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December 11, 2002

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: Ex Parte Submission by Vycera Communications, Inc. Concerning
Application by SBC Communications, Inc. Pursuant to Section 271 of the
Telecommunications Act of 1996 To Provide In-Region, InterLATA Services
in California, WC Docket No. 02-306

Dear Secretary Dortch:

Vycera filed comments in this proceeding, and discussed in its ex parte meeting with FCC Staff on November 1, 2002, Pacific's failure to meet Checklist Item 2 because it does not provide readable, auditable, and accurate wholesale bills. In response to subsequent inquiries by FCC Staff, the following responds to certain statements made in the Reply Affidavit of Michael E. Flynn, Ginger L. Henry, and Gwen S. Johnson Regarding Billing ("Flynn-Henry-Johnson Reply Affidavit").

The Flynn-Henry-Johnson Reply Affidavit states that the disputes referenced by, *inter alia*, Vycera, do not reflect on the quality of Pacific's billing systems at the time this Application was filed, and that Pacific's dispute resolution process has worked well to address the specific complaints raised by CLECs in this proceeding.¹ Vycera takes issue with those statements.

Vycera currently has many outstanding billing disputes with Pacific. Vycera's ongoing billing disputes with Pacific that individually exceed \$20,000 and that are more than one year old are reflected in the attached chart; one of these is now over two years old.

The Flynn-Henry-Johnson Reply Affidavit states that a dispute raised by Vycera in April 2001 involving double billing on customer calling features and overbilling on The Works package was finally resolved in September/October 2002.² That is not correct. The original dispute was for \$240,000. Vycera has received credits of \$151,000 to date. As of today, Pacific still owes Vycera a credit of approximately \$89,000 on this now 18-month-old dispute.

¹ Flynn-Henry-Johnson Reply Affidavit, ¶¶ 5, 13.

² Flynn-Henry-Johnson Reply Affidavit, ¶¶ 31-35.

Regarding the above-referenced double billing issue specifically, which Pacific discusses in paragraph 32 of the Flynn-Henry-Johnson Reply Affidavit – Pacific states that it was unable initially to validate that a billing system error occurred because Vycera only provided examples to Pacific for disconnected accounts from June 2000. That is not true. Actually, Vycera spent a significant amount of time writing a program to pull information from the CD ROM for this dispute (Vycera normally audits from the EDI files that Pacific provides). Vycera gave Pacific, via email, all files wherein the double-billing had occurred, by month, from June 2000 through Nov 2000. Pacific complains about the “massive effort”³ it put forth to review this claim for “Vycera’s double billing errors.” These were Pacific’s errors, not Vycera’s. The necessity for Pacific to expend “massive effort” to review the claim was caused by Pacific’s making a massive billing error.

Vycera takes issue with Pacific’s claim that “the low percentage of adjustments Pacific has made over this period [July 2002 – September 2002] demonstrates that the overwhelming majority of Pacific’s wholesale bills were accurate in the first place.”⁴ As Pacific explained in the Flynn-Henry-Johnson Reply Affidavit, bill credits reflecting an inaccuracy on a prior bill are not captured in performance metrics until the credit is issued.⁵ Vycera suggests that “the low percentage of adjustments” reflected in Pacific’s data does not demonstrate that Pacific’s wholesale bills are accurate; rather, it demonstrates Pacific’s ability to manipulate the data by denying or at least postponing adjustments so that significant credits will not be reflected in billing performance metrics until after the completion of this 271 proceeding. (Pacific currently owes just Vycera hundreds of thousands of dollars in adjustments). Vycera suggests that “the low percentage of adjustments” reflected in Pacific’s recent data also demonstrates Pacific’s ability to manipulate the data by resolving billing disputes via a “settlement” whereby SBC gets the CLEC to agree that the credit need not be reflected in performance metrics, a methodology Pacific describes in footnote 10 of the Flynn-Henry-Johnson Reply Affidavit. (Vycera has never entered in to such an agreement with SBC).

Additionally, “the low percentage of adjustments” would appear to reflect the fact that Pacific sometimes “forgets” to report manual billing adjustments to the performance measurement group.⁶ Pacific stated, in paragraph 42 of the Flynn-Henry-Johnson Reply Affidavit, that it was evaluating the impact of its “oversight” in failing to include a September ESBA-level credit to Vycera in the reported results for Measure 34, and that it would determine if a restatement of September results for Measure 34 was appropriate. The September ESBA-level credit to Vycera to which Pacific refers was \$128,002.63, while Vycera’s two bills for September only totaled approximately \$287,700.⁷ That would appear to be an error rate of 44.5%. In addition to the ESBA-level credit of \$128,002.63 Vycera received in September, Vycera received ESBA-level credits (which must be manually added to Measure 34 results) of \$15, 275.00 on 1/14/02; \$19,901.37 on 10/14/02; and \$23,805.21 on 11/14/02.

³ Flynn-Henry-Johnson Reply Affidavit, ¶35.

⁴ Flynn-Henry-Johnson Reply Affidavit, ¶ 37.

⁵ Flynn-Henry-Johnson Reply Affidavit, ¶ 39.

⁶ Flynn-Henry-Johnson Reply Affidavit, ¶ 42.

⁷ \$287,697.13 excluding “late” charges, to be exact.

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December 11, 2002

Page 3

Regarding the “pay-per-use issue” discussed at paragraph 28 of the Flynn-Henry-Johnson Reply Affidavit and Vycera’s Comments (Vycera was billed for tariffed increases for a period prior to the effective date of the tariffed increase), Pacific claims that this issue was resolved in July 2000.⁸ That is absolutely untrue. Vycera argued for the \$2,000 claim for two years⁹ and did not finally receive the credit until mid-2002.

Pacific also discusses in the Flynn-Henry-Johnson Reply Affidavit (paragraph 29) an issue regarding billing for Anonymous Call Rejection, wherein Vycera was being billed for a service which was supposed to be free when ordered with Caller ID. Vycera provided examples to Pacific showing that Pacific was billing incorrectly. If Pacific didn’t want to spend the time to figure out what was causing the incorrect billing, that is Pacific’s decision, but Pacific was not calculating bills in accordance with the tariff.

Pacific does not meet Checklist Item 2 because it does not provide readable, auditable, and accurate wholesale bills. Please do not hesitate to contact us if you would like additional information regarding these issues.

Very truly yours,



Patrick J. Donovan
Rogena Harris
Katherine A. Rolph

Counsel for Vycera Communications, Inc.

Attachment

⁸ Flynn-Henry-Johnson Reply Affidavit, ¶ 28.

⁹ It was Pacific’s contention to Vycera that it didn’t matter when the date of the increase went into effect according to tariff – that the increase would be effective retroactively back to the date of Vycera’s bill. For example, Vycera’s bills are dated the 8th and the 14th. Per the tariff, the increase was effective 6/2/00. Vycera’s bills for 6/8/00 and 6/14/00 included pay-per-use calls for the period of 5/9/00 thru 6/8/00 and 5/15/00 thru 6/14/00, respectively. Pacific charged Vycera the increased rate effective 5/9/00 and 5/15/00 – not 6/2/00. Pacific’s statement that the credits were given in 2000 is completely false.

Vycera Communications Inc.

Individual Outstanding Credits Due from Pacific Bell
in excess of \$20,000 and outstanding for more than one year
Dec-02

Issue #	Description	Date Opened	Amt Pending Per Vycera	Notes
15/16	Not receiving additional 15% discount on usage and monthly recurring charges as per the Ameritech merger conditions.	April-00	\$30,000	Original dispute was for \$61,000. Have received credits of \$23,000 to date. Another \$8,000 credit was promised but has not yet been received. Still waiting for detail of \$8,000 credit to identify discrepancy and provide additional details to Pacific Bell.
24	Incorrect and triple billing on minimum billed accounts.	April-01	\$64,000	Original dispute was for \$87,000. Have received credits of \$23,000 to date. Provided additional documentation for PacBell's review.
25/31	Double billing of features on single line accounts and over billing of THE WORKS package.	April-01	\$89,000	Original dispute was for \$240,000. Have received credits of \$151,000 to date. Still waiting for complete detail of credits given in order to provide specific discrepancies to Pacific Bell.
36	Pacific Bell is carrying LATA traffic on Vycera local customers even though LATA is picked to Vycera. Pacific Bell is billing Vycera at wholesale rates when Vycera's cost of carrying the LATA is significantly less.	July-01	<u>\$25,000</u>	PacBell continues to review. No credits issued.
			\$208,000	