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Decision 97-11-079 November 19, 1997

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the operations, practices, and conduct of L.D. Services, Inc., doing business as Long Distance Services, to determine whether it has violated the laws, rules, and regulations governing the manner in which California consumers are switched from one long distance carrier to another.

I.97-04-044
(Filed April 23, 1997)

O P I N I O N

Summary

This order approves the settlement agreement between the Commission's Consumer Services Division (CSD) and L.D. Services, Inc. (L.D. Services). The settlement agreement requires L.D. Services to make restitution to certain former customers and to cease providing telecommunications services in California.

Procedural Background

On April 23, 1997, the Commission issued an Order Instituting Investigation (OII) I.97-04-044, in which the Commission found that there was probable cause to believe that L.D. Services was "slamming at an alarming rate, preying particularly on Spanish speaking consumers, and that as recently as February the rate of switched customers complaining to Pacific Bell climbed to 25%." (OII, at 5.) Specifically, the staff's declarations document that staff began a full-scale preliminary investigation of L.D. Services in November of 1996. CSD staff learned that, according to Pacific Bell, Pacific Bell customers have said their telephone lines were switched to L.D. Services without their authorization (slammed) more than 27,000 times since January 1995. Based on a ratio provided by L.D. Services, 27,000 lines is roughly equivalent to 20,000 customers or victims.

Staff found that over time about 10% of all customers L.D. Services switched later complained to a LEC that they were slammed by L.D. Services. This percentage is about three times the average for the long-distance industry as a whole. Pacific Bell also told staff that the majority of customers switched to L.D. Services had previously elected to receive service information from Pacific Bell in Spanish. Staff states that it independently verified the above parameters of L.D. Services' apparent slamming through customer interviews, reviewing GTE-California's records, and the Commission's own complaint records.

The Commission prohibited L.D. Services from directing a local exchange carrier to change a subscriber's presubscribed or primary interexchange carrier, from selling or transferring any customers, and from changing ownership. The Commission scheduled a hearing for May 7, 1997, to allow L.D. Services to respond to the OII and the prohibitions it contained.

At the request of the parties, the May 7 hearing was rescheduled for May 28, 1997. Rather than a hearing, however, the parties participated in a mediation session under the supervision of Administrative Law Judge (ALJ) Ramsey. Further meetings of the parties preceded a prehearing conference at which the parties informed the assigned ALJ that promising settlement negotiations were under way. On September 4, 1997, the parties executed the settlement agreement. The parties jointly filed the agreement and a motion requesting that it be approved on September 12, 1997. The parties also requested that the Commission waive the 20-day comment period provided in Commission Rule 77.2.

Description of the Settlement Agreement

The major provisions of the settlement agreement are:

1. L.D. Services will request that the Commission permanently revoke its certificate of public convenience and necessity effective 120 days after the effective date of an order approving the settlement agreement. Specific individuals are also prohibited from being employed by L.D. Services.
2. L.D. Services will pay \$760,000 to the Commission for restitution to customers who have disputed their transfer to L.D. Services. Such

individuals will receive \$20 initially and may also request arbitration for additional damages caused by L.D. Services. This fund will also cover the costs of the public reproval discussed below.¹

3. Should L.D. Services find a purchaser acceptable to CSD for its customer base, the purchaser will be allowed to contact L.D. Services' customers to offer its Services. Any customers that opt to switch to the purchaser's service will be confirmed by third-party verification.
4. L.D. Services will be the subject of a public reproval for its actions and will bear the costs of 10x13" advertisements in all major California newspapers, including several published in Spanish, which state the facts of this case.
5. L.D. Services will withdraw its pending application for rehearing of the OII.
6. The parties will request that the Commission order Pacific Bell and GTE California Incorporated (GTEC) to provide customer information necessary to prepare customer checks. L.D. Services will reimburse the companies for any cost of providing these data.

Subsequent Events

Since the settlement agreement was executed, two related events have occurred. L.D. Services has paid \$760,000 to the Commission's trust account. L.D. Services has also found a purchaser for its stock. The settlement agreement anticipates, in accord with the OII, that all advice letter filings, such as those necessary to obtain Commission authorization for the sales transaction, will be consolidated into this proceeding and resolved in one decision.

On September 15, 1997, L.D. Services filed Advice Letter No. 15 seeking approval of the acquisition of L.D. Services by STAR Telecommunications, Inc. (STAR). STAR will acquire L.D. Services by merging it with one of STAR's subsidiaries. This advice letter is consolidated into this proceeding as provided in the OII.

¹ As provided in Section 15 of the settlement agreement, if the initial payment by L.D. Services is insufficient to cover all customer restitution and other costs, the Commission staff will notify L.D. Services or its successor to remit additional funds.

On September 22, STAR filed Advice Letter No. 1, which seeks approval of the acquisition of L.D. Services. STAR is an international long distance provider offering switched voice services on a wholesale basis, primarily to U.S.-based long distance carriers. STAR provides international long distance service to over 275 foreign countries through a network of resale arrangements with long distance providers, various foreign termination relationships, international gateway switches, and leased and owned transmission facilities. STAR commenced operations as an international long distance provider in August 1995 and increased its revenues from \$16.1 million in 1995 to \$208.1 million in 1996. STAR received a CPCN from the Commission to provide interexchange service on September 8, 1997. STAR will not directly acquire the L.D. Services customer base but will only be allowed to offer customers the option of switching to STAR or some other carrier. This advice letter is consolidated into this proceeding.

On October 3, 1997, and supplemented on October 8, 1997, the Monterey County Office of the District Attorney filed a protest to STAR's advice letter. The protest alleged that Monterey County had filed a civil prosecution against L.D. Services and that L.D. Services was subject to a court order enjoining it from selling assets without establishing a reserve fund of \$2 million to fund any remedy ordered in the civil prosecution. The County's protest did not contain a request for a hearing and it stated that should it receive adequate assurances regarding compliance with the court order, it would withdraw its protest.

On October 8, 1997, STAR and L.D. Services responded to the County's protest in which they stated that a shareholder commitment would soon be filed with the County which STAR and L.D. Services believed would provide the County the assurances it required.

On November 10, 1997, the County withdrew its protest.

Discussion

Commission Rule of Practice and Procedure 51(e) requires 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 allegations of widespread violations of Public Utilities Code Section 2889.5, the "anti-slamming" statute. Such violations, if proven, harm not only the customers' right to use their carrier of choice, but also damage the competitive market for interexchange carriers through unfair competition.

The settlement agreement imposes drastic burdens on L.D. Services. The company is completely and permanently removed from the market for provision of long distance Services in California. L.D. Services also will make substantial restitution to California consumers. The funds for this restitution have already been deposited with the Commission.

The burdens on L.D. Services reasonably address the harms to which this proceeding was directed. L.D. Services will be permanently unable to provide service in California; customers and competitors alike will no longer be threatened with unauthorized presubscribed interexchange carrier changes by this company. Customers who have alleged unauthorized transfer and other harms by L.D. Services, will be compensated.

The settlement agreement will also serve an important public education function in providing state-wide advertising, in English and Spanish, regarding unauthorized carrier changes.

b. Consistent with the Law

None of the actions required by the settlement agreement is in violation of any statute or Commission rule or regulation.¹

¹ Questions have arisen concerning § 10 of the settlement agreement, which addresses the disbursement of customer refund checks, specifically whether unclaimed amounts may be

Footnote continued on next page

c. In the Public Interest

The Commission is responsible for ensuring that the public is protected from unscrupulous practices by interexchange carriers. The settlement agreement protects the public by removing L.D. Services from the California market. The settlement agreement also protects other members of the public by providing information to the public about unauthorized transfers.

The Commission is also responsible for encouraging a robust market for interexchange carriers in California. The settlement agreement contributes to this goal by permanently removing an allegedly unfair competitor from the marketplace.

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 pursuant to Rules 51 through 51.10 of the Rules of Practice and Procedure. (See also San Diego Gas & Electric, 46 CPUC2d 538 (1992) (rules for all-party settlements).)

Finding of Fact

1. The Commission opened an investigation into L.D. Services' operations based on allegations of unauthorized transfer of customers and to ascertain whether L.D. Services was otherwise operating unlawfully.

2. As a result of ALJ-supervised mediation, the parties reached a settlement agreement which is Attachment A to this decision.

3. The settlement agreement resolves all matters relating to this proceeding.

4. Notice of the filing of L.D. Services' Advice Letter No. 15 appeared in the Daily Calendar on September 19, 1997.

5. Notice of the filing of STAR Advice Letter No. 1 appeared in the Daily Calendar on October 1, 1997.

properly deposited with the designated trust fund. For this reason, the unclaimed funds will escheat to the State pursuant to Code of Civil Procedure § 1519.5.

6. The Monterey County District Attorney's Office filed, but withdrew, a protest to the advice letters.

Conclusions of Law

1. The settlement agreement is reasonable in light of the whole record, is consistent with the law, and is in the public interest.
2. The settlement agreement should be approved.
3. The two advice letters, L.D. Services No. 15 and STAR No. 1, should be approved.
4. The parties' request for waiver of the 20-day comment period should be granted.
5. In order to assure prompt compliance with the terms of the settlement agreement, and to quickly obtain the benefits of the settlement agreement for California consumers, this order should be made effective immediately.

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, as modified to reflect that unclaimed funds escheat to the State of California, and the parties are directed to comply with the terms set forth in the settlement agreement, as modified.
2. Commission staff is directed to take all actions, including canceling the L.D. Services, Inc. (L.D. Services) utility identification number, to clearly reflect in the Commission's records that L.D. Services is no longer a certificated provider of telecommunications Services in California, effective 121 days after the effective date of this order.
3. Pacific Bell and GTE California Incorporated are directed to provide the consumer information described in Section 9 of the settlement agreement to the Consumer Services Division for the purpose of preparing checks. All costs of such data provision shall be assessed to L.D. Services' which shall pay the costs within 30 days.
4. The two advice letters, L.D. Services No. 15 and STAR Telecommunications, Inc. No. 1, are consolidated into this proceeding and are approved.

5. The parties' request for waiver of the 20-day comment period is granted.

6. This proceeding is closed.

This order is effective today.

Dated November 19, 1997, at San Francisco, California.

P. GREGORY CONLON

President

JESSIE J. KNIGHT, JR.

HENRY M. DUQUE

JOSIAH L. NEEPER

RICHARD A. BILAS

Commissioners

**SETTLEMENT AGREEMENT
BETWEEN
L. D. SERVICES, INC., AND CONSUMER SERVICES DIVISION**

This SETTLEMENT AGREEMENT (Agreement) is the final and complete expression of the agreement entered into this 4th day of September, 1997, by and between the Consumer Services Division (CSD) of the California Public Utilities Commission (Commission), L.D. Services, Inc. (LDS), Richard A. Bishop, President of LDS, and LDS's shareholders, directors, officers, employees, managers, agents, predecessors, and/or successors-in-interest, which hereinafter are collectively referred to as the "Parties" to this Agreement.

WHEREAS, the Commission has before it a proceeding entitled "Investigation on the Commission's Own Motion into the Operations of L.D. Services, Inc." (I.97-04-044);

WHEREAS, the Parties each desire to resolve amicably the disputes among them and to settle and forever dispose of as expeditiously as possible all issues raised in I.97-04-044 except those expressly reserved herein;

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

NOW, THEREFORE, in consideration of the foregoing and the mutual promises hereinafter made and intending legally to be bound, the Parties by their authorized representatives hereby agree and contract as follows:

Section 1. Voluntary Permanent Revocation

LDS voluntarily hereby requests that the Commission permanently revoke LDS's certificate of public convenience and necessity (CPCN) without an opportunity to apply for reinstatement, on the date that the 120-day transition period (as defined in Section 2 herein) expires.

Except during the 120-day transition period, neither LDS nor any affiliated person or entity of LDS (e.g., shareholders, directors, officers, employees, managers, agents, predecessors, or successors-in-interest) which is subject to the jurisdiction of the Commission, shall directly or indirectly in regard to operations or practices subject to Commission jurisdiction, retain for compensation in any capacity (e.g., independent contractor or employee) or allow to serve in a position of management or control (e.g., member of board of

directors, corporate officer), any of the following persons for a period of 48-months beginning the day after the 120-day transition period expires:

- Richard A. Bishop
- Teresa Anne Bishop
- Donna J.S. Robinson
- Harold Robinson
- Judith Bolger
- Thomas Guy Eltringham
- John Brent McDaniel
- Elizabeth Currier
- Don Currier

During the 120-day transition period, neither LDS nor any shareholder, director, officer, employee, manager, agent, or predecessor of LDS may (1) solicit any California customers or (2) provide any presubscribed telephone service (e.g., 1 + service, local telephone services) to any California customer who is not already an LDS customer as of the date that this Agreement is executed. During such transition period, LDS may continue to provide service to those customers who are LDS customers prior to the execution date of this Agreement.

Except as directed or ordered by the Commission, LDS will not raise any prices or charges, or change any of the terms and conditions under which it currently provides telephone service to California customers.

Section 2. The 120-Day Transition Period

The 120-day transition period shall begin the day after the date that the Commission's order approving this Agreement and closing the docket in this proceeding, becomes effective and end 120-days thereafter. The Parties jointly request that in its order adopting this Agreement, the Commission fix the effective date of such order as the date of issuance thereof.

If during the 120-day transition period another person or entity (Purchaser) agrees to purchase LDS's customer base and/or any other LDS asset for an amount in excess of \$100,000.00, LDS will notify CSD of such proposed purchase prior to executing the sale and provide CSD with the identity of the purchaser; the name, address, and telephone number of the proposed purchaser's corporate officers; and a copy of the written purchase agreement.

If another person or entity agrees to purchase LDS's California customer base and/or any other LDS asset that serves such customer base, LDS shall sell only to a Purchaser who is unaffiliated with LDS (e.g., a shareholder, director, officer, employee, agent, or predecessor), and only if such Purchaser agrees to be subject to the terms and conditions of this Agreement, including Section 6 ("Purchaser's Contact of Existing LDS Customers").

CSD must approve such proposed sale, which shall be deemed approved if CSD makes no objection thereto within 5-days of receiving sufficient notice thereof. CSD's objection(s) may be based inter alia on the prospective Purchaser's fitness to do business in California.

Section 3. Application for Rehearing

The Parties agree that the following provisions herein shall be suspended: (i) the running of the 120-day transition period per Section 2; (ii) the mailing of the restitution checks by CSD per Section 10; and (iii) the publication of the public reproof per Section 15; provided that one or both of the events described below occurs.

- An established and publicly recognized consumer advocate which is granted party status in this proceeding and which in the past three years has been awarded intervenor compensation by the Commission pursuant to Rules 76.71 through 76.76, timely files pursuant to Rule 85 an application for rehearing of the Commission order adopting this Agreement; and/or
- The Commission grants an application for rehearing of the Commission order adopting this Agreement.

If a consumer advocate as described above files an application for rehearing, the suspension of the provisions set forth in items (i) through (iii) in this Section 3 shall be for a period of 90-days from the date of such filing. On the other hand, if the Commission grants the application for rehearing, the suspension period shall continue during the pendency of the application until the Commission has mailed to the Parties an order determining the matter.

However, if the Commission denies the application prior to the expiration of the 90-day suspension period, the suspension of the provisions set forth in items (i) through (iii) in this Section 3 shall terminate on the date that such Commission denial or order is mailed to the Parties.

If notwithstanding the issuance of a Commission order adopting this Agreement, the Commission conducts further proceedings (e.g., grants an application for rehearing as provided herein), LDS shall receive credit for the following payments made pursuant to this Agreement, insofar as such payments are relevant thereto:

- restitution, arbitration, and/or mediation payments made to customers; and/or
- payments made for the costs of publishing the public reproval.

The Parties agree not to file an application for rehearing of any Commission order adopting this Agreement. The Parties further agree that if any person or entity other than a consumer advocate described in this Section 3 or any shareholder, director, officer, employee, manager, agent, predecessor, and/or successor-in-interest of LDS (regardless of whether such entity or person meets the criteria stated in the preceding paragraph) files an application for rehearing of the order adopting this Agreement, such application shall not suspend any provision of this Agreement; shall not excuse any Party from complying with and obeying any requirement of this Agreement or of the order adopting this Agreement; and/or shall not operate in any manner to stay or postpone the enforcement of this Agreement or the Commission order adopting this Agreement.

LDS agrees to oppose any application for rehearing which seeks to overturn the Commission order approving this Agreement or to disturb in any fashion the effectiveness of the Agreement to achieve its stated purpose of resolving completely the disputes between the Parties to the Agreement.

Section 4. No Ex Parte Communications

The Parties agree to refrain from any ex parte communications with any Commission decisionmaker (as defined by Rule 1.1(e)), beginning on the date this Agreement is executed and ending on the date that all provisions of this Agreement are fulfilled.

Section 5. LDS Payment of \$760,000.00

This Agreement shall no longer be of any force and effect, unless on or before September 12, 1997, LDS and/or the Purchaser pays in cash to the

Commission the sum of \$760,000.00 for the purposes described in Sections 10 and 12 herein. However, the following Agreement provisions shall remain in effect and binding among the Parties, despite any nullification or Commission rejection of this Agreement: Section 22 regarding LDS's waiver of the PIC-freeze hearing and Section 16 regarding the payment to LDS if the Commission should reject this Agreement.

Section 6. Purchaser's Contact of Existing LDS Customers

During the transition period, the Purchaser may contact existing LDS customers to ask if they would like to change from LDS to the Purchaser's telephone service. Any notice, sales script, or other written material utilized by the Purchaser in such customer contacts shall be submitted in advance of such use to CSD for review. Within five (5) days after receipt thereof, CSD shall either approve or object to the use of such materials. The notice, sales script or other written materials shall include the following elements:

- LDS will no longer be authorized to provide telephone service to any customers in California, as of the date when the 120-day transition period ends.
- The customer must change from LDS to another interexchange carrier ("IEC") such as the Purchaser.
- Unless another IEC is chosen, the customer will have no presubscribed long-distance telephone service, although 10XXX dialing will still be available.
- LDS and/or the Purchaser will pay for the expense of changing the customer to another IEC.

Any consent by a customer to switch from LDS to the Purchaser shall be verified in accordance with California Public Utilities Code section 2889.5, as amended. CSD shall select the independent third-party verification company after providing LDS and/or the Purchaser 10-days to comment thereon. The Purchaser will bear all the expenses of such verification.

Section 7. Customer Notice by CSD

On or before the ninetieth (90th) day of the transition period, LDS and/or the Purchaser will provide CSD in computer readable form the names,

addresses, and telephone numbers of customers who are still being served by LDS, because inter alia the Purchaser has been unable to secure and verify the customer's consent to switch from LDS to the Purchaser. After receiving this LDS data and prior to the end of the 120-day transition period, CSD will notify these LDS customers in writing that unless they select another IEC, their presubscribed long-distance telephone service will be terminated on the day following the end of the 120-day transition period.

Section 8. Cessation of LDS's Customer Services

By the Parties' execution of this Agreement and subject to Commission adoption of this Agreement, LDS and CSD jointly request the Commission to revoke LDS's authority to provide telephone services within California, effective the day after the 120-day transition period ends. On such date, LDS will immediately cease providing any California customers telephone or any other services that are subject to the Commission's jurisdiction.

Section 9. PIC Dispute Complainants

By execution of this Agreement, CSD and LDS jointly request that the Commission direct local exchange carriers (LECs), Pacific Bell and GTE California Incorporated (GTEC), to provide CSD and LDS within 30-days after the date of the Commission's order adopting this Agreement, the following data in computer readable form: the name, address, telephone number, and number of PIC disputes for each customer since January 1, 1995, who has complained to the LECs of being slammed by LDS. LDS shall have the opportunity to review these customer lists; however, only CSD, Pacific Bell, or GTEC may delete any name from these lists.

Pacific Bell or GTEC may invoice LDS and/or the Purchaser for the cost of producing these lists, as well as for any other extraordinary or reasonable business expenses related thereto. LDS and/or the Purchaser will reimburse these LECs the invoiced amount within 30-days of receiving their invoice.

Section 10. Disbursement of Customer Restitution Checks

Subject to payment by LDS and/or the Purchaser to the Commission of the cash amount set forth in Section 5 herein, CSD will disburse restitution

checks no sooner than 40-days following the date when the Commission's order adopting this Agreement becomes effective, to the following LDS customers:

- (i) each and every customer on the list provided by Pacific Bell and/or GTEC to CSD and LDS pursuant to Section 9 herein; and
- (ii) those customers who directly complained to the Commission that LDS switched their long-distance carrier without authority.

The Commission shall disburse the customer restitutions in the form of a State warrant or bank check as appropriate, which shall be made negotiable for 90-days from the date of mailing and in an amount equaling twenty-dollars (\$20.00) per PIC dispute per telephone line for each customer.

Those State warrants or checks that are undeliverable, returned, and/or not cashed within 90-days as of the date of mailing, will be cancelled. The monies represented by these cancelled State warrants or checks shall be deposited by CSD into the following designated trust fund: the "Consumer Protection and Prosecution Trust Fund" as established by the Alameda Superior Court in *People vs. ITT Consumer Financial Corporation, et al.* (Civil No. 65038-0 (September 21, 1989)), and administered by the California District Attorneys Association for purposes of enhancing the investigation, prosecution, and enforcement of consumer actions in California.

Section 11. Mediation/Arbitration

A. Additional Restitution

LDS and/or Purchaser shall provide additional restitution beyond the \$20.00 payment described in Section 3 herein, to all persons who have been affected by the activities alleged in I.97-04-044; have Qualifying Consumer Complaints as described herein; suffered actual damages as a result thereof; and submitted an arbitration/mediation claim form to CSD within 90-days of receiving the notice and State warrant or check from the Commission. This program shall be conducted as follows:

1. Customer Options

Customers have the option of deciding whether to participate in the arbitration/mediation process. LDS and the customers participating in the process shall be bound by the final decision of the arbitrator. Customers who do

not submit a claim form in a timely manner waive their right to participate in the arbitration/mediation process or to pursue any other claims before the Commission against LDS that are related to the allegations against LDS set forth in I.97-04-044. Whether customers participate in the arbitration/mediation process or not, they do not waive their right to pursue any claim or remedy against LDS in an action or proceeding before any other agency, court, or other jurisdiction. Customers, however, may waive duplicative reparation claims in other jurisdictions as a result of accepting a restitution award in the mediation/arbitration process. LDS and/or the Purchaser shall pay any and all fees and costs of the arbitration/mediation process to the arbitrator. The Parties intend to use the American Arbitrator Association or JAMS Endispute to conduct the arbitrations or mediations and to make determinations pursuant to this Section 11.

LDS and/or the Purchaser and CSD may jointly agree to select a different arbitrator or mediator within 30-days of the execution of this Agreement. In the event the chosen arbitrator or mediator is unable or unwilling to participate in this process, CSD and LDS shall jointly designate another entity or entities to perform such role(s). The mediation/arbitration process is solely to determine the amount of damages and not whether there has been an unauthorized PIC change.

2. Qualifying Consumer Complaints

"Qualifying Consumer Complaints" shall refer to any customer PIC dispute or complaint as described in Section 10 herein. To be eligible to participate in the mediation/arbitration process, the consumer must have made his/her PIC dispute or complaint to the LEC or the Commission on or after January 1, 1995, and no later than 120-days after the date when the Commission order approving this Agreement becomes effective pursuant to Rule 83.

Consumers who "qualify" shall be eligible to participate in the arbitration/mediation process, in addition to receiving the \$20.00 payment, if they meet all of the following three criteria: (a) their complaint pertains to allegations by CSD made in I.97-04-044; (b) the consumer has not otherwise received full restitution (where entitled) for damages arising out of the activities alleged in the investigation in this proceeding; and (c) the consumer alleges he/she has suffered an actual and ascertainable loss beyond the above-described \$20.00 payment as a result of the activities alleged in I.97-04-044.

3. Mediation/Arbitration Notification

CSD shall include with the \$20.00 restitution mailed to customers a notice explaining the purpose of the restitution and informing the customer that he/she can seek additional restitution beyond the \$20.00 payment from LDS by participating in the arbitration/mediation process. The notice shall be prepared in English and Spanish. A copy of the notice is attached hereto as Exhibit A. CSD will include with the notice a claim form that the customer must fill out to participate in the mediation/arbitration process. A copy of the claim form is attached as Exhibit B.

The notice and claim forms will describe the arbitration/mediation process and will set forth the procedures the customer must follow to participate in the process. The notice and claim form shall advise customers that they have 90-days to complete the claim form and return it to CSD at the address specified. The notice and claim form shall further advise customers that if they do not submit the claim form within the 90-day period, they will be deemed to have waived any right to use this arbitration/mediation process to seek relief from the Commission concerning any issues raised in I.97-04-044. The notice and claim forms shall advise customers that their decision to participate in the arbitration/mediation process shall not affect their right to pursue any claim or remedy against LDS in any other agency, court, or jurisdiction.

CSD shall date the complaint forms as they are received and use all reasonable efforts to deliver to LDS and/or Purchaser copies of the claim forms to LDS and/or the Purchaser in two batches: the first shall contain all claim forms received by CSD within 30-days of the date that the notice and claim forms were first mailed to LDS customers. The second batch shall include the remaining claim forms received within 90-days of the last date that the notice and claim forms were mailed to LDS customers.

B. Mediation Process

After receipt by LDS of the form described in Subsection 11(A)(3) above, LDS shall have 60-days to informally mediate all customer complaints with, at LDS's election, the assistance of a mediator. Those customers whose complaints are still unresolved after this period shall be eligible to participate in the arbitration process. After the aforementioned 60-day period, LDS shall contact all customers with unresolved complaints by letter notifying the customers that the claim remains unresolved and will be submitted to arbitration. LDS shall then transfer to the arbitrator all claims that remain unresolved. LDS shall send

CSD a list of those customers whose claims have been submitted to arbitration and inform CSD of the arbitration outcome for each customer so listed.

If LDS resolves a customer complaint through mediation, LDS shall file within 60-days after resolution a report with CSD containing the name, address, and disposition of the complaint. A photocopy of the customer complaint and correspondence with the customer shall be sufficient to meet this requirement.

C. Arbitration Process

Upon receipt of a customer claim form, the arbitrator shall schedule an arbitration hearing to be held within 90-days of the arbitrator's receipt of the form. The arbitrator shall determine whether restitution is appropriate in each case and shall be responsible for assuring that there is adequate personnel to arbitrate all cases. For the customer to prevail in the arbitration process, the customer shall have the burden of proving actual damages by a preponderance of evidence. Such damages are limited to refunds of rates or fees paid. A customer's unpaid billings shall not be considered as offsets for arbitration purposes.

After the hearing, the arbitrator will deliver the final decision by regular mail to the customer, CSD, and LDS and/or Purchaser. LDS shall pay to the customer any monies awarded by the final arbitration decision within 90-days after the mailing of the arbitrator's decision. LDS shall inform CSD of the arbitration outcome for each customer so listed.

Section 12. Public Reproval

The Parties agree that after the Commission order adopting this Agreement becomes effective but no sooner than 40-days after such effective date, CSD will place a notice in the following newspapers that will be approximately 10" x 13" in size or alternatively consisting of 130 square inches and similar in format and text to the sample attached as Exhibit C to this Agreement. This notice will not name any individuals or mention the Purchaser.

- Los Angeles Times (statewide edition)
- Wall Street Journal (California edition)
- Sacramento Bee
- San Francisco Chronicle
- Vida En Valle

- El Mensajero
- La Opinion

Section 13. Law Enforcement Agencies

CSD will not attempt to initiate any action by local, county, state, or Federal law enforcement agencies against LDS based on the allegations contained in I.97-04-044. However, CSD will participate to the extent requested by any regulatory or law enforcement agency in any action involving LDS.

The Parties intend that this Agreement will not determine the outcome of any other proceeding before the Commission or in any other jurisdiction, whether now pending or later instituted. The positions and the actions taken herein to facilitate this Agreement, do not constitute any admission of fact or law by any of the Parties.

Section 14. LDS's Application for Rehearing

By execution of the Agreement, LDS hereby agrees and informs the Commission that LDS will not exercise the deemed denied provision of California Public Utilities Code section 1733 regarding its Application for Rehearing of I.97-04-044 except upon 30-days written notice to the Commission.

LDS further agrees to withdraw its Application for Rehearing of I.97-04-044 within 35-days after the date that the Commission order approving the Agreement is mailed pursuant to Rule 85, unless a consumer advocacy group as described in Section 2 files an application for rehearing. In that event, LDS's application for rehearing of I.97-04-044 will be withdrawn 10-days after the Commission issues an order denying the consumer advocacy group's application for rehearing.

Section 15. LDS Payment to Commission

A. *The Sum of \$760,000.00*

On or before September 12, 1997, LDS and/or the Purchaser will pay the Commission, the sum of \$760,000.00 in cash which the Commission shall disburse in payment of the following: (i) customer restitutions as set forth in Section 10 herein; and (ii) the cost for publishing the newspaper notices as

described in Section 12 herein. LDS relinquishes all claims, rights, or title to the \$760,000.00 paid to the Commission.

The Commission will deposit these monies into the Commission's special deposit account specifically established for purposes of this Agreement at the State Controller's Office. The Commission shall disburse payments from such account for the purposes described in (i) and (ii) above and for any costs associated therewith. The Parties understand that the Commission's deposit into such account at the State Controller's Office accrues no interest, and no monthly statements of the account's balance will be available. Where pertinent, provisions of this Agreement shall constitute the written disbursement instructions to the Fiscal Office.

B. Payment to LDS

When the Commission order adopting this Agreement becomes effective and after the mediation/arbitration process described in Section 11 above has disposed of all additional restitution claims, the Commission will pay, or direct to have paid to, LDS and/or the Purchaser an amount equal to the amount remaining in the Commission's special deposit account described above less that amount of customer restitution that has been disbursed; the costs of such disbursements (e.g., labor, postage, stationery, handling, etc.); and the costs of publishing the public reproof notices. The Commission will use its best efforts to minimize the costs of disbursements. If the monies in the Commission's special deposit account are insufficient to cover the payment of customer restitution, the costs of disbursements, and the actual costs of printing the public reproof notices, the Commission will invoice LDS an amount equal to the difference between the monies remaining in the Commission's account and the total of such restitution and/or costs that remain unpaid by LDS. LDS will pay the Commission the invoiced amount within 7-days of receipt of such invoice. As soon as CSD is informed that the balance in the special deposit account is insufficient to cover the restitution and/or costs described in the preceding sentence, CSD shall promptly notify as soon as possible LDS and/or the Purchaser.

Section 16. Commission Rejection of the Agreement

If the Commission rejects the Agreement -- whether upon the Parties' submission of the Agreement to the Commission for adoption or subsequent to granting an application for rehearing -- then either Party may withdraw from this

Agreement by giving written notice to the other Party of such intent within 10-days after the Commission order rejecting the Agreement is mailed to the Parties. Within 45-days after such written notice of withdrawal is received by the other Party, CSD shall pay to LDS an amount equal to \$760,000.00, less any costs associated therewith and made in accordance with this Agreement. CSD represents that it has the authority consistent with the pertinent provisions of this Agreement as executed by the Parties and based on its understanding of the Commission Fiscal Officer's responsibilities, to effectuate such payment to LDS.

The 45-day period described above shall be suspended on the date that the withdrawing Party notifies in writing the other Party to this Agreement that it would like to renegotiate the terms of the Agreement for purposes of resubmitting a revised Agreement that would be acceptable to the Commission. Such suspension shall continue until the Commission has rejected the Parties' resubmitted Agreement or one of the Parties notifies the other Party in writing that it is withdrawing from the Agreement, whichever occurs earlier.

Section 17. LDS's CIC Code and ACNA

Upon the expiration of the 120-day transition period, LDS agrees to cease using any CIC code and/or ACNAs in California.

Section 18. Non-Severability

The terms of this Agreement are non-severable. If this Agreement is adopted by the Commission with modifications that are not acceptable to one or both of the Parties, then the Agreement is void except as set forth in Sections 16 and 22 herein. A Party shall be deemed to have consented to the Commission modification unless that Party notifies in writing the other Party and the Commission of its objection to the modification(s) within 15 days following the effective date of the Commission order proposing such modification.

Section 19. Enforcement of Agreement

CSD may bring an enforcement action jointly or severally against LDS and/or the Purchaser for any violation of the Agreement as adopted by the Commission order. At least 15-days prior to bringing any such action, however, CSD will notify by regular mail LDS and/or the Purchaser of the alleged violations, so that LDS and/or the Purchaser may informally respond to such

proposed CSD action. However, CSD need not provide such 15-day notice if LDS provides any services in California after the 120-day transition period that are subject to the Commission's jurisdiction; or if CSD believes that the alleged violations threaten imminent harm to public safety.

CSD shall send its notice to the following persons and to the Purchaser that LDS so identifies:

Richard Bishop
President
L.D. Services, Inc.
13230 East Firestone Boulevard
Suite D-2
Santa Fe Springs, California 90670

with a copy to:

Thomas J. MacBride, Jr.
Kathryn A. Fugere
Goodin, MacBride, Squeri, Schlotz & Ritchie, L.L.P.
505 Sansome Street, Suite 900
San Francisco, California 94111

Section 20. Purchaser's Acquisition of LDS

LDS acknowledges that if a Purchaser agrees to acquire LDS, then LDS and/or the Purchaser will seek the requisite prior Commission approval for such sale pursuant to California Public Utilities Code section 854. Provided that Commission approval of LDS's sale would be consistent with the terms and conditions of this Agreement and in the public interest, CSD will not object to such Purchaser.

Section 21. LDS and Purchaser's Obligations

LDS agrees that in any sale or other disposition of its California customer base or any other LDS asset that is necessary to serve such customer base, LDS shall provide in writing between LDS and the Purchaser (or other successor-in-interest) that the Purchaser or other successor-in-interest shall assume the payment obligations of LDS in this Agreement, if LDS is otherwise unable to perform such duties. The Parties further agree that wherever this Agreement

obligates LDS to make certain payments, the Parties may construe the provisions thereof to apply to the Purchaser and/or other successor-in-interest.

Section 22. LDS Stipulation to PIC Freeze

LDS hereby waives its right to contest the interim suspension of the carrier initiated PIC changes for LDS as ordered by I.97-04-044, which was scheduled for hearing on July 28, 1997. If the Commission adopts this Agreement, LDS stipulates that such PIC suspension shall continue until the date when LDS's CPCN authority is permanently revoked by the Commission as provided for in Section 1 herein. If the Commission rejects this Agreement, LDS agrees that such PIC suspension shall continue until otherwise terminated by Commission order or until LDS's CPCN authority is permanently revoked, whichever occurs earlier. The Parties agree that this Section 22 will remain in force and effect, despite any nullification, Commission rejection, and/or any provisions to the contrary of this Agreement.


Section 23. Applicability of Commission Authorities


The Parties acknowledge that unless expressly and specifically stated otherwise herein, the California Public Utilities Code, Commission regulations, orders, rulings, and/or decisions shall govern the interpretation and enforcement of this Agreement.

Section 24. Counterparts

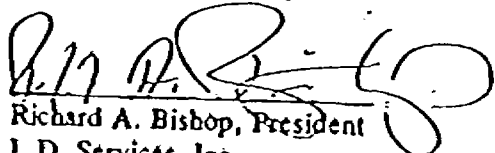
This Agreement may be executed in counterparts.

Approved as to form:



William R. Schulte, Director
Consumer Services Division
Public Utilities Commission
of the State of California


Cleveland W. Lee
Attorney for Consumer
Services Division

Dated:


Richard A. Bishop, President
L.D. Services, Inc.

Dated:


Thomas J. MacBride, Jr.
Attorney for L.D. Services, Inc.

Dated:

Dated:

ATTACHMENT A

LETTER TO BE SENT TO FORMER CUSTOMERS OF L.D. SERVICES, INC.

DATE:

Dear Former Customer of L.D. Services, Inc:

You are receiving this letter because you have been identified as a consumer who made a complaint against L.D. Services, Inc. with Pacific Bell, GTE California (GTEC) or with the California Public Utilities Commission (CPUC). You may not be aware of the name of this entity as it has operated as Long Distance Services, Inc.; however, information the CPUC has received from local exchange companies indicates that you are a bona fide victim of an unauthorized change in your telephone service in violation of the Public Utilities Code.

As a result of your complaint and others like it, the CPUC approved a settlement between the CPUC Consumer Services Division and L.D. Services, Inc. Under the terms of the settlement, you are automatically entitled to receive a payment of \$20.00 from L.D. Services, Inc. Your \$20.00 check is enclosed with this letter. You do not need to take any action in response to this letter, except to cash the check enclosed with this letter within 90 days of the date printed on the check. If this payment satisfies you, you do not need to contact the CPUC or L.D. Services, Inc. If you are not satisfied with this payment, you may still cash the check and you may also be entitled to participate in the mediation/arbitration process set up by the settlement. In the mediation/arbitration process you may receive additional compensation if you demonstrate that, as a result of the conduct of L.D. Services, Inc. you have suffered actual losses beyond the \$20.00 payment provided to you by the enclosed check.

If you wish to participate in the mediation/arbitration process and you think that you are eligible, please follow the instructions on the attached claim form. You must complete the attached claim form and return it to the Consumer Services Division within 90 days of the date of this letter to participate in the mediation/arbitration process.

You should know that this offer of arbitration/mediation is your only opportunity to seek restitution at the CPUC. Whether or not you participate in this arbitration/mediation process does not affect your right to pursue any claims you may have against L.D. Services in any proceeding before any other agency, court, or jurisdiction.

Please contact Mr. Fred Patterson, a Special Agent at the CPUC, at (800) 999-7392 if you have any questions regarding this letter.

Sincerely,

William R. Schulte
Director, Consumer Services Division
California Public Utilities Commission

ATTACHMENT B

INSTRUCTIONS FOR COMPLETING THE CLAIM FORM

The claim form attached to these instructions is only for use by former customers of L.D. Services, Inc. who wish to participate in mediation or arbitration of their disputes with L.D. Services, Inc. If you are satisfied with the \$20.00 payment you have received, you do not need to fill out this form.

To be eligible to participate in this mediation/arbitration process, you must:

- (1) have a complaint that relates to being switched to L.D. Services, Inc.'s long distance service without your consent, or being improperly billed by L.D. Services, Inc.;
- (2) have suffered actual losses as a result of the conduct of L.D. Services, Inc. beyond the \$20.00 payment you received by the enclosed check -- this is limited to the types of losses directly tied to your telephone bill (such as charges for changing your long distance service, charges at rates higher than those charged by your chosen long distance carrier, etc.); and
- (3) return this claim form within 90 days to:

Fred Patterson, Special Agent
Consumer Services Division
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
(800) 999-7392

If you do not send in this claim form within 90 days of the date of this letter, you will not be eligible to participate in this mediation/arbitration process. If you do not participate in the arbitration/mediation process, you give up your right to ask the California Public Utilities Commission to award you damages from L.D. Services, Inc. of more than the \$20.00 you have received with this notice.

Whether or not you participate in this mediation/arbitration process does not affect your right to pursue any claims you may have against L.D. Services, Inc. in any proceedings before any other agency, court, or other jurisdiction.

If you decide to participate in the mediation/arbitration process, please fill out the attached claim form as clearly and as completely as possible, and return it within 90 days to the address above. If you do not know the answer to some of the questions on the claim form, complete as much as you can. You can still submit a claim even if you cannot provide all the information requested.

MEDIATION/ARBITRATION CLAIM FORM

**COMPLETE THIS CLAIM FORM ONLY IF YOU WANT TO PARTICIPATE
IN MEDIATION/ARBITRATION WITH L.D. SERVICES, INC.**

Complete as much of the form as you can, writing clearly and legibly. You can submit the form even if you cannot answer all of the questions.

- A. Fill in your name, current address and telephone number(s):

Name _____

Street Address _____

City, State, Zip _____

Telephone Number (including area code) _____

- B. What was the name of your local exchange carrier (Pacific Bell, GTE California) at the time the conduct by L.D. Services, Inc. occurred?

- C. Please state your address and telephone number at the time you were a customer of L.D. Services, Inc. if it was different from your current address:

Street Address _____

City, State, Zip _____

Telephone Number (including area code) _____

- D. Have you ever corresponded with L.D. Services, Inc. concerning the nature of your complaint?

_____ yes (Please attach copies of the letters if you have them)
_____ no

- E. Did you ever complain to your local exchange carrier (Pacific Bell or GTE California) about L.D. Services, Inc.?

_____ yes (Please describe the complaint)
_____ no

- F. Did you request that your local exchange carrier change the company who provided your long distance telephone service from L.D. Services, Inc. to another company?

_____ yes
_____ no

- G. Explain fully and clearly the details of your dispute with L.D. Services, Inc. Attach additional pages if necessary and copies of documents, if applicable. (For example, copies of telephone bills, letters written to or received from L.D. Services, Inc., etc., if any) Please send copies with this form and keep any originals.

- H. Did you ever receive a refund from L.D. Services, Inc. or anyone else for charges on your telephone bill?

_____ no
_____ yes If yes, please state:

The amount you received _____

The date you received it _____

What as the reason for the refund (if you know)?

- I. Please describe any additional damages you believe you are entitled to beyond the \$20.00 check you have received.

J. Date: _____

- K. If an attorney is representing you, please complete the following:

Name of attorney: _____

Address of attorney: _____

Attorney's Tel. # (including area code): _____

Signature of attorney: _____

Under penalty of perjury, I swear that the information provided in this form is true and correct to the best of my knowledge and belief.

Your signature

ATTACHMENT C

ATTACHMENT C
FOR FORM ONLY

PUBLIC NOTICE

Gregory Conlon
Commission President

The California Public Utilities Commission (CPUC), San Francisco, which licenses and regulates moving companies within California, has recently concluded its investigation of a San Jose moving company by entering into a settlement agreement. The mover is JACK D. HANSEN, also doing business as "HANSEN'S MOVING & STORAGE" (al T-160,524). The unlawful business practices alleged occurred during 1994 and 1995, and include failing to respond to loss and damage claims, giving oral estimates, overcharging, misrepresenting rates and services, and failing to provide consumer information to customers. The terms of this settlement agreement are:

- 1) Twelve months suspension, all but 30 days of which is stayed,
- 2) A fine of \$5,000,
- 3) Placement of this public notice,
- 4) Restitution to specified customers,
- 5) A supervised probation period.

The CPUC considers these measures sufficient to correct the problems noted in its investigation and to protect the public. Anyone who believes they have a claim for restitution against this mover should contact CPUC Investigator Richard Maniscalco at (415) 703-1815.

