

### **Concurring Opinion of President Bilas**

I agree with today's order which makes several difficult decisions. For example, the order sets a reciprocal compensation rate and determines that calls to Internet Service Providers (ISP) are local.

Some parties will remember that I have stated that I would like many of these issues to be part of a generic proceeding. I continue to advocate a generic proceeding. Although I support today's order which sets the rules for only two companies, I believe that this decision does not impair a neutral and objective generic proceeding. The main differences between this decision and the alternate decision is that the proposed decision sets a new compensation rate and recognizes Decision 98-10-057 which categorized calls to Internet Service Providers as local. I note that the decision that classified ISP calls as local was made in the Local Competition docket which is a generic, policy proceeding. Additionally, I note that the compensation rate set in the decision is approximately one-sixth of the current rate.

Most arbitration agreements have terms which state that the agreement will be updated when the Commission issues a decision in a generic proceeding. The agreement between Pacific Bell and PacWest contains a similar agreement. Therefore, our decision today will likely last for only a few months. It is my intention for a generic proceeding to begin in the very near future. I also desire for this proceeding to have a decision ready for the Commission in a few months after beginning. In my mind, such a timely proceeding is necessary in the quickly changing telecommunications environment.

Pacific Bell has raised concerns about other parties getting similar reciprocal compensation terms due to the "pick-and-choose" rule as a result of this arbitrated agreement. Should the Commission be able to open and complete a generic proceeding in a timely manner, Pacific's concerns about other parties getting similar terms due to the "pick-and-choose" rule without a generic proceeding will not come to fruition. This Commission will have the benefit of a generic proceeding that will set policy on the appropriateness of reciprocal compensation for calls to ISPs. Whichever way the Commission rules, the parties affected in today's arbitration will be treated in an identical manner as future parties.

A.98-11-024

D.99-06-088

In summary, today's decision will be revisited in a future generic proceeding. It is my intention that this proceeding be opened *post* haste and be completed in a timely manner. By doing so, neither Pacific Bell nor PacWest will be locked into permanent terms that resulted solely from an arbitration.

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RICHARD A. BILAS  
Commissioner

San Francisco, California  
June 24, 1999