

Decision **COMMISSIONER WOOD'S ORDER TO ALJ ECONOME'S ORDER AGENDA #1009**
(Mailed 10/11/02)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the operations, practices, and conduct of Qwest Communications Corporation (Qwest), U-5335-C and its wholly owned subsidiary, LCI International Telecommunications Corporation, doing business as Qwest Communications Services (LCIT), U-5270-C to determine whether Qwest and LCIT have violated the laws, rules and regulations governing the manner in which California consumers are switched from one long distance carrier to another and billed for long distance telephone services.

Investigation 00-11-052
(Filed November 21, 2000)

(See Appendix A for Appearances)

OPINION FINDING VIOLATIONS AND IMPOSING SANCTIONS

TABLE OF CONTENTS

Title	Page
OPINION FINDING VIOLATIONS AND IMPOSING SANCTIONS	1
I. Summary	2
II. Background	2
III. CSD's Slamming and Cramming Allegations.....	5
IV. Greenlining / LIF's Allegations	6
V. Qwest's Response to the Allegations.....	7
A. Slamming Allegations.....	7
B. Cramming Allegations	8
VI. Other Investigations.....	8
VII. Conclusions Regarding Slamming	9
A. Summary	9
B. The PIC Dispute Data Indicate Widespread Slamming	10
1. Commission Precedent on Evidence of Slamming	10
2. Qwest Challenges the PIC Dispute Numbers.....	11
3. Qwest's Credibility and Burden of Proof Defenses	15
C. Qwest's Admissions.....	21
D. Falsified Verification Tapes, Forged Letters of Authorization	22
E. Failure to Retain Verification Tapes and Make Them Available	25
F. Disproportionate Impact on Ethnic Communities	27
G. Independence of Qwest's Third-party Verification Agents.....	30
H. Qwest's Historic vs. Ongoing Practices	31
VIII. Conclusions Regarding Cramming	34
IX. Qwest's Lack of Compliance With D.00-06-079.....	38
X. Remedies.....	42
A. CSD's and Greenlining / LIF's Recommendations.....	43
B. Qwest's Response.....	44
C. Discussion.....	45
1. Refunds	45
2. Fines.....	46
3. Additional Conditions.....	50
a. CSD's Recommended Conditions	50
b. Other Conditions	51
XI. Appeal of Presiding Officer's Decision	53
A. CalTel's Motion.....	53
B. Qwest's Appeal.....	55
C. Greenlining / LIF's Appeal	59
XII Comments on Commissioner Wood's Alternate Draft Order	60
Findings of Fact	60

Conclusions of Law	63
ORDER.....	67
Appendix A - APPEARANCES	1
Appendix B - Additional Adopted Conditions	
Appendix C - Conclusions Regarding Qwest's Summary of Slamming	
Complaints For Which Qwest Alleges That CSD Did Not Meet Its	
Burden Of Proof	
(END OF APPENDIX C)	15

I. Summary

This decision finds that Qwest Communications Corporation and its wholly-owned subsidiary, LCI International Telecommunications Corporation (collectively Qwest) violated Pub. Util. Code § 2889.5 and § 2890, as well as other statutes, in the course of their marketing activities, and that sanctions are warranted for these violations.¹ Primarily in 1999 and 2000, Qwest failed to adequately supervise its sales agents so that the agents switched thousands of customers' long distance telephone service without their permission in violation of § 2889.5. In some cases, the third-party verification tapes or letters of authorization confirming the switches were falsified, and Qwest failed to retain third-party verification tapes and make them available to the customer and the Commission. Qwest also violated § 2890 by placing unauthorized charges on thousands of customers' telephone bills. For these acts, we conclude that a \$20,340,500 fine is warranted. We also order reparations and require Qwest to comply with additional conditions to ensure compliance with § 2889.5 and § 2890.

II. Background

Qwest is a Delaware corporation with its principal place of business in Denver, Colorado.² Qwest offers both long distance and local toll services for California residential consumers, and provides communication services to interexchange carriers and other entities using its own facilities as well as

¹ Unless otherwise indicated, statutory citations are to the Public Utilities Code.

² Qwest is wholly owned by Qwest Communications International, Inc., which oversees a conglomerate of subsidiaries that provide telecommunications services to businesses and residential customers.

facilities leased from other carriers. Qwest currently acts as an underlying carrier for 158 long distance resellers.

The order instituting this investigation (OII) charges Qwest with changing the long distance carrier of numerous California customers without their authorization. This practice, known as “slamming”, is unlawful under § 2889.5. Section 2889.5 contains detailed rules regarding the appropriate steps telephone corporations must take in order to make changes in a subscriber’s telephone service. The statute requires independent third-party verification of the subscriber’s decision to change telephone service providers. The telephone corporation must record the subscriber’s decision to change, retain the record for at least one year, and make the record available to the subscriber and the Commission upon request. Section 2889.5 is a public welfare statute which does not require proof of a mental state element such as intent. (See e.g., *In Re Communication TeleSystems International (CTS)*, D.97-05-089, 72 CPUC2d 621, 642, Conclusion of Law 6.)

The OII also charges that Qwest has caused various unauthorized charges to be added to the customers’ telephone bills. This practice, known as “cramming”, is unlawful under § 2890.³ According to the OII, the highest

³ The OII charges that if the allegations are proven, Qwest has also violated § 451 [requiring all charges by public utilities to be just and reasonable and that a utility furnish just and reasonable service]; § 532 [requiring that no public utility shall charge a different compensation for any service other than the compensation specified in the tariffs]; § 702 [requiring every public utility to comply with every order decision or rule of the Commission] and Rule 1 of the Commission’s Rules of Practice and Procedure [any person who transacts business with the Commission is required to comply with state law].

percentages of complaints come from residential customers indicating Spanish or Asian languages as their preferred language.⁴

Additionally, the OII asks whether Qwest should be ordered to pay reparations pursuant to § 734, whether the Commission should order fines against Qwest pursuant to § 2107 and § 2108, and whether the Commission should order Qwest to cease and desist from any unlawful operations, or have special conditions imposed upon it. The investigation focuses on Qwest's alleged violations of § 2889.5 and § 2890 from January 1, 1999 through mid 2001.

Evidentiary hearings were held from May 3 through May 11, 2001. Briefing was complete with the filing of concurrent surreply briefs on June 20, 2001. In addition to Qwest and the Consumer Services Division (CSD), Greenlining Institute/Latino Issues Forum (Greenlining/LIF) participated in the evidentiary hearings and briefing.

We set aside submission in order to consider multiple motions made by Qwest commencing on August 17. The briefing on this series of motions was complete with the filing of Qwest's October 25, 2001 reply. The Commission held oral argument on July 18, 2002 at Qwest's request.

In this OII, CSD has the burden of proving that Qwest has failed to comply with relevant provisions of the Public Utilities Code, including § 2889.5 and § 2890. (See *CTS*, D.97-05-089, 72 CPUC2d 621, 642, Conclusion of Law 1.) CSD must prove this by a preponderance of the evidence. (72 CPUC 2d at 642, Conclusion of Law 2.)

⁴ This allegation derives from Pacific Bell's records which identify the preferred Asian languages as Chinese, Japanese, Korean, Tagalog, Mandarin, or Vietnamese.

III. CSD's Slamming and Cramming Allegations

CSD states that from 1999 to the present, it interviewed hundreds of customers who stated that Qwest switched their long distance telephone service provider without their permission. CSD obtained declarations from 61 customers interviewed. All but one of these declarants report being slammed by Qwest. According to CSD, 41 of these declarants report that the letters of authorization which Qwest provided did not contain their handwriting, or that they did not recognize the voice on the third-party verification tape which Qwest provided.

In addition to the 61 declarants, CSD investigators interviewed 165 customers. According to CSD, 142 of these 165 customers claimed they were either slammed or crammed by Qwest. Qwest produced no third-party verification tape or letter of authorization for many of these customers. Of the 142 customers for which Qwest could locate proof of their intent to switch, 41 reviewed either a letter of authorization or third-party verification and stated that it was not their handwriting or voice.

In addition to declarations and interviews, CSD obtained the following data on total primary interexchange carrier (PIC) disputes against Qwest recorded by various local exchange carriers (LECs).⁵ Between January 1999 and December 2000, Pacific Bell (Pacific) reported that it received 30,807 PIC disputes attributable to Qwest. For this same time period, Verizon reported that it received a total of 3,215 PIC disputes attributable to Qwest; the Commission's

⁵ A "PIC dispute" is a term used by Qwest, Pacific, and Verizon to describe an allegation by a consumer that his or her telephone service provider was switched without the consumer's permission.

Consumer Affairs Branch (CAB) received a total of 646 slamming and cramming complaints attributable to Qwest. Additionally, CSD discovered that Qwest reports that its in-house customer service department received 30,920 PIC disputes for 1999 and 2000. During this same time period, Pacific received a total of 6,553 cramming complaints against Qwest.

CSD also states that the 1999-2000 PIC dispute rates for Qwest customers whose preferred language is Spanish or an Asian language was substantially higher than the dispute rate of customers whose preferred language is English. Finally, CSD raises concerns about management “inattentiveness and irresponsibility” during 1999 and 2000, and believes that Qwest’s management failed to maintain the legally required independence of its third-party verification vendors.

IV. Greenlining/LIF’s Allegations

Greenlining / LIF allege that CSD’s testimony presents the “tip of the iceberg,” and that the actual complaints from Spanish and Asian speaking customers and recent immigrant populations represents a much larger problem (i.e., more complaints) than are actually reported. This is so, according to Greenlining / LIF, because these populations are more reluctant to complain about abuses in telecommunications for a variety of reasons.

Greenlining / LIF maintain that, after Qwest switched customers without their authorization, it was difficult for the customers to transfer back to their carrier of choice. Greenlining / LIF also complain of Qwest’s Welcome Postcard campaign, which sends a postcard thanking customers for choosing Qwest. According to Greenlining / LIF, this postcard is misleading because Qwest sends on average about 83,586 per month, while knowing that 25% of them are going to

people with invalid orders, many of whom have placed a “PIC freeze” on the line.

V. Qwest’s Response to the Allegations

A. Slamming Allegations

Qwest believes that the evidence demonstrates no more than 106 slams, largely based on alleged problems with the LECs reporting the PIC disputes attributable to Qwest. Qwest also contends that, for a number of specific reasons, CSD did not meet its burden of proving a slam in the cases where it interviewed the complaining customers. Qwest believes the evidence does not support Greenlining/LIF’s theory that reported slamming is the “tip of the iceberg.” Qwest also believes that its Welcome Card, which is required by law, is not misleading.

Qwest states it has always had a zero tolerance policy for slamming, and has always required 100% third-party verification for California sales. Even with this policy, Qwest admits to a higher than expected PIC dispute rate in 1999. According to Qwest, starting in the second half of 1999 and through 2000, it implemented changes which culminated in the Federal Communications Commission (FCC) Consent Decree.⁶ Qwest maintains it currently has a “state of the art” process to protect against slamming and describes its current “anti-slamming” process in detail.

⁶ Qwest entered into a July 21, 2000 Consent Decree concerning slamming with the FCC. See also “Other Investigations” discussed below.

Qwest also argues that it complied with Pub. Util. Code § 2889.5(f)⁷ and made whole customers who complained that they were slammed. Qwest argues that CSD did not meet its burden of proof to show that any customers are still entitled to refunds, because CSD did not ask for the customers' preferred carrier or the rates both the preferred carrier and Qwest charge, and did not ask customers how much they thought they should have been credited.

B. Cramming Allegations

Qwest claims that CSD has proven at most five out of 6,553 crams alleged by CSD based on Pacific's cramming report titled the Business Office Referrals Report (BOR). Qwest believes this report is not supported by documentation or other backup, such as investigation by Pacific to substantiate customers' allegations. According to Qwest, CSD's own interviews confirm the lack of reliability of the BOR report. Qwest also disputes many of the specific allegations, arguing that some of the charges are authorized, or they are "billing disputes", and not crams.

VI. Other Investigations

The Commission is not the only jurisdiction to investigate Qwest. During 1999 and 2000, the FCC and other states have also investigated Qwest for, among other things, slamming and cramming complaints.

On October 15, 1999, the FCC issued a Notice of Apparent Liability to Qwest International for alleged violations of the FCC's slamming rules. The

⁷ Pub. Util. Code § 2889.5(f) requires a telephone corporation that violates the verification procedures described in that section to credit to a subscriber any charges paid by the subscriber in excess of the amount that the subscriber would have been obligated to pay had the subscriber's telephone service not been changed.

action was based on 30 consumer complaints that Qwest International and LCIT switched long distance carriers without consumer authorization. Many of these complaints involved falsified letters of authorization. In July 2000, Qwest International settled by making a voluntary payment of \$1.5 million.

The following states have also investigated Qwest, primarily for slamming allegations: Florida, Michigan, New York, Oklahoma, Oregon, Tennessee, Texas, Minnesota, Idaho, Connecticut, Washington, Kansas, and Arizona.⁸ In these cases, Qwest either settled or was directed to take remedial measures to cure the slamming problems, and was assessed monetary penalties or negotiated settlements ranging from \$10,000 to \$500,000.

VII. Conclusions Regarding Slamming

A. Summary

The evidence demonstrates that Qwest has committed extensive and multiple violations of § 2889.5. The LECs' and Qwest's PIC dispute numbers indicate widespread slamming in violation of § 2889.5 in 1999 and 2000. Since October 2000, Qwest has begun tracking "realized" PIC disputes, and has recorded over 3,420 disputes through March 2001. Moreover, the evidence demonstrates that Qwest falsified some third-party verification tapes and letters of authorization, and had problems retrieving third-party verification tapes and making them available to customers. In some instances, Qwest failed to maintain its independence from its third-party verification agents and sales agents. The slamming rate for Spanish and Asian preferred language residential customers for 1999 and 2000 was consistently higher than the rate for English language

⁸ Some of these investigations are against LCIT, Qwest's wholly owned subsidiary.

preferred customers; thus, Qwest's slamming activities have a disproportionate impact on ethnic communities. Finally, although Qwest has recently improved its policies and procedures to prevent slamming, it continues to have problems in this area.

B. The PIC Dispute Data Indicate Widespread Slamming

1. Commission Precedent on Evidence of Slamming

As stated above, 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 each of the steps outlined above was followed prior to the switch.

In this case, the Qwest-related PIC dispute reports of the LECs and Qwest total over 70,000. The Commission previously has considered the reliability of PIC dispute data to demonstrate the number of violations of § 2889.5. In *CTS*, 72 CPUC2d at 633, the Commission found that that CTS switched 56,000 customers without their authorization. The Commission imposed a \$500 fine for 39,200 of these violations, yielding a \$19 million fine, all but \$2 million of which was stayed. 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."

More recently, in the *Vista Communications OII (Vista)*, D.01-09-017, the Commission held the PIC dispute reports regarding Vista to be reliable and admissible. The Commission found that the 10,773 PIC disputes attributable to Vista for 1997-1998 constituted sufficient evidence to find that number of slamming violations occurred. In *Vista*, the Commission reduced the number of violations to 7,000 on CSD's recommendation to correct for miscalculations, and imposed a \$7 million fine, representing \$1000 for each violation. The Commission reaffirmed its holding in *CTS* on the reliability of PIC dispute data.

"Since the customer interviews represented customers who complained to LECs and Vista's-affiliated carriers throughout the state and involved slamming allegations during the period of this investigation against Vista, and since there is no showing of inaccuracy of any carriers in recording or categorizing slams, we are convinced that the customer complaints investigated are representative of the thousands of PIC disputes recorded in this proceeding. Therefore, we accept the previously discussed total of PIC disputes during 1997-1999 (10,773) as the number of unlawful incidents during this period." (*Vista*, slip op. at 18-19.)

2. Qwest Challenges the PIC Dispute Numbers

Qwest criticizes the LECs' process and record keeping regarding PIC disputes, first, because the LECs do not investigate each complaint. However, Sandy McGreevy, General Manager of Consumer Protection and Communication at Pacific, explained that it did not investigate the complaints

primarily because Qwest chose the “no-fault” PIC dispute payment plan, under which Qwest paid a \$9.98 PIC change charge for each unauthorized switch without investigating the PIC dispute.⁹

Qwest also argues that many of Pacific’s recorded PIC disputes are the result of Pacific’s “winback” campaign rather than a reliable indication of invalid PIC changes. However, Pacific does not compete in the long distance market and CSD states it did not use Pacific’s intraLATA (i.e., local) PIC dispute reports in this case.

Qwest asked the Commission to set aside submission to take official notice of CSD filings in another Commission proceeding (made after the record closed in this proceeding.) Qwest believes these filings demonstrate the unreliability of the LECs’ PIC dispute reports. Alternatively, Qwest requested the Commission to strike CSD’s testimony of uninvestigated PIC dispute reports, or to order an issue sanction, finding that the PIC dispute reports do not prove legal violations. These motions focus on the reliability of Pacific’s PIC dispute report, as opposed to Verizon’s. The presiding officer set aside submission in order to consider Qwest’s motions.¹⁰ We summarize these motions in the sequence of their filing.

⁹ This option was available until November 2000. Due to a change in the FCC rules, after that, when Pacific is notified of an allegedly unauthorized PIC change, the offending carrier is billed two PIC change charges (one for the unauthorized PIC change that the carrier initiated and one to change the customer back to his or her original carrier of choice.)

¹⁰ Specifically, we set aside submission to consider the following motions and related responses and replies, which replies we grant Qwest leave to file: (1) Qwest’s August 17 motion, CSD’s August 22 response, and Qwest’s August 29 reply thereto; (2) Qwest’s September 6 motion to take official notice of Pacific Bell’s response to CSD’s

Footnote continued on next page

Qwest's August 17 motion requests the Commission to take official notice of CSD's compliance filing in another Commission proceeding.¹¹ This CSD filing recommends, in relevant part, hiring an independent auditor at Pacific's expense to investigate the accuracy of Pacific's tracking and billing of intraLATA disputes. CSD recommends this because its preliminary investigation finds that Pacific's billing system improperly reported legitimate consumer switches to AT&T as intraLATA PIC disputes. Later, Qwest asked the Commission to take official notice of Pacific's response to CSD's compliance filing, and particularly to Pacific's statement that Pacific's intraLATA disputes historically have been coded by the "same mechanized ordering and billing system Pacific has used successfully for interLATA PIC changes and disputes." Qwest argues that this statement contradicts CSD's argument that the evidence is irrelevant, and demonstrates the unreliability of Pacific's tracking system for both intra- and interLATA disputes. Finally, Qwest moved to strike reports of uninvestigated and unverified complaints, including PIC dispute reports, or alternatively, for the Commission to impose an issue sanction and rule that such reports do not prove violations of law.

CSD opposes these motions on procedural and relevancy grounds. In particular, CSD believes its critique of Pacific's performance regarding intraLATA PIC disputes, and Pacific's rebuttal, are irrelevant to this OII because

compliance filing, CSD's September 21 response, and Qwest's October 2 reply thereto; and (3) Qwest's September 28 petition to set aside submission in order to strike evidence or order an issue sanction, CSD's October 15 response, and Qwest's October 25 reply thereto.

¹¹ CSD made this filing on August 7, 2001 in Case (C.) 99-12-029 and C.00-02-027 pursuant to D.01-02-017.

CSD did not count intraLATA disputes attributable to Qwest in enumerating violations.

We deny Qwest's motions because they concern filings that have no evidentiary value here.¹² CSD did not rely on Pacific's intraLATA PIC dispute process (the subject of the filings for which Qwest asks official notice.) More fundamentally, the reliability of the interLATA PIC dispute reports (including Pacific's, Verizon's, and Qwest's own reports) has been exhaustively tested in this investigation, and has been found to be high. Specifically, CSD investigated a sample of the LECs' and Qwest's PIC dispute complaints and obtained the declarations of 61 customers alleging that they were slammed. Based on the declarations, we find that 60 of these customers were slammed. CSD also completed interviews with an additional 115 customers alleging that they were slammed. We find that all but 16 of these customers were slammed.¹³ The customer declarations and interviews demonstrate an approximate 10% error margin in the PIC dispute reports by the LECs and Qwest. We find that over 70,000 PIC disputes reported to the LECs and Qwest, even if discounted by 10%, credibly and reliably show widespread violation of § 2889.5. Finally, until

¹² Rule 73 of the Commission's Rules of Practice and Procedure permits, but does not require, the Commission to take official notice of such matters as may be judicially noticed by the courts of the State of California.

¹³ Based on the record, we find that a slam did not occur as follows: Lee; Haza; Florez [complaint is against another company or customer is not sure which company switched service]; Haynepour; Verhelst; Fritch; Canton [cram, either for an unauthorized call or because Qwest billed after the customer switched away from Qwest]; Aimo; Piph; Herrera; Montes, Snow, Volardi [customer admitted to his or her voice on the verification tape] Adams; Flores [never complained or is happy with Qwest's service], and Madrid [did not recall service being switched without authorization.]

recently, Qwest itself relied on the LEC PIC dispute reports to determine whether its sales agents should be terminated, thus demonstrating that Qwest believed them to be reliable for this purpose.¹⁴ Consequently, it would be highly inappropriate to draw from the fact that CSD has criticized Pacific's intraLATA PIC dispute process any inference that CSD lacks credibility or that the PIC dispute reports of Pacific and the other companies are unreliable. Moreover, the evidence of which Qwest requests we take official notice is still being debated in another proceeding.

We also deny Qwest's multiple motions for sanctions against CSD. The gravamen of Qwest's sanction requests is that CSD failed to disclose to Qwest the information Qwest now seeks to officially notice. Qwest also accuses CSD of withholding in discovery from Qwest Pacific's actual PIC dispute reports, which contain a disclaimer that all reported disputes are the result of unsubstantiated customer claims to Pacific. However, this disclaimer did appear in an attachment to one of CSD's witnesses testimony; thus Qwest had it prior to the evidentiary hearings. Moreover, Qwest asked Pacific's McGreevy about this issue during cross-examination. We base our conclusion on the credibility and reliability of the PIC dispute reports on CSD's independent verification, and do not infer that Pacific independently verifies these complaints. For the reasons set forth above, Qwest's motions for sanctions against CSD are denied.

3. Qwest's Credibility and Burden of Proof Defenses

Qwest did not produce any customer witnesses, nor did Qwest depose or cross-examine any of CSD's customer witnesses. However, Qwest

¹⁴ Qwest now relies on "realized" PIC disputes, which we discuss more fully below.

questions the credibility of both the customer witnesses and CSD's own investigators who interviewed many customers. Qwest also alleges that CSD did

not meet its burden of proof in demonstrating that many of the customers were slammed. As stated above, we find that CSD confirmed that about 90% of a sample of 176 complaining customers were slammed. We address Qwest's specific arguments to the contrary in this section.

Qwest challenges witnesses' credibility, for example, by arguing that the fact that some interviewees did not also file a declaration affects the validity of their complaint. We disagree. CSD presented 61 declarations (as opposed to testimony from CSD investigators summarizing these complaints) because the investigators who interviewed these declarants no longer worked for the Commission, not because the declarants were more credible than other customers.

Qwest believes that CSD has not met its burden of proving a slam has occurred if CSD has not offered evidence on any possible contingency that might have occurred. According to Qwest:

“For example, a PIC dispute could be made by one family member who did not know another family member (including the subscriber) had authorized the switch. Some customers forget that they themselves authorized the switch. Others suffer from buyer's remorse and falsely report PIC disputes.” (Qwest Opening Brief at p. 17.)

This argument essentially asks us to require CSD to anticipate all possible defenses. Such is not CSD's burden. Section 2889.5 requires the long distance telephone company to establish, among other things, the intent of the subscriber to switch long distance carriers. (*CTS*, 72 CPUC2d at 635-36.) Qwest's current practice is to require its third-party verification agent to verify a subscriber's authorization by asking whether the person attempting to make the

switch is in fact authorized to make the switch.¹⁵ Once CSD establishes by credible evidence that Qwest has switched a subscriber's telephone service without the customer's authorization, the burden shifts to Qwest to demonstrate that another adult authorized this switch on a customer's behalf. To the extent a third party, such as Qwest, wishes to rely on the agency relationship to bind the principal, the third party has a duty to ascertain the scope of the agency. (*Id.* at 636.) CSD does not have the burden of disproving a negative, namely, that no adult living or answering the telephone in the household was ever authorized to switch the telephone service.

Similarly, if CSD establishes through another adult living in the household that the subscriber has been slammed, the Commission must assess the credibility of this evidence to determine if it was more likely than not that a slam occurred. CSD does not always have to produce testimony from the subscriber of record in order to prove its case. In fact, this would be impossible in some situations, as when Qwest switched the long distance service of a subscriber, Mr. Nakashima, who died 11 years before the telephone service was slammed.¹⁶

In short, CSD is not required to speak directly to the subscriber regarding the complaint, because other household members may file the complaint. In contrast, Qwest is required by law to obtain verification of

¹⁵ Qwest believes its current practice is consistent with the FCC's authorized practice. Because we are defining "subscriber" in our rulemaking concerning consumer protection rules applicable to telecommunication utilities (R.00-02-004) we do not address in this decision CSD's argument that Qwest's current practice violates § 2889.5.

¹⁶ See Exhibit C20.

authorization for a change in service from the subscriber or the subscriber's agent, in cases where, for example, the subscriber is deceased.

Qwest also argues that CSD did not meet its burden of proof where (1) it did not ask for a third-party verification tape, or (2) if it had a verification tape, it did not play the tape for the subscriber. Although playing the verification tape for the customer is preferable when CSD is able, CSD is unable to do so in all instances. The failure of CSD to do so does not mean it has not demonstrated a slam occurred. In fact, Qwest itself admits to a forgery in instances where CSD did not play a third-party verification tape. (See, e.g., Exhibit C19, number 13 (Shu) and number 15 (Lim).)

Qwest details 50 instances where it believes CSD did not meet its burden of proving a slam. In all but one instance, we find a slam occurred.¹⁷ (See Appendix C for a summary of the Commission's conclusions for each of these 50 instances.) Examples of Qwest's arguments include the following:

McRae: Qwest says it has a third-party verification tape for this customer's wife and CSD did not play the recording. Qwest says the wife represented she had authority to make changes to the account. In a rebuttal, McRae's declaration states, "Qwest sent me a disk that supposedly contained a voice record file of my wife authorizing the switch. The file is in a language neither my wife or I speak and was very fast. It was obviously faked! I still have the file for evidence."¹⁸

Sabo: Qwest argues the subscriber never testified that no other authorized adult placed the order or that the person

¹⁷ In two instances where CSD alleges multiple slams, we only find one occurred.

¹⁸ Exhibit C7, Declaration 46.

whose name appears on the letter of authorization is unknown to him or lacks authority to make changes in the telephone service. However, the Qwest letter of authorization survey signed by Sabo states that the letter of authorization is not in his name, nor does he know a Xuan Ho, and the address on the letter of authorization is not, and has never been, his address. Sabo further states, “Is Xuan Ho a real person? Why is he using /claiming my phone number?”¹⁹

Nguyen: The subscriber (Vu Nguyen) stated that his brother, Dung Nguyen, who (according to Qwest) authorized the change in service, moved to Seattle in February 1999, prior to the switch which occurred on August 18, 1999. Qwest states CSD never established that Dung Nguyen lacked authority to make the changes, and that Dung was not in town at the time the order was placed. The CSD investigator also reported that Vu Nguyen’s father, who pays the household bills, stated that Dung Nguyen has never been an authorized subscriber to the household’s telephone service.²⁰

Qwest also argues that PIC disputes may have been caused by customer confusion arising from Qwest’s acquisition of LCI International Telecommunications, Inc. However, no customer witness testified as to any confusion. Qwest states that resellers were responsible for some of the illegal switches, but fails to provide persuasive evidence of this, or any explanation regarding which reseller is responsible. Furthermore, when CSD asked Qwest in discovery to differentiate between complaints against itself and complaints

¹⁹ Exhibit C9, Declaration 59

²⁰ Ex. C19, Interview 2.

against its resellers, Qwest stated it did not maintain records that would provide a breakdown of which PIC disputes are attributable to which companies.²¹

C. Qwest's Admissions

Since October 2000, shortly after adoption of the FCC Consent Decree, Qwest investigates all reported PIC disputes and tracks those that it defines as "realized." Qwest classifies a PIC dispute as "realized" if (a) Qwest cannot produce a third-party verification tape within 14 days of the complaint or (b) the customer denies that the voice on the third-party verification tape is the voice of someone authorized to make changes to the service. From October 2000 through March 2001, Qwest recorded 3,420 PIC disputes. The number of "realized" PIC disputes has decreased in 2001.

Qwest states that, since it has begun tracking "realized" PIC disputes, less than 25% of all PIC disputes have become "realized." This number is conservative. Qwest derived it by dividing the number of "realized" PIC disputes for December 2000 through February 2001 by the total reported PIC disputes for those months listed in Exhibit 28. When the same computation is made for October 2000 through February 2001, the percentage of "realized" PIC disputes jumps to 32% of all PIC disputes.

Qwest's "realized" PIC disputes are compelling evidence of § 2889.5 violations, because the complaining customers have not only alleged their telephone service was switched without authorization, but they have also either denied that the voice on the verification tape is that of someone authorized to

²¹ Exhibit 31. The record testimony is contradictory on this point. For example, Qwest alleges Exhibit C15, Tab 21 B contains reseller information, but fails to point specifically to the relevant information in this voluminous exhibit.

make the switch, or Qwest has been unable to timely retrieve the verification tape. However, Qwest argues that a significant number of “realizations” are the result of Qwest’s inability to produce a verification tape within 14 days, and that California law does not require verification retrieval within 14 days of a complaint.

The record is silent on how many “realized” PIC disputes are the result of Qwest’s inability to produce a third-party verification tape within 14 days. The record is also silent on why late-retrieved verification should be considered reliable. Also, § 2889.5(a)(7) requires Qwest to make the verifications available to the subscriber upon request. For these reasons, the Commission is fully justified in regarding the slam as established when the company fails to produce timely verification. In the future, Qwest should produce the record of verification at or near the time of a customer’s complaint.

Qwest also argues that an unknown number of “realized” PIC disputes result from customers who in fact authorized the switch, but nonetheless denied recognizing the third-party verification tape. However, Qwest’s evidence on this point is anecdotal, not customer specific, and does not support an inference that this is a widespread problem.²²

D. Falsified Verification Tapes, Forged Letters of Authorization

Section 2889.5(a)(3) requires that Qwest confirm a residential subscriber’s decision to change his or her telephone service provider by an independent

²² Qwest’s only witness, Mr. Pitchford, stated that he has heard service representatives saying it was the voice of the customer on the verification tape; but according to Pitchford, Qwest does not want to confront the customer on this point and therefore does not track this information.

third-party verification. The record demonstrates that in 1999 and 2000, Qwest had a serious problem with its sales agents or telemarketers forging or falsifying letters of authorization or third-party verification tapes.

CSD interviewed many customers who complained about verifications that were either not their handwriting or their voice. For example:

Mrs. H.Y. Nakashima listened to a verification tape produced by Qwest with what purported to be Mrs. Nakashima's deceased husband's voice. Mrs. Nakashima's husband passed away eleven years ago and she never changed the telephone service to her name.²³

Millie Jung listened to a verification tape produced by Qwest with what purported to be Mrs. Jung's recently deceased husband's voice. Mrs. Jung did not recognize the voice on the tape. Also, the voice on the tape provided the wrong birth date for Mr. Jung.²⁴

Tak Ming Chan reviewed the letter of authorization Qwest sent to the Commission's CAB in response to the complaint. Chan states he did not fill out any portion of the authorization and the signature is not his signature.²⁵

Helen Duce, who set up telephone service for her daughter when she moved into an apartment, and discontinued it about five months later when her daughter moved, stated the letter of authorization appears to contain her daughter's former address, telephone number and signature, but the signature is not her daughter's.²⁶

²³ See Exhibit 20, Interview 7.

²⁴ Exhibit C5, Declaration 14.

²⁵ Exhibit C5, Declaration 3.

²⁶ Exhibit C5, Declaration 6.

Greenlining/LIF also presented two witnesses who stated Qwest had slammed members of their family and falsified the verifications. Luis Arteaga, who also testified on broader immigrant issues, stated Qwest had slammed his own limited-English speaking parents twice in 2000 and that they did not know how to resolve the problem or to leave the Qwest billing system. According to Arteaga, both the letter of authorization and two third-party verification tapes were forged. Although the Arteagas had a PIC freeze on their long distance telephone account for interLATA service, Qwest switched their intraLATA account. It took Arteaga until early 2001 to resolve the problem, and cost him much aggravation and time.

Calvin Dong, who complained on behalf of his mother who speaks limited English, testified that in October 2000, her long distance telephone service was switched to Qwest without authorization, after he had resolved a similar problem in 1999. Dong called to complain for several months, and it took Qwest until March 2001 to send him a third-party verification tape. According to Dong, the verification was forged. It took until April 2001 to remove Qwest from his bill, and Dong spent about 6 to 10 hours trying to resolve the problem.

The problem of falsified tapes and letters of authorization is not limited to Qwest's operations in California. In 1999, the FCC proposed a \$2 million fine on Qwest, stating that it believed Qwest's activities to be egregious because Qwest apparently relied on forged or falsified letters.

Qwest admits that 58 of the complaints investigated by CSD in this case were "apparently caused by forgeries" by representatives employed by Qwest's sales agents. Nonetheless, Qwest questions the credibility of this evidence because CSD's investigators chose not to provide their own opinion as to whether or not the recordings were forged. We find credible the many customer

representations of forgery of letters of authorization or third-party verification tapes, and are not persuaded otherwise by the absence of CSD's personal observations.

Qwest also challenges CSD's assertion that a forgery has occurred in any case where the third-party verification tape or letter of authorization is not in the name of the subscriber. Qwest believes the more likely problem is either a recycled telephone number, a customer inadvertently providing the wrong telephone number, or a third-party verification vendor filing or retrieval error. However, Qwest's belief is based on speculation unsupported by credible evidence.

Whenever forgeries occurred, according to Qwest, the third-party sales agent breached its contract with Qwest, Qwest was defrauded by the offending individual, the sales representative responsible for the slam was terminated, and in most instances, the sales agent responsible for the sales representative was also terminated. Qwest may have remedies against its third-party sales agents. However, it is still responsible for their actions. (See *Vista* at pp. 14-15, holding that *Vista* may be punished for the acts of its independent contractors.)

E. Failure to Retain Verification Tapes and Make Them Available

Section 2889.5(a)(7) requires Qwest to retain a record of the subscriber's verification for at least one year, and to make the records available to the subscriber, the Attorney General, or the Commission upon request. The record demonstrates that in 1999 and 2000, Qwest had serious problems with maintenance and retrieval of third-party verification tapes, although its retrieval rate has improved. (See also "Qwest's Admissions" discussed above, regarding the problem of delayed retrieval.)

Qwest admits it had problems retrieving third-party verification tapes in 1999, with an overall success rate only a little above 50%. An internal Qwest memorandum indicated that Qwest had a 32% retrieval rate for its third-party verification tapes in September 1999. According to CSD, the retrieval rate for Qwest's third-party verification vendors (ADC, CyberRep.Com, Teltrust, Quintel / West Interactive) ranged between 42.86% and 97.77% between March and December 2000. Qwest states that during this same time period, its retrieval success rate was 89.3%. Qwest has improved further, with a 96.1% retrieval rate in January 2001.

As already discussed, Qwest alleges that CSD did not meet its burden of proving slams for many customers, in part, because Qwest stated it had a third-party verification tape for these customers. (See also Appendix C to this decision.) In some of those cases, Qwest relies on Pitchford's testimony²⁷ indicating the verification tape was found, but does not state when. In many instances, Qwest was unable to retrieve the third-party verification tapes at or near the time either the customer or the Commission requested them.²⁸ Because of this problem, in the future, we are directing Qwest to produce such record of verification no later than 10 business days after a customer's or the Commission's request, in order to fulfill the requirements of § 2889.5(a)(7) to provide such verification to a subscriber or the Commission upon request.

²⁷ See Exhibit 300.

²⁸ See, e.g., the following consumers listed in Appendix B: Wu; Diaz; Acosta; and Bernstein.

F. Disproportionate Impact on Ethnic Communities

In the OII at p. 7, staff alleged that Qwest slammed residential customers who indicated Spanish or one of the Asian languages as their preferred language at a much higher rate than English speaking residential customers. For 1999 and 2000, the interLATA PIC dispute rate for Spanish and Asian language preferred residential customers was higher than the rate for English language preferred customers. This is so, even though the PIC change percentages for these two groups is smaller than for English language preferred customers.

Language Preferred	PIC Dispute Rate – 1999	PIC Dispute Rate - 2000
English	2.5%	2.2%
Spanish	6.8%	7.3%
Asian	9.8%	7.2%

Qwest claims that these higher PIC dispute rates were not caused by targeting, but rather by the unusually high proportion of face-to-face sales in ethnic communities. Because Qwest discovered a high percentage of PIC dispute rates resulting from such sales, it has eliminated them. According to Qwest, this higher PIC dispute rate may also have been caused by mistranslated Spanish scripts, which Qwest states it has corrected.

The record is insufficient to make a finding of the exact cause of these higher rates. However, if Qwest is correct as to the causes, the higher rate should no longer exist, because Qwest has eliminated this marketing behavior.

As in *CTS*, we emphasize here our commitment to ensure full and fair customer choice to all customers regardless of their primary language preference. We will not tolerate singling out any group of customers due to “industry norms” or any other spurious reason. We also require that, commencing with its next quarterly compliance report required by D.00-06-079 (this report is

discussed below), Qwest shall disaggregate the actual PIC dispute numbers in California, as well as the PIC dispute rate, for English, Spanish, and Asian preferred language customers. If the PIC dispute rate for Spanish and Asian preferred language customers continues to be higher than the PIC dispute rate for English preferred language customers in any quarter, Qwest shall explain why and how it proposes to abate the problem.

Greenlining/LIF also presented three expert witnesses²⁹ who testified that Spanish and Asian preferred language customers are much less likely to complain than customers whose primary language is English. Greenlining/LIF suggest that complaints from these populations are more numerous and represent a much larger problem than are actually reported. According to Greenlining/LIF, these Spanish and Asian customers are less likely to complain because of cultural differences, their disinclination to question authority, their generally lower income level often associated with lower education and less knowledge of consumer rights, and their deep fear of being reported to the Immigration and Naturalization Service if they “cause trouble” by reporting a telephone problem.

Qwest attacks the credibility of these three experts on the ground that their testimony is based upon their years of experience with ethnic issues, rather than on academic or empirical research. Qwest’s expert witness, Armando Gutierrez, believes the empirical evidence proves the opposite to be true, and that the

²⁹ The three experts are (1) John Gamboa, Executive Director of the Greenlining Institute, and a former Advertising and Marketing Manager for ethnic markets with Pacific Bell; (2) Luis Arteaga, who performs policy analysis on topics affecting Latinos in California, such as health care, voting patterns, sustainable growth, and educational access; and (3) Professor Bill Ong Hing, an immigration law expert.

individuals who choose to leave Mexico and Central America tend to be the most ambitious and assertive members of their society; otherwise, they would remain content with their home lives.³⁰

The empirical data relied upon by Gutierrez is largely census data showing that nearly 25% of California's population is foreign born. The census data also addresses the percentage of immigrants who speak English well within designated time periods after arriving to the United States. Gutierrez then extrapolates certain points from other studies on legal and illegal immigrants from Mexico, namely, that even some recent legal immigrants have completed high school and about 15% are college graduates. The primary study cited by Gutierrez addressing consumer behavior describes Hispanics as brand conscious, but not necessarily loyal consumers who can be persuaded to buy a different product over the current one.

Gutierrez' testimony is no less subjective than the testimony offered by Greenlining/LIF. The difference is that Gutierrez includes in his testimony data from which he draws questionable inferences, particularly concerning those low-income people who have immigrated during the last ten years. For instance, Guteierrez contends that because other academics describe these immigrants as the most ambitious and assertive in their home country, these immigrants will display the same characteristics in the United States. However, it does not follow from that assumption that immigrants will be more likely to "challenge

³⁰ Qwest's expert witness, Armando Gutierrez, has a Ph.D. in Political Science from the University of Texas at Austin. He has taught in the areas of Chicano and Ethnic Studies, American Political Parties, Statistics and related areas in Texas and Mexico. He has recently finished a manuscript on Hispanic marketing.

authority” in their new country, and the experience of three of Greenlining / LIF’s experts suggest the contrary.³¹

The record supports a finding that PIC disputes from Spanish and Asian preferred speaking customers may be understated. It does not support a finding as to the amount of such understatement, nor whether it is significantly higher for these particular communities than for the general population.

G. Independence of Qwest’s Third-party Verification Agents

Section 2889.5(a)(3)(A) requires the third-party verification company to meet each of the following criteria: (1) be independent from the telephone corporation that seeks to provide the subscriber’s new service; (2) not be directly or indirectly managed, controlled, directed, or owned by the telephone corporation that seeks to provide the new service; (3) operate from physically separate facilities from those of the telephone corporation that seeks to provide the new service; and (4) not derive commissions or compensation based upon the number of sales confirmed.

In the past, several of Qwest’s third-party verification vendors have not been independent. For example, Qwest’s contract with its third-party verification vendor Teltrust expands the scope of Teltrust’s services beyond verification services. Qwest’s contract with Teltrust states that Teltrust will also provide a “PIC Freeze Resolution Service” and a “PIC Freeze Installation

³¹ The fact that there are many community organizations to assist these groups, and a large Hispanic media, does not change the conclusion that complaints from these communities may be understated, because all immigrants may not take advantage of these services or be influenced by the Hispanic media. Nor does the fact that Qwest’s El Centro call center received many Spanish speaking complaints inform the Commission of how many people did not complain.

Service.” Under the contract, Teltrust will also provide inbound order taking for Qwest media campaigns and inbound customer service. Because it provides these sales and customer services, Teltrust is not independent from Qwest.

Qwest argues that § 2889.5 does not say that Qwest cannot retain the third-party verification vendor to provide other services. However, the statute requires these vendors to be independent from Qwest, and by providing other marketing and customer-related services to Qwest, these vendors are not independent because they may want to ensure sales and customer satisfaction with Qwest.

CSD also demonstrated that Qwest did not contract for third-party verification services directly with West Interactive in 1998 and 1999, but rather let one of its sales vendors do so. Because of this arrangement, Qwest had difficulty retrieving the third-party verification tapes from West Interactive; it had a retrieval rate in the year 2000 of 42.86%. Again, Qwest argues that the statute does not preclude this relationship. However, the verification vendor has a contractual relationship with the sales agent (presumably whose calls it is verifying), thus thwarting the statutory mandate of independence. Qwest also violated § 2889.5(a)(7) where, as here, it was unable to make the verification of the sale available to the subscriber. Qwest states that it has discontinued these practices.

H. Qwest’s Historic vs. Ongoing Practices

Qwest describes its current “anti-slamming” process as consisting of the following elements: verification procedures; monitoring employees of

independent, third-party sales distributors and agents³²; annual training of third-party sales agents and distributors; immediate termination of individual third-party sales representatives with a single “realized PIC dispute”; remedial action against third-party sales agents whose realized PIC dispute rate in any month is greater than 2% of the PIC-change orders the agents submit; modified compensation structures for Qwest’s outbound telemarketers from a per sale to hourly basis; maintaining a “stay away list”; and customer education. Qwest argues that these procedures are effective because its recent PIC dispute rate is decreasing.

Although some policies and practices now in effect at Qwest differ from those in place when many of the complaints occurred, “we do not condone some sort of customer service and statutory compliance ‘learning period’” for public utilities. (See *CTS*, 72 CPUC2d at 629.) In *CTS*, we stated that the purpose of distinguishing between historic and future time periods is to align the sanctions with the behavior to which they are directed. Here, we take into account Qwest’s new procedures in determining sanctions, but balance that against the continued problems with these procedures.

First, Qwest has reduced the number of recent PIC disputes, in large part, by investigating complaints and counting as a PIC dispute those that are “realized”. Arguably, Qwest has reduced the field of PIC disputes by this definition. While we understand that Qwest wishes to determine the validity of customer complaints against it, we expect Qwest to put as much, if not more effort toward preventing slams by ensuring that a customer order to switch to

³² Qwest’s sales “agents” employ sales “representatives.”

Qwest is valid to begin with, rather than by concentrating on proving the invalidity of customer complaints. In short, Qwest cannot solve its slamming problems by redefining slamming.

Qwest's new policies require a sales agent with a "realized" PIC dispute rate that exceeds 2% to be terminated after several phases of probation. However, this means that Qwest will tolerate a sales agent with a "realized" PIC dispute rate of 1500 if it has about 90,000 confirmed sales. Because a "realized" PIC dispute is a narrowly defined category, this policy does not appropriately protect California customers and we modify it in the conditions we adopt below.

Second, Qwest's current policies require its third-party verification vendors to retrieve 98% of the third-party verification tapes requested. This policy violates Pub. Util. Code § 2889.5(a)(7), which requires Qwest to retain the record of verification for one year, and to make the record available to the subscriber or the Commission upon request. We require a 100% retrieval rate in the conditions we adopt below.

Third, Qwest's dealings with its sales agent, Results Marketing, Inc., demonstrate that its current policies and practices have not fully remedied its past behavior. Greenlining/LIF presented as a witness Felipe Rubio of Results Marketing, Inc., a sales agent marketing exclusively to Latinos that was under contract with Qwest to provide face-to-face marketing. Qwest terminated its relationship with Results Marketing in June 2000 due to a high level of PIC disputes. However, in late May 2000, on the eve of Qwest's termination of Results Marketing, Qwest knowingly hired Results Marketing as a sub-agent of Snyder Direct Services, Inc., which also had a high PIC dispute rate.

Qwest's witness Pitchford knew of this subcontracting arrangement. Pitchford testified that Qwest believed Snyder Direct had the best process in

place to control PIC disputes, and that Qwest agreed to move Results Marketing under Snyder Direct to remedy the problems with Results. Qwest argues that if it had not given Results this opportunity to cure its processes, it might be accused of discriminating against a minority-owned business. However, we are not convinced this was the reason, because Qwest also determined in 2000 that Snyder Direct had an unacceptable level of PIC disputes and terminated its relationship with Snyder Direct in October 2000. Also, Results Marketing had a high number of sales in 2000. Qwest's recent actions in this matter demonstrate its continued difficulty in enforcing its "zero tolerance" policy with respect to slamming and its poor supervision over its sales agents as late as mid-2000.

VIII. Conclusions Regarding Cramming

Pacific reported 6,553 cramming complaints attributable to Qwest in 1999 and 2000. In the BOR report, as required by § 2890 and D.00-03-020 (Ordering Paragraph 2), Pacific tracks complaints from subscribers regarding unauthorized third-party billing charges for products and services. Pacific provides the Commission, as well as Qwest, with the BOR report. Pacific's General Manager of Consumer Protection, McGreevy, believes this report's tabulation of complaints is reliable. Although we make some adjustment to the BOR report for classification errors, the BOR report constitutes the most accurate and up-to-date record the Commission has of such customer complaints. (See D.00-03-020, Attachment B, page 2, requiring the billing telephone company to "maintain accurate and up-to-date records of all customer complaints made to or received by it for charges for products or services provided by a third party, including a corporate affiliate.")

Pacific's 1999 records show that the most common complaints against Qwest involved billings for Q. Home Plan and Q. World Plan. For 1999, Pacific

reported that Qwest had the largest number of cramming complaints compared to all other entities billing through Pacific that year.³³

Qwest attacks the credibility of the BOR report and CSD's investigator, and presents a detailed analysis of the BOR report entries, in order to establish that only five crams occurred. In fact, we make some Qwest's suggested adjustments to the BOR report data, but even as adjusted, we find that about 70% of the cramming complaint entries are correct.

Qwest argues that when the BOR report contains a complaint regarding a PICC charge³⁴, or a charge for the Universal Service Fund, standing alone, this is not a cram because these are federally approved charges. We agree and adjust the numbers on the BOR report accordingly (762 line items for a PICC charge; 322 line items for the Universal Service Fund.) We also adjust the numbers for duplicate monthly entries (139).

Qwest believes that when the customer denies making the call, or has a complaint regarding a calling card billing, these are not crams but rather billing disputes. However, § 2890 provides that a customer may only be billed for authorized charges for products and services. If a customer denies making the call, this is a complaint for an unauthorized charge.³⁵

³³ The only other companies registering a comparable number of complaints were billing aggregators who billed on behalf of several other companies combined.

³⁴ A PICC charge is a charge that the FCC imposes for long-distance companies for access to Pacific's local loop.

³⁵ According to Qwest, CSD has not met its burden of proof because § 2890(e)(D) provides, with regard to direct dialed telecommunications services, evidence that a call was dialed is prima facie evidence of authorization. However, here, we have a complaint from the subscriber rebutting that presumption. Moreover, this same statute

Footnote continued on next page

Qwest also believes that 28.6 % of the remaining cramming complaints should not have been included in the report because they were already listed as PIC disputes. According to Qwest, the complaint was either (a) coded as both a PIC dispute and a cram, which is improper; or (b) initially coded as a PIC dispute and if that matter was not resolved and the customer complained again, subsequently coded as a cram. Qwest believes if the customer receives a subsequent bill, it is either for charges incurred before being switched away from Qwest or because the customer never called the LEC to be switched back to the carrier of choice.³⁶

We disagree. Section 2889.5 prohibits telephone corporations from switching a subscriber's telephone service without authorization. Section 2890 addresses unauthorized charges on the telephone bill. These are two separate statutes. Many customers reported Qwest continued to bill them after they requested to be disconnected from Qwest. The continued billing is a violation of § 2890.

Qwest also attacks the credibility of CSD's investigator Northrup, who completed 54 interviews of 84 customers selected at random from Pacific Bell's October 1999 BOR report. However, for many of these interviews, there is evidence of cramming. Of the complaints Qwest challenges, for example, Ms. St. James claimed she ordered Qwest's services based on promotional free airline

provides that in the case of a dispute, there is a rebuttable presumption that an unverified charge for a product or service was not authorized by the subscriber and that the subscriber was not responsible for that charge. This presumption applies to other charges listed in the BOR report, such as Q. Home Plan, Q. World Plan, etc.

³⁶ Qwest also did not offer persuasive evidence that resellers, as opposed to Qwest, are largely responsible for the crams listed in the BOR report.

tickets and hotel accommodations, but waited five weeks and the service was not initiated. She then returned to AT&T because she had no long distance service while waiting for Qwest to begin service. After switching back to AT&T, she was notified by Qwest that it had begun providing services. Thus, Qwest charged her for services after she switched back to AT&T.

Similarly, Ms. Sullivan complained that Qwest billed her \$5.95 a month for a year without providing her with long distance service. There is no evidence that that this constitutes a “billing error” rather than a violation of § 2890, because Ms. Sullivan authorized Qwest to bill her a monthly fee only if she was to receive the long distance service as promised. This did not occur.

In another matter, Ms. Wareham complained that her business, Nalbandian Sales, Inc., was billed for a telephone number it did not have, and that no one authorized Qwest to provide another telephone line to her company. Qwest also argues that four customers, Rea, Sanchez, Doyer and Mack, are “billing errors.” However, the allegations by these witnesses are sufficient evidence to demonstrate they were charged for a service they did not authorize.

For four people whom Northrup interviewed, Qwest had no record of their being a customer, and the customer was either unable to provide billing records, or was unclear on the carrier complained against. We therefore adjust the BOR report to account for this factor.³⁷

Qwest’s arguments as to the cramming charges also rely on burden of proof and credibility theories it used in responding to the slamming charges. For

³⁷ We adjust the total number of cramming complaints listed in the BOR report (6,553) by 7%, because these four complaints were about 7% of the total 54 interviews Northrup completed.

the reasons stated above, we find that CSD has credibly and adequately demonstrated cramming by Qwest substantially as charged in the OIL.

In summary, we find a total of 4,871 violations of § 2890, after adjusting the BOR report as discussed above.³⁸

IX. Qwest's Lack of Compliance With D.00-06-079

In D.00-06-079, the Commission approved Qwest's acquisition of US West and its affiliates, conditioned upon specific mitigation measures designed to address the Office of Ratepayer Advocate's (ORA) objections to the merger because of the merger's effect on service quality. ORA was specifically concerned because of a large number of slamming and cramming complaints against Qwest's subsidiaries, the FCC Notice of Apparent Liability for Forfeiture against Qwest for slamming, and the potential impact on the service quality for US West California affiliates being acquired by Qwest.

Relevant to this proceeding, D.00-06-079 required Qwest to:

Categorize each complaint against itself or any of its affiliates as either a slamming, cramming, or other complaint, tracking the slamming complaints by PIC code, tracking the cramming complaints by product or service ordered but not billed; and tracking "other" complaints by a general description of the complaint (Ordering Paragraph 2.a (1), (2) and (3));

Submit to CSD and ORA copies of all California customers' complaints received at the FCC of which Qwest has notice (Ordering Paragraph 2.d); and

³⁸ 6553 entries, adjusted by 7% for a total of 6094, and further adjusted by 1223, representing the PICC charge, Universal Service Fund, and duplicate entries discussed above.

Submit quarterly reports to CSD and ORA within 60 days after the end of each quarter (May 30, August 29, November 29 and March 1) for five years following the effective date of the merger decision summarizing the number and type of California complaints. (Ordering Paragraphs 2.e and 2.h.)

Because the instant investigation involves slamming and cramming allegations, and similar concerns served as the basis of the above mitigation measures, the presiding officer requested at an April 26 prehearing conference that Qwest demonstrate its compliance with D.00-06-079 in this investigation.

Notwithstanding the fact that D.00-06-079 required Qwest to submit quarterly reports commencing November 29, 2000³⁹, Qwest submitted its first compliance report to the Commission on May 2, 2001, shortly after the presiding

³⁹ D.00-06-079 requires Qwest to submit to CSD and ORA quarterly reports within 60 days after the end of each quarter (May 30, August 29, November 29 and March 1). Because D.00-06-079 was issued on July 3, 2000, we find that Qwest's first quarterly report should be for the third quarter of 2000, which is the earliest quarter in 2000 ending after the effective date of the decision. Thus, Qwest's first compliance report was due November 29, 2000.

officer in this proceeding requested a copy of the compliance filing.⁴⁰ Qwest has therefore violated Ordering Paragraphs 2(e) and (h) of D.00-06-079 from November 29, 2000 through at least May 2, 2001, by failing to file the required quarterly reports in a timely manner. Because the Commission issued the OII on November 21, 2000, and Qwest's first compliance report was not due until eight days later, we do not fine Qwest for a particular aspect of its performance which first occurred after the OII issued, and is therefore not specifically addressed in the OII. However, we consider Qwest's conduct concerning this compliance report an aggravating factor in determining the fine for Qwest's slamming and cramming violations.

Although Qwest states it accepts responsibility for its delayed filing of compliance reports, Qwest argues that it will be denied due process if the Commission makes findings or takes any action regarding the report in this proceeding. Qwest argues that the presiding officer first asked Qwest about the compliance reports one week before the evidentiary hearings began, and although its witness Pitchford could speak of the content of the report and Qwest's challenges in preparing them, he was not the person most knowledgeable about their content or the reason for their tardiness. Qwest believes that the Commission should issue a new OII if it wishes to take action on the reports. We disagree and find that the relevant facts permit us to consider Qwest's conduct concerning the compliance report as a factor in determining the amount of the fine for Qwest's slamming and cramming violations.

⁴⁰ The report covered the last three quarters of 2000 and was supplemented by further filings during the course of the May hearings.

D.00-06-079, issued on July 3, 2000, clearly ordered Qwest to take certain actions.⁴¹ Furthermore, Qwest received specific notice that the Commission wished to examine its compliance with D.00-06-079 a week before the hearings. Once the presiding officer determined Qwest failed to comply with the timelines set forth in D.00-06-079, Qwest received notice that this issue would be considered in this proceeding, and Qwest was afforded the opportunity to present a witness addressing the filing. At no time during the hearings did Qwest request an extension so that a more knowledgeable witness than Pitchford could testify on this subject. We find that Qwest had ample notice and the opportunity to address the compliance issue at the hearings.

Additionally, CSD questions Qwest's compliance with D.00-06-079 on a substantive basis. Specifically, CSD complains that the report does not provide any categorization of slamming and cramming complaints, but rather categorizes each complaint by an adjustment code (i.e., the reason the customer's telephone bill was adjusted). CSD points out there is no slamming code, Qwest only recently is instituting a cramming code, and customers who have complained but have yet to receive an adjustment will not appear on the quarterly reports. Further, CSD complains that Qwest's tracking of "other" complaints overwhelms the report and makes CSD's tracking and investigation difficult. CSD also points out that the complaint does not contain business complaints.

⁴¹ If Qwest believed the decision's directives were ambiguous or unclear, it could have filed a petition for modification. If Qwest needed an extension to comply with the decision, it could have requested one pursuant to Rule 48(b) of the Commission's Rules of Practice and Procedure. Qwest did neither.

Qwest believes it has complied with D.00-06-079's categorization requirements. We do not engage in a detailed analysis of the compliance filing here, but recognize that it may have been hastily assembled in light of the presiding officer's request. In order for the compliance filings to provide meaningful information to the Commission, we direct that Qwest meet and confer with representatives from CSD and ORA no later than 30 days after the issuance of this decision in order to refine the format of the compliance report. If the parties thereafter believe that the reporting requirements of D.00-06-079 need to be clarified or supplemented, or if the parties cannot agree on the report's format, they should petition to modify D.00-06-079. For this reason, the Commission's Process Office should also serve a copy of today's decision on the service list of Application 99-09-039 (the merger proceeding in which the Commission issued D.00-06-079).

X. Remedies

In order to remedy Qwest's multiple violations of § 2889.5 and § 2890, we direct Qwest to provide full reparations pursuant to § 734 for the customers listed on the PIC dispute reports from the LECs, Qwest, as well as those complaining to CAB, according to the criteria set forth below.⁴²

Additionally, we fine Qwest a total of \$20,340,500. This fine consists of \$5,000 for 3,581 violations of § 2889.5(\$17,905,000), based on Qwest's own admission of "realized" PIC disputes (3,420) and the actual slamming violations from the customers CSD (159) and Greenlining/LIF (2) presented in the form of witnesses or interviews. We also fine Qwest for 4,871 violations of § 2890

⁴² Section 734 gives the Commission authority to order reparations.

(\$2,435,500), based on the BOR report figures as adjusted.⁴³ This is lower than CSD's recommended fine of over \$100 million (based on the PIC dispute data) and Greenlining / LIF's proposed fine of about \$83 million, based on a percentage of Qwest's total revenues. However it is higher than Qwest's recommended \$55,500 fine, based on a \$500 fine for each of the 111 violations Qwest believes CSD has proven. Finally, pursuant to § 451 and § 701, we impose conditions on Qwest in order to ensure future compliance with § 2889.5 and § 2890. CSD and Qwest agreed to most of these conditions. We decline to appoint an independent monitor to supervise Qwest, as proposed by Greenlining / LIF.

A. CSD's and Greenlining/LIF's Recommendations

CSD recommends refunds, special conditions, and penalties against Qwest to remedy the violations found this investigation. CSD states that Qwest has not credited or made refunds to some of the customers interviewed by CSD. CSD recommends that the Commission direct Qwest to make these customers whole, and impose special conditions and restrictions on Qwest to ensure future compliance with § 2889.5 and § 2890.

CSD's recommended penalty in this investigation is about \$106 million. CSD recommends the maximum \$20,000 penalty for what it believes to be each falsified proof of authorization. According to CSD, this penalty should apply to the 41 declarants and 41 customers CSD interviewed who stated that the third-party verification tape does not contain their voice, or the letter of

⁴³ Sections 2107 and 2108 address fines. According to § 2107, Qwest is liable for a fine of \$500 to \$20,000 for every violation of the Public Utilities Code or a Commission decision. Section 2108 provides that every violation is a separate and distinct offense, and in case of a continuing violation each day's continuance constitutes a separate and distinct offense.

authorization does not contain their signature. Additionally, CSD believes that this penalty should apply to Qwest's 3,420 "realized" PIC disputes.

CSD also recommends Qwest be fined \$500 for each of the 71,495 PIC dispute and cramming complaints registered in the LECs' and Qwest's reports, as well as a minimum, \$5,000 for each day since November 30, 2000, that Qwest has failed to comply with D.00-06-079.

Because Greenlining/LIF believe that the thousands of reported PIC disputes are the "tip of the iceberg," these parties recommend that all "potential victims" be contacted and advised of their right (a) to be switched back to the carrier of their choice at no cost to them, and (b) of their potential eligibility for reparations or refunds. According to Greenlining/LIF, the Commission should order Qwest to place about \$10 million in an escrow account for this purpose. Because Greenlining/LIF believe the \$1.5 million fine imposed by the FCC was inadequate to change the way Qwest does business, they recommend a fine set at 0.5% of Qwest's total revenues, for a total of \$83 million. Greenlining/LIF also recommend that the Commission establish an independent monitor, paid by Qwest, who would have full access to Qwest's systems and data and would advise Qwest and the Commission how to best protect customers from slamming.

B. Qwest's Response

Qwest believes that CSD has proven that Qwest is responsible for 111 slams and crams. Qwest argues that there is no need for the Commission to order a penalty here because Qwest (a) did not intentionally commit the slams or crams because they were caused by third-party sales agents, (b) made the

complainants whole, (c) did not profit from the slamming or cramming,⁴⁴ (d) has a “zero-tolerance” policy for slamming, (e) took prompt action to address customer complaints and to terminate sales representatives responsible for slamming, (f) improved its own and its sales representatives’ internal processes to reduce slamming, and (g) currently has a “state of the art anti-slamming process.”

Alternatively, if the commission decides to impose a penalty, Qwest believes it should be the minimum penalty, or \$500 for each of the 111 violations Qwest believes CSD has proven. Under Qwest’s calculations, the appropriate penalty should be no more than \$55,500. Qwest also agrees to many of the conditions proposed by CSD, while recommending changes to others.

C. Discussion

1. Refunds

Qwest has not provided refunds or a credit to all customers who allege an unauthorized switch of their telephone service. (See, e.g. Exhibit C24, interviews 30 (Camarena), 34 (Kapoor), and 26 (Abe).) For purposes of reparations, we use the full count of the PIC disputes from the LECs, Qwest, and the complaints received by CAB.

No later than 90 days from the effective date of this decision, Qwest shall provide full refunds for every customer on these lists for which it has not already done so under the following criteria. Qwest shall provide these customers with a refund of any PIC change fee and other applicable

⁴⁴ This is so, according to Qwest, because those who complained received credits, and because Qwest paid a \$10 fee to the LECs for each LEC-reported PIC dispute.

administrative fees, as well as any charges paid by the subscriber in excess of the amount that the subscriber would have paid his or her carrier of choice. Qwest shall make any checks payable to the subscriber of record for the telephone line, and shall meet and confer with CSD to ensure that it has refunded all appropriate customers.

No later than 120 days from the effective date of this decision, Qwest shall file a compliance report with the Director of the Commission's Consumer Services Division, served on the service list of this investigation, which demonstrates that it has fully complied with this directive.

2. Fines

We fine Qwest a total of \$ 20,340,500 for slamming and cramming in violation of § 2889.5 and § 2890. We fine Qwest for 3,581 violations of § 2889.5 for changing a subscriber's telephone service without authorization, based on Qwest's own admission of "realized" PIC disputes (3,420) and the actual slamming violations from the customers CSD (159) and Greenlining/LIF (2) presented in the form of witnesses or interviews. We also fine Qwest for 4,871 violations of § 2890 based on the BOR report figures as adjusted. Under § 2107 and § 2108, the range of a fine for 8452 slamming and cramming violations is between \$4,226,000 and \$169,040,000. Our fine is significant, but still at the lower end of this range.

In determining the amount of the fine, we look to the criteria we established in D.98-12-075, Appendix B, which has provided guidance in all subsequent cases in which such issues arise. That decision stated that the purpose of a fine is to effectively deter further violations by this perpetrator or others.

In setting the amount of the fine in this proceeding, we consider the following criteria:

- The severity of the economic or physical harm;
- The utility's conduct to prevent, detect, disclose, and rectify the violation;
- The utility's financial resources;
- The public interest involved;
- The totality of the circumstances; and
- Commission precedents.

We require each public utility to fully comply with all relevant statutes, rules, regulations, and Commission orders, and we expressly order each utility to do so as a condition of our approval of its authority to operate. Since such compliance is the cornerstone of our regulation, the disregard of a relevant statute, rule, regulation or Commission order is a substantial violation. In this case, the violation harmed thousands of customers. The FCC and numerous other states have investigated Qwest for the same problems set forth in the OII, demonstrating that Qwest's slamming and cramming problems are nationwide and persistent.

We find the over 8,000 violations of § 2889.5 and § 2890 to be substantial, and to warrant a significant fine especially with respect to the slamming violations. The 3,581 violations of § 2889.5 occurred during a small portion of the period we investigate (from October 2000 to March 2001.) Not only did Qwest slam these customers' telephone service, but in some instances Qwest: (a) forged the letter of authorization or third-party verification tape; (b) did not retain the verification record and make it available to the Commission or the subscriber upon request; and / or (c) failed to remain independent from its third-party verification company. The LECs' and Qwest's PIC dispute numbers

indicate further widespread violations of § 2889.5. These factors justify us imposing a higher fine for each slamming violation than for the other violations. We do not mitigate the fine on the grounds that Qwest's independent contractors caused the violations, because Qwest is responsible for the acts of its independent contractors.

With respect to Qwest's efforts to prevent and rectify violations, we are troubled that Qwest permitted the serious violations outlined above to occur. Largely in response to the FCC investigation, Qwest has implemented improved policies to minimize slamming and cramming. Given the recent PIC dispute numbers, we are pleased that Qwest's improved policies have decreased the number of reported slams. However, Qwest's current policies still need improvement. For instance, Qwest's hiring of Results Marketing as a subcontractor of Snyder Direct at the same time it was implementing its improved policies causes us to question its commitment to a "zero tolerance" policy. Also, in October 2000, even after the improvements were in place, customers such as Mr. Dong complained their long distance service was changed without authorization, and Qwest took until April 2001 to resolve the problem. Qwest also failed to timely file the slamming and cramming compliance reports required by D.00-06-079. Balancing Qwest's inadequate monitoring of its business activities in the past with its improved policies and the need for further improvement, we conclude that Qwest's preventive and remedial efforts warrant some mitigation of the amount of the fine. However, we do not agree with Qwest that its mitigation efforts warrant either no fine, or a minimal fine, because of the other factors that we balance, and because that outcome would not deter further violations by Qwest or others.

Qwest's financial statement indicates total assets of about \$72 billion, and revenue for 2000 of approximately \$11 billion. Qwest's California residential long distance revenues for 2000 were about \$92 million. Qwest appears to have the ability to pay a substantial fine. Furthermore, Qwest's CEO's total compensation for 2000 was about \$95 million, with a base salary of \$854,165, a bonus of \$193,736, a long term stock payment worth \$1,107,913 and \$93,454,973 million of what Qwest describes as "fortuitously earned" stock options.⁴⁵

As we stated in *Vista*, the public interest in slamming cases is significant because the customer's right to choose a long distance carrier is crucial to the competitive environment in telecommunications. For similar reasons, it is crucial that a customer's bill be free of unauthorized charges. These harms have been lessened but not eliminated when the customers were switched back to their carrier of choice (although in some instances it took several months for this to occur) or by the customers receiving refunds (although this has not occurred in all instances.) Thus, the public interest has been harmed.

Considering all the circumstances, we fine Qwest \$5,000 for each of the 3,581 violations of § 2889.5, and \$500 for each of the 4,871 violations of § 2890. This fine is consistent with a recent Commission decision concerning slamming issued after D.98-12-075.

In *Vista*, the Commission fined Vista \$1000 per violation for a total of \$7 million; however, the slams were based on Pacific's PIC dispute data, where here, each slam has been investigated and verified, some of the slams involved forgery, and they occurred during a limited part of this investigation. Moreover,

⁴⁵ See Qwest's Reply Brief at p. 1, n. 3.

we found that Vista reported a net loss in 1998 of \$4.6 million with gross revenues of \$40 million nationwide. Thus, a \$ 20,340,500 fine in this case, when Qwest had total revenues for the year 2000 of \$11 billion, and its California residential long distance revenue for 2000 was about \$92 million, falls within the realm of reasonableness.

3. Additional Conditions

a. CSD's Recommended Conditions

CSD also recommends that the Commission impose 21 additional conditions on Qwest to ensure future compliance with § 2889.5 and § 2890. Qwest states it has already implemented 14 of these, and agrees to implement the remaining with some modification.

The parties have a significant disagreement on one recommended condition, namely, that Qwest be required to terminate a third-party sales agent for a single proven forgery by one of the agent's representatives. Qwest believes the term "proven forgeries" is ambiguous, and also states that this requirement would put it out of business in California, because it would not be able to contract with a sales agent employing perhaps thousands of sales representatives due to the alleged misconduct of one employee. Qwest states it terminates individual sales representatives responsible for any realized PIC dispute.

Qwest believes that the agreement in the FCC Consent Decree, requiring it to terminate a sales agent with a realized PIC dispute rate of 2%, is appropriate. However, in order to cooperate with CSD, Qwest would agree to modify the realized PIC dispute thresholds for agents selling in California so that Qwest would terminate an agent who remains above a 1% realized PIC dispute rate after Phase II probation.

Qwest's proposal is reasonable as modified below, so that Qwest can contract with some sales agents. We require Qwest to place third-party sales agents on a 90-day probationary/retraining period if they remain above a 1% realized PIC dispute rate for any calendar month, and to terminate a sales agent if it remains above a 1% realized PIC dispute rate for any calendar month after its first 90-day probationary period. Ninety days should be sufficient time to retrain sales agents.

We also modify CSD's proposed condition regarding Qwest maintaining a "Stay Away" list of customers who have previously been slamming victims to ensure that telemarketers do not call this list in the future. CSD does not put any time limit on Qwest's ability to contact these customers, whereas Qwest recommends that the names be added to its "Do Not Call" list for a year, to accommodate the reissuing of the phone number to a new customer. Given the serious slamming violations in this proceeding, a year is too short a period. In balancing the gravity of the violations with the need to accommodate reissuing telephone numbers, we place a three-year limit on this condition.

We adopt the conditions as set forth in Appendix B.

b. Other Conditions

Many customers who call Qwest complaining about a slam were not promptly transferred to their carrier of choice. Qwest states that it cannot make the transfer itself, that only the LEC can do so, and that it so advises customers. Until the customer calls the LEC to reverse the switch, Qwest places these customers in "casual billing".

Credible witnesses testified Qwest did not advise them to call the LECs in all instances when the customer reported being slammed. Also, witnesses testified they spent much time and aggravation trying to rectify a

slamming problem. We therefore direct that, at the time the customer calls to complain that the telephone service has been switched to Qwest without authorization, Qwest shall provide customers with the telephone number of the LEC which customers must call to reverse the unauthorized switch, if, (a) in response to a required inquiry from Qwest's customer service representatives, the customers identify their LEC; and (b) CSD provides Qwest with a list of customer service telephone numbers for the LECs doing business in California, updated every six months and more frequently if conditions warrant.

Additionally, within two business days of the call, Qwest shall mail a postcard to that subscriber with the same information. In order to minimize customer confusion, Qwest shall not use that postcard for any other activity (marketing or otherwise). Qwest shall have this postcard written in English, Spanish, and Asian languages and send it in the language in which the customer was originally solicited.

Finally, Greenlining / LIF states that Qwest's Welcome Postcard is misleading to the customers who have been slammed, because the card not only thanks customers for "choosing Qwest", but also asks them to remove any PIC freeze on the line so the service can take effect. Greenlining / LIF recommend Qwest refrain from sending this card until it receives notification from the LEC that the order has been processed. Qwest states it is required by California law to send the Welcome Card within 14 days, and therefore must send the card as soon as Qwest receives the customer's order.

In Appendix B, we adopt an additional condition suggested by CSD requiring Qwest's Welcome Postcard to contain an 800 number to report any unauthorized switch or change in service, or any unauthorized charges in order to address this problem.

Qwest shall obtain approval from CSD and the Commission's Public Advisor on the content of the notices required to be sent to customers by this decision.

XI. Appeal of Presiding Officer's Decision

We make several changes resulting from appeals filed by Qwest and Greenlining / LIF. The changes include those adopted by the Presiding Officer in her Modified Presiding Officer's Decision (MOD-POD), as well as a reduction in the amount of the penalty.

Our main difference with the MOD-POD is the significance we attach to the fact that Qwest has made restitution to most of its customers and the fact that Qwest has put into place operational changes as a result of consent decree. We take those facts to indicate a commitment by Qwest to adhere to both CPUC's regulations and sound business practices. We expect this indicates a marked departure from Qwest's prior practices, as described during this proceeding. These facts warrant a lowering of the total fine to \$20,340,500. We have made changes in the foregoing portions of this decision to reflect the decreased fine.

On January 4, 2002, pursuant to Rule 8.2 of the Commission's Rules of Practice and Procedure, Qwest and Greenlining / LIF each filed an appeal of the Presiding Officer's Decision (POD) alleging numerous factual and legal errors. Additionally, the California Association of Competitive Telecommunications Companies (CalTel) seeks to appear solely to file a response to Qwest's appeal. We address these matters individually below.

A. CalTel's Motion

CalTel seeks to enter a special appearance pursuant to Rule 45(c)(2), in order to file a response to Qwest's appeal. CalTel argues that it did not realize the Commission would reach issues pertaining to industry-wide subjects such as

third-party verification, local exchange company PIC dispute reports, and evidentiary standards for establishing slamming claims. CSD opposes CalTel's request, and alternatively argues that if the Commission grants CalTel's request, that CSD should have the opportunity to respond to CalTel's response.

We deny CalTel's request. Fundamentally, a "special appearance" contemplated by Rule 45(c)(2) is a method of appearing for the sole purpose of objecting to the lack of jurisdiction of the tribunal over the person appearing specially, without submitting to the tribunal's jurisdiction. (See Witkin, California Procedure 4th Ed., Jurisdiction § 197.) Rule 45(c)(2) makes this clear by citing a motion to quash as an example of a special appearance.⁴⁶ However, CalTel's request is in effect to make a general appearance in order to contest the POD, not a Rule 45 "special appearance."

CalTel also argues its motion may not be necessary, because while Rule 8.2(c) limits appeals to the complainant, defendant, respondent, or intervenor, Rule 8(f) states that "any party may file and serve its response no later than 15 days after the date of the appeal." According to CalTel, since the Commission did not qualify the term "any party", any person may file a response to an appeal, notwithstanding the fact that the person has not received permission from the Commission to make an appearance in the proceeding.

CalTel misreads our rules. The term "party" in Rule 8(f) refers to a person or entity who has made a formal appearance in the case. Rule 8(c) clarifies that a "party" is proceeding-specific, by enumerating the specific parties who can file

⁴⁶ Rule 45(c)(2) states that, in appropriate circumstances, a person or entity who is not a party may make a motion "if the motion relates to a special appearance or limited participation in the proceeding, e.g., a motion to quash."

an appeal “within 30 days of the date the decision is mailed to the parties in the proceeding.”⁴⁷ To permit a nonparty to file a response to an appeal without the Commission’s permission would create unreasonable delay, unfairness to the parties involved from the commencement of the case, and procedural chaos.

CalTel’s request is also untimely. The OII issued on November 21, 2000, and placed Qwest and the public on notice that the Commission was investigating allegations of slamming and cramming. The POD addresses those allegations. CalTel has not adequately justified its delay until the final stages of this proceeding before attempting to participate. Furthermore, its “response” is in fact an appeal, raising alleged legal error. As such, it is also untimely because it was not filed and served within 30 days after the POD was mailed, as is required by Rule 8.2(c). For all of these reasons, CalTel’s motion is denied.

B. Qwest’s Appeal

Based upon numerous alleged factual and legal errors, Qwest argues that a much lower fine is warranted. Qwest also requests the Commission make several technical changes to conditions the POD imposes.

Qwest concurs with the standard the POD applies in assessing fines. (See Section X.C.2 of the POD and page 11 of Qwest’s appeal.) Qwest essentially argues that the POD’s weighing and balancing of these factors in determining the appropriate amount of the fine constitutes an abuse of discretion. We do not address in detail Qwest’s reargument of the sanction issue, because the Presiding

⁴⁷ See also Rule 5, which defines an interested person as, among others, “interested parties who have made a formal appearance.”

Officer considered the appropriate criteria in determining the amount of the fine. However, we make several general observations.

Qwest argues that the POD's fines are inconsistent with Commission precedent which, according to Qwest, supports fines of a maximum of between \$500 to \$1000 for each violation. Qwest further argues that the POD's fine also constitutes cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments to the United States Constitution in that the fine exceeds the level necessary to punish and deter.

The POD explains its consistency with *Vista* in Section X.C.2. Although the Commission found a fine of \$1,000 per violation appropriate in *Vista*, the slamming violations there were based on Pacific's PIC dispute data. In contrast, here, each slam for which a fine has been imposed has been investigated and verified, some slams involved forgery, and they occurred during a limited part of this investigation. *Vista* reported a net loss in 1998 of \$4.6 million with gross revenues of \$40 million nationwide. Thus, an approximate \$38 million fine is reasonable in this case when Qwest had total revenues for the year 2000 of \$11 billion, and its California residential long distance revenue for 2000 was about \$92 million.

Qwest argues that the Commission should consider net revenues, not gross California revenues, but then admits that there "is no evidence in the record regarding the amount of Qwest's net worth in California."⁴⁸ Qwest then extrapolates testimony that it states demonstrates that Qwest's net profit in California was at most \$18.4 million. However, we fined *Vista* about 1/6 of its

⁴⁸ Qwest appeal at p. 20.

nationwide gross revenues when it reported a net loss. Again, the POD is consistent with our outcome in *Vista*.

Other Commission precedents addressing slamming and cramming violations support the result reached by the POD.⁴⁹ (See also *Coral Communications*, D.01-04-035 [the Commission fined Coral \$10,000 for each day of the continuing offense of billing customers as a result of sweepstakes entry forms that did not meet the requirements of a valid contract, resulting in a fine of \$5.1 million, even though Coral was insolvent.]; *CTS*, [the Commission fined CTS \$500 per violation in 1997, again based on PIC dispute data, for a total penalty of \$19.6 million.⁵⁰] No statute or Commission decision caps the fine the Commission may impose upon a slamming or cramming violation to \$500, the statutory minimum. However, if the Commission were to use this statutory minimum and base its finding of violations on the PIC dispute data, as we did in *Vista* and *CTS*, the fine would be reasonably consistent with that reached in the POD.⁵¹ Moreover, the Commission issued *CTS* in 1997 and a \$500 fine per

⁴⁹ Qwest also cites D.01-09-058, modified after limited rehearing was granted in D.0202-027, which involved allegations of Pacific Bell's unfair business practices. This case does not concern slamming and cramming activities, and there were substantial allegations of ambiguity in the applicable statutes and tariffs. In the instant case, there were not similar allegations that § 2889.5 (slamming) and § 2890 (cramming) are ambiguous.

⁵⁰ The Commission stayed all but \$2 million of the penalty consistent with "prudent and fair enforcement policies" specific to respondent. (72 CPUC2d at 640.)

⁵¹ A fine of \$500 for 63,000 occasions of slamming as evidenced by the PIC dispute reports (see Section VII.B.2) results in a fine of \$31.5 million. When added to the POD's \$2,435,500 fine for violations of § 2890 (cramming), the total penalty would be \$33,935,500, which is higher than the \$20,340,500 penalty imposed by the POD. This calculation does not include any fine for Qwest's 3420 "realized" PIC disputes.

violation (for a total fine of \$19 million) against CTS was not of sufficient magnitude to deter Qwest's own misconduct, which occurred principally in 1999 and 2000.

Qwest argues that the amount of the POD's penalty sends an anticompetitive message to carriers seeking to enter the California market and will make them think twice about doing so. We disagree. The message sent by the POD is that this Commission does not put a \$500 to \$1,000 price tag on each proven slamming and cramming violation, so that companies who engage in this activity can factor this expense into the cost of doing business in California. Such a message would not deter slamming and cramming activities and properly protect California consumers.

Finally, we address several technical issues which Qwest raises. Qwest argues that two of the POD's conditions should be modified so that it can comply with them. Qwest recommends that the Commission modify Ordering Paragraph 7(b) to require that Qwest provide customers with the telephone number of their LEC if (a) in response to an inquiry from Qwest's customer service representatives, customers identify their LEC, and (b) CSD provides Qwest a list of customer service telephone numbers for the LEC's doing business in California, updated on a regular basis. CSD does not object to this modification. We agree with this modification and require CSD to update the list to Qwest every six months, and more frequently if circumstances warrant.

Qwest also recommends the Commission modify Ordering Paragraph 7(b) to require Qwest to send a follow-up postcard containing the LEC customer service phone number within two, as opposed to one, business day of the customer's call. We agree that this modification is reasonable and make it.

We also modify Section VII.B.2 to find that Qwest did not violate § 2889.5 with respect to customers Snow and Voladri, and we reduce the fine accordingly. Additionally, we make several nonsubstantive changes to conform the text of the decision to the ordering paragraphs modified above, improve the flow of the discussion and correct typographical errors.

C. Greenlining/LIF's Appeal

Greenlining/LIF appeal the POD because they believe the Commission should use a portion of the penalty to create a Consumer Protection and Education Trust Fund, to benefit unidentified customers, particularly low-income and minority customers, who may have been slammed or crammed. Greenlining/LIF recommend that their organizations actively participate in implementing the trust fund. Additionally, Greenlining/LIF believe the POD should be rewritten to more specifically recognize the substantial contribution made by these two intervenors.

We decline to adopt the changes which Greenlining/LIF propose. These parties propose establishing a Consumer Education and Trust Fund for the first time in their appeal.⁵² The proposal is not well defined and raises accountability issues. We also do not modify the POD to address in further detail Greenlining/LIF's contribution to the proceeding because this is not a decision on an intervenor compensation request.

⁵² In their post-hearing briefs, Greenlining/LIF recommended that the Commission establish an independent monitor, paid by Qwest, who would advise Qwest and the Commission how to best protect customers. According to Greenlining/LIF, one of the monitor's tasks should be to develop a public education and outreach campaign. The POD rejected establishing an independent monitor.

XII Comments on Commissioner Wood's Alternate Draft Order

Commissioner Wood's Alternate Draft order was mailed for comments on October 11, 2002. Greenlining Institute and Latino Issues Forum filed joint comments on October 16, 2002. Qwest Communications Corporation filed comments on October 18, 2002. In their comments parties reargued many of the same issues that were raised in their appeals. We have reviewed the comments and determine that there is need to make changes to the order.

Findings of Fact

1. During 1999 and 2000, the FCC and other states have also investigated Qwest for, among other things, slamming and cramming.
2. CSD's compliance filing in C.99-12-029 and C.00-02-027 have no evidentiary value in this investigation.
3. The reliability of the interLATA PIC dispute reports has been exhaustively tested in this investigation and has been found to be high. Based on 61 customer declarations that CSD obtained, we find that Qwest switched 60 of these customer's telephone service without authorization; based upon the CSD investigators' 115 completed customer interviews, we find that Qwest switched 99 of these customers' telephone service without authorization. CSD confirmed that about 90% of those it interviewed or obtained declarations from were slammed.
4. Since October 2000, shortly after the adoption of the FCC Consent Decree, Qwest investigates all reported PIC disputes and tracks those that it defines as "realized." Qwest classifies a PIC dispute as "realized" if (a) Qwest cannot produce a third-party verification tape within 14 days of the complaint, or (b) the customer denies that the voice on the third-party verification tape is the voice of someone authorized to make changes to the service.

5. From October 2000 through March 2001, Qwest recorded 3,420 PIC disputes.

6. Qwest's "realized" PIC disputes are compelling evidence of violations of § 2889.5, because the complaining customers have not only alleged their telephone service was switched without authorization, but they have also either denied that the voice on the verification tape is that of someone authorized to make the switch, or Qwest has been unable to timely retrieve the verification tape.

7. In 1999 and 2000, Qwest had a serious problem with its sales agents or telemarketers forging or falsifying letters of authorization or third-party verification tapes.

8. In 1999 and 2000, Qwest had serious problems with maintenance and retrieval of third-party verification tapes.

9. For 1999 and 2000, the interLATA PIC dispute rate for Spanish and Asian language preferred residential customers was higher than the rate for English language preferred customers.

10. We will not tolerate singling out any group of customers due to "industry norms" or any other spurious reason.

11. PIC disputes from Spanish and Asian preferred speaking customers may be understated.

12. Qwest's new policy requiring a sales agent with a "realized" PIC dispute rate that exceeds 2% to be terminated after several phases of probation does not appropriately protect California consumers.

13. Qwest's actions concerning its hiring Results Marketing as a sub-agent of another marketing firm, on the eve of terminating Results for a high PIC dispute rate, demonstrate its continued difficulty in enforcing its "zero tolerance" policy

with respect to slamming, and its poor supervision over its sales agents as late as mid-2000.

14. Pacific reported 6,553 cramming complaints attributable to Qwest in 1999 and 2000 in its BOR report. This report's tabulation of complaints regarding unauthorized third-party billing charges for products and services is reliable and is the most accurate and up-to-date record the Commission has of cramming complaints.

15. We adjust the numbers in the BOR report as discussed in the decision to account for (1) customers who were unable to provide billing records or were unclear on the carrier complained about; (2) authorized charges; and (3) duplicate entries, and fine Qwest for 4,871 violations of § 2890 based on these adjusted figures.

16. In D.00-06-079, the Commission approved Qwest's acquisition of US West and its affiliates, conditioned upon the specific mitigation measures designed to address ORA's service quality concerns because of the large number of slamming and cramming complaints against Qwest.

17. D.00-06-079 required Qwest to submit quarterly reports containing slamming and cramming dispute information commencing November 29, 2000. Qwest submitted its first compliance report on May 2, 2001. Qwest had ample notice and opportunity to address the compliance issue at the hearings.

18. Qwest has not provided refunds or a credit to all customers who allege an unauthorized switch of their telephone service.

19. We fine Qwest for 3,581 violations of § 2889.5 for changing a subscriber's telephone service without authorization, based on Qwest's own admission of "realized" PIC disputes (3,420) and the actual slamming violations from the

customers CSD (159) and Greenlining /LIF (2) presented in the form of witnesses or interviews.

Conclusions of Law

1. CSD has the burden of proving by a preponderance of the evidence that Qwest has failed to comply with relevant provisions of the Public Utilities Code, including § 2889.5 and § 2890.

2. Submission of this proceeding should be set aside in order to consider the following motions and related responses and replies, which replies we grant Qwest leave to file: (1) Qwest's August 17 motion, CSD's August 22 response, and Qwest's August 29 reply; (2) Qwest's September 6 motion, CSD's September 21 response, and Qwest's October 2 reply; and (3) Qwest's September 28 petition to set aside submission, CSD's October 15 response, and Qwest's October 25 reply.

3. Pursuant to Rule 73 of the Commission's Rules of Practice and Procedure, we deny Qwest's motions for us to take official notice of CSD's August 7, 2001 compliance filing and Pacific's response in C.99-12-029 and C.00-02-027, as well as Qwest's related requests for sanctions against CSD.

4. A customer's credible allegation of a PIC dispute, standing alone, constitutes compelling evidence that Qwest has violated § 2889.5 by failing to ensure the steps outlined in the statute were followed.

5. The PIC dispute data of the LECs and Qwest in 1999 and 2000 indicate widespread slamming in violation of Pub. Util. Code § 2889.5.

6. Once CSD establishes by credible evidence that Qwest has switched a subscriber's telephone service without the customer's authorization, the burden shifts to Qwest to demonstrate that another adult authorized this switch on a customer's behalf. To the extent a third party, such as Qwest, wishes to rely on

the agency relationship to bind the principal, the third party has a duty to ascertain the scope of the agency. CSD does not have the burden of proving a negative, namely, that no adult living or answering the telephone in the household was ever authorized to switch the telephone service.

7. CSD may establish through another adult living in the household that the subscriber's telephone service was switched without authorization; CSD does not always have to produce testimony from the subscriber of record to prove its case.

8. In the future, Qwest shall produce the record of verification required by Pub. Util. Code § 2889.5 (a)(7) no later than 10 business days after a customer's or the Commission's request.

9. Qwest is responsible for the actions of its third-party sales agents, and may be punished for the acts of its independent contractors.

10. Commencing with its next quarterly compliance report required by D.00-06-079, Qwest should disaggregate the actual PIC dispute numbers in California, as well as the PIC dispute rate, for English, Spanish, and Asian preferred language customers. If the PIC dispute rate for Spanish and Asian preferred language customers continues to be higher than the PIC dispute rate for English preferred language customers in any quarter, Qwest shall explain why and how it proposes to abate the problem.

11. In the past, several of Qwest's third-party verification vendors have not been "independent" as required by Pub. Util. Code § 2889.5(a)(3)(A).

12. Qwest's new policy requiring third-party verification vendors to retrieve 98% of the third-party verification tapes requested also violates Pub. Util. Code § 2889.5(a)(7) which requires Qwest to make the verifications available to all subscribers upon request.

13. Qwest violated Ordering Paragraphs 2(e) and (h) of D.00-06-079 from November 29, 2000 through at least May 2, 2001 by failing to file the required quarterly reports in a timely manner.

14. Qwest should meet and confer with representatives from CSD and ORA no later than 30 days after the issuance of this decision in order to refine the format of the compliance report required by D.00-06-079. If these parties thereafter believe that the reporting requirements of D.00-06-079 need to be clarified or supplemented, or if these parties cannot agree on the report's format, they should petition to modify D.00-06-079. For this reason, the Commission's Process Office should also serve a copy of today's decision on the service list of Application 99-09-039 (the merger proceeding in which the Commission issued D.00-06-079).

15. No later than 90 days after the effective date of this decision, Qwest should provide full refunds as set forth in this decision for those customers for which it has not already done so who are listed on the PIC dispute reports of the LECs, Qwest, and CAB's complaint list. No later than 120 days from the effective date of this decision, Qwest shall file a compliance report with the Director of the Commission's Consumer Services Division, served on the service list of this investigation, which demonstrates that it has fully complied with this directive.

16. The purpose of a fine is to effectively deter further violations by the perpetrator or others.

17. Weighing the severity of the offense, Qwest's mitigation measures, its financial resources, and the public interest in this proceeding, a fine of 20,340,500 is warranted, which is significant, but still at the lower end of the fine range (between \$4,226,000 and \$169,040,000) under Pub. Util. Code § 2107.

18. The conditions in Appendix B are reasonable to impose to ensure future compliance with Pub. Util. Code § 2889.5 and § 2890 and Qwest should comply with them.

19. At the time the customer calls to complain that the telephone service has been switched to Qwest without authorization, Qwest should provide customers with the telephone number of the LEC which customers must call to reverse the unauthorized switch, if, (a) in response to a required inquiry from Qwest's customer service representatives, the customers identify their LEC; and (b) CSD provides Qwest with a list of customer service telephone numbers for the LECs doing business in California, updated every six months and more frequently if conditions warrant. Additionally, within two business days of the call, Qwest should mail a postcard to that subscriber with the same information. In order to minimize customer confusion, Qwest should not use that postcard for any other activity (marketing or otherwise). Qwest should have this postcard written in English, Spanish, and Asian languages and send it in the language in which the customer was originally solicited. Qwest should implement this condition within 30 days from the effective date of this decision.

20. Qwest should obtain approval from CSD and the Commission's Public Advisor on the content of the notices required to be sent to customers by this decision.

21. This decision should be effective immediately in order to provide full customer reparations as soon as possible.

22. The January 22, 2002 motion of CalTel to enter a special appearance for the purpose of filing a response to Qwest's appeal of the POD should be denied.

O R D E R**IT IS ORDERED** that:

1. Qwest Communications Corporation and its wholly-owned subsidiary, LCI International Telecommunications Corporation (collectively Qwest) shall cease and desist from engaging in slamming (unlawful switches in service) and cramming (placing unauthorized charges on a customer's telephone bill), and from all further violations of the Public Utilities Code and other applicable California or federal law.

2. No later than six months after the effective date of this decision, Qwest shall pay a fine of \$20,340,500 to the General Fund of the State of California.

3. No later than 90 days from the effective date of this decision, Qwest shall provide full reparations for those customers it has not already fully reimbursed who are listed on the primary inter-exchange carrier (PIC) dispute reports of the Local Exchange Carriers (LECs), Qwest, as well as the customers who complained to the Commission's Consumer Affairs Branch. Qwest shall provide these customers with a refund of any PIC change fee and other applicable administrative fees, as well as any charges paid by the subscriber in excess of the amount that the subscriber would have paid his or her carrier of choice. Qwest shall make any checks payable to the subscriber of record for the telephone line, and shall meet and confer with the Commission's Consumer Services Division to ensure that it has credited all appropriate customers. No later than 120 days from the effective date of this decision, Qwest shall file a compliance report with the Director of the Commission's Consumer Services Division (CSD), served on the service list of this investigation, which demonstrates it has fully complied with this directive.

4. Commencing with its next quarterly compliance report required by Decision (D.) 00-06-079, Qwest shall disaggregate the actual PIC dispute numbers in California, as well as the PIC dispute rate, for English, Spanish, and Asian language preferred customers, for comparative purposes. If the PIC dispute rate for Spanish and Asian preferred language customers continues to be higher than the PIC dispute rate for English preferred language customers in any quarter, Qwest shall explain why and how it proposes to abate the problem.

5. Qwest shall meet and confer with representatives from CSD and the Office of Ratepayer Advocates no later than 30 days after the issuance of this decision in order to refine the format of the compliance report required by D.00-06-079. If these parties thereafter believe that the reporting requirements of D.00-06-079 need to be clarified or supplemented, or if these parties cannot agree on the report's format, they should petition to modify D.00-06-079.

6. The Commission's Process Office will also serve a copy of today's decision on the service list of Application 99-09-039 (the merger proceeding in which the Commission issued D.00-06-079).

7. Qwest shall comply with the conditions set forth in Appendix B of this decision, as well as with the following conditions: (a) Effective immediately, Qwest shall produce the record of verification required by Pub. Util. Code § 2889.5(a)(7) no later than 10 business days after a customer's or the Commission's request; and (b) at the time the customer calls to complain that the telephone service has been switched to Qwest without authorization, Qwest shall provide customers with the telephone number of the LEC which customers must call to reverse the unauthorized switch, if, (i) in response to a required inquiry from Qwest's customer service representatives, the customers identify their LEC; and (ii) CSD provides Qwest with a list of customer service telephone numbers

for the LECs doing business in California, updated every six months or more frequently if conditions warrant. Additionally, within two business days of the call, Qwest shall mail a postcard to that subscriber with the same information. In order to minimize customer confusion, Qwest shall not use that postcard for any other activity (marketing or otherwise). Qwest shall have this postcard written in English, Spanish, and Asian languages and send it in the language in which the customer was originally solicited. Qwest shall implement this condition within 30 days from the effective date of this decision.

8. Qwest shall obtain approval from CSD and the Commission's Public Advisor's office on the content of the notices required to be sent to customers by this conditions adopted in this decision.

9. The January 22, 2002 motion of the California Association of Competitive Telecommunications Companies to enter a special appearance for the purpose of filing a response to the appeal of Qwest is denied.

10. This investigation is closed.

11. This order is effective today.

Dated _____, at San Francisco, California.

APPENDIX A APPEARANCES

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*Christopher P. Witteman was council for Greenlining from the commencement of the investigation and throughout the hearings and briefing schedule.

(END OF APPENDIX A)

APPENDIX B

ADDITIONAL ADOPTED CONDITIONS

CSD recommended that the Commission impose 21 special conditions and restrictions on Qwest, in order to ensure compliance with Pub. Util. Code § 2889.5 and § 2890. Qwest states that it has already implemented 14 of these conditions and agrees to implement the remaining with some modification. CSD and Qwest have a significant disagreement over one recommendation, which is discussed in the body of the decision.

Qwest is directed to comply with the following conditions:

The Anti-Slamming Advisory that Qwest requires its third-party marketers to sign shall be more strongly worded to prohibit certain persistent problems; Qwest shall work with CSD to re-write the existing advisory language, and shall complete this re-write no later than 60 days from the effective date of this decision.

Qwest shall electronically store letters of authorization and third-party verification tapes, which Qwest shall maintain for one year on its premises. Qwest shall implement this measure no later than 60 days from the effective date of this decision.

Prior to processing any sales order, Qwest shall compare the sales order to the third-party verification tape data stream. If the data do not exactly match, Qwest shall only process that portion of the order for which the data match. Qwest shall implement this provision no later than 30 days from the effective date of this decision.

Qwest sales agents shall not be allowed to contract with a third-party verification vendor directly. Qwest shall ensure that its sales agents and third-party verification vendors do not have a direct contractual relationship, and that Qwest itself contracts with its third-party verification vendors. Qwest shall implement this provision no later than 30 days from the effective date of this decision.

Qwest shall ensure its third-party verification vendors do not provide sales services, such as marketing or customer service. Qwest's third-party verification vendors shall only provide verification services. Qwest shall implement this provision no later than 30 days from the effective date of this decision.

Qwest shall send each new customer a "welcome postcard" with an 800 number to report any unauthorized switch or change in service, or any unauthorized charges. Qwest shall implement this provision no later than 30 days from the effective date of this decision.

Qwest shall use CARE flags to track customer telephone numbers that report being slammed by Qwest, to prevent re-installation of Qwest service after a reported slam. Qwest shall implement this provision no later than 30 days from the effective date of this decision.

Qwest shall maintain a "Stay Away" list of customers who report being slammed by Qwest in the past. Qwest shall also add these names to its "Do Not Call List" for a period of three years, and shall ensure its telemarketers refrain from contacting these customers, either by telemarketing, face-to-face marketing, or other type of marketing during that period. Qwest shall implement this provision no later than 30 days from the effective date of this decision.

Qwest shall modify its contracts with its third-party verification vendors to require both 100% retrieval of the third-party verification tapes and appropriate financial penalties for their failure to comply with this condition. Qwest shall implement this provision no later than 90 days from the effective date of this decision.

Qwest shall review letters of authorization and monitor third-party verification calls for suspected forgeries, and shall immediately terminate individual sales representatives for any forgery or any other realized PIC dispute. Qwest shall place a sales agent who remains above a 1% realized PIC dispute rate for any calendar month on a 90-day probationary/retraining period, and shall terminate a sales agent who remains above a 1% realized PIC dispute rate for any calendar month after its first 90-day probationary period. Qwest shall also implement mandatory retraining for any agent who remains above 0.5% realized PIC

dispute rate for one month. Qwest shall implement this provision no later than 30 days from the effective date of this decision.

Qwest shall ensure that its sales agents disgorge profits (usually commissions and fees from a disputed sale) from disputed slamming and cramming activities. Qwest shall implement this provision no later than 30 days from the effective date of this decision.

Qwest shall perform its own investigation into disputed charges concerning sales agents, and shall not rely on the sales agents to conduct an investigation of the disputed charges against themselves. Qwest shall implement this provision no later than 30 days from the effective date of this decision.

Qwest shall report and track the following information from its third-party distributors and sales agents: (1) rejections for facial defects; (2) charge-backs; (3) PIC disputes and other billing adjustments; (4) allegations of forgeries, including the names of the individual sales representative and the sales agent involved; (5) terminated individual sales agents by last name. Qwest shall include these categories in its quarterly reports to the Commission as required by D.00-06-079. Qwest shall implement this procedure on the effective date of this decision.

Qwest shall strengthen its sales representative enforcement procedures by requiring representatives to sign the Anti-Slamming Advisory and shall immediately terminate individual representatives for a single realized PIC dispute. Qwest shall implement this provision no later than 30 days from the effective date of this decision.

Qwest shall target areas of reported abuse by sales or sales channels and take steps to remedy this reported abuse. Qwest shall implement this provision no later than 30 days from the effective date of this decision.

Qwest shall strengthen its sales agent enforcement procedures, including but not limited to (1) adding triggers for mandatory training; (2) providing stricter thresholds for its distributors; and (3) requiring distributors to sign the Anti-Slamming Advisory. Qwest shall implement this provision no later than 30 days from the effective date of this decision.

Qwest shall strengthen its procedures regarding pre-screening proposed distributors and sales agents. Before entering into new contracts with distributors and sales agents, Qwest shall require the distribution and sales agents to disclose: (1) information of past lawsuits involving allegations of forgery or fraud; (2) any complaints against the distributors or sales agents for forgeries, slamming, or cramming; (3) any past settlements regarding forgeries, slamming or cramming; and (4) any instances of termination of contracts due to related misdeeds. Qwest shall implement this provision no later than 30 days from the effective date of this decision.

Qwest shall require refresher training of its sales representatives. Qwest shall implement this provision no later than 30 days from the effective date of this decision.

Qwest shall undergo regular independent audits, where an annual independent auditor examines reporting and data tracking mechanisms and the enforcement procedures. Qwest shall implement this provision no later than 30 days from the effective date of this decision.

Qwest shall require its sales agents and distributors to conduct self-audits on a quarterly basis. Qwest shall implement this provision no later than 30 days from the effective date of this decision.

Qwest shall deliver a summary of the independent audits and the sales agents and distributors self-audit to the Commission with its quarterly reports. Qwest shall include these categories in its quarterly reports to the Commission as required by D.00-06-079. Qwest shall implement this procedure on the effective date of this decision.

(END OF APPENDIX B)

APPENDIX C

Conclusions Regarding Qwest's Summary of Slamming Complaints for Which Qwest Alleges That CSD Did Not Meet Its Burden of Proof¹

Declarant or Interviewee	Summary of Complaint	Qwest's Alleged Missing Evidence	Other Additional Record Evidence and Conclusion
2. ² Bertz (Ex. C-5)	Subscriber did not authorize Qwest to switch her telephone service. Bertz has had her telephone number for two years prior to the switch.	Never testified that no other household member authorized the switch.	11/23/99 Qwest letter stating Qwest's position that the LEC assigned the consumer a recycled telephone number, and the number belonged to a consumer who previously had Qwest services. Bertz stated she had her phone number for 2 years and Pacific Bell stated the recycled number rationale is not possible. Conclusion: Slam
8. Garcia (Ex. C-5)	Garcia did not authorize Qwest to switch her telephone service; her husband told her he did not fill out any portion of the LOA, which appears to contain her husband's name, address, phone number, and signature.	Did not testify whether signature appeared to be his or whether birthday was correct. No explanation for how Qwest sales agent would have known husband's name.	Conclusion: Slam

¹ Qwest summarizes this information in Appendix A of its opening brief. We do not address instances where CSD was unable to complete the interviews.

² The numbers correspond with the numbers Qwest used in Appendix A to its opening brief.

APPENDIX C

Declarant or Interviewee	Summary of Complaint	Qwest's Alleged Missing Evidence	Other Additional Record Evidence and Conclusion
19. Li (Ex. C-5)	Subscriber did not authorize Qwest to switch his long distance service; the account was also changed from his name to that of his wife.	Never testified that his wife did not authorize the switch. Never explains how Qwest sales agent could have known his wife's name, or how Qwest could have switched the name on the LEC-billed account.	Qwest could not find the LOA for this account. Qwest received authorization from Snyder Direct. Conclusion: Slam
20. Henry Lim (Ex. C-5)	Subscriber did not "order anything" from Qwest, but was billed for unauthorized charges. LOA appears to contain his name, address, and telephone number, but the signature of "Hang Lim". Henry Lim did not fill out or sign the LOA.	Subscriber never testified that he did not know Hang or that Hang lacked authority to authorize the switch.	Conclusion: Slam
31. Raddatz (Ex. C-6)	Subscriber states Qwest switched her telephone service without her authorization twice. She does not know Jesus Ramirez, the name on the LOA, and the LOA also has a different address. Raddatz states Qwest switched her service again two months later.	Qwest admits one slam. For the second slam, there is no evidence that CSD attempted to obtain an LOA or TPV and to show them to the witness; that it is not clear from her bills that she was slammed twice as opposed to her service simply never switched away from Qwest; there is no indication that she called her LE to switch away.	Raddatz states that two Qwest operators who took her complaints were rude to her. Conclusion: One slam
32. Shen (Ex. C-6)	Subscriber states that Qwest switched her telephone service without her authorization.	Shen did not testify that no one else with authority to make the change could not have or did not make the change.	Shen testifies that she spoke with a Qwest sales agent before she was slammed, but she never authorized a change in telephone service. Qwest could not find the LOA for this account. Conclusion: Slam

APPENDIX C

Declarant or Interviewee	Summary of Complaint	Qwest's Alleged Missing Evidence	Other Additional Record Evidence and Conclusion
33. Schultz (Ex. C-6)	Subscriber states Qwest switched his telephone service without his authorization. LOA bears roommate's name, but roommate told Schutz he did not fill out any part of the LOA.	Never testified that no one else with authority to make the change could not have or did not make the change, or how Qwest's sales representative would have known the roommate's name.	Conclusion: Slam
39. Ybarrando (Ex. C-6)	Subscriber states Qwest switched his telephone service without his authorization.	Never testified that no other authorized adult placed the order.	Qwest was unable to retrieve verification from its third party distributor. Conclusion: Slam
40. Yi (Ex. C-6)	Subscriber states Qwest switched his telephone service without his authorization.	Does not testify that no other authorized adult placed the order.	Qwest unable to retrieve verification. Account was established in the name of Ki Tony Yi. Subscriber Yi's first name is spelled Kitong. In October 1999, Yi received what he described a "suspicious" call from a man claiming to represent AT&T with an offer for better distance rates. Yi stated he was already with AT&T and did not want to switch. Conclusion: Slam
41. Brizuela (Ex. C-7)	Subscriber states Qwest switched his telephone service without his authorization in August 1998. Subscriber and his daughter also complained to Qwest about billing problems in 1999.	No explanation for why it took 10 months to complain. Qwest argues that subscriber's July 14 letter written by his daughter on his behalf is inconsistent with his declaration.	Conclusion: Slam

APPENDIX C

Declarant or Interviewee	Summary of Complaint	Qwest's Alleged Missing Evidence	Other Additional Record Evidence and Conclusion
42. Hernandez (Ex. C-7)	Hernandez states that neither she nor her husband Eduardo (the subscriber) authorized Qwest to switch their long distance telephone service. Neither know Alfredo Sanchez, who the Qwest letter says established the account.	The Qwest letter referencing Sanchez contains a "cut and paste" typographical error. Qwest has a TPV for this account in Eduardo Hernandez' name, who is the subscriber of record.	Qwest's 12/16/99 letter says the voice capture reveals the account was established in the name of Sanchez Alfredo. Conclusion: Slam
43. Wu (Ex. C-7)	Subscriber states that he did not authorize Qwest to switch his telephone service.	Qwest alleges it has a TPV recording for this account, and CSD never played the recording for the witness.	9/20/99 Qwest letter indicates that Qwest received authorization from third party distributor called Snyder Direct. Qwest was unable to find LOA as of 9/20/99. Handwritten "Qwest Authorization to Change Long Distance Service" appears in Ex. C7, together with a letter from Wu stating that both the birthday and signature are incorrect. Conclusion: Slam
45. Gomez (Ex. C-7)	Subscriber did not authorize Qwest to switch his telephone service	Did not testify that no other authorized adult placed the order.	When Gomez initially called to complain, Qwest's service representative was not helpful in resolving complaint and hung up on Gomez when he requested to speak to representative's supervisor. When Gomez tried to call Qwest back, all he got was recorded messages. In 9/8/99 letter sent to Gomez in response to written complaint, Qwest stated it was unable to find the LOA. Conclusion: Slam

APPENDIX C

Declarant or Interviewee	Summary of Complaint	Qwest's Alleged Missing Evidence	Other Additional Record Evidence and Conclusion
46. McRae (Ex. C-7)	Qwest states the account was established under McRae's fiancée's (now wife's) name. McRae (the subscriber) states that neither he nor his wife authorized Qwest to switch telephone service.	Qwest alleges it has a TPV tape for Deena Shin (the wife of McRae); that CSD did not play the recording to McRae or his wife, even though Qwest's letter to CAB enclosed the recording; Qwest alleges that Shin represented she had authority to make changes to the account. McRae did not explain how Qwest's sales agent could have known his then fiancée's name if she had not in fact placed the order.	McRae declaration further states, "Qwest sent me a disk that supposedly contained a voice record file of my wife authorizing the switch. The file is in a language neither my wife or I speak and was very fast. It was obviously faked! I still have the file for evidence." Conclusion: Slam
50. Diaz (Ex. C-8)	Subscriber states Qwest switched his service without authorization.	Qwest has TPV recording for this account; CSD did not play the recording for the witness.	Qwest's 12/29/99 letter to the CPUC states it was unable to obtain the LOA establishing the account but would forward it once received. Qwest states it has TPV recording in Ex. 300 (Pitchford Testimony prepared for this case.) The record is unclear when Qwest informed CSD of this recording. Conclusion: Slam
52. Newman (Ex. C-8)	Subscriber never authorized Qwest to be his service provider and states that Qwest billed him for services he never ordered.	Never testified that no other authorized adult placed the order.	Newman states that Qwest representatives were very rude to him when he called to complain.; Qwest's 9/8/99 letter to the CPUC addressing the complaint states that it is unable to obtain the LOA which established the account. Conclusion: Slam

APPENDIX C

Declarant or Interviewee	Summary of Complaint	Qwest's Alleged Missing Evidence	Other Additional Record Evidence and Conclusion
53. Acosta (Ex. C-8)	Subscriber states Qwest switched his telephone service without authorization.	Qwest has TPV recording for this account; CSD did not play recording for witness.	Qwest's 11/8/99 letter to CPUC regarding complaint states that it is unable to obtain the LOA at this time. Qwest states it has TPV recording in Ex. 300 (Pitchford Testimony prepared for this case.) The record is unclear when Qwest informed CSD of this recording. Conclusion: Slam
56. Nhung (Ex. C-8)	Subscriber states Qwest switched his telephone service without his authorization.	Never testified that no other adult placed the order.	12/14/99 Qwest letter states it received authorization from Snyder, and Qwest is unable to obtain the LOA at that time. Conclusion: Slam
58. Bernstein (Ex. C-9)	Subscriber states he never authorized Qwest to switch his telephone service.	Qwest found TPV recording for account and CSD did not play the recording.	11/16/99 Qwest letter to CPUC states it is Qwest's position that the LEC assigned the consumer a recycled telephone number. Qwest was unable to find the LOA at that time. Qwest states it has TPV recording in Ex. 300 (Pitchford Testimony) prepared for this case. Ex. 300 states that TPV recording in name of Masato Nakamura. The record is unclear on when Qwest informed CSD of this recording. Conclusion: Slam

APPENDIX C

Declarant or Interviewee	Summary of Complaint	Qwest's Alleged Missing Evidence	Other Additional Record Evidence and Conclusion
59. Sabo (Ex. C-9)	Subscriber states that Qwest switched his telephone service on two separate occasions without his authorization.	Never testified that no other authorized adult placed the order, or that the person whose name appears on the LOA is unknown to him or lacks authority to make the changes in the phone service.	Sabo states that he called Qwest, as well as AT&T and Pacific Bell to rectify the slam and three months later Qwest charges appeared on his bill again. 9/13/99 letter to CPUC indicates that Qwest was unable at that time to find the LOA for the account. The letter further states, "It would seem most likely that Xuan Ho service was disrupted when Eric Sabo information was entered incorrectly into our database." Qwest letter of authorization survey signed by Sabo states that the LOA is not in his name, nor does he know a Xuan Ho, and the address on the LOA is not, and has never been, his address. Sabo further states, "Is Xuan Ho a real person? Why is he using /claiming my phone number?" Conclusion: Slam
FBW-1. McAfee (Ex. C-24)	McAfee, of Crestridge Management, which oversees certain apartments, stated that Qwest switched the telephone service of the apartments without authorization. Qwest told her that Betty Guerra authorized the switch, but Guerra, who answers phones, told McAfee that she did not authorize the switch.	CSD never asked Qwest for an LOA or interviewed Ms. Guerra.	Conclusion: Slam

APPENDIX C

Declarant or Interviewee	Summary of Complaint	Qwest's Alleged Missing Evidence	Other Additional Record Evidence and Conclusion
FB W-2. Boyd (Ex. C-24)	Manager of business stated that no one in her firm authorized the switch of telephone service to Qwest.	Qwest states it has TPV recording in Ex. 300 (Pitchford Testimony prepared for this case), which CSD did not play. CSD did not interview any other employees.	Conclusion: Slam
FBW-3. Berry (Ex. C-24)	Manager of apartments states that no one authorized the switch of telephone service. She learned of the switch upon receiving a telephone bill from Qwest addressed to Barbara, a part time employee telephone person.	CSD never established whether Berry spoke with Barbara or whether Barbara had authority to make changes to the phone service. CSD never attempted to interview Barbara. CSD never asked Qwest for an LOA.	Berry thinks it is possible that a Qwest caller had talked to Barbara and obtained her name, thus was able to use the name to substantiate an authorization for the switch. Conclusion: Slam
FB W-8. Cohen, Vernon (Ex. C-24)	Qwest switched Cohen's business telephone without his authorization, and he is the only one with such authorization.	CSD did not review copies of bills showing Qwest as carrier. CSD did not ask Qwest for a LOA. Qwest's records show no account for complainant.	Qwest also switched Cohen's home phone without authorization. Neither he nor his wife authorized this switch. Conclusion: Slam
FB W-9. Bravo (Ex. C-24)	Subscriber states Qwest switched his telephone service without authorization.	Subscriber never told CSD, and CSD never established, that no other authorized adult placed the order.	Bravo told CSD he does not know who authorized the switch. He was not contacted by a TPV company regarding the switch. Conclusion: Slam
FBW-10. Cornejo, Alma (Ex. C-24)	Subscriber states Qwest switched her telephone service without her authorization. She listened to a TPV tape Qwest provided and stated the voice was not hers, and the name and date of birth were not correct.	She never told CSD, and CSD never established, whose name was on the recording, whether she knew the person, or whether the person had authority to place the order.	Cornejo states she does not know who authorized the switch. Conclusion: Slam

APPENDIX C

Declarant or Interviewee	Summary of Complaint	Qwest's Alleged Missing Evidence	Other Additional Record Evidence and Conclusion
FBW-13. Delgado (Ex. C-24)	Subscriber states Qwest switched his telephone service without authorization.	Qwest states it has TPV recording in Ex. 300 (Pitchford Testimony prepared for this case), which CSD did not play. CSD did not establish whether any other authorized adult might have placed the order.	Delgado states he did not authorize the switch, nor does he know who did authorize the switch. Conclusion: Slam
FBW-14. Zavaleta (Ex. C-24)	Subscriber states Qwest switched her telephone service without authorization.	Qwest states it has TPV recording in Ex. 300 (Pitchford Testimony prepared for this case), which CSD did not play. CSD did not establish whether any other authorized adult might have placed the order.	Zavaleta states she did not authorize the switch, nor does she know who did authorize the switch. Conclusion: Slam
FBW-18. Gomez (Ex. C-24)	Subscriber states Qwest switched his telephone service without authorization twice.	Qwest states it has TPV recording in Ex. 300 (Pitchford Testimony prepared for this case), which CSD did not play. CSD did not obtain any information to substantiate the claim that his service was switched twice. CSD did not establish whether any other authorized adult might have placed the order.	Gomez does not know who authorized the switch in 2000. Gomez told CSD that Qwest had previously switched his long distance service in 1999 and it took him several months to restore service to his carrier of choice. Conclusion: Slam
FBW-22. West (Ex. C-24)	Subscriber states Qwest switched his telephone service without authorization.	CSD did not establish that no other authorized adult placed the order.	West states he does not know who authorized the switch. Conclusion: Slam
FBW-25. Sotello (Ex. C-24)	Subscriber states Qwest switched her telephone service without authorization.	Qwest states it has TPV recording in Ex. 300 (Pitchford Testimony) prepared for this case, which CSD did not play. CSD did not establish whether any other authorized adult might have placed the order.	Sotello states that she does not know who authorized the switch. Conclusion: Slam

APPENDIX C

Declarant or Interviewee	Summary of Complaint	Qwest's Alleged Missing Evidence	Other Additional Record Evidence and Conclusion
FBW-26. Abe (Ex. C-24)	Subscriber states Qwest switched his telephone service without authorization.	CSD did not establish that no other authorized adult placed the order.	Abe states that he does not know who authorized the switch. Conclusion: Slam
FBW-32. Paredes (Ex. C-24)	Subscriber states Qwest switched his telephone service without authorization.	CSD did not establish that no other authorized adult placed the order.	Paredes states that he does not know who authorized the switch. Conclusion: Slam
SN2-2. Nguyen (Ex. C-19)	Subscriber states Qwest switched telephone service without authorization. Qwest records show that switch was purportedly authorized by subscriber's older brother, Dung Nguyen. Vu Ngyen (subscriber) states that Dung moved to Seattle in February 1999.	Qwest states it has TPV recording in Ex. 300 (Pitchford Testimony prepared for this case), which CSD did not play. CSD never played the recording for the interviewee, never established that Dung lacked authority to make changes (just that he was not the subscriber), and never established that, though Dung live out of town now, he was not in town at the time the order was placed.	Vu Nguyen believes the LOA signed in August 1999 was a forgery. Que Nguyen, Vu's father, pays all the household bills, and stated that Dung Nguyen has never been an authorized subscriber to their telephone service. Conclusion: Slam

APPENDIX C

Declarant or Interviewee	Summary of Complaint	Qwest's Alleged Missing Evidence	Other Additional Record Evidence and Conclusion
SN2-5. Alvarez (Ex. C-19)	Subscriber states Qwest switched telephone service without Alvarez' authorization. Alvarez is the subscriber, and states that his mother-in-law signed a promotion letter at a fair or mall authorizing the billing, but that she is not the subscriber to the service and therefore not authorized to allow such billing.	Qwest states it has TPV recording in Ex. 300 (Pitchford Testimony prepared for this case), which CSD did not play.	Alvarez (to whom CSD spoke through a Spanish interpreter) signed and returned a Qwest Letter of Authorization Survey saying he was not the subscriber, Magdalena Alvarez was the subscriber, but she was "67 years old [;] she hardly reads or write Spanish nor English and was not authorize in any manner to change the phone service." When CSD later questioned Alvarez through a Spanish interpreter, Alvarez stated that he was the subscriber. Conclusion: Slam
SN2-10. Shen (Ex. C-19)	Daughter of subscriber states Qwest switched her father's telephone service without authorization, and changed the account to her name. She states that the LOA bearing her name is a forgery because she was not home on the day it was purportedly signed.	Qwest states that the complaint lacks credibility because only the LEC can change account-holder name.	Conclusion: Slam

APPENDIX C

Declarant or Interviewee	Summary of Complaint	Qwest's Alleged Missing Evidence	Other Additional Record Evidence and Conclusion
SN2-12. Gomez (Ex. C-19)	Gomez had two slamming complaints against Qwest. Qwest admits the switch regarding Gomez home telephone involved a forgery. Gomez also alleges that one month after the unauthorized switch of his residential service, Qwest switched his office telephone without his authorization.	CSD never provided office telephone number to Qwest nor asked for an LOA or TPV for that account.	Conclusions: 2 slams
SN2-14. Chen (C-19)	Son of subscriber stated that LOA, bearing subscriber's name, is a forgery. The long distance service was switched by Qwest four times without authorization, and the local long distance service was switched once without authorization.	Qwest admits the first allegation is a forgery, but alleges for the others that CSD has not met its burden of proof. CSD never asked Qwest for proof of authorization for any of the other alleged slams, nor provided copies of bills evidencing other alleged slams.	Conclusion: 1 slam
SN3-2. Gutierrez, Elsa (C-20)	Gutierrez stated that she was subscriber and did not authorize Qwest to switch her telephone service. She listened to TPV tape and stated the voice was not her voice, the verification tape was in Spanish and she does not speak the language. Also, the date of birth provided for her was wrong.	CSD never found out whether the subscriber knew the person whose voice was on the TPV recording or whether that person had authority to make changes to the telephone service.	Gutierrez said she had no idea who authorized the switch in her telephone service. Conclusion: Slam
SN3-8. Kazarya (C-20)	Wife of subscriber stated that Qwest switched telephone service on two different occasions without her authorization.	Interviewee never told CSD, and CSD never established, that subscriber did not authorize switch.	Qwest did not provide a TPV tape for the Kazarya telephone. Conclusion: Slam

APPENDIX C

Declarant or Interviewee	Summary of Complaint	Qwest's Alleged Missing Evidence	Other Additional Record Evidence and Conclusion
SN3-9. Mercado (C-20)	Wife of subscriber stated that Qwest switched telephone service without her authorization, and that the voice and date of birth on the TPV tape are not hers.	She did not tell CSD, and CSD never established, (a) whether the TPV recording purported to be her, and, if not, whether the person who placed the order had authority to do so, or (b) whether the subscriber authorized the switch.	Wife of the subscriber stated that she handled the complaint. Conclusion: Slam
SN3-10. Ho (C-20)	Wife of subscriber stated that Qwest switched telephone service without her authorization. Ms. Ho said the voice on the TPV tape was not her husband's, because he does not speak Chinese.	She did not tell CSD, and CSD never established, (a) whether the TPV recording purported to be her husband, and, if not, whether the person who placed the order had authority to do so, or (b) whether the subscriber authorized the switch.	Barbara Ho had no idea who had authorized the switch. Conclusion: Slam
SN3-11. Cornejo, Ramon (C-20)	Qwest switched telephone service without subscriber's authorization. Cornejo stated that neither the voice nor the date of birth on the TPV tape were his.	Cornejo never told CSD, and CSD never established (a) whether the TPV recording purported to be him, and, if not, whether the person who placed the order had authority to do so.	Cornejo stated he did not know how he came to be switched and was not sure if his local toll service was switched as well. Conclusion: Slam
SN3-12. Cevallos (C-20)	Qwest switched telephone service without subscriber's authorization. Cevallos stated that neither the voice nor the date of birth on the TPV tape were hers, and the name was close, but not hers.	Cevallos never told CSD, and CSD never established, whether the person whose voice is on the recording had authority to place the order.	Cevallos told CSD that a Qwest sales representative contacted her on the telephone and she told the representative that she did not want any long distance telephone service. Conclusion: Slam

APPENDIX C

Declarant or Interviewee	Summary of Complaint	Qwest's Alleged Missing Evidence	Other Additional Record Evidence and Conclusion
SN3-13. Cristal (C-20)	Subscriber states Qwest switched her telephone service without authorization. She listened to the TPV tape and the name on the tape, Yolanda Cortez, was not hers. Also, Cristal states she does not speak Spanish and the TPV tape was in Spanish.	Cristal never told CSD, and CSD never established, whether she knew Yolanda Cortez or whether Ms. Cortez had authority to make changes to the service.	Conclusion: Slam
SN3-17. Barraza (C-20)	Wife of subscriber states that Qwest switched their telephone service without her authorization. She stated that the name Alicia Barraza was used on the tape, which was not her name or in her voice, and the tape also contained a different birth date than hers.	Barraza never told CSD (a) whether she knew Alicia, and, if so, whether Alicia had authority to place the order, or (b) whether the subscriber authorized the switch.	Conclusion: Slam
SN3-19. Carillo (Ex. C-20)	Subscriber did not authorize Qwest to switch her telephone service. Carillo stated that she could not understand the TPV tape (in Spanish) except to hear the name Hidalgo Garcia accepting service from Qwest.	Carillo never told CSD, and CSD never established, whether Carillo knew Garcia or whether he had authority to place the order.	Conclusion: Slam
SN 3-22. Amado, Robert (Ex. C-20)	Subscriber did not authorize Qwest to switch his telephone service. Amado stated that the name, Albert Amado, and the birth date on the verification tape were not his.	Subscriber never told CSD, and CSD never established, whether he knew Albert or whether Albert had authority to place the order.	Conclusion: Slam

APPENDIX C

Declarant or Interviewee	Summary of Complaint	Qwest's Alleged Missing Evidence	Other Additional Record Evidence and Conclusion
SN3-26. Centanni (Ex. C-20)	Husband of subscriber stated he did not authorize switch to Qwest. Qwest did not provide a TPV tape for this telephone number.	While he testified that Qwest never contacted him, he did not testify that Qwest never contacted the subscriber. He also never testified that no other authorized adult placed the order.	Conclusion: Slam
SN4-24. Florez (Ex. C-21)	Subscriber's long distance telephone number was switched without his authorization.	Florez did not know the name of the company that switched his long distance service, that he was not at his residence when this happened, and that the person that took care of the problem in his absence had returned to Mexico.	Conclusion: No slam

(END OF APPENDIX C)