

BEFORE THE PUBLIC UTILITIES COMMISSION OF STATE OF CALIFORNIA

Order Instituting Investigation on the Commission's own motion into the operations, practices, and conduct of Telseven, LLC, Calling 10 LLC dba California Calling 10, (U-7015-C), and Patrick Hines, an individual, to determine whether Telseven, Calling 10, and Patrick Hines have violated the laws, rules and regulations of this State in the provision of directory assistance services to California consumers.

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ORDER INSTITUTING INVESTIGATION
INTO THE OPERATIONS OF
TELSEVEN, LLC, CALLING 10, LLC, AND PATRICK HINES

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I. SUMMARY

By this Order, the Commission institutes an Investigation into the practices of Telseven, LLC (Telseven),¹ its affiliate Calling 10, LLC (Calling 10),² and their owner Patrick Hines (Hines), an individual (collectively Respondents).

Respondents provide directory assistance (DA) services to consumers nationwide, including California (where DA is an element of basic telecommunications service). Respondents' charges appear on the bills of California consumers. Both corporate Respondents are owned and managed by Hines, have the same *de facto* place of business in Florida, and employ similar or identical business models. Calling 10, LLC is registered as an interexchange carrier with this Commission (U-7015-C), although Respondents apparently sell no telecommunications services other than unbundled DA.

We are prompted to take this action by a large number of complaints lodged against Respondents by consumers. Respondents' billing agents report receiving between 89,000 and 125,000 (or more) calls from Californians expressing dissatisfaction with the placement of Respondents' charges on their telephone bills.³ The practice of

¹ Telseven at times has done business as Calling 10, Calling 101515800 and perhaps other fictitious business names. These and other facts are found in a report of the Consumer Protection and Safety Division (CPSD) entitled "Investigation Report on Cramming and Related Allegations Regarding Telseven LLC, Calling 10 LLC, and Other Entities Controlled and/or Utilized by Patrick Hines and His Agents (Staff Report). See Staff Report at section II(A)(1).

² Calling 10 at times has done business as California Calling 10, Calling 101515800, and perhaps other fictitious names. *Id.* at II(A)(2).

³ Staff Report, at sections I and IV(A)(3), Table 6. The discrepancy in "complaint" numbers occurs because Respondents and their billing agents have reported inconsistent numbers of "complaints," "inquiries," and "credits," classifying many calls as "inquiries" rather than "complaints," even where a credit or refund was given. *Id.* at section IV(A). We use the word "complaint" as it is defined in the dictionary, i.e., as an "expression of dissatisfaction." See, e.g., <http://www.merriam-webster.com/dictionary/COMPLAINT>. As discussed below, a high percentage – between 60% and 90% – of calls made by consumers to their billing telephone companies or billing agents regarding Respondents resulted in refunds or "credits." Where an inquiry was accompanied by a refund, staff has inferred that some expression of dissatisfaction was made. *Id.* Respondents apparently have a policy to issue a credit or refund whenever their charges are "challenged." *Id.* at IV.A.1, Attachment 72.1C. Attachment with a "C" next to the attachment number are provided as confidential documents.

placing

unauthorized changes on phone bills, if proven, is known as “cramming.”⁴ The charges at issue are typically labeled “DIR ASSIST,” and are accompanied by “Carrier Administrative Fees” and “Universal Service Fund Fees,” totaling in the aggregate more than \$7. The Commission’s Consumer Affairs Branch (CAB) has also received a number of complaints about these charges. All CAB complainants deny authorizing the charge, most deny all knowledge of (“never heard of”) Respondents, and staff assumes that the same is true for the majority of complaints reported by the billing agents.

Respondents claim they disclose that the service costs \$4.99 or \$5.49 (depending on the script used), and that switch record of a call from the consumer’s premises to Respondents’ DA platform is proof that the consumer authorized the charge. Staff questions the effectiveness of this disclosure and notes the absence of any initial disclosure of the “administrative” and other fees that push the price from \$4.99 to \$7.14.

Staff also takes issue with the inherently deceptive aspects of Respondents’ business model. Respondents market their DA service exclusively through roughly a million defunct “800” and other toll-free numbers that they control. Respondents appear to capitalize on consumers who mistakenly dial these toll-free numbers, often distinguished from popular numbers (e.g., for banks, utilities, insurance companies, and the like) by only one digit.⁵ Respondents intercept these calls, tell callers that “the number you have dialed has a new national directory assistance service,” and direct them to “dial 10 15 15 8000 for more information on the number you have dialed.”

Respondents’ business model and conduct may violate a number of provisions of the California Public Utilities Code. Failure to provide a customer with

⁴ See, e.g., D.02-10-059 (*Qwest*), Slip Op. at [3] (“caus[ing] various unauthorized charges to be added to the customers’ telephone bills” is “known as ‘cramming’ [and] is unlawful”).

⁵ See, e.g., <http://abcnews.go.com/Business/Consumer/story?id=3473030>; <http://edumacation.com/TelSeven>; see also discussion below; Staff Report Attachment 72.5C (“Misdials – Turning Lemons into Lemonade”); 72.6 (“One-Off Numbers”).

information sufficient to allow informed market decisions violates Public Utilities (P.U.) Code §§ 451 and 2896. The placing of unauthorized charges on a California phone bill violates P.U. Code § 2890. The failure to properly identify the company originating the charges also violates P.U. Code § 2890. The hoarding and warehousing of 800 and other toll-free numbers for the apparent sole purpose of marketing Respondents' DA service may violate federal regulations, and constitute an unjust and unreasonable practice under P.U. Code § 451.

Staff also discovered other potentially illegal conduct, including:

(a) Telseven's provision of public utility DA services from 2003-2007 without a valid Certificate of Public Convenience and Necessity ("CPCN"), which would violate P.U. Code §§ 1001 and 1013; (b) Respondents statement to the Commission, under oath, that the "full legal name" of Calling 10 LLC was the fictitious business name California Calling 10, LLC, possibly a violation of Rule 1.1 of the Commission's Rules of Practice and Procedure; and (c) Telseven's failure to remit regulatory fees and surcharges during the 2003-2007 period, as called for by P.U. Code §§ 270, 431-435, 702, 739, 879 and 2881. In addition, staff believes that the beneficial owner of Telseven and Calling 10, Patrick Hines, may be the alter ego of those corporations, and/or have directed the allegedly illegal acts described herein, and therefore may be held personally accountable for the violations described herein.

Staff has prepared an investigative report (Staff Report) documenting these allegations, a non-confidential public version of which will be made available after the publication of this Order.

The allegations of wide-spread cramming, operating without Commission authorization, and misrepresentation are serious. We note that Respondents' activities have spurred consumer allegations of fraud as reflected on various Internet sites (although often directed towards Respondents' billing agents ILD and BSG/OAN, rather

than Telseven or Calling 10, as described further below).⁶ We observe that there is a substantial gulf between the denial by both CAB and Internet complainants that they had ever heard of or called Respondents, and Respondents' claims that each of these consumers had in fact dialed Respondents' DA service and knowingly authorized the \$7 charge. We direct staff to further investigate this discrepancy, and order Respondents, as well as the billing agent/aggregators, billing telephone companies identified herein, and third party Wholesale Carrier Services, to cooperate with staff's inquiries on this and the other factual issues discussed in this Order Instituting Investigation (OII).

II. RESPONDENTS, AFFILIATES AND COOPERATING BUSINESS ENTITIES

A. Respondents

1. Telseven, LLC

Telseven is a Florida limited liability corporation, with its principal place of business located at 200 Executive Way, Ponte Verde Beach, Florida, 32082. It is a telecommunications company providing DA service, which Respondents characterize as Enhanced Number Assistance and Directory Assistance (ENADA),⁷ to customers throughout the United States, except in Nevada, and Alaska.⁸ As the term ENADA does not appear to be broadly utilized in the industry, or adopted by the FCC, and as Respondents' bills refer to DIR ASST, we will refer here to "DA" services. Telseven

⁶ See <http://800notes.com/Phone.aspx/1-101-515-8000> (complaints against this number, against billing agents ILD and OAN, and against Patrick Hines as person responsible); <http://whocallsme.com/Phone-Number.aspx/1015158000/2> (complaints about charges posted by agent aggregator ILD for calls to 101515800 numbers) <http://whocallsme.com/Phone-Number.aspx/1015158000/2> (same) <http://www.everycall.us/phone-number/1-101-515-8000/> Many of these complaints specifically plead for regulatory intervention, as described below.

⁷ See, e.g., <http://telseven.com>

⁸ Staff Report at section II(A)(1), and Attachment 2C (re states in where Telseven active). As recounted in the following paragraph, Telseven has also reported that it no longer offers service in California.

sometimes does business under the fictitious name of 101515800. Patrick Hines has consistently been identified as the direct or indirect owner of Telseven.²

As set forth below, staff discovered that Telseven was offering a telecommunications service in California without having registered or obtained a CPCN from the Commission. When staff directed Telseven to apply for operating authority from the Commission, Respondents first claimed their service was interstate, and then applied for that authority under the name California Calling 10, LLC.¹⁰

2. Calling 10 LLC

Calling 10 is a Delaware limited liability corporation with its headquarters also located at 200 Executive Way, Ponte Vedra Beach, Florida, 32082.¹¹ It is a telecommunications company providing DA services to customers throughout the United States, except in Alaska, Connecticut, Iowa and Nevada.¹² Calling 10 employs the same business model and has the same beneficial owner (Patrick Hines) as Telseven.¹³ Calling 10 does business under the fictitious business names of California Calling 10 LLC, Calling 10, Calling 101515800, Calling 1015158000, Service Bureau Networks, and Calling 1010275.¹⁴ Patrick Hines has consistently been identified as the direct or indirect owner of Calling 10.¹⁵

² Staff Report at section II(A)(1).

¹⁰ See discussion in sections V(B)(2) and VI(G)(1) and (2) below. Staff has not provided, nor have Respondents offered, an explanation of why Respondents did not apply for authority under the existing name of Telseven. Had they so applied, however, they would presumably have had to answer as “not true” question 7 of the [Short] Form of Application for Registration, which asks whether the Applicant is “currently under investigation for similar violations [involving misrepresentations to consumers].” See Staff Report Attachment 66 (Telseven litigation with Florida Attorney General re documents produced to AG and requested by both Commission staff and FCC).

¹¹ Calling 10’s CPUC registration shows this address, but other corporate documentation shows a corporate address in Delaware. See Staff Report at section II(A)(2).

¹² *Id.* at section II(A)(2).

¹³ *Id.* at sections II(A)(1)-(2), II(C), and II(C)(1). Compare also <http://calling10.com> with <http://telseven.com>.

¹⁴ Staff Report at section II(A)(2).

¹⁵ *Id.* and Table 1.

When confronted with allegations of unlicensed telecommunications service in California, Respondents filed a registration application under the “full legal name” of California Calling 10, LLC. There is no corporation in California with that as its “full legal name”; as noted above, the full legal name of the Telseven affiliate in question is Calling 10, LLC, and the California Calling 10, LLC name is a fictitious business name.¹⁶

3. Common Ownership and Management by Patrick Hines

As illustrated in the Staff Report, Telseven and Calling 10 have and appear to share common ownership, control, and management; by all appearances, Patrick Hines effectively owns, manages and directs both companies.¹⁷

B. Affiliates

Staff reports that Respondents’ business operations are enabled by affiliated¹⁸ and non-affiliated “cooperating business entities.”¹⁹ In addition to these companies, Mr. Hines also effectively owns and controls a number of affiliated companies, among which he apparently distributes the various functions involved in

¹⁶ Asserting that it could not obtain the legal name Calling 10 LLC in California, Calling 10 LLC registered with the secretary of state under the fictitious name of California Calling 10, LLC, and then reported that fictitious name to this Commission as its “full legal name.” Staff Report, Attachment 6 (Calling 10’s Application A.06-10-008 listing “full legal name of applicant” incorrectly as California Calling 10, LLC, while correctly identifying the legal domicile of the corporation as Delaware); *see also* Attachment 6.1, Tab 2, California Secretary of State LLC Application for Registration, showing the dba and true legal name; *compare* Tab 1 (showing true name of the corporation, domiciled in Delaware, is Calling 10 LLC, not what is disclosed on the Application Form itself).

¹⁷ Staff Report, at sections II(A) and (B).

¹⁸ Staff is not using the word “affiliated” in any technical sense, and is instead referring to the fact that the entities here are believed to be beneficially owned and ultimately controlled by Patrick Hines. *See* Staff Report Attachment 14C (“Red Resources Ltd. [owner of Calling 10] and a number of other entities, including Levendo, Signal One and Tarajara Properties, are all owned, indirectly and in various ways, by Patrick Hines”). Many of the attachments to the Staff Report were submitted to Staff as confidential information pursuant to P.U. Code §583 and General Order 66-C. By publishing information from those confidential Attachments in this OII, the Commission is authorizing the release of that information to the limited extent reflected here. The Staff Report itself will be published in public and confidential versions.

¹⁹ Staff Report at sections II(B)(1) and (B)(2).

marketing and delivering the DA service, including but not limited to: (1) Signal One, a fictitious business name for several different corporations, operates as a “Responsible Organization” or RespOrg, giving Respondents control over a approximately one million toll-free numbers, as described below;²⁰ (2) Levendo LLC, which contracts with various other entities that actually supply the DA service, telecommunications, and (in some cases) provide billing and collection services (Respondents appear to contract with third parties for all of the core operational aspects of the DA service); (3) Red Resources Ltd. and (4) Tarajara Properties Ltd., which apparently function as a holding companies for Respondents Telseven and Calling 10.²¹

C. Unaffiliated Cooperating Business Entities

Through contracts, sometimes between Respondents (or their affiliates) and third parties, and sometimes between Levendo (or other Hines affiliates) and third parties, Telseven and Calling 10 obtain the services necessary to run their businesses. These apparently unaffiliated business entities are essential to the operation of Respondents’ business. These include: (1) Respondents’ billing agents or “aggregators,” ILD Telecommunications, Inc. (ILD) and ACI Billing Services, Inc., a subsidiary of BSG Clearing Solutions (BSG), which allow Respondents to place their charges on local phone companies’ telephone bills;²² and (2) the company to which Respondents apparently outsource both the transportation of the dial-around calls to the DA platform and the DA service itself, Wholesale Carrier Services (WCS). WCS has its principal place of business at 5471 N. University Drive, Coral Springs Florida.²³ WCS has filed a lawsuit in Florida seeking to block access to documents related to Telseven and Calling 10.²⁴

²⁰ *Id.* at II(B)(1) and (C)(1).

²¹ *Id.* at section II(B)(1).

²² *Id.* at section II(B)(2).

²³ *See id.*, and Staff Report Attachment 13C (contract between Respondents and WCS).

²⁴ *See* Staff Report Attachment 66.1.

Finally, the billing telephone companies, typically the large ILECs AT&T and Verizon, provide the actual billing and collection services which are essential to Respondents' business model.²⁵ AT&T, at least, was aware of the high number of consumer complaints associated with Respondents' service.²⁶

D. Leave to Amend

Because of the multiplicity and possible confusion of corporate names and services, as well as the difficulty in obtaining definitive information as to the relationships between Respondents and third parties, we grant staff leave to propose the addition of other parties as Respondents herein, as well as the addition of other factual allegations and legal theories to this OII.

III. CONSUMER COMPLAINTS

Respondents' conduct has generated a large number of inquiries or complaints to the billing agent/aggregators (ILD and BSG) that resulted in refunds to the consumer. Where an inquiry or complaint resulted in a credit or refund, staff refers to these calls as "complaints," regardless of how the agent/aggregator chooses to

²⁵ See Section III(B)(3) of Staff Report for further discussion. In addition, one CAB complaint identifies Cox Telephone as the billing telephone company. Although not in privity with Respondents, the billing telephone companies services are the *sine que non* of Respondents' business model, as pointed out by District Court Judge Alsup in *FTC v. Inc21*, 688 F. Supp. 2d 927 (N.D. Cal 2010) (quoted *infra*). Staff notes the typical billing and collection agreement (BCA) between an ILEC and a service provider, or an ILEC and a billing agent/aggregator, calls for the ILEC to receive a portion of the revenues generated by the service provider. See Attachment 11C (Billing Service Agreements and Amendments) LEC Billing and Collection Attachment 1, Schedule 1-A at pg. 3-4, and 1-B at pg.6. Because the billing telephone companies were in possession of funds from the fraudulent enterprise in the *Inc21* case, the Court there named them "relief defendants," subject to the preliminary injunction:

It seems that Pacific Bell could have organized the LEC billing process -- from which it presumably profits handsomely -- to have more control over the flow of funds going to potentially fraudulent businesses, but has simply chosen not to do so. This order declines to exempt Pacific Bell and other LECs from the preliminary injunction. LECs have a responsibility to learn the ultimate destination of the funds they are charging their own customers so that if and when fraud occurs, they can protect their customers and immediately put an end to the fraudulent billing.

688 F.Supp.2d at 939, fn. 12.

²⁶ Staff Report at section III(B)(3) and Attachment 26C.

characterize the interaction. Staff reports that there have been at least 89,000 such credits issued, and over 125,000 customer contacts reported as “inquiries” by the billing agent/aggregators, although these represent a small portion of consumers charged for the DA service.²⁷

In addition, staff also has reviewed and analyzed complaints submitted to CAB, as well as those found on the Internet. Consumers report finding charges on their bill, typically totaling over \$7, for a DA service that they universally deny authorizing or using.²⁸ Most deny ever hearing of Telseven or Calling 10, and identify ILD or BSG – i.e., the billing agent/aggregators – rather than Telseven or Calling 10 as the party responsible for the charges.²⁹ Some customers label Respondents’ practices as “fraud,”³⁰ and others plead with the Commission to stop Respondents’ allegedly abusive billing practices.³¹

²⁷ Staff Report at section IV(A)(3).

²⁸ Staff Report at section IV(C)(1); in particular, *see* Attachment 27 for summary of CAB complainant details (separately bound). Staff has compiled a selection of quotations from the CAB complainant letters and declarations, that describe in greater detail consumers’ claims that Respondents’ charges are unauthorized. See Staff Report Attachment 45 and 45.1.

²⁹ Staff Report at section IV(C)(1).

³⁰ Attachment 27.2 (Supreme Roofing Co./Carey Clifford).

³¹ See, e.g., Attachment 27.38 (David Platt “I urge the CPUC to take action against ILD Teleservices”); Attachment 27.69 (CAB Complainant 07-05-8347 states “Why do you allow ATT to accept charges from other companies, [t]hese companies are sleezebags”). Staff notes that some CAB complainants are identified by the CAB ID # because those complainants did not explicitly agree to have their names divulged. In Attachment 27.35, CAB Complainant 18954 states:

I received a charge on my AT&T residential phone bill from ILD Teleservices for a \$7.14 directory assistance charge to CALLING 10 15 15 800. I did not make this call and I did not authorize this charge. I researched this on the Internet, and I found that there have been many consumer complaints...Take immediate action to stop this deceptive practice. Prevent these deceptive and frivolous charges from being added to legitimate telephone bills. This harms the innocent consumers by costing money, time and stress.

IV. RESPONDENTS' BUSINESS MODEL

A. Respondents Market Their DA Service Through Approximately One Million Defunct Toll-Free Numbers.

Respondents market their DA service through intercept messages (which Respondents refer to as “network messages”) played on defunct 800 and other toll-free numbers, i.e., toll-free numbers that have been discarded by the entity previously associated with the number, or where the entity associated with the number has ceased to exist.³² The intercept message informs customers that the number “now has a new national directory assistance service,” and directs consumers to call a 101515800 or 1015158000 “dial-around” or “equal access” number to “get information on the number you have dialed.”³³ Other than this marketing intercept, Respondents do no mass media advertising; nor do they post the dial-around numbers on their websites.³⁴ Thus, it is only through control of a large pool of discarded toll-free numbers that Respondents’ business model functions.³⁵ Respondents control approximately one million 800 and other toll-free numbers, access to which they obtain from another entity owned by Patrick Hines, Signal One, as described above. Respondents apparently pay \$10 a year to their affiliate Signal One for access to and control of these numbers.³⁶

Customers reach these numbers by mistake, either by a dialing mistake (sometimes referred to as “fat finger” dialing), or by dialing a number abandoned by its previous owner, as described further below.

³² Staff Report at section II(C)(1).

³³ Staff Report at section II(C)(1) and (2), and Staff Report Attachments 15 and 17C.

³⁴ Staff Report at section II(C)(1). The websites of Telseven and Calling 10, set forth above, do not advertise or disclose the “10-10” or “10-15” dial-around numbers through which consumers allegedly access Respondents’ DA services.

³⁵ Staff Report at II(C)(1).

³⁶ Staff Report Attachment 10C (contracts between Calling 10 and Signal One & Levendo and Signal One – all Hines’ entities – for the provisioning of 800 numbers).

B. Respondents Provide Their Reputed DA Services from a Server Located in Nevada – the “Nevada Directory Assistance Platform.”

If the consumer in fact calls the dial-around number advertised in the marketing intercept, she reaches a server allegedly located in Nevada (sometimes referred to as the “Nevada DA platform”), from which the DA service is provided.³⁷

The mere act of calling the Nevada platform seems to trigger, in most cases, charges in excess of \$7 on a consumer’s bill.³⁸ CAB complainants and other customers, on the other hand, are nearly unanimous in stating that they had not dialed, reached or heard of Respondents’ DA platform, much less authorized the disputed charges.³⁹

Because Respondents own no telecommunications facilities of their own (Calling 10 registered with the Commission as a “reseller” of inter- and intra-LATA telecommunications services), they contract with WCS for the transport of California consumers’ calls to the Nevada DA platform, for the use of the dial-around numbers, and for the DA service itself.⁴⁰ WCS, in turn, contracts with the Williams Telecommunications Group (Witel Communications, LLC, aka Witel),⁴¹ which routes the calls through voice switches owned and operated by a member of the Witel Group. In this way, WCS provides domestic origination and routing for Respondents.

³⁷ While Respondents themselves operate the servers on the DA platform, live operators – when requested – are provided by WCS, pursuant to the contracts found at Attachments 13.1C-13.3C.

³⁸ Staff Report at section II(C)(2) and III(B)(2). Aug 3, 2010 data responses from Respondents (Attachment 69C) seem to indicate that about 90% of the calls that arrive at the Nevada DA platform result in charges to consumers.

³⁹ Staff Report at sections IV(C)(1), IV(D) and IV(E).

⁴⁰ Staff Report section II(B)(2), Attachments 13.1-13.3.

⁴¹ Staff Report section II(B)(2) and II(C)(2). *See also* Staff Report Attachment 13.1C (Service Schedule II), at pg.9 – “Through Witel Communications...WCS will provide domestic origination and routing, via Witel’s voice switches of 10-15-158 1+700-XXX-XXXX calls.” Witel is the owner of the 1015158 “CIC” code necessary for routing these numbers. The 5158 portion of the Respondents’ equal access number correspond to William Telephone Co.’s carrier identification code as identified by the North American Numbering Plan Administration – http://www.nanpa.com/reports/cic_docs/D-sep-98.doc.

C. Respondents Bill Their Services Through “Billing Telephone Companies” – Typically the Incumbent Local Exchange Carriers Like AT&T and Verizon.

Once a caller has proceeded far enough onto the DA service platform to trigger a charge,⁴² those charges are routed by Respondent to Respondents’ billing agents ILD and BSG (aka OAN), which bundle and forward the charges and an accompanying description of the “service” to the billing telephone companies, primarily AT&T and Verizon.

D. How Telseven and Calling 10 Respond to Consumer Complaints.

Telseven and Calling 10 do not, in the first instance, respond to consumer complaints. Instead, they contract with the billing aggregators ILD and BSG for customer service functions.

When cases have escalated to Telseven or Calling 10, they or their agent respond that there are call detail records (CDRs) associated with the consumers’ call to the DA platform. Although staff has not yet examined these CDRs, it has obtained other call records from AT&T and WilTel, reflecting calls from California customer numbers to Respondents’ DA platform. The Staff Report addresses these latter CDRs, noting in some cases that the call duration shown was insufficient for a consumer to find and hear the rate disclosure or gain any useful information at the DA platform.⁴³

Often, the proffer of a CDR is accompanied by the promise of a credit. It may be that Respondent’s liberal credit policy masks the true extent of the problem, and has prevented Respondents services from being challenged in administrative or judicial proceedings. Staff reports that approximately 89,000 customers in California have had

⁴² It appears that most callers reaching the platform are charged. Staff Report, at sections III(B)(2), (4), and Attachment 69C. Staff has call detail records of customers who were charged notwithstanding call duration of under 10 seconds, and in at least one case under 5 seconds. *Id.*

⁴³ See Staff Report section III(B)(4) regarding staff conducted “test calls.”

Respondents' charges credited back to them, as against approximately 2.7 million Californians who have been charged for Respondents' DA services.⁴⁴

V. FURTHER FACTS REGARDING ALLEGED VIOLATIONS

A. Disclosure of the Nature of, and Charges for, Respondents' DA Service.

There are two opportunities for Respondents to disclose the full amount of the DA charges and the true nature of the DA service: when the customer calls the toll-free number, or when the customer makes (as Respondents allege) the subsequent call to the 1015158000 equal access number. Staff alleges that neither of the disclosures are adequate to inform consumers about the true nature and full amount of what Respondents are offering. As suggested below, if the toll-free and equal access calls are separate, it may be only the latter disclosure on the equal access number – i.e., where the pay-per-call service is provided – that matters from a legal point of view.

1. Disclosures of Charges and Nature of the DA Service -- on the 1-800 Marketing Intercept.

Respondents provided 27 alleged scripts for the marketing message on the 1-800 number, most apparently showing a disclosure of a [\$]4.99 (or [\$]5.49) charge for Respondents' DA service in the first sentence of the pre-recorded marketing intercept.⁴⁵ However, Respondents were unable to verify the exact dates when any of those scripts were actually used.⁴⁶ For example, Respondents changed their marketing message in response to concerns voiced by AT&T about Telseven's allegedly inadequate price disclosures (see below), but no reliable evidence has been adduced as to the extent, timing and sequence of these changes. As described in the Staff Report, the changes

⁴⁴ See Staff Report at sections III(A) (total revenue, charges) and IV(A)(3) (credits).

⁴⁵ Staff Report at section III(B)(1).

⁴⁶ Respondents could only provide an actual *recording* of the current script, although staff had sought recordings of the marketing message dating back to 2006. See Staff Report at section III(B)(1).

purportedly made around the beginning of 2007 had little effect on complaint rates, which remained high in 2007 and 2008.⁴⁷

Staff has made test calls to some of the toll-free numbers, and verified that the messages currently played on at least some of these numbers states:

For a charge of 4, 99, please have a pen ready to write down our phone number. You can hang up and dial 10 15 15 8000. That number again is 10 15 15 8000. The number you have dialed has a new national directory assistance service. Please dial 10 15 15 8000. That number again is 10 15 15 8000 -- to get information on the number you have just dialed and be connected to a new national directory assistance service, brought to you by Calling 10. Rates exclude federal universal service fee and administrative recovery fee. You can also dial 10 15 15 8000 702 555 1212, to be connected to a new national directory assistance service. Subject to terms and condition of service available at www.Calling10.com. For trouble reporting, you can email service@calling10.com.⁴⁸

Staff believes this intercept or network message is likely to mislead consumers for various reasons:

- a) This price disclosure is part of an inherent non-sequitur: “For a charge of 4, 99, please have a pen ready to write down our phone number”;⁴⁹
- b) The price disclosure is made in the first sentence, before the consumer understands (if she ever does) the context of the intercept;
- c) There is no disclosure of the total charge to the consumer, which is, in fact, typically about \$7.14, not \$4.99. The extra \$2.15 is undisclosed, although the suggestion is made that rates “exclude” such additional charges;
- d) The use of and possible charges for the 800 number mentioned in the second sentence remain vague. At what

⁴⁷ Staff Report section IV(A)(3) and Tables 2 - 5.

⁴⁸ Staff Report section III(B)(1) and the test call transcript Attachment 52.

⁴⁹ The recording does not use the words “dollars” or “cents” in conjunction with the “4, 99.” For this reason, dollar signs are either omitted or bracketed in the scripts reproduced in this OII.

point in the process of dialing the access number and connecting to the Nevada DA Platform will the \$4.99 (plus fees) be levied?

- e) The customer is not told that the called number is now out of service, that the original owner of the 800 number no longer uses it,⁵⁰ and that the original owner (intended called party) is in no way connected with this marketing intercept;
- f) The sentence “Rates exclude federal universal service fee and administrative recovery fee” can be understood to mean that no universal service fee or administrative recovery fee applies;
- g) The 10 15 15 800[0], with its echoes of a toll-free 800 number (some of the marketing intercepts use the 800 variant), is repeated three times in the next five sentences, but the “4, 99” in the first sentence is not repeated; and
- h) The consumer hears further inducements, that she can “get information on the number you have just dialed and be connected to a new national directory assistance service,” without further mention of the four-ninety-nine base charge (let alone the entire \$7.14).

Some (apparently earlier) versions of the scripts provided by Respondents show that the \$4.99 (or \$5.49) base cost for the DA service is buried near the middle of the message, after consumers are told several times to dial Respondents’ “10-10” or “10-15” numbers “to get information on the number dialed.”⁵¹ Both may mislead customers.

None of Respondents’ scripts adequately disclose the amount of the \$1.65 “Carrier Administrative Fee” or the \$.60 “Universal Service Fund Fee” Respondents typically add to the \$4.99 or higher “DIR ASSIST” base fee.⁵² The Carrier

⁵⁰ We do not mean to suggest that a company ever obtains unqualified “ownership” of a toll-free number.

⁵¹ Staff Report section III(B)(1) and Staff Report Attachment 22C.

⁵² See example of telephone bill in Staff Report Attachments 27.1. The Universal Service Fund Fee may also be in excess of any amounts actually paid by Respondents into the USF, as discussed below.

Administrative Fee, presumably for administration of the USF Fee, is almost three times as much as the USF Fee itself.

2. Disclosure of Charges and Nature of the Service at the DA Platform.

If a consumer does call the 10 15 15 800[0] dial-around number, as directed by the network intercept, the first menu she or he hears is the following.⁵³

Start Time	Message	Stop Time	Elapse Time (seconds)
0.00	Thank you for calling the national directory assistance service with number assistance brought to you by Calling 10.	0.06	6 secs
0.07	To get a status and history on a number you are trying to reach on Calling 10, press "1" now.	0.12	6 secs
0.13	Press "0" or please hold to speak with a directory assistance service operator.	0.17	5 secs
0.18	For customer service and rate information, press "5".	0.21	4 secs
			21 seconds

Staff has not been able to ascertain at precisely what point the customer incurs a charge, but some CAB complainants received charges on their bill even though call detail records indicate a call duration of less than 10 seconds, and others less than 20 seconds – insufficient in either case to obtain either number information *or* a rate quote, as shown above. Call durations varied as follows:⁵⁴

Duration of Calls from	Number of Switch
------------------------	------------------

⁵³ Staff Report at Section III(B)(4). Staff added a [bracket] to the last [0] on the 10-15-15-8000 DA dial around number because Respondents' have referred to this number as both "800" or "8000," and the final zero apparently has no efficacy other than muting the resemblance to an 800 number.

⁵⁴ *Id.*

Switch Records	Records
Under 10 seconds	5
Between 11 to 20 seconds	8
Between 21 to 30 seconds	2
Between 31 to 40 seconds	4
Between 41 to 50 seconds	1
Greater than 40 seconds	7

Staff also reports that the value of the service is questionable, even were it to be offered for free. The number history and information relates only to 800 numbers “on [the] Calling 10 [system],” as shown by the following sub-menu encountered when the customer presses “1” for “a status and history on a number you are trying to reach”:⁵⁵

Start Time	Message	Stop Time	Elapse Time (seconds)
.00	Please enter the 10 digit number you wish to check now.	.03	3 secs
.04	Do not enter “1” before the 10 digit number.	:06	3 secs
.07	For example 800 123-4567.	.11	5 secs
			11 secs

Staff then spent an additional 10 seconds entering the Commission’s toll-free number, 800-848-5580, and received the following message:⁵⁶

⁵⁵ *Id.*

⁵⁶ *Id.*

Start Time	Message	Stop Time	EIapse Time (seconds)
.21	This number is not operating on Calling 10.	.23	2 secs
.24	Press “1” to check another telephone number.	.26	3 secs
.27	Press “0” or please hold to be connected with a directory assistance service operator.	.11	5 secs
.32	Press“*” to return to the main menu.	.14	3 secs
			13 secs

Thus, if the 800 number of the party the consumer was originally trying to reach is not “operating on Calling 10,” the customer has not received any useful information. Even if the 800 number is “on” the system, the customer hears the following information, of no apparent utility to most consumers:

This number is operating on California Calling 10. The Responsible Organization for this number is Signal One. This number was made active from the spare pool of disconnected phone numbers, and its last record change was in the second quarter of 2007.⁵⁷

The best that a customer can do on Respondents’ DA platform is to dial “0” or wait (through one or more intervening menus) “to speak to a [live] directory assistance service operator,” who appears to offer nothing more than traditional DA service.⁵⁸

3. Disclosures on Telephone Bills.

The charges for Respondents’ DA service typically appear on a separate page of the consumer’s telephone bill devoted to third-party billing.⁵⁹ On that third-party

⁵⁷ November 12, 2010 test call by staff to the 888 958 2800 number identified by AT&T in its August 15, 2007 letter.

⁵⁸ *Id.*

⁵⁹ In the customer complaints collected in Attachment 27 to the Staff Report, one can see bills generated by both large ILECs, Verizon and AT&T. Both use a third-party page format, where the charges are listed as DIR ASST, accompanied by substantial further charges for “administrative fee” and universal service surcharge.

page, however, and elsewhere on the ILECs' bills, it is the name of the billing agent – and not Telseven or Calling 10 – that predominates. Indeed, on none of the bills submitted by complaining customers to CAB was staff able to find a disclosure of the legal name of the entity responsible for the charge, i.e., Respondents Telseven and Calling 10.⁶⁰ Thus, many consumers are under the mistaken impression that the billing agents, and not Respondents, were responsible for the charges.⁶¹

4. AT&T's Concerns about Telseven's Disclosures.

Respondents were on notice that their marketing representations were likely to be misleading to consumers. Based on consumer complaints and “an alarming number of credits issued to our end users in the amount of \$7.17 – the exact amount of the charge for a dial-around directory assistance call to Telseven,”⁶² AT&T complained to aggregator ILD (but never directly to Telseven) about the apparently deceptive marketing practices that had resulted in high complaint and refund numbers associated with Telseven's service.⁶³ The thrust of AT&T's concern was that “the caller did not dial that toll-free number with the intent of reaching Telseven,” yet they are directed to Telseven's service with the suggestion that Telseven's service will allow the caller to reach the number originally intended.⁶⁴ Telseven responded that “advertising to such callers is an effective, legitimate method of informing such customers of [Telseven's] directory assistance services.”⁶⁵

⁶⁰ Staff Report section III.C, and Attachment 55.

⁶¹ This is made clear by the consumer complaints assembled in Staff Report Attachment 27. Most of the complaints identify ILD or BSG as the party responsible for the charge. *See also* Staff Report section III.C. and Attachment 47.

⁶² Staff Report Attachment 26.2, at p. 1, defining “dial-around” as “to dial the '10-15-15-800' number to dial around the numbers '4-1-1' or '(Area Code) 555-1212,' to reach Telseven, instead of the end user's regular directory assistance provider.”

⁶³ Staff Report section III(B)(3) and Staff Report Attachment 26C. Staff obtained correspondence from Respondents and AT&T to the billing aggregators/agents from two sources: AT&T and Respondents.

⁶⁴ Staff Report section III.B.3 and Staff Report Attachment 26.3C (pg.2, paragraph 3 of letter).

⁶⁵ *Id.*, and Attachment 26.4C (pg.4, paragraph 2 of letter).

AT&T made a number of specific observations about the potentially misleading nature of Telseven's services: (a) the rate for Telseven's DA service was not disclosed early enough "in the Telseven advertisement" played on the toll-free 800 number;⁶⁶ (b) the rate for Telseven's DA service was not adequately disclosed "after the customer dials the equal access number";⁶⁷ (c) the use of an equal access number that contained "800" in the number sequence gave the false impression that this was a free call;⁶⁸ (d) the continued assessment of a universal service fund (USF) fee even though Respondents' own contributions to the USF were "not current" (if indeed it was contributing at all);⁶⁹ (e) Respondents' "outsourced DA vendor" may have "refer[red] customers to the local exchange carrier when responding to customer inquiries about the price of the ENADA service";⁷⁰ and (f) Respondents' billing message on AT&T's bills originally identified the equal access number called by customers as a Nevada number with 702 area code (702-555-1212) rather than the 101515800 dial-around equal access number actually called by the customers.⁷¹

Beginning on October 12, 2006, Telseven began asserting that it had "moved up the placement of the rate" disclosure in the Telseven advertisements, and made other changes.⁷² AT&T apparently continued to insist that Telseven's marketing intercept was misleading, and that "the cost of the call [should] be stated before the 10-15-15-8000 number is provided."⁷³ As noted in the Staff Report, complaints against

⁶⁶ *Id.*, Attachment 26.1C (p.2, paragraph 5 of letter).

⁶⁷ *Id.* (p.3, paragraph 2 of letter).

⁶⁸ *Id.* (p.3, paragraph 4 of letter).

⁶⁹ *Id.*, at Attachment 26.4C (p.3, paragraph 4 of letter) (AT&T's allegation that the FCC listed Telseven as a "non contributor" because its contributions were "not current").

⁷⁰ *Id.*, Attachment 26.3C (p.2, paragraph 7 of letter).

⁷¹ *Id.*, Attachment 26.1C (pp.1-2 of letter).

⁷² *Id.* (p.2, paragraph 5).

⁷³ Staff Report section III(B)(3) and Attachment 26.3 (p.2, paragraph 4 of letter).

Telseven and Calling 10 continued unabated from 2007 through 2010, even after Respondents moved up the putative disclosure of the \$4.99 (or \$5.49) base rate.⁷⁴

B. Facts Relating to Other Possible Violations

1. Telseven's Operation without a CPCN.

In the course of researching the initial cramming complaints against Telseven, staff discovered that Telseven had never registered with or obtained a CPCN from the Commission. Staff then directed Respondents to cease the unlicensed provision of a telecommunications service in California. On December 11, 2006, the Commission granted Calling 10's Application for a CPCN (#U-7015). Respondents informed staff that all service in California would be operated by Calling 10 as soon as its registration was effective, but complaints against Telseven continued to occur until CPSD finally directed Telseven to cease all operations by October 1, 2007. It appears, then, that Telseven has operated an unlicensed telephone company in California from its inception in 2003 through October 2007.

2. Misrepresentation on Calling 10 Application.

In Application 06-10-008, Calling 10 LLC represented under oath that its "full legal name" was "California Calling 10, LLC," which is the fictional business name for the true name of Telseven's affiliate, Calling 10, LLC. Calling 10 claims this representation was based on the fact that it registered under the fictitious business name of California Calling 10, LLC with the California Secretary of State, but that is irrelevant to the question of the Applicant's full legal name. Staff points to a pattern of Respondents' cloaking their true identity, most notably in their billing representations.⁷⁵

⁷⁴ Staff Report section IV(A)(1), (2) and (3).

⁷⁵ See section V(A)(3) *supra*, and VI(E) *infra*; see also Staff Report at sections III(C).

3. Telseven's Failure to Pay Public Purpose Surcharges on California Telecommunications Revenue.

It appears that Telseven failed to pay public purpose surcharges on the revenue it collected from California consumers from December 2003 through September 2007. Telseven initially excused its nonpayment by claiming that the DA service was completely interstate, by virtue of the fact that its DA platform is in Nevada.⁷⁶ Notwithstanding this claim, Calling 10 has paid these surcharges from December 2007 to date.⁷⁷ Staff points out that Telseven provided DA services to California consumers, calling from California telephone numbers, and billed on California bills, during the 2003-07 period.⁷⁸

VI. DISCUSSION -- LEGAL BACKGROUND, POTENTIAL VIOLATIONS

A. Jurisdiction

The Commission has jurisdiction over Respondents because they have provided a telecommunications service to California customers,⁷⁹ and over telecommunications lines and facilities located in California,⁸⁰ and because their charges have appeared on the bills of California consumers.⁸¹ As described in the Staff Report, between 89,000 and 125,000 or more California consumers have complained about charges placed on their telephone bills by Respondents.

B. Disclosure Violations – Failure to Adequately Disclose the Total Price for the Service, and Other Information

⁷⁶ *Id.*

⁷⁷ Staff Report section VII.

⁷⁸ *Id.* and II(C)(1).

⁷⁹ *See* D.96-03-020; D.96-10-066, Appendix B, Rule 4 (directory assistance, access to foreign NPAs, access to operator services, and free access to 800 or 800-like toll-free services are all elements of basic telecommunications service).

⁸⁰ P.U. Code §§ 216, 233-34.

⁸¹ P.U. Code §§ 2890 *et seq.*

Material to Consumer Choice, Violates Public Utilities Code §§ 451 and 2896.

Two statutes frame the Commission’s disclosure requirements.

P.U. Code § 451 requires that all public utilities not only charge just and reasonable rates, but also maintain “just and reasonable service [and] instrumentalities,” and that the rules “affecting or pertaining to its charges or service to the public shall be just and reasonable.” The Commission has interpreted § 451’s reasonableness mandate to require that utilities 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.”⁸²

P.U. Code § 2896(a) requires all telephone corporations to provide customers with “[s]ufficient information upon which to make informed choices among telecommunications services and providers.”⁸³

Our judgment under these broad standards may be informed by more specific provisions in adjacent areas of law.⁸⁴ Pay-per-call services similar to

⁸² D.04-09-062 (*Cingular*), *aff’d sub nom Pacific Bell Wireless v. Public Utilities Commission*, 140 Cal. App. 4th 718 (2006), Slip Op. at 49, and fn. 31, *citing e.g., UCAN v. Pacific Bell*, D.01-09-058, ltrd rehrg D.02-02-027 (misleading or potentially misleading marketing tactics unreasonable under § 451); *National Communications Center Corp. v. PT&T Co.*, D.91784, (1980) 3 CPUC2d 672 (utility owes customers responsibility to provide all available and accurate information customers require to make intelligent choice between similar services where choice exists); *H.V. Welker Inc. v. PT&T Co.*, D.75807, (1969) 69 CPUC 579 (utility has duty to ensure its representatives inform business customers of options available to meet customers’ needs).

⁸³ *See, e.g., D.04-09-062 (Cingular)*, Slip Op. at 54, *citing D.02-02-027*:

While section 2896 provides a statutory basis for the Commission’s requirements regarding the prospective remedies imposed by [D.01-09-058], we need not rely upon section 2896 alone to impose penalties. When misleading or potentially misleading information is provided to customers regarding optional services, such practices clearly violate section 451’s mandate that telecommunications carriers provide reasonable service. (D.02-02-027, *slip op.* at p. 8.)

⁸⁴ As stated in *Greenlining Institute v PUC*, 103 CA4th 1324, 1333, fn. 10 (2002), quoting *Northern California Power Agency v PUC (NCPA)* 5 C3d 370, 378 (1971):

The PUC may, and indeed sometimes must, consider areas of law outside of its jurisdiction in fulfilling its duties. The *NCPA* court explained, “by considering antitrust issues, the Commission merely carries out its legislative mandate to determine whether

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Respondents' DA service, for example, must "clearly and conspicuously disclose ... the total cost ... and any other fees for that service."⁸⁵ The FCC has generally found that "failing to convey sufficient information as to the carriers' identity, rates, practices, and range of services" constitutes an "unjust and unreasonable" practice under the federal statute most analogous to P.U. Code § 451.⁸⁶ We will consider the totality of the circumstances when ruling on whether a disclosure is adequate, as suggested by the FCC/FTC Joint Policy Statement for the Advertising of Dial-Around and Other Long Distance Services:

The FTC looks to the "net impression" conveyed to consumers – often described as "the entire mosaic, rather than each tile separately." Even if the wording of an ad may be literally truthful, the net impression conveyed to consumers may still be misleading. The entire advertisement, transaction or course of dealing will be considered. *The issue is whether the act or practice is likely to mislead, rather than whether it causes actual deception.*⁸⁷

To the extent the Commission finds that Respondents did not timely, meaningfully, and adequately disclose the true nature and full charges associated with their DA services, their marketing and sale of DA services to California consumers is in violation of P.U. Code §§ 451 and 2896 of the Public Utilities Code. Among other things, the Commission will consider whether an administrative charge that is 33% of the base charge, is so large as to likely surprise consumers and require independent disclosure.⁸⁸

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the public convenience and necessity require a proposed development."

⁸⁵ 15 USC § 5711(a) (1) (A) ("Telephone Disclosure and Dispute Resolution Act").

⁸⁶ *In re Business Discount Plan*, 15 FCCR 14461 (2000), at ¶ 16, quoting from 47 U.S.C. § 201(b) and *Telecomm'ns Research and Action Center v. Central Corp.*, 4 FCCR 2157 (1989).

⁸⁷ *In re Joint FCC/FTC Policy Statement for the Advertising of Dial-Around and Other Long-Distance Services to Consumers*, 15 FCCR 8654 (2000), at ¶ 6 (emphasis added).

⁸⁸ See Staff Report at section III(B)(1), Staff Report Attachment 27 (consumer complaints, bills) and 44

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C. Other Aspects of Respondents' Use of Toll-Free Numbers May Be Unjust and Unreasonable.

As noted above, Respondents control approximately one million toll-free numbers that can be accessed by California consumers. Callers reach Respondents only through these 800 and other toll-free numbers (these terms are sometimes used interchangeably herein). All of these toll-free numbers are defunct. By definition, then, consumers reach the Respondent-controlled 800 numbers in error: either because the party they intended to call no longer controls the numbers or because of a physical dialing error. They are not attempting to reach Respondents.

If Respondents are unfairly taking advantage of consumers who had inadvertently dialed a wrong number, that could constitute an unjust and unreasonable practice prohibited by P. U. Code § 451. P.U. Code § 451 requires that utilities “maintain adequate, efficient, just, and reasonable service [and] instrumentalities ... as are necessary to promote the safety, health, comfort and convenience of its patrons ... and the public.”

1. Respondents' Business Model Bears Resemblance to “Fat Finger Dialing” Schemes the FCC Has Previously Prosecuted as Deceptive.

Dialing errors appear to be the primary (if not exclusive) scenario under which consumers hear Telseven/Calling 10's marketing intercept message. “Fat finger dialing” is telecommunications industry parlance for such dialing errors.⁸⁹ Such schemes

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(surcharge amounts). The www.calling10.com web page discloses, under Rates, that “Calling10 charges an administrative recovery fee of \$1.65 per call for our directory assistance service. This fee is intended to offset the cost Calling10 incurs in complying with regulatory obligations and includes the cost of complying with the Federal Universal Service Charge.” This disclosure is not made on the toll-free marketing intercepts, or on the initial menus of the DA platform.

⁸⁹ See *FCC Proposes Over \$6.5 Million in Total Fines Against Two Carriers For Violations of Consumer Disclosure Requirements*, press release, 2002 FCC LEXIS 4666; see also <http://archive.deseretnews.com/archive/972775/Fat-finger-dialing-targeted.html>; <http://kansascity.bizjournals.com/kansascity/stories/2003/03/24/daily44.html>.

often use toll-free numbers; individuals who misdial those numbers are then charged at unexpectedly high rates for services they may or may not have ordered but for the misdial.⁹⁰

The FCC has attempted to staunch such schemes. In 2002, the FCC proposed a total of \$6,560,000 in fines against two operator service providers, One Call Communications, Inc. dba Opticom (Opticom) and ASC Telecom, Inc. dba Alternatel (Alternatel), for perpetuating a “scheme to take advantage of consumers’ dialing errors by [involving] access numbers that are similar to nationally advertised access numbers.”⁹¹ Both were in the collect call (or operator services) business, but did no advertising, instead intercepting callers who misdialed more popular collect call services. The FCC found these practices “particularly egregious” for several reasons:

[I]t appears that Opticom has willfully and deliberately devised a scheme repeated on numerous access numbers intended to mislead unwitting consumers into using their operator services while the consumer is attempting to dial another OSP. For example, if a consumer trying to dial 1-800-CALLATT misdials by one number, that customer will reach Opticom instead of AT&T. The consumer remains unaware that he or she has misdialed because Opticom fails to identify itself. ... The consumer is even further left in the dark by not being able to obtain rate information that is essential for consumers who wish to make informed choices in a competitive telecommunications market. This is particularly egregious in light of the fact that the rates Opticom charges are significantly higher than the industry average. .. Moreover, it appears that these misdialed numbers, such as 1-800-COOLECT or 1-800-FONCALT, are not advertised as a means of reaching Opticom. Therefore, it appears that Opticom’s only customers are those who make a mistake in

⁹⁰ See *Careless Dialing Could Cost You Money*, FCC Consumer Advisory Fact Sheet found at <http://www.fcc.gov/cgb/consumerfacts/carelessdialing.html>. These schemes may place most at risk Consumers who are prone to dialing mistakes because they are disabled, dyslexic, hearing impaired, or limited-English speakers.

⁹¹ See *In re One Call Communications, Inc. dba Opticom*, September 17/23, 2002 Notice of Apparent Liability, 17 FCCR 18646 (2002), also available at http://fjallfoss.fcc.gov/edocs_public/attachmatch/FCC-02-258A1.pdf; see also FCC press release, *FCC Proposes Over \$6.5 Million in Total Fines, supra*.

attempting to dial another OSP's [Operator Service Provider's] access code.⁹²

While the statutes and regulations applicable to operator services speak to businesses that “make telephones available to the public or to transient users,”⁹³ and thus do not precisely fit the DA services offered by Respondents, the *Opticom* and *Alternatel* cases share at least two characteristics with Respondents' pay-per-call DA services: the lack of advertising; and the exclusive focus on consumers who have misdialed. In a posted consumer advisory, the FCC added other characteristics of companies that obtain business by marketing intercepts directed at callers who have misdialed 1-800 toll numbers:

[The] company [has] secured 800 numbers similar to well-known ones (i.e., a company secures the number “800-CALLLAT”). The company is likely hoping that you might accidentally misdial your intended number... Often, the company won't identify itself to you
....

Surprise! The charge for the misdialed call is two or more times higher than it would have been had you reached the carrier you intended to use.⁹⁴

Respondents admit targeting callers who do not “intend to reach out-of-service numbers or reach wrong numbers,” but nevertheless claim theirs is a legitimate “service.”⁹⁵ Whether Respondents' business methods represent a variation on “fat

⁹² *In re One Call, supra*, 17 FCCR 18646, at ¶ 9. The FCC later settled the charges against both *Opticom* and *Alternatel*, and required both companies to make contributions to the United States Treasury and to conduct a “Best Practices Compliance Program” that included, among other things, requirements that the companies properly identify themselves to consumers and offer rate information to all callers to their access numbers so that consumers would not have to take the affirmative step of requesting the rates. See *In the matter of OCMC, Inc. d/b/a/ One Call Communications, Inc. d/b/a Opticom; Operator Service Provider Requirements*, Order, Release Number: FCC 03-317, 18 FCCR 26474 (2003) (\$500,000 fine); *In the matter of ASC Telecom, Inc. d/b/a Alternatel; Operator Service Provider Requirements*, Order, Release Number: FCC 04-56, 19 FCCR 5160 (2004) (\$125,000).

⁹³ 47 U.S.C. § 226; 47 C.F.R. §§ 64.703-708.

⁹⁴ See *Careless Dialing Could Cost You Money*, FCC Consumer Advisory Fact Sheet found at <http://www.fcc.gov/cgb/consumerfacts/carelessdialing.html>.

⁹⁵ See Staff Report section III.B.3 and Staff Report Attachment 26.4 (Telseven letter to ILD, at pg.4,

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finger” dialing schemes, and whether they constitute “just and reasonable” service, are questions that this Commission can and will consider under P.U. Code § 451.

2. Respondents May Be Offering a Pay-Per-Call Service in Violation of Federal Law, Which May Constitute Unjust and Unreasonable Service in Violation of Section 451 and Commission Norms.

The FCC and Congress have also been concerned with the misuse of 800 or other numbers “widely understood to be toll-free, in a way that the calling party is charged for information.”⁹⁶ For that reason, the “1996 [Telecommunications] Act added a new prohibition on the calling party ‘being assessed, by virtue of being asked to connect *or otherwise transfer*’ to a pay-per-call service, a charge for the call to a toll-free number.”⁹⁷

Respondents’ service appears to meet the essential requirements of a pay-per-call service as set out in 47 U.S.C. § 228(i)(1)(A) and (B), and thus be subject to the statutory prohibition of a toll-free number tie-in: “The term “pay-per-call services” means any service—

- (A) in which any person provides or purports to provide—
 - (i) audio information or audio entertainment produced or packaged by such person; ... or
 - (iii) any service, including the provision of a product, the charges for which are assessed on the basis of the completion of the call;

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paragraph 2).

⁹⁶ *In re Policies and Rules Governing Interstate Pay-Per-Call and Other Information Services*, NPRM and Memorandum Opinion and Order, 19 FCCR 13461 (2004), at ¶ 10.

⁹⁷ *Id.* at fn. 16 (emphasis added), *citing* 47 U.S.C. § 228(c)(7)(E). Section 228 applies, on its face, only to pay-per-call services offered through 900 numbers, which begs the question of whether Respondents’ service *should* be offered over a 900 number instead of an equal access or dial-around number.

- (B) for which the caller pays a per-call or per-time-interval charge that is greater than, or in addition to, the charge for transmission of the call.

Section 228(b)(5) requires that “any service described in subparagraphs (A) and B) of subsection (i)(1) be offered only through the use of certain telephone number prefixes and area codes,” which the FCC has limited to the 900 area codes.⁹⁸ For all pay-per-call services coming within the statutory definition, section 228 prescribes further requirements: charges for such services must be clearly disclosed; and charges for such services may be made only (a) pursuant to a written *presubscription* agreement; or (b) by credit, prepaid, debit, charge, or calling card in absence of agreement; and use of 800 or other toll-free numbers to facilitate the pay-per-call service is restricted, as described above.⁹⁹

Respondents may rely on an exclusion from the pay-per-call service requirements for “directory services”:

Such term does not include directory services provided by a common carrier or its affiliate or by a local exchange carrier

⁹⁸ *Id.* at ¶ 22 (“Commission requires services meeting the pay-per-call definition to be accessed only through 900 numbers”).

⁹⁹ In addition to the provision of 15 U.S.C. § 5711 quoted above (fn. 85 and accompanying text), 47 U.S.C. §§ 228(c)(8) and (9) provide that pay-per-call charges must be assessed either pursuant to a presubscription agreement that clearly discloses the charges, or paid by credit card where the “service provider includes in response to each call an introductory disclosure message” that

- (A) clearly states that there is a charge for the call;
- (B) clearly states the service's total cost per minute and any other fees for the service or for any service to which the caller may be transferred;
- (C) explains that the charges must be billed on either a credit, prepaid, debit, charge, or calling card;
- (D) asks the caller for the card number;
- (E) clearly states that charges for the call begin at the end of the introductory message; and
- (F) clearly states that the caller can hang up at or before the end of the introductory message without incurring any charge whatsoever.

See also 47 C.F.R. § 64.1501 (same). Respondents’ introductory message on their directory assistance platform does not appear to conform with any of these requirements.

or its affiliate, or any service for which users are assessed charges only after entering into a presubscription or comparable arrangement with the provider of such service.¹⁰⁰

It appears, however, that the “directory services” referenced here are those offered by to a customer who is *presubscribed* to a common carrier or local exchange carrier, whereas Telseven and Calling 10 have no pre-existing contractual relationship with the consumers whose calls they intercept. It was this lack of a pre-existing contractual relationship, in part, that led to concern in Washington and California that some “pay-per-call businesses have engaged in practices which are misleading to the consumer, harmful to the public interest, or contrary to accepted standards,” and rules that the called party can only charge the calling party if certain requirements are met.¹⁰¹

3. Respondents May Also Be Hoarding 800 and Other Toll-Free Numbers in Violation Federal Law, Which May Also Constitute Unjust and Unreasonable Service, and a Violation of Section 451 and Commission Norms.

A toll-free number is a telephone number that can be called at no cost to the caller because the recipient pays for the cost of the call.¹⁰² All toll-free numbers are contained in a centralized database known as the SMS/800 Database.¹⁰³ The SMS/800 Database is the repository of information pertaining to whether a toll-free (800, 888, 877,

¹⁰⁰ 47 U.S.C. § 228(i)(2).

¹⁰¹ Telephone Disclosure and Dispute Resolution Act, Public Law 102-556, 106 Stat. 4181, section 1(b)(5) (1992), codified at 15 U.S.C. § 5701(b)(5); *see also* 47 U.S.C. §228; *In re Telephone Disclosure and Dispute Resolution Act*, 8 FCCR 6885 (1993), at ¶ 11 (defining “presubscription or comparable arrangement” as “a contractual agreement in which ... the service provider clearly and conspicuously informs a consumer of the terms and conditions under which the service is offered”); Cal. P.U. Code § 2884; D.91-03-021, Conclusion of Law 7 (requiring full disclosure and a delay to give the consumer an opportunity to decline the transaction).

¹⁰² Toll-free numbers can start with the area codes 800, 888, 877, and 866. NEWTON’S TELECOM DICTIONARY, 24th Ed., 2008, at 66.

¹⁰³ *In re Toll-Free Serv. Access Codes*, 22 FCCR 22188 (2007).

or 866) number is “available” or “in use”, and -- if “in use” -- what the subscriber’s routing instructions are.¹⁰⁴

Subscribers, like Respondents, seeking to obtain a toll-free number must contact a Responsible Organization (“RespOrg”), generally telephone companies that have gone through a certification process and subsequently gained access to the SMS/800 Database.¹⁰⁵ The RespOrg then obtains the toll-free number from the SMS/800 Database and manages the record for the number, including billing and routing information,¹⁰⁶ as well as information about the subscriber’s interexchange carrier.¹⁰⁷

As noted above, Respondent Patrick Hines owns a RespOrg, Signal One, through which he and his affiliated businesses have secured access to approximately one million 800 and other toll-free numbers. Respondents’ conduct appears to violate FCC Rules that prohibit hoarding of toll-free numbers. The FCC defines hoarding as “the acquisition by a toll-free subscriber from a Responsible Organization of more toll-free numbers than the toll-free subscriber intends to use for the provision of toll-free service.”¹⁰⁸ The Commission will consider whether Respondents use *any* of their toll-free numbers in the provision of a toll-free service, or whether they are merely instruments used by Respondents to market their DA services.

¹⁰⁴ *Id.* at 22189.

¹⁰⁵ *Id.*

¹⁰⁶ When a customer dials a toll-free number, she is essentially telling the Service Switching Point (SSP) associated with the end office or tandem receiving the call that special processing is in order. Upon recognizing that a call is to a toll-free number, the SSP contacts the appropriate Service Control Point (SCP) to obtain detailed instructions for processing the call. The SCP finds this information by checking the customer record identified by the toll-free number. This record shows the call handling instructions and options chosen by the customer. These options could include choosing multiple carriers for different time periods or routing calls to alternative destinations. Each SCP Owner/Operator has at least one pair of SCPs to assure reliability. Each SCP contains the information necessary for routing calls originating in its service area. Once the SCP has determined the appropriate routing information, instructions are then sent back to the Service Switching Point (SSP) to complete the call.
<http://www.sms800.com/PublicContent.aspx?Text=SMS^800%20FAQ&URL=Shared%20Documents/Public/About%20SMS^800/SMS^800%20FAQ&Site=Public>; see also NEWTON’S TELECOM DICTIONARY, *supra*.

¹⁰⁷ *In re Toll-Free Serv. Access Codes, supra*, 22 FCCR at 22189.

¹⁰⁸ 47 CFR § 52.107(a).

The definition of hoarding also includes “number brokering, which is the selling of a toll-free number by a private entity for a fee.”¹⁰⁹ Section 52.107 of Code of Federal Regulations Title 47 further provides:

- (1) Toll free subscribers shall not hoard toll free numbers.
- (2) No person or entity shall acquire a toll free number for the purpose of selling the toll free number to another entity or to a person for a fee.
- (3) Routing multiple toll free numbers to a single toll free subscriber will create a rebuttable presumption that the toll free subscriber is hoarding or brokering toll free numbers.¹¹⁰

Respondents indeed appear to be routing all of their 800 numbers to servers on the same Nevada platform that services the 101515800 dial-around number, at which point the marketing intercept for Respondents DA service is played.¹¹¹ Respondents may also be “warehousing” toll-free numbers in violation of federal regulations.¹¹²

Regardless of the legal status of Respondents’ use of toll-free numbers under federal law, the control of a million toll-free numbers as a means of delivering a potentially deceptive marketing intercept, one the customer is in no way seeking, presents a troubling scenario. We will examine whether this conduct constitutes “adequate, efficient, just, and reasonable service ... necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public” under section 451, and whether it meets section 451’s requirement “rules affecting or pertaining to [such] charges or service to the public shall be just and reasonable.”¹¹³

¹⁰⁹ *Id.*

¹¹⁰ 47 C.F.R. § 52.107(a)(3) (emphasis added).

¹¹¹ This was the testimony of Telseven/Calling 10’s agent Harvey Berg in a November 3, 2010 Examination Under Oath.

¹¹² A rebuttable presumption of “warehousing” by a RespOrg exists if a RespOrg does not have an identified toll-free subscriber agreeing to be billed for each toll-free number requested. 47 C.F.R. §52.105(b)(1), (2); *compare In re Toll-Free Serv. Access Codes*, 22 FCCR at 22189.

¹¹³ Public Utilities Code § 451 provides that “All rules made by [a] public utility affecting or pertaining to its charges or service to the public shall be just and reasonable.”

D. Billing Violations – Placing Unauthorized Charges on Consumer Telephone Bills Violates P.U. Code 2890.

P.U. Code § 2890 (a) provides that “A telephone bill may only contain charges for products or services, the purchase of which the subscriber has authorized.” Placing unauthorized charges on consumer phone bills is a practice known colloquially as “cramming.”¹¹⁴

Cramming continues to be a problem despite the enactment twelve years ago of P.U. Code §§ 2890 and 2889.9,¹¹⁵ and related federal legislation even further back in time.¹¹⁶ The United States District Court for the Northern District of California recently recounted the frustrating history and etiology of this problem:

[Cramming] highlights the vulnerable underbelly of a widespread and under-regulated practice called LEC billing. LEC billing – or “Local Exchange Carrier” billing – arose out of the court-ordered break-up of AT&T in the 1980s. After AT&T agreed to divest its local phone operations ..., the local phone companies continued to present customers with the convenience of a *single* telephone bill for both local and long-distance fees, despite the fact that the long-distance services were provided by separate business entities. LEC billing was born. Four years later, the FCC detariffed the billing and collection services provided by local telephone companies, opening the door for LEC billing to be used as a method of charging and collecting payments for a wide variety of services ... Since its inception, LEC billing has attracted fraudsters.¹¹⁷

¹¹⁴ The term “cramming” comes from the Legislative history of P.U.Code sections 2889.9 and 2890: “This bill addresses the problem of ‘cramming,’ a practice in which consumers are charged for unauthorized services on their phone bills... (Assembly Bill No. 2142, 3d reading May 7, 1998, Assembly Floor (1997-1998 Reg. Sess.)).

¹¹⁵ *Id.*

¹¹⁶ *See, e.g.*, 47 U.S.C. § 228, authorizing the regulation of pay-per-call services, which was first enacted in 1994; *see also* 46 C.F.R. §§ 64.2400 *et seq.* (Truth-in-Billing regulations, promulgated 1998).

¹¹⁷ *FTC v. INC21.com Corp., supra*, 688 F.Supp.2d at 929; *see also* D.01-04-036 (*In re USP&C*), in which Commission fined Respondent \$1.7 million (never collected) for cramming violations; D.06-02-12 (*UCAN v. Cingular Wireless*), Slip Op. at 9-10 (“[t]he United States Attorney’s Office for the Eastern District of New York subsequently indicted USP&C, along with members of the Gambino crime family, for additional cramming [and racketeering] violations, seeking \$430 million in criminal forfeiture”). Respondent later indicted by Justice Department [and convicted] as part of Gambino crime family. [cl]

As is the case here, “[o]ften the charges which are ‘crammed’ on the customer’s bill are relatively small, less than \$10, and inconspicuously labeled. If one does not carefully scrutinize the telephone bill, the crammed charge could easily be overlooked.”¹¹⁸ As the accompanying Staff Report makes clear, disputed charges assessed by Respondents continue to appear on California phone bills, despite industry’s claim that it was adopting “even more stringent anti-cramming measures” for billing services, and AT&T’s recent assertion that it had “completely discontinu[e]d billing” for certain services “because ‘cramming complaint rates were notably high’.”¹¹⁹

Whether a charge has been authorized is in large part dependent on whether the nature of the service and the amount of the charge were fully disclosed. A customer cannot authorize something of which she is uninformed.¹²⁰ We will thus inquire into whether there was a contractual meeting of the minds between Telseven/Calling 10 and its customers. If the evidence shows that Respondents charged customers for DA services without disclosing sufficient information to allow them to knowingly authorize the charge, Respondents could also be in violation of P. U. Code § 2890.¹²¹

¹¹⁸ Assembly Bill No. 2142 (1997-1998), *supra*; see also D.10-10-034, Slip Op. at 33 (“The record shows that customers do not carefully check bills and often pay small charges, even if unauthorized, due to the time and inconvenience of disputing the charge”).

¹¹⁹ Joint Comments of AT&T, New Cingular Wireless LLC, *et al.* (AT&T) regarding proposed new cramming complaint reporting rules in R.00-02-004, at 5-6, as reported in D.10-10-034, Slip Op. at 7-8. BSG similarly reports that before it “will accept billings from a service provider, [it] conducts a comprehensive due diligence process.” D.10-10-034, Slip Op. at 14, quoting BSG Comments at 1.

¹²⁰ D.01-04-035 (*In re Coral Communications*), Slip Op. at 2, *passim* (finding cramming violations where “fine print” disclosure inadequate). The Commission there noted the connection between disclosure and authorization:

Other aspects of California contract law support the conclusion that Coral’s means of obtaining customer authorization for charges was inadequate. To be enforceable, a contract’s terms must be apparent to a reasonable person. If the writing does not appear to be a contract, and its contractual terms are not called to the attention of the person who receives it, the person is not bound by the purported contract. 1 Witkin, Contracts (9th ed. 1987), § 123.

Slip Op. at 26.

¹²¹ We recently noted the connection between full disclosure and meaningful authorization in our Order Instituting Investigation of Legacy.

We are cognizant of Respondents' possible defense to these allegations under Code § 2890(d)(2)(D), which provides that "evidence that a call was dialed is prima facie evidence of authorization." Customer complaints denying authorization or denying all knowledge of Respondents, however, may rebut that presumption.¹²² The issue of authorization is a factual, or mixed legal and factual, question in this case.¹²³

E. Billing Violations – Failure to Place Complete and Accurate Information about Their Charges, and Identity of Service Provider, on Consumers' Bills, Violates Public Utilities Code §§ 451 and 2890.

P.U. Code § 2890(d)(2)(B) requires that "any person, corporation, or billing agent that charges subscribers for products or services on a telephone bill" must include in the bill the "name of the party responsible for generating the charge" in addition to the name and number of the "entity responsible for resolving disputes." P.U. Code § 2890(d) states that a "billing telephone company shall clearly identify ... each person, corporation, or billing agent that generates a charge on a subscriber's bill." These sections are consistent with section 64.2401 of Title 47 of the Code of Federal Regulations, which requires that the "name of the service provider associated with each

(Continued footnote from previous page)

Staff found, in the course of its review of the CAB complaint files, that many complaints characterized as disclosure or unreasonable rates were also cramming complaints. For example, consumers who complained of inadequate disclosure and lack of opportunity to inquire about collect call rates because of Legacy's automated operator system also had no opportunity to authorize or reject the collect calls in dispute. Hence, charges arising out of such calls can also be considered unauthorized charges.

I.10-06-013, Slip Op. at 5.

¹²² See D.10-06-001 (*UCAN v MPower*), Slip Op. at 29, citing D.02-10-059 (*Qwest Investigation*), at 35, n. 35; see also D.10-10-034, adopting new Billing Rules, at Appendix A, Revised General Order 168, Part 4, Rule 3 ("With regard to direct dialed telephone services, evidence that a call was dialed is prima facie evidence of authorization. This presumption can be rebutted with evidence that the call was not authorized").

¹²³ Staff maintains that there was no full and meaningful disclosure of the nature of Respondents' service – i.e., that the called number is defunct, that option 1 "status and history on a number you are trying to reach" tells the customer nothing more than the date on which the number went out of service and is essentially worthless, and that the best the consumer could hope for is a garden-variety DA service, costing however an exorbitant total of \$7.14. Staff Report, at sections III(B)(2) and (4).

charge [on a consumer's phone bill] must be clearly and conspicuously identified on the telephone bill.”

The failure of Respondents to insure that their legal names and full charges are conspicuously disclosed on the bills delivered to California consumers may constitute a violation of P.U. Code § 2890, as well as the “just and reasonable” requirement of P.U. Code § 451.¹²⁴ The fact that most CAB complainants thought they had been crammed by ILD or BSG/OAN appears to be evidence of the misleading nature of the bill disclosure,¹²⁵ and to run afoul of the standard that we articulated in D.00-11-015 that the name on the bill make “abundantly clear who the service provider is.”¹²⁶ To that end, we have stated that

The name used on the bill shall be based on the name on the carrier's Certificate of Public convenience and Necessity including any properly registered fictitious business names or, in the case of uncertificated service providers, the name on any FCC certificate or business license.¹²⁷

Here, the relevant names would be Respondents' legal names Telseven, LLC and Calling, 10 LLC, and perhaps (if we consider the fictitious business name to which we erroneously granted a CPCN) California Calling 10, LLC. None of the bills submitted by CAB complainants disclose these names.¹²⁸ The bills further confuse the issue by placing the names of Respondents billing agents ILD and BSG in substantially

¹²⁴ See D.01-04-036 (*USP&C*), Slip Op. at 10, 14-15 (failure to accurately identify service provider constitutes violation of section 2890).

¹²⁵ See Staff Report at section III(C), and Attachments 27 (consumer complaints) and 47 (selection of consumer complaint quotes directing initial complaint to ILD and BSG).

¹²⁶ D.00-11-015, Slip Op. at 14-15.

¹²⁷ *Id.* at 20, Ordering Paragraph 1.

¹²⁸ See Staff Report Attachment 27 for examples of such bills.

larger and more conspicuous print than the inaccurate reference to Respondents as Calling 101515800.¹²⁹

Compelling adequate information and disclosure on telephone billing is a subset of efforts at both the federal and state levels to arm the consumer with sufficient information to make sure that they are only being charged for what they have authorized.¹³⁰ In 1999, the FCC adopted similar truth-in-billing principles to “ensure that consumers receive thorough, accurate, and understandable bills from their telecommunications carriers.”¹³¹ The FCC promulgated regulations that require disclosure on the bill of sufficient information to allow consumers to “accurately assess that the services for which they are billed correspond to those that they have received.”¹³²

But, as the United States District Court in the Northern District of California recently commented, this

¹²⁹ Perhaps partly for this reason, Telseven and ILD have been named as joint defendants in a Florida class action lawsuit. *Eyler v. ILD Telecommunications Inc. and Telseven LLC*, 2008 U.S. Dist. LEXIS 101267 (/D. Fla, 2008) (remanding case to Florida State court). See Staff Report at section IV(F) and Attachment 50.

¹³⁰ In its recent Notice of Inquiry on Truth-in-Billing, the FCC noted the full continuum of disclosure:

The Commission’s approach to information disclosure issues has traditionally focused on the formatting of consumer bills, which is relevant after a consumer has already selected a service provider. This Notice asks questions about the information available to consumers at all stages of the purchasing process, including: (1) choosing a provider, (2) choosing a service plan, (3) managing use of the service plan, and (4) deciding whether and when to switch an existing provider or plan.

In re Matter of Truth-in-Billing and Billing Format, CC Docket Nos. 98-170 *et alia*, 24 FCCR 1138, ¶ 4 (2009).

¹³¹ *In re Matter of Truth-in-Billing and Billing Format*, CC Docket No. 98-170, FCCR 99-72, 14 FCCR 7492, ¶ 5 (1999).

¹³² 47 CFR § 64.2401(b) provides:

(b) *Descriptions of billed charges.* Charges contained on telephone bills must be accompanied by a brief, clear, non-misleading, plain language description of the service or services rendered. The description must be sufficiently clear in presentation and specific enough in content *so that customers can accurately assess that the services for which they are billed correspond to those that they have requested and received*, and that the costs assessed for those services conform to their understanding of the price charged.

(Emphasis added.)

approach taken by the FCC was (and remains today) premised on the dubious assumption that consumers scrutinize their phone bills every month before paying them and local phone companies are vigilant about allowing only authorized third party charges to appear on their bills. Fraudsters can easily exploit this dubious assumption.¹³³

Given the fact that many consumers do not scrutinize every line of their bill, it is all the more important that third-party charges accurately and conspicuously identify any party responsible for placing charges on that bill. The Public Utilities Code's consumer protection statutes will therefore be "liberally construed to effectuate [their] object and purpose, and to suppress the mischief at which [they] are directed."¹³⁴

F. Any USF surcharges Collected from Customers But Not Remitted to the Federal Universal Service Fund Would Constitute an Unjust and Unreasonable Billing and Collection Practice.

The FCC has adopted "rules related to contribution recovery that will ensure that federal universal service line items on customer bills accurately reflect the extent of a carrier's contribution obligations."¹³⁵ The FCC's regulations provide as follows:

Federal universal service contribution costs may be recovered through interstate telecommunications-related charges to end users. If a contributor chooses to recover its federal universal service contribution costs through a line item on a customer's bill the amount of the federal universal service line-item charge may not exceed the interstate telecommunications portion of that customer's bill times the relevant contribution factor.¹³⁶

¹³³ *FTC v. Inc21, supra*, Slip Op. at 2, citing the FCC's most recent pronouncement in this area, *In re Consumer Information and Disclosure*, 24 FCCR 11380 (2009).

¹³⁴ D.01-04-036, Slip Op. at 10 citing *Ford Dealers v. DMV*, 32 C.3d 347, 356 (1982).

¹³⁵ *Federal-State Joint Board on Universal Service, Report and Order and Second Further Notice of Proposed Rulemaking*, 17 FCCR 24952 (2002), at ¶ 45.

¹³⁶ 47 C.F.R. § 54.712(a) (2009); *see also In re Truth-in-Billing and Billing Format*, CC Docket Nos. 98-170 *et alia*, 20 FCCR 6448, ¶ 1 (2005) ("the burden rests upon the carrier to demonstrate that any line item that purports to recover a specific governmental or regulatory program fee conforms to the

(Footnote continued on next page)

The “practice of charging its customers more for services than the actual cost of those services, with no indication to the customers that they were doing so, may constitute a deceptive business practice.”¹³⁷ We share the concern evident in AT&T’s 2006 correspondence that Telseven may not be actually paying into the USF fund the full amounts it lists on its bills.¹³⁸ P.U. Code § 2890 requires that all charges on a consumer’s bill be accurately described. If the evidence shows that not all monies collected as “Universal Service Fund Fees” were in fact remitted to the USF, the use of that description on the bill would also violate Section 2890.

G. Other Possible Violations of Law

1. Violation of P. U. Code § 1013 (Operating Without a CPCN).

P. U. Code § 1013 requires all telephone corporations to obtain a certificate of public convenience and necessity from the Commission or register with the Commission prior to operation.¹³⁹ A telephone corporation includes every corporation or person owning, controlling, operating, or managing any telephone line for compensation

(Continued footnote from previous page)

amount authorized by the government to be collected”).

¹³⁷ *McKell v. Wash. Mut., Inc.*, 142 CA4th 1457, 1472 (2006) (customers “reasonably would conclude that the fees charged were the costs Washington Mutual incurred, [but] [t]he fees charged were substantially above Washington Mutual’s costs”).

¹³⁸ See Staff Report Attachments 26.2C (November 14, 2006 letter at 2-3), 26.3 (December 19, 2006 letter at 2), and 26.4 (January 9, 2007 letter at 1).

¹³⁹ Section 1013 was adopted as an exception to Pub. Util. Code §§ 1000 *et seq.* for the benefit of existing telecommunications companies that would otherwise certainly qualify for a CPCN and whose intended operations within California do not involve activities that would require environmental review. The purpose of this section was to make it easier and quicker for competitors to enter the California telecommunications market. Section 1013 was not intended to as a way to avoid Commission review of an applicant’s qualifications, especially if there are questions about those qualifications. See discussion in D.03-10-054, *In re Application of Consolidated Communications Operator Services, Inc. for Registration as an Interexchange Carrier Telephone Corporation Pursuant to the Provisions of Public Utilities Code Section 1013*, found at 2003 Cal. PUC LEXIS 502.

within this state.¹⁴⁰ A “telephone line” includes all conduits, ducts, poles, wires, cables, instruments, appliances, and all other real estate fixtures, and personal property owned, controlled, or operated, or managed in connection with or to facilitate communication by telephone, whether such communication is had with or without the use of transmission wires.¹⁴¹ Resellers of telecommunication services are telephone corporations.¹⁴² DA services are considered telecommunications services.¹⁴³ A telephone corporation that provides telephone services to the public for which any compensation or payment is received is a public utility subject at least in part to the jurisdiction, rules and regulations of the Commission.¹⁴⁴

To the extent that Telseven provided a telecommunications DA service to California customers over California telephone lines, and billed California consumers on their local exchange telephone bills, from 2003-2007, it was a public utility within this Commission’s jurisdiction and control, and its continued operation was a violation of P.U. Code §§ 1001 and 1013.

2. Failure to Disclose Full Legal Name in an Application for Registration with the Commission.

Regardless of Respondents’ intent,¹⁴⁵ the failure of Respondents to provide the “full legal name” where required on the Commission’s Application form may represent a violation of Rule 1.1 of the commission’s Rules of Practice and Procedure, which requires in relevant part:

Any person who signs a pleading or brief, enters an appearance, ... or transacts business with the Commission, by

¹⁴⁰ P.U. Code § 234.

¹⁴¹ P.U. Code § 233.

¹⁴² P.U. Code § 216(c).

¹⁴³ See D.96-03-020; D.96-10-066, Appendix B, Rule 4.

¹⁴⁴ P.U. Code §§ 216, 233-34.

¹⁴⁵ Respondents explanation for why they registered under a fictitious business name – “Calling 10 was not available” -- is found at Staff Report Attachment 6.1. Staff notes that a California Secretary of State search for Calling 10 brings up California Calling 10, so the Calling 10 name was clearly not unavailable.

such act represents that he or she is authorized to do so and agrees to comply with the laws of this State; ... and never to mislead the Commission or its staff by an artifice or false statement of fact or law.

The purpose of requiring scrupulous honesty in representations to the Commission is ultimately to protect the public. As a result of Respondents' misrepresentation, the Commission committed an empty act in registering a utility under a fictitious name, and was therefore compromised in its attempts to protect California consumers. Strict liability obtains for failure to comply with such "police power" requirements.¹⁴⁶

3. Possible Failure to Pay Surcharges

If Telseven's California revenue in the years 2003-2007 was in fact and law intrastate revenue, Telseven's apparent failure to remit public purpose surcharges and fees to the Commission would have violated P.U. Code §§ 270 *et seq*, 431-35, 739.3, 879, and 2881, *inter alia*. The Commission may order payment of outstanding surcharges plus interest, and impose penalties pursuant to P.U. Code §§ 2107 and 2108 in the amount of \$500 to \$20,000 per offense and/or day.

H. Patrick Hines Liability

Staff alleges that Patrick Hines was an alter ego of Telseven and Calling 10, and should therefore be held jointly and severally liable with them for violations of pertinent statutes and regulations. Alternatively, personal liability may be predicated on

¹⁴⁶ Like the consumer protection statutes cited in this OII, Rule 1.1 is a strict liability rule. Such laws are sometimes referred to as public welfare or police power laws, as they involve protection of the public at large. *Cf. Investigation on the Commission's own motion into ... Communication Telesystems [CTS]*, D.97-10-063 (1997) 1997 Cal. PUC LEXIS 912 at *10-11, *16, and Conclusion of Law 6 (slamming of long distance customers); see also D.97-05-089, 1997 Cal. PUC LEXIS 447 at *39-40; *see also Donald v. Cafe Royale, Inc.* (1990) 218 CA3d 168, 180 (failure to provide wheelchair access in restaurant); *Drewry v. Welch* (1965) 236 CA2d 159, 175-76 (trespass in removing timber), discussed in D.97-10-063, 1997 LEXIS 912 at *11.

a showing that Mr. Hines “participated directly in the practices discussed above, and had the authority to control them.”¹⁴⁷

The alter ego doctrine is grounded in equity, and said to apply only where two general requirements are met: first, there must be such a unity of interest and ownership that the separate personalities of the corporation and the controlling individuals or companies no longer exist; and, second, a failure to disregard the corporate entity must sanction a fraud or promote injustice.¹⁴⁸ The officer, director or shareholder may also be personally liable where he “specifically directed or authorized the wrongful acts.”¹⁴⁹

Whether the corporate entity should be disregarded, and personal liability attach, depends on the facts of a particular case.¹⁵⁰ Courts have considered an array of factors in analyzing alter ego problems, including but not limited to: commingling of funds and other assets; the unauthorized diversion of corporate funds or assets to other than corporate uses; the treatment by an individual of the assets of the corporation as his own; sole ownership of all of the stock in a corporation by one individual or the members of a family; the employment of the same attorney; common addresses and business models; and the diversion of assets from a corporation by or to a stockholder or other person or entity, to the detriment of creditors.¹⁵¹ Common ownership and a common

¹⁴⁷ *FTC v. Inc21*, *supra*, Slip Op. at 17, citing *FTC v. Publishing Clearing House, Inc*, 104 F.3d 1168, 1170 (9th Cir. 1997).

¹⁴⁸ *Watson v. Commonwealth Ins. Co.*, (1936) 8 C2d 61, 68.

¹⁴⁹ *Wyatt v Union Mortgage Co.*, 24 C3d 773, 785 (2007) (“Directors and officers of a corporation are not rendered personally liable for its torts merely because of their official positions, but may become liable if they directly ordered authorized or participated in the tortious conduct”).

¹⁵⁰ D.03-01-079 (*Titan Investigation*), Slip Op. at 16, citing *Alexander v. Abbey of the Chimes*, 104 CA3d 39, 46 (1980). In *Titan*, the *alter ego* theory was rejected on due process grounds, because the individual alleged to be the alter ego of the corporation had not been named in the original order instituting investigation. Slip Op. at 16-17.

¹⁵¹ *Id.*, citing *Associated Vendors, Inc. v. Oakland Meat Co., Inc.*, 210 CA2d 825, 838-840 (1962) (citations omitted); other factors include: failure to maintain an arm's-length relationship among related entities. the concealment and misrepresentation of the identity of the ownership, management, and financial interest of the business, and use of same address. *Id.* at 839-40.

business plan may also be predicates of individual liability for corporate misfeasance.¹⁵² Staff believes that several of these factors are present with respect to Hines and the two corporations in question here.¹⁵³

The Commission believes there is good reason for further investigation of this issue, and will allow staff to complete discovery on the alter ego issue in this proceeding.

I. Role of Third Parties

It appears from staff's report that that the billing agent/aggregators ILD and BSG may have violated our rules under P.U. Code § 2899.9 by failing to provide, or being unable to provide, the names and other information of consumers who called to challenge Respondents' charges on their bills.¹⁵⁴ We also find troubling the inconsistencies described by staff regarding the agent/aggregators' reporting of complaints, inquiries and credits.¹⁵⁵ We decline at this time, however, to name the billing agent/aggregators as Respondents in this Investigation.

We nonetheless expect that the agent/aggregators, as well as the billing telephone companies, will fully cooperate in this Investigation. Indeed, that is what the

¹⁵² *Wyatt v. Union Mortgage, supra*, 24 C3d at 785-86 ("tightly knit, family-oriented business operation" where one individual "owned all or a controlling interest in each of the affiliated corporations").

¹⁵³ *See, e.g.*, Staff Report at section II(A).

¹⁵⁴ *See* Staff Report at section IV(A)(4). Rule 3 of the Subscriber Complaint Reporting Rules set out in our Decision 00-11-015 requires that each billing agent or aggregator maintain "records of billing disputes" that "include the following information (among other things):

- a. the subscriber name;
- b. the subscriber telephone number ...
- f. a description of the product or service billed;
- g. the number of contacts by the subscriber; and
- h. the disposition of the dispute.

Our recent Decision 10-10-034 reaffirmed these requirements.

¹⁵⁵ Staff Report section IV(A).

law requires.¹⁵⁶ In D.99-08-017, the Commission ordered OAN and several other billing agents to

file with the Commission's Docket Office and serve on all parties, a full accounting their respective transactions with, or on behalf of, Coral Communications, Inc. . . . Such accountings shall include, without limitation, a statement of all amounts billed for Coral/Easy Access, amounts actually collected, amounts refunded to customers, amounts disbursed to Coral/Easy Access, and amounts retained by the billing agent.¹⁵⁷

Pursuant to our authority under P.U. Code § 2889.8(g), we will direct the Process Office to add these entities to the service list as “interested parties,” and order the billing agents and billing telephone companies involved in this case to provide a similar accounting, including total billings, collections, and refunds associated with Respondents' charges. We ask staff to inform us of whether that has occurred.

J. Remedies

Upon proof of a cramming or related violation, the Commission has the authority to order restitution to any consumer who has been victimized by Respondents or their agents, to make that consumer whole pursuant to section 734. Staff may recommend, and the Commission may consider, penalties pursuant to P. U. Code §§ 2107 and 2108 in the amount of \$ 500 to \$ 20,000 per offense per day. In addition, we may consider whether Calling 10 is fit to continue to operate in California as a reseller of telecommunication services pursuant to its Commission-granted authority, under the licensing authority granted to the Commission in P. U. Code §§ 1001 and 1013(h).

For purposes of enforcement, the Public Utilities Code extends the Commission's jurisdiction over nonpublic utilities that generate a charge on a

¹⁵⁶ P.U. Code § 2889.8(g) (“... biling agents, and telephone corporations billing for these products or services shall cooperate with the commission in the commission's efforts to enforce the provisions of this article ...”); D.99-08-917 (*In re Coral Communications*), 1999 Cal. PUC LEXIS 519, *4 (“We put on notice all entities which provide billing and collection services, including LECs and billing agents, that the Commission may direct them to provide information on billing services provided to respondents in future proceedings”).

¹⁵⁷ *Id.* Ordering Paragraph 1.

subscriber's telephone bill. Where the Commission finds that "a person or corporation" has violated §§ 2890 and/or 2889.9, the Commission is authorized to treat that person or corporation as if it were public utility for purposes of fines, contempt citations, and other penalties.¹⁵⁸ The Commission also has explicit authority to order any billing telephone company to "terminate the billing and collection services" for any person or corporation failing to comply with these statutory sections.

Finally, we will consider the remedy invoked by the Court in the *Inc21* case – a postcard mailing to a discrete subset of Respondents "customers" to determine more precisely what percentage of them knowingly authorized Respondents to place DA charges on their bills, or were/are even aware of who Respondents are.¹⁵⁹ We ask the assigned Administrative Law Judge to consider this remedy at an initial pre-hearing conference.

K. Categorization

This proceeding is categorized as adjudicatory. Pursuant to Rule 8.2(b) of the Commission's Rules of Practice and Procedure, *ex parte* communications are prohibited. The determination as to category is appealable under Rule 7.6.

Therefore, **IT IS ORDERED** that:

1. Pursuant to Rule 5.1 of the Commission's Rules of Practice and Procedure, an Investigation on the Commission's own motion is instituted into the operations of Telseven, Calling 10, subsidiary and affiliated business entities, and their beneficial owner Patrick Hines (collectively, Respondents), and specifically whether:

- a. Respondents violated P.U. Code § 451 by marketing DA service in an inherently misleading manner, and adopting rules pertaining to its charges and services that are unjust, unreasonable, or defeat the reasonable expectations of consumers;

¹⁵⁸ P.U. Code § 2889.9(b).

¹⁵⁹ See *FTC v. Inc21*, *supra*, 688 F. Supp. 2d at 932 ("Inc21 was ordered to send all of its current customers a verification letter asking them to confirm in writing that they authorized their services").

- b. Respondents violated P.U. Code §§ 451 and 2896 by failing to provide consumers with information necessary to make informed market choices;
- c. Respondents violated P.U. Code § 451 by selling a pay-per-call service to unsubscriptions customers, without using a 900 number, by marketing such pay-per-call service through toll-free (8xx) numbers, by hoarding and warehousing of toll-free numbers, and/or by conduct otherwise in violation of federal and state rules, all in a way likely to defeat the reasonable expectations of consumers;
- d. Respondents violated P.U. Code § 2890 by causing charges to be placed on consumers' bills for services which the consumer did not request or authorize;
- e. Respondents violated P.U. Code §§ 451 and 2890 by failing to cause their true legal name to be disclosed on consumer bills, and instead allowing their charges to appear associated with fictional names, in small and inconspicuous print, and otherwise in a manner likely to confuse consumers;
- f. Respondents violated §§ 451 and 2890 by collecting more from consumers for "universal service" contributions than actually remitted to federal and/or state universal service funds;
- g. Telseven violated P.U. Code §§ 1000 and 1013 by operating in California without Commission authorization;
- h. Respondents violated Rule 1.1 of the Commission's Rules of Practice and Procedure by stating under penalty of perjury that Calling 10 LLC's "full legal name" was California Calling 10, LLC, a fictional business name;
- i. Telseven violated P.U. Code §§ 270, 431-435, 702, 739, 879 and 2881 for its failure to remit regulatory fees and surcharges on intrastate revenue; and
- j. Patrick Hines is an alter ego of Respondents, or so directed and authorized the acts alleged by staff, such that his personal liability is equitable and appropriate.

2. The Commission will consider whether, pursuant to §§ 701, 734, and 1702 of the Public Utilities Code, any of the following remedies are warranted:

- a. Respondents be enjoined from using 1-800 numbers accessible by California consumers to advertise their DA service to California consumers in a way that is misleading or deceptive;
- b. Respondents be required to conspicuously and clearly disclose the nature and total price of its services, with all fees and surcharges included, both on its 1-800 intercepts and on its DA platform;
- c. Respondents be ordered to cease and desist from any unfair, unreasonable, unjust, deceptive, or unlawful operations and practices;
- d. Respondents have conditions and restrictions placed on any further operations in California or directed at California consumers;
- e. Respondents be enjoined from the use of dial-around numbers that contain “800” or otherwise suggest the service is free, e.g., 101515800, to sell their DA service;
- f. Respondents be required to provide an accounting, on an annual basis, of all monies obtained from California consumers, including the total amounts billed to and collected from customers for “UNIVERSAL SERVICE FUND FEES,” the total amounts actually paid by Respondents to the state and federal universal service funds, total amounts refunded, credited, or recouped back to consumers, and all other amounts paid out of the revenue stream from Respondents’ DA or DIR ASSIST services;
- g. Respondents be ordered to disgorge all profits obtained illegally, and pay reparations, restitution, and/or refunds, pursuant to P.U. Code § 734, to California consumers in the total amount collected from them for Respondents’ DA services and related charges, where consumers had not knowingly authorized the services or the amounts charged;
- h. Respondents be fined pursuant to P.U. Code §§ 2107 and 2108 for the above-described violations of the Public Utility Code and related Orders, Decisions, Rules, directions, demands and requirements of this Commission; and/or

- i. The CPCN granted to “California Calling 10 LLC,” a fictional name, be revoked.

3. To facilitate the completion of this investigation, and consistent with the provisions of P.U. Code §§ 311, 314, 581-82 and 584, Respondents are ordered to provide the information requested in Attachment 1 hereto within forty-five (45) days of service of this OII.

4. We direct the Process Office to add the following as “interested parties” to the service list of this proceeding: ILD Corp. and ILD Telecommunications, Inc. (ILD), ACI Billing Services, Inc. and BSG Clearing Solutions (BSG), Pacific Bell Telephone (AT&T); Verizon; and Wholesale Carrier Services (WCS).

5. Respondents and interested parties are ordered to preserve for the pendency of this action all documents which might relate to this action, including but not limited to switch records, reports based on switch records, contracts (including contracts with billing agents/aggregators and third parties relative to Respondents’ services and billing), invoices, correspondence, intra- and inter-office memoranda, intra- and inter-office email, electronic archives, all websites and electronic archives of information from past company websites, and consumer complaints and other expressions of dissatisfaction from California consumers. Respondents and interested parties are ordered to cooperate with staff in its investigation.

6. Billing agents ILD and BSG and billing telephone companies AT&T and Verizon are ordered to file with the Commission’s Docket Office and serve on all parties, within forty-five (45) days of service of this OII, a full accounting of their respective transactions with, or on behalf of, Respondents. Such accountings should include, without limitation, a statement on an annual basis of all amounts billed on behalf of Respondents, amounts collected on behalf of Respondents, amounts refunded or credited back to customer accounts, amounts retained by the billing agents and billing telephone companies for their services, amounts paid to public purpose funds (universal service and the like), and any other amounts paid out of Respondents’ revenue stream, i.e., out of

amounts collected on behalf of Respondents for the DA services described herein. We request, to the extent possible, that the billing agents and telephone companies specify the amounts in each of these categories attributable to DA service, administrative fee, and universal service fees or the like.

7. Staff shall continue to monitor consumer complaints against Respondents. We expect staff to bring additional evidence of any related and potentially harmful business practices to our attention. Because of the multiplicity and confusion of corporate names and services described above, and the complexity of Respondents' operations, we grant staff leave to propose the addition of other parties, factual allegations, and potential violations. Such proposals shall be presented to the Assigned Commissioner and Assigned Administrative Law Judge in the form of a motion to amend the OII, and shall be accompanied by a staff declaration supporting the proposed amendments. The cutoff date for advancing evidence of additional violations, for responses if appropriate, for the exchange of testimony, and other procedures as necessary shall be determined by the Assigned Commissioner or Assigned Administrative Law Judge.

8. Many of the attachments to the Staff Report were submitted as confidential materials pursuant to P.U. Code § 583. The Commission authorizes the publication of information from those attachments, to the limited extent that information is found in this OII. As to the attachments themselves, staff shall prepare and serve on Respondents and interested parties by January 7 proposed public and (to the extent appropriate) proposed confidential versions of its Staff Report, and may prepare those in several iterations to the extent that multi-party confidentiality claims must be accommodated. If Respondents or interested parties assert that any portion of the proposed public report should remain unavailable for public review, or that confidential materials should not be provided to other parties, they shall file a written motion for protection of specifically identified portions of the report and attachments, and provide legal support for these assertions, no later than January 28, 2011. CPSD shall reply by February 11, 2011.

9. Staff shall be subject only to that discovery relating to the specific violations alleged in this Order, described in the Staff Report, or added to the scope of this proceeding by subsequent motion.

10. These ordering paragraphs suffice for the “preliminary scoping memo” required by Rule 6 (c) of the Commission’s Rules of Practice and Procedure.

11. This proceeding is categorized as an adjudicatory proceeding and is expected to require an evidentiary hearing. Pursuant to Rule 8.2(b) of the Commission’s Rules of Practice and Procedure, *ex parte* communications are prohibited. The determination as to the category is appealable under Rule 7.6.

12. A prehearing conference shall be scheduled for the purpose of setting a schedule for this proceeding, including dates for discovery, amendment to the OII as necessary, exchange of written testimony, disclosure of witnesses, hearings, and briefing as appropriate in this matter. The issue of a postcard survey of Respondents’ customers, or some subset of them, as performed in the *Inc21* case discussed herein, shall also be considered at the initial prehearing conference.

13. The Commission’s Process Office shall effect service on Respondents of this OII by causing a copy of this Order to be personally served on the respondents’ designated agent for service in California:

Corporation Service Company
2730 Gateway Oaks Drive, Suite 100
Sacramento, CA 95833

And by delivering by Federal Express, Certified, and/or Priority Mail (such that confirmation of delivery may be verified) copies of the Order to Respondents’ principal place of business in Ponte Vedra Beach, Florida, at the following address:

Patrick Hines
Telseven LLC
Calling 10 LLC
200 Executive Way
Ponte Vedra Beach, Florida, 32082

In addition, a copy of this Order shall be served on local counsel for Respondents:

Martin A. Mattes
Attorney at Law
NOSSAMAN LLP
50 California Street, 34th Floor
San Francisco, CA 94111

In addition, copies of this Order shall be served on the following interested parties, by Federal Express, Certified, and/or Priority Mail (such that confirmation of delivery may be verified):

ILD, Corp.
c/o Lorraine McClin-Olriedge, Director
Client Compliance & Regulatory Complaints
ILD, Corp.
3230 West Commercial Blvd., Ste 360
Oakland Park, Florida 33309

Wholesale Carrier Services, Inc. U#6644 (WCS)
5471 N. University Drive
Coral Springs, Florida 33067
Attn: Chris Barton, President

WCS' Agent for Service of Process in California:
Corporation Service Company
dba CSD- Lawyers Incorporating Service
2730 Gateway Oaks Drive, Ste. 100
Sacramento CA 95833

ACI Billing Services, Inc., and BSG Clearing Solutions
Adolf Rodriguez, Regulatory Manager
7411 John Smith Drive, Suite 1500
San Antonio, Texas 78229

Pacific Bell Telephone Company dba AT&T California
Eric Batongbacal, Executive Director
525 Market Street, Room 1944
San Francisco, CA 94105

Verizon California, Inc.
Margo Ormiston
Specialist-State Gov't Relations
711 Van Ness Avenue, Suite 300
San Francisco, CA 94102

14. Respondents Telseven, LLC, Calling 10, LLC, and Patrick Hines are ordered to answer or otherwise respond to this Order within thirty days of service. Respondents and any other person filing a response to this Order shall state in the response any objections to the order regarding the need for hearings, issues to be considered, or proposed schedule.

This order is effective today.

Dated: December 16, 2010, in San Francisco, California.

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN
TIMOTHY ALAN SIMON
NANCY E. RYAN
Commissioners

ATTACHMENT 1 OII DATA REQUESTS TO RESPONDENTS

Unless stated otherwise, the following requests seek information and documents for years 2006-2010 inclusive, including any documents created or in effect during that time.

1. Please identify all factual statements in the above OII with which you disagree, and provide documents and evidence supporting your disagreement.
2. Please provide every script used by respondents on any 1-800 number in the last 5 years, and identify as clearly as possible during what period of time the script was used, and on what percentage (or number) of the Telseven-controlled toll-free numbers accessible by California consumers.
3. Please state the total monies or revenues collected from California consumers during the last five years in each of these three categories: DIR ASSIST charges; USF fee; and administrative fees. From these totals, please state all amounts paid to billing telephone companies, billing agents, universal service funds, or any other third parties.
4. Please provide California tax returns and any explanation of a discrepancy between the numbers provided in response to OII DR 3.
5. Please provide an accounting and evidence (including quarterly 499 reports) of amounts paid to USAC for federal universal service contributions, any amounts paid to this Commission, and amounts collected from consumers.
6. For the last two years only, please provide all routing instructions provided by Telseven or any of its affiliates in conjunction with the 1 800 numbers it controls and/or uses in marketing its DA services.
7. With regard to the customer complaints in Staff Report Attachment 27, please provide the complete switch records (containing all data fields) in your possession, and any other evidence in your possession, that supports your contention that the

complaining customer in fact dialed the Nevada DA Platform and authorized a charge of \$7.14 to be placed on his or her bill.

8. Please provide all invoices sent over the last year by Mr. Harvey Berg for services performed by Mr. Berg for Respondents or their affiliates, including their owner Patrick Hines, or other entities owned by Mr. Hines, relating in whole or in part to the provision by those companies or by other Mr. Hines' entities of directory assistance (DA) service to California consumers.

9. Please provide any contract, letter agreement, email, memoranda or other documents setting forth the terms of Mr. Berg's employment with (or retention by) Calling 10 and/or Telseven as a "regulatory consultant."

10. Please provide any memoranda or other documents setting forth Calling 10/Telseven's policy regarding refunds or credits back to California (and other) consumers, which policy or policies were in effect at any time during the last five years.

11. Please provide any contracts, manuals, memoranda, product descriptions, or other documents relating to the servers and other equipment that constitute the "Nevada platform," including contracts with parties other than WCS (e.g., David Leone and his company or companies).

12. Please provide any correspondence (email or otherwise) relating to the capabilities and/or operation of the servers and other equipment that constitute the Nevada platform.

13. Please provide any memoranda, correspondence (email or otherwise), or other documents relating to Calling 10 or Telseven's use of call detail records (CDRs) as a defense to customer complaints, including but not limited to correspondence between or among Harvey Berg, billing agent/aggregators ILD or BSG, Telseven and/or Calling 10, or any of them.

14. Please provide any correspondence between or among Mr. Berg, billing agent aggregators, Telseven and/or Calling 10, and government agencies, regulators or prosecutors, or any of them, relating to allegations of unauthorized charges on telephone bills.

15. Please provide the transcripts of any depositions given by Messrs. Berg or Hines relating to allegations of unauthorized charges on telephone bills.

16. Please provide documentation of Signal One's acquisition in the last three years of toll-free numbers used by Respondents or other Hines-owned entities for marketing intercepts as described in the foregoing OII.

17. Please provide any correspondence between or among Mr. Berg, billing agent/aggregators ILD or BSG, Telseven and/or Calling 10, any billing telephone company, or any of them, relating to the handling of customer complaints.

18. Please provide any regulatory complaints, inquiries, or civil complaints received by Telseven LLC or Calling 10 LLC over the last 5 years related to more than one allegation of unauthorized charges for directory assistance service, or an allegation of a pattern of conduct that was alleged to be misleading or fraudulent.