

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**



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Rulemaking 00-02-004

Order Instituting Rulemaking on the Commission's Own  
Motion to Establish Consumer Rights and Consumer  
Protection Rules Applicable to All Telecommunications  
Utilities.

**COMMENTS OF THE UTILITY REFORM NETWORK ON PROPOSED  
DECISION OF COMMISSIONER BOHN ADOPTING CALIFORNIA TELEPHONE  
CORPORATION BILLING RULES**

October 4, 2010

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The Utility Reform Network (TURN) submits our Comments on the Proposed Decision of Commissioner Bohn in the above-captioned proceeding.

**I. Introduction**

TURN generally supports the Proposed Decision (PD). The PD represents a reasonable balance between competing interests – providing some significant protections for consumers from unauthorized charges while not being overly burdensome on service providers. Nonetheless, TURN submits that the PD could be improved by enhancing some of the provisions.

**II. TURN's Recommendations for Strengthening the Proposed Decision**

**A. Authorization Required**

The PD attempts to walk a fine line regarding the issue of subscriber authorization especially for wireless services. While the PD concedes that “it is clear that an opt-in option

would offer subscribers more protection from unauthorized charges,” it also asserts that “this would represent a significant operational change from current third-party billing practices and may result in customer confusion and dissatisfaction.”<sup>1</sup> The PD’s compromise is to require the Commission’s Communications Division staff, in collaboration with CPSD, “to prepare a report... no later than January 1, 2013...on developments in the wireless industry” assessing among other things whether the cramming rules adequately protect consumers “including an assessment of whether the existing ‘opt-out’ options and processes provided by the Billing Telephone Corporations sufficiently protect subscribers.”<sup>2</sup>

While TURN is sensitive to the need to adopt a balanced approach to cramming rules, we submit that the record is insufficient to support the contention that somehow customers would be confused and dissatisfied with an opt-in authorization approach. TURN submits, as the PD finds, that consumers would be significantly better off with an opt-in requirement whereby consumers make an affirmative choice to permit third party billing. TURN urges the Assigned Commissioner to modify the PD to reflect this approach.

In addition, TURN reiterates our recommendation that the language in Rule 3 regarding direct dialed telephone services be eliminated. The PD currently provides: “With regard to direct dialed telephone services, evidence that a call was dialed is prima facie evidence of authorization. This presumption can be rebutted with evidence that the call was not authorized.” As we stated in our previous comments in this proceeding<sup>3</sup> this provision effectively places the burden that a call was authorized on the customer rather than the service provider. This provision is particularly egregious given the language in Rule 3 stating that: “A Service Provider may establish that a charge was authorized by (i) a record of affirmative authorization, (ii) a demonstrated pattern of knowledge past use, or (iii) other persuasive evidence of authorization.” These elements that purportedly demonstrate customer authorization are more than sufficient to

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<sup>1</sup> Proposed Decision of Commissioner Bohn Adopting California Telephone Corporation Billing Rules (PD), p. 28.

<sup>2</sup> PD, p. 30; Ordering Paragraph (OP) 2.

<sup>3</sup> Comments of TURN on Assigned Commissioner’s Ruling Requesting Comment of Proposed California Telephone Corporation Billing Rules, March 22, 2010 (TURN Comments), p. 6.

protect the service providers from consumers who allege they did not authorize a service or product. There is therefore no need to also include the language relating to direct dialed calls. Including the later provision is overkill in favor of the service provider.

### **B. Flexible Compliance Option and Exemptions From Reporting Requirements**

The PD allows flexibility for Billing Telephone Corporations and Billing Agents to comply with the record retention for refund requirements by demonstrating to CPSD “that the records meet the Commission’s standard of having sufficient information to enable refunds to customers.”<sup>4</sup> There is nothing in the record to support such flexibility. The information required in Rule 11 is basic and essential information and the Commission should not, without demonstrated good cause (which has not been shown here), allow service providers any means to avoid providing this data.

Equally troubling is the provisions of Rule 12.5 “Exemptions from Reporting Requirement.” The PD provides that pre-paid wireless carriers and carriers that provide service only to business or wholesale customers may request “that the Director of the Consumer Protection and Safety Division suspend or modify their obligation to file the Report of Refunds and/or Report of Suspension and Terminations.”

As TURN discussed in reply comments in the proceeding, pre-paid wireless carriers and service providers to business and wholesale customers have essentially asserted that they are not and cannot engage in cramming.<sup>5</sup> However, neither of these parties supply a scintilla of evidence to support this assertion. If, as these service providers allege, they have few instances of cramming then it will not at all be onerous to comply with the reporting requirements.

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<sup>4</sup> PD, Rule 11, “Flexible Compliance Option.”

<sup>5</sup> See Reply Comments of TURN on Assigned Commissioner’s Ruling Requesting Comment of Proposed California Telephone Corporation Billing Rules, April 9, 2010 (TURN Reply Comments), pp. 15-18. See also, Comments of Cricket Communications, Inc. and MetroPCS California (Cricket/MetroPCS), p. 5,6,11 and Comments of CALTEL on Assigned Commissioner’s Ruling Requesting Comment on Proposed California Telephone Corporation Billing Rules (CALTEL), p. 2,3.

Furthermore, the exemption is on an annual basis. Thus, once an exemption is granted, these service providers can engage in and/or turn a blind eye to cramming incidents with no oversight or fear of repercussions. The exemption condition should be eliminated.

### **C. Effect of Failure to Supply Reports**

TURN remains concerned with the penalty provisions of Rule 13. The goal of penalties in this context is to provide a deterrent to unscrupulous behavior. Given the significant revenues at stake for both service providers, billing agents and third party billers the threat of a \$500 or \$5000 penalty not only gets lost in the rounding but can easily be viewed by these companies as a “cost-of-doing business.” TURN recommends that this provision be reconsidered and a penalty that correlates with the revenues earned by the billing entity be adopted.

Respectfully submitted,

By /s/ William Nusbaum

October 4, 2010

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CERTIFICATE OF SERVICE

I, Larry Wong, certify under penalty of perjury under the laws of the State of California that the following is true and correct:

On October 4, 2010, I served the attached:

**COMMENTS OF THE UTILITY REFORM NETWORK ON PROPOSED DECISION OF  
COMMISSIONER BOHN ADOPTING CALIFORNIA TELEPHONE CORPORATION  
BILLING RULES**

on all eligible parties on the attached list **R.00-02-004** by sending said document by electronic mail to each of the parties via electronic mail, as reflected on the attached Service List.

Executed this October 4, 2010, at San Francisco, California.

/S/  
Larry Wong

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