Decision 06-09-009 September 7, 2006

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Alliance Group Services, Inc. for a certificate of public convenience and necessity to provide facilities-based interexchange services.	Application 04-12-029 (Filed December 29, 2004)

OPINION GRANTING JOINT PARTIES' MOTION FOR COMMISSION ADOPTION OF SETTLEMENT AGREEMENT AND APPROVING SETTLEMENT AGREEMENT

Summary

This decision grants the joint motion of Alliance Group Services, Inc. (AGS) and the Commission Consumer Protection and Safety Division (CPSD) for Commission adoption of a settlement agreement in this proceeding (Settlement Agreement) and approves the Settlement Agreement without modification.

Under the terms of the Settlement Agreement, AGS has agreed to withdraw its motion to dismiss this application for a certificate of public convenience and necessity (CPCN), which was made on jurisdictional grounds; to submit to the Commission's jurisdiction and obtain a CPCN; and to terminate or deny service to any of its customers that are unlawfully operating in this state. In return, CPSD has agreed to withdraw its protest to the application and to take no further enforcement action against AGS based on the issues raised in the protest.

In addition, the parties have agreed that members of the Coughlin family, which own an indirect controlling interest in AGS, will divest themselves of any

interest in the company, because Thomas Coughlin was one of the former owners of Vista Group International dba Vista Communications (Vista). In Decision (D.) 01-09-017, the Commission fined Vista $7 million for slamming violations, but to date, the fine remains unpaid. The purpose of this divestiture is to ensure that the Coughlin family will have no role in the continuing management of AGS, because of Vista's previous violations of the law and a Commission order.

Based on the above, we find that this Settlement Agreement meets the criteria stated in Rule 51.1(e) and that approval of the Settlement Agreement is in the public interest.

A copy of the Settlement Agreement is attached as Attachment A.

Background

AGS is a privately-held Delaware corporation with its corporate offices in Westport, Connecticut. AGS is a wholly owned subsidiary of Alliance Group Services Acquisition (AGS Acquisition), a privately held corporation.

AGS uses the networks of other carriers (primarily AT&T) to provide call termination services on a statewide basis to carriers that are customers of AGS (AGS carrier-customers). AGS carrier-customers are switchless resellers that do not own or lease their own switches or any physical facilities, but rely instead on the networks of other carriers to complete the calls of their own end-user customers.

AGS has a long history of regulatory issues before this Commission.

In D.98-09-069, the Commission granted AGS a certificate of public convenience and necessity (CPCN) to operate as a switchless reseller of inter-Local Access and Transport Area (LATA) and intra-LATA telecommunications services in California.

Regulatory problems began in late 1999, when AGS entered into an agreement with VarTec Telecom, Inc. (VarTec) to purchase the customer base of U.S. Republic Communications (USRC).[1] On February 4, 2000, USRC filed Advice Letter No. 4 (AL 4), seeking Commission approval of the purchase of USRC's customer base by AGS. AL 4 became effective on March 13, 2000. The Commission also subsequently approved AGS' purchase of USRC's customer base on April 2, 2002 in D.02-04-020.

Although AL 4 became effective on March 3, 2000, the seller in the transaction—VarTec—did not seek prior Commission authorization for the transfer of the USRC customer base to AGS, as required by Section 854.[2] However, the Commission approved the transfer of USRC's customer base to AGS pursuant to a settlement agreement between CPSD and VarTec in D.02-04-020, finding that since both USRC and AGS were authorized to resell interexchange services, AGS was qualified to purchase USRC.[3]

On April 3, 2003, AGS' operating authority was revoked by the Commission for non-payment of fees and failure to file surcharge transmittals, as required by law.[4] For reasons not entirely clear, AGS' operating authority (which had been granted under the number U-6047-C) was revoked under the name of "U.S. Republic," rather than AGS' name.

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[1] VarTec Holding Company, a wholly-owned subsidiary of VarTec, owned a controlling interest in USRC and sold it to AGS. See D.02-04-020.

[2] All Code references are to the Public Utilities Code, unless otherwise stated.

[3] D.02-04-020, Finding of Fact 33.

[4] The revocation occurred pursuant to Resolution T-16713.

Despite the revocation of its CPCN in April 2003, AGS continued to offer telecommunications services in California. On May 11, 2004, AGS filed Application (A.) 04-05-018 for authority to operate as a switchless reseller of long distance services, but AGS withdrew the application on June 3, 2004.

On October 28, 2004, Richard Clark, Director of CPSD, sent AGS a letter directing the company to cease operations in California and apply for a CPCN. AGS replied that as a seller of purely wholesale services, it is not required to hold a CPCN in order to operate in this state. CPSD disagreed and on December 14, 2004, the Commission's Executive Director, Steve Larson, sent AGS another letter directing it to file an application for operating authority within 15 days or cease doing business in California.

On December 29, 2004, AGS filed the instant application for authority to operate as a statewide provider of facilities-based interexchange services. In the application, AGS argued that because it "does not hold out telecommunications services to the public or any portion thereof [and] has not dedicated its services to the public, [it] is not a public utility subject to the Commission's jurisdiction."[5] AGS states that since it no longer provides retail services in California, but offers only wholesale services in this state, the revocation of its CPCN had no effect on its right to operate,[6] and that to reach a contrary conclusion, "the Commission would have to conclude that a supplier of wholesale service to certified carriers must itself obtain certification."[7] After noting that the Executive Director

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[5] Application, p. 3.

[6] *Id*. at p. 2.

[7] *Id*. at p. 3.

disagreed and had instructed the company to file the application, AGS stated that it would soon be filing a motion to dismiss the application on jurisdictional grounds.[8] AGS filed the promised Motion to Dismiss on January 27, 2005.

On the same day that AGS sought dismissal, CPSD filed a protest to the application. CPSD's protest was based on two main grounds. First, CPSD noted that AGS' then Chairman, Thomas M. Coughlin, was one of the owners of Vista, the respondent in Investigation (I.) 99-04-020. CPSD stated that in D.01-09-017, the Commission fined Vista approximately $7 million for slamming violations charged in I.99-04-020. However, to date, the fine remains unpaid. Therefore, CPSD contends that Coughlin remains unfit to own or operate a telephone company in California until the fine is paid.[9] Second, CPSD expressed concern that although the Commission revoked AGS' CPCN pursuant to Resolution T-16713 in April 2003, AGS had unlawfully continued to operate without a CPCN.

AGS replied to CPSD's protest, arguing that since the Commission had dismissed Coughlin with prejudice from the Commission's collection action in Superior Court for payment of the fine, any action by the Commission to collect the fine from Coughlin is barred by the doctrine of *res judicata*. AGS further argued that it was not operating without a CPCN in defiance of the Commission, but because the company believed that it did not need a CPCN to offer exclusively wholesale services in California.

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[8] *Id.* at p. 4.

[9] CPSD also alleged that another principal in Vista, Phillip A. Bethune, was a director of AGS. AGS denied this allegation.

In its Motion to Dismiss (Motion), AGS sought dismissal of the application on the grounds that as a solely wholesale provider, AGS is not subject to regulation by the Commission and therefore does not need a CPCN to operate in this state. CPSD opposed the Motion, stating that AGS' ownership and operation of a telephone network in California, and its resale of access to or capacity on that network, brought AGS within the definition of a regulated telephone company under Section 234(a).[10] In its reply, AGS argued that CPSD had excessively relied on the text of Section 234, without recognizing that under Richfield Oil Corporation v. CPUC, 54 Cal. 2d 419 (1960) (Richfield), even if an entity falls within the definition of a public utility as set forth in the Public Utilities Code, the entity is not a public utility unless it has dedicated its services to the public. AGS further argued that the holding of Richfield is not limited to the specific facts of that case.

The Commission has not ruled on the Motion. Under the Settlement Agreement, AGS agrees to withdraw its Motion when the Settlement Agreement is approved by the Commission.

Procedural History

AGS filed this application on December 29, 2004. In Resolution ALJ 176-3145, dated January 13, 2005, we preliminarily categorized this proceeding as ratesetting and preliminarily determined that a hearing is not necessary.

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[10] Section 234(a) states in pertinent part: "'Telephone corporation' includes every corporation or person owning, controlling, operating, or managing any telephone line for compensation in this state."

After the filing of CPSD's protest on January 27, 2005, a prehearing conference (PHC) was held before Administrative Law Judge (ALJ) A. Kirk McKenzie on March 29, 2005. At the PHC, the parties agreed to pursue a settlement through Commission alternate dispute resolution (ADR) procedures. Several weeks later, ALJ Peter Allen met with the parties to facilitate dispute resolution. ALJ Allen then conducted a series of ADR sessions over the remainder of 2005. In early 2006, the parties reached agreement on the issues in dispute, and on April 11, 2006, signed the proposed Settlement Agreement. On April 12, 2006, the parties filed a joint motion for Commission adoption of the Settlement Agreement.

The Settlement Agreement

The principal terms of the Settlement Agreement between AGS and CPSD are as follows:

A. AGS' Agreement to Submit to Commission's Jurisdiction

- AGS has agreed to submit to the Commission's jurisdiction and to cooperate with Commission staff's data requests regarding the certification status of AGS' carrier-customers, consumer complaints against AGS or its carrier-customers, or any other matter under the Commission's jurisdiction. By submitting to the Commission's jurisdiction, AGS has impliedly agreed to obtain a CPCN.

B. Withdrawal of CPSD's Protest and AGS Motion to Dismiss

- Within 40 days after the effective date of this order, CPSD will withdraw its protest and support the Commission's granting of AGS' application for a CPCN in this docket (as modified and restricted by the Settlement Agreement), and AGS will withdraw its Motion.

C. Divesture of Coughlin Ownership Interests

- AGS is wholly owned by AGS Acquisition, Inc. 85% of the stock of AGS Acquisition, Inc. is held by Alliance Group Holdings, Inc. (Holdings). The majority shareholder of Holdings is the SMC 2001 Trust (Trust), an irrevocable trust established in 2001 as an estate planning vehicle for the Coughlin family. Sharon Coughlin, wife of Thomas M. Coughlin, is trustor of the Trust.
- Upon Commission approval of the Settlement Agreement, Trust will commence efforts to divest itself of the indirect control of AGS with all deliberate speed consistent with prudent business practices. Owners of Trust will accomplish this objective by transferring control of Holdings, or causing the transfer of control of one of its subsidiaries, to an unrelated third party so that Trust no longer holds any direct or indirect controlling interest in AGS.
- Owners of Trust shall file an application for the transfer of control of Holdings with the Commission within one year after the Commission's approval of AGS' currently pending application for a CPCN in this docket. CPSD agrees to any reasonable good faith request for extension of this deadline.
- AGS will not sell or in any way transfer ownership or control of AGS to any members of the Coughlin family or to Phillip Bethune, or to any companies that they own or operate. CPSD retains the right to investigate the identity of potential buyers of Holdings to ensure that AGS complies with this requirement.
- During the period between the effective date of this order and the above-described divestiture, Thomas M. Coughlin will play no role in the management of AGS, will not serve as an officer or director of AGS, and will receive no compensation as an employee of AGS. Coughlin's sole interest in the company will be of an indirect nature derived from the interest that members of his family currently hold in Trust. AGS will provide CPSD with copies of documentation regarding any termination agreement or severance letter related to Coughlin's role in the management of AGS.

D. Termination of Service to AGS Carrier - Customers that Do Not Have Proper Operating Authority

- CPSD has determined during its investigation of AGS that some of AGS' carrier-customers do not have valid operating authority in this state.
- Therefore, during the period between the effective date of this order and the effective date of any transfer of the assets or control of AGS pursuant to the divestiture of the Coughlin family interests in the company, AGS will terminate service to any carrier-customer identified by CPSD as not having a valid CPCN in effect to authorize its operations in California. AGS will give these carrier-customers 30 days' notice before terminating service.
- AGS has agreed to require any new carrier-customer that wishes to initiate operations in California to provide AGS with the identification number for its CPCN (U#) before AGS will provide service.
- Within six months of the effective date of this order and continuing every six months until completion of the divestiture of the Coughlin family interests in AGS, AGS will provide CPSD with a status report that: (1) lists AGS' carrier-customers, and (2) provides certification that each carrier-customer of AGS previously identified by CPSD as unlicensed has either verified that it has a valid CPCN or has had its service terminated by AGS.

E. Parties' Support of Settlement Agreement/Effect of Application for Rehearing by Third Party

- AGS and CPSD have agreed to use their best efforts to seek Commission approval of the Settlement Agreement and will not seek rehearing of this order or take any other action that would be inconsistent with fully supporting the Settlement Agreement.
- If any third party files an application for rehearing of this order, the effective date of this order shall be stayed during the time that the application for rehearing is pending.

F. Settlement Agreement is a Full and Final Resolution of Issues

- The parties have agreed that the Settlement Agreement is a full and final resolution of this application and the Protest and the matters contained therein.
- After the issuance of this order, CPSD will initiate no enforcement action and seek no administrative or other penalties against AGS based on the issues alleged in the Protest.

G. Successors

- The Settlement Agreement is binding on the successors of the parties.

Discussion

In this case, we must evaluate whether the Settlement Agreement between AGS and CPSD meets Commission requirements for approval. Under Rule 51.1(e),[11] the Commission will not approve stipulations or settlements, whether contested or uncontested, unless the stipulation or settlement is:

- Consistent with the law;
- Reasonable in light of the whole record, and
- In the public interest.

We find that the settlement agreement meets the criteria for approval under Rule 51.1(e), as follows.

[11] All Rule citations are to the Commission Rules of Practice and Procedure, unless otherwise stated.

A. The Settlement is Consistent with Law and Prior Commission Decisions

Since AGS has agreed to withdraw its Motion and to submit to Commission jurisdiction, we need not address whether, as an entity claiming to provide exclusively wholesale services in this state, AGS is a public utility subject to our jurisdiction, or whether under Richfield, AGS must also dedicate its services to the public and has, in fact, done so. However, it is entirely consistent with state law and Commission precedent for AGS, as an entity offering telecommunications services in California, to submit to Commission jurisdiction, obtain a CPCN, and to cooperate with Commission staff in its operations. It is also consistent with state law for AGS to deny service to carrier-customers that do not have valid operating authority in this state, in order to avoid enabling these carrier-customers to conduct business in California without obtaining CPCNs or after the Commission has suspended or revoked their CPCNs.

The provisions of the Settlement Agreement regarding divestiture of the Coughlin family interests in AGS, and the prohibition of the transfer of any interest in AGS to any member of the Coughlin family or Phillip Bethune, are also consistent with state law. Under state law, the Commission may deny a CPCN if the management of the telecommunications provider is not fit to serve the public, or has not demonstrated its ability to operate the company in a manner consistent with legal and regulatory requirements.[12] The record of slamming violations by Vista and Vista's failure to pay the fine ordered by the Commission demonstrate that the former managers of Vista, including Coughlin, are not fit to serve the public as telecommunications providers at this time.

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[12] See D.04-05-033.

We find that the remaining provisions of the Settlement Agreement also comply with state law.

B. The Settlement Agreement is Reasonable in Light of the Record as a Whole

We find that the Settlement Agreement is reasonable in light of the record as a whole. Since the record shows that AGS is offering telecommunications services in this state, it is reasonable for AGS to agree to withdraw its Motion, submit to Commission jurisdiction and cooperate with Commission staff, including denying or terminating service to carrier-customers that CPSD identifies as unlawfully operating in California. Further, since the record shows that the Coughlin family was involved with the former management of Vista, which engaged in slamming and failed to pay a Commission-ordered fine, the provisions of the settlement agreement that require divestiture of any Coughlin family interests in AGS or the transfer of any interest to any member of the Coughlin family or Philip Bethune are reasonable.

In addition, since the record shows that the Settlement Agreement resolves the concerns raised by CPSD regarding the management of AGS, AGS' operations in this state without possession of a CPCN, and AGS' provision of services to customers-carriers that do not have operating authority in this state, it is reasonable for CPSD to withdraw its Protest and to agree not to take further enforcement action against AGS based on the issues raised in its Protest, so long as the Commission approves the Settlement Agreement.

The remaining provisions of the Settlement Agreement are also consistent with the record as a whole.

C. The Settlement is in the Public Interest

The Settlement Agreement is in the public interest, because it will resolve the issues raised by the parties without the need for extensive, time-consuming, and costly Commission proceedings and litigation, will promote the cooperation of AGS with the Commission in its operations, including the termination or denial of service to customer-carriers that do not have valid operating authority to conduct business in this state, and will prevent the former management of Vista, which engaged in serious slamming violations and failed to pay the fine ordered by the Commission, from controlling or managing the operations of AGS, directly or indirectly.

In addition to the above criteria applicable to all settlements, we note that the Settlement Agreement fairly represents the affected interests, since AGS represents the interests of its shareholders, and CPSD represents the interests of AGS ratepayers and advocates for all ratepayers in this state and the public. Finally, we note the Settlement Agreement includes sufficient information regarding the rights and obligations of the parties and is adequately clear for the parties and the Commission to understand its terms and for the parties to carry out the agreement.

For all of the foregoing reasons, we grant the motion of AGS and CPSD for approval of the Settlement Agreement and approve the Settlement Agreement without modification.

Categorization and Need for Hearings

Based on our review of this application, there is no need to alter the preliminary determinations made in Resolutions ALJ 176-3145 as to the category of this proceeding and the need for a hearing.

Comments on Draft Decision

Section 311(g)(1) of the Public Utilities Code provides that a draft decision must be served on all parties and subjected to at least 30 days of public review and comment prior to a vote of the Commission. However, Section 311(g)(2) provides that the 30-day period may be reduced or waived upon the stipulation of all parties in the proceeding. In this case, the parties agreed to shorten the comment period and to waive reply comments. Comments were due at noon on September 5, 2006, and were to be served on the assigned ALJ by e-mail. No comments were received by this deadline.

Assignment of Proceeding

Michael R. Peevey is the Assigned Commissioner and A. Kirk McKenzie is the assigned ALJ in this proceeding.

Findings of Fact

1. On January 13, 2005, in Resolution ALJ 176-3145, we preliminarily categorized this proceeding as ratesetting and preliminarily determined that a hearing is not necessary.

2. AGS is a privately-held Delaware corporation and a wholly-owned subsidiary of AGS Acquisition, which is also a privately held corporation.

3. 85% of the stock of AGS Acquisition is held by Alliance Group Holdings, Inc. (Holdings).

4. The majority shareholder of Holdings is the SMC 2001 Trust, a family trust established as an estate planning vehicle for the Coughlin family.

5. The trustor of the SMC 2001 Trust is Sharon Coughlin, wife of Thomas M. Coughlin, one of the former owners of Vista.

6. AGS uses the networks of other carriers (primarily AT&T) to provide call termination services on a statewide basis to its carrier customers.

7. In D.98-09-069, the Commission granted AGS a CPCN to operate as a switchless reseller of inter-LATA and intra-LATA telecommunications services in this state.

8. On April 3, 2003, in Resolution T-16713, the Commission revoked AGS' CPCN based on the company's failure to pay fees and to file surcharge transmittals, as required by law.

9. On May 11, 2004, AGS applied for a CPCN authorizing the company to operate as a switchless reseller of long distance services, but AGS withdrew this application on June 3, 2004.

10. Despite the revocation of its CPCN and the withdrawal of its subsequent application for a new CPCN, AGS continued to provide services to its carrier-customers in California.

11. On October 28, 2004, the Director of CPSD sent AGS a letter directing the company to cease operations in California and apply for a CPCN.

12. AGS replied that as a provider of exclusively wholesale services, it is not required to hold a CPCN in order to operate in this state.

13. On December 29, 2004, the Commission's Executive Director sent AGS a letter, directing the company to file an application for a CPCN within 15 days or cease operations in California.

14. On December 29, 2004, AGS filed this application, seeking to obtain a CPCN authorizing the provision of facilities-based interexchange services on a statewide basis.

15. AGS' application in this docket states that AGS believes that as a provider of purely wholesale services, it is not required to obtain a CPCN, and that under Richfield, since AGS does not hold telecommunications services out to the public

and has not dedicated its services to the public, AGS is not a public utility subject to the Commission's jurisdiction.

16. On January 27, 2005, CPSD protested AGS' application.

17. CPSD's protest raised two main concerns regarding AGS' application:

    a. AGS' chairman at that time, Thomas Coughlin, was one of the former owners of Vista, which had previously been found guilty of slamming violations and fined $7 million by the Commission. To date, Vista's fine remains unpaid.

    b. After the Commission revoked AGS' CPCN in Resolution T-16713, AGS was unlawfully operating in California without a CPCN.

18. Also on January 27, 2005, AGS filed its Motion to Dismiss, on the grounds that as a provider of exclusively wholesale services, the company did not need a CPCN to operate in California and that under Richfield, even if an entity falls within the definition of a public utility as set forth in the Public Utilities Code, the entity is not a public utility unless it has dedicated its services to the public.

19. CPSD opposed the Motion, on the grounds that AGS' ownership and operation of a telephone network in California, and its resale of access to or capacity on that network to its carrier-customers, brought AGS within the definition of a regulated telephone company under Section 234(a).

20. On April 12, 2006, after participation in Commission ADR proceedings, the parties filed a joint motion for Commission adoption of the Settlement Agreement.

21. The principal terms of the Settlement Agreement are set forth in the foregoing opinion.

22. All active parties have agreed to settle this case, after extensive discussions and review of the record.

23. AGS and CPSD fairly reflect all affected interests in this proceeding. AGS represents the interests of shareholders. CPSD represents the interests of ratepayers.

24. Conducting further proceedings and litigating the issues in this case, particularly regarding the jurisdictional issue raised by AGS, would unnecessarily consume the time and valuable resources of the Commission and the parties.

Conclusions of Law

1. The Settlement Agreement fully resolves and settles all disputed issues between the parties in this proceeding.

2. The Settlement Agreement is reasonable in light of the whole record, consistent with law, consistent with prior Commission decisions, and in the public interest.

3. The Settlement Agreement contains adequate information regarding the rights and obligations of the parties and is sufficiently clear for the Commission and the parties to understand its terms and for the parties to carry out the agreement.

4. The Settlement Agreement is in the public interest and should be approved.

5. Based on our review of this application, there is no need to alter the preliminary determinations made in Resolutions ALJ 176-3145 as to the category of this proceeding and the need for a hearing.

6. This decision should be effective today so that the Settlement Agreement will take effect immediately.

O R D E R

IT IS ORDERED that:

1. The joint motion of Alliance Group Services, Inc. (AGS) and the Commission Consumer Protection and Safety Division for adoption of the proposed Settlement Agreement, attached as Attachment A, is granted.
2. The Settlement Agreement is approved without modification.

3. Application 04-12-029 remains open, for further adjudication of AGS' application for a facilities-based certificate of public convenience and necessity authorizing the provision of interexchange services in this state.

This order is effective today.

Dated September 7, 2006, at San Francisco, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
Commissioners

ATTACHMENT A
SETTLEMENT AGREEMENT

The Consumer Protection and Safety Division of the California Public Utilities Commission ("CPSD"), and Alliance Group Services, Inc. ("AGS") (collectively, the "Parties") hereby agree upon the following terms for the settlement (the "Settlement") of CPSD's Protest of AGS's application for a certificate of public convenience and necessity ("CPCN") to provide facilities-based inter-exchange service statewide, A.04-12-029 (the "Application"). This Settlement shall become effective when approved by the California Public Utilities Commission ("Commission").

TERMS

I. BACKGROUND

1. Alliance Group Services, Inc. ("AGS") is a Delaware corporation with its corporate office in Westport, Connecticut. Its exact legal name is Alliance Group Services, Inc. Its principal place of business is 1221 Post Road E., Westport, Connecticut, 06880. Its telephone number is (203) 221-8700.

2. AGS is a privately held corporation. It is a wholly owned subsidiary of AGS Acquisition, Inc ("Acquisition"), also a privately held corporation. Jess DiPasquale, the President of AGS, owns 15% of the shares of stock of Acquisition. The other 85% is owned by Alliance Group Holdings, Inc. ("Holdings.").

3. Holdings is also a privately held company. The majority of the shares of Holdings are owned by the SMC 2001 Trust, an irrevocable trust established in 2001 of which Sharon Coughlin is Trustor. The balance of the shares of Holdings are owned by five individuals unrelated to the Coughlin Family. The SMC 2001 Trust is a family trust, established by the Coughlin Family as an estate planning vehicle. The beneficiaries of the trust are Sharon Coughlin and her children.

4. Acquisition, the parent of AGS, is also is the parent of Alliance Prepaid, Inc. and Alliance International. Alliance Prepaid offers international prepaid calling

cards and Alliance International offers international switching. Holdings is also the parent of Swiss Telephone, a carrier that offers international call termination services.

5. Thomas M. Coughlin was a principal of Vista Group International dba Vista Communications ("Vista"), the Respondent fined in I. 99-04-020. Mr. Coughlin was not personally fined. Mr. Coughlin is no longer an officer of AGS. Vista is no longer in operation.

6. AGS employs the networks of other carriers (principally AT&T) to provide call termination services on a statewide basis to carriers that are customers of AGS ("carrier-customers"). These carrier-customers are generally known as switchless resellers because they do not own or lease their own switches. These carrier-customers typically do not own or lease any physical facilities; they rely instead on the networks of other carriers to complete the calls of their own end-user customers. Letters of agency ("LOAs") executed by end-user customers of the carrier-customers of AGS are executed in favor of, and retained by, the carrier-customers of AGS and not by AGS itself.

7. On July 27, 1998 AGS applied for operating authority as a switchless reseller of long distance services in California. On August 31, 1998 the Commission granted approval for AGS as a switchless reseller of inter-Local Access and Transport Area (LATA) and intra-LATA telecommunications services offered by communication common carriers in California and gave it CPCN number U-6047-C.[1]

8. In 1999, AGS purchased the customer base of U.S. Republic Communications (USRC, U-5773-C) from VarTec Telecom, Inc. (VarTec). On February 4, 2000, USRC filed Advice Letter No. 4 seeking authority for the purchase pursuant to the procedures set forth in D. 94-05-051. Advice Letter No 4 stated that USRC and AGS had executed a purchase agreement for certain assets of USRC, including but not limited to the Company's customer base, on December 24, 1999. Advice Letter No 4 became effective on March 13, 2000. The purchase was also

[1] D.98-09-069.

approved pursuant to Ordering Paragraph No. 4 of D. 02-04-020 issued on April 2. 2002. While finding that VarTec violated the Public Utilities Code by failing to obtain Commission approval before the sale became final, D.02-04-020 approved the sale stating that "since USRC and Alliance were both authorized to resell inter-exchange services, Alliance was qualified to purchase USRC".[2]

9. On April 3, 2003 AGS's operating authority (U-6047-C) was revoked by the Commission in Resolution T-16713 for non-payment of fees and failure to file Surcharge Transmittals as required by law. While no formal determination was made that AGS actually owed any fees, it was undisputed that no fee returns were filed during the period in question. The Commission revoked the license for U-6047-C under the name "U.S. Republic," instead of AGS. In fact, USRC's license number, U-5773-C, had already been cancelled at the request of USRC in Advice Letter No. 4.

10. On May 11, 2004, AGS re-applied for a CPCN for permission to operate as a switchless reseller of long distance services[3]. AGS withdrew its application on June 3, 2004. On October 28, 2004, CPSD directed AGS to cease business operations in California and apply for a CPCN. AGS denied that it required a license to operate as a telephone company indicating that its operations were limited to wholesale service. On December 14, 2004, Executive Director Steve Larson sent another letter to AGS, directing it to file an application for operating authority or cease doing business immediately.

11. On December 29, 2004, AGS filed Application 04-12-029 in response to Mr. Larson's directive. On January 26, 2005, CPSD filed a Protest to Application 04-12-029, raising two main concerns. CPSD first noted that AGS' then Chairman, Thomas M. Coughlin, was one of the owners of Vista while another principle

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[2] D.02-04-020, Finding of Fact No.33, p. 17.

[3] A.04-05-018.

in Vista, Phillip A. Bethune, was also, according to CPSD, a director of AGS; CPSD pointed to D.01-09-017, which fined Vista approximately $7 million for slamming and noted that the fine remains unpaid to date. In the Protest, CPSD argued that until the fine is paid, Coughlin and Bethune are unfit to own or operate a telephone company in California. Second, CPSD noted that while the Commission revoked AGS' authority to operate as a reseller of long-distance services in Resolution T-16713 issued April 3, 2003, since that time, AGS had continued to operate without a CPCN. The following month, AGS replied to the CPSD Protest noting, *inter alia*, that (1) the Commission had dismissed Mr. Coughlin and Mr. Bethune from the Commission's collection action in Superior Court for payment of the fine and that the dismissal had *res judicata* effect, (2) Mr. Bethune was not a director of AGS and (3) that AGS was not operating without a CPCN in open defiance of the Commission but because, as it explained to CPSD on more than one occasion, it believed that it did not need a CPCN to provide exclusively wholesale service.

12. On January 27, 2005, AGS filed a Motion for Dismissal. In its Motion for Dismissal, AGS sought an order from the Commission dismissing its Application and finding that AGS was not a regulated entity and did not need a license to operate CPSD opposed the Motion for Dismissal on the grounds that AGS is a telephone company, because it owns and operates a telephone network in California, and resells access or capacity on that network to other companies. CPSD argued that AGS' activity as a reseller of telephone services falls under the definition of what constitutes a regulated telephone company contained in Public Utilities Code section 234(a): "'Telephone corporation' includes every corporation or person owning, controlling, operating, or managing any telephone line for compensation within this state." AGS filed a reply arguing that CPSD had placed excessive reliance on the text of Section 234 without recognizing that *Richfield*[4] (1) trumped the text of the statute and (2) was not limited to

[4] Richfield Oil Corporation v. CPUC (1960) 54 Cal. 2nd 419

the precise facts of that case. The Commission has not issued a Ruling regarding AGS's Motion for Dismissal. Pursuant to this Settlement, AGS agrees to withdraw its Motion when the Settlement is approved by the Commission.

II. AGS DIVESTITURE

13. The principal indirect owner of AGS' is the SMC 2001 Trust. AGS is wholly owned by AGS Acquisitions, Inc., 85% of the stock of which is, in turn, owned by Alliance Group Holdings, Inc. The majority shareholder of Alliance Group Holdings, Inc. is the SMC 2001 Trust, an irrevocable trust established in 2001 of which Sharon Coughlin (wife of Thomas M. Coughlin) is Trustor. Upon Commission approval of this settlement agreement, the present indirect majority owners of AGS (the SMC 2001 Trust) will embark on an effort to divest themselves of the indirect control of AGS; they will do so by transferring control of Holdings (or causing the transfer of control of one its subsidiaries) it to an unrelated third party such that the SMC 2001 Trust no longer holds a controlling interest (direct or indirect) in AGS. Owners will undertake divestiture efforts with all deliberate speed consistent with prudent business practices. Owners commit to submitting an application for said transfer of control of the company within one year following the date of the Commission's approval A.05-12-029. CPSD agrees to grant any reasonable good faith request to extend the deadline.

14. AGS will not sell or in any way transfer ownership or control of AGS to any members of the Coughlin Family or Mr. Phillip Bethune, or any companies they own or operate. CPSD maintains the right to investigate the identity of the potential buyers of AGS to verify the above.

15. During the period between the Commission's approval of this settlement agreement and the date of the divestiture described in Paragraph 14 above, Thomas M. Coughlin will play no role in the management of AGS. Mr. Coughlin will not serve as an Officer or Director of the Company, nor will he receive any compensation as an employee. Mr. Coughlin's sole interest in the company will be of an indirect passive

nature deriving from the interest members of his family have in the trust which owns a majority of the shares of AGS' ultimate parent company, Holdings AGS will provide copies of any documentation regarding any termination agreement or severance letter regarding the limitation of Mr. Coughlin's role in the management of AGS.

III. TERMINATION OF SERVICE TO AGS' CUSTOMERS THAT LACK OPERATING AUTHORITY

16. As described above, AGS employs the networks of other carriers to provide call termination services to carriers that are customers of AGS ("carrier-customers"). During the investigation phase of this matter, it came to light that some of AGS' carrier-customers may have been operating without valid operating authority.

17. Therefore, between the effective date of a Commission order adopting this settlement agreement and the effective date of any transfer of the assets or control of AGS pursuant to the divestiture described in Paragraph 13 above, AGS will maintain a policy of terminating service to any carrier-customers of AGS that are identified by the Commission staff as lacking the appropriate Commission operating authority. Specifically, upon notice to Applicant by the Commission's Telecommunications Division ("TD") or Consumer Protection and Safety Division ("CPSD"), in the manner set forth herein, that one of Applicant's customers either does not possess a Certificate of Public Convenience and Necessity ("CPCN") or that the CPCN initially awarded to that company has been revoked or suspended, AGS will provide the identified company with thirty days notice that AGS will terminate service because of that company's failure to hold the requisite operating authority. The notice to Applicant described above shall be by first class and electronic mail to:

Mr. Jess DiPasquale
President & CEO
Alliance Group Services, Inc.
1221 Post Road East
Westport, CT 06880
jess@alliancegrp.com

with copy to:

Thomas J. MacBride, Jr.
Goodin, MacBride, Squeri, Ritchie & Day
505 Sansome Street, Suite 900
San Francisco, CA 94111
Phone No.: (415) 765-8444
Fax No. : (415) 398-4321
tmacbride@gmssr.com

Moreover, in the future, AGS will agree that new customers that wish to originate traffic in California will be required to identify their operating authority ("U" number) for AGS.

18. Within six months of the Commission approval of this agreement, and continuing every six months until divestiture is complete, AGS will provide CPSD with a status report which (1) lists the of AGS' carrier-customers, and (2) provides verification that each carrier-customer of AGS previously identified by CPSD to AGS as unlicensed has either (a) verified its certification or (b) been terminated by AGS.

19. If CPSD advises AGS that a carrier-customer does not have valid operating authority, AGS will request verification of the certification from the carrier-customer. If CPSD is not satisfied that the subject carrier-customer is validly certified, the Director of CPSD will so inform AGS, and AGS will provide to the subject carrier-customer 30 days notice of termination.

IV. WITHDRAWAL OF CPSD'S PROTEST AND AGS' MOTION TO DISMISS

20. Within 40 days of the effective date of the Commission decision approving this settlement, CPSD will withdraw its Protest and support the granting of Application 04-12-029 (as modified and restricted by this agreement). Within that same 40-day period, AGS will withdraw its motion to dismiss A.04-12-029.

V. ADVOCACY IN FAVOR OF SETTLEMENT

21. CPSD and AGS agree to employ their best efforts to seek expeditious Commission approval of the Settlement and, upon approval of the Settlement, A.04-12-029. The Parties agree that they will not apply to the Commission for any

rehearing of the Commission decision adopting the Settlement in full or take any other action that would in any manner be inconsistent with fully supporting this Settlement. If a third party is permitted to seek rehearing of the decision approving the settlement, the obligations herein that are premised on the effective date of the order approving the settlement shall be stayed for the period of the pendency of that application for rehearing.

VI. DISMISSAL AND SETTLEMENT

22. This Agreement represents a full and final resolution of the Application and Protest, and the matters contained therein. If the Commission does not approve this Agreement in full, it shall have no force and effect.

23. By submitting this Application and entering into this Agreement, AGS submits to the jurisdiction of the Commission and agrees to cooperate with Commission Staff's data requests, regarding the certification status of AGS' carrier-customers, consumer complaints against AGS or its carrier-customers, or any other matter under the Commission's jurisdiction.

VII. GENERAL TERMS

24. Severability. No individual term of this Agreement is assented to by any party except in consideration of the Parties' assent to all other terms. Thus, the Agreement is indivisible and each part is interdependent on each and all other parts. Any party may withdraw from this Agreement if the Commission modifies, deletes from, or adds to the disposition of the matters stipulated herein. The Parties agree, however, to negotiate in good faith with regard to any Commission-ordered changes in order to restore the balance of benefits and burdens, and to exercise the right to withdraw only if such negotiations are unsuccessful.

25. Absence of Admissions. This Settlement will not constitute approval, disposition of, or precedent regarding any legal principle or issue of law or fact in this or any future proceeding. After the Issuance Date, CPSD will initiate no enforcement action and seek no administrative or other penalties against the Respondents based on the matters alleged in the Protest. Each material breach of this Settlement will constitute a

separate violation and will entitle the Commission to take any necessary action to enforce its orders.

26. Successors. This Agreement and all covenants set forth herein shall be binding upon and shall inure to the benefit of the respective Parties hereto, their successors, heirs, assigns, partners, representatives, executors, administrators, subsidiary companies, divisions, units, agents, attorneys, officers, and directors.

27. Knowing and Voluntary Execution. The Parties acknowledge each has read this Agreement, that each fully understands the rights, duties and privileges created hereunder, and that each enters this Agreement freely and voluntarily. Each Party further acknowledges that it has had the opportunity to consult with counsel and discuss the provisions hereof and the consequences of signing this Agreement, and that each Party or their counsel have made such investigation of the facts and law pertaining to the matters herein as they deem necessary, and that they have not relied and do not rely upon any statement, promise or representation by any other party or its counsel, whether oral or written, except as specifically set forth in this Agreement.

28. Authority to Execute Agreement. The undersigned acknowledge and covenant that they have been duly authorized to execute this Agreement on behalf of their respective principals and that such execution is made within the course and scope of their respective agency or employment.

29. Entire Agreement. The Parties expressly acknowledge that the consideration recited in this Agreement is the sole and only consideration of this Agreement, and that no representations, promises, or inducements have been made by the Parties or any director, officer, employee, or agent thereof other than as set forth expressly in this Agreement.

30. No Waiver or Modification. This Agreement constitutes the entire agreement between the Parties and no terms herein may be waived, modified or amended, except in a writing signed by both Parties.

31. Choice of Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of California and the rules, regulations and General Orders of the California Public Utilities Commission.

32. Execution in Counterparts. This Agreement may be executed by any of the Parties in counterparts with the same effect as if all Parties had signed one and the same document. All such counterparts shall be deemed to be an original and shall together constitute one and the same Agreement. A signature transmitted by facsimile shall be regarded as an original signature.

ALLIANCE GROUP SERVICES, INC.

Dated:_____ _____

Mr. Jess Mr. JessDiPasquale
President & CEO
Alliance Group Services, Inc.
1221 Post Road East
Westport, CT 06880

Dated:_____ _____

Thomas MacBride
505 Sansome Street
Suite 900
San Francisco, CA 94111

CONSUMER PROTECTION AND SAFETY SERVICES DIVISION

Dated:_____ _____

Richard W. Clark
Director of Consumers Protection and Safety Division
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

Dated:_____

_____

Travis T. Foss
Staff Counsel
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

(END OF ATTACHMENT A)