

Decision 99-10-027

October 7, 1999

## 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 Telecommunications services.

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

**ORDER CLARIFYING ORDER INSTITUTING INVESTIGATION  
I. 99-09-001 AND DENYING REHEARING OF THE ORDER,  
AS CLARIFIED**

Telmatch Telecommunications, Inc. (Telmatch) has filed a timely application of our September 2, 1999 Order Instituting Investigation (OII) I.99-09-001. In that order, we instituted adjudicatory proceedings to determine whether Telmatch has billed California consumers for telephone charges they did not knowingly authorize, a practice known as "cramming." Pending a full evidentiary hearing on this question, we scheduled two preliminary hearings.

Telmatch's application for rehearing challenges two specific provisions of the order: one concerning public disclosure of proprietary information and the other, discovery. The application does not persuade us that we committed legal error with respect to either of these provisions. We deny, therefore, the request for a rehearing. We will, however, provide clarification of the order, and correct a clerical error.

In paragraph 6, we ordered certain information submitted by Telmatch and other utilities about Telmatch's billing and marketing practices made public. Telmatch contends that this provision of the OII violates its right to move for a

protective order pursuant to Rule 74.7 of the Commission's Rules of Practice and Procedure, and, consequently, its right to due process. (Application for Rehearing, pages 1-2). We disagree.

First, Rule 74.7, on which Telmatch relies, is applicable only to computer models. *See* Commission Rules of Practice and Procedure 74.1-74.2. Second, Public Utilities Code section 583 gives the Commission broad discretion to order confidential information provided by a utility made public.<sup>1</sup> *Southern Cal. Edison Co. v. Westinghouse Elec. Corp.*, 892 F.2d 778, 783 (9<sup>th</sup> Cir. 1989). The information provided by Telmatch about how it solicited and billed its California customers is central to this investigation.<sup>2</sup> In order to conduct a full and fair public hearing on the allegations set forth in the OII, public disclosure of the evidence supporting the allegations is necessary and in the public interest.

The OII does not, however, preclude Telmatch from conferring informally with the Consumer Services Division in order to reach a stipulation designed to limit the use of confidential and proprietary information to that which

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<sup>1</sup> Section 583 of the Public Utilities Code provides that:

No information furnished to the commission by a public utility, or any business which is a subsidiary or affiliate of a public utility, or a corporation which holds a controlling interest in a public utility, except those matters specifically required to be open to public inspection by this part, shall be open to public inspection or made public *except on order of the commission, or by the commission or a commissioner in the course of a hearing or proceeding.* Any present or former officer or employee of the commission who divulges any such information is guilty of a misdemeanor.

Public Utilities Code § 583 (West Supp. 1999) (emphasis added).

<sup>2</sup> Most of the declarations prepared by staff summarize information obtained from consumers, not from Telmatch. Telmatch's objections are inapplicable to this information. They are also inapplicable to information provided by Telmatch that is already in the public domain, such as its FCC filings.

is necessary for a full and fair hearing. Nor does it preclude Telmatch from filing a motion for a protective order if these efforts fail. *See* Resolution ALJ-164, which sets forth the procedures that govern discovery disputes.

Telmatch also contends that paragraph 8 of the OII restricts the scope of discovery too narrowly. (Application for Rehearing, page 3.) We reject this contention as well.

Paragraph 8 directs staff to continue its investigation and to provide to Telmatch, in advance of any hearings, any additional information that it intends to use as part of its direct showing in this proceeding. It limits staff's obligation to respond to discovery requests from Telmatch to those "directed at Staff's investigation of the respondent and staff's prepared testimony offered in this proceeding."

This provision gives Telmatch access to the information obtained in the course of staff's investigation of Telmatch, and to all the evidence that staff intends to present at the hearings. It is sufficiently broad to enable Telmatch to obtain the information reasonably necessary to prepare its defense. It merely forecloses discovery requests concerning other investigations and other respondents. Such requests would be overbroad and excessively burdensome, and could cause an unwarranted delay of these proceedings, which would be contrary to the public interest.

**It is hereby ordered:**

1. The following clerical error in I.99-09-001 is hereby corrected:

Page 1, first paragraph, next to last line: "1988" is changed to "1998."

2. Numbered paragraph 6, on page 11, is deleted and replaced with the following:

6. Staff has prepared declarations summarizing the results of their investigation. One of these declarations relies in part upon information from Telmatch and other utilities, which they designated as proprietary and confidential. The staff declarations and their supporting documents, including those that were designated as proprietary and confidential, shall be made public, pursuant to Public Utilities Code section 583, so that the allegations set forth in this order may be publicly aired.

3. Rehearing of I.99-09-001, as clarified and corrected above, is denied.

This order is effective today.

Dated October 7, 1999, at Los Angeles, California.

**RICHARD A. BILAS**  
**President**  
**HENRY M. DUQUE**  
**JOSIAH L. NEEPER**  
**JOEL Z. HYATT**  
**CARL W. WOOD**  
**Commissioners**