

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



September 27, 2002

TO: PARTIES OF RECORD IN CASE 02-01-007, INVESTIGATION 02-01-024

This proceeding was filed on January 7, 2002, and is assigned to Commissioner Carl Wood and Administrative Law Judge (ALJ) James C. McVicar. This is the decision of the Presiding Officer, ALJ McVicar.

Any party to this adjudicatory proceeding may file and serve an Appeal of the Presiding Officer's Decision within 30 days of the date of issuance (i.e., the date of mailing) of this decision. In addition, any Commissioner may request review of the Presiding Officer's Decision by filing and serving a Request for Review within 30 days of the date of issuance.

Appeals and Requests for Review must set forth specifically the grounds on which the appellant or requestor believes the Presiding Officer's Decision to be unlawful or erroneous. The purpose of an Appeal or Request for Review is to alert the Commission to a potential error, so that the error may be corrected expeditiously by the Commission. Vague assertions as to the record or the law, without citation, may be accorded little weight.

Appeals and Requests for Review must be served on all parties and accompanied by a certificate of service. Any party may file and serve a Response to an Appeal or Request for Review no later than 15 days after the date the Appeal or Request for Review was filed. In cases of multiple Appeals or Requests for Review, the Response may be to all such filings and may be filed 15 days after the last such Appeal or Request for Review was filed. Replies to Responses are not permitted. (See, generally, Rule 8.2 of the Commission's Rules of Practice and Procedure.)

If no Appeal or Request for Review is filed within 30 days of the date of issuance of the Presiding Officer's Decision, the decision shall become the decision of the Commission. In this event, the Commission will designate a decision number and advise the parties by letter that the Presiding Officer's Decision has become the Commission's decision.

/s/ CAROL A. BROWN
Carol A. Brown, Interim Chief
Administrative Law Judge

CAB:tcg

C.02-01-007, I.02-01-024 ALJ/POD-JCM/tcg

Attachment

PRESIDING OFFICER'S DECISION (Mailed 9/27/2002)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

The Utility Consumers' Action Network (UCAN),

Complainant,

vs.

Pacific Bell Telephone Company,

Defendant.

Case 02-01-007
(Filed January 7, 2002)

Investigation on the Commission's Own Motion into the Operations, Practices, and Conduct of Pacific Bell Telephone Company (U 1001 C), Pacific Bell Internet Services, and SBC Advanced Solutions, Inc. (U 6346 C) to Determine Whether They Have Violated the Laws, Rules and Regulations Governing the Inclusion of Charges for Products or Services on Telephone Bills.

Investigation 02-01-024
(Filed January 23, 2002)

Michael Shames, Lee Biddle, Alan Mansfield and Hallen D. Rosner, Attorneys at Law, for The Utility Consumers' Action Network, complainant.

Garrett Wong, James B. Young, and Ed Kolto, Attorneys at Law, and Cynthia Wales for Pacific Bell Telephone Company, defendant and respondent.

William H. Booth and Merrie M. Cavanaugh, Attorneys at Law, for SBC Advanced Solutions, Inc., respondent.

Keith Epstein, Marilyn Salmon, Steven D. Rathfon, and
Merrie M. Cavanaugh, Attorneys at Law, for Pacific
Bell Internet Services, respondent.

James Anthony, Attorney at Law, for The Utility
Reform Network, interested party.

Travis T. Foss and Laura Tudisco, Attorneys at Law,
for Consumer Services Division.

OPINION ADOPTING SETTLEMENT

Summary

Pacific Bell Telephone Company (Pacific Bell), Pacific Bell Internet Services, (PBI), SBC Advanced Solutions, Inc. (ASI), Utility Consumers' Action Network (UCAN) and the Commission's Consumer Services Division (CSD) have jointly proffered an uncontested settlement agreement in this consolidated complaint and investigation proceeding involving the companies' billing for DSL services.¹ Under the settlement agreement, Pacific Bell, PBI, and ASI (jointly, Respondents) acknowledge their billing problems and reporting deficiencies, and agree to pay a \$27,000,000 penalty to the State General Fund. The settlement describes the many measures Respondents have taken and will take to correct their problems and ensure that they do not recur. The Commission adopts the settlement, the full text of which is set forth in Appendix A, as resolving all issues in the complaint and investigation, and closes the proceeding.

¹ DSL is an acronym for asymmetrical Digital Subscriber Line service, one of the underlying technologies for high speed Internet access and broadband service.

Background

The Respondents

Pacific Bell, a California corporation, is a subsidiary of SBC Communications Inc. Pacific Bell is California's largest local exchange carrier. PBI, also a California corporation, is a subsidiary of Pacific Bell and an Internet service provider (ISP) with no Commission operating authority.² ASI, a Delaware corporation and subsidiary of SBC Communications Inc., is a Commission-certificated competitive local exchange carrier in California and operates in the entire thirteen-state SBC region. ASI states that its principal product in California today is wholesale DSL transport service sold to ISPs for use in high speed Internet access arrangements.

Pacific Bell began offering DSL transport to business customers in 1998 and to residential customers in 1999, both for use with their chosen ISPs. At the same time, it also sold directly to ISPs at volume prices. In February 2000, PBI began offering consumers a bundled ISP package of DSL transport, which it purchased from Pacific Bell, and Internet access. PBI used Pacific Bell's billing and collection service and customers saw a single price for the bundled package on the PBI page of their Pacific Bell bills. In May 2000, Pacific Bell transferred its DSL transport responsibilities to ASI (referred to as "the SBC-ASI conversion"), reportedly as a result of conditions imposed by the Federal Communications Commission in the SBC and Ameritech merger proceeding. Thereafter, ASI initially provided DSL transport to both end-user customers and ISPs, including PBI. Pacific Bell continued to provide billing and collection services to both PBI and ASI. In some cases ASI's transport services and PBI's Internet services

² PBI also does business as SBC Internet Services.

appeared on users' bills split onto separate ASI and PBI pages, and in others ASI billed its transport to the ISP. Where that ISP was PBI, PBI in turn billed the end-user through its page on Pacific Bell's bills. By the end of 2001, ASI had moved to a purely wholesale model and today no longer bills DSL transport to end-users.

The Issues

On January 7, 2002, UCAN filed complaint Case (C.) 02-01-007 against Pacific Bell setting forth various allegations concerning Pacific Bell's billing, customer service, disconnection and marketing practices, and tariff inadequacies, all relating to Pacific Bell's DSL service.

On January 23, 2002, the Commission issued Order Instituting Investigation (I.) 02-01-024 into, among other things, various DSL and Internet service billing and customer service-related practices by Respondents Pacific Bell and its affiliates, PBI and ASI. The investigation was to afford CSD a forum to advance its evidence of violations of the law and Commission orders, and for Pacific Bell, PBI and ASI to respond.

UCAN's complaint and the Commission's investigatory order set forth some allegations that overlapped and some that were unique. The Assigned Commissioner's Scoping Ruling summarized the resulting issues:³

1. Did any or all of the Respondents violate Section 2890 by placing charges on a subscriber's telephone bill for products or services the purchase of which the subscriber did not authorize?

³ The section citations here and elsewhere in today's decision area to the Public Utilities Code unless otherwise noted.

2. Did Pacific Bell violate Ordering Paragraph 2 of Decision (D.) 00-03-020 as modified by D.00-11-015, which requires billing telephone companies to maintain accurate and up-to-date records of all customer complaints made to or received by them for charges for products or services provided by a third party, including corporate affiliates?
3. Did Pacific Bell violate Ordering Paragraph 2 of D.00-03-020 as modified by D.00-11-015, which requires billing telephone companies to create a calendar month summary report of all customer complaints received each month for each service provider and billing agent for charges by a third party, including corporate affiliates, and provide it to the Director of Consumer Services Division quarterly?
4. Did Pacific Bell violate Section 702 by violating Ordering Paragraph 2 of D.00-03-020 as modified by D.00-11-015?
5. Did Pacific Bell violate Section 2890 or D.00-03-020 as modified by D.00-11-015 by threatening customers with disconnection or toll restriction due to unpaid DSL charges?
6. Did Pacific Bell violate D.00-03-020 as modified by D.00-11-015 by failing to timely file and serve advice letters to conform its tariffs to the portions of those orders eliminating its authority to disconnect local service for nonpayment of interexchange service?
7. Should Pacific Bell and /or ASI be ordered to pay reparations pursuant to Section 734?
8. Should any or all of the Respondents be fined pursuant to Sections 2107 and 2108, or punished for contempt pursuant to Section 2113, for violations of the Public Utilities Code or any order, decision, rule, direction, demand or requirement of the Commission?

Procedural History

Both the complaint and the investigation were preliminarily designated as adjudicatory proceedings expected to require hearing. Assigned Administrative

Law Judge (ALJ) McVicar consolidated the two proceedings by a ruling issued on February 8, 2002, and Assigned Commissioner Wood and ALJ McVicar conducted a prehearing conference on February 19, 2002.

The scope of the proceeding was as established in I.02-01-024, Ordering Paragraph 1, and C.02-01-007. The Assigned Commissioner's scoping ruling defined the issues as set forth above and designated the ALJ as the presiding officer.

On April 8, 2002, in response to a UCAN notice of intent, the ALJ issued a ruling finding UCAN eligible to claim intervenor compensation under Section 1801 et seq.

In preparation for evidentiary hearings, CSD and UCAN submitted extensive prepared testimony, including dozens of declarations from California consumers who had made complaints alleging DSL Internet service-related billing errors, an analysis of hundreds of DSL billing-related consumer complaints to the Commission's Consumer Affairs Branch, and analyses of many thousands of like complaints to Respondents' organizations. Respondents provided prepared testimony from eight individuals familiar with the company organizations and practices that played a role in their DSL billing problems.

The week before evidentiary hearings were scheduled to begin, the settling parties contacted the ALJ to report that they were engaged in negotiations that they believed could successfully resolve all issues. The ALJ agreed to adjourn the first week of hearings on a day-to-day basis to allow them to continue their negotiations, subject to beginning evidentiary hearings immediately if and when any party reported that they were no longer making satisfactory progress. At the last day of evidentiary hearing on July 3rd, the parties answered questions from the ALJ on the latest, nearly-final version of the settlement. They executed the

final settlement agreement and filed it with an accompanying motion later that afternoon.

Under Rule 51.1(b), prior to signing any settlement, the settling parties must convene at least one conference with notice and opportunity to participate provided to all parties. They did so in this case. The Utility Reform Network (TURN), the only party not signing the settlement, was not active in the proceeding and has informed the other parties and the ALJ that it neither supports nor opposes the settlement.

The Settlement

Settlement Overview

The settlement is attached as Appendix A to this decision. In Section 1, Joint Statement of the Case, the settling parties provide a 69-paragraph summary of the problems that led to this proceeding, what caused those problems, how Pacific Bell, PBI and ASI responded, and what corrective actions have been and will be taken. Those explanations need not be repeated here. Subsequent settlement sections describe more specifically the settling parties' intended remedies. Section 2 calls for: credits for the next two years of either \$25 or one month of DSL service for customers who experience future DSL billing errors, as specified, double those amounts when the problem is not timely corrected, and customer recourse to the Commission's expedited complaint process for resolving related disputes; a tracking and reporting requirement; applicability to all residential and up to 20-line business customers; and a 60-day implementation timeframe and two-year sunset provision. Section 3 describes operational improvements including: Pacific Bell business and residential DSL Internet billing centers dedicated to handling billing inquiries for PBI's DSL

Internet services⁴; improved disconnection notices; upgraded DSL order-confirmation, billing, collection, problem resolution, and customer complaint recording and reporting procedures; and restrictions for two years on using coupon rebates and gift or debit cards as DSL promotional offerings. In Section 4, PBI agrees to maintain its billing and collection agreement with Pacific Bell until at least July 1, 2004, thus preserving for at least that period the billing and collection-related improvements in the settlement.

In settlement Section 5, Respondents agree to pay \$27,000,000 into the State General Fund within 30 days after the Commission's approval of the settlement agreement.

Specific Issues

Wrongful DSL Billing Practices

In settlement Section 1, the parties have agreed to a statement regarding complaints: "During the period of January 2000 through the present, an estimated 30,000 to 70,000 Respondents' customers complained about and / or experienced billing errors." They go on to characterize "certain of these complaints" as falling into five categories that generally parallel wrongful billing practices set forth in I.02-01-024 and which constitute violations of Section 2890(a).⁵

⁴ While Section 3 does not say so, another section of the settlement and the accompanying motion make it clear that these DSL Internet billing centers *will not sell products and services*. See, e.g., settlement paragraph 47 and pages 6 and 11 of the motion.

⁵ § 2890(a): "A telephone bill may only contain charges for products or services, the purchase of which the subscriber has authorized."

In addition, Respondents acknowledge in this same settlement Section 1 that certain of those complaints fall into a sixth category: “[B]illing errors were not resolved in a timely manner and /or required multiple calls and substantial investment of time to resolve.” Further confirmation of the problem is provided in settlement Section 1, paragraph 11: “[C]ertain customers experienced... unresponsive service, such as long waiting queues, delays on hold, transfers to other departments, unreturned calls, full voice mail boxes, [and] inability to resolve the problem without having to wait on the phone.” This is also one of the allegations in UCAN’s complaint, and constitutes violation of Section 2890(d)(2)(D).⁶

Disconnection and Toll Restriction

UCAN alleged that Pacific Bell improperly threatened local service disconnection or toll restriction for disputed DSL Internet service charges in violation of Section 2890(c)⁷ and D.00-03-020 as modified by D.00-11-015.⁸ UCAN

⁶ § 2890(d)(2)(D): “Any person, corporation, or billing agent that charges subscribers for products or services on a telephone bill shall... provide a means for expeditiously resolving subscriber disputes over charges for a product or service, the purchase of which was not authorized by the subscriber....”

⁷ § 2890(c): “The Commission may only permit a subscriber’s local telephone service to be disconnected for nonpayment of charges relating to the subscriber’s local exchange telephone service, long distance telephone service within a local access and transport area (intraLATA), long distance telephone service between local access and transport areas (interLATA), and international telephone service.”

⁸ D.00-03-020 / D.00-11-015, Ordering Paragraph 4: “Carriers of Last Resort, as defined in D.96-10-066, shall file and serve advice letters that contain revised tariffs no later than 180 days after the effective date of this order that conform to the portions of this order eliminating such carriers’ authority to disconnect basic residential and single line business, Flat Rate and /or Measured Rate service, as defined in D.96-10-066, Appendix B, page 5, for nonpayment of any charge other than nonpayment of non-recurring and recurring charges for basic residential and single line business, Flat Rate and Measured

Footnote continued on next page

further alleged that Pacific Bell failed to update its tariffs to reflect the Commission's revised disconnection policies, in violation of D.00-03-020. These were issues #5 and #6 in the Assigned Commissioner's Scoping Ruling above.

Respondents' confirmation that there was a toll restriction and disconnect notice problem is provided in settlement Section 1, paragraph 11: "[C]ertain customers experienced the following: inappropriate application of toll restriction for outstanding DSL-related charges; [and] disconnect notices were sent to customers that might have led them to believe that their basic service would be disconnected for non-payment of DSL Internet charges or that a security deposit was required." That Respondents acknowledge the problem is further confirmed by the accompanying motion, at pages 5 and 6.

The same cannot be said about UCAN's allegation (which was not also an I.02-01-024 allegation) that Pacific Bell failed to update its tariffs with regard to disconnection practices, since neither the settlement nor the accompanying motion make mention of it. Additionally, UCAN did not prepare direct or rebuttal testimony pressing this issue, nor did any other party's prepared testimony mention it. With neither factual information in the proceeding record to rely on nor further mention of a problem in the settlement, we see no need to pursue the tariff-filing allegation.

The Commission at one time did have a policy of permitting carriers to disconnect local exchange service for non-payment of certain other, non-local exchange services. That changed with Section 2890(c) and D.00-03-020 as modified by D.00-11-015:

Rate service, including mandated surcharges and taxes calculated on same. Mandated charges do not include charges that are elective for the carrier to recover. Pending such advice letter filings, current tariffs shall remain in effect."

For these reasons, we intend to limit disconnection of basic residential and single line business service (i.e., Flat Rate and / or Measured Rate services) to nonpayment of non-recurring and recurring charges for basic residential and single line business services, including all mandated surcharges and taxes.

While those two decisions were clear in stating the new policy, they did not immediately forbid the former practice; nor is whatever was formerly an acceptable practice defined in the record of this proceeding. Rather, they gave carriers of last resort 180 days to file advice letters with new, conforming tariff provisions. Since there is no reference in the record of this proceeding to any resulting Pacific Bell advice letter or tariff, we decline to conclude that there was a specific Public Utilities Code, Commission order, or tariff violation associated with issues #5 and #6 of the Assigned Commissioner's Scoping Ruling. What we do know is that the settling parties have agreed that there was a toll restriction and disconnect notice problem, as evidenced by their settlement Section 1, paragraph 11, statement quoted above, and that the measures set forth in the settlement are intended to remedy it.

Recordkeeping and Reporting

In D.00-03-020, Ordering Paragraph 2, we adopted a set of Subscriber Complaint Reporting Rules. In I.02-01-024, Ordering Paragraph 1(b), we sought to determine whether Pacific Bell as a billing telephone company violated D.00-03-020 by failing to maintain accurate and up-to-date records of all customer complaints made to or received by it for charges for products or services provided by a third party, including corporate affiliates, as those rules require. In Ordering Paragraph 1(c), we sought to determine whether Pacific Bell violated those decisions by failing to create a calendar month summary report of all customer complaints received each month for each service provider and

billing agent for charges by a third party, including corporate affiliates, and to provide it to the Director of CSD quarterly. A public utility's failure to comply with a Commission order or rule may constitute a violation of Section 702,⁹ a possibility raised in Ordering Paragraph 1(d).

In settlement Section 1, paragraphs 30 through 44 set forth the parties' statement of facts which constitute Respondents' admission that they did not always maintain the records and submit accurate reports as D.00-03-020 and D.00-11-015 require. This is summarized in the settlement's page 1 Joint Statement of the Case as, "Respondents acknowledge to the Commission that certain billing errors and reporting deficiencies occurred that were unacceptable and should not have happened." Further confirmation is provided in the accompanying motion, which states that the settlement's new tracking and reporting requirements are for Pacific Bell's "failure to report to CSD all complaints against its affiliates SBC-ASI and PBI...", and, "This action is expected to eliminate future violations of D.00-03-020 as alleged by CSD in the OII."

We conclude that Pacific Bell did violate Ordering Paragraph 2 of D.00-03-020 as modified by D.00-11-015, and thus Section 702.

Further, we note that, although settlement Section 2.5 calls for additional customer complaint tracking and reporting, nothing in the settlement relieves Pacific Bell as a billing telephone company of its responsibility to comply

⁹ § 702: "Every public utility shall obey and comply with every order, decision, direction, or rule made or prescribed by the commission in the matters specified in this part, or any other matter in any way relating to or affecting its business as a public utility, and shall do everything necessary or proper to secure compliance therewith by all of its officers, agents, and employees."

with the tracking and reporting requirement we established in Ordering Paragraph 2 of D.00-03-020 as modified by D.00-11-015. These are different requirements, established for different purposes, and the D.00-03-020 reports are still needed.

Standard of Review

Five parties have tendered an “uncontested settlement” as defined in Rule 51(f), *i.e.*, a settlement that “...is not contested by any party to the proceeding within the comment period after service of the [] settlement on all parties to the proceeding.” Rule 51.1(e) requires that settlement agreements be reasonable in light of the whole record, consistent with the law, and in the public interest.

This settlement is tendered pursuant to Rule 51, and it is under this standard of review set forth in Rule 51.1(e) that we will evaluate it.

Reasonable in Light of the Whole Record

The settling parties spent considerable time and effort conducting discovery, analyzing complaint records and other documentation, and understanding and explaining the events that led to this proceeding. They prepared and served extensive written testimony and exhibits setting forth and supporting their positions before evidentiary hearings began. That prepared material was admitted into the record by agreement, and it shows all of the parties to have been vigorous and capable participants on behalf of their constituencies. The parties’ Joint Statement of the Case (settlement Section 1) provides a summary that reflects the record in this proceeding.

Respondents have acknowledged that the problems consumers experienced, and their failure to report all consumer complaints as the Commission required, were unacceptable and should not have happened.

The settling parties have considered the corrective measures already taken by Respondents to address those problems and have described those measures at length in the settlement agreement. In addition, the settlement agreement prescribes other remedies, such as the billing credits and operational improvements set forth in settlement Sections 2 and 3, to minimize the likelihood of similar problems in the future and to compensate consumers if they do recur. Finally, Respondents have agreed to pay a substantial penalty in consideration of the problems they have acknowledged.

The proposed settlement agreement is based closely on the record the parties have developed, and the remedies it proposes are commensurate with the problems documented. We conclude that it is reasonable in light of the whole record.

Consistent with the Law

In I.02-01-024, Ordering Paragraphs 1(e) and 1(f), we stated that we would consider whether “Pacific Bell and / or SBC-ASI should be ordered to pay reparations pursuant to ... Code section 734; [and] any or all of the Respondents should be fined pursuant to ... sections 2107 and 2108 for violations of the Public Utilities Code or other order, decision, rule, direction, demand or requirement of the Commission.” We address each of these sections here.

In the analysis above, we concluded that some or all of the Respondents have violated Sections 2890(a) and 2890(d)(2)(D), D.00-03-020 as modified by D.00-11-015, and Section 702.

Settlement Section 5 states,

Pursuant to Public Utilities Code sections 2107 and 2108 and the California Public Utilities Commission’s Rules of Practice and Procedure Rule 51, Respondents agree to pay \$27,000,000 (twenty-seven million dollars) into the State General Fund

within 30 days after the Commission's approval of this Agreement.

While the settlement itself provides no additional statement of the purpose of this provision, the joint motion does: "Respondents have also agreed to pay a penalty in the amount of \$27,000,000 in acknowledgement of the billing errors that occurred and to ensure future compliance with all applicable laws relating to unauthorized billing." We noted above Respondents' acknowledgement that an estimated 30,000 to 70,000 customers complained about and / or experienced billing errors. The settlement provides no count of the recordkeeping and reporting errors, but their number seems likely to have been small in comparison. The 30,000 to 70,000 figure constitutes customers who "complained about and / or experienced billing errors." We cannot assume that every customer who suffered a billing error actually noticed it or complained, nor can we assume that every complaint represented a true violation. However, even though the absolute number of violations cannot be accurately determined, the 30,000 to 70,000 range the parties have agreed to indicates the *scale* of the problem and is sufficient for our purposes here.

Section 2107 provides for penalties ranging from \$500 to \$20,000 for each offense, and Section 2108 provides that each violation, and each day's continuance of a violation, is a separate offense. The parties have not indicated how they derived the \$27,000,000 total penalty figure, but if Respondents were penalized \$500 for each offense, the total penalty would equate to 54,000 offenses, well within the range indicated. We conclude that the \$27,000,000 penalty the parties propose is consistent with Sections 2107 and 2108.

Section 734 allows the Commission to award reparations where a utility has charged an unreasonable, excessive, or discriminatory amount for a product or service. Settlement Section 1, paragraph 23 states, "Except perhaps

for open complaints, the parties are not aware of any billing complaints that were not ultimately credited or adjusted by Respondents.” The motion echoes that thought as support for the parties’ belief that “Reparations or restitution to consumers are not warranted in this case.” The parties have thus taken into account our I.02-01-024, Ordering Paragraph 1(e) directive to determine the need for reparations pursuant to Section 734, and have recommended that reparations not be ordered. Nothing in the record would lead us to conclude otherwise, so we concur. We note, however, that the settlement does not absolve Respondents of responsibility for reparations on a case-by-case basis where individual customers may in the future present meritorious claims based on Respondents’ past or future wrongful billings, nor would we have approved the settlement on any other basis.

By this decision, we also do not validate the corrective actions identified in paragraphs 45 through 69 and do not make any findings about whether they have been or will be effective in correcting the problems identified. Respondents remain responsible for adopting any and all necessary changes to ensure they are for the future in full compliance with all legal requirements.

The Parties assert that the settlement agreement is consistent with the law. After reviewing the settlement agreement, we agree.

In the Public Interest

The settling parties aver that the proposed settlement agreement is in the public interest because it protects consumers in many ways, and provides a substantial penalty to ensure future compliance with all applicable laws. We agree. Specifically, we observe that the parties have examined every allegation set forth in our investigatory order and provided their conclusions with respect to each. Where there were problems with Respondents’ operations and practices that harmed consumers, those problems have been exposed and measures taken

to ensure they do not recur. Where there were violations of law, those violations have been acknowledged and an appropriate penalty applied. One of the important advantages any settlement provides is avoiding the time, the expense and the uncertainty of continued litigation. Here, the parties have addressed every issue that led us to open the investigation. Our approval of this settlement will now allow Respondents to implement the corrective measures the settlement outlines, and our staff and the other parties to pursue consumer protection needs in other areas.

For these reasons, we find the proposed settlement to be in the public interest and will approve it.

Assignment of Proceeding

This matter is assigned to Commissioner Wood and ALJ McVicar. ALJ McVicar is the presiding officer for this proceeding.

Findings of Fact

1. Respondents have acknowledged that their customers experienced billing errors in which subscribers' telephone bills contained charges for products or services those subscribers had not authorized.
2. The number of instances of unauthorized billing has not been precisely quantified, but it is substantial.
3. Respondents have acknowledged that they did not always resolve billing errors in a timely manner, and that subscribers had to make multiple calls and substantial investments of time to resolve them.
4. Respondents have acknowledged having inappropriately applied toll restriction for outstanding DSL-related charges, and having sent disconnect notices that might have led customers to believe that their basic service would be disconnected for non-payment of DSL Internet charges or that a security deposit was required.

5. Respondents have acknowledged that Pacific Bell did not always maintain the records and submit accurate reports that D.00-03-020 as modified by D.00-11-015 requires.

6. The problems experienced by consumers caused by Respondents' conduct were unacceptable.

7. The parties are not aware of any billing complaints that were not ultimately credited or adjusted by Respondents, or of any reparations that may be due under Section 734.

8. The proposed settlement agreement is based on the record the parties have developed, and the remedies it proposes are commensurate with the problems they have documented.

9. The settlement presents a reasonable resolution of all of the issues in this proceeding.

10. TURN neither supports nor opposes the settlement.

11. There is no known opposition to the settlement.

Conclusions of Law

1. The proposed settlement proffered by Pacific Bell, PBI, ASI, CSD, and UCAN is an uncontested settlement as defined in Rule 51(f).

2. Some or all Respondents have violated Section 2890(a) by placing on subscribers' bills charges for products or services the purchase of which those subscribers had not authorized.

3. Some or all Respondents have violated Section 2980(d)(2)(D) by failing to provide a means for expeditiously resolving subscriber disputes over charges for a product or service the purchase of which was not authorized by the subscriber.

4. Pacific Bell has violated Ordering Paragraph 2 of D.00-03-020 as modified by D.00-11-015 by failing to maintain records and submit accurate reports as required.

5. Pacific Bell has violated Section 702 by failing to comply with D.00-03-020 as modified by D.00-11-015.

6. The \$27,000,000 penalty Respondents have agreed to pay into the State General Fund under Sections 2107 and 2108 is consistent with the limitations set forth under Section 2107.

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

8. The settlement should be approved.

9. For administrative efficiency, this order should be made effective today.

O R D E R

IT IS ORDERED that:

1. The Joint Motion of Pacific Bell Telephone Company, Pacific Bell Internet Services, SBC Advanced Solutions, Inc., Utility Consumers' Action Network and the Commission's Consumer Services Division for Approval of Settlement Agreement is granted. The settlement agreement attached to this decision as Appendix A is approved.

2. This proceeding is closed.

This order is effective today.

Dated _____, at San Francisco, California.

APPENDIX A

[Appendix A to C0201007, I0201024 - Settlement Agreement](#)