**PUBLIC UTILITIES COMMISSION**505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298**FILED**08/14/18
03:37 PM

August 14, 2018

TO PARTIES OF RECORD IN INVESTIGATION 17-09-004

This proceeding was filed on September 14, 2017, and is assigned to Commissioner Carla J. Peterman and Administrative Law Judges (ALJ) Kimberly H. Kim and Sasha Goldberg. This is the decision of Presiding Officers, ALJs Kim and Goldberg.

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/ ANNE E. SIMONAnne E. Simon
Chief Administrative Law Judge

AES:jt2

Attachment

217789362

ALJ/KK2/SL5-POD/jt2

Decision PRESIDING OFFICERS' DECISION (Mailed 8/14/2018)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation and Ordering
NetFortris Acquisition Co., Inc. to Appear
and Show Cause Why It should not be
sanctioned for Violations of the Laws, Rules
and Regulations of this State by Monitoring
and Recording Employee Telephone
Conversations without Prior Consent.

Investigation 17-09-004

(See Appendix B for Appearances)

**PRESIDING OFFICERS' DECISION ADOPTING
THE SETTLEMENT AGREEMENT**

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PRESIDING OFFICERS' DECISION ADOPTING THE SETTLEMENT AGREEMENT

Summary

The California Public Utilities Commission (Commission) initiated the above entitled Order Instituting Investigation and Order to Show Cause (OII/OSC) proceeding to investigate NetFortris Acquisition Co., Inc. (NetFortris) for the alleged non-consensual monitoring of employees' telephone conversations occurring from January 23, 2014 to January 22, 2015. The Commission initiated this OII/OSC based on the investigation report prepared and submitted by the Commission's Consumer Protection and Enforcement Division (CPED).

NetFortris and CPED (collectively, referred to as the Parties) are the only parties to this proceeding. CPED is a Division of the Commission charged with investigating and enforcing compliance with the Public Utilities Code and other utility laws, and the Commission's rules, regulations, orders and decisions. NetFortris is a holder of a Certificate of Public Convenience and Necessity (CPCN) to provide limited facilities-based and resold local exchange service¹ and is subject to the Commission's jurisdiction under the Public Utilities Code.

The Parties have negotiated a settlement agreement to resolve all of the issues in the above entitled investigation proceeding (Settlement Agreement) and filed a motion recommending it for Commission approval. As detailed in the attached Appendix A, the four key components of the Settlement Agreement are NetFortris' (1) acknowledgements and admissions, (2) agreement to pay a

¹ NetFortris acquired the CPCN from its original holder, CF Communications, LLC. (Settlement Agreement at 1).

penalty of \$300,000, (3) proposed enhancements to its internal controls and public website, and (4) plan to identify and delete prior recordings and to notify affected customers as well as providing CPED a report on its efforts to notify the affected customers as outlined in the Settlement Agreement. The Settlement Agreement, including all of its terms, is reasonable in light of the whole record, consistent with law, and in the public interest.

We therefore approve and adopt it. Accordingly, this decision directs NetFortris to, within twelve months of this decision, (1) pay the \$300,000 in penalty, (2) implement its proposed set of enhancements to its internal controls and public website, (3) identify and delete prior recordings and to notify the affected customers as outlined in the Settlement Agreement, and (4) provide CPED a report on its efforts to notify the affected customers as detailed in the Settlement Agreement. This proceeding is closed.

1. Background and Procedural History

1.1. Joint Factual Statements

NetFortris Acquisition Co., Inc. (NetFortris) and the Commission's Consumer Protection and Enforcement Division (CPED) (collectively, referred to as the Parties) have reached a settlement to resolve all of the issues in the above entitled investigation proceeding (Settlement Agreement). For purposes of and as part of the Settlement Agreement, the Parties have agreed to a set of joint factual statements (Joint Factual Statements).² The following stipulated facts agreed to by the Parties were extrapolated from various documents gathered by

² Settlement Agreement, Section I, parags. 1-7.

CPED, in its investigation into the underlying alleged violations, and the resulting staff report (Staff Report):³

- (1) Decision (D.) 02-04-036 granted CF Communications, LLC the authority to provide limited facilities-based and resold local exchange service. CF Communications renamed itself Telekenex, Inc. On June 3, 2010, Telekenex, Inc. filed Advice Letter No. 71 transferring its public utility operations to IXC Holdings, Inc. D.14-01-026, issued on January 23, 2014, granted the application of IXC Holdings, Inc. and Acquisition Corporation (Telekenex) for approval of the transfer of assets and control over the public utility operations of IXC to Telekenex.
- (2) Telekenex acquired and installed technology for the tracking, logging, and recording of telephone calls made to and from Telekenex telephone extensions. Prior to the acquisition by NetFortris described in paragraph 4 below, Telekenex set the call recording settings for all employee telephone extensions to automatically record. The tracking, logging, and recording equipment did not deliver an audible warning for direct calls to or from company telephone extensions and company-issued cellular phones. Calls made to Telekenex's call center were prompted with an audible warning.
- (3) NetFortris acquired the assets of Telekenex, IXC Inc., NWC LLC, and NW Incorporated on October 9, 2013. NetFortris asserts that after acquiring the assets of Telekenex, the automatic recording functions of the Telekenex telephone equipment remained in use at NetFortris unbeknownst to the new owners and new executive management team. NetFortris did not alter or change the settings on its employees' extensions prior to approximately January 22, 2015, shortly after the new executive management team became aware that the manner in which the recording of calls was being conducted violated the California Public Utilities Code.

³ On March 2, 2018, the Staff Report, dated August 31, 2017, was filed in the herein proceeding docket and is received into the evidentiary record of this proceeding by this decision.

- (4) An employee of NetFortris reviewed call logs of Anthony Zabit made from Anthony Zabit's telephone extension and NetFortris-provided cellular phone. Said employee downloaded and listened to approximately twenty calls of Anthony Zabit made from Anthony Zabit's telephone extension and NetFortris-provided cellular phone in early January 2015. Said employee disseminated approximately fourteen of Anthony Zabit's call recordings and call-logs to a NetFortris executive.
- (5) On January 22, 2015, shortly after NetFortris' new ownership group or executive management team first became aware of the call recording equipment settings, NetFortris unilaterally took prompt action to stop any and all call recordings that were not preceded by an audible warning.
- (6) At the time of the acquisition, NetFortris was not aware that Telekenex Telephone Equipment was being used to record calls other than the call center calls preceded by an audible warning. NetFortris relied upon the Compliance with Laws representations of the Asset Purchase Agreement. As soon as NetFortris' new executive management team learned that its call recording equipment installed by Mr. [Anthony] Zabit and inherited post-closing might not be in compliance with the law as warranted, NetFortris promptly took steps to disable all features of the equipment that would record calls other than calls preceded by an audible warning."
- (7) NetFortris denied that it "knew about the capabilities of the call tracking logging, and recording features of the 'Telekenex Telephone Equipment' at the time it acquired 'Seller Parties'" assets.
- (8) NetFortris denied that it owned assets, at any time, the use of which violated the California Public Utilities Commission's General Order 107-B.

NetFortris has never installed equipment on telephone lines in violation of General Order 107-B.

1.2. CPED Investigation, Recommendations and Report

The Utility Enforcement Branch of CPED initiated an investigation into the alleged call recording practices of Telekenex and NetFortris based on the allegations set forth in Complaint (C.) 15-04-017 and NetFortris' Answer in that proceeding.⁴ On August 31, 2017, CPED issued the Staff Report on the alleged call recording practices of Telekenex and NetFortris. The Staff Report was based on CPED's:

- (1) Review of all relevant NetFortris documents and data responses;
- (2) Review of the relevant document(s) surrounding Telekenex's acquisition by NetFortris; and
- (3) Review of all documents and data responses relevant to C.15-04-017.⁵

The Staff Report alleges (1) NetFortris violated General Order (GO) 107-B by failing to provide notice of telephone recordings to third parties; and (2) NetFortris violated Rule 1.1 of the Commission's Rules of Practice and Procedure by providing contradictory information that NetFortris was unaware of the call recording equipment. The Staff Report recommends that the Commission determine the extent of NetFortris' call recording violations and impose penalties pursuant to Public Utilities Code⁶ Sections 2107 and 2108.

⁴ On November 12, 2015 complainants and NetFortris filed a joint motion to dismiss C.15-04-017 with prejudice. D.16-03-005 ultimately dismissed C.15-04-017 with prejudice. D.16-03-005, at Finding of Fact 5, specified that CPED may pursue investigative operations into NetFortris' business practices under Public Utilities Code Sections 314 and 581.

⁵ See generally, Staff Report Attachments.

⁶ All statutory references in this decision are to California Public Utilities Code, unless otherwise specified.

1.3. Order Instituting Investigation/Order to Show Cause History

Based on the Staff Report, the Commission issued an Order Instituting Investigation and Order to Show Cause (OII/OSC) into the alleged call recording practices of NetFortris on September 14, 2017.

A prehearing conference (PHC) was initially set to be held on November 22, 2017 and was reset to January 23, 2018. On December 21, 2017, the Parties provided a status update to the assigned Administrative Law Judge (ALJ) explaining that the Parties had reached a settlement and seeking a stay in proceeding to allow them to finish drafting the settlement agreement. The assigned ALJ granted this request. On January 31, 2018, the Parties filed the Joint Motion for Commission's Adoption of Settlement (Joint Motion) seeking to resolve all factual and legal issues in the instant proceeding.

2. The Settlement Agreement

In general, the four main components to the Settlement Agreement are: (1) acknowledgements and admissions, (2) a penalty, (3) commitment to strengthen its internal controls, and (4) agreement to identify and delete past recordings and to notify the affected customers. Each component of the Settlement Agreement is discussed below.

2.1. Acknowledgements and Admissions

The Settlement Agreement provides NetFortris' acknowledgements and admissions that:

- (1) Customer privacy and adherence to all statutes, laws, or rules pertaining to public utilities or other regulated industries is of critical importance to the Commission;
- (2) After taking over the assets of Telekenex on January 23, 2014, NetFortris continued recording all incoming and outgoing

telephone calls to and from employees' extensions without the requisite audible warning required by GO 107-B; and

- (3) NetFortris' new ownership group or executive management team had no knowledge of the existence of the improper call-recording settings until approximately January 19, 2015, at which time NetFortris took prompt action to stop any and all call recordings that were not preceded by an audible warning until on or about January 22, 2015.⁷

CPED acknowledges that NetFortris' responses to CPED's Requests for Admission satisfactorily explain the extent of NetFortris' knowledge and ownership of its call-recording equipment and that NetFortris did not mislead the Commission.⁸

In the Settlement Agreement, NetFortris represents that it now fully meets and commits that it will continue to fully meet its regulatory and legal obligations in California.⁹

2.2. Penalty Amount

Under the Settlement Agreement, NetFortris will pay \$300,000 to the State of California General Fund in twelve equal quarterly installments of \$25,000 with the first payment payable within thirty days of the date on which the Settlement Agreement is approved by the Commission.¹⁰ NetFortris will continue to make payments every third month following the first month of initial payment until the entire \$300,000 is paid in full.¹¹ While the Joint Motion did not refer to the

⁷ *Id.* at Section II, parag. 8.

⁸ *Ibid.*

⁹ *Ibid.*

¹⁰ Settlement Agreement, Section II, parag. 9.

¹¹ *Ibid.*

\$300,000 as a penalty, it referred to the payment as “Monetary Payments in the Settlement” to “Comply with D.98-12-075” and pursuant to Code §§ 2107 and 2108, which set forth the Commission’s penalty authorities. As such, the settlement amount of \$300,00 will be viewed as a proposed penalty amount here and will be discussed further below in Section 4.2. of this decision.

2.3. Enhancements to Internal Practices and Controls

The Settlement Agreement also addresses the corrective internal practices and measures NetFortris agrees to undertake to ensure future compliance with all applicable Commission orders and state laws.¹² Specifically, NetFortris commits to, within twelve months from the date the Commission approves and adopts the proposed Settlement Agreement:

- (1) Update (a) the current version of its Employee Handbook and (b) its website, reaffirming the importance of, and NetFortris’ commitment to, customer privacy protection;
- (2) Implement a training program (Employee Training Program) for its employees to inform and reaffirm NetFortris’ commitment to and understanding of the importance of customer privacy protections and rights as well as highlight the appropriate consumer service protocols consistent with the Commission's General Orders.
- (3) Provide to all employees the training program (Employee Training Program) and reference and integrate the Employee Training Program into the orientation materials provided to all newly hired employees; and
- (4) Provide the Commission with a summary of the Employee Training Program as conducted.

¹² Settlement Agreement, Section II, parag. 10.

2.4. Recording Deletion and Notice to Affected Customers

Finally, to the extent that NetFortris has in its possession any recordings of customer telephone calls made during the period commencing January 23, 2014 and ended January 22, 2015 (Call Period) that were not preceded by an audible warning indicating that such calls may be recorded (Archived Calls), NetFortris commits to, within twelve months from the date the Commission approves and adopts the proposed Settlement Agreement:

- (1) Use commercially reasonable efforts to identify and locate all such recordings and thereafter reasonably promptly destroy all such recordings and any copies thereof;
- (2) Use commercially reasonable efforts to identify all customers located in California who placed or were subject to an Archived Call during the Call Period and verbally notify such customers of the fact that a recording of their call was made without them being notified of the recording; and
- (3) Send a report to CPED describing the methodologies for effecting actions 1 and 2 and confirming that those actions have been successfully completed.¹³

3. Standard of Review

The Joint Motion seeks Commission approval and adoption of the Settlement Agreement and its terms. Under Rule 12.1 of the Commission's Rules to approve and adopt a settlement, the Commission must find that a settlement is reasonable in light of the whole record, consistent with law, and in the public interest. In addition, for settlement agreements which include a fine or penalty,

¹³ Settlement Agreement, Section II, parag. 11.

D.98-12-075 also sets forth the following five factors that must be examined in determining whether the proposed fine or penalty is reasonable:

- (1) The severity of the offense, including consideration of economic harm, physical harm, harm to the regulatory process, and number and scope of violations, with violations that cause physical harm to people or property being considered the most severe and violations that threatened such harm closely following;
- (2) The conduct of the utility in preventing, detecting, disclosing and rectifying the violation;
- (3) The financial resources of the utility (to ensure that the degree of wrongdoing comports with the amount of fine and is relative to the utility's financial resources such that the amount will be an effective deterrence for that utility while not exceeding the constitutional limits on excessive fines);
- (4) The amount of fine in the context of prior Commission decisions; and
- (5) The totality of the circumstances in furtherance of the public interest.¹⁴

The above factors closely mirror the considerations listed in Code § 2104.5.¹⁵ While that code section applies to gas pipeline safety, the Commission has analogously applied its applications in other types of proceedings.¹⁶

¹⁴ D.98-12-075 at 10 (listing the five factors).

¹⁵ See Code § 2104.5.

¹⁶ See, e.g., D.11-11-001 (OII into the Operations and Practices of Pacific Gas and Electric Company regarding the Gas Explosion and Fire on December 24, 2008 in Rancho Cordova, California in Investigation (I.) 10-11-013); and D.04-09-062 (OII into the operations, practices, and conduct of Pacific Bell Wireless LLC dba Cingular Wireless in I.02-06-003).

4. Discussion

4.1. Overview

The preliminary scope of this proceeding was set in the OII/OSC which provided that the purposes of this investigation proceeding are to examine NetFortris' call recording actions, determine appropriate corrective measures, and impose a fine or other remedies.¹⁷ As discussed below, the Settlement Agreement addresses all issues in the scope of this proceeding, meets the Rule 12.1(d) requirements, and is reasonable under the D.98-12-075 five-factor analysis. Because the Settlement Agreement involves a proposed penalty amount we will first discuss the reasonableness of the proposed penalty amount by reviewing the five factors under D.98-12-075. Then we will discuss how the Settlement Agreement as a whole addresses all issues in this proceeding and complies with Rule 12.1(d) requirements.

4.2. Reasonableness of the Proposed Penalty Under D.98-12-075

At issue here is the settlement amount of \$300,000, which we are reviewing as a proposed penalty under Code §§ 2107 and 2108. Code § 2107 provides that any public utility that violates or fails to comply with a Commission order or rule, in a case in which a penalty has not otherwise been provided, is subject to a penalty of not less than five hundred (\$500) dollars and no more than fifty thousand (\$50,000) dollars for each offense. Code § 2108 provides that in a case of a continuing violation, each day's continuance of said offense shall be a separate and distinct offense.

¹⁷ I.17-09-004 at 12 to 13.

The Parties did not itemize or otherwise parse out specific number of or days of violations in reaching the penalty amount. However, it is agreed that the non-compliant call recordings took place between January 23, 2014 and January 22, 2015, or 364 days. A simple calculation provides that for each of the 364 days that NetFortris' non-compliant call recordings continued comes to a daily penalty of \$824.17 (the Parties' total proposed penalty of \$300,000 divided by 364 days).¹⁸ We review the reasonableness of this penalty amount below.

4.2.1. Severity of Offense

The first factor under D.98-12-075 is the severity of the offense. The severity of the offense factor takes into account physical and economic harms, harm to the regulatory process and the number and scope of violation. In view of those four considerations, as discussed below, severity of offense here is low to moderate.

Under D.98-12-075, the most severe violations are those which either cause physical harm to people or property.¹⁹ Here, the conduct involves automatic recording of telephone calls without the requisite audible warning to those participants that were being recorded. There is no evidence presented in the Staff Report or the Joint Factual Statements that anyone suffered physical harm from this conduct. However, an unknown volume of recordings was made of employees and customers which invaded their privacy over about a period of about a year. While not physical harm, this invasion of privacy constitutes a harm nonetheless, and we see this as a serious harm.

¹⁸ This amount was calculated by dividing \$300,000 by 364 days ($\$300,000/364 = \824.175).

¹⁹ D.98-12-075 at 39.

As for the economic harm, D.98-12-075 provides that the severity of a violation increases with (i) the level of costs imposed on the victims of the violation, and (ii) the unlawful benefits gained by the public utility. Here, no evidence was presented in the Staff Report or the Joint Factual Statements as to what financial harm was suffered, if any, by the victims. Likewise, there is no evidence of unlawful gain or benefit to NetFortris, resulting from the underlying conduct, the recordings. Based on what is known, the recording equipment, setting and practice was merely a continuance of that which preexisted. Without knowing of it, we can infer NetFortris could not have used it for its gain or benefit. Thus, we can deduce that NetFortris did not receive any knowing and identifiable benefit here.

As for the harm to the regulatory process, D.98-12-075 provides that a “high level of severity will be accorded to violations of statutory or Commission directives, including violations of reporting or compliance requirements.”²⁰ Here, NetFortris admits to GO 107-B violation and its continued use of the call recording equipment from January 23, 2014 to January 22, 2015, without the audible warning. That said, NetFortris’ management did not know of the existence and usage of the call recording equipment during that time, which is why such practice continued during that time. That also means NetFortris’ management failed to discover the existence of the call recording equipment and practice for almost one-year, which perhaps evidence management’s less than diligent management practice.

²⁰ D.01-08-019 at 13, citing D.98-12-075.

In any event, while NetFortris' lack of knowledge does not diminish its duty to comply with all Commission orders and laws, it does show that the underlying GO 107-B violation was inadvertent. Moreover, the Parties agree that NetFortris' management stopped all call recordings that were not prompted with an automated warning within three days of learning of the issue, which shows NetFortris' diligence and responsiveness to the Commission's authorities, and NetFortris' duties to comply with the Commission's regulatory requirements once it became aware of the underlying non-compliance.

Last of the consideration for the severity of offense review is the number and scope of violations. Naturally, a single violation is less severe than multiple offenses. A widespread violation that affects many consumers is a more severe than one that is limited in scope. Here, the unauthorized recordings occurred from January 23, 2014 to January 22, 2015, almost a year, and affected numerous employees and customers. That evidences a significant and continuing violation.

In weighing all of the above four considerations, the harms resulting from the underlying conduct falls between low to moderate. On one hand, a year-long invasion of privacy of so many employees and customers are troubling. However, NetFortris did not gain anything, did not know of nor initiate the call recording practice and were prompt in taking immediate corrective action here. On balance, we therefore opine that a daily penalty here should be on the low (\$500) to moderate (\$2,500) level and falling closer to the lower range. Thus, we find that the proposed penalty amount of \$300,000, or daily penalty of \$824.17, is well within the range of appropriate penalty. We conclude that the proposed penalty is reasonable and justified upon our review of the above factors.

4.2.2. Conduct of the Utility

The second factor focuses on the utility's actions in preventing, detecting, disclosing and rectifying the violation. Here, NetFortris' management failed to discover the continual use of automatic call recording equipment for 364 days. NetFortris contends that it was unaware of the call recording equipment because it relied on compliance assertions made in the Asset Purchase Agreement. However, that does not completely excuse NetFortris' failure to exercise independent diligence and to discover the use of the unauthorized call recording equipment and practice on its telephones for almost a year.

We also acknowledge that NetFortris' management did end all call recordings that were not preceded by an audible warning within three days of learning of the issue. We also acknowledge that NetFortris worked constructively and diligently with CPED to craft a set of corrective actions proposals which are set forth in the Settlement Agreement, including agreement to update its Employee Handbook and website, in addition to implementing a new Employee Training Program, and more. These are important steps in rectifying the underlying violations. Additionally, NetFortris commits to identifying and deleting all Archived Calls, if any, and making reasonable efforts to contact all potentially affected customers. Moreover, NetFortris' cooperation in the discovery process with the CPED throughout this proceeding and the underlying investigation, exemplify NetFortris' actions to disclosing and rectifying its 364-day violation of GO 107-B.

Upon weighing the NetFortris' overall conduct, on balance, we find that NetFortris' culpability is relatively low. We therefore opine that a daily penalty here should be close to the low (\$500) side and not the high side (\$5,000.) Thus, we find that the proposed penalty amount of \$300,000, or daily penalty of

\$824.17, is well within the range of appropriate penalty. We conclude that the propose penalty therefore is reasonable and justified.

4.2.3. Financial Resources of the Utility

The third factor is the financial resources of the utility. Here, the Commission must ensure against excessive fines or penalties while imposing an effective fine/penalty.²¹ In D.98-12-075, the Commission explained:

Effective deterrence ... requires that the Commission recognize the financial resources of the public utility in setting a fine which balances the need for deterrence with the constitutional limitations on excessive fines. Some California utilities are among the largest corporations in the United States and others are extremely modest, one-person operations. What is accounting rounding error to one company is annual revenue to another. The Commission intends to adjust fine levels to achieve the objective of deterrence, without becoming excessive, based on each utility's financial resources.²²

In other words, an effective fine or penalty is one that reflects the severity of the harm (the first factor examined above) and is also proportionate to the offending entity. That means a fine or penalty should be high enough to impact the offending entity in such a way to send an effective message to the offending entity and those similarly situated to deter future similar offense or violations, without putting them out of business or otherwise impacting the entity in a catastrophic way.²³

Under the proposed Settlement Agreement, NetFortris is subject to a \$824.17 per day fine, or a total penalty amount of \$300,000. Here, NetFortris is a relatively small business especially when compared to some of the much larger

²¹ *Id.* at 7.

²² *Id.* at 58-59.

²³ *Ibid.*

entities regulated by the Commission.²⁴ The \$300,000 in penalty is a substantial penalty for a company of NetFortris' size and is sufficient to deter future violations by either it or other utilities. Indeed, in recognition of the magnitude of the agreed upon penalty amount, the Parties agreed that the penalty would be paid but could only be paid in twelve quarterly installments. This installment plan was a critical concession NetFortris needed so that it could commit to an agreement for the \$300,000 settlement amount. Otherwise, NetFortris could not have paid that total sum in a single one-time payment.²⁵

In sum, we find the proposed penalty amount is not excessive and has the necessary deterrent effect of sending an effective message to NetFortris and those similarly situated telecommunications companies. We therefore find that the proposed penalty amount of \$300,000 is reasonable and justified.

4.2.4. Comparison to Prior Commission Decisions

The fourth factor is whether the fine or penalty is reasonable in light of prior Commission decisions. To demonstrate the reasonableness of the recommended penalty, the Parties cited three pre-2012 decisions (D.11-10-017, D.05-02-001, and D.01-08-019) against telephone companies, imposing fines or penalties but also correctly noted that those decisions were not factually analogous, in terms of the alleged violations, to this instant proceeding. As such, they were presented solely to provide a yardstick for evaluating the reasonableness of the NetFortris settlement amount. And for our comparison purposes, the fact that these are pre-2012 decisions is significant. In 2012,

²⁴ Joint Motion at 12. (NetFortris acquired the Telekenex business and assets, including the business's relationships and goodwill, for \$25.8 million.)

²⁵ *Ibid.*

Code § 2107 was amended and the per violation maximum penalty amount increased from \$20,000 to \$50,000. As such, pre-2012 fines or penalties are not comparable to those imposed after 2012 under the increased per violation maximum penalty of \$50,000. That said, as summarized and discussed below, these decisions can still be looked to as a yardstick, as recommended by the Parties.

D.11-10-017	The Commission approved a settlement that imposed a \$215,000 fine on Legacy Long Distance International, Inc. for violating Rule 1.1 by failing to disclose regulatory sanctions in other states and for violating the Code by placing unauthorized charges on consumers’ phone bills, charging unfiled rates, and charging rates in excess of its posted rates.
D.05-02-001	The Commission assessed fines totaling \$45,350 against Miko Telephone Communications, Inc. for violating Rule 1.1 by misrepresenting the date it commenced operations in California and for violating the Code by switching consumers to a different carrier without authorization.
D.01-08-019	The Commission assessed a \$200,000 fine against Sprint PCS for violating Rule 1.1 by failing to disclose information about phone number availability in parts of Los Angeles.

Our review of the above cited pre-2012 decisions confirms that the NetFortris’ penalty in the Settlement Agreement is reasonable. While those decisions involve different violations and circumstances, they all involve smaller telecommunication companies with limited or insolvent telecommunication companies similar to NetFortris and the range of fine or penalty adopted in those decisions (\$45,350 to \$215,000) suggest that NetFortris’ settled penalty amount (\$300,000) is quite reasonable.

In addition, as noted above, the foregoing three decisions predate Code § 2107 per violation maximum penalty amount being increased from \$20,000 per violation to \$50,000 per violation. As such, we can infer that the penalty or fine imposed in those pre-2012 decisions would be inflated under the amended Code § 2107 with significantly higher maximum limit, and \$300,000 in penalty for NetFortris under the amended Code § 2107 is well within the reasonable range of penalties or fines and consistent those imposed in the prior decisions.

Moreover, those prior decisions reflect some similar considerations as those we considered with NetFortris, particularly in terms of how those penalties or fines are similarly accompanied by mitigating conduct of those companies and/or companion requirements of those companies to rectify the violations and prevent future violations, and in terms of how they relate to the companies' limited financial resources²⁶ and extent of identifiable harm done to consumers.²⁷ In sum, we find them helpful in confirming the reasonableness of the Parties' recommended penalty amount of \$300,000.

Aside from the above three pre-2012 decisions, the Parties also presented D.15-09-009, which involves Comcast's disclosure of contact information for approximately 75,000 customers who had paid for phone numbers that would not be published. D.15-09-009 involves a much larger utility than NetFortris, with significantly greater resources. It also involves far more egregious violations and significantly higher utility culpability. Moreover, the violations at

²⁶ See D.05-02-001 (The telephone company and its sole owner were insolvent with no identifiable assets, but the Commission still imposed penalties.)

²⁷ See D.01-08-019 (The Commission imposed a penalty even though there were no identifiable costs on consumers or other economic harms.)

the heart of D.15-09-009 as well as the scope and extent of the resulting harm and injury to the customers were vastly greater than those in this proceeding. For these distinguishing reasons, we do not find D.15-09-009 to be instructive to the instant proceeding.

In sum, although the three pre-2012 decisions involve violations and facts somewhat dissimilar to the violations and facts presented by this instant proceeding, the approaches we took in those pre-2012 decisions are helpful in our review of the Parties' recommended penalty amount of \$300,000. Based on the overall analysis of the five-factors under D.98-12-075 (see Sections 4.2.1. to 4.2.5. of this decision) and our review of the above-discussed prior decisions, we find the penalty amount of \$300,000 agreed to by the Parties to be reasonable and generally consistent with our prior decisions.

4.2.5. Totality of the Circumstances

The fifth and final factor we consider in evaluating the proposed penalty is the totality of the circumstances, with an emphasis on protecting the public interest. As discussed in detail above, a \$300,000 penalty is reasonable, looking at all the circumstances, including both mitigating and aggravating factors. The \$300,000 penalty amount is reasonable, weighing the continual violation against NetFortris' lack of prior knowledge and prompt corrective action to end automatic call recordings that were not preceded by an audible warning. Moreover, we find NetFortris' proposed Employee Training Program, and proposed improvements to its employee handbook and website to be indicative of NetFortris' commitment to rectifying the GO 107-B violations.

That said, we cannot stress enough the importance of privacy protections and the attendant public interests. We must protect the public interest by

assessing a fine sufficient to deter another similar incident. In D.98-12-075, the Commission explained the policy of deterrence to justify a fine:

The purpose of a fine is to go beyond restitution to the victim and to *effectively deter further violations* by this perpetrator or others.... Effective deterrence creates an incentive for public utilities to avoid violations. Deterrence is particularly important against violations which could result in public harm, and particularly against those where severe consequences could result. [*Emphasis added.*]²⁸

As we try to determine whether the proposed penalty or fine would be an effective deterrence, we also acknowledge that the proposed penalty combined with other elements of the Settlement Agreement, further numerous public interest benefits by adopting the fine, as proposed in the Settlement Agreement.

First, by ordering this penalty of \$300,000, we deter future similar violations and incentivize NetFortris and other utilities to work more diligently to ensure that similar privacy protections are not violated.

Second, we cannot ignore the fact that the penalty is accompanied by other significant settlement terms. They include various enhancements to NetFortris' internal employee training program and handbook which promote public interest. NetFortris' employees will benefit from implementation of the Settlement Agreement's Employee Training Program and updates to its employee handbook. The updates to privacy protection on its website not only benefits employees, but consumers as well. We recognize that it would have been difficult, through litigation, to craft similar thoughtful and thorough ready-to-implement enhancements to NetFortris' Employee Training Program comparable to those contained in the Settlement Agreement.

²⁸ D.98-12-075 at 54.

Third, by adopting this penalty and the Settlement Agreement, all the proposed updates to its internal controls will be implemented sooner than if this OII were to be litigated and further implementation delay occurs.

Fourth, to settle this litigation, NetFortris has agreed to pay a penalty of \$300,000. The only parties to this proceeding, CPED and NetFortris, have cooperated to negotiate the terms of the Settlement Agreement. No unresolved contested factual or legal issues remain in the proceeding. The Settlement Agreement is in the public interest because, avoiding litigation, conserves the Commission and party resources. We recognize that the public interest is served by reducing the expense of litigation, conserving scarce resources and allowing litigants to eliminate the risk of uncertain litigated outcome. Thus, by adopting this penalty and the Settlement Agreement, it will avoid increased litigation while conserving public resources.

The Settlement Agreement and proposed penalty achieve these public interest benefits, and based on all the foregoing public interest benefits, the penalty of \$300,000 is reasonable and appropriate under D.98-12-075.

4.3. Rule 12.1(d) Compliance

In Section 4.2 of this decision, we scrutinized the proposed penalty amount and found the proposed penalty reasonable under D.98-12-075 five-factor analysis. As discussed below, we now turn to the whole of the Settlement Agreement to discuss how it addresses all issues in this proceeding and meets the requirements of Rule 12.1(d) of the Commission's Rules that it is reasonable in light of the whole record, consistent with law, and in the public interest.

First and foremost, as discussed in this decision, this Settlement Agreement resolves the three issues within the scope of this proceeding, as set forth in the OII/OSC which provided that the purposes of this investigation

proceeding are to examine NetFortris' call recording actions, determine appropriate corrective measures, and impose a fine or other remedies.

Here, the Joint Factual Statements of the Settlement Agreement addresses NetFortris' call recording actions. The Settlement Agreement terms concerning NetFortris' enhancements to its internal practices and plans for call recording deletions and notice to affected customers address the corrective action. In addition, the \$300,000 penalty amount is proposed in the Settlement Agreement as the appropriate penalty and reviewed in this decision.

As for the requirements of Rule 12.1(d) of the Commission's Rules, we incorporate our comprehensive analysis in Section 4.2., including 4.2.1 through and including 4.2.5, of this decision. While that analysis focused on the proposed penalty amount, the same analysis evaluated the severity of NetFortris' offense, NetFortris' conduct, NetFortris' resources, and totality of all of the circumstances. In addition, Section 4.2.4. also examined application of prior decisions and Code §§ 2107 and 2108. Thus, we find our foregoing Section 4.2 analysis applicable to our assessment of Rule 12.1(d) compliance. Based thereon, we find the Settlement Agreement and its terms reasonable in light of the whole record, consistent with law, and in the public interest.

4.4. Waiver of Rule 12.1 Procedural Requirements

Rule 12.1(a) provides that at any time after the first PHC and within 30 days after the last day of hearing, parties may propose settlements on the resolution of any material issue of law or fact or on a mutually agreeable outcome to the proceeding. Because the Parties were able to reach a settlement prior to the holding of a PHC or evidentiary hearing, NetFortris and CPED

waive any such requirement for a PHC or hearings in this proceeding.²⁹ The Parties request a waiver consistent with Rule 1.2, which permits the Commission to liberally construe the rules to secure just, speedy, and inexpensive determination of the issues presented. Rule 1.2 permits the Commission, when good cause shown, and within the extent permitted by statute, to deviate from the rules.

Here, we find that the Parties have acted in good faith to secure a just, speedy and inexpensive determination of the issues presented.³⁰ We agree with the Parties that the issues in this proceeding are adequately addressed by the Settlement Agreement, as discussed above, and there are no outstanding issues of material fact in dispute which would require the need for hearings. Moreover, no party will be prejudiced by granting the requested waiver of Rule 12.1(a). Thus, the waiver of Rule 12.1(a) is granted.

5. Categorization and Need for Hearing

The OII/OSC categorized this Investigation as adjudicatory as defined in Rule 1.3(a) and anticipated that this proceeding would require evidentiary hearings. Because the Parties were able to reach a settlement, prior to the holding of a PHC or issuance of a Scoping Memo, we affirm the preliminary categorization of adjudicatory and determine that no hearings are now required.

²⁹ Joint Motion for Adoption of Settlement at 15.

³⁰ Rule 1.2.

6. Assignment of Proceeding

The assigned Commissioner is Carla J. Peterman, and Kimberly H. Kim and Sasha Goldberg are the assigned Presiding Officers and Administrative Law Judges in this proceeding.

Findings of Fact

1. On August 31, 2017 the Utility Enforcement Branch of CPED issued the Staff Report on the alleged call recording practices of NetFortris.
2. Based on the Staff Report, the Commission initiated OII/OSC to investigate NetFortris' call recording practices.
3. CPED and NetFortris are the only parties to this proceeding, and they have negotiated the Settlement Agreement and filed their Joint Motion for Adoption of Settlement Agreement.
4. For purposes of and as part of the Settlement Agreement, the Parties have agreed to a set of Joint Factual Statements, which were extrapolated from various documents gathered by CPED, in its investigation into the underlying alleged violations, and the resulting Staff Report, as follows:
 - A. Decision (D.) 02-04-036 granted CF Communications, LLC the authority to provide limited facilities-based and resold local exchange service. CF Communications renamed itself Telekenex, Inc. On June 3, 2010, Telekenex, Inc. filed Advice Letter No. 71 transferring its public utility operations to IXC Holdings, Inc. D.14-01-026, issued on January 23, 2014, granted the application of IXC Holdings, Inc. and Acquisition Corporation (Telekenex) for approval of the transfer of assets and control over the public utility operations of IXC to Telekenex;
 - B. Telekenex acquired and installed technology for the tracking, logging, and recording of telephone calls made to and from Telekenex telephone extensions. Prior to the acquisition by NetFortris described in paragraph D below, Telekenex set the call recording settings for all employee telephone extensions to

- automatically record. The tracking, logging, and recording equipment did not deliver an audible warning for direct calls to or from company telephone extensions and company-issued cellular phones. Calls made to Telekenex's call center were prompted with an audible warning;
- C. NetFortris acquired the assets of Telekenex, IXC Inc., NWC LLC, and NW Incorporated on October 9, 2013. NetFortris asserts that after acquiring the assets of Telekenex, the automatic recording functions of the Telekenex telephone equipment remained in use at NetFortris unbeknownst to the new owners and new executive management team. NetFortris did not alter or change the settings on its employees' extensions prior to approximately January 22, 2015, shortly after the new executive management team became aware that the manner in which the recording of calls was being conducted violated the California Public Utilities Code;
- D. An employee of NetFortris reviewed call logs of Anthony Zabit made from Anthony Zabit's telephone extension and NetFortris-provided cellular phone. Said employee downloaded and listened to approximately twenty calls of Anthony Zabit made from Anthony Zabit's telephone extension and NetFortris-provided cellular phone in early January 2015. Said employee disseminated approximately fourteen of Anthony Zabit's call recordings and call-logs to a NetFortris executive;
- E. On January 22, 2015, shortly after NetFortris' new ownership group or executive management team first became aware of the call recording equipment settings, NetFortris unilaterally took prompt action to stop any and all call recordings that were not preceded by an audible warning;
- F. At the time of the acquisition, NetFortris was not aware that Telekenex Telephone Equipment was being used to record calls other than the call center calls preceded by an audible warning. NetFortris relied upon the Compliance with Laws representations of the Asset Purchase Agreement. As soon as NetFortris' new executive management team learned that its call recording equipment installed by Mr. [Anthony] Zabit and inherited post-closing might not be in compliance with the law as

warranted, NetFortris promptly took steps to disable all features of the equipment that would record calls other than calls preceded by an audible warning”;

- G. NetFortris denied that it “knew about the capabilities of the call tracking logging, and recording features of the ‘Telekenex Telephone Equipment’ at the time it acquired ‘Seller Parties’ assets;
- H. NetFortris denied that it owned assets, at any time, the use of which violated the California Public Utilities Commission’s General Order 107-B; and
- I. NetFortris has never installed equipment on telephone lines in violation of General Order 107-B.

5. As detailed in the attached Appendix A, the four key components of the Settlement Agreement are (1) NetFortris’ acknowledgements and admissions, (2) NetFortris’ agreement to pay a penalty of \$300,000, (3) NetFortris’ proposed enhancements to its internal controls and public website, and (4) NetFortris’ plan to identify and delete prior recordings and to notify affected customers.

6. As part of the Settlement Agreement, NetFortris also agrees and commits to provide CPED a report on its efforts to notify the affected customers as outlined in the Settlement Agreement within twelve months from the date of today’s decision.

7. The issues in this proceeding are adequately addressed by the Settlement Agreement, and there are no outstanding issues of material fact in dispute.

8. Because the Parties reached a settlement prior to the holding of a PHC or evidentiary hearing, NetFortris and CPED the Commission requested a waiver of Rule 12.1(a) requirements for a PHC or hearings in this proceeding.

9. No party will be prejudiced by granting the requested waiver of Rule 12.1(a) compliance.

Conclusions of Law

1. The Joint Motion for Adoption of the Settlement Agreement should be granted.
2. The Settlement Agreement addresses all issues in the scope of this proceeding.
3. The proposed penalty of \$300,000 is reasonable under D.98-12-075 five-factor analysis.
4. The Settlement Agreement is reasonable in light of the whole record, consistent with law, and in the public interest, consistent with Rule 12.1(d) of the Commission's Rules.
5. CPED should review NetFortris' reports on its Employee Training Program, employee handbook, and website to ensure it achieves its proposed enhancements to its internal controls.
6. The preliminary determination of proceeding categorization of adjudicatory should be confirmed.
7. Hearings are no longer needed.
8. The Staff Report, dated August 31, 2017, and filed on March 2, 2018, in the herein proceeding docket should be received into the evidentiary record of this proceeding.
9. The Parties' requested waiver of Rule 12.1(a) compliance should be granted.
10. ALJs Kimberly H. Kim and Sasha Goldberg should be designated as the assigned Presiding Officers.
11. I.17-09-004 should be closed.

O R D E R

IT IS ORDERED that:

1. The Joint Motion of NetFortris Acquisition Co., Inc. and the Consumer Protection and Enforcement Division for Adoption of Settlement filed on January 31, 2018, is granted and the Settlement Agreement, attached to this decision as Appendix A, is approved and adopted without modification.

2. NetFortris Acquisition Co., Inc. (NetFortris) shall pay \$300,000 in penalty in twelve equal quarterly installments of \$25,000. The first payment of \$25,000 shall be made within thirty days of the effective date of this decision. NetFortris shall continue to make subsequent payments every third month after the initial payment date. All payments pursuant to this decision shall be made 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. NetFortris shall write on the face of the check or money order "For deposit to the State of California General Fund per Decision _____" with "Decision _____" being the Commission-designated number for today's decision.

3. Within one year of the effective date of this decision, NetFortris Acquisition Co., Inc. (NetFortris) shall:

- A. Update (1) the current version of its Employee Handbook and (2) its website, reaffirming the importance of, and NetFortris' commitment to, customer privacy protection;
- B. Implement a training program (Employee Training Program) for its employees to inform and reaffirm NetFortris' commitment to and understanding of the importance of customer privacy protections and rights as well as highlight the appropriate

- consumer service protocols consistent with the Commission's General Orders;
- C. Provide to all employees the training program (Employee Training Program) and reference and integrate the Employee Training Program into the orientation materials provided to all newly hired employees; and
 - D. Provide the Commission with a summary of the Employee Training Program as conducted.
4. To the extent that NetFortris Acquisition Co., Inc. (NetFortris) has in its possession any recordings of customer telephone calls made during the period commencing January 23, 2014 and ended January 22, 2015 (Call Period) that were not preceded by an audible warning indicating that such calls may be recorded (Archived Calls), within one year of the effective date of this decision, NetFortris shall:
- A. Use commercially reasonable efforts to identify and locate all such recordings and thereafter reasonably promptly destroy all such recordings and any copies thereof;
 - B. Use commercially reasonable efforts to identify all customers located in California who placed or were subject to an Archived Call during the Call Period and verbally notify such customers of the fact that a recording of their call was made without them being notified of the recording; and
 - C. Send a report to the Consumer Protection and Enforcement Division describing the methodologies for effecting actions A and B and confirming that those actions have been successfully completed.
5. Within one year of the effective date of this decision, NetFortris Acquisition Co., Inc. shall submit a report on its Employee Training Program, and efforts used to identify and delete past recordings and to notify affected customers with the Consumer Protection and Enforcement Division.

6. The Consumer Protection and Enforcement Division shall review the report submitted by NetFortris Acquisition Co., Inc. (NetFortris), pursuant to Ordering Paragraph 3 of this decision, on its Employee Training Program and efforts used to identify and delete past recordings and to notify affect customers to ensure the proposed enhancements to NetFortris' internal controls are realized.

7. The preliminary determination of proceeding categorization of adjudicatory is confirmed.

8. Hearings are no longer needed.

9. The Staff Report prepared and filed on March 2, 2018 by the Consumer Protection and Enforcement Division, dated August 31, 2017, in the herein proceeding docket is received into the evidentiary record of this proceeding.

10. The joint request of NetFortris Acquisition Co., Inc. and the Consumer Protection and Enforcement Division for a waiver of Rule 12.1(a) compliance is granted.

11. Administrative Law Judges Kimberly H. Kim and Sasha Goldberg are designated as the assigned Presiding Officers.

12. Investigation 17-09-004 is closed.

This order is effective today.

Dated _____, at San Francisco, California.

Appendix A

Settlement Agreement

SETTLEMENT AGREEMENT

On September 14, 2017, the California Public Utilities Commission (Commission) issued an Order Instituting Investigation (I.17-09-004) into NetFortris Acquisition Co., Inc.'s (NetFortris) monitoring and recording certain telephone conversations without prior consent as further described in the Staff Report dated August 31, 2017 (Staff Report) in violation of the California Public Utilities Code and the Commission's General Orders. To avoid the costs and risk of litigation and to expeditiously resolve this matter, the Commission's Consumer Protection and Enforcement Division (CPED), NetFortris, and its predecessors, successors, affiliates, and assigns (collectively the Parties), hereby agree upon the following terms for the settlement in full of all claims arising out of the matters set forth in I.17-09-004. The penalties and remedies detailed herein provide a reasonable deterrence for other telecommunication companies and commitment to prevent future violations while also rectifying missteps in customer service and, therefore, preserve the intent and purpose of California Public Utilities Code Sections 451, 702, and 7903, and the Commission's General Order 107-B.

I. JOINT FACTUAL STATEMENT

1. The following joint factual statement is taken from documents obtained in CPED Staff's investigation and is detailed in the Staff Report.

2. Decision (D.) 02-04-036 granted CF Communications, LLC the authority to provide limited facilities-based and resold local exchange service. CF Communications renamed itself Telekenex, Inc. On June 3, 2010, Telekenex, Inc. filed Advice Letter No. 71 transferring its public utility operations to IXC Holdings, Inc. D.14-01-026, issued on January 23, 2014, granted the application of IXC Holdings, Inc. and Telekenex Acquisition Corporation (Telekenex) for approval of the transfer of assets and control over the public utility operations of IXC to Telekenex.

3. Telekenex acquired and installed technology for the tracking, logging, and recording of telephone calls made to and from Telekenex telephone extensions. Prior to the acquisition by NetFortris described in paragraph 4 below, Telekenex set the call recording settings for all employee telephone extensions to automatically record. The tracking, logging, and recording equipment did not deliver an audible warning for direct calls to or from company

telephone extensions and company-issued cellular phones. Calls made to Telekenex's call center were prompted with an audible warning.

4. NetFortris acquired the assets of Telekenex, IXC Inc., NWC LLC, and NW Incorporated on October 9, 2013. NetFortris asserts that after acquiring the assets of Telekenex, the automatic recording functions of the Telekenex telephone equipment remained in use at NetFortris unbeknownst to the new owners and new executive management team. NetFortris did not alter or change the settings on its employees' extensions prior to approximately January 22, 2015, shortly after the new executive management team became aware that the manner in which the recording of calls was being conducted violated the California Public Utilities Code.

5. An employee of NetFortris reviewed call logs of Anthony Zabit made from Anthony Zabit's telephone extension and NetFortris-provided cellular phone. Such employee downloaded and listened to approximately twenty calls of Anthony Zabit made from Anthony Zabit's telephone extension and NetFortris-provided cellular phone in early January 2015. Such employee disseminated approximately fourteen of Anthony Zabit's call recordings and call-logs to a NetFortris executive.

6. On January 22, 2015, shortly after NetFortris' new ownership group or executive management team first became aware of the call recording equipment settings, NetFortris unilaterally took prompt action to stop any and all call recordings that were not preceded by an audible warning.

7. On November 4, 2015, CPED propounded Data Request Set Number 01. In Request for Admission 3 of this data request set, CPED asked NetFortris to admit or deny whether NetFortris "knew about the capabilities of the call tracking logging, and recording features of the 'Telekenex Telephone Equipment' at the time it acquired 'Seller Parties' assets. Additionally, in Request for Admission 5 of this same data request set, CPED asked NetFortris to admit or deny that NetFortris, at any time, owned assets, the use of which violated the California Public Utilities Commission's General Order 107-B. In NetFortris' response to both Request for Admission 3 and 5, NetFortris denied the Requests for Admission and elaborated that "NetFortris has never installed equipment on telephone lines in violation of General Order 107-B. At the time of the acquisition, NetFortris was not aware that Telekenex Telephone

Equipment was being used to record calls other than the call center calls preceded by an audible warning. NetFortris relied upon the Compliance with Laws representations of the Asset Purchase Agreement. As soon as NetFortris' new executive management team learned that its call recording equipment installed by Mr. [Anthony] Zabit and inherited post-closing might not be in compliance with the law as warranted, NetFortris promptly took steps to disable all features of the equipment that would record calls other than calls preceded by an audible warning."

II. AGREEMENT

8. Acknowledgements. NetFortris acknowledges that customer privacy and adherence to all statutes, laws, or rules pertaining to public utilities or other regulated industries is of critical importance to the Commission. NetFortris and CPED acknowledge that NetFortris, after taking over the assets of Telekenex on January 23, 2014, continued recording all incoming and outgoing telephone calls to and from employees' extensions without the requisite audible warning required by GO 107-B. NetFortris alleges that its new ownership group or executive management team had no knowledge of the existence of the improper call-recording settings until approximately January 19, 2015, at which time NetFortris took prompt action to stop any and all call recordings that were not preceded by an audible warning until on or about January 22, 2015.

CPED acknowledges that NetFortris' response to its Requests for Admission 3 and 5, identified above, explain the extent of NetFortris' knowledge and ownership of its call-recording equipment, thus remedying whether NetFortris misled the Commission through its denial of both Requests for Admission.

By this Settlement, NetFortris states that it now fully meets and will in the future continue to fully meet its regulatory and legal obligations in California. Subject to NetFortris' ongoing compliance with this Agreement and all applicable laws, and Commission rules, regulations, decisions, and orders, NetFortris and CPED acknowledge that all issues raised in I.17-09-004 will have been fully resolved, and will not be the basis for future or additional regulatory action or sanctions by the Commission against NetFortris.

9. Payments. In order to resolve the legal issues raised by the Commission in I.17-09-004, NetFortris will pay \$300,000 to the State of California General Fund in twelve equal

quarterly installments of \$25,000 (the Settlement Amount) with the first payment payable within thirty days of the date on which the Settlement is Approved by the Commission (the Initial Payment Date) and thereafter every third month cycle of the Initial Payment Date. All payments shall be made payable to the California Public Utilities Commission and remitted to the Commission's Fiscal Office, 505 Van Ness Avenue, Room 3000, San Francisco, CA 94102. The check or money order shall indicate the decision number of the Commission decision adopting this settlement.

10. Employee Training Program and Employee Handbook. Within twelve months from the date the Commission approves and adopts this Agreement, NetFortris will implement a training program (Employee Training Program) for its employees that shall inform and reaffirm NetFortris' commitment to and understanding of the importance of customer privacy protections and rights as well as highlight the appropriate consumer service protocols consistent with the Commission's General Orders. The Employee Training Program shall be provided to all employees and shall be referenced and integrated into the orientation materials provided to all newly hired employees. On or before the first annual anniversary of the Commission decision adopting this Agreement, NetFortris shall provide the Commission with a summary of the Employee Training Program as conducted. In addition, NetFortris shall, within twelve months from the date of the Commission's adoption of this Agreement, update (i) the current version of its Employee Handbook and (ii) its website, reaffirming the importance of, and NetFortris' commitment to, customer privacy protection.

11. Archive of Recorded Calls and Customer Notices. To the extent that NetFortris has in its possession any recordings of customer telephone calls made during the period commencing January 24, 2014 and ended January 22, 2015 (Call Period) that were not preceded by an audible warning indicating that such calls may be recorded (Archived Calls), NetFortris shall within twelve months from the date the Commission adopts this Agreement: (1) use commercially reasonable efforts to identify and locate all such recordings and thereafter reasonably promptly destroy all such recordings and any copies thereof; (2) use commercially reasonable efforts to identify all customers located in California who placed or were subject to an Archived Call during the Call Period and verbally notify such customers of the fact that a recording of their call was made without them being notified of the recording; and (3) send a

report to CPED describing the methodologies for effecting actions (1) and (2) and confirming that those actions have been successfully completed.

III. GENERAL PROVISIONS

12. Scope and Effect of Agreement. This Agreement represents a full and final resolution of I.17-09-004 and the matters giving rise thereto or arising out of the matters described therein. The parties understand that this Agreement is subject to approval by the Commission. As soon as practicable after the Parties have signed the Agreement, a Motion for Commission Approval and Adoption of the Agreement will be filed. The Parties agree to support the Agreement, recommend that the Commission approve it in its entirety without change, and commit to use their best efforts to secure Commission approval of it in its entirety without modification. The Parties agree that, if the Commission fails to adopt the Agreement in its entirety without material change and issue the requested operating authority, the Parties shall convene a settlement conference within fifteen days thereof to discuss whether the Parties can resolve any issues raised by the Commission's actions. If the Parties cannot mutually agree to resolve the issues raised by the Commission's actions, the Agreement shall be rescinded and the Parties shall be released from their obligation to support this Agreement. Thereafter, the Parties may pursue any action they deem appropriate, but agree to cooperate to establish a procedural schedule for the remainder of the proceeding and agree that neither this Agreement nor its terms shall be admissible in such proceeding unless the Parties agree.

13. Successors and Assigns. This Agreement and all covenants set forth herein shall be binding upon and shall inure to the benefit of the respective Parties hereto, their successors, heirs, assigns, partners, representatives, executors, administrators, subsidiary companies, divisions, units, agents, attorneys, officers, and directors.

14. Knowing and Voluntary Execution. The Parties acknowledge each has read this Agreement, that each fully understands the rights, duties, and privileges created hereunder, and that each enters this Agreement freely and voluntarily.

15. Authority to Execute Agreement. The undersigned acknowledge and covenant that they have been duly authorized to execute this Agreement on behalf of their respective

principals and that such execution is made within the course and scope of their respective agency or employment.

16. Entire Agreement. The Parties expressly acknowledge that the consideration recited in this Agreement is the sole and only consideration of this Agreement, and that no representations, promises, or inducements have been made by the Parties or any director, officer, employee, or agent thereof other than as set forth expressly in this Agreement.

17. Severability/Commission Modification of the Agreement. No individual term of this Agreement is agreed to by any Party except in consideration of the Parties' assent to all other terms. Thus, the Agreement is indivisible and each part is interdependent on each and all other parts. Any Party may withdraw from this Agreement if the Commission fails to approve, or modifies, deletes from or adds to the disposition of the matters stipulated herein. The Parties agree, however, to negotiate in good faith with regard to any Commission-ordered changes in order to restore the balance of benefits and burdens, and to exercise the right to withdraw only if such negotiations are unsuccessful.

18. Choice of Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of California and the rules, regulations, and General Orders of the California Public Utilities Commission.

19. Execution in Counterparts. This Agreement may be executed by any of the Parties in counterparts with the same effect as if all Parties had signed one and the same document. All such counterparts shall be deemed to be an original and shall together constitute one and the same Agreement. A signature transmitted by facsimile shall be regarded as an original signature.

20. Interpretation of the Agreement. The Parties intend the Agreement to be interpreted as a unified, interrelated agreement. Both of the Parties have contributed to the preparation of this Agreement. Accordingly, the Parties agree that no provision of this Agreement shall be construed against either of them because a particular Party or its counsel drafted the provision.

21. Final Agreement/Intent of Parties. This Agreement embodies the entire understanding of the Parties with respect to the matters described herein and supersedes any and


all prior oral or written agreements, principles, negotiations, statements or understandings among the Parties. The Agreement may be amended only by a written agreement signed by all the Parties. The Parties have bargained in good faith to achieve this Agreement. Each of the Parties has contributed to the preparation of this Agreement. Accordingly, the Parties agree that no provision of the Agreement shall be construed as against any party because that party or its counsel drafted the provision.

22. Enforcement of this Agreement. The Parties and their counsel agree to fully cooperate with each other to accomplish the terms of this Agreement in an expeditious manner. The Commission shall retain continuing jurisdiction over this matter for the term of the Agreement, including jurisdiction to enforce the terms of this Agreement. In the event of a breach, any Party to this Agreement may move the Commission to enforce this Agreement; however, before filing such motion, the moving Party shall meet and confer with all the Parties in a good faith attempt to resolve the issue without Commission intervention.

IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement.

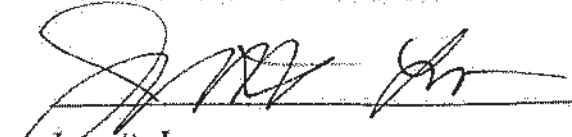
NETFORTRIS ACQUISITION, INC.

Dated: 1/25/18


Kevin Dickens
Co-CEO
NetFortris Acquisition Inc.
5601 6th Avenue, Suite 201
Seattle, WA 98108

CONSUMER PROTECTION AND ENFORCEMENT DIVISION

Dated: 1/30/18


Jeanette Lo
Chief, Utility Enforcement Branch
Consumer Protection and Enforcement Div.
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

Appendix B

Appearances

***** SERVICE LIST I1709004*****

***** PARTIES *****

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(End of Appendix B)