

Mailed 7/2/98

Decision 98-07-020 July 2, 1998

ORIGINAL

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of the Application of Tel-Save, Inc.  
of Pennsylvania d/b/a The Phone Company for  
authority to operate as a resale provider of local  
exchange service within the State of California.  
(U-5535-C)

Application 96-12-050  
(Filed December 20, 1996)

**O P I N I O N**

**Summary**

Tel-Save, Inc. of Pennsylvania (Tel-Save or applicant), doing business as The Phone Company, filed this application seeking a certificate of public convenience and necessity (CPC&N) under Public Utilities (PU) Code § 1001 to permit it to provide facilities-based and resold local exchange telecommunication services as a competitive local carrier (CLC).<sup>1</sup> Applicant was authorized to provide interLATA and intraLATA telephone services in California<sup>2</sup> by Decision (D.) 95-11-037. We grant the authority requested subject to the terms and conditions set forth below.

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<sup>1</sup> A competitive local exchange carrier is a common carrier that is authorized to provide local exchange telecommunications service for a geographic area specified by that carrier.

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

### **Historical Background**

An ex parte order granting applicant the requested CPC&N was to be placed on the Commission's agenda in July 1997. However, on June 30, 1997, the Commission's Consumer Services Division (CSD) filed a protest to the application stating that applicant's request for an ex parte review should be denied because of widespread allegations of slamming by applicant, as well as a possible absence of third-party verification.

CSD requested that the Commission not take any action on the application until CSD had conducted its investigation of applicant.

As a result of CSD's protest, the matter was not placed on the Commission's agenda.

A prehearing conference in the proceeding was held on November 26, 1997 before Administrative Law Judge (ALJ) Garde, during which evidentiary hearing was set for February 19, 1998.

On February 17, 1998, counsel for CSD sent a letter to the ALJ, stating that parties in the proceeding have reached a settlement and that an evidentiary hearing was not necessary. The letter also stated that parties will file a joint motion requesting the Commission to accept the parties' settlement.

On April 14, 1998, CSD filed a motion withdrawing its protest and recommending approval of the application. Simultaneously with filing of CSD's motion, parties filed a joint motion seeking Commission approval of their settlement.

In the motion to withdraw its protest, CSD states that slamming complaints or primary interconnection carrier (PIC) disputes involving applicant resulted from applicant's acquisition of the assets of American Business Alliance, Inc. (ABA). Specifically, CSD states the following:

"In December 1996, Tel-Save acquired substantially all of the assets of American Business Alliance, Inc. (ABA), including its marketing operations. CSD's Protest was based on complaints and PIC disputes involving the telemarketing practices of ABA occurring prior to Tel-Save's acquisition and continuing for a time until closed down by Tel-Save prior to CSD's investigation having even begun. Tel-Save has fully cooperated with CSD's investigation. ABA and CSD have entered into a Agreement to resolve these complaints and PIC disputes and are jointly filing a motion for Commission approval of the pertinent settlement agreement. Nothing presently to CSD's knowledge indicates that Tel-Save's management is not fully qualified to provide local exchange and other services within California. CSD accordingly withdraws its protest against the Application and recommends that the Commission approve, as expeditiously as possible, the Application."

#### **Settlement**

The settlement refers to the Settlement Agreement between CSD and ABA and Tel-Save's Guaranty of ABA's performance under the Settlement Agreement. The two items are attached to this order as Attachments C and D, respectively.

Although, ABA has not filed for party status in this proceeding, because of its involvement in the proceeding, we will make ABA a party to the proceeding. We will treat the settlement as an all-party settlement.

The settlement provides immediate restitution for all affected customers in California who complained to their local exchange carrier or the Commission re ABA's PIC disputes. ABA at its own expense will furnish CSD company checks (Checks) payable to every customer whose telephone line(s) was slammed. The Checks will be in a suitable format for CSD's mailing to the affected customers and in the amount of \$25.00 per telephone line that was allegedly slammed.

Tel-Save's guaranty of ABA's performance provides that if ABA fails to fulfill its obligations under the Agreement (e.g., restitution to customers, reimbursement of CSD's costs, and payment to the Commission for expired or undeliverable Checks), Tel-Save will unconditionally undertake such obligations.

### **Discussion**

The proposed settlement, which is the result of extensive negotiations, comprises a reasonable and fair resolution of this proceeding. The proposed settlement addresses the concerns and interests of all the Parties, and presents a more efficient and less costly outcome than engaging in an administrative hearing. First, further proceedings would most likely lengthen considerably a final disposition of this case. Second, the cost in CSD's time and resources, as well as legal costs to other Parties, would be significantly greater than the costs associated with the adoption of the proposed settlement.

Principally, the two features of this proposed settlement that outweigh the other options available to the parties, are (i) speedy and assured restitution concurrent with approval of this settlement by the Commission and (ii) ABA's voluntary surrender of its CPC&N. These measures assure that no future violations of California Public Utilities Code § 2885.9 will occur.

We will approve the settlement set forth in Attachments C and D. The settlement is reasonable, consistent with the law, and in the public interest. (Rule 51.1(e), Rules of Practice and Procedure.) In addition, the Settlement Agreement meets the Commission standards established in D.92-12-019 (46 CPUC2d 538), the San Diego Gas & Electric Company's rate proceeding. It is sponsored by all parties. No statutory provisions are offended by the settlement, and the terms are reasonable. The settlement provides sufficient

information to permit us to discharge future regulatory obligations with respect to the parties and their interests.

### **Request for CPC&N**

By D.95-07-054 (Rulemaking (R.) 95-04-043/Investigation (I.) 95-04-044), we established initial procedures by which carriers could file for authority to offer CLC service within the service territories of Pacific Bell and GTE California Incorporate (GTEC). Prospective CLCs that filed petitions by September 1, 1995, and otherwise met eligibility requirements were authorized to offer local exchange service effective January 1, 1996, (for facilities-based carriers) and by March 31, 1996, (for resale carriers). Filings for CLC authority made after September 1, 1995, were to be treated as applications and processed in the normal course of the Commission's business.

Applicant's request for authority to provide facilities-based and resold local exchange services was made on December 20, 1996.<sup>3</sup> Accordingly, the request was docketed as an application.

### **Nature of Application**

Applicant is a Pennsylvania corporation authorized to do business in California. A copy of applicant's California registration is attached to the application as Exhibit A. In compliance with Rule 18(b) of the Rules of Practice and Procedure,<sup>4</sup> applicant has listed the names and addresses of entities with

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<sup>3</sup> On April 21, 1997, the assigned ALJ informed applicant that the application did not provide adequate information to determine whether applicant seeks authority to provide facilities-based and resold local exchange services. On May 28, 1997, applicant filed an amendment to the application requesting authority to provide facilities-based as well as resold local exchange services.

<sup>4</sup> All references to rules hereafter are to the Commission's Rules of Practice and Procedure.

which it may compete, and applicant certifies that it has notified each of these entities of this filing, offering to send a copy of the application upon request.

Applicant plans to provide basic telephone service (referred to as POTS service by applicant), private branch exchange (PBX) trunks, and other ancillary services. Applicant will provide the services by reselling local services of Pacific Bell and GTEC. In the San Francisco area, applicant will use its own switch for routing calls. All local access lines will be provided by the incumbent local exchange carriers (ILEC). Applicant thus seeks certification as both a facilities-based and a resale local exchange carrier.

Applicant states that it will offer its services 24 hours a day, seven days a week to all classes of customers, although its marketing effort will primarily be focused on business customers who are being provided long distance service by applicant.

Applicant intends to provide resold service in Pacific Bell and GTEC service areas throughout the state. A map of the proposed area of service is attached to the application as Exhibit B. Applicant proposes to provide services at rates that are competitive with the rates of existing ILECS.

In applications of this kind, proposed tariffs must conform to the consumer protection rules set forth in Attachment B of D.95-07-054. Applicant's proposed tariff, pursuant to Rule 18(h), containing its proposed rates and terms and conditions of service, is attached as Exhibit C to the application.

We have reviewed applicant's proposed tariff and conclude that it conforms to the adopted Commission rules except for the deficiencies noted in Attachment B of this decision.

We also conclude that applicant qualifies as a facilities-based and resale competitive local carrier and meets the financial requirements set forth in our

rules. A facilities-based CLC must demonstrate that it has a minimum of \$100,000 of cash or cash equivalent, reasonably liquid and readily available to meet the firm's start-up expenses as prescribed in Rule 4.B(1) of D.95-07-054. Applicant also must agree that customer deposits, if any, must be maintained in a protected, segregated interest-bearing escrow account subject to Commission oversight.

Applicant has submitted its financial data in Exhibit D to the application. Exhibit D contains applicant's most recent Form 10-Q filed with the Securities and Exchange Commission. Form 10-Q shows that as of September 30, 1996, applicant had over \$160,000 in cash or cash equivalent. It satisfies our criteria for being reasonably liquid and readily available to meet the applicant's needs.

An applicant seeking local exchange authority also is required to make a reasonable showing of technical expertise in telecommunications or a related business.

Applicant has provided information on its key employees indicating their professional background and experience. Based on the information provided, we conclude that applicant has the technical expertise and qualifications to conduct its business.

Applicant states that none of its officers or directors have been principals of or otherwise involved with any certificated telecommunication carrier in California that has declared bankruptcy or similarly been the subject of dissolution or liquidation proceeding, or has abandoned the provision of telecommunications services in the state.

### **California Environmental Quality Act (CEQA) Review**

Applications to provide facilities-based local exchange services must be reviewed for compliance with CEQA.<sup>5</sup> CEQA requires the Commission to assess the potential environmental impact of a project in order that adverse effects are avoided, alternatives are investigated, and environmental quality is restored or enhanced to the fullest extent possible. To achieve this objective, Rule 17.1 requires the proponent of any project subject to Commission approval to submit an environmental assessment which is referred to as a Proponent's Environmental Assessment (PEA). The PEA is used by the Commission to focus on any impacts of the project which may be of concern and to prepare the Commission's Initial Study to determine whether the project would need a Negative Declaration or an Environmental Impact Report (EIR).

Applicant filed its PEA as a supplement to the amendment to the application. Applicant states that it plans to install an AT&T-manufactured #5 ESS switch in an existing building. Applicant plans no new construction or outside plant facilities.

According to applicant, since no construction of new buildings or outside facilities is contemplated, installation of its switch will not have any adverse impact on the environment.

Applicant's CEQA review was consolidated with the CEQA review of eight other CPC&N applications by facilities-based CLCs. After assessing the PEAs for these eight facilities-based CLCs, Commission staff prepared a draft Negative Declaration and Initial Study generally describing the applicants, projects and their potential environmental effects. The Initial Study identified

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<sup>5</sup> D.95-12-056, Appendix C, Section 4.C.(2).



potentially significant impacts from applicants' projects which, with mitigating measures, could be reduced to a less than significant level. (Pub. Res. Code § 21080(c)(2).) The draft Negative Declaration and Initial Study was then circulated for public review and comment.<sup>6</sup>

In D.97-09-110, issued on September 24, 1997, in R.95-04-043 and I.95-04-044, we approved the Final Mitigated Negative Declaration for the projects proposed by eight applicants for facilities-based CLCs, including the project proposed by applicant in the instant application. We find that with the inclusion of mitigation measures set forth in the Final Mitigated Negative Declaration contained in Attachment C of D.97-09-110, applicant's proposed project will not have potentially significant environmental effects. Accordingly, we shall require applicant to comply with the Mitigation Monitoring Plan (Appendix C to the Final Mitigated Negative Declaration approved in D.97-09-110) in order to ensure that the listed Mitigation Measures will be followed and implemented.<sup>7</sup>

### **Conclusion**

We conclude that this application conforms to Commission rules for competitive local exchange certification, subject to compliance with the terms and conditions set forth herein. We approve the application on that basis.

### **Findings of Fact**

1. Applicant filed its application on December 20, 1996, for authority to provide facilities-based and resold local exchange services.

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<sup>6</sup> No written comments were received.

<sup>7</sup> Along with a copy of this decision, the Commission's Process Office shall mail to applicant a copy of the Final Mitigated Negative Declaration approved in D.97-09-110.

2. Applicant served a Notice of Availability, in lieu of its application, on prospective competitors, stating that copies of the application would be served at the request of any party receiving the notice.

3. A notice of the filing of the application appeared in the Daily Calendar on December 31, 1996.

4. An ex parte order granting the requested CPC&N was to be placed on the Commission's agenda in July 1997.

5. On June 30, 1997, CSD filed a protest to the application stating that the applicants' request for an ex parte review of the application should be denied because of widespread allegation of slamming by applicant.

6. CSD and applicant have reached a settlement regarding CSD's protest.

7. All parties to the proceeding have filed a motion to adopt the settlement reached between CSD and applicant.

8. The settlement is reasonable, consistent with the law, and in the public interest.

9. No hearing is required.

10. By prior Commission decisions, we authorized competition in providing local exchange telecommunications service within the service territories of Pacific Bell and GTEC.

11. By D.95-07-054, D.95-12-056, D.96-02-072, and D.96-03-020, we authorized facilities-based CLC services effective January 1, 1996, and CLC resale services effective March 31, 1996, for carriers meeting specified criteria.

12. Applicant has demonstrated that it has a minimum of \$100,000 of cash or cash equivalent reasonably liquid and readily available to meet its start-up expenses.

13. Applicant's technical experience is demonstrated by the descriptions of the background qualifications of its executives and technical staff.

14. Applicant has submitted with its application a draft of its initial tariffs which complies with the requirements established by the Commission except for the deficiencies identified in Attachment B.

15. Exemption from the provisions of PU Code §§ 816-830 has been granted to other nondominant carriers. (See, e.g., D.86-10-007, 22 CPUC2d 42 (1986) and D.88-12-076, 30 CPUC2d 145 (1988).)

16. The transfer or encumbrance of property of nondominant carriers has been exempted from the requirements of PU Code § 851 whenever such transfer or encumbrance serves to secure debt. (See D.85-11-044, 19 CPUC2d 206 (1985).)

17. CEQA requires the Commission to assess the potential environmental impact of a project.

18. The Commission staff conducted an Initial Study of the environmental impact of facilities-based CLC applications, including this application, and prepared a Mitigated Negative Declaration.

19. D.97-09-110 issued on September 24, 1997, approved a Final Mitigated Declaration for the projects proposed by eight applicants for facilities-based CLCS, including the project proposed by applicant.

20. In D.97-09-110, the Commission found that with the incorporation of all mitigation measures discussed in the Mitigated Negative Declaration (Attachment C of D.97-09-110, certification of the eight CLCs covered therein, including applicant, will result in no significant adverse impact on the environment.

### Conclusions of Law

1. The motion to adopt the settlement should be granted.
2. Applicant has the financial ability to provide the proposed service.
3. Applicant has made a reasonable showing of technical expertise in telecommunications.
4. Public convenience and necessity require the competitive local exchange services to be offered by applicant, subject to the terms and conditions set forth below.
5. Applicant is subject to:
  - a. The current 2.4% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund Universal Lifeline Telephone Service Fund (PU Code § 879; Resolution T-16098, December 16, 1997);
  - b. The current 0.25% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California Relay Service and Communications Devices Fund (PU Code § 2881; Resolution T-16090, December 16, 1997);
  - c. The user fee provided in PU Code §§ 431-435, which is 0.11% of gross intrastate revenue for the 1998-1999 fiscal year (Resolution M-4789);
  - d. The current surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California High Cost Fund-A (PU Code § 739.30; D.96-10-066, pp. 3-4, App. B, Rule I.C.; Resolution T-16117 at 0.0% for 1998, effective February 19, 1998);
  - e. The current 2.87% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California High Cost Fund-B (D.96-10-066, p. 191, App. B, Rule 6.F.); and

- f. The current 0.41% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California Teleconnect Fund (D.96-10-066, p. 88, App. B, Rule 8.G.).
5. Applicant should be exempted from PU Code 816-830.
6. Applicant should be exempted from PU Code 851 when the transfer or encumbrance serves to secure debt.
7. The application should be granted to the extent set forth in the order below.
8. Any CLC which does not comply with our rules for local exchange competition adopted in R.95-04-043 shall be subject to sanctions including, but not limited to, revocation of its CLC certificate.
9. Applicant is required to carry out any specific mitigation measures outlined in the Negative Declaration applicable to its facilities to be in compliance with CEQA.
10. With the incorporation of the specific mitigation measures outlined in the Negative Declaration, applicant's proposed project will not have potentially significant environmental impacts.
11. Because of the public interest in competitive local exchange services, the following order should be effective immediately.

## O R D E R

IT IS ORDERED that:

1. The motion to adopt the Settlement Agreement between American Business Alliance, Inc. (ABA) and the Consumer Services Division and Tel-Save, Inc. of Pennsylvania's (applicant) guaranty of ABA's performance is granted.

2. ABA and applicant shall abide by the terms of the Settlement Agreement and applicant's guaranty of ABA's performance.

3. A certificate of public convenience and necessity is granted to applicant, doing business as The Phone Company, to operate as a facilities-based and resale competitive local carrier (CLC) subject to the terms and conditions set forth below.

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

5. a. Applicant is authorized to file with this Commission tariff schedules for the provision of competitive local exchange services. Applicant may not offer such services until tariffs are on file. Applicant's initial filing shall be made in accordance with General Order (GO) 96-A, excluding Sections IV, V, and VI, and must include a satisfactory correction of each deficiency listed in Attachment B to this order. The tariff shall be effective not less than 1 day after tariff approval by the Commission's Telecommunications Division. Applicant shall comply with the provisions in its tariffs.

b. Applicant is a CLC. The effectiveness of its future tariffs is subject to the schedules set forth in Appendix A, Section 4.E of Decision (D.) 95-07-054:

"E. CLCs shall be subject to the following tariff and contract filing, revision and service pricing standards (Contracts shall be subject to GO 96-A rules for NDIECS, except those for interconnection):

- "(1) Uniform rate reductions for existing tariff services shall become effective on five (5) working days, notice to the Commission. Customer notification is not required for rate decreases.
- "(2) Uniform major rate increases for existing tariff services shall become effective on thirty (30) days' notice to the Commission, and shall require bill inserts, or a

message on the bill itself, or first class mail notice to customers at least 30 days in advance of the pending rate increase.

"(3) Uniform minor rate increases, as defined in D.95-07-054, shall become effective on not less than five (5) working days' notice to the Commission. Customer notification is not required for such minor rate increases.

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

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

4. Applicant may deviate from the following provisions of GO 96-A:

(a) paragraph II.C.(1)(b), which requires consecutive sheet numbering and prohibits the reuse of sheet numbers, and (b) paragraph II.C.(4), which requires that "a separate sheet or series of sheets should be used for each rule." Tariff filings incorporating these deviations shall be subject to the approval of Commission's Telecommunications Division. Tariff filings shall reflect all fees and surcharges to which applicant is subject, as reflected in Conclusion of Law 4.

5. Applicant shall file as part of its initial tariff, after the effective date of this order and consistent with Ordering Paragraph 3, a service area map or written description of its facilities. Such written descriptions or maps must be adequate for staff to determine that the CLC is providing service to interested customers located within 300 feet of the CLC's facilities.

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

7. Applicant shall notify this Commission in writing of the date local exchange service first rendered to the public within five days after such service begins.

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

9. Applicant shall file an annual report, in compliance with GO 104-A, on a calendar-year basis using the information request form contained in Attachment A.

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

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

12. The corporate identification number assigned to applicant is U-5535-C. That identification number shall apply to its CLC and inter- and intraLATA services, and shall be included in the caption of all original filings with this Commission, and in the titles of other pleadings filed in existing cases.



13. Within 60 days of the effective date of this order, applicant shall comply with PU Code § 708, Employee Identification Cards, and notify the Director of the Telecommunications Division in writing of its compliance.

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

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

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

17. Applicant shall comply with the customer notification and education rules adopted in D.96-04-049 regarding passage of calling party number. The entire Final Mitigated Negative Declaration that was approved and adopted in D.97-09-110 is hereby incorporated into this order by reference. A copy of the Final Mitigated Negative Declaration shall be provided to applicant along with this decision.

18. The applicant shall comply with the conditions and carry out the mitigation measures outlined in the Final Mitigated Negative Declaration attached to D.97-09-110.

19. The applicant shall provide the Director of the Commission's Telecommunications Division with reports on compliance with the conditions and implementation of mitigation measures under the schedule as outlined in the Final Mitigated Negative Declaration adopted in D.97-09-110.

20. Applicant shall send a copy of this decision to concerned local permitting agencies not later than 30 days from the date of this order.

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

22. Application 96-12-050 is closed.

This order is effective today.

Dated July 2, 1998, at San Francisco, California.

RICHARD A. BILAS

President

P. GREGORY CONLON

JESSIE J. KNIGHT, JR.

HENRY M. DUQUE

JOSIAH L. NEEPER

Commissioners

**ATTACHMENT A**

**Page 1**

**INFORMATION REQUESTED OF COMPETITIVE LOCAL CARRIERS**

**TO: ALL COMPETITIVE LOCAL CARRIERS**

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

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

Address your report to:  
California Public Utilities Commission  
Financial Reports, Room 3251  
505 Van Ness Avenue  
San Francisco, CA 94102-3298

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

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

**ATTACHMENT A**

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**INFORMATION REQUESTED OF COMPETITIVE LOCAL CARRIERS**

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

1. Exact legal name and U # of reporting utility.
2. Address.
3. Name, title, address, and telephone number of the person to be contacted concerning the reported information.
4. Name and title of the officer having custody of the general books of account and the address of the office where such books are kept.
5. Type of organization (e.g., corporation, partnership, sole proprietorship, etc.).  
If incorporated, specify:
  - a. Date of filing articles of incorporation with the Secretary of State.
  - b. State in which incorporated.
6. Commission decision number granting operating authority and the date of that decision.
7. Date operations were begun.
8. Description of other business activities in which the utility is engaged.
9. A list of all affiliated companies and their relationship to the utility. State if affiliate is a:
  - a. Regulated public utility
  - b. Publicly held corporation.
10. Balance sheet as of December 31<sup>st</sup> of the year for which information is submitted.
11. Income statement for California operations for the calendar year for which information is submitted.

**(END OF ATTACHMENT A)**

**ATTACHMENT B**

***Tel-Save, Inc. of Pennsylvania d/b/a The Phone Company.***

List of deficiencies in tariffs filed by Tel-Save, Inc. of Pennsylvania d/b/a The Phone Company A. 96-12-050.

1. 2-T, Sheet 7, Preliminary Statement should indicate the intent to provide facilities-based as well as resale local exchange service in Pacific Bell and GTEC's service areas.
2. 2-T, All Rate Schedules: Need to clarify if rates apply in both Pacific Bell and GTEC's territory.
3. 2-T, Sheet 42 is missing from the filing.
4. 2-T, Sheets 49 and 87, Contracts for Individual Case Basis (ICB) service offerings: ICB arrangements are subject to G.O.96-A rules. There is no blanket authority for ICB arrangements.
5. 2-T, Sheet 53, Rule 6 (B), item 4, must be changed to reflect that the deposit balance must be returned within 30 days after discontinuance of service, not 30 days following rendition of the final bill.
6. 2-T, Sheet 60: Revise tariff to show surcharges as follows:

CPUC Reimbursement Fee. ....	0.11%
Universal Lifeline Telephone Service .....	2.4%
California High Cost Fund(CHCF-A) .....	0.0%
California High Cost Fund(CHCF-B) .....	2.87%
California Relay Service & Communication Devices Fund ....	.25%
California Teleconnect Fund .....	0.41%

7. Sample forms must be included in the company's compliance filing following certification.
8. The company must include its own Switched Access Tariff or concur in another carrier's tariff.
9. Number Portability: D. 96-04-054 requires that CLC's offer RCF under reciprocal rates and terms as those adopted in that decision.

**(END OF ATTACHMENT B)**

A.96-12-050 ALJ/AVG/jva

**ATTACHMENT C**

SETTLEMENT AGREEMENT

This SETTLEMENT AGREEMENT (Agreement) is the final and complete expression of the agreement entered into this \_\_\_ day of April 1998 by and among the Consumer Services Division (CSD) of the California Public Utilities Commission (CPUC or Commission), American Business Alliance, Inc. (ABA), and the stockholders, directors, officers, employees, agents, and predecessors and successors in interest of ABA, which collectively are referred to as the "Parties" to this Agreement.

WHEREAS, the Commission and local exchange carriers in California received consumer complaints regarding ABA's marketing operations, practices, and conduct;

WHEREAS, ABA ceased its marketing operations as of April 1997 and is unlikely to resume doing telemarketing business in California;

WHEREAS, the Parties desire to amicably and forever resolve, settle, and dispose of the matters raised by the aforementioned customer complaints, and to that end, the Parties have signed a Memorandum of Understanding, dated February 17, 1998 (MOU);

WHEREAS, ABA is ready, willing, and able to reasonably compensate those California customers who complained about ABA;

WHEREAS, pursuant to such MOU, ABA has agreed to sign this Agreement and join CSD in the filing of a motion to have the Commission approve this Agreement;

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

1. Within forty-five (45) days of the Commission's final adoption of this Agreement, ABA at its own expense shall furnish to CSD ABA company checks (Checks) addressed and made payable to every California customer whose telephone line(s) was allegedly slammed. The Checks shall be in a format suitable for CSD mailing to the affected California customers and in the amount of \$25.00 per each customer's telephone line(s) that was allegedly slammed. As herein referenced, the terms "telephone line(s) allegedly slammed" shall mean (i) those lines reported in the pertinent local exchange carrier's PIC Dispute Disposition Reports as having been switched without customer authorization by ABA, Tel-Save (which acquired substantially all of

## ATTACHMENT C

the assets of ABA), or any affiliate thereof using ACNAs such as TVN, ATX, ATI, ABA, or any other code; and (ii) those lines for which CSD has recorded consumer complaints alleging slamming by any of the foregoing.

2. CSD shall mail each Check to the address printed thereon. Each Check shall be accompanied by a letter in the form of Appendix A attached hereto (Letter).
3. Any uncashed or returned as undeliverable Checks shall become void after sixty (60) days from the date on which the Check was issued. Within sixty (60) days after the date on which the Checks became void, ABA shall pay the sum total of all such voided Checks to the Commission, which shall deposit the amount received in the general fund of the State of California.
4. ABA also will remit concurrently with such payment to the Commission the amount of fifty thousand dollars (\$50,000.00) in reimbursement for CSD's investigation costs and for postage and handling of the Checks.
5. ABA shall voluntarily surrender to the Commission its Certificate of Public Convenience and Necessity to provide long distance service within California.
6. CSD will recommend that no fines, penalties or any remedies other than those set forth in this Agreement be imposed on ABA or the corporation which acquired substantially all of ABA's assets, Tel-Save, because of their cooperation with CSD's investigation, their corrective action taken before CSD's investigation began, and the remedial actions promised in this Agreement.
7. CSD will not recommend any legal actions be undertaken by any other regulatory or law enforcement agencies against ABA or Tel-Save with regard to the matters settled by this Agreement; however, the Parties acknowledge that CSD will cooperate fully with any request for assistance by any local, state or federal law enforcement or regulatory administrative agencies.
8. The Parties acknowledge that this Agreement is subject to approval by the CPUC. As soon as practicable after all the Parties have signed this Agreement, the Parties shall jointly file a motion for Commission approval of this Agreement. The Parties agree to furnish such additional information, documents, and/or testimony as may be required by the assigned Administrative Law Judge or the assigned Commissioner in granting said Motion and adopting the Agreement.



**ATTACHMENT C**

9. The Parties agree that the CPUC has primary jurisdiction over any interpretation, enforcement, or remedies pertaining to this Agreement. No Party may bring an action pertaining to the Agreement in any local, state, or federal court or administrative agency without first having exhausted its administrative remedies at the CPUC.
10. This Agreement shall be governed by and interpreted in accordance with the laws of the State of California and CPUC rules and regulations.
11. The Parties agree that no signatory to this Agreement nor any Commission employee assumes any personal liability as a result of this Agreement. No Party shall bring any such action in any local, state, or federal court or administrative agency against any individual signatory, Party representative, or Commission employee.
12. The Parties each agree to execute and/or cause to be executed any other documents or to take any other action as may be necessary to effectively consummate this Agreement.
13. This Agreement shall be binding upon and shall inure to the benefit of the respective Parties hereto, their legal successors, assigns, partners, representatives, parent companies, subsidiary companies, affiliates, divisions, or units thereof.
14. This Agreement and the provisions contained herein shall not be construed nor interpreted for or against any Party hereto because that Party drafted or caused its legal representative to draft any of its provisions.
15. This Agreement may be executed in any number of separate counterparts by the different Parties hereto 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.
16. The provisions of this Agreement are not severable. If any Party fails to perform its respective obligations under this Agreement, the Agreement may be regarded as rescinded. Further, if the Commission or any court of competent jurisdiction overrules or modifies any material provision of this Agreement as legally invalid, then this Agreement and the related MOU shall be deemed rescinded.

**ATTACHMENT C**

- 17. No Party has relied or presently relies upon any statement, promise or representation by any other Party, whether oral or written, except as specifically set forth in this Agreement. Each Party expressly assumes the risk of any mistake of law or fact made by such Party or its authorized representative.**
- 18. The undersigned hereby acknowledge and covenant 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.**
- 19. This Agreement is for settlement purposes only. ABA admits no violation of any law or regulation or any wrongdoing of any sort, and further expressly denies any such actions.**
- 20. The Parties acknowledge and stipulate that the Agreement is fair and not the result of any fraud, duress, or undue influence by any other Party. Each Party hereby states that it has read and fully understands its rights, privileges, and duties under this Agreement. In executing this Agreement, each Party declares that the provisions herein are adequate, reasonable, and mutually agreeable and that such Party is entering this Agreement freely and voluntarily.**
- 21. This Agreement is the entire agreement between the Parties, which cannot be amended or modified without the express written consent of all Parties hereto.**

**IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed by their respective authorized representatives as of the date hereof.**

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**///**  
**///**

ATTACHMENT C

CONSUMER SERVICES DIVISION,  
CALIFORNIA PUBLIC UTILITIES COMMISSION

By: William R. Schulte  
Name: WILLIAM R. SCHULTE  
Title: DIRECTOR  
4/3/98  
AMERICAN BUSINESS ALLIANCE, INC.

By: \_\_\_\_\_  
Name:  
Title:

ATTACHMENT G

CONSUMER SERVICES DIVISION,  
CALIFORNIA PUBLIC UTILITIES COMMISSION

By: William R. Schulte  
Name: William R. Schulte  
Title: Director

4/3/78

AMERICAN BUSINESS ALLIANCE, INC.

By: JH, President  
Name: Jim Means  
Title: President

Appendix A

April \_\_\_\_, 1998

Dear California Consumer:

Our records indicate that you complained to your local telephone company or to the Commission about an unauthorized switching of your telephone long distance provider, allegedly involving the Group Savings Plan of American Business Alliance, Inc. (ABA). The Commission recently investigated such complaints and has reached a settlement with ABA, that entitles you to a payment of twenty-five dollars (\$25.00) for each telephone line you own which you complained was "slammed."

A check for the amount described above is enclosed with this letter. You do not need to take any action in response to this letter, except to cash the enclosed check within sixty (60) days of the date printed on the check. The check will become void after those sixty days have passed.

If you have any questions regarding this matter, call Special Agent Fred Patterson at the California Public Utilities Commission at (415) 703-2427.

Very truly yours,

William R. Schulte, Director  
Consumer Services Division

A.96-12-050 ALJ/AVG/jva

**ATTACHMENT D**

**GUARANTY**

**GUARANTY made on April \_\_\_\_, 1998, by Tel-Save, Inc. (Tel-Save) to the Consumer Services Division (CSD) of the California Public Utilities Commission (CPUC or Commission).**

**WHEREAS, CSD and American Business Alliance, Inc. (ABA), have signed a Settlement Agreement (Agreement) dated concurrently with this Guaranty;**

**WHEREAS, CSD agreed to settle consumer complaints against ABA in consideration inter alia for Tel-Save's guarantee of ABA's performance under the Agreement, as set forth herein;**

**WHEREAS, the CSD, Tel-Save, and ABA have entered into a Memorandum of Understanding which resulted in CSD requesting the assigned Administrative Law Judge A. Garde to remove docket A.96-12-050 from the Commission Calendar for any further proceedings;**

**WHEREAS, CSD will file concurrently with the filing of the Agreement and the Guaranty, a Motion to withdraw its Protest of A.96-12-050 and recommend therein that the Commission approve such Application.**

**NOW, THEREFORE, in consideration of the foregoing and of the mutual promises hereinafter made, and intending to be legally bound, Tel-Save by its authorized representative hereby agrees to guarantee unconditionally and irrevocably performance of the following ABA obligations under the Agreement and other conditions as set forth below:**

- 1. ABA will furnish CSD with company checks (Checks) in a suitable format, addressed to the California customers, and made payable in an amount as described in section one (1) of the Agreement. If ABA is unable to make payment on any such Checks, Tel-Save will immediately do so;**
- 2. ABA shall pay the Commission an amount of monies that correspond to the total of all Checks which were uncashed or returned as undeliverable, as set forth in section three (3) of the Agreement. If ABA is unable to make such payment to the Commission, Tel-Save will immediately pay this amount.**

ATTACHMENT D

3. ABA will pay to the Commission fifty thousand (\$50,000.00) dollars in compensation for CSD's investigatory, postage, and handling costs, pursuant to section four (4) of the Agreement. If ABA is unable to pay this amount, Tel-Save will immediately pay such amount.
4. This Guaranty shall remain in force until ABA has satisfied all of its obligations pursuant to the Agreement.
5. Tel-Save agrees to furnish such additional information, documents, and/or testimony as may be required by the assigned Administrative Law Judge or the assigned Commissioner in approving this Guaranty.
6. Tel-Save acknowledges that the CPUC has primary jurisdiction over any interpretation, enforcement, or remedies pertaining to this Guaranty. No action pertaining to this Guaranty may be brought in any local, state, or federal court or administrative agency without first exhausting the administrative remedies available at the CPUC.
7. This Guaranty shall be governed by and interpreted in accordance with the laws of the State of California and CPUC rules and regulations.
8. Tel-Save agrees to execute and/or cause to be executed any other documents or to take any other action as may be necessary, to effectively consummate this Guaranty.
9. This Guaranty shall inure to the benefit of the Commission and shall be binding upon Tel-Save's legal successor, assigns, partners, representatives, parent companies, subsidiary companies, affiliates, divisions, and units thereof.
10. Tel-Save acknowledges that this Guaranty is fair and not the result of any fraud, duress, or undue influence by CSD. Tel-Save regards this Guaranty as reasonable and is entering this Guaranty freely and voluntarily.

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ATTACHMENT D

IN WITNESS WHEREOF, Tel-Save executes, and CSD acknowledges, this Guaranty as of the date first indicated above.

TEL-SAVE, INC.

By: \_\_\_\_\_

Name:

Title:

Date:

Receipt Acknowledged by:

CONSUMER SERVICES DIVISION

CALIFORNIA PUBLIC UTILITIES COMMISSION

By: William R. Schulte

Name: WILLIAM R. SCHULTE

Title: DIRECTOR

Date: 4/3/98

ATTACHMENT D

IN WITNESS WHEREOF, Tel-Save executes, and CSD acknowledges, this Quarranty as of the date first indicated above.

TEL-SAVE, INC.

By: Aloysius T. Lawn IV

Name: Aloysius T. Lawn, IV

Title: General Counsel and Secretary

Date: 4/8/98

Receipt Acknowledged by:

CONSUMER SERVICES DIVISION

CALIFORNIA PUBLIC UTILITIES COMMISSION

By: William R. Schultz

Name: William R. Schultz

Title: Director

Date: 4/3/98