

Decision 99-10-069 October 21, 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 Telecommunication Services.

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

INTERIM OPINION

Summary

This decision directs Hold Billing Services, Inc. (HBS), Billing Concepts, USBI, and ZPDI to remit to the Manager of the Commission's Fiscal Office a certified check, payable to California Public Utilities Commission in the amount of the difference between the amount collected from California consumers on behalf of Telmatch Telecommunications, Inc.¹ (Telmatch) and the amount disbursed to Telmatch or refunded to customers less the amount charged

¹ Telmatch Telecommunications, Inc. (Telmatch), doing business as Benefits Plus (formerly known as Geo Communications, LLC, ES Communications, Inc., and Geo Communications, Inc.) is a long distance telephone service provider. According to Telmatch, the company obtained its Certificate of Public Convenience and Necessity (CPCN) from this Commission to operate as a reseller of long distance telephone service within California when it acquired GEO Communications. Geo Communications, LLC, was certificated by the Commission in Decision (D.) 96-12-055, dated December 20, 1996, to resell interLATA and intraLATA telephone services within California, and the name was changed to Telmatch Telecommunications, Inc. by Geo's Third Advice Letter, filed on November 25, 1988. Telmatch is a Louisiana corporation with headquarters in Plano, Texas.

Telmatch for billing services. Similarly, Pacific Bell (Pacific), and GTE California, Incorporated (GTEC), should remit funds held on behalf of Telmatch to the Commission. All such funds will be held by the Commission and will be distributed pursuant to further order of the Commission.

Background

On September 2, 1999, we issued an Order Instituting Investigation² (OII) into the operations and practices of Telmatch to determine whether it has violated the laws, rules and regulations governing the manner in which California consumers are billed for telecommunications services.

We issued this OII based on allegations that Telmatch, through its billing agents, is imposing unauthorized recurring charges for a calling card on consumers' telephone bills (i.e., cramming). We relied on allegations made by the Consumer Services Division (CSD or staff) that Telmatch has used what staff terms the "sweepstakes method" to bill consumers for a Telmatch calling card. Telmatch uses the information it solicits on sweepstakes entry forms to charge consumers, through billing agents, a recurring charge for a calling card. The recurring charge generally appears on the consumers' local exchange carrier (LEC) telephone bill. Staff describes the sweepstakes method as deploying entry boxes, set up at locations such as fairgrounds, where consumers are enticed by a chance to win a new car to fill out a sweepstakes entry form.

Staff alleges that the contest entry form contains small print that states that the consumer consents to receiving and being billed for a calling card. Staff believes that this practice does not secure the consumers' consent. The entry form's visual emphasis is on a prize, whereas the language regarding the calling

² See Investigation (I.) 99-09-001

card is in small print. The entry form is most clearly marked as an entry in a raffle. The terms and conditions are in small print on the back of the entry form. Further, Telmatch does not provide the consumer a copy of the terms contained on the entry form. Consumers fill out the front of the entry form and drop it into a contest entry box. The contest entry box contains a message on it in large print that states: "No Purchase Necessary." Staff asserts that customers did not consent to paying monthly charges for a calling card by entering the contest.

Staff states that Telmatch has represented that it has stopped its solicitations. However, staff believes that as many as 60,000 California consumers may be continuing to receive recurring monthly charges for a calling card. Staff states that Telmatch represented that it mailed a calling card to all consumers entering the raffle and those consumers elected to keep the calling card. However, staff interviewed many consumers who stated that they did not recall receiving a calling card, and many were not aware that a recurring calling card charge was appearing on their LEC telephone bill.

Staff estimates that the amount potentially owed by Telmatch to Californians is at least \$5.5 million, and staff recommends that the Commission secure from Telmatch no less than this amount. This amount considers that there are almost 60,000 current remaining California consumers being billed for the Telmatch calling card. Further, Telmatch solicited all of these customers prior to January 1998, and thus Telmatch has charged these consumers for at least 20 months. Sixty thousand customers multiplied by \$4.33/month (\$259,800) multiplied by 20 months equals \$5.2 million. Add to this the one-time activation fee paid by consumers of \$4.96, and total estimated billings received from these 60,000 consumers amounts to \$5.5 million.

If staff proves its allegations that Telmatch has committed thousands of cramming violations, obtaining reparations for the affected victims becomes a

critical task. We have not made a determination on staff's allegations of cramming. However, in the OII, we found that good cause exists to believe that a high portion of revenues remitted to Telmatch through its billing agents result from the unauthorized imposition of recurring monthly charges on consumers' telephone bills.

Thus in the OII, based on staff's allegations, we ordered an accounting of Telmatch's revenue from LECs and billing agents for Telmatch within 10 days of the effective date of the OII. Further, at page four of the OII, we directed Pacific and GTEC to "file an accounting explaining whether they could independently identify amounts which they have billed, through information submitted by billing agents or other sources, for Telmatch, and if they can identify the funds they hold which are destined for Telmatch."

On September 27, 1999, an initial hearing was held for the purpose of allowing Telmatch, billing agents, staff and the two large local exchange carriers to present evidence on whether Telmatch has sufficient financial solvency to assure compliance with any future order to provide reparations to the allegedly crammed consumers. If Telmatch lacks solvency, the OII also directed Telmatch to show cause why the Commission should not order Telmatch's billing agents and the LECs to impound or hold in escrow sufficient funds to provide reparations or take other measures to ensure the availability of funds to provide reparations.

The OII also ordered a second hearing on October 1, 1999.³ Because approximately 60,000 Californians may still be receiving charges for Telmatch's

³ Telmatch requested an extension from the Commission's Executive Director and received an extension of the second hearing date to October 12, 1999.

calling card, the purpose of the second hearing is to gather the information necessary to determine whether consumers have authorized Telmatch or consented to a recurring monthly charge for Telmatch's calling card. Further, the second hearing should allow us to determine whether the Commission should order Telmatch's billing agents and billing telephone companies to cease billing California consumers on behalf of Telmatch. At the second hearing, the OII also directed the assigned Commissioner or Assigned ALJ to consider issuing an ex parte ruling directing CSD to send notices to all consumers receiving charges for a Telmatch calling card. The notice would inform consumers of the Telmatch calling card charges on their bill and what action to take to remove any unauthorized charges.

Hearing on September 27, 1999

The OII ordered that at the hearing on September 27, 1999, the reports prepared by the billing agents and the LECs shall be presented by them and staff may offer evidence and recommendations based on its review of the interested parties' submissions. Further, the OII ordered that Telmatch may advance evidence on its ability to make reparations and whether it has sufficient financial solvency that there is no need for the Commission to order the billing agents and LECs to hold funds. The OII also gave notice that if it is found that expeditious Commission action is needed to reasonably assure the adequacy of funds to provide consumers reparations, the Commission may consider it an emergency situation and act with the greatest possible dispatch.

At the hearing on September 27, 1999, no billing agent made an appearance. Pacific and GTE presented no evidence⁴. However, Pacific's counsel did state that:

"Pacific Bell is not capable of stopping its billing on behalf of Telmatch because Pacific Bell does not have a billing and collections agreement with Telmatch. The billings and collections agreements that we have are with billing aggregators through whom we receive Telmatch's billings. So Pacific would request that whatever order is entered, that it be phrased in such a way so as to either require the billing aggregators to stop forwarding that information to the LECs such as Pacific Bell or it be worded so as to require Telmatch to simply not forward its billing information to the billing aggregators who in turn have been forwarding it to Pacific Bell."

GTE concurred with Pacific's assessment of its inability to halt Telmatch charges.

Staff produced one witness who had analyzed data submitted by a billing agent. Telmatch sponsored one witness that addressed Telmatch's financial status.

The following briefing schedule was set for filing briefs on issues addressed at the September 27 hearing: opening briefs due on Friday, October 1st, by 5:00 p.m.; reply briefs due on Friday, October 8th, by 5:00 p.m. However, the ALJ reminded parties, that as indicated in the OII, the Commission might find that expeditious action is needed to reasonably assure the adequacy of funds in the event consumer reparations are required. Thus, the Commission

⁴ Pursuant to ordering paragraph 2 of I.99-09-001, Pacific and GTEC identified in separate letters dated September 13, 1999, HBS, Billing Concepts, USBI and ZPDI as billing agents that Telmatch uses.

may consider this proceeding an emergency situation and act with the greatest possible dispatch to secure funds.

Consumer Services Division

CSD presented one witness, James R. Wuehler (Wuehler), who sponsored a report (Exhibit 1) that analyzed the data provided by one of Telmatch's billing agents, Billing Concepts. Wuehler is a Certified Public Accountant with a Master of Accountancy degree from Brigham Young University. Wuehler has been employed by the Commission for 14 years; currently he holds the position of Public Utility Financial Examiner IV. (Prior to working at the Commission, Wuehler worked eight years in public accounting and industry.) Wuehler has substantial experience advising the Commission on accounting related issues.

Wuehler reviewed Billing Concepts data to determine whether Billing Concepts provided the following information required by the OII:

- a) the funds collected for Telmatch for the monthly charges and related user fees for the calling cards,
- b) the amount credited consumers for the monthly recurring fee and activation fee,
- c) the amount charged to Telmatch for billing services,
- d) the amount of Telmatch billings currently in their possession,
- e) and an estimate of gross monthly collections for future months.

For the period June 1998 to August 1999, Wuehler estimated that Billing Concepts charged consumers \$7,374,000 on behalf of Telmatch for calling cards. In response to cross-examination, Wuehler could not state for certain whether the amount Billing Concepts identified as calling card charges included any charges for usage. Also in response to cross-examination, Wuehler could not state for

certain whether billing data provided by Billing Concepts in written reports reflected billing for California only or national billing data for Telmatch.⁵

Wuehler testified that Billing Concepts credited \$626,111 to consumers for monthly recurring charges and that Billing Concepts charged Telmatch \$210,287 for billing services. Further, Wuehler estimated that Billing Concepts held \$68,411 in funds owed to Telmatch and estimated that future gross monthly billings would amount to \$433,000.

Telmatch

Andrew Ozurovich (Ozurovich), an accountant in the firm of Licker and Ozurovich, sponsored Exhibit 2 and testified on behalf of Telmatch. Exhibit 2 contained a balance sheet (as of June 30, 1999) and a profit and loss (P&L) statement (January through June 1999) for Telmatch. The balance sheet reflects that as of June 30, 1999, Telmatch has \$770,481 in assets as follows:⁶

Total Checking and Savings	\$ 4,639
Total Accounts Receivables (LEC Receivables)	\$614,764
Total Funding Reserves	\$121,861
Other Receivables	\$ 29, 217

Discussion

This decision reaffirms that good cause exists to believe that a high portion of revenues remitted to Telmatch through its billing agents result from the

⁵ Billing Concepts provided data to staff in two formats, CD Rom and written reports. Wuehler testified that Billing Concepts identified the data on the CD Rom as containing data only for California. However, Wuehler could not state for certain that the data contained in the written reports applied only to California billings.

⁶ Telmatch's balance sheet does not make clear what percentage of its LEC receivables are related specifically to California operations.

unauthorized imposition of recurring monthly charges for a calling card on California consumers' telephone bills.

In D.99-08-017, we stated that our general policy on securing assets to fund potential reparation orders or fines:

"Where Commission staff alleges that an entity has wrongfully obtained funds from consumers or that fines are required to deter any future such activity, the Commission must take all actions within its power to ensure that respondents' assets will be available to fund any ordered reparations or fines. Of course, there may be instances where, despite diligent efforts, no assets can be located; nevertheless, aggressive actions must be fully pursued."

Additionally, we directed CSD to:

"consider from the outset of all enforcement cases any actions which could be taken to preserve such assets. We put on notice all entities which provide billing and collection services, including LECs and billing agents, that the Commission may direct them to provide information on billing services provided to respondents in future proceedings."

Based on our review of Telmatch's assets, we find that Telmatch lacks sufficient financial resources to make reparations to California consumers in the potential amount alleged due by CSD. As of June 1999, Telmatch has only \$4,639 in assets in checkings and savings accounts. This amount is insignificant in comparison to the approximately \$5.5 million that staff has alleged may be due in reparations. Even taking into consideration receivables, Telmatch lacks financial resources to make reparations. The OII provided clear notice that Telmatch should show that it has sufficient financial solvency to assure compliance with any future order to provide reparations to consumers allegedly crammed. Telmatch offered no evidence on this point.

Thus, under our authority to safeguard the rights of consumers, we shall direct HBS, Billing Concepts, USBI, and ZPDI, no later than 22 days after the effective date of this order, to remit to the Manager of the Commission's Fiscal Office a certified check, payable to California Public Utilities Commission in the amount of the difference between the amount collected on behalf of Telmatch from California consumers and the amount disbursed to Telmatch or refunded to customers less the amount charged Telmatch for billing services. All such funds will be held by the Commission and will be distributed pursuant to further order of the Commission. Also, until further order, any future funds received on behalf of Telmatch should be remitted to the Commission within 10 business days of their receipt. Further HBS, Billing Concepts, USBI, and ZPDI should notify Pacific and GTEC within five business days of the effective date of this order of all funds owed or held by such LECs on behalf of Telmatch. HBS, Billing Concepts, USBI, and ZPDI should make no effort to collect such funds held by Pacific and GTEC. Pacific and GTEC should immediately remit all funds so identified to the Commission.⁷

Lastly, we are profoundly troubled by Pacific's statement that it is not capable of stopping Telmatch's billings from appearing in Pacific's bills. This statement would appear to leave California consumers vulnerable to unscrupulous carriers and telecommunications service providers even after we have ordered that billing cease. This is an untenable situation.

In I.97-08-001/R.97-08-002 (the "slamming/cramming" rulemaking), we are considering rules which would require that each entity which bills through an incumbent local exchange carrier have a unique identifier for use with all

⁷ According to Exhibit 2, Telmatch is owed \$614,764 in LEC receivables.

billings. Pacific and GTEC are parties to that proceeding and we will direct them to file comments in the slamming/cramming rulemaking on whether the proposed rules will resolve this situation. If the current proposal will not enable the incumbent local exchange carriers to control the contents of their subscribers' bills, then Pacific and GTEC should present alternative proposals that will accomplish this goal.

Voluntary Discontinuance of Billing

At the hearing on September 27, 1999, Telmatch voluntarily agreed to cease:

"... all billings in the State of California as of this date, and binds and commits itself that all billings in California will remain suspended until this investigation is resolved. Telmatch will continue to provide refunds to consumers that believe they've been charged for services they did not order, as has been its practice to date."

In response to respondent's assertion that billing has stopped, the ALJ asked respondent if it had any objection to the Commission issuing an order directing LECs and billing agents to cease billing for Telmatch. Counsel for Telmatch had no objection as long as such an order is based on the representation of Telmatch that it has voluntarily agreed to cease billing California consumers.

At hearing Pacific requested that whatever order is entered, that it be phrased in such a way so as to either require the billing aggregators to stop forwarding that information to the LECs such as Pacific or it be worded so as to require Telmatch to simply not forward its billing information to the billing aggregators who in turn have been forwarding it to Pacific. In response to Pacific's concerns about specific wording, the ALJ directed Pacific to draft a

proposed order that would enable Pacific and GTEC to ensure that Telmatch had ceased billing California consumers.⁸

We memorialize in this decision Telmatch's representation to cease billing California consumers and base our order on the representation of Telmatch that it has voluntarily agreed to cease billing California consumers.

Section 311(g)(2): Waiver of 30-Day Period Due to Unforeseen Emergency Situation

In I.99-09-001, the Commission indicated that there might be a need to bring this matter back before the Commission on an emergency basis to deal with the preservation of funds to allow adequate restitution to California customers should a final decision indicate that such action was required. The facts developed at the hearing on September 27, 1999 indicate such a need for emergency action exists.

Due to these facts, there is a need to act on this matter as soon as possible, and this constitutes an unforeseen emergency situation for purposes of Pub. Util. Code Section 311(g)(2). (See Rule 81(h) of the Commission's Rules of Practice and Procedure). Accordingly, pursuant to Pub. Util Code Section 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

Findings of Fact

1. No billing agent made an appearance at the hearing on September 27, 1999.

⁸ Pacific timely provided the ALJ a two-page proposed order requiring Telmatch to cease all telecommunications billings in the State of California. We find some of the language provided by Pacific useful and incorporate it into this decision. However, we are troubled in general that California LECs lack the ability to monitor compliance with such an order.

2. Pacific and GTE presented no evidence at the hearing on September 27, 1999.
3. Consumer Services Division (CSD) has sought reparations of approximately \$5.5 million on behalf of Telmatch's California customers.
4. For the period June 1998 to August 1999, Billing Concepts charged consumers \$7,374,000 on behalf of Telmatch for calling cards.
5. For the period June 1998 to August 1999, Billing Concepts credited consumers approximately \$626,111 on behalf of Telmatch.
6. On average, not more than 10% of consumers billed by Billing Concepts on behalf of Telmatch have received credits.
7. Good cause exists to believe that a high portion of revenues remitted to Telmatch through its billing agents result from the unauthorized imposition of recurring monthly charges for a calling card on California consumers' telephone bills.
8. As of June 30, 1999, Telmatch had \$4,639 in assets in checkings and savings accounts.
9. As of June 30, 1999, Telmatch had \$614,764 in assets in accounts receivables.
10. As of June 30, 1999, Telmatch had \$121,861 in assets in funding reserves.
11. As of June 30, 1999, Telmatch had \$29,217 in assets in other receivables.
12. Telmatch's assets in checkings and savings accounts is insignificant in comparison to the approximate \$5.5 million that staff has alleged may be due in reparations.
13. Even taking into consideration receivables, Telmatch lacks financial resources to make reparations in the amount that staff has alleged may be owed to California consumers.

14. Telmatch has failed to show that it has sufficient financial solvency to assure compliance with any future order to provide reparations to consumers allegedly crammed.

15. Telmatch lacks financial resources to make reparations to California consumers in the amount alleged due by staff of CSD.

16. Telmatch has voluntarily stipulated to cease all billings in the state of California until the instant investigation is resolved.

17. Telmatch consents to an interim order directing Telmatch to cease billing California consumers.

18. Funds held by billing agents and LECs are a tangible asset that may disappear if immediate action is not taken to preserve such funds.

19. Expeditious action is needed to reasonably assure the adequacy of funds to provide reparations to consumers.

Conclusions of Law

1. The Commission has specific jurisdiction over billing agents pursuant to Pub. Util. §§ 2889.9 and 2890.

2. The Commission is authorized to "adopt rules, regulations and issue decisions and orders, as necessary, to safeguard the rights of consumers and to enforce the provisions of [§ 2889.9]."

3. The Commission may suspend the right of a billing agent to bill through a local exchange carrier pursuant to Pub. Util. Code § 2889.9(c).

4. Safeguarding the rights of consumers requires that the Commission act to preserve the remaining assets of the original respondents for a potential Commission decision ordering reparations or fines.

5. Safeguarding the rights of consumers requires that the billing agents fully account for all funds that may have been collected as the result of wrongful billing.

6. In order to ensure that the Commission can achieve its enforcement objectives, this order should be effective immediately.

INTERIM ORDER

Therefore, **IT IS ORDERED** that:

1. No later than 22 days after the effective date of this order, Hold Billing Services, Inc. (HBS), Billing Concepts, USBI, and ZPDI shall remit to the Manager of the Commission's Fiscal Office a certified check payable to California Public Utilities Commission in the amount of the difference between the amount collected on behalf of Telmatch Telecommunications, Inc. (Telmatch) and the amount disbursed to Telmatch or refunded to customers. The amount submitted should exclude the amount charged Telmatch for billing services in California. If HBS, Billing Concepts, USBI or ZPDI can show that funds held on behalf of Telmatch are from sources other than California consumers, then those funds so identified should not be remitted to the Commission.

2. HBS, Billing Concepts, USBI, and ZPDI shall notify Pacific Bell (Pacific) and GTE California, Incorporated (GTEC) within five business days of the effective date of this order of all funds owed or held by such local exchange carriers on behalf of Telmatch. HBS, Billing Concepts, USBI, and ZPDI should make no effort to collect such funds held by Pacific and GTEC. Pacific and GTEC should immediately remit all funds so identified to the Commission.

3. Telmatch will cease all billings in the state of California and shall submit no further billings in connection with any California end-user to any billing and collections aggregators, local exchange carriers, or other billing and collections entity until or unless the Commission orders otherwise.

4. Effective immediately, HBS, Billing Concepts, USBI, and ZPDI shall cease billing California end-users on Telmatch's behalf until or unless the Commission orders otherwise.

5. Pacific and GTEC shall file comments in I.97-08-001/R.97-08-002 stating whether the proposed rules (rules which would require that each entity which bills through an incumbent local exchange carrier have a unique identifier for use with all billings) will enable the incumbent local exchange carriers to control the contents of their subscribers' bills. If the current proposed rules do not, then Pacific and GTEC shall present alternative proposals that will accomplish this goal. These limited comments shall be filed and served no later than November 1, 1999.

This order is effective today.

Dated October 21, 1999, at San Francisco, California.

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