

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation Into the Operations and Practices of Preferred Long Distance, Inc. to Determine Whether Respondents Violated the Laws, Rules, and Regulations of this State Governing the Manner in which California Consumers are Switched from Telephone Carriers and Billed for Telephone Products and Services. (U-5502-C)

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**ORDER INSTITUTING INVESTIGATION
INTO THE OPERATIONS OF
PREFERRED LONG DISTANCE, INC. (U-5502-C)**

I. SUMMARY

Pursuant to Rule 5.1 of the California Public Utilities Commission's (Commission) Rules of Practice and Procedure, we open this investigation into the operations and practices of Preferred Long Distance, Inc. (PLD) (U-5502-C). We take this action based on evidence pertaining to PLD's systematic practice of misleading California consumers, executing unauthorized carrier changes, misrepresenting the nature and extent of its services, failing to refer slamming complainants to the Commission, issuing bills containing unauthorized and unlawful charges, failing to provide accurate and complete service information to consumers, and misleading the Commission. These actions are contrary to Public Utilities (P.U.) Code Sections 451, 702, 2889.5, 2889.9, 2890, and 2896; General Order (G.O.) 168; and, Rule 1.1 of the Commission's Rules of Practice and Procedure. This investigation will review and determine PLD's compliance with regulations and laws pertaining to its solicitation and billing practices.

This Order provides notice that the Commission will determine: (1) whether PLD violated the Commission's General Orders and Rules and California statutes and

(2) whether the Commission should impose fines and/or order other remedies for PLD's apparent violations of applicable laws described below.

II. RESPONDENT

Decision (D.) 95-09-014 granted PLD a Certificate of Public Convenience and Necessity (CPCN) to resell inter Local Access and Transport Area (LATA) and intraLATA telephone service statewide. D.04-08-017 granted PLD a CPCN to provide resold and limited facilities-based local exchange services throughout the service territories of SBC California, Inc., Verizon California, Inc., Roseville Telephone Company, and Citizens Telecommunications Company of California, Inc. and facilities-based interexchange telecommunications services statewide. PLD conducts business in California as "Telplex," "Telplex Communications," "RingPlanet," and RingPlanet Communications."¹ PLD provides local and long distance telecommunication services in several states.²

PLD contracts with telemarketing companies and does not engage in telemarketing itself.³ PLD relies primarily on recorded third-party verification (TPV) to confirm a subscriber's decision to change carriers and has used two TPV vendors – BSG TPV, LLC and DCC Solutions, LLC (doing business as Capitol Verification) – since 2002.⁴

III. STAFF INVESTIGATION

The Commission's Utility Enforcement Branch⁵ of the Consumer Protection and Enforcement Division (CPED) completed an investigation into PLD's solicitation and billing practices based on complaints received by the Commission's Consumer Affairs

¹ Staff Report, p. 3.

² In addition to California, PLD operates in Arizona, Colorado, Florida, Georgia, Illinois, Indiana, Iowa, Minnesota, Missouri, New Mexico, North Carolina, Ohio, Oregon, Texas, Utah, Washington, and Wisconsin. *Id.*, pp. 3-4.

³ *Id.*, p. 5.

⁴ *Id.*, p. 6.

⁵ Prior to June 1, 2016, the Utility Enforcement Branch was in the Commission's Safety and Enforcement Division.

Branch (CAB), the Federal Communication Commission's (FCC) Consumer and Governmental Affairs Bureau, and the Federal Trade Commission (FTC). CPED assessed PLD's practices by conducting: discovery to obtain pertinent documentation, including bills and billing data, from PLD and PLD's third-party billing service; a review of complaints filed with CAB, the FCC, and the FTC; and interviews with former subscribers who complained to CAB. CPED also obtained twelve signed declarations from CAB complainants.

After conducting its investigation, CPED developed a Staff Report: *Investigation of Preferred Long Distance, Inc. (U-5502-C)*.⁶ In its Staff Report, CPED details allegations that PLD and its employees and contractors:

1. Misrepresented itself as AT&T Inc. (AT&T) or affiliated with AT&T;
2. Misrepresented the nature and extent of its services;
3. Executed unauthorized carrier changes;
4. Failed to refer slamming complainants to CAB;
5. Included unauthorized charges on customer bills;
6. Failed to identify themselves at the request of subscribers; and,
7. Mised Commission staff by providing falsified TPV recordings and data request responses.

CPED found that CAB received 233 complaints about PLD from California consumers between January 1, 2013 through July 31, 2017.⁷ Similarly, CPED found 157 FTC complaints involving PLD from California subscribers during the same time period.⁸

CPED's investigation uncovered numerous state and federal regulatory agency investigations into and enforcement actions against PLD related to slamming, cramming, and other misrepresentations to consumers in other jurisdictions between 2004 and 2016.⁹ For example, the Attorney General of Minnesota investigated PLD for alleged

⁶ The Staff Report and associated exhibits are available upon request on a CD due to their volume and confidentiality.

⁷ Staff Report, p. 6.

⁸ *Id.*, p. 7.

⁹ *Id.*, pp. 44-53.

misrepresentations by its representatives in telemarketing solicitations.¹⁰ Similarly, the Iowa Utilities Board approved two separate settlement agreements (2011 and 2013) between the Consumer Advocate Division of the Iowa Utilities Board and PLD involving different allegations that PLD included unauthorized charges on subscribers' bills.¹¹ Analogous to CPED's claims here, the 2011 settlement agreement resolved allegations that PLD's telemarketers not only misrepresented themselves as agents of a local service provider but also misrepresented that the solicited carrier changes were mandatory.¹² In addition, the FCC's Consumer and Governmental Affairs Bureau – a branch of the FCC's Consumer Policy Division which is "...specifically tasked with issuing orders to resolve complaints about unauthorized changes in telecommunications providers (slamming)..."¹³ – issued thirty-three orders to PLD resolving seventy-three unauthorized carrier change complaints, concluding in all instances that PLD took actions that resulted in unauthorized changes to complainants' telecommunications service providers.¹⁴

CPED's Staff Report presents the Commission with a strong showing that PLD violated applicable law. As detailed below, the Commission has substantial evidence and good cause to commence a formal investigation to ascertain whether such violations occurred and, if so, to consider the proper penalties and remedies for such violations.

IV. DISCUSSION

Rule 5.1 of the Commission's Rules of Practice and Procedure provides, "[t]he Commission may at any time institute investigations on its own motion." The Commission has jurisdiction over PLD as a CPCN holder licensed by the Commission to resell inter and intraLATA telephone services and to provide limited facilities-based and

¹⁰ *Id.*, p. 49.

¹¹ Staff Report, pp. 50-53.

¹² *Id.*, p. 50.

¹³ <https://www.fcc.gov/general/consumer-policy-issues>.

¹⁴ Staff Report, pp. 45.

resold local exchange and interexchange telecommunications services.¹⁵ Based on CPED's investigation, the Commission finds it reasonable to investigate the allegations identified in the Staff Report, to determine whether any violations of statute or this Commission's rules or orders occurred, and to assess if penalties shall be imposed.

A. Misrepresentation of Association or Affiliation in Violation of G.O. 168 and P.U. Code Section 2889.9

Upon receipt of numerous complaints from California consumers and based on its investigation, CPED alleges that PLD misrepresented itself as AT&T or an AT&T affiliate in telemarketing solicitations for carrier changes contrary to California law and G.O. 168. P.U. Code Section 2889.9(a) states, "[n]o person or corporation shall misrepresent its association or affiliation with a telephone carrier when soliciting, inducing, or otherwise implementing the subscriber's agreement to purchase the products or services of the person or corporation, and have the charge for the product or service appear on the subscriber's telephone bill." G.O. 168, Part 2, Rule 2(d) mirrors Section 2889.9(a).¹⁶

Relying on CPED's findings and declarations from complainants, the Commission may reasonably conclude that telemarketers working on behalf of PLD misrepresented that they were affiliated or associated with AT&T. CPED found 118 CAB complaints and eighty FTC complaints from California consumers alleging that telemarketers working on behalf of PLD misrepresented themselves as or affiliated with AT&T.¹⁷ CPED also obtained six declarations from complainants attesting that PLD's telemarketers misrepresented associations or affiliations with AT&T to them.¹⁸ In one

¹⁵ D.95-09-014 and D.04-08-017.

¹⁶ G.O. 168, Part 2, Rule 2(d), "No carrier shall misrepresent, or allow its employees or contractors to misrepresent, its association or affiliation with a telephone carrier when soliciting, inducing, or otherwise implementing the subscriber's agreement to purchase products or services, and have the charge for the product or service appear on the subscriber's telephone bill."

¹⁷ Staff Report, p. 7.

¹⁸ *Id.*, p. 11.

instance, a PLD telemarketer repeatedly identified himself as an AT&T representative when the complainant asked which company the telemarketer was associated with.¹⁹ In another instance, PLD's telemarketer insisted on her affiliation with AT&T and went as far as to state that AT&T had partnered with PLD to provide small business long distance services when no affiliation or partnership exists.²⁰ Similarly, a PLD telemarketer also stated that PLD was actually AT&T's new lower cost service, not a competitor.²¹ The evidence thus far suggests that PLD misrepresented itself as AT&T and AT&T's affiliate.

B. Change of Customers' Preferred Telephone Service Provider Without Obtaining Proper Authorization in Violation of P.U. Code Sections 2889.5 and 451

In addition to misrepresenting its association or affiliation with consumers' incumbent carrier AT&T, CPED alleges that PLD executed unauthorized carrier changes by misrepresenting the nature and extent of its services and also failed to establish whether subscribers intended to change carriers to PLD. Specifically, CPED asserts that PLD provided false guarantees of bill savings, falsely claimed carrier changes were mandatory, and solicited carrier changes from unauthorized individuals or through deceptive means.

These practices are expressly prohibited by P.U. Code Section 2889.5. Section 2889.5(a) states:

No telephone corporation, or any person, firm, or corporation representing a telephone corporation, shall make any change or authorize a different telephone corporation to make any change in the provider of any telephone service for which competition has been authorized of a telephone subscriber until all of the following steps have been completed:

- (1) The telephone corporation, its representatives or agents shall thoroughly inform the subscriber of the nature and extent of the service being offered.

¹⁹ *Id.*

²⁰ Staff Report, p. 12.

²¹ *Id.*, pp. 12-13.

- (2) The telephone corporation, its representatives or agents shall specifically establish whether the subscriber intends to make any change in his or her telephone service provider, and explain any charges associated with that change.

Furthermore, P.U. Code Section 451 requires utilities to provide just and reasonable service, which the Commission has interpreted as requiring utilities to “provide accurate consumer information by a readily accessible means, refrain from misleading or potentially misleading marketing practices, and ensure their representatives assist customers by providing meaningful information about products and services.”²²

CPED’s Staff Report details several accounts from consumers who were guaranteed substantial bill savings by PLD in telemarketing solicitations but actually received larger bills under PLD’s service. Approximately 117 of the 233 CAB complaints involving PLD relate to false guarantees of bill savings.²³ For example, one declarant switched carriers to PLD after PLD’s representative promised to reduce his monthly telephone bill in half.²⁴ Similarly, another consumer switched carriers to PLD because a PLD representative assured her that her employer’s monthly bill would decrease by \$50; however, the subsequent bill from PLD was three times higher than her employer’s typical AT&T bill.²⁵

In addition, CPED found that PLD misled consumers by falsely claiming that carrier changes to PLD were mandatory. In thirty-four CAB complaints, California consumers reported that PLD representatives stated to them that PLD was required to become their new provider of telephone service due to regulatory actions or restructuring efforts involving AT&T even though no such actions or efforts actually took place.²⁶ In other complaints, consumers reported that PLD representatives falsely claimed to them in

²² D.04-12-058, at 23.

²³ Staff Report, p. 14.

²⁴ *Id.*

²⁵ *Id.*, pp. 15-16.

²⁶ *Id.*, p. 17.

telemarketing solicitations that PLD was only providing billing services for AT&T²⁷ or that PLD was taking over AT&T's long distance services,²⁸ although PLD's true intention was to execute carrier changes to itself.

In the Staff Report, CPED also provides evidence of PLD representatives intentionally executing carrier changes from persons not authorized to do so, thus failing to establish whether subscribers actually intended to make carrier changes. The Staff Report notes that twenty-four of the 233 CAB complaints relate to carrier changes involving unauthorized individuals.²⁹

CPED's investigation further revealed the deceptive practices employed by PLD to obtain carrier changes. Specifically, CPED found instances of PLD representatives conditioning the provision of their identity or affiliation upon the subscriber agreeing to a carrier change³⁰ and of circumventing the intent and integrity of the TPV process by explicitly instructing unauthorized individuals to answer "yes" to all questions asked during the recorded TPV.³¹ CPED also discovered an instance in which PLD representatives intentionally misled a subscriber and her employee to execute a carrier change through a three-part scheme. First, a PLD representative misrepresented PLD's affiliation with AT&T and presented that the purpose of the call was to verify the subscriber's account information.³² Purporting to want to save time for the subscriber, the PLD representative then asked to be transferred to the subscriber's receptionist to confirm account information.³³ Second, the PLD representative then misrepresented to the subscriber's receptionist that the subscriber had already agreed to a carrier change.³⁴

²⁷ *Id.*, p. 56 and 15.

²⁸ Staff Report, pp. 17-18.

²⁹ *Id.*, p. 20.

³⁰ *Id.*, p. 23.

³¹ *Id.*, pp. 11, 15, 17-18, 20-21, and 23.

³² *Id.*, p. 19.

³³ *Id.*, p. 20.

³⁴ *Id.*

Third, the PLD representative then prompted the subscriber's receptionist to answer "yes" to all questions during the TPV process.³⁵

The evidence presented in the Staff Report indicates that PLD misrepresented the nature and extent of its services during carrier change solicitations and failed to establish whether subscribers intended to make carrier changes, thereby providing unjust and unreasonable service. If true, these deceptive practices exhibit a blatant disregard for consumers, State law, and Commission rules.

C. Failure of Employees and Contractors to Identify Themselves Upon Request in Violation of G.O. 168 and P.U. Code Section 2896

CPED asserts that PLD representatives failed on several occasions to identify themselves at the requests of consumers during telephone solicitations in violation of G.O. 168 and State law.³⁶ G.O. 168, Part 2, Rule 2(c) provides that "[e]very carrier shall require its employees and contractors to identify themselves at the request of any applicant or subscriber during a telephone or in-person conversation, using a real name or other unique identifier." Similarly, P.U. Code Section 2896 provides that the Commission shall require telephone corporations to provide "sufficient information upon which to make informed choices among telecommunication services and providers. This includes, but is not limited to, information regarding the provider's identity" As indicated above, CPED found numerous instances of PLD representatives misrepresenting their affiliation with AT&T, thus failing to disclose their actual identity and affiliation with PLD. In addition, the Staff Report documents several instances when complainants called PLD to inquire about their accounts or bills but were (1) hung up on when they requested the PLD representative's name or other unique identifier or (2) told

³⁵ Staff Report, p. 21.

³⁶ *Id.*, p. 21-23.

providing representative information was conditioned on agreeing to a carrier change.³⁷ If true, these actions violate G.O. 168, Part 2, Rule 2(c), and P.U. Code Section 2896.

D. Failure to Refer Slamming Complaints to the Consumer Affairs Branch in Violation of G.O. 168 and P.U. Code Section 2896

CPED also claims that PLD failed to refer slamming complainants to CAB or inform them of the “30-day absolution period” after an unauthorized carrier change during which they are absolved of liability for charges.³⁸ Pursuant to G.O. 168:

if a subscriber has not already paid charges to the unauthorized carrier, the subscriber is absolved of liability for charges imposed by the unauthorized carrier for service provided during the first 30 days after the unauthorized charge. Upon being informed by a subscriber that an unauthorized charge has occurred, the authorized carrier, the unauthorized carrier, or the executing carrier shall inform the subscriber of this 30-day absolution period.³⁹

G.O. 168, Part 3 continues, “[a]ny carrier, executing, authorized, or allegedly unauthorized, that is informed by a subscriber or an executing carrier of an unauthorized carrier change shall direct that subscriber to CAB for resolution of the complaint.⁴⁰

Similarly, P.U. Code Section 2896 states in pertinent part that the Commission shall require telephone corporations to provide “information concerning the regulatory process and how customers can participate in that process, including the process of resolving complaints” to its subscribers. Both G.O. 168 and California law require PLD to refer consumers who claim unauthorized carrier changes to CAB for resolution of their complaints.

CPED’s Staff Report includes seven declarations from complainants who stated that PLD never informed them of the 30-day absolution period or directed them to

³⁷ *Id.*, pp. 21-23.

³⁸ Staff Report, p. 24.

³⁹ G.O. 168, Part 3(D)(b)(1).

⁴⁰ G.O. 168, Part 3(E)(b).

CAB.⁴¹ Instead, upon notification of unauthorized carrier changes, PLD employees failed to assist and instead, took obstructive actions such as hanging up on callers who were seeking assistance or intimidating and threatening to refer consumers to collections and to disconnect their telephone service in order to discourage their complaints.⁴² If PLD's allegations prove true, PLD's failures to provide information and to direct customers to CAB violate G.O. 168 and P.U. Code Section 2896.

E. Unauthorized Charges, in Violation of P.U. Code Sections 2890(a) and G.O. 168

According to the Staff Report, PLD violated P.U. Code Section 2890(a) and G.O. 168 by placing unauthorized charges on subscribers' bills. P.U. Code Section 2890(a) strictly limits a telephone bill to "only contain charges for products or services, the purchase of which the subscriber has authorized." G.O. 168 also requires that only authorized charges be included on subscribers' bills and explicitly states that, "[a]ll charges billed without [s]ubscriber authorization are unlawful."⁴³

CPED identified nine CAB complaints in which PLD subscribers stated that their bills contained charges such as directory listing and other undisclosed "business custom calling features" that they did not want or authorize.⁴⁴ Furthermore, CPED reviewed the billing data for twenty-two CAB complainants who were subscribers of PLD's stand-alone long distance service between July 2013 and April 2017.⁴⁵ CPED conducted test calls to telephone numbers listed as outbound calls made by these stand-alone long distance subscribers and, through this effort, discovered twenty-seven non-operational telephone numbers that are listed as outbound calls in the bills or billing data⁴⁶ of four or

⁴¹ Staff Report, p. 24.

⁴² Staff Report, pp. 24-27 and 34.

⁴³ G.O. 168, Part 4.

⁴⁴ Staff Report, p. 28.

⁴⁵ *Id.*, pp. 30-31.

⁴⁶ "Billing data" refers to information provided to CPED by PLD's third-party billing provider, BSG, which contained billing records, including charges and call details such as the number dialed and date, time, and length of calls, for PLD's stand-alone long distance subscribers who
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more PLD subscribers with no apparent relation between these subscribers.⁴⁷ In total, CPED discovered at least 283 unique telephone numbers, listed as outbound calls in the billing data of one or more of these stand-alone long distance subscribers, which were non-operational at the time they were tested.⁴⁸

CPED also found that PLD included charges for federal excise taxes on the bills of some stand-alone long distance subscribers.⁴⁹ CPED alleges that PLD's stand-alone long distance service does not fall within the definition of "toll telephone service" under 26 U.S. Code Section 4252.⁵⁰ Therefore, the imposition of this tax may be contrary to 26 U.S. Code Section 4251, which only authorizes federal excise taxes to be imposed on local and toll telephone services and typewriter exchange services.⁵¹ Lastly, CPED

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received PLD's charges on their local exchange carrier's bill (i.e. AT&T bill).

⁴⁷ *Id.*, p. 31. CPED identified a pattern of charges for outbound calls made to non-operational telephone numbers through outbound call usage obtained from PLD and its third-party billing provider, BSG. *Id.*

⁴⁸ Staff Report, p. 33.

⁴⁹ *Id.*, p. 33.

⁵⁰ 26 U.S. Section 4252(b) defines toll telephone service as (1) a telephonic quality communication for which (A) there is a toll charge which varies in amount with the distance and elapsed transmission time of each individual communication and (B) the charge is paid within the United States, and (2) a service which entitles the subscriber, upon payment of a periodic charge (determined as a flat amount or upon the basis of total elapsed transmission time), to the privilege of an unlimited number of telephonic communications to or from all or a substantial portion of the persons having telephone or radio telephone stations in a specified area which is outside the local telephone system area in which the station provided with this service is located."

⁵¹ 26 U.S. Section 4251 provides:

(a) Tax imposed. –

(1) In general. – There is hereby imposed on amounts paid for communications services a tax equal to the applicable percentage of amounts so paid.

(2) Payment of tax. – The tax imposed by this section shall be paid by the person paying for such services.

(b) Definitions. – For purposes of subsection (a) –

(1) Communications services. – The term "communications services" means –

(A) local telephone service;

(B) toll telephone service; and

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alleges that PLD also continued to require subscribers to pay for services resulting from unauthorized carrier changes even after PLD was notified of slamming by those subscribers.⁵²

If true, PLD imposed unlawful charges for unauthorized business custom calling features, fraudulent outbound calls, and imposed charges after subscribers notified PLD of unauthorized carrier changes.

F. Failure to Provide Accurate Price or Service Information to Customers in Violation of P.U. Code Section 2896(a)

CPED alleges that PLD has not adhered to the rates, terms, and conditions for its de-tariffed services described in its California Service Guides,⁵³ and thus PLD may have failed to provide consumers with adequate information to make informed decisions as required by P.U. Code Section 2896(a). P.U. Code Section 2896(a) requires telephone corporations to provide

Sufficient information upon which to make informed choices among telecommunications services and providers. This includes, but is not limited to, information regarding the provider's identity, service options, pricing, and terms and conditions of service. A provider need only provide information to its customers on the services which it offers.

In enforcing Section 2896, the Commission affirmed the importance of providing information necessary to make informed choices and that the minimum standard imposed by Section 2896 reflects traditional regulatory concerns for consumer protection as well as emerging concerns about fair competition.⁵⁴

In its investigation, CPED found that PLD's 2016 Service Guide⁵⁵ stated that subscribers' bills would contain the following statement: "The CPUC handles complaints

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(C) teletypewriter exchange service.

⁵² Staff Report, pp. 34-35.

⁵³ *Id.*, p. 40.

⁵⁴ D.01-09-058, p. 71; D.09-04-036, p. 30.

⁵⁵ After receiving data request DR-TEL-00565-4 from CPED on November 21, 2017, PLD replaced its 2016 Service Guide with a new, 2017 guide on December 8, 2017. PLD's 2017

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of both interstate and intrastate unauthorized carrier changes (“slamming”). The California consumer protection rules are available online, at www.cpuc.ca.gov.⁵⁶ However, none of the PLD bills received by CPED or CAB in connection with consumer complaints contain this phrase or similar information about slamming.⁵⁷ As such, given PLD’s additional failures to refer slamming complainants to CAB,⁵⁸ it is unlikely that PLD subscribers were provided any information by PLD about how they may resolve their slamming complaints. Furthermore, PLD’s 2016 Service Guide stated that PLD assesses a \$0.63 “Regulatory Assessment Fee” per account, per month; however, CPED identified bills in which subscribers were actually charged fees of \$1.89, triple the listed fee of \$0.63, during the time the 2016 Service Guide was in effect.⁵⁹

Moreover, PLD’s 2016 Service Guide, although not a tariff itself, contained references to the document as a “tariff” and also referred consumers to various erroneous “rules” that are not actually explained anywhere in PLD’s 2016 Service Guide related to notices for overdue payments, notices required for voluntary discontinuation of service, and liability for non-recoverable costs of special arrangements and services.⁶⁰ Given the possibility of collections, penalties related to potentially non-compliant service termination, and liability for certain actions, the inaccuracy of PLD’s Service Guides present considerable consumer protection concerns and may constitute a violation of P.U. Code Section 2896.

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Service Guide contains similar discrepancies. Staff Report, p. 40, footnote 101.

⁵⁶ Staff Report, p. 42.

⁵⁷ *Id.*

⁵⁸ *See supra*, Section IV.D.

⁵⁹ Staff Report, p. 43. PLD defines its “Regulatory Assessment Fee” as fee that “permits the Company to recover the costs associated with access charges, taxes, and the expenses associated with regulatory matters and is applied each month in which the Customer has calling charge.” *Id.*

⁶⁰ *Id.*, pp. 43-44.

G. Misrepresentations Made to Commission Staff in Violation of Rule 1.1

CPED alleges that PLD provided fraudulent TPV recordings to CAB and CPED and false statements in response to CPED data requests in violation of Rule 1.1 of the Commission's Rules of Practice and Procedure. Rule 1.1 provides that,

Any person who . . . transacts business with the Commission, by such act . . . agrees to comply with the laws of this State; to maintain the respect due to the Commission, members of the Commission and its Administrative Law Judges; and never to mislead the Commission or its staff by an artifice or false statement of fact or law.

During its investigation, CPED obtained two declarations from CAB complainants who stated that the TPV recordings provided by PLD to the Commission in response to their complaints were not true and accurate recordings.⁶¹ Importantly, one complainant noted in his declaration that an entire portion of the original recorded TPV process (the portion in which the complainant asked the third party verifier during the course of answering the verifier's questions about the stated affiliation between AT&T and PLD that was described to him during the telemarketing solicitation) was not contained in the TPV recording received by CAB.⁶² If true, this presents severe misconduct on behalf of PLD. By providing fraudulent TPV recordings, PLD not only hinders Commission staff's ability to properly and thoroughly investigate PLD's conduct and operations but also harms the integrity of the regulatory process and shows disregard for Commission rules.

In addition to allegedly fraudulent TPV recordings, CPED alleges that PLD also made false statements in response to CPED data requests, including providing information concerning the provision of term contracts, early termination fees (ETF), and

⁶¹ Staff Report, p. 35. CAB generally obtains copies of the TPV recordings from carriers and complainants alleging unauthorized carrier changes. *Id.*

⁶² *Id.*, pp. 35-36.

notices of past due bills.⁶³ In regards to offering term contracts, PLD stated that it only offers term contracts providing for an ETF if an existing subscriber:

- 1) Is billed for an ETF from its former carrier and asks the Company to pay the ETF in order to retain the subscriber, [PLD] may negotiate a special term agreement with an ETF in exchange for paying the ETF assessed by the former carrier, or
- 2) Seeks a rate plan with lower pricing than the subscriber's current plan with [PLD], the subscriber may enter into a term contract providing for a different rate plan.⁶⁴

Contrary to PLD's claim, CPED discovered a letter of authorization in which PLD imposed a six-month minimum service term and a \$60 ETF per line to a new subscriber.⁶⁵ The subscriber neither asked PLD to pay any ETFs from its former carrier nor sought a lower priced rate plan since the subscriber was not an existing PLD customer.⁶⁶

Relatedly, CPED also alleges that PLD provided false statements regarding notices of past due bills in response to CPED data requests. CPED requested that PLD provide notices of past due bills in connection with subscribers who filed complaints with CAB.⁶⁷ In its response, PLD provided a template notice letter that contained information not included in actual notices received by California subscribers, such as the possibility of the subscriber being sent to collections, inaccurate payment deadlines, and notice dates.⁶⁸

These responses to CPED's data requests can reasonably be construed as misrepresentations. PLD's responses directly contradict what CPED later discovered to be true and present the Commission with an inaccurate portrait of the service PLD

⁶³ *Id.*, pp. 37-40.

⁶⁴ Staff Report, p. 38.

⁶⁵ *Id.*

⁶⁶ *Id.*, p. 39.

⁶⁷ *Id.*

⁶⁸ *Id.*, pp. 39-40.

provides to California consumers. Therefore, the Commission may have evidence to conclude that PLD violated Rule 1.1.

H. Non-compliance with the Commission's Orders and Rules Pursuant to P.U. Code Section 702

CPED presents a strong showing that PLD acted in violation of P.U. Code Section 702. According to P.U. Code Section 702:

Every public utility shall obey and comply with every order, decision, direction, or rule made or prescribed by the commission in the matters specified in this part, or any other matter in any way relating to or affecting its business as a public utility, and shall do everything necessary or proper to secure compliance therewith by all of its officers, agents, and employees.

PLD did not ensure that its internal practices were compliant with rules and laws governing public utility activities. Pursuant to and as authorized by P.U. Code Section 701,⁶⁹ the Commission establishes orders and rules to regulate the activities and practices of public utilities, including G.O. 168. CPED's investigation provides a strong showing that PLD violated several provisions of G.O. 168 by using deceptive tactics to make unauthorized carrier changes and by failing to provide information to consumers as required. By failing to ensure its representatives complied with G.O. 168 in their solicitations of carrier changes and handling of complaints, PLD also failed to "do everything necessary or proper to secure compliance therewith by all of its officers, agents, and employees." Thus, it may be reasonable for the Commission to conclude that PLD violated P.U. Code Section 702.

V. PRELIMINARY SCOPING MEMO

The preliminary scope of issues and schedule are set forth below, and may be changed by the assigned Commissioner's scoping memo. (See Rule 7.1(c))

⁶⁹ P.U. Code Section 701 states, "[t]he commission may supervise and regulate every public utility in the State and may do all things, whether specifically designated in this part or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction."

A. Issues Presented

The Commission bears a responsibility to protect consumers, to enforce laws utilities may have violated, and to investigate the practices of public utilities. Therefore, the proceeding shall determine:

1. Whether PLD violated G.O. 168;
2. Whether PLD violated Rule 1.1 of the Commission's Rules of Practice and Procedure;
3. Whether PLD violated California P.U. Code Sections 451, 702, 2889, 2889.9, 2890, and 2896;
4. Whether PLD violated any other Commission rule or order or California statute in which the Commission has jurisdiction to enforce; and,
5. Whether penalties and/or remedies pursuant to G.O. 168 and P.U. Code Sections 734, 2107, 2108, 2889.5 are warranted and, if so, the amount appropriate to the facts and the law; and,
6. Whether any other remedies available to the Commission are warranted.

P.U. Code Section 2889.5(e) explicitly provides that, “[a]ny telephone corporation that violates the verification procedures described in this section shall be liable to the telephone corporation previously selected by the subscriber in an amount equal to all charges paid by the subscriber after the violation.” Moreover, P.U. Code Section 2889.5(f) further provides, “[i]n addition to the liability described in subdivision (e), any telephone corporation that violates the verification procedures described in this section shall credit to a subscriber any charges paid by the subscriber in excess of the amount that the subscriber would have been obligated to pay had the subscriber's telephone service not been changed,” as detailed in G.O. 168, Part 3.

The issue of sanctions to be imposed encompasses consideration of P.U. Code Section 2107 which sets a \$500 minimum and a \$50,000 maximum fine for each offense and Section 2108 which provides that every day is a separate offense. Further, every corporation or person, other than a public utility “which or who aids or abets any violation of the California Constitution or Commission order, decision, rule, direction, or

demand, or requirement of the [C]ommission” is subject to a penalty of \$500 to \$50,000 for each offense.⁷⁰ Also, the issue of sanctions may encompass the consideration of any or all other remedies available to the Commission including remedies pursuant to P.U. Code Section 701.

B. Preliminary Schedule

Pursuant to Rule 7.6(a), appeals of the categorization of this investigation, if any, are to be filed and served within 10 days of the date this order is issued.

Respondent PLD may file comment on the preliminary determination of need for evidentiary hearings, issues, and schedule within thirty days of the date this order is issued. Other persons who intend to move for party status may also file comment on these matters within thirty days of the date this order is issued, provided that such comment is accompanied by written motion for party status (See Rule 1.4(a)(4) and (b)) and such motion is granted.

A prehearing conference shall be set as soon as practicable after a Commissioner and Administrative Law Judge are assigned to this proceeding.

The schedule for taking testimony and briefing shall be determined by the assigned Commissioner, and may be modified by the assigned ALJ as required to promote the efficient and fair resolution of the investigation. It is expected that the investigation will be resolved no later than 12 months from the date this investigation is instituted, pursuant to P.U. Code Section 1701.2(e).

VI. CATEGORY

The category of this proceeding is adjudicatory. Accordingly, ex parte communications are prohibited pursuant to Rule 8.3(b).

VII. PRELIMINARY DETERMINATION OF NEED FOR HEARING

It is preliminarily determined that evidentiary hearings will be needed in this proceeding.

⁷⁰ P.U. Code § 2111.

VIII. PUBLIC ADVISOR

Any person or entity interested in participating in this rulemaking who is unfamiliar with the Commission's procedures should contact the Commission's Public Advisor in San Francisco at (866) 849-8390 or e-mail public.advisor@cpuc.ca.gov.

IT IS ORDERED that:

1. In accordance with Rule 5.1 of the Rules of Practice and Procedure, the Commission institutes this order instituting investigation into the solicitation and billing practices of Preferred Long Distance, Inc. in violation of General Order 168; Rule 1.1 of the Commission's Rules of Practice and Procedure; and, California Public Utilities Code Sections 451, 702, 2889.5, 2889.9, 2890, and 2896.

2. The Commission may impose fines and/or remedies in this matter pursuant to General Order 168 and Public Utilities Code Sections 734, 2107, 2108, 2889.5 and may order the implementation of operational and policy measures designed to prevent release of subscribers' confidential information pursuant to Public Utilities Code Section 761, *inter alia*.

3. Pursuant to Rule 7.1(c) of the Commission's Rules of Practice and Procedure, this proceeding is categorized as adjudicatory. *Ex Parte* communications are prohibited. The categorization of this Order is appealable under Rule 7.6.

4. Pursuant to Rule 7.3, this Order constitutes a preliminary scoping memo. The issues of this proceeding are framed in the above order, which may be amended by subsequent order or ruling of the Assigned Commissioner or Administrative Law Judge. These issues will be heard in this proceeding without prejudice to any related proceedings. Comment on the preliminary determination of need for evidentiary hearings, issues, and schedule are due within ten days of the date this order is issued.

5. A prehearing conference shall be convened before an Administrative Law Judge for the purpose of establishing a schedule in this matter including the exchange of prepared testimony, and the date, time, and location of an evidentiary hearing, and for good cause shown the Administrative Law Judge and/or Assigned Commissioner may extend the deadlines specified herein, for any particular responses required.

6. To facilitate the completion of this investigation, and consistent with the provisions of Public Utilities Code Sections 311, 314, 581-82, and 584, staff shall continue discovery and investigation of the operations of the Respondent. Preferred Long Distance, Inc. shall cooperate fully with staff's inquiries and preserve all records related to the matters described above until the completion of this Investigation. Any data requests to staff shall be limited to matters discussed in this Order Instituting Investigation, the Staff Report, and any further prepared testimony offered by staff in this proceeding.

7. The Respondent is ordered to preserve until further order by the Commission all information and documents, regardless of age, which might relate to this action, including but not limited to correspondence with consumers and third parties, inter-office memoranda, inter-office email, disk drives, company websites including archived sites, bank account and other financial records, and complaints (i.e., all expressions of dissatisfaction) from California consumers. The Respondent is ordered to cooperate with Staff in its investigation, and provide information, documents and witnesses as requested.

8. A copy of Consumer Protection and Enforcement Division's Staff Report will be placed in the record of this proceeding.

9. We expect staff to bring any newly discovered information or alleged violations by the Respondent to our attention. Staff may present additional allegations to the Administrative Law Judge in the form of a motion to amend the scope of this proceeding, which shall be supported by a further staff report or declaration supporting the proposed amendments.

10. The Executive Director shall cause a copy of this order instituting investigation to be served by certified mail on the Respondent, Preferred Long Distance, Inc., and Commission staff at:

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This order is effective today.

Date May 10, 2018 at Fontana, California.

MICHAEL PICKER

President

CARLA J. PETERMAN

LIANE M. RANDOLPH

MARTHA GUZMAN ACEVES

CLIFFORD RECHTSCHAFFEN

Commissioners