

DEC 9 1996

Decision 96A12-017 December 9, 1996 re hearing before the California Public Utilities Commission of the State of California
BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA
In the Matter of the Application)
 of EQUALNET CORPORATION for a telephone to obtain an adequate authority to provide **IntraLATA**)
 Toll Telecommunications Services) (Filed April 21, 1995)
 Within State of California.

~~the following is the background information concerning the application:~~

OPINION **ORIGINAl**

Background In this decision we grant authority to EqualNet Corporation (EqualNet) formerly EqualNet Communications, Inc. A resell intralATA telephone service in California. We also approve a settlement agreement between the Commission's Safety and Enforcement Division (S&E) and EqualNet to remedy improprieties in its previous marketing practices which would otherwise bar approval of its application.¹

EqualNet, a Texas corporation qualified to do business in California, has applied for additional authority under its certificate of public convenience and necessity (CPCN), to permit it to resell intralATA telephone services within California.²

¹ Under the recently announced reorganization of the Commission, the responsibilities of the Safety and Enforcement Division with respect to the subject matter of this proceeding have been assumed by the Consumer Services Division. For the sake of convenience, we will continue to use the former designation for responsible staff, except in our orders.

² California is divided into ten Local Access and Transport Areas (LATAs) of various sizes, each containing numerous local telephone exchanges. IntraLATA describes services originating in one LATA and terminating in another. IntraLATA describes services, revenues, and functions that relate to telecommunications originating within a single LATA.

FEB 19 1996

EqualNet already received authority to resell interLATA services in California under Decision (D.) 94-07-046 (July 20, 1994), in Application (A.) 94-03-012, and this application, therefore, requests an expansion of EqualNet's authority consistent with D.94-09-065, in which we authorized competitive interLATA services to be provided by qualified carriers.

The information furnished with the application demonstrates that the applicant meets the Commission's prima facie requirements for providing telecommunications services as a non-facilities-based "switchless" reseller in California. The application was served upon the same persons upon whom A.94-03-012 was served, and no protests were received from those persons. Accordingly, the Administrative Law Judge (ALJ) prepared a decision recommending approval of the application, which was placed on the Commission's agenda for its meeting of November 8, 1995.

Just before the Commission meeting, the assigned Commissioner removed the recommended decision from the agenda at the request of S&E, because S&E became aware that the Commission had received a number of customer complaints about EqualNet's marketing of telecommunications services. S&E subsequently

D.93-05-010 defines a switchless reseller as a nondominant interexchange carrier (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 a local exchange company; 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.

sought leave to file a late protest to the application, which was granted, and filed its protest on January 30, 1996. The protest cited allegations that EqualNet had engaged in deceptive marketing practices, including "slamming," in which unsuspecting customers' long distance services were transferred to EqualNet on the basis of a misrepresentation of its relationship to AT&T. In Communications of California, Inc. et al (AT&T), by its protest, S&E sought the opportunity to complete a full investigation of the slamming allegations and other purported misconduct, and the proceeding was effectively stayed for that purpose.

No EqualNet cooperated with S&E's investigation of the causes of the customer complaints. EqualNet acknowledged the existence of problems with its initial marketing arrangements, explaining that these problems resulted primarily from a very rapid expansion of its customer base during the latter part of 1994 and the first six months of 1995, and the inability of its primary, wholesale provider, AT&T, to keep up with the number of new orders. EqualNet stated that the monthly volume of new legal customer orders during the last five months of 1994 was five to ten times higher than in previous periods, and that its customer base more than doubled during this period. This resulted in frequent delays of many months in the provisioning of those orders.

EqualNet explained that in order to accommodate the higher volume it switched from an independent voice verification system to a "welcome packet" method of verification as described in the Federal Communications Commission's (FCC) Rules (47 CFR Sec. 64.1100(d)), and that the new form of verification was not effective because many customers discarded it as junk mail. EqualNet outlined the steps it had taken to improve its verification procedure in mid-1995, and the actions taken both to

These are the findings of the Commission
not intended to be conclusive
nor binding except to the parties

improve the sales procedures used by its independent contractors agents, and to discipline certain agents in both the selling

During the course of its investigation, S&B submitted two sets of data requests to EqualNet regarding outstanding issues, and EqualNet responded with the requested information. In March and April 1996, S&B and EqualNet engaged in a series of telephonic and in-person discussions to explore the identified concerns of S&B, the steps already taken by EqualNet to address them, and any additional steps needed to eliminate slamming and la reports. These discussions led to the execution by the parties of a Memorandum of Understanding on April 24, 1996, which outlines the terms of a settlement between the parties. They also have now formalized that understanding in a Settlement Agreement (Settlement), which they present to the Commission for approval under Rule 51.1(a) of the Rules and Regulations of the Provincial Board.

As required by Rule 51.1(c), the joint motion proposing the Settlement for adoption contains a statement of factual and legal considerations adequate to advise the Commission of its scope and the grounds on which adoption is urged. Both parties also state their agreement that the Settlement is fair, just and reasonable, and in the public interest in light of the facts adduced in the investigation. The joint motion recounts these facts, the substance of which follows:

EqualNet acknowledges that the sales and service verification procedures which it employed during the latter part of 1994 and the first

and the half of 1995 were not adequate to ensure that all consumers understood fully the nature of the services they were being offered. In the

In wake of the complaints stemming from that period, EqualNet took a number of actions, mainly before the filing of the S&B Protest, to reduce the confusion that some customers were experiencing. It prohibited the agent responsible for most of the complaints from

selling its services provided across AT&T's facilities; since customer confusion between EqualNet and AT&T appeared to be the cause for many of the complaints, EqualNet worked with other agents to modify the 'script' for sales to ensure that customers were told that EqualNet is a separate company which resells AT&T services and avis specifically not as an division of AT&T or can AT&T rate plan. This TPA is immediately off balance in most EqualNet also developed a new verification software program called 'VerBase' which has been used since June 15, 1995 for independent third party verification of all sales. This process ensures that there is direct contact with the customer who placed the order before the order is submitted to EqualNet's underlying carriers. It also improves the quality of customer information entered into EqualNet's customer account records. One of EqualNet's goals with respect to customer sales related complaints is zero tolerance and the VerBase system is an important tool in its effort to achieve that goal. The DQG Settlement Agreement permits EqualNet to continue to use this new verification system, while permitting S&E to monitor its ratio of effectiveness and to insist on changes if it proves ineffective.

Many of the complaints which S&E has identified were registered after the 2010 implementation of the VerBase system in June 1995. EqualNet believes that these complaints relate primarily to sales made before June 1995, but that for a variety of reasons, they were not registered with the underlying carrier or the Commission until later in 1995 or even in the early months of 1996. There are several reasons for this delay. EqualNet experienced very significant delays in AT&T's ability to provision orders sent to it in 1995. In some instances, a considerable delay of several months ensued between the time of the sales contact and the receipt by the customer of its first EqualNet bill. Some customers simply forgot that they had sent

authorized their service to be switched.¹¹ In other instances, the customer utilized EqualNet's service for several months and paid for such service before registering a complaint, at which time or perhaps earlier in the month of January or February of 1995. EqualNet understands that a great many of the sales complaints received in the later part of 1995 relate to a specific action it took in response to the substantial AT&T provisioning delays. Frustrated by the long delays and afraid that it would lose customers who had authorized a switch, EqualNet sent a package to such customers in which it explained the AT&T delay in its provisioning and offered the customers the opportunity to have, for an interim period, the use of EqualNet's resold Sprint service at an additional discount. The package asked the customers to respond if they did not want the service using Sprint's facilities and simply stated that they would be placed on Sprint's facilities if they failed to respond. This approach was a poor choice because, as it unfortunately, many of these customers did not read the package or failed to understand the offer, and were unhappy when they subsequently learned that they were being served by EqualNet on Sprint facilities rather than AT&T facilities.

"With respect to complaints from customers affected by this notice, (f) it was EqualNet's practice to forgive the charges and to offer to move them to AT&T when available or to return them to their original carrier. This episode was another instance in which the value of direct voice verification, as opposed to written notices which are not sometimes treated by customers as junk mail, was made clear to EqualNet. Under the VSEB Settlement Agreement, the voice verification process is continued during [all] probation [the period] with the S&E staff able to review its effectiveness and to prescribe written, to be signed, verification if it proves ineffective." (Joint Motion pp. 26-28)

SIXTY DAY ORDER
NOTICE OF PROPOSED SETTLEMENT
AND PROVISIONAL INJUNCTION

The Settlement

The principal features of the Settlement, as it relates to remedying infractions disclosed by the investigation, are as follows:

- EqualNet will pay the Commission a total of \$50,000 in five equal monthly installments. S&E agrees to use this payment to promote consumer education and awareness, provide advice to consumers to prevent unauthorized switching of their telephone service, and provide remedial advice to consumers whose service was switched without authorization.
- A series of provisions specify terms for the payment of restitution to approximately 1,000 individuals and businesses who were identified by EqualNet in April 1996 as customers who had complained about EqualNet's marketing. Under the terms for restitution, every customer so identified has received, or will receive, full credit or refund of amounts paid or due, or \$25 if the customer has not received a credit or refund. The payment of restitution under these provisions will not bar a customer from seeking additional amounts to which it may be entitled, and will also be made prospectively to customers identified by AT&T and Sprint who alleged that they were "slammed" by EqualNet between January 1, 1996, and the date of our order.
- As part of the restitution arrangement, EqualNet will send a letter to each customer who receives the \$25 payment, explaining EqualNet's reason for making the payment. EqualNet will also provide a report to the Commission describing the restitution actions it has taken, within 60 days of the date of this order.

90 days after the Commission approves the Settlement.

Initials: [Signature]

EqualNet will be on probation for one year from the date of our approval of the initial members of Settlement. During this period EqualNet is obligated to investigate all customer claims that they were "slammed" by EqualNet, make full credits and refunds to customers determined to have been "slammed", and provide to S&E quarterly reports concerning all complaints by California customers known or accessible to EqualNet and the disposition of each.

- During the probationary period, EqualNet will verify by telephone the validity of each California sales order, and will tape record each verification call for the availability of S&E. If S&E believes on the basis of this or other information that EqualNet is making an unacceptable number of unauthorized switches, S&E may require EqualNet to use written letters of authorization for each sale made during the remainder of the probationary period.
- In return for these concessions by EqualNet, S&E agrees to withdraw its initial protest and refrain from further investigative and enforcement actions against EqualNet in relation to its past marketing practices.

Discussion

The Settlement is logically directed at remedying past violations of reseller marketing requirements, which the investigation revealed to have been careless or inadvertent rather than intentional. It is fair and equitable, and it leaves EqualNet free to commence its new business activities in California under the watchful eye of responsible Commission staff. Importantly, it does so without unduly burdening members.

of our staff who have their hands full policing the marketing up to activities of new entrants in this burgeoning and highly unique competitive area of the telecommunications industry.

S&E supports the Settlement for all of these reasons. Its view, as stated in the joint motion, is that the Settlement represents a reasonable means of providing a remedy for past harm to businesses and individuals, provides for means to help prevent or reduce future harm, and allows for a reallocation of the Commission staff's resources to deal with more exacerbated slamming problems. (p 18) Both parties urge that we adopt it as an "all party" settlement to resolve all of the issues raised by the S&E protest, and to its members benefit.

The Settlement satisfies our criteria for approval of an all-party settlement. It commands the sponsorship of both parties to the proceeding, who proposed it to us by joint motion; these parties are fairly reflective of the affected interests, i.e., those of the applicant and those of the customers; no term contravenes statutory provisions or prior Commission decisions; and it conveys to the Commission sufficient information to permit us to discharge our future regulatory obligations with respect to the parties and their interests. Up to 10,000,000

We will approve the Settlement and grant EqualNet's application for expanded authority. In addition, the Findings of Fact below establish that it is likely that the Applicant served a copy of the application upon the major telephone corporations with which it is likely to compete.

At notice of the filing of the application appeared in the Daily Calendar on April 24, 1995, and was joined to the

3. A protest was filed by S&E alleging that EqualNet had engaged in deceptive marketing practices, including slamming, in which customers' long distance services were transferred from

EqualNet, without the customers' knowledge, or based upon a false misrepresentation of EqualNet's relationship to underlying transmission carriers. This affidavit and its attachments add to some existing affidavits. No other protests were filed at the same time.

In 5, the S&E investigated EqualNet's allegedly wrongful way of marketing activities while the application was pending before the Commission. EqualNet cooperated with S&E's investigation, and all the facts, regarding the matters alleged in the protest were fully disclosed to S&E, so that it was able to make a明智的 decision. It is noted that EqualNet and S&E have entered into the Settlement which is attached as the appendix to our order of the "Petition" as well.

7. The Settlement addresses all of the allegations of the wrongdoing encompassed by S&E's protests concerning the filing of the Settlement.

8. The Settlement meets all of our requirements for filing an adoption of an all-party settlement, notwithstanding the holding

of a hearing is not required for a trial on netting benefits. By D.94-09-065, we authorized competitive intralATA services effective January 11, 1995 for carriers meeting certain specified criteria. The filing of this Settlement is made in accordance with the Commission's order of filing dated January 11, 1995. Applicant has demonstrated that it has a minimum of at least \$25,000 of cash, reasonably liquid and readily available to meet its continuing expenses. The Settlement is availed of now.

12. Applicant has submitted with its application a complete draft of its tariff revisions which complies with the requirements established by the Commission including prohibitions on unreasonable deposit requirements.

13. 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.

14. The Commission has routinely granted nondominant foreign interexchange carriers, such as applicant, an exemption from Rule

18(b) to the extent that it 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.

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

16. 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 debts in (See D.85-11-044.) (See)

Conclusions of Law

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

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

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

4. Applicant is subject to:

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);

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

(a) Communications Devices Fund (PU Code § 2881; Resolution T-15801, October 5, 1995);

The user fee provided in PU Code §§ 4312 or (d) 81-435, which is 0.11% of gross intrastate revenue for the 1996-1997 fiscal year (Resolution M-4782); and all of the above service charges (D.94-09-065). 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 § 818.28 effective 10/1/95) Resolution T-15826, December 20, 1995. (D.95-02-050 and 1882-04-023 A)

6. The Applicant should be exempted from Rule 18(b)'s 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. (See D.94-04-023 A)

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

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

8. The Settlement should be approved and made a part of our order herein.

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

10. Because of the public interest in competitive intralATA services, the following order should be effective immediately.

IT IS ORDERED that if the following resolution is granted to EqualNet Corporation (Applicant) to operate as a reseller of intralocal Access and Transport Area (intralATA) telecommunications services offered by common carriers in California to the extent authorized by Decision (D.) 94-09-065. October 2, 1995; Resolution T-1882-04-023 A (see)

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

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

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, as modified by D.91-12-013, and D.92-06-034.

4. All NDIECs are hereby placed on notice that their California tariff filings (a) shall be processed in accordance with the following effectiveness schedule:

(a) Inclusion of FCC-approved rates for Interstate services in California 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 telephone company and the consumer pending increased rates.

Uniform minor rate increases, as defined in D.90-11-029, for existing services shall become effective on one (1) day's notice.

shall be considered effective on not less than 5 business working days' notice, Customer notification is not required for such minor rate increases.

4. **e. Advice letter filings for new services** and for all other types of service tariff revisions, except changes in text not affecting rates or VI another party's relocation of text in the tariff schedules, shall become effective within 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.

4. 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's Telecommunications Division. Tariff filings shall reflect all fees and surcharges to which applicant is subject, as reflected in Conclusion of Law 4(b).

5. 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.

6. Prior to initiating service, applicant shall provide the Commission's Consumer Services Division 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.

8.6(b)(7)(C) Applicant shall notify this Commission in writing of the date interLATA service is first rendered to the public within 5 days after service begins and again within 5 days of when intralATA service begins, failing to respond to a summons to render.

8. Applicant shall keep its books and records in accordance with the Uniform System of Accounts specified in Title 47, Code of Federal Regulations, Part 32111 b(d)(6) at 32111(q)(6).

8.9(f) 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. 32111(q)(6)

10. Applicant shall file any annual report in compliance with GO-104-A on a calendar year basis using the information and request form developed by the Commission staff and contained in Attachment A. If no longer in existence, a notification shall be filed.

11. Applicant shall ensure that its employees comply with the provisions of PU Code § 2889.5 regarding solicitation of new customers.

12. 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, unless otherwise indicated.

13. The corporate identification number assigned to the applicant is U-5533-C 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.

14. Within 60 days of the effective date of this order, the applicant shall comply with PU Code § 1708.1 Employee Identification Cards and notify the Director of the Office of Telecommunications Division in writing of its compliance.

15. if applicant is exempted from the provisions of PU Code §§ 816-830, doing out of business until at service AT&T until after this date.

16. if applicant is exempted from PU Code § 851 for the event of transfer or encumbrance of property, whenever such transfer or encumbrance serves to secure debt.

17. 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.

18. If applicant is 90 days or more late in filing an annual report or in remitting the fees listed in Conclusion of Law, 4, the Telecommunications Division 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 the Telecommunications Division to file or remit late.

19. The Settlement by and between the Commission's S&E and applicant dated August 16, 1996, a copy of which is attached as the appendix to this order, is approved and is incorporated fully as a part hereof. Applicant shall comply with each and every term to which it was agreed thereunder. The term "Consumer Services Division" shall be substituted wherever the settlement is by its terms, requires performance by it to the Safety and the Enforcement Division" or "S&E" or "parties in this agreement" refers

20. Applicant is authorized to seek from third parties AT&T and Sprint all complaints alleging slamming made from January 1, 1996, to the date this order becomes effective in furtherance of the terms of this order. Applicant shall immediately notify the

Commission of any refusal by AT&T or Sprint to furnish reasonably requested information required by applicant to carry out the terms of the Settlement as embodied in this order.

21. All pending hearing dates in this proceeding are vacated.

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

23. Application 95-04-023 is closed.

This order is effective today.

Dated December 9, 1996, at San Francisco, California.

P. GREGORY CONLON
President
DANIEL Wm. FESSLER
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
Commissioners

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)

APPENDIX

EX-40-PP-A

for the application filed on March 28, 1992 and previously docketed

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

on file in the Public Utilities Commission of the State of California.

Jeffrey B. and Brian

In the matter of the Application of EqualNet Corporation for authority to provide intralata toll-tele-service communications services within the State of California.

This is to confirm and set forth the terms of the Settlement Agreement between the parties to this proceeding which is in the best interest of the public and the parties. The Commission's Safety and Enforcement Division (S&E) and EqualNet Corporation (EqualNet) (together "the parties") hereby agree to resolve the issues raised in S&E's protest of EqualNet's A-95-04-019 for intralata authority, while S&E also has filed a protest of EqualNet's application to acquire the stock of ALD Communications, Inc. (A-95-10-017); that the application has been withdrawn by EqualNet due to changes in the business plans of EqualNet and ALD. The above-named parties agree to resolve the issues raised in A-95-04-019 and A-95-10-017 on the following terms:

The parties will review the above terms and make any necessary changes.

1. EqualNet agrees to pay to the California Public Utilities Commission (Commission) the sum of \$50,000, with said amount to be paid in five equal monthly installments of \$10,000 each. EqualNet will make the first payment on the first day of the first month following the Commission's approval of this agreement. Reimbursement of any fees or expenses will be made by the party that incurred them.
2. S&E agrees to use the \$50,000 sum to promote consumer education and awareness, to provide advice to consumers to prevent unauthorized switching of their telephone service, and to provide advice as to actions to take if consumers find that their long-distance service was switched without their authorization. The manner in which the \$50,000 is spent will be determined.

forgiving of debt for each listed business or individual, in a void case and each instance in which EqualNet took no action with respect to the listed business or individual. In the only one of last instances EqualNet will explain in the report why it does not make each such listed business or individual receive no restitution or forgiving of debt.

The parties agree that no listed or unlited business or individual is precluded by anything in this agreement and it is from pursuing any claim against EqualNet for any additional amounts beyond those provided for in this agreement to which the business or individual believes it is not entitled.

AT&T agrees that it will forego any other enforcement actions against EqualNet arising from customer complaints made prior to the execution of this agreement, and

further agrees not to raise any such complaint as a bar to other applications which EqualNet may file with this Commission.

EqualNet will promptly seek to obtain from AT&T and Sprint all complaints alleging slamming made from January 1996 to the date on which the Commission adopts this settlement agreement. For all such complaints, EqualNet agrees to provide restitution in the same way described in Paragraph A through C. S&B agrees to be bound by the terms of Paragraph C with respect to such complaints.

- I. The parties hereby request the Commission to direct AT&T to collect from Sprint to provide EqualNet and S&B with all information needed for EqualNet to accomplish the refunds and debt forgiveness described in Paragraph 3 and Paragraph 4 not later than the date of the filing of the complaint by the FCC or the date of the final decision of the Commission.
- II. EqualNet agrees to a period of probation to last one year from the date of the Commission's approval of this

1. It is appropriate given its review of EqualNet's operations and the provisions of the settlement agreement, to note that both parties believe it is appropriate for EqualNet to continue to market its telecommunications services in California while complying with all federal and state laws. EqualNet agrees that its marketing of telecommunications services in California will comply with all federal and state laws. EqualNet agrees that its sales representations will not state or imply to prospective customers that EqualNet is a division/unit, or marketing arm of AT&T or any other telecommunications provider other than EqualNet, and that its sales personnel will make clear to prospective customers that EqualNet is a separate telecommunications company.

2. It is further agreed that S&E agrees to withdraw its protest in Applications 95-04-023, with prejudice, immediately upon execution of this agreement, and agrees to request the administrative law judge assigned to this application and the Commission to expedite the approval of this agreement as well as A.95-04-023.

3. Clause 10, If either S&E or EqualNet contends that the other is violating any provision of this Agreement, either party may file with the Commission a statement of its contention, the evidence which supports it, and a request for remedy.

4. 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.

5. This Agreement is the entire agreement between the parties, and it can not be amended or modified without the written agreement of both parties.

6. EqualNet 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

Rules of Practice and Procedure [Rule 51.4]. S&E does not oppose EqualNet's request for waiver.

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

William R. Schulte

Safety and Enforcement
Division

William H. Booth /ao

EqualNet Corporation
Its Attorney

Date: August 16, 1996

Date: August 16, 1996

(END OF APPENDIX)