ATTACHMENT B

CONSUMER PROTECTION AND SAFETY DIVISION
CALIFORNIA PUBLIC UTILITIES COMMISSION

INVESTIGATIVE REPORT
ON
LEGACY LONG DISTANCE
INTERNATIONAL, INC.

I.10-06-013

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I. SUMMARY

Enforcement Staff (Staff) of the Public Utilities Commission's (Commission) Consumer Protection and Safety Division (CPSD) conducted an investigation into the business practices of Legacy Long Distance International, Inc. (Legacy). Staff gathered evidence through reviewing complaint files, analyzing call and billing records, obtaining verifications from carriers on whether certain calls traveled over their networks, interviewing and obtaining declarations from complainants, and, deposing Legacy President Curtis Brown. The weight of the evidence presented in this report supports the conclusion that Legacy violated the following statutes:

1. Public Utilities (P.U.) Code §2890(a) by placing unauthorized charges on consumers' telephone bills (also known as "cramming"). Specifically, Legacy charged California consumers for non-existent, fraudulent and unauthorized calls such as:
   - Calls that did not occur, according to carriers' switch records;[1]
   - Collect calls consumers assert they did not accept nor make;
   - Unauthorized third-party charges;
   - Collect calls that did not connect well, were inaudible, static, were disconnected or connected to a wrong number;
   - Collect calls which consumers specifically refused to accept; and
   - Collect calls Legacy connected to consumers' answering machines.

2. P.U. Code §§2896(a) and 451, and 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. P.U. Code §489(a) by failing to file its complete tariff timely, and by charging consumers under rates it had not filed;

[1] A "switch record" or Automated Message Accounting (AMA) record automatically records data regarding user-dialed calls. It provides electronic detail for billing telephone calls.

4. P.U. Code §532 by charging consumers in excess of rates posted in rate sheets; and
5. The Commission's Rules of Practice and Procedure Rule 1.1 by failing to disclose the numerous regulatory sanctions Legacy sustained in 16 other states.

CPSD requests that the Commission open an Order Instituting Investigation (OII) into these allegations and determine whether and how much penalties and refunds are warranted. Staff believes penalties are necessary based on the evidence.

II. BACKGROUND

A. Legacy and Its Operations

Legacy (utility number U-5786-C) is a California corporation located in Cypress, California. It was incorporated in 1996. In Decision 97-06-055, issued in June 1997, the Commission granted Legacy a Certificate of Public Convenience and Necessity ("CPCN") to resell interLATA and intraLATA telephone services in California.[2] Legacy operates as: (1) a reseller of interexchange services; and (2) a provider of operator services in California. Legacy provides operator and long distance services to Coin-Operated Pay Telephone (COPT) companies and to hotels and motels. Ninety percent of Legacy's operator services business is provided at outdoor payphones, and ten percent in rooms in hotels and motels.[3] Legacy provides service to approximately 150 COPTs owning approximately 60,000 payphones in California as of March 9, 2007. Beginning in October 2009, Legacy provides inmate telecommunications services in some California facilities. Legacy also provides resold dial tone to approximately 600 payphones in California.[4] Legacy's customer billings from 2005 through 2008 are in Table 1 below[5].

[2] A LATA – a Local Access and Transport Area – is a geographic region established to differentiate local and long distance telephone calls within the U.S.

[3] Appendix 1, Deposition of Legacy President Curtis A. Brown., pp. 14-15, lines 27-1.

[4] Appendix 2, Deposition of Legacy President Curtis A. Brown, p. 17, lines 3-6; Mr. Brown states

TABLE 1

Legacy's Customer Billings
Amount Billed and Number of Unique Billing Telephone Numbers

Year	Amount Billed	Number of Unique Billing Telephone Numbers
2005	$ 4,998,747	189,803
2006	$ 6,221,998	203,866
2007	$ 3,869,716	142,614
2008	$ 2,597,333	90,839
Total	$17,687,794	627,122

Source: Billing Aggregator BSG Quarterly Reports to CPSD

Ninety percent of Legacy's call center business is in collect calls placed from pay phones and billed through live and automatic operator services. Ten percent comes from calls made using credit cards, calling cards, and third party billing. Legacy negotiates with payphone companies and offers contracts that feature tailored rate plans. Each payphone company can choose a combination of rates, surcharges, non-subscriber fees, and premise-imposed fees, depending on its needs. For example, one company might choose a rate plan in which live operator services cost more than automatic operator services; another company might choose a rate plan in which automatic operator services cost more than live operator services. Each collect call can generate an operator-connection fee, a minutes-of-usage charge, a premise-imposed fee, and a nonsubscriber fee. Legacy

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that Legacy serves somewhere around 30,000 pay phones in California; also Appendix 3, Legacy Response to CPSD Data Request 1-13, citing 39,255 active lines, filed under seal; Appendix 4, Legacy Response to Data Request 2-1B, listing more than 61,000 separate pay phones in California, filed under seal.

[5] Appendix 5, BSG Clearing Solutions Subscriber Complaint Reports Years 2005 – 2008, filed under seal. BSG is a subsidiary of Billing Concepts Inc.

bills consumers via its billing aggregator, Billing Services Group (BSG), which submits Legacy's charges to the end consumers' telephone providers for inclusion in their respective telephone bills.

B. CPSD's Protest Of Legacy's Application For Expanded Authority

On November 3, 2006, Legacy applied (in A. 06-11-003) for a CPCN for expanded authority to operate as a facilities-based competitive local exchange telecommunication services provider. CPSD protested Legacy's application on December 14, 2006, on the basis of misrepresentations[6] in its application, in violation of Rule 1.1 of the Commission's Rules of Practice and Procedure. In its protest, CPSD alleged that Legacy knowingly misled the Commission when it stated that it had never been sanctioned or investigated by any state regulatory agency at the time of its application. Contrary to this attestation, CPSD discovered substantial evidence showing Legacy had been investigated, fined, sanctioned and/or penalized, and had its tariff and registration cancelled or its corporate certificate of authority revoked in 16 states.[7] In addition, CPSD found and Legacy acknowledged that it had billed California consumers under tariffs that Legacy had never filed with the Commission, in violation of P.U. Code §495;[8] and CPSD found that Legacy billed consumers at rates higher than permitted in its filed tariffs, in violation of P.U. Code §532.[9] Legacy also violated P.U. Code §489 by failing to file its tariffs timely.[10]

CPSD served its testimony in the form of an Investigation Report on

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[6] Appendix 6, Protest of the Consumer Protection and Safety Division to the Application of Legacy Long Distance International, Inc., A.06-11-003, December 14, 2006.

[7] Appendix 7, Report and Testimony, Protest of Legacy Long Distance International, Inc. A.06-11-003, August 13, 2007, filed under seal.

[8] Ibid.

[9] Ibid.

[10] Ibid.

August 13, 2007[11]. On November 7, 2007, Legacy filed its testimony in response to CPSD's report[12]. Due to intervening illness, the respondent requested and Administrative Law Judge (ALJ) Patrick granted an extension of time for the scheduled hearing. Prior to hearings being rescheduled, Legacy formally withdrew its application on January 30, 2008 stating that it no longer had an interest in obtaining authority to provide service as a facilities-based competitive local carrier in California. CPSD did not object to Legacy's withdrawal, conditioned upon Legacy's agreement that it would refer to this withdrawal and CPSD's protest in any future applications before this Commission. On April 10, 2008, the Commission approved ALJ Patrick's decision, which granted Legacy's request for withdrawal and CPSD's conditions.[13]

C. Consumer Cramming Complaints Against Legacy

In the course of reviewing Legacy's CPCN application, Staff found a high number of cramming complaints against Legacy filed by consumers with Legacy's billing aggregator BSG and with the Commission's Consumer Affairs Branch (CAB).

1. Consumer Complaints Filed with Billing Aggregator BSG

BSG reports 686 complaints against Legacy from 2005 through the first half of 2008.[14] These complaints were predominantly related to unauthorized charges or cramming. Since 2005, the number of consumer complaints reported to

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[11] Appendix 7.

[12] Appendix 8, Testimony of Curtis A. Brown, President, Legacy Long Distance International, Inc., A.06-11-003.

[13] Appendix 9, Decision 08-04-021 April 10, 2008. In the Decision, ALJ Patrick granted Legacy's request to withdraw its Application for a CPCN as a facilities-based local exchange carrier and granted CPSD's request that Legacy and/or any of its officers, directors, or owners of more than 10% of Legacy outstanding shares shall reference CPSD's protest and this decision in any future application for authorization to provide telecommunications services in California.

[14] Appendix 5.

BSG against Legacy appears to have declined significantly. These complaints are summarized below.

TABLE 2

Consumer Complaints against Legacy as Reported by BSG
2005 through 2008

Year	Total Number of Complaints Against Legacy Received by BSG	Unauthorized Charges Complaints	Percent of Unauthorized Charges Complaints to Total
2005	284	185	65%
2006	302	282	93%
2007	81	49	60%
2008	19	10	53%
Totals	686	526	68%

Source: Billing Aggregator BSG Quarterly Reports to CPSD

2. Consumer Complaints Filed with the Commission's CAB

Legacy was also the subject of numerous complaints to CAB, with a majority of complaints concerning unauthorized charges or cramming, disclosure issues, and unreasonable rates. CAB received 706 complaints from 2005 through 2008. Unlike the declining trend in the number of complaints against Legacy received by BSG, complaints received by CAB appear to have grown from 2005 and held steady through 2007. Legacy acknowledged in response to CPSD's Data Request 1, Question 8 that "A vast majority of the complaints received by CAB about Legacy are *operator service rate* related."[15] Legacy President Curtis Brown confirmed that such complaints pertain to claims of unconscionably high rates and denials of ever having authorized or accepted the collect calls.[16]

[15] Appendix 10, Legacy Responses to Data Request 1-8.

[16] Appendix 11, Deposition of Legacy President Curtis Brown, page 140, lines 20-24.

TABLE 3

**Consumer Complaints Concerning Legacy Received by CAB
2005 through 2008**

YEAR	Total Number of Complaints Received by CAB	Unauthorized Charge	Unreasonable Rates	Lack of Disclosure	Other[17]
2005	160	41	70	31	18
2006	255	71	123	36	25
2007	228	53	110	36	29
2008	63	15	21	14	13
Total	706	180	324	117	85

Source: CPSD analysis of data in the CAB database.

Of the 706 complaints CAB received in the above 4-year period, 180 complaints concerned cramming. By comparison, 324 complaints concerned unreasonable rates and 117 were about the lack of disclosure of rates and/or charges. Upon reviewing the CAB complaint files, Staff found that many complaints characterized as disclosure or unreasonable rates are also cramming complaints. For example, consumers who complained of inadequate disclosure and lack of opportunity to inquire about collect call rates because of Legacy's automated operator system also had no opportunity to authorize or reject the collect calls in dispute. Hence, charges arising out of such calls can also be considered unauthorized charges. Legacy's President has admitted that Legacy's automated operator program does not permit California collect call recipients to ask for rates.[18] CPSD found that the majority of the Legacy-related cramming

[17] "Other" complaints cover such diverse matters as out of state complaints over which the PUC has no authority; complaints filed anonymously, duplicate complaints, complaints concerning another OSP, complainants whose contact phone numbers have been disconnected and there is no forwarding address or telephone, etc.

[18] Appendix 12, Deposition of Legacy President Curtis Brown, page 189, lines 5-13.

complaints reported to CAB concerned collect calls placed from payphones for which Legacy provides operator service.

Given the large number and the nature of consumer complaints against Legacy, CPSD conducted further investigations to determine the scope of Legacy's potential wrongdoing.

D. Scope Of CPSD Investigation

The CAB database contained 706 consumer complaints filed against Legacy for the period 2005 to 2008. Of the 706 complaints, staff was successful in locating 345 paper files. Of the 345 paper files, 162 files contained sufficient background information (consumer letters and bills) to allow staff to evaluate the veracity of the complainant's case. Staff attempted to reach the 162 complainants and was successful in interviewing 91 complainants. The balance of 71 (162-91) complainants could not be reached or declined to be interviewed. The 91 complaints constitute the sample used by staff to form its conclusions presented in this report.

The complainants provided Staff with the authorization to obtain their automated messaging account (AMA) or "switch records" and/or telephone bills in relation to their complaints against Legacy. Staff reviewed and analyzed the details of the complaints raised by the 91 consumers. Staff determined whether these complaints are supported by switch records obtained from their respective carriers and from Legacy. Staff also reviewed the billing records associated with these complaints to understand the nature, duration, and point of origin of the subject calls. Staff summarizes its findings and conclusions in this report. Of the 91 complainants, 54 signed Declarations attesting to their respective complaints. Several complainants also agreed to testify before the Commission about their complaints, if called upon.

TABLE 4

CPSD Staff Contacts with Consumers Who Complained to CAB Concerning Legacy 2005 through 2008

Year	Total Number of Complaints to CAB	Number of Paper Files CPSD Received	No Paper File Available, Anonymous, Duplicate, Out of State, No Information, Complainant Unavailable	Number of Complain-ants CPSD Attempted to Reach	Number of Complain-ants CPSD Reached	Number of CAB Complain-ants with Declarations
2005	160	90	15	13	0	0
2006	255	155	69	86	49	28
2007	228	90	37	53	34	20
2008	63	10	0	10	8	6
Totals	706	345	121	162	91	54

III. LEGACY VIOLATED P.U. CODE §2890(a) BY PLACING UNAUTHORIZED CHARGES ON CONSUMERS' TELEPHONE BILLS

According to P.U Code §2890(a), a telephone bill may only contain charges for products or services, the purchase of which the subscriber has authorized. Staff talked with 91 complainants and reviewed their billing records and switch records. After completing this review, Staff identified 106 incidents of unauthorized charges (also known as "cramming") and 49 incidents of unreasonable charges and lack of rate disclosure.[19] Based on the evidence gathered in the investigation, it appears Legacy violated §2890(a) by systematically placing unauthorized charges on its customers' telephone bills in a number of ways.

[19] See Part IV for discussion of lack of rate disclosure.

TABLE 5[20]

CPSD's Analysis of the 91 Complainants to CAB against Legacy 2005 through 2008

Placement of Unauthorized Charges or Cramming	**Number of Incidents [21]**	**Percent of Total**
A. For collect calls that did not occur	60	57%
B. For unauthorized third-party billing	20	19%
C. For calls that did not connect well (inaudible/static)	11	10%
D. For rejected collect calls	9	8%
E. For collect calls connected to answering machines	6	6%
Total	106	100%

A. LEGACY BILLED FOR COLLECT CALLS THAT DID NOT OCCUR

A large proportion (57%) of the sampled cramming incidents filed with CAB against Legacy concerned charges for collect calls that did not occur or for which records did not exist. Staff's careful examination of the available switch records of the subject calls and additional information from the carriers and complainants provided overwhelming evidence that these 60 collect calls were not placed, connected, or authorized, supporting the consumers' complaints of unauthorized charges. Placing charges on consumers' telephone bills for non-existent calls is not only "cramming;" it also suggests theft and/or fraud.

A subscriber's Local Exchange Carrier (LEC) provides the service necessary for a call to connect to and from the subscriber's telephone. A call must

[20] Refer to Appendix 13 for the expanded table containing the description of complaints.

[21] Some of the 91 complainants raised multiple complaints.

travel over the LEC's switch in order for it to connect to the consumer's telephone. If the LEC's switch records show that no call traveled over the LEC's switch to the billed consumer's telephone at the time and date of the purported call, then the call did not occur. Staff requested the switch records of the calls in question from Legacy and from the consumers' LECs (AT&T and Verizon). Staff compared Legacy's switch records to those provided by AT&T and Verizon.

In 25 of the 60 incidents in this complaint category, the carriers' switch records showed that the calls Legacy billed to the consumers never travelled over AT&T's or Verizon's switches, supporting the conclusion that these calls did not occur. In fact, in 12 out of the 25 instances, Staff uncovered a disturbing pattern of Legacy charging consumers for fictitious collect calls. Specifically, Legacy charged these consumers for a collect call, and one month later billed them for another collect call that allegedly happened exactly 1 hour and 11 minutes after the first call.

For example, Legacy charged Complainant #6009210 in her January 2006 bill for a collect call that was left on her answering machine on December 20, 2005 at 7:03 p.m.[22] One month later, she was billed for another collect call allegedly accepted on December 20, 2005, at 8:14 p.m., exactly 1 hour and 11 minutes after the call on her prior month's bill. AT&T reviewed its historical call record and phone number inventory and found no record of the originating telephone number of the second call being in existence at the time of the second collect call. In addition, AT&T's switch records show no evidence that the second call ever passed over its network. Therefore, the second call for which Legacy billed the consumer never occurred.

Complainant #8059447, an attorney in Los Angeles, was billed by Legacy for a collect call placed on August 9, 2008 at 1:29 p.m. Neither she nor any member of her household made or accepted this call. She stated that on or about

[22] Appendix 14, Declaration of Complainant #6009210

August 9, she recalled answering the phone and hearing a recorded voice stating "You have a collect call from" followed by a pause for name. "However, no name was given," she wrote. "I believe I said `What?' and the recorded message repeated at least once."[23] She hung up the phone, and when she received her August phone bill, she noticed a charge for a 6-minute collect call from Legacy. One month later, she received her September bill, with another collect call from Legacy. This second collect call began at 2:40 p.m., according to her bill, exactly 1 hour and 11 minutes after the first collect call. Legacy provided CPSD with the billing records for the calls. Reviewing its own switch record of the call, Legacy found no record of the second collect call. AT&T also found no record of the second call. Therefore, the second call for which Legacy billed the consumer never occurred.

In 22 of the 60 incidents in this complaint category, the carriers or Legacy were able to produce call records that suggest phone connection of some duration. The average duration of the connection time for 71% of the 22 calls is 21 seconds. When viewed in the context of the consumers' assertions that they did not take these collect calls, the relatively short call duration suggests that it is unlikely that conversations occurred. These 22 complainants are convinced these calls did not occur and they provide supporting facts in their complaints, such as: not knowing anyone from the originating number; collect calls supposedly accepted after business hours when no one is at the premises; collect calls allegedly accepted by someone at a residence when no one is at home; etc. See Appendix 13 for the complete table of complaint descriptions. Staff is persuaded by the complainants' claims that these collect calls did not occur.

In the remaining 13 of the 60 incidents, the carrier and/or Legacy were unable to provide any switch records at all. Under P. U. Code § 2890 (d)(2) D, in the case of a dispute, there is a rebuttable presumption that an unverified charge

[23] Appendix 15, Declaration of Complainant #8059447

for a product or service was not authorized by the subscriber, and that the subscriber is not responsible for the charge. Therefore, in the absence of any call records that could point to the contrary, Staff has to place substantial weight on the consumers' assertions that these calls did not occur and were not authorized.

The weight of the evidence supports the complainants' contentions in these 60 instances that Legacy charged them for collect calls that did not occur, and that Legacy violated P.U Code §2890(a) by placing unauthorized charges for non-existent calls on its customers' phone bills.

B. Legacy Billed For Unauthorized Third Party Billing

Unlike a collect call, wherein the receiving party authorizes the charge for the collect call, a third party call is any call for which the charges are billed to a third number, other than the call originating number or the call destination number. In order to bill for a third party call, a telephone provider must first obtain the authorization of the party to be billed. Nineteen percent of the cramming complaints sampled by Staff relate to unauthorized third party billings.

In one case, the consumer disputes Legacy's charges for third party billing because he did not accept the charges and was in fact out of the country at the time of the alleged calls.[24] In another instance, the consumer stated that the third party call was billed to her dedicated fax line.[25] Because this line was only used for the fax, no one could have accepted the third party charges. See Appendix 13 for a complete list of complaint descriptions.

The evidence supports the conclusion that Legacy billed consumers for third-party calls that the consumers did not authorize, in violation of P.U Code §2890(a).

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[24] Appendix 16, Declaration of Consumer #7034155.

[25] Appendix 17, Declaration of Consumer #6021282.

C. Legacy Billed For Calls That Did Not Connect Well

Ten percent of the sampled cramming complaints relate to charges for calls that did not connect well, were inaudible, disconnected after 3 seconds, or connected to wrong numbers. For example, a consumer complained that the phone rang; she picked it up but heard no voice, and then heard a disconnecting sound. She hung up the phone. She was billed for the call.[26]

The switch records for the complaints in this category show an average call connection duration of 14 seconds. The short average duration appears to support the complainants' assertions that the collect calls did not connect well. In each of the instances, the complainant provides specific descriptions of the poor connection. See Appendix 13 for a complete list of complaint descriptions.

According to P.U Code §2890(a), a telephone bill may only contain charges for products or services, the purchase of which the subscriber has authorized. When authorizing a collect call, a consumer has a reasonable expectation of receiving a working call connection in exchange for the associated charges. In the above cases, where the consumers complained of the inability to conduct a phone conversation due to immediate disconnections or inaudibility, it is fair to say that the consumers did not receive the useable service from Legacy, the charges for which they authorized. Instead, Legacy billed them for a useless service, the purchase of which the subscriber did not authorize.

D. Legacy Billed For Rejected Collect Calls

As mentioned above, P.U Code §2890(a) provides that a consumer's phone bill may only contain charges authorized by the consumer. The Federal Telecommunications Act of 1996, Section 226(b)(1)(B), require that providers of operator services permit the consumer to terminate the telephone call at no charge before the call is connected. Legacy's own policy requires that a collect call must

[26] Appendix 18, Declaration of Consumer #6008334.

first be accepted by the recipient before billing can begin[27]. Yet 8% of the sampled cramming complaints relate to Legacy charging consumers for collect calls they rejected.

For example, Complainant #6049227 stated that Legacy billed him for collect calls that were specifically rejected. He stated, "[w]hen the phone rang, my wife answered the phone in the presence of our whole family. An automated voice came on to indicate that a collect call was trying to get through and gave her an option to accept the call or reject the call. My wife did not accept the call, and hung up. Nevertheless, my September bill showed a $32.83 charge for the call."[28] Upon complaining, the consumer was told by a Legacy customer service representative that Legacy's automated system recorded someone at his residence pressing "1" to accept the collect call, and that the call lasted 1 minute and 23 seconds and that there was a five-minute minimum charge. The complainant refutes Legacy's claim and insists that his wife specifically rejected this collect call.

The other complainants in this category had similar accounts of being charged for collect calls they specifically rejected. Legacy clearly placed unauthorized charges for rejected collect calls on consumers' phone bills, in violation of P.U Code §2890(a).

E. Legacy Billed For Collect Calls Left On Answering Machines

Six percent of the sampled cramming incidents concerned charges for collect calls that were left on the consumers' answering machines. When collect calls are left on answering machines, the recipient of the call does not have the opportunity to accept or reject the call. Thus, Legacy's billing for collect calls left on answering machines is a clear case of "cramming." In its response to CPSD's data request 4-3 Legacy stated that "Legacy does not bill for collect or third party

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[27] Appendix 19, Legacy's response to Data Request 3.3.

[28] Appendix 20, Declaration of Complainant #6049227.

calls that are answered by answering machines or voice mail"[29] and that "Collect calls can only be considered accepted by the automated call processor when a DTMF signal of `1' is received by the Dialogic card."[30] Legacy further claims that, "No collect calls are released to answering machines or computer modems."[31] But consumer complaints directly contradict Legacy's assertions.

Complainant #6009210 attests in her declaration that she was charged for 3 collect calls left on her answering machine while she and her husband were in Mexico.[32] Complainant #6012509 also refutes Legacy's claim, stating that his answering machine recorded the telephone number of a collect call originating in Washington State.[33] Complainant #6008334 asserts that she was charged for a collect call that was answered by an answering machine.[34] These complaints clearly refute Legacy's assertions that it does not bill for unauthorized collect calls left on answering machines.

IV. LEGACY VIOLATED P.U. CODE §2896(a), §451, AND THE FEDERAL TELECOMMUNICATIONS ACT SECTION 226 BY FAILING TO DISLCOSE RATE INFORMATION TO ITS CONSUMERS

P.U. Code §2896(a) states as follows:

> The commission shall require telephone corporations to provide customer service to telecommunication customers that includes, but is not limited to, all the following: (a) Sufficient information upon which to make informed choices among telecommunications services and providers. This includes, but is not limited to, information regarding the provider's identity, service options,

[29] Appendix 21, Legacy Response to Data Request 4-3.

[30] Ibid.

[31] Appendix 22, Legacy Response to Data Request 1-9, Billing/Collections Department Customer Service Guidelines, Collect Call Disputes, Number 3, filed under seal.

[32] Appendix 23, Declaration of Complainant #6009210.

[33] Appendix 24, Declaration of Complainant #6012509

[34] Appendix 25, Declaration of Complainant #6008334

> pricing, and terms and conditions of service. A provider need only provide information to its customers on the services which it offers.

In addition to the complaints of unauthorized charges, 49 complaints concerned unreasonably high collect call rates and lack of rate disclosure. Complainant #6038032 stated in her Declaration that her husband asked a Legacy representative how the recipient of an automated call could know what the rates are and the Legacy representative told him, "[t]here is no way to know. The person who is making the collect call can ask for rates, but the person who gets the call can not ask what the rates are, and has no opportunity to ask what the rates are."[35]

Legacy President Curtis Brown acknowledged this limitation of Legacy's automated call platform system. In his deposition, Mr. Brown stated that in California, the recipient of a collect call placed via Legacy's automated call platform can not get the rate or price of the collect call. The recipient can only accept or refuse the call.[36]

CPSD Staff sought to learn the industry standard on disclosure of automated-operator placed collect call rates in California prior to connection, and learned that it is AT&T's policy and practice to announce the caller and if the caller is an inmate, to announce the facility, and to either quote the rate or offer a rate option.[37]

Legacy's lack of disclosure of rates to consumers is a violation of the P.U. Code §2896(a). Without the disclosure of collect call rates and fees prior to the connection of the collect call, the call recipient will not have sufficient information to make an informed choice as to whether or not to accept the collect call and the associated charges.

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[35] Appendix 26, Declaration of Complainant #6038032

[36] Appendix 12, Deposition of Curtis Brown, p. 189, lines 5-13.

[37] Appendix 27, email from AT&T Regulatory Affairs Officer Greta Banks, filed under seal.

Additionally, this lack of disclosure renders the charges unjust and unreasonable and therefore, unlawful. P.U. Code §451 requires that all charges demanded or received by any public utility for any product or commodity or any service rendered or to be rendered shall be just and reasonable. Under §451, every unjust and unreasonable charged demanded or received for such product, commodity or service is unlawful. Price information is specifically identified as an element requiring disclosure under §2896(a); a consumer has the right to know the charges for a collect call before he or she decides whether to accept the call. Legacy's inability to provide this information at the point of sale, and subsequent placement of such charges on the uninformed consumers' phone bills, is therefore unjust and unreasonable.

The lack of rate disclosure also violates the Federal Telecommunications Act of 1996, Section 226. This section lists the requirements for Providers of Operator Services and specifically requires that providers "…disclose immediately to the consumer, upon request and at no charge to the consumer, a quotation of its rates or charges for the call."[38] Legacy's practice of not disclosing collect call rates to consumers plainly violates this section of the Federal Telecommunications Act.

Complainants have good cause to demand rate disclosure, especially since Legacy charges unreasonably high rates for the collect calls they carry. One consumer complained about being charged $66 for 2 collect calls, which together lasted 3 minutes.[39] Many consumers complained about exorbitant undisclosed charges ranging from $20 to $40 for each collect call lasting less than 5 minutes. See Appendix 13 for a complete list of complaint descriptions.

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[38] Appendix 28, Federal Telecommunications Act Section 226 (a)(3)(i).

[39] Appendix 29, Declaration of Complainant #7001839.

V. LEGACY VIOLATED P.U. CODE §489(a) BY FAILING TO FILE ITS COMPLETE TARIFF TIMELY

P. U. Code §489(a) requires every public utility to file with the Commission schedules showing all rates, tolls, rentals, charges, and classifications collected or enforce.

In CPSD's Protest of Legacy's Application A 06-11-003, Staff raised and Legacy admitted[40] that Legacy failed to file timely its complete tariff with the Commission. In November 2006, Communications Division Director John Leutza sent a letter to all regulated telecommunications companies, asking that each company file with the Communications Division its complete and current tariff on a compact disc by January 2, 2007. Legacy did not comply with this request until ordered to do so by ALJ Patrick on June 20, 2007 at a prehearing conference relating to Legacy's request for expanded CPCN[41]. Legacy violated P.U. Code §489(a) by failing to file timely its complete tariffs with the Commission. In his testimony in response to CPSD's protest of its CPCN application, Legacy President Brown admitted that certain errors led it to violate its tariff.[42] Legacy also admitted in response to a Staff data request that it billed consumers under rate sheets it had not filed.[43]

VI. LEGACY VIOLATED P.U. CODE §532 BY CHARGING CONSUMERS RATES IN EXCESS OF ITS FILED TARIFFS

P.U. Code §532 states in relevant part as follows:

> Except as in this article otherwise provided, no public utility shall charge, or receive a different compensation for any product or commodity furnished or to be furnished, or for any service rendered or to be rendered, than the rates, tolls, rentals, and charges applicable thereto as specified in its schedules on file and in effect at the time…

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[40] Appendix 8, Testimony of Legacy President Curtis Brown, November 7, 2007 p. 1, lines 1-18.

[41] As stated in the Background section, Legacy has withdrawn its Application for the expanded CPCN.

[42] Appendix 8, Testimony of Legacy President Curtis Brown, p.1, lines 11-18.

[43] Appendix 30, Legacy Supplemental Responses to Data Request 3-2

In Staff's protest of Legacy's application for CPCN, Staff reviewed a sample of 35 CAB complaints regarding unreasonably high collect call rates and the lack of disclosure, Staff found that Legacy charged 11 complainants rates in excess of its filed tariffs, in violation of P.U. Code §532[44]

VII. LEGACY VIOLATED THE COMMISSION'S RULE 1.1 BY FAILING TO DISCLOSE NUMEROUS REGULATORY SANCTIONS IT SUSTAINED IN 16 OTHER STATES

Rule 1.1 establishes requirements for parties appearing before the CPUC:

> Any person who signs a pleading or brief, enters an appearance, offers testimony at a hearing, or transacts business with the Commission, by such act represents that he or she is authorized to do so and agrees to comply with the laws of this State; to maintain the respect due to the Commission, members of the Commission and its Administrative Law Judges; and never to mislead the Commission or its staff by an artifice or false statement of fact or law.
>
> In his signed Verification Statement in its application for expanded CPCN (in A.06-11-003), Legacy President Curtis Brown attested that "neither applicant, any affiliate, officer, director, partner nor owner of more than 10% of applicant, or any person acting in such capacity…. has been sanctioned by the Federal Communications Commission or any state regulatory agency for failure to comply with any regulatory statute, rule or order."[45]

In Legacy's response to CPSD's Data Request 1.17, it responded "no" to the question "[h]ave Companies, their affiliates, or their principals been investigated by any State or Federal agency in the last ten years for any matter related in any way to the provision of telecommunications services?"[46]

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[44] Appendix 7, Report and Testimony, Protest of Legacy Long Distance International, Inc. A.06-11-003, August 13, 2007, Tables D and E, filed under seal.

[45] Appendix 31, Verification Statement of Curtis A. Brown.

[46] Appendix 32, Legacy response to CPSD Data Request 1-17.

In Legacy President Curtis Brown's deposition, when asked whether Legacy had been sanctioned in any of the 49 states in which Legacy does business, Mr. Brown stated "no."[47]

Staff discovered that in fact Legacy had been sanctioned, investigated, penalized, had its tariff cancelled, and had its public utility registration or corporate charter revoked, in 16 other states. Legacy clearly violated Rule 1.1 repeatedly by misrepresenting to the Commission and Staff that it has never been sanctioned or investigated by any state regulatory agency. Table 6 below shows the various actions against Legacy in 16 other states. Legacy President Curtis Brown, when confronted with the facts, admitted to the above Rule 1.1 violations.[48]

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[47] Appendix 33, Deposition of Curtis Brown, pp 162-163, lines 25-1.

[48] Appendix 8, Testimony of Curtis Brown, p. 1, lines 11-18.

TABLE 6

LEGACY SANCTIONS IN OTHER STATES

State Agency	Nature of Action	Date of Action	Fines or Penalties if Any
Public Utilities Commissions			
Florida Public Service Commission	Order Cancelling Tariff and Registration	July 20, 2006 (reinstated March 1, 2007)	$500
Iowa Utilities Board	Order Docketing for Formal Proceeding and Requiring Response	January 20, 2004 (withdrawn without prejudice March 17, 2004)	NA
Nebraska Public Service Commission	Stipulation and fine to dismiss departmental complaint and order to cease and desist operations and revoke CPCN	July 11, 2001	Amount of fine not given
North Carolina Utilities Commission	CPCN order and sanction	July 13 2006	$9,000, refunds to consumers, Commission
Ohio Public Utilities Commission	Investigation into unlawful nonsubscriber fees	June 8, 2005	$54,931.26 to be credited to customer accounts
Secretaries of State			
Arizona Corporation Commission	Corporate Revocation	September 30, 2003	NA
Arkansas Secretary of State	Corporate Revocation	December 31, 2003	NA
Illinois Secretary of State	Corporate Revocation	February 9, 2007	NA
Kentucky Secretary of State	Corporate Revocations	November 1, 2003, November 1, 2000	NA
Maine Secretary of State	Corporate Revocation	July 19, 2002 (reinstated March 8, 2007)	NA
Mississippi Secretary of State	Corporate Revocation	Not given	NA
New York Secretary of State	Corporate Revocation	September 24, 2004	NA
Oklahoma Secretary of State	Corporate Suspension (reinstated March 5, 2007)	Suspension March 19, 2003; Reinstated March 5, 2007	NA
Rhode Island Secretary of State	Corporate Revocation	November 7, 2003	NA
South Carolina Secretary of State	Corporate Forfeiture	May 20, 2005	NA
Wisconsin Department of Financial Institutions	Revocation of Certificate of Authority	October 31, 2002	NA

VIII. CPSD RECOMMENDS THE COMMISSION OPEN AN ORDER INSTITUTING INVESTIGATION

The weight of the evidence presented in this report supports the conclusion that Legacy violated the following statutes:

1. P.U. Code §2890(a) by placing unauthorized charges on consumers' telephone bills in many different ways. Specifically, Legacy charged California consumers for non-existent, fraudulent and unauthorized calls such as:
    - Calls that did not occur according to carriers' switch records;
    - Collect calls consumers assert they did not accept nor make;
    - Unauthorized third-party charges;
    - Collect calls that did not connect well, were inaudible, static, were disconnected or connected to wrong numbers;
    - Collect calls which consumers specifically refused to accept; and
    - Collect calls Legacy connected to consumers' answering machines.
2. P.U. Code §2896(a) and §451, and the Federal Telecommunications Act Section 226 by failing to disclose rate information to its customers for them to make informed choices on whether to accept certain collect calls or not;
3. P.U. Code §489(a) by failing to file its complete tariff timely, and charging consumers under rates not filed with the Commission;
4. P.U. Code §532 by charging consumers in excess of rates posted in rate sheets; and,
5. The Commission's Rules of Practice and Procedure Rule 1.1 by failing to disclose the numerous regulatory sanctions Legacy sustained in 16 other states.

CPSD requests that the Commission investigate these issues in an OII and determine whether and how much penalties and refunds are warranted. Staff believes penalties are necessary based on the evidence.