



CALIFORNIA PUBLIC UTILITIES COMMISSION

**CONSUMER PROTECTION & SAFETY
DIVISION**

**INVESTIGATIVE REPORT ON
AMERICATEL CORPORATION
(U-5918-C)**

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I. SUMMARY

The Utility Enforcement Branch (UEB) of the California Public Utilities Commission's (Commission) Consumer Protection and Safety Division (CPSD or "Staff") initiated an investigation into the operations and practices of Americatele Corporation (Americatele) in September 2006. This investigation was in response to a significant increase in cramming allegations reported by its billing aggregator, ILD Telecommunications, Inc. (ILD).¹ ILD later clarified that loyalty or promotional credits to Americatele's subscribers were inadvertently reported as cramming. This explanation, in conjunction with the then declining complaint levels, led Staff to temporarily close the investigation in June 2007. The complaints, however, resumed and consequently Staff reopened the investigation in November 2007. Complaint levels against Americatele skyrocketed in the middle of 2008. Results of Staff's investigation into Americatele support the following conclusions:

1. Americatele crammed 360,504 California consumers and billed them for services they neither ordered nor authorized in violation of Public Utilities (P.U.) Code §2890(a) and §451;
 - Americatele crammed 61,097 California customers because its marketing vendor, Bravo Marketing, Inc., forged certain Letters of Authorization and fraudulently signed up customers for long distance telephone service.² In addition, Americatele billed consumers even after they requested the cancellation of the long distance telephone service they neither ordered nor authorized;

¹ ILD performs billing services for Americatele, such as getting the charges to the local telephone company's statements and processing credits issued by Americatele.

² September 22, 2008 Americatele Data Response No. 5 (Attachment C-2)

- Americatel admitted to overcharging approximately 300,000 California consumers by applying the Universal Service Fund (USF) rate at 100%--instead of the 11.4% approved by the Federal Communications Commission (FCC) -- and applying erroneous, higher per minute plan rates;³
2. Americatel refunded \$1.5 million to California customers impacted by the fraudulent Bravo-related sales;⁴
 3. Americatel refunded \$2 million to California customers impacted by the overcharging of USF fee and rates;⁵ and,
 4. Americatel failed to perform due diligence in establishing the business relationship with Bravo and failed to monitor its activities.

CPSD requests that the Commission open an Order Instituting Investigation (OII) into Americatel's actions. If the Commission finds that Americatel violated any laws, rules, or regulations of this State as described in this report, the Commission should impose penalties against Americatel. Staff is extremely concerned by the findings in this report and questions Americatel's fitness to continue to operate in California. CPSD asks that the Commission consider Americatel's fitness in the OII and what additional sanctions the Commission should impose upon Americatel to protect California consumers.

II. COMPANY BACKGROUND

Americatel is a Delaware corporation with offices at 7361 Calhoun Place, Suite 650, Rockville, Maryland. The Commission granted Americatel a Certificate of Public

³ November 12, 2009 Americatel Data Response No. 2 (Attachment I)

⁴ February 2, 2009 Americatel Data Response (Attachment E-2) and April 3, 2009 Americatel Data Response (Attachment F-1)

⁵ November 12, 2009 Americatel Data Response (Attachment I)

Convenience and Necessity (CPCN) to be a switchless reseller of inter-Local Access and Transport Area (LATA) telecommunications services in December 1997 through Decision (D.)97-12-128 (U-5918-C). The Commission also authorized Americatel to provide intra-LATA telecommunications services offered by communications carriers in California. Additionally, the FCC has granted Americatel authority to provide interstate and international services and intrastate long distance services throughout the contiguous United States.

Americatel provides telecommunications services in the United States with connections to Latin America and the Caribbean. Americatel targets primarily Hispanic customers.⁶

In 2008, the Commission granted Americatel authority to acquire control of Startec Global Operating Company (Startec), another Delaware corporation in Maryland.⁷ In California, Startec held a CPCN (U-5604-C) to provide resale interexchange telecommunications service. Startec primarily provided services to customers that place calls to international destinations. Following the acquisition of Startec, Americatel continued to serve Startec's customer base, under the Startec brand.

Platinum Equity –a limited liability company formed under the laws of Delaware and headquartered in Beverly Hills, California– has indirectly held 95 percent of the equity in Americatel since July 2006.⁸ Platinum Equity is a global firm specializing in the merger, acquisition and operation of companies that provide services and solutions to customers in a broad range of business markets, (information technology, telecommunications, logistics, manufacturing and entertainment distribution).⁹

⁶ As described by Americatel in its Advice Letter No. 21 filed December 17, 2007 (Attachment J) and at <http://www.americatel/EN/corporate/>

⁷ Through Advice Letter No. 21 filed on December 17, 2007, Americatel advised the Commission of the pro forma corporate restructuring involving the merger of Startec Global Operating Company (Startec) (U-5604-C) and Americatel. In this restructuring, Startec would relinquish its operating authority in California and cease to operate. Americatel would be the surviving company that would assume the customers and operations of Startec –under the Startec brand name– consistent with Americatel's authorities to provide telecommunications services. (Attachment J)

⁸ Ibid.

⁹ Americatel web site at <http://www.americatel/EN/corporate/>

Americatel's average number of customers in a year is approximately

██████████.¹⁰ Its average annual revenues total approximately ██████████.¹¹

A. SERVICES PROVIDED BY AMERICATEL

Americatel currently offers two basic types of long distance services that do not require customers to change their current long distance company:¹² (1) dial-around; and, (2) contracted dial-around. Under the dial-around, a customer needs only to dial an access code at the beginning of the call to access Americatel's service. Dial-around is marketed under the 1010123 and the Ametex 1015688 brands/codes.¹³

Similarly under the contracted dial-around, the customer needs only to dial Americatel's access code at the beginning of the call to access his/her Americatel calling plan. However, the contracted dial-around calling plans involve payment of a monthly fee. Examples of these plans are the Uniendo America and the LineaPais brands. In Uniendo America, residential and business customers agree to pay a monthly fee in exchange for a lower per-minute rate. In LineasPais, residential customers agree to pay a monthly fee and are assigned a local telephone number in the foreign country of their choice. Calls to the assigned local telephone number from friends and relatives from the selected foreign country are routed to the customer's activated telephone number in the U.S.¹⁴

Additionally, Americatel offers prepaid calling plans, such as the LineaPais Prepagada (a contracted service wherein only the inbound component is available on a prepaid basis) and the Americatel Prepagado, formerly called 1010123 (wherein customers pay no monthly fee).¹⁵

¹⁰ January 28, 2008 Americatel Data Response No. 1 (Attachment A)

¹¹ June 2, 2009 Americatel e-mail (Attachment F-2) In this e-mail Americatel stated that the revenues provided on January 28, 2008 are too large to represent Americatel's California intrastate revenues. While uncertain since the individuals and the systems that provided the data are no longer with the company, Americatel believes that the earlier provided figures may have represented revenues from intrastate, interstate and international calls that originated in California.

¹² Technically referred to as Primary Interexchange Carrier (PIC)

¹³ January 28, 2008 Americatel Data Response (Attachment A)

¹⁴ Ibid.

¹⁵ Ibid.

Through a billing arrangement with local telephone companies, the applicable monthly fees that are charged by Americatel show as a line item on the customers' monthly local telephone bill, and the usage charges are billed consistent with the customers' selected calling rate plan.

B. AMERICATEL'S MARKETING STRATEGY

Americatel utilizes telemarketers to promote and market its services and calling plans. On February 1, 2008, Americatel entered into a Marketing Agreement (Agreement) with Bravo Marketing, Inc., (Bravo) a Florida corporation with offices at 2100 Constitution Boulevard, Sarasota, Florida 34231. Bravo was formed as a Florida corporation in January 2008.¹⁶

According to the Agreement, Bravo was required to promote and market Americatel's calling plans (which meant collectively the LineaPais and the UniendoAmerica calling plans)¹⁷ to consumers at public events and through other face-to-face contacts. The Agreement contains the following provisions, among others:

“Section 3.3, Bravo shall consummate sales of the Calling Plans by either (1) having each End User execute a Letter of Authorization on a form provided by Americatel or (2) by initiating a telephone call between the End User and Americatel's call center so that the new End User may be signed to a Calling Plan according to Americatel's sales procedures.”

“Section 3.6 Bravo shall ensure that each End User who purchases an Americatel Calling Plan (a) executes a Letter of Authorization (in the form provided by Americatel) or completes a sales call with Americatel's call center and (b) receives a Brochure (also in the form provided by Americatel.)”

With regard to commissions, the Agreement contains a provision that if an end-user voluntarily or involuntarily cancels within 30 or 60 days (depending on the

¹⁶ February 2, 2009 Americatel Data Response, page 2, (Attachment E-2)

¹⁷ Ibid., at Attachment C

calling plan), the commission paid or payable to Bravo shall be cancelled, offset and deducted against any commission payable to Bravo.¹⁸

III. CRAMMING COMPLAINTS AGAINST AMERICATEL

A. HIGH LEVELS OF CRAMMING COMPLAINTS

On July 23, 2008, the Commission's Consumer Affairs Branch (CAB) notified Staff of a significant increase in the number of cramming complaints against Americatel (see Table 4 below for details). Cramming is referred to as the placement of unauthorized charges on a consumer's telephone bill. After review of the complaints raised by consumers, Staff sent a data request on July 29, 2008,¹⁹ asking Americatel for information and data relating to alleged unauthorized services and charges, continuous billing post service cancellation, and inadequate service. Americatel sent a letter dated July 31, 2008,²⁰ addressed to the Director of CPSD from its General Counsel, Robert Felgar, notifying the Commission about the unusual volume of complaints from consumers in a recent period. The consumers complained that they had been enrolled in one of Americatel's monthly service plans without their authorization. Atty. Felgar stated in the letter "there has been some breakdown in the systems and procedures of one of Americatel's third party marketing vendor."

According to Atty. Felgar, Americatel would be responding to each complaint as directed by CAB. Americatel's intention was to make everyone of these consumers whole, and actively investigate the underlying problem. Americatel would inform the Commission accordingly once Americatel determined the cause of the problem. Specifically, Atty. Felgar indicated that, in every instance, Americatel would have —by the end of the week— reversed the monthly fees in question.

¹⁸ Ibid.

¹⁹ Attachment B-1

²⁰ Attachment G to February 2, 2009 Americatel Data Response (Attachment E-2). Staff noted that Americatel sent this letter two days after July 29, 2008 CPSD Data Request, which was sent via e-mail and hard copy.

**B. COMPLAINTS RESULTED FROM FRAUDULENT BEHAVIOR
OF AMERICATEL'S MARKETING VENDOR**

In August 2008, Staff phoned Ms. Lucy Mends, Americatel's Manager of Regulatory Compliance/Legal Department, and inquired about the suspected breakdown in their systems and procedures mentioned in the letter to the CPSD Director. Ms. Mends mentioned that Americatel's marketing vendor might have committed fraud. On September 5, 2008, Staff sent Data Request No. 3²¹ to ask for further clarifications to Americatel's responses dated August 15, 2008²² and August 22, 2008,²³ including the status of Americatel's investigation into the alleged breakdown in the marketing vendor's systems and procedures. In its reply dated September 22, 2008,²⁴ Americatel stated:

“...Americatel received thousands of Letters of Authorizations (LOAs) from Bravo. Thus, Americatel was under the impression that the service was properly authorized. The procedures, however, did not contemplate fraud in the form of forgery of the LOAs. It took Americatel a few months to ascertain that Americatel and its customers were the victims of a fraud....”

As a result of the nature and large number of complaints we received regarding the Bravo sales, we believe that Bravo or its sub-contractors forged signatures on the LOAs....”

On January 8, 2009, Staff sought more information regarding the alleged forgery of the LOAs and sent another data request, (CPSD Utility Enforcement Branch Data Request No. 005-Americatel (NYG)).²⁵ In its responses dated February 2, 2009, Americatel submitted Attachments F and I. Attachment F included an e-mail dated June

²¹ Attachment C-1

²² Attachment B-2

²³ Attachment B-3

²⁴ Attachment C-2

²⁵ Attachment E-1

27, 2008²⁶ from Hector Krauss of Americatel addressed to the Bravo team. Mr. Krauss stated in the e-mail:

“I am sending you a table with the 3,200 ANIs that have caused calls and credits at customer care. One customer actually called Thomas’ office and one of the caller said the LOAs had the name of his uncle who died 3 years ago. See on the table that a few reps have OVER 50 complaints to customer care, there are many over 30 and many-many in the high single digits. The fact that reps were able to generate over 30 calls, each, with complaints and credits is unbelievable. Obviously there is no control on your sales, what so ever. My gut feeling is that reps are filling up LOAs using the phone book as a place to get names. Roughly this past week over \$9,000 in credits were generated and the volume (3,200 in a week) is about what the call center generates in 2 months. The call center does not have enough back office staff to handle these tickets....”

Attachment I included an e-mail dated July 11, 2008²⁷ from Mr. David Yepes of Bravo addressed to kosta@bravohispanicmarketing.net and greg@bravohispanicmarketing.net. Mr. Yepes stated in the e-mail:

“... Among the production I receive yesterday, it was obvious by looking at his bundle that he took the LOAs home and filled them up from some kind of database, (Phone Book etc)...I took it upon myself to start making calls to his production and none please pay attention NOBODY acknowledge to subscribe to anything, a big % were numbers already disconnected or the person does not live there no more. By looking at the signatures on the LOAs you can tell belong to the same person.”

²⁶ Attachment F to February 2, 2009 Americatel Data Response (Attachment E-2)

²⁷ Attachment I to February 2, 2009 Americatel Data Response (Attachment E-2)

1. Americatel Admitted That Cramming Occurred

In response to consumer complaints with CAB in 2008, Americatel sent a form letter to consumers that stated:²⁸

“...I have researched the account and found that the complainant is a consumer who has been impacted by a breakdown in the systems and procedures of one of Americatel’s former third party marketing vendors. As discussed in the attached letter, Americatel will make this and other consumers affected by this problem whole...The credit should be reflected on the customer’s Local Exchange Carrier’s billing statement...” Staff interprets this letter as an admission that cramming occurred. Since Americatel is responsible for the conduct of its third-party marketing vendor, Americatel is responsible for the cramming that occurred.

2. 61,097 California Consumers Were Crammed as a Result of Americatel’s Marketing Vendor’s Forging the Letters of Authorization

In response to CPSD’s Data Request No. 005,²⁹ Americatel submitted data associated with the Bravo sales. Americatel indicated that Bravo conducted almost all face-to-face sales to residential customers. Majority of the plans sold by Bravo included a monthly fee of \$16.99.³⁰

On April 3, 2009, Americatel provided data (see Table 1 below) indicating that Bravo-related sales in California total to 61,097 (a sale is equal to 1 customer).³¹

²⁸ Attachment K

²⁹ January 8, 2009 CPSD Data Request (Attachment E-1)

³⁰ February 2, 2009 Americatel Data Response, page 5, (Attachment E-2)

³¹ Attachment F-1

Table 1. California Sales of Americatel Calling Plans by Bravo (2008-REVISED)³²

Month	Mar-08	Apr-08	May-08	Jun-08	Date of Sale unknown	Total
Sales	1,347	12,309	22,190	21,286	3,965	61,097

Source: Americatel Data Response Dated April 3, 2009

3. Americatel Refunded a Total of \$1.5 Million to the California Customers Affected by Fraudulent Sales Conducted by Its Marketing Vendor

In response to Staff's request, Americatel submitted on April 3, 2009 the customer credit data associated with the fraudulent Bravo sales (see Table 2 below for details).³³ According to Americatel, a total of \$1,933,122 in credits was issued to customers nationwide. Seventy-nine percent of this total, or \$1,511,300.72, was issued to California customers.

Table 2. California Customer Credits/Refunds Associated with Bravo Sales (2008 & 2009 REVISED)³⁴

Entity that Issued the Credit	Customer Credit/Refund Amount	No. of California Customers that Rec'd Credits/Refunds
Americatel Customer Service	\$159,666.28	5,318
Americatel IT Dept/ILD	\$1,083,474.70	50,252
Local Telephone Co.	\$27,535.74	1,562
Total per Feb 2, 2009 Response	\$1,270,676.72	57,132
Americatel Customer Service or Local Telephone Co.	\$107,056.00	1,072
ILD	\$133,568.00	2,893
Total per Apr 3, 2009 Response	\$240,624.00	3,965
Grand Total	\$1,511,300.72	61,097

³² Ibid. Initially, Americatel provided Bravo sales data on February 2, 2009, attached to this report as Attachment E-2. Staff noted that on page 7 of February 2, 2009 Americatel Data Response indicated a total of 57,132 customer refunds (Mar-08-Jun 08), which Staff reflected on Tables 1 and 2 of the report.

³³ Attachment F-1

³⁴ Ibid. Initially, Americatel provided Bravo sales data on February 2, 2009, attached to this report as Attachment E-2. In its Data Response dated April 3, 2009, Americatel provided information regarding the 3,965 customers that Americatel inadvertently did not cancel on July 28, 2008 as detailed on Tables 1 and 2 of the report.

IV. STAFF'S ANALYSIS OF CRAMMING COMPLAINTS AGAINST AMERICATEL

A. CRAMMING COMPLAINT DATA FROM AMERICATEL

As part of its investigation, Staff requested from Americatel data related to customer inquiries or complaints regarding unauthorized services/charges. On February 23, 2009, Americatel provided the total number of complaints received in 2008 (see Table 3).³⁵

Table 3. Number of California Complaints Alleging Unauthorized Charges by Americatel (Jan 2008-Dec 2008)

³⁵ Attachment E-3

Month	Number of Complaints
Jan-08	108
Feb-08	62
Mar-08	71
Apr-08	100
May-08	566
Jun-08	2,721
Jul-08	6,341
Aug-08	5,693
Sep-08	882
Oct-08	922
Nov-08	559
Dec-08	524
Total	18,549

Source: Americatel Data Response Dated April 3, 2009³⁶

Source: Americatel Data Response Dated February 23, 2009

Table 3 shows that complaints began to increase beginning May 2008 (a nearly five-fold increase from the month before) and peaked at 6,341 complaints in July 2008.

³⁶ Printout of Excel Worksheet from February 23, 2009 Americatel Data Response (Attachment E-3) and April 3, 2009 Americatel Data Response (Attachment F-1)

The total number of complaints in 2008 of 18,549 significantly rose by more than 10 times from 1,681 in the prior year. The chart above illustrates the staggering year over year comparison.

B. CRAMMING COMPLAINTS DATA FROM CAB

Based on the CAB database, (as shown on Table 4 below), the complaints received by CAB for Americatel total 512 in 2008. Of the 512 complaints, 262 (51%) were categorized as cramming complaints and 94 (18%) were categorized as slamming complaints. As depicted by the complaint data from Americatel, complaints received by CAB also significantly grew in 2008 (from 117 complaints in 2007 to 512 in 2008).

Table 4. Number of Consumer Complaints Against Americatel Based on Data from CAB (Jan 2008-Dec 2008)

Month	Number of Complaints
Jan-08	6
Feb-08	9
Mar-08	10
Apr-08	8
May-08	12
Jun-08	77
Jul-08	220
Aug-08	90
Sep-08	26
Oct-	21

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08	
Nov-	13
08	
Dec-	20
08	
Total	512

Source: CAB Database as of April 6, 2009³⁷

³⁷ Printout from CAB listing 512 complaints (Attachment M-1)

**C. COMPLAINTS WITH CAB SHOW THAT MOST CONSUMERS
ALLEGED CRAMMING, CONTINUOUS BILLING EVEN
AFTER CANCELLATION WAS REQUESTED AND
INADEQUATE SERVICE PROVISION**

Staff reviewed the complaint details recorded in the CAB database and noted that consumers complained about unauthorized charges by Americatel or cramming; continuous billing post cancellation; and/or, inadequate/poor customer service. Below are examples of consumer complaints in the CAB database:

CAB Complaint Number 08043584: "My last two statements from phone company (AT&T) shows charges from a phone company called Americatel. I've never heard of Americatel before; I never requested service from them. I do not have any reason to get services from Americatel..."

CAB Complaint Number 08044383: Consumer states she is being crammed by Americatel and that she never solicited an account with Americatel. Consumer states she has used 10-10-123 before when she needed to call due to an emergency but she never signed up for a calling plan.

CAB Complaint Number 08043718: "Americatel Corp is charging long distance service thru my telephone service provider (AT&T). I never ordered/requested any long services to Americatel..."

CAB Complaint Number 08044985: "For over six months I have been trying to remove "Americatel" from my phone bill Verizon. At first, when I contacted "Verizon" they told me that there was nothing they could do to help me. I had to call "Americatel" direct and ask them to remove themselves from my phone bill. I tried many times to contact them and they refused to help me by hanging up on me or keeping me on hold for many minutes to see if I would hang up..."

CAB Complaint Number 08045110: "Dear Sirs, we have a problem with a company called Americatel Corp. Last month they added a charge on our AT&T phone bill of a plan we never agreed to, saw or had any Knowledge of. We called AT&T and they

removed it. This month Americatel did it again and now the charge is for \$20.34 for a plan called "Plan Uniendo America...."

CAB Complaint Number 08045722: Consumer states father has been crammed by Americatel Corp. Consumer states father has not authorized any services from Americatel. CPUC spoke with the daughter and she states father is deaf and would not answer the phone or be able to give authorization...

CAB Complaint Number 08045979: "Enclosed please find 2 bills, consecutive months showing a plan to Americatel Corp. For \$15.23 and \$20.72, which I nor anyone in my household contacted for. All this seems to be an international/Spanish calling Plan. My household makes no international calls, nor are we Spanish speaking. My household consists of 2 people, the undersigned and my husband. I have been trying to reach Americatel Corp for 2 months, and they just put the call a hold and never return. I have held as long as 30 minutes. I am on hold with them now, as I type this, for over 50 minutes..."

CAB Complaint Number 08045845: "I received my AT&T bill with charges from a company called Americatel Corp. This is an international phone service that I, nor anyone in this household have used. I have called several times to have these charges removed. Being an international based phone company, I do not speak the language of their customer service representatives. I have work for weeks to remove these charges and I keep getting passed around. I have yet to speak with anyone who speaks English to assist me. The Americatel Corp is phone slamming me into paying for service I have never used. I want the charges off my phone bill and to never be charged or contact by this phone company again."

CAB Complaint Number 08050751: "We received an AT&T phone bill last month that had charges from Americatel Corp. We have no idea why this Spanish speaking company is charging us on our phone bill. There is no explanation of service and we have not signed up with this company. We speak only English. We do not speak Spanish.... Well it's next month now and the Americatel charges nearly doubled. For what, we still have no clue. We make 7 calls to Americatel to try to resolve the issues,

waiting for 20 minutes at a time with no one to help and mostly Spanish speaking recordings....”

**D. DECLARATIONS FROM COMPLAINANTS SHOW
AMERICATEL CRAMMED THEM**

Although Staff relies on Americatel’s admission that cramming occurred, Staff conducted a small-scale interview of some complainants who complained to CAB in 2008. Staff interviewed 11 complainants regarding their experience with Americatel. Nine of the 11 respondents alleged being charged for services they did not authorize. The remaining two respondents complained about charges for monthly fees even after they have repeatedly requested the cancellation of the service. Staff obtained declarations from these customers attesting to their complaints. In addition to the declarations, staff obtained permission from these consumers to obtain telephone information from their respective local telephone companies. In reviewing the telephone bills, Staff confirmed the charges for a calling plan called “Uniendo America” with no information regarding call usage.³⁸ The declarations from consumers support the conclusion that Americatel placed unauthorized charges on their phone bills.

**V. STAFF DISCOVERED AMERICATEL OVERCHARGED
CUSTOMERS \$2 MILLION IN RATES AND FEES**

On January 29, 2009, Staff issued a data request to ILD to obtain further information regarding Americatel’s customer credits.³⁹ On February 5, 2009, ILD provided the data on customer credits/refunds it made on behalf of Americatel from 2005 through 2008.⁴⁰ (See table below.)

³⁸ Attachment L

³⁹ Attachment G-2. Initially, staff sent December 5, 2008 Data Request, attached as to this report as Attachment G-1.

⁴⁰ Attachment G-2. Initially, ILD submitted January 9, 2009 Data Response, attached to this report as Attachment G-1.

**Table 5: Americatel Customer Credits/Refunds (Intrastate)
(2005-2008)**

	2005	2006	2007	2008
Jan		\$78,718.28	-	\$17,767.35
Feb		\$33,815.10	-	\$19,045.13
Mar		\$38,363.51	\$25,330.81	\$45,278.47
Apr		\$39,772.12	\$24,411.90	\$17,942.43
May		\$23,992.85	\$22,581.27	\$21,721.27
Jun		\$24,996.10	\$27,383.99	\$67,547.87
Jul		\$28,453.68	\$20,493.70	\$95,392.17
Aug	\$3,687.23	\$24,456.31	\$25,368.78	\$3,016,429.26
Sep	\$23,070.74	\$28,492.16	\$38,469.55	\$15,930.02
Oct	\$4,977.63	\$24,387.07	\$16,689.33	\$39,125.12
Nov	\$3,543.72	\$19,418.00	\$19,315.28	\$124,023.12
Dec	\$3,487.56	\$22,567.42	\$16,366.24	\$16,609.33
Total	\$38,766.88	\$387,432.60	\$236,410.85	\$3,496,811.54

Source: ILD (Americatel's Billing Aggregator) Data Response Dated February 5, 2009

Staff noted a substantially higher amount of total credits to customers of \$3.5 million in 2008 from ILD's response compared to the \$1.5 million Bravo-related credits reported by Americatel. This led Staff to inquire further on what the difference is attributable to. After numerous and persistent questioning, Staff obtained confirmation from Americatel that the actual total customer credit is indeed \$3.5 million as reported by ILD, representing 360,504 separate credits.⁴¹

In its response dated November 12, 2009,⁴² Americatel confirmed that the Bravo-related incident resulted in \$1.5 million credits to 61,097 California customers in 2008. Additionally, Americatel explained there were another \$2 million credits issued to approximately 300,000 California customers due to two billing errors. Americatel

⁴¹ September 18, 2009 Americatel Data Response (Attachment H)

⁴² Attachment I

admitted to overcharging customers by applying the wrong USF rate and applying higher per minute plan rates. In its reply, Americatel stated:

“The first, and most significant, error occurred in the August 2008 invoices, when the USF rate appeared at 100% of the July 2008 revenue instead of 11.4%. Effectively doubling the customer’s regular invoice, this error was immediately brought to the company’s attention, resulting in approximately \$1.8 million in credits. Regarding the second error, in October of 2008, select call charges for Americatel’s dial around service plan, Uniendo America, were calculated based on erroneous per minute rates, resulting in an overcharge. The error was discovered shortly after invoicing and resulted in about \$204,000 in credits to the impacted customers.”⁴³

VI. AMERICATEL FAILED TO PERFORM DUE DILIGENCE IN ESTABLISHING BUSINESS RELATIONSHIP WITH ITS MARKETING VENDOR

According to Americatel, its Vice President of Marketing, Mr. Hector Krauss⁴⁴ developed and managed its marketing relationship with Bravo. Prior to entering into an agreement, Mr. Krauss requested and reviewed the resumes of Bravo’s President and CEO (Gregory Bever), Vice President of Sales (David Yepes), and Vice President of Strategic Alliances (Konsta Constant). Staff observed there was no mention, however, of performing other types of review or assessment, such as verification of performance with previous employers (i.e., MCI or Snyder Communications), provision of references, or

⁴³ USF refers to Universal Service Fund. All telecommunications service providers and certain other providers of telecommunications must contribute to the federal based USF based on a percentage of their interstate and international end-user telecommunications revenues. Some consumers may notice a “Universal Service” line item on their telephone bills. This line item appears when a company chooses to recover its USF contributions directly from its customers by billing them this charge. The FCC does not require this charge to be passed on to customers. Each company makes a business decision about whether and how to assess charges to recover its Universal Service costs. These charges usually appear as a percentage of the consumer’s phone bill. Companies that choose to collect Universal Service fees from their customers cannot collect an amount that exceeds their contribution to the USF. (Source: FCC website URL)

⁴⁴ February 2, 2009 Americatel Data Response (Attachment E-2)

thorough background check (i.e., criminal records). Americatel confirms this observation in its October 31, 2008 Response to Data Request No. 4, Item 3.b.⁴⁵, wherein Americatel stated:

“3.b. In the past vendor due diligence was the responsibility of the business person that engaged the vendor. This person is expected to conduct reasonable due diligence. At the minimum, a credit check was required.”

Additionally, Americatel stated that Bravo was formed for the sole purpose of conducting business with Americatel,⁴⁶ and that Mr. Yepes, Vice President of Sales, was adjudicated guilty of larceny in the first degree.⁴⁷

Americatel also appeared to admit that it had not performed adequate vendor check in the past and has recently adopted a “Vendor Due Diligence” policy to minimize legal and financial risks to Americatel, as well as to protect consumers going forward, (September 22, 2008 Response to Data Request No.3, Item 5;⁴⁸ October 31, 2008 Response to Data Request No. 4, Item 3.a., and Attachment C.⁴⁹

VII. AMERICATEL FAILED TO ADEQUATELY MONITOR THE ACTIVITIES OF ITS MARKETING VENDOR

The contract between Bravo and Americatel required that Bravo obtain LOAs from customers to consummate a sale. However, when Staff requested copies of LOAs from Americatel,⁵⁰ Americatel provided only a blank copy of an LOA. According to Americatel, early in the business relationship, Bravo would scan the LOAs and make them available to Americatel over the internet; when the contract was terminated, Bravo

⁴⁵ Attachment D

⁴⁶ February 2, 2009 Americatel Data Response, Section II, Footnote 4, page 2, (Attachment E-2)

⁴⁷ Ibid., pages 10 & 11

⁴⁸ Attachment C-2

⁴⁹ Attachment D

⁵⁰ January 8, 2009 CPSD Data Request No. 5, Item 1.b.(8), (Attachment E-1)

cut off access. According to Americatel, it had repeatedly asked Bravo to ship the LOAs to Americatel's office in Maryland, but Bravo ignored its requests.

In one of its responses, Americatel also referred to festivals where Bravo employees appeared to sell Americatel services and used LOAs.⁵¹ However, when staff requested details about these events (name, purpose and date of the festivals, sponsors, locations, number of Americatel employees present, nature of participation and duration of stay of Americatel employees),⁵² Americatel could name only three festivals (two in Florida and one in California), the month they were held, and the presence of Mr. Krauss and Mr. Fiallo (Regional Sales Manager, who reported directly to Mr. Krauss).

Americatel did not provide further information about the festivals. In the footnote, Americatel stated that it "does have a list of all the Festivals in which Bravo participated. Mr. Krauss may have that information but he is no longer an employee of Americatel."⁵³

Furthermore, even Americatel apparently believed that its executive failed to safeguard the company and terminated the services of Vice President Mr. Krauss, the individual responsible for managing the Bravo contract. Mr. Krauss reported directly to the President and CEO. Americatel, however, indicated that there is no evidence that the Americatel employees (Mr. Krauss and Mr. Fiallo) that managed the Bravo relationship knowingly participated in or benefited from the conduct undertaken by persons associated with Bravo.⁵⁴ Americatel did not terminate Mr. Fiallo.

Americatel failed to adequately monitor the activities of its marketing vendor and did not have proper internal controls to help detect the wrongdoing.

⁵¹ September 22, 2008 Americatel Data Response, Item 5 (Attachment C-2)

⁵² January 8, 2009 CPSD Data Request No. 5, Item 1.a.(5), (Attachment E-1)

⁵³ February 2, 2009 Americatel Data Response, Section IV, Footnote 9, page 5, (Attachment E-2)

⁵⁴ Ibid., Section X, page 12

VIII. AMERICATEL VIOLATED P.U. CODE SECTION §2890 (a) BY PLACING UNAUTHORIZED CHARGES ON CONSUMERS' TELEPHONE BILLS AND BY OVERCHARGING THEM

Based on Staff's analysis of consumer complaints, interviews with and declarations from complainants, and Americatel's own admission, 61,097 consumers were crammed due to the fraudulent actions of Americatel's marketing agent. Americatel is responsible for the actions of its marketing vendor yet it failed to conduct due diligence of Bravo prior to entering into a marketing relationship and did not adequately monitor Bravo's actions. Such failure caused the placement of unauthorized charges on consumers' telephone bills, in violation of P.U. Code §2890 (a), which requires that: "A telephone bill may only contain charges for products or services, the purchase of which the subscriber has authorized." In addition, Americatel admitted to overcharging customers \$2 million by applying the wrong USF rate and applying higher per minute plan rates than those authorized by the customers. Both actions violate P.U. Code § 2890 (a).

IX. AMERICATEL VIOLATED P.U. CODE §451

P. U. Code §451 requires: "All charges demanded or received by any public utility, or by any two or more public utilities, for any product or commodity furnished or to be furnished or any service rendered or to be rendered shall be just and reasonable. Every unjust or unreasonable charge demanded or received for such product or commodity or service is unlawful." Americatel's placement of unauthorized charges and overcharging of customers are both widespread and egregious. Americatel unjustly charged customers, in violation of P. U. Code §451.

X. RECOMMENDATIONS

Based on Staff's findings in this report, CPSD requests that the Commission open an Order Instituting Investigation (OII) into Americatel's actions. CPSD believes that competent evidence exists to warrant an OII.

If the Commission finds that Americatel violated any laws, rules, or regulations of this State as described in this report, the Commission should impose penalties against Americatel. P.U. Code§ 2107 states: “Any public utility which violates or fails to comply with any provision of the Constitution of this state or of this part, or which fails or neglects to comply with any part or provision of any order, decision, decree, rule, direction, demand, or requirement of the commission, in a case in which a penalty has not otherwise been provided, in subject to a penalty of not less than five hundred dollars (\$500), nor more than twenty thousand dollars (\$20,000) **for each offense.**” (Emphasis added.) Statutory grounds exist for the imposition of substantial penalties and Staff intends to file a separate testimony in this regard at a later time.

Staff is extremely concerned by the findings in this report and questions Americatel’s fitness to continue to operate in California. CPSD asks that the Commission consider Americatel’s fitness in the OII and what additional sanctions are appropriate for the Commission to impose upon Americatel to protect California consumers.