MD2 /lil 3/25/2011

FILED
03-25-11
08:34 AM

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation on the Commission's own motion into the operations and practices of Americatel Corporation, (U5918C), 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)

ADMINISTRATIVE LAW JUDGE'S RULING REQUESTING SETTLING PARTIES TO IDENTIFY TESTIMONY REQUESTED TO BE ADMITTED INTO THE RECORD IN SUPPORT OF MOTION TO APPROVE SETTLEMENT

The parties to this proceeding are Americatel Corporation (Americatel) and the Commission's Consumer Protection and Safety Division (CPSD). On January 11, 2011, Americatel and CPSD (collectively "Settling Parties") filed a Joint Motion For Approval of Settlement Agreement (Joint Motion). The Joint Motion is unopposed. On Page 4 of the Joint Motion, at Footnote 5, the Joint Motion stated:

"The Settling Parties <u>have identified public versions of this testimony in the Settlement Agreement</u> and request that this testimony be received in evidence, without cross-examination, for the sole and limited purpose of facilitating a determination by the Commission of whether the Settlement

Agreement is reasonable in light of the whole record, consistent with the law, and in the public interest (emphasis added)."

Reference to Paragraph 14 of the Settlement Agreement, Attachment A to the Joint Motion, reveals the following, in relevant part:

"Prepared testimony. The Parties agree to submit all prepared testimony to ALJ Darling to be entered into the official record and received into evidence. The parties reserve all rights and objections concerning the prepared testimony in the event that …the Commission does not approve this settlement….(emphasis added)."

These two assertions by the Settling parties are inconsistent and must be resolved. Additionally, I have other concerns.

First, the request to the ALJ to admit evidence into the record should conform with Rule 11.1 of the Commission's Rules of Practice and Procedure (Rule). Although such a motion could be included in the Joint Motion, it should not be relegated to a footnote. The limited footnote explanation of the request led to the other problems of inconsistency and ambiguity. I will accept the nominal request this time, but caution the parties in the future to include motions in the text of a pleading.

Second, inconsistency arises because the Joint Motion seeks submission only of public versions of the served testimony. In contrast, the Settlement Agreement refers to all prepared testimony. So far, I have been served with "public" versions of testimony of Nora Y. Gatchalian (7/26/10), Nermin Selimic, Robert Felgar, and William R. Schulte (all 9/7/10). However, the Selimic testimony includes pages 20 to 31 and an attachment regarding follow-up to customer complaints forwarded by the Commission, which include customer

specific information of the type usually filed under seal if necessary to the proceeding record.

Third, CPSD also served testimony of Nora Y. Gatchalian (7/26/10) "confidential version" and her reply testimony "confidential version" (9/29/10). Neither of these "confidential versions" was served sealed nor served with a motion to file under seal as required by Rule 11.4. These versions were apparently titled "confidential" because they contained customer specific information of the type usually filed under seal if necessary to the proceeding record. If any "confidential versions" of testimony are to be admitted into the record under seal, they must be properly presented to the Docket Office under seal and be accompanied by the appropriate motion to file under seal.

It is unclear to me whether (a) the Settling Parties intend to move only the "public versions" of testimony into the record, (b) a "public version" exists of the reply testimony of Nora Y. Gatchalian which I did not receive, and (c) the Selimic testimony is intended to be submitted in its entirety or will a redacted "public version" be submitted and the prior testimony be recharacterized as "confidential."

Therefore, the Settling Parties must promptly meet and confer about their request that certain testimony be received into evidence for the sole and limited purpose of supporting the Joint Motion for the consideration of the Commission. Within five business days of the date of this order, the Settling Parties shall jointly submit a list of the proposed testimony which they seek to have admitted. In addition to the list, a complete hard copy set of this testimony shall be provided to the ALJ. To the extent that any testimony is altered or recharacterized, in whole or part, from prior versions, then the revised testimony shall be served on the service list in this proceeding.

IT IS RULED that:

1. On or before April 1, 2011, the Consumer Protection and Safety Division and Americatel Corporation shall jointly file and serve a complete list of the prepared testimony which they have moved to be admitted to the record for the limited purpose of supporting the Joint Motion to Approve Settlement Agreement.

2. On or before April 1, 2011, the Settling Parties shall serve on Administrative Law Judge Melanie Darling a complete hard copy of the testimony identified in paragraph one. If any version of this testimony has not been served on the service list for this proceeding, such version shall be served on the service list no later than April 1, 2011. It may be served electronically.

3. No further briefing is authorized.

Dated March 25, 2011, at San Francisco, California.

/s/ MELANIE M. DARLING
Melanie M. Darling
Administrative Law Judge