

EXHIBIT 1

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

The Utility Consumers' Action Network
(UCAN), Complainant,

vs.

Pacific Bell Telephone Company (U-1001-
C), AOL-Time Warner Inc., Does 1-100,
Defendants.

C.02-07-044

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into between Pacific Bell Telephone Company ("SBC California") and the Utility Consumer Action Network ("UCAN") together referred to as "Parties."

WHEREAS, on July 24, 2002, UCAN filed a formal Complaint against SBC California with the California Public Utilities Commission ("Commission"), Case No. C.02-07-044 regarding billings issues for toll charge calls incurred by SBC California customers when attempting to dial an Internet Service Provider ("ISP").

WHEREAS, the Parties wish to resolve the Complaint to their mutual satisfaction, it is hereby agreed by and between the Parties that the Complaint, and all causes of action raised therein be settled and compromised pursuant to the terms of this Settlement Agreement as set forth below:

1. The effective date of this Settlement Agreement shall be the date of the final signature by either party.

2. As consideration for this agreement, SBC California has implemented a system to provide early warning to SBC California customers who have incurred more than \$50 of toll calls to America Online ("AOL") in a calendar month.

Customers will be notified that they have exceeded \$50 in toll calls to AOL as soon as practically possible. The system implemented by SBC California is described below:

- a. SBC California will monitor its customer billing information for toll calls to AOL access lines. The monitoring process involves several steps.
 - i. Step 1: The monitoring process begins with the collection of data at a central data warehouse. Data is received by the warehouse at the end of each billing cycle, which approximates every 1 ½ days.
 - ii. Step 2: Once the information is received and processed by the warehouse, a program is run which makes a database query using AOL's access numbers as the input. The software provides a response listing all SBC California telephone numbers that have exceeded \$50 in toll calls to one of AOL numbers since the beginning of the calendar month. The software then prepares a report listing all originating telephone numbers that: 1) exceeded \$50 in toll calls to AOL access numbers since the beginning of the calendar month; and 2) were not included in any previous report generated since the beginning of the calendar month. The report includes the telephone number, billing address and billing name associated with each telephone number included in the report.

- iii. Step 3: The report is then electronically transmitted to SBC California.
- iv. Step 4: Once received and checked, SBC California staff transmits an electronic file to a letter printer/envelope stuffing machine.
- v. Step 5: The resulting letters are then mailed to customers.

b. Timing.

- i. Each step in the process causes a delay in the ultimate mailing of the letter.
 - 1. The first delay is between the moment the customer exceeds \$50 in charges and the receipt of the data reflecting that fact by the data warehouse. Because the data is received by the warehouse approximately every 1 ½ days, the delay can be as long as 2 days.
 - 2. The second delay is between the time the warehouse receives the data and the time the completed report is received by SBC California. The data received to date indicates that this delay is averaging 1-2 days.
 - 3. The final delay is between the date SBC California receives the report and the date the letter is mailed. The data received to date indicates that the letter is usually mailed out on the same day, but on some occasions has taken as much as 3 days to be mailed. SBC California is in the process of automating this step to minimize any delay.

c. Miscellaneous.

i. SBC California will update the list of AOL access numbers at least quarterly. This list will be obtained either from the AOL website, or directly from AOL.

d. For each customer line identified in the process described above, SBC California will send a one time notification by letter alerting the customer that charges in excess of \$50 of ISP toll charges have been incurred on the customer's line for that month. This notification alert will request that the customer confirm that the access number being used to access AOL is a local number. SBC California will use best efforts to generate the alert letter within seven days of SBC California's receipt of a report showing the customer exceeded \$50 in charges as described above.

3. In further consideration of the execution of this Settlement Agreement by UCAN, SBC California shall:

- a. Cooperate with UCAN in case C.02-07-044 by responding to a valid subpoena or data request issued by UCAN requesting information gathered during the implementation or duration of the program described in paragraph (2) above. The extent of this cooperation shall be determined by mutual agreement of the parties.
- b. Make a witness available pursuant to a valid CPUC subpoena to provide testimony to the Commission in C.02-07-044 verifying and describing the information created pursuant to paragraph 3 (a) above.

4. SBC California retains the right to draft or modify the language of the notification in consultation with UCAN.
5. UCAN believes that SBC California's actions as described in Paragraph 2 above are reasonably calculated to prevent instances of SBC California customers incurring toll charges to access AOL's dial-up Internet services. UCAN acknowledges, however, that SBC California's actions do not guarantee that all such instances of toll charges will be prevented, and that some degree of uncertainty as to the effectiveness of this prospective remedy is inherent in the process. Therefore, UCAN acknowledges and agrees that this Settlement Agreement shall be binding and effective, notwithstanding the ultimate degree of success or effectiveness of the above described program that SBC California has agreed to implement.
6. In no event shall this Settlement Agreement require SBC California to continue the customer notifications described in Paragraph 2 for a period of time longer than 18 months following the effective date of this Settlement Agreement. SBC California may discontinue the program less than 18 months from the effective date of this Settlement Agreement only through mutual agreement with UCAN.
7. The parties will request Commission approval of the settlement pursuant to Rule 51 of the Commission's Rules of Practice and Procedure, beginning this process as soon as possible.
8. In further consideration of the execution of this Settlement Agreement by SBC California, UCAN shall:
 - a. Immediately withdraw its Motion for Sanctions.

- b. Institute no legal action against SBC California for toll charges incurred by customers using dial-up access to ISPs other than AOL.
9. UCAN acknowledges that SBC California may seek to limit or oppose any request for intervenor compensation UCAN may file in this action and that the propriety of any compensation award is to be determined by the ALJ and Commission pursuant to established rules.
10. UCAN hereby releases and forever discharges SBC California, its parent companies, affiliates, subsidiaries, officers, directors, employees and agents, including attorneys, and each of them, from any and all claims, actions, causes of action, suits, debts, sums of money, controversies, damages and demands whatsoever, in law and equity, which they have or may have for, upon, by reason of, or in any way connected with the facts, circumstances, events and related issues that are the subject of the Complaint.
11. UCAN acknowledges that this Settlement Agreement is a compromise of a doubtful and disputed claim, and that said Settlement Agreement forecloses, compromises, settles and resolves all issues involved in the Complaint, binding the Parties, their affiliates, subsidiaries, successors, assigns, directors, shareholders, officers, employees and agents.
12. UCAN is aware that it may discover claims or facts in addition to or different from those it now knows or believes to be true with respect to the matters related herein. Nevertheless, it is the intention of the Parties to fully, finally, and forever settle and release such matters.

13. UCAN acknowledges that it has legal counsel and is familiar with Section 1542 of the California Civil Code, which reads as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

14. UCAN is aware that in connection with the claims it has brought in the Complaint, there may be damages, loss, or otherwise additional cost and expense that is presently unknown or unsuspected, and that such damage, loss or cost and expense as may have been sustained may give rise to additional damage, loss, cost and expense in the future. Nevertheless, UCAN acknowledges that this Settlement Agreement has been negotiated and agreed upon in light of this situation and UCAN expressly waives any and all rights which it may have under Section 1542 of the California Civil Code, or any other state or federal statute or common law principle of similar effect.
15. Except as to such rights which may be created by this Settlement Agreement, UCAN agrees never to commence, aid in any way, prosecute or cause to permit to be commenced or prosecuted against SBC California, any action or other proceeding based upon any claims which are the subject of this Settlement Agreement.
16. The Parties agree that this Settlement Agreement shall be deemed breached and a cause of action accrued thereon immediately upon the commencement of any action contrary to this Settlement Agreement, and in any such action this Settlement Agreement may be pleaded both as a defense and as a counter or

cross-claim in such action. The prevailing party to such an action shall be entitled to reasonable attorney's fees and costs as determined by the Court taking jurisdiction over such an action.

17. UCAN agrees that SBC California's execution of this Settlement Agreement does not in any way constitute an admission of liability with respect to any claim raised in or related to the Complaint.
18. The Parties represent that the person executing this Settlement Agreement has been duly authorized to execute this Settlement Agreement on behalf of that party.
19. It is further understood that the consideration recited in this Settlement Agreement is the sole and only consideration of this Settlement Agreement, and no representations, promises, or inducements have been made by SBC California, or any director, officer, employee, attorney, or agent thereof, other than as they appear in this Settlement Agreement.

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20. This Settlement Agreement constitutes the entire agreement between the Parties and shall not be modified except in writing signed by the Parties. This Settlement Agreement is governed by the laws of the State of California.
21. This Settlement Agreement may be signed in counterparts and a signature transmitted by facsimile shall be regarded as an original signature.

SBC California

Utility Consumer Action Network

By: Cynthia D. Marshall
Cynthia Marshall

By: _____
Michael Shames

Dated: 5-10-04

Dated: _____

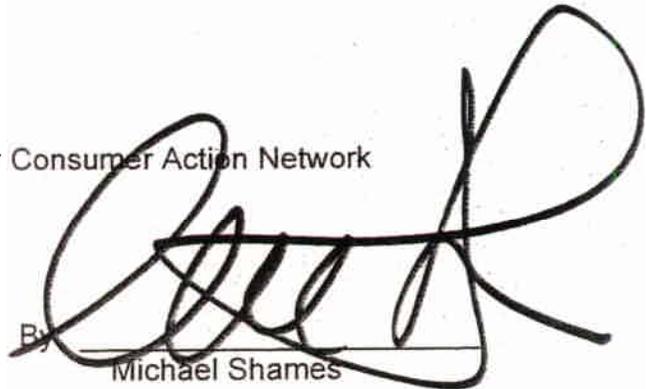
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21. This Settlement Agreement may be signed in counterparts and a signature transmitted by facsimile shall be regarded as an original signature.

SBC California

By: _____
Cynthia Marshall

Dated: _____

Utility Consumer Action Network

By:  _____
Michael Shames

Dated: 5-10-2004

(END OF EXHIBIT 1)

April 26, 2004

2	
Proceeding	C.02-07-044
Sponsor/Witness	SBC
Date Ident.	4/27/04 Recd. 4/27/04
Glen Walker Administrative Law Judge	

«BillName»
 «Addr3» «Addr4»
 «City» «ST» «Zip»-«Zip4»

Re: «FromTN» (DTN) – IMPORTANT ADVISORY NOTICE! You are incurring toll charges when accessing the Internet from this number.

Dear «BillName»:

SBC sends you this courtesy notice to advise you that the access number being used to connect to your Internet Service Provider ("ISP") is a toll number from your location and the related toll charges for calls to that number have exceeded \$50. The toll charges you have incurred for accessing your ISP may have already been itemized on your current bill or will appear on future SBC bills. To minimize cost to you, it is critical that you act immediately to stop your computer from making toll calls.

Although ISPs provide lists of access numbers for customers to use to connect with their services, these lists are often arranged in alphabetical order by area code and it is sometimes not readily apparent if an access number is a local or toll number from a customer's location. Because some customers use these access numbers frequently and for sometimes lengthy Internet connections, it is important to carefully select access numbers and then verify with SBC that they are indeed local numbers from your location before using them.

To avoid additional toll charges, please check the ISP numbers stored in your computer and change them to local, non-toll telephone numbers before connecting with your ISP. You can quickly verify if an access number is local by dialing "0" and providing the Operator with the number you plan to call and the number you will be calling from. SBC does not charge for this service. (Please be sure to check all numbers stored in your computer since most ISP software automatically dials alternate numbers if the primary access number is busy.) If you encounter difficulty changing your modem or dial up network to local access numbers, please contact your ISP for assistance.

Thank you for using SBC.

(END OF EXHIBIT 2)

IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES that the Action, and all claims and causes of action that are or could have been raised therein, are settled and compromised pursuant to the terms of this Settlement Agreement, as set forth below:

1. When the Commission enters an order approving this Agreement (the "Approval Date"), the Parties agree that this action is dismissed, without prejudice, so as to permit the Parties to perform their respective obligations under this Settlement Agreement without pending litigation. If this Settlement Agreement is not approved in any respect, such that the Action is not dismissed in its entirety without prejudice, then this Settlement Agreement shall immediately become null and void.

2. Beginning no later than ninety (90) days after the Approval Date, AOL will include the following language in a welcoming e-mail to new AOL members:

NOTE: AOL strongly recommends that you contact your local phone company to confirm that any access number(s) you have chosen for dial up access to AOL will not cause toll or long distance charges to appear on your phone bill. Simply because an access number has the same area code or city as your dial-up location does not necessarily mean that it is in your local calling area. The access number(s) that you have selected may not correspond to your local phone company's billing designations and need to be carefully selected. If you do not contact your local phone company, you may unnecessarily incur phone charges when dialing an AOL access number. Only your local phone company can provide this information.

3. Within ninety (90) days after the Approval Date AOL will revise the language in the host based sections of AOL's online service that are available to all AOL members, and thereafter in the next version of AOL's client software, so that portions relating to the potential for incurring toll charges read as follows:

NOTE: AOL strongly recommends that you contact your local phone company to confirm that any access number(s) you choose for dial up access to AOL will not cause toll or long distance charges to appear on your phone bill. Simply because an access number has the same area code or city as your dial-up location does not

necessarily mean that it is in your local calling area. The access number(s) that you select may not correspond to your local phone company's billing designations and need to be carefully selected and verified. If you do not contact your local phone company, you may unnecessarily incur phone charges when dialing an AOL access number. Only your local phone company can provide this information.

4. Within fifteen (15) days after the Approval Date, AOL will notify SBC California ("SBC") of all AOL access numbers in California that are available for use by AOL as of the date of the notice. The notice will be sent electronically to the email address of SBC's counsel of record in this proceeding, Paul Strange (strange@strangelaw.net), or to another person properly designated by SBC in writing to AOL. Thereafter, AOL will send additional, updated electronic notices to SBC's designee on the first (1st) day of each calendar month until December 1, 2005. If the due date for AOL's electronic notice falls on a weekend or holiday, then the notice shall be sent to SBC's designee on the next following business day.

5. AOL will use its best efforts to develop and implement in a future version of its client software a six-digit access number identifier system no later than December 31, 2005, that will require an AOL member to enter the member's area code and local exchange during the access number selection process, and then use that information to sort potential access numbers (a "6-Digit System"). After the 6-Digit System has been implemented in a future version of AOL's client software, AOL will use its best efforts to provide a 6-Digit System in an electronic update to the client software to existing members who, at the time of its introduction, are using the AOL 9.0 version of AOL's client software, but such an update will be made only if AOL determines in good faith that it is technically feasible to do so without unduly degrading service to existing members, and the failure to provide such an update shall not in any event trigger the payment set forth in paragraph 5.c below.

a. If AOL decides not to implement a 6-Digit System on or before December 31, 2005, then AOL shall promptly inform UCAN and the Commission in writing of that decision.

b. Within thirty (30) days after the Approval Date, or on July 1, 2004, whichever comes later, AOL shall send a written report to UCAN and the Commission, addressed to the Director of the Commission's Telecommunications Division, and copied to the Director of the Commission's Consumer Protection and Safety Division ("CPSD"), describing AOL's efforts to develop and implement a 6-Digit System by December 31, 2005. Thereafter, commencing on October 1, 2004, and continuing until October 1, 2005, AOL will send quarterly update reports to UCAN and the Commission about AOL's progress. The Commission, in its discretion, may request such further information from AOL about its progress, telephonically, in writing, or in hearings, until December 31, 2005.

c. If AOL has not implemented a 6-Digit System by December 31, 2005, or if it decides before then not to implement such a System (as provided in section 5.a above), then AOL agrees to pay the sum of Seventy-Five Thousand and no/100 dollars (\$75,000.00) to the Commission's designee to develop a consumer education campaign to help consumers avoid incurring toll and long distance charges while accessing the Internet.

d. For purposes of paragraphs 5 and 10, the term "implement" means to include a 6-Digit System in a publicly available version of AOL's client software.

6. Between the Approval Date and December 31, 2005 (or the date that AOL implements a 6-Digit System, whichever comes first), AOL will cooperate with a joint effort by

UCAN and SBC, if any, to develop a consumer education campaign designed to help consumers avoid incurring toll and long distance charges while accessing the Internet, which may include consumer education information distributed via Internet web pages. The purpose of the campaign would be to foster a greater understanding among consumers of the details and limitations of individual telephone calling plans, including area code changes and permissive dialing periods, and the selection of numbers for accessing the Internet.

7. AOL's execution of this Settlement Agreement does not in any way constitute an admission of liability with respect to any claim raised in or related to the Complaint, and nothing in this Settlement Agreement may be taken as or construed to be an admission by AOL as evidence supporting any of the allegations raised by UCAN, any matter of fact or law, any violation of law, or any other liability or wrongdoing whatsoever, including without limitation an admission by AOL that any of its business practices are or have been unfair or deceptive, violate or have violated any of the statutes of the State of California, all of which AOL expressly denies.

8. AOL, by executing this Settlement Agreement, has not waived, and has expressly preserved, its objection to the Commission's exercise of jurisdiction over AOL in this Action. Subject to and without waiving any of its jurisdictional objections, AOL is willing to submit to the Commission's jurisdiction for the sole and limited purposes of having the Commission approve this Settlement Agreement and enforce its terms. If the Commission seeks to exercise jurisdiction over AOL in this Action for any other purpose, including but not limited to ordering AOL to pay intervenor compensation or any other form of compensation in connection with the Action, then AOL may assert its jurisdictional objections and seek all appropriate relief.

9. UCAN agrees that AOL's actions as described in Paragraphs 2-5 above are reasonably calculated to reduce instances of AOL members incurring toll charges to access AOL's

online services. UCAN acknowledges, however, that AOL's actions cannot guarantee that all such instances of toll charges will be prevented even with the implementation of a 6-Digit System, and that some degree of uncertainty as to the effectiveness of this prospective remedy is inherent in the process. Therefore, UCAN acknowledges and agrees that this Settlement Agreement shall be binding and effective, notwithstanding the ultimate degree of success or effectiveness of the above described actions that AOL has agreed to take.

10. If AOL implements a 6-Digit System by December 31, 2005, then UCAN will move for the dismissal of the Action with prejudice within ten (10) days after receiving written notice of the date of implementation from AOL. Upon UCAN's receipt of this written notice from AOL that it has implemented a 6-Digit System, UCAN fully releases and forever discharges AOL, its parent companies, affiliates, subsidiaries, officers, directors, employees and agents, including attorneys, and each of them, from any and all claims, actions, causes of action, suits, debts, sums of money, controversies, damages and demands whatsoever, in law and equity, which it now has or may in the future have for, upon, by reason of, or in any way connected with the facts, circumstances, events and related issues that are the subject of the Complaint.

11. UCAN acknowledges that it has legal counsel and is familiar with Section 1542 of the California Civil Code, which reads as follows: "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor." UCAN is aware that in connection with the claims it has brought in the Complaint, there may be damages, loss, or otherwise additional costs and expenses that is presently unknown or unsuspected, and that such damage, loss or cost and expense as may have been sustained may give rise to additional damage, loss, cost and expense in the future. Nevertheless, UCAN acknowledges

that this Settlement Agreement has been negotiated and agreed upon in light of this situation, and UCAN expressly waives any and all rights which it may have under Section 1542 of the California Civil Code, or any other state or federal statute or common law principle of similar effect.

12. Except as to such rights which may be created or expressly preserved by this Settlement Agreement, UCAN agrees never to commence, aid in any way, prosecute or cause to be commenced or prosecuted against AOL, its parent companies, affiliates, subsidiaries, officers, directors, employees and agents, including attorneys, and each of them, any action or other proceeding based upon any claims which are involved in or related to the subject of the Action or this Settlement Agreement. The Parties understand, however, that UCAN will comply with subpoenas and other requests for information through legal process as required by the applicable laws.

13. The Parties agree that this Settlement Agreement shall be deemed breached and a cause of action accrued thereon immediately upon the commencement of any action contrary to this Settlement Agreement, and in any such action this Settlement Agreement may be pleaded both as a defense and as a counter or cross-claim in such action.

14. UCAN will notify AOL, and will provide AOL with a written copy, of any press release or other written statement by UCAN relating to this Settlement Agreement at least 24 business day hours before UCAN issues the press release or statement.

15. In further consideration of the execution of this Settlement Agreement by AOL, UCAN shall immediately withdraw its Motion for Sanctions against AOL.

16. UCAN acknowledges that AOL may seek to limit or oppose any request for intervenor compensation that UCAN may file in this action, and that the propriety of any compensation award is to be determined by the ALJ and Commission pursuant to established rules.

Should the Commission order AOL to pay any compensation award, UCAN acknowledges that the order or the payment of such an award does not constitute an admission of jurisdiction.

17. The Parties represent that the person executing this Settlement Agreement has been duly authorized to execute this Settlement Agreement on behalf of that party.

18. All Notices required by this Settlement Agreement will be in writing, unless otherwise specified herein, and will either be delivered in person or sent by overnight delivery service with proof of delivery to the Parties as follows:

To UCAN:
Michael Shames
UCAN Executive Director
3100 5th Avenue.
Suite B
San Diego, CA 92103

To AOL:
Curtis P. Lu
Senior Vice President and Deputy General Counsel
America Online, Inc.
22000 AOL Way
Dulles, Virginia 20166

A Party may change the Notice address by written notification to the other Party.

19. It is further understood that the consideration recited in this Settlement Agreement is the sole and only consideration of this Settlement Agreement, and no representations, promises, or inducements have been made by AOL, or any director, officer, employee, attorney, or agent thereof, other than as they appear in this Settlement Agreement.

20. This Settlement Agreement constitutes the entire agreement between the Parties and shall not be modified except in writing signed by the Parties. This Settlement Agreement is governed by the laws of the State of California.

21. This Settlement Agreement may be signed in counterparts and a signature transmitted by facsimile shall be regarded as an original signature.

THE UTILITY CONSUMERS' ACTION
NETWORK

AMERICA ONLINE, INC.

By: W. Lee Biddle

By: Curtis P. Lu

Name: Lee Biddle

Name: Curtis P. Lu

Title: General Counsel

Title: Senior Vice-President

Date: May 20, 2004

Date: May 17, 2004

(END OF EXHIBIT 3)