Decision 11-10-017 October 6, 2011

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation on the Commission's Own Motion into the Billing Practices and Conduct of Legacy Long Distance International, Inc. (Legacy) to Determine if Legacy Violated the Law, Rules, and Regulations Governing the Manner in which California Consumers are Billed for Phone Services.	Investigation 10-06-013 (Filed June 24, 2010)

DECISION APPROVING SETTLEMENT AGREEMENT

1. Summary

This decision approves the proposed Settlement Agreement (Appendix A) between the Commission's Consumer Protection and Safety Division and respondent, Legacy Long Distance International, Inc. (Legacy) resolving all issues in this investigation.

The Settlement Agreement, among other things, requires that Legacy (1) issue refunds or credits to California consumers who complained about Legacy's billing or were double-billed during the period between 2005-2008, and (2) pay a penalty of $215,000 to the State of California General Fund.

The Settlement Agreement also requires that Legacy conduct an internal investigation to confirm that it has addressed all of approximately 14,000 reported inquiries from consumers regarding Legacy's billing.

Investigation 10-06-013 is closed.

2. Background

Legacy Long Distance International, Inc. (U5786C) (Legacy) is a California corporation located in Cypress, California, that was incorporated in 1996. Legacy operates as: 1) a facilities-based and resale carrier of interexchange services, including operator services in California; and 2) a reseller of local exchange services in California. Legacy provides local and long distance services, including operator services, to Customer-Owned Pay Telephone (COPT) service providers, inmate facilities, and to hotels, motels, and other hospitality locations.

This Commission's Consumer Protection and Safety Division's (CPSD) investigation of complaints against Legacy found 686 complaints against Legacy via its billing aggregator BSG and 706 complaints against Legacy made to the Commission's Consumer Affairs Branch (CAB). CPSD's report alleged that Legacy placed unauthorized charges (or cramming) on customer bills.

Based on CPSD's report, the Commission voted unanimously on June 24, 2010 to issue an Order Instituting Investigation (I.) 10-06-013 (OII), to investigate these allegations and to determine whether Legacy violated provisions of the Public Utilities Code, general orders, and other rules or requirements. Specifically, the Commission sought to investigate:

1. Whether Legacy had violated Pub. Util. Code § 2890(a) by placing unauthorized charges on consumers' telephone bills (also known as "cramming"). The alleged unauthorized charges took the following form:
    - Charges for collect calls that did not occur;
    - Charges for unauthorized third-party calls;
    - Charges for calls that did not connect well;
    - Charges for rejected collect calls; and
    - Charges for collect calls left on answering machines.

2. Whether Legacy had violated Pub. Util. Code §§ 2896(a) and 451, as well as the Federal Telecommunications Act of 1996, Section 226, by failing to provide consumers with sufficient rate information with which to make informed choices on whether to accept certain collect calls or not.
3. Whether Legacy had violated Pub. Util. Code § 489(a) by failing to file its complete tariff timely, and by charging consumers under rates it had not filed.
4. Whether Legacy had violated Pub. Util. Code § 532 by charging consumers in excess of rates posted in rate sheets.
5. Whether Legacy had violated Rule 1.1 of the Commission's Rules of Practice and Procedure by failing to disclose numerous regulatory sanctions Legacy sustained in 16 other states.

The order directed Legacy to provide responses to the alleged violations of specific sections of the Pub. Util. Code within 30 days of the OII's issuance, which was July 7, 2010, and to show cause why the Commission should not find violations in this matter and why the Commission should not impose penalties, or any other forms of relief, if violations were found.

On July 14, 2010, Legacy wrote to the Executive Director of the Commission asking for an extension of time for responding. On July 16, 2010, the Executive Director granted Legacy an extension until September 7, 2010.

On August 23, 2010, a prehearing conference (PHC) was held at the Commission at which Legacy and CPSD agreed to a schedule under which Legacy would provide a response and its reply testimony on September 21, 2010.

On September 21, 2010, Legacy filed a response to the questions in Ordering Paragraph (OP) 2, but failed to reference and identify supporting documents as required by OP 2. Legacy also failed to submit reply testimony.

On October 1, 2010, Legacy filed a motion asking for relief from providing further identification of documents supporting its responses. On October 13, 2010, CPSD filed in opposition to the Motion. On October 26, 2010, Administrative Law Judge (ALJ) Sullivan issued a ruling revising the schedule and clarifying that the scope of the proceeding included the issue of whether Legacy's Certificate of Public Convenience and Necessity (CPCN) should be revoked. In addition, the ruling denied Legacy's Motion for Relief.

On November 12, 2010, Legacy filed an amended response to the OII and submitted reply testimony and accompanying exhibits.

By joint motion filed May 13, 2011, CPSD and Legacy requested adoption of their Settlement Agreement. The proposed Settlement Agreement, including a stipulation of facts by the parties, is attached to this decision as Appendix A.

3. Terms of the Settlement Agreement

To settle this proceeding, Legacy, among other things, admitted to the following:

1. Legacy failed to timely submit a CDROM copy of its tariff that was in effect as of January 1, 2007.

2. Legacy failed to properly update its tariff for a period of time prior to mid-2007, which resulted in charges to some consumers exceeding amounts specified in its tariff.

3. Legacy made misrepresentations in its withdrawn CPCN application (Application (A.) 06-11-003) by failing to disclose sanctions and investigations in Florida, Nebraska, and North Carolina.

4. Legacy's charges for operator service calls could be viewed as exorbitant.

5. Legacy double-billed a significant number of consumers. Legacy estimates that between 2005 and 2008, approximately 5,700 calls out of roughly 985,000 calls completed to California consumers were double-billed.

6. On very rare occasions, a consumer may be billed for a call that was not authorized.

7. On some occasions, Legacy may bill for calls that did not connect well.

8. Until recently, Legacy's automated operator system did not permit California intrastate collect call recipients to ask for rates.

Legacy denied any intentional wrongdoing. Legacy argued, among other defenses, that its failure to make disclosures was due to carelessness and was not intentional. Regarding high prices, Legacy stated that its charges are determined through negotiations with COPT owners and aggregators who are able to demand the imposition of very high charges for calls as a condition to serving their COPTs.

As for the admitted practice of double-billing and other unauthorized charges, Legacy contended that it was not aware of the double-billings until the OII was issued, and that the double-billing occurred as the result of Legacy's adoption of an inappropriate procedure in which Legacy billed customers for calls Legacy mistakenly believed had not yet been billed. Legacy contended that in general, Legacy's policies, practices, and systems do not allow charges to be billed for rejected collect calls, unauthorized third-party-billed calls, or attempted collect calls that are answered by answering machines. However, Legacy stated that it has no way to ascertain, once a call is authorized, whether the subsequent connection is of suitable quality.

Finally, Legacy argued that its practices relating to a call recipient's ability to get rate information conformed to standard, competitive industry practice.

The parties disagreed on whether Commission precedent requires alternative operator service providers to disclose rates to collect call recipients.

In order to correct its admitted violations, Legacy claimed that it had recently re-programmed its automated operator system to enable call recipients to obtain complete rate information prior to accepting charges. Legacy argued that this new practice is unique and places it at a competitive disadvantage in negotiating with COPT owners and aggregators.

Legacy asserted that it has confirmed that charges for approximately 3,100 mischarged calls were removed from the consumers' bills. Legacy stated that it maintains a very liberal policy of providing discounts or refunds to consumers who complain directly or through regulatory agencies regarding excessive charges for operator-handled calls or who deny authorizing such charges, and that discounts or refunds are very often provided notwithstanding call data showing that such calls were authorized and completed.

Legacy agreed that it will comply with all Pub. Util. Code sections and the tariffs applicable to Legacy's operations. If there are any future disputes from California consumers regarding Legacy, Legacy will provide to CAB both the billing records and the switch records relevant to the dispute.

4. Discussion

Pursuant to Rule 12.1(d), the Commission will not approve a settlement unless it is reasonable in light of the whole record, consistent with law, and in the public interest.

Nothing in the Settlement Agreement contravenes any statutory provisions or prior Commission decisions, and it provides sufficient information for us to discharge our future regulatory obligations with respect to the parties and their interests and obligations.

We have historically favored settlements that are fair and reasonable in light of the record as a whole. Concerning the record in this proceeding, the stipulation of facts constitutes an admission that Legacy did indeed violate each of the cited provisions of the Pub. Util. Code. Specifically, regarding allegations in the OII:

1. The admission that Legacy failed to timely submit a CDROM copy of its tariff that was in effect as of January 1, 2007 confirms allegations 2, 3, and 4.

2. The admission that Legacy failed to properly update its tariff for a period of time prior to mid 2007, which resulted in charges to some consumers exceeding amounts specified in its tariff confirms allegations 3 and 4.

3. The admission that Legacy made misrepresentations in its withdrawn CPCN application (A.06-11-003) by failing to disclose sanctions and investigations in Florida, Nebraska, and North Carolina confirms allegation 5.

4. The admission that Legacy's charges for operator service calls could be viewed as exorbitant pertains to allegation 2.

5. The admission that Legacy double-billed a significant number of consumers (Legacy estimates that between 2005 and 2008, approximately 5,700 calls out of roughly 985,000 calls completed to California consumers were double billed) confirms allegation 1.

6. The admission that on very rare occasions a consumer may be billed for a call that was not authorized pertains to allegation 1.

7. The admission that on some occasions Legacy may bill for calls that did not connect well confirms allegation 1.

8. The admission that until recently, Legacy's automated operator system did not permit California intrastate collect call recipients to ask for rates pertains to allegation 2.

Therefore, Legacy admits to these alleged violations of law and rules.

In this case, although Legacy maintains that its failure to disclose information and its over-billing of customers was inadvertent, it acknowledged that it did fail to disclose and over-billed a great number of its customers. As a consequence of its admitted violations of law, the Settlement Agreement proposes that Legacy will pay a fine to the General Fund, refund its customers, conduct an internal investigation to ensure it has addressed customer complaints and modify its operations to make rate information available to called parties and ensure future compliance with Pub. Util. Code and other regulations. Thus, Legacy has admitted its errors, offered restitution to affected customers that it can identify, and instituted changes in policy and practices. Also, it will pay a fine.

The Settlement Agreement resolves a potentially time-consuming and disruptive dispute and avoids future litigation. In addition, it provides that customers who may not have been aware of prior double billings are provided a fair opportunity to obtain refunds and ensures that all outstanding, legitimate consumer complaints are properly redressed.

While we find the number of customers harmed and the amount of admitted violations by Legacy to be highly troubling, we find that the benefits to the public, including the payment to the General Fund but most importantly the guaranteed refund to customers harmed by Legacy's practices, outweigh the benefits of continued litigation with its associated cost and uncertainty of outcome.

Furthermore, the settlement will ensure that going forward, both Legacy and CAB will have appropriate data before them when addressing customer complaints and that recipients of collect calls are able to obtain full rate disclosure before accepting a call.

As for the penalty amount proposed in the Settlement Agreement, in determining the amount of the fine, we look to the criteria established in Decision (D.) 98-12-075, Appendix B, which has provided guidance in all subsequent cases in which such issues arise. We consider the following criteria: 1) The severity of the economic or physical harm resulting from the violation; 2) The utility's conduct to prevent, detect, disclose, and rectify the violation; 3) The utility's financial resources; 4) The public interest involved; 5) The totality of the circumstances; and 6) Commission precedents. We require each public utility to fully comply with all relevant statutes, rules, regulations, and Commission orders, and we expressly order each utility to do so as a condition of our approval of its authority to operate.[1]

In this particular situation, the severity of the economic harm, with approximately 5,700 customers double-billed, and other customers billed for unauthorized calls, is high. However, the Settlement Agreement demonstrates that the utility has committed to a course of action to prevent, detect, disclose, and rectify the violation. Based on the confidential CPSD report filed under seal, the amount of the proposed fine, which was reached in a compromise by both parties, is substantial and the parties provide ample precedent to support it. In light of the overall Settlement Agreement and the totality of the circumstances,

[1] D.98-12-075, Appendix B.

we find the penalty level of the settlement payment to the General Fund reasonable and lawful.

The Settlement Agreement is reasonable in light of the record as a whole, consistent with law, and in the public interest. It resolves all issues before the Commission. Accordingly, this decision adopts the Settlement Agreement.

5. Proceeding Category 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 no hearings are now required as a result of the settlement, the hearing determination is changed to state that no evidentiary hearings are necessary.

6. Assignment of Proceeding

Catherine J. K. Sandoval is the assigned Commissioner, and Timothy J. Sullivan is the assigned Administrative Law Judge and the presiding officer in this proceeding.

7. Waiver of Comment Period

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

Findings of Fact

1. Legacy failed to timely submit a CDROM copy of its tariff that was in effect as of January 1, 2007.

2. Legacy failed to properly update its tariff for a period of time prior to mid 2007, which resulted in charges to some consumers exceeding amounts specified in its tariff.

3. Legacy made misrepresentations in its withdrawn CPCN application (A.06-11-003) by failing to disclose sanctions and investigations in Florida, Nebraska, and North Carolina.

4. Legacy's charges for operator service calls could be viewed as exorbitant.

5. Between 2005 and 2008, approximately 5,700 calls out of roughly 985,000 calls completed to California consumers were double-billed. In other words, Legacy double-billed a significant number of consumers.

6. On very rare occasions a consumer may be billed by Legacy for a call that was not authorized.

7. On some occasions Legacy may have billed for calls that did not connect well.

8. Until recently, Legacy's automated operator system did not permit California intrastate collect call recipients to ask for rates.

9. Legacy maintains that its failure to disclose information and its over-billing of customers was inadvertent.

10. Under terms of the Settlement Agreement, Legacy will pay a fine to the General fund, refund its customers, conduct an internal investigation to address customer complaints and modify its operations to make rate information available to customers.

11. The terms of the Settlement Agreement ensure that both CAB and Legacy will have appropriate data before them when addressing customer complaints and that customers are able to obtain full rate disclosure before accepting a call.

12. Under terms of the Settlement Agreement, customers who may not have been aware of prior double billings are provided a fair opportunity to obtain refunds.

13. Based on the whole record, both parties face substantial litigation risk as to whether their respective positions will prevail.

14. The Settlement Agreement avoids the time, expense, and uncertainty of further litigating and resolving the matter and, by requiring a settlement payment, affirms the importance of adherence to the Commission's rules and orders.

15. The severity of the economic harm to consumers from Legacy's violations is high. However, the Settlement Agreement demonstrates that Legacy has committed to a course of action to prevent, detect, disclose, and rectify the violations. The Settlement Agreement is supported by ample Commission precedent.

Conclusions of Law

1. Legacy violated Pub. Util. Code § 2890(a) by placing unauthorized charges on consumers' telephone bills (also known as "cramming").

2. Legacy violated Pub. Util. Code §§ 2896(a) and 451 by failing to provide consumers with sufficient rate information.

3. Legacy violated Pub. Util. Code § 489(a) by failing to file its complete tariff timely, and by charging consumers under rates it had not filed.

4. Legacy violated Pub. Util. Code § 532 by charging consumers in excess of rates posted in rate sheets.

5. Legacy violated Rule 1.1 of the Commission's Rules of Practice and Procedure by failing to disclose numerous regulatory sanctions Legacy sustained in 16 other states.

6. Nothing in the Settlement Agreement contravenes any statute or Commission decision or rule.

7. The benefits to the public in the Settlement Agreement outweigh the benefits of continued litigation.

8. The Settlement Agreement is in the public interest.

9. The penalty level of the Settlement Agreement is substantial but is also reasonable and lawful.

10. The Settlement Agreement should be approved, and Legacy should be directed to make an initial payment to the State of California General Fund in the amount of $50,000 within 30 days after the effective date of today’s decision, and thereafter Legacy shall be directed to pay the balance of $165,000 at the rate of $9,706 per month for the next 17 months.

11. Hearings are not necessary.

12. This investigation should be closed.

13. To promptly resolve this matter and secure the ordered remedies, today’s decision should be made effective immediately.

O R D E R

IT IS ORDERED that:

1. The Settlement Agreement is approved.

2. Legacy Long Distance International, Inc. (Legacy) shall make a settlement payment to the State of California General Fund in the amount of $215,000. The

first payment, in the amount of $50,000, will be paid within 30 days of the Commission's approval of the Settlement Agreement. Legacy must pay the balance of $165,000 at the rate of $9,706 per month for the next 17 months. Legacy must make payments by check or money order payable to the California Public Utilities Commission and mailed or delivered to the Commission's Fiscal Office at 505 Van Ness Avenue, Room 3000, San Francisco, CA 94102, within the timeframe directed above. Legacy must write on the face of the check or money order "For deposit to the General Fund per Decision 11-XX-XXX: Attn: Beverly Sun or Elsa Cerezo."

3. Within six months of the effective date of today's decision, Legacy Long Distance International, Inc. (Legacy) must use the following process to issue refunds or credits to California consumers who were double-billed during the 2005 to 2008 period and have not already received refunds. Legacy must advise each potentially affected consumer of the double-billing by a special mailing to the consumer's last known address that must include a postage-paid return card on which the customer can certify that he or she paid Legacy's billing; Legacy must send all customers who return the card a check in the amount of the duplicate charge. Legacy must report its refunds and credits to Consumer Protection and Safety Division on conclusion of this procedure, detailing the dollar amount of the refunds or credits issued regarding the remaining 2,600 customers who were double-billed.

4. Within six months of the effective date of today's decision, Legacy Long Distance International, Inc. (Legacy) must issue refunds or credits, if appropriate, to each of the 597 consumers who complained to the Commission Consumer Affairs Branch regarding Legacy's billings. The refunds or credits must be issued to all consumers who can reasonably be identified, whose complaints can

be validated, and who have not already received credits or refunds. Legacy must report its refunds and credits to the Director of the Consumer Protection and Safety Division on conclusion of this procedure detailing the dollar amount of the refunds or credits issued to these 597 complaints.

5. Within 10 months of the effective date of today's decision, Legacy Long Distance International, Inc. (Legacy) must complete an internal investigation and provide a report to the Director of the Consumer Protection and Safety Division and others enumerated in the Settlement Agreement that supplements the information on the CD attached to the Settlement Agreement as Exhibit B that details the dollar amounts of any additional refunds or credits issued to the approximately 14,000 reported inquiries from consumers regarding Legacy's billings.

6. Legacy Long Distance International, Inc. must, in substantially the same manner as required by 47 U.S.C. § 226 and Federal Communications Commission requirements with respect to interstate operator-handled calls, also make its complete rates available to the called party on every intrastate California collect call that is assisted either by a live or automated operator system.

7. Legacy Long Distance International, Inc. (Legacy) must comply with all applicable Public Utilities Code sections including, but not limited to, Sections 2890, 2896, 451, 489, and the tariffs applicable to Legacy's operations.

8. If there are any future disputes from California consumers regarding Legacy Long Distance International, Inc. (Legacy), then Legacy must provide to Consumer Affairs Branch both the billing records and the switch records relevant to the dispute.

9. Legacy Long Distance International, Inc. shall fulfill all the terms and conditions of the Settlement Agreement including any that may not be specified in ordering paragraphs 2 through 8.

10. The hearing determination is changed to no hearings necessary.

11. Investigation 10-06-013 is closed.

This order is effective today.

Dated October 6, 2011, at Los Angeles, California.

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

D1110017 Appendix A