



FILED

05-21-10

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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation on the Commission's own motion into the operations and practices of Americatel Corporation, (U-5918-C), to determine whether it has violated the laws, rules and regulations governing the way in which consumers are billed for products or services, by billing consumers for dial-around long distance monthly service without authorization.

Investigation 10-02-003
(Filed February 4, 2010)

ASSIGNED COMMISSIONER'S RULING AND SCOPING MEMO

Pursuant to Rule 7.3(a) of the Commission's Rules of Practice and Procedure¹ and following the prehearing conference held on May 7, 2010, this scoping memo sets forth the schedule, issues and procedural requirements for this proceeding.

Background

On February 4, 2010, the Commission opened this Order Instituting Investigation (OII) into the operations and practices of Americatel Corporation (Americatel) to determine whether Americatel violated the laws, rules and

¹ All subsequent references to Rules are to the Commission's Rules of Practice and Procedure. The current version of the Rules is available on the Commission's website: www.cpuc.ca.gov.

regulations governing the way in which consumers are billed for products or services, by billing customers for dial-around long distance monthly service without authorization.

At the May 7, 2010 prehearing conference, with the Consumer Protection and Safety Division (CPSD) and Respondents in attendance, the procedural schedule was discussed and developed. A second prehearing conference will be held to provide an update on the status and progress of anticipated settlement negotiations and to address any preliminary matters prior to the start of evidentiary hearing.

Schedule

The schedule for this proceeding is as follows:

EVENT	DATE
CPSD Opening Testimony due	July 26, 2010
Rebuttal Testimony due	September 7, 2010
Close of Discovery and Deadline for requesting formal Alternative Dispute Resolution	September 20, 2010
CPSD Reply Testimony due	September 29, 2010
Second Prehearing Conference	October 13, 2010
Evidentiary Hearings	October 20-21, 2010
Concurrent Opening Briefs due	November 22, 2010
Concurrent Reply Briefs due (anticipated submission date)	December 10, 2010
Presiding Officer's Decision	To be determined

The assigned Commissioner or Administrative Law Judge (ALJ) may modify the schedule as necessary. The goal is to resolve this matter as soon as possible, and it is anticipated that the resolution will not exceed 12 months from the date of filing the investigation, pursuant to Pub. Util. Code § 1701.2(d).²

Scope of the Proceeding

The scope of the proceeding is set out in the OII. The issues to be addressed are:

- a. whether Respondent or its agents violated Pub. Util. Code § 2890 by imposing charges on consumers' bills for products or services which the consumer did not request or authorize;
- b. whether Respondent should be ordered to pay reparations pursuant to Pub. Util. Code § 734;
- c. whether Respondent should be ordered to cease and desist from any unlawful operations and practices, or have special conditions and restrictions imposed on it, pursuant to Pub. Util. Code § 761; and
- d. whether Respondent should be fined pursuant to Pub. Util. Code §§ 2107 and 2108 for violations of the Pub. Util. Code or other order, decision, rule, direction, demand or requirement of the Commission.

² Section 1701.2(d) states that adjudication cases shall be resolved within 12 months of initiation unless the Commission makes findings why that deadline cannot be met and issues an order extending that deadline.

Category of Proceeding and Need for Hearings

The OII categorized this proceeding as adjudicatory. No party appealed that determination pursuant to Rule 7.1(c). The OII states that this matter will be set for evidentiary hearings, and such hearings are set by this scoping memo.

Presiding Officer

Pursuant to Rule 13.2(a), ALJ Melanie Darling is designated as the presiding officer.

Communications with Decisionmakers (*Ex Parte* Communication)

This proceeding is categorized as adjudicatory, and pursuant to Pub. Util. Code § 1701.2(b), *ex parte* communications are prohibited. (See Pub. Util. Code §§ 1701.1, 1701.2 and Article 8 of the Commission's Rules of Practice and Procedure for specific rules on *ex parte* communications particularly Rule 8.2(b).)

Filing, Service and Service List

In this proceeding, there are several different types of documents participants may prepare. Each type of document carries with it different obligations with respect to filing and service. Parties must file certain documents as required by the Rules or in response to rulings by either the assigned Commissioner or the ALJ. All formally filed documents must be filed with the Commission's Docket Office *and* served on the service list for the proceeding. Article 1 of the Rules contains all of the Commission's filing requirements. Rule 1.10 sets forth the rules for electronic filing, which replaces only the filing requirements, not the service requirements.

Other documents, including prepared testimony, are served on the service list but not filed with the Docket Office. We will follow the electronic service protocols adopted by the Commission in Rule 1.10 of the Commission's Rules of Practice and Procedure for all documents, whether formally filed or just served.

This Rule provides for electronic service of documents, in a searchable format, unless the appearance or state service list member did not provide an e-mail address. If no e-mail address was provided, service should be made by United States mail. In this proceeding, we require concurrent e-mail service to ALL persons on the service list for whom an e-mail address is available, including those listed under "Information Only." Parties are expected to provide paper copies of served documents upon request.

E-mail communication about this case should include, at a minimum, the following information on the subject line of the e-mail: I.10-02-004. In addition, the party sending the e-mail should briefly describe the attached communication; for example, *Brief*. Paper format copies, in addition to electronic copies, shall be served on the assigned Commissioner and the ALJ.

The official service list for this proceeding is available on the Commission's web page. Parties should confirm that their information on the service list is correct, and serve notice of any errors on the Commission's Process Office, the service list, and the ALJ. Prior to serving any document, each party must ensure that it is using the most up-to-date service list. The list on the Commission's web site meets that definition.

Any person interested in participating in this proceeding who is unfamiliar with the Commission's procedures or who has questions about the electronic filing procedures should contact the Commission's Public Advisor at (866) 849-8390 or in San Francisco at (415) 703-2074, or (866) 836-7825 (TTY-toll free), or send an e-mail to public.advisor@cpuc.ca.gov.

IT IS RULED that:

1. The schedule and issues to be addressed are set forth in this Scoping Memo, unless subsequently modified by assigned Commissioner or assigned Administrative Law Judge (ALJ) directive.

2. Evidentiary Hearings are necessary in this proceeding.

3. A second Prehearing Conference will begin at 10 a.m. on October 13, 2010. Evidentiary hearings will begin at 9 a.m. on October 20, 2010, and continue through October 21, 2010 as needed. Both will be held in the Commission Courtroom, State Office Building, 505 Van Ness Avenue, San Francisco, California 94102.

4. ALJ Melanie Darling is the presiding officer in this proceeding.

5. Pursuant to Pub. Util. Code § 1701.2(b) and Rule 8.2, *ex parte* communications are prohibited.

Dated May 21, 2010, at San Francisco, California.

/s/ NANCY E. RYAN

Nancy E. Ryan
Assigned Commissioner

INFORMATION REGARDING SERVICE

I have provided notification of filing to the electronic mail addresses on the attached service list.

Upon confirmation of this document's acceptance for filing, I will cause a Notice of Availability of the filed document to be served upon the service list to this proceeding by U.S. mail. The service list I will use to serve the Notice of Availability of the filed document is current as of today's date.

Dated May 21, 2010, at San Francisco, California.

/s/ TERESITA C. GALLARDO
Teresita C. Gallardo

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to ensure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074 or TDD# (415) 703-2032 five working days in advance of the event.