

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Consumer Services Division

San Francisco, California

Date: April 9, 1998

Resolution No. CSD-3

RESOLUTION

**RESOLUTION TO ADOPT A SETTLEMENT AGREEMENT
BETWEEN THE CONSUMER SERVICES DIVISION AND
WINSTAR GATEWAY NETWORK**

SUMMARY

This Resolution adopts a Settlement Agreement reached between the Consumer Services Division (CSD) and Winstar Gateway Network (WGNI). Under the terms of the Settlement Agreement, WGNI will provide restitution to California consumers that complained to the California Public Utilities Commission (Commission), Pacific Bell or GTE California that their telephone service was switched to WGNI without their authorization.

BACKGROUND

In March of 1993, the Commission issued D.93-03-054 granting Communications Gateway Network, Inc. (WGNI) a Certificate of Public Convenience and Necessity to operate as a reseller of interLATA telecommunications services in California. On November 28, 1994, Winstar Communications, Inc. filed an application with the Commission requesting *nunc pro tunc* approval of the acquisition of WGNI. The Commission granted Winstar Communications' application on May 10, 1995 in D.95-05-009. WGNI is currently a wholly-owned subsidiary of Winstar Communications, Inc.

In late 1995 and early 1996, Pacific Bell and GTE California (GTEC) began reporting that WGNI was receiving a significant number of primary interexchange

carrier change disputes (PIC disputes). A PIC dispute occurs when a consumer contacts the local exchange company (LEC) and indicates that the subscriber's telephone service provider was changed without the subscriber's authorization.

In August of 1996, CSD began a preliminary investigation of WGNI. CSD reports that WGNI fully cooperated with CSD staff in its investigation of WGNI. CSD found that from July of 1995 to May of 1997 approximately 9,500 consumers alleged that their service was switched to WGNI without their authorization. CSD determined that WGNI used marketing agents to solicit customers for WGNI and that the PIC disputes resulted from these marketing agents using sweepstakes marketing methods that allegedly violate Public Utilities Code (P.U. Code) Section 2889.5 to obtain customers for WGNI. CSD reports that during the first five months of 1997, only 41 PIC disputes have been lodged against WGNI.

CSD reports that WGNI voluntarily took action to address the PIC dispute problem and the complaints being lodged against it prior to the initiation of a CSD investigation. In July of 1996, WGNI contacted the Commission to discuss concerns arising from the sweepstakes box marketing method (box program) used by its marketing agent R&R Ventures Inc., (d/b/a/ TropicTel, a/k/a Millenium Telecom). WGNI informed the Commission of a number of proactive measures WGNI had instituted to ameliorate any problems the TropicTel box program had caused. For example, in May of 1996, WGNI ceased processing all letters of agency (LOAs) submitted by independent marketing agents, pending institution of procedures to enable WGNI to independently verify each LOA before the associated PIC change was made. WGNI then retained an independent third-party verification company to verify all LOAs. WGNI, eventually stopped accepting all LOAs from the then existing box programs and revised their marketing program.

WGNI voluntarily approached the Federal Communications Commission (FCC) and the CSD staff to discuss remediation for customers who disputed their PIC change to WGNI. In addition to entering into the Settlement Agreement adopted in this Resolution, in December of 1996 WGNI entered into a Consent Decree with the FCC.

While WGNI entered a Consent Decree with the FCC, the parties agree that additional remediation, beyond that provided under the FCC Consent Decree, will be provided to certain California consumers that alleged that their long distance service provider was switched to WGNI without their authorization. The negotiated consumer remediation is consistent with that provided in other slamming proceedings but took into account reparations provided by the FCC Consent Decree.

Pursuant to the Settlement Agreement, consumers that complained to the Commission, Pacific Bell or GTE California that their long distance service provider was switched by WGNI without their authorization will receive a check for \$20.00 for each line disputed unless the subscriber has previously received \$8.00 of remediation pursuant to the FCC Consent Decree, in which case the subscriber will receive \$12.00. In addition, if consumers believe that their actual losses exceed \$20.00 they can participate in a mediation/arbitration process established in the Settlement.

The Settlement also requires WGNI to make a minimum payment of \$15,000 to the Consumer Protection and Prosecution Trust Fund, a trust administered by the California District Attorney's Association for the purpose of enhancing the investigation, prosecution and enforcement of consumer actions in California, or to the General Fund if the Commission so chooses. In addition, an amendment to the Settlement Agreement provides that funds from undelivered, uncashed, and returned checks will be held in trust by WGNI for the payee for a period of one year. Those funds not claimed during the one year period shall be paid by WGNI to the California Public Utilities Commission for deposit into the General Fund.

DISCUSSION

The Settlement Agreement as amended was reviewed by the Administrative Law Judge Division and determined to be reasonable in light of the entire record, consistent with the law, and in the public interest.

Reasonable In Light of the Entire Record

CSD has prepared a Summary Report which documents the Staff's investigation of WGNI. Staff reports that approximately 9,500 consumers alleged that their service was switched to WGNI without their authorization. The Settlement Agreement provides each of these consumers with restitution. The Settlement takes into account that some consumers may have previously received some restitution from WGNI pursuant to the terms of the Consent Decree WGNI entered with the FCC. Thus, consumers will receive a check for \$20.00 for each line switch disputed unless the subscriber has previously received \$8.00 of remediation pursuant to the FCC Consent Decree, in which case the subscriber will receive \$12.00.

The Settlement Agreement does not suspend WGNI's operating authority, and this is appropriate for two reasons. First, WGNI voluntarily took proactive measures to

correct the problems that resulted from using the sweepstakes marketing method and did so prior to the initiation of a CSD investigation. Second, CSD reports that WGNI fully cooperated with Staff during its investigation.

In light of the entire record, the Settlement Agreement is reasonable.

Consistent with the Law

The restitution provisions of the Settlement Agreement are consistent with prior settlements adopted by the Commission in other slamming enforcement proceedings. (See *Investigation of Cherry Communications*, D.96-09-041; *Investigation of Heartline Communications*, D.96-12-031; and *Investigation of LD Services*, D.97-11-079.)

The Amendment to the Settlement Agreement provides for unclaimed funds from restitution payments to escheat to the State pursuant to Code of Civil Procedure § 1579.5. With this amendment, the Settlement Agreement is consistent with the law.

In the Public Interest

CSD and WGNI have reached a Settlement that provides California consumers with appropriate restitution. WGNI voluntarily took action to address the PIC dispute problem thus demonstrating that unauthorized PIC changes are not an acceptable practice for WGNI. We believe that California consumers are of little risk of further unauthorized switches by WGNI. However, should WGNI violate any of the terms of the Settlement Agreement or violate applicable law or regulation, the Commission can exercise a range of sanctions against WGNI.

This Agreement was reached without initiating a formal investigative proceeding into WGNI, thus conserving valuable Commission resources.

For these reasons, the Settlement Agreement is in the Public Interest.

FINDINGS OF FACT

1. From July of 1995 to May of 1997 approximately 9,500 consumers alleged that their service was switched to WGNI without their authorization.

2. WGNI voluntarily took proactive measures to address the problems that arose from its use of a sweepstakes marketing method and which led to the disputed service switches and did so prior to the initiation of a CSD investigation.
3. WGNI entered into a Consent Decree with the Federal Communications Commission in December of 1996 which stemmed from complaints the FCC received involving the sweepstakes marketing method.
4. The number of primary interexchange carrier disputes lodged against WGNI significantly decreased in early 1997.
5. WGNI cooperated fully with CSD's investigation of the entity's activities.
6. On January 26, 1998, the parties amended their Settlement Agreement to provide for payment of all funds from undeliverable, returned, and uncashed checks to the General Fund of the State of California.
7. The Settlement Agreement as amended was reviewed by the Administrative Law Judge Division to determine whether the Settlement Agreement is reasonable in light of the record, consistent with the law, and in the public interest.
8. The Settlement Agreement considers the record in this case as documented by CSD's Investigative Summary Report.
9. Approval of the Settlement Agreement avoids further consumption of limited Commission resources.
10. The Settlement Agreement provides restitution to aggrieved consumers consistent with Settlement Agreements adopted by the Commission in other slamming enforcement proceedings.

CONCLUSIONS OF LAW

1. The Settlement Agreement as amended is reasonable in light of the whole record, is consistent with the law, and is in the public interest.
2. The Settlement Agreement should be approved.

ORDER

1. The Settlement Agreement is adopted.
2. Funds from undeliverable, returned and uncashed checks shall be paid to the California Public Utilities Commission for deposit into the General Fund in accordance with the procedures established in paragraph 7a of the amendment to the Settlement Agreement.
3. In this instance, the \$15,000 payment described in paragraph 2 shall be made payable to the California Public Utilities Commission for deposit into the General Fund.
4. Pacific Bell, GTE California, WorldCom Network Services, Inc., and U.S. Long Distance are ordered to cooperate with Commission staff in implementing the terms of the Settlement Agreement.
5. A copy of this Resolution, when approved, shall be mailed to Winstar Gateway Network's counsel of record:

Ky E. Kirby, Esq.
SWIDLER & BERLIN
3000 K. Street, N.W., Suite 300
Washington, D.C. 20007-5116

A copy of the Resolution will also be mailed to the regulatory contact for each of the entities identified in Ordering Paragraph 4:

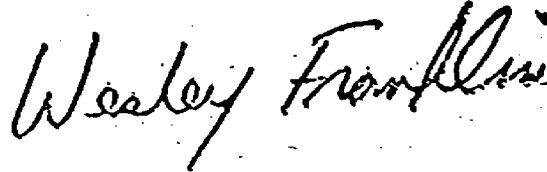
Pacific Bell
140 New Montgomery, Room 1822
San Francisco, CA 94105
Attention: A.E. Swan

GTE California, Inc
One GTE Place, RC3412
Thousand Oaks, CA 91362-3811
Attention: Timothy McCallion

WorldCom, Inc.
9300 Shelbyville Road, Suite 700
Louisville, KY 40222
Attention: Douglas Brent

U.S. Long Distance
9311 San Pedro Ave., Suite 300
San Antonio, TX 78216-4470
Attention: Ken Melley

I certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting of April 9, 1998. The following Commissioners approved the Resolution:



WESLEY M. FRANKLIN
Executive Director

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

CONSUMER SERVICES DIVISION
INVESTIGATIVE SUMMARY REPORT
OF
WINSTAR GATEWAY NETWORK, INC.

INVESTIGATIVE SUMMARY REPORT

WINSTAR GATEWAY NETWORK

Winstar Gateway Network, Inc. (WGN), also known as Communications Gateway Network, is a certificated long distance interexchange carrier, pursuant to D.93-03-054, dated March 24, 1993. In August 1996, the Consumer Services Division's, Utility Enforcement Unit initiated an informal investigation regarding slamming complaints made against WGN. Prior to initiating this investigation, WGN had contacts with staff and Commissioner Fessler's Advisor, Mr. Jose Jimenez, to discuss the company's problems with marketing its telecommunication services in California. Attached is a copy of a letter addressed to Jose Jimenez, from WGN's attorney, Ms. Ky E. Kirby, dated July 3, 1997, in which Ms. Kirby discusses some of the marketing problems WGN has had and how the company intends to address those problems.

PIC DISPUTES

From July 1995 through May 1997, 6,649 consumers complained to Pacific Bell that Winstar Gateway Network (WGN), also known as Communications Gateway Network, had switched their long distance telephone service without the consumers' authorization. GTE reports that it received 255 Primary Interexchange Carrier (PIC) disputes against WGN for the period January 1996 through May 1997.

WGN resells the telecommunication services of MCI, Wiltel, AT&T and U.S. Long Distance. MCI submits PIC change requests on behalf of WGN to Local Exchange Carriers (LEC), using WGN's Carrier Identification Code (CIC) number (643). Under this arrangement, all PIC change disputes are directly attributed to WGN. Wiltel and U.S. Long Distance submit PIC change requests on behalf of WGN using their own CIC number, so under this arrangement, PIC change disputes caused by WGN are attributed to either Wiltel or U.S. Long Distance. Wiltel reports that WGN had 2196 PIC disputes for the period January 1995 through March 1997, and U.S. Long Distance reported that WGN had 375 PIC disputes for the year 1996. AT&T resells its 1-800 service to WGN. According to WGN, no PIC disputes would be brought about under this business arrangement.

The number of PIC disputes reported against WGN for the year 1997 has dropped dramatically. Pacific Bell reports that WGN had only 36 PIC disputes for the period of January through May 1997, and GTE reports 4 disputes for the same period. U.S. Long Distance reports no PIC disputes against WGN for 1997, and Wiltel reports 1 PIC dispute.

The number of PIC disputes against WGN as described above totals 9475.

WGN'S MARKETING PROGRAM

WGN used the marketing services of three agents, R&R Ventures, LTD. d/b/a Millennium (TropicTel), TAN STN Communications, Inc., and Tan Communications, Inc., to solicit its telecommunication services in California. These marketing companies used a sweepstakes contest (the box program) to lure contestants to win a free vacation or automobile. The contest form, which required the contestant's signature, also

served as an application, Letter of Agency (LOA), which authorized the conversion of the consumer's long distance telephone service. According to WGN's attorney, Ms. Ky E. Kirby, WGN no longer markets its telecommunication services through the box program. Ms. Kirby states in her July 3, 1996 letter to Jose Jimenez, that WGN terminated the box program because its marketing agents failed to confirm the sweepstakes contestants' desire to switch their long distance service to WGN.

WGN also used the marketing services of Call Star One. This marketing company setup booths at malls, trade shows and the like and directly solicited consumers to sign a LOA that authorized the conversion of the consumer's long distance service to WGN.

INVESTIGATION AND CONSUMER COMPLAINTS

In August 1996, CPUC case investigators Pete Winnie and Stephen Northrop were assigned to interview consumers who had complained to either the Commission or to Pacific Bell that WGN had converted their long distance telephone service without the consumers' authorization. Investigator Northrop interviewed 91 complainants, and Investigator Winnie interviewed 45 complainants and memorialized the interviews in declarations.

The 91 interviews memorialized in Investigator Northrop's Declaration are from consumers who had filed complaints with the Pacific Bell. These complainants are identified in Pacific Bell's Business Office Referral Report. The majority of the complainants (57) told Investigator Northrop that either WGN or Communications Gateway Network was responsible for converting their long distance service without their authorization. Thirteen (13) complainants claimed that USBI (WGN's billing agent) had converted their telephone service and eighteen (18) did not know the name of the carrier responsible for switching their service. Eighty-six (86) consumers told investigator Northrop that WGN had not contacted them to confirm their desire to switch their telephone service to WGN. Thirty-six (36) consumers told investigator Northrop that WGN charged rates higher than their carrier of choice. Forty-seven (47) complainants stated they would be willing to testify or sign a declaration.

Pete Winnie interviewed 45 consumers who had filed a complaint with the Commission. All of these complainants identified WGN or Communications Gateway Network as the company that had switched their long distance service without their authorization. Forty of the 45 complainants stated that they had contacted WGN and requested a copy of their LOA, which authorized the conversion of their long distance service. Only 15 of those consumers actually received a copy of their LOA from WGN. Eight complainants stated that they had filled out and signed the LOA/contest form but did not knowing authorize WGN to convert their long distance service.

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July 3, 1996

Via Facsimile and Regular Mail

Jose Jimenez
California Public Utilities Commission
State Building
505 Van Ness Avenue
San Francisco, CA 94102

Fax No. (415) 703-5091

Re: WinStar Gateway Network, Inc.

Dear Mr. Jimenez:

Thank you for speaking with me this afternoon. As you know, we are counsel for WinStar Gateway Network, Inc. ("WGN"), a wholly owned subsidiary of WinStar Communications, Inc. ("WCI"). Our purpose in contacting the Commission is to discuss concerns arising from the use of a display box program by R&R Ventures, Inc. (d/b/a TropicTel, a/k/a Millenium Telecom) to solicit Letters of Agency ("LOAs") authorizing PIC-changes to WGN. We also want to apprise the Commission of the proactive measure WGN has instituted to ameliorate any problems that the TropicTel program has caused.

The TropicTel display box program was put in place for WGN in early 1995. The two persons who were responsible for the initial dealings with TropicTel -- John Bush, former Vice President of Sales, and Mark Troup, former Agent Sales Manager -- are no longer with WGN.¹ Current WGN officers do not know whether the TropicTel display box or pre-September, 1995 LOA forms were affirmatively reviewed or approved by WGN before it was put into operation because Messrs. Bush and Troup would have been the persons who conducted any review or approval. Art Greene, WGN's current president, saw the box while he served as a consultant to WGN in early 1995, but only fleetingly at a time when a TropicTel representative was visiting WGN's Texas office to meet with Messrs. Bush and Troup.

When the Federal Communications Commission implemented its new LOA rules effective September, 1995, WGN reviewed and approved the revised LOA form to be used in

¹ Mr. Bush left WGN in approximately May of 1995. Mr. Troup left WGN in early May, 1996.

conjunction with TropicTel's display box program. As the display box was not undergoing any changes, it was not reviewed by then-present WGN management.

Mr. Greene had, by then, taken over as President of WGN. In that capacity, he spoke with all organizations that solicited LOAs for WGN and queried how they controlled the individuals who collected and submitted LOAs, focusing primarily on the level of verification the organizations used. All of the marketing organizations, and TropicTel in particular, assured Mr. Greene that routine random verifications ("spot checks") were conducted by way of telephone contact with the subscriber signing the LOA. Mr. Greene was also advised by TropicTel that its keypunch operators were trained to spot LOA irregularities (e.g., batches with identical handwriting or filled out with the same pen) and to reject such LOAs.

Mr. Greene was, unfortunately, absent from WGN's office from December 8, 1995 to January 22, 1996 while receiving medical treatment for a serious condition. On his return, he noticed an increasing number of complaints from consumers whose LOAs had been obtained from the TropicTel program. He contacted Mr. Rautio of TropicTel who repeated the assurances identified above and suggested that the problem lay in WGN's customer service department, which either misunderstood, or was not properly handling, consumer complaints.

The escalating complaints came to the attention of WCI management. Both WCI and current WGN management reviewed the TropicTel box and, after considering the possibility of prophylactic changes, concluded that its use should be terminated altogether and all LOAs not previously processed should be subjected to telephonic verification. WCI and WGN further determined that additional proactive measures were needed both to ameliorate any past confusion or harm caused by the activities of WGN's independent marketing agent and to prevent repetition in the future.

- Effective May 10, 1996, and as a precursor to cessation of the existing display box programs, WGN ceased processing Letters of Agency ("LOAs") submitted by independent marketing agents, pending institution of procedures to enable WGN to independently verify each LOA before the associated PIC-change is implemented. Toward that end, WGN retained a third party organization -- NeoData -- to conduct telephonic verifications of all LOAs submitted in connection with display box programs. NeoData was established in 1949 as a division of Esquire, Inc. and later became a division of Dun & Bradstreet in 1984 until its acquisition by Hicks Muse & Company in 1990. NeoData has no affiliation with WGN or any of the independent marketing agents that submit LOAs to WGN.

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July 3, 1996
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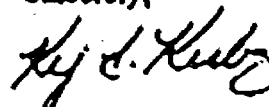
- No further LOAs submitted from the display box program have been processed absent independent verification from the consumer that he or she desires to change to WGN's service.
- WGN directed that its independent marketing agents remove all of the outstanding display boxes by June 10, 1996. WGN will not accept any LOAs from any existing display box programs that are dated after June 10, 1996.
- WGN is reviewing all marketing programs using LOAs with a view toward ensuring acceptable disclosure going forward. It is initiating several new programs which will actively market long distance service at competitive rates, with reduced emphasis on prize programs advertised by way of a display box. These new programs will replace the discontinued display box programs.
- WGN has not only reviewed the form of its LOA to ensure compliance with FCC requirements, but has revised its LOA to significantly highlight the fact that the consumer is authorizing a change in his or her long distance service. The revised LOA will be part of all new marketing programs which solicit LOAs.
- WGN is reviewing its relationships with and the practices of its independent marketing agents. To the extent these agents employ materials or practices that are not acceptable to WGN, the relationship will be terminated. WGN is no longer utilizing R&R Ventures, Ltd. to conduct marketing.
- In addition to the 24 hour customer satisfaction service provided by its billing agent, USBI, WGN has increased the number of its Customer Satisfaction personnel by 50% and has upgraded the quality of the customer representatives it hires to help consumers who call with inquiries. The hours of the Customer Satisfaction Department have been extended by two hours daily and will now be from 7:00 a.m. to 9:00 p.m. (Central Time).
- If a consumer advises that a PIC-change was in error, WGN is rerating the consumer's invoice (to the extent that it would have been lower), refunding PIC-change charges and advising the consumer how to immediately change back to his or her previous long distance carrier.
- WGN relocated to new offices this past week. This relocation will expand the space available for both its Customer Satisfaction and Regulatory Departments and will permit WGN to bring in additional personnel, as required, and to upgrade its systems to expedite

Jose Jimenez
July 3, 1996
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responses to consumer inquiries. WGN's new address is 8585 North Stemmons Freeway, Suite 1100 South, Dallas, Texas 75247. Its new main telephone number is (214) 672-4700 and its new fax number is (214) 672-4701.

WGN and WCI are committed to addressing the problems that have arisen from the TropicTel display box program as proactively as possible and for that reason, asked that we contact you to provide the foregoing information and to request a meeting for further discussion should Commission staff be amenable. I understand that you are attempting to determine with whom I should speak at the Commission and I greatly appreciate your cooperation and effort. I look forward to hearing from you.

Sincerely,



Ky E. Kirby

cc: WinStar Gateway Network, Inc.
WinStar Communications, Inc.

10000 12.1

SETTLEMENT AGREEMENT

SETTLEMENT AGREEMENT

This SETTLEMENT AGREEMENT is the final and complete expression of the agreement entered into the 20th day of October 1997 by and between the California Public Utilities Commission (Commission) Consumer Services Division (CSD or Staff) and WinStar Gateway Network, Inc. (WGNI) which collectively are the "Parties" to this Agreement.

WHEREAS, CSD has conducted a preliminary investigation of the operations of WGNI and allegations that the entity had violated rules and regulations governing the switching of consumers' long distance service provider and has gathered the results of its investigation into an Investigative Report.

WHEREAS, WGNI voluntarily initiated communications with the Commission in July of 1996 before it had notice that CSD was conducting a preliminary investigation.

WHEREAS, on December 4, 1996 WGNI entered into a Consent Decree with the Federal Communications Commission (FCC) which provided credits, refunds, or debit cards to consumers nationwide as remediation for primary interexchange carrier (PIC) change disputes that arose from using a sweepstakes box program marketing method.

WHEREAS, WGNI has acted in good faith and cooperated in CSD's preliminary investigation and the parties have met and communicated on several occasions regarding the investigation and its possible resolution.

WHEREAS, the Parties each desire to resolve amicably the disputes among them and to settle and forever dispose of all issues raised in Staff's Investigative Report except those expressly reserved;

WHEREAS, as part of their resolution, the parties agree that additional remediation, beyond that provided under the FCC Consent Decree, will be provided to certain California consumers that alleged that their long distance service provider was switched to WGNl without their authorization.

WHEREAS, the Parties have negotiated a Settlement Agreement prior to the initiation of a formal proceeding by the Commission pursuant to CSD Standard Practice 1, procedures developed as part of a pilot program to settle certain qualifying telecommunications enforcement investigations, particularly those where the utility's conduct is not egregious and the utility has willingly undertaken corrective measures, prior to the initiation of a formal proceeding. Pursuant to these procedures, CSD will seek Commission adoption of the Settlement Agreement through the Resolution Process.

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:

1. WGNl agrees to obey all Commission rules and regulations and all laws of the State of California including, but not limited to, California Public Utilities Code § 2889.5 which governs switching consumers' presubscribed long distance service provider.
2. Within 30 days of adoption of the Settlement Agreement by the Commission, WGNl agrees to provide the Commission's Consumer Services Division with a check for \$15,000 made payable to the "Consumer Protection and Prosecution Trust Fund" a trust fund administered by the California District Attorneys' Association for the purpose of enhancing the investigation, prosecution and enforcement of consumer actions in

California, or if the Commission so chooses, payable to the "California Public Utilities Commission" for deposit into the General Fund.

3. WGNI agrees to provide each and every consumer identified as a consumer disputing a PIC change in paragraph 4 of this Agreement with minimum restitution of \$20.00. WGNI will provide each such consumer a \$20.00 check unless such consumer has previously received \$8.00 of compensation from WGNI pursuant to the terms of the Consent Decree entered into with the FCC in which case WGNI will provide the consumer with a \$12.00 check.

4. 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 that, between the period from July 1, 1995 and the date of execution of this Agreement, complained to the Commission that their long distance telephone service was switched by WGNI without their authorization, and (b) those consumers who, between the period referenced in (a) immediately above, have been switched by the LEC from WGNI to another carrier and whose request for a PIC change from WGNI had been designated as 2218 by Pacific Bell and 2219 or 2229 by GTE California (GTEC). This would include (1) disputes recorded by Pacific Bell and GTEC under WGNI's Carrier Identification Code (CIC) and (2) disputes recorded by Pacific Bell and GTEC as disputes against WorldCom Network Services, Inc. (WilTel) and U.S. Long Distance (USLD) but determined by these carriers to be disputes against WGNI. Consumers shall be entitled to compensation for each line designated as a PIC dispute. WGNI shall have the opportunity to review the lists of consumers disputing PIC changes or other information developed by WilTel and USLD to ensure that they do not include consumers never switched to WGNI. In the event that WGNI and Pacific Bell, GTEC, USLD do not agree on whether a consumer should be removed from a list because never

placed on WGNI's service. CSD shall make the determination after consideration of information supplied by WGNI, Pacific Bell, GTEC, USLD and/or WilTel. 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.

5. Within 30 days of adoption of this agreement, CSD will request from Pacific Bell, GTEC, WilTel, and USLD a list, on a computer readable medium, of consumers deemed eligible by the provisions of paragraph 4 herein to receive compensation from WGNI. CSD will request that Pacific Bell, GTEC, WilTel, and USLD provide CSD with the name, address, and telephone number of each Qualifying Consumer. If WilTel or USLD are unable to provide CSD with the names and addresses of the Qualifying Consumers, CSD will provide a list of these consumers' telephone numbers to Pacific Bell and GTEC and CSD will request that these entities provide CSD with the names and addresses associated with the telephone numbers. WGNI agrees to reimburse Pacific Bell, GTEC, WilTel, and USLD for the reasonable and necessary cost of producing the names, addresses, and telephone numbers. WGNI shall also pay Pacific Bell and GTEC for other extraordinary, but reasonable and necessary expenses borne by the two LECs in connection with administering and executing the Settlement Agreement. Pacific Bell, GTEC, WilTel, and USLD can directly invoice WGNI for these costs, providing adequate detail with said invoices to allow WGNI to ascertain the nature, purpose, reasonableness and necessity of such costs and expenses, and WGNI shall pay the amounts due within 30 days of the receipt of the invoice.

6. CSD will forward to WGNI the list(s) of names, addresses, and telephone numbers for the consumers that are to receive checks from WGNI. Within 90 days of receiving the list(s) from CSD, WGNI shall provide the Commission staff with a \$20.00

or \$12.00 check as agreed in paragraph 3, negotiable for 90 days from the date of mailing, for each consumer name on the list. The checks will prominently display, on the front side, notice that the checks are negotiable for only 90 days from the date on the check. Each check will contain the name of the consumer and the consumer's address and will be formatted as specified by CSD so that the check can be mailed to the consumer in a window envelop at the address printed on the check. CSD will notify WGNI of the date(s) to place on the checks. The checks will be separated and not physically connected to other checks or other documents. The checks will be mailed by the Commission staff to the consumer along with a notice advising the consumer of the reason for the check and informing the consumer that he/she can seek additional restitution from WGNI through the arbitration/mediation program defined in paragraph 8 herein. WGNI shall reimburse CSD for the cost of mailing the checks and claim forms. CSD will directly invoice WGNI for these costs, and WGNI shall pay the amounts due within 30 days of the receipt of the invoice.

7. Undeliverable and returned checks shall be returned by the Commission staff to WGNI and funds from checks not cashed within 90 days of mailing shall revert to WGNI but in no event shall WGNI's total remittance be less than one-half of the total amount sent out to consumers. If undeliverable and returned checks and funds from checks not cashed within 90 days amount to more than one-half of the total funds sent out, WGNI shall reissue a check for the difference between the amount returned to WGNI and one-half of the total amount sent to consumers (the "excess amount"). The check will be made payable to the "Consumer Protection and Prosecution Trust Fund" or, if the Commission so chooses, payable to the "California Public Utilities Commission" for deposit into the General Fund. To determine the amount of funds that revert back to WGNI as a result of checks not cashed within the 90 day period, within 45 days after the 90 day period expires, WGNI shall provide the Consumer Services Division with monthly

bank statements that list each individual check cashed by check number. WGNI shall provide these statements for the time period beginning on the date the first check is issued and continuing until 90 days after the date of the last check issued. Within 15 days of a determination and notification by CSD that funds returned and reverted to WGNI amount to more than one-half of the total amount paid out to consumers, WGNI shall issue a check(s) payable to the "Consumer Protection and Prosecution Trust Fund" or the "California Public Utilities Commission" as determined by the Commission for the excess amount.

8. WGNI shall provide additional restitution beyond the \$20.00 or \$12.00 payment, in the manner specified below, to all persons who have been affected by the activity alleged in the Staff's Investigative Report, 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 Service Division within 90 days of receiving the notice and check from the Commission. This program shall be conducted as follows:

8.1. General

WGNI 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 WGNI before the Commission and related to the allegations against WGNI set forth in the Staff's Investigative Report. Consumers who do submit a claim form in a timely manner are deemed to

CORRECTION !!

*THE PREVIOUS DOCUMENT(S) MAY HAVE
BEEN FILMED INCORRECTLY*

RESHOOT FOLLOWS

bank statements that list each individual check cashed by check number. WGNI shall provide these statements for the time period beginning on the date the first check is issued and continuing until 90 days after the date of the last check issued. Within 15 days of a determination and notification by CSD that funds returned and reverted to WGNI amount to more than one-half of the total amount paid out to consumers, WGNI shall issue a check(s) payable to the "Consumer Protection and Prosecution Trust Fund" or the "California Public Utilities Commission" as determined by the Commission for the excess amount.

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8.1. General

WGNI 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 WGNI before the Commission and related to the allegations against WGNI set forth in the Staff's Investigative Report. 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 WGNI set forth in the Staff's Investigative Report. 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 WGNI in any action or proceeding before any other agency, court, or other jurisdiction. Consumers, however, may waive duplicative reparation claims in other jurisdictions and fora 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 WGNI. 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 WGNI 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 WGNI 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.

8.2. Qualifying Consumer Complaints

"Qualifying Consumer Complaints" shall refer to any consumer complaint or dispute as identified in paragraph 4 herein. To be eligible to participate in the mediation/arbitration process, the consumer must have made his/her PIC dispute or complaint to the LEC or the Commission on or after July 1, 1995 and before the date of execution of this Settlement Agreement.

Qualifying Consumers shall be eligible to participate in arbitration/mediation, in addition to receiving the \$12.00 or \$20.00 payment, if they meet all of the following three criteria: (a) the consumer complaint pertains to allegations made in the Investigative Report of the Consumer Services Division; (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 CSD's Investigative Report.

8.3. Mediation/Arbitration Notification

The Consumer Services Division shall include with the \$12.00 or \$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 WGNI 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 WGNI concerning any issues raised in CSD's Investigative Report. 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 WGNI in any other agency, court, or other jurisdiction.

The Consumer Services Division shall date stamp all complaint forms as they are received and provide copies of the claim forms to WGNI 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 WGNI customers. The Consumer Division shall use all reasonable efforts to deliver to WGNI the second batch, containing the remaining claim forms received, within 90 days of the last date that the notice and claim forms were mailed to former WGNI customers.

8.4. Mediation Process

After receipt by WGNI of the form described in paragraph 8.3. herein, WGNI shall have 60 days to informally mediate all consumer complaints with, at WGNI'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, WGNI shall contact all consumers with unresolved complaints through a letter notifying the consumers that the claim remains unresolved and will be submitted to arbitration. WGNI shall then transfer to the arbitrator all claim forms which remain unresolved.

If, at any time, WGNI resolves a consumer complaint through mediation, within 60 days after resolution, WGNI shall file with the Consumer Services Division a report containing the name, address, and resolution of the complaint. A photocopy of the correspondence with the consumer complaint shall be sufficient to meet this requirement.

8.5. 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, WGNI 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 from WGNI. 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 WGNI of this decision through regular mail. Any money due claimants after arbitration shall be paid by WGNI 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 WGNI. WGNI 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.

9. The Parties intend that this Settlement Agreement will not determine 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 WGNI 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.

10. The Consumer Services Division agrees that it will make no effort to initiate actions by law enforcement agencies against WGNI. CSD will fully participate to the degree requested in any state or local law enforcement agency action taken against WGNI.

11. 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 suspension or revocation of WGNI's operating authority in California. Prior to bringing any such evidence of violations to the Commission, the Consumer Services Division will notify WGNI of CSD's belief that such violation has occurred so that the WGNI can respond informally.

12. 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.



William R. Schulte, Director
Consumer Services Division

Public Utilities Commission
of the State of California

Dated: October 20, 1997



Timothy Graham, Vice President
Counsel for WinStar Gateway Network, Inc.

On Behalf of WinStar Gateway
Network, Inc.

Dated: October 10, 1997

Letter to Former WinStar Gateway Network Customers

Date:

Dear Former WinStar Gateway Network Customer:

You are receiving this letter because you have been identified as a consumer who made a complaint involving WinStar Gateway Network (WinStar) with Pacific Bell, GTE California (GTEC) or with the California Public Utilities Commission (CPUC). As a result of your complaint and others like it, the CPUC approved a settlement between the CPUC's Consumer Services Division and WinStar Gateway Network.

Under the terms of the settlement, you are automatically entitled to receive the enclosed check from WinStar. You do not need to take any action in response to this letter, except to cash the check enclosed with this letter within 90 days of the date printed on the check. If this payment satisfies you, you do not need to contact the CPUC or WinStar. If you are not satisfied with this payment, you may still cash the check and you may also be entitled to participate in the mediation/arbitration program set up by the settlement. In the mediation/arbitration program you may receive additional compensation if you demonstrate that as a result of the conduct of WinStar you have suffered actual losses of the nature described in the accompanying Claim Form Instructions that are greater than \$20.00.

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

You should know that this offer of arbitration/mediation is your only opportunity to seek restitution at the CPUC. Whether or not you participate in this arbitration/mediation program does not affect any right you may have to pursue any claims against WinStar in any proceeding before any other agency, court, or jurisdiction. By this notification, the CPUC does not take any position as to whether you have other claims to pursue.

Please contact Mark Clairmont, an investigator at the CPUC, at 1-800-____-____ if you have any questions regarding this letter.

Sincerely,

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

INSTRUCTIONS FOR COMPLETING THE CLAIM FORM

The claim form attached to these instructions is only for use by former customers of WinStar Gateway Network (WinStar) who wish to participate in mediation or arbitration of their disputes with WinStar. If you are satisfied with the payment you have received, you do not need to fill out this form.

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

- (1) have a complaint that relates to being switched to WinStar's long distance service without your consent;
- (2) have suffered actual losses as a result of WinStar's conduct beyond the payment you received by the enclosed check and any other compensation that may have previously been provided by WinStar. Such losses are limited in nature to the types of losses directly tied to your telephone bill (such as charges for changing your long distance service, charges at rates higher than those charged by your chosen long distance carrier, etc.); and
- (3) return this claim form within 90 days to:

Mark Clairmont, Investigator
Consumer Services Division
California Public Utilities Commission
505 Van Ness Avenue, 2nd Floor
San Francisco, CA 94102

If you do not send in this claim form within 90 days of the date of the attached letter, you will not be eligible to participate in this mediation/arbitration program. If you do not participate in the arbitration/mediation program, you give up your right to ask the California Public Utilities Commission to award you damages from WinStar of more than the check you received with this notice and any additional remediation previously provided to you by WinStar.

Whether or not you participate in this mediation/arbitration program does not affect any right you may have to pursue any claims against WinStar in any proceedings before any other agency, court, or other jurisdiction.

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

MEDIATION/ARBITRATION CLAIM FORM

RETURNED FORM MUST BE POSTMARKED BY [DATE]

**COMPLETE THIS CLAIM FORM ONLY IF YOU WANT TO PARTICIPATE IN
MEDIATION/ARBITRATION WITH WINSTAR GATEWAY NETWORK**

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

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

Name: _____

Street Address: _____

City, State, Zip: _____

Telephone Number (including area code): (____) _____

2. Please print your address and telephone number at the time you were a customer of WinStar if it was different from your current address:

Street Address: _____

City, State, Zip: _____

Telephone Number (including area code): (____) _____

3. What was the name of your local telephone company (Pacific Bell, GTE California) at the time the conduct by WinStar Gateway Network occurred?

4. Have you ever corresponded with WinStar Gateway Network concerning your complaint?

Yes _____ (Please attach copies of the letters if you have them)
No _____

5. Did you ever complain to your local telephone company (Pacific Bell or GTE California) about WinStar Gateway Network?

Yes (Please describe the complaint.)

No

6. Did you ask your local telephone company to change your long distance telephone service provider from WinStar Gateway Network to another long distance company?

Yes

No

7. Explain the details of your dispute with WinStar Gateway Network. Attach additional pages if necessary and copies of documents, if applicable. (For example, copies of telephone bills, letters written to or received from WinStar Gateway Network, etc.) Please send copies with this form and keep any originals.

8. Did you ever receive a refund from WinStar Gateway Network or any other telephone company for charges on your telephone bill associated with your complaint against WinStar?

No
Yes If yes, please state:

The amount you received: _____

The date you received it: _____

What was the reason for the refund (if you know)? _____

9. Please describe any additional damages you believe you are entitled to beyond the payment(s) you have received. Attach additional pages if necessary.

I certify to the California Public Utilities Commission that the information provided in this form is true and correct to the best of my knowledge and belief.

Date: _____

Your signature: _____

AMENDMENT TO THE SETTLEMENT AGREEMENT

**AMENDMENT TO THE SETTLEMENT AGREEMENT BETWEEN
WINSTAR GATEWAY NETWORK
AND THE CONSUMER SERVICES DIVISION**

Winstar Gateway Network ("WGNI") and the Consumer Services Division ("CSD") here amend the Settlement Agreement entered into on October 20, 1997 and agree to replace paragraph 7 of the Settlement Agreement with this replacement paragraph.

7a. Undeliverable and returned checks shall be returned by the Commission staff to WGNI. WGNI shall hold these unpaid funds and funds from uncashed checks in trust for the payee for a period of one year from the date of the check. Distribution of the unpaid funds shall be made in accordance with California Code of Civil Procedure § 1519.5. WGNI shall provide an accounting of the unpaid funds by providing CSD with monthly bank statements that list each individual check cashed by check number. WGNI shall provide these statements beginning on the date the first check is issued. One year after the date of the last check issued, WGNI shall make payment of all unpaid funds in the form of a check payable to the "California Public Utilities Commission" for deposit into the General Fund.



Timothy Graham, Vice President
Counsel for WinStar Gateway
Network, Inc.

On Behalf of WinStar Gateway
Network, Inc.

Dated: 12/15/97



William R. Schulte, Director
Consumer Services Division

Public Utilities Commission
of the State of California

Dated: 1/26/98