Decision ______________________

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Clear World Communications Corporation for a Certificate of Public Convenience and Necessity To Operate as a Provider of Resold Local Exchange Telecommunications Service Within the State of California.	Application 01-09-040 (Filed September 25, 2001)

David A. Simpson, and Dwight Donovan, Attorneys at Law, for Clear World Communications Corporation, applicant.
Chris Witteman, Attorney at Law, for the Consumer Protection & Safety Division (CPSD), interested party.

OPINION DENYING APPLICATION AND ORDER TO SHOW CAUSE

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OPINION DENYING APPLICATION AND ORDER TO SHOW CAUSE

I. Summary

Clear World Communications Corporation (Clear World) seeks a certificate of public convenience and necessity (CPCN) under Pub. Util. Code § 1001 for authority to resell local exchange telecommunications services as a competitive local carrier. By this decision, we deny the requested authority because Clear World is not fit to provide such services. In addition, we prohibit Christopher Mancuso from any involvement with any utility subject to our jurisdiction, including Clear World, and order Clear World to show cause why it should not be fined for slamming, and have its CPCN to resell interexchange services revoked.

II. Application

Clear World, a California corporation, requests authority to resell local exchange services within the service territories of Pacific Bell Telephone Company (Pacific), Verizon California Inc. (Verizon).

Applicant's principal place of business is located at 3100 South Harbor Boulevard, Suite 300, Santa Ana, California 92704.

CPSD filed a protest to this application. Hearings were held on August 5-7, 2002. The matter was submitted after receipt of briefs.

III. Opposition of the Commission's Consumer Protection and Safety Division (CPSD)

CPSD alleges that Clear World is unfit to provide local exchange and interexchange services, and recommends that this application should be denied. In addition, CPSD recommends that the Commission should order Clear World to show cause why its CPCN to resell interexchange services should not be revoked. CPSD also alleges that the actions of Worldwide demonstrate that Clear World is unfit to provide service because the Mancuso family was involved in the ownership and operations of Worldwide.

IV. Background of Worldwide, Clear World and the Mancusos

Clear World is owned by Michael Mancuso (90%), James Mancuso (5%), and Joseph Mancuso (5%). In addition, Christopher Mancuso provides services to Clear World. Joseph Mancuso is the father of James, Michael and Christopher Mancuso. Therefore, examination of the fitness of Clear World to provide telecommunications services in California necessitates a look at the actions of these men in connection with this application, and before. Such examination necessarily requires an examination of Worldwide, because the Mancusos owned and operated Worldwide, which did business with Clear World. We shall begin with background on Worldwide.

Worldwide

Worldwide was incorporated by Christopher Mancuso, and owned by Joseph Mancuso. James Mancuso was its general counsel.

Worldwide entered into an agreement with World Tel Services, Inc. (WTS), a certified interexchange reseller, to use WTS's tariffs and operating authority for which WTS would receive a fee. All operations were to be performed by Worldwide. At that time, WTS had no operations.

Worldwide's services were marketed by World Technologies Marketing, Inc. (WorldTech) whose officers were Christopher Mancuso and

Jerry Ballah.[1] Worldwide's long distance minutes, and office functions such as billing, service provisioning, and data entry, were provided by Clear World.

CSD's[2] director wrote a letter, dated February 4, 1999, to Worldwide saying that Worldwide was providing service without a CPCN, and that its arrangement with WTS was not permitted. Worldwide subsequently amended its agreement with WTS, and filed Application (A.) 99-04-042 for registration as an interexchange service reseller.

On April 25, 2002, Worldwide filed a motion to withdraw its application, and said that it was no longer operating in California. By Decision (D.) 02-06-045, Worldwide's application was dismissed. In addition, it was ordered to appoint a custodian of records, and preserve its existing corporate documents for possible use in this proceeding. Joseph Mancuso is the custodian of records for Worldwide.

Clear World

By D.98-08-056, Clear World was authorized to resell interexchange services. On September 25, 2001, Clear World filed the instant application for a CPCN to resell local exchange services.

In October 1998, Clear World acquired all of the assets of American Electronics Corporation (AEC), which does business as Discount Long Distance (DLD), including customers and customer lists.[3] The Clear World acquisition of AEC / DLD had been in the works for 18 months prior to that date.

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[1] James Mancuso prepared World Tech's articles of incorporation.

[2] The Consumer Services Division (CSD) was CPSD's predecessor.

[3] AEC / DLD was not a certificated carrier.

Clear World loaned Mancuso, L.L.C. $450,000 in late 2001. The money was to be used to buy a house for Christopher Mancuso. The loan is still outstanding.

Christopher Mancuso

In about 1983-84, Christopher Mancuso started a company called Commonwealth Business Systems (Commonwealth). Commonwealth provided consulting services to sales and marketing companies. One of Commonwealth's customers was Culture Farms, Inc. (Culture Farms), a company for which Christopher Mancuso ultimately served as vice president. Culture Farms was a "Ponzi scheme" involving the sale of milk cultures that were purportedly used for cosmetics.[4] Christopher Mancuso eventually pled guilty to mail fraud in connection with his Culture Farm activities, and was incarcerated.

During the time Christopher Mancuso was in prison, he received over $300,000 from Reed Slatkin, allegedly to pay his bills and consolidate his debts. The Culture Farms bankruptcy trustee filed a petition in February 1987 in the High Court of Justice of the Isle of Man, seeking return of those monies. The petition implicates Christopher Mancuso and Commonwealth as well as Ronald Rakow. The Petition alleges that $300,000 was transferred to Rakow in July 1985, and that an identical sum was paid to Reed Slatkin in September 1985.

Almost six months after being released from prison in 1987, with Slatkin as an early investor, and his Culture Farms associate Jerry Ballah as a later director of marketing, Christopher Mancuso formed National Telephone & Communications, Inc. (NTC). NTC started operations in early 1989.

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[4] A "Ponzi scheme" is a scheme to defraud investors by paying them returns with funds raised from other investors.

Christopher Mancuso was initially on the NTC board of directors, but resigned when it went public. The investors did not want Christopher Mancuso to be an officer or director because, according to Christopher Mancuso, of his felony conviction. Among his responsibilities at NTC was putting together its marketing network.

In early 1992, Christopher Mancuso sold a controlling interest in NTC to Incomnet Communications Corporation (Incomnet). After the sale, he worked on finding NTC a new carrier agreement and developing the marketing program. Christopher Mancuso was not, in this post-Incomnet period, an employee of NTC, but a consultant working under a contract between NTC and AEC/DLD. In 1996, the consulting contract between NTC and AEC/DLD became a contract between Christopher Mancuso's company, Communications Consulting Inc, (CCI), and NTC.

Christopher Mancuso negotiated NTC's take-or-pay contracts with MCI WorldCom, Inc. (WorldCom) starting in 1992, culminating in a $1 billion contract in 1996. The contract called for discounts if NTC hit a certain level of sales. To achieve the required sales levels, NTC used various subaccounts. In addition to the main NTC account with WorldCom, there were other accounts under the NTC contract, including an NTC/Amerivision Communications (Amerivision) account, and an Amerivision/DLD account.[5] The Amerivision/DLD subaccount 182806 is the same as the Clear World/DLD subacount 182806 under which Clear World operates. AEC/DLD purchased long-distance services from Amerivision that, in turn, purchased its time under the NTC contract.

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[5] Amerivision stands for Amerivision Communications, Inc.

Christopher Mancuso, through CCI, provided carrier negotiation, product development, and strategic marketing analysis to AEC / DLD as early as 1993, and then began providing those services to Clear World when it acquired the assets of AEC / DLD in 1998. He also performed consulting services for NTC, Amerivision, and Worldwide.

In September 1997, the Commission instituted Investigation 97-09-001 into NTC because of the high numbers of slamming complaints made against it. The matter was resolved by D.98-02-029, as modified in D.98-12-008, which approved a settlement that included restitution of approximately $335,000 to consumers, and $1.2 million in fines and costs. D.98-02-029 effectively prohibited Christopher Mancuso, as a prior officer or director, from ever again having an officer or director role at NTC.

In 1997, Ballah and Christopher Mancuso decided to buy NTC.[6] Christopher Mancuso received commitments of $20 and $10 million from Reed Slatkin and WorldCom, respectively, for the planned purchase. WorldCom subsequently backed out.

To avoid problems with this Commission, Christopher Mancuso decided to resort to a ruse. Describing the ruse, he stated that:

> "We knew we were going to have a 120-day period between putting the deal together and getting the shareholders to agree to it. In that 120 days we had to get creative about how the company was going to be operated because technically the PUC rules said that Mancuso and Ballah

[6] During the negotiations for the purchase of NTC, Christopher Mancuso was represented by James Mancuso.

could not do what effectively the board had agreed to let us do."[7]

Subsequently, the deal fell through.

Christopher Mancuso and Ballah then started Worldwide, and created WorldTech to sell long-distance services for Worldwide. The efforts to form Worldwide, and the negotiations between Worldwide and WorldTech, involved Ballah, and Christopher, James, Michael and Joseph Mancuso.

Christopher Mancuso negotiated an agreement between WTS and Worldwide that allowed Worldwide to sell long-distance service under WTS's name. Worldwide essentially licensed WTS's tariffs and operating authority. Worldwide's sales were made through the marketing services of WorldTech.

From 1985 forward, Christopher Mancuso had financial interactions with Slatkin, peaking with a $2.6 million check from Slatkin to Christopher Mancuso's Mancuso, L.L.C. in 1999.[8] At about that time Christopher Mancuso loaned $250,000 to Clear World, without a promissory note or loan agreement to memorialize it.

In February 2000, Christopher Mancuso arranged for a Swiss telephone number for Slatkin that could be used to deceive investors in Slatkin's Ponzi scheme [9]into thinking that they were reaching a Swiss institution, where their money was invested, when in fact the telephone actually rang in Slatkin's Santa Barbara garage. Slatkin is now in prison.

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[7] Christopher Mancuso did not testify in this proceeding. His statements are taken from transcripts of a deposition taken on November 10, 1998 in connection with Case No. 797154 before the Orange County Superior Court, a lawsuit filed by NTC against Ballah, WorldTech, *et al.*

[8] The manager of Mancuso, L.L.C. was Christopher Mancuso. Its agent for service was James Mancuso.

[9] This was a different Ponzi scheme than the Culture Farms Ponzi scheme.

Christopher Mancuso's company, International Telecommunications Consulting, L.L.C. (ITC), provides carrier negotiations, product development, and strategic marketing analysis to Clear World.

James Mancuso

James Mancuso is the secretary and general counsel for Clear World, and was general counsel for Worldwide.

As discussed above, during the time Christopher Mancuso was in prison, James Mancuso received over $300,000 in checks from Slatkin for the benefit of Christopher Mancuso in 1986 and 1987. The checks were written to Trojan Financial, a company controlled by James Mancuso.

James Mancuso formed Mancuso LLC, and assisted it in a substantial legal settlement involving Slatkin.

Michael Mancuso

Michael Mancuso is the president, chief executive officer, and treasurer of Clear World. He also worked at NTC, Incomnet, Amerivision, and managed DLD on a daily basis.

Joseph Mancuso

Joseph Mancuso owned AEC/DLD and Worldwide. He also owns five percent of Clear World.

V. Discussion of Issues

The following is a discussion of the individual issues raised in this proceeding. We will address issues pertaining to Worldwide first.

Worldwide-Agreement with WTS

In Worldwide's comments on the proposed decision in A.99-04-042, signed by Joseph Mancuso, it said that its "sole operations" in California were as an agent of WTS. CPSD says that this statement was false. CPSD alleges that an

"Assignment Agreement" between Worldwide and WTS assigned all rights and responsibilities to Worldwide. CPSD Exhibit 38. CPSD also says that, under the later amended agreement, Worldwide still collected and kept all the revenue, minus $5,000/month it paid to WTS. Worldwide was still solely responsible for all billing, accounting, payment of regulatory fees, reporting, and the like, maintained control over all the customer information, and functioned as an agent for customers. Christopher Mancuso said that at the time the agreement was made with WTS, WTS's business was almost entirely wound up, and it had sold off its customer base several years before. Christopher Mancuso also said that he never performed any services for WTS, and there was never a marketing agreement between WorldTech and WTS.

Worldwide entered into an agency and an assignment agreement with WTS, in July 1998, whereby it used WTS's tariffs and operating authority for a fee. The agreements provided that Worldwide was responsible for virtually all operations, and the customers and customer information were Worldwide's property. Worldwide was described as an authorized agent for its customers. WTS was allowed to inspect Worldwide's books quarterly, and approve tariff changes. WTS had no obligation to collect any charge, or respond to any customer complaint.

The Commission has not previously addressed comprehensively what constitutes a valid agency agreement with an authorized carrier. However, we would expect that such an agreement would be structured to at least ensure that the carrier had sufficient control over the agent to ensure the agent's compliance with statutory and Commission requirements. In addition, we would expect the customers to be customers of the utility, not the agent. The agreement does not do this. In addition, the agreement with WTS refers to Worldwide as an agent for end users, not for WTS. Therefore, Worldwide's initial agreement with WTS did not make Worldwide "solely" an agent of WTS, and in fact Worldwide was in all material aspects the principal in the transaction.

The amended agreement of April 1999, described Worldwide as an agent for sale of WTS's services. Worldwide remained responsible for all aspects of operations. In addition, the amended agreement described Worldwide as an agent for end users. Although the amended agreement described "end users" as "end users of WTS," all customer information belonged to Worldwide. Any access WTS may have had to customers or customer information was strictly for performance of the agreement. WTS was allowed to inspect Worldwide's books quarterly, and approve tariff changes.

The amended agreement does not give WTS sufficient control over Worldwide to ensure compliance with statutory and Commission requirements. It describes Worldwide as an agent for both WTS and customers, which appears to create a conflict of interest. In addition, since WTS did not own the customer information, the customers effectively belonged to Worldwide. Therefore, Worldwide's amended agreement with WTS also did not make Worldwide "solely" an agent of WTS, and in fact Worldwide was in all material aspects the principal in the transaction. Thus Worldwide's statement that its "sole operations in California were as an agent of WTS" is false.

Worldwide-False Statement

On February 26, 1999, counsel for Worldwide wrote to the Commission's General Counsel concerning a subpoena duces tecum that had been served on the Commission in connection with litigation between NTC, Worldwide, Christopher Mancuso and other parties.[10] Worldwide's counsel stated that the purpose of the letter was to notify the General Counsel that his office represented two of the parties to the litigation, Worldwide and WTS, and that both of these parties have been dismissed from the litigation.

CPSD alleges that this was a false statement. An amended complaint in the litigation was filed on the same day as the letter. In addition, James Mancuso, as a "person most knowledgeable" designee of Worldwide, was deposed in that litigation almost two months after the letter was sent. Exhibit CPSD-16.

Clear World argues that counsel for Worldwide was referring to an order by the Orange County Superior Court granting a demurrer, with leave to amend, on several causes of action asserted against Worldwide. It also says that while CPSD may be technically correct, the use of the term "dismissed" was inadvertent and not willful misconduct.

The grant of a demurrer with leave to amend is not the same as a dismissal, and the further step of a judgment dismissing the action or the party is always necessary.[11] While this may have been an inadvertent error, it is still a false statement. The error should have been caught by its counsel, its owner Joseph Mancuso, or its general counsel James Mancuso.

Worldwide-Concealment of True Address

In its Statement of Domestic Stock Corporation filed with the California Secretary of State, Worldwide listed its street address as

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[10] Case No. 797154 before the Orange County Superior Court.

[11] Witkin, *California Procedure,* "Pleading," at Sections 942, 949 ("Necessity of Judgment").

2781 MacArther Boulevard, Suite B-603, Santa Ana, California 92704. This address is for a Mail Boxes Etc. mailbox, even though the form for the statement specifically says not to use a post office box. In an application for registration as an interexchange service reseller, an applicant is required to provide its street address. However, in A.99-04-042, Worldwide listed its street address as the same mailbox.

Clear World says that Worldwide used the mailbox because it was sharing office space with WTS, and needed a separate address for reasons of corporate confidentiality.

While Clear World offers an explanation of Worldwide's actions, the fact remains that Worldwide misled both the Secretary of State and the Commission as to its true street address. This does not reflect favorably on Worldwide's owner Joseph Mancuso, and its general counsel James Mancuso.

Worldwide-Concealment of the Role of Christopher Mancuso

Worldwide's A.99-04-042 stated that no one acting in the capacity of "officer, director, or general partner … whether or not formally appointed," had ever been convicted of any "actions which involved misrepresentations to consumers." CPSD argues that it is misleading because Christopher Mancuso was the company founder and incorporator. In addition, the application did not include Worldwide's articles of incorporation that were signed by Christopher Mancuso as incorporator. CPSD further says that Christopher Mancuso made all of the major corporate decisions for Worldwide.

Clear World says that the incorporator has nothing to do with the future operation of the corporation. The incorporator appoints the initial directors, after which his role ceases. Clear World also argues that Christopher Mancuso signed the articles of incorporation because Joseph Mancuso was not available.

While the Commission's registration process for interexchange carriers did not require the filing of articles of incorporation, Clear World had in fact included its articles of incorporation whereas Worldwide omitted the articles of incorporation showing Christopher as "incorporator."

Since the incorporator had the authority to appoint the initial directors, the incorporator certainly had authority equivalent to an officer or director until the appointment was made. Thus, the affirmation made by Worldwide in its Application 99-04-042 -- that "no affiliate, officer, director, general partner, or person owning more than10% of applicant, *or anyone acting in such a capacity whether or not formally appointed* … has been found either criminally or civilly liable by a court of appropriate jurisdiction … for any actions which involved misrepresentations to consumers" – was false. Christopher Mancuso had been convicted of mail fraud involving misrepresentations to purchasers of the "Culture Farms" milk cultures described above.

Regardless of Christopher Mancuso's actual role, Worldwide's failure to include the articles of incorporation with its application concealed Christopher Mancuso's involvement with the company. Since both Joseph and James Mancuso knew that the Commission would not view any participation by Christopher Mancuso favorably, it is reasonable to conclude that this may not have been an oversight. This does not reflect favorably on the fitness of Joseph and James Mancuso.

Worldwide-Failure to Comply with D.02-06-045

D.02-06-045 allowed Worldwide to withdraw its application for registration as a long-distance reseller, but ordered Worldwide to preserve all corporate documents and appoint a custodian of records. CPSD points out that Joseph Mancuso, who was so ill that he could not understand or answer questions and could not be deposed in these proceedings, is the custodian of records. In addition, James Mancuso, Worldwide's General Counsel and only employee other than Joseph Mancuso, said that he does not know where Worldwide's records are. Christopher Mancuso, who founded Worldwide, evaded service in this matter. CPSD says that it served a subpoena duces tecum on Worldwide requesting all documents describing or memorializing any relationships between Clear World, WTS, and/or Worldwide. Worldwide produced only 13 pages, and the key "Assignment Agreement" between Worldwide and WTS was not included. This "Assignment Agreement" (CPSD Exhibit 38) was obtained by CPSD through third parties; therefore, CPSD believes that D.02-06-045 has had no effect. The Assignment Agreement again demonstrates that Worldwide was a principal and not an agent, as it assigns from WTS to Worldwide "all rights and responsibilities to carry the Interexchange telecommunications traffic currently on [WTS'] system … to WTC [Worldwide] effective July 10th 1998."

Since Joseph Mancuso was so ill that he could not understand or answer questions and could not be deposed in this proceeding, it is reasonable to expect that someone else should have been made custodian of records. In addition, Worldwide did not include the "Assignment Agreement" in the few records it produced in response to CPSD's request. The record does not demonstrate that James Mancuso, as Worldwide's general counsel, attempted to have someone else made the custodian of records, or otherwise make the records available. Therefore, Worldwide's records are effectively unavailable to the Commission, in violation of D.02-06-045. At the very least, this does not reflect favorably on the fitness of Joseph and James Mancuso.

Clear World-Slamming

Slamming is the unauthorized switching of a subscriber's long distance service provider in violation of Pub. Util. Code § 2889.5. CPSD alleges that Clear World has slammed numerous customers. In addition, CPSD alleges that Clear World did not adequately train its sales representatives, because it had almost no materials regarding slamming in its training materials.

A primary interexchange carrier (PIC) dispute occurs when a subscriber alleges to the local exchange carrier that his or her long distance service was switched to another carrier without authorization.[12] As evidence of slamming, CPSD states that Clear World had over 48,176 reported PIC disputes in 1998-2000, 21,830 in 2001, and 1080 in January 2002. CPSD says that even if the numbers were reduced by half because of counting intraLATA and interLATA disputes for the same customer as two PIC disputes, or by throwing out intraLATA disputes because of potential conflicts of interest by the reporting carriers, there would still be over 35,500 PIC disputes in that period.[13] In addition, CPSD mailed letters to 1,804 customers who had PIC disputes. One hundred fifteen responded. CPSD also contacted eight customers who complained to the Commission' Consumer Affairs Branch. In all, 76 customers were interviewed by CPSD. Of these, 54 said that they were slammed, 19 said they authorized the switch but didn't receive the promised rates, 60 said they did not receive a written notice of the switch, and three said that they did not complain about Clear World. Four customers provided testimony.

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[12] Pacific and Verizon track PIC disputes and report them to the Commission monthly.

[13] LATA stands for Local Access and Transport Area.

Suzanne Sobenes testified that in approximately June 2001, her long distance service was switched to Clear World without her permission. The switch had been authorized by her adult son, without her permission, in the belief that it would result in lower rates. She contacted Clear World but was unable to resolve the issue. After she complained to the Commission in July 2001, Clear World stopped its service, and provided her with a refund. Sobenes said that Clear World's rates were higher that her authorized carrier, and that she never received written notice of the switch.

Andy Xu testified that on October 10, 2001 his long distance service was switched to Clear World without his permission. He said that on October 10, 2001, his wife received a call from Clear World.[14] The sales representative spoke to her in Mandarin because she does not speak English. He offered her 200 free minutes even if she did not want to switch carriers. She accepted the free minutes only. The representative told her that a third party representative would verify her acceptance of the gift, and requested that she respond to the verifier by saying yes when the sales representative did. The verifier spoke English. The verifier asked questions in English. The sales representative would say yes, and Ms. Xu would copy him by saying yes.[15] On October 19, 2001, Xu had Pacific transfer his service back to his authorized carrier. On October 27, 2001, Clear World again switched his service without his authorization. On

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[14] Xu testified to his wife's interactions with Clear World, as well as his own. His written testimony was prefiled. Clear World did not subpoena Mrs. Xu, nor did it object to receipt of Xu's exhibit into evidence.

[15] After July 2001, sales representatives were prohibited from being on the line during the verification process.

December 13, 2001, Xu complained to the Commission. Xu said that Clear World's rates were higher than his authorized carrier, and he never received written notice from Clear World of the switch. Xu eventually received a refund from Clear World.

Jose Duran testified that in October 2001 he found that his long distance service had been switched without his permission. He called Clear World and said he did not authorize the switch. He was informed that he had been receiving service from them for six months. The representative promised a refund of the difference between Clear World's rates and those of his previous carrier. On February 19, 2002, he called Clear World asking the status of his refund. He received the refund in March 2002. When CPSD played the tape recording of the third party verification tape, he said that he did not recognize the voice or the name of the person on the tape. Duran said that he never received a written notification of the switch.

Maria Flores testified that in August 2001, her long distance service was switched without her permission. She discovered the change on her October 2001 bill. On August 23, 2001, she received a call from a sales representative for Clear World. He offered her a new long distance discount plan by Pacific. Believing the offer to be by Pacific, she accepted. On September 7, 2001, she received a third party verification call. The verifier said the service was to be provided by Clear World rather than Pacific. Flores then told the verifier that she was not interested. The verifier told her that Clear World's service would be stopped and Clear World would have to pay the fee for the carrier change. Clear World subsequently billed Flores for a monthly charge. In October 2001, Flores called Pacific to have Clear World removed from her account, which they did. Flores said that she never received a written notification of the switch.

Clear World says that CPSD's allegation ofmany thousands of PIC disputes should be of no concern. It says that it has added more than 550,000 customers since its inception in 1998 and its PIC dispute rate is comparable to an industry average of 2.94-7.35%. In addition, Clear World says that CPSD's PIC dispute numbers came from WorldCom. Clear World claims that the PIC dispute numbers provided by WorldCom for Pacific's territory are much larger than those reported by Pacific. Clear World also says that WorldCom showed Clear World PIC disputes prior to when Clear World was created or began offering service. Clear World, therefore, argues that WorldCom's numbers are suspect. Clear World further argues that Pacific and Verizon's numbers are suspect, at least as far as local toll service is concerned, because they compete with Clear World for customers. Clear World argues that the fact that the Commission has received only 23 written complaints in the last two years, during which time it added 279,384 customers, indicates that it is doing a good job. Clear World argues that the tape recordings of the independent verifications contradict Sobenas, Xu, Duran, and Flores's testimony regarding slamming. Regarding training, Clear World says that, in addition to written materials, its sales representatives receive two days of training, and receive other training on the job. In addition, sales calls are electronically monitored by supervisors.

The exact number of PIC disputes is uncertain. Nonetheless, since there appears to have been a lot of PIC disputes, slamming may have occurred. Since Clear World provides service in a number of states, its statistics appear to be comparing, at least in part, California PIC disputes and California written complaints with the number of customers for the total company. Even if Clear

World's statistics and claim that its PIC dispute rate is comparable to the average for the industry are accurate, having an average number of PIC disputes does not mean that slamming did not occur.

Verification of a customer's choice to switch to Clear World is done by an independent entity chosen by Clear World. The verification is done by an automated system where an electronic voice asks a series of questions. To determine whether the person agreeing to the switch is authorized to make decisions regarding telephone service, the following question is asked:

> "Clear World is a long distance company that bills you through your local phone Company, but is not associated with them in any way. To confirm that you are over the age of 18, and you are the person authorized to make decisions regarding your telephone service, please state your birthday."

A careful reading of the question indicates that by stating his or her birthday, the person is claimed to be saying he or she is authorized to make decisions regarding telephone service. However, the question is asked orally, rather than in writing. The record does not indicate Clear World's motivation in allowing this language to be used, rather than simply asking for the person's birthday, and then separately asking whether the person is authorized to make the switch. However, it could easily be misunderstood to be asking only for the person's birthday. Clear World is responsible for insuring proper verification. By allowing this wording to be used, it is reasonable to conclude that it switched some customers without valid authorization. Such occurrences likely contributed to the number of PIC disputes. The fact that Clear World allowed such potentially misleading language to be used is not to the credit of Joseph, James, or Michael Mancuso. We will require Clear World to modify the verification language as discussed above.

The verification tape for Xu does not show that Mrs. Xu was coached during the verification. However, Clear World has provided no evidence to show that its sales representative did not misrepresent what was offered, and take advantage of Mrs. Xu's inability to speak English. Xu had nothing to gain by misrepresenting what his wife had told him had occurred, or his own experiences. We find his testimony credible and persuasive and, therefore, conclude that he was slammed.

Duran testified that he did not recognize the voice or the name given on the verification tape. He had no reason to misrepresent what happened. We find his testimony credible and persuasive and, therefore, conclude that he was slammed.

Clear World said that Flores was contacted by its sales representative on October 10, 2001, and that the verification tape shows that she confirmed the switch. However, Flores provided a copy of a bill she received from HBS Billing Services, dated October 28, 2002, that indicates a monthly service fee from Clear World on October 1, 2001. That bill appears to indicate that Clear World billed Flores for services before the transfer was alleged to have been authorized. Flores had no reason to misrepresent what happened. We find her testimony credible and persuasive, and therefore conclude that she was misled, and then slammed.

All four customers said that they did not receive written notice of the switch. Clear World offered information on its postage expenses that it said demonstrated that it mailed notices to all of its customers. However, it provided no records that demonstrate that these particular customers received notices.

Clear World provides its sales representatives with written materials and training. The fact that Clear World had few written training materials regarding slamming does not demonstrate that its sales representatives were inadequately trained regarding slamming.

Clear World-Altered Document

In this proceeding, CPSD sought discovery of correspondence between Clear World and WorldCom from both of those entities. CPSD received a copy from WorldCom of a November 30, 2001 letter from WorldCom to Clear World. The letter was to a "Mr. Michael Mancuso – President" and "Mr. Christopher Mancuso – Founder" of Clear World Communications Corporation. The second version, produced by Clear World, was the same letter but with the reference to Christopher Mancuso as founder missing.

Clear World explains that when it received the letter, the letter erroneously listed Christopher Mancuso as founder. It sought to correct the error by sending WorldCom a fax with the reference to Christopher Mancuso deleted. This version was put in the files. When Clear World produced the letter for CPSD, it merely copied the one in its files. Clear World says that it was not attempting to hide Christopher Mancuso's involvement.

The original letter made reference to Christopher Mancuso as founder. There is no apparent reason why the altered version should be in the files for Clear World's internal use. Therefore, the only logical reason to include the altered version in its files rather than the original is so that the reference to Christopher Mancuso would not be seen by someone outside the company. The only entity outside the company who would likely care about the reference is the Commission. The letter was apparently altered in the past, rather than specifically for this proceeding. However, it was altered to conceal the reference to Christopher Mancuso as founder. Whether Christopher Mancuso was the founder of Clear World is not relevant. Therefore, we find that Clear World submitted an altered document to the Commission.

Clear World-Aiding Unlicensed Sale of Telephone Services by Worldwide

CPSD alleges that Clear World aided and abetted the unlicensed sale of telephone service by Worldwide. Specifically, CPSD alleges that, in the period following the February 4, 1999 cease and desist letter from CSD, Clear World continued to sell wholesale minutes and back-office support to Worldwide.

Clear World says that the question of whether Worldwide was operating without authority was a disputed issue of law that was never decided by the Commission. In addition, it says it never sold wholesale minutes to Worldwide.

In the hearings, James Mancuso could not identify whether it was Worldwide or WTC that paid Clear World for wholesale minutes. However, Christopher Mancuso said, in his 1998 deposition, that he negotiated an agreement between Worldwide and Clear World, whereby Clear World was the exclusive provider of wholesale minutes and back-office support to Worldwide. Therefore, it appears that Clear World did sell wholesale minutes to Worldwide. However, the question is whether it should have stopped doing so until the issue of authority was decided.

After receipt of CSD's letter, Worldwide attempted to satisfy the Commission's requirements by revising its agreement with WTS, and filing for registration as an interexchange carrier. If Clear World had stopped providing services to Worldwide, Worldwide's customers would have had their service interrupted. This would not have been a desirable outcome. In addition, the Commission did not take any action against Worldwide. Therefore, we believe that these were reasonable first steps by Worldwide in resolving the situation. In addition, it was reasonable for Clear World to continue providing service to Worldwide so that customer service would not be interrupted while the situation was being resolved.

Use of the agreement with WTS allowed Worldwide to escape the scrutiny by the Commission, and discovery of Christopher Mancuso's involvement, that would have occurred if it had applied for a CPCN in the first place. Given the Mancuso's involvement in the provision of service by Worldwide, it is not to their credit that Worldwide did not seek operating authority from the start.

Clear World-Sale of Telephone Service Without a CPCN

CPSD says that the WorldCom PIC dispute reports, entered into evidence in this proceeding, show that 226 PIC disputes were lodged against Clear World/DLD Account No. 182806 in January 1998, and there were similar numbers of PIC disputes for subsequent months. However, Clear World did not receive authority to operate in California until August 1998. CPSD, therefore, says that Clear World operated without a CPCN during that period. Clear World says that account 182806 had earlier been assigned to Amerivision/DLD, and that WorldCom's report was flawed.

We have previously determined that the exact number of PIC disputes is uncertain. Therefore, we cannot conclude solely on the basis of these PIC dispute reports that Clear World provided service without a CPCN.

CPSD also alleges that the asset purchase agreement by which Clear World acquired all of the assets of AEC/DLD included customers and customer lists. Christopher Mancuso said that the Clear World acquisition of DLD had been in the works for 18 months prior to the acquisition. He also said that, prior to the acquisition, AEC/DLD had purchased long-distance services from Amerivision that were then resold to AEC/DLD's customers. In addition, Christopher Mancuso said that he provided carrier negotiations, product development, strategic marketing analysis to AEC/DLD beginning in 1993. However, AEC/DLD never obtained a CPCN from the Commission, and Clear World only obtained its license in August 1998. Therefore, CPSD says it appears that Clear World, AEC/DLD and, therefore, Michael Mancuso and Joseph Mancuso were operating as unlicensed resellers at least as of January 1998, and probably as early as 1993.

Clear World says that AEC/DLD operated as an agent of another carrier. However, the record does not contain such an agreement, nor does it indicate that CPSD made a request for a copy of the agreement that was denied. Therefore, we cannot determine whether AEC/DLD provided telecommunications services without a CPCN.

Clear World-Adequacy of Financial Records

D.98-08-056, which granted Clear World a CPCN to resell interexchange services, required it to keep its books and records in accordance with the Uniform System of Accounts (USOA). CPSD asserts that Clear World violated this requirement because it did not maintain adequate financial records. In particular, CPSD says that Clear World made payments to Christopher Mancuso's ITC, totaling over $5.275 million from August 3, 1999 through April 19, 2002, without a written contract or invoices for the payments. Clear World does not agree that it violated the USOA. However, James Mancuso testified that there was no written contract pursuant to which these payments were made, nor was he aware of any invoices for the payments. Our requirement that Clear World keep its books and records in accordance with the USOA presupposes that adequate records are actually kept. Clear World cannot avoid the requirement by not keeping records of such transactions. Therefore, we find that, since Clear World did not keep adequate records of these transactions, it did not keep its books and records in accordance with the USOA in violation of D.98-08-056. We also note that these transactions involve Christopher Mancuso. The lack of such records tends to conceal details of the services provided by Christopher Mancuso.

Clear World-Failure to Produce Documents

CPSD says that Clear World repeatedly failed to produce requested documents, and that CPSD was forced to file three separate motions to compel to obtain documents that should have been readily provided. For example, Clear World produced no documents in response to CPSD's repeated requests for evidence of whether Worldwide or WTS paid Clear World for the services sold by Worldwide.

Clear World says that it did not refuse any reasonable request of the Commission to inspect its records. It argues that since CPSD is acting as an advocate in this proceeding, it is not acting at the direction of the Commission. Therefore, it has only the discovery rights of any other party.

Clear World is mistaken. The fact that CPSD participated in this proceeding in no way diminishes its ability as Commission staff to inspect a utility's books and records. At the May 23, 2002 prehearing conference, the assigned administrative law judge (ALJ) made it clear that he would place no restrictions on CPSD's discovery rights.

Clear World has also sought to deny discovery on the basis of privacy, and because CPSD had not demonstrated that it had good cause for requesting the information. There is no privacy exception applicable to a regulated utility's books and records. In addition, CPSD is not required to prove to Clear World that it has good cause before such books and records are produced. Therefore, we find that Clear World has not fully cooperated with CPSD in its investigation.

Christopher Mancuso

Christopher Mancuso was convicted of mail fraud, and was prohibited from serving as an officer or director of NTC by D.98-02-029. By his own admission he intended to deceive the Commission concerning his attempt to buy NTC. He also had significant involvement with Slatkin, another convicted felon.

The 2001 First Interim Report of the trustee of Slatkin's bankruptcy estate alleged that Christopher Mancuso facilitated the deception of investors by creating a telephone connection to Slatkin's Santa Barbara office that rang when investors called a Swiss number. The Trustee's Report also states that in the Securities and Exchange Commission's investigation of Slatkin, Slatkin testified that he had hundreds of millions of dollars in accounts in Switzerland. In February 2000, Christopher Mancuso set up Slatkin's Swiss telephone number, which would ring in Slatkin's Santa Barbara garage rather than Switzerland. Slatkin subsequently pled guilty to multiple counts of felony federal securities fraud, and is now incarcerated. The record does not demonstrate that Christopher Mancuso knew of Slatkin's Ponzi scheme at the time he set up the Swiss number. Clear World says that the number was never actually used. Whether the number was used is irrelevant. Christopher Mancuso set up a telephone number designed to deceive whoever called it.

As discussed above, Christopher Mancuso has demonstrated that he is not fit to be involved in any way with any regulated utility.

At the beginning of the hearings in this proceeding, the ALJ noted the allegations made by CPSD regarding Christopher Mancuso, and said that Clear World should address them, preferably by providing Christopher Mancuso as a witness. Clear World did not produce Christopher Mancuso during the hearings. In addition, he avoided a subpoena by CPSD.[16] Therefore, both Clear World and Christopher Mancuso had ample opportunity to address allegations regarding him, and any statements attributed to him, including those given in his 1998 deposition.

In this proceeding, we have chosen to use his statements in his 1998 deposition. We do this because they were made before either this application or Worldwide's application were filed. In addition, the statements were against his or his family's interests in this proceeding. Therefore, we have no reason to believe they were untruthful.

We also note that even though he avoided CPSD's subpoena, Christopher Mancuso appeared at the Commission's offices in San Francisco for an ex parte meeting with the Assigned Commissioner's advisor, on May 8, 2002, regarding this application. The notice of the ex parte contact was not filed until August 19, 2002.

VI. Conclusion

As discussed above, we have determined that Worldwide was not in any substantial sense an agent of WTS, falsely asserted to the Commission that it had been dismissed from litigation, misled the Secretary of State and the Commission as to its true address, concealed Christopher Mancuso's involvement in the

[16] CPSD made several attempts to serve a subpoena on Christopher Mancuso at his place of work, but he was not there. CPSD also attempted to serve him at the gated community where he lives. The gate guard called Christopher Mancuso to tell him that the process server wanted entry into the community. Christopher Mancuso told the guard not to let the process server in. The process server then left a copy of the subpoena with the guard.

company, and did not comply with D.02-06-045. These actions reflect adversely on the fitness of Joseph and James Mancuso, part owners of Clear World. We have also determined that Clear World slammed at least three customers, allowed misleading language to be used in verifying customers' authority to switch to Clear World, submitted an altered document to CPSD in discovery, did not maintain adequate financial records in violation of D.98-08-056, and did not fully cooperate with CPSD in its investigation. These actions reflect adversely on the fitness of Joseph, James, and Michael Mancuso, and demonstrate that Clear World is unfit to provide local exchange services. In addition, we have determined that Christopher Mancuso is not fit to be involved in any way with any regulated utility. Finally, we note that Clear World saw fit to have Christopher Mancuso participate in an ex parte meeting with the Assigned Commissioner's advisor regarding this application, while he avoided CPSD's subpoena.

The above findings are more than sufficient to deny this application, and we will do so. However, they also convince us that Clear World should be ordered to remove Christopher Mancuso from any involvement with the company, and that he should also be prohibited from any involvement whatsoever with any utility regulated by this Commission. For example, he should not be an officer, owner, director or employee of any regulated utility, or of any provider of services to a regulated utility, including as a consultant. In addition, the above findings give us reason to fine Clear World for slamming Xu, Duran, and Flores, and revoke its CPCN to resell interexchange services. We will order Clear World to show cause why we should not do so.

This order should be effective immediately to remove Christopher Mancuso from involvement with Clear World, to require Clear

World to modify the verification language, and to address the issue of fines and revocation of Clear World's CPCN as soon as possible.

VII. Categorization and Need for Hearings

In Resolution ALJ 176-3073 dated October 10, 2001, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. CPSD filed a protest to the application, and hearings were held. We confirm our preliminary categorization of this application as ratesetting.

VIII. Comments on Alternate Proposed Decision

The alternate proposed decision of Commissioner Loretta Lynch in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(d), and Rule 77.7 of the Commission's Rules of Practice and Procedure.

Both CPSD and Clear World filed comments on the PD and the Alternate. CPSD generally supported the PD and Alternate, but felt that they did not go far enough. Clear World opposed both. All comments were considered. To the extent that the PD or Alternate contained errors, they have been corrected. To the extent that revisions were necessary, we have made them. However, there are a few of Clear World's allegations that warrant a separate discussion.

Clear World alleges that the PD improperly evaluates the actions of Worldwide, including the agreement between Worldwide and WTS without including Worldwide or WTS as parties to this proceeding. Clear World is incorrect. The actions of Worldwide, and the agreement between it and WTS are addressed only as they relate to Joseph and James Mancuso. Joseph Mancuso, the owner of Worldwide, had ample opportunity to participate, and James Mancuso did participate in this proceeding. In addition, neither this decision nor the PD takes any action against Worldwide or WTS.

Clear World says that the PD improperly holds it responsible for the actions of Christopher Mancuso. This is incorrect. The PD holds Clear World responsible for its actions, and the actions of Joseph, James and Michael Mancuso.

Clear World says that the PD fails to address its financial, technical and managerial qualifications. Since we find that Clear World is not fit to provide local exchange services, its financial and technical qualifications are moot. It is not in the public interest to grant the application.

Clear World objects to the PD's order to show cause (OSC) why it should not be fined for slamming, and have its existing CPCN revoked. We believe an OSC is appropriate here, and preferable to an OII because : (1) the OSC is based on the notion, reaffirmed as recently as last week in the Commission's *Titan* decision, that the Commission should jealously guard the integrity of its processes whether or not ongoing harm to consumers is occurring (and *a fortiori* should certainly intervene when such harm is shown); (2) the Modified and Alternate Decisions *both* find that the Mancusos are unfit to manage a local exchange utility, which poses the immediate and related question whether they are fit to manage a long-distance reseller; and (3) as any OII will depend to some extent on the findings of the Commission in the instant case, keeping all the litigation within one proceeding will prevent the splintering of disputes and possible inconsistency between results.

IX. Assignment of Proceeding

On October 10, 2001, this matter was assigned to ALJ Jeffrey P. O'Donnell. On March 22, 2002, this matter was assigned to Commissioner Michael Peevey. In his scoping memo of May 30, 2002, Commissioner Peevey designated ALJ O'Donnell as the principal hearing officer for this proceeding.

Findings of Fact

1. Clear World is owned by Michael Mancuso (90%), James Mancuso (5%), and Joseph Mancuso (5%).

2. Worldwide was incorporated by Christopher Mancuso, and owned by Joseph Mancuso. James Mancuso was its general counsel.

3. Worldwide entered into an agreement with WTS, a certified interexchange reseller, to use WTS's tariffs and operating authority for which WTS would receive a fee. All operations were to be performed by Worldwide. At that time, WTS had no operations.

4. Worldwide's services were marketed by WorldTech whose officers were Christopher Mancuso and Jerry Ballah.

5. Worldwide's long distance minutes, and back office functions such as billing service provisioning and data entry, were provided by Clear World.

6. CSD's director wrote a letter, dated February 4, 1999, to Worldwide saying that Worldwide was providing service without a CPCN, and that its arrangement with WTS was not permitted. Worldwide subsequently revised its agreement with WTS, and filed A.99-04-042 for registration as an interexchange service reseller.

7. On April 25, 2002, Worldwide filed a motion to withdraw its application, and said that it was no longer operating in California.

8. By D.02-06-045, Worldwide's application was dismissed. In addition, it was ordered to appoint a custodian of records, and preserve its existing corporate documents for possible use in this proceeding.

9. Joseph Mancuso is the custodian of records for Worldwide.

10. By D.98-08-056, Clear World was authorized to resell interexchange services.

11. In October 1998, Clear World acquired all of the assets of AEC/DLD, including customers and customer lists. The Clear World acquisition of AEC/DLD had been in the works for 18 months prior to that date.

12. Christopher Mancuso started Commonwealth.

13. One of Commonwealth's customers was Culture Farms, a company for which Christopher Mancuso ultimately served as vice president.

14. Culture Farms was a Ponzi scheme.

15. Christopher Mancuso pled guilty to mail fraud in connection with his Culture Farm activities, and was incarcerated.

16. During the time Christopher Mancuso was in prison, he received over $300,000 from Slatkin.

17. NTC had several accounts with WorldCom including Amerivision/DLD subaccount 182806 that is the same as the Clear World/DLD subacount 182806 under which Clear World operates.

18. Christopher Mancuso, through CCI, provided carrier negotiation, product development, and strategic marketing analysis to AEC/DLD as early as 1993, and then began providing those services to Clear World when it acquired the assets of AEC/DLD in 1998.

19. D.98-02-029 prohibited Christopher Mancuso, as a prior officer or director, from ever again having an officer or director role at NTC.

20. In 1997, Ballah and Christopher Mancuso decided to buy NTC, and resort to a ruse to deceive the Commission.

21. Christopher Mancuso and Ballah started Worldwide, and created WorldTech to sell long-distance services for Worldwide.

22. Christopher Mancuso negotiated an agreement between WTS and Worldwide pursuant to which Worldwide used WTS's tariffs and operating authority.

23. Worldwide's sales were made through the marketing services of WorldTech.

24. WorldTech was a Nevada corporation, with Christopher Mancuso and Ballah as its corporate officers.

25. In February 2000, Christopher Mancuso arranged for a Swiss telephone number for Slatkin that could be used to deceive Slatkin's investors into thinking that they were reaching a Swiss institution when the telephone actually rang in Slatkin's Santa Barbara garage.

26. Slatkin is incarcerated.

27. Christopher Mancuso's company, ITC, provides carrier negotiations, product development, and strategic marketing analysis to Clear World.

28. James Mancuso is the secretary and general counsel for Clear World, general counsel for Worldwide.

29. James Mancuso received over $300,000 from Slatkin for the benefit of Christopher Mancuso in 1986 and 1987. The checks were written to Trojan Financial, a company controlled by James Mancuso.

30. James Mancuso formed Mancuso LLC, and assisted it in a substantial legal settlement involving Slatkin.

31. Michael Mancuso is the president, chief executive officer and treasurer of Clear World. He also worked at NTC, Incomnet, Amerivision, and managed DLD on a daily basis.

32. Joseph Mancuso owned AEC / DLD and Worldwide, and owns five percent of Clear World.

33. Worldwide entered into an agreement with WTS, in July 1998, whereby it used WTS's tariffs and operating authority for a fee. The agreement provided that Worldwide was responsible for virtually all operations, and the customers and customer information were Worldwide's property. Worldwide was described as an authorized agent for its customers. WTS was allowed to inspect Worldwide's books quarterly, and approve tariff changes. WTS had no obligation to collect any charge, or respond to any customer complaint.

34. The amended agreement of April 1999, described Worldwide as an agent for sale of WTS's services. Worldwide remained responsible for all aspects of operations. In addition, the amended agreement described Worldwide as an agent for end users. Although the amended agreement described "end users" as "end users of WTS," all customer information belonged to Worldwide. Any access WTS may have had to customers or customer information was strictly for performance of the agreement. WTS was allowed to inspect Worldwide's books quarterly, and approve tariff changes.

35. The amended agreement does not give WTS sufficient control over Worldwide to ensure compliance with statutory and Commission requirements. It describes Worldwide as an agent for both WTS and customers, which appears to create a conflict of interest. In addition, since WTS did not own the customer information, the customers effectively belonged to Worldwide. Worldwide functioned more as a principal than an agent.

36. The statement in Worldwide's Comments [on Proposed Decision], filed by the Mancusos on or about June 17, 2002 in the Commission's proceeding A.99-04-042, that Worldwide's "sole operations in California were as an agent of WorldTel Services, Inc. [WTS]," was false.

37. On February 26, 1999, counsel for Worldwide wrote to the Commission's General Counsel concerning a subpoena duces tecum that had been served on the Commission in connection with litigation between NTC, Worldwide, Christopher Mancuso and other parties. Worldwide's counsel stated that the purpose of the letter was to notify the General Counsel that his office represented two of the parties to the litigation, Worldwide and WTS, and that both of these parties had been dismissed from the litigation.

38. An amended complaint in the litigation was filed on February 26, 1999.

39. James Mancuso was deposed in that litigation, as a "person most knowledgeable" designee of Worldwide, almost two months after the February 26, 1999 letter.

40. Worldwide was granted a demurrer with leave to amend.

41. In its Statement of Domestic Stock Corporation filed with the California Secretary of State, Worldwide listed its street address as 2781 MacArther Boulevard, Suite B-603, Santa Ana, California 92704. This address is for a Mail Boxes Etc. mailbox, even though the form for the statement specifically says not to use a post office box.

42. In an application for registration as an interexchange service reseller, an applicant is required to provide its street address.

43. In A.99-04-042, Worldwide listed its street address as the above mailbox.

44. Worldwide did not include its articles of incorporation, which were signed by Christopher Mancuso as incorporator, with A.99-04-042.

45. D.02-06-045 allowed Worldwide to withdraw A.99-04-042, but ordered Worldwide to preserve all corporate documents and appoint a custodian of records.

46. Joseph Mancuso was so ill that he could not understand or answer questions, and could not be deposed in this proceeding.

47. James Mancuso, the only employee of Worldwide other than Joseph Mancuso, did not know where Worldwide's records were.

48. Worldwide did not include its Assignment Agreement with WTS in the records it produced in response to CPSD's request.

49. The record does not demonstrate that James Mancuso, as Worldwide's general counsel, attempted to have someone else made the custodian of records, or otherwise make the records available.

50. Slamming is the unauthorized switching of a subscriber's long distance service provider in violation of Pub. Util. Code § 2889.5.

51. A PIC dispute occurs when a subscriber alleges to the local exchange carrier that his or her long distance service was switched to another carrier without authorization.

52. CPSD mailed letters to 1,804 customers who had PIC disputes. One hundred fifteen responded. CPSD also contacted eight customers who complained to the Commission's Consumer Affairs Branch. In all, 76 customers were interviewed by CPSD. Of these, 54 said that they were slammed, 19 said they authorized the switch but didn't receive the promised rates, 60 said they did not receive a written notice of the switch, and three said that they did not complain about Clear World.

53. Sobenes's long distance service was switched to Clear World without her permission. The switch was authorized by her adult son, without her permission.

54. Sobenes complained to the Commission in July 2001.

55. Clear World stopped its service, and provided Sobenas with a refund.

56. Sobenes never received written notice of the switch.

57. Xu's long distance service was switched to Clear World without his permission on October 10, 2001.

58. On October 10, 2001, Xu's wife received a call from Clear World. The sales representative spoke to her in Mandarin because she does not speak English. He offered her 200 free minutes even if she did not want to switch carriers. She accepted the free minutes only. The representative told her that a third party representative would verify her acceptance of the gift, and requested that she respond to the verifier by saying yes. The verifier asked questions in English. On October 19, 2001, Xu had Pacific transfer his service back to his authorized carrier.

59. After July 2001, sales representatives were prohibited from being on the line during the verification process.

60. On October 27, 2001, Clear World again switched Xu's service without his authorization.

61. On December 13, 2001, Xu complained to the Commission.

62. Xu never received written notice from Clear World of the switch.

63. Xu eventually received a refund from Clear World.

64. In October 2001, Duran found that his long distance service had been switched without his permission. He called Clear World and said he did not authorize the switch. He was informed that he had received service from them for six months. The representative promised a refund of the difference between Clear World's rates and those of his previous carrier.

65. On February 19, 2002, Duran called Clear World asking the status of his refund. He received the refund in March 2002.

66. When CPSD played the tape recording of the third party verification, Duran did not recognize the voice or the name of the person on the tape.

67. Duran never received a written notification of the switch.

68. On August 23, 2001, Flores received a call from a sales representative for Clear World offering a new long distance discount plan by Pacific. Believing the offer to be by Pacific, she accepted.

69. On September 7, 2001, Flores received a third party verification call. The verifier said the service was to be provided by Clear World rather than Pacific. Flores then told the verifier that she was not interested. The verifier told her that Clear World's service would be stopped and Clear World would have to pay the fee for the carrier change. Clear World subsequently billed Flores for a monthly charge. Flores never received a written notification of the switch.

70. Flores received a bill from HBS Billing Services, dated October 28, 2002, that indicates a monthly service fee from Clear World on October 1, 2001. That bill appears to indicate that Clear World billed Flores for services before the October 10, 2001 date on which Clear World alleged the transfer was authorized.

71. Xu, Duran, and Flores had no reason to misrepresent what happened regarding the alleged slamming.

72. The PIC dispute numbers provided to CPSD by WorldCom for Pacific's territory are much larger than those reported by Pacific, and showed Clear World PIC disputes prior to when Clear World was created or began offering service.

73. Clear World's sales representatives receive two days of training, and receive other on the job training.

74. Clear World's sales calls are electronically monitored by supervisors.

75. The exact number of PIC disputes attributable to Clear World is uncertain.

76. Having an average number of PIC disputes does not demonstrate that slamming did not occur.

77. Verification of a customer's choice to switch to Clear World is done by an independent entity chosen by Clear World using an automated system where an electronic voice asks a series of questions.

78. To determine whether the person agreeing to the switch is authorized to make decisions regarding telephone service, the following question is asked:

> "Clear World is a long distance company that bills you through your local phone Company, but is not associated with them in any way. To confirm that you are over the age of 18, and you are the person authorized to make decisions regarding your telephone service, please state your birthday."

79. The question could easily be misunderstood to be asking only for the person's birthday.

80. Clear World is responsible for ensuring proper verification.

81. By allowing this wording to be used, it is reasonable to conclude that it switched some customers without valid authorization. Such occurrences likely contributed to the number of PIC disputes.

82. Sobenes's adult son provided his birthday in response to a question that asked him for his birthdate and whether he was authorized to make a change in telephone service at his home.

83. Mrs. Sobenes was slammed.

84. Clear World provided no records that demonstrate that Sobenas, Xu, Duran or Flores actually received notices.

85. The version of the November 30, 2001 letter from WorldCom to Clear World produced by WorldCom was to a "Mr. Michael Mancuso – President" and "Mr. Christopher Mancuso – Founder" of Clear World Communications

Corporation. The version produced by Clear World was the same letter but with the reference to Christopher Mancuso as founder missing.

86. Clear World sent WorldCom a fax with the reference to Christopher Mancuso deleted, and put it in its files.

87. When Clear World produced the letter for CPSD, it copied the one in its files.

88. There is no apparent reason why the altered version of the November 30, 2001 letter from WorldCom to Clear World should be in Clear World's files for internal use. The only logical reason to include the altered version in Clear World's files rather than the original is so that the reference to Christopher Mancuso would not be seen by someone outside the company. The only entity outside Clear World who would likely care about the reference is the Commission.

89. The November 30, 2001 letter was apparently altered in the past, rather than specifically for this proceeding.

90. The letter was altered to conceal the reference to Christopher Mancuso as founder.

91. Clear World sold wholesale minutes to Worldwide.

92. After receipt of CSD's letter, Worldwide attempted to satisfy the Commission's requirements by revising its agreement with WTS, and filing for registration as an interexchange carrier.

93. If Clear World had stopped providing services to Worldwide, Worldwide's customers would have had their service disrupted.

94. The Commission did not take any action against Worldwide.

95. Use of its agreement with WTS allowed Worldwide to escape scrutiny by the Commission, including Christopher Mancuso's involvement.

96. The WorldCom PIC dispute reports show that 226 PIC disputes were lodged against "Clear World / DLD" Account No. 182806 in January 1998, and there were similar numbers of PIC disputes for subsequent months.

97. The asset purchase agreement by which Clear World acquired all of the assets of AEC / DLD included customers and customer lists.

98. Prior to the acquisition, AEC / DLD had purchased long-distance services from Amerivision that were then resold to AEC / DLD's customers.

99. Christopher Mancuso provided carrier negotiations, product development, strategic marketing analysis to AEC / DLD beginning in 1993.

100. AEC / DLD never obtained a CPCN from the Commission.

101. DLD operated under an agreement with another carrier, which is not in the record. The record does not show that CPSD made a request for the agreement, or that such a request was denied.

102. D.98-08-056 required Clear World to keep its books and records in accordance with the Uniform System of Accounts (USOA).

103. Clear World made payments to ITC, totaling over $5.275 million from August 3, 1999 through April 19, 2002, without a written contract or invoices for the payments.

104. The Commission's requirement that Clear World keep its books and records in accordance with the USOA presupposes that adequate records are actually kept. Clear World cannot avoid the requirement by not keeping records of such transactions.

105. Clear World did not keep adequate records of its transactions with Christopher Mancuso's company ITC and therefore, it did not keep its books and records in accordance with the USOA.

106. Since the transactions involve Christopher Mancuso, the lack of such records tends to conceal details of the services provided to Clear World by Christopher Mancuso.

107. CPSD filed three separate motions to compel to obtain documents from Clear World that should have been readily provided.

108. Clear World produced no documents in response to CPSD's repeated requests for evidence of whether Worldwide or WTS paid Clear World for the services sold by Worldwide.

109. At the May 23, 2002 prehearing conference, the ALJ made it clear that he would place no restrictions on CPSD's discovery rights.

110. Clear World has sought to deny discovery on the basis of privacy, and because CPSD had not demonstrated that it had good cause for requesting the information.

111. There is no privacy exception applicable to a regulated utility's books and records.

112. CPSD is not required to prove to Clear World that it has good cause before such books and records are produced.

113. Christopher Mancuso was convicted of mail fraud.

114. In February 2000, Christopher Mancuso set up Slatkin's Swiss telephone number, which would ring in Slatkin's Santa Barbara garage rather than Switzerland.

115. Slatkin subsequently pled guilty to multiple counts of felony federal securities fraud, and is now incarcerated.

116. At the beginning of the hearings in this proceeding, the ALJ noted the allegations made by CPSD regarding Christopher Mancuso, and said that Clear World should address them, preferably by providing Christopher Mancuso

as a witness. Clear World did not produce Christopher Mancuso during the hearings. In addition, he avoided a subpoena by CPSD.

117. Christopher Mancuso's statements in his 1998 deposition, as used in this opinion, were made before either this application or Worldwide's application were filed, and were against his or his family's interests in this proceeding.

118. Christopher Mancuso appeared at the Commission's offices in San Francisco for an ex parte meeting with the Assigned Commissioner's advisor, on May 8, 2002, regarding this application. The ex parte notice was not filed until August 19, 2002.

119. Rule 7.1 of the Commission's Rules of Practice and Procedure require that notices of ex parte contacts be filed within three working days of the meeting.

120. Since the ex parte notice of the May 8, 2002 meeting was not filed until after the hearings held in this proceeding on August 5-7, 2002, CPSD did not know that the meeting had occurred, and therefore could not cross-examine James or Michael Mancuso on what happened at the meeting.

121. A notice of the filing of the application appeared in the Daily Calendar on October 5, 2001.

Conclusions of Law

1. A valid agency agreement with a certificated telecommunications carrier should be structured to at least ensure that the carrier has sufficient control over the agent to ensure the agent's compliance with statutory and Commission requirements. In addition, the agreement should provide that customers belong to the certificated carrier.

2. Worldwide's initial agreement and amended agreement with WTS were not valid agency agreements making Worldwide an agent of WTS in any primary or substantial sense.

3. Worldwide was therefore selling telecommunications services as a principal, although it had not registered as a telecommunications utility with this Commission.

4. The granting of a demurrer with leave to amend is not the same as a dismissal, and the further step of a judgment dismissing the action or the party is always necessary.

5. Worldwide's assertion, in its February 26, 1999 letter to the Commission's General Counsel, that it had been dismissed from litigation was false.

6. Worldwide misled both the Secretary of State and the Commission as to its true street address.

7. Worldwide's failure to include the articles of incorporation in its application helped conceal Christopher Mancuso's involvement with the company.

8. Worldwide's statement on its Application that "no affiliate, officer, director, general partner, or person owning more than10% of applicant, *or anyone acting in such a capacity whether or not formally appointed* … has been found either criminally or civilly liable by a court of appropriate jurisdiction … for any actions which involved misrepresentations to consumers" was false. Worldwide's incorporator had been convicted of felony mail fraud.

9. Since Joseph Mancuso was so ill that he could not understand or answer questions and could not be deposed in these proceedings, someone else should have been made custodian of records.

10. Worldwide's records are effectively unavailable to the Commission, in violation of D.02-06-045.

11. Because Clear World had a lot of PIC disputes, slamming is likely to have occurred.

12. The testimony of Xu, Duran, and Flores was credible and persuasive.

13. Xu was slammed by a sales representative who misrepresented what was offered, and took advantage of Mrs. Xu's inability to speak English.

14. Duran was slammed because he didn't authorize the switch.

15. Flores was misled, and then slammed.

16. Clear World should be ordered to change its verification language so that the customer is asked to state his or her date of birth, and separately asked whether he or she is authorized by the subscriber to switch telephone service to another carrier.

17. Clear World submitted an altered document to the Commission.

18. After receipt of CSD's letter, Worldwide attempted to satisfy the Commission's requirements by revising its agreement with WTC, and filing for registration as an interexchange carrier, which was a reasonable first step in resolving the situation.

19. Since Clear World did not keep adequate records of its transactions with ITC, it did not keep its books and records in accordance with the USOA in violation of D.98-08-056.

20. The fact that CPSD participated in this proceeding in no way diminishes its ability as Commission staff to inspect a utility's books and records.

21. Clear World has not fully cooperated with CPSD in its investigation.

22. Christopher Mancuso is not fit to be involved in any way with any regulated utility.

23. Both Clear World and Christopher Mancuso had ample opportunity to address allegations regarding him, and any statements attributed to him including those given in his 1998 deposition.

24. We have no reason to believe that Christopher Mancuso's statements in his 1998 deposition, as used in this opinion, were untruthful.

25. Since the notice of Clear World's May 8, 2002 ex parte meeting was not filed until August 19, 2002, it violated Rule 7.1 of the Commission's Rules of Practice and Procedure.

26. Since the ex parte notice of the May 8, 2002 meeting was not filed until after the hearings held in this proceeding on August 5-7, 2002, CPSD's ability to participate in the hearings in this proceeding was inhibited.

27. Clear World should be ordered to remove Christopher Mancuso from any involvement with the company.

28. Christopher Mancuso should be prohibited from having any involvement with any utility regulated by the Commission.

29. Clear World is not fit to provide local exchange services.

30. Since we find that Clear World is not fit to provide local exchange services, its financial, technical and managerial qualifications are moot, and it is not in the public interest to grant the application.

31. The application should be denied.

32. Clear World should be ordered to show cause why it should not be fined for slamming Xu, Duran, and Flores, and have its certificate of public convenience and necessity to resell interexchange services revoked.

33. This order should be effective immediately to remove Christopher Mancuso from involvement with Clear World, and to address the question of fines and revocation of Clear World's CPCN as soon as possible.

O R D E R

IT IS ORDERED that:

1. The application of Clear World Communications Corporation (Clear World) to resell local exchange services is denied with prejudice.

2. Clear World shall show cause why it should not be fined for slamming Xu, Duran, and Flores, and have its certificate of public convenience and necessity to resell interexchange services revoked for the reasons stated herein.

Clear World's showing shall be filed and served no later than 30 days after the effective date of this decision.

3. This proceeding shall remain open, and shall be classified as adjudicatory, for the purpose of considering fines and revocation.

4. Clear World shall remove Christopher Mancuso (as well as any firm, company, limited liability company, partnership, corporation, or other entity of any nature that is associated with him, owned by him, or with which he has a consulting or employment agreement), from any and all involvement whatever with Clear World, its affiliates, subsidiaries, and successors. Clear World shall further ensure that no payments by it, its affiliates, subsidiaries or successors is made to Christopher Mancuso, including compensation, consulting fees, or loans.

5. Clear World shall conduct a complete, comprehensive audit of any and all business and consulting relationships, whether reduced to writing or otherwise, between Clear World, its officers and directors, and entities and persons associated with Clear World and with Christopher Mancuso (as well as any firm, company, limited liability company, partnership, corporation, or other entity of any nature that is, or was, associated with him, owned by him, or with which he

has, or has had, a consulting or employment agreement), including loans of money or informal business relationships and shall list and describe in detail all such relationships, of any nature whatever. Said audit shall be completed and returned to the Consumer Safety and Protection Division and the Assigned Commissioner and Administrative Law Judge in this proceeding no later than 45 days after the effective date of this order.

6. Clear World shall change its verification language so that the customer shall state, in response to two separate questions, that he or she is over 18 and is authorized to switch telephone service from one carrier to another. As a third separate and distinct question, the customer shall be asked whether he or she desires to change service. Standard script language in accordance with this provision shall be submitted to the Public Advisor's Office of the Commission for its approval no later than 30 days after the effective date of this order. Upon approval by the Public Advisor's Office, Clear World, its agents, affiliates, associates, subsidiaries, successors and all comparable entities shall use such language.

7. Clear World shall file and serve a written report that indicates its compliance with Ordering Paragraphs 4 and 6 above, including the complete text of the verification language, within 30 days of the effective date of this decision. A copy of the report shall be sent to the Commission's Telecommunications Division, and Public Adviser's Office.

This order is effective today.

Dated ____________________, at San Francisco, California.