



FILED
7-17-14
08:00 AM

Utility Consumers Action Network
3405 Kenyon Street, Suite 401
San Diego, CA 92110
(619) 610-9001
(619) 696-6966
don@ucan.org

C1407007

**BEFORE THE PUBLIC UTILITIES COMMISSION OF
THE STATE OF CALIFORNIA**

UTILITY CONSUMERS' ACTION NETWORK (UCAN),)	Case No.:
)	
Complainant,)	
)	
vs.)	
)	
U.S. TELEPACIFIC CORP., dba TelePacific Communications (U5721C))	
)	
Defendant.)	

**COMPLAINT AND REQUEST FOR STAY FROM COLLECTIONS, CEASE AND
DESIST ORDER AND DAMAGES AGAINST TELEPACIFIC COMMUNICATIONS
FOR IMPOSING UNAUTHORIZED CHARGES ON SUBSCRIBERS' PHONE BILLS,
BILLING CUSTOMERS FOR UNJUST AND UNREASONABLE CHARGES, AND
FAILING TO PROVIDE CUSTOMER SERVICE**

Pursuant to Section 1702 of the California Public Utilities Code (the "Code"), and Rule 4.1 of the commission's Rules of Practice and Procedures, this complaint is brought and hereby filed by the Utility Consumers' Action Network ("UCAN") against TelePacific Communications and related entities collectively "TelePacific" U-5271 for:

- 1 1. Imposing unauthorized charges to customers bills in violation of Public Utilities Code
2 section 2890 (a)¹;
- 3 2. Charging unjust and unreasonable rates for the services provided in violation of Public
4 Utilities Code section 451;
- 5 3. Failing to provide customers with enough information to make informed choices by
6 providing false, misleading and deceptive representations about TelePacific customers
7 receiving “24 hour toll fraud protection”, in violation of Public Utilities Code section
8 2896 (a);
- 9 4. Citing inapplicable terms of service as justification for imposing toll fraud charges on a
10 customers’ account in violation of Public Utilities Code section 2896 (a);
- 11 5. Not providing accurate information to the Public Utilities Commission when responding
12 to the commission’s Consumers Affairs Branch (CAB) regarding a customer’s dispute in
13 violation of Public Utilities Code section 2889.9 (f) & (g);

14 As set forth below, TelePacific’s actions violate the Public Utilities Code and commission’s
15 General Orders and Rules.

16 **SUMMARY OF THE COMPLAINT**

17 This complaint involves TelePacific, a regulated utility in California, which billed their
18 customers for toll fraud calls even though TelePacific has represented that customers at
19 TelePacific receive “24 hour toll fraud protection”. TelePacific has produced marketing
20 materials for its customers that say: As always with TelePacific you get – “24 hour toll fraud
21 protection”. Unfortunately, when customers were victimized by toll fraud, TelePacific billed
22 their customers anyway. TelePacific’s representations were false, misleading and deceptive and
23 resulted in thousands of dollars in toll charges being billed to TelePacific customers. These
24 charges were unauthorized and this conduct violates PU Code section 2890 (a) and the
25 commission’s General Order 168.

26
27
28 ¹ Unless otherwise noted, all references to code sections refer to the California Public Utilities Code.

1 In addition, by billing their customers thousands of dollars for toll fraud calls that
2 TelePacific has represented their customers were protected from, TelePacific has violated PU
3 Code section 451 by imposing unjust and unreasonable charges.

4 UCAN's complaint will cite customer specific facts where the customers were told by
5 TelePacific that the toll fraud charges on their accounts were their responsibility to pay.
6 TelePacific's representatives have claimed that their represented "24 hour toll fraud protection"
7 does not protect the customer from toll fraud charges if the customer's equipment was hacked.
8 TelePacific claims that a term and condition of their customer service contracts require
9 customers to secure their own equipment. TelePacific has used this contract language to shift
10 liability for the costs of toll fraud calls onto their customers.

11 TelePacific also failed to disclose that there were major exceptions to its advertized
12 service provided to customers of "24 hour toll fraud protection." TelePacific customers were
13 unaware that this provided service contained major exceptions. Those exceptions include that
14 TelePacific does not protect their customers against toll fraud if the customers' phone equipment
15 is hacked. This failure to disclose what "24 hour toll fraud protection" meant violates PU Code
16 section 2896 (a) because TelePacific failed to provide their customers enough information to
17 make informed choices.

18 TelePacific also held one specific customer responsible for toll fraud calls, citing specific
19 contract terms even though the customer's contract contained no such term. By holding a
20 customer liable for charges under a contract term the customer never agreed to, TelePacific is
21 violating Public Utilities Code section 2896 (a); moreover, TelePacific violated Section 2889.9
22 (f) & (g) by telling the commission's Consumers Affairs Branch (CAB) that they had reviewed
23 the customers' contract and concluded the customer was responsible, again citing a contract term
24 the customer never agreed to.²

25 TelePacific's conduct and policies are harming customers and UCAN asks for an
26 immediate Cease and Desist Order for charging any customer who is the victim of toll fraud, an
27 accounting of all toll fraud incidents in which customers were billed, and restitution with interest

28 ² As will be shown, Colony West, one of the customers mentioned in this complaint signed a TelePacific contract in
2009, and this contract was in effect at the time the toll fraud calls were placed in February 2013. Subsequently, in
March 2013 Colony West signed a new contract with TelePacific that contained the contract term 3(f) TelePacific
later cited to both the customer and CAB. This March contract was not applicable to the dispute.

1 to be made to those customers. UCAN also asks that the commission impose appropriate
2 penalties and sanctions on TelePacific to discourage such future conduct.

3 4 **I. THE PARTIES**

- 5
- 6 1. Complainant Utility Consumers' Action Network, UCAN, is a consumer advocacy
7 organization representing consumers, customers, or subscribers of telephone, electrical,
8 gas, or water corporations that are subject to the jurisdiction of the commission. UCAN's
9 place of business is 3405 Kenyon Street, Suite 401, San Diego, CA 92110
 - 10 2. Attorney and representative for UCAN is Donald Kelly.
 - 11 3. Defendant TelePacific (U-5271) is a corporation currently doing business in the State of
12 California as a telecommunications service provider. TelePacific's principle California
13 office is located at 515 South Flower Street, 47th Floor, Los Angeles, CA 90071. There
14 phone number is (877) 487-8722.
 - 15 4. TelePacific is registered with the California Public Utilities Commission ("commission")
16 as a telecommunications provider.
 - 17 5. TelePacific markets and sells telecommunications services in the State of California.
 - 18 6. TelePacific provides local, interstate and international long distance phone services,
19 internet and data services, managed security of business communications services on
20 business premises, and mobile phone services. TelePacific has local offices throughout
21 California.

22 **II. CONSUMER/CUSTOMER SPECIFIC FACTS ASSERTED**

23 **Unless otherwise stated, the facts cited in this complaint are stated on information and**
24 **belief. As to the following, UCAN is informed and believes:**

25
26 **Lasercare Technologies Inc,**
27
28

- 1 1. Lasercare Technologies, Inc., (hereinafter Lasercare) is a corporation doing business in
2 the State of California. Lasercare's principal place of business is 3375 Robertson Place,
3 Los Angeles, CA 90034. Consumer Paul Wilhelm is the President of the company.
- 4 2. In 2012 Lasercare was seeking a provider of Telephone services and contacted
5 TelePacific to inquire about services offered and fees charges. In their negotiations for
6 telephone services Lasercare was provided information, both written and oral about the
7 types of services offered by TelePacific.
- 8 3. One item provided to Lasercare was a brochure which detailed several benefits provided
9 by TelePacific to its customers. This brochure includes both graphics and statements.
10 On the left side of the first page of this brochure, set off in large type, under the picture of
11 a telephone receiver, using gold bullet points, is the statement: As always with
12 TelePacific, you get:
13 - 24-Hour Technical Support
14 - 24-Hour Toll Fraud Protection
15 - Commitment-based Purchasing Power
16 - Voice and Data Service Level Agreements (Exhibit A)
- 17 4. Relying on the statements and information provided by TelePacific, Lasercare signed a
18 contract with TelePacific for telephone services on July 27, 2012. Lasercare's account
19 number with TelePacific is 132494. (Exhibit B)
- 20 5. While TelePacific provided the telephone service, Lasercare had professionally installed
21 an Allworx PBX telephone system.
- 22 6. On February 3, 2014 TelePacific registered to Lasercare's account 3,355 calls to Kosovo
23 totaling 29,725 minutes and \$13,385.40.³ (Exhibit C)
- 24 7. Lasercare never received a toll fraud alert from TelePacific prior to February 3, 2013.
- 25 8. On February 4, 2013 Lasercare was notified by TelePacific of toll fraud charges to their
26 account.
- 27 9. On February 6, 2014 Lasercare received from Allworx, Lasercare's telephone equipment
28 provider, a security advisory regarding toll fraud incidents. (Exhibit D)

³ On the telephone bills submitted, the calling destination for toll fraud calls lists Kosovo. In email correspondence attached, exhibit F, TelePacific refers to the calling destination as Monaco. TelePacific has explained that Kosovo refers to the telephone exchange in Monaco.

1 10. On February 9, 2013 TelePacific issued a billing statement to Lasercare for \$19, 554.16
2 for services and calls made. Lasercare's previous amount owed for services was
3 \$972.02⁴

4 11. Lasercare sought to dispute the toll fraud charges with TelePacific as they were
5 unauthorized calls.

6 12. Lasercare was informed that TelePacific has determined that Lasercare's phone system
7 was hacked.

8 13. On March 20, 2014 TelePacific responded to Lasercare's billing dispute by saying that:

9 TelePacific has confirmed that you signed a 3 year Service Agreement dated July 27,
10 2012. Page 3 section 3(f) of the Terms and Conditions states in part:

11 "(f) Network Security. You acknowledge that it is your responsibility to take whatever
12 actions you deem necessary to make your computer and voice network and circuits
13 adequately secure from unauthorized access. You further acknowledge that we only
14 provide telecommunications services and certain equipment to you and that we are not
15 responsible for the security of your network and circuits from third parties, or for any
16 damages that may result from any unauthorized access to your network. We urge you to
17 seek independent advice with respect to products, equipment (including configurations),
18 and services available to make your computer network and circuits more secure from
19 third parties".

20 By signing the Service Agreement, you acknowledged that you understood the Service
21 Agreement and all of the Terms and Conditions provided. The Service Agreement and
22 the Terms and Conditions are attached for your review.

23 Based on this information, TelePacific has confirmed that the charges related to the calls
24 terminating to Monaco are valid.

25 As a courtesy, TelePacific has offered to issue a credit in the amount of \$4,587.99.

26 The remaining balance of \$8,797.41 for the international long distance charges is valid
27 and is equivalent to the cost and fees TelePacific incurred to carry the long distance
28 traffic. (Exhibit E)

⁴ In addition to the Toll Fraud charges for the calls placed, other service fees increased as well.

1 14. On March 29, 2013 TelePacific issued a security advisory noting: “Our Toll Fraud
2 Monitoring Team is registering a spike in the number of fraud incidents involving large
3 auto-dialer attacks targeting network users who use Allworx PBXs.” (Exhibit F)

4 15. After receiving this letter, Lasercare continued to dispute the charges and through the
5 remainder of 2013 and through April of 2014 TelePacific never sought to collect for the
6 fraudulent toll calls. In May, 2014 TelePacific affirmed that they still held Lasercare
7 responsible for the toll fraud charges, although TelePacific has yet to take any
8 enforcement actions against Lasercare.

9 16. On June 17, 2014 Lasercare filed an informal complaint with the Consumer Affairs
10 Branch (CAB) seeking relief. (file no: 322831)

11 17. On June 19, 2014 the CAB sent a letter to Lasercare indicating that they are precluded by
12 Public Utilities Code section 710 from taking anything other than informal action because
13 Lasercare purchased VoIP services from TelePacific. (EXHIBIT G)

14 18. CAB’s letter to Lasercare never examined section PU Code section 710 (d) which
15 applies here and allows for the enforcement of criminal and civil laws related to
16 consumer protection and unfair or deceptive trade practice laws or ordinances by
17 telephone corporations. PU Code section 710 (d) reads:

18 “This section does not affect the enforcement of any state or federal criminal or
19 civil law or any local ordinances of general applicability, including, but not
20 limited to, consumer protection and unfair or deceptive trade practice laws or
21 ordinances . . .”

22 19. Public Utilities Code section 2890 (a) is a state civil law related to consumer protection.
23 The commission’s General Order 168 implementing PU Code section 2890 is titled the
24 “Consumer Bill of Rights Governing Telecommunications Services.” This complaint
25 accuses TelePacific of false, misleading and deceptive representations that have resulted
26 in unauthorized charges being placed on customers’ bills in violation of PU Code section
27 2890 (a). Section 710 (d) provides protection for VoIP customers of telephone utilities
28 by allowing for enforcement of those civil consumer protection laws which are violated
by telephone utilities, like PU Code section 2890(a). TelePacific is a utility regulated by
this commission, and Public Utilities Code section 2890 (a) is enforced by this
commission.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Colony West Financial

20. Customer Colony West Financial (hereinafter Colony West) is a corporation doing business in the State of California. Colony West Financial's principal place of business is 201 E. Sandpoint Suite 360 Santa Ana, CA 92707. Consumer Tina Kaley is Administrative Operator of Colony West Financial, and her phone number is (714) 542-4870, ext 221.
21. Colony West Financial, a licensed commercial insurance agency which contracted with TelePacific Communications U-5271 (hereinafter TelePacific) to provide monthly telecommunications in the form of California local and long distance telephone lines and services. In addition, TelePacific provided Smart Voice SIP network, CA Smart Voice SIP Internet, FAX Central services, a deluxe Business Line and a toll free number. Colony West's TelePacific account number is 104960.⁵ (Exhibit H).
22. Colony West professionally installed and secured an Allworx PBX system to connect to the telecommunication services to be provided by TelePacific. Colony West performed regular security checks and updates to their system to make sure that their system maintained adequate security.
23. On February 1, 2013 TelePacific registered 2,866 calls totaling 26,490.5 minutes as originating from Colony West's phone system.⁶ (Exhibit I)
24. On February 4, 2013 TelePacific contacted Colony West to let them know that TelePacific detected possibly fraudulent account activity, and wanted to provide notification of a potential problem. (Exhibit J)
25. On February 13, 2013 Colony West was informed by email that they would be billed for the calls on the upcoming invoice and that there was no way to stop the billing (Exhibit K).

⁵ When Colony West signed their contract they were only given 3 pages of the Terms and Conditions regarding the contract. Colony West has repeatedly tried to obtain the remaining pages from TelePacific. TelePacific has told Colony West they have no other pages to give them.

⁶ On the telephone bills submitted, the calling destination for toll fraud calls lists Kosovo. As noted in footnote 3, TelePacific has explained that Kosovo refers to the telephone exchange in Monaco.

1 26. Colony West received an invoice numbered 4450189-0, dated February 28, 2013 for an
2 amount of \$16,393.44. This invoice included usage charges of \$11,935.87 for calls to a
3 location listed as Kosovo. All of the calls listed for Kosovo occurred on February 1,
4 2013 between 7:58 pm and 10:26 pm.⁷ (Exhibit I).

5 27. On March 15, 2013 Colony West contacted TelePacific to dispute responsibility for the
6 toll fraud charges. Colony West denies that any calls made to Kosovo were authorized.

7 28. Colony West was informed by TelePacific that they were the victims of hacking. Colony
8 West was also told by TelePacific that their contract's terms and conditions called for the
9 customer to provide adequate security to prevent unauthorized access. Therefore, since
10 the hacking occurred to Colony West's system, they were responsible for the bill.

11 29. TelePacific cited to a section 3 (f) of the Terms and Conditions of Colony West' contract
12 terms as justification for Colony West being responsible for the toll fraud charges. Term
13 3 (f) notes the customers' responsibility to secure their phone equipment. TelePacific
14 claimed that because Colony West had failed to properly secure its system, then Colony
15 West is responsible for the bill. But Colony West's contract contained no term 3 (f).

16 30. The contract Colony West signed in 2009, which was the contract in effect covering the
17 time period of the toll fraud calls, contains no term 3 (f). The only language mentioning
18 a customer's responsibility for securing their telephone system is on page 1, in Section 2,
19 "Order information" of exhibit H, which states that:

20 "Customer hereby acknowledges that it is the customer's responsibility to
21 adequately secure its computer network, circuits and customer premise equipment
22 from unauthorized access by 3rd parties."⁸

23 31. UCAN contacted TelePacific on November 27, 2013 and inquired about what terms and
24 conditions did TelePacific maintain for Colony West regarding the contract in effect for
25

26
27 ⁷ In addition to the Toll Fraud charges for the calls placed, other service fees increased as well.

28 ⁸ The identical language was found by the commission in D.10-06-001 to be unenforceable, relieving a TelePacific customer of thousands of dollars of toll fraud calls. That case was a dispute involving UCAN and TelePacific regarding customer facts very similar to this present complaint.

1 the disputed calls. TelePacific produced one page of terms and conditions, and claimed
2 this document was the only page of the terms that the company had.⁹ (Exhibit L)

3 32. Nowhere in Colony West's contract in effect on February 1, 2014 does it state that a
4 customer is responsible for toll fraud calls placed if a customers' phone system is hacked,
5 or not properly secured.

6 33. In April 2013 Colony West was informed that TelePacific would agree to compromise
7 the bill by reducing the amount in dispute by \$3,442.48 but that Colony West would have
8 to pay the remainder of the disputed amount. Colony West is refusing to accept this
9 offer.

10 34. After failing to pay the disputed amount, Colony West received an interruption notice
11 declaring that local and long distance service would be disconnected by May 27, 2013
12 unless payment was received. (Exhibit M)

13 35. On May 22, 2013 Colony West filed a complaint with the California Public Utilities
14 Commission, complaint #277112 asking that the commission examine this issue.

15 36. On July 25, 2013 Colony West received a letter from the Consumer Affairs Branch
16 (CAB) stating:

17 "To address your billing complaint, the utility has reviewed your account and
18 your signed Service Agreement. U.S. TelePacific Corp. reports that the Network
19 Security provision on page 3, Section 3(f) of the contract states that the consumer
20 is responsible in taking whatever actions deem necessary to make your computer
21 and voice networks and circuits adequately secure from unauthorized access.
22 Hence the utility maintains that the disputed charges are valid. However, as a
23 courtesy, TelePacific issued a credit in the amount of \$3,442.48 which was
24 reflected in your April 30th billing statement. Attached is a copy of the signed
25 contract together with some materials on fraud protection provided by
26 TelePacific."¹⁰ (Exhibit N)

27 37. As noted in Paragraph 30, TelePacific only had 1 page of the terms and conditions of
28 Colony West's service contract. In Exhibit N CAB notes that they were told that
TelePacific checked Colony West's service contract and cited a provision on page 3,

⁹ Even though TelePacific only had one page of the terms and conditions for the 2009 contract in effect on February 1, 2013, Colony West claims they were give 3 pages of terms and conditions when they signed the contract; see footnote 5 and Exhibit H.

¹⁰ As noted in footnote 2, Colony West, signed a TelePacific contract in 2009, and this contract was in effect at the time the toll fraud calls were placed in February 2013. In March 2013 Colony West signed a new contract with TelePacific that contained a contract term 3 (f).

1 section 3 (f), regarding network security as a customers' responsibility. TelePacific
2 informed the CAB that due to the provision the toll fraud charges are valid.

3 38. The CAB was unaware that TelePacific had cited incorrect information regarding
4 TelePacific's contract terms. As discussed above in paragraph 30, UCAN investigated if
5 TelePacific had a term 3 (f) on page three of the customers service contract in effect at
6 the time of the toll fraud calls. They did not. TelePacific provided wrong information to
7 the CAB, and relying on this incorrect information, the CAB declined to take further
8 action.

9 39. On August 20, 2013 Colony West filed a complaint against TelePacific with the
10 commission noting the amount in dispute and a brief synopsis of what had happened.
11 (Exhibit O)

12 40. On October 8, 2013 Colony West, was notified in an email that the docket office was
13 rejecting the claim as the charges in dispute are for long distance calls. (Exhibit P)

14 41. As noted below, the facts stated by UCAN involve TelePacific providing false,
15 misleading or deceptive information to their clients – an issue not previously considered
16 by the CAB or the docket office. Moreover, CAB and the docket office were not
17 provided the citation for the commission decision in D.10-06-001 that established
18 commission jurisdiction for a dispute almost identical to this case even though the charge
19 involve long distance calls.

20 **Additional facts**

21 42. On June 23, 2014 a UCAN representative contacted a TelePacific sales representative
22 and inquired about TelePacific's advertized "24-hour toll fraud protection" for a voice
23 network. UCAN was told that if someone was to hack through TelePacific's network,
24 then TelePacific would be responsible for any charges and the cost would be credited to
25 the customer's account. However, the representative said this doesn't happen very often
26 and normally it is through the customer's network, so the customer is liable. If
27 TelePacific notices that there has been a hacking they will contact the customer and also
28 warn other customers on the same network. Other than the description above,

1 TelePacific's sales representative did not say how this provided customers with "24 hour
2 toll fraud protection".

3 43. UCAN is informed and believes that other TelePacific customers were charged for toll
4 fraud and have been billed by TelePacific for the same type of calls.

6 III. JURISDICTION

7
8 44. The CAB has already informally examined the complaints made individually by both
9 Lasercare and Colony West. However, the CAB never examined the issue from the
10 perspective of did TelePacific make false, misleading and deceptive representations
11 which violate consumer protection statutes like PU Code section 2890 (a) and General
12 Order 168, as well as section 2896 (a).

13 45. Nor was the CAB aware of D.10-06-001 in which the commission heard a remarkably
14 similar case filed by UCAN against TelePacific of toll fraud involving long distance
15 calls. In that decision the commission:

- 16 a. found the issues were not preempted by federal law,
17 b. heard the case, and
18 c. granted relief requested by UCAN, including removing charges from the
19 customers' bill.

20 46. Nor did the CAB examine PU Code section 710 (d) which allows for the enforcement of
21 state consumer protection laws, like PU Code sections 2890 (a) and 2896 (a) even if the
22 customer purchases VoIP services. Since the commission enforces these statutes against
23 Telephone utilities, the commission has jurisdiction for that reason as well.

24 47. The facts alleged here, and commission decision in D.10-06-001 clearly establish
25 commission jurisdiction and do not depend on if the customer had VoIP service with
26 TelePacific or if the calls were toll charges or local calls. The allegations deal with
27 TelePacific's false misleading or deceptive representations regarding services they failed
28

1 to provide to their customers, and TelePacific's failure to disclose material information
2 which resulted in thousands of dollars in charges being billed to their customers.

3 48. The commission has jurisdiction to determine if TelePacific's representations to their
4 customers to provide "24 hour toll fraud protection" were false, deceptive or misleading.
5 The commission has the power to enforce consumer protection laws even if the
6 customers purchase VoIP services under PU Code section 710 (d) and to determine if the
7 charges billed to a customer are unauthorized (PU Code 2890 (a)) even though the
8 dispute may involve long distance charges. The commission also has jurisdiction to
9 consider if the rates charged are unjust and unreasonable rates (PU Code 451);
10 jurisdiction to decide if TelePacific properly informed their customers of material
11 information (PU Code 2896 (a)); and jurisdiction to decide if TelePacific cited inaccurate
12 facts to the CAB (PU Code sections 2889.9 (f) & (g)).

13 14 **IV. VIOLATIONS**

15 **A. Violation of Public Utilities Code section 2890 (a)**

16 49. TelePacific has represented that their customers always receive "24 hour toll fraud
17 protection". TelePacific has never qualified this statement to their customers as meaning
18 anything other than its plain meaning – that TelePacific will protect their customers from
19 the toll fraud.

20 50. In February 2013 TelePacific had contracts with 2 companies who were victimized by
21 toll fraud. Colony West was victimized on February 1, 2013, and then 2 days later
22 Lasercare was also victimized by toll fraud. In each case thousands of unauthorized calls
23 were billed by TelePacific to the victimized customers. At no point prior to February 3,
24 2013 was Lasercare given any type of toll fraud alert that another company on
25 TelePacific's system, Colony West, had a few days prior also been the victim of toll
26 fraud.

27 51. TelePacific points to contract language in the customers' terms and conditions, section
28 3(f), (see facts cited above - paragraph 12 for Lasercare and 35 for Colony West) which

1 requires their customers to secure their own equipment as the basis to bill TelePacific
2 customers for toll fraud calls.¹¹

3 52. TelePacific's terms and conditions of their contracts, section 3 (f) says nothing about toll
4 fraud calls, and provides no basis to void the representations made by TelePacific that
5 they provide their customers with "24 hour toll fraud protection".

6 53. The language in the standard terms and conditions of their customer's contracts mention
7 only the obligation of TelePacific's customers to secure their own equipment and notes
8 that TelePacific will not be responsible for any damages that may result from
9 unauthorized access. Nothing in the terms and conditions section expressly or implicitly
10 limits or voids TelePacific's representations to provide their customers with "24 hour toll
11 fraud protection".

12 54. By charging customers for toll fraud calls after making representations that their
13 customers receive "24 hour toll fraud protection", TelePacific is violating Public Utilities
14 Code section 2890 (a) and 2890.1. Those Code sections provide:

15 2890. (a) A telephone bill may only contain charges for products or services, the
16 purchase of which the subscriber has authorized.

17 55. General Order 168, part 4, the commission's Consumers Bill of Rights Governing
18 Telecommunications Services defines the term "unauthorized charge" in section 2.6:

19 Unauthorized Charge: Any charge placed upon a Subscriber's telephone bill for a service
20 or goods that the Subscriber did not agree to purchase, including any charges that resulted
21 from false, misleading, or deceptive representations (emphasis added).

22 56. General Order 168, part 4 section 3 reads:

23 Authorization Required:

24 Billing Telephone Corporations shall only place charges that have been authorized by the
25 Subscriber on the Subscriber's telephone bill. All charges billed without Subscriber
26 authorization are unlawful (emphasis added).

27
28 ¹¹ As noted in the facts for Colony West, their contract in effect on the date of the toll fraud contained no section 3(f).

1 57. Part 4 of the Revised General Order begins “these rules apply to *all* Billing Telephone
2 corporations,” defining Billing Telephone Corporations as “*any* telephone corporation
3 that bills a Subscriber for products and services” and a “Telephone corporation” as *any*
4 telephone corporation (as defined in Pub. Util. Code § 234) operating within California.”
5 TelePacific is a billing telephone corporation and is subject to commission jurisdiction
6 and General Order 168. (*emphasis added*).

7 58. TelePacific represented that as always with TelePacific customers receive “24 hour toll
8 fraud protection”. By billing their customers who were the victims of toll fraud
9 TelePacific has failed to provide “24 hour toll fraud protection” and thus has made false,
10 misleading and deceptive representations. Had TelePacific provided “24 hour toll fraud
11 protection” to their customers, the customers would not have been billed for toll fraud
12 charges.

13 59. Since the toll fraud charges resulted from the false, misleading and deceptive
14 representations, the charges are unauthorized and unlawful, and violate PU Code section
15 2890 (a).

16 **B. Violation of Public Utilities Code section 451**

17 60. As a separate and distinct violation, TelePacific violated Public Utilities Code section
18 451.

19 61. Section 451 states that:

20 “All charges demanded or received by any public utility, or by any two or more
21 public utilities, for any product or commodity furnished or to be furnished or any
22 service rendered or to be rendered shall be just and reasonable. Every unjust or
23 unreasonable charge demanded or received for such product or commodity or
24 service is unlawful.”

25 62. In **D.10-06-001** the commission decided a dispute between UCAN and TelePacific
26 involving a customer being billed for international calls due to toll fraud through hacking
27 of the customers’ equipment. The contract language for the customer in **D.10-06-001**
28 required the customer to adequately secure their phone equipment. However, despite the
language, the commission held that the contract language was unenforceable and that it

1 would be unconscionable for TelePacific to charge their customers for the unauthorized
2 calls when the customer had taken reasonable measures to protect their phone systems.

3 63. In D.10-06-001 the commission, citing a line of federal cases, held the issues presented
4 were not preempted by Federal Law and that the commission had jurisdiction to hear the
5 case. The commission also found that the FCC and the federal courts:

6
7 “have recognized that business customers should not be held liable for
8 unauthorized calls where the customer has used reasonable measures to protect its
9 system against hacking, even if those measures prove to be unsuccessful.”¹²

10 64. In D.10-06-001, the commission held that TelePacific’s contract was one sided, a
11 contract of adhesion, unconscionable and therefore, the charges placed on a customer’s
12 bill were unfair and unreasonable under Public Utilities Code Section 451.

13 65. The commission then determined that the Customer should receive a refund of money
14 paid and be relieved of any pending charges that resulted from the hacking.

15 66. In this case, Lasercare and Colony West were told by TelePacific that their systems were
16 hacked.

17 67. By charging Lasercare and Colony West for calls they did not authorize, TelePacific is
18 not charging just and reasonable rates and just like the result in D.10-06-001, the
19 commission must grant relief.

20
21 **C. Violation of Public Utilities Code Section 2896 (a)**

22 68. Another separate and distinct violation is that TelePacific’s conduct also violates Public
23 Utilities Code section 2896 (a) which provides:

24 “The commission shall require telephone corporations to provide customer service to
25 telecommunication customers that includes, but is not limited to, all the following:

26 Sufficient information upon which to make informed choices among
27 telecommunications services and providers. This includes, but is not limited to,

28

¹² D.10-06-001 at pg 18-19

1 information regarding the provider's identity, service options, pricing, and terms
2 and conditions of service. A provider need only provide information to its
3 customers on the services which it offers.

4 69. In addition, the commissions Revised General Order 168 states the following:

5 **PART 1 - Consumer Bill of Rights and Freedom of Choice**

6 The commission adopts the following rights and principles in this Consumer Bill of
7 Rights as a framework for consumer protection and freedom of choice in a competitive
8 telecommunications market. . .

9 ***Disclosure:***

10 · Consumers have a right to receive clear and complete information about all material
11 terms and conditions, such as material limitations, for i) products and service plans they
12 select or ii) available products and service plans for which they request information.
13 (*emphasis added*)

14 · Consumers have a right to be charged only according to the rates, terms and conditions
15 they have agreed to, as set forth in service agreements or carrier tariffs governing services
16 ordered. (*emphasis added*)

17 70. TelePacific made representations that they provided "24 hour toll fraud protection".

18 TelePacific is now claiming that "24 hour toll fraud protection" only means that
19 TelePacific will not charge customers for toll fraud calls only if TelePacific's system is
20 hacked. However, if a customer's telephone system is hacked then all toll fraud calls will
21 be billed to the customer. Nowhere in the information provided to customers by
22 TelePacific do they explain the limitation of "24 hour toll fraud protection". TelePacific
23 failed to provide clear and complete information such as material limitations for products
24 and service plans customers select. TelePacific's failure to disclose the material
25 limitations of "24 hour toll fraud protection" violates PU Code section 2896 (a).

26 71. In the terms and conditions of TelePacific customer contracts, section 3 (f) there is
27 nothing indicating that TelePacific's representations of "24 hour toll fraud protection" is
28 limited.

72. TelePacific is relying on the term and condition 3 (f) to their customer contracts to
establish customer liability for toll fraud calls placed through a customer's hacked
telephone system.

1 73. In examining Exhibit A, the words chosen by TelePacific are clear and specific and there
2 is no clarifying language saying that if a customer's phone system is hacked, then the "24
3 hour toll fraud protection" will no longer apply. In examining the language of
4 TelePacific's contract terms and conditions section 3 (f) there is only general language
5 that notifies the customer of their obligation to secure their phone equipment.

6 74. In examining the language of both the advertised "24 hour toll fraud protection" and term
7 3 (f) together, an ordinary reasonable prudent person would conclude:

- 8 - that the Customer is responsible to secure their phone system,
- 9 - that the customer is responsible for damages that may result from an insecure system,
10 (i.e. damage to the phone system itself) but,
- 11 - if there is toll fraud, that TelePacific will protect the customer.

12 75. TelePacific drafted the brochure containing the representations of toll fraud protection
13 and they drafted the contract terms and conditions. The representation of "24 hour toll
14 fraud protection" is specific language and is simple and easy to understand. Term 3 (f) is
15 silent on toll fraud protection or who is responsible for toll fraud charges. Because
16 TelePacific failed to inform their customers that "24 hour toll fraud protection" meant
17 something different than its plain meaning, or that TelePacific would interpret term 3 (f)
18 as imposing liability on customers whose equipment was hacked resulting in toll fraud
19 charges, TelePacific failed to inform their customers of material limitations of the
20 services they offered. TelePacific's conduct, therefore, violates PU Code section 2896
21 (a).

22 **D. Additional violation of Public Utilities Code Section 2896 (a)**

23 76. TelePacific has maintained that Colony West's contract in effect on February 1, 2013
24 contained section 3 (f). TelePacific maintains that this clause means that Colony West is
25 liable for the toll fraud calls placed through their hacked phone equipment.

26 77. Colony West's contract in effect for February 1, 2013 contains no term 3 (f).

27 78. TelePacific is now holding Colony West responsible for toll fraud calls based on a
28 contract term that does not apply to Colony West, in violation of section 2896(A).

1 TelePacific also failed to follow General Order 168's mandate to only charge a customer
2 according to terms and conditions they have agreed to.

3 79. Colony West should be relieved from the obligation to pay for calls they were never told
4 they would be liable for.

5
6 **E. Violation of Public Utilities Code section 2889.9 (f) &(g)**

7
8 80. TelePacific violated California Public Utilities Code section 2889.9 (f) &(g), which
9 states:

10 (f) Failure by a person, corporation, or billing agent to respond to commission staff
11 requests for information is grounds for the commission to order the billing telephone
12 company or companies that are providing billing and collection services to cease billing
13 and collection services for the person, corporation, or billing agent.

14 (G) Persons or corporations originating charges for products or services, their billing
15 agents, and telephone corporations billing or these products or services shall cooperate
16 with the commission in the commission's efforts to enforce the provisions of this article.

17 81. When contacted by the CAB, TelePacific told to the commission it had checked Colony
18 West's contract and then cited to the CAB contract condition 3(f) on page 3 of the
19 customer's terms and conditions. TelePacific then sent a copy of those terms to the CAB.
20 Upon examination it is clear that those terms do not apply to this case. The contract
21 terms sent to the CAB were effective on March 29, 2013 and this dispute is over calls
22 placed on February 1, 2013. (Exhibit N)

23 82. As shown in Exhibit L, the only document TelePacific has maintained for the contract in
24 issue, is page one of the terms and conditions of Colony West's service contract.

25 TelePacific told the CAB that they reviewed Colony West's service contract and that it
26 contained term 3 (f). Yet a review of the contract terms in TelePacific's possession
27 shows no condition 3 (f).

28 83. Failure to provide the CAB with accurate information violated PU Code section 2889.9
(f) & (g). Because a violation of 2889.9 (f) is grounds for the commission to order the
billing telephone company or companies that are providing billing and collection services

1 to cease billing and collection services for the person, the commission should order that
2 TelePacific cease billing and collection services for the Colony West dispute.
3
4

5 **IV. SCOPING INFORMATION**

6 84. UCAN is filing this complaint as an adjudicatory complaint and believes that hearings
7 will be necessary.

8 85. UCAN proposes the following schedule for resolving this regular (non expedited)
9 adjudicatory Complaint within 12 months as follows:

10 86. Prehearing Conference: 30 to 40 days from the date of filing the Complaint

11 87. Hearings: 50-70 days from the date of the filing of the Complaint

12 88. Issues to be considered are:

- 13 **a.** Is TelePacific billing their customers for unauthorized charges in violation of PU
14 Code section 2890 (a) and General Order 168?
- 15 **b.** Did TelePacific make false misleading or deceptive representations to their
16 customers?
- 17 **c.** Is TelePacific charging unjust and unreasonable rates in violation of section 451
18 of the Public Utilities Code?
- 19 **d.** Are TelePacific's customers provided complete information about all material
20 contract terms and conditions, such as material limitations for products and
21 service plans they select as provided in PU Code section 2896 (a)?
- 22 **e.** Did TelePacific fail to cooperate with commission staff in violation of Public
23 Utilities Code sections 2889.9 (f) & (g)?

24 **V. RELIEF SOUGHT**

25
26
27 **WHEREFORE, UCAN respectfully request that the commission:**
28

1. Order TelePacific to immediately cease and desist from each and every violation alleged effective upon receipt of this complaint through the issuance of an injunction.
2. Order TelePacific to undertake such steps as are necessary so as comply with state law.
3. Order TelePacific to make and pay any and all reimbursement for toll fraud calls billed to customers where the toll fraud charges were paid after TelePacific represented that their customers receive 24 hour toll fraud protection.
4. Order TelePacific to cease efforts to obtain any payments related to the disputed calls and charges cited in this complaint against either Colony West or Lasercare.
5. Order TelePacific to pay commensurate fines and penalties.¹³
6. Order all other remedies and penalties, fees and costs as the commission may determine just and equitable.

Dated: July 16, 2014

Respectfully submitted,

/s/ Donald Kelly

Donald Kelly
Utility Consumers' Action Network
3405 Kenyon St. #401
San Diego, CA 92110
(619) 696-6966
Fax: 696-7477
don@ucan.org
Representatives for Complainant UCAN

¹³ General Order 168, Part 4, section 15 notes the commission's authority under § 2889.9(b), and the commissions remedial statutory authority over public utilities. These include the potential for fines up to \$20,000 per violation, and extend to all Services Providers and Billing Agents using the billing services of Billing Telephone Corporations.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Verification

I, Donald Kelly, am an officer of Complainant Corporation herein, and am authorized to make this verification on its behalf. The statements in the foregoing document are herein stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 16, 2014 at San Diego, California.

/s/ Donald Kelly

Donald Kelly

EXHIBIT LIST

Exhibit A: TelePacific's brochure listing "24 hour toll fraud protection".

Exhibit B: Lasercare's July 27, 2013 service contract with TelePacific.

Exhibit C: Lasercare's February 2013 bill detailing toll fraud calls made on February 3, 2013

Exhibit D: Allworx Communications' February 6, 2013 security bulletin.

Exhibit E: TelePacific's March 20, 2013 response to Lasercare's bill dispute on toll fraud calls.

Exhibit F: TelePacific's March 29, 2013 notice and advisory to their customers of system fraud.

Exhibit G: The California Public Utilities Commission's Consumers Affairs Branch's (CAB)

June 19, 2014 response to Lasercare's complaint against TelePacific

Exhibit H: Colony West's September 22, 2009 contract with TelePacific

Exhibit I: Colony West's February 2013 phone bill detailing toll fraud calls made on February 1, 2013.

Exhibit J: February 4, 2013 URGENT email from TelePacific notifying Colony West of suspicious international usage.

Exhibit K: February 13, 2013 email from TelePacific notifying them that they will be billed for the toll fraud calls on the upcoming invoice.

Exhibit L: The single page of Colony West's 2009 service contract's terms and conditions maintained by TelePacific.

Exhibit M: TelePacific's May 17, 2013 service interruption notice to Colony West for past due account.

Exhibit N: The California Public Utilities Commission's Consumers Affairs Branch (CAB) July 25, 2013 response to Colony West's complaint against TelePacific.

Exhibit O: Colony West's complaint filed with the California Public Utilities Commission on August 20, 2013

Exhibit P: The California Public Utilities Commission's October 20, 2013 email to Colony West declining to take action on their complaint against TelePacific.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28