

Memorandum 97-36

Public Utility Deregulation: Draft Report on Consultation

Attached to this memorandum is a staff draft of the Law Revision Commission's report on its consultation with the Public Utilities Commission concerning code changes required by public utility restructuring. Our objective at the June meeting is to make any revisions that appear appropriate and approve a report for submission to the Legislature and to the Public Utilities Commission in fulfillment of the consultation.

Transportation Industry

The letter attached as Exhibit p. 1, from the California Short Line Railroad Association, arrived too late for consideration at the May meeting. The letter draws a distinction between passenger and freight lines for purposes of deregulation, but our research indicates that federal preemption does not make this distinction. See, e.g., 49 USC 10501(a)(2)(A). In any case, careful drafting should enable removal of federally preempted areas from the statute without impacting matters over which the Public Utilities Commission maintains regulatory authority.

Communications between Union Pacific Railroad and the Public Utilities Commission confirm that there is fundamental agreement that many provisions of the Public Utilities Code are no longer applicable to most railroads due to federal preemption, and code cleanup is more a drafting issue than a policy consideration. See letter from Union Pacific attached as Exhibit pp. 2-6. A few areas of disagreement remain, however, as reflected in the letter. (Note. PUC staff indicates some quibbles with concepts expressed in the letter, but overall agreement.)

Telecommunications Industry

The Law Revision Commission has tentatively concluded that the Public Utilities Commission should formulate criteria and standards for determining what degree of regulation in the local telephone service sector is appropriate, and

when. PUC staff has brought to our attention sample statutes that may be useful as models.

Public Utilities Code Section 495.7 permits the Public Utilities Commission to exempt a phone company from tariffing requirements on a determination either that the company lacks “significant market power” or that “competitive alternatives” are available in the market. PUC is required to promulgate rules for determining market power based on company size, market share, type of service, and other appropriate criteria.

A federal statute, 47 USC § 271, determines when the Bell companies are allowed into the long distance market. The statute includes a checklist of requirements that must be satisfied before regulatory relief is available. See Exhibit pp. 7-16.

Pacific Bell raises the question whether formulation of criteria and standards is appropriately delegated to the Public Utilities Commission, or should be a legislative function. They observe that both models set out above are statutory. The Law Revision Commission staff does not have a useful perspective on this issue; discussion at the Commission meeting by interested parties may be helpful.

Charts

Attached to this memorandum are revised charts for Code revisions proposed by electrical industry participants (Exhibit pp. 17-29) and telecommunications industry participants (Exhibit pp. 30-52 [Pacific Bell] and 53-78 [GTE]). The revised charts are organized by category of policy issue rather than by Code section. The charts have been used to derive the narrative discussion of areas of agreement and disagreement set out in the draft report. Note, however, that the charts provide much greater detail and specificity than the summary in the draft report.

A question remains as to whether these charts, as well as updated versions of the original charts for the natural gas and transportation industries, should be reproduced as Appendices in the Law Revision Commission’s report. The Public Utilities Commission points out that these charts will be substantially expanded for the PUC’s report to the Legislature on June 30. It may make sense to rely on the PUC’s expanded charts rather than the limited versions we have here.

The Pacific Bell chart, at least, has added material that explains the reasons for their proposed changes and is intended to help focus the policy considerations. If we were to rely on PUC's replication of these charts for their June 30 report, we would need assurance that the full Pacific Bell information will be included.

Respectfully submitted,

Nathaniel Sterling
Executive Secretary



Law Revision Commission
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File: _____

1020 11th Street • Suite 310 • Sacramento, California 95814
(916) 447-6006 FAX (916) 441-6504

David L. Parkinson
President / Director
1470 Railroad Avenue
St. Helena, CA 94574

May 1, 1997

Kennan H. Herold, Jr.
Vice President / Director
540 Eleventh Street
Modesto, CA 95354

TO: California Law Revision Commission

William F. Herndon
Secretary / Treasurer
122 Camino Orqui
Napa, CA 94558

FROM: California Shortline Railroad Association (CSRA), which represents about 20 non-Class One railroads in California

Vincent DeDomenico
Director
1275 McKinstry Street
Napa, CA 94559

RE: Public Utilities Commission Revisions

Jeff Forbes
Director
P.O. Box 1500
McJ. Blvd., CA 96057

Fred L. Krebs
Director
221 North I Street
Eureka, CA 95521

We have received the proposed P.U.C. revisions to the P.U. Code dated March 31, 1997. We note throughout the revisions a referral to maintaining certain code sections in order to regulate railroads "not part of the interstate network". To our knowledge there are no freight railroads in California that are not part of the interstate rail network.

Some disconnected tourist lines exist. They would be properly regulated under different sections of the code dealing with passenger service.

Under the interest of SB 960 we would strongly recommend that portions of the P.U. Code dealing with freight railroads be deleted. They are obsolete and serve no useful purpose.

Please call Charles Halnan at 447-6006 if you have any questions.

cc: California Public Utilities Commission

Post-It Fax Note	7671	Date	5/97	# of pages	▶
To	Northrup Sterling	From	Chuck Halnan		
Co./Dept.		Co.			
Phone #		Phone #	916-447-6006		
Fax #	415-494-1827	Fax #			

UNION PACIFIC RAILROAD COMPANY



Southern Pacific Building • One Market Plaza • San Francisco, CA 94105
(415) 541-1779 • Facsimile (415) 495-5436

Carol A. Harris

Law Revision Commission
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Room 812

May 20, 1997

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VIA FAX 703-2262

Joel T. Perlstein
Legal Division
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

Re: SB 960 Code Revisions Relating to Economic Regulation
of Railroads

Dear Mr. Perlstein:

This refers to our recent conversation concerning SB 960 and to our proposed revisions to provisions of the Public Utilities Code pertaining to railroads, to the California Public Utilities Commission's March 31, 1997 Report, and to the California Law Revision Commission's April 21, 1997 Staff Memorandum. The purpose of this letter is to identify the areas where I believe that Union Pacific Railroad Company and CPUC are in agreement concerning the need for legislative change and to set forth for your consideration our views on those areas where it appears that we disagree.

Background

Last November, your Commission requested comments from Union Pacific to assist the Commission in preparing its report to the California Legislature pursuant to SB 960 on "needed revisions to the Public Utilities Code that result from the restructuring of the electrical, gas, transportation, and telecommunications industries."

By letter dated December 30, 1996, Union Pacific responded and advised that as a result of the Staggers Rail Act of 1980 and the ICC Termination Act of 1995, exclusive jurisdiction over rail transportation is now vested in the Surface Transportation Board (the successor to the Interstate Commerce Commission). States are expressly precluded from economic regulation of railroads operating in interstate commerce, including regulation of rates, classifications, rules, practices, routes, facilities, equipment and services regardless of whether the transportation, facilities or

services are located or performed entirely in one state. See, 49 USC § 10501 (b)(1) and (2) and 49 USC § 10102 (A) and (B). Our letter proposed specific changes to the P.U. Code that are needed to reflect the federal preemption under Staggers and the ICCTA.

Areas of Apparent Consensus

CPUC reacted positively to many of our suggestions in its March 31 Report. It appears that both CPUC and Union Pacific agree that railroads operating in interstate commerce should be excluded from the following P.U. Code sections:

458, 459, 460, 461.5, 486, 488, 493, 494, 496, 556, 557,
559, 560, 706, 707, 728.5, 730, 731, 732, 733, 763, 763.1,
764, 765, 769, 769.5, 7532, and 7532.5

The affected California railroads include the three Class I Railroads, Union Pacific Railroad Company, Southern Pacific Transportation Company, and The Burlington Northern and Santa Fe Railway Company and their connecting California subsidiary railroads, and approximately 20 non-Class I railroads that are represented by the California Shortline Railroad Association.

CPUC does not propose to exclude certain shorthaul tourist railroads which do not interchange freight or passengers with other interstate railroads and whose tracks are not physically connected to the national rail transportation system. The only railroad that we are aware of that meets this description is the Western Railway Museum, which operates in the vicinity of Rio Vista, CA.¹ It is our understanding that the Commission wishes to carve out a special class of such "non-interconnected railroads" and continue to regulate their rates, practices and services under the above referenced code sections. We submit that upon further inquiry into the matter, the CPUC may wish to reconsider whether such continued regulation is warranted.

¹ The three tourist railroads you mentioned are connected to either a Class I railroad or to a short line railroad: The Skunk Train interchanges freight with North Coast Rail Authority at Willits, CA and also interchanges passengers with Amtrak; the McCloud Railway Company interchanges with Southern Pacific at Mt. Shasta, CA and with BNSF at Hambone, CA; and the Santa Cruz, Big Trees, and Pacific Railroad connects with Southern Pacific at Santa Cruz, CA.

Although not reflected in its March 31 Report, it is our understanding that CPUC will propose a new code section that will give recognition to the fact that application of any retained provisions of the Code to interstate railroads may be federally preempted and will expressly authorize CPUC to declare that its regulations and orders are federally preempted, upon a proper showing. Union Pacific wholeheartedly supports such an amendment as important and necessary.

Sections 211 and 216

Union Pacific had advocated excluding "railroads" and "railroad corporations" from the definitions of "common carrier" and "public utility" in P.U. Code Sections 211 and 216, respectively. CPUC's comments indicate that it disagrees on the ground that Union Pacific's proposed revisions "would also make code sections relating to safety inapplicable to railroads."

CPUC's authority to regulate the safety of interstate railroads is subject to the Federal Railway Safety Act, recodified at 49 USC § 20101, et seq. and to CPUC's certification pursuant to 49 USC § 20105. Union Pacific's proposed code revisions did not address the federal limitations on CPUC's safety jurisdiction because we felt that this was beyond the scope of SB 960. However, there is no reason why railroads need to be designated "common carriers" or "public utilities", in order for CPUC to exercise the safety jurisdiction it now possesses. Although Union Pacific would prefer to have railroads excluded from the definitions of "common carrier" and "public utility", we recognize that CPUC's approach would have the important advantage of preserving railroads' existing right of eminent domain. As CPUC pointed out in its comments, its approach would avoid the need to make corrective changes to Sections 610 and 611, as Union Pacific had proposed.

Areas of Disagreement

There are four additional code sections that Union Pacific sought to have revised and CPUC has either indicated its opposition or has proposed new modifications that are unacceptable to Union Pacific. They consist of the following:

a) Section 314.5

This section concerns inspection and audit of records for regulatory and tax purposes. It prescribes intervals for inspection and audit of specified industries to develop information for rate setting and for use by the State Board of Equalization for tax assessment purposes. Union Pacific had proposed that the clause "and the rail passenger commuter operations of every railroad" be

stricken. CPUC's comments indicated that this suggestion "appears reasonable." However, CPUC maintains that the section should be amended to require audits for rail safety purposes! This unwarranted expansion of Section 314.5 is beyond the scope of Section 960 and should not be pursued. It would be contrary to the federal safety preemption under 49 USC § 20101 et seq.

b) Section 703

This section would allow the Commission to investigate "all existing or proposed interstate rates, fares, tolls, charges, and classifications, and all rules and practices in relation thereto, for or in relation to the transportation of persons or property ... where any act in relation thereto takes place within this state..." where the Commission perceives that such rates, etc. are excessive, discriminatory or in violation of the Interstate Commerce Act. Union Pacific had urged that railroads should be excluded from this provision and CPUC indicated that it disagrees.

Section 703 is a broad invitation to intervene in transportation matters that are no longer federally regulated. The majority of California rail traffic has either been federally exempted from regulation or moves subject to private confidential transportation agreements entered into pursuant to federal law which prohibits disclosure of their terms. Additionally, the anti-discrimination provisions of the former Interstate Commerce Act have been repealed. In the event CPUC should wish to represent the state in a federal regulatory proceeding dealing with rail rates, fares, etc., CPUC would have available the discovery rules in that proceeding. Union Pacific continues to urge that Section 703 should be amended to exclude railroads.

c) Section 768

This section is overly broad and far exceeds the bounds of permissible state safety regulation of railroads under 49 USC § 20106. CPUC has authority elsewhere in the code to regulate safety, including regulation of protective devices at grade crossings. See, e.g., P.U. Code Section 1202.

d) Section 7531.5

Union Pacific withdraws its request for deletion of this provision. The legislature may direct the CPUC to forward a railroad application for abandonment to any agency it deems appropriate. However, Union Pacific

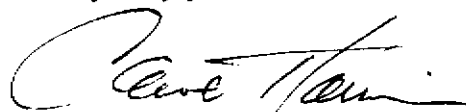
Joel T. Perlstein
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opposes the proposed amendment advanced by CPUC in its March 31 Report to require California railroads to notify "CPUC and other relevant state agencies" of abandonment applications. The issue of notification is covered by federal procedural rules, and is subject to the exclusive jurisdiction of the STB.

I appreciate the opportunity to respond to CPUC's suggested code revisions. It is gratifying that there are many areas where we appear to have reached a consensus. Whether or not we are able to resolve those few areas where we disagree, we urge your Commission to seek amendments to the code to effectuate the consensus changes as soon as possible. Such legislative changes are long overdue and would represent an important and constructive first step in modernizing state transportation law.

If you would like additional information concerning these comments or the basis for our position or would like to discuss any of the matters raised in this letter, please do not hesitate to give me a call.

Very truly yours,



Carol A Harris

CAH/aam

cc: Nathaniel Sterling - via fax 494-1827
Executive Director
California Law Revision Commission

end of part II (as added by section 101) the following new part:

**"PART III—SPECIAL PROVISIONS CONCERNING BELL
OPERATING COMPANIES**

"SEC. 271. BELL OPERATING COMPANY ENTRY INTO INTERLATA SERVICES.

47 USC 271.

"(a) **GENERAL LIMITATION.**—Neither a Bell operating company, nor any affiliate of a Bell operating company, may provide interLATA services except as provided in this section.

"(b) **INTERLATA SERVICES TO WHICH THIS SECTION APPLIES.**—

"(1) **IN-REGION SERVICES.**—A Bell operating company, or any affiliate of that Bell operating company, may provide interLATA services originating in any of its in-region States (as defined in subsection (i)) if the Commission approves the application of such company for such State under subsection (d)(3).

"(2) **OUT-OF-REGION SERVICES.**—A Bell operating company, or any affiliate of that Bell operating company, may provide interLATA services originating outside its in-region States after the date of enactment of the Telecommunications Act of 1996, subject to subsection (j).

"(3) **INCIDENTAL INTERLATA SERVICES.**—A Bell operating company, or any affiliate of a Bell operating company, may provide incidental interLATA services (as defined in subsection (g)) originating in any State after the date of enactment of the Telecommunications Act of 1996.

"(4) **TERMINATION.**—Nothing in this section prohibits a Bell operating company or any of its affiliates from providing termination for interLATA services, subject to subsection (j).

"(c) **REQUIREMENTS FOR PROVIDING CERTAIN IN-REGION INTERLATA SERVICES.**—

"(1) **AGREEMENT OR STATEMENT.**—A Bell operating company meets the requirements of this paragraph if it meets the requirement of subparagraph (A) or subparagraph (B) of this paragraph for each State for which the authorization is sought.

"(A) **PRESENCE OF A FACILITIES-BASED COMPETITOR.**—A Bell operating company meets the requirements of this subparagraph if it has entered into one or more binding agreements that have been approved under section 252 specifying the terms and conditions under which the Bell operating company is providing access and interconnection to its network facilities for the network facilities of one or more unaffiliated competing providers of telephone exchange service (as defined in section 3(47)(A), but excluding exchange access) to residential and business subscribers. For the purpose of this subparagraph, such telephone exchange service may be offered by such competing providers either exclusively over their own telephone exchange service facilities or predominantly over their own telephone exchange service facilities in combination with the resale of the telecommunications services of another carrier. For the purpose of this subparagraph, services provided pursuant to subpart K of part 22 of the Commission's regulations (47 C.F.R. 22.901 et seq.) shall not be considered to be telephone exchange services.

“(B) FAILURE TO REQUEST ACCESS.—A Bell operating company meets the requirements of this subparagraph if, after 10 months after the date of enactment of the Telecommunications Act of 1996, no such provider has requested the access and interconnection described in subparagraph (A) before the date which is 3 months before the date the company makes its application under subsection (d)(1), and a statement of the terms and conditions that the company generally offers to provide such access and interconnection has been approved or permitted to take effect by the State commission under section 252(f). For purposes of this subparagraph, a Bell operating company shall be considered not to have received any request for access and interconnection if the State commission of such State certifies that the only provider or providers making such a request have (i) failed to negotiate in good faith as required by section 252, or (ii) violated the terms of an agreement approved under section 252 by the provider’s failure to comply, within a reasonable period of time, with the implementation schedule contained in such agreement.

“(2) SPECIFIC INTERCONNECTION REQUIREMENTS.—

“(A) AGREEMENT REQUIRED.—A Bell operating company meets the requirements of this paragraph if, within the State for which the authorization is sought—

“(i)(I) such company is providing access and interconnection pursuant to one or more agreements described in paragraph (1)(A), or

“(II) such company is generally offering access and interconnection pursuant to a statement described in paragraph (1)(B), and

“(ii) such access and interconnection meets the requirements of subparagraph (B) of this paragraph.

“(B) COMPETITIVE CHECKLIST.—Access or interconnection provided or generally offered by a Bell operating company to other telecommunications carriers meets the requirements of this subparagraph if such access and interconnection includes each of the following:

“(i) Interconnection in accordance with the requirements of sections 251(c)(2) and 252(d)(1).

“(ii) Nondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1).

“(iii) Nondiscriminatory access to the poles, ducts, conduits, and rights-of-way owned or controlled by the Bell operating company at just and reasonable rates in accordance with the requirements of section 224.

“(iv) Local loop transmission from the central office to the customer’s premises, unbundled from local switching or other services.

“(v) Local transport from the trunk side of a wireline local exchange carrier switch unbundled from switching or other services.

“(vi) Local switching unbundled from transport, local loop transmission, or other services.

“(vii) Nondiscriminatory access to—

“(I) 911 and E911 services;

"(II) directory assistance services to allow the other carrier's customers to obtain telephone numbers; and

"(III) operator call completion services.

"(viii) White pages directory listings for customers of the other carrier's telephone exchange service.

"(ix) Until the date by which telecommunications numbering administration guidelines, plan, or rules are established, nondiscriminatory access to telephone numbers for assignment to the other carrier's telephone exchange service customers. After that date, compliance with such guidelines, plan, or rules.

"(x) Nondiscriminatory access to databases and associated signaling necessary for call routing and completion.

"(xi) Until the date by which the Commission issues regulations pursuant to section 251 to require number portability, interim telecommunications number portability through remote call forwarding, direct inward dialing trunks, or other comparable arrangements, with as little impairment of functioning, quality, reliability, and convenience as possible. After that date, full compliance with such regulations.

"(xii) Nondiscriminatory access to such services or information as are necessary to allow the requesting carrier to implement local dialing parity in accordance with the requirements of section 251(b)(3).

"(xiii) Reciprocal compensation arrangements in accordance with the requirements of section 252(d)(2).

"(xiv) Telecommunications services are available for resale in accordance with the requirements of sections 251(c)(4) and 252(d)(3).

"(d) ADMINISTRATIVE PROVISIONS.—

"(1) APPLICATION TO COMMISSION.—On and after the date of enactment of the Telecommunications Act of 1996, a Bell operating company or its affiliate may apply to the Commission for authorization to provide interLATA services originating in any in-region State. The application shall identify each State for which the authorization is sought.

"(2) CONSULTATION.—

"(A) CONSULTATION WITH THE ATTORNEY GENERAL.—The Commission shall notify the Attorney General promptly of any application under paragraph (1). Before making any determination under this subsection, the Commission shall consult with the Attorney General, and if the Attorney General submits any comments in writing, such comments shall be included in the record of the Commission's decision. In consulting with and submitting comments to the Commission under this paragraph, the Attorney General shall provide to the Commission an evaluation of the application using any standard the Attorney General considers appropriate. The Commission shall give substantial weight to the Attorney General's evaluation, but such evaluation shall not have any preclusive effect on any Commission decision under paragraph (3).

"(B) CONSULTATION WITH STATE COMMISSIONS.—Before making any

Notification.

determination under this subsection, the Commission shall consult with the State commission of any State that is the subject of the application in order to verify the compliance of the Bell operating company with the requirements of subsection (c).

"(3) DETERMINATION.—Not later than 90 days after receiving an application under paragraph (1), the Commission shall issue a written determination approving or denying the authorization requested in the application for each State. The Commission shall not approve the authorization requested in an application submitted under paragraph (1) unless it finds that—

"(A) the petitioning Bell operating company has met the requirements of subsection (c)(1) and—

"(i) with respect to access and interconnection provided pursuant to subsection (c)(1)(A), has fully implemented the competitive checklist in subsection (c)(2)(B); or

"(ii) with respect to access and interconnection generally offered pursuant to a statement under subsection (c)(1)(B), such statement offers all of the items included in the competitive checklist in subsection (c)(2)(B);

"(B) the requested authorization will be carried out in accordance with the requirements of section 272; and

"(C) the requested authorization is consistent with the public interest, convenience, and necessity.

The Commission shall state the basis for its approval or denial of the application.

"(4) LIMITATION ON COMMISSION.—The Commission may not, by rule or otherwise, limit or extend the terms used in the competitive checklist set forth in subsection (c)(2)(B).

"(5) PUBLICATION.—Not later than 10 days after issuing a determination under paragraph (3), the Commission shall publish in the Federal Register a brief description of the determination.

"(6) ENFORCEMENT OF CONDITIONS.—

"(A) COMMISSION AUTHORITY.—If at any time after the approval of an application under paragraph (3), the Commission determines that a Bell operating company has ceased to meet any of the conditions required for such approval, the Commission may, after notice and opportunity for a hearing—

"(i) issue an order to such company to correct the deficiency;

"(ii) impose a penalty on such company pursuant to title V; or

"(iii) suspend or revoke such approval.

"(B) RECEIPT AND REVIEW OF COMPLAINTS.—The Commission shall establish procedures for the review of complaints concerning failures by Bell operating companies to meet conditions required for approval under paragraph (3). Unless the parties otherwise agree, the Commission shall act on such complaint within 90 days.

"(e) LIMITATIONS.—

"(1) JOINT MARKETING OF LOCAL AND LONG DISTANCE SERVICES.—Until a Bell operating company is authorized pursuant to subsection (d) to provide interLATA

Federal Register
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services in an in-region State, or until 36 months have passed since the date of enactment of the Telecommunications Act of 1996, whichever is earlier, a telecommunications carrier that serves greater than 5 percent of the Nation's presubscribed access lines may not jointly market in such State telephone exchange service obtained from such company pursuant to section 251(c)(4) with interLATA services offered by that telecommunications carrier.

“(2) INTRA LATA TOLL DIALING PARITY.—

“(A) PROVISION REQUIRED.—A Bell operating company granted authority to provide interLATA services under subsection (d) shall provide intraLATA toll dialing parity throughout that State coincident with its exercise of that authority.

“(B) LIMITATION.—Except for single-LATA States and States that have issued an order by December 19, 1995, requiring a Bell operating company to implement intraLATA toll dialing parity, a State may not require a Bell operating company to implement intraLATA toll dialing parity in that State before a Bell operating company has been granted authority under this section to provide interLATA services originating in that State or before 3 years after the date of enactment of the Telecommunications Act of 1996, whichever is earlier. Nothing in this subparagraph precludes a State from issuing an order requiring intraLATA toll dialing parity in that State prior to either such date so long as such order does not take effect until after the earlier of either such dates.

“(f) EXCEPTION FOR PREVIOUSLY AUTHORIZED ACTIVITIES.—Neither subsection (a) nor section 273 shall prohibit a Bell operating company or affiliate from engaging, at any time after the date of enactment of the Telecommunications Act of 1996, in any activity to the extent authorized by, and subject to the terms and conditions contained in, an order entered by the United States District Court for the District of Columbia pursuant to section VII or VIII(C) of the AT&T Consent Decree if such order was entered on or before such date of enactment, to the extent such order is not reversed or vacated on appeal. Nothing in this subsection shall be construed to limit, or to impose terms or conditions on, an activity in which a Bell operating company is otherwise authorized to engage under any other provision of this section.

“(g) DEFINITION OF INCIDENTAL INTERLATA SERVICES.—For purposes of this section, the term ‘incidental interLATA services’ means the interLATA provision by a Bell operating company or its affiliate—

“(1)(A) of audio programming, video programming, or other programming services to subscribers to such services of such company or affiliate;

“(B) of the capability for interaction by such subscribers to select or respond to such audio programming, video programming, or other programming services;

“(C) to distributors of audio programming or video programming that such company or affiliate owns or controls, or is licensed by the copyright owner of such programming (or by an assignee of such owner) to distribute; or

“(D) of alarm monitoring services;

“(2) of two-way interactive video services or Internet services over dedicated facilities to or for elementary and secondary schools as defined in section 254(h)(5);

“(3) of commercial mobile services in accordance with section 332(c) of this Act

and with the regulations prescribed by the Commission pursuant to paragraph (8) of such section;

"(4) of a service that permits a customer that is located in one LATA to retrieve stored information from, or file information for storage in, information storage facilities of such company that are located in another LATA;

"(5) of signaling information used in connection with the provision of telephone exchange services or exchange access by a local exchange carrier; or

"(6) of network control signaling information to, and receipt of such signaling information from, common carriers offering interLATA services at any location within the area in which such Bell operating company provides telephone exchange services or exchange access.

"(h) LIMITATIONS.—The provisions of subsection (g) are intended to be narrowly construed. The interLATA services provided under subparagraph (A), (B), or (C) of subsection (g)(1) are limited to those interLATA transmissions incidental to the provision by a Bell operating company or its affiliate of video, audio, and other programming services that the company or its affiliate is engaged in providing to the public. The Commission shall ensure that the provision of services authorized under subsection (g) by a Bell operating company or its affiliate will not adversely affect telephone exchange service ratepayers or competition in any telecommunications market.

"(i) ADDITIONAL DEFINITIONS.—As used in this section—

"(1) IN-REGION STATE.—The term 'in-region State' means a State in which a Bell operating company or any of its affiliates was authorized to provide wireline telephone exchange service pursuant to the reorganization plan approved under the AT&T Consent Decree, as in effect on the day before the date of enactment of the Telecommunications Act of 1996.

"(2) AUDIO PROGRAMMING SERVICES.—The term 'audio programming services' means programming provided by, or generally considered to be comparable to programming provided by, a radio broadcast station.

"(3) VIDEO PROGRAMMING SERVICES; OTHER PROGRAMMING SERVICES.—The terms 'video programming service' and 'other programming services' have the same meanings as such terms have under section 602 of this Act.

"(j) CERTAIN SERVICE APPLICATIONS TREATED AS IN-REGION SERVICE APPLICATIONS.—For purposes of this section, a Bell operating company application to provide 800 service, private line service, or their equivalents that—

"(1) terminate in an in-region State of that Bell operating company, and

"(2) allow the called party to determine the interLATA carrier,

shall be considered an in-region service subject to the requirements of subsection (b)(1).

"SEC. 272. SEPARATE AFFILIATE; SAFEGUARDS.

"(a) SEPARATE AFFILIATE REQUIRED FOR COMPETITIVE ACTIVITIES.—

"(1) IN GENERAL.—A Bell operating company (including any affiliate) which is a local exchange carrier that is subject to the requirements of section 251(c) may not provide any service described in paragraph (2) unless it provides that service through one or more affiliates that—

"(A) are separate from any operating company entity that is subject to the

47 USC 272.

requirements of section 251(c); and

"(B) meet the requirements of subsection (b).

"(2) SERVICES FOR WHICH A SEPARATE AFFILIATE IS REQUIRED.—The services for which a separate affiliate is required by paragraph (1) are:

"(A) Manufacturing activities (as defined in section 273(h)).

"(B) Origination of interLATA telecommunications services, other than—

"(i) incidental interLATA services described in paragraphs (1), (2), (3), (5), and (6) of section 271(g);

"(ii) out-of-region services described in section 271(b)(2); or

"(iii) previously authorized activities described in section 271(f).

"(C) InterLATA information services, other than electronic publishing (as defined in section 274(h)) and alarm monitoring services (as defined in section 275(e)).

"(b) STRUCTURAL AND TRANSACTIONAL REQUIREMENTS.—The separate affiliate required by this section—

"(1) shall operate independently from the Bell operating company;

"(2) shall maintain books, records, and accounts in the manner prescribed by the Commission which shall be separate from the books, records, and accounts maintained by the Bell operating company of which it is an affiliate;

"(3) shall have separate officers, directors, and employees from the Bell operating company of which it is an affiliate;

"(4) may not obtain credit under any arrangement that would permit a creditor, upon default, to have recourse to the assets of the Bell operating company; and

"(5) shall conduct all transactions with the Bell operating company of which it is an affiliate on an arm's length basis with any such transactions reduced to writing and available for public inspection.

"(c) NONDISCRIMINATION SAFEGUARDS.—In its dealings with its affiliate described in subsection (a), a Bell operating company—

"(1) may not discriminate between that company or affiliate and any other entity in the provision or procurement of goods, services, facilities, and information, or in the establishment of standards; and

"(2) shall account for all transactions with an affiliate described in subsection (a) in accordance with accounting principles designated or approved by the Commission.

"(d) BIENNIAL AUDIT.—

"(1) GENERAL REQUIREMENT.—A company required to operate a separate affiliate under this section shall obtain and pay for a joint Federal/State audit every 2 years conducted by an independent auditor to determine whether such company has complied with this section and the regulations promulgated under this section, and particularly whether such company has complied with the separate accounting requirements under subsection (b).

"(2) RESULTS SUBMITTED TO COMMISSION; STATE COMMISSIONS.—The auditor described in paragraph (1) shall submit the results of the audit to the Commission and to the State commission of each State in which the company audited provides service, which shall make such results available for public inspection. Any

Records.

Public information

party may submit comments on the final audit report.

"(3) ACCESS TO DOCUMENTS.—For purposes of conducting audits and reviews under this subsection—

Records.

"(A) the independent auditor, the Commission, and the State commission shall have access to the financial accounts and records of each company and of its affiliates necessary to verify transactions conducted with that company that are relevant to the specific activities permitted under this section and that are necessary for the regulation of rates;

"(B) the Commission and the State commission shall have access to the working papers and supporting materials of any auditor who performs an audit under this section; and

"(C) the State commission shall implement appropriate procedures to ensure the protection of any proprietary information submitted to it under this section.

"(e) FULFILLMENT OF CERTAIN REQUESTS.—A Bell operating company and an affiliate that is subject to the requirements of section 251(c)—

"(1) shall fulfill any requests from an unaffiliated entity for telephone exchange service and exchange access within a period no longer than the period in which it provides such telephone exchange service and exchange access to itself or to its affiliates;

"(2) shall not provide any facilities, services, or information concerning its provision of exchange access to the affiliate described in subsection (a) unless such facilities, services, or information are made available to other providers of interLATA services in that market on the same terms and conditions;

"(3) shall charge the affiliate described in subsection (a), or impute to itself (if using the access for its provision of its own services), an amount for access to its telephone exchange service and exchange access that is no less than the amount charged to any unaffiliated interexchange carriers for such service; and

"(4) may provide any interLATA or intraLATA facilities or services to its interLATA affiliate if such services or facilities are made available to all carriers at the same rates and on the same terms and conditions, and so long as the costs are appropriately allocated.

"(f) SUNSET.—

"(1) MANUFACTURING AND LONG DISTANCE.—The provisions of this section (other than subsection (e)) shall cease to apply with respect to the manufacturing activities or the interLATA telecommunications services of a Bell operating company 3 years after the date such Bell operating company or any Bell operating company affiliate is authorized to provide interLATA telecommunications services under section 271(d), unless the Commission extends such 3-year period by rule or order.

"(2) INTERLATA INFORMATION SERVICES.—The provisions of this section (other than subsection (e)) shall cease to apply with respect to the interLATA information services of a Bell operating company 4 years after the date of enactment of the Telecommunications Act of 1996, unless the Commission extends such 4-year period by rule or order.

"(3) PRESERVATION OF EXISTING AUTHORITY.—Nothing in this subsection

shall be construed to limit the authority of the Commission under any other section of this Act to prescribe safeguards consistent with the public interest, convenience, and necessity.

"(g) JOINT MARKETING.—

"(1) AFFILIATE SALES OF TELEPHONE EXCHANGE SERVICES.—A Bell operating company affiliate required by this section may not market or sell telephone exchange services provided by the Bell operating company unless that company permits other entities offering the same or similar service to market and sell its telephone exchange services.

"(2) BELL OPERATING COMPANY SALES OF AFFILIATE SERVICES.—A Bell operating company may not market or sell interLATA service provided by an affiliate required by this section within any of its in-region States until such company is authorized to provide interLATA services in such State under section 271(d).

"(3) RULE OF CONSTRUCTION.—The joint marketing and sale of services permitted under this subsection shall not be considered to violate the nondiscrimination provisions of subsection (c).

"(h) TRANSITION.—With respect to any activity in which a Bell operating company is engaged on the date of enactment of the Telecommunications Act of 1996, such company shall have one year from such date of enactment to comply with the requirements of this section.

"SEC. 273. MANUFACTURING BY BELL OPERATING COMPANIES.

47 USC 273.

"(a) AUTHORIZATION.—A Bell operating company may manufacture and provide telecommunications equipment, and manufacture customer premises equipment, if the Commission authorizes that Bell operating company or any Bell operating company affiliate to provide interLATA services under section 271(d), subject to the requirements of this section and the regulations prescribed thereunder, except that neither a Bell operating company nor any of its affiliates may engage in such manufacturing in conjunction with a Bell operating company not so affiliated or any of its affiliates.

"(b) COLLABORATION; RESEARCH AND ROYALTY AGREEMENTS:—

"(1) COLLABORATION.—Subsection (a) shall not prohibit a Bell operating company from engaging in close collaboration with any manufacturer of customer premises equipment or telecommunications equipment during the design and development of hardware, software, or combinations thereof related to such equipment.

"(2) CERTAIN RESEARCH ARRANGEMENTS; ROYALTY AGREEMENTS.—Subsection (a) shall not prohibit a Bell operating company from—

"(A) engaging in research activities related to manufacturing, and

"(B) entering into royalty agreements with manufacturers of telecommunications equipment.

"(c) INFORMATION REQUIREMENTS.—

"(1) INFORMATION ON PROTOCOLS AND TECHNICAL REQUIREMENTS.—Each Bell operating company shall, in accordance with regulations prescribed by the Commission, maintain and file with the Commission full and complete information with respect to the protocols and technical requirements for connection with and use

Regulations.

of its telephone exchange service facilities. Each such company shall report promptly to the Commission any material changes or planned changes to such protocols and requirements, and the schedule for implementation of such changes or planned changes.

"(2) DISCLOSURE OF INFORMATION.—A Bell operating company shall not disclose any information required to be filed under paragraph (1) unless that information has been filed promptly, as required by regulation by the Commission.

"(3) ACCESS BY COMPETITORS TO INFORMATION.—The Commission may prescribe such additional regulations under this subsection as may be necessary to ensure that manufacturers have access to the information with respect to the protocols and technical requirements for connection with and use of telephone exchange service facilities that a Bell operating company makes available to any manufacturing affiliate or any unaffiliated manufacturer.

"(4) PLANNING INFORMATION.—Each Bell operating company shall provide, to interconnecting carriers providing telephone exchange service, timely information on the planned deployment of telecommunications equipment.

"(d) MANUFACTURING LIMITATIONS FOR STANDARD-SETTING ORGANIZATIONS.—

"(1) APPLICATION TO BELL COMMUNICATIONS RESEARCH OR MANUFACTURERS.—Bell Communications Research, Inc., or any successor entity or affiliate—

"(A) shall not be considered a Bell operating company or a successor or assign of a Bell operating company at such time as it is no longer an affiliate of any Bell operating company; and

"(B) notwithstanding paragraph (3), shall not engage in manufacturing telecommunications equipment or customer premises equipment as long as it is an affiliate of more than 1 otherwise unaffiliated Bell operating company or successor or assign of any such company.

Nothing in this subsection prohibits Bell Communications Research, Inc., or any successor entity, from engaging in any activity in which it is lawfully engaged on the date of enactment of the Telecommunications Act of 1996. Nothing provided in this subsection shall render Bell Communications Research, Inc., or any successor entity, a common carrier under title II of this Act. Nothing in this subsection restricts any manufacturer from engaging in any activity in which it is lawfully engaged on the date of enactment of the Telecommunications Act of 1996.

"(2) PROPRIETARY INFORMATION.—Any entity which establishes standards for telecommunications equipment or customer premises equipment, or generic network requirements for such equipment, or certifies telecommunications equipment or customer premises equipment, shall be prohibited from releasing or otherwise using any proprietary information, designated as such by its owner, in its possession as a result of such activity, for any purpose other than purposes authorized in writing by the owner of such information, even after such entity ceases to be so engaged.

"(3) MANUFACTURING SAFEGUARDS.—(A) Except as prohibited in paragraph (1), and subject to paragraph (6), any entity which certifies telecommunications equipment or customer premises equipment manufactured by an unaffiliated entity

PUBLIC UTILITY DEREGULATION
Categorization of Policy Issues in Public Utilities Code Revision

(1) Direct Regulation of Service Providers
Is there a need for continuing traditional regulation of how a utility runs its business with respect to:

- **Planning for the future -- expansion, facilities, markets**

CODE SECTION	Suggested Action	Rationale	Other Parties	CPUC
454.8 Requires that in any decision establishing rates reflecting the costs of new construction or additions to the corporation's plant, the CPUC shall consider a method in which recover of costs would be constant in real economic terms over the useful life of the facilities.	Delete: Edison suggests deleting this section	Section is an out-date overly-prescriptive procedure based on cost-of-service ratemaking		Agrees in concept--will work with parties on language.
701.3 Requires Commission to direct that a specific portion of future electrical generating capacity needed in California be reserved or set aside for renewable resources.	Delete: Edison suggests deleting this section.	No need for the CPUC to perform long-run resource planning for the electric utilities.		Agrees in concept--if state policy to support renewable development is to be eliminated.

CODE SECTION	Suggested Action	Rationale	Other Parties	CPUC
701.4 Requires electric resource acquisition programs to recognize and include a value for the resource diversity provided by renewable resources.	Delete: Edison suggests deleting this section.	No need for the CPUC to perform long-run resource planning for the electric utilities.		Agrees in concept--if state policy to support renewable development is to be eliminated. Competitive market could include renewables program.
Proposed revisions to Public Resources Code §§ 25300-25309.1 Sections are related to the long-run resource planning in the public utilities	Amend: Edison suggests that these sections should be deleted or subject to a sunset statute. (See attached exhibit for contents of specific provisions.)			Did not address.

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• Direct Regulation: New entrants (certification)

CODE SECTION	Suggested Action	Rationale	Other Parties	CPUC
1001 Requires some public utilities to obtain a certificate of public convenience and necessity (CPCN) from the Commission prior to commencement of construction.	Amend Edison states modifying to revise requirement for CPUC approval prior to construction. This provision should be subject to periodic review to encourage regulatory streamlining.	The interests of the general public will be protected by competition, rather than by a finding by a regulatory agency or future public convenience and necessity. Note that utilities are still required to get permit from the proper county, city, or other public authority. Also, these statutes done apply to municipally-owned public utilities.		Opposes deletion--proposal is over broad, since under competition electric distribution utilities may continue to operate some generation facilities and will operate distribution lines under CPUC performance based regulation.
1003 States information that must be included in application for certificate authorizing new construction by electrical or gas corporation regulated by Public Resources Code.	Amend: Edison suggests revising or deleting the detailed requirements for engineering information, cost estimates of the financial impact of the plant on ratepayers, and a construction management plan for power plant construction.	This section was designed to allow the CPUC to establish fair rates to cover prudent and reasonable costs for the construction of electric plants.		Opposes deletion--but revisions may be necessary in light of competitive electricity market. Some facilities may continue to require certificate approval.

CODE SECTION	Suggested Action	Rationale	Other Parties	CPUC
1003.5 States information that must be included in application for certificate authorizing new construction by electrical or gas corporation regulated by Public Resources Code.	Amend: Edison suggests revising or deleting the detailed requirements for engineering information, cost estimates of the financial impact of the plant on ratepayers, and a construction management plan for power plant construction.	This section was designed to allow the CPUC to establish fair rates to cover prudent and reasonable costs for the construction of electric plants.		Opposes deletion--but revisions may be necessary in light of competitive electricity market. Some facilities may continue to require certificate approval.
1005 Permits Commission to issue or refuse to issue certificates for new construction. If a certificate for new construction is granted, requires the Commission to specify the operating and cost characteristics of the plant, line, or extension for which the certificate was granted.				Opposes deletion as premature--Section 1005(b) may be in the public interest for distribution electric utilities. Also see comments to Section 1001 above.
1005.5 Requires the Commission to specify in the certificate a maximum reasonable cost of new construction.	Delete: Edison suggests deleting this section.	Should no longer be necessary for the Commission to establish a maximum cost to be reasonable and prudent for any new construction or addition.		Opposes deletion as premature--there could be electric and gas distribution utility projects that this section could apply to. Also see comments to Section 1001 above.

(2) Rates and Pricing

Is there a need to continue traditional regulation in the areas of:

- Retail, wholesale

CODE SECTION	Suggested Action	Rationale	Other Parties	CPUC
211 et seq. Provide definitions for terms used in the code.	Amend: Edison states that this section should be revised, and periodically reviewed for regulatory streamlining purposes. Union Pacific also suggests amending § 211. See discussion below.	The CPUC is now pre-empted by federal law from regulating rates for railroads and trucks, although it still sets rates for some carriers, such as shuttle services, household movers, and limousine companies.		PUC did not address.
454.4 Requires Commission to set rates for gas used in cogeneration technology projects no higher than rates for tax used as fuel by an electric plant.	Delete: Edison suggests deleting this section. SoCal Gas also suggests amending this section. See discussion below.	Section is obsolete because of gas deregulation, i.e. there is no longer a single UEG rate for electric utilities. It is also obsolete as a result of the changing competitive environment in which regulated and unregulated entities are competitors.		Agrees in concept that mandatory cogeneration rate parity with UEG rates is inconsistent with a competitive energy market. CPUC will work with parties on language.

CODE SECTION	Suggested Action	Rationale	Other Parties	CPUC
454.6 Requires Commission to set rates for gas in solar electric generation station project no higher than the rates for gas used as fuel by an electric plant. In effect until January 1, 2001.	Delete: Edison suggests deleting this section.	Section is obsolete because of gas deregulation, i.e., there is no longer a single UEG rate for electric utilities. It is also obsolete as a result of the changing competitive environment in which regulated and unregulated entities are competitors.		Agrees in concept that mandatory cogeneration rate parity with UEG rates is inconsistent with a competitive energy market.
454.7 Requires Commission, to the extent permitted by federal law,, to provide cogeneration technology projects with the highest possible priority for the purchase of natural gas.	Delete: Edison suggests deleting this section.	Section is obsolete because of gas deregulation, i.e., there is no longer a single UEG rate for electric utilities. It is also obsolete as a result of the changing competitive environment in which regulated and unregulated entities are competitors.		Agrees in concept--will work with parties on language.

CODE SECTION	Suggested Action	Rationale	Other Parties	CPUC
454.8 Requires that in any decision establishing rates reflecting the costs of new construction or additions to the corporation's plant, the CPUC shall consider a method in which recovery of costs would be constant in real economic terms over the useful life of the facilities.	Delete: Edison suggests deleting this section.	Section is an out-dated, overly-prescriptive procedure based on cost-of-service ratemaking.		Agrees in concept--will work with parties on language.
701.3 Requires Commission to direct that a specific portion of future electrical generating capacity needed in California be reserved or set aside for renewable resources.	Delete: Edison suggests deleting this section.	No need for the CPUC to perform long-run resource planning for the electric utilities.		Agrees in concept--if state policy to support renewable development is to be eliminated. Competitive market could include renewables program.

(2) Rates and Pricing

- Antitrust matters

CODE SECTION	Suggested Action	Rationale	Other Parties	CPUC
Proposed new section.	<p>Add: Edison suggest amending the PUC code and the Cartwright Act to draw a "bright line" between those activities subject to regulation and those subject to state antitrust laws.</p>	<p>The California Supreme Court recently held that the CPUC's authority over the regulated rates did not immunize PacTel and US West against claims for price fixing under the Cartwright Act. (Cellular Plus v. Sup. Ct. of San Diego County, 14 Cal.App 4th 1224 (1993). As the energy market moves to a competitive framework, Cellular Plus creates the opportunity for duplicative litigation. Law should provide for one litigation before the regulatory agency to set rates, or before the courts for unregulated conduct, but not both.</p>		Did not address.

(3) Consumer Protection

Should the Law Continue to regulate such matters:

- fraud
- information (misinformation)
- access (universal service)

CODE SECTION	Suggested Action	Rationale	Other Parties	CPUC
2106 Permits court to impose punitive damages on public utilities for willful violations of law.	Amend: Edison suggests modifying to eliminate the potential for punitive damages for alleged breach of qualified facilities (QF) contracts.	1) Equity--QFs cannot be sued for punitive under the civil code. See Civil code § 3294. 2) State policy against awarding punitive for breach of commercial contracts. See <u>Foley v. Interactive Data Corp.</u>		Opposes amendment.

(6) Organization and Procedures

Does the emerging competitive marketplace require considering changes to the regulatory processes and procedure, e.g.:

- Judicial Review
- The APA
- Agency organization

CODE SECTION	Suggested Action	Rationale	Other Parties	CPUC
3 Grandfathers provisions for Commissioners in office in 1951 when code was adopted.	Delete: Edison suggests deleting this section.	Obsolete.		Agrees with deletion--section is obsolete.
303 Prohibits a persons who holds an office or is pecuniarily interested in a regulated corporation from being appointed a Commissioner, or being employed by the CPUC.	Delete: Edison suggests deleting this section.	Uses archaic "pecuniarily interested" standard. Superseded by the Fair Political Practices Act.		Agrees with modification--but does not view it as a clean-up issue. Legislation has been introduced to address this issue. (SB 595)
310 States that no vacancy in the Commission shall impair the right of the remaining commissioners to exercise all powers of the commission. A majority of the commissioners shall constitute a quorum.	Amend: Edison suggests amending to provide that a majority of the <u>then-sitting</u> commissioners constitute a quorum.	To clarify the Commission's power to act when there are vacant seats.		Agrees with amendment in concept--amendment would clarify validity of actions taken when there are only 3 sitting Commissioners.

CODE SECTION	Suggested Action	Rationale	Other Parties	CPUC
1801-1812 Provide rules for reasonable advocate's fees, reasonable expert witness fees, and other reasonable costs to public utility customers for participation or intervention in any proceeding of the Commission.	Amend: Edison suggest revising intervenor compensation rules. For example, large agricultural groups and other industry groups, whose members cannot show financial hardship			Agrees with amendment in concept--intervenor program needs to be looked at. CPUC has opened a Rulemaking and Investigation. (R.97-01-009, I.97-01-010).
1821-1824 Rules regarding use of computer models for forecasting. Sections require computer models that are used as the basis for any testimony or exhibit in a hearing or proceeding before the Commission be available to the Commission and parties for review and verification. Also require Commission to periodically review and monitor the development and use of any operations model used by any public utility.	Delete: Edison suggest deleting or revising this provision.	No need for CPUC to perform long-run resource planning for the utilities. The Computer model requirements for economic forecasting and need analysis are overly complex, unduly burdensome, and outdated. These rules heavily contributed to over a decade of wasteful and expensive modeling wars between the CEC and the CPUC in the Biennial Resource Plan Update. At minimum, they should not be set in statute, but addressed by CPUC rules so there is flexibility.		Opposes deletion--these computer models are being used in OANAD and Universal Service proceedings and CPUC must have continued access to them.

CODE SECTION	Suggested Action	Rationale	Other Parties	CPUC
Proposed new section-- 1700 et seq	<p>Add: Edison suggests adding provisions that require disclosure of commission material in a manner similar to the Federal APA under 5 U.S.C. § 552(c), including disclosure of all statements of formal and informal procedure, staff manuals and instructions that affect members of the public, statements of policy interpretation and common use, and rules of general applicability.</p>			Opposes addition of new section as premature--the current provisions for disclosure of documents in CPUC hearings appear to be adequate.
Proposed new section-- similar to Gov't Code § 11340.6.	<p>Add: Edison suggests adding a new section that would provide that parties may petition the Commission to repeal or modify obsolete regulations. Gov't Code § 11340.6 provides such a mechanism for state agencies that operate under the APA.</p>			Did not address.

CODE SECTION	Suggested Action	Rationale	Other Parties	CPUC
Proposed new section or amendment to Gov't code § 11126.	<p>Add: Edison suggests adding a section requiring the CPUC to conduct rulemaking under the APA. Edison sees no reason to exempt the Commission's Rules of Procedure from parts of the APA.</p>	<p>Ideally, Edison would prefer that the "ratesetting" category be eliminated, and that cases where policy is made to be categorized as quasi-legislative because this would lower regulatory barriers to public participation.</p> <p>If the "ratesetting" category is retained, Edison would like the <i>ex parte</i> rules that sometimes subject members of the public to significant and expensive filing and mailing requirements removed.</p> <p>If the <i>ex parte</i> requirement is retained, Edison thinks the CPUC should follow procedures allowed for ratemaking proceedings in the APA to make the process less burdensome. See Edison letter dated Jan. 30, 1997, at 3-5.</p>		Did not address.

PUBLIC UTILITY DEREGULATION

Pacific Bell Categorization of Policy Issues in Public Utilities Code Revision

(1) Direct Regulation of Service Providers

Is there a need for continuing traditional regulation of how a utility runs its business with respect to:

- Planning for the future--expansion, facilities, markets

Code Section	Suggested Action	Rationale	Other Parties	COMMISSION
314.5 Requires Commission to inspect and audit books and records for regulatory and tax purposes every three or five years depending on number of customers a corporation serves.	Amend: PacBell and GTE suggest modifying this provision to exclude telecommunications carriers.	To remove an inappropriate level of oversight in a competitive environment. Section was based on the old regulatory scheme that envisioned monopoly companies providing service. Different situation now exists in telecom-munications; competition will protect the consumer and ensure fair prices.	Coalition and CalTel feel Commission should be required to conduct these audits since local markets are not yet competitive	Agrees with amendment--does not want to be required to perform audits every 3 years. However, still suggests authority to audit books of affiliates as competition has not sufficiently developed to eliminate the need.

PUBLIC UTILITY DEREGULATION

Pacific Bell Categorization of Policy Issues in Public Utilities Code Revision

(1) Direct Regulation of Service Providers

Is there a need for continuing traditional regulation of how a utility runs its business with respect to:

- Planning for the future--expansion, facilities, markets

Code Section	Suggested Action	Rationale	Other Parties	COMMISSION
728.2 Limits the Commission's jurisdiction over directory publication with the exception of rates and charges for commercial directory advertising and impact of those revenues on other rates.	Amend: PacBell and GTE suggest modifying section to limit application to cost-of-service regulated telecommunications carriers.	Directory publishing is a highly competitive, market-driven business, and should not be regulated. Commission regulation is inappropriate for non-cost-of-service regulated telecommunications carriers. Section was initially enacted to counter a court decision holding that all utility services must be regulated.	Coalition and CalTel feel that incumbent LECs have a near monopoly over directories, and these revenues remain available to support the LEC's basic service. Also, competitive local carriers will be dependent upon LEC's for listings.	Opposes amendment--failure to consider yellow page revenues in setting rates is anti-consumer.

PUBLIC UTILITY DEREGULATION

Pacific Bell Categorization of Policy Issues in Public Utilities Code Revision

(1) Direct Regulation of Service Providers

Is there a need for continuing traditional regulation of how a utility runs its business with respect to:

- Planning for the future--expansion, facilities, markets

Code Section	Suggested Action	Rationale	Other Parties	COMMISSION
797 Requires the Commission to periodically audit all significant transactions between an electrical, gas, or telephone corporation and every subsidiary or affiliate of, or corporation holding a controlling interest in that electrical, gas, or telephone corporation.	Amend: PacBell and GTE suggest modifying to limit audits of non-cost-of-service telecommunications carriers to transactions associated with provisioning wholesale services.	Section is inappropriate for telephone corporations that are subject to incentive regulation. There is no longer any opportunity to use affiliates to skew rates-of-return, so this kind of oversight is unnecessary and a waste of industry and Commission resources.	Coalition and CalTel feel that revision would be inconsistent with the Act, and that at this point, it is still important to have Commission oversight of transactions involving regulated providers	Opposes amendment--affiliate transaction audits are important until markets are competitive.

PUBLIC UTILITY DEREGULATION

Pacific Bell Categorization of Policy Issues in Public Utilities Code Revision

(1) Direct Regulation of Service Providers

Is there a need for continuing traditional regulation of how a utility runs its business with respect to:

- Planning for the future--expansion, facilities, markets

Code Section	Suggested Action	Rationale	Other Parties	COMMISSION
816-827 and 830 Upon an application for an order to issue stock or debt, allows the Commission to approve the terms and conditions of such issuance and exchange and the fairness of such terms and conditions.	Amend: PacBell and GTE suggest modifying to exclude telecommunications carriers from the provisions of this chapter.	Section impairs a company's ability to raise capital on favorable terms available in the financial markets. Additionally, in a competitive market, access to capital will require shorter turn-around period or risk losing growth opportunities. No reason to continue Commission review of this kind of business decision, when non-utility competitors will not face this kind of restraint on their financing decisions.	Coalition and CalTel feel that revision would be inconsistent with the Act, and that at this point, it is still important to have Commission oversight of transactions involving regulated providers.	Opposes amendment--such oversight ensures that captive customers are not adversely affected. Commission would support an expedited approval process.

PUBLIC UTILITY DEREGULATION

Pacific Bell Categorization of Policy Issues in Public Utilities Code Revision

(1) Direct Regulation of Service Providers

Is there a need for continuing traditional regulation of how a utility runs its business with respect to:

- Planning for the future--expansion, facilities, markets

Code Section	Suggested Action	Rationale	Other Parties	COMMISSION
851, 852, 854 Establishes criteria the Commission must consider before authorizing a merger or acquisition of any utility with gross annual California revenues exceeding \$500 million.	Amend: PacBell and GTE suggest modifying to exclude telecommunications carriers from the provisions of this chapter.	Inappropriate level of oversight in a competitive environment. Transfer issues and consumer safeguards are already reviewed by other agencies. There shouldn't be micro-management of ordinary business decisions that competing businesses can make without such unwarranted regulatory burdens and hurdles. New entrants to the market will not have this restraint on their ability to make and implement business decisions.	Coalition and CalTel feel that revision would be inconsistent with the Act, and that at this point, it is still important to have Commission oversight of transactions involving regulated providers.	Opposes amendment--ratepayer interest must be protected.

PUBLIC UTILITY DEREGULATION

Pacific Bell Categorization of Policy Issues in Public Utilities Code Revision

(2) Rates and Pricing

Is there a need for continuing traditional regulation of how a utility runs its business with respect to:

- Retail, wholesale

Code Section	Suggested Action	Rationale	Other Parties	COMMISSION
451 Requires public utilities to charge just and reasonable rates for services.	Amend: PacBell suggests telephone companies be exempted from rate regulation.	This section is based on monopoly public utility service, not the new competitive and streamlined regulatory environment of today. The Commission should not regulate rates in a competitive environment.	Coalition feels that Commission should continue to monitor rates and safeguard consumers' level of service and their voice in determining rates until a truly competitive environment is achieved.	Opposes any change-- regulation should remain in place to protect consumers and the competitive process as California proceeds though the transition from a monopoly to competitive market.

PUBLIC UTILITY DEREGULATION

Pacific Bell Categorization of Policy Issues in Public Utilities Code Revision

(2) Rates and Pricing

Is there a need for continuing traditional regulation of how a utility runs its business with respect to:

- Retail, wholesale

Code Section	Suggested Action	Rationale	Other Parties	COMMISSION
453(a)&(c) Prohibits public utilities from providing preferential rates or services to any customer.	PacBell suggests telephone companies be exempted from rate regulation.	Based on a subsidy laden monopoly situation that cannot survive in a competitive environment. Commission must be able to allow communications providers to change rates to meet competition or major market segments will be seriously disadvantaged.	Coalition feels that since this issue is currently being considered by the FCC, it would be premature for the Legislature to modify these provisions, which could result in California law being at variance with federal mandates. Coalition feels that unreasonable differences in rates must be prohibited as long as any incumbent carrier retains monopoly power.	Opposes any change-- regulation should remain in place to protect consumers and the competitive process as California proceeds through the transition from a monopoly to competitive market.

PUBLIC UTILITY DEREGULATION

Pacific Bell Categorization of Policy Issues in Public Utilities Code Revision

(2) Rates and Pricing

Is there a need for continuing traditional regulation of how a utility runs its business with respect to:

- Retail, wholesale

Code Section	Suggested Action	Rationale	Other Parties	COMMISSION
<p>454</p> <p>Prohibits public utilities from changing rates, except upon showing to Commission that the new rate is justified.</p> <p>Commission may adopt rules regarding the showing required and shall permit customers affected by the proposed rate change to testify at any hearing on the proposed change.</p>	<p>PacBell suggests telephone companies be exempted from rate regulation.</p>	<p>Imposes detailed and cumbersome requirements, disadvantaging some providers who are not able to change/lower rates to meet competition. New competitors are not slowed by these restrictions. This section is consistent with competitive environment.</p>	<p>Coalition feels that since this issue is currently being considered by the FCC, it would be premature for the Legislature to modify these provisions, which could result in California law being at variance with federal mandates.</p>	

PUBLIC UTILITY DEREGULATION

Pacific Bell Categorization of Policy Issues in Public Utilities Code Revision

(2) Rates and Pricing

Is there a need for continuing traditional regulation of how a utility runs its business with respect to:

- Retail, wholesale

Code Section	Suggested Action	Rationale	Other Parties	COMMISSION
455 Rules for implementing rate change after Commission action.	PacBell suggests telephone companies be exempted from rate regulation.	Burdens competition and complicates rate changes with requirements that have no place in today's communications market.	Coalition feels that Commission should continue to monitor rates and safeguard consumers' level of service and their voice in determining rates until a truly competitive environment is achieved.	Opposes any change-- regulation should remain in place to protect consumers and the competitive process as California proceeds though the transition from a monopoly to competitive market.
457 Permits establishment of sliding scale of charges if schedule has been filed with and approved by the Commission. Permits Commission to revoke approval at any time.	PacBell suggests telephone companies be exempted from rate regulation.	The market, a better and more efficient determinant of rates, should replace this detailed rate oversight. Commission's role should be to resolve disputes over rates rather than determine rates.	Coalition feels that Commission should continue to monitor rates and safeguard consumers' level of service and their voice in determining rates until a truly competitive environment is achieved.	Opposes any change-- regulation should remain in place to protect consumers and the competitive process as California proceeds though the transition from a monopoly to competitive market.

PUBLIC UTILITY DEREGULATION

Pacific Bell Categorization of Policy Issues in Public Utilities Code Revision

(2) Rates and Pricing

Is there a need for continuing traditional regulation of how a utility runs its business with respect to:

- Retail, wholesale

Code Section	Suggested Action	Rationale	Other Parties	COMMISSION
461* Prohibits greater aggregate charges/compensation from short distance calls compared to longer distance calls on same route without Commission authorization.	Delete: PacBell and GTE suggest eliminating this section.	Section is antiquated and inappropriate for any class of services provided. Section restricts competitive pricing.	Coalition feels that since this issue is currently being considered by the FCC, it would be premature for the Legislature to modify these provisions, which could result in California law being at variance with federal mandates. Coalition feels that unreasonable differences in rates must be prohibited as long as any incumbent carrier retains monopoly power.	Agrees with deletion--section is no longer necessary.

*Consensus with Commission

PUBLIC UTILITY DEREGULATION
Pacific Bell Categorization of Policy Issues in Public Utilities Code Revision

- (2) **Rates and Pricing**
Is there a need for continuing traditional regulation of how a utility runs its business with respect to:
- Retail, wholesale

Code Section	Suggested Action	Rationale	Other Parties	COMMISSION
461.2* Requires that revenues and expenses associated with simple inside wire be included for establishing rates.	Amend: PacBell and GTE suggest modifying this section so that it applies only to those utilities subject to cost-of-service regulation.	To remove an inappropriate requirement for utilities subject to incentive regulation.	Coalition feels that since this issue is currently being considered by the FCC, it would be premature for the Legislature to modify these provisions, which could result in California law being at variance with federal mandates. Coalition feels that unreasonable differences in rates must be prohibited as long as any incumbent carrier retains monopoly power.	Agrees with amendment--section should apply only to cost-of-service telephone corporations.

*Consensus with Commission.

PUBLIC UTILITY DEREGULATION

Pacific Bell Categorization of Policy Issues in Public Utilities Code Revision

(2) Rates and Pricing

Is there a need for continuing traditional regulation of how a utility runs its business with respect to:

- Retail, wholesale

Code Section	Suggested Action	Rationale	Other Parties	COMMISSION
489(a) Requires the Commission to order public utilities to file schedules containing rates, charges, classifications, rules, etc.	Amend: PacBell and GTE suggest modifying this section to exempt telecommunications retail services from tariffing requirements.	Section currently makes no distinction between the tariffs required of telecommunications carriers and other utilities. It also fails to recognize differences between classes of telecommunications providers or the types of service (wholesale/retail offered) Detailed tariff schedules and instructions on customer info. are acceptable in a monopoly utility situation, but are unproductive and unnecessary burdens in a competitive market.	Coalition and CalTel feel that tariffs should remain a necessary part of regulation and doing business in the state as they inform and protect consumers, and provide the only way for competitive carriers to compare access charges.	Opposes amendment-- regulation should remain in place to protect consumers and the competitive process as California proceeds through the transition from a monopoly to competitive market.*

*May be addressed in G.O. 96A proceeding at Commission.

PUBLIC UTILITY DEREGULATION

Pacific Bell Categorization of Policy Issues in Public Utilities Code Revision

(2) Rates and Pricing

Is there a need for continuing traditional regulation of how a utility runs its business with respect to:

- Retail, wholesale

Code Section	Suggested Action	Rationale	Other Parties	COMMISSION
491 Requires 30 days notice for rate, rule, and classification changes unless the Commission approves less.	PacBell and GTE suggest modifying this section to provide that notice requirements for non-cost-of-service telecommunications carriers is applicable to only those services provided on a wholesale basis, lifeline, Deaf and Disabled Telecommunications Program ("DDTP"), and basic services. In addition, they suggest that the notification period for such carriers should be reduced to be equal to the notification requirements imposed on Competitive Local Carriers (CLCs) licensed by Commission provide telephone service to California, and that other retail services should be exempt from any customer notification requirements.	Section makes no distinction between the customer notification required of telephone companies and other utilities. Section also fails to recognize any differences between classes of telecommunications providers or the types of services (wholesale/retail) offered. Prevents communications providers from responding in a timely manner to market forces and competition. Only competitors benefit from this unreasonable restraint and the delay it imposes.	Coalition feels that until a truly competitive environment is achieved, code section should remain in place so the Commission will be able to continue safeguarding consumers' level of service and their voice in determining rates. Coalition also notes that rate structures and regulation are currently being considered by the Commission in the OANAD proceeding.	Opposes amendment-- modification unnecessary because they have recently amended GO 96A to reflect the growth in competition.*

*G.O. 96A workshop just completed and OII/OIR expected Summer '97.

PUBLIC UTILITY DEREGULATION

Pacific Bell Categorization of Policy Issues in Public Utilities Code Revision

(2) Rates and Pricing

Is there a need for continuing traditional regulation of how a utility runs its business with respect to:

- Retail, wholesale

Code Section	Suggested Action	Rationale	Other Parties	COMMISSION
495 Requires telephone corporations to file rate and classification schedules for intra and interstate routes.	Amend: PacBell and GTE suggest modifying this section so it applies only to those services provided on a wholesale basis, lifeline, DDTP, and basic service. Other retail service should not be subject to tariff regulation.	This section makes no distinction between classes of telecommunications providers or the types of service (wholesale/retail) offered. This section also duplicates Section 489. The Commission and industry can find better and more efficient ways to utilize resources than to file and store material resulting from this requirement.	Coalition and CalTel feel that tariffs should remain a necessary part of regulation and doing business in the state as they inform and protect consumers and provide the only way for competitive carriers to compare access charges.	Opposes amendment-- regulation should remain in place to protect consumers and the competitive process as California proceeds though the transition from a monopoly to competitive market.

PUBLIC UTILITY DEREGULATION

Pacific Bell Categorization of Policy Issues in Public Utilities Code Revision

(2) Rates and Pricing

Is there a need for continuing traditional regulation of how a utility runs its business with respect to:

- Retail, wholesale

Code Section	Suggested Action	Rationale	Other Parties	COMMISSION
495.7 Allows Commission to exempt certain services from tariffing requirements if competitive alternatives exist and the service complies with rules promulgated by the Commission with respect to consumer protection.	Delete: PacBell suggests deleting this section.	This section is unnecessary if retail services are detariffed. The Commission should be able to designate services as competitive under the new regulatory framework, and allow those services to be offered with no tariff requirements.	Coalition feels that since retail services should not be detariffed, section remains necessary.	Opposes amendment-- regulation should remain in place to protect consumers and the competitive process as California proceeds though the transition from a monopoly to competitive market.
532 Prohibits public utilities from charging rates different from those specified in its schedule on file. Permits Commission to establish exceptions to section by rule or order	PacBell suggests exemption of telephone companies from this section.	Unnecessary if retail services are detariffed. Outmoded 1915 provision was appropriate for monopoly utility service but tariff schedules should have no role for competitive services in a competitive market.	Coalition feels that Commission should continue to monitor rates and safeguard consumers' level of service and their voice in determining rates until a truly competitive environment is achieved.	Opposes any change-- section prohibits rate discrimination.

PUBLIC UTILITY DEREGULATION

Pacific Bell Categorization of Policy Issues in Public Utilities Code Revision

(2) Rates and Pricing

Is there a need for continuing traditional regulation of how a utility runs its business with respect to:

- Retail, wholesale

Code Section	Suggested Action	Rationale	Other Parties	COMMISSION
585 At any rate proceeding, requires public utilities to provide the Commission with access to all computer models used by the public utility to substantiate their showing.	PacBell suggests exemption of telephone companies from this section.	Not appropriate for telecommunications since modeling is not an industry standard.	Coalition feels that Commission should continue to monitor rates and safeguard consumers' level of service and their voice in determining rates until a truly competitive environment is achieved.	Opposes any change-- provision is critical to the OANAD & Universal Service proceedings ongoing at the Commission.
587 Requires electric, gas, and telephone corporations to report significant transactions between the corporation and subsidiary affiliates.	Amend: PacBell and GTE suggest modifying section to limit the reporting of affiliate transactions to those associated with the provisioning of wholesale services. Also suggest that section should apply to all telecommunications carriers.	Commission monitoring of affiliate transactions made sense in a cost-of-service regulatory scheme where single profits could be hidden and investment improperly charged to a regulated utility. This now represents an unwarranted burden on the industry and Commission Staff.	Coalition and CalTel feel that this change is inconsistent with Section 272 of the Act. Also feel that it is still necessary for the Commission to examine transactions between affiliates given the nascent stage of local competition.	Opposes amendment-- affiliate transactions must be monitored as competition develops.

PUBLIC UTILITY DEREGULATION

Pacific Bell Categorization of Policy Issues in Public Utilities Code Revision

(2) Rates and Pricing

Is there a need for continuing traditional regulation of how a utility runs its business with respect to:

- Retail, wholesale

Code Section	Suggested Action	Rationale	Other Parties	COMMISSION
728 Requires Commission to evaluate rates and service quality in adjacent territories when setting rates.	Amend: PacBell and GTE suggest modifying to eliminate requirements for telecommunications carriers.	Section is unnecessary for either wholesale or retail services with multiple service providers competing within the same territory. Section was based on close Commission scrutiny of rates and service level, no longer justified in the new communications environment. Consumer choice will be the incentive to provide quality service at competitive rates.	Coalition feels Commission should take quality into consideration when setting rates.	Opposes amendment-- service quality continues to be a concern.

PUBLIC UTILITY DEREGULATION

Pacific Bell Categorization of Policy Issues in Public Utilities Code Revision

(2) Rates and Pricing

Is there a need for continuing traditional regulation of how a utility runs its business with respect to:

- Retail, wholesale

Code Section	Suggested Action	Rationale	Other Parties	COMMISSION
728.7 Requires customer notification of rate or surcharge changes that result from changes in intercompany payments.	Delete: PacBell and GTE suggest eliminating this provision for non-cost-of-service telecommunications carriers.	This regulation is inappropriate in a competitive market. Sufficient customer service requirements are set forth in Section 491. Enacted shortly after the AT&T divestiture amid alarm over potential increases in local service rates. The fears proved unfounded, and the requirements of this section now serve no purpose.	Coalition feels that in this volatile and emerging competitive market, notice to customers of proposed rate changes is vitally important.	Opposes deletion--customer notification is an important consumer safeguard.

PUBLIC UTILITY DEREGULATION

Pacific Bell Categorization of Policy Issues in Public Utilities Code Revision

(2) Rates and Pricing

Is there a need for continuing traditional regulation of how a utility runs its business with respect to:

- Retail, wholesale

Code Section	Suggested Action	Rationale	Other Parties	COMMISSION
729 Permits the Commission, upon a hearing, to investigate rates, practices, etc., of a public utility and to establish new rates, practices, etc.	PacBell suggests exemption of telephone companies from this section.	Not appropriate for communications services in a competitive environment.	Coalition feels that since local competition is nonexistent and the ILECs are entrenched monopolists, the Commission should retain its regulatory authority until total rate freedom becomes possible through true competition.	Did not address.
729.5 Prohibits a public utility from changing a group of customers from one rate schedule to another without first notifying customer if change would result in an increase of more than 10 percent. Permits Commission to hold hearing upon request of affected customer.	PacBell suggests exemption of telephone companies from this section.	Not appropriate for communications services in a competitive environment.	Coalition feels that in this volatile and emerging competitive market, notice to customers of proposed rate changes is vitally important.	Did not address.

PUBLIC UTILITY DEREGULATION

Pacific Bell Categorization of Policy Issues in Public Utilities Code Revision

(2) Rates and Pricing

Is there a need for continuing traditional regulation of how a utility runs its business with respect to:

- Retail, wholesale

Code Section	Suggested Action	Rationale	Other Parties	COMMISSION
1821-1824 Rules regarding use of computer models for forecasting. Sections require computer models that are used as the basis for any testimony or exhibit in a hearing or proceeding before the Commission be available to the Commission and parties for review and verification. Also require Commission to periodically review and monitor the development and use of any operations model used by any public utility.	PacBell suggests exemption of telephone companies from this section.	Computer models, a mechanism used in energy regulation, are inappropriate for telecommunications. No need for Commission to access computer systems in a competitive market. Elimination of these provisions is consistent with the elimination of detailed rate oversight by the Commission.	Coalition feels that modifying or eliminating Sections 1821-1824, concerning the use of computer models in proceedings before the Commission, would introduce an unacceptable element of confusion to an already complicated situation since the decisions in the OANAD and Universal Service proceedings both rely upon computer models.	Opposes any change-- computer models are being used in OANAD and Universal Service proceedings and Commission needs continued access to them.

PUBLIC UTILITY DEREGULATION

Pacific Bell Categorization of Policy Issues in Public Utilities Code Revision

(3) Consumer Protection

Should the law continue to regulate such matters as:

- fraud
- information/misinformation
- access (Universal Service)

PacBell proposes no specific code changes in this category.

PUBLIC UTILITY DEREGULATION
Pacific Bell Categorization of Policy Issues in Public Utilities Code Revision
(4) Safety of Public

Is continuing protection needed for physical safety of the public, e.g.:

- gas pipelines
- railroad crossings

PacBell proposes no specific code changes in this category.

PUBLIC UTILITY DEREGULATION

Pacific Bell Categorization of Policy Issues in Public Utilities Code Revision

(5) Transitional Issues

Does the deregulation process itself require interim regulation for such matters as:

- **Stranded investments**
- **equal footing**
- **wheeling**

PacBell proposes no specific code changes in this category.

CALIFORNIA PUBLIC UTILITIES CODE

GTE CALIFORNIA CATEGORIZATION OF POLICY ISSUES IN PUBLIC UTILITIES CODE REVISION

(1) Direct Regulation of Service Providers

Is there a need for continuing traditional regulation of how a utility runs its business with respect to:

- Planning for future—expansion, facilities, markets

CODE SECTION	SUBJECT	REQUIREMENT	SUGGESTED ACTION	RATIONALE
1 2889.8 Added 1992	Network Reliability.	Directs the Commission to assess network reliability and report to Legislature by December 31, 1993	Eliminate	This action was completed in 1993 and the Section should therefore be deleted.

CALIFORNIA PUBLIC UTILITIES CODE
GTE CALIFORNIA CATEGORIZATION OF POLICY ISSUES IN PUBLIC UTILITIES CODE REVISION
(1) Direct Regulation of Service Providers
Is there a need for continuing traditional regulation of how a utility runs its business with respect to:
●Planning for future—expansion, facilities, markets

CODE SECTION	SUBJECT	REQUIREMENT	SUGGESTED ACTION	RATIONALE
1 7902.5 Added 1983	Lines of Business	Requires every telephone corporation to file a report with the Commission by 5/1/84 indicating its existing as well as future lines of business.	Eliminate	Outdated by its own provisions.

CALIFORNIA PUBLIC UTILITIES CODE
GTE CALIFORNIA CATEGORIZATION OF POLICY ISSUES IN PUBLIC UTILITIES CODE REVISION

(1) Direct Regulation of Service Providers

Is there a need for continuing traditional regulation of how a utility runs its business with respect to:

- Planning for future--expansion, facilities, markets

CODE SECTION	SUBJECT	REQUIREMENT	SUGGESTED ACTION	RATIONALE
1 7902 Enacted 1951	Sale or transfer of property of telephone corporation.	A telephone corporation may sell, transfer, assign, etc., any property, rights, privileges, except its corporate franchise, upon the consent of two-thirds of the shareholders.	Eliminate.	The conditions governing the sale or transfer of property by any telecommunications carrier should be the same for all carriers and should be governed by the state corporations law.
1 314.a Amended 1986	General powers and duties of the Commission	Any person employed by the Commission may at any time inspect the accounts, books, documents of any public utility. Any person employed by the Commission may examine under oath any employee of the public utility.	Modify to exclude telecommunications carriers.	To remove an inappropriate level of oversight in a competitive environment.

CALIFORNIA PUBLIC UTILITIES CODE

GTE CALIFORNIA CATEGORIZATION OF POLICY ISSUES IN PUBLIC UTILITIES CODE REVISION

(1) Direct Regulation of Service Providers

Is there a need for continuing traditional regulation of how a utility runs its business with respect to:

- Planning for future--expansion, facilities, markets

CODE SECTION	SUBJECT	REQUIREMENT	SUGGESTED ACTION	RATIONALE
1 314.b Amended 1986	General powers and duties of the Commission	Subdivision (a) also applies to an affiliate of a public utility	Modify to exclude telecommunications carriers.	To remove an inappropriate level of oversight in a competitive environment.
1 314.5 Added 1975	General powers and duties of the Commission	The Commission shall inspect and audit the books and records for regulatory and tax purposes at least once in every three years for corporations serving over 1,000 customers and once every five years for corporations serving 1,000 or fewer customers.	Modify to exclude telecommunications carriers.	To remove an inappropriate level of oversight in a competitive environment.

CALIFORNIA PUBLIC UTILITIES CODE

GTE CALIFORNIA CATEGORIZATION OF POLICY ISSUES IN PUBLIC UTILITIES CODE REVISION

(1) Direct Regulation of Service Providers

Is there a need for continuing traditional regulation of how a utility runs its business with respect to:

- Planning for future—expansion, facilities, markets

CODE SECTION	SUBJECT	REQUIREMENT	SUGGESTED ACTION	RATIONALE
1 786 Amended 1991	Listing of services and associated rates.	Annual requirement to provide a listing of services and associated charges to every residential subscriber. Also requires FCC charges be separately identified on the bill for residential and business subscribers	Eliminate.	Requirement to provide list of rates and services in inappropriate in a competitive environment. Universal Service requirements are set forth in Article 8 of the Code.
1 792 Enacted 1951	System of accounts	Grants the Commission authority to establish its own system of accounts.	Eliminate.	For consistency across all telecommunications and jurisdictions, this section should require all telecommunications carriers to maintain their books of account in conformance with the FCC's Part 32 uniform system of accounts.

CALIFORNIA PUBLIC UTILITIES CODE

GTE CALIFORNIA CATEGORIZATION OF POLICY ISSUES IN PUBLIC UTILITIES CODE REVISION

(1) Direct Regulation of Service Providers

Is there a need for continuing traditional regulation of how a utility runs its business with respect to:

- Planning for future—expansion, facilities, markets

CODE SECTION	SUBJECT	REQUIREMENT	SUGGESTED ACTION	RATIONALE
1 795 Amended 1970	Depreciation	Depreciation must be carried in accordance with Commission rules.	Amend to remove telecommunications carriers from this section.	In a competitive environment, telecommunications carriers should have the ability to set depreciation lives at market rates.
1 797 Added 1988	Audits of significant transactions.	The Commission shall periodically audit all significant transactions between an electrical, gas, or telephone corporation and every subsidiary or affiliate of, or corporation holding a controlling interest in that electrical, gas or telephone corporation. The Commission may utilize the services of an independent auditor. Nothing in this section prohibits the Commission from auditing any transaction as otherwise permitted by law.	Modify to limit audits of non-cost-of-service telecommunications carriers to transactions associated with provisioning of wholesale services.	This Section is inappropriate for telephone corporations that are subject to incentive regulation.

CALIFORNIA PUBLIC UTILITIES CODE

GTE CALIFORNIA CATEGORIZATION OF POLICY ISSUES IN PUBLIC UTILITIES CODE REVISION

(1) Direct Regulation of Service Providers

Is there a need for continuing traditional regulation of how a utility runs its business with respect to:

- Planning for future—expansion, facilities, markets

CODE SECTION	SUBJECT	REQUIREMENT	SUGGESTED ACTION	RATIONALE
1 816-830	Stocks and Securities Transactions	Upon an application for an order to issue stock or debt, the Commission may approve the terms and conditions of such issuance and exchange and the fairness of such terms and conditions.	Modify to exclude telecommunications carriers from the provisions of this chapter.	This Section impairs a company's ability to raise capital on favorable terms available in the financial markets. Additionally, in a competitive market, access to capital will require a shorter turnaround period or risk losing growth opportunities.
1 851-856 Initially Enacted 1951. Latest amendment 1995	Transfer Encumbrance of Utility Property.	Establishes criteria the Commission must consider before authorizing a merger or acquisition of any utility with gross annual California revenues exceeding \$500 million.	Modify to exclude telecommunications carriers from the provisions of this chapter.	Inappropriate level of oversight in a competitive environment. Transfer issues and consumer safeguards are already reviewed by other agencies.

CALIFORNIA PUBLIC UTILITIES CODE
GTE CALIFORNIA CATEGORIZATION OF POLICY ISSUES IN PUBLIC UTILITIES CODE REVISION

(1) Direct Regulation of Service Providers

Is there a need for continuing traditional regulation of how a utility runs its business with respect to:

- **Planning for future--expansion, facilities, markets**

CODE SECTION	SUBJECT	REQUIREMENT	SUGGESTED ACTION	RATIONALE
1 708.3 Added 1995	Business transactions between telephone corporations and customers	Certain utilities must provide reasonable non-business hour alternatives to customers for business transactions.	Modify to remove references to telephone corporations.	State law has declared this market as competitive and as such this requirement becomes a differentiator in a competitive market.
1 2882.5 Added 1994	Billing increments.	Requires Commission to investigate billing in increments of less than one minute.	Eliminate.	This Section is no longer necessary because the investigation was completed December 31, 1995.
1 587	Report of significant transactions between affiliates	Annual requirement to report significant transactions between the corporation and subsidiary affiliates. Requirement applies to electric, gas, and telephone corporations.	Modify to limit the reporting of affiliated transactions associated with the provisioning of wholesale services. This section should be applicable to all telecommunications carriers.	Consistent with GTEC's position to limit regulation to wholesale services.

CALIFORNIA PUBLIC UTILITIES CODE
GTE CALIFORNIA CATEGORIZATION OF POLICY ISSUES IN PUBLIC UTILITIES CODE REVISION

(1) Direct Regulation of Service Providers

Is there a need for continuing traditional regulation of how a utility runs its business with respect to:

- **Planning for future--expansion, facilities, markets**

CODE SECTION	SUBJECT	REQUIREMENT	SUGGESTED ACTION	RATIONALE
1 701.5 Enacted 1987	Financing Arrangement Restrictions	No corporation whose rates are set by the Commission on a cost-of-service basis shall issue any indebtedness of any kind pledging the utility assets or credits for or on behalf of any subsidiary or affiliate of, or corporation holding a controlling interest in the utility.	Modify to expressly state that the entire statute refers only to cost-of-service regulated telecommunications carriers.	To clarify and ensure that this statute only applies to cost-of-service regulated telecommunications carriers, because it would be unnecessary regulation for a non-cost-of-service carrier.

CALIFORNIA PUBLIC UTILITIES CODE

GTE CALIFORNIA CATEGORIZATION OF POLICY ISSUES IN PUBLIC UTILITIES CODE REVISION

(2) Rates and Pricing

Is there a need for continuing traditional regulation of how a utility runs its business with respect to:

- Retail, wholesale

CODE SECTION	SUBJECT	REQUIREMENT	SUGGESTED ACTION	RATIONALE
2 530c Amended 1955	Telephone Company/Common Carrier Contracts	Allows common carriers to enter into contracts with telephone corporations for exchange of service.	Eliminate	This Code Section is antiquated. Express authority granted in this section is unnecessary.
2 529b Amended 1984	Common Carrier Rates	Allows discounted travel and mail service on common carriers by telephone companies.	Eliminate	Express authority to grant passes or franking privileges is no longer relevant or necessary in a competitive environment.
2 2893(b) Added 1989	Caller ID	No charge for blocking	Modify to allow for assessing resellers charges for blocking functions after the initial order.	Costs incurred by the facility-based carriers should be borne by the reseller receiving the economic benefit of the customer.
2 728 Amended 1963	Rate Setting	Requires the Commission to evaluate rates and service quality in adjacent territories when setting rates.	Modify to eliminate requirements for telecommunications carriers.	With multiple service providers competing within the same territory this section is unnecessary for either wholesale or retail services.

CALIFORNIA PUBLIC UTILITIES CODE

GTE CALIFORNIA CATEGORIZATION OF POLICY ISSUES IN PUBLIC UTILITIES CODE REVISION

(2) Rates and Pricing

Is there a need for continuing traditional regulation of how a utility runs its business with respect to:

- Retail, wholesale

CODE SECTION	SUBJECT	REQUIREMENT	SUGGESTED ACTION	RATIONALE
2 728.2 (a,b1-3) Amended 1982	Rate Setting: Directory Advertising	Limits the Commission's jurisdiction over directory publication with the exception of rates and charges for commercial directory advertising and impact of those revenues on other rates.	Modify to limit the application to cost-of-service regulated telecommunications carriers.	Directory publishing is a highly competitive, market-driven business. Commission regulation is inappropriate for non-cost-of-service regulated telecommunications carriers.
2 495.7 Added 1995	Tariffs: Exemption of Certain Services	Allows the Commission to exempt certain services if competitive alternatives exist and service complies with rules promulgated by the Commission with respect to consumer protection.	Eliminate	If retail services are detariffed, this section is unnecessary.

CALIFORNIA PUBLIC UTILITIES CODE
GTE CALIFORNIA CATEGORIZATION OF POLICY ISSUES IN PUBLIC UTILITIES CODE REVISION

(2) Rates and Pricing

Is there a need for continuing traditional regulation of how a utility runs its business with respect to:

- Retail, wholesale

CODE SECTION	SUBJECT	REQUIREMENT	SUGGESTED ACTION	RATIONALE
2 495 Amended 1992 Amended 1995	Tariffs: Filing Requirements	Requires that telephone corporations file rate and classification schedules for intra and interstate routes.	Modify to apply to only those services provided on a wholesale basis, lifeline, DDTP and basic services. Other retail service should not be subject to tariff regulation.	This section makes no distinction between classes of telecommunications providers or the types of service (Wholesale/Retail) offered. This section also duplicates Section 489.
2 728.7 (a&b) Added 1986	Rate Changes: Customer Notification	Requires customer notification of rate or surcharge changes that result from changes in intercompany payments.	Eliminate for non-cost-of-service telecommunications carriers.	This regulation is inappropriate in a competitive market. Sufficient customer notification requirements are set forth in Code Section 491.

CALIFORNIA PUBLIC UTILITIES CODE
GTE CALIFORNIA CATEGORIZATION OF POLICY ISSUES IN PUBLIC UTILITIES CODE REVISION

(2) Rates and Pricing

Is there a need for continuing traditional regulation of how a utility runs its business with respect to:

- **Retail, wholesale**

CODE SECTION	SUBJECT	REQUIREMENT	SUGGESTED ACTION	RATIONALE
2 491 Enacted 1951	Customer Notification: Rate, Classification, and Rule Changes	Requires 30 days notice for rate, rule, and classification changes unless the Commission approves less.	Modify to provide that notice requirements for non cost-of-service telecommunications carriers is applicable to only those services provided on a wholesale basis, lifeline, Deaf and Disabled Telecommunications Program ("DDTP") and basic services. The notification period for such carriers should be reduced to be equal to the notification requirements imposed on CLCs. Other retail services should be exempt from any customer notification requirements.	This section makes no distinction between the customer notification required of telecommunications companies and other utilities. It further does not recognize any differences between classes of telecommunications providers or the types of service (Wholesale/Retail) offered.

CALIFORNIA PUBLIC UTILITIES CODE

GTE CALIFORNIA CATEGORIZATION OF POLICY ISSUES IN PUBLIC UTILITIES CODE REVISION

(2) Rates and Pricing

Is there a need for continuing traditional regulation of how a utility runs its business with respect to:

- **Retail, wholesale**

CODE SECTION	SUBJECT	REQUIREMENT	SUGGESTED ACTION	RATIONALE
2 740 Added 1973	Rate Setting	Allows Commission to include research and development costs when setting rates.	Modify to exclude non-cost-of-service regulated telecommunications providers.	R&D cost are appropriately recoverable costs; however, express authority is no longer relevant or necessary in a competitive environment.
2 489(a) Amended 1992 Amended 1995	Tariffs - Filing Requirements	Requires the Commission to order that every public utility file schedules containing rates, charges, classifications, rules, etc.	Modify to direct the Commission to exempt telecommunications' retail services from tariffing requirements.	This section makes no distinction between the tariffs required of telecommunications carriers and other utilities. It further does not recognize any differences between classes of telecommunications providers or the types of service (Wholesale/Retail) offered.

CALIFORNIA PUBLIC UTILITIES CODE
GTE CALIFORNIA CATEGORIZATION OF POLICY ISSUES IN PUBLIC UTILITIES CODE REVISION

(2) Rates and Pricing

Is there a need for continuing traditional regulation of how a utility runs its business with respect to:

- **Retail, wholesale**

CODE SECTION	SUBJECT	REQUIREMENT	SUGGESTED ACTION	RATIONALE
2 461.2 Enacted 1987	Establishment of Rates	Requires that revenues and expenses associated with simple inside wire be included for establishing rates.	Modify to apply only to those utilities subject to cost of service regulation.	To remove an inappropriate level of oversight for utilities subject to incentive based regulation.
2 767.5 Repealed and Added 1980	Pole attachment and conduit occupancy.	Public utilities shall provide surplus pole space and excess conduit capacity to cable television corporation at an annual recurring fee that is computed in the statute.	Repeal	Under the Act, regulations concerning pole attachment and conduit occupancy must be applicable to all telecommunications carriers, not merely cable t.v., and the current statutory rates are grossly non-compensatory in a competitive market. Under 47 U.S.C. 224(c) the Commission may regulate such rates, terms, and conditions, and the Commission is in the process of promulgating such regulations in the Local Competition Docket.

CALIFORNIA PUBLIC UTILITIES CODE
GTE CALIFORNIA CATEGORIZATION OF POLICY ISSUES IN PUBLIC UTILITIES CODE REVISION

(2) Rates and Pricing

Is there a need for continuing traditional regulation of how a utility runs its business with respect to:

- Retail, wholesale

CODE SECTION	SUBJECT	REQUIREMENT	SUGGESTED ACTION	RATIONALE
2 461 Enacted 1951	Establishment of Rates	Prohibits greater aggregate charges/compensation from short distance calls compared to longer distance calls on same route without Commission authorization.	Eliminate	This section of the code is antiquated and inappropriate for any class of services provided (Wholesale or Retail). Restricts competitive pricing. Prices in the competitive marketplace are moving to a non-distance sensitive rate structure and market driven rates.
2 1807 Added 1984	Payment of Intervenor Compensation	Identifies the responsible utility for intervenor payment and authorizes recovery of said payment.	Modify to add a provision which requires the Commission to equitably allocate payment to intervenors among all participants.	In a competitive proceeding the intervenor funding requirement should be borne equally by all participants in the proceedings.

CALIFORNIA PUBLIC UTILITIES CODE
GTE CALIFORNIA CATEGORIZATION OF POLICY ISSUES IN PUBLIC UTILITIES CODE REVISION

(2) Rates and Pricing

Is there a need for continuing traditional regulation of how a utility runs its business with respect to:

- **Retail, wholesale**

CODE SECTION	SUBJECT	REQUIREMENT	SUGGESTED ACTION	RATIONALE
2 798 Added 1987	Penalties for improper payments to or from corporation.	Establishes a penalty that the Commission can levy against a corporation of a finding is made that a payment was made or received by the corporation for the purpose of benefiting its subsidiary, affiliate or holding company.	Modify to limit penalties to transactions involving wholesale services. This section should also be made applicable to all telecommunications carriers.	This Section is inappropriate for telephone corporations that are subject to incentive regulation.

CALIFORNIA PUBLIC UTILITIES CODE
GTE CALIFORNIA CATEGORIZATION OF POLICY ISSUES IN PUBLIC UTILITIES CODE REVISION

(3) Consumer Protection

Should the law continue to regulate such matters as:

- fraud
- information/misinformation
- access (Universal Service)

CODE SECTION	SUBJECT	REQUIREMENT	SUGGESTED ACTION	RATIONALE
3 788 Added 1991	Inside Wire.	Annual notification to subscribers detailing inside wire responsibilities and options.	Eliminate	Inside wire has been deregulated and/or detariffed for more than thirteen years, and consistent with the Commission's goal of fostering a competitive market, this requirement should be lifted.
3 742.1(a) Added 1988	Non-public Utility Operator Services	Prohibits Operator Assisted Services (OAS) unless the Commission finds in public interest. Requires OAS information in phone books.	Eliminate	This Section is outdated because OAS service has already been approved by the Commission.
3 742 (b) Amended 1989	Non-public Utility Coin & Credit Card Activated Phones	Requires telephone corporations to include rules for coin and credit card operated phones in its phone books.	Eliminate	Determination of contents of customer information pages in telephone books should not be mandated by the Commission.

CALIFORNIA PUBLIC UTILITIES CODE
GTE CALIFORNIA CATEGORIZATION OF POLICY ISSUES IN PUBLIC UTILITIES CODE REVISION

(3) Consumer Protection

Should the law continue to regulate such matters as:

- fraud
- information/misinformation
- access (Universal Service)

CODE SECTION	SUBJECT	REQUIREMENT	SUGGESTED ACTION	RATIONALE
3 739.3	Support for small independent telephone corporations	Requires the Commission to establish a transfer program to promote universal service and discourage rate disparity.	Modify. This section should be incorporated into Code section Part 1, Article 8, para 871-878.	All universal service requirements should be addressed in one single section.
3 779.2 Added 1984 Added 1986	Termination of service	Prohibits a telephone corporation from disconnecting service for non-payment under certain conditions.	Modify to exclude telecommunications carriers.	This section is unduly burdensome when operating in a competitive market. Consumers who are disconnected for non-payment may obtain service from other carriers with less stringent credit and/or payment requirements.

CALIFORNIA PUBLIC UTILITIES CODE
GTE CALIFORNIA CATEGORIZATION OF POLICY ISSUES IN PUBLIC UTILITIES CODE REVISION

(3) Consumer Protection

Should the law continue to regulate such matters as:

- fraud
- information/misinformation
- access (Universal Service)

CODE SECTION	SUBJECT	REQUIREMENT	SUGGESTED ACTION	RATIONALE
3 728.4 Added 1990	Listing of facsimile machine numbers in directories.	A telephone corporation shall list a telephone number as the number for a facsimile machine in its directory only if requested by the subscriber.	Eliminate.	Inclusion of customers' fax numbers in directories should be a competitive differentiator.
3 728.3 Added 1987	Public Telephones: Removal	Requires 30 days' notice prior to removal of a public phone.	Eliminate.	The payphone business is highly competitive with many service alternatives. No similar requirement exists for competitive pay telephone providers. This requirement is inappropriate.
3 879.5 Amended 1992	Universal Service	Instructions for initial surcharge.	Eliminate.	This Section is no longer necessary because the surcharge process required by this Section has been implemented.

CALIFORNIA PUBLIC UTILITIES CODE
GTE CALIFORNIA CATEGORIZATION OF POLICY ISSUES IN PUBLIC UTILITIES CODE REVISION

(3) Consumer Protection

Should the law continue to regulate such matters as:

- fraud
- information/misinformation
- access (Universal Service)

CODE SECTION	SUBJECT	REQUIREMENT	SUGGESTED ACTION	RATIONALE
3 882 Added 1993	Universal Service - Advanced Telecommunication Service	Requires Commission to initiate an investigation and submit a report to the Legislature.	Eliminate.	This Section is no longer necessary because this requirement has been completed and the Commission has issued its Universal Service Decision.
3 1802.5 Added 1992	Intervenor Participation Complementing/Contributing to the position of another party.	Eligibility for Compensation.	Modify to add that when said participation results in jointly filed comments, any intervenor compensation award should be borne by the aligned telecommunications carrier.	Significant contribution of the intervenor is difficult to isolate when they align themselves with a particular telecommunications carrier(s).
3 779.5 Added 1989	Deposit Requirements	Decision to require deposit for non-residential applicant is based solely on the credit-worthiness of applicant.	Modify to exclude telecommunications carriers.	Deposit requirements should be business decision determined at the discretion of each telecommunications carrier.

CALIFORNIA PUBLIC UTILITIES CODE
GTE CALIFORNIA CATEGORIZATION OF POLICY ISSUES IN PUBLIC UTILITIES CODE REVISION

(3) Consumer Protection

Should the law continue to regulate such matters as:

- fraud
- information/misinformation
- access (Universal Service)

CODE SECTION	SUBJECT	REQUIREMENT	SUGGESTED ACTION	RATIONALE
3 2881, 2881.1 Amended 1994 Amended 1989	Deaf and Disabled Telecommunication services.	Requires the Commission to establish a program whereby each telephone corporation will provide access to the telephone network for deaf, hearing impaired and disabled subscribers (the Deaf and Disabled Telecommunications Program) for free or at discounted rates. Establishes a rate recovery mechanism through a surcharge. Requires the CPUC to study the feasibility of reasonable toll call discounts for public pay telephone calls made using a TDD.	Modify to remove reference to telephone corporation as entity which physically provides telecommunications devices.	Allows the Commission to design the DDTP Program in the most cost-effective and efficient manner in today's competitive environment.

CALIFORNIA PUBLIC UTILITIES CODE
GTE CALIFORNIA CATEGORIZATION OF POLICY ISSUES IN PUBLIC UTILITIES CODE REVISION

(3) Consumer Protection

Should the law continue to regulate such matters as:

- fraud
- information/misinformation
- access (Universal Service)

CODE SECTION	SUBJECT	REQUIREMENT	SUGGESTED ACTION	RATIONALE
3 708 Added 1987	ID cards	Requirement for employees who enter customer premises to have photo ID cards.	Modify to include all telecommunications carriers.	This section provides protection for consumers and its effectiveness would be compromised if it did not apply to all carriers.
3 2885 Added 1986	Notification regarding customer privacy on cellular telephone calls.	The Commission shall determine before July 1, 1987 if a cellular telephone call notification system should be enacted to be placed on cellular calls to notify recipients that the conversation may not be totally private.	Eliminate.	The requirements of the statute are no longer timely since Commission action was required approximately 10 years ago.

CALIFORNIA PUBLIC UTILITIES CODE
GTE CALIFORNIA CATEGORIZATION OF POLICY ISSUES IN PUBLIC UTILITIES CODE REVISION

(5) Transitional Issues

Does the deregulation process itself require interim regulation for such matters as:

- **Stranded Investments**
- **equal footing**
- **wheeling**

CODE SECTION	SUBJECT	REQUIREMENT	SUGGESTED ACTION	RATIONALE
5 2882.3 Added 1996; Repealed 1/1/98	Enhanced Services.	No cross subsidy by non-comp. services and anti-competitive behavior. Hearings required prior to offer services and the Commission may impose safeguards, if appropriate. The Commission shall conduct annual audits on services exempt from Section 489. To extent necessary to ensure competition in enhanced service market is fair, the Commission shall ensure nondiscriminatory access by ESPs to the LECs network capabilities, including billing, on equivalent terms and conditions.	Eliminate.	This Section will be repealed as of January 1, 1998 by its own provision

CALIFORNIA PUBLIC UTILITIES CODE
GTE CALIFORNIA CATEGORIZATION OF POLICY ISSUES IN PUBLIC UTILITIES CODE REVISION
Code Sections not Categorized

CODE SECTION	SUBJECT	REQUIREMENT	SUGGESTED ACTION	RATIONALE
216 Amended 1991	Definition of Public Utility	Includes a "telephone corporation" within the definition of a public utility.	Substitute the definition of a "telecommunications carrier" under Section 153(49) of the Telecommunications Act of 1996 (the Act) for that of a "telephone corporation".	To achieve consistency between state and federal definitions.
230.3 Enacted 1951	Service Area	LATAs are defined by Court Order	Modify.	This section should be revised to be consistent with Section 153(43) of the Act.
234 Amended 1995	Telephone Corporation	Definition	Substitute the definition of a "telecommunications carrier" under Section 153(49) of the Act for that of a "telephone corporation".	To achieve consistency between state and federal definitions.
709.5 Added 1994	Competition in Video and Intraexchange Markets	Legislature's intent to open all markets to competition by January 1, 1997	Eliminate	The Commission has completed this requirement; therefore, this Section may be eliminated.

CALIFORNIA PUBLIC UTILITIES CODE
GTE CALIFORNIA CATEGORIZATION OF POLICY ISSUES IN PUBLIC UTILITIES CODE REVISION
Code Sections not Categorized

CODE SECTION	SUBJECT	REQUIREMENT	SUGGESTED ACTION	RATIONALE
2884.2 Amended 1993	Information Access Services	Establishes reporting requirement for the Commission to the Legislature regarding information access services.	Eliminate.	Repealed January 1, 1996 by its own provisions.
2884.3 Added January 1, 1994	Network Infrastructure.	Requires Commission to assembly task force to evaluate the telecommunications network infrastructure.	Eliminate	This was repealed by the Legislature January 1, 1995.
7930 Added 1990	New Area Code	24 months advance notification; within 6 months after giving notice, hold at least 3 public meetings; give written notice of the specific geographic area to be included in the new area code to all affected subscribers at least 15 months prior to the new code going into effect.	Modify to reduce the 24-month advance notification to 12 months due to accelerated pace of number exhaustion. Eliminate requirement for 3 public meetings. Reduce 15-month notice requirement to 6 months prior to new code going into effect.	Notifications need to be compressed due to accelerated pace of number exhaustion.

#B-800

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

Staff Draft

REPORT

Public Utility Deregulation

June 1997

California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, CA 94303-4739
415-494-1335 FAX: 415-494-1827

PUBLIC UTILITY DEREGULATION

SUMMARY OF REPORT

Section 12 of Chapter 856 of the Statutes of 1996 requires the Public Utilities Commission “in consultation with the Law Revision Commission” to report to the Legislature by June 30, 1997, on needed revisions of the Public Utilities Code that result from the restructuring of the electrical, gas, transportation, and telecommunications industries.

This report presents the results of the Law Revision Commission’s consultation. It should be noted that this report is based on preliminary information from the Public Utilities Commission and stakeholders. It is anticipated that the Public Utilities Commission’s June 30, 1997, report to the Legislature will reflect both the results of this consultation and additional work performed by the Commission at the time of issuance of its report. This report does not include draft legislation; the Law Revision Commission’s mandate for this study is limited to “consultation”.

After receiving preliminary input from the Public Utilities Commission and from stakeholders in the affected industries that have participated in this process, the Law Revision Commission concludes:

Code Revision Process

The Public Utilities Commission’s effort to revise the Code to date is preliminary, and only a limited number of the potentially interested parties have participated. Industry participants have suggested a variety of techniques to expedite review, including sunseting. The Public Utilities Commission indicates that it will take a more active role in the future, but at present its resources have been taxed to open the affected industries to competition.

Major Policy Dispute

The major policy issue that pervades each of the affected industries (except transportation) is whether sufficient competition exists to permit Code revision to dismantle the existing monopoly regulatory system.

Categorization of Issues

To a significant degree, the Public Utilities Commission and industry participants can identify areas of agreement and disagreement over proposed Code revisions. This report attempts to categorize the areas. The Public Utilities Commission intends to sponsor legislation on matters on which there is agreement that Code revisions are appropriate.

Electrical Industry

In the electrical industry, there are substantial areas of disagreement. Even in areas where there is agreement in concept, drafting may prove to be difficult. Electrical industry participants also urge reform of Public Utilities Commission organization and procedures; recent and pending legislation addresses these matters to some extent.

Natural Gas Industry

Restructuring is further along in the natural gas industry than in the electrical industry. The Public Utilities Commission will approve a strategic plan for the natural gas industry this summer. Natural gas industry participants plan to address Code revisions through that process. Both electrical and gas industry participants and the Public Utilities Commission agree that in order to promote competition, the Code should be revised to eliminate price parity requirements for gas supplied for cogeneration and electrical plants.

Transportation Industry

The dominant feature of deregulation in the transportation industry is federal preemption. The transportation industry participants agree that significant portions of the transportation regulation statutes in the Code are obsolete and should be revised or repealed. This appears to be a drafting matter. The Public Utilities Commission indicates its intent to take an active role in developing clean-up legislation. There is disagreement between the Commission and railroad industry participants about the effect of federal preemption on a handful of statutes that could affect the Commission's regulatory authority over transportation safety and a few other matters.

Telecommunications Industry

The question whether monopoly regulation must continue until full competition flourishes is particularly intense in the local telephone service sector. The Law Revision Commission recommends that the Public Utilities Commission, with the participation of interested parties, promulgate criteria and standards for determining when sufficient levels of competition have been attained for specific aspects of deregulation.

PUBLIC UTILITY DEREGULATION

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PUBLIC UTILITY DEREGULATION

CONSULTATION BY LAW REVISION COMMISSION

Section 12 of Chapter 856 of the Statutes of 1996 (SB 960) provides:

SEC. 12. On or before June 30, 1997, the Public Utilities Commission in consultation with the Law Revision Commission shall submit a report to the Legislature on needed revisions of the Public Utilities Code that result from the restructuring of the electrical, gas, transportation, and telecommunications industries.

This statute is part of the public utilities restructuring package enacted during the 1996 legislative session after extensive conference committee hearings on the matter.

The premise of the statute is that restructuring of the public utility industries for competition may render parts of the Public Utilities Code obsolete. The existing Code is based on a model of regulation of monopolies through command and control, whereas the new statutory scheme provides procedures suited to the emerging competitive utility marketplace. In this respect, many of the regulatory responsibilities of the Public Utilities Commission may be antiquated and unnecessary.

The statute imposes primary responsibility for the Code revision report on the Public Utilities Commission. The Law Revision Commission has executed its consultative role by reviewing materials prepared by the Public Utilities Commission (focusing on procedural and substantive problem areas identified by industry participants) and reporting its findings to the Legislature. This report is also provided to the Public Utilities Commission to assist it in reporting to the Legislature on Code revisions.

STRUCTURE OF THIS REPORT

This report first addresses the procedure being followed by the Public Utilities Commission in reporting to the Legislature on needed Code revisions.

The report next addresses each of the utility industries referred to the Law Revision Commission for consultation — electrical, gas, transportation, and telecommunications. The report summarizes the current status of restructuring in each industry, and summarizes the positions of stakeholders and the Public Utilities Commission on deregulation in that industry. The report states the perspective of the Law Revision Commission on Code revision to implement deregulation in each of the industries. The report does not include draft legislation; the Law Revision Commission's mandate for this study is limited to "consultation".

1 This report does not reproduce material provided in Public Utilities Commission
2 reports on this matter, including original communications from stakeholders. That
3 material is available from the Public Utilities Commission.

4 It should be noted that this report is based on preliminary information from the
5 Public Utilities Commission and stakeholders. It is anticipated that the Public
6 Utilities Commission's June 30, 1997, report to the Legislature on Code revisions
7 will reflect both the results of this consultation and additional work performed by
8 the Commission up to the time of issuance of its report.

9 PROCEDURAL ISSUES IN PUBLIC UTILITIES CODE REVISION

10 **Public Utilities Commission's Status Update on Code Revision Efforts**

11 The Public Utilities Commission began its efforts in November 1996 by
12 requesting interested persons (particularly participants in the legislative
13 restructuring process) for their comments on needed Code revisions. The
14 comments received were then recirculated in January 1997 for response. The
15 Public Utilities Commission on March 31, 1997, issued a status update that
16 included its preliminary reactions. The preliminary reactions were generated from
17 review by the Public Utilities Commission's industry division, legal, and
18 administrative law judge, staff.

19 The Public Utilities Commission's March 31, 1997, status update indicates that
20 the Commission had hoped to be able to introduce legislation in 1997 to effectuate
21 consensus code changes that arise out of the reporting effort. But, "there were only
22 a few such code changes."

23 **Public Utilities Commission's Working Relationship with CLRC**

24 The Public Utilities Commission has been cooperative in keeping the Law
25 Revision Commission informed of Public Utilities Commission activities for this
26 consultation, and promptly providing the Law Revision Commission with copies
27 of materials when requested.

28 The procedure followed by Public Utilities Commission leaves the Law Revision
29 Commission some, but not a lot, of time to perform its consultative role. However,
30 this is not critical, since that role is basically reactive — reporting on identified
31 problems, rather than drafting legislation.

32 **Involvement of Stakeholders**

33 Stakeholder involvement in the effort to identify needed Code revisions has been
34 limited. Of the four industries included in this report, only the telecommunications
35 industry shows active participation, and that participation is limited to
36 telecommunications providers and does not include telecommunications users.

37 The reasons for this limited involvement are not clear. They may include:

38 (1) Inadequate resources to review Code regulatory revisions due to the
39 pressures of preparing for competition.

(2) Reluctance to challenge the Public Utilities Commission for fear of unfavorable treatment in the regulatory process.

Text of Code Revisions

SB 960 requests a report on needed revisions by June 30. The Public Utilities Commission's status report indicates that, apart from consensus changes that may be made during 1997, it is the Commission's desire to continue the discussions into the 1998 legislative session "when more detailed conversations may take place." During the course of the Law Revision Commission's consultation, a number of consensus areas were identified; it is anticipated that the Public Utilities Commission's June 30 report will include Code revision text on some of these matters.

Future Code Revision Efforts

For its March 31, 1997, status update, the Public Utilities Commission solicited proposed changes from others and reacted to the changes identified. The Public Utilities Commission indicates that it is also actively searching the Code for needed revisions and that its June 30 report will include specific recommended revisions it has identified as a result of this effort.

Industry participants have expressed dissatisfaction with the pace of Code reform, stating that it is urgently needed now. Some have perceived a reluctance of Public Utilities Commission staff to initiate code reforms, and have suggested active Commissioner involvement in the process. Industry participants have also suggested sunseting the regulatory statutes, with the burden on the Commission to demonstrate the need for their continuance; this would ensure the Commission's prompt review of the statutes. And industry participants have requested the Law Revision Commission's continued assistance to the parties to draft specific code language for the Legislature to consider.

The Public Utilities Commission indicates that it expects to take a much more active role in seeking out needed Code revisions for all industry areas in the future. The effort to open the various industries to competition, particularly implementation of AB 890, has taxed Public Utilities Commission's resources to simultaneously review the Code for needed revisions.

Conclusion of Law Revision Commission

Initial materials from the Public Utilities Commission indicated very few areas of agreement on Code revisions between the Commission and stakeholders. However, closer examination by the Law Revision Commission reveals greater agreement below the surface. Many of the issues or concerns appear to be matters of drafting rather than matters of policy. The consultation of the Law Revision Commission may have been of some help in this respect.

The Law Revision Commission recommends that the parties continue to communicate with each other on these matters in a constructive, rather than

adversarial manner. In addition, the policy categorization suggested below may help focus on fundamental areas of agreement and disagreement. To the extent this process reveals areas of agreement, the parties should proceed to implementing legislation, in consultation with each other.

The Law Revision Commission notes that this revision effort does not include a number of potentially interested parties, such as consumers. The Public Utilities Commission has invited all interested parties to participate in this process. The Law Revision Commission recommends that the Public Utilities Commission make a renewed effort to get the input of affected parties.

Although it has been suggested that the Law Revision Commission continue its involvement to assist in the preparation of draft legislation, this is beyond the scope of authority given to the Law Revision Commission by SB 960.

CATEGORIZATION OF POLICY ISSUES IN PUBLIC UTILITIES CODE REVISION

The Law Revision Commission believes the Code revision process will be advanced by summarizing categories or areas of agreement and disagreement. To this end, the Law Revision Commission in this report uses the following categorization of policy issues. The importance of an issue may vary with the particular industry.

Direct Regulation of Service Providers

Is there a need for continuing traditional regulation of how a utility runs its business with respect to:

- planning for the future — expansion, facilities, markets
- audits and inspections
- new entrants (certification)

Rates and Pricing

Is there a need to continue traditional regulation in the areas of:

- retail, wholesale
- antitrust matters

Consumer Protection

Should the law continue to regulate such matters as:

- fraud
- information/misinformation
- access (universal service)

Safety of Public

Is continuing protection needed for physical safety of the public, e.g.:

- gas pipelines
- railroad crossings

Transitional Issues

Does the deregulation process itself require interim regulation for such matters as:

- stranded investments
- equal footing
- wheeling

Organization and Procedures

Due to the emerging competitive marketplace, should changes to regulatory processes and organization be considered?

- agency organization
- administrative procedures
- judicial review

ELECTRICAL INDUSTRY

Current Status of Restructuring and Deregulation

Electrical energy has historically been sold to retail customers by regulated utilities with exclusive service monopolies. This regulatory framework is believed to be partially responsible for California's electricity rates being some 50 percent higher than the national average. The electric utilities were vertically integrated monopolies responsible for the generation, transmission, and distribution of electricity and electrical services. Retail customers had no choice but to purchase power from the local monopoly.

Congress began encouraging competition in the industry in 1978 with the passage of the Public Utilities Regulatory Policies Act, which effectively created competition among independent and utility generators. Congress pushed the industry closer to full scale competition in 1992 by enacting the Energy Policy Act, which promoted greater wholesale competition by lowering the threshold for new producers to enter the market and allowing greater access to the transmission lines owned by monopoly utilities. The Act also allowed states to create a market where individual customers could buy power from independent producers.

The California Public Utilities Commission began investigating new approaches to regulating the supply and distribution of electricity in 1993. In 1996, the Legislature passed AB 1890, which provides a legislative framework for the restructuring of California's electrical industry. The goal of the bill was to restructure California's electrical services industry in order to transition to competitive markets by December 31, 2001, lower the cost of electricity, retain and attract jobs, and reduce power outages.

In the restructured electrical industry, there will be competition in the generation of electricity. Thus in the future, electricity consumers may choose among competing providers of electricity. The transmission and distribution of electricity, however, will continue to be done by regulated franchise monopolies.

Delivery of a third party's power to customers over the local distributor's lines is commonly referred to as 'retail wheeling'. In order to implement retail wheeling, two new public benefit, non-profit market institutions were created: the Power Exchange and the Independent Service Operator. Both entities must be approved by the Federal Energy Regulatory Commission. The Power Exchange is required to provide an efficient, competitive electric energy auction, open on a non-discriminatory basis to all providers, to meet the electricity loads of exchange customers. The Power Exchange must provide results of its auction to the

1 Independent Service Operator. The Independent Service Operator is responsible
2 for providing centralized control of the state-wide transmission grid and for
3 ensuring efficient use and reliable operation of the transmission system. In order to
4 ensure reliability, the Independent Service Operator is required to adopt standards
5 for maintenance of the transmission facilities, and to conduct reviews of power
6 failures affecting more than 10 percent of a service area. The Independent Service
7 Operator has authority to levy sanctions where appropriate. Both publicly-owned
8 and investor-owned electric utilities are required to commit control of their
9 transmission facilities to the Independent Service Operator until the end of 2001.

10 The move to a competitive generation market will result in transition (or
11 stranded) costs. These costs consist primarily of continuing obligations for past
12 utility power plant investments and power purchase contracts that will not be
13 recovered in a competitive generation market. Investor-owned utilities have
14 through December 31, 2001, to recover most of these costs through an accelerated
15 recovery system. The Legislature found that these costs should be recovered
16 because the costs were imposed by regulations and were then included in utility
17 rates.

18 Once the restructuring of California's electrical industry is complete, electricity
19 consumers will have the opportunity to choose among competing providers of
20 electricity and to negotiate the purchase terms. Although customers will be able to
21 choose the energy-services company they wish, they can also choose to remain
22 traditional utility customers.

23 The Public Utilities Commission will still have regulatory responsibilities to
24 ensure that consumers are protected from fraud and misinformation. The Public
25 Utilities Commission will be required to provide electricity consumers with
26 information necessary to compare electric service offerings. In addition, because
27 many aspects of electric service will remain monopoly-based, the Public Utilities
28 Commission will continue to be responsible for protecting consumers where
29 services are provided by monopoly suppliers.

30 The Public Utilities Commission indicates a commitment to developing
31 alternatives to the historical cost of service methods of regulation to encourage
32 efficient and least-cost service. The Public Utilities Commission is currently
33 investigating regulatory reforms that will provide stronger incentives for efficient
34 utility operations and investment, simplify complex rate proceedings, and reduce
35 administrative burdens.

36 **Positions of Stakeholders and Public Utilities Commission**

37 In the electrical industry, the underlying issue appears to be whether
38 deregulation is timely. Existing utilities take the position that the industry will be
39 open to competition beginning January 1, and therefore deregulation is necessary
40 to allow all parties to compete in the open market — monopoly-style regulation
41 will no longer be appropriate. The Public Utilities Commission, on the other hand,

believes transitional regulation is necessary to allow new entrants to establish a foothold to promote effective competition.

The Public Utilities Commission believes it is too early to contemplate broad revision of the Code, at least during 1997. Industry participants have suggested that at least specific language on Code changes that can be agreed upon should be enacted now, along with a suggested path and timeline for completing work. They suggest that sunset provisions of the Code would force the process.

Categorization of Policy Issues

Policy issues in deregulation in the electrical industry are summarized by category below. Detailed references to specific Code sections may be found in the charts accompanying [this report] [the Public Utilities Commission's reports on this matter].

Direct Regulation of Service Providers

Planning for the future — expansion, facilities, markets. Resource planning statutes in both the Public Utilities Code and the Public Resources Code (including provisions involving the California Energy Commission's Electricity Report), may be obsolete and overly prescriptive. Industry participants suggest the provisions should be deleted, revised, or subjected to sunset review. The Public Utilities Commission agrees in concept that the resource planning statutes should be revised.

New entrants — certification. The parties disagree over the continued need for certification of public convenience and necessity. Industry participants suggest these provisions should be revised to ensure regulatory streamlining — the interests of the public for the construction of electric plants will be protected by competition, rather than by a finding of future public convenience and necessity. The Public Utilities Commission disagrees — while some revisions may be necessary in light of a competitive electricity market, some facilities may continue to require certificate approval; deletion of these provisions may be premature, especially for distribution utility projects.

Rates and Pricing

Retail, wholesale. There is agreement of the parties that statutes prescribing the method of establishing the costs of new construction additions are out-dated and overly-prescriptive, based on cost-of-service ratemaking. The parties will work on language.

There is agreement of both electric and gas industry participants and the Public Utilities Commission that mandatory cogeneration rate parity with rates for gas used as fuel in an electric plant is inconsistent with a competitive market. The parties will work on language.

ntitrust matters. Industry participants suggest amending the Public Utilities Code and the Cartwright Act to draw a "bright line" between those activities

1 subject to regulation and those subject to state antitrust laws. While the Public
2 Utilities Commission agrees that a “bright line” division is conceptually desirable,
3 it believes such a division is likely to be extremely difficult to make until the
4 competitive evolution of the electric industry has progressed further. For the
5 electric industry, the competition AB 1890 envisions will not exist before 1998.
6 The Public Utilities Commission is concerned that all market participants have a
7 fair opportunity to compete during the transitional period, and as an interim
8 measure is currently reviewing appropriate rules to govern the relationship
9 between a regulated utility and any unregulated affiliates which provide energy or
10 energy-related services (see R.97-04-011/I.97-04-012).

11 **Consumer Protection**

12 AB 1890 addressed some aspects of consumer protection affecting electric
13 industry deregulation. Other areas of the code may need to be changed or
14 reorganized to better define the Public Utilities Commission’s consumer protection
15 mandate in a competitive environment. The Public Utilities Commission
16 anticipates that pending legislation, such as SB 524 (Peace) and AB 581
17 (Martinez), will be vehicles for enactment of additional consumer protection
18 reforms and will supplement AB 1890’s consumer protection mandates.

19 Industry participants suggest modifying the Code to eliminate punitive damages
20 for breach of a qualified facility contract — state policy is against punitive
21 damages for breach of a commercial contract. The Public Utilities Commission is
22 opposed to this change at this time.

23 **Safety of Public**

24 The parties agree that the Public Utilities Commission should continue its safety-
25 related regulation in the electrical industry and no code changes are proposed.

26 **Transitional Issues**

27 Transitional issues for the electrical industry are addressed in AB 1890. No
28 changes have been suggested in these provisions.

29 **Organization and Procedures**

30 Industry participants believe changes should be made to streamline the Public
31 Utilities Commission’s processes and make them more accountable, including
32 subjecting the Commission’s actions to the Administrative Procedure Act and
33 making them subject to standard judicial review procedures.

34 The Public Utilities Commission believes it is inappropriate to revisit these
35 issues in this report, pointing out that the Law Revision Commission has recently
36 studied the areas of administrative adjudication and judicial review and
37 recommended exemption of the Public Utilities Commission from them.
38 Legislation enacted in 1996 deals with Public Utilities Commission procedure (SB
39 960) and judicial review (SB 1322).

1 Industry participants also suggest that a new statute be enacted to permit parties
2 to petition the Public Utilities Commission to repeal or modify obsolete
3 regulations. The Public Utilities Commission believes such legislation is
4 unnecessary since under existing law parties can file a petition to modify a Public
5 Utilities Commission decision and achieve the same result.

6 **Conclusion of Law Revision Commission**

7 The policy disagreements in the electrical industry are substantial. This report
8 highlights major areas of substantive disagreement. There are also substantial
9 areas of agreement between the parties, at least in concept. Whether the areas of
10 agreement in concept may be readily expressed in statutory language is not clear.
11 Those parties participating to date agree that in order to promote competition, the
12 Code should be revised now to eliminate price parity requirements for gas supplied
13 for cogeneration and electrical plants.

14 **NATURAL GAS INDUSTRY**

15 **Current Status of Restructuring and Deregulation**

16 Deregulation of the natural gas industry began in 1978 with the Natural Gas
17 Policy Act. This resulted in federal decontrol of wellhead prices by 1985. The
18 Federal Energy Regulatory Commission then began the process of providing
19 wholesale access to natural gas transmission systems on a non-discriminatory
20 basis, thus providing the opportunity for competition.

21 Between 1984 and 1993, the California Public Utilities Commission instituted
22 reforms to restructure the natural gas industry at the state level. The Public
23 Utilities Commission unbundled, or separated, gas sales from gas transportation
24 services, reformed gas purchase contracts, and opened up access to interstate
25 pipeline transportation capacity to promote gas supply competition. The Public
26 Utilities Commission also developed a pricing framework for a new gas
27 transportation and distribution market by unbundling interstate pipeline charges
28 from intrastate transportation rates, establishing intrastate rates, implementing
29 rules for brokering the utilities' interstate pipeline capacity rights, and establishing
30 pricing policy for new facilities. These regulatory steps have allowed a diversity of
31 competing natural gas supply and transportation.

32 Today, the natural gas industry is moving toward an increasingly competitive
33 market structure. It currently exhibits both competitive and monopoly
34 characteristics.

35 Large consumers may now choose to purchase unbundled gas from non-utility
36 suppliers, with price governed by market forces. Residential and small commercial
37 consumers may access non-utility supplies through aggregation or pooling
38 purchasing. Further refinement of small consumers' direct access to non-utility
39 supplies will be addressed in the strategic plan for natural gas being developed by
40 the Public Utilities Commission. For these consumers, the role of the Public

1 Utilities Commission is to protect consumers from fraud and misinformation, and
2 to ensure that competitors do not circumvent or distort market forces. Consumers
3 who elect not to participate in competitive gas procurement and transportation
4 markets (generally residential and small businesses), retain the option of remaining
5 with a regulated provider. Because gas distribution is likely to remain
6 monopolistic, the Public Utilities Commission plans to regulate it to protect
7 customers from monopoly abuses. However, rather than basing rates on the cost of
8 service, the Public Utilities Commission is exploring a system that will provide
9 enhanced efficiency incentives to providers.

10 Although many of the reforms of the natural gas industry are already in place,
11 the Public Utilities Commission believes a number of issues remain: maintaining
12 clear standards for regulated utilities that want to participate in unregulated gas
13 procurement and transportation markets; removing alleged market distortions in
14 transportation; ensuring equal, adequate access to market information; and
15 addressing conflicts of interest. In addition, the Public Utilities Commission would
16 continue to fulfill its traditional duty to protect consumers from monopoly abuses
17 and ensure "just and reasonable" rates for monopoly services.

18 **Positions of Stakeholders and Public Utilities Commission**

19 Restructuring of the natural gas industry is further along than restructuring in the
20 electrical industry. The Public Utilities Commission is currently engaged in an
21 intensive review of the regulatory statutes, in the process of developing a natural
22 gas strategy. The Commission expects to complete its report on this matter this
23 summer. The report will detail the status of deregulation and what needs to be
24 done next.

25 Industry participants have identified a number of problem areas in the Code they
26 believe need to be addressed to implement deregulation. However, they believe all
27 parties would be best served to address these issues in the context of the Public
28 Utilities Commission's development of its strategic plan for natural gas, with one
29 exception. Both gas and electrical industry participants and the Commission
30 believe that Code provisions should be repealed immediately that require parity of
31 rates for gas used in cogeneration technology with those used as fuel by an electric
32 plant — this is an artificial subsidy that is no longer appropriate in competitive gas
33 and electricity markets.

34 **Categorization of Policy Issues**

35 Policy issues in deregulation in the natural gas industry are summarized by
36 category below. Detailed references to specific Code sections may be found in the
37 charts accompanying [this report] [the Public Utilities Commission's reports on
38 this matter].

Direct Regulation of Service Providers

Planning for the future — expansion, facilities, markets. Industry participants note that current law generally recognizes the obligation to serve as a legal duty that requires public utilities to provide “reasonable” service to the public, regardless of a customer’s service arrangements or market conditions. They suggest that the applicable code sections be revised to refine the utility’s obligation to serve to allow flexibility to reflect the competitive implications of the new gas market in which customers have more choice for service providers and different levels of utility service. The Public Utilities Commission agrees in concept, but believes this may be premature.

Rates and Pricing

Retail, wholesale. Industry participants note that current law for residential rates and low-income customer program (CARE) creates imbalances in how costs are allocated within and between customer classes. In a competitive market, baseline creates competitive issues that result in inequities in ratemaking because it rewards low consumption and penalizes high consumption without regard to the customers’ circumstances. In light of the competitive market that natural gas utilities face, participants believe it no longer makes sense for the costs of the program to be borne significantly by a class of customers that cannot benefit from it. The law should be clarified to provide that the drivers in the competitive market are cost causation, economic efficiency, and competitive forces, balanced with the policies of affordability and conservation. The statutory provisions governing baseline and CARE should be so modified so as to minimize ratemaking inequities. The Public Utilities Commission would support some revision.

There is agreement of both electric and gas industry participants and the Public Utilities Commission that mandatory cogeneration rate parity with rates for gas used as fuel in an electric plant is inconsistent with a competitive market. The parties will work on language.

antitrust matters. Industry participants suggest amending the Public Utilities Code and the Cartwright Act to draw a “bright line” between those activities subject to regulation and those subject to state antitrust laws. While the Public Utilities Commission agrees that a “bright line” division is conceptually desirable, it believes such a division is likely to be extremely difficult to make until the competitive evolution of the natural gas industry has progressed further. In the natural gas industry, competition in the procurement of natural gas supplies is still unavailable for all but the largest customers. The Public Utilities Commission is concerned that all market participants have a fair opportunity to compete during the transitional period.

Consumer Protection

No issues have been raised in connection with this category in the natural gas industry.

Safety of Public

The parties agree that the Public Utilities Commission should continue its safety-related regulation in the natural gas industry and no code changes are proposed.

Transitional Issues

Industry participants propose that statutory law be enacted concerning transitional issues for the gas utility industry, such as:

- recovery for uneconomic assets acquired to satisfy the monopoly obligation-to-serve utility requirements
- public purpose program financing
- establishing rules for competition to ensure competitive equity between utility (including municipal utilities) and non-utility providers
- aggregation rules for small customers

The Public Utilities Commission has taken no position on these matters but is expected to address them in the strategic plan for natural gas.

Organization and Procedures

No issues have been raised in connection with this category in the natural gas industry.

Conclusion of Law Revision Commission

The policy disagreements in the natural gas industry are substantial, but the few parties that have entered into this process are in agreement that it is appropriate to use the forthcoming strategic plan of the Public Utilities Commission as a forum for working out Code revisions. This procedure appears appropriate to the Law Revision Commission. Those parties participating to date agree that in order to promote competition, the Code should be revised now to eliminate price parity requirements for gas supplied for cogeneration and electrical plants.

TRANSPORTATION INDUSTRY

Current Status of Restructuring and Deregulation

Railroad and Rail Transit

The California Public Utilities Commission began regulating railroads when they had a de facto monopoly on transportation and the public demanded that it be protected from industry abuses. As the railroad monopoly was eroded with the development of trucking, passenger buses, and airlines, Congress recognized that railroads do business in a competitive environment and preempted the states from economic regulation of most of the railroad industry. The Public Utilities Commission retains a minor advisory role in economic oversight by making recommendations to the federal Surface Transportation Board in response to

1 railroad mergers and track abandonments, and economic regulatory authority over
2 railroads that are not interconnected to the interstate network.

3 Today, the federal government has primacy on nearly all matters concerning
4 non-government railroads. The Public Utilities Commission's rail-related role is
5 limited to ensuring freight and passenger safety, transit system safety, and grade
6 crossing safety. The Public Utilities Commission conducts inspections of all
7 railroads in accordance with federal and state regulations, investigates railroad
8 accidents, and participates in educational rail safety programs. The Public Utilities
9 Commission also oversees the design, construction, operation and maintenance of
10 rail transit systems; investigates accidents and potentially hazardous conditions;
11 reviews and approves corrective action plans and schedules; and performs
12 triennial, on-site safety audits at rail transit agencies. In addition, The Public
13 Utilities Commission is responsible for ensuring that rail/highway at-grade
14 crossings and separations are designed, constructed, and maintained in accordance
15 with public safety standards.

16 **Motor Carriers of Property, Household Goods, and Passengers**

17 Until recently, the California Public Utilities Commission was authorized to
18 regulate the activities of motor carriers of property, household goods, and
19 passengers. Motor carriers of property, also referred to as motor freight carriers,
20 are primarily trucking firms that move goods such as general freight, agricultural
21 products, livestock, and automobiles. Household goods carriers are those that
22 move used household goods and other personal effects from or to a residence
23 within California. Passenger carriers include buses, shuttle vans, and limousines.
24 The regulatory scheme included control of prices, routes and areas of service, as
25 well as other elements of the motor carrier business.

26 The Federal Aviation Administration Authorization Act of 1994 generally
27 preempted the states' authority to regulate prices, routes, or the services of motor
28 carriers that transport property. It did not preempt states' authority to regulate
29 passenger carriers and household goods carriers.

30 In response to federal preemption, the Legislature in 1996 removed all
31 provisions in state law that authorized the Public Utilities Commission to regulate
32 rates, routes, and services of motor freight carriers. The Legislature also
33 transferred authority for regulation of motor freight carriers from the Public
34 Utilities Commission to the California Highway Patrol, with the Department of
35 Motor Vehicles carrying out the licensing and liability and workers' compensation
36 functions previously performed by the Public Utilities Commission. To assure a
37 smooth regulatory transition, the Department of Motor Vehicles contracted with
38 the Public Utilities Commission to have the Public Utilities Commission continue
39 to perform licensing activities for motor freight carriers until the Department of
40 Motor Vehicles is ready to assume full regulatory control. However, the Public
41 Utilities Commission will probably cease performing licensing functions by the
42 end of 1997.

1 The Public Utilities Commission continues to be responsible for the regulatory
2 oversight of the passenger carrier industry. This includes ensuring that firms
3 maintain adequate liability and workers' compensation insurance coverage,
4 comply with driver and vehicle safety programs, and adhere to service and pricing
5 requirements. The objective of the regulation of these carriers is to insure safety
6 and promote consumer interests.

7 The Public Utilities Commission will also continue its regulatory program for
8 the household goods carrier industry. This regulatory program includes licensing,
9 updating maximum rates, and enforcing consumer protection rules and responding
10 to consumer complaints.

11 **Positions of Stakeholders and Public Utilities Commission**

12 The main factor in Public Utilities Commission regulation or deregulation of the
13 transportation industry has been federal preemption. The Public Utilities
14 Commission agrees that many of the statutes in the Public Utilities Code are ripe
15 for review to reflect this trend. Work is ongoing to review existing statutes. The
16 Public Utilities Commission hopes to identify a number of statutes for reform in its
17 June 30 report to the Legislature.

18 **Railroads**

19 The Public Utilities Commission's economic regulatory authority is limited to
20 intrastate railroads that have no interstate connection. Railroad industry
21 participants have proposed revisions of the statutes to reflect this. The Public
22 Utilities Commission is concerned that the specific language proposed could
23 impact its general regulatory authority over safety issues and its economic
24 regulatory authority over intrastate railroads that have no interstate connection.
25 Further inquiry indicates a substantial amount of agreement in principle among the
26 parties, but some disagreement about the full impact of federal preemption on the
27 Commission's regulatory authority over transportation safety and a few other
28 matters. There is also a question whether a few small intrastate railroads in fact
29 have an interstate connection; the answer to this question could affect the drafting
30 approach to statute revision.

31 **Highway Property Carriers**

32 The Public Utilities Commission's role in this field is terminating. The main
33 statutes have been revised accordingly. However, there are a few missed
34 provisions and cleanup legislation is desirable.

35 **Household Goods Carriers**

36 Moving and storage industry input indicates existing statutes are satisfactory.
37 The Public Utilities Commission believes some adjustment is needed to reflect
38 further federal preemption in some areas.

Passenger Carriers

There is full Public Utilities Commission regulatory authority in this area. The Public Utilities Commission does not see a need for statutory change here.

Water Vessel Carriers

No significant issues have been identified in this area.

Airlines

Federal preemption in this area has made large segments of the Public Utilities Code ripe for review, and the Public Utilities Commission plans to address this in its June 30, 1997, report to the Legislature. However the Commission retains authority to receive proofs of insurance of air carriers; the Public Utilities Commission plans to review this matter to determine the extent to which this authority is still necessary.

Categorization of Policy Issues

The critical factor in the transportation industry is federal preemption rather than state deregulation. For this reason, a summary by category of policy issues for this industry is not particularly helpful. The disagreements relate primarily to drafting questions rather than policy issues. Detailed references to specific Code sections may be found in the charts accompanying [this report] [the Public Utilities Commission's reports on this matter].

Conclusion of Law Revision Commission

It appears to the Law Revision Commission that there are substantial areas of agreement over policy among the parties. All sides acknowledge the pervasive effect of federal preemption. There is some disagreement between the Commission and railroad industry participants about the effect of federal preemption on a handful of statutes that could affect the Commission's regulatory authority over transportation safety and a few other matters.

The Law Revision Commission perceives that it is essentially a drafting matter to overhaul the transportation portions of the Public Utilities Code in a way that does not adversely affect the remaining regulatory authority of the Public Utilities Commission. There is an opportunity here for a substantial cleanup of large portions of the Code. It should be a fairly straightforward process for the parties to circulate drafts and reach agreement on statutory language.

TELECOMMUNICATIONS INDUSTRY

Current Status of Restructuring and Deregulation

Competition was virtually non-existent in the telecommunications industry until the 1984 federal divestiture case broke up the AT&T monopoly on local and long-distance telephone service. The divestiture occurred because AT&T had the

1 power, by virtue of its control of the local exchanges, to prevent competition in the
2 long distance market. *See* United States v. American Tel. and Tel. Co., 552 F.
3 Supp. 131, 162 (D.D.C. 1982). The consent decree (known as the Modification of
4 Final Judgment, or MFJ), allowed for competition in the long-distance market and
5 left the regulation — and deregulation — of local companies to the states.

6 The MFJ prohibited the local exchange carriers (LECs) that were created out of
7 the divestiture, including Pacific Bell in California, from providing long-distance
8 service between service areas known as Local Access and Transport Areas
9 (LATAs). LECs provide local exchange services and intraLATA toll. Local
10 exchange services include: access line, dial tone, local calling, directory assistance,
11 911 emergency service, white page listing, and access to Interexchange Carriers.
12 The MFJ also prevented the LECs from providing video-programming services.
13 Although the LECs originally had monopolies on local exchange service in certain
14 service areas, this service has now been opened to competition.

15 In 1994, the California Legislature passed several bills designed to open all
16 telecommunication markets under the regulation of the California Public Utilities
17 Commission to competition by January 1, 1997. Assembly Bill 3720 directed the
18 Public Utilities Commission to authorize fully open competition in the intrastate,
19 interLATA telecommunications market, provided such competition was authorized
20 by federal law or court action. (Before the LECs created out of the divestiture
21 could compete in intraLATA markets, the MFJ needed to be amended, Congress
22 needed to pass legislation authorizing such competition, or the LEC needed to
23 obtain a waiver from the D.C. District Court.) One of the goals of AB 3720 was to
24 allow Pacific Bell into the intrastate long-distance market. In order to prevent
25 Pacific Bell from unfairly using its position as a LEC, AB 3720 required that the
26 opening of interLATA long-distance markets to Pacific Bell not precede the
27 opening of competition within the local exchange markets.

28 Competition in the local exchange markets raises difficult issues regarding the
29 provision and subsidy support of universal service: Competition makes the
30 mechanisms to ensure universal service less functional because the profits
31 available for the cross-subsidization of residential telephone service shrink. In
32 addition, when an LEC operates as a monopoly, only the LEC is eligible for
33 universal service support. But under a competitive scenario, multiple, competing
34 providers of residential local telephone service should all be eligible for universal
35 service support. Thus, AB 3643 directed the Public Utilities Commission to study
36 the definition and provision of universal service to ensure the feasibility of
37 competition in the local exchange markets.

38 The Legislature also passed AB 3606 which directed the Public Utilities
39 Commission to permit any cable television corporation or telecommunications
40 corporation to enter local telecommunications markets in the service territory of a
41 local exchange telephone corporation once that local exchange telephone
42 corporation obtains the right to offer cable television or video dialtone service
43 within its service territory.

1 Congress replicated much of this legislation in the federal Telecommunications
2 Act of 1996. The Act was intended to effect competition in the
3 telecommunications market throughout the country. It opened all local exchange
4 markets to competition and removed the MFJ restrictions from companies such as
5 Pacific Bell that were created out of the divestiture, allowing those companies to
6 provide interLATA services under specified conditions. It also removed the video-
7 programming restrictions from the divestiture companies, enabling them to enter
8 the cable business, and directed the FCC to redefine universal service. The Public
9 Utilities Commission is currently reviewing its policies to assure compliance with
10 the Act.

11 California's telecommunication industry has undergone rapid change since
12 enactment of state and federal legislation and adoption of Public Utilities
13 Commission policies. Carriers are now authorized to compete in the local
14 exchange and to compete for intraLATA toll calls. But competition is only now
15 developing in local telephone markets. And although California's second largest
16 LEC (GTE) now offers interLATA services, California's largest LEC (Pacific
17 Bell) has to date not requested this authority.

18 Despite the steps that have been taken toward a competitive market, the Public
19 Utilities Commission still retains a major regulatory role in the
20 telecommunications industry. Its primary functions include setting rates for
21 monopoly services, implementing public goods programs, enforcing market place
22 fairness, and resolving customer complaints. In addition, the Public Utilities
23 Commission is currently examining the technical, legal, and financial issues that
24 must be resolved before new entrants into the market can compete. Among the
25 legal issues the Public Utilities Commission must solve are those involving the
26 sale and resale of telephone services. Among the technical issues are how to
27 provide equal access to switching equipment and how to assign new phone
28 numbers.

29 **Positions of Stakeholders and Public Utilities Commission**

30 The principle area of contention in the telecommunications industry is
31 competition and deregulation involving local telephone service. Incumbent carriers
32 note that since the Public Utilities Code was written, both state and federal laws
33 have opened local service telephone markets to competition. Over eighty
34 competitive local carriers have received authority to compete in the provision of
35 local exchange service in California, more than in any other state. Many players
36 are huge, all are sophisticated, and some plan to enter all lines of business,
37 including local service, long distance, wireless, Internet, and cable TV.

38 The incumbent carriers state that there is a need for comprehensive revision of
39 many Public Utilities Code provisions designed originally to apply to monopolies.
40 They would purge obsolete code sections that include unnecessary statutory
41 constraints preventing the California Public Utilities Commission from reducing
42 regulation in the competitive environment. The Public Utilities Commission must

1 also enforce a full set of competitive protections now required by Congress,
2 increasing the need to remove unnecessary regulatory burdens. Code revision
3 would permit the Commission to focus more on consumer protection to assure
4 quality service from all competitors.

5 The Public Utilities Commission points out that it has been active in revising the
6 Public Utilities Code to reflect restructuring in the telecommunications industry,
7 which has been going on for some years. There is pending legislation to eliminate
8 obsolete reporting requirements. The Public Utilities Commission currently has an
9 internal group actively studying the Code, and expects to have affirmative
10 recommendations for its June 30 report to the Legislature on needed Code
11 revisions. The Public Utilities Commission anticipates meetings with interested
12 persons in the fall to seek out areas of consensus on Code changes.

13 The Public Utilities Commission sees the need for continuing regulation in the
14 local telephone service sector until a fully competitive environment is established.
15 During this transition phase, it believes regulation is still necessary to promote
16 competition by new entrants in the market with the large former monopolies that
17 still dominate the market. The Commission views itself as the rational middle
18 between contending parties in this area, with the purpose of fostering competition
19 by an appropriate transitional level of regulation.

20 The Public Utilities Commission indicates that it is moving in the direction of
21 competitiveness and away from heavy-handed regulation. However, it believes
22 this whole area is very complex, and any deregulation must be instituted with great
23 care. For example, factors that influence the direction of deregulation include such
24 matters as market share, type of market (facilities based v. resale), ability of
25 competitors to cross-subsidize, etc. The Public Utilities Commission has issued
26 decisions that depend on the competitive environment, and these are very difficult
27 and lengthy cases.

28 The Public Utilities Commission is supported in this approach by new entrants.
29 They point to experience in moving from a monopolistic environment to a
30 competitive environment in the long distance sector. They believe deregulation is
31 not appropriate until the regulated monopolies lose market share and real choices
32 are available to consumers of local telephone services.

33 The incumbent carriers disagree with this assessment, noting that the local
34 telephone service sector is open to competition right now. While actual
35 competition is not as great in the residential sector as it is in the business sector,
36 the Public Utilities Commission is moving much too slowly. They believe that
37 telecommunications should be exempted from Public Utilities Commission
38 economic regulation now. The companies now entering the local telephone service
39 market are large and fiercely competitive corporations, and do not need special
40 protection by the Public Utilities Commission.

41 The incumbent carriers indicate that heavy-handed regulation by the Public
42 Utilities Commission is still in place in the Code. They distinguish between Public
43 Utilities Commission oversight in the wholesale market, which may still be

appropriate, and the retail market, where Public Utilities Commission regulation should be eliminated. They recognize a continuing need for Public Utilities Commission regulation in the area of consumer protection, but believe this should apply to all carriers equally, not just to the former monopolies. They have suggested sunseting existing regulatory provisions to precipitate a thorough review.

Categorization of Policy Issues

Policy issues in deregulation in the telecommunications industry are summarized by category below. Detailed references to specific Code sections may be found in the charts accompanying [this report] [the Public Utilities Commission's reports on this matter].

Direct Regulation of Service Providers

There are many statutes providing for direct regulation of telecommunication carriers, such as nonbusiness hour service, directory publication, fax listings, and many other aspects of the telecommunication business. The incumbent carriers generally believe this sort of direct regulation should end — these services are market differentiators in a competitive environment. The Public Utilities Commission and new entrants generally disagree; they would maintain many of these forms of regulation, at least until competition is more extensive.

Planning for the future — expansion, facilities, markets. The Public Utilities Commission and industry participants agree that in a fully competitive market, the Commission's direct regulation of many business activities (including day to day operations, sales, administration, investment, future planning, expansion, and market entry plans) should end. The Commission views its role as not to protect monopoly markets or former monopoly providers, but to foster fair competition in markets that have been monopolistic until recently.

The Public Utilities Commission and the new entrants to the market believe that during the transition to a fully competitive market, the interests of the competitors must be balanced, and the Commission should retain discretion for this purpose. The incumbent carriers believe that in reality the markets are now open to competition, and all competitors should be treated equally. The Code permits disparate treatment of companies providing the same services; the incumbents would repeal the provisions that allow unequal treatment in a competitive market.

Audits and inspections. The Public Utilities Commission and incumbent carriers agree that the Commission should no longer conduct triennial comprehensive audits of incumbents' operations. The new entrants disagree, arguing that audits should be required since local markets are not yet competitive.

The Public Utilities Commission and new entrants believe the Commission must retain authority to conduct narrowly-targeted audits, such as those to review affiliate transactions to protect against inappropriate revenue transfers. The incumbent carriers disagree — open markets and competition in combination with

1 the competitive protections required by federal law will protect against
2 inappropriate revenue transfers and should replace other pricing mechanisms
3 imposed by the Public Utilities Commission.

4 *New entrants (certification).* The Public Utilities Commission and industry
5 participants agree that basic network standards and standards of service quality
6 and reliability should be maintained. They agree the Commission should continue
7 to certify or register new market entrants to ensure this, in the near term.
8 Incumbent carriers also believe the level of regulatory oversight should decrease
9 as markets take over the role of defining service quality and reliability
10 requirements. They believe any regulatory-mandated service quality and reliability
11 standards that remain should apply equally to all service providers.

12 **Rates and Pricing**

13 *Retail, wholesale.* The Public Utilities Commission and new entrants into the
14 market believe that the Commission should regulate rates in retail service
15 offerings, and differential rates may be appropriate to encourage development of
16 competition between incumbent carriers and new entrants. The incumbent carriers
17 disagree, noting that competition exists now — in a competitive environment, no
18 retail service offered directly to end-users by any provider should be regulated.
19 Code sections that allow the Commission to restrict retail pricing in markets where
20 competition is permitted should be eliminated.

21 With respect to wholesale service offerings, the Public Utilities Commission is
22 required to set prices that conform to the Telecommunications Act of 1996. The
23 incumbent carriers argue that wholesale services and network elements provided to
24 interconnecting carriers should be subject to Commission oversight only when
25 interconnecting carriers cannot reach an interconnection or switched access
26 agreement, consistent with the Telecommunications Act. Any oversight should be
27 limited to effecting an agreement and resolving possible disputes or complaints
28 among signatories that may occur over time.

29 The Public Utilities Commission takes the position that increased regulatory
30 flexibility — e.g. tariff and pricing flexibility rules — depends on whether service
31 is provided by an incumbent carrier or a new entrant and whether the carrier
32 offering the service has market power.

33 The incumbent carriers argue that basic local exchange service, whether
34 categorized as a retail service or as wholesale service on an interim basis, should
35 be authorized at a price that covers the cost of service, plus a reasonable profit,
36 with the single exception of any costs explicitly recovered from the state or federal
37 universal service funds.

38 *Antitrust matters.* The Public Utilities Commission, supported by the new market
39 entrants, believes it has a continuing role in monitoring anticompetitive behavior
40 and cross subsidization by incumbents as long as they have market power. The
41 incumbent carriers disagree — the role of the Commission should be to implement
42 state and federal laws promoting competition, not to enforce antitrust laws. They

1 point out that the Attorney General is available for antitrust issues, and that the
2 state unfair business practices laws provide for both public and private
3 enforcement. They suggest that the current regulatory framework (under which,
4 for example, there are price ceilings and floors) should be reassessed to determine
5 whether it is appropriate as competition grows and intensifies in California.

6 The incumbent carriers also argue that, in any case, all competitors should be
7 held to the same standards. They urge that antitrust investigative actions should be
8 taken only on sufficient and substantial grounds (to minimize competitive
9 “gaming”) and that any action recognize the competitive urgency for resolving
10 matters expeditiously.

11 **Consumer Protection**

12 There appears to be general agreement that existing Public Utilities Code
13 consumer protection statutes should remain in place as the markets open to
14 competition. The Public Utilities Commission needs to be able to establish or
15 modify specifics in response to the changing competitive environment, and also to
16 forebear from regulation where appropriate. Industry participants emphasize that
17 providers should be equally obligated and consumers should have equal basic
18 protections; the law should not discriminate in the area of consumer protection.

19 *Fraud.* Both the Public Utilities Commission and industry participants agree that
20 continuing oversight of marketing practices of carriers is necessary. Certain types
21 of marketing practices peculiar to the telecommunications industry — for
22 example, “slamming” (unauthorized transfer of a customer’s long distance service
23 from one carrier to another) — are likely to grow as competition develops in the
24 intraLATA toll market and local exchange market. A related concern is consumer
25 privacy (telemarketing).

26 *Information/misinformation.* Both the Public Utilities Commission and industry
27 participants see an ongoing role for the Commission in the area of consumer
28 information. Types of issues that have been identified include notification and
29 distribution of information about marketing practices, available services, the range
30 of providers, area code splits, reasonable rates and charges, and billing details.

31 *Access (universal service).* The Public Utilities Commission must implement
32 universal service and consumer access to the telecommunications network
33 pursuant to the Telecommunications Act of 1996 (FCC’s Universal Service
34 program) and pursuant to Commission rules governing access to the network of
35 local exchange companies by competitors and long-distance companies. Industry
36 participants agree on the importance of availability of universal service and
37 consumer access. Revision of Commission rules will be required during the move
38 from monopoly to competitive markets; the existing access structure is premised
39 on a monopoly local exchange market.

1 Safety of Public

2 In the telecommunications industry safety of the public relates primarily to
3 network reliability (e.g., 911, alarm services, etc.). The parties indicate that
4 existing statutes and regulations are effective for this purpose and should be
5 maintained. Incumbent carriers note that, with competition, the Public Utilities
6 Commission should hold all providers to the same standards to ensure that public
7 safety is not compromised.

8 Transitional Issues

9 Incumbent carriers argue that local markets are now open to all competitors.
10 Incumbent carriers have entered into interconnection agreements with new
11 entrants, enabling them to offer consumers a competitive choice. Barriers to entry
12 have been removed and competition is underway with customer choices available
13 today. They argue that regardless of the transitional mechanisms to a deregulated
14 marketplace, the Public Utilities Commission should treat all competitors equally.

15 The new entrants into the local market disagree with this basic assessment, and
16 believe that the incumbent carriers must be restrained until competition is fully
17 established.

18 *Stranded investments.* There is substantial disagreement over stranded costs and
19 the need to maintain fair rates of return until those costs are recovered. The
20 incumbent carriers argue that competitive pricing should reflect the full recovery
21 of an incumbent provider's actual costs incurred during monopoly regulation; this
22 must be accomplished before deregulation is implemented or the marketplace
23 effects of competition become widespread. The Public Utilities Commission notes
24 that it has denied a request of the incumbent carriers for compensation under the
25 Takings Clause of the United States Constitution for failure to provide a fair rate
26 of return; the Commission found that the carriers' quantitative evidence of this was
27 too speculative at the time, but left open the opportunity to reapply.

28 *Equal footing.* The incumbent carriers argue that if state public policy
29 determines a transitional period is necessary before full deregulation, all
30 competitors should be treated equally. The critical issues include costing/pricing
31 associated with interconnection, universal service, and access charges. There must
32 also be sufficient and competitively neutral funding of universal service. Correct
33 universal service and universal service funding must be accomplished
34 expeditiously — before deregulation and widespread competition.

35 Organization and Procedures

36 In 1996, the Legislature enacted two bills dealing with Public Utilities
37 Commission procedure (SB 960) and with judicial review of the Public Utilities
38 Commission (SB 1322).

39 The Public Utilities Commission sees both its organization and its administrative
40 procedures changing due to new laws governing public utility regulation in general
41 and telecommunications regulation in particular. For example, if competitors fail

1 to negotiate the broad range of technical and pricing issues associated with
2 interconnection and access to facilitates and services, they can request the Public
3 Utilities Commission to arbitrate. Final negotiated or arbitrated agreements must
4 be approved by the Commission. Beginning in September of 1996, the
5 Commission has successfully arbitrated or approved a number of agreements
6 interconnecting carriers.

7 **Conclusion of Law Revision Commission**

8 The Law Revision Commission has concluded that several actions would be
9 helpful. The Public Utilities Commission should establish criteria and standards
10 for determining when sufficient competition exists for each phase of deregulation.
11 This should be done in consultation with all interests. Statutory examples of this
12 may be found in Pub. Util. Code § 495.7 and in 47 USC § 271. It would also be
13 helpful to establish the Public Utilities Commission's role in telecommunications
14 when full competition exists and deregulation is complete — for example,
15 licensing or certifying entrants into the market and ensuring consumer protection.
16