

MILDRED SMITH,

Plaintiff,

v.

SBC COMMUNICATIONS, INC.,  
SOUTHERN NEW ENGLAND TELEPHONE  
CO. d/b/a SNET,

and

BJ'S WHOLESALE CLUB, INC.  
Defendants.

: DOCKET NO. L-9159-99  
: CIVIL ACTION  
: ORDER GRANTING JOINT MOTION  
: FOR PRELIMINARY APPROVAL OF  
: CLASS ACTION SETTLEMENT

The plaintiff's unopposed motion for, *inter alia*, preliminary approval of class action settlement and notice to class members came on calendar for hearing on 11/9/05 at 9<sup>00</sup> AM in the Superior Court of New Jersey, Camden County. All parties appeared through counsel as stated on the record. The Court, having reviewed the moving papers and all supporting documentation, hereby GRANTS the motion and ORDERS as follows:

1. The proposed Settlement Agreement ("Settlement Agreement") is preliminarily approved as fair, reasonable and adequate, free of collusion to the detriment of the Settlement Class Members and within the range of possible final judicial approval.

2. This Court finds that the Settlement Class as proposed in the Settlement Agreement meets all of the requirements under Rule 4:32-1. Accordingly, the Court provisionally certifies a Settlement Class composed of:

All persons who purchased pre-paid telephone calling cards offered by Communication Design Group, Inc. from vending machines located on the premises of a BJ's club in the United States between February 1, 1998 and June 12, 2001, excluding Defendants and their officers.

3. The Court provisionally designates Mildred Smith as Class Representative and James C. Shah and Donald P. Alexander as Class Counsel.

4. The Court provisionally finds that the Settlement Class Members are so numerous that joinder of all members would be impracticable; that the litigation and proposed Settlement raise questions of law and fact common to the claims of the Settlement Class Members and these common questions predominate over any questions affecting only individual members of the Settlement Class. The Court further provisionally finds that the claims of the named representative Plaintiff are typical of the claims of the Settlement Class and that Plaintiff and the Class have fairly and adequately protected the interest of the Settlement Class in connection with the Settlement Agreement and that a class action is superior to other methods available for adjudicating the controversy.

5. The Court approves the nationwide publication of Class Notice attached to the Settlement Agreement as Exhibit D as to both form and content and finds that the implementation of the Notice Program meets the requirements of Rule 4:32-2 and due process and is the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all Settlement Class Members. Counsel for the parties are directed to revise the Class Notice prior to disseminating it by filling in the missing information. These revisions need not be presented to the Court for approval prior to the publication and/or dissemination of the Class Notice. The Class Notice will be published and/or disseminated in accordance with the approved Notice Program as described in the Settlement Agreement.

6. Defendant BJ's shall, prior to the Final Approval Hearing, certify to this Court that Class Notice was disseminated consistent with the terms of the Settlement Agreement.

7. The Class Action Settlement Claim Form ("Claim Form") attached to the Settlement Agreement as Exhibit C is approved. Counsel for the parties are directed to revise the Claim Form prior to disseminating it by filling in the missing information. These revisions need not be presented to the Court for approval prior to the publication and/or dissemination of the Claim Form.

8. All Settlement Class members as defined above may elect to opt out of the settlement by filing a written request for exclusion from the Class ("Request for Exclusion") with Class Counsel and Defendant's Counsel at the addresses set forth in the Class Notice that should include: (1) the person's full name, current address, telephone number, the date of purchase of the pre-paid telephone card and either their BJ's membership number or the location of the BJ's Wholesale Club where the card was purchased; (2) a statement that the person wishes to be excluded from the Settlement Class; and (3) a statement that the person understands that they will not be eligible for any of the rights and remedies set forth in the Settlement Agreement.

9. To be timely, all Requests for Exclusion must be postmarked no later than 1/4/06 ("Opt Out Deadline").

10. Any Settlement Class Member may appear at the Final Approval Hearing, either on their own or through their own attorney hired at their own expense, and show cause why the Settlement Agreement should not be approved. No Settlement Class Member shall be heard or entitled to contest or object to the Court's decision on the Settlement unless that person has filed a notice of objection with the Court and served by mail or hand delivery such notice of objection upon Class Counsel and Defendant's Counsel at the address set forth in the Class Notice, no later than the Objection Date provided below. Members of the Settlement Class can assert objections to the Settlement as follows:

11. Persons objecting to the settlement must set forth in their objection their full name, current address, current telephone number, the date of purchase of the pre-paid telephone card and either their BJ's membership number or the BJ's Wholesale Club location at which the card was purchased, and must state in writing all objections and factual and legal reason therefore, and include any and all supporting papers. If applicable, the objector's written statement must include the objector's statement of intent to appear at the Final Approval Hearing. Only objecting Settlement Class Members who specify in their objections that they intend to present objections orally at the Final Approval Hearing shall have the right to present their objections orally at the Final Approval Hearing. Any Settlement Class member who does not file timely written objections to the settlement shall not be permitted to present his or her objections to the settlement at the Fairness Hearing and shall be foreclosed from seeking review of the Settlement Agreement by appeal or otherwise. To be timely, all objections must be postmarked no later than 1/4/06 ("Objection Date").

12. Any Settlement Class Member who does not timely and validly request exclusion from the Settlement Class shall be included in such Settlement Class and be bound by all of the terms of the Settlement Agreement if a Final Approval Order is entered.

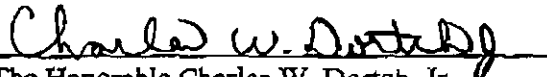
13. Pending the Court's final determination of whether the Settlement Agreement will be approved, each and every member of the Settlement Class, any action by or through them, or on behalf of them, is barred and enjoined from instituting, commencing, or continuing to prosecute, directly or indirectly, as an individual or collectively, representatively, derivatively on behalf of them, or in any other capacity of any kind whatsoever, any action in the New Jersey Courts, and other state court, any federal court, or any other tribunal or forum of any kind, against Defendant BJ's that asserts any settled claims that would be released and discharged

upon final approval of the settlement (except as the Court may further order upon application of a Settlement Class Member and notice to all parties.)

14. A Final Approval Hearing will be conducted on 1/25/06 at 9<sup>00</sup>. At the Final Approval Hearing, the Court will address whether the Class Settlement should be finally approved.

IT SO ORDERED.

Dated:

  
The Honorable Charles W. Dortch, Jr.