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Decision 98-04-024 April 9, 1998

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the operations, practices, and conduct of Brittan Communications International Corp. (BCI) 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.

ORIGINAL

197-04-045
(Filed April 23, 1997)

Nossaman, Guthner, Knox & Elliot, by
Jose E. Guzman, Jr., Attorney at Law, for
Brittan Communications International Corp.,
respondent.

Monica McCrary, Attorney at Law, and Linda Woods,
for the Consumer Services Division

O P I N I O N

Summary

This decision grants a joint motion for approval of a Settlement Agreement between the Commission's Consumer Services Division (CSD) and respondent, Brittan Communications International, Inc. (BCI). The agreement resolves CSD and customer allegations that respondent violated Public Utilities (PU) Code § 2889.5 by switching the long distance carrier of customers without authority between September 1995 and October 1997. Without admitting liability, BCI agrees to deposit \$702,480 at the Commission to provide restitution to at least 35,007 customers who complained to local exchange carriers (LECs) about unlawful switching and 117 customers who made similar complaints to the Commission. BCI further agrees to suspend its service in California for 24 months.

Background

The Commission instituted this proceeding to investigate whether BCI had violated the requirements of PU Code § 2889.5. In 1995-96, this statute required that prior to switching a telephone customer's long distance service to a different carrier, the switching carrier must take the following steps.¹

If the subscriber is solicited by telephone, or other than in person:

- a. Thoroughly inform the subscriber of the nature and extent of the service being offered,
- b. Specifically establish whether the subscriber intends to make any changes in telephone service and explain any associated charges,
- c. Verify the customer's order, and²
- d. Mail the subscriber a packet of information with confirmatory information seeking written authorization to make the change.

If the subscriber is solicited in person:

- a. Thoroughly inform the subscriber of the nature and extent of the service being offered,
- b. Specifically establish whether the subscriber intends to make any changes in telephone service and explain any associated charges,
- c. Obtain the subscriber's signature on a document which fully explains the nature and extent of the action, and
- d. Furnish the subscriber with a copy of the document.

Failure to comply with these requirements constitutes an unlawful act called "slamming."

¹ Effective January 1, 1997, the steps for third-party verification were specified and must be performed by an independent company meeting specific criteria.

² The specific verification requirements of PU Code § 2889.5 also changed from 1995 to 1996.

BCI alleges it obtained customer authorization from entry forms attached to boxes or otherwise made available, placed in public locations which advertised winning a new car ("box program") or through its clipboard program where BCI representatives manned booths at fairs or festivals. In addition to entering the signatory in the sweepstakes, the entry form for this program contained language authorizing the switch from the service of the existing long distance carrier to that of BCI. Many customers complained that they did not understand or intend to switch their long distance service by completing the sweepstakes entry form. Others stated that unauthorized friends or related minors completed the form and caused the customer's long distance service to be switched to BCI. CSD presented to the Commission the affidavits of customers who swore that these allegations were true. Thus, the Commission found there was probable cause to institute this proceeding.

The Commission also implemented two restraints pending completion of this proceeding to protect the public from probable unlawful acts. The Commission prohibited BCI from submitting PIC changes to local exchange carriers in California ("PIC freeze") and from selling its existing customer base.

The Commission set a date for a *limited hearing* in which BCI was provided the opportunity to address the issues of probable cause to investigate and to continue the named restraints.

Interim Decision

The limited hearing was held on May 13 and 14, 1997, before Administrative Law Judge (ALJ) Patricia A. Bennett. BCI and CSD presented 18 witnesses and documentary evidence to address probable cause to institute the investigation and continue the restraints. CSD argued that public harm will still occur without the restraints. BCI alleged that its box and clipboard programs provided lawful customer authority to switch long distance service. BCI also asserted that effective January 1, 1997, it had completely complied with all state law regarding authorization to switch long distance service when it voluntarily stopped submitting PIC changes to local exchange carriers. Therefore, it argued that the initial restraints were not necessary.

After considering this evidence, the Commission concluded that the restrictions established in the initial order should continue pending the conclusion of this proceeding. (Interim Decision (D.) 97-12-046.)

Mediation Efforts

After the conclusion of the limited hearing, the parties noticed and held four settlement meetings on the following dates: August 11, September 8 and 30, and October 16, 1997. ALJ Robert Ramsey acted as mediator in the settlement meetings. Simultaneous with the settlement meetings, between May and September 1997, the parties engaged in discovery to prepare for an evidentiary hearing on all issues in the proceeding.

Evidentiary Hearing

At the scheduled evidentiary hearing on November 17, 1997, the parties jointly introduced into evidence Exhibit 29, an executed Settlement Agreement. ALJ Bennett instructed the parties to file a joint motion to approve the agreement.

Settlement Agreement

On November 21, 1997, the parties filed a Joint Motion For Approval Of Settlement. The parties assert that the Settlement Agreement complies with all Commission requirements and should be approved.

The Settlement Agreement, which is attached as Appendix A, was signed by both parties in this proceeding, BCI and CSD, on November 7 and 10, 1997, respectively. The agreement disposes of the two major disputed issues in this proceeding: whether BCI engaged in unlawful switching of customer long distance service between September 1995 and October 1997; and, if so, what remedies for the affected customers and/or sanctions against BCI are appropriate.

In addition, the parties request the Commission to order affected local exchange companies to cooperate with the terms of the agreement, that is, by providing the CSD with the identity of a complaining BCI customer and waiving any switching costs for a BCI customer qualified under the agreement to switch to another carrier. BCI will pay these costs pursuant to paragraph 5 of the Settlement Agreement.

The parties also request that the Commission's final decision in this proceeding be made effective on the date it is issued.

There are five major terms in the agreement.

1. Restitution

BCI agrees to deposit with the Commission \$702,480 as restitution for customers who have complained to the Commission that their service was switched to BCI without authorization, or customers who have filed primary interexchange carrier (PIC) disputes with LECs alleging unauthorized switching to BCI. BCI deposited with the Commission \$350,000 at the time the proposed Settlement Agreement was executed. The remainder will be paid in four monthly installments in December 1997 and January, February and March 1998. The majority shareholder of BCI, Jim Edwards, in his individual capacity, personally guarantees the payment to the Commission of the stated restitution.

Under the terms of the agreement, the Commission will allocate to qualifying consumers who have complained of unauthorized switching a minimum of \$20 per customer. The agreement establishes a mediation/arbitration program to disburse additional funds for damages. The parties agree that there are 35,007 customer disputes regarding the unauthorized switching of service to BCI filed with various LECs and 117 written consumer complaints lodged with the Commission. The parties request that unclaimed restitution be deposited into the Consumer Protection and Prosecution Trust Fund as established by the Alameda Superior Court in *People v. IIT Consumer Financial Corporation, et al.* (Civil No. 65038-0, September 1989) or to any other fund, trust or account the Commission chooses. Alternatively, the parties request that these unclaimed funds, if possible, be used to provide education and/or protection of consumers involved in slamming issues.

2. Temporary Suspension of Operating Authority

BCI agrees to cease service in this state for a period of 24 months effective the date this decision is adopted. During a 60-day transition period, while BCI may

continue to serve existing customers, CSD will notify customers of its service suspension and provide time for existing customers to locate other service.

3. Payment of Costs by BCI

BCI agrees to pay all costs associated with the Settlement Agreement.

4. Future Certification Proceedings

In the future, any officer, director, or major shareholder with 10% or greater ownership in BCI who applies to this Commission for a certificate of public convenience and necessity to provide telecommunications services within California must disclose in its filing its relationship with BCI. The applicant must concurrently notify the Director of the CSD of such filing. The agreement lists the individuals to whom this provision applies.

5. Enforcement of Terms

Should BCI violate the agreement, CSD reserves the right to initiate a formal proceeding to seek the appropriate remedies, including additional suspension or revocation of BCI's operating authority in California.

6. Other Terms

In addition, the parties request the Commission to order affected local exchange companies to cooperate with the terms of the agreement, that is, by providing the CSD with the identity of complaining BCI customers and billing any switching costs for BCI customers required under the agreement to switch to another carrier to BCI rather than the individual customers.

The parties also request that the Commission's final decision in this proceeding be made effective on the date it is issued.

Rule 51.5(e)

The parties allege that the Settlement Agreement meets the requirements of Rule 51.1(e) of the Commission's Rules of Practice and Procedure. This rule requires that a Settlement Agreement be reasonable in light of the whole record, consistent with the law and in the best interest of the public.

Reasonable In Light of Entire Record

In addition to the written pleadings and briefs, the entire record in this proceeding without an evidentiary hearing includes the affidavits of numerous BCI customers, the sworn testimony of twelve complainants,³ the testimony of two CSD investigators with voluminous investigation reports, and five witnesses testifying in respondent's defense. Witnesses for CSD assert the unlawful behavior of BCI. Witnesses for BCI deny any wrongdoing.

On one hand, the Settlement Agreement addresses the alleged violations by providing restitution of roughly \$20 per complaining customer to make whole those who have incurred fees and higher rates by switching long distance carriers. The agreement removes from California for 24 months the possibility of any further harm from similar behavior by this carrier. These are substantial sanctions for grave, widespread allegations of unlawful behavior.

On the other hand, inspite of these voluntary sanctions, BCI admits no guilt of the alleged unlawful behavior. In fact, the agreement expressly outlines this provision.

The Settlement Agreement is between the only two parties in the proceeding, CSD and BCI, and resolves all issues disputed between them. Thus, in light of the record in this proceeding, that is, CSD's evidence of alleged unlawful behavior and BCI's denial of such behavior, the Settlement Agreement is reasonable.

Lawfulness of the Agreement

The Settlement Agreement contains terms and conditions previously approved by the Commission and unchallenged by parties in prior slamming enforcement proceedings. (*Sonic Communications, dba SCI Communication*, 1995 Cal. PUC LEXIS 176 *6 (D. 95-04-029); *Heartline Communications*, D. 96-12-031; and, *Cherry Communications*, D. 96-09-041.) However, as in prior proceedings, we specify that

³ CSD contends there are many other customers willing to provide testimony at any evidentiary hearing in this proceeding.

unclaimed funds will escheat to the State pursuant to Code of Civil Procedure § 1579.5. (L.D. Services, D.97-11-079.) With this clarification, the Settlement Agreement in this proceeding does not contravene existing law.

In The Public Interest

Based upon the record in this proceeding, it is reasonable to assume that the evidentiary hearings would consume the five to seven days scheduled. After the evidentiary hearing, briefs would be filed and the matter submitted for a proposed decision by the assigned ALJ and a final decision by the Commission. Instead, the Settlement Agreement avoids any further litigation thereby reducing attorney's fees, the consumption of Commission resources and the time it takes to close this proceeding.

The payment of customer switching costs to return to their chosen carrier, restitution for any additional fees and higher rates and the temporary suspension of California service are the same remedies the Commission routinely imposes for the unlawful switching of customer long distance service. Thus, the agreement offers reasonable and immediate recompense for service which the public perceives as unauthorized and unsatisfactory.

In addition, the agreement acts to deter unlawful switching which decreases the likelihood that customers and competitors will be subjected to such future unlawful acts.

For these reasons, the Settlement Agreement is in the public interest.

Judicial Review

Judicial review of Commission decisions is governed by Division 1, Part 1, Chapter 9, Article 3 of the PU Code. The appropriate venue for judicial review is dependent on the nature of the proceeding. This is an enforcement proceeding brought by the Commission against BCI, and so this decision is issued in an "adjudicatory proceeding" as defined in § 1757.1. Therefore, the proper court for filing any petition for writ of review is the Court of Appeal if any subsequent decision disposes of a timely application for rehearing of this decision. (PU Code § 1756(b).)

Comments on Proposed Decision

Based upon the timely comments on the Proposed Decision filed by the parties, we have made minor non-substantive changes to clarify this decision and make it more accurate.

Findings of Fact

1. The Commission issued this enforcement, adjudicatory investigation based upon probable cause that BCI had violated PU Code § 2889.5.
2. The Commission prohibited BCI from submitting PIC changes to local exchange carriers in California ("PIC freeze") and from selling its then-existing customer base until completion of this proceeding.
3. Interim D. 97-12-046 retained the two initial restraints.
4. On November 17, 1997, at the scheduled evidentiary hearing, BCI and CSD jointly sponsored Exhibit 29, an executed Settlement Agreement.
5. On November 21, 1997, the parties filed a Joint Motion For Approval Of Settlement. In addition to approval of the Settlement Agreement, the parties jointly request that local exchange companies with complaining BCI customers be ordered to identify these customers and waive any applicable switching fees for BCI customers required to switch service to another carrier. The parties also request that the decision approving the agreement be effective on the date issued.
6. The Settlement Agreement resolves all of the disputed issues between all of the parties in this proceeding.
7. The Settlement Agreement considers the entire record in this proceeding, namely CSD and customer allegations of unlawful behavior, as well as BCI's assertions of innocence.
8. Approval of the Settlement Agreement avoids further litigation, attorneys' fees, and consumption of limited Commission resources.
9. The Settlement Agreement provides reasonable restitution to aggrieved customers which will deter similar unlawful acts by BCI and other interexchange carriers providing such service in this state.

10. The terms and remedies of the Settlement Agreement are similar to those approved in prior Commission "slamming" proceedings.

11. A Commission order in this proceeding made effective today will expedite the temporary cessation of unsatisfactory service and provision of restitution to qualified aggrieved customers.

Conclusions of Law

1. The Settlement Agreement attached as Appendix A to this decision is reasonable in light of the entire record, not contrary to the law, and in the public interest, therefore, meets the requirements of Rule 51.1(e).

2. Unclaimed restitution funds under the Settlement Agreement shall escheat in the State pursuant to Code of Civil Procedure § 1579.5.

3. BCI admits no violations by executing the Settlement Agreement.

4. The Settlement Agreement should be approved and made effective immediately.

5. This is an enforcement proceeding, and so the decision herein is issued in an "adjudicatory proceeding" as defined in PU Code § 1757.1. Therefore, the proper court for filing any petition for writ of review will be the Court of Appeal if any subsequent decision disposes of a timely application for rehearing of this decision.

O R D E R

IT IS ORDERED that:

1. The Settlement Agreement attached as Appendix A is approved and the Commission selects the alternative option in paragraph 13 that escheats uncollected funds to the state.

2. Local exchange companies affected by this Settlement Agreement will cooperate in implementing the terms of the agreement which affect their respective operations.

3. Investigation 97-04-045 is closed.

This order is effective today.

Dated April 9, 1998, at San Francisco, California.

RICHARD A. BILAS
President
P. GREGORY CONLON
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
Commissioners

I.97-04-045 ALJ/PAB/gab

APPENDIX A

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's)
own motion into the operations,)
practices, and conduct of Brittan)
Communications International Corp.)
(BCI) to determine whether it)
has violated the laws, rules, and) I. 97-04-045
regulations governing the manner)
in which California consumers are)
switched from one long distance carrier)
to another.)
_____)

SETTLEMENT AGREEMENT

This SETTLEMENT AGREEMENT is the final and complete expression of the agreement entered into the 12th day of November 1997 by and between the Consumer Services Division ("CSD" or "Staff") of the California Public Utilities Commission ("Commission") and Brittan Communications International Corporation ("BCI"), Jim G. Edwards, President of BCI, Michael H. Driscoll, and BCI's officers, directors, and/or successors-in interest, which collectively are the "Parties" to this Settlement Agreement ("Settlement Agreement" or "Agreement");

WHEREAS, the Commission has before it a proceeding entitled "Investigation on the Commission's own motion into the operations, practices, and conduct of Brittan Communications International Corp. 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.97-04-045);

WHEREAS, the Parties each desire to resolve amicably the disputes among them and to settle and forever dispose of all issues raised in I.97-04-045;

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:

SUSPENSION

1. The Certificate of Public Convenience and Necessity of Brittan Communications International Corporation granted by Commission shall be suspended for twenty-four (24) consecutive months from the effective date of the Commission decision adopting this Settlement Agreement.
2. During the 24 month period of suspension, Brittan Communications International Corporation, any successors, assignees, affiliates, or any company which Jim G. Edwards or Michael H. Driscoll have a 10 percent or greater ownership interest shall not solicit any customers for telecommunications services in California.
3. During the 24 month period of suspension, BCI shall not provide any presubscribed telephone service to any California customers except during a 60 day transition period beginning the day after the date that the Commission's order approving the Settlement Agreement becomes effective and ending 60 days thereafter. The Parties agree that they will jointly request that the order adopting the Settlement Agreement fix the effective date of the order as the date of issuance.

CUSTOMER NOTICE AND SERVICE TERMINATION

4. Within 30 days of the execution of this Agreement, BCI shall provide to the Consumer Services the name, address, and telephone number of each of BCI's existing customers in California. This list provided by BCI shall be on computer readable medium as specified by CSD and shall separately state the existing customers by local exchange carrier. Within 15 days of the date this Settlement Agreement is adopted by the Commission, the Consumer Services Division shall send a notice to all customers on this list advising them of the need to select another long distance carrier. CSD shall invoice BCI for the cost of postage for mailing the notices and BCI shall reimburse the Commission for such costs within 30 days of receipt of the invoice.

5. All BCI customers identified in paragraph 4, shall have any primary interexchange carrier switch fee that may be charged for switching to a new service provider as required by the terms of this Agreement paid for by BCI. All switching charges will be paid by BCI within 30 days of receipt of an invoice from each affected local exchange carrier for all the switches performed on the local exchange carrier's ("LEC's") system.

CESSATION OF BCI SERVICE

6. At the conclusion of the 60 day transition period, BCI and its officers and directors agree to cease using any Carrier Identification Code ("CIC") or Access Customer Name Abbreviation ("ACNA") in California to provide service to California residents and will immediately cease providing all California consumers telephone service or any other service that is subject to the Commission's jurisdiction.

RESTITUTION PAYMENT BY BCI

7. BCI shall pay the Commission a total of \$702,480 to be used for the purpose of providing \$20.00 restitution payments to California consumers identified as a consumer disputing a primary interexchange carrier ("PIC") change in paragraph 10 of this Settlement Agreement.

8. The \$702,480 shall be paid to the Commission as follows: BCI shall pay to the Commission by cashiers checks \$350,000 on or before November 12, 1997, \$100,000 on or before December 15, 1997, \$100,000 on or before January 15, 1998, \$100,000 on or before February 15, 1998, and \$52,480 on or before March 15, 1998. Upon payment of each amount, BCI relinquishes all claims, rights, or title to the moneys paid to the Commission.

9. This Settlement Agreement shall no longer be of any force and effect, unless on or before each date listed in paragraph 8, BCI has paid, by cashiers check, the sum due to the Commission. Failure to meet any of the payments on schedule is a breach of the entire agreement.

CONSUMERS ELIGIBLE FOR RESTITUTION

10. For purposes of this Settlement Agreement, the Parties agree that consumers disputing a PIC change and entitled to compensation pursuant to this Agreement shall be defined as (a) those consumers who, between the period from September 19, 1995 and October 21, 1997, made a written complaint to the Commission that their long distance telephone service was switched by BCI without their authorization and whose complaint, as identified by Automatic Number Identifiers ("ANIs"), is not included in the list of PIC disputes discussed below and (b) those consumers who, between the period September

19, 1995 and April 1, 1997 have been switched by a LEC to BCI from another carrier and whose PIC change to BCI had been designated as a PIC dispute by the LEC and the disputes were recorded by the LEC as a dispute against Switched Services Communications ("SSC") or U.S. Long Distance ("USLD") but determined by SSC or USLD to be disputes against BCI. For the purpose of this agreement and the calculation of the payment required by paragraph 7, the Parties agree that there are 35,007 PIC disputes and 117 written consumer complaints to the Commission that are not included in the list of 35,007 PIC disputes. The 35,007 PIC disputes are identified in a list of ANIs provided to CSD by BCI in response to Ordering Paragraph 2.f. of I.97-04-045. Consumers shall be entitled to restitution for each line designated as a PIC dispute. Consumers deemed eligible by the provision of this paragraph to receive compensation under the terms of this Settlement Agreement may be referred to in this Agreement as "Qualifying Consumers."

DISBURSEMENT OF CUSTOMER RESTITUTION

11. Within 30 days of execution of this agreement, BCI shall provide the Consumer Services Division with a list, on computer readable medium as specified by CSD, of each ANI identified in paragraph 10. The list of ANIs shall separately state the ANIs in each local exchange carrier service territory. Within 30 days of adoption of this agreement, CSD will request from LECs the name and address associated with each ANI on the list. BCI agrees to reimburse the LECs for the reasonable cost of producing the names, addresses, and ANIs. BCI shall also pay the LECs for other extraordinary, but reasonable and necessary expenses borne by the LECs in connection with administering and executing the Settlement Agreement. The LECs can directly invoice BCI for reasonable costs and BCI shall pay the amounts due within 30 days of the receipt of the invoice.

12. Subject to payment by BCI to the Commission of the \$702,480 amount set forth in paragraphs 7 and 8, CSD will disburse restitution no sooner than 40 days following the date when the Commission order adopting this Settlement Agreement becomes effective, to the Qualifying Customers identified in paragraph 10. The Commission shall disburse the customer restitution in the form of State warrants or bank checks as appropriate, which shall be made negotiable for a minimum of 90 days and a maximum of 120 days from the date of the check and in the amount equaling twenty dollars (\$20.00) per dispute as identified in paragraph 7. CSD shall invoice BCI for the cost of postage for mailing the restitution and BCI shall reimburse the Commission for such costs within 30 days of receipt of the invoice.

13. State warrants or checks that are undeliverable, returned, and/or not cashed within the time period the check is negotiable, will be canceled. The moneys represented by these canceled State warrants or checks, which in the Parties' view represent neither refunds or reparations, but some recompense for the nuisance of having to switch back to the consumers' carrier of choice, shall be deposited by the Commission into the "Consumer Protection and Prosecution Trust Fund" as established by the Alameda Superior Court in *People v. 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 or to any other fund, trust, or account as the Commission so chooses. If the Commission determines that the money should not be placed in the Prosecution Trust Fund identified above, the parties request that, if possible, the money be used to educate and/or protect California consumers on issues relating to unauthorized telephone service switches.

ARBITRATION/MEDIATION FOR ADDITIONAL RESTITUTION

14. BCI shall provide additional restitution beyond the \$20.00 payment, in the manner specified below, to all persons who have been affected by the activity alleged in I.97-04-045, who have Qualifying Consumer Complaints, as described below, who have suffered actual damages as a result thereof, and who submit an arbitration/mediation claim form to the Consumer Services Division within 90 days of receiving the notice and/or check from the Commission. This program shall be conducted as follows:

14.1 General

BCI and the consumers participating in the arbitration/mediation program shall be bound by the final decision of the arbitrator. However, consumers have the option of deciding whether to participate in the program.

Consumers who do not submit a claim form in a timely manner waive their right to participate in the arbitration/mediation program or to pursue any other claims against BCI before the Commission and related to the allegations against BCI set forth in the I.97-04-045. Consumers who do submit a claim form in a timely manner are deemed to have agreed to be bound by the result of the arbitration as to any claims before the Commission and related to the allegations against BCI set forth in the I.97-04-045. However, whether consumers participate in the arbitration/mediation program or not, does not affect their right, if any, to pursue any claim or remedy against BCI in any action or proceeding before any other agency, court, or other jurisdiction. Consumers, however, will waive duplicative reparation claims in other jurisdictions as a result of accepting reparations awards in the mediation/arbitration process. The arbitration/mediation will be conducted at a location convenient for the

consumer. Any and all fees and costs of the arbitration shall be paid to the arbitrator by BCI. The parties intend to use the American Arbitration Association or JAMS Endispute to conduct the hearings and to make determinations pursuant to this paragraph, with the understanding that BCI and the Consumer Services Division may jointly agree to select a different arbitrator within 30 days of the execution of the Settlement Agreement. In the event the chosen arbitrator is unable or unwilling to conduct the hearings and participate in the restitution program, the Consumer Services Division and BCI shall designate another entity or entities to conduct the hearings and make determinations under this program. The mediation/arbitration process is solely to determine the amount of damages and not to determine whether there has been an unauthorized PIC change.

14.2. Qualifying Consumer Complaints

"Qualifying Consumer Complaints" shall refer to any consumer complaint or dispute as identified in paragraph 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 on or after September 19, 1995 and before April 1, 1997 or to the Commission on or after September 19, 1995 and before October 21, 1997.

Qualifying Consumers shall be eligible to participate in arbitration/mediation, in addition to receiving the \$20.00 payment, if they meet all of the following three criteria: (a) the consumer complaint pertains to allegations made in I.97-04-045; (b) the consumer has not otherwise received full restitution (where entitled) for damages arising out of the activity alleged in the Investigation; and (c) the consumer alleges he/she has

suffered an actual and ascertainable loss greater than \$20.00 as a result of the activity alleged in I.97-04-045.

14.3. Mediation/Arbitration Notification

The Consumer Services Division shall include with the \$20.00 check a notice explaining the purpose of the check and informing the consumer that he/she may seek additional restitution, beyond the \$20.00 remediation, from BCI by participating in the arbitration/mediation program. 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 consumer must fill out to participate in the mediation/arbitration program. A copy of the claim form is attached as Exhibit B.

The notice and claim form shall describe the arbitration/mediation program and shall set forth the procedures the consumer must follow to participate in the program. The notice and claim form shall advise consumers that they have 90 days to complete the claim form and return it to the Consumer Services Division at the address specified. The notice and claim form shall further advise consumers 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 BCI concerning any issues raised in I.97-04-045. The notice and claim form shall advise consumers that their decision to participate in the arbitration/mediation process shall not affect their right, if any, to pursue any claim or remedy against BCI in any other agency, court, or other jurisdiction except to the extent a consumer seeks duplicative reparations.

The Consumer Services Division shall date stamp all complaint forms as they are received and provide copies of the claim forms to BCI in two batches, the first containing all claim forms received by the Consumer Services Division within 30 days of the date that the notice and claim forms were first mailed to former BCI customers. The Consumer Services Division shall use all reasonable efforts to deliver to BCI the second batch, containing the remaining claim forms received, within 120 days of the last date that the notice and claim forms were mailed to former BCI customers.

14.4. Mediation Process

After receipt by BCI of the form described in paragraph 14.3. herein, BCI shall have 60 days to informally mediate all consumer complaints with, at BCI's election, the assistance of the mediator. Those consumers whose complaints are still unresolved after this period shall be eligible to participate in the arbitration program. After the aforementioned 60 day period, BCI shall contact all consumers with unresolved complaints through a letter notifying the consumers that the claim remains unresolved and will be submitted to arbitration. BCI shall then transfer to the arbitrator all claim forms which remain unresolved.

If, at any time, BCI resolves a consumer complaint through mediation, within 60 days after resolution, BCI shall file with the Consumer Services Division a report containing the name, address, and telephone number of each complainant and the resolution of the complaint. A photocopy of the correspondence with the consumer complainant shall be sufficient to meet this requirement if it contains all of the required information.

14.5 Arbitration Process

Upon receipt of a consumer claim form, the arbitrator shall schedule an arbitration hearing to be held within 90 days of the arbitrator's receipt of the form and notify the consumer, BCI, and CSD of the date of the hearing.

The arbitrator shall determine whether restitution is appropriate in each case and shall be responsible for assuring that there are adequate personnel to arbitrate all cases. For the consumer to prevail in the arbitration program, the consumer shall have the burden of proving his/her actual damages by preponderance of evidence. Such damages are limited in nature to refunds of rates or fees actually paid by the consumer for which the consumer has not previously received reimbursement. Consumers may not recover consequential damages through the arbitration program.

When the arbitrator issues his/her final decision after the hearing, he/she shall notify the consumer and BCI of this decision through regular mail. Any money due claimants after arbitration shall be paid by BCI within 90 days after notice from the arbitrator of his/her decision in any particular hearing. The cost of each such arbitration shall be borne by BCI. BCI shall also send the Consumer Services Division a list of those consumers who elected to participate in the arbitration/mediation program and notify the Consumer Services Division of the results of the arbitration.

BCI OFFICERS, DIRECTORS, AND MAJOR SHAREHOLDERS

15. If any Officer, Director, or major shareholder (10 percent or greater) of BCI as identified below applies to this Commission for a Certificate of Public Convenience and

Necessity to provide telecommunications services within California, the applicant shall disclose in its filing its relationship with BCI and, concurrent with any such filing, shall notify the Director of the Consumer Services Division. Within 30 days of the execution of the Settlement Agreement, BCI shall notify each Officer, Director, and major shareholder (10 percent or greater) of the provisions of this paragraph and provide copies of such notification to CSD. In the event that such a filing is made by an Officer, Director, or major shareholder of BCI without such disclosure, the failure to provide such disclosure shall be deemed to be a breach of the Settlement Agreement. In the event that any other entity covered by this paragraph files such an application absent the requisite disclosure, such failure may be cited by any protestant as evidence of applicant's lack of fitness to hold a Certificate of Public Convenience and Necessity and the Consumer Services Division may move to dismiss the request with prejudice upon that basis. BCI's Officers, Directors, or major shareholders are: Jim G. Edwards, President, CEO, Chairman, and Shareholder; Michael H. Driscoll, Secretary and Treasurer; Arthur W. Jones, Senior Vice President Marketing; Jeff Dean Calvin, Vice President Operations; and William Joel Hokanson, Vice President and Chief Information Officer

EX PARTE COMMUNICATIONS BAN

16. Except to support the Settlement Agreement, the Parties agree to refrain from any ex parte communications with any Commission decisionmakers as defined by Rule 1.1 (c) of the Commission's Rules of Practice and Procedure beginning on the date this Agreement is executed and ending on the date that the Settlement is adopted by the Commission.

OTHER ACTIONS

17. The Consumer Services Division agrees that it will make no effort to initiate actions by law enforcement agencies against BCI based upon allegations contained in I.97-04-045. However, CSD will fully participate, to the extent requested, in any regulatory or law enforcement agency action taken against BCI.

18. Parties intend that this Settlement Agreement will not determine or be advanced in any manner to try to influence the outcome of any other proceeding before the Commission or in any other jurisdiction pending now or instituted in the future. The positions taken herein, and the actions taken in furtherance of this Settlement Agreement, are in settlement of disputed claims and do not constitute admissions. CSD and BCI agree that the actions required to be taken by them pursuant to this Agreement are taken without prejudice to positions each party has taken, or may take hereafter, in any proceeding, including the Investigation.

19. BCI agrees that it will not seek the dismissal of any civil or criminal action filed against BCI on the grounds that the Commission has primary jurisdiction over the issue of unauthorized PIC changes.

REINSTATEMENT OF OPERATING AUTHORITY

20. Twenty-four months from the effective date of the Commission decision adopting this Settlement Agreement, BCI's operating authority or Certificate of Public Convenience and Necessity will be fully reinstated and the suspension of its Certificate of Public Convenience and Necessity provided for in this Settlement Agreement shall end, without the necessity for any further order of the Commission other than the order approving this Settlement Agreement, unless, no later than 90 days prior to the

completion of the suspension period, the Consumer Services Division submits to the Commission an emergency petition to continue the suspension and the Commission grants the petition. Should the Consumer Services Division file such a petition, the parties expect the Commission to consider it expeditiously and pursuant to the requirements of Public Utilities Code Section 1708. At any hearing, the Consumer Services Division would have the burden of proving to the Commission any violations which it alleges.

ENFORCEMENT OF SETTLEMENT AGREEMENT

21. In the event of any violation of this Agreement, CSD reserves its right to initiate a formal proceeding and to seek whatever remedies that it deems necessary including additional suspension or revocation of BCI's operating authority in California.

COMMISSION REJECTION OF THE SETTLEMENT AGREEMENT

22. If the Commission rejects the Settlement Agreement, either Party may withdraw from this Settlement 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 BCI an amount equal to that paid to the Commission pursuant to paragraph 8 less any costs associated therewith and made in accordance with this Settlement Agreement. CSD represents that it has the authority consistent with the pertinent provisions of this Agreement as executed by the Parties and based on the understanding of the Commission Fiscal Officer's responsibilities, to effectuate such payment to BCI.

23. If the Commission rejects the Settlement Agreement, the 45 day period described in paragraph 22 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 Settlement 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.

LEC AND IEC COOPERATION

24. By execution of the Settlement Agreement, CSD and BCI jointly request that the Commission direct the LECs to provide CSD with the information described in paragraph 11 and direct the LECs to waive any switching fees for the consumers identified in paragraph 4 when the customers switch off of BCI's service. As previously agreed in paragraph 5, the LECs may bill BCI for the switching fees.

25. By execution of the Settlement Agreement, CSD and BCI jointly request that the Commission direct SSC and USLD to cooperate with the Commission and CSD staff in implementation of the Settlement Agreement as necessary.

APPLICATION FOR REHEARING

26. BCI agrees that it will not file an application for rehearing in this proceeding or take any action that would be deemed to not fully support the terms and conditions contained in the Settlement Agreement.

EXECUTION OF THE AGREEMENT

27. This Agreement contains the entire agreement between the Parties and is not severable. If this Settlement Agreement is adopted by the Commission with modifications, the modifications must be consented to by all Parties to this Settlement Agreement. If the modifications are not acceptable to one or more of the Parties, then the Settlement Agreement is void except for the provisions in paragraph 22. 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.

28. The Parties agree, without further consideration, to execute and/or cause to be executed, any other documents and to take any other action as may be necessary, to effectively consummate the subject matter of this Settlement Agreement.

29. This Settlement Agreement shall be binding upon the respective parties, their heirs, assignees, executors, administrators, parent companies, subsidiary companies, affiliates, divisions, units, officers, directors, and 10 percent of greater shareholders.

30. The Parties acknowledge each has read this Settlement Agreement, that each fully understands its rights, privileges, and duties under this Agreement, and that each enters this Agreement freely and voluntarily. Each party further acknowledges that it has had the opportunity to consult with an attorney of its own choosing to explain the terms of this Agreement and the consequences of signing it.

31. This Settlement Agreement may be executed in any number of counterparts and by

different Parties hereto in separate counterparts, with the same effect as if all Parties had signed one and the same document. All such counterparts shall be deemed to be an original and shall together constitute one and the same Agreement.

32. The undersigned acknowledge that they have been duly authorized to execute this Agreement on behalf of their respective principals and that such execution is made within the course and scope of their respective agency and/or employment,

JOINT AND SEVERAL LIABILITY

33. BCI and Jim G. Edwards are each jointly and severally liable for the \$702,480 payment to the Commission required pursuant to paragraphs 7 and 8. Jim G. Edwards, the majority shareholder personally guarantees all payments required under this Settlement Agreement and agrees that the Commission can fully pursue debt collection against him or against BCI.

GOVERNING LAW

34. 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.

William R. Schulte

William R. Schulte, Director
Consumer Services Division

Public Utilities Commission
of the State of California

On behalf of Brittan Communications
International Corp.

Dated: November 7, 1997

Dated: _____

BCI SHAREHOLDERS

Jim. G. Edwards, President

Brittan Communications
International Corp.

Dated: _____

Michael H. Driscoll, Secretary & Treasurer

Brittan Communications
International Corp.

Dated: _____

Arthur W. Jones
Vice President, Sales and Marketing

Brittan Communications
International Corp.

Dated: _____

William Joel Hokanson
Chief Information Officer

Brittan Communications
International Corp.

Dated: _____

Jeffrey Dean Calvin
Vice President of Operations

Brittan Communications
International Corp.

Dated: _____

 William R. Schulte, Director
 Consumer Services Division

Public Utilities Commission
 of the State of California

Dated: _____

Jim G. Edwards

On behalf of Brittan Communications
 International Corp.

Dated: 11/10/97

BCI SHAREHOLDERS

Jim G. Edwards
 Jim G. Edwards, President

Brittan Communications
 International Corp.

Dated: 11/10/97

Arthur W. Jones
 Arthur W. Jones
 Vice President, Sales and Marketing

Brittan Communications
 International Corp.

Dated: 11/10/97

Jeffrey D. Calvin
 Jeffrey Dean Calvin
 Vice President of Operations

Brittan Communications
 International Corp.

Dated: 11/10/97

Michael H. Driscoll 11/10/97
 Michael H. Driscoll, Secretary & Treasurer

Brittan Communications
 International Corp.

Dated: _____

William Joel Hokanson
 William Joel Hokanson
 Chief Information Officer

Brittan Communications
 International Corp.

Dated: 11/10/97