

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the fitness of the officers, directors, owners and affiliates of Clear World Communications Corporation, U-6039, including individual officers, directors and shareholders James, Michael, and Joseph Mancuso, and into the conduct of other utilities, entities, or individuals (including Christopher Mancuso) who or that may have facilitated the Mancusos' apparent unlicensed sale of telecommunications services.

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**ORDER INSTITUTING INVESTIGATION INTO THE FITNESS OF THE
OFFICERS, DIRECTORS, OWNERS, AND AFFILIATES OF CLEAR WORLD
COMMUNICATIONS CORPORATION, U-6039.**

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I. INTRODUCTION

By this Order Instituting Investigation, the Commission institutes an investigation into the fitness of Clear World Communications Corporation, U-6039 (“Clear World”) to serve as a telecommunications provider in California, and into the actions of its owners, Michael, James and Joseph Mancuso, in establishing and operating Clear World and related entities in California.

We take this action based on new evidence gathered by the Commission’s Consumer Protection and Safety Division and Legal Enforcement Group (Staff), indicating that Clear World, its principals, predecessor corporations and affiliates have engaged in a persistent pattern of misrepresentation to, and outright deception of, its customers and this Commission. Staff has submitted evidence showing that Clear World and the Mancusos: (1) operated two telephone utilities – Discount Long Distance (DLD) and Worldwide Telecommunications Corporation (“Worldwide”) -- without a Certificate of Public Convenience and Necessity (CPCN); (2) misrepresented facts in sworn testimony to this Commission regarding such operations; (3) violated Section 854 in the sale of DLD assets to Clear World without approval by this Commission; (4) failed to disclose -- in Applications to this Commission and in a Commission-ordered audit¹ -- the significant participation of brother Christopher Mancuso (a convicted felon) in the operation of DLD, Clear World, and related entities; (5) may have underpaid regulatory fees and public program surcharges; (6) did not produce documents requested by Staff (which were later obtained from third parties) or fully cooperate in Staff’s investigation; and (7) slammed and misrepresented the nature and type of services offered to California customers on an ongoing and widespread basis.

The alleged actions of Clear World and the Mancusos appear to have harmed many of its customers, the competitive marketplace, and the regulatory process, and call into question the fitness of Clear World’s management.

¹Staff alleges that Clear World did not provide the “complete, comprehensive audit of any and all business and consulting relationships” between Clear World and Christopher Mancuso as ordered in D.03-02-066.

II. FACTUAL BACKGROUND

The immediate impetus for this Investigation was our determination in D.03-02-066 that CPSD should review all facts bearing on the fitness of Clear World and its management. The fitness of the Mancusos and their predecessor corporations has been of concern to the Commission for a number of years. Our Investigation 97-09-001 of slamming allegations against National Telephone and Communications (NTC) resulted in a stipulated order effectively banning Christopher Mancuso from further participation in NTC.² In February 1999, the Commission's Consumer Services Division (CSD) wrote to the Mancusos informing them that another of their companies, Worldwide, was illegally operating without a CPCN.³ D.03-02-066 described facts indicating additional unlicensed telecommunications sales and other illegal acts by the Mancusos, and cast doubt on their fitness to operate Clear World as a telecommunications utility.

Staff presents newly discovered evidence in three Staff Reports addressing general fitness issues (hereinafter SR I), slamming issues (SR II), and surcharge, financial, and corporate documentation (SR III). Those Staff Reports address two underlying and interrelated problems: (1) an alleged scheme of deceit and artifice to hide the *de facto* operation of at least two unlicensed interexchange carriers by the Mancusos; and (2) slamming and marketing abuse perpetrated by Clear World and other Mancuso entities.

A. Clear World

As described in the Staff Reports, Clear World Communications Corporation (U-6039) is a reseller of long-distance telephone service in California and nationally. Staff informs us that the largest segment of Clear World's customers is Latino

² See D.98-02-029, OP 1; see also D.03-02-066, Finding of Fact 19.

³ D.03-02-066, Finding of Fact 6.

surnamed, and many appear not to speak English as a first language, a population we have previously found to be vulnerable to aggressive sales practices.⁴ SR II at § I(B). Staff also reports that Clear World has a smaller number of Vietnamese customers, along with some “direct billed” business accounts. SR I at § IV(A). Clear World’s President Michael Mancuso was unable to accurately state the number of Clear World customers, but it appears to have been between 500,000 and 800,000 at the time of the 2002 hearings. HT⁵ at 415-19. Residential sales have been made from telemarketing centers located in Fresno, Santa Ana, Los Angeles, Riverside, and Downey. SR I at §IV(A). Staff asserts that Clear World’s “Income from Operations” has grown from approximately \$1.5 million/month at the time it acquired DLD (e.g., mid-1998) to \$3.7 million/month in more recent years. Staff Report III at Table 5.

B. The Mancusos

Clear World is “nominally”⁶ owned by Michael, James and Joseph Mancuso, and operated by Michael and James. In addition, from 1999-2002 Clear World made at least \$5 million in payments to a third brother, Christopher Mancuso, as a “consultant,” although Clear World was unable to present a contract or invoices to document these payments. D.03-02-066, Findings of Fact 103-106. As used herein, “Mancusos” will refer to the three brothers and their father.

As the Commission wrote in D.03-02-066, “examination of the fitness of Clear World to provide telecommunications services in California necessitates a look at the actions of these men [the Mancusos] in connection with this application, and before.” *Mimeo* at 6. Staff contends that the Mancusos have acted collectively, that Michael, James and Joseph have functioned as *de facto* agents for Christopher Mancuso and for

⁴ D.97-05-089, *Investigation of ... Communications TeleSystems International (CTS)*, 72 CPUC 2d 621, 633 (citing non-English speakers’ “lack of familiarity with the aggressively competitive long distance telephone market”).

⁵ “HT” refers to the Commission’s August 2002 hearing transcript in Application 01-09-040.

⁶ D.03-02-066 found that the ownership shares are 90% for Michael, and 5% for his brother and father, based on the Mancusos’ filings with this Commission. *Cf.* Finding of Fact 1. Staff uses the word “nominal” in light of what it sees as a pattern of Christopher Mancuso placing ownership of companies he effectively controls in the hands of his father or other family members. SR I at § III(D).

each other, and that each aided and abetted a common enterprise of operating one or more unlicensed telecommunications utilities, of hiding Christopher Mancuso's participation in those utilities, and of using misleading if not fraudulent sales practices in acquiring new customers, in violation of the legal requirements applicable to such utilities. SR I at § III; SR II; SR III at § VII and Appendix A.

1. James Mancuso

James Mancuso is director, secretary, general counsel, and 5% owner of Clear World. He has also been agent, counsel, and/or incorporator for other entities apparently operated or controlled by Christopher Mancuso, including DLD, American Electronics Corporation, Worldwide Telecommunications Corporation (Worldwide), Communications Consulting Incorporated (CCI), International Telecommunications Consulting LLC (ITC), World Technology Marketing, Inc. (World Tech), and Mancuso LLC. See SR III at § VII, App. A, Atts. R-BB. Staff reports new evidence that James was involved in DLD's unlicensed sale of telecommunications services. SR I at §§ III(B), VII, Att. 140.

2. Michael Mancuso

Michael Mancuso is president, chief executive officer, treasurer, and 90% owner of Clear World. During the 1990s, he was involved with entities associated with Christopher Mancuso, and worked for National Telephone Communications (NTC), Amerivision, and DLD (which he managed on a daily basis). D.03-02-066, Finding 30. Staff presents new evidence of Michael's involvement in the unlicensed sale of long distance service by DLD and Worldwide. SR I at § IV(B).

3. Joseph Mancuso

Joseph Mancuso is the father of Christopher, James and Michael Mancuso. He is also a 5% owner of Clear World, as well as the nominal 100% owner of both Worldwide and Clear World's predecessor entity, American Electronics Corporation dba DLD (AEC/DLD), (see further discussion below). Our Decision 03-02-066 noted that, although Joseph was custodian of records for Worldwide, he was allegedly "so

ill that he could not understand or answer questions and could not be deposed in these proceedings.” Finding of Fact 44.

4. Christopher Mancuso

In Decision 03-02-066, the Commission found that “Christopher Mancuso has demonstrated that he is not fit to be involved in any way with any regulated utility,” and barred him from further participation in Clear World. *Mimeo* at 28.⁷ His long history as founder of NTC, consultant to Amerivision, “principal” of DLD, and incorporator of Worldwide – all resellers of WorldCom service – is alluded to in D.03-02-066, and described in the accompanying Staff Report I, which portrays Christopher as the architect of the complex relationships among these entities. *Id.* at 6-10; SR I at §VI.

Staff alleges that Christopher Mancuso remains material because of his role in the unlicensed utilities DLD⁸ and Worldwide, *inter alia*, enterprises in which Clear World principals James and Michael Mancuso were also involved and about which they have allegedly testified falsely under oath. In addition, he was the recipient of at least \$5 million in undocumented “consulting fees” from Clear World.

Staff Report I demonstrates that Christopher Mancuso first became involved in the telecommunications industry in the late 1980’s, and since that time has used extraordinary efforts to conceal his involvement in various telecommunications utilities. As Christopher himself has said in regard to NTC: “[T]he investors ... didn’t want me to be an officer or director because we’d have to disclose the fact that

⁷ The Decision goes on to state that “he should not be an officer, owner, director or employee of any regulated utility, or of any provider of services to a regulated utility, including as a consultant.” Ordering paragraph 2 of D.03-02-066, however, does not fully implement this resolve, barring Christopher Mancuso only from direct or indirect participation in Clear World. In order to effectuate D.03-02-066’s intent, and assure that he not have such functions in the future with any regulated utility, we make Christopher Mancuso a respondent hereto and order him to show cause why that should not occur. See Ordering Paragraph 7 below.

⁸ Staff alleges that Christopher appears to have run much of the DLD business, and received the proceeds of same, through his company Communication Consulting Inc. (CCI). See, e.g. SR I at § XII(A), Atts. 141-42. As discussed below, Staff presents evidence that the Mancusos’ business model and operations remained consistent between DLD and Clear World.

I had a felony conviction.” CMT⁹ 103:1-3. Decision 03-02-066 recites how Christopher admitted resorting to “creative” means, ten years later, to hide his participation in another (planned) utility from the Commission¹⁰ at approximately the same time as Commission Decision 98-02-029 effectively banned him from further participation in NTC.

Christopher Mancuso failed to appear as a witness in A.01-09-040 despite the Assigned Administrative Law Judge’s request that he do so, after he had “avoided a subpoena [served] by CPSD.” D.03-02-066, Finding of Fact 116. Clear World – despite family and financial ties (including paying Christopher at least \$5 million in a little over two years) – could not or would not procure his testimony.¹¹

C. The Mancusos’ Four Applications to this Commission.

Over the last fifteen years, Mancuso family members or their agents have filed three Applications to this Commission for authority to provide telephone utility service, and are alleged to have caused a fourth Application to be filed on their behalf. Chronologically, those applications are: (1) A.88-12-007, filed by NTC seeking authority to operate as a reseller of interLATA service in California; (2) A.98-07-012, filed by Clear World seeking authority to operate as a reseller of inter- and intra-LATA service in California; (3) A.99-04-042, filed by Worldwide seeking authority to operate as a reseller of inter- and intra-LATA service in California; and (4) A.01-09-040 filed by Clear World seeking authority to operate as a competitive local exchange carrier in California.

⁹ “CMT” refers to the Christopher Mancuso Transcript, a 1998 deposition transcript entered into evidence in A.01-09-040 as Exhibit CPSD 19. References in this OII to “Exhibits” refer to record evidence in A.01-09-040.

¹⁰ *Mimeo* at 7, Finding of Fact 20.

¹¹ Findings of Fact 116-17. Lacking Christopher Mancuso’s live testimony, the Commission turned to statements taken from a November 10, 1998 video-taped deposition of Christopher Mancuso in connection with Case No. 797154 before the Orange County Superior Court, a lawsuit filed by NTC against Ballah, Mancuso, WorldTech, et al. *Id.*; see also Exhibit CPSD 19 (CMT).

Application 01-09-040 triggered an investigation by CPSD into Clear World's high slamming numbers, the Mancusos' other telephone activities in California, and Clear World's relationship with the Mancusos' brother Christopher – a felon – and resulted in Commission Decision 03-02-066, denying Application 01-09-040. The facts uncovered in D.03-02-066 lead us now to consider revoking Clear World's CPCN to offer inter- and intra-LATA service, granted in Commission Decision 98-08-056.

III. PROCEDURAL BACKGROUND AND SUMMARY OF STAFF'S REVIEW.

Decision 03-02-066 denied Clear World's Application 01-09-040 for a CPCN to operate as a provider of resold local exchange telecommunications service within the State of California. The Commission concluded that "Clear World is not fit to provide local exchange services." *Id.*, Conclusion of Law 24 and Ordering Par. 1.

In D.03-02-066 (Ordering Paragraph 6), we directed that the Consumer Protection and Safety Division (CPSD) and Legal Division:

...shall review the record in this proceeding and any related matters bearing upon the fitness of Clear World, its officers, directors, owners and affiliates to operate under a Certificate of Public Convenience and Necessity and shall recommend whether an Order Instituting an Investigation (OII), pursuant to Rule 14 and Public Utilities Code §1701 should be issued by the Commission.

Decision 03-02-066 made a number of findings and conclusions about the Mancusos, on which the denial of Clear World's Application 01-09-040 was based, including but not limited to the following acts which Staff claims should remain relevant to our fitness analysis:

- * submission of a false statement to the Commission;¹²
- * submission of an altered document to the Commission;¹³

¹² D.03-02-066, Conclusion of Law 3

¹³ *Id.*, Conclusion of Law 13.

- * concealment of affiliate Worldwide's true address;¹⁴
- * failure to make Worldwide's records available to the Commission, in violation of D.02-06-045;¹⁵
- * misleading and slamming of identified Clear World customers;¹⁶
- * failure to keep Clear World's books and records in accordance with the Uniform System of Accounts (USOA) in violation of D.98-08-056;¹⁷
- * failure to fully cooperate with CPSD in its investigation;¹⁸ and
- * violation of Rule 7.1 of the Commission's Rules of Practice and Procedure (violation of *ex parte* rules).¹⁹

D.03-02-066 left several questions relating to the Mancusos' fitness undeveloped or unanswered in that proceeding, including:

1. Did the Mancusos use DLD to engage in the unauthorized sale of telephone service without obtaining a CPCN from the Commission?²⁰
2. Did the Mancusos sell long-distance services through Worldwide, again without a CPCN (and did Clear World aid and abet such sales)?²¹
3. What was the extent of slamming engaged in by Clear World? (Slamming is the unauthorized transfer of presubscribed telephone customers from one carrier to another);²² and

¹⁴ *Id.*, Conclusion of Law 4.

¹⁵ *Id.*, Conclusion of Law 6.

¹⁶ *Id.*, Conclusions of Law 7-12.

¹⁷ *Id.*, Conclusion of Law 15.

¹⁸ *Id.*, Conclusion of Law 17.

¹⁹ *Id.*, Conclusion of Law 21.

²⁰ *Id.*, *Mimeo* at 25-26, and Findings of Fact 11, 17-18, 96-101.

²¹ *Id.*; see, e.g., *id.*, Findings of Fact 32-35.

²² *Id.*, *Mimeo* at 15-20, Finding of Fact 74.

4. What has been the extent of Christopher Mancuso's participation in Clear World, its predecessor DLD, and its affiliate Worldwide Telecommunications?²³

The Staff Reports published today collectively answer the first two questions (regarding the sale of unlicensed service) in the affirmative. In addition, Staff finds a persistent pattern of slamming at DLD and Clear World; indeed, slamming complaints against Clear World increased by some measures after the Commission issued D.03-02-066.

Staff also obtained new documents indicating that Christopher Mancuso was a primary actor in DLD, Clear World, and Worldwide, and that both James and Michael Mancuso participated in the operation of these entities. Staff alleges that the new documents also demonstrate the falsity of statements made by James and Michael Mancuso under oath, statements about the circumstances of Clear World's inception, the activities of its predecessor-in-interest DLD, and Christopher Mancuso's role in both utilities (see discussion, *infra*).

Staff also reports that Clear World failed to submit the "complete and comprehensive" audit ordered in D.03-02-066 (Ordering Paragraph 3), that Clear World and DLD may have failed to fully remit required public interest surcharges and user fees to this Commission, and that the transfer of customers from DLD to Clear World occurred without the required P.U. Code Section 854 filing at the Commission.

Staff maintains that the Commission's findings in D.03-02-066 – augmented by the additional evidence presented in the Staff reports – provide a compelling record for revocation of Clear World's CPCN. In ordering this Investigation, we hope to resolve these issues, and to determine what remedies or sanctions, if any, are appropriate *vis a vis* Clear World and its management.

The Commission also will examine the role of other utilities and billing agents in facilitating the Mancusos' unlicensed sale of telephone service in California. See Part VIII of this Order. One of these companies – Amerivision Communications, Inc. (U-5244) – realized

²³ *Id.*, see: Findings of Fact 85 and 90 (Clear World's alteration of letter "to conceal the reference to Christopher Mancuso as founder"); Findings 13-16 (Christopher's conviction for mail fraud in connection with "ponzi scheme"); Finding 103 (Clear World's payments of over \$5.275 million to Christopher's company ITC); Findings 18 and 26 (Christopher's admitted activities on behalf of Clear World and its predecessor DLD).

that it was “essentially hiding [DLD] as a company from regulatory agencies and government scrutiny.”²⁴ According to Staff, MCI WorldCom²⁵ may also have been aware of DLD’s status as an unlicensed telephone company, and was certainly aware of a high incidence of slamming complaints against DLD and Clear World. SR I at § XVI(A). To assure a complete record, we include WorldCom, Amerivision, and certain billing aggregators²⁶ as additional Respondents in this Investigation,²⁷ and direct them to cooperate with Staff in providing disclosure of all facts related to the issues raised in this OII.

IV. CLEAR WORLD/MANCUSO CONDUCT SINCE D.03-02-066.

A. Slamming

This Commission has announced a “zero tolerance” policy for slamming and other “business strategies that are abusive of consumer rights.”²⁸ D.03-02-066 found that four Clear World customers had been slammed, but made no findings about the full extent of Clear World’s slamming and customer abuse.

1. CAB Complaints, Clear World Denials, and TPV Tapes.

Staff reports that the number of complaints lodged against Clear World with the Commission’s Consumer Affairs Branch (CAB) has increased steadily over the last three years, from 9 in 1999 to 105 last year, and that Clear World’s slamming violations appear still to be widespread. SR II at § I(A).²⁹

²⁴ SR I at § VII, and Att. 32.

²⁵ MCI WorldCom operated under U-5011, U-5378, U-5253 and U-5278, and was known as WorldCom during most periods relevant to this Investigation, and will be so referenced herein.

²⁶ Specifically referenced is BCI Acquisition LLC, and its recently merged components Billing Concepts, Inc. (BCI), ACI Billing Services Inc., and Hold Billing Services (HBS). SR I at XVI(D); see P.U. Code §§ 2889.9 (jurisdiction over billing aggregators), 2890, and 2890(f) (definition of “billing agent”).

²⁷ We also include Ironwood Communications, apparent successor in interest to NTC/Incomnet (U#5173), which according to Staff was a member - along with Amerivision and DLD - of the “consortium buying arrangement” described below.

²⁸ *Rulemaking on the Commission's Own Motion to Consider Adoption of Rules Applicable to Interexchange Carriers*, R.97-08-001, I.97-08-002, 1997 Cal PUC LEXIS 599, at *11-12.

²⁹ Staff notes that it has asked Clear World for slamming cases or investigations against it in other jurisdictions, and that Clear World has not substantively responded. SR I at § XVII(A)(2). Staff reports, however, that in 2002 the FCC found Clear World guilty of slamming. *In the Matter of Clear World Communications Unauthorized Change of Customer's Telecommunications Carrier*,

Staff attaches 69 new³⁰ CAB complaints to its Staff Report on slamming, relating to slamming issues that seem to recur at Clear World. SR II, Att. 1. Staff reports that in most instances James Mancuso responded to CAB claiming Clear World had a third party verification (TPV) tape of someone at the customer's number "requesting" Clear World service. *Id.* (Attachment of customer complaints includes typical response letters).

Staff reports that customers in many of these cases are just as adamant that they never authorized Clear World service. *Id.* Staff offers an August 13, 2003 customer letter as a typical example. The customer complained about a fraudulently obtained TPV and an unauthorized change: "The lady then said nothing would affect my phone company and all she wanted to was [to get] information so that she could send me a pamphlet [about] Clear World Comm." *Id.* (Tab 67, case 03-03-6052). Staff believes this illustrates how Clear World may obtain a recording of "yes" to authorization questions even where there was no subscriber intent to authorize a carrier switch.

2. Testimony of Former Clear World Employees.

Staff presents the Declarations of five former Clear World employees who describe how Clear World's telemarketers used misleading sales tactics to acquire a customer's affirmative response on a TPV tape. SR II at §VI, Atts. 13-16. Three of the Declarations concern conduct at the Los Angeles telemarketing center in the latter part of 2003, one concerns conduct in the Fresno center in 2001,³¹ and one in Fresno in 2003. The Declarations aver that Clear World sells largely in Spanish to Spanish-language customers, and in some cases avoids English-speaking customers. *Id.* The Declarants all state that there was pressure on Clear World representatives to sell by any means possible, including misrepresentation of rates, assertions about free calls

IC No. 02-S76504 (March 6, 2003); SR I at § XIV(B).

³⁰ Staff reports these as "new" in that they were not included in the evidentiary showing in A.01-09-040.

³¹ Staff concedes this Declarant's narrative relates to conduct prior to D.03-02-066, but Staff includes it to show that the more recent conduct was not anomalous.

(when in fact only calls between Clear World customers were free), and statements that Clear World and its TPV vendors only needed the customer's address and acquiescence to send the customer free information. *Id.*

The employee-telemarketers provided handwritten sales scripts that had not previously been produced by Clear World in response to Staff requests. These Spanish-language scripts (and English translations) are found as Exhibits to the telemarketer declarations. *Id.* One script states in Spanish that "I am calling just to confirm that beginning next month you will have a reduction in your long distance bill. You will only pay \$5.95, OK"; another states "Now I'm going to transfer [you] to a verifier for services of Clear World, so that he can make the change for you and eliminate the charges for long distance."

Staff alleges that these misrepresentations result in slamming by fraudulently inducing consumers to provide affirmative answers to authorization questions in the TPV recording.

3. LEC PIC Dispute Reports Showing Hundreds of Slamming Complaints Each Week; Other Evidence.

Staff presents slamming complaint or "PIC³² dispute" data compiled by the Local Exchange Carriers (LECs), showing that an average 5-6% of all Clear World PIC changes over the last two years have resulted in PIC disputes, i.e., for every 100 primary interexchange carrier changes initiated by Clear World, 5-6 are reported as disputed to the local exchange carriers. SR II at § II, Tables 2 and 3. The rate in 2003 was 6.23%. In absolute numbers, these reports show hundreds of California slams being alleged against Clear World each week. *Id.*

These reports build on evidence in A. 01-09-040 that the LECs reported over 47,000 PIC disputes involving Clear World in 1998-2000 (Exhibit CPSD-46), and 28,830 disputes in 2001 (CPSD-1, Attachment B). Staff in A.01-09-040 randomly tested the 2001 PIC dispute reports and found that the majority of complainants who

³² Primary Interexchange Carrier.

responded substantively to Commission inquiries confirmed their belief that they had been slammed or had Clear World's rates misrepresented.³³

Staff notes that WorldCom kept its own list of reseller PIC Dispute reports (derived from LEC numbers) between 1998 and 2000, and these consistently show "Clear World/DLD"³⁴ and "Clear World/WorldTel"³⁵ with among the highest slamming complaint numbers of all WorldCom resellers.³⁶ Moreover, Staff believes that these LEC-derived slamming numbers may substantially understate the extent of Clear World's slamming problem.³⁷

³³ Such misrepresentations could also violate our slamming statute, P.U. Code § 2889.5, which requires the utility to "thoroughly inform the subscriber of the nature and extent of the service being offered." In order to test the 2001 PIC dispute reports, CPSD mailed letters to 1,804 of these reported PIC disputants, and contacted a further eight customers who had complained to CAB. See D.03-02-066. One hundred fifteen complainants responded to the mailing. Of these and the CAB complainants, CPSD was able to contact and interview 76 customers. *Id.* Of these, 54 confirmed that they were slammed, and another 19 said they authorized the switch but didn't receive the promised rates. Three said that they did not complain about Clear World. *Id.* at § II(A); see also Hearing Exhibits CPSD 1 and 2.

³⁴ As the World Com Reseller PIC Dispute lists (at Hearing Exhibit CPSD-48) indicate, "Clear World/DLD" refers to slamming on WorldCom account 182806, which was the primary account for DLD from 1994-98, and then became Clear World's account in August or October, 1998. See discussion below.

³⁵ "Clear World/WorldTel" refers to slamming activity on account 112904, which was associated with the Mancusos' other unlicensed operation under Worldwide. SR I at Att. 135; Hearing Exhibits CPSD 19 (CMT at 36:19-37:5), 46 (WorldCom Reseller PIC Disputes).

³⁶ Hearing Exhibit 46. In many months, Clear World is recorded with the most slamming complaints (in absolute numbers) of any of the resellers.

³⁷ Staff advances several reasons for this belief: (a) customers may not report the slam to the LEC, but merely ask their preferred carrier to switch them back; (b) other customers who were switched from one of WorldCom's resellers to another reseller may not have even been reported as a PIC change, a prerequisite to a PIC dispute report; and (c) some slamming victims abandon presubscribed long-distance service altogether, moving perhaps to dial around or calling card services, cellular phone service, or service in another name. SR II at § II(C). Staff also notes that PIC disputes may be underreported because the largest print name on the Clear World bill page is not Clear World but the billing aggregators (e.g., "HBS"). *Id.* at § I(B)(3). Finally, numbers provided by Clear World indicate a monthly churn rate of 24-33%, which might also evidence slammed customers returning to their carrier of choice. SR II at § VI.

Staff also discusses WorldCom documents that show high levels of PIC disputes at DLD,³⁸ and testimony of a former Amerivision employee who stated that Amerivision received and responded to complaints forwarded by this Commission to Amerivision regarding DLD customers in a way that hid DLD's role as carrier from the Commission. SR II at § I(C); *see* also Sections V(A) and VIII, below. If true, this would appear to be yet another instance in which Christopher Mancuso's operations were hidden from the Commission.

B. Failed Audit – Omissions in Compliance Filing, and Failure to Comply with D.03-02-066.

Staff alleges that Clear World failed to provide the complete and comprehensive audit required by D.03-02-066. In pertinent part, Ordering Paragraph 3 of D.03-02-066 required that:

Clear World shall conduct a *complete, comprehensive audit of any and all business and consulting relationships*, whether reduced to writing or otherwise, between Clear World, its officers and directors, and entities and persons associated with Clear World and *with Christopher Mancuso* (as well as any firm, company, limited liability company, partnership, corporation, or other entity of any nature that is, *or was*, associated with him, owned by him, or with which he *has, or has had*, a consulting or employment agreement), including loans of money or informal business relationships and shall list and *describe in detail* all such relationships, of any nature whatever. (Emphasis added.)

The audit submitted by Clear World and its accountants, however, states that it has “interpreted Ordering Paragraph 3” to limit the Commission’s order in the following ways: (a) the “audit period” was declared to be January 1, 2002 through March 31, 2003; (b) the word “entities” was defined to mean only “affiliates or

³⁸ SR II at § III. WorldCom, at least, was aware that these slamming complaints should be addressed to Christopher Mancuso. Staff presents newly discovered internal WorldCom memoranda showing high levels of Clear World, DLD, and NTC slamming allegations and chargebacks for same, including one document referencing “about 10,000 PIC disputes” on the January-June 2000 invoices for Clear World’s accounts 182806 and 112904, stating “We should address with Chris [Mancuso].” SR II at § III(A).

subsidiaries of Clear World”; and (c) the phrase “persons associated with Clear World” were deemed to be “persons and entities with which Clear World contracted as further detailed below.”³⁹

Staff reports that at no time did Clear World or its auditors approach the Commission or Staff for approval of these limitations. SR I at § XIV(C)(2). Staff opines that this unilateral narrowing and restating of the Commission’s order resulted in something decidedly less than a “complete, comprehensive audit of any and all . . . relationships.” *Id.*

Staff alleges that: the audit fails to admit, deny, or meaningfully address Christopher Mancuso’s role in the formation of Clear World, or to address Clear World’s acquisition of DLD, Clear World’s payment of over \$5 million to Christopher Mancuso, or Clear World’s sale of wholesale long-distance service to (the Christopher-incorporated) Worldwide; the one-page audit disclosure provides no meaningful explanation of the relationships between Clear World and other entities known by Clear World to be related to Christopher Mancuso (WorldTech, for example); and none of the interrelationships described elsewhere in this OII and accompanying Staff Reports are found in the audit, nor is there any quantification of the monetary benefit flowing to Christopher Mancuso, i.e., there is no discussion of how much money he received *in toto*, either directly or indirectly, from the utility.⁴⁰ In Staff’s view, the audit does not comply with the Commission’s Order in D.03-02-066, and has largely served to obscure, rather than clarify, Christopher’s role in the various affiliates and Clear World. *Id.*

³⁹ SR I at § XIV(C)(2), and Attachment 71. Staff requested contracts, correspondence, and workpapers relating to this audit, but no contract or letter of engagement or other direction or explanation was produced. *Id.* at § XVII(A)(2)(b).

⁴⁰ Decision 03-02-066 found that he had received at least \$5 million in payments from Clear World. See Findings of Fact 103-106.

V. NEWLY DISCOVERED EVIDENCE OF PAST CONDUCT.

A. Mancusos' Operation of DLD as a Telephone Company Without Certificate of Public Convenience and Necessity.

After analyzing the evidence before it in A.01-09-040, the Commission concluded that “we cannot determine whether AEC/DLD provided telecommunications services without a CPCN.” D.03-02-066 *Mimeo* at 23. The Mancusos’ denied that they had done so. *Id.* The Staff Reports present substantial new evidence that the Mancusos indeed operated AEC/DLD as a telephone company prior to forming Clear World, and did so for as long as six years without registering with this Commission. It also appears that DLD may have underpaid required regulatory user fees and public interest surcharges. SR III, §§ III, IV, Atts. N, O, FF.

1. DLD’s Participation as a “Separate Entity” in the “Consortium Buying Arrangement.”

Staff Report I presents a newly discovered 1998 letter from Christopher Mancuso to WorldCom in which he characterizes DLD’s relationship with WorldCom as part of a “consortium buying arrangement with three separate companies NTC, Amerivision, and Discount Long Distance.” SR I at § VI, Att. 1.

Staff reports that DLD functioned as an independent reseller of long distance services, and that third parties regularly treated DLD as such. *Id.* at §§ VI, VII, VIII. In a newly discovered 1995 letter, a senior WorldCom executive expressed concern about WorldCom’s “exposure” under the NTC contract to “three separate entities”: NTC; Amerivision; and DLD. *Id.* at Att. 28. Staff also attaches a May 31, 1998 Memorandum to Amerivision CEO Steve Halliday, reportedly written at a time when Amerivision was trying to separate itself from DLD:

DLD presents considerable problems for Amerivision and is further complicated by continuing liabilities after we are divorced from them. *As Amerivision has been rating and billing DLD’s calls falsely for some time, and has been filing tax reports and traffic reports including DLD’s portion (essentially hiding them as a company from regulatory agencies and government scrutiny), should there be a complaint or investigation in the future*

Amerivision may face fines and/or the revocation of its certification to conduct business in a particular state.

Id. at Att. 32 (emphasis added).

Staff reports that Christopher Mancuso himself admitted that “DLD has operated under the Amerivision banner since its inception,” and that the Mancusos’ account representative at WorldCom confirmed that the Mancusos were essentially providing the same long distance service under DLD in 1997-98 as they do today under Clear World, and that “DLD ... has operated under [accounts 182806, 186317 and 178522] since the earth cooled.” *Id.* at Att. 24.⁴¹

2. Contractual Agreements between DLD and Amerivision; and Clear World and WorldCom.

Staff presents newly discovered contractual documents that appear to define DLD’s role as a reseller of long-distance service. Decision 03-02-066 found that there was no record of Staff having requested “a copy of the agreement” that supported Clear World’s contention that AEC/DLD only “operated as an agent of another carrier,” i.e., Amerivision. *Mimeo* at 24. Staff reports that it has unsuccessfully requested the DLD-Amerivision contracts and records from Clear World. SR I at § XVII(A)(2)(b). Staff ultimately obtained the following agreements from Amerivision: a Billing Services Agreement; a Supplemental Advance Purchase Agreement; and a Security Agreement. SR I at Atts. 29-31. These agreements were apparently executed by Joseph Mancuso for DLD and Carl Thompson on behalf of Amerivision on or about June 26, 1997. The first two Agreements refer to DLD as a “reseller of long distance telecommunications services.” In these Agreements, Amerivision contracts to provide billing and “collection services” and other support services “to such reseller.” *Id.*

Staff reports on the details of this arrangement, wherein Amerivision apparently was to receive DLD call detail records (CDRs) from WorldCom, rate

⁴¹ The relationships between and among utilities WorldCom, NTC, Amerivision and DLD are illustrated on the chart attached to SR I as Appendix A; see also Appendices B (index of entities), C (index of persons), and D (timeline); and SR III at Appendix A, and Attachments S-BB (corporate documents).

them, and pass them on to the LECs through Amerivision's billing aggregators.⁴² Wholesale invoices were sent to Christopher Mancuso, who, in turn, approved payments to WorldCom, and directed that the balance be remitted back to his company, Communications Consulting Inc. (CCI). *Id.* at § XII(A). Staff also presents evidence that the accounts and customers formerly served by DLD were later transferred to Clear World under the same account numbers. SR I at § IX, SR III at § VI. Staff references a 1999 contract between Clear World and WorldCom, signed by James Mancuso, which provides:

Customer assumes responsibility for all services provided by MCI Worldcom to Customer (or *Discount Long Distance, its predecessor-in-interest*) under account numbers 112904, 182806, 186317, and 178522, and agrees to be liable for all charges relating to services provided under such accounts.

SR I at Att. 5 (emphasis added).

Clear World's principals and the Director of Sales for WorldCom have claimed that DLD was only an agent for Amerivision, similar to the Mancusos' claim that Worldwide was only an agent of WorldTel. SR I at §§ VIII, XII(A); D.03-02-066, *Mimeo* at 11-12; *compare Mimeo* at 25-26. Staff was unable to find any documentary evidence supporting DLD's claim in this regard, and instead presents a number of documents indicating that all involved considered DLD to be a principal, not an agent of Amerivision. SR at § VIII. If DLD was a principal, it was illegally selling long distance service without Commission authority to do so.

3. Mancusos' Unlicensed Sale of Long Distance Service through another Company, Worldwide Telecommunications Corporation.

Staff alleges that another unlicensed Mancuso affiliate, Worldwide, used the tariffs and certifications of a licensed carrier, WorldTel Services Inc. ("WorldTel") to provide telephone service to California customers. The Mancusos have claimed that Worldwide's "sole activities" were as an agent of WorldTel (D.03-02-066, *Mimeo* at

⁴² SR I at § VI. Alternatively, Amerivision would send out (direct mail) DLD's bills. *Id.*

11-12) but Staff reports that the alleged principal, WorldTel, no longer existed for at least part of the time Worldwide was purporting to be its agent. SR I at § XI.

The Commission concluded in D.03-02-066 that it did “not believe that Worldwide’s initial or amended agreements with [WorldTel] were valid agency agreements.” *Mimeo* at 11. Staff believes that the Commission can now make a stronger finding, that there was no agency relationship at all, and that the Mancusos’ assertions to the contrary were materially misleading.⁴³

B. New Evidence of Christopher Mancuso’s Significant Control⁴⁴ Over the Mancuso Utilities, Including DLD and Clear World.

While our Decision 03-02-066 addressed the issue of Christopher Mancuso’s future role in Clear World, questions about the scope of his past role in, and control over, DLD, Clear World, and Worldwide remain relevant to whether James and Michael Mancuso misrepresented facts to this Commission.

Staff contends that newly discovered evidence shows a pattern of deceit and fraud in Christopher Mancuso’s businesses from Culture Farms to Clear World. Culture Farms aka Cleopatra’s Secret was a Ponzi scheme for which Christopher Mancuso went to prison. D.03-02-066, Findings of Fact 14-15. Clear World is a utility licensed by this Commission. Staff contends that the intermediate stops on this trajectory were National Telephone Communications, Inc. (NTC), which Mancuso formed in 1988 shortly after getting out of prison, and DLD, which Mancuso appears to have formed after he sold his interest in NTC. SR I at §§ III(A), IV(D), Appendix D (timeline). Staff suggests that DLD remained unlicensed because Christopher anticipated problems licensing a utility that was largely run by a felon. *Id.*

⁴³ In D.03-02-066, we excused the Mancusos’ statements as “argument and not statements of fact.” *Mimeo* at 12. If, however, the Mancusos knew or should have known that WorldTel was out of business at the time they were purporting to be its agent, then statements that Worldwide’s “sole activities” in California were as an agent for WorldTel might be construed as willfully misleading. Staff has also found evidence that NTC’s Christopher Mancuso and Amerivision’s Carl Thompson were using an agency rationale as early as 1992 to essentially pool their state certifications and tariffs so that they could offer service even in states where one of the utilities was not registered. *See, e.g.*, SR at § VIII, Att. 35.

⁴⁴ See D.97-06-107, Finding of Fact 4 (“significant control” sufficient to trigger disclosure requirement on registration form).

at §§ XII, XII(A), XIV. Staff reports that when DLD's relationship with Amerivision disintegrated in 1998, Christopher formed both Clear World and Worldwide. *Id.* at § XII. Staff maintains that the evidence shows Christopher Mancuso exercised significant (if not primary) control over the entities NTC, DLD, Clear World and Worldwide, and that James and Michael Mancuso participated in the operation of DLD and Worldwide, and were aware of Christopher's role in all these entities. *Id.*

To the extent that the NTC and DLD business model carried over to Clear World, and Christopher was at any time an undisclosed principal in Clear World, it makes Clear World's Applications to this Commission, as well as James and Michael Mancuso's subsequent representations and testimony to the Commission, false and misleading. We therefore direct that further investigation be made to resolve Staff's allegations regarding Christopher's role in DLD and Clear World.

We believe the new evidence in Staff's Reports also compels a second look at Christopher's role in Worldwide, as that appears to have been an integral part of the Mancuso family business and the subject of contradictory statements by brothers James and Michael. Indeed, James Mancuso signed a sworn Declaration in a California Superior Court case that "Worldwide was formed by myself, with the assistance of my brother Chris Mancuso,"⁴⁵ yet later effectively denied any significant involvement of Christopher in the company. SR I at §§ XIV(A) and (C)(1).

C. New Evidence Showing Failure to Pay Required Surcharges and Usage Fees.

Telecommunications utilities in California are required to pay user fees and surcharges to support various public interest programs. See, e.g., P.U. Code §§ 405, 739.3, 879, 879.5 and 2881; SR III at § III. Staff's investigation into the operations of DLD and Clear World uncovered evidence suggesting these companies may have underpaid such fees and surcharges. *Id.* Staff concedes that evidence of such underpayments is not conclusive. We therefore order Clear World and its

⁴⁵D.03-02-066 also found that "Christopher Mancuso was Worldwide's incorporator ... was involved in the creation of Worldwide, and negotiated its agreement with [WorldTel]." *Mimeo* at 15

management to show that it, and its related companies, DLD and Worldwide, have, in fact, paid all required surcharges and fees, and to provide such backup materials as Staff may need to complete its analysis.

D. New Evidence of Failure to Retain and Produce Documents, and Cooperate with Staff.

Staff asserts that evidence obtained from third parties demonstrates that Clear World's failure to retain and produce evidence was more extensive than documented in our Decision 03-02-066 (see Findings of Fact 97-112). The newly discovered documents described above (and attached to the Staff Reports) were obtained almost exclusively from companies other than Clear World. Staff asserts that Clear World and its management have been unable or unwilling to provide meaningful documentation on key corporate issues, including: (a) Clear World's relationship to, and purchase of assets from, DLD/AEC;⁴⁶ (b) Clear World's relationship with, and sale of long distance minutes to, Worldwide; and (c) Clear World's relationship to Christopher Mancuso and other entities affiliated with him. SR I at § XVII. On these issues, Staff claims that it has attempted to "follow the money" and otherwise discover the most reliable evidence of what Clear World's affiliations were, and has been frustrated in that effort. *Id.*

Staff reports that its attempts to obtain documents from Clear World began on December 7, 2001 and have continued through this year, when Staff unsuccessfully requested that James and Michael Mancuso appear with documents for an examination under oath pursuant to P.U. Code § 314.

⁴⁶ Clear World produced the Asset Purchase Agreement itself, but no documentation of what those assets were, or what contracts Clear World was succeeding to, etc. CPSD also asked Clear World for all DLD contracts with Amerivision. Clear World states it no longer has these. The purchase and sale agreement requires Clear World to provide written notification to AEC/DLD of its intent to destroy any AEC/DLD documents. SR I, Att. 9. CPSD then requested that Clear World provide any such written notifications and none was produced. *Id.*, Att. 80 (Request 30, Nov. 13, 2003).

VI. MANCUSOS' ALLEGED MISREPRESENTATIONS IN APPLICATIONS, FILINGS, AND TESTIMONY TO AND BEFORE THIS COMMISSION.

A. Omissions and Misrepresentations in Applications.

Staff contends that all three Clear World and Worldwide Applications for operating authority failed to disclose the material role played by Christopher in the utilities. Apart from the false “street address” in the Worldwide Application (as found in D.03-02-066), and the failure to file with the Commission the Articles of Incorporation for Worldwide (which would have shown Christopher as “incorporator”),⁴⁷ the Mancusos affirmed and verified in all three Applications that no “affiliate, officer, director, general partner or person owning more than 10% of applicant, *or anyone acting in such a capacity*” had ever been found guilty for “any actions which involved misrepresentations to consumers.” SR I at § XIV(C)(1). The Commission had, by that time, clarified that the phrase “anyone acting in such a capacity” includes “*all those persons that might exercise significant control over an applicant regardless of its legal structure.*” D.97-06-107, *Rulemaking to Establish a Simplified Registration Process*, Finding of Fact 4. Staff alleges that none of the Clear World/Worldwide Applications disclosed Christopher Mancuso’s role in those utilities in any way. SR I at § XIV(C)(1).

B. Mancusos’ Misrepresentations in Sworn Testimony.

According to Staff Report I, the testimony under oath of James and Michael Mancuso in A.01-09-040 was materially misleading if not intentionally false, in: (a) denying that Clear World’s predecessor was in fact DLD; (b) denying that DLD had customers of its own; (c) denying that Clear World purchased and acquired those customers; (d) denying that DLD had been operating as a long-distance reseller without certification or license from this Commission; (e) denying that Christopher had any role in founding Clear World; (f) minimizing the extent of Christopher Mancuso’s involvement in Clearworld, DLD, and Worldwide; (g)

⁴⁷ See Rule 16(a) of the Commission’s Rules of Practice and Procedure (articles of incorporation must be filed with application).

denying Christopher Mancuso's role in early negotiations with WorldCom; and (h) denying that Clear World had been the subject of other public agency investigations.

Staff Report I itemizes the specific hearing and deposition testimony that Staff claims to be false. See SR I at § XIV(A), (B).

VII. LEGAL ANALYSIS

A. The Short Form Registration Process.

Public Utilities Code Sections 1001 *et seq.* require all utilities to acquire a CPCN. Section 1013 allows for an expedited "registration" process for non-dominant utilities in competitive markets, such as non-dominant interexchange carriers (NDIECs). In establishing such an expedited process, we noted:

Our objective with the registration process is to allow applicants which have no history of questionable behavior and which present noncontroversial applications (the majority of applicants meet these two standards) to rely on a expedited and inexpensive means of securing operating authority. Applicants which do not meet these standards ... will not be excluded from applying but will have to use the more extensive application process.

D.97-06-107, *supra*, Finding of Fact 8. Accordingly, Section 1013(d) requires the Commission to verify that no one exercising "significant control" over the applicant utility has a "prior history of committing fraud on the public." *Id.* at 4, Question 7. If Staff is correct, it appears that the three Clear World and Worldwide Applications subverted the intent of our registration process by suppressing information that would have been material and controversial in an Application proceeding. In that regard, we note that by August, 1998, Christopher Mancuso had already been effectively banned from one utility, NTC, and his application to participate in the management of another utility would have been, by definition, controversial. See D.98-02-029; D.03-02-066, Finding of Fact 19.

B. Misrepresentations by Management Are Relevant to Whether Management Is Fit to Operate a Utility.

D.03-02-066 found that Clear World and its management were not “fit” to operate as a competitive local exchange carrier in California. California law and Commission decisions require a showing of fitness before a company is granted access to the California telephone network, and provide for the revocation of such authority when a lack of fitness is shown. D.03-01-079, in *Investigation ... and Order to Show Cause [re] Titan Telecommunications, Inc.* (U-6224), 2003 Cal. PUC LEXIS 79. Section 1013(g) authorizes cancellation or revocation of a prior registration or CPCN where the telephone utility fails to provide required information, conducts any illegal telephone operation, violates any of the applicable provisions of [the Public Utilities] Code or of any regulation, order, decision, rule, regulation, direction, demand or requirement issued thereunder, where the “corporation files a false statement to the commission,” or where the corporation knowingly defrauds a customer. Thus, fitness includes a component of “moral trustworthiness”:

[R]easonable fitness connotes more than mere adequacy or sufficiency in training, competency, or adaptability to the appropriate technical and vocational aspects of the service to be rendered. It also includes an element of moral trustworthiness, reliance, and dependability.

Walter Hoffman dba ACE A-1 Limousine Service application for charter-party permit renewal (1976) D.85973, 80 CPUC 117, 119 (violations of police, Commission, and airport regulations ground for revocation). Misrepresentations to this Commission are directly relevant to a fitness analysis, and grounds for revocation of a CPCN:

If these allegations of misrepresentations to the Commission are true, *this alone is sufficient cause to revoke ATN’s CPCN to operate in California.*

Investigation into the conduct of America’s Telenetwork Corp (ATN), I.98-03-039, 1998 Cal. PUC LEXIS 30, at 2-3 (emphasis added); *see also Titan, supra*, 2003 Cal. PUC LEXIS at *31 (“We revoke Titan’s operating authority, because Respondents violated Rule 1 in obtaining that authority”).

C. Past Regulatory Performance Is Relevant to Whether Management is Fit to Operate a Utility.

Past regulatory compliance history is “relevant and highly probative of the applicant’s prospective compliance with California authorities.” D.97-06-107, *supra*, Finding of Fact 6. In the *Application of Landmark Communications, Inc. for a CPCN*, D.98-11-054, we again noted these concerns:

Among other things, we have routinely examined an applicant's past business record in order to make sure that consumer rights are protected. Over eight years ago, in ... D.90-12-019)... we noted the concern of the California Department of Consumer Affairs over "the lack of stringent review allowing at best poorly prepared carriers to serve the public and at worst some dishonest individuals to take advantage of the public." (*Id.* at 28.)

83 CPUC 2d 107, 113.

The accompanying Staff Reports call the Mancusos’ past regulatory performance into question in a number of areas, including: (1) Failure to File CPCN Application (DLD, Worldwide)⁴⁸; (2) failure to file a Section 854 Application on its purchase of DLD customers;⁴⁹ (3) failure to remit public utility fees and public interest surcharges to the Commission;⁵⁰ and (4) failure to keep and produce corporate

⁴⁸ The licensing/registration requirements of PUC Sections 1001 applied to “telephone corporations” at all relevant times; Section 1013 modified these requirements when enacted in 1995. Switchless resellers, like DLD and Clear World, are “telephone corporations” within the meaning of the Code. D.92-06-069, *Rulemaking ... for the purpose of modifying existing tariff filing rules for telecommunications utilities...*, 1992 Cal. PUC LEXIS 972; 44 CPUC2d 747.

⁴⁹ “No person or corporation, whether or not organized under the laws of this state, shall merge, acquire, or control either directly or indirectly any public utility organized and doing business in this state without first securing authorization to do so from the commission... Any merger, acquisition, or control without that prior authorization shall be void and of no effect.”

⁵⁰ California Public Utilities Code Sections 401-405, 739.3, 879, and 2881 require that all telephone utilities remit certain fees and surcharges to the Commission, to facilitate the Commission’s work and certain statutorily mandated public interest programs. Staff Report III describes DLD and Clear World’s apparent underpayment of some of those fees and surcharges.

documents.⁵¹ These matters are all proper areas for inquiry into the Mancusos' fitness.⁵²

D. Slamming Violations are also Relevant to Fitness Analysis.

Slamming violations and unlawful sales practices may also be grounds for revocation of a CPCN. D.03-06-034, *Investigation ... of Telmatch, Mimeo* at 19 (“the Commission has ample authority to revoke Telmatch’s CPCN due to its flagrant and unlawful consumer solicitation practices”). We have found that the LECs’ PIC dispute reports are good evidence that an unauthorized switch occurred:

A PIC dispute is a customer allegation that his or her telephone service was switched without permission. Section 2889.5 prevents a telephone corporation from changing the provider of any telephone service until the telephone corporation: (1) thoroughly informs the subscriber of the nature and extent of the service being offered; (2) specifically establishes whether the subscriber intends to change his or her telephone service provider and explains charges associated with that change; and (3) confirms the subscriber’s decision to change by an independent third-party verification company. *A customer’s credible allegation of a PIC dispute, standing alone, constitutes compelling evidence that Qwest has violated § 2889.5 by failing to ensure that*

⁵¹ A utility’s obligation to keep and produce significant business documentation to the Commission is anchored in the California Constitution, Title XII, § 6. The Commission’s Constitutional power finds expression in California Public Utility Code §§ 311, 314, 581-82, 584, and 701, *inter alia*. Part of analyzing a utility’s regulatory compliance history is looking at the utility’s readiness to respond to Commission and staff inquiries, including those about prior business practices. *Landmark, supra*, 83 CPUC 2d at 115 (Application denied because “Landmark’s attempt to avoid responding to Commissioner and staff inquiries, to avoid having a hearing on its application, and to avoid any consideration of its prior business practices demonstrates a lack of respect for Commission procedures, rules and orders, and the public policies that underlie them”).

⁵² We note also the evidentiary implications of a failure to produce documents. California Evidence Code Section 412 states “If weaker and less satisfactory evidence is offered when it was within the power of the party to produce stronger and more satisfying evidence, the evidence offered should be viewed with distrust.”

*each of the steps outlined above was followed prior to the switch.*⁵³

In addition to the LECs' PIC dispute records, other evidence may be considered to establish that a reseller fails to thoroughly inform the customer of the services offered, or obtain the consumer's informed consent to a change of service.

E. Misrepresentations, Contempt, Rule 1 Violations Generally.

In its consumer protection role, it is important that the Commission be able to obtain reliable and accurate information from utility officers and directors. As we have stated in the past, the Commission cannot tolerate artifice or falsity in its proceedings:

In protecting that public interest the Commission cannot permit itself to be willfully misled by either artifices or false statements of fact or law. [Citations omitted.] Accordingly, when circumstances develop to point up the appearance that false material or representations may have been submitted under oath and penalty of perjury to induce a Commission authorization, and that there exists the possibility that the material or representations submitted were known to be false when submitted, this Commission will move to ascertain the underlying facts ... Agents or officers of any public utility who submit as true any material matter which they know to be false, are guilty of a felony and shall be punished by a fine (P.U. Code § 2114). Similarly, any individual who aids or abets any public utility in a violation of our Rules is subject to a fine for each offense (P.U. Code § 2111).

⁵³ *Investigation into operations, practices and conduct of Qwest Communications*, D.02-10-059, *Mimeo* at 10 (emphasis added). In *Communications TeleSystems International (CTS)* (1997), 72 CPUC2d 621, 633 in relying on PIC dispute data the Commission reasoned:

The PIC dispute data maintained by the LECs is the most comprehensive data set available which relates to unauthorized customer transfer. While not purporting to conclusively prove any specific underlying fact, there is sufficient evidence to support an inference of wide-spread unauthorized customer transfers. Absent evidence directly undermining the credibility of the LEC's process and record keeping, or suggesting an alternative data source, the Commission will continue to rely on this data. *Ibid.*

D.86-10-013, in A.60857, I.86-05-006, *Application of Henry LaZare et al. dba The Jacumba Water Co.*, 1986 Cal. PUC LEXIS 613, *12.⁵⁴

Materially false testimony is specifically punishable under the Public Utilities Code Section 2114 (which incorporates key language of Penal Code § 118(a)):

Any public utility on whose behalf any agent or officer thereof who, having taken an oath that he will testify, declare, depose or certify truly before the commission, willfully and contrary to such oath states or submits as true any material matter which he knows to be false, or who testifies, declares, deposes, or certifies under penalty of perjury and willfully states as true any material matter which he knows to be false, is guilty of a felony and shall be punished by a fine not to exceed five hundred thousand dollars (\$500,000).

If Staff is correct, it would appear that several aspects of the Mancusos' testimony before this Commission in Application 01-09-040 were false, and were intentionally so in order to hide the activities of Christopher Mancuso. The specific testimony alleged to be false is discussed in more detail in Staff Report I, § XIV(A) and (B).

F. Agency.

Even were this Commission to find that the Mancusos were merely “managing” phone lines as agents for other utilities such as WorldTel or Amerivision, that “management” activity might still be considered as a utility service under our Code. See P.U. Code § 234(a) (defining telephone corporation to include a person “managing any telephone line for compensation”). The Mancusos have, however,

⁵⁴ Rule 1 of the Commission’s Rules of Practice and Procedure evidences a similar concern that the Commission obtain true and accurate testimony: “Any person who signs a pleading or brief, enters an appearance at a hearing, or transacts business with the Commission, by such act ... agrees... never to mislead the Commission or its staff by an artifice or false statement of fact or law.” Violation of this Rule subjects the witness to fines or other sanctions under, inter alia, Public Utility Code sections 2101, 2102, 2107, and 2113.

asserted a theory of agency as a defense to the allegation of unlicensed sale of telecommunications service, and we will therefore briefly address the law of agency.⁵⁵

Decision 03-02-066 states “The Commission has not previously addressed comprehensively what constitutes a valid agency agreement with an authorized carrier.” *Mimeo* at 12. While that may be true, the Commission has in the past looked to the common law of agency and applied the principal that agency connotes the principal’s power over the agent.⁵⁶

The declarations of the principal are generally admissible to prove or disprove the agency relationship. *Schlake v. McConnell*, 83 Cal. App. 725, 730 (1927) *see generally* Witkin, *Summary of California Law*, “Agency” at §38. The converse is not true: the declarations of one assuming to act as an *agent* are of less evidentiary value, and cannot be introduced in evidence to prove the agency unless made *in the presence of*, or communicated to and acquiesced in by, the *principal*. *Scott v. Los Angeles Mountain Park Co.* (1928) 92 C.A. 258, 263, 267 P. 914; *Howell v. Courtesy Chevrolet* (1971) 16 C.A. 3d 391, 401, 94 C.R. 33 (“declarations of an agent are not admissible to prove the fact of his agency or the extent of his power as such agent ... ‘An assumption of authority to act as agent for another of itself challenges inquiry. Like a railroad crossing, it should be in itself a sign of danger...’”).

The existence of an agency relationship is mainly a question of fact. Witkin, *supra*, “Agency” at § 37.

⁵⁵ "An agent is one who represents another, called the principal, in dealings with third persons. Such representation is called agency." Cal. Civ. Code § 2295. Agency may be created by an express contract or authorization, or be "implied from words and conduct of the parties and the circumstances of the particular case." Cal. Civ. Code §§ 2299, 2307; *Smith v. Schuttpelz*, 1 Cal. 2d 158, 161 (1934).

⁵⁶ *See, e.g., Investigation of Coleman Enterprises, Inc. dba Local Long Business*, D.00-06-037, 2000 Cal. PUC LEXIS 256, at *29 (Conclusion of Law 4, stating “In determining whether an agency relationship exists, an important factor is the extent of the alleged principal's power to control the alleged agent's manner and means of accomplishing the desired result.”); *see also* D.03-02-066, Finding of Fact 35 (same); *see also Mimeo* at 12 (“we would expect that such an agreement would be structured to at least ensure that the carrier had sufficient control over the agent to ensure the agent’s compliance with statutory and Commission requirements. In addition, we would expect the customers to be customers of the utility, not the agent”). *See also Nichols v. Arthur Murray, Inc.*, 248 Cal. App. 2d 610, 613 (1967) (citing *Malloy v. Fong*, 37 Cal. 2d 356, 370 (1951)). "In the absence of the essential characteristic of the right of control, there is no true agency." *Edwards v. Freeman*, 34 Cal. 2d 589, 592 (1949).

VIII. ROLE OF WORLDCOM, NTC, AMERIVISION, AND CERTAIN BILLING AGGREGATORS IN FACILITATING MANCUSOS' CONDUCT.

The Staff Report paints a disturbing picture of a telecommunications oversight system subverted by the apparent actions – intentional or unintentional -- of the utilities and other companies working with the Mancusos: NTC/Incomnet (U-5173, now operated as Ironwood Telecom LLC); Amerivision Communications (U-5244); MCI WorldCom (U-5011, U-5378, U-5253, U-5278), and several billing aggregators or agents. All of these entities appear to have participated in a scheme whereby the Mancusos could effectively operate a telephone company, DLD, without obtaining a license to do so from this Commission.

As suggested by D.03-02-066, and discussed above, it appears that the Mancusos were well aware that any entity run or owned by Christopher Mancuso would incur significant Commission scrutiny because of Christopher's previous conviction for mail fraud. It also appears that Amerivision shared this awareness, and that WorldCom was as well positioned to be aware of these facts as Amerivision. *Id.* at § XII(A). WorldCom's wholesale sales director admitted knowing since 1993 or 1995 that Christopher was a convicted felon. *Id.*

In order to develop a full factual record, the third party utilities and billing agents listed below will be made Respondents to this Investigation.

A. MCI WorldCom and the Mancusos.

WorldCom played a key role in facilitating the Mancusos' operations, although it was not alone. WorldCom and its affiliates did business with the Mancusos since at least 1992, when WilTel (with whom Robert Brejcha was then employed) entered into a contract with NTC. See Timeline at Appendix D to SR I. Staff reports that WorldCom's highest-ranking witness to date, wholesale sales director Robert Brejcha, claimed under oath first to have been unaware of DLD, and then to know only that DLD was an agent of Amerivision. SR I at § XII(A). He denied knowing that DLD was selling long-distance service on its own behalf to

end users (*Id.* at § XVI(A)), but evidence attached to Staff's Reports suggests that WorldCom and Brejcha were well aware of DLD's sale of long distance service.⁵⁷

B. NTC

As described in Staff Report I, the NTC-Amerivision-DLD "consortium buying arrangement" continued at least until Clear World's inception on October 1, 1998.⁵⁸ NTC clearly played a key role in this arrangement, although NTC as such no longer exists. In 1999, NTC (re-named Incomnet after purchase by a holding company) filed for bankruptcy, and shortly thereafter as Incomnet applied to this Commission for permission to transfer its assets to a Colorado-based holding company that had invested in Incomnet, Ironwood Telecom LLC. (Application No. 00-04-047.) Ironwood/Incomnet's Application to transfer Incomnet's customer base to Ironwood was approved by Commission Decision No. 00-09-065. In that Decision, we memorialized Ironwood's representation to us that Incomnet would continue to operate as a telephone utility. *Id.* Staff, however, has been unable to find either: (a) Ironwood/Incomnet's officers, directors or any signs of its operation; or (b) any evidence that Ironwood or Incomnet had applied to this Commission to go out of business. SR I at § XVI(B). As Ironwood/Incomnet may still exist and be in possession of evidence related to the matters here at issue, we direct service of this OII on Ironwood as Respondent in this Investigation.

C. Amerivision

Although 1998 Amerivision documents indicate the company was involved in "hiding" DLD "from regulatory scrutiny" (SR I, Att. 32), Staff reports that Amerivision sought to sever its links with the Mancusos at that time, even though James Mancuso threatened to sue

⁵⁷ SR I at Att. 48 (10/4/95 email that Brejcha admits receiving, stating that "as we discussed in our recent meeting with you, DLD and Amerivision are separate corporations under the 'umbrella' of the NTC contract"), 40-41 (DLD invoices sent directly to DLD or to Christopher Mancuso), 23 (8/12/98 memorandum of WorldCom Sales Representative Neiman, describing Christopher Mancuso as "principal in Discount Long Distance ... a subpurchaser under Amerivision on the NTC Agreement"); 52 (10/6/98 WorldCom letter to Christopher Mancuso, with reference to "circuits designated by Amerivision as belonging to Discount Long Distance").

⁵⁸ WorldCom's Robert Brejcha testified that even after that date Clear World continued to purchase at the rates and terms provided to the consortium. SR I at § IX.

Amerivision for this. SR I at § XVI(C). Amerivision has cooperated in Staff's review and pre-investigation, and remains important for full development of the facts in this case. *Id.*

D. Billing Agents or Aggregators

Staff alleges that billing agents or aggregators play a key role in allowing the Mancusos to operate as an unlicensed telephone utility. Staff reports that the aggregators that historically serviced the Mancusos' telecommunications companies AEC/DLD, Worldwide, and Clear World – Hold Billing Services (HBS), ACI Billing Services Inc. (ACI), and Billing Concepts Inc. (BCI) (and BCI's former affiliates Zero Plus Dialing Inc. and USBI) -- have apparently all been consolidated into one holding company, BCI Acquisition LLC. SR I at § XVI(D).

The role of billing agents or aggregators, as described in this Commission's 2001 *Coral Communications* decision, is multifaceted: they are an interface between the smaller carrier and the LEC, arranging for the small carrier's rated calls to be formatted in a way acceptable to the LEC; they are a conduit for accounts receivable and for cash, passing ownership of the former from the carrier to the LECs, and forwarding the proceeds back to the carrier; sometimes they even act as "factors," purchasing the accounts receivable from the small carrier and providing instant discounted cash to the carrier. *Investigation into ... Coral Communications, Inc.*, D.01-04-035, 2001 *Cal. PUC LEXIS* 289, at *10-11.⁵⁹ It is this latter role that provides a serious potential for abuse, allowing unscrupulous carrier/resellers to falsely obtain customer authorizations and thereby "generate accounts receivable to sell to factors before the end-use customers are even billed." *Id.* Once these customers are billed, "many of them unwittingly (or out of fear of losing their telephone service) pay the unauthorized charges." *Id.*

Staff reports that the Mancusos employed billing agents and aggregators throughout their telecommunications careers, beginning at the latest in 1994, both as an interface with the

⁵⁹The Commission has previously looked at the role of billing aggregators in at least one other proceeding. See D.01-04-036, *Investigation of USP&C* (\$1.75 million fine for failure to accurately reflect true nature of service and company billing). USP&C and related individuals were recently indicted in what the Department of Justice characterized as a "criminal enterprise" run by members and associates of an organized crime family. See Rashbaum, *New York Times*, February 11, 2004, "Officials Say Mob Stole \$200 Million Using Phone Bills."

LECs and as factors to purchase DLD and Clear World's accounts receivables. SR I at § XVI(D); Appendix D (timeline). BCI Acquisition LLC and its subsidiaries BCI, ACI, and HBS are made parties Respondent in this Investigation in order to facilitate the fullest fact finding herein.

IX. ORDERING PARAGRAPHS

Good cause appearing, IT IS THEREFORE ORDERED that:

1. An Investigation on the Commission's own motion is instituted into the fitness of Clear World, its officers, directors, and shareholders James, Michael, and Joseph Mancuso, to operate a telephone utility in California.

2. Staff is directed to develop and present all available evidence relating to all such fitness issues, including but not limited to whether and to what extent:

- (a) DLD and the Mancusos sold long-distance service without a CPCN, in violation of P.U. Code §§ 1001 and 1013, *inter alia*;
- (b) Clear World and the Mancusos misrepresented and concealed such sales and related facts, in violation of P.U. Code § 2114 and the Commission's Rule 1, *inter alia*;
- (c) Clear World and the Mancusos operated telecommunications companies which slammed customers and engaged in other acts of abusive and/or fraudulent marketing, in violation of P.U. Code §§ 451, 2889.5 and 2890, *inter alia*;
- (d) Clear World and the Mancusos concealed the role of Christopher Mancuso in Clear World and related entities in violation of P.U. Code § 2114 and the Commission's Rule 1, *inter alia*;
- (e) Clear World purchased the customers of DLD without Commission approval, in violation of P.U. Code § 854, *inter alia*;
- (f) Clear World and DLD underpaid required surcharges and fees associated with the sales of long distance service, in violation of P.U. Code §§ 405, 739.3, 879, 879.5 and 2881, *inter alia*;
- (g) Clear World and its management failed to comply with Ordering Paragraph 3 of D.03-02-066; and

- (h) Clear World and its management failed to properly retain and produce corporate and business records, and otherwise cooperate with Commission Staff, in violation of P.U. Code §§ 311, 314, 581-82, 584 and 701, *inter alia*.

3. The record in A.01-09-040 shall be incorporated into this proceeding; exhibits admitted in A.01-09-040 shall be considered as admitted here.

4. The Investigation shall determine whether, pursuant to Sections 701, 734, 1013 and 1702 of the Public Utilities Code, *inter alia*, institution of any or all of the following remedies are warranted:

- a. Commission revocation of Clear World's CPCN;
- b. Commission approval of any subsequent sale of Clear World's customer base, or adoption of other measures necessary to protect the established customer base;
- c. Reparations to slamming victims;
- d. Fines or other penalties;
- e. Lifetime ban for James, Michael, Christopher, and Joseph Mancuso from participation in the management of, or as a consultant to, any telecommunications utility licensed by this Commission; and/or
- f. Further injunctive or other relief as appropriate.

4.1 Pending conclusion of this investigation, Clear World and its management shall not directly or indirectly transfer or sell its customer base, or any part thereof, without notice to and approval from this Commission.

5. MCI WorldCom (U-5011, U-5378, U-5253, U-5275), Amerivision Communications (U-5244), and Ironwood Telecom LLC dba Incomnet (U-5173), as well as the billing agent BCI Acquisition LLC (on behalf of its subsidiaries ACI, BCI, and HBS and their predecessors, as named herein), are included as Respondents in this Investigation, and

these utilities and billing agents⁶⁰ are directed to cooperate with Staff in providing full disclosure of all facts and documents relevant to the issues raised in this OII.

6. James, Michael, and Joseph Mancuso are also made Respondents in their capacity as individuals, and directed to provide all documents in their individual possession, custody, or control responsive to Staff's requests (*see* Appendix A).

7. Christopher Mancuso is made a Respondent in his individual capacity. He is ordered to show cause why this Commission should not issue an order barring him from any participation in *any* public utility operation in California, as suggested by D.03-02-066. Should Christopher Mancuso desire to show such cause in this case, he shall also make available to CPSD Staff copies of the account statements, all cancelled checks, and all deposit documentation for those bank accounts in his name or the name of any company he has owned or controlled from 1994-2004, including but not limited to Communications Consulting Inc. (CCI), International Telecommunications consulting (ITC), World Tech, and Mancuso LLC (see SR I, Appendix A; SR III, Appendix A), into which accounts monies from Clear World, Amerivision, billing agents or aggregators, billing "factors," or local exchange carriers were deposited relating in any way to services marketed or sold by DLD, Worldwide, or Clear World.

8. To facilitate the completion of this investigation, and consistent with the provisions of P.U. Code §§ 311, 314, 581-82, 584, and 701, Respondents are ordered to produce the information and documents listed in Appendix A within 15 days of service of this Order. Respondents are further ordered to provide a response verified by one or more competent document custodians, stating that all responsive documents found after reasonable inquiry and diligent search have been produced, except documents specifically identified as privileged, as further set out in Appendix A.

9. Respondents are ordered to preserve until further order by the Commission *all* information and documents, regardless of age, which might relate to this action, including but not limited to correspondence with consumers and third parties, inter-

⁶⁰ See P.U. Code § 2889.9.

office memoranda, inter-office email, disk drives, company websites including archived sites, bank account and other financial records, and complaints (i.e., all expressions of dissatisfaction) from California consumers. Respondents are ordered to cooperate with Staff in its investigation, and provide information, documents and witnesses as requested.

10. Confidentiality of OII, Staff Reports, Attachments to Staff Reports, and Supporting Documents: This OII and Staff's Reports rely on, and the Staff Reports contain as Attachments, substantial material originally designated as "confidential" by the producing party, including documents from MCI WorldCom, Amerivision, Clear World and other telecommunications utilities as well as from third party billing companies. The Commission finds that none of the information contained in, or language excerpted in, this OII and accompanying Staff Reports (apart from the Attachments) is so trade sensitive as to outweigh the public interest in the OII and Staff Reports being released in their entirety, and their release is hereby authorized. Moreover, the Commission finds that documents older than four years, i.e., which date from before the year 2000, do not generally remain so trade sensitive as to outweigh the public interest in their disclosure, and such disclosure is hereby conditionally authorized (subject to objection as set forth in paragraph 11 below).

10.1 Definitions:

* "Supporting Documents," as used herein, means those documents, including but not limited to Attachments, on which Staff has relied in preparing its report.

* "Confidential" documents, as used herein, means those documents the producing party designates as so trade sensitive as to outweigh the public interest in disclosure, absent a ruling or Commission Order to the contrary (and the Commission hereby authorizes the presiding officer to make such determinations in this case).

* "Attorneys-eyes-only" documents, as used herein, means confidential documents the producing party designates as so trade sensitive as to preclude their viewing by respondents herein, such that only legal counsel for a Respondent may view them (except that attorney James Mancuso, a principal of Clear World and a Respondent himself, may not view "attorneys-eyes-only" documents). While legal

counsel may generally discuss the “attorneys-eyes-only” documents with his or her client, he may do so only to the extent necessary to prepare the client’s response or defense to this OII, and may not disclose specific economic or technological data (prices, identification of switches, etc.) to his/her client except with leave from the presiding officer on a showing of necessity. These strictures do not apply where the Respondent client is also the producing party, i.e., where Respondent produced the document.

* “Producing party,” as used herein, means those entities which have produced documents labeled as “confidential,” and includes Respondents Clear World, MCI WorldCom, Amerivision, and BCI Acquisition (and subsidiaries ACI, BCI, HBS, etc.), as well as non-Respondents Qwest and SBC (who will be served with a copy of this OII, per paragraph 21 below).

* “Respondents,” as used herein, means Clear World, James Mancuso, Michael Mancuso, Christopher Mancuso, MCI WorldCom, Amerivision, Ironwood Telecom LLC dba Incomnet, and BCI Acquisition, LLC (and subsidiaries).

* “Mancuso Respondents,” as used herein, means Clear World, James Mancuso, Michael Mancuso, and Christopher Mancuso.

10.2 Meet and Confer: Staff and Respondents are directed to meet and confer with the several producing parties in order to establish which Attachments and Supporting Documents may be released as unrestricted, which Attachments and Supporting documents may only be produced to Respondents herein as “confidential,” which Attachments and Supporting Documents may only be produced to Respondents as “attorneys-eyes-only” confidential, and whether some of the Attachments and Supporting Documents may be redacted or other accommodations reached in order to avoid a “confidential” or “attorneys-eyes-only” designation. Such meet and confer sessions shall include an attempt to devise a confidentiality agreement that protects the confidentiality concerns of the entity that produced the documents while allowing submission of the documents expeditiously to Clear World and the Mancusos. Sample confidentiality orders appear in the *Manual for Complex Litigation*, § 41.35 (Federal Judicial Center, West Publishing, 1995),

available at <http://classaction.findlaw.com/research/mcl.pdf>. The parties who produced the documents may find these samples useful, but are not obligated to use them. Such meet and confer obligations generally extend to documents ordered produced in Attachment A or otherwise produced in discovery herein. All Respondents are requested to designate documents as “confidential” and “attorneys-eyes-only” only where clearly required to maintain “trade secrets,” as used in the context of General Order 66-C and P.U.Code § 583.

10.3. Production of Attachments and Other Supporting Documents to Mancuso Respondents: Notwithstanding the “meet and confer” responsibilities set out above or the previous confidentiality designations of the parties, after service (as set forth below) and within three days of the Mancuso Respondents’ designation of counsel (and Clear World’s designation of outside counsel), Staff is directed to make available to such counsel and outside counsel for the Mancuso Respondent(s) all documents, including but not limited to the Attachments, on which Staff has relied in preparing its report (“Supporting Documents”), for the purpose of allowing counsel to prepare a response, if any, to this OII. As to documents originally produced by parties other than Clear World as “confidential,” counsel for the Mancuso Respondents shall hold such documents as “attorneys eyes only” confidential, and shall not show or give them to Clear World’s principals (Clear World General Counsel James Mancuso and Clear World President Michael Mancuso), to Christopher Mancuso, or to any of the Mancuso Respondents’ non-attorney personnel until either permission can be obtained from the producing parties for the production of their respective documents to the Mancuso Respondents, or a ruling or Commission Order permits such disclosure.

10.4 Production of Attachments and Supporting Documents to Other Respondents: The Attachments may be provided to legal counsel for other Respondents, provided they are then held as “attorneys-eyes-only” confidential until further agreement or ruling. If Respondents other than the Mancuso Respondents request Supporting Documents other than the Attachments, and to the extent not resolved after the process outlined in paragraph 11 below, the producing party shall

similarly meet and confer with the requesting party and – if such consultations are unavailing -- move for protection within ten days of such a request.

11. Designation and Objection: After the “meet and confer” process outlined above, and within fifteen days of service of this Order on a producing party (as described below), that producing party shall serve on CPSD and all Respondents herein written permission for the Mancuso Respondents (and other Respondents if possible) to receive documents produced by that party (with or without specified conditions), or a designation of such Attachments and other documents produced by that party for which that party demands “confidential” or “attorneys’ eyes only” treatment, or both. Counsel for the parties shall then again promptly “meet and confer” so that producing parties’ counsel may explain such “confidential” or “attorneys-eyes-only” confidential designations. If CPSD or Respondents still object to such designation of a document, it/they shall inform the producing party within two business days of such “meet and confer” session. The producing party shall move within ten days of such objection before the Assigned Administrative Law Judge or other designated Administrative Law Judge for an order determining the proper treatment of the document. Resolution ALJ-164 (Sept. 16, 1992) applies to the resolution of these disagreements. Only documents remaining as “attorneys eyes only” after this process shall be withheld from Clear World or other parties’ principals and personnel. Documents remaining “confidential” after this process may be provided to the Respondents and their principals on request, but shall be withheld from public disclosure until further ruling or Commission Order.

11.1 Related Law and Motion: As multi-lateral discovery, document management, and confidentiality issues may bring to the fore problems not anticipated by these Ordering Paragraphs, the Assigned Administrative Law Judge, the Assigned Commissioner, or the Law and Motion ALJ may modify the procedures set forth in paragraphs 10-11 on his/her own motion, on the motion of CPSD, or on the motion of any respondent or third party who produced the documents described in those paragraphs.

12. Respondents' Testimony: Within 60 days of service of this Order as set out below, Respondents shall serve prepared testimony, if any, rebutting, explaining, or expanding on Staff's report herein. Clear World in particular shall show cause in such testimony why its CPCN should not be revoked, and the Mancusos shall show cause why they should not be barred for life from participation in public utility management or operation in California. At the time that Respondents serve such testimony, they shall serve all documents supporting, negating, or otherwise relevant to the testimony served, including all workpapers, relevant contracts, and relevant electronically stored information.

12.1 When OII served on different dates: To the extent service of the OII pursuant to paragraphs 19-20 below occurs on different respondents on different days, the Assigned Administrative Law Judge shall fix a single date for service of Respondents' testimony, and for the doing of any other thing required by this OII to be done within a time certain after such service.

13. Reply Testimony. Within 30 days of service of Respondents' testimony, or at such other time as the Assigned Administrative Law Judge may order, Staff shall file any prepared reply testimony. During this time, Staff requests for information concerning Respondents' testimony shall be responded to within 3 business days, unless agreed otherwise by the parties or ordered otherwise by the Assigned Administrative Law Judge. Respondents' objections to production of documents or information relating to such reply testimony shall be promptly ruled on by the presiding officer or other designated Administrative Law Judge, in order to enable Staff to file its prepared reply testimony in a timely fashion.

14. As soon as practicable after service of reply testimony, a hearing on the allegations set forth in this OII, Staff's accompanying Reports, additional prepared testimony and on any additional information material to the issues in the proceeding, shall occur on a date or dates to be set by the Assigned Administrative Law Judge, and held at the Commission's hearing rooms.

15. Staff shall be subject only to discovery relating to the specific allegations contained in this order, or those added by subsequent motion and order.

16. Staff shall continue to investigate the operations of Respondent Clear World and its management, and the conduct of related third parties. Staff shall monitor consumer complaints made against Clear World. We expect Staff to bring additional evidence, if any, of any alleged harmful business practices by Clear World, its management, or related third parties to our attention. If necessary, Staff may propose to amend the OII to add additional allegations or affiliated respondents. Any such proposal shall be presented by motion to the Assigned Commissioner or Assigned Administrative Law Judge in the form of a motion to amend the OII and shall be accompanied by a Staff declaration supporting the proposed amendments.

17. These ordering paragraphs suffice for the “preliminary scoping memo” required by Rule 6 (c) of the Commission’s Rules of Practice and Procedure. This proceeding is categorized as an adjudicatory proceeding. A prehearing conference shall be scheduled for the purpose of setting a schedule for this proceeding consistent with the parameters set out above.

18. This order, as to categorization of this proceeding, can be appealed under the procedures in Rule 6.4. Any person filing a response to this order instituting investigation shall state in the response any objections to the order regarding the need for hearings, issues to be considered, or proposed schedule. However, objections must be confined to jurisdictional issues that could nullify any eventual Commission decision on the merits of the alleged violations, and not consist of factual assertions that are more properly the subject of evidentiary hearings.

19. Service of this order on Respondents Clear World and the Mancusos shall be effected by service of a copy of this Order and Staff’s Reports on the following Respondents, personally if possible (*cf.* CCP §§ 415.10, 416.10), or otherwise at their designated place of business (*cf.* CCP §415.20), or – if such efforts are not successful -- elsewhere as they may be found and in such other manner reasonably calculated to provide Respondents with notice:

- a. Clear World, James Mancuso, and Michael Mancuso:

Clear World Communications Corp.
3601 South Harbor Blvd.
Santa Ana, CA 92704
- b. Christopher Mancuso at the following address, listed by Christopher Mancuso in 2003 filings with the Secretary of State (See SR III at Appendix A):

C/o International Telecommunications Consulting,
LLC
3333 Michelson Dr., Ste 720
Irvine, CA 92612

To the extent James or Michael Mancuso are aware of any other address where their brother Christopher Mancuso may more readily be found, they shall promptly notify Staff of that address. Although service shall be complete on delivery of this OII and accompanying staff reports without Attachments, Attachments shall be delivered promptly to outside counsel as soon as such counsel is designated by the Mancuso Respondents.

20. Service of this Order and the three Staff Reports (the Attachments may also be served on MCI WorldCom's and Billing Services Group's counsel as identified below, as well as counsel designated by Ironwood and Amerivision, provided such counsel agrees to keep the Attachments marked "confidential" as "attorneys'-eyes only" pending further resolution of the documents' status, as set out above) shall be effected on Respondents MCI WorldCom, Ironwood Telecom LLC, Amerivision Communications, and Billing Services Group by hand service, Federal Express, Express Mail, or certified mail, of this Order to such parties at the following addresses:

- a. MCI WorldCom

Maria Woodbridge, Associate Counsel
MCI WorldCom, Inc.
201 Spear Street, 9th Floor
San Francisco, CA 94105

- b. Ironwood Telecom, dba Incomnet, on the address given in A. 00-04-047:

Donald Berlanti
Ironwood Telecom LLC
555 Zang St., Suite 300
Lakewood, Colorado 80228

And/or on the address found for Incomnet in Telecommunications Division's database:

C/o Dale LaForge
Director, Legal and Regulatory Affairs
Incomnet Communications Corp. U-5173
2801 Main St.
Irvine, CA 92714

(Staff informs the Commission that Ironwood/Incomnet appears to be unknown at both of these addresses. Upon a showing of unsuccessfully attempted service on Ironwood/Incomnet at these addresses, the presiding officer may recommend further action relating to Ironwood/Incomnet's regulatory status.)

- c. Amerivision Communications:

C/o Randy Muth, CFO
Amerivision, dba Lifeline Communications
5900 Mosteller Dr., Suite 1800
Oklahoma City, OK 73112

- d. BCI Acquisition LLC. (for ACI, BCI, and Hold Billing Services):

C/o Kelli Cubeta, Associate Counsel
7411 John Smith Drive, Suite 200
San Antonio, Texas 78229.

21. A copy of this OII and a list of Attachments to the Staff Reports shall be mailed to non-respondent producing parties Qwest and SBC/Pacific Bell, in order to facilitate their designation of documents for which they demand “confidential” or “attorneys-eyes-only” treatment, as set forth above.

This order is effective today.

Dated June 9, 2004, San Francisco, California.

MICHAEL R. PEEVEY
President
CARL W. WOOD
LORETTA M. LYNCH
GEOFFREY F. BROWN
SUSAN P. KENNEDY
Commissioners

APPENDIX A – DATA REQUESTS OF RESPONDENTS

The indicated Respondent is directed to provide the following information and documents within fifteen (15) days from service of this Order, and to provide a verified response from the most knowledgeable employee(s) or custodian(s) of records stating in response to each request that all non-privileged responsive documents have been produced, and identifying those documents by number range or other identifier. In the case of those documents requested of Clear World and its management, as identified under the first heading below, the response should also be verified by James and Michael Mancuso as individuals, to the best of their knowledge. If documents are withheld on the grounds of privilege, a privilege log shall be provided, naming the document and listing author, addressees, persons copied, date, and privilege or other legal protection claimed to shield such document from production.

Clear World Communications Corp. (U-6039), including documents and information in the possession, custody, or control of Clear World's officers and directors Michael and James Mancuso or their father Joseph Mancuso:

1. State clearly the total number of customers (defined by BTNs) and lines (defined by WTNs) Clear World had on each of the following dates, as well as the total number of such customers with California numbers on such dates: October 2, 1998; January 1, 1999, and October 1 of each of the years 1999-2003 inclusive.
2. For each of the dates in the preceding request, please state the number of California customers direct billed by Clear World, the number billed through the LECs (please specify by LEC), and the number billed by billing agents other than the LECs (please specify by billing agent).
3. For the calendar and Clear World fiscal years 1998 through 2003 (to the extent that fiscal year 2003 is still ongoing, partial information may be provided), please separately state the total dollar amount billed to California BTNs through: (a) LECs or billing agents; (b) Clear World direct billing; and (c) other sources.
4. Please identify Clear World's five largest direct billed customers (in terms of total billings) with California numbers in calendar years 1998, 1999, 2000, 2001, 2002, and 2003, and the amount billed to each of those customers in those years.

5. Please state for each calendar and Clear World fiscal year, 1998 forward, Clear World's total California revenue (i.e., revenue obtained from all California ANIs and BTNAs).

6. Please state for each calendar and Clear World fiscal year, 1998 forward, Clear World's total California billings (i.e., billings for all California ANIs and BTNAs, to the extent different than the number stated in 2.5 above), and the total amount of that number which constituted California intrastate billings, as used in the calculation of public interest surcharges and PUCURA user fees (and to the extent your calculation of total billings for purposes of those surcharges and fees are different, provide both numbers). As to the intrastate billings, please provide all backup, workpapers, and supporting source documents in your possession and/or on which Clear World bases its calculation.

6.5 Please provide proof that Clear World, DLD, and Worldwide paid all required public interest surcharges and PUCURA user fees, and provide all backup for such proof.

7. Please produce all account records for Worldwide Telecommunications Corp. bank account # 023760959 at City National Bank (or its predecessors or successors) in Newport Beach, CA, as identified in Clear World's contract with Hold Billing Services as the repository account for proceeds of Clear World's sales, including monthly statements and any cancelled checks, wire transfers, or other memoranda of payments into or out of the stated account.

8. Please produce account records of all accounts used by Clear World to receive the net proceeds from its or Worldwide's sale of telephone service through WorldCom accounts 182806, 112904, 172522, and 186317 services (whether such revenue came from LECs, billing aggregators like BCI, ACI, HBS or ZPDI, or from Worldwide, WorldTel, or other sources) from 1998 through 2003 inclusive. Again, "account records" means all documents including cancelled checks, account statements and other evidence of payments into or out of the account.

9. Please produce account records for all accounts from which Clear World made payments to Christopher Mancuso, for Christopher Mancuso, or to or for business entities in which he had or has a beneficial or controlling interest, including but not limited to CCI, ITC, Mancuso LLC, World Tech, etc., and including but not limited to records of the accounts from which the \$5.2 million in payments to Christopher Mancuso's ITC were made. *See* D.03-02-066.

10. Please produce account records, including copies of checks and other documentation, of those accounts used by Clear World the Mancusos, or their agents to make payments to World Com, its affiliates, or any third party for

service on accounts 182806, 186317, 178522 and 112904, 1996 to date. (See previous DR Doc. Request #15).

11. All invoices and correspondence from WorldCom or its subsidiaries or affiliates, in your possession, custody or control, for services rendered under account 182806, 186317, 178522, and 112904, 1996 to date.

12. All documents related to Clear World's purchase of American Electronics Corporation (AEC), an entity apparently owned 100% by Joseph Mancuso, including but not limited to all AEC/DLD tax returns, financial reports, checking and other financial institution account records, customers lists, and any documents describing the assets purchased by Clear World in your possession, custody or control. (*See* previous DR Doc. Request #16).

13. Clear World Accounts Payable Ledger from 10/2/01 to 10/30/01. (DR Doc. Request #24)

14. Please provide a full explanation and documents supporting such explanation for the difference between the September 2001 ending balance and October 2001 beginning balance of the Clear World Accounts Payable Ledger, including a full description and backup for the fiscal year end final adjustments which Clear World has previously indicated as justification for such difference. (*See Id.*)

15. Missing audited financial statements for/dated September 30, 2002, which were supposed to be available in October 2003. (DR Doc. Request #24)

16. Copies of all documents, agreements, transactions, ledger details and any other supporting documentation for the asset account titled "Loans to Shareholders" in Clear World's Federal and State of California Income Tax returns.

17. The (names and) last known telephone numbers of all former DLD or Clear World telemarketers, telemarketer managers, sales secretaries, and telemarketer monitors.

18. Please state the total amount of all compensation of whatever form paid directly or indirectly from Clear World to James, Michael, Joseph, and Christopher Mancuso for each of the years 1998-2003 inclusive.

19. Please provide all customer service notes, CARE system or TCIS code transmissions, and any other customer information for the 69 customers identified in SR II.

20. Verified responses, per CCP 2031(f) and (g), to all data requests propounded in 2003 and 2004, verifying that all responsive, non-privileged documents have been produced, and identifying those documents by Bates number.

MCI WorldCom

* all documents memorializing, or reflecting in any way the circumstances of, the creation of accounts 182806, 186317, 178522, and 112904 -- and verification that all responsive, non-privileged documents have been produced, and identifying those documents by Bates number.

* Verified responses, per CCP 2031(f) and (g), to the 15 data requests propounded on or about July 15, 2003, verifying that all responsive, non-privileged documents have been produced, and identifying those documents by Bates number.

Incomnet/Ironwood/NTC

* all extant documents referencing or reflecting the activities of Christopher Mancuso and other members of his family on behalf of the utility NTC or its successors, while they were operating at the utility, and a verification attesting that all such documents found after reasonable inquiry and diligent search have been provided to the Commission.

BCI Acquisition LLC aka BCI, ACI, HBS, etc.

* Verified responses, per CCP 2031(f) and (g), to all data requests propounded in 2003 and 2004 to ACI/HBS and BCI, verifying that all responsive, non-privileged documents have been produced, and identifying those documents by Bates number.