

EXHIBIT 25

California Public utilities Commission - Order Instituting Investigation

PRISON
POLICY INITIATIVE

L/rbg

Date of Issuance
July 7, 2010

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.

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PUBLIC UTILITIES COMMISSION
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ORDER INSTITUTING INVESTIGATION
NOTICE OF HEARING
AND ORDER TO SHOW CAUSE

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I. INTRODUCTION

By this Order, the Commission institutes a formal investigation to determine whether Legacy Long Distance International, Inc. (Legacy) violated any of the following provisions of the Public Utilities (P.U.) Code, general orders, other rules, or requirements in the following manner:

- P.U. Code Section 2890(a) by placing unauthorized charges on consumers' telephone bills (also known as "cramming").¹ The 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;
 - Charges for collect calls left on answering machines.
- P.U. Code Sections 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.
- P.U. Code Section 489(a) by failing to file its complete tariff timely, and by charging consumers under rates it had not filed.
- P.U. Code Section 532 by charging consumers in excess of rates posted in rate sheets; and

¹ The term "cramming" comes from the Legislative history of P.U. Code sections 2889.9 and 2890: "This bill addresses the problem of 'cramming,' a practice in which consumers are charged for unauthorized services on their phone bills... Often the charges which are 'crammed' on the customer's bill are relatively small, less than \$10, and inconspicuously labeled. If one does not carefully scrutinize the telephone bill, the crammed charge could easily be overlooked." (Assembly Bill No. 2142, 3d reading May 7, 1998, Assembly Floor (1997-1998 Reg. Sess.); see also Sen. Bill No. 378, approved by Governor, Sept, 30, 1998 (Amend. Aug. 21, 1998) ["'Cramming' charges are usually comprised of services such as unauthorized voice mail options, Internet access options, calling cards, paging services, and 800 numbers."]) (1997-1998 Reg. Sess.); *Final Opinion on Rules Designed to Deter Slamming, Cramming, and Sliding*, Decision No. 00-03-020; R. 97-08-001; I. 97-08-002 [2000 Cal. PUC LEXIS 215], at p. 5 March 2, 2000 ["Assembly Bill 2142 (Stats. 1998, Ch. 1036) and SB 378 (Stats. 1998, Ch. 1041) add sections 2889.9 and 2890, respectively. These bills, which the legislation instructs are to be read together, were passed to deter cramming and to clarify the rights and remedies available to California consumers with regard to telephone billing disputes."].)

- 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 provides notice that a hearing will be held on the matter, and directs Legacy to show cause as to why the Commission should not find violations in this matter, and why the Commission should not impose penalties, and or any other forms of relief, if any violations are found.

Finally, the Order also directs Legacy to respond to certain questions and to provide the Consumer Protection and Safety Division (CPSD) with certain information, described *infra*.

II. BACKGROUND

A. Legacy and Its Operations

Legacy (utility number U-5786-C) is a California corporation located in Cypress, California, and 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. 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 of

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 The CPSD Report, Attachment B, is the source of all Appendices referenced herein. 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 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

CPSD's Report, attached hereto as Attachment B below⁵.

B. CPSD'S Protest Of Legacy's Application For Expanded Authority Lead To The Discovery Of Cramming Complaints

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 numerous alleged misrepresentations⁶ in Legacy's application. For example, CPSD discovered substantial evidence showing that 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. In addition, CPSD found, and Legacy acknowledged, that Legacy had billed California consumers under tariffs that Legacy had never filed with the Commission, in violation of P.U. Code Section 495; and that Legacy billed consumers at rates higher than permitted in its filed tariffs, in violation of P.U. Code Section 532. Legacy also violated P.U. Code Section 489 by failing to file its tariffs timely.

CPSD served its testimony in the form of an Investigation Report on August 13, 2007. On November 7, 2007, Legacy filed its testimony in response to CPSD's Report. 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 the withdrawal of Legacy's application, conditioned upon Legacy's agreement that it would refer to this withdrawal and CPSD's protest in any future applications before this

Data Request 2-17, 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.

⁶ Appendix 6, CPSD Protest to the Application of Legacy Long Distance International, Inc., filed on December 14, 2006.

Commission. On April 10, 2008, the Commission approved ALJ Patrick's decision, which granted Legacy's request for withdrawal and CPSD's conditions.⁷

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 BSG⁸

BSG reports 686 complaints against Legacy from 2005 through the first half of 2008. These complaints were predominantly related to unauthorized charges or cramming. Since 2005, the number of consumer complaints reported to BSG against Legacy appears to have declined significantly. These complaints are summarized, *infra*, at V.A.2.

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."⁹ Legacy President Curtis Brown confirmed that such complaints pertain to

⁷ 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.

⁸ BSG is a subsidiary of Billing Concepts Inc.

⁹ Appendix 10, Legacy Responses to Data Request 1-8.

claims of unconscionably high rates and denials of ever having authorized or accepted the collect calls.¹⁰

CAB received 706 complaints in the above 4-year period, 180 of which concerned cramming. By comparison, 324 complaints concerned unreasonable rates, and 117 were about the lack of disclosure of rates and/or charges. Staff found, in the course of its review of the CAB complaint files, that many complaints characterized as disclosure or unreasonable rates were 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.¹¹ CPSD found that the majority of the Legacy-related cramming 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.

III. CPSD'S CURRENT INVESTIGATION

A. The Scope

The CAB database contained 706 consumer complaints filed against Legacy for the period 2005 to 2008. Staff successfully located 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

¹⁰ Appendix 11, Deposition of Legacy President Curtis Brown, page 140, lines 20-24.

¹¹ Appendix 12, Deposition of Legacy President Curtis Brown, p.189, lines 5-13.

to be interviewed. The 91 complaints constitute the sample staff used to form its conclusions presented in its report.

Staff obtained authorization from the complainants 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 summarized 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.¹²

¹² In *Investigation on the Commission's Own Motion Into the Operations and Practices of Telmatch Telecommunications, Inc.*, (U 5715), to Determine Whether It Has Violated the Laws, Rules and Regulations Governing the Manner in which California Consumers are Billed for Telecommunication Services, [Decision 02-06-077; I. 99-09-001] at *24, 2002 Cal. PUC LEXIS 380 (June 27, 2002), we made it clear in prior investigations that it is not incumbent upon the Commission to establish evidence of each affected consumer in a cramming investigation: “In order to protect the public from unscrupulous carriers that engage in cramming, we conclude the Commission is not required to make a factual inquiry of each affected consumer. Instead, an investigation into the practices of the respondent utility, which may include interviews with affected consumers, is sufficient to determine if Telmatch's actions constitute an unjust or unreasonable practice, here cramming.” (See also *Investigation on the Commission's Own Motion Into the Operations, Practices, and Conduct of Qwest Communications Corporation (Qwest)*, U-5335-C... [Decision 02-10-059; I. 00-11-052] at * 5-6 (October 24, 2002) [evidence of cramming and slamming based on interviews, 61 declarations, and information obtained through data from local exchange carriers]; *Investigation on the Commission's Own Motion into the Operations, Practices, and Conduct of Vista Group International, Inc.* [U-5650-C]... [I.99-04-020], at * 18, 1999 Cal. PUC LEXIS 149 (April 22, 1999) [“Staff's declarations also indicate that Vista may be engaged in cramming. According to Pacific Bell reports, complaints of cramming by Vista are on the rise. In addition, Staff has seen at least two cramming complaints that involve alleged unauthorized charges appearing on consumers' telephone bills in 1999.”]; and *Investigation on the Commission's Own Motion into the Operations and Practices of MCI, WorldCom, or MCI WorldCom*, (U-5011, U-5378, U-5253, U-5278)..., [I. 05-04-018 2005], at*1, fn. 2, Cal. PUC LEXIS 163 (April 21, 2005) [Staff reviewed approximately 200 minimum usage fee complaints, interviewed 115 consumers, and obtained 77 declarations].)

B. The Conclusions**1. Legacy Placed Unauthorized Charges on Consumers' Telephone Bills**

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. Based on the evidence gathered in the investigation, Staff reached the following conclusions.

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 examination of the available switch records of the subject calls and additional information from the carriers and complainants provided suggest that these 60 collect calls were not placed, connected, or authorized, supporting the consumers’ complaints of unauthorized charges.

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 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 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.

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 a complete list of complaint descriptions.) Staff believes 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.

b. Legacy Billed For Unauthorized Third-Party Calls

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 that Staff sampled relate to unauthorized third-party billings.

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.¹³

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.)

d. Legacy Billed For Rejected Collect Calls

Yet 8% of the sampled cramming complaints relate to Legacy charging consumers for collect calls they rejected.

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 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 calls that are answered by answering machines or voice mail,"¹⁴ 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."¹⁵ Legacy further claims that, "[n]o collect calls are released to answering machines or computer modems."¹⁶ But consumer complaints that Staff reviewed contradict Legacy's assertions. (*See* Appendix 21, 22, and 23.)

¹³ Appendix 18, Declaration of Consumer #6008334.

¹⁴ Appendix 21, Legacy Response to Data Request 4-3.

¹⁵ *Ibid.*

¹⁶ Appendix 22, Legacy Response to Data Request 1-9, Billing/Collections Department Customer Service Guidelines, Collect Call Disputes, Number 3, "No collect calls are released to answering machines or computer modems." (filed under seal).

2. Legacy Failed to Disclose Rate Information to its Customers

In addition to the complaints of unauthorized charges, 49 complaints concerned allegedly 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.”¹⁷

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 cannot get the rate or price of the collect call. The recipient can only accept or refuse the call.¹⁸

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: (1) announce the caller and if the caller is an inmate, to announce the facility, and (2) to either quote the rate or offer a rate option.¹⁹

3. Legacy Failed to File its Complete Tariff Timely

In CPSD’s Protest of Legacy’s Application A 06-11-003, Staff asserted, and Legacy admitted,²⁰ that Legacy failed to file timely its complete tariff with the Commission. In November 2006, Communications Division Director John M. 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

¹⁷ Appendix 26, Declaration of Complainant #6038032.

¹⁸ Appendix 12, Deposition of Curtis Brown, p. 189, lines 5-13.

¹⁹ Appendix 27, email from AT&T Regulatory Affairs Officer Greta Banks, (filed under seal).

²⁰ Appendix 8, Testimony of Curtis Brown, President, Legacy Long Distance International, Inc., A.06-11-003, filed on November 7, 2007, p. 1, lines 1-18.

expanded CPCN²¹. In his testimony, Legacy President Brown also admitted that Legacy billed consumers under rate sheets it had not filed.²²

4. Legacy Charged Consumer Rates in Excess of Its Filed Tariffs

Of the total of 49 sampled complaints regarding unreasonably high collect call rates and the lack of disclosure, Staff claims it verified and Legacy admitted²³ that it charged 10 customers rates in excess of its filed tariffs, in violation of P.U. Code Section 532. For example, a complainant informed Staff that he talked to a Legacy representative who told him that “it made no difference how long each call lasted, the company bills for 5 minutes at a minimum.”²⁴ Legacy’s filed tariffs and rate sheets do not include a \$29.05 five-minute-minimum flat rate.

5. Legacy Failed to Disclose Numerous Regulatory Sanctions Received in 16 Other States

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.”²⁵

In Legacy’s response to CPSD’s Data Request 1.17, it responded “No” to the question “Have 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?”²⁶

²¹ As mentioned in the Background section, Legacy has withdrawn its Application for the expanded CPCN.

²² Appendix 8, Testimony of Legacy President Curtis Brown, p.1, lines 11-18.

²³ Appendix 30, Legacy Supplemental Responses to Data Request 3-2.

²⁴ Appendix 29, Declaration of Complainant #7001839.

²⁵ Appendix 31, Verification Statement of Curtis A. Brown.

²⁶ 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, "[n]o."²⁷

Yet Staff discovered that Legacy had been sanctioned, investigated, penalized, had its tariff cancelled, and had its public utility registration or corporate charter revoked, in 16 other states. As such, Legacy 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 in the CPSD Report shows the various actions against Legacy in 16 other states. Legacy President Curtis Brown, when confronted with the facts, admitted to and took responsibility for the errors and misstatements.²⁸

III. AN OII IS NECESSARY TO ADDRESS LEGACY'S VIOLATIONS OF THE LAW

A. Justification for Use of the OII Process

The Commission has, in the past, utilized the OII process provided by Rule 5.1 of the Commission's Rules of Practice and Procedure to conduct investigations into illegal telecommunications practices such as deceptive marketing, cramming, and other activities that violate the laws and regulations of this Commission. (*See, e.g. Investigation on the Commission's Own Motion into the Operations, Practices, and Conduct of Pacific Bell Telephone Company (U-1001-C), Pacific Bell Internet Services, and SBC Advanced Solutions, Inc. (U 6346 C) to Determine Whether They Have Violated the Laws, Rules and Regulations Governing the Inclusion of Charges for Products or Service on Telephone Bills (Cal. P.U.C., Jan. 23, 2002) No. I. 02-01-024 [2002 WL 257402]; Investigation into TALK AMERICA, INC., formerly Talk.com Holding Corporation, formerly Tel-Save, Inc., (U-5289 and U-5535-C) to determine whether it has violated the laws, rules, and regulations governing the manner in which California*

²⁷ Appendix 33, Deposition of Curtis Brown, pp. 162-163, lines 25-1.

²⁸ Appendix 8, Testimony of Curtis Brown, p. 1, lines 11-18.

subscribers are switched from one presubscribed carrier to another, [I. 01-08-003 2001 Cal. PUC LEXIS 740 (August 2, 2001) [OII opened to investigate charges of deceptive marketing, slamming, and cramming]; and *Investigation into NOS COMMUNICATIONS, INC. (U-5251-C) dba International Plus...to determine whether they have violated the laws, rules, and regulations governing the manner in which California Subscribers are solicited, switched from one presubscribed carrier to another, and billed for telephone services*, I.02-05-001, 2002 Cal. PUC LEXIS 212 (May 2, 2002) [OII opened to investigate charges of deceptive marketing, slamming, and cramming], as well as other decisions cited, *infra*, throughout this OII.)²⁹

Moreover, when commencing an investigation pursuant to P.U. Code Sections 451 and 2896, as well as to consider ordering penalties or reparations under sections 701, 734, 1702, and 2107, the Commission need not first apply to a superior court prior to fashioning relief. (*Investigation on the Commission's own motion into the operations, practices, and conduct of Pacific Bell Wireless LLC dba Cingular Wireless...*[Decision 02-10-061; I. 02-06-003] at * 22 (October 24, 2002); *National Communications Center Corp. v. Pacific Telephone* [D.90997, 1979 Cal. PUC LEXIS 1178, mod and suppl'd by D.91784, 1980 Cal. PUC LEXIS 512; *UCAN v. Pacific Bell*, [D.01-09-058] 2001 Cal. PUC LEXIS 914, mod, and ltd. rhrg granted on other issues by D.02-02-027, 2002 Cal. PUC LEXIS 189.

As this Commission shall explain, in light of the nature of the CPSD allegations, as well as the evidence proffered, against Legacy, it is procedurally appropriate to proceed with this OII.

²⁹ Additionally, P.U. CODE Section 761 gives the Commission the authority to investigate and regulate utility practices: "Whenever the Commission, after a hearing finds that the rules, practices,...of any public utility,...are unjust, unreasonable, unsafe, improper, inadequate, or insufficient, the commission shall determine and by order or rule, fix the rules, practices,...or methods to be observed,...or employed. ..."

B. The CPSD Report Suggests that Legacy Violated PUC Section 2890(a) By Placing Unauthorized Charges on Consumers' Telephone Bills

1. The Law

According to P.U. Code Section 2890(a), “a telephone bill may only contain charges for products or services, the purchase of which the subscriber has authorized.” As discussed, *supra*, at footnote 1, the Legislature adopted sections 2889.9 and 2890 specifically to combat the problem of cramming, an illegal practice that this Commission has defined in a number of decisions. (*See, e.g. Interim Decision Issuing General Order 168, Rules Governing Telecommunications Consumer Protection*, [Decision No. 04-05-057; R. 00-02-004], at p. 91, 2004 WL 1375707 (Cal P.U.C., May 27, 2004) [“Cramming, the submission or inclusion of unauthorized, misleading, or deceptive charges for products or services on subscribers’ telephone bills, has become a serious problem in California in recent years.”]; *Decision Issuing Revised General Order 168, Market Rules to Empower Telecommunications Consumers and to Prevent Fraud*, [Decision 06-03-013; R. 00-02-004], at p. 75 (March 2, 2006) [“Cramming is the placement of an unauthorized charge on a consumer’s phone bill.”]; *Interim Opinion Adopting Interim Rules Governing The Inclusion of Noncommunications-Related Charges in Telephone Bills* (Cal. P.U.C., July 12, 2001) [Decision No. 01-07-030; R.00-02-004], at p. 2, 2001 Cal. PUC LEXIS 542; 212 P.U.R. 4th 282].)³⁰

³⁰ The problem of cramming is not unique to California. The Federal Government has both expressed its concerns over the practice and has tracked state efforts to protect the consumers. (*See Czerwinski, Stanley. Overview of the Cramming Problem. TELECOMMUNICATIONS United States General Accounting Office. Testimony Before the Committee on Small Business, U.S. Senate. October 25, 1999* [“At the federal level, cramming complaints became the fourth most common type of written complaint received by the Federal Communications Commission (FCC) and the second most common type of complaint received by the Federal Trade Commission (FTC) during 1998.”]; *Update on State-Level Cramming Complaints and Enforcement Actions. TELECOMMUNICATIONS United States General Accounting Office. January 2000.*) Moreover, the branches of the federal government charged with deterring the practice of cramming utilize definitions similar to those adopted by this Commission. For example, the Federal Trade Commission defines cramming as “the inclusion of charges on consumers’ telephone bills for services which they had not requested.” (*United States v. Locascio*, 357 F. Supp. 2d 536, 540 (E.D.N.Y. 2004).) The Federal Communications Commission defines cramming as “the practice of including, placing, or submitting unauthorized, misleading, or deceptive charges for products or services on an end-user consumer’s telephone bill.” (*In the Matter of Long Distance Direct, Inc., Notice of Apparent Liability for Forfeiture*, 14 FCC Rcd 314, 315 (1998).) The FCC went further and

It is beyond dispute that the Commission has been vested with the constitutional and statutory authority to regulate the practice of cramming,³¹ and this Commission has not shied away from exercising its authority in order to protect the public against this and other unlawful utility practices. In *Rulemaking on the Commission's Own Motion to Consider Adoption of Rules Applicable to Interexchange Carriers for the Transfer of Customers Including Establishing Penalties for Unauthorized Transfer; Investigation on the Commission's Own Motion...*, [Decision No. 00-03-020; R. No. 97-08-001; I. 97-08-002] at p. 2, 200 Cal. PUC LEXIS 215 (March 2, 2000), we addressed, in the *Final Opinion on Rules Designed to Deter Slamming, Cramming, and Sliding*, the importance of protecting the consumer against unauthorized charges:

The Commission's constitutional, statutory, and policy directives all accord consumer protection the highest priority. On the issues of unauthorized transfer and billing, attaining the objective of consumer protection requires an understanding of the impact that these unscrupulous practices have on consumers...Consumers have also presented the Commission with a well-harmonized chorus of complaints about the time and effort involved in detecting and correcting unauthorized bills...Consumers are deeply frustrated and annoyed by the time and aggravation necessary to correct unauthorized charges...Adequately protecting consumers requires that we address these issues. As discussed below, the legislature

explained that "cramming can also occur if a local or long distance company or another type of service provider does not clearly or accurately describe all of the relevant charges to you when marketing a service. Although you may have authorized the service, you did not understand or were misled about how much it would really cost." (FCC Consumer Facts at www.fcc.gov/cgb/consumerfacts/cramming.html.)

³¹ The Historical and Statutory Notes to section 2890 provide that the purpose behind promulgating 2890 and 2889.9 was to "(a) reduce the inclusion of unauthorized charges on a telephone subscriber's bill, a practice known as 'cramming';" "(b) clarify the rights and remedies available to California consumers with regard to telephone billing disputes;" and "(c) provide California consumers with a consistent, effective, and easily accessible means of resolving disputes over unauthorized, inadvertent, misleading, or fraudulent charges that appear on their telephone bills." (Section 2890; Stats. 1998, ch. 1041, section 1 (Sen. Bill No. 378).) Moreover, our constitutional and statutory authority is undoubtedly broad enough to regulate cramming. (*See San Diego Gas & Electric Co. v. Superior Court*, 13 Cal.4th 893, 914-915 (1996) ["The commission is a state agency of constitutional origin with far-reaching duties, functions and powers...The Constitution confers broad authority on the commission to regulate utilities, including the power to fix rates, establish rules, hold various types of hearings, award reparation, and establish its own procedures..."].)

adopted new laws that imposed duties on parties to billing agreements and gave the Commission enhanced jurisdiction to impose further duties and sanctions, where necessary. We intend to use our extant jurisdiction and new authority to further protect consumers.³²

Moreover, in Decision 06-03-013, *supra*, at p. 76, we addressed the expansive scope of our jurisdiction to combat violators of Section 2890, even if suspected violators are not normally subject to our jurisdiction:

“In enacting the laws, the Legislature stipulated that P.U. Code sections 2889.9 and 2890 apply not only to utilities, but also to non-utility billing agents and other persons or corporations responsible for generating a charge on a subscriber’s phone bill. Thus the commission may impose penalties on persons or corporations that violate the cramming statutes, even if the violators typically are not subject to our jurisdiction.

Most recently, on February 12, 2010, the Assigned Commissioner in *Order Instituting Rulemaking on the Commission’s Own Motion to Establish Consumer Rights and Consumer Protection Rules Applicable to All Telecommunications Utilities* issued a ruling requesting comment on the proposed California Telephone Corporation billing rules that are designed “to prevent unauthorized charges from appearing on subscribers bills; and, where prevention fails, to detect unauthorized charges and facilitate any needed refunds.”³³

We now apply the foregoing law and policy considerations to the allegations contained in the CPSD report regarding Legacy.

³² See also *Investigation of USP&C to determine whether it violated Public Utilities Code Section 2889.9 by failing to provide Commission staff with requested information and whether the Commission should order California telephone companies to cease providing billing and collection services to USP&C*, [I.99-10-024], at * 5, 1999 Cal. PUC LEXIS 589 (October 21, 1999) [“Cramming is a serious problem within California and nationwide. Our enforcement staff must be able to obtain information from billing aggregators quickly to effectively investigate slamming and cramming.”]

³³ R. 00-02-004, page 1.

2. Application of the Law to the Factual Allegations

Based on the findings in the CPSD report, it appears that Legacy violated Section 2890(a) by systematically placing unauthorized charges on its customers' telephone bills.³⁴ First, the evidence shows that in 60 instances, Legacy charged complainants for collect calls that did not occur, and that Legacy violated P.U. Code Section 2890(a) by placing unauthorized charges for non-existent calls on its customers' phone bills. Second, the evidence shows that Legacy billed consumers for third-party calls that the consumers did not authorize, in violation of P.U. Code Section 2890(a). Third, Legacy billed some customers for a useless service that was not authorized.

Furthermore, Legacy's conduct also appears to have violated federal law. The 1996 Federal Telecommunications Act, Section 226(b)(1)(B), requires 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 first be accepted by the recipient before billing can begin³⁵. Yet, the evidence shows that Legacy placed unauthorized charges for rejected collect calls on consumers' phone bills, in violation of applicable law.

Finally, we note that placing charges on consumers' telephone bills for non-existent calls is not only "cramming;" but also suggests the commission of theft³⁶ and/or fraud.³⁷

³⁴ Under P.U. Code Section 2890 (d)(2) D, in the case of a dispute, there is a rebuttable presumption that an unverified charge 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.

³⁵ Appendix 19, Legacy's Response to Data Request 3.3.

³⁶ Penal Code Section 484(a) defines theft as: "Every person who shall feloniously steal, take, carry, lead, or drive away the personal property of another...is guilty of theft."

³⁷ The elements of fraud, which give rise to deceit, are [1] misrepresentation (false representation, concealment, or nondisclosure); [2] knowledge of falsity; [3] intent to defraud; [4] justifiable reliance; and [5] resulting damage. (Civil Code Section 1709.)

C. The CPSD Report Suggests that Legacy Violated PUC Section 2896(a), Section 451, and the Federal Telecommunications Act Section 226 by Failing to Disclose Rate Information to its Consumers

1. The Law

a. PUC Section 2896(a)

Public Utilities Code Section 2896(a) states in relevant part 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, pricing, and terms and conditions of service. A provider need only provide information to its customers on the services which it offers.

In Opinion: Order Modifying Decision 08-08-017 and Denying Rehearing of Decision 08-080017as Modified herein in Utility Consumers' Action Network v. SBC Communications, Inc., (Decision 09-04-036; Case 05-11-011), at * 59, 200 Cal. PUC LEXIS 212 (April 16, 2009), we explained the importance of this section in promoting consumer protection:

Section 2896, subdivision (a) requires carriers to provide customers with information about their services, including 'service options, pricing, and terms and conditions of service.' This statute requires information to be provided so customers can make informed choices between different types of service and between carriers. In *UCAN v. Pacific Bell* [D.01-09-058], *supra*, we found that section 2896 had enacted into law an already-established 'minimum regulatory standard' requiring companies such as AT&T 'to provide consumers with the information necessary to make informed choices among services and service providers.' Finally, we pointed out the importance of this requirement. 'This minimum standard reflects traditional regulatory concerns for consumer protection and also emerging concerns about fair competition. (*Id.*, at p. 17 (*slip. Op.*)).³⁸

³⁸ See also *Opinion: Order Modifying and Denying Rehearing of Decision (D.) 04-09-062 in Investigation on the Commission's own Motion into the Operations, Practices, and conduct of Pacific*

b. P.U. Code Section 451

P.U. Code Section 451 states:

Every public utility shall furnish and maintain such adequate, efficient, just, and reasonable service, instrumentalities, equipment, and facilities, including telephone facilities, as defined in Section 54.1 of the Civil Code, as are necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public. All rules made by a public utility affecting or pertaining to its charges or service to the public shall be just and reasonable.³⁹

In Decision 04-12-058, *supra*, at * 23, we explained that

this section requires that all public utilities not only charge just and reasonable rates, but also furnish and maintain adequate, efficient, just, and reasonable service necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public. (D.04-09-062, p. 49.) Section 451 also requires that the rules pertaining to service to the public to be just and reasonable. (Id.) We noted that, in decisions spanning several decades, the Commission

Bell Wireless LLC dba Cingular Wireless..., [Decision 04-12-058; I. 02-06-003], at *24, 2004 Cal. PUC LEXIS 577 (December 16, 2004) [“As to section 2896, we stated that this section ‘requires all telephone corporations (including wireless carriers and resellers) to provide customers with sufficient information upon which to make informed choices among telecommunications services and providers.’ (D.04-09-062, p. 54, quoting section 2896(a).)]

³⁹ This Commission has interpreted Section 451 to prohibit the practice of cramming. (See, e.g. *Investigation into Accutel Communications, Inc., d.b.a. Florida Accutel Communications, Inc. (U-585)* [Decision 02-07-034; I. 99-04-023], at * 2, July 17, 2002. Indeed, statutes such as section 451 have been broadly written and have been upheld against charges of vagueness. (See *Pacific Bell Wireless, LLC v. Public Utilities Commission*, 140 Cal.App. 4th 718, 741 (2006) [“The statutes [451, 702, and 2896] and the Commission order that Cingular was found to have violated are broadly written.”]; *Opinion Ordering Reparations and Imposing Sanctions in Investigation on the Commission’s Own Motion Into the Operations and Practices of Telmatch Telecommunications, Inc., (U 5715), to Determine Whether It Has Violated the Laws, Rules and Regulations Governing the Manner in which California Consumers are Billed for Telecommunication Services*, [Decision 02-06-077; I. 99-09-001], at *20, 2002 Cal. PUC LEXIS 380 (June 27, 2002) [“Recently, we have seen many disputes in which a consumer alleges that a telecommunications service provider has charged the consumer for services the consumer has never ordered. From the standpoint of section 451, it is immaterial whether the service provided was wrong, inadequate, or unauthorized. In each instance, the charge for such services would be unjust and unreasonable, and we see no basis in policy or the plain language of the statute for holding otherwise. Thus, a utility violates section 451 by furnishing a product or service that consumers have not ordered or authorized.”]; *Carey v. Pacific Gas & Electric Company*, 85 Cal.P.U.C.2d 682, 689 (1999) [“it would be virtually impossible to draft Section 451 to specifically set forth every conceivable service, instrumentality and facility which might be defined as ‘reasonable’ and necessary to promote the public safety. That the terms are incapable of precise definition given the variety of circumstances likewise does not make Section 451 void for vagueness, either on its face or in application to the instant case.”].)

has interpreted section 451's reasonable service mandate to require, for example, that 'utilities provide accurate consumer information by a readily accessible means, refrain from misleading or potentially misleading marketing practices, and ensure their representatives assist customers by providing meaningful information about products and services.'

c. FTA Section 226

Section 226 of the 1996 Federal Telecommunications Act provides, in relevant part as follows:

(1) In general beginning not later than 90 days after October 17, 1990, each provider of operator services shall, at a minimum - (A) identify itself, audibly and distinctly, to the consumer at the beginning of each telephone call and before the consumer incurs any charge for the call; (B) permit the consumer to terminate the telephone call at no charge before the call is connected; (C) disclose immediately to the consumer, upon request and at no charge to the consumer - (i) a quote of its rates or charges for the call.

2. Application of the law to the Factual Allegations

Legacy's lack of disclosure of rates to consumers appears to violate P.U. Code Section 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.

Additionally, this lack of disclosure renders the charges unjust and unreasonable, and therefore unlawful. Public Utilities Code Section 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 Section 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 Section 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.

Complainants have good cause to demand rate disclosure, especially since Legacy may be charging 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.⁴⁰ 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.

Moreover, the lack of rate disclosure also appears to violate Section 226 of the Federal Telecommunications Act. Section 226 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."⁴¹ Legacy's practice of not disclosing collect call rates to consumers, if proven on the record in this case, would constitute a violation of Section 226.

D. The CPSD Report Suggests that Legacy Violated PUC Section 489(a) By Failing to File its Complete Tariff Timely

1. The Law

Public Utilities Code Section 489(a) empowers the Commission to require every public utility to file with the Commission schedules showing all rates, tolls, rentals, charges, and classifications collected or enforce:

The commission shall, by rule or order, require every public utility other than a common carrier to file with the commission within the time and in the form as the commission designates, and to print and keep open to public inspection, schedules showing all rates, tolls, rentals, charges, and classifications collected or enforced, or to be collected or enforced, together with all rules, contracts privileges, and facilities which in any manner affect or relate to rates, tolls, rentals, classifications, or service.⁴²

⁴⁰ Appendix 29, Declaration of Complainant #7001839.

⁴¹ Appendix 28, Federal Telecommunications Act Section 226 (a)(3)(i).

⁴² See also *Waters v. Pacific Telephone Co.*, 12 Cal.3d 1, 6 (1974) ["The commission is specifically empowered to require utilities to file tariff schedules containing rates, charges, and classifications[.]"]

The importance of complying with Section 489(a) is evidenced by the fact that “the tariff, with any limitation of liability specified therein, is the document that governs the rights and liabilities between a public utility...and its customers.” (*Pink Dot, Inc., v. Teleport Communications Group*, 89 Cal.App.4th 407, 410, fn. 1 (2001).) Moreover, as “a condition imposed by a tariff binds a utility’s customer’s without regard to whether a contract is signed by the customer and without regard to the customer’s actual knowledge of the tariff[,]” (*Los Angeles Cellular Telephone Co. v. Superior Court*, 65 Cal. App.4th 1013, 1017, fn. 6 (1998)), it is vital that utilities comply with the tariff-filing requirements.

2. Application of the law to the Factual Allegations

Based on Staff’s factual findings, Legacy appears to have violated PUC Section 489(a) by failing to file timely its complete tariffs with the Commission.

E. The CPSD Report Suggests that Legacy Violated PUC Section 532 by Charging Consumers Rates in Excess of its Filed Tariffs

1. The Law

Public Utilities Code Section 532 states:

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....The commission may by rule or order establish such exceptions from the operation of this prohibition as it may consider just and reasonable as to each public utility.

We have interpreted Section 532 “to complement PU Code Section 489 by providing that the utilities shall not deviate from tariffs required by PU Code Section 489.” (*Toward Utility Rate Normalization v. Pacific Bell*, [Decision No. 92-05-062; Case No. 91-03-006], at. *17, 1993 Cal. PUC LEXIS 394, 49 CPUC 2d 299 (1993).) If the rates and charges collected by a utility differ from those set forth in its tariffs, the utility is in

violation of section. 532. (*See Apex Smelting Co. v. So. Cal. Gas Co.*, 60 Cal. PUC 74, 80 (1962) [“The rates and charges collected by Southern from Apex were, and are, at variance from those applicable under its tariffs (Schedule G-53) in violation of Section 532 of the Public Utilities Code.”].) While Section 532 “prevents utilities from deviating from their tariff,” the Commission is allowed “to make exceptions in its discretion.” (*Pacific Bell (U 1001 C) v. MCI Telecommunications Corporation (U 5002 C)*, [Decision No. 99-04-030, Case No. 97-02-027], 1999 Cal. PUC LEXIS 250; 85 CPUC2d 694, 698 (1999).)

2. Application of the Law to the Factual Allegations

Of the total of 49 sampled complaints regarding unreasonably high collect call rates and the lack of disclosure, Staff verified and Legacy admitted⁴³ that it charged 10 customers rates in excess of its filed tariffs, which would constitute a violation of PUC Section 532. For example, a complainant informed Staff that he talked to a Legacy representative who told him that “it made no difference how long each call lasted, the company bills for 5 minutes at a minimum.”⁴⁴ Legacy’s filed tariffs and rate sheets do not include a \$29.05 five-minute-minimum flat rate. As such, the five-minute minimum charge appears to violate Legacy’s tariffs and PUC Section 532.⁴⁵

F. The CPSD Report Suggests that Legacy Violated The Commission’s Rule 1.1 By Failing To Disclose Numerous Regulatory Sanctions It Sustained In 16 Other States

1. The Law

Rule 1.1 requires that

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

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

⁴⁴ Appendix 29, Declaration of Complainant #7001839.

⁴⁵ Appendix 30, Legacy Supplemental Responses to Data Request 3-2.

Administrative Law Judges; and never to mislead the Commission or its staff by an artifice or false statement of fact or law.

A person can violate Rule 1.1 “even if the violation was inadvertent[.]” (*In the Matter of the Application of Bigredwire.com, Inc. for Registration as an Interexchange Carrier Telephone Corporation pursuant to the provisions of Public Utilities Code Section 1013*, [Decision 09-04-009; A. 07-10-003] at * 21 [2009 Cal. PUC LEXIS 197] (April 16, 2009); *Order Instituting Rulemaking on the Commission’s Own Motion into Competition for Local Exchange Service*; *Order Instituting Investigation on the Commission’s Own Motion into Competition for Local Exchange Service*, [Decision 01-08-019; R.95-04-043; I. 95-04-044], at p. 10 (August 6, 2001) [“In any event the question of intent to deceive merely goes to the question of how much weight to assign to any penalty that may be assessed. The lack of direct intent to deceive does not necessarily, however, avoid a Rule 1 violation.”].)

2. Application of the Law to the Factual Allegations

Legacy appears to have repeatedly violated Rule 1.1 by misrepresenting to the Commission and Staff that it has never been sanctioned or investigated by any state regulatory agency. Table 6 in the CPSD Report shows the various actions against Legacy in 16 other states. Legacy President Curtis Brown, when confronted with the facts, admitted to and took responsibility for the errors and misstatements.⁴⁶

IV. SCOPE OF THE COMMISSION’S INVESTIGATION

A. The OII

We agree with CPSD that the request for an OII should be granted and the CPSD allegations identified above and in the attached CPSD Report should be fully investigated.

⁴⁶ Appendix 8, Testimony of Curtis Brown, p. 1, lines 11-18.

B. Penalty/Refund Analysis

We will also investigate whether, and to what extent, penalties and refunds are warranted, pursuant to P.U. Code Section 2107.

1. Penalties

With respect to penalties, in *Re Standards of Conduct Governing Relationships Between Energy Utilities and their Affiliates*, [Decision 98-12-075; R.98-04-009], 84 CPUC 2d 155, 182-184, 190 PUR4th 6 (1998), we explained that the “purpose of a fine is to go beyond restitution to the victim and to effectively deter further violations by this perpetrator or others[,]” and we consider two general factors: [1] severity of the offense; and [2] conduct of the utility. These factors are broken down in greater detail as follows.

a. Severity of the Offense

This includes several considerations, such as the economic harm to the victim and any unlawful benefits gained by the public utility. In instances where there is no harm to the consumer, we look to whether there has been harm done to the integrity of the regulatory process. The number of violations is also a factor in determining the severity of the offense.

b. Conduct of the Utility

This factor recognizes the important role of the public utility’s conduct in (1) preventing the violation, (2) detecting the violation, and (3) disclosing and rectifying the violation. (*Id.*)

c. Financial Resources of the Utility

Effective deterrence also 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. (*Id.*)

d. Totality of the Circumstances in Furtherance of the Public Interest

Setting a fine at a level which effectively deters further unlawful conduct by the subject utility and others requires that the Commission specifically tailor the package of sanctions, including any fine, to the unique facts of the case. (*Id.*)

e. The Role of Precedent

The Commission adjudicates a wide range of cases which involve sanctions, many of which are cases of first impression. As such, the outcomes of cases are not usually directly comparable. (*Id.*)

We have considered the application of the five criteria in the telecommunications field when there are claims that California subscribers are being improperly charged for services. (*See Investigation on the Commission's own motion into the operations, practices, and conduct of Coral Communications, Inc. (Coral) and Michael Tinari, President of Coral...to determine whether they have charged California subscribers for telecommunications services the subscribers never authorized*, [Decision 01-04-035; I.98-08-004], at pages 53-55 (April 23, 2001).)

Finally, in terms of the level of proof, violations of the PUC or other Commission requirements may be proved by the preponderance of the evidence. (*Investigation on the Commission's own motion into the operations, practices, and conduct of Qwest Communications Corporation (Qwest)*, [Decision 03-01-087; I.00-11-052], at * 12, fn. 5 (January 30, 2003), citing *Communications Telesystems International (CTS)*, D.97-10-063, Finding of Fact 11.)

2. Refunds

In contrast, reparations “are refunds of excessive or discriminatory amounts collected by a public utility. (Section 734.) The purpose of reparations is to return unlawfully collected funds to the victim.” (*Investigation into Accutel Communications, Inc.*, [Decision 02-07-034; I.99-04-023], at * 18 (July 17, 2002).)

Therefore **IT IS ORDERED** that:

1. An investigation on the Commission's own motion is hereby instituted into the operations of Legacy (Respondent) to determine whether Respondent violated:

1. P.U. Code Section 2890(a) by placing unauthorized charges on consumers' telephone bills in many different ways. Specifically, Respondent 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 Respondent connected to consumers' answering machines.
2. P.U. Code Sections 2896(a) and 451, and Section 226 of the 1996 Federal Telecommunications Act 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 Section 489(a) by failing to file its complete tariff timely, and charging consumers under rates not filed with the Commission;
4. P.U. Code Section 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 Respondent sustained in 16 other states.
6. The Commission will also investigate whether and how much penalties and refunds are warranted.

2. Respondent is ordered to appear and show cause why it has not committed the following alleged violations. Respondent is ordered to respond completely (including reference to supporting documents [title of document,

author, recipients, and date] and witnesses [name, title, association to Legacy] who can support each response) to the following questions, as well as the attached Data Request, within 30 days from the issuance of this OII (See Attachment A):

1. Did Respondent violate P.U. Code Section 2890(a) by placing unauthorized charges on consumers' telephone bills in many different ways. Specifically, did Respondent charge 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 Respondent connected to consumers' answering machines.
2. Did Respondent violate P.U. Code Sections 2896(a) and 451, and Section 226 of the Federal Telecommunications Act, by failing to disclose rate information to consumers, which rate information would allow them to make informed choices on whether to accept certain collect calls or not;
3. Did Respondent violate P.U. Code Section 489(a) by failing to file its complete tariff timely, and charging consumers under rates not filed with the Commission;
4. Did Respondent violate P.U. Code Section 532 by charging consumers in excess of rates posted in rate sheets; and,
5. Did Respondent violate the Commission's Rules of Practice and Procedure Rule 1.1 by failing to disclose the numerous regulatory sanctions Respondent sustained in 16 other states?

3. To facilitate the completion of this investigation, and consistent with the provisions of Section 314 of the PUC, Respondent is ordered to preserve until further order by this Commission all consumer account records, verification tapes, dispute records, and any other evidence of consumer complaints.

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 respondents 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 respondents.

6. This ordering paragraph suffices for the "preliminary scoping memo" as required by Rule 7.1(c) of the Commission's Rules of Practice and Procedure. The issues of this proceeding are framed in the above order.

7. This proceeding is categorized as adjudicatory. *Ex parte* communications are prohibited. The determination as to the category is appealable under Rule 7.6 of the Commission's Rules of Practice and Procedure.

8. A prehearing conference shall be convened before an Administrative Law Judge for the purpose of considering the establishment of a schedule in this matter, including the dates for the exchange of written testimony, whether or not evidentiary hearings will be based on stipulated testimony and exhibits or live witnesses, the date, time, and location of any evidentiary hearings, depositions, addressing discovery issues, and other scheduling matters.

9. Respondent is put on notice that fines may be imposed in this matter pursuant to P.U. Code Sections 2107 and 2108.

10. The attached CPSD Report, supported by Declaration, is hereby entered into the record for this proceeding.

11. The Executive Director shall cause a copy of this Order to be personally served on Legacy:

Legacy Long Distance International, Inc.
10833 Valley View Street, Suite 150
Cypress, California 90630-5015

This order is effective today.

Dated June 24, 2010, at San Francisco, California.

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

ATTACHMENT A**WITNESS IDENTIFICATION FOR DEPOSITIONS
AND DOCUMENT PRODUCTION****A. Witness Identification for Depositions**

1. Identify (the term “identify” shall mean the name, current title, job responsibilities, and work address) the persons most knowledgeable about the programming of Legacy’s Siemens-Stromberg switch and the NAMS software. (Deposition of Curtis Brown, May 29, 2007: page 4: line 12 through page 5, line 6.)
2. Identify Legacy’s IT Director who Curtis Brown met with to prepare for his deposition. (Deposition of Curtis Brown, May 29, 2007: page 4: line 12 through page 5, line 6.)
3. Identify Legacy’s current IT Director.
4. Identify Legacy’s IS Director who Curtis Brown met with to prepare for his deposition. (Deposition of Curtis Brown, May 29, 2007: page 4: line 12 through page 5, line 6.)
5. Identify Legacy’s current IS Director.
6. Identify Legacy’s Operations Manager who Curtis Brown met with to prepare for his deposition. (Deposition of Curtis Brown, May 29, 2007: page 4: line 12 through page 5, line 6.)
7. Identify Legacy’s current Operations Manager.
8. Identify the person most knowledgeable about Legacy’s VoIP hardware and software. (Deposition of Curtis Brown, May 29, 2007: page 8: lines 1-28; page 9: lines 22-28; page 10: Lines 1-18.)

B. Documents

1. Produce audited financial reports detailing the California element of Legacy’s revenues for the years 2005, 2006, 2007, 2008, and 2009.
2. Produce all documents substantiating the fact that Legacy is providing telecommunication service in California.



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 below⁵.

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

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 misrepresentations⁶ 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

⁶Appendix 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, 2007¹¹. On November 7, 2007, Legacy filed its testimony in response to CPSD's report¹². 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

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	Other¹⁷
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 Complainants CPSD Attempted to Reach	Number of Complainants CPSD Reached	Number of CAB Complainants 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 5²⁰**CPSD's Analysis of the 91 Complainants to CAB against Legacy
2005 through 2008**

Placement of Unauthorized Charges or Cramming	Number of Incidents²¹	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).

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 begin²⁷. 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

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 DISCLOSE 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.

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.

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 admitted⁴⁰ 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 CPCN⁴¹. 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...

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 §532⁴⁴

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

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

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.