

Decision **DRAFT DECISION OF ALJ MCKENZIE**
(Mailed 5/28/2002)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation into Long Distance Charges, Inc.,
Least Cost Routing, Inc., National
Telecommunications, Inc., Future
Telecommunications, Inc., and Tel-Save, Inc., and
Ned Gershenson and Doris Fisher In Their
Individual And Controlling Officer And / Or
Shareholder Capacities,

Respondents.

Investigation 00-01-018
(Filed January 20, 2000)

FINAL OPINION APPROVING SETTLEMENT AGREEMENT

Summary

In this decision, we approve a settlement agreement entered into between the Commission's Consumer Services Division (CSD) and the various respondents in this proceeding. The settlement agreement was filed on August 28, 2001, and is attached hereto as Appendix A.

Under the agreement, the respondents will make various payments totaling \$340,000. Of this sum, \$152,000 is for customer restitution, \$136,000 represents a penalty, \$22,000 is for notifying customers that they must choose a new long-distance or toll service provider (and to reimburse the customers for the costs of making this change), and \$30,000 is for hiring an independent legal claims administrator, Gilardi & Co. LLC (Gilardi), that will handle the actual notification of customers, payment of restitution and reimbursement for the costs

of connecting with new providers.

The settlement agreement also requires the corporate respondents except Tel-Save, Inc. (Tel-Save) to surrender the certificates of public convenience and necessity (CPCNs) that they hold from this Commission, and not to offer any type of telephone service in California for a period of five years.¹ The two individuals who control the companies surrendering their CPCNs, Ned Gershenson and Doris Fisher -- who, along with these companies, are collectively referred to hereinafter as the Gershenson Group -- also agree that neither they nor any "telephone corporation" they control (as defined in the agreement) will apply to the Commission for operating authority during the same five-year period. If they do apply for such authority after the end of the five years, they will disclose the existence of this proceeding and any subsequent legal complaints that may have been filed against them.

Applying the standards of Rule 51.1(e) of our Rules of Practice and Procedure, we find the settlement agreement is reasonable in light of the whole record, consistent with law and in the public interest. We therefore approve it.

Procedural Background

The Order Instituting Investigation (OII) charged the respondents with violating several provisions of the Public Utilities Code. First, the OII alleged that the companies within the Gershenson Group had changed the long distance or toll service provider of nearly 4400 California customers without their

¹ The corporate respondents that have agreed to surrender their CPCNs consist of Long Distance Charges, Inc. (U-5561-C), Least Cost Routing, Inc. (U-4206-C) and National Telecommunications, Inc. (ESP 1176), the last of which does business as "Future-Tel Communications". In addition, although it has not been named as a respondent, Internet Telephone Company, Inc. (U-6107-C), another company controlled by Ned Gershenson and Doris Fisher, will surrender its CPCN for cancellation.

authorization, a practice known as "slamming" that is unlawful under Pub. Util. Code § 2889.5. Second, the OII alleged that the Gershenson Group companies had misrepresented their relationships with local exchange carriers, in violation of § 2889.9(a). Third, the OII alleged that the companies had changed the customers' service providers without adequate verification by an independent, third-party verification company, in violation of § 2889.5(a)(3). The OII alleged that the Gershenson Group companies had committed these violations by using "telephone solicitors [who] falsely represented themselves as employees of the customers' local access provider, such as Pacific Bell or GTE, and / or presented misleadingly 'Least Cost Routing' as a discount or billing consolidation plan. When switched to LDC, consumers experienced higher toll or long-distance charges." (OII, p. 2.)

The OII also alleged that respondent Tel-Save appeared to have purchased the customer bases, accounts receivable and other assets of certain Gershenson Group companies in 1997 in exchange for the forgiveness of \$2.2 million in debts owed by these companies. The OII alleged that this amounted to a *de facto* sale of the Gershenson Group companies that violated § 851 of the Pub. Util. Code because Commission authorization had not been obtained. In addition, the OII continued, this change of control appeared to make Tel-Save jointly and severally liable for the slamming and other unlawful conduct engaged in by the Gershenson Group companies after Tel-Save took control. As relief, the OII sought restitution for customers, cancellation of the CPCNs held by the Gershenson Group companies, and the imposition of fines.

The first prehearing conference (PHC) in this matter was held on April 6, 2000. After noting that charges of misconduct similar to those alleged in the OII had been filed against Long Distance Charges, Inc. and other Gershenson Group companies in several states, and that some of these charges had been settled with

the payment of substantial fines, the assigned Administrative Law Judge (ALJ) observed that the case for liability appeared strong, and he urged the respondents to consider a settlement. (April 6, 2000 PHC Tr., pp. 7-9.)

On May 18, 2000, counsel for CSD sent the assigned ALJ a letter stating that all parties "have executed a letter of intent to settle," and that a settlement agreement and motion for approval thereof were expected to be filed within about a month.

Although no settlement papers were filed in June 2000, counsel for CSD informed the ALJ through the summer and fall that these papers were being prepared and should be filed soon. In mid-July 2000, for example, counsel informed the ALJ that comments from other counsel were expected shortly on a draft settlement agreement that had been circulated. On November 22, 2000, counsel for CSD informed the ALJ that "the substantive issues of the settlement are agreed to," and that the parties expected to sign the settlement agreement after receiving some necessary customer data from the affected local exchange carriers.

Because the 12-month deadline for the proceeding set forth in Pub. Util. Code § 1701.2(d) was quickly approaching, a second PHC was held on December 12, 2000 to obtain a progress report. At the PHC, counsel for CSD stated that he had recently reached separate agreement on settlement terms with counsel for Tel-Save and counsel for the Gershenson Group, that a revised settlement agreement reflecting these terms was being prepared, and that before it was filed, the revised agreement would have to be reviewed by CSD's newly-appointed Division Director. (December 12 PHC, pp. 32-37.)

After the second PHC, the review process appeared to be proceeding smoothly, because on February 13, 2001, counsel for CSD informed the ALJ that all respondents had signed the settlement agreement, that execution of the

agreement by CSD was imminent, that a motion for adoption of the settlement agreement had also been prepared, and that the filing of all papers necessary for consideration of the settlement should be completed within a week.

On February 22, 2001, the Commission issued Decision (D.) 01-02-066, which extended, pursuant to § 1701.2(d) of the Pub. Util. Code, the 12-month deadline applicable to this proceeding. After noting that an extension was necessary to give the parties time to submit their settlement agreement and the Commission time to consider it, D.01-02-066 ordered the parties to file within 45 days “either a proposed settlement agreement (together with motion for approval thereof) or a status report indicating whether and when the settlement agreement will be forthcoming.”

After the issuance of D.01-02-066, CSD apparently had a change of heart. On March 15, 2001, it filed a motion "to suspend the procedural schedule in order to have the [OII] amended or a new OII consolidated in this proceeding." CSD stated that its basis for seeking this relief was that CSD had just learned that Tel-Save's corporate successor had committed "numerous slamming violations not included in the OII." CSD stated that it had been unaware of these violations because Tel-Save had changed its corporate name to Talk.com. CSD continued that due to these newly-discovered violations, Tel-Save's liability appeared to be direct rather than vicarious (as the OII had alleged), and CSD wanted an opportunity to expand the scope of the OII to include these new charges. CSD also stated that as a result of the newly-discovered violations, "Staff now regards this proceeding as unamenable to resolution by settlement."

On May 18, 2001, the assigned ALJ issued a ruling denying CSD's motion.² The ALJ pointed out that Tel-Save's change of name to Talk.com had been noted during the first PHC on April 12, 2000, as well as in the scoping memo issued on May 2, 2000. The ruling continued:

"Under these circumstances, CSD cannot reasonably claim that it became aware of the relation between Tel-Save and Talk.com only recently, or that it has somehow been deprived of an opportunity to investigate the extent of consumer complaints against Talk.com.

"Moreover, CSD has not adequately explained why Talk.com's alleged misconduct should be litigated in this proceeding. As noted above, the focus of this OII is slamming allegedly committed by [Gershenson Group companies.] The OII names Tel-Save, Talk.com's predecessor, as a respondent based on a theory of *vicarious* liability. Under these circumstances, CSD has not explained why it would make sense to delay this proceeding to allow the existing OII to be amended, especially since CSD is free to seek a separate OII directed solely against Talk.com." (May 18, 2001 Ruling, p. 2; emphasis in original.)³

The ALJ's ruling also directed the parties to appear for a third PHC on June 4, 2001, at which time dates would be set for a hearing. (*Id.* at 10.) At this PHC, the ALJ ruled that opening testimony would be due on August 27, 2001, that rebuttal testimony and trial briefs would be due on September 6, and that a

² Administrative Law Judge's Ruling Denying Motion of the Consumer Services Division to Suspend the Procedural Schedule so that the Order Instituting Investigation for this Proceeding Can Be Amended, and Setting Prehearing Conference," issued May 18, 2001 (May 18, 2001 Ruling).

³ On August 2, 2001, the Commission issued I.01-08-003, an OII concerning the activities of Talk America, Inc., a subsidiary of Talk America Holdings, Inc. that has done business under the name of Talk.com. A proposed decision addressing a settlement reached in that proceeding is being mailed shortly.

hearing not to exceed five days would take place from September 17-21, 2001. He also encouraged the parties once again to consider settlement of the proceeding, especially if the Commission chose to issue a new OII to examine the alleged misconduct of Talk.com. (June 4, 2001 PHC Tr., pp. 53-54.)

The next step in this proceeding took place on August 28, 2001, when CSD filed on behalf of all parties the settlement agreement attached as Appendix A, along with a motion seeking its approval.

Terms of the Proposed Settlement

As noted above, the proposed settlement consists of three parts. The first calls for a series of payments by the respondents to Gilardi totaling about \$340,000; Gilardi in turn will disburse them to eligible customers. The second is an agreement by the Gershenson Group companies to surrender their CPCNs, and not to offer any type of telephone service within California for a period of five years. The third part is an undertaking by Ned Gershenson and Doris Fisher as individuals not to apply for any type of operating authority from this Commission during the same five years, and if they do apply for such authority after this period, to disclose the existence of this proceeding and any legal complaints that may have been filed against them subsequently. We will discuss each of these parts in turn.⁴

As to payments, the settlement agreement designates Gilardi as a fiduciary to receive funds from the various respondents. Most of these funds are to be deposited into either a "restitution" account or a "switching fee payment" account.

⁴ The settlement agreement consists of two pages of recitals, 16 pages of numbered paragraphs and three signature pages. In addition, one appendix and three exhibits are attached to the settlement agreement. The references in this decision are to the numbered paragraphs in the settlement agreement.

All of the respondents are required to make their respective payments within five days after this Commission issues a decision approving the settlement agreement. Tel-Save is obliged to pay Gilardi \$105,000, of which \$88,000 is for the restitution account and \$17,000 is for payment of Gilardi's services as claims administrator. The Gershenson Group is required to pay Gilardi \$100,811.74, from which \$64,000 is to be deposited into the restitution account, \$22,361.74 into the switching fee payment account, and \$14,450 is payment for Gilardi's services. (¶ 2.1.) As noted above, the Gershenson Group is also required to pay a penalty of \$136,000, but that money is to be paid to the Commission for deposit into the State of California's General Fund. (*Id.*) Pursuant to a fee arrangement included in the settlement agreement, Gilardi agrees to invoice Tel-Save and the Gershenson Group for its actual costs, and to return to them the difference (if any) between these actual costs and the \$31,450 designated as payment for Gilardi's services as claims administrator. (*Id.*, ¶ 2.2.)

The date that the Commission approves the settlement agreement is also the starting date for other obligations of the respondents and Gilardi. For example, within ten days after the decision, the respondents are obliged to provide computer files to CSD (which will forward them to Gilardi) setting forth the names and billing telephone numbers (including mailing addresses) of all "eligible consumers," *i.e.*, those present and former customers who complained of slamming by one of the Gershenson Group companies between January 1996 and December 1999, and who are therefore entitled to a restitution payment. (*Id.*, ¶ 3.1.) Gilardi, in turn, is obliged to send a restitution check to each of the eligible consumers within 21 days after issuance of the Commission's decision, along with a written explanation from CSD that is attached as Exhibit A to the settlement agreement. (*Id.*, ¶ 3.4.) The amount of each check is computed by dividing the funds designated for restitution (\$152,000) by the number of eligible

consumers, which is approximately 6,020,⁵ resulting in a payment per consumer of \$25.24. (*Id.*, ¶ 3.5.)⁶

Gilardi also has extensive responsibilities in administering the switching fee payment account. Under paragraph 4.1 of the agreement, the respondents are obliged within ten days after the Commission's decision approving the settlement to provide CSD with computer files setting forth the names and billing telephone numbers of all "existing customers," *i.e.*, those California consumers who have been billed by a billing agent on behalf of one of the respondents for the period March 1 - August 30, 2000. CSD will then forward these data to the appropriate local exchange carriers (LECs) and request that the LECs provide within 10 days the current billing addresses of these customers; CSD will then forward the addresses to Gilardi. Within 21 days thereafter, Gilardi will send each existing customer a notice explaining the need to select a new long distance or toll service provider, along with a switching fee payment check in an amount corresponding to what the customer's LEC charges under its tariffs for changing a long distance or toll service provider. According to paragraph 4.5, this amounts to \$5.26 for Pacific Bell Telephone Company and \$4.46 for GTE California Incorporated (now Verizon California). Existing customers served by other LECs are also entitled to a switching fee payment of \$4.46.⁷

⁵ Paragraph 3.5 also states that the number of eligible consumers "may vary because of miscoding, unavailable mailing addresses, duplication, or other circumstances unforeseen at this time."

⁶ Paragraph 3.4 provides that the restitution checks shall contain an expiration date of 90 days after mailing. Under Paragraph 3.6, the amount representing uncashed or undeliverable restitution checks is to be paid to the Commission. This payment is to be made 120 days after the mailing of the last restitution check. (¶5.1.)

⁷ Like the restitution checks, the switching fee payment checks expire 90 days after

Footnote continued on next page

The Gershenson Group companies also have obligations in connection with the switching of long distance or toll service providers. Under paragraph 4.9, they agree to notify their underlying facilities-based providers to stop provisioning existing customers by the end of a 60-day “Transition Period” (which begins the day after the Commission’s decision approving the settlement), and they also agree not to bill or collect for any services (inadvertently) provided after this 60-day period. Under paragraph 4.10, the members of the Gershenson Group agree to cease providing service to any existing customer (or other California consumer) at the end of the Transition Period, and specifically agree to cease using in California any of the technical codes that are essential for providing long-distance or toll service, *i.e.*, Access Customer Name Abbreviations, Carrier Identification Codes (CICs) or sub-CICs.

As noted above, the second major part of the settlement agreement calls for the Gershenson Group companies to surrender their CPCNs and not to offer any type of telephone service within California for a period of five years. To carry this out, the Gershenson Group consents to the cancellation of the CPCNs for the four companies named in footnote 1 of this decision, effective the last day of the Transition Period. (¶6.1.)⁸ Second, the Gershenson Group agrees that by the last

mailing. (¶4.4.) Under paragraph 4.7, Gilardi will pay the amount representing uncashed or undeliverable switching fee payment checks to the Gershenson Group companies. Gilardi is required to make this payment 120 days after the mailing of the last switching fee payment check. (¶5.2.)

⁸ Investigation reveals that the Commission has apparently granted two CPCNs under the name of "Long Distance Charges, Inc.". The first bears the registration number U-4206-C, is a California corporation and is surrendering its CPCN pursuant to the settlement agreement approved herein. The second bears the registration number U-5696-C and is a Florida corporation that was granted a CPCN in D.96-10-053. This latter corporation is unrelated to the Gershenson Group companies, and its status is not

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day of the Transition Period, it will either terminate, cause to have terminated, or amend four agreements relating to the alleged “purchase” of the Gershenson Group companies by Tel-Save referenced in the OII. The parties agree that the effect of these terminations or amendments shall be to “preclude the [Gershenson Group] from providing telecommunications services within California.” (§6.2.) Third, the Gershenson Group agrees that for the five years beginning on the last day of the Transition Period, its members “will not do business as a Telephone Corporation within California on a wholesale or retail basis with California consumers.” (§6.3.)⁹

The members of the Gershenson Group (who include Ned Gershenson and Doris Fisher individually) also agree that during the five years that begin on the last day of the Transition Period, neither they nor any Telephone Corporation that they “own, control, operate, manage, or hold a TEN (10) percent or greater shareholder interest in” will apply for a CPCN from the Commission. (§6.4.) They also agree that if, after the end of the five-year period, any of them reapply for a CPCN, the applicant(s) will furnish both the Director of CSD and the appropriate Assistant General Counsel of the Commission with copies of the application, and that the application will (a) refer to this proceeding, (b) offer proof of the applicant’s fitness to operate within California, (c) include a plan for using unique CICs or PICs¹⁰ that “will enable Commission Staff to monitor any of

affected by today's decision.

⁹ “Telephone Corporation” is a defined term under paragraph 1 of the settlement agreement. It is defined as “every corporation or person owning, controlling, operating, or managing any telephone line for compensation within California, and includes a reseller of telephone services.”

¹⁰ Paragraph 1 of the settlement agreement indicates that PIC is an acronym for Primary

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the [applicant's] California operations,” and (d) disclose any state or federal investigations or proceedings, whether judicial or administrative, that involve allegations of slamming, consumer fraud or “other alleged unlawful conduct.” (*Id.*)

The remaining provisions of the settlement agreement address such things as how the agreement is to be enforced and the effect of any changes the Commission might order in it. The most noteworthy feature of these provisions is that the Commission is given "primary jurisdiction over any interpretation, enforcement, or remedies" pertaining to the settlement agreement, and that "no party may bring an action pertaining to this Settlement in any local, state, federal court, or administrative agency without first having exhausted its administrative remedies at the Commission." (§7.2.) In the event any of the respondents breaches the agreement, CSD is authorized to commence proceedings at the Commission to enforce the agreement or obtain other appropriate remedies, and in any such proceeding, "a CSD declaration documenting the breach or violation shall support CSD's action, and CSD shall have the burden of proof." (§7.1.) CSD has also agreed that while it will not initiate proceedings by any law enforcement agency based on the facts alleged in the OII, "CSD may provide information or otherwise co-operate to the extent requested by a law enforcement agency or a court of law." (§7.5.)

Joint Motion to Approve the Settlement

In their joint motion to approve the settlement agreement, the parties argue that they have satisfied each of the elements required for approval by Rule 51.1(e); *viz.*, that the settlement be reasonable in light of the whole record,

Interexchange Carrier.

consistent with law, and in the public interest.

With respect to reasonableness, the parties rely on the statement in D.00-09-034 that "the Commission has held that a proposed settlement is reasonable if it saves the Commission significant expenses and use of its resources, when compared to the risk, expense, complexity and likely duration of further proceedings." Conservation of the Commission's resources has been achieved here, the moving parties argue, because in addition to yielding payments of \$340,000 and avoiding a week of hearings, the settlement obviates the need for numerous depositions involving the 6,000 consumer complaints at issue. Moreover, the motion continues, "another factor [favoring settlement is] the age of the alleged violations in question, which occurred from 1996 to 1998. Ensuring the availability four years later in 2001 of these consumer witnesses and their supporting documents would have been challenging and time consuming." (Joint Motion, p. 4.)

On the issue of consistency with law, the joint motion notes that while Sections 2107 and 2108 provide for substantial fines (ranging from \$500 to \$20,000 per day in the case of continuing violations), the Commission has held that "settlement payments are made in compromise and in lieu of the penalty amounts specified in Sections 2107-2108." (*Id.* at p. 6.) Since the proposed penalty of \$136,000 is substantial (representing 40 percent of the total amount respondents are paying), legal requirements are clearly met, according to the moving parties.

Finally, on the issue of the public interest, the moving parties contend that the settlement agreement satisfies the tests set forth in D.00-12-050, in which the Commission recently approved a settlement with Coleman Enterprises, Inc. (CEI) arising out of slamming practices very similar to those alleged here. According to the moving parties, D.00-12-050 holds that "the public interest in

telecommunications enforcement proceedings is served when customer restitution is achieved, the alleged improper practices and operations cease, and the telecommunications market is free[d] from a source of unfair competition." (*Id.* at 5.) The joint motion argues that those tests are satisfied here because (1) each eligible consumer of the Gershenson Group companies will receive restitution of about \$25.00, an amount "commensurate with other settlements" the Commission has approved, (2) the companies will be required to surrender their CPCNs, not do business in California for five years, and pay their customers' costs of switching to new service providers, and (3) the entire process will be overseen by Gilardi, a well-respected legal claims administrator that also handled the CEI settlement.

Discussion

Although the enforcement provisions in the settlement agreement here are not quite as rigorous as those in the CEI settlement that we approved in D.00-12-050, there are enough attractive features to the settlement -- especially in view of the separate OII involving Tel-Save's affiliate, Talk America, Inc. -- that we have decided to approve it.¹¹

First, as noted in the Joint Motion, the total restitution payment of \$152,000 amounts to about \$25.00 for each eligible customer, a sum that is consistent with other restitution payments we have approved in recent years. *See*, D.00-12-050,

¹¹ As noted in the text, the settlement agreement here provides that in the event CSD becomes aware of any violations of the settlement's provisions, CSD may bring an enforcement action before the Commission in which CSD will have the burden of proof. In contrast, the CEI settlement provided for a suspended fine of \$500,000 applicable to CEI and \$300,000 applicable to QAI, Inc. The fine on CEI was deemed vacated only if CSD did not bring an enforcement action against it within five years, and the QAI fine was deemed vacated only if no enforcement action was brought against QAI within three years. (*See* D.00-12-050, *mimeo.* at 19-20.)

mimeo. at 12-14; *Investigation of Heartline Communications, Inc.*, D.96-12-031, 69 CPUC2d 584, 591 (1996); *Investigation of L.D. Services, Inc.*, D.97-11-079, *mimeo.* at 2-3; *Investigation of Brittan Communications International Corp.*, D.98-04-024, *mimeo.* at 5. While it is true that customers with larger restitution claims will not be able to pursue them under this settlement, the Gershenson Group companies appear to be in the same situation as CEI; *i.e.*, they have been the subject of disciplinary proceedings in so many other jurisdictions that the total amount available for restitution to California customers appears limited. Under these circumstances, it is reasonable to approve capping the restitution payment in the manner specified in paragraph 3.5 of the settlement agreement. *See*, D.00-12-050, *mimeo.* at 13.

Second, in terms of assuring that the slamming alleged in the OII does not happen again, the settlement agreement requires the Gershenson Group companies to surrender their CPCNs for cancellation and to cease doing business in California for five years. Moreover, no telephone company that Ned Gershenson or Doris Fisher as individuals manage, control or operate, or in which they have a 10% or larger shareholder interest, may apply for operating authority from this Commission during the five-year period, and if they choose to reapply for such authority later, their application will have to disclose this proceeding and make a new showing of fitness. As we said of similar provisions applicable to CEI, these requirements should "help to ensure that long distance and toll service are marketed in California in a more informative and even-handed manner." (*Id.* at 14-15.)

Third, the \$136,000 penalty that the Gershenson Group is paying to the Commission is substantial and appropriate under the circumstances of this case. Not only does this penalty represent 40 percent of the total amount that respondents are paying to settle this matter; it is accompanied by the agreement of the Gershenson Group not to conduct any telecommunications business within

this State for at least five years.¹²

¹² The agreement of the Gershenson Group's members to cease doing business in California makes it appropriate to accept a penalty in this case that is a somewhat smaller percentage of the total settlement package than the penalty in the I.01-08-003 settlement referred to in footnote 3. In that case, the \$560,000 penalty that the respondent has agreed to pay represents 56% of the total settlement amount. Here, in contrast, the proposed penalty is 40% of the total settlement package. However, the settlement in I.01-08-003 does not require the respondent in that case to cease doing business in California.

In light of these considerations, and the lack of opposition to the settlement, we conclude that the settlement agreement is reasonable in light of the whole record, consistent with law, and in the public interest. Thus, the agreement satisfies the standards for approval set forth in Rule 51.1(e) of our Rules of Practice and Procedure, and should be approved without modification.¹³

Comments on Draft Decision

The draft decision of the ALJ in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure.

Findings of Fact

1. The settlement agreement attached hereto as Appendix A is unopposed.
2. The proposed settlement will achieve customer restitution, because approximately 6,020 eligible consumers will each receive a restitution payment of about \$25.00, for a total of \$152,000.

¹³ We note that the proposed decision concerning the settlement in I.01-08-003 requires the agreement there to be modified so that the respondent, Talk America, Inc., "shall be liable for any error or omission of the Settlement Claims Administrator that results in nonpayment to eligible consumers, and [Talk America, Inc.] can pursue appropriate relief against the Administrator." (*Mimeo.* at 8.)

For several related reasons, we do not think that a such a modification is necessary in this case. First, paragraph 2.1 of the settlement agreement here specifically states that "the Settlement Claims Administrator shall serve as the *fiduciary* of the Eligible Consumers and the Existing Customers in establishing, managing, and controlling respectively the Restitution and the Switching Fee Payment Accounts." (Emphasis supplied.) Second, the settlement claims administrator here will be Gilardi, a firm well known to us from its work as the settlement administrator in the CEI settlement. (*See*, D.00-12-050, *mimeo.* at 9, 14.) Third, on April 8, 2002, CSD filed in I.99-12-001 a formal accounting of Gilardi's work in connection with the CEI settlement. Based on a review of that accounting, we have no reason to believe that Gilardi will fail to perform its duties in this case reliably.

3. The restitution payment described in the preceding finding is consistent with those in other settlements that the Commission has approved in recent years for telecommunications customers allegedly victimized by slamming.

4. The \$22,361.74 to be paid by the Gershenson Group for deposit into the switching fee payment account appears sufficient to reimburse the 4,409 existing customers of Gershenson Group companies for the expense of switching their long-distance or toll service to a different provider.

5. The proposed settlement will help to protect the public from unscrupulous practices by telecommunications carriers, will serve to obtain refunds for customers injured by respondents' actions, and will help to encourage a robust telecommunications market free from unfair competition.

Conclusions of Law

1. In view of the many disciplinary proceedings brought against Gershenson Group companies in other states, the \$152,000 cap on restitution payments provided for in the settlement agreement is reasonable.

2. The \$136,000 penalty provided for in the settlement agreement is reasonable and appropriate under the circumstances of this case.

3. The proposed settlement is reasonable in light of the whole record, consistent with law, and in the public interest.

4. The proposed settlement should be approved without modification.

5. All local exchange carriers, facilities-based providers and billing agents that have done business with, performed work for, or rendered services on behalf of any one or more of the Gershenson Group companies should be directed to cooperate with CSD to ensure that complete data (including names and addresses) for all Eligible Consumers and Existing Customers, as defined in the settlement agreement, are provided to Gilardi.

O R D E R

IT IS ORDERED that:

1. The settlement agreement attached to this decision as Appendix A is approved without modification.
2. The certificates of public convenience and necessity granted to the following companies shall be cancelled at the end of the Transition Period specified in paragraph 1 of Appendix A (*i.e.*, on the sixtieth day following the mailing date of this decision): Long Distance Charges, Inc. (U-5561-C), Least Cost Routing, Inc. (U-4206-C), Internet Telephone Company, Inc. (U-6107-C), and National Telecommunications, Inc. (ESP 1176, now doing business as "Future-Tel Communications").
3. Pacific Bell Telephone Company (Pacific), Verizon California Inc. (Verizon), Worldcom, Inc. (Worldcom), and all other local exchange carriers, facilities-based providers and billing agents that have done business with, performed work for, or rendered services on behalf of any one or more of the companies named in Ordering Paragraph 2 shall cooperate fully with the Consumer Services Division (CSD) to ensure that complete data (including names and addresses) for all Eligible Consumers and Existing Customers, as those terms are defined in Appendix A, are provided on a timely basis to CSD and Gilardi & Co. LLC (Gilardi).
4. At the end of the 60-day Transition Period specified in Paragraph 1 of Appendix A, Pacific, Verizon, Worldcom and all other local exchange carriers and facilities-based providers shall discontinue service to all California customers receiving service from any one or more of the companies named in Ordering Paragraph 2.
5. Within five days after the issuance date of this decision, the respondents shall execute the fee agreement with Gilardi referenced in Paragraph 2.1 of

Appendix A, and shall make the payments specified in said paragraph to Gilardi acting in its fiduciary capacity as Settlement Claims Administrator.

6. This proceeding is closed.

This order is effective today.

Dated _____, at San Francisco, California.

APPENDIX A
THE SETTLEMENT OF THE PARTIES

THE PARTIES

Pursuant to Rule 51.1(a) of the Commission Rules of Practice and Procedure, the following parties hereby enter into this Settlement of Commission proceeding I.00-01-018, dated the 13th day of July 2001:

- CONSUMER SERVICES DIVISION (CSD) of the CALIFORNIA PUBLIC UTILITIES COMMISSION (COMMISSION);
- NATIONAL TELECOMMUNICATIONS, INC. (d.b.a. FUTURE-TEL COMMUNICATIONS); LEAST COST ROUTING, INC.; and LONG DISTANCE CHARGES, INC.;
- NED GERSHENSON (GERSHENSON);
- DORIS FISHER (FISHER); and
- TEL-SAVE, INC. (TS).

The National Telecommunications, Inc. (d.b.a. Future-Tel Communications), Least Cost Routing, Inc., Long Distance Charges, Inc., Gershenson, and Fisher are herein collectively referred to as the “Companies.” The Companies and TS are collectively herein referred to as the “Respondents.” The Respondents and CSD are collectively herein referred to as the “Parties.”

Respondents agree to be jointly and severally responsible for performance of their monetary payment obligations as provided for in this Settlement. Further, Respondents intend that this Settlement shall bind their respective legal successors, purchasers, heirs, representatives, assignees, partners, parent or subsidiary corporation(s), limited liability

company, directors, officers, shareholders, divisions, units, employees, principals, agents, affiliated persons, or any business which Respondents (either jointly or severally) operate, manage, direct, control, own, or in which a Respondent is a ten percent or greater shareholder.

RECITALS

WHEREAS, in I.00-01-018¹⁴ the Commission instituted an investigation into whether inter alia the Respondents jointly and/or severally were unlawfully switching California consumers' presubscribed toll and/or long - distance telephone provider to another carrier;

WHEREAS, the Parties mutually desire to reach a full and final settlement of I.00-01-018 and thus avoid the time, expense, uncertainty, and inconvenience of an evidentiary hearing;

WHEREAS the Companies since May 1, 1998, have voluntarily ceased soliciting any new California customers as a Telephone Corporation whether for themselves or another business, as the Companies have represented to the Commission¹⁵;

WHEREAS, Gershenson represents that he owns, directs, or otherwise controls only the following businesses that hold a CPCN: (i) Long Distance Charges, Inc. (U-5561); (ii) Least Cost Routing, Inc. (U-4206-C); (iii) National Telecommunications, Inc. (ESP1176); and (iv) Internet Telephone Company, Inc., (U- 6107-C). OAN Services, Inc., is the Companies' sole and exclusive Billing Agent for customer billing and collections in California;

WHEREAS, the Parties have signed a letter dated April 19, 2000, memorializing their intent to settle; and

¹⁴ 2000 Cal. PUC LEXIS 81 (filed January 20, 2000).

¹⁵ Reporter's Transcript of Prehearing Conference in I.00-01-018 dated April 6, 2000, at p.9, lines 11-16.

WHEREAS, the Parties agree that this Settlement does not constitute any admission by any of the Respondents of any fact and/or law alleged in I.00-01-018.

TERMS, COVENANTS, AND CONDITIONS

NOW THEREFORE, in consideration of the foregoing and the terms, covenants, and conditions herein stated, the Parties themselves or by their authorized representative(s) mutually agree as follows:

1. Definition of Terms

“ACNA” means Access Customer Name Abbreviation.

“ANI” means Automatic Number Identifier.

“Billing Agent” means OAN Services, Inc., or any other clearinghouse or billing aggregator that has been or is billing and collecting on behalf of the Respondents in California.

“BTN” means the Billing Telephone Number of the consumer’s telephone line that is billed for telephone services provisioned by the Companies, and any other telephone line of the consumer that is billed under the same BTN for telephone services provisioned by the Companies.

“CAB” means the Consumer Affairs Branch of the California Public Utilities Commission.

“CSD” means the Consumer Services Division of the California Public Utilities Commission.

“CIC” means Carrier Identification Code.

“Corporation” means a corporation, a company, an association, or a joint stock association.

“CPCN” means those Certificates of Public Necessity and Convenience granted by the Commission and such CPCNs that are held by any of the following businesses of the Respondents: (i) Long Distance Charges, Inc. (U-5561); (ii) Least Cost Routing, Inc.

(U-4206-C); (iii) National Telecommunications, Inc. (ESP1176); and (iv) Internet Telephone Company, Inc. (U- 6107-C).

“CSD Declarations” means those Declarations of Stephanie Amato and Steve Northrop, including the tabulated attachments thereto, a copy of which was provided the Respondents pursuant to the Order Instituting Investigation, I.00-01-018;

“Date of Issuance” means the date when the Commission mails to the Parties the order or decision adopting this Settlement.

“Day” means a calendar day unless otherwise stated.

“Eligible Consumer” means those California consumers (whether a person or corporation) who were reported by the Commission Consumer Affairs Branch (CAB), the consumer’s local exchange carrier (LEC), any of the Respondents, or an underlying facilities based carrier (e.g., WorldCom, Inc. (WorldCom) or Tel-Save, Inc.), as having complained during the period from January 1996 through December 1999 that one or more of the Companies without authorization switched (or caused a LEC to switch) consumers’ presubscribed toll or long distance telephone service provider to any of the Companies. This includes any unauthorized switching accomplished by using an underlying carrier’s CIC, which the LEC designated and recorded as a PIC dispute involving the underlying carrier but which the underlying carrier determined as a PIC dispute involving one or more of the aforementioned Respondents. Unauthorized switching also includes PIC disputes reported by an LEC or an underlying facilities- based provider, and involving one or more of the Companies and their underlying facilities-based provider. An Eligible Consumer shall be entitled to restitution for each telephone line(s) that was switched without authorization.

“Existing Customer” means (i) those California consumers whose BTN Respondents’ Billing Agent(s) has billed on behalf of the Companies or any fictitious business name thereof during the period March 1 to August 30, 2000, and which billing subsequently appears as a separate insert in the envelope containing the consumers’ monthly telephone billing statement mailed by the customers’ LEC.

“Fee Agreement” means that contract between the Respondents and the Settlement Claims Administrator for the performance of settlement claims services as described in the Settlement Claims Administration Plan.

“Joint Motion” means the All Parties Joint Motion for Commission Adoption of the Settlement signed by the attorneys for the Parties, and filed at the Commission with this Settlement attached.

“Notice” means the CSD written statement that the Settlement Claims Administrator will include with its mailing of Switching Fee Payment Checks to Existing Customers. This Notice shall inform the Existing Customers that by the end of the Transition Period, they must switch from the Companies to another toll/long-distance carrier because as part of this Settlement, the Companies will no longer provide telephone services, and the enclosed Switching Fee Payment Check is to reasonably compensate them for the LEC charge for the switching.

“Paragraph” means the numbered provision set forth in this Settlement.

“Person” means an individual, a firm, and/or a copartnership.

“PIC” means Primary Interexchange Carrier.

“Restitution Account” means that bank account established by the Settlements Claims Administrator and into which Respondents’ Restitution Monies shall be deposited and held pending its distribution/mailing to Eligible Consumers.

“Restitution Check” means that bank check drawn by the Settlements Claims Administrator on the Restitution Account for the purpose of delivering restitution to the Eligible Customers.

“Restitution Monies” means those monies paid by the Respondents to the Settlement Claims Administrator for deposit into the Restitution Account, in accordance with this Settlement.

“Rule” means a provision of the Commission Rules of Practice and Procedure, unless otherwise stated.

“Section” means a section of the California Public Utilities Code, unless otherwise stated.

“Settlement Claims Administrator” means Gilardi & Co., LLC, 1115 Magnolia Avenue, Larkspur CA 94939-1055, which as Respondents herein agree, shall process, administer, and mail (i) the Restitution Checks to the Eligible Consumers and (ii) the Switching Fee Payment Checks to Existing Customers, in the manner set forth in this Settlement and the attached Settlement Claims Administration Plan. Remuneration for which services shall be paid entirely and solely by the Respondents to the Settlement Claims Administrator according to the Fee Agreement.

“Settlement Claims Administration Plan” means the written description of the settlement claims services that the Settlement Claims Administrator will perform pursuant to this Settlement and which is hereto attached as Exhibit C and attached to the Fee Agreement.

“Switching Fee Payment Account” means the bank account established by the Settlement Claims Administrator for deposit of monies received from the Companies for purposes of paying each Existing Customer for the cost charged by the LEC for switching the Existing Customer’s toll/long distance provider from the Companies to another service provider.

“Switching Fee Payment Checks” means the checks issued to an Existing Customer by the Settlement Claims Administrator pursuant to Paragraph 5.3 to 5.5, and which are drawn on the Switching Fee Payment Account.

“Telephone Corporation” means every corporation or person owning, controlling, operating, or managing any telephone line for compensation within California, and includes a reseller of telephone services.

“Transition Period” means the SIXTY (60) Day period of time that begins on the Day after the date of issuance of the Commission’s decision adopting the Settlement and ends -FIFTY-NINE (59) Days later.

“USPS” means the United States Postal Service.

2. Payment Obligations of Respondents

2.1. Within FIVE (5) Days after the date of issuance of the Commission decision adopting this Settlement, Respondents will execute the Fee Agreement. At such time,

TS shall pay the Settlement Claims Administrator via wire transfer or in the form of a bank check and referencing I.00-01-018, the following amounts: (i) the sum of EIGHTY - EIGHT THOUSAND DOLLARS and NO CENTS (\$ 88,000.00) for deposit into the Restitution Account; and (ii) the sum of SEVENTEEN THOUSAND DOLLARS and NO CENTS (\$17,000.00) in remuneration for the Settlement Claims Administrator's services in processing, mailing, and/or accounting for the Restitution Checks to Eligible Consumers pursuant to this Settlement and the Settlement Claims Administration Plan. At such time also, the Companies shall pay via wire transfer or in the form of a bank check and referencing I.00-01-018, the following amounts to the following payees: (i) to the Commission, the amount of ONE HUNDRED THIRTY-SIX THOUSAND DOLLARS and NO CENTS (\$136,00.00) as a payment in penalty for deposit into the General Fund of California; and (ii) to the Settlement Claims Administrator, the amount of SIXTY-FOUR THOUSAND DOLLARS and NO CENTS (\$ 64,000.00) for deposit into the Restitution Account; the amount of TWENTY-TWO THOUSAND THREE HUNDRED SIXTY-ONE DOLLARS AND SEVENTY-FOUR CENTS (\$22,361.74) for deposit into the Switching Fee Payment Account; and the amount of FOURTEEN THOUSAND FOUR HUNDRED FIFTY DOLLARS AND NO CENTS (\$14,450.00)) in remuneration for the Settlement Claims Administrator's services in processing, mailing, and/or accounting for the Switching Fee Payment Checks to Existing Customers pursuant to this Settlement and the Settlement Claims Administration Plan. The Settlement Claims Administrator shall serve as the fiduciary of the Eligible Consumers and the Existing Customers in establishing, managing, and controlling respectively the Restitution and the Switching Fee Payment Accounts.

2.2. Pursuant to the Fee Agreement, the Settlement Claims Administrator will invoice TS and the Companies for its services and return to TS and the Companies respectively the difference between the \$ 17,000.00 and the \$ 14,450.00 deposits and the actual costs incurred for delivery of the Restitution and the Switching Fee

Payments. The Parties mutually agree that the Respondents shall have no duty or right to supervise or otherwise direct or control the Settlement Claims Administrator in performing its services. Further, CSD agrees not to hold the Respondents liable for any errors or omissions of the Settlement Claims Administrator.

2.3. Respondents agree that they waive any potential, residual, or current ownership, claim, interest, or title in or to any portion of the payments made pursuant to Paragraphs 2.1 through 2.2 above. This paragraph shall not apply if the Settlement is rescinded according to Paragraph 9.3 or in the case of Switching Fee Payments subject to Paragraph 4.7.

3. Restitution And Eligible Consumers

3.1. Within TEN (10) Days after signing this Settlement, Respondents at their own expense shall provide CSD (if not already so provided) in computer readable form as directed by CSD, the names and BTNs of all Eligible Consumers (excluding Eligible Consumers received by CSD from CAB), arranged in separate computer files according to the LEC provisioning the Eligible Consumers (e.g., PacBell or GTE). CSD shall forward this data to the appropriate LEC and request therefrom that the name and current mailing address for each such BTN be provided CSD within TEN (10) Days after the date of such request. After receiving the LECs' responses, CSD shall provide the Companies with a copy thereof and submit the Eligible Consumers' names and mailing addresses to the Settlement Claims Administrator in accordance with Paragraph 3.2. The Companies and CSD hereby acknowledge the following: Pursuant to this Paragraph in or about November 2000, the Companies provided CSD with the Eligible Consumers data described above. In or about December 2000, CSD submitted such Eligible Consumers' data to appropriate LECs which subsequently provided CSD with names and mailing addresses for the Eligible Consumers. On or about January 16, 2001, CSD provided the Companies with a copy of such Eligible Consumers names and mailing addresses, which the Settlement Claims Administrator

shall also receive pursuant to Paragraph 3.2.

3.2. Within TEN (10) Days or less after the date of the Commission decision adopting this Settlement, CSD will forward the Eligible Consumers' names and mailing addresses to the Settlement Claims Administrator for the processing and mailing of Restitution Checks to Eligible Consumers.

3.3. The LEC may invoice Respondents for the tariffed cost of finding mailing addresses for the BTNs provided by CSD according to Paragraph 3.1. Respondents agree to pay such invoice on a timely basis according to the terms of the LEC invoice.

3.4. Within TWENTY-ONE (21) Days after receipt of CSD's delivery of data pursuant to Paragraph 3.1, the Settlement Claims Administrator shall mail each Eligible Consumer a Restitution Check drawn on the Restitution Account and a CSD written explanation for the Restitution Check, a copy of which is hereto attached as Exhibit A. Respondents shall have an opportunity to comment upon the explanation before this Settlement is filed. Each Restitution Check shall be made payable to the Eligible Consumer in an amount as determined according to Paragraph 3.5 below. Each Restitution Check shall be dated as of the date of mailing and contain an expiration date of NINETY (90) Days following the date of the Restitution Check. If the Eligible Consumer fails to cash or deposit it within the NINETY (90) Day period, the Restitution Check shall become void and canceled by the Settlement Claims Administrator. The Restitution Checks shall be sent via USPS by first class mail with the return address of the Settlement Claims Administrator included.

3.5. The Parties agree that full restitution of each Eligible Consumer will consist of each Eligible Consumer receiving a Restitution Check in an amount to be calculated as follows. The total amount of restitution of ONE HUNDRED FIFTY-TWO THOUSAND DOLLARS and NO CENTS (\$ 152,000.00), as provided for in Paragraphs 2.1 and 2.2, shall be divided by the total of Eligible Consumers. The

Parties agree that the total Eligible Consumers is approximately 6,020.¹⁶ The Parties understand and agree that the above stated number of Eligible Consumers may vary because of miscoding, unavailable mailing addresses, duplications, or other circumstance unforeseen at this time.

3.6. For each check that is mailed but returned as undeliverable for whatever reason or has expired, the Settlement Claims Administrator shall cancel the check and remit an amount corresponding to the total sum of monies represented by the Restitution Checks that were undeliverable, canceled, or expired, to the Commission on the date and in the manner prescribed by Paragraphs 5.1 et seq., below.

3.7. Within TEN (10) days after the date of issuance of the Commission decision adopting this Settlement, the Companies will notify in writing their Billing Agent and facilities-based providers (e.g., TS and WorldCom) to immediately cease all billing, collection, or any other demand for payment by any Eligible Consumer of telephone billings, service fees, and/or balances resulting from any alleged unauthorized switching of the consumer's toll or long-distance provider.

3.8. As of the end of the Transition Period, the Companies will direct in writing the appropriate bill collection services or credit reporting bureaus or agencies to reverse, cancel, and/or purge any of their records pertaining to an Eligible Consumer's nonpayment of past or present outstanding debts owed to the Companies and attributable to any alleged unauthorized switching of the Eligible Consumer's toll or long-distance provider. The Companies will copy CSD with such written communication at the same time it is mailed or delivered according to this Paragraph.

4. Switching Fee Payments And Existing Customers

4.1. Within TEN (10) Days after signing this Settlement, Respondents at their own

¹⁶ This figure of 6,020 is based on 5,973 reported by TS and WorldCom; 75 reported by CAB; none reported by Pacific Bell or GTE, and subtracting 38 duplicate BTNs reported as slammed.

expense shall provide CSD (if not already so provided) in computer readable form as directed by CSD, the names and BTNs of all Existing Customers, arranged in separate computer files according to the LEC provisioning the Existing Customer (e.g., PacBell or GTE). CSD shall forward this data to the appropriate LEC and request therefrom that the name and the current mailing address for each such BTN be provided CSD within TEN (10) Days after the date of such request. After receiving the LECs' responses, CSD shall provide the Companies with a copy thereof and submit the Existing Customers' names and mailing addresses to the Settlement Claims Administrator in accordance with Paragraph 4.2. The Companies and CSD hereby acknowledge the following: Pursuant to this Paragraph in or about November 2000, the Companies provided CSD with the Existing Customers data described above. In or about December 2000, CSD submitted such Existing Customers data to the appropriate LECs which subsequently provided CSD with the names and mailing addresses for the Existing Customers. In or about January 26, 2001, CSD provided the Companies with a copy of such Existing Customers names and mailing addresses, which the Settlement Claims Administrator shall also receive pursuant to Paragraph 4.2. The Companies hereby acknowledge their knowledge and understanding that as January 26, 2001, Pacific Bell has not completed its search for other multiple telephone lines of an Existing Customer that is billed under a single BTN of that Existing Consumer and provisioned by the Companies. Pursuant to this Paragraph 4.1, CSD has requested Pacific Bell to provide CSD with the telephone numbers for these additional telephone lines, and the Existing Customer names, mailing addresses, and BTNs associated with them. CSD will provide the Companies for comment a copy of such Pacific Bell provided data as soon as practicable after its receipt. Pursuant to Paragraph 4.2, CSD will then forward a copy of this additional data to the Settlement Claims Administrator for purposes of processing and delivering Switching Fee Payment Checks as provided at Paragraph 4.2 et seq. However, as the Parties hereby agree, any additional multiple telephone number as described in this Paragraph

for which no name, mailing address, and BTN of an Existing Customer can be determined, shall not be included for processing by the Settlement Claims Administrator.

4.2. Within TEN (10) Days or less after the date of the Commission decision adopting this Settlement, CSD will forward the Existing Consumers' names and mailing addresses to the Settlement Claims Administrator for the processing and mailing of Switching Fee Payment Checks to Existing Consumers.

4.3. The LEC(s) may invoice Respondents for the tariffed cost of finding mailing addresses for the BTNs provided by CSD according to Paragraph 5.1. Respondents agree to pay such invoice on a timely basis according to the terms of the LEC invoice.

4.4. Within TWENTY-ONE (21) Days after receipt of CSD's delivery of data pursuant to Paragraph 4.2, the Settlement Claims Administrator shall mail each Existing Customer a Switching Fee Payment Check drawn on the Switching Fee Payment Account and a CSD written Notice explaining the purpose of the Switching Fee Payment and the need to switch from the Companies to another toll/long-distance carrier by the end of the Transition Period (see Exhibit B for a copy of the Notice). Respondents shall have an opportunity to comment upon the Notice before this Settlement is filed. Each Switching Fee Payment Check shall be made payable to the Existing Customer in an amount determined according to Paragraph 4.5 below. Each Switching Fee Payment Check shall be dated as of the date of mailing and contain an expiration date of NINETY (90) Days following the date of the Switching Fee Payment Check. If the Existing Customer fails to cash or deposit it within the NINETY (90) Day period, the Switching Fee Payment Check shall become void and canceled by the Settlement Claims Administrator. The Switching Fee Payment Checks shall be sent via USPS by first class mail with the return address of the Settlement Claims Administrator included.

4.5. The Companies agree to provide each Existing Customer a Switching Fee Payment in an amount corresponding to what the Existing Customer's LEC would

charge for switching the Existing Customer to another toll/long-distance carrier, as stated or otherwise provided in this Paragraph. The Pacific Bell switching fee cost is FIVE DOLLARS and TWENTY-SIX CENTS (\$5.26) per line switched (*see* California Tariff Schedule CAL P.U.C. NO. G21 and FCC No.1 Tariff, original page 12-23); GTE California's switching fee cost, FOUR DOLLARS and FORTY-SIX CENTS (\$4.46) per line switched (*see* to FCC Tariff 1, Miscellaneous Services). Those Existing Customers serviced by LECs other than Pacific Bell or GTE California, shall receive a Switching Fee Payment Check in the amount of FOUR DOLLARS and FORTY-SIX CENTS (\$4.46).

4.6. The total number of Existing Consumers who shall receive a Switching Fee Payment Check shall be 4,409 as enumerated in Appendix A hereto. In addition, because some of the Companies' Existing Customers may have multiple telephone lines that are presubscribed to the Companies for toll/long-distance telephone services and are billed under a single BTN of the Existing Customer, an Existing Customer shall receive an additional amount of Switching Fee Payment calculated according to Paragraph 4.5, for each such multiple telephone line reported as described above to CSD by Pacific Bell on January 19, 2001. As soon as practicable, CSD will forward this data to the Settlement Claims Administrator (with a copy to the Companies) for processing and delivery according to Paragraph 4.4.

4.7. Concurrently with such reporting, the Settlement Claims Administrator shall refund the Companies from the Switching Fee Payment Account, an amount of monies corresponding to the total amount of all Switching Fee Payment Checks that have expired or were returned to the Settlement Claims Administrator as undeliverable (e.g., unknown current mailing address or forwarding address).

4.8. The Respondents agree not to sell its Existing Customer database at any time after their signing of this Settlement; however, Respondents may sell any assets used only for interstate telephone service or located outside of California.

4.9. Within the Ten (10) Days after the date of issuance of the Commission decision approving this Settlement, the Companies shall direct in writing their underlying facilities-based provider(s) to cease provisioning Existing Customers, by the last Day of the Transition Period. However, the Companies may continue to bill and collect only for telephone services provisioned before and through, but not after, the last Day of the Transition Period. The Companies shall provide CSD with a copy of each such written communication no later than FIVE (5) Days after mailing or delivery thereof.

4.10. By the last Day of the Transition Period, the Companies will cease using any CIC, sub-CIC, or ACNA in California or otherwise provisioning any Existing Customer or other California consumer with telephone or other services that require a CPCN

4.11. The Settlement Claims Administrator shall report as soon as practicable to CSD the date, manner, and amount of Respondents' payments received pursuant to this

5. Remittance and Accounting to the Commission.

5.1. ONE HUNDRED TWENTY (120) Days (120-Day Period) after the date of mailing of the last Restitution Check pursuant to Paragraph 3.3, the Settlement Claims Administrator shall remit and deliver as soon as practicable, a bank check to the Commission (in care of Special Agent Stephanie Amato, Consumer Services Division, 505 Van Ness Avenue, Second Floor, San Francisco, CA 94102) drawn on the Restitution Account and made payable to the Commission in an amount corresponding to the total sum of monies represented by the Restitution Checks that were undeliverable, canceled, or expired as of the last day of the 120-Day Period. These monies shall be deemed to escheat to the State of California, and the Commission shall deposit this remittance into the California State General Fund.

5.2. ONE HUNDRED TWENTY (120) Days (120-Day Period) after the date of mailing of the last Switching Fee Payment Check pursuant to Paragraph 4.3, the Settlement Claims Administrator shall remit and deliver as soon as practicable, a bank check to the Companies (in care of Ned Gershenson) drawn on the Switching Fee

Payment Account and made payable to the Companies in an amount corresponding to the total sum of monies represented by the Switching Fee Payment Checks that were undeliverable, canceled, or expired as of the last day of the 120-Day Period.

5.3. Concurrent with its remittances described in Paragraphs 5.1 and 5.2, the Settlement Claims Administrator shall report to the Commission with a copy to the Respondents, the following data, which shall be made a part of the formal file:

- The account balances of the Restitution and/or the Switching Fee Payment Accounts both before and after the remittances to the Commission and/or the Companies;
- A listing as of the date of its report and by number and dollar amount, of each Restitution and Switching Fee Payment Checks
 - Mailed;
 - Deposited or cashed;
 - Returned as undeliverable;
 - Expired; and
 - The total sum of the number and dollar amount of the Restitution and Switching Fee Payment Checks in each of the above stated categories;
- The total amount of money remitted to the Commission and to the Companies.

6. Relinquishment and Cancellation of CPCN; Future Reapplication.

6.1. The Companies hereby agree that by the last Day of the Transition Period, they will relinquish their CPCNs held in the name of the following persons or corporations:

(i) Long Distance Charges, Inc. (U-5561-C); (ii) Least Cost Routing, Inc. (U-4206-C); (iii) National Telecommunications, Inc. (ESP1176); and (iv) Internet Telephone Company, Inc., (U- 6107-C). Respondents concur with CSD's request in this Settlement and the Joint Motion that in its decision adopting the Settlement, the Commission shall order the Companies' CPCNs canceled as of the last Day of the Transition Period.

6.2. Unless already terminated, Respondents shall by the last Day of the Transition Period (i) terminate, (ii) cause to have terminated, or (iii) amend as to preclude the Companies from providing telecommunications services within California, the

following agreements among themselves:

- The Restructuring and Settlement Agreement dated March 19, 1997;
- The Employment Agreement between TS and Gershenson dated March 19, 1997;
- The Resale Agreement (dated on or about January 1998); and
- The Third Party Payment Agreement dated on or about March 1998¹⁷

Within FIVE (5) Days after the end of the Transition Period, Respondents shall provide CSD documentary proof of any contractual termination or modification described above.

6.3. The Companies agree that for the next succeeding FIVE (5) years beginning with the last Day of the Transition Period (the “5-Year Period”), they will not do business as a Telephone Corporation within California on a wholesale or retail basis with California consumers.

6.4. During the same 5-Year Period, the Companies agree that they or any Telephone Corporation that the Companies own, control, operate, manage, or hold a TEN (10) percent or greater shareholder interest in, whether directly or indirectly, shall not apply for any CPCN. If after such 5-Year Period the Companies (whether jointly or severally) re-apply for a CPCN, such applicant(s) shall provide the Director of CSD and Assistant General Counsel of the Enforcement and Litigation Section of the Legal Division with a copy of their application; apply in accordance with Section 1001; and include the following data in their application:

- A reference to the Commission’s I.00-01-018;
- Proof of the pertinent Companies’ fitness to operate within California;
- A specific plan for provisioning any telephone service to California consumers by using a unique PIC or CIC code that will enable Commission Staff to monitor any of the pertinent Companies’ California operations;
- Disclosure of any state or Federal administrative, law enforcement agency, or judicial proceedings, in which the Companies are or have been parties to the action

¹⁷ Copies of these agreements are contained in the CSD Declaration (Amato), Vol. 1, at Tabs D & E.

and which include allegations of consumer fraud, switching consumers' telephone service provider without authorization, or any other alleged unlawful conduct.

7. Enforcement

7.1. After Commission approval of this Settlement, if any of the Respondents breaches a material provision of the Settlement or violates a Commission statute, rule, decision, order or regulation, CSD may bring the appropriate enforcement or other action against such Respondent(s) to compel performance of this Settlement and/or to request other remedies (e.g., cease and desist order, fines under Section 2100 et seq.). A CSD declaration documenting the breach or violation shall support CSD's action, and CSD shall have the burden of proof.

7.2. The Parties agree that the Commission has primary jurisdiction over any interpretation, enforcement, or remedies pertaining to this Settlement. No Party may bring an action pertaining to this Settlement in any local, state, federal court, or administrative agency without first having exhausted its administrative remedies at the Commission.

7.3. This Settlement shall be governed by and interpreted in accordance with the laws of the State of California and Commission rules and regulations.

7.4. Parties agree that pursuant to Rule 51.8, this Settlement shall constitute no approval of, or precedent regarding, any legal principle or issue of law or fact in this proceeding or in any future proceeding.

7.5. CSD agrees not to initiate proceedings by any law enforcement agency against any of the Respondents based upon any fact or law alleged in I.00-01-018. However, CSD may provide information or otherwise co-operate to the extent requested by a law enforcement agency or a court of law.

7.6. The Parties agree that they will not file any application for rehearing of any order adopting the Settlement in full, or take any other action in any way inconsistent with full support of this Settlement.

7.7. The Respondents hereby jointly request that the Commission order full cooperation from the pertinent Billing Agents, Underlying Facilities Based Providers, LECs, and any other Persons or Corporations necessary to implementing this Settlement.

8. Commission Adoption

8.1. This Settlement is subject to approval and adoption by the Commission. The Parties agree to furnish such additional information, documents, and/or testimony as the Commission or CSD may request, that would be necessary to implement the Settlement and/or Joint Motion.

8.2. The Parties agree to execute (and/or shall cause to be executed) any other documents, or to take any other action as may be necessary to implement this Settlement.

9. Execution of Settlement

9.1. This Settlement may be executed in any number of counterparts and by different Parties hereto in separate counterparts, with the same effect as if all Parties had signed the same document. All such counterparts shall be deemed an original and shall together constitute the same Settlement.

9.2. This Settlement is the entire agreement among the Parties, which cannot be amended or modified without the express written consent of all the Parties.

9.3. The provisions of this Settlement are not severable. If pursuant to Rule 51.7 the Commission modifies any provision of this Settlement, all the Parties must consent to such changes. If the modifications are not acceptable to one or more of the Parties, then the Settlement is deemed rescinded. A Party shall be deemed to have consented to the Commission modification unless within FIVE (5) Days following the date of issuance of the Commission proposed modification(s), that Party notifies in writing the other Parties and files with the Commission its objection to the modification(s).

9.4. Each Party represents that it has investigated the facts and law pertaining to the matters described in this Settlement. No Party has relied or presently relies upon any

statement, promise, or representation by any other Party, whether oral or written, except as specifically set forth in this Settlement.

9.5. The Parties acknowledge and stipulate that this Settlement is fair and not the result of any fraud, duress, or undue influence by any other Party. Each Party hereby states that it has read and fully understands its rights, privileges, and duties under this Settlement. Moreover, each Party has had its respective attorney or other authorized person review the terms of this Settlement. By executing this Settlement each Party declares that the provisions herein are adequate, reasonable, and mutually agreed upon; and that they are entering this Settlement freely and voluntarily.

9.6. The undersigned hereby acknowledge and covenant that they have been duly authorized to execute this Settlement on behalf of their respective principals and that such execution is made within the course and scope of their respective agency and/or employment.

CONCLUSION

IN WITNESS WHEREOF, the Parties hereto have caused this Settlement to be duly executed by their respective authorized representative(s) as of the date hereof.

CONSUMER SERVICES DIVISION,

By: /s/ RICHARD W. CLARK Date: 7/12/01

Richard W. Clark

Director of Consumer Services Division

/s/ CLEVELAND W. LEE Date: 7/12/01

Cleveland W. Lee

Staff Counsel

Attorney for CONSUMER SERVICES DIVISION

NATIONAL TELECOMMUNICATIONS, INC. (D.B.A. FUTURE-TEL
COMMUNICATIONS); LONG DISTANCE CHARGES, INC.; AND LEAST COST
ROUTING, INC.

By: /s/ NED GERSHENSON Date: 7/12/01

Ned Gershenson,

President and/or Chief Executive Officer

/s/ NED GERSHENSON Date: 7/12/01

Ned Gershenson

/s/ DORIS FISHER

Date: 7/12/01

Doris Fisher

/s/ PATRICK E. MCMAHON

Date: 7/12/01

Patrick E. McMahon

Attorney for

National Telecommunications, Inc.

(d.b.a. Future-Tel Communications);

Long Distance Charges, Inc.;

Least Cost Routing, Inc.;

Ned Gershenson; and Doris Fisher

TEL-SAVE, INC.

By: /s/ ALOYSIUS T. LAWN IV Date: 7/12/01

Aloysius T. Lawn IV
Executive Vice-President,
Secretary and General Counsel

/s/ THOMAS J. MACBRIDE Date: 7/12/01

Thomas J. MacBride
Attorney for Tel Save, Inc.

APPENDIX A – TABULATION OF EXISTING CUSTOMERS

# of LDC customers for each LEC 3 1 00 to 8 31 00		
# of Customers	LEC	LEC ID #
62	Contel Co of CA GTE	2302
6	Citizens Util. Co. of CA	2308
601	GTE CA	2319
3	The Ponderosa Tel Co	2332
1	Roseville Tel Co	2334
2	Sierra Tel Co. Inc	2338
1	Tuolumne Tel Co	2342
0	West Tel Co. of CA	2344
1	Citizens Utility	3402
3732	Pacific Bell	9740
4409	TOTAL	

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE

SAN FRANCISCO, CA 94102-3298



**RESTITUTION PAYMENT
TO ELIGIBLE CONSUMERS**

Dear Consumer:

The Consumer Services Division (CSD) of the California Public Utilities Commission (Commission) is sending you this letter because our records indicate that you had complained concerning unauthorized switching of your toll/long distance carrier by Long Distance Charges, Inc. (LDC), and / or Least Cost Routing, Inc. (LCR). Because of such complaints, CSD investigated and the Commission and LDC and LCR have entered into a settlement.

According to the settlement, LDC and LCR have agreed to pay restitution to complainants in the amount of the enclosed check. This check is valid for a period of 90-days from the printed date of the check. You must cash or deposit this check within the 90-days, after which the check will be invalid.

Please contact CSD at 1-800-900-3985 if you have any questions regarding this letter.

Very truly yours,

Richard Clark, Director
Consumer Services Division
California Public Utilities Commission

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE

SAN FRANCISCO, CA 94102-3298



Urgent Consumer Advisory

The California Public Utilities Commission (CPUC or Commission) is sending you this advisory because our records indicate that you are a current telephone customer of Long Distance Charges, Inc. (LDC) and/or Least Cost Routing, Inc. (LCR) ¹⁸for intrastate toll calling within California or interstate long-distance telephone services.

The Commission has ordered LDC and LCR to stop providing telephone service to consumers in California, beginning on the day after _____, 2001. On or before that date, you must switch from LDC or LCR to another toll and long distance telephone service carrier of your choice. If you do not switch by _____, 2001, you may have no toll or long distance telephone service after such date.

To find out who is your current toll and long distance telephone service carrier, examine your most recent telephone billing statement. It will state the name of the telephone company billing you for toll calls within California and for long-distance, interstate calls outside of California. Or, you may call your local telephone carrier (for example, Pacific Bell or GTEC) for this information. To choose a new toll and long distance company, call your local telephone carrier, such as Pacific Bell or GTE, and notify them of your choice. Your local telephone carrier will charge you a fee for switching to another toll and long-distance carrier. Enclosed is a check for your deposit, to defray all or part of the cost for switching to another carrier.

Disregard this advisory if you determine that neither LDC nor LCR is currently your toll and/or long distance telephone service. If you have questions about this letter, you may telephone toll-free the California Public Utilities Commission, Consumers Services Division, at 1-800-900-3985.

¹⁸ LDC and LCR are also known as National Telecommunications, Inc. (d.b.a. Future-Tel Communications).

PUBLIC UTILITIES COMMISSION

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Aviso Urgente al Consumidor

Usted esta recibiendo esta carta porque su nombre se encuentra en la lista de personas que estan recibiendo servicio de telefono con Long Distance Charges, Inc. /Least Coast Routing, Inc. (LDC/LCR). Si Usted esta seguro que LDC/LCR no es su compania de toll o larga distancia, por favor ignore esta carta. Si Usted no esta seguro en cual compania tiene servicio, debe de revisar su cuenta de larga distancia. Puede llamar su compania de telefonos local (por ejemplo Pacific Bell o GTE).

El Estado de California ha ordenado a LDC/LCR que descontinue sus servicios telefonicos en este estado. LDC/LCR no podra prestarles estos servicios despues del _____, 2000. Si Usted no escoge otra compania para sus servicios de larga distancia, Usted podria perder temporalmente esos servicios. Para escoger una nueva compania de toll o larga distancia, Usted podria llamar a su compania local, pero es necesario notificarles. Si usted estan recibiendo servicio de telefono con LDC/LCR, la compania de telefonos local no les cobrara extra por cambiarse de compania telefonica para servicio de toll o larga distancia.

Si Usted tiene algun pregunta sobre el decision de la Comision, puede dejar un mensaje en la contestadora del agente especial de la Comision la Sra. Telefono: 1-800-900-3985 Es importante que Usted entienda que el agente no le puede decir si LDC/LCR es su compania de larga distancia.

SETTLEMENT CLAIMS ADMINISTRATION PLAN

Pursuant to the Settlement in I.00-01-018 (Settlement), this Settlement Claims Administration Plan (Plan) describes the duties and obligations of the Settlement Claims Administrator, Gilardi & Co., LLC (Gilardi), in processing and mailing the Restitution and the Switching Fee Payment Checks respectively to Eligible Consumers and Existing Customers. All capitalized terms used herein shall have the same meaning as specified in the Settlement.

1. **Restitution Payments.** Within FIVE (5) Days after the date of issuance of the Commission decision adopting the Settlement, Respondents shall pay the Settlement Claims Administrator the amounts specified at Paragraphs 2.1 of the Settlement. The Settlement Claims Administrator shall hold these monies in the following bank accounts, the “Restitution Account” and the “Switching Fee Payment Account,” in the manner and for the purposes set forth by the Settlement. The Settlement Claims Administrator shall act as a fiduciary of these Accounts on behalf of the Eligible Consumers and the Existing Customers.
2. **Eligible Consumers Records.** In accordance with Paragraph 3.2 of the Settlement, CSD shall provide the Settlement Claims Administrator with a list of the Eligible Consumers (i.e., names and mailing addresses), which shall be maintained in strict confidence. The Settlement Administrator shall use this data for mailing Restitution Checks to the Eligible Consumers.
3. **Existing Customers Records.** In accordance with Paragraph 4.2 of the Settlement, CSD shall provide the Settlement Claims Administrator with a list of the Existing Customers (i.e., their names and mailing addresses), which shall be maintained in strict confidence. The Settlement Claims Administrator shall use this data for mailing Switching Fee Payment Checks to the Existing Customers.
4. **Distribution of Restitution and Switching Fee Payment Checks.** The Settlement Claims Administrator shall distribute the Restitution Checks to each Eligible Consumer in an amount and in the manner described by Paragraphs 3.4 through 3.5. The Switching Fee Payment Checks shall be distributed to Existing Customers in an amount and in the manner described by Paragraphs 4.4 through 4.5. Both types of Checks shall state that they will become void if not cashed or deposited within NINETY (90) days after the date of the Check.
 - a) **Amounts Distributed.** The amount of each Restitution Check provided an Eligible Consumer shall be determined by Paragraph 3.5; the amount of Switching Fee Payment per Existing Customer, by Paragraph 4.5.
 - b) **Distribution Process.** In accordance with Paragraphs 3.4 through 3.5 and 4.4 and 4.5, the Settlement Claims Administrator shall mail via first class U.S. Mail the Restitution and the Switching Fee Payment Checks. Before mailing either

type of Checks, the Settlement Claims Administrator shall verify the Eligible Consumers' and Existing Customers' current mailing addresses with the National Change of Address Systems or by another reasonable means of updating such data. Each Restitution Check mailed shall contain in the same envelope, a CSD written explanation of the Restitution Check (see Exhibit A of the Settlement). Each Switching Fee Payment Check mailed, shall contain a CSD written Notice (see Exhibit B of the Settlement) advising Existing Customers to switch their toll/long distance provider from the Companies to another provider.

5. **Reports to the Commission.** Pursuant to Paragraphs 5.1 through 5.3, the Settlement Claims Administrator shall remit and report to the Commission its distribution and the returns of Restitution and Switching Fee Payment Checks.
6. **Undeliverable And Expired Restitution and Switching Fee Payment Checks.** As for all Restitution and Switching Fee Payment Checks mailed but returned as undeliverable for whatever reason (e.g., no current address found) or which have expired, no further action is necessary. The monies represented by such undeliverable or expired Restitution Checks shall be remitted and delivered to the Commission in a check drawn on the Restitution Account and made payable to the Commission in accordance with Paragraph 5.1. The monies represented by such undeliverable or expired Switching Fee Payment Checks shall be remitted and delivered to the Companies as stated in Paragraph 5.2.
7. **Tax Reporting.** The Settlement Claims Administrator shall perform any local, State or Federal tax-reporting obligation that results from establishing and/or maintaining the Restitution or the Switching Fee Payment Accounts.
8. **Questions in Implementation.** Any material questions regarding implementation of this Plan not addressed here or in the Settlement Agreement shall be directed to the Consumer Services Division.
9. **Compensation of the Settlement Claims Administrator.** According to the Fee Agreement between the Respondents and the Settlement Claims Administrator, the Settlement Claims Administrator shall receive no more than \$ 17,000.00 for processing and mailing of the Restitution Checks; and no more than \$14,450.00 for the processing and mailing of the Switching Fee Payment Checks.