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Decision 01-04-036 April 19, 2001

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation of USP&C to Determine Whether it has Violated Public Utilities Code Section 2889.9 by Failing to Provide Commission Staff with Requested Information and Whether the Commission Should Order California Telephone Companies to Cease Providing Billing and Collection Services to USP&C.	Investigation 99-10-024 (File October 21, 1999)

OPINION AND ORDER TO SHOW CAUSE

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Stephanie E. Krapf, Attorney at Law, for Pacific Telesis Group, Susan E. Brown, Attorney at Law, for Latino Issues Forum, and Chris Witteman, Attorney at Law, for The Greenlining Institute, intervenors.
Paul Stein, Attorney at Law, for The Utility Reform Network, interested party.
Travis Foss, Attorney at Law, for Consumer Services Division.

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OPINION AND ORDER TO SHOW CAUSE

Summary

The record in this proceeding shows that from January 1998 to June 1999, respondent, USP&C, Inc. (USP&C), served as the billing agent for $51.5 million of billings to California customers. USP&C presented billings for service providers that conducted business under several different unregistered aliases, and that also used up to four different names for identical services. Of the total amount billed by USP&C during this period, $27 million (52%) was refunded at the customer's request. The remaining $24.5 million, however, was collected by USPC, and was forwarded to the service providers, net of the fees charged by USP&C.

In this decision, the Commission finds that the respondent, USP&C, Inc. (USP&C), violated Public Utilities Code[1] §§ 2890(e)(2)(A) and (B), and imposes a fine of $1,750,000. The Commission also approves a settlement agreement between its Consumer Services Division (CSD) and USP&C that provides for USP&C to pay an additional fine of $43,000. The Commission orders all California Local Exchange Carriers (LECs) to cease permanently providing USP&C billing and collection services. The Commission also orders USP&C to show cause why it (1) should not be required to disgorge all amounts retained from unauthorized billings, and (2) should not be fined for failing to comply with §§ 2889.9 and 2890. The decision also requires Pacific Bell to enforce its Billing and Collections tariff to the letter and in a timely manner.

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[1] All citations are to the Public Utilities Code unless otherwise indicated.

Procedural Background

In the order instituting this investigation, the Commission stated that it had received a declaration from the CSD staff that alleged that:

- From January to July 1999, USP&C billed for companies responsible for 30% of all complaints regarding billing of unauthorized charges reported to Pacific Bell;
- During 1998 and from January to August 1999, 52% of all amounts billed by USP&C was refunded to customers at the customers' request, indicating to staff that an excessive amount of unauthorized billing was occurring;
- USP&C had failed to respond to staff's data request for over five months;
- USP&C had not identified all the companies for which it was billing; and
- Products and services being billed were not clearly and adequately described on customers' bills.

Based on these factual assertions, CSD further alleged that: (1) USP&C had violated § 2889.9 by failing to provide CSD with requested information; (2) USP&C had violated § 2890 by failing to provide "clear and concise descriptions of all products being billed," and (3) USP&C had violated § 2890 by failing to include on the bill the "name of the party responsible for generating the charge."

On December 1, 1999, the assigned Commissioner and Administrative Law Judge (ALJ) held a prehearing conference (PHC). The respondent appeared as did the Commission's Consumer Services Division (CSD) and Pacific Bell. The Latino Issues Forum and the Greenlining Institute also submitted formal appearances as intervenors at the PHC.

On December 3, 1999, the Assigned Commissioner issued his scoping memo for the proceeding. The scoping memo set out the procedural schedule and indicated that the assigned ALJ would be the presiding officer.

On January 7, 2000, CSD and USP&C filed a joint motion seeking Commission approval of a settlement agreement between them, covering only those issues arising from CSD's allegations that USP&C had violated § 2889.9(f) by failing to provide Commission staff with requested information. The settlement agreement is Attachment A to this decision. The settlement agreement provides that USP&C will pay a fine of up to $114,000 to the General Fund of the State of California. Upon Commission approval of the settlement agreement, USP&C will immediately pay $43,000. The remaining amount, $71,000, would be suspended pending USP&C's compliance with additional data requests in this proceeding.

On February 17, 2000, both CSD and USP&C filed motions stating, as to the matters not covered by the settlement, that there were no disputed issues of material fact. Each party sought a judgment in its favor without hearings. This matter having been heard, both motions are moot and, therefore, are denied.

On April 11 and 12, 2000, the presiding officer conducted evidentiary hearings. CSD presented its Supervisor of the Utility Enforcement Unit, Mark Clairmont, who testified regarding the results of his investigation of USP&C. USP&C presented its Telco Relations Manager, Terry Stock. Stock is an employee of BMSI, Inc., a firm that USP&C has contracted with for daily management functions. She testified that USP&C complied with all requirements for billing imposed by LECs.

Following the conclusion of hearings, the parties, other than Pacific Bell, filed initial briefs, and all parties filed reply briefs.

On October 20, 2000, the presiding officer issued her Presiding Officer's Decision (POD). USP&C, CSD, and Pacific Bell each filed appeals of the POD. Every issue raised by each appeal has been carefully reviewed and considered. Where warranted, changes have been made to the text of this decision.

Factual Background

1. USP&C's Business Practices

USP&C is a Delaware corporation with its principal place of business in Kansas City, Missouri. USP&C is an aggregator of billings for telecommunications-related services, such as voicemail. USP&C does not provide the telecommunications-related services to end-users; rather, USP&C serves as a billing agent between these service providers and the LEC, such as Pacific Bell, who actually bills the customer. USP&C aggregates billing information from several such service providers, prepares the information in the proper computer format, and submits it to the LEC for inclusion on customers' local telephone bills.

2. USP&C's Relationship with Pacific Bell

The LECs provide billing and collection services to billing agents pursuant to Commission-approved tariffs. Pacific Bell's tariff for its billing and collection customers is Schedule Cal. P.U.C. 175-T. This tariff sets out the terms and conditions under which Pacific Bell will provide billing services, including the following requirements:

For telecommunications related services,

> "Section 8.5.5 Obligations of the Customer[2]
>
> (B) All Transactions submitted by the Customer will be accurate and consistent with the Customer service requested by and provided to the end user."

For Message Toll Service calls,

> "Section 8.3.5 Obligations of the Customer
>
> All Messages submitted by the Customer for billing will be accurate and consistent with the Customer service requested by and provided to the end user including the telephone number actually dialed by the end user."

Pacific Bell, Schedule Cal. P.U.C. No. 175-T, Sheet 522 and 484. These provisions place the obligation squarely on USP&C to submit only accurate and authorized charges to Pacific Bell.

In addition to the tariff, Pacific Bell signs a billing and collection services contract with each of its billing and collection customers. The Agreement for the Provision of Billing and Collection Services between Pacific Bell and USP&C, Inc, dated August 11, 1998 (Billing Agreement) is included in the record.[3] Among the items set out in the Billing Agreement are customer complaint and refund standards, the violation of which can result in termination of the Billing Agreement. Specifically, § XX of the Billing Agreement provides that the agreement may be terminated if Pacific Bell receives more than one complaint per 30,000 bills rendered, or USP&C's refund rate to customers exceeds 15% of the total amount billed.

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[2] The "customer" is the billing and collection services customer, such as a billing agent, not the end-user customer who actually receives the bill.

[3] This agreement appears to be an amendment to an earlier agreement, as the record shows that Pacific Bell was billing for USP&C in January 1998.

The record contains USP&C's customer refund rates from January 1998 to August 1999. USP&C's refund rates always exceeded 15% of the total amount billed, ranging from 36.5% to 69.02%, with an average of 52% for the entire period. In response to Pacific Bell's repeated written and verbal instructions to improve the refund rate, USP&C stated that (1) it was terminating contracts with service providers that exhibited high refund rates, (2) Pacific Bell's refund totals contained duplicate credits, (3) USP&C had a liberal refund policy; and (4) it was attempting to gain new billing customers that provided only "1+" services, which have a lower refund rate, to "dilute" its refund levels. In December 1999, Pacific Bell ceased to provide billing services to USP&C.

3. USP&C's Relationship with Service Providers

As a billing agent, USP&C aggregates the billings from numerous service providers and submits the charges to Pacific Bell. Pacific Bell requires a billing agent, such as USP&C, to obtain a Carrier Identification Codes (CIC) for record-keeping purposes. Pacific Bell does not require each service provider whose billings USP&C aggregates to obtain a CIC. Instead, a service provider may bill under USP&C's CIC; such a service provider is referred to as a sub-CIC.

USP&C's Billing Agreement with Pacific Bell sets up an approval process for sub-CICs. The sub-CIC must complete and submit a Pacific Bell Billing and Collections Customer or Sub-Entity Affidavit in which the sub-CIC states, among other things, that it has engaged in no deceptive practices and that all billings that will be submitted are legally owed by the end-user customer. Along with the affidavit, the sub-CIC must also prepare and submit an Information Form. Some items the form requests are: names, addresses, and phone numbers of all principals in the organization, its billing and regulatory history, including refund percentages, and proof that all fictitious business name statements are registered and filed with the applicable jurisdiction.

For each service the sub-CIC proposes to bill, the sub-CIC must submit to Pacific Bell a "SWB/PB/NB Misc Charge/Enhanced Service Billing Request Form." This form requires the name of the CIC and sub-CIC, the 12-character product name which will appear on the end-user customers' bills, a description of the service, its price, and means of advertising. Copies of all advertising materials must be attached.

Examples of several of USP&C's sub-CICs are set out in the following table:

Company Name	Name On Bill	Service Billed As	Description of Service
Spring Telecom, Inc.	Progressive Technologies	"Call Mgr Plus"	Call Manager Plus is a personal 800 number service with optional electronic voicemail.
Spring Telecom, Inc.	Voiser Telcom	"Dial Plan"	Dial Plan is a personal 800 number service with optional electronic voicemail.
Spring Telecom, Inc.	Voice Processing Systems	"Gateway Svc"	Gateway Service is a personal 800 number service with optional electronic voicemail.
Spring Telecom, Inc.	United Voice	"Call Plan"	Call Plan is a personal 800 number service with optional electronic voicemail.
Benchmark Communications, Inc.	Media Systems	"Network Mgnt"	Network Management is a voicemail service offering unlimited monthly message storage, recording, and message retrieval.

Benchmark Communications, Inc.	United Systems Services	"Plan Mgnt"	Plan Management is a voicemail service offering unlimited monthly message storage, recording, and message retrieval.
Benchmark Communications, Inc.	Voiceflex Services	"Mgtmt Plan"	Management Plan is a voicemail service offering unlimited monthly message storage, recording, and message retrieval.

The "Company Name" is the name of the corporation with whom USP&C has an agreement to provide billing services. The "Name on Bill" is the sub-CIC name that appears on end-user customers' local telephone bills. As the table illustrates, the companies to whom USP&C provided billing services used numerous names. The record shows that these names are not the names of corporate subsidiaries of the corporations to whom USP&C provides billing services, nor are these names registered fictitious business names. The table also shows that in addition to using several different provider names, each corporation also sold the same product under different names. For example, Spring Telecom, Inc., sold 800 number service under four different product names, as well as four different provider names.

Discussion

In this decision, we apply certain provisions of §§ 2889.9 and 2890 for the first time. The California Supreme Court has provided guidance for interpreting consumer protection statutes such as §§ 2889.9 and 2890. In upholding Department of Motor Vehicles regulations implementing an automobile repair consumer protection statute, the Court stated:

> This statute was passed as a remedial statute, designed to protect the public. The dominant concern of this statutory

> scheme is that of protecting the purchaser from the various harms which can be visited upon him by an irresponsible or unscrupulous dealer. Protection of unwary consumers from being duped by unscrupulous sellers is an exigency of the utmost priority in contemporary society. As a remedial statute, it must be liberally construed to effectuate its object and purpose, and to suppress the mischief at which it is directed.

(Ford Dealers v. Dept. of Motor Vehicles, 32 Cal. 3d 347, 356 (1982)(citations omitted).)

The statutes we consider today, §§ 2889.9 and 2890, have the same purpose – protection of the public – as the repair statutes in the Ford Dealers opinion. We will, therefore, follow the Supreme Court's direction in liberally construing the specific provisions at issue here.[4]

1. Alleged Violations of § 2890(e)(2)(A) – Clear and Concise Description

Section 2890(e)(2)(A) requires that any person, corporation, or billing agent that charges subscribers for products or services on a telephone bill must include in the bill a "clear and concise description of the service, product, or other offering for which a charge has been imposed."

The undisputed facts show that USP&C used what it calls "service brand names" as the basis for the description it provided to California LECs for billing on subscribers' local telephone bills. The service brand names are listed in the foregoing table under the heading "Service Billed As." USP&C states that

[4] USP&C contends that CSD must prove that USP&C acted with "evil intent" to prove a violation of §§ 2890(2)(A)and (B). No mental state element is found in the plain words of the statute, and we need not add such a requirement. *See* Communications TeleSystems International, 72 CPUC 621, 635 (1997).

the service brand names were based on the advertising material that the service providers used when soliciting customers to purchase the product or service. USP&C contends that billing under the service brand name used in advertising will protect and assist customers by triggering in their minds that they had ordered this service. USP&C also stated that Pacific Bell limited to 12 characters the number of characters that it would include in the description on the bill, and that the service brand name is the best utilization of this minimal number of characters. For these reasons, USP&C argues that its use of service brand names meets the requirements of the statute for a clear and concise description of the product or service being billed.

CSD disagrees with USP&C's interpretation of the statute. CSD states that the service brand names used by USP&C are not clear descriptions because they do not describe to a reasonable person the product or service being billed. Consequently, CSD argues, USP&C failed to comply with the statute.

The statute does not define "clear and concise description." Black's Law Dictionary offers the following definition of "description:"

> A delineation or explanation of something by an account setting forth the subject's characteristics or qualities.

(Black's Law Dict. (7th ed. 1999) p.456, col. 2.) Applying this definition with the statute results in the requirement that the bill include an explanation of each charge which sets forth the characteristics or qualities of the product or service for which the charge has been imposed.

We begin by noting that the service brand names billed by USP&C reflect no hint at the nature of the service. For example, "PlanMgmt" does not suggest voicemail, and could reasonably be used to describe a wide variety of services. USP&C, thus, must rely on the service providers' efforts to bring these service names within the statutory requirements.

The audience that must draw meaning from these service names is also broader than USP&C claims. USP&C argues that its service brand names are "clear" because such names will evoke recognition in the minds of those customers who have reviewed the advertising. We reject this narrow interpretation of § 2890(e)(2)(A).

A clear and concise description must inform <u>all</u> customers of the characteristics or qualities of the product or service so that they can determine whether or not it was authorized. The purpose of the statute is not simply to enable customers to confirm authorized charges, but to also allow customers to identify unauthorized charges. USP&C's contention that customers who saw the advertising and ordered the service will recall placing the order when seeing an abbreviation of the service brand name, even if accepted as accurate, does nothing for the person victimized by an unauthorized charge. Providing these persons the information necessary to identify and dispute unauthorized charges is the primary focus of §§ 2889.9 and 2890. Therefore, to meet the clear description standard, the description must have meaning for all customers.[5] USP&C makes no claim, however, that its "service brand names" have any meaning for those persons who did not see the advertising, but nevertheless were billed by USP&C. Thus, USP&C's service brand names fail to meet the statutory standard for this group of persons. As analyzed below, we also find

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[5] In fact, a vague description such as "PlanMgmt" promotes unauthorized charges because customers may mistakenly think that it is some other service that they did order.

that USP&C's service brand names fail to meet the statutory standard even for customers that have reviewed advertising materials.

We must clarify the definition of terms used. USP&C refers to the descriptions it used on the bills as "service brand names." USP&C did not define this term. Black's Law Dictionary (7th edition) contains no such term, nor does Merriam Webster's Collegiate Dictionary (10th edition).

Black's Law Dictionary does provide a definition of an apparently similar concept, namely "service mark." A service mark is "a name, phrase, or other device used to identify and distinguish the services of a certain provider." (Black's Law Dict. (7th ed. 1999) p.1373, col. 1.) Similarly, the Lanham Act, 47 U.S.C. § 1027, defines "service mark" as "any word, name, symbol, or device used . . . to identify and distinguish the services of one person . . . from the services of others . . .."

Service mark functions to identify and distinguish source and quality of intangible service, and trademark serves to identify and distinguish source and quality of tangible product. Dial-A-Mattress Operating Corp. v. Mattress Madness, Inc., 841 F.Supp 1339, (E.D.N.Y. 1994). Service marks and trademarks are subject to the same substantive rules of validity and infringement. McCarthy, J. Thomas, McCarthy on Trademarks and Unfair Competition, 4th ed., West Group #13, (March 2000) p. 4-16. The purpose of service marks and trademarks is to:

> make effective competition possible in a complex, impersonal marketplace by providing a means through which the consumer can identify products which please him and reward the producer with continued patronage. Without some such method of product identification, informed consumer choice, and hence meaningful competition in quality, could not exist.

Smith v. Chanel, Inc., 402 F.2d 562, 566 (9th Cir. 1968).

Thus, where a service provider has identied and meaningfully distinguished its service name from that of different providers, such a name could convey a clear and concise description of the service. The name itself could become synonymous with the characteristics or qualities of the product or service for which the charge has been imposed.

Here, however, CSD has shown that service providers offer the same service under several different names. Spring Telcom, Inc., is not attempting to distinguish its 800 service from others when it offers the same service under four different, unrelated, and vague names: "CallMgr Plus," "Dial Plan," "Gateway Svc," and "Call Plan." We note also that Benchmark Communications, Inc., reorders the two-word name of its voicemail service, i.e., "Plan Mgnt" and "Mgtmt Plan."[6] Thus, it is fair to conclude that the entities that USP&C allows to bill in this manner are not attempting to create a unique name for their services "to identify and distinguish the services of one person . . . from the services of others." As noted above, the purpose of service marks is to allow customers to recognize a particular service mark and associate it with a particular supplier. This association is critical to making the name functionally equivalent to a "clear and concise description." Here, in contrast, USP&C allows entities for whom it bills to use and advertise numerous service brand names for the same product.[7] Accordingly, a service brand name, as used by USP&C, does

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[6] As noted above, these vague terms used as "service brand names" are particularly at odds with the purpose of §§ 2889.9 and 2890 because persons that have not ordered the service may mistakenly conclude that the charge is for some other service that they had authorized.

[7] The record shows that during 1999 four out of eleven of USP&C's service providers took advantage of the opportunity to bill their service under several names. The information is incomplete regarding an additional five out of the eleven service

Footnote continued on next page

not achieve the product identification function service marks are intended to achieve. Because they do not achieve the identification function, USP&C's service brand names cannot constitute a clear description of the service being billed.

In sum, USP&C's service brand names fail to meet the statutory requirements for customers that have not reviewed the advertising materials. The service brand names also fail to meet the requirements for customers that have reviewed the materials because multiple service brand names fail to achieve the product identification function necessary to make a name synonymous with a description.

2. Alleged Violations of § 2890(e)(2)(B) – Name, address, and telephone number of the Party Responsible for Generating the Charge and Information for Resolving Disputes

The version of § 2890(e)(2)(B) effective in 1999[8] required that the bill provide two pieces of information to the customer: (1) "the name, address, and telephone number of the party responsible for generating the charge" and (2) "description of the manner in which a dispute regarding the charge may be addressed." To evaluate USP&C's compliance with these requirements, we turn to Attachment B, which is a copy of a page from a customer's local telephone bill (with identifying markings obliterated). Near the top of the bill is "USP&C" in large, all-capital block letters. Slightly above this heading appears "Questions about your bill?" and the telephone number "1-800-449-1056." Further down the

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provides. The remaining two service providers apparently billed only one service each under their respective names. *See* Exh. 2, Att. E.

[8] Section 2890 (e)(2)(B) was amended effective January 1, 2000.

page is a heading "Calls." Two subheadings are under this heading. The first is "Billed on Behalf of PROGRESIVETECHNOLOGY," under which is listed "Apr24" under the date column, "CALLMGR Plus" under the Place and Number Called column, and "32.00" under the Amount column. The next subheading is "Billed on Behalf of VOICEPROCESSINGSYS." Under this subhearing is "Mar24" for the date, "Gateway Svc" for the Place and Number Called, and "32.00" for the amount. Thus, each bill contains the name of USP&C and its toll free number as well as the name of the service provider(s).

CSD argues that the 1999 version of § 2890(e)(2)(B) required each billing agent to include, or cause to be included, the name of the company responsible for generating the charge, and that USP&C has failed to do this. CSD states that UCP&C included the name of the sub-CIC on the bill rather than the actual name of the company with whom USP&C has a billing contract, i.e. "VOICEPROCESSINGSYSTEM" rather than Spring Telecom, Inc. CSD provided evidence that the sub-CIC names are not registered as fictitious business names with the State of California, nor are these entities incorporated in the State of California. CSD also provided evidence that USP&C admitted that it did not know the relationship between the sub-CICs and the entities with whom it had billing contracts.

In response, USP&C states that it was the "party responsible for generating the charge" because it, and not the sub-CICs, had a billing contract with the LECs. USP&C also contends that end-user customers benefit from seeing its name on the bill because only USP&C has the system in place to handle customer inquiry service.[9]

USP&C is correct that, to the extent it provides customer inquiry service, its name and its telephone number should have been part of the customer inquiry directions because it was the contact for customers with questions about items billed on the USP&C page. USP&C, however, misses CSD's point. What CSD objects to is the use of the sub-CICs as names in the "Billed on Behalf of" section of the bill.

USP&C contends that it is the "party responsible for generating the charge" because it handled customer inquiry service. USP&C is correct that the statute required its name to be on the bill not because it was the "party responsible for generating the charge," but rather because contacting USP&C was necessary to address any dispute regarding the charge. USP&C's statutory interpretation would subsume "party responsible for generating the charge" into "description of the manner in which a dispute regarding the charge may be addressed." Withholding such basic information as the identity of the alleged service provider would not assist customers in understanding the charges on their bills. In fact, showing USP&C as the "responsible" party serves only to obfuscate, since the end-user customer likely never have heard of USP&C before getting the bill. We therefore reject USP&C's interpretation.

We turn then to CSD's argument that the name of the sub-CIC fails to meet the statutory requirement for the "name, address, and telephone number of

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[9] USP&C also argues that this issue is not properly before the Commission because USP&C believes it was not included in the OII. On March 14, 2000, the assigned Commissioner issued his Ruling Clarifying Scoping Memo. That ruling found that this issue was within the scope of this proceeding.

the party responsible for generating the charge."[10] As an initial matter, we note the name of the sub-CIC is not a California corporation name, it is not a registered fictitious business name,[11] it is not filed with or approved by this Commission, and, moreover, there is no evidence that the sub-CICs are authorized to do business in this state. CSD testified that it conducted a search of the California Secretary of State's records and found that none of the sub-CIC names were even registered as California business names. The record does show that many of the companies with whom USP&C has billing contracts do business under several sub-CICs, as illustrated in the table above. The record also shows that these various sub-CICs sell the same services on behalf of the same company. USP&C has also admitted that it does not know the nature of the legal relationship between the sub-CICs and the companies with whom it has billing contracts. Apparently, USP&C's (and Pacific Bell's) only requirement to obtain the right to place charges on end-users' local telephone bills for a particular provider name is that the name appear on some advertising materials.

Where the sub-CIC name is (1) not the name of a natural person or partnership, (2) not a corporate name, and (3) not registered as a fictitious business name pursuant to Business and Professions Code § 17900 et. seq., the sub-CIC name fails to meet the requirements of § 2890(e)(2)(B). The inadequacy of the sub-CIC is illustrated by Attachment B, which is an example of the misleading information presented to customers under USP&C's interpretation of the statute. The copy of the bill in Attachment B contains a $32 charge for

[10] We note that USP&C would not have been in full compliance with even its own interpretation of the statute because it did not include its address on the bill.

[11] Despite the fact that Pacific Bell's Billing and Collections Product Binder requires such registration.

"CallMgr Plus" from "PROGRESIVE TECHNOLOGY" and a $32 charge for "Gateway Svc" from "VOICEPROCESSINGSYS." Based on information presented by staff, we are able to conclude that these charges are both for the same service, personal 800 number service, from the same provider, Spring Telecom, Inc. Lacking a detailed report from a professional telecommunications investigator, customers would be unable to obtain this information. Accordingly, we hold that USP&C failed to include the name of the party responsible for generating a charge on a customer's bill when USP&C placed billings for sub-CICs under the three circumstances listed above.

USP&C also contends that its use of sub-CIC names is consistent with a recent Federal Communications Commission (FCC) order. The FCC Truth in Billing regulations require that "the name of the service provider associated with each charge must be clearly and conspicuously identified on the telephone bill." 47 CFR 64.2001(a)(1). The FCC recently clarified this regulation by stating that the "carrier's trade name, rather than its precise corporate or corporate subsidiary name" satisfies this requirement, and that "the carrier name on the telephone bill should be the name by which such company is known to its consumers for the provision of the respective service." (In re: Truth-In-Billing and Billing Format, FCC Docket No.98-170, ¶ 10 March 29,2000.) From this FCC statement, USP&C argues that the FCC approves of the use of sub-CICs on customer telephone bills.

USP&C, however, fails to acknowledge that nowhere in the FCC opinion or the regulations does the FCC consider the USP&C fact pattern; that is, multiple trade names and multiple service names for the same provider and the same service. Such a fact pattern would appear to be at odds with the FCC's stated objective of order: to " clearly identify the service provider." (*Id.* at ¶ 16.)

Multiple, unregistered aliases provide little information about identity. Thus, we find that the FCC opinion is not dispositive of the facts before us.

2. Alleged Violations of § 2889.9(f) – Failure to Make Timely Response to Commission Data Requests

As noted above, USP&C and CSD filed a settlement agreement on this issue. Commission Rule of Practice and Procedure 51(e) requires, as conditions for approval, that settlement agreements be (1) reasonable in light of the whole record, (2) consistent with the law, and (3) in the public interest.

a. Reasonable in Light of the Whole Record

The record in this case reveals that CSD made its initial information request to USP&C on May 5, 1999, pursuant to § 2889.9(f). CSD subsequently made repeated efforts to obtain the information. USP&C did not fully comply until after this OII had been issued. CSD stated that USP&C had fully responded to the information request on November 10, 1999.

On January 7, 2000, USP&C and CSD filed a settlement agreement resolving all issues related to USP&C's compliance with CSD's information request. The agreement provides that USP&C will pay a fine of up to $114,000 to the General Fund of the State of California. Of that amount, $43,000 is payable upon Commission approval of the settlement agreement. The remaining amount is suspended pending USP&C's compliance with discovery requests as part of this proceeding.

The record shows that USP&C took over six months to respond to a Commission staff request for information. The record also shows that during the first six months of 1999, USP&C billed California customers over $14 million, with customers subsequently demanding return of 52% of that amount. These facts illustrate the critical importance of timely response to Commission staff requests for information.

USP&C's delayed response is simply incompatible with our regulatory objectives. Our duty to protect Californians from unauthorized billings on their local telephone bills requires that our staff receive prompt responses to all such information requests. USP&C's response does not meet this standard.

We therefore announce that we expect a billing agent to respond to any and all staff requests for information within 10 business days of receiving the request unless otherwise directed in writing by staff. Should any billing agent fail to comply with such a request within the time allotted, we direct CSD to prepare a resolution for inclusion on the next Commission meeting agenda ordering California LECs to cease to provide billing and collection services to that billing agent. (See § 2889.9(f).)

As for the settlement agreement before us, we find that, in light of the fine paid by USP&C, and its subsequent cooperation, the agreement is reasonable.

b. Consistent with the Law

Pursuant to § 2889.9(f), all billing agents are required to respond to Commission staff requests for information. Failure to do so is grounds for a Commission order directing California LECs to cease providing billing and collection services to the billing agent. The Commission may also impose fines against billing agents for failure to comply. (§ 2889.9(b)) Given these statutory remedial powers, we conclude that the actions required by the settlement agreement are consistent with the law.

c. In the Public Interest

The Commission is responsible for ensuring that the public is protected from certain practices by service providers and their billing agents. The settlement agreement results in payment of a fine which will have the desirable effect of deterring further such violations by this billing agent and others. The settlement agreement also resolves these issues without need for further hearings or appeals.

For these reasons, the Commission finds that the settlement agreement is reasonable in light of the whole record, is consistent with the law, and is in the public interest. The agreement is approved. Because the settlement is limited to USP&C's failure to make timely response to CSD's information request, the agreed-upon fine does not moot the other grave accusations in this investigation, or obviate the need for further sanctions that today's decision imposes.

Sanctions

In its opening brief, CSD requests that the Commission require (1) all California LECs to cease billing for USP&C, (2) USP&C to conduct a survey of all customers who it billed in 1999 who were potentially victimized by the companies USP&C bills on behalf of, and to use the information so obtained to provide refunds to the customers, and (3) USP&C pay a fine of up to $3.5 million, with a large portion suspended pending refunds to customers.

As set out above, we find that USP&C has violated § 2890(e)(2)(A) and (B). Among the sanctions that we are authorized to impose for such violations are: (1) ordering the LECs to cease to provide billing and collection services, § 2889.9(c), and (2) requiring USP&C to pay a fine to the State of California, § 2889.9(b).

As set out above, we find that USP&C's billing practices violate both the "clear and concise description" and the "name" requirements of § 2890. These violations occurred in the context of customer refund rates that were more than twice the maximum rate allowed by USP&C's contract with Pacific Bell. Despite repeated warnings by Pacific Bell, USP&C was either unable or unwilling to take the steps necessary to reduce its volume of customer complaints and refunds to an acceptable level. USP&C has demonstrated that it cannot conform itself to the requirements for billing agents imposed by Pacific Bell's tariffs and by the Public Utilities Code. For these reasons, safeguarding the rights of customers and enforcing the provisions of §§ 2889.9 and 2890 requires that we order all California LECs permanently to cease providing billing and collection services to USP&C, its corporate affiliates, and any billing agents with which USP&C has common corporate officers or owners of 10% or more of outstanding stock.

CSD also asks that we impose a fine on USP&C for its violations of § 2890. CSD states that each bill should be considered a separate offense for each violation of the § 2890.

The Commission may impose fines payable to the State of California pursuant to § 2107 against any "public utility which . . . fails or neglects to comply with any part or provision of any order, decision, decree, rule, direction, demand, or requirement of the Commission." Such fines shall be not less than $500 nor more than $20,000 for each offense. Each day of a continuing offense is a separate offense as provided in § 2108.

CSD recommends that we impose the statutory minimum for each bill issued by USPC in violation of § 2890. As an alternative, CSD suggests using the number of days USP&C was out of compliance, 350, to calculate the fine. CSD recommends $10,000 per day, resulting in a fine of $3.5 million. CSD would further reduce this amount by 75% to $875,000, contingent upon USP&C's continued cooperation.

To provide guidance in setting fines within the broad statutory range, the Commission has distilled the principles that it has historically used in assessing fines and restated them such that they may form the basis for future decision assessing fines. (Rulemaking to Establish Rules for Enforcement of the Standards of Conduct Governing Relationships between Energy Utilities and Their Affiliates Adopted by the Commission in Decision 97-12-088, D.98-12-075, App. B.)

Those principles begin by distinguishing reparations from fines. The purpose of reparations is to return improperly collected amounts. Here, however, CSD has not proven that USP&C retained any funds collected from California customers. While we order USP&C to submit additional information on this issue, the current state of the record would not support reparations from USP&C.

The purpose of fines, in contrast, is to deter further violations. In setting the fine level, the Commission will consider the severity of the offense, the utility's conduct, the financial resources of the utility, the totality of the circumstances in furtherance of the public interest, and the role of precedent.

USP&C's offense is significant. Thousands of customers were directly affected, and tens of millions of dollars were unlawfully billed and collected.

The conduct of the utility is another factor that we consider in setting fines. Here, USP&C failed to prevent, detect, and rectify these violations.

USP&C's financial resources also play a role in determining the appropriate fine level. CSD notes that USP&C has not presented any evidence of its financial resources. The record shows that USP&C did over $14 million worth of billing and collection business in 1999 through Pacific Bell alone. Exhibit 24 contains a USP&C document stating that USP&C has 250 employees, and continues to provide service in numerous other states. USP&C has also been represented in this proceeding by attorneys from both a San Francisco law firm and a Washington, D.C. law firm. From these facts, we conclude that USP&C is a going concern with significant financial resources. Thus, a substantial fine could be necessary to achieve our goal of deterrence of future violations.

Our guidelines also require that we consider the totality of the circumstances in furtherance of the public interest when setting a fine. Billing agents enable service providers to have access to customers' local telephone bills. Billing agents, unlike the LECs, contract directly with the service providers and therefore have a unique role in end-user customer billing. Achieving our goal of customer protection requires that billing agents perform their services with diligent regard for their ethical and legal duties. Here, USP&C implemented business practices that allowed service providers to bill customers for $51 million worth of services, while at the same time failing to comply with the statutory requirements. Most troubling to us is USP&C's refund rate of over 52%. The long duration of this refund rate, and USP&C's steadfast refusal to reduce the volume of refunds voluntarily, reveals an unacceptable disregard of responsible billing practices. USP&C either knew or should have known that billings that generate this level of refunds over an extended period of time are unlikely to be in full compliance with legal and regulatory requirements. The volume of refunds call into serious question the validity of the $51 million worth of charges billed to California customers by USP&C. Accordingly, the totality of the circumstances also inclines us to impose a substantial fine.

The final factor in our guidelines is precedent in setting an appropriate fine. In Communications TeleSystems International, 72 CPUC2d at 639-40, we imposed a fine of $19.6 million and suspended all but $2 million for violations of § 2889.5. In FutureNet, D.99-06-055, we imposed a fine of $1.3 million for violations of § 394.

In sum, we hold that USP&C's violations of §§ 2890(e)(2)(A) and 2890(e)(2)(B) are severe offenses. In light of the number of violations, and the conduct of USP&C, as well as our precedent, we will impose a fine of $5,000 for each day USP&C was out of compliance, or $1,750,000. Such amount shall be paid to the State of California, General Fund, no later than 60 days after the effective date of this order.

CSD also puts forward an elaborate proposal for a refund process, and bases its proposal on § 2890(f). That section, however, states that upon receiving a complaint from a customer, the entity responsible for placing the charge on the bill must resolve the dispute within 30 days. Setting aside the question of whether USP&C is the entity placing charges on the bill, it is not obvious how this particular statutory provision could grant this Commission authority to order a customer survey and customer refunds.

Moreover, CSD fails to address the practical issues of obtaining refunds for end-user customers. First, CSD has not shown what fraction, if any, of the funds collected from end-user customers remains in USP&C's possession. Second, CSD has also not shown that USP&C possesses customer billing records going back over two years such that customers owed a refund might be identified and located. Because the entities that caused the billings to be placed on customers' bills, and obtained the funds from the billings, are not respondents here, we have limited remedies, with no practical opportunities to make whole the end-user customers who paid the unauthorized charges.

We have, however, pursued funds retained by billing agents from unlawful billings to California customers. See D.99-08-017. We have found that some billing agents retain reserves of amounts collected from end-user customers for the purpose of making any refunds that might be requested by the customers or ordered by a regulatory or legal authority in the future. We also are aware that billing agents charge fees for their services, and that such fees are typically paid out of the funds collected from customers. We have previously determined that these amounts are subject to this Commission's jurisdiction pursuant to § 2889.9(i). CSD, however, has not requested that we order USP&C to turn over such funds, nor has CSD presented any evidence that such funds exist. We address this issue in the next sections.

Reparations Policy

As discussed above, the Commission adopted a set of guidelines for consideration in setting penalties in D.98-12-075. Those guidelines also briefly addressed reparations. The guidelines noted that reparations are refunds of excessive or discriminatory amounts, and that the purpose of reparations is to return wrongfully collected funds to the victim. To clarify our policy on reparations, we will discuss the role that reparations play in Commission enforcement actions.

As a general matter, the Commission's priorities in enforcement proceedings, where violations of law or regulations have been established, as here, are to: (1) bring to an end any ongoing violations, (2) provide restitution to victims of the wrongdoing, and (3) deter future violations through the use of fines. Here, Pacific Bell and GTEC have ceased to provide billing and collection services to USP&C, so violations have ceased.

Our second objective, providing restitution to victims, has not been addressed in this proceeding to date. The record in this proceeding shows that from January 1998 to June 1999 USP&C served as the billing agent for $51.5 million worth of billings to California customers. As noted above, USP&C presented billings for service providers that conducted business under several different unregistered aliases, and that also used up to four different names for identical services, in violation of the Public Utilities Code. Of the total amount billed by USP&C during this period, $27 million (52%) was refunded at the customers' request. The remaining $24.5 million, however, was collected by USPC, and after USP&C extracted its fees, was forwarded to the service providers. This remaining amount, $24.5 million, represents the amount that has been unlawfully collected from California customers. We consider it of paramount importance to discharging our duty to protect the public that every opportunity at our disposal be used to attempt to recover these funds.

In its comments on the POD, CSD stated that if the Commission adopts CSD's recommended fine of $4 million, "disgorgement of consumer funds kept in reserve by USP&C is unnecessary." We disagree. A fine of $4 million (as recommended by CSD) paid to the General Fund of the State of California cannot render "unnecessary" refunds to the customers that paid $24.5 million in unauthorized charges. Moreover, a fine of $4 million against one participant in a group of perpetrators who absconded with $24.5 million substantially undermines our policy of deterring further such violations.

In sum, because USP&C's unlawful acts are no longer ongoing, we consider obtaining reparations for customers that paid unlawful charges to be our primary goal.[12] To that end, it is essential that USP&C disgorge any and all amounts obtained from California customers and held for any purpose. These amounts, and any additional sums that we might obtain from the service providers, must be returned to customers. We have considered above the need for a fine pursuant to our guidelines, and quite apart from the amounts needed for restitution.

Order to Show Cause – Violation of § 2890(b)

To date in this proceeding, we have focused exclusively on the technical details of §§ 2889.9 and 2890, service descriptions and name of the service provider. The overall purpose of these statutes, however, is to prevent, detect, and correct unauthorized billings. In this proceeding, we have received substantial evidence that while USP&C was submitting unauthorized billings to California LECs:

- USP&C's 18-month average customer refund rate with Pacific Bell was 52%;[13]
- USP&C's customer refund rate with GTE from December 1998 to November 1999 was 48%;
- From January to July 1999, 30% of all complaints to Pacific Bell alleging that unauthorized charges had been placed on

[12] We are well aware of the inherent administrative difficulties in distributing such refunds, *see* D.99-06-005, but are not persuaded that such difficulties justify foregoing any attempt at restitution.

[13] We have reviewed the evidence presented by USP&C that Pacific Bell's customer refund data contains duplicates of refunds and may inappropriately include refunds of taxes and fees. USP&C has not presented any evidence, however, that Pacific Bell has treated it differently from other billing agents. Thus, the data are comparable on a relative basis to other Pacific Bell data. We note also that USP&C's GTE refund rate is in the same range as the Pacific Bell rate.

a customer's local telephone bill were from companies USP&C bills on behalf of; and

- Over 600 customers contacted the Commission to complain of USP&C's billing practices.

Section 2890(b) requires that a telephone bill only contain charges that have authorized by the customer. USP&C appears to have repeatedly violated this statute because it knew or should have known that the customers had not authorized the charges it was submitting to the LECs.

Pacific Bell routinely informed USP&C of the number of complaints Pacific Bell received of unauthorized billing, and of the level of refunds requested by customers. Pacific Bell also repeatedly informed USP&C in writing that its customer complaint levels and customer refund levels were "excessive" and must be "reduce[d] to acceptable levels." The record contains copies of notices dated as early as January 1998. USP&C, however, continued to exhibit high levels of customer complaints and refunds up to the time Pacific Bell terminated its contract. Due to the extended time period over which these billings were presented to Pacific Bell, and Pacific Bell's regular reporting to USP&C of the data, we find that USP&C either knew or should have known that the billings it was presenting to Pacific Bell failed to comply with § 2890(b). Based on this evidence, we order USP&C to show cause:

1. Why USP&C should not be required to disgorge all funds obtained from California customers and retained by USP&C for reserves, in payment of fees, or for any other purpose; and
2. Why USP&C should not fined for violating § 2890(b) by presenting billings with unauthorized charges to California LECs.

In addition to USP&C's apparent violation of § 2890(b), the service providers for whom USP&C was billing also appear to have been violating

§ 2890(b). Benchmark Communications, Inc., Messenger Com, Inc., Voice Delivery Systems, and Spring Telcom, Inc. were the service providers that submitted the billings, through USP&C, which resulted in the customer complaints and subsequent refunds. Based on our understanding of the billing and collection arrangements between billing agents and service providers, these entities are the ultimate recipients of the funds collected from California customers.[14] For this reason, securing refunds of any wrongfully collected and retained amounts requires that these entities be named respondents to this proceeding.

Therefore, we find that probable cause exists to believe that Benchmark Communications, Inc., Messenger Com, Inc., Voice Delivery Systems, and Spring Telcom, Inc. have violated § 2890(b), and may have retained funds obtained pursuant to such violations. Benchmark Communications, Inc., Messenger Com, Inc., Voice Delivery Systems, and Spring Telcom, Inc. are hereby named as respondents to this proceeding, and are ordered to appear and show cause why they should not:

1. Required to disgorge all funds obtained from California customers in violation of § 2890(b) and retained for reserves, in payment of fees, or for any other purpose;
2. Fined for violating § 2890(b) by presenting billings with unauthorized charges to California LECs; and
3. Required to demonstrate that they have obtained all required operating authority and are otherwise in compliance with all applicable portions of the Public Utilities Code.

[14] Less any amounts retained by the billing agents or LECs in payment of their fees or as reserves for refunds.

Pacific Bell Enforcement of Tariff

In its Opening Brief, Greenlining urges this Commission to aggressively enforce existing rules and laws against cramming, particularly the rules and laws designed to safeguard customer choice and to protect customers from unauthorized charges. Among the existing rules and laws are the tariffs under which Pacific Bell provides billing and collection services.

Pacific Bell's billing and collection service business generates substantial revenues, and Pacific Bell's shareholders benefit from this business. The tariffs approved by this Commission, as well as the statutes, require that Pacific Bell bill only authorized charges. We insist that Pacific Bell enforce its tariffs to the letter to afford customers the level of protection mandated by those tariffs and statutes. We also insist that Pacific Bell enforce its tariffs in a timely fashion. We note here that Pacific Bell took almost two years to suspend USP&C's billing contract. During this time, USP&C continued to have access to end-user customers' local telephone bills and to bill them over $ 51 million. Prompt termination of noncompliant billing agents is essential to proper enforcement of this tariff and these statutes.

We also direct Pacific Bell to change its tariffs to preclude another subterfuge that USP&C attempted. When confronted by Pacific Bell with its excessive refund rates, USP&C announced that it was attempting to secure clients that billed for "1+" calls. According to USP&C, these billings traditionally have a much lower customer refund rate, and USP&C wanted to use these billings to "dilute" their other billings with higher refund rates. A billing agent whose activity results in excessive levels of refunds and end-user customer complaints must address the cause of those refunds and complaints. USP&C's

subterfuge was intended to enable continued "business as usual" with the service providers whose unauthorized charges were causing the complaints.

To prevent any other billing agent from indulging in a similar subterfuge, we hereby direct Pacific Bell to revise its tariffs to preclude this practice.

Pacific Bell's Appeal of POD

In its appeal of the POD, Pacific Bell states that the POD "commits legal error" by ordering Pacific Bell to alter its tariffs to preclude the practice of diluting unacceptably high refund rates, and to provide a copy of the decision to all its billing and collection customers. Pacific Bell contends that such actions exceed the scope of the OII and the scoping memo because the OII and scoping memo are directed only at USP&C, not Pacific Bell's generally applicable billing and collection practices. Pacific Bell concludes that the Commission may not take such actions because Pacific Bell had no notice such actions might be taken.

When, in the course of an adjudication, the Commission discovers a novel act of wrong-doing, the Commission is not powerless to prohibit such acts. Here, UDP&C admitted to a plan to conceal its actual customer refund rate by diluting it with additional billings that had a lower rate, rather than correcting the underlying problem. The record in this proceeding is more than ample to support the conclusion that "dilution" of refund rates is contrary to the public interest. Pacific Bell provides billing and collection services pursuant to Commission-approved tariffs. A minor alteration to those tariffs to foreclose a newly uncovered means of circumventing the tariff requirements is not a significant burden to Pacific Bell. In fact, Pacific Bell should have come forward with this modification upon learning of the "dilution" technique as such dilution undermines the purpose of the refund rate limitation in the tariff.

The record similarly does not support Pacific Bell's contention that it lacked notice that the Commission might order it to take additional steps. When adopting the OII, the Commission indicated its intention to consider imposing requirements on "all California billing telephone companies" in this proceeding.[15] Ordering Paragraph 1.d. states that the Commission will determine whether to order "all California billing telephone companies to cease providing billing and collection services to USP&C or take other action such as establishing reporting requirements for USP&C." (emphasis added.) The scoping memo carried through this issue and stated that, other than the issue identified in Ordering Paragraph 1.a., all other issues set out in that Ordering Paragraph would be addressed in this proceeding.

Thus, the Commission has the authority to order Pacific Bell to modify its billing and collection tariffs to preclude dilution of refund rates, and to provide copies of this decision to all its billing and collection customers. The Commission gave Pacific Bell and all other billing telephone companies notice that it was considering ordering them to take "other actions" as part of this OII. In short, the Commission properly ordered Pacific Bell to modify its tariffs and distribute copies of this decision.

Findings of Fact

1. USP&C is an aggregator of billings for telecommunications-related services, USP&C serves as a billing agent between these service providers and the LEC, who actually bills the subscriber.

[15] Pacific Bell is a billing telephone company. See § 2890.

2. Pacific Bell's tariff Schedule Cal. P.U.C. No. 175-T requires that each billing and collection customer submit only accurate billings that are consistent with the service requested by and provided to the end-user.

3. The Agreement for the Provision of Billing and Collection Services between Pacific Bell and USP&C, Inc, dated August 11, 1998, provides that the agreement may be terminated if Pacific Bell receives more than one complaint per 30,000 bills rendered, or the USP&C's refund rate to customers exceeds 15% of the total amount billed.

4. USP&C's refund rate for Pacific Bell billings ranged from 36.5% to 69.02%, with an average of 52% for the period January 1998 to July 1999.

5. USP&C's refund rate for GTE billings averaged 48% for the period December 1998 to November 1999.

6. Pacific Bell approves all sub-CICs and requires, among other things, that the entity submit proof that all fictitious business name statements are registered and filed with the applicable jurisdiction.

7. The companies to which USP&C provided billing services obtained sub-CICs using different names for the same service provider and the same service.

8. The names used to obtain sub-CICs were not the names of natural persons, corporations, or corporate subsidiaries of the corporations to whom USP&C provides billing services, nor were these names registered fictitious business names.

9. USP&C used what it calls "service brand names" as the basis for the description it provided to California LECs for billing on subscribers' local telephone bills.

10. USP&C's "service brand names" are meaningless to customers that had not reviewed the service provider's advertising materials.

11. The entities for which USP&C bills are not attempting to create a unique name for their services "to identify and distinguish the services of one person . . . from the services of others."

12. The term "service brand name" has no relation to service marks and the product identification function service marks are intended to achieve.

13. As used by USP&C, "service brand names" do not provide customers with a clear and concise description of the service charged on the local telephone bill.

14. A billing agent, such as USP&C, is not the "party responsible for generating the charge," but may be responsible for resolving disputes regarding the charge.

15. Despite repeated warnings by Pacific Bell, USP&C was either unable or unwilling to take the steps necessary to reduce its customer refund rate to an acceptable level.

16. USP&C either knew or should have known that the billings it was presenting to Pacific Bell failed to comply with § 2890(b).

17. The Federal Communications Commission's Truth in Billing regulations do not address multiple trade names and multiple service names for the same provider and the same service.

18. USP&C is a going concern with significant financial resources.

19. USP&C has demonstrated that it cannot conform itself to the requirements for billing agents imposed by Pacific Bell's tariffs and by the Public Utilities Code.

20. A customer refund rate of 52% with Pacific Bell and 48% with GTE is substantial evidence of widespread violations of § 2890(b).

Conclusions of Law

1. Neither Black's Law Dictionary (7th edition), nor Merriam Webster's Collegiate Dictionary (10th edition) define "service brand name."

2. Black's Law Dictionary defines a "servicemark" as "a name, phrase, or other device used to identify and distinguish the services of a certain provider."

3. The Lanham Act, 47 U.S.C. § 1027, defines "service mark" as "any word, name, symbol, or device used . . . to identify and distinguish the services of one person . . . from the services of others . . .."

4. Black's Law Dictionary (7th edition) defines "description" as an account setting forth the subject's characteristics or quantities.

5. Section 2890(e)(2)(A) requires that a telephone bill include an explanation of each charge which sets forth the characteristics or qualities of the product or service for which the charge has been imposed.

6. In 1999, § 2890(e)(2)(B) required that the bill identify "the name of the party responsible for generating the charge" and provide a "description of the manner in which a dispute regarding the charge may be addressed."

7. Where the sub-CIC name is (1) not the name of a natural person or partnership, (2) not a corporate name, and (3) not registered as a fictitious business name pursuant to Business and Professions Code § 17900 et. seq., the sub-CIC name fails to meet the requirements of § 2890(e)(2)(B).

8. The settlement agreement between CSD and USP&C is reasonable in light of the whole record, is consistent with the law, and is in the public interest.

9. The settlement agreement should be approved.

10. The public interest requires that all billing agents respond to any and all staff requests for information within 10 business days of receiving the request.

11. The Commission is authorized to order California LECs to cease to provide billing and collection services, and to require billing agents to pay a fine to the State of California.

12. Safeguarding the rights of customers and enforcing the provisions of §§ 2889.9 and 2890 requires that we order all California LECs permanently to cease providing billing and collection services to USP&C, its corporate affiliates, and any billing agents with which USP&C has common corporate officers or owners of 10% or more of outstanding stock.

13. USP&C should be fined for each day it was out of compliance with the Public Utilities Code.

14. The totality of the circumstances includes a long-standing customer refund rate of over 52%, which supports imposing a substantial fine.

15. In consideration of the severity of the offense, the number of violations, and the conduct of the utility, the public interest requires that we impose a fine of $1,750,000.

16. All California LECs should be ordered to cease permanently providing billing and collections services to USP&C, its affiliates, and any billing agents with whom USP&C has common corporate officers or owners of 10% or more of outstanding shares.

17. USP&C should show cause why it should not be required to disgorge all funds obtained from California customers and retained by USP&C for reserves, in payment of fees, or for any other purpose.

18. USP&C should show cause why it should not fined for presenting billings to a California LEC that failed to comply with § 2890(b).

19. Probable cause exists to believe that Benchmark Communications, Inc., Messenger Com, Inc., Voice Delivery Systems, and Spring Telcom, Inc. have violated § 2890(b).

20. Benchmark Communications, Inc., Messenger Com, Inc., Voice Delivery Systems, and Spring Telcom, Inc. should be named as respondents to this proceeding, and should be ordered to appear and show cause why they should not be required to disgorge all funds obtained from California customers in violation of § 2890(b), and retained for reserves, in payment of fees, or for any other purpose; and fined for violating § 2890(b) by presenting billings with unauthorized charges to California LECs.

21. The public interest requires that Pacific Bell and all California LECs that provide billing and collections services enforce their billing and collection services tariffs to the letter and in a timely manner to afford customers the level of protection mandated by those tariffs.

22. The public interest requires that LECs revise their tariffs to disallow "dilution" of customer refund rates as described in this decision.

O R D E R

IT IS ORDERED that:

1. The settlement agreement affixed hereto as Attachment A and made a part hereof is approved, and the parties are directed to comply with the terms set forth in the settlement agreement.

2. No later than 60 days after the effective date of this order, USP&C, Inc. (USP&C) shall pay to the State of California, General Fund, the amount of $1,750,000. USP&C shall file and serve documentation of such payment on the day payment is made.

3. All California local exchange carriers (LECs) should shall permanently cease providing billing and collections services to USP&C, its affiliates, and any billing agents with whom USP&C has common corporate officers or owners of 10% or more of outstanding shares;

4. At a hearing to be scheduled by the assigned Administrative Law Judge, USP&C shall appear and show cause why:

   a. It should not be required to disgorge all funds obtained from California customers and retained by USP&C for reserves, in payment of fees, or for any other purpose; and

   b. A fine should not be imposed for presenting billings to a California LEC that failed to comply with § 2890(b).

5. Benchmark Communications, Inc., Messenger Com, Inc., Voice Delivery Systems, and Spring Telcom are named as respondents to this proceeding.

6. At a hearing to be scheduled by the assigned Administrative Law Judge, Benchmark Communications, Inc., Messenger Com, Inc., Voice Delivery Systems, and Spring Telcom shall appear and show cause why they should not be:

   a. Required to disgorge all funds obtained from California customers in violation of § 2890(b) and retained for reserves, in payment of fees, or for any other purpose; and

   b. Fined for violating § 2890(b) by presenting billings with unauthorized charges to California LECs.

   c. Required to demonstrate that they have obtained all required operating authority and are otherwise in compliance with all applicable portions of the Public Utilities Code.

7. The Executive Director shall cause the final decision to be served on Benchmark Communications, Inc., Messenger Com, Inc., Voice Delivery Systems, and Spring Telcom.

8. All billing agents shall respond to any and all staff requests for information within 10 business days of receiving the request unless otherwise

stated by staff in writing. Should any billing agent fail to comply with such a request within the time allotted, we direct our Consumer Services Division staff to prepare a resolution for inclusion on the next Commission meeting agenda ordering California LECs to cease to provide billing and collection services to that billing agent pursuant to § 2889.9(f).

9. USP&C's Motion to Dismiss and Consumer Services Division's Motion for Summary Adjudication are denied.

10. The Executive Director shall cause the final decision to be served on all LECs. Each LEC that provides billing and collection services to third parties shall comply with this decision and shall notify its billing and collection customers of their need to comply with the decision.

11. No later than 90 days after the effective date of this order, Pacific Bell shall make all advice letter filings necessary to revise its tariffs to preclude the practice of diluting unacceptably high customer refund rates, as described in this decision.

This order is effective today.

Dated April 19, 2001, at San Francisco, California.

LORETTA M. LYNCH
President
RICHARD A. BILAS
CARL W. WOOD
GEOFFREY F. BROWN
Commissioners

Commissioner Henry M. Duque, being necessarily absent, did not participate.

ATTACHMENT A

SETTLEMENT AGREEMENT
BETWEEN
USP&C AND CONSUMER SERVICES DIVISION

This SETTLEMENT AGREEMENT ("Agreement") is the final and complete expression of the agreement entered into this 6th day of January, 2000, by and between the Consumer Services Division ("CSD") of the California Public Utilities Commission ("Commission") and USP&C and its shareholders, directors, officers, employees, mangers, agents, predecessors, and/or successors-in-interest (collectively, "USP&C" or "Respondents"), which hereinafter are collectively referred to as the "Parties" to this Agreement.

WHEREAS, the Commission has before it a proceeding entitled "Investigation of USP&C to determine whether it has violated Public Utilities Code Section 2889.9 by failing to provide Commission staff with requested information and whether the Commission should order California telephone companies to cease providing billing and collection services to USP&C, Investigation No. 99-10-024" ("I.99-10-024");

WHEREAS, the Parties each desire to resolve amicably the disputes among them and to settle and forever dispose of as expeditiously as possible the issues raised by Ordering Paragraph No. 1(a) of I.99-10-024 ("Phase I") related to the provision of requested information to the Commission staff;

WHEREAS, the Parties do not intend by this agreement to settle any of the issues raised by Ordering Paragraph No. 1 (b-e) of this proceeding;

WHEREAS, nothing in this Agreement shall be deemed an admission of liability or wrongdoing by any Party;

WHEREAS, the Parties agree that this Agreement does not constitute evidence, or an admission by any Party with respect to any issue of fact or law arising from or related to Phase I;

WHEREAS, the Parties dispute their respective rights and liabilities arising out of or relating to Phase I, and now mutually desire to reach a full and final compromise of all claims regarding the above controversy and all other potential controversies related in any way to Phase I, and further wish to avoid the delay, expense and uncertainty and inconvenience of protracted litigation of these claims;

WHEREFORE, in consideration of the mutual covenants, promises and warranties set forth herein. The Parties agree and contract as follows:

SECTION 1: $114,000 FINE

The Parties agree that USP&C will pay a fine to the Commission for remittance to the General Fund of the State of California in the amount of $114,000, of which $71,000 will stand suspended. USP&C shall pay the amount not suspended ($43,000) within ten business days of the effective date of the Commission's order adopting of this Agreement. The Parties further agree that the suspended portion of the fine may be imposed on USP&C under the conditions set forth in Section 2.

SECTION 2: USP&C RESPONSES TO CSD DATA REQUESTS

USP&C shall promptly respond to all reasonable data requests submitted by CSD to USP&C. Any dispute regarding the reasonableness of a CSD data request, including, and without limitation, the date upon which a response to a data request is due, shall be submitted to the Commission's Law & Motion Administrative Law Judge ("LMALJ") for resolution pursuant to the Commission's Law & Motion Procedures set forth in Resolution ALJ-164.

In the event USP&C fails to respond to a CSD data request by the date the response is due and has not been granted an extension of time from CSD to respond or has not disputed the reasonableness of the data request pursuant to the procedures set forth above, CSD may request that the balance of the fine be imposed. CSD shall make such request by a formal motion to the LMALJ. If ordered to do so by the LMALJ in response to the CSD motion, USP&C shall pay the fine within ten business days of the issuance of the LMALJ's ruling. The parties agree that any ruling by the MLALJ in response to such a motion may not be appealed to the Commission and that the order of the MLALJ need not be ratified by any further order of the full Commission.

The procedures set forth in this paragraph shall not apply to data requests submitted by CSD to USP&C regarding the balance of I.99-10-024. Any disputed data requests submitted in any subsequent phase of I.99-10-024 shall be resolved by the administrative law judge assigned to I.99-10-024 or by procedures agreed to by the Parties in a separate agreement.

SECTION 3: NON-SEVERABILITY

No individual terms of this agreement is assented to by any Party except in consideration of another party's assent to all other terms. The terms of this Agreement are non-severable. Thus, the Agreement is indivisible, and each part is interdependent on each and all other parts. If this Settlement Agreement is adopted by the Commission with modifications, the modifications must be consented to by all Parties to this Settlement Agreement. Any Party may withdraw from this Agreement if the Commission modifies, deletes from, or adds to the disposition of the matters agreed to herein.

SECTION 4: APPLICABLE LAW

This agreement is to be governed and construed in accordance with the laws of the state of California applicable to settlement agreements either entered into or to be performed in the State of California.

SECTION 5: NO ADMISSION

The giving of consideration specified herein effects the settlement of Phase I of I.99-10-024. Neither the giving of said consideration nor anything contained herein shall be construed as an admission by USP&C, its employees, officers, directors, stockholders, agents, principals, representative, successors, and attorneys of the validity of the claims of CSD and the Commission.

SECTION 6: FURTHER ASSURANCES AND COOPERATION

The Parties shall cooperate with one another to prepare appropriate documentation to memorialize and effectuate the terms of this Agreement. The Parties shall employ their best efforts to secure Commission approval of this settlement. The Parties shall execute all such further and additional documents as may be reasonably necessary or appropriate to carry out the provisions of this Agreement.

SECTION 7: NOTICES AND DEMANDS

All notices, requests or demands herein provided to be given or made, or which may be given or made by either Party to the other, shall be given or made only in writing and shall be deemed to have been duly given: (a) when delivered personally to any Party to this Agreement; (b) forty-eight hours after the time the same is deposited in the United States mail within the State of California, regular, certified or registered mail, properly addressed, and postage thereon prepaid; or (c) when sent by facsimile transmission to any party using the facsimile number for such party set forth below in this section. The proper address to which notices, requests or demands may be given or made by either Party shall be the address for either party set forth as follows:

If to USP&C:

USP&C
Attn: Sheldon Krantz, Esq.
Piper, Marbury, Rudnick & Wolfe, LLP
1200 – 19th Street, N.W.
Washington, D.C. 20036-2430
Facsimile: (202) 223-2085
[Address]

with a copy to:

Thomas J. MacBride, Jr.
Goodin, MacBride, Squeri, Ritchie & Day, LLP
505 Sansome Street, Suite 900
San Francisco, California 94111
Facsimile: (415) 398-4321

If to CSD:

California Public Utilities Commission
Consumer Services Division
State Building Room 4107
Attn: ______________
505 Van Ness Avenue
San Francisco, California 94102
Facsimile: (415) 703-______

with a copy to:

Travis T. Foss, Esq.
Staff Counsel
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, California 94102
Facsimile: (415) 703-4465

Such address and facsimile numbers may be changes by written notice given by such Party to the other pursuant to this section.

SECTION 8: ENTIRE AGREEMENT

This written Agreement constitutes the entire agreement between the Parties pertaining to the subject matter contained in it. This Agreement supersedes all prior and contemporaneous representations and understandings of the Parties. No supplement, modification, or amendment of this Settlement agreement shall be binding unless executed in a writing signed by the Parties hereto expressly stating that the modification is intended.

SECTION 9: CONSTRUCTION

This Agreement is a negotiated agreement. Each party has cooperated in the drafting of this Agreement. If any construction is to be made of any provision of this agreement, it shall not be construed against any Party on the grounds that such Party was the drafted of the agreement or a particular Provision.

SECTION 10: INTERPRETATION

Section titles in this Agreement are for convenience and do not define, limit or extend any provision of this Agreement.

SECTION 11: COUNTERPARTS

This Agreement may be executed in any number of separate counterparts, each of which shall constitute an original, and all of which, when taken together, shall constitute one single agreement.

IN WITNESS WHEREOF, each Party has executed this Settlement Agreement as of the date first shown above.

CONSUMER SERVICES DIVISION

By______________________________

Williams Schulte, Director

USP&C

By______________________________

Approved as to form:

CONSUMER SERVICES DIVISION

By______________________________

Travis T. Foss
Staff Counsel
California Public Utilities Commission

USP&C

By______________________________

Thomas J. MacBride, Jr.
Goodin, MacBride, Squeri, Ritchie & Day, LLP
Attorneys for USP&C

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(END OF ATTACHMENT A)

ATTACHMENT B

(SEE CPUC FORMAL FILES FOR ATTACHMENT B)