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ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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

FILED
PUBLIC UTILITIES COMMISSION
APRIL 23, 1997
SAN FRANCISCO OFFICE
1.97-04-045

**ORDER INSTITUTING INVESTIGATION INTO THE OPERATIONS OF
BRITTAN COMMUNICATIONS INTERNATIONAL CORPORATION**

Brittan Communications International Corporation (BCI) is a Texas corporation with its principal place of business in Houston, Texas. On March 29, 1995, BCI filed Application (A.) 95-03-059 seeking authority to operate as a switchless reseller of interLATA and intraLATA telecommunications services within California. Pursuant to an Administrative Law Judge (ALJ) Ruling, on July 3, 1995 BCI amended its application to provide the Commission additional information.

On September 7, 1995, the Commission issued Decision (D.) 95-09-043 granting BCI a certificate of public convenience and necessity (CPCN) to resell intraLATA and interLATA telecommunications services within California and assigning BCI corporate identification number U-5506-C. According to BCI,

it resells and has resold the services of U.S. Long Distance, Inc. (USLD), IXC Long Distance, Inc. (IXC), and IXC's affiliate, Switched Services Communications (SSC) to California consumers.

The Consumer Services Division's Enforcement Branch (Staff) has investigated consumer complaints and other information that indicate that BCI has violated regulations governing how telephone subscribers are switched from one interexchange carrier to another. Staff alleges that BCI is using a sweepstakes marketing method that does not comply with Public Utilities Code (P.U. Code) or Federal Communications Commission (FCC) regulations governing switching subscribers' long distance service provider. If these allegations are true, BCI's fitness to operate in California is in question.

Staff has prepared declarations that support our order today freezing BCI's ability to make primary interexchange carrier (PIC) changes for subscribers. A copy of this OII and the declarations will be personally served on the designated agent for service of process for BCI, CT Corporation System, at 818 West Seventh Street, Los Angeles, CA 90017. A copy of the OII and supporting declarations will also be personally served on BCI's counsel of record, Nossaman, Guthner, Knox & Elliott, LLP, at 50 California Street, 34th Floor, San Francisco, California 94111-4712.

I. STAFF ALLEGATIONS

The Staff's declarations set forth the following facts and allegations:

The Consumer Services Division's (CSD's) Enforcement Branch began a preliminary investigation of BCI in December of 1996 when a CSD investigator discovered numerous sweepstakes boxes being used by BCI to obtain "letters of authorization" (LOA) to switch consumer's telephone service. The sweepstakes boxes were located in public places such as stores and supermarkets.

The boxes display a picture of an automobile and advertise in large letters "WIN A NEW CAR!" Attached to the box are the entry forms that the consumer fills out and deposits into the box to enter to win the prize. These entry forms, however, also "authorize" a change of the telephone service provider to the telephone number entered on the entry form. Carriers often refer to this marketing method as the "box program." Staff alleges that BCI's box program violates P.U. Code § 2889.5 and FCC regulation 47 C.F.R. § 64.1150 governing changing a subscriber's telephone service.

Staff informs us that there is no information on either the registration/application or the sweepstakes entry box regarding BCI's long distance telephone rates. Furthermore, there is no information on the box or on the registration/application as to how one can find out what BCI's long distance telephone rates are. In addition, Staff alleges that there was no information regarding BCI's long distance rates anywhere near the sweepstakes boxes in any of the locations where Staff found BCI sweepstakes boxes.

After Staff discovered the sweepstakes boxes at various locations, Staff determined that the Commission's Consumer Affairs Branch (CAB) was reporting receiving a large number of consumer complaints alleging that BCI was engaged in slamming (the unauthorized change in a subscriber's telephone service provider). Since October of 1996, Staff reports that CAB has recorded over 160 complaints against BCI. As of February 5, 1997, CAB reported a total of 128 contacts regarding BCI. Of these 128 consumer contacts, 116 contacts were categorized as abusive marketing complaints which includes slamming complaints. When Staff checked the complaint records for BCI on March 28, 1997, Staff learned that in less than two months CAB had recorded an additional 30 contacts

regarding BCI. Twenty-four of these contacts were categorized as abusive marketing complaints.

Staff interviewed approximately 50 of the consumers who made complaints to CAB about BCI. Staff has also interviewed 2 consumers whose entry forms were in the boxes acquired by the CSD Agent. Staff found that consumers making written complaints to CAB consistently stated that their service was switched to BCI without their authorization. Consumers usually stated that they learned that their service provider was changed without their authorization when they received their monthly bill, when they were contacted by their prior long distance service provider, or when they were unable to make a long distance call. The consumers whose entry forms were in the boxes acquired by CSD stated that they did not know that by entering the contest they were authorizing a change of long distance service provider.

Staff learned that consumers were sometimes confused about which company had switched their long distance service. Consumers may have initially believed that they were slammed by USLD or SSC, two carriers BCI purchases, directly or indirectly, service for resale from, because these carriers' names appear on the consumers' telephone bills with the fee charged for the PIC change. Consumers may also initially believe that BCI's billing agent, U.S. Billing, Inc. (USBI), had allegedly slammed the consumer because USBI's name and telephone number appears on the consumer's bill as billing for BCI. If the consumer happens to contact the consumer's local exchange carrier (LEC) the LEC's records will not show BCI as the consumer's service provider because BCI does not operate under its own carrier identification code (CIC) but instead submits PIC changes to the LECs under USLD's and SSC's CICs.

Consumers report that once they determine that they were slammed by BCI and they reach a BCI service representative, the service representative will inform them that BCI has a letter of authorization to change the subscriber's telephone service. If the consumer requests a copy of the LOA the consumer is often told he or she must send BCI a written request for the LOA. Staff reports that once the consumer obtains the LOA, the consumer either does not recognize the form or recognizes the form as one the consumer may have filled out to enter a contest.

Those consumers that acknowledge filling out the form consistently state that they did not know that by entering the contest they were "authorizing" a change of their long distance service provider. Staff reports, however, that many consumers allege that they never filled out the entry form. The entry forms are often filled out by a minor child, a relative, an in-law, an acquaintance, or by someone the consumer does not even know. One consumer stated that an adult grandson visiting his terminally ill grandmother had filled out the entry form that switched his grandmother's telephone service. Another consumer stated that her telephone service was switched to BCI after her 12 year old daughter entered a contest at a bakery to win a Mustang automobile. Staff reports that not one subscriber reported that they were ever contacted by BCI to verify that they wanted their telephone service switched to BCI.

Consumer complaints also indicate that apparently BCI will change a subscriber's telephone service even if there are irregularities with the entry forms. Staff discovered that one consumer's service was change when two consecutively numbered entry forms filled out by the consumer's seven year old child were received by BCI. A complaint received from a business that was allegedly slammed reports that the business' telephone service provider was switched when

an employee that does not read English filled out an entry form. The company's telephone service was changed despite the fact that the contest entry form had no name printed in the name space.

Staff reports that consumer bills attached to consumer complaints demonstrate that BCI's rates are significantly higher than the consumer's carrier of choice. For example, one consumer's bill showed that BCI charged the consumer 29 cents a minute for a call that would have cost the consumer only 8 to 10 cents a minute if placed with the consumer's carrier of choice, AT&T. Another consumer's bill showed that a call to Nicaragua cost the consumer \$2.26 a minute with BCI while the consumer would have only paid 90 cents to \$1.36 a minute with AT&T.

In addition to the higher rates, BCI also charged some consumers a monthly access fee of \$2.92 although it appears that BCI's tariff at that time did not include any monthly fee. The consumers were charged a monthly fee even if they did not make any long distance calls. Staff reports that a few consumers also alleged that they were billed for calls that they never made.

Staff also alleges that BCI's bills to the customer are misleading. While BCI charges consumers one rate regardless of the time of day, consumer bills identify different "Rate" times. For example, international calls are identified as "Econ," "Dsnt," and "Std" and domestic calls are identified as "Day," "Eve," and "Night," despite the fact that rates are the same regardless of time of day.

Staff alleges that BCI did not make the complaint resolution process easy for the consumers it allegedly slammed. Consumers report that once they reach BCI to complain about the unauthorized change of service providers, BCI's service representatives were initially argumentative, nasty, rude, condescending, uncooperative, or unprofessional. Staff alleges that in many instances BCI

required the consumer to make a written request before it would provide the consumer with a copy of the letter of authorization/contest entry form that BCI alleged authorized the change in the subscriber's telephone service.

Consumers report that it took many calls and many months to receive a refund and in some cases the consumers are still waiting for the refunds. A review of the consumer complaints show that refunds often ranged from fifty to hundreds of dollars. Consumers, however, were required to pay BCI's higher charges up front and wait for months to receive a credit. One consumer wrote "I am a full time student, single parent mom, raising two children. I cannot afford the rates BCI is charging, nor should I be held responsible. I have incurred other cost, just trying to locate the governmental offices or free legal help to deal with this problem."

Staff reports that consumer complaint documents often indicate that unless a consumer escalated his or her complaint, BCI did not offer to adjust the consumer's bill. Moreover, Staff alleges that in many cases it appears that unless a consumer was knowledgeable about the laws regarding slamming or escalated his or her complaint, a consumer's bill would not be rerated to the rates of the consumer's carrier of choice. Complaints show that often BCI initially offered consumers refunds from 10 percent to 50 percent even though rerating would require a higher refund.

Staff reports that because BCI does not operate under its own CIC it has been difficult to determine the level of PIC disputes the LECs are receiving involving BCI's service. Staff determined that BCI submits its PIC changes under the CICs of SSC and USLD. Therefore, any PIC disputes attributable to BCI would appear on the LEC's PIC dispute reports as PIC disputes against SSC and USLD. Staff conducted a preliminary investigation of the PIC disputes reported

for these two carriers. Staff learned that the dispute level for both of these two carriers was far above the industry average dispute rate.¹ From mid-August 1995 through mid-February 1997, USLD had a PIC dispute rate with Pacific Bell of about 11 percent. From mid-February 1996 through mid-February 1997, SSC's PIC dispute rate with Pacific Bell was about 10 percent.² Both of these carrier's PIC dispute rate is significantly higher than the industry average PIC dispute rate recorded by Pacific Bell which is generally around 3 to 4 percent. Staff, however, has not been able to determine the number of PIC changes and PIC disputes recorded under SSC's and USLD's CIC that are attributable to BCI.

II. DISCUSSION

If the allegations set forth in the Staff's declaration are true, BCI does not meet the public convenience and necessity requirements we expect of telecommunications providers and there are ample grounds to revoke BCI's authority to operate within California. Staff's allegations that BCI is slamming California consumers by using a solicitation method that does not comply with state and federal requirements causes us great concern.

P.U. Code § 2889.5 requires telephone corporations to thoroughly inform the subscriber of the nature and extent of the service offered and

¹ Of course even the so called "industry average" rate is hardly an acceptable level of disputed customer switches because our tolerance level for unauthorized switches must be zero.

² Pacific Bell's Subscription Management Report calculated PIC dispute rates for the period of December 1995 through June 1996 based on a 6 month rolling average of carrier-initiated PIC changes. Prior to December 1995, Pacific Bell calculated the PIC dispute rate using the monthly actual carrier-initiated PIC changes. After June of 1996, Pacific Bell calculated the PIC dispute rate using both methodologies. For comparison purposes, Staff used consistent reporting methodologies for SSC and USLD.

specifically requires the telephone corporation to establish whether the subscriber intends to make any change to the subscriber's telephone service. Despite this requirement, the Commission is receiving numerous consumer complaints alleging that subscribers did not authorize the change of their telephone service to BCI. Those consumers that entered a contest that resulted in a change of their telephone service consistently state that they were not aware that by entering the contest they were authorizing a change to their telephone service. Many subscribers had no knowledge let alone intent to change their telephone service provider as evident from complaints alleging that the subscriber's signatures were forged, that minor children filled out the entry forms changing their parents' telephone service, that friends, acquaintances, in-laws, and individuals the subscriber did not know changed the subscriber's telephone service.

Both P.U. Code § 2889.5 and 47 C.R.F. §64.1150 require the subscriber's authorization to change the subscriber's telephone service. Yet apparently BCI makes no attempt to determine whether the telephone service subscriber is authorizing a change to the subscriber's telephone service. While P.U. Code § 2889.5 requires that BCI to verify PIC change requests,³ Staff alleges

³ The type of verification required by P.U. Code § 2889.5 has changed over the years. In 1995 and 1996, a telephone corporation soliciting a subscriber in person had to obtain the subscriber's signature on a document which fully explained the nature and extent of the action and had to furnish the subscriber with a copy of the signed document. During 1995, a telephone corporation soliciting subscribers by methods other than in person, had to verify the change request by placing a follow-up call to verify the subscriber's intent and by mailing the subscriber an information package. During 1996, the carrier had to verify the change by one of these two methods or by obtaining the subscriber's signature on a document fully explaining the nature and extent of the action. Beginning January 1, 1997, telephone corporations must have all residential PIC change orders verified by an independent third party regardless of the solicitation method used.

that BCI does not verify the information on the "LOA" and will change the telephone service of a subscriber regardless of who filled out the "LOA." Staff alleges that BCI does not even attempt to ascertain that the telephone number on the "LOA" belongs to the person who filled out the "LOA."

P.U. Code § 2889.5 and FCC regulation 47 C.F.R. §64.1150 both require that the sole purpose of any letter of agency be to authorize a change in interexchange carriers and do not permit a carrier from combining the letter of agency with other inducements on the same documents. BCI's box program appears to violate these code requirements because it combines the LOA with another inducement, the opportunity to win an automobile.⁴ We note that the sweepstakes solicitation method used by BCI is in some ways similar to that used by Heartline Communications, Inc. and Total National Telecommunications, Inc., two other long distance carriers the Commission took enforcement action against in I.96-04-024 for allegedly slamming California consumers. We also note that the President and Chief Executive Officer of BCI was the General Manager and Director of Marketing and Sales for Heartline Communications in 1993.

We are also concerned with BCI's apparent policy to require the consumer make a written request to obtain a copy of the "LOA." We question the need to place this additional burden on the subscriber. Moreover, a consumer's written request would most likely be in the form of a signed letter to BCI. We

⁴ In the FCC enforcement action In the Matter of LDS, Inc. Apparent Liability for Forfeiture the FCC's Chief of the Common Carrier Bureau addresses the requirement in 47 C.F.R. § 64.1150 that the LOA cannot be combined with other inducements. In response to a consumer complaint alleging that the subscriber's telephone service was switched as a result of entering a raffle, the FCC's Chief of the Common Carrier Bureau stated "Both the opportunity to qualify for four free hours of long distance service and the contribution of part of the subscriber's monthly phone bill to a charity are inducements that should not be included in the LOA." DA 96-2101, § 12.

agree with the FCC's Chief of the Common Carrier Bureau who has stated "We believe that this practice [of requiring a signed request from the consumer] exposes the consumer to a risk of fraud and we can discern no legitimate business purpose for it." In the Matter of Nationwide Long Distance, Inc., Apparent Liability for Forfeiture, DA 96-45, ¶ 10.

The number of slamming complaints made to the LECs and to the Commission remains high. Consumers are becoming disheartened with deregulation as unethical carriers enter the marketplace using deceptive business practices. Consumers complain to this Commission that they cannot believe that a company can "steal" their telephone service and charge them higher rates without their authorization.

The Commission has an important interest in protecting the public from unauthorized long distance service switches as well as protecting the long distance marketplace from unfair competition. Given the aggravated nature and level of violations alleged and documented in the Staff's declaration and given that BCI is using a highly suspect solicitation method that appears to violate state and federal regulations, we believe there is a substantial likelihood that harm to the public in large numbers will continue and that there is probable cause to act today to extend some basic protection to California consumers. We find that the protection of the public requires the following steps pending a further order in this matter. First, BCI will submit no additional PIC changes to local exchange carriers in California. By this we prohibit BCI or any of its agents from transmitting, in writing or electronically, to a local exchange carrier, directly or through other telephone corporations, a request to change a subscriber's presubscribed or primary interexchange carrier. BCI may still market to subscribers and subscribers who want to switch their PIC to Respondent's service

can still, on their own volition and by their individual affirmative action, submit such change requests directly to their local exchange carrier. Second, BCI cannot sell or transfer any of its consumers.

Because BCI submits PIC changes through USLD, IXC, and SSC under the CICs of USLD and SSC, we order these carriers to cease submitting PIC changes for BCI. We further order these carriers to provide the Consumer Services Division with information ordered in ordering paragraph 9.

A hearing is set for May 13, 1997 at 9.00 a.m. at Commission Courtroom, State Office Building, 505 Van Ness Avenue, in San Francisco, to address continuing the conditions while Staff completes its investigation. To expedite this proceeding and to assist Staff in completing all facets of its investigation, we direct BCI to provide the Consumer Services Division with information ordered in ordering paragraph 2.

We, therefore, issue this OII and find that because of the apparent extremely high level of slamming resulting from a highly suspect marketing method and the resulting harm to thousands of California consumers, it is necessary to order a freeze of Respondent-initiated primary interexchange carrier changes. The Respondent will have the opportunity at a hearing in the very near future to demonstrate whether there is cause to modify today's order.

This OII was listed on the Commission's Internal Agenda for its April 23, 1997 meeting because the proposed OII contains orders which become effective upon personal service, and public disclosure of the identity of the Respondent and the order could provide an incentive to evade personal service of the OII.

Good cause appearing, therefore,

IT IS ORDERED that:

1. An investigation on the Commission's own motion is hereby instituted into the operations of Respondent, Brittan Communications International Corporation, to determine whether:

- a) Respondent violated P.U. Code § 2889.5 by switching subscribers' long distance service provider without the subscribers' authorization;
- b) Respondent violated P.U. Code § 489 by charging subscribers rates or services that were not tariffed;
- c) Respondent should be ordered to cease and desist from any unlawful operations and practices;
- d) Respondent should be ordered to pay restitution to consumers;
- e) Respondent should pay any applicable user fees and/or penalty pursuant to P.U. Code § 2107 and 2108; and
- f) in addition to fines for any violations of P.U. Code § 2889.5 or other order, decision, rule, direction, or requirement of the Commission which may be levied under Public Utilities Code § 2107 or any other provision of law, Respondent is unfit to conduct utility service and should have its certificate suspended or revoked.

2. To facilitate this investigation, and consistent with the provisions of Section 314 of the Public Utilities Code, Respondent is ordered to provide Consumer Services Division Special Agent Linda Woods with complete responses to all outstanding CSD data requests within 7 days of the date this order is served on Respondent.

In addition, Respondent is ordered to provide Special Agent Woods with the information identified below within 7 days of the date this order is served on the Respondent:

- a) Any and all CICs that a BCI customer change order may be recorded under in California local exchange carriers' records;

The following information shall be provided to Special Agent Woods within 20 days of the date this order is personally served on Respondent:

- b) The amounts billed by USLD and SSC/IXC for PIC dispute charges for 1995, 1996 and year-to-date 1997.
- c) The amounts paid by BCI to USLS and SSC/IXC for PIC dispute charges for 1995, 1996 and year-to-date 1997.
- d) BCI volumes in California by number of subscribers and annual revenues for 1995, 1996 and year-to date 1997. The information should be broken out by volumes using USLD and IXC/SSC as the underlying carrier.
- e) The percent of California revenue and subscribers to total operations.

The following information shall be provided to Special Agent Woods within 30 days of the date this order is personally served on Respondent:

- f) Provide the name, address, and telephone number for every California consumer that BCI paid a PIC dispute charge for to USLD or SSC/IXC.

3. Respondent shall also respond to all further Staff requests, including requests to obtain billing information from its billing agent, U.S. Billing Inc. or other billing entities.

4. As a condition of Respondent's continuing authority to operate in California pending a final decision in this matter, starting on the fourth day after personal service of this order on the Respondent's registered agent of service, Respondent is prohibited from:

- a) submitting PIC changes directly or indirectly, through other telecommunication companies, to the local exchange carriers within California; and
- b) transferring or selling its customers.

5. A hearing is set for May 13, 1997 at 9:00 A.M. at Commission Courtroom, State Office Building, 505 Van Ness Avenue, San Francisco, solely to allow the Respondent an opportunity to present evidence that the PIC freeze and other requirements ordered in ordering paragraph 4 are not warranted, and to show cause, if any, to modify or vacate ordering paragraph 4.

6. All advice letters submitted by Respondent after today will be consolidated with this OII for consideration.

7. Respondent is directed to disclose to Staff any plans to transfer the operating authority which is the subject of this proceeding, and/or any part of the control of the business in which Respondent is entitled to use that authority, and shall further disclose to Staff any such plans, and any actions and/or applications in pursuit of such plans, which it may commit itself to pursue during the course of this proceeding, until such time as there is a final Decision disposing of this matter.

8. U.S. Long Distance, Inc., IXC Long Distance, Inc., and Switched Services Communications are ordered to stop submitting PIC change orders on behalf of BCI to the local exchange carriers in California.

9. U.S. Long Distance, Inc., IXC Long Distance, Inc., and Switched Services Communications are ordered to provide the following information, submitted under penalty of perjury, to Consumer Services Division Special Agent Linda Woods within 20 days of the effective date of this order:

- a) Identify how many PIC changes and PIC disputes recorded by Pacific Bell and presented in the Declaration of Linda J. Woods in Table 4 for USLD and Table 5 for SSC and IXC are attributable to BCI.
- b) For each PIC dispute identified as attributable to BCI, provide the subscriber's name, address, and telephone number.
- c) For those PIC changes and PIC disputes not attributable to BCI, please identify the carriers they are attributable to and the number attributable to each carrier. The response should include the number of PIC changes and PIC disputes that are attributable to USLD or SSC/IXC.
- d) Provide the total PIC changes made under the carrier's CIC through each California LEC other than Pacific Bell and PIC disputes recorded under the carrier's CIC by each California LEC other than Pacific Bell by month from August 1995 to the present. Provide the information described in b) and c) above for each PIC change and PIC dispute.
- e) The bills received each month from September of 1995 to the present from all California local exchange companies for unsubstantiated PIC disputes charges.

- f) The amount charged each month to each reseller from September 1995 to the present for unsubstantiated PIC disputes.
- g) Identify all CICs used to submit PIC changes for BCI to local exchange carriers in California.
- h) All contracts between USLD, SSC, and IXC with California LEC's regarding the handling of PUC changes and disputes.

8. The information contained in Staff's declarations that has been identified by Pacific Bell or BCI as proprietary shall be made public.

9. A prehearing conference shall be scheduled and held for the purpose of setting a schedule for the exchange of written testimony, determining which of the Staff's percipient and collaborative witnesses will need to testify, and addressing any discovery issues.

10. The Staff will continue discovery and will continue to investigate the operations of the Respondent as there are several important issues which it needs to finishing investigating. Any additional information which Staff wishes to advance as direct showing evidence in this proceeding shall be provided to the Respondent in advance of any hearings in accordance with the schedule directed by the Administrative Law Judge. Staff will respond to discovery requests directed at Staff's prepared testimony offered in this proceeding.

11. At the first evidentiary hearing held in this investigatory proceeding, the Respondent shall submit testimony on why a bond or some other collateral should not be required to assure funding to guarantee compliance with any orders which may ultimately be issued in connection with this proceeding.

12. The Executive Director shall cause the order, complete with the declarations submitted by Staff to support the PIC freeze ordered in ordering paragraph 4, to be personally served on the Respondent's registered agent of service:

CT Corporation System
818 West Seventh Street
Los Angeles, California 90017

If personal service cannot be made on Respondent despite diligent efforts, service may be made by mailing a copy by certified mail to Respondent at the address of record.

Brittan Communications International
600 Jefferson, Suite 500
Houston, Texas 77002

A copy of this order and declarations shall also be personally served on Respondent's counsel of record:

Nossaman, Guthner, Knox & Elliott, LLP
50 California Street, 34th Floor
San Francisco, California 94111-4712

A copy of this order shall also be sent by certified mail to the utilities ordered to cease submitting PIC changes for BCI and ordered to provide staff with certain information:

U.S. Long Distance, Inc.
9311 San Pedro, Suite 300
San Antonio, Texas 78216

Switched Services Communications L.L.C.
5000 Plaza on the Lake
Austin, Texas 78746

IXC Long Distance
5000 Plaza on the Lake
Austin, Texas 78746

This order is effective today,

Dated April 23, 1997, in San Francisco, California

P. GREGORY CONLON

President

JESSIE J. KNIGHT, JR.

HENRY M. DUQUE

JOSIAH L. NEEPER

RICHARD A. BILAS

Commissioners