BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

October 12, 2012

IN RE:	)	**DOCKET NO. 11-00181**
	)	
PETITION OF TELMATE, LLC FOR CERTIFICATE OF AUTHORITY TO RESELL TELECOMMUNICATIONS SERVICES IN TENNESSEE	)))))	
IN RE:	)	**DOCKET NO. 11-00182**
	)	
PETITION OF TELMATE, LLC FOR AUTHORITY TO PROVIDE COCOT SERVICES IN TENNESSEE	))))	

PETITION FOR RECONSIDERATION BASED ON NEW EVIDENCE

Pay-Tel Communications, Inc. ("Pay-Tel") asks the Authority to reconsider its decision limiting Pay-Tel's participation in this docket to the issue of whether the applicant, Telmate, LLC must obtain a certificate of convenience and necessity in order to offer telephone service in Tennessee.[1]

The basis for this petition is newly discovered evidence[2] showing that (1) Telmate has misled the TRA concerning the identity of its "regulated partner" (2) Telmate's actual partner, Legacy International, has been the subject of sanctions in Florida, North Carolina, Nebraska,

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[1] Under TRA Rule 1220-1-2-.20, a petition for reconsideration may be filed "within fifteen days after the date of the entry of an order." The TRA decision concerning Pay-Tel's limited intervention was made during an agenda conference on September 10, 2010. No order has yet been issued. Therefore this motion is timely.

[2] The TRA's rules state that a petition for reconsideration may be based on "new evidence" and that the petitioner should explain "the cause for the failure to introduce the proposed new evidence in the original proceeding" and provide "a detailed description of any such new evidence proposed to be introduced including copies of documents sought to be introduced. . . ." TRA Rule 1220-1-2-.20

Georgia, and California for, among other things, operating without authority, "exorbitant" charges, double billing, failure to disclose rate information, and failure to make refunds to customers after being ordered to do so,[3] and (3) the sample bills which Telmate filed with the Authority do not comply with the Authority's billing rules which require that the "name of the service provider and a toll free number of the service provider" be included on the bill. TRA Rules 1220-4-2-.58(2)(b).

Argument

On December 16, 2011, Telmate filed a response to a data request from the TRA staff. The response to Question 1 stated, "Telmate does not provide local carrier services such as LEC or collect call billing. Calls of this type are branded and handled by its regulated partner Airespring."

On June 20, 2012, Telmate responded to another staff data request, explaining that Telmate, not its regulated partner, will contract with a correctional facility to provide telephone service in Tennessee.

Although the Hearing Officer limited Pay-Tel's intervention in this case to the issue of whether Telmate should have filed for a certificate pursuant to T.C.A. § 65-4-201, the Hearing Officer allowed Pay-Tel to ask three discovery questions of Telmate. The responses to those questions were filed late Monday, October 8, 2012. In those responses, Telmate revealed, for the first time, that its "regulated partner" Airespring "does not have any relationship with the correctional facilities, the inmates, or end users for any prepaid or collect calls from correctional facilities under contract with Telmate. Branding and billing of collect calls from inmates is

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[3] The most recent sanctions against Legacy were imposed last year in Georgia and California. In California, Legacy admitted to having failed to disclose earlier investigations and sanctions issued by the states of Florida, Nebraska and North Carolina. The California Staff found that Legacy had been "sanctioned, investigated, penalized, had its tariff canceled, and had its public charter revoked in sixteen other states." A copy of the Staff Report is attached.

provided by Legacy Long Distance International, Inc., a registered provider in Tennessee." Response to Discovery, p. 8-9. Telmate also provided a copy of its contract with Legacy and three examples of bills issued, presumably on behalf of Telmate, by Legacy.

In other words, local calls in Tennessee will not be "branded and handled by [Telmate's] regulatory partner Airespring" as Telmate said in December but will be "branded and directly billed" through Legacy Long Distance International.

Legacy is well known among inmate telephone service providers because of its record of illegal and improper conduct over the last few years. Attached to this filing are settlement orders issued last year by the Georgia and California commissions. Attached to the California order is a staff report which includes a list of sixteen other states where Legacy has faced legal problems.

Finally, the sample bills provided by Telmate do not comply with the TRA's rules. Telmate has made clear that it, and no one else, will be the "service provider" in Tennessee. The sample bills do not, however indicate that Telmate is the service provider. The name "Telmate" never appears on the bills. The "service provider" appears to be Legacy, not Telmate, contrary to the TRA's rules.

Conclusion

Clearly, this new evidence—which was not available until October 8, 2012—raises serious questions about Telmate's application to offer service in Tennessee. Clearly, Pay-Tel, whose actions led to the discovery of this information, should be allowed to intervene in this docket and participate fully as a party.

For these reasons, Pay-Tel asks the Authority to reconsider its decision limiting Pay-Tel's participation in this case and grant Pay-Tel's petition to intervene and raise these and other issues[4] which may arise.

Respectfully submitted,

BRADLEY ARANT BOULT CUMMINGS LLP

By: ______________________________

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[4] Because this matter is scheduled for argument and, possibly, a hearing on October 15, 2012, Pay-Tel has not yet had time to investigate other possible issues raised by Telmate's discovery responses. For example, it appears that customers are billed a "regulatory" fee of $.99 not once but on each day that the customer makes a local call. It is also not clear if Telmate itself ever sends bills to prepay customers.

CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of October, 2012, a copy of the foregoing document was served on the parties of record, via hand-delivery, overnight delivery or U.S. Mail, postage prepaid, addressed as follows:

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HENRY WALKER

7/2980031.1

Decision 11-10-017 October 6, 2011

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation on the Commission's Own Motion into the Billing Practices and Conduct of Legacy Long Distance International, Inc. (Legacy) to Determine if Legacy Violated the Law, Rules, and Regulations Governing the Manner in which California Consumers are Billed for Phone Services.	Investigation 10-06-013 (Filed June 24, 2010)

DECISION APPROVING SETTLEMENT AGREEMENT

1. Summary

This decision approves the proposed Settlement Agreement (Appendix A) between the Commission's Consumer Protection and Safety Division and respondent, Legacy Long Distance International, Inc. (Legacy) resolving all issues in this investigation.

The Settlement Agreement, among other things, requires that Legacy (1) issue refunds or credits to California consumers who complained about Legacy's billing or were double-billed during the period between 2005-2008, and (2) pay a penalty of $215,000 to the State of California General Fund.

The Settlement Agreement also requires that Legacy conduct an internal investigation to confirm that it has addressed all of approximately 14,000 reported inquiries from consumers regarding Legacy's billing.

Investigation 10-06-013 is closed.

2. Background

Legacy Long Distance International, Inc. (U5786C) (Legacy) is a California corporation located in Cypress, California, that was incorporated in 1996. Legacy operates as: 1) a facilities-based and resale carrier of interexchange services, including operator services in California; and 2) a reseller of local exchange services in California. Legacy provides local and long distance services, including operator services, to Customer-Owned Pay Telephone (COPT) service providers, inmate facilities, and to hotels, motels, and other hospitality locations.

This Commission's Consumer Protection and Safety Division's (CPSD) investigation of complaints against Legacy found 686 complaints against Legacy via its billing aggregator BSG and 706 complaints against Legacy made to the Commission's Consumer Affairs Branch (CAB). CPSD's report alleged that Legacy placed unauthorized charges (or cramming) on customer bills.

Based on CPSD's report, the Commission voted unanimously on June 24, 2010 to issue an Order Instituting Investigation (I.) 10-06-013 (OII), to investigate these allegations and to determine whether Legacy violated provisions of the Public Utilities Code, general orders, and other rules or requirements. Specifically, the Commission sought to investigate:

1. Whether Legacy had violated Pub. Util. Code § 2890(a) by placing unauthorized charges on consumers' telephone bills (also known as "cramming"). The alleged unauthorized charges took the following form:
   - Charges for collect calls that did not occur;
   - Charges for unauthorized third-party calls;
   - Charges for calls that did not connect well;
   - Charges for rejected collect calls; and
   - Charges for collect calls left on answering machines.

2. Whether Legacy had violated Pub. Util. Code §§ 2896(a) and 451, as well as the Federal Telecommunications Act of 1996, Section 226, by failing to provide consumers with sufficient rate information with which to make informed choices on whether to accept certain collect calls or not.

3. Whether Legacy had violated Pub. Util. Code § 489(a) by failing to file its complete tariff timely, and by charging consumers under rates it had not filed.

4. Whether Legacy had violated Pub. Util. Code § 532 by charging consumers in excess of rates posted in rate sheets.

5. Whether Legacy had violated Rule 1.1 of the Commission's Rules of Practice and Procedure by failing to disclose numerous regulatory sanctions Legacy sustained in 16 other states.

The order directed Legacy to provide responses to the alleged violations of specific sections of the Pub. Util. Code within 30 days of the OII's issuance, which was July 7, 2010, and to show cause why the Commission should not find violations in this matter and why the Commission should not impose penalties, or any other forms of relief, if violations were found.

On July 14, 2010, Legacy wrote to the Executive Director of the Commission asking for an extension of time for responding. On July 16, 2010, the Executive Director granted Legacy an extension until September 7, 2010.

On August 23, 2010, a prehearing conference (PHC) was held at the Commission at which Legacy and CPSD agreed to a schedule under which Legacy would provide a response and its reply testimony on September 21, 2010.

On September 21, 2010, Legacy filed a response to the questions in Ordering Paragraph (OP) 2, but failed to reference and identify supporting documents as required by OP 2. Legacy also failed to submit reply testimony.

On October 1, 2010, Legacy filed a motion asking for relief from providing further identification of documents supporting its responses. On October 13, 2010, CPSD filed in opposition to the Motion. On October 26, 2010, Administrative Law Judge (ALJ) Sullivan issued a ruling revising the schedule and clarifying that the scope of the proceeding included the issue of whether Legacy's Certificate of Public Convenience and Necessity (CPCN) should be revoked. In addition, the ruling denied Legacy's Motion for Relief.

On November 12, 2010, Legacy filed an amended response to the OII and submitted reply testimony and accompanying exhibits.

By joint motion filed May 13, 2011, CPSD and Legacy requested adoption of their Settlement Agreement. The proposed Settlement Agreement, including a stipulation of facts by the parties, is attached to this decision as Appendix A.

3. Terms of the Settlement Agreement

To settle this proceeding, Legacy, among other things, admitted to the following:

1. Legacy failed to timely submit a CDROM copy of its tariff that was in effect as of January 1, 2007.
2. Legacy failed to properly update its tariff for a period of time prior to mid-2007, which resulted in charges to some consumers exceeding amounts specified in its tariff.
3. Legacy made misrepresentations in its withdrawn CPCN application (Application (A.) 06-11-003) by failing to disclose sanctions and investigations in Florida, Nebraska, and North Carolina.
4. Legacy's charges for operator service calls could be viewed as exorbitant.

5. Legacy double-billed a significant number of consumers. Legacy estimates that between 2005 and 2008, approximately 5,700 calls out of roughly 985,000 calls completed to California consumers were double-billed.

6. On very rare occasions, a consumer may be billed for a call that was not authorized.

7. On some occasions, Legacy may bill for calls that did not connect well.

8. Until recently, Legacy's automated operator system did not permit California intrastate collect call recipients to ask for rates.

Legacy denied any intentional wrongdoing. Legacy argued, among other defenses, that its failure to make disclosures was due to carelessness and was not intentional. Regarding high prices, Legacy stated that its charges are determined through negotiations with COPT owners and aggregators who are able to demand the imposition of very high charges for calls as a condition to serving their COPTs.

As for the admitted practice of double-billing and other unauthorized charges, Legacy contended that it was not aware of the double-billings until the OII was issued, and that the double-billing occurred as the result of Legacy's adoption of an inappropriate procedure in which Legacy billed customers for calls Legacy mistakenly believed had not yet been billed. Legacy contended that in general, Legacy's policies, practices, and systems do not allow charges to be billed for rejected collect calls, unauthorized third-party-billed calls, or attempted collect calls that are answered by answering machines. However, Legacy stated that it has no way to ascertain, once a call is authorized, whether the subsequent connection is of suitable quality.

Finally, Legacy argued that its practices relating to a call recipient's ability to get rate information conformed to standard, competitive industry practice.

The parties disagreed on whether Commission precedent requires alternative operator service providers to disclose rates to collect call recipients.

In order to correct its admitted violations, Legacy claimed that it had recently re-programmed its automated operator system to enable call recipients to obtain complete rate information prior to accepting charges. Legacy argued that this new practice is unique and places it at a competitive disadvantage in negotiating with COPT owners and aggregators.

Legacy asserted that it has confirmed that charges for approximately 3,100 mischarged calls were removed from the consumers' bills. Legacy stated that it maintains a very liberal policy of providing discounts or refunds to consumers who complain directly or through regulatory agencies regarding excessive charges for operator-handled calls or who deny authorizing such charges, and that discounts or refunds are very often provided notwithstanding call data showing that such calls were authorized and completed.

Legacy agreed that it will comply with all Pub. Util. Code sections and the tariffs applicable to Legacy's operations. If there are any future disputes from California consumers regarding Legacy, Legacy will provide to CAB both the billing records and the switch records relevant to the dispute.

4. Discussion

Pursuant to Rule 12.1(d), the Commission will not approve a settlement unless it is reasonable in light of the whole record, consistent with law, and in the public interest.

Nothing in the Settlement Agreement contravenes any statutory provisions or prior Commission decisions, and it provides sufficient information for us to discharge our future regulatory obligations with respect to the parties and their interests and obligations.

We have historically favored settlements that are fair and reasonable in light of the record as a whole. Concerning the record in this proceeding, the stipulation of facts constitutes an admission that Legacy did indeed violate each of the cited provisions of the Pub. Util. Code. Specifically, regarding allegations in the OII:

1. The admission that Legacy failed to timely submit a CDROM copy of its tariff that was in effect as of January 1, 2007 confirms allegations 2, 3, and 4.

2. The admission that Legacy failed to properly update its tariff for a period of time prior to mid 2007, which resulted in charges to some consumers exceeding amounts specified in its tariff confirms allegations 3 and 4.

3. The admission that Legacy made misrepresentations in its withdrawn CPCN application (A.06-11-003) by failing to disclose sanctions and investigations in Florida, Nebraska, and North Carolina confirms allegation 5.

4. The admission that Legacy's charges for operator service calls could be viewed as exorbitant pertains to allegation 2.

5. The admission that Legacy double-billed a significant number of consumers (Legacy estimates that between 2005 and 2008, approximately 5,700 calls out of roughly 985,000 calls completed to California consumers were double billed) confirms allegation 1.

6. The admission that on very rare occasions a consumer may be billed for a call that was not authorized pertains to allegation 1.

7. The admission that on some occasions Legacy may bill for calls that did not connect well confirms allegation 1.

8. The admission that until recently, Legacy's automated operator system did not permit California intrastate collect call recipients to ask for rates pertains to allegation 2.

Therefore, Legacy admits to these alleged violations of law and rules.

In this case, although Legacy maintains that its failure to disclose information and its over-billing of customers was inadvertent, it acknowledged that it did fail to disclose and over-billed a great number of its customers. As a consequence of its admitted violations of law, the Settlement Agreement proposes that Legacy will pay a fine to the General Fund, refund its customers, conduct an internal investigation to ensure it has addressed customer complaints and modify its operations to make rate information available to called parties and ensure future compliance with Pub. Util. Code and other regulations. Thus, Legacy has admitted its errors, offered restitution to affected customers that it can identify, and instituted changes in policy and practices. Also, it will pay a fine.

The Settlement Agreement resolves a potentially time-consuming and disruptive dispute and avoids future litigation. In addition, it provides that customers who may not have been aware of prior double billings are provided a fair opportunity to obtain refunds and ensures that all outstanding, legitimate consumer complaints are properly redressed.

While we find the number of customers harmed and the amount of admitted violations by Legacy to be highly troubling, we find that the benefits to the public, including the payment to the General Fund but most importantly the guaranteed refund to customers harmed by Legacy's practices, outweigh the benefits of continued litigation with its associated cost and uncertainty of outcome.

Furthermore, the settlement will ensure that going forward, both Legacy and CAB will have appropriate data before them when addressing customer complaints and that recipients of collect calls are able to obtain full rate disclosure before accepting a call.

As for the penalty amount proposed in the Settlement Agreement, in determining the amount of the fine, we look to the criteria established in Decision (D.) 98-12-075, Appendix B, which has provided guidance in all subsequent cases in which such issues arise. We consider the following criteria: 1) The severity of the economic or physical harm resulting from the violation; 2) The utility's conduct to prevent, detect, disclose, and rectify the violation; 3) The utility's financial resources; 4) The public interest involved; 5) The totality of the circumstances; and 6) Commission precedents. We require each public utility to fully comply with all relevant statutes, rules, regulations, and Commission orders, and we expressly order each utility to do so as a condition of our approval of its authority to operate.[1]

In this particular situation, the severity of the economic harm, with approximately 5,700 customers double-billed, and other customers billed for unauthorized calls, is high. However, the Settlement Agreement demonstrates that the utility has committed to a course of action to prevent, detect, disclose, and rectify the violation. Based on the confidential CPSD report filed under seal, the amount of the proposed fine, which was reached in a compromise by both parties, is substantial and the parties provide ample precedent to support it. In light of the overall Settlement Agreement and the totality of the circumstances,

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[1] D.98-12-075, Appendix B.

we find the penalty level of the settlement payment to the General Fund reasonable and lawful.

The Settlement Agreement is reasonable in light of the record as a whole, consistent with law, and in the public interest. It resolves all issues before the Commission. Accordingly, this decision adopts the Settlement Agreement.

5. Proceeding Category and Need for Hearing

The OII categorized this Investigation as adjudicatory as defined in Rule 1.3(a) and anticipated that this proceeding would require evidentiary hearings. Because no hearings are now required as a result of the settlement, the hearing determination is changed to state that no evidentiary hearings are necessary.

6. Assignment of Proceeding

Catherine J. K. Sandoval is the assigned Commissioner, and Timothy J. Sullivan is the assigned Administrative Law Judge and the presiding officer in this proceeding.

7. Waiver of Comment Period

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Section 311(g)(2) of the Public Utilities Code and Rule 14.6(c)(2) of the Commission's Rules of Practice and Procedure, the otherwise applicable 30-day period for public review and comment is waived.

Findings of Fact

1. Legacy failed to timely submit a CDROM copy of its tariff that was in effect as of January 1, 2007.

2. Legacy failed to properly update its tariff for a period of time prior to mid 2007, which resulted in charges to some consumers exceeding amounts specified in its tariff.

3. Legacy made misrepresentations in its withdrawn CPCN application (A.06-11-003) by failing to disclose sanctions and investigations in Florida, Nebraska, and North Carolina.

4. Legacy's charges for operator service calls could be viewed as exorbitant.

5. Between 2005 and 2008, approximately 5,700 calls out of roughly 985,000 calls completed to California consumers were double-billed. In other words, Legacy double-billed a significant number of consumers.

6. On very rare occasions a consumer may be billed by Legacy for a call that was not authorized.

7. On some occasions Legacy may have billed for calls that did not connect well.

8. Until recently, Legacy's automated operator system did not permit California intrastate collect call recipients to ask for rates.

9. Legacy maintains that its failure to disclose information and its over-billing of customers was inadvertent.

10. Under terms of the Settlement Agreement, Legacy will pay a fine to the General fund, refund its customers, conduct an internal investigation to address customer complaints and modify its operations to make rate information available to customers.

11. The terms of the Settlement Agreement ensure that both CAB and Legacy will have appropriate data before them when addressing customer complaints and that customers are able to obtain full rate disclosure before accepting a call.

12. Under terms of the Settlement Agreement, customers who may not have been aware of prior double billings are provided a fair opportunity to obtain refunds.

13. Based on the whole record, both parties face substantial litigation risk as to whether their respective positions will prevail.

14. The Settlement Agreement avoids the time, expense, and uncertainty of further litigating and resolving the matter and, by requiring a settlement payment, affirms the importance of adherence to the Commission's rules and orders.

15. The severity of the economic harm to consumers from Legacy's violations is high. However, the Settlement Agreement demonstrates that Legacy has committed to a course of action to prevent, detect, disclose, and rectify the violations. The Settlement Agreement is supported by ample Commission precedent.

Conclusions of Law

1. Legacy violated Pub. Util. Code § 2890(a) by placing unauthorized charges on consumers' telephone bills (also known as "cramming").

2. Legacy violated Pub. Util. Code §§ 2896(a) and 451 by failing to provide consumers with sufficient rate information.

3. Legacy violated Pub. Util. Code § 489(a) by failing to file its complete tariff timely, and by charging consumers under rates it had not filed.

4. Legacy violated Pub. Util. Code § 532 by charging consumers in excess of rates posted in rate sheets.

5. Legacy violated Rule 1.1 of the Commission's Rules of Practice and Procedure by failing to disclose numerous regulatory sanctions Legacy sustained in 16 other states.

6. Nothing in the Settlement Agreement contravenes any statute or Commission decision or rule.

7. The benefits to the public in the Settlement Agreement outweigh the benefits of continued litigation.

8. The Settlement Agreement is in the public interest.

9. The penalty level of the Settlement Agreement is substantial but is also reasonable and lawful.

10. The Settlement Agreement should be approved, and Legacy should be directed to make an initial payment to the State of California General Fund in the amount of $50,000 within 30 days after the effective date of today's decision, and thereafter Legacy shall be directed to pay the balance of $165,000 at the rate of $9,706 per month for the next 17 months.

11. Hearings are not necessary.

12. This investigation should be closed.

13. To promptly resolve this matter and secure the ordered remedies, today's decision should be made effective immediately.

ORDER

IT IS ORDERED that:

1. The Settlement Agreement is approved.

2. Legacy Long Distance International, Inc. (Legacy) shall make a settlement payment to the State of California General Fund in the amount of $215,000. The

first payment, in the amount of $50,000, will be paid within 30 days of the Commission's approval of the Settlement Agreement. Legacy must pay the balance of $165,000 at the rate of $9,706 per month for the next 17 months. Legacy must make payments by check or money order payable to the California Public Utilities Commission and mailed or delivered to the Commission's Fiscal Office at 505 Van Ness Avenue, Room 3000, San Francisco, CA 94102, within the timeframe directed above. Legacy must write on the face of the check or money order "For deposit to the General Fund per Decision 11-XX-XXX: Attn: Beverly Sun or Elsa Cerezo."

3. Within six months of the effective date of today's decision, Legacy Long Distance International, Inc. (Legacy) must use the following process to issue refunds or credits to California consumers who were double-billed during the 2005 to 2008 period and have not already received refunds. Legacy must advise each potentially affected consumer of the double-billing by a special mailing to the consumer's last known address that must include a postage-paid return card on which the customer can certify that he or she paid Legacy's billing; Legacy must send all customers who return the card a check in the amount of the duplicate charge. Legacy must report its refunds and credits to Consumer Protection and Safety Division on conclusion of this procedure, detailing the dollar amount of the refunds or credits issued regarding the remaining 2,600 customers who were double-billed.

4. Within six months of the effective date of today's decision, Legacy Long Distance International, Inc. (Legacy) must issue refunds or credits, if appropriate, to each of the 597 consumers who complained to the Commission Consumer Affairs Branch regarding Legacy's billings. The refunds or credits must be issued to all consumers who can reasonably be identified, whose complaints can

be validated, and who have not already received credits or refunds. Legacy must report its refunds and credits to the Director of the Consumer Protection and Safety Division on conclusion of this procedure detailing the dollar amount of the refunds or credits issued to these 597 complaints.

5. Within 10 months of the effective date of today's decision, Legacy Long Distance International, Inc. (Legacy) must complete an internal investigation and provide a report to the Director of the Consumer Protection and Safety Division and others enumerated in the Settlement Agreement that supplements the information on the CD attached to the Settlement Agreement as Exhibit B that details the dollar amounts of any additional refunds or credits issued to the approximately 14,000 reported inquiries from consumers regarding Legacy's billings.

6. Legacy Long Distance International, Inc. must, in substantially the same manner as required by 47 U.S.C. § 226 and Federal Communications Commission requirements with respect to interstate operator-handled calls, also make its complete rates available to the called party on every intrastate California collect call that is assisted either by a live or automated operator system.

7. Legacy Long Distance International, Inc. (Legacy) must comply with all applicable Public Utilities Code sections including, but not limited to, Sections 2890, 2896, 451, 489, and the tariffs applicable to Legacy's operations.

8. If there are any future disputes from California consumers regarding Legacy Long Distance International, Inc. (Legacy), then Legacy must provide to Consumer Affairs Branch both the billing records and the switch records relevant to the dispute.

9. Legacy Long Distance International, Inc. shall fulfill all the terms and conditions of the Settlement Agreement including any that may not be specified in ordering paragraphs 2 through 8.

10. The hearing determination is changed to no hearings necessary.

11. Investigation 10-06-013 is closed.

This order is effective today.

Dated October 6, 2011, at Los Angeles, California.

MICHAEL R. PEEVEY
President
TIMOTHY ALAN SIMON
MICHEL PETER FLORIO
CATHERINE J.K. SANDOVAL
MARK J. FERRON
Commissioners

D1110017 Appendix A

ATTACHMENT B

CONSUMER PROTECTION AND SAFETY DIVISION
CALIFORNIA PUBLIC UTILITIES COMMISSION

INVESTIGATIVE REPORT ON LEGACY LONG DISTANCE INTERNATIONAL, INC.

I.10-06-013

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I. SUMMARY

Enforcement Staff (Staff) of the Public Utilities Commission's (Commission) Consumer Protection and Safety Division (CPSD) conducted an investigation into the business practices of Legacy Long Distance International, Inc. (Legacy). Staff gathered evidence through reviewing complaint files, analyzing call and billing records, obtaining verifications from carriers on whether certain calls traveled over their networks, interviewing and obtaining declarations from complainants, and, deposing Legacy President Curtis Brown. The weight of the evidence presented in this report supports the conclusion that Legacy violated the following statutes:

1. Public Utilities (P.U.) Code §2890(a) by placing unauthorized charges on consumers' telephone bills (also known as "cramming"). Specifically, Legacy charged California consumers for non-existent, fraudulent and unauthorized calls such as:
    - Calls that did not occur, according to carriers' switch records;[1]
    - Collect calls consumers assert they did not accept nor make;
    - Unauthorized third-party charges;
    - Collect calls that did not connect well, were inaudible, static, were disconnected or connected to a wrong number;
    - Collect calls which consumers specifically refused to accept; and
    - Collect calls Legacy connected to consumers' answering machines.

2. P.U. Code §§2896(a) and 451, and the Federal Telecommunications Act of 1996 Section 226, by failing to provide consumers with sufficient rate information with which to make informed choices on whether to accept certain collect calls or not;
3. P.U. Code §489(a) by failing to file its complete tariff timely, and by charging consumers under rates it had not filed;

[1] A "switch record" or Automated Message Accounting (AMA) record automatically records data regarding user-dialed calls. It provides electronic detail for billing telephone calls.

4. P.U. Code §532 by charging consumers in excess of rates posted in rate sheets; and
5. The Commission's Rules of Practice and Procedure Rule 1.1 by failing to disclose the numerous regulatory sanctions Legacy sustained in 16 other states.

CPSD requests that the Commission open an Order Instituting Investigation (OII) into these allegations and determine whether and how much penalties and refunds are warranted. Staff believes penalties are necessary based on the evidence.

II. BACKGROUND

A. Legacy and Its Operations

Legacy (utility number U-5786-C) is a California corporation located in Cypress, California. It was incorporated in 1996. In Decision 97-06-055, issued in June 1997, the Commission granted Legacy a Certificate of Public Convenience and Necessity ("CPCN") to resell interLATA and intraLATA telephone services in California.[2] Legacy operates as: (1) a reseller of interexchange services; and (2) a provider of operator services in California. Legacy provides operator and long distance services to Coin-Operated Pay Telephone (COPT) companies and to hotels and motels. Ninety percent of Legacy's operator services business is provided at outdoor payphones, and ten percent in rooms in hotels and motels.[3] Legacy provides service to approximately 150 COPTs owning approximately 60,000 payphones in California as of March 9, 2007. Beginning in October 2009, Legacy provides inmate telecommunications services in some California facilities. Legacy also provides resold dial tone to approximately 600 payphones in California.[4] Legacy's customer billings from 2005 through 2008 are in Table 1 below[5].

[2] A LATA – a Local Access and Transport Area – is a geographic region established to differentiate local and long distance telephone calls within the U.S.

[3] Appendix 1, Deposition of Legacy President Curtis A. Brown., pp. 14-15, lines 27-1.

[4] Appendix 2, Deposition of Legacy President Curtis A. Brown, p. 17, lines 3-6; Mr. Brown states

TABLE 1

Legacy's Customer Billings
Amount Billed and Number of Unique Billing Telephone Numbers

Year	Amount Billed	Number of Unique Billing Telephone Numbers
2005	$ 4,998,747	189,803
2006	$ 6,221,998	203,866
2007	$ 3,869,716	142,614
2008	$ 2,597,333	90,839
Total	$17,687,794	627,122

Source: Billing Aggregator BSG Quarterly Reports to CPSD

Ninety percent of Legacy's call center business is in collect calls placed from pay phones and billed through live and automatic operator services. Ten percent comes from calls made using credit cards, calling cards, and third party billing. Legacy negotiates with payphone companies and offers contracts that feature tailored rate plans. Each payphone company can choose a combination of rates, surcharges, non-subscriber fees, and premise-imposed fees, depending on its needs. For example, one company might choose a rate plan in which live operator services cost more than automatic operator services; another company might choose a rate plan in which automatic operator services cost more than live operator services. Each collect call can generate an operator-connection fee, a minutes-of-usage charge, a premise-imposed fee, and a nonsubscriber fee. Legacy

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that Legacy serves somewhere around 30,000 pay phones in California; also Appendix 3, Legacy Response to CPSD Data Request 1-13, citing 39,255 active lines, filed under seal; Appendix 4, Legacy Response to Data Request 2-1B, listing more than 61,000 separate pay phones in California, filed under seal.

[5] Appendix 5, BSG Clearing Solutions Subscriber Complaint Reports Years 2005 – 2008, filed under seal. BSG is a subsidiary of Billing Concepts Inc.

bills consumers via its billing aggregator, Billing Services Group (BSG), which submits Legacy's charges to the end consumers' telephone providers for inclusion in their respective telephone bills.

B. CPSD's Protest Of Legacy's Application For Expanded Authority

On November 3, 2006, Legacy applied (in A. 06-11-003) for a CPCN for expanded authority to operate as a facilities-based competitive local exchange telecommunication services provider. CPSD protested Legacy's application on December 14, 2006, on the basis of misrepresentations[6] in its application, in violation of Rule 1.1 of the Commission's Rules of Practice and Procedure. In its protest, CPSD alleged that Legacy knowingly misled the Commission when it stated that it had never been sanctioned or investigated by any state regulatory agency at the time of its application. Contrary to this attestation, CPSD discovered substantial evidence showing Legacy had been investigated, fined, sanctioned and/or penalized, and had its tariff and registration cancelled or its corporate certificate of authority revoked in 16 states.[7] In addition, CPSD found and Legacy acknowledged that it had billed California consumers under tariffs that Legacy had never filed with the Commission, in violation of P.U. Code §495;[8] and CPSD found that Legacy billed consumers at rates higher than permitted in its filed tariffs, in violation of P.U. Code §532.[9] Legacy also violated P.U. Code §489 by failing to file its tariffs timely.[10]

CPSD served its testimony in the form of an Investigation Report on

[6] Appendix 6, Protest of the Consumer Protection and Safety Division to the Application of Legacy Long Distance International, Inc., A.06-11-003, December 14, 2006.

[7] Appendix 7, Report and Testimony, Protest of Legacy Long Distance International, Inc. A.06-11-003, August 13, 2007, filed under seal.

[8] Ibid.

[9] Ibid.

[10] Ibid.

August 13, 2007[11]. On November 7, 2007, Legacy filed its testimony in response to CPSD's report[12]. Due to intervening illness, the respondent requested and Administrative Law Judge (ALJ) Patrick granted an extension of time for the scheduled hearing. Prior to hearings being rescheduled, Legacy formally withdrew its application on January 30, 2008 stating that it no longer had an interest in obtaining authority to provide service as a facilities-based competitive local carrier in California. CPSD did not object to Legacy's withdrawal, conditioned upon Legacy's agreement that it would refer to this withdrawal and CPSD's protest in any future applications before this Commission. On April 10, 2008, the Commission approved ALJ Patrick's decision, which granted Legacy's request for withdrawal and CPSD's conditions.[13]

C. Consumer Cramming Complaints Against Legacy

In the course of reviewing Legacy's CPCN application, Staff found a high number of cramming complaints against Legacy filed by consumers with Legacy's billing aggregator BSG and with the Commission's Consumer Affairs Branch (CAB).

1. Consumer Complaints Filed with Billing Aggregator BSG

BSG reports 686 complaints against Legacy from 2005 through the first half of 2008.[14] These complaints were predominantly related to unauthorized charges or cramming. Since 2005, the number of consumer complaints reported to

[11] Appendix 7.

[12] Appendix 8, Testimony of Curtis A. Brown, President, Legacy Long Distance International, Inc., A.06-11-003.

[13] Appendix 9, Decision 08-04-021 April 10, 2008. In the Decision, ALJ Patrick granted Legacy's request to withdraw its Application for a CPCN as a facilities-based local exchange carrier and granted CPSD's request that Legacy and/or any of its officers, directors, or owners of more than 10% of Legacy outstanding shares shall reference CPSD's protest and this decision in any future application for authorization to provide telecommunications services in California.

[14] Appendix 5.

BSG against Legacy appears to have declined significantly. These complaints are summarized below.

TABLE 2

Consumer Complaints against Legacy as Reported by BSG 2005 through 2008

Year	Total Number of Complaints Against Legacy Received by BSG	Unauthorized Charges Complaints	Percent of Unauthorized Charges Complaints to Total
2005	284	185	65%
2006	302	282	93%
2007	81	49	60%
2008	19	10	53%
Totals	686	526	68%

Source: Billing Aggregator BSG Quarterly Reports to CPSD

2. Consumer Complaints Filed with the Commission's CAB

Legacy was also the subject of numerous complaints to CAB, with a majority of complaints concerning unauthorized charges or cramming, disclosure issues, and unreasonable rates. CAB received 706 complaints from 2005 through 2008. Unlike the declining trend in the number of complaints against Legacy received by BSG, complaints received by CAB appear to have grown from 2005 and held steady through 2007. Legacy acknowledged in response to CPSD's Data Request 1, Question 8 that "A vast majority of the complaints received by CAB about Legacy are *operator service rate* related."[15] Legacy President Curtis Brown confirmed that such complaints pertain to claims of unconscionably high rates and denials of ever having authorized or accepted the collect calls.[16]

[15] Appendix 10, Legacy Responses to Data Request 1-8.

[16] Appendix 11, Deposition of Legacy President Curtis Brown, page 140, lines 20-24.

TABLE 3

Consumer Complaints Concerning Legacy Received by CAB
2005 through 2008

YEAR	Total Number of Complaints Received by CAB	Unauthorized Charge	Unreasonable Rates	Lack of Disclosure	Other[17]
2005	160	41	70	31	18
2006	255	71	123	36	25
2007	228	53	110	36	29
2008	63	15	21	14	13
Total	706	180	324	117	85

Source: CPSD analysis of data in the CAB database.

Of the 706 complaints CAB received in the above 4-year period, 180 complaints concerned cramming. By comparison, 324 complaints concerned unreasonable rates and 117 were about the lack of disclosure of rates and/or charges. Upon reviewing the CAB complaint files, Staff found that many complaints characterized as disclosure or unreasonable rates are also cramming complaints. For example, consumers who complained of inadequate disclosure and lack of opportunity to inquire about collect call rates because of Legacy's automated operator system also had no opportunity to authorize or reject the collect calls in dispute. Hence, charges arising out of such calls can also be considered unauthorized charges. Legacy's President has admitted that Legacy's automated operator program does not permit California collect call recipients to ask for rates.[18] CPSD found that the majority of the Legacy-related cramming

[17] "Other" complaints cover such diverse matters as out of state complaints over which the PUC has no authority; complaints filed anonymously, duplicate complaints, complaints concerning another OSP, complainants whose contact phone numbers have been disconnected and there is no forwarding address or telephone, etc.

[18] Appendix 12, Deposition of Legacy President Curtis Brown, page 189, lines 5-13.

complaints reported to CAB concerned collect calls placed from payphones for which Legacy provides operator service.

Given the large number and the nature of consumer complaints against Legacy, CPSD conducted further investigations to determine the scope of Legacy's potential wrongdoing.

D. Scope Of CPSD Investigation

The CAB database contained 706 consumer complaints filed against Legacy for the period 2005 to 2008. Of the 706 complaints, staff was successful in locating 345 paper files. Of the 345 paper files, 162 files contained sufficient background information (consumer letters and bills) to allow staff to evaluate the veracity of the complainant's case. Staff attempted to reach the 162 complainants and was successful in interviewing 91 complainants. The balance of 71 (162-91) complainants could not be reached or declined to be interviewed. The 91 complaints constitute the sample used by staff to form its conclusions presented in this report.

The complainants provided Staff with the authorization to obtain their automated messaging account (AMA) or "switch records" and/or telephone bills in relation to their complaints against Legacy. Staff reviewed and analyzed the details of the complaints raised by the 91 consumers. Staff determined whether these complaints are supported by switch records obtained from their respective carriers and from Legacy. Staff also reviewed the billing records associated with these complaints to understand the nature, duration, and point of origin of the subject calls. Staff summarizes its findings and conclusions in this report. Of the 91 complainants, 54 signed Declarations attesting to their respective complaints. Several complainants also agreed to testify before the Commission about their complaints, if called upon.

TABLE 4

CPSD Staff Contacts with Consumers Who Complained to CAB Concerning Legacy 2005 through 2008

Year	Total Number of Complaints to CAB	Number of Paper Files CPSD Received	No Paper File Available, Anonymous, Duplicate, Out of State, No Information, Complainant Unavailable	Number of Complainants CPSD Attempted to Reach	Number of Complainants CPSD Reached	Number of CAB Complainants with Declarations
2005	160	90	15	13	0	0
2006	255	155	69	86	49	28
2007	228	90	37	53	34	20
2008	63	10	0	10	8	6
Totals	706	345	121	162	91	54

III. LEGACY VIOLATED P.U. CODE §2890(a) BY PLACING UNAUTHORIZED CHARGES ON CONSUMERS' TELEPHONE BILLS

According to P.U Code §2890(a), a telephone bill may only contain charges for products or services, the purchase of which the subscriber has authorized. Staff talked with 91 complainants and reviewed their billing records and switch records. After completing this review, Staff identified 106 incidents of unauthorized charges (also known as "cramming") and 49 incidents of unreasonable charges and lack of rate disclosure.[19] Based on the evidence gathered in the investigation, it appears Legacy violated §2890(a) by systematically placing unauthorized charges on its customers' telephone bills in a number of ways.

[19] See Part IV for discussion of lack of rate disclosure.

TABLE 5[20]

CPSD's Analysis of the 91 Complainants to CAB against Legacy 2005 through 2008

Placement of Unauthorized Charges or Cramming	Number of Incidents [21]	Percent of Total
A. For collect calls that did not occur	60	57%
B. For unauthorized third-party billing	20	19%
C. For calls that did not connect well (inaudible/static)	11	10%
D. For rejected collect calls	9	8%
E. For collect calls connected to answering machines	6	6%
Total	106	100%

A. LEGACY BILLED FOR COLLECT CALLS THAT DID NOT OCCUR

A large proportion (57%) of the sampled cramming incidents filed with CAB against Legacy concerned charges for collect calls that did not occur or for which records did not exist. Staff's careful examination of the available switch records of the subject calls and additional information from the carriers and complainants provided overwhelming evidence that these 60 collect calls were not placed, connected, or authorized, supporting the consumers' complaints of unauthorized charges. Placing charges on consumers' telephone bills for non-existent calls is not only "cramming;" it also suggests theft and/or fraud.

A subscriber's Local Exchange Carrier (LEC) provides the service necessary for a call to connect to and from the subscriber's telephone. A call must

[20] Refer to Appendix 13 for the expanded table containing the description of complaints.

[21] Some of the 91 complainants raised multiple complaints.

travel over the LEC's switch in order for it to connect to the consumer's telephone. If the LEC's switch records show that no call traveled over the LEC's switch to the billed consumer's telephone at the time and date of the purported call, then the call did not occur. Staff requested the switch records of the calls in question from Legacy and from the consumers' LECs (AT&T and Verizon). Staff compared Legacy's switch records to those provided by AT&T and Verizon.

In 25 of the 60 incidents in this complaint category, the carriers' switch records showed that the calls Legacy billed to the consumers never travelled over AT&T's or Verizon's switches, supporting the conclusion that these calls did not occur. In fact, in 12 out of the 25 instances, Staff uncovered a disturbing pattern of Legacy charging consumers for fictitious collect calls. Specifically, Legacy charged these consumers for a collect call, and one month later billed them for another collect call that allegedly happened exactly 1 hour and 11 minutes after the first call.

For example, Legacy charged Complainant #6009210 in her January 2006 bill for a collect call that was left on her answering machine on December 20, 2005 at 7:03 p.m.[22] One month later, she was billed for another collect call allegedly accepted on December 20, 2005, at 8:14 p.m., exactly 1 hour and 11 minutes after the call on her prior month's bill. AT&T reviewed its historical call record and phone number inventory and found no record of the originating telephone number of the second call being in existence at the time of the second collect call. In addition, AT&T's switch records show no evidence that the second call ever passed over its network. Therefore, the second call for which Legacy billed the consumer never occurred.

Complainant #8059447, an attorney in Los Angeles, was billed by Legacy for a collect call placed on August 9, 2008 at 1:29 p.m. Neither she nor any member of her household made or accepted this call. She stated that on or about

[22] Appendix 14, Declaration of Complainant #6009210

August 9, she recalled answering the phone and hearing a recorded voice stating "You have a collect call from" followed by a pause for name. "However, no name was given," she wrote. "I believe I said `What?' and the recorded message repeated at least once."[23] She hung up the phone, and when she received her August phone bill, she noticed a charge for a 6-minute collect call from Legacy. One month later, she received her September bill, with another collect call from Legacy. This second collect call began at 2:40 p.m., according to her bill, exactly 1 hour and 11 minutes after the first collect call. Legacy provided CPSD with the billing records for the calls. Reviewing its own switch record of the call, Legacy found no record of the second collect call. AT&T also found no record of the second call. Therefore, the second call for which Legacy billed the consumer never occurred.

In 22 of the 60 incidents in this complaint category, the carriers or Legacy were able to produce call records that suggest phone connection of some duration. The average duration of the connection time for 71% of the 22 calls is 21 seconds. When viewed in the context of the consumers' assertions that they did not take these collect calls, the relatively short call duration suggests that it is unlikely that conversations occurred. These 22 complainants are convinced these calls did not occur and they provide supporting facts in their complaints, such as: not knowing anyone from the originating number; collect calls supposedly accepted after business hours when no one is at the premises; collect calls allegedly accepted by someone at a residence when no one is at home; etc. See Appendix 13 for the complete table of complaint descriptions. Staff is persuaded by the complainants' claims that these collect calls did not occur.

In the remaining 13 of the 60 incidents, the carrier and/or Legacy were unable to provide any switch records at all. Under P. U. Code § 2890 (d)(2) D, in the case of a dispute, there is a rebuttable presumption that an unverified charge

[23] Appendix 15, Declaration of Complainant #8059447

for a product or service was not authorized by the subscriber, and that the subscriber is not responsible for the charge. Therefore, in the absence of any call records that could point to the contrary, Staff has to place substantial weight on the consumers' assertions that these calls did not occur and were not authorized.

The weight of the evidence supports the complainants' contentions in these 60 instances that Legacy charged them for collect calls that did not occur, and that Legacy violated P.U Code §2890(a) by placing unauthorized charges for non-existent calls on its customers' phone bills.

B. Legacy Billed For Unauthorized Third Party Billing

Unlike a collect call, wherein the receiving party authorizes the charge for the collect call, a third party call is any call for which the charges are billed to a third number, other than the call originating number or the call destination number. In order to bill for a third party call, a telephone provider must first obtain the authorization of the party to be billed. Nineteen percent of the cramming complaints sampled by Staff relate to unauthorized third party billings.

In one case, the consumer disputes Legacy's charges for third party billing because he did not accept the charges and was in fact out of the country at the time of the alleged calls.[24] In another instance, the consumer stated that the third party call was billed to her dedicated fax line.[25] Because this line was only used for the fax, no one could have accepted the third party charges. See Appendix 13 for a complete list of complaint descriptions.

The evidence supports the conclusion that Legacy billed consumers for third-party calls that the consumers did not authorize, in violation of P.U Code §2890(a).

[24] Appendix 16, Declaration of Consumer #7034155.

[25] Appendix 17, Declaration of Consumer #6021282.

C. Legacy Billed For Calls That Did Not Connect Well

Ten percent of the sampled cramming complaints relate to charges for calls that did not connect well, were inaudible, disconnected after 3 seconds, or connected to wrong numbers. For example, a consumer complained that the phone rang; she picked it up but heard no voice, and then heard a disconnecting sound. She hung up the phone. She was billed for the call.[26]

The switch records for the complaints in this category show an average call connection duration of 14 seconds. The short average duration appears to support the complainants' assertions that the collect calls did not connect well. In each of the instances, the complainant provides specific descriptions of the poor connection. See Appendix 13 for a complete list of complaint descriptions.

According to P.U Code §2890(a), a telephone bill may only contain charges for products or services, the purchase of which the subscriber has authorized. When authorizing a collect call, a consumer has a reasonable expectation of receiving a working call connection in exchange for the associated charges. In the above cases, where the consumers complained of the inability to conduct a phone conversation due to immediate disconnections or inaudibility, it is fair to say that the consumers did not receive the useable service from Legacy, the charges for which they authorized. Instead, Legacy billed them for a useless service, the purchase of which the subscriber did not authorize.

D. Legacy Billed For Rejected Collect Calls

As mentioned above, P.U Code §2890(a) provides that a consumer's phone bill may only contain charges authorized by the consumer. The Federal Telecommunications Act of 1996, Section 226(b)(1)(B), require that providers of operator services permit the consumer to terminate the telephone call at no charge before the call is connected. Legacy's own policy requires that a collect call must

[26] Appendix 18, Declaration of Consumer #6008334.

first be accepted by the recipient before billing can begin[27]. Yet 8% of the sampled cramming complaints relate to Legacy charging consumers for collect calls they rejected.

For example, Complainant #6049227 stated that Legacy billed him for collect calls that were specifically rejected. He stated, "[w]hen the phone rang, my wife answered the phone in the presence of our whole family. An automated voice came on to indicate that a collect call was trying to get through and gave her an option to accept the call or reject the call. My wife did not accept the call, and hung up. Nevertheless, my September bill showed a $32.83 charge for the call."[28] Upon complaining, the consumer was told by a Legacy customer service representative that Legacy's automated system recorded someone at his residence pressing "1" to accept the collect call, and that the call lasted 1 minute and 23 seconds and that there was a five-minute minimum charge. The complainant refutes Legacy's claim and insists that his wife specifically rejected this collect call.

The other complainants in this category had similar accounts of being charged for collect calls they specifically rejected. Legacy clearly placed unauthorized charges for rejected collect calls on consumers' phone bills, in violation of P.U Code §2890(a).

E. Legacy Billed For Collect Calls Left On Answering Machines

Six percent of the sampled cramming incidents concerned charges for collect calls that were left on the consumers' answering machines. When collect calls are left on answering machines, the recipient of the call does not have the opportunity to accept or reject the call. Thus, Legacy's billing for collect calls left on answering machines is a clear case of "cramming." In its response to CPSD's data request 4-3 Legacy stated that "Legacy does not bill for collect or third party

[27] Appendix 19, Legacy's response to Data Request 3.3.

[28] Appendix 20, Declaration of Complainant #6049227.

calls that are answered by answering machines or voice mail"[29] and that "Collect calls can only be considered accepted by the automated call processor when a DTMF signal of `1' is received by the Dialogic card."[30] Legacy further claims that, "No collect calls are released to answering machines or computer modems."[31] But consumer complaints directly contradict Legacy's assertions.

Complainant #6009210 attests in her declaration that she was charged for 3 collect calls left on her answering machine while she and her husband were in Mexico.[32] Complainant #6012509 also refutes Legacy's claim, stating that his answering machine recorded the telephone number of a collect call originating in Washington State.[33] Complainant #6008334 asserts that she was charged for a collect call that was answered by an answering machine.[34] These complaints clearly refute Legacy's assertions that it does not bill for unauthorized collect calls left on answering machines.

IV. LEGACY VIOLATED P.U. CODE §2896(a), §451, AND THE FEDERAL TELECOMMUNICATIONS ACT SECTION 226 BY FAILING TO DISLCOSE RATE INFORMATION TO ITS CONSUMERS

P.U. Code §2896(a) states as follows:

> The commission shall require telephone corporations to provide customer service to telecommunication customers that includes, but is not limited to, all the following: (a) Sufficient information upon which to make informed choices among telecommunications services and providers. This includes, but is not limited to, information regarding the provider's identity, service options,

[29] Appendix 21, Legacy Response to Data Request 4-3.

[30] Ibid.

[31] Appendix 22, Legacy Response to Data Request 1-9, Billing/Collections Department Customer Service Guidelines, Collect Call Disputes, Number 3, filed under seal.

[32] Appendix 23, Declaration of Complainant #6009210.

[33] Appendix 24, Declaration of Complainant #6012509

[34] Appendix 25, Declaration of Complainant #6008334

> pricing, and terms and conditions of service. A provider need only provide information to its customers on the services which it offers.

In addition to the complaints of unauthorized charges, 49 complaints concerned unreasonably high collect call rates and lack of rate disclosure. Complainant #6038032 stated in her Declaration that her husband asked a Legacy representative how the recipient of an automated call could know what the rates are and the Legacy representative told him, "[t]here is no way to know. The person who is making the collect call can ask for rates, but the person who gets the call can not ask what the rates are, and has no opportunity to ask what the rates are."[35]

Legacy President Curtis Brown acknowledged this limitation of Legacy's automated call platform system. In his deposition, Mr. Brown stated that in California, the recipient of a collect call placed via Legacy's automated call platform can not get the rate or price of the collect call. The recipient can only accept or refuse the call.[36]

CPSD Staff sought to learn the industry standard on disclosure of automated-operator placed collect call rates in California prior to connection, and learned that it is AT&T's policy and practice to announce the caller and if the caller is an inmate, to announce the facility, and to either quote the rate or offer a rate option.[37]

Legacy's lack of disclosure of rates to consumers is a violation of the P.U. Code §2896(a). Without the disclosure of collect call rates and fees prior to the connection of the collect call, the call recipient will not have sufficient information to make an informed choice as to whether or not to accept the collect call and the associated charges.

[35] Appendix 26, Declaration of Complainant #6038032

[36] Appendix 12, Deposition of Curtis Brown, p. 189, lines 5-13.

[37] Appendix 27, email from AT&T Regulatory Affairs Officer Greta Banks, filed under seal.

Additionally, this lack of disclosure renders the charges unjust and unreasonable and therefore, unlawful. P.U. Code §451 requires that all charges demanded or received by any public utility for any product or commodity or any service rendered or to be rendered shall be just and reasonable. Under §451, every unjust and unreasonable charged demanded or received for such product, commodity or service is unlawful. Price information is specifically identified as an element requiring disclosure under §2896(a); a consumer has the right to know the charges for a collect call before he or she decides whether to accept the call. Legacy's inability to provide this information at the point of sale, and subsequent placement of such charges on the uninformed consumers' phone bills, is therefore unjust and unreasonable.

The lack of rate disclosure also violates the Federal Telecommunications Act of 1996, Section 226. This section lists the requirements for Providers of Operator Services and specifically requires that providers "...disclose immediately to the consumer, upon request and at no charge to the consumer, a quotation of its rates or charges for the call."[38] Legacy's practice of not disclosing collect call rates to consumers plainly violates this section of the Federal Telecommunications Act.

Complainants have good cause to demand rate disclosure, especially since Legacy charges unreasonably high rates for the collect calls they carry. One consumer complained about being charged $66 for 2 collect calls, which together lasted 3 minutes.[39] Many consumers complained about exorbitant undisclosed charges ranging from $20 to $40 for each collect call lasting less than 5 minutes. See Appendix 13 for a complete list of complaint descriptions.

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[38] Appendix 28, Federal Telecommunications Act Section 226 (a)(3)(i).

[39] Appendix 29, Declaration of Complainant #7001839.

V. LEGACY VIOLATED P.U. CODE §489(a) BY FAILING TO FILE ITS COMPLETE TARIFF TIMELY

P. U. Code §489(a) requires every public utility to file with the Commission schedules showing all rates, tolls, rentals, charges, and classifications collected or enforce.

In CPSD's Protest of Legacy's Application A 06-11-003, Staff raised and Legacy admitted[40] that Legacy failed to file timely its complete tariff with the Commission. In November 2006, Communications Division Director John Leutza sent a letter to all regulated telecommunications companies, asking that each company file with the Communications Division its complete and current tariff on a compact disc by January 2, 2007. Legacy did not comply with this request until ordered to do so by ALJ Patrick on June 20, 2007 at a prehearing conference relating to Legacy's request for expanded CPCN[41]. Legacy violated P.U. Code §489(a) by failing to file timely its complete tariffs with the Commission. In his testimony in response to CPSD's protest of its CPCN application, Legacy President Brown admitted that certain errors led it to violate its tariff.[42] Legacy also admitted in response to a Staff data request that it billed consumers under rate sheets it had not filed.[43]

VI. LEGACY VIOLATED P.U. CODE §532 BY CHARGING CONSUMERS RATES IN EXCESS OF ITS FILED TARIFFS

P.U. Code §532 states in relevant part as follows:

> Except as in this article otherwise provided, no public utility shall charge, or receive a different compensation for any product or commodity furnished or to be furnished, or for any service rendered or to be rendered, than the rates, tolls, rentals, and charges applicable thereto as specified in its schedules on file and in effect at the time…

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[40] Appendix 8, Testimony of Legacy President Curtis Brown, November 7, 2007 p. 1, lines 1-18.

[41] As stated in the Background section, Legacy has withdrawn its Application for the expanded CPCN.

[42] Appendix 8, Testimony of Legacy President Curtis Brown, p.1, lines 11-18.

[43] Appendix 30, Legacy Supplemental Responses to Data Request 3-2

In Staff's protest of Legacy's application for CPCN, Staff reviewed a sample of 35 CAB complaints regarding unreasonably high collect call rates and the lack of disclosure, Staff found that Legacy charged 11 complainants rates in excess of its filed tariffs, in violation of P.U. Code §532[44]

VII. LEGACY VIOLATED THE COMMISSION'S RULE 1.1 BY FAILING TO DISCLOSE NUMEROUS REGULATORY SANCTIONS IT SUSTAINED IN 16 OTHER STATES

Rule 1.1 establishes requirements for parties appearing before the CPUC:

> Any person who signs a pleading or brief, enters an appearance, offers testimony at a hearing, or transacts business with the Commission, by such act represents that he or she is authorized to do so and agrees to comply with the laws of this State; to maintain the respect due to the Commission, members of the Commission and its Administrative Law Judges; and never to mislead the Commission or its staff by an artifice or false statement of fact or law.

In his signed Verification Statement in its application for expanded CPCN (in A.06-11-003), Legacy President Curtis Brown attested that "neither applicant, any affiliate, officer, director, partner nor owner of more than 10% of applicant, or any person acting in such capacity.... has been sanctioned by the Federal Communications Commission or any state regulatory agency for failure to comply with any regulatory statute, rule or order."[45]

In Legacy's response to CPSD's Data Request 1.17, it responded "no" to the question "[h]ave Companies, their affiliates, or their principals been investigated by any State or Federal agency in the last ten years for any matter related in any way to the provision of telecommunications services?"[46]

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[44] Appendix 7, Report and Testimony, Protest of Legacy Long Distance International, Inc. A.06-11-003, August 13, 2007, Tables D and E, filed under seal.

[45] Appendix 31, Verification Statement of Curtis A. Brown.

[46] Appendix 32, Legacy response to CPSD Data Request 1-17.

In Legacy President Curtis Brown's deposition, when asked whether Legacy had been sanctioned in any of the 49 states in which Legacy does business, Mr. Brown stated "no."[47]

Staff discovered that in fact Legacy had been sanctioned, investigated, penalized, had its tariff cancelled, and had its public utility registration or corporate charter revoked, in 16 other states. Legacy clearly violated Rule 1.1 repeatedly by misrepresenting to the Commission and Staff that it has never been sanctioned or investigated by any state regulatory agency. Table 6 below shows the various actions against Legacy in 16 other states. Legacy President Curtis Brown, when confronted with the facts, admitted to the above Rule 1.1 violations.[48]

[47] Appendix 33, Deposition of Curtis Brown, pp 162-163, lines 25-1.

[48] Appendix 8, Testimony of Curtis Brown, p. 1, lines 11-18.

TABLE 6

LEGACY SANCTIONS IN OTHER STATES

State Agency	Nature of Action	Date of Action	Fines or Penalties if Any
Public Utilities Commissions			
Florida Public Service Commission	Order Cancelling Tariff and Registration	July 20, 2006 (reinstated March 1, 2007)	$500
Iowa Utilities Board	Order Docketing for Formal Proceeding and Requiring Response	January 20, 2004 (withdrawn without prejudice March 17, 2004)	NA
Nebraska Public Service Commission	Stipulation and fine to dismiss departmental complaint and order to cease and desist operations and revoke CPCN	July 11, 2001	Amount of fine not given
North Carolina Utilities Commission	CPCN order and sanction	July 13 2006	$9,000, refunds to consumers, Commission
Ohio Public Utilities Commission	Investigation into unlawful nonsubscriber fees	June 8, 2005	$54,931.26 to be credited to customer accounts
Secretaries of State			
Arizona Corporation Commission	Corporate Revocation	September 30, 2003	NA
Arkansas Secretary of State	Corporate Revocation	December 31, 2003	NA
Illinois Secretary of State	Corporate Revocation	February 9, 2007	NA
Kentucky Secretary of State	Corporate Revocations	November 1, 2003, November 1, 2000	NA
Maine Secretary of State	Corporate Revocation	July 19, 2002 (reinstated March 8, 2007)	NA
Mississippi Secretary of State	Corporate Revocation	Not given	NA
New York Secretary of State	Corporate Revocation	September 24, 2004	NA
Oklahoma Secretary of State	Corporate Suspension (reinstated March 5, 2007)	Suspension March 19, 2003; Reinstated March 5, 2007	NA
Rhode Island Secretary of State	Corporate Revocation	November 7, 2003	NA
South Carolina Secretary of State	Corporate Forfeiture	May 20, 2005	NA
Wisconsin Department of Financial Institutions	Revocation of Certificate of Authority	October 31, 2002	NA

VIII. CPSD RECOMMENDS THE COMMISSION OPEN AN ORDER INSTITUTING INVESTIGATION

The weight of the evidence presented in this report supports the conclusion that Legacy violated the following statutes:

1. P.U. Code §2890(a) by placing unauthorized charges on consumers' telephone bills in many different ways. Specifically, Legacy charged California consumers for non-existent, fraudulent and unauthorized calls such as:
    - Calls that did not occur according to carriers' switch records;
    - Collect calls consumers assert they did not accept nor make;
    - Unauthorized third-party charges;
    - Collect calls that did not connect well, were inaudible, static, were disconnected or connected to wrong numbers;
    - Collect calls which consumers specifically refused to accept; and
    - Collect calls Legacy connected to consumers' answering machines.
2. P.U. Code §2896(a) and §451, and the Federal Telecommunications Act Section 226 by failing to disclose rate information to its customers for them to make informed choices on whether to accept certain collect calls or not;
3. P.U. Code §489(a) by failing to file its complete tariff timely, and charging consumers under rates not filed with the Commission;
4. P.U. Code §532 by charging consumers in excess of rates posted in rate sheets; and,
5. The Commission's Rules of Practice and Procedure Rule 1.1 by failing to disclose the numerous regulatory sanctions Legacy sustained in 16 other states.

CPSD requests that the Commission investigate these issues in an OII and determine whether and how much penalties and refunds are warranted. Staff believes penalties are necessary based on the evidence.

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EXECUTIVE SECRETARY
G.P.S.C.

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BEFORE THE

GEORGIA PUBLIC SERVICE COMMISSION

IN RE:

Applications of Legacy Long Distance International, Inc. For a Certificate to Provide Intrastate Interexchange Alternative Operator Service and to Resell Interexchange Telecommunications Service in the State of Georgia	)	Docket No. 8076
Legacy Long Distance International, Inc.'s Application For a Certificate of Authority to Provide Competitive Local Exchange Service	)	Docket No. 28152
Legacy Long Distance International, Inc.'s Application For a Certificate of Authority to Provide Institutional Telecommunications Services	)	Docket No. 30554
Legacy Long Distance International, Inc.'s Payphone Service Provider Registration Certification	)	PSP ID No. 112pp

ORDER ADOPTING CONSENT AGREEMENT

This matter comes before the Georgia Public Service Commission ("Commission") to consider the proposed Consent Agreement (Attachment "A") between the Commission Staff and Legacy Long Distance, International, Inc. ("Legacy").

JURISDICTION

1.

Legacy holds the following certificates from the Georgia Public Service Commission ("Commission"): Alternative Operator Services Certificate of Authority A-149, Resale Certificate of Authority R-0498, and Payphone Service Provider Certificate of Authority 0112pp

2.

Legacy is a "telecommunications company" as that term is defined under O.C.G.A. § 46-5-162(17).

3.

The Commission has general authority and jurisdiction over telecommunications companies pursuant to Georgia's Telecommunications and Competition Development Act of 1995, O.C.G.A. §§ 46-5-160 through 174, and generally O.C.G.A. §§ 46-1-1 through 5, 46-2-20, 46-2-21 and 46-2-23. In addition, upon a finding that a company subject to the Commission's jurisdiction willfully violates any law it administers or any duly promulgated regulation issued thereunder, or fails, neglects, or refuses to comply with any duly noticed order it issues, the Commission may assess a civil penalty not to exceed $15,000.00 for such violation and an additional penalty not to exceed $10,000.00 for each day during which such violation continues. O.C.G.A. § 46-2-91(a).

FACTUAL BACKGROUND

1.

On April 4, 2011, a Consent Agreement entered into between the Commission Staff and Legacy was filed with the Commission. The Consent Agreement proposes to resolve two separate matters. The first matter involved Staff's finding that Legacy provided institutional telecommunications services ("ITS") without having obtained the necessary certificate of authority from the Commission to do so. The second matter involved Staff's investigation into whether Legacy complied with the terms of a prior Stipulation that required the Company to refund to consumers overcharged amounts.

2.

Staff concluded that Legacy provided ITS to Seminole County from May 1, 2009 through at least January 28, 2010, and that, through August 2010, Legacy continued to receive revenues from the provision of ITS to Seminole County and customer bills still reflected Legacy as the ITS provider for this facility.

3.

In its December 3, 2008 Order Adopting Stipulation in Docket No. 8076, the Commission ordered Legacy to provide refunds by to customers that it had overcharged. Legacy was order to refund the overcharges by December 31, 2008. After that deadline, Staff contacted customers that were due refunds under the Stipulation in an effort to confirm that the refunds were issued. The customers contacted by the Staff stated that they did not receive a refund from Legacy. Legacy maintains that it issued credits to customers pursuant to the methodology agreed upon between the Staff and Legacy.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1.

The Commission finds that Legacy provided institutional telecommunications service from May 1, 2009 through at least January 28, 2010, and that, through August 2010, Legacy continued to receive revenues from the provision of ITS to Seminole County and customer bills still reflected Legacy as the ITS provider for this facility. The Commission also finds that Legacy did not possess a certificate to provide ITS at that time. Finally, the Commission concludes that an ITS certificate was required to provide this service. Commission Rule 515-12-1-.30(2).

2.

The Commission does not reach a factual finding regarding whether Legacy complied with the terms of the December 3, 2008 Order in Docket No. 8076 that required Legacy to refund certain overcharges to customers. While Legacy maintains that the refunds were issued, the customers contacted by Staff deny ever receiving any refund. The record does not provide an adequate basis for determining with any certainty whether the refunds were issued and subsequently received by any Legacy customer that was overcharged.

3.

The Commission finds and concludes that the terms and conditions of the Consent Agreement are reasonable. The Commission finds that the amount of the civil penalty is reasonable, in light of the totality of the facts set forth in the Consent Agreement. The appropriate amount of a civil penalty involves judgment, and may be specific to the facts of the particular case. The penalty provided for in the Consent Agreement is sufficient to preserve the integrity of the Commission's rules, orders and administration of Georgia law. The amount arrived at between the parties adequately addresses both the established violation of the Commission's ITS rules, and the uncertainty over whether Legacy complied with the terms and conditions of the December 3, 2008 Order Adopting Stipulation.

4.

The Commission also finds and concludes that the provisions in the Consent Agreement related to Legacy's withdrawal of its application to provide ITS and its commitment not to re-apply for three years from the date of this Order are reasonable and fair. It is also reasonable to prohibit Legacy from subcontracting with any telecommunications provider to carry the calls originating from an inmate facility in Georgia until it obtains ITS certification from the Commission. Furthermore, it is reasonable to apply this prohibition to Legacy, its officers, agents and employees.

WHEREFORE IT IS ORDERED, that the Commission hereby adopts as an Order of this Commission, the Consent Agreement signed by the Commission Staff and Legacy dated April 4, 2011, and attached as "Exhibit A" to this Order.

ORDERED FURTHER, that all findings, conclusions, statements, and directives made by the Commission and contained in the foregoing sections of this Order are hereby adopted as findings of fact, conclusions of law, statements of regulatory policy, and orders of this Commission.

ORDERED FURTHER, that a motion for reconsideration, rehearing, or oral argument or any other motion shall not stay the effective date of this Order, unless otherwise ordered by the Commission.

ORDERED FURTHER, that jurisdiction over these matters is expressly retained for the purpose of entering such further Order or Orders as this Commission may deem just and proper.

The above by action of the Commission in Administrative Session on the 19th day of April, 2011.

Reece McAlister Executive Secretary	Stan Wise Chairman
4-21-11 Date	4-21-11 Date