

ALJ/SAW/tcg

POLAROID CORPORATION
DEPARTMENT OF INDUSTRY AND COMMERCE
CALIFORNIA
080-09-090 SEP 24 1996

Mailed

Decision 96-09-090 September 20, 1996

ORIGINIAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA
Michael and Kathleen Lyon, d/b/a Orland Florist,

Complainants, Case 93-06-051
(Filed June 17, 1993)

Matrix Telecom,

To this order, as follows:

Defendant

Investigation on the Commission's Own Motion and Order to Show Cause Why Matrix Telecom, a Long Distance Carrier, Should Not Be Held in Contempt for Failure to Appear and Fined for Violating Its Tariff.

U-5227-C

Summary

Matrix Telecom (Matrix) is an interexchange reseller. In June of 1993, Michael and Kathleen Lyon (complainants), as owners of Orland Florist, filed an expedited complaint against Matrix, accusing it of "slamming." Slamming occurs when a customer is switched from one primary interexchange carrier to another without the customer's authorization. Matrix did not answer the complaint and did not attend the hearing. Thereafter,

the California Public Utilities Commission (Commission) issued a default judgment against Matrix. On the same day, the Commission opened an investigation into the switching practices of Matrix and issued an Order to Show Cause as to why Matrix should not be fined for slamming-related tariff violations, held in contempt for failure to participate in the complaint proceeding, and divested of its operating authority.

In this order, we allow Matrix to retain its authority to operate in California. However, we fine Matrix for slamming complainants' long-distance service and for its failure to comply with the directives of the then-assigned administrative law judge (ALJ). In addition, we order Matrix to explicitly inform its other California customers that they are customers of Matrix and to make additional reimbursements both to Mr. and Mrs. Lyons and to the Advocates' Trust Fund.

Background

Matrix currently serves approximately 206,000 residential and business customers nationwide. Of those, approximately 43,000 are California customers. Matrix has used telemarketing firms to increase its customer base. In November 1991, Matrix switched the Lyons' business account from AT&T to Matrix. The Lyons state that they had no knowledge of the switch and had not approved it.

As reported in Decision (D.) 94-03-045 in the expedited complaint docket, Matrix began billing the Lyons for a \$15-per-month service charge that appeared on the telephone bill among the cluster of long distance calls and bearing various misleading descriptions. Initially, the service charge was

described as "Operator Assistance Network." At other times, it was listed as "Servicechg, Texan." Because it was in the itemized wa list of long distance calls and labelled in an ambiguous way, it was not easily discoverable. The Lyons state that they did not notice the charge until November 1992. Matrix allegedly charged the Lyons \$15 per month so that they could participate in a special rate program for customers with long distance charges not exceeding \$150 per month. However, according to Mrs. Lyon, she and her husband never would have agreed to such a charge if since their long distance bills seldom exceed \$45. enoyd off han almondo

Matrix says that initially, the Lyons had been contacted on behalf of Matrix by a telemarketing firm using the name Small Business Network. However, Matrix offers no records or other evidence to support this contention. Matrix also states that it was the company's practice to follow such telephone, fax or solicitations with a welcome letter describing the service and including a card that a subscriber could use to refuse service. However, Matrix offers no records to support the suggestion that such a letter was sent to the Lyons and has no way of knowing for sure that any such letter was ever received. In addition, Matrix now acknowledges that if a person does receive the letter, it thinks it is junk mail and does not open it; then Matrix will never know that. A person can file a complaint with the Better Business Bureau and the Commission, a public utility commission, to discuss the failure to answer and to make sure the Commission is aware. It is believed that Matrix may file an

According to Matrix, Small Business Network is a name used by a firm called United Group Association which is owned by Mr. Ron Jensen. Jensen also owns a "significant" share of Matrix Telecom.

When the Lyons discovered that their service had been switched, they asked Matrix to refund all of the \$15 service bill now charge payments and switch their long-distance service back to AT&T. Matrix agreed to switch the service to AT&T but refused to refund the full amount, suggesting that if there had been a connection mistake, the Lyons should have discovered it sooner. Matrix sent the Lyons a check for \$45, which the Lyons did not cash and did not accept as settlement of their dispute. The parties failed to resolve their dispute through the Commission's less formal channels and the Lyons filed a formal complaint on June 17, 1993.

On June 30, 1993, the Commission's Docket Office sent to Matrix, at its principal office in Texas, a certified letter (no attaching the formal complaint) instructing Matrix to answer it within before July 20th and giving notice of the evidentiary hearing on July 28, 1993, before ALJ Bennett. A return receipt indicates that defendant received the certified letter from our Docket Office. On July 12, 1993, defendant sent a brief letter to the Docket Office which referred to the informal complaint and, however, attached the correspondence in the informal complaint. No formal answer was filed on or before July 20th and no date was set.

The day before the hearing, the Lyons called the Commission's Public Advisor to ask if the hearing would take place as scheduled, since Matrix had not filed an answer. ALJ. S.A. Bennett and the Commission's Public Advisor called Matrix to discuss its failure to answer and its obligations under the Commission's rules. ALJ. Bennett told Matrix that it must file an answer and it must appear at an evidentiary hearing. Matrix indicated that it was not prepared to appear at the hearing and asked Mr. Ron Jensen, Jensen Associates, to represent them. Mr. Jensen accepted.

requested a continuance; ALJ Bennett temporarily removed the case from the calendar. The Commission's Expedited Complaint rules state that a hearing shall be held within 30 days after the answer is filed. ALJ Bennett chose to adhere to the 30-day deadline that would have applied if Matrix had filed an answer, just as ordered. On July 29th, ALJ Bennett issued a ruling directing Matrix to file an answer on or before August 4th and appear at a hearing on August 5th. The same day, she sent a telephone facsimile of the ruling to each party, but owing to rule 11(e) of ERIN, Matrix did not file an answer by August 4th and did not appear at the hearing on August 5th. The matter was submitted, subject to the distribution by the Lyons Office and to post-hearing exhibit on August 17th via new notation date.

On August 6th, Matrix informed ALJ Bennett that, although it had received the ruling, it remained unaware of the new hearing date because its regulatory representative was then on vacation. ALJ Bennett informed Matrix that, because of its failure to answer the complaint and appear at the hearing, the Lyons were entitled to a decision in their favor. The next day, Matrix contacted ALJ Bennett and asked her to explain the procedures for settlement, which she did. However, no settlement was filed.

On August 25, 1993, Matrix filed an answer to the original complaint, accompanied by a Motion to Leave (SIC) to File Late Answer. Matrix stated in its motion that the answer was late, not because it had been rejected by the Docket Office on July 12th in 1993. According to ALJ Bennett's ruling on July 29th, what Matrix refers to as the Answer it offered on July 12th was a

letter. The ALJ said that in the letter, Matrix seemed to attempt to confuse the formal complaint with the earlier informal efforts involving the Commission's Consumer Affairs Branch. In the same letter, for example, Matrix stated that it had answered the revenue complaint on March 10, 1993, yet the complaint, however, was not truly filed until the following June. The ALJ resolved this confusion as in the July 29th ruling by making it clear that an answer was indeed still required. In its Motion, however, Matrix failed to address the ALJ Ruling or provide justification for its failure to initially comply. In ID 94-03-045, the Commission resolved the complaint in favor of the Lyons and denied Matrix' request for consideration on of its later-filed Answer. It did not jurisdictional issue of jurisdiction.

That decision was signed on March 9, 1994. The Board being Commission ordered Matrix to pay the Lyons a total of \$700.20 (\$215 for service charges paid and \$485.20 for unauthorized (plus) excessive rates). In addition, observing that Matrix was the won subject of slamming investigations in other states, the Board, no Commission directed Matrix to send a copy of the order to its then existing and prior California customers. On the same day, the Board Commission issued this Investigation and Order to Show Cause, asking four questions:

1. Should Matrix be fined for violating its tariffs by way of slamming one of the Lyons' business telephone lines? A no

2. Should Matrix be held in contempt of the Commission for its failure to obey the rules of the Commission and its failure to follow the directives contained in an ALJ ruling?

3. If yes what no profit a' benefit of ALJ Ruling to Matrix. If no how much profit to Matrix if award as of earlier x1300M

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But what's a note about it? It's hard to prove it by presenting information that aid in behalf of the individual who filed the complaint.
3. Is Matrix unfit to operate as a reseller of long distance services in this state and should its operating authority be revoked?

4. Is there any other appropriate action that should be taken by the Commission in response to these issues?

Matrix filed an application for rehearing and the Lyons filed a petition for modification of D.94-03-045. In D.94-07-069, the Commission recalendered three issues for further hearing:

1. The status of out-of-state regulatory proceedings in which Matrix has been named and their relevance, if any, to this matter.

2. Whether or not Matrix should be required to mail the decision to its past and current California customers.

3. Whether or not interest should be added to the reimbursements ordered in D.94-03-045.

We have consolidated the complaint with this investigation to consider these issues.

The Lyons also filed a request for compensation of their litigation expenses from the Advocates' Trust Fund. In D.95-03-040, the Commission granted the request in part, and deferred to this investigation the question of whether or not Matrix should be required to reimburse the Trust Fund accordingly.

A hearing was held. Charles G. Taylor, President of Matrix, testified on behalf of the company. Kathleen Lyon offered testimony about the events following the switching of their telephone service from AT&T to Matrix. Fred Patterson was called as a witness. He testified that he was not present at the hearing.

In the case of a continuing motion, each party is given a right to file a reply to each motion to continuation of the proceeding.

presented a report on behalf of the Commission's Safety and Enforcement Division. He included, in his report, information about slamming investigations involving Matrix in Illinois, Ohio and Florida, and before the Federal Communications Commission.

Patterson also reported on slamming complaints brought to Better Business Bureaus. Finally, Patterson provided information on some of the 16 people who contacted the Commission's Consumer Affairs Branch with complaints about Matrix' marketing practices during the first seven months of 1995. A number of these complaints involved allegations of slamming.

A proposed decision was mailed on June 12, 1996. The active parties filed opening comments on July 2, 1996 and reply comments on July 8, 1996. In response to the comments, we have made changes to the proposed decision as appropriate.

We will address each issue designated for consideration here by the Order to Show Cause and related orders.

Discussion

Tariff Violation

At the time that the initial slamming was alleged to have occurred, Public Utilities (PU) Code § 2107 read as follows:

- 1. Any public utility which violates or fails to comply with any provision of the Constitution of this state or of this part, nor which fails, or neglects to comply with any part or provision of any order, decision, decree, rule, direction, demand, or requirement of the commission, in a case in which a penalty has not otherwise been provided, is subject to a penalty of not less than five hundred dollars (\$500), nor more than two thousand dollars (\$2,000) for each offense.

Effective January 1, 1994, the upper limit on fines per offense was increased to \$20,000. This section authorizes the Commission to fine a utility for each violation of a Commission-approved tariff. In the case of a continuing violation, each day's

continuance is treated as a separate and distinct offense (PU Code § 2108).

In D.94-03-045, Matrix was found to have violated its tariff by slamming one of the telephone lines serving the Lyons' florist business. The Commission offered Matrix the opportunity to show why it should not be fined for this violation. We do not fine a utility each and every time it violates one of its tariffs. In addressing this issue, we look for special circumstances that suggest that a violation results from a failure of the utility to conduct its business in a reasonable manner.

Safety and Enforcement Division (S&E) starts with the assumption that the Commission has already found that Matrix has violated its tariffs and offers several reasons for its recommendation that Matrix be fined:

1. S&E argues that Matrix is seemingly unaware of the laws, rules and regulations that govern its operations. Matrix admits that it was not sufficiently well-informed of applicable laws and rules at the time the Lyons filed their formal complaint. However, it states that it has, since, increased its regulatory staff and become more aware of its responsibilities. We agree that any entity providing utility service within this state must do so with a full understanding of its responsibilities under the law. The company's failure to understand and comply with the law and the Commission's rules is inexcusable. We will fine the company for its failure to comply with the Commission's rules and requirements as set forth below.

For its failure to answer the Lyons' complaint as directed in a certified letter sent by the Commission's Docket Office on June 30, 1993, we will fine Matrix \$2,000. Matrix

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(P) cannot conclude from the record in this case that Matrix has failed to answer its complaint as required by Commission rule. (801S 3 90g)

argues that its failure to answer was the result of mistake and miscommunication. However, Matrix has proven the existence of neither. The letter clearly states the company's obligation to file an answer. The Commission's rules explain what an answer must contain. The company merely failed to comply with this directive.

For its failure to answer the Lyons' complaint as subsequently directed in an ALJ's ruling dated July 29, 1993, we will fine Matrix \$2,000. Although Matrix did receive the facsimile transmission of the ruling, the person who was assigned to handle this matter was on vacation at the time. Matrix had every reason to expect a ruling from the ALJ and to plan for responding within a brief period of time. The company had asked the ALJ whether or not the schedule could be suspended to allow Matrix to file an answer at a later date. However, Matrix did not arrange for someone to receive the answer to their request and to meet the abbreviated schedule that (as they should have known) generally applies to expedited complaints. In this manner, they showed disregard for the Commission's procedures and the requirements of an expedited complaint proceeding, as well as disregard for the rights of the Lyons.

2. S&E states that Matrix has repeatedly violated its own tariffs by slamming and continuing to bill the Lyons for unauthorized service as well as by slamming other California customers. Matrix does not appear to dispute the Lyons' assertion that Matrix switched their long-distance service without authorization. However, Matrix argues that its provision of service to the Lyons does not constitute a tariff violation.

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responsible for making bills or agree otherwise with it and while agreeing that slamming is wrong and unlawful, Matrix argues that it does not have a tariff that prohibits slamming. Matrix's own Rule 1 states, in pertinent part, that a customer is "(t)he person, firm, corporation or other entity which orders service and is responsible for payment of charges due and compliance with the Company's tariff regulations." Accordingly, the Lyons were never a customer of Matrix because they never ordered service or from Matrix. Matrix has not demonstrated that the Lyons even qualify as a customer pursuant to its Rule 3, which limits AT&T service to "individual users who are members or employees of "participating trade associations, professional trade groups, non-profit organizations, business entities, affiliated franchises, or similar buying groups" not organized expressly for the purpose of or to qualify to receive discounted prices. Instead, the Lyons are ever a customer of AT&T. Matrix concedes that its tariffs do not authorize it to bill customers of other long distance carriers. Thus, Matrix has violated its tariffs by slamming the Lyons.

In order to determine if we should fine Matrix for this tariff violation, we must now determine whether the act of slamming was the result of unreasonable conduct on the part of Matrix. The record suggests that customers can mistakenly be slammed as part of the normal course of business. However, the record does not allow us to determine if the initial act of "knowing" slamming (at issue here) was voluntary or simply a mistake. It would certainly be unreasonable for the company to willfully cause a switch accustomers without its consent, yet some accidental, done. The critical question, here, is whether or not, at the time, Matrix

was taking reasonable steps to avoid slamming, to uncover instances where slamming did occur, and to provide appropriate remedies. (unintelligible ends) There is over ten pages to this.

Matrix relies heavily on telephone sales to increase and its business. A continuing question is how the accuracy of these telephone transactions can be assured in the absence of signed contracts or other forms of documentation. Matrix states that in its practice, at the time, was to contact potential customers by phone, determine whether they were interested in becoming AT&T Matrix customers and, if so, send each potential new customer a "welcome" letter explaining that Matrix was about to become the new customer's long-distance carrier. Reportedly, the letter would often include a postcard which the potential customer could return in order to reject the change in service. The facts before us may reveal several problems that suggest that Matrix did not take sufficient care to avoid or overcome this particular slamming. There is incidentally one point which could be a problem. Did or did not Matrix

The Lyons say that Matrix never contacted them, by mail, telephone or otherwise, to seek their business. Matrix states that it is very possible that its agents did solicit business from the Lyons, but the company offers no evidence to show that so far they did. Apparently, Matrix does not maintain records of its initial marketing contacts. The Lyons say that they never received a bona fide "welcome" letter and, therefore, had no notice that they had been switched to Matrix. The company says that it was its normal practice to send such letters, but offers no evidence that it has ever sent such a letter to the Lyons. Apparently, Matrix does not now maintain records of those to whom it has provided notice of a change in carrier or to whom it has been switched. Matrix

service switch, anywhere such a notice is mailed, there is no way to know if it was received or read. This is important since because under the process chosen by Matrix, no action on the part of the potential customer is interpreted as consent to receive it.

The Lyons say that they were billed for participation in a high-volume discount program that was inapplicable to them, since they are not a high-volume customer. Matrix does not contest this assertion. The Lyons say that the only way they would have discovered that their service had been switched would have been by noticing the \$15 monthly fee for the high-volume service, but it was listed on their monthly Pacific Bell bill in a vague manner and appeared to be one of a series of charges for individual long-distance calls. Matrix argues that it has no control over how Pacific Bell lists the charges on its bills. Evidence to that point is inconclusive. However, no matter who ultimately controls the billing presentation, Matrix should have been aware that the purpose of the charge was vague and that the Pacific Bell bill, as presented, does not provide clear notice that a new customer had been switched to Matrix. Accordingly, Matrix should have known that it needed to be more careful in notifying its potential new customers, verifying consent to the switch in their service and making sure that its customers knew what they were paying for. Whether or not the initial mailing of the Lyons' bill service resulted from a mistake, Matrix did not take reasonable steps to catch its mistakes and adequately inform its potential customers. Matrix argues that even if it did violate a tariff, the violation was not continuous because Matrix did not know that it

the Lyons were an unwilling customer until the Lyons so informed the company. However, as discussed above, Matrix had not set up, as a procedure reasonably designed to ensure that customers would indeed discover that their service had been changed. To excuse an ongoing tariff violation in such circumstances would serve to encourage a continuation of inadequate practices which might be used.

S&B provides evidence of various other circumstances in which Matrix may have slammed customers. One customer said that a friend had enrolled her in a contest, not realizing that upon the contest form authorized a switch to Matrix. Another reported receiving a telephone call from someone who asked him to confirm that AT&T was his carrier. He says that he confirmed that he was currently using AT&T and wished to continue doing so. He reports that by the time his next bill arrived, he had been switched to Matrix. A third customer said she received a small check from Matrix, which she endorsed and cashed, not realizing that this would lead to a change of her long-distance service. A fourth says that he agreed to use Matrix for his business phone, but both his business and personal lines were switched to Matrix and Matrix had sent him "welcoming" letters with cards that could be and returned in order to cancel the service. He reports that he never returned the cards, but was switched to Matrix anyway. As fifth one said that he returned from a trip to Bermuda to find a telephone bill from Matrix, a firm with which he was unfamiliar. He states that he never received a confirmation call or letter. S&B or agency included several other similar examples in its report.

Matrix responds to this report by stating that these slamming incidents do not reflect a concerted effort on its part.

to sign up unwilling customers; instead, they represent the kind of mistakes that normally occur when a large quantity of random customers are changing their long-distance service providers. Matrix offers a Subscription Management Report from Pacific Bell covering a thirteen-month period beginning in July 1994. This report suggests that Matrix fares well when compared to the entire long distance industry. While customers have consistently raised objections to Pacific Bell about being switched from one long distance company to Matrix, the percentage of Matrix customers raising such objections appears to be lower than the total percentage of customers of all long distance companies raising such complaints. It is noted in this "Final" that

Without a sponsoring witness from Pacific Bell (and it does without an explanation of how the data was compiled), the 1994 Pacific Bell Subscription Management Report is of limited evidentiary value. However, it tends to support Matrix's statement that its current toll incidents of slamming are unremarkable when compared to the industry as a whole. The record provides us with no evidence to the contrary... While no single incident of slamming is excusable, we do not find that the additional examples offered by S&E (which establishes a pattern of unreasonable conduct that should affect) any fine levied in this decision. This evidence underscores our need to continue to keep a watchful eye on Matrix' marketing practices.

Since Matrix's failure to undertake reasonable steps to ensure the accuracy of its service change requests contributed to its tariff violation, we will impose a \$2,000 fine for the initial slamming of the Lyons' long-distance service. Because

Classed as telephone customer. (VB 1462, Ch. 664, Sec. 1.)
As of January 1, 1994, HUC 22882 applies to all

Matrix failed to respond to billing ambiguities by finding other means to ensure that the Lyons were aware of the status of their long-distance service; we will fine Matrix \$500 for each of the two 15 billing cycles in which the Lyons remained unaware that xitam slamming had occurred.² The fine for these ongoing violations now totals \$7,500. Because now how can't xitam just accept the money? S&B asserts that Matrix is continuing to use marketing tactics that fail to meet the minimum standards of PUC § 2885.5, after which prohibits residential slamming and requires the company to follow certain steps when signing up new customers. Matrix's own telemarketers are instructed to respond to a prospective customer who says "I don't want to make a change at this time" by questioning continuing to press the person to agree to the change. Among other things, the telemarketer responds by saying, "[o]ur program works this way: I'll get all the information I need from your adue local telephone bill to process your order immediately, and to soon switch your service from your old provider to Matrix/Telecom. Within 2 or 3 days, we'll be sending you a 'Welcome Letter' explaining our company in detail along with the written guarantees... In just ~~one~~ approximately 20-30 days you will be connected with half of the Matrix/Telecom." Clearly, the telemarketers are instructed to continue to push for a sale, even after a potential customer has said, "no thanks" twice following a good deal of enticement from the

While this tactic creates the potential for marketing abuse, it does not seem to force a sale upon an unwilling potential customer. The potential customer can respond to this

² As of January 1, 1996, PUC § 2885.5 applied to all classes of telephone customers. (AB 1465, Ch. 664, Stats. 1995.)

tactic by continuing to say "hotline." While residential slamming is expressly forbidden under the statute, pressure-based salesmanship tactics are not. Thus, this practice does not contribute to the merits of imposing a fine on Matrix at this time. However, it does support our need to continue to closely monitor Matrix's own future service change practices before any fines are imposed.

The conclusions reached here depend heavily on the types of record that was developed in this case, and these efforts did not benefit from a generic Commission policy for slamming in itself complaints, nor from examples in prior cases where slamming was an issue. Until such policy is developed, individual cases will likely continue to reflect the totality of the circumstances, and will do so over time, bringing sharp focus to factual issues that will help to determine what specific actions constitute slamming and what the proper fines for these violations should be.

We note that this case against Matrix is based on a single complaint. The record before us does not establish either widespread and deliberate slamming of customers for long distances services or We note that our decision in this case in including the one determination of fines and slamming should not be used as a standard precedent in future cases or to extend it beyond the context of Contempt and waiver of 302(b) of the Act. We do not believe that

In addition, the contempt charges raised in this Order to Show Cause relate to Matrix's failure to file an answer as ordered on two occasions and failure to attend the hearings. We have already addressed the failures to file an answer by imposing fines pursuant to PU Code § 2108 and therefore need not exercise our contempt powers for this purpose. We do not find Matrix's failure to attend the hearings to give rise to a finding of contempt.

Although this failure provided justification for a default of the judgment in the expedited complaint docket, it has not been shown that by not attending the hearing, Matrix violated any law, rules, or express direction from the Commission or the ALJ ought to allow Revocation of Operating Authority. nothing of been no drogue each

In its actions related to the Lyons complaint, Matrix showed a disregard for the laws, rules and procedures under which it is certified to provide service within the state of Oregon to California. The reported incidence of slamming related to the Jon Lyons and others suggest that Matrix has in the past violated its tariff and continues to do so. However, the record before us at does not support a finding that there exists an ongoing pattern of disregard of tariff violations that would support the extreme step of revoking the company's authority to do business in this state.

It is what we have learned in this proceeding will cause us, nonetheless, to watch closely Matrix's practices in the years ahead. For the next three years, we will require Matrix to provide to S&E, on a quarterly basis, current Subscription Service Management Reports from Pacific Bell and GTE California Inc. Incorporated covering both Matrix by itself and the whole telephone industry in the aggregate. We will ask S&E to review these reports as well as any continuing patterns of formal or informal slamming complaints brought to the Commission and notify us through a motion to reopen this docket if Matrix's performance worsens significantly. We will also tolerate no further examples of Matrix's failure to understand and apply the laws, orders, rules and practices that govern long distance service in this country. The purpose of this proceeding is to afford the parties to

state. Such failure in the future will be grounds for revocation of the company's operating authority unless there is a prompt response.

Notice to Past and Current Customers It should be noted that A. Arnold &

In D.94-03-045, the Commission took notice of slamming investigations in two other states and concluded:

"[Matrix] investigation for slamming in [redacted] state and to other states... reasonably leads us to believe we need to inform all of its California customers that [it] has engaged in these acts in California, that these acts are unlawful and will be prosecuted if reported to the Commission. Therefore, we will require [redacted] of [Matrix] to send a copy of the order in this proceeding to all of its California customers and to include the address and telephone number of our Consumer Affairs Branch in San Francisco and Los Angeles."

In D.94-07-069, the Commission decided to take more evidence on the status of out-of-state regulatory proceedings in which Matrix has been named and hear additional argument on whether or not Matrix should be required to mail the decision to its past and current California customers.

Concerns about Matrix' marketing practices have led to legal actions in at least 3 states. An Illinois investigation focused on the practices of Cherry Communications, which it is alleged undertook marketing on behalf of Matrix, as well as others. An Ohio Attorney General's investigation of incidents of slamming involving Matrix resulted in a settlement. A Florida proceeding focussed on 34 slamming complaints against Matrix and resulted in the imposition of a fine.

Matrix explains these proceedings as resulting from its "victimization" by Cherry Communications and suggests the Florida problems resulted from an isolated problem with its

telemarketing verifications. Matrix also argues that it "acted strongly and responsibly to the discovery of the Cherry problems. A common element in all three states is that the telemarketing problems had to be brought to the attention of Matrix by others. Although Matrix is always responsible for the actions of its agents, Matrix had not monitored their conduct sufficiently to uncover problems before governmental agencies took action." See id. at 59-60 and [ii] infra.

In California and elsewhere, Matrix still relies on agents to undertake its telemarketing efforts. Our examination of Matrix' verification practices in past years raises doubt as to whether the company has a basis for knowing if its current and past customers knowingly switched to Matrix. Because of the apparent billing ambiguity, some customers may not know that they are served by Matrix.

Because of this history in California and elsewhere, and we will continue to require that Matrix mail a one-time notice to each of its current and past California customers. We will inquire to modify the requirement, however, to enable the company to minimize the cost of doing so. We will not require Matrix to include, in its notice, a copy of this or any other Commission order. Matrix may use the lowest cost format that will provide practical, effective and direct notice. A post card mailing to each current and past customer may be sufficient. Matrix must prepare this notice within thirty days of this order and gain approval of final language from the Commission's Public Advisor prior to mailing.

At a minimum, the notice should inform each customer that it receives or formerly did receive its long-distance service

service from Matrix Telecom and that any questions about the choice of long distance carrier can be directed to the Commission's Consumer Affairs Office. Office addresses and telephone numbers in San Francisco and Los Angeles should be provided. The language must make it sufficiently clear that the Commission wants to hear from customers who think they may have been switched to Matrix service without having given prior notice or approval. We will expect Matrix to cooperate with the Consumer Affairs office by making refunds to improperly switched customers who enjoy off establishment usage of Matrix over their own lines.

The Payment of Interest on Reimbursements to the Lyons

In order to fully compensate the Lyons, Matrix should make payments of interest accrued on the \$700.20 previously awarded. Matrix should calculate the interest by using the rate for prime, three-month commercial paper, as reported in the Federal Statistical Release G.13, that was in effect at the date of the unauthorized switch. Interest begins to accrue the first of the month following the date that each charge was first billed to the Lyons and continues until the date they received the check for \$700.20. Matrix shall make this reimbursement within 30 days of the date of this order.

Reimbursement of the Advocate's Trust Fund

In D.95-03-040 granting the Lyons compensation from the Advocate's Trust Fund, the Commission noted the Lyons' suggestion that Matrix be required to reimburse the fund for the \$17,883 in compensation. The Commission directed the parties to address the merits of the suggestion in this docket. Both sides have

argued and the Lyons argue that reimbursement is warranted because Matrix' action and omissions caused the Lyons to incur the expenses they faced. Matrix opposes reimbursement.

and goods and services that the Lyons had received.
Fundamentally, they argue that the Lyons never should have been given compensation in the first place. We will not reconsider the merits of awarding compensation to the Lyons, a matter that was resolved in D.95-03-040.

This is the first time the Commission has been asked to order a party to reimburse the Advocates' Trust Fund. While we are not prepared to declare a policy of reimbursements by all defendants, we will require Matrix to reimburse the fund. First, Matrix could have agreed to fully reimburse the Lyons during the informal complaint process. Had they done so, none of the legal expenses related to the expedited complaint would have been necessary. Had they complied with the Commission's orders, rules and procedures, much of the activity that led to the issuance of the Order to Show Cause could have been avoided. In addition, we have found many of the Lyons' allegations to have merit. It is appropriate for Matrix to reimburse the fund because it is its actions and omissions that caused the expenses to be incurred.

Applying the three month commercial paper rate in effect on March 22, 1995 (the date of issuance of D.95-03-40), Matrix shall reimburse the full amount, with interest accruing to until the date of payment.

Findings of Fact

1. In November, 1994, Matrix switched the Lyons' business off account from AT&T to Matrix.

The Lyons state that they had no knowledge of the £88, VAT switch and had not approved it.

3. In D.94-03-045, Matrix was found to have violated its tariff by slamming one of the telephone lines serving the Lyons' florist business.

4. Matrix failed to answer the Lyons' complaint as subsequently directed in a certified letter sent by the Commission's Docket Office on June 30, 1993.

5. Matrix failed to answer the Lyons' complaint as subsequently directed in an ALJ's ruling dated July 29, 1993.

6. Matrix showed disregard for the Commission's procedures and the requirements of an expedited complaint proceeding, as well as disregard for the rights of the Lyons.

7. The tariff violations affecting the Lyons were the result of unreasonable conduct on the part of Matrix.

8. The record in this proceeding tends to support Matrix' assertion that its current incidents of slamming are unremarkable when compared to the industry as a whole.

9. Matrix' failure to undertake reasonable steps to ensure the accuracy of its service change requests contributed to its tariff violation.

10. We do not find Matrix' failure to attend the hearings to give rise to a finding of contempt.

11. The record before us does not support a finding that there exists an ongoing pattern of disregard or of tariff violations that would support the extreme step of revoking the company's authority to do business in this state.

12. Although Matrix is always responsible for the actions of its agents, Matrix had not monitored their conduct sufficiently to uncover problems before governmental agencies took action.

13. Had they complied with the Commission's orders, rules and procedures, much of the activity that led to the issuance of the Order to Show Cause could have been avoided.

14. It is appropriate for Matrix to reimburse the advocates' trust fund because it is its actions and omissions that caused the expenses to be incurred.

15. The existence of billing ambiguities should have led Matrix to take additional steps to ensure that their California customers knew they were being served by Matrix.

16. It is appropriate for Matrix to pay the Lyons for interest on the earlier judgment.

Conclusions of Law

1. Matrix has violated its tariffs by slamming the Lyons.

2. Because of its history in California and elsewhere, we should continue to require that Matrix mail a notice to each of its current and past California customers.

3. In order to fully compensate the Lyons, Matrix should make payments of interest accrued on the \$700.20 previously awarded.

4. Matrix should be fined \$13,500 for failing to answer the Lyons' complaint as directed and for slamming.

5. Matrix should reimburse the Advocates' Trust Fund for the sum paid to the Lyons from that fund.

IT IS ORDERED that:

1. Within 30 days, Matrix Telecom (Matrix) shall pay to the general fund of the State of California the sum of \$13,500.

2. Within 30 days, Matrix shall reimburse the Advocates' Trust Fund in a manner consistent with this order.

3. Within 60 days, Matrix shall mail to its current and past California customers a notice as set forth in this order.

4. Within 30 days, Matrix shall reimburse Michael and Kathleen Lyon (complainants), for accrued interest as set forth above.

5. Matrix shall make periodic reports to the California Public Utilities Commission's Safety and Enforcement Division as set forth in this order.

This order is effective today.

Dated September 20, 1996, at San Francisco, California.

P. GREGORY CONLON
President
DANIEL Wm. FESSLER
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
Commissioners

APPENDIX A

MASTER LIST

(ECP) 93-06-051/I94-03-020
CRTD: 07/07/94 cont
REV: 6/07/96
DOCUMENT ID: C10793

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(END OF APPENDIX A)