

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

CALIFORNIA ISP ASSOCIATION, INC.,

Complainant,

vs.

PACIFIC BELL TELEPHONE COMPANY
(U-1001-C); SBC ADVANCED SOLUTIONS, INC.
(U-6346-C) and DOES 1-20,

Defendants.

Case 01-07-027
(Filed July 26, 2001)

**ASSIGNED COMMISSIONER'S AND ADMINISTRATIVE LAW JUDGE'S
RULING GRANTING INTERVENTION REQUESTS AND
DENYING MOTION TO WITHDRAW COMPLAINT**

I. Background

On July 26, 2001, the California Internet Service Provider Association (CISPA) filed this complaint alleging unlawful discrimination by the defendants, Pacific Bell Telephone Company (Pacific) and SBC Advanced Solutions Inc. (ASI) (jointly Pacific/ASI), in the provision of Digital Subscriber Line (DSL) Transport services. CISPA alleges anticompetitive marketing and sales practices, preferential treatment in providing DSL to ISP's affiliated with Pacific and ASI, improper use of non-public customer information, and service quality concerns such as service interruptions and disconnections.

On October 22, 2001, Pacific/ASI filed a motion to dismiss the complaint, which was denied by the Assigned Commissioner and Administrative Law

Judge by ruling dated March 28, 2002. A Scoping Memo for the case was issued on May 10, 2002, and complainant's testimony was served on June 14, 2002.

On August 12, 2002, CISPAA and Pacific/ASI jointly filed a motion to withdraw the complaint and dismiss the proceeding because they had reached a settlement resolving their disputes. The settlement between CISPAA and Pacific/ASI was attached to the motion to withdraw along with a motion to file the settlement under seal. On August 29, 2002, CISPAA and Pacific/ASI jointly requested to withdraw the motion to file their settlement under seal because they had now made the settlement publicly available.

II. Motions to Intervene

On August 20, 2002, Brand X Internet LLC (Brand X) filed a motion to intervene as a party in the above-captioned proceeding. Brand X is a local Internet Service Provider (ISP) in southern California that offers internet connections to residential customers, businesses, and non-profit organizations. Brand X states that it has an interest in this proceeding involving alleged unfair business practices by Pacific and its affiliate ASI in the provision of DSL Transport service to ISPs not affiliated with Pacific or ASI. Brand X maintains that these alleged unfair and anti-competitive practices directly impact the provision of competitive internet services offered by Brand X. Brand X does not intend to broaden the issues already raised in the proceeding.

On September 10, 2002, The Utility Reform Network (TURN) and the Utility Consumers' Action Network (UCAN) jointly filed a motion to intervene in this complaint in order to represent consumer and small business interests and to ensure competitive choices in internet service in California. They contend the issues in this complaint directly affect the way end-user customers and small businesses obtain high speed internet services. TURN/UCAN maintain they

have expertise with the subject matter of this complaint given UCAN's direct involvement with consumer complaints regarding DSL services and its representation of consumers in a recent complaint against Pacific's billing, customer service, disconnection and marketing practices for DSL service (Case (C.) 02-01-007/Investigation (I.) 02-01-024). TURN describes its expertise from involvement with the Commission's "line sharing" proceedings that involve joint use of Pacific's local exchange lines for voice calls and other broadband services such as DSL.

According to TURN/UCAN, they did not intervene earlier because they saw no need to duplicate the efforts of CISPA. TURN/UCAN now move to intervene because of the motion to withdraw the complaint filed by CISPA and Pacific/ASI on August 12, 2002. TURN/UCAN view the allegations in the case as too important to dismiss without further review and are concerned that the interests of end-user customers and small ISPs be adequately heard. They suggest that the Commission should allow CISPA to withdraw from the case, but keep the proceeding open so individual ISPs can litigate the complaint.

CISPA does not oppose the intervention request by Brand X and takes no position regarding the intervention of TURN/UCAN.

Pacific/ASI oppose the Brand X intervention as untimely since it comes over one year after the complaint was filed.¹ In addition, they contend that Brand X has no standing because it is not a customer of ASI and that Brand X

¹ Pacific/ASI's response to the Brand X intervention was due on September 4 but not filed until September 10 and is itself untimely. Although Pacific/ASI provide no explanation for their late response, we will still consider the issues they raise in their response because the minor delay in its receipt has not harmed any party.

should not be allowed to raise issues, such as pricing, that have already been ruled to be outside the scope of the complaint. Similarly, Pacific/ASI oppose TURN/UCAN's intervention request as untimely and contend that TURN/UCAN have no legitimate interest in the proceeding because they are not customers of ASI, they do not represent ISPs that are customers of ASI, and they have failed to demonstrate that end-user customers of ISPs have requested their assistance. In addition, Pacific/ASI claim that TURN/UCAN have no expertise or familiarity with the issues in this proceeding and they have not specifically described the issues they intend to pursue.

Morgen Van Buren, a DSL customer who earlier intervened in this complaint, files in support of the interventions of TURN/UCAN and Brand X. Van Buren states that DSL is an issue of substantial public interest and importance and that complainant CISPA has alleged serious service quality problems and anti-competitive practices surrounding defendants marketing and installing DSL. Van Buren notes similarities between the intervention requests of Brand X and TURN/UCAN and the intervention of Greenlining Institute (GI) and Latino Issues Forum (LIF) in consolidated complaints C.99-12-029 and C.00-02-027.² In that consolidated complaint, the complainant and defendant had jointly filed a request to dismiss their complaints. In D.01-02-017, the Commission granted intervention to GI and LIF and denied the request to dismiss the complaint despite the agreement of the parties. The Commission found that it was in the public interest to continue to pursue the allegations

² C.99-12-029 involved slamming allegations by Pacific against AT&T Communications of California (AT&T). C.00-02-027 involved a cross-complaint of slamming allegations by AT&T against Pacific.

contained in the complaints, and that GI's and LIF's intervention might advance inquiry and resolution of those allegations.

Discussion

Brand X and TURN/UCAN have shown good cause why their intervention requests should be granted for the purpose of considering their views on the Settlement between CISPA and Pacific/ASI. First, with regard to Brand X, the motion is timely given the recent request to withdraw the complaint and Brand X's fear that its concerns as an ISP and individual member of CISPA may not be covered by the Settlement. Brand X wants to inform the Commission of its opinion of the Settlement between CISPA and Pacific/ASI and it will only be able to do so if its intervention request is granted. Brand X has shown it has an interest in the competitive issues and service quality allegations contained in the complaint given its role as an ISP, former wholesale DSL customer of Pacific/ASI, and a current retail DSL customer of Pacific/ASI.

With regard to TURN/UCAN, its motion is also timely because it comes immediately following the motion by CISPA and Pacific/ASI to withdraw the complaint. Further, TURN/UCAN have an interest in this complaint as representatives of end-users concerned with the competitive provisioning of internet services. TURN/UCAN have provided assistance in numerous proceedings in their capacity as consumer advocates and the Commission does not typically require them to prove that specific end-users have requested representation by TURN or UCAN before it allows their intervention in a proceeding. We disagree that TURN/UCAN did not specify the issues they wish to address. TURN/UCAN have expressed their desire to comment on the Settlement Agreement filed by CISPA and Pacific/ASI and their intervention should be granted so they can do so.

We agree with Mr. Van Buren that D.01-02-017 provides useful guidance in this matter. In that order, the Commission allowed intervention by additional parties when the public interest necessitated further scrutiny of important policy issues underlying the complaint, despite the complainant's and defendant's joint request to withdraw their complaints. In this case, Brand X and TURN/UCAN raise issues related to the Settlement underlying the withdrawal request and the effect of the Settlement on the competitive DSL market. As described more fully below, Brand X and TURN/UCAN allege the Settlement forged by CISPA and Pacific/ASI violates the Commission's rules regarding settlements and it is not in the public interest because it may not prevent further abuses of the kinds alleged in the complaint. The Commission should consider the views of Brand X and TURN/UCAN. The motions to intervene are granted. Brand X and TURN/UCAN's intervention is limited to commenting on the motion for withdrawal and the underlying Settlement Agreement. Should either Brand X or TURN/UCAN desire greater involvement in the proceeding, they will have to file subsequent motions explaining the nature and scope of their intended participation.

III. Commission Rules Regarding Settlements

Rule 51 defines the term "settlement" in Commission proceedings, including complaints, as "an agreement between some or all of the parties to a Commission proceeding on a mutually acceptable outcome to the proceedings." (Rule 51(c).) A contested settlement is one that is opposed in whole or part by any of the parties to the proceeding. (Rule 51(e).) Rule 51.1 (a) states that:

Parties to a Commission proceeding may stipulate to the resolution of any issue of law or fact material to the proceeding, or may settle on a mutually acceptable outcome to the proceeding, with or without resolving material issues. Resolution shall be limited to the

issues in that proceeding and shall not extend to substantive issues which may come before the Commission in other or future proceedings.

Rule 51.1(b) states that:

Prior to signing any stipulation or settlement, the settling parties shall convene at least one conference with notice and opportunity to participate provided to all parties for the purpose of discussing stipulations and settlements in a given proceeding. Written notice of the date, time, and place shall be furnished at least seven (7) days in advance to all parties to the proceeding. Notice of any subsequent meetings may be oral, may occur less than seven days in advance, and may be limited to prior conference attendees and those parties specifically requesting notice.

Rule 51.1(e) states that:

The Commission will not approve stipulations or settlements, whether contested or uncontested, unless the stipulation or settlement is reasonable in light of the whole record, consistent with law, and in the public interest.

IV. Motion to Withdraw Complaint

On August 12, 2002, CISPA and Pacific/ASI (collectively the “Settling Parties”) jointly filed a motion to withdraw this complaint and dismiss the proceeding with prejudice. The Settling Parties state they have reached a Settlement Agreement that is more advantageous than proceeding with litigation because it resolves their dispute and serves the interest of ISPs and Californians who want to use DSL service in areas served by ASI. The Settlement Agreement, attached to the motion to withdraw, contains provisions addressing system architecture, customer migration intervals, provisioning of DSL transport service, access to competitive information, sales practices of ASI and Pacific personnel, creation of an ombudsperson to resolve sale practice disputes between ISPs and Pacific/ASI, and creation of a marketing fund to promote ASI’s DSL services through non-affiliated ISPs. The Agreement also addresses payment of attorneys’ fees to CISPA and a provision prohibiting CISPA’s involvement in any

state or federal proceedings under Section 271 of the Telecommunications Act of 1996, or state proceedings under Pub. Util. Code § 851 regarding claims based on the facts alleged in the complaint.

According to the Settling Parties, the Settlement resolves their dispute, solidifies various remedies regarding DSL service to ISPs that Pacific/ASI have already implemented during the course of this litigation, commits Pacific/ASI to continued improvement, provides resources to CISPA members who sell ASI's DSL service, and ensures CISPA does not suffer a hardship based on the attorneys' fees it incurred in the course of this litigation. They contend the Settlement is in the public interest because it will ultimately benefit California consumers who have or seek DSL Internet service. Specifically, they contend the Settlement benefits consumers by minimizing the time involved in changing from one ISP to another, which will allow consumers to exercise choice in ISP providers without significant downtime. In addition, they assert the Settlement assists independent ISPs in marketing DSL, which should give consumers a wider variety of ISPs to choose from for their broadband services. The Settling Parties believe that the provision limiting CISPA's future involvement in other Commission proceedings regarding the facts alleged in this complaint is a fair trade for other provisions of the Settlement.

Brand X, TURN/UCAN, and Morgen Van Buren filed comments opposing the Settling Parties motion to withdraw the complaint. Brand X contends the settlement is not consistent with Rule 51.1(a) of the Commission's Rules of Practice and Procedure because it limits CISPA's involvement in other Commission proceedings. Brand X also asserts that the Settlement is not in the public interest because it does not meaningfully resolve the issues presented in the complaint. According to Brand X, the Settlement does not give ISPs any

enforceable rights to counter the alleged improper actions of Pacific/ASI. Therefore, Brand X maintains that the Commission cannot approve the Settlement because it is not in the public interest and it should be rejected or modified to conform to Rule 51.1(a).

TURN/UCAN contend that withdrawal of the complaint is contrary to the public interest because it prevents the Commission from hearing complaints by ISPs and customers and severely limits the Commission's ability to investigate the allegations contained in the complaint. They contend the Settlement contains no enforceable language to prevent ASI from duplicating the kinds of abuses alleged by CISPA in its complaint. Further, TURN/UCAN maintain the motion to withdraw the complaint violates the Commission's rules regarding settlements (Rule 51 *et seq.*) because the Settlement attempts to silence CISPA on matters that are not limited to this proceeding, and the Commission has already rejected a similar attempt to limit a party's participation in a regulatory proceeding.³ TURN maintains that although the Settlement limits participation in other proceedings "based in whole or in part on any of the facts alleged in the Complaint," this restriction is meaningless because the allegations in the complaint were broad and comprehensive and covered numerous operations and marketing practices of Pacific/ASI. They suggest that the Commission should allow CISPA to withdraw from the case but invite ISPs or their customers

³ See Resolution T-16522, dated Nov. 29, 2001 rejecting a provision in an interconnection agreement between Pacific and Covad Communications that attempted to limit Covad's participation in the Commission's Section 271 Proceeding (R.93-04-003/I.93-04-002/R.95-040943/I.95-04-044.)

to continue to present testimony in this docket, while at the same time moving the testimony already filed by CISPA into the evidentiary record of the case.

Morgen Van Buren responds that the Settlement Agreement was executed in violation of Rule 51.1(b) because it was signed without first holding a settlement conference with notice to all other parties. Van Buren maintains that Rule 51.1 applies to *all* settlements in *all* proceedings, and requires a settlement conference with notice and opportunity to participate to all parties. Van Buren explains that he had asked for notice of a settlement conference and never received one from attorneys of CISPA or Pacific/ASI. He asks that the Commission require CISPA and Pacific/ASI to reopen settlement negotiations in the presence of a Commission-appointed ALJ mediator, so that Van Buren and other parties can present their views on the issues in this case in a confidential meeting. Van Buren also contends that the Settlement violates Rule 51.1(a) because it affects CISPA's participation in other Commission and FCC proceedings.

The Settling Parties reply that the Settlement Agreement and corresponding withdrawal of the complaint are in the public interest because the Settlement will change the way ASI provides DSL transport. They contend the Settlement contains specific commitments to ISPs which are enforceable through breach of contract litigation. Further, they reply that the Settlement does not violate the Commission's rules because the parties are not requesting Commission approval of the settlement under Rule 51.1. Rather, they merely seek leave to withdraw the complaint and terminate the proceeding. Pacific/ASI contends the Rule 51 procedure is voluntary in that parties "*may* settle on a mutually acceptable outcome" and "*may* by written motion propose settlements for adoption by the Commission" but they are not required to obtain

Commission approval of settlements. Therefore, the Commission does not need to determine whether the settlement is in the public interest, as required by Rule 51.1(e).

The Settling Parties respond to comments that the Settlement limits participation in various Commission proceedings by claiming that the Settlement merely prohibits CISPA from raising the very same issues and the very same factual situations that have been settled here. They contend that Pacific/ASI would not have provided compensation or otherwise made concessions through the Settlement without assurance that the same facts and issues would not be raised elsewhere. CISPA and its members are free to participate in other Commission proceedings to raise other issues or assert claims based on new or different facts. Finally, they claim that any unease with Section 271 proceeding limitations are moot given the Commission's recent Section 271 order (D.02-09-050, September 19, 2002).

The Settling Parties respond to Van Buren's claim that he was not notified of any settlement conferences, as required by Rule 51.1(b), by stating that all of the parties in the proceeding had notice of settlement discussions based on discussions at the August 2001 prehearing conference and based on e-mails in May 2002. They claim that Rule 51.1(b) does not require an additional notice of a settlement conference on the eve of execution of a settlement.

Pacific/ASI object to TURN/UCAN's proposal to allow CISPA to withdraw and leave the case open because they compare this to leaving the defendants in the public stockade without a complainant. Further, they note that if this proposal were adopted, the terms of the Settlement would not become effective and CISPA would forfeit the benefits contained in the Settlement. The Settling Parties also oppose TURN/UCAN's suggestion to have CISPA file its

testimony for the record in this proceeding. They see no need for the testimony to be incorporated into the record, particularly when it is only the testimony of one side to the complaint. Rather, the Commission can review the Settlement itself to determine whether to allow withdrawal of the complaint.

CISPA responds to concerns that the Settlement binds other parties in other Commission proceedings by stating that the Settlement is not binding on individual ISPs, end user customers, or consumer groups and their ability to raise their own complaints against Pacific or ASI. Further, the Settlement does not waive the rights of CISPA concerning matters outside the scope of the complaint.

Discussion

The issue before us is whether we should allow the Settling Parties to withdraw the complaint and thereby dismiss it with prejudice. In granting this request, the Commission would essentially waive scrutiny of the underlying settlement Agreement under the standard set forth in Rule 51.1(e). Brand X and TURN/UCAN allege that the underlying settlement is not in the public interest and that Commission rules regarding settlements were violated. The Settling Parties contend that the Commission does not need to determine whether the settlement is in the public interest, the settlement rules do not apply because they are not invoked here, and even if they did apply, there were no violations.

We agree with Van Buren's assessment that the Commission's rules defining settlements, setting procedures for their proposal, and setting a standard for review apply to **all** settlements in Commission proceedings. Under those definitions, this is a contested settlement because Van Buren does not support its adoption. We also find D.01-02-017 to provide useful guidance on the issue of whether to grant a request to dismiss a complaint. As stated therein:

Resolution of a request for dismissal of a complaint requires a balancing of litigant's discretion to control interaction with governmental bodies against the Commission's need to advance the public business. (*Application of Southern California Gas Co.*, 43 CPUC 2d 639, (D.92-04-027), (1992).) The Commission should deny requests for dismissal when a case involves the orderly development of the law or issues of substantial public interest or importance. (D.01-02-017, 2001 Cal. PUC LEXIS 72, *1.)

We find that the Commission should deny the motion to withdraw the complaint and should instead review the Settlement Agreement under Rule 51.1 to determine whether it is reasonable in light of the whole record, consistent with law, and in the public interest. Commenters raise several issues relating to the public interest that the Commission should consider such as whether the Settlement violates the Rule 51.1(a) limitation on matters outside the scope of the settled case and whether the settlement contains enforceable provisions that adequately resolve the service quality and anti-competitive concerns raised in the initial complaint. TURN/UCAN point out that the language in paragraph 9 of the settlement appears to limit CISPA's involvement in the Section 271 case, Section 851 proceedings regarding DSL service, and other cases such as the NRF audit. TURN/UCAN also charge that the language in paragraph 9 is so broad that it might deprive ISPs and their customers from being heard, or restrict the Commission's ability to pursue allegations on its own. The Settling Parties contend that the language in paragraph 9 is integral to the settlement and that Pacific/ASI would never have made the concessions in the settlement without agreement that future claims arising from these same issues would be prevented. The service quality and anti-competitive allegations that are at the heart of this complaint are matters of substantial public interest. Therefore, the Commission should judge whether the public interest is served by the terms of the settlement

and the restrictions contained therein on the ability of CISPA, its individual members, or any other parties, to raise these same facts in other Commission and federal proceedings.

We appreciate that the parties have attempted to resolve a business dispute without further litigation that is a drain on the resources of all involved. Nevertheless, we find that the seriousness of the allegations raised in this complaint require us to consider the issues raised by commenters regarding this settlement. The balancing described in D.01-02-017 requires the Commission to place consideration of the public interest over the business interests of CISPA, Pacific, and ASI in desiring to withdraw the complaint.

For the guidance of the parties as they consider whether to revise the Settlement or to join the proposed Settlement, we note some preliminary issues we have identified as we have reviewed the Settlements and parties' comments on it.

We are concerned that the language of paragraph 9 of the settlement, "Settlement Agreement; Release of Claims," is unclear and perhaps too broad in its limitations on the ability of other parties to pursue future claims against Pacific or ASI. The statement in paragraph (a) that "The parties reserve their rights as to the legal effect of this Settlement Agreement upon the claims of individual members of CISPA in other proceedings," is vague and ambiguous because it could be interpreted to allow Pacific or ASI to counter future claims as violations of the Settlement. The provision limiting CISPA from proactively participating further in any Section 271 proceeding appears to go beyond a limit on involvement related to the facts underlying this complaint. The provision requiring CISPA to withdraw its comments in the Commission's Section 271

proceeding is problematic to the extent those comments covered topics other than those underlying this complaint.

Finally, the third paragraph of section 9(a) contains language restricting CISPA and Defendants from any involvement in a future claim, lawsuit, complaint or administrative proceeding against the other “arising out of or based upon, any and all facts which are the basis of the Complaint or claims asserted in this litigation...” We note that the record of this proceeding never advanced beyond the broad allegations in the complaint, given that testimony was only served, but never accepted into the record. It is unclear how such a broad restriction as contained in paragraph 9(a) will be practically enforced. The settlement refers to the "facts" underlying the complaint, but we are unsure what this refers to since the record for the case was not developed. We are concerned this language might unreasonably exclude any future claims of misconduct against Pacific or ASI unless the facts, time periods, and claims referred to are specified. We invite parties to address these concerns either in a revised agreement or in further comments after the required settlement conference described below.

We are also concerned with the situation described by Mr. Van Buren. His opposition is based on what he views as a violation of the notice requirements of Rule 51.1(b). He claims he requested notice of any settlement conference and did not receive it. Settling Parties contend that no additional notice was required beyond the initial notice at a PHC in August 2001 that settlement discussions were under way and e-mails between CISPA and Pacific/ASI in May 2002. Van Buren appears to not have received adequate notice of settlement. The e-mails that CISPA/ASI attach to their September 25, 2002 reply comments as proof that parties were apprised of settlement negotiations are all dated prior to the May

10, 2002 ruling granting Van Buren's intervention request. Given that settlement discussions between the CISPAs and Pacific/ASI broke off in late 2001 and did not resume until May 2002, around the time Van Buren was granted leave to intervene, it is reasonable in this case to find that CISPAs and Pacific/ASI should have notified Van Buren that settlement discussions were resuming. Van Buren had not been granted party status when the discussions began, and since they resumed after a long hiatus and after Van Buren was granted intervention, a new notice of a settlement conference should have been issued.

We find that it would be unreasonable to waive review under Rule 51.1 and allow withdrawal of the complaint when there is a question raised by one party as to whether the settlement was entered into properly under Commission rules. Therefore, we will require the Settling Parties to convene a settlement conference for all parties to this proceeding to determine if the settlement will be modified. Following the settlement conference, the Settling Parties should file a report within 14 days after the settlement conference on whether the settlement will be modified. Other parties may comment on this report within ten days of its filing. Van Buren's request for mandatory mediation is denied because we do not consider it appropriate to require parties to submit to mediation in this case.

TURN/UCAN's request that the Commission allow CISPAs to withdraw and require filing of the testimony is denied. It is unclear from TURN/UCAN's pleading whether any ISPs or end-users actually want to pursue the issues in the initial complaint. At this point, we prefer to review the Settlement to see whether it is reasonable and meets the public interest. We can do this based on the comments that have been filed thus far, and based on any further comments we receive after a settlement conference is held. At that point, the Commission can consider whether the Settlement is reasonable and in the public interest, or

whether certain terms within the Settlement should be modified before it can be approved.

In summary, the motion to withdraw the complaint and dismiss it without prejudice is denied. The Commission will review the Settlement Agreement under Rule 51.1(e), based on the comments filed thus far by the parties and any additional comments that are filed after a settlement conference is noticed and held.

IT IS RULED that:

1. The motions to intervene of Brand X Internet LLC, The Utility Reform Network (TURN) and the Utility Consumer Action Network (UCAN) are granted for the limited purpose of commenting on the motion to withdraw the complaint and the accompanying Settlement Agreement filed by California Internet Service Provider Association (CISPA), Pacific Bell Telephone Company (Pacific), and SBC Advanced Solutions Inc. (ASI).

2. The Process Office and the parties are directed to add the following names to the service list for this proceeding:

1. Jim Pickrell
Brand X Internet LLC
927 6th Street
Santa Monica, CA 90403
(310) 393-8467
jimp@brandx.net
2. Christine Mailloux
The Utility Reform Network
711 Van Ness Avenue, Suite 350
San Francisco, CA 94102
(415) 929-8876
cmailloux@turn.org
3. Michael Shames

UCAN
3100 5th Avenue, Suite B
San Diego, CA 92101
(619) 696-6966
mshames@ucan.org

3. The August 12, 2002 motion filed by CISPA, Pacific and ASI to withdraw the complaint and dismiss the proceeding is denied.

4. The August 12, 2002 motion by CISPA, Pacific, and ASI to file confidential information under seal is denied as moot given the August 29, 2002 request by these same parties to withdraw the motion for confidential treatment.

5. CISPA, Pacific and ASI shall convene a settlement conference within 21 days of this ruling.

6. Within 14 days of the settlement conference, CISPA, Pacific, and ASI shall file and serve a report on whether their Settlement Agreement will be modified. Other parties may comment on this report within 10 days of its filing.

7. The Settlement Agreement attached to the CISPA, Pacific, and ASI motion to withdraw the complaint, or any modifications of it, shall be reviewed under Rule 51.1, based on comments filed thus far and any additional comments received following the settlement conference.

Dated December 17, 2002, at San Francisco, California.

/s/ LORETTA LYNCH
Loretta Lynch
Assigned Commissioner

/s/ DOROTHY J. DUDA
Dorothy J. Duda
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Assigned Commissioner's and Administrative Law Judge's Ruling Granting Intervention Requests and Denying Motion to Withdraw Complaint on all parties of record in this proceeding or their attorneys of record.

Dated December 17, 2002, at San Francisco, California.

/s/ FANNIE SID

Fannie Sid

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.