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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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

Rulemaking 00-02-004
(Filed February 3, 2000)

**ASSIGNED COMMISSIONER'S RULING REQUESTING COMMENT ON
PROPOSED CALIFORNIA TELEPHONE CORPORATION BILLING RULES**

1. Summary

Attachment A to this ruling is a set of proposed rules for billings by California Telephone Corporations. These rules require such Telephone Corporations to take steps to prevent unauthorized charges from appearing on subscribers' bills; and, where prevention fails, to detect unauthorized charges and facilitate any needed refunds. These rules combine two previously issued sets of rules into a comprehensive standard set of rules applicable to all California telephone corporations, including resellers and wireless service providers.

2. Background

On February 22, 2008, the then-assigned Commissioner issued his Assigned Commissioner Ruling initiating a process by which the Commission would develop a record upon which to issue a final decision adopting cramming reporting requirements. The ruling provided for opening and reply comments on numerous issues.

Based on these comments and the existing rules from D.00-03-020, D.00-11-015, and General Order 168, Part 4, Commission staff has prepared a standard set of rules for billing which apply to all California telephone companies, including wireless. These rules cover subscriber authorization, requirements for offering billing services, dispute resolution responsibility, and reporting requirements.

With this ruling, I am seeking comments on the attached proposed rules.

3. Specific Objectives

The first key objective of these rules is to prevent unauthorized charges from being placed on subscribers' bills by requiring Billing Telephone Corporations and Billing Agents, as defined in the rules, to administer their billing operations in such a manner as to deny unscrupulous service providers access to subscribers' bills and to ensure that the billings for products or services they provide are accurate. The second key objective is to identify promptly any unauthorized billing, bring it to a halt, and obtain refunds for subscribers. The third key objective is to identify entities that present unauthorized charges ("bad actors") and to prevent them from presenting any further billings in California. Each objective and the specific provisions designed to achieve it are addressed below.

3.1. Means of Achieving Key Objectives

3.1.1. Billing Business Administration

The proposed rules require a Billing Agent or Billing Telephone Corporation, before agreeing to provide billing services, to obtain basic identification information about the service provider and its principals. With this information, the billing telephone corporation or billing agent must make a reasonable inquiry into the service provider and principals' history of regulatory

compliance and customer disputes. A reasonable initial step for inquiry would be to search of the World Wide Web with any reliable search engine. Results would dictate the next steps.

Pursuant to the Commission's authority under Pub. Util. Code §§ 2889.9 and 2890, the proposed rules also impose an over-arching duty on the Billing Telephone Corporation or Billing Agent to take all commercially reasonable steps to ensure that only authorized charges appear on subscribers' bills. This requirement makes the entity that is providing, for financial remuneration, the service of third-party billing responsible for reasonable actions to comply with this rule.

These rules also apply to the charges placed on a subscriber's bill by the Billing Telephone Corporation for products or services it directly supplied. As is required for Billing Agents and Service Providers, the Billing Telephone Corporation is required to ensure that it places only authorized charges on its subscribers' bills. In this way, all entities presenting charges to the subscriber must adhere to the same standards of subscriber authorization.

3.1.2. Identifying and Halting Unauthorized Charges

Billing Telephone Corporations and Billing Agents are required to monitor each service provider's billings and customer billing disputes to quickly notice any unauthorized billings. Billing Telephone Corporations and Billing Agents are uniquely positioned to identify and halt unauthorized billings because these entities will be first contacted by aggrieved subscribers. This rule makes clear that these entities are responsible for on-going monitoring and, where necessary, prompt action.

A billing termination process is a critical component of permanently halting unauthorized charges. The proposed rules require all Billing Telephone

Corporations and Billing Agents to adopt a protocol for discovering unauthorized billings and for suspending or terminating billing services to the responsible party. Where a complaint or refund rate increases by 10%, absent compelling justification, the billing services must be suspended and amounts held for customer refunds pending resolution of the causes for the complaint or refund rate increase.

3.1.3. Facilitating Customer Refunds

Achieving this objective is necessarily data-intensive. Many of the most ardent objections to the earlier proposals focused on the burden and associated expense of compliance with these requirements.¹

In light of these comments, staff has developed a flexible compliance option for Billing Telephone Corporations and Billing Agents that focuses on the Commission's objective of having sufficient data to enable any ordered refunds but allows each Billing Telephone Corporation or Billing Agent to determine how best to gather and retain this information.

3.1.4. Identifying "Bad Actors" and Preventing Future Unauthorized Billings in California.

The proposed rules contain several provisions designed to quickly identify persons and entities that present unauthorized charges for billing. The rules clearly place the obligation on Billing Telephone Corporations and Billing Agents to maintain up-to-date identity and contact information for users of their billing services. Should unauthorized billing occur, this information will enable the

¹ See e.g., Opening Comments of CTIA – The Wireless Association at pages 6 – 9, estimating the cost to initiate the tracking, reporting, and record retention requirements at \$39,000,000, with annual operating costs of \$85,000,000.

Consumer Protection and Safety Division to notify other Billing Telephone Corporations and Billing Agents with the identity of the perpetrator to forestall any future unauthorized billings.

The proposed rules also adopt the recommendation of several parties² that “bad actors” be identified and reported to the Commission’s Consumer Protection and Safety Division. A three business day notification period is proposed. On-going reporting of service providers and their associated complaint and refund rate is also necessary for the Commission to meet its responsibilities to monitor third-party billing by California telephone corporations.

The rules authorize the Consumer Protection and Safety Division Director to issue citations for failure to file timely the required quarterly reports. If a report is up to 30 days late, the Director may cite the Billing Telephone Corporation or Billing Agent for a fine of up \$500, and if the report is 30 to 60 days late, a citation of up to \$5,000 may be issued. A 10-day notice and opportunity to cure provision is also established to create immediate incentives for compliance.

3.2. Applicability

The proposed rule applies to Billing Telephone Corporations (both wireline and wireless carriers and resellers) and their Billing Agents. Billing Telephone Corporations are defined to include all California telephone corporations that bill subscribers for services or goods provided by a third-party, as well as goods or services provided and billed directly by the telephone

² See e.g., Verizon Wireless’ Comments at page 21.

corporation to its subscriber. Accordingly, the proposed rules by their terms apply to all California telephone corporations without any exceptions so that “opt out” provisions, as was contemplated in earlier drafts, would not be applicable.

3.3. Frequency of Reporting

The proposed rules retain the existing quarterly report for routine monthly data but create a three business day reporting requirement for discovery of significant unexplained unauthorized billings. The objective is to create a reporting system that responds quickly to urgent and on-going wrong-doing, but also allows for record keeping that could highlight long-term patterns.

3.4. What Information should be in the Reports?

The objective of the reporting requirement is to uncover unauthorized billing, particularly patterns where complaining subscribers receive immediate refunds, but undetected unauthorized billings continue.

Local exchange carriers have been operating under the reporting rules adopted in D.00-03-020 for nearly a decade. We have distilled these rules to the most important data and propose to extend them to all Billing Telephone Corporations in California. We have also tailored the data requirements to information that a billing service provider would likely retain in the ordinary course of business so as to minimize the administrative burden.

3.5. Three-Year Record Retention Requirement

The proposed rules continue the three-year record retention requirement presently in place from D.00-03-020, as modified by D.00-11-015. The duration of this requirement is necessary to achieve our objective of having sufficient data available to facilitate customer refunds.

4. Conclusion

This Commission has the responsibility to protect consumers in California from unscrupulous business practices of the entities and utilities that we regulate. The Legislature has recognized that we must be take proactive steps in order to prevent unauthorized billing. The requirements that we will adopt in this proceeding will be an important tool in our efforts to protect the people of California.

Therefore, **IT IS RULED** that:

1. Interested parties shall file and serve Opening Comments on the proposed California Telephone Corporation Billing Rules set out in Attachment A on or before March 12, 2010 and Reply Comments on or before March 29, 2010. The Opening Comments shall not exceed 35 pages and the Reply Comments are limited to 25 pages. Due to the advanced stage of this proceeding, Comments should focus closely on the proposed rules and include specific remedies for identified deficiencies or alternatives that better meet the stated objectives.

2. Those interested in becoming interested parties and filing comments, or otherwise monitoring this proceeding, who are not already on the service list, may do so by informing the Commission's Process Office (process_office@cpuc.ca.gov) on or before March 24, 2010 of his/her intent to participate and providing the following information:

- Name and organization represented, if any;
- Address;
- Telephone number;
- E-mail Address; and
- Assignment to the appearance, state service, or information only category.

3. The service list will be posted on the Commission's website at www.cpuc.ca.gov and will be updated periodically. Parties should use the website service list for service of all filings.

4. All filings in this proceeding may be made electronically according to Rule 1.10 of the Commission's Rules of Practice and Procedure. Consistent with those rules, a hard copy of all pleadings shall be concurrently served on the assigned Administrative Law Judge.

Dated February 12, 2010, at San Francisco, California.

 /s/ JOHN A. BOHN
John A. Bohn
Assigned Commissioner

Appendix A

Revised General Order 168, Part 4

California Telephone Corporation Billing Rules

1. Definitions:

- 1.1 **Billing Agents:** Any entity which provides billing service for service providers directly or indirectly through a Billing Telephone Corporation.
- 1.2 **Customer Complaint:** Any written or oral communication from a subscriber alleging that an unauthorized charge was included in the Billing Telephone Corporation's bill to the subscriber.
- 1.3 **Service Provider:** The person or entity that originates the charge or charges that are billed to the subscriber of Billing Telephone Corporation, including products or services provided directly by the Billing Telephone Corporation.
- 1.4 **Billing Telephone Corporation:** A telephone corporation that bills a subscriber for products and services, including products and services provided by the Billing Telephone Corporation.
- 1.5 **Telephone Corporation:** Any telephone corporation (as defined in Pub. Util. Code § 234) operating within California. This term includes resellers and wireless telephone service providers.
- 1.6 **Unauthorized Charge:** Any charge placed upon a subscriber's telephone bill for a service or goods that the subscriber did not agree to purchase, including any charges that resulted from false, misleading, or deceptive representations.

2. Applicability:

These rules apply to all Billing Telephone Corporations in California and specify the responsibilities and procedures for addressing subscribers' allegations of unauthorized charges on telephone bills.

These rules supersede the rules adopted in Decision 00-03-020, as modified by D.00-11-015, and replace General Order 168, Part 4, adopted in D.06-03-013.

3. Authorization Required:

Prior to billing or causing to be billed any charge to a subscriber on a telephone bill, the service provider shall obtain the subscriber's authorization. The requirements for written authorizations are set out in Pub. Util. Code § 2890(b). Oral authorizations must contain the same information as written authorizations. All disputed oral and written authorizations for which no record of verification is available are subject to a rebuttable presumption that the charges are unauthorized. With regard to direct dialed telephone services, evidence that a call was dialed is prima facie evidence of authorization. For direct dialed wireless telephone services, this evidentiary conclusion can be overcome with evidence that the wireless handset was lost or stolen at the time the call was placed.

4. Billing for Authorized Charges Only:

Billing Telephone Corporations and Billing Agents may bill subscribers only for authorized charges. Billing Agents and Service Providers may not submit, directly or indirectly, charges for billing through a Billing Telephone Company that the subscriber has not authorized. Billing Telephone Corporations and Billing Agents must monitor each service provider's billings and customer billing disputes to ensure continuing compliance with this requirement.

5. Responsibilities of Billing Telephone Corporations:

The Billing Telephone Corporation bears ultimate responsibility for all items presented in a subscriber's bill. If the Billing Telephone Corporation opts to offer billing services to third parties, then the carrier must take all commercially reasonable steps to ensure that only authorized charges from legitimate service providers are included in the bill. If a subscriber contacts the Billing Telephone Corporation to dispute a billed item from a service

provider, the Billing Telephone Corporation must promptly investigate the dispute without deflecting the customer to the alleged service provider.

6. Disclosure Requirements for Service Providers:

Prior to approving a service provider or Billing Agent for the provision of billing services, the Billing Telephone Corporation shall verify the identity of and contact information for the proposed service provider, including all principals in any corporation or partnership, as well as conduct a reasonable inquiry into the service provider's and principals' history of regulatory compliance and customer disputes. The service provider must maintain current identity and contact information with the Billing Telephone Corporation.

7. Billing Termination Process:

Each Billing Telephone Corporation and Billing Agent shall have in place and comply with a protocol for quickly identifying unauthorized billings and suspending or terminating billing services to any service provider that has submitted unauthorized billings. At any time, the Director of the Consumer Protection and Safety Division may direct any Billing Telephone Corporation or Billing Agent to submit the protocol for Division review, and the Division may direct the Billing Telephone Company or Billing Agent to make any modifications to the protocol necessary to bring it into compliance with these rules.

Where prevention fails, the objective is detection of the unauthorized billings and immediate complete refunds for all subscribers who paid unauthorized billings. Billing Telephone Corporations and Billing Agents shall immediately investigate any unexplained significant increases in customer complaints or refund rates. Customer complaint or refund rates greater than 10%, absent compelling justification, shall result in immediate suspension of billing services and retention of all customer payments by the Billing Telephone Corporation for potential customer refunds.

The protocol shall also include notification to the Commission's Consumer Protection and Safety Division within 3 business days of discovery of significant unexplained unauthorized billings. The notification shall include the identity of the service provider and its principles, the details of the

unauthorized billing, the steps taken to obtain refunds for customers, and the billing status of service provider. The Billing Telephone Corporation and Billing Agents shall provide all requested information and shall cooperate fully with the Commission's staff in any investigation and prosecution.

8. Nonpayment of Charges While an Investigation is Pending:

While a Billing Telephone Corporation investigates an allegedly unauthorized billing, the subscriber shall not be required to pay the disputed charge or any associated late charges or penalties; the charge may not be sent to collection; and no adverse credit report may be made based on non-payment of that charge.

9. Resolution:

If a Billing Telephone Corporation or Billing Agent receives a complaint that the subscriber did not authorize the purchase of the product or service associated with a charge, the Billing Telephone Corporation or Billing Agent, not later than 30 days from the date on which the complaint is received, shall either (i) verify and advise the subscriber of authorization of the disputed charge or (ii) credit the disputed charge and any associated late charges or penalties to the subscriber's bill.

10. Other Available Rights:

Nothing herein shall prevent a subscriber from exercising his or her other rights.

11. Records of Complaints:

Every Billing Telephone Corporation and Billing Agent shall maintain accurate and up-to-date records of all billings and service providers sufficient to demonstrate its compliance with these rules and to facilitate customer refunds.

Billing Telephone Corporations and Billing Agents that maintain records with the following information shall be subject to a presumption of having sufficient information to enable refunds to customers:

- a. the subscriber name;
- b. the subscriber telephone number;

- c. the name of the service provider responsible for the charge complained about;
- d. the name of the billing agent or agents, if any;
- e. the amount of the alleged unauthorized charge and the date the charge was incurred and billed;
- f. a description of the product or service billed;
- g. the number of contacts by the subscriber;
- h. the disposition of the dispute;
- i. for Billing Agents, the total dollars billed and total amount refunded for each service provider; for Billing Telephone Companies, the total dollars billed and total dollars refunded for each service provider for which the billing telephone company directly bills and each Billing Agent; and
- j. for Billing Agents, the total number of working telephone number billed by each service provider; for Billing Telephone Companies, the total number of working telephone numbers billed by each service provider for which the Billing Telephone Company directly bills and each Billing Agent.

Flexible Compliance Option: Billing Telephone Corporations and Billing Agents may also elect to maintain records that meet the Commission's standard of sufficient information to enable refunds to customers but which do not include each item listed above. Such Billing Telephone Corporations and Billing Agents must affirmatively demonstrate to the Consumer Protection and Safety Division Director that the records meet the Commission's standard of having sufficient information to enable refunds to customers. The information specified below for monthly reporting is not subject to this option.

12. Quarterly Calendar Month Summary Report:

All Billing Telephone Corporations and Billing Agents shall create a calendar month summary report and include the following:

- a. Information for each service provider:
 - i. Identify and contact information
 - ii. number of working telephone lines billed
 - iii. number of complaints
 - iv. total amount billed
 - v. total amount refunded
- b. Any anomalous billing or customer complaint data.
- c. Complete information on any billing services suspension or termination in progress or completed.

The Calendar Month Summary Report shall be submitted to the Director of the Commission's Consumer Protection and Safety Division pursuant to the following schedule:

- Report for January, February, and March due no later than April 30th;
- Report for April, May and June due no later than July 31st;
- Report for July, August and September due no later than October 31st; and
- Report for October, November, and December due no later than January 31st of the following year.

13. Effect of Failure to Supply Report:

Any Billing Telephone Corporation or Billing Agent that fails to submit its report in a complete and timely fashion is subject to citation by the Director of the Consumer Protection and Safety Division as follows:

- a. Up to 30 days late, a citation requiring payment of \$500 to the General Fund,
- b. 30 to 60 days late, a citation requiring payment of \$5,000 to the General Fund
- c. No less than 10 days before issuing a citation, the Director shall give the Billing Telephone Corporation or Billing Agent notice of the impending citation and an opportunity to submit the report.

In addition to the above-listed citations, any Billing Telephone Corporation or Billing Agent failing to timely supply the required report is subject to a Commission decision or resolution taking such further actions as may be necessary to protect the public interest.

14. Actions Based on Reported Information:

As provided in § 2889.9(b), the Commission's remedial statutory authority over public utilities, including the potential for fines up to \$20,000 per violation, extends to all service providers and Billing Agents using the billing services of California Telephone Corporations. Billing Agents and Service Providers, like Billing Telephone Corporations, are subject to such remedial directives as the Commission finds necessary to protect the public interest.

(END OF APPENDIX A)

INFORMATION REGARDING SERVICE

I have provided notification of filing to the electronic mail addresses on the attached service list.

Upon confirmation of this document's acceptance for filing, I will cause a Notice of Availability of the filed document to be served upon the service list to this proceeding by U.S. mail. The service list I will use to serve the Notice of Availability of the filed document is current as of today's date.

Dated February 12, 2010, at San Francisco, California.

/s/ GLADYS M. DINGLASAN
Gladys M. Dinglasan

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to ensure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074 or TDD# (415) 703-2032 five working days in advance of the event.