

Decision 11-06-005 June 9, 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 PETITION FOR MODIFICATION OF
DECISION 11-01-017 BY CONSUMER PROTECTION AND SAFETY DIVISION**

1. Summary

On January 13, 2011, the Commission approved Decision (D.) 11-01-017 which approved Settlement Agreements with three Respondents, found all other Respondents liable for violation of Pub. Util. Code §§ 2871-2875.5, and resolved all other issues regarding the non-settling Respondents. The decision required all Respondents to relinquish any and all claims or rights to the Dial-Around Compensation (DAC) funds held in escrow by G-Five, LLC (G-Five), the call aggregator for the Respondents' Customer-Owned Pay Telephones.

Prior to D.11-01-017 being issued, Consumer Protection and Safety Division (CPSD) was unaware that G-Five had incurred any costs in assisting CPSD with its analysis of Respondents' call records and administering the bank account set up to hold the illegally generated DAC. After D.11-01-017 was issued, G-Five notified CPSD that it intended to seek reimbursement of these costs, particularly compensation for time spent related to its efforts. CPSD supports this claim and submitted a declaration from G-Five's owner that explains the claimed costs. On February 22, 2011, CPSD filed this Petition for Modification of D.11-01-017. The petition asks the Commission to allow G-Five to deduct \$3,900.00 in claimed expenses. There were no disputed issues of material fact and no hearing was held.

Based on the written record, we grant the petition on the grounds that it is reasonably justified and in the public interest. The effect of the modification is to make appropriate changes to D.11-01-017 to permit G-Five to deduct \$3,900.00 in approved expenses from the amount that G-Five is to turn over to the Commission.

2. Background

The Commission opened this investigation into the operations, practices, and conduct of named Respondents to determine whether they 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 what remedies should be applied.

CPSD's initial inquiry was prompted by an informal complaint from G-Five, LLC (G-Five), a billing aggregator, which reported that Respondents had generated abnormally high volumes of toll-free number calling from their COPTs. G-Five initially provided CPSD with 2007-08 call detail records for the

24 COPT lines registered to certain Respondents. G-Five later provided CPSD with records covering call activities from 2002 to 2005 by additional Respondents. The results of the CPSD inquiry led the Commission to institute this proceeding. At that time, G-Five held \$103,193.64 in DAC funds¹ generated by Respondents' COPTs, which it decided to place in an "escrow"² account pending a Commission order. Robert Berg is the owner of G-Five.

CPSD reached a settlement with three Respondents: Intella II, Inc., TNT Financial Services, and Limo Services, Inc. In D.11-01-017, the Commission approved these uncontested settlements in which the settling Respondents conceded they had violated Pub. Util. Code §§ 2871-2875.5, by unlawfully connecting and operating ADADs to COPTs, resulting in illegal generation of DAC.

The non-settling Respondents also conceded that each had violated Pub. Util. Code §§ 2871-2875.5, by unlawfully connecting and operating ADADs to COPTs, resulting in illegal generation of DAC. On July 15, 2010, CPSD filed a Motion for Summary Adjudication as to the Facts Regarding Liability and a Motion to Forego Hearings and Proceed to Briefing the Remaining Legal Issues. Because there were no disputed facts as to liability, 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.

In D.11-01-017, *inter alia*, the Commission granted CPSD's Motion for Summary Adjudication as to liability of the non-settling parties, imposed fines,

¹ DAC is a federally-mandated fee per call of \$0.494.

² Although G-Five described the account as an "escrow" account, it was established as merely a business checking account which did not generate any interest.

ordered the Respondents to release any and all rights to the DAC, and ordered CPSD to assure that the \$103,193.64 in DAC held by G-Five was released to the Commission for disbursement as set forth in the decision.³ Specifically, in Ordering Paragraph 11, the Commission directed CPSD to “take all necessary steps” to obtain release to the Commission of the \$103,193.64 in DAC funds illegally generated by Respondents that were held by G-Five. However, Berg notified the Commission that G-Five intended to make a claim for \$3,900.00 in administrative expenses. Berg said the expenses were related to analytical work by G-Five for the Commission and segregating the DAC in a bank account. Berg accordingly deducted that amount from the funds he turned over to the Commission.

3. Petition for Modification

On February 22, 2011, CPSD filed this petition to make changes to D.11-01-017 in order to approve the request for administrative expenses made by Berg and G-Five. CPSD states it was unaware that G-Five intended to make such a claim until after the decision was issued.

In the petition, CPSD represents that G-Five provided adequate documentation to support its claim, but no such documentation was filed with the petition. In an April 1, 2011 ruling, Administrative Law Judge (ALJ) Melanie Darling ordered CPSD to provide a declaration from Berg that included documentation that an escrow account was established and that it held the

³ D.11-01-017 provided that 50% of the DAC shall be transferred to the State of California General Fund and 50% shall be transferred to the Telecommunications Consumer Education Fund operated by the California Consumer Protection Foundation.

disputed DAC funds and all accrued interest. The documentation was also to provide a description of G-Five's activities and the basis for any hourly rates claimed. The ALJ also ordered Berg to be added to the service list of the proceeding.

On April 15, 2011, CPSD moved to submit the requested declaration of Berg and supporting documentation for his claim. The ALJ subsequently granted the motion.

4. Discussion

The petition was timely filed because, pursuant to Rule 16.4(d) of the Commission's Rules of Practice and Procedure (Rules), a petition should be filed within one year of the effective date of the decision proposed to be modified. This petition was filed approximately six weeks after D.11-01-017 was issued.

Rule 16.4 authorizes filing a petition for modification to make changes to an issued decision. It must "concisely state the justification for relief and must propose specific wording to carry out the requested modifications." It also provides that allegations of new or changed facts must be supported by a declaration.

CPSD rests its petition on the "new" fact that G-Five and Berg have asserted a post-decision claim for reimbursement of administrative expenses. CPSD said it was unaware, prior to issuance of the decision, that Berg intended to make any such claim.

CPSD has now submitted Berg's declaration. The claim he describes is for (1) original analysis of finding fraud in the dial-around data, (2) setting up an "IT analysis" with CPSD staff to separate suspected fraud, (3) "IT establishment of fraud tracking including prior periods," and (4) "Final IT reports" for the Commission. Berg did not identify any separate claim for reimbursement related

to the creation and maintenance of the “escrow” account. However, his declaration states such activity is included in the claim.

We agree that the documentation is sufficient to establish that Berg incurred these costs, that the costs are reasonable in amount, and that they are justified because they are reasonably related to administration of the bank account which retained the illegal DAC intact for eventual Commission disposition. In addition, the expenses arise from Berg’s actions which were in the public interest. He was instrumental in bringing this matter to the Commission’s attention and CPSD states he has been cooperative throughout the investigation. If not for Berg, CPSD claims the Commission likely would not have become aware of the Respondents’ illegal activities.⁴ We agree with CPSD that Berg’s actions were valuable to the Commission and that he has now provided documentation to support the claim. The expenses he and G-Five incurred while analyzing call records, running reports, assisting CPSD, and administering the bank account are reasonable, and it is in the public interest for him to be reimbursed.

Based on the foregoing, we find that the administrative costs claimed by Berg and G-Five are reasonable and justified, and their approval is in the public interest. Therefore, we approve the petition and authorize G-Five to retain \$3,900.00 in expenses.

5. Modifications Required

The petition includes proposed changes to Ordering Paragraph 11 to effectuate the recommended modification, as follows (changes in bold)

⁴ Petition at 4.

The Consumer Protection and Safety Division shall take all necessary steps to assure that the \$103,193.64 (**less \$3,900 in administrative expenses by G-Five**) 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 **\$49,646.82** (50%) shall be transferred to the State of California General Fund and **\$49,646.82** (50%) shall be transferred to the Telecommunications Consumer Education Fund operated by the California Consumer Protection Foundation.

We approve the proposed changes to Ordering Paragraph 11 of D.11-01-017.

6. Assignment of Proceeding

This proceeding was categorized as adjudicatory. The assigned Commissioner is Catherine J.K. Sandoval and the assigned Administrative Law Judge is Melanie M. Darling.

7. Waiver of Comment Period

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to § 311(g)(2) of the Pub. Util. Code and Rule 14.6(c)(2) of the Commission's Rules of Practice and Procedure, the otherwise applicable 30-day period for public review and comment is waived.

Findings of Fact

1. Robert Berg, owner of G-Five, LLC, has incurred \$3,900.00 in costs in connection with provision of analysis and call records to CPSD and in the administration of the bank account holding DAC funds illegally generated by the Respondents.

2. The claimed expenses are reasonable, and reimbursement as proposed in the petition is in the public interest.

Conclusion of Law

The Petition for Modification filed by CPSD should be approved.

ORDER

IT IS ORDERED that:

1. The Petition for Modification of Decision (D.) 11-01-017 filed by the Commission's Consumer Protection and Safety Division is approved. Ordering Paragraph 11 of D.11-01-017 shall be modified as follows (changes in bold).

The Consumer Protection and Safety Division shall take all necessary steps to assure that the \$103,193.64 (**less \$3,900 in administrative expenses by G-Five**) 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 **\$49,646.82** (50%) shall be transferred to the State of California General Fund and **\$49,646.82** (50%) shall be transferred to the Telecommunications Consumer Education Fund operated by the California Consumer Protection Foundation.

2. Investigation 10-02-004 is closed.

This order is effective today.

Dated June 9, 2011, at San Francisco, California.

MICHAEL R. PEEVEY
President
TIMOTHY ALAN SIMON
MICHEL PETER FLORIO
CATHERINE J.K. SANDOVAL
MARK J. FERRON
Commissioners