

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



FILED

03-23-11

04:59 PM

Order Instituting Rulemaking on the Commission's Own Motion to Require Interconnected Voice Over Internet Protocol Service Providers to Contribute to the Support of California's Public Purpose Programs.

Rulemaking 11-01-008

(Filed January 13, 2011)

**RESPONSE OF THE GREENLINING INSTITUTE TO THE MOTION
OF THE CONSUMER PROTECTION AND SAFETY DIVISION**

STEPHANIE C. CHEN
ENRIQUE GALLARDO
The Greenlining Institute
1918 University Avenue, Second Floor
Berkeley, CA 94704
Telephone: 510 926 4017
Facsimile: 510 926 4010
E-mail: enriqueg@greenlining.org

March 23, 2011

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

Order Instituting Rulemaking on the Commission’s Own
Motion to Require Interconnected Voice Over Internet
Protocol Service Providers to Contribute to the Support of
California’s Public Purpose Programs.

Rulemaking 11-01-008

(Filed January 13, 2011)

**RESPONSE OF THE GREENLINING INSTITUTE TO THE MOTION
OF THE CONSUMER PROTECTION AND SAFETY DIVISION**

Introduction

Pursuant to Rule 11.1(e) of the California Public Utilities Commission’s (“the Commission”) Rules of Practice and Procedure the Greenlining Institute (“Greenlining”) provides this Response to the Motion of the Consumer Protection and Safety Division for Modification of the Scope of Rulemaking to Include Consumer Protection (“CPSD Motion,” filed March 8, 2011). CPSD provides strong evidence that consumer protection is an important part of the Commission’s authority over interconnected Voice over Internet Protocol (“VoIP”) service providers. CPSD also provides evidence – despite the fact the Commission’s Consumer Affairs Branch (“CAB”) does not track complaints against VoIP providers – that many VoIP customers face consumer protection issues.¹ Were CAB to actively track complaints against VoIP providers, the reported incidents of slamming, cramming and other violations would likely increase. Thus, Greenlining urges the Commission to consider consumer protection within the scope of this rulemaking. Greenlining also urges the Commission to require that CAB begin tracking complaints against VoIP service providers.²

¹ See CPSD Motion, pp. 8-14.

² See *id.*, p. 8.

I. The Commission Has Authority Over VoIP Providers' Consumer Protection Issues and Should Exercise that Authority.

The CPSD Motion demonstrates clearly that the *Vonage Preemption Order* preempts only state regulation of “rate regulation, tariffing, or other requirements that operate as ‘conditions to entry.’”³ CPSD demonstrates that consumer protection requirements do not operate as conditions of entry and are thus not preempted by the FCC.⁴ FCC and federal authority makes clear that states are free to regulate where they do not interfere with federal regulation.⁵ As the FCC has delegated responsibility over consumer complaints to the states, there can be no interference with federal regulation; thus, states are free to exercise authority over consumer protections.⁶

The Commission may exercise its authority over consumer protections, but should it? The Commission’s focus on the principle of competitive neutrality requires that the Commission should not selectively enforce consumer protection laws.⁷ If VoIP providers are given free reign to commit slamming, cramming, and other consumer protection violations, they will have a competitive advantage of the worst possible kind over other providers of telephone service. If the Commission is truly committed to the principle of competitive neutrality, then it should not hold VoIP providers to a different consumer protection standard than other telephone corporations. The Commission should consider all consumer protections applicable to telephone corporations in this rulemaking.

As mentioned above, CPSD has also documented instances of consumer protection violations by VoIP providers, which are likely under-counted because CAB does not track

³ See *id.*, p. 15, citing Declaratory Ruling, *In the Matter of Universal Service Contribution Methodology*, WC Docket No.06-122 (rel. November 5, 2010), ¶23.

⁴ See CPSD Motion, pp. 15-16.

⁵ See *id.*, p. 17.

⁶ See *id.*, pp. 17-19.

⁷ See *id.*, pp. 3-4.

complaints against VoIP providers. As CPSD states, these consumers were marketed telephone service and experience consumer abuse whether or not their service is VoIP or traditional telephone technology. The Commission should not leave VoIP providers without oversight regarding consumer protections.

A. The Commission should exercise authority over all consumer protection issues in this rulemaking.

VoIP providers may object that the Commission’s authority over them is unclear, leading to uncertainty over the VoIP industry. They may also complain that the Commission’s authority is “creeping,” taking advantage of regulatory uncertainty to impose itself. The Commission may easily address any uncertainty by specifying in this rulemaking the extent of authority and how it will exercise its authority. Thus, the Commission should determine which statutes, general orders and Commission rules involve consumer protections and specify in this rulemaking that it will enforce these over all telephone corporations. This rulemaking would end with a definitive status of consumer protections in the VoIP industry.

The Commission must ensure in this rulemaking that none of its exercise of authority acts as a “condition of entry” to the VoIP market. This should be easily attainable. For example, in its Opening Comments, The Utility Reform Network suggested a registration process that addresses consumer protection issues without rising to the level of a “condition of entry.”⁸ In this rulemaking, the Commission will be able to adopt consumer protection rules and processes over VoIP providers that do not conflict with federal authority.

////

////

⁸ See Opening Comments of The Utility Reform Network on the OIR, pp. 7-9.

Conclusion

As tentatively concluded in the OIR, the Commission may move forward with its proposal to classify interconnected VoIP providers as telephone corporations. The Commission should also determine that it should exercise its authority over consumer protection issues over these telephone corporations. The entire issue of consumer protections is part of the Commission's authority. Greenlining urges the Commission to hold to its principle of competitive neutrality and hold VoIP providers to the same consumer protection standard as other telephone corporations. After the recent FCC ruling cleared the way for state exercise of authority, this is an opportunity for the Commission to demonstrate national leadership in the area of telecom consumer protection.

Respectfully submitted,

Dated: March 23, 2011

/s/ Stephanie C. Chen
Stephanie C. Chen
Senior Legal Counsel
The Greenlining Institute

/s/ Enrique Gallardo
Enrique Gallardo
Legal Counsel
The Greenlining Institute