PACIFIC BELL’S (U 1001 C) RESPONSE TO THE MOTION OF COX CALIFORNIA TELCOM, L.L.C. FOR MEDIATION

PRELIMINARY STATEMENT.

Pacific Bell, in accordance with Rule 45(f) of the Commission’s Rules of Practice and Procedure, files this response to the Motion of Cox California Telcom, L.L.C. for Mediation With Pacific Bell to Resolve a Dispute Under Their Interconnection Agreement (“Cox Mot.”), dated August 9, 1999.

Cox erroneously contends that Pacific Bell has “failed and refused” to deliver telephone directories to Cox’s customers as required by the parties interconnection agreement. Cox Mot., p. 1. But the facts are that Pacific Bell’s account team has worked diligently with Cox to address Cox’s concerns about the delivery of directories, established a special point of contact for Cox at Pacific Bell Directory to
handle Cox’s alleged problems and made special deliveries of directories for Cox. Indeed, until receipt of Cox’s motion, Pacific Bell’s account team had understood that Cox's alleged problems with directories was resolved to Cox’s satisfaction.

We do not oppose the appointment of a mediator. The Commission should not, however, have to become involved in a dispute where the parties are working to resolve it and where Pacific Bell believed that Cox’s problems were solved. Cox’s filing is inconsistent with the alternative dispute resolution provisions of the interconnection agreement, and such filings should not be encouraged. Cox’s motion should be dismissed without prejudice, pending its exhaustion of the dispute resolution provisions of the agreement.

**Pacific Bell promptly and fully responded to Cox’s claims concerning delivery of directories.**

We deny that there has been any breach of Pacific Bell’s interconnection agreement with Cox, much less any “serious breach.” Cox Mot., p. 4. Only a fraction of Cox’s customers claim not to have received directories even if Cox’s own data on customer complaints is taken at face value (difficulties in delivery of directories is part of the normal course of doing business with customers in large apartment complexes). Nevertheless, the Pacific Bell account team took the necessary steps to address and resolve Cox’s concerns.

Pacific Bell, based on data regarding customer complaints provided by Cox, investigated the ordering process. Gilmore Decl., ¶2. In addition, following a meeting in which John Stankey (Vice President – Industry Markets) participated, Pacific
Bell arranged for special deliveries of over 500 directories to locations that Cox identified. Gilmore Decl., ¶¶ 3-4, Exh. B. Those directories were delivered to Cox as agreed, without regard to whether Cox had made errors in ordering directories or Pacific Bell Directory had made errors in delivery. Gilmore Decl., ¶ 5, Exh. C. Pacific also arranged a special contact for Cox at Pacific Bell Directory, Bill Lieber. As Pacific Bell pointed out in its letter to Cox confirming these arrangements, “these actions are exceptions to Pacific Bell Directory’s normal business practices * * *.” Gilmore Decl., ¶ 4, Exh. B.

Pacific Bell was never advised either in writing or verbally that there was any failure to comply with these arrangements. Gilmore Decl., ¶ 7. To the contrary, Pacific Bell wrote Cox on May 27, 1999, identifying the steps that had been taken, noting that Cox’s own delivery tally revealed only a “few no-delivery complaints by Cox’s end user customers” and “to close on the issue related to the delivery of Pacific Bell directories.” Gilmore Decl., ¶ 5, Exh. C. When Cox responded to this letter, the only concern it raised was about a Cox customer who complained about a charge for an unidentified Yellow Pages directory that the Cox letter states Directory agreed to waive. Gilmore Decl., ¶ 6, Exh. D. The letter asks Pacific to “confirm in writing” that there would be no charge for one copy of white and Yellow Page directories. Id. Pacific Bell complied with that request, pointing out that “Cox’s operational contacts had reported that the [directory] issues were resolved.” Gilmore Decl., ¶ 6, Exh. D.
This is Pacific Bell’s understanding of how matters stood when Cox filed its motion with the Commission.

**cox’s motion should be denied and it should be ordered to work cooperatively with pacific bell finally to resolve this issue.**

Pacific Bell often has been admonished by the Commission and its staff to treat CLECs as customers rather than competitors. Pacific Bell Directory has provided the same high level of service to Cox's customers as it does to Pacific Bell subscribers, and in the case of Cox gone beyond its normal business practices. We believed that any legitimate issues with regard to directory deliveries to Cox were resolved.

The supplier (Pacific Bell)/customer (Cox) relationship must be a two-way street in order to function properly. Cox itself has to assume the responsibility for obtaining directories for its customers, including, for example, coordinating deliveries and ensuring that its orders contain the necessary information that will enable Pacific Bell Directory to make deliveries. The assumption cannot be that if a Cox customer does not have a directory it is somehow Pacific Bell's fault.

Cox should be required to work with Pacific Bell to solve its problems before running to the Commission. Cox filed its motion without either verbal or written communication with the Pacific Bell account team, and at a time when we believed Cox’s problems had been resolved to the satisfaction of its operating personnel. The Commission decision that is the basis for the dispute resolution provision on which Cox purports to rely provides that the parties “to interconnection contracts shall have a requirement to negotiate in good faith to resolve contractual disputes arising after the
signing of the interconnection agreements.”  In Re Local Exchange Competition, Decision No. 95-12-056, 63 Cal. P.U.C. 700, 723 (1995). The Commission should deny Cox’s motion without prejudice pending its exhaustion of the alternative dispute resolution provisions of the agreement. There is ample authority requiring a party to exhaust such remedies before resorting to litigation. E.g., Abelleira v. District Court of Appeal, 17 Cal. 2nd 280 (1941) (exhaustion of administrative remedy); see generally, Witkin, California Procedure (4th Ed. 1996), Actions. §§296 et. seq. (exhaustion of contractual and other remedies).
Conclusion.

For the reasons stated above, Pacific Bell respectfully requests that Cox’s motion should be denied without prejudice.

Dated at San Francisco, California, this 24th day of August, 1999.

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