

ORIGINAL

Decision 96-09-041 September 4, 1996

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

Investigation on the Commission's Own
Motion into the Operations, Practices, and
Conduct of Cherry Payment Systems, Inc. as
Parent Company to Cherry Communications,
Inc., and James Elliott, Chairman of the
Board of Cherry Communications, 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.

Cherry Communications should not be subject to sanctions for violating Paragraph 2 of the Commission Order Instituting Investigation 95-10-007 (D. 95-03-051). Paragraphs 1 and 2 were held on February 27 and 28, 1996.

OPINION

Summary

This order approves the settlement agreement between Cherry Communications Incorporated (Cherry) and the Commission's Safety and Enforcement Division (S&E). The settlement agreement imposes certain restrictions on Cherry's future operations in California and requires Cherry to make restitution to certain former customers.

Procedural Background

On October 18, 1995, the Commission began its investigation of Cherry by issuing its Order Instituting Investigation and Order to Show Cause Why Cherry Communications' Certificate of Public Convenience and Necessity Should not be Revoked, 95-10-007 (OII). The Commission found that there was good cause to believe that Cherry

was "operating in disregard of the rules and regulations applicable to long-distance carriers and that the pattern of conduct may be continuing and adverse to the public interest." (OII at p. 5.) Specifically, the OII alleged that Cherry had violated the statutes and regulations governing how long-distance customers are switched from one carrier to another. This practice is known as "slamming."

The OII imposed several immediate limitations on Cherry's operations including a prohibition on Cherry submitting any carrier-initiated PIC changes after a certain date. To allow Cherry an opportunity to respond to the interim limitations, the Commission promptly scheduled a hearing. Such a hearing was held on November 8 and 9, 1995. After the completion of the hearing, the Commission issued Decision (D.) 95-12-019 in which it concluded that the public interest required that the PIC change prohibition remain in place while the proceeding was pending.

On February 7, 1996, the Commission issued an Order to Show Cause Why Cherry Communications Should not be Subject to Sanctions for Violating Paragraph 5 of the Commission Order Instituting Investigation 95-10-007. (D.96-02-021.) Evidentiary hearings were held on February 27 and 28, 1996.

Prior to the February hearings, Cherry had filed a motion requesting that the chief administrative law judge appoint a third-party mediator for this proceeding and that the parties be ordered to mediate. S&B responded to this motion on the record at the February hearings. The assigned administrative law judge ordered mediation limited to four hours prior to the hearings then scheduled for March. The chief administrative law judge assigned ALJ Kim Maldom to serve as the mediating ALJ.

On March 18, 1996, the day on which hearings were scheduled to begin, the parties formally notified the assigned ALJ that they had reached a settlement in principle and that they expected to soon file a formal complete settlement agreement. The parties filed such

Primary Interexchange Carrier (OII) The Commission found that there was good cause for issuing its Order Instituting Investigation and Order to Show Cause Why Cherry Communications, Certificate of Public Convenience and Necessity should not be Rejected.

an agreement on May 28, 1996. The settlement agreement is Attachment A to this decision.² In their motion requesting approval of the settlement agreement, the settling parties indicated that the other active but nonsettling parties, Pacific Bell and GTE-California, had waived their rights to the formal settlement conference and comment period provision of Rule 51.³

Description of the Settlement Agreement

The major provisions of the settlement agreement are:

1. Cherry's Certificate of Public Convenience and Necessity

will be suspended for 24 consecutive months following the effective date of this order, except for a specific, limited class of customers.

2. Cherry shall provide S&E a list of all its existing retail

customers and S&E will notify them of the need to select another carrier, and the default selection process will be used if the customer fails to make a selection.

3. Cherry may retain its customers who are the subject of its

agreement to transfer customers to Midcom Communications. That transaction is being reviewed by the Commission in another docket which will be unaffected by the settlement agreement.

4. Cherry will pay \$20 to each of its former customers who have

submitted a PIC change dispute to their local exchange carrier. In addition, these customers may seek additional restitution through an arbitration/mediation procedure set out in the settlement agreement.

² Exhibit A to the settlement agreement, which contains a list of certain commercial customers to whom Cherry may continue to provide service, is the subject of a protective order and thus is not included in Attachment A.

³ Jere Green, dba as Jere's Interiors, filed a motion for intervention which Ms. Green subsequently withdrew on the condition that if the Commission does not approve the settlement agreement that she be granted party status. The assigned ALJ granted Ms. Green's request on May 29, 1996.

The parties also agreed that the terms of the settlement agreement are nonseverable and do not constitute admissions.

Discussion

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

The record in this case reveals allegations of wide-spread violations of Public Utility Code section 2889.5, the "anti-slammng" statute. Such violations, if proven, harm not only the customers' right to use their carrier-of-choice but also damage the competitive market for interexchange carriers through unfair competition.

The settlement agreement imposes significant burdens on Cherry. These burdens effectively remove it from the market for provision of long-distance services in California for two years. Cherry also is required to make substantial restitution to customers who have alleged that their PIC change was unauthorized.

The burdens on Cherry reasonably address the harms to which this proceeding was directed. Cherry will be unable to provide service in California; customers and competitors alike will no longer be threatened with unauthorized PIC changes. Cherry will also have an opportunity to improve its solicitation and verification procedures to ensure full compliance with all applicable laws and regulations. Finally, all customers that have alleged unauthorized transfers, and other losses due to Cherry, will be compensated.

b. Consistent with the Law

None of the actions required by the settlement agreement are in violation of any statute or Commission rule or regulation.

The Commission's decision is based on the record in this case. The settlement agreement is a result of the parties' agreement and is not subject to review by the Commission. The Commission's decision is based on the record in this case.

In the Public Interest
The Commission is responsible for ensuring that the public is protected from unscrupulous practices by interexchange carriers. The settlement agreement protects the public by requiring that Cherry cease providing service in California for two years.

The Commission is also responsible for encouraging a robust market for interexchange carriers in California. The settlement agreement accomplishes this goal by removing an allegedly unfair competitor from the marketplace.

For these reasons, the Commission finds that the settlement agreement is reasonable in light of the whole record, is consistent with the law, and is in the public interest. The agreement is approved pursuant to Rules 51 through 51.10 of the Commission's Rules. (See also San Diego Gas & Electric Company, 46 CPUC2d 538 (1992) (rules for all-party settlements).)

Findings of Fact

1. The Commission opened an investigation into Cherry's operations based on allegations of unauthorized transfer of customers and to ascertain whether Cherry was otherwise operating unlawfully.

2. As a result of ordered mediation, the parties reached a settlement agreement which is Attachment A to this decision.

3. The settlement agreement resolves all matters relating to this proceeding except the transfer of customers to Midcom Communications. That matter will be resolved by the Commission in docket Application 96-02-004.

Conclusions of Law

1. Cherry does not admit the allegations brought against it.

2. The settlement agreement is reasonable in light of the whole record, is consistent with the law, and is in the public interest.

3. The settlement agreement should be approved.

4. In order to assure prompt compliance with the terms of the settlement agreement, and to quickly obtain the benefits of the settlement agreement for California consumers, this order should be made effective immediately.

ORDER

IT IS ORDERED that

1. 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.

2. This proceeding will remain open to address any issues that may arise in the implementation process.

This order is effective today.

Dated September 4, 1996, at San Francisco, California.

DANIEL Wm. FESSLER

JESSIE J. KNIGHT, JR.

HENRY M. DUQUE

JOSIAH L. NEPPER

Commissioners

President P. Gregory Conlon,

being necessarily absent, did not

participate.

BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the operations, practices and conduct of Cherry Payment Systems, Inc. as parent company to Cherry Communications, Inc., and James Elliott, Chairman of the Board of Cherry Communications, to determine whether they have complied with the laws, rules, regulations and applicable tariffs and provisions governing the manner in which California consumers are switched from one long-distance carrier to another, and other requirements for long distance carriers.

SETTLEMENT AGREEMENT

This SETTLEMENT AGREEMENT is the final and complete expression of the agreement entered into the 9th day of May, 1996, by and between the California Public Utilities Commission ("CPUC") Safety and Enforcement Division and Cherry Communications Incorporated, formerly known as Cherry Payment Systems, Inc. and James Elliott, Chairman of the Board of Cherry Communications, Inc. Its employees, managers, agents and predecessors and successors in interest, if any, at Cherry Communications, Inc. ("Cherry") which collectively are the "Parties" to this Agreement.

WHEREAS, the CPUC has before it a proceeding investigation on the Commission's own motion into the operations, practices and conduct of Cherry Payment Systems, Inc. as parent company to Cherry Communications, Inc. and James Elliott, Chairman of the Board of Cherry Communications (I.95-10-007);

WHEREAS, the Parties each desire to resolve amicably the dispute among them and to settle and forever dispose of all issues raised in I.95-10-007;

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

The certificate of public convenience and necessity of Cherry shall be suspended for cause for 24 consecutive months from the effective date of the Commission decision adopting this settlement agreement, except for service to interexchange carriers (wholesale service) and to existing commercial customers with T-1 service. The existing T-1 commercial customers, as of the date of

execution of this settlement agreement, are identified in Exhibit A to this Settlement Agreement.

2. During the 24 month period of suspension, Cherry shall solicit no commercial or residential (retail) customers in California and shall not knowingly accept any new retail customers in California. Cherry shall have no retail customers in California during the 24 month period of suspension except those commercial customers to whom Cherry provided T-1 service prior to the effective date of the start of the suspension period. A list of the existing T-1 customers of Cherry is attached hereto as Attachment A. This list is privileged and confidential as proprietary business information and as a trade secret, and Cherry and Safety and Enforcement Division agree that the list of T-1 service customers set forth in Attachment A shall be treated as confidential information and shall be protected from public disclosure under the provisions of Public Utility Code Section 583 and General Order No. 66-C. Cherry and the Safety and Enforcement Division agree that the list of existing T-1 customers in Attachment A, however, may be disclosed to California local exchange carriers solely for the purpose of implementing this settlement.

3. Within 30 days of the execution of this agreement, Cherry shall provide on a computer readable medium, the names and addresses of its existing retail customers in California to the Safety and Enforcement Division and to the local exchange carriers serving those customers. Within 15 days of the date this settlement agreement is adopted by the Commission, the Safety and Enforcement Division shall send a notice to all existing Cherry retail customers, except those described in paragraph 4 below, advising them of the need to select another long distance carrier. Existing Cherry retail customers in California will be reassigned to other long distance carriers of the customers' election through the local exchange carriers' notification and default carrier selection process, with any switching charges to be paid by Cherry within 30 days of receipt of an invoice from each affected local exchange carriers for all the switches performed on its system.

4. Cherry may retain any customers which it agreed to transfer to MIDCOM Communications pursuant to the agreements between MIDCOM and Cherry dated September 1, 1995 and December 1, 1995, and which are the subject of MIDCOM Advice Letter No. 20 and Cherry Advice Letter No. 13 until said transfers are complete, subject to further orders of the Commission. Safety and Enforcement Division reserves the right to continue to oppose said transfers, specifically by means of its Application 96-02-004, and Cherry reserves the right to oppose said Application. Both parties recognize that the Commission will rule on safety and Enforcement Division's Application, and agree to be bound by a final order issued by the Commission in the Application that is no longer subject to state or federal appeals. Therefore, if the Commission

(wholesale service) and to existing commercial customers with T-1 service. The existing T-1 commercial customers, as of the date of

does not disturb the MIDCOM-Cherry transactions, the transfer of customers to MIDCOM pursuant to the above-referenced agreements, whether said transfers occur prior to or after the execution of this Agreement, will not be affected by this Agreement. If, however, the Commission orders that some or all of the customers involved in the transfer to MIDCOM are to remain the customers of Cherry, or otherwise renders invalid the transfers of customer base set out in the above-referenced agreements, those customers which remain customers of Cherry will be transferred to other long distance carriers through the same customer election and default carrier selection process described above, and the related switching charges will be paid by Cherry as set forth above.

5. Cherry will prepare checks for \$207.00 made payable to each and every customer characterized as a disputed PIC Change by their respective LEC. For purposes of this Agreement, it is agreed that such customers shall be defined as those who have been switched to another carrier by the LEC and whose request for a PIC change has been designated as 2218 by Pacific Bell and 2219 by GTEC. Pacific Bell, GTE California, and any other applicable local exchange carrier will provide the Commission staff and Cherry with a list on a computer readable medium of such designated customers to whom checks should be issued. Cherry shall reimburse all such local exchange carriers for the cost of producing and providing the lists within 30 days of receiving the invoice from the local exchange carrier. Cherry shall provide the Commission staff with the check(s) for each customer within 60 days of receiving from the local exchange carrier the lists of customer names. The Commission staff will mail the checks with a notice and a claim form. The notice, which will be prepared by the Commission in English, Spanish and Vietnamese, will inform the recipients of the reason for the check and explain the arbitration/mediation procedures available to such customers, if they seek to claim additional restitution. The description of said procedures shall be consistent with the arbitration/mediation procedures set forth in this Settlement Agreement below.

6. Cherry shall provide restitution, in the manner specified below, to all persons who have been affected by the activity alleged in I.95-10-007, who have Qualifying Consumer Complaints, as described below, who have suffered actual damages as a result thereof, and who submit a complaint form to Safety and Enforcement Division within 60 days of receiving the notice and check from the Commission. This program shall be conducted as follows:

(a) their complaint pertains to allegations made in I.95-10-007 by the Safety and Enforcement Division; (b) the consumer has not otherwise received restitution (where entitled); (c) damages arising out of the activity alleged in the investigation in this proceeding are not being recovered; and (d) the consumer is participating in the arbitration/mediation program.

General. Cherry 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. Customers 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 Cherry before the Commission and related to the allegations against Cherry set forth in I.95-10-007. Customers 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 Cherry set forth in I.95-10-007. However, whether customers participate in the arbitration/mediation program or not, they do not waive their right to pursue any claim or remedy against Cherry in any action or proceeding before any other agency, court or other jurisdiction. Any and all fees and costs of the arbitration service relating to the arbitration proceeding shall be paid to the arbitrator by Cherry. The parties intend to utilize the American Arbitration Association to conduct the hearings and to make determinations pursuant to this paragraph with the understanding that Cherry and Safety and Enforcement Division may jointly agree to select a different arbitrator within 30 days of the execution of this agreement. In the event the chosen arbitrator is unable or unwilling to conduct the hearings and participate in the restitution program, the Safety and Enforcement Division and Cherry shall designate another entity or entities to conduct the hearings and make determinations under this program.

11. Qualifying Consumer Complaints.

"Qualifying Consumer Complaints" shall refer to any complaint which has been made to the consumer's local exchange carrier and has been designated by the carrier as a "PIC dispute", specifically Pac Bell Code 2218 and GTEC Code 2219. To be eligible, the consumer must have made his/her PIC dispute complaint to the LEC on or after January 1, 1995, and no later than 60 days after the execution of this Agreement. Consumers who have suffered actual damages as a result thereof and who shall be eligible for arbitration/mediation in addition to the \$20 payment by Cherry, in the event that they meet all of the following three criteria: (a) their complaint pertains to allegations made in I.95-10-007 by the Safety and Enforcement Division; (b) the consumer has not otherwise received restitution (where entitled) for damages arising out of the activity alleged in the investigation in this proceeding; and (c) the consumer alleges he/she has suffered an actual and ascertainable loss beyond the decision of the arbitrator. However, consumers have the

above-described \$20 payment as a result of the activity alleged in I.95-10-007. The Safety and Enforcement Division shall make every effort to deliver to Cherry the second batch containing the remaining claim forms received within 30 days of the last date that the former Cherry customers were mailed to.

Identification of Consumers:

The Safety and Enforcement Division shall request that Pacific Bell and GTEC, and any other local exchange carriers interconnected with Cherry, supply Cherry Communications with a list of eligible customers' names on a computer readable medium for all those consumers who Pacific Bell has coded as a 2218 PIC dispute and GTEC has coded as a 2219 PIC dispute, or the corresponding identification used by other carriers. The cost of providing the names shall be paid by Cherry Communications, Pacific Bell, GTEC, and any other involved carriers shall directly invoice Cherry for these costs. Cherry shall pay the amounts due on these invoices within 30 days after their receipt.

Within 60 days after receiving these names, Cherry shall prepare checks in the amount of \$20 made payable to each of these consumers, and provide the checks to the Commission staff. Cherry shall provide the checks to Safety and Enforcement Division in reasonably sized batches, as they are issued, rather than all at once. Thereafter, the checks will be mailed by the Commission staff to the consumer along with a notice, a copy of which is attached hereto as Exhibit B, advising the consumer that they can seek additional restitution from Cherry through this arbitration/mediation program.

In addition to receiving the notice, the consumer shall also receive a claim form, attached hereto as Exhibit C. The notice shall advise consumers that they have 60 days to complete the complaint form and return it to Safety and Enforcement Division at the address specified in the notice. The notice shall further advise consumers that if they do not submit the claim form within the 60 day period, they will be deemed to have waived any right to use this arbitration/mediation process to seek relief from Cherry concerning any issues raised in I.95-10-007. The claim form shall advise consumers that their decision to participate in the arbitration/mediation process shall not affect their right to pursue any claim or remedy against Cherry in any other agency, court or other jurisdiction. Safety and Enforcement Division shall date stamp all complaint forms as they are received, and provide copies of the claim forms to Cherry in two batches, the first containing all claim forms received by Safety and Enforcement Division within 30 days of the date that the notice and claim

forms were first mailed to former Cherry customers. The Safety and Enforcement Division shall use all reasonable efforts to deliver to Cherry the second batch, containing the remaining claim forms received, within 90 days of the last date that notice and claim forms were mailed to former Cherry customers.

The Safety and Enforcement Division shall request that Pacific Bell and GTE, and any other local exchange carriers, inform the consumer of the arbitration/mediation process which is available, and shall set forth the procedures which must be filed by the consumer to initiate the arbitration/mediation program.

iv. Mediation: Mediation used by other identification used by other names shall be paid by Cherry. After receipt by Cherry of the form described in paragraph 3 above, Cherry shall have 60 days to informally mediate all consumer complaints. Those customers whose complaints are still unresolved after this period shall be eligible to participate in the arbitration program.

After the aforementioned 60 day period, Cherry shall contact all consumers with unresolved complaints through a letter notifying the consumer that the claim remains unresolved and will be submitted to arbitration. Cherry shall then transfer to the arbitrator all claim forms which remain unresolved.

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Cherry shall then transfer to the arbitrator all claim forms which remain unresolved. The arbitrator shall advise the consumer along with a notice, a copy of which is attached, advising the consumer that they can seek additional resolution from Cherry through mediation.

Complaints Resolved Through Mediation: If at any time, Cherry resolves a consumer complaint through mediation, within 60 days after resolution, Cherry shall file with the Safety and Enforcement Division a report containing the name, address and resolution of the complaint. A photocopy of the correspondence with the consumer shall be sufficient to specify and Enforcement Division at the address specified in the notice. The notice shall further advise consumers that if they are dissatisfied with their claim form within the 60 day period, they will be deemed to have waived any right to arbitration.

v. The 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. When the arbitrator issues his/her final decision after the hearing, he/she shall notify the consumer and Cherry of this decision through regular mail. In order 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 by tariff limited to refunds of rates or fees charged by Cherry. Consumer's unpaid billings shall not be considered as offsets for purposes of the arbitration.

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. When the arbitrator issues his/her final decision after the hearing, he/she shall notify the consumer and Cherry of this decision through regular mail. In order 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 by tariff limited to refunds of rates or fees charged by Cherry. Consumer's unpaid billings shall not be considered as offsets for purposes of the arbitration.

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program. Consumers may not recover consequential damages through the arbitration program.

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. Any money due claimants after arbitration shall be paid by Cherry within 90 days after notice from the arbitrator of its decision in any particular hearing. The cost of each such arbitration shall be borne by Cherry. Cherry shall also send to the Safety and Enforcement Division a list of those consumers who are elected to participate in the arbitration/mediation program and notify Safety and Enforcement Division of the results of the arbitration.

Any undeliverable or returned checks shall be returned by the Commission staff to Cherry and reissued by Cherry payable to the order of the Advocates Trust Fund of the California Public Utilities Commission or, at the election of the Commission, the checks shall be reissued payable to the General Fund of the State of California, in order that the funds which cannot be delivered to ratepayers escheat to the State, consistent with California law. Cherry shall reissue and deliver to the Executive Director of the Commission the first batch of checks no later than 150 days after the first checks were first mailed by Safety and Enforcement Division. Any returned or undeliverable checks received by Cherry more than 150 days after the initial mailing of the checks shall be reissued as described above and delivered to the Executive Director within 60 days of their receipt by Cherry.

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 Agreement, are in settlement of disputed claims and are not intended to constitute admissions. The Safety and Enforcement Division and Cherry 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 thereafter, in any proceeding, including the investigation.

The terms of this settlement agreement are non-severable. If this settlement agreement is adopted by the Commission, it must be adopted in its entirety or Cherry and/or Safety and Enforcement

Division may reconsider or withdraw their support for the modified settlement.

10. During the 24-month period of suspension, Commission staff may bring evidence of any violation on the part of Cherry of this settlement agreement, as adopted by the Commission, of any violation of law, rule, regulation or applicable tariff provision to the Commission. Such violations will be considered by the Commission as grounds for permanent revocation. Safety and Enforcement Division agrees that prior to providing any evidence or information related to any alleged violation of this Agreement on the part of Cherry to Decisionmakers at the CPUC, as that term is defined in Rule 1.1(e) of the Commission's Rules of Practice and Procedure, that Safety and Enforcement Division will meet and confer with Cherry or its representatives in a good faith effort to confirm the facts of the alleged violation and permit Cherry to respond to the alleged violation. Safety and Enforcement Division agrees that it will not provide any evidence or information, described in the foregoing sentence, for a period of two weeks after notice is given to Cherry to permit Cherry to investigate and respond to the alleged violation. This provision shall not apply in the specific instances where Safety and Enforcement Division reasonably believes that the alleged violation by Cherry threatens imminent harm to public safety, or if such a meeting would unreasonably interfere with Safety and Enforcement Division's law enforcement responsibilities.

Twenty-four months from the effective date of the Commission's decision adopting this settlement agreement, Cherry's operating authority or certificate of public convenience and necessity will be fully reinstated and the suspension of its certificate of public convenience and necessity provided for in this Agreement shall end, without the necessity for any further order of the Commission other than the order approving this Settlement and Agreement, unless the Safety and Enforcement Division submits to the Commission an emergency petition to continue the suspension, and the Commission grants the petition. Should the Safety and Enforcement Division file such a petition, the parties expect the Commission to consider it expeditiously, including the holding of a hearing, if warranted. In such a hearing, the Safety and Enforcement Division would have the burden of proving to the Commission any violations which it alleges.

William R. Schulte
William R. Schulte, Director,
Safety & Enforcement Division,
Public Utilities Commission of
the State of California

James Elliott
James Elliott, Chairman
of the Board,
Cherry Communications, Inc.

Date May 14, 1996

Date 5-13-96

1.95-10-007 /ALJ/HAB/tcg

ATTACHMENT A
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EXHIBIT A

(Exhibit has been omitted because it is subject to a protective order.)

A TERNATTACHMENT A
SI 9364 Page 11

LETTER TO BE SENT TO FORMER CHERRY CUSTOMERS
CLASSIFIED AS 2218 (PAC BELL), 2219 (GTE)

Date

Dear Former Cherry Communications Customer,

You are receiving this letter because you have been identified as a consumer who made a complaint against Cherry Communications with your local telephone company (such as Pacific Bell or GTE). Recently, as a result of your complaint and others like it, the California Public Utilities Commission (CPUC) approved a settlement between the CPUC Safety and Enforcement Division and Cherry Communications.

Under the terms of the settlement, you are automatically entitled to receive a payment of \$20.00 from Cherry Communications. Your \$20.00 check is enclosed with this letter. You do not need to take any action in response to this letter, except to cash the check enclosed with this letter. If this payment satisfies you, you do not need to contact the CPUC or Cherry. If you are not satisfied with this payment, you may 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 Cherry Communications, you have suffered actual losses beyond the \$20 payment provided to you by the enclosed check.

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 Safety & Enforcement Division within 60 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 your right to pursue any claims you may have against Cherry in any proceedings before any other agency, court, or jurisdiction.

Please contact Fred Patterson, an investigator at the CPUC, at (415) 703-1208 if you have any questions regarding this letter.

Sincerely,

William R. Schulte
Director, Safety and Enforcement Div.
California Public Utilities Commission

LETTER TO BE SENT TO FORMER CHERRY CUSTOMERS
CLASSIFIED AS 2218 (PAC HEAD), 2219 (GTE)

Date

Dear Former Cherry Communications Customer,

You are receiving this letter because you have been identified as a consumer who made a complaint against Cherry Communications with your local telephone company (such as Pacific Bell or GTE). Recently, as a result of your complaint and others like it, the California Public Utilities Commission (CPUC) approved a settlement between the CPUC Safety and Enforcement Division and Cherry Communications.

Under the terms of the settlement, you are automatically entitled to receive a payment of \$20.00 from Cherry Communications. Your \$20.00 check is enclosed with this letter. You do not need to take any action in response to this letter, except to cash the check enclosed with this letter. If this payment satisfies you, you do not need to contact the CPUC or Cherry. If you are not satisfied with this payment, you may 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 Cherry Communications, you have suffered actual losses beyond the \$20.00 payment to you by the enclosed check.

EXHIBIT C

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 Safety & Enforcement Division within 60 days of the date of this letter to participate in the mediation/arbitration process.

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

Please contact Fred Patterson, an investigator at the CPUC, at (415) 703-1208 if you have any questions regarding this letter.

Sincerely,

William R. Schulte
Director, Safety and Enforcement Div.
California Public Utilities Commission

ATTACHMENT A
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(on CPUC letterhead)

INSTRUCTIONS FOR COMPLETING THE CLAIM FORM

The claim form attached to these instructions is only for use by former customers of Cherry Communications, Inc. who wish to participate in mediation or arbitration of their disputes with Cherry. If you are satisfied with the \$20.00 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 Cherry's long distance service without your consent or being improperly billed by Cherry (e.g., Bell, GTE, etc.);
- (2) have suffered actual losses as a result of Cherry's conduct beyond the \$20.00 payment you received by the enclosed check, and this is limited to the types of losses directly tied to your phone bill (such as charges for changing your long distance service or charges for calls you did not make, etc.);
- (3) return this claim form within 60 days to:

Fred Patterson, Investigator
 Safety and Enforcement Division
 California Public Utilities Commission
 505 Van Ness Ave.
 San Francisco, California 94102
 (415) 703-1208

If you do not send in this claim form within 60 days of the date of this 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 Public Utilities Commission to award you damages from Cherry of more than the \$20 you have received with this notice.

Whether or not you participate in this mediation/arbitration program does not affect your right to pursue any claims you may have against Cherry 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 60 days to the address above. If you do not know the answers to some of the questions on the claim form, just complete as much as you can. You can still submit a claim even if you cannot provide all the information requested.

ATTACHMENT A
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MEDIATION/ARBITRATION CLAIM FORM

COMPLETE THIS CLAIM FORM ONLY IF YOU WANT TO PARTICIPATE IN MEDIATION/ARBITRATION WITH CHERRY COMMUNICATIONS

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

A. Fill in your name, current address and phone number(s):
Name _____
Street Address _____
City, State, Zip _____
Telephone Number (including area code) _____

B. What was the name of your local exchange carrier (Pacific Bell, GTE, etc.) at the time the conduct by Cherry occurred?

C. Please state your address and phone number at the time you were a customer of Cherry Communications if it was different from your current address.
Street Address _____
City, State, Zip _____
Telephone Number (including area code) _____

D. Have you ever corresponded with Cherry concerning the nature of your complaint?
_____ yes (Please attach copies of the letters if you have them)
_____ no

E. Did you ever complain to your local exchange carrier (Pacific Bell or GTE) about Cherry?
_____ no
_____ yes (Please describe complaint)

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

F. Did you request to change the company who provided your long distance phone service from Cherry to another company?
_____ yes
_____ no

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

H. Did you ever receive a refund from Cherry or anyone else for charges on your phone bill?
(A TRIENNIO ATTACH TO QRS)

_____ 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)?

I. Please describe any additional damages you believe you are entitled to beyond the \$20 check you have received.

J. Date: _____

K. If an attorney is representing you, please complete the following:

Name of attorney: _____
Address of attorney: _____
Attorney's Telephone number (including area code) _____
Signature of attorney: _____

ATTACHMENT A
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Under penalty of perjury, I swear that the information provided in this claim form is true and correct to the best of my knowledge and belief. (For example, bills, letters written to or received from Cherry, etc.) Please send copies with this form and keep any originals.

your signature

H. Did you ever receive a refund from Cherry or anyone else for charges on your phone bill?
(ATTACHMENT OF END)

If yes, please state:

The amount you received

The date you received it

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

I. Please describe any additional charges you believe you are entitled to beyond the \$20 check you have received.

J. Date:

K. If an attorney is representing you, please complete the following:

Name of attorney:

Address of attorney:

Attorney's Telephone number (including area code)

Signature of attorney: