

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

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

**PACIFIC BELL TELEPHONE COMPANY'S (U 1001 C) SECOND SUPPLEMENTAL  
BRIEF IN SUPPORT OF D.98-12-069 COMPLIANCE FILING AND IN SUPPORT  
OF MOTION FOR AN ORDER THAT PACIFIC BELL TELEPHONE COMPANY HAS  
MET THE REQUIREMENTS OF SECTION 271 OF THE TELECOMMUNICATIONS  
ACT AND SECTION 709.2 OF THE PUBLIC UTILITIES CODE**

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**PACIFIC BELL TELEPHONE COMPANY'S (U 1001 C) SECOND SUPPLEMENTAL BRIEF IN SUPPORT OF D.98-12-069 COMPLIANCE FILING AND IN SUPPORT OF MOTION FOR AN ORDER THAT PACIFIC BELL TELEPHONE COMPANY HAS MET THE REQUIREMENTS OF SECTION 271 OF THE TELECOMMUNICATIONS ACT AND SECTION 709.2 OF THE PUBLIC UTILITIES CODE\***

On November 5, 1999, the Federal Communications Commission ("FCC") issued its UNE Remand Order,<sup>1</sup> which identified the network elements that incumbent local exchange carriers must unbundle pursuant to section 251(c)(3) of the Federal Telecommunications Act ("Act"), 47 U.S.C. § 251(c)(3). Previous filings in this docket establish Pacific Bell Telephone

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\* This filing will be available on August 28, 2000, at <http://www.sbc.com/PublicAffairs/PublicPolicy/Other/Home.html>

<sup>1</sup> See Third Report and Order and Fourth Further Notice of Proposed Rulemaking, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, 15 FCC Rcd 3696 (1999) ("UNE Remand Order").

Company's ("Pacific's") compliance with most of the UNE Remand Order's requirements.<sup>2</sup> Certain UNE Remand Order requirements, however, did not take effect until May 17, 2000, subsequent to Pacific's earlier filings. Accordingly, on August 9, 2000, Assigned Commissioner Neeper instructed Pacific to update the record with respect to the UNE Remand Order's May 17 requirements. With this filing, Pacific verifies that it offers competitive local exchange carriers ("CLECs") in California access to unbundled network elements on rates, terms, and conditions that fully comply with the UNE Remand Order's May 17 requirements.

## DISCUSSION

### **PACIFIC IS IN FULL COMPLIANCE WITH ALL ASPECTS OF THE UNE REMAND ORDER.**

The list of unbundled network elements set out in the UNE Remand Order largely parallels the FCC's initial Rule 51.319, promulgated in 1996.<sup>3</sup> See Supplemental Br. at 12-13; Hopfinger

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<sup>2</sup> See generally Supplemental Br. in Support of Pacific Bell Tel. Co.'s (U 1001 C) Compliance Filing (Cal. Pub. Utils. Comm'n Mar. 6, 2000) ("Supplemental Br."); Reply Br. in Support of Pacific Bell Tel. Co.'s (U 1001 C) Supplemental Compliance Filing (Cal. Pub. Utils. Comm'n Apr. 25, 2000) ("Supplemental Reply Br.").

<sup>3</sup> See First Report and Order, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 FCC Rcd 15499, modified on recon., 11 FCC Rcd 13042 (1996), vacated in part, Iowa Utils. Bd. v. FCC, 120 F.3d 753 (8th Cir. 1997), aff'd in part, rev'd in part sub nom. AT&T Corp. v. Iowa

Supp. Aff. ¶¶ 21, 23, 27.<sup>4</sup> Because Pacific continued to provide unbundled access to the elements on the FCC's initial Rule 51.319 list even while that rule was not in effect, see Supplemental Reply Br. at 55-56, Pacific did not have to take further action to be in compliance with most of the UNE Remand Order. See Hopfinger Supp. Aff. ¶¶ 27-33.

The UNE Remand Order did, however, establish four new network elements that are subject to unbundling: dark fiber loops, dark fiber transport, subloops, and packet switching (in certain limited circumstances). See id. ¶ 26. These requirements took effect on May 17, 2000, as did the unbundling requirements for Calling Name and 911/E911 Databases, and loop qualification. UNE Remand Order ¶ 527. As discussed below, Pacific is in full compliance with the UNE Remand Order's May 17 requirements.

**A. Pacific Provides Nondiscriminatory Access to Dark Fiber Loops and Transport.**

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Utils. Bd., 525 U.S. 366 (1999), decision on remand, Iowa Utils. Bd. v. FCC, No. 96-3321, 2000 U.S. App. LEXIS 17234 (8th Cir. July 18, 2000).

<sup>4</sup> The designation "Supp. Aff." refers to affidavits submitted with Pacific's March 6, 2000, Supplemental Compliance Filing. "Second Supp. Aff." refers to affidavits submitted with this filing, and "Aff." refers to affidavits submitted with Pacific's July 15, 1999, Compliance Filing.

Although incumbent LECs have been required to unbundle most local loops since 1996, the UNE Remand Order added dark fiber loops to the types of loop facilities that must be unbundled under the Act. See UNE Remand Order ¶¶ 196-199. In addition, the FCC now requires incumbent LECs to provide unbundled access to dark fiber transport - i.e., deployed fiber optic cable "that connects two points within the incumbent LEC's network" and that "does not have electronics on either end . . . to energize it to transmit a telecommunications service." UNE Remand Order ¶ 325; see id. ¶ 332.

CLECs in California can order dark fiber loops and transport on an unbundled basis, subject to the terms and conditions provided in Pacific's Generic Interconnection Agreement. See Hopfinger Second Supp. Aff. ¶¶ 15, 22 & Attach. 2. These terms and conditions include TELRIC-based rates posted on Pacific's CLEC website. See id. ¶¶ 18, 25. Though the Commission has not yet approved these rates, Pacific will negotiate true-up provisions with any interested CLEC. See id.; Memorandum Opinion and Order, Application by SBC Communications Inc., et al., Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas, CC Docket No. 00-65, FCC 00-238, ¶ 90 (rel. June 30, 2000) ("FCC Texas Order") (approving interim rates

subject to true-up). Pacific additionally "has a concrete and specific legal obligation" to furnish dark fiber loops and transport pursuant to its CPUC-approved interconnection agreement with AT&T. FCC Texas Order ¶ 52; see Hopfinger Second Supp. Aff. ¶¶ 16, 23 & Attach. 3.

Although Pacific has had its dark fiber offerings in place for several months, Pacific has not received any orders for dark fiber loops or transport, nor has any CLEC provided forecasts suggesting it will place orders. See Hopfinger Second Supp. Aff. ¶¶ 20, 27. Accordingly, foreseeable volume for both network elements appears to be minimal. In the event CLECs do order dark fiber, however, Pacific has methods and procedures ("M&Ps") in place to ensure that it can successfully provision those orders. See id. ¶¶ 21, 28. These M&Ps are based on the procedures Pacific has used to provision thousands of similar elements. Thus, for example, the steps to provision an order for dark fiber transport are similar to those necessary to provision interoffice transport. See id. ¶ 28. Likewise, Pacific's dark fiber loop M&Ps are based on its experience provisioning collocation space, cross-connects, and dedicated transport. See id. ¶ 21. With proven procedures in place, Pacific is "ready to furnish" dark fiber loops and transport "in



the quantities that competitors may reasonably demand and at an acceptable level of quality.”<sup>5</sup>

**B. Pacific Provides Nondiscriminatory Access to Subloops.**

Where an incumbent LEC employs a network architecture involving a digital loop carrier (“DLC”), it uses the distribution portion of the local loop to connect the end-user to a remote terminal, and the feeder portion of the loop to connect the remote terminal to the central office. In such circumstances, the FCC requires unbundled access to subloops – i.e., the “portions of the loop that can be accessed at terminals in the incumbent’s outside plant.” UNE Remand Order ¶ 206.<sup>6</sup>

CLECs in California can now order unbundled access to Pacific’s subloops, including loop distribution on routes served by a digital loop carrier, and dark fiber and DSL-conditioned 4-wire copper cable in the feeder segment of the loop. Hopfinger

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<sup>5</sup> Memorandum Opinion and Order, Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Michigan, 12 FCC Rcd 20543, ¶ 110 (1997).

<sup>6</sup> The FCC also requires unbundled access to inside wiring owned and controlled by the incumbent LEC. See UNE Remand Order ¶ 210. Pacific does not own or control inside wire, see Hopfinger Second Supp. Aff. ¶ 12 n.13, so this requirement is inapplicable. Pacific provides unbundled access to the network interface device, allowing CLECs a full range of access to end-users’ inside wire. Id.; see also Deere Aff. ¶¶ 60-64.

Second Supp. Aff. ¶ 30. These offerings satisfy the FCC's new subloop unbundling requirements. See UNE Remand Order ¶¶ 206-229.

Well in advance of the May 17 effective date, Pacific posted generic contract language for access to subloops on its CLEC website. See Hopfinger Second Supp. Aff. ¶ 29. Moreover, Pacific's CPUC-approved interconnection agreement with AT&T legally obligates Pacific to provide unbundled access to each subloop element. See id. ¶¶ 30-31. As with dark fiber, Pacific offers CLECs access to subloop elements at TELRIC-based rates, and it will negotiate a true-up with any interested carrier. See id. ¶ 30.

As with dark fiber, Pacific has received no orders or forecasts of demand for unbundled subloops, and reasonably foreseeable demand appears to be virtually nonexistent. See id. ¶ 31. Nevertheless, Pacific has in place all methods and procedures necessary to provision subloops upon request by CLECs. With respect to initial orders for subloop unbundling at a particular remote terminal location, the procedures Pacific has adopted resemble those that Pacific has used successfully to provision hundreds of initial orders for physical collocation in California. Id. ¶ 32. Thereafter, orders for additional subloops at the same access point can be filled using procedures

that resemble the methods Pacific routinely uses to provide cross-connects. Id.

**C. The UNE Remand Order's Packet-Switching Obligations Do Not Apply to Pacific.**

In the UNE Remand Order, the FCC "decline[d] to unbundle packet switching" except in one limited situation related to the provision of advanced services. UNE Remand Order ¶ 313. To provide advanced services to an end-user served over a DLC, the incumbent LEC may install a digital subscriber line access multiplexer ("DSLAM") in the remote terminal. If it does so, and if the requesting carrier is unable to collocate its own DSLAM in the remote terminal and there are no spare copper loops available as an alternative for the provision of advanced services, the incumbent must provide unbundled access to the packet-switching element. See id.

That limited exception does not apply to Pacific. Pursuant to conditions imposed by the FCC on the SBC/Ameritech merger,<sup>7</sup> Pacific has transferred control of all equipment and facilities used specifically for the provision of advanced services to its advanced services affiliate. See Hopfinger Second Supp. Aff. ¶ 40. This transfer included any advanced services packet

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<sup>7</sup> See Memorandum Opinion and Order, Applications of Ameritech Corp., Transferor, and SBC Communications Inc., Transferee, for Consent to Transfer Control, 14 FCC Rcd 14712 (1999).

switching facilities that might otherwise have met the requirements of the FCC's order.

Pacific does own and control low-speed packet switches that are used in the provision of non-advanced services. Id. ¶ 41. The FCC's limited unbundling requirement, however, does not apply to those switches; it extends only to packet switches used in the provision of advanced services. As the FCC explained, the packet-switching unbundling rule is designed to ensure that CLECs are not "precluded altogether from offering xDSL service" due to incumbent LECs' use of fiber facilities. UNE Remand Order ¶ 313. Moreover, the unbundling requirement itself is contingent on the absence of spare copper loops that can be used to provide advanced services, confirming that the unbundling obligation was intended to apply only in the advanced services context. Id.; see also, id. ¶ 317 (FCC's "overriding objective" in examining packet switching unbundling "is to ensure that advanced services are deployed on a timely basis to all Americans").

Moreover, even if Pacific's low-speed packet switches were subject to the FCC's limited unbundling rules, unbundling still would not be required. As noted above, unbundling of packet switching is required only where CLECs cannot collocate their own packet-switching equipment. Each packet switch in the

Pacific network is located in an open central office with available space for collocation. See Hopfinger Second Supp. Aff. ¶ 41. The UNE Remand Order's packet-switching requirement therefore has no application to Pacific's network.

**D. Pacific Provides Nondiscriminatory Access to Calling Name and 911/E911 Databases, and to Loop Qualification.**

Pacific has been providing unbundled access to its call-related databases and to loop qualification since well before the FCC's May 17, 2000, implementation date, and Pacific's longstanding offerings satisfy the FCC's requirements. Moreover, Pacific's proven record in meeting existing commercial demand for each of these elements establishes Pacific's capacity to meet reasonably foreseeable demand in the future. See id. ¶¶ 34, 35, 36.

Calling Name Database. Pacific has been providing nondiscriminatory access to its signaling systems and call-related databases on standardized terms since 1997. See id. ¶ 33. These offerings satisfy the UNE Remand Order's requirement that Pacific provide access to Calling Name Database functionality. See UNE Remand Order ¶ 406. Pacific provides CLECs with access to Calling Name Database functionality through its Line Information Data Base ("LIDB"), which allows CLECs to offer services such as Caller ID with name. Hopfinger Second

Supp. Aff. ¶ 33. Pacific's obligation to provide access to the LIDB is set out in its Generic Interconnection Agreement, as well as in Pacific's CPUC-approved interconnection agreement with AT&T, see id., and has been addressed previously in this record.<sup>8</sup>

911/E911 Databases. Pacific has offered nondiscriminatory access to its 911/E911 Databases under a general offering since 1997. See Hopfinger Second Supp. Aff. ¶ 35. As Pacific's previous filings establish, it has fully implemented the UNE Remand Order's requirements in this respect. See Compliance Br. at 67-69; Reply Br. at 80-81; Supplemental Br. at 5; Supplemental Reply Br. at 17-19; Hopfinger Second Supp. Aff. ¶ 35.

Loop qualification. As with the call-related databases, Pacific's previous filings establish that Pacific provides nondiscriminatory access to loop qualification. See Compliance Br. at 55-56; Reply Br. at 15; Supplemental Br. at 19-20; Supplemental Reply Br. at 75-80; see also Hopfinger Second Supp.

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<sup>8</sup> See Pacific Bell Tel. Co.'s (U 1001 C) Br. in Support of D.98-12-069 Compliance Filing and in Support of Motion for an Order that Pacific Bell Has Met the Requirements of § 271 of the Telecommunications Act and § 709.2 of the Pub. Utils. Code, at 75-76 (Cal. Pub. Utils. Comm'n filed July 16, 1999) ("Compliance Br."); Reply Br. in Support of Pacific Bell Tel. Co.'s (U 1001 C) Compliance Filing, at 85 (Cal. Pub. Utils. Comm'n filed Sept. 7, 1999) ("Reply Br.").

Aff. ¶¶ 36-38. In the Supplemental Reply, Pacific noted, in response to a comment from Covad, that it would by May 29, 2000, complete interface and ordering format changes necessary to provide electronic loop qualification information related to line sharing. See Supplemental Reply Br. at 77 (citing Accessible Letter CLECSS00-37). Pacific made these changes on time. See Hopfinger Second Supp. Reply Aff. ¶ 37.

**E. Pending CPUC Approval of Certain Measurements, Pacific's Performance Measurement Plan Tracks Each of the UNE Remand Order's May 17 Requirements.**

Pacific has implemented performance measures to track loop qualification and the timeliness and accuracy of E911 updates. Available data show that Pacific responds to CLECs' mechanical loop qualification queries in a manner of seconds, and that Pacific's performance on manual loop qualification queries is at parity to the service Pacific provides its own data services affiliate. See Johnson Second Supp. Aff. ¶¶ 8, 9. Likewise, Pacific's performance on E911 updates for CLECs has met or exceeded parity in each of the last two months. See id. ¶ 13.

Pacific and CLECs have jointly proposed revisions to the Joint Partial Settlement Agreement on Performance Measures ("JPSA") to reflect the UNE Remand Order's remaining May 17 requirements. See id. ¶ 6. Pending this Commission's approval, Pacific will track dark fiber and subloops as distinct service

group types. See id. ¶ 10. Thus, specifically for those elements, Pacific will collect and report data on such measures as average FOC interval, percentage flow-through, average jeopardy notice interval, average completed interval, due dates missed, percent troubles in 30 days for new orders, and average time to restore. Id. Moreover, Pacific's dark fiber and subloop performance will be captured in various aggregate measures, including, among others, average response time on pre-order queries, average reject notice interval, provisioning trouble reports, average completion notice interval, and billing timeliness and accuracy. Id. ¶ 11. The jointly proposed revisions to the JPSA also include two new sub-measures - average database update interval and percent database accuracy - to specifically track the timeliness and accuracy of updates to LIDB. Id. ¶ 14.

Pacific collects and posts data for all of its performance measures on its CLEC website. Id. ¶ 15. Accordingly, pending this Commission's approval of the proposed JPSA revisions, Pacific will implement the new measures and begin collecting and reporting results. See id.



## CONCLUSION

Pacific offers CLECs in California access to each of the UNE Remand Order's May 17, 2000 requirements, on rates terms and conditions that fully comply with the FCC's orders.

Respectfully submitted,

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