

**PUBLIC UTILITIES COMMISSION**505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298**FILED**11-20-13
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November 20, 2013

TO PARTIES OF RECORD IN INVESTIGATION 10-12-010

This proceeding was filed on December 16, 2010, and is assigned to Commissioner Catherine J.K. Sandoval and Administrative Law Judge (ALJ) Maribeth A. Bushey. This is the decision of the Presiding Officer, ALJ Bushey.

Any party to this adjudicatory proceeding may file and serve an Appeal of the Presiding Officer's Decision within 30 days of the date of issuance (i.e., the date of mailing) of this decision. In addition, any Commissioner may request review of the Presiding Officer's Decision by filing and serving a Request for Review within 30 days of the date of issuance.

Appeals and Requests for Review must set forth specifically the grounds on which the appellant or requestor believes the Presiding Officer's Decision to be unlawful or erroneous. The purpose of an Appeal or Request for Review is to alert the Commission to a potential error, so that the error may be corrected expeditiously by the Commission. Vague assertions as to the record or the law, without citation, may be accorded little weight.

Appeals and Requests for Review must be served on all parties and accompanied by a certificate of service. Any party may file and serve a Response to an Appeal or Request for Review no later than 15 days after the date the Appeal or Request for Review was filed. In cases of multiple Appeals or Requests for Review, the Response may be to all such filings and may be filed 15 days after the last such Appeal or Request for Review was filed. Replies to Responses are not permitted. (See, generally, Rule 14.4 of the Commission's Rules of Practice and Procedure at www.cpuc.ca.gov.)

If no Appeal or Request for Review is filed within 30 days of the date of issuance of the Presiding Officer's Decision, the decision shall become the decision of the Commission. In this event, the Commission will designate a decision number and advise the parties by letter that the Presiding Officer's Decision has become the Commission's decision.

/s/ TIMOTHY J. SULLIVAN for KVC
Karen V. Clopton, Chief
Administrative Law Judge

KVC:lil

Attachment

PRESIDING OFFICER'S DECISION (Mailed 11/20/2013)

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 Telseven, LLC, Calling 10 LLC dba California Calling 10, (U7015C), and Patrick Hines, an individual, to determine whether Telseven, Calling 10, and Patrick Hines have violated the laws, rules and regulations of this State in the provision of directory assistance services to California consumers.

Investigation 10-12-010
(Filed December 16, 2010)

(See Appendix A for a list of appearances.)

**PRESIDING OFFICER'S DECISION FINDING THAT RESPONDENTS PLACED
UNAUTHORIZED CHARGES ON CALIFORNIA TELEPHONE BILLS AND
CLOSING PROCEEDING**

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**PRESIDING OFFICER'S DECISION FINDING THAT RESPONDENTS
PLACED UNAUTHORIZED CHARGES ON CALIFORNIA
TELEPHONE BILLS AND CLOSING PROCEEDING**

1. Summary

This decision holds that all charges placed on California subscribers' telephone bills by Telseven, LLC, Calling 10 LLC dba California Calling 10,¹ and Patrick Hines (respondents) were not authorized by the subscriber, and orders respondents to pay reparations. Respondents are also ordered to pay a fine of \$19,760,000 to the General Fund of the State of California. This proceeding is closed.

2. Procedural History

The Commission on its own motion on December 16, 2010, instituted this enforcement investigation into the operations, practices, and conduct of Telseven, LLC (Telseven), Calling 10 LLC dba California Calling 10 (Calling 10), and Patrick Hines, to determine whether Telseven, Calling 10, and Patrick Hines have violated the laws, rules and regulations of this State in the provision of directory assistance services to California consumers.

On June 10, 2011, a Prehearing Conference was held adopting the schedule noted in the Scoping Ruling dated June 21, 2011. The Scoping Ruling also designated the assigned Administrative Law Judge (ALJ), Maribeth A. Bushey, as the Presiding Officer.

Evidentiary hearings were held in this proceeding on November 15, 16, and 17, 2011. At the conclusion of those hearings, the parties had not completed

¹ The operating authority of California Calling 10 was revoked by the Commission in Resolution T 17359 on April 19, 2012.

their evidentiary presentations. On April 5, 2012, the Presiding Officer ruled that four additional exhibits would be received into evidence and the record closed. The ruling also set a schedule for filing and serving opening briefs April 6, 2012, and reply briefs on May 4, 2012. With the filing of the reply briefs, the proceeding was to be submitted for consideration by the Commission.

On April 20, 2012, Telseven, LLC and Calling 10, LLC filed voluntary petitions for bankruptcy protection in the United States Bankruptcy Court for the Middle District of Florida. On September 17, 2012, the Bankruptcy Court granted the Commission's motion to lift the automatic stay and authorized the Commission to "take actions necessary and appropriate to adjudicate with finality the claims asserted against the [Teleseven and Calling 10]." The Court, however, prohibited the Commission from taking any steps to enforce any monetary judgment against the Telseven and Calling 10 other than through the bankruptcy proceeding or against parties other than Telseven and Calling 10.²

On November 28, 2012, the Presiding Officer granted the motion of counsel for Telseven, Calling 10, and Partick Hines to withdraw as counsel of record. Since that motion, respondents have not participated in this proceeding.

On March 28, 2013, the Commission's enforcement staff, known as the Consumer Protection and Safety Division when this proceeding began but now known as the Safety and Enforcement Division (SED), filed its motion to align this proceeding with a class action settlement in *Nwabueze v. AT&T California* (AT&T), Case No. CV 09-1529 SI. In its motion, SED stated that the class action

² Order Granting California Public Utilities Commission's Motion to Determine the Automatic Stay Inapplicable, or in the alternative, for Relief from the Automatic Stay, Case No.3:12-bk-02683-PMG (September 7, 2012).

settlement agreement provided for AT&T to pay restitution to the “the majority of consumers billed for unauthorized charges” in this proceeding.³ SED sought a Commission order finding that all charges placed on California bills by respondents were unauthorized, adding AT&T and Verizon California Inc. (Verizon) as respondents, and issuing an order to show cause why AT&T and Verizon should not be required to make full restitution to all customers of respondents.⁴ SED stated that the claims process provided in federal class action settlement was inadequate and that the Commission should order AT&T and Verizon to make direct restitution to each and every customer billed by respondents.

AT&T and Verizon responded in opposition to the SED’s motion on May 13, 2013.

On September 20, 2013, AT&T and Verizon filed and served status reports on their respective class action refund programs. AT&T’s status report showed that their refund program is just getting underway and that AT&T will have a more complete assessment by February 17, 2014. Verizon’s status report stated that amounts billed by respondents are not within the scope of that refund order. With the filing of the status reports, this matter was submitted for Commission consideration.

³ Safety and Enforcement Division March 28, 2013, motion at 2.

⁴ *Id.* at 18.

3. Evidence Presented

3.1. SED

SED presented largely undisputed evidence that respondents obtained control over approximately one million toll-free telephone numbers that had been previously assigned to other businesses.⁵ When telephone subscribers dialed these numbers the subscriber would hear the following message:

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

SED analyzed this message and concluded that it was misleading, and did not convey the true nature or full price of the service for the following reasons:

1. The subscriber is not informed that the number dialed is now out of service, that the original owner of the 800 number no longer uses it, or that the original owner (in some cases, the intended called party) is in no way connected with this marketing intercept.
2. The subscriber is not informed that telephone number being offered has no relation to the originally dialed number, and that the service being offered via the telephone number similarly has no relation to originally dialed number.

⁵ Hearing Exhibit 3 at 12; Hearing Transcript at 389.

3. The first sentence contains two elements that have no apparent relationship to one another: "For a charge of 4, 99" and "have a pen ready to write down our phone number."
4. There is no disclosure of the total charge to the consumer, which is not \$4.99, but typically about \$7.14.
5. The 10 15 15 8000 number is similar to the 800 number that the consumer was typically trying to dial.
6. The 10 15 15 800[0] number is repeated three times in the next five sentences, with further inducements to call the number.
7. "Rates exclude federal universal service fee and administrative recovery fee" could be understood to mean that no universal service fee or administrative recovery fee applies.

SED presented its own analysts as witnesses to support its conclusions, as well as six consumer witnesses who uniformly disavowed authorizing a charge of \$7.14 for directory assistance services.

3.2. Telseven and Calling 10

Telseven and Calling 10 presented testimony that its competitive assisted directory assistance service was an improvement in the way directory assistance was provided in California, particularly as an alternative to internet-based searches. By acquiring and using thousands of discarded toll free numbers, after a quarantine period, and then playing a short disclosure message to any person who called those numbers, Telseven and Calling 10 concluded that they provided a new directory assistance service that could be conveniently accessed via an equal access telephone number and which provided number history and a direct connection to a live operator.

As to the specific disclosure language set out above, Telseven and Calling 10 explained that they repeatedly worked with the local exchange carriers to implement their instructions to modify and improve the messaging disclosures. Telseven and Calling 10 stated that each customer received several

key pieces of information in the outgoing message: the cost of the call, the additional charges that apply, Calling 10's website, and an e-mail address for customer services. Thus, Telseven and Calling 10 concluded that the disclosures went above and beyond the regulatory disclosure requirements and current industry standard practice.

4. Discussion

4.1. Burden of Proof and Standard of Proof

In an investigatory proceeding launched by Commission staff in response to allegations of violations of the Public Utilities Code, Commission staff has the burden of proof, with the standard of proof being a preponderance of the evidence.⁶

With the burden of proof placed on SED, the Commission has held that the standard of proof the SED must meet is that of a preponderance of evidence. Preponderance of the evidence usually is defined "in terms of probability of truth, e.g., such evidence as, when weighed with that opposed to it, has more convincing force and the greater probability of truth."⁷ In short, SED must present more evidence that supports the requested result than would support an alternative outcome.

⁶ Communications TeleSystems International, D.97-05-089, 72 CPUC2d 621, 633-4.

⁷ In the Matter of the Application of San Diego Gas & Electric Company for a Certificate of Public Convenience and Necessity for the Sunrise Powerlink Transmission Project, Decision 08-12-058, *citing* Witkin, Calif. Evidence, 4th Edition, Vol. 1, 184.

4.2. Reasonableness of Respondents' Business Model and Adequacy of Service Offerings and Price Disclosures

As set forth above, respondent controlled approximately one million toll-free numbers as a marketing plan. No customer would intentionally dial these numbers as no person nor business, other than this directory assistance service, was presently associated with these numbers, and the numbers which were once associated with a business or person had been through the quarantine period.⁸

Subscribers reaching any of the toll-free numbers would hear the message quoted above directing the subscriber to call a specific direct access number.⁹ Most subscribers, up to 95%, who heard the message did not place the second call.¹⁰ Upon completing the second call, the subscriber would be charged and through a series of interactive options subscribers were theoretically able to reach directory assistance services from Telseven and Calling 10.

No consumer witnesses appeared on behalf of respondents. SED's witnesses explained that they would not use respondents' service as it was priced much higher than other competing sources of directory assistance, such as internet searches.¹¹

As set forth below, we find that respondents have failed to disclose to the subscriber the exact nature of the service being offered and the costs.

⁸ See Exh. 3 at 11- 14 and documents cited therein.

⁹ Direct access means that the call was not routed through a long distance service provider.

¹⁰ Respondents Opening Brief at 53.

¹¹ See, e.g., Hearing Transcript at 145 and 151.

Consequently, we find that all charges placed on California telephone bills by respondents were unauthorized, and therefore unreasonable.

We begin with the notion of controlling up to a million toll free numbers, with no apparent purpose other than to catch misdialers. Respondents have presented no other purpose for controlling this number of toll-free but not-in-use telephone numbers. Thus, we conclude on the evidentiary record before us that the purpose of controlling vast amounts of toll-free numbers not otherwise in service is to capture subscribers who misdial toll-free numbers. We will evaluate respondents' service offerings and rate disclosures in the context of the audience to which the offerings and disclosures are being made.

Next, we turn to respondent's recorded message played to callers reaching a toll-free number controlled by respondents. Rather than disclosing that the number reached is no longer associated with any business, other than directory assistance, the message creates the impression that dialing another number is how to reach your intended number:

You can hang up and dial 10 15 15 8000. That number again is 10 15 15 8000. The number you have dialed has a new national directory assistance service. Please dial 10 15 15 8000. That number again is 10 15 15 8000 - to get information on the number you have just dialed.

This does not clearly convey to the subscriber that the subscriber has dialed a number no longer in use and that an expensive directory assistance service is being offered. Instead it entices the subscriber to call the number, "to get information on the number you have just dialed." Thus, we conclude that this message fails to inform the subscriber of the service being offered and the charge for that service.

Finally, we look at what happens if the subscriber dials the 10 15 15 8000 number. SED presented unrefuted evidence that calls of only a few seconds duration were charged the full \$7.00 fee.¹² Thus, by simply completing the call and discerning that it is not the intended person or business, a subscriber has incurred a charge of \$7.00 and received nothing of value from respondents. SED conducted an analysis of 1,000 calls to respondents' telephone number and demonstrated that 81.2% of subscribers hung up without interacting with the telephonic options at all, i.e., did not press any further digits after the called number.¹³ Of the 18.8% of callers who did press additional digits, respondents were unable to show what share, if any, ever received actual directory assistance.¹⁴

4.3. Did subscribers authorize the charges?

Pursuant to Pub. Util. Code § 451, "all charges demanded or received by any public utility . . . for any product . . . or any service rendered . . . shall be just and reasonable." Here, respondents' business model is to control vast amounts of otherwise unused toll-free numbers, and to refer callers who reach these toll free numbers to a directory assistance service. Especially in light of the unique features of the audience to which the reference is being made, i.e., misdialers, respondents must clearly inform these subscribers that (1) the number dialed is not associated with any business other than directory assistance, and (2) directory assistance service, with price terms, is being offered by dialing the subsequent number.

¹² Exhibit 3 at 30 - 34.

¹³ Exhibit 8 at 12 - 13.

The recorded notice fails to meet this standard. Subscribers reaching the no-longer-in-use toll-free numbers are not informed of the status of the number and instead are incited to call the subsequent number to reach the intended number. Similarly, the subscriber is not informed that the subsequent number is for a directory assistance service and that charges will apply upon completion of the call. Therefore, we conclude that subscribers are not informed of the nature and price of the service being offered and, lacking this basic information, the subscribers are in no position to validly authorize a charge for directory assistance on their California telephone bills. Unauthorized charges are unreasonable in violation of Pub. Util. Code § 451.

We, therefore, conclude that all charges placed on California telephone bills by Telseven, Calling 10 and Partick Hines were not authorized by the telephone subscriber. Respondents are subject to claims for reparations for all unreasonable charges billed to California subscribers and, pursuant to Pub. Util. Code § 2107, to a fine of up to \$20,000 for each instance of unlawful billing.

4.4. Practical Limitation on the Commission's Ability to Obtain Reparations or Fines from Respondents

As set forth above, the corporate respondents have sought and obtained protection from the United States Bankruptcy Court. Any order from this Commission for reparations or fines will join the long line of unsecured creditors currently assembled in the bankruptcy proceeding.

¹⁴ *Id.* at 13 - 14.

Moreover, these charges were imposed and collected as early as 2004. The passage of time and customers moving presents challenges in locating subscribers for the reparations.

4.5. The Federal Court Claims Process

SED explained that the AT&T federal court class action settlement covered all present and former AT&T customers who, from January 1, 2005, to January 1, 2013, had third-party charges placed on their bill through a billing aggregator. SED estimated that the federal court settlement process covered between 69% and 74% of the customers billed by respondents to this proceeding. The missing groups are customers from 2004 and Verizon customers.

The Commission has a long history with difficulty of enforcing reparations orders. In many cases, such as here, the perpetrators are insolvent or no assets are available to fund a reparations order.¹⁵ In other instances, even where funds are available, the passage of time and customer relocation makes contacting wrongfully billed customers impossible because the local exchange carriers do not retain indefinitely forwarding information.¹⁶

In 1999, when considering allegations of unauthorized billing the Commission emphasized the importance of obtaining reparations for customers and stated its Policy on Enforcement:

Where Commission staff alleges that an entity has wrongfully obtained funds from consumers or that fines are required to

¹⁵ See e.g., Investigation on the Commission's own motion into the operations, practices, and conduct of Coral Communications, Inc. D.01-10-073

¹⁶ See, e.g., Communication TeleSystems International, D.99-06-005, three years after wrongful acts, contact information was available for only 24,000 out of 56,000 customers.

deter any future such activity, the Commission must take all actions within its power to ensure that respondents' assets will be available to fund any ordered reparations or fines. Of course, there may be instances where, despite diligent efforts, no assets can be located; nevertheless, aggressive actions must be fully pursued.

The Commission has previously relied on its authority over the Local Exchange Carriers (LECs), which often provide billing and collection services to telecommunications investigation respondents. See *Sonic*, 59 CPUC2d 30 (D.95-03-016) (ordering LECs to hold payments due to Sonic). Other administrative and judicial means exist to thwart asset flight.

Therefore, we reaffirm our policy of resolutely pursuing all assets which may be needed to fund reparations orders or fines. We direct CSD [Consumer Services Division] to consider from the outset of all enforcement cases any actions which could be taken to preserve such assets. We put on notice all entities which provide billing and collection services, including LECs and billing agents, that the Commission may direct them to provide information on billing services provided to respondents in future proceedings. We direct the General Counsel to explore all innovative administrative means which the Commission has authority to impose, and to consider whether any additional legislation is needed to expand our authority. The General Counsel should also consider and be ready to pursue judicial remedies to preserve assets for a potential reparations and fine order, or otherwise to enforce such an order through judicial means.

Notwithstanding its policy statement, the Commission was ultimately unsuccessful in obtaining reparations for customers due to the insolvency of the perpetrator and its billing agents:

We are profoundly dissatisfied with the outcome of this proceeding. Coral and its billing agents unlawfully billed and

collected millions of dollars from California consumers. Despite our best efforts, we have been unable to effectuate any return of those funds due to the intervening insolvency of Coral and the billing agents. We intend to aggressively maintain our “policy of resolutely pursuing all assets which may be needed to fund reparations orders or fines.”¹⁷

The context of insolvency coupled with the passage of time - some customers were billed by Telseven almost nine years ago - substantially undermines the likelihood of successfully implementing a reparations order. The AT&T federal court class action settlement covers the bulk of wrongfully billed subscribers. The billings from 2004 are the oldest and thus the most likely to be missing subscriber contact information. The remaining billings are through Verizon, comprise a small share of the total billings, would require additional time and resources to pursue, and would ultimately be subject to the same passage of time deterioration in customer contact information. In light of these facts, we find that the AT&T federal court class action settlement which will offer a claims process to 70% of the wrongfully billed subscribers reasonably achieves our reparations objectives.¹⁸

The majority of Telseven’s unauthorized charges occurred prior to the Commission adopting new consumer protection rules in 2010. These new rules

¹⁷ *Id.* at 5, *citing* D.99-08-017 at 3.

¹⁸ As the Commission’s long history of difficulties with securing reparations in wrongful billing circumstances shows, the passage of time is a serious impediment to successfully achieving the Commission’s reparations goals. In light of the extant federal court settlement refund process, we find that further actions against AT&T and Verizon by this Commission would be unlikely to materially improve actual reparations for California subscribers. For this reason, we deny SED’s motion to add AT&T and Verizon as respondents and initiate another phase of this proceeding.

make Billing Telephone Companies responsible to issue refunds for all unauthorized charges appearing on the bill. Specifically, in D.10-10-034, the Commission adopted Revised General Order 168, Part 4, California Telephone Corporation Billing Rules which, among other things, held telephone corporations responsible for all unauthorized charges appearing on a customer's bill:

The record shows that customers do not carefully check bills and often pay small charges, even if unauthorized, due to the time and inconvenience of disputing the charge. Ensuring comprehensive refunds for all unauthorized charges are available is essential to removing the reward for unauthorized billing. Billing Telephone Corporations must remain responsible for refunding up to one year after the bill, even if mistakenly paid by the subscriber. Billing Telephone Corporations must prevent or detect what the federal court called "fraudsters" from surreptitiously placing unauthorized charges on many bills, cheerfully refunding to those that complain, and pocketing the payments from the unsuspecting. To comprehensively address this situation for all wrongfully billed subscribers, all such subscribers must have access to refunds.

The revised rules clarify that the Billing Telephone Corporation has an affirmative duty to investigate, not only when there are allegations of unauthorized billings, but also when there are reasonable grounds for concern. The revised rules also make clear that a Billing Telephone Corporation is responsible for refunding all unauthorized charges presented in its bill, regardless of whether the unsuspecting subscriber may have paid the charge.

Therefore, we conclude that the reparations being made through the federal court class action settlement reasonably achieve this Commission's goal of preventing unauthorized billing of third-party charges in the future and obtaining a reasonable level of recompense for subscribers billed by respondents.

The local exchange carriers are in a unique position to prevent unauthorized billing and we will require that they meet this responsibility to California subscribers. These carriers must be more diligent in the management of their billing and collection services to forestall the creation of patently unreasonable business models such as created by respondents.

4.6. Penalties

When opening this Investigation, we found that our staff could recommend for our consideration, penalties pursuant to Pub. Util. Code §§ 2107 and 2108 in the amount of \$500 to \$20,000 per offense per day, as well as other penalties.

SED recommended a fine of \$19,760,000, based on the number of days respondents billed California customers multiplied by \$10,000 per day, assessed against all respondents.¹⁹

In establishing an appropriate fine under § 2107, the Commission considers two general factors: the severity of the offense and the conduct of the utility. In addition, the Commission considers the financial resources of the utility, and the totality of the circumstances related to the violations.²⁰ Commission precedent should also be considered when assessing fines.²¹

The amount of a fine imposed pursuant to § 2107 must be proportional to the severity of the offense. Here, the severity of the offense rises to the higher

¹⁹ SED Opening Brief at 88.

²⁰ Rulemaking to Establish Rules for Enforcement of the Standards of Conduct Governing Relationships Between Energy Utilities and Their Affiliates Adopted by the Commission in D.97-12-088, 84 CPUC2d 155, 182-84 (D.98-12-075).

²¹ *Id.* at 184.

levels of range due to the duration and scope of the unauthorized billing. As this fact pattern illustrates, disregarding a statutory or Commission directive is accorded a high level of severity because compliance is absolutely necessary to the proper functioning of the regulatory process.²²

In considering the conduct of the utility, the Commission reviews the utility's efforts to prevent, detect, and disclose and rectify the violation.²³ Here, there is no evidence that any respondent made any effort to prevent, detect, or disclose and rectify the violation.

The size of the fine should reflect the financial resources of the utility. All of the corporate respondents are subject to bankruptcy court protection. SED argues that actual current and possible future resources are unknown and that the scope of this fraudulent scheme requires a substantial fine.²⁴ The highest level of fine is required to deter future such conduct, and is consistent with the totality of the circumstances in furtherance of the public interest.²⁵

Precedent also supports a fine at the high end of the spectrum. In D.09-07-021, we fined the utility \$10,000 per incident for each violation of a Commission order.²⁶

²² *Ibid.*

²³ *Id.* 183-184.

²⁴ SED Opening Brief at 89.

²⁵ *Ibid.*

²⁶ Application of California-American Water Company for Authorization to Increase its Revenues for Water Service in its Monterey District by \$24,718,200 or 80.30% in the year 2009; \$6,503,900 or 11.72% in the year 2010; and \$7,598,300 or 12.25% in the year 2011 Under Current Rate Design and to Increase its Revenues for Water Service in the Toro Service Area of it Monterey District by \$354,324 or 114.97% in the year 2009; \$25,000 or

Footnote continued on next page

No party opposed SED's recommendation.

We find that SED's recommendation is consistent with the Commission's guidelines for assessing fines and supported by the record. We, therefore, assess a fine pursuant to § 2107 and 2108 of \$19,760,000 against respondents jointly and severally.

SED also seeks an order prohibiting all California local exchange carriers from providing billing and collection services to any entity in which Patrick Hines has an ownership or management interest. We will grant this request.

5. Assignment of Proceeding

Catherine J.K. Sandoval is the assigned Commissioner and Maribeth A. Bushey is the Presiding Officer.

Findings of Fact

1. Respondents controlled up to one million toll-free telephone numbers.
2. Respondents offered no commercially reasonable purpose for controlling vast amounts of toll-free telephone numbers.
3. The only apparent purpose for controlling vast amounts of toll-free telephone numbers is to catch misdialers.
4. Respondents offered no evidence that any subscriber authorized charges for the services billed to the subscriber.
5. Respondents' recorded notice played to misdialers who reached one of the toll-free numbers controlled by respondents failed to clearly explain the nature of the services being offered and the price.

3.77% in the year 2010; and \$46,500 or 6.76% in the year 2011 Under the Current Rate Design and Current Matters (D.09-07-021), 2009 Cal. PUC LEXIS 346, *120.

6. Respondents did not inform subscribers that they would be charged upon completion of the call to the direct access number.

7. Respondents have sought and obtained United States Bankruptcy Court protection and reparations for unauthorized charges to California subscribers are unlikely.

8. Due to the passage of time from the dates of the unauthorized charges, up to nine years, many subscribers entitled to reparations will have moved and not be locatable.

9. Local exchange carriers are responsible for ensuring that only authorized charges appear on subscribers' bills.

10. Respondents' violations are severe due to the duration and scope of the unauthorized billing.

11. Respondents made no effort to prevent, detect, or disclose and rectify the violation.

12. Respondents' current and future financial circumstances are unknown.

13. A Federal Court class action settlement against AT&T has made refunds available to most subscribers billed by respondents.

14. The Federal Court refund program reasonably achieve the Commission's goal of reparations to unlawfully billed California subscribers.

Conclusions of Law

1. The burden of proof is on SED to show by a preponderance of the evidence that respondents violated California law or regulations.

2. SED presented substantial evidence that subscribers billed by respondents were not informed of the nature of services being offered and did not authorize charges to their accounts.

3. Respondents presented no persuasive evidence of any subscriber knowingly authorizing charges for respondents' services to be placed on the bill.

4. All charges placed on California subscribers' bills by respondents were unauthorized in violation of Pub. Util. Code § 2889.5, and are therefore unreasonable in violation of § 451.

5. Respondents are liable for reparations to all California subscribers billed by respondents.

6. Refunds available to California subscribers from the Federal Court class action settlements against AT&T reasonably achieve the Commission's enforcement goals.

7. Respondents should be assessed a fine pursuant to §§ 2107 and 2108 of \$19,760,000, with joint and several liability.

8. All California local exchange carriers should be prohibited from providing billing and collection services to any entity in which Patrick Hines has an ownership or management interest.

9. This proceeding should be closed.

O R D E R

IT IS ORDERED that:

1. All charges placed on California subscribers' telephone bills by Telseven, LLC, Calling 10 LLC dba California Calling 10, and Patrick Hines were unauthorized, and Telseven, LLC, Calling 10 LLC dba California Calling 10, and Patrick Hines, are ordered to pay reparations to each subscriber so billed in the total amount collected from that subscriber.

2. Telseven LLC, Calling 10 LLC dba California Calling 10 and Patrick Hines, jointly and severally, must pay a fine of \$19,760,000 by check or money order

payable to the California Public Utilities Commission and mailed or delivered to the Commission's Fiscal Office at 505 Van Ness Avenue, Room 3000, San Francisco, CA 94102, within 40 days of the effective date of this order. Write on the face of the check or money order "For deposit to the General Fund per Decision _____."

3. All money received by the Commission's Fiscal Office pursuant to the preceding Ordering Paragraph shall be deposited or transferred to the State of California General Fund as soon as practical.

4. All California local exchange carriers are prohibited from providing billing and collection services to any entity in which Patrick Hines has an ownership or management interest.

5. Investigation 10-12-010 is closed.

This order is effective today.

Dated _____, at San Francisco, California.

APPENDIX A

***** PARTIES *****

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(END OF APPENDIX A)