

R.00-02-004 COM/DGX/khy/epg
APPENDIX A
GENERAL ORDER 168 (G.O. 168)

GENERAL ORDER NO. 168

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

Rules Governing Telecommunications Consumer Protection

Adopted _____; Effective _____
(Decision _____ in Rulemaking 00-02-004)

IT IS ORDERED that all Commission-regulated telecommunications utilities shall respect the consumer rights and comply with the rules set forth in this General Order.

The Executive Director of the California Public Utilities Commission is directed to modify rules contained in this General Order to appropriately reflect any change in Commission rule or order.

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PART 1 – Bill of Rights

The Commission declares that all consumers who interact with telecommunications providers must be afforded certain basic rights, and those rights shall be respected by the Commission-regulated providers with whom they do business:

Choice: Every consumer has a right to select their services and vendors, and to have those choices respected by the industry.

Non-Discrimination: Every consumer has the right to receive products and services free of prejudice or disadvantage.

Safety: Every consumer has a right to safety and security of their persons and property, including the ability to receive clear and complete information about access to 911 emergency services.

Privacy: Every consumer has a right to personal privacy, to have protection from unauthorized use of their records and personal information, and to reject intrusive communications and technology.

Disclosure: Every consumer has the right to receive clear and complete information about rates, terms and conditions for available products and services, and to be charged only according to the rates, terms and conditions they have agreed to.

Accurate Bills: Every consumer has the right to accurate and understandable bills for products and services they authorized.

Public Participation: Every consumer has the right to participate in public policy proceedings and to be informed of their rights and protections.

[Comment: This Bill of Rights shall serve the same purpose as a statement of legislative intent and is not intended to create a private right of action to impose liability on carriers or other utilities for damages, which liability would not exist had these rights not been adopted.]

PART 2 - Consumer Protection Rules

A. APPLICABILITY

1. These rules are applicable to all telecommunications carriers, including wireless carriers, unless expressly exempted in these rules or by Commission order. Acts of an agent on behalf of a carrier are considered acts of the carrier for purposes of these rules.
2. These rules represent minimum standards. Compliance with these rules does not relieve carriers of other obligations they may have under their tariffs, other Commission general orders and decisions, Federal Communications Commission (FCC) orders, and state and federal statutes.
3. These rules are not intended to and do not create a private right of action to impose liability on carriers or other utilities for damages, which liability would not exist had these rules not been adopted.
4. Except as specifically provided in these rules, the provisions of these rules may not be waived by contract. Any provision in a contract to provide service for an individual or small business subscriber that purports to waive any requirement set forth in these rules is contrary to public policy and is of no effect.
5. These rules do not limit any rights a consumer may have and do not preclude any civil action or remedies that may be available by law.
6. For services offered under the Universal Lifeline Telephone Service program, carriers shall also comply with the requirements set forth in General Order 153, Procedures for Administration of the Moore Universal Telephone Service Act where they apply. The requirements of General Order 153 take precedence over these rules whenever there is a conflict between them for services offered under the Universal Lifeline Telephone Service program.

B. RULES

Rule 1: Disclosure Requirements including Non-English Language Specifications

- (a) Every carrier shall provide the following upon request by any subscriber or other member of the public:
 - (1) The carrier's legal name, its designated utility number, and the names under which the carrier offers regulated telecommunications service in California.
 - (2) A description of the carrier's service offerings available that relate to the customer's inquiry and the applicable key rates, terms and conditions.

- (3) The address and toll-free telephone number of the Commission's Consumer Affairs Branch.
 - (4) A description of customers' privacy rights and how the carrier handles confidential subscriber information.
- (b) If a language other than English is used in the advertising, promotion or offer of a carrier's services, the written authorization for service, contract or confirmation and the information requirements of Rules 2 and 3, shall also be in that language.
 - (c) If a language other than English is used in the advertising or promotion of the card or prepaid calling services or is used on the card or packaging, the information required by Rule 4(c) shall also be disclosed in that language on the card or packaging and in the point of sale disclosure in the manner described in Rule 4(c).

Rule 2: Marketing Practices

- (a) Statements about rates and services that are deceptive, untrue or misleading are prohibited.
- (b) All terms of a written confirmation, authorization, order, agreement or contract shall be clear and conspicuous and otherwise in compliance with existing law.
- (c) Written authorization for service shall be a separate document from all solicitation materials, and such written authorization may not constitute entry forms for sweepstakes, contests, or any other program that offers prizes or gifts.

Rule 3: Service Initiation and Changes

- (a) Carriers may initiate or change service upon request (in any form) from a consumer or subscriber.
- (b) Carriers shall provide consumers initiating a service with information to enable consumers to make informed choices among services, and shall clearly and conspicuously disclose in the course of the sale transaction the consumer's right to cancel a term contract.
- (c) The carrier shall provide a short summary document listing the key terms and conditions of the services purchase at the point of sale.
- (d) The carrier shall provide the subscriber a written contract or confirmation of the order, as applicable, at the point of sale for in person transactions and, for any other transaction, not later than ten days after it is accepted, or ten days after the carrier providing the service is notified of the order originated through another carrier. The key rates, terms and conditions for each service

ordered shall be set forth clearly and conspicuously in the confirmation or contract.

- (e) If a confirmation or contract incorporates information by reference, the confirmation or contract shall (i) provide an Internet web site address where the specific document can be found, and (ii) state that a printed copy of the referenced documents is available on request at no charge.
- (f) Subscribers may cancel without termination fees or penalties any new tariffed service or any new contract for service within 30 days after the new service is initiated. This Rule does not relieve the subscriber from payment for per use and normal recurring charges applicable to the service incurred before canceling, or for the reasonable cost of work done on the customer's premises (such as wiring or equipment installation) before the subscriber canceled.
- (g) A carrier may require a deposit to establish or re-establish service only if an applicant for service is unable to demonstrate acceptable credit to the satisfaction of the carrier.
 - (1) A carrier shall not deny service for failure to provide a social security number. Where a consumer chooses not to provide a social security number, the carrier may deny service if the subscriber does not provide other identification information sufficient to enable the carrier to verify the subscriber's identity and run a credit check.
 - (2) Carriers shall refund, with interest, deposit amounts associated with basic service after one continuous year of timely payments for basic service, and not later than 30 days after basic service is discontinued. Carriers shall refund deposits associated with other services not later than 120 days after service is discontinued.
- (h) When a carrier denies an application for a telecommunications service subject to Commission jurisdiction, the carrier shall inform the applicant of the reasons within 10 days thereafter. The carrier's reasons shall be provided in writing unless the applicant agrees to accept a different form of notice.
- (i) No carrier whose service has been cancelled at the subscriber's request shall re-establish service for that subscriber without a new subscriber authorization. Authorization may not be founded upon any term in an agreement for service that binds the subscriber to again take service from the carrier.

Comment: Requiring a subscriber who cancels a service or contract before the term is completed to nonetheless pay the recurring charges for more than the remainder of the billing period, or for more than one month if the billing period exceeds one month, constitutes imposing a penalty.

Rule 4: Prepaid Calling Cards and Services

The following standards and requirements for consumer disclosure and services shall apply to the advertising and sale of prepaid calling cards and prepaid calling services by entities subject to Public Utilities Code Sections 885 and 886.

- (a) All advertisement of the price, rate, or unit value in connection with the sale of prepaid calling cards or services shall include a disclosure of any geographic limitation to the advertised price, rate, or unit value, as well as a disclosure of additional surcharges, call setup charges, or fees or surcharges applicable to the advertised price, rate, or unit value.
- (b) The following information shall be legibly printed on the card:
 - (1) The name of the carrier.
 - (2) A toll-free customer service number.
 - (3) A toll-free network access number, if required to access service.
 - (4) The authorization code, if required to access service.
 - (5) The expiration date or policy, if applicable, except where Rule 4(g) applies.
- (c) The carrier shall print legibly on the card or packaging, and the carrier shall require that the vendor shall make available clearly and conspicuously in a prominent area immediately proximate to the point of sale of the prepaid calling card or prepaid calling services the following information:
 - (1) The value of the card and all surcharges, taxes, or fees, including monthly or other periodic fees, maintenance fees, per-call access fees, surcharges for calls made on pay telephones, or surcharges for the first minute or other period of use applicable to the use of the prepaid calling card or prepaid calling services within the United States.
 - (2) All surcharges for international calls or, in lieu of disclosing each surcharge, the highest surcharge for any international calls applicable on that card and additional or different prices, rates, or unit values applicable to international usage of the prepaid calling card or prepaid calling services.
 - (3) The minimum charge per call, such as a three-minute minimum charge, if any.
 - (4) The definition of the term "unit," if applicable.
 - (5) The billing decrement.
 - (6) The name of the carrier.

- (7) The recharge policy, if any.
 - (8) The refund policy, if any.
 - (9) The expiration policy, if any.
 - (10) The 24-hour customer service toll-free telephone number required in Rule 4(d).
- (d) Carriers shall establish and maintain a toll-free customer service telephone number that shall meet the following requirements:
- (1) A live operator shall answer incoming calls to the telephone number 24 hours a day, seven days a week.

A carrier offering prepaid cellular telephone services shall be deemed to be in compliance with the requirements of Rule 4(e)(1) for those services if, when a request for information related to those services is made outside of normal business hours, that carrier provides the information requested on the next business day.
 - (2) The telephone number shall have sufficient capacity and staffing to accommodate a reasonably anticipated number of calls without incurring a busy signal or undue wait. The carrier shall provide customer service in each language used on a prepaid calling card or its packaging and in the advertising or promotion of the prepaid calling card or prepaid calling services.
 - (3) The telephone number shall allow consumers to lodge complaints and obtain information on all of the following:
 - (a) All rates, surcharges, and fees.
 - (b) The carrier's recharge, refund, and expiration policies.
 - (c) The balance of use available in the consumer's account, if applicable.
 - (4) A carrier shall not impose a fee or surcharge related to obtaining customer service, including any charge related to connecting with the customer service number or waiting to speak to a live operator.
- (e) A carrier that issues prepaid calling cards or prepaid calling services shall provide a refund to any purchaser of a prepaid calling card or prepaid calling services if the network services associated with that card or services fail to operate in a commercially reasonable manner. The refund shall be in an amount not less than the value remaining on the card or in the form of a replacement card, and shall be provided to the consumer within 60 days from the date of receipt of notification from the consumer that the card has failed to operate in a commercially reasonable manner.

- (f) Cards without a specific expiration date or policy printed on the card, and with a balance of service remaining, shall be considered active for a minimum of one year from the date of purchase, or if recharged, from the date of the last recharge.
- (g) In the case of prepaid calling cards or services utilized at a pay phone, the carrier is permitted to provide voice prompt notification of all applicable pay phone surcharges, in lieu of providing notice of surcharges as required by Rule 4(a) and by Rule 4(c)(1), given that the carrier provides users of prepaid calling cards or services with reasonable time to terminate the call after notification of applicable pay phone surcharges without incurring any charge for the call.
- (h) A carrier shall maintain access numbers with sufficient capacity to accommodate a reasonably anticipated number of calls without incurring a busy signal or undue delay.
- (i) A carrier shall not impose fees or surcharges that are not disclosed as required by this section or that exceed the amount disclosed by the carrier.
- (j) A carrier shall not impose charges if the consumer is not connected to the number called. For the purpose of this paragraph, the customer shall not be considered connected to the number called if the customer receives a busy signal or the call is unanswered.
- (k) The value of the card and the amount of the various charges, however denominated, that are required to be disclosed by Rule 4(c), shall be expressed in the same format. If the value of a card is expressed in minutes, the minutes shall be identified as domestic or international and the identification shall be printed on the same line or next line as the value of the card in minutes.

Rule 5: Billing

- (a) Telephone bills may only contain charges for products and services the purchase of which the subscriber has authorized. Services and charges must be clearly labeled with language that is not misleading. Carriers shall not label or describe non government fees or charges in a way that could mislead consumers to believe those charges are remitted to the government.

Bills must be based on the rates in effect at the time the service was used. Charges for basic service shall be prorated for partial months. Charges for non-communications-related products and services may be included in a telephone bill, or in the same envelope as a telephone bill, only if they meet

the requirements of Part 3, Rules Governing Billing for Non-communications-Related Charges, of this General Order.

- (b) Telephone bills shall contain the following information:
- (1) The name of the billing carrier and the service provider associated with each charge must be clearly and conspicuously identified on the telephone bill. Certificated carriers shall use the name that appears on their Certificate of Public Convenience and Necessity, or any fictitious business names that are properly registered pursuant to Business and Professions Code §§ 17900 et seq. and registered with the Commission's Telecommunications Division. For carriers not certificated by the Commission, the bill shall include the name under which the carrier is certificated by the FCC, if applicable, or the carrier's legal name as registered with the California Secretary of State;
 - (2) The period of service covered by the bill. A bill shall not include any previously unbilled charges for intrastate service, wireless roaming charges on a system other than the subscriber's home system, or collect, third-party, and calling cards calls furnished prior to four months immediately preceding the date of the bill. This limitation on backbilling does not apply in cases involving subscriber fraud.
 - (3) The payment due date;
 - (4) The late payment charge (if applicable) and date after which it may be applied;
 - (5) Instructions on how to pay; and,
 - (6) The carrier's toll-free number for billing inquiries and disputes, along with a postal address, or an e-mail address if the subscriber has agreed to communicate via electronic media, where the subscriber may send a billing inquiry or complaint in writing.
- (c) Any carrier or billing agent that charges subscribers for products or services on a telephone bill shall include, or cause to be included, in the telephone bill the amount being charged for each product or service, and a clear and concise description of the service, product, or other offering for which a charge has been imposed.
- (d) Where a telephone bill contains both charges for basic residential or single line business service and other charges, the bill must distinguish between charges for which non-payment will result in disconnection of basic residential or single line business service, and charges for which non-payment will not result in such disconnection. The carrier must explain this distinction to the subscriber.
- (e) Where charges for two or more carriers appear on the same telephone bill,

the charges must be separated by service provider. This rule does not apply to wireless roaming charges.

- (f) Telephone bills shall clearly and conspicuously identify any change in service provider, including identification of charges from any new service provider. For purposes of this rule, "new service provider" means a service provider that did not bill the subscriber for service during the service provider's previous billing cycle. This definition shall include only providers that have continuing relationships with the subscriber that will result in periodic charges on the subscriber's bill until the service is canceled.
- (g) In addition to the billing requirements above, each bill shall include the following statement in clear, readable type:
 - If you have a complaint you cannot resolve with us, contact the California Public Utilities Commission at 1-800-649-7570 or TDD 1-800-229-6846.
 - If your complaint concerns interstate or international calling, contact the FCC at 1-888-225-5322, or TTY 1-888-835-5322.
- (h) A carrier shall credit payments effective the business day payments are received by the carrier or its agent. Subscribers shall not be liable for late payment charges on disputed amounts that are resolved in the subscriber's favor.
- (i) Upon request by any subscriber, including any former subscriber for whom, in the judgment of either the carrier or the subscriber, charges or credits are still pending, every carrier shall provide the following information within 3 business days from the date the request is received:
 - (1) A description of each service for which charges appear(ed) on the subscriber's bill, and sufficient information regarding that service to respond to the subscriber's inquiry.
 - (2) For any charges the carrier has placed on the bill on behalf of another entity, but for which the carrier does not handle inquiries, disputes and complaints: the name of the other entity, and a toll-free telephone number the subscriber may call for inquiries, disputes and complaints related to those charges.

Comment: The naming requirements were established by D.00-03-020 as modified by D.00-11-015. Carriers that provide service under a trade name that differs from the name required by this rule are free to place that trade name on the bill in addition to, but not instead of, the name required by this rule.

Rule 6: Tariff Changes, Contract Changes, Withdrawals and Notices

- (a) A carrier shall notify all affected subscribers at least 25 days in advance of every proposed change in its subscribers' service agreements or non-term contracts that may result in higher rates or charges or more restrictive terms or conditions. The subscriber notice shall, in a clear and conspicuous manner, describe the current and proposed rates, terms or conditions, as appropriate. Where required by D.02-01-038 (or General Order 96-B, when issued), the notice must also describe the reason for the proposed change to a rate or charge and state the impact of the change in dollar and percentage terms.
- (b) A carrier shall notify each affected subscriber at least 25 days in advance of every request to the Commission to withdraw service. The notice must describe the proposed withdrawal and proposed effective date, state that subscribers have the right to choose another utility, and provide the carrier's toll-free customer service telephone number for responding to subscribers' questions. If the service to be withdrawn is basic service (as defined in these rules), the carrier must also: explain in the notice that the withdrawal is contingent on Commission approval; arrange with the default carrier(s) for continuity of service to affected subscribers who fail to choose another utility and describe in the notice those arrangements and the subscribers' right to receive basic service from the underlying carrier or carrier of last resort; and provide the default carrier's name and toll-free number.
- (c) Notices required in these Rules shall be in writing by one or a combination of bill inserts, notices printed on bills, or separate notices sent by first class mail. In each case, an electronic notice may be substituted where the subscriber has agreed to receive notice in that manner. Notice by first class mail is complete when the document is deposited in the mail; and electronic notice is complete upon successful transmission (as defined in Cal. Civil Code § 1633.15(b)). Every notice in whatever form shall be unambiguous, legible, and otherwise in compliance with existing law.

Comment: Rule 6(a) applies only to the carrier's rates (as defined), terms and conditions, and thus excludes government taxes, surcharges or fees for which the carrier has no discretion to collect and are remitted to government.

Rule 7: Service Termination

- (a) Carriers shall provide notices in writing, including text messages, to subscribers whose payments are overdue not less than 7 calendar days prior to terminating service for nonpayment. Each termination notice shall include all of the following:
 - (1) Carrier's name, following the same designation guideline used in Rule

5(b)(1) above.

- (2) The name and address of the subscriber, and the telephone number(s) associated with the delinquent account.
- (3) Information sufficient for the subscriber to identify what service(s) are to be terminated, and the delinquent amount(s). If basic service is to be disconnected, the notice shall state the minimum amount that must be paid to retain basic service.
- (4) The time or date by which payment, or arrangement for payment, must be made to avoid termination.
- (5) A toll-free telephone number to reach a carrier service representative who can provide subscriber assistance.
- (6) The telephone number of the Commission's Consumer Affairs Branch where the subscriber may direct inquiries.

Rule 7(a) and Rule 8(b) do not apply to termination of non-tariffed service for having reached either: (i) a usage or spending limit, prepaid or otherwise, that was arranged with the subscriber in advance; or (ii) the end of a prepaid period of service known to and anticipated by the subscriber in advance.

- (b) Basic exchange service may not be disconnected on any day carrier service representatives are not available to assist subscribers.
- (c) The notice and disconnection requirements of Rule 7 and Rule 8(b) do not apply where the subscriber's acts or omissions demonstrate an intention to defraud the carrier, or threaten the integrity or security of the carrier's operations or facilities.
- (d) Carriers of last resort may not disconnect basic residential or single line business service, either flat rate or measured rate, for nonpayment of any charge other than non-recurring or recurring charges for that same service, including government mandated fees and taxes calculated on that service that are remitted to government.
- (e) Unless the subscriber directs otherwise, any payment made by a subscriber shall be applied first to any overdue amount of basic service, any other overdue amount, and then any amount due for basic service.
- (f) Where a subscriber is offered and agrees to an alternative payment plan, the carrier must provide confirmation of the terms in writing if the subscriber so requests.

Rule 8: Billing Disputes

- (a) In the case of a billing dispute between a subscriber and a carrier, the carrier shall investigate the charge(s) the subscriber has informed the carrier are in

question, and shall reach a determination and communicate it to the subscriber within 30 days. During the time the investigation is pending, no late charges or penalties may be collected, the charge may not be sent to collection, and no adverse credit report may be made based on non-payment of the charge. If the subscriber prevails, then no late charge or penalty may be imposed on the amount in dispute.

- (b) All disputed charges for any telecommunications service are subject to a rebuttable presumption that the charges are unauthorized unless there is (i) a record of affirmative subscriber authorization; (ii) a demonstrated pattern of knowledgeable past use; or (iii) other persuasive evidence of authorization.
- (c) Except as provided in Rules 7(a) and (c), a carrier shall not disconnect service to a subscriber for non-payment of a disputed amount before seven calendar days after the date the carrier notifies the subscriber in writing of the results of its investigation.
- (d) A carrier may not disconnect service to a subscriber for nonpayment of a disputed amount if the subscriber has: (a) submitted a claim to CAB for informal review; and (b) deposited the disputed amount with the Commission. During the time any CAB review is pending, no late charges or penalties may be imposed or collected, the charge may not be sent to collection, and no adverse credit report may be made based on non-payment of the charge.
- (e) Carriers shall not hold subscribers liable for carrier costs resulting from complaints before the Commission, arbitrators, the courts or another agency.

Comment: The rules in Part 3 supersede Rules 8(a),(b), and (c) when the dispute involves billings for non-communications related charges.

Rule 9: Employee Identification

- (a) Every carrier shall prepare and issue to every employee who, in the course of his or her employment, has occasion to enter the premises of subscribers of the carrier or applicants for service, an identification card in a distinctive format having a photograph of the employee. The carrier shall require every employee to present the card upon requesting entry into any building or structure on the premises of an applicant or subscriber.
- (b) Every carrier shall require its employees to identify themselves at the request of any applicant or subscriber during a telephone or in-person conversation, using a real name or other unique identifier.
- (c) No carrier shall misrepresent, or allow its employees to misrepresent, its association or affiliation with a telephone carrier when soliciting, inducing, or otherwise implementing the

subscriber's agreement to purchase products or services, and have the charge for the product or service appear on the subscriber's telephone bill.

Rule 10: Emergency 911 Service

All carriers providing end-user access to the public switched telephone network shall, to the extent permitted by existing technology or facilities, provide every residential telephone connection, and every wireless device technologically compatible with its system, with access to 911 emergency service regardless of whether an account has been established. No carrier shall terminate such access to 911 emergency service for non-payment of any delinquent account or indebtedness owed to the carrier.

C. DEFINITIONS

Affiliate: A person or entity that directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person or entity. For purposes of this paragraph, the term "own" means to own or control an equity interest (or the equivalent thereof) of more than 10 percent.

Comment: See 47 U.S.C. § 153(1).

Agent: A person or entity considered an agent under California law.

Basic Service: A minimum level of telecommunications service, as defined in D.96-10-066 and as may be changed by later decisions, which each carrier offering local exchange service is required to provide to all of its residential customers who request local exchange service. Also referred to as "basic exchange service."

Carrier: A telecommunications provider subject to the Commission's jurisdiction, including wireless carriers. "Carrier" also includes all entities offering telephone services via telephone prepaid debit cards who are required to obtain operating authority or register with the Commission as specified in Public Utilities Code Section 885. A carrier shall do everything necessary and proper to secure compliance with these rules by all of its officers, agents and employees.

"LEC" refers to local exchange carriers; "ILEC" refers to incumbent local exchange carriers; "CLC" refers to competitive local exchange carriers; "IEC" refers to interexchange carriers; and "CMRS" refers to commercial mobile radio service carriers.

Clear and Conspicuous: A statement as interpreted under California Law.

Comment: For example, a statement is clear and conspicuous if it is presented in a manner that is readily noticeable, readable, audible, and understandable to the audience to whom it is disseminated. Typeface, print contrast, paragraph breaks, layout, use of headings, space or margins are some of the elements that may be considered in determining whether a confirmation, authorization, order, agreement or contract is clear and conspicuous.

Commission: California Public Utilities Commission.

Consumer: An individual or small business which purchases or subscribes, or may potentially purchase or subscribe, to any product or service provided or billed by a carrier.

Consumer Affairs Branch (CAB): The Commission office where California consumers file complaints about a utility service or billing problem they have not been able to resolve with the utility.

Day: A calendar day unless otherwise indicated.

Employee: Includes, for purposes of these rules, employees, contract employees, contractor employees, agents, and carrier representatives of all types.

Key Rates, Terms and Conditions: A provision imposed by a carrier to which a subscriber is bound (through, e.g., the carrier's tariffs, service agreements, contracts, operating practices, billing practices, system limitations, etc.) that increases a subscriber's bill or limits a subscriber's use of a product or service. Key rates, terms and conditions include, but are not limited to, the following when directly related to the telecommunications services provided:

Service activation or installation charges, periodic recurring charges, per-unit usage charges, usage allowances, minimum charges, surcharges or fees (other than taxes and mandated surcharges required to be collected from subscribers and remitted to government), usage restrictions, geographic limitations, time of use distinctions (e.g., peak/off-peak), term of service, termination fees or penalties, and required bundling arrangements.

Non-Communications-Related: As defined or used in Part 4, Rules Governing Billing for Non-Communications-Related Charges, of this General Order.

Prepaid Calling Card; Prepaid Telephone Debit Card: An object containing an access number and authorization code that enables a consumer to use prepaid calling services. It does not include an object of that type used for promotional purposes.

Prepaid Calling Service: A prepaid telecommunications service that allows consumers to originate calls through an access number and authorization code, whether manually or electronically dialed.

Rates and/or Charges: An amount(s) requested to be paid by the user of a telecommunications service including charges, surcharges and fees, over which a carrier has discretion to charge. Unless otherwise indicated, "rates" includes any subscriber line charges (also known as the end user common line charge) authorized by the Federal Communications Commission.

Small Business: A business that subscribes for not more than twenty telephone access lines from any single carrier, or an individual who subscribes directly for not more than twenty access lines from a single carrier for business use or combination business and personal use. A business or individual subscribing to more than one T-1 lines may not be considered a small business customer. For purposes of these rules, all entities other than individuals (e.g., government and quasi-governmental agencies,

associations, etc.) meeting the twenty-access and one T-1 line limits are treated identically with small businesses. A business is defined by a billed account.

Subscriber: An individual or small business that purchases or subscribes to a telecommunications service subject to Commission jurisdiction. Also referred to as a “customer.”

Transfer: A transfer of subscribers in which the transferee would replace the transferring utility for some or all of the latter’s subscribers. A transfer of subscribers does not include a transfer at the corporate level that does not affect the underlying utility or subscribers.

Comment: This definition is intended to be consistent with the definition of “transfer of customers” in D.02-01-038.

Type of Service: Three broad categories of telephone service: Local Exchange Service; Interexchange (long distance and local toll service); and CMRS.

User: A person or entity using a telecommunications network or service.

Written; In Writing: Both “written” and “in-writing” describe materials intended to be read, either in hardcopy document form (including fax) or transmitted through electronic media. For purposes of these rules, whenever anything is required to be provided “in writing” or in “written” form (e.g., a disclosure, a notice, or a confirmation), the requirement may be satisfied through the use of electronic media if both parties to the communication have agreed to do so. If they have not, a tangible, hardcopy document is required. Carriers’ electronic communications with customers and agreements to use electronic communications must satisfy the requirements of the federal Electronic Signatures Act, 15 USCA §§ 7001 et seq. and/or the California Uniform Electronic Transactions Act, Cal. Civil Code §§ 1633 et seq., as applicable.

PART 3 - Rules Governing Billing for Non-Communications-Related Charges

A. Scope and Purpose

The purpose of these rules is to protect consumers from unauthorized charges on their telephone bills, specifically, charges for non-communications-related products and services. Effective July 1, 2001, such charges are no longer barred by statute. These rules are intended to give consumers control over whether to use their telephone bills to pay for non-communications-related products and services; to ensure that consumers have sufficient information to make informed choices about this service and, if they use it, to verify charges on their bills; to provide for prompt and effective recourse if they find unauthorized charges or other billing errors related to non-communications charges on their telephone bills; and to protect the confidentiality of information they provide to telephone companies.

These rules apply to: (1) any telephone corporation, as defined in Public Utilities Code Section 234, operating in California, whether providing landline or wireless telephone service, that chooses to open its telephone billing service to non-communications-related products and services; (2) any billing agent that presents such charges to a California telephone corporation on behalf of another entity; and (3) any vendor of non-communications-related products or services that bills for those products or services on a California subscriber's telephone bill, whether it makes billing arrangements directly with the California billing telephone company or indirectly through billing agents. Business entities in all three categories must comply with the applicable rules in this Part. These rules apply to billing for residential telephone service, business telephone service, and combined or undifferentiated residential/business telephone service.

These rules are intended to be consistent with other consumer protection laws that are or may be applicable to billing for products and services unrelated to telephone service. These laws include state and federal laws governing debt collection activity and consumer credit. The Commission's rules governing non-communications-related charges on telephone bills are not intended to deprive consumers of other remedies available under such laws. Our objective in drafting these rules is to make them consistent with the Truth in Lending Act, in particular. To the extent these rules provide any greater protections than those provided by the Act, we believe they are still consistent with and therefore not preempted by the Act.

Compliance with these rules does not relieve carriers of other obligations they may have under their tariffs, other Commission general orders and decisions, FCC orders, and state and federal statutes. Nor do these rules limit any rights a consumer may have.

The Commission intends to continue its policy of cooperating with law enforcement authorities to enforce consumer protection laws that prohibit misleading advertising and other unfair business practices. These rules do not preclude any civil action that may be available by law. The remedies the Commission may impose for violations of these

rules are not intended to displace other remedies that may be imposed by the courts for violation of consumer protection laws.

Prosecution, whether civil or criminal, by any local or state law enforcement agency to enforce any consumer protection or privacy law does not interfere with any Commission policy, order or decision, or the performance of any duty of the Commission, related to the enactment or enforcement of these rules. Such prosecution, however, does not, in any way, limit the Commission's authority to interpret or enforce these rules as the Commission determines appropriate.

These rules are not intended to create a private right of action to impose liability on carriers or other utilities for damages, which liability would not exist had these rights not been adopted.

B. Definitions

Agent

Any person, company, or entity, other than a billing telephone company:

- (1) that represents or acts on behalf of a billing telephone company, billing agent, or vendor as those terms are defined in these rules; or
- (2) that solicits, promotes, advertises, offers, or bills for, products or services that are billed for on a subscriber's telephone bill or included in the envelope containing any bill for telecommunications services; or
- (3) whose function is to bring about or accept performance of contractual obligations between a consumer and either a billing telephone company or a vendor whose charge for products or services is billed for on a subscriber's telephone bill or included in the envelope containing any bill for telecommunications services.

Basic Service

A minimum level of telecommunications service that each carrier offering local exchange service is required to provide to all of its residential subscribers who request local exchange service. Also referred to as "basic exchange service." (See D.96-10-066). Wireless service is not "basic service" unless the wireless service satisfies the definition of basic service provided in D.96-10-066 and subsequent Commission decisions.

Billing Agent

A company or other business entity that aggregates billing for telephone service providers and/or vendors and submits that billing to a telephone company for inclusion on subscribers' telephone bills, either directly or indirectly through one or more billing aggregators.

[Comment: Sections 2889.9 and 2890 use the term “billing agent.” Billing agents are sometimes referred to as “billing aggregators.” The FCC uses the term “clearinghouse” (see FCC Anti-Cramming Best Practices Guidelines).]

Billing Error

A charge made on a subscriber’s telephone bill without proper authorization as required by statute and/or these rules (see definition of “unauthorized charge, below); a charge not identified as required by statute and/or these rules; a charge assessed on a subscriber’s telephone bill for products or services not accepted by the subscriber, or the subscriber’s designee, or not delivered to or provided to the subscriber or the subscriber’s designee as authorized; the billing telephone company’s failure to mail or deliver a telephone bill to the subscriber’s last known address if that address was received by the billing telephone company or the entity responsible for initiating the charge, in writing, at least 20 days before the end of the billing cycle for which the statement was required; a reflection on the subscriber’s telephone bill of the billing telephone company’s failure to credit properly a payment or other credit issued to the subscriber’s account; a computational error or similar error of an accounting nature made by a telephone company or vendor; a reflection on a telephone bill of a charge inconsistent with the terms and conditions of the subscriber’s service agreement (whether defined by tariff or by contract) or purchase agreement, whichever is applicable.

Billing Telephone Company

See *Telephone Company*

Clear and Conspicuous

A statement is clear and conspicuous if it is presented in a manner that is readily noticeable, readable, audible, and understandable to the audience to whom it is disseminated.

[Comment: Pale typography, insufficient contrast, infrequent paragraph breaks, small type, inordinately rapid or low volume speech, and a clarifying footnote or information that lack ready proximity or accessibility to the original statement being modified are examples of elements that must be considered in determining whether a statement is not “clear and conspicuous.”]

Commission

The California Public Utilities Commission.

Communications-related charges; Non-communications charges

Communications-related charges include, but are not limited to, charges for: services tariffed by telephone utilities; services permitting voice and data communications, including charges for installation of equipment and facilities; telecommunications equipment that is connected to a telecommunications network; wireless communications service; Internet access; video service; message service; information service, including pay-per-call service; and cable

set top boxes. Any charge that is not communications-related, with the exception of taxes and mandatory charges for public purpose programs, is a non-communications charge.

[Comment: This list of communications-related charges is derived from Section 2890. The Commission recognizes that new communications-related products and services are being developed at a rapid pace; therefore, this list is not intended to be exclusive.]

Complaint (to a billing telephone company from a subscriber)

A communication, whether written or verbal, from a subscriber to the subscriber's billing telephone company disputing a charge on that subscriber's telephone bill. A question about a charge is not necessarily a complaint; however, if the bill provides insufficient information to enable the subscriber to verify the charge, fails to identify clearly the source of the charge, includes incorrect information about the charge or the source of the charge, or in any way falls within the definition of a billing error, the question should be deemed a complaint.

Fraudulent Authorization

An authorization (written, verbal, or electronic) is fraudulent if it is inauthentic (not given by the subscriber) or was obtained from the subscriber based on false or misleading information.

Legal Name (of a business entity that is not a telephone company)

Name of company as registered with the California Secretary of State.

Signature

Signature includes an electronic signature as defined by the Uniform Electronic Transactions Act, Civil Code § 1633.2(h), provided, however, that an oral communication or a recording of an oral communication shall not constitute an electronic signature.

Solicitation

A statement made by any means to any member of the public with the intent, directly or indirectly, to sell, rent, or otherwise dispose of goods or property, perform services, or induce the public to enter into any obligation.

Subscriber

Any individual or business that subscribes to any telecommunications service subject to Commission jurisdiction. For purposes of these Part 4 rules, "subscriber" also includes individuals who use the subscriber's telecommunications service with the permission of the subscriber of record.

Telephone Company; Billing Telephone Company

A telephone company is any telephone corporation (as defined in Public Utilities Code § 234) operating within California. This term includes resellers and

wireless telephone service providers. A billing telephone company is a telephone company that also provides billing services to any third party, including its own affiliate, or that bills for non-communications-related products and services on its own behalf. Telephone companies are responsible for their agents' compliance with these rules and liable for their agents' violation of these rules.

Unauthorized Charge

In the context of billing for non-communications-related products or services on a subscriber's telephone bill, an unauthorized charge is a non-communications-related charge included on a subscriber's bill when the subscriber (1) has not authorized the billing telephone company, directly, to include non-communications-related charges on that subscriber's bill; or (2) has not authorized that particular charge. A charge placed on the subscriber's bill by a person who does not have actual, implied, or apparent authority to place such a charge, and which confers no benefit upon the subscriber, is an unauthorized charge.

Vendor

Any person, company or entity that offers or provides non-communications-related products or services billed on a subscriber's telephone bill. Vendors are responsible for their agents' compliance with Section 2890 and these rules.

[Comments:

(1) As used in these rules, "vendor" refers to the entity that makes the sale to a California subscriber, attempts to make the sale, or sets in motion the process of placing a charge on a subscriber's bill. In the Commission's view, "entity responsible for generating a charge" as that term is used in Section 2890, i.e., is synonymous. Some telephone companies have argued, however, that the "entity responsible for generating a charge" could include billing agents. To eliminate this ambiguity, we will use the term "vendor" to refer to entities that set in motion the process of placing a charge on a subscriber's bill, not to billing agents acting as an intermediary between seller and billing telephone company. In the event that a billing entity is responsible for setting the process in motion, i.e., is responsible for generating a charge on behalf of no one but itself, it would be subject to the Commission's jurisdiction as provided by Section 2890, as are vendors. Note that if a billing telephone company sells non-communications-related products and services directly to subscribers, it is a vendor as well.

(2) Vendors are not necessarily public utilities, nor are they necessarily California corporations, though they sell or offer to sell to California subscribers.]

Written; In Writing

Both "written" and "in-writing" describe materials intended to be read, either in hardcopy document form (including fax) or transmitted through electronic media. For purposes of these rules, whenever anything is required to be provided "in writing" or in "written" form (e.g., a disclosure, a notice, or a confirmation), the

requirement may be satisfied through the use of electronic media if both parties to the communication have agreed to do so. If they have not, a tangible, hardcopy document is required. Carriers' electronic communications with customers must satisfy the requirements of the federal E-Sign Act and/or the California Uniform Electronic Transactions Act where they apply.

[Comment: This definition of "written" and "in writing" will be interpreted consistent with the requirements of the federal Electronic Signatures Act, 15 USCA §§ 7001 et seq. (E-Sign Act), whenever it is applicable, or with the California Uniform Electronic Transactions Act, Cal. Civil Code §§ 1633 et seq. (CUETA). It is not possible to determine in advance which transactions will be governed by the federal E-Sign Act and which by the CUETA. Carriers are responsible for determining which law applies to their own transactions.]

C. Authorization Requirements

Effective July 1, 2001, non-communications-related charges may be included in a subscriber's telephone bill, provided both of the following conditions pertaining to authorization have been satisfied: (1) the subscriber has affirmatively "opted in", i.e., provided a general one-time authorization directly to the billing telephone company to open up the subscriber's account to non-communications charges; AND (2) the subscriber has authorized the specific charge placed on the account. Each of these authorization requirements is described in more detail below.

(1) General ("opt-in") authorization: The billing telephone company may place non-communications charges on a subscriber's account only if it has first obtained express written authorization, directly from the subscriber, to include non-communications charges on that subscriber's telephone bill, and the subscriber has not revoked that authorization. The billing telephone company must use a PIN number or other equally reliable security procedure designed to prevent anyone other than the subscriber and individuals authorized by the subscriber from placing charges on the subscriber's account. Opt-in authorization information or confirmation, including any assigned or confirmed PIN, must be sent to the subscriber's billing address even if the authorization lists a different address for delivery of products or services.

[Comment: Because billing for non-communications-related charges on telephone bills was previously prohibited by law, many subscribers initially will be unaware that they are now exposed to a new risk of having unauthorized charges for non-communications-related products or services improperly placed in their telephone bills. The Legislature has acknowledged that additional safeguards are necessary to protect consumers from the risk of being "crammed" with charges that are unrelated to telephone service or other communications services. (See Stats 2000, ch 931 (AB 994).) Consumers should not be exposed to this risk unknowingly.]

Accordingly, these interim rules require billing telephone companies to obtain express permission from a subscriber to include non-communications-related charges before any non-communications-related charges may be included on that subscriber's bill.]

(a) In obtaining authorization to bill for non-communications charges, billing telephone companies must disclose in a clear and conspicuous manner all material terms and conditions related to this service. Material terms and conditions include any applicable fees and charges, including late payment penalties and interest; any available options for limiting authorization (for example, to a dollar amount per month); how a subscriber may dispute a charge; the fact that the billing telephone company may not terminate basic local service, file an adverse credit report, or charge interest or finance charges on disputed amounts; how a subscriber may revoke authorization; and how a subscriber's confidential information is protected.

[Comments:

(1) Billing telephone companies may create forms for obtaining subscribers' authorization, although written authorization may be provided in other ways.

*(2) Regardless of the manner in which written permission is given, billing telephone companies must provide sufficient information to enable consumers to make informed decisions about whether to allow non-communications charges on their telephone bills, and must abide by those decisions. (See § 2896.) They must disclose all material terms and conditions, and must not mislead subscribers in an effort to convince them to authorize the use of their telephone bill for non-communications-related charges. (See *Id.* and Business and Professions Code § 17500.) Companies that do so will be subject to sanctions by the Commission for violating the Public Utilities Code and these rules. Such practices may also lead to court-ordered remedies pursuant to California's Unfair Competition Law (Business and Professions Code §§ 17200 and 17500).*

(3) If a subscriber disputes a charge on the ground that the subscriber had not authorized the billing telephone company to include non-communication-related charges on the subscriber's bill, the billing telephone company bears the burden of proving that the subscriber did in fact provide such authorization.

(4) See limitation on late payment penalties in Part 2, Rule 7(a).]

(2) Point-of-sale authorization: Only charges that the subscriber has specifically authorized may be included on the subscriber's bill. Authorization must be provided by use of PIN number or other equally reliable security procedure.

[Comments:

(1) The primary goal of Sections 2889.9 and 2890 and of these rules is to ensure that only authorized charges are billed to subscribers, i.e., to deter "cramming." Billing telephone companies, billing agents, and vendors all are responsible for ensuring that only authorized charges are billed.

(2) Requiring PIN number authorization is one way to ensure that a purchase is properly authorized at the point of sale. As commenters pointed out in response to the first draft of these rules, however, better methods of ensuring proper authorization may exist or may be developed in the future. Accordingly, these rules allow flexibility in the means used to ensure authorization. Whatever the security procedure used, it should be at least as reliable as a PIN number, however. In the event a subscriber claims that a charge was unauthorized, the billing telephone company may not require the subscriber to pay the charge until the billing telephone company has obtained proof of proper authorization from the vendor or from the billing agent that submitted the charge for billing.

(3) This type of authorization will be referred to as "point-of sale authorization" to distinguish it from general authorization to include non-communications charges on a subscriber's telephone bill (see Rule C(1)).]

(3) Subscribers may not be held liable for unauthorized charges. Subscribers must make a reasonable, good-faith effort to notify the billing telephone company promptly when the subscriber becomes aware of a probability of unauthorized use of the subscriber's account. If the billing telephone company is unable to verify authorization, a charge is deemed unauthorized.

[Comment: Section 2890 provides that a telephone bill "may only contain charges for products or services, the purchase of which the subscriber has authorized." This provision mandates a "zero-liability" rule for unauthorized charges.]

D. Revocation of Opt-in Authorization

(1) By subscriber: Subscribers may revoke authorization to allow non-communications charges on their bills at any time without charge. They may do so by notifying their billing telephone company, by telephone, in writing, or via the Internet, that they no longer wish to allow non-communications charges on their telephone bill. The billing telephone company must confirm the revocation in writing within 10 business days. This written confirmation shall indicate the date

and time the subscriber notified the billing telephone company that authorization was revoked. Billing telephone companies must allow subscribers to revoke authorization by telephone 7 days a week, 24 hours a day. The right to revoke authorization to allow charges includes charges from standing authorizations previously made by the subscriber, such as charges for monthly dues or subscription service. This right is in addition to any other right that the subscriber may have to cancel the transaction that gave rise to the billing charge.

[Comment: As with credit cards, the consumer must be able to revoke authorization at any time to protect the subscriber in the event of attempted fraudulent use of the subscriber's account. As subscribers cannot be held liable for unauthorized charges, this provision protects the billing telephone company as well.]

(2) By billing telephone company: A billing telephone company may suspend a subscriber's authorization to bill for non-communications charges without prior notice if the company has reason to suspect fraudulent or unauthorized use of the subscriber's account. The billing telephone company shall give prompt notice to the subscriber of such action. In all other cases, a billing telephone company must provide reasonable notice before suspending or revoking the subscriber's authorization. Billing telephone companies must inform subscribers of their revocation policies when soliciting subscribers' authorization and when responding to subscribers' requests for information about the billing service.

(3) Any agreement by a subscriber not to revoke an authorization is contrary to public policy and of no effect.

E. Billing Telephone Companies' Obligations to Screen and Monitor Entities for Whom They Bill

(1) Billing telephone companies must take reasonable precautions to screen vendors and billing agents before agreeing to provide billing services for them, in order to screen out unreliable or untrustworthy business entities.

(2) Before providing billing services to any vendor or billing agent, billing telephone companies must require and obtain from the vendor or billing agent the following information:

(a) If the company is a corporation or other type of business entity required to file with the State of California (Secretary of State or other state agency) as a domestic or foreign corporation, its legal name as registered with the State of California, and if doing business under a different name in California, its fictitious name as registered in each county in California in which it is doing business under that fictitious name.

(b) If the company is not a corporation or other type of business entity required to register with the State of California (Secretary of State or other state agency), but is doing business under a fictitious name, its fictitious name as registered in each county in California in which it is doing business under the fictitious name. Billing telephone companies must provide this information to the Commission and the California Attorney General upon request.

(3) Contracts to provide billing services for vendors and billing agents must provide that the billing telephone company will require proof of authorization for all charges disputed by subscribers, including but not limited to the nature, time, place and fact of the authorization; the nature, qualities and price of the product or service; and other charges of any and every kind, such as taxes, charges for other products and services, shipping expenses, interest, and penalties; and the legal basis for any such charge, and that without such proof, the subscriber will be credited for the charge and the corresponding amount withheld from the vendor or billing agent. Billing telephone companies may impose fees on these vendors and billing agents for the cost of investigating and resolving subscriber complaints.

(4) Billing telephone companies must monitor the performance of the vendors and billing agents for whom they provide billing services, promptly investigate subscribers' complaints, whether written or verbal, of unauthorized charges and other billing errors, and promptly suspend billing on behalf of a vendor or billing agent whose charges are generating a significant percentage of complaints (over five percent in two out of three consecutive months), or if the billing company has any other reason to believe unauthorized billings are being presented to it. A billing telephone company may resume billing for a vendor or billing agent after investigating the alleged billing errors, if it has determined that the problem(s) underlying the errors have been resolved.

[Comment: Regarding what constitutes a "significant percentage" of complaints, the Federal Trade Commission has defined "excessive consumer dispute chargebacks" in the credit card context as chargebacks that exceed three percent of all credit card transactions for any single company for two out of three consecutive months. See In re Citicorp Credit Services, Inc. (1993), FTC No. C-3413, 116 F.T.C. 87, 1993 Lexis 19 (holding that failure to investigate excessive chargebacks and terminate billing when excessive chargebacks occur constitutes an unfair business practice in violation of the Federal Trade Commission Act.)]

(5) Billing telephone companies must keep records of all subscriber complaints, both written and verbal, of unauthorized non-communications charges and other billing errors related to those charges for at least four years, and be able to categorize those complaints by vendor and by billing agent. Billing telephone companies will make this complaint information available to Commission staff or

the California Attorney General upon request.

[Comment: As a further deterrent to cramming, billing telephone companies are encouraged to consider including escalating fee provisions in their contracts with billing agents and vendors, so that those vendors whose charges generate a large number of complaints quickly suffer financial consequences. The purpose of such provisions is to make cramming unprofitable for vendors and billing agents, thereby eliminating the incentive to engage in the practice and reducing the harm to consumers, as well as the number of complaints addressed to billing telephone companies and the Commission.]

(6) The Rosenthal Fair Debt Collection Practices Act, Sections 1788-1788.17 of the California Civil Code, applies to the billing and collection activity of telephone corporations subject to these rules. Insofar as these rules require action inconsistent with an explicit requirement of that Act, that Act shall apply.

F. No Disconnection of Basic Telephone Service for Nonpayment of Non-Communications Charges

Billing telephone companies that provide basic local exchange service may not disconnect or suspend a subscriber's basic service for failure to pay any non-communications charge on the subscriber's telephone bill. Billing telephone companies must give subscribers notice of this rule when requesting initial authorization and on every bill that contains non-communication-related charges.

[Comment: See definition of basic service and § 779.2].

(1) When discussing non-payment of charges with subscribers, orally or in writing, billing telephone companies must inform them of this rule in a clear and conspicuous manner.

(2) Billing telephone companies and their agents, as well as billing agents, vendors, and their agents, including assignees of accounts receivables, may not tell subscribers or lead them to believe that subscribers' basic local exchange service may be disconnected for failure to pay for non-communications charges.

(3) Unless otherwise directed by the subscriber at the time the payment is made, billing telephone companies shall credit partial payment amounts in the following order: (1) local exchange telephone service and associated mandatory fees and taxes; (2) other communications-related charges; (3) other charges.

G. Complaint Procedures

(1) The billing telephone company is responsible for ensuring that subscriber complaints about non-communication charges on its bills are processed as required by these rules. Subscriber questions and complaints concerning non-

communications-related charges should be addressed to the billing telephone company, or to its agent, as designated on the bill. The telephone bill must include a prominently displayed toll-free customer service number for this purpose. The toll-free number must be adequately staffed by personnel with sufficient training and authority to answer questions, investigate complaints, and adjust bills in favor of subscribers when appropriate.

Telephone companies are required to provide adequate customer service as a telecommunications provider (see the Telecommunications Customer Service Act of 1993, codified at Sections 2895-2897). They must ensure that the additional customer service required of them in connection with non-communications charges does not negatively impact telephone customer service.

(2) Billing telephone companies or their agents shall promptly investigate subscribers' complaints of billing errors. Within 30 days of receiving a complaint of a billing error unrelated to the subscribers' telephone service, the billing telephone company must either credit the disputed charge to the customer or acknowledge, in writing, receipt of the complaint, and must verify the validity of the charge. Billing telephone companies must resolve such complaints within 60 days.

[Comment: These rules are meant to be consistent both with Section 2890 and with federal regulations governing credit card transactions, which may be applicable as well in some cases. See 15 U.S.C. 1666(a)(3)(A),(B) and 12 C.F.R. 226.13(c)(1),(2).]

(3) While the investigation is pending, the subscriber shall not be required to pay the disputed charge, no late charges or penalties may be applied, the charge may not be sent to collection, and no adverse credit report may be made based on non-payment of that charge.

(4) The billing telephone company or, if the vendor is handling the complaint, the vendor, will notify the subscriber in writing of the result of its investigation. If the vendor has failed to provide proof of authorization within the time allowed, the billing telephone company will credit the charge to the subscriber. If the billing telephone company has obtained proof of authorization within the time allowed, it may require payment of the charge within 30 days of sending written notice to the subscriber. The notice shall state the reason for the creditor's belief that the billing error alleged by the subscriber is incorrect and include the amount due and the date of payment. If, however, the subscriber alleges that the authorization provided was fraudulent, or the billing telephone company has reason to believe it was fraudulent based on other information, the billing telephone company has an obligation to investigate further. An authorization is fraudulent if it is inauthentic (not given by the subscriber) or obtained from the subscriber based on false or misleading information. Consumers must be given copies of evidence to support the billing telephone companies' allegations that charges are authorized if the

consumer so requests. Consumers who request such evidence will be given a time period equal to one billing cycle or ten days, whichever is less, to determine if the evidence is authentic and to offer other evidence, by oral statements or otherwise, that would show the purchase was not authorized by the subscriber.

(5) If the subscriber alleges that a non-communications charge is improper because the subscriber had not "opted in," i.e., consented to the inclusion of non-communications charges on the telephone bill (see Rule C(1)), or had revoked such authorization, the billing telephone company bears the burden of proving that it had a valid general authorization from the subscriber at the time the particular charge was authorized.

(6) A subscriber dissatisfied with the billing telephone company's resolution of the complaint may file an informal complaint with the Commission's Consumer Affairs Branch (CAB). Consumers who believe they have been crammed may also notify other agencies such as the District Attorney's Office in their county or the Attorney General's Office.

(7) Pending CAB's investigation, the subscriber's obligation to pay the disputed charge is stayed, provided that the subscriber's complaint was filed with CAB within 30 days from the date the billing telephone company notified the subscriber of its decision in writing.

(8) If CAB obtains proof of proper authorization, CAB will so inform the subscriber and the billing telephone company in writing. Within 30 days of such a notice, the subscriber must pay the disputed charge if it has not been paid. If the subscriber believes CAB's conclusion was in error, the subscriber may appeal CAB's conclusion to a Consumer Affairs Manager. If the subscriber does not agree with the Consumer Affairs Manager's conclusion, the subscriber may file a formal complaint with the Commission. The filing of a formal complaint does not, however, stay the subscriber's obligation to pay the disputed charge.

(9) If CAB is unable to obtain proof of proper authorization, it will ask the billing telephone company, in writing, to remove the charge. If the billing telephone company fails to remove the charge, the subscriber may file a formal complaint with the Commission. CAB may refer the case to the Commission's Consumer Protection and Safety Division or to other law enforcement agencies for further investigation.

(10) A billing telephone company shall credit a payment to the subscriber's account as of the date of receipt, except when a delay in crediting does not result in a finance or other charge. If a billing telephone company fails to credit payment as required in this rule, in time to avoid the imposition of finance or other charges, the billing telephone company shall adjust the subscriber's account so that the charges imposed are credited to the subscriber's account during the next billing

cycle.

(11) When a positive balance in excess of \$1 is credited on a telecommunications account (through transmittal of funds to the billing telephone company in excess of the total balance due on an account, through rebates of unearned charges, or through amounts otherwise owed to or held for the benefit of a subscriber) the billing telephone company shall: Credit the amount of the credit balance to the subscriber's account; refund any part of the remaining credit balance within seven business days from receipt of a written request from the subscriber; and make a good faith effort to refund to the subscriber by cash, check, or money order, or credit to a deposit account of the subscriber, any part of the credit balance remaining in the account for more than six months. No further action is required if the subscriber's current location is not known to the billing telephone company and cannot be traced through the subscriber's last known address or telephone number.

(12) When an entity other than the billing telephone company accepts the return of property or forgives a debt for services, and agrees to credit the subscriber's telephone bill, the entity shall, within seven business days from accepting the return or forgiving the debt, transmit a credit statement to the billing telephone company through normal channels for billing statements. The billing telephone company shall, within 3 business days from receipt of a credit statement, credit the subscriber's account with the amount of the refund.

(13) Nothing in these rules precludes a subscriber that has been the victim of cramming, misleading advertising, or other unfair business practice from pursuing other legal remedies and obtaining relief that the subscriber may be entitled to under state or federal law.

H. Bill Format

(1) Telephone bills containing non-communications charges must be clearly organized, readily understandable, and provide sufficient information to enable subscribers to verify whether the charges they were billed for are the charges they authorized. They must satisfy all of the applicable requirements set forth in Sections 2889.9 and 2890.

(2) Non-communications charges must be placed in one or more separate sections of the telephone bill clearly labeled "Non-communications-related charges," separate from the charges for telecommunications services. The name of the vendor and billing agent associated with each charge must be clearly identified.

(a) Upon request, billing telephone companies shall provide Commission staff and the Attorney General with information about the types of non-communications-related products and services they bill, and the names of the vendors and billing agents on whose behalf they bill for these charges. Billing telephone companies shall require the vendors on whose behalf they bill, either directly or indirectly through billing agents, to provide the necessary information.

(3) Each bill must provide a clear, concise, non-misleading description of the product or service for which a charge has been imposed. The description of the product or service must be sufficiently clear and specific to enable subscribers to determine whether the products or services for which they are being billed are the products or services that they have requested and received.

(4) If the telephone bill includes charges for local exchange service, the section of the bill containing non-communications charges must include a notice that states:

“The telephone company is not allowed to disconnect your basic local service for failure to pay this portion of your bill. It may, however, take steps other than disconnection, as permitted by law, to collect legitimate charges.”

I. Confidential Subscriber Information

Billing telephone companies may not release confidential subscriber information, credit or financial information, or any other confidential information about a subscriber, including information about a subscriber’s spending patterns, to their affiliates or to other third parties, without the subscriber’s informed, written consent, with the following exceptions:

Confidential information may be released: (1) to affiliates of the billing telephone company, or to others, to the extent necessary to provide and bill for telecommunication services; (2) to a law enforcement agency or other public agency for the purpose of responding to an emergency (“911”); (3) to law enforcement personnel in possession of a valid search warrant for the information sought; (4) if required to turn over such information by a court order; or (5) if otherwise required by law. In addition, information about unpaid charges may be released to a collection agency for the purpose of collecting a debt, subject to the requirements of Rule G (Complaint procedures) and all applicable laws.

[Comment: See §§ 2891- 2891.1, and 47 U.S.C. § 222.]

J. Penalties

The Commission may impose fines and other penalties on billing telephone companies, billing agents, and vendors that fail to comply with these rules. Nothing in these rules, however, precludes district attorneys, the Attorney General, or other law enforcement agencies from obtaining injunctive relief, civil penalties, and other relief permitted by law against a billing telephone company, billing agent, or vendor that engages in business practices that violate these rules and/or the provisions of state law. The Commission will make relevant complaint data and investigation reports available to the Attorney General and to district attorneys who are investigating possible consumer fraud.

[Comments:

(1) On the Commission's authority to impose penalties on billing agents and vendors, see §§ 2889.9- 2890.

(2) Government Code § 26509 requires the Commission to give district attorneys access to complaints against, and the Commission's investigation of, a person being investigated by a district attorney regarding possible consumer fraud.]

PART 4 — Rules Governing Slamming Complaints

A. Purpose and Scope

The purpose of these rules is to establish carriers' and subscribers' rights and responsibilities, and the procedures both must follow, for addressing slamming complaints that involve California's regulated telecommunications carriers. Slamming is the unauthorized change of a subscriber's presubscribed carrier. These California-specific rules are designed to supplement and work in conjunction with corresponding rules issued by the Federal Communications Commission.

The California Public Utilities Commission is the primary adjudicator of both intrastate and interstate slamming complaints in California. A subscriber may request that the FCC rather than the Commission handle an interstate slamming complaint, in which case the FCC would apply its rules, and these rules would govern any related intrastate complaint. Where these rules differ from the FCC's slamming rules, the differences are in recognition of California-specific issues and are consistent with the FCC's mandate to the states.

Compliance with these rules does not relieve carriers of other obligations they may have under their tariffs, other Commission general orders and decisions, FCC orders, and state and federal statutes. Nor do these rules limit any rights a consumer may have.

The Commission intends to continue its policy of cooperating with law enforcement

authorities to enforce consumer protection laws that prohibit misleading advertising and other unfair business practices. These rules do not preclude any civil action that may be available by law. The remedies the Commission may impose for violations of these rules are not intended to displace other remedies that may be imposed by the courts for violation of consumer protection laws.

These rules take precedence over any conflicting tariff provisions on file at the Commission. The remedies provided by these rules are in addition to any others available by law.

Prosecution, whether civil or criminal, by any local or state law enforcement agency to enforce any consumer protection or privacy law does not interfere with any Commission policy, order or decision, or the performance of any duty of the Commission, related to the enactment or enforcement of these rules. Such prosecution, however, does not, in any way, limit the Commission's authority to interpret or enforce these rules as the Commission determines appropriate.

These rules are not intended to create a private right of action to impose liability on carriers or other utilities for damages, which liability would not exist had these rights not been adopted.

B. Definitions

Authorized Carrier

Any telecommunications carrier that submits a change, on behalf of a subscriber, in the subscriber's selection of a provider of telecommunications service with the subscriber's authorization verified in accordance with state and federal law.

Commission

California Public Utilities Commission, unless otherwise noted.

Consumer Affairs Branch (CAB)

The Commission office where California consumers may complain about a utility service or billing problem they have not been able to resolve with the utility.

Days

Calendar days, unless otherwise noted.

Executing Carrier

Any telecommunications carrier that affects a request that a subscriber's telecommunications carrier be changed. A carrier may be treated as an executing carrier, however, if it is responsible for any unreasonable delays in the execution of carrier changes or for the execution of unauthorized carrier changes, including fraudulent authorizations.

FCC

Federal Communications Commission.

LATA

Local Access and Transport Area.

Submitting Carrier

Any telecommunications carrier that requests on the behalf of a subscriber that the subscriber's telecommunications carrier be changed and seeks to provide retail services to the end user subscriber. A carrier may be treated as a submitting carrier, however, if it is responsible for any unreasonable delays in the submission of carrier change requests or for the submission of unauthorized carrier change requests, including fraudulent authorizations.

Subscriber:

Any one of the following:

- (1) The party identified in the account records of a carrier as responsible for payment of the telephone bill;
- (2) Any adult person authorized by such party to change telecommunications services or to charge services to the account; or
- (3) Any person contractually or otherwise lawfully authorized to represent such party.

Unauthorized Carrier

Any telecommunications carrier that submits a change, on behalf of the subscriber, in the subscriber's selection of a provider of telecommunications service but fails to obtain the subscriber's authorization verified in accordance with state and/or federal law.

Unauthorized Change

A change in a subscriber's selection of a provider of telecommunications service that was made without authorization verified in accordance with the verification procedures described in state and/or federal law.

C. Authorization and Verification of Orders for Telecommunications Services

Authorization and verification of orders for telecommunications services shall be done in accordance with applicable state and federal laws.

D. Carrier Liability for Slamming

- (a) Carrier Liability for Charges. Any submitting telecommunications carrier that

fails to comply with the required procedures for changing carriers or verifying subscriber authorization shall be liable to the subscriber's properly authorized carrier in an amount equal to 150% of all charges paid to the submitting telecommunications carrier by such subscriber after such violation, as well as for additional amounts as prescribed in Part 5.H. The remedies provided in this Part 5 are in addition to any other remedies available by law.

(b) **Subscriber Liability for Charges.** Any subscriber whose selection of telecommunications services provider is changed without authorization verified in accordance with legally-required procedures is liable for charges as follows:

(1) If the subscriber has not already paid charges to the unauthorized carrier, the subscriber is absolved of liability for charges imposed by the unauthorized carrier for service provided during the first 30 days after the unauthorized change. Upon being informed by a subscriber that an unauthorized change has occurred, the authorized carrier, the unauthorized carrier, or the executing carrier shall inform the subscriber of this 30-day absolution period. Any charges imposed by the unauthorized carrier on the subscriber for service provided after this 30-day period shall be paid by the subscriber to the authorized carrier at the rates the subscriber was paying to the authorized carrier at the time of the unauthorized change in accordance with the provisions of Part 5.G(e).

(2) If the subscriber has already paid charges to the unauthorized carrier, and the authorized carrier receives payment from the unauthorized carrier as provided for in paragraph (a) of this section, the authorized carrier shall refund or credit to the subscriber any amounts determined in accordance with the provisions of Part 5.H(c).

(3) If the subscriber has been absolved of liability as prescribed by this section, the unauthorized carrier shall also be liable to the subscriber for any charge required to return the subscriber to his or her properly authorized carrier, if applicable.

E. Procedures for Resolution of Unauthorized Changes in Preferred Carrier

(a) **Notification of Alleged Unauthorized Carrier Change.** Executing carriers who are informed of an unauthorized carrier change by a subscriber must immediately notify both the authorized and allegedly unauthorized carrier of the incident. This notification must include the identity of both carriers.

(b) **Referral of Complaint.** Any carrier, executing, authorized, or allegedly unauthorized, that is informed by a subscriber or an executing carrier of an unauthorized carrier change shall direct that subscriber to CAB for resolution of the

complaint.

(c) Notification of Receipt of Complaint. Upon receipt of an unauthorized carrier change complaint, CAB will notify the allegedly unauthorized carrier of the complaint and order that the carrier remove all unpaid charges for the first 30 days after the slam from the subscriber's bill pending a determination of whether an unauthorized change, as defined by Part 5.B, has occurred, if it has not already done so.

(d) Proof of Verification. Not more than twenty business days after notification of the complaint, the alleged unauthorized carrier shall provide to CAB a copy of any valid proof of verification of the carrier change. This proof of verification must contain clear and convincing evidence of a valid authorized carrier change, as that term is defined in Parts 4.F through 4.G. CAB will determine whether an unauthorized change, as defined by Part 5.B, has occurred using such proof and any evidence supplied by the subscriber. Failure by the carrier to respond or provide proof of verification will be presumed to be clear and convincing evidence of a violation.

F. Absolution Procedure Where the Subscriber Has Not Paid Charges

(a) This section shall only apply after a subscriber has determined that an unauthorized change, as defined by Part 5.B, has occurred and the subscriber has not paid charges to the allegedly unauthorized carrier for service provided for 30 days, or a portion thereof, after the unauthorized change occurred.

(b) An allegedly unauthorized carrier shall remove all charges incurred for service provided during the first 30 days after the alleged unauthorized change occurred, as defined by Part 5.B, from a subscriber's bill upon notification that such unauthorized change is alleged to have occurred.

(c) An allegedly unauthorized carrier may challenge a subscriber's allegation that an unauthorized change, as defined by Part 5.B, occurred. An allegedly unauthorized carrier choosing to challenge such allegation shall immediately notify the complaining subscriber that: the complaining subscriber must file a complaint with CAB within 30 days of either: the date of removal of charges from the complaining subscriber's bill in accordance with paragraph (b) of this section or; the date the allegedly unauthorized carrier notifies the complaining subscriber of the requirements of this paragraph, whichever is later; and a failure to file such a complaint within this 30-day time period will result in the charges removed pursuant to paragraph (b) of this section being reinstated on the subscriber's bill and, consequently, the complaining subscriber will only be entitled to remedies for the alleged unauthorized change other than those provided for in Part 5.E(b)(1). No allegedly unauthorized carrier shall reinstate charges to a subscriber's bill

pursuant to the provisions of this paragraph without first providing such subscriber with a reasonable opportunity to demonstrate that the requisite complaint was timely filed within the 30-day period described in this paragraph.

(d) If CAB, under Part 5.I. below, determines after reasonable investigation that an unauthorized change, as defined by Part 5.B, has occurred, it shall notify the carriers involved that the subscriber is entitled to absolution from the charges incurred during the first 30 days after the unauthorized carrier change occurred, and neither the authorized or unauthorized carrier may pursue any collection against the subscriber for those charges.

(e) If the subscriber has incurred charges for more than 30 days after the unauthorized carrier change, the unauthorized carrier must forward the billing information for such services to the authorized carrier, which may bill the subscriber for such services using either of the following means:

(1) The amount of the charge may be determined by a re-rating of the services provided based on what the authorized carrier would have charged the subscriber for the same services had an unauthorized change, as described in Part 5.B, not occurred; or

(2) The amount of the charge may be determined using a 50% Proxy Rate as follows: Upon receipt of billing information from the unauthorized carrier, the authorized carrier may bill the subscriber for 50% of the rate the unauthorized carrier would have charged the subscriber for the services provided. However, the subscriber shall have the right to reject use of this 50% proxy method and require that the authorized carrier perform a re-rating of the services provided, as described in paragraph (e)(1) of this section.

(f) If the unauthorized carrier received payment from the subscriber for services provided after the first 30 days after the unauthorized change occurred, the obligations for payments and refunds provided for in Part 5.H shall apply to those payments. If CAB, under Part 5.I. below, determines after reasonable investigation that the carrier change was authorized, the carrier may re-bill the subscriber for charges incurred.

G. Reimbursement Procedures Where the Subscriber Has Paid Charges

(a) The procedures in this section shall only apply after a subscriber has determined that an unauthorized change, as defined by Part 5.B, has occurred and the subscriber has paid charges to an allegedly unauthorized carrier.

(b) If CAB, under Part 5.I. below, determines after reasonable investigation that an unauthorized change, as defined by Part 5.B, has occurred, it shall direct the unauthorized carrier to forward to the authorized carrier the following:

- (1) An amount equal to 150% of all charges paid by the subscriber to the unauthorized carrier; and
 - (2) Copies of any telephone bills issued from the unauthorized carrier to the subscriber. This order shall be sent to the subscriber, the unauthorized carrier, and the authorized carrier.
- (c) Within ten days of receipt of the amount provided for in paragraph (b)(1) of this section, the authorized carrier shall provide a refund or credit to the subscriber in the amount of 50% of all charges paid by the subscriber to the unauthorized carrier. The subscriber has the option of asking the authorized carrier to re-rate the unauthorized carrier's charges based on the rates of the authorized carrier and, on behalf of the subscriber, seek an additional refund from the unauthorized carrier, to the extent that the re-rated amount exceeds the 50% of all charges paid by the subscriber to the unauthorized carrier. The authorized carrier shall also send notice to CAB that it has given a refund or credit to the subscriber.
- (d) If an authorized carrier incurs billing and collection expenses in collecting charges from the unauthorized carrier, the unauthorized carrier shall reimburse the authorized carrier for reasonable expenses.
- (e) If the authorized carrier has not received payment from the unauthorized carrier as required by paragraph (c) of this section, the authorized carrier is not required to provide any refund or credit to the subscriber. The authorized carrier must, within 45 days of receiving CAB's determination as described in paragraph (b) of this section, inform the subscriber and CAB if the unauthorized carrier has failed to forward to it the appropriate charges, and also inform the subscriber of his or her right to pursue a claim against the unauthorized carrier for a refund of all charges paid to the unauthorized carrier.
- (f) Where possible, the properly authorized carrier must reinstate the subscriber in any premium program in which that subscriber was enrolled prior to the unauthorized change, if the subscriber's participation in that program was terminated because of the unauthorized change. If the subscriber has paid charges to the unauthorized carrier, the properly authorized carrier shall also provide or restore to the subscriber any premiums to which the subscriber would have been entitled had the unauthorized change not occurred. The authorized carrier must comply with the requirements of this section regardless of whether it is able to recover from the unauthorized carrier any charges that were paid by the subscriber.

[Comment: Nothing in these Part 5 rules is intended to prohibit a subscriber and an alleged unauthorized carrier from making mutually-agreeable

arrangements for compensating the subscriber and restoring the service to the authorized carrier without the subscriber's having to file a complaint with CAB; provided, however, that the alleged unauthorized carrier must first have informed the subscriber of the 30-day absolution period and the subscriber's right to file such a complaint.]

H. Informal Complaints

The following procedures shall apply to informal complaints to the Commission alleging an unauthorized change of a subscriber's preferred carrier, as defined by Public Utilities Code § 2889.5 or the FCC's slamming rules.

(a) *Address:* Complaints shall be mailed to:

Slamming Complaints
Consumer Affairs Branch
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

(b) *Form:* The complaint shall be in writing, and should contain: (1) the complainant's name, address, telephone number, and e-mail address (if the complainant has one); (2) the names of the alleged unauthorized carrier, the authorized carrier, and the executing carrier, if known; (3) the date of the alleged unauthorized change, if known; (4) a complete statement of the facts (including any documentation) showing that the carrier changed the subscriber's preferred carrier without authorization; (5) a copy of the subscriber's bill which contains the unauthorized changes; (6) a statement of whether the complainant has paid any disputed charges to the alleged unauthorized carrier; and (7) a statement of the specific relief sought.

(c) *Procedure:*

(1) The CAB staff will acknowledge receipt of subscriber's complaint and inform the subscriber of the procedures for resolving it.

(2) The CAB will notify the executing carrier, the authorized carrier, and the alleged unauthorized carrier of the alleged unauthorized change.

(3) The CAB staff will require the alleged unauthorized carrier to produce evidence of authorization and verification, and any other information or documentation the CAB staff may need to resolve the subscriber's complaint. The alleged unauthorized carrier shall provide evidence of subscriber

authorization and verification within twenty (20) business days of CAB's request. If a carrier requests an extension of time from the CAB Staff, the carrier shall provide a written explanation why the required explanation cannot be provided within twenty (20) days, and an estimate of when it will provide the information. If evidence of authorization and verification is not provided within twenty (20) business days, a presumption exists that an unauthorized change occurred, and CAB staff will find that an unauthorized change did occur.

(4) Upon request by the CAB staff for information other than the subscriber authorization and verification, the alleged unauthorized carrier shall provide such information within twenty business days of CAB's request or provide a written explanation as to why the information cannot be provided within the required twenty business days and an estimate of when it will provide the information.

(5) The CAB staff will determine whether an unauthorized change has occurred. CAB's investigation may include review of the alleged subscriber authorization, verification, solicitation methods and materials, and any other information CAB staff determines is relevant to the investigation.

(6) Upon concluding its investigation, the CAB staff will inform the subscriber, the executing carrier, the alleged unauthorized carrier, and the authorized carrier of its decision.

(d) *Appeals:*

(1) If the subscriber is not satisfied with the CAB staff decision, the subscriber may appeal the decision to a Consumer Affairs Manager. The subscriber shall present new information or explain any factual or legal errors made in the CAB staff decision.

(2) If the subscriber is not satisfied with the resolution of the complaint by the Consumer Affairs Manager, the subscriber may file a formal complaint with the Commission according to the Commission's Rules of Practice and Procedure, Article 3.

(3) If the CAB staff finds that an unauthorized change has occurred but the unauthorized carrier disagrees and pursues billing or collection against the subscriber, CAB staff will forward this information to Commission's enforcement staff and advise the subscriber to file a formal complaint.

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APPENDIX A
GENERAL ORDER 168 (G.O. 168)

PUBLIC UTILITIES COMMISSION
STATE OF CALIFORNIA

By Steve Larson
Executive Director