

**PUBLIC UTILITIES COMMISSION**

505 VAN NESS AVENUE

SAN FRANCISCO, CA 94102-3298

**FILED**09/09/19  
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September 9, 2019

TO PARTIES OF RECORD IN INVESTIGATION 18-05-012:

This proceeding was filed on May 10, 2018 and is assigned to Commissioner Clifford Rechtschaffen and Administrative Law Judge (ALJ) Mary F. McKenzie. This is the decision of the Presiding Officer, ALJ McKenzie.

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](http://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. SIMON

Anne E. Simon

Chief Administrative Law Judge

AES:lil

Attachment

**PRESIDING OFFICER'S DECISION OF ALJ MCKENZIE (Mailed 9/9/2019)**

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Investigation into Operations and Practices of Preferred Long Distance, Inc. to Determine Whether Respondents Violated the Laws, Rules, and Regulations of this State governing the manner in which California Consumers are switched from Telephone Carriers and Billed for Telephone Products and Services (U5502C).

Investigation 18-05-012

**(See Appendix A for a list of appearances.)**

**PRESIDING OFFICER'S DECISION APPROVING SETTLEMENT OF  
PREFERRED LONG DISTANCE, INC. AND CONSUMER  
PROTECTION AND ENFORCEMENT DIVISION**

## TABLE OF CONTENTS

<u>Title</u>	<u>Page</u>
Summary .....	2
1. Jurisdiction .....	2
2. Background and Procedural History .....	3
2.1. Description of PLD .....	3
2.2. CPED Investigation, Recommendations and Report .....	4
2.3. OII .....	5
3. The Settlement Agreement Provisions .....	5
3.1. Overall Settlement Payment .....	6
3.2. Provision of List of Customers to CPED .....	6
3.3. Advising New Customers of All Applicable Rates and Charges.....	7
3.4. Reporting and Compliance Provisions.....	7
3.4.1. Complaint Reporting.....	7
3.4.2. Telemarketing Transparency .....	8
3.4.3. TPV.....	9
3.4.4. Quality Control.....	10
3.5. Practices to Handle Slamming and Misrepresentation Complaints.....	10
3.6. Prohibitions on Providing Customer Information to Credit Reporting Agencies .....	11
4. Review of the Settlement Agreement .....	11
4.1. Compliance of Penalty Amount with D.98-12-075 .....	12
4.1.1. Severity of the Offense .....	13
4.1.2. Voluntary Conduct of the Utility .....	14
4.1.3. Financial Resources of the Utility.....	15
4.1.4. Comparison to Prior Commission Decisions .....	16
4.1.5. Totality of the Circumstances .....	17
4.2. Rule 12.1(d) Compliance.....	18
4.2.1. Reasonable in Light of the Record .....	19
4.2.2. Consistent with Law.....	20
4.2.3. In the Public Interest .....	20
5. Categorization and Need for Hearing .....	21
6. Appeal and Review of Presiding Officer's Decision .....	21
7. Assignment of Proceeding.....	21

Findings of Fact..... 22  
Conclusions of Law ..... 23  
ORDER ..... 24

Appendix A - Appearances

Appendix B - Settlement Agreement

**PRESIDING OFFICER'S DECISION APPROVING SETTLEMENT OF  
PREFERRED LONG DISTANCE, INC. AND CONSUMER  
PROTECTION AND ENFORCEMENT DIVISION**

**Summary**

This decision approves the Settlement Agreement, attached as Appendix B hereto, jointly sponsored by the Consumer Protection and Enforcement Division (CPED) of the California Public Utilities Commission (Commission) and Preferred Long Distance, Inc. (PLD). PLD is a holder of a Certificate of Public Convenience and Necessity to provide limited facilities-based and resold local exchange service and is subject to the Commission's jurisdiction under the Public Utilities Code.

The Settlement Agreement has been executed pursuant to the California Public Utilities Commission Order Instituting Investigation 18-05-012 into the operations and practices of PLD and resolves all outstanding issues in this proceeding. Under the terms of the Settlement Agreement, PLD will make an overall settlement payment of \$250,000 to the State of California General Fund and will take a number of prescribed steps to help avoid future harm to consumers and strengthen its internal controls.

We find that the proposed settlement payment satisfies the criteria set forth in Decision 98-12-025 and serves as an effective deterrent to further offenses. We further find that all other terms of the Settlement Agreement to be reasonable in light of the record, consistent with law, and in the public interest. Accordingly, we direct PLD to implement the terms and conditions of the Settlement Agreement.

**1. Jurisdiction**

Pursuant to Rule 5.1 of the California Public Utilities Commission's (Commission's) Rules of Practice and Procedure (Rules), the Commission has

authority to institute an investigation on its own motion. We instituted Investigation (I.) 18-05-012 based on evidence of Preferred Long Distance's (PLD's) systematic practice of misleading California consumers, executing unauthorized carrier changes, misrepresenting the nature and extent of its services, failing to refer slamming complainants to the Commission, issuing bills containing unauthorized and unlawful charges, failing to provide accurate and complete service information to consumers, and misleading the Commission. These actions are contrary to Public Utilities Code Sections 451, 702, 2889.5, 2889.9 2890, and 2896; General Order (GO) 168; and, Rule 1.1. The investigation was opened to review and determine PLD's compliance with regulations and laws pertaining to its solicitation and billing practices.

## **2. Background and Procedural History**

### **2.1. Description of PLD**

In Decision (D.) 95-09-014, the Commission granted a Certificate of Public Convenience and Necessity (CPCN) to PLD to resell inter Local Access and Transport Area (LATA) and intra LATA telephone service statewide.

D.04-08-017 granted PLD a CPCN to provide resold and limited facilities-based local exchange services and facilities-based interexchange telecommunications services statewide. PLD strictly services commercial customers in California and conducts business as "Telplex," "Telplex Communications," "RingPlanet," and "RingPlanet Communications."

PLD provides local and long distance telecommunication services in several states. PLD contracts with telemarketing companies but does not engage in telemarketing itself. PLD relies primarily on recorded Third-Party Verification (TPV) to confirm a subscriber's decision to change carriers and has used two TPV

vendors – BSG TPV, LLC and DCC Solutions, LLC (doing business as Capitol Verification) – since 2002.

## **2.2. CPED Investigation, Recommendations and Report**

The Commission’s Utility Enforcement Branch of the CPED completed an investigation into PLD’s solicitation and billing practices based on California consumer complaints received by the Commission’s Consumer Affairs Branch (CAB), the Federal Communication Commission’s (FCC) Consumer and Governmental Affairs Bureau, and the Federal Trade Commission (FTC)<sup>1</sup>. CPED assessed PLD’s practices by conducting: discovery to obtain pertinent documentation, including bills and billing data, from PLD and PLD’s third-party billing service; a review of complaints filed with CAB, the FCC, and the FTC; and interviews with former subscribers who complained to CAB. CPED also obtained 12 signed declarations from CAB complainants.

After conducting its investigation, CPED detailed its findings in an April 24, 2018, report which alleged that PLD violated Commission GO 168,<sup>2</sup> and other provisions of state law through its billing and solicitation practices. The CPED report further alleged that PLD had violated Rule 1.1. The Staff Report recommended that the Commission open a formal investigation and consider the imposition of penalties pursuant to California Public Utilities Code Sections 2107 and 2108. On May 6, 2018, the Commission issued an Order Instituting Investigation (OII).

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<sup>1</sup> According to the Order Instituting Investigation, there are 233 CAB complaints and 80 FTC complaints.

<sup>2</sup> GO 168, adopted pursuant to D.06-03-013 in Rulemaking 00-02-004 prescribes market rules to empower telecommunications consumers and to prevent fraud.



### **2.3. OII**

Pursuant to the August 29, 2018 Administrative Law Judge's Ruling Setting Prehearing Conference and Requiring the Parties to Meet and Confer and to File a Joint Prehearing Conference Statement, CPED and PLD filed a joint Prehearing Conference Statement identifying factual and legal issues in dispute and in scope, potential witnesses, the need for discovery and a proposed schedule. A prehearing conference was held on September 11, 2018 and the Assigned Commissioner's Scoping Memo and Ruling (Scoping Memo) was issued on October 8, 2018. The Scoping Memo identified as within scope whether PLD violated GO 168, Public Utilities Code Sections 451, 2889.5, 2889.9, 2890, and 2896, and Rule 1.1. based on whether PLD:

- 1) Misrepresented its affiliations in solicitations;
- 2) Changed customers' preferred telephone service providers without obtaining proper authorization;
- 3) Representatives failed to identify themselves properly upon request by customers;
- 4) Failed to refer slamming complaints to the CAB;
- 5) Placed unauthorized charges on subscribers' bills;
- 6) Failed to provide accurate price or service information to customers; and
- 7) Provided false information to Commission staff and false statements in response to Commission staff data requests.

### **3. The Settlement Agreement Provisions**

Following the submittal of prepared and direct testimony on November 19, 2018 and December 14, 2018, respectively, PLD and CPED entered into negotiations and reached a Settlement Agreement that resolves all issues within the scope of this proceeding. On January 25, 2019, the assigned Administrative Law Judge issued an e-mail ruling vacating scheduled hearings

and briefs. On February 8, 2019, PLD and CPED jointly filed a motion for Commission adoption of a Settlement Agreement attached thereto. As described in the motion, the settling parties assert that the Settlement Agreement resolves all issues in the OII, as identified in the Scoping Memo, and achieves a comprehensive resolution of issues. The Settlement Agreement provides, in addition to penalties, various remedial measures for customer restitution, to help prevent improper marketing, and to enable diligent oversight. The Settling Parties express support for this approach in light of PLD's financial condition and recent efforts to stop and prevent any unlawful solicitations and billing.

The terms of the Settlement Agreement are summarized below:

**3.1. Overall Settlement Payment**

The Settlement Agreement calls for an overall settlement payment of \$250,000 in the aggregate, payable to the State of California General Fund in installments over 24 months, with the first payment due before or within 90 days of Commission approval of the Settlement Agreement. The appropriateness of the settlement amount is discussed below in accordance with the factors set out by the Commission in D.98-12-075.

**3.2. Provision of List of Customers to CPED**

In addition to the monetary settlement amount, the Settlement Agreement includes specified remedies. First, PLD has refunded payments by many customers who asserted they were improperly switched to PLD's service or received bills for unauthorized services. PLD has committed to providing CPED with a list of those customers along with their billing information to account for refunds provided. If CPED identifies from CAB complaints additional customers eligible for refunds, PLD will attempt to issue refunds to these customers as well.

### **3.3. Advising New Customers of All Applicable Rates and Charges**

Second, PLD will assure that each new customer is fully advised of all rates and charges that will appear on the customer's bill, by: a) maintaining a current Service Guide on PLD's website consistent with GO 168 and b) disclosing the amounts of monthly recurring charges for the service, including each feature, the mandatory per-account directory listing/unlisted number fee, and Cost Recovery Fees (individually, or totals by account or line), and the per unit usage charges for intrastate and domestic interstate calling, on the order confirmation/welcome letter and disclosing where such information may be found on PLD's website during the TPVs.

### **3.4. Reporting and Compliance Provisions**

Third, PLD agrees to specified reporting and compliance provisions. In particular, over a two-year period, PLD will designate a "Compliance Officer" to implement several compliance conditions, including the requirements described below:

#### **3.4.1. Complaint Reporting**

PLD's Compliance Officer will provide quarterly Complaint Reports to CPED related to California consumer complaints made directly to PLD and provided to PLD from any federal regulatory or law enforcement agency. Within 30 days of receiving a CAB complaint for slamming, the Compliance Officer will provide CPED a copy of the complaint; an audio copy of the TPV; information as to whether PLD's TPV regulatory checklist was satisfied during the TPV; PLD's Quality Control (QC) Checklist (discussed below); the identity of the telemarketing company and the unique identifier of the specific telemarketer that contacted the consumer; a summary of the PLD Compliance Officer's communication and/or interaction with the customer; and an indication if the

consumer was satisfied with the results of any discussions with the Compliance Officer.

### **3.4.2. Telemarketing Transparency**

PLD's Compliance Officer will provide the contact information and unredacted contracts for each telemarketing company currently providing telemarketing services for PLD and will notify CPED within 30 days of the written termination of or any additional contracts for telemarketing services that PLD enters into.

Additionally, PLD will ensure that its telemarketing contracts include express provisions that prohibit a telemarketer from purposefully misrepresenting the relationship between a carrier and PLD, provide for appropriate mechanisms to investigate and take further action in any instances of misrepresentation, and require each of the contracted telemarketing vendors to obtain countersigned anti-slamming policies by individuals engaged in telemarketing PLD Communications Service offerings.

PLD will also provide CPED with copies of any scripts used by identified telemarketing companies in connection with marketing of PLD's Communications Service and will provide modified scripts within ten days of the effective date of the change.

PLD will require that its contracts telemarketers must, if provided an opportunity to do so:

- 1) state that she or he is PLD's representative; identify that the telemarketing call's purpose is to inquire whether the consumer is authorized to and desires to change his or her local, long distance, international, or other toll service from his or her current preferred carrier to PLD (using the appropriate PLD business name under which the service is being offered;

- 2) not state that the consumer's carrier change is mandatory, required, or necessary under any law or agreement made by the consumer's carrier at the time of the call and/or necessary because the consumer's carrier at the time of the call is no longer offering services in the consumer's geographical area;
- 3) not make any false and/or misleading statements to the consumer regarding the TPV service provider and/or its role, or instruct the consumer how (s)he should respond to any questions made during the TPV call or callback or the PLD quality control (QC) call;
- 4) immediately end the telemarketing call once the consumer states that (s)he is not interested in the PLD offer; and
- 5) use best efforts to explain the business relationship between PLD and the carrier, including, where appropriate, PLD's affiliation with the AT&T Partner Exchange Program as a Platinum Service Provider authorized to provide resale services powered by AT&T for Communications Services at the time of the telemarketing call.

PLD's Quality Control staff will continue to contact every California subscriber prior to effectuating a carrier change for services and will assess whether a review of a telemarketer's representations to consumers is warranted. If a review is warranted, then the Compliance Officer will further investigate and inform the call center of the situation to take additional steps as appropriate, i.e. discuss the incident with the telemarketer, retrain, monitor, suspend, or remove the telemarketer from PLD's services. The Compliance Officer will record these instances and report them on a quarterly basis to CPED.

### **3.4.3. TPV**

PLD will provide copies of any scripts currently used by the TPV service providers that provide services in connection with PLD, including any changed scripts, to CPED.

#### **3.4.4. Quality Control**

PLD will conduct a QC call to every customer that successfully completes the TPV process for PLD services prior to switching the customer's preferred carrier in order to confirm that the customer understands (a) that PLD is a separate, competing carrier with the customer's carrier at the time of the telemarketing call, and (b) other terms of the authorization being made to switch the customer's preferred carrier to PLD. PLD will not effectuate a carrier change unless it has successfully completed the QC call and the call indicates that a customer wishes to effectuate a carrier change. PLD will generate and maintain a QC call checklist for each customer reflecting his or her responses to each of the questions made during the QC call.

During the QC call, Quality Control staff will also disclose the amounts of monthly recurring charges for the service and the per unit usage charges for intrastate and domestic interstate calling, and indicate that the Cost Recovery Fees (individually, or totals by account or line) are disclosed on the Order Confirmation/Welcome Letter and on PLD's website.

#### **3.5. Practices to Handle Slamming and Misrepresentation Complaints**

Fourth, PLD has agreed to modify its practices for handling slamming and misrepresentation complaints for a two-year period. If complaints are made within 90 days of the carrier change, PLD will waive all charges over that period and waive charges for the following 30-day period to enable a customer to switch carriers if desired, unless a customer agrees to the charges or to continue services. If a complaint is raised after 90 days of the carrier change, PLD will undertake efforts to engage in good faith discussions to resolve the matter to the customer's satisfaction, including as PLD deems appropriate, offering additional

credits or, if payment has been made, refunds of charges made up to 90 days prior to receipt of the allegations.

### **3.6. Prohibitions on Providing Customer Information to Credit Reporting Agencies**

Lastly, PLD will not, and will not permit its agents, attorneys, external collection agencies, or other independent contractors to, provide any customer's payment history or other information to any credit reporting agency.

## **4. Review of the Settlement Agreement**

Under Rule 12.1 of the Commission's Rules, as a basis to approve and adopt a settlement, we must find that the 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, D.98-12-075 sets forth five factors to be examined in determining whether the proposed fine or penalty is reasonable, as follows:<sup>3</sup>

- (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

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<sup>3</sup> D.98-12-075, 84 CPUC2d 155, 182-84 (1998).

- (5) The totality of the circumstances in furtherance of the public interest.

The above factors closely mirror the considerations listed in Public Utilities Code Section 2104.5. While that code section applies to gas pipeline safety, the Commission has analogously applied its application in other types of proceedings.<sup>4</sup>

As discussed below, we find that the instant Settlement Agreement addresses all issues in the scope of this proceeding, meets Rule 12.1(d) requirements, and is reasonable under the five-factor analysis set forth in D.98-12-075. Because the Settlement Agreement involves a proposed penalty amount, we first discuss the reasonableness of the proposed penalty amount by reviewing the five factors under D.98-12-075. Then we discuss how the Settlement Agreement as a whole addresses all issues in this proceeding and complies with Rule 12.1(d) requirements.

#### **4.1. Compliance of Penalty Amount with D.98-12-075**

Public Utilities Code Section 2107 provides that the Commission may impose a penalty between \$500 and \$100,000 for each violation of state law.<sup>5</sup> Under Section 2108, every violation is a separate and distinct offense, and each day of a continuing violation is a separate and distinct offense. When assessing the reasonableness of a penalty, we evaluate the amount under five general factors: (1) the severity of the offense, (2) the conduct of the utility, (3) financial resources of the utility, (4) the role of precedent, and (5) the totality of the

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<sup>4</sup> 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).

<sup>5</sup> In 2018, when the OII was commenced, the maximum penalty per violation was \$50,000.



circumstances in furtherance of the public interest, as established by D.98-12-075. These factors, when applied to the \$250,000 payment proposed in the Settlement Agreement, establish that it is objectively reasonable, as discussed below.

#### **4.1.1. Severity of the Offense**

For purposes of evaluating the reasonableness of a penalty payment, the severity of the offense is the first factor identified for consideration under D.98-12-075. The severity of the offense factor takes into account the nature and extent of physical and economic harm, harm to the regulatory process and the number and scope of violations.

Under D.98-12-075, the most severe violations are those which either cause physical harm to people or property.<sup>6</sup> The violations raised in this OII did not involve causing physical harm to people or property.

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. In this case, PLD stood to gain economically from its unlawful conduct. The fact that PLD has already refunded a large portion of customer's bills to resolve customer complaints included in the OII is a mitigating factor that we will consider in the section below on totality of the circumstances. Going forward, PLD will refund costs for services if slamming or misrepresentation complaints are made within 90 days of the carrier change to PLD. CPED acknowledges that no economic harm was inflicted on PLD customers related to imposition of the Federal Excise Tax.

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<sup>6</sup> D.98-12-075 at 39.

*Footnote continued on next page.*

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.”<sup>7</sup> Here, as a result of PLD’s actions, regulatory harm occurred in relation to GO 168 and Rule 1.1 compliance.

CPED and PLD have different interpretations of when and how to fulfill GO 168 requirements to refer customers to CAB who wish to make a complaint and to provide notice to customers of the 30-day absolution period. To remedy this, in the Settlement Agreement, PLD has committed to provide this information to customers when they make complaints to PLD rather than just providing notice on customer bills. Additionally, PLD did not provide or maintain an up-to-date California Service Guide, as required by GO 168. To remedy this, PLD has agreed to maintain its California Service Guide on a fully-updated basis going forward.

CPED alleged that PLD committed several Rule 1.1. violations. CPED acknowledges that PLD did not mislead the Commission as to the provision of TPVs associated with the CAB complaints identified in CPED’s prepared direct testimony served on November 19, 2018; however, CPED maintains that PLD’s provision of inaccurate information pertaining to the use of term contracts and its production of telemarketing scripts that were not actually being used in telemarketing calls constitute violations of Rule 1.1.

#### **4.1.2. Voluntary Conduct of the Utility**

The second factor to be considered under D.98-12-075 focuses on the utility’s voluntary conduct in preventing, detecting, disclosing and rectifying the

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<sup>7</sup> D.01-08-019 at 13, citing D.98-12-075.

violation. In this instance, PLD sought to refund customers who presented billing disputes and claims of misrepresentation or claimed that their carrier switch was not authorized. PLD also instituted quality control measures to require telemarketers to adhere to anti-slamming policies and to monitor any misrepresentations that may have occurred during telemarketing calls through calls to customers after the TPV process but before effectuating a carrier change.

The Settlement Agreement includes actions that PLD will take to prevent, detect, disclose, and rectify any further violations as detailed above.

#### **4.1.3. Financial Resources of the Utility**

The third factor to be considered under D.98-12-075 is the financial resources of the utility. Here, the Commission must ensure against excessive fines or penalties while imposing an effective fine/penalty.<sup>8</sup> 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.<sup>9</sup>

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

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<sup>8</sup> *Id.* at 7.

<sup>9</sup> *Id.* at 58-59.

*Footnote continued on next page.*

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.<sup>10</sup>

Under the proposed Settlement Agreement, PLD is subject to a total penalty amount of \$250,000. PLD has 38 employees and its operations in California are relatively small compared to some of the extremely large entities regulated by the Commission.

#### **4.1.4. Comparison to Prior Commission Decisions**

The fourth factor to be considered under D.98-12-075 is whether the fine or penalty is reasonable in light of prior Commission decisions. To demonstrate the reasonableness of the recommended penalty, CPED considered the range of the fines assessed in several other settlements and compared PLD to those companies in terms of their financial health, the severity of its violations, and its conduct in rectifying its violations. The Commission has imposed much larger penalties against telephone corporations. These larger penalties are typically assessed against far larger utilities for more serious or more numerous violations. For example, in D.15-09-009, the Safety and Enforcement Division and Comcast agreed to a \$25 million settlement amount because Comcast had disclosed contact information for approximately 75,000 customers who had paid for phone numbers that would not be published. In this case, both the scope of the harm and the financial resources of the utility were significantly greater than in this proceeding. Similarly, in D.01-09-017 and D.04-06-017, the Commission levied multi-million-dollar fines on Vista Group International, Inc. and NOS

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<sup>10</sup> *Ibid.*

Communications, respectively, for deceptive marketing practices. In D.01-09-017, thousands of customers were affected and in D.04-06-017, 850 customers were affected, which are considerably more than the complaints CPED received related to this proceeding.

In terms of determining a penalty amount, CPED considered the range of the fines assessed in several other settlements and compared PLD to those companies in terms of their financial health, the severity of its violations, and its conduct in rectifying its violations. CPED believes \$250,000 is a sufficient penalty that would serve as a strong and effective deterrent from future violations.

#### **4.1.5. Totality of the Circumstances**

The fifth and final factor to 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 \$250,000 penalty is reasonable, looking at all the circumstances, including both mitigating and aggravating factors. Here, PLD has committed to complying with the legal requirements enforced by the Commission and has agreed to remedies that can strengthen its internal controls and help avoid future harm to consumers.

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

First, by imposing the penalty of \$250,000, we deter future similar violations and incentivize PLD and other utilities to work more diligently to ensure that similar rules are not violated. Second, the penalty is accompanied by other significant settlement terms. It would have been difficult, through litigation, to craft similar thoughtful and thorough ready-to-implement features

comparable to those in the Settlement Agreement. Third, PLD has already refunded a large portion of customer's bills to resolve customer complaints included in the OII. Fourth, 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. Fifth, to settle this litigation, PLD has agreed to pay a penalty of \$250,000. The only parties to this proceeding, CPED and PLD, have cooperated to negotiate these terms of the Settlement Agreement. No unresolved contested factual or legal issues remain in the proceeding.

Based on the overall analysis of the five-factors under D.98-12-075, as discussed above, and our review of the above-noted prior decisions, we find the proposed penalty amount of \$250,000 in the Settlement Agreement to be a substantial payment for a utility of PLD's size, and with the necessary deterrent effect of sending an effective message to PLD and those similarly situated telecommunications companies. We therefore find the proposed penalty amount of \$250,000 to be reasonable and justified under the standards of D.98-12-075.

#### **4.2. Rule 12.1(d) Compliance**

In the preceding section, we found the proposed penalty amount reasonable under the D.98-12-075 five-factor analysis. As discussed below, we now turn to the Settlement Agreement as a whole to discuss how it addresses all issues in this proceeding and satisfies the requirements of Rule 12.1(d) of the Commission's Rules.

As for the requirements of Rule 12.1(d), we incorporate our analysis in the preceding section of this decision. While that analysis focused on the penalty amount, the same analysis evaluated the severity of PLD's offense, its conduct, its resources, and totality of all of the circumstances. In addition, we examined

application of prior decisions and Code §§ 2107 and 2108. Thus, our foregoing analysis applies 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.

**4.2.1. Reasonable in Light of the Record**

In reaching the Settlement Agreement, CPED and PLD draw upon facts established through a comprehensive investigation by Commission staff and prepared testimony. Although the schedule for evidentiary hearings and briefs was vacated at parties' request, we hereby receive into evidence the staff report and the prepared and direct testimony offered on November 19, and December 14, 2018, respectively.

CPED and PLD engaged in arms-length negotiations to resolve the complex fact pattern and determine a settlement amount. The resulting Settlement Agreement addresses and resolves the factual and legal allegations made by CPED, as presented in its report on April 24, 2018, and provides for future compliance with the Public Utilities Code and the Commission's Rules and General Orders. As discussed herein, the Settlement Agreement resolves the issues within the scope of this proceeding, as set forth in the OII, to examine PLD actions, determine appropriate corrective measures, and impose a fine or other remedies.

A proposed settlement is reasonable if it adopts a result in the range of reasonableness in the context of the allegations and the strength of evidence, and as weighed against the significant risk, expense, complexity, and length of further proceedings.

The proposed Settlement Agreement requires PLD to pay a significant penalty for a company of its financial condition, conduct compliance monitoring

and reporting, and implement quality control measures. The agreed-upon reporting and quality control requirements indicate PLD's willingness to comply with regulations and to work with customers to resolve disputes in a reasonable manner going forward. The facts relied on and the penalties agreed to do not conflict with the underlying record.

Given these facts, we find the Settlement Agreement reasonable in light of the whole record. Much of the factual record is disclosed in the Staff Report and prepared testimony. Although the schedule for evidentiary hearings and briefs was vacated at parties' request, we receive into evidence the staff report and the prepared and direct testimony offered on November 19, 2018, and December 14, 2018, respectively.

#### **4.2.2. Consistent with Law**

The Settlement Agreement is consistent with applicable laws. The Settlement Agreement presents reasonable penalties and remedies that protect the public interest.

Nothing in the Agreement is contrary to or compromises statute, case law, or Commission rules or regulations. Moreover, it requires PLD to comply with specific reporting requirements over a two-year period, which will enable CPED to ensure compliance.

#### **4.2.3. In the Public Interest**

The only parties to this proceeding, CPED and PLD, represent the interests affected by the Settlement. Each party has a different interest and perspective in ensuring and enforcing compliance with state laws and Commission regulations. PLD has agreed to compliance and quality assurance monitoring and reporting measures to provide consumer benefits and enable Commission oversight.



As previously noted, the Settlement Agreement serves the public interest by deterring future similar violations and incentivizing PLD and other utilities to work more diligently to ensure that similar rules are not violated. 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.

**5. Categorization and Need for Hearing**

The OII 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 evidentiary hearings, we affirm the preliminary categorization of adjudicatory and determine that no hearings are now required.

**6. Appeal and Review of Presiding Officer's Decision**

Pursuant to Rule 14.4, any party may file an appeal of the Presiding Officer's Decision within 30 days of the date the decision is served. In addition, any Commissioner may request review of the Presiding Officer's decision by filing a request for review within 30 days of the date the decision is served. Appeals and requests for review shall set forth specifically the grounds on which the appellant or requestor believes the Presiding Officer's decision to be unlawful or erroneous. Vague assertions as to the record or the law, without citation, may be accorded little weight.

**7. Assignment of Proceeding**

Clifford Rechtschaffen is the assigned Commissioner and Mary McKenzie is the assigned Administrative Law Judge and the Presiding Officer in this proceeding.

### **Findings of Fact**

1. On April 24, 2018, the Utility Enforcement Branch of CPED issued the Staff Report on the alleged solicitation and billing practices of PLD.

2. Based on the Staff Report, the Commission initiated an OII to investigate the allegations of PLD's systematic practice of misleading California consumers, executing unauthorized carrier changes, misrepresenting the nature and extent of its services, failing to refer slamming complainants to the Commission, issuing bills containing unauthorized and unlawful charges, failing to provide accurate and complete service information to consumers, and misleading the Commission.

3. CPED and PLD are the only parties to this proceeding, and they have negotiated a Settlement Agreement and filed their Joint Motion for Adoption of Settlement Agreement.

4. The Settlement Agreement is uncontested.

5. The Commission has authority to impose fines and/or remedies in this matter pursuant to GO 168 and Public Utilities Code Sections 734, 2107, 2108, 2889.5.

6. The Settlement Agreement addresses and resolves all factual and legal allegations made by CPED, as presented in its report issued April 24, 2018, and provides for future compliance with applicable provisions of the Public Utilities Code and the Commission's Rules and General Orders.

7. For settlement agreements which include a fine or penalty, D.98-12-075 sets forth five factors to be examined in determining whether the proposed fine or penalty is reasonable. The \$250,000 penalty payment in the Settlement Agreement is reasonable in light of the five factors outlined in D.98-12-075.

8. The \$250,000 penalty payment in the Settlement Agreement is substantial and appropriate in light of PLD's offense and conduct. The penalty has been set at a level that should act as an effective deterrent to PLD and others, but should not affect PLD's ability to continue providing service to its customer base.

9. In addition to the monetary settlement amount, the Settlement Agreement calls for other specified remedies including full restitution to customers of amounts paid by charges to consumers claiming slamming or misrepresentation, identification of rates and charges appearing on customer's bills, and additional remedies set forth in Section II.C of the Settlement Agreement.

10. The issues in this proceeding are adequately addressed by the Settlement Agreement.

### **Conclusions of Law**

1. The Joint Motion for Adoption of the Settlement Agreement, filed February 8, 2019, should be granted, and the Settlement Agreement should be approved and adopted without change.

2. We receive into evidence the staff report and the prepared and direct testimony offered on November 19, and December 14, 2018, respectively.

3. 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 and should be approved.

4. The Settlement Agreement addresses all issues in the scope of this investigation, as set forth in the CPED Staff Report issued on April 24, 2018 and in the prepared testimony offered on November 19, and December 14, 2018 and should be approved.

5. The proposed Settlement Agreement is consistent with the Commission's Rule 12.1(d) and the proposed penalty amount is reasonable in light of the five-factor analysis as outlined in D.98-12-075.

6. The preliminary determination of proceeding categorization of adjudicatory should be confirmed.

7. In view of the Settlement Agreement, hearings are no longer needed.

8. The prepared and direct testimony offered in this proceeding on November 19, 2018, and December 14, 2018, together with the Consumer Protection and Enforcement Division Staff Report, issued April 24, 2018, should all be received into the evidentiary record of this proceeding.

9. Administrative Law Judge Mary McKenzie should be designated as the assigned Administrative Law Judge and Presiding Officer.

10. I.18-05-012 should be closed.

## **O R D E R**

### **IT IS ORDERED that:**

1. The Joint Motion of Preferred Long Distance, Inc. (U-5502-C) and the Consumer Protection and Enforcement Division for Adoption of Settlement filed on February 8, 2019, is granted.

2. The Settlement Agreement, attached to this decision as Appendix B, is approved and adopted without modification.

3. The prepared and direct testimony offered in this proceeding on November 19, 2018, and December 14, 2018, together with the Consumer Protection and Enforcement Division Staff Report, dated April 24, 2018, and filed

in the proceeding docket are all hereby received into the evidentiary record of this proceeding.

4. Preferred Long Distance, Inc. (PLD) shall pay \$250,000 to the State of California General Fund, over a period of 24 months under the terms as outlined in Section II.D the Settlement Agreement (see Appendix B hereto). 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. PLD shall write on the face of the check or money order "For deposit to the State of California General Fund per Decision \_\_\_\_\_" with the "Decision \_\_\_\_" being the Commission-designated number for today's decision.

5. Preferred Long Distance, Inc. is directed to comply with and implement all of the terms of the Settlement Agreement as adopted and set forth in Appendix B of this decision.

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

7. Hearings are no longer needed.

8. Administrative Law Judge Mary McKenzie is designated as the assigned Administrative Law Judge and Presiding Officer.

9. Investigation 18-05-012 is closed.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.

**APPENDIX A**

\*\*\*\*\* **PARTIES** \*\*\*\*\*

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

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Rosanne O'Hara  
Legal Division  
RM. 5039  
505 Van Ness Avenue  
San Francisco CA 94102 3298  
(415) 703-2386  
ro4@cpuc.ca.gov  
For: Consumer Protection and Enforcement Division (CPED)

\*\*\*\*\* **STATE EMPLOYEE** \*\*\*\*\*

Jeanette Lo  
Consumer Protection and Enforcement Division  
RM. 2207  
505 Van Ness Avenue  
San Francisco CA 94102 3298  
(415) 703-1825  
jlo@cpuc.ca.gov

Mary F. McKenzie  
Administrative Law Judge Division  
RM. 5109  
505 Van Ness Avenue  
San Francisco CA 94102 3298  
(415) 703-2408  
mfm@cpuc.ca.gov

**(END OF APPENDIX A)**

**APPENDIX B**  
**SETTLEMENT AGREEMENT**