

Decision 11-01-017 January 13, 2011

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation on the Commission's own motion into the operations, practices, and conduct of Contractors Strategies Group, Inc., Intella II, Inc., A&M Communications, TNT Financial Services, Limo Services, Inc., Calnev Communications, Inc., 1st Capital Source Funding & Financial Services, Inc., and their owners to determine whether Respondents violated the laws, rules, and regulations of this State regarding the connection of Automatic Dialing-Announcing Devices to Customer-Owned Pay Telephones.

Investigation 10-02-004
(Filed February 4, 2010)

**DECISION APPROVING SETTLEMENT AGREEMENTS,
GRANTING MOTION FOR SUMMARY ADJUDICATION REGARDING
LIABILITY, AND RESOLVING ALL OTHER ISSUES**

TABLE OF CONTENTS

Title	Page
DECISION APPROVING SETTLEMENT AGREEMENTS,.....	2
GRANTING MOTION FOR SUMMARY ADJUDICATION REGARDING LIABILITY, AND RESOLVING ALL OTHER ISSUES	2
Summary	2
1. Background and the OII	3
2. Procedural History	10
3. The Settlements	14
3.1. Standard of Review	14
3.2. Settlement with TNT Financial Services and Intella II, Inc. (Joint Motion #1)	14
3.3. Settlement with Jose and Barbara Quezada/ Limo Services, Inc. (Joint Motion #2).....	16
3.4. Discussion.....	17
4. CPSD Motions for Summary Adjudication of Facts and to Forego Hearings	18
4.1. Standard of Review	19
4.2. The Parties' Positions.....	21
4.3. Conclusion.....	24
5. Penalties, Refunds, and Other Remedies for Violations.....	31
5.1. The Parties' Positions.....	32
5.2. The Commission's Options.....	33
5.2.1. Fines	33
5.2.2 Refunds and Other Remedies	38
6. Comments on Proposed Decision	42
7. Assignment of Proceeding	45
Findings of Fact.....	45
Conclusions of Law	49
ORDER	51
ATTACHMENT A - Exhibit List	

**DECISION APPROVING SETTLEMENT AGREEMENTS,
GRANTING MOTION FOR SUMMARY ADJUDICATION REGARDING
LIABILITY, AND RESOLVING ALL OTHER ISSUES**

Summary

On February 4, 2010, the Commission opened this Order Instituting Investigation (OII) into the operations, practices, and conduct of Contractors Strategies Group, Inc., Intella II, Inc., A&M Communications, TNT Financial Services, Limo Services, Inc., Calnev Communications, Inc., 1st Capital Source Funding & Financial Services, Inc., and their owners (collectively, Respondents) to determine whether Respondents violated the laws, rules, and regulations of this State regarding the connection of Automatic Dialing-Announcing Devices (ADADs) to Customer-Owned Pay Telephones (COPTs) and, if so, what remedies should be applied.

The Consumer Protection and Safety Division (CPSD) reached a settlement with three Respondents: Intella II, Inc., TNT Financial Services, and Limo Services, Inc. These parties have jointly submitted motions to approve adoption of their respective settlement agreements and the Decision approves these uncontested settlements. Each settling Respondent admitted to violation of Cal. Pub. Util. Code § 2871 *et seq.*, including the attachment and illegal operation of ADADs with their COPTs. Intella II, Inc. will pay a fine of \$1,000.00, TNT Financial Services will pay a fine of \$500.00, and the individual owners of Limo Services, Inc. Barbara & Jose Quezada, will replace Limo Services as the named Respondent in this proceeding and will jointly pay a fine of \$2,000.00. Limo Services, Inc. is dismissed as a Respondent.

This decision also grants CPSD's Motion for Summary Adjudication as to the Facts Regarding Liability and a Motion to Forego Hearings and Proceed to

Briefing the Remaining Legal Issues. Following approval of the settlement agreements, this motion is considered applicable to the other, non-settling Respondents. They each conceded that they had repeatedly violated Pub. Util. Code § 2871 *et seq.*, by unlawfully connecting and operating ADADs to COPTs, resulting in generation of a federally-mandated fee per call, known as “Dial-Around Compensation (DAC). Because violations of the laws are undisputed by Respondents, no evidentiary hearings were held and the parties briefed the legal issues related to what remedies the Commission might apply to the non-settling Respondents, who argued for leniency primarily based on ignorance of the law.

This decision imposes a fine of \$13,451.33 on Alterber Terlusk Freeman and his companies, and \$1,462.45 on Massimo Cavallaro and his company. Furthermore, the decision directs all Respondents to release their claims to \$103,193.64 in DAC funds generated by their illegal use of ADADs that are currently held in escrow by G-Five LLC, Respondents’ billing aggregator. Due to the administrative inefficiencies of refunding small amounts to dozens of carriers for further refund of less than \$0.50 to hundreds of thousands of owners of toll-free numbers (if they could be located), 50% of the escrow funds will be distributed to the State’s General Fund and 50% to the Telecommunications Consumer Education Fund, pursuant to the Commission’s equitable authority.

1. Background and the OII

In April 2008, the Commission’s Consumer Protection and Safety Division (CPSD) received an informal complaint from G-Five, LLC (G-Five), a billing aggregator, which reported that Respondents Contractors Strategies Group, Inc. (CSGI), A&M Communications (A&M), TNT Financial Services (TNT), and Limo Services, Inc. (Limo Services) had generated abnormally high volumes of toll-free

number calling from their Customer-Owned Pay Telephone (COPT) lines.¹ The complaint alleged that, in 2007-2008, these Respondents may have fraudulently generated Dial-Around Compensation (DAC) from their twenty-four payphone lines.²

A payphone service provider (PSP) generates DAC of \$0.494 for every successful call to a toll-free number, regardless of duration. Payment is collected from carriers, typically through a billing aggregator that processes and remits the payments to the owners of the COPTs. G-Five, the billing aggregator for CSGI, A&M, TNT, and Limo Services, decided to retain the undisbursed DAC in an escrow account until given instructions by the Commission as to its disposition.

CPSD investigated the questionable call activity, starting with an analysis of the 2007 call detail records for the twenty-four COPT lines registered to the four Respondents. Over 99% of the calls were to toll-free numbers, mostly unsuccessful or lasting less than 60 seconds. G-Five's owner, an experienced billing aggregator, noted that it was extremely unusual that none of the calls were to 1-800-CALLATT or 1-800-COLLECT, and that most of the toll-free numbers were called only once. Based on his experience, he concluded that these facts together indicated Automatic Dialing-Announcing Devices (ADAD) use.

Alterber Tekulsky Freeman (Freeman), owner of CSGI and a partner in A&M, admitted he connected ADADs to his companies' payphone lines, purportedly to advance a telemarketing business using a "loophole" within

¹ Order Instituting Investigation into the Operations of Contractors Strategies Group, Inc., Intella II, Inc., A&M Communications, TNT Financial Services, Limo Services, Inc., Calnev Communications, Inc., 1st Capital Source Funding & Financial Services, Inc., and their owners (OII) at 2-3.

² *Id.* at 3.

telephone regulation to gain DAC, find clients, and cover the cost of his equipment.³ Furthermore, Freeman said he helped the other Respondents obtain COPTs, installed the ADADs to their payphone lines, provided technical support as a liaison between the software and hardware equipment manufacturer, and loaded toll-free numbers provided by other Respondents into the switch.⁴ Freeman also recorded the alleged marketing messages played on the ADADs of these Respondents.⁵ The purported message was, "Hello. If you would like to reach thousands of potential customers each day or week just like this, please call Al Freeman for further information at 480-678-4444."⁶

The Respondents all confirmed that they intentionally connected ADADs to their payphone lines to dial toll-free numbers, did not comply with § 2871 *et seq.*, and knew that DAC would be generated. All Respondents denied knowing that the attachment of ADADs to COPTs for long hours of dialing toll-free numbers with a pre-recorded message was illegal. Instead, they asserted they had no reason to know the activities were illegal and lacked any intent to deceive anyone.⁷

Following notice of a dispute with two carriers over the DAC, and G-Five's notice it would withhold payment of DAC pending a Commission investigation of the call activity, Freeman said he contacted the Federal Communications Commission (FCC) to determine whether the activity was a violation of the laws

³ *Id.* at 4.

⁴ *Id.* at 5.

⁵ *Ibid.*

⁶ Staff Report at 21.

⁷ *Ibid.*

governing DAC.⁸ After learning that their use of the ADADs had been illegal, Freeman and the other Respondents disposed of their COPTs, ADADs, and related records.⁹

CPSD further investigated Respondents' activities with payphone lines in previous years and found that Freeman had also operated COPTs with ADADs between 2002 and 2005 through two other wholly-owned businesses, Calnev Communications (Calnev) and 1st Capital Source Funding & Financial Services, Inc. (1st Capital). Freeman said most of the generated DAC went to another individual, John Barrett, who "duped" him about the legality of the ADAD activities.¹⁰ On the other hand, Freeman admitted that he attached the ADADs to the lines and recorded the "marketing" messages for the ADADs. CPSD provided documentary evidence that during 2002 - 2005, \$47,712.99 in DAC revenue was paid to Calnev and 1st Capital by the predecessor company¹¹ to Freeman's current aggregator, G-Five.¹² Freeman cannot confirm how much DAC was distributed to Calnev and 1st Capital, but has offered no contradictory evidence nor shown evidence that he transferred DAC funds to Barrett.

The results of CPSD's initial investigation are contained in a report (Staff Report) provided to the Commission and made part of the record of this

⁸ Staff Report, Appendix K (Attachment Letter to Freeman's response to Data Request 1.0).

⁹ *Ibid.*

¹⁰ Staff Report at 6.

¹¹ Private Payphones Provider Network (OII at 3).

¹² OII at 6.

proceeding.¹³ CPSD provided documentary evidence from G-Five that, as a result of unlawful use of ADADs, 546,167 calls made in 2007 from the twenty-four payphone lines registered solely or jointly to CSGI, Intella II, A&M, TNT, & Limo Services were made to toll-free numbers.¹⁴ Respondents did not contradict the call records, which did not cover the entire period in which the ADADs were in operation.

In addition, CPSD provided undisputed evidence that between 2002 and 2005, Freeman leased 204 payphone lines from AT&T¹⁵ through Calnev and 1st Capital. CPSD provided documentary evidence from G-Five¹⁶ that these businesses collected DAC revenue generated by the lines from more than 550,000 calls in similar call patterns to those operated by Respondents in 2007.¹⁷ Other than Freeman's statements that he did not keep most of the DAC, he offered no evidence to contradict the call or payment records.

CPSD recommended that the Commission impose unspecified penalties on each Respondent, order full restitution of any DAC money received, and order the DAC held in escrow to be either returned to owners of the toll-free numbers or, if not administratively feasible, then to distribute 50% of the funds to the State of California General Fund and 50% to an unspecified consumer education

¹³ Exh. CPSD-2.

¹⁴ Exh. CPSD-2 at 13 (fn. 38).

¹⁵ Formerly SBC Communications, Inc. which merged with AT&T in 2005.

¹⁶ G-Five provided computerized summary business records that its owner declared he acquired from Private Payphone Owners Network (PPON) when G-Five acquired that company in 2007.

fund. Furthermore, CPSD recommended that Respondents be ordered to cease and desist all payphone operations and be prohibited from any future payphone-related activity. All Respondents have ceased payphone operations.

In addition, CPSD commented on the failure of AT&T's internal controls to detect the suspicious calls that all originated in its service area and were routed through AT&T's switch. AT&T staff did not clearly explain why the patterns were not detected and CPSD asked the Commission to order AT&T to review its internal control structures to ensure they are able to detect and prevent fraud in this area.

Based on the evidence in the Staff Report, on February 4, 2010, the Commission issued an Order Instituting Investigation into the Operations of CSGI, Intella II, A&M, TNT, Limo Services, Calnev, 1st Capital, and their owners (OII).¹⁸ The Commission made a preliminary finding that the Respondents generated illegal revenue totaling over \$156,000 through the unlawful connection of ADADs to their COPTs.

¹⁷ Staff Report at 16, Appendix F (CPSD obtained call detail from AT&T for 24 of the 204 COPT lines which generated 87% of the total DAC revenue for Calnev and 1st Capital).

¹⁸ Staff Report is attached to the OII.

The OII set forth the claimed DAC revenue and call volume by Respondent, as follows:

TABLE A: DAC Revenue and Volume by Respondent¹⁹

Respondent(s)	Number of COPT lines	DAC Revenue ESCROW	DAC Revenue DISBURSED	Call Volume	Dates of Operation
1. CSGI	2 lines	\$ 67,815.83	\$ 5,322.29	385,326	April - December 2007
2. CSGI/Intella II	8 lines				
3. CSGI/Limo Services	2 lines				
CALNEV	200 lines		\$ 47,274.51	553,847	2002 - 2005
1 st Capital Source Funding	4 lines		\$ 438.48		2002 - 2004
A&M Communications	7 lines	\$ 24,829.92	\$ 211.93	118,417	July - December 2007
TNT Financial Services	1 line	\$ 4,545.79	\$ 115.60	24,467	July - December 2007
Limo Services	4 lines	\$ 6,002.10		18,057	July - December 2007
Total		\$ 103,193.64	\$ 53,362.81	1,100,114	

The Commission determined that all of the Respondents attached ADADs to their payphone lines in order to continuously dial toll-free numbers for the purpose of collecting DAC.²⁰ The Commission found insufficient evidence in the record to support Freeman’s claim that in 2007-2008, he was executing a business plan to promote a new telemarketing business in conjunction with the other Respondents. Instead, the Commission found “no legitimate purpose” for the call activity.²¹

¹⁹ *Id.* at 7.

²⁰ OII at 15-16.

²¹ *Id.* at 15.

Respondents were ordered to appear and show cause why the Commission should not impose penalties and other remedies for their unlawful use of ADADs, which CPSD characterized as a “fraudulent scheme” masterminded by Freeman.²²

2. Procedural History

A prehearing conference was held on May 5, 2010 where Freeman spoke for all Respondents since none had retained counsel. The Respondents individually confirmed they had attached the ADADs to the payphone lines but asserted, as they had during the investigation, that they did not know it was illegal.²³

The Assigned Commissioner’s Ruling and Scoping Memo (Scoping Memo) was issued on May 24, 2010, set the procedural schedule, and identified the issues, as summarized below:

- Whether Respondents violated Pub. Util. Code²⁴ §§ 2871-2875.5 by unlawfully connecting and operating ADADs to a telephone line in California;
- Whether Respondents should be penalized and their ADADs permanently disconnected;
- Whether Respondents Calnev and 1st Capital should be ordered to refund any dial-around compensation collected by Respondents; and
- Whether Respondents CSGI, Limo Services, Intella II, Inc., A&M, and TNT should be ordered to forfeit the DAC

²² Staff Report at 7-8.

²³ Reporter’s Transcript (RT) (May 5, 2010) at 9-10.

²⁴ Unless otherwise indicated, all future references to “section” means the Public Utilities Code.

generated by their payphones that is currently being held in escrow.

The Scoping Memo established that CPSD's Opening Testimony was due to be served on June 7, 2010 and Respondents' Rebuttal Testimony was due on June 28, 2010. CPSD timely served Opening Testimony and Respondents were granted additional time to serve Rebuttal Testimony by July 2, 2010. However, instead of serving Rebuttal Testimony, on June 16, 2010 and July 1, 2010, Freeman filed two separate Motions to Dismiss the OII on behalf of all Respondents. CPSD opposed the motions and both motions were denied by the ALJ's August 10, 2010 ruling.

On July 14, 2010, CPSD, TNT, and Intella II jointly filed a motion for Approval of Settlement Agreement (Joint Motion #1). On July 21, 2010, CPSD and Limo Services jointly filed a Motion for Approval of Settlement Agreement (Joint Motion #2) and a related Motion to Substitute Respondent with its individual owners, Barbara and Jose Quezada. No opposition to these motions has been voiced or filed.

Also on July 14, 2010, CPSD filed a Motion for Summary Adjudication as to the Facts Regarding Liability (Motion for Summary Adjudication), combined with a Motion to Forego Hearings and Proceed to Briefing the Remaining Legal Issues (Motion to Forego Hearings) based on Respondents' failure to serve any Rebuttal Testimony. CPSD argued that there were no triable issues of material fact because Respondents presented no evidence at all, despite an opportunity to do so. CPSD also asked the Commission to forego evidentiary hearings as a matter of judicial economy. Freeman, apparently representing all non-settling Respondents, filed opposition to these motions but offered no evidence to rebut

the underlying charges. With the ALJ's permission, CPSD filed a reply to Freeman's Opposition.

On August 18, 2010 and August 19, 2010, respectively, Respondent Freeman and Respondent Massimo Cavallaro (Cavallaro) on behalf of A&M Communications sent the ALJ (and the service list) emails in which they requested evidentiary hearings in this proceeding citing due process concerns, particularly seeking to tell their "version of the truth" and to confront witnesses.²⁵ Although CPSD characterized the emails as improper ex parte contacts, the ALJ instead broadly construed the communications as a request to serve late rebuttal testimony. In an abundance of deference to due process concerns, the ALJ issued a ruling on August 25, 2010 that permitted the non-settling Respondents to serve Rebuttal Testimony by August 31, 2010 and CPSD to serve Reply Testimony by September 8, 2010.

In conformity with that ruling, Freeman timely served "Rebuttal Testimony" from the non-settling Respondents and CPSD timely served Reply Testimony. However, the Rebuttal Testimony did not clearly dispute any material facts alleged in the OII. Instead the testimony was focused on alleged improper conduct by CPSD, rebuttal of CPSD's claims of Respondents' fraudulent motive and intent, and dispute of elements of the analysis that concluded the calls were placed by ADADs.

On September 22, 2010, the ALJ held a status conference with CPSD, Freeman and Cavallaro to determine whether the remaining non-settling Respondents actually disputed their improper use of the ADADs hooked up to

²⁵ Respondents' Exhibit 1 and 1A.

their payphone lines. The Respondents agreed they did not dispute that they had connected the ADADs to their payphone lines, and conceded they had violated the statutory restrictions on use of ADADs.²⁶ All parties agreed that no further argument as to Respondents' violations was necessary, CPSD's motion could be granted, and the remaining disputes centered only on potential penalties and remedies.

In an October 1, 2010 ruling, the ALJ summarized the results of the status conference and authorized non-settling Respondents to file a brief by October 15, 2010 which set forth their arguments for mitigation or elimination of penalties authorized by § 2876. CPSD was ordered to file a brief that responded to six specific questions about various potential remedies including imposition of fines and distribution options for the DAC held in escrow. These parties were also permitted an additional week to file and serve a final reply to the other brief(s). Opening and Reply briefs were filed by CPSD, and jointly filed by Freeman and Cavallaro.

The Opening, Rebuttal, and Reply Testimony are hereby entered into the record of this proceeding.²⁷ This testimony, along with the briefs and other documents filed, shall constitute the record for the proceeding which is submitted as of December 10, 2010.²⁸

²⁶ RT (September 22, 2010) at 3, 10, 22.

²⁷ See Attachment A for list of admitted exhibits.

²⁸ The original submission date was extended to allow time for Respondents to correct deficiencies in their filing of the closing briefs.

3. The Settlements

Initially, we note that each Settlement Agreement was preceded by a properly noticed settlement conference pursuant to Rule 12.1 of the Commission's Rules of Practice and Procedure (Rules), and the fact that the Settlement Agreements are unopposed generally supports their adoption.

3.1. Standard of Review

The Commission's Rules of Practice and Procedure set a standard for review of any settlement:

12.1(d) The Commission will not approve settlements, whether contested or uncontested, unless the settlement is reasonable in light of the whole record, consistent with the law, and in the public interest.

We find all three Settlement Agreements meet the criteria for approval pursuant to Rule 12.1(d), and discuss each of these three criteria in relation to each settlement in detail below.

3.2. Settlement with TNT Financial Services and Intella II, Inc. (Joint Motion #1)

Intella II, an S-corporation organized under the laws of Texas with its principal place of business in San Diego, California, principally provides conference calling and voicemail services.²⁹ The company's President, Vice-President, and Treasurer is Paul Cohen; Robert Taylor is the corporate Secretary. CSGI and Intella II co-registered eight payphone lines at the San Diego business address where Intella II connected ADADs to each payphone line in April 2007.³⁰

²⁹ Staff Report at 11.

³⁰ Joint Motion #1 at 3.

The Staff Report found that these lines generated DAC revenue between April and December 2007 which was included in a \$5,322.29 check for DAC revenue issued to CSGI by the billing aggregator, G-Five.³¹ In the Settlement Agreement, Intella agreed that in 2007 and 2008, it programmed the ADADs to automatically dial toll-free numbers sequentially in order to collect DAC for successfully completed toll-free calls dialed from their payphones.

TNT is a business owned and operated by John and Norma Tomlinson in Inglewood, California. The primary purpose of the business is undisclosed.³² TNT operated one payphone line at the Inglewood business address from July 27, 2007 to January 14, 2008 and connected an ADAD.³³

The Staff Report found that TNT's payphone generated \$4,661.39 in DAC revenue, of which \$4,545.79 is currently held in escrow by G-Five.³⁴ In the Settlement Agreement, TNT agreed that in 2007 and 2008, it programmed the ADAD to automatically dial toll-free numbers sequentially in order to collect the DAC.

As part of the Settlement Agreements, the Respondents each acknowledged that (1) anyone operating an ADAD must comply with §§ 2872-2875.5, (2) they failed to follow these requirements, (3) they will disconnect their payphone lines (if any are still connected), and (4) they will not operate payphone lines in the future.

³¹ Staff Report at 14.

³² Joint Motion #1 at 2.

³³ *Ibid.*

³⁴ Staff Report at 13.

In addition, TNT agreed to pay a penalty of \$500.00, and Intella II agreed to pay a penalty of \$1000.00, to the State of California General Fund within thirty days of the Commission's approval of the Settlement Agreement. TNT released its claims and/or rights to the \$4,545.79 in DAC revenue currently held in escrow by G-Five. Intella II released its claims and/or rights to any portion of the \$67,815.83 in DAC revenue currently held in escrow by G-Five for payphones owned solely or jointly with CSGI.

**3.3. Settlement with Jose and Barbara Quezada/
Limo Services, Inc. (Joint Motion #2)**

Limo Services is a California corporation owned and operated by Jose and Barbara Quezada with its principal office in San Jose, California (the same location as CSGI). Barbara Quezada is the Chief Executive Officer.³⁵

The Staff Report found that Limo Services operated six payphone lines at the San Jose business address, two of which were co-registered with CSGI, and connected ADADs to each payphone line from August 20, 2007 to February 6, 2008. The Staff Report also stated that the four payphone lines operated only by Limo Services generated \$6,002.10 in DAC revenue, currently held in escrow by G-Five, while the DAC revenue generated by the two co-registered payphones is included in CSGI's total DAC revenue.

In the Settlement Agreement, the parties agreed that the Quezadas acted in their individual capacities, rather than as Limo Services.³⁶ Thus, the Settlement Agreement is between CPSD and the Quezadas and the parties jointly filed a motion to dismiss Limo Services, Inc. and substitute the Quezadas as individual

³⁵ Staff Report at 12.

³⁶ Joint Motion #2 at 3.

respondents. The Quezadas have not otherwise disputed the allegations that, in 2007 and 2008, they programmed the ADADs to automatically dial toll-free numbers sequentially in order to collect DAC.

As part of the Settlement Agreement, the Quezadas each acknowledged that (1) anyone operating an ADAD must comply with §§ 2872-2875.5, (2) they failed to follow these requirements, (3) they will disconnect their payphone lines (if any are still connected), and (4) they will not operate payphone lines in the future. In addition, after providing documentation of financial hardship, they agreed to pay a penalty of \$2,000 in three monthly installments of \$666.66 to the State of California General Fund with the first payment due within thirty days of the Commission's approval of the Settlement Agreement.³⁷ The Quezadas released their claims and/or rights to any portion of the DAC revenue currently held in escrow by G-Five for payphones owned solely or jointly with CSGI.

3.4. Discussion

The Settlement Agreements are reasonable in light of the whole record. None of the settling Respondents challenge the basic accuracy of the facts as set forth in the Staff Report.³⁸ The Settlement Agreements establish the essential facts of violation of §§ 2872-2875.5 by each Respondent, which are undisputed and supported by the record. The Settlement Agreements are also reasonable based on the year-long investigation by CPSD, and opportunities for each Respondent to offer objections or contrary information into the record. Instead, each repeatedly acknowledged the violations, but asserted ignorance of the law restricting use of ADADs.

³⁷ Joint Motion #2 at 4.

³⁸ Joint Motion #1 at 4; Joint Motion #2 at 5.

The Settlement Agreements are also consistent with the law and precedent. They do not contravene any statute or Commission decision or rule. These Respondents do not contest the Commission's jurisdiction over their operations and accept that § 2871 *et seq.* requires anyone operating an ADAD to comply with the law, which they failed to do. The proposed fines are consistent with § 2876 authorizing the Commission to impose fines for violation of the ADAD rules.

Lastly, the proposed Settlement Agreements are in the public interest. They are consistent with Commission decisions on settlements, which express the strong public policy favoring settlement of disputes if they are fair and reasonable in light of the whole record.³⁹ Approval will avoid the time, expense, and uncertainty of evidentiary hearings and further litigation.

For all of the foregoing reasons, we approve the three Settlement Agreements and grant the motion to substitute Jose and Barbara Quezada for Limo Services as Respondents and settling parties.

4. CPSD Motions for Summary Adjudication of Facts and to Forego Hearings

CPSD's Motion for Summary Adjudication sought to establish the liability of all Respondents for violation of §§ 2871-2875.5, and adjudication of numerous specific "undisputed facts" regarding the violations. CPSD also moved to forego evidentiary hearings on the ground that liability was undisputed. Respondents jointly filed Opposition to the motions in which they admitted violations of §§ 2871-2875.5. However, Respondents argued they wanted hearings to present evidence to show that (1) their motives were legitimate instead of illegal, (2) the evidence that Calnev and 1st Capital received DAC "may not be accurate," and

³⁹ See *e.g.*, D.05-03-022 at 9.

(3) CPSD's investigator and witness, Kenneth Bruno, was biased against them and misrepresented evidence to the Commission.

CPSD's Reply argued that Respondents had not placed any material facts in dispute, their arguments went to potential penalties that could be imposed, questioned how the aggregator's DAC records were inaccurate, and dismissed allegations of CPSD "bias" as not detailed and merely a difference in opinion as to analysis of the undisputed facts.

At the time CPSD filed the motions, none of the Settlements had been considered by the Commission, no Respondent had submitted any reply testimony or other evidence, and the deadline for submission of reply testimony had passed. The facts have evolved since that date.

First, the motion is moot as to settling Respondents because this decision approves the settlements. Second, the non-settling Respondents (i.e., CSGI, A&M, 1st Capital, Calnev and their owners) have submitted Rebuttal Testimony, followed by CPSD Reply Testimony. Third, at the September 22, 2010 Status Conference, the non-settling Respondents clarified that they did not dispute that they had violated §§ 2871-2875.5 by hooking up ADADs to their COPTS with a pre-recorded message resulting in generation of DAC from the owners of the toll-free numbers called.

To the extent the Opening Testimony, Rebuttal Testimony and Reply Testimony involve facts and issues involving only settling Respondents, they are excluded from the discussion below.

4.1. Standard of Review

The Commission has not established a rule that explicitly governs summary judgment or summary adjudication of issues, so CPSD advanced its motion in terms of the requirements of Code of Civil Procedure (Code Civ. Proc.)

§ 437c(c) and Rule 11.2. The Commission has previously looked to the requirements of Code Civ. Proc. § 437c(c) for guidance in resolving motions for summary judgment or summary adjudication.⁴⁰

Code Civ. Proc. § 437c(c) provides in relevant part:

“The motion for summary judgment shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to judgment as a matter of law. In determining whether the papers show that there is no triable issue as to any material fact the court shall consider all of the evidence set forth in the papers . . . and all inferences reasonably deducible from the evidence, except summary judgment shall not be granted by the court based on inferences reasonably deducible from the evidence, if contradicted by other inferences or evidence, which raise a triable issue as to any material fact.”

The Commission has also looked to Rule 11.2 (formerly Rule 56), which governs motions to dismiss which are “analogous in several respects to a motion for summary judgment in civil practice” because such a motion permits the Commission to determine prior to hearing whether there are any triable issues of material fact.⁴¹ Like a motion for summary judgment under Code Civ. Proc. § 437c(c), a second purpose of a Rule 11.2 motion to dismiss is “that it promotes and protects the administration of justice and expedites litigation by the elimination of needless trials.”⁴² When considering these type of motions, the Commission has said that declarations and evidence offered in opposition to the

⁴⁰ See, e.g., D.07-01-004 at 3; D.02-04-051 at 6; D.94-04-082, (1994) 54 CPUC2d 244, 249.)

⁴¹ D.94-04-082 at 249.

⁴² *Ibid.*

motion must be liberally construed, while the moving party's evidence must be construed strictly, in determining the existence of a "triable issue" of fact.⁴³

These are the legal standards that provide the analytical framework for consideration of CPSD's motion for summary adjudication of the liability issue.

4.2. The Parties' Positions

The effect of the OII was to place the burden on Respondents to present some defense to the OII's preliminary findings against them. CPSD submitted testimony from analyst Kenneth Bruno which included the Staff Report with attached statements provided by the Respondents.⁴⁴ The details of the findings in the Staff Report and OII are detailed above. After no evidence was submitted by any Respondent, CPSD's motion argued that the evidence established that all Respondents had violated §§ 2871-2875.5. More specifically, the Motion for Summary Adjudication enumerated a list of "undisputed facts" about Respondents activities drawn from the OII.⁴⁵

However, after missing deadlines and obtaining new opportunities to express their position, non-settling Respondents submitted Rebuttal Testimony which described their relevant concerns, summarized as follows:⁴⁶

- Inflammatory language in the Staff Report describes Respondents' activities as a "fraudulent scheme" and Freeman as the "mastermind" when Respondents had no fraudulent intent and no criminal charges were brought;

⁴³ *Sprecher v. Adamson Companies*, (1981) 30 C3d 358, 373.

⁴⁴ Exhs. CPSD-1, CPSD-2.

⁴⁵ Motion for Summary Adjudication at 7-12.

⁴⁶ Cavallaro also objected to personal information inadvertently disclosed in the OII which has been removed by CPSD through D.10-10-020, Order Correcting Error.

- CPSD ignored that Freeman had a business plan with other Respondents which included telemarketing outreach through the ADADs;
- CPSD did not properly document that the call patterns establish fraudulent ADAD use and some calls were made by hand prior to installation of the ADAD software;
- The dialing sequences were determined by the ADAD software and did not establish fraudulent intent to capture DAC;
- CPSD's alleged conduct which Freeman contends misled him as to the severity of the matter and was coercive as to settlement;
- The Commission, AT&T, the ADAD software provider, and the call aggregator should have warned Respondents about ADAD rules;
- Respondents' disconnection of the COPTS, disposal of the equipment, and discard of related records implies good faith compliance rather than bad faith and a failure to detect and correct the violations;
- The 2002-2005 use of ADADs by Calnev and 1st Capital is improperly lumped together with the 2007-2008 ADAD use because Freeman was "duped" by a third party in connection with the earlier ADADs and did not substantially profit; and
- The call aggregator, G-Five, and its owner, Robert Berg (Berg), can not authenticate the call records or payments from G-Five's predecessor for 2002-2005;

The Rebuttal Testimony included admissions that Respondents did not follow the restrictions in §§ 2871-2875.5 when using ADADs attached to their COPTs. It also did not dispute CPSD's documentary evidence showing the actual number of calls made or the DAC revenue generated, with the exception of whether Calnev and 1st Capital made the specific calls identified by G-Five

and received identified DAC revenue in 2002-2005. No documentary evidence was offered or submitted by Respondents.

In CPSD's Reply Testimony, Bruno denied bias and improper actions during the investigation, supported inferences drawn from its call analysis, and stated the law imposes no duty on the Commission or AT&T to notify Respondents of ADAD laws, particularly when their illegal actions were unanticipated.⁴⁷ Additionally, Bruno asserted that a finding of fraud is not required to establish liability, even if, as he claims, it is established by Freeman's own admissions. Finally, Bruno pointed to the Staff Report to assert that call and payment records from G-Five's predecessor were provided by G-Five and Respondents offered no basis to dispute their content which supports findings of improper ADAD use by Freeman's companies in 2002-2005 and related DAC payments to them.

To clarify what issues remained in dispute and whether evidentiary hearings were required, a status conference was held. Freeman and Cavallaro, representing the non-settling Respondents, repeated their prior admissions that each of them had violated the ADAD laws through respondent companies, although each claimed ignorance of the law and a valid business purpose, rather than fraud, motivated their actions.⁴⁸

Freeman continued to object to what he asserted was CPSD's bias and coercion, but agreed that he had not been coerced into stating he had violated the statute when he had not, or into making an involuntary settlement.⁴⁹ Freeman

⁴⁷ CPSD's Reply Testimony at 3.

⁴⁸ RT (September 22, 2010) at 3, 10, 14, 16.

⁴⁹ *Id.* at 3.

also could not identify any legal basis for a duty by the Commission, the carrier, or any other person or entity to notify consumers that state law applies restrictions to use of ADADs and conceded instead he thought the Commission should act affirmatively in the future.⁵⁰

The only remaining liability question centered on the allegations that Freeman's companies, Calnev and 1st Capital, had improperly used ADADs in 2002-2005. Freeman did not dispute that he attached ADADs to the COPTS registered to his companies, but again he disputed his motives were fraudulent and asserted that he did not receive most of the DAC generated by these companies.

Therefore, all participating parties agreed that the Rebuttal Testimony was submitted to mitigate or eliminate potential penalties and other remedies related to the admitted violations of §§ 2871-2875.5. Furthermore, the participating parties all agreed that evidentiary hearings were not required, Respondents had no new evidence to present, and the parties could address the remedy issues by briefs, including arguments related to the Respondents' intent.

4.3. Conclusion

Based on all the evidence in the record, including non-settling Respondents' own admissions, we grant the Motion for Summary Adjudication and find that these Respondents each violated §§ 2872-2875.5, the first issue set forth in the Scoping Memo. We find no triable issues of fact remaining as to this question.

A finding of fraud is not essential to determining that non-settling Respondents violated ADAD laws. Their various claims of CPSD bias were not

⁵⁰ Id. at 5.

supported, and, even if non-settling Respondents' statements were liberally construed, they are moot given that Freeman and Cavallaro both agreed they were not coerced into admitting they violated these laws. Finally, since there is no legal duty by a carrier, an aggregator, or the Commission to notify a PSP of ADAD laws, the argument is irrelevant to the presented issue of statutory violation.

The claims by Freeman that the 2002-2005 AT&T call records or payments' summaries from G-Five cannot be authenticated are inconsistent with other undisputed evidence and Freeman's own statements. These are ordinary business records which, absent other evidence, are more likely than not reasonably accurate. Freeman agreed that 204 payphones listed in the Commission's COPT database were registered to Calnev and 1st Capital between 2002-2005. He also admitted he wholly-owned both of the companies.

Freeman offered no evidence to show his companies did not receive the identified DAC payments totaling \$47,274.51 to Calnev and \$438.48 to 1st Capital which were supported by Berg's declaration that PPO provided the DAC services. In fact, Freeman admitted that the companies received DAC from these payphones, he kept and used some of it, and said he paid Barrett \$25-\$30,000.00 for services related to the ADAD generation of DAC.⁵¹ This is consistent with Freeman's statement he did not keep "most" of the DAC revenue. Therefore, even with a liberal construction of Freeman's statements and strict construction of CPSD's evidence, it is reasonable to infer that the AT&T call records and

⁵¹ Respondents' Closing Brief at 3; Staff Report, Appendix K (Freeman response to Data Request No. 2.0).

PPON payment records accurately reflect call activity and DAC payments distributed to Freeman through Calnev and 1st Capital.

As part of granting the motion, we determine the following undisputed facts:

1. The Federal Communications Commission has a compensation plan, known as DAC which compensates all payphone service providers (PSPs) \$.494 for every toll free call completed on a payphone line.⁵²
2. G-Five provides DAC services for PSPs, which means that G-Five collects monies from carriers and remits monies to PSPs when end user customers call toll free numbers from the PSP's payphone line.⁵³
3. G-Five handled the DAC services for Respondents during 2007-2008. In 2007, G-Five purchased Private Payphone Owners Network (PPON), a competitor, which handled the DAC in 2002-2005 for Calnev and 1st Capital.⁵⁴
4. CPSD's investigation of Respondents was initiated by an informal complaint filed by G-Five concerning unusual call activity with respect to DAC generated by Respondents' COPTs.⁵⁵
5. An average normal payphone generates anywhere from \$40 to \$50 of DAC per quarter.⁵⁶
6. Respondents CSGI, A&M, and settling Respondents were averaging combined DAC in the 4th Quarter 2007 ranging from \$1,500 to \$5,651 per COPT line.⁵⁷

⁵² Staff Report at 5.

⁵³ Staff Report at 15, Appendix J (Declaration of Robert J. Berg).

⁵⁴ *Ibid.*

⁵⁵ Staff Report at 15.

⁵⁶ *Ibid.*

⁵⁷ *Ibid.*

7. Freeman learned about how DAC worked for PSPs prior to ordering the COPT lines for Calnev, 1st Capital, and CSGI.⁵⁸
8. At all relevant times, Freeman owned and operated Respondents Calnev, 1st Capital, and CSGI, and was co-owner of A&M.⁵⁹
9. Prior to 2007, Freeman had experience in the telephone business and had knowledge of the Commission's oversight of carriers.⁶⁰
10. Calnev ordered 200 COPT lines from SBC⁶¹ and operated some or all of them in California between January 2002 and December 2005. At least 553,847 toll free calls were placed from the Calnev COPT lines. G-Five's available records from PPON showed it disbursed to Calnev \$47,274.51 in DAC revenue from 59 of those 200 lines.⁶²
11. 1st Capital ordered four COPT lines from SBC and operated them in California between the years 2002-2004. G-Five's records available from PPON showed it disbursed to 1st Capital \$438.48 in DAC from these four lines.⁶³
12. In 2007, Freeman ordered a single COPT line at first, collected some DAC, and then helped the other Respondents order their lines for them.⁶⁴

⁵⁸ Staff Report at 21, Appendix K (Freeman response to Data Request 1.0, Information Attachment Letter).

⁵⁹ *Id.* at 7-11.

⁶⁰ *Id.* at 10; Appendix K (Freeman response to Data Request No. 1.0); Respondents' Closing Brief at 3. (According to public records, Freeman also started a payphone business, ALF Payphones, in 2000).

⁶¹ Currently doing business as AT&T.

⁶² Staff Report at 10, 14, 16, 17.

⁶³ *Id.* at 10-11.

⁶⁴ *Id.* at 21, Appendix K (Freeman response to Data Request 1.0).

13. CSGI eventually ordered twelve COPT lines from SBC/AT&T and operated them between April 13, 2007 and March 5, 2008. Two lines, registered solely to CSGI, were located at CSGI's business address in San Jose, CA. Of the remaining 10 lines, CSGI co-registered 8 lines with Intella II and placed them at Intella's San Diego, CA business address. CSGI also co-registered 2 lines with Jose and Barbara Quezada and placed them at their San Jose, CA address.⁶⁵
14. The twelve CSGI/Intella II/ Jose and Barbara Quezada COPT lines placed 385,326 calls to toll-free numbers. These calls generated \$73,138.12 in DAC; of this amount \$67,815.83 (plus any accrued interest) is currently held in an escrow account by G-Five.⁶⁶
15. A&M is an informal partnership between Freeman and Cavallaro. A&M ordered seven COPT lines from SBC/AT&T and operated them between July 2007 and April 25, 2008. Four lines were located at an A&M business address in Santa Clara, CA and three lines were located at Cavallaro's personal address in Menlo Park.⁶⁷
16. The seven A&M COPT lines placed 118,417 calls to toll-free numbers. These calls generated \$25,041.85 in DAC revenue, of which \$24,829.92 (plus any accrued interest) is currently held in an escrow account by G-Five.⁶⁸
17. On behalf of all Respondents operating in 2007-2008, Freeman stated that ADADs were used to dial 1-8xxxxx-xxxx numbers from these Respondents'

⁶⁵ *Id.* at 8-10.

⁶⁶ *Id.* at 9, 14.

⁶⁷ *Id.* at 11; Appendix L (A&M response to Data Request 1.0).

⁶⁸ *Id.* at 14.

- twenty- four COPT lines for the purpose of soliciting new business for a new telemarketing venture.⁶⁹
18. Freeman also said that ADADs attached to the COPT lines operated by Calnev and 1st Capital were used to market the services of 1st Capital.⁷⁰
 19. In 2007, Freeman provided technical support to Respondents, including settling parties, acting as the liaison between the software and hardware equipment manufacturer for the ADADs.⁷¹
 20. The ADADs Respondents used to place calls over their COPT lines disseminated a prerecorded message. A live person was not made available during any of those calls.⁷²
 21. Freeman prepared and installed the “telemarketing message” that was played on the ADADs connected to all Respondents’ COPT lines.⁷³
 22. Jose and Barbara Quezada, Cavallaro of A&M, and John and Norma Tomlinson of TNT Financial provided Freeman with toll-free numbers of businesses found in 8xx directories, to program into the ADAD equipment.⁷⁴
 23. Freeman programmed the toll free numbers into the ADADs that were used to place calls over CSGI’s, A&M’s, and settling parties’ COPT lines.⁷⁵
 24. Respondents did not have prior business relationships with the subscribers of the telephone numbers that were called

⁶⁹ *Id.*, Appendix K (Freeman response to Data Request 1.0).

⁷⁰ *Id.*, Appendix K (Freeman response to Data Request 2.0).

⁷¹ *Id.* at 21.

⁷² *Id.* at 21, 23; Appendix K (Freeman response to Data Request 1.0).

⁷³ *Ibid.*

⁷⁴ Staff Report at 21.

⁷⁵ *Ibid.*

- from Respondents' COPT lines through the use of ADADs.⁷⁶
25. Subscribers of the telephone numbers that were called from Respondents' COPT lines through the use of ADADs did not request such calls to be placed.⁷⁷
 26. Subscribers of the telephone numbers that were called from Respondents COPT lines through the use of ADADs did not consent to such calls pursuant to a prior agreement with Respondents.⁷⁸
 27. Respondents CSGI and A&M had the ADADs initially programmed to run almost 24 hours a day, Monday through Friday.⁷⁹
 28. Respondents did not receive approval to connect ADADs to their COPT lines from any telephone corporation within whose service area ADAD telephone calls were placed.⁸⁰
 29. After Respondents learned in January 2008 that G-Five was going to withhold DAC payments and report them to the Commission, Freeman contacted the FCC and was informed their use of ADADs was illegal.⁸¹
 30. After Freeman informed the other Respondents about their illegal use of ADADs, they each disconnected the COPT lines, got rid of the equipment, and disposed of all related papers and files.⁸²

⁷⁶ *Ibid.*

⁷⁷ *Ibid.*

⁷⁸ *Ibid.*

⁷⁹ Staff Report, Appendix K (Freeman response to Data Request 1.0).

⁸⁰ *Id.* at Appendix K, Appendix L.

⁸¹ *Id.* at 22, Appendix K (Freeman response to Data Request 1.0).

⁸² *Ibid.*

We conclude that based on the foregoing facts, that Respondents CSGI, A&M, Calnev, 1st Capital, Freeman, and Cavallaro have committed multiple violations of §§2871-2875.5, and appropriate remedies should be considered.

5. Penalties, Refunds, and Other Remedies for Violations

The Commission has “full jurisdiction, control, and regulation” over ADAD operators, including COPT providers.⁸³ As noted previously, §§ 2871-2875.5 prohibit attachment of an ADAD prior to making an application to the telephone corporation in whose service area the calls will originate, and set forth explicit restrictions for use of ADADs. These restrictions include a requirement of consent by the call recipient, a live announcement of the call, and a limit to hours of operation.

In today’s decision, the Commission determined that the non-settling Respondents repeatedly violated §§ 2871 *et seq.* over a period of many months. Section 2876 provides that any person violating these provisions is guilty of a civil offense and subject to a fine not to exceed \$500 per violation, and/or disconnection of telephone service to the ADAD. The Commission also anticipated additional remedies when it included orders for investigation into whether Calnev and 1st Capital should be required to refund any collected DAC and whether the other Respondents should have to forfeit the DAC currently held in escrow.

The non-settling Respondents have not met their burden of proof to show cause why the Commission should not penalize them and order restitution for violating § 2871 *et seq.* Therefore, we impose fines on Freeman and Cavallaro,

⁸³ § 2872(a).

order them to release their claims to the funds in escrow, prohibit them from operating COPTS or ADADs in the future, and conclude that refunds of the escrow funds are infeasible and order alternate distributions as described below.

5.1. The Parties' Positions

Non-settling Respondents offered to release their interest in the DAC funds held in escrow, although they contend that some portion of those funds in third quarter of 2007 (3Q07) arose from hand-dialed telephone calls that generated legal DAC revenue. They further argue that no additional fines or penalties are warranted because no real harm was done, they were small businesses and ignorant of the law, they intended a legitimate business rather than fraud, the Commission or one of the private vendors they dealt with should have warned them about ADAD laws, the businesses are now closed, both Freeman and Cavallaro are suffering financial hardship, Freeman has serious health problems and filed for permanent disability, and Freeman offered a new argument that any potential fines related to Calnev and 1st Capital were discharged in a 2005 bankruptcy.⁸⁴ They both also argue that CPSD ignored their claims and failed to investigate them.

CPSD instead relies on the undisputed facts regarding non-settling Respondents' activities to argue that not only did they initiate a scheme to collect DAC, they knew or should have known that using payphones, with or without an ADAD, to generate DAC from unsuspecting owners of toll-free numbers was

⁸⁴ This argument is irrelevant. Freeman does not claim that he included the Commission as a creditor in the bankruptcy case(s) and the illegal activity was unknown to the Commission at the time of the bankruptcy in 2005. Moreover, 11 U.S.C. § 523 provides that a debt which is a fine, penalty, or forfeiture payable to and for the benefit of a government agency is non-dischargeable in a chapter 7 bankruptcy.

illegal. CPSD points to the large volume of calls and more than \$155,000 in DAC generated to assert that the scheme defrauded the owners of the toll-free lines because the calls were made to generate DAC, rather than utilize the businesses paying the DAC.

CPSD recommended that Freeman and his companies be fined a total of \$40,354.02, and Cavallaro and A&M be fined a total of \$4,387.55, based on a balance of factors. CPSD also asked that the non-settling Respondents be ordered to relinquish all claims to the DAC funds held in escrow. The amounts to be returned are so small that CPSD contends refunds are administratively infeasible. In the alternative, CPSD recommends that 50% of the funds be transferred to the State's General Fund and 50% be placed in a consumer program, the Telecommunications Consumer Education Fund.

5.2. The Commission's Options

The Commission has said that a package of sanctions, including fines, should be tailored to the unique facts of each case.⁸⁵ "The Commission will review facts which tend to mitigate the degree of wrongdoing as well as any facts which exacerbate the wrongdoing. In all cases, the harm will be evaluated from the perspective of the public interest."⁸⁶

5.2.1. Fines

If a fine is imposed, it should be set at a level which effectively deters further unlawful conduct. CPSD argued that in order to avoid exorbitant fines based on a mechanical application of the \$500 maximum per violation authorized by § 2876, the Commission should apply a balancing formula when weighing the

⁸⁵ D.98-12-075 (1998), 84 CPUC 2d 155, 184.

⁸⁶ *Ibid.*

large number of continuing violations. In D.01-04-035, the Commission first applied its established criteria for imposition of fines to violations of telecommunications law. The Commission has since applied the criteria to other violations of telecommunications law and we apply them here, even though non-settling Respondents are not “public utilities,” because the same principles of fairness and appropriate deterrence apply.

First, we look at the severity of the offense, typically measured by the amount wrongfully obtained. Non-settling Respondents caused economic harm to over 200,000 toll-free number subscribers who incurred charges in 2007-2008 for illegal calls made not to utilize their businesses, but to generate \$0.494 per subscriber call. Additional economic harm was done in 2002-2005 for illegal calls to over 130,000 toll-free number subscribers (albeit at a lower DAC rate). Excluding amounts attributed only to settling Respondents, in this case the total amounts would be \$53,247.21 already disbursed, and another \$92,645.75 held in escrow by G-Five, for a total of \$145,892.96 in illegally generated DAC.⁸⁷

Second, the conduct of the non-settling Respondents is considered. Here, they each failed to prevent, detect, disclose, or rectify the illegal use of ADADs and collection of unauthorized DAC until the aggregator declined to forward the DAC and told them their activities would be reported to the Commission. Indeed, we find that based on the undisputed facts and Respondents’ statements, collection of the DAC was the primary intended result for non-settling Respondents, despite an alleged additional use to promote a telemarketing business. In addition, ignorance of the law is no excuse and their continuing

⁸⁷ CPSD Opening Brief at 11, Table A at 11.

assertions that “someone” should have warned them, indicates none have embraced responsibility for assuring their own actions did not violate the law.

The claims by non-settling Respondents that they undertook “due diligence” and searched the web for rules before commencement of the ADAD activities, strain credulity. A simple internet search of “automatic dialer laws” results in a 2002 website listing the ADAD laws in various states.⁸⁸ Other logical searches clearly signal numerous laws limiting ADAD use.⁸⁹ Furthermore, Freeman had worked with telecommunications services before, knew the FCC and Commission had some jurisdiction over the industry, and failed to make a simple telephone call to either agency to check the facts until after G-Five withheld the funds. These first two factors weigh heavily against non-settling Respondents.

We also consider the financial resources of the non-settling Respondents. Freeman and Cavallaro stated that their businesses, CSGI, A&M, Calnev, and 1st Capital, are out of business.⁹⁰ Both individuals also claimed personal financial hardship. Both claim to have been out of work for some time, and Freeman stated his health problems will prevent him from acquiring work in the foreseeable future. Cavallaro stated he had been looking for work but believed that the availability of the OII on the internet had harmed his employment chances. We find these claims of financial distress to be at least somewhat

⁸⁸ E.g., www.donotcallprotection.com/do_not_call_chart.shtml.

⁸⁹ See, e.g., CPSD Opening Brief at 13.

⁹⁰ CSGI registered as a Nevada corporation in 2006 and had its status revoked due to failure to pay registration fees. Freeman’s other companies, Calnev Communications and 1st Capital, were both registered as California corporations in 2002 but have been suspended by the Secretary of State.

credible, despite the lack of documentary evidence in support of either Respondents' financial condition. This factor weighs in favor of non-settling Respondents.

The next factor is the totality of the circumstances in furtherance of the public interest. The record in this proceeding shows a high volume of illegal calls made by the ADADs which is of substantial concern to the public. Most states have laws limiting the use of ADADs. Throughout the proceeding, CPSD argued that all of the Respondents engaged in fraud, a charge that all Respondents disputed by claiming they lacked intent to deceive and their plan included promotion of a new business. CPSD relied on the widespread illegal activity which unjustly enriched Respondents at the expense of toll-free number subscribers who automatically paid the DAC for each improper call. They also emphasized the actions taken by all Respondents to promptly get rid of all the equipment and destroy all relevant records of their operations when informed in early 2008 of the legal problems.

We agree with CPSD that the illegal calling was widespread and the actions of the Respondents in disposing of all their records and equipment looks more like destruction of evidence than acts motivated by overwhelming guilt, as asserted by Freeman. However, CPSD did not establish or argue the particular elements of actual or constructive fraud set forth in Civil Code §§ 1572-1573. Therefore, we make no such finding in this decision. Regardless of that result, we find that considering all of the circumstances, the ADAD operations were serious offenses, and if no investigation had occurred, the violations would likely have continued unabated. The public interest requires strong deterrence of future schemes of this type. Therefore, this factor favors a significant penalty for non-settling Respondents.

The final factor is the role of precedent, but the only previous ADAD case did not involve attachment to payphones to improperly generate a high volume of DAC revenue, thus, the penalty is not comparable. Application of the maximum \$500 per violation to the more than 300,000 illegal ADAD calls would result in unreasonably high penalties.⁹¹ CPSD offered a penalty methodology where the call volumes are multiplied by a “reasonable” 15% penalty factor, or \$0.0741 per call for illegal calls made in 2007-2008. For calls made in 2002-2005, CPSD used a 15% penalty factor of \$0.036 per call based on the old DAC rate of \$0.24 per call. No basis is provided for reasonableness of the 15% applied.

We agree with CPSD’s approach to the penalty calculations but apply a lower penalty factor primarily due to the very distressed financial condition of Freeman and Cavallaro, but also their release of all claims to the DAC in escrow, and the fact they will be barred from future leasing of COPTs.

Freeman was clearly the initiator and coordinator of all of the illegal ADAD calls made in 2007-2008 by the payphone lines operated jointly or individually by CSGI. He admits this and said he took “full responsibility” for the actions of the other Respondents. Further, his share of the illegally generated DAC is much higher than that of the other Respondents. Freeman’s activities in 2002-2005 are slightly less clear. Although Freeman claimed he was “duped” in 2002-2005 and did not control the ADADs, he and his companies were clearly integral to that earlier operation and they received the DAC, regardless of whether he had an agreement to pay out some or most of the revenue to another person. We have considered the possibility that he was initially used by another

⁹¹ Staff Report, Appendix G (AT&T switch records for Respondents’ COPT lines).

individual and do not order restitution of all of the DAC funds distributed to Freeman through Calnev and 1st Capital. However, based on his deep involvement in both periods of illegal activity, it is still appropriate that Freeman have a significantly larger penalty.

The table below illustrates the call volumes, the penalties proposed by CPSD, and the total statutory penalties resulting from a 5% penalty factor which we impose in this Decision.

TABLE B: Statutory Penalty Calculations

Respondent	Weight	Call Volume	CPSD Proposed Penalty (15% factor)	Decision Penalty (5% factor)	Decision Penalty Dollars
Freeman					
CSGI	100%	112,175	\$ 8,312.17	\$0.0247	\$ 2,770.72
CSGI/Intella	33%	193,987	\$ 4,786.69	\$0.0247	\$ 1,595.56
A&M	50%	118,417	\$ 4,387.35	\$0.0247	\$ 1,462.45
CSGI/LSI	50%	79,064	\$ 2,929.32	\$0.0247	\$ 976.44
Calnev & 1 st Capital	100%	553,847	\$19,938.49	\$0.012	\$ 6,646.16
Total Freeman			\$40,354.02		\$13,451.33
Cavallaro (A&M)	50%	118,417	\$ 4,387.35	\$0.0247	\$ 1,462.45
Total Freeman & Cavallaro					\$14,913.78

Accordingly, Freeman shall pay a fine of \$13,451.33, and Cavallaro shall pay a fine of \$1,462.45, to the General Fund of the State of California. The General Counsel shall take all reasonable steps necessary to locate any assets owned by these Respondents, and to obtain and enforce a judgment based on this decision.

5.2.2. Refunds and Other Remedies

All of the DAC funds collected and held in escrow by G-Five are unreasonable and excessive because they were generated by illegal use of ADADs without the knowledge of the toll-free number subscribers who pay the

DAC. In the approved Settlement Agreements, Respondents Intella, TNT, and Jose and Barbara Quezada have each agreed to “release and/or relinquish any of their claims and/or rights to all of these funds.” The non-settling Respondents have also offered to similarly release their claims to the DAC funds in escrow, but want the funds applied to any fines imposed against them. This is not an appropriate use of the DAC funds.

In the Rebuttal Testimony, Freeman and Cavallaro first asserted a right to an unspecified portion of the DAC funds held in escrow on the grounds that each made some 3Q07 calls by hand, generating DAC which they argued is not prohibited by the ADAD statutes. Their statements were unsupported by other evidence, but it is possible that some hand-made calls were made in 3Q07 before call volumes skyrocketed as a result of the ADAD use. However, we disagree that any of the DAC funds now in escrow arose from non-ADAD calls.

A review of the generated DAC (as set forth in Appendix H of the Staff Report) shows that in 3Q07, \$823.50 was generated and paid to CSGI and \$211.93 was generated and paid to A&M. These amounts are only about one percent (1%) of the DAC generated in 2007-2008 for these Respondents, and the funds have already been distributed to the Respondents. Therefore, it is reasonable to conclude that the DAC funds remaining in escrow arose from illegal ADAD calls and non-settling Respondents must release all of their claims and/or rights to all of the held funds.

The Commission could order the \$103,193.64 held by G-Five to be refunded to the owners of the toll-free numbers called. Pursuant to § 701 and § 734, the Commission may order a public utility to make “due reparation” for any “unreasonable, excessive, or discriminatory” charge collected by a public utility. CPSD concedes that Freeman and Cavallaro are not technically “public

utilities,” but argue that the Commission’s jurisdiction over COPTS and ADADs provides authority to order refunds where it is in the public interest. We agree.

The Commission has previously exercised its authority over COPT providers, for example, where it adopted consumer safeguards applicable to all payphones including a requirement that refunds be offered.⁹² In addition, the Commission has “full jurisdiction, control, and regulation” of ADAD operators pursuant to § 2871. Therefore, following the intent of § 734 to protect consumers, we find that the Commission’s power extends to ordering refunds of DAC illegally generated by COPT providers who use ADADs in violation of §§ 2871 *et seq.* To find otherwise, would undercut the regulatory authority of the Commission in this area and result in unjust enrichment of the Respondents or their billing aggregator.

If the Commission ordered refunds, G-Five would have to reverse all payments received from the dozens of carriers and then direct the carriers to credit DAC back to each of their customers who had a toll-free line billed for DAC. CPSD contends that this option is not financially feasible because of the administrative costs associated with refunding hundreds of thousands of small amounts (\$0.494/call). We agree that the administrative costs would likely exceed the amount held in escrow, and when combined with the lack of oversight, renders this option infeasible.

Unclaimed refunds are generally required by law to escheat to the State.⁹³ However, if the refunds are impractical, the Commission has statutory authority

⁹² D.94-09-065 (1994) 56 CPUC 2d 117, 216, citing D.90-06-018 (1990) 36 CPUC2d 446.

⁹³ Code of Civ. Proc. § 1519.5.

to order an equitable remedy.⁹⁴ There are several examples of the Commission's use of its broad authority to fashion a reasonable alternative where funds were distributed to public purpose programs as a result of an enforcement action.⁹⁵ In other cases where it was not practical or possible to make a direct distribution to a class, the Commission has relied on the equitable remedy of "*cy pres*" and the funds are used for purposes other than direct compensation to the injured class.⁹⁶

CPSD asked that the Commission adopt a *cy pres* remedy for the escrow funds to be disbursed, and suggested distribution to a consumer education fund. In D.09-10-008, the Commission considered alternative uses of undeliverable reparations funds in connection with widespread improper marketing practices and approved distribution of the funds to the Telecommunications Consumer Protection Fund (TCPF) which provided consumer education. "Were we to decline to authorize distribution of the [funds] to the TCPF, we are unsure what use lawfully could be made of the monies."⁹⁷

The TCPF, operated by the California Consumer Protection Foundation (CCPF) is now closed. However, the CCPF created the Telecommunications Consumer Education Fund as a replacement. It has similar funding guidelines

⁹⁴ *Ibid.*

⁹⁵ *See, e.g.*, D.09-07-018 (Settlement with San Diego Gas & Electric Company over alleged rule violations resulted in donations to non-profit groups).

⁹⁶ *See, e.g.*, D.00-04-027 (Commission approved creation of consumer education trust in settlement of slamming charges where customers could not be located); D.98-12-084 (1998) 84 CPUC2d 517 (Commission approved creation of Telecommunications Consumer Protection Fund pursuant to a settlement with GTE California relating to abusive marketing practices); D.97-03-067 (1997) (Commission approved creation of a Community Technology Fund to address universal service goals).

⁹⁷ D.09-10-008 at 15.

and will award grants to support the efforts of non-profit, community-based organizations in California to educate consumers on their rights, and to advance policies that protect the rights of consumers, with regard to their use of wireless telecom services. CPSD suggests the Commission order half of the escrow funds be distributed to the TCEF because it is a telecommunications-related fund focused on educating consumers about telecom services.⁹⁸

We conclude that 50% of the funds in escrow shall be distributed to the State's General Fund, and 50% of the funds should be distributed to the TCEF as an equitable result that will benefit California consumers of telecom services.

6. Comments on Proposed Decision

The proposed decision of the ALJ in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure.

No comments were filed. During the time available to file comments on the Proposed Decision, Respondent Cavallaro filed a "Motion to Remove Personal Information From Public View and to Seal Records" in which he argues that businesses, business addresses, individual business owners, and individuals named in Commission proceedings should be presumptively confidential unless there is a direct linkage to criminal activity or significant harm affecting the public. Cavallaro contends that the OII omitted any claim that he or other named Respondents harmed the public and notes that it is his business, not him, that is named in the OII. Furthermore, he claims that D.10-10-020, adopted to delete his home address from the OII and Staff Report, should have been

⁹⁸ The Commission has already distributed the residual funds from the Cingular Wireless case to the TCEF.

construed to delete his individual name and address from all possible sources of public view on the Commission's website, including the proceeding service list.⁹⁹ He asks for "compassion" from the Commission to seal "the records of the proceeding" to avoid possible harm, embarrassment, and "future financial loss." He concedes the Final Decision can be public.

CPSD opposed the motion on two grounds, arguing: 1) Rule 13.14 precludes the filing of a motion in an OII after the record is submitted for decision, and 2) no legal duty or authority exists to seal a proceeding record to prevent harm to a respondent's "financial and emotional" well being. We disagree with CPSD that Rule 13.14 precludes Cavallaro from filing his motion to seal proceeding records. Rule 13.14 identifies when a proceeding has been submitted for decision and provides criteria for a motion to set aside submission to take additional evidence. Instead, Rule 11.1 applies. It provides that a motion may be made at any time during the pendency of a proceeding. Cavallaro's motion is not to reopen the record to take evidence, but instead to seal the record. Thus, once Cavallaro complied with the requirements for filing and service, the motion was timely.

However, we agree with CPSD that the motion lacks legal basis. Cavallaro's motion is comprised of speculation and argument, without any supporting citations. Rule 11.1 requires any motion filed to "concisely state the facts and law supporting the motion." Cavallaro's motion does neither. CPSD

⁹⁹ Cavallaro installed COPTs at both a home and business address. CPSD was unaware that one address was his home and inadvertently included it in the Staff Report and OII when discussing Cavallaro's control over the payphones which generated illegal DAC by use of ADADs. D.10-10-020 removed the disclosure of his home address from the OII and Staff Report.

points out that although the OII named A&M Communications, not Cavallaro individually, the OII also included the owners of named businesses and Cavallaro is co-owner of A&M Communications along with Freeman. Naming an owner of a business charged with violations of the law is the Commission's practice and duty, and Cavallaro has not made the case for different treatment.¹⁰⁰ In fact, Cavallaro admitted that he illegally operated his payphones with ADADs to generate DAC, thus the location of the payphones is arguably of public interest. However, in D.10-10-020, the Commission explicitly permitted deletion of the traditionally confidential home address from the OII and Staff Report based on his claims of interference with employment.

Cavallaro also filed a reply to CPSD in which he attempts to invoke either General Order (GO) 66-C or Pub. Utils. Code § 583 as a basis to seal the proceeding records, and re-iterates his argument that the Commission lacks jurisdiction over him and his company because they are not "public utilities." This latter argument has been addressed in the body of the decision and is of no merit.¹⁰¹ Additionally, neither § 583 and GO 66-C assist Cavallaro in his arguments. Section 583 limits public inspection of proprietary information reported by utilities to the Commission unless required by other statutes or if submitted within a Commission proceeding. Section 583 does not create a privilege of nondisclosure nor designate any specific types of information as confidential. GO 66-C defines public records and sets forth procedures for the

¹⁰⁰ For examples of OIIs that named businesses and their owners, see, e.g., I.02-02-005 and I.04-07-005.

¹⁰¹ The Commission has jurisdiction over those who violate Pub. Utils. Code provisions regulating use of ADADs.

public to make requests for disclosure of those public records by the Commission. For Cavallaro to justify non-disclosure of documents in the record, he must expressly identify other parts of the law to support confidentiality.¹⁰² This he did not do.

The Commission's proceedings are open to the public, as are documents filed therein, unless placed under seal by Commission order based on weightier public concerns. Respondent failed to meet his burden of proof and his motion to seal the record of the proceeding is denied.

7. Assignment of Proceeding

Nancy E. Ryan is the assigned Commissioner and Melanie M. Darling is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. The Federal Communications Commission has a compensation plan, known as DAC which compensates all payphone service providers (PSPs) \$.494 for every toll free call completed on a payphone line.
2. G-Five provides DAC services for PSPs, which means that G-Five collects monies from carriers and remits monies to PSPs when end user customers call toll free numbers from the PSP's payphone line.
3. G-Five handled the DAC services for Respondents during 2007-2008. In 2007, G-Five purchased Private Payphone Owners Network (PPON), a competitor, which handled the DAC in 2002-2005 for Calnev and 1st Capital.
4. CPSD's investigation of Respondents was initiated by an informal complaint filed by G-Five concerning unusual call activity with respect to DAC generated by Respondents' COPTs.

¹⁰² *In re Southern California Edison Co.*, D.91-12-019, 42 CPUC2d 298, 301.

5. An average normal payphone generates anywhere from \$40 to \$50 of DAC per quarter.

6. Respondents CSGI, A&M, and settling Respondents were averaging combined DAC in the 4th Quarter 2007 ranging from \$1,500 to \$5,651 per COPT line.

7. Freeman learned about how DAC worked for PSPs prior to ordering the COPT lines for CALNEV, 1st Capital, and CSGI.

8. At all relevant times, Freeman owned and operated Respondents Calnev, 1st Capital, and CSGI, and was co-owner of A&M.

9. Prior to 2007, Freeman had experience in the telephone business and had knowledge of the Commission's oversight of carriers.

10. Calnev ordered 200 COPT lines from SBC and operated some or all of them in California between January 2002 and December 2005. At least 553,847 toll free calls were placed from the Calnev COPT lines. G-Five's available records from PPOB showed it disbursed to Calnev \$47,274.51 in DAC revenue from 59 of those 200 lines.

11. 1st Capital ordered four COPT lines from SBC and operated them in California between the years 2002-2004. G-Five's records available from PPOB showed it disbursed to 1st Capital \$438.48 in DAC from these four lines.

12. In 2007, Freeman ordered a single COPT line at first, collected some DAC, and then helped the other Respondents order their lines for them.

13. CSGI eventually ordered twelve COPT lines from SBC/AT&T and operated them between April 13, 2007 and March 5, 2008. Two lines, registered solely to CSGI, were located at CSGI's business address in San Jose, CA. Of the remaining 10 lines, CSGI co-registered 8 lines with Intella II and placed them at

Intella's San Diego, CA business address. CSGI also co-registered 2 lines with Jose and Barbara Quezada and placed them at their San Jose, CA address.

14. The 12 CSGI/Intella II/ Jose and Barbara Quezada COPT lines placed 385,326 calls to toll-free numbers. These calls generated \$73,138.12 in DAC; of this amount \$67,815.83 (plus any accrued interest) is currently held in an escrow account by G-Five.

15. A&M is an informal partnership between Freeman and Cavallaro. A&M ordered seven COPT lines from SBC/AT&T and operated them between July 2007 and April 25, 2008. Four lines were located at an A&M business address in Santa Clara, CA and three lines were located at Cavallaro's personal address in Menlo Park.

16. The seven A&M COPT lines placed 118,417 calls to toll-free numbers. These calls generated \$25,041.85 in DAC revenue, of which \$24,829.92 (plus any accrued interest) is currently held in an escrow account by G-Five.

17. On behalf of all Respondents operating in 2007-2008, Freeman admitted stated that ADADs were used to dial 1-8xxxxx-xxxx numbers from these Respondents' twenty-four COPT lines for the purpose of soliciting new business for a new telemarketing venture.

18. ADADs attached to the COPT lines operated by Calnev and 1st Capital were also used to market the services of 1st Capital.

19. In 2007, Freeman provided technical support to Respondents, including settling parties, acting as the liaison between the software and hardware equipment manufacturer for the ADADs.

20. The ADADs Respondents used to place calls over their COPT lines disseminated a prerecorded message. A live person was not made available during any of those calls.

21. Freeman prepared and installed the “telemarketing message” that was played on the ADADs connected to all Respondents’ COPT lines.

22. Jose and Barbara Quezada, Cavallaro of A&M, and John and Norma Tomlinson of TNT Financial provided Freeman with toll-free numbers of businesses found in 8xx directories, to program into the ADAD equipment.

23. Freeman programmed the toll free numbers into the ADADs that were used to place calls over CSGI’s, A&M’s, and settling parties’ COPT lines.

24. Respondents did not have prior business relationships with the subscribers of the telephone numbers that were called from Respondents’ COPT lines through the use of ADADs.

25. Subscribers of the telephone numbers that were called from Respondents’ COPT lines through the use of ADADs did not request such calls to be placed.

26. Subscribers of the telephone numbers that were called from Respondents COPT lines through the use of ADADs did not consent to such calls pursuant to a prior agreement with Respondents.

27. Respondents CSGI and A&M had the ADADs initially programmed to run almost 24 hours a day, Monday through Friday.

28. Respondents did not receive approval to connect ADADs to their COPT lines from any telephone corporation within whose service area telephone calls through the use of ADADs were placed.

29. After Respondents learned in January 2008 that G-Five was going to withhold DAC payments and report them to the Commission, Freeman contacted the FCC and was informed their use of ADADs was illegal.

30. After Freeman informed the other Respondents about their illegal use of ADADs, they each disconnected the COPT lines, got rid of the equipment, and disposed of all related papers and files.

31. Freeman should receive a higher fine than other Respondents due to his leadership of the illegal activities.

32. Freeman is unemployed, financially distressed, and has serious health problems which may lead to permanent disability.

33. Cavallaro is unemployed and financially distressed.

34. All issues in this proceeding regarding TNT, Intella, and Limo Services are encompassed by, and resolved in, the Settlement Agreements with CPSD.

35. The Settlement Agreements convey to the Commission sufficient information to permit it to discharge its future regulatory obligations with respect to the parties and their interests.

36. The Settlement Agreements between CPSD and TNT, Intella, and Barbara and Jose Quezada are reasonable in the light of the whole record, consistent with the law, and in the public interest.

37. It is financially infeasible for G-Five to administer the refund of the \$0.494 DAC to each of the hundreds of thousands of toll-free subscribers through the dozens of carriers.

Conclusions of Law

1. CSGI, A&M, Freeman, and Cavallaro each committed multiple violations of §§ 2871-2875.5 in 2007 and 2008 by placing hundreds of thousands of non-consensual telephone calls on their COPTS by use of ADADs programmed with a pre-recorded message.

2. CSGI, A&M, Freeman, and Cavallaro have not met their burden of proof to show cause why the Commission should not penalize them for the violations of §§ 2871-2875.5.

3. Calnev, 1st Capital, and Freeman committed multiple violations of §§ 2871-2875.5 in 2002-2005 by placing hundreds of thousands of non-consensual

telephone calls on their COPTS by use of ADADs programmed with a pre-recorded message.

4. Calnev, 1st Capital, and Freeman have not met their burden of proof to show cause why the Commission should not penalize them for the violations of §§ 2871-2875.5.

5. To avoid excessive fines derived from a mechanical application of the statutory maximum of \$500 per violation, fines calculated pursuant to § 2876 may be determined by use of the criteria set forth in D.01-04-035.

6. Freeman should pay a fine of \$13,451.33, release and/or relinquish any of his or his companies' claims or rights to the DAC funds held in escrow by G-Five, should immediately discontinue any use of ADADs, and should be barred from future operation of COPTs.

7. Cavallaro should pay a fine of \$1,462.45, release and/or relinquish any of his or A&M's claims or rights to the DAC funds held in escrow by G-Five, should immediately discontinue any use of ADADs, and should be barred from future operation of COPTs.

8. The Settlement Agreements fully resolve and settle all disputed issues among CPSD, TNT, Intella, and Limo Services concerning the issues raised in the OII, including substitution of Barbara and Jose Quezada for Limo Services as Respondents.

9. The Settlement Agreements are reasonable in light of the whole record, consistent with law, and in the public interest and, therefore, should be approved.

10. CPSD's Motion for Summary Adjudication should be granted because there is no disputed material fact as to any non-settling Respondent's violation of §§ 2871-2875.5.

11. Where the refund of illegally generated Dial Around Compensation is administratively infeasible, the Commission has equitable authority to make an alternate distribution through application of *cy pres* which will benefit telephone consumers.

12. This decision should be effective today so that the Settlement Agreements may be implemented expeditiously and the DAC funds recovered promptly.

13. I.10-02-004 should be closed.

O R D E R

IT IS ORDERED that:

1. The Motion for Summary Adjudication as to the Facts Regarding Liability filed on July 14, 2010 by the Commission's Consumer Protection and Safety Division is granted.

2. The Joint Motion filed by Limo Services, Inc. and the Consumer Protection and Safety Division to dismiss Limo Services, Inc. and to substitute Barbara and Jose Quezada as Respondents is granted.

3. The Settlement Agreement between the Consumer Protection and Safety Division and TNT Financial Services as set forth in Attachment A to the Joint Motion for Approval of Settlement Agreement filed July 14, 2010 is approved.

4. The Settlement Agreement between the Consumer Protection and Safety Division and Intella II, Inc. as set forth in Attachment B to the Joint Motion for Approval of Settlement filed July 14, 2010 is approved.

5. The Settlement Agreement between the Consumer Protection and Safety Division and Limo Services, Barbara Quezada and Jose Quezada as set forth in

Attachment A to the Joint Motion for Approval of Settlement filed July 21, 2010 is approved.

6. Alterber Tekulsky Freeman shall pay a fine of \$13,451.33, release and/or relinquish any of his or his companies' claims or rights to the Dial-Around Compensation funds held in escrow by G-Five LLC, will immediately discontinue any use of Automatic Dialing- Announcing Devices, and shall be barred from future operation of Customer Owned Pay Telephones.

7. Cavallaro shall pay a fine of \$1,462.45, release and/or relinquish any of his or A&M Communications' claims or rights to the Dial Around Compensation funds held in escrow by G-Five LLC, will immediately discontinue any use of Automatic Dialing-Announcing Devices, and shall be barred from future operation of Customer Owned Pay Telephones.

8. Within 120 days of the effective date of this decision, Alterber Tekulsky Freeman shall submit \$13,451.33 to the State of California General Fund. Proof of payment shall be filed and served on the service list and shall be provided to the Executive Director of the California Public Utilities Commission within five days of payment.

9. Within 120 days of the effective date of this decision, Massimo Cavallaro shall submit \$1,462.45 to the State of California General Fund. Proof of payment shall be filed and served on the service list and shall be provided to the Executive Director of the California Public Utilities Commission within five days of payment.

10. All Respondents shall fully cooperate with the Commission in obtaining the release of the Dial Around Compensation funds from G-Five LLC.

11. The Consumer Protection and Safety Division shall take all necessary steps to assure that the \$103,193.64 in Dial Around Compensation generated by the

illegal activities of Respondents and held in escrow by G-Five LLC, is released to the Commission where \$51,596.82 (50%) shall be transferred to the State of California General Fund and \$51,596.82 (50%) shall be transferred to the Telecommunications Consumer Education Fund operated by the California Consumer Protection Foundation.

12. No hearings need to be held.

13. Respondent Cavallaro's "Motion to Remove Personal Information From Public View and to Seal Records" is denied.

14. Investigation 10-02-004 is closed.

This order is effective today.

Dated January 13, 2011, at San Francisco, California.

MICHAEL R. PEEVEY
President
TIMOTHY ALAN SIMON
NANCY E. RYAN
Commissioners

**ATTACHMENT A
Exhibit List**

Consumer Protection and Safety Division's Exhibits:

Exhibit	Description	Submission date
CPSD-1	Testimony of Kenneth Bruno	11/10/10
CPSD-1A	CPSD Staff Report	11/10/10
CPSD-2	Reply Testimony of Kenneth Bruno	11/10/10

Respondents' Exhibits:

Resp-1	Email from A. Freeman 8/18/10	11/10/10
Resp-2	Email from M. Cavallaro 8/19/10	11/10/10
Resp-3	Joint Rebuttal Testimony of A. Freeman and M. Cavallaro	11/10/10

(END OF ATTACHMENT A)

