

Decision 01-09-048 September 20, 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)

**OPINION AFFIRMING FINAL ARBITRATOR'S REPORT
AND APPROVING INTERCONNECTION AGREEMENT**

I. Summary

This decision affirms the results reached in the August 24, 2001 Final Arbitrator's Report (FAR) which found that SCC Communications Corporation (SCC)¹ is a telecommunications carrier entitled to interconnection with Pacific Bell Telephone Company (Pacific). The FAR ordered parties to file an interconnection agreement (agreement). By this decision, we approve the agreement. The agreement shall become effective upon the grant of a certificate of public convenience and necessity (CPCN) to SCC in Application (A.) 00-12-016. This proceeding is closed.

¹ At the hearing on this matter, SCC disclosed that it has since changed its name to Intrado. Nevertheless, this decision will continue to refer to the applicant as SCC, the name under which it filed the application.

II. Background

On March 27, 2000, SCC requested that SBC Communications Inc. (SBC) enter into negotiations for an interconnection agreement in Texas. SCC later decided to pursue a multi-state interconnection agreement with SBC, which would include interconnection with SBC's subsidiary in California, Pacific.² The parties continued to engage in negotiations from March 2000 to December 2000, and agreed to extend the deadline for filing a petition for arbitration. On December 20, 2000, SCC filed a petition for arbitration of an interconnection agreement with Pacific pursuant to Section 252(b) of the Telecommunications Act of 1996 (Act) and the Commission's Arbitration Rules set forth in Resolution ALJ-181.³ SCC's application and request for arbitration was timely filed.

In its filings in this petition for arbitration, 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 telematics⁴ service providers.

² Pacific 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, we will hereinafter refer to Pacific rather than SBC.

³ Resolution ALJ-181, adopted October 5, 2000, sets forth "Revised Rules Governing Filings Made Pursuant to the Telecommunications Act of 1996."

⁴ 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.)

According to SCC, it offers several distinct services.⁵ One of SCC's services performs selective routing database management, which handles call routing data for delivery of 9-1-1 calls. In addition, SCC states that its "9-1-1 SafetyNet" (SafetyNet) service,⁶ which is a separate service, 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 claims that SafetyNet service qualifies as "telecommunications" under the definitions in the 1996 Act.⁷

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

III. Procedural History

On December 27, 2000, Pacific filed a motion to dismiss SCC's arbitration request 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. Pacific argues that SCC is not a competitive carrier in the local exchange market, but rather a provider of

⁵ 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 A.00-12-016 in California.

⁶ 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.)

⁷ SCC states 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.)

database services for the selective routing of 9-1-1 calls. 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.

The assigned Arbitrator, ALJ Duda, 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 “telecommunications carrier” under the Act and could request interconnection. The ruling also set a further schedule for the arbitration.⁸

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 was the only issue remaining in this arbitration. Despite disagreement on the threshold issue, Pacific attached to its response the agreement negotiated between the parties should the Commission conclude that SCC is a telecommunications carrier entitled to request interconnection.

⁸ The parties stipulated to extend the time period for the Commission to resolve this arbitration through September 20, 2001.

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.

The Arbitrator filed and served her Draft Arbitrator's Report on July 31, 2001. Parties filed comments on the draft report shortly thereafter and the Arbitrator filed and served her Final Arbitrator's Report (FAR) on August 24, 2001. As directed by the FAR, the parties filed and served their executed interconnection agreement on September 5, 2001.

IV. Relevant Legal Authority

The Telecommunications Act of 1996 (1996 Act) defines a "telecommunications carrier" as follows:

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.⁹

The term "telecommunications carrier" means any provider of telecommunications services, except that such term does not include aggregators¹⁰ of telecommunications services (as defined in section 226 of this title).¹¹

The term "telecommunications service" means the offering of telecommunications for a fee directly to the public, or to such classes

⁹ 47 U.S.C. §153(43).

¹⁰ 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."

¹¹ 47 U.S.C. §153(44).

of users as to be effectively available directly to the public, regardless of the facilities used.¹²

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.¹³

V. Arbitrator’s Findings

The Arbitrator concluded in the FAR that based on the definitions in the 1996 Act, SCC does provide “telecommunications services” and is, therefore, a “telecommunications 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.

We agree with the Arbitrator’s reasoning and conclusions on this issue, and adopt the same for purposes of this decision as described below.

SCC Provides Telecommunications Service

First, we agree with the Arbitrator that SCC’s 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. The

¹² 47 U.S.C. §153(46).

¹³ 47 U.S.C. §153(47).

Arbitrator disagreed 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 data, including Automatic Number Identification (ANI), that accompanies the 9-1-1 call merely by sending additional Automatic Location Information (ALI)¹⁴ over a dedicated data circuit.

Second, we find that 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.”¹⁵ SCC showed through the tariffs it submitted as evidence that it serves the public directly because it offers service to telematics service providers, Private Branch Exchange (PBX) operators, and government entities.¹⁶ These entities are all end users and unquestionably, “the public.” We agree with the Arbitrator that telematics providers are essentially business customers.

We also agree with the Arbitrator’s analysis that disagreed with Pacific’s assertion that SCC is not directly serving the public because it is providing wholesale services to other carriers. The Arbitrator concluded that a wholesale provider can also be a common carrier. Further, we agree with the Arbitrator that SCC is a common carrier because it offers service indiscriminately. As noted by the Arbitrator, prices set on an individual customer basis do not prove that SCC will discriminate in the offering of its services. SCC intends to offer service

¹⁴ 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.

¹⁵ 47 U.S.C. §153(46).

¹⁶ 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.)

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indiscriminately through its tariffs once it secures interconnection with Pacific. SCC provided its proposed tariffs as evidence of this, although the tariffs are currently pending Commission approval in SCC's CPCN application. The draft

tariffs alone do not provide sufficient evidence to prove that SCC will discriminate among its customers.

SCC is Seeking Interconnection for Telephone Exchange Service

We agree with the Arbitrator's conclusions that SCC can seek interconnection because its services meet the definition of "telephone exchange service" by enabling 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. 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."

The Arbitrator disagreed 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. The Arbitrator found 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. We agree with the conclusions of the Arbitrator in this area.

Further, the Arbitrator did not agree with Pacific that SCC's services are merely "adjunct services" rather than telecommunications services. While SCC may perform certain functions that the FCC has defined as adjunct, these are only some 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).

The Arbitrator did 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 provider of operator services.

In summary, we agree with the Arbitrator that while SCC does not intend to provide traditional dial-up telephone services in California, and provides only one portion of what constitutes local exchange service, namely 9-1-1 calls, the fact that it does not provide all the services normally thought of as local exchange does not mean that it is not providing 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 provides 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 does provide 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 interconnection agreement with Pacific.

VI. The Interconnection Agreement

SCC and Pacific negotiated an entire interconnection agreement pending Commission resolution of their dispute regarding whether SCC was indeed a telecommunications carrier entitled to interconnection. As directed by the FAR, the parties filed and served an executed copy of their negotiated interconnection agreement on September 5, 2001.

Along with this filing, the parties filed a statement regarding whether the agreement meets the criteria from the 1996 Act and whether the Commission should approve the agreement. SCC states the agreement meets the criteria for approval. Pacific states the agreement should not be approved because the FAR erroneously concludes that SCC is a telecommunications carrier. Pacific reiterates its earlier arguments that SCC is not a telecommunications carrier because it does not offer service indiscriminately and does not originate a telecommunications service. We have already addressed and dismissed these arguments in our discussion above.

Section 252(e)(2) of the 1996 Act provides that the Commission may only reject an interconnection agreement (or any portion thereof) adopted by negotiation if we find that the interconnection agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement, or that implementation of such agreement (or portion thereof) is not consistent with the public interest, convenience, and necessity. Commission rules echo these provisions and add a provision for rejection if the agreement would not meet other rules, regulations and orders of the Commission, including service quality standards.¹⁷

¹⁷ Resolution ALJ-181, Rules 4.3.1, 4.3.2, 4.1.4, and 2.18.

No party or member of the public alleges that any negotiated portion of the interconnection agreement should be rejected. We find nothing in the negotiated agreement which results in discrimination against a telecommunications carrier not a party to the agreement, is inconsistent with the public interest, convenience and necessity, or does not meet other Commission rules, regulations and orders, including service quality standards. Thus, we approve the negotiated interconnection agreement. The signed agreement should become effective upon the grant of operating authority to SCC in A.00-12-016.

VII. Public Review and Comment

The Public Utilities Code and our Rules of Practice and Procedure generally require that draft decisions be circulated to the public for review and comment 30 days prior to the Commission's vote. On the other hand, the 1996 Act requires that the Commission reach its decisions to approve or reject an arbitrated agreement within 30 days after submission by the parties. This establishes a conflict.

However, Rule 77.7(f)(5) provides that we may reduce or waive the period for public review and comment "for a decision under the state arbitration provisions of the Telecommunications Act of 1996." We consider and adopt this decision today under the state arbitration provisions of the 1996 Act.

The draft decision of Arbitrator Duda was filed and served on September 12, 2001. The period for public review and comment was waived.

Findings of Fact

1. SCC provides a service that transports a 9-1-1 call and transmits information of the user's choosing, between or among points specified by the user.

2. SCC offers its services for a fee directly to the public or to such classes of users as to be effectively available directly to the public.
3. SCC enables subscribers to intercommunicate within a telephone exchange.
4. SCC originates emergency calls for telematics customers and PBX customers.
5. SCC provides a telecommunications service and is entitled to interconnection with Pacific.
6. Pending the outcome of this arbitration, SCC and Pacific negotiated an interconnection agreement.
7. No party or member of the public alleges that any negotiated portion of the agreement must be rejected.
8. The agreement does not discriminate against a telecommunications carrier not a party to the agreement; is consistent with the public interest, convenience and necessity; and meets other Commission rules, regulations, and orders, including service quality standards.
9. This is a proceeding under the state arbitration provisions of the Act.
10. SCC applied for a certificate of public convenience and necessity in Application 00-12-016.

Conclusions of Law

1. SCC is a telecommunications carrier and is entitled to request arbitration of an interconnection agreement with Pacific.
2. The FAR, along with the agreement between SCC and Pacific, should be approved.
3. The interconnection agreement between SCC and Pacific should be effective upon the grant of operating authority to SCC.
4. The 30-day public review and comment period should be waived pursuant to Pub. Util. Code Section 311(g)(3) and Rule 77.7(f)(5).

5. This order should be effective today because it is in the public interest to implement national telecommunications policy as accomplished through the interconnection agreement as soon as possible.

O R D E R

IT IS ORDERED that:

1. We affirm the results reached in the August 24, 2001 Final Arbitrator's Report and, pursuant to the Telecommunications Act of 1996, and Resolution ALJ-181, we approve the Interconnection Agreement between SCC Communications Corporation (SCC), now known as Intrado, and Pacific Bell Telephone Company (Pacific) as filed herein.

2. The Interconnection Agreement between SCC and Pacific is effective upon SCC being granted a certificate of public convenience and necessity as a competitive local exchange carrier in Application 00-12-016.

3. This proceeding is closed.

This order is effective today.

Dated September 20, 2001, at San Francisco, California.

LORETTA M. LYNCH
President
HENRY M. DUQUE
RICHARD A. BILAS
CARL W. WOOD
GEOFFREY F. BROWN
Commissioners