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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Institution 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 Laws, Rules, and Regulations Governing the Manner in which California Consumers are Billed for Phone Services.	I. 10-06-013

RESPONSE OF LEGACY LONG DISTANCE INTERNATIONAL, INC. (U5786C) TO ORDER INSTITUTING INVESTIGATION

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Pursuant to Ordering Paragraph No. 2 of the Order Instituting Investigation ('OII") herein and the schedule established by Assigned Administrative Law Judge Timothy Sullivan, Legacy Long Distance International, Inc. ("Legacy") hereby submits its response to the questions set forth in Ordering Paragraph No. 2 of the OII.

INTRODUCTION

Legacy was founded in 1996 and began providing service in California the following year. Legacy now provides its services in 49 states, Puerto Rico, and various Caribbean islands. Legacy provides operator services, primarily to the payphone and hospitality industries for the completion of collect, third party, and other calls by payphone users and guests of hospitality locations, such as hotels, motels, and hospitals. In addition, Legacy provides resold local dialtone and 1+ long distance services to certain payphone providers and hospitality locations. Recently, Legacy has begun providing inmate calling services for correctional facilities.

Legacy contracts directly with payphone owners and hospitality locations to provide its 0+/0- operator services. "0+" means that the end user dials "0" plus the desired telephone number; "0-" means that the end user just dials "0." Under these arrangements, when an end user dials the operator from a payphone or other customer-owned facility, the call is transmitted to Legacy's live or automated operators for handling. Once the end user is connected to the operator, the end user may make a collect, third-party-billed, credit card, or, in some cases, a calling card call. Assuming that the billing for the call is validated (i.e., that the credit card is determined to be valid or, in the case of a collect or third-party-billed call, the party to be billed authorizes the charges), the call is completed and the charges are automatically processed by Legacy's system for billing to the credit card or the authorized billing number. In the vast majority of cases, Legacy's charges are placed on the local telephone bill of the person who authorized the charges pursuant to arrangements between local telephone companies and BSG Solutions, the largest billing aggregator in the country. However, in a relatively few cases, Legacy directly bills the responsible party. Revenues from billed charges are shared between Legacy and the payphone providers or the hospitality locations from which the calls originate, based on Legacy's contract with them.

In California and other states that do not impose caps on operator service charges, rates are dictated by competition and the demands of payphone providers and hospitality location managers. In order to have the opportunity to serve particular payphones, Legacy must offer the payphone owner revenue that is more than, or at least equal to, that offered by Legacy's competitors. Legacy does this by attempting to minimize its costs, maximize its collections, maintain high quality service, and charge an overall rate that provides the payphone owner with the level of revenue the payphone owner believes it needs. This latter component, the overall rate, is selected by the payphone owner. At the beginning of negotiations, Legacy will provide the payphone owner with a standard contract form and a standard list of rate options. However, that is just the beginning point. Typically, based on the demands of the payphone owner for particular revenue levels, the total level of the charge that will be billed when an end user makes an operator service call will be unique to that payphone owner.

Because of circumstances in the payphone market, charges for calls from payphones can be very high. Payphone owners are operating in an industry faced with rapidly declining usage due to ever-increasing cell phone usage, prepaid calling card use, and other factors, including the availability of discounted "dial-around" 800 toll calling such as "1-800 Call ATT" or "866 92 SAVE," which is Legacy's own service. In fact, on average, payphones generate significantly less than one commissionable 0+ or 0- call per month, whereas, not too long ago, the use of payphones to make these types of operator service calls was commonplace among business travelers and others. Yet, the payphone owner still has to recover the cost of the equipment, repair vandalism, pay for basic service to the payphone, and cover other operating costs and overhead. Even at rates that end users might term "exorbitant," the typical payphone owner probably has difficulty meeting its costs. Because of these circumstances, and even though most of the amount billed to an end user is remitted by Legacy to the payphone owner, it is doubtful that payphone owners would deem the amounts they receive to be exorbitant.

Legacy, like every operator service provider, experiences a large number of complaints because of the levels of the charges that the payphone market demands be assessed. However, copies of communications between BSG Solutions and the Commission's Consumer Protection and Safety Division ("CPSD"), which were provided to Legacy by CPSD pursuant to data requests, show that the level of complaints Legacy receives is not unusual, but is typical of the complaint levels experienced by other operator service providers. [1]

Most of the complaints that Legacy receives involve assertions of excessive rates. However, a substantial portion of consumers claim that calls were never made or authorized. Still, Legacy believes that in the vast majority of these cases, the impetus for the complaint is the receipt of a high bill and that, very often, the subject call was clearly authorized and completed, as Legacy will show below in response to the OII questions. Even then, Legacy often gives the complainant the "benefit of the doubt" and issues partial or total credits, as CPSD's records show.

Unfortunately, Legacy's operations have exhibited imperfections from time to time, as observed in the OII. Legacy does not disclaim responsibility for its mistakes and oversights. However, at no time has Legacy intentionally violated any law or regulation or otherwise engaged in any impropriety. Moreover, as Legacy has discovered mistakes, it has made concerted efforts to correct the problems that led to the mistakes. In addition, Legacy is pro-active in attempting to detect potential problems, and does not simply wait until a complaint is filed before it takes action. For example, Legacy regularly monitors its operators through on-site supervision and off-site review of recordings to ensure that calls are being handled properly. In addition, operator script selection and information for rate quotes is automated in Legacy's system based on the ANI of the payphone or other calling number. This ensures that Legacy's operators provide correct information and that rate quotes are accurate for all calls.

[1] As the Commission is aware, the tariffed rates of Legacy's competitors, such as Custom Teleconnect, Inc., are highly comparable to those charged by Legacy. Thus, Legacy's competitors, as CPSD can undoubtedly attest, experience the same types and rates of complaints as Legacy.

Although Legacy deeply regrets all errors and oversights, Legacy will demonstrate in this proceeding that any violations have been inadvertent and relatively rare, and that Legacy strives to carry out its business in a manner that is consistent with all applicable laws, regulations, and industry standards.

OII RESPONSES[2]

1. Did Respondent violate P.U. Code Section 2890(a) by placing unauthorized charges on consumers' telephone bills in many different ways? Specifically, did Respondent charge California consumers for non-existent, fraudulent and unauthorized calls such as:

- **Collect calls that did not occur according to carriers' switch records;**
- **Collect calls consumers assert they did not make accept or 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 Respondent connect to consumers' answering machines?**

Response

A. Legacy's processes for completing operator service calls are designed to help ensure that only properly-authorized calls are completed.[3]

Contrary to the assumptions evidenced in CPSD's reports, it is highly inefficient and costly for Legacy to complete unauthorized calls. Unlike the small charges for ringtone

[2] Legacy believes that this response to the OII appropriately addresses the issues raised therein, and notes that very substantial related documentation has already been furnished to CPSD during the course of CPSD's investigation, which Legacy does not believe it is expected to reproduce at this time. However, as new issues arise, issues become more developed, or it otherwise becomes apparent that a supplement or amendment to this response is necessary to clarify or add further support to the positions taken, Legacy expects that it will have an opportunity to do so. Further, it should be noted that Legacy's internal investigation of the matters addressed in the OII and its related discovery efforts are ongoing. Accordingly, Legacy also reserves the right to amend or supplement this response to reflect newly discovered information.

[3] Legacy identifies the following persons who can support all or portions of this section of the response,

(footnote continued)

downloads and other types of charges that commonly are the subject of cramming, charges for operator services are typically very high and noticeable by consumers. Consequently, the likelihood of charges for an unauthorized operator service call being overlooked is very small. Further, in cases where consumers question charges for operator services, not only can they pursue complaints directly with Legacy, they usually also have the ability to request that their local exchange carriers remove the charges from their bills. Because of these factors and because the major portion of charges for operator service calls is remitted to payphone owners, it is naïve to believe that cramming is a viable business option. Indeed, the costs associated with processing unauthorized calls spur Legacy and other operator service providers to avoid doing so. For these reasons and to comply with applicable law, Legacy's processes for completing operator service calls are designed to help ensure that only properly authorized calls are completed.

In the cases of calls that are completed by live operators, a computerized script and prompt system is used. When a call is originated from a payphone, the payphone ANI and location appear on the operator's screen, along with a scripted greeting: e.g. "Legacy Operator, My Name is ..... May I help you?"[4] Then, the operator follows a series of prompts and scripts to obtain the destination phone number and the billing option (i.e., calling card, collect, third party, or credit/debit card). Once the billing option is selected, the applicable charges will appear on operator's screen so that the charges can be accurately specified if requested by the calling party. Depending on the billing option selected, the system will either automatically dial the destination number if the call is collect or third-party billed or will require that more information be entered,

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each is an employee of Legacy: Curtis Brown, President; Paul Truong, Director of IT/IS.

[4] CPSD was furnished a sample copy of Legacy's Operator Training Manual in response to CPSD's Second Set of Data Requests in A.06-11-003.

such as credit card identifying information. In the case of a collect or third-party billed call, the operator is prompted to enter the name of the person authorizing the call before allowing the call to be completed; or, if the call is not authorized, the operator will disconnect the call.

Legacy's automated operator system, referred to as Automatic Call Processing or ACP, follows a similar process. Once a caller initiates a call, the system prompts the caller for a billing option and then follows an appropriate validation process. In the case of a collect call, the system, using an Intel Dialogic Board, dials the called party and, upon connection, states: "This is Legacy Automatic Operator, you have collect call from 'Caller name'. To accept this call press 1, to deny press 2." When the called party presses 1 or 2 on his or her phone, the phone converts this number to the DTMF tone for 1 or 2, as applicable, and the tone is transmitted to the ACP. If the ACP receives a 1 tone, the ACP will release the call for completion by Legacy's switch and insert error-code "0" into the call record database. If the ACP receives a 2 tone, the ACP will disconnect the call and insert error-code "1" into the call record database. If the ACP does not receive a tone from called party within 40 seconds, the call will timeout and the ACP will insert error-code "2" into the call record database. Only calls with error-code "0" are considered billable by Legacy's billing system; calls with error-code "1" or "2" do not bill.

B. The record does not establish the existence of any significant failure on the part of Legacy to obtain authorization before completing operator service calls.[5]

Legacy believes that its live and automated operator verification systems work very well. Although Legacy may occasionally experience a problem with a live operator verification as discussed below, Legacy is unaware of any actual issues with its automated

[5] Legacy identifies the following persons who can support all or portions of this section of the response, each is an employee of Legacy: Curtis Brown, President; Paul Truong, Director of IT/IS; Rafael G. Quinto, Director of Operations.

operator verification system. Specifically, the ACP cannot complete a third-party or collect call unless it receives a DTMF 1 tone. If the call connects to an answering machine or the called party hangs up the phone, presses 2, or does nothing, the call will not be completed. CPSD's assertions to the contrary are simply not true.

For example, while complainant no. 47[6] asserts that a collect call was rejected by his wife "in the presence of our whole family," information obtained by CPSD from AT&T shows that there were two calls to this complainant's line.[7] One was very short, which is consistent with a call having been rejected as asserted by the complainant; the second call, which was completed about 50 minutes later, was longer, which indicates that someone did accept the call, but likely, outside the presence of the whole family. However, only the second call was billed by Legacy and, after the complainant asserted that the call was not authorized, Legacy credited the complainant in full. Call record information obtained by CPSD for other collect calls for which authorization allegedly was not given also shows connection times that are inconsistent with collect call rejection.

It should also be noted that CPSD's reliance on information from complainant no. 1 to rebut Legacy's assertion that automated calls cannot be completed by answering machines is entirely unfounded. That complainant alleged that she was billed for collect calls left on her answering machine while she was in Mexico; but billing information obtained by CPSD from AT&T shows that she did not receive bills from Legacy for any such calls. Moreover, CPSD's assertion that complainant no. 5 reported that a collect call was left on his answering machine is

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[6] To protect their privacy, Legacy refers to specific complainants by the complaint number specified in CPSD's response to Legacy's Data Request 1-1. Information herein relating to specific complaints is set forth in documents provided to Legacy by CPSD pursuant to Legacy's first set of data requests.
[7] Call record information utilized by Legacy in this response is contained in CPSD's Response to Legacy's Data Request 1-5.

also untrue. This complainant stated that the call was not left on his answering machine, but was merely indicated by his caller i.d. device. Although he stated that he was billed for a collect call that he did not receive, the call records obtained by CPSD from AT&T indicate that the call was completed and lasted for over a minute.

In the case of third-party-billed calls handled by live operators, Legacy has occasionally experienced an operator being convinced by the caller to complete a call without actual verification, which is contrary to Legacy's policy. For example, in the case of complainant no. 39, who complained of an unauthorized third-party call having been billed to her dedicated fax line, the operator was convinced by the caller, who was the complainant's ex-husband, to complete the call. Upon learning from the complainant that the call was not authorized, Legacy credited her in full. Similarly, a live operator allowed complainant no. 23's son to make third-party calls without obtaining actual authorization from the complainant; but, as in the case of complainant no. 39, full credit was issued when complainant no 23 asserted that the calls were not authorized.

On the other hand, in the case of collect calls handled by live operators, Legacy's process would not allow a call to be billed without authorization because a bill will not be generated unless the operator releases the call for completion to the switch: the switch, not the operator generates the bill; so, if the collect call is not completed, there will be no billing. Indeed, a comparison of the complaints with the billing records obtained by CPSD from AT&T reveals numerous instances where the complainant denies having authorized a live-operator-assisted call but actually was on the line for inconsistent period of time: see, for example, records relating to complainant nos. 7, 25, and 90.

In many instances, such as most calls involving lines terminated to Verizon customers, CPSD apparently was unable to obtain call data that would establish whether or not calls were completed or whether call times were consistent or inconsistent with collect calls having been accepted. Thus, the available information is inconclusive. However, this does not mean, as CPSD asserts, that the complaining parties were improperly billed. Indeed, based on the large number of complainants whose denials are inconsistent with call times obtained from AT&T, such as for complainant nos. 7, 8, 10, 16, 17, 21, 25, 42, 43, 55, and 90, it would seem reasonable to conclude that, if they were available, records from Verizon would show similar results. Moreover, it must be kept in mind that even where call records confirmed that calls were completed, Legacy still provided credits most cases, which most certainly is completely inconsistent with an intent to "defraud" consumers.

C. The record does not show that Legacy responds improperly to complaints concerning service quality.[8]

If a call does not connect well, there is static on the line, or there is some other quality problem, which apparently was the case with a few calls, the consumer, in general, should not be responsible for a charge. However, Legacy has no way of ascertaining such circumstances unless the customer complains; and, in almost all cases a full credit will be provided. (An exception to a request for a credit might be made, however, if the call time, for example, is not consistent with a poor connection.) Consequently, the fact that a customer who is party to such a call complains about being charged in such a case is not a basis for asserting

[8] Legacy identifies the following persons who can support all or portions of this section of the response, each is an employee of Legacy: Curtis Brown, President; Rafael G. Quinto, Director of Operations; Francisco J. Flores, Director of Network.

that the customer was the victim of cramming or that Legacy otherwise violated any law or policy by billing the customer for such the call.

D. Legacy admits that some consumers were double-billed for calls as the result of Legacy's adoption of an inappropriate procedure to bill for completed calls that it believed had not been billed.[9]

During the period from approximately November 2005 to October 2008, Legacy engaged in a concerted effort to identify and bill for completed calls that had not been billed due to an error or defect in its systems. As the volume of calls completed from payphones had been dropping substantially, Legacy believed it to be very important to its customers and its own business interests to ensure that all calls that should be billed were in fact billed.

Legacy did so by manually searching through its call detail records ("CDRs") for completed calls that, for some reason, did not bill. Legacy manually downloaded the CDRs from the back-up error files maintained by every live and automated operator platform server. Legacy would then manually review the error files (which included CDRs pertaining to both completed and uncompleted calls) for calls of extended duration that exhibited a "Project Code." (A unique Project Code is assigned to every operator service call by Legacy's central Database Server prior to the call being released for completion. The existence of a Project Code in the CDR would indicate that a call was completed.) If the CDR for a particular call included a Project Code, the call was for an extended duration, <u>and</u> there appeared to be some problem in the record, such as scrambled or missing digits in the originating ANI,[10] Legacy would assume that the call was not

[9] Legacy identifies the following persons who can support all or portions of this section of the response, each is an employee of Legacy: Curtis Brown, President; Paul Truong, Director of IT/IS; Rafael G. Quinto, Director of Operations; Francisco J. Flores, Director of Network.

[10] Legacy believes that the CDR problems are caused by certain defects in the Intel Dialogic Boards that convert DTMF tones to digits. However, these boards are still the top-of-the-line, which is why Legacy uses them.

billed even though it should have been. Legacy would then force bill these records by modifying the defective CDR in a manner that would allow it to flow through the billing system.

Legacy discontinued this extremely time-intensive practice in October 2008 because a large portion of the billings were not paid and were deemed uncollectible after consumers apparently asked their local exchange carriers to remove the charges from their bills. However, Legacy was not aware of any real problems with its billings at that time.

Once the OII was issued and Legacy began investigated the allegations that it had billed consumers for calls for which there were no Legacy or exchange carrier switch records, but that supposedly had been completed 1 hour and 11 minutes after previously-billed calls, Legacy determined that the method it was using to capture unbilled calls had been at fault. Although Legacy assumed that CDRs which contained scrambled or missing digits in the ANI had not been billed, Legacy discovered that, in an as-of-yet-unknown portion of cases, its central Database Server had been able to generate bills using switch records and that consumers had been double-billed as the result of Legacy's efforts.

The reason why the duplicate billings show call times that are different from the original billings and switch records is because the operator platform servers were not time-synchronized with the central Database Server or Legacy's switch. Thus, in a case where the "time stamp" of an operator platform server was 1 hour and 11 minutes out of synch with the Database Server, all of the billings generated from CDRs generated by the operator platform server would show a call time that is exactly 1 hour and 11 minutes apart from the call time identified in the original billings. Legacy's investigation indicates that there were other duplicate billings aside from those exhibiting a 1 hour and 11 minute time difference. For example, it appears that complainants 21 and 27 were double billed based on CDRs obtained from operator platform servers that were out of synch by an amount of time different from 1 hour and 11 minutes.

At this time, Legacy has not yet completed its investigation into this issue and, for this reason, is unable to identify the full extent to which consumers were double billed; nor, is Legacy able, at this time, to identify which customers may have remitted payment for any such billings. Legacy does not expect that a very significant number of customers were actually affected by these billings; however, Legacy is intent on properly resolving this situation.

2. Did Respondent violate P.U. Code Sections 2896(a) and 451, and Section 226 of the Federal Telecommunications Act, by failing to disclose rate information to consumers, which rate information would allow them to make informed choices on whether to accept certain collect calls or not?[11]

Response

Legacy has complied with all applicable laws, regulations, and policies relating to rate disclosure in the provision of operator services. In cases where either federal law or state law requires disclosure of rates prior to completing an operator-assisted call, Legacy complies fully with such requirement. Thus, Legacy discloses rates to the billed party in the case of all *interstate* calls, as required by 47 U.S.C. § 226 and the Federal Communications Commission ("FCC") rules implementing that section. Likewise, Legacy discloses rates to billed parties in the case of *intrastate* calls in the state of Washington, for example, because it is required to do so under that state's law. However, there are no similar requirements that apply to *intrastate* operator services in California.

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First, contrary to CPSD's apparent assumption, disclosure requirements under federal law apply only to *interstate* calls. "[T]he policies and rules adopted herein are applicable only to interstate services."[12] "Section 226 is concerned with interstate, domestic, interexchange operator services."[13] Thus, the suggestion that Legacy's practices relating to the completion of intrastate calls may have violated 47 U.S.C. § 226 is obviously without merit.

Second, this Commission has never adopted price disclosure requirements similar to those that apply to interstate operator-handled calls. Instead, the only requirement imposed by the Commission is that the operator service provider identify itself to the calling party. This requirement was established in Decision 90-05-021, which addressed an application by Chernow Communications, Inc. for authority to provide alternative operator service, and was then generally applied to all other applicants. In that decision, the Commission explained:

> This decision requires the persons who provide operator service on behalf of the applicant to clearly identify themselves as a Chernow operator to the caller. *This notice to the end user is a reasonable way of alerting the consumer to the fact that operator services are not being provided by the dominant carrier or the LEC and that charges may vary from those assessed by the dominant carrier/LEC.* (Emphasis added.)

Legacy identifies itself on all operator-assisted calls. Therefore, Legacy has fully complied with the Commission's disclosure requirements.

3. Did Respondent violate P.U. Code Section 489(a) by failing to file its complete tariff timely, and charging consumers under rates not filed with the Commission?[14]

<u>Response</u>

CPSD notes that Legacy failed to timely submit a CD-ROM copy of its tariff that was in effect as of January 1, 2007, by the due date specified in a directive from the

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[12] *In the Matter of Billed Party Preference for InterLATA 0+ Calls* (1998) 13 FCC Rcd 6122, ¶54.
[13] *Id*. at n.167.
[14] Legacy identifies the following persons who can support all or portions of this section of the response,
(footnote continued)

Communications Division. However, this was simply an oversight; Legacy did submit a CD-ROM for the prior year and once Legacy learned that the 2007 filing had been overlooked, Legacy submitted the requested CD-ROM.

Legacy's failure to submit the CD-ROM did not constitute a violation of Public Utilities Code § 489(a), which establishes the general tariff filing requirement for public utilities. Instead, Legacy merely failed to provide the Commission with a CD-ROM copy of what Legacy had already filed. Thus, the failure to submit the CD-ROM does not establish or otherwise have relationship to an allegation that Legacy provided service at rates not filed with the Commission.[15]

4. Did Respondent violate P.U. Code Section 532 by charging consumers in excess of rates posted in rate sheets?[16]

Response

A. Due to various misunderstanding and miscommunications Legacy failed to properly update its tariff for a period of time prior to mid-2007, which resulted in a number of consumers being billed charges that exceeded tariff rates.

During CPSD's investigation of consumer complaints in connection with Legacy's application for facilities-based local exchange authority in A. 06-11-003, it came to light that Legacy's then-current tariff was out of date and that, in many instances, Legacy was charging rates that were not set forth in its tariff, which Legacy concedes was a violation of Public Utilities Code § 532.

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each is an employee of Legacy: Curtis Brown, President; Rafael G. Quinto, Director of Operations.

[15] Legacy has always strived to comply with all applicable laws and regulations, and regrets its inadvertence in this regard. Further Legacy concedes that its failure to timely file the CD-ROM was a technical violation of the Public Utilities Code.

[16] Legacy identifies the following persons who can support all or portions of this section of the response, each is an employee of Legacy: Curtis Brown, President; Rafael G. Quinto, Director of Operations.

Legacy's failure to properly maintain its tariff was due to miscommunications and misunderstanding. Legacy had a long-standing, ongoing arrangement with Technologies Management, Inc. ("TMI"), a nationally-recognized telecommunications consulting and tariff management firm, to handle Legacy's compliance with state and federal tariffing obligations. Under this arrangement, once a payphone or hospitality customer reached agreement with Legacy on the rates that would be charged for operator services, Legacy would notify TMI of the rate plans. If the agreed-upon rate plans were not covered by existing tariffs, TMI would file tariff revisions to cover the new plans. Similarly, if a customer subsequently required other rates, TMI would file tariff revisions if necessary.

Several years before CPSD instituted its investigation, TMI had advised Legacy that the Commission had detariffed or deregulated operator services and that it was not really necessary for Legacy to have a tariff. As a result, although Legacy continued to provide new rate information to TMI for purposes of revising Legacy's federal informational tariff, Legacy no longer specifically requested that TMI regularly update the California tariff with the new rates. Instead, as rates changed, Legacy simply directed TMI, generally, to make tariff filings in states where filings continued to be required. Although TMI easily could have submitted filings in California, TMI did not do so because, according to TMI, Legacy did not specifically ask it to do so.

During the course of responding to data requests from CPSD, Legacy learned from its California counsel that tariffing requirements continued to apply to the services Legacy provides to consumers who make calls from payphones or hospitality locations. Consequently, Legacy immediately directed TMI to fully update Legacy's tariff, and the necessary revisions were filed in early summer 2007. To the best of Legacy's knowledge, its California tariff has been properly maintained ever since and all customers have been billed in accordance with the filed tariff.

B. Although Legacy's tariff was not up to date, consumers who requested rate information were properly advised of the rates that would be charged for operator-handled calls.[17]

Even though Legacy's tariff was out-of-date, rate information given consumers was not. While TMI was charged with managing Legacy's tariff, Legacy remained responsible for updating its internal systems that were relied upon to provide accurate rate information to consumers. This was done in-house by Legacy, without exception. Therefore, even if, as occurred in California, there was an error made in tariffing, consumers requesting rate information were always be provided with accurate pricing.

Notably, consumers who request rate information are provided with complete information: not just Legacy's rates, but the full amount that will be billed for the call once the connection is made, plus any additional per minute charges that will apply after the specified minimum call duration. For example, if the applicable rate is $1.95 per minute and there is a 5 minute minimum, the customer will be told that the call will cost $9.95 and that the customer will be charged $1.95 per minute after the first five minutes. In addition, if other charges, such as a connection fee, a "nonsubscriber fee," or a premises fee, apply, the total amount of those charges will be added to the quoted minimum. So, if, in the prior example, those charges add up to $10.00, the customer would be told that the call will cost $19.95, plus $1.95 per minute after the first five minutes.

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5. Did Respondent violate the Commission's Rules of Practice and Procedure Rule 1.1 by failing to disclose the numerous regulatory sanctions Respondent sustained in 16 other states?[18]

Response

The allegations that Legacy violated Rule 1.1 arose as the result of Legacy's careless, yet inadvertent, failure in A.06-11-003 to disclose certain sanctions that had been imposed in other states as the result of noncompliance with certain regulatory obligations. However, it is not true that Legacy was sanctioned in 16 states for reportable violations.

A. There were only three matters that clearly should have been reported by Legacy.

(1) Legacy's failure to timely remit the 2006 Regulatory Assessment Fee required by the Florida Public Service Commission ("FPSC"). This failure led to a $500 fine and a temporary revocation of Legacy's operating registration in that state until Legacy requested and received reinstatement of the registration. While Legacy timely filed all applicable regulatory fees and reports with the regulatory commissions in every other state, it somehow missed Florida. To make matters worse, Legacy then missed the late-filing window, which resulted in the cancellation of its registration on August 15, 2006. Although Legacy paid the fee and fine shortly thereafter, it did not re-register until January 26, 2007.

(2) Legacy's failure to timely submit its annual report to the Nebraska Public Service Commission ("NPSC") in 2001. Once Legacy was notified of this failure, Legacy entered into a stipulation with the NPSC staff admitting to the failure and agreeing to pay a fine. No further action was taken. As in the case of the failure to pay the FPSC regulatory fee, Legacy's failure to remit the annual report to the NPSC was simply due to inadvertence. Again,

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Legacy files these types of reports with regulatory agencies across the nation every year, but just over looked this one.

(3) Legacy's completion of operator-assisted local calls in North Carolina without having local exchange operating authority. Legacy had provided operator services in North Carolina pursuant to interexchange operating authority granted by the North Carolina Utilities Commission ("NCUC") since 2002. In response to an informal complaint regarding a bill for an operated assisted call, it came to light that Legacy had been completing operator-assisted local calls, as well as other operator-assisted calls. However, unlike most other states, including California, the completion of any local calls in North Carolina, including operator-assisted local calls, requires the provider to have local exchange authority. Legacy was not previously aware of this unusual requirement, but agreed that it would file an application to expand its authority to include the provision of local exchange and exchange access service, pay a $9000 fine, and refund all amounts billed to end users for operator-assisted local calls. Legacy did so and, to the extent it was unable to make refunds, remitted the charges for the local calls to the state. The NCUC then proceeded to grant Legacy's request for local operating authority, concluding that Legacy was "fit, capable, technically qualified, and financially able to provide local exchange and exchange access telecommunications services as a public utility in North Carolina."

B. Contrary to CPSD's assertions, Legacy was not the subject of reportable proceedings in Iowa or Ohio.

The involvement of Legacy in the Iowa investigation was actually a mistake. What happened is that one of Legacy's wholesale customers, a switchless reseller named Colorado Communications Network, Inc., inadvertently entered two wrong telephone numbers into databases of telephone numbers belonging to hospitality locations that were being switched by the reseller from one underlying transport carrier to another. When the telephone numbers were switched to the new carrier, the incorrect number was switched along with the correct ones. As a result, the end users whose numbers were erroneously switched believed that they had been slammed and contacted their original carrier. That carrier investigated the matter and concluded that Legacy was the responsible party because Legacy's carrier identification code ("CIC") was indicated on the record. However, the only reason why Legacy's CIC was indicated was because Legacy was the reseller's wholesale carrier. Once these circumstances were clarified, the Iowa commission dropped Legacy from the investigation.

The Ohio matter concerned a tariff change that Legacy filed in 2002 to establish a new rate element for operator-assisted calls. This particular rate element is called a non-subscriber fee" or "NSF" and is assessed on non-Legacy end users who make operator assisted calls. If an end user is a subscriber to Legacy's 1+ long distance service, the NSF would not be assessed.

The NSF was originated by AT&T, and because of the competitive circumstances in the operator services industry discussed above, was quickly mirrored by AT&T's competitors. When one of Legacy's competitors in Ohio included an NSF in its tariff, Legacy and a number of other operator service providers soon followed suit. About two years after these tariffs were filed, the Ohio commission staff began looking into the matter and determined that assessing the NSF violated statutory limits the state legislature had set on rates for operator-assisted calls. The staff then began contacting carriers to resolve the situation. During this time, the staff apparently became frustrated with perceived slowness in Legacy's responding to data requests and formalized the investigation. However, soon after the investigation was opened, Legacy reached agreement with the staff on a refund plan. Pursuant to this plan, Legacy issued refunds to affected end users and, in the cases of end users who could not be located, the refunds were escheated to the state. This is the same process that applied to all carriers that had assessed the NSF, and neither Legacy nor any other carriers were sanctioned.

C. Contrary to CPSD's assertions, the 11 corporate registration revocations were not reportable sanctions.

CPSD's allegations of Rule 1.1 violations are based on Legacy's assertion in A.06-11-003 that "neither applicant, any affiliate, officer, director, partner nor owner of more that 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" and Legacy's assertion in response to a CPSD data request that neither Legacy, its affiliates, or their principals had "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."

Not one of the 11 corporate registration revocations falls into either of these categories. Corporate registration requirements are ministerial and associated revocations, suspensions, or fines are simply not sanctions imposed by "regulatory" agencies. Legacy submits that it is not "regulated" by the secretary of state in any of the jurisdictions in which it operates. In common usage, a "regulated" corporation would be a corporation whose operations are subject to oversight by an agency, such as the California Public Utilities Commission or the FCC. Secretaries of state do not make or enforce any rules or policies concerning Legacy's prices or services. Therefore, Legacy does not believe that run-of-the-mill penalties for late registration filings with secretaries of state constitute sanctions for violations of regulatory requirements or otherwise should have been reported as alleged by CPSD.

CONCLUSION

As Legacy has admitted in the foregoing response, its operations have not always been perfect. In an effort to shore up declining revenues for itself and its customers, Legacy undertook an effort to bill customers for calls that had been completed but that Legacy believed were not billed due to equipment defects; but, that effort was not fully thought out and resulted in a number of consumers being double billed for calls. In addition, while Legacy ensured that consumers who requested rate information received full and accurate information, Legacy failed to properly maintain its California tariff. Further, Legacy cannot deny that it carelessly violated Rule 1.1 by failing to disclose three regulatory sanctions in other states.

However, contrary to the assertions by CPSD, Legacy has never engaged in fraud or otherwise intentionally violated any law or regulation. Moreover, the record clearly shows that Legacy strives to be fair to consumers and very often provides whole or partial credits to consumers who are upset at the high prices that are charged for operator-handled calls, even when there is little basis for doing so. Legacy understands why consumers complain about its charges and deny having used its services when Legacy and LEC switch records clearly show that calls have been completed. These types of complaints are common throughout the industry due to the very high rates that payphone owners typically demand, but there is nothing that a carrier such a Legacy can do to help resolve this problem in the absence of Commission-imposed rate caps.

Finally, it is important to keep in mind that Legacy has fully cooperated in CPSD's four-year-long investigation and has been up-front in bringing to light its errors, such as its failure to properly maintain its tariff. Moreover, the record shows that when mistakes were made, such as those that led to the sanctions identified by CPSD, Legacy has almost invariably responded quickly and appropriately. And, as indicated above, Legacy is working hard to identify consumers who paid twice for calls due to the 1 hour, 11 minute-type double billing problem that occurred during the 2005-2008 timeframe.

Legacy, of course, is embarrassed and deeply regrets all errors and oversights. However, all violations have been inadvertent and relatively rare, and Legacy will continue to make every reasonable effort to continue to carry out its business in a manner that is consistent with all applicable laws, regulations, and industry standards.

Respectfully submitted this 21st day of September 2010.

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By *_/s/ John L. Clark_*
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<u>CERTIFICATE OF SERVICE</u>

I, Lisa Vieland, certify that I have on this 21st day of September 2010 caused a copy of the foregoing

RESPONSE OF LEGACY LONG DISTANCE INTERNATIONAL, INC. (U5786C) TO ORDER INSTITUTING INVESTIGATION

to be served on all known parties to I.10-06-013 listed on the most recently updated service list available on the California Public Utilities Commission website, via email to those listed with email and via U.S. mail to those without email service. I also caused courtesy copies to be hand-delivered as follows:

ALJ Timothy J. Sullivan
California Public Utilities Commission
State Building, Room 5106
505 Van Ness Avenue
San Francisco, CA 94102

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 21st day of September 2010 at San Francisco, California.

/s/ Lisa Chapman
Lisa Chapman

3307/002/X122422.v1
09/21/10

Service List I.10-06-013
Last Updated 8/23/10

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