

ATTACHMENT A

Settlement Agreement

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**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA
CONSUMER PROTECTION & SAFETY DIVISION**

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

**SETTLEMENT AGREEMENT IN THE ABOVE REFERENCED ORDER INSTITUTING
INVESTIGATION**

SETTLEMENT AGREEMENT

The Consumer Protection & Safety Division of the California Public Utilities Commission ("CPSD") and Americatel Corporation, its successors, affiliates and assigns ("Americatel"), hereby agree upon the following terms for the settlement (the "Agreement") of the Commission Order Instituting Investigation I.10-02-003 (the "OII"). All of the above-identified parties are sometimes individually referred to as "Party" and/or collectively referred to as the "Parties."

TERMS

I. JOINT STATEMENT OF THE CASE

Americatel

The Parties submit the following Joint Statement as the basis for the Settlement Agreement:

1. Americatel provides a dial-around service pursuant to which customers place long distance calls by dialing the access code 10-10-123. Customers have the choice of several different rate plans, including plans with no monthly fees and other plans that include a monthly fee while providing reduced per-minute rates. The monthly fees, which are assessed regardless of whether the customer places any telephone calls, are billed through a billing arrangement with local phone companies and appear as a line item on the customer's monthly local phone bill. Customers are billed for usage in accordance with the rate plan they selected. Americatel's service does not require the customer to change its preferred interchange carrier ("PIC").

2. Americatel began to provide telephone services in California in 1997.¹ From the date of its inception until the OII was filed, Americatel had not been the subject of any other enforcement proceeding in California, nor the subject of any informal inquiry of consequence at the Federal Communications Commission. Moreover, the company has never been subject to a forfeiture action by the Federal Communications Commission.

Customer Complaints of Unauthorized Charges

3. In a July 31, 2008 letter, Americatel's then General Counsel, Robert Felgar, notified CPSD that Americatel had received complaints from consumers who said that "they were signed up

¹The Commission granted Americatel authority as a switchless reseller of inter-Local Access and Transport Area (Inter LATA) services in December 1977 (Decision (D.) 97-12-128.

1 for one of Americatel's monthly service plans with an attendant monthly fee without their
2 authorization . . . We believe that there has been some breakdown in the systems and procedures of
3 one of Americatel's third party marketing vendors. These complaints are a matter of utmost concern
4 to Americatel and we made their resolution the company's highest priority. We are committed to
5 making every complainant whole . . . We have also initiated a full-scale investigation in order to
6 identify and correct the source of the complaints. Once we have determined the cause of the problem,
7 we will inform the Commission."

8 4. Americatel concluded that the third party marketer in question, Bravo Marketing
9 Inc. ("Bravo"), had defrauded many Americatel customers and Americatel itself. In order to ensure
10 that each sale was a legitimate one, Americatel had required Bravo to submit signed Letters of
11 Authorization demonstrating that the customer had indeed signed up for Americatel's services.
12 However, it became clear that Bravo had forged a significant number of Letters of Authorization.

13 5. Americatel terminated the marketing contract with Bravo effective June 11, 2008,
14 which was later extended to July 9, 2008 and further extended to July 31, 2008. Americatel,
15 however, considered the contract with Bravo ended on June 30, 2008 since Americatel did not bill
16 any customers obtained by Bravo in July 2008. Americatel decided to provide every customer
17 subscribed to an Americatel service by Bravo (61,097) with credits, totaling about \$1.5 million, to
18 make them whole. Americatel made this decision despite the fact that (1) Americatel knew that some
19 of the sales were legitimate; and (2) Americatel had not been directed by any government entity
20 (formally or informally) to do so.

21 The OII

22 6. By the time that Americatel sent its July 31, 2008 letter, the Commission's Consumer
23 Affairs Branch had already noted a significant increase in the number of cramming complaints against
24 Americatel and notified CPSD. CPSD, also at the end of July 2008, as a result of such customer
25 complaints, initiated a series of Data Requests to Americatel.

26 7. On February 4, 2010, the Commission filed the OII to determine whether Americatel
27 had violated the laws, rules and regulations governing the way in which consumers are billed for
28 products or services, by billing consumers for dial-around long distance monthly service without

1 authorization. In addition, the OII addressed two separate instances of one-time billing errors made by
2 Americatel. The first billing error occurred in August of 2008 when the federal universal service fee
3 defaulted to 100% of the customer's usage instead of 11.4% of usage resulting in an overcharge of
4 approximately \$1.8 million. The error affected all Americatel customers in California. The second
5 billing error involved higher per minute charges for certain rates under the Uniendo call plan in
6 October 2008, and caused 2,665 California customers to be overcharged \$70,134.93. Americatel
7 corrected the two billing errors by issuing credits to affected consumers on the next billing cycle,
8 resulting in credits of over \$1.8 million.

9 8. The Parties dispute their respective rights and liabilities arising out of and relating to
10 the OII, and mutually desire to reach a full and final settlement of all claims arising from all issues
11 raised in or related to the OII and further wish to avoid the delay, expense, uncertainty and
12 inconvenience of protracted litigation of the issues raised in the OII.

13 9. The Parties hereby resolve any and all claims arising out of the OII, upon the terms
14 and conditions set forth herein.

15 **II. AMERICATEL'S COMMITMENT TO OPERATIONAL IMPROVEMENTS AND**
16 **CREDITS**

17 10. CPSD has requested Americatel to make numerous operational improvements and
18 Americatel has agreed to do so. The operational improvements are in the following areas: (1)
19 procedures for marketing and new customers; (2) customer service; (3) pre-screening of marketing
20 vendors; (4) billing procedures; and (5) use of Letters of Authorization. The operational
21 improvements are set forth in detail on Exhibit "A," attached hereto and incorporated herein by
22 reference. Such operational improvements shall be implemented for not less than twenty-four months
23 from the date of approval of this settlement by the Public Utilities Commission. With respect to the
24 billing errors described in the OII, Americatel has already installed a new billing system under which
25 it is highly unlikely that any similar billing errors will occur. Americatel acknowledges that the
26 billing errors warranted investigation by the CPSD for the purpose of consumer protection.

27 11. Americatel further acknowledges that the complaints of unauthorized charges asserted
28 by many Bravo-obtained consumers warranted investigation and action by the CPSD to ensure

1 compliance with the law and to protect consumer welfare.

2 12. Americatel will utilize commercially reasonable good faith efforts to review its billing
3 records to identify, locate and provide credits or refunds to customers affected by unauthorized
4 charges in the event that any customer has not already been issued the appropriate credits. Americatel
5 will provide the CPSD with a list of such customers affected by such unauthorized charges. The list
6 will include information about such unauthorized charges submitted to Americatel's LEC Billing
7 aggregator ILD and credits provided to customers via ILD. The review will be conducted by
8 Americatel's Chief Financial Officer, who will verify that all credits/refunds been issued or paid as set
9 forth on the list.

10 **III. MONETARY PAYMENT**

11 13. Americatel has agreed to pay the total amount of \$503,000.00 to the State of
12 California's General Fund. Americatel shall pay \$43,000.00 within 30 days after the Effective Date
13 of this Settlement. The Effective Date shall be the date of the approval by the Public Utilities
14 Commission. Thereafter, Americatel shall make monthly payments in the amount of \$20,000.00
15 each, for the following 23 months, for a total payment of \$503,000.00.

16 **IV. DISMISSAL AND SETTLEMENT**

17 14. Prepared Testimony. The Parties agree to submit all prepared testimony to ALJ
18 Darling to be entered into the official record and received into evidence. The Parties reserve all rights
19 and objections concerning the prepared testimony in the event that ALJ Darling and/or the
20 Commission does not approve this settlement. In the event that this Settlement Agreement is not
21 approved by the Commission, and the issues in this case proceed to evidentiary hearing, the Parties
22 reserve the right to object to the admissibility of any Party's testimony or portion thereof.

23 15. Approvals. After signing this Settlement Agreement, including prior to final approval
24 from the Commission, the Parties shall actively support prompt approval of the Settlement
25 Agreement, including briefing, comments on the proposed decision, written and oral testimony if
26 necessary, appearances, and other means as may be needed to obtain the necessary approvals. The
27 Parties agree that if the Commission does not approve the Agreement unconditionally and without
28 modification, any party may, in its sole discretion, elect to terminate the Settlement Agreement.

1 However, prior to any such termination, the Parties agree to negotiate in good faith with regard to any
2 Commission-ordered changes in order to restore the balance of benefits and burdens, and to exercise
3 the right to withdraw only if such negotiations are unsuccessful. Such negotiations shall be
4 conducted in a mediation before Administrative Law Judge Jacqueline Reed. If such mediation is not
5 successful, with the result that the Settlement Agreement is terminated, the Parties shall request that
6 the issues in this proceeding be heard and briefed at the earliest convenient time.

7 16. Compromise. The Parties agree that this Settlement Agreement represents a
8 compromise, not agreement or endorsement of disputed facts and law, and the Settlement Agreement
9 does not constitute a precedent regarding any principle or issue in this proceeding or any future
10 proceeding.

11 17. Scope and Effect of Agreement. This Agreement represents a full and final resolution
12 of the issues set forth in the OII, and the matters giving rise thereto, including, but not limited to, all
13 potential claims, penalties, enforcement actions or investigations.

14 18. Other Proceedings. The Parties agree that neither the Joint Statement of Case nor
15 anything contained in this Agreement constitutes a binding admission or concession in any other
16 proceeding. The Parties have entered into this Agreement to effect a compromise and settlement of
17 the contested matters pending before the Commission.

18 **V. GENERAL TERMS**

19 19. Severability. No individual term of this Agreement is assented to by any Party except
20 in consideration of the Parties' assent to all other terms. Thus, the Agreement is indivisible and each
21 part is interdependent on each and all other parts. Any Party may withdraw from this Agreement if
22 the Commission modifies, deletes from, or adds to the disposition of the matters stipulated herein,
23 subject to the good faith negotiation set forth in Paragraph 15.

24 20. Entire Agreement. This Agreement contains the entire Agreement and understanding
25 concerning the subject matter hereof and supersedes and replaces all prior negotiations, proposed
26 agreements, whether written or oral, express or implied, of any type whatsoever. No change,
27 addition, waiver, amendment or modification of any of the terms or conditions hereof shall be valid or
28 binding on either Party unless it is memorialized in writing and signed by all Parties.

1 21. Authority. The undersigned representatives of the respective Parties, hereby
2 acknowledge that they are empowered and authorized by the Commission, in the case of the CPSP,
3 or corporate entity, in the case of Americatel, to execute this Settlement Agreement and to make this
4 Settlement Agreement binding on behalf of the Party they represent.

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

9 23. Interpretation. The Parties acknowledge and agree that each Party was represented by
10 independent counsel with respect to the negotiation, preparation and execution of this Agreement. In
11 the event of an ambiguity in or dispute regarding the interpretation of this Agreement, such
12 interpretation shall not be resolved by any rule for interpretation against the Party who causes the
13 uncertainty to exist or against the draftsman.

14 24. Section Headings. The section headings contained in this Settlement Agreement are
15 solely for the purpose of reference, are not part of the agreement of the Parties, and shall not in any
16 way affect the meaning or interpretation of this Settlement Agreement.

17 25. Further Documents. Each party shall execute, acknowledge and deliver such other
18 documents and instruments as are reasonably necessary to carry out the intents and purposes of this
19 Agreement.

20 26. Notice. Any notice, report, request or statement provided for in this Agreement shall
21 be deemed sufficiently given when personally delivered, or sent by overnight delivery (e.g., federal
22 express) or sent by certified or registered mail addressed to the Party for whom intended, to the
23 addresses set forth below.

24 If Addressed To

25 Americatel Corporation

24 Send To

25 Brian J. McCormack
26 Callahan & Blaine APLC
27 3 Hutton Centre Drive, Suite 900
28 Santa Ana, CA 92707
 Telephone: (714) 241-4444
 Facsimile: (714) 241-4445

 With a copy to:

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Scott M. Klopack
General Counsel Americatel Corporation
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Fax: (214) 432-1576
Email: sklopack@matrixbt.com

Consumer Protection & Safety Division

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Public Utilities Commission
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(415) 703-1998
tff@cpuc.ca.gov
travis.foss@cpuc.ca.gov

27. Governing Law. To the extent permitted by law, the execution, validity, construction, and performance of this Agreement will be construed and enforced in accordance with the laws of the State of California.

28. Counterparts. This Agreement may be executed in two or more counterparts; each counterpart shall be deemed an original instrument as against the Party who signed it. When counterparts have been executed by all of the Parties hereto and delivered to the opposing Parties, this Agreement shall at that point become effective and the counterparts shall together constitute one document. The Parties agree that facsimile or e-mail (i.e., pdf) copies of signed signature pages shall be accepted as originals for all purposes, but that each party delivering a facsimile or e-mail copy of a signature page shall cause the original thereof to be delivered to the opposing Party as soon as practical

IN WITNESS WHEREOF, the Parties have caused this Agreement to be entered into and executed and have signed their respective names as of the date below.

Dated: December __, 2010

Charles Taylor
Americatel Corporation

Dated: December 20, 2010

Richard Clark
Director of Consumer Protection & Safety Division

Dated: December 30, 2010

Travis Foss, Esq.
Public Utilities Commission, Legal Division

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Email: sklopack@matrixbt.com

Consumer Protection & Safety Division

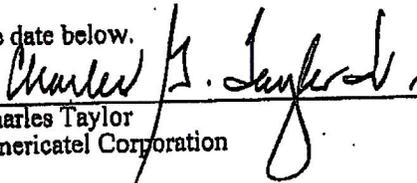
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travis.foss@cpuc.ca.gov

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28. Counterparts. This Agreement may be executed in two or more counterparts; each counterpart shall be deemed an original instrument as against the Party who signed it. When counterparts have been executed by all of the Parties hereto and delivered to the opposing Parties, this Agreement shall at that point become effective and the counterparts shall together constitute one document. The Parties agree that facsimile or e-mail (i.e., pdf) copies of signed signature pages shall be accepted as originals for all purposes, but that each party delivering a facsimile or e-mail copy of a signature page shall cause the original thereof to be delivered to the opposing Party as soon as practical

IN WITNESS WHEREOF, the Parties have caused this Agreement to be entered into and executed and have signed their respective names as of the date below.

Dated: December 22, 2010


Charles Taylor
Americatel Corporation

Dated: December __, 2010

Richard Clark
Director of Consumer Protection & Safety Division

Dated: December __, 2010

Travis Foss, Esq.
Public Utilities Commission, Legal Division

EXHIBIT A

CPSD REQUEST RE: PROCEDURES FOR MARKETING AND NEW CUSTOMERS

Americatel shall establish a "Do Not Market To List" of customers who have complained of being crammed by Americatel in the past and the customers' names shall be kept on the list for a period of 3 years.

Americatel shall ensure its telemarketers do not solicit new orders and refrain from contacting these customers, either by telemarketing, face-to-face or other type of marketing for a period of two years.

Americatel shall send a "welcome letter" that is signed and dated to confirm subscription to any of Americatel contract plans. The "welcome letter" shall clearly state the:

Name of the contract plan the customer ordered;

Contract plan monthly rate;

If applicable, the associated call minutes included in the contract plan and monthly rate;

If applicable, the associated rate per minute of call; and

Customer's Activation Date for Americatel to begin the contract plan.

Americatel shall implement this provision no later than 30 days from the effective date of the Commission order.

CPSD REQUESTS RE: CUSTOMER SERVICE

Americatel shall have a dedicated customer service toll-free number. Customers who wish to request cancellation of service and charges may call this number during normal business hours. This dedicated toll-free number shall be staffed with an adequate number of representatives who could return customer calls within one business day. This dedicated toll-free number shall be included in Americatel's welcome letter.

Americatel shall have representatives who are fluent in both Spanish and English.

Americatel shall have regular training of all its representatives to ensure they provide informative, adequate and polite service to all the customers.

In the event that a customer calls Americatel's customer service requesting cancellation of service, Americatel shall send the customer a postcard confirming such cancellation of service.

CPSD REQUEST RE: PRE-SCREENING MARKETING VENDORS

Americatel shall pre-screen all third party marketing vendors involved in the sales or marketing of subscribed services to end users, including its sales agents, prior to engaging their services and require full disclosure of:

Information of past lawsuits involving allegations of forgery or fraud;

Any complaints against the vendor or its sales agent for forgeries, slamming or cramming;

Any past settlements regarding forgery, slamming or cramming; and

Any instances of termination of contracts due to forgery, slamming or cramming.

CPSD'S REQUESTS RE: BILLING PROCEDURES

Americatel shall conduct regular training of all billing personnel. Americatel shall submit its training program to the Commission 30 days from the effective date of the Commission order.

Americatel shall keep detailed records of training conducted for all its billing personnel. The training record shall include the topics addressed during the training, date and place of training, including the list of attendees and their titles. The training record shall be available to Commission staff upon request.

Americatel shall regularly monitor its billing rates for accuracy and also for anomalies (March 17, 2010 Americatel Response to CPSD Data Request No. 8).

Americatel shall regularly perform trend analysis of customer inquiries to monitor, prevent and correct any system-wide issues. (See March 17, 2010 Americatel Response to CPSD Data Request No. 8).

CPSD REQUESTS RE: LOAs AND MARKETING SAFEGUARDS

Whenever AmericateL uses a LOA to consummate a sale, AmericateL shall match the LOAs with the sales report.

AmericateL shall not initiate billing a customer unless there is a matching sales report and a LOA.

AmericateL shall maintain physical possession of all LOAs for a period of three years.

As one of the ways to ensure accountability from its vendors, AmericateL indicated that it would compare data from two reports: Daily Sales Reports vs. Daily TPV Reports. This measure would ensure that all sales are being submitted through the ITPV (Independent Third Party Verification) process. If all sales go through the ITPV, then the number of ITPV should match the number of sales (September 22, 2008 AmericateL Response; Attachment C-2 to CPSD Report). CPSD recommends that this process be implemented as well with sales that require LOAs. All sales of pre-subscribed long distance (Pic'd ANIs) product will meet all FCC and California rules regarding same. All sales of pre-subscribed casual long distance service products will be subjected to an ITP sales confirmation.

Additionally, AmericateL informed CPSD in response to CPSD Data Request 005 (Attachment E-2 to the Staff Report) that it has adopted certain compliance measures to ensure its marketers comply with applicable law, including:

- (1) Festival Inspections designed to witness first-hand whether Bravo complied with the law;
- (2) AmericateL required Bravo to obtain LOAs;
- (3) Adherence to Compliance Standards;
- (4) Termination Requirements;
- (5) Zero Tolerance Policy;
- (6) Termination Report detailing that Bravo had terminated improper marketers;
- (7) Mystery Shoppers to make unannounced surprise visits to Bravo;
- (8) and requiring third party verifications.

CPSD recommends that the Commission requires continued compliance with these adopted measures.

(END OF ATTACHMENT A)

ATTACHMENT B**I.10-02-003 EXHIBIT LIST**

Exhibit Number	Testimony	Source	Date submitted	Date Admitted to Record
1	Nermin Selimic (public)	Americatel	3/29/11	4/1/11
2	Robert Felgar	Americatel	3/29/11	4/1/11
3	William Schulte	Americatel	3/29/11	4/1/11
4	Nora Gathalian 7/26/10 (public) and includes Supplemental Report	CPSD	3/29/11	4/1/11
5	Nora Gathalian 9/29/11 (public) with Attachments 1 and 3	CPSD	3/29/11	4/1/11

(END OF ATTACHMENT B)