

Decision 99-06-005 June 3, 1999

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the operations, practices, and conduct of Communication Telesystems International and Edward S. Soren, President of Communication Telesystems International to determine whether they have complied with the laws, rules, regulations and applicable tariff provisions governing the manner in which California consumers are switched from one long distance company to another, and other requirements for long distance carriers.

Investigation 96-02-043
(Filed February 23, 1998)

OPINION

On May 21, 1997, the Commission issued Decision (D.) 97-05-089 in which it ordered Communications TeleSystems International, also known as WorldXChange, to

return \$1,939,412, as reparations, to subscribers that have submitted presubscribed interexchange carrier (PIC) disputes to their local exchange carrier (LEC). Each subscriber shall receive an equal amount for each PIC dispute as determined by the Commission's Consumer Services Division (CSD).

At the time, the estimated number of customers that had filed a PIC dispute was 56,000, resulting in a check for each dispute of about \$34. The decision also granted the Executive Director authority to resolve all disputes regarding the appropriate process to get the checks to consumers "quickly and efficiently."

On March 8, 1999, the assigned Commissioner and Administrative Law Judge (ALJ) convened a prehearing conference in response to reports from the

parties that current addresses were only available for approximately a half of the original 56,000 customers. As explained by Pacific Bell at the hearing, when customers move or otherwise change telephone numbers their PIC dispute records, which are keyed to the "old" telephone number, do not contain current information. Consequently, the LECs cannot prepare the PIC dispute list with current names and phone numbers for all 56,000 customers but only for 24,321 customers. The reduced number of customers raises the immediate question as to what the amount of the checks for the known customers should be because the total reparations amount is to be equally divided by the number of customers.

With the encouragement of the assigned Commissioner and ALJ, the parties reached an agreement that a check in the amount of \$40 should be mailed immediately to each of the remaining identified customers. The parties filed their agreement¹ and requested that pursuant to D.97-05-089, the Executive Director approve it. The parties indicated that they would file a request at a later date for Commission action on the remaining amount which was intended for the now unknown customers.

Requirements for Approval of Settlement Agreements

Commission Rule of Practice and Procedure 51(e) requires that settlement agreements be (1) reasonable in light of the whole record, (2) consistent with the law, and (3) in the public interest, to be approved by the Commission.

a. Reasonable in Light of the Whole Record

As this proceeding approaches its third anniversary, the record in this case reveals that customers, some of whom filed their PIC disputes in 1994,

¹ The document filed by the parties is entitled "Joint Motion of All Parties for Executive Director Action Pursuant to D.97-05-089" and is executed by each party. For purposes of this decision, it will be treated as an all party settlement agreement.

have not received the reparations the Commission ordered nearly two years ago.² Each day of delay increases the number of customers that filed a complaint who are no longer reachable due to changed addresses. Because this agreement limits further delays in making reparation payments, it is reasonable.

The amount of the check is also reasonable. The amount is the nearest factor of ten, rounded up, to the estimated amount in the Commission's decision.

b. Consistent with the Law

Making Commission-ordered reparations is consistent with the law.

c. In the Public Interest

This settlement agreement is in the public interest because it expedites the payment of Commission-ordered reparations.

d. All-Party Settlements

The Commission must be satisfied that a proposed all-party settlement:

- 1) commands the unanimous sponsorship of all active parties to the instance proceeding;
- 2) that the sponsoring parties are fairly reflective of the affected interests;
- 3) that no term of the settlement contravenes statutory provisions or prior Commission decisions; and

² The parties are investigating the cause of the delay in issuing the reparation checks and shall recommend any policy or procedural changes necessary to limit any future similar occurrences.

- 4) that the settlement conveys to the Commission sufficient information to permit us to discharge our future regulatory obligations with respect to the parties and their interests.

Here, all parties have sponsored the settlement. The parties represent the utility, the Commission staff, consumer intervenors, and Pacific Bell. As noted above, the agreement is consistent with the law. The agreement is clear as to the obligations it imposes on the parties such that the Commission can oversee implementation of it.

For these reasons, the settlement agreement is reasonable in light of the whole record, is consistent with the law, is in the public interest, and meets the additional requirements for all-party settlements. The agreement is approved pursuant to Rules 51 through 51.10 of the Commission's Rules of Practice and Procedure. (See also San Diego Gas & Electric, 46 CPUC 2d 538 (1992)(rules for all-party settlements).)

Waiver of Comment Period

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code Section 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

Findings of Fact

1. The number of customers who filed PIC disputes against CTS and for which current addresses are available is 24,321 not 56,000 as contemplated by the Commission in D.97-05-089.
2. Reparations checks in the amount of \$40 are consistent with D.97-05-089.
3. The public interest requires that the reparations checks be mailed as soon as practicable.

Conclusions of Law

1. The settlement agreement is reasonable in light of the whole record, is consistent with the law, is in the public interest, and meets the additional requirements for all-party settlements.
2. The settlement agreement should be approved.
3. In order to assure prompt compliance with the terms of the settlement agreement, and to quickly obtain the benefits of the settlement agreement for consumers, this order should be made effective immediately.

O R D E R

IT IS ORDERED that the settlement agreement affixed hereto as Attachment A, and made a part hereof, is approved, and the parties are directed to comply with the terms set forth in the settlement agreement.

This order is effective today.

Dated June 3, 1999, at San Francisco, California.

RICHARD A. BILAS
President
HENRY M. DUQUE
JOSIAH L. NEEPER
LORETTA M. LYNCH
TAL C. FINNEY
Commissioners

ATTACHMENT A

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

Investigation on the Commission's own motion) Investigation 96-02-043
into the operations, practices, and conduct of)
Communications TeleSystems International and)
Edward S. Soren, President of Communications)
TeleSystems International, to determine)
whether they have complied with the laws,)
rules, regulations and applicable tariff)
provisions governing the manner in which)
California consumers are switched from one)
long-distance carrier to another, and other)
requirements for long-distance carriers.)
_____)

**JOINT MOTION OF ALL PARTIES
FOR EXECUTIVE DIRECTOR ACTION
PURSUANT TO D 97 05 089**

(COUNSEL LISTED ON SIGNATURE PAGES)

SUMMARY OF MOTION

Intervenors the Greenlining Institute and Latino Issues Forum ("Intervenors"), Communications TeleSystems International ("CTS"), the Consumer Services Department of the California Public Utilities Commission ("CSD"), and Pacific Bell ("Pacific") jointly bring this motion for executive director action pursuant to paragraph 6, p. 35, of this Commission's Decision 97 05 089, dated May 21, 1997. Paragraph 6 reads in its entirety:

6. The Executive Director is authorized to resolve all disputes regarding the appropriate process for effectuating the Commission's intent to get the ["slamming" reparations] checks to customers quickly and efficiently.

BACKGROUND OF MOTION

Decision 97 05 089 required that CSD contact California Local Exchange Carriers (LECs) to identify those subscribers who had submitted complaints about CTS' unauthorized submission of presubscribed interstate carrier (PIC) changes (sometimes referred to as "slamming"). The Commission ordered CTS to pay \$1,939,412 in reparation to those subscribers for such unauthorized changes. The LECs had reported, and the Commission understood, that in 1994 through 1996 there were roughly 56,000 such PIC complaints. The Commission thereupon ordered the LECs to "provide the Commission staff and CTS with a list on a computer readable medium of such designated customers," CTS was ordered "to prepare checks for the customer reparations amount made payable to each and every customer characterized as a disputed PIC change by their respective LEC," and CSD was ordered to forward such checks to the subscribers with a multilingual notice informing the subscribers of the nature of the refund. Decision at page 34, paragraph 2.

Based on the 56,000 figure, all parties had estimated reparations of roughly

\$34.60 per PIC dispute. It was subsequently determined, however, that the LECs could only identify by customer name and address 24,321 PIC disputes.

Pursuant to the agreement of all parties hereto, and the direction of Commissioner Neep and Administrative Law Judge (ALJ) Bushey, the parties hereby apply to the Executive Director for authorization to comply with the Commission's Decision 97 05 089 by the prompt mailing of checks in the amount of \$40.00 per PIC dispute to each of the identified 24,321 PIC disputants. CSD has represented that 24,321 represents the totality of PIC disputants who can now be identified by name and address.

The parties' agreement regarding the remaining portion of the \$1,939,412 will be reduced to a formal settlement agreement which will be submitted by March 26, 1999 to the Commission for approval. The parties further agree that

MOTION

Because the above-described and suggested action of the Executive Director provides the most expedient and efficient means to place reparations monies in the hands of the "slamming" victims who have been identified, all parties hereby move the Executive Director to issue the following directive:

(1) that CTS immediately begin the preparation of checks in the amount of \$40 each (per dispute) to the 24,321 PIC disputants who have been identified, and complete the issuance of those checks and the delivery of same to CSD within thirty (30) days of the Executive Director's issuance of this directive; and

(2) that CSD immediately begin the preparation of the notice to be included with the mailing of such checks to subscribers, and mail those checks to subscribers within

twenty (20) days of receipt of the checks from CTS; and

(3) the granting of this motion is without legal prejudice to CTS' pending federal actions, case number 98 16400 in the U.S. Court of Appeals for the Ninth Circuit, and case number C 98 2861 MHP in the United States District Court for the Northern District of California, regarding the Commission's action against CTS in I.96 02 043.

CONCLUSION

Because such a directive would effectuate the Commission's intent to "get the reparations checks to customers. [as] quickly and efficiently" as possible, as reflected in D 97 05 089, all parties herein urge and move the Executive Director to issue such directive as soon as possible.

Dated: March __, 1998

CONSUMER SERVICES DIVISION,
CALIFORNIA PUBLIC UTILITIES COMMISSION

By: _____

Robert Cagen, Esq.

Dated: March __, 1999

COMMUNICATIONS TELESYSTEMS INT'L (CTS)

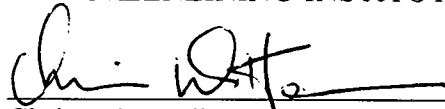
By: _____

David Brownstein, Esq. (Heller, Ehrman, White & McAuliffe)

Dated: March 26, 1999

THE GREENLINING INSTITUTE

By: _____


Christopher Witteman, Esq.

(Further signatures next page)

twenty (20) days of receipt of the checks from CTS; and

(3) the granting of this motion is without legal prejudice to CTS' pending federal actions, case number 98 16400 in the U.S. Court of Appeals for the Ninth Circuit, and case number C 98 2861 MHP in the United States District Court for the Northern District of California, regarding the Commission's action against CTS in I.96 02 043.

CONCLUSION

Because such a directive would effectuate the Commission's intent to "get the reparations checks to customers [as] quickly and efficiently" as possible, as reflected in D 97 05 089, all parties herein urge and move the Executive Director to issue such directive as soon as possible.

Dated: March 26, 1998

CONSUMER SERVICES DIVISION,
CALIFORNIA PUBLIC UTILITIES COMMISSION

By:

Travis T. Foss
~~Robert Gagon, Esq.~~
Travis T. Foss

Dated: March __, 1999

COMMUNICATIONS TELESYSTEMS INT'L (CTS)

By:

David Brownstein, Esq. (Heller, Ehrman, White & McAuliffe)

Dated: March __, 1999

THE GREENLINING INSTITUTE

By:

Christopher Witteman, Esq.

(Further signatures next page)

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Dated: March __, 1998

CONSUMER SERVICES DIVISION,
CALIFORNIA PUBLIC UTILITIES COMMISSION

By: _____

Robert Cagen, Esq.

Dated: March 25 1999

COMMUNICATIONS TELESYSTEMS INT'L (CTS)

By: _____

David Brownstein, Esq. (Heller, Ehrman, White & McAuliffe)

Dated: March __, 1999

THE GREENLINING INSTITUTE

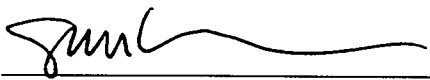
By: _____

Christopher Witteman, Esq.

(Further signatures next page)

Dated: March 25, 1998

LATINO ISSUES FORUM

By: 

Susan E. Brown, Esq.

Dated: March __, 1998

PACIFIC BELL

By: _____
Robert Mazique, Esq.

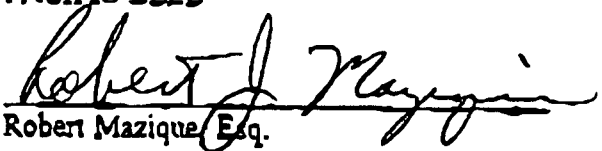
Dated: March 25, 1998

LATINO ISSUES FORUM

By: 
Susan E. Brown, Esq.

Dated: March 29, 1998

PACIFIC BELL

By: 
Robert Maziq, Esq.

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

Investigation on the Commission's own motion)	Investigation 96-02-043
into the operations, practices, and conduct of)	
Communications TeleSystems International and)	[PROPOSED] DIRECTIVE OF
Edward S. Soren, President of Communications)	EXECUTIVE DIRECTOR
TeleSystems International, to determine)	
whether they have complied with the laws,)	
rules, regulations and applicable tariff)	
provisions governing the manner in which)	
California consumers are switched from one)	
long-distance carrier to another, and other)	
requirements for long-distance carriers.)	
_____)	

The Executive Director hereby directs the following: (1) that Communications TeleSystems International (CTS) immediately begin the preparation of checks in the amount of \$40 each (per dispute) to the 24,321 PIC disputants who have been identified, and complete the issuance of those checks and the delivery of same to the Consumer Services Division of the Public Utilities Commission (CSD) within thirty (30) days of the Executive Director's issuance of this directive; (2) that CSD immediately begin the preparation of the notice to be included with the mailing of such checks to subscribers, and mail those checks to subscribers within twenty (20) days of receipt of the checks from CTS; and (3) the granting of this motion is without legal prejudice to CTS' pending federal actions, case number 98-16400 in the U.S. Court of Appeals for the Ninth Circuit, and case number C 98 2861 MHP in the United States District Court for the Northern District of California, regarding the Commission's action against CTS in I.96 02 043.

Date: _____

Wesley Franklin, Executive Director
California Public Utilities Commission