Date of Issuance
February 9, 2010

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation on the Commission's own motion into the operations and practices of Americatel Corporation, (U-5918-C), to determine whether it has violated the laws, rules and regulations governing the way in which consumers are billed for products or services, by billing consumers for dial-around long distance monthly service without authorization.	**FILED** **PUBLIC UTILITIES COMMISSION** **FEBRUARY 4, 2010** **SAN FRANCISCO OFFICE** **INVESTIGATION 10-02-003**

ORDER INSTITUTING INVESTIGATION INTO THE OPERATIONS OF AMERICATEL CORPORATION; ORDER TO SHOW CAUSE AND NOTICE OF OPPORTUNITY FOR HEARING

I. INTRODUCTION

By this Order, the Commission institutes an investigation to determine whether Americatel Corporation (Americatel) (U-5918-C), or its agents, have violated Public Utilities Code Section 2890 or any Commission rule, regulation, order, requirement or state law, by billing consumers for dial-around long distance monthly service without the consumers' authorization and by applying incorrect rates on customers' phone bills, resulting in overcharges of approximately $3.5 million in total. We direct Americatel to show cause why we should not impose penalties and other sanctions as a result of the apparent violations in this case.

II. SUMMARY OF ALLEGATIONS

Staff has prepared a report documenting its investigation to date, including declarations obtained from victims and documentary evidence obtained from Americatel and other sources. The report is released today and shall be placed in the Commission's public formal file for this proceeding. The following is a summary of Staff's allegations.

Americatel is a Delaware corporation with headquarters in Rockville, Maryland. Americatel provides long-distance dial around services in the United States with connections to Latin America and the Caribbean, with a focus on Hispanic customers. Americatel is primarily held and controlled by Platinum Equity, a holding corporation incorporated in Delaware with headquarters in Beverly Hills, California[1].

The Commission granted Americatel authority as a switchless reseller of inter-Local Access and Transport Area (Inter LATA) services in December 1997 (Decision (D.) 97-12-128). Americatel mainly offers two types of service: dial-around service and contracted dial-around. With contracted dial-around service, customers agree to pay a monthly contract fee in exchange for a lower-per minute rate. Americatel's charges appear as a line item on the customers' local telephone bill[2].

Americatel generally utilizes telemarketers and direct marketers (face-to-face), including Bravo Marketing, Inc. (Bravo), a Florida Corporation. Bravo's contract provided for promotion and marketing of Americatel's calling plans, through face-to-face contacts in public areas such as shopping malls[3].

In 2008, the Commission's Consumer Affairs Branch (CAB) noted a significant increase in the number of cramming[4] complaints against Americatel and notified CPSD, although CPSD Staff had previously noted a high incidence of complaints about Americatel as early as 2006. CPSD Staff learned from Americatel that the cause of the rise in complaints in 2008 was due to a "breakdown in the systems and procedures of one of Americatel's third party marketing vendors."[5]

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[1] Staff Report, at p.6.

[2] *Id.*, at p.7.

[3] *Id.*, at p.8.

[4] "Cramming" is the inclusion of unauthorized charges on a telephone bill, which is prohibited by Public Utilities Code Section 2890.

[5] Staff Report, at p.9.

Staff has learned that early in 2008 Americatel began to receive thousands of Letters of Authorization that its marketing agent Bravo purportedly obtained from new customers signed up by its agents. It took several months for Americatel to ascertain that the customers were the victims of fraud by Bravo, after receiving large numbers of complaints. Americatel ultimately terminated its relationship with Bravo and began issuing refunds to affected consumers. Americatel reported to CPSD Staff that sales to 61,096 California consumers were associated with Bravo, primarily for Americatel's dial-around plans for a typical monthly fee of $16.99. Americatel informs Staff that it has issued refunds to all affected California consumers[6].

In addition, Staff noted a large discrepancy in the amounts of refunds issued in 2008 – approximately $2 million out of $3.5 million in refunds – which were not attributable to Bravo's fraud. Staff discovered that this discrepancy was caused by Americatel's billing errors in 2008 that resulted in the application of an incorrect Universal Service Fund (USF) surcharge rate of 100% instead of 11.4% and incorrect per-minute rates for certain calls under Americatel's Uniendo America plan.[7].

III. DISCUSSION

Staff reports that Americatel's complaints surged from 1,090 in 2006, 1,681 in 2007, to 18,549 in 2008. This trend was apparently caused by Americatel's agent Bravo's fraud. This causes us concern that Americatel does not have adequate systems and procedures in place to ensure its telemarketers or direct-marketing agents are reliable and established entities with a history of good corporate behavior. We are also concerned that Americatel does not conduct adequate oversight over its agents. We commend Americatel for taking relatively prompt action to sever its ties with Bravo once it verified the fraud. But this does not relieve Americatel of its responsibility to prevent fraud from occurring in the first place. We hold carriers and their agents to the same standards and trust that carriers will protect consumers from unscrupulous marketing agents. We

[6] *Id*., at pp.130-14.

[7] *Id*., at pp.19-20.

cannot allow such widespread consumer harm to go unredressed; thus we initiate this proceeding to provide a forum to consider penalties, sanctions and any other appropriate remedies including refunds to consumers.

In addition to the fraud by Bravo, a large amount of refunds were issued by Americatel in 2008 as a result of egregious billing errors: the misapplication of the USF surcharge rate and per minute rates for certain calls. Again, this causes us concern that Americatel does not have adequate system and proper procedural oversight. This caused hundreds of thousands of consumers to receive bills effectively doubling their average monthly bills[8]. This proceeding will consider what penalties and other remedies to impose on Americatel as a result of this unacceptable billing error, and ensure that all affected consumers were made whole.

Public Utilities Code section 2890(a) states "A telephone bill may only contain charges for products or services, the purchase of which the subscriber has authorized." Staff may recommend, and the Commission may consider, penalties pursuant to Public Utilities Code section 2107 and 2108 in the amount of $500 to $20,000 per offense per day. If Staff's allegations are true, Americatel is responsible for its agent's (Bravo) widespread violations of Section 2890. In addition, we may consider whether Americatel is fit to continue to operate in California as a reseller of telecommunication services pursuant to its Commission-granted authority, under the licensing authority granted to the Commission in Public Utilities Code Section 1013(h). We will further ensure that all consumers who have been victimized by Americatel or its agents have been made whole, pursuant to Section 734.

Staff has thoroughly investigated and corroborated its allegations against Americatel. Therefore, by this Order we will provide an opportunity for Americatel to appear before us and show cause why it should not be fined or have other sanctions imposed as a result of the alleged cramming.

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[8] *Ibid*.

Therefore **IT IS ORDERED** that:

1. An investigation on the Commission's own motion is hereby instituted into the operations of Americatel Corporation (U-5918-C) (Respondent), to determine:

   a. whether Respondent or its agents violated PU Code section 2890 by imposing charges on consumers' bills for products or services which the consumer did not request or authorize;

   b. whether Respondent should be ordered to pay reparations pursuant to PU Code section 734;

   c. whether Respondent should be ordered to cease and desist from any unlawful operations and practices, or have special conditions and restrictions imposed on it, pursuant to PU Code section 761;

   d. whether Respondent should be fined pursuant to PU Code sections 2107 and 2108 for violations of the PU Code or other order, decision, rule, direction, demand or requirement of the Commission.

2. Respondent is hereby ordered to appear and show cause why the Commission should not order Respondent to pay fines for widespread cramming violations and to have further conditions placed on its license authority, including possible revocation pursuant to PU Code Section 1013(h), on a date to be set at the Commission's hearing room, 505 Van Ness Avenue, San Francisco, 94102.

3. Staff's report also includes documents obtained from Respondent, which contain proprietary information such as customer-specific information. We will maintain the privacy of any consumer confidential information that may be a part of this proceeding.

4. Staff shall continue discovery and continue to investigate the operations of Respondent. Any additional information that Staff wishes to introduce shall be provided to the Respondent in advance of any hearings in accordance with the schedule directed by the assigned Administrative Law Judge. Staff need only respond to discovery requests

directed at Staff's investigation of the Respondent and Staff's prepared testimony offered in this proceeding.

5. Staff shall monitor consumer complaints made against Respondent. We expect Staff to bring additional evidence of any alleged harmful business practices by Respondent to our attention (e.g. new types of violations). Staff may propose to amend the OII to add additional Respondent or to raise additional charges. Any such proposal shall be presented to the Commission in the form of a motion to amend the OII and shall be supported by a Staff declaration supporting the proposed amendments or additional named Respondent.

6. This ordering paragraph suffices for the "preliminary scoping memo" required by Rule 7.1(c) of the Commission's Rules of Practice and Procedure. This proceeding is categorized as an adjudicatory proceeding and will be set for hearing. The issues of this proceeding are framed in the above order. A prehearing conference shall be scheduled for the purpose of setting a schedule for this proceeding including dates for the exchange of written testimony, determining which of the Staff's witnesses will need to testify, and addressing discovery issues. This order, as to categorization of this proceeding, can be appealed under the procedures in Rule 7.6. Any person filing a response to this order instituting investigation shall state in the response any objections to the order regarding the need for hearings, issues to be considered, or proposed schedule. However, objections must be confined to jurisdictional issues that could nullify any eventual Commission decision on the merits of the alleged violations, and not on factual assertions that are the subject of evidentiary hearings.

Service of this order on Respondent will be effectuated by serving a copy of the order and Staff's report by registered mail on the Respondent' designated agent for service in California.

This order is effective today.

Dated February 4, 2010 at San Francisco, California.

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN
TIMOTHY ALAN SIMON
NANCY E. RYAN
Commissioners

I1002003 Investigative Staff Report on Americatel Corp