Decision **PROPOSED DECISION OF COMMISSIONER PEEVEY**
(Mailed 8/5/2008)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Address the Needs of Telecommunications Customers Who Have Limited English Proficiency.	Rulemaking 07-01-021 (Filed January 11, 2007)

PHASE II DECISION ADDRESSING IN-LANGUAGE MARKET TRIALS, FRAUD NOTIFICATION AND REPORTING, AND CONSUMER COMPLAINT AND LANGUAGE PREFERENCE TRACKING FOR LIMITED ENGLISH PROFICIENT TELECOMMUNICATIONS CONSUMERS

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PHASE II DECISION ADDRESSING IN-LANGUAGE MARKET TRIALS, FRAUD NOTIFICATION AND REPORTING, AND CONSUMER COMPLAINT AND LANGUAGE PREFERENCE TRACKING FOR LIMITED ENGLISH PROFICIENT TELECOMMUNICATIONS CONSUMERS

1. Summary

Decision (D.) 07-07-043 adopted rules to ensure that customers with limited English proficiency have just, adequate and reasonable access to the information and assistance they need to obtain and maintain telecommunications services, and help limited English proficient (LEP) customers protect themselves from fraud or abuse (In-Language Marketing Rules). Today's decision (Decision) further develops the In-Language Marketing Rules by resolving issues concerning: (1) tracking and reporting LEP consumer complaints and language preference; (2) fraud notification to LEP consumers and fraud reporting to the Commission; and (3) market trials in non-English languages.

The Decision finds that in-language market trials should be permitted with conditions, unless a carrier already markets non-exempt telecommunications services in the target language. The Decision:

- Defines an in-language market trial as, "the marketing of one or more non-exempt services for a limited duration in a non-English language;
- Authorizes carriers to conduct in-language market trials for a period not to exceed 180 days. A carrier that continues to market in a non-English language after the conclusion of a 180-day in-language market trial period must comply with all of the In-Language Marketing Rules adopted in D.07-07-043;
- Requires a two-year cooling off period before an in-language market trial in the same language may be repeated to ensure that carriers do not conduct serial market trials as a way to avoid compliance with the In-Language Marketing Rules;

- Determines that pre-approval of in-language market trials is unnecessary. However, the Decision requires notice to the Commission of the market trial start date and target language to provide a way for the Commission to determine that a carrier is complying with limits on the duration of in-language market trials;
- Requires carriers conducting in-language market trials to comply with Rule V of the In-Language Marketing Rules by providing, in the market trial target language during normal business hours, access to live, person-to-person customer service over the telephone using either a customer service representative fluent in the market trial target language, or through a third-party interpreter service, such as Language Line;
- Requires carriers to inform participants in the target language at the start of their participation in an in-language market trial that participants may contact the Commission's Consumer Affairs Branch (CAB) to file an informal complaint, and to provide CAB's telephone number web address and online complaint entry URL to participants. The Decision permits carriers to use any of the methods specified in Rule V of the In-Language Marketing Rules to provide this information;
- Requires the terms of an in-language market trial to include the condition that participation is entirely voluntary and revocable by participants if a carrier discontinues support in the market trial target language, and requires carriers to provide notice to in-language market trial participants 30 days before discontinuing access to customer service in the target language of the market trial;
- Requires carriers to, at a minimum, provide in-language market trial participants an English language confirmation summary of the customer's transaction, and to provide instructions in the target language on how to access target language customer service support for assistance with the translation and/or interpretation of the confirmation summaries, billing questions, and Commission-mandated notices and disclosures; and

- Finds that the Commission should not (but carriers may) limit in-language market trials to a specific geographic area, that there should be no restrictions on the pricing of services to in-language market trial participants, and that carriers should not be required to submit reports or other information to the Commission at the conclusion of an in-language market trial.

The In-Language Market Trial Rules adopted by this Decision are separate from, and do not modify, the In-Language Marketing Rules.

The Decision also finds that carriers should not be required to provide fraud notification to LEP consumers or fraud reports to the Commission, or to track or report LEP consumer complaints and language preference. The Decision concludes that we should first assess the effectiveness of those efforts already underway and try other alternatives before requiring carriers to establish LEP complaint and language preference tracking and reporting systems or establishing fraud notice and reporting requirements. Therefore, we adopt a combination of proposals which:

- Require carriers that market in a non-English language to submit a compliance report to the Commission within 60 days of initiating in-language marketing;
- Rely on Consumer Information Management System (CIMS) for data on LEP consumer complaints;
- Require posting of CIMS data on the Commission's website, including carrier information;
- Require that a carrier-funded consumer satisfaction survey of LEP consumers be conducted to help the Commission obtain information on how LEP customers are treated by carriers and to identify the needs of LEP consumers who may not file complaints;
- Use the Regulatory Complaint Resolution Forum (RCRF) for identifying and resolving LEP consumer issues, including separate venues for open meetings where all carriers and

community-based organizations (CBO) may address general issues, and special meetings limited to selected participants to address specific issues;

- Direct Commission staff to recommend revisions to the Commission's on-line complaint forms; and
- Require carriers which market in-language to provide their customers with a notice in the language(s) in which the carrier markets on how to reach to the CalPhoneInfo website.

The Decision defers a review of the In-Language Marketing Rules until after a written report on the consumer satisfaction survey has been issued, CIMS data has been compiled and reported for one year, and the Telecommunications Education and Assistance in Multiple-languages (TEAM) Program has published at least one annual report.

2. Background

The Order Instituting Rulemaking (R.) 07-01-021 was initiated to consider ways to improve services to California telecommunications consumers who do not read or speak English fluently, and to focus on ways of promoting consumer protection for telecommunications customers who are limited English proficient (LEP). D.07-07-043 (Phase I Decision) adopted rules applicable to carriers that market non-exempt telecommunications services in a language other than English (In-Language Marketing Rules).[1]

The In-Language Marketing Rules require carriers that market non-exempt telecommunications services in a non-English language (*i.e.*, "in-language") to

[1] The In-Language Marketing Rules do not apply to carriers' services to wholesale or business customers, or to wireless services offered through prepaid or month-to-month contracts (exempt services).

provide live person-to-person customer service over the telephone. However, carriers have a choice of ways to satisfy other in-language information obligations that accommodate their various marketing strategies and their different modes of operation while ensuring consumers receive adequate information to make informed decisions about purchases of non-exempt telecommunications services.

Among other things, the Phase I Decision decided that carriers which market non-exempt services in-language should report to the Commission annually on problems with fraud and actions taken to combat it (Fraud Reporting), and that these carriers should inform their LEP customers upon initiation of service and annually thereafter about ways to protect against fraud (Fraud Notification).[2] The Phase I Decision determined, however, that before implementing these requirements, the Commission would seek comment on the content, format and timing of Fraud Notification to LEP consumers and Fraud Reporting to the Commission.

The Phase I Decision also deferred to Phase II of this proceeding consideration of issues concerning carrier tracking of LEP consumer complaints and tracking of customer language preference.[3] The Phase I Decision determined that, before ordering carriers to track and report LEP consumer complaints and customer language preference, the Commission should seek additional comment on the kinds of LEP consumer complaint and language preference information that should be tracked by carriers, and how that tracking should be done.

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[2] D.07-07-043, Conclusions of Law (COLs) 56, 57.

[3] D.07-07-043, p. 97.

Finally, the Phase I Decision directed the assigned Commissioner to issue a ruling seeking comments on whether in-language market trials should be permitted and, if so, what rules, if any, should apply to in-language market trials.

On August 30, 2007, pursuant to the Phase I Decision,[4] the assigned Commissioner issued a supplemental scoping memo and ruling (Phase II Scoping Memo/Assigned Commissioner's Ruling (ACR)) identifying the scope of issues for Phase II of this proceeding to include: (1) establishing Fraud Notification to LEP consumers and Fraud Reporting by carriers to the Commission; (2) determining the kinds of LEP consumer complaint and language preference information that should be tracked by carriers, including defining "reportable telecommunications complaint," identifying the specific information to be tracked, how that information will be used, and what kinds of exceptions to any tracking requirements are appropriate; and (3) determining whether in-language market trials are appropriate, and if so, what requirements, if any, should apply to in-language market trials.

On September 14, 2007, CTIA - The Wireless Association (CTIA) requested that Phase II be divided into three consecutive parts: (1) in-language market trials; (2) fraud notification requirements and; (3) complaint and language preference tracking (Segmentation Motion). The Segmentation Motion also requested an extension of time until 60 days after the issuance of a revised scoping memo to file comments on the proposed Segment 1 issues concerning in-language market trials.

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[4] D.07-07-043, Ordering Paragraphs (OPs) 10, 11, and 12.

On September 27, 2007, the assigned Commissioner issued a ruling granting, in part, CTIA's Segmentation Motion by dividing the issues identified in the August 30, 2007 Phase II Scoping Memo/ACR into two parts (September 27 ACR). The September 27 ACR established Phase II-A to address issues related to in-language market trials and Phase II-B to address issues related to LEP consumer complaint and language preference tracking, fraud notification to LEP consumers, and fraud reporting by carriers to the Commission.

The September 27 ACR denied CTIA's request for an extension of time until 60 days after the issuance of a revised scoping memo to file comments on Phase II-A issues, but provided two additional weeks for parties to file and serve comments on Phase II-A issues. Comments on Phase II-A issues were filed on October 15, 2007 and reply comments were filed on November 1, 2007.[5]

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[5] Parties filing comments and/or reply comments on Phase II-A issues were Pacific Bell Telephone Company dba AT&T California, AT&T Communications of California, Inc., New Cingular Wireless PCS, LLC (collectively, referred to as "AT&T"); Consumer Federation of California (Consumer Federation); CTIA - The Wireless Association; Division of Ratepayer Advocates (DRA); Greenlining Institute (Greenlining); Latino Issues Forum (LIF); Cal-Ore Telephone Co., Calaveras Telephone Co., Ducor Telephone Co., Foresthill Telephone Co., Global Valley Networks, Inc., Happy Valley Telephone Co., Hornitos Telephone Co., Kerman Telephone Co., Pinnacles Telephone Co., Ponderosa Telephone Co., Sierra Telephone Co., Inc., Siskiyou Telephone Co., Volcano Telephone Co., Winterhaven Telephone Co., (collectively, referred to as "Small Local Exchange Carriers" (LECs)); SureWest Telephone Company (SureWest); The Utility Reform Network (TURN); MCI Communications Services, Inc. (MCI), MCImetro Access Transmission Services LLC (MCImetro), Verizon California Inc. (VC), Verizon Long Distance (VLD), Verizon West Coast, Inc. (VWC) (collectively, referred to as "Verizon California"); and Cellco Partnership, Los Angeles SMSA Limited Partnership, Verizon Wireless (VAW) LLC, Fresno MSA Limited Partnership, Sacramento Valley Limited Partnership, GTE Mobilnet of California Limited Partnership, GTE Mobilnet of Santa Barbara Limited Partnership, Modoc RSA Limited Partnership, California RSA No. 4

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The September 27 ACR also ordered a workshop in Phase II-B prior to the filing of comments to provide parties an opportunity to discuss issues related to LEP consumer complaint and language preference tracking (Tracking Workshop). On October 18, 2007, the Administrative Law Judge (ALJ) issued a ruling scheduling the Tracking Workshop as directed by the September 27 ACR, and on November 8 and 9, 2007, the Communications Division (CD) held the Tracking Workshop.[6]

Some parties submitted position papers prior to the Tracking Workshop,[7] and after the workshop some parties submitted post-workshop statements identifying areas of consensus and disagreement.[8] The CD issued a workshop

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Limited Partnership and Cal-One Cellular Limited Partnership (collectively, referred to as "Verizon Wireless").

[6] Parties participating in the Tracking Workshop were AT&T, CalTel, Communities for Telecom Rights (CTR), Consumer Federation, Cox, CTIA, Cricket Communications, Inc. (Cricket), DRA, Greenlining, LIF, Small LECs, SureWest, Sprint Nextel, T-Mobile, Telscape Communications, Time Warner Cable, TURN, Verizon California and Verizon Wireless. Also attending were advisors to President Peevey and Commissioner Chong.

[7] Parties submitting workshop position papers on November 2, 2007 were AT&T; Consumer Federation; CTR; CTIA; DRA, Greenlining, LIF and TURN (collectively, filing as "Joint Consumer Groups" and referred to as "DGLT-Joint Consumer Groups") and Verizon California.

[8] Parties submitting post-workshop statements on November 14, 2007 were AT&T; Cricket; CTIA; Consumer Federation, DRA, Greenlining, LIF and TURN (collectively, filing as "Joint Consumer Groups" and referred to as "CDGLT-Joint Consumer Groups"); Small LECs; SureWest and Verizon California.

report on December 17, 2007. Comments on Phase II-B issues were filed on January 7, 2008 and reply comments were filed on January 22, 2008.[9]

On March 19, 2008, the ALJ issued a ruling authorizing parties to submit proposals for addressing LEP complaint and language preference tracking developed as a result of discussions occurring after the conclusion of the Tracking Workshop (March 19 Ruling). On April 2, 2008, proposals were filed and served by Joint Telecommunications Carriers,[10] CDT-Joint Consumer Groups,[11] and LIF. Comments on parties' LEP complaint and language preference tracking proposals were submitted by Joint Telecommunications Carriers (excluding Small LECs, which separately filed comments), CDT-Joint Consumer Groups, LIF and Verizon Wireless.[12]

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[9] Parties filing opening comments on Phase II-B issues were AT&T; Consumer Federation, DRA, Greenlining and TURN (collectively, filing as "Joint Consumer Groups" and referred to as "CDGT-Joint Consumer Groups"); Consumer Federation; Cox California Telcom, L.L.C., dba Cox Communications (Cox); Cricket; CTIA; LIF; Small LECs; SureWest; Verizon California and Verizon Wireless. Parties filing reply comments on Phase II-B issues were AT&T; DRA, Greenlining and TURN (collectively, filing as "Joint Consumer Groups" and referred to as "DGT-Joint Consumer Groups"); Consumer Federation; Cox California Telcom, L.L.C., dba Cox Communications (Cox); Cricket; CTIA; LIF; Small LECs; SureWest; Verizon California and Verizon Wireless.

[10] Joint Telecommunications Carriers is comprised of AT&T, Cox, Cricket, CTIA, Small LECs, Sprint PCS, SureWest, T-Mobile, Verizon California and Verizon Wireless.

[11] CDT-Joint Consumer Groups are comprised of Consumer Federation, DRA, and TURN.

[12] Verizon Wireless is also listed as a member in the Comments of Joint Telecommunications Carriers on Proposals of CDT-Joint Consumer Groups and the LIF Addressing LEP Complaint and Language Preference Tracking.

3. Phase II-A Issues - In-Language Market Trials

3.1. Introduction

In its comments on the Phase I Proposed Decision (Phase I PD), Verizon California recommended allowing carriers to conduct market trials in order to test the responsiveness of non-English speaking communities to marketing in non-English languages in which carriers do not currently advertise. Because the issue of market trials was raised for the first time in comments on the Phase I PD, the Commission lacked a record upon which to decide this issue. The Phase I Decision directed that further comments be taken on whether in-language market trials should be permitted, and if so, what rules, if any, should apply to in-language market trials. The Phase II Scoping Memo/ACR established a schedule and sought comment on the questions addressed below concerning in-language market trials.

3.2. Should In-Language Market Trials Be Permitted?

Before addressing issues concerning in-language market trials, we briefly review the Commission's treatment of traditional market trials, technology tests and promotional offerings.

The Commission has allowed carriers to make temporary offerings since 1986, initially through technology tests, and later through market trials and promotional offerings. Technology tests are the testing of hardware, software, systems and other facilities conducted in a small controlled environment with a limited group of customers in order to determine if a new unproven service or technology works.[13]

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[13] Res. T-11083 (December 3, 1986).

Market trials are defined as the trialing of services, features, applications or service options that provides potential customer benefit in a limited marketplace to determine end user willingness to pay, end user demand, and various service provisioning processes.[14] Market trials allow carriers to try out a service that provides potential customer benefit to determine the marketability or profitability of new services using a small group of customers to ensure better service for customers and to reduce the risk of introducing unsuccessful services to the marketplace.

Promotional offerings waive or discount the non-recurring charges for new or existing optional services that are, consistent with Pub. Util. Code § 453(c),[15] offered to all customers statewide, or for services made available as the result of new or upgraded facilities.[16]

The Commission's oversight of technology tests, market trials and promotional offerings has evolved as telecommunications competition developed. In the more closely regulated telecommunications industry of the late 1980s and early 1990s, technology tests, market trials and promotional offerings allowed carriers to temporarily deviate from their tariffs, which otherwise require carriers to offer services to everyone on the same terms and conditions. As competition has developed and matured, the restrictions on deviating from tariffs have lessened and current requirements are minimal.

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[14] Res. T-14556 (September 6, 1991).

[15] All statutory references are to the Public Utilities Code, unless otherwise noted.

[16] *See*, for example, Res. T-14174 re: Pacific Bell (October 12, 1990) and Res. T-14689 re: GTE California (December 18, 1991).

The Commission's rules previously required carriers to provide notification and obtain authorization before offering service at rates or under conditions other than those contained in their tariffs.[17] This was often a lengthy process. However, with increasing competition, the Commission recognized the need to allow carriers to more quickly evaluate the marketability of new services.

The Commission also recognized that its then-existing notification and approval process allowed competitors to review a carrier's new services long before the service was introduced. As a result, the Commission established rules for, and authorized, technology tests in 1986, promotional offerings in 1990 and market trials in 1991.[18] Because competition was still nascent, the Commission established stricter guidelines (primarily concerning pricing) for incumbent local exchange carriers (ILECs) than for other carriers.[19]

Resolution (Res.) T-14556 authorized AT&T, and Res.T-14944 authorized Pacific Bell, to conduct market trials.[20] These resolutions defined market trials and technology tests, and established guidelines for conducting market trials, including requirements for Commission pre-approval, product pricing limitations, customer notification, limits on the geographic scope, duration,

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[17] At the time, these rules were contained in General Order (GO) 96-A, now GO 96-B.

[18] *See* Res. T-11083 re: Pacific Bell technology tests (dated 12/3/1986), Res. T-14174 re: Pacific Bell promotional offerings (dated 10/12/1990), and Res. T-14556 re: AT&T market trials (dated 9/6/1991).

[19] For example, *see* Res. T-14944 (June 17, 1992) re: market trial guidelines for Pacific Bell.

[20] Res.T-16099 authorized GTE California to conduct market trials under the same terms as those applicable to Pacific Bell pursuant to Res. T-14944.

repetition and extension of trials, cost tracking, post-trial reporting and other rules. These requirements were established to protect competitors from anticompetitive conduct, and to protect customers from unreasonable discrimination and the burden of bearing the costs of an incumbent's unsuccessful competitive ventures.

More recently, D.07-09-019 adopted Telecommunications Industry Rules for GO 96-B, reflecting the changes made to rules governing telecommunications carriers in our Uniform Regulatory Framework (URF) rulemaking (R.05-04-005). As a result, the Commission significantly streamlined the rules governing the filing, review, and disposition of advice letters and information-only filings for URF carriers, including the rules governing market trials, technology tests and promotional offerings.[21]

In particular, D.07-09-019 determined that carriers should submit an information-only filing with the Commission describing a planned market trial or technology test, instead of the previously-required advice letter filing. This effectively eliminated pre-approval requirements for market trials.

D.07-09-019 also adopted revised definitions for market trials, technology tests and promotional offerings, and defined a market trial or technology test as "a new service offered only for a specified limited duration for the purpose of testing or evaluating the service."[22] A promotional offering is an existing service

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[21] URF carriers are wireline carriers that have full pricing flexibility over all or most of its rates and charges. URF carriers include ILECs, competitive local exchange carriers (CLECs), and interexchange carriers regulated through the Commission's URF established in D.06-08-030.

[22] D.07-09-019, Appendix A, Rules 1.7 and 1.9. Rule 1.8 defines "New Service" as a service that (i) is distinguished from any existing service offered by the Utility by virtue

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offered under terms temporarily deviating from the otherwise applicable tariff in order to promote the service.

The term "market trial" used by parties to R.07-01-021 in reference to the temporary marketing of non-exempt telecommunications services, features or rate plans in a non-English language differs from traditional (*i.e.*, English language) market trials because GO 96-B limits traditional market trials to new services. However, in-language market trials are expected to offer existing services, and to market those services in a non-English language in which a carrier has not previously marketed. Thus, in this proceeding, our use of the term "market trial" in the context of a limited duration non-English language marketing effort does not strictly comport with the Commission's established definition of market trial.

Traditional market trials are a way to permit carriers to temporarily offer services that they are not presently authorized to offer so they may test the marketability of new services. Because in-language market trials, as discussed in this proceeding, would include the marketing of existing services, they are more like promotional offerings in this respect. However, unlike promotions, in-language market trials will not necessarily offer services that deviate from tariffed rates or terms.

In-language market trials, as proposed by carriers, would temporarily relieve carriers from complying with the In-Language Marketing Rules so they may test the marketability of existing services in a non-English language. Thus,

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of the technology employed; or (ii) includes features or functions not previously offered in any service configuration by the Utility.

while similar in many ways to traditional market trials and promotions, in-language market trials, as proposed by parties in this proceeding, do not fit squarely within the traditional definition of either market trials or promotions.

The difference between traditional market trials and in-language market trials is important. Traditional market trials provide an opportunity to do something a carrier is not authorized to do, while in-language market trials would provide an opportunity to avoid doing something that carriers are normally required to do. Thus, rules for in-language market trials should necessarily and appropriately differ from traditional market trials because they are intended to serve different purposes. Nevertheless, awareness of the Commission's rules for promotions and traditional market trials will help our consideration of issues concerning in-language market trials.

Parties' Positions

Most parties recommend that in-language market trials be permitted. Carriers uniformly recommend that in-language market trials be allowed, and that rules for market trials be flexible and not more burdensome than complying with the In-Language Marketing Rules adopted in the Phase I Decision.[23] Most carriers seek the freedom to undertake market trials with few, if any, rules in order to assess the feasibility of providing services in certain languages without triggering the In-Language Marketing Rules.

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[23] AT&T Phase II-A Opening Comments, p. 1. AT&T Phase II-A Reply Comments, pp. 1, 4. CTIA Phase II-A Opening Comments, p. 2. CTIA Phase II-A Reply Comments, p. 3. Small LECs Phase II-A Reply Comments, pp. 1-4, 6. SureWest Phase II-A Opening Comments, pp. 2-3. Verizon California Phase II-A Opening Comments, pp. 1-2. Verizon Wireless Phase II-A Opening Comments, pp. 1-4. Verizon Wireless Phase II-A Reply Comments, pp. 1-2.

CTIA and AT&T contend that carriers will be discouraged from offering telecommunications services to non-English speaking telecommunication customers unless the Commission allows flexibility in undertaking in-language market trials.[24] AT&T states that prescriptive rules are unnecessary, however, because in-language market trials will be limited in duration.

SureWest states that in-language market trials are a streamlined way of testing carriers' marketing efforts without triggering all of the In-Language Marketing Rules, and contends that, without in-language market trials, carriers may be unwilling to reach out to LEP communities.[25]

Verizon California states that any in-language market trial rules should be minimal and only those necessary to ensure that rogue carriers do not use market trials to evade the In-Language Marketing Rules.[26]

Although most consumer groups recommend that in-language market trials be permitted with conditions, the Consumer Federation opposes permitting in-language market trials altogether. Consumer Federation contends that our consideration at this time of in-language market trial issues is an effort to rescind the In-Language Marketing Rules adopted in D.07-07-043.[27] That is, Consumer Federation argues that consideration in Phase II of the issues related to

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[24] CTIA Phase II-A Opening Comments, p. 2. AT&T Phase II-A Opening Comments, p. 2.

[25] SureWest Phase II-A Opening Comments, pp. 1-2.

[26] AT&T Phase II-A Opening Comments, p. 1. Verizon California Phase II-A Opening Comments, p. 1.

[27] Consumer Federation Phase II-A Opening Comments, pp. 3-4.

in-language market trials is a change in course from the In-Language Marketing Rules adopted in Phase I, and that any grant of authority to conduct in-language market trials constitutes the granting of a waiver or exemption request of the Phase I In-Language Marketing Rules.[28]

Consumer Federation contends that once adopted, the Commission is bound to abide by the In-Language Marketing Rules and may not change them without a reasoned basis for doing so. Consumer Federation contends that no carrier has offered any evidence of the cost of providing the in-language support required by the Phase I Decision, and that in-language market trials should not be considered until carriers have demonstrated the investment required to comply with the In-Language Marketing Rules is substantial and will prevent them from entering LEP markets.

Other consumer groups do not oppose permitting in-language market trials, but recommend imposing some or all of the In-Language Marketing Rules on in-language market trials, and some recommend requirements in addition to the In-Language Marketing Rules.[29] For example, DRA recommends that market trials be permitted in languages in which a carrier does not currently market. DRA recommends that all of the In-Language Marketing Rules apply to market trials, but, at a minimum, carriers should be required to provide during and after in-language market trials live in-language telephone support during regular

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[28] Consumer Federation Phase II-A Opening Comments, pp. 4-7.

[29] DRA Phase II-A Opening Comments, pp. 2-4. Greenlining Phase II-A Opening Comments, pp. 1-2. Greenlining Phase II-A Reply Comments, 1-4. LIF Phase II-A Reply Comments, p. 1. TURN Phase II-A Reply Comments, p. 1.

customer service hours through a toll-free number.[30] DRA contends that during a market trial more information may be needed for trial services because the term for trial services is likely to be temporary and because the trial services have not been previously advertised in-language. However, DRA recommends that the Commission first hold a workshop on in-language market trials and issue a workshop report before taking comments.

Greenlining states that, while in-language market trials can be a valuable tool for assessing the potential viability of a market, the Commission must closely regulate in-language market trials in LEP communities to minimize the potential for fraudulent or misleading practices, and to prevent carriers from evading existing consumer protection regulations.[31] Greenlining contends that temporary offers are more likely to result in misunderstandings and fraud than do standard marketing and service agreements, and recommends that all of the In-Language Marketing Rules apply to in-language market trials.[32]

LIF does not oppose in-language market trials, but recommends that in-language market trials be permitted only for languages in which a carrier does not currently market. Like DRA, LIF contends that all of the In-Language Marketing Rules should apply to in-language market trials regardless of

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[30] DRA Phase II-A Opening Comments, pp. 1-3. DRA Phase II-A Reply Comments, pp. 2-3.

[31] Greenlining Phase II-A Opening Comments, p. 3.

[32] Greenlining Phase II-A Opening Comments, pp. 3, 5. Greenlining Phase II-A Reply Comments, pp. 1-3.

duration.[33] LIF contends that the In-Language Marketing Rules provide crucial consumer protections, and carriers have not shown that compliance with those protections will restrict carriers' flexibility.

TURN states that it supports a limited exemption from some of the In-Language Marketing Rules for market trials in languages in which a carrier does not currently market.[34] However, TURN contends, the Commission must balance the needs of carriers with the protection of consumers. TURN states that the In-Language Marketing Rules are necessary, and therefore, exceptions to those rules should be justified and limited. TURN recommends that in-language market trials be permitted with limitations on their duration, and where carriers provide in-language notice and in-language customer service, and perform complaint tracking and reporting.

Discussion

The Phase I Decision acknowledged that one of the purposes of this proceeding is to consider ways to improve services to California telecommunications consumers who do not read or speak English fluently. Late in Phase I of the proceeding, Verizon California proposed that in-language market trials be permitted, and the issue was deferred to Phase II in order to establish a record upon which to decide the issue.

The Phase I Decision stated the Commission's desire to avoid discouraging carriers from offering telecommunications services to non-English speaking

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[33] LIF Phase II-A Opening Comments, pp. 1-3. LIF Phase II-A Reply Comments, pp. 1-2.

[34] TURN Phase II-A Reply Comments, pp. 1-3.

consumers and to encourage carriers to provide in-language support to these consumers in ways that help to inform and educate them. The Phase I Decision recognized that Verizon California's proposal for in-language market trials might be a way to improve services to California telecommunications consumers who do not read or speak English fluently, but deferred consideration of the issue to Phase II to build a record upon which a decision could be made. Thus, the Commission has not changed course from the Phase I Decision. Rather, the Commission is pursuing the course that was initiated in Phase I.

Moreover, the Commission is considering the issue of in-language market trials in the context of the Phase I In-Language Marketing Rules. That is, the Commission has sought comments on which, if any, of the In-Language Marketing Rules should apply to in-language market trials, and if so, why. The current effort is supplemental to the In-Language Marketing Rules to determine if and how they should be applied to short-term market trials. As SureWest puts it, the issue of in-language market trials is an undecided issue on which the Commission is seeking further input, not an established rule that the Commission is seeking to overturn.[35] Consumer Federation's contention that consideration of in-language market trials is a rescission of the In-Language Marketing Rules is without merit.

All other parties recommend that in-language market trials be permitted, albeit with widely differing recommendations as to what conditions and requirements should apply to them. Allowing carriers to test the responsiveness of consumers to marketing in a language in which the carrier does not already

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[35] SureWest Phase II-A Reply Comments, pp. 6-7.

market services may improve services to California telecommunications consumers who do not read or speak English fluently. Therefore, in-language market trials will be permitted under certain conditions.

However, in-language market trials in a particular target language will not be permitted if a carrier already markets non-exempt telecommunications services in the target language. Otherwise, carriers may seek to evade compliance with the In-Language Marketing Rules by characterizing their ongoing in-language marketing efforts as "market trials." The In-Language Market Trial Rules adopted by this Decision are separate from, and do not modify, the In-Language Marketing Rules adopted by D.07-07-043.

3.3. How Should In-Language Market Trial Be Defined?

The Phase II Scoping Memo/ACR asked if an in-language market trial should be defined as "the marketing of one or more non-exempt services on a limited basis in a specific non-English language to determine the responsiveness to the marketed services of potential LEP consumers which communicate in that language."

Parties' Positions

Most parties do not oppose the proposed definition of an in-language market trial. AT&T recommends adoption of the definition proposed in the Phase II Scoping Memo/ACR.[36] SureWest and Verizon California state that, while they do not object to the definition proposed in the Phase II Scoping Memo/ACR, they could support another better definition that may be proposed

[36] AT&T Phase II-A Opening Comments, p. 2.

by others.[37] CTIA and Verizon Wireless recommend that the definition include a duration limitation to make clear that carriers cannot conduct long term in-language marketing without triggering the In-Language Marketing Rules. CTIA and Verizon Wireless propose that an in-language market trial be defined as "The marketing of one or more non-exempt services for a limited duration in a foreign language."[38]

Greenlining supports, and LIF does not object to, the Phase II Scoping Memo/ACR's proposed definition of in-language marketing trial.[39] However, LIF recommends that either the definition of in-language marketing trial or another rule make clear that in-language market trials are permitted only for languages in which a carrier does not currently market.

Discussion

The definition of in-language market trial proposed by CTIA and Verizon Wireless is similar to that proposed in the Phase II Scoping Memo/ACR. The primary difference between the two proposed definitions is that the CTIA/Verizon Wireless definition does not identify the purpose of in-language market trials (*i.e.*, "to determine the responsiveness to the marketed services of potential LEP consumers…").

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[37] SureWest Phase II-A Opening Comments, p. 3. Verizon California Phase II-A Opening Comments, p. 3.

[38] Verizon Wireless Phase II-A Opening Comments, p. 4. CTIA Phase II-A Opening Comments, pp. 3-4.

[39] Greenlining Phase II-A Reply Comments, p. 4. LIF Phase II-A Opening Comments, p. 1. LIF Phase II-A Reply Comments, p. 2.

However, the CTIA/Verizon Wireless proposed definition concisely captures the essential elements needed to define "in-language market trial." That is, the CTIA/Verizon Wireless proposed definition identifies the services to which it applies and under which circumstances (*i.e.*, marketing of one or more non-exempt services in a foreign language), and the temporary nature of the activity (*i.e.*, for a limited duration).

Omitting a description of the purpose of an in-language market trial from the definition simplifies identification of an in-language market trial. That is, under the CTIA/Verizon Wireless proposed definition, one need only know that a carrier has undertaken the marketing of one or more non-exempt services in a foreign language, and does not need to consider why the effort was undertaken. This more concise definition eliminates opportunities to evade the In-Language Marketing Rules by claiming that the marketing of one or more non-exempt services in a non-English language is for reasons other than to determine the responsiveness of potential LEP consumers which communicate in that language to the marketed services.

However, the phrase "foreign language" in the proposed definition should be replaced with "non-English language" to reduce potential ambiguity. Therefore, an in-language market trial will be defined as, "The marketing of one or more non-exempt services for a limited duration in a non-English language." However, as we determined above, if a carrier already markets non-exempt telecommunications services in a particular non-English language, that carrier will not be permitted to conduct in-language market trials in that language.

3.4. If In-Language Market Trials are Authorized, What Conditions or Other Requirements, If Any, Should Be Imposed on Carriers Conducting In-Language Market Trials?

The Phase II Scoping Memo/ACR asked what conditions or other requirements, if any, should be imposed on carriers conducting in-language market trials. For example, should carriers be required to seek Commission approval before undertaking an in-language market trial, and, if so, how should that request be made?

Parties' Positions

Carriers, for the most part, oppose any conditions or requirements on in-language market trials.[40] AT&T states that any rules established for in-language market trials should be less burdensome than the In-Language Marketing Rules or carriers will have no incentive to conduct trials to reach new LEP communities.[41]

CTIA states that the only requirement that should be imposed is a limitation on the duration of in-language market trials.[42] CTIA contends that a limitation on the duration of in-language market trials is appropriate to ensure that full scale in-language marketing is not conducted in the guise of a market

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[40] Comments of AT&T on Phase II Proposed Decision of Commissioner Peevey, pp. 5-8. Comments of CTIA on Proposed Decision of Commissioner Peevey, pp. 10–12. Verizon California's Opening Comments on the Proposed Decision of Commissioner Peevey, pp. 2–8. Comments of Verizon Wireless on the Proposed Decision of Commissioner Peevey, pp. 9-13.

[41] AT&T Phase II-A Opening Comments, p. 2.

[42] CTIA Phase II-A Opening Comments, pp. 2-5. CTIA Phase II-A Reply Comments, pp. 2-5.

trial. CTIA asserts that any other rules for in-language market trials are unnecessary and potentially self defeating because carriers need flexibility to make changes during and following market trials. CTIA contends that imposition of rules will discourage carriers from conducting in-language market trials, and compromise the Commission's objective of encouraging the provision of increased services to LEP consumers.

CTIA contends that carriers' marketing plans are competitively sensitive and should be treated as confidential. According to CTIA, requiring carriers to publicly disclose competitively sensitive information will discourage in-language market trials. CTIA also contends that the time and expense of filing for approval and responding to the comments of other parties and/or Commission staff will also deter carriers from conducting market trials, and act as a straightjacket, preventing carriers from making ongoing adjustments to their approved plans.

Small LECs state that, except for a one-year limit on the duration of in-language market trials and a requirement to provide in-language customer service for the duration of the trial, carriers should have discretion to determine all other aspects of in-language market trials.[43] Verizon Wireless states that prescriptive rules will impede the flexibility carriers need to determine the most effective outreach methods in different LEP communities.[44]

AT&T, CTIA, SureWest, Verizon California and Verizon Wireless state that Commission approval should not be required for in-language market

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[43] Small LECs Phase II-A Reply Comments, pp. 2-3.

[44] Verizon Wireless Phase II-A Opening Comments, pp. 2, 6.

trials.[45] The carriers contend that pre-approval is not required to market services in-language, and none should be required to conduct temporary in-language market trials. SureWest asserts that pre-approval of in-language market trials will create an unnecessary obstacle to the detriment of LEP consumers. Verizon Wireless states that prior Commission approval will interfere with carriers' ability to timely implement and modify market trials, and carriers need flexibility to make adjustments throughout the course of a market trial. CTIA contends that any pre-approval requirement for wireless carriers' in-language market trials is unlawful because this constitutes Commission approval of a carrier's entry into a particular in-language market, and state regulation of entry into wireless markets is pre-empted by § 332(c)(3)(A) of the Communications Act of 1934, as amended.[46]

Verizon Wireless asserts that it will not conduct an in-language market trial under the proposed rules because carriers must have systems or processes to provide (1) target language customer service; (2) an English confirmation summary and target language instructions to market trial participants; (3) target language disclosures about CAB at the start of their participation; (4) the option for participants to discontinue services if a carrier discontinues target language customer service support; (5) waivers of ETFs; and (6) target language notices before discontinuing customer service support in the target language.[47]

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[45] CTIA Phase II-A Reply Comments, p. 5. SureWest Phase II-A Opening Comments, pp. 3-4. Verizon California Phase II-A Opening Comments, p. 3.

[46] CTIA Phase II-A Opening Comments, p. 5. CTIA Phase II-A Reply Comments, p. 6.

[47] Comments of Verizon Wireless on the Proposed Decision of Commissioner Peevey, pp. 10- 11.

DRA, Greenlining and LIF state that all of the In-Language Marketing Rules should apply to in-language market trials.[48] Greenlining states that failure to apply all of the In-Language Marketing Rules to in-language market trials provides a loophole for carriers to temporarily market in-language in the guise of a market trial to entice LEP consumers while leaving those consumers unprotected and undermining the Commission's efforts to protect LEP consumers.[49]

LIF contends that, in addition to market trials, carriers have other ways which are exempt from Commission rules for testing language markets. LIF states, for example, that carriers may conduct marketing surveys free from any Commission regulation, and may work with CBOs participating in the Commission's CBO program described in Resolution CSID-002. LIF asserts that, because there are other ways to analyze different language markets, there is no compelling reason to exempt carriers from the In-Language Marketing Rules for even a limited time.

LIF contends that consumers may not be able to make informed purchases without the in-language summary required by Rule V of the In-Language Marketing Rules, and may not be able to ask questions about their service without access to in-language customer service required by Rule IV of the In-Language Marketing Rules.[50] LIF states that the Commission has determined

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[48] DRA Phase II-A Reply Comments, pp. 2-4. Greenlining Phase II-A Reply Comments, p. 5. LIF Phase II-A Opening Comments, pp. 1-3.

[49] Greenlining Phase II-A Opening Comments, p. 5.

[50] LIF Phase II-A Opening Comments, pp. 2-3.

that requiring a carrier to provide in-language support in the languages in which the carrier markets its service is not unduly burdensome, and carriers have not shown this burden to be unreasonable. LIF contends that, without a showing that compliance with the in-language rules is unduly burdensome, there is no reason to exempt carriers from any of the In-Language Marketing Rules during marketing trials.

DRA, Greenlining and LIF recommend that in-language market trials require pre-approval.[51] DRA and LIF recommend a streamlined notification process requiring carriers to provide notice to the Commission 30 days prior to initiating an in-language market trial, including information about the duration, geographic area, language, type of marketing, and type of LEP support to be provided. LIF recommends that, as part of the recommended approval process, carriers be required to notify CBOs located in the in-language market trial area of the existence of the market trial. To facilitate the CBO notification process, LIF recommends that the Commission establish a process for quickly identifying CBOs by location and languages they serve.

In addition to the pre-approval information recommended by DRA and LIF, Greenlining recommends that a carrier also be required to provide: (1) information on comparable services offered on an ongoing basis; (2) the prices offered during the market trial; (3) the prices for comparable services when the market trial is not in effect; (4) customer services and protections provided during the market trial and how these services and protections differ from the

[51] DRA Phase II-A Reply Comments, pp. 3-4. Greenlining Phase II-A Opening Comments, pp. 5-6. Greenlining Phase II-A Reply Comments, p. 4. LIF Phase II-A Opening Comments, pp. 2-3, 6-7.

carrier's standard practices; and (5) how the carrier plans to inform trial participants of these differences between market trial and ongoing services and protections.

Greenlining also recommends that a carrier be required to continue providing indefinitely after the termination of a market trial any in-language customer service provided during a market trial, if a carrier refers to the availability of that in-language customer service as part of its market trial. Greenlining contends that, without such a requirement, LEP consumers may be enticed by a carrier's promise of superior in-language customer service, only to have the temporarily provided in-language customer service discontinued before LEP customers' service agreements terminate.[52]

TURN states that a limited exemption from the in-language information requirements under Rule V of the In-Language Marketing Rules is appropriate, including exemption from requirements to provide in-language confirmation summaries and access to Commission notices.[53] TURN states that, if its recommendations are adopted, carriers need not seek approval of in-language market trials, submit detailed reports to the Commission, provide mass notices to all potential customers, or rules governing the terms and conditions of the services being offered or the geographic scope of market trials.

TURN recommends that carriers be required to provide notice to the Commission and interested parties of all market trials via an advice letter or other communication, and recommends that carriers be required to state in their

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[52] Greenlining Phase II-A Opening Comments, p. 6.

[53] TURN Phase II-A Reply Comments, passim.

in-language market trial notifications: (1) when and where a market trial will be performed; (2) the start and end dates for the trial; (3) the geographic market included in the trial; (4) the estimated number of customers targeted by the trial; (5) a detailed description of the services involved in the trial; and (6) the terms and conditions of those services. TURN recommends that this notice be provided to interested parties on the service list for advice letters, the service list for this proceeding, and to CBOs in the geographic area of the trial.

TURN also recommends that carriers be required to: (1) provide in-language customer service and generic, in-language service descriptions; (2) provide in-language disclosure to market trial participants that the terms of their service may change at the conclusion of the trial; and (3) track and report complaints received during the trial.

Discussion

The Commission previously required carriers to seek prior approval of traditional market trials by submitting a market trial description package to CD and DRA at least 30 days prior to the market trial start date. However, reflecting changes to rules governing telecommunications carriers made in R.05-04-005 (the URF rulemaking), D.07-09-019 eliminated the pre-approval requirement by adopting an information-only filing procedure.[54]

As with traditional market trials, we conclude that pre-approval of in-language market trials is unnecessary. The Commission does not require carriers to obtain approval to conduct in-language marketing on a permanent basis. It is unreasonable to require pre-approval of temporary marketing efforts

[54] GO 96-B, Section 5.4.

undertaken through in-language market trials when no pre-approval is required to conduct in-language marketing on a permanent basis or to conduct traditional market trials.

Pre-approval will likely result in delays in implementing in-language market trials, but would accomplish little. The showing that DRA, LIF and Greenlining recommend carriers be required to make for approval of in-language market trials will not improve the likelihood of a successful market trial or enhance protection of consumers.

CTIA asserts that a limit on the duration of in-language market trials is appropriate, but contends no other requirements are necessary. As discussed below, we agree that a limit on the duration of in-language market trials is necessary and appropriate. However, if a limit on trial duration is to be a requirement for in-language market trials, we must have an objective way to determine the duration of an in-language market trial. Notice to the Commission of the market trial start date and target language serves this purpose.

Carriers will be required to notify the Commission's Communications Division, Public Advisor and CAB Chief of planned in-language market trials via an information-only advice letter filing prior to the start of an in-language market trial, including the carrier's identity (name and utility identification number), the start date, a description or map of the geographic target area and the target language of the market trial. Carriers' information-only advice letters may be filed pursuant to GO 66-C. This notice will be used to determine the permitted duration of an in-language market trial, if disputes, complaints or questions arise concerning compliance with the In-Language Marketing Rules.

As discussed below, carriers will also be required to inform in-language market trial participants in the target language that they may contact CAB to file

an informal complaint, and provide CAB's telephone number and web address. As a result, CAB needs to be prepared for the possibility of calls from market trial participants and have resources available to assist callers in the target language. Therefore, carriers will be required to informally alert the Public Advisor and the CAB Chief in writing of a pending in-language market trial at least seven days prior to the market trial start date, and carriers will be permitted to treat that informal notice to CAB as confidential and proprietary.

The "start date" of an in-language market trial period will be the date that a carrier begins marketing in the target language, and not, for example, the date on which a carrier provisions service to trial participants. In-language marketing that occurs prior to the start date specified in the notice to the Commission or after the permitted duration must comply with all of the In-Language Marketing Rules even if a carrier subsequently notifies the Commission that the in-language marketing is a "trial." Prior notification to the Commission is required to prevent carriers which are conducting in-language marketing efforts that do not comply with the In-Language Marketing Rules from notifying the Commission after-the-fact as a way to avoid compliance with the In-Language Marketing Rules.

Prior notification far in advance of the start date of an in-language market trial is unnecessary, provided that the notification is received by the Commission no later than the start date of the in-language market trial. CTIA contends that advance notice of a market trial will compromise carriers' confidential marketing strategies and thus deter carriers from conducting in-language market trials.[55]

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[55] CTIA Phase II-A Reply Comments, pp. 5-6.

However, because we find that carriers may notify the Commission as late as the start date of an in-language market trial, there is no risk of compromising a marketing campaign which is unveiled to the public on the same day or close to the date that notice is provided to the Commission. If a carrier initiates an in-language market trial or other in-language marketing effort without first notifying the Commission, that marketing effort must comply with the In-Language Marketing Rules.

The information-only filing is permitted to be filed as late as the start date of the in-language market trial to protect carrier plans. However, the Commission needs sufficient advance notice to ensure adequate staff is available in a target language, and seven days notice to the Public Advisor and the CAB Chief will permit the Commission to adjust vacations and work schedules to ensure adequate staffing in a target language.

If a carrier files its information-only advice letter at least seven days prior to the start date of the in-language market trial, carriers need not separately notify the Public Advisor and the CAB Chief because those positions are required to be served the information-only advice letter. However, if carrier chooses to file an information-only advice letter less than seven days prior to start of an in-language market trial, separate notice to the Public Advisor and the CAB Chief is required with a minimum seven days notice. Email notice to the Public Advisor and the CAB Chief will be permitted, so the requirement to notify the Public Advisor and the CAB Chief is not burdensome.

Carriers will not be required to notify CBOs or other parties of their intention to conduct in-language market trials. Although the Commission's effort to integrate CBOs is currently in the early stages of implementation, we

anticipate that the Commission will coordinate carrier market trial notifications with CBOs through that effort.

3.4.1. Should Carriers Conducting In-Language Market Trials be Required to Submit Reports or Other Information to the Commission at The Conclusion of an In-Language Market Trial? If So, What Kind of Information Should be Provided and Why? If Not, Why Not?

The Phase II Scoping Memo/ACR asked if carriers conducting in-language market trials should be required to submit reports or other information to the Commission at the conclusion of an in-language market trial, and, if so, what kind of information should be provided and why. The Phase II Scoping Memo/ACR also asked parties recommending that carriers not be required to submit reports or other information to the Commission to explain why not.

Parties' Positions

Carriers oppose any requirements for submitting reports or other information to the Commission concerning in-language market trials. AT&T states that no useful purpose is served by requiring carriers to file reports or other information after completing an in-language market trial.[56] AT&T contends that imposing a reporting obligation on carriers creates a barrier to carriers seeking to provide in-language services. SureWest and Small LECs contend that reporting and other requirements will discourage carriers from conducting market trials.[57]

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[56] AT&T Phase II-A Opening Comments, p. 3.

[57] SureWest Phase II-A Opening Comments, p. 4. Small LECs Phase II-A Reply Comments, p. 2.

Verizon California states that there is no need for reports to the Commission and opposes any reporting requirements.[58] Verizon California states, however, that, as a courtesy, it would inform the Commission if as the result of a successful trial it decides to provide on-going in-language marketing.

Verizon Wireless contends that the time and expense associated with preparing applications for approval of an in-language market trial, responding to public comment, and producing reports will ensure that no market trials take place, particularly in smaller LEP communities.[59]

DRA, Greenlining and LIF state that carriers should be required to submit reports at the end of in-language market trials.[60] DRA recommends that carrier reports include the geographic area, languages marketed to, and the scope of the trial. DRA and Greenlining contend that these reports will not be unduly burdensome or complex, and will allow the Commission and the public to determine the effectiveness of the In-Language Marketing Rules and whether carriers are providing market trial participants adequate protections. Greenlining recommends that post-market trial reports be made available to the public.

In addition to the information that DRA recommends be reported, Greenlining recommends that carriers be required to: (1) submit copies of any radio or television ads and other marketing materials used in the market trial;

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[58] Verizon California Phase II-A Opening Comments, p. 3.

[59] Verizon W ireless Phase II-A Reply Comments, pp. 3-4.

[60] DRA Phase II-A Reply Comments, p. 3. Greenlining Phase II-A Opening Comments, pp. 6-7. Greenlining Phase II-A Reply Comments, p. 4. LIF Phase II-A Opening Comments, pp. 7-8.

(2) report the number of market trial participants or those who signed service agreements as a result of the market trial; (3) breakdown market trial participants' language preferences; (4) provide the terms of the agreements signed during the market trial; and (5) provide the summary of key terms and conditions of agreements provided to market trial participants. Greenlining recommends that the Commission base its approval of future market trials on whether it is satisfied with the customer service and information provided during an in-language market trial.

LIF recommends that, in order to ensure consumer protections were implemented and that the carrier complied with in-language market trial rules, carriers be required to submit to the Commission, within 30 days after their conclusion, reports confirming the geographic scope and the dates of in-language market trials. LIF recommends, for example, that carriers be required to include in post-market trial reports a confirmation that: (1) in-language customer service was provided; (2) complaint tracking was in place; (3) the number of complaints received; and (4) that no ETFs or other long-term commitments were imposed on customers.

TURN states that reports to the Commission are not necessary. However, TURN recommends that, for enforcement purposes, carriers be required to notify the Commission that an in-language market trial has ended and whether the carrier will continue marketing in the language targeted by the market trial.[61] TURN contends that, unless in-language market trials can be identified, tracked, and enforced, no purpose is served by exempting them from the In-Language

[61] TURN Phase II-A Reply Comments, pp. 5-7.

Marketing Rules. TURN states that a notice requirement will help ensure carriers comply with Commission rules and help the Commission track compliance and complaints, and answer consumer questions.

Discussion

The Commission currently requires carriers to submit at the conclusion of a traditional market trial an executive summary highlighting the results of the market trial and indicating the carrier's future plans, if any, regarding tariffing of the trialed service(s). Because in-language market trials involve existing services, there is no need for information at the conclusion of the market trial concerning a carrier's future plans for tariffing trialed services.

The Commission previously required carriers conducting promotional offerings to also submit a post-implementation analysis, including customer response, profitability, revenues, expenses, and customer complaints.[62] However, these requirements were established prior to R.05-04-005. Pursuant to D.06-08-030, promotions now require only an advice letter filing, effective on one-day notice, at the beginning of a promotion.[63] Promotions no longer require a post-implementation analysis.

Post-trial reports will not allow the Commission or the public to determine the effectiveness of the In-Language Marketing Rules. Greenlining, for example, recommends detailed reports as a way to audit a carrier's compliance with the In-Language Marketing Rules, and depending on a carrier's performance, to serve as a basis for approval or denial of subsequent in-language market trials.

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[62] Res. T-14174.

[63] D.06-08-030, COLs 44, 48.

Selectively examining reports from carriers that conduct in-language market trials will not help the Commission determine the effectiveness of the In-Language Marketing Rules as applied to all carriers. Far more information than even that recommended by Greenlining would be needed to undertake the kind of analysis contemplated by Greenlining, and would be required from all carriers, not just those proposing in-language market trials. As discussed below, we have determined that there are better ways for the Commission to obtain the information it needs to assess the effectiveness of the In-Language Marketing Rules.

Because we have determined that pre-approval will not be required, post-trial reports are not needed as a basis for approving or denying authority to conduct subsequent in-language market trials.

A requirement to submit post-market trial reports may discourage carriers from conducting in-language market trials in less commonly spoken languages for which market responsiveness is uncertain. This could undermine our goal of improving services to telecommunications consumers who do not read or speak English fluently, and will not enhance consumer protections. Because in-language market trials involve existing services there is no need for information at the conclusion of the market trial concerning a carrier's future plans for tariffing trialed services as is the case with traditional market trials, and post-trial reports for in-language market trials are unnecessary. Therefore, carriers will not be required to submit reports or other information to the Commission at the conclusion of an in-language market trial.

3.4.2. Limitations on The Geographic Scope of In-Language Market Trials

The Phase II Scoping Memo/ACR asked if the geographic scope of in-language market trials should be limited by the size of a carrier's service territory or confined to a specific geographic area, and, if so, how should that area be determined.

Parties' Positions

Carriers state that there should be no limits on the geographic scope of in-language market trials. AT&T contends that the geographic scope of a carrier's in-language market trial will vary depending on the services sold, the geographic markets served and other factors.[64] AT&T asserts that carriers should have the flexibility to define the geographic scope of their market trials to meet their business needs, including the ability to conduct market trials throughout their service territories based on the demographics of a specific LEP community and the characteristics of the particular type of media used in the trial. AT&T states that media channels like the Internet cannot be limited in geographic scope, and other media channels vary in their geographic reach.

CTIA, too, states that limiting the geographic scope would be impractical because different media channels cover different geographic areas.[65] CTIA contends that carriers will likely confine their market trials to a limited geographic area based on the location of LEP populations, but should have the flexibility to adjust the geographic scope of market trials.

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[64] AT&T Phase II-A Opening Comments, pp. 3-4.

[65] CTIA Phase II-A Opening Comments, Footnote #4, pp. 4-5.

Cox and Small LECs state that carriers should have the discretion to determine the geographic scope of in-language market trials.[66]

SureWest states that limits on the geographic scope of a market trial would be difficult to define, administratively burdensome, and could defeat the usefulness of the market trial.[67]

Verizon California states that carriers will likely confine their in-language market trials to restricted geographic areas due to limited budgets, and, therefore, the Commission should not limit the geographic area in which in-language market trials may be conducted.[68]

Verizon Wireless states that limits on geographic scope are impractical because of the different types of media used for marketing, differences in the size of carriers' service areas, and the uneven distribution of LEP populations speaking various languages.[69]

Greenlining and TURN state that there is no need to geographically limit in-language market trials, provided that the consumer protections they recommend are in place.[70]

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[66] Opening Comments of Cox on Commissioner Peevey's Proposed Phase II Decision, pp. 6–7. Small LECs Phase II-A Reply Comments, p. 2.

[67] SureWest Phase II-A Opening Comments, pp. 2, 5.

[68] Verizon California Phase II-A Opening Comments, p. 2.

[69] Verizon Wireless Phase II-A Opening Comments, p. 5.

[70] Greenlining Phase II-A Opening Comments, p. 7. Greenlining Phase II-A Reply Comments, p. 5. TURN Phase II-A Reply Comments, pp. 1-2.

LIF states that in-language market trials should be limited geographically to the counties where a carrier is analyzing a particular language market.[71] LIF contends that counties are geographic areas where demographic analysis is easily performed, but does not object to carriers using comparable geographic areas such as service territories. LIF states that a carrier should not be able to treat an in-language market trial as a statewide undertaking if the carrier intends to gather its market trial information from only certain counties. LIF recommends that, as part of its recommended pre-approval process, carriers be required to provide demographic information related to the market trial to demonstrate that the geographic areas included in an in-language market trial will be analyzed by the carrier.

Discussion

Commission rules currently limit the geographic scope of traditional market trials by prohibiting company-wide market trials.[72] This limitation is to prevent carriers from offering untariffed services to a significant portion of their customer base, and is consistent with the intended purpose of traditional market trials (*i.e.*, to determine the marketability of new services on a small, controlled group of customers).

However, Commission-imposed geographic limitations are inappropriate for in-language market trials. Rather than testing the "marketability of a new service," the purpose of an in-language market trial is to test "in-language marketing of non-exempt services." That is, it is the "marketing in a non-English

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[71] LIF Phase II-A Opening Comments, pp. 5-6.

[72] Res. T-14944, Attachment 1, Section B.2.

language," and not a "new untariffed service," that is being tested. Thus, there is little risk that carriers will be offering untariffed services to a significant portion of their customer base in an in-language market trial, so geographically limiting an in-language market trial for this purpose is unnecessary.

Imposing limits on the geographic scope of in-language market trials is also unworkable. We agree that Commission-imposed geographic limitations on in-language market trials are impractical because different media channels cover different geographic areas, and media channels like the Internet cannot be limited to a particular geographic area. However, consistent with Rule II.C of the In-Language Marketing Rules, carriers should have the flexibility to define the geographic scope of an in-language market trial.

LIF recommends limiting the geographic scope of in-language market trials to prevent carriers from extending to the entire state any special conditions applicable to in-language market trials targeted to certain areas. However, imposing limits on the geographic scope of in-language market trials to counties or similar geographic units, as recommended by LIF, is administratively complex and would not provide any apparent benefits.

Also, given the pricing flexibility granted to carriers by D.06-08-030, limiting in-language market trials geographically will not achieve the objective sought by LIF to prevent carriers from extending to the entire state any special offer applicable to in-language market trials. This is because carriers may, but are not required to, geographically target promotional offerings. Therefore, carriers may already geographically target or extend to the entire state, through the use of promotional offerings, any special terms or conditions applicable to in-language market trials which LIF seeks to constrain. Thus, a Commission-imposed geographic limitation on in-language market trials would not achieve

LIF's intended objective, even if the Commission agreed that such an objective was desirable.

Moreover, any attempt by the Commission to impose geographic limits on in-language market trials can be easily frustrated. Carriers could get around any geographic limitations by conducting separate market trials in distinct but contiguous geographic areas where there is an overlap in the media coverage area. Thus, what in the absence of geographic limits would otherwise be considered serial market trials could be characterized as separate, unique, geographic-based market trials that just happen to occur sequentially in contiguous or proximate geographic areas.

The absence of any Commission-imposed geographic limitations on in-language market trials provides carriers greater flexibility in conducting in-language market trials. It also simplifies carriers' ability to comply with, and the Commission's enforcement of, the In-Language Marketing Rules. A carrier marketing non-exempt services in a non-English language in a particular geographic area may market those services in the same language on either a permanent or market trial basis in a different geographic area.[73] Carriers shall include a detailed description or map of the in-language market trial geographic target area as part of the information-only advice letter filing sufficient to allow the Commission to determine carrier compliance with this requirement.

[73] Rule II.C of the In-Language Marketing Rules defines the geographic area as the in-language advertising area.

3.4.3. Limitations On The Duration Of In-Language Market Trials

The Phase II Scoping Memo/ACR asked if there should be a maximum period of time that an in-language market trial may last, and, if so, what should that be and why. The Phase II Scoping Memo/ACR also asked if carriers should be permitted to extend the time during which an in-language market trial may last or conduct serial or successive in-language market trials, and, if not, why not. Finally, the Phase II Scoping Memo/ACR asked at what point should an in-language market trial be no longer considered a "trial," but instead deemed to be "in-language marketing" that is subject to the In-Language Market Rules.

Parties' Positions

The carriers recommend that they be allowed to conduct each in-language market trial for up to one year.[74] AT&T recommends that carriers be permitted to conduct serial or successive in-language market trials, with no single trial lasting longer than one year. After one year, a carrier must comply with the In-Language Marketing Rules if it continues to market in the language used in the trial.

SureWest states that there should be no restrictions on serial market trials, but recommends that a market trial that lasts longer than one year be required to comply with all of the In-Language Marketing Rules.[75]

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[74] AT&T Phase II-A Opening Comments, p. 4. CTIA Phase II-A Opening Comments, p. 4. Small LECs Phase II-A Reply Comments, pp. 2, 3. SureWest Phase II-A Opening Comments, pp. 2, 5. Verizon California Phase II-A Opening Comments, p. 2. Verizon Wireless Phase II-A Opening Comments, p. 4.

[75] SureWest Phase II-A Opening Comments, p. 5.

Verizon California states that its prior marketing trials have lasted from three to six months.[76] Verizon California states that it would not design a trial to last more than 12 months, and recommends that in-language market trials not exceed 12 months. Verizon California states that, if there is evidence that an in-language market trial continues beyond its recommended time limit, the Commission can evaluate whether the carrier's marketing is "in-language marketing" subject to the In-Language Marketing Rules.

Verizon California also recommends that carriers be allowed to repeat a market trial if the first trial was unsuccessful and a considerable amount of time has passed.[77] Verizon California does not specify what it considers to be an appropriate interval of time between market trials. However, Verizon California states that it conducted an unsuccessful Tagalog language market trial nearly seven years ago, and that it may want to conduct another Tagalog language market trial in the future if conditions warrant.

DRA, LIF and TURN recommend that in-language market trials be limited to a maximum duration of six months.[78] DRA and LIF state that the carriers are not seeking complex information from marketing trials, and, therefore, lengthy market trials are unnecessary. DRA contends that carriers would be able to test within a six-month period the responsiveness of non-English speaking communities to which carriers do not currently advertise.

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[76] Verizon California Phase II-A Opening Comments, p. 2.

[77] Verizon California Phase II-A Opening Comments, p. 4.

[78] DRA Phase II-A Reply Comments, p. 4. LIF Phase II-A Opening Comments, pp. 4-5. LIF Phase II-A Reply Comments, p. 2. TURN Phase II-A Reply Comments, pp. 2, 4-5.

LIF states that telecommunications market trials are generally six months or less in duration, and, therefore, six months is a sufficient amount of time for carriers to learn about a particular market. LIF points to a three-month voice over Internet protocol market trial conducted by Covad and Earthlink in 2005 and a four-month market trial of music downloads by Universal Music Group in the United Kingdom in 2000, as examples of typical durations of market trials.[79]

LIF states that extensions should not be permitted because six months is enough time to conduct a market trial. LIF contends that in-language market trials should not simply be opportunities for carriers to market in-language without any consumer protections in place, and recommends that the Commission prohibit carriers from repeating an in-language market trial for a period of ten years.

TURN states that the Phase I Decision found that the In-Language Marketing Rules were needed, and, therefore, one year is too long to exempt carriers from the rules because too many consumers could be harmed during that time. TURN recommends that, with notice to the Commission and interested parties, the Commission allow an in-language market trial to be extended once for up to three months, and require a period of two years to elapse before an in-language market trial can be repeated.

Greenlining contends that allowing lengthy market trials permits carriers to evade the In-Language Marketing Rules, and recommends that the length of

[79] LIF Phase II-A Opening Comments, p. 4.

in-language market trials be limited to six to eight weeks.[80] Greenlining contends that the longer a market trial runs, the greater the risk of misinformation, miscommunication, and fraud. Greenlining, therefore, recommends that the In-Language Marketing Rules apply to any in-language market trials that run longer than four months, and that carriers not be permitted to extend or conduct serial or successive in-language market trials.

Discussion

The Commission currently limits the duration of traditional market trials to 12 months.[81] A traditional market trial may be extended for up to 20 working days when a carrier indicates its intention to request authority to offer the trialed service on a permanent basis. The extension of time is permitted in order to avoid the interruption of customers' market trial service while a carrier's request for permanent authority to offer the service is pending.

By comparison, ILEC (incumbent local exchange carrier) promotions were previously limited to a maximum duration of 240 days (a 120-day initial period and a 120-day extension), with a 60 day cooling off period after a promotion has run for 240 consecutive days before it can offer the same promotion. CLEC promotions were limited to a maximum of one year. However, D.06-08-030 eliminated limits on the duration of promotions, relying instead on federal rules

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[80] Greenlining Phase II-A Opening Comments, pp. 8-9. Greenlining Phase II-A Reply Comments, p. 5.

[81] Res. T-14556, p. 5. Res. T-14944, Attachment 1, Section B.2, p. 2.

that require promotions lasting longer than ninety days to be made available for resale.[82]

All parties agree that there should be a maximum period of time during which an in-language market trial may be conducted, but disagree on what that period should be. The carriers uniformly contend that one year is necessary to gather sufficient information to test the responsiveness to in-language marketing. However, only Verizon California provides specific information about the duration of actual market trials it has conducted, and, according to Verizon California, its prior market trials have lasted from three to six months.

The consumer groups argue that a one-year market trial period is too long to leave LEP consumers unprotected. While LIF's example of the Covad/Earthlink market trial is not an in-language market trial of non-exempt telecommunications services, its duration is approximately the same as the in-language market trials described by Verizon California.

The non-exempt telecommunications services that will be marketed during in-language market trials are not new services to be test marketed prior to their tariffing as permanent offerings, so the one-year duration we allow for traditional market trials is not appropriate or necessary for in-language market trials. We agree that the carriers are not seeking complex information from in-language market trials, and, therefore, lengthy trials are unnecessary.

We have already determined that LEP customers that enter into annual or multi-year contracts are entitled to reasonable, just and adequate service just like

[82] D.06-08-030, p. 196 and COL 43.

other customers[83], and we will therefore not relax the In-Language Marketing Rules any longer than is absolutely necessary for carriers to trial market services in a new target language. The in-language market trials that Verizon California has conducted have lasted from three to six months. Based on this evidence, we conclude that six months is an adequate and reasonable amount of time for carriers to test a particular non-English language market before being required to comply with all of the In-Language Marketing Rules.

For sake of clarity, we authorize carriers to conduct in-language market trials for a period not to exceed 180 days. A carrier that continues to market in a non-English language after the conclusion of a 180-day in-language market trial period will be required to comply with all of the In-Language Marketing Rules adopted in D.07-07-043.

It is not necessary or appropriate to grant extensions of time for conducting in-language market trials. Extensions of time of up to 20 working days are permitted for traditional market trials so that service to market trial participants is not discontinued or interrupted while a carrier's request is awaiting authorization to offer the service on a permanent basis. However, because the services marketed during in-language market trials are not new untariffed services there is no need to tariff those services at the conclusion of a successful market trial, and, therefore, extensions of time for this purpose are not necessary.

We agree that carriers should be allowed to repeat a market trial if the first trial was unsuccessful. Although an in-language market trial may not be

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[83] D.07-07-043, COL 9.

successful today due to inadequate response from the target language community, changing demographics or other conditions may justify trial marketing in the target language at a later date. However, there should be sufficient time between the initial and subsequent in-language market trials to ensure that carriers do not conduct serial in-language market trials as a way to evade compliance with the In-Language Marketing Rules.

Ten years, as recommended by LIF, is too long of a cooling off period between repeat in-language market trials. Significant demographic changes which could justify repeating an unsuccessful in-language market trial will likely occur more quickly than that. It is unreasonable to prohibit carriers from repeating, after a sufficient cooling off period, an in-language market trial that might demonstrate the viability of marketing on a permanent basis in a particular target language. To do so could undermine our objective of improving services to California telecommunications consumers who do not speak English fluently.

We will require that a two-year period elapse from the conclusion of an in-language market trial before another in-language market trial in that language may be repeated. Two years is a sufficient cooling off period to ensure that carriers do not evade compliance with the In-Language Marketing Rules by conducting serial market trials. Carriers will not find it a viable strategy to repeat a 180-day market trial in a particular target language every two years as a way to market in-language while avoiding compliance with the In-Language Marketing Rules.

3.4.4. Limitations on Pricing of Services to In-Language Market Trial Participants, and Reduction or Waiver of Early Termination

Fees (ETFs) or Other Rates/Charges During In-Language Market Trials

The Phase II Scoping Memo/ACR asked if any limitations should be placed on pricing of services to in-language market trial participants, either regarding prices charged to in-language market trial participants and other customers or regarding in-language market trial participants. For example, should carriers be allowed to charge different prices to in-language market trial participants to measure participants' price sensitivity? If not, why not? The Phase II Scoping Memo/ACR also asked if ETFs or other rates/charges should be reduced or waived during in-language market trials.

Parties' Positions

Carriers oppose any limitations on pricing of services to in-language market trial participants, including the waiver or reduction of ETFs.

AT&T states there should be no limitations or other regulations on the prices offered during in-language market trials, including ETFs.[84] AT&T contends that existing laws prohibit unreasonable discrimination of similarly situated customers and that in-language market trials will be subject to these requirements, citing § 451 and 47 United States Code (U.S.C.) §§ 201-202. AT&T recommends that, to the extent carriers have flexibility to reduce or waive activation fees or other charges, carriers be allowed to exercise that same flexibility in their pricing of services offered during an in-language market trial.

CTIA states that a requirement to waive ETFs for contracts obtained through market trials would discourage carriers from conducting market trials by limiting their ability to recoup up-front costs incurred when activating new

[84] AT&T Phase II-A Opening Comments, p. 5.

customers. CTIA also contends that the Commission is preempted by § 332 (c)(3)(A) of the Communications Act of 1934, as amended, from imposing such a requirement.[85]

SureWest states that in language market trials should not be subject to any price regulation.[86] SureWest contends that price controls on market trials are inconsistent with D.06-08-030, and that price regulations cannot be imposed on URF carriers. SureWest cites §§ 451 and 453 as existing laws which prevent unreasonable price discrimination and ensure customers receive just and reasonable rates. Small LECs state that there should be no additional requirements or limitations on in-language market trials.[87]

Verizon California states that any effort to regulate prices would be inconsistent with the URF and opposes any rules that limit carriers' flexibility to design or evaluate a market trial.[88]

Verizon California states that wireless carriers provide customers up to 30 days to test equipment and service, and the customer can cancel service within this period without incurring an ETF whether the customer is English proficient or not. According to Verizon California, because a carrier must provide customer service during the market trial, customers can receive whatever information they need in the target language within the 30 day grace

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[85] CTIA Phase II-A Reply Comments, p. 6.

[86] SureWest Phase II-A Opening Comments, p. 6.

[87] Small LECs Phase II-A Reply Comments, pp. 2-3.

[88] Verizon California Phase II-A Opening Comments, pp. 4-5.

period, and, if dissatisfied, they can cancel the contract or service without paying an ETF.[89]

Verizon Wireless opposes rules on the price or price-related terms of sale offered during in-language market trials.[90] Verizon Wireless contends that rules governing pricing will interfere with the value of the trials, discourage the use of trials, and violate § 332(c) of the Communications Act of 1934, as amended.

Greenlining states that carriers should not be permitted to charge higher prices to LEP consumers than to English speaking consumers, or to raise prices only for consumers that speak certain languages.[91] Greenlining therefore recommends that the Commission prohibit the prices of in-language market trial services from exceeding the prices for similar or comparable services charged to English proficient customers. If prices vary across a carrier's service area, Greenlining recommends that the Commission require carriers to charge the same prices as those charged for comparable service in areas with similar language and income demographics to those in the market trial area. If a carrier conducts multiple market trials in English and in one or more non-English languages in a particular geographic area, Greenlining also recommends that the Commission require equal pricing in those trials.

LIF states that it is unfair to remove consumer protections during an in-language market trial while at the same time binding consumers to long-term

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[89] Verizon California's Opening Comments on the Proposed Decision of Commissioner Peevey, pp. 4–5.

[90] Verizon Wireless Phase II-A Opening Comments, pp. 3-4, 8.

[91] Greenlining Phase II-A Opening Comments, pp. 9-10. Greenlining Phase II-A Reply Comments, p. 5.

contracts entered into without the benefit of the protections provided by the In-Language Marketing Rules.[92] LIF contends that in-language market trials should be considered "experiments" where carriers will seek to minimize their permanent expenditures. Therefore, according to LIF, allowing carriers to retain long-term benefits from marketing trials gives carriers an inappropriate windfall. LIF recommends that ETFs be waived for contracts obtained through marketing trials, as should fees designed to defray permanent or long-term service costs.

Discussion

Prior to the URF, the Commission required ILECs conducting traditional market trials or promotions to comply with unbundling and imputation requirements established for dominant ILECs under the New Regulatory Framework (NRF) in order to prevent anticompetitive pricing.[93] This meant that NRF ILECs were prohibited from offering services during promotions or market trials that were priced below cost, and was intended to prevent predatory pricing by ILECs or a price squeeze on carriers who purchased services for resale from the ILECs on a wholesale basis. However, the Commission did not impose similar price restrictions on other carriers. With adoption of the URF, the Commission eliminated pricing restrictions for all URF carriers, including those on traditional market trials or promotional offerings.[94]

Consistent with the Commission's policy to bring pricing practices in line with the operation of competitive markets, we find that there should be no

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[92] LIF Phase II-A Opening Comments, pp. 9-10.

[93] *See* Res. T-14174 and Res. T-14944.

[94] D.06-08-030, OP 5.

restrictions imposed on the pricing of services to in-language market trial participants, either regarding prices charged to in-language market trial participants and other customers or regarding in-language market trial participants. Limitations on pricing flexibility are inconsistent with the URF adopted by D.06-08-030.

In particular, we will not require that rates/charges be reduced or waived during in-language market trials. It is unreasonable to limit flexibility in the pricing of services offered to in-language market trial participants while permitting unfettered pricing flexibility for all other services.

It is also unreasonable, and contrary to the URF, to limit pricing flexibility for some carriers but not to others. Moreover, even if we were inclined to do so, which we are not, we are prohibited by federal law from regulating the prices of services provided by wireless carriers. As a result, any attempt to place limits on the pricing of market trial services would result in a patchwork of restrictions on some carriers but not others, and the resulting confusing, inconsistent set of rules would serve no clear purpose.

We do not agree with Greenlining that carriers will selectively charge higher prices or raise prices for consumers that speak certain languages. This is because existing law requires that prices be just and reasonable, and prohibits unreasonable discrimination.[95] It is unreasonable discrimination in violation of

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[95] § 451 states: All charges demanded or received by any public utility, or by any two or more public utilities, for any product or commodity furnished or to be furnished or any service rendered or to be rendered shall be just and reasonable. Every unjust or unreasonable charge demanded or received for such product or commodity or service is unlawful.

§ 453 for a carrier to charge in-language market trial participants higher prices than other consumers solely because they speak certain languages.[96]

3.4.5. Notice and Other Information Carriers Should Be Required to Make Available to In-Language Market Trial Participants

The Phase II Scoping Memo/ACR asked if carriers conducting in-language market trials should be required to provide notice to customers or to potential in-language market trial participants. For example, should carriers be required to inform potential in-language market trial participants that the in-language market trial will be discontinued at any time or on a specified date?

The Phase II Scoping Memo/ACR also asked what information carriers should be required to make available during an in-language market trial. For example, should carriers be required provide in-language market trial participants a confirmation summary of the customer's transaction in the market trial language(s) or instructions on how to access the translation or interpretation

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[96] § 453 states:

(a) No public utility shall, as to rates, charges, service, facilities, or in any other respect, make or grant any preference or advantage to any corporation or person or subject any corporation or person to any prejudice or disadvantage.

(b) No public utility shall prejudice, disadvantage, or require different rates or deposit amounts from a person because of ancestry, medical condition, marital status or change in marital status, occupation, or any characteristic listed or defined in § 11135 of the Government Code. A person who has exhausted all administrative remedies with the commission may institute a suit for injunctive relief and reasonable attorney's fees in cases of an alleged violation of this subdivision. If successful in litigation, the prevailing party shall be awarded attorney's fees.

(c) No public utility shall establish or maintain any unreasonable difference as to rates, charges, service, facilities, or in any other respect, either as between localities or as between classes of service.

of the confirmation summary or Commission-mandated notices and disclosures in the market trial language(s)? If not, why not?

Finally, the Phase II Scoping Memo/ACR asked what steps the Commission should take to ensure that potential in-language market trial participants have access to in-language confirmation information and Commission-mandated notices/disclosures, if carriers were not required to provide market trial participants a confirmation summary/access the translation or interpretation of the confirmation summary, Commission-mandated notices and disclosures, or instructions on how to obtain this information in the market trial language(s).

Parties' Positions

AT&T states that carriers should not be required to notify potential or existing customers about an in-language market trial because there is no justification for this requirement and it would create customer confusion.[97] AT&T contends that consumers will be notified of any relevant information about the services offered during an in-language market trial. AT&T states that in-language market trial advertising will describe any discounts offered as part of a promotion, and consumers would be informed that a particular offering must be accepted by a certain date.

SureWest states that carriers should not be required to provide notice at the beginning of an in-language market trial because the notice could distort the results of the market trial.[98] SureWest states, however, it is reasonable to provide

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[97] AT&T Phase II-A Opening Comments, pp. 6-8.

[98] SureWest Phase II-A Opening Comments, p. 6.

30 days' notice before the end of a market trial to inform customers that in-language services may be discontinued.

CTIA opposes providing in-language market trial participants a 30-day notice that customer service support in the target language will be discontinued because, according to CTIA, it requires carriers to track in-language market trial participants.[99]

SureWest states that carriers should not be required to provide in-language confirmation summaries in connection with market trials because the provision of in-language customer service, as SureWest recommends, is adequate for resolving customer billing or service questions.[100] SureWest contends that carriers should have the flexibility to provide a range of in-language services in connection with a market trial in order to gauge the customer response to those services. SureWest asserts that carriers will not likely conduct in-language market trials if all of the In-Language Marketing Rules apply to those trials.

Verizon California recommends that carriers not be required to inform customers that an in-language market trial is a limited time offer, and opposes requiring confirmation summaries or instructions because it contends this will dissuade carriers from conducting in-language market trials.[101] Verizon California contends, however, that an effective in-language market trial would necessarily include a Uniform Resource Locator (*i.e.*, a web page address) to an

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[99] Comments of CTIA on Proposed Decision of Commissioner Peevey, p. 11.

[100] SureWest Phase II-A Opening Comments, p. 7.

[101] Verizon California Phase II-A Opening Comments, p. 6.

in-language web page or a telephone number to in-language customer service representatives.

Verizon Wireless opposes any requirement to provide notice to customers or to potential in-language market trial participants because, according to Verizon Wireless, these requirements would constrain carriers, undermine the value of market trials and harm consumers who would benefit from market trials.[102] Verizon Wireless contends that carriers will have incentives to provide appropriate in-language information and disclosures because market trials are likely to be unsuccessful without them.

CTIA, Small LECs and SureWest assert that carriers should not have to provide an in-language notice to customers that they may call CAB to file a complaint because carriers already provide the Commission's contact information on customer bills, and this notice will require carriers to track in-language market trial customers.[103]

Greenlining states that, regardless of the type of marketing used that leads to an agreement, consumers have a right to fully understand what they have agreed to.[104] Greenlining recommends that carriers be required to provide participants in the market trial target language with a confirmation summary, and information concerning the terms, conditions, features, pricing, and other

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[102] Verizon Wireless Phase II-A Opening Comments, pp. 3, 6-8.

[103] Comments of CTIA on Proposed Decision of Commissioner Peevey, p. 11. Opening Comments of Small LECs on Phase II Proposed Decision, p. 4. Opening Comments of SureWest on Phase II Proposed Decision, p. 4.

[104] Greenlining Phase II-A Opening Comments, pp. 9-11, 13-14. Greenlining Phase II-A Reply Comments, pp. 5-6.

information about a carrier's standard service. Greenlining recommends that information concerning ETFs be provided to participants entering into service agreements.

Greenlining recommends that the summary of key terms and conditions be required so that in-language market trial participants are informed that a reduction or waiver of ETFs or other charges may be temporary, when any temporarily reduced or waived charges expire, and what terms, conditions and charges will apply after the reduction or waiver expires. Greenlining also recommends that carriers be required to inform in-language market trial participants that in-language telephone customer service may only be available on a temporary basis.

Greenlining contends that consumers who participate in in-language market trials, like other customers, are entitled to the information contained in Commission-mandated notices and disclosures, and recommends that carriers be required to provide Commission-mandated notices and disclosures in the market trial target language to participants who sign service agreements.

LIF states that consumers who participate in an in-language market trial should be notified about CBOs which may be available to assist them.[105] LIF recommends that this notification be provided with marketing material or by coordinating CBO consumer outreach activities with the market trial. As noted above, LIF recommends that carriers also be required to notify CBOs located in the market trial area of the existence of the market trial as part of LIF's recommended pre-approval process.

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[105] LIF Phase II-A Opening Comments, pp. 6-7.

TURN states that, apart from the companies' own outreach and advertising, it is not necessary to provide notice to all potential customers of an in-language market trial.[106] However, TURN recommends that carriers be required to inform participants who signs up for service during a market trial that: (1) the customer may have to change services at the end of the trial; (2) the carrier may discontinue the service; (3) the customer may not be able to renew the service at the end of the contract term; or (4) rates or terms may change at the end of the trial.

TURN and DRA support SureWest's recommendation that in-language market trial participants be notified 30 days before end of the market trial so that participants may look for a different service or service provider.[107] TURN states, however, 30 days may not be enough time for participants with contracts subject to ETFs, so carriers should be required to disclose how the market trial works to those participants at the time of sale.

Discussion

The Commission currently requires carriers that conduct traditional market trials to provide written notice to participants that the trial can be withdrawn at any time during the duration of the market trial, and that participation is entirely voluntary and revocable.[108] This is required in order to reduce the number of customer complaints. Carrier notices must also describe

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[106] TURN Phase II-A Reply Comments, pp. 1, 10.

[107] TURN Phase II-A Reply Comments, p. 10. DRA Phase II-A Reply Comments, p. 2.

[108] Res. T-14944, p. 4, and Attachment 1, Section B.4.

the market trial, including the start and end dates of the trial, and all prices applicable to the market trial services.

In the case of in-language market trials of existing services and unlike traditional market trials, trialed services will not be withdrawn during or at the end of the trial. Therefore, it is not necessary to inform participants at the start of an in-language market trial that this is a possibility. However, it is possible that target language customer support may be withdrawn during or at the end of the trial. Therefore, providing certain information to in-language market trial participants at the beginning of an in-language market trial and before discontinuing target language customer support is appropriate and reasonable.

As discussed below, we will rely on, among other things, CIMS complaint data as a way to obtain the information we need to assess the effectiveness of the In-Language Marketing Rules. Because we will rely in part on CIMS complaint data for information on LEP consumers, carriers will be required to inform participants in the target language at the start of their participation in an in-language market trial that participants may contact the CAB to file an informal complaint, and to provide CAB's telephone number and web address to participants. This will help ensure that in-language market trial participants' are aware that the Commission is available to assist consumers in addressing their complaints, and will assist the Commission in obtaining information on the needs of LEP consumers at minimal cost to carriers. Carriers will be permitted to use any of the methods specified in Rule V of the In-Language Marketing Rules for this purpose.

The Phase I Decision found that LEP consumers do not speak, read, write, or understand the English language sufficiently to access services to which they may be entitled, and that LEP customers who receive notices and other

important information only in English are not receiving adequate service.[109] The Phase I Decision also concluded that carriers marketing non-exempt services in a particular language to consumers should make available enough information in the language the carrier is marketing to allow consumers to make informed purchasing decisions and resolve service or billing problems.[110]

Small LECs and SureWest do not explain why the English-language notice of the Commission's contact information on customer bills is sufficient for consumers who are not proficient in English. CTIA does not explain why the CAB notice may not be provided with target language marketing materials or why carriers must establish systems to track target language customers in order to provide this notice.

Providing certain other information to in-language market trial participants is appropriate. In particular, it is possible that customer service support in the target language may be discontinued during or at the end of an in-language market trial, and it is reasonable to inform LEP participants of this possibility before it occurs but not necessarily at the beginning of the trial.

Pacific Bell, stated that written notice to participants of traditional market trials would reduce confusion and complaints, and the Commission adopted the requirement to provide participants written notice of the possibility of the discontinuance of service at any time.[111] With respect to in-language market trials, providing advance notice to in-language market trial participants of the

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[109] D.07-07-043, p. 40, FOFs 37 and 46.

[110] D.07-07-043, COL 35.

[111] Res. T-14944, pp. 4, 10.

possibility that support in the target language may be discontinued will reduce confusion and complaints.

We agree that it is reasonable to provide notice to in-language market trial participants 30 days before discontinuing in-language services. We also agree that an effective in-language market trial will necessarily include access to an in-language web page or to in-language customer service representatives. Carriers that conduct in-language market trials will have to establish some target language resources so they may market and communicate with potential participants in the target language. Thus, providing participants with 30 days advance notice in the market trial target language informing participants that customer service support in the target language will be discontinued does not require carriers to invest in additional infrastructure beyond what is already needed to conduct an in-language market trial.

A requirement to provide participants 30 days' written notice in the target language before discontinuing in-language services will not unreasonably constrain carriers and will help LEP consumers make informed decisions. Providing notice that customer service support in the target language will be discontinued after participation begins will minimize any impact on the results of the trial, because it will not influence a participant's decision to initially participate in the trial. At the same time, LEP consumers will be notified in the target language that they have the option to discontinue participating, without penalty, in a trial that does not provide the target language support they need.

Therefore, we will require carriers to provide notice in the target language to in-language market trial participants at least 30 days before terminating target language support that customer service support in the target language will be discontinued. Carriers will be permitted to use any of the methods specified in

Rule V of the In-Language Marketing Rules to notify in-language market trial participants for this purpose. Because we will require that in-language market trial participation be entirely voluntary and revocable if a carrier discontinues support in the market trial target language, we will also require carriers to inform in-language market trial participants of this condition in the 30-day notice.

As stated above, the Phase I Decision found that LEP consumers do not speak, read, write, or understand the English language sufficiently to access services to which they may be entitled. The Phase I Decision also concluded that carriers marketing non-exempt services in a non-English language should provide access to customer service in the languages in which the carrier markets its non-exempt services.

The carriers objecting to the 30-day notice do not explain why not providing target language customer support to LEP customers who were sold services in a target language constitutes adequate service, or why a carrier should not be required to notify in-language market trial participants that the carrier will no longer communicate with them in the target language. Carriers that do not wish to provide the 30-day notice may use a third-party interpreter service, such as Language Line, to continue providing customer service in the market trial target language.

We encourage, but will not require, carriers that conduct in-language market trials to provide in the target language a confirmation summary, or the terms, conditions, features, pricing, or other information about a carrier's standard service. We will not require carriers that conduct in-language market trials to provide Commission-mandated notices and disclosures in the target language, except as discussed herein.

As is already required for services provided in English, carriers will be required to, at a minimum, provide in-language market trial participants an English language confirmation summary of the customer's transaction. However, for this information to be of any use to LEP participants, carriers will be required to provide instructions in the target language on how to access target language customer service support for assistance with the translation or interpretation of the confirmation summaries, billing questions, and Commission-mandated notices and disclosures. Carriers will be permitted to use any of the methods specified in Rule V of the In-Language Marketing Rules for this purpose.

Small LECs and SureWest do not explain why they believe that it is sufficient to include a telephone number for target language customer support without accompanying information in the target language on why the telephone number is being provided.

It is premature to require carriers to provide to CBOs notice about the initiation of an in-language market trial, or to notify market trial participants about the availability of assistance from CBOs. As discussed below, the CBO program initiated by Resolution CSID-002 is in its early stages of implementation, and operational details of the program are still being developed.

We note that D.07-07-043 requires carriers to permit CBOs to represent any customer who has authorized a CBO to assist it in dealings with carriers.[112] Once the Commission's effort to integrate CBOs in its outreach, education and

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[112] OP 14.

complaint resolution process is implemented, we anticipate that the Commission will be able to provide carriers with the names of CBOs available to assist LEP consumers in particular non-English languages. We urge, but will not require, carriers to inform in-language market trial participants about CBOs which may be available to assist LEP participants because we see this as another potentially cost-effective way for carriers to enhance in-language support to LEP market trial participants.

As discussed below, we will not require carriers to establish complaint or language preference tracking systems and instead will rely on, among other things, CIMS complaint data as a way to obtain the information we need to assess the effectiveness of the In-Language Marketing Rules. Therefore, carriers will also be required to inform participants in the target language at the start of their participation in an in-language market trial that participants may contact the CAB to file an informal complaint, and to provide CAB's telephone number and web address to participants. This will help ensure that in-language market trial participants' are aware that the Commission is available to assist consumers with their complaints, and will assist the Commission in obtaining information on the needs of LEP consumers at minimal cost to carriers. Carriers will be permitted to use any of the methods specified in Rule V of the In-Language Marketing Rules for this purpose.

3.4.6. What Services, If Any, Should Carriers be Required to Make Available During an In-Language Market Trial

The Phase II Scoping Memo/ACR asked what services, if any, should carriers be required to make available during an in-language market trial. For example, should carriers be required provide potential in-language market trial

participants access to live, person-to-person customer service over the telephone during its normal business hours in the market trial language(s)? If not, why not? The Phase II Scoping Memo/ACR also asked that, if carriers were not required to provide live, person-to-person customer service over the telephone during normal business hours in the market trial language(s), then how should carriers be required to support potential in-language market trial participants that have questions about their bills or services?

Parties' Positions

AT&T and CTIA oppose applying any of the In-Language Marketing Rules to in-language market trials, contending that this defeats the purpose of having a market trial.[113] AT&T contends that the purpose of an in-language market trial is to give carriers an opportunity to assess the responsiveness of a particular LEP community before undertaking a marketing campaign that triggers the In-Language Marketing Rules. AT&T states that, while all customers should have access to support, carriers should have the flexibility to determine how best to support the different needs and preferences of each community. AT&T suggests that CBOs could assist consumers who purchase services during in-language market trials.

Small LECs and SureWest recommend that carriers be required to provide in-language customer service during in-language market trials, but that none of

[113] AT&T Phase II-A Opening Comments, pp. 6-8. CTIA Phase II-A Opening Comments, pp. 4-5. CTIA Phase II-A Reply Comments, p. 2.

the other In-Language Marketing Rules should apply during in-language market trials.[114]

Verizon California states that, while it makes little sense for carriers to attempt an in-language market trial without an in-language web page or in-language customer service, the Commission should not require carriers to provide in-language support during the trial.[115]

Verizon Wireless opposes any requirement to provide in-language support for customers.[116] Verizon Wireless contends that carriers will have incentives to provide appropriate in-language support because market trials are likely to be unsuccessful without it.

DRA states that carriers have not provided any cost information or other evidence to demonstrate why it would be burdensome to apply the In-Language Marketing Rules to market trials, and recommends that all of the In-Language Marketing Rules apply to in-language market trials.[117] However, if the Commission does not adopt DRA's recommendation, DRA recommends that, at a minimum, carriers be required to provide live in-language telephone support through a toll-free number during a carrier's normal customer service hours. DRA also recommends that carriers provide in-language telephone support for a

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[114] Small LECs Phase II-A Reply Comments, p. 2. SureWest Phase II-A Opening Comments, pp. 4, 7. SureWest Phase II-A Reply Comments, p. 2.

[115] Verizon California Phase II-A Opening Comments, p. 2.

[116] Verizon Wireless Phase II-A Opening Comments, pp. 3, 6-8.

[117] DRA Phase II-A Reply Comments, pp. 1-3.

period of time after the market trial ends to allow for LEP customers to transition out of the service, if necessary.

Greenlining recommends that carriers be required to comply with all of the In-Language Marketing Rules during in-language market trials.[118] If, however, the Commission does not apply all of the In-Language Marketing Rules to in-language market trials, Greenlining recommends that, at a minimum, carriers should be required to provide live, person-to-person in-language customer service. Greenlining contends that carriers can easily provide in-language customer service, even on a temporary basis, through Language Line or other professional translation services.

Greenlining asserts that access to live customer assistance is essential because LEP consumers who participate in an in-language market trial must be able to ask questions about the market trial and a carrier's services. Greenlining states that in-person or telephonically provided in-language customer service are the best ways to support in-language market trial participants. Greenlining contends that the Internet is an efficient way to provide in-language market trial information, but that it is not available to most LEP customers who do not have regular Internet access.

Greenlining recommends that the Commission require that carriers' in-language customer service be able to explain the differences between a carrier's standard service offerings and the services offered during a market trial, including differences in service plans, prices and applicable contract provisions.

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[118] Greenlining Phase II-A Opening Comments, pp. 11-13. Greenlining Phase II-A Reply Comments, p. 6.

LIF states that the Commission determined in Phase I of this proceeding that carriers marketing in-language must provide consumers who speak that language a way to ask questions about their service and resolve service or billing questions, and recommends that carriers be required to provide in-language customer service during in-language market trials.[119] LIF contends that providing in-language customer service through third-party interpreters during in-language market trials is efficient, and doesn't require large expenditures if a carrier decides not to permanently market in a language. Therefore, according to LIF, it is not burdensome for carriers to provide in-language customer service during marketing trials.

LIF also recommends that carriers be required to provide a summary of the key terms and conditions of their contract in the market trial target language, because the Commission has found a summary of the key terms and conditions necessary in order for LEP consumer to be able to make informed purchasing decisions. Finally, LIF recommends that, as part of a purchase during an in-language market trial, carriers be required to provide contact information so that consumers may make complaints about marketing or their service.

TURN supports the recommendation that carriers be required to provide customer service in the target language during market trials through, at least, a third party translation service.[120] TURN contends that carriers have acknowledged they must have a way to communicate with LEP customers and

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[119] LIF Phase II-A Opening Comments, pp. 8-9.

[120] TURN Phase II-A Reply Comments, pp. 7-9.

potential customers during a market trial, so, according to TURN, the requirement should not be controversial.

TURN recommends that generic written materials about the services being marketed be made available in the market trial target language on a publicly available website and by telephone, at a minimum. As with in-language customer service, TURN states that carriers acknowledge they will need to provide written materials to in-language customers during the trial, so, TURN contends, making available generic written materials in the market trial target language about the services being marketed should not be controversial.

Discussion

Most carriers agree that customers should have access to support, but nevertheless object to imposing of any of the In-Language Marketing Rules on in-language market trials. We conclude that it is unreasonable to permit in-language market trials without any target language support to LEP participants.

Carriers which conduct in-language market trials must provide in the target language of the market trial during normal business hours access to live, person-to-person customer service over the telephone so that participants may obtain assistance in resolving customer billing or service questions. A carrier may provide in-person customer service in the target language, in addition to telephonic customer service, if a carrier chooses to do so. Customer service may be provided using either a customer service representative fluent in the market trial target language, or through a third-party interpreter service, such as Language Line.

This requirement effectively adopts Rule IV of the In-Language Marketing Rules for in-language market trials, and will ensure that LEP consumers have a

way to receive an in-language explanation of the information contained in confirmation summaries, contracts, notices and other English language written materials.

We adopt this requirement for in-language market trials because access to customer service in the target language of the market trial will reasonably permit LEP participants to obtain assistance resolving customer billing or service questions during the limited duration of an in-language market trial. However, because carriers may provide target language customer service through a third-party interpreter service such as Language Line, providing access to customer service in the target language of the market trial is not burdensome and will not require carriers to make substantial investments in infrastructure to support a non-English language before carriers have determined the viability of marketing to LEP customers in the target language. Combined with the limit on the duration of in-language market trials and the minimal notice requirements we will adopt, this requirement will provide sufficient protections for LEP consumers during an in-language market trial.

3.4.7. Other Requirements for In-Language Market Trials

The Phase II Scoping Memo/ACR asked what other requirements, if any, the Commission should establish with respect to in-language market trials, and why?

Parties' Positions

The carriers state that no other requirements should be imposed on in-language market trials.[121]

Greenlining recommends that, in addition to requiring carriers to provide information regarding the terms and conditions of the market trial offer, carriers should also be required to provide information on the terms, conditions, features, pricing, etc., of a carrier's standard service. Greenlining contends that disclosure of this information is particularly necessary when the initial offer is temporary and service will revert to a standard plan or price at the end of the market trial.

LIF recommends that the Commission use the CBO program initiated by Resolution CSID-002 to assist market trial participants.[122] As discussed above, LIF recommends notice to CBOs as part of its recommended in-language market trial pre-approval process, and notice to market trial participants that CBOs are available to assist them.

TURN recommends that carriers be required to track and report all complaints made during an in-language market trial.[123]

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[121] AT&T Phase II-A Opening Comments, p. 8. CTIA Phase II-A Opening Comments, p. 4. SureWest Phase II-A Opening Comments, p. 8. Small LECs Phase II-A Reply Comments, p. 3. Verizon California Phase II-A Opening Comments, p. 7. Verizon Wireless Phase II-A Opening Comments, p. 8.

[122] LIF Phase II-A Opening Comments, pp. 6-7.

[123] TURN Phase II-A Reply Comments, pp. 2, 7.

Discussion

As discussed above, we will require carriers to provide in the target language of the market trial during normal business hours access to live, person-to-person customer service over the telephone, and, in essence, impose Rule IV of the In-Language Marketing Rules on in-language market trials. Requiring in-language market trials to comply with Rule IV will ensure that LEP consumers have a way to communicate with carriers in the target language about billing and service issues, or for an explanation of the information contained in confirmation summaries, contracts, notices and other English language written materials.

TURN's recommendation that carriers be required to report all complaints made during an in-language market trial will not be adopted because, as discussed below, we conclude that carriers should not be required to track or report LEP consumer complaints.

The requirement to comply with Rule IV of the In-Language Marketing Rules, combined with the 180-day limit on the duration of in-language market trials and the notice requirements that we adopt, will provide sufficient protections during an in-language market trial. In addition, the consumer protections established in R.00-02-004 (the Consumer Protection Initiative) will apply to in-language market trials. Therefore, no additional requirements will be imposed on in-language market trials.

4. Phase II-B Issues - Fraud Notification and Reporting, and Consumer Complaint by Language and Language Preference Tracking

This proceeding established several objectives for evaluating options for addressing the problems LEP telecommunications customers may face, including, among other things, the objectives of minimizing fraud, billing

problems, and unresolved complaints.[124] The record in this proceeding shows LEP consumers are especially vulnerable to fraud and marketing abuse.[125] The Phase I Decision found that LEP consumers who are particularly vulnerable to fraud have access to little or no in-language information on how to protect themselves from fraud, and that providing LEP customers with information about how to protect against fraud only in English is ineffective and inadequate to inform LEP consumers so they may protect themselves.

As noted above, a Tracking Workshop was held on November 8 and 9, 2007, prior to the filing of comments to provide parties an opportunity to informally discuss Phase II-B issues. Prior to the Tracking Workshop, some parties submitted to the CD position papers, and after the Tracking Workshop some parties submitted post-workshop statements identifying areas of consensus and disagreement. On December 17, 2007, Staff issued its report on the Tracking Workshop (Workshop Report). After the Workshop Report was issued, parties filed comments and reply comments on Phase II-B issues. On April 2, 2008, pursuant to the March 19 Ruling, Joint Telecommunications Carriers, CDT-Joint Consumer Groups (Consumer Federation, DRA and TURN) and LIF submitted separate proposals to address LEP complaint and language preference tracking issues, and on April 16, 2008, parties submitted comments on those proposals.

Thus, through position papers, post-workshop statements, comments and reply comments on the Phase II-B issues identified in the Phase II Scoping Memo/ACR, parties' proposals, and comments on those proposals, we have

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[124] R.07-01-021, p. 7.

[125] D.07-07-043, p. 40.

received several rounds of input on Phase II-B issues.[126] We first address the issues identified in the Phase II Scoping Memo/ACR, followed by a discussion of each component of parties' proposals for addressing the Phase II-B issues.

We note that the participating consumer groups (Consumer Federation, DRA, Greenlining, LIF, and TURN) joined together in different combinations in each of the Phase II-B pleadings, and refer to themselves in each pleading as "Joint Consumer Groups." For clarity, we will refer to each combination of Joint Consumer Groups with a different moniker.

That is, DRA, Greenlining, LIF and TURN jointly filing Joint Consumer Groups' Workshop Position Paper will be referred to as "DGLT- Joint Consumer Groups"; Consumer Federation, DRA, Greenlining, LIF and TURN jointly filing Joint Consumer Groups' Post-Workshop Statement will be referred to as "CDGLT- Joint Consumer Groups"; Consumer Federation, DRA, Greenlining and TURN jointly filing Joint Consumer Groups' Phase II-B Opening Comments will be referred to as "CDGT- Joint Consumer Groups"; DRA, Greenlining and TURN jointly filing Joint Consumer Groups' Phase II-B Reply Comments will be referred to as "DGT- Joint Consumer Groups," and Consumer Federation, DRA and TURN jointly filing Joint Consumer Groups' Phase II-B Proposal and Joint Consumer Groups' Comments on Phase II-B Proposals will be referred to as "CDT- Joint Consumer Groups."

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[126] The Phase II Scoping Memo/ACR also incorporates by reference the Limited English Proficiency aspects of the record of the CPI proceeding, R.00-02-004, and of the meetings, workshops and comments and staff report, as described in R.07-01-021. P. 14.

4.1. Consumer Complaint by Language and Language Preference Tracking

The Phase I Decision deferred to Phase II of this proceeding, among other things, issues concerning carrier tracking of complaints by language and tracking of customer language preference. The Phase I Decision determined that several issues must be resolved before requiring carriers to track customer language preference or LEP consumer complaints, and directed the assigned commissioner to seek additional comments on the kinds of LEP consumer complaint and language preference information that should be tracked by carriers, and how that tracking should be done.[127] The Phase II Scoping Memo/ACR was issued pursuant to that directive.

The Phase II Scoping Memo/ACR proposed a definition for a "reportable telecommunications complaint" and requested comment on whether the Commission should adopt the proposed definition, or if a different definition should be adopted, and, if so, what that definition should be and why. The Phase II Scoping Memo/ACR also sought comment on:

- the specific complaint information that should be tracked;
- what reports, if any, should carriers be required to prepare or file concerning LEP consumer complaints, and if so, what specific information should be contained in these reports, and when/how should any reports be made;
- what limitations or restrictions, if any, should there be on publishing or otherwise making publicly available aggregated complaint data received by the Commission;

[127] D.07-07-043, COLs 58, 60, 65 and OP 12.

- What, if any, carrier information provided to the Commission or a community based organization (CBO) in connection with a reportable telecommunications complaint should be prohibited from public disclosure;
- What, if any, exceptions to complaint tracking or reporting are appropriate, and why; and
- What other requirements should the Commission establish with respect to LEP consumer complaint tracking or reporting, and why?

The Phase II Scoping Memo/ACR requested comment on language preference tracking issues, including:

- Identifying the methods carriers currently use to solicit and track language preference, and the advantages and disadvantages of each;
- What reports on customer language preference, if any, should carriers be required to provide to the Commission, and what specific information should be contained in those reports and why;
- What exceptions to language preference tracking or reporting, if any, are appropriate and why; and
- What other requirements should the Commission establish with respect to customer language preference tracking or reporting, and why.

Parties Positions

Carriers recommend that none of the proposed requirements be adopted for tracking customer language preference or LEP consumer complaints, and, therefore, do not recommend specific complaint information that should be tracked.[128] The carriers recommend that none of the proposed reports be filed,

[128] AT&T Phase II-B Opening Comments, pp. 1, 6, 7, 9. Cox Phase II-B Opening Comments, pp. 3, 6, 7, 9. CTIA Phase II-B Opening Comments, pp. 2-4, 8-10. SureWest Phase II-B Opening Comments, pp. 4, 5, 6-7. Small LECs Phase II-B Opening Comments, pp. 4, 5, 6-7. Verizon California Phase II-B Opening Comments, pp. 3, 4, 5. Verizon Wireless Phase II-B Opening Comments, pp. 3-4, 14, 20-21.

and, therefore, do not make recommendations on the content of those reports or the public availability of information contained in those reports. Because carriers recommend that none of the proposed requirements be adopted for tracking customer language preference or LEP consumer complaints, they do not propose exemptions or other conditions, except that Small LECs recommend that rate-of-return carriers and other carriers with less than $10 million in annual intrastate revenues be exempt from any language preference or complaint tracking requirements that the Commission may establish.

Verizon Wireless states that it does not currently collect or track customer language preference or complaints, and that requiring it to do so will adversely affect customer satisfaction, impose substantial costs on customers, and will not produce useful data.

Verizon Wireless states that it handles customer calls through call centers that serve multi-state regions. Calls from customers in any of several western states may be served by any one of six West Area call centers, allowing calls to be efficiently distributed and thereby reducing customer hold times. According to Verizon Wireless, its West Area call centers handle several million calls per month, mostly from California customers.

Verizon Wireless contends that implementing complaint tracking will increase the time spent on each call to obtain and log complaint information, and will require Verizon Wireless to train customer services representatives in all of its West Area call centers that handle California calls. Verizon Wireless states that it will incur substantial costs to modify its information systems in order to collect and store the complaint information to be tracked.

Verizon Wireless asserts that the data produced will be of limited usefulness because complaints cannot be consistently and accurately categorized

by each of its thousands of customer service representatives due to the complexity and subjectivity involved in classifying and tracking complaints. Verizon Wireless states that it previously attempted to track the reasons for calls in an effort to obtain feedback and to improve service. However, it abandoned that effort because discrepancies made the data worthless. Verizon Wireless contends that LEP complaint data will likewise be unreliable. Verizon Wireless, therefore, recommends that complaint tracking requirements not be imposed on carriers.

With regard to language preference tracking, AT&T states that it does not proactively solicit customer language preferences because it believes consumers do not like to be asked such questions. AT&T contends that it would cost AT&T California several million dollars per year to implement and maintain a process to track the language preference of its customers, and many million dollars per year to maintain an LEP complaint tracking system.[129]

AT&T states that the numerous complexities involved in tracking and reporting LEP consumer complaints that were identified at the Tracking Workshop suggest that the Commission should seek more effective, less costly ways of collecting this information. AT&T contends, for example, that the CIMS database will provide the Commission with information about LEP consumers, and points to Resolution CSID-002 as an innovative example of ways to reach LEP consumers and facilitate resolution of their complaints.[130]

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[129] AT&T Phase II-B Opening Comments, Declaration of Scott P. Pearsons. The specific amounts that AT&T estimates are designated as proprietary information.

[130] Resolution CSID-002, adopted December 6, 2007, approved establishing an outreach program that integrates CBOs in the Commission's outreach, education and complaint

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AT&T states that to establish a language preference tracking system AT&T Mobility would be required to modify 16 different information systems and various point-of-sale (POS) systems.[131] AT&T Mobility would also be required to increase data storage, develop and provide training, and develop reports. AT&T asserts that such a system would increase the number of calls to its customer care centers, and increase the time to handle those calls and to complete POS transactions.

AT&T states that AT&T California would incur tens of thousands of programmer hours to modify its information systems to track language preferences and LEP consumer complaints.[132] AT&T states that it costs $1.7 million for postage, alone, to communicate with AT&T California's 6.6 million residential customers, and substantially more than that in additional customer care representative time needed to collect language preference and complaint information.

Cox states that the proposed language preference and complaint tracking requirements are not necessary, and supports the alternatives identified at the Tracking Workshop because they are less restrictive and less costly than requiring carriers to upgrade their information systems in order to collect and report information about LEP consumers.[133] Cox recommends that, if parties do

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resolution processes to develop language appropriate materials for LEP consumers, to perform education and outreach activities, and to assist them resolve telecommunications issues.

[131] AT&T Phase II-B Opening Comments, Declaration of Nancy Greer, p. 2.

[132] AT&T Phase II-B Opening Comments, Declaration of Scott Pearsons, pp. 4 - 5.

[133] Cox Phase II-B Opening Comments, pp. 1-4.

not reach agreement on any of the alternatives identified at the Tracking Workshop, the Commission should evaluate parties' proposals using criteria set out in R.07-01-021 for evaluating Phase I proposals.[134]

Cricket states that establishing tracking requirements now is premature and burdensome, and contends that the Commission can obtain the information it needs to evaluate the success of the Phase I Rules using the alternatives discussed at the Tracking Workshop and through carriers' proposals.[135] To the extent that the Commission adopts any tracking or reporting requirements in Phase II, Cricket recommends that those requirements be triggered by in-language marketing of non-exempt services.

CTIA opposes any complaint or language preference tracking requirements which are inconsistent with existing carrier systems and business processes. CTIA contends this will impose excessive costs that will ultimately be borne by customers, and impede carriers' ability to efficiently serve customers. CTIA estimates that it would cost the four largest carriers approximately $50 million to set up a complaint and language tracking system, with annual operations and maintenance costs of approximately $119 million per year.[136]

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[134] R.07-01-021 established the following criteria for evaluating proposals in this proceeding: (1) promoting informed choice, while not discouraging in-language marketing efforts; (2) minimizing fraud, billing problems, and unresolved complaints; (3) feasibility using existing infrastructure, processes and technologies; (4) doable at reasonable cost, and without undue financial burden; and (5) compliant with applicable law.

[135] Cricket Phase II-B Reply Comments, pp. 1-3.

[136] CTIA's estimate includes the cost to create and operate a complaint system to track language preferences in seven languages, track the total complaints, complaints related to fraud and complaints concerning language barrier issues, and to generate quarterly

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CTIA contends that such a system will not produce reliable data, will confuse consumers, increase the length of customer service, and will require carriers to ask questions that customers might find offensive.

Small LECs and SureWest oppose any tracking requirements, and state that the Commission should rely on its own internal resources and census data to address language preference tracking and consumer complaint information needs. Small LECs and SureWest assert that any rules the Commission may adopt should be subject to the marketing trigger established in Phase I. Small LECs recommend that rate-of-return carriers and other carriers with less than $10 million in annual intrastate revenues be exempt from any language preference or complaint tracking requirements that may be established.

Verizon California contends that language preference tracking will not promote the goals of the Phase I Rules, and the cost of tracking will exceed the benefits to consumers because the number of customers benefiting from tracking is minimal.[137] Verizon California supports the alternatives identified at the Tracking Workshop as less costly and more effective ways to address LEP customer language preference and complaint issues.[138]

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reports identifying the complaints and the number of customers in each language group. CTIA Phase II-B Opening Comments, Footnote 5, pp. 3-4.

[137] For example, Verizon states that the percentage of Asian customers that prefer to conduct business in an Asian language is extremely small, with only 1.0% of Mandarin-speaking, 0.9% of Vietnamese-speaking, 0.9% of Korean -speaking, 0.2% of Japanese-speaking, and no Cantonese or Tagalog-speaking customers preferring to conduct business in those languages. Verizon California Phase II-B Opening Comments, p. 4.

[138] Verizon California Phase II-B Opening Comments, p. 2.

Verizon California states that the value of routinely reporting customer language preferences is questionable, and instead recommends that the Commission rely on targeted data requests to obtain information as necessary. Verizon California states that it has tracked language preference for Spanish-speaking customers since 1988, and language preferences for Chinese, Korean and Vietnamese-speaking customers since 1997, but asserts that there is insufficient justification to require tracking and reporting of language preference and LEP consumer complaints.

Verizon Wireless opposes any requirement to track customer language preference, and instead recommends that the Commission rely on existing sources of public information for this purpose. According to Verizon Wireless, any requirement to track customer language preference will impose an unjustified burden on carriers and could offend customers. Verizon Wireless contends numerous, costly system modifications will be required, and will interfere with implementing other system upgrades.

CDGT-Joint Consumer Groups (Consumer Federation, DRA, Greenlining and TURN), Communities for Telecom Rights (CTR) and LIF state that carriers should be required to track customer language preference and LEP consumer complaints.[139] CDGT-Joint Consumer Groups contend that LEP consumers are particularly vulnerable to fraud and marketing abuse due to their limited command of English, and, therefore, language preference and complaint tracking mechanisms are needed to ensure that carriers do not act unscrupulously toward emerging LEP consumer markets in California.

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[139] CDGT-Joint Consumer Groups Phase II-B Opening Comments, pp. 6-7. CTR Workshop Position Paper, p. 2. LIF Phase II-B Opening Comments, p. 2.

CDGT-Joint Consumer Groups state that the buying power of California's Latino and Asian LEP communities is increasing, and these groups represent a large proportion of California's LEP population. According to CDGT-Joint Consumer Groups, the potential profits to be earned from the emerging LEP markets may tempt carriers to undertake unfair business practices with LEP consumers.

CDGT-Joint Consumer Groups state that businesses track customer complaints to maintain a loyal customer base, ensure compliance with regulatory requirements, promote consistent handling of complaints, identify areas where customer service personnel need training, allow the company to identify the source and frequency of complaints, and to help management to acquire and deploy adequate resources. CDGT-Joint Consumer Groups state that tracking of customer complaints by carriers is more effective than monitoring via third party surveys, because carriers have direct access to every customer.

CDGT-Joint Consumer Groups and LIF contend that the Commission's complaint tracking system is inadequate for monitoring LEP consumer complaints because only a small fraction of customers initiating complaints with carriers also contact the Commission. LIF states that carrier-specific data is more accurate that third party surveys of the general LEP population, and will allow the Commission to pin-point particular problems.

CDGT-Joint Consumer Groups recommend that carriers be required to track:

- Complainant's telephone number;
- Subject of complaint;
- Target of complaint (carrier or third party name);
- Description and disposition of complaint;

- Number of times customer called regarding the same matter;
- Whether in-language assistance was requested or offered, and if so, in which language; and
- Whether the customer or a representative (*e.g.*, a CBO) contacted the carrier.

CDGT-Joint Consumer Groups also recommend that carriers be required to prepare and semi-annually file reports on reportable telecommunications complaints from LEP consumers, including the total number of complaints received by the carrier for the reporting period, and a breakdown of these complaints by type and language. LIF recommends making aggregated complaint data publicly available, and that carrier names should be disclosed to provide consumers with useful information when shopping for services.

LIF recommends that, in addition to the items recommended for tracking by CDGT-Joint Consumer Groups, that carriers also track the monetary amount in dispute and the geographic region of the complaint. LIF recommends that carriers be required to retain this information for a period of three years, and that a workshop be held to discuss and develop this information. LIF states that only carrier-specific data can show if a particular carrier is complying with the Commission's consumer protection rules, including the In-Language Marketing Rules.[140] LIF contends that complaint tracking by carriers is necessary for an effective fraud reporting program because customer complaints provide the best indicators of fraud and the action needed to eliminate fraud.

CDGT-Joint Consumer Groups state that while LEP customers need additional protection, all telecommunications customers are potential victims of

[140] LIF Phase II-B Opening Comments, pp. 2-4.

fraud. CDGT-Joint Consumer Groups recommend that the scope of this proceeding be expanded or that a new proceeding be opened to consider requiring reporting of fraud against, and tracking of complaints from all consumers.

CDGT-Joint Consumer Groups and LIF state that D.00-10-028 already requires carriers which offer Universal Lifeline Telephone Service (ULTS) in languages other than English to provide those customers with in-language ULTS notices and certification forms. Thus, according to CDGT-Joint Consumer Groups, carriers providing ULTS service to LEP customers must currently have tracking systems in place to identify the language in which to send the ULTS-mandated notices and forms. CDGT-Joint Consumer Groups contend, therefore, that it is not burdensome to extend their language tracking efforts to non-ULTS customers.

LIF contends that language preference tracking is needed to determine if LEP consumer complaints represent a disproportionate amount of all complaints to a carrier, and will assist in enforcing the In-Language Marketing Rules.

Consumer groups criticize CTIA's cost estimate, contending that CTIA provides little explanation of how the estimate was developed, and the estimate lacks supporting documentation or a description of the methodology used. CDGLT-Joint Consumer Groups state that, as a result, they are unable to analyze the estimate or the underlying assumptions made by each carrier included in the estimate.[141]

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[141] CDGLT-Joint Consumer Groups Post-Workshop Statement, pp. 3 – 4. LIF Phase II-B Opening Comments, p. 5. DGT-Joint Consumer Groups Phase II-B Reply Comments, p. 19. Consumer Federation Phase II-B Reply Comments, p. 8.

CDGT-Joint Consumer Groups recommend that carriers with less than $10 million in intrastate revenue and which do not serve any LEP customers be eligible for exemption from language preference tracking and reporting.[142] However, DGT-Joint Consumer Groups recommend that all carriers that market in-language or which have a significant LEP populations in their service territory be required to track and report language preference, and indicate that this is a change from the recommendation made in CDGT-Joint Consumer Groups' Opening Comments.[143]

CDGT-Joint Consumer Groups assert that, even when a carrier does not market in-language it may still have a significant number of LEP customers, and the Commission should know whether LEP customers are complaining about the carrier's products or services. CDGT-Joint Consumer Groups recommend that carriers which do not market in non-English languages should still be required to track and report language customer preferences because, without tracking or reporting requirements, these LEP customers will not receive the same protections as other LEP consumers.[144]

Therefore, CDGT-Joint Consumer Groups recommend that carriers claiming an exemption be required to annually file a notice with the Commission stating that the company does not conduct in-language marketing to residential

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[142] CDGT-Joint Consumer Groups Phase II-B Opening Comments, pp. 35-36.

[143] DGT-Joint Consumer Groups Phase II-B Reply Comments, pp. 35-36.

[144] For example, CDGT-Joint Consumer Groups contend that small and midsized LECs and CLECs which do not track customer language preferences may not be offering ULTS to LEP customers as required. CDGT-Joint Consumer Groups Phase II-B Opening Comments, pp. 34-36.

customers, and to report the number of LEP residential customers the carrier serves and the languages spoken by those LEP customers.

LIF recommends exempting carriers which do not market in a language other than English from tracking and reporting telecommunications complaints.

Discussion

Consistent with the criteria set out in R.07-01-021 for evaluating Phase I proposals, the Commission should favor parties' proposals for complaint and language preference tracking to the extent those proposals promote informed choice while not discouraging in-language marketing efforts; minimize fraud, billing problems, and unresolved complaints; are feasible using existing infrastructure, processes and technologies; are doable at reasonable cost, and without undue financial burden; and are compliant with applicable law.[145] As we stated in D.07-07-043, when remedies addressing specific concerns are already available under existing law, additional rules may be unnecessary. We also stated that we prefer the least restrictive solution, so long as it effectively addresses a substantiated problem.[146]

AT&T submitted cost estimates to set up tracking systems within AT&T California and AT&T Mobility, including cost information, the methodology and the assumptions used to develop its estimates. AT&T states that some of the information used in its estimates is proprietary and we will not disclose that information. However, we acknowledge that AT&T's estimated costs are substantial, and, while they appear to be rough approximations, they are based

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[145] R.07-01-021, pp. 7 – 8.

[146] D.07-07-043, pp. 17 – 18.

on a reasonable methodology and assumptions. Although consumer groups contend that CTIA's estimate is not adequately supported, no party contends that AT&T's estimate is insufficiently supported.

According to the Workshop Report, CTIA asserts that it will cost $50 million to set up carrier tracking systems, and $119 million per year in ongoing annual maintenance and operational costs.[147] The Workshop Report states that, due to carrier concerns about disclosing proprietary data, the underlying data and methodology supporting CTIA's estimate of the cost to track language preferences would not be published nor provided, and CTIA's consultant was to destroy each carriers' estimates after processing.

The Phase II Scoping Memo/ACR directed parties alleging unreasonable or burdensome costs to implement or maintain an option identified in the ACR/Scoping Memo or proposed by another party support that position with specific, detailed cost information, including a description of the methodology and assumptions used in its analysis. CTIA's estimate does not comply with this directive.

It is unreasonable for carriers to withhold from the Commission the basis upon which their cost estimates are developed, purportedly to protect proprietary information. The Commission has procedures for protecting proprietary information from disclosure. While CTIA correctly notes that the Commission routinely treats competitively sensitive utility information as confidential,[148] CTIA does not explain why the Commission's procedures are

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[147] Workshop Report, p. 13.

[148] CTIA Phase II-A Reply Comments, p. 5.

inadequate to protect any proprietary information supporting its cost estimates. The Commission should not rely on cost estimates for which the proponent has intentionally withheld the underlying cost information, assumptions and methodology on which the estimates are based. Therefore, the Commission will disregard CTIA's unsupported cost estimates.

Although we do not accept CTIA's estimates of the costs to establish and maintain tracking systems, the costs to establish and maintain tracking systems, as indicated by AT&T's estimates, are nevertheless substantial. We are also concerned that the data generated by numerous, diverse carriers using different systems and methods to collect and report that data, will be of questionable reliability because of the subjectivity involved in identifying and classifying complaints or language preferences.

CDGT-Joint Consumer Groups and LIF contend that carriers should be required to track customers' language preference and LEP consumer complaints to ensure that carriers do not act unscrupulously toward LEP consumers. However, requiring carriers to track and report LEP consumer complaints and language preferences will not, *per se*, achieve this objective. This is because an unscrupulous carrier that is engaged in unfair practices will not likely accurately report LEP consumer complaints, or comply, at all, with any reporting requirements the Commission may establish. As a result, the Commission will not receive the information which consumer groups contend is needed to protect LEP consumers.

We are also faced with the dilemma of when carriers should be required to track and report LEP consumer complaints and customer language preferences. Our In-Language Marketing Rules are triggered when a carrier markets non-exempt telecommunications services in a non-English language. If we were

to require all carriers to track and report LEP consumer complaints or customer language preferences, carriers with few LEP consumers and who do not market in a non-English language would nonetheless be required to incur substantial costs to produce little or no useful data.

However, if we require only those carriers which market non-exempt telecommunications services in a non-English language to track and report LEP consumer complaints or customer language preferences, we would not obtain information from carriers who may serve LEP consumers but do not market in a non-English language. This could discourage carriers which do not presently market in-language to LEP communities from marketing in-language to those communities. Therefore, requiring carriers to establish systems to track and report LEP consumer complaints or customer language preferences will not provide the Commission with complete, consistent, or reliable information, and the cost of establishing those systems may discourage carriers from serving LEP communities.

There are formidable challenges to carriers implementing LEP complaint and language preference tracking systems, and considerable uncertainty about the usefulness of information that would be produced by those tracking systems. We conclude that there are better ways for the Commission to obtain information on the needs of LEP consumers than requiring carriers to establish and maintain language preference and LEP complaint tracking and reporting systems. Indeed, the Phase I Decision acknowledged efforts already underway, including the Commission's new telecommunications fraud unit that works with CAB and CBOs to prevent fraud, and implementation of the CIMS database to provide the Commission with improved information on complaints.

The Phase I Decision acknowledged efforts to improve the Commission's complaint resolution efforts by working more closely with CBOs, and directed Staff to design a program to integrate CBOs in our outreach, education, and complaint resolution processes. The Phase I Decision also required carriers to allow CBOs to represent any customer who has authorized a CBO to assist it. Thus, the Commission has already begun to implement steps that will help it obtain the information it needs to better assess the needs of LEP consumers and to make information available to those consumers, and to do this in a way that does not discourage in-language marketing efforts.

We will first assess the effectiveness of those efforts already underway and try other reasonable alternatives before requiring carriers to establish LEP complaint and language preference tracking and reporting systems which may not produce the information necessary to assess the needs of LEP consumers. The alternatives identified at the Tracking Workshop and presented in parties' proposals provide a basis for developing more practical and cost-effective ways for the Commission to obtain information on the needs of LEP consumers.

It is reasonable to first implement options which are technically and administratively simpler, are likely to be more cost-effective, produce more consistent and reliable data, and which do not discourage in-language marketing efforts. It is also reasonable to assess the effectiveness of these more measured steps before we order carriers to establish and maintain language preference and LEP complaint tracking and reporting systems.

4.2. Fraud Notification and Reporting

The Phase I Decision acknowledges that § 2892.3 requires the Commission to make mobile telephony service providers report to the Commission on problems with fraud and actions taken to combat it, and to require these

providers to inform customers about ways to protect against fraud.[149] Among other things, the Phase I Decision requires carriers that market non-exempt services in-language to report to the Commission annually on problems with fraud and actions taken to combat it (Fraud Reporting), and to require these carriers to inform their LEP customers upon initiation of service and annually thereafter about ways to protect against fraud (Fraud Notification). The Phase I Decision determined, however, that before implementing these requirements, the Commission would seek comment on the content, format and timing of Fraud Notification to LEP consumers and Fraud Reporting to the Commission.

Pursuant to the Phase I Decision, the Phase II Scoping Memo/ACR sought comments on the content, format and timing of notifications to LEP consumers about ways to protect against fraud, and on the content, format and timing of reports to the Commission by carriers on problems with fraud and actions taken to combat it. The Phase II Scoping Memo/ACR also requested comments on:

- Existing sources of information currently available to English speaking consumers contain useful information about how telecommunications consumers can avoid becoming victims of fraud that the Commission should consider for inclusion in a LEP consumer fraud notice;
- Whether the Commission should require carriers to provide or make available fraud notices to LEP consumers in a particular format, and, if so, what should that format be and why;

[149] Section 2892.3(c) states, "The commission shall require mobile telephony service providers to provide their subscribers with a notice, to be reviewed by the commission, warning subscribers about problems associated with fraud, and informing them about ways to protect against fraud."

- Whether the Commission should develop a standardized fraud notice for use by all carriers, or if carriers should be allowed to develop their own customized notices;
- Whether the Commission should require carriers to obtain prior approval of carrier-crafted fraud notices from the Public Advisor's Office;
- Whether the Commission should require carriers to provide or make available fraud notices upon initiation of service, annually thereafter, or both;
- Whether carriers should only be required to make available fraud notices to their LEP customers or should carriers be required to provide fraud notices to all customers; and
- Any other issues that the Commission should consider concerning the content, format and timing of notification to LEP consumers about ways to protect against fraud.

The Phase II Scoping Memo/ACR also requested comments on requiring carriers to submit fraud reports to the Commission, including:

- The specific information or categories of information that should be included in fraud reports, and whether the Commission should establish separate categories for the types of fraud to be reported by carriers;
- Whether fraud reports should distinguish and separately report on fraud against customers from fraud against carriers;
- Whether fraud reports should identify/distinguish patterns or instances of fraud against a carrier's LEP customers from fraud against a carrier's English-speaking customers, or identify patterns or instances of fraud against a carrier's customers as a whole;
- What other requirements the Commission should establish with respect to the format or content of fraud reports;
- When and how frequently carriers should be required to provide fraud reports to the Commission, and whether electronic filing should be required;

- Whether there should be exceptions to fraud reporting, and, if so, what should they be and why; and
- Whether any fraud reports filed by carriers should be publicly available, and if so, under what conditions (*e.g.*, at all times, only pursuant to a Public Records Act request, etc.) and by what means (*e.g.*, posted on the CPUC Web site).

Parties' Positions

The carriers unanimously oppose any fraud notification and reporting requirement.[150] The carriers state that the Commission should not rely on § 2892.3 as a basis for ordering fraud reporting and notices because § 2892.3 was enacted to address fraud committed against carriers and does not apply to carrier fraud against customers. The carriers state § 2892.3 was adopted to address the cloning of cellular devices, which occurred when analog technology was commonplace in the wireless industry.

According to AT&T, any such rules adopted pursuant to § 2892.3 may only be applied to wireless carriers. However, AT&T states, it is no longer necessary to adopt rules for fraud notification because digital technology has largely eliminated the problem which § 2892.3 was adopted to address.

AT&T and Cox state that, because § 2892.3 was intended to cover fraud against mobile carriers, considering the issue of reporting carrier fraud against customers is beyond the scope of this proceeding. Cox contends that, until a problem has been identified that fraud notification and reporting would remedy,

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[150] AT&T Phase II-B Opening Comments, pp. 7-13. CTIA Phase II-B Opening Comments, pp. 8-11. Cox Phase II-B Opening Comments, pp. 6-7. Small LECs Phase II-B Opening Comments, pp. 4-6. SureWest Phase II-B Opening Comments, pp. 4-5. Verizon California Phase II-B Opening Comments, pp. 2, 10 - 11. Verizon Wireless Phase II-B Opening Comments, pp. 20 - 22.

it is premature to consider whether carriers should be required to provide any type of fraud notice to LEP consumers or what type of information should be included in a fraud notification. Cox states that, while the record shows that LEP consumers are apparently more susceptible to fraud, no record has been established showing they actually experience fraud more often than other consumers.

Cox and Verizon Wireless assert that, if the Commission seeks to address implementation of § 2892.3, it should do so in a separate proceeding that is not limited to LEP Consumers. Cox contends that existing laws are adequate and make fraud notification and reporting unnecessary. Cox recommends that fraud related issues can be addressed by the alternatives identified at the Tracking Workshop and through ongoing Commission enforcement efforts.

The carriers also contend that fraud reporting is not feasible, and recommends that the Commission consider alternatives to requiring carrier reports. According to CTIA, carriers would need to make major internal process changes to track reports of alleged fraud, and such California-specific changes would be costly and burdensome. Instead, AT&T, CTIA and Cox recommend that the Commission work with CBOs and use the RCRF in combination with CIMS data to protect LEP consumers against fraud.

AT&T, CTIA, Verizon California and Verizon Wireless state that, until the Commission determines the types of conduct the Commission defines as "fraud," it is impossible for carriers to provide customer notifications about fraud or compile fraud reports.

CTIA states that carriers should not have to report allegations of fraud. According to CTIA, until the Commission adjudicates an allegation and

concludes that fraud has occurred, carriers cannot assume fraud has occurred based on mere allegations.

AT&T, CTIA and Verizon Wireless contend that the Commission's CalPhoneInfo website is the most appropriate way to ensure that LEP consumers are informed about ways to protect against fraud, and states that some of the brochures provided on the website already address how consumers can protect against certain types of activities that may be considered fraud. CTIA recommends that the Commission build on this existing mechanism, and expresses a willingness to work with the Commission and CBOs to develop brochures with information on how to guard against different types of fraud. AT&T suggests that the Commission can direct carriers which market in-language to provide their customers with a notice in the language(s) in which the carrier markets directing customers to the CalPhoneInfo website to ensure that all LEP customers receive consistent information about fraud.[151]

CDGT-Joint Consumer Groups state that strict fraud reporting requirements are needed to ensure that telecommunication carriers do not act unscrupulously toward consumers who have a limited command of English.[152] CDGT-Joint Consumer Groups recommend that the Commission consider adopting additional methods for addressing fraud, including surveys, audits, participating in joint efforts with other agencies and business partners, operating a fraud reporting hot line, and conducting criminal investigations.

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[151] AT&T Phase II-B Opening Comments, pp. 11 - 12.

[152] CDGT-Joint Consumer Groups Phase II-B Opening Comments, pp. 5, 8-9.

CDGT-Joint Consumer Groups state that the Commission's CalPhoneInfo website is a good start for ensuring that LEP consumers are informed about ways to protect against fraud, and recommend that the Commission translate its current web-based CalPhoneInfo brochures into multiple languages and ensure that the brochures provide culturally sensitive information. CDGT-Joint Consumer Groups recommend that carriers be required to post the Commission's informational pamphlets on their websites, including a link to the CalPhoneInfo website.

CDGT-Joint Consumer Groups state that there are many kinds of fraud and misrepresentation, and contend that most people know it when they see it.[153] CDGT-Joint Consumer Groups identify "cramming," "slamming," "call-splashing," "809, 284 and 876 international calling," "subscriber fraud" and "cloning" as examples of fraud that should be categorized and reported. CDGT-Joint Consumer Groups contend these types of customer calls or suspicious activities by vendors should be easy to recognize, and recommend that carriers be required to report any kind of misrepresentation or fraudulent practices about which they receive customer complaints or which the carriers themselves discover.

Consumer Federation points to § 495.7(c) as guidance for carriers to identify what it contends should be reported to the Commission.[154] Consumer

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[153] CDGT-Joint Consumer Groups Phase II-B Opening Comments, pp. 22-23.

[154] Section 495.7 permits the Commission to establish procedures to allow telephone or telegraph corporations to apply for the exemption of certain telecommunications services from the tariffing requirements of §§ 454, 489, 491, and 495. Before implementing procedures to allow telephone corporations to apply for the exemption of certain telecommunications services from tariffing requirements, § 495.7(c)(3) requires

Footnote continued on next page

Federation recommends that carriers be required to report all unacceptable marketing practices including, but not limited to, fraudulent marketing practices.[155] Consumer Federation states that carriers' customer service personnel should have little difficulty identifying a practice which a reasonable person would consider to be unacceptable, and that the Commission can then investigate the reported practice to determine whether it is unfair or anticompetitive. Consumer Federation states that, in 2006, Assembly Bill (AB) 3073 amended § 2892.3 to clarify the state's authority to regulate commercial mobile radio service, and contends that the Legislature would not have done so if the statute was outmoded.

CDGT-Joint Consumer Groups state that § 2892.3 requires notice to all consumers, and is not limited to LEP consumers. CDGT-Joint Consumer Groups contend that the notice should be delivered to consumers upon request and whenever a sale is made or service is renewed, and should be made available at all other times.

LIF recommends that the Commission conduct a workshop to develop a standardized fraud notice, and that the notice should include, at a minimum, the same information as provided to mobile telephony customers pursuant to § 2892.3(c).[156] LIF further recommends that the standardized fraud notice be translated into several languages and customized for specific LEP populations.

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the Commission to establish consumer protection rules for those exempted services that include, but are not limited to rules to identify and eliminate unacceptable marketing practices including, but not limited to, fraudulent marketing practices.

[155] Consumer Federation Phase II-B Reply Comments, pp. 20 - 21.

[156] LIF Phase II-B Opening Comments, pp. 13-15.

However, LIF also recommends that carriers be allowed to craft their own fraud notices, as long as they contain certain, standardized information.[157] LIF states that carriers should be required to obtain Commission approval of carrier-crafted notices that deviate from the standardized information.

LIF recommends that carriers be required to deliver (not merely make available) to LEP customers a paper copy of fraud notices at the initiation of service and annually thereafter. LIF contends a hard copy of the notice is necessary because electronic copies or text messages of fraud notices will not be effective.

CDGT-Joint Consumer Groups recommend that the Commission develop a standardized brochure written in neutral, culturally responsive terms in several languages for use by all carriers on websites and at retail outlets. CDGT-Joint Consumer Groups recommend that, if the Commission develops the notice, there is no need for Commission approval. However, if carriers prepare this information, the notices should be approved by Commission staff to ensure that the notices serve their intended purpose.

CDGT-Joint Consumer Groups recommend that the standardized brochure include: (1) a general description of how consumers can protect themselves against scams; (2) protecting your credit card, checking account or Social Security information; (3) getting written confirmation of oral promises; (4) how to identify suspicious businesses; (5) how to contact the Better Business Bureau to find out about a company; (6) a description of known deceptive

[157] LIF does not identify the specific types of information that should be included in a standard notice.

practices; (7) identification of companies known to be engaged in fraudulent activities; (8) information on how to complain effectively; (9) contact information for carriers subject to the Commission's jurisdiction; and (10) contact information for the Commission, the Federal Communication Commission (FCC) and the Federal Trade Commission

CDGT-Joint Consumer Groups recommend that carrier websites be required to provide links to the standardized brochure, the Commission's and the FCC's websites, and to an on-line complaint/inquiry form. CDGT-Joint Consumer Groups also recommend that carriers be required to make the standardized brochure available at retail locations, and, in addition, to: (1) provide copies of the terms and conditions of each calling plan and product available to customers; and (2) provide a copy of the calling plan the customer purchases with all terms and conditions and the product warranty, if applicable.

CDGT-Joint Consumer Groups state that using a standard brochure throughout the industry will help consumers recognize the material as coming from a single, trusted source, and will reduce customer confusion by separating consumer information from carrier-specific marketing. CDGT-Joint Consumer Groups also recommend that the Commission continuously update its website with current consumer alerts, fraud alerts and industry bulletins, like those posted by the FCC and the California Attorney General.

CDGT-Joint Consumer Groups state that the Commission's complaint gathering process should be used to detect and correct fraudulent practices, but is currently not user friendly and should be improved. CDGT-Joint Consumer Groups contend that, if consumers are aware of and use the Commission's complaint process, the Commission's CIMS database will be a good source of information about fraudulent activities.

CDGT-Joint Consumer Groups state that the Commission should establish a comprehensive carrier reporting requirement for fraud against consumers. CDGT-Joint Consumer Groups recommend that reports to the Commission include the type of fraud reported (*e.g.*, slamming, cramming, etc.); the type of customer affected (*i.e.*, LEP, non-LEP); contact information for companies authorized to sell a carrier's products and services; locations where fraud is discovered and the name, address and phone numbers of companies perpetrating fraud; estimates of losses due to particular kinds of fraud, per instance of fraud, and amounts recovered through carrier efforts, law enforcement, bank action or other means; and actions taken by the carrier to combat fraud.

CDGT-Joint Consumer Groups recommend that carriers be required to immediately report to the Commission known instances of fraud, and to annually or semi-annually report on actions taken by the carrier to combat fraud and amounts saved through such efforts. CDGT-Joint Consumer Groups recommend reports be filed electronically, be publicly available, and that limited waivers be permitted on a case-by-case basis.

LIF states that tracking complaints is the best way to detect problems with fraud, and recommends that carriers' fraud reporting programs be coordinated with their complaint tracking efforts. LIF recommends that carriers be required to track fraud against LEP consumers separately from customers as a whole, and that carriers provide fraud reports to the Commission at the time its recommended carrier compliant reports are filed. LIF recommends that carriers be required to include reports of fraud involving their agents.

Discussion

The Public Utilities Code does not define "fraud," as the term is used in § 2892.3. Therefore, we must interpret the legislative intent of § 2892.3. The Legislature enacted § 2892.3 through Senate Bill (SB) 318 in 1993.[158] The purpose of SB 318 was "to provide criminal penalties against those who seek to avoid payment for cellular telephone services obtained by the use of a cellular … device."[159] New penalties, codified in Penal Code § 502.8,[160] were necessary due to the magnitude of monetary losses from "cloning" compared to the relatively small penalties for cellular fraud under existing law.[161] The legislative committees noted that supporters of SB 318 believed that more severe penalties would deter cellular fraud and avoid monetary losses to customers and cellular providers (*e.g.*, possible rate increases stemming from providers' increased expenses related to fraud).[162]

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[158] SB 318 (1993-1994 Reg. Sess.) § 2.

[159] Sen. Com. on Energy and Public Utilities, Analysis on SB 318 (1993-1994 Reg. Sess.) May 4, 1993, p. 2.

[160] The new penalties included (1) "us[ing] a telecommunications device [with] inten[t] to avoid the payment of any lawful charge for service to the device," (2) "possess[ing] a telecommunications device with intent to sell or offer to sell to another, intending to avoid the payment of any lawful charge for service to the device," and (3) "manufactur[ing] . . . telecommunications devices [with] inten[t] to sell them to others intending to avoid the payment of any lawful charge for service to the device." SB. 318 (1993-1994 Reg. Sess.) § 1, subds. (a), (c), & (e).

[161] Sen. Com. on Energy and Public Utilities, Analysis on SB. 318 (1993-1994 Reg. Sess.) Mar. 30, 1993, p. 2 (hereafter Sen. Hearing 3/30/93); Assem. Hearing 7/13/93, comment 1.

[162] Sen. Hearing 3/30/93, p. 2; Assem. Hearing 7/13/93, comment 2.

There is little in the legislative history of SB 318 to indicate the exact intent behind the notice and reporting provisions of § 2892.3. The Assembly Committee noted that supporters of the bill believed that customers would benefit from the notification requirement.[163] The Legislature found that "[m]onitoring of the cellular telephone industry and the effect of cellular fraud provides valuable information for the commission to determine appropriate regulatory policy and protect the public interest."[164] Consumer Federation and DGT-Joint Consumer Groups read this declaration broadly to support their recommendations for fraud notification and reporting.[165] However, as with § 2892.3, this declaration does not explain the meaning of "fraud."

Since the Legislature did not define "fraud" as it is used in § 2892.3, we must infer the legislative intent from the central thrust of SB 318 to establish criminal penalties. It is clear that the Legislature was concerned with conduct undertaken with the intent "to avoid the payment of any lawful charge for service to [a telecommunications] device."[166]

The legislative history of SB 318 indicates that § 2892.3 and Penal Code § 502.8 are intended to address the misappropriation of telecommunications services, and to penalize those who use illegal telecommunications equipment in order to avoid the payment of any lawful charge for telecommunications service

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[163] Assem. Hearing 7/13/93, comment 2.

[164] SB. 318 (1993-1994 Reg. Sess.) § 3, subd. (a)(1).

[165] Consumer Federation Phase II-B Reply Comments, p. 5; DGT-Joint Consumer Groups Phase II-B Reply Comments, p. 3.

[166] SB 318 (1993-1994 Reg. Sess.) § 1.

or to facilitate other criminal conduct. For example, Penal Code § 502.8 provides that any person who knowingly advertises illegal telecommunications equipment, or manufactures or possesses illegal telecommunications equipment with intent to sell or offer to sell the equipment to another, or uses illegal telecommunications equipment intending to avoid the payment of any lawful charge for telecommunications service or to facilitate other criminal conduct is guilty of a misdemeanor.[167]

Penal Code § 502.8 defines "illegal telecommunications equipment" as equipment that operates to evade the lawful charges for any telecommunications service; [surreptitiously] intercept electronic serial numbers or mobile identification numbers; alter electronic serial numbers; circumvent efforts to confirm legitimate access to a telecommunications account; conceal from any telecommunications service provider or lawful authority the existence, place of origin, or destination of any telecommunication; or otherwise facilitate any other criminal conduct. Illegal telecommunications equipment includes, but is not limited to, any unauthorized electronic serial number or mobile identification number, whether incorporated into a wireless telephone or other device or otherwise.[168]

Section 2892.3 and Penal Code § 502.8 do not explicitly refer to "cloning." However, "illegal telecommunications equipment" as defined in Penal Code § 502.8(g) describes activities commonly characterized as "cell phone cloning."

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[167] Penal Code §§ 502.8(a), (b), (d) and (f).

[168] Penal Code § 502.8(g).

For example, the FCC Consumer Advisory on Cell Phone Fraud describes a "cloned cell phone" as,

> … [a cell phone] that has been reprogrammed to transmit the [unique factory-set electronic serial number (ESN)] and [telephone number (MIN)] belonging to another (legitimate) cell phone. Unscrupulous people can obtain valid ESN/MIN combinations by illegally monitoring the radio wave transmissions from the cell phones of legitimate subscribers. After cloning, both the legitimate and the fraudulent cell phones have the same ESN/MIN combination and cellular systems cannot distinguish the cloned cell phone from the legitimate one. The legitimate phone user then gets billed for the cloned phone's calls.[169]

Thus, the FCC's Consumer Advisory description of cell phone cloning is consistent with the more technical description of the punishable conduct contained in Penal Code § 502.8(g). Notably, Penal Code § 502.8 addresses only conduct involving "illegal telecommunications equipment," and does not discuss or describe any other kind of activity that might be described as "fraud." We conclude that SB 318, as reflected in § 2892.3 and Penal Code § 502.8, was intended primarily to address cellular device "cloning."

Consumer Federation contends that AB 3073 amended § 2892.3 in 2006 to clarify the state's authority to regulate commercial mobile radio service, and would not have done so if the statute we no longer necessary. However, our review of AB 3073 indicates that it was a cleanup bill that made non-substantive changes to address inconsistent definitions of cellular telephone services in various statutes, including § 2892.3, and made no changes to state policy.[170]

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[169] *See* http://www.fcc.gov/cgb/consumerfacts/cellphonefraud.html.

[170] Senate Rules Committee July, 6 2006 Senate Floor Analyses, pp. 1-2.

The Senate Floor Analysis of AB 3073 indicates that state law has used similar, but technically inconsistent, definitions of what is commonly referred to as cellular telephone service, including cellular service, mobile service and wireless service. The analysis states that AB 3073 establishes standard definitions for cellular telephone service throughout state code and makes other technical corrections to statutes. AB 3073 replaced "cellular telephone service" with "mobile telephony service," and made similar non-substantive changes to numerous other sections of the Public Utilities Code, Family Code, Penal Code, and Government Code.

R.07-01-021 focuses on ways of ensuring that LEP customers have access to the information and assistance they need to obtain and maintain telecommunications services and so they may protect themselves from fraud or abuse. The legislative history of SB 318 indicates that § 2892.3 and Penal Code § 502.8 are intended to address the misappropriation of telecommunications services, and to penalize those who use illegal telecommunications equipment in order to avoid the payment of any lawful charge for telecommunications service or to facilitate other criminal conduct. Thus, the type of fraud that R.07-01-021 seeks to address is different than the conduct addressed in § 2892.3. Therefore, we conclude that it is inappropriate to rely on § 2892.3 in this proceeding as a basis for requiring carriers to report to the Commission on fraud and to inform LEP customers about how to protect themselves against fraud.

The scope of R.07-01-021 is limited to issues facing LEP consumers, and we are therefore limited to considering § 2892.3 in this context. To consider requiring carriers to report fraud and provide notice to not only LEP consumers but to all customers goes beyond the scope of this proceeding. Establishing fraud notice and reporting requirements applicable only to LEP consumers

before considering these issues for other consumers will result in a confusing situation where fraud notice and reporting requirements might apply to some carriers, customers or services, but not to others. However, we will not modify the scope of this proceeding, as CDGT-Joint Consumer Groups recommend, in order to consider reporting of fraud against, or tracking of complaints from, all consumers because to do so will detract from our focus on issues concerning LEP consumers.

We disagree that, because § 2892.3 was intended to cover fraud arising out of cell-phone cloning, considering the issue of reporting carrier fraud against customers is beyond the scope of this proceeding. While we agree that § 2892.3 was intended to cover cell-phone cloning, we note that R.07-01-021 was initiated to, among other things, minimize fraud or abuse. R.07-01-021 states that "[minimizing] fraud, billing problems, and unresolved complaints" is among the criteria set out for evaluating possible options for addressing the problems facing LEP customers.[171] Thus, the conclusion that it is inappropriate to rely on § 2892.3 as a basis for requiring carriers to report to the Commission or to inform LEP customers about how to protect themselves against fraud does not place issues concerning fraud notification and reporting beyond the scope of this proceeding.

Nevertheless, we agree that, without a better definition of the types of conduct that should be considered "fraud," it is not possible for carriers to provide customer notifications about fraud or compile fraud reports. CDGT-Joint Consumer Groups contend that "most people know fraud when they see it," and recommend that carriers be required to report all customer

[171] R.07-01-021, p. 7.

complaints which involve any kind of misrepresentation or fraudulent practices about which they receive customer complaints or which the carriers themselves discover However, while we do not require carriers to provide customer notices about fraud or compile fraud reports, as discussed below, we will require carriers to provide LEP customers with an in-language notice directing them to the CalPhoneInfo website where information is available to consumers about ways to protect against certain practices we have determined are unacceptable.

Consumer Federation's recommendation that carriers be required to report "all practices which a reasonable person would consider to be unacceptable" will not be adopted. We are not convinced that carrier self-reporting is the most effective way to obtain accurate, unbiased information about carrier practices that may be questionable. We believe a different approach will be more effective in informing LEP consumers about ways to protect against fraud than requiring carriers to provide fraud notices to them. There are better ways for the Commission to obtain the information it needs to help to inform LEP consumers about fraud than requiring carriers to submit fraud reports.

As discussed above, the efforts already underway include the Commission's new telecommunications fraud unit that works with CAB and CBOs to prevent fraud. Implementation of the CIMS database will provide the Commission with improved information. We are working to integrate CBOs in our outreach, education and complaint resolution processes through the TEAM Program. We also require carriers to allow CBOs to represent any customer who has authorized a CBO to assist it, and require carriers to provide LEP customers with an in-language notice directing them to the CalPhoneInfo website.

Thus, the Commission is implementing steps that will help it obtain the information it needs to identify fraud against LEP consumers and to inform

those consumers so they may protect themselves from fraud, and to do this in a way that does not discourage carriers from in-language marketing. Before requiring carriers to issue fraud notices to LEP consumers or to submit fraud reports to the Commission, we will first assess the effectiveness of those efforts already underway and try other reasonable alternatives for ensuring that LEP consumers are informed about ways to protect against fraud.

4.3. Alternatives Identified During the Tracking Workshop

The Workshop Report states that the parties consistently disagreed about whether the Commission should require the carriers to implement systematic language preference and complaint tracking, and did not agree to any alternative.[172] However, according to the Workshop Report, the parties agreed to explore six alternatives identified at the Tracking Workshop which, if implemented together, might provide reasonable substitutes to language preference tracking and reporting. These alternatives as discussed are briefly summarized below.

4.3.1. Rely on Census Data for Information on LEP Populations

Several carriers recommend that census data would serve the same purpose as the proposed language preference tracking and reporting rules, and that this information is readily available at relatively minimal cost. Issues raised concerning the use of census data included correlating census data with carriers'

[172] Workshop Report, p. 1.

service areas, timeliness of census information, and the quality of the self-reported census data.

4.3.2. Use of the Commission's Consumer Information Management System (CIMS) for Assessing Whether LEP Consumers are Facing Unique Challenges and to Identify Those Challenges

Carriers recommend using CIMS data to assess whether LEP consumers face unique challenges and to identify those challenges. Consumer representatives acknowledge that CIMS data is a useful measure of complaint activity, but are concerned that CIMS data represents only a fraction of all complaints lodged against carriers.

4.3.3. Conduct Customer Surveys to Gauge Whether LEP Consumers Are Facing Unique Challenges Relative to the General Population, or Whether Subgroups of LEP Consumers Have Unique Challenges

Instead of requiring carriers to track and report complaints, carriers suggest that the Commission instead conduct customer surveys to gauge whether LEP consumers face unique challenges relative to the general population, or whether subgroups of LEP consumers have unique challenges. Some carriers state that they already conduct small-scale internal surveys for monitoring of customer satisfaction.

Several parties state that the parameters of any survey would need to be further defined, including:

- Who will finance the surveys?
- How frequently would surveys be conducted?

- Can surveys provide the ongoing monitoring capability envisioned under LEP complaint and language preference tracking and reporting?
- Can parties agree on who should conduct the survey?
- What criteria, such as margin of error for large and small subpopulations, are appropriate?
- Can surveys better identify specific LEP issues and provide better information than LEP complaint tracking and reporting?

4.3.4. Service Quality Enhancement and Other Internal Processes

Several carriers suggested that their internal tools for monitoring customer satisfaction, including internal customer quality surveys and informal discussions with their call-center staff allowed them to determine whether any issue warranted further attention or remediation and that, in conjunction with meetings with CAB, were sufficient to address any Commission or CBOs concerns regarding LEP consumers.

Parties agreed that informal discussions may result in greater candor and willingness to address problems. Consumer groups were receptive to informally attempting to resolve issues but want greater transparency. Concerns were raised as to the resources available to the Commission to investigate and compel carriers to take action to address LEP consumer complaints, and whether carriers' internal surveys would detect problems in the larger LEP consumer population.

4.3.5. Funding and Resources for CBOs

Some parties stated that CBOs perform a vital role in fielding and representing LEP consumers' concerns, and suggested that directing more resources toward CBOs would allow them to communicate more actively with

carriers and the Commission. Parties agreed that greater CBO participation would be of value, and suggested exploring funding sources available outside of the state budget process, and to consider which CBOs might be supported in light of their varying ability to perform outreach or concerns about accepting carrier funding.

4.3.6. Regulatory Complaint Resolution Forum (RCRF)

Carriers supported further dialogue via the RCRF, which has recently been reinstated. Structured appropriately, the RCRF could serve as a vehicle for addressing and resolving consumer LEP problems and complaints. The details of how best to structure such discussions will need further refinement, including:

- Will CBOs participate in the RCRF and if so, which CBOs and how?
- How frequently should participants meet?
- Should meetings/discussions be recorded and made publicly available?

Parties recommend that the forum should be structured to provide two separate venues for the RCRF to: (1) include open meetings where all carriers and CBOs may address general issues; and (2) special meetings where participation is limited to the involved carrier(s) and appropriate CBOs to address specific issues.

4.4. Parties' Proposals Addressing Phase II-B Issues

The Workshop Report states that, although the parties did not agree to any alternative, the parties agreed that it would be worthwhile to further explore the alternatives. The goal would be to seek agreement on any details necessary for parties to know that their interests would be addressed satisfactorily. Subsequently, the March 19 Ruling authorized parties to submit proposals for

addressing LEP complaint and language preference tracking that may have been developed as a result of discussions occurring after the conclusion of the Tracking Workshop.

On April 2, 2008, Joint Telecommunications Carriers, CDT-Joint Consumer Groups and LIF each filed separate proposals addressing Phase II-B issues, and comments on parties' proposals were submitted on April 16, 2008. The alternatives summarized above are reflected to various degrees in the parties' proposals for addressing Phase II-B Issues.

Joint Telecommunications Carriers unanimously support the alternatives identified at the Tracking Workshop as preferable to any carrier tracking and reporting requirements while CDT-Joint Consumer Groups support adoption of some of the alternatives, but only in combination with CDT-Joint Consumer Groups' proposed carrier tracking and reporting requirements.

Joint Telecommunications Carriers' proposal was developed subsequent to the Tracking Workshop and offers most of the alternatives in a seven-part package to address all Phase II-B language preference and complaint tracking issues.[173] Joint Telecommunications Carriers state that their proposal was developed to provide a way for the Commission to monitor the implementation of the In-Language Marketing Rules. Carriers which did not join in the Joint Telecommunications Carriers' proposal nevertheless support the Joint

[173] Proposal of Joint Telecommunications Carriers Addressing LEP Complaint and Language Preference Tracking, p. 1.

Telecommunications Carriers' proposal, and recommend its adoption by the Commission.[174]

CDT-Joint Consumer Groups state that, in January 2008, they met with representatives from the telecommunications industry to discuss the Joint Telecommunications Carriers' proposal. CDT-Joint Consumer Groups state that the Joint Telecommunications Carriers' proposal lacks any substantive requirements that will enable the Commission to effectively protect LEP consumers against fraud and other abuses. CDT-Joint Consumer Groups propose a "pilot program," which they state was developed to address what the CDT-Joint Consumer Groups perceive as deficiencies in the Joint Telecommunications Carriers proposal.

CDT-Joint Consumer Groups contend that the Joint Telecommunications Carriers' proposal places a significant burden on the Commission and other parties to detect and prevent abusive practices, but only requires carriers to participate in informal meetings and comply with high-level reporting requirements. CDT-Joint Consumer Groups state that they developed an alternative proposal to serve as a pilot program to address their perceived deficiencies in the Joint Telecommunications Carriers' proposal.[175] CDT-Joint Consumer Groups assert that their proposal seeks to balance the benefit of

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[174] Comments of Small LECs on Additional Proposals in Response to ALJ's March 19, 2008 Ruling (p. 1). Comments of Verizon Wireless on Post-Workshop Proposals on Phase II-B Tracking Issues (pp. 1-2). However, Verizon Wireless is also listed as a member of Joint Telecommunications Carriers.

[175] Phase II-B Proposal of CDT-Joint Consumer Groups in Response to ALJ's March 19, 2008 Ruling Permitting the Filing of Post-Workshop Proposals on Phase II-B Tracking Issues, p. 3.

providing the Commission with useful data while reducing the high costs carriers allege they will incur to implement carrier tracking requirements.

CDT-Joint Consumer Groups state that adopting only some of their suggestions is not sufficient to protect LEP customers and offer their proposal as a "package deal," which CDT-Joint Consumer Groups state should be adopted in addition to the Joint Telecommunications Carriers' proposal if the Commission adopts the Joint Telecommunications Carriers' proposal. CDT-Joint Consumer Groups recommend that the Commission reassess the proposed pilot program at least one year after implementation to evaluate its usefulness and cost effectiveness.

LIF states that its proposal offers less burdensome alternatives to address issues identified in D.07-07-043.

The following summarizes each component of parties' proposals, and addresses parties' comments on that component and the issues intended to be addressed by the component.

4.4.1. Compliance Reports

Joint Telecommunications Carriers propose that carriers which have triggered the In-Language Marketing Rules for one or more languages be required to submit a compliance report to the Commission on or before May 15, 2008.[176] Joint Telecommunications Carriers propose that carriers be required to make representatives available to meet with Commission staff, CBOs and Commissioners to discuss a carrier's compliance report. The proposed

[176] Proposal of Joint Telecommunications Carriers Addressing LEP Complaint and Language Preference Tracking, Telecommunications Industry Phase II Proposal, p. 1.

compliance reports will include a list of the languages for which a carrier has triggered the In-Language Marketing Rules, a narrative summarizing the various types of in-language support that the carrier currently provides in the triggered language(s) *(e.g.*, foreign-language website, or foreign-language interactive voice response (IVR) system), and a description of how the support materials are made available to customers.

CDT-Joint Consumer Groups recommend modifying this proposal so that carriers who trigger the In-Language Rules are required to submit the Joint Telecommunications Carriers' proposed compliance report to the Commission within 60 days after triggering the In-Language Marketing Rules.[177] Joint Telecommunications Carriers support this modification to its proposal.[178]

Discussion

Parties agree that carriers that have triggered the In-Language Marketing Rules for one or more languages should be required to submit a compliance report to the Commission, and that this compliance report should be filed with the Commission within 60 days after triggering the In-Language Marketing Rules. The compliance reports will allow the Commission to identify carriers that are marketing in non-English languages and the LEP communities which are targeted by such marketing, and we will adopt this proposal.

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[177] Phase II-B Proposal of CDT-Joint Consumer Groups in Response to ALJ's March 19, 2008 Ruling Permitting the Filing of Post-Workshop Proposals on Phase II-B Tracking Issues, p. 9.

[178] Comments of Joint Telecommunications Carriers on Proposals of the CDT-Joint Consumer Groups and the Latino Issues Forum Addressing LEP Complaint and Language Preference Tracking, pp. 5-6.

The compliance reports that we will require must include a list of the languages for which a carrier has triggered the In-Language Marketing Rules, a summary of the types of in-language support that the carrier provides in the triggered language(s), and a description of how the support materials are made available to customers. The In-Language Marketing Rules have been revised to reflect this requirement (*see* Appendices B and C).

4.4.2. Tracking LEP Consumer Complaints and Language Preference

Consistent with their comments in Phase I of this proceeding, carriers unanimously oppose LEP complaint and language preference tracking.[179] Joint Telecommunications Carriers contend that establishing systems to do this is complex and costly, requires carriers to speculate about a customer's language proficiency or risk offending customers, and will produce subjective and unreliable data having questionable benefits. AT&T contends that true customer complaints, rather than general inquiries made to carriers' customer care centers, are those complaints made to the Commission and recorded in the CIMS database.[180]

Joint Telecommunications Carriers instead propose that the Commission's CIMS be specifically designed to track, among other things, LEP consumer complaints, and that carriers and consumer groups designate representatives to

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[179] AT&T Phase II-B Opening Comments, pp. 8-13. CTIA Phase II-B Opening Comments, pp. 8-11. Cox Phase II-B Opening Comments, pp. 6-7. Small LECs Phase II-B Opening Comments, pp. 4-6. SureWest Phase II-B Opening Comments, pp. 4-5. Verizon California Phase II-B Opening Comments, pp. 10 - 11. Verizon Wireless Phase II-B Opening Comments, pp. 20 - 22.

[180] AT&T Phase II-B Reply Comments, p. 8.

serve as a technical advisory committee to the CAB to assist with the development, testing and operation of the CIMS data base, including collaboratively determining how to appropriately define LEP consumer complaints.[181]

Consumer groups maintain that complaint and language preference tracking by carriers is needed to protect LEP consumers. CDT-Joint Consumer Groups and LIF oppose Joint Telecommunications Carriers proposal to rely on CIMS data for information concerning LEP consumer complaints, contending that complaint data collected by carriers will provide the Commission with evidence of ongoing, specific problems faced by LEP customers.[182] CDT-Joint Consumer Groups state that CIMS data may prove useful but represents only a fraction of consumer complaints. CDT-Joint Consumer Groups contend that CIMS data will not give the Commission sufficient insight into the LEP customer experience because consumers must first contact their carrier before calling the CAB, and, as a result, particular issues will never reach the Commission and CAB's data will be incomplete.

CDT-Joint Consumer Groups instead recommend that carriers be required to, at a minimum, report complaints escalated to a carrier's executive level office through its appeals process, and to report quarterly to the Commission all in-language complaints handled by the carriers' appeals processes, including

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[181] Proposal of Joint Telecommunications Carriers Addressing LEP Complaint and Language Preference Tracking, Telecommunications Industry Phase II Proposal, p. 1.

[182] Phase II-B Proposal of CDT-Joint Consumer Groups in Response to ALJ's March 19, 2008 Ruling Permitting the Filing of Post-Workshop Proposals on Phase II-B Tracking Issues, pp. 4 - 5. Latino Issues Forum Comments on Phase II-B Proposals, pp. 4 - 6.

complaints alleging or confirming fraudulent behavior on behalf of the carrier, a third party vendor, or agent.[183] CDT-Joint Consumer Groups recommend that the initial report provide a one-time description of the carrier's complaint handling process, including any specific criteria used by its customer service representatives to determine how a complaint is escalated. In addition to inclusion in quarterly reports, CDT-Joint Consumer Groups recommend that carriers be required to immediately report instances of fraud discovered through their complaint process or in the course of business.

CDT-Joint Consumer Groups propose that carriers which do not have an appeals or escalation process to handle complex complaints be required to file a letter with the Commission's Executive Director stating this, and include a description of the carrier's current complaint handling process and information on how the carrier handles complaints which take longer than 14 days to resolve. CDT-Joint Consumer Groups propose that the Commission then work with the carrier to provide data on LEP consumer complaints in the most cost-effective manner for that carrier.

While CDT-Joint Consumer Groups propose that carriers report complaints escalated to a carrier's executive level office through a carrier's appeals process, LIF instead recommends that carriers be required to track all (or a sample of) telephone calls to a carrier's in-language customer service. LIF states that use of in-house or third-party in-language customer service should

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[183] Phase II-B Proposal of CDT-Joint Consumer Groups in Response to ALJ's March 19, 2008 Ruling Permitting the Filing of Post-Workshop Proposals on Phase II-B Tracking Issues, pp. 4 - 5.

make it easy to identify when a complaint should be tracked, and will focus on identifying customer service and fraud challenges faced by LEP consumers.

Joint Telecommunications Carriers, Small LECs and Verizon Wireless oppose CDT-Joint Consumer Groups' and LIF's proposals for tracking and reporting LEP consumer complaints. Joint Telecommunications Carriers and Verizon Wireless contend that CDT-Joint Consumer Groups misunderstand the nature of the matters which are handled by carriers' executive offices, and that LIF's proposal imposes tracking requirements on carrier systems which are not designed for that purpose.[184]

Verizon Wireless asserts that CDT-Joint Consumer Groups' and LIF's complaint tracking and reporting proposals are unworkable and counterproductive. Verizon Wireless states that CDT-Joint Consumer Groups' proposal will not produce a subset of LEP consumer complaints to a carrier's customer service representatives because carriers' executive appeals processes typically handle complaints originating through different channels such as the Commission or other agencies. Verizon Wireless contends that LIF's proposal will be costly, frustrating to customers by complicating their customer service experience, confusing to administer, and will not produce useful data.

Joint Telecommunications Carriers and Verizon Wireless recommend that the Commission allow time to determine the usefulness of the new CIMS database, and Joint Telecommunications Carriers recommend allowing the

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[184] Comments of Joint Telecommunications Carriers on Proposals of the CDT-Joint Consumer Groups and the Latino Issues Forum Addressing LEP Complaint and Language Preference Tracking, pp. 7 - 10. Comments of Verizon Wireless on Post-Workshop Proposals on Phase II-B Tracking Issues, pp. 3 - 5.

TEAM program to be implemented and assessed before adopting additional, time consuming, and costly tracking and reporting requirement for carriers.[185]

Discussion

As stated above, we will first assess the effectiveness of those efforts already underway and try other reasonable alternatives before requiring carriers to establish LEP complaint and language preference tracking and reporting systems which may not produce the information the Commission needs to assess the needs of LEP consumers. One of the efforts already underway is implementation of the CIMS database to provide the Commission with improved information on complaints.

We conclude that we should first assess the usefulness of CIMS data before requiring carriers to establish LEP complaint and language preference tracking and reporting systems. A significant benefit of relying on CIMS data is that it does not require us to precisely define "complaint." We do not agree with AT&T that "true" customer complaints are limited to those complaints made to the Commission. However, informal contacts with CAB that are recorded in the CIMS database are easily identified, and provide objective indications of the kinds of LEP concerns we wish to know about.

CDT-Joint Consumer Groups and LIF contend that only a small fraction of customers initiating complaints with carriers will also contact the Commission,

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[185] The TEAM program was established pursuant to D.07-07-043 (OP 13) to integrate CBOs in the Commission's outreach, education and complaint resolution processes. The TEAM program facilitates and further consumers' knowledge telecommunications services by operating and managing a statewide network of CBOs providing in-language education, outreach and complaint resolution services to LEP consumers statewide.

so CIMS data is inadequate for monitoring LEP consumer complaints. However, CDT-Joint Consumer Groups' proposal for carriers to report complaints escalated through a carrier's appeals process and LIF's proposal to track telephone calls to a carrier's in-language customer service each also capture only a fraction of all complaints.

Thus, CDT-Joint Consumer Groups' and LIF's proposals contain the same shortcoming they allege renders CIMS data inadequate. CDT-Joint Consumer Groups' or LIF's complaint tracking proposals also require significant administrative coordination that is not required with CIMS data. Therefore, we will not adopt CDT-Joint Consumer Groups' or LIF's tracking proposals because the quality and reliability of the data produced under those proposals will not be better than that available from the CIMS database but are more costly and require greater coordination than that associated with using CIMS data.

Carriers object to the Commission effectively treating calls fielded by CAB and recorded in CIMS as "complaints." Cox asserts that the PD defines "complaint," and recommends that the Commission delete the portion of the PD that concludes any calls to CAB by LEP consumers are complaints.[186] Although the PD does not, in fact, define "complaint," the PD describes informal complaints to the Commission that are recorded in the CIMS database as the kinds of LEP concerns we wish to know about.

With respect to competitive local carriers (CLCs), the Commission already defines informal complaints as "[i]nformal request for assistance made to the

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[186] Opening Comments of Cox on Commissioner Peevey's Proposed Phase II Decision, p. 4.

[CAB] with supporting documentation concerning a CLC's service, rates or other matters."[187] Except for the reference to CLCs, this definition is comparable to the PD's characterization of the CAB contacts to which Cox objects.

As discussed above, for purposes of published CAB data, we will describe the calls to CAB included in CIMS data as "contacts." and include the explanation that CAB contacts include complaints and inquiries. We will also include the explanation that callers to CAB are required to contact their carrier before CAB will assist them.

Because CAB requires callers to contact their carrier before CAB will assist them, we may reasonably conclude that, if CAB ultimately assists a caller and records that event in CIMS, the CIMS consumer contact record relates to a consumer who was not satisfied by its carrier, whether it be a complaint or an inquiry about which the customer was dissatisfied with the carrier's response.

Moreover, because CAB requires callers to contact their carrier before CAB will assist them, carriers have an opportunity to address and resolve customer concerns before the customer turns to CAB. Thus, relying on CIMS data for information on LEP consumer contacts has the added benefit of motivating carriers to satisfactorily resolve LEP customer concerns so that customers are not compelled to call CAB for help and have that event recorded in CIMS.

We will not adopt Joint Telecommunications Carriers' proposal that the CIMS database be specifically designed to track, among other things, LEP consumer complaints, or their proposal that carriers and consumer groups serve

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[187] Consumer Protection and Consumer Information Rules for CLCs, D.95-07-054, Appendix B, Section 2.3. Section 2.4 of the Consumer Protection and Consumer Information Rules for CLCs defines "Formal Complaint."

as a technical advisory committee to assist with the development, testing and operation of the CIMS data base. Joint Telecommunications Carriers' proposal is untimely because implementation of the CIMS database is well underway and is expected to become operational in the near future. Nevertheless, we anticipate a continuing need to update and modify CIMS, and the Commission welcomes recommendations on improvements that should be made. However, we prefer to receive input concerning CIMS modifications on an informal basis so that the process of modifying CIMS is administratively efficient.

Some parties apparently believe that the CIMS database is not capable of tracking LEP consumer complaints because the Commission rejects Joint Telecommunications Carriers' proposal that the CIMS database be specifically designed to track LEP consumer complaints.[188] This is incorrect. The CIMS database is capable of tracking consumer contacts (complaints and inquiries) by consumers' preferred language. We do not adopt Joint Telecommunications Carriers' proposal because CIMS already has the recommended capability.

4.4.3. Customer Satisfaction Surveys

According to the Workshop Report, some carriers at the Tracking Workshop stated that they currently conduct small-scale surveys for monitoring of customer satisfaction. In its workshop position paper, AT&T recommends that the Commission obtain language preference and complaint data through,

[188] Comments of CTIA on Proposed Decision of Commissioner Peevey, p. 5. Opening Comments of Cox on Commissioner Peevey's Proposed Phase II Decision, pp. 2–4.

among other things, customer surveys before imposing new requirements on carriers.[189]

AT&T's presentations at the Tracking Workshop state, among other things, that market surveys are one of the ways the Commission can ensure complaints of LEP customers are being addressed,[190] and that the results from AT&T's Marketing Satisfaction and Customer Experience Evaluation surveys are a "measure of success" showing that its Language Centers are leading the way for Consumer Markets Group in the area of customer service.[191]

CDT-Joint Consumer Groups recommend that the Commission conduct a consumer satisfaction survey of in-language communities to supplement, but not replace, reported complaint data.[192] CDT-Joint Consumer Groups contend that, in the absence of comprehensive complaint statistics, a customer satisfaction survey may allow the Commission to understand how LEP customers are treated by carriers. CDT-Joint Consumer Groups recommend a large and comprehensive survey, but proposes that all stakeholders, through workshops, jointly develop with the Commission the specifications and scope of the survey.

CDT-Joint Consumer Groups propose that, at a minimum, the Commission retain an independent, third-party company acceptable to all

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[189] November 2, 2007 AT&T Workshop Position Paper, p. 2.

[190] November 9, 2007 AT&T Complaint Tracking Presentation, p. 12.

[191] November 8, 2007 AT&T Language Preference Presentation, p. 5

[192] Phase II-B Proposal of CDT-Joint Consumer Groups in Response to ALJ's March 19, 2008 Ruling Permitting the Filing of Post-Workshop Proposals on Phase II-B Tracking Issues, pp. 5-6.

stakeholders to survey a randomly selected sample of LEP customers throughout California. CDT-Joint Consumer Groups propose that the survey be funded by carriers serving significant LEP populations, based on information provided through a one-time demographic report submitted by carriers (discussed below). CDT-Joint Consumer Groups recommend that the results of the survey be made publicly available, including carrier-specific information.

CDT-Joint Consumer Groups' proposal includes a preliminary estimate by Field Research, Inc. (Field Research), of the costs for the proposed survey.[193] CDT-Joint Consumer Groups assert that the estimated cost of the survey is less than one percent of the combined revenue of Verizon, AT&T and Sprint ($93.5 billion, $118.93 billion and $40.15 billion, respectively).

CDT-Joint Consumer Groups state that the specific questions, number of participants, and other parameters will be developed in collaboration with Commission Staff, carriers, consumer groups and the survey consultant.[194] The preliminary estimate is based on a proposed survey of residential telephone customers and non-customers in California among households where LEP adults reside, and whose primary language is Spanish, Cantonese, Mandarin, Korean, Vietnamese, or Tagalog.

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[193] Phase II-B Proposal of CDT-Joint Consumer Groups in Response to ALJ's March 19, 2008 Ruling Permitting the Filing of Post-Workshop Proposals on Phase II-B Tracking Issues, Attachment B.

[194] Phase II-B Proposal of CDT-Joint Consumer Groups in Response to ALJ's March 19, 2008 Ruling Permitting the Filing of Post-Workshop Proposals on Phase II-B Tracking Issues, pp. 5-6.

The Field Research proposal states that interviews will be conducted with a stratified sample of 15,000 LEP households that currently have one or more types of residential telephone service, and those which report having been without any residential telephone service for an extended period in the recent past. Sample selection will be performed using random sampling of telephone households in all areas of the state, random sampling of telephone households in high density Latino and Asian population areas, and from randomly selected telephone customers with Hispanic, Chinese, Korean, Vietnamese or Tagalog surnames. Field Research estimates that this sample will be large enough to provide the Commission with estimates of the problems encountered by LEP customers within each major telephone service type with a reasonably high degree of statistical accuracy and reliability.

Field Research estimates the total costs for the survey to be from $2 million to $2.3 million, and will require 24 months to complete. The estimate assumes that interviews of 15 to 20 minutes each will be conducted in six non-English languages using mostly closed-ended questions, and up to eight attempts will be made to interview an adult in the selected households. The costs include presentations of the main survey findings to Commission staff, an executive summary report, a customer and a non-customer survey report and a technical appendix describing the survey methods used to carry out the study.

Field Research states that it will need five months to conduct a pilot test, at a cost of $140,000.00, to test the assumptions underlying the preliminary estimate before it could develop a final, specific estimate. The pilot test will include up to 500 LEP customers (approximately 250 Spanish speaking and 250 Asian speaking) from the three sample sources described above, and will provide a preliminary estimate of the number of recent non-customers a survey would

expect to reach overall and by language, and to test the non-customer questionnaire.

Like CDT-Joint Consumer Groups, LIF proposes that an independent, carrier-funded survey of California's LEP population be conducted to identify and report on telecommunications customer service and fraud issues.[195] LIF states that its proposed survey is also supplemental to, and not a replacement for, complaint tracking.

CDT-Joint Consumer Groups contend that carriers oppose the proposed survey because of its cost, time frame and the perceived difficulties in arriving at consensus about questions to be asked of respondents.[196] CDT-Joint Consumer Groups state that the survey information provided by Field Research was not proposed for adoption as presented, but instead was intended to provide the Commission with preliminary guidance on the type and scope of survey that may be needed to appropriately assess the needs of LEP consumers.

CDT-Joint Consumer Groups state that, if appropriate, costs may be reduced once the Commission and parties develop the survey parameters. CDT-Joint Consumer Groups assert that the estimated cost of the survey is a small price relative to carriers' revenues for ensuring that the LEP population is being adequately served. CDT-Joint Consumer Groups contend that the carriers' opposition to a survey is inconsistent with carriers' position in this proceeding

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[195] LIF Phase II-B Proposal, p. 3.

[196] Comments of CDT-Joint Consumer Groups Pursuant to the March 19, 2008 ALJ Ruling, pp. 6-7.

because, according to CDT-Joint Consumer Groups, the carriers emphasized the use of third party data and surveys during the Tracking Workshop.

Joint Telecommunications Carriers oppose CDT-Joint Consumer Groups' and LIF's proposals for a consumer satisfaction survey of in-language communities. Joint Telecommunications Carriers contend that the survey will face formidable challenges and produce stale, unreliable information.[197] The carriers recommend that, before retaining a survey consultant, the Commission conduct a workshop to allow parties to participate in crafting the LEP survey, and that the survey questions be acceptable to all stakeholders.[198]

Joint Telecommunications Carriers state that, in certain circumstances, a survey can be an effective way to gauge customer satisfaction, but assert that the complications associated in conducting a survey of LEP consumers will diminish the reliability of the survey results. CTIA asserts that the TEAM program eliminates the need for a survey because it provides the Commission the same information that the LEP consumer survey will provide.[199]

Verizon Wireless contends that the survey will be burdensome, complicated, expensive, and that there are potentially insurmountable logistical

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[197] Comments of Joint Telecommunications Carriers on Proposals of the CDT-Joint Consumer Groups and the Latino Issues Forum Addressing LEP Complaint and Language Preference Tracking, pp. 10-11.

[198] Comments of AT&T on the Phase II Proposed Decision of Commissioner Peevey, p. 5. Comments of CTIA on Proposed Decision of Commissioner Peevey, pp. 7-10. Opening Comments of Cox on Commissioner Peevey's Proposed Phase II Decision, p. 3. Opening Comments of SureWest on Phase II Proposed Decision, p. 3. Comments of Verizon Wireless on the August 5, 2008 Proposed Decision of Commissioner Peevey, pp. 2–4.

[199] Comments of CTIA on Proposed Decision of Commissioner Peevey, pp. 9-10.

obstacles to the proposed survey.[200] Verizon Wireless asserts that those surveyed will be annoyed, and requiring carriers which serve LEP consumers to assist in the survey will discourage carriers from serving LEP consumers.

CTIA and Verizon Wireless assert that a LEP consumer survey must be funded by the Utilities Reimbursement Account (URA) because the Commission does not have the authority to adopt a funding mechanism for the survey outside of the URA.[201] Verizon Wireless contends that the proposed funding mechanism conflicts with the Legislature's exclusive control over the Commission's budget, and that the Commission may spend no more money to provide services than the Legislature has appropriated.

CTIA states that, if the Commission determines the survey is feasible, the survey costs should be treated as a cost of Commission operations and financed by the URA because this approach eliminates the need to determine each carrier's share of costs, and for the Commission to issue invoices and collect those costs.

Discussion

We have determined above that CIMS data will help the Commission better assess the needs of LEP consumers. However, we recognize that CIMS data represents only a fraction of all complaints, and only includes information from those consumers who contact the Commission. We found in Phase I that victims of fraud who are not fluent in English may be less likely to complain

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[200] Comments of Verizon Wireless on Post-Workshop Proposals on Phase II-B Tracking Issues, pp. 6-9.

[201] Comments of Verizon Wireless on Proposed Decision of Commissioner Peevey, pp. 5–6. Comments of CTIA on Proposed Decision of Commissioner Peevey, p. 9.

about a fraudulent experience,[202] and agree that LEP consumers are less likely than other consumers to contact the Commission or carriers directly to complain about problems they experience. Thus, CIMS data alone will not provide us with complete information about the needs of LEP consumers.

We are not persuaded by carriers' arguments that customer satisfaction surveys are logistically insurmountable, too costly, and will not produce reliable data. CDT-Joint Consumer Groups assert that the Field Research preliminary estimate of the cost of the survey is less than one percent of the combined revenue of $252.58 billion of Verizon, AT&T, and Sprint. We note that the Field Research estimated survey cost is actually less than one-thousandth of 1% (0.00099%) of the combined revenue of Verizon, AT&T, and Sprint. However, we recognize that this is a comparison of the carriers' national revenues. Nevertheless, the estimated cost of the pilot test and survey are minimal when compared to the carriers' asserted costs to establish and maintain tracking systems.

For example, Field Research's estimated pilot test and survey cost is 5% of the carriers' estimated cost of establishing carrier tracking systems, and 2.1% of the carriers' estimated annual costs of $119 million to maintain those systems. The estimated cost of the proposed survey and pilot test is only 55% more than what AT&T states is the cost of postage for a one-time mailing to AT&T California's residential customers.

Thus, the cost of a customer satisfaction survey is very low when compared to other options, and is, therefore, a reasonable alternative to requiring

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[202] D.07-07-043, Finding of Fact (FOF) 49.

carriers to establish tracking systems. We recognize that the actual costs to conduct a customer satisfaction survey may be different, and possibly higher, than Field Research estimates. However, the Field Research estimate is a reasonable approximation of the costs that will be incurred to conduct a customer satisfaction survey.

The issues Field Research identifies with respect to conducting a survey of LEP consumers do not present potentially insurmountable logistical problems. Instead, the issues identified by Field research are the kind to which statistical and survey research experts are accustomed. While Field Research indicates a survey of LEP consumers presents challenges, Field Research describes reasonable ways to address those challenges.

Some carriers routinely conduct customer satisfaction surveys, and AT&T, for example, uses the results from its Marketing Satisfaction and Customer Experience Evaluation surveys to measure the customer service provided by its Language Centers. Carriers such as AT&T would not continue to conduct customer satisfaction surveys if the surveys were logistically insurmountable, too costly, or produced unreliable information. Carriers' opposition to CDT-Joint Consumer Groups' proposal to conduct a customer satisfaction survey is inconsistent with carriers' position in the Tracking Workshop and lacks merit.

A consumer satisfaction survey of in-language communities like that proposed by CDT-Joint Consumer Groups will help the Commission better understand how LEP customers are treated by carriers and to identify the concerns of LEP consumers who may not file complaints. A customer satisfaction survey is a reasonable way for the Commission to obtain information about LEP consumers because a customer satisfaction survey, as outlined by CDT-Joint Consumer Groups, is doable at a reasonable cost, will not impose an

undue financial burden on carriers, and is feasible using existing infrastructure. Therefore, we will adopt the proposal.

In general, the scope, parameters and assumptions described by Field Research for a pilot test and survey of LEP consumers is reasonable. Therefore, we will direct Commission staff to undertake steps needed to retain an organization to conduct the pilot test and survey in accordance with the general scope and parameters described by Field Research. Once an organization has been retained to conduct the pilot test and survey, Commission staff is directed to convene a workshop to develop recommendations on the final scope, parameters and specifications of the pilot test and survey, and to present those recommendations in a resolution for the Commission's consideration.

The carriers recommend that the Commission hold a workshop to allow parties to participate in crafting the LEP survey before retaining a survey consultant, and that the survey questions be acceptable to all stakeholders. As discussed above, parties were provided a workshop opportunity to discuss issues related to LEP consumer complaint and language preference tracking, including, among other things, consideration of mechanisms to monitor LEP customer satisfaction and complaints other than carrier-based complaint tracking.

According to the Workshop Report, during the Tracking Workshop carriers recommended, among other things, customer surveys as a way to determine whether LEP consumers face unique challenges.[203] The Workshop

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[203] Staff Report on November 8 and 9, 2007 Workshops: Limited English Proficiency Tracking, Reporting, and Complaints, pp. 14-15.

Report states that Tracking Workshop participants discussed this option at length, but were unable to reach agreement or consensus. The Workshop Report also states that the parties agreed that it would be worthwhile to explore this and other alternatives to seek agreement. Similarly, carriers' comments on the Workshop Report stated that, although consensus was not reached at the Tracking Workshop, parties began further discussion of options including a survey of LEP consumers and recommended that the Commission provide parties time to continue a collaborative process to reach mutually workable solutions.[204]

In response to carriers' formal and informal requests following the Tracking Workshop for further opportunities to reach consensus with parties on potential alternatives, including a LEP consumer survey, the Commission delayed action on Phase II-B issues for four months to allow parties additional time to reach consensus on any or all Phase II-B issues.[205] The March 19 Ruling then provided parties yet another opportunity to present proposals for addressing LEP complaint and language preference tracking issues developed as a result of discussions occurring at and after the conclusion of the Tracking Workshop.

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[204] Post-Workshop Statement of CTIA, pp. 5–6, 8. CTIA Phase II-B Opening Comments, p. 2. CTIA Phase II-B Reply Comments, p. 9. Post-Workshop Statement of AT&T, pp. 1, 2–3. Cox California Telcom, LLC, Phase II-B Opening Comments, pp. 7, 12. Post-Workshop Statement of Cricket Communications, p.1. Verizon California Post-Workshop Statement, p. 1.

[205] March 19, 2008 Administrative Law Judge's Ruling Permitting the Filing of Post-Workshop Proposals on Phase II-B Tracking Issues, pp. 2–5.

As discussed above, in response to the March 19 Ruling, the CDT-Joint Consumer Groups and LIF proposed, among other things, a survey of LEP consumers like that originally recommended by the carriers. The CDT-Joint Consumer Groups proposal states that they met with carriers on April 10, 2008, and that, while the carriers emphasized the use of third party data and surveys during the Tracking Workshop, the carriers subsequently and inconsistently opposed the proposed survey.[206] Carriers' comments on the CDT-Joint Consumer Groups proposal confirm the carriers' opposition to a LEP consumer survey.[207]

Carriers raise the same arguments concerning the survey in their comments on the PD as raised in their comments on the CDT-Joint Consumer Groups proposal and in their Phase II-B comments. Carriers' comments on the PD do not explain why another workshop will produce a different outcome than that from the November 8 and 9, 2007 Workshops or during the intervening months provided to parties to reach consensus on Phase II-B issues.

This decision directs Commission staff to undertake steps to retain an organization to conduct the pilot test and customer satisfaction survey consistent with the general scope and parameters presented by Field Research as described in this decision. This survey is intended to obtain information about the carriers'

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[206] Phase II-B Proposal of CDT-Joint Consumer Groups in Response to ALJ's March 19, 2008 Ruling Permitting the Filing of Post-Workshop Proposals on Phase II-B Tracking Issues, pp. 6-7.

[207] Comments of Joint Telecommunications Carriers on Proposals of the CDT-Joint Consumer Groups and the Latino Issues Forum Addressing LEP Complaint and Language Preference Tracking, pp. 10-11

LEP customers. However, to ensure meaningful results, the survey consultant should include a sample of English-speaking customers to serve as a control group for comparison purposes, and the survey results should include a comparative analysis of English-speaking and LEP respondents.

After an organization has been retained to conduct the pilot test and customer satisfaction survey, the decision directs Commission staff to convene a workshop to develop recommendations on the final scope, parameters and specifications of the pilot test and survey. Thus, parties will have an opportunity to participate, through a workshop, in developing the specifics of the survey.

The State contracting requirements for retaining a consultant of the kind ordered in this decision are complex and will require that, among other things, the Commission issue a Request for Proposals (RFP) and conduct a bidder evaluation and selection process. The Field Research estimate and this decision provide enough guidance for Commission staff to prepare a complete RFP sufficient to select a survey consultant. To hold workshops prior to selecting the consultant that will perform the survey would be premature and unnecessary because the specific parameters, sampling methods and survey instrument will not be developed until after the survey consultant has been selected.

CTIA contends that the actual cost of the survey is unknown, and that the Commission should first weigh the actual survey costs against the potential benefits of the survey before committing to a survey.[208] The actual cost of the survey can not be known until responses to the LEP survey RFP are received and evaluated. However, the RFP should provide guidance to potential bidders

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[208] Comments of CTIA on Proposed Decision of Commissioner Peevey, p. 9.

about the expected range of costs that will be considered acceptable. The Commission has already weighed the potential costs of the survey against the option of requiring carriers to establish tracking systems, and, as discussed above, has determined that the costs are reasonable in relation to the benefits of the survey.

CTIA contends that the TEAM program eliminates the need for a survey because it provides the Commission with the same information that the LEP consumer survey will provide. This is not correct. The reports produced by the TEAM program will analyze the program's performance with respect to outreach, educational activities and complaint resolution services.[209] Much of the information that will be reported by the TEAM program will be anecdotal and will not have the scope, validity, reliability, and statistical significance of that resulting from the LEP consumer survey we order.

For all of the reasons discussed above, the Commission will not adopt carriers' request for further workshops prior to Commission staff undertaking steps to retain an organization to conduct the pilot test and customer satisfaction survey we order.

Concerning the recommendation of Cox that the LEP consumer survey questions be acceptable to all stakeholders, the Commission will consider input/interests of all parties during the workshop we order Commission staff to convene. Thus, all parties will have an opportunity to participate in developing acceptable survey questions. However, the Commission will not permit parties' inability to reach consensus on issues related to the LEP consumer survey,

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[209] RFP 07 PS5736, pp. 9,

including the lack of unanimous agreement among the parties on the acceptability of survey questions, to prevent the Commission from moving forward with this effort.

We do not at this time see good reasons why the aggregated survey results should not be made publicly available. However, no residential subscriber information, as specified in § 2891, should be disclosed. We direct that the LEP consumer survey workshop include as a topic, what other survey information, if any, should not be publicly disclosed.

The costs to conduct the survey and pilot test should be borne by carriers. As discussed above, a customer satisfaction survey is likely to be far less costly than requiring carriers to establish and maintain tracking systems. Thus, we have selected an alternative which is not unduly burdensome for carriers because the costs of a survey are relatively low compared to other alternatives, and those relatively low costs will be shared by carriers providing non-exempt services that have annual intrastate revenues of $10 million or more.

We will not adopt CDT-Joint Consumer Groups proposal that the survey be funded only by carriers serving significant LEP populations based on information provided through a one-time demographic report submitted by carriers. Because the survey will address LEP consumers who may be served by any carrier providing non-exempt services, the costs should be allocated to carriers based on intrastate revenues. However, as discussed below, carriers with less than $10 million in annual intrastate revenues and carriers serving only wholesale or business customers should be exempt from the obligation to share in the cost of the consumer satisfaction survey and pilot test.

We do not decide at this time whether the survey should be periodically repeated as a way to measure changes in consumer satisfaction over time.

Instead, we direct that the workshop include in its agenda whether the survey should be periodically repeated, and, if so, how frequently this should be done and the estimated cost of doing so. Staff is directed to prepare a resolution with recommendations on whether the survey should be one-time or periodic, and if periodic, the frequency with which the survey should be repeated.

Verizon asserts that the Commission's plan to have carriers reimburse the Commission for the cost of the survey does not comply with the Legislature's exclusive control over the Commission's budget because the Commission may only spend monies to fund its operations that the Legislature has appropriated. Verizon contends that the Commission must fund the survey through the Utilities Reimbursement Account (URA). Verizon further asserts that the Commission cannot rely on § 701, which allows the Commission to take actions which are "necessary and convenient" in the exercise of its power, to disregard the provisions of the URA (§ 401, *et seq*.)

Verizon points to three California Supreme Court (Cal Supreme Court) cases to support its assertions. In *Southern California Gas Company v. Public Utilities Commission* (1979) 24 Cal.3d 653, the Cal Supreme Court determined that the Commission exceeded its authority by establishing a mandatory Home Insulation Financing Assistance Program (HIFAP), and thereby disregarded the Legislature's desire that participation in the HIFAP be permissive or optional. The Cal Supreme Court determined that § 701 does not permit the Commission to disregard the Legislature's express directives embodied in §§ 2781 through 2788.

In *Pacific Telephone and Telegraph Company v. Public Utilities Commission* (1965) 62 Cal.2d 634, the Cal Supreme Court found that the Commission

exceeded its authority by retroactively setting rates when § 728 expressly requires rates to be put into effect on a prospective basis.

In *Assembly of the State of California v. Public Utilities Commission* (1995) 12 Cal.4th 87, the Cal Supreme Court concluded that the Commission exceeded its authority when it established the California Teleconnect Fund with ratepayer monies expressly required by § 453.5 to be returned to customers.

Those cases are not applicable here because, in this case, the Commission is not relying on § 701 to disregard express legislative directives or restrictions. Verizon Wireless states that § 401, *et seq.*, and § 431, *et seq.*, provide the mechanism for funding the Commission's operations, and that funding Commission operations outside this mechanism conflicts with the Legislature's express directives.[210] By implication, Verizon Wireless contends that the LEP consumer survey we order to be undertaken is a part of the Commission's operations, and is therefore subject to the provisions of § 401, *et seq.*, and § 431, *et seq.*[211] In doing so, Verizon Wireless mischaracterizes the undertaking of the LEP consumer survey as "Commission operations."

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[210] Section 401(b) states: The Legislature intends, in enacting this chapter, that the fees levied and collected pursuant thereto produce enough, and only enough, revenues to fund the commission with (1) its authorized expenditures for each fiscal year to regulate common carriers and businesses related thereto, public utilities, and applicants and holders of a state franchise to be a video service provider, less the amount to be paid from special accounts except those established by this article, reimbursements, federal funds, and the unencumbered balance from the preceding year; (2) an appropriate reserve; and (3) any adjustment appropriated by the Legislature.

[211] Section 431 states, in part: The commission shall annually determine a fee to be paid by every electrical, gas, telephone, telegraph, water, sewer system, and heat corporation and every other public utility providing service directly to customers or subscribers and subject to the jurisdiction of the commission other than a railroad, except as otherwise

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provided in Article 2 (commencing with Section 421). The annual fee shall be established to produce a total amount equal to that amount established in the authorized commission budget for the same year, including adjustments for increases in employee compensation, other increases appropriated by the Legislature, and an appropriate reserve to regulate public utilities less the amount to be paid from special accounts or funds pursuant to Section 402, reimbursements, federal funds, and any other revenues, and the amount of unencumbered funds from the preceding year.

Section 432 states: The commission shall establish the fee pursuant to Section 431 with the approval of the Department of Finance and in accordance with all of the following:

(a) In its annual budget request, the commission shall specify both of the following:

(1) The amount of its budget to be financed by the fee.

(2) The dollar allocation of the amount of its budget shall be financed by the fee by each class of public utility subject to the fee. The fee allocation among classes of public utilities shall reflect expenditures by the commission on regulatory and other authorized activities affecting each respective class, and shall bear the same ratio that the commission's workload for each class of public utility subject to the fee bears to the commission's total workload for all public utilities subject to the fee.

(b) The commission may establish different and distinct methods of assessing fees for each class of public utility, if the revenues collected are consistent with paragraph (2) of subdivision (a), except that the commission shall establish a uniform charge per kilowatt hour for sales in kilowatt hours for the class of electrical corporations and a uniform charge per therm for sales in therms for the class of gas corporations.

(c) Within each class of public utility subject to the fee, the commission shall allocate among the members of the class the amount of its budget to be financed by the fee using the following methods:

(1) For electrical corporations, the ratio that each corporation's sales in kilowatt hours bears to the total sales in kilowatt hours for the class.

(2) For gas corporations, the ratio that each corporation's sales in therms bears to the total sales in therms for the class.

(3) For telephone and telegraph corporations, the ratio that each corporation's gross intrastate revenues bears to the total gross intrastate revenues for the class. If the commission determines that there is a need for consultants or advisory services to assist in determining the reasonableness of capital expenditures for a telephone corporation, the commission may adjust the fees within the class so that the

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Section 701 permits the Commission to supervise and regulate every public utility, and to do all things, whether specifically designated which are necessary and convenient in the exercise of such power and jurisdiction. Thus, the Commission could have ordered carriers to establish LEP complaint and language preference tracking systems, and required each carrier to individually bear its own costs for establishing those systems. Alternatively, the Commission could have ordered each carrier to undertake its own survey of its LEP customers, and required each carrier to individually bear its own costs of conducting the survey.

Instead, the Commission has determined that an independent survey consultant conducting a statewide survey of LEP consumers under the Commission's oversight is a better way to obtain information about the carriers' LEP customers. This is because, among other things, the use of a single survey consultant would ensure uniformity and consistency in survey design, methodology and instruments, making the survey results comparable, reliable, and valid.

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expenses for the consultants and advisory services are fully allocated to that telephone corporation.

(4) For water and sewer system corporations, the ratio that each corporation's gross intrastate revenues bears to the total gross intrastate revenues for the class.

(5) For all other public utilities, an appropriate measurement methodology determined by the commission.

(d) Every public utility belonging to more than one class shall be subject to the fee for each class of which it is a member.

(e) For every public utility with annual gross intrastate revenues of seven hundred fifty thousand dollars ($750,000) or less, the commission shall annually establish

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The Commission determined that a single survey of all carriers' LEP customers is more efficient and cost-effective when compared to other options, and, as discussed below, determined that it is reasonable to require carriers that offer non-exempt services to bear the obligation of reimbursing the Commission for the survey costs. The alternative chosen by the Commission directly benefits carriers that offer non-exempt services because it does not require carriers to incur the substantial costs and efforts those carriers could otherwise be required to bear to provide the information the Commission may require of them.[212]

The Commission, as discussed below, excludes from the obligation to reimburse the Commission for the survey costs carriers that offer only wholesale or business services, and excludes carriers with intrastate revenues less than $10 million. The Commission determined that this approach is necessary and convenient, and the Commission's determination is an appropriate exercise of the Commission's power and jurisdiction pursuant to § 701.

The Commission's oversight of a survey of carriers' LEP customers is no more a part of Commission operations as is each carrier's survey of its own LEP customers. The activities associated with the LEP customer survey that are, in fact, part of Commission operations include, among other things, preparing and

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uniform fees to be paid by each such public utility, if the revenues collected thereby are consistent with paragraph (2) of subdivision (a) and subdivision (c).

[212] Section 584 states: Every public utility shall furnish such reports to the commission at such time and in such form as the commission may require in which the utility shall specifically answer all questions propounded by the commission. The commission may require any public utility to file monthly reports of earnings and expenses, and to file periodical or special reports, or both, concerning any matter about which the commission is authorized by any law to inquire or to keep itself informed, or which it is required to enforce. All reports shall be under oath when required by the commission.

administering the RFP to identify and retain a survey consultant, facilitating the workshop that will develop recommendations on the final scope, parameters and specifications of the pilot test and survey, and overseeing the survey consultant conducting the survey. However, the Commission is not directing carriers to reimburse the Commission for the costs of these Commission activities. The Commission's costs for these activities will be recovered pursuant to § 401, *et seq.*, and § 431, *et seq*. Verizon Wireless' characterization of the LEP consumer survey as "Commission operations" is without merit.

The statutes that Verizon Wireless contends require that the survey be funded through the URA expressly exclude from the URA reimbursement costs like those related to the LEP consumer survey that Verizon Wireless and CTIA contend the Commission must include in the URA. Verizon Wireless' and CTIA's assertion that the Commission must fund the LEP consumer survey exclusively through the URA is without merit.

Because reimbursements are expressly excluded from the URA, Verizon Wireless' assertion that the Commission may not exempt from the obligation to reimburse the Commission for the survey costs carriers that offer only wholesale or business services and carriers with intrastate revenues less than $10 million, too, is without merit.[213] There are no express prohibitions that, for reasons of equity, administrative efficiency or otherwise, the Commission may not exempt an individual or group of utilities from their reimbursement obligations.

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[213] The combined cost reimbursement obligation for carriers with intrastate revenues less than $10 million is less than 2.0% of the estimated cost of the survey and pilot study.

However, there are examples of where the Legislature expressly permits the Commission to do so.

The Commission has previously undertaken or overseen activities for which it has required a utility or subset of the utilities in a class to reimburse the Commission for the cost of those activities. For example, the Commission required Roseville Telephone Company (now SureWest) to reimburse the Commission for the cost of the verification and non-regulated operations audit, including fees and expenses of the auditor, and the incremental travel costs of ORA (now DRA) for the verification audit.[214]

The Commission also required Pacific Bell to reimburse ORA for the cost of Certified Public Accountants (CPAs) and technical experts conducting an audit of Pacific Bell, and required Verizon California to reimburse ORA for the cost of Certified Public Accountants (CPAs) and technical experts conducting an audit of Verizon California.[215]

Other examples include Commission decisions approving area code relief plans and the funding of related Public Education Programs (PEPs). Those decisions required carriers to fund PEP-related activities and allocated the costs among carriers in proportion to the relative percentage of thousand-blocks of telephone numbers that they held in the area code being relieved.[216] The Commission was not required to fund the costs related to any of the above

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[214] *See* D.99-06-051.

[215] *See* D.04-09-061 and D.02-10-020, respectively.

[216] *See*, for example, D.98-12-081, D.99-09-021, D.05-08-040, D.07-09-025, and D.08-04-059.

described examples through the URA or to obtain legislative approval to impose these costs on a utility or a subset of a class of utilities.

Verizon Wireless does not contend any statutes other than § 401, *et seq.*, and § 431, *et seq.*, expressly prohibit the Commission from overseeing a survey of LEP consumers or prohibit the Commission from requiring carriers to reimburse the cost of that survey. Here, the Commission is simply requiring reimbursement for specific expenses associated with a survey conducted by an outside consultant that the Commission could have ordered the carriers to conduct. Because there are no express legislative directives that the Commission has disregarded, the cases relied upon by Verizon Wireless do not support its position.

The Commission will proceed obtain budget authority for the survey costs, once its decision to retain an independent survey consultant to conduct a statewide survey of LEP consumers under the Commission's oversight and directing carriers to reimburse the Commission for the cost of the survey is issued. The time required to prepare and issue the RFP, and to conduct the bidder evaluation and selection process, will allow the Commission sufficient time to obtain budget authority to require carriers to reimburse the Commission for the survey costs.

4.4.4. Publicly Available CAB Data

Joint Telecommunications Carriers propose that CAB publish a quarterly report of aggregated LEP consumer complaints, excluding carrier specific information, and that carriers be available to the Commission to discuss carrier specific information as requested. Joint Telecommunications Carriers and Verizon Wireless assert that the data would not provide context, such as the

basis for the complaint, whether the complaint was valid or was resolved expediently.[217]

Joint Telecommunications Carriers also contend that publishing data showing that one carrier has received more complaints than another could be viewed as Commission endorsement of one carrier over another. Verizon Wireless states that including carrier-specific information could mislead consumers because, rather than indicate inadequate service, higher complaint levels may indicate that a carrier serves a higher proportion of LEP customers.

Carriers assert that publishing carrier-specific complaint data will distort competition, may harm carriers' reputations based on complaints that may lack merit, and may discourage carriers from serving LEP consumers.[218] Carriers assert that they should have an opportunity to review and refute information before it is posted. Carriers also contend that all CAB contacts are not complaints, and it will be difficult to distinguish informal complaints from inquiries that are not complaints.[219] Carriers request that they have an opportunity to provide input on what and how information will be reported.[220]

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[217] Comments of Joint Telecommunications Carriers on Proposals of the CDT-Joint Consumer Groups and the Latino Issues Forum Addressing LEP Complaint and Language Preference Tracking, p. 12. Comments of Verizon Wireless on Post-Workshop Proposals on Phase II-B Tracking Issues, pp. 13-14.

[218] Comments of Verizon Wireless on the August 5, 2008 Proposed Decision of Commissioner Peevey, pp. 7-8. Comments of AT&T on the Phase II Proposed Decision of Commissioner Peevey, pp. 3-4.

[219] Comments of CTIA on Proposed Decision of Commissioner Peevey, p. 6.

[220] Opening Comments of SureWest on Phase II Proposed Decision, pp. 3–4. Opening Comments of Small LECs on Phase II Proposed Decision, pp. 3–4.

CDT-Joint Consumer Groups recommend publishing the identity of carriers as part of publicly available CAB data.[221] CDT-Joint Consumer Groups recommend including the identity of carriers in publicly available CAB data because, according to CDT-Joint Consumer Groups, unless carriers are identified, consumers are not able to compare service providers and this will undermine the Commission's goal of providing consumers with sufficient information to make informed choices.

Discussion

Parties recommend that the Commission publish data on LEP consumer informal complaints to CAB but disagree on whether carrier identifying information should be included. We agree that publishing data on LEP consumer contacts (informal complaints and inquiries that are not complaints) with CAB will assist LEP consumers in making better informed choices. Therefore we will require that Commission staff periodically publish data on LEP consumer contacts with CAB, and post that data on the Commission's website.

However, we will not require at this time that this data be published on a quarterly basis. There may administrative or other reasons why publishing this data on a different schedule (for example, monthly, semi-annually or annually) is more appropriate. Therefore, we will instead direct Commission staff to present its recommendations as to the appropriate timing for publishing CIMS reports in a resolution for Commission consideration. Commission staff should be

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[221] Phase II-B Proposal of CDT-Joint Consumer Groups in Response to ALJ's March 19, 2008 Ruling Permitting the Filing of Post-Workshop Proposals on Phase II-B Tracking Issues, pp. 9-10.

reasonably confident that CIMS data to be published is accurate, reliable and consistent. All parties will have an opportunity to comment on the draft resolution.

The State's telecommunications policy is, among other things, "to encourage fair treatment of consumers through provision of sufficient information for making informed choices, establishment of reasonable service quality standards, and establishment of processes for equitable resolution of billing and service problems."[222] Joint Telecommunications Carriers' proposal to exclude carrier specific information from any data on LEP consumer contacts with CAB that may be made publicly available is inconsistent with this policy.

The quality of a carrier's products and services is an important factor that consumers take into consideration when making purchasing decisions. Effective competition requires that consumers have sufficient information to make informed choices. We believe that carrier-specific information about the number of LEP consumer contacts with CAB will assist LEP consumers make more informed choices.

Data on LEP consumer contacts with CAB is one important measure of consumers' satisfaction with a carrier's products and services. Without a compelling reason, fair treatment of LEP consumers is not promoted by withholding information which may assist LEP consumers in making better-informed choices. This data will be one of several potentially useful sources of information, including information provided by CBOs participating in

[222] Section 709(h). Emphasis added.

the TEAM program, which LEP consumers may use when shopping for telecommunications services.

The data collected by CAB is public information, and, as such, is already available to any person under the Public Records Act (PRA).[223] The Commission receives several requests each year for CAB informal complaint information that it is required to provide pursuant to the PRA. However, with regard to LEP consumer contacts with CAB, rather we prefer to be proactive rather than reactive, in an effort to assist LEP consumers better protect themselves while promoting effective competition.[224]

LEP consumers who are concerned by what may appear to be disproportionately high numbers of LEP consumer contacts with CAB will be able to do further research by, for example, asking others, including their CBOs about the carrier's treatment of LEP consumers. LEP consumers may find that the carrier specializes in serving LEP consumers and provides high quality service or they may find that the carrier is unresponsive to LEP consumers, requiring LEP consumers to also contact the CAB. More information will enhance, not distort, competition, and more information will promote consumer choice. Carriers' assertion that publishing carrier-specific complaint data will distort competition and may harm carriers' reputations is without merit.

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[223] Government Code §§ 6250 through 6270.

[224] Government Code §§ 6250 states, in part: [T]he Legislature, mindful of the right of individuals to privacy, finds and declares that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state.

Because CAB is able to classify, and CIMS is able to report, LEP consumer contacts as informal complaints or as inquiries that are not complaints, carriers' contention that it will be difficult to distinguish these LEP consumer informal complaints from inquiries lacks merit. We will require that the posted data separately report the number of each type of LEP consumer contact.

Carriers' concern that published data on LEP consumer contacts with CAB will not provide context does not convince us to withhold carrier identities from published LEP consumer contact data because carriers' concern is easily addressed by including appropriate explanations and disclosures with the published data.

In particular, we will require that the published report contain an explanation that the LEP consumer calls to CAB included in the report are contacts that include informal complaints and inquiries that are not complaints. We will also require the report to include the disclosures that (1) callers to CAB are required to contact their carrier before CAB will assist them, and (2) that complaints recorded in CIMS may not be resolved in favor of the consumer.

We are also not persuaded that publishing LEP consumer data showing that CAB has received more LEP consumer contacts concerning one carrier than another will be viewed as Commission endorsement of one carrier over another. Again, appropriate explanations accompanying the published LEP consumer data will adequately address this concern. In particular, we will require that the published report include a statement that the information reported should not be viewed as a Commission endorsement of one carrier over another.

As discussed above, CAB requires callers to contact their carrier before CAB will assist them. Thus, carriers have the first opportunity to address and resolve customer concerns before CAB will assist the customer, and, as a result, a

carrier has a large measure of control over what data is ultimately published about that carrier. Therefore, carriers may significantly reduce the number of LEP consumer contacts reported by satisfactorily resolving LEP customer questions and concerns so that LEP consumers will not find it necessary to call CAB for help and to have that contact recorded in CIMS.

We will require that published data to be normalized (that is, presented as "contacts per 100,000 wireline telephone lines or wireless accounts") so that the data are comparable among carriers of different sizes. AT&T contends that normalizing LEP consumer contact data creates an additional requirement for carriers to report the number of customers in California.[225] We disagree. Information is already publicly available that can be used to normalize CIMS data. The Commission will use FCC Form 477 data on wireline telephone lines and wireless accounts to normalize CIMS LEP consumer contact data.

Verizon Wireless asserts that a carrier with a high number LEP customers contacting CAB may merely be a carrier serving a higher proportion of LEP consumers. Verizon Wireless contends that normalizing LEP consumer complaint numbers by the size of the carrier will not correct for this because there is no way to determine how many LEP customers each carrier has.

As discussed above, we do not expect consumers to rely exclusively on published CAB data to make their telecommunications purchasing decisions. LEP consumers who are concerned by what may appear to be a disproportionately high number of LEP consumer contacts with CAB for a

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[225] Comments of AT&T on the Phase II Proposed Decision of Commissioner Peevey, p. 3.

particular carrier will be aware that they should do further research by, for example, asking others served by that carrier or CBOs participating in the TEAM program about the carrier's relations with LEP consumers.

However, without the CIMS data on LEP consumer contacts with CAB, LEP consumers will not necessarily know that they should try to find out more about a particular carrier. Thus, publishing carrier-specific LEP consumer contact data supports our LEP consumer education efforts.

We will require that the published report include a statement that telecommunications consumers should not rely exclusively on the published data and should do further research before making their decisions to purchase telecommunications products and services.

We direct Commission staff to develop a template or sample of the CAB complaint report, including the format, explanations and disclosures discussed above, and other information recommended for inclusion in the report. Commission staff is directed to present the proposed report in a resolution for Commission consideration.

4.4.5. Regulatory Complaint Resolution Forum (RCRF)

The RCRF was originally established in the late 1990s by the Commission's Consumer Services Division the predecessor division to CSID, to improve the processing and resolution of consumer inquiries and complaints. D.06-03-013 reinstituted the RCRF to provide a forum for the exchange of information between the utilities, the Commission, and consumers.[226]

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[226] D.06-03-013, OP 11.

Joint Telecommunications Carriers propose that the RCRF meet quarterly to address LEP issues, and, that CAB, the CBOs, or a carrier may request a special meeting to address particular LEP-related issues. Carriers will be required to participate in the RCRF, and designated CBOs may participate.[227]

AT&T states that the RCRF is an appropriate forum for ongoing discussions with Commission Staff and consumer groups to identify and resolve issues encountered by LEP consumers.[228] Verizon Wireless states that the RCRF will provide a forum where stakeholders can regularly discuss and proactively address LEP issues as they arise.[229]

CDT-Joint Consumer Groups recommend that Joint Telecommunications Carriers' RCRF proposal be modified to be more inclusive by: (1) permitting participation by other consumer groups besides "designated CBOs"; (2) allowing any participant, including CAB, to raise issues in the RCRF on behalf of other organizations or interested persons; (3) permitting any participant to request a special meeting to discuss LEP-related issues; and (4) making public the agenda and written materials pertaining to the RCRF, consistent with customer confidentiality laws.[230]

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[227] Proposal of Joint Telecommunications Carriers Addressing LEP Complaint and Language Preference Tracking, Telecommunications Industry Phase II Proposal, p. 1.

[228] AT&T Phase II-B Opening Comments, p. 4.

[229] Verizon Wireless Phase II-B Opening Comments, p. 19.

[230] Phase II-B Proposal of CDT-Joint Consumer Groups in Response to ALJ's March 19, 2008 Ruling Permitting the Filing of Post-Workshop Proposals on Phase II-B Tracking Issues, p. 10.

Parties recommend that the forum be structured to provide two separate venues for the RCRF to: (1) include open meetings where all carriers and CBOs may address general issues; and (2) special meetings where participation is limited to the involved carrier(s) and appropriate CBOs to address specific issues.

Except for making publicly available the agenda and written materials pertaining to the RCRF, Joint Telecommunications Carriers and Verizon Wireless support CDT-Joint Consumer Groups' recommended modifications.[231] Joint Telecommunications Carriers contend that publication of written materials may inhibit frank, candid discussion, and would detract from the efficacy of the RCRF. CDT-Joint Consumer Groups state they and carriers agree to the publication of the RCRF agenda and generalized minutes that do not identify any individual carrier. However, CDT-Joint Consumer Groups recommend that Commission Staff facilitating the RCRF take detailed minutes to assist participants' efforts and identify recommendations and commitments that may require follow-up.

Discussion

Carriers and consumer groups agree that the RCRF will provide a forum to identify and resolve LEP consumer issues, and we will adopt the proposal for separate venues to: (1) include open meetings where all carriers, CBOs and others may address general issues; and (2) special meetings where participation

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[231] Comments of Joint Telecommunications Carriers on Proposals of the CDT-Joint Consumer Groups and the Latino Issues Forum Addressing LEP Complaint and Language Preference Tracking, p. 5. Comments of Verizon Wireless on Post-Workshop Proposals on Phase II-B Tracking Issues, p. 13.

is limited to the involved carrier(s), appropriate CBOs or others to address specific issues. These different meeting formats are appropriate because carriers may be reluctant to publicly discuss what might be perceived as shortcomings on their part, or to discuss certain issues in the presence of their competitors. For the same reasons, we agree that publishing detailed minutes of open meetings may inhibit discussion, and, therefore, only general minutes will be made publicly available.

Special RCRF meetings to address specific issues will be limited to participation by Commission Staff, the involved carrier(s), appropriate CBOs or others, as determined by Commission Staff. No minutes of special meetings will be made publicly available because such meetings may involve proprietary carrier information, customer specific information protected pursuant to § 2891, or allegations of potential violations which may become the subject of litigation or Commission investigation. Of course, Commission Staff may meet with carriers at any time outside of the RCRF, or issue targeted data requests to carriers, to obtain information on issues of particular concern.

4.4.6. Including CBOs in the Commission's Education, Complaint Resolution and Outreach Efforts

Joint Telecommunications Carriers propose that carriers continue to support the Commission's efforts to obtain adequate funding and resources for CBOs and will collaborate with the Commission and CBOs in the Commission's efforts to establish a program which will incorporate CBOs into the

Commission's education, complaint resolution and outreach efforts.[232] Joint Telecommunications Carriers state that major wireline and wireless carriers will continue to meet regularly with designated CBOs to address LEP issues.

LIF states that Joint Telecommunications Carriers propose an activity that has already been ordered by the Commission, and which requires no additional effort on the carriers' part.[233] LIF contends that the Joint Telecommunications Carriers CBO funding proposal will be fulfilled by the implementation of Resolution CSID-002, which has already been approved by the Commission.

LIF states that it supports greater use of CBOs to reach, educate and assist LEP consumers, but that CBOs by themselves cannot reach all LEP consumers who have complaints or face issues of fraud. LIF asserts that CBO efforts must be supplemental to carrier consumer education, where CBOs can provide a second source of information for consumers and more assistance than merely distributing a consumer education brochure.

Discussion

As stated above, the Phase I Decision identified efforts underway to improve the Commission's complaint resolution efforts by working more closely with CBOs. The Phase I Decision acknowledged that the Commission received appropriations earmarked to fund CBOs to assist the Commission, and directed Staff to design a program to integrate CBOs in our outreach, education, and complaint resolution processes.

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[232] Proposal of Joint Telecommunications Carriers Addressing LEP Complaint and Language Preference Tracking, Telecommunications Industry Phase II Proposal, p. 1.

[233] LIF Comments on Phase II-B Proposals, p. 4.

On February 26, 2008, the Commission issued an RFP to retain an entity to create, operate and manage the TEAM program to manage a statewide network of CBOs to facilitate outreach and further telecommunications education and complaint resolution services to LEP consumers statewide. Pending final contract approval by the Department of General Services, Self-Help for the Elderly has been selected to act as the TEAM program administrator from June 15, 2008 through February 15, 2009.

We also ordered carriers to permit CBOs to represent any customer who has authorized a CBO to assist it in dealings with carriers. Thus, the effort to incorporate CBOs into the Commission's education, complaint resolution and outreach efforts is well underway. Nevertheless, we are encouraged by carriers continued commitment to supporting these efforts.

4.4.7. LEP Demographic Information

Joint Telecommunications Carriers propose that the Commission rely on census data and other publicly available information to obtain demographic data about California's LEP population, and that the Commission consult with carriers and CBOs in this effort.[234]

CDT-Joint Consumer Groups oppose Joint Telecommunications Carriers' proposal to rely on census data because, according to CDT-Joint Consumer Groups, this approach will not identify the LEP customers of carriers.[235] Instead,

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[234] Proposal of Joint Telecommunications Carriers Addressing LEP Complaint and Language Preference Tracking, Telecommunications Industry Phase II Proposal, p. 1.

[235] Phase II-B Proposal of CDT-Joint Consumer Groups in Response to ALJ's March 19, 2008 Ruling Permitting the Filing of Post-Workshop Proposals on Phase II-B Tracking Issues, pp. 10-11.

CDT-Joint Consumer Groups recommend that, within six months of the final decision in Phase II of this proceeding, all certificated carriers in California file a one-time statistical and analytical report on their LEP customers, including the total number of LEP customers and a breakdown of LEP customers by the primary languages spoken. CDT-Joint Consumer Groups recommend that, if third party data is used, a carrier be required to explain the methodology used and to provide supporting work papers. Joint Telecommunications Carriers and Verizon Wireless oppose this recommendation, contending that producing the proposed report requires carriers to already have costly, burdensome language preference tracking in place.[236]

Discussion

We will not adopt CDT-Joint Consumer Groups' proposal for carriers to file a one-time statistical and analytical report on their LEP customers because it requires carriers to establish language preference tracking, and we have determined that we will not require carriers to establish language preference tracking systems at this time. CDT-Joint Consumer Groups complain that census data will not identify the LEP customers of carriers. However, we anticipate that information on the carriers' LEP customers will be obtained through the consumer satisfaction survey we adopt.

4.4.8. Definition of Complaint

The Phase II Scoping Memo/ACR proposed to define a reportable telecommunications complaint as:

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[236] Comments of Joint Telecommunications Carriers on Proposals of the CDT-Joint Consumer Groups and the LIF Addressing LEP Complaint and Language Preference Tracking, pp. 14-15.

> An oral or written statement to a telephone corporation, its parent, subsidiary, affiliate or agent (collectively, referred to as "carrier") by a customer or applicant expressing dissatisfaction with a nonexempt service, or terms and conditions concerning the provisioning of a non-exempt service, or alleging that the carrier has acted or done something or failed to do something in violation of any provision of law or of any order or rule of the Commission or the carrier's terms and conditions of service that is resolved through corrective action taken by the carrier to resolve the customer's dissatisfaction, adjust the customer's pending or active service, rates, or charges, or which results in the matter being escalated or referred for resolution elsewhere within the carrier, or to the Commission or other agency.

The Phase II Scoping Memo/ACR requested comment on whether the Commission should adopt this proposed definition, or if a different definition should be adopted, and, if so, what that definition should be and why.

According to Verizon California, the Phase II Scoping Memo/ACR's proposed definition of complaint is too broad.[237] Verizon California contends that "expressions of dissatisfaction" should not be included in the definition because such expressions could simply be the result of inquiries about legally required charges and result from a customer's lack of knowledge.

CTIA states that the inherent subjectivity of whether a particular call into customer service should be classified as a complaint will not likely produce reliable data.[238]

AT&T states that the proposed definition of a complaint is not workable, and contends that true customer complaints are those complaints made to the

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[237] Verizon California Phase II-B Opening Comments, pp. 5-7.

[238] CTIA Phase II-B Opening Comments, pp. 2-3.

Commission and recorded in the CIMS database.[239] AT&T asserts that the Commission can determine whether LEP consumers are receiving adequate information and services more effectively though other means than through the proposed language preference and LEP complaint tracking requirements.

Cox states that consumers, including LEP consumers, may contact CAB to make inquiries or to file complaints, and recommends that contacts to CAB not be considered "complaints."[240]

CDT-Joint Consumer Groups are concerned about qualifying and limiting phrases in the proposed definition, and recommend that a reportable telecommunications complaint be defined as:

> An expression of dissatisfaction made to an organization, related to its products, services, or to the complaints handling process itself, where a response or resolution is explicitly or implicitly expected.[241]

Like CDT-Joint Consumer Groups, LIF states that the definition proposed in the Phase II Scoping Memo/ACR is too complicated and contains too many qualifying and limiting phrases. LIF contends this presents opportunities for error, and recommends a simpler definition like that proposed by CDT-Joint Consumer Groups.[242]

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[239] AT&T Phase II-B Opening Comments, p. 6. AT&T Phase II-B Reply Comments, p. 8.

[240] Opening Comments of Cox on Commissioner Peevey's Proposed Phase II Decision, p. 4.

[241] Phase II-B Proposal of CDT-Joint Consumer Groups in Response to ALJ's March 19, 2008 Ruling Permitting the Filing of Post-Workshop Proposals on Phase II-B Tracking Issues, p. 6.

[242] LIF Phase II-B Opening Comments, pp. 8-9.

Although carriers did not directly comment on the definitions recommended in CDT-Joint Consumer Groups' proposal, CDT-Joint Consumer Groups' proposed definition, like the Phase II Scoping Memo/ACR's proposed definition, includes as part of the definition "expressions of dissatisfaction," which carriers oppose. Therefore, we consider carriers' comments on the definition proposed in the Phase II Scoping Memo/ACR to also apply to CDT-Joint Consumer Groups' proposed definition.

CDT-Joint Consumer Groups also recommend that an "in-language complaint" be defined as:

> A complaint which is voiced by or on behalf of an LEP customer or which complains about access to or adequacy of telecommunications service provided to potential or existing customers who have limited proficiency in the English language.

LIF supports CDT-Joint Consumer Groups' proposed definition of an "in-language complaint."

Discussion

Parties identify significant challenges to even define a "reportable telecommunications complaint," a necessary prerequisite to tracking complaints. Verizon California states that "expressions of dissatisfaction" contained in the Phase II Scoping Memo/ACR's proposed definition would include inquiries about legally required charges which may result from a customer's lack of knowledge, and which should not be treated as complaints. We agree.

At the same time, excluding "expressions of dissatisfaction" from the definition will not allow the Commission to determine how LEP consumers feel about the services and treatment they receive from carriers. No party has proposed a way to reconcile the dilemma of how to capture information on how LEP consumers feel about the services and treatment they receive from carriers

without including expressions of dissatisfaction about legally required charges about which customers may be unhappy. Because of this shortcoming, we agree with AT&T that the proposed definition is not workable.

CDT-Joint Consumer Groups propose a simpler definition than that proposed in the Phase II Scoping Memo/ACR because of their concerns about qualifying and limiting phrases in the ACR's proposed definition. However, CDT-Joint Consumer Groups' proposed definition includes "expressions of dissatisfaction," and, therefore, has the same shortcoming as the definition proposed in the Phase II Scoping Memo/ACR. We find that parties' proposed definitions are not workable for the same reason we find that the ACR's proposed definition is not workable. Therefore, we will not adopt any of the proposed definitions of "reportable telecommunications complaint."

CDT-Joint Consumer Groups' proposed definition of "in-language complaint" is not workable because it requires a definition of "complaint" to have clear meaning. That is, because "in-language complaint" is proposed to be defined as "a complaint which is voiced…," the term "complaint" must first be defined in order for the proposed definition of in-language complaint to be workable. The proposed definition of in-language complaint also requires carriers to assess a customer's English proficiency in order to apply the proposed definition. Therefore, we will not adopt CDT-Joint Consumer Groups' proposed definition of "in-language complaint."

4.4.9. Modify CAB Procedures

CDT-Joint Consumer Groups recommend that CAB procedures be changed to only require LEP callers to first contact their carrier if that carrier

offers in-language customer service in the language of the LEP caller.[243] CDT-Joint Consumer Groups state that CAB will not substantively assist a caller or treat a call as a complaint until the caller has first tried to contact his carrier. CDT-Joint Consumer Groups contend, however, that CAB's practice serves as a barrier which discourages or prevents customers from following through with complaints, leaving those complaints unrecorded and unresolved.

Joint Telecommunications Carriers and Verizon Wireless oppose CDT-Joint Consumer Groups' proposal to modify CAB's procedures. Joint Telecommunications Carriers state that this proposal would undermine the benefits of directly resolving issues between carriers and customers.[244] Joint Telecommunications Carriers also contend that some carriers may offer in-language support without triggering the In-Language Marketing Rules, but the proposal is not clear as to how CAB representatives would know this when deciding whether to take the call or refer the caller to his carrier. Verizon Wireless contends that modifying CAB's procedures will cause confusion and be difficult to administer because it requires CAB personnel to be continually up to date on the status of each carrier's in-language customer service offerings, and will interfere with expeditiously resolving customer complaints.

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[243] Phase II-B Proposal of CDT-Joint Consumer Groups in Response to ALJ's March 19, 2008 Ruling Permitting the Filing of Post-Workshop Proposals on Phase II-B Tracking Issues, p. 7.

[244] Comments of Joint Telecommunications Carriers on Proposals of the CDT-Joint Consumer Groups and the Latino Issues Forum Addressing LEP Complaint and Language Preference Tracking, p. 13. Comments of Verizon Wireless on Post-Workshop Proposals on Phase II-B Tracking Issues, pp. 12-13.

Discussion

The Commission's efforts to integrate CBOs into its education, outreach and complaint resolution processes will reduce the barriers which CDT-Joint Consumer Groups contend discourage LEP consumers from following though with their complaints. Therefore, we will not require CAB to modify its practice of requiring callers to first contact their carrier before CAB will field that call and treat the call as a complaint. This practice is an important feature of our decision to make CIMS data publicly available.

Because we intend to make carrier identification publicly available with CIMS data, it is reasonable to require callers to contact their carrier before CAB will assist them so that carriers have an opportunity to address and resolve customer concerns before the customer turns to CAB and have that information made publicly available.

4.4.10. Revise On-Line Complaint Forms

CDT-Joint Consumer Groups also recommend that the Commission revise its on-line complaint forms to make them more accessible and consumer friendly, and to make CAB's complaint data publicly available.[245] Joint Telecommunications Carriers support CDT-Joint Consumer Groups recommendation to make the Commission's on-line complaint form more consumer-friendly.[246]

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[245] Phase II-B Proposal of CDT-Joint Consumer Groups in Response to ALJ's March 19, 2008 Ruling Permitting the Filing of Post-Workshop Proposals on Phase II-B Tracking Issues, p. 7.

[246] Comments of Joint Telecommunications Carriers on Proposals of the CDT-Joint Consumer Groups and the Latino Issues Forum Addressing LEP Complaint and Language Preference Tracking, pp. 6-7.

Discussion

All parties agree that the Commission's on-line complaint forms should be revised to make them more accessible and consumer friendly, and we will adopt CDT-Joint Consumer Groups recommendation to do this. Therefore, we will direct Commission staff to revise the Commission's on-line complaint forms.

4.4.11. Consumer Education Program

CDT-Joint Consumer Groups recommend that consumer education materials be culturally sensitive and appropriately translated, with particular LEP communities in mind.[247] CDT-Joint Consumer Groups recommend that, in addition to the brochures currently on the CalPhone website, the Commission develop brochures regarding other types of fraud prevalent in the telecommunications and broadband industries. CDT-Joint Consumer Groups recommend that carriers be required to provide these brochures to customers through their web sites, as bill inserts, and at the POS. CDT-Joint Consumer Groups also recommend that carriers be required to annually notify customers about the resources available on the CalPhone Info website through bill inserts, electronic mail, text message or other methods of the consumer's choosing.

Similarly, LIF proposes that carriers develop an LEP consumer education program to help LEP consumers avoid fraud before they become victims.[248] LIF recommends that any carrier who triggers the In-Language Marketing Rules be required to provide, in-language at the POS and annually, consumer education

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[247] Phase II-B Proposal of CDT-Joint Consumer Groups in Response to ALJ's March 19, 2008 Ruling Permitting the Filing of Post-Workshop Proposals on Phase II-B Tracking Issues, pp. 6-7.

[248] LIF Phase II-B Proposal, pp. 1-2.

materials, including an in-language customer service telephone number, for all languages in which a carrier markets. LIF recommends that in-language consumer education materials also include information on how to make good purchasing decisions, the steps to take if consumers have a question or complaint about their telecommunications service, and reseller-specific information such as a description of secondary agreements.

LIF recommends that this information be made available in printed and in audio form to assist consumers who do not read. LIF recommend workshops to develop the content of in-language consumer education materials.

Joint Telecommunications Carriers and Verizon Wireless support CDT-Joint Consumer Groups' and LIF's proposals to provide consumer education materials.[249] However, Joint Telecommunications Carriers and Verizon Wireless oppose CDT-Joint Consumer Groups' proposal to require carriers to provide these materials on their web sites, as bill inserts, at the POS, or to annually notify customers of the resources available on the CalPhoneInfo website. Joint Telecommunications Carriers assert that direct provision of materials, either at POS or on the web, is neither practical nor efficient. Joint Telecommunications Carriers state their willingness to work with the Commission and other stakeholders to find effective ways to publicize and educate consumers about the availability of the information, such as the TEAM program.

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[249] Comments of Joint Telecommunications Carriers on Proposals of the CDT-Joint Consumer Groups and the Latino Issues Forum Addressing LEP Complaint and Language Preference Tracking, pp. 3-4.

Verizon Wireless states that the proposal for carriers to store and furnish consumer education materials will impose substantial costs for publishing, reproducing, transporting and storing the materials, and is wasteful because many consumers will have no need for or interest in such materials.[250] Verizon Wireless recommends that the Commission should make such materials available at the Commission, on the CalPhoneInfo website, and through CBO education and outreach efforts.

However, Verizon Wireless opposes the requirement for carriers to provide a notice directing customers to the CalPhoneInfo website. Verizon Wireless asserts carriers cannot control the content of information on the website, and contends that requiring carriers to provide notice about the Commission's CalPhoneInfo website raises First Amendment issues relating to compelled speech.

Discussion

As discussed above, pursuant to D.07-07-043, the Commission established the TEAM Program to manage a statewide network of CBOs to facilitate outreach and further telecommunications education and complaint resolution services to California's LEP consumers, and recently selected Self-Help for the Elderly to act as the TEAM program administrator from June 15, 2008 through February 15, 2009. The TEAM Program administrator is designing and implementing a program to provide education to LEP consumers whose primary languages include, but are not limited to, Spanish, Chinese, Korean, Vietnamese,

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[250] Comments of Verizon Wireless on Post-Workshop Proposals on Phase II-B Tracking Issues, pp. 10–12.

Tagalog, Thai, Hmong, Arabic, Farsi, Khmer, Armenian, and Russian (Targeted Communities).

The TEAM Program's education component consists of information about telecommunications choices, consumer rights, and consumer protections, including, but not limited to issues addressed in the Commission's CalPhoneInfo brochures and advisories. The Commission's RFP soliciting a TEAM program administrator specifically requires that education and training contain standardized information and be presented in a culturally sensitive manner which may vary based on the LEP community's demographics.[251]

The TEAM Program's outreach component is intended to make LEP consumers in Targeted Communities aware of available information and complaint assistance services, and will use a variety of means, including, among other things, public service announcements, meetings with community leaders and other community organizations, posting information on public bulletin boards and the Internet, and participating in community events. The TEAM Program will also assist consumers in Targeted Communities to resolve telecommunications complaints or inquiries.

The Commission requires the TEAM Program to, at a minimum, track demographic information for the clients served, type and disposition of complaint handled, and the training or information provided. The Commission also requires the TEAM Administrator to submit monthly, quarterly and annual reports that analyze the impact of outreach efforts, educational activities, and complaint resolution services, and to identify areas requiring improvement. As a

[251] RFP 07 PS 5736, p. 8.

result, the TEAM Program will provide the Commission with useful information about LEP consumers.

Thus, the Commission is presently implementing a LEP consumer education and assistance effort through a coordinated network of CBOs serving LEP consumers in Targeted Communities. This program is similar to that proposed by CDT-Joint Consumer Groups and LIF, and endorsed by Joint Telecommunications Carriers and Verizon Wireless, except that it relies on CBOs, not the carriers, to make LEP consumers aware of available information and complaint assistance services.

Utilizing CBOs which serve Targeted Communities is a more effective way to reach and educate LEP consumers than relying on carriers. As we stated in the Phase I Decision, D.06-03-013 recognized the special relationship CBOs have with LEP consumers they assist with telecommunications problems and found that CBOs have unique insights into the consumer problems faced by specific communities.[252] Therefore, we will not adopt CDT-Joint Consumer Groups' and LIF's proposals to require carriers to provide CalPhone brochures and other information to customers through carriers' web sites, bill inserts, and at the POS.

Using a network of CBOs with relationships with Targeted Communities will better ensure that information in target languages to help LEP consumers will reach those with a need or interest in that information. Requiring carriers to provide LEP consumers educational information in different languages will not be as effective because most customers will not have a need for materials written in a particular non-English language. Carriers would nonetheless be required to

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[252] D.06-03-013, p. 101; FOF 49.

acquire, distribute and maintain inventories of materials which most of their customer will not need.

CDT-Joint Consumer Groups assert that consumer education is a tool which will help protect LEP consumers from the acts of unscrupulous carriers and/or their agents. However, an unscrupulous carrier or agent engaged in unfair practices will not provide LEP consumers with information on how to protect themselves from that carrier or agent, or that an unscrupulous carrier will report to the Commission that the carrier or its agents are defrauding consumers.

It is administratively more difficult to ensure that carriers make available all of the current consumer education materials in all target languages. Thus, relying on CBOs, under the Commission's oversight of the TEAM Program, to provide focused consumer education to LEP consumers in their primary language will help ensure that LEP consumers consistently receive unbiased, up-to-date, accurate information.

We will not adopt CDT-Joint Consumer Groups' proposal to require carriers to annually notify customers about the resources available on the CalPhoneInfo website through bill inserts, electronic mail, text message or other methods of the consumer's choosing. However, as discussed below, we will require carriers which market in-language to provide their customers with a notice in the non-English language(s) in which the carrier markets directing customers to the CalPhoneInfo website.

Parties agree that the Commission's CalPhoneInfo website is, at a minimum, a good start for ensuring that LEP consumers are informed about ways to protect against fraud. As noted by parties, the CalPhoneInfo website brochures already provide information on how consumers can protect against

many of the most common kinds of fraud. We agree that the Commission should translate the CalPhoneInfo brochures into the most commonly spoken non-English languages.

Carriers express a willingness to work with the Commission and CBOs to develop brochures with information on how to guard against different types of fraud, and we look forward to carriers' cooperation with and assistance to the Commission to maintain and update the information available on the CalPhoneInfo website.

We will not require, as CDGT-Joint Consumer Groups recommend, that carriers websites be required to provide links to the CalPhoneInfo brochures, the Commission's and the FCC's websites, and to an on-line complaint/inquiry form. We will also not require carriers to make the Commission's informational pamphlets, copies of the terms and conditions of each calling plan and product available to customers or to make other information available at retail locations, on their websites, or to provide a link to the CalPhoneInfo website on carrier websites.

Instead, we will adopt AT&T's suggestion to require carriers to provide LEP customers with an in-language notice directing them to the CalPhoneInfo website. Carriers may use any of the methods specified in Rule V of the In-Language Marketing Rules to provide this information. Centralizing information about ways to protect against fraud on the Commission's CalPhoneInfo website will ensure consistency and timeliness of the information available to consumers, and will be easier to maintain and update. This approach is more administratively efficient and cost effective than requiring carriers to conduct duplicative efforts.

Verizon Wireless opposes the requirement that carriers provide a notice directing customers to the CalPhonelnfo website. Verizon Wireless states that the carriers cannot control the content of the website, and they should not be required to direct customers generally to any and all content on the website. Verizon asserts that this requirement raises First Amendment issues, citing *Pacific Gas & Electric Co. v. Public Utilities Commission* (1986) 475 U.S. 1 (*PG&E v. PUC*). In that case, the United States Supreme Court (U.S. Supreme Court) determined it was a violation of the First Amendment to require a privately owned public utility to include in its billing envelopes speech of a third party with which the utility disagreed.

In D.83-12-047, the Commission required PG&E to make available extra space remaining in its billing envelope, after inclusion of the monthly bill and any required legal notices, to TURN four times per year for the purpose of raising funds and communicating with customers. PG&E claimed that it had a First Amendment right not to help spread messages with which it disagreed, and appealed first to the Cal Supreme Court and finally to the U.S. Supreme Court.

The U.S. Supreme Court concluded that the Commission's order impermissibly burdened PG&E's First Amendment rights, because it forced PG&E to associate with the views of other speakers, and because it selected the other speakers on the basis of their viewpoints. (*PG&E v. PUC*, 475 U.S. at pp. 20-21.) The U.S. Supreme Court stated that D.83-12-047 could not be upheld as a narrowly tailored means of furthering a compelling state interest or as a "content-neutral" regulation of the time, place, or manner of expression. (*PG&E v. PUC*, 475 U.S. at pp. 19- 20.) The U.S. Supreme Court further stated that PG&E could not be forced to associate with or to disseminate views with which it disagreed, and that, contrary to the First Amendment, D.83-12-047 burdened the

speech of one party in order to enhance the speech of another. (*PG&E v. PUC*, 475 U.S. at p. 20.)

PG&E v. PUC does not prevent the Commission from requiring carriers to insert a notice in bills that directs customers to the CalPhoneInfo website. Here, unlike the order at issue in *PG&E v. PUC,* the Commission is not forcing the carriers to insert information from a third party with which it disagrees. Rather, the Commission is requiring carriers to reference a Commission website that contains consumer protection information. This notice requirement is narrowly tailored to further a compelling state interest, which is to inform LEP consumers about ways to protect against fraud. Nor does this requirement prohibit any speech protected by the First Amendment. (*See Pacific Gas & Electric Co. v. Public Utilities Commission*) (2000) 85 Cal.App.4th 86 [in which court struck down restrictions on PG&E's political advocacy in its newsletter which was included in billing envelopes]).

Section 701 permits the Commission to supervise and regulate every public utility, and to do all things, whether specifically designated which are necessary and convenient in the exercise of such power and jurisdiction. The Commission's requirement for carriers to provide a notice directing customers to the CalPhoneInfo website is designed to provide a means for LEP consumers to be aware of Commission-provided information about ways to protect against fraud. Within its authority pursuant to § 701, the Commission could have ordered carriers to directly provide fraud notices to LEP consumers. The Commission could have also required carriers to make the Commission's informational pamphlets or other information available at retail locations and on their websites, or required carriers to provide a link to the CalPhoneInfo website on carrier websites. However, the Commission determined that requirement for

carriers to provide a notice directing customers to the CalPhonelnfo website was a better, less burdensome way to inform LEP consumers about ways to protect against fraud.

The Commission's authority to require carriers to provide notices is well-established. For example, the Commission requires CLCs to provide each applicant for service or customer, upon request, the Commission's address and telephone number, a copy of the CLC consumer protection rules, and other information.[253] The Commission requires CLCs to include on each bill, among other things, a statement that a customer may file a complaint with the Commission and include Commission contact information.[254] The Commission also requires CLCs to provide notices containing specific information, including how to contact the Commission.[255]

The Commission also requires every utility to annually send to all residential customers, with certain exceptions, a notice that contains information about the availability, terms, and conditions of ULTS, and to have that notice pre-approved by the Commission.[256] The Commission also requires all local exchange carriers that sell services in certain non-English languages to send Commission-mandated notices, including the ULTS notice with the rates, terms and conditions, in language.[257]

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[253] D.95-07-054, Appendix B, Rule 1.

[254] D.95-07-054, Appendix B, Rule 3.

[255] D.95-07-054, Appendix B, Rule 6.

[256] GO 153, Rule 4.3.1.

[257] D.96-10-076, Appendix A, Rule 1.B., and Rule 2, GO 153, Rule 4.6.1.1.

For all of the above reasons, Verizon Wireless' suggestion that the notice requirement is unlawful lacks merit.

Because we will require carriers which market in-language to provide their LEP customers with a notice about the CalPhoneInfo website, Rule V of the In-Language Marketing Rules should apply to this notice. Thus, carriers will be permitted to use any of the methods specified in Rule V of the In-Language Marketing Rules to provide this notice, and, consistent with Rule 1(D) of the Revised Rules For Local Exchange Service[258], the notice must be given to LEP customers upon initiation of service and annually thereafter, as are English-language notices given to customers under other Commission rules.[259] The In-Language Marketing Rules have been revised to reflect this requirement (*see* Appendices B and C).

4.4.12. Monitoring Carrier Practices

LIF states that the annual reports proposed in D.07-07-043 are inadequate and recommends that carriers be required to report, immediately upon discovery, instances of fraud, including fraud by their agents or resellers.[260] LIF contends that resellers are a large source of fraudulent activity, are often transient, and LIF is concerned that they might go out of business, change names or change locations within a year.

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[258] *See* D.96-10-076, Appendix A.

[259] *See*, for example, the Universal Lifeline Telephone Service (ULTS) program rules (D.00-10-028, OP 76), and Rules 10(a) and 10(b) of the Competitive Local Carrier Customer Notification and Education Rules (D.96-04-049, Attachment 1).

[260] LIF Phase II-B Proposal, pp. 3-4.

LIF also recommends that the Commission retain an independent entity to monitor carriers and resellers to identify questionable marketing tactics, and to monitor carriers' and resellers' compliance with the In-Language Marketing Rules and other requirements. Joint Telecommunications Carriers oppose LIF's proposal for an entity to monitor carrier and reseller compliance with the In-Language Marketing Rules and other requirements, contending that this is unnecessary because the Commission established the Telecommunications Fraud Unit to perform this function.[261]

In its comments on the PD, Greenlining, for the first time in this proceeding, recommends that CBOs be funded as watchdogs, with 5% of all carrier expenditures relating to in-language market trials for the next two years set aside for CBOs to perform this role.[262] Greenlining contends this is necessary because the PD has inadequate consumer protections and inadequate oversight and enforcement provisions.

Discussion

As discussed above, we have determined that it is inappropriate to rely on § 2892.3 as a basis for requiring carriers to report to the Commission or to inform LEP customers about how to protect themselves against fraud. We also conclude that there are more effective and manageable ways to obtain the information the Commission needs to help it better assess the needs of LEP consumers and to inform LEP customers about how to protect themselves against fraud. In

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[261] Comments of Joint Telecommunications Carriers on Proposals of the CDT-Joint Consumer Groups and the LIF Addressing LEP Complaint and Language Preference Tracking, p. 10.

[262] Comments of Greenlining on the Proposed Phase II Decision, p. 5.

particular, we adopt proposals which will provide information the Commission needs to help it assess the needs of LEP consumers by monitoring and publishing CIMS data and by undertaking a survey of LEP consumers.

We will also obtain information from the TEAM Program on efforts to reach and educate LEP consumers, and to help those consumers resolve their complaints. Moreover, the TEAM Program's network of CBOs with close relationships with Targeted Communities provides an effective way of identifying instances and patterns of fraud against LEP consumers. As a result, the TEAM Program will provide the Commission with useful information on effective ways to help inform and educate LEP consumers about fraud.

As discussed above, an unscrupulous carrier will not report to the Commission that the carrier or its agents are defrauding consumers. Thus, the information we obtain from CIMS, the consumer satisfaction survey and TEAM Program reports will provide us with more objective information about possible fraud against LEP consumers because we will be hearing directly from the potential victims of fraud. Therefore, we will not adopt LIF's recommendation that carriers be required to immediately report instances of fraud by carriers, their agents or their resellers.

We will not adopt LIF's recommendation for the Commission to retain an independent entity to monitor carriers and resellers compliance with the In-Language Marketing Rules or to identify questionable marketing tactics. The Commission's Telecommunications Fraud Unit, established by D.06-03-013, is

dedicated to investigating, documenting, and resolving allegations of telecommunications consumer fraud.[263]

This unit of the Consumer Protection and Safety Division is staffed with knowledgeable and experienced personnel to monitor fraud and complaint hotline trends, investigate alleged violations of the Public Utilities Code and Commission rules, and to coordinate enforcement efforts with law enforcement agencies. LIF does not explain why the Commission's Telecommunications Fraud Unit should be supplemented or replaced by an independent entity, or why an independent entity will be more effective at detecting fraud and undertaking enforcement actions.

We will not adopt Greenlining's recommendation that 5% of all carrier expenditures relating to in-language market trials for the next two years be set aside to fund CBOs to police carriers. As discussed above, the TEAM program will manage a statewide network of CBOs to facilitate outreach and further telecommunications education and complaint resolution services to LEP consumers statewide.

Greenlining does not describe with sufficient specificity what the proposed CBO watchdogs will do, or how that differs from what CBOs participating in the TEAM program will do. Greenlining also does not explain why carrier in-language market trial expenditures should serve as the basis for funding the proposed CBO watchdogs, how carrier in-language market trial expenditures will be determined, why 5% of those expenditures is the appropriate level of

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[263] D.06-03-013, OP 20.

funding, how the funding obligation will be collected and enforced, or why two years is the appropriate amount of time to provide the recommended funding.

4.4.13. Exemptions

Although not explicitly stated in their proposal, CDT-Joint Consumer Groups recommend in their comments that all carriers that market in-language or which have significant LEP populations in their service territory be required to track and report language preference.[264] CDT-Joint Consumer Groups contend that even those carriers which do not market in non-English languages should still be required to track and report language customer preferences because carriers who do not market in-language may still have a significant number of LEP customers. CDT-Joint Consumer Groups contend that, without tracking or reporting requirements, these LEP customers will not receive the same protections as other LEP consumers.[265]

LIF recommends that all carriers be required to track LEP consumer complaints, but that exempting small carriers from tracking language preference may be appropriate.[266] LIF contends that language preference tracking is needed to determine if LEP consumer complaints represent a disproportionate amount

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[264] DGT-Joint Consumer Groups Phase II-B Reply Comments, pp. 35-36. In their opening comments, CDGT-Joint Consumer Groups recommended exempting carriers with less than $10 million in intrastate revenue *and* which do not serve any LEP customers be exempt from language preference tracking and reporting.

[265] For example, CDGT-Joint Consumer Groups contend that small and midsized LECs and CLECs which do not track customer language preferences may not be offering ULTS to LEP customers as required. CDGT-Joint Consumer Groups Phase II-B Opening Comments, pp. 34-36.

[266] LIF Phase II-B Opening Comments, pp. 11, 13.

of all complaints to a carrier, and will assist in enforcing the In-Language Marketing Rules. However, LIF states that exemptions for language preference tracking requirements may be appropriate for smaller carriers because LIF believes language preference tracking is more costly than complaint tracking.

LIF recommends exempting carriers which have less than $10 million in intrastate revenue and which do not market in-language be exempt from language preference tracking and reporting. LIF recommends that a carrier seeking exemption be required to file a report with the Commission stating that the carrier does not conduct in-language marketing to residential customers, provide statistics on its customers, including the number of LEP residential customers by language, and explaining how the data was compiled.

Small LECs recommend that, if the Commission adopts any language preference tracking, complaint reporting, or fraud notification requirements, those requirements be subject to the same marketing "trigger" as the other obligation established by the In-Language Marketing Rules, and include an exemption for carriers regulated on a cost-of-service basis and carriers with less than $10 million in intrastate revenue. Small LECs contend that the burdens of implementing new preference tracking and complaint reporting rules are not justified for carriers who have few customers and very few LEP customers.[267]

Small LECs also recommend that, in addition to exempting carriers with less than $10 million per year in intrastate revenue from responsibility for funding the LEP consumer survey, the Commission also exempt all rate-of-

[267] Comments of Small LECs on Additional Proposals in Response to ALJ's March 19, 2008 Ruling, pp. 1–2.

return carriers from any responsibility for funding the LEP consumer survey.[268] Cox responds that the Small LECs do not explain why a rate-of-return carrier with $20 million per year in intrastate revenue should be exempt from funding responsibility while non-rate-of-return carriers with $20 million per year in intrastate revenue should not be exempt.[269]

CalTel states that the Phase I decision exempts from the In-Language Marketing Rules carrier services to wholesale and business customers and services offered through prepaid or month-to-month contracts, and, therefore, the PD should be modified to make only those carriers that provide non-exempt services responsible for the costs of the LEP consumer survey and pilot test.[270]

Discussion

Because we do not require carriers to establish tracking systems, issues concerning exemptions from any adopted requirements are largely moot. However, for the same reasons that the Phase I decision exempts from the In-Language Marketing Rules carriers providing only services to wholesale or business customers, we will also exclude those carriers from the responsibility for funding the costs of the LEP consumer survey and pilot test.

We also exclude non-exempt carriers with less than $10 million in annual intrastate revenues from the obligation to share in the cost of the consumer satisfaction survey and pilot test we order. Although the survey and pilot test

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[268] Opening Comments of Small LECs on Phase II Proposed Decision, p. 3.

[269] Reply Comments of Cox on Commissioner Peevey's Proposed Phase II Decision, p. 5.

[270] Comments of CalTel on Phase II Proposed Decision, passim.

will cover LEP consumers throughout California, the share of the cost that would be borne by carriers with less than $10 million in annual intrastate revenues will be approximately $43,000; less than 2% of the estimated cost of the survey and pilot test.

It would be administratively burdensome and not cost-effective to collect this minimal amount from several hundred small carriers. Most of these small carriers would bear a cost obligation of less than $100 each. Therefore, the survey costs that would otherwise be borne by carriers with less than $10 million in annual intrastate revenues will instead be allocated to carriers with $10 million or more in annual intrastate revenues in proportion to those carriers' share of total intrastate revenues.

The Small LECs do not explain why non-exempt rate-of-return carriers with $20 million per year in intrastate revenue should not contribute to the cost of the LEP consumer survey while other non-exempt carriers with $20 million per year in intrastate revenue should. The Phase I Decision found that several of the Small LECs operate in areas with significant LEP populations.[271] We will not exclude non-exempt rate-of-return carriers with $20 million per year in intrastate revenue from the obligation to fund the cost of the LEP consumer survey.

4.4.14. Review of Phase I Implementation

Joint Telecommunications Carriers propose that, twelve months after implementation of the In-Language Marketing Rules, Commission Staff convene

[271] D.07-07-043, FOF 36.

a meeting of the participants of the RCRF to review carrier implementation of the In-Language Marketing Rules.[272]

CDT-Joint Consumer Groups state that Joint Telecommunications Carriers' proposal to limit a review of Phase I implementation to an informal discussion is unreasonable, and contend that the review should be broader and more formal. CDT-Joint Consumer Groups propose that the Commission request comment on and analysis of the Phase I and Phase II decisions three months after:
(1) CDT-Joint Consumer Groups proposed survey has been conducted and the results having been compiled and analyzed with a written report by Staff or the survey company; (2) carriers' escalated complaints have been compiled for one year; and (3) CAB has fully implemented the CIMS database and compiled data for one year.[273]

CDT-Joint Consumer Groups also recommend that this proceeding remain open until the LEP rules have been in effect for one year, the LEP consumer survey results have been provided to the parties, the CIMS database has been operational for one year and parties have an opportunity to comment on the LEP survey results and the effectiveness of the LEP rules.[274]

Joint Telecommunications Carriers and Verizon Wireless oppose CDT-Joint Consumer Groups' recommendation, contending that it would reopen all of

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[272] Proposal of Joint Telecommunications Carriers Addressing LEP Complaint and Language Preference Tracking, Telecommunications Industry Phase II Proposal, p. 2.

[273] Phase II-B Proposal of CDT-Joint Consumer Groups in Response to ALJ's March 19, 2008 Ruling Permitting the Filing of Post-Workshop Proposals on Phase II-B Tracking Issues, pp. 10-11.

[274] Comments of CDT-Joint Consumer Groups on Phase II Proposed Decision, p. iii.

the issues in this proceeding, and will detract from focusing on the successful implementation of the In-Language Marketing Rules.[275] Verizon Wireless recommends that the Commission should first gain experience with the In-Language Marketing Rules before reconsidering and revising them.

Discussion

It is appropriate to gain experience with the In-Language Marketing Rules before revisiting them. Parties agree that implementation of Phase I should be reviewed, but disagree on formality and extent of that review. A review of the In-Language Marketing Rules adopted by D.07-07-043 and this decision should not take place until after the consumer satisfaction survey has been conducted and a written report has been issued.

The first opportunity to consider objective, quantified information on the effects of the In-Language Marketing Rules will occur after the results of the consumer satisfaction survey and the TEAM Program reports are published, and after CIMS data becomes available for review and analysis. Therefore, a review of the In-Language Marketing Rules should not take place until after the CIMS database has been fully implemented and data compiled for one year, after the results of the consumer satisfaction survey become available, and after the TEAM Program has published reports on its efforts.

Because we do not yet know which, if any, of the In-Language Marketing Rules will require changes to better meet the needs of LEP consumers, it is

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[275] Comments of Joint Telecommunications Carriers on Proposals of the CDT-Joint Consumer Groups and theLIF Addressing LEP Complaint and Language Preference Tracking, p. 15. Comments of Verizon Wireless on Post-Workshop Proposals on Phase II-B Tracking Issues, pp. 14–15.

premature to conclude that a formal and comprehensive proceeding is necessary. CDT-Joint Consumer Groups do not explain why this proceeding should remain open pending the milestones it recommends. The Commission need not hold a proceeding open in order to take further action on its on motion or at the request of a party.

Therefore, we will reserve the option to initiate a review of the In-Language Marketing Rules after a written report on the consumer satisfaction survey has been issued, CIMS data has been compiled and reported for one year, and the TEAM Program has published at least one annual report. If the Commission does not initiate its own review of the In-Language Marketing Rules after these benchmarks occur, parties may petition the Commission to open a proceeding to review the In-Language Marketing Rules.

5. Request to File Under Seal

On January 7, 2008, AT&T filed a motion for leave to file under seal confidential portions of its Phase II-B comments. AT&T states that the material on pages four and five of the Declaration of Scott P. Pearsons submitted in support of AT&T's Phase II-B Opening Comments (Pearsons Declaration) contains proprietary information regarding AT&T California's labor rates and the use of its network, and requests that it be filed under seal. AT&T asserts that the Commission has accorded confidential treatment for this kind of information in other similar proceedings. The information, if revealed, will place AT&T at an unfair business disadvantage.

We have granted similar requests in the past, and will grant AT&T's request for confidential treatment of the material on pages four and five of the Pearsons Declaration for a period of two years from the effective date of this decision. During that period the information will not be made accessible or

disclosed to anyone other than the Commission staff except on the further order or ruling of the Commission, the assigned Commissioner, the assigned ALJ, or the ALJ then designated as Law and Motion Judge. If AT&T believes that further protection of the information is needed, it may file a motion stating the justification for further withholding of the information from public inspection, or for such other relief as the Commission rules may then provide. This motion shall be filed no later than one month before the expiration date.

6. Comments on Proposed Decision

The proposed decision of the assigned Commissioner in this matter was mailed to the parties in accordance with Public Utilities Code § 311 and Rule 14.3(a) of the Rules of Practice and Procedure. Comments were received on August 20, 2008 from Greenlining, and comments were received on August 25, 2008 from AT&T, CalTel, CDT-Joint Consumer Groups, Cox, CTIA, Greenlining, Small LECs, SureWest, Verizon California, and Verizon Wireless. Reply comments were received on September 2, 2008 from AT&T, CDT-Joint Consumer Groups, Cox, CTIA, Small LECs, SureWest, Verizon California, and Verizon Wireless.

Parties' comments and replies, for the most part, reargue positions taken in their previously filed pleadings. In addition to the comments that we have addressed explicitly, we have reviewed all the comments and replies and revised the decision as warranted.

7. Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and Richard Smith is the assigned ALJ in this proceeding.

Findings of Fact

1. D.07-07-043 recognized that in-language market trials might be a way to improve services to California telecommunications consumers who do not read or speak English fluently, but deferred consideration of the issue to Phase II of R.07-01-021 to build a record upon which a decision could be made.

2. The term "market trial" used in reference to the temporary marketing of non-exempt telecommunications services, features or rate plans in a non-English language differs from traditional English language market trials because GO 96-B limits traditional market trials to new services, while in-language market trials are expected to market existing services in a non-English language in which a carrier has not previously marketed.

3. While similar in many ways to traditional market trials and promotions, in-language market trials do not fit squarely within either the definition of traditional market trials or of promotions.

4. Allowing carriers to test the responsiveness of consumers to marketing in a language in which the carrier does not already market services may improve services to California telecommunications consumers who do not read or speak English fluently.

5. A carrier that markets services in a target language during an in-language market trial and enters into long-term contracts with LEP participants who communicate in that target language, then subsequently discontinues in-language support to those consumers during or at the end of the trial, will leave LEP participants with the worst of both worlds: long-term English language agreements they do not understand, and no in-language support to explain or assist them in resolving questions or disputes.

6. The Commission previously required carriers to seek prior approval of traditional market trials by submitting a market trial description package to CD and DRA at least 30 days prior to the market trial start date. D.07-09-019 eliminated the pre-approval requirement for traditional market trials by adopting an information-only filing procedure.

7. The Commission does not require carriers to obtain approval to conduct in-language marketing on a permanent basis.

8. Pre-approval of in-language market trials will likely result in delays in implementing those trials, but would accomplish little.

9. The Commission previously required carriers conducting promotional offerings to submit a post-implementation analysis, including customer response, profitability, revenues, expenses, and customer complaints. Pursuant to D.06-08-030, promotions now require only an advice letter filing that is effective on one-day notice.

10. Selectively examining post-market trial reports from carriers that conduct in-language market trials will not help the Commission determine the effectiveness of the In-Language Marketing Rules as applied to all carriers.

11. Post-market trial reports are not needed as a basis for approving or denying authority to conduct subsequent in-language market trials.

12. A requirement to submit post-market trial reports may discourage carriers from conducting in-language market trials in less commonly spoken languages for which market responsiveness is uncertain. This will undermine the Commission's goal of improving services to telecommunications consumers who do not read or speak English fluently.

13. The Commission currently limits the duration of traditional market trials to 12 months.

14. The services that will be marketed during in-language market trials are not new services to be test marketed prior to their tariffing as permanent offerings, so the one-year duration allowed for traditional market trials is not appropriate or necessary for in-language market trials.

15. The carriers are not seeking complex information from in-language market trials, so lengthy trials are unnecessary.

16. Six months is an adequate and reasonable amount of time for carriers to test a particular language market before they should be required to comply with all of the In-Language Marketing Rules.

17. A traditional market trial may be extended for up to 20 working days when carriers indicate their intention to request authority to offer the trialed service on a permanent basis in order to avoid the interruption of customers' market trial service while a carrier's request for permanent authority to offer the service is pending.

18. It is not necessary or appropriate to grant extensions of time for conducting in-language market trials because the services marketed during in-language market trials are not new, non-tariffed services, and there is no need to tariff those services at the conclusion of a successful market trial.

19. Two years from the conclusion of an in-language market trial before repeating another trial in that language is a sufficient cooling off period to ensure that carriers do not evade compliance with the In-Language Marketing Rules by conducting serial market trials.

20. It is unreasonable discrimination in violation of § 453 for a carrier to charge in-language market trial participants higher prices than other consumers solely because they speak certain languages.

21. It is necessary to establish an objective way to determine that a carrier is complying with the limit on the duration of in-language market trials. Notice to the Commission of the market trial start date and target language serves this purpose.

22. Prior notification to the Commission far in advance of the start date of an in-language market trial is not necessary, as long as the notification is received by the Commission no later than the start date of the in-language market trial.

23. If carriers are allowed to formally notify the Commission as late as the start date of an in-language market trial, there is no risk of compromising a marketing campaign which is unveiled to the public on the same day or close to the date that notice is provided to the Commission.

24. Commission rules currently limit the geographic scope of traditional market trials by prohibiting company-wide market trials. This limitation is to prevent carriers from offering non-tariffed services to a significant portion of their customer base, and is consistent with the intended purpose of traditional market trials to determine the marketability of new services on a small, controlled group of customers.

25. Rather than testing the "marketability of a new service," the purpose of an in-language market trial is to test "in-language marketing of non-exempt services."

26. Confining the geographic scope of in-language market trials to counties or similar geographic units is administratively complex and will not provide any apparent benefits.

27. Given the pricing flexibility granted to carriers by D.06-08-030, limiting in-language market trials geographically will not prevent carriers from extending to the entire state any special conditions applicable to in-language

market trials because carriers may, but are not required to, geographically target promotional offerings.

28. Any attempt to impose geographic limits on in-language market trials can be easily frustrated because carriers could get around any Commission-imposed geographic limitations by conducting separate market trials in distinct but contiguous geographic areas where there is an overlap in the media coverage area.

29. Only Verizon California provides specific information about the duration of actual in-language market trials it has conducted. Verizon California's prior in-language market trials have lasted from three to six months.

30. With adoption of the URF, the Commission eliminated pricing restrictions for URF carriers, including those on traditional market trials or promotional offerings.

31. The Commission currently requires carriers that conduct traditional market trials to provide written notice to participants that the trial can be withdrawn at any time during the duration of the market trial, and that participation is entirely voluntary and revocable. This is required in order to reduce the number of customer complaints.

32. The Commission currently requires carriers that conduct traditional market trials to provide written notice to participants that describe the market trial, including the start and end dates of the trial, and all of prices applicable to the market trial services.

33. Providing advance notice to in-language market trial participants that customer service support in the target language will be discontinued will reduce confusion and complaints.

34. Providing participants with 30-days advance notice in the market trial target language that customer service support in the target language will be discontinued does not require carriers to invest in additional infrastructure beyond what is already needed to conduct an in-language market trial.

35. Requiring carriers to comply with Rule IV of the In-Language Marketing Rules, combined with the 180-day limit on the duration of in-language market trials, the minimum notice requirements, and the consumer protections established in R.00-02-004 will provide sufficient protections for LEP consumers during an in-language market trial.

36. CTIA's estimate does not comply with the Phase II Scoping Memo/ACR directive that parties alleging unreasonable or burdensome costs to implement or maintain an option identified in the ACR/Scoping Memo or proposed by another party support that position with specific, detailed cost information, including a description of the methodology and assumptions used in its analysis.

37. AT&T's cost estimates to set up tracking systems within AT&T California and AT&T Mobility, including cost information, the methodology and the assumptions used to develop its estimates, comply with the Phase II Scoping Memo/ACR.

38. AT&T's estimated costs to set up tracking systems within AT&T California and AT&T Mobility are substantial, and are based on a reasonable methodology and assumptions.

39. The Legislature enacted § 2892.3 through SB 318 in 1993. The purpose of SB 318 was to provide criminal penalties against those who seek to avoid payment for cellular telephone services obtained by the use of a cellular device.

40. Establishing fraud notice and reporting requirements applicable only to LEP consumers before considering these issues for other consumers will result in

potential confusion, where fraud notice and reporting requirements might apply to some carriers, customers or services but not to others.

41. The type of fraud that R.07-01-021 seeks to address is different than the fraud addressed in § 2892.3.

42. The scope of R.07-01-021 is limited to issues facing LEP consumers, and the Commission is therefore limited to considering § 2892.3 in this context. To consider requiring carriers to report fraud and provide notice to not only LEP consumers but to all customers goes beyond the scope of this proceeding.

43. The Commission is implementing steps that will help it obtain the information it needs to better identify fraud against LEP consumers and to inform those consumers about ways to avoid fraud, and to do this in a way that does not discourage carriers' in-language marketing efforts.

44. Pursuant to D.07-07-043, the Commission established the TEAM Program to manage a statewide network of CBOs to facilitate outreach and further telecommunications education and complaint resolution services to California's LEP consumers.

45. Utilizing CBOs that serve LEP consumers whose primary languages include, but are not limited to, Spanish, Chinese, Korean, Vietnamese, Tagalog, Thai, Hmong, Arabic, Farsi, Khmer, Armenian, and Russian (Targeted Communities) is a more effective way to reach LEP consumers than relying on carriers to educate LEP consumers.

46. The TEAM Program's education component consists of information about telecommunications choices, consumer rights, and consumer protections, including, but not limited to, issues addressed in the Commission's CalPhoneInfo brochures and advisories.

47. The TEAM Program's outreach component is intended to make LEP consumers in Targeted Communities aware of available information and complaint assistance services, and will use a variety of means, including, among other things, public service announcements, meetings with community leaders and other community organizations, posting information on public bulletin boards and the Internet, and participating in community events.

48. The Commission requires the TEAM Program to, at a minimum, track demographic information for the clients served, type and disposition of complaint handled, and the training or information provided.

49. The Commission requires the TEAM Administrator to submit monthly, quarterly and annual reports that analyze the impact of outreach efforts, educational activities, and complaint resolution services, and to identify areas requiring improvement.

50. The TEAM Program will provide the Commission with useful information on effective ways to help inform and educate LEP consumers about fraud.

51. Carriers have an opportunity to address and resolve customer concerns before the customer turns to CAB because CAB requires callers to contact their carrier before it will assist them.

52. CIMS data alone will not provide the Commission with complete information about the needs of LEP consumers, and no information about those LEP consumers who do not complain to the Commission.

53. "Expressions of dissatisfaction" contained in the Phase II Scoping Memo/ACR's proposed definition would include inquiries about legally required charges which may result from a customer's lack of knowledge, and which should not be treated as complaints. At the same time, excluding "expressions of dissatisfaction" from the definition will not allow the

Commission to determine how LEP consumers feel about the services and treatment they receive from carriers.

54. No party has proposed a way to reconcile the dilemma of how to capture information on how LEP consumers feel about the services and treatment they receive from carriers without including expressions of dissatisfaction about legally required charges about which customers may be unhappy.

55. There are significant challenges to defining a "reportable telecommunications complaint," a necessary prerequisite to tracking complaints.

56. The data generated by numerous, diverse carriers using different systems and methods to collect and report that data, will be of questionable reliability because of the subjectivity involved in identifying and classifying complaints or language preferences.

57. There are formidable challenges to carriers implementing LEP complaint and language preference tracking, and considerable uncertainty about the usefulness of information that would be produced by those tracking systems.

58. Requiring carriers to establish systems to track and report LEP consumer complaints or customer language preferences will not provide the Commission with complete, consistent, or reliable information, and the cost of establishing those systems will discourage carriers from serving LEP communities.

59. The alternatives identified at the Tracking Workshop and presented in parties' proposals provide a basis for developing more practical ways for the Commission to obtain information on the needs of LEP consumers.

60. The Commission's efforts to integrate CBOs into its education, outreach and complaint resolution processes will reduce the barriers which discourage LEP consumers from following though with their complaints.

61. The Commission's CalPhoneInfo website is a good start for ensuring that LEP consumers are informed about ways to protect against fraud because the CalPhoneInfo website brochures already provide information on how consumers can protect against many of the most common kinds of fraud.

62. Centralizing information about ways to protect against fraud on the Commission's CalPhoneInfo website will ensure consistency and timeliness of the information available to consumers, and will be easier to maintain and update.

63. Centralizing information about ways to protect against fraud on the Commission's CalPhoneInfo website is more administratively efficient and cost effective than requiring carriers to conduct duplicative efforts. Informal contacts with CAB that are recorded in the CIMS database, are easily identified, and provide objective indications of the kinds of LEP concerns the Commission wants to know about.

64. Publishing information on LEP consumer contacts with CAB will assist consumers in making informed decisions.

65. The quality of a carrier's products and services is an important factor that consumers take into consideration when making purchasing decisions.

66. Customer complaints are an important measure of consumers' satisfaction with a carrier's products and services.

67. Excluding carrier specific information from data on LEP consumer contacts with CAB that should be made publicly available is inconsistent with the State's telecommunications policy to encourage fair treatment of consumers through provision of sufficient information for making informed choices.

68. Appropriate disclosures accompanying published CAB data will adequately address the concern that the Commission is endorsing one carrier over another.

69. Concerns that published information on LEP consumer contacts with CAB will not provide context is easily addressed by including appropriate disclosures with the published data.

70. CDT-Joint Consumer Groups' proposal for carriers to report complaints escalated through a carrier's appeals process and LIF's proposal to track telephone calls to a carrier's in-language customer service each capture only a fraction of all complaints.

71. The quality and reliability of the data produced under CDT-Joint Consumer Groups' or LIF's complaint tracking proposals is not better than that available from the CIMS database but would be more costly and require greater administrative coordination than using CIMS data.

72. Relying on CIMS data has the added benefit of motivating carriers to satisfactorily resolve LEP customer concerns so that customers are not compelled to call CAB for help and have that event recorded in CIMS.

73. Some carriers routinely conduct customer satisfaction surveys.

74. AT&T uses the results from its Marketing Satisfaction and Customer Experience Evaluation surveys to measure the customer service provided by its Language Centers.

75. A customer satisfaction survey will be far less costly than requiring carriers to establish and maintain tracking systems.

76. The Field Research estimate is a reasonable approximation of the costs that will be incurred to conduct a customer satisfaction survey.

77. The estimated cost of the pilot test and customer satisfaction survey are minimal when compared to the costs to establish and maintain carrier operated tracking systems.

78. The issues Field Research identifies with respect to conducting a survey of LEP consumers do not present insurmountable logistical problems.

79. A consumer satisfaction survey of LEP customers will help the Commission better understand how LEP customers are treated by carriers and to identify the concerns of LEP consumers who may not file complaints.

80. A customer satisfaction survey is a reasonable way for the Commission to obtain information about LEP consumers because a customer satisfaction survey is doable at a reasonable cost, will not impose an undue financial burden on carriers, and is feasible using existing infrastructure.

81. The share of the cost of the consumer satisfaction survey and pilot test that would be borne by carriers with less than $10 million in annual intrastate revenues will be approximately $43,000.00, or less than 2% of the estimated cost of the survey and pilot test.

82. Most of the carriers with less than $10 million in annual intrastate revenues would bear a cost obligation of less than $100 each for their share of the cost of the consumer satisfaction survey and pilot test.

83. It will be administratively burdensome and not cost-effective to collect from several hundred small carriers with less than $10 million in annual intrastate revenues their portion of costs for the consumer satisfaction survey and pilot test.

84. It is premature to conclude that a formal and comprehensive proceeding is necessary because it is not yet known which, if any, changes to the In-Language Marketing Rules will be required to better meet the needs of LEP consumers.

Conclusions of Law

1. Consumer Federation's contention that consideration of in-language market trials is a rescission of the In-Language Marketing Rules is without merit.

2. Rules for in-language market trials should necessarily and appropriately differ from traditional market trials because they are intended to serve different purposes.

3. In-language market trials should be permitted under certain conditions.

4. Carriers may provide target language customer service support through a third-party interpreter service such as Language Line, so providing access to customer service in the target language of the market trial is not burdensome and will not require carriers to make substantial investments in infrastructure to support a non-English language before carriers have determined the viability of marketing to LEP customers in the target language.

5. In-language market trials in a target language should not be permitted if a carrier already markets non-exempt telecommunications services in the target language. Otherwise, carriers may seek to evade compliance with the In-Language Marketing Rules by characterizing their ongoing in-language marketing efforts as market trials.

6. An in-language market trial should be defined as, "The marketing of one or more non-exempt services for a limited duration in a non-English language."

7. It is unreasonable to require pre-approval of a limited duration in-language market trial when no pre-approval is required to conduct in-language marketing on a permanent basis or to conduct traditional market trials.

8. The start date of an in-language market trial period should be the date that a carrier begins marketing in the target language.

9. Carriers should be required to notify the Commission's Communications Division, Public Advisor and CAB Chief of planned in-language market trials via information-only filings prior to the start of an in-language market trial to inform the Commission of the carrier's identity, the start date, a description or map of the geographic target area and the target language of the market trial. Carriers' information-only advice letters may be filed pursuant to General Order (GO) 66-C. This notice will establish the start date and should be used to determine the permitted duration of an in-language market trial, if disputes, complaints or questions arise concerning compliance with the In-Language Marketing Rules.

10. Prior notification to the Commission of planned in-language market trials should be required to prevent carriers which are conducting in-language marketing efforts that do not comply with the In-Language Marketing Rules from notifying the Commission after-the-fact as a way to avoid compliance with the In-Language Marketing Rules.

11. If a carrier initiates an in-language market trial or other in-language marketing effort without first notifying the Commission of the in-language market trial, that marketing effort should be required to comply with the In-Language Marketing Rules.

12. Carriers should not be required to notify CBOs or other parties of their intention to conduct in-language market trials.

13. Carriers should be required to inform in-language market trial participants in the target language that participants may contact the CAB to file an informal complaint, and to provide CAB's telephone number and web address to participants.

14. Carriers should be required to informally alert the Public Advisor and the CAB Chief in writing to a pending in-language market trial at least seven days

prior to the market trial start date, and carriers should be permitted to treat that informal notice to CAB as confidential and proprietary pursuant to GO 66-C.

15. Carriers should not be required to submit reports or other information to the Commission at the conclusion of an in-language market trial.

16. There should be no limitations on the geographic scope of in-language market trials. However, carriers should have the flexibility to define the geographic scope of an in-language market trial.

17. Carriers should be authorized to conduct in-language market trials for a period not to exceed 180 days. A carrier that continues to market in a non-English language after the conclusion of a 180-day in-language market trial period should be required to comply with all of the In-Language Marketing Rules adopted in D.07-07-043.

18. Carriers should be allowed to repeat an in-language market trial not less than two years from the conclusion of an in-language market trial in that language, if the first trial was unsuccessful.

19. It is unreasonable to grant carriers broad flexibility in conducting in-language market trials, including the option to terminate the trial at any time, while binding LEP participants to long-term contracts entered into during an in-language market trial without any of the protections provided by the In-Language Marketing Rules.

20. Carriers that conduct in-language market trials should be required to provide, in the target language of the market trial during normal business hours, access to live, person-to-person customer service over the telephone so that participants may obtain assistance in resolving customer billing or service questions. Carriers should be allowed to provide customer service using either a

customer service representative fluent in the market trial target language, or a third-party interpreter service, such as Language Line.

21. In-language market trials should be required to include the condition that participation is entirely voluntary and revocable by participants if a carrier discontinues support in the market trial target language.

22. It is reasonable to inform LEP participants before it occurs that customer service support in the target language will be discontinued during or at the end of an in-language market trial.

23. Because in-language market trial participation is entirely voluntary and revocable if a carrier discontinues support in the market trial target language, carriers should be required to inform in-language market trial participants of this at least 30 days before terminating target language support. Carriers should be permitted to use any of the methods specified in Rule V of the In-Language Marketing Rules to provide this notice.

24. Carriers conducting in-language market trials should be required to inform in-language market trial participants in the target language that participants may contact CAB to file an informal complaint, and to provide CAB's telephone number and web address to participants. Carriers should be permitted to use any of the methods specified in Rule V of the In-Language Marketing Rules for this purpose.

25. Carriers should be required to, at a minimum, provide in-language market trial participants an English language confirmation summary of the customer's transaction, and instructions in the target language on how to access target language customer service support for assistance with the translation or interpretation of the confirmation summaries, billing questions, and Commission-mandated notices and disclosures. Carriers should be permitted to

use any of the methods specified in Rule V of the In-Language Marketing Rules for this purpose.

26. Carriers should not be required to report complaints made during an in-language market trial because carriers should not be required to track or report LEP consumer complaints.

27. The Commission should first assess the effectiveness of those efforts already underway and try other reasonable alternatives before requiring carriers to establish LEP complaint and language preference tracking and reporting systems which may not produce the information the Commission needs to help it assess the needs of LEP consumers.

28. It is unreasonable for carriers to withhold from the Commission the basis upon which their cost estimates are developed because the Commission has procedures for protecting proprietary information from disclosure.

29. The Commission should not rely on cost estimates for which the proponent has intentionally withheld the underlying cost information, assumptions and methodology on which the estimates are based.

30. Public Utilities Code Section 2892.3 and Penal Code § 502.8 are intended to address the misappropriation of telecommunications services, and to penalize those who use illegal telecommunications equipment in order to avoid the payment of any lawful charge for telecommunications service or to facilitate other criminal conduct.

31. Senate Bill 318, as reflected in § 2892.3 and Penal Code § 502.8, was intended primarily to address cellular device "cloning."

32. It is inappropriate to rely on § 2892.3 in this proceeding as a basis for requiring carriers to report to the Commission on fraud and to inform LEP customers about how to protect themselves against fraud because the type of

fraud that R.07-01-021 seeks to address is different than the conduct addressed in § 2892.3.

33. The Commission should not modify the scope of this proceeding in order to consider reporting of fraud against, or tracking of complaints from, all consumers because to do so will detract from the Commission's focus on issues concerning LEP consumers.

34. The Commission should address implementation of § 2892.3 in a separate proceeding that is not limited to LEP Consumers.

35. Carriers which have triggered the In-Language Marketing Rules for one or more languages should be required to file a compliance report with the Commission within 60 days after triggering the In-Language Marketing Rules because the reports will allow the Commission to identify carriers that are marketing in non-English languages and the LEP communities which are targeted by such marketing.

36. The compliance reports from carriers which have triggered the In-Language Marketing Rules should include a list of the languages for which a carrier has triggered the In-Language Marketing Rules, a summary of the types of in-language support that the carrier provides in the triggered language(s), and a description of how the support materials are made available to customers.

37. The Commission should first assess the usefulness of CIMS data before requiring carriers to establish LEP complaint and language preference tracking and reporting systems.

38. Published complaint statistics should be presented as "complaints per 100,000 customers" so that complaint statistics are comparable for carriers of different sizes.

39. Commission staff should revise the Commission's on-line complaint forms to make them more accessible and consumer friendly.

40. Carriers which market in-language should be required to provide LEP customers with an in-language notice directing them to the CalPhoneInfo website, and the notice should be given upon initiation of service and annually thereafter. Carriers should be permitted to use any of the methods specified in Rule V of the In-Language Marketing Rules to provide this notice.

41. Carriers with less than $10 million in annual intrastate revenues and carriers providing only services to wholesale or business customers should be exempt from the obligation to share in the cost of the consumer satisfaction survey and pilot test.

42. The consumer satisfaction survey and pilot test costs that would otherwise be borne by carriers with less than $10 million in annual intrastate revenues and to carriers providing only services to wholesale or business customers should instead be allocated to carriers with $10 million or more in annual intrastate revenues in proportion to those carriers' share of total intrastate revenues.

43. The Commission should reserve the option to initiate a review of the In-Language Marketing Rules adopted by D.07-07-043 and this decision after a written report on the consumer satisfaction survey has been issued, CIMS data has been compiled and reported for one year, and the TEAM Program has published at least one annual report.

44. AT&T's request for confidential treatment of the material on pages four and five of the Pearsons Declaration should be granted for a period of two years from the effective date of this decision.

O R D E R

Therefore, **IT IS ORDERED** that:

1. Carriers are authorized to conduct in-language market trials to test the responsiveness of consumers to marketing in a non-English language in which the carrier does not already market services, without being subject to the In-Language Marketing Rules adopted in Decision (D.) 07-07-043. Carriers that conduct in-language market trials shall comply with the rules applicable to in-language market trials contained in Appendix A to this decision.

2. Carriers currently marketing in one or more non-English languages shall file a compliance report with the Commission within 60 days of this decision. A carrier that begins marketing in one or more non-English languages shall file a compliance report with the Commission within 60 days after the carrier initiates marketing in a non-English language. The compliance report shall include a list of the languages for which a carrier has triggered the In-Language Marketing Rules, a summary of the types of in-language support that the carrier provides in the triggered language(s), and a description of how the support materials are made available to customers.

3. Commission staff shall undertake steps needed to retain an organization to conduct the pilot test and customer satisfaction survey consistent with the general scope and parameters presented by Field Research as described in this decision.

4. After an organization has been retained to conduct the pilot test and customer satisfaction survey, Commission staff shall convene a workshop to develop recommendations on the final scope, parameters and specifications of the pilot test and survey. The survey workshop shall consider what customer satisfaction survey information, if any, should not be publicly disclosed. The

survey workshop shall also consider whether the customer satisfaction survey should be periodically repeated, and, if so, how frequently this should be done and the estimated cost of doing so. Commission staff shall present its recommendations in a resolution for the Commission's consideration.

5. The costs to conduct the customer satisfaction survey and pilot test shall be borne by carriers with $10 million or more in annual intrastate revenues, excluding carriers providing only services to wholesale or business customers, and shall be apportioned to those carriers based on their share of total intrastate revenues.

6. Commission staff shall periodically publish its Consumer Affairs Branch (CAB) contact data, including carrier identifying information, and post that data on the Commission's website. Published contact statistics shall be presented as "contacts per 100,000 wireline telephone lines or wireless accounts" so that contact statistics are comparable among carriers of all sizes.

7. Commission staff shall develop a template or sample of the CAB contact statistics to be published, including the format, disclosures and other information recommended for posting on the Commission's website. Commission staff shall also make recommendations as to the frequency with which CAB contact statistics should be published. Commission staff shall be reasonably confident that CIMS data to be published is accurate, reliable and consistent. Commission staff shall present the proposed CAB contacts report and recommendations in a resolution for Commission consideration.

8. The Regulatory Complaint Resolution Forum shall provide open meetings where all carriers, community based organizations (CBOs) and others may address general issues; and staff has the ability to hold meetings where participation is limited to the involved carrier(s), appropriate CBOs or others to

address specific issues. Only general minutes of open RCRF meetings shall be made publicly available.

9. Commission staff shall revise the Commission's on-line complaint forms to make them more accessible and consumer friendly.

10. Carriers that market in-language shall provide their limited English proficient customers with a notice in the non-English language(s) in which the carrier markets directing customers to the CalPhoneInfo website for information about ways to protect against fraud. Carriers may use any of the methods specified in Rule V of the In-Language Marketing Rules to provide this notice, and shall provide the notice upon initiation of service and annually thereafter.

11. A review of the In-Language Marketing Rules adopted by D.07-07-043 and this decision shall not take place until after the results of the consumer satisfaction survey ordered herein are published, at least one Telecommunications Education and Assistance in Multiple-languages Program annual report is published, and at least one-year of Consumer Information Management System data becomes available.

12. AT&T's request for confidential treatment of the material on pages four and five of the Pearsons Declaration is granted for a period of two years from the effective date of this decision. During that period, the information shall not be made accessible or disclosed to anyone other than the Commission staff except on the further order or ruling of the Commission, the assigned Commissioner, the assigned Administrative Law Judge (ALJ). If AT&T believes that further protection of the information is needed, no later than one month before the expiration date of the grant of confidential treatment AT&T shall file a motion stating the justification for further withholding of the information from public inspection, or for such other relief as the Commission rules may then provide.

13. Rulemaking 07-01-021 is closed.

This order is effective today.

Dated _____, at San Francisco, California.

APPENDIX A
Rules Applicable to In-Language Market Trials

A. Definitions

1. An in-language market trial is defined as, "The marketing of one or more non-exempt services for a limited duration in a non-English language."

2. The "start date" of an in-language market trial period shall be the date that a carrier begins marketing in the target language. In-language marketing that occurs prior to the start date specified in the notice to the Commission or after the permitted duration shall comply with all of the In-Language Marketing Rules.

3. The "In-Language Marketing Rules" are the Rules for In-Language Support to Limited English Proficient (LEP) Telecommunications Consumers contained in Decision (D.) 07-07-043, Appendix A, as modified by the Phase II decision (Appendix C).

B. Limitations

1. Carriers which market non-exempt telecommunications services in a particular non-English language shall not conduct in-language market trials in that language.

2. In-language market trials shall not exceed a period of 180 days. A carrier that continues to market in a non-English language after the conclusion of a 180 day in-language market trial period shall comply with all of the In-Language Marketing Rules adopted in D.07-07-043, as modified by the Phase II decision (Appendix C).

3. A minimum period of two years shall elapse from the conclusion of an in-language market trial before another in-language market trial in that language may be repeated.

C. Notice to Commission

1. Carriers shall serve on the Commission's Communications Division, Public Advisor and CAB Chief notice of planned in-language market trials via an information-only advice letter filing prior to the start of an in-language market trial to inform the Commission of the carrier's identity (name and utility identification number), the start date, a detailed description or map of the geographic target area and the target language of the market trial. Carriers' information-only advice letters may be submitted pursuant to General Order (GO) 66-C.

2. Carriers shall informally notify the Public Advisor and CAB Chief in writing to a pending in-language market trial at least seven days prior to the market trial start date, and may designate that informal notice as confidential and proprietary pursuant to General Order 66-C. If a carrier submits its information-only advice letter at least seven days prior to the start date of the in-language market trial, the carrier need not separately notify the Public Advisor and the CAB Chief. If a carrier chooses to submit its information-only advice letter less than seven days prior to start of an in-language market trial, that carrier shall separately notify the Public Advisor and the CAB Chief at least seven days prior to the market trial start date. Email notice to the Public Advisor and the CAB Chief is permitted.

3. Carriers shall inform in-language market trial participants in the target language, at the start of their participation in an in-language market trial, that participants may contact the Consumer Affairs Branch (CAB) to file an informal complaint, and to provide CAB's telephone number, web address and online complaint entry URL to participants.

4. If a carrier begins an in-language market trial or other in-language marketing effort without first notifying the Commission, that marketing effort shall comply with the In-Language Marketing Rules.

D. Requirements

1. The consumer protections established in Rulemaking 00-02-004 (the Consumer Protection Initiative) shall apply to in-language market trials.

2. Carriers that conduct in-language market trials shall comply with Rule IV of the In-Language Marketing Rules by providing in the target language of the market trial during normal business hours access to live, person-to-person customer service over the telephone. A carrier may provide in-person customer service in the target language, in addition to telephonic customer service, if a carrier chooses to do so. Customer service may be provided using either a customer service representative fluent in the market trial target language, or through a third-party interpreter service, such as Language Line.

3. Carriers shall, at a minimum, provide in-language market trial participants an English language confirmation summary of the customer's transaction and instructions in the target language on how to access target language customer service support for assistance with the translation and/or interpretation of the confirmation summaries, billing

questions, and Commission-mandated notices and disclosures. Carriers may use any of the methods specified in Rule V of the In-Language Marketing Rules for this purpose.

4. The terms of an in-language market trial shall include the condition that participation is entirely voluntary and revocable by participants if a carrier discontinues support in the market trial target language.

5. Carriers shall inform participants in the target language at least 30 days before terminating target language customer service support that participation in an in-language market trial is entirely voluntary and revocable if a carrier discontinues support in the market trial target language. Carriers may use any of the methods specified in Rule V of the In-Language Marketing Rules to notify in-language market trial participants for this purpose.

6. Carriers shall inform participants in the target language at the start of their participation in an in-language market trial that participants may contact CAB to file an informal complaint, and to provide CAB's telephone number, web address and online complaint entry URL to participants. Carriers may use any of the methods specified in Rule V of the In-Language Marketing Rules for this purpose.

7. Carriers shall provide notice in the target language to in-language market trial participants at least 30 days before terminating target language customer service support that customer service support in the target language will be discontinued. Carriers shall also provide trial participants with CAB's contact information and the CalPhoneInfo website URL when they provide notice to trial participants that target

language customer service support will be discontinued. Carriers may use any of the methods specified in Rule V of the In-Language Marketing Rules to notify in-language market trial participants for this purpose.

8. If a carrier during or at the end of an in-language market trial discontinues providing customer service support in the target language, participants shall have the option to discontinue services obtained during the market trial.

(END OF APPENDIX A)