

Mailed

ALJ/ANG/slo

JUN 6 1996

Decision 96-06-021 June 6, 1996

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of The Furst Group, Inc. (U-5381-T) for Authority to Provide IntraLATA Toll Telecommunications Services Within the State of California Application 95-09-018 (Filed September 18, 1995)

ORIGINAL

OPINION

Summary

By this decision, we adopt a proposed settlement agreement filed by the Furst Group (Furst or applicant) and our Safety and Enforcement (S&E) Division. We grant the expanded authority which applicant seeks to provide as a reseller of intrastate, intraLATA toll services.

Procedural History

Furst, a privately-held New Jersey corporation certified to do business in California, seeks a certificate of public convenience and necessity (CPCN) under Public Utilities (PU) Code § 1001 to permit it to resell intraLATA telephone services in California. Applicant has previously received authority for provision of interLATA toll services by Decision (D.) 94-04-077 issued on April 20, 1994. The corporate identification number assigned to applicant is U-5381-T. Applicant now requests that its authority be expanded in order to provide intraLATA toll telecommunications services between points within the State of California as a nondominant interexchange carrier (NDIEC). In

California is divided into ten Local Access and Transport Areas (LATAs) of various sizes, each containing numerous local telephone exchanges. "InterLATA" describes services, revenues, and functions that relate to telecommunications originating in one LATA and terminating in another. IntraLATA describes services, revenues, and functions that relate to telecommunications originating and terminating within a single LATA.

Decision 95-09-018 June 3, 1996

particular, Furst requests authorization to operate as a nonfacilities-based or "switchless" reseller of intrastate, intralATA toll service.

On February 8, 1996, the Safety and Enforcement Division (S&E) filed a late-filed protest to Furst's application. Pursuant to Rule 45 of the California Public Utilities Commission's (Commission) Rules of Practice and Procedure, S&E requested that the Commission accept this protest. S&E states that the Commission's Consumer Affairs Branch (CAB) has received several complaints related to unfair marketing practices or "slamming". S&E states that it began its investigation into Furst's operations in November of 1995, but this investigation has taken considerably longer than anticipated. Because Furst is a reseller and does not have its own carrier identification code, data gathering and documentation have been cumbersome. S&E recommended in its protest that the Commission should dismiss Furst's application, ex parte without prejudice.

On February 20, 1996, applicant filed its response to S&E's motion, as well as a response to the protest itself. Furst responds that S&E's motion is procedurally improper, because no timely protests were filed. More substantively, Furst asserts that it has severed its relationship with several hundred independent marketing agents and that it has adopted a vigorously enforced quality control policy.

By Administrative Law Judge (ALJ) ruling, S&E's late-filed protest to A.95-09-018 was accepted. The ALJ also ruled that the Commission cannot fully evaluate whether or not it is appropriate to expand applicant's operating authority without additional information. We affirm that ruling now. A pre-hearing-conference (PHC) was scheduled for March 15, 1996. By conference call on March 14, 1996, and confirmed by letter dated March 15, 1996, applicant and S&E jointly requested a continuance of the PHC. The parties agreed to continue their discussions and exchange of data in a good faith effort to resolve the S&E protest. The

parties agreed to report back to the ALJ as to the outcome of these efforts and the need for a PHC, if any. By conference call on April 11, 1996, applicant and S&E confirmed that settlement discussions were proceeding satisfactorily. S&E filed a Motion to Withdraw Protest on April 29, 1996, along with a jointly-signed proposed settlement agreement.

On May 6, 1996, S&E filed a Supplemental Request for Approval of the Settlement Agreement and Protest Dismissal. S&E filed this request to provide the Commission with additional information as to why the proposed settlement is in the public interest. S&E believes that the agreement not only redresses past problems, but provides the necessary reassurance that applicant's operations will change so as to avoid future slamming problems. In summary, S&E states that the public interest is fostered by this settlement agreement, because it 1) provides for restitution to customers who believe they were slammed; 2) specifically provides that applicant's employees and agents will disclose to prospective and existing customers that they are First employees or agents, and are not associated with any other company, which may help prevent the situations which caused the slamming complaints; and 3) provides for close monitoring of applicant's California transactions. S&E also requests that we waive the requirement for a settlement conference under Rule 51.1(b). No person or entity other than applicant and S&E has notified the Commission of any interest in this case.

Discussion

The proposed settlement agreement (Attachment B) disposes of the issues in dispute in this case. Proposals of settlement agreements are governed by Rules 51 et seq. of our Rules of Practice and Procedure. In D.92-12-019, we set forth our policy on all-party settlement proposals and stated that all-party settlements must meet the following requirements:

- a. Command the unanimous sponsorship of all active parties to the instant proceeding;

b. Demonstrate that the sponsoring parties are fairly reflective of the affective interests;

c. Demonstrate that no term of the settlement contravenes statutory provisions or prior Commission decisions; and

d. Convey to the Commission sufficient information to permit (the Commission) to discharge (its) future regulatory obligations with respect to the parties and their interests.

In addition, we stated that an all-party settlement does not require a sufficient quantum of evidence to establish prima facie that the settlement provisions are "reasonable." (D.92-12-019, mimeo, 14.)

The parties to the settlement agreement are the only active parties involved in this case; therefore, sponsorship is unanimous. The sponsoring parties in this case are reflective of the affective interests. S&E is concerned that consumers are adequately protected; Furst obviously wants to expand its authority in order to compete in the intralATA market. Both parties acknowledge that they have reached this compromise after thorough bargaining and negotiation and that the settlement agreement represents a mutually agreeable compromise of the applicable factual allegations and legal authorities. In light of the fact that S&E and Furst are the only parties to this proceeding, applicant requests that we waive the comment and reply period set forth in Rule 51.4 of our Rules of Practice and Procedure. S&E does not oppose this request. We hereby grant Furst's request for waiver of the comment period. In addition, we waive the requirement for a settlement conference under Rule 51.1(b). We must now turn to consideration of whether the settlement agreement is in the public interest and whether any terms contravene statutory provisions or prior Commission decisions.

Command the unanimous sponsorship of all active parties to the instant proceeding;

110-01- We find that the settlement agreement is in the public interest. We are greatly concerned about the possibility of unfair marketing practices, or slamming, which are occurring with more frequency as the markets become more competitive. We believe that the safeguards discussed in the settlement agreement adequately protect consumers. We remind applicant of its statutory obligations, particularly (Public Utilities Code § 28890.5) We are pleased that First has shown a willingness to address these problems and believe that S&B's efforts can be more usefully directed elsewhere.

In addition to determining whether the particular settlement provisions are in the public interest, we turn to the rules generally applicable to NDIEC resellers. By D. 84-01-037 (14 CPUC2d 317 (1984)) and later decisions, we authorized interLATA entry generally. However, we limited the authority conferred to interLATA service, and we subjected the applicants to the condition that they not hold themselves out to the public to provide intralATA service. Subsequently, by D. 94-09-065, we authorized competitive intralATA services effective January 1, 1995, for carriers meeting specified criteria.

The Commission has established two major criteria for determining whether a CPCN should be granted. An applicant who is a switchless reseller² must demonstrate that it has a minimum of

² D. 93-05-010 defines a switchless reseller as an NDIEC with the following characteristics: it uses the switch of another carrier; it usually, but not always, uses access circuits that the underlying carrier purchases from an LEC; it provides service in its own name, and its customers view it as their telephone company for interLATA and interstate calls. D. 92-06-069 noted that it is possible to control, operate, or manage telephone lines without owning them. The decision also notes that resellers which do not own or directly operate their own telephone wires may still have plant which is owned, controlled, operated, and/or managed in order to facilitate communication by telephone.

\$25,000 of cash or cash equivalent (as described in D.91-10-041, 41 CPUC2d 505 at 520 (1991)) is reasonably liquid and readily available to meet the firm's start-up expenses. Such applicants shall also document any deposits required by local exchange companies or interexchange carriers (IECs) and demonstrate that they have additional resources to cover all such deposits. (D.93-05-0109949 CPUC2d 197 at 208 (1993)) In addition, an applicant is required to make a reasonable showing of technical expertise in telecommunications for a related business.

Applicant filed a motion for a limited protective order for its financial statements, maintaining that it contains confidential information and would do harm to applicant if revealed. No opposition to the motion has been filed. The motion was granted by administrative law judge (ALJ) (ruling dated October 10, 1995).

As part of its application, applicant provided audited financial statements demonstrating that applicant has more than \$25,000 consisting of cash. These audited financial statements satisfy our criteria for being reasonably liquid and readily available to meet the applicant's needs.

A showing of the technical expertise of applicant's principals has been made and accepted by this Commission in Furst's interLATA certification application, Exhibit G. Applicant incorporated this exhibit by reference, which we accept as adequate for these purposes.

In light of the joint proposed settlement filed by applicant and S&E, we will grant S&E's motion to withdraw its protest. Furst and S&E have appropriately resolved the issues raised in S&E's protest without going to the time and expense of hearings and litigation. We find that the terms of the settlement agreement are reasonable, consistent with the law, and in the public interest. Furthermore, Furst has successfully met our

standards of fitness for NDIECs. Therefore, we will authorize the intralATA services that applicant seeks to provide.

Findings of Fact

1. Applicant served a copy of the application upon the NDIEC telephone corporations with which it is likely to compete.

2. A notice of the filing of the application appeared in the Daily Calendar on September 27, 1995.

3. S&B filed a protest on February 18, 1996. This late-filed protest was accepted by ALJ ruling on February 23, 1996. On April 29, 1996, S&B filed a motion to withdraw its protest.

4. A hearing is not required.

5. By prior Commission decisions, we authorized competition in providing interLATA telecommunications service but generally barred those offering such service from holding out to the public the provision of intralATA service.

6. By D. 94-09-065, we authorized competitive intralATA services effective January 1, 1995, for carriers meeting specified criteria.

7. Applicant has demonstrated that it has a minimum of \$25,000 of cash, reasonably liquid and readily available to meet its start-up expenses.

8. Applicant has represented that no deposits are required by any local exchange companies or interexchange carriers.

9. Applicant's showing of technical experience was made in A. 93-11-018 and was accepted in D. 94-04-077.

10. Applicant has submitted with its application a complete draft of applicant's initial tariff which complies with the requirements established by the Commission including prohibitions on unreasonable deposit requirements.

11. Applicant has represented that no one associated with or employed by applicant was previously associated with a nondominant interexchange carrier that filed for bankruptcy or went out of business.

12. Since no facilities are to be constructed, it can be seen with certainty that the proposed operation will not have a significant effect upon the environment.

13. The Commission has routinely granted nondominant interexchange carriers, such as applicant, an exemption from Rule 18 (b) (where no construction is involved) to the extent that the rule requires applicant to serve a copy of its application on cities and counties in the proposed service area and to the extent that it requires applicant to provide a conformed copy of all exhibits attached to applicant's filed application to potential competitors.

14. Exemption from the provisions of PU Code §§ 816-830 has been granted to other resellers. (See e.g. A.D. 86-10-007 and D. 88-12-076.)

15. The transfer or encumbrance of property of nondominant carriers has been exempted from the requirements of PU Code § 851 whenever such transfer or encumbrance serves to secure debt.

16. Applicant's motion for a limited protective order was previously granted on October 10, 1995.

Conclusions of Law

1. S&E's motion to withdraw its protest is reasonable in light of the joint settlement agreement filed by S&E and applicant.

2. The joint settlement agreement is reasonable and meets our criteria for all party settlements, as set forth in this decision, and established in D. 92-12-019.

3. It is reasonable to grant applicant's request for waiver of the comment period, as provided for in Rule 51.4, because S&E and applicant are the only parties to this proceeding and it is reasonable to grant S&E's request for a waiver of the settlement conference requirement under Rule 51.1(b).

4. Applicant has the financial ability to provide the proposed service.

5. Applicant has made a reasonable showing of technical expertise in telecommunications.

6. Public convenience and necessity require the interLATA and intralATA services to be offered by applicant.

7. Applicant is subject to:

a. The current 3.2% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the Universal Lifeline Telephone Service (PU Code § 879, Resolution T-15799, November 21, 1995);

b. The current 0.36% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California Relay Service and Communications Devices Fund (PU Code § 2881, Resolution T-15801, October 5, 1995);

c. The user fee provided in PU Code §§ 431-435, which is 0.1% of gross intrastate revenue for the 1995-1996 fiscal year (Resolution 4778); and

d. The current 0.27% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California High Cost Fund (PU Code § 739.30, Resolution T-15826, December 20, 1995.)

8. Applicant should be exempted from Rule 18(b) requirement of service of the application on cities and counties in the proposed service area and service of all exhibits attached to this application on potential competitors.

9. Applicant should be exempted from PU Code §§ 816-830.

10. Applicant should be exempted from PU Code § 851 when the transfer or encumbrance serves to secure debt.

All notices are hereby placed on notice that their California tariff filings

11. The application should be granted to the extent set forth below.

12. Because of the public interest in competitive/interLATA and intralATA services, the following order should be effective immediately.

ORDER

IT IS ORDERED that:

1. The protest filed by the Safety and Enforcement (S&E) Division is withdrawn and the proposed settlement agreement is adopted.

2. A certificate of public convenience and necessity is granted to The First Group, Inc. (applicant) to operate as a reseller of intralocal access and transport area (intralATA) telecommunication services offered by communication common carriers in California, to the extent authorized by Decision (D.) 94-09-065.

3. Applicant shall file a written acceptance of the certificate granted in this proceeding.

4. a. Applicant is authorized to file with this Commission tariff schedules for the provision of intralATA service. Applicant may not offer intralATA services until tariffs are on file. Applicant's initial filing shall be made in accordance with General Order (GO) 96-App excluding Sections IV, V, and VI, and shall be effective not less than 1 day after filing. Applicant shall comply with the provisions in its tariffs.

b. Applicant is a nondominant interexchange carrier (NDIEC). The effectiveness of its future tariffs is subject to the schedules set forth in Ordering Paragraph 5 of D. 90-08-032 (37 CPUC2d 130 at 158) as modified by D. 91-12-013 (42 CPUC2d 220 at 231) and D. 92-06-034 (44 CPUC2d 617 at 618).

5. All NDIECs are hereby placed on notice that their California tariff filings

will be processed in accordance with the following effectiveness schedule:

"a. Inclusion of FCC-approved rates for interstate services in California public utilities tariff schedules shall become effective on one (1) day's notice.

"b. Uniform rate reductions for existing services shall become effective on five (5) days' notice.

"c. Uniform rate increases, except for minor rate increases, for existing services shall become effective on thirty (30) days' notice, and shall require bill inserts, a message on the bill itself, or first class mail notice to customers of the pending increased rates.

"d. Uniform minor rate increases, as defined in D.90-11-029, for existing services shall become effective on not less than 5 working days' notice. Customer notifications is not required for such minor rate increases.

"e. Advice letter filings for new services and for all other types of tariff revisions, except changes in text not affecting rates or relocations of text in the tariff schedules, shall become effective on forty (40) days' notice.

"f. Advice letter filings merely revising the text or location of text material which do not cause an increase in any rate or charge shall become effective on not less than five (5) days' notice.

5. Applicant may deviate from the following provisions of GO 96-A: (a) paragraph II.C. (1) (b), which requires consecutive

sheet numbering and prohibits the reuse of sheet numbers, and (b) paragraph II.C.(4), which requires that "a separate sheet or series of sheets should be used for each rule." Tariff filings incorporating these deviations shall be subject to the approval of the Commission Advisory and Compliance Division's (CACD) Telecommunications Branch. Tariff filings shall reflect all fees and surcharges to which applicant is subject, as reflected in Conclusion of Law 4.

6. Applicant shall file as part of its initial tariff, after the effective date of this order and consistent with Ordering Paragraph 3, a service area map.

7. Prior to initiating service, applicant shall provide the Commission's Consumer Affairs Branch with the applicant's designated contact person(s) for purposes of resolving consumer complaints and the corresponding telephone number. This information shall be updated if the name or telephone number changes or at least annually.

8. Applicant shall notify this Commission in writing of the date intraLATA service is first rendered to the public within 5 days after service begins.

9. Applicant shall keep its books and records in accordance with the Uniform System of Accounts specified in Title 47, Code of Federal Regulations, Part 32.

10. In the event the books and records of the applicant are required for inspection by the Commission or its staff, applicant shall either produce such records at the Commission's offices or reimburse the Commission for the reasonable costs incurred in having Commission staff travel to applicant's office.

11. Applicant shall file an annual report, in compliance with GO 104-A, on a calendar-year basis using the information request form developed by the CACD Auditing and Compliance Branch and contained in Attachment A.

GO 98-A: (a) paragraph II.C.(1)(b), which requires consecutive

12. Applicant shall ensure that its employees comply with the provisions of Public Utilities (PU) Code § 2889.5 regarding solicitation of customers.

13. The certificate granted and the authority to render service under the rates, charges, and rules authorized will expire if not exercised within 12 months after the effective date of this order.

14. The corporate identification number assigned to applicant is U-5381-T which shall be included in the caption of all original filings with this Commission, and in the titles of other pleadings filed in existing cases.

15. Within 60 days of the effective date of this order, applicant shall comply with PU Code § 708, Employee Identification Cards, and notify the Chief of CACD's Telecommunications Branch in writing of its compliance.

16. Applicant is exempted from the provisions of PU Code §§ 816-830.

17. Applicant is exempted from PU Code § 851 for the transfer or encumbrance of property, whenever such transfer or encumbrance serves to secure debt.

18. In response to the applicant's request for waiver, applicant is exempted from Rule 18(b) of the Commission's Rules of Practice and Procedure to the extent that the rule requires applicant to serve a copy of its application on the cities and counties it proposes to operate in and to the extent that the rule requires applicant to serve a copy of all exhibits attached to its application on potential competitors.

19. If applicant is 90 days or more late in filing an annual report or in remitting the fees listed in Conclusion of Law 4, CACD shall prepare for Commission consideration a resolution that revokes the applicant's certificate of public convenience and necessity, unless the applicants have received the written permission of CACD to file or remit late.

20. The Administrative Law Judge's ruling granting the motion for a limited protective order keeping applicant's financial records confidential is affirmed.

21. The application is granted, as set forth above.

22. Application 95-09-018 is closed. This order is effective today.

Dated June 6, 1996, at San Francisco, California.

The corporate identification number assigned to applicant is U-2381-T which shall be included in the caption of all original filings with the Commission, and in the title of other pleadings filed in cases.

P. GREGORY CONLON

President

JESSIE J. KNIGHT, JR.

HENRY M. DUQUE

JOSIAH L. NEPPER

Commissioners

of the effective date of this order. Applicant's employee identification number is 2 708. The Chief of CACD's Telecommunications Branch is

Commissioner Daniel Wm. Fessler, being necessarily absent, did not participate.

writing of its compliance. Commissioner Daniel Wm. Fessler, being necessarily absent, did not participate.

IV. Applicant is exempted from 20 Code § 821 for the transfer or encumbrance of property, whenever such transfer or encumbrance serves to secure debt.

18. In response to the applicant's request for waiver, applicant is exempted from Rule 18(b) of the Commission's Rules of Practice and Procedure to the extent that the rule requires

applicant to serve a copy of its application on the state and counties it proposes to operate in and to the extent that the rule requires applicant to serve a copy of all exhibits attached to its application on potential competitors.

19. If applicant is 90 days or more late in filing an annual report or in revising the fees listed in Conclusion of Law A,

CACD shall prepare for Commission consideration a resolution that revokes the applicant's certificate of public convenience and necessity, unless the applicants have received the written

permission of CACD to file or remit late.

TO: ALL INTEREXCHANGE TELEPHONE UTILITIES

Article 5 of the Public Utilities Code grants authority to the California Public Utilities Commission to require all public utilities doing business in California to file reports as specified by the Commission on the utilities' California operations.

A specific annual report form has not yet been prescribed for the California interexchange telephone utilities. However, you are hereby directed to submit an original and two copies of the information requested in Attachment A no later than March 31st of the year following the calendar year for which the annual report is submitted.

Address your report to:

California Public Utilities Commission
Auditing and Compliance Branch, Room 3251
505 Van Ness Avenue
San Francisco, CA 94102-3298

Failure to file this information on time may result in a penalty as provided for in §§ 2107 and 2108 of the Public Utilities Code.

If you have any question concerning this matter, please call (415) 703-1961.

ATTACHMENT A

Information Requested of California Interexchange Telephone Utilities.

To be filed with the California Public Utilities Commission, 505 Van Ness Avenue, Room 3251, San Francisco, CA 94102-3298, no later than March 31st of the year following the calendar year for which the annual report is submitted.

1. Exact legal name and U # of reporting utility.
2. Address.
3. Name, title, address, and telephone number of the person to be contacted concerning the reported information.
4. Name and title of the officer having custody of the general books of account and the address of the office where such books are kept.
5. Type of organization (e.g., corporation, partnership, sole proprietorship, etc.).

If incorporated, specify:

- a. Date of filing articles of incorporation with the Secretary of State.
- b. State in which incorporated.
6. Commission decision number granting operating authority and the date of that decision.
7. Date operations were begun.
8. Description of other business activities in which the utility is engaged.
9. A list of all affiliated companies and their relationship to the utility. State if affiliate is a:
 - a. Regulated public utility.
 - b. Publicly held corporation.
10. Balance sheet as of December 31st of the year for which information is submitted.
11. Income statement for California operations for the calendar year for which information is submitted.

(END OF ATTACHMENT A)

ATTACHMENT B

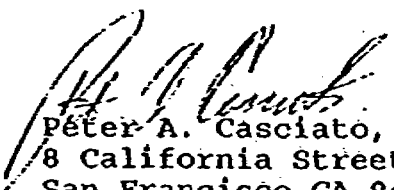
BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA


In the Matter of the Application of)
THE FURST GROUP, INC. (U-5381-T))
for Authority To Provide IntraLATA)
Toll Telecommunications Services Within) Application
the State of California.) No. 95-09-018
)

MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT & PROTEST DISMISSAL

The Safety & Enforcement Division ("S&E") and The Furst Group, Inc. ("TFG"), by their attorneys and pursuant to Rule 51.1(c) of the Commission's Rules of Practice and Procedure, hereby request the dismissal with prejudice of the S&E protest, contingent upon Commission approval of the attached agreement between the Applicant and S&E. The agreement provides, inter alia, for voluntary contributions by TFG to be used for consumer education and awareness to prevent unauthorized switching of long distance customers, voluntary forgiveness of charges by TFG for customers that have alleged that their long distance service was changed in an unauthorized manner, TFG continued adherence to Commission and statutory requirements regarding the provision of service in California and the dismissal of the protest and grant of the TFG application. Both TFG and S&E request speedy approval of the Agreement and the instant TFG application.

Respectfully submitted,


Peter A. Casciato, P.C.
8 California Street Suite 701
San Francisco CA 94111
(415) 291-8661
Attorney for The Furst Group,
Inc.


Robert C. Cagen, Esq.
Public Utilities Commission
505 Van Ness Ave. Room 5030
San Francisco CA 94102
(415) 703-2197
Attorney for the Safety
& Enforcement Division

April 22, 1996

ATTACHMENT B

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of THE FURST GROUP, INC. (US281-T) for Authority to Provide IntralATA Toll Telecommunications Services Within the State of California. Filed September 18, 1995

SETTLEMENT AGREEMENT

- 1) The Safety and Enforcement Division (S&E) and the Furst Group, Inc. (Furst) hereby agree to resolve the issues raised in S&E's protest of Furst's Application (A.95-09-018) for IntralATA authority based on the following terms:
 - In consideration of the following, the Safety and Enforcement Division (S&E) agrees to withdraw its protest of Application (A.95-09-018) with prejudice, contingent upon Commission approval of this Agreement.
- 2) Furst voluntarily and hereby agrees to contribute \$25,000 per year, for two years (payable on or before June 5, 1996 and June 5, 1997, respectively) to the California Public Utilities Commission to be used by S&E to purchase public notices in California newspapers or other periodicals of S&E's choosing, to promote consumer education and awareness as well as providing advice to consumers concerning the prevention of unauthorized switching of their long distance telephone service. These public notices may also advise consumers about actions to take if their long distance telephone service has been switched without their authorization. The content of all such notices shall be solely at the discretion of S&E, however, no such notices shall include any mention of The Furst Group.
- 3) Furst volunteers and hereby agrees to forgive any and all outstanding disputed charges or balances for Furst's long distance services for all consumers identified in a list

ATTACHMENT B

provided to Furst on April 17, 1996 under cover letter from S&E ("listed customers") that have alleged that their long distance service was switched without authorization and who have not withdrawn that allegation. Furst further volunteers and agrees that for all such listed customers who were switched to Furst's long distance services from the period January 1, 1995 and through the date of Commission approval of this Agreement, Furst will refund or credit all PIC fees, service charges and long distance revenues charged or collected by Furst or by any agent or collection services working on behalf of Furst. Such refunds or credits for long distance service will be limited to the customer's first two months of long distance charges. Any credit or refund previously made by Furst to these customers will offset any credit or refund issued to these customers by Furst.

Furst represents that, to the best of its knowledge, the listed customers include all California customers who have contended that their long distance service was switched by Furst without their authorization.

Should any unlisted customer allege at any time after the signing of the Agreement that he or she was switched to Furst without his or her authorization at any time after January 1, 1995, Furst agrees to use diligence to ascertain whether the customer's allegation is substantiated. Furst agrees, upon finding that any such allegation is substantiated, to refund and credit all charges for long distance services limited to the customer's first two months of long distance charges. If Furst concludes that the allegation is unsubstantiated, Furst agrees to so notify S&E in writing, and to provide therewith all evidence supporting this conclusion. S&E reserves the right to take any action it deems appropriate for any such customer, while Furst reserves all of its rights and remedies in defending against such actions.

ATTACHMENT B

4) For the consumers identified in #3 above, Furst agrees to request in writing, of any and all collection services that it engages or engaged, that such collection services cease all attempts to collect from these consumers. Further, Furst agrees to make a diligent and best effort to direct these agencies in writing to cause any and all credit reporting agencies to purge their records of any reference to any past or present outstanding debt to Furst, so that such customers' credit reports/ratings are not impacted in any way for non-payment of any rates, charges, fees, etc. to Furst or any agent of Furst. Furst agrees to provide S&E, within 90 days after the Commission approves this Agreement, a report detailing its compliance with the requirements contained in items 3 and 4 of the Agreement. This report shall include the names of all customers for whom any action described in these items was taken by Furst, the specific action(s) taken by Furst, and any and all correspondence, from or to Furst, pertaining to such actions.

5) Furst agrees that its employees and agents must fully disclose to all prospective and existing customers that they are employees or agents of Furst and are not associated with AT&T, Sprint or any other company. No employee or agent of Furst shall state or imply that they are associated with any entity other than Furst. All employees or agents of Furst shall affirmatively state to all prospective customers that they represent Furst and no other company. In the event that Furst, subsequent to Commission approval of this Agreement, does become associated with AT&T, Sprint, or any other telephone corporation, nothing in this paragraph shall prevent Furst, or agents of Furst, from making such representations, so long as such representations are not made in a manner to mislead customers concerning the provider and services being sold. Such representations may be made only when the Furst agents are acting on behalf of the other provider.

ATTACHMENT B

- 6) Furst agrees that its employees and agents shall not state or imply to prospective customers that they are offering any special discount calling plan from AT&T, Sprint or any company other than Furst, in a manner which misleads customers into believing that Furst's employees or agents are employees or agents of AT&T, Sprint or any other company.
- 7) a) Furst agrees to obey all CFC rules and regulations, all laws of the state of California, including but not limited to Public Utilities Code section 2889.5, and all rules and regulations of the Federal Communications Commission.
- b) Furst agrees that for the period stated below, it will once each month provide S&E and the Consumer Affairs Branch (CAB) with a report which lists all allegations of unauthorized switching by Furst of which Furst is aware. The report shall contain but not be limited to copies of all letters of complaint, and all other written contacts regarding long distance switching, billing and service complaints, from Furst's California customers. Furst shall provide to S&E and CAB, the above specified items for a period of at least 12 months from the date of Commission approval of this Agreement, and S&E may require Furst, upon notice, to continue to provide the above specified items for an additional 12 months, at its sole discretion.
- c) For any California customers switched to Furst between the date of the signing of the Agreement and two years thence, Furst agrees to create and retain, for not less than two years from the date of the switch, a voice recording of a phone conversation with that customer, in which the customer confirms that he or she did previously, knowingly authorize the switch. Furst agrees to produce any and all such recordings, in addition to any and all transcripts of such calls or letters of authorization from those customers which may exist, upon demand of S&E. If, during this period, Furst wishes to suggest to S&E some other

ATTACHMENT B

- method of verification, S&E agrees to consider that such methodology.
- 8) Furst has provided evidence that it has fully complied with its obligations to make payments for all surcharges and fees as required by the Public Utilities Code (PU Code), including PU Code Section 879; Resolution T-15322; PU Code Section 2881; Resolution T-15254; and PU Code Sections 431-435. Furst agrees to continue to comply with these obligations and present evidence of its compliance upon request by S&E.
- 9) In the event of any violation of the Agreement, S&E reserves its rights to initiate a proceeding with the Commission and to seek whatever remedies that it deems necessary. Likewise, Furst reserves all of its rights and remedies in defending against such actions. If any provision of the Agreement is found by a court or administrative body to be prohibited by federal or state law or regulation, such provision shall not be enforceable and any such non-enforceability will not vitiate any other severable provision of the Agreement.
- 10) This Agreement is the entire agreement between the parties and it can not be amended or modified without the written agreement of both parties. Both Furst and S&E commit to filing the Agreement with the Commission within two (2) business days of its execution along with a brief joint request that the S&E protest is withdrawn, contingent upon Commission approval of the Agreement. In addition, both Furst and S&E agree to jointly request that the Commission grant speedy Commission approval of the Agreement and the Furst application.
- 11) Furst and S&E acknowledge and confirm that they have received sufficient consideration for the settlement set forth in this Agreement, and represent and warrant that no promise or inducement has been made or offered to them except as set forth in this Agreement, that they are executing this

ATTACHMENT B

Agreement without reliance upon any statement or burden representation by any person or party released, or the representative of any person or party released, except as set forth in this Agreement; that they are legally competent to make the settlement set forth in this Agreement and to execute this Agreement; that this Agreement sets forth the entire understanding of First and S&E with respect to the terms and conditions of their settlement; that they fully understand their right to discuss with their respective legal counsel any and all aspects of the settlement set forth in this Agreement; that they have availed themselves of that right; that they and their legal counsel carefully have read and fully understand all of the provisions of the settlement set forth in this Agreement; that they voluntarily are entering into this agreement; and that this Agreement cannot be modified except in writing signed by all parties to the modification.

12) First and S&E acknowledge and stipulate that the Agreement is fair and is not the result of any fraud, duress, or undue influence exercised by any either upon the other, or by any other person or persons upon either; that the provisions herein made are adequate, reasonable, and satisfactory to each of them; that they have arrived at the compromise that forms the basis of their settlement agreement after thorough bargaining and negotiation; and that review of the applicable factual allegations and legal authorities and their settlement agreement represents a final and mutually agreeable compromise of the matters set forth in this Agreement.

13) This Agreement is to be governed and construed in accordance with the Commission's Rules of Practice and Procedure, particularly those applicable to settlement agreements, and with the laws of the State of California applicable to settlement agreements either entered into or to be performed in the State of California. In light of the fact that S&E

ATTACHMENT B

CERTIFICATE OF SERVICE

and Furst are the only parties to this proceeding, Furst requests that the Commission waive the document and reply period set forth in the Rules of Practice and Procedure (Rule 51.4). S&E does not oppose Furst's request for waiver.

14) This Agreement may be executed in multiple counterparts, each of which shall constitute an original, and all of which shall constitute one single agreement.

THOMAS J. KENNEDY (s) Bessie J. Kinard

//

William R. Schulte

WILLIAM R. SCHULTE, Director
Safety and Enforcement Division

Hubert A. Streep

HUBERT A. STREEP, Vice President
The Furst Group, Inc.

Date: April 23, 1996

Date: April 17, 1996

ATTACHMENT B

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document, entitled MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT & PROTEST DISMISSAL and SETTLEMENT AGREEMENT upon all known parties of record in this proceeding by mailing by first-class a copy thereof properly addressed to each party.

Dated at San Francisco, California this 29th day of April, 1996.

/s/ BESSIE J. KLAUDT

Bessie J. Klaudt

[Handwritten Signature]
WILLIAM R. SCHUMER, Director
Safety and Enforcement Division, The Fruit Group, Inc.

DATE: APRIL 29, 1996