Decision **ALTERNATE PROPOSED DECISION OF COMMISSIONER SANDOVAL** **(Mailed -10/1/2013)**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Petition to Adopt, Amend, or Repeal a Regulation Pursuant to Pub. Util. Code Section 1708.5.	Petition 12-11-006 (Filed November 8, 2012)
Rulemaking to Review the Privacy Practices of Telephone Corporations and Consider Modified Privacy Standards.	R._____

DECISION GRANTING PETITION IN PART AND INSTITUTING RULEMAKING TO REVIEW THE PRIVACY OF TELEPHONE CORPORATIONS AND CONSIDER MODIFIED PRIVACY STANDARDS

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DECISION GRANTING PETITION IN PART AND INSTITUTING RULEMAKING TO REVIEW THE PRIVACY OF TELEPHONE CORPORATIONS AND CONSIDER MODIFIED PRIVACY STANDARDS

1. Summary

This decision grants in part the Petition for Rulemaking filed by the Consumer Federation of California, The Utility Reform Network, and Privacy Rights Clearinghouse requesting that the Commission open a new rulemaking to review the privacy practices of telephone corporations and to develop wireless privacy standards. The Petition for Rulemaking identifies potential concerns related to the collection and use of personal information by telephone corporations, including companies that provide wireless telecommunications services, and inquires about whether existing laws and policies at the state and federal level fail to offer adequate protection for customer information. The Petition for Rulemaking also suggests that this Commission develop and adopt regulations under its jurisdiction, or recommend additional state or federal laws that the Commission or other body would implement.

Because of the importance of information privacy to California consumers, and recognizing the many changes to telecommunications practices and technologies since this Commission last reviewed the privacy rules for and practices of telephone corporations, it is reasonable to re-evaluate these practices to ensure that they remain relevant to the current communications environment. As a result, the Commission initiates a Rulemaking focusing on the privacy practices of telephone corporations under our jurisdiction, including providers of wireless telecommunications services. This review will not extend to the privacy practices of applications installed directly by consumers on their mobile communications devices from non-affiliated application providers. With the adoption of this decision and order, Petition 12-11-006 is closed.

2. Petition

The "Joint Petition Of Consumer Federation Of California, The Utility Reform Network, And Privacy Rights Clearinghouse To Initiate A Proceeding To Review The Privacy Practices Of Telephone Corporations, Including Wireless Carriers; And To Develop Wireless Privacy Standards" (Petition) was filed on November 8, 2012. In this Petition, the Consumer Federation of California, The Utility Reform Network, and Privacy Rights Clearinghouse (collectively, the Petitioners) request that the Commission initiate a new rulemaking to review the customer information that telephone corporations collect or have access to, along with those companies' practices in handling and using that information once it is collected. The Petitioners further ask that the Commission develop standards for the collection, handling, and sharing of customer information to ensure that customers are aware of what information may be collected and how that information may be used, and to protect the privacy of customers' information. In addition, the Petition appears to suggest that third parties under contract with telecommunications providers, as well as other third parties that use the phone as a platform (apparently, developers and distributors of phone applications or "apps"), should be subject to privacy rules developed by the Commission.

In support of their request for a rulemaking, the Petitioners note that the technologies supporting telecommunications services have been developing rapidly in recent years, and that the rules that are currently in place may benefit from a review and possible updates to ensure their relevance to current communications technologies. Discussion in the Petition focuses predominantly on concerns about the potential for violations of consumers' privacy by wireless telecommunications carriers and third parties that offer applications that operate on a wireless platform. The Petitioners' recommendation for a rulemaking also

urges an examination of the privacy practices and rules applicable to wireline carriers. The Petitioners reiterate these arguments in their reply to the parties' responses, which are discussed below.

3. Responses to the Petition

The Commission received responses to this petition from CTIA – the Wireless Association (CTIA) and Pacific Bell Telephone Company dba AT&T California, New Cingular Wireless LLC and affiliated companies (together, (AT&T). MetroPCS California Inc. (MetroPCS) and the petitioners filed replies to these comments. AT&T, MetroPCS, and CTIA (collectively, the Opposing Parties) argue that the Commission should deny the petition. The Opposing Parties argue against opening a rulemaking on telephone corporations' privacy practices on both procedural and substantive grounds. The Opposing Parties assert, among other things, that the Petition is procedurally deficient because it attempts to reach non-regulated services and providers, and because it fails to state a clear justification for new rules or a specific wording for those rules. In addition, the Opposing Parties make substantive arguments against opening a rulemaking. Overall, the Opposing Parties argue that existing laws and policies already protect the privacy of customer information and that additional rules governing the privacy of information available to telecommunications carriers (wireless or wireline) are unnecessary.

The Opposing Parties further suggest that the Commission's authority over wireless carriers is limited, and report that carriers already have their own internal privacy policies in place and disclose them to the public, in conformance with California State law. The Opposing Parties also cite existing privacy laws

and policies that they assert are applicable to wireline carriers, such as those governing customer proprietary network information (CPNI),[1] which the Opposing Parties believe do not need to be revised and obviate the need for more rules.

3.1. Procedural Arguments Against Granting the Petition

First, the Opposing Parties argue that the Petition fails to meet the requirements of Rule 6.3.[2] AT&T asserts specifically that the Petition focuses on privacy of information accessible to wireless carriers and does not provide any justification for a review of wireline providers' privacy practices.[3] CTIA and MetroPCS argue that the Petition as a whole fails to meet the requirements of Rule 6.3 because, in requesting a review of third-party practices with respect to customer information, it fails to limit its request to entities under the Commission's jurisdiction.[4] In addition, CTIA argues that the Petition does not comply with the rule because it does not recommend specific wording for new rules.[5] MetroPCS argues that the Petition does not "concisely state the

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[1] *In the Matter of Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information,* CC Dkt No. 96-115, *Declaratory Ruling*, FCC 13-89, rel. June 27, 2013.

[2] All references to Rules in this document are to the Commission's Rules of Practice and Procedure.

[3] AT&T Opening Comments filed December 10, 2012, at 4.

[4] MetroPCS Reply Comments filed December 20, 2012, at 4 and CTIA Opening Comments filed December 10, 2012, at 3.

[5] CTIA Opening Comments at 3.

justification for the requested relief," stating that it does not include any evidence that current privacy rules are inadequate or could lead to customer harm.[6]

3.2. Substantive Arguments Against a Rulemaking

AT&T argues that the Commission does not have the authority to regulate third-party software developers who create "apps" or other software that may be used on what it refers to as "handheld computing devices"[7] (what the petitioners call "smart phones"). AT&T asserts that the Commission's ability to regulate wireless carriers is limited, specifically noting that the Federal Communications Commission (FCC) has classified wireless broadband services as information services.[8] In its discussion, AT&T appears to classify most activities customers may undertake on smart phones as "wireless broadband services" that should be considered interstate information services under the jurisdiction of the FCC.[9] In support of this position, AT&T cites to the FCC Wireless Broadband Order's[10] description of "wireless broadband Internet access service" as "a service that uses spectrum, wireless facilities and wireless technologies to provide subscribers with high-speed (broadband) Internet access capabilities."[11]

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[6] MetroPCS at 2-3.

[7] AT&T Opening Comments, December 10, 2012, at 1.

[8] AT&T Opening Comments at 2.

[9] AT&T Opening Comments at 2.

[10] *In the Matter of Appropriate Regulatory Treatment for Broadband Access to the Internet Over Wireless Networks*, WT Dkt. No. WT 07-53, *Declaratory Ruling*, 22 FCC Rcd. 5901, 40 Communications Reg. (P&F) 942, FCC 07-30 (rel. Mar. 23, 2007).

[11] WT Dkt. No. WT07-53.

In addition, the Opposing Parties argue that there are already rules and policies in place to protect customer information collected by telecommunications carriers, so additional rules are not needed. For example, CTIA cites Section 222 of the Federal Communications Act, which requires carriers to protect the confidentiality of CPNI.[12] CTIA also argues that the Federal Trade Commission (FTC) has the authority under Section 5 of the FTC Act and the Children's Online Privacy Protection Act to take action against unfair or deceptive business practices and ensure privacy of information about children, and that it can use this authority to protect customer information or take action against companies that violate their own posted privacy policies.[13] CTIA also notes that California law requires mobile carriers and app developers to post privacy policies, and that, like the FTC, the California Attorney General's office may act to enforce those policies if they are not followed.[14]

4. Discussion

4.1. Existing Federal and State Privacy Protections

As noted above, both the State of California and the federal government have enacted laws and policies that protect the privacy of consumers' personal information. The Commission recognizes the importance of protecting the privacy of customer information, and is addressing issues related to the privacy of energy user data in the ongoing Smart Grid proceeding, Rulemaking 08-12-009. That proceeding is exploring the balance between

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[12] CTIA at 4-7.

[13] CTIA at 8.

[14] CTIA at 9.

making information (generally aggregated or de-identified) available for various legitimate purposes (for example, for research on energy usage patterns, to support Commission programs such as energy efficiency, and/or to support technological innovation that may facilitate reaching Commission or state policy goals) and protecting individuals' right to control the use of potentially sensitive information that could be matched to an individual.

As noted by the Opposing Parties, there are currently federal and state laws and rules governing the protection and use of CPNI. The main federal law relevant to the issues raised in the Petition is 47 U.S.C. § 222, part of the Telecommunications Act of 1996. The federal statute defines CPNI as follows:

> The term "customer proprietary network information" means--
>
> (A) information that relates to the quantity, technical configuration, type, destination, location, and amount of use of a telecommunications service subscribed to by any customer of a telecommunications carrier, and that is made available to the carrier by the customer solely by virtue of the carrier-customer relationship; and
>
> (B) information contained in the bills pertaining to telephone exchange service or telephone toll service received by a customer of a carrier; except that such term does not include subscriber list information.[15]

Section 222 requires telecommunication carriers to protect the confidentiality of CPNI and use it only to provide the services to which the customer subscribes. Section 222 does not allow use of CPNI for other purposes unless the customer approves disclosure of the information or disclosure is required under the law. Notably, Section 222 protects information relating to

[15] 47 U.S.C. § 222.

customer location, with some exceptions including, but not limited to, notification to family and authorities in case of an emergency.[16]

In addition to this federal statutory protection, the FCC issued an order in 2007 addressing the scope of protection for CPNI.[17] That order generally requires telecommunication corporations, including wireless and VoIP carriers, to authenticate customers who call or arrive in a store requesting account information, to give notice to customers of changes to the customer's account, to give notice to customers if their CPNI is disclosed without authorization, and requires that customers "opt-in" before their information can be given to joint venture partners or independent contractors.[18] The order also requires that telecommunications carriers file an annual certification disclosing all customer complaints regarding the unauthorized release of CPNI and actions taken against "data-brokers," and take "reasonable measures to discover and protect against pretexting."[19]

California state law also establishes privacy requirements for telephone corporations, consistent with the right to privacy established in Article I of the California State Constitution, which provides:

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[16] See the FCC's discussion of the scope of its authority under Section 222 in its *Declaratory Ruling*, *op. cit*., rel. June 27, 2013.

[17] *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information; IP-Enabled Services*, CC Docket No. 96-115; WC Docket No. 04-36, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 6929 (2007)("EPIC CPNI Order").

[18] *Id*. at ¶ 3.

[19] *Id*. at ¶ 3.

> All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy.

Consistent with this provision of the state Constitution, the Public Utilities Code Section 2891 sets specific privacy-related rules of telephone corporations. Section 2891 generally requires that a telephone corporation cannot disclose CPNI to another person or corporation without first obtaining the residential customer's written permission, and defines CPNI as including calling patterns, financial information, purchased services, and demographics. This section appears to apply to all telephone corporations, but does not include protection of location information. Other state privacy requirements applicable to telecommunications providers include the following:

- General Order 107-B protects the privacy of telephone communications and restricts recording and monitoring of telephone conversations.
- Sections 629.5, et seq. provide rules for intercepting of communications, but those rules are only in effect until January 1, 2015.
- Sections 630, *et seq*. provide protections against invasion of privacy. For instance, section 631 does not allow wiretapping, but does provide an exception for telecommunication public utilities "for the purpose of construction, maintenance, conduct or operation of the services and facilities of the public utility."[20]
- Section 632.7 prohibits recording of phone calls from both cell phones and landlines without consent, but

[20] Ca. Pen. Code § 631(b).

provides the same exception noted above for public utilities.[21]

- The California Penal Code has provisions regarding wiretapping.

In addition to these examples, a variety of federal and state privacy and consumer protection laws apply to all telephone corporations, including wireless carriers. For example, California requires most providers of mobile and on-line services to develop and make available to customers their own privacy policies, which specify what information they collect and how it may be used. Like other businesses, mobile and on-line services associated with telephone corporations are bound by the requirement to provide and abide by such privacy policies. In addition, certain agencies, including the FTC at the federal level and the California State Attorney General's Office, have authority under existing anti-fraud laws and other policies to investigate breaches of and to enforce compliance with companies' privacy policies.[22]

4.2. Jurisdiction

The CPUC, as with other state commissions, has authority over wireless terms and conditions of service. While states are not allowed to regulate the entry of or the rates charged by wireless carriers, they are not prohibited "from regulating the other terms and conditions of commercial mobile services" (47 USC § 332(c)(3)(A)). In particular, the CPUC has regulatory authority over telephone corporations, including wireless service providers, and that regulatory authority includes the ability to impose rules to protect consumers. The FCC

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[21] See Ca. Pen. Code § 632.7(b)(1).

[22] For example, the FTC under 15 U.S.C. § 45 and the California State Attorney General's Office under Cal. Bus. & Prof. Code §§ 22575-79.

explicitly acknowledges this in the 2007 CPNI Order, stating "[w]e reject commenter requests to preempt all state CPNI obligations because we agree with commenters that assert we should allow states to also create rules for protecting CPNI."[23] This confirms that states are not preempted from enacting their own regulations governing customer information. Accordingly, the CPUC can adopt rules affording some protections for customers so long as those rules do not attempt to infringe on areas in which the FCC has exclusive jurisdiction.

4.3. Basis for Opening a Rulemaking

Based on the record of this proceeding, along with a review of the Commission's jurisdiction and existing restrictions on telecommunications carriers' use of customer information, we find that there may be gaps in existing privacy protections that this Commission should address through a Rulemaking proceeding. Such gaps include, but may not be limited to, a need to update state CPNI requirements, which were enacted in 1986, well before the development of either current cell phone technologies or smartphones.

Potential gaps resulting from new technologies, including recent changes to telecommunications capabilities, have created new forms of personal information and new capacities for tracking that information not available or foreseen when earlier laws and regulations were written. For example, mobile telephones now contain equipment that allows tracking of an individual's location, which a telephone corporation could then match with a customer's demographic information; this ability was not available at the time state CPNI laws and rules were adopted.[24] Wireless service providers also have access to the

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[23] *Id*. at ¶ 60 (internal footnotes omitted).

[24] For instance, Verizon has just announced a new Precision Market Insights initiative:

Footnote continued on next page

unique serial numbers of customer telecommunications devices, as well as information created by various text and other messaging services, in addition to the content of other private communications and data transported across their networks.

Another potential gap is created by the state's lack of explicit authority to enforce federal privacy rules, especially given the differences between the

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> Precision Market Insights empowers you to understand and engage consumers in deeper ways. Our solutions capture information from the physical and digital worlds simultaneously to deliver unparalleled audience and location measurement, mobile marketing and predictive analytics based on what audiences actually do, where they actually go and what they actually like. This 360° view allows you to strengthen strategies, improve MROI and drive your business more efficiently and profitably than ever before. Now you can strategically enter new markets and strengthen connections to your current audiences with game-changing ***Outdoor Media Measurements***, innovative ***Venue Audience Measurements*** and cutting-edge ***Retail Site Analytics***. Our analytics platform allows you to:
>
> - Understand the demographic, geographic and psychographic makeup of your target audience.
> - Isolate where consumer groups work and live, the traffic patterns of a target audience and demographic information about what groups visit particular locations. Learn what mobile content your target audience is most likely to consume so you can cross-sell and up-sell more easily.

Verizon adds the following note about privacy:

> At Verizon, we are committed to protecting the privacy of customer information. The information that is shared to provide insightful data to businesses is provided solely on an aggregated basis—as a means to enhancing the overall media experience and connected dialogue between growing businesses and consumers. Data is not included from individual Verizon Wireless customers who choose not to participate. http://business.verizonwireless.com/content/b2b/en/precision/precision-market-insights.html
>
> AT&T has announced a similar initiative. http://rt.com/usa/at&t-selling-personal-information-725/ .

state and more extensive federal CPNI provisions. These differences between state and federal rules may reduce the effectiveness of existing privacy protections for California consumers. As one example, federal CPNI laws and regulations protect customers' location information, but California laws and regulations currently do not. Similarly, federal laws and regulations cover all customers and explicitly apply to all telecommunications carriers (including wireless and VOIP carriers). In contrast, state CPNI laws focus on residential telephone customers; as a result, their application to wireless carriers, which may not always distinguish between residential and commercial customers, is less clear. A further ambiguity has been raised by the passage of SB 1161, now codified as Sections 239 and 710 of the Public Utilities Code. That measure prevents the Commission from exercising regulatory jurisdiction or control over VoIP and IP-enabled services except "as required or expressly delegated by federal law or expressly directed to do so by statute…" (Section 710(a).) Does this limitation impinge on the Commission's ability to protect the privacy of consumers who are coming to rely in ever increasing numbers[25] on VoIP for their phone services and IP-enabled technology for their data services, including wireless voice service over LTE (VoLTE)?

In addition, the Petitioners cite newspaper accounts reporting that several wireless companies, including AT&T, Sprint, and T-Mobile installed software on customers' mobile communications devices that collected and

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[25] FCC Form 477 data as of December 2011 indicates that VoIP represents approximately 25% of all *fixed voice subscriptions* in the state and *some 8% of all voice subscriptions* in the state. The latter figure should explode when wireless voice service migrates to VoLTE. Some 66% of all voice subscriptions in the state were wireless customers as of December 2011.

transmitted to Carrier IQ, a privately owned mobile data-mining software company, customers' usage information without customers' knowledge and consent.[26] It is not clear exactly what information was collected and transmitted to and by the Carrier IQ software or how that information was used, but based on public reports, it appears possible that some of the collected information may have been CPNI or subject to other privacy protections under California law. If so, making that information available to an entity other than the original service provider, even under contract with that provider, could constitute a violation of CPNI or other customer privacy laws. While this proceeding does not contemplate an investigation into this or other past incidents at this time, the Carrier IQ example raises the possibility that there is a lack of clarity about the limits of existing CPNI and other information privacy standards as they apply to Telephone Corporations, especially wireless companies. A Rulemaking is appropriate to address such concerns and to answer questions about the changing scope of risks to privacy and the reach of current law in protecting against those risks.

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[26] Petition at 4 and 5; cf. the FCC's Declaratory Ruling of June 27, 2013, at ¶ 3.

> The actual risks to consumers of unauthorized disclosure of sensitive information—and the need for Commission action—are demonstrated by the insecure way in which some carriers caused software provided by Carrier IQ, Inc. (Carrier IQ) to be installed on some mobile devices. Carrier IQ's diagnostic software can be installed on a mobile device to provide carriers with information about how their network and devices on their network are functioning. In November 2011, a researcher discovered security vulnerabilities that permitted third parties to access the information collected by the Carrier IQ software, resulting in the potential for consumers' location and other data to be accessed and disclosed. This discovery led to calls for an investigation into the overall security of sensitive information throughout the mobile services ecosystem. [Footnotes omitted.]

The appropriateness of a Rulemaking is also supported by the requirements of Public Utilities Code Section 7906:

> The Public Utilities Commission shall regularly make inquiry of every telephone corporation under its jurisdiction to determine whether or not such corporation is taking adequate steps to insure the privacy of communications over such corporation's telephone communication system.

Given the many changes to the telecommunications industry and communications technologies since current CPNI laws and regulations were put into place, an examination of telecommunications providers' privacy practices and a potential update to applicable privacy standards and rules is reasonable and consistent with the Commission's legal responsibilities under Pub Util Code § 7906.

We recognize that much of the discussion in the Petition focuses on third-party applications, which appear to be governed by existing state laws and policies that require development and disclosure of privacy policies, and are primarily enforced by entities other than this Commission. The portions of the Petition focused on third party applications are denied except as described in the preliminary scoping memo below. As a result, the scope of this Rulemaking is narrower than that requested in the Petition.

5. Preliminary Scoping Memo

As required by Rule 7.1(d),[27] this order includes a preliminary scoping memo as set forth below. The Petitioners have raised a number of issues that are

[27] Rulemakings. An order instituting rulemaking (OIR) shall preliminarily determine the category and need for hearing, and shall attach a preliminary scoping memo. The preliminary determination is not appealable, but shall be confirmed or changed by assigned Commissioner's ruling pursuant to Rule 7.3, and such ruling as to the category is subject to appeal under Rule 7.6.

appropriate areas of inquiry for this OIR, of which the following are expected to be within the scope of this proceeding.

- Identification of the types of individual customers' telephone communications usage data that is available to the carrier by the customer solely by virtue of the carrier-customer relationship;
- Evaluation of whether policies and practices of Telephone Corporations for handling CPNI and other potentially privacy-sensitive customer information are consistent with California customers' right to privacy as defined in the state Constitution and state statutes;
- Determination of whether those policies and practices comply with existing laws and policies;
- Identification of gaps in existing privacy laws and policies applicable to Telephone Corporations;
- If appropriate, development and adoption of new privacy standards and regulations to ensure that Telephone Corporations under the Commission's jurisdiction collect, handle, and share CPNI and other potentially privacy-sensitive information in a way that insures the privacy of telecommunications customers and the privacy of their communications over Telephone Corporations' networks; and
- If appropriate, develop recommendations for new federal and state laws or regulations that the Commission, the State Legislature, or some other body would implement.

The privacy practices of developers of applications that operate on a mobile platform and offer voluntary services directly to consumers, but are not affiliated with a telecommunications provider, and are installed or uninstalled at the discretion of the customer, are not within the scope of this proceeding.

Both respondents and other parties may file and serve responses to the following questions according to the schedule set forth in Section 6, below:

1. What, if any, types of data collected by Telephone Corporations should be subject to privacy standards for retention, storage, handling, and use? Are there any types of data that should be subject to privacy standards that are not covered by existing state privacy laws or regulations? If so, why should that additional information be considered CPNI or otherwise privacy sensitive and deserving of protection?
2. Are the existing policies and procedures related to collection, retention, handling, sharing, and use of CPNI or other privacy-sensitive information sufficient to protect that information?
3. If you believe that existing state laws, regulations, policies, and procedures are inadequate, what additional policies or procedures might be appropriate?
4. What are the jurisdictional boundaries limiting CPUC modification of Commission orders or otherwise constraining adoption of new regulations, policies or procedures to safeguard consumer information from unauthorized use?

Parties may include in their comments suggestions for additional policies, practices, rules, and procedures related to this preliminary scope. The final scope of this proceeding will be identified in a subsequent scoping memo to be issued after the filing of the information and comments described in this section.

Filing parties should provide verifiable data and documentation when responding. Parties may include in their comments suggestions of additional policies, practices, rules, and procedures related to this preliminary scope. The final scope of this proceeding will be determined through a subsequent scoping memo to be issued after the filing of the information and comments described in this section.

6. Schedule

This OIR will conform to the statutory case management deadline for quasi-legislative matters set forth in Pub. Util. Code § 1701.5. In particular, it is our intention to resolve all relevant issues within 18 months of the date of the assigned Commissioner's Scoping Memo.

The timetable for this OIR will depend on the input we receive from the parties. For purposes of addressing the scoping memo requirements, we establish the following tentative schedule, which is subject to adjustment by the assigned Commissioner or the assigned Administrative Law Judge:

Date	**Activity**
Day 1	Issuance of Order Instituting Rulemaking
Day 45	Telephone corporations file the information set forth in questions 1-5 of Section 5.
Day 75	Parties file Opening Comments on telephone corporations' filings and the other issues and questions raised in this Rulemaking.
Day 90	Parties file reply comments
After filing of reply comments	Prehearing conference (PHC)

The assigned Commissioner will issue a scoping memo with a schedule for further activities in this proceeding after the PHC. The Opening Comments should follow the requirements of Rule 6.2, and should include any objections to the preliminary scoping memo regarding the category, need for hearing, issues to be considered, or schedule.

Through the scoping memo and other rulings, the assigned Commissioner or the assigned ALJ with the assigned Commissioner's concurrence, may adjust

the timetable as necessary during the course of the OIR and establish the schedule for remaining events.

7. Becoming a Party; Joining and Using the Service

A new service list will be created for this new rulemaking proceeding pursuant to the following process. If you want to participate in the Rulemaking or simply to monitor it, follow the procedures set forth below. To ensure you receive all documents, send your request within 30 days after the OIR is published. The Commission's Process Office will publish the official service list at the Commission's website (www.cpuc.ca.gov), and will update the list as necessary.

7.1. Parties to Petition (P.) 12-11-006 Will be Parties to This Rulemaking

Parties to P.12-11-006 shall be included on the service list of the new rulemaking as parties, and need take no further action to gain party status. Other persons may become a party to the proceeding by filing timely opening comments or reply comments in response to this OIR (see Rule 1.4(a)(2)(ii)) or by ALJ ruling granting an oral or written motion to become a party (see Rule 1.4(a)(3) and (4)).

7.2 Additions to Official Service List

Persons who are or become parties to the proceeding will be automatically added to the "Parties" category of the official service list. Only one representative per party will be listed in the "Parties" category. Additional representatives will be added as "Information Only."

Any person will be added to the "Information Only" category of the official service list upon request to the Process Office. Persons must provide an e-mail address in order to receive service of documents that are not required to

be served by hard copy. (See Rule 1.10(b).) Persons may request the ALJ to require additional service as appropriate.

Any member or employee of the CPUC, State Legislature or other State office or agency will be added to the "State Service" category of the official service list upon request to the Process Office. Any such person who declines to provide an e-mail address will receive hard-copy service of all documents. (See Rule 1.10(b).)

Send your request to the Process Office. You may use e-mail (process_office@cpuc.ca.gov) or letter (Process Office, California Public Utilities Commission, 505 Van Ness Avenue, San Francisco, California 94102). Include the following information:

- Docket Number of this rulemaking;
- Name (and person or entity represented, if applicable);
- Postal Address;
- Telephone Number;
- E-mail Address; and
- Whether you request "State Service" or "Information Only."

It is the responsibility of each person or entity on the official service list to ensure that its designated person for service, mailing address and/or e-mail address shown on the official service list are current and accurate.

7.3 Subscription Service

You can also monitor the rulemaking by subscribing to receive electronic copies of documents in this proceeding that are published on the Commission's website. There is no need to be on the service list in order to use the subscription service. Instructions for enrolling in the subscription service are available on the Commission's website at http://subscribecpuc.cpuc.ca.gov/.

7.4. Serving and Filing Documents

We anticipate that the Process Office will publish the official service list before the first filing deadline in this Rulemaking. When you serve a document, use the official service list published at the Commission's website as of the date of service. You must comply with Rules 1.9 and 1.10 when you serve a document to be filed with the Commission's Docket Office. If you are a party to this Rulemaking, you must serve by e-mail any person (whether Party, State Service, or Information Only) on the official service list who has provided an e-mail address.

Filing and service of comments and reply comments is governed by Article 1 of the Rules of Practice and Procedure. The Commission encourages electronic filing and e-mail service. You may find information about electronic filing at http://www.cpuc.ca.gov/PUC/efiling. E-mail service is governed by Rule 1.10. If you have questions about the Commission's filing and service procedures, contact the Docket Office (docket_office@cpuc.ca.gov).

If you use e-mail service, you must also provide a paper copy to the assigned Commissioner and ALJ. The electronic copy should be in Microsoft Word or Excel formats to the extent possible. The paper copy should be double-sided. E-mail service of documents must occur no later than 5:00 p.m. on the date that service is scheduled to occur.

If you have questions about the Commission's filing and service procedures, contact the Docket Office.

8. Categorization and Need for Hearing

Rule 7.1(d) requires that an order instituting rulemaking preliminarily determine the category of the proceeding and the need for hearing. As a preliminary matter, we determine that this OIR is "quasi-legislative," as defined

in Rule 1.3(d). We anticipate that the issues in this OIR may require hearings. Any person who objects to the preliminary categorization of this OIR as "quasi-legislative" or to the preliminary hearing determination, must state their objections in their Opening Comments, as described above. After considering the Opening Comments, the assigned Commissioner will issue a scoping ruling making a final category determination; this final category determination is subject to appeal as specified in Rule 7.6.

9. Respondents

We make the following utilities Respondents in this case:

- Pacific Bell d/b/a AT&T California (U1001C) and affiliated local exchange carrier entities;[28]
- New Cingular Wireless PCS, LLC (U3060C) and affiliated wireless entities;[29]
- Verizon California, Inc. (U1002C) and affiliated local exchange carrier entities;[30]

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[28] AT&T Communications of California, Inc. (U5002C), TCG San Francisco (U5454C), TCG Los Angeles, Inc. (U5462C), and TCG San Diego (U5389C).

[29] AT&T Mobility Wireless Operations Holdings Inc. (U3021C), Santa Barbara Cellular Systems, Ltd. (U3015C) and AT&T Mobility Wireless Operations Holdings, LLC (U3014C).

[30] MCI Metro Access Transmission Services (U5253C) and Verizon Select Services, Inc. (U5494C).

- Verizon Wireless, LLC (U3029C) and affiliated wireless entities;[31]
- T-Mobile West Corporation d/b/a T-Mobile (U3056C).
- Sprint Telephony PCS, LP (U3064C) and affiliated wireless and local exchange carrier entities;[32]
- MetroPCS, Inc. (U3079C); and
- Cricket Communications, Inc. (U3076C).

Utilities designated as respondents are required to respond to the data requests and other filing requirements in this proceeding. In addition to the respondents, we encourage all LECs operating in California, including CLECs and wireless carriers, and other interested parties, to respond to the questions posed in the preliminary scoping memo in Section 5. While all telephone corporations may be bound by the outcome of this proceeding, only those who notify us that they wish to be on the service list will be accorded service by others until a final decision is issued.

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[31] California RSA No. 4 Ltd. Partnership (U3038C), Cellco Partnership (U3001C), Fresno Msa Ltd. Partnership (U3005C), GTE Mobilnet of Ca. Ltd. Partnership (U3002C), GTE Mobilnet of Santa Barbara (U3011C), Los Angeles Smsa Limited Partnership (U3003C), Modoc RSA Limited Partnership (U3032C), and Sacramento Valley Ltd. Partnership (U3004C).

[32] Nextel Boost of California, LLC (U4332C), Sprint Communications Company, LP (U5112C), Nextel of California, Inc. (U3066C), and Wirelessco, LP (U3062C).

10. Service of this Rulemaking

We will serve this order by electronic mail on the respondents, all telephone corporations, and on the service list of P.12-11-006. The initial service list for this proceeding shall be established utilizing the service list in P.12-11-006. Parties of record in P.12-11-006 will automatically be made parties in this new proceeding, and need take no further action in that regard. Any additional persons or representative of entities seeking to become a party to this new rulemaking that are not already a party to P.12-11-006, must follow the procedures set forth below in Section 7, above, and respondents not already on the service list for P.12-11-006 must still designate a representative and ask to be added to the official service list.

11. Public Advisor

Any person or entity interested in participating in this Rulemaking who is unfamiliar with the Commission's procedures should contact the Commission's Public Advisor in San Francisco at (415) 703-2074 or (866) 849-8390 or e-mail public.advisor@cpuc.ca.gov; or in Los Angeles at (213) 576-7055 or (866) 849-8391, or e-mail public.advisor.la@cpuc.ca.gov. The TTY number is (866) 836-7825.

12. Intervenor Compensation

Any party that expects to claim intervenor compensation for its participation in this OIR must file its notice of intent to claim intervenor compensation within 30 days of the filing of reply comments, except that notice may be filed within 30 days of a prehearing conference in the event that one is held. (See Rule 17.1(a)(2).)

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13. Ex Parte Communications

Communications with decision makers and advisors in this OIR are governed by Article 8, in particular, Rules 8.2(c), 8.3, and 8.4(b).

14. Comments on Proposed Decision

The alternate proposed decision of Commissioner Sandoval in this matter was mailed to parties in accordance with Pub. Util. Code § 311, and comments were allowed in accordance with Rule 14.3 of the Commission's Rules of Practice and Procedure. Opening comments were filed on October 31, 2013 by AT&T, the California Association of Competitive Telecommunications Companies (CalTel), CTIA, the Office of Ratepayer Advocates (ORA), the Petitioners, and Verizon California, Inc (Verizon). AT&T, Cox California Telcom LLC., CTIA, ORA, and Verizon filed reply comments on November 5, 2013. ORA and the Petitioners generally support opening a new rulemaking and urged the Commission to adopt the Alternate Decision with some modifications to broaden its scope. The other parties oppose the Alternate Proposed decision and urge the Commission not to open a new rulemaking related to privacy practices for telephone corporations. The arguments and issues raised in comments largely reiterated those raised in earlier filings in this proceeding, and no substantive changes have been made in response. Minor clarifications have been made in response to comments, and typographical or other minor errors have been corrected where appropriate.

15. Assignment of Proceeding

Mark J. Ferron is the assigned Commissioner and Jessica Hecht is the assigned ALJ in P.12-11-006.

Findings of Fact

1. Both the state of California and the federal government have existing laws and policies that protect the privacy of consumers' personal information.

2. Federal CPNI privacy protections apply to wireline, wireless, and other carriers.

3. The state of California has privacy and consumer protection laws and regulations that apply to Telephone Corporations.

4. There may be gaps in existing state privacy protections applying to Telephone Corporations.

5. There have been many changes to the telecommunications industry and communications technologies since current California state CPNI laws and other privacy-sensitive regulations were put into place.

6. Because of the rapid changes in communications-related technologies and the services facilitated by those technologies, concerns related to telephone corporations' privacy practices may arise that are not adequately addressed through existing privacy laws and policies.

7. Several wireless companies have installed software on customers' mobile communications devices that collected and transmitted customers' usage information to a third party without customers' knowledge and consent.

Conclusions of Law

1. CPUC has regulatory authority over Telephone Corporations, including wireless service providers, and that regulatory authority includes the ability to impose rules to protect consumers, including their right to privacy.

2. States are not pre-empted from enacting their own privacy rules for Telephone Corporations.

3. Public Utilities Code Section 7906 provides that this Commission shall ensure that every Telephone Corporation under its jurisdiction is taking adequate steps to ensure the privacy of communications over such corporation's telephone communications systems.

4. It is reasonable and consistent with the Commission's legal responsibilities to examine the privacy practices of Telephone Corporations and update applicable privacy standards and protections.

O R D E R

IT IS ORDERED that:

1. Petition 12-11-006 is granted to the extent described in this rulemaking.

2. The Commission hereby institutes this Rulemaking focusing on the privacy practices of Telephone Corporations under its jurisdiction, including providers of wireless telecommunications services.

3. The issues to be considered in this proceeding are set forth in the Preliminary Scoping Memo.

4. The Executive Director shall cause this Order Instituting Rulemaking to be served on all Telephone Corporations including the respondents, and to the service list of Petition 12-11-006.

5. The initial service list for this proceeding shall be based on the service list in Petition (P.) 12-11-006. Parties of record in P.12-11-006 will automatically be made parties in this new proceeding, and need take no further action in that regard.

6. Any person or representative of an entity seeking to become a party to this new Rulemaking that is not already a party to Petition (P.)12-11-006, shall follow the procedures set forth in Section 7, above. Respondents are considered parties

to the proceeding, but those not already on the service list for P.12-11-006 must still designate a representative and ask to be added to the official service list.

7. Individuals interested only in monitoring the proceeding may request to be placed on the "Information Only" section of the service list, as described in Section 7. This service list will be posted on the Commission's website, www.cpuc.ca.gov.

8. The category of this rulemaking is preliminarily determined to be quasi-legislative as defined in Rule 1.3(d) of the Commission's Rules of Practice and Procedure. We anticipate that the issues in this Order Instituting Rulemaking may require hearings.

9. Any person who objects to the preliminary categorization of this Order Instituting Rulemaking as "quasi-legislative" or to the preliminary hearing determination, must state their objections in their Opening Comments.

10. Communications with decision makers and advisors in this Order Instituting Rulemaking are governed by Article 8, in particular, Rules 8.2(a) and 8.4(b).

11. All parties shall abide by the Commission's electronic service rules contained in Rule 1.10 of the Commission's Rules of Practice and Procedure.

12. Respondents are required and interested persons are invited to file comments responsive to the scope of issues and questions raised in Sections 5 of this rulemaking.

13. The schedule of initial activities in this proceeding is as set forth in Section 6 of this rulemaking.

14. The assigned Commissioner and Administrative Law Judge (ALJ) will establish the schedule for and the scope of additional activities in this proceeding by subsequent rulings, as warranted, and the assigned Commissioner and/or the

assigned ALJ may modify the schedule of this Order Instituting Rulemaking by ruling as necessary for the reasonable and efficient conduct of the proceeding.

15. Petition 12-11-006 is closed.

This order is effective today.

Dated _____, at San Francisco, California.