

**PUBLIC UTILITIES COMMISSION**505 VAN NESS AVENUE
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April 7, 2009

Agenda ID #8451
Adjudicatory

TO PARTIES OF RECORD IN INVESTIGATION 02-06-003

This is the proposed decision of Administrative Law Judge (ALJ) Vieth. It will not appear on the Commission's agenda for at least 30 days after the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the proposed decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the proposed decision as provided in Article 14 of the Commission's Rules of Practice and Procedure (Rules), accessible on the Commission's website at www.cpuc.ca.gov. Pursuant to Rule 14.3, opening comments shall not exceed 15 pages.

Comments must be filed either electronically pursuant to Resolution ALJ-188 or with the Commission's Docket Office. Comments should be served on parties to this proceeding in accordance with Rules 1.9 and 1.10. Electronic and hard copies of comments should be sent to ALJ Vieth at xjv@cpuc.ca.gov and the assigned Commissioner. The current service list for this proceeding is available on the Commission's website at www.cpuc.ca.gov.

/s/ JANET A. ECONOME for
Karen V. Clopton, Chief
Administrative Law Judge

KVC:tcg

Attachment

Decision **PROPOSED DECISION OF ALJ VIETH** (Mailed 4/7/2009)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the operations, practices, and conduct of Pacific Bell Wireless LLC dba Cingular Wireless, U-3060, U-4135 and U-4314, and related entities (collectively "Cingular") to determine whether Cingular has violated the laws, rules and regulations of this State in its sale of cellular telephone equipment and service and its collection of an Early Termination Fee and other penalties from consumers.

Investigation 02-06-003
(Filed June 6, 2002)

DECISION GRANTING MOTION OF UTILITY CONSUMERS' ACTION NETWORK FOR DISTRIBUTION OF RESIDUE OF REPARATIONS FUNDS TO THE TELECOMMUNICATIONS CONSUMER PROTECTION FUND

1. Summary

We grant the unopposed motion of the Utility Consumers' Action Network for distribution of the residue of two previously established Reparations Funds to the Telecommunications Consumer Protection Fund. The residue, which was \$1.056 million (as of January 31, 2009), comprises approximately 6% of the total amounts paid in restitution (\$13.778 million as of January 31, 2009) plus approximately \$4.075 million, the sum expected to escheat to the state in accordance with law. The residue is not subject to escheat. It consists solely of monies that were never converted to checks and as further explained herein, cannot be traced to identified persons or entities known to be eligible for restitution.

2. Background

D.04-09-062 fined Cingular Wireless (Cingular) \$12.14 million for its unlawful early termination fee (ETF) policies and other corporate practices. The decision also ordered Cingular to pay reparations, later estimated to be valued at more than \$18.467 million, to affected customers and declared that any unpaid reparations would escheat to the State of California General Fund.

Following continued litigation, including an application for rehearing at the Commission and appeal to the courts, Cingular nka AT&T Mobility LLC (AT&T), the Utility Consumers' Action Network (UCAN), and the Commission's Consumer Protection and Safety Division (CPSD) entered into an all-party settlement. D.07-03-048 adopted this settlement, which resolved all litigation resulting from D.04-09-062 and required Cingular to pay the \$12.14 million penalty previously assessed, as well as customer reparations. The settlement also established the details of the reparations plan, which was designed to provide restitution to two different customer groups. Group A customers consisted of the 115,623 customers (identified in the settlement as the "Actual Identified Claimants") who were known to have paid an ETF, a supplemental equipment charge, or both, to Cingular or an independent Cingular dealer or retailer. Group B consisted of another 91,722 customers (identified in the settlement as the "Potential Agent Claimants") who potentially had paid an ETF or a supplemental equipment charge to an independent Cingular dealer or retailer. Since Cingular did not have records to establish whether the Group B payments had been made and since many of the independent entities were no longer in business, Group B customers (unlike Group A customers) were required to submit a claim form once they had been located.

The all-party settlement also addressed, in a very general way, the distribution of any money remaining in the reparations accounts after all possible restitution had been made. The settlement required the parties to file a report showing “how much money in refund checks have been cashed, how much money remains outstanding in issued checks, and how much money remains in Reparations Funds A and/or B.”¹ Regarding any residual balance, the settlement stated:

If any funds remain in Reparations Funds A and/or B, the Commission shall subsequently determine in a separate decision how any remaining funds are to be distributed or otherwise utilized, **but no funds remaining in Reparations Funds A and/or B shall be returned to Cingular.** Consistent with prior Commission decisions, including *TURN v Pacific Bell*, 54 Cal. PUC 2d 122 (1994), *In Re GTE California*, 1998 Cal PUC LEXIS 910 (1998), and *In Re CTS International*, 2000 Cal. PUC LEXIS 202 (2000), where the Commission has ordered distribution for other equitable purposes **in addition to escheatment pursuant to C.C.P. Section 1519.5, some or all of such amounts may be distributed to the Telecommunications Consumer Protection fund administered by the California Consumer Protection Foundation.**²

Subsequently, D.7-09-015 granted UCAN a second intervenor compensation award in the amount of \$171,996.30 for its substantial contribution to D.07-03-048. (Previously, the Commission awarded UCAN \$367,401.25 for its substantial contribution to D.04-09-062.) In October 2007, AT&T filed a status report on the progress of the reparations process and thereafter D.08-02-015

¹ Decision (D.) 07-03-046, Appendix A (Settlement Agreement, Paragraph 6).

² *Id.*, emphasis added.

authorized the use of a portion of the undistributed settlement monies remaining in the Group B reparations account to pay UCAN's second intervenor compensation award. D.08-02-015 also authorized the use of a portion of the interest earned on the principal in the Group A reparations account to reimburse the settlement administrator for \$61,783.09, the cost of providing telephone support. This sum was in addition to the \$600,000 that the all-party settlement originally estimated for notice, administration, and monitoring costs associated with the reparations plan.

As the settlement states, the California Consumer Protection Foundation (Foundation) administers the Telecommunications Consumer Protection Fund. The Foundation, established in 1991 following *California v. Levis Strauss & Co.* and incorporated under § 501(c)(4) of the Internal Revenue Code, administers numerous consumer trust funds and provides grants to eligible grantees pursuant to a rigorous application process.³ The Foundation currently administers consumer trust funds established and/or approved by agencies such as the Department of Consumer Affairs and the Attorney General's Office, in addition to this Commission – such funds include the Community Collaborative Fund and the Electric Education Trust, as well as the Telecommunications Consumer Protection Fund. Grants from the Telecommunications Consumer Protection Fund are restricted to funding telecommunications consumer education and protection programs for limited English speaking consumers in California.

³ *California v. Levis Strauss & Co.* (1986) 41 Cal.3d 460 [equitable doctrine of *cy pres*, also called "fluid recovery," invoked to govern distribution of residual monies from class action settlement].

3. Procedural History

On July 3, 2008, UCAN filed a motion recommending how the Commission should dispose of the monies remaining in Funds A and B and attached the balance sheets, as of April 30, 2008, for each fund. By ruling filed August 6, 2008, the Administrative Law Judge (ALJ) directed UCAN to amend its motion to more fully explain its rationale and authorized other parties to file responses. UCAN filed an amended motion on August 29, 2008. No responses were filed. On February 23, 2009, at the ALJ's request, UCAN filed a second amendment to its motion, updating the Fund A and B balances as of January 31, 2009.

4. Discussion

The claims administrator has issued checks to all eligible Group A and Group B customers who could be located and the uncashed checks have begun to escheat to the state in accordance with Code of Civ. Proc. § 1519.5. We are asked now to determine the disposition of the residual balances in Fund A and B, which total approximately \$1.056 million (as of the period ending January 31, 2009).

UCAN's proposed distribution relies on the different purposes of Funds A and B and their different funding sources. According to UCAN the attributes of the unspent monies in both Funds means that they cannot escheat to the state. UCAN proposes distribution to the Telecommunications Consumer Protection Fund. UCAN relies on several prior Commission decisions and argues that no other alternative is readily apparent.

4.1. Source of the Residual Balances from Funds A and B

The restitution process has been quite successful. The settlement established that Fund A would be created with a deposit of approximately \$18.467 million, which represented the total reimbursement for ETF and related equipment charge payments, and interest, due to Group A customers. According to UCAN "AT&T Mobility has issued \$17.4 million in payments -- potentially 94% of the collected funds -- to over 108,000 former Cingular wireless consumers."⁴ As of April 30, 2008, checks worth \$13.322 million had cleared and approximately \$3.268 million was outstanding; as of January 21, 2009, \$13.459 million had cleared and \$170,500 remained outstanding. Thus, over 76% of identified Group A customers have received restitution. Some \$3.757 million due to individual Group A customers who could not be located has escheated to the state and checks still outstanding will continue to escheat unless cashed within statutory time periods.

Fund B was created with deposits of \$1.168 million (an initial deposit of \$1.130 million, the amount accrued on the escrowed penalty up to that time, plus a second deposit of over \$38,000, the additional interest accrued on the escrowed penalty). As of April 30, 2008, checks valued at almost \$318,000 had cleared from Fund B; as of as of January 31, 2009, cleared checks totaled over \$319,000. The amount in Fund B checks outstanding and uncashed, and subject to escheat unless cashed, was slightly more than \$9,000 as of April 30, 2008, and totaled about \$7,500 as of January 31, 2009.

⁴ July 3, 2009 Motion, at 3.

UCAN estimates that the escheat total “will be close to \$4.075 million (the \$3.177 million in uncashed, outstanding checks from Groups A and B, plus the approximately \$796,000 in checks that were mailed but returned with no forwarding address).”⁵

The \$1.056 million now at issue represents monies that were never converted to checks. It also represents the balance remaining after payment of the previously approved, additional intervenor compensation award and supplemental third-party administrator costs. The table below identifies the Fund A and B components of the \$1.056 million.

Monies not converted to checks, as of January 31, 2009	
Interest accrued on initial principal and interest deposit into Fund A	\$ 177,714.56
Fund B unallocated balance, including interest	<u>\$ 879,261.89</u>
TOTAL	\$1,056,976.45

4.2. Escheat and the Commission’s Equitable Authority

Code Civ. Proc. § 1519.5, added to the California Unclaimed Property Law in 1984, governs escheat of unclaimed utility refunds, including the restitution ordered to customer Groups A and B here.⁶ In the case of money, the escheat

⁵ *Id.*

⁶ The Unclaimed Property Law is codified at Code Civ. Proc. § 1500 et seq. Code Civ. Proc. § 1519.5 provides, in pertinent part:

[A]ny sums held by a business association that have been ordered to be refunded by ... the Public Utilities Commission, which have remained unclaimed by the

Footnote continued on next page

process involves transmission of the cash to the state treasurer, along with written notice to the state controller that sets forth the amount of cash transmitted, the name and last known address of the person entitled to it or for whose benefit it is transmitted, and other identifying information the controller requires from the records of the holder of the cash.⁷ Thus, this process is not meant to handle cash which belongs to no one. Moreover, the objectives of the Unclaimed Property Law are:

(1) to protect unknown owners by locating them and restoring their property to them, and (2) to give the state, rather than the holders of the unclaimed property, the benefit of its retention, since experience shows most abandoned property will never be claimed [citations omitted].⁸

The Commission has examined application of Code Civ. Proc. § 1519.5 to various fact patterns where the ultimate question was how to dispose of the remains of a reparations fund. Paragraph 2(a) of the parties' settlement in this docket, which we quote in Section 2 above, cites three major decisions: *TURN v*

owner for more than one year after becoming payable in accordance with the final determination or order providing for the refund ... escheats to this state.

....

[I]t is the intent of the Legislature that nothing in this section shall be construed to change the authority of a court or administrative agency to order equitable remedies.

⁷ See California Jurisprudence 3d (2006), Vol, 1, Abandoned, Lost, and Escheated Property §§ 26-100, Escheat of Property to the State.

⁸ *Id.*, § 56.

Pacific Bell (D.94-04-057),⁹ *In Re GTE California* (D.98-12-084),¹⁰ and *In Re CTS International* (D.00-04-027).¹¹

The *CTS* decision, the most recent of the three, discusses both of the other decisions and summarizes the development of the Commission's interpretation of the statutorily undefined area between mandatory escheat under Code Civ. Proc. § 1519.5 and the Commission's own authority to order equitable remedies, which § 1519.5 expressly recognizes. At the time the *CTS* decision issued, the Commission already had approved establishment of the Telecommunications Consumer Protection Fund. D.99-04-023, which preceded the *CTS* decision in the same docket, had rejected a settlement that proposed distribution to the Telecommunications Consumer Protection Fund of all undeliverable and uncashed reparations checks, relying on the 1995 Supreme Court case *Assembly v*

⁹ *TURN v Pacific Bell*, D.94-04-057, 54 Cal. PUC 2d 122 (1994) [construed Code Civ. Proc. § 1519.5 to permit use of Commission's equitable authority to distribute any unclaimed customer refunds to benefit those most likely to have been injured by the unlawful practices which gave rise to the refund ordered in D.93-05-062 (an earlier decision in the same docket); however, D.97-06-062 (a subsequent decision in that docket), ordered escheatment, stating that use of the residual refunds to provide upfront support for consumer advocacy groups, the distribution the parties proposed, served no equitable function connected with the proceeding].

¹⁰ *In Re GTE California*, D. 98-12-084; 1998 Cal. PUC LEXIS 910 [approved settlement agreement to create the Telecommunications Consumer Protection Fund as a supplemental, equitable remedy for alleged abusive marketing practices resulting in the unauthorized transfer of long-distance service ("slamming") and requiring distribution to it of the residue of a previously ordered reparations fund].

¹¹ *In Re CTS International*, D.00-04-027, 2000 Cal PUC LEXIS 202 (2000) [approved modification of settlement agreement approved in D.99-06-005 (an earlier decision in the same docket), thereby authorizing equitable distribution of nearly \$1 million, the portion of reparations fund that could not be converted to checks because of lack of addresses, to the Telecommunications Consumer Protection Fund].

PUC.¹² D.99-04-023 determined that such checks must escheat.¹³ The subsequent CTS decision addressed a different question:

[W]hether the portion of the reparations fund that was never converted into checks, because of lack of current addresses, can be paid over to the Telecommunications Consumer Protection Fund.¹⁴

The CTS decision determined that “use of this portion of the reparations fund is legally permissible” and that the Telecommunications Consumer Protection Fund was a proper recipient.¹⁵ The CTS decision reasoned:

[T]he allocation of the remainder of the reparations fund to the Telecommunications Consumer Protection Fund serves an important equitable function in this proceeding, because the Fund is designed to provide consumer education about telecommunications matters to limited English speaking and non--English speaking customers, a group that was a major target of CTS illegal marketing practices. In addition, in the Pacific Bell late payment charge case [*TURN v Pacific Bell*], we noted that the majority of customers had received their refunds. Here in contrast, the majority of the customers who filed PIC [presubscribed interexchange carrier]

¹² 12 Cal. 4th 87 (1995) [CPUC lacked authority under rate refund statute, Pub. Util. Code § 435.5, to create an equitable fund for purpose of advancing the State policy of improving telecommunications consumer education and school telecommunications infrastructure since that statute required distribution of rate refunds to present and past customers].

¹³ D.99-04-023 determined, however, that ordering the use of a portion of the uncashed checks drawn on common fund (a reparations fund) to pay an outstanding intervenor compensation award was consistent with the equitable authority retained by the Commission under Code Civ. Proc. § 1519.5, as well as with two controlling Supreme Court decisions: *Consumers Lobby Against Monopolies v PUC (CLAM)*, 25 Cal. 3d 891 (1975) [CPUC possess equitable power to award attorney fees under the common fund doctrine in quasi-judicial reparation actions].

¹⁴ 2000 Cal PUC LEXIS 202 *10.

¹⁵ *Id.*

disputes never received any reparation, making this case more the situation we faced in D.98-12-084 (the GTEC marketing abuse case [*In Re GTE California*]), where the restitution remedies had not been adequate.¹⁶

4.3. Rationale for Distribution to Telecommunications Consumer Protection Fund

Though the facts here are somewhat different than those underlying the *CTS* decision, the significant parallel is that the Fund A and B residue (\$1.056 million as of January 31, 2009) consists of monies never converted to checks. Moreover as discussed above, the monies at issue here cannot really be characterized as refunds belonging to individuals to whom they could be sent if only current addresses were available -- none of the residue represents monies known to be owed to identified persons. UCAN's characterization of the residue is apt -- it consists of "monies designed to disgorge unjust enrichment, not reimburse identifiable customers."¹⁷ Thus, based on the terms of the settlement and on the accountings provided, it does not appear that the residue is subject to escheat.

Specifically, the Fund A portion of the residue consists of interest on the original principal deposit from Cingular. However the principal itself, a sum calculated to match the total in restitution, including interest, due to Group A customers (persons known to have paid ETFs and other unlawful charges), has been distributed as restitution or used to pay additional, reasonable expenses of the third-party administrator per D.08-02-015; the interest subsequently accrued

¹⁶ 2000 Cal PUC LEXIS 202 *14.

¹⁷ August 29, 2009 Amended Motion at 6.

is not needed to pay restitution. There is no dispute that all checks issued on Fund A, which have not been cashed within the requisite statutory period, will escheat.

On the other hand, the Fund B portion of the residue consists of the remainder of the initial deposit (comprising the interest that accrued during the years the penalty was in escrow with the Commission), plus subsequent interest. Equally important, Group B customers (unlike Group A customers) were those with merely a potential, rather than an actual, entitlement to restitution, given the uncertainty about whether Group B customers had paid ETFs, etc., and if so, how much they had paid. For this reason, Group B customers were required to file claims for restitution and no Fund B monies were converted to checks in advance of receipt and approval of those claims.

Thus, we reach essentially the same question that the *CTS* decision raised-- whether the portion of the reparations fund that was never converted into checks can be distributed to the Telecommunications Consumer Protection Fund? The *CTS* decision's affirmative response relied upon the Telecommunications Consumer Protection Fund serving a meaningful equitable function *vis a vis* the harm for which reparations were ordered, in that case, unfair marketing to customers with no- or limited-English proficiency, since the Fund's purpose is to provide grants for programs to educate and protect such consumers. Does such a nexus exist here?

Our decisions in this docket (D.04-09-062 and D.07-03-048) levied not only a \$12.14 million penalty but also ordered reparations for what we found to be widespread, unfair corporate policies and practices related to the marketing of cellular services in this state over a span of several years and the resulting failure to provide just and reasonable service to customers. Among other things:

We concluded that Cingular's advertising and coverage maps misled consumers into signing up for wireless service in areas where the cell phone did not work, and then imposed ETFs when the customer tried to cancel, allowing for no grace period to return the phone.¹⁸

The Commission did not focus on the comparative harm to one language group over another, but rather on the injury to customers at large, since all groups, regardless of language, experienced the harm. Thus, though the evidence included written marketing solicitations in languages other than English, we cannot readily quantify the percentage of the approximately 200,000 Group A and B customers who had no- or limited-English proficiency. Given our broader regulatory experience with this issue, however, we think it highly likely both Groups included some number of such individuals.¹⁹ What we can calculate is that the eventual amount of the residue (\$1.056 million as of January 31, 2009) will be approximately 6% of the total of the amounts paid in restitution (\$13.778 million as of January 31, 2009) plus the amounts subject to escheat (estimated at \$4.075 million). From this perspective, the Fund A and B residue is not large.

Were we to decline to authorize distribution of the residue of Funds A and B to the Telecommunications Consumer Protection Fund, we are unsure what use lawfully could be made of the monies. The ALJ's August 6, 2008 ruling

¹⁸ D.07-03-048 at 2, referencing D.04-09-062, at 67-69.

¹⁹ See for example, D.07-07-043 and D.08-10-016, as modified by D.08-12-029, issued in Rulemaking 07-01-021, *Order Instituting Rulemaking to Address the Needs of Telecommunications Customers Who Have Limited English Proficiency* [adopting, respectively, rules requiring telecommunications carriers that market in a language

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directed UCAN (and invited other parties) to suggest alternative disposition of the residue. UCAN's response, the only one filed, states that transfer to the Telecommunications Consumer Protection Fund is the "only specific recommendation that UCAN can offer the Commission."²⁰ UCAN's response explains:

UCAN is unaware of any other non-profit or state-affiliated NGO that has the track record, the existing network, the familiarity with the nuances of telecommunications sales practices and the ability to efficiently disburse what is a modest amount of money for potential grants.²¹

For these reasons, we authorize distribution of the Fund A and B residue to the Telecommunications Consumer Protection Fund.

5. Comments on Proposed Decision

The proposed decision of the Administrative Law Judge in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on _____, and reply comments were filed on _____ by _____.

6. Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and Jean Vieth is the assigned Administrative Law Judge in this proceeding.

other than English to provide "in-language" support for such services and rules for in-language market trials].

²⁰ August 29, 2008 Amended Motion at 8.

²¹ *Id.* at 8.

Findings of Fact

1. The Motion of the Utility Consumers' Action Network Regarding Distribution of Remaining Funds, filed July 3, 2008, as amended on August 29, 2008 and February 20, 2009, is unopposed.
2. Pursuant to the settlement approved by D.07-03-048, Fund A was created with a deposit of approximately \$18.467 million, which represented the total reimbursement for ETF and related equipment charge payments, and interest, due to Group A customers, consisting of persons and entities who were known to have paid an ETF or equipment charge, or both, to Cingular or an independent Cingular dealer or retailer.
3. Pursuant to the settlement approved by D.07-03-048, Fund B was created with deposits of \$1.168 million, representing the interest accrued on the \$12.41 penalty while it was escrowed with the Commission. The purpose of Fund B was to provide restitution to Group B customers, consisting of persons and entities who may have paid an ETF or a supplemental equipment charge to an independent Cingular dealer or retailer. Because, due to lack of records, it was unknown whether Group B customers had made such payments, and if so, what the amount of those payments had been, Group B customers were required to submit a claim form for restitution.
4. The residue of Funds A and B does not constitute monies that, but for current addresses, could be submitted to persons or entities known to be entitled to restitution.
5. UCAN provides a reasonable estimate, \$4.075 million, of the ultimate amount in uncashed checks drawn on Funds A and B and does not dispute that all such uncashed checks must escheat.

6. The ultimate residue of Funds A and B will not be large – it will not vary significantly from \$1.056 million, the balance as of January 31, 2009, and thus will be approximately 6% of the total of the amounts paid in restitution (\$13.778 million as of January 31, 2009) plus the amounts subject to escheat (estimated at \$4.075 million).

7. Though the evidence received in this docket included written marketing solicitations in languages other than English, we cannot readily quantify the percentage of the approximately 200,000 Group A and B customers who had no- or limited-English proficiency.

8. Apart from the distribution to the Telecommunications Consumer Protection Fund, no other equitable use of the residue of Funds A and B has been proposed.

Conclusions of Law

1. Pursuant to the settlement approved by D.07-03-048, no funds remaining in Funds A and/or B shall be returned to Cingular.

2. All checks drawn on monies in Fund A and Fund B are subject to escheat under Code of Civil Procedure § 1519.5 if uncashed within the time prescribed by law.

3. All monies remaining in Fund A and Fund B, which were not converted to checks to provide restitution to customers, are not subject to escheat under Code of Civil Procedure § 1519.5, given the facts established.

4. The Motion of the Utility Consumers' Action Network Regarding Distribution of Remaining Funds, filed July 3, 2008, as amended on August 29, 2008 and February 20, 2009, should be granted.

O R D E R

IT IS ORDERED that:

1. The *Motion of the Utility Consumers' Action Network Regarding Distribution of Remaining Funds*, filed July 3, 2008, as amended on August 29, 2008 and February 20, 2009, is granted and all monies remaining in Reparations Fund A and Reparations Fund B, which were not converted to checks to provide restitution to customers, and which, therefore, are not subject to escheat under Code of Civil Procedure § 1519.5 if uncashed within the time prescribed by law, shall be distributed to the Telecommunications Consumer Protection Fund.
2. This proceeding is closed.

This order is effective today.

Dated _____, at San Francisco, California.

INFORMATION REGARDING SERVICE

I have provided notification of filing to the electronic mail addresses on the attached service list.

Upon confirmation of this document's acceptance for filing, I will cause a Notice of Availability of the filed document to be served upon the service list to this proceeding by U.S. mail. The service list I will use to serve the Notice of Availability of the filed document is current as of today's date.

Dated April 7, 2009, at San Francisco, California.

/s/ TERESITA C. GALLARDO
Teresita C. Gallardo