The service to be provided will be High-capacity Access Service described in Sec. 7.2.2(c)(4) of Pacific's access tariff, CPUC 175-T. This service will be provided for 10 years for a nonrecurring charge of $63,105 and a monthly rate of $512, subject to a termination charge equal to the actual cost of removal.

The Proponents agree that the stated rates and charges apply only to the exchange access services and facilities described in the SSA to be effected between Teleport's points of connection and Pacific's CO. They acknowledge that any additional access services or facilities ordered from Pacific and provided in conjunction with these facilities will be charged at tariff rates developed for those services or facilities on a case-by-case basis.

Both parties recognize that the subject exchange access services and facilities may be used to transport authorized interstate and intrastate traffic. The Proponents intend to preclude Teleport from supplying local exchange dial tone to its customers. They agree that Teleport may not interconnect the 90 Mbps service at Pacific's CO with any dial tone service or other services excluded by the SSA.

A good portion of a settlement agreement addressed the potential interconnections that Pacific may construct at the request of TCG in the future. Pacific agrees to provide similar interconnections pursuant to the terms of the Settlement Agreement but potentially using other equipment. The prices and other terms and conditions for any similar interconnections are to be negotiated in good faith by the parties. However, if the purpose of the interconnection is to facilitate the provision of services which compete with those offered by Pacific, Pacific need not accept a price if the contribution derived from that price (the amount of price in excess of cost) is less than the contribution Pacific realizes for like connections when it offers its competing services directly to customers.

Comments on the Settlement Agreement

DRA had no objection to adoption of the Settlement Agreement. It suggests that the concerns of Metropolitan and the FEA be addressed not in this proceeding, but in the rate design

Although Metropolitan, FEA, and Associated recommend rejection of the Settlement Agreement, no party indicated what it would show or the extent of its planned participation at any evidentiary hearing on TCG's petition for an order requiring Pacific to interconnect Teleport's CO-to-POP links at cost-based rates. None of the parties asserted that hearing is required by law. Despite its avowed interest in the price of Pacific's service to Teleport, Metropolitan has not pursued discovery of that issue as required under Rule 51.6 (a). Pacific reported in its response to Metropolitan's comments on the May 8 joint motion that "Metropolitan has not inquired of Pacific whether the rates satisfy the requirement (that CO-to-POP services be provided at fully allocated or direct embedded costs)."

Metropolitan, FEA, and Associated have not given the Commission constructive guidance on the benefits of proceeding to evidentiary hearing. Metropolitan failed to diligently pursue discovery and did not follow through on its comments objecting to the Settlement Agreement. Thus, we find that Metropolitan, FEA, and Associated have not properly contested the Settlement Agreement. On that basis, we need not consider the merits of their comments. Nonetheless, we will analyze those comments, below, to provide guidance to Pacific and other parties who may wish to negotiate similar SSAs.

Procedure for Contested Stipulations and Settlements

Rule 51.6 (a) states:

> "If the stipulation or settlement is contested, pursuant to Rule 51.4, in whole or in part on any material issue of fact by any party, the Commission will schedule a hearing on the contested issue(s) as soon after the close of the comment period as reasonably possible...."

Rule 51.6 (b) states:

> "The Commission may decline to set hearing in any case where the contested issue of fact is

> not material or where the contested issue is one of law. In the latter case, opportunity for briefs will be provided."

Metropolitan and FEA state five grounds for their recommended rejection of the Settlement Agreement. Associated cited two of those five grounds. We shall determine whether these parties have contested a material issue of fact that requires hearing or a contested issue of law, that requires an opportunity for briefs.

The Settlement Agreement is neutral with respect to competitors. Pacific has offered to execute a SSA to interconnect any other party employing the same format under substantially the same terms it has negotiated with TCG. However, because the location and type of equipment required to serve an alternate service provider will be unique to each service, the issue of cost must be resolved on an individual basis. The Settlement Agreement governs the terms of service that Pacific proposes to provide Teleport under extremely specific circumstances. In fact, if Teleport wishes additional interconnection or other services from Pacific, the terms of those services will have to be negotiated independent of the Settlement Agreement. Teleport's bargaining position will be identical to that of its competitors. Pacific has not discriminated against other alternate service providers in its settlement with Teleport.

Metropolitan and FEA believe that arrangements such as Teleport's should be offered on a general tariffed basis as soon as possible. Associated claims that as a unique arrangement between Teleport and Pacific, the Settlement Agreement discriminates against similarly situated alternative service providers. We disagree. The scope of this proceeding involves the petition of TCG for a narrowly defined service. The relief sought by Metropolitan, FEA, and Associated could not be undertaken here without creating a conflict with the Commission's inquiry into

costing and pricing methodology that is still pending in Phase III of I.87-11-033. In the Settlement Agreement itself, the parties have affirmed their continuing right to advocate their positions with respect to the terms of service provided under the Settlement Agreement in regulatory proceedings.[4] Thus, the Settlement Agreement cannot be said to resolve any legal or policy issues

location for interconnection, and the price of service, have been amended since the settlement conference, the settlement conference required by Rule 51.1 (b) was not held. Proper notice and opportunity to comment on the proposed Settlement Agreement was provided in August and September 1991, after Metropolitan filed its comments. We find there has been no violation of Rule 51.1 (b).

While Metropolitan challenges the nonrecurring and recurring rates that Teleport would pay Pacific under the Settlement Agreement, it has not alleged that the rates violate any Commission order or rule. Instead, it attacks the Settlement Agreement by comparing the agreed-upon rates with rates charged by other local exchange carriers for other alternative service providers in or outside California. This assertion of out of state

Agreement to be in the public interest and accordingly grant the August 19 Joint Motion.

Findings of Fact

1. TCG filed a petition to require Pacific to modify its special access tariffs and practices. TCG is affiliated with Teleport.

2. TCG sought to physically terminate Teleport's CO-to-POP links at the Pacific CO, and to connect its CO-to-POP links with facilities of Pacific known as End User-to-CO Links. TCG claimed this interconnection was mandated by the Commission's decision to allow Pacific to price its provision of CO-to-POP links on a flexible basis.

3. On May 21, 1990, Pacific filed its protest to and

8. Proponents subsequently reached agreement on the price Teleport should pay Pacific for the desired services. The Joint Motion for adoption of a settlement agreement dated May 7, 1991, was filed on May 8, 1991 pursuant to Rule 51.3.

9. Proponents withdrew the May 8 Joint Motion on August 2, 1991.

10. Proponents circulated a Notice of Settlement Conference to all parties on August 2, 1991. The settlement conference was held on August 9, 1991.

11. The Proponents executed their Settlement Agreement and filed it and the Joint Motion with the Commission on August 19, 1991. The terms of the Settlement Agreement are identical to those contained in the May 7 settlement agreement.

12. All of the parties that participated in the settlement conference agreed to file their comments on the Settlement Agreement, if any, no later than September 3, 1991. On that basis, TCG's motion to shorten time for filing comments from 30 days to 15 days was granted.

13. Pursuant to the SSA, Pacific will offer Teleport exchange

Conclusions of Law

1. The parties to the Settlement Agreement complied with Rule 51 of the Commission's Rules.

2. The pricing terms of the Settlement Agreement are consistent with D.88-09-059.

3. The Settlement Agreement is reasonable in light of the whole record, consistent with law, and in the public interest.

4. The objection of CCTA to TCG's motion for shortening time for comments should be denied.

O R D E R

IT IS ORDERED that:

1. The "Joint Motion of Teleport Communications Group and Pacific Bell for the Adoption of Settlement Agreement" filed on August 19, 1991, is granted.

2. The California Cable Television Association's objection to shortening time for filing comments relative to the August 19, 1991 Settlement Agreement is denied.

3. The "Settlement Agreement and Revised Stipulation" entered into by Pacific Bell and Teleport Communications Group on August 19, 1991 is approved.

This order is effective today.

Dated September 25, 1991, at San Francisco, California.

PATRICIA M. ECKERT
President
JOHN B. OHANIAN
DANIEL Wm. FESSLER
NORMAN D. SHUMWAY
Commissioners

I abstain.

/s/ G. MITCHELL WILK
Commissioner

Certificate of Service

I, Denice Harris, on behalf of Pacific Bell, do hereby certify that I caused a copy of its foregoing "Petition For Expedited Waiver of the Virtual Collocation Tariffing Requirement Concerning Intrastate Arrangements" in connection with CC Docket No. 91-141, CC Docket No. 93-162, and Pacific Bell's Tariff F.C.C. No. 128, Transmittal Nos. 1613, 1630 to be served to the parties indicated on the attached Service List by United States mail, postage prepaid, on this 2nd day of July, 1993.

Denice Harris

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