

50-275/323

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7 PACIFIC GAS AND ELECTRIC COMPANY

8 UNITED STATES BANKRUPTCY COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION

12 In re
13 PACIFIC GAS AND ELECTRIC
COMPANY, a California corporation,
14 Debtor.

Case No. 01-30923 DM
Chapter 11 Case

16 Federal I.D. No. 94-0742640

18 NOTICE OF ENTRY OF ORDER ON MOTION FOR ORDER APPROVING
19 ENTRY INTO RESCISSION AGREEMENT

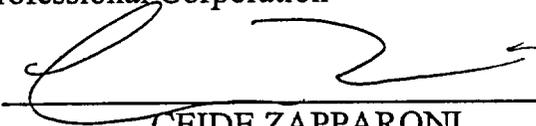
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HOWARD
RICE
NEMEROVSKI
CANADY
FALK
& RABKIN
A Professional Corporation

1 **PLEASE TAKE NOTICE** that on November 5, 2002, the above-captioned
2 Bankruptcy Court filed its "Order On Motion For Order Approving Entry Into Rescission
3 Agreement," a copy of which is attached as Exhibit 1.

4 DATED: November 5, 2002.

5 HOWARD, RICE, NEMEROVSKI, CANADY,
6 FALK & RABKIN
7 A Professional Corporation

8 By: 

CEIDE ZAPPARONI

9 Attorneys for Debtor and Debtor in Possession
10 PACIFIC GAS AND ELECTRIC COMPANY

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13 HOWARD
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18 & RABKIN
19 A Professional Corporation

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28 WD 110502/1-1419909/1034770/v1

NOTICE OF ENTRY OF ORDER

1 JAMES L. LOPES (No. 63678)
WILLIAM J. LAFFERTY (No. 120814)
2 CEIDE ZAPPARONI (No. 200708)
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FILED

NOV 05 2002

UNITED STATES BANKRUPTCY COURT
SAN FRANCISCO, CA

6 Attorneys for Debtor and Debtor in Possession
7 PACIFIC GAS AND ELECTRIC COMPANY

8 UNITED STATES BANKRUPTCY COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION

12 In re

Case No. 01-30923 DM

13 PACIFIC GAS AND ELECTRIC
COMPANY, a California corporation,

Chapter 11 Case

14 Debtor.

Date: November 5, 2002

Time: 9:30 a.m.

Place: 235 Pine St., 22nd Floor
San Francisco, California

Judge: Hon. Dennis Montali

15 Federal I.D. No. 94-0742640

17 ORDER ON MOTION FOR ORDER APPROVING ENTRY
18 INTO RESCISSION AGREEMENT

19 The Court, having considered the Motion of Pacific Gas and Electric Company
20 ("PG&E") For Order Approving Entry Into Rescission Agreement (the "Motion"), the
21 Memorandum Of Points And Authorities In Support Of Debtor's Motion, and the
22 Declaration of Lori I. Austin in support thereof, any opposition to the Motion, the record in
23 this case, and any admissible evidence and argument presented to the Court, hereby finds as
24 follows:

25 A. Adequate notice of the Motion was given to parties in interest as appropriate
26 under the circumstances;

27 B. The "Rescission Agreement and Mutual Release" between the Debtor and
28

ORDER ON MOTION FOR ORDER APPROVING ENTRY INTO RESCISSION AGREEMENT

1 RCN Telecom Services ("RCN") (the "Rescission Agreement"), a true and correct copy of
2 which is attached hereto as Exhibit A, is based upon sound business justifications and is fair,
3 reasonable and in the best interests of the Debtor's Chapter 11 estate;

4 C. There is good cause for granting the Motion.

5 Based on the foregoing, **IT IS HEREBY ORDERED** that:

6 1. The Motion is GRANTED;

7 2. PG&E is authorized to enter into the Rescission Agreement, a true and
8 correct copy of which is attached hereto as Exhibit A, and the Rescission Agreement is
9 hereby approved;

10 3. PG&E and RCN shall be bound by all the terms of the Rescission
11 Agreement and all terms and conditions therein;

12 4. PG&E and RCN are authorized and directed to take such actions as are
13 reasonably necessary to perform their respective obligations under the Rescission
14 Agreement. Specifically, pursuant to Section 363(b)(1) of the Bankruptcy Code, PG&E is
15 authorized to pay to RCN the amount of \$873,170.72 as provided for in the Rescission
16 Agreement.

17 DATED: November 5, 2002

DENNIS MONTALI

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19 _____
20 HONORABLE DENNIS MONTALI
21 UNITED STATES BANKRUPTCY JUDGE
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RECISSION AGREEMENT AND MUTUAL RELEASE

This Rescission Agreement and Mutual Release ("Rescission Agreement") is entered into as of this 22nd day of May, 2002 by and between Pacific Gas and Electric Company, a California corporation located at 77 Beale Street, San Francisco, CA 94105 ("PG&E") and RCN Telecom Services, Inc., a Delaware corporation located at 1400 Fashion Island Blvd., Suite 100, San Mateo, CA 94404 ("RCN") (collectively, the "Parties").

RECITALS

- A. WHEREAS, the Parties entered into a Master Conduit and Facilities License and Lease Agreement, dated November 20, 2000 (the "License Agreement"); and
- B. WHEREAS, PG&E filed a Chapter 11 bankruptcy petition pursuant to Title 11 United States Codes §§ 101 *et seq.* in the United States Bankruptcy Court for the Northern District of California, San Francisco Division ("Bankruptcy Court") on April 6, 2001; and
- C. WHEREAS, a dispute has arisen regarding the Parties' respective obligations under the Agreement ("Dispute"); and
- D. WHEREAS, by this Rescission Agreement, the Parties desire to rescind the License Agreement and fully and finally resolve and settle their dispute in accordance with the terms and conditions set forth herein;

THEREFORE, the Parties agree as follows:

1. EFFECTIVE DATE

- a. The effectiveness of this Agreement is contingent upon Bankruptcy Court approval of this Rescission Agreement.
- b. The Parties shall seek Bankruptcy Court approval in accordance with the procedures described below:
 - 1. As soon as practicable, upon execution and delivery of this Rescission Agreement by the Parties, PG&E shall file and serve a motion in Bankruptcy Court for approval to resolve all disputes between the Parties arising from the License Agreement through the Rescission Agreement ("Motion");
 - 2. The Parties shall use their best efforts to obtain from the Bankruptcy Court an order granting the Motion ("Approval Order"),
- c. The Agreement shall be effective the day the Approval Order is final, the time for appeal has expired, and no one has timely filed a notice of appeal. ("Effective Date").

2. RECISSION OF LICENSE AGREEMENT

The License Agreement, including RCN's license of and right to license PG&E's facilities, is rescinded, null, and void.

3. RETURN OF CONSIDERATION.

- a. Within ten (10) business days of the Effective Date, PG&E shall return to RCN \$873,170.72, which is the amount RCN paid pursuant to Section 8.1 of the License Agreement without interest, \$876,553.92, minus the costs PG&E has incurred to review RCN's Facility Application Notices pursuant to Section 3.8 of the License Agreement, \$3,383.20.
- b. Within ten (10) business days of the Effective Date, RCN shall return to PG&E all maps of PG&E's facilities that PG&E provided to RCN ("PG&E Maps").

4. RELEASE OF ALL CLAIMS AND KNOWING WAIVER

- a. Each Party hereby releases and forever discharges the other from all actions, causes of action, claims and demands that it, its affiliates, subsidiaries, officers, partners, directors, agents, employees or legal representatives may now have, or that may subsequently accrue, against the other, its affiliates, subsidiaries, officers, directors, agents, employees or legal representatives in any way relating to, or arising from, the License Agreement, including, but not limited to, claims for breach of contract, breach of the implied covenant of good faith and fair dealing, performance and monies owed, waiver, estoppel, misrepresentation, and contract termination.
- b. Each Party hereby expressly acknowledges that there is a risk that, subsequent to the execution of this Rescission Agreement, it may incur, suffer or sustain injuries, losses, damages, costs, attorneys fees, expenses or any of these which are in some way caused by or are connected with the released matters encompassed in this Rescission Agreement which are unknown or unanticipated at the time this Rescission Agreement is signed, or which are presently not capable of being ascertained. It further acknowledges that there is a risk that such damages as are known may become more serious than now anticipated or expected. Nevertheless, each Party hereby expressly acknowledges that this Rescission Agreement has been negotiated and agreed upon in light of these realizations, and each of them, and hereby waives all rights which it may have had in these unsuspected claims. Each Party specifically waives its right under California Civil Code Section 1542, which provides as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO THE CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTION OF THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR."

Each Party also expressly waives any equivalent or similar provision of any statute or other law of the United States, or any state or jurisdiction.

- c. Each Party represents, warrants and covenants that no other person or entity has or claims to have any interest in the claims, demands, damages, policies, actions or causes of action which are the subject of controversy as set forth above; that it has the sole rights and exclusive authority to enter into and execute this Rescission Agreement, subject to Bankruptcy Court approval; that it has not sold, signed, transferred, conveyed, encumbered or otherwise disposed of any of the claims, demands, damages, actions or causes of action; and that it will hold the other harmless in the event that any person or entity contends otherwise.
- d. The Parties acknowledge that this Rescission Agreement represents a compromise settlement of disputed claims and that neither the contents of this Rescission Agreement, nor the fact of its execution, nor any other fact, matter or thing concerning or in any way connected with the making or execution of this Rescission Agreement, is intended to be, nor shall it be construed as, an admission of liability, obligation or responsibility, which liability, obligation and responsibility is, and continues to be, denied.

5. NO REJECTION

The Parties expressly agree and acknowledge that the rescission of the Licensing Agreement accomplished through this Agreement neither constitutes a "rejection" of the Licensing Agreement by PG&E pursuant to the provisions of section 365 of the Bankruptcy Code, nor may be deemed a rejection of the Licensing Agreement. RCN hereby waives and releases any claim to damages against PG&E based upon a rejection or deemed rejection of the Licensing Agreement by PG&E.

6. AUTHORITY

Each person executing this Rescission Agreement warrants and represents that he has the authority to bind the Party on whose behalf his or her signature appears. PG&E's authority is subject to Bankruptcy Court approval. The parties to this Rescission Agreement acknowledge that they have read, and that they fully understand the terms of this Rescission Agreement, and that they each have been advised of the legal effect and consequences of this Rescission Agreement by their respective legal counsel.

7. BINDING EFFECT

This Rescission Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective past, present, and future officers, directors, shareholders, owners, partners, trustees, trustors, agents, assigns, fiduciaries, employees, insurers, heirs, executors, administrators, and all parent, subsidiary or affiliated business entities, and their predecessors and successors in interest.

8. REPRESENTATIONS

- a. Each Party hereby represents and warrants to each of the other that (1) the execution of this Rescission Agreement has been duly authorized by all necessary corporate, shareholder and similar actions; (2) this Agreement has been duly executed and delivered and constitutes the legal valid and binding obligation of such Party, enforceable against such Party in accordance with its terms; and (3) the execution and delivery of this Agreement and the performance by such Party of its obligations hereunder do not and will not conflict with, contravene or breach, and law, judgment, order or material contract applicable to or binding on such Party or any of its properties or assets.
- b. RCN represents and warrants that it (1) has not filed a proof of claim in PG&E's bankruptcy proceeding; (2) has not shown, displayed, or provided any PG&E Maps to any third party; and (3) will not show, display, or provide any PG&E Maps to any third party prior to returning the PG&E Maps as specified in Paragraph 3.b. above.

9. INTEGRATION

This Rescission Agreement expressly supersedes all previous discussions, negotiations, understandings, and agreements, written or otherwise relating to the Rescission Agreement and the License Agreement. This Rescission Agreement may only be amended in a writing executed by all parties.

10. CONSTRUCTION OF AGREEMENT

Counsel for the respective Parties have reviewed and participated in the drafting of this Agreement. Consequently, the principle of construction of contracts that ambiguities shall be resolved against the drafter shall not be used or applied in the interpretation of this Agreement.

11. EXPENSES

Each Party shall pay its own expenses, professional fees and other costs connected with or associated with the negotiation and execution of this Agreement. In the event any Party breaches this Agreement, the breaching Party shall pay all costs and expenses (including attorneys' fees and expenses) incurred by the other Party or Parties in connection with or arising out of such breach.

12. GOVERNING LAW

This Rescission Agreement shall be governed by the laws of the State of California, without regard to principles of conflicts of law. The Bankruptcy Court shall retain sole and exclusive jurisdiction to adjudicate disputes regarding this Rescission Agreement.

13. COUNTERPARTS

This Rescission Agreement may be executed in counterparts, each of which, taken

together shall constitute one document.

14. COOPERATION

The parties to this Rescission Agreement agree to cooperate fully and execute any and all supplemental documents and to take all additional actions necessary or appropriate to give full force and effect to the terms and intent of this Rescission Agreement.

PACIFIC GAS AND ELECTRIC COMPANY

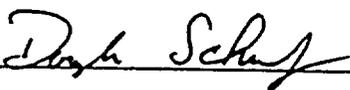
By: 

Name: Roger Gray

Title: VP & COO

Dated: 5/2/02

RCN TELECOM SERVICES, INC.

By: 

Name: Douglas Schultz

Title: General Manager / Vice President

Dated: 4/18/02

Approved as To Form
Elizabeth A. Collier