

DOT/tcg 8/24/2001

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

In the Matter of the Petition of SCC  
Communications Corp. for Arbitration Pursuant  
to Section 252(b) of the Telecommunications Act  
of 1996 to Establish an Interconnection  
Agreement with SBC Communications Inc.

Application 00-12-025  
(Filed December 20, 2000)

**FINAL ARBITRATOR'S REPORT**

**I. Background**

On December 20, 2000, SCC Communications Corporation (SCC)<sup>1</sup> filed a petition for arbitration of an interconnection agreement (ICA or agreement) with SBC Communications Inc. (SBC) pursuant to Section 252(b) of the Telecommunications Act of 1996 (Act) and the Commission's Arbitration Rules set forth in Resolution ALJ-181.<sup>2</sup>

On March 27, 2000, SCC requested that SBC enter into negotiations for an ICA in Texas. SCC later decided to pursue a multi-state interconnection agreement with SBC, which would include interconnection with SBC's

---

<sup>1</sup> At the hearing on this matter, SCC disclosed that it has since changed its name to Intrado. To avoid confusion, I will continue to refer to the applicant by the name of SCC under which it filed the application.

<sup>2</sup> Resolution ALJ-181, adopted October 5, 2000, sets forth "Revised Rules Governing Filings Made Pursuant to the Telecommunications Act of 1996."

A.00-12-025 DOT/tcg

subsidiary, Pacific Bell Telephone Company (Pacific) in California.<sup>3</sup> The parties continued to engage in negotiations from March 2000 to December 2000, and agreed to extend the deadline for filing a petition of arbitration.<sup>4</sup> I find that SCC's application and request for arbitration was timely filed.

In its filings in this petition for arbitration, SCC states that it provides competitive telecommunications services in 19 states and the District of Columbia, and it has applications pending to provide telecommunications services in 13 other states, including California.<sup>5</sup> SCC states that its services facilitate, enhance, and advance the provision of emergency services by aggregating and transporting traditional and non-traditional emergency call traffic from end users of wireline, wireless, and telematics<sup>6</sup> service providers.

---

<sup>3</sup> In its motion and response, Pacific notes that it, and not its parent company SBC, is the appropriate party with which a requesting telecommunications carrier may seek interconnection in the state of California. Consequently, the arbitrator's report will hereinafter refer to Pacific rather than SBC.

<sup>4</sup> Attachment 29 of the Application (A.) 00-12-025 contains a memorandum of understanding between the parties that extends the deadline for filing for arbitration to December 5, 2000. SCC's petition for arbitration was submitted to the Commission on December 4, 2000 but was not formally accepted until December 20, 2000 because SCC was required to file a certificate of public convenience and necessity (CPCN) application in order to request arbitration in California per Commission rules. SCC's CPCN application was filed on December 15, 2000.

<sup>5</sup> In A.00-12-016, SCC requests a CPCN to provide facilities-based and resold local exchange services in California. That application is currently pending.

<sup>6</sup>According to SCC, "telematics" devices combine electronic sensors, wireless communications technologies, and/or location determination technologies. Typically, these devices are supported by a call center operated by a telematics service provider that provides concierge type services such as driving directions, reservations and roadside assistance. (See Direct Testimony of Cynthia Clugy (Exhibit 1), pg. 13-14.) Telematics service providers include On Star and AAA Response. (SCC Brief, 7/5/01, pg. 4.)

A.00-12-025 DOT/tcg

SCC delivers 9-1-1 calls and other emergency call traffic to incumbent local exchange carriers' Selective Routing Tandems for transport to the appropriate Public Safety Answering Point (PSAP).

SCC does not currently have an ICA with Pacific. The petition for arbitration lists numerous unresolved issues arising during the negotiations between SCC and Pacific.

On December 27, 2000, Pacific filed a motion to dismiss the petition for lack of jurisdiction. Pacific claims that SCC is not a "telecommunications carrier" as set forth in Section 153(44) of the Act, and is therefore not entitled to invoke a state utility commission's jurisdiction to arbitrate interconnection agreements. SCC responded in opposition to this motion on January 9, 2001. Pacific filed a reply to SCC's opposition on January 16, 2001.

According to the Commission's arbitration rules, a response to the petition for arbitration is due 25 days after the filing of the arbitration request. The assigned arbitrator, ALJ Jones, suspended the filing of a response to SCC's petition for arbitration until the Commission acted on Pacific's motion to dismiss. On January 17, 2001, the petition for arbitration was reassigned from ALJ Jones to ALJ Duda. At the same time, the parties requested a continuance of the matter for several weeks so they could engage in settlement discussions.

Because the parties were not able to resolve all of their disputed issues, ALJ Duda proceeded to review the case and issued a ruling on April 25, 2001 denying Pacific's motion for dismissal. The ruling stated that if SCC's contentions regarding the nature of its service offerings could be supported by evidence submitted at an arbitration hearing, then SCC would be considered a

A.00-12-025 DOT/tcg

“telecommunications carrier” under the Act and could request interconnection. The ruling also set a further schedule for the arbitration.<sup>7</sup>

SCC filed testimony in support of its arbitration request on May 8, 2001. Pacific filed a response and its testimony on June 4, 2001. The response indicated that despite their continued disagreement over whether SCC is a “telecommunications carrier” entitled to interconnection, the parties had continued to negotiate their other unresolved issues and had reached resolution on each of the substantive issues raised in the arbitration request. Thus, the threshold issue of jurisdiction raised by Pacific’s motion to dismiss is the only issue remaining for decision in this arbitration. Despite disagreement on the threshold issue, Pacific attached to its response the parties’ proposed ICA should the Commission conclude that SCC is a telecommunications carrier entitled to request interconnection.<sup>8</sup>

An initial arbitration meeting was held on June 11, 2001 and an arbitration hearing was held on June 27, 2001. Parties filed briefs on July 5, 2001 and reply briefs on July 10, 2001.

## **II. Pacific’s Position**

In its motion to dismiss, Pacific states that only “telecommunications carriers” may seek arbitration under the Act. Pacific provides the following definitions from the Telecommunications Act of 1996 (1996 Act) regarding what constitutes a “telecommunications carrier:”

---

<sup>7</sup> The parties stipulated to extend the time period for the Commission to resolve this arbitration through September 20, 2001.

<sup>8</sup> On June 26, 2001, Pacific amended its response with a corrected copy of the parties’ proposed agreement.

A.00-12-025 DOT/tcg

The term "telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.<sup>9</sup>

The term "telecommunications carrier" means any provider of telecommunications services, except that such term does not include aggregators<sup>10</sup> of telecommunications services (as defined in section 226 of this title).<sup>11</sup>

The term "telecommunications service" means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.<sup>12</sup>

The term "telephone exchange service" means (A) service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge, or (B) comparable service provided through a system of switches, transmission equipment, or other facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service.<sup>13</sup>

---

<sup>9</sup> 47 U.S.C. §153(43).

<sup>10</sup> 47 U.S.C. §226 (Section 226) states in relevant part that "the term 'aggregator' means any person that, in the ordinary course of its operations, makes telephones available to the public or to transient users of its premises, for interstate telephone calls using a provider of operator services."

<sup>11</sup> 47 U.S.C. §153(44).

<sup>12</sup> 47 U.S.C. §153(46).

<sup>13</sup> 47 U.S.C. §153(47).

A.00-12-025 DOT/tcg

Pacific argues throughout its filings that SCC is not a competitive carrier in the local exchange market, but rather a provider of database services for the selective routing of 9-1-1 calls. First, Pacific asserts that SCC's services do not meet the definition of "telecommunications" in Section 153(43). Pacific claims that SCC does not provide a telecommunications service because the functions it performs, namely creating and updating selective routing data and providing "Automatic Location Information" (ALI),<sup>14</sup> are defined by the FCC as "adjunct services." Moreover, Pacific claims that SCC's services are not telecommunications because the user does not specify the point of transmission and SCC changes the form and content of the information sent. Pacific contends that since SCC's Coordinate Routing Database (CRDB) routes calls to the appropriate PSAP, the points of transmission are not specified by the user as required in the definition of "telecommunications." In addition, Pacific claims that SCC adds dynamic location information to the 9-1-1 call and thus changes the form or content of the information sent.

Second, Pacific claims that SCC is not providing a "telecommunications service" as defined in Section 153(46) because it does not directly serve the public. Pacific argues that service to wireline and wireless service providers, telematics providers, and governmental agencies does not constitute service directly to "the public" because these entities are not end-users. Pacific argues that the person actually making the emergency call has no relationship with, and pays nothing to, SCC. Further, Pacific contends that SCC's tariff does not quote any specific price but merely notes that prices will be set on an "individual case

---

<sup>14</sup> ALI is subscriber information that is transmitted to the PSAP over a dedicated data circuit, in a separate transmission from the voice portion of a 9-1-1 call.

A.00-12-025 DOT/tcg

basis." Pacific claims that service under customer-specific contracts means SCC is not offering service indiscriminately to the public.

In Pacific's view, SCC sells wholesale services to other carriers and service providers who are not the end users. Therefore, it is not serving the public directly. Pacific supports this contention by asserting that the FCC made a similar finding that a carrier was not a telecommunications carrier because it provided wholesale services.<sup>15</sup> Pacific also claims that holdings of the FCC order it cites were affirmed on appeal to the D.C. Circuit of the United States Court of Appeals.<sup>16</sup>

Third, Pacific claims that SCC cannot request arbitration because it is not seeking interconnection. Interconnection is, by definition, "for the transmission and routing of telephone exchange service and exchange access."<sup>17</sup> According to Pacific, SCC provides selective routing information services but not telephone exchange service as defined in Section 153(47). Pacific notes that the FCC defines interconnection as the "linking of two networks for the mutual exchange of traffic."<sup>18</sup> Pacific claims that SCC is incapable of originating or terminating traffic that can be exchanged with Pacific, hence there is no mutual exchange of traffic between Pacific's network and SCC's. In Pacific's view, SCC does not originate calls because it does not provide the dial tone to the caller and SCC does not terminate any calls because Pacific terminates the call to the PSAP. Further,

---

<sup>15</sup> See Re AT&T Submarine Systems., Inc., 13 FCC Rcd. 21,585 (rel. Oct. 9, 1998).

<sup>16</sup> See Virgin Islands Tel. Corp. v. FCC, (hereinafter Virgin Islands) 198 F.3d 921.

<sup>17</sup> See 47 U.S.C. §251(c)(2).

<sup>18</sup> 47 CFR 51.5.

A.00-12-025 DOT/tcg

SCC's customers cannot exchange calls with one another because SCC does not have assigned NPA-NXX numbers.<sup>19</sup>

Fourth, Pacific contends that SCC is a "go between" entity that simply aggregates 9-1-1 calls from other service providers and delivers them to Pacific's 9-1-1 Selective Routing Tandem. In Pacific's view, SCC is merely a vendor of services to the telecommunications industry that contracts with carriers and other service providers to perform one of their obligations. To support this contention, Pacific provides statements that SCC has made in other jurisdictions that it is not a telecommunications carrier. Specifically, Pacific's motion to dismiss cites a SCC brief filed before the Texas Public Utility Commission in 1999 that stated, "SCC is not a telecommunications carrier."<sup>20</sup> At hearing, Pacific submitted as evidence a document of the Montana Public Service Commission (PSC) that contains the statement that "SCC is not a local exchange provider and is not requesting authorization to provide local exchange service."<sup>21</sup> Pacific also notes that SCC has told Pacific's parent, SBC, that SCC's SafetyNet service is not in competition with SBC.<sup>22</sup>

In summary, Pacific states that only "telecommunications carriers" are entitled to arbitration under the Act and that SCC has not established that it

---

<sup>19</sup> "NPA-NXX" refers to the six-digit area code/central office code designation for identifying numbering resources for routing and billing purposes under the North American Numbering Plan. The "NPA" is a three-digit code (also known as an "area code") identifying a "numbering plan area" and the NXX refers to the three-digit central office code that identifies blocks of 10,000 line numbers by rate center.

<sup>20</sup> See Pacific's Motion to Dismiss Petition for Arbitration, December 27, 2000, pg. 10.

<sup>21</sup> See Exhibit 101.

<sup>22</sup> See Exhibit C-2, Attachment F.



A.00-12-025 DOT/tcg

meets the definition of a telecommunications carrier. In Pacific's view, therefore, SCC is not entitled to obtain interconnection at prices based on cost.<sup>23</sup> While SCC claims it requires interconnection with Pacific to provide its end users with emergency services, Pacific argues that the fact that SCC will need to have a connection with Pacific's network does not automatically qualify SCC as a telecommunications carrier. According to Pacific, SCC can obtain the services it needs through Pacific's tariffed offerings or special contracts. Pacific states that it continues to negotiate with SCC concerning its request for services from Pacific and it intends to serve SCC as it would any other customer, through tariffs or negotiated contracts.

### III. SCC's Position

SCC claims that Pacific lacks a full understanding of SCC's services and that its "9-1-1 SafetyNet" (SafetyNet)<sup>24</sup> service qualifies as "telecommunications" under the definitions in the 1996 Act. According to SCC, it offers several distinct services. One of SCC's services performs selective routing database management, which handles call routing data for delivery of 9-1-1 calls. SafetyNet, on the other hand, is a separate service that SCC characterizes as a telecommunications service.<sup>25</sup>

---

<sup>23</sup> Interconnection Agreements set prices based on "total element long run incremental cost," or TELRIC.

<sup>24</sup> SCC clarifies that while it currently "offers" SafetyNet, it needs interconnection before it can physically provide the service in California and other states. (Hearing Transcript (Tr.) at 50.)

<sup>25</sup> SCC explains that selective routing is a subset of SafetyNet because SafetyNet uses a selective routing database to route a 9-1-1 call over SCC's network. (Tr. at 48-49.)

A.00-12-025 DOT/tcg

Under SafetyNet, SCC aggregates and transports 9-1-1 and emergency calls from SCC's customers to Pacific's 9-1-1 Selective Routing Tandem for ultimate transmission to the PSAP. SCC transports the caller's voice as well as data including Automatic Number Identification (ANI) and Automatic Location Information (ALI).<sup>26</sup> To transport the voice and data portions of these calls, SCC's Emergency Call Network consists of switches, transport, SS7 links, call management hardware and software, and trunking terminations at Pacific's Selective Routing Tandems.<sup>27</sup> SCC contends that although it can provide selective routing database management services without interconnection to Pacific, it needs interconnection with Pacific in order to provide its SafetyNet service.

In contrast to Pacific's arguments, SCC alleges that it meets the definitions provided in the 1996 Act to qualify it as a telecommunications carrier. First, SCC claims that it meets the requirements of Section 153(43) to provide transmission between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information. SCC maintains that end users specify the points of transmission for their emergency calls by dialing the 9-1-1 digits. SCC claims it then aggregates and transports the voice and data elements of the 9-1-1 call without altering the form or content of the information.

Second, SCC contends that it is a telecommunications carrier under Section 153(46) because it offers its service "for a fee directly ...to the public."

---

<sup>26</sup> The ALI is transmitted in a separate transmission initiated by the PSAP when it receives the voice portion of a 9-1-1 call and ANI.

<sup>27</sup> Exhibit 1, pg. 10-11.

A.00-12-025 DOT/tcg

The “public” SCC contends it serves includes governments and municipalities,<sup>28</sup> telematics service providers, and Private Branch Exchange (PBX) customers.<sup>29</sup> SCC considers telematics service providers and PBX customers as business end users. SCC also considers government entities to form a subsection of the public. SCC disagrees that individual customer contracts constitute price discrimination and notes that Pacific routinely offers service based on customer specific contracts. SCC does not see a problem with end users not paying SCC for service since 9-1-1 calls are always free to end users.

According to SCC, sales to wireline and wireless carriers on a common carrier basis constitute sales to the public despite Pacific’s arguments that service must be directly to end users and that wholesale service cannot be a telecommunications service. SCC rebuts Pacific on this point by stating that a provider of telecommunications on a common carrier basis is a telecommunications carrier, and that the definition of “common carrier” can include wholesale services to other carriers.<sup>30</sup> SCC states that it meets the applicable test for common carriage, as set forth in National Association of

---

<sup>28</sup> SCC describes that it has made proposals involving 9-1-1 SafetyNet to the State of California and the State of New Hampshire, and that it offers services to state and local government entities wishing to procure competitive 9-1-1 services. (See Exhibit 1, pg. 13.)

<sup>29</sup> Exhibit 1, pg. 12.

<sup>30</sup> SCC cites the same case that Pacific relies on, namely Virgin Islands. SCC claims that this case specifically rejects a wholesale/retail distinction as a basis for determining whether a provider of telecommunications is a telecommunications carrier under the Act. SCC also claims that the decision holds that a telecommunications carrier is essentially the same as a common carrier (Virgin Islands, 198 F.3d at 929).

A.00-12-025 DOT/tcg

Regulatory Utility Commissioners v. FCC,<sup>31</sup> because it makes capacity available to the public indiscriminately. The fact that SCC provides common carrier service to other carriers on a wholesale basis does not mean it is not a telecommunications carrier.<sup>32</sup> SCC provided its proposed California tariffs and tariffs from another state as evidence that it does not discriminate in offering its services and that service is provided for a fee.<sup>33</sup>

Third, SCC claims that it is requesting interconnection because it provides “telephone exchange service,” as defined in Section 153(47). SCC asserts that it transports 9-1-1 calls “within a telephone exchange,” through the use of its transport and switching facilities. In SCC’s view, SafetyNet is comparable to telephone exchange service because it allows SCC’s subscribers (whether they are wireline or wireless carriers, telematics providers, or PBX customers) to originate and terminate 9-1-1 calls for their end users.<sup>34</sup> SCC states that it terminates 9-1-1 calls just as any other competitive local carrier (CLC) operating in Pacific’s territory terminates such traffic. SCC states that where Pacific is the incumbent 9-1-1 services provider, all carriers must terminate 9-1-1 calls at Pacific’s selective routing tandems because Pacific owns and controls the selective routing tandems and the trunking from these tandems to the PSAPs.<sup>35</sup>

---

<sup>31</sup> 525 F.2d 630 (D.C. Cir. 1976) (hereinafter NARUC I).

<sup>32</sup> See SCC Reply Brief, July 10, 2001, pg. 8-9.

<sup>33</sup> See Exhibit 1, Parts P and Q.

<sup>34</sup> See Exhibit 1, pg. 17-18. In addition, SCC claims that it facilitates the origination of 9-1-1 calls in the same way that Pacific does when it switches and transports 9-1-1 calls that originate and terminate outside of Pacific’s wire center. (See SCC Reply Brief, pg. 17; Tr. at 55.)

<sup>35</sup> Tr. at 45.

A.00-12-025 DOT/tcg

SCC also asserts that 9-1-1 calls are inherently local in nature, that is “within a telephone exchange” or “the same exchange area,” since traffic almost always terminates at a PSAP that is geographically proximate to the originating caller. SCC provides network diagrams showing that it provides service over its own network comprised of transmission and switching equipment, SS7 links, call management hardware and software, and trunking terminations.<sup>36</sup> SCC claims that all of these features satisfy the definition of “telephone exchange service.”

---

<sup>36</sup> See Exhibit C-2, Part A, and Exhibit 1, pg. 10-11.

A.00-12-025 DOT/tcg

Further, SCC maintains that SafetyNet meets the definition of telephone exchange service because it allows end users to intercommunicate just like any other caller who dials 9-1-1. SCC states that its service establishes a continuous open communications path that permits the calling and called parties to interact. Although SCC does not provide traditional "dial up" exchange service, SCC claims that the FCC has held that non-traditional means of communicating information within a local area can also qualify as telephone exchange service.<sup>37</sup> Thus, SCC contends that its service meets the definition of telephone exchange service.

SCC states that briefs it filed in Texas in 1999 are not relevant because the nature of SCC service offerings has changed since the briefs were filed. Regarding statements to the Montana PSC that it is not a local exchange provider, SCC testified at hearing that it would have been more accurate for it to have stated, "SCC is not seeking to provide local dial tone."<sup>38</sup>

---

<sup>37</sup> SCC cites Deployment of Wireline Services Offering Advanced Telecommunications Capability, Memorandum Opinion and Order, CC Docket No. 98-147 (rel. Aug. 7, 1998), at paragraph 41.

<sup>38</sup> Tr. at 26.

A.00-12-025 DOT/tcg

SCC disputes Pacific's statement that SCC could obtain service from Pacific's tariffs. SCC claims that database management services, certain transport facilities, and hardware to support ALI steering<sup>39</sup> are all required for its services and are not generally available in Pacific's special access tariff.<sup>40</sup>

SCC asserts that Pacific is collaterally estopped from relitigating issues argued and decided in a prior proceeding. SCC requests the Commission take official notice of a recent arbitration decision of the Illinois Commerce Commission (ICC), in which the ICC concluded that SCC is a telecommunications carrier under the Act. SCC claims that the ICC rejected jurisdictional arguments of Ameritech Illinois that are virtually identical to those raised by Pacific in this arbitration proceeding.

Finally, SCC contends that Pacific's opposition to signing an interconnection agreement with SCC is merely a "thinly-veiled effort to stifle competition."<sup>41</sup> SCC explains that SCC and Pacific have submitted competing proposals to provide the State of California with a statewide wireless 9-1-1 network and SCC will not be able to provide its service without interconnection with Pacific.

#### **IV. Discussion**

Based on the testimony and evidence presented, I find that SCC does provide "telecommunications services" and is, therefore, a "telecommunications

---

<sup>39</sup> Witness Clugy testified that "ALI steering" is the ability, using bidirectional protocols, for the ALI node of Pacific to make an inquiry to the ALI node of SCC, to get a dynamically created ALI record for delivery to the PSAP. (Tr. at 40.)

<sup>40</sup> Tr. at 40-42, and 90.

<sup>41</sup> SCC Opening Brief, pg. 16.

A.00-12-025 DOT/tcg

carrier" entitled to interconnection with Pacific. SCC's Emergency Communications Network allows a wireline, wireless, or telematics services provider to connect emergency call traffic to the appropriate selective routing tandem and deliver a voice call with the accompanying data to the 9-1-1 selective routing tandem.

### **SCC Provides Telecommunications Service**

First, SCC service meets the definition of "telecommunications" because the point of transmission for a 9-1-1 call under SafetyNet is specified by the end-user when the 9-1-1 digits are dialed. I do not agree with Pacific that SCC alters the form or content of the 9-1-1 call. SCC does not change the form or content of the voice message or the ANI that accompanies the 9-1-1 call merely by sending additional ALI information over a dedicated data circuit.

Second, SCC offers its services for a fee either directly to the public or to "such classes of users as to be effectively available directly to the public."<sup>42</sup> I agree that SCC has shown through the tariffs it submitted as evidence that it serves the public directly because it offers service to telematics service providers, PBX operators, and government entities. These entities are all end users and unquestionably, "the public." I agree with SCC that telematics providers are essentially business customers. According to the testimony of SCC's witness Clugy, a telematics end user can press an emergency button on the telematics device to initiate a call to the telematics provider. The telematics provider then sets up through its PBX a call, over SCC dedicated trunks, to the SCC switch for delivery to the appropriate 9-1-1 selective router for delivery to a PSAP.<sup>43</sup> I

---

<sup>42</sup> 47 U.S.C. §153(46).

<sup>43</sup> Tr. at 34-35.



A.00-12-025 DOT/tcg

disagree with Pacific that prices set on an individual customer basis prove SCC does not offer service indiscriminately. SCC's tariffs refer to individual contract prices because SCC cannot set prices for its services until it secures interconnection with Pacific. There is no evidence that SCC will treat like customers differently and indeed, Pacific offers customer specific contracts in its own tariffs. I also find that SCC offers its services for a fee since SafetyNet subscribers pay for the services, even though the ultimate end users do not pay for 9-1-1 calls.

I disagree with Pacific's assertion that SCC is not directly serving the public because it is providing wholesale services to other carriers. While I find that both parties have somewhat mischaracterized Virgin Islands to support their views, I agree with SCC's analysis that Virgin Islands rejected the wholesale/retail distinction as a basis for determining whether a carrier is a common carrier and whether a service is "effectively available" to the public. Instead, that order affirmed the FCC's use of the NARUC I test to determine if a provider is a common carrier. I also conclude that Virgin Islands supports SCC's contention that a wholesale provider can still be a common carrier. I agree with SCC's analysis that it is a common carrier under the test set forth in NARUC I because it offers service indiscriminately as shown in its proposed tariffs. Therefore, I disagree with Pacific's assertion that SCC does not serve the public because it offers wholesale service.

### **SCC is Seeking Interconnection for Telephone Exchange Service**

I find that SCC can seek interconnection because it meets the definition of "telephone exchange service." SCC meets this definition because it enables subscribers to "intercommunicate" within a telephone exchange. Using SCC's SafetyNet service, end users of SCC's subscribers are able to originate emergency calls and conduct two-way voice communication with a person at the PSAP.

A.00-12-025 DOT/tcg

Essentially, carriers that employ SCC's SafetyNet service originate 9-1-1 calls for their end users and SCC enables its carrier customers to originate these calls. For telematics customers and PBX customers, SCC originates emergency calls. In all of these scenarios, SCC uses its own facilities to carry the traffic from the origination point to Pacific's selective router for termination at the PSAP. SCC enables its customers to terminate 9-1-1 calls just as any other CLCs terminate such calls. This fulfills the requirement to allow origination and termination of calls as set forth in the definition of "telephone exchange service."

I disagree with Pacific that SCC is not a carrier because it does not provide dial tone and because it does not have assigned NPA NXX's. While SCC admitted it does not provide dial tone to end users, SCC's SafetyNet service allows intercommunication over its facilities even though SCC is not the dial tone provider. I find that this entails telephone exchange service for the subset of calls, namely 9-1-1 emergency calls, that SCC handles through its network of switches and transmission equipment. In addition, the definitions in the 1996 Act of "telecommunications" and "telecommunications carrier" do not include a requirement that a carrier have its own NPA NXX's or provide dial-tone.

I do not agree with Pacific that SCC's services are merely "adjunct services." While SCC may perform certain functions that the FCC has defined as adjunct, this is only one of the services that SCC offers. SCC's SafetyNet service entails transportation of 9-1-1 calls over SCC's facilities in order to allow subscribers to originate and terminate 9-1-1 calls. Again, this constitutes a "comparable service" to telephone exchange service as defined in part B of Section 153(47).

I do not agree with Pacific that SCC is an "aggregator" as defined in Section 226. SCC does not fit that definition because it is not making telephones available to the public or transient users of its premises for interstate calls using a

A.00-12-025 DOT/tcg

provider of operator services.

I find there is no issue with statements that SCC has made in the past in other jurisdictions, namely Texas and Montana. SCC has justified that its service has changed since its 1999 Texas filings claiming it was not a telecommunications carrier. Further, SCC has adequately clarified the meaning of its statements to the Montana PSC.

Regarding SCC's claims that Pacific is collaterally estopped from relitigating the jurisdictional issue, Pacific responds that the doctrine of collateral estoppel does not apply to an administrative agency's determination of a jurisdictional issue. Pacific does not provide any support for this contention. Nevertheless, I agree with Pacific that it is not collaterally estopped from litigating the issue of whether SCC is a telecommunications carrier in California simply because a similar arbitration was decided in SCC's favor by the ICC. SCC argues that collateral estoppel applies when the issue sought to be precluded is identical to the issue decided in a former proceeding. I have reviewed the ICC arbitration decision and while it decides the issue of whether SCC is a telecommunications carrier in Illinois, I cannot conclude that the facts underlying the ICC's determination are identical to the facts presented here. It is possible that the testimony regarding SCC's service offerings in California constitutes a different set of underlying facts on which this Commission will decide this arbitration. Therefore, I do not agree that Pacific is collaterally estopped from raising its jurisdictional arguments before this Commission. In addition, I will not take official notice of the ICC's arbitration decision issued on March 21, 2001.

SCC also charges that Pacific is thwarting SCC's interconnection efforts purely to stifle competition in 9-1-1 services. I note that SCC's accusations are not supported by any evidence. Indeed, Pacific presented evidence of SCC's own statements to SBC that its service was not in competition with SBC.

A.00-12-025 DOT/tcg

Furthermore, SCC's contentions regarding Pacific's motives do not answer the factual and legal question of whether SCC is a telecommunications carrier entitled to interconnection under the act. Therefore, I will not address these accusations because they are beyond the scope of this arbitration.

In summary, while SCC does not intend to offer traditional dial-up telephone services in California, and offers only one portion of what constitutes local exchange service, namely 9-1-1 calls, the fact that it does not offer all the services normally thought of as local exchange does not mean that it is not offering a telecommunications service. The language of the 1996 Act does not limit the definition of telephone exchange services in the manner in which Pacific contends. Providing a 9-1-1 connection, for another carrier or for other customers, is a telecommunications service. SCC offers a service that transports a 9-1-1 call and therefore SCC transmits information of the user's choosing, between or among points specified by the user, as set forth in Section 153(43). SCC facilitates intercommunication among subscribers, within the meaning of Section 153(47), because by transporting the 9-1-1 call to the appropriate PSAP, SCC enables an end user to talk to someone at the PSAP and vice versa. Therefore, SCC is a telecommunications carrier and is entitled to request arbitration of an ICA with Pacific.

#### **V. Comments on Arbitrator's Report**

The Draft Arbitrator's Report in this matter was mailed to allow comments by the parties as provided by Rule 3.19 of the Commissions Arbitration Rules. Comments were filed by Pacific and SCC on August 9, 2001. Pacific's comments reiterated its contention that SCC does not offer service indiscriminately and does not originate calls. There were no substantive changes made in response to comments.

A.00-12-025 DOT/tcg

**O R D E R**

**IT IS ORDERED** that:

1. Within 7 days of adoption of the Final Arbitrator's Report, the parties shall file and serve:

- a. An entire Interconnection Agreement, for Commission approval, that conforms to the decisions of the Final Arbitrator's Report.
- b. A statement which (a) identifies the criteria in the Act and the Commission's Rules (e.g., Rule 4.2.1, Rule 2.18, and 4.2.3 of Resolution ALJ-181) by which the negotiated and arbitrated portions of the Agreement must be tested; (b) states whether the negotiated and arbitrated portions pass or fail those tests; and (c) states whether or not the Agreement should be approved or rejected by the Commission.

Dated August 24, 2001, at San Francisco, California.

/s/ DOROTHY J. DUDA  
Dorothy J. Duda, Arbitrator  
Administrative Law Judge

A.00-12-025 DOT/tcg

**CERTIFICATE OF SERVICE**

I certify that I have by mail this day served a true copy of the original attached Final Arbitrator's Report on all parties of record in this proceeding or their attorneys of record.

Dated August 24, 2001, at San Francisco, California.

/s/ TERESITA C. GALLARDO  
Teresita C. Gallardo

**N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

\*\*\*\*\*

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.