Loyola of Los Angeles Law Review

Volume 28
Number 4 *The Federal Rules of Evidence in Retrospect: Observations from the 1995 AALS Evidence Section and A Critique of Rawls's Political Liberalism Theory: Observations from the 1995 AALS Jurisprudence Section*

Article 9

6-1-1995

Opening the Intralata Market in California: Tolls Drop but Casualties Rise

Peter Siembab

Recommended Citation
Peter Siembab, *Opening the Intralata Market in California: Tolls Drop but Casualties Rise*, 28 Loy. L.A. L. Rev. 1453 (1995).
Available at: https://digitalcommons.lmu.edu/llr/vol28/iss4/9

OPENING THE INTRALATA MARKET IN CALIFORNIA: TOLLS DROP BUT CASUALTIES RISE

I. INTRODUCTION

Since late 1994 Pacific Bell and GTE have told Californians not to change a thing.[1] Conversely, AT&T,[2] MCI, and Sprint—and less familiar phone companies such as LDDS and Express Tel—have urged Californians to break away.[3] Meanwhile, twenty-one million telephone users in California[4] are left wondering just what it is they should or should not change.

Unbeknownst to most telephone users, January 1, 1995, marked the next big step in deregulating California's telecommunications market.[5] A decade ago Californians gained the ability to select a telephone company to carry their long distance phone calls; today they face a similar choice when it comes to making local long distance calls.[6] In addition to local phone companies, over ninety long distance companies will be competing for toll service subscribers.[7] As a result, toll rates will drop an average of thirty-nine percent, becoming among the lowest rates in the nation.[8] After years of exclusive carriage of toll calls, local exchange carriers (LECs) such as Pacific Bell and GTE are faced with competition—competition that strikes at an essential source of their income.[9]

This Comment explores the California Public Utilities Commission's (CPUC) approach to opening the toll market to competition. Part II examines the events leading up to the CPUC's decision. Part

1. GTE's advertisement pictures a flat tire with the caption, "Things You Should Change," and then pictures "1+The Phone Number" with the caption, "Things You Shouldn't." *E.g.*, L.A. TIMES, Jan. 17, 1995, at B8.

2. A glossary is included at the end of this Comment for referencing terms.

3. LDDS's advertisement pictures a ball and chain with the caption, "You're Finally Free To Choose Your Own Long Distance Carrier For Local Toll Calls." *E.g.*, L.A. TIMES, Dec. 13, 1994, at D6. Express Tel's ad shows three dead fish and asks, " 'What's that smell?' " Denise Gellene, *Telephone Companies Hear Call of New Round of Competition*, L.A. TIMES, Dec. 30, 1994, at D1. Another Express Tel ad pictures a dry cleaners with the caption, " 'You should know this place well. Pacific Bell has been taking you there for years.' " *Id.*

4. California Public Utilities Commission, News Release 1 (Sept. 15, 1994) (on file with *Loyola of Los Angeles Law Review*) [hereinafter News Release].

5. *See* Gellene, *supra* note 3, at D1.

6. I will refer to local long distance calls as toll calls. Toll calls are telephone calls beyond a twelve-mile radius within a region. *See infra* part II.B.1.

7. Alternative Regulatory Frameworks for Local Exchange Carriers, No. D.94-09-065, slip op. app. F at F-1 to -3 (Cal. P.U.C. Sept. 15, 1994) [hereinafter Interim Opinion].

8. News Release, *supra* note 4, at 1.

9. *See* Interim Opinion, *supra* note 7, at 32; *see also* A. MICHAEL NOLL, INTRODUCTION TO TELEPHONES AND TELEPHONE SYSTEMS 148 (1986) (observing that "[n]early 50 to 60 cents of every dollar in toll revenue was returned to local phone companies," effectively subsidizing local service).

III dissects areas of the decision, reviews the approaches taken by other states, and highlights the potential challenges the CPUC faces. Part IV forecasts the detrimental impact on residential customers, recommends the next steps in deregulating this area, and analyzes the long-term implications of this decision both for the state and the consumer.

II. BACKGROUND

A. *The Development of a Monopoly*

The Pacific coast's first telephone arrived in 1877,[10] and the first interconnecting telephone exchange[11] was established in 1878.[12] By the turn of the century, local telephone companies were competing to provide telephone service throughout the state.[13] American Telephone and Telegraph Company (AT&T) developed a superior long distance telephone network and gained control of the local competitors by limiting connection of its network to only its own local affiliates.[14] In this way AT&T grew into a single national network, providing both local and long distance telephone service,[15] and monopolizing telephone traffic in the United States.[16]

10. Pacific Bell, Pacific Bell History and Development 1 (Aug. 1986) (unpublished manuscript, on file with *Loyola of Los Angeles Law Review*).

11. An interconnecting telephone exchange is a central office telephone switch that is connected to another central office telephone switch. *See* JOHN BELLAMY, DIGITAL TELEPHONY 5 (1982). The exchange originally comprised the area served by a central office where the operator-attended switchboard was located. Washington Indep. Tel. Ass'n v. Telecommunications Ratepayers Ass'n, 880 P.2d 50, 52 n.1 (Wash. Ct. App. 1994).

12. Pacific Bell, *supra* note 10, at 1. The exchange was established in San Francisco by the Gold and Stock Telegraph Company, a subsidiary of Western Union. *Id.*

13. *See* MICHAEL K. KELLOGG ET AL., FEDERAL TELECOMMUNICATIONS LAW § 4.2, at 199 (1992); Pacific Bell, *supra* note 10, at 1-3.

14. KELLOGG ET AL., *supra* note 13, § 4.2, at 199-200.

15. *See* GTE Sprint Communications Corp. v. Public Util. Comm'n, 753 P.2d 212, 213 (Colo. 1988) (en banc); KELLOGG ET AL., *supra* note 13, § 4.2, at 201. AT&T provided approximately 80% of the nation's local telephone service, while the remaining 20% was serviced by independent local telephone companies, such as GTE and Central Telephone. James M. Fink, *The Battle over the Rewrite of Illinois' Telecommunications Law: Is More Reform Needed?*, 11 N. ILL. U. L. REV. 189, 192 n.11 (1991) (citing S. REP. No. 41, 102d Cong., 1st Sess. 2 (1991)).

16. *E.g.*, KELLOGG ET AL., *supra* note 13, § 1.3.5, at 23. By 1982 AT&T was also the largest corporation in the world. United States v. American Tel. & Tel. Co., 552 F. Supp. 131, 151 (D.D.C. 1982), *aff'd sub nom.* Maryland v. United States, 460 U.S. 1001 (1983). In 1980 the Bell System's total operating revenues exceeded $50 billion which constituted almost two percent of the gross national product of the United States that year. *Id.* at 152 n.85. Its net income was $6 billion. *Id.* Its net assets devoted to telephone service in 1979 were valued at approximately $99.3 billion. *Id.* It employed over one million people by the end of 1979, making it the largest U.S. employer except for the federal government. *Id.*

Twenty-two subsidiaries operated AT&T's regional telephone networks.[17] Pacific Telephone and Telegraph (Pacific) was the AT&T regional subsidiary that served a majority of California and interconnected with other AT&T regional networks.[18]

Improved technology, falling costs, and a change in national regulatory policy in the 1970s allowed telecommunications common carriers such as Sprint, MCI, and Western Union to compete in the interstate long distance market.[19] Still, AT&T subsidiaries retained exclusive control of the intrastate market.[20]

In 1974 the United States Department of Justice, responding to alleged monopolistic practices by AT&T—including unequal access to the long distance market—filed an antitrust claim.[21] This claim, settled in 1982, resulted in the largest judicially supervised divestiture in history.[22]

B. The 1982 Decree

The 1982 court-approved order, referred to as the Modified Final Judgment (MFJ), divested AT&T of its twenty-two subsidiaries.[23] The MFJ created a new framework of ownership and rate structure by, among other things, simultaneously creating regional operating companies and dividing the country into local access and transport areas (LATAs).[24]

1. MFJ creates LATAs

The MFJ directed the Regional Bell Operating Companies (RBOCs) to divide their territories into new geographical classifications known as LATAs.[25] LATA boundaries distinguish local and toll

17. Pacific Tel. & Tel. Co. v. Public Util. Comm'n, 62 Cal. 2d 634, 642, 401 P.2d 353, 357, 44 Cal. Rptr. 1, 5 (1965).

18. *Id.* at 643, 401 P.2d at 358, 44 Cal. Rptr. at 6. By 1981 Pacific ranked second among all Bell companies in terms of total telephones in service and gain in the number of customer access lines; it generated one billion more long distance calls than the next highest Bell company and operated in 53 of California's 58 counties. Pacific Bell, *supra* note 10, at 5.

19. *GTE Sprint*, 753 P.2d at 213.

20. *Id.*

21. *Id.* at 214. AT&T allegedly also used profits derived from its monopoly telephone operations to subsidize the long distance and equipment markets—businesses in which AT&T faced competition. *American Tel. & Tel. Co.*, 552 F. Supp. at 223.

22. KELLOGG ET AL., *supra* note 13, § 4.5, at 218.

23. *American Tel. & Tel. Co.*, 552 F. Supp. at 226.

24. KELLOGG ET AL., *supra* note 13, § 4.18, at 227.

25. *GTE Sprint*, 753 P.2d at 214.

calls from long distance calls.[26] LATA boundaries also determine if a long distance carrier, such as MCI or AT&T, can carry the call, or whether a local exchange carrier (LEC), such as Pacific Bell or GTE, can complete the call alone.[27]

The MFJ envisioned LATAs as areas composed of one or more contiguous local exchanges that serve "common social, economic, and other purposes."[28] MFJ guidelines allowed LATAs to transcend municipal or other local government boundaries, but prohibited them from extending beyond state borders or encompassing more than one metropolitan area.[29] The composition of some LATAs was subject to judicial approval, allowing some deviations from the MFJ restrictions.[30]

The original AT&T territory was divided into 163 LATAs.[31] These LATAs ranged in size from 10,000 to 10 million people,[32] with an average of 500,000 people in each LATA.[33] California is composed of eleven LATAs.[34]

Table 1 displays the LATA division within California.

The creation of LATA boundaries was, therefore, not intended to delineate between local calls and toll calls.[35] Rather, the imposition of toll charges for intraLATA calls is a decision reserved to state regulatory bodies and not specified in the MFJ.[36]

California has defined a toll call as any intraLATA call beyond a twelve-mile[37] radius.[38] For instance, calls between San Clemente and Thousand Oaks, or between San Diego and Oceanside, are intraLATA toll calls because they travel further than twelve miles but stay within a LATA. On the other hand, calls between Thousand Oaks and San Diego, or between Oceanside and San Clemente, are

26. United States v. Western Elec. Co., 569 F. Supp. 990, 994 (D.D.C. 1983).

27. *Id.*

28. *American Tel. & Tel. Co.*, 552 F. Supp. at 229.

29. *Id.*

30. KELLOGG ET AL., *supra* note 13, § 4.8, at 230-32.

31. *Id.* § 4.8, at 234.

32. This number exceeds the number of subscribers of phone systems in Switzerland or Belgium. *Id.* § 5.3.3, at 264.

33. *Id.* § 4.8, at 234.

34. Interim Opinion, *supra* note 7, app. B at B-9; Pacific Bell, *supra* note 10, at 6.

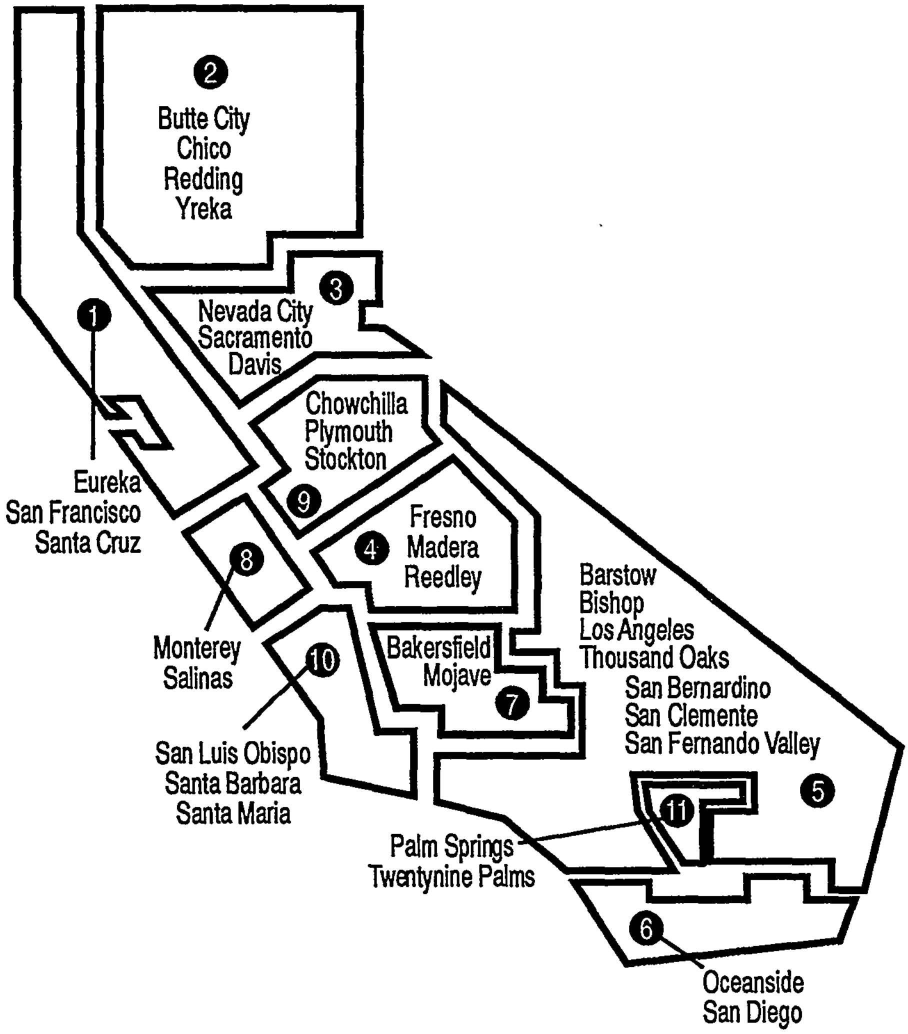
35. KELLOGG ET AL., *supra* note 13, § 4.8, at 227.

36. *Western Elec. Co.*, 569 F. Supp. at 995.

37. In some areas the radius is 16 miles. News Release, *supra* note 4, at 1.

38. *See* Interim Opinion, *supra* note 7, at 4. California defines local calls, also referred to as local usage, local measured usage, or measured usage, as "calls completed to central [switching] offices within 12 miles of the caller's central [switching] office." *Id.* at 25.

Table 1 — California LATA Map



interLATA long distance calls because the calls cross a LATA boundary.

2. MFJ divests AT&T

The MFJ ordered AT&T to transfer ownership of the subsidiaries to new entities.[39] AT&T subsequently formed seven wholly independent regional holding companies, the Regional Bell Operating Companies (RBOCs), to provide for all calls carried over the local exchange.[40] The Pacific Telesis Group was one such RBOC.[41]

The MFJ allowed the RBOCs to retain a monopoly over local telephone services, but it precluded the RBOCs from providing any long distance services.[42] Thus, the RBOCs can carry intraLATA traffic—calls originating and terminating within the same LATA[43]—but not interLATA traffic—calls that pass from LATA to LATA. So, the MFJ allows Pacific Bell to carry calls between Los Angeles and San Clemente, or between San Diego and Oceanside, but prohibits it from carrying calls between Orange County and Oceanside. These interLATA calls are handled instead by a long distance or Inter-Exchange Carrier (IXC).[44]

C. IntraLATA Controversy After the 1982 Decree

The MFJ was clear in its intent not to invade state control over competition in local or toll service.[45] Yet shortly after the MFJ was issued, Judge Harold Greene, who presided over AT&T's divestment, stated that toll market competition was always contemplated,[46] and the service was never intended to be reserved to the local carriers.[47]

39. *American Tel. & Tel. Co.*, 552 F. Supp. at 226.

40. KELLOGG ET AL., *supra* note 13, § 4.7, at 223-24. The local exchange is the collection of access lines that connect customers with a switching machine that serves a neighborhood. *See* NOLL, *supra* note 9, at 77; J. GORDON PEARCE, TELECOMMUNICATIONS SWITCHING 1 (1981).

41. Pacific Telesis is the parent company of Pacific Bell. Interim Opinion, *supra* note 7, app. B at B-11; Pacific Bell, *supra* note 10, at 5.

42. *American Tel. & Tel. Co.*, 552 F. Supp. at 224, 227-28.

43. *Id.* at 228. IntraLATA calls include local as well as toll calls.

44. *See id.* at 227. Common IXCs are AT&T, Sprint, and MCI. Alexander C. Larson & Douglas R. Mudd, *Collocation and Telecommunications Policy: A Fostering of Competition on the Merits?*, 28 CAL. W. L. REV. 263, 265 n.5 (1992).

45. *American Tel. & Tel. Co.*, 552 F. Supp. at 159 n.117.

46. United States v. Western Elec. Co., 569 F. Supp. 990, 1005 n.72 (D.D.C. 1983).

47. *Id.* at 1005.

Despite Judge Greene's statement most states did not rush to embrace intraLATA competition.[48] By 1986 only sixteen states had decided to allow intraLATA toll competition.[49]

Nevertheless, the court in *United States v. Western Electric Co.*[50] carried out Judge Greene's intent to allow toll competition and issued an order that compelled RBOCs to provide equal access to competitors for carriage of intraLATA and interLATA calls unless a state regulatory agency "affirmatively prohibited"[51] the granting of such access. Accordingly, in June 1984, California expressly declined to adopt intraLATA competition.[52]

D. Rise and Power of the State Public Utilities Commission

Prior to the Communications Act of 1934,[53] telecommunications regulation was relatively minimal and considered ineffective.[54] The Act established a dual regulatory system,[55] creating the Federal Communications Commission to regulate interstate and foreign communications[56] while expressly reserving to the states the regulation of intrastate communications.[57] In *Louisiana Public Service Commission v. FCC*,[58] the Supreme Court acknowledged the natural strain between federal and state regulation under this structure,[59] and reaffirmed the state's sovereign power to regulate communications within its borders.[60]

Prior to the MFJ, the smallest geographic unit of measurement for regulatory purposes was a state,[61] and the states retained regulatory control over communication activities within that unit of measurement.[62] The smallest unit of regulatory measurement following

---

48. *See* Margie Semilof, *IntraLATA Competition: LATA Barrier Falls*, NETWORK WORLD, Aug. 25, 1986, at 11, 11.

49. *Id.*

50. 569 F. Supp. 990 (D.D.C. 1983).

51. *Id.* at 1006 n.74.

52. Competition in the Provision of Telecommunications Transmission Serv., 15 C.P.U.C.2d 426, 458, 476 (1984).

53. Ch. 652, 48 Stat. 1064 (1934) (codified as amended at 47 U.S.C. §§ 151-609 (1988)).

54. *See* KELLOGG ET AL., *supra* note 13, § 2.2-.6, at 78-84.

55. Louisiana Pub. Serv. Comm'n v. FCC, 476 U.S. 355, 375 (1986).

56. 47 U.S.C. §§ 152(a), 201(a) (1988).

57. *Id.* §§ 152(b), 221(b).

58. 476 U.S. 355 (1986).

59. *Id.* at 375.

60. *Id.* at 370.

61. GTE Sprint Communications Corp. v. Public Util. Comm'n, 753 P.2d 212, 213 (Colo. 1988) (en banc).

62. *See* 47 U.S.C. § 152 (1988); *GTE Sprint*, 753 P.2d at 213.

the MFJ is a LATA, and a state's power extends to all LATAs situated within its boundaries.[63]

E. *Making IntraLATA Telephone Calls*

To understand the issues confronting the deregulation of the intraLATA market, it is important to understand the physical acts involved in making a phone call. To clarify the concepts, I will use Table 2 in conjunction with a hypothetical phone call from you in Thousand Oaks to your mother in San Clemente.

Generally speaking, a customer's call is carried across wires from the customer's telephone to the LEC's central switch.[64] This is shown by the lines between your house in Thousand Oaks and GTE's end office switching station. At the LEC's central switch, the call is handed off for interexchange transport to the destination party's central switch, where it is then transmitted to the destination party's telephone.[65]

For intraLATA toll calls this process differs slightly, depending on whether the interexchange transport is done by the LEC or by an IXC.[66] Table 2 shows an example of GTE, the LEC, and of MCI, the IXC, carrying the call from GTE's end office switching station to Pacific Bell's end office switching station. Also, recall that the call to Mom is a toll call because Thousand Oaks and San Clemente are more than twelve miles apart, and the call stays within, but does not cross, LATA boundaries.[67]

IntraLATA calls carried by an LEC travel across the local loop to the LEC's end office that serves that particular customer.[68] Again, these are the lines between you in Thousand Oaks, and GTE's end office switching station. The call is carried over the LEC's own interexchange facilities to the LEC's end office switching station serving the destination party.[69] This is the solid line between GTE's end of-

63. *See GTE Sprint*, 753 P.2d at 214.

64. NOLL, *supra* note 9, at 146. The two wires between the telephone user and the LEC's office form the local loop. *Id.* at 12.

65. *See id.* at 147; Craig D. Dingwall, *Imputation of Access Charges—A Prerequisite for Effective IntraLATA Toll Competition*, 40 ADMIN. L. REV. 433, 435 (1988).

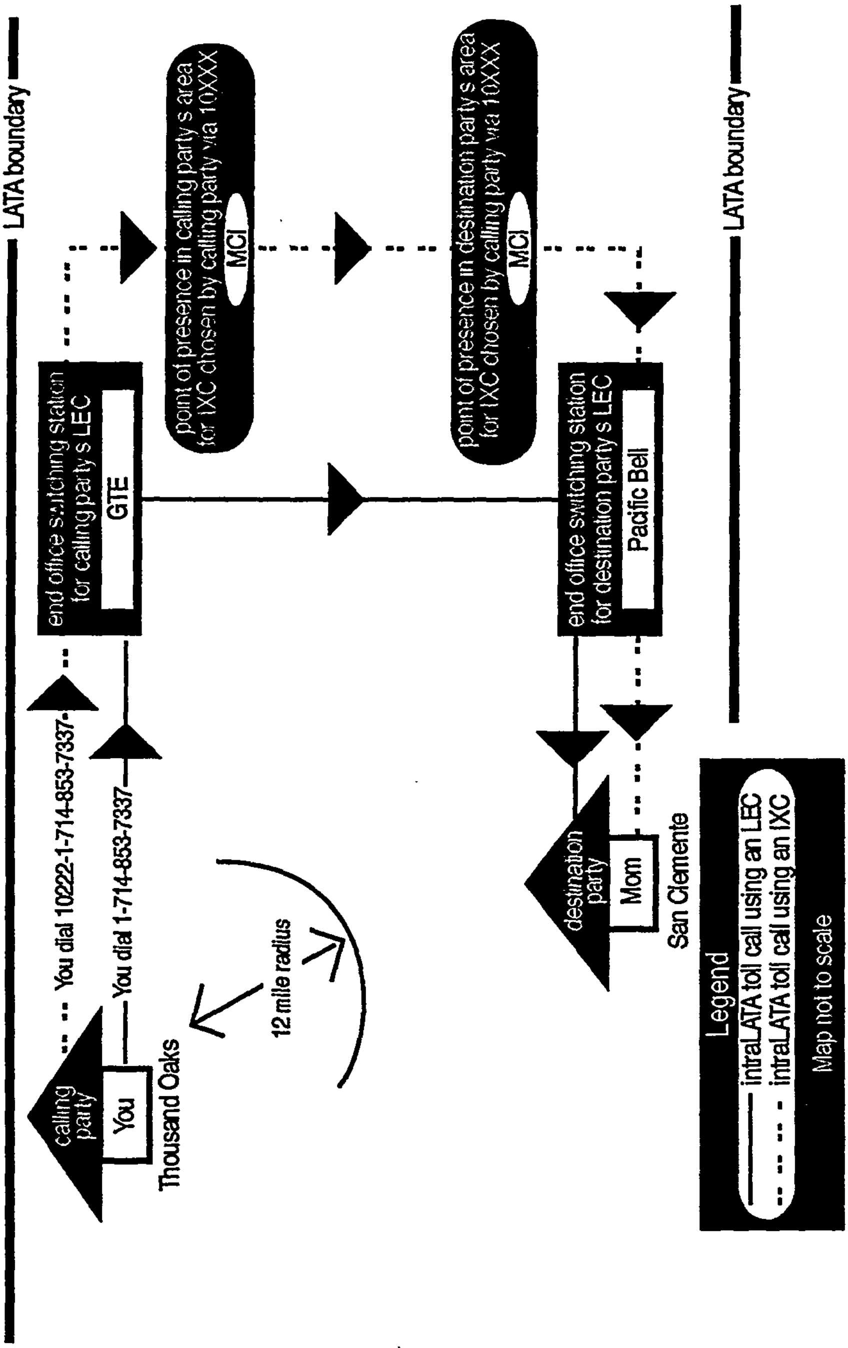
66. Dingwall, *supra* note 65, at 435.

67. *See supra* part II.B.1.

68. Dingwall, *supra* note 65, at 435.

69. *Id.* "Large volumes of traffic between points are generally routed over direct trunks, while small volumes of traffic are usually switched from a central point . . . [in what is] known as a 'tandem' arrangement. Tandeming is used because it is more economical than direct trunking for small volumes of toll traffic." Competition in the Provision of Telecommunications Transmission Serv., 15 C.P.U.C.2d 426, 433 (1984). Tandem offices

Table 2—How to Make a Phone Call



fice switching station and that of Pacific Bell's end office switching station. After the call is handed to the destination LEC's end office, the call travels over the local loop to the destination party's telephone.[70] These are the lines between Pacific Bell's end office switching station and Mom in San Clemente.

In a deregulated market IXCs complete intraLATA calls in a similar fashion.[71] The customer's call travels over the LEC's local loop to the LEC's end office switch.[72] Once more, these are the lines between you in Thousand Oaks and GTE's end office switching station. At this point, rather than handing the call to its own interexchange facilities, the LEC's end office switch sends the call to the customer-designated IXC,[73] such as AT&T or MCI. In California the customer determines which IXC would carry the call by dialing 10XXX. In our hypothetical, because you chose MCI by dialing 10222,[74] GTE's end office switch sends the call to MCI's point of presence.

The IXC carries the call across its own interexchange lines to its facility closest to the LEC's end office serving the destination party.[75] In Table 2 MCI carries the call from its point of presence in Thousand Oaks to its point of presence in San Clemente. The call is then handed to the local destination LEC and carried across its local loop to the intended caller.[76] MCI sends the call from its point of presence in San Clemente to Pacific Bell's local end office switching station, and Pacific Bell completes the call by delivering it to your eagerly awaiting Mom.

Whenever a call is handed off from the originating LEC's end office switch to an IXC—whether for long distance calls or intraLATA toll calls—the LEC imposes an access charge on the IXC. The practice of charging for access dates back to *Smith v. Illinois Bell Telephone Co.*,[77] when the Supreme Court determined that interstate consumers would offset the expenditures of plant operation costs. As

---

interconnect the central offices within an exchange that have insufficient interoffice traffic volume to justify the installation of a direct trunk. BELLAMY, *supra* note 11, at 8.

70. Dingwall, *supra* note 65, at 435.

71. *See id.*

72. *Id.* End office switching is also referred to as local switching. Interim Opinion, *supra* note 7, at 114.

73. The IXC's physical location is referred to as its point of presence. *See* Interim Opinion, *supra* note 7, app. B at B-11.

74. PACIFIC BELL, WE'RE CHANGING OUR PRICES § 5 (1994) (on file with *Loyola of Los Angeles Law Review*) [hereinafter WE'RE CHANGING OUR PRICES].

75. Dingwall, *supra* note 65, at 435.

76. *Id.*

77. 282 U.S. 133 (1930).

part of the divestment, the MFJ established a system of access charges which are applied to IXCs for interconnecting with LECs.[78]

California access charges generally consist of fees for (1) the LEC's switching function done at the end office that supports the user ("end office switching"),[79] (2) transmitting a call from the LEC's end office to the IXC's point of presence ("local transport"),[80] and (3) costs of the access to the LEC's network ("carrier common line charge" (CCLC)).[81]

F. Reasons to Allow IntraLATA Competition

Since divestment, regulators across the country have implemented intraLATA competition or are considering plans to do so.[82] The determinations as to when and how to deregulate the intraLATA market have been varied,[83] but the motivation as to why has been consistent.

LATA boundaries limit competition[84] by prohibiting carriers other than LECs to carry traffic within the LATA.[85] Supporters of a deregulated market assert that the costs of regulation exceed the benefits.[86] Deregulation increases society's welfare[87] and abandons monopolistic environments where "the market and not the state public service commission dictates the price of a service."[88] Deregulation creates intangible benefits such as lower prices, increased perform-

78. United States v. American Tel. & Tel. Co., 552 F. Supp. 131, app. B at 232-34 (D.D.C. 1982).

79. Interim Opinion, *supra* note 7, at 114.

80. *Id.*

81. *Id.*

82. *See infra* part III.B.

83. *See infra* part III.B.

84. Joseph Gillan, *Consumer Sovereignty: A Proposed Approach to IntraLATA Competition*, PUB. UTIL. FORT., Aug. 16, 1990, at 34, 34.

85. *See id.* at 34-35.

86. *See* David Gabel, *Deregulation: Should the Local Telephone Market Be Next?*, 24 NEW ENG. L. REV. 39, 58-59 (1989). For a discussion of the concerns in opening up local service to competition, see *id.*

87. *See id.*

88. Fink, *supra* note 15, at 194. "Regulation necessarily fosters a battle of wits between regulators seeking to impose restraints and regulated companies trying to avoid them." Competition in the Provision of Telecommunications Transmission Serv., 15 C.P.U.C.2d 426, 437 (1984).

ance incentive,[89] experimentation, innovation,[90] and rapid deployment of new technology.[91]

State regulators have also considered opening the intraLATA market because competition limitations have affected the way the consumer views the toll and long distance price structure.[92] To the phone user, the boundaries between local, toll, and long distance calls seem arbitrary.[93] This perceived arbitrariness alters consumer acceptance of telecommunications services[94] and may influence the degree that the consumer utilizes them. Thus, regulators have recognized that instead of structuring the market "to promote producer responsiveness to consumer demand,"[95] LATA boundaries inhibit responsiveness to consumer demand, consumer needs, and consumer preferences.[96]

The increasing difficulty of enforcing the ban on intraLATA competition also affected the CPUC's decision to open the intraLATA market.[97] Sophisticated telephone users have an increasing ability to use advances in technology to bypass the local loop and avoid the LECs' related costs for making toll calls.[98] At the same time, LECs have a diminishing ability to block toll calls in light of the increasing development of special services—notably 800-toll-free calls and Wide Area Telephone Service[99]—offered by competitors.[100] The CPUC's decision to open the market was an acknowledgment that, left unaddressed, LECs' loss of revenue would grow.

89. "In a competitive market, firms devote resources to outsmarting their adversaries—other firms." *Telecommunications Transmission Serv.*, 15 C.P.U.C.2d at 438.

90. Gabel, *supra* note 86, at 39 (citing NATIONAL TELECOMMUNICATIONS AND INFO. ADMIN., U.S. DEP'T OF COMMERCE, NTIA REGULATORY ALTERNATIVES REPORT 68 (1987)); Gillan, *supra* note 84, at 35.

91. *State OKs IntraLATA Facilities-Based Toll Competition*, PUB. UTIL. FORT., May 10, 1990, at 47, 47. "[C]ompetitive firms are much more likely to invent or adapt new technologies to maximize their cost advantages and increase their market." *Telecommunications Transmission Serv.*, 15 C.P.U.C.2d at 436.

92. *See* Gillan, *supra* note 84, at 34.

93. *See id.*

94. *Id.* at 34-35.

95. *Id.* at 35.

96. *Id.* Several petitions have been filed with the CPUC to redraw LATA boundaries because they allegedly bisect communities of interest which may not be conterminous with state lines. Interim Opinion, *supra* note 7, at 152-53.

97. Interim Opinion, *supra* note 7, at 11.

98. *Id.*

99. Wide Area Telephone Service is more commonly referred to as WATS. *Id.*

100. *Id.*

G. *Federal Telecom Reform*

In 1994 three bills were introduced in Congress that proposed sweeping reform to federal telecommunications regulation.[101] These bills endeavored to overhaul the 1934 Communications Act[102] and provide greater consistency to the divergent communications policies of the states.[103] IntraLATA deregulation was among the many issues confronted in the bills;[104] however, Congress failed to pass all three bills.[105] While the House bills were overwhelmingly approved,[106] the Senate version never reached the floor for a vote[107] despite broad approval by the Commerce Committee.[108] Failed federal efforts to act in this area leave the states with the responsibility of reforming telecommunications regulation.

H. *California Public Utilities Commission*

1. History

Prior to 1911 the California legislature and the State Board of Transportation Commissioners regulated public utilities in California.[109] In 1911 the foundations for utility regulation emerged with the adoption of three constitutional amendments.[110] One of those legisla-

101. S. 1822, 103d Cong., 2d Sess. (1994); H.R. 3626, 103d Cong., 2d Sess. (1994); H.R. 3636, 103d Cong., 2d Sess. (1994), referred to as the Hollings Bill, the Brooks-Dingell Bill, and the Markey-Fields Bill, respectively. Nicholas W. Allard, *Congress Paves a New Road*, NAT'L L.J., Mar. 7, 1994, at 29, 30.

102. Ch. 652, 48 Stat. 1064 (1934) (codified as amended at 47 U.S.C. §§ 151-609 (1988)); Allard, *supra* note 101, at 29, 30.

103. *See* Leslie Helm, *No Telecom Bill Means States, Courts Must Sort Out Issues*, L.A. TIMES, Sept. 27, 1994, at D1, D4.

104. *See id.* at D4.

105. *See id.* at D1.

106. The Brooks-Dingell Bill was approved 423 to 5. William J. Eaton & Leslie Helm, *House Rewrites Phone, Cable Rules*, L.A. TIMES, June 29, 1994, at A1, A18. The Markey-Fields Bill was approved 423 to 4. *Id.*

107. Helen Dewar, *Senate Stalemate Kills Campaign Reform Bill*, WASH. POST, Oct. 1, 1994, at A1. The 104th Congress has targeted telecommunications reform as one of its objectives; competing factions, however, have been unable to agree as to how to accomplish it. *See* Jube Shiver Jr., *No GOP Quick Fix Seen on Telecom Bill*, L.A. TIMES, Feb. 1, 1995, at D3. Again, intraLATA service is among many issues implicated. *Pressler Releases Telecom "Discussion Draft"; VDT Applicants Would Undergo One-Year Freeze*, TELECOMMUNICATIONS REP., Feb. 6, 1995, at 1, 2.

108. *See* Jube Shiver Jr., *Senate Panel Approves Broad Reform Bill*, L.A. TIMES, Aug. 12, 1994, at D2.

109. *See* CLYDE C. BAKER, THE CALIFORNIA PUBLIC UTILITIES COMMISSION: AN ORGANIZATIONAL PROFILE 1-2 (1966). During this period railroads were the primary focus of regulation. *Id.*

110. *See id.* at 4.

tive acts was the Public Utilities Act of 1911[111] which created the Railroad Commission,[112] the predecessor of the CPUC.[113] The Act gave the Railroad Commission the power to regulate public utilities and to establish rates.[114]

2. CPUC guidelines and objectives

Since the AT&T divestment, the CPUC has defined its function as managing the transition of telecommunications from a monopoly to a competitive telecommunications market.[115] In fulfilling this role, the CPUC adopted the "New Regulatory Framework" which provides an incentive environment for the growing number of alternatives to LEC services.[116]

The New Regulatory Framework separated telephone services into three categories: Category I services are "monopoly services for which no competition is authorized";[117] Category II services are "discretionary or partially competitive services for which competition is authorized, with pricing flexibility between appropriate price ceilings and price floors";[118] Category III services are "fully competitive telecommunications services with full pricing flexibility and minimal tariff requirements."[119]

These categories form the regulatory framework for the CPUC's pricing policies.[120] Prices for Category I services are "cost-based" and should equal the direct embedded costs (DEC)[121] for those specific services.[122] For Category II services, the CPUC authorizes downward price flexibility capped at rates that it found reasonable.[123] The price

111. Ch. 91, 1915 Cal. Stat. 115 (original version at ch. 20, 1911 Cal. Stat. 13).

112. *Id.*

113. BAKER, *supra* note 109, at 3. The Railroad Commission was renamed the Public Utilities Commission by amendment, adopted on November 5, 1946. CAL. CONST. art. XII, § 22 (current version at CAL. CONST. art. XII, §§ 1-9 (amended 1974)).

114. *See* CAL. CONST. art. XII (amended 1974); REP. OF THE RAILROAD COMM'N OF CALIFORNIA FROM JANUARY 1, 1911 TO JUNE 30, 1912, 19 (1912).

115. Interim Opinion, *supra* note 7, at 10.

116. Alternative Regulatory Frameworks for Local Exchange Carriers, 33 C.P.U.C.2d 43, 59 (1989).

117. Interim Opinion, *supra* note 7, at 2.

118. *Id.*

119. *Id.*

120. *Id.*

121. Direct embedded costs are the "[h]istorical costs of a utility that can be attributed to a specific service on the basis of direct cost causation, based on the utility's incurred costs as reflected on the accounting records of the company." *Id.* app. B at B-6.

122. *See id.* at 32-33.

123. *Id.* at 33.

cap accompanies a price floor, which prevents subsidization and anticompetitive predatory pricing.[124] As a general guideline, the price cap is the LEC's proposed rate, while the price floor is the DEC or long-run incremental cost, whichever is lower.[125]

The CPUC seeks to accomplish revenue neutrality by offsetting any revenue increase or decrease by a countervailing change or adjustment. The CPUC's goal with revenue neutrality is that the overall revenue effect is zero.[126]

Moreover, universal service has long been a cornerstone of telecommunications regulation[127] with the CPUC seeking to implement policies that promote phone usage.[128] The CPUC believes that every home should have access to emergency services such as fire and police.[129] In a broader sense, the CPUC also recognizes that the benefits of a telephone network stem from its ability to contact others, and that with each new subscriber the entire network benefits by the increased economic and social activity conducted over that line.[130] To serve both of these policies, the CPUC has established a goal of a 95% telephone service penetration in California households.[131]

3. IntraLATA deregulation in California

In 1984 the CPUC expressly declined to adopt intraLATA competition.[132] At that time its overriding concern was the threat that deregulation posed to its goals of "availability of telephone service at affordable rates."[133] However, the CPUC left open the possibility of revisiting the decision when "the post-divestiture era turns dawn to

---

124. *Id.*

125. *Id.* at 33-34.

126. *Id.* at 3.

127. *See, e.g.*, 47 U.S.C. § 151 (1988); A.B. No. 3643, ch. 278, 1994 Cal. Stat.

128. In addition the California legislature has mandated that the CPUC file a report of findings and recommendations on the issue of universal service by January 1, 1996. *Pacific Telesis Files Motion for InterLATA Relief; California Cranks Up Effort for Competition by 1997*, TELECOMMUNICATIONS REP., Feb. 6, 1995, at 9, 11 [hereinafter *InterLATA Relief*].

129. Interim Opinion, *supra* note 7, at 445.

130. *See id.*

131. *Id.* at 6.

132. Competition in the Provision of Telecommunications Transmission Serv., 15 C.P.U.C.2d 426, 458, 476 (1984).

133. *Id.* at 452.

daylight."[134] The CPUC considered petitions to allow IXCs intraLATA carriage, but did not adopt these petitions over the years.[135]

By September 1991, however, the CPUC had initiated an investigation into the opening of the intraLATA market.[136] On September 17, 1993, the CPUC passed the Implementation Rate Design which approved intraLATA competition along with the largest increases ever in basic telephone rates for California.[137] Nevertheless, this decision was rescinded on October 6, 1993, as a result of an investigation which determined that the CPUC's decision was " 'tainted.' "[138] Utility employees allegedly reviewed and edited the decision and engaged in several unreported communications with a CPUC official.[139]

In light of these improprieties, the CPUC undertook sweeping review of the decision-making process and instituted corrective measures.[140] The decision was redrafted with great care, reviewing every element of the rescinded decision and incorporating additional comments.[141] The CPUC distributed a draft for public comment in July 1994, and issued the final decision on September 15, 1994.[142]

4. Decision summary

The 1994 CPUC opinion extends beyond the mere ordering of intraLATA toll competition. The opinion touches on a wide area of telecommunications concerns such as pay telephones,[143] foreign ex-

134. *Id.* at 459.

135. *See, e.g.*, Alternative Regulatory Frameworks for Local Exchange Carriers, 41 C.P.U.C.2d 1 (1991); Alternative Regulatory Frameworks for Local Exchange Carriers, 37 C.P.U.C.2d 226 (1990).

136. Interim Opinion, *supra* note 7, at 15.

137. *Improprieties in the California Public Utilities Commission's Telephone Rate Decision: Restoring the Public Trust: Joint Interim Hearing of the Assembly Comm. on Util. and Com. Comm'n and the Senate Comm. on Energy and Pub. Util.* at v (1993).

138. *Id.* at vii (quoting CPUC investigation report).

139. *Id.* Pacific Bell managers held 34 meetings with CPUC decision makers prior to the September 17 vote. *Id.* Key personnel, including Pacific Bell's chief policy witness, were in the CPUC offices, suggesting policy and editorial changes. The CPUC's own investigation determined that four chapters of the decision had been " 'tainted.' " *Id.* at vii-viii (quoting CPUC investigation report).

140. Interim Opinion, *supra* note 7, at 15-17.

141. *See id.* at 16-17.

142. *Id.* at 18.

143. *Id.* at 175-88.

change services,[144] small and midsized LECs,[145] and Centrex/CentraNet and private branch exchange services.[146] Each of these concerns are affected by intraLATA deregulation.[147]

The foundation of the CPUC decision is to reclassify intraLATA toll carriage as a Category II service[148]—discretionary or partially competitive service.[149] This reclassification allows telephone carriers other than the LEC to handle toll calls. It still prevents LECs, however, from competing against other LECs for intraLATA services.[150] For instance, GTE cannot offer toll call carriage within an area serviced by Pacific Bell and vice versa, but MCI or Sprint will be able to compete against Pacific Bell.

Furthermore, the CPUC moved away from tariffs as a means of setting terms and conditions for intraLATA toll calls.[151] Instead, the CPUC has approved the ability for LECs to enter into contracts.[152]

The CPUC also granted the LECs' request to raise rates for providing basic service.[153] Previously, LECs received substantial revenue from the intraLATA market.[154] Toll rates are higher than nontoll calls for similar mileage, which supports the notion that the toll rates exceed the cost of providing the service.[155] The revenue from toll calls was used routinely to subsidize LECs in providing below-cost, basic

144. *Id.* at 71-80. Foreign Exchange Service allows customers in "[e]xchange 'A,'... to have a telephone number associated with [e]xchange 'B' [which] allows a customer to have a telephone number presence in a community other than the one where the customer equipment is physically located. The customer receives dial tone from the foreign exchange so that calls to and from other exchanges in [e]xchange B are local calls instead of toll calls." *Id.* at 71.

145. *Id.* at 244-71.

146. *Id.* at 190-203. These services are designed for businesses with multiple telephone stations and allow station-to-station calls within the business, as well as providing outside callers access to a particular station directly. *Id.* at 190.

147. This Comment, however, will not address all of the areas encompassed in the CPUC decision.

148. Interim Opinion, *supra* note 7, at 23, 335-36.

149. *Id.* at 2. For a description of Category II services, see *supra* text accompanying notes 118-25.

150. Interim Opinion, *supra* note 7, at 24.

151. *See id.* at 226-27.

152. *Id.* at 226.

153. *Id.* at 38. Phone service requires a customer to subscribe to the LEC's basic exchange access service. *Id.* at 39. Basic service comes in two forms, flat rate and measured rate basis. *Id.*

154. For example, approximately 44% of GTE's revenues are collected through toll calls. *Id.* at 40. In comparison, GTE receives 32% through rates for local phone service, and 7% from switched and special access rates. *Id.*

155. *Id.* at 32.

residential service.[156] Now, as toll rates drop with deregulation, LECs' revenues are expected to decline.[157] Therefore, the CPUC has compensated LECs for their anticipated loss in revenue by allowing them to increase basic service rates.[158] Thus it achieves revenue neutrality.

Opening the toll market allows consumers to choose which carrier will transport the call. The CPUC decided to have all toll calls carried by the customer's LEC unless the customer specifically directs the call to a different carrier.[159] This method, referred to as 10XXX dialing,[160] requires customers to dial a five-digit prefix prior to the destination party's phone number.[161] The CPUC chose not to implement customer presubscription[162] which allows a telephone subscriber to designate in advance which carrier will carry all of a type of call, such as intraLATA calls, placed on that phone line.[163]

The CPUC decision also changed the structure of access charges that LECs could charge IXCs.[164] Fees for accessing the LECs' network, carrier common line charges (CCLCs), were eliminated.[165] Because this change was anticipated to affect LECs' revenue, the CPUC decided to compensate them by allowing increased charges in other services.[166]

III. ANALYSIS

A. Reviewing the Decision

The decision to introduce intraLATA competition in California affected several different areas of telephone service. The following discussion explores some of the areas affected by this decision and the arguments presented by the various parties.

---

156. *Id.* at 40.

157. *Id.* at 32.

158. *Id.*

159. *See id.* at 9.

160. *See id.*

161. *Id.* at 9, 26. The prefix will be 10XXX and each carrier will have a unique three-digit code represented here as XXX. *Id.* app. B at B-1.

162. *Id.* at 25.

163. KELLOGG ET AL., *supra* note 13, glossary at 861. California offers presubscription for designating a long distance carrier.

164. Interim Opinion, *supra* note 7, at 120-21.

165. *Id.*

166. *Id.* at 121.

1. Toll rates

Deregulation of the intraLATA toll market has allowed LECs to lower their toll call rates.[167] It also permitted IXCs to carry intraLATA traffic.[168] This partially competitive market has forced the dominant carriers, like Pacific Bell and GTE, to lower their toll rates.[169] Simultaneously, competitors seeking to capture the LECs' market share are offering toll rates lower than the LECs'.[170] Table 3 compares Pacific Bell's prior rate, its current rate, and some competing carriers' rates.

The CPUC also authorized Pacific Bell to implement different pricing tariffs for business and residential customers.[171] Pacific Bell believed that the different schedules would allow it greater flexibility in reacting to the competitive forces in the toll market.[172] Furthermore, it asserted that it should not be saddled with a restriction that did not bind other carriers.[173]

However, separate tariffs may benefit business customers at the expense of residential customers.[174] Toll service providers may generally offer lower rates to compete for the lucrative business market while forsaking any lower prices for residential customers.[175] Instead, any discounts offered to the business market should be extended to the residential market.[176]

The CPUC rationalized its decision by noting that "[t]he trend in telecommunications is to cater to and design services for niche markets and for customers with special calling patterns or needs."[177] The CPUC believed that the competitive market will motivate telecommunications companies to design pricing schedules tailored to the customer and to create lower prices and increased choices.[178]

---

167. *See id.* at 134.
168. *Id.* at 23, 335-36.
169. *Id.* at 134.
170. *Id.*
171. *Id.* at 136. GTE was not granted a separate schedule because it did not request one, but the CPUC declared that it will allow GTE to file a similar tariff structure in the future. *Id.*
172. *Id.* at 135.
173. *Id.*
174. *Id.*
175. *Id.* at 135.
176. *See id.* at 130.
177. *Id.* at 136.
178. *Id.*

Table 3 — IntraLATA Toll Rate Comparison

	per minute rate from Santa Ana to Los Angeles	per minute rate from Pasadena to Riverside	per minute rate from Anaheim to Thousand Oaks
Pacific Bell (pre-Jan. 1)	$0.57	$0.84	$1.02
Pacific Bell (current)	$0.36	$0.40	$0.42
AT&T	$0.34	$0.37	$0.37
MCI	$0.30	$0.33	$0.33
Sprint	$0.38	$0.41	$0.43
Express Tel	$0.20	$0.20	$0.20
Cable & Wireless	$0.21	$0.21	$0.21

Toward Utility Rate Normalization (TURN) opposed any reduction in intraLATA toll rates.[179] Moreover, even if a reduction is approved, TURN believed it should be severely limited.[180] TURN argued that Pacific Bell wrongly assumed that current toll rates are above cost[181] and that Pacific Bell is not subsidizing local service from toll revenues.[182] Furthermore, even with a competitive intraLATA market, TURN reasoned that Pacific Bell and GTE will retain an overwhelming market share as long as customers cannot presubscribe to their carrier of choice for intraLATA service.[183] Consequently, Pacific Bell and GTE should be held to their current toll rates.

The CPUC also decided to allow LECs to enter into contracts with customers, rather than relying exclusively on tariffs to set the rules, terms and conditions of a service.[184] The introduction of tariffs arose in response to allegations of discrimination and preference by monopoly utilities.[185] It was a way to ensure uniform applicability to a defined customer class.[186]

Carriers submit tariffs to the CPUC that are publicly available.[187] The CPUC has permitted exceptions from the tariff structure when utilities have been confronted with competition for a historically monopolistic service.[188] The CPUC recognized that customers with unusual service requirements, options, or bargaining power will want to negotiate a more favorable rate or a customized service not specified by the tariff rate structure.[189]

In a competitive toll market, telecommunications companies need to tailor their services to meet the specific needs of a wide spectrum of customers. The CPUC allowed LECs to enter into contracts with individual customers for Category II services, which include intraLATA toll calls;[190] however, these contracts are subject to a price floor set by the CPUC.[191] The CPUC also requires public disclosure

179. *Id.* at 131.
180. *Id.*
181. *Id.*
182. *See id.*
183. *Id.*; Memorandum from Toward Utility Rate Normalization 5 (Oct. 5, 1994) (on file with *Loyola of Los Angeles Law Review*) [hereinafter Memorandum].
184. Interim Opinion, *supra* note 7, at 226.
185. *Id.*
186. *Id.* at 225.
187. *Id.*
188. *Id.* at 226.
189. *Id.*
190. *Id.* at 226-27.
191. *Id.* at 228-31.

of contract terms[192] due to a statutory obligation,[193] as well as a belief that public availability of contract terms will promote competition and safeguard against unlawful price discrimination.[194]

The benefit of tariffs and the danger of contracts revolve around the possibility that the utility will show preference or discrimination in the rates and services it provides. California law requires that no utility grant any person or corporation any preference or advantage, or subject them to any prejudice or disadvantage.[195] Furthermore, both the MFJ[196] and a federal statute[197] prohibit telecommunication carriers from showing any undue preference or any unreasonable discrimination. The CPUC has declared that it will enforce this policy and require that contract rates be available to any customer, provided that the customer is willing to abide by the contract terms and is similarly situated to the contracted customer.[198] Customers who are similarly situated must share numerous characteristics, such as volume, calling patterns, and cost of negotiation.[199]

Since divestment, however, federal courts have been reluctant to find cases of discrimination or preference in telecommunications services.[200] Even upon a finding of price discrimination, the courts have upheld rate schemes based on the theory of "competitive necessity"—the theory that the carrier's goal is to match the competitor's offered rate.[201] The CPUC acknowledges that it will be difficult for a customer to raise a claim of discrimination or preference.[202] Moreover, the CPUC rationalizes that customers who believe they are treated unfairly have the option of negotiating a fair rate or contracting with a competing service.[203]

---

192. *Id.* at 237.
193. CAL. PUB. UTIL. CODE § 489 (West 1975 & Supp. 1995).
194. Interim Opinion, *supra* note 7, at 237-39.
195. CAL. PUB. UTIL. CODE § 453.
196. United States v. American Tel. & Tel. Co., 552 F. Supp. 131 (D.D.C. 1982).
197. 47 U.S.C. § 202(a) (1988).
198. Interim Opinion, *supra* note 7, at 239.
199. *Id.*
200. KELLOGG ET AL., *supra* note 13, § 2.12.4, at 116-17; *see, e.g.*, MCI v. FCC, 917 F.2d 30 (D.C. Cir. 1990) (challenging AT&T's "Tariff 12" offerings).
201. *See, e.g.*, American Tel. & Tel. Co. v. FCC, 449 F.2d 439, 448 (2d Cir. 1971). For an analysis of the competitive necessity doctrine, see Alexander C. Larson et al., *Competitive Necessity and Pricing in Telecommunications Regulation*, 42 FED. COMM. L.J. 1 (1989).
202. Interim Opinion, *supra* note 7, at 239.
203. *Id.*

2. Switched access

Switched access is a monopoly service provided by the LEC to connect users to IXCs, and vice versa.[204] As discussed earlier, access charges may include switching, transport, and carrier common line charges (CCLC).[205] The CPUC, however, has chosen to eliminate the CCLC and offset the resulting loss of income through an increase in other services, including basic exchange services.[206] The CPUC's justification for this decision was that the CCLC was not a cost-based charge, but was intended as a means of recovering nontraffic-sensitive costs from toll users instead of basic users.[207] The CPUC felt that the CCLC conflicted with the philosophy of the new rate design, and that toll users alone should not bear the burden of recovering these costs.[208]

TURN disagrees with the CPUC's revenue-neutral philosophy and considers toll users the parties responsible for supporting nontraffic-sensitive costs.[209] Furthermore, TURN is opposed to any additional rise in basic service rates—the mechanism the CPUC chose to offset the loss in CCLC revenue.[210] Moreover, TURN considers the elimination of the CCLC contrary to the Supreme Court's holding in *Smith v. Illinois Bell Telephone Co.*,[211] which requires carriers to contribute to local network costs.[212]

CPUC Commissioner P. Gregory Conlon acknowledges that the elimination of the CCLC would " 'be a windfall for carriers at the expense of ratepayers.' "[213] As an alternative, Conlon supports a requirement that Pacific Bell and GTE pass along the effects of the CCLC elimination to end users' toll rates.[214] Moreover, he believes that this choice departs from the CPUC's policy regarding imputation of tariffed rates for monopoly services used by LECs.[215]

204. *See supra* text accompanying notes 77-78.
205. *See supra* text accompanying notes 79-81.
206. Interim Opinion, *supra* note 7, at 120-21.
207. *Id.* at 121.
208. *Id.*
209. *Id.* at 120.
210. *Id.* at 121.
211. 282 U.S. 133 (1930).
212. Memorandum, *supra* note 183, at 4.
213. *California Proposes New IntraLATA Toll Competition Plan*, TELECOMMUNICATIONS REP., July 25, 1994, at 12, 13 (quoting Commissioner Conlon).
214. *Id.*
215. This decision undermines the imputation safeguard and " 'removes any assurance that the LEC is not "charging itself" less than it charges its competitors for the same . . . function.' " *Id.* (quoting Commissioner Conlon).

3. Entrance to intraLATA market

Deregulation of the intraLATA toll market allows carriers other than LECs to provide toll service.[216] This decision requires that telephone users have the ability to access a carrier other than their LEC. Accessing a carrier other than the LEC can be done by either 10XXX dialing or presubscription.[217] The CPUC chose not to employ toll call presubscription.[218] Instead, telephone users must dial a five-digit prefix in order to request a carrier other than the LEC to carry the call.[219] Without dialing the five-digit prefix, the call will be carried by the LEC.[220]

Other common carriers claim that 10XXX dialing prevents them from effectively competing in the market.[221] Customer awareness of alternate carriers for toll traffic can be low.[222] Even if a customer is aware of alternate toll carriers, brand loyalty to the LEC may inhibit a customer from using an alternate carrier.[223] For instance, AT&T's dominance of the long distance market was not significantly eroded by competition until recently.[224]

However, because the user must dial the 10XXX access, informing and convincing telephone users to choose a carrier other than their LEC is not enough. The 10XXX requirement acts as a physical barrier between the customer and the telephone company because it is not as simple as dialing "1+" the phone number. The access codes for alternate carriers can be confusing and difficult to remember.[225] Moreover, the access code must be dialed before *every* call that the telephone user wishes to have carried by an alternate carrier. As such, competitive parity for accessibility between LECs and IXCs can only be achieved with presubscription.

216. Interim Opinion, *supra* note 7, at 23, 335-36.

217. *See supra* text accompanying notes 159-63.

218. Interim Opinion, *supra* note 7, at 9. The CPUC left open the possibility of requiring presubscription as a next step. *Id.*

219. *Id.*

220. *See id.*

221. *See* Helm, *supra* note 103, at D1.

222. Bill Burch, *Competition Cuts Intra-LATA Toll Bills*, NETWORK WORLD, Jan. 17, 1994, at 21, 21.

223. *See* Gillan, *supra* note 84, at 37-38.

224. *Id.* AT&T's market share is estimated to have dropped to 65% by 1994. *AT&T Sales Up 11% in '94, Best Since Breakup*, L.A. TIMES, Jan. 25, 1995, at D2 [hereinafter *AT&T Sales*].

225. For instance, LDDS's code is 10450; Bittel is 10867. WE'RE CHANGING OUR PRICES, *supra* note 74, § 5.

4. Basic rate service

The CPUC recognized that deregulating the intraLATA toll market means that LECs will need the flexibility to charge competitive rates[226] because fully competitive markets drive prices lower.[227] Consequently, the combination of lower prices and an eroding customer base may also lead to a drop in LECs' revenue.[228] To adhere to its revenue-neutral policy, the CPUC offsets LECs' loss in income by allowing price increases for other services.[229] Furthermore, because LECs provide basic service below DEC to further the penetration goals set by the state,[230] LECs subsidize residential basic service with income derived from toll calls.[231] LECs' proposed rate schedules attempted to compensate for this loss in revenue.[232] The CPUC granted some increase in the basic service rates, but not to the levels requested by Pacific Bell and GTE.[233]

The adopted levels nevertheless exceeded rates proposed by other parties to the decision.[234] The Division of Ratepayer Advocates (DRA) of the CPUC, for instance, proposed a rate structure for residential customers that was lower than that which the CPUC adopted.[235] Table 4 outlines the proposed and accepted rate designs.

The CPUC justified the rate increases by determining that the alternative rate plans did not anticipate the competitive pressures LECs will face in the next few years.[236] Allowing the rate increases will help maintain adequate revenues to "meet the costs of continuing to provide monopoly services."[237]

LECs are still concerned that the failure to secure the proposed higher rates will undermine their ability to survive in an increasingly competitive market.[238] However, the revenue-neutral approach to setting rates results in a guarantee that LECs will never suffer any loss

226. Interim Opinion, *supra* note 7, at 32.
227. *Id.* at 33.
228. *Id.* at 32. However, the commission recognized that toll volume may increase and offset some of this expected loss. *Id.*
229. *See, e.g.*, *id.* at 38, 121.
230. *Id.* at 5.
231. *See id.* at 40, 45. For example, approximately 44% of GTE's revenues derive from toll service. *Id.* at 40.
232. *See id.* at 40-43.
233. *See id.* at 40-49.
234. *Id.* at 47-48.
235. *See id.* at 43.
236. *Id.* at 48-49.
237. *Id.* at 10-11.
238. *See id.* at 40-43.

Table 4 — Basic Rate Comparison

		residential flat rate	residential measured rate	business measured rate
GTE	Proposed	$19.60	$10.15	$18.95
	Adopted	$17.25	$10.00	$19.22
	Previous	$9.75	$5.25	$9.10
	DRA	$15.30	$8.00	$17.75
Pacific Bell	Proposed	$13.35	$7.05	$10.90
	Adopted	$11.25	$6.00	$10.32
	Previous	$8.35	$4.45	$8.35
	DRA	$10.40	$5.55	$11.95

of profit because of the decision to open the toll market to competition.[239] Moreover, no competing telecommunication companies are guaranteed protection from profit loss.[240] The CPUC is without legal support to implement the increase in basic residential rates simply to offset potential revenue losses resulting from a competitive toll market.[241]

5. InterLATA service

The CPUC decision does not affect the restrictions on long distance carriage. Only long distance carriers are authorized to provide interLATA services, and LECs are still prevented from competing in this market.[242] Consequently, because the LECs' monopoly is partially eroded by competition in the intraLATA market, LECs argue that they should be allowed to compete in providing long distance services.

B. IntraLATA Deregulation in Other States

Most states allow some form of intraLATA competition, but such competition is usually heavily restricted.[243] For instance, presubscription is offered in only ten states.[244] Virginia and Arizona are the only states that have not yet adopted intraLATA toll competition.[245] A brief survey of how other states have approached intraLATA deregulation follows.

1. Georgia

The Georgia Public Service Commission authorized intraLATA toll competition in 1992.[246] The Georgia Commission's decision did not require presubscription and allowed LECs and IXCs to charge flexible rates. It did, however, require that the dominant LEC, South-

239. Memorandum, *supra* note 183, at 1.

240. *Id.*

241. *See id.*

242. *American Tel. & Tel. Co.*, 552 F. Supp. at 227-28.

243. *See* Kristine Loosley, *States Allow Intra-LATA Battle, Take Few Steps to Foster It*, TELCO BUS. REP., Nov. 8, 1993, at 1, 4-6.

244. The ten states are Florida, Idaho, Illinois, Iowa, Kentucky, Maine, Michigan, Minnesota, Montana, and Ohio. Eric Paulak, *Intra-LATA Competition Brings Lower Rates*, NETWORK WORLD, Aug. 15, 1994, at 31, 31; *see infra* text accompanying notes 248-55.

245. Paulak, *supra* note 244, at 31. Arizona, however, approved implementation of intraLATA competition with presubscription by July 1, 1996. *Arizona Permits Local Exchange, IntraLATA Toll Competition*, TELECOMMUNICATIONS REP., Dec. 26, 1994, at 9, 9.

246. IntraLATA Toll Competition, 131 Pub. Util. Rep. 4th (PUR) 205, 207 (Ga. P.S.C. 1992).

ern Bell, set toll rates that cover costs, including imputed access charges to prevent an unfair competitive advantage.[247]

2. Florida

Competition for toll calls began in 1990[248] despite objections from LECs that intraLATA competition should be delayed until competition was permitted in the interLATA market.[249] The Florida Public Service Commission declined to adopt presubscription for fear that LECs would lose significant revenue.[250] More recently, however, it completed proceedings on implementing presubscription for intraLATA toll traffic.[251] LECs took the position that presubscription would result in IXCs having an unfair and insurmountable advantage over LECs.[252] Furthermore, LECs argued that they would suffer large market and revenue losses, with great harm coming to rural users' telephone service.[253] Supporters contend that presubscription is in the public's interest and essential to a fully competitive marketplace.[254] In the end, the Florida Commission ruled to implement presubscription for toll calls in 1995.[255]

3. Kansas

IntraLATA toll competition without presubscription was authorized in Kansas in April 1993.[256] Southwestern Bell Telephone opposed the competition based on three arguments.[257] First, competition was not necessary because intraLATA users already re-

247. Mary Nagelhout, *IntraLATA Competition: States Rethink the Ban*, PUB. UTIL. FORT., July 1, 1993, at 41, 41.

248. Investigation into Equal Access Exchange Areas, Toll Monopoly Areas, 1+ Restriction to the Local Exchange Companies and Elimination of the Access Discount, 116 Pub. Util. Rep. 4th (PUR) 473, 483 (Fla. P.S.C. 1990).

249. Nagelhout, *supra* note 247, at 41.

250. *Id.* GTE submitted information to the CPUC that 10XXX dialing resulted in an approximate loss of 6.4% of GTE's share of the switched toll market. *IXCs Submit Plan for IntraLATA Equal Access in California*, TELECOMMUNICATIONS REP., Aug. 1, 1994, at 4, 4.

251. Investigation into IntraLATA Presubscription, No. 930330-TP, 1994 Fla. PUC LEXIS 1125, at *3 (Fla. P.S.C. Sept. 7, 1994).

252. *Id.* at *11.

253. *Id.* at *9-15.

254. *Id.*

255. Audra D.S. Burch, *Regional Toll Calls Could Get Cheaper*, MIAMI HERALD, Dec. 2, 1994, at 1A.

256. IntraLATA Competition, 143 Pub. Util. Rep. 4th (PUR) 542, 562-63 (Kan. Corp. Comm'n 1993). The state previously rejected intraLATA competition in 1985 and again in 1989. *Id.* at 545.

257. *Id.* at 546; Nagelhout, *supra* note 247, at 41-42.

ceive state-of-the-art communications services.[258] Second, competition in the toll market would result in a revenue loss for the LEC of up to $13 million.[259] Third, precluding LECs from competing in the interLATA market while allowing IXCs entry to the intraLATA market was fundamentally unfair and would allow IXCs to achieve a preferred competitive position.[260]

The Kansas Commission rejected Southwestern Bell's arguments but acknowledged that competition might affect basic rates, although increases for basic local services were not an inescapable result of intraLATA toll competition.[261] Moreover, the Kansas Commission found that the goals of universal service would not be harmed by this limited intraLATA competition.[262] The Commission also ordered the imputation of access charges to ensure that all network costs would be recovered, as well as to prevent cross-subsidy and double recovery.[263]

4. Kentucky

The Kentucky Public Service Commission authorized intraLATA toll competition, including "1+" presubscription and imputation of access charges to LECs, in May 1991.[264] The Kentucky Commission stated that excluding presubscription would have merely been a short-lived interim step, creating an artificial boundary that would increase inefficiency.[265] Presubscription would also run counter to the Commission's finding that competition was in the public interest, and would not provide telecommunications carriers in the state with the policy direction required to make investment decisions.[266] The Kentucky Commission decided that competition for intraLATA toll calls

258. *IntraLATA Competition*, 143 Pub. Util. Rep. 4th (PUR) at 546; Nagelhout, *supra* note 247, at 41-42.

259. *IntraLATA Competition*, 143 Pub. Util. Rep. 4th (PUR) at 546; Nagelhout, *supra* note 247, at 42.

260. *IntraLATA Competition*, 143 Pub. Util. Rep. 4th (PUR) at 546; Nagelhout, *supra* note 247, at 42.

261. Nagelhout, *supra* note 247, at 42.

262. *Id.*

263. *IntraLATA Competition*, 143 Pub. Util. Rep. 4th (PUR) at 562-63.

264. IntraLATA Toll Competition, 122 Pub. Util. Rep. 4th (PUR) 565, 590 (Ky. P.S.C. 1991). The proceeding on whether to order presubscription, however, remains pending. *IntraLATA Equal Access Expected Early 1996 in Minnesota; PUC Affirms "Bona Fide" Request Rule*, TELECOMMUNICATIONS REP., Oct. 31, 1994, at 13, 13 [hereinafter *IntraLATA Equal Access*].

265. Nagelhout, *supra* note 247, at 42.

266. *Id.*

would not adversely affect local rates[267] or jeopardize universal coverage because the competition was expected to gradually occur, and increased demand with market stimulation would offset any potential losses by the LEC.[268]

5. Louisiana

The Louisiana Public Service Commission allowed competition for intraLATA traffic in 1991.[269] In addition to denying South Central Bell Telephone's request to increase local rates in exchange for a reduction in toll charges, the Louisiana Commission ordered the LEC to levy access charges against itself as it does against other carriers.[270] Because of technological and networking limitations at the time, full competition through presubscription was not implemented.[271]

6. Minnesota

The Minnesota Public Utilities Commission approved intraLATA competition in March 1993.[272] Although the Minnesota Commission was committed to presubscription and considered it necessary for effective competition, it decided that it was too difficult to implement.[273] More recently, however, the Minnesota Commission ordered presubscription effective February 15, 1996.[274] The Commission concluded that presubscription would stimulate toll call usage and counterbalance any potential revenue loss for LECs.[275]

---

267. *Kentucky Commission Allows IntraLATA Toll Competition*, PUB. UTIL. FORT., July 1, 1991, at 49, 49.

268. Nagelhout, *supra* note 247, at 42.

269. *Louisiana OKs 10XXX IntraLATA Toll Competition*, PUB. UTIL. FORT., Dec. 15, 1991, at 33, 33.

270. *Id.* South Central Bell has sought to avoid intraLATA competition by expanding local calling areas which has "eliminate[d] intraLATA toll competition and replace[d] it with local service in a forty mile radius." *S. 1822, The Communications Act of 1994: Hearings Before the Comm. on Com., Sci., and Transp.*, 103d Cong., 2d Sess. 428 (1994) (statement of Bert C. Roberts, Jr., Chairman and Chief Executive Officer, MCI Communications Corp.). RBOCs have expanded local calling areas in Mississippi, New Mexico, Texas, and Vermont, to name a few. *Id.*

271. *Louisiana OKs 10XXX IntraLATA Toll Competition*, *supra* note 269, at 33.

272. IntraLATA Toll Access Compensation, 142 Pub. Util. Rep. 4th (PUR) 218, 218 (Minn. P.U.C. 1993).

273. Nagelhout, *supra* note 247, at 42.

274. *IntraLATA Equal Access*, *supra* note 264, at 13.

275. *Id.* at 14.

7. Missouri

In 1986 Missouri became the sixteenth state to allow intraLATA toll competition.[276] Missouri has four LATAs, three of which have their own area code.[277] The Missouri Public Service Commission denied LECs the ability to change their basic rates but allowed them to charge access fees.[278] The Missouri Commission felt that LECs would dominate because they were firmly entrenched in providing intraLATA service and insufficient business existed to allow for competition.[279]

8. North Dakota

North Dakota allows intraLATA toll competition but initially did not require presubscription.[280] Subsequently, the North Dakota Public Service Commission ordered all LECs to implement presubscription as well as to impute access charges on themselves.[281] US WEST, the dominant LEC, argued that sufficient competition already existed through 10XXX dialing and that equal access is unfair because, as the designated carrier, it is required to carry the call even if it is made at a loss to it.[282]

The North Dakota Commission later ordered presubscription for intraLATA calls throughout the state.[283] However, this order was reversed[284] and blocked by the state assembly which passed legislation that precluded requiring an LEC to provide 1+ dialing for intraLATA calls until 1999.[285]

Two IXCs challenged the legislation as contrary to the state constitution;[286] however, the court upheld the legislation as "reasonable . . . to allow the companies providing local exchange service to maintain a slightly more convenient dialing disparity requiring customers desiring to use an interexchange carrier to dial an extra four-digit ac-

276. Semilof, *supra* note 48, at 11.
277. *Id.*
278. *Id.*
279. *Id.*
280. *See* Loosley, *supra* note 243, at 5.
281. Nagelhout, *supra* note 247, at 43.
282. *Id.*
283. MCI Telecommunications Corp. v. Heitkamp, 523 N.W.2d 548, 551 (N.D. 1994).
284. The reversal order resulted from a failure to comply with rule-making provisions. *Id.*
285. *Id.*; *Deregulation, Competition, Infrastructure Top '93 State Laws*, ST. TELEPHONE REG. REP., Dec. 30, 1993, at 1, 5.
286. *MCI Telecommunications Corp.*, 523 N.W.2d at 551. The two IXCs were MCI and LDDS. *Id.*

cess code."[287] Furthermore, the court found a rational basis between the substantial costs LECs would incur in order to implement 1+ dialing and the state's interest in offering " 'telecommunications services at the most economic and reasonable cost.' "[288]

9. Ohio

Although the Ohio Public Utilities Commission opened intraLATA competition, an expansion of the market to include presubscription and equal access charges on a statewide basis was recently declined.[289] The decision not to open the market to further competition was based on a failure by the petitioner to show that the current regulations were unjust, discriminatory, or anticompetitive.[290] Nevertheless, the Ohio Commission approved intraLATA presubscription for Western Reserve Telephone and Cincinnati Bell Telephone by the end of 1994 and 1995, respectively.[291]

C. Challenges to IntraLATA Deregulation

RBOCs and GTE oppose intraLATA competition because they are precluded from competing for interLATA service.[292] Other carriers can counter charges of unfair competition, however, with the argument that each carrier "comes to the intraLATA market with an advantage that is denied the other."[293] Furthermore, RBOCs have a cost advantage over IXCs because they already have a highly efficient operational toll network. The alternative carriers are optimized for long-haul traffic and do not have the infrastructure within the various LATAs.[294] Moreover, the RBOCs and GTE retain an advantage because they still control the local loop, are the incumbent carriers and, in most cases, are protected by 10XXX dialing.[295]

---

287. *Id.* at 554.

288. *Id.* (quoting N.D. Cent. Code § 49-21-02.1 (Supp. 1993)).

289. Allnet Communications Serv. v. Public Util. Comm'n, 638 N.E.2d 516, 519 (Ohio 1994).

290. *Id.*

291. *IntraLATA Equal Access*, *supra* note 264, at 13.

292. *See* Gillan, *supra* note 84, at 36-37.

293. *Id.* at 37.

294. Pam Powers, *Intra-LATA Toll War Brewing: BOCs Prepare to Protect Hold on Local Market*, NETWORK WORLD, Aug. 31, 1987, at 1, 1.

295. *See supra* text accompanying notes 216-25. " '[T]o be truly competitive,' dialing parity is required." *California Proposes New IntraLATA Toll Competition Plan*, TELECOMMUNICATIONS REP., July 25, 1994, at 12, 12 (quoting AT&T response to CPUC draft decision).

LECs argue that intraLATA competition will erode profits.[296] However, "[s]o long as competitive entry erodes the [LEC's] market at a rate slower than the market's growth, the [LEC] will continue to see its revenues and traffic volumes increase."[297] In fact, the New York Public Service Commission found the effects of intraLATA competition on LECs to be "insignificant."[298] Washington state found that after monitoring LECs' monthly revenue flow, "no adverse effects [were] reported."[299] AT&T reported that in states that allow intraLATA competition, it carried less than one percent of the intraLATA residential calls.[300] This scenario played out in the long distance market after divestment and AT&T lost its market share to competitors.[301]

LECs argue that implementing presubscription is unnecessary because the market is sufficiently competitive with 10XXX dialing.[302] However, even with presubscription, most consumers will stay with the incumbent LEC as a carrier. For instance, in Iowa's voluntary equal access plan, eighty percent of users signed on with US WEST, the dominant LEC for the area.[303] Therefore, it is unlikely that LECs will experience losses substantial enough to jeopardize either their revenues or their ability to provide local service.[304]

---

296. Interim Opinion, *supra* note 7, at 32; Investigation into IntraLATA Presubscription, No. 930330-TP, 1994 Fla. PUC LEXIS 1125, at *3, *11 (Fla. P.S.C. Sept. 7, 1994).

297. Gillan, *supra* note 84, at 37.

298. Paul Rodgers, *InterLATA and IntraLATA Competition*, *in* REGULATION AND DEREGULATION AFTER THE AT&T DIVESTITURE, at 471, 481 (PLI Patents, Copyrights, Trademarks, and Literary Property Course Handbook Series No. G4-3759, 1984).

299. *Id.*

300. AT&T estimated its share to be 0.94%. *IXCs Submit Plan for IntraLATA Equal Access in California*, TELECOMMUNICATIONS REP., Aug. 1, 1994, at 4, 44. By extrapolating from AT&T's estimated 60% share of the interLATA market, the IXCs collectively have an approximate nationwide residential intraLATA market share of 1.6%. *Id.*

301. From the third quarter of 1984 to the end of 1987, AT&T's share of the interstate toll market declined from 84 percent to 70 percent. In every quarter, however, AT&T's traffic *increased*—by an average of more than 7 percent per year.

> Furthermore, while AT&T's share of *revenues* has declined from 90 percent to 75 percent—reflecting its loss in market share *and* significant rate reductions—its revenues have remained relatively constant . . . .

Gillan, *supra* note 84, at 37-38 (footnotes omitted). Currently, AT&T carries approximately 60% of the long distance traffic in the United States. *AT&T Sales*, *supra* note 224, at D2. AT&T's revenue in 1994, $5.7 billion, reached the same revenue as the entire Bell system attained just prior to its breakup in 1984. *Id.*

302. *See, e.g.*, Intra-Market Service Area Dialing Arrangements, 116 Pub. Util. Rep. 4th (PUR) 223, 224-25 (Ill. Commerce Comm'n 1990).

303. Gillan, *supra* note 84, at 38.

304. *Id.*

Once presubscription is ordered, LECs may argue that they will suffer dramatic losses in revenue and market share,[305] just as GTE and Pacific Bell claimed they will suffer from limited intraLATA competition in California.[306] LECs believe they should be compensated for this loss in order to continue to provide affordable basic phone service. This compensation will likely derive from a rise in local rates.[307]

IV. CONCLUSION

A. *Business Customers Win Out*

Although California's new rates will be among the lowest in the country, business customers are primarily those who will see lower overall phone costs.[308] The CPUC admits that more than half of residential customers will see higher phone bills.[309] Higher basic service rates will hurt the poor, the elderly, and those twenty to thirty percent of phone customers who do not make toll calls every month.[310] Moreover, business customers will have the added ability to bypass the standard tariff rates and negotiate better deals for their toll calls.[311] Additionally, Pacific Bell will only target the largest users to secure contract deals.[312] In New Jersey, Bell Atlantic offers its Toll Savings Plan only to customers who pledge at least $150,000 per year in total volume.[313]

Even without presubscription, sophisticated customers with PBX software can automatically route their calls to their chosen carrier and therefore enjoy an immediate benefit from competition.[314] Furthermore, if the customer uses an IXC as its toll carrier, the customer may

305. LECs have asserted that they will suffer losses from implementing the technology required for presubscription. *See Investigation into IntraLATA Presubscription,* 1994 Fla. PUC LEXIS 1125, at *3, *41-45.

306. Interim Opinion, *supra* note 7, at 163.

307. *See id.* at 38; *Investigation into IntraLATA Presubscription*, 1994 Fla. PUC LEXIS 1125, at *3, *41-45.

308. *See* Bill Burch, *California Intra-LATA Toll Rates Cut Nearly in Half*, NETWORK WORLD, Sept. 26, 1994, at 31, 31.

309. *The PUC Gets Its Wires Crossed: Effort to Deregulate Phone Service Business Has Become One Big Snarl*, L.A. TIMES, Jan. 5, 1995, at B6 (editorial).

310. *Id.*

311. *See* Burch, *supra* note 308, at 31.

312. *Pac Bell Gearing Up for Intra-LATA Competition*, TELECOMMUNICATIONS ALERT, Nov. 5, 1993, *available in* LEXIS, CMPCOM Library, ZTL2 File.

313. Paulak, *supra* note 244, at 31.

314. David Rohde, *Intra-LATA Toll Calls: Trick or Treat?*, NETWORK WORLD, Nov. 1, 1993, at 28, 28. The FCC noted that business customers may have choices that residential customers cannot exercise and, therefore, residential ratepayers will pay a disproportionate

likely receive additional savings because the intraLATA toll usage may apply toward IXC volume discounts.[315]

B. Recommendations

"[R]egulatory rules which govern the basic structure of competition should begin with the assignment of most rights to the *customer*."[316] One analyst suggested that this objective is met through two elements: dialing pattern reform and financial indifference.[317]

1. Dialing patterns

States should implement presubscription as soon as possible.[318] Access codes add a barrier to consumer access of alternate carriers, thus insulating the LEC from competition and limiting the choice and benefit of a deregulated market.[319] Presubscription is recognized as an accepted and superior method for accessing competitive carriers[320]—long distance calling could not be easier. Presubscription empowers the user with freedom and flexibility in the selection of telecommunications products.[321] It also allows other carriers to compete against LECs on a level playing field, thus increasing competition.

Likewise, implementing presubscription should not be conditioned on allowing LECs to compete in markets in which they are currently prohibited. LECs will offer dialing parity in exchange for permission to carry interLATA calls.[322] Because such approval will not be effective for some time,[323] and because unfair competition continues to exist in the interim, 1+ dialing should not wait for LEC entry into other markets.

Furthermore, presubscription should be extended to residential customers before business customers. This method gradually in-

---

higher price for toll calls. Administration of the North American Numbering Plan, 9 FCC Rcd 2068, 2077 (1994).

315. Rohde, *supra* note 314, at 28.

316. Gillan, *supra* note 84, at 35.

317. *Id.*

318. Even with an authorization to implement presubscription, LECs may not be required to implement the change for anywhere between six months to five years. *See* Investigation into IntraLATA Presubscription, No. 930330-TP, 1994 Fla. PUC LEXIS 1125, at *3, *30-33 (Fla. P.S.C. Sept. 7, 1994).

319. *See supra* text accompanying notes 215-25.

320. *See* Gillan, *supra* note 84, at 35.

321. *Id.*

322. *InterLATA Relief*, *supra* note 128, at 9.

323. *See id.*; *Sparks Fly over Industry Talks on InterLATA Services; Paper Outlines "Essential Elements" of Local Competition*, TELECOMMUNICATIONS REP., Feb. 13, 1995, at 1, 1.

troduces competition and provides regulators with quantifiable experience before introducing full-scale competition.[324] It also bypasses problems of competitors who engage in cream skimming of business customers who comprise the bulk of the toll market. Lastly, residential customers are more in need of presubscription than business customers. Business customers are more likely to use PBX programming, smart phones, and auto dialers. They are, therefore, less likely to turn to 1+ dialing to take advantage of the benefits of alternative carriers.[325]

2. Financial indifference

Regulators should not sacrifice consumer choice and competition in exchange for a carrier's financial protection. The CPUC should approach deregulation issues without regard to the market participants' estimated financial outcome. By implementing a revenue-neutral policy, the CPUC has chosen to protect the financial viability of LECs at the consumer's expense. If there is a legitimate concern as to the ability of a carrier to provide a government-mandated service, the CPUC should look to other competitors who use that carrier's service rather than making consumers directly and immediately bear the burden of lost income.

a. access charges

In the event increased competition does cause LECs to suffer significant financial losses that threaten affordable basic rates and universal service, regulators should look to subsidization from other markets where LECs retain monopoly power.[326] Access charges are one area of almost exclusive LEC control. As long as LECs control access to carriers for toll or long distance calls, LECs can charge these carriers an access fee.[327] This charge is a single transaction common to all calls outside the local loop and should be the source of any local service subsidization.

The use of access charges has four advantages. First, regulators control the degree these charges contribute to local service.[328] Regulatory control is based on an explicit policy decision by the regulator and should avoid decisions based on LECs' financial objectives.[329]

324. Gillan, *supra* note 84, at 39.
325. *Id.* at 39 n.14.
326. *Id.* at 36.
327. *See id.*
328. *Id.*
329. *Id.*

Second, the side effects of competition are limited to that single market.[330] Third, access charges are not threatened by erosion of competition in the market[331]—LECs' dominance in this service will not be undermined except by specific determination by the regulator. Fourth, local rates stay at low levels, thus promoting the goals of universal service.

Furthermore, these access charges should be applied evenly to all carriers, including to LECs themselves. LECs' failure to levy the same access charges against themselves as they levy against IXCs may give rise to a charge of price discrimination, thus violating state and federal law.[332] Imputation of access charges to LECs also prevents bypass of the local exchange by consumers who utilize private networks, and encourages efficient use of the toll facilities.[333]

b. local rates

The CPUC should not raise the rates for basic service. Rate increases threaten the universal service goals set out by the CPUC. Also, evidence of any potential loss is based on economic models and is to some degree speculative. Other states have taken a wait-and-see approach before enacting any raise in basic service rates. The CPUC should have chosen this more cautious approach to shield consumers.

C. Sign of Future Trends

The local long distance market in California will change from monopolistic to competitive. Initiating competition removes the CPUC from a price regulation role while simultaneously allowing LECs and IXCs more freedom to compete in a deregulated market. The CPUC has taken the step of allowing market forces to establish the price in one portion of the telephone market. However, the manner the CPUC employed has sacrificed the interests of residential customers for the goal of competition. The CPUC has simultaneously undermined the tantamount goals of universal service set out by the federal and state government.

Each of the decisions may provoke litigation over anything from the basic service increase, to the common carrier line charge, to the toll rate structure. However, as these issues are addressed, the tele-

---

330. *Id.*

331. *Id.*

332. *See, e.g.*, 47 U.S.C. § 202 (1988); CAL. PUB. UTIL. CODE §§ 556, 558 (West 1975 & Supp. 1995); Dingwall, *supra* note 65, at 443-46.

333. Dingwall, *supra* note 65, at 441-43.

communications markets will become increasingly competitive, both at the state and national levels.

In 1991 the National Telecommunication and Information Administration concluded that the public interest would be best served by removing legal barriers to competitive entry of the local exchange services.[334] The CPUC has stated that it intends to open all telecommunications markets to full competition by 1997.[335] Consumers have much at stake in this matter because of the continued reliance on telecommunication services for social and economic welfare. The development of a national information infrastructure promises benefits that consumers will increasingly begin to rely upon. Telecommunications companies will also have much at stake in the development of new markets, such as video dial tone, and increasing competition in existing markets, such as the local loop.[336]

The rulings enacted by the CPUC are critical to setting precedent for further deregulation in these emerging and existing areas. Without adjustments in its approach, the CPUC decisions reflect a trend that ultimately will adversely affect consumers in the future and result in excluding portions of the population from the benefits of a communications infrastructure.

So while Express Tel's ad may be correct in saying that Pacific Bell has been taking us to the cleaners, the CPUC is the one driving us there.

Peter Siembab *

---

334. Lori A. Burkhart, *Local Telephone Monopoly—The Beginning of the End*, PUB. UTIL. FORT., Feb. 1, 1992, at 32, 32 (citing NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION REP., TELECOMMUNICATIONS IN THE AGE OF INFORMATION 271-72).

335. Interim Opinion, *supra* note 7, at 23-24 (citing CAL. PUB. UTIL. COMM'N, ENHANCING CALIFORNIA'S COMPETITIVE STRENGTH: A STRATEGY FOR TELECOMMUNICATIONS INFRASTRUCTURE (1993)). However, "most state utilities commissions [will] overlook dialing parity for intra[ ]LATA toll calls as much less important than the question of opening the local loop." Loosley, *supra* note 243, at 7.

336. Nationally, the local exchange market is estimated at $80 billion, the cable market at $20 billion, the toll market at $14 billion, and the long distance market at $60 billion. Leslie Helm, *Telecom Regulation: A Status Report*, L.A. TIMES, Sept. 27, 1994, at D1.

* I wish to extend my appreciation to everyone on *Law Review* for their hard work and support. Also, I wish to acknowledge my pal, Dr. Shep Martin for the indelible impressions he made on this Comment. Special thanks to Kendra Nitta, my wife-to-be, for her love, editorial insights, professional graphics, and Saturday dance lessons. This Comment is dedicated to my father and "Vindaloo Brother," Walter, who inspired me to work in telecommunications.

V. GLOSSARY

10XXX DIALING: Dialing method for designating IXC. Each IXC has a unique three-digit code which is represented by XXX.

AT&T: American Telephone and Telegraph Corporation.

CCLC: Carrier Common Line Charge. The costs levied against carriers for accessing the LEC's network—the nontraffic-sensitive costs of the local loop, end office, and other like portions of the LEC's network.

CPUC: California Public Utilities Commission.

DEC: Direct Embedded Costs. The historical costs that can be attributed to a specific service supplied by a utility.

DRA: Division of Rolepayer Advocates of the CPUC.

INTERCONNECTING TELEPHONE EXCHANGE: A central office telephone switch that is connected to another central office telephone switch.

INTERLATA PHONE CALLS: Phone calls that pass from LATA to LATA. RBOCs are prohibited from offering this service pursuant to the MFJ.

INTRALATA PHONE CALLS: Phone calls that originate and terminate within the same LATA.

IXC: Inter-Exchange Carrier. Carriers that provide interLATA communications services over their own or leased facilities. Commonly referred to as a long-distance carrier.

LATA: Local Access and Transport Areas. Geographic service areas established by order of the MFJ that mark the boundaries beyond which the RBOCs may not carry telephone calls.

LEC: Local Exchange Carrier. Provider of local and intraLATA telephone service. Includes all RBOCs.

LOCAL LOOP: The two wires between the telephone user and the LEC's end office.

MFJ: Modified Final Judgment. United States v. American Tel. & Tel. Co., 552 F. Supp. 131 (D.D.C. 1982), *aff'd sub nom.* Maryland v. United States, 460 U.S. 1001 (1983). The agreement between AT&T

and the Department of Justice that required AT&T to divest itself of exchange telecommunications services.

POP: Point of Presence. The physical location of the IXC's switching office that gains access to the LEC's network.

PRESUBSCRIPTION: Method of allowing a telephone subscriber to designate in advance which carrier will transport all of a class of phone calls.

RBOC: Regional Bell Operating Company. Twenty-two independent, regional holding companies that provide for all calls carried over the local exchange.

TOLL CALL: Generally, any intraLATA call beyond a twelve-mile radius.

TURN: Toward Utility Rate Normalization. California-based consumer rights organization.