Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)
	)
Pacific Bell Petition for Interim	)
Waiver of Part 69.104	)
to Offer ISDN Equipped Access Lines	)
to California Schools, Libraries,	)
and Community Colleges	)

ORDER

Adopted: December 11, 1995 Released: December 13, 1995

By the Commission: Commissioners Barrett and Chong issuing separate statements.

I. INTRODUCTION AND BACKGROUND

1. On November 9, 1994, Pacific Bell (Pacific) filed a petition for interim waiver of Section 69.104 of the Commission's rules[1] to permit it to provide integrated services digital network (ISDN)-equipped access lines to public and private schools, libraries, and community colleges free of charge for one year.[2] The requested waiver would allow Pacific to forego assessing the end user common line (EUCL) charge on the ISDN lines for one-year following initiation of service to the eligible institution. Under this program, eligible institutions must request inclusion in the program prior to December 31, 1996.

2. This request is the interstate component of Pacific's Education First program. Pacific sought authorization for the intrastate component of this program in a proposal it submitted to the California Public Utilities Commission (CPUC) on April 8, 1994 to provide

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1 47 C.F.R. § 69.104.

2 Pacific Bell Petition for Interim Waiver, Nov. 9, 1994 (Pacific Petition). The Pacific Petition was placed on public notice. See Pleading Cycle Established for Comments on Pacific Bell's Petition for an Interim Waiver of the Commission's Rules to Offer ISDN Equipped Access Lines Without Imposition of the End User Common Line Charge, DA 94-1302, 9 FCC Rcd 7220 (1994).

ISDN service to public schools, public libraries, and community colleges for one year free of intrastate service charges. On August 3, 1994, the CPUC issued a Resolution authorizing Pacific to offer the proposed service, subject to specified conditions. The program was subsequently expanded to include private schools (kindergarten through twelfth grade).[3] As of May 22, 1995, 710 institutions had applied to participate in the program, 95 institutions were in the program, and 286 ISDN lines had been installed.[4]

3. The CPUC approved the Education First program subject to certain conditions.[5] First, the CPUC imposed several local marketing and local rate information disclosure requirements on Pacific. Second, the CPUC required Pacific to develop and file a tracking mechanism for identifying the waived expenses and revenues associated with the program. Third, Pacific is required to file with the CPUC its proposed discount access rates for the Education First program. Fourth, Pacific is prohibited from recovering any waiver revenues or expenses associated with this program through increased rates to customers of other services. Fifth, Pacific is prohibited from including Education First expenses in any request to recover extraordinary costs under the state's incentive regulation plan. Finally, Pacific is required to deduct its program expenses from its earnings calculation if the company's intrastate rate of return falls below Pacific's intrastate earnings floor.[6]

4. For the reasons stated below, we conclude that Pacific has demonstrated good cause for a limited waiver of Section 69.104 of the Commission's rules, which would otherwise require Pacific to assess a EUCL charge with respect to these lines. Accordingly,

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3 See Cal. Public Utilities Comm'n. Res. T-15588, Aug. 3, 1994 (resolution authorizing Pacific Bell to offer Education First program to public schools, public libraries, and community colleges)(Authorizing Resolution T-15588); Cal. Public Utilities Comm'n., Order Modifying and Denying Application for Rehearing of Resolution T-15588, Decision No. 94-11-077, Nov. 22, 1994 (Order On Application for Rehearing); Cal. Public Utilities Comm'n. Res. T-15703, Dec. 21, 1994 (resolution authorizing extension of Pacific Bell Education First Program for private schools)(Authorizing Resolution T-15703).

4 See ex parte Letter from Sheryl L. Herauf, Director, Federal Regulatory Relations, Pacific, to Mark Nadel, Federal Communications Commission, June 1, 1995. The institutions that have begun accepting service from Pacific under the Education First program are currently paying EUCL charges.

5 See Authorizing Resolution T-15588.

6 See Authorizing Resolution T-15588. Originally, the CPUC also required that Pacific deduct the program's expenses from its earnings calculation if at any time the rate of return exceeds shareable earnings. In the Order on Application for Rehearing, the CPUC modified its original requirement and deleted this last requirement. See Order on Application for Rehearing at 5.

we grant this waiver, subject to the conditions described herein.

II. POSITIONS OF THE PARTIES

A. Pacific Petition

5. Pacific proposes to provide public and private elementary and secondary schools, public libraries, and community colleges with free installation of up to four ISDN lines and free monthly service for one year, including no local or intraLATA usage charges. Pacific also proposes to provide inside wiring/coaxial cable for up to two locations per site and one additional ISDN line and associated inside wiring/coaxial cable to connect individual school sites with a mutually agreed upon hub location. If schools order additional lines or services, tariffed rates will apply.[7]

6. Pacific explains that under this initiative, which it calls "Education First," it will offer one introductory year of service to approximately 8,600 eligible schools. The institutions may place orders through December 31, 1996.[8] Pacific states that it is developing with the CPUC reduced intrastate rates for these service offerings that will apply after the initial year. Pacific seeks a one-year waiver of the EUCL charges so that participating institutions would not pay any Federal access charges during the year that they are exempt from intrastate charges. Pacific proposes to charge its standard tariffed EUCL rates for these lines after the first year.[9]

7. Pacific estimates the aggregate cost of the program to be approximately $115 million, "split fairly evenly between expenses and foregone revenue."[10] Pacific states that

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7 Pacific Petition at 3.

8 The figure of 8600 schools is comprised of 7400 public and 1200 private schools. This figure represents the maximum number of schools that Pacific believes will participate in the program. See ex parte letter from Jo Ann Goddard, Director, Federal Regulatory Relations, Pacific, to Mark Nadel, Attorney, Federal Communications Commission, Common Carrier Bureau, Policy and Program Planning Division, January 9, 1995 at 1 (January 9 Pacific ex parte letter).

9 Pacific Petition at 2-4.

10 See Pacific Petition at 3. See also Authorizing Resolution T-15588 at 2-3; and Authorizing Resolution T-15703 at 2-3 for a detailed description of Education First's cost components. In addition, Pacific states that 23% of the $115 million total estimated cost of the program is related to inside wire installation and maintenance. See ex parte letter from Alan F. Ciamporcero, Executive Director, Federal Regulatory Relations, Pacific, to Kathleen Levitz, Deputy Chief, Common Carrier

the foregone revenue from EUCL charges could add $2.3 million to these costs over the three-year life of the program.[11] Pacific further states that it will not attempt to recover these foregone revenues by raising rates for other intrastate and interstate services. Hence, Pacific contends, the cost of the program will be borne by its shareholders.

8. Pacific observes that a waiver may be granted upon good cause, and that the Commission may exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the public interest. It states that a waiver is appropriate if special circumstances warrant a deviation from the general rule and such deviation will better serve the public interest than adherence to the general rule.[12] Pacific asserts that the public interest is served by this waiver because it will accelerate the connection of schools, libraries, and community colleges to the information highway, benefiting the students, educators, and economy of California, without harming any competitor or customer.

9. If the waiver request is granted, Pacific proposes to include the relevant ISDN-equipped lines in its projection of "local exchange service subscriber lines in use," for purposes of calculating the EUCL charge pursuant to Section 69.104(c) of the Commission's rules.[13] It states that by including these costs in its calculation, other subscribers will not be subsidizing the cost of the program. Pacific proposes to include the costs of Education First in its regulated accounts and in its earnings calculations, because it expects to realize revenue from its expenditures on the Education First lines in subsequent years.[14]

B. Comments

10. United States Telephone Association (USTA) strongly supports Pacific's initiative and urges the Commission to grant the request.[15] It asserts that the Commission should not impede local education initiatives among local exchange carriers (LECs), schools, teachers,

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Bureau, Federal Communications Commission, February 3, 1995.

11 Pacific states that Education First will be in place for three years. According to Pacific's calculation, this period began in November 1994, the time that Pacific filed its Petition, and would end one year after December 31, 1996, the last date on which eligible institutions may order service. See Pacific Petition at 3-4 & n.4.

12 Pacific Petition at 4-5 (citing 47 C.F.R. § 1.3; Northeast Cellular Telephone Co. v. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990)(Northeast Cellular v. FCC)).

13 47 C.F.R. § 69.104(c).

14 Pacific Petition at 5-6.

15 USTA and MCI are the only parties that filed comments in this proceeding.

parents, and students, particularly where state regulators already have reviewed a project.[16] In addition, USTA urges the Commission to develop expedited means of reviewing LEC projects for education.[17]

11. MCI commends Pacific's initiative, but argues that, contrary to assertions by Pacific, the Education First initiative would not be funded solely by Pacific shareholders.[18] MCI contends that interexchange carriers (IXCs) also might bear part of the program's costs. MCI observes that, because the costs of the ISDN lines would be included in Pacific's regulatory books and in the earnings calculations that determine Pacific's sharing obligation or entitlement to a low-end adjustment under price caps, the costs of the initiative could reduce its sharing obligation or permit it to file above-cap rates targeted to earn the low-end adjustment minimum rate of return. In addition, MCI asserts that if Pacific's interstate earnings exceed the 50/50 sharing range of price caps, the amount by which the cost of the program reduced Pacific's "100%" sharing obligation would be funded entirely by ratepayers of other Pacific interstate services.[19] MCI also contends that the inclusion of these lines could also decrease the "g" (growth in minutes of use per line) factor that is used to calculate the cap on the carrier common line (CCL) rate. MCI claims that if these new ISDN lines generate fewer interstate minutes of use than the average line, including these lines in computing the CCL cap will lower the "g" factor and cause the CCL cap to be higher than it otherwise would be, allowing Pacific to charge a higher CCL rate. Finally, MCI states that, because Pacific is not proposing to waive the CCL charges for any interstate usage on these lines, the captive interstate CCL ratepayers will pay for part of the Education First program.[20]

12. MCI suggests several ways that Pacific could modify its waiver request to ensure that its shareholders fund the full cost of the program.[21] First, Pacific could exclude the costs of the ISDN lines from the computation of its interstate rate of return for purposes of applying the sharing/low-end adjustment rules under price caps. Second, Pacific could agree to exclude both the lines and the minutes of use generated by these lines from the

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16 USTA Comments at 1-3.

17 Id. at 2-3.

18 MCI Comments at 3-4.

19 See ex parte letter from Chris Frentrup, Senior Regulatory Analyst, MCI to Mark Nadel, Attorney, Federal Communications Commission, Common Carrier Bureau, Policy and Program Planning Division, January 12, 1995 at 1-2 (January 12 MCI ex parte letter).

20 MCI Comments at 3-4.

21 Id. at 3-4.

computation of the "g" factor. Finally, Pacific could agree not to assess CCL charges on interstate minutes of use that originate and terminate on these lines during the first year. Alternatively, MCI suggests that Pacific could assess the full EUCL charges, but offset them by making a charitable contribution to the educational entities in an amount equal to the full cost of the lines. MCI contends that, under this arrangement, the Commission would only need to grant Pacific a waiver of Part 36.222(c) of its rules to allow Pacific to take the contribution "below the line."[22]

13. In response to MCI's comments, Pacific asserts that it will not seek any rate increases to recover the expenses incurred or revenues foregone in connection with Education First.[23] Pacific contends that MCI's suggestions are self-serving, unnecessary due to the relatively small amount of costs involved, contrary to the goals of price cap regulation, and would result in increased administrative costs due to the substantial additional bookkeeping and separations analysis that would be required to implement below-the-line accounting of costs and revenues. While acknowledging that Education First costs could reduce sharing, Pacific believes that, as long as rates are not increased as a result of Education First, it is not also necessary to ensure that Pacific's sharing obligation will not be affected by the program. Rather, it views the program as an investment in infrastructure that will both improve education and stimulate overall network use, providing significant long-term benefits to customers.[24]

14. Pacific states that Education First is not and was never intended to be a charitable contribution. Furthermore, Pacific states that it never intended this program to be anything other than a product promotion.[25] Consequently, Pacific argues that MCI's suggestion that it artificially increase booked revenues "makes no sense under any rule of accounting."[26] Pacific asserts that although MCI's proposed accounting treatment would place all of the risks of Education First on Pacific's shareholders, it also could deny those

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22 Id.

23 January 9 Pacific ex parte letter at 2.

24 Id. at 1-2.

25 In the proceedings before the CPUC, Pacific also stated that, the Education First program was intended as an opportunity for it to "jump-start" cash poor schools and accelerate their entrance into the information age, while at the same time stimulate their use of Pacific's network services. See Response to MCI's Opposition to Pacific Bell's (U 1001 C) Application for Rehearing of Resolution T-15588, Advice Letter No. 16965, October 7, 1994, at 3-5.

26 See ex parte letter from Jo Ann Goddard, Director, Federal Regulatory Relations, Pacific to Mark Nadel, Attorney, Federal Communications Commission, Common Carrier Bureau, Policy and Program Planning Division, January 18, 1995 at 2.

shareholders any return on the ISDN and associated investment stimulated by the program.[27]

15. In response, MCI contends that if Pacific does not book revenues from the program, its interstate earnings will be understated and interstate ratepayers could end up paying the cost of these lines under the current price cap sharing mechanism. MCI also explains that it was not suggesting that Pacific record any of its regulated investment and expenses below-the-line; rather, MCI's accounting proposal would only require Pacific to book (below-the-line) a charitable contribution equal to the foregone EUCL revenue.[28]

III. DISCUSSION

16. Under Section 1.3 of our rules, we are authorized to grant waivers "if good cause therefor is shown."[29] As interpreted by the courts, this requires that a petitioner demonstrate that "special circumstances warrant a deviation from the general rule and such a deviation will serve the public interest."[30] In this case, we find special circumstances in that the CPUC already has approved Pacific's promotional offering of local service under the Education First program. We further find that Pacific's goal of making advanced telecommunications services more accessible to California's schools and libraries provides significant public interest benefits that justify this deviation from the EUCL charge requirement for a limited two-year period.

17. The EUCL charge, which is also known as the Subscriber Line Charge (SLC), is part of a comprehensive system of tariffed access charges for recovery of LEC costs associated with the origination and termination of interstate calls.[31] Twenty-five percent (25%) of the costs of the local loop -- the telephone lines that connect end-users' premises to LEC switches at local central offices -- are assigned to the interstate jurisdiction.[32] The EUCL charge is a monthly charge intended to recover a major portion of a LEC's interstate

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27 Id. at 1-2.

28 See January 12 MCI ex parte letter at 1-2.

29 47 C.F.R. § 1.3.

30 Northeast Cellular v. FCC, 897 F.2d at 1166 (citing WAIT Radio v. FCC, 418 F.2d 1153, 1159 (D.C.Cir. 1969)).

31 See MTS and WATS Market Structure, CC Docket No. 78-72, Phase I, Third Report and Order, 93 FCC 2d 241 (1983).

32 47 C.F.R. § 36.154, Subcategory 1.3. LECs eligible for the Universal Service Fund recover a higher percentage of their local loop costs through interstate rates.

loop costs from subscribers on a flat-rate basis.[33] The portion of local loop costs that is assigned to the interstate jurisdiction but not recovered through the EUCL charge is recovered from interexchange carriers through the per-minute CCL charge.[34]

18. Section 69.104 of the Commission's rules generally requires LECs to assess upon end users that subscribe to local exchange service, the EUCL charge.[35] The only exception to this requirement falls under the Lifeline program, where eligible (means tested) low income households in 41 participating jurisdictions receive a reduction in their monthly rates up to the full amount of the maximum $3.50 per line federal residential EUCL charge.[36] Consequently, our rules do not permit Pacific voluntarily to forego collection of the EUCL without a waiver.

19. We believe that Pacific's requested waiver is consistent with our statutory mandate to increase public access to the telecommunications network. A year of free ISDN service will allow schools to assess, without financial risk, the benefits of advanced telecommunications services. Each school then will be able to determine whether such service should be incorporated into its educational budget in the future. After careful review of this proposal and the record submitted, we find that the limited waiver requested by Pacific would not affect adversely either competing providers of communication and information services to schools and libraries or ratepayers of other Pacific services. The approval of Pacific's waiver petition does not disadvantage Pacific's competitors who might seek to provide services to schools; their ability to structure comparably attractive offerings to schools and libraries will be unaffected by this waiver. In addition, Pacific's proposal, subject to the conditions contained in this Order, does not create a new internal subsidy as the waiver will neither result in increasing other rates nor affect sharing or low-end adjustments. The waiver will only be temporary and will be subject to conditions designed to prevent Pacific from recovering the lost EUCL revenues from other end-user ratepayers, or IXCs and their long distance customers. Consequently, we conclude that the waiver

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[33] The Commission released a Notice of Proposed Rulemaking in May 1995, seeking comment on how to assess EUCL charges on derived channel services, such as ISDN. The issues raised in that rulemaking proceeding concern the amount of EUCL revenues that LECs may obtain from end users. See Notice of Proposed Rulemaking, End User Common Line Charges, CC Docket No. 95-72, FCC 95-212 (Rel. May 30, 1995).

[34] See MTS and WATS Market Structure, CC Docket No. 78-72, Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, CC Docket No. 80-286, Report and Order, 2 FCC Rcd 2953, 2954, 2957, paras. 10, 29 (1987).

[35] 47 C.F.R. §69.104(a). To the extent that an end user is required to pay CCL charges, it is not required also to pay the EUCL. Id.

[36] 47 C.F.R §§ 36.701 et seq., 69.104(j), 69.104 (k), 69.104(l), 69.117, 69.603(d).

should be granted, subject to certain conditions.

20. In its petition, Pacific asks for a waiver that would extend over the proposed life of the Education First program. Pacific proposes to permit eligible schools and libraries to apply for the promotional service through December 31, 1996, and to receive an exemption from the EUCL charges for a 12-month period, commencing with the installation of the ISDN service. Consequently, the requested waiver could continue to apply to some schools and libraries until some unspecified time in 1998. We are not prepared to grant such an open-ended waiver at this time. Rather, we will grant the requested waiver for a two-year period that will begin on January 1, 1996. Pacific must resume collecting the EUCL from the affected customers on January 1, 1998. While Pacific may forego charging the EUCL for a two-year period, the benefits of this waiver apply to each institution for not more than one 12-month period.

21. Pacific has stated that it will not increase rates to recover the costs of Education First. Accordingly, we condition this waiver upon Pacific's guarantee that it will not attempt to recover any costs associated with this program by increasing interstate access rates, including CCL charges. We do not, however, adopt MCI's proposal regarding calculation of the "g" factor in the common line formula because we find MCI's concern that these lines may generate below-average interstate usage to be entirely speculative.

22. In April 1995, the Commission released the Price Cap Performance Review Order in which it adopted interim changes to the original LEC price cap plan.[37] In that order, we established three productivity factors, or "X"-Factors, and determined that the highest X-Factor, 5.3 percent, presented a sufficiently challenging target to permit us to eliminate sharing. Consequently, Pacific and other LECs that elected the 5.3 percent X-Factor for the 1995 annual access tariff filings do not incur any sharing obligations and are also not entitled to a low-end adjustment based on interstate earnings performance during the period that their tariffs are in effect.[38] As long as Pacific's interstate services are regulated under a "no sharing" X-Factor, MCI's concern that the interstate costs of the Education First program may be used to reduce or avoid sharing obligations is groundless. Because the current LEC price cap plan is an interim scheme, however, this waiver is granted upon the further condition that, in the event Pacific becomes subject to an X-Factor that makes it subject to a potential sharing obligation or potentially eligible for a low-end adjustment, Pacific will impute the revenues foregone pursuant to this waiver for purposes of calculating its interstate access earnings.

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37 Price Cap Performance Review for Local Exchange Carriers, First Report and Order, CC Docket No. 94-1, FCC 95-132 (Rel. April 7, 1995) (Price Cap Performance Review).

38 Price Cap Performance Review at paras. 19-20.

23. Pacific is currently submitting monitoring reports to the CPUC. These reports track the administrative costs of the Education First program, the volume of service provided under the program, and the cost to Pacific of the services being provided. As a condition to this waiver, we require Pacific to submit to the Common Carrier Bureau those portions of the state monitoring reports that contain data on administrative costs and on the amount of service being provided under the program.[39]

IV. CONCLUSION

24. We find that Pacific has shown the special circumstances necessary to grant a waiver with respect to its proposed Education First program. Accordingly, we conclude that Pacific has shown good cause for a waiver of the Commission's Part 69 rules with respect to its offer to install ISDN lines, as requested in Pacific's petition, to serve each public and private elementary and secondary school (kindergarten through twelfth grade), public library, and community college in California. We, therefore, grant Pacific a waiver of those rules and permit Pacific to forego collecting EUCLs from such entities for two years, beginning January 1, 1996.

V. ORDERING CLAUSE

25. Accordingly, IT IS ORDERED that, pursuant to Sections 201-205 and Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 201-205 and §154(i), the petition for waiver filed by the Pacific Bell IS GRANTED to the extent provided herein, and subject to the conditions set forth herein.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

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[39] We do not request data on the cost of the ISDN services because we are already examining the cost of providing ISDN service in another proceeding. See supra note 33. See also Letter from Kathleen M.H. Wallman, Chief, Common Carrier Bureau, Federal Communications Commission, to Bell Operating Companies (September 29, 1995).

SEPARATE STATEMENT
of
COMMISSIONER ANDREW C. BARRETT

RE: *Pacific Bell Petition for Interim Waiver of Part 69.104 to Offer ISDN Equipped Access Lines to California Schools, Libraries, and Community Colleges*

By its action today, the Commission grants Pacific Bell a limited waiver of the Part 69 access charge rules, subject to certain conditions. The interim waiver will allow Pacific Bell, as part of its "Education First" plan, to provide integrated services digital network or ISDN-equipped access lines to public and private schools, public libraries, and community colleges free of charge for one year. Specifically, the limited waiver permits Pacific Bell to forego assessing the end user common line (EUCL) charge, and the revenues generated by that charge, on the ISDN lines for one year following initiation of service to the eligible institution.[1]

To obtain a waiver of our rules, a petitioning party must demonstrate good cause for the waiver.[2] Through several opinions, the courts have interpreted this rule to require that the petitioner show that "special circumstances warrant a deviation from the general rule and such a deviation will serve the public interest."[3] Here, the Commission concludes that Pacific Bell has partially satisfied its burden under the WAIT Radio standard by reporting that California regulatory authorities have blessed the intrastate portion of Pacific Bell's "Education First" plan. The Commission adds that Pacific Bell's goal of making advanced telecommunications services more accessible to California's schools and libraries provides significant public interest benefits that justify a deviation from the Part 69 EUCL requirement.

While I generally support industry's initiatives to deploy advanced telecommunications infrastructure to public elementary and secondary schools, I am concerned that, by approving general waivers such as this one, the Commission condones the provision of free facilities and services to private education institutions that do not necessarily need assistance.[4] By its terms, Pacific Bell's "Education First" plan will offer ISDN-equipped access lines to all of

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1 Section 69.104 of the Commission's rules generally requires local exchange carriers (LECs) to assess upon end users that subscribe to local exchange service the EUCL charge. 47 C.F.R. § 69.104(a).

2 47 C.F.R. § 1.3.

3 Northeast Cellular Tel. Co., L.P. v. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (citing WAIT Radio v. FCC, 418 F.2d 1153, 1159 (D.C. Cir. 1969)).

4 While Pacific Bell's waiver will only be effective for two years, the limited period does not address my broader concerns regarding conferring economic benefits to private schools.

California's public and private elementary and secondary schools free of charge for a period of one year. Pacific Bell states that 1,200 private schools (14 percent of all elementary and secondary schools) will be eligible for free ISDN lines and service for a year.[5] Surely, not every private school in the State of California "needs" free ISDN lines and service -- many of these private schools have endowments comparable to small colleges.

Moreover, the record in this proceeding does not contain specific information concerning the eligibility requirements for private schools to be included in Pacific Bell's program. Without any information describing which private schools are eligible for the free ISDN lines and service, the assumption is that all private schools, regardless of financial condition, are eligible to receive the benefits provided by the Commission's waiver of Part 69.

Notwithstanding my concerns, I join this decision because of certain assurances and particular conditions on the waiver, which are designed to protect interstate ratepayers from shouldering the cost of this temporary corporate promotion. Pacific Bell states that the cost of the "Education First" program will be borne by its shareholders, and further pledges that it will not attempt to recover foregone revenues by raising rates for other interstate or intrastate services.[6] Consistent with these representations, the waiver order prohibits Pacific Bell from attempting to recover any costs associated with this program by increasing interstate access rates, including carrier common line charges.[7].

While I assent to this particular waiver, I will carefully evaluate every forthcoming petition for waiver of our access charge rules and any other rules where, in my view, granting such a waiver may result in conferring an unjustified benefit on a given entity or may endanger the interests of interstate telephone ratepayers.

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5 Ex Parte Letter from Jo Ann Goddard, Director, Federal Regulatory Relations, Pacific Bell, to Mark Nadel, Attorney, Policy and Program Planning Division, Common Carrier Bureau, Federal Communications Commission at 1 (Jan. 9, 1995).

6 Order at para. 7.

7 Order at para. 21.

SEPARATE STATEMENT OF

COMMISSIONER RACHELLE B. CHONG

Re: Pacific Bell Petition for Interim Waiver of Part 69.104 to Offer ISDN Equipped Access Lines to California Schools, Libraries, and Community Colleges

I write separately to express my support for initiatives by communications service providers and equipment vendors to make available advanced communications facilities and services to schools and libraries. As our nation enters the Information Age where information will be as inexpensive and ubiquitous as electricity or clean water, our nation needs to be educated as to how to reap the power of information and communications systems. If we wish the United States to remain competitive in the global marketplace, we must recognize the need to update our educational systems to meet the challenge of an information-based economy. Private sector initiatives are key to achieving this worthy goal. Moreover, such efforts represent good business decisions to boot because today's students are future consumers and employees of these companies.

In evaluating requests for Commission regulatory action in this context, I am guided by two interrelated principles. First, I believe our actions should not create hidden subsidies. Any subsidies to extend communications facilities and services to schools and other educational institutions, to the extent such subsidies are in the public interest, should be out in the open -- "in the sunshine" -- for all to see. Consumers should know that they are being asked to pay a subsidy, the cost of such subsidy, the purpose of such subsidy, and which service provider or equipment vendor will receive the subsidy. Second, I believe we should strive to make our decisions in this area technology- and service-provider neutral. In my judgment, our actions in this context should not favor one particular communications technology over another, or afford a regulatory advantage to one class of communications service provider over another. Our children should reap the benefits of technological advances and not be tied to any particular technology by virtue of government action, however well meaning.

Pacific Bell's request for an interim waiver of Section 69.104 of our rules is consistent with these principles.[1] I therefore support this decision and commend Pacific Bell on its efforts.

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[1] *Cf. Price Cap Performance Review for Local Exchange Carriers, First Report and Order*, CC Docket No. 94-1, 10 FCC Rcd 8961, 9003 (para. 95) (1995).