-09-029.

date of the ICA's renewal and any Commission decision finding ISP-bound traffic not to be subject to reciprocal compensation. (Issue 238)

Pacific's witness admitted that the true purpose of such a bond would be to deal with the risk to Pacific of less well-financed CLECs opting into AT&T's contract and subsequently becoming unable to repay the reciprocal compensation it receives from Pacific, in the event Pacific prevails in R.00-02-005. (Tr. 647-648.) This is another reason to reject Pacific's proposal, since the FCC's *Local Competition Order* (at ¶ 1312) specifically forbids ILECs from inserting provisions into CLECs' ICAs whose primary purpose is to discourage other CLECs from opting into related provisions.

Pacific throws in an additional clause that would exclude from its reciprocal compensation obligations ISP-bound traffic that "is delivered from a DSLAM directly to an ISP," and another clause that excludes ISP-bound traffic "delivered from a DSLAM or other equipment directly to an ISP that bypasses the terminating switch." Pacific would use the broad language in the clauses to create even larger exemptions from its reciprocal compensation obligations than the simple delivery of traffic from a DSLAM to an ISP. Pacific's proposed language appears to exempt traffic between Pacific's ATM network and a CLEC's ATM network, without qualifying the language by the modifier "ISP bound."

### **Pacific's Position**

Pacific contends that reciprocal compensation is not due to CLECs for ISP traffic. Calls to ISPs are not local calls, as the FCC has determined.<sup>131</sup> Pacific's

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<sup>131</sup> *In the Matters of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 [and] Inter-carrier Compensation for ISP-Bound Traffic*, CC Dkt. Nos. 96-98 and 99-68, *Declaratory Ruling in CC Docket No. 96-98 and Notice of Proposed Rulemaking in CC Docket No. 99-68*, 14 FCCR 3689 FCC No. 99-38 (re. Feb. 26, 1999) (finding ISP-bound traffic to be interstate). The FCC ruling was recently reversed and remanded in *Bell Atlantic v. FCC*, 2000 WL 273383 (D.C. Cir).

position is that all issues related to this issue should be decided in the Commission's rulemaking. So that neither party is harmed while the Commission reviews this important issue, the arbitration decision should order that payments made under this agreement be retroactively tried-up following the Commission's decision in its generic rulemaking.

**Discussion:**

AT&T's proposed Section 3.9 in Attachment 18 is adopted, with modification. The final section relating to calls placed using UNEs must be deleted, to conform with the outcome in Issue 236 above. Reciprocal compensation is due for traffic to ISPs. The Commission endorsed that view in various decisions in generic proceedings and in prior arbitrations, as described by AT&T. While the Commission is reviewing its former decisions in a new rulemaking, R.00-02-005, the current decisions are in effect until the Commission determines otherwise, and the Rulemaking states that fact quite explicitly.

AT&T's language must be modified to make it consistent with the finding in Issue 240, that reciprocal compensation does not apply to traffic delivered from a DSLAM or other equipment directly to an ISP and bypasses the terminating switch. AT&T's proposed language in Section 3.9 says that "all traffic" to ISPs will be settled on the basis as if such traffic were a voice telephone call. That is inconsistent with Issue 240 and must be revised.

Pacific's request for a retroactive refund of reciprocal compensation payments in case the Commission determines that reciprocal compensation is not to be paid for ISP traffic, is rejected. While the Commission has instituted a new rulemaking to re-examine issues relating to reciprocal compensation, it has not indicated that it intends to make any outcome retroactive. In fact an Assigned Commissioner Ruling Adopting Scoping Memo and Setting Evidentiary Hearing issued on May 2, 2000 includes the following statement, "Any changes to current

Commission policy that may be adopted in this rulemaking will be applied prospectively only.”

**Issue 238**

**Should Pacific be allowed to condition payment of reciprocal compensation for ISP traffic on AT&T’s agreement to post a bond, letter of credit, guaranty or other security in the amount equal to the expected reciprocal compensation payments?**

**AT&T’s Position:**

See Issue 237.

**Pacific’s Position:**

Given the FCC’s finding that ISP traffic is interstate in nature, there is a substantial likelihood the CPUC will terminate the current ISP windfall. The amount of money at issue is significant, and consequently, it is necessary to ensure that carriers currently receiving the money be able to repay it once this issue is resolved. AT&T argues that it is financially able to repay reciprocal compensation payments if ordered by the Commission. However true this may be for AT&T, it does not affect the need for a bond or other guaranty under this provision. Despite the fact that AT&T is well funded, it has had difficulty in the past three years turning over money due to Pacific. As for the MFN aspects of this issue, AT&T presented no compelling argument why the Commission should ignore the fact that most CLECs will in fact opt into this ICA.

**Discussion:**

AT&T’s position is adopted, and Pacific’s proposed Section 3.10 will not be included in the ICA. The Commission’s new rulemaking into various reciprocal compensation issues gives no indication that the Commission will make any policy change retroactive so that CLECs would have to repay money received from Pacific. Given the fact that the Commission has endorsed the payment of reciprocal compensation for calls to ISPs in a number of Commission orders, it

would be inconsistent to change that policy on a retroactive basis, which is essentially what Pacific is requesting. CLECs which negotiate an ICA with Pacific should have certainty to make appropriate business decisions based on the ICA provisions and the existing state of the law, and to have that issue overturned on a retroactive basis would preclude their ability to effectively manage their business.

Pacific relies on the FCC's finding that ISP traffic is interstate in nature when it concludes that the CPUC is likely to terminate the payment of reciprocal compensation for ISP traffic. However, the D.C. Circuit Court of Appeals vacated the FCC's ISP order on March 24, 2000, largely because it found that the FCC's basis for finding that the traffic was interstate was unsupported and inconsistent with other FCC decisions.

#### **Issue 239**

**Should Pacific be allowed to withhold reciprocal compensation on calls destined to AT&T customers who are physically located outside the rate center to which their number is assigned?**

#### **AT&T's Position:**

Although AT&T offers no service that it terms, "foreign exchange service," and does not provide any service in the way that Pacific provides foreign exchange service, AT&T sometimes accommodates customers that purchase other tariffed services by fulfilling their request to be assigned some numbers associated with a particular rate center where they are not physically located. (Ex. 120 at 5.) At no point during the negotiation process did Pacific request from AT&T any information regarding the actual routing points involved in any such arrangements, the volume of traffic involved in any of them, or the location of any points of interconnection associated with the few such arrangements that AT&T provides.

Pacific maintains that it is entitled to some form of compensation from AT&T based on the "actual routing points of the call, the volume of traffic, [and]

the location of the points of interconnection..." (Ex. 216 at 15.) This quotation from D.99-09-029 refers to the information "which properly forms a basis for considering what compensation between carriers may be due." The Commission then continued in the following sentence to find, "We conclude, however, that the record at this point does not provide a sufficient basis to adopt appropriate preferred outcomes for intercarrier compensation arrangements for the transport and delivery of traffic involving different rating and routing points." (*Ibid.*) Thus, even if the arbitrator were to conclude that Pacific were entitled to compensation for the carriage of calls under the few "FX-like" arrangements into which AT&T has entered in California, Pacific has not filed a single piece of evidence regarding the only proper basis on which such compensation should be based. Instead, Pacific's testimony assumes that its costs in carrying such traffic are equal to the tandem and common transport rates established in the OANAD decision, D.99-11-050. Pacific then assumes that AT&T is entitled, as reciprocal compensation, only to the end-office terminating switching rates. Pacific then concludes that, since the rates are "equal," there should be no compensation in either direction on calls terminated to customers with disparate rating and routing points. (Ex. 216 at 16.)

Pacific never asked AT&T for the information necessary to compute compensation under the D.99-09-029 standard, nor did it supply any of its own for the record. Then Pacific abandons the D.99-09-029 standard and, instead, proposes a simple method to determine compensation in this situation. Its "simple method" involves comparing Pacific's tandem transport rate to its end-office switching rate. However, the end-office switching rate that Pacific postulates AT&T is entitled to in this situation is six times higher than the tandem transport rate. The compensation under these two rates is far from equal.

In order to adopt Pacific's position, the arbitrator would have to accept Pacific's position that AT&T is not entitled to the tandem switching and transport rates, to which it has shown an entitlement above, in connection with Issue 229. Also, Pacific's premise would require that the parties continue to provide 50% each of the facilities used for interconnection, in lieu of AT&T's position that the parties should share the costs of such facilities in proportion to their share of originating traffic, as AT&T described in Issue 228, above. Pacific made a number of other unproven assumptions in connection with its analysis, such as the assertion that "AT&T's incoming FEX ISP usage alone represents about 90% of the usage on the facilities," an assertion which is not supported by any documents.

Pacific's proposal would limit its reciprocal compensation obligation to cases where the calling and called parties are physically located in the same local exchange. This is in conflict with the very decision on which Pacific relies, D.99-09-029 (*mimeo*) at 21:

"...we conclude that the rating of calls as toll or local should be based upon the designated rate center of the NXX prefix of the calling and called parties' numbers. Even if the called party may be physically located in a different exchange from where the call is rated, the relevant rating point is the rate center of the NXX prefix."

The arbitrator must reject § 3.3 since it violates the Commission's definition of a local call for reciprocal compensation purposes. In addition, Pacific's proposed §§ 3.11 and 3.12 promulgate a definition of a local call that violates D.99-09-029.

**Pacific's Position:**

Pacific is not seeking to withhold compensation, but rather makes the proposal described below. When an incoming FEX call routes through a Pacific tandem, Pacific must transport the FEX call from the calling party's local exchange to the distant tandem. Then Pacific must switch the call through the

tandem before the call is connected to shared interconnection facilities and terminates at AT&T's switch. On an incoming FEX call, AT&T provides no transport and only incurs end-office terminating switching costs. The Commission adopted prices for Pacific's UNE tandem switching and common transport that are approximately equal to the adopted price for end-office terminating switching. The tandem and common transport costs equal \$0.00113 per call and \$0.002 per minute, excluding the common transport mileage element. The adopted end-office terminating switching costs are \$0.007 per call and \$0.00187 per minute. Therefore, on incoming FEX calls that route through Pacific's tandem, Pacific proposes that neither party receive compensation, since the terminating compensation AT&T would owe Pacific is equal to the end-office terminating compensation Pacific would owe AT&T.

AT&T's proposal is inconsistent with D.99-09-029. With respect to FEX ISP traffic, D.99-09-029 stated:

We conclude that, whatever method is used to provide a local presence in a foreign exchange, a carrier may not avoid responsibility for negotiating reasonable intercarrier compensation for the routing of calls from the foreign exchange merely by redefining the rating designation from toll to local.

The provision of a local presence using an NXX prefix rated from a foreign exchange may avoid the need for separate dedicated facilities, but does not eliminate the obligations of other carriers to physically route the call so that it reaches the proper destination. A carrier should not be allowed to benefit from the use of other carriers' networks for routing calls to ISPs while avoiding payment of reasonable compensation for the use of those facilities. A carrier remains responsible to negotiate reasonable compensation with other

carriers with whom it interconnects for the routing of calls from a foreign exchange.<sup>132</sup>

**Discussion:**

In its Comments, AT&T criticizes the Draft's requirement that the parties include "a simple statement that explains that AT&T will pay Pacific tandem switching and transport for transporting those 'FX-type' calls, and that Pacific will pay AT&T end-office switching for terminating the calls." AT&T asserts there is no agreed-upon definition for the term "FX-type call." In order to avoid disputes, the ICA must include more specific language to implement the principles of D.99-09-029.

The arbitrator agrees it would be helpful to develop a specific definition to replace the phrase "FX-type calls." We are referring to the use of NXX codes to provide locally-rated calling to customers which physically reside beyond the local calling area of the designated NXX code. A customer in this circumstance has "disparate rating and routing points." The call is *rated* as though it originated in one NXX, even though the customer is actually physically located in an area served by a different NXX. In other words, the customer has different NXXs for rating and routing purposes. Specific language will be included in Section 3.12.

AT&T points out that D.99-09-029 requires that the appropriate compensation method should take into account the costs that arise from the service offered. (D.99-09-029 at 33-34). AT&T asserts the first step in identifying the "costs that arise" when a carrier assigns a number to a customer physically located outside the rate center is to identify the costs the originating carrier incurs to deliver calls when the called customer is physically located within the rate center. The second step is to identify the costs incurred to deliver calls when the

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<sup>132</sup> D.99-09-029, *mimeo*, p. 32.

called customer is located outside the rate center. If there is no difference between the two costs, the originating carrier is not entitled to compensation simply because the called customer is physically located outside the rate center, says AT&T. Given how AT&T and Pacific will interconnect their networks, there will rarely be additional costs to the originating carrier as a result of assigning customers numbers in different rate centers.

AT&T states each party will designate to which POI calls to a particular rate center should be delivered. Each party will ordinarily require calls to be delivered to the POI nearest the rate center for the called NPA-NXX. So long as a call is delivered by the originating carrier to the specified POI, there is no difference in the cost to the originating carrier regardless of where the customer is physically located. The originating party would incur additional costs only if the terminating party required calls to NPA-NXXs associated with a rate center within the geographic coverage area of a switch to be delivered to a POI other than the one for that switch. Then, and only then, says AT&T, would the originating party be entitled to compensation under the cost-causing principles established in D.99-09-029. AT&T says it intends to accept calls at the POI applicable to the geographic coverage area of a switch that includes the rate center for the called NPA-NXX and take responsibility at that point for terminating the calls. AT&T proposes language to clarify this situation.

The arbitrator finds AT&T's proposed solution and draft language both complicated and confusing. AT&T does not look at the actual costs incurred to transport and terminate calls from a customer physically located in a different NXX. Instead, AT&T looks at the difference in cost between terminating calls to a customer within the rate center and to one outside the rate center. AT&T concludes that if there is no difference in cost between the two calls, the originating carrier is not entitled to compensation. In a giant leap, AT&T then determines that the way AT&T and Pacific will interconnect their networks, there

will "rarely, if ever" be additional costs to the originating carrier as a result of assigning customers numbers in different rate centers. However, AT&T never explains why that is the case.

AT&T states that if the traffic is delivered to the POI closest to the called NPA-NXX, the terminating carrier will be responsible for transporting the call from the POI to the customer. That begs the issue of how traffic travels from the originating caller to the POI closest to the called NPA-NXX, which is the issue discussed at length in D.99-09-029.

AT&T's proposal is rejected. AT&T says it intends to accept calls at the POI applicable to the geographic coverage area of a switch that includes the rate center for the called NPA-NXX, and that is appropriate. Those calls should be handed off to the other carrier at the POI closest to the switch which serves the terminating customer.

However, to the extent that calls originating in a different rate center traverse Pacific's network before being delivered to the POI for termination to the called customer, AT&T should pay tandem switching and transport for those elements of Pacific's network which are used to deliver the call from the switch serving the originating customer to the POI which serves the terminating customer. AT&T's argument that it should pay only the difference between calls terminated within the same rate center and those without is not convincing. AT&T should pay for Pacific's specific network functions Pacific uses to transmit its originating traffic.

Pacific clarifies that the company does not intend to withhold compensation for these so-called "FX-type" calls, only that Pacific is due compensation for transporting the call through its network before the call terminates at AT&T's switch. While both parties cite to D.99-29-029 to bolster their positions, Pacific's interpretation is the correct one. The Commission intends that compensation for

disparate routing and rating arrangements be resolved in negotiations between the parties. In this case, the negotiations did not lead to a settlement of the issue, so the issue is before the Commission in this arbitration.

Pacific's proposal for a bill and keep arrangement is not appropriate, because as AT&T demonstrates, the tandem switching/transport rates do not equate to the end-office switching rate. Instead, explicit compensation rates will be adopted, i.e., AT&T will pay for tandem switching and transport for any "FX-type" calls which are routed from distant exchanges to terminate at AT&T's switch. Pacific will continue to pay end-office switching to AT&T for terminating those calls. This will provide a satisfactory interim solution to the compensation problem, which is consistent with the Commission's order in D.99-29-029. However, since the Commission is slated to explore the issue in more depth in R.00-02-005, the outcome from that rulemaking on this issue will be incorporated into this ICA on a prospective basis.

This outcome will be reflected in the ICA as follows:

Section 3.3: Pacific's proposed language is rejected. Pacific requires that for reciprocal compensation to apply, calls must terminate to end users in the same local exchange. That violates Conclusion of Law 2 in D.99-29-029, which states: "The rating of calls as toll or local should be based upon the designated rate center of the NXX prefix of the calling and called parties' numbers, even if the called party may be physically located in a different exchange from where the call is rated."

Section 3.11: Pacific's proposed language is rejected, for the same reason described in the discussion of Section 3.3 above.

Section 3.12: Pacific's proposed language is rejected. It will be replaced with the following: "Neither party shall be prohibited from designating different rating and routing points for the delivery of telephone calls for purposes of

providing customers a local presence within a foreign exchange. Calls shall be rated in reference to the rate center of the assigned NXX prefix of the calling and called parties' numbers. PACIFIC is entitled to receive tandem switching and transport compensation for its facilities used in the carriage of traffic from the rate center where the calling party physically resides to the point of interconnection closest to the switch used for terminating calls to the NXX rate center where the call terminates."

**Issue 240**

**Should the ICA state that "Reciprocal compensation does not apply to ISP traffic delivered from a DSLAM or other equipment directly to an ISP that bypasses the terminating switch" and "Reciprocal Compensation applies to traffic terminated at either parties' end-office switch. Traffic that is delivered from a DSLAM directly to an ISP is not subject to intercarrier compensation"?**

**AT&T's Position:**

See Issue 237.

**Pacific's Position:**

Internet traffic is now split off of the voice network via splitters and DSLAMs and placed onto packet switching networks. As AT&T's Ms. Swift acknowledged on cross-examination, the configuration of this network is different from the voice network, which involves circuit switching costs incurred by voice switches. The reciprocal compensation requirement is set up for this latter network, providing compensation for end-office switching that does not occur in packet-switched networks. The existing reciprocal compensation rates also derive from the costs of the circuit-switched network. The Commission does not have before it the cost information on packet networks that would enable it to set cost-based interconnection rates for this traffic, as required by the Act.

Until the legal picture clears, the Commission should not worsen the ISP compensation issue by expanding it beyond the circuit-switched network.

**Discussion:**

Pacific's position is adopted. As Pacific states, reciprocal compensation arrangements are based on calls which travel over the circuit-switched network. Once a call is on a packet-switched network, the same rules do not apply. Reciprocal compensation provides compensation for end-office switching, which does not occur in a packet-switched environment. Pacific's proposed Section 3.5 is adopted. However, since Pacific's Section 3.9 (which also deals with this issue) was not adopted, in the interest of clarity, a minor modification will be made to Section 3.5 to incorporate language found in Section 3.9. The second sentence of Section 3.5 will read as follows: "Traffic that is delivered from a DSLAM directly to an ISP *and that bypasses the terminating switch* is not subject to intercarrier compensation." The additional language is in italics.

**Issue 241**

**Should the contract include Pacific's language describing its views on various laws, rules and regulations?**

**AT&T's Position:**

AT&T has already discussed this issue somewhat in connection with Issues 237-240 and 259, above. Contrary to the implication of Pacific's claim, very little of its recitation of legal opinions bears on the obligations of the parties. The language simply clutters up the ICA.

**Pacific's Position:**

Similar language was included in the 1996 agreement. The presence of litigation remains a significant source of uncertainty in the industry, as it was in 1996. Under these circumstances, language referring to pending litigation and potential outcomes is appropriate and should be adopted.

**Discussion:**

The Matrix of Disputed Issues indicates that "multiple" contract provisions are covered by this issue, but the parties do not provide specific contract cites.

The Draft invited the parties to provide information in their comments. Neither party commented so the arbitrator makes no ruling on Issue 241.

**Issue 242**

**Should the contract include extensive terms and conditions for Feature Group A switched access services when the parties make little, if any, use of such services and have had no prior controversies or disputes?**

**AT&T's Position:**

AT&T does not use or need Feature Group A (FGA) service in offering local services in California. Should AT&T have a need for such service at a later date, it is free to purchase FGA service from Pacific's tariff. (Ex. 119 at 10.) Since AT&T has no use for the service, Pacific's proposal can only be aimed at other carriers that may wish to adopt the terms of the ICA.

**Pacific's Position:**

As discussed elsewhere, the parties have significant disputes concerning compensation for AT&T's incoming FEX service. FGA is not just a little-used switched access service. It is provisioned like FEX service with dedicated transport. The fact that there have been no disputes in the past does not mean that none will occur in the future. If AT&T does not plan to provide FGA services, the contract can be worded to prohibit AT&T from connecting FGA services to Pacific's network until compensation arrangements are established. If AT&T plans to offer FGA services, then this section is required and should be included.

**Discussion:**

AT&T should not be required to include contract provisions for a service which it says it will not purchase. However, if AT&T does decide to purchase the service, then it is appropriate that specific compensation provisions be established. Pacific's proposed Section 3.2 shall be modified to incorporate the proposed language in Pacific's brief, which would prohibit AT&T's use of FGA service

until compensation arrangements are established. All other provisions relating to FGA in Section 3.2 shall be deleted.

**Issue 243**

**Should AT&T's tariffed rates for intraLATA access services be limited to the rates contained in Pacific's switched access tariff?**

**AT&T's Position:**

There is no place in this local service ICA for reference to irrelevant topics like exchange access. Moreover, in D.99-09-029 at page 25, the Commission observed: "We have previously determined that Commission regulation of tariff rates charged by CLCs is not necessary in view of the CLCs' lack of market power." What Pacific proposes clearly violates the Commission's policy.

**Pacific's Position:**

Pacific is concerned that CLECs can charge any rate they choose for terminating switched access without any Commission oversight to ensure the changes are reasonable. In the MFS WorldCom arbitration, the parties eventually settled upon Pacific's language.

**Discussion:**

AT&T's proposed § 3.13 is adopted. The Commission has not previously placed any restrictions on the exchange access charges that CLECs may charge, and the arbitrator will not do so in this arbitration.

**Issue 249**

**Should Pacific and AT&T be required to establish direct end-office trunking whenever the forecasted or actual usage between the end-offices requires 24 or more trunks?**

**AT&T's Position:**

This is a corollary to Pacific's insistence on maintaining two-way trunks. See Issue 230, above. Only where the interconnection trunks are two-way do the parties have to agree on the establishment of direct end-office trunking. (Ex. 114

at 8.) Where the trunks are one-way, each party is free to determine when to upgrade trunk groups to direct end-office trunking and no agreement is necessary.

If AT&T's proposal for network interconnection is not adopted, then the ICA should provide that: (1) if AT&T's originating traffic requires less than 24 trunks, Pacific shall, at its own expense, establish such a trunk group; or (2) if AT&T's originating traffic requires 24 or more trunks, then AT&T shall, at its own expense, establish such a trunk group. This outcome is consistent with the equivalent interconnection principle that facilities should be provided by each party in proportion to each party's traffic. (Ex.114 at 9-10.) As an alternative, Pacific's concluding sentence to § 1.4.2 could be omitted, leaving the matter to the parties to negotiate as the issue arises.

**Pacific's Position:**

The most efficient network design is to establish direct end-office trunking once traffic reaches DS-1 levels. AT&T's witness Mr. Talbott agreed with the efficiency advantages of direct trunking, but contended that it should be left to the agreement of the parties as the situation arose.<sup>133</sup> However, it is better to make this aspect of network efficiency contractually binding.

**Discussion:**

In light of the decision in Issue 230 to adopt AT&T's proposal for one-way trunking, this issue is moot. Pacific's proposed language in Section 1.4.2 is rejected.

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<sup>133</sup> 10 Tr. 1015 (Mr. Talbott for AT&T).

**Issue 250**

**Should language regarding signaling format for FGB traffic be included in the ICA?**

**AT&T's Position:**

This language was taken directly from the existing ICA, but Pacific contends that it was included in the current ICA "incorrectly." Pacific has not submitted any testimony to support its position, and there is simply no basis for removing the provision. Pacific has shown no problems that the provision creates nor any changes in circumstances that would justify its excision.

**Pacific's Position:**

Feature Group B (FGB) facilities are access facilities. These facilities play no role in local interconnection. The provision does not address AT&T's interconnection with Pacific, but instead places requirements on the third party IXC (FGB carrier). The language was incorrectly included in the 1996 ICA and has been carried forward here because of that error.

**Discussion:**

AT&T's proposed § 4.10 is adopted. In Issue 242, Pacific argued to include terms and conditions for FG-A. Pacific has not presented any compelling reasons why the FG-B reference should be removed from the ICA.

**Issue 252(a)**

**Should trunk group resizing occur when a trunk group is under 75% capacity on an average basis for three months or for six months?**

**Issue 252(b)**

**Should exceptions be made when a party reasonably expects capacity to be needed due to seasonal demands, events, or new developments?**

**Issue 252(c)**

**Should the procedures proposed by Pacific to initiate resizing be reflected in the ICA?**

**AT&T's Position:**

This issue is yet another corollary of Pacific's insistence on two-way trunk groups. See Issues 230 and 249 above. Were each party providing its own one-way trunk groups, there would be no need for consultation in the sizing of trunk groups. Pacific indicates that its language requiring the down-sizing of a trunk group following three consecutive months below 75% of CCS capacity would only initiate a discussion regarding resizing. (Ex. 203 at 30.)

If the Commission were to adopt Pacific's proposal, it would trigger many unnecessary trunk studies and many unnecessary meetings between the parties' engineers. Using a three-month trigger, as Pacific proposes, AT&T would frequently come to a different conclusion than Pacific, and a time-consuming discussion or dispute may result. (Ex. 114 at 10-11.) The trigger for initiating such discussion should be much more closely aligned with the factors that AT&T will actually use to determine if a trunk reduction is warranted. In this way, the parties would be better able to identify under-utilized trunk groups and avoid many unnecessary meetings. Pacific alleges that maintaining under-utilized trunks is a "general problem with CLECs and a particular problem with AT&T in California." It also claims that over-provisioning is very burdensome and costly to Pacific." (Ex. 203 at 30.) Pacific provides no details to support its claims in either regard.

If the arbitrator adopts Pacific's proposal for two-way trunking, there should be an exception created in the language of § 7.3 for a party to stave off any resizing request if one party reasonably expects current capacity to be needed in the foreseeable future due to seasonal demand, planned events or new development. That is one reason why AT&T believes the three-month trigger is simply too short.

**Pacific's Position:**

Trunk group resizing should occur when a trunk group is under 75% capacity on an average basis for three months. AT&T proposes to use six months of data to determine if there is excess capacity, but that is too long to wait before correcting the problem. Pacific's language uses three months only as a trigger to start discussions between the parties, but does not trigger an order to resize the trunk group unless AT&T refuses to meet.

Exceptions should not be made for seasonal demand, events or new developments. AT&T has not provided evidence that any of the foregoing are responsible for affecting traffic volumes to any significant degree, let alone to such a degree that would cause a trunk group to be under 75% capacity for three months. Efficient use of the network is too important to allow AT&T and any other MFNing CLEC to take advantage of this loophole.

The procedures proposed by Pacific in Attachment 18, §§ 7.3.1, 7.3.2, and 7.3.3 to initiate resizing should be included in the ICA. Pacific notes that, as a logistical matter, some procedure for initiating trunk-group resizing must be included in the ICA.

**Discussion:**

In light of the decision in Issue 230 to adopt AT&T's proposal for one-way trunking, this issue is moot. This provision points to one of the clear advantages

of one-way trunking, namely, the parties will not be in a position to argue over when upgrades are necessary or trunks under-utilized.

**Issue 255**

**Should the ICA require AT&T to home its NPA-NXX codes serving a particular geographical area on the tandem serving that geographical area?**

**AT&T's Position:**

This issue is closely analogous to one of the key issues that the Commission addressed in D.99-09-029. In proposing § 1.1 of Attachment 18, Pacific is attempting to force AT&T's network into the mold of Pacific's. The phenomenon Pacific seems to address with a prohibition is one that the Commission in D.99-09-029 specifically sought to encourage. It is analogous to the "FX-like arrangements" discussed above in Issue 239. Regarding such arrangements, the Commission found:

CLCs should have the discretion to negotiate interconnection agreements consistent with differences in the CLC's network configuration relative to that of the ILEC.... Moreover, a number of interconnection agreements already executed between ILECs and CLCs explicitly provide that the rating and routing points for calls need not match, although they must be in the same LATA as the rate center of the called party's NXX prefix. AT&T provides examples of such agreements in its reply comments. Thus, a prohibition on the use of different rating and routing points would be in conflict with those existing interconnection agreements.<sup>134</sup>

Thus, there is no basis for adopting Pacific's attempt to force AT&T's network into its own network mold.

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<sup>134</sup> D.99-09-029 (*mimeo*) at 15.

**Pacific's Position:**

Unless AT&T homes its codes on the Pacific tandem in the geographical area of that NXX, Pacific will have to transport the call across its network and, in some cases, double tandem the call before it is handed off to AT&T. Pacific's proposal is consistent with the processes associated with the LERG and is at parity with what Pacific does for itself.

**Discussion:**

AT&T's position is adopted, and Pacific's proposed § 1.11 is rejected. The Commission endorsed the use of disparate rating and routing centers in D.99-09-029, as AT&T cites above. Pacific's proposed language violates Ordering Paragraph 2 in that decision which reads as follows: "Carriers shall not be prohibited from designating different rating and routing points for the delivery of telephone calls for purposes of providing customers a local presence within a foreign exchange."<sup>135</sup>

**Issue 256**

**Should the ICA reflect other methods of interconnection with AT&T besides a Space License arrangement?**

**AT&T's Position:**

There is no requirement in the Act that AT&T offer Pacific collocation in its switching centers. Pacific should not complain that it lacks alternatives to the Space License that AT&T offers as an accommodation to Pacific's needs because Pacific has no entitlement even to the Space License that AT&T has offered. Actually AT&T has offered alternatives to the Space License: (1) Pacific can use spare capacity on an access entrance facility already located in an AT&T switching center; (2) it may lease a facility from AT&T, if and where available;

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<sup>135</sup> D.99-09-029, Ordering Paragraph 2, p. 41.

(3) it may lease a facility from a third party, which has excess capacity at an AT&T switching center; (4) it may establish a mid-span fiber meet, with AT&T's agreement; and (5) it may interconnect with AT&T at a commercial building to which both parties have installed broadband facilities. (Ex. 114 at 12.) Pacific's witness admitted on cross-examination that there are alternatives to the space license. (Tr. 425.)

Pacific requests that if none of the five options listed above are available, it be granted a Space License to collocate in an AT&T switching center free of charge. Pacific would never waive its collocation charges, no matter how acute the lack of space for collocation. Waiving the charges would amount to a governmental taking of AT&T's property without due compensation, in violation of the Fifth Amendment to the US Constitution.

**Pacific's Position:**

Pacific should not be limited to a single method of interconnection. While AT&T claims that its proposal permits multiple methods of interconnection, under AT&T's proposed language in Section 1.5.2.2, the only interconnection method mentioned is space license. Pacific's proposed language would grant Pacific the right to use other methods of interconnection.

**Discussion:**

AT&T is correct that it is not required by the Act to allow Pacific to collocate at its switches. Pacific's proposed language in Section 1.5.2.2 is rejected. That language would provide that if AT&T does not offer alternatives to its Space License agreement, the Space License charges would be waived. AT&T claims that this is an illegal taking of its property, and the arbitrator agrees that AT&T cannot be ordered to provide space in its office "for free." However, in an effort to encourage the parties to develop alternatives to the Space License agreement, Pacific's proposed language in Section 1.5.3.5 is adopted. That section

provides that the parties may mutually agree to other methods of interconnection. It is a reasonable outcome that the parties explore all possible methods of interconnection.

**Issue 257**

**Should the ICA qualify the obligation to work cooperatively to establish joint access to transmission overhead signals and commands by stating that such work will be "consistent with security and customer service needs"?**

**AT&T's Position:**

The underlying issue is whether the data communication channel (DCC) should be disabled on a mid-span fiber interconnection. Pacific and AT&T agree that this is a prudent measure. Pacific proposes to implement this agreement with vague language that it could use to deny AT&T access to other signals and commands that are essential to AT&T's management of such interconnection. AT&T proposes that the following language be substituted for Pacific's vague terms: "The parties agree that the data communications channel should be disabled on a Mid-Span Fiber Meet." With this insertion, AT&T agrees to the remainder of § 1.5.2.3.3.

**Pacific's Position:**

Currently, Pacific disables the data communications channel on a mid-span fiber meet with any other carrier. If the DCC is not disabled, the other carrier would have access to Pacific's network, and Pacific would have access to the other carrier's network. Such access would be intrusive and clearly inappropriate for network security and quality of service reasons.

**Discussion:**

AT&T's proposed language described above is adopted and shall be placed in § 1.5.2.3.3. The parties agree that the data communications channel should be disabled on a Mid-Span Fiber Meet, and AT&T's proposed language states that

very clearly, while Pacific's proposed language is more general, which could lead to misunderstandings.

**Issue 258**

**Should the ICA require AT&T to establish direct end-office trunking between itself and a third party carrier when transit traffic through a Pacific tandem from AT&T to a third party carrier who subtends the Pacific tandem requires 24 or more trunks?**

**AT&T's Position:**

This issue is another corollary to Pacific's proposal to maintain two-way trunks. See Issues 230 and 249, above. Only where the interconnection trunks are two-way do the parties have to agree on the establishment of direct end-office trunking. (Ex. 114 at 8.) Where the trunks are one-way, each party is free to determine when to upgrade trunk groups to direct end-office trunking and there is no need to reach agreement on when and under what circumstances such an upgrade will occur.

If the arbitrator does not adopt AT&T's one-way trunking proposal, then the contract should provide that: (1) if AT&T's originating traffic to a third-party carrier requires less than 24 trunks, Pacific may, at its own option and expense, establish such a trunk group; or (2) if AT&T's originating traffic requires 24 or more trunks, then AT&T may, at its own expense, establish such a trunk group. This outcome is consistent with the equivalent interconnection principle that facilities should be provided by each party in proportion to that party's traffic. (Ex. 113 at 9-10.)

**Pacific's Position:**

Just as Pacific and AT&T should establish direct trunks between each other when traffic volumes reach the 24-trunk objective, so should direct end-office trunks be established for local and intraLATA toll transit traffic between AT&T and a third party CLEC that subtends the Pacific tandem.

**Discussion:**

This issue is moot in light of the decision in Issue 230 to require one-way trunking. Each party will be responsible for sizing its own trunks appropriately. Pacific's proposed § 2.3 shall be deleted.

**Issue 259**

**Should the arbitrator order that reciprocal compensation does not apply to: 1) Exchange access traffic; 2) information service traffic; and 3) traffic originated by one party on a number ported to its network that terminates to another number ported on that same Party's network?**

**AT&T's Position:**

See Issue 237.

**Pacific's Position:**

Pacific proposes to include language that would make the contract clear concerning situations where reciprocal compensation does not apply, such as calls between two AT&T customers but, because of number porting, the terminating number might wrongly appear to belong to a Pacific customer. Based on its position on the Matrix, AT&T appears to agree with Pacific on the first and third types of traffic. With regard to information service traffic, Pacific believes that reciprocal compensation should not apply to such traffic.

**Discussion:**

Pacific's proposed language in Section 3.4 is adopted with modification. Section (ii) which relates to ISP traffic, shall be deleted, since traffic to ISPs is subject to reciprocal compensation provisions. Pacific's (iv) provides that no compensation will be paid for any traffic which the FCC or CPUC finds should be exempt from reciprocal compensation provisions. That language is appropriate and will be retained. The final sentence which says that exchange access and intraLATA toll traffic shall be governed by Pacific's tariff shall be deleted. That

statement is not appropriate for a section dealing with reciprocal compensation for local traffic.

**Issue 260**

**Is this language in Section 3.19.5 redundant to Sections 2.2 and 2.4 and therefore unnecessary?**

**AT&T's Position:**

This issue relates to completion of third-party traffic when either party is the transiting carrier. Pacific maintains that this clause is redundant to §§ 2.4 and 2.5 of Attachment 18. What Pacific ignores is that those sections relate only to Pacific's obligation to complete third party traffic. Section 3.19.5 ensures that the completion obligation extends to both parties. It also stipulates that the fact that the third-party carrier may be an affiliate of either Pacific or AT&T is irrelevant. This would block Pacific from refusing to handle the traffic of an AT&T affiliate on the basis that it does not have a contract with the affiliate.

**Pacific's Position:**

Section 3.19.5 is redundant to Section 2.4 and fails to address traffic from either party to a third party, Section 2.2. The net effect of these overlapping sections is to confuse the intent of the ICA. The language is, in part redundant and, in part, inconsistent with the agreed-upon language of Section 2.2 and 2.4. Section 3.19.5 attempts to modify 2.4 through the back door, by adding a right for affiliates to take advantage of Pacific's obligations under Section 2.4. This is not part of the agreement established by Sections 2.2 and 2.4. This could lead to gaming. A CLEC with an IXC affiliate will use this language to attempt to send switched access traffic over this interconnection arrangement.

**Discussion:**

Pacific's position is adopted. The overlap of AT&T's proposed section 3.19.5 with agreed-upon sections 2.2 and 2.4 is potentially confusing. AT&T

insists that it needs Section 3.19.5 so that AT&T, as well as Pacific, can function as the transiting carrier. However, the agreed-upon language in § 2.2 allows AT&T to handle transit traffic from other carriers. That section provides: "PACIFIC shall terminate traffic from third-party LECs, CLCs, or CMRS providers delivered to Pacific's network through an AT&T tandem."

**Issue 261**

**Should the arbitrator adopt Pacific's proposed language that specifies how Toll Free Service traffic is delivered, billing records exchanged and Toll Free Service calls charged be adopted, or should the language be modified?**

**AT&T's Position:**

Pacific's proposed language in the introductory paragraph would require the party terminating the call to pay compensation, but the entity terminating the call would be an IXC, not Pacific or AT&T acting as a local carrier under the ICA.

Section 3.20.1 addresses trunking issues, which are handled elsewhere in Attachment 18, and should not be included in Section 3, whose subject is compensation for call termination. Section 3.20.3 addresses end user billing, which is not the subject matter of the ICA. The language should be rejected.

**Pacific's Position:**

Pacific's proposed language describes the data exchange required to allow billing for 800 calls in the ordinary course. AT&T says that Section 3.20.3 addresses end-user billing, which AT&T contends is not the subject matter of the ICA. However, to the extent that the parties need certain information from each other in order to bill their respective end users, it is, in fact, an appropriate subject matter of the ICA. Without Pacific's proposed language in Section 3.20.2, billing for these calls will be disrupted.

**Discussion:**

Pacific's position is adopted. As Pacific says, Section 3.20.2 simply requires that the parties exchange information necessary for billing their respective end users.

**Issue 263**

**Should the arbitrator adopt language allowing for various types of usage factors when actual charge information is not determinable (AT&T's proposal), or language limiting usage factors to a local usage factor only (Pacific's proposal)?**

**AT&T's Position:**

Pacific seeks to limit the methodology used to determine the charges applicable to local traffic carried over its switched access trunks solely by reference to its PLU factor. AT&T believes that, where charges cannot be based on actual measurement data, the parties should be free to develop new approaches over the course of the contract, that will more accurately reflect the mix of local and switched access traffic on these trunks. Using AT&T's more general language in Section 3.23 will permit the parties to adapt to those changes more readily without the need for contract renegotiation and amendment. The additional paragraph AT&T suggests is necessary to guide the parties in developing and modifying any new factor approach they may develop. Without such detailed terms, there would likely be disputes about when and how such factors are to be developed and applied.

**Pacific's Position:**

AT&T's language vaguely refers to a factoring process without defining how the factor is calculated. Pacific has changed the language to refer to the PLU factor, which is the term generally used in the industry, and to specify how the factor is calculated.

**Discussion:**

Pacific's position is adopted. Pacific's proposed section 3.23 clearly describes how the PLU factor is calculated, while AT&T's proposal does not. AT&T's proposed additional language dealing with development of new factors is vague and could prove difficult to implement. Something as important as development of a new factor should be the subject of additional negotiation between the parties.

**Issue 264**

**Should the ICA reflect Pacific's proposed language regarding how meet point trunk arrangements will be established, including a restriction that meet point trunk groups may be used only for routing of traffic between AT&T's end users and IXCs via Pacific access tandem?**

**AT&T's Position:**

This issue relates to Issue 235, above, concerning Section 4.6 of Attachment 18. In that section, the parties agree to explore the technical feasibility of AT&T's providing exchange access services to third parties through the use of both an AT&T and a Pacific tandem. Such provision by AT&T would involve the use of Meet Point trunk groups, the subject of this Issue 264.

Pacific's proposed addition to Section 4.1 is written entirely from the perspective that it is only Pacific that will be providing access tandem services to third-party carriers. In view of Pacific's agreement to explore the technical feasibility of AT&T offering access tandem services to third-party carriers, Pacific should not be permitted to include terms in the ICA that would pre-empt the outcome of the technical feasibility study.

**Pacific's Position:**

Pacific believes it is important to clarify that the meet-point trunk group is for jointly provided switched access between an AT&T end user and an IXC.

Also, because of signaling differences, FGD versus FGC, this traffic must be placed on a separate DS1 from the local and intraLATA toll traffic. In some instances, IXCs with which meet-point trunks groups will interconnect will have only MF signaling.

**Discussion:**

AT&T's proposed language in § 4.1 is adopted. This is consistent with the outcome in Issue 235, where the parties agree to explore the feasibility of AT&T providing exchange access to third parties.

**Issue 266**

**Should the arbitrator adopt Pacific's proposed contract terms regarding Calling Party Number?**

**AT&T's Position:**

This issue relates to Pacific's proposal relating to the provision of Calling Party Number (CPN) information in connection with the exchange of traffic between the parties. AT&T accepts Pacific's proposed §§ 5.2 and 5.3, but rejects § 5.4 which specifies that, whenever the percentage of calls AT&T passes to Pacific without CPN exceeds 10%, Pacific will bill all calls passed without CPN at intraLATA switched access rates. Neither Pacific's testimony nor its *Response* gives a reason for this punitive measure. AT&T plans to offer access tandem and other services to third-party carriers and cannot control whether the traffic they pass to AT&T arrives with CPN information.

**Pacific's Position:**

Pacific's proposed language was adopted in the MFS WorldCom arbitration. There the arbitrator stated:

Pacific's position is adopted. Pacific's rationale for its proposed treatment is that it should not be charged for something for which it has no control (i.e., traffic sent to Pacific with no CPN that is sent to MFSW). Pacific has no way to monitor CPN on a continuous basis for all traffic such that it could implement a billing process to

designate all non-CPN calls as billed access. A portion of the calls without CPN are local calls and local reciprocal compensation should apply. Pacific's estimation of calls without CPN is approximately 4% on average, some of which are normally local calls. Pacific proposes billing the first 10% of calls without CPN at the same percentage as the traffic with CPN. If the percentage should exceed 10%, Pacific argues that access arbitrage could be taking place, and access rates should then apply.

Even if CPN is passed with greater than 90% of the calls, Pacific's proposal would necessarily result in inaccurate billing. Neither party definitively proved that the ratio of local versus access is different for calls with and without CPN. Since at least some calls without CPN are local, applying access charges to all calls without CPN necessarily results in MFSW getting an overpayment. Thus, it is a fair outcome to bill calls without CPN in the same ratio as calls with CPN, as proposed by Pacific.<sup>136</sup>

For the same reasons relied on by the arbitrator in the MFS WorldCom arbitration, Pacific's proposal should be adopted here.

**Discussion:**

In its Comments, AT&T asserts the arbitrator must reject Pacific's proposed language. According to A&T, the basis for adopting Pacific's position is a two-paragraph passage from the FAR in Pacific's arbitration with MFS WorldCom. That passage relies on evidence that was submitted in MFS WorldCom but not in this arbitration.

AT&T states the Draft itself concludes that the MFSWorldCom FAR has no binding effect on this arbitration. Consequently, that decision should have persuasive effect in this case only where Pacific can prove it presented evidence in this case that is identical or similar to evidence received in the other case, and that

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<sup>136</sup> MFS WorldCom FAR, pp. 61-62.

the dispositive principles should be the same. According to AT&T, Pacific provided no evidence supporting its proposal, nor does the Draft point to any.

It violates § 1701.2(a) of the Public Utilities Code to draw a conclusion based on evidence in another case, which was not subject to cross-examination or any other form of challenge or testing in this case, says AT&T.

AT&T's argument does not have merit. The outcomes in the MFS WorldCom arbitration are clearly not binding on this arbitration. However, that does not mean that Pacific cannot present as its position in *this* arbitration, the outcome from MFS WorldCom. The two paragraphs which appear in the Draft represent Pacific's position in this case. The Draft based its findings on the *content* of the two paragraphs Pacific presented, not the fact that the paragraphs were citations from the MFS WorldCom FAR.

AT&T alleges it was given no opportunity for cross-examination or "any other form of challenge" of Pacific's position. That is not correct. The CPN issue was not addressed in parties' pre-filed testimony and, therefore, not subject to cross-examination. However, many of the issues in this proceeding were not covered in hearings, but were briefed by the parties. AT&T had an opportunity to comment on Pacific's proposal in its Post-Hearing Brief, and AT&T did provide comments on portions of the content of Pacific's CPN proposal. However, in its Brief, AT&T did not challenge the basis of Pacific's position or question the data Pacific relied on in developing its recommendation. Instead, AT&T focused on what it saw as the punitive aspects of Pacific's proposal. AT&T clearly had an opportunity to be heard.

Pacific's proposed §5.4 is adopted. Pacific estimates that four percent of calls are passed without CPN. However, Pacific proposes billing the first 10% of calls without CPN at the same percentage as the traffic with CPN, which offers a cushion in case the four-percent estimate is incorrect. If the percentage exceeds

10%, Pacific rightfully argues that access arbitrage could be taking place, and access charges will apply. This is a reasonable outcome and will avoid any potential for arbitrage.

**Issue 267**

**Should the ICA reflect AT&T's or Pacific's proposed contract terms regarding the provision of blocking data to AT&T?**

**AT&T's Position:**

AT&T is concerned that it will not be able to discern the root cause of blockage that Pacific reports to it unless it can learn, as § 5.10.8.3 of AT&T's version of § 5.10 would require, "the point(s) behind the tandem in Pacific's network where the blocking is occurring..." The blocking data is useless to AT&T without this information. Also, Pacific's proposed edit of § 5.10.8.2 regarding one-way trunks is incoherent and should be excluded. If the arbitrator does not accept AT&T's proposed compromise, then AT&T's version of Section 5.10 should be adopted in its entirety, discarding Pacific's edits. There is no point in requiring reporting of blocking if the report is not usable in correcting the problems uncovered.

**Pacific's Position:**

Pacific is willing to provide AT&T with Pacific trunk blocking data that is standardized and readily available to Pacific. AT&T has requested data by NXX, not trunk group. This is non-standard data that would require special systems development. Further, with two-way trunking, there are already mechanized processes in place to exchange much of the data that AT&T is requesting.

**Discussion:**

In its Comments, Pacific clarifies that certain words were omitted from its proposed § 5.10.8.2. Pacific also asserts that it can study blocking only on a trunk basis, and not on an NXX basis, as AT&T proposes in its version of § 5.10.8.2.

In its Brief, Pacific states that the NXX data that AT&T requests could be compiled, but would require special systems development. Since blockage data by NXX code are not routinely available, Pacific's proposed section 5.10.8 will be adopted. However, if AT&T is willing to pay for the systems development work necessary to develop data by NXX, AT&T should be able to obtain that information. A new section 5.10.8.4 will be added as follows: "At AT&T's option, PACIFIC will provide blockage data by NXX trunk group. AT&T and PACIFIC shall negotiate the terms for this special systems development work."

**Issue 268**

**Should the ICA reflect Pacific's proposed language specifying how high volume trunk groups are to be established?**

**AT&T's Position:**

Pacific should not be allowed to insert lengthy, complex and onerous provisions to which AT&T objects. Pacific uses this issue to impose lengthy and complex new provisions which it justifies as being "in the interest of fairness..." (Ex. 203 at 30.) There is no reference to the routing of calls, the design of trunk groups, exemption from quality standards, group sizing requirements, code assignments, homing specifications, or minimum lead times in Pacific's testimony on this issue.

**Pacific's Position:**

The Height Volume Call In (HVCI) trunk group is very important to the health of Pacific's network and to AT&T customer service provided over the local interconnection trunk group. To ensure fairness to all CLEC customers connected to Pacific's network that are trying to connect to a Pacific HVCI customer, it is important that the recommended trunk group size be followed.

**Discussion:**

In its Comments, AT&T asserts that, contrary to the Draft's finding, AT&T did provide its own version of the language concerning the establishment of HVCI trunks. In fact, AT&T supports the agreed-upon language in §9.4 which requires the parties to cooperate in establishing separate HVCI trunks for calls to high-volume customers.

AT&T alleges there is no need for more specific language. Short-duration high-volume trunk groups are highly individual, and each one is individually crafted to meet the particular customer's needs. Pacific's attempt to craft "one-size-fits-all" rules unduly constrains AT&T from offering services tailored to the needs of particular high-volume-trunk-group customers.

According to AT&T, Pacific's only testimony on the subject is quite general in nature, but the contract language establishes detailed numerical and technical requirements. Pacific did not provide the technical basis for these detailed requirements.

AT&T's position is adopted. Pacific's proposed §§ 9.4.1 – 9.4.4 shall be deleted. Section 9.4 (which both AT&T and Pacific agreed to) requires the parties to cooperate in the establishment of high-volume trunk groups. HVCI customers can have a substantial impact on a carrier's network, and both carriers have an incentive to see that they do not have a negative impact on network operations. As AT&T states, the detailed rules Pacific proposes could constrain the service offerings AT&T is able to offer its customers. With only the more general language included in the ICA, parties will be able to examine specific HVCI requests and craft specific rules for each situation.

**Issue 269**

**Should the ICA require AT&T to adhere to a reasonableness standard in offering space licenses to Pacific, or should space licenses be at AT&T's discretion?**

**AT&T's Position:**

This issue relates to Issue 256, and the two issues should be decided together. As AT&T established in Issue 256, Pacific has no entitlement under the Act to any collocation in AT&T switching centers. Since AT&T is not required to offer such collocation to Pacific, it cannot be argued that AT&T cannot exercise its discretion in determining where and when to make a Space License available. Pacific's position that AT&T's offering of a Space License should be subject to a "reasonableness" standard is merely a way to invite new disputes.

Other provisions relating to Pacific's placement of cable, the repair of cable, and the disposition of cable upon termination of the Space License are reasonable under the circumstances.

**Pacific's Position:**

A reasonableness standard is appropriate. The AT&T offering is available only at "AT&T's sole discretion" and includes so much one-sided language that the offering effectively is null. AT&T's position on interconnection sets up the possibility that the Space License agreement may be the only option available to Pacific under many circumstances. AT&T's Mr. Talbott cited several alternatives in his pre-filed testimony, but on cross-examination, however, he acknowledged that these alternatives were limited or unsuitable.<sup>137</sup> For example, one of the

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<sup>137</sup> 10 Tr. 1068-1072 (Mr. Talbott for AT&T)

alternatives proffered by Mr. Talbott was for Pacific to share space in the AT&T central office with Covad.<sup>138</sup>

**Discussion:**

In its Comments, AT&T asserts the Draft contradicts itself by resolving Issue 269 in a manner inconsistent with the resolution of Issue 256. The opening clause in the ICA's "Space License" section makes it clear that AT&T's provision of such space to Pacific is at AT&T's sole discretion. The arbitrator then eliminated that same language in the resolution of Issue 269.

According to AT&T, Pacific's proposed language which makes provision of a Space License mandatory should be deleted. Otherwise, Pacific will use the language to claim it has an absolute right to such license, by pointing to the mandatory "shall" language the Drafts adopts in § 12.1. Pacific's proposed 12.3 would lend support to Pacific's claim that it is absolutely entitled to any Space License it chooses.

The draft also adopts Pacific's disputed language in § 12.7. AT&T asserts it makes no sense to find in one section of the ICA that AT&T need not provide any Space License to Pacific, and in another section to limit AT&T's ability to specify physical or space separation requirements in connection with any such License.

AT&T's position is adopted, and AT&T's proposed language in §§ 12.1, 12.3, 12.4, and 12.7 is adopted. As AT&T points out, having a different outcome on Issue 269, leads to contradictory contract provisions in the ICA. AT&T has "sole discretion" over whether to grant Space Licenses to Pacific. This outcome is consistent with the outcome on Issue 256. (See Discussion under Issue 256.)

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<sup>138</sup> 10 Tr. 1070 (Mr. Talbott for AT&T).

**Issue 274**

**Should the arbitrator adopt additional language changes proposed by Pacific?**

**AT&T's Position:**

Pacific has presented no justification for any of the changes in either testimony or its *Response* beyond the allegation that it changed, added, or deleted items to clarify that AT&T should pay for services it receives.

**Pacific's Position:**

Pacific has adjusted AT&T's language in numerous places in this attachment where that language reflected AT&T's erroneous underlying assumption that Pacific is obligated to supply local exchange service to CLECs for little or no compensation. Certain other language changes were intended to clarify the wording.

**Discussion:**

Since Pacific says it has provided clarifying language or to specify that compensation is due for a particular service Pacific provides to AT&T, each section will be evaluated on that basis.

- a. Section 1.3.1: Pacific's proposed language clarifies that the ICA deals with network-to-network interconnection, and not just connecting AT&T's network to Pacific's UNEs. That language shall be adopted.
- b. Section 1.3.3.5: Pacific's language clarifies that the section deals with "unbundled network elements," as opposed to "network elements" and should be adopted.
- c. Section 1.9 is adopted. Pacific's proposed language cross-references the rates for transit signaling in Attachment 8.
- d. Section 1.15.4: AT&T's language is adopted.
- e. Section 3.19.7: Pacific's language is adopted. Pacific merely references a specific Section in Attachment 13.
- f. Section 3.21: AT&T's proposed language is rejected. AT&T did not provide a reason for its proposed language change.

- g. Section 6.1: Pacific provides a more exact reference to the specific section in the Preface which deals with performance measures. Pacific's proposed language will be adopted.
- h. Section 9.2: AT&T's proposed language is adopted. It provides greater specificity as to the specific unit within Pacific which will send TGSRs.
- i. Section 12.9: In its Comments, AT&T asserts the Draft should not have adopted Pacific's proposed language which allows Pacific to access AT&T central offices outside of ordinary business hours. AT&T states it is outrageous that Pacific demands mandatory language without any compensation to AT&T for accommodating such non-standard access. AT&T proposes that if the language allowing Pacific off-hours access is retained, Pacific should be required to compensate AT&T for the expense of accommodating any such request. AT&T suggests the following be added: "PACIFIC shall compensate AT&T for all additional expenses AT&T incurs in granting such 'out of normal hours' access." AT&T's proposed Section 12.9 is adopted, with the sentence AT&T proposes. In the case of service outages or equipment damage, Pacific should be able to access its equipment after hours. However, AT&T should be compensated for the costs it incurs in granting the access.
- j. Section 12.17: AT&T's position is adopted. AT&T, as property owner, has the right to inspect the space in its switch which Pacific uses. Pacific's proposed addition of the modifier "reasonably" is not appropriate.
- k. Section 12.19: In its Comments, Pacific asserts that AT&T's proposed language reserves to itself the unilateral right to block Pacific from selling the *transmission cable it purchased and installed at its own expense in connection with a Space License in an AT&T facility*. Pacific's language places a "reasonableness" standard into the provision. Pacific's clause is based on standard real estate lease language requiring the tenant to obtain the consent of the landlord before doing something affecting the landlord's property, but also requiring the landlord not to unreasonably withhold that consent.

AT&T also addresses Section 12.19 in its Comments. According to AT&T, it is unreasonable to require AT&T to consent to the sale, conveyance or lease of Pacific's transmission cable situated in AT&T's central offices. Space license are not transferable so no other entity has the right to operate equipment or transmission cables in AT&T's central office under that license.

AT&T's proposed language for § 12.19 is adopted. AT&T has determined that the Space Licenses are not transferable, which is appropriate. AT&T should be able to determine which entities are allowed into its central offices.

- l. Section 12.23.4: AT&T's position is adopted. The issue is similar to that of virtual collocation in Pacific's central offices. AT&T has the right to insist that it will repair Pacific's transmission cable which is installed in AT&T's central office.
- m. Section 12.26.2: In its Comments, AT&T points out an inconsistency in the Draft. In the discussion of § 12.23.4, the Draft determines that Pacific has no right to repair transmission cable, because this would create the risk of harm to other transmission cable in AT&T's central office. For the same reasons, the ICA should not grant Pacific the right to remove the cable.

In its Comments, Pacific states that the Draft did not make a determination on Section 9.1 of Attachment 18. Section 9.1 was not addressed because it is not included under any issue in the Matrix of Disputed Issues, and neither party briefed the specific issues relating to Section 9.1. However, since the language is in dispute, the arbitrator will make a determination. AT&T's proposed language for § 9.1 is adopted. Both carriers should have the right to determine the order form the other carrier will use to place trunk orders. Pacific's language would have required that both carriers use the Access Service Request.

#### **M. Attachment 19: Ancillary Equipment**

##### **Issue 275**

##### **Should Pacific's Ancillary Equipment Attachment be adopted?**

##### **AT&T's Position:**

As discussed in Issue 54, ancillary equipment can be part of UNE or not, depending upon its function. The price of each UNE and each combination should include the price of all ancillary equipment necessary for the UNE or combination to function. If AT&T were requesting ancillary equipment beyond that necessary for the UNE or Combination to function, an extra charge would apply, but AT&T does not intend to acquire ancillary equipment under those circumstances from Pacific. The arbitrator should adopt AT&T's contract language on ancillary equipment (Attachment 6, § 2.9, 2.10) and reject Pacific's Attachment 19 as unnecessary and inappropriate.

**Pacific's Position:**

Facilities that are identified as UNEs under the Act, and subject to the TELRIC pricing rules, should be contained in an attachment separate from offerings Pacific makes voluntarily or under other sections of the Act. This keeps it clear which facilities are subject to TELRIC pricing rules and which are not. It will reduce confusion in the industry when CLECs MFN into this ICA.

**Discussion:**

In its Comments, AT&T asserts that Attachment 19 should be deleted from the ICA. AT&T made no request for Attachment 19 and has no intention of purchasing Ancillary Equipment under the terms in Attachment 19. Surely, says AT&T, it is entitled to a negotiated agreement under the Act that includes a right to request certain Pacific services and a parallel right to decline unneeded Pacific services. If another CLEC opts in to the AT&T agreement, that CLEC should negotiate an Attachment 19 with Pacific. AT&T's position is adopted, and Attachment 19 shall be deleted from the ICA. This is consistent with the outcome on Issue 120.

**O R D E R**

**IT IS ORDERED** that, within 14 days of today, the parties shall file and serve:

1. An entire Interconnection Agreement, for Commission approval, that conforms with the decisions of this Final Arbitrator's Report.
2. A statement which (a) identifies the criteria in the Act and the Commission's Rules (e.g., rule 4.3.1, Rule 2.18, and 4.2.3 of Resolution ALJ 178) by which the negotiated and arbitrated portions of the Agreement must be tested; (b) states whether the negotiated and arbitrated portions pass or fail those tests; and (c) states whether or not the Agreement should be approved or rejected by the Commission.

Dated June 13, 2000, at San Francisco, California.

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Karen A. Jones, Arbitrator  
Administrative Law Judge

**CERTIFICATE OF SERVICE**

I certify that I have by mail this day served a true copy of the original attached Final Arbitrator's Report on all parties of record in this proceeding or their attorneys of record.

Dated June 13, 2000, at San Francisco, California.

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Ann White

**NOTICE**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074 or TDD# (415) 703-2032 five working days in advance of the event.

Operator Services (when not provided as a UNE):

Fully Automated Call Processing	
Call Completion LATA Wide - Per MOU	\$0.00436
Rate per completed automated call	\$0.09381
Operator - Assisted Call Processing	
Call Completion LATA Wide - Per MOU	\$0.00436
Operator Assisted Call Processing (Per work second)	\$0.02967
Call Branding	
Establish/Change Branding Announcement (Per TOPS - Switch)	\$447.96 NRC
Operator Services rate/reference information	
Rate per initial load	TBD
Rate per subsequent rate change	TBD
Rate per subsequent reference change	TBD
OA/DA Trunks	
Trunk installation per trunk - initial	\$500.00 NRC
Trunk installation per trunk - additional	184.00 NRC
BLV/I Trunks	
Trunk installation per trunk - initial	\$500.00 NRC
Trunk installation per trunk - additional	184.00 NRC

Directory Assistance (when not provided as a UNE):

Directory Assistance	
Rate per call	IEC DA Rate in Pacific Bell Schedule Cal.P.U.C D-5, Section 5
Express Call Completion	
Rate per call	\$0.14516
Call Completion LATA Wide - Per MOU	\$0.00436
Directory Assistance (nationwide listing service)	
Rate per call	\$0.82

Call Branding  
Establish/Change Branding Announcement  
(Per TOPS - Switch) \$447.96 NRC

DA rate/reference information  
Rate per initial load TBD  
Rate per subsequent rate change TBD  
Rate per subsequent reference change TBD

attachment 9

ACCESS TO OPERATIONS SUPPORT  
SYSTEMS AND RELATED FUNCTIONS

ATTACHMENT 9  
ACCESS TO OPERATIONS SUPPORT SYSTEMS AND RELATED FUNCTIONS

1. General Conditions

1.1 This Attachment sets forth the terms and conditions under which PACIFIC will provide access to PACIFIC's operations support systems (OSS) interfaces and access to the related functions of pre-ordering, ordering, order statusing, maintenance, billing, provision of customer usage data, and account maintenance. PACIFIC's OSS systems for these functions (hereinafter "the Interfaces") are:

OSS Interface
EDI/CORBA Pre-Ordering
DataGate
Verigate
EDI Ordering
LEX
CESAR
PBSM
Electronic Bonding Interface (EBI)
POS
Order Status
E911 MS Gateway
Billing Interface to CABS
Billing (EDI 811)
Daily Usage File
CARE
Trouble Administration

- 1.2 For Resale and UNE services not supported via an electronic interface for the preorder, ordering and provisioning processes, PACIFIC and AT&T will use manual processes. Should PACIFIC develop electronic interfaces for these functions for itself, PACIFIC will offer electronic access to AT&T.
- 1.3 When PACIFIC introduces electronic interfaces, in accordance with the change management process referenced in Section 1.11 below, those interfaces will be deemed automatically added to this Attachment, upon request of AT&T and subject to adoption of appropriate amendments to cover Commission approved charges, if any, and any unique terms and conditions as described below. Prior to introducing a new interface, PACIFIC shall notify AT&T if PACIFIC believes there are essential terms

and conditions unique to the new interface that are not included in this Attachment. PACIFIC shall use its good faith reasonable efforts to notify AT&T and propose such additional terms and conditions in sufficient time that the Parties, negotiating in good faith, may reach agreement on the amendment and have it become effective no later than the date the new interface is made available for use by CLECs.

At a minimum, PACIFIC shall use its good faith reasonable efforts to propose the essential terms and conditions to AT&T at least three (3) months prior to the scheduled release date for the new interface.

If, for any reason, the Parties are unable to reach agreement on the amendment in time for the amendment to become effective (under Commission rules) on or before the date that the new interface is scheduled to be available for use by CLECs, then, at AT&T's option, AT&T may agree to PACIFIC's proposed amendment on an interim basis with a retroactive true-up to the effective date of such interim amendment based upon the final amendment that subsequently becomes effective between the Parties.

When PACIFIC retires Interfaces in accordance with the change management process referenced in Section 1.11 below, those Interfaces will be deemed automatically deleted from this Attachment.

- 1.4 In addition to the electronic Interfaces, PACIFIC shall provide manual processes available to other CLECs for preordering, ordering, provisioning, and billing functions via PACIFIC's Local Service Center, and for repair and maintenance functions through PACIFIC's Local Operations Center. AT&T shall use its best efforts to utilize these electronic Interfaces. However, should AT&T use manual processes, AT&T shall pay PACIFIC the additional charges associated with these manual processes, as set forth in Attachment 8.
- 1.5 AT&T agrees to utilize the Interfaces described herein only for the purposes of establishing and maintaining Resale Services, UNEs, including combinations to the extent provided under this Agreement, number portability and interconnection services from PACIFIC. The Alternative Dispute Resolution (ADR) process set forth in Attachment 3 shall apply to any disputes which arise under this Attachment 9, including any alleged non-compliance with PACIFIC's security guidelines.
- 1.6 AT&T's access to pre-order functions described in 2.1.2 will only be used to view Customer Proprietary Network Information (CPNI) of another carrier's end-user where AT&T has obtained an authorization for release of CPNI from the end user and has obtained an authorization to become the end

user's local service provider. CPNI includes customer name, billing and residence address, billing telephone number(s), current participation in Voluntary Federal Customer Financial Assistance Program, Telephone Relay, and other similar services, and identification of PACIFIC features and services subscribed to by customer. The following additional terms shall apply to CLEC's access:

- 1.6.1 For business customers, prior to accessing such information, AT&T shall provide PACIFIC with a written or electronic statement indicating that it has obtained the customer's approval (verbal or written) to receive such information. Where accessing such information via an electronic interface, AT&T shall have obtained an authorization to become the end user's local service provider. AT&T shall receive and retain such information in conformance with the requirements of 47 USC 222 (and implementing FCC decisions thereunder).
- 1.6.2 For residence customers, prior to accessing such information, AT&T shall, on its own behalf and on behalf of PACIFIC, comply with all applicable requirements of Section 2891 of the California Public Utilities Code and 47 USC 222 (and implementing FCC decisions thereunder), and, where accessing such information via an electronic interface, AT&T shall have obtained an authorization to become the end user's local service provider. Accessing such information by AT&T shall constitute certification that AT&T is in compliance with applicable requirements of Section 2891 and Section 222 (and implementing FCC decisions thereunder) and has complied with the prior sentence. AT&T shall receive and retain such information in conformance with the requirements of 47 USC 222 (and implementing FCC decisions thereunder). AT&T agrees to indemnify, defend and hold harmless PACIFIC against any claim made by a residence customer or governmental entity against PACIFIC or AT&T under Section 2891 or Section 222 (and implementing FCC decisions thereunder) or for any breach by AT&T of this section.
- 1.7 PACIFIC will provide AT&T with access to the Interfaces during the hours described in the summary description of each Interface, except for scheduled maintenance. All hours shown are in Pacific time. PACIFIC shall provide AT&T a minimum of 15 days advance notice of any scheduled maintenance.
- 1.8 PACIFIC shall provide support for the Interfaces described in this Attachment. AT&T will provide a single point of contact for issues related to the Interfaces. Each Party shall also provide to the other Party telephone numbers for resolution of problems in connection with pre-ordering,

ordering, provisioning and maintenance of the services. PACIFIC shall list the business days and hours for each call center in PACIFIC's CLEC Handbook and notice any changes via Accessible Letter. Minimum hours of operation for each center (all hours shown are in Pacific time) shall be:

IS Call Center: 7 days per week, 24 hours per day

LSC, including OSS Help Desk: Monday through Friday, excluding Holidays, 8:00 AM to 5:00 PM

LOC – Maintenance: 7 days per week, 24 hours per day

LOC – Provisioning: Monday through Friday, excluding Holidays, 8:00 AM to 5:00 PM

AT&T shall ensure adequate coverage in its service centers during these minimum hours.

- 1.9 Intentionally Omitted.
- 1.10 PACIFIC and AT&T will establish contingency and disaster recovery plans for the Interfaces and related functions.
- 1.11 The Parties will follow the documented guidelines of change management ("Change Management Process") developed in the OSS OII proceedings and set forth in the document entitled "Pacific Bell – Competitive Local Exchange Carrier (CLEC) Interface Change Management Process (04/28/99 Version)", as the same may be modified from time to time in accordance with the change management principles. That document (or any successor), as it may be modified from time to time, is incorporated into this Agreement by reference as is fully set forth herein. (Reference to be changed to SBC 8-State Change Management Process Document when effective.)
- 1.12 The service performance measures and financial remedies applicable to the Interfaces and related functions are set forth, or referenced, in Section 14 of the Preface (General Terms and Conditions) of this Agreement.
- 1.13 PACIFIC will recognize AT&T as the customer of record of all services ordered by AT&T and will send all notices, invoices and pertinent information directly to AT&T. Except as otherwise specifically provided in this Agreement, AT&T shall be the single point of contact for all AT&T End Users whose service is based in whole or in part on services offered under this Agreement.
- 1.14 Each Party shall refer all questions regarding the other Party's service or product directly to the other Party at a telephone number specified by the other Party. Each Party shall ensure that all their representatives who receive

inquiries regarding the other Party's services: (i) provide such numbers to callers who inquire about the other Party's services or products; and (ii) do not in any way disparage or discriminate against the other Party, or its products or services.

- 1.15 Each Party will abide by applicable state or federal laws and regulations in obtaining End User authorization prior to changing End User's local service provider to itself and in assuming responsibility for any applicable charges as specified in Section 258(b) of the Telecommunications Act of 1996. If an End User initiates a challenge to a change in its local exchange service provider, or if otherwise required by law or a regulatory authority, the Parties shall cooperate in providing each other information about the End User's authorization for the change.
- 1.16 When PACIFIC believes an AT&T End User has abandoned the premises, PACIFIC shall notify AT&T. AT&T shall investigate and respond to PACIFIC within 24 hours. If AT&T does not respond within 24 hours, PACIFIC is free to reclaim the facilities from AT&T for use by another customer and is free to issue service orders required to reclaim such facilities.

## 2. Pre-Ordering

2.1 PACIFIC will provide real time access to pre-order functions to support AT&T's orders placed through the electronic Interfaces or substitute manual processes described herein. The Parties acknowledge that ordering requirements necessitate the use of current, real time pre-order information to accurately build service orders. PACIFIC will make the following pre-order functions available to AT&T:

2.1.1 Features and services available at a valid service address;

2.1.2 Access to certain information from customer service records (CSRs) for PACIFIC retail or resold services. The information will include billing name, service address, billing address, service and feature subscription, directory listing information, long distance carrier identity, and pending service order activity. AT&T agrees to comply with the conditions as described in Section 1.6 of this Attachment;

2.1.3 Telephone number assignment and confirmation;

2.1.4 Service availability dates to the end user;

2.1.5 Information regarding whether dispatch is required;

- 2.1.6 Primary Interexchange Carrier (PIC) options for intraLATA toll and interLATA toll;
- 2.1.7 Service address verification; and
- 2.1.8 Facility availability, loop qualification and loop make-up information, including loop length, presence of bridged taps, repeaters, and loading coils, etc. This Section 2.1.8 shall apply only to AT&T orders for unbundled loops or loop combinations.

## 2.2 Electronic Access to Pre-Order Functions

- 2.2.1 DataGate is a transaction-based data query system used for application to application access to pre-order information and uses Transmission Control Protocol/Internet Protocol (TCP/IP). This allows AT&T to develop its own user interface for pre-order inquiries when AT&T has authorization to become the end user's local service provider. Minimum hours of operation are:

Monday through Friday, excluding Holidays: 6:00 AM to 11:00 PM  
Saturday: 10:00 AM to 11:00 PM  
Sunday and Holidays: 10:00 AM to 6:00 PM

- 2.2.2 Electronic Data Interchange (EDI) is a transaction-based data query system based on the Ordering & Billing Forum (OBF) Pre-Ordering Inquiry Process (POINQP) Transaction Guide. Two formats are available: EDI and Common Object Request Broker Architecture (CORBA). This allows AT&T to develop its own user interface for pre-order inquiries when AT&T has authorization to become the end user's local service provider. Minimum hours of operation are:

Monday through Saturday, excluding Holidays: 5:00 AM to 5:00 PM  
Sunday and Holidays: 8:00 AM to 4:00 PM

- 2.2.3 Verigate is an end-user interface developed by PACIFIC that provides access to the pre-ordering functions using Graphical-User Interface (GUI) technology. Verigate is accessible via Toolbar. Minimum hours of operation are:

Monday through Friday, excluding Holidays: 7:00 AM to 11:00 PM  
Saturday: 7:00 AM to 7:00 PM

### 3. Ordering/Provisioning

- 3.1 PACIFIC will provide access to ordering and statusing functions to support provisioning of services ordered via the Interfaces or substitute manual processes. To order services, AT&T will format the service request to identify what features, services, or elements it wishes PACIFIC to provision in accordance with PACIFIC LSOR and other ordering requirements which have been reviewed and adopted pursuant to Section 1.11 of this Attachment.
- 3.2 PACIFIC shall provide all provisioning services to AT&T during the same business hours PACIFIC provisions similar services for its end user customers, but at a minimum Monday-Friday, 8:00 a.m. to 5:00 p.m. PACIFIC will provision non-coordinated standalone number portability-only cutovers on Saturdays, 8:00 a.m. to 5:00 p.m. and on Sundays from 8:00 a.m. to 5:00 p.m., except during hours on Sundays when the Regional Service Management System (RSMS) is unavailable due to update or maintenance activity. Provisioning of non-coordinated standalone number portability cutovers on Sundays is subject to AT&T obtaining industry agreement that all carriers will conduct their Local Service Management Systems (LSMS) update or maintenance activity on Sundays during the same maintenance window as the RSMS. Recurring charges for Sunday provisioning of non-coordinated standalone number portability cutovers are set forth in Attachment 8. AT&T agrees to reimburse PACIFIC for reasonable costs incurred in developing the capability for Sunday provisioning of non-coordinated standalone LNP cutovers, as provided in the applicable Bona Fide Request process. Such charges shall be paid, and reimbursed when applicable, as provided in the Bona Fide Request process. If AT&T requests that PACIFIC perform provisioning services or complete service requests at times or on days other than as required in the preceding sentences, PACIFIC shall provide such services at the rates, if any, set forth in Attachment 8.
- 3.3 When an End User changes from one Party to the other Party and does not retain its original telephone number, the Party formerly providing service to the End User will provide a referral announcement on the abandoned telephone number. These arrangements will be provided for the same period of time and under the same terms and conditions as such Party provides such arrangements to its existing End Users. Custom messages, extensions in duration, or other special requests are subject to each Party's applicable tariffs.

- 3.4 When AT&T places an electronic order PACIFIC will provide AT&T with an electronic confirmation notice. The confirmation notice will follow industry-standard formats and contain the PACIFIC commitment date for order completion ("Committed Due Date"). Upon completion of the order, PACIFIC will provide AT&T with an electronic completion notice which follows industry-standard formats and which states when that order was completed.
- 3.5 When AT&T places an electronic order, PACIFIC shall provide electronic notification of any instances when (1) PACIFIC's committed due dates are in jeopardy of not being met by PACIFIC or (2) an order contains rejections/errors in any of the data element(s) fields. PACIFIC shall give such notice as soon as it identifies the jeopardy or reject.
- 3.6 At AT&T's request, PACIFIC will perform acceptance testing with AT&T (including trouble shooting to isolate any problems) to test xDSL, DS1 and DS3 services purchased by AT&T in order to identify any performance problems at turn-up of the service. Acceptance testing is provided at the rates set forth in Attachment 8. Testing of other services shall be as described in Attachment 6 and/or 15.
- 3.7 Where PACIFIC provides installation on behalf of AT&T, PACIFIC shall advise AT&T's End User to notify AT&T immediately if the AT&T End User requests a service change at the time of installation.
- 3.8 PACIFIC will provide AT&T access to the following electronic interfaces for ordering and provisioning:
- 3.8.1 Electronic Data Interchange (EDI) is an application to application interface for transmission of service requests via the Local Service Request (LSR) implemented by PACIFIC based on the Ordering and Billing Forum (OBF) and EDI mapping as defined by TCIF. This allows AT&T to develop its own user interface for placing service requests for Resale and UNE. Minimum hours of operation are:
- Monday through Friday, excluding Holidays: 7:00 AM to 11:00 PM  
Saturday: 7:00 AM to 5:00 PM
- 3.8.2 Carrier Enhanced System for Access Requests (CESAR) provides access to ordering functions using the Access Service Request (ASR) for Unbundled Loop, Unbundled Dedicated Transport and Interconnection Trunks. The Interconnection Service Request (ISR), which may be utilized for ordering Unbundled Loop, will only be available until October 2000. Minimum hours of operation are:

Monday through Friday, excluding Holidays: 7:00 AM to 11:00 PM  
Saturday: 7:00 AM to 5:00 PM

- 3.8.3 LSR Exchange (LEX) is a Graphical User Interface (GUI) that provides access to the service request functions via the Local Service Request (LSR) implemented by PACIFIC based on the Ordering and Billing Forum (OBF). LEX is accessible via Toolbar. Minimum hours of operation are:

Monday through Friday, excluding Holidays: 7:00 AM to 11:00 PM  
Saturday: 7:00 AM to 7:00 PM

- 3.8.4 Provisioning Order Status (POS) provides current service provisioning information for End User basic services (Resale and UNE). POS is accessible via Toolbar. Minimum hours of operation are:

Monday through Friday, excluding Holidays: 7:00 AM to 11:00 PM  
Saturday: 7:00 AM to 7:00 PM

- 3.8.5 Order Status (OS) provides a read-only view of pending (non-completed) service order records for End User basic services (Resale, UNE and LNP). OS is accessible via Toolbar. Minimum hours of operation are:

Monday through Friday, excluding Holidays: 7:00 AM to 11:00 PM  
Saturday: 7:00 AM to 7:00 PM

- 3.8.6 E911 Gateway allows AT&T to provide updates to the E911 system for AT&T's facilities based services and, at AT&T's option, applicable Unbundled Network Elements. For purposes of making updates, the E911 Gateway is available 24 hours a day, seven days a week. The E911 Gateway also includes a TN Query function, which is available Monday through Friday, 7:00 a.m. to 6:00 p.m.

### 3.9 Additional Terms for Provisioning

- 3.9.1 PACIFIC agrees that AT&T may use PACIFIC's Frame Due Time (FDT) process or Coordinated Hot Cut (CHC) process for migration requests on the following types of services: (a) unbundled Loops (b) Loops with LNP, and (c) standalone LNP. AT&T may also use similar processes offered by PACIFIC for other types of services.
- 3.9.2 AT&T shall order unbundled Loops from PACIFIC by delivering to PACIFIC a valid Local Service Request (LSR), and Pacific shall provide AT&T with a Firm Order Confirmation (FOC) and other response notifications as provided for in this Attachment 9.

- 3.9.3 When submitting the LSR AT&T will specify a desired date and time (the "Frame Due Time") for the coordinated hot cut. If PACIFIC cannot comply with the request, in its FOC, PACIFIC will designate a due date that PACIFIC commits to meet.
- 3.9.4 AT&T shall send Pacific confirmation of the desired cut time at least 48 hours in advance. Pacific shall send AT&T confirmation of the cut time, or shall contact AT&T to arrange a mutually agreeable alternative cut time.
- 3.9.5 AT&T shall establish its dial tone on service extended to the AT&T side of the Expanded Interconnection Cross Connect no later than 48 hours before the desired cut time.
- 3.9.6 PACIFIC shall test for dial tone and ANI supplied by the AT&T switch to the designated pair assignment by testing through the tie cable provisioned between PACIFIC's main distribution frame and the AT&T expanded interconnection cross connect. Such pre-testing shall be completed by PACIFIC no later than 24 hours prior to the cut. If PACIFIC finds problems during pre-testing, PACIFIC shall immediately notify AT&T of this finding and work cooperatively with AT&T to rectify the problem.
- 3.9.7 AT&T shall call PACIFIC to initiate the cut within 30 minutes prior to the agreed-to cut time. If AT&T does not call within this time, the cut will be delayed until a future time and/or date agreed-to by both Parties. AT&T will submit a supplemental LSR in a timely manner, if the due date must be changed.
- 3.9.8 Except as otherwise agreed by the Parties, the time interval for the hot cut shall be monitored and shall conform to the performance standards and consequences for failure to meet the specified standards as reflected in Section 14 of the Preface (General Terms and Conditions) of this Agreement.

#### 4. Maintenance

- 4.1 PACIFIC shall provide maintenance and repair functions (including testing and surveillance for applicable services) for Resale Services, UNE, including combinations to the extent provided under this Agreement, and number portability purchased by AT&T, and shall provide an electronic interface to permit AT&T to place trouble reports and receive maintenance status updates. Each Party shall make maintenance progress reports and status of repair efforts available to the other Party.
- 4.2 In the event PACIFIC misses a scheduled repair appointment on behalf of AT&T,

PACIFIC will notify AT&T via the *electronic Interface* used to place the trouble report, in parity with notice provided to its own retail End Users.

- 4.3 PACIFIC shall provide repair services to AT&T for AT&T End Users that are equal in quality to that which it provides to its own retail End Users. Trouble calls from AT&T shall receive response time priority that is at least equal in quality to that of PACIFIC retail End Users and shall be handled on a "first come first served" basis regardless of whether the End User is an AT&T End User or a PACIFIC End User.
- 4.4 For Resale Services and UNEs provided to AT&T under this Agreement, PACIFIC shall provide AT&T with the same scheduled and non-scheduled maintenance, including, without limitation, required and recommended maintenance intervals and procedures that PACIFIC currently provides for the maintenance of its own network. PACIFIC shall provide AT&T at least ten (10) business days advance notice of any scheduled maintenance activity which may impact AT&T End Users. Scheduled maintenance shall include, without limitation, such activities as switch software retrofits, power tests, major equipment replacements and cable rolls.
- 4.5 For Resale Services and UNEs provided to AT&T under this Agreement, PACIFIC shall advise AT&T of non-scheduled maintenance, testing, monitoring, and surveillance activity to be performed by PACIFIC on any service, including, without limitation, any hardware, equipment, software, or system providing service functionality which may potentially impact AT&T End Users. PACIFIC shall provide the maximum advance notice of such non-scheduled maintenance and testing activity possible, under the circumstances; provided, however, that PACIFIC shall provide emergency maintenance as promptly as possible to maintain or restore service and shall advise AT&T promptly of any such actions it takes.
- 4.6 PACIFIC shall provide AT&T with a detailed description of any and all emergency restoration plans and disaster recovery plans, however denominated, which are in place during the term of this Agreement. Such plans shall include, at a minimum, the following: (i) procedures for prompt notification to AT&T of the existence, location, and source of any emergency network outage potentially affecting an AT&T End User; (ii) establishment of a single point of contact responsible for initiating and coordinating the restoration of all services; (iii) methods and procedures to provide AT&T with real-time access to information relating to the status of restoration efforts and problem resolution during the restoration process; (iv) methods and procedures for reprovisioning of all services after initial restoration; (v) equal priority, as between AT&T End Users and PACIFIC End Users, for restoration efforts, consistent with FCC service restoration guidelines, including, without limitation, deployment of repair personnel,

and access to spare parts and components; and (vi) a mutually agreeable process for escalation of maintenance problems, including a complete, up-to-date list of responsible contacts, each available twenty-four (24) hours per day, seven (7) days per week. Said plans shall be modified and updated as needed.

- 4.7 Each Party shall establish mutually acceptable methods and procedures for referring callers to the Toll Free number supplied by the other Party for purposes of receiving misdirected calls from customers requesting repair.
- 4.8 Maintenance charges for premises visits by PACIFIC technicians shall be billed by PACIFIC to AT&T and not by PACIFIC to AT&T's End User. All forms, business cards or other materials furnished by PACIFIC technicians to AT&T End Users will contain no brand. If the AT&T End User is not at home when the PACIFIC technician arrives, the PACIFIC technician shall leave on the premises "not-at-home" cards that are unbranded but include the contact number for AT&T provided pursuant to section 4.7 of this Attachment. The PACIFIC technician will not leave on the premises a PACIFIC-branded "not-at-home" card.
- 4.9 PACIFIC will provide AT&T access to the following electronic interfaces to place and check the status of trouble reports for Resale, UNE and LNP.
  - 4.9.1 PACIFIC Bell Service Manager (PBSM) allows AT&T to perform Mechanized Loop Testing (MLT), issue trouble tickets, view status, and view trouble history on-line. Access to PBSM is available 24 hours a day, seven days a week.
  - 4.9.2 Electronic Bonding Interface (EBI) is an interface that is available for trouble report submission and status updates. It conforms to guidelines established by ANSI and Electronic Communications Implementation Committee. Access to the EBI is available 24 hours a day, seven days a week.
  - 4.9.3 Trouble Administration, when available, allows AT&T to perform Mechanized Loop Testing (MLT), issue trouble tickets, view status, and view trouble history on-line. Trouble Administration is accessible via Toolbar.

## 5. Billing and Customer Usage

- 5.1 PACIFIC shall bill AT&T for the services it provides to AT&T and shall send associated billing information to AT&T as necessary to allow AT&T to perform its own billing functions. At minimum PACIFIC will provide AT&T billing information in a paper format or via electronic media, as mutually agreed.

- 1.2 PACIFIC shall make electronic access to billing information for Resale Services available as follows:
  - 1.2.1 AT&T may receive a mechanized bill format using the EDI 811 transaction set.
  - 1.2.2 PACIFIC shall provide AT&T a Usage Extract Feed (Daily Usage File) electronically, on a daily basis, with information on the usage billed to its accounts for Resale Services, in the industry-standard Exchange Message Record (EMR) format.
  - 1.2.3 AT&T may elect to receive Custom Billing Disk/ CD Bill. Custom Billing Disk/ CD Bill is an electronic bill with the same information as a paper bill, along with various reporting options.
- 1.3 PACIFIC shall make electronic access to billing information for UNE available as follows:
  - 1.3.1 PACIFIC makes available to AT&T an electronic format bill in Billing Data Tape (BDT) format in accordance with a current CABS Billing Output Specifications (BOS) National Standards release, containing the same information that would appear on a paper bill.
  - 1.3.2 PACIFIC shall provide to AT&T a Usage Extract Feed (Daily Usage File) electronically, on a daily basis, with information on the usage billed to its accounts for UNE in the industry-standard Exchange Message Record (EMR) format.
- 1.4 Other provisions for the delivery of wholesale bills and customer usage data are covered in Attachments 13 and 14 of this Agreement.

## 6. Local Account Maintenance

- 1.1 *As of the Effective Date of this Agreement PACIFIC did not offer local service provider freezes for its End Users. At such time as PACIFIC offers a local service provider freeze to its End Users, PACIFIC shall make freezes available for AT&T's End Users (for which AT&T purchases resale services or UNEs from PACIFIC) on a basis that is at least equal in kind and quality.*
- 1.2 Change in Service Provider
  - 1.2.1 If an End User notifies PACIFIC or AT&T that the End User requests local

exchange service from such Party, the Party receiving such request shall be free to immediately provide service to such End User and to use any CPNI of such End User in its possession to provide such service. The currently serving Party shall release customer-specific facilities in accordance with the End User's direction or that of the End User's authorized agent.

1.2.2 When an AT&T End User (for which AT&T purchases resale services or UNEs from PACIFIC) changes or withdraws authorization to provide service, AT&T shall provide, upon request by PACIFIC, necessary pre-order information to facilitate the prompt release of End User-specific facilities in accordance with the End User's direction or that of the End User's authorized agent (if AT&T has no local service freeze in place for that account). Such pre-order information, provided via AT&T Customer Service Record or some other mutually agreed-upon method, shall include the PACIFIC telephone number (or, if none, the End User's circuit ID), PACIFIC billing account number and any services or features, including listings. The Party or other CLEC authorized to commence service for such End User shall be free to re-use the facilities and issue service orders or Local Service Requests ("LSRs") as required to commence such service and discontinue prior service.

1.2.3 When an AT&T End User (for which AT&T does not purchase resale services or UNEs from PACIFIC) changes or withdraws authorization to provide service, AT&T shall provide, upon request by PACIFIC, necessary pre-order information to facilitate the prompt change for the End User in accordance with the End User's direction or, if AT&T has no local service freeze on the account, that of the End User's authorized agent. Such pre-order information, provided via an AT&T Customer Service Record or some other mutually agreed-upon method, shall include the telephone number(s), AT&T billing account number, and any services or features, including listings.

1.3 A PIC capable service is defined as a service that can be pre-subscribed to intra- or inter-exchange carrier. When an AT&T End User for which PACIFIC is the switch provider has changed to another local service provider, and the End User's service has PIC capability, PACIFIC will notify AT&T using the industry-standard CARE process through CONNECT:Direct. PACIFIC shall notify AT&T of such changes six days a week (Monday through Saturday), via an end-of-day batch feed, within 24 hours of the migration order being completed. PACIFIC will provide this information through a Local Disconnect Report, at the rate set forth in Attachment 8.

1.4 PACIFIC and AT&T recognize that PACIFIC has not implemented an indus