PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

FILED
6-24-14
03:44 PM

June 24, 2014

Agenda ID #12952
Decision Different Agenda ID #13106
Adjudicatory

TO PARTIES OF RECORD IN INVESTIGATION 10-12-010:

Enclosed is the Decision Different of Commissioner Sandoval and the Modified Presiding Officer's Decision (Mod-POD) of Administrative Law Judge (ALJ) Bushey. ALJ Bushey's Mod-POD appeared on May 1, 2014 Commission Agenda as Item 35. The item has been held and now appears on June 26, 2014 Commission Agenda as Item 39. Due to the issuance of these decisions both items will be postponed to August 14, 2014.

Pursuant to Public Utilities Code Section 1701.2(a), Commissioner Sandoval's Decision need not be served on the parties, nor are comments required. However, in this instance, parties may file and serve concurrent opening comments no later than July 14, 2014 and reply comments no later than July 21, 2014.

When the Commission considers the Presiding Officer's Decision and any decision different from the POD, the Commission may act by adopting all or part of the decisions as written, amend or modify the decisions, or set aside and prepare its own decision, so long as the Commission's decision is based on the record developed in the investigation, and if the decision differs from the POD, has a written explanation of the differences. (See Public Utilities Code Section 1701.2(a).) Only when the Commission acts does the decision become binding on the parties.

Parties shall adhere to the rules for filing comments on proposed decision, as delineated in Article 14 of the Commission's Rules of Practice and Procedure. These Rules are accessible on the Commission's website at www.cpuc.ca.gov. Pursuant to Rule 14.3, opening comments may not exceed 15 pages. Comments should be served separately on the assigned Commissioner and the assigned ALJ. For that purpose, I suggest electronic mail, hand delivery, overnight mail, or other expeditious method of service.

/s/ TIMOTHY J. SULLIVAN
Timothy J. Sullivan
Chief Administrative Law Judge (Acting)
Attachment

ALJ/MOD-POD-MAB/lil/sbf/jt2**MOD-POD** Agenda ID #12952
Adjudicatory
6/26/2014 Item 39

Decision **MODIFIED PRESIDING OFFICER'S DECISION OF ALJ BUSHEY**
(Mailed 6/24/2014)

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.)

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

TABLE OF CONTENTS

Title **Page**

MODIFIED PRESIDING OFFICER'S DECISION FINDING THAT CORPORATE 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, and Calling 10 LLC dba California Calling 10,[1] (corporate respondents) were not authorized by the subscriber, and orders the corporate respondents to pay reparations. Corporate respondents are also ordered to pay a fine of $19,760,000 to the General Fund of the State of California. All California local exchange carriers are prohibited from providing billing and collection services to any entity in which respondent Patrick Hines has an ownership or management interest. 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 (Hines), to determine whether Telseven, Calling 10, and 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.

---

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

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 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 and Calling 10 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 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

[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).

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 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. On February 18, 2014, AT&T filed its second status report explaining that due to on appeal of the class action settlement, the Federal Court has not yet issued a

[3] SED March 28, 2013, motion at 2.

[4] *Id*. at 18.

final order. With the filing of the status reports, this matter was submitted for Commission consideration.

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.

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

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.
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

---

[6] Communications TeleSystems International, Decision (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, D.08-12-058, *citing* Witkin, Calif. Evidence, 4th Edition, Vol. 1, 184.

present more evidence that supports the requested result than would support an alternative outcome.

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

As set forth above, corporate respondents 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 corporate respondents. SED's witnesses explained that they would not use respondents' service as it was

---

[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.

priced much higher than other competing sources of directory assistance, such as internet searches.[11]

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

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

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

[12] Exhibit 3 at 30 – 34.

[13] Exhibit 8 at 12 – 13.

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.

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, and Calling 10 were not authorized by the telephone subscriber. Corporate 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.

---

[14] *Id*. at 13 – 14.

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

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

[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

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 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

[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.

> 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 nominally 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.

---

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

The majority of Telseven's unauthorized charges occurred prior to the Commission formally reiterating existing consumer protection rules in 2010 that underlined existing carrier responsibility for unauthorized charges. These rules clarify the responsibilities of Billing Telephone Companies to issue refunds for all unauthorized charges appearing on the bill. Specifically, in D.10-10-034, the Commission adopted Revised General Order (GO) 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.

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.[18] SED pointed out that respondents submitted unauthorized billings to over 3 million customers, for a total of about $21 million. SED stated that a fine for each billing, even at the lowest end of the range, would result in "an astronomical amount, in excess of a billion dollars."[19] SED, therefore, recommended using the per day tabulation to achieve a fine that was reasonable and proportionate to the offenses.

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

[18] SED Opening Brief at 88.

[19] *Id*. at 90.

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 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]

---

[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.

[22] *Ibid.*

[23] *Id.* 183-184.

[24] SED Opening Brief at 89.

[25] *Ibid.*

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]

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 Hines has an ownership or management interest. We will grant this request.

5. Presiding Officer's Decision, Appeals and Request for Review

On November 20, 2013, the Presiding Officer issued her Presiding Officer's Decision finding that all charges placed on California subscribers' telephone bills by respondents were unauthorized and requiring respondents to pay reparations for all such amounts. The Presiding Officer's Decision also imposed a fine of $19,760,000, jointly and severally, on respondents.

On December 18, 2013, the Commission's SED appealed the portions of the Presiding Officer's Decision that denied the Division's request that AT&T and

[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 Montery District by $354,324 or 114.97% in the year 2009; $25,000 or 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.

Verizon be made parties to the proceeding, and ordered to show cause why they should not be required to promptly and directly refund all unauthorized Telseven and Calling 10 charges placed on California subscribers' bills.

On December 19, 2013, Hines, an individual, filed his appeal of the Presiding Officer's Decision and argued that the decision was unlawful in the following respects: (1) there is no evidence to support a finding that Respondent Hines is jointly liable for the acts of the LLC Respondents, (2) the Commission lacks subject matter jurisdiction over interstate telecommunications activities such as the provision of directory assistance by respondents, (3) SED presented no evidence to rebut the statutory presumption that "evidence that a call was dialed is prima facie evidence of authorization," and (4) Respondents provided service in accord with their tariff filed with this Commission in 2007 and, despite this notice, SED waited until 2010 to challenge the tariffed service.

On December 20, 2013, Commissioner Sandoval requested review of the Presiding Officer's Decision in respect to the conclusions that the Commission's consumer protection rules would not support an order that the billing telephone companies, AT&T and Verizon, refund all unauthorized charges placed on subscribers' bills, and that the Federal Court refund orders reasonably accomplish the Commission's enforcement objectives.

On January 17, 2014, Verizon and AT&T responded to the appeals and request for review. AT&T argued that the SED appeal and the request for review constitute a collateral attack on the AT&T settlement of the federal court litigation as providing insufficient refunds to Telseven customers. AT&T stated that the federal court has overruled such objections and approved the settlement. AT&T opposed SED's request that AT&T be found liable for Telseven's wrongdoing, and contended that the law and due process prevented that

outcome on the record of this proceeding. AT&T also pointed out that should the Commission attempt to remedy the procedural and due process defects by holding further proceedings, any Commission order requiring further refunds to Telseven customers would inevitably conflict with the Federal District Court and, therefore, be a nullity. Finally, AT&T stated that Presiding Officer's Decision did not rely on D.10-10-034 as the basis of its order, contrary to the arguments put forth in the Appeal and Request for Review.

Verizon stated that it complied with the Commission's rules for refunds for third-party charges, and even went beyond to issue refunds whenever a customer complained about a third-party charge. Verizon concluded that the only Telseven customers who have not requested refunds would be included in SED's appeal. Verizon examined the Commission's rulemaking history under Pub. Util. Code § 2890 and argued that the Commission first imposed an affirmative obligation to make refunds to customers who have not submitted complaints in 2010, after this proceeding had commenced. Verizon explained that it was able to locate only about 36% of customers from a recent class action settlement, covering billings from 2005 to 2012. Verizon concluded that even though the decision found that the respondents violated the Public Utility Code and caused Verizon to include unauthorized charges on customers' bills, Verizon is not liable for restitution nor has Verizon violated its statutory obligations.

Due Process Issues

Respondent Hines argued that SED has failed to present sufficient evidence to set aside the corporate structure and hold him personally liable for the actions of Telseven and Calling 10, the corporate respondents. SED explained that the following facts support such a finding: (1) Hines is the sole owner of all the corporate respondents, (2) Hines controlled all activities of these

respondents, (3) certain entities in the corporate chain were disregarded for tax and business purposes, and (4) Hines put the corporate respondents "into bankruptcy after hearing in this matter."[27] Respondent Hines countered that the corporate respondents maintained separate structures, with separate books, records, and bank accounts, and that each adheres to the corporate distinctions required under the laws of the state in which they are organized.

The Commission considered the standards for piercing the corporate veil and holding individual shareholders responsible for violations of the Public Utility Code in Investigation of Clear World.[28] There, the Commission declined to impose personal liability on a family of three brothers, one of whom had been previously convicted of a felony and served six months in jail, and their father, who, through several corporations, provided telecommunications services. In that proceeding, the Commission found that the Commission staff had presented no evidence that Clear World was a sham corporation or other connections such as commingling of funds or the holding out by an individual that he is personally liable for the debts of the corporation. The Commission relied on Associated Vendors v. Oakland Meat Co., 210 Cal App 2d 825, 836-842 (1962), which sets out a long list of possible factors for consideration by a Court when presented with a request to disregard the corporate entity. There, as here, the

[27] SED Response to Appeal and Request for Review at 10.

[28] Investigation on the Commission's Own Motion Into the Fitness of the Officers, Directors, Owners and Affiliates of Clear World Communications Corporation, U-6039, Including Individual Officers, Directors and Shareholders James, Michael, and Joseph Mancuso, and Into the Conduct of Other Utilities, Entities, or Individuals (including Christopher Mancuso) Who or That May Have Facilitated the Mancusos' Apparent Unlicensed Sale of Telecommunications Services, Investigation 04-06-008, D.05-06-033.

respondents were closely-held corporations, but there was no showing that the corporate formalities were being ignored or that the individuals were using the corporation as a sham.[29] SED provides no citation to support its contention that the corporate entity should be disregarded here.[30] Although the corporate respondents are now in bankruptcy and have off-shore owners, SED has not provided sufficient legal analysis and support showing that these facts distinguish the instant case from that of Clear World. We, therefore, will follow our precedent in Clear World and will not disregard the corporate entities. The Ordering Paragraphs have been revised to limit the reparations and fine to the corporate respondents.

Coordination with Federal Court Proceedings

We find that the Federal District Court has exercised jurisdiction over charges placed by respondents on AT&T subscribers' bills between 2005 and 2013.[31] Consequently, any refund of those charges may in this instance come

[29] We note that the Federal Communications Commission has issued Notice of Apparent Liability for Forfeiture, 12-65, June 14, 2012, finding that Telseven appeared to have violated federal laws and regulations with regard to mandatory contributions to the Universal Service Fund, administration of the North American Numbering Plan and local number portability, as well as information and regulatory fees filings. A forfeiture penalties totaling $1,758,465 is proposed. Relying on authority from the Federal Communications Act and precedent, the Federal Communiations Commission holds Mr. Hines personally liable for the actions of Telseven because he owns, controls, and manages Telseven.

[30] SED's attempt to use Pub. Util. Code § 2889.9 as a basis for personal liability fails because there is no evidence that Hines, acting as an individual, placed unauthorized charges on a bill.

[31] The Commission also has jurisdiction over these charges and, absent the Federal Court's actions, could have asserted jurisdiction to order any needed refunds to customers.

through the Federal Court class action settlement. While the "direct refund" proposed by SED need not be part of the Federal Court class action settlement to be implemented by the Commission, and any such refund process, in this instance, we deem impractical for the reasons indicated. We, therefore, decline to name AT&T as a respondent and pursue further refunds of these charges before this Commission.

As for charges on Verizon bills, all requested refunds have been made and Verizon has presented a compelling description of the difficulty involved with a "restitution campaign" for the refunds that have not been requested as compared to the actual refunds likely to reach subscribers.[32] Therefore, we find that the record in this proceeding does not support adding Verizon as a respondent and pursuing additional refund of Telseven charges billed by Verizon.

Commission Authority Over Billing Telephone Corporations

In 2010, the Commission concluded that notwithstanding GO 168, Consumer Bill of Rights Governing Telecommunications Services, and extensive efforts by the Commission, its staff, and the carriers, unauthorized charges continued to vex California telecommunications subscribers. The Commission pointed to complaints from deeply frustrated customers showing unauthorized charges that reappear on monthly bills despite extensive time and effort to dispute the charges. In D.10-10-034, the Commission adopted revised Part 4 to GO 168 to establish reporting requirements to provide information to assist the Commission in identifying unauthorized billing, bringing it to a halt, and obtaining refunds for subscribers.

[32] Verizon Response at 11.

The Commission described its authority over Billing Telephone Corporations as delegated by the Legislature in 2001:

> In response to repeated and statewide unauthorized telephone billing scandals, the Legislature adopted stringent consumer protection standards for California telephone corporations providing billing and collection services to third parties. The Legislature also required the Commission to oversee third party billing on California telephone bills. The Legislature adopted specific statutory protections for subscribers, and allowed the Commission to "adopt rules, regulations, and issue decisions and orders, as necessary, to safeguard the rights of consumers and enforce the provisions of this article." (§ 2889.9(i).)
>
> Section 2890(a) places all authority for all charges on a telephone bill with the subscriber: "A telephone bill may only contain charges for products or services, the purchase of which the subscriber has authorized." Where a dispute arises about authorization, the same statute goes on to further protect the subscriber: "[i]n the case of a dispute, there is a rebuttable presumption that an unverified charge for a product or service was not authorized by the subscriber and that the subscriber is not responsible for that charge. (§ 2890(b)(2)(D).)
>
> For purposes of enforcement, the Public Utilities Code extends the Commission's jurisdiction over nonpublic utilities that generate a charge on a subscriber's telephone bill. Where the Commission finds that "a person or corporation" has violated §§ 2890 and/or 2889.9, the Commission is authorized to treat that person or corporation as if it were public utility for purposes of fines, contempt citations, and other penalties. (§ 2889.9(b).) The Commission also has explicit authority to order any billing telephone company to "terminate the billing and collection services" for any person or corporation failing to comply with these statutory sections. To assist the Commission in making this determination, the statute also directs the Commission to require each billing telephone

> corporation, billing agent, and service provider to report subscriber complaints to the Commission, and the Commission to initiate formal investigations as necessary. (§ 2889.9(d) and (e).)[33]

Thus, since 2001, California telephone bills may only include charges authorized by the subscriber and, where bills contain unauthorized charges, the Commission has authority to impose penalties. There is no dispute that pursuant to Pub. Util. Code §§ 2889.9 and 2890, the Commission may use its extant authority to impose penalties, e.g., fines as provided in § 2107, upon any billing telephone corporation that allows unauthorized charges on customer bills.

Accordingly, we conclude that this Commission has the authority to proceed against billing telephone corporations, such as AT&T and Verizon, for violations of Pub. Util. Code §§ 2889.9 and 2890, with remedies to include fines for each instance of unauthorized billing as provided in Pub. Util. Code §§ 2107 and 2108. All fines are payable to the State Treasury to the credit of the General Fund of California.

AT&T and Verizon, however, were not named as respondents to this Investigation, and have not participated as parties to this proceeding. Accordingly, exercising our authority over these billing telephone corporations would require amending the Order Instituting Investigation or issuing an Order to Show Cause and, essentially, beginning anew this now almost four-year-old proceeding to properly afford the new parties their due process rights.

---

[33] D.10-10-034, *mimeo*, at 25 – 26.

Moreover, no party has requested that the Commission exercise its authority to impose fines.

The purpose of fines is to "go beyond restitution to the victim and to effectively deter further violations by this perpetrator or others."[34] Here, AT&T and Verizon both have been the subject of Federal Court Proceedings regarding their third-party billings and have paid or are paying substantial refunds for such billings, and are enduring the attendant publicity of these lawsuits. Given the existing Federal enforcement actions, it is not clear what additional deterrence could be achieved with another California action, should we decide to initiate one. Therefore, we conclude, based on the unique history of this proceeding and the Federal Court proceedings, that the public interest does not require this Commission to exercise its authority to initiate a further proceeding to impose fines on AT&T and Verizon.

6. Comments on Modified Presiding Officer's Decision

The Modified Presiding Officer's Decision of ALJ Bushey 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. Comments were filed on _____, and reply comments were filed on _____ by _____.

7. Assignment of Proceeding

Catherine J.K. Sandoval is the assigned Commissioner and Maribeth A. Bushey is the assigned ALJ and Presiding Officer in this proceeding.

---

[34] Re Standards of Conduct Governing Relationships Between Energy Utilities and Their Affiliates, 84 CPUC2d 155, 188 (D.98-12-075).

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.

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 subscribes 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. Corporate respondents' violations are severe due to the duration and scope of the unauthorized billing.

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

12. Corporate respondents' current and future financial circumstances are unknown.

13. The Federal District Court has exercised jurisdiction over charges placed by corporate respondents on AT&T customers' bills.

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

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

16. Respondent Hines did not offer telecommunications services in his own name as an individual.

17. SED did not show that the corporate respondents were sham corporations.

18. AT&T and Verizon were not named as respondents in this proceeding.

19. This proceeding has been pending for since 2010, and the SED investigation began 2005. Respondents ceased billing California customers in 2011.

20. The public interest in deterring violations of Pub. Util. Code §§ 2889.9 and 2890 by billing telephone companies has been reasonably achieved through the Federal Court Proceedings against AT&T and Verizon.

Conclusions of Law

1. SED has not demonstrated that the corporate structure should be disregarded and respondent Hines found personally liable for fines and reparations.

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

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

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

5. All charges placed on California subscribers' bills by corporate respondents were unauthorized in violation of Pub. Util. Code § 2890, and are therefore unreasonable in violation of § 451.

6. Corporate respondents are liable for reparations to all California subscribers billed by respondents.

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

8. Corporate respondents should be assessed a fine pursuant to §§ 2107 and 2108 of $19,760,000, with joint and several liability.

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

10. Based on the unique history of this proceeding and the Federal Court litigations, the public interest does not require initiating another proceeding to consider imposing fines on AT&T and Verizon.

11. 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, and Calling 10 LLC dba California Calling 10, were unauthorized, and Telseven, LLC, and Calling 10 LLC dba California Calling 10, are ordered to pay reparations to each subscriber so billed in the total amount collected from that subscriber.

2. Telseven LLC, and Calling 10 LLC dba California Calling 10, 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 Los Angeles, California.

APPENDIX A

********** PARTIES **********

Adolf Rodriguez
Regulatory Mgr
ACI BILLING SRVCS, INC.
7411 JOHN SMITH DRIVE, SUITE 1500
SAN ANTONIO TX 78229
For: ACI Billing Services, Inc.

Adolf Rodriguez
Regulatory Mgr.
BSG CLEARING SOLUTIONS
7411 JOHN SMITH DR., STE. 1500
SAN ANTONIO TX 78229
For: BSG Clearing Solutions

Patrick Hines
CALIFORNIA CALLING 10, LLC
200 EXECUTIVE WAY
PONTE VEDRA BEACH FL 32082
For: California Calling 10, LLC / Telseven LLC / Patrick Hines

---

John L. Clark
Attorney At Law
GOODIN MACBRIDE SQUERI DAY & LAMPREY LLP
505 SANSOME STREET, SUITE 900
SAN FRANCISCO CA 94111
(415) 765-8443
JClark@GoodinMacBride.com
For: ILD Telecommunications, Inc.

Lorraine Mcclin-Olriedge
Dir - Client Compliance & Regulatory
ILD, CORP.
3230 W. COMMERCIAL BLVD., STE 360
OAKLAND PARK FL 33309
For: ILD, Corp.

Robert Mason
Administrative Law Judge Division
RM. 5107
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-1470
rim@cpuc.ca.gov
For: CPSD

Eric Batongbacal
Exec Dir - Regulatory
PACIFIC BELL TELEPHONE COMPANY
525 MARKET STREET, RM 1927
SAN FRANCISCO CA 94105
(415) 778-1299
eb1642@att.com
For: Pacific Bell Telephone Company dba: AT&T California

Jesus G. Roman, Esq
VERIZON CALIFORNIA, INC.
2535 W. HILLLCREST DR., MC CAM21LB
NEWBURY PARK CA 91320
(805) 499-6832
jesus.g.roman@verizon.com
For: Verizon California, Inc.

Chris Barton
President
WHOLESALE CARRIER SERVICES, INC.
5471 N. UNIVERSITY DRIVE
CORAL SPRINGS FL 33067
For: Wholesale Carrier Services, Inc.

(END OF APPENDIX A)