Decision **DRAFT DECISION OF ALJ DEULLOA** **(Mailed 8/5/2003)**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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.	Investigation 99-09-001 (Filed September 2, 1999)

OPINION APPROVING REPARATION PLAN

1. Summary

This decision approves a reparation plan that compensates California consumers for unauthorized charges that Telmatch Telecommunications, Inc. (Telmatch) imposed on consumers' telephone bills.

2. Background

We issued the above-captioned Order Instituting Investigation (OII) into the operations and practices of Telmatch to determine whether Telmatch improperly billed California consumers for telecommunications services. The OII contained allegations made by Consumer Services Division (CSD)[1] that Telmatch, through its billing agents, had been "cramming," that is, had imposed

[1] This unit has subsequently renamed as the Consumer Protection and Safety Division (CPSD). Both names are used in this decision, reflecting the time when activities occurred.

unauthorized charges on consumers' telephone bills. The OII found that good cause existed to believe that a high portion of Telmatch's revenues came from recurring monthly charges for a calling card that consumers did not authorize.

The OII ordered an accounting of Telmatch's revenue from local exchange carriers (LECs) and billing agents. On September 27, 1999, we held an initial evidentiary hearing (EH) for the purpose of allowing Telmatch, billing agents, CSD, and the two large LECs (Pacific Bell and GTE California Incorporated[2]) to present evidence on whether Telmatch had sufficient financial solvency to ensure compliance with any future order to provide reparations to the allegedly crammed consumers.

On October 22, 1999, we issued an Interim Decision (D.) 99-10-069, which ordered billing agents and LECs to submit to the Commission's fiscal office funds collected on behalf of Telmatch. In response, the Commission received funds from several sources.[3]

On October 12, 13, and 14, 1999, a second EH was held to determine whether Telmatch violated the Public Utilities Code by imposing a recurring monthly charge on consumers' telephone bills in connection with the company's calling card; whether Telmatch should be fined $500 or up to $20,000 per violation; and whether Telmatch should be ordered to pay reparations for charges for service that consumers did not authorize.

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[2] GTE California Incorporated has since changed its name to Verizon California.

[3] Verizon California, Pacific Bell, and Clearworld Communications submitted checks for $53,311, $4,690.27, and $4,690.27, respectively.

In D.02-06-077, we determined that Telmatch had engaged in cramming, and that Telmatch's operating authority should be revoked. Further, we determined that Telmatch should pay $5.5 million in reparations and pay a fine of $1.74 million. Further, we directed CSD to submit a reparation plan for making restitution to affected customers.

Telmatch filed an application for rehearing of D.02-06-077. On June 5, 2003, we issued D.03-06-034 which (1) denied Telmatch's application for rehearing;[4] and (2) ordered Telmatch to comply with D.02-06-077 within 60 days of the issuance of D.03-06-034. Sixty days have passed and Telmatch has not paid the reparations owed in compliance with D.02-06-077.

3. CPSD's Reparation Plan

On August 16, 2002, pursuant to D.02-06-077, the Consumer Protection and Safety Division (CPSD) filed a reparation plan. CPSD suggests that its reparation plan may be moot, unless steps are taken to enforce payment. CPSD's reparation plan proposes the following:

1. CPSD will issue a data request to Respondent, requiring Respondent to identify all California consumers affected by Telmatch's cramming practices.

2. CPSD will request from the LECs a current and complete list of consumer information for the consumers identified in Step 1. The list will include the consumer's name, billing address and billing telephone number.

[4] Although, we denied the rehearing application, we made a mathematical correction and reduced the reparation amount to $5,493,600 from $5,500,000.

3. CPSD will contract with a claims administrator for the purpose of making and accounting for restitution payments to Telmatch's affected California consumers.

4. CPSD will forward the names and addresses of the affected California consumers to the claims administrator, together with a bank check made payable to the claims administrator, in the amount of the ordered restitution for disbursement.

5. The amount of each restitution check provided an eligible consumer shall be determined in accordance with D.02-06-077, Paragraph 4.

6. If any victims of Respondent's cramming practices cannot be found, or if payment to any victims cannot be completed despite reasonable efforts, any amount remaining form the restitution paid by Respondent Telmatch will escheat to the General fund of the State of California.

4. Discussion

The purpose of this order is to review CPSD's reparation plan. For purposes of reviewing CPSD's reparation plan, we will assume that reparation funds are eventually collected from Telmatch. Below, we will address the situation where no further funds are collected from Telmatch.

CPSD proposes to issue a data request requiring Respondent to identify all California consumers affected by its cramming practices. It appears that each affected consumer is entitled to approximately $91.56.[5] CPSD's approach is reasonable given the relatively small amount owed each consumer. The costs

[5] In D.02-06-077, we found to be reasonable CSD's estimate of the amount owed by Telmatch to be $4.33 per month per consumer (times 20 months) plus a one time activation fee of $4.96 per consumer times 60,000 customers. (*Id.* at p. 8-9, and 24, mimeo.) Thus, the amount owed to each individual consumer is approximately (20 x $4.33) + $4.96= $91.56.

associated with more expensive methods might unnecessarily exhaust the refunds owed consumers.

Subsequently, CPSD proposed to request from the LECs a current and complete list of consumer information for the consumers identified. The list will include the consumer's name, billing address and billing telephone number. We find CPSD's approach expedient and reasonable.

Next, CPSD asserts it will contract with a claims administrator for the purpose of making and accounting for restitution payments to Telmatch's affected California consumers. Further, CPSD will forward the names and addresses of the affected California consumers to the claims administrator, together with a bank check made payable to the claims administrator, in the amount of the ordered restitution for disbursement. We also approve of this approach, subject to slight modification. We are concerned about consumer privacy. CPSD should take steps to ensure that the claims administrator maintains as confidential the information it receives concerning consumers and that such information not be used for any purpose except to make restitution payments on behalf of Telmatch. Second, we are concerned about excessive overhead. We believe that the fees and costs charged by the claims administrator should not exceed 10% of the restitution amount. However, in the event CPSD believes that costs are higher or greater compensation is required, CPSD may petition to modify this portion of the order.[6]

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[6] Initially, we had some concern about entrusting consumer funds to a third-party vendor. However, we observe that in D.02-06-073 we had a similar concern about entrusting funds to a claims administrator. In that decision, CPSD responded by discussing the benefits and protections afforded by a claims administrator such as: (1) the Settlement Claims Administrator having the capability of tracking each

Footnote continued on next page

CPSD also proposes that each restitution check provided an eligible consumer shall be determined in accordance with D.02-06-077. CPSD's proposal is reasonable.

Finally, CPSD proposes that if any victims of Respondent's cramming practices cannot be found, or if payment to any victims cannot be completed despite reasonable efforts, any amount remaining from the restitution paid by Respondent Telmatch will escheat to the General Fund of the State of California. We agree that CPSD's proposal is reasonable as long as CPSD ensures that its "reasonable efforts" comply with escheat law.

To date, Telmatch has failed to submit reparations to the Commission. Consequently, we will authorize the Commission's General Counsel to pursue collection in any appropriate jurisdiction in cooperation with local, state and or federal law enforcement agencies.

We also address the disposition of funds already submitted to the Commission.[7] CPSD should determine whether it is feasible to disburse funds already collected pursuant to its reparation plan or whether, given costs, it is impractical to do so. In the event it is impractical to disburse funds already collected via CPSD's reparation plan, then CPSD should make restitution

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individual restitution check mailed, and ability to send a replacement check to a consumer if necessary and (2) the Settlement Claims Administrator being insured for more than $3 million against any errors, omissions, or fraudulent acts by its employees that may occur in the course of its performance. (*Id.*, mimeo. at p. 8.) Given CPSD's past assurances, we will approve CPSD's proposal to entrust funds to a claims administrator.

[7] See footnote 2.

payments to all known persons owed reparations[8] and should, consistent with California's escheat law, disburse any remaining funds.

5. Comments on Draft Decision

The draft decision of the Administrative Law Judge (ALJ) in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure. Comments were filed on _____, and reply comments were filed on _____.

6. Assignment of Proceeding

Susan P. Kennedy is the Assigned Commissioner and Joseph R. DeUlloa is the assigned ALJ in this proceeding.

Findings of Fact

1. CPSD proposes a six-step reparations plan to compensate California consumers for unauthorized charges on consumers' telephone bills imposed by Telmatch.

2. Each of Telmatch's 60,000 affected customers is entitled to approximately $91.56.

3. Telmatch has failed to submit reparations as ordered to do so in D.02-06-077 and reaffirmed in D.03-06-034.

Conclusions of Law

1. CPSD's proposal to issue a data request to Respondent, requiring Respondent to identify all California consumers affected by Telmatch's

[8] CPSD should at a minimum have contact information for those witnesses it presented at hearing.

cramming practices is reasonable given the relatively small amount owed each consumer.

2. CPSD's proposal to request from the LECs a current and complete list of consumer information for affected consumers is expedient and reasonable.

3. CPSD's proposal to contract with a claims administrator for the purpose of making and accounting for restitution payments to Telmatch's affected California consumers is reasonable, subject to CPSD taking steps to ensure consumer privacy and limit overhead.

4. CPSD's proposal to issue restitution checks consistent with D.02-06-077 is reasonable.

5. CPSD's proposal to distribute any amount remaining from the restitution paid by Respondent Telmatch to the General Fund of the State of California is reasonable as long as CPSD ensures that the "reasonable efforts" to make reparation payments comply with escheat law.

6. The Commission's General Counsel should be authorized to pursue collection in any appropriate jurisdiction in cooperation with local, state and or federal law enforcement agencies.

7. CPSD should attempt to disburse funds already collected pursuant to its reparation plan only if practical to do so. If impractical, then funds already collected should be disbursed to all known persons owed reparations and any remaining funds disbursed consistent with California's escheat law.

8. This order should be made effective immediately.

O R D E R

IT IS ORDERED that:

1. Consumer Protection and Safety Division's (CPSD) reparation plan, as modified by this decision, is approved.

2. CPSD shall take steps consistent with this decision to compensate California consumers for unauthorized charges on consumers' telephone bills imposed by Telmatch Telecommunications, Inc. (Telmatch).

3. The Commission's General Counsel is authorized to take all reasonable steps to collect the reparations and fine imposed against Telmatch in this proceeding. All fines collected will be deposited in the State's General Fund.

4. This proceeding is closed.

This order is effective today.

Dated _____, at San Francisco, California.