**Decision** PROPOSED DECISION OF COMMISSIONERS PEEVEY AND KENNEDY

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

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| Order Instituting Rulemaking on the Commission's Own Motion to Establish Consumer Rights and Protection Rules Applicable to All Telecommunications Utilities | Rulemaking 00-02-004 (Filed February 3, 2000) |

# DECISION ISSUING REVISED GENERAL ORDER 168, MARKET RULES TO EMPOWER TELECOMMUNICATIONS CONSUMERS AND TO PREVENT FRAUD

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# DECISION ISSUING REVISED GENERAL ORDER 168, MARKET RULES TO EMPOWER TELECOMMUNICATIONS CONSUMERS AND TO PREVENT FRAUD

## 1. Summary: Revisions to General Order 168 Warranted

This decision adopts Revised General Order No. 168, Market Rules to Empower Consumers and to Prevent Fraud. The purpose of this revised General Order is to chart a new regulatory role for the Commission in the face of increasing competition in telecommunications, the introduction of radical and new communications technologies, and the convergence of voice, data, and video.

New market and technological developments challenge the basis for command-and-control rules, as the telecommunications marketplace can no longer be characterized as a staid commercial environment suited to one-size-fits-all regulation. The traditional regulatory approach sought to limit telecommunications carriers to a narrow set of services and marketing practices that have prior Commission review. But in the face of changing technology and markets, that approach on balance now harms consumers by delaying the introduction of new services and limiting the deployment of new technologies.

In contrast to the traditional regulatory approach, the decision adopted today addresses and protects the welfare of the modern California consumer. Regulations and programs adopted in the decision seek to empower individuals through education concerning new technologies and markets, and their rights as a consumer; and to protect consumers through enhanced enforcement of our existing rules that guard against unlawful and harmful practices.

Specifically the decision applies to all Commission-regulated telecommunications utilities and takes the following actions:

- Enumerates rights and freedom of choice principles that should be enjoyed by all telecommunications consumers in California
- Extends rules addressing investigatory efforts of the Consumer Affairs Branch ("CAB"), employee identification and Emergency 911 access to all wireless carriers
- Combines the newly-expanded rules with a set of anti-slamming rules
- Repeals the Commission's interim rules governing the placement of non-communications charges on telephone bills
- Creates a new Commission-led consumer education program
- Enhances the Commission's ability to enforce laws and regulations in a timely and effective manner
- Directs Staff to prepare a report on special problems faced by consumers with limited English proficiency

These actions are warranted by the modern marketplace and the Commission's statutory framework, which retains a fundamental consumer focus.

## 2. Introduction: Technology and Market Change Undercut Need for Rules Proposed Five Years Ago

The telecommunications industry has become more and more competitive, and intermodal competition increasingly blurs the line between regulated and deregulated providers and services. It is imperative that the Commission, whose regulatory tools were initially designed to regulate monopolies, periodically

calibrate its rules to adjust to this new environment rather than to force competitors to adhere to ill-fitting rules.

The 1996 Telecommunications Act established a national telecommunications policy framework, setting us on a path toward competition and deregulation. A central premise of that framework is recognition that competitive markets provide the most effective consumer protection: the power of choice. As competition takes hold and market forces mature, regulators must recognize and accede to the role competitive forces play in empowering consumers to protect themselves. If the regulatory regime fails to adapt, it becomes an impediment to the societal benefits of economic growth, innovation and the efficiencies that competition was intended to produce.

Regulatory adaptation is particularly important in today's dynamic telecommunications marketplace. In the five years between the opening of this proceeding and the Commission's adoption of Decision ("D.") 04-05-057, the telecommunications industry underwent a profound transformation. The wireless industry grew at such a rapid pace that by the time D.04-05-057 was finally adopted, the number of wireless access lines in the United States exceeded the number of wireline connections. In that same period, the first Internet-based telephone companies made their appearance; major cable companies began offering cable-based telephony; peer-to-peer software allowed free voice communications between any two computer users with broadband access; and broadband became accessible to more than ninety percent of U.S. households.

Rules that might have seemed necessary or desirable in 2000 look very different today. The creation of a highly competitive alternative national telephone

system based on wireless technology calls into question the wisdom of extending regulations rooted in the problems of the old copper wire monopoly era. There are significant differences between the legacy telephone companies and their wireless competitors in terms of technology, costs, business model, market dynamics, customer interaction, billing systems, contracts or regulatory structure. New technologies such as Voice over Internet Protocol ("VoIP") further challenge the traditional regulatory regime. The complex and dynamic nature of the telecommunications marketplace makes it difficult to apply any regulation on a one-size-fits-all basis. Instead regulatory efforts are best directed at empowering consumers.

This decision accordingly has two primary objectives. Its first objective is to ensure that consumers receive sufficient information to make informed choices. Its second is to enhance the Commission's ability to respond to abusive and fraudulent conduct by service providers subject to our jurisdiction.

## 3. Long and Contentious Procedural History

The rulemaking order that initiated this proceeding relied upon a Commission staff report that noted an increase in recorded complaints by customers against Commercial Mobile Radio Service ("CMRS") carriers.[1] The report indicated that the Commission received 2,404 informal complaints regarding the 158 registered CMRS providers operating in California in 1998 and 3,356 such complaints in 1999. The

[1] Consumer Protections for a Competitive Telecommunications Industry: Telecommunications Division Staff Report and Recommendations (Feb. 3, 2000).

informal complaints were recorded during a time when carriers of all classes were engaging in aggressive marketing tactics that reflected increased competition both in the wireless industry and the newly competitive local wireline service. During this same period, carriers also were in the process of deploying new technologies and services such as ISDN and digital wireless. The staff reviewed 81 of the 5,760 complaints received in 1998 and 1999 and recommended that we adopt a set of rules for the entire telecommunications industry. Staff recommended changing tariffs, marketing and billing practices; modifying the limitation on liability of carriers; and establishing a "Telecommunications Consumer Bill of Rights." Respondent utilities and interested parties were invited to submit comments on the proposed rules in the staff report, and a full spectrum of stakeholders did so.

In January 2001, Assigned Commissioner Carl Wood issued two rulings that sought comments on two additional sets of proposed rules falling within the scope of the rulemaking proceeding. The first set was Proposed Rules on the Inclusion of Non-Communications-Related Charges on Telephone Bills. On September 29, 2000, Governor Gray Davis signed Assembly Bill ("AB") 994 which extended a ban on non-communications-related charges in telephone bills to July 1, 2001. AB 994 also added § 2890.1 to the Public Utilities Code. This provision explicitly directed the Commission to adopt by July 1, 2001 any additional rules it determined necessary to implement the billing safeguards set forth in § 2890. In response to the direction of the Legislature in AB 994 and after considering some thirty-one sets of comments and replies, on July 30, 2001 the Commission issued D. 01-07-030, which adopted a set of interim rules governing the inclusion of non-communications-related charges on telephone bills (the "Interim Non-Com Rules"). We stated at the time that the

Interim Non-Com Rules, possibly with some modifications, would be incorporated into and superseded by the new general order to be adopted in this proceeding.

Commissioner Wood's second set of proposed rules dealt with "slamming," the unauthorized switching of carriers. These proposed rules were prepared in response to the FCC's decision in CC Docket No. 94-129. The FCC gave each state the option to act as the adjudicator of slamming complaints, both interstate and intrastate. Under the FCC's order, each state that opts to take on that responsibility must notify the FCC of the procedures it will use to adjudicate individual slamming complaints. Twenty-four sets of comments and replies were received on those proposed rules.

On June 6, 2002, Assigned Commissioner Wood issued a draft decision and a proposed general order, "Rules Governing Telecommunications Consumer Protection," for public comment. The draft decision incorporated new rules for placement of non-communications charges on phone bills and new anti-slamming rules. Thirty-two sets of comments were filed, followed by four days of workshops. Assigned Commissioner Wood suspended the proceeding schedule to allow carrier and consumer representatives to convene an informal working group to consider rule changes that both could support. The working group submitted its report with agreement on some issues and disagreement on others. The Assigned Commissioner sought two additional rounds of comments and, pursuant to P.U. Code § 311(g)(1), mailed a revised draft decision and general order for public comment on July 24, 2003.

On November 17, 2003 Governor Arnold Schwarzenegger issued Executive Order S-2-03. This order directed all State agencies and departments to suspend

action on and withdraw all proposed regulations not yet enacted for a period of 180 days to give the new administration time to assess their impact on California businesses. On December 22, 2003, Governor Schwarzenegger formally requested that the Commission voluntarily abide by this Order. This request for voluntary compliance recognized the Commission's independent status under the California Constitution.[2] In response to the Governor's request, Assigned Commissioner Wood delayed Commission action on this decision for 180 days. On March 2, 2004 he issued for public comment a revised draft decision that invited parties to submit comments on economic effects of the proposed new general order.[3] The revised draft decision gave the parties two weeks to file comments on the proposed rules and their possible economic impact.

Many parties, including carriers and California businesses, objected that the short comment cycle did not provide sufficient time to permit meaningful consideration of the economic impacts of the proposed rules.[4] They also objected to the level of consideration that the comments on economic impacts would receive, as outlined in the Notice of Availability. The Notice provided that

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[2] *See* CAL. CONST., art. XII, § 5 (establishing "additional authority and jurisdiction" of the Commission).

[3] Notice of Availability (Mar. 2, 2004).

[4] *See, e.g.*, Objections and Opening Comments of SBC California (U 1001 C) on Economic Impacts of Proposed Consumer Protection Rules (March 23, 2004), p. 2.

> [b]ecause this is a quasi-legislative proceeding, new information will not be evaluated as to its factual accuracy but may be considered by the Commission, in its discretion, as it makes policy determinations.[5]

Carriers argued that the Commission would not be making a reasoned decision if it relied on unverified data to reach policy determinations.

Assigned Commissioner Wood held no formal hearings in this proceeding and did not accept any formal submissions. As a result, the record on which original G.O. 168 was based consisted of customer complaint data from 1998-1999, statements made at public participation hearings and comments filed by various parties.

Wireless Carriers[6] and the Wireline Group[7] moved for extensions in the proposed schedule. The assigned Administrative Law Judge ("ALJ") granted a one-

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[5] Notice of Availability (Mar. 2, 2004), p. 2.

[6] Cingular Wireless, Nextel of California, Inc., T-Mobile, Sprint Telephony PCS, L.P., Sprint Spectrum, L.P., as agent for Wireless Co., L.P. dba Sprint PCS, Verizon Wireless and CTIA-The Wireless Association, collectively referred to herein as "Wireless Carriers."

[7] AT&T Communications of California, Inc. (U 5002 C); Calaveras Telephone Company (U 1004 C); Cal-Ore Telephone Co. (U 1006 C); Citizens Telecommunications Company of California, Inc. (dba Frontier Telecommunications Company of California) (U 1024 C); Citizens Telecommunications Company of the Golden State (dba Frontier Telecommunications Company of the Golden State) (U 1025 C); Citizens Telecommunications Company of Tuolumne (dba Frontier Telecommunications Company of Tuolumne) (U 1023 C); Comcast Phone of California LLC (U 5698 C); Cox California Telcom, LLC (dba Cox Communications) (U 5684 C); Ducor Telephone Company (U 1007 C); Electric Lightwave, Inc. (U 5429 C); Foresthill Telephone Co. (U 1009 C); Global Valley Networks, Inc. (f/n/a Evans Telephone Company) (U 1008 C); Happy Valley Telephone Company (U 1010 C); Hornitos Telephone Company (U 1011 C); Kerman Telephone Co. (U 1012 C); MCI, Inc.; Pinnacles Telephone Co. (U 1013 C); The Ponderosa Telephone Co. (U 1014 C); Qwest Communications Corporation (U 5335 C); SBC California (U 1001 C); Sierra

*Footnote continued on next page*

week extension. Assigned Commissioner Wood made additional changes in response to the parties' comments. He posted a further revised draft on the Commission's website on March 24, 2004.

On June 7, 2004, the Commission adopted D. 04-05-057, an alternate decision of Commissioner Geoffrey Brown. The Brown alternate created original G.O. 168 and the expansive set of specific regulations adopted in connection therewith.

In January 2005, following the expiration of Commissioner Wood's term, this proceeding was assigned to Commissioner Susan Kennedy. The Commission then adopted D. 05-01-058, on January 27, 2005. This decision suspended G.O. 168 pending a review of the effects of changes in the telecommunications industry since the inception of the proceeding on the need for additional prescriptive rules.

On May 2, 2005, the Assigned Commissioner issued a proposed ruling (the "May 2 ACR"). The May 2 ACR took four actions. First, it proposed issuing a revised bill of rights for telecommunications consumers that restated and amended the original bill of rights,[8] and adding principles of consumer choice related to the use of the Internet as a telecommunications medium.[9] Second, it continued the stay

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Telephone Company, Inc. (U 1016 C); The Siskiyou Telephone Company (U 1017 C); SureWest Telephone (U 1015 C); Verizon California, Inc. (U 1002 C); Volcano Telephone Company (U 1019 C); Winterhaven Telephone Company (U 1021 C); and XO Communications Services (U 5553 C), collectively referred to herein as the "Wireline Group.

[8] See Appendix B for text of the original bill of rights.

[9] See Appendix C for text of the bill of rights accompanying the May 2 ACR.

of Rules 1 through 12 of Part 2.[10] Third, the May 2 ACR proposed re-adopting, without alteration, Parts 4 and 5 of G.O. 168, together with Rules 13, 14 and 15 of Part 2.[11] Fourth, it directed the parties to address three specific questions:

> 1. Are the consumer rights…sufficiently comprehensive to protect and empower consumers or are there additional rights or issues that should be addressed?
>
> 2. Are current laws and regulations, federal or state, including those conferring enforcement authority on the CPUC and/or other government agencies but not including the stayed portions of G.O. 168, sufficient to enforce these rights? In responding to this question, parties should be specific as to each of the enumerated rights and support their responses with reference to applicable facts and law.
>
> 3. If current laws and regulations are not sufficient to enforce these rights and principles, what are the most cost-effective changes to law or regulation necessary for effective enforcement?

The Assigned Commissioner Ruling dated June 30, 2005 (the "June 30 ACR") advised parties that formal hearings would be held in this matter at the end of September.

A further Assigned Commission Ruling on September 19 (the "September 19 ACR") set the ground rules for the hearings and directed the parties to address certain other topics including the need, if any, for regulations to:

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[10] Primary topics covered in the suspended rules were point of sale disclosures, marketing practices, billing and billing disputes.

[11] Part 4 governs the placement of non-communications charges on telephone bills. Part 5 contains anti-slamming rules. Rules 13, 14 and 15 of Part 2 cover CAB data requests, employee identification and 911 service.

Guarantee unlimited access to all lawful Internet websites by any customer of an Internet service provider ("ISP") affiliated with a telephone company subject to Commission jurisdiction;

Prohibit any telephone company subject to Commission jurisdiction from tying purchase of its ISP service to purchase of its voice telephone service; and

Provide for the special needs of non-English-speaking consumers.

Two days of formal hearings were held on September 29 and 30, 2005, during which twenty-five representatives of industry and consumer groups organized in five different panels addressed these questions and topics. Written testimony from the witnesses also was accepted into the record at that point. Opening briefs were filed on October 24, 2005. Reply briefs were filed on November 7, 2005.

## 4. Revised General Order: Statement of Bill of Rights and Freedom of Choice Principles

This section describes the "Consumer Bill of Rights and Freedom of Choice Principles" proposed in the May 2 ACR and reviews subsequent comments of consumer groups and industry representatives on whether the enumerated rights and principles should be revised. After considering various parties' arguments, this decision concurs with some of the parties' comments and adopts a modified version of the rights and principles proposed in the May 2 ACR.

### 4.1 Clarification of Language Introducing and Defining the Applicability of the General Order

The May 2 ACR included language introducing and defining the applicability of the rights and principles included within Part 1. Carriers and consumer

organizations alike, however, agreed that further clarification was needed regarding the intent and scope of the Order. We describe various comments and modifications we made in response to them below.

First, both the Wireline Group and The Utility Reform Network ("TURN") supported removal of the introductory language preceding the rights. The industry group and the consumer organization concurred that broad statements regarding the Commission's role and status of the telecommunications market were not appropriate for a general order.[12] Also both disputed various portions of the proposed Order's introductory language.[13] In response to these comments and in an effort to align this decision with prior Commission practice, today's Order removes all but one sentence of the introductory section.

Second, industry representatives argued that we needed to clarify our intentions related to enforcement of the rights and principles.[14] They cautioned that we should avoid creating any implied private right of action, because they maintained that market forces and existing laws provide ample protection for wireless customers.[15] We agree the carriers' contention that this statement of rights

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[12] Consolidated Opening Brief of the Wireline Group (Oct. 24, 2005) ("Wireline Group Opening Brief"), p. 12; Comments of The Utility Reform Network on the May 2, 2005 Assigned Commissioner's Ruling (May 31, 2005) ("TURN ACR Comments"), pp. 5-6.

[13] Wireline Group Opening Brief, p. 12; TURN ACR Comments, p. 5.

[14] Verizon Wireless's Opening Brief (Oct. 24, 2005) ("Verizon Wireless Opening Brief"), pp. 41-42; Opening Brief of Wireless Carriers (Oct. 24, 2005) ("Wireless Carriers Opening Brief"), pp. 35-36; Wireline Group Opening Brief, p. 11.

[15] Verizon Wireless Opening Brief, pp. 20-29; Wireless Carriers Opening Brief, pp. 5-13; Wireline Group Opening Brief, pp. 7-10.

and principles should not impose any legal obligation. Thus this decision modifies various portions of Part 1 language that could form the basis for a finding of liability by a court or the Commission.[16] These revisions make it clear that this statement of rights and principles is merely a statement of legislative intent – and should not be construed as set of independently enforceable rights.

We find that these revisions sufficiently address any concerns regarding intent and scope of the General Order. Thus we reject any further suggestions for revision and adopt the new Part 1 introduction and applicability language as modified in response to parties' comments described above.

### 4.2 Adoption of Consumer Rights Regarding Disclosure; Privacy; Public Participation and Enforcement; Accurate Bills and Dispute Resolution; Non-Discrimination; and Public Safety

The May 2 ACR endorsed a wide range of consumer rights including rights to adequate disclosure by carriers; protection of consumer privacy; public participation in Commission proceedings; effective enforcement of consumer protection statutes and regulations; accurate bills and redress; non-discrimination; and public safety. The complete text of the bill of rights from the May 2 ACR is set out in Appendix C.

We received comments on all of the rights proposed in the May 2 ACR. Many of the consumer organizations advocated wholesale abandonment of the rights and

[16] In the process of making these changes, we address additional critiques of TURN and the Wireline Group by removing language that describes how we may condition use of numbering resources on adherence to the Part 1 rights and principles. For the parties' arguments, see TURN ACR Comments, p. 10, and Wireline Group Opening Brief, p. 11.

principles proposed in the May 2 ACR, as they continued to urge the Commission to adopt the rights included in the original G.O. 168.[17] In the alternative, consumer organizations, along with carriers, proposed a number of piecemeal revisions to the May 2 ACR rights. These latter revisions guided our review, and the version of the bill of rights we adopt today is modified in response to the various parties' comments. We describe proposed revisions to individual rights and explain our responses to parties' suggestions below.

***Disclosure***

The May 2 ACR listed two rights that addressed disclosure of information regarding telecommunications products and services plans. The specific rights enumerated in the May 2 ACR are as follows:

- Consumers have a right to receive clear and complete information about rates, terms and conditions for products and service plans they select, and to be charged only according to the rates, terms and conditions they have agreed to.

- Consumers have a right to receive clear and complete information about any limitations affecting the services they select, including limitations on bandwidth, applications or devices that may be used in connection with their service.

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[17] Opening Brief of Disability Rights Advocates (Oct. 24, 2005) ("DRA Opening Brief"), p. 1; Opening Brief of the Office of Ratepayer Advocates, Oct. 24, 2005 ("ORA Opening Brief"), p. 1; Opening Brief of The Utility Reform Network, Oct. 24, 2005 ("TURN Opening Brief"), p. 2. Consumer groups also argued that the preferred and perhaps only path to securing these rights for California consumers is through the imposition of additional prescriptive rules. TURN Opening Brief, p. 1; ORA Opening Brief, p. 2. For reasons described in Parts 1, 2 and 5 of this decision, however, we decline to readopt the original G.O. 186.

These rights were some of the most contentious rights proposed. Both rights received criticism, although most comments focused on the latter of the two rights.

The first disclosure right was criticized by the Wireline Group for being too vague. The Wireline Group recommended that we add a clause to the end of the first right, which clarifies that the "terms and conditions" that customers "have agreed" to are those "set forth in service agreements" or "in carrier tariffs governing services ordered."[18] We concur that it is useful to clarify that tariffs and agreements continue to control, so this decision modifies the first disclosure right accordingly.

The second disclosure right was the subject of criticism by many of the commenting parties. On the one hand, Disability Rights Advocates ("DRA"), TURN, the Office of Ratepayer Advocates ("ORA"), and the California Attorney General argued that the right should be expanded to encompass all services, not just the services that customers "select."[19] They explained that additional information was necessary for consumers to comparison shop effectively,[20] and for consumers with disabilities to learn about accessibility features that exist in various devices.[21]

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[18] Wireline Group Opening Brief, p. 15. *See also* The Wireline Group's Consolidated Opening Comments on May 2, 2005 Assigned Commissioner's Ruling (May 31, 2005) ("Wireline Group ACR Comments"), pp. 20-21 (providing a more detailed description of the justification for this recommendation).

[19] DRA Opening Brief, pp. 3-4; TURN ACR Comments, p. 6; Comments of the Office of Ratepayer Advocates and the California Attorney General to the Assigned Commissioner's May 2, 2005 Ruling (May 31, 2005) ("ORA/AG ACR Comments"), p. 3.

[20] ORA/AG ACR Comments, p. 3; TURN ACR Comments, p. 6.

[21] DRA Opening Brief, pp. 3-4.

On the other hand, the Wireline Group and the Wireless Carriers contended that the second disclosure right should be eliminated altogether.[22] The Wireline Group argued it was improper to reference "bandwidth applications and devices," given constraints on the Commission's jurisdiction.[23] The Wireline Group and the Wireless Carriers also maintained that the right to receive "complete" information about "any limitations" affecting services was confusing and overly broad.[24] Without further clarification, the Wireline Group contended that the second disclosure right could be construed as placing "an impossible burden on carriers," as the word "disclosure" could be read so broadly that it "encompass hundreds of aspects of a service," such as the "possibility that service may be interrupted by national security's invocation of priority wireless access."[25]

The Order adopted today reflects several changes made in response to comments regarding the second disclosure right. First, we agree with the carriers that it makes sense to merge the statement regarding disclosure of rates, terms and conditions, with the statement regarding disclosure of limitations. We effect this combination, and for clarity, we make the first right's statement regarding consumer charges into a new, standalone second disclosure right. Second, in response to the concern that "any limitations" is not a precise enough statement, we clarify that the

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[22] Wireless Carriers Opening Brief, p. 38; Wireline Group Opening Brief, p. 15.

[23] Wireline Group Opening Brief, p. 15.

[24] Wireless Carriers Opening Brief, p. 38; Wireline Group ACR Comments, p. 19.

[25] Comments of Wireless Carriers on Assigned Commissioner's Ruling (May 31, 2005) ("Wireless Carriers ACR Comments"), pp. 8-9.

first right only applies to "material terms and conditions, such as material limitations." Third, we acknowledge that it is important for consumers (and, in particular, disabled consumers) to have adequate knowledge of product and service features when purchasing a telecommunications product or service, so we extend application of the first disclosure right to "available products and services" for which consumers "request information."

***Privacy***

The May 2 ACR stated that a consumer's privacy right includes the right to "have protection from unauthorized use of their financial records and personal information." The consumer organizations asked that we delete the word "financial," as they argued the revision was necessary to show that all records are encompassed in this right.[26] We, however, decline to make this modification. The right, as proposed in the May 2 ACR, strikes the right balance: The right addresses consumers' legitimate privacy interests, while acknowledging carriers may use aggregated data to improve operations, develop new products, and assess consumer preferences. A blanket prohibition on carriers' use of consumer records, as urged by the consumer organizations, inhibits the development of pro-consumer programs by the carriers and does not provide any more meaningful protection to consumers.

***Public Participation and Enforcement***

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[26] ORA/AG ACR Comments, p. 3; TURN ACR Comments, p. 7.

The right to public participation and enforcement, as proposed by the May 2 ACR, stated that consumers had the right to participate in public policy proceedings "affecting their rights." Consumer organizations expressed the concern that the "affecting their rights" qualification may be construed as "an attempt to severely limit the public ability to participate in open, administrative proceedings before this Commission."[27] While we have no such intention, we decline to make any revisions to the right. The public participation right, as stated in the May 2 ACR, appropriately recognizes that participation in some proceedings is restricted to interested parties or persons.[28] In no way does the statement of this right negate standing to participate in Commission proceedings, as conferred by statute and the Commission's Rules of Practice and Procedure.[29] Appropriate statutes and rules will continue to guide us in our determination as to whether an individual or entity has standing to participate in a specific Commission proceeding.

***Accurate Bills and Dispute Resolution***

As described in the May 2 ACR, the right to "accurate bills and redress" includes the right to "fair, prompt, and courteous redress for resolving disputes and correcting errors." Both TURN and the Wireline Group disputed the scope of the

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[27] ORA/AG ACR Comments, p. 3; TURN ACR Comments, pp. 7-8.

[28] *See* CPUC Rules of Practice and Procedure, Rules 53 and 54 (providing that individuals participating in complaint, investigation, or application proceedings are required to have an interest in the proceeding).

[29] *See, e.g.*, CPUC Rules of Practice and Procedure, Rule 77.7 (stating that "any person" may file comments on a draft resolution).

right: TURN argued the right should be expanded to address all problems consumers encounter; the Wireline Group contended that the right should be narrowed to only convey a right to "dispute resolution," not "redress."[30]

We opt to restrict this right as advocated by the Wireline Group. Our intent is not to imply that consumers have a right to have every perceived problem with their service satisfied by their carrier. Instead our intent is only to state that consumers have a right to "fair, efficient and reasonable mechanisms for resolving disputes and correcting errors." For this reason we clarify the description of the right, and change the title of the right to "Accurate Bills and Dispute Resolution."

***Non-discrimination***

The May 2 ACR proposed that we confer a right upon consumers to "be treated equally to all other similarly-situated customers, free of prejudice or discrimination." As with other rights discussed above, parties disagreed as to what the appropriate scope of this right should be. TURN would broaden this right, so that it addresses not only "discrimination," but also any other type of "disadvantage."[31] In contrast the Wireless Carriers and the Wireline Group would like to narrow the scope of this right.[32] They request that we insert a qualification

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[30] TURN ACR Comments, p. 8; Wireline Group Opening Brief, pp. 15-16.

[31] TURN ACR Comments, pp. 8-9.

[32] Wireless Carriers Opening Brief, p. 39; Wireline Group Opening Brief, p. 16.

that the non-discrimination right only provides a protection against "unreasonable" prejudice and discrimination.[33]

After reviewing arguments for these opposing positions, we modify the right so that it only applies to "unreasonable prejudice and discrimination." As recognized by the Wireless Carriers, this revision recognizes that there are many instances where the public interest benefits when a company discriminates on a reasonable basis – such as in the cases of deposit requirements for customers with bad credit, or decreased rates for higher volume purchases.[34] Also this modification brings the non-discrimination right more in line with P.U. Code § 453(c), which recognizes a modicum of discrimination may be an appropriate way to account for differences in consumers' circumstances.[35] Here, like P.U. Code §453(c), we recognize that the public interest may be served by reasonable discrimination.

***Public Safety***

The May 2 ACR listed two public safety rights:

- Consumers have a right to maintain the safety and security of their person, property, and personal financial data.

- Consumers have a right to expect that providers of voice services utilizing numbers from the North American Numbering Plan and connecting to the Public

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[33] Wireless Carriers Opening Brief, p. 39; Wireline Group Opening Brief, p. 16.

[34] Wireless Carriers Opening Brief, p. 39.

[35] *See* P.U. Code § 453(c) ("No public utility shall establish or maintain any *unreasonable* difference as to rates, charges, service, facilities, or in any other respect, either as between localities or as between classes of service." (emphasis added)).

Switched Telephone Network will offer reliable connections to E911 emergency services and Public Safety Answering Points, and to clear and complete disclosure of any limitations on access to 911 emergency services through the use of those services.

These two proposed rights were the subject of significant criticism: Consumer groups asked that we modify the first right; the Wireline Group recommended revisions to the second right; and Wireless Carriers requested that we eliminate both rights, or in the alternative at least revise the second right.

The Wireless Carriers stated that we should eliminate both public safety rights, because they held that a public safety right is "misplaced in a telecommunications Consumer Bill of Rights which is aimed at 'allowing consumers to make informed choices regardless of who the provider is or what technology they choose.'"[36] We disagree with this contention. While we acknowledge that a central aim of the Bill of Rights is consumer empowerment, we stated in the May 2 ACR – and reaffirm in this decision – that the Bill of Rights additionally provides "a framework for consumer protection." Public safety is critical to consumer protection, and as such, we hold that public safety rights are properly included in the Consumer Bill of Rights. We, however, will consider parties' proposals for modifications to the two rights.

With respect to the first public safety right, consumer organizations urged us to delete the word "financial," which qualifies the type of personal data giving rise

[36] Wireless Carriers Opening Brief, p. 38.

to a public safety right.[37] They maintained that public safety concerns dictated that we widen the scope of this protection. In response to their concerns, we replace "personal financial data" with "financial records and personal information." This language parallels the language included in the privacy right.

With respect to the second public safety right, the Wireless Carriers and Wireline Group recommended several modifications. First, the Wireline Group asked that we "make the right more general to account for future developments regarding E911 obligations for various providers."[38] Second, the Wireline Group and the Wireless Carriers recommended we state that E911 is a right only to the extent that it is "technically feasible," given that E911 depends on a number of factors, some of which are outside a carrier's control.[39] These limitations are recognized in federal E911 rules.[40] Third, the Wireless Carriers argued that disclosure of "any limitation" is both "overbroad and impractical;" their argument here paralleled their criticism of the disclosure right proposed in the May 2 ACR.[41]

Upon consideration of these arguments, we revise the second public safety rule in response to the issues raised by the Wireless Carriers and Wireline Group. We concur that it is reasonable to modify the second public safety right so that it will

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[37] ORA/AG ACR Comments, p. 3; TURN ACR Comments, p. 7 n.4.

[38] Wireline Group Opening Brief, pp. 16-17.

[39] Wireless Carriers Opening Brief, p. 39; Wireline Group Opening Brief, pp. 16-17.

[40] *See* 47 C.F.R. § 20.18.

[41] Wireless Carriers ACR Comments, p. 10.

account for future federal developments regarding E911 requirements; parallel federal law in recognizing limits of technical feasibility; and state that consumers are only entitled to disclosure of "material" limitations. Thus while we modify the public safety rights, we decline to remove this or any other category of right recognized in the May 2 ACR.

### 4.3 Endorsement of Freedom of Choice Principles

To ensure that consumers receive the full benefits of increasing competition among different voice communication platforms, the May 2 ACR also contained four freedom of choice principles. These four principles are as follows:

- Consumers have a right to select their services and vendors, and to have those choices respected by the industry.
- Consumers have a right to access the lawful content of their choice, including voice services, over their broadband Internet connection without interference from the broadband provider.
- Consumers have a right to select any voice service provider of their choice, including no voice services, separate from their broadband service provider.
- Consumers have the right to change voice service providers within the same local area and keep the same phone number.

In today's decision we adopt the four freedom of choice principles, after modifying them in response to parties' comments.

In articulating the freedom of choice principles, we are mindful that there are limits to our jurisdiction and that, in particular, the FCC has preempted certain areas that are of concern to us. Nonetheless, we hold that it was important to articulate these principles because of their importance to the future of telephony.

Of particular significance, the second and third freedom of choice principles address potential anti-competitive behavior by those who provide Internet access or handle Internet-based voice communications originating from non-traditional sources. We discuss these two principles' endorsement of stand-alone DSL and content neutrality below.

#### 4.3.1 Stand-Alone DSL Principle

One of our freedom of choice principles is that customers should not be required to purchase traditional voice service in order to purchase Internet access from a regulated phone company that offers it. This principle does not limit phone companies who offer Internet access from bundling voice services with Internet access. To the contrary, we encourage phone companies to innovate in consumer-friendly ways that include bundling popular services into all-in-one packages.

Consumers should have the right to find the best deal or the one that best suits their needs from a variety of potential sources, including bundled offerings from their incumbent telephone service providers However, by tying Internet access to the purchase of traditional voice service, the telephone service providers effectively preclude customers from purchasing their voice service from an Internet-based service provider. Tying shields the incumbent telephone company from competition from Internet-based service providers and denies those service providers access to the tied customers. The result is reduced consumer choice and higher prices.

This principle received support from both Time-Warner Telecom and the California ISP Association, Inc. ("CISPA"). Time-Warner Telecom pointed out that

in California "the customer's right to choose its voice provider independent of its broadband provider…has never been subject to question as a consumer right."[42] CISPA further argued that the deployment of stand-alone broadband services will promote consumer protection by encouraging competition.[43]

The primary opponents of the stand-alone DSL provision, the Wireline Group and Wireless Carriers disagreed with our analysis and argued against our encouragement of stand-alone DSL on both jurisdictional and policy grounds.[44] They argued that Internet access services are interstate services that are the exclusive province of the FCC and that the Commission lacks authority to regulate ISPs.[45] Also the Wireline Group contended that the stand-alone DSL principle conflicts with the FCC's recent *BellSouth* decision, in which the FCC concluded that a "state commission may not require an incumbent local exchange carrier…to provide digital subscriber line…service to an end-user customer over the same unbundled network elements…that a competitive LEC uses to provide voice services to that end user."[46]

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[42] Opening Brief of Time-Warner Telecom of California, LP (U-5358-C), Navigator Telecommunications, LLC (U-6167-C) and Tri-M Communications, Inc. d/b/a TMC Communications (U-5928-C) (Oct. 24, 2005), p. 3.

[43] Comments of the California ISP Association, Inc. in Response to the Assigned Commissioner's Ruling of May 2, 2005 (May 31, 2005), pp. 1-2.

[44] We also observe that some of the consumer organizations expressed concerns regarding our endorsement of the freedom of choice principles that address broadband. ORA Opening Brief, p. 1; TURN ACR Comments, p. 9.

[45] Wireless Carriers Opening Brief, pp. 37-38; Wireline Group Opening Brief, p. 13-14.

[46] Wireline Group Opening Brief, p. 14 (citing Bell South Telecomm, Inc., Memorandum Opinion and Order and Notice of Inquiry, WC Docket No. 03-251, at ¶ 25 (Mar. 25, 2005).

In response we emphasize what we are not doing when we articulate the stand-alone DSL principle. We are not seeking to regulate Internet service providers, over whom we acknowledge we lack jurisdiction. We are not saying that regulated telephone companies should be required to offer DSL or share lines in violation of the FCC's *BellSouth* order. We are not stating that regulated telephone companies may not offer DSL in a bundle with other telephone services; indeed, we affirm that the companies may set any price they choose for DSL service.

We strongly believe, however, that a regulated telephone company that offers DSL Internet access should not tie the purchase of DSL service to the purchase of traditional voice service. To make these intentions clear, we modify the stand-alone DSL principle to state that it provides consumers the "right to purchase commercially available broadband service even if they do not obtain traditional voice service from their broadband provider," and we delete the accompanying footnote. So while we modify the stand-alone DSL principle in order to clarify our intentions, we nonetheless adopt the principle as a part of the revised General Order.

The stand-alone DSL principle also has been adopted by the FCC in its recent decisions approving the mergers of Verizon with MCI and SBC with ATT. In those decisions, the FCC required the merged companies to "provide, within 12 months of the Merger Closing Date[], DSL service to in-region customers without requiring them to also purchase circuit-switched voice telephone service."[47] The FCC's merger

[47] Press Release, Federal Communications Commission, FCC Approves SBC/ATT and Verizon/MCI Mergers (Oct. 31, 2005), http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-261936A1.doc.

order will result in making stand-alone DSL available to California consumers and effectively provides the relief we cannot order in this proceeding. We salute the FCC for enforcing the stand-alone DSL principle.

#### 4.3.1 Content Neutrality Principle

Another one our freedom of choice principles is that consumers have the right to access lawful content of their choice, including voice services, over their broadband Internet connection without interference from the broadband provider. If those incumbents who control broadband access or Internet transport are in a position to discriminate between voice traffic for which they are compensated and voice traffic for which they receive no compensation, they can effectively hamper or eliminate competitors through their manipulation of access and transport.

The Wireline Group and Wireless Carriers' primary objection to our content neutrality principle, like their objection to our stand-alone DSL principle, is based upon the assertion that we are exceeding our jurisdictional authority in adopting this right.[48] In particular the Wireline Group asserts that the footnote accompanying the content neutrality principle makes it "particularly clear" that we are attempting to directly regulate ISPs and Internet access services.[49]

In urging carriers to abide by the content neutrality principle, however, we are not ordering any conduct by any carrier. We are mindful that we do not possess jurisdiction to enforce it and that the record in this proceeding does not include

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[48] Wireless Carriers Opening Brief, pp. 37-38; Wireline Group Opening Brief, p. 13-14. For related concerns of consumer organizations, see note 44.

[49] Wireline Group Opening Brief, p. 13.

evidence that carriers are failing to act in accordance with this principle today. We concur with the carriers that content neutrality is federal matter that should be resolved through the adoption of federal guidelines.

Yet we also recognize that we are more than disinterested bystanders. We believe the most pro-consumer outcome will result from a conscious alignment of federal and state policy regarding provision of voice services via the Internet. This decision places our beliefs in the public record and invites the FCC and the carriers to embrace a regulatory regime that incorporates the principle of content neutrality.

We are encouraged that the FCC's recent port-blocking decision upholds a similar principle. In that case, the FCC brought an enforcement action against a carrier for allegedly engaging in port blocking with respect to VoIP services. The resulting consent decree imposed monetary penalties and prohibited the customer from blocking ports used for VoIP applications or otherwise preventing customers from using VoIP applications.[50]

Given our similar concern with preventing anticompetitive behavior, we clarify the description of the rule to state that consumers have a right to broadband access without "any anticompetitive interference from their broadband provider," and we delete the accompanying footnote. Our continued endorsement of the content neutrality principle, as modified, puts the Commission on record as supporting maximum consumer freedom to choose a voice provider from the widest

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[50] In the Matter of Madison River Communications, LLC and Affiliated Companies, Consent Decree, D.A. 05-543, http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-05-543A2.pdf.

range of potential suppliers, without hindrance from the gatekeepers through whom that choice must be exercised. The principle recognizes how neutral handling of voice communications over the Internet is an essential condition of effective competition between facilities-based incumbents and Internet-based voice service providers. Thus we urge parties to act in accordance with the content neutrality principle even though we lack the jurisdiction to compel such conduct.[51]

### 4.4 Conclusion

This decision adopts a modified version of the bill of rights and freedom of choice principles contained in the May 2 ACR. In response to comments and upon further reflection, we have clarified and simplified the phrasing of these rights and principles to ensure that our statement of the bill of rights accurately reflects the division of responsibility between state and federal statutory and regulatory authority and is consistent with existing bodies of state and federal law. Also these revisions empower consumers by removing ambiguities of wording and clearly stating rights, which set appropriate consumer and industry expectations.

## 5. Revised General Order: Specific Consumer Protection Rules

This section reviews the May 2 ACR's proposed changes to our consumer protection rules. It then assesses arguments for modification of these rules. Finally it concludes that we should repeal the Interim Non-Com Rules regarding non-

[51] At the same time, we recognize, as pointed out by various parties, that both ISPs and transport providers may have legitimate reasons, including fraud prevention, to limit access to certain websites and services.

communications charges on phone bills, but otherwise leave the regulatory regime proposed by the May 2 ACR intact.

### 5.1 Description of Rules Proposed by the May 2 ACR

The Commission already has a significant consumer protection regime in place. In addition to general consumer rights laws,[52] telecommunications consumers presently enjoy extensive protection of their rights to disclosure, choice, privacy, public participation and enforcement, accurate bills and redress, non-discrimination, and public safety. Moreover, in addition to generally-applicable laws and industry-specific regulations, the Wireline Group notes that their customers are afforded extra protection under Commission-approved tariffs, Individual Case Basis ("ICB") contracts, and/or other contractual or quasi-contractual sources.[53] Appendix D provides a compendium of authorities that demonstrates the depth and breadth of existing consumer protection laws and regulations available to telecommunications consumers. The issue before us, therefore, is not whether we need consumer protection rules, but instead whether we need more consumer protection rules beyond those that we already have.

After assessing our current regulatory regime, the May 2 ACR proposed extending several consumer protection rules applicable to wireline carriers to wireless carriers. First, it proposed that every carrier and service provider shall

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[52] California consumers benefit from a wide variety of laws that enforce general consumer rights, including significant portions of the California Civil Code and the California Business & Professions Code. Consolidated Opening Testimony of the Wireline Group (Oct. 5, 2005) ("Wireline Group Opening Testimony"), p. 4.

[53] *Id*.

designate one or more representatives to be available during regular business hours to accept this Commission's CAB inquiries and requests for information regarding complaints. Second, the May 2 ACR proposed that all carriers must require their employees to identify themselves by name or identifier. And third, it proposed that all carriers, including wireless companies connecting to the public switched telephone network, shall provide their customers with access to 911 emergency services to the extent permitted by technology. All three revised rules were incorporated into G.O. 168.

Also the May 2 ACR proposed including two sets of existing rules in G.O. 168 in order to make them more accessible to consumers. First, the May 2 ACR proposed inclusion of the Interim Non-Com Rules in the General Order. These rules govern the placement of non-communications-related charges on telephone bills. They require a carrier to obtain a consumer's prior written authorization before placing non-communications-related charges on the customer's bill, and the use of a personal identification number ("PIN") or equivalent security device before the customer can initiate a transaction that results in a non-communications-related charge being placed on the bill.[54] Second, the May 2 ACR proposed including our rules governing slamming complaints in the General Order. These rules, in

[54] Interim Opinion Adopting Interim Rules Governing the Inclusion of Non-Communications-Related Charges in Telephone Bills, D.01-07-030. These rules also address a consumer's opt-in revocation, a telephone company's responsibility for its billing agents, a consumer's right not to have basic service disconnected for nonpayment of non-communications related charges, complaint procedures, readable bill format, confidential subscriber information and the Commission's ability to impose fines on entities that fail to comply with these rules.

conjunction with corresponding rules issued by the Federal Communications Commission, establish both carriers' and subscribers' rights and responsibilities when there is an unauthorized change of the subscriber's presubscribed carrier.[55]

In response to the rules proposed by the May 2 ACR, parties to the proceeding provided lengthy evaluations of the proposed consumer protection regime. Some parties argued that additional rules were needed beyond those provided in the May 2 ACR and our existing consumer protection regime; others contended that our current rules or proposed rules in the May 2 ACR should be scaled back. We discuss and respond to the various criticisms below.

### 5.2 Should the Commission Expand the Set of Rules Proposed in the May 2 ACR?

TURN, ORA, and other consumer groups advocated adoption of more prescriptive rules. These organizations stated that the telecommunications marketplace is not highly competitive, and further argued that even competitive markets require rules to ensure that all participants are fairly treated.

#### 5.2.1 Failure of Evidentiary Arguments to Support Expansion of Rules

Arguing for expansion of the rules, consumer organizations relied upon the following pieces of evidence: consumer complaint records, survey data, enforcement actions, and anecdotal evidence. We will review each piece of this evidence in turn.

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[55] *Id.*

#### 5.2.1.1 Consumer Complaint Records

Proponents of extensive consumer protection rules have given significant weight to consumer complaints filed at the Commission. This section reviews the complaint data and evaluates whether it is appropriate to rely on the data as a basis for proposed detailed and prescriptive rules.

The primary complaint data at issue in the proceeding are telecommunications consumer informal complaints received by the Commission's CAB between 2000 and 2004.[56] ORA witness Lynn Maack prepared an analysis of these data and found that CAB received 165,415 complaints during that period, three-fourths of which (124,579) were complaints about wireline carriers and one-fourth of which (40,836) were complaints about wireless carriers.[57] Maack also reviewed these complaints by subject matter. He found that complaints about billing were the single largest complaint category for both wireline (56%) and wireless (74%) carriers. Service complaints were the second largest complaint category for wireline (17%) and wireless (12%) carriers, respectively.[58]

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[56] Consumer organizations also referred to FCC and FTC complaint data. TURN Opening Brief, pp. 12-13; California Attorney General and Office of Ratepayer Advocates Reply Brief (July 22, 2004), p. 47. This evidence, however, has little value in a state-specific regulatory proceeding, given that we have no way of knowing which complaints can be attributed to California consumers and whether the complaints address issues governed by state law. Reply Brief of Wireless Carriers (Nov. 7, 2005) ("Wireless Carriers Reply Brief"), p. 11.

[57] Prepared Testimony of Lynn A. Maack in the Telecommunications "Bill of Rights" Proceeding (Aug. 5, 2005) ("Maack Testimony"), p. 3.

[58] *Id.*

ORA paid special attention to complaints regarding wireless carriers' disclosures of prices, terms and conditions of service plans and products. "Disclosure" is not a specific category under which CAB records complaints, so ORA had to review descriptions of individual complaints to identify disclosure-related complaints. A CAB-generated list of all complaints filed in 2004 was sorted into major categories and sub-categories, from which sixteen combinations of categories and sub-categories were selected for review. All complaints in the fourteen categories with relatively small numbers of complaints were reviewed, and the remaining two categories, which held the largest numbers of complaints, were sampled. A count was taken of the number of complaints in which the complainants specifically indicated that the carrier provided insufficient, misleading or no information about their service or equipment.[59] From this review ORA concluded that approximately eleven percent of all wireless complaints to CAB could be characterized as involving disclosure issues.[60]

But while ORA discussed these and other complaint data at length,[61] ORA and the other consumer groups never were able to establish that the complaints support adoption of extensive and detailed addition rules. Indeed some of the consumer complaint data cuts against the proponents of prescriptive rules. For example, the data do not support the suspended rules' significant concern with carriers'

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[59] Not included were the many complaints in which the complainants indicated only that the bill did not match the service they ordered.

[60] *Id*. at p. 6.

[61] ORA Opening Brief, pp. 8-9.

advertising and marketing practices. Maack's analysis indicated that consumer complaints to CAB about "abusive marketing" were minimal for both wireline and wireless carriers, far fewer in number than complaints about billing, service or "other matters."[62]

Equally striking is that even in 2004, when the number of wireless access lines in California for the first time equaled the number of wireline connections, the rate of complaints about wireline providers was nearly double the rate of complaints about wireless providers.[63] Since wireline providers are already subject to tariffs that are, in many cases, more detailed and restrictive than the provisions of original G.O. 168, it is difficult to conclude from these data that additional prescriptive regulation would improve the relationship between wireless carriers and their customers.

Moreover even where there is a record of complaints, the complaint data relied upon in this proceeding do not provide justification for creating expansive new consumer protection rules. It is difficult to draw conclusions based on the complaint data due to lack of a reliable benchmark for a normal level of complaints, insufficient specificity of complaints reviewed, and questions of statistical validity. Each of these problems is discussed in turn below.

First, there is no reliable base line against which to compare the observed level of consumer complaints. During the hearings, the Assigned Commissioner repeatedly asked TURN and ORA experts to define a normal level of consumer

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[62] Maack Testimony, p. 4.

[63] *Id*. at p.5.

complaints with which the observed level of complaints could be compared to determine if there were problems requiring regulatory intervention. Neither expert offered any substantive response to this question, though each admitted that any industry the size of the telecommunications industry was bound to have some unavoidable complaints.[64]

Second, many complaints were not described with enough specificity to determine whether they raised issues that could be addressed by the proposed consumer rules. For example, it is unclear whether we should be concerned by ORA's finding that billing issues are the most frequently cited cause of consumer complaints to CAB for both wireless and wireline carriers.[65] The billing complaints were insufficiently analyzed to permit us to draw any valid inferences as to the substance of those complaints. To the extent these complaints addressed wireless carriers' bill headings, formats and required disclosures, those matters have now been preempted by application of the federal Truth-In-Billing rules to wireless carriers' phone bills.[66] It is impossible to discern, from the ORA analysis, how many of the complaints pertain to matters within our jurisdiction, such as a discrepancy between services contracted for and services received; how many were requests for explanations of bill formats and descriptions, matters that are now within the

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[64] Tr. at 1305-1311.

[65] Maack Testimony, p. 4.

[66] Truth in Billing Order, FCC 05-55 (Mar. 18, 2005). The FCC docket in this proceeding remains open to examine whether to extend federal pre-emption in this area to include point of sale representations made by telecommunications providers. *Id*.

purview of the FCC; and how many were simply requests for help in getting in touch with a carrier to discuss a bill. Since we do not know what customers were actually calling about, we also do not know if the proposed rules would be responsive to customer concerns about their bills.

Similarly, ORA did not specify whether disclosure complaints related to the size of the font of a written contract used at the point of sale when relying upon the complaints to justify a rule that would require provision of a written contract at the point of sale in ten-point type with "key rates, terms and conditions" highlighted. There is no evidence in the record that the ten-point type requirement or highlighted text would actually improve disclosure.[67] Indeed, it is difficult to identify any disclosure requirements that would solve the complaining consumers' problems. Carriers have placed in the record extensive documentation of the disclosures currently made to consumers in connection with a purchase of telephone service;[68] neither ORA nor TURN has identified alleged deficiencies in any of the disclosures.

Third, there is significant reason to question whether ORA's review of the complaint data was statistically valid. There is no indication that ORA validated

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[67] Indeed there was uncontradicted testimony that this proposal might be counter-productive. Reply Testimony of Michael L. Katz (Sept. 16, 2005) ("Katz Reply Testimony"), p. 10.

[68] Testimony of Marni Walden (Aug. 5, 2005), pp. 5-13 (on behalf of Verizon Wireless); Rely Testimony of David R. Conn (Aug. 16, 2005), Exhibit A. (on behalf of T-Mobile); Reply Testimony of Kelly King (Sept. 16, 2005), Exhibit A (on behalf of Cingular Wireless).

that complaining consumers were reporting actual grievances.[69] ORA has no means of documenting what information a customer actually received, as compared to what the consumer reported when making a complaint.[70]

ORA's review of disclosure complaints, in particular, has additional problems: The sample used was inadequately selected and inappropriately small. ORA did not apply objective criteria when constructing the set of complaints sampled for disclosure issues. Instead Maack selected categories of complaints for individual review based on preconceived notions of which categories would be most likely to contain disclosure complaints.[71] Given the way the sample was selected, it is inappropriate to draw any conclusions about the frequency of disclosure complaints.

Also while the sample size of the entire complaint data set may be criticized,[72] the small sample size of the disclosure complaints is particularly troublesome. Wireless consumers complaining to the Commission in 2004 constituted just 0.04% of the entire universe of the more than 23 million wireless customers in California.[73]

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[69] Reply Testimony of John McLaughlin (Sept. 16, 2005) ("McLaughlin Reply Testimony"), p. 3; Reply Testimony of William Schulte and Robert Johnston (Sept. 16, 2005) ("Schulte and Johnston Reply Testimony"), p. 3.

[70] Schulte and Johnston Reply Testimony, p. 4.

[71] *Id*. at pp. 4-5.

[72] Wireless Carriers maintain that number of consumer complaints to the Commission in 2004 is "not representative of any significant level of customer dissatisfaction." McLaughlin Reply Testimony, p. 4.

[73] *Id*.

Maack testified that only 11%[74] of that 0.04% was categorized as involving "disclosure" issues. This means that less than 0.004% of California wireless consumers reported disclosure issues to the Commission.

TURN contended that we should view these complaints as simply the "tip of the iceberg" that warrants the wholesale adoption of rules and regulation. The consumer organization argued that "[i]t is well known that only a small percentage of aggrieved customers actually seek help from even their own carriers, much less file a complaint with a state or federal government agency or pursue the dispute into a formal lawsuit,"[75] and testifying on behalf of TURN, Barbara Alexander maintained that "the tip of the iceberg theory…has motivated all state regulators with respect to how they handle complaint data."[76]

Before state regulators use the "tip of the iceberg theory," however, prudent practice requires that we first establish a nexus between the customer complaint and carrier practices. Only after that nexus is established should the Commission determine whether the complaints warrant new regulation or enforcement actions for violation of existing rules. And here these steps were not taken. Without this type of analysis, this complaint data, which is not the result of a systematic statistical sample, becomes little more than anecdotal data. As we note below, anecdotal data does have its value, but it does not support the adoption of new regulations.

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[74] Maack Testimony, p.6.

[75] TURN Opening Brief, p. 6.

[76] Tr. 1311 (Barbara Alexander, TURN). *See also* Alexander Direct Testimony, pp. 36-37 (discussing this theory at length).

In conclusion, as TURN's own witness explained, the complaint numbers by themselves do not justify rules.[77] While they raise a red flag, the complaints do not establish that the public would benefit from proposed prescriptive rules. It is unclear whether the complaints are well-founded, and even assuming most are, we do not know enough about the complaints to determine whether we could, or should, adopt new rules to address issues raised by the complainants.

#### 5.2.1.2 Survey Data

Consumer representatives also made use of various types of survey data to bolster their case for the necessity of prescriptive regulations. These surveys include, among others, a 2003 nationwide survey of 3,037 adults conducted for AARP; a 2004 survey of New York State residents also conducted for AARP; and a 2001 telephone survey of California consumers conducted for the CPUC. TURN itself, however, admits that it "would not suggest that this Commission base any action solely on these surveys."[78] The following review of some of the surveys in this proceeding illustrates why we should not place significant weight on these surveys when considering whether to impose significant new rules.

***2003 nationwide AARP survey***

The nationwide AARP survey demonstrates why it may be difficult to discern what we should take away from survey results. The AARP data were presented in

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[77] Tr. at 1323.

[78] TURN Opening Brief, p.11.

skewed fashion to convey the impression that there was widespread dissatisfaction with wireless service, when the actual data may have revealed just the opposite. Respondents were classified as either "highly satisfied" or "less than highly satisfied" with their wireless service, but the survey did not reveal how many respondents were satisfied overall.[79] This omission may inflate the degree of apparent dissatisfaction and makes it difficult to draw a conclusion.

Furthermore we cannot assume that consumers in other states, even if correctly surveyed, are representative of California consumers. The AARP survey does not indicate how many of the national sample were California residents or how many of those sampled were actual wireless phone users.[80] The number of California wireless users in the survey may well have been under two hundred, which makes it difficult to make inference about the population of California wireless users.[81]

***2004 New York State AARP survey***

Similar objections apply to the use of the New York AARP data. The number of wireless users in the sample was so small as to make inferences from their

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[79] *Id*. at 10.

[80] McLaughlin Reply Testimony, p. 9.

[81] *Id*.

responses highly unreliable.[82] Also we can not assume that New York consumers are representative of California consumers.

***2001 California Telephone Survey***

The California telephone survey data are almost five years old now. So even if the survey was sufficiently well-conducted to permit valid inferences to be drawn from the results, the age of the information makes it of questionable value given the explosive growth of wireless phone use during the past five years.

The survey also suffers from significant methodological shortcomings. These shortcomings include questions that lump together wireless and wireline problems, a failure to separate wireless users from non-users, and a general bias in favor of encouraging respondents to report dissatisfaction.[83] The small sample size makes the validity of any inference drawn from this survey even more questionable. For example, the sample contains only eighteen consumers who reported having received a sales call from a cell phone company at their homes during the previous year and only two consumers who reported having authorized service or equipment changes as the result of a sales call from a cell phone company.[84]

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[82] *Id*.

[83] *Id*. at pp. 5-9.

[84] Katz Reply Testimony, pp. 19-20.

#### 5.2.1.3 Enforcement Actions

TURN further relies upon multiple enforcement actions that have occurred outside of California as examples of a greater pattern of abuse in the telecommunications industry. These actions, however, also may be characterized as providing evidence in support of fewer rules, rather than more.

Nationwide enforcement actions may eliminate the need for further rules. For example, TURN cites a settlement between wireless carriers and the Attorneys General of thirty-two states as evidence that new prescriptive rules are necessary in California.[85] The settlement is memorialized in an Assurance of Voluntary Compliance ("AVC") that covers point of sale disclosures, coverage disclosures, fourteen-day return periods for wireless handsets, advertising, separate disclosure of taxes and surcharges on consumer bills, and mechanisms for handling customer inquiries and complaints.[86] For practical reasons described by industry experts, wireless carriers will implement the AVC on a national basis even in states that are not parties to the settlement.[87] Thus California consumers will benefit from the settlement even though the California Attorney General was not a party to the action. Imposing California-only rules that do not track the AVC will compel the

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[85] Assurance of Voluntary Compliance (June 25, 2005), http://www.nasuca.org/CINGULAR%20AVC%20FINAL%20VERSION.pdf.

[86] *Id*.

[87] *See, e.g.*, Declaration of Henry J. Herman in Response to May 2, 2005 Assigned Commissioner's Ruling (Aug. 5, 2005) ("Herman Declaration"), pp. 5-14 (providing a detailed description of difficulties in creating state-specific billing regimes on behalf of Nextel).

carriers to litigate. Moreover even if California ultimately prevailed in court, the victory would give California consumers little or nothing that they do not already have from the combination of the AVC, existing California laws and regulations and enhanced federal regulation of carriers' billing practices.

The existence of out-of-state lawsuits against telecommunications carriers is another example that may cut against organizations advocating more rules. An argument may be made that these lawsuits merely demonstrate that "when perceived issues arise, there are means available for addressing them."[88]

#### 5.2.1.4 Anecdotal Evidence

Several parties provide anecdotal evidence as additional support for more regulation. This section reviews various forms of anecdotal evidence submitted to the Commission and discusses how we should respond to this evidence.

In its opening brief and in subsequent testimony of its expert witness Anthony Tusler, DRA asked us to adopt a group of new rules specifically designed to make it easier for people with disabilities to receive information from carriers and present complaints to carriers. None of this evidence was quantified either as to the extent of the alleged problem, and the scope of the proposed solution is undefined.[89]

Luis Arteaga testified that Spanish speaking customers face a variety of problems. He noted that although Verizon Wireless communicates well in Spanish,

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[88] Wireless Carriers Reply Brief, p. 12.

[89] In addition these proposals were made at the very last stage of this proceeding.

"they are certainly not the rule when it comes to many other carriers."[90] Additionally he stated that having materials in Spanish is "often incomplete."[91] He described situations in which at a cell phone kiosk, a Spanish speaking customer is "handed a contract which they cannot read."[92] Arteaga also mentioned that customers often are told that the phone works in Mexico, and "[w]hen the person chooses to call Mexico or travel to Mexico, they're seeing outrageous phone bills."[93]

TURN relied on anecdotal evidence in multiple ways. Lynn Maack testified for TURN concerning advertisements that contain information on different wireless services, but contain some information in smaller fonts. He argued that this practice warrants the extension of current rules, which require that written orders be in ten-point font.[94] Barbara Alexander, also testifying on behalf of TURN, stated that customers are irritated by bills that conflate mandatory taxes and fees with discretionary charges.[95]

Carriers addressed this testimony in different ways. The Wireless Carriers responded to DRA by arguing that working with the federal government is the best approach to ensuring compliance with Section 251(a) and Section 255 of the

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[90] Tr. at 1401.

[91] *Id*.

[92] *Id*.

[93] *Id*.

[94] *See* CAL. PUB. UTIL. CODE § 2890(b) (discussed in Maack Testimony, p. 15).

[95] Reply Testimony of Barbara R. Alexander (Sept. 16, 2005) ("Alexander Reply Testimony"), p. 21 (on behalf of TURN).

Communications Act.[96] The Wireline Group replied that DRA's proposals came in at the last minute, fall outside the scope of the current phase of this proceeding, and fail to make a case that the benefits outweigh the costs.[97]

Michael Bagley of Verizon Wireless responded to Luis Arteaga's praise of Verizon Wireless's bilingual marketing by noting that Verizon Wireless does not conduct these marketing practices for regulatory reasons. Instead he stated that Verizon Wireless is "looking at a community that is a very large opportunity in the marketplace for us to distinguish ourselves and be a leader. We want those Spanish-speaking customers to come to Verizon Wireless."[98]

Testifying for CTIA, UC-Berkeley Professor Michael Katz, responded that even if some carriers are "bad actors," most carriers find that their "investments serve as 'hostages' that create economic incentives to maintain good reputations with customers."[99] He further contended that the "state level rules would impose costs and unintended consequences on all providers and their customers.[100] He concluded that "Ms. Alexander provides no evidence or argument that the existing

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[96] Wireless Carriers Reply Brief, p.23.

[97] Consolidated Reply Brief of the Wireline Group (Nov. 7, 2005) ("Wireline Group Reply Brief"), p. 8.

[98] Tr. at 1421.

[99] Katz Reply Testimony, p. 38.

[100] *Id*. at p. 39.

laws are insufficient to deal with any exceptionally bad service providers that might exist, not that broad policies are preferable to targeted policies."[101]

We find ourselves in agreement with the arguments of Professor Katz. While some proposals made on behalf of the above anecdotal evidence may have merit, we should not adopt extensive new rules solely on the basis of anecdotal evidence. Without clear data on the extensiveness of a particular harm, the Commission has little information to assess what a specific incident means. Prudent policy, however, would seek to ensure that a regulatory response does not impose costs on carriers and their customers that outweigh benefits of reducing inappropriate behavior. Without data on the scope of the inappropriate behavior, one cannot make such an assessment of benefits and costs. Without such an assessment, it is not prudent to adopt sweeping new rules.

On the other hand, the anecdotal information, combined with our low levels of complaints, suggests that targeted enforcement actions and education programs can offer a positive response to issues identified by witnesses. Targeted enforcement actions can stop bad actors, and targeted education programs can provide consumers with specific knowledge they can use when making choices that best serve their telecommunications needs. These alternative responses to evidence of consumer dissatisfaction are discussed in Parts 6 and 7.

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[101] *Id*. at p. 39.

### 5.2.2. Consumer Harm That Would Result from Prescriptive Rules Proposed by TURN and ORA

Even if we accepted the contention that there are significant problems that can be remedied by the Commission, it still would not be clear that we should create prescriptive rules in response to these problems. Rules can cause their own problems, which may overshadow any benefits bestowed upon consumers.

As explained by Professor Katz, the ability of regulation to improve efficiency and consumer economic welfare is very limited except in certain well-defined circumstances, namely those characterized by externalities (or missing markets) or certain types of asymmetric information. Even an imperfectly competitive market is likely to produce better outcomes for consumers than will regulation.[102]

Rules may impose additional costs on transactions, induce consumer confusion, or restrict the variety of service offerings available to consumers. Several rules proposed in this proceeding provide good examples of the problems that may be created by developing additional regulations.

Consider, for example, the proposed requirement that various documents appear in at least ten-point font.[103] Motivated by a questionable belief that bigger

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[102] *Id*. at pp. 7-8.

[103] Stayed rules would require ten-point type in bills; any written confirmation, authorization, order, agreement or contract used in marketing; any contract for service; and any notice given to customers. *See* Interim Decision Issuing General Order 168, Rules Governing Telecommunications Consumer Protection, Decision 04-05-057, Appendix A, Rules 1(h), 2(c), 3(e) and 8(e) (May 27, 2004). These requirements go well beyond existing law, which require minimum 10-point type only for order forms, not contracts and notices. CAL. PUB. UTIL. CODE § 290(b).

print is easier to read,[104] this proposal is certain to impose significant costs on carriers. Undisputed testimony in the record establishes that compliance is costly when it requires national carriers to create "California only" practices, documents and systems. On behalf of Nextel, Henry J. Herman, a billing systems consultant, testified that imposing state-specific billing requirements on wireless carriers creates expensive and complex compliance problems and will likely backfire to the detriment of the intended beneficiaries.[105] With respect to the ten-point font proposal, requiring companies to move from 9.5-point font to ten-point font alone could cost them millions of dollars while adding little readability.[106] Many carriers likely would pass these costs on to consumers.

For other carriers these extra costs and complications are too much to bear. In his opening testimony, U.S. Cellular's witness Bradley L. Stein testified that enforcement of G.O. 168's ten-point type requirement alone would raise this rural carrier's costs to the point that it would exit the California market rather than

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[104] The belief that ten-point font is always more readable than smaller type sizes has no empirical basis. As testimony provided in this phase of the proceeding makes clear, the size of the type is only one of many features that affect readability. Testimony of Michael L. Katz (Aug. 5, 2005) ("Katz Testimony"), p. 13. Other factors that affect readability include typeface; margins; the use of headings; the use of white space, including "leading" – the space between lines; the length of a column; the use of italics, bold face and underline; and the height of a lower case letter or "glyph" (known as "x height"). Serif typefaces, like the Palatino font used in the text of this document, can be easier to read than larger san-serif fonts, like Arial, which lacks the serifs that guide the reader from word to word. Thus, a rule that singles out font size for regulation may produce no benefits in terms of readability.

[105] Herman Declaration.

[106] Maack Testimony, p. 15.

attempt to comply.[107] Thus, imposing additional regulations may have the unintended consequence of decreasing service offerings, in particular in the markets where these services are especially needed.

Additional problems arising from regulation are illustrated by a proposed rule that would require carriers to highlight "key rates, terms and conditions." The phrase "key rates, terms and conditions," is defined in a vague and open-ended way. This rule, therefore, most likely would produce litigation and confusion. Carriers wanting to ensure compliance would highlight a consumer's entire bill. Although this action would comply with the poorly written regulation, it would provide no benefits – one would simply have a contract entirely written in a "bold" font. Moreover, since bold font generally requires more space that normal fonts (it is thicker and wider), this requirement will also lengthen the physical size of a contract and increase carriers' printing costs, as would a ten-point font requirement.[108]

One final example illustrating the types of problem that arises from the application of simplistic rules to a technologically and commercially diverse telecommunications industry is the proposal for a rule that would entitle any

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[107] Opening Testimony of Bradley L. Stein (Aug. 5, 2005) ("Stein Testimony"), p.10.

[108] Also like the ten-point font requirement, it is unclear whether a requirement requiring key terms and conditions to be highlighted is even needed. Verizon Wireless notes that the wireless carriers typically prepare collateral material to highlight the terms of the contract that they deem important, such as "the number of minutes in the calling plan, the monthly charge, the charge for minutes over the allowance, the charge for domestic roaming minutes, the service activation fee, and the charges for certain optional features such as night and weekend allowances, mobile-to-mobile allowances and mobile web." Verizon Comments on the Alternate Draft Decision of Commissioner Brown (May 20, 2004) ("Verizon Comments on Brown Alternate"), p. 13.

customer to terminate a contract, without an early termination fee, within thirty days of service initiation. As applied to the wireless industry, such a "grace period" would permit the customer to try out a service to see if it works in the areas that the customer uses it.

Although it doubtful that such a requirement is needed,[109] there is substantial evidence that longer rescission periods will substantially increase costs to carriers.[110] The record in this proceeding makes clear that the practical result of mandating a longer period on all carriers, regardless of their particular business plans, is that carriers will be forced either to raise prices in order to cover the additional expenses that the rule would impose or discontinue or limit popular plans where a consumer receives a handset at a discounted price in exchange for a commitment to take service for designated term.[111]

Also the extension of this rule to facilities-based competitors to incumbent local telecommunications companies would wreak havoc with those trying to build advanced telecommunications infrastructures. When a competitive local carrier must build a fiber optic line to a customer's premises, it is common for the carrier to require the customer sign a contract that commits to a certain term. Such a contract

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[109] Currently every major wireless carrier provides consumers with at least a fourteen-day, no questions asked, rescission period. T-Mobile Comments on the Alternate Draft Decision of Commissioner Brown (May 20, 2004) ("T-Mobile Comments on Brown ACR"), pp. 11-12. There is no evidence that this 14-day period is inadequate for the determination of the basic information concerning whether the phone works.

[110] T-Mobile Comments on Brown ACR, p. 7.

[111] *Id*. at p. 12.

provides a rational way to reduce the financial risks that a competitive carrier incurs in building a modern fiber optic network. These financial risks are far in excess of the small handset subsidy that a wireless carrier provides in exchange for a fixed term contract; the financial risks can readily mount to several thousands of dollars.[112] If a customer for whom a carrier builds a fiber-optic line could walk away without penalty for 30 days, few carriers would be willing to make the needed investments.

For these and other reasons cited above, we, therefore, decline to expand our consumer rules beyond those extensions proposed in the May 2 ACR. While there is contradictory testimony in the record regarding the costs of complying with additional prescriptive rules, the balance of testimony favors the carriers' position that such costs are substantial and, in the absence of a convincing showing that these prescriptive rules would effectively respond to real problems, we decline to impose these additional costs on the carriers and their customers.

### 5.3 Should the Commission Restrict the Set of Rules Proposed in the May 2 ACR?

In contrast to the consumer organizations, telecommunications companies contended that the rules proposed in the May 2 ACR were too expansive. In particular the wireless carriers maintained that the Commission should refrain from subjecting them to the proposed rules regarding CAB requests for information,

[112] Additionally here, in particular, it is unclear what benefits would arise by imposing a rescission period in this market when both consumers and service providers are highly sophisticated and have complex needs and requirements.

employee identification, and Emergency 911 service, and they argued that the Commission should repeal the Interim Non-Com Rules.

#### 5.3.1 Extension of Rules Regarding CAB Requests for Information, Employee Identification and Emergency 911 Service to Wireless Carriers

A common theme through all the carriers' comments on these and other rules was that competition in the telecommunications industry is robust and provides carriers with strong incentives to meet consumer needs and provide clear, meaningful disclosures. We examine the carriers' assertions regarding competitiveness of the marketplace and related implications for these three rules.

##### 5.3.1.1 Competitiveness of the Wireless Market

The carriers have provided extensive evidence of significant competition in the telecommunications marketplace. 99.8% of Californians live in counties that have three or more facilities-based wireless carriers, and 98.5% live in counties having five or more providers.[113] Implementation of number portability has further enhanced competition among these carriers.[114]

There also is good reason to believe that these competitive pressures have benefited California consumers. In the last six years, prices have dropped at a faster rate in California than on average in the rest of the nation.[115] Moreover, the size of the rate drops has been very significant, with prices dropping 42% in the four largest

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[113] Wireless Carriers Opening Brief, p. 13 (citing FCC data).

[114] *Id*.

[115] Katz Testimony, p. 23.

California cities. In addition, even as rates have dropped, the number of minutes has risen dramatically. Average monthly minutes of use doubled from 125 in 1996 to 255 in 2000, and more than doubled again to 600 by the second quarter of 2005.[116] Competition has resulted in lower service prices, simplified rate plans, continued high levels of investment, consistent advancement in enhanced features and devices, a real time service activation process, and robust and efficient number portability.[117]

#### 5.3.1.2 Irrelevance of Market Competition to Public Safety Protections

Wireless carriers use the competitiveness of this telecommunications market to argue against the proposed extension of these three rules. They argue that competition obviates the need for further regulation, and that they are already performing many of the duties that the rules would impose upon them.[118] Yet although we agree that there is significant evidence of competition in the telecommunications marketplace, we do not hold that a competitive marketplace warrants an exemption from these three specific rules.

First, although the rule requiring carriers to comply with information requests from CAB is largely a restatement of statutory requirements, we find nothing lost and much gained by clearly stating the obligations of all carriers in this General Order. This issue of compliance with Commission authority is very different from

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[116] Testimony of Mark Lowenstein, p. 12.

[117] Wireless Carriers Opening Brief, pp. 14-15.

[118] *Id*. at 40. Verizon Wireless further argues that if regulation is necessary in the national wireless telecommunications marketplace, then it should be adopted at the national level, not the state level. Verizon Wireless Opening Brief, p. 37.

service quality, prices, or the terms and conditions of service, which are directly influenced by the level of competition in the marketplace. The competitive level of the marketplace cannot be relied upon to ensure that a carrier complies with information requests from the Commission. Moreover California has vested this Commission with authority to monitor the functioning of this marketplace, and rules that clarify and facilitate our work are justified.

Second, concerning the requirement that carriers issue identification cards to their employees, we see little cost and much benefit to codifying this practice into the General Order. If carriers already follow this practice, then the requirement imposes no incremental cost on carriers. Furthermore, by including this requirement in the General Order enumerating consumer rights, the Commission helps to set consumer expectations that company employees will have official identification materials. In general we see both the practice of having official identification materials and the inclusion of this requirement in the General orders as promoting public safety, a role for government that is independent of the market place.

Similar considerations justify the extension of 911 requirements to wireless carriers. For some time, state and local governments have relied on 911 as the critical communications element in providing police, fire protection and emergency health services. Although the marketplace will likely drive most providers to offer 911 services, we believe that it is better to adopt such 911 requirements as a condition for providing telecommunications services in California rather than creating a situation in which the unavailability of 911 service becomes known only in an emergency.

In reaching this conclusion, we acknowledge that the Wireless Carriers raise an important point when they note that the FCC is currently examining the questions concerning 911 service for wireless carriers. Yet we hold that the FCC's examination of 911 issues does not provide a significant basis for forbearing from adopting these regulations. We believe instead that the more prudent course is to extend these rules to wireless carriers but to invite carriers to file petitions to modify this decision if and when the FCC adopts rules that contravene the rules that we adopt today.

#### 5.3.2 Repeal of Interim Non-Com Rules

As noted above, the Interim Non-Com Rules require that the billing telephone company first obtain express written authorization, directly from the subscriber, to include non-communications charges on that subscriber's telephone bill. These rules also require that any authorization of a non-communications charge must be accompanied by entry of a PIN or equivalent security procedure.

When the Commission adopted the Interim Non-Com Rules in 2001, it stated that the rules should be re-evaluated after eighteen months in order to assess their effectiveness and whether any changes were necessary.[119] No such review has taken place until the past four years.

Parties' comments on the Interim Non-Com rules sharply divide consumer organizations from telecommunications carriers. The consumer organizations argued that the Interim Non-Com rules should be upheld; the telecommunications

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[119] Interim Opinion Adopting Interim Rules Governing the Inclusion of Non-Communications-Related Charges in Telephone Bills, D.01-07-030, p. 4.

carriers maintained that they should be repealed. We review and discuss these positions below.

Consumer organizations supporting the Interim Non-Com Rules included the ORA, TURN, and the California Attorney General. Advocating on behalf of these rules, ORA argued that the non-communications rules, and especially the requirement of a PIN, add significant security to the phone as a charge-authorizing device, because the rules prevent unauthorized use of a lost or stolen phone.[120] ORA also maintained that entering a PIN is a very minor burden, as it observed that customers regularly enter a PIN when they use a debit card.[121] The Attorney General joined with ORA in some of the comments ORA filed regarding the current interim rules.[122]

TURN agreed that the carriers' criticisms of the rules were unpersuasive. TURN blamed the carriers for adopting a "limiting" interpretation of the rules.[123] TURN accused the carriers of making "overly-restrictive interpretations of the rules to make their point" that the rules are unworkable.[124] While it recognized that the category of "communications-related charges" includes "broadband, video, pay-per-use, information services and messaging services," TURN characterized the

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[120] Reply Brief of the Office of Ratepayer Advocates (Nov. 7, 2005), p. 20.

[121] *Id*.

[122] *See* ORA/AG ACR Comments (discussing the Interim Non-Com Rules).

[123] Reply Brief of The Utility Reform Network (Nov. 7, 2005) ("TURN Reply Brief"), p. 17.

[124] *Id*.

application of the interim rules to non-communications charges as a "narrow application."[125]

In contrast to the consumer organizations, the Wireless Carriers, Wireline Carriers and Verizon Wireless urged us to repeal the Interim Non-Com Rules regarding non-communications charges on phone bills.[126] They based their arguments both on legal and policy grounds.

The Wireline Group argued that the current rules are "unworkable" and hinder the development of many potential service offerings.[127] For example, it would be very convenient to pay for the download of a song on a DSL line by a charge on the monthly phone bill. The Wireline Group, however, stated that no carrier in California is offering such non-communications services to telephone subscribers in California.[128] The Wireline Group noted that at the time of the adoption of the rules, parties to the proceeding argued that the rules were so strict that they "rendered ineffective the legislature's intent," and characterized the Attorney General's proposal, which shaped the Interim Non-Com Rules, as a "repeal" of the legislation that allowed carriers to place non-communications

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[125] TURN Reply Brief, p. 18.

[126] Wireless Carriers Opening Brief, pp. 41-47; Verizon Wireless Opening Brief, pp. 44-47.

[127] Wireline Group Reply Brief, pp. 9-12.

[128] Wireline Group Reply Brief, p. 11.

charges on phone bills.[129] The Wireline Group concluded that re-examination of these rules is long overdue and repeal is warranted.

In addition to arguing that no state-specific rules should be applied to wireless carriers, the wireless companies based their recommendation for repeal of these rules on a technical evolution in the wireless industry. Technology now permits the use of a wireless phone as a point-of-purchase authorization device, a development that was not contemplated at the time the Interim Non-Com Rules were adopted. Evidence placed in the record by Wireless Carriers reveals that in other countries wireless phones may now be used to purchase movie tickets, mass transit tickets and other low-cost items.[130]

After reviewing the parties' comments, we hold that record developed in this proceeding indicates that we should repeal the interim rules. The evidence in the record shows that the central elements of the interim rules, namely the "opt-in" and "PIN" requirements, are extremely burdensome.

The opt-in requirement is inconvenient for consumers and burdensome for carriers. Evidence in this proceeding demonstrates that the requirement of a "written prior authorization" has been arduous for certain small and midsized carriers, because of the costs of tracking which customers have opted-in.[131] Other

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[129] *Id*.

[130] Wireless Carriers Opening Brief, p. 46. *But see* TURN Reply Brief, p. 18 (arguing that these are examples of "prepaid smart cards embedded in the wireless phone," and maintaining that the examples, therefore, are "not analogous").

[131] Tr. at 1479-1480 (Beatty, Wireless Group).

forms of opt-in, including opt-in via a phone call, are also hassles for consumers electing to use their phones for non-communications applications, and may be particularly unneeded for devices such as cell phones, for which a customer's perception of the device's capabilities and uses is evolving.

We also find that requiring the use of a PIN makes it more inconvenient for consumers who want to charge non-communications items to their cell phones. For example, as Verizon Wireless points out, in Japan consumers can wave their wireless handsets over turnstiles to board mass transit trains.[132] Requiring customers to stop and enter a PIN is largely incompatible with such a use – it is difficult to think that customers rushing for a train would find it convenient to stop and enter a PIN. Consequently, imposing a PIN requirement in California likely will restrict the use of the cell phones to only those non-communications applications where using a PIN does not pose undue delay or burden on consumers.[133]

Furthermore we conclude that the Interim Rules create an irrational regulatory regime. Currently no PIN is required to incur communications-related charges when using the handset; yet the Interim Rules would require a PIN when the same

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[132] Verizon Wireless Opening Brief, p. 46.

[133] We are not persuaded by TURN's response that this use is not really the use of a cell phone, but the use of a smart card embedded in the phone. Our own extensive experience with regulation convinces us that the Interim Non-Com Rules would cast uncertainty on whether a smart card embedded in a phone is part of the phone. For example, if a cell phone includes a MP3 device within it, does the downloading of songs become subject to regulation when done on this device, but not subject to regulation if done on a computer? Would the Commission need yet another proceeding to resolve this issue? Would manufactures simply decide to not add this capability to a phone?

handset is used to make a non-communications related charge. There is no logical reason to require a PIN when the same handset is used to make a non-communications related charge. For wireless phones, in all cases the unique electronic identifier associated with each wireless handset is as effective as a PIN and assures that charges can only be incurred by someone in physical possession of the handset. For wireline phones, there are many other forms of verification as well. To use our simple example once again, if a customer downloaded a song using a DSL line connected to a home computer, then the extensive information provided to establish a Web connection could obviate the need for the consumer to enter a PIN. It makes little sense to micromanage the form of security that a service provider elects to use. By repealing the rules we would eliminate an irrational regime that permits unauthorized phone calls to be made without a PIN, but requires a PIN before a handset may be used to authorize small purchases.

Finally, and most importantly, we conclude that repeal of these rules likely would not result in any significant detriment to consumers. While ORA may analogize to a debit card, another analogy may be drawn to a credit card, which may be used to make purchases without a PIN. Viewing the handset as a credit card, as it is used in other countries, strongly implies that it is not necessary to impose restrictions on its use that are greater than those restrictions already in place vis-à-vis credit cards. Like credit card companies, the Wireline Group rightly point out that they have strong financial incentives to adopt procedures that minimize the

likelihood of unauthorized use, since resolving such issues is costly to the carriers in both monetary and non-monetary terms.[134]

Additionally consumers will continue to benefit from regulatory protections that exist independent of the Interim Non-Com Rules. Repealing the Interim Non-Com Rules does not alter or reduce carrier's obligations under P.U. Code § 2890, which bars carriers from placing any unauthorized charges, including charges for non-communications services, on a phone bill.[135] Cramming will remain illegal even if wireless phone customers are able to use their handsets to make small purchases. The Commission also can and will monitor the use of phone bills for non-communications charges and, if a pattern of abuse warrants, impose rules.

**5.4. Conclusion**

Based on the record in this case, we conclude that, if modified as described herein, the rules set out in the May 2 ACR are sufficiently comprehensive to protect and empower consumers. We disagree with the consumer representatives who argue that our current regulatory regime is valueless without the buttressing of additional prescriptive rules; there has been no showing that additional prescriptive rules need to be adopted.

Moreover, by repealing the Interim Non-Com Rules, we ensure that our regulatory regime does not unduly stifle innovation in the telecommunications

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[134] *Id*. at p. 47.

[135] CAL. PUB. UTIL. CODE § 2890(a) (stating that a "telephone bill may only contain charges for products or services, the purchase of which the subscriber has authorized").

marketplace. It was irrational for us to permit unauthorized phone calls to be made without a PIN, but require both prior authorization and a PIN before a handset may be used to authorize purchases. Instead it makes more sense for us to rely on other existing rules that continue to protect consumers from unauthorized uses of their telecommunications bills.

## 6. Consumer Education Program

Consumer education is the cornerstone to empowering and protecting consumers. Consumer education coupled with clearly delineated rights, a competitive marketplace, and effective enforcement of regulations, laws and guidelines arms consumers with the tools necessary to empower themselves when making decisions about telecommunications products and services. A consumer education program is the most efficient and effective way of empowering consumers so that they understand their existing rights and can make informed choices when they navigate the competitive marketplace of telecommunications. The Commission's focused consumer education campaign will make consumers more likely to be satisfied with their telecommunications products and services.

### 6.1. Ability to Inform Customers About Product Features and Provide Information on Basic Consumer Rights.

Consumer education is central to providing California residents with the tools they need to make informed decisions. This section discusses how a consumer education campaign can inform consumers, and improve consumer welfare better than additional prescriptive rules.

Consumer education can inform consumers of the significant features of a service, technology or a market that should affect their decision to purchase. Cingular, for example, notes that the FCC has just such a program and has developed a brochure that guides consumers with a set of questions concerning coverage, pricing issues, and handset features.[136] Disseminating such information benefits providers of telecommunications services as well as consumers. The Reply Testimony of William Schulte and Robert Johnston shows that the wireless industry already provides a wealth of similar information to consumers.[137]

Consumer education also can empower consumers by informing them of the rights that have under existing laws and regulations. The Greenlining Institute provided testimony in this proceeding that indicated that despite the wealth of rules and regulations that prohibit slamming, a complex set of cultural and linguistic factors combine to make certain consumers particularly vulnerable to "aggressive, deceptive and/or unscrupulous telecommunications service providers" whose marketing targets ethnic minorities.[138] An effective education campaign, however, can assist these vulnerable consumers by informing them of their rights.

The benefits of education are particularly apparent in a dynamic marketplace – and thereby may produce more positive results than the adoption of more

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[136] Comments of Cingular Wireless in Response to the March 10, 2005 Assigned Commissioner's Ruling (Mar. 25, 2005), p. 3.

[137] Schulte and Johnston Reply Testimony, p. 2.

[138] Testimony of John C. Gamboa (Aug. 5, 2005) ("Gamboa Testimony"), p. 3 (on behalf of the Greenlining Institute).

prescriptive rules. In a telecommunications market where technological change and new service offerings are occurring daily, education may offer a quicker and more robust way to protect consumers than the adoption of regulatory rules that constrain service offerings by imposing a one-size-fits-all model on a complex industry using many different business models.

An education program can be narrowly tailored to address specific problems encountered by identifiable groups of consumers. For example, to the extent that lack of English proficiency prevents certain consumers from making meaningful choices among providers or services or limits their ability to make use of existing consumer protections, narrowly targeted in-language consumer education materials are likely to be far more effective in aiding those consumers than dozens of pages of printed contract terms, whether or not in ten-point type. The problem of "information overload" noted by Professor Katz[139] could be particularly acute for such consumers.

Also we have more freedom to experiment in a consumer education program and to learn from our experience than we would from adoption of extensive and costly rules. An education campaign can be quickly modified to respond to consumer feedback and marketplace developments.

### 6.2. Parties' Support for Consumer Education

It is, therefore, not surprising that there was widespread agreement among the parties to this proceeding that enhanced consumer education, spearheaded by this

[139] Katz Testimony, p. 14.

Commission, would be beneficial to consumers and companies alike. Although they differed as to whether additional new prescriptive rules are necessary to protect consumers when purchasing telecommunications products and services, both consumer groups and industry representatives endorsed a consumer education program. This section reviews the parties' comments.

As noted by its Executive Director John C. Gamboa, the Greenlining Institute supported a consumer protection and held that "this phase in the proceeding offers the Commission the perfect opportunity to address the consumer education and language issues that have been notably absent from the discussions surrounding the creation of the Telecommunications Bill of Rights."[140] Gamboa testified that the Commission has spent insufficient time in this proceeding addressing the special needs of minority language communities and the role consumer education programs could play in meeting those needs.[141]

In its opening brief and again in its comments during the hearings, Latino Issues Forum pointed out that minority language communities suffer from two different disadvantages. On the one hand, while carriers may provide accurate and useful information in English, minority language customers typically cannot understand it. On the other hand, they are also targeted for fraudulent and

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[140] Gamboa Testimony, p. 6.

[141] *See id.* (describing how business can exploit immigrants).

deceptive communications in their own languages by unscrupulous businesses that prey on minority language communities.[142]

TURN stated a consumer education program should complement but not be a substitute for substantive set of rules.[143] TURN's witness Alexander suggested a combination of consumer education; analysis of informal customer complaints; informal and formal investigations; formal proceedings to determine violations; consultations and coordination with the Attorney General and other law enforcement personnel; and the judicious use of the Commission's authority to assess civil penalties.[144]

DRA endorsed the Commission's efforts to make consumer education a more explicit commitment. It declared that it "supports the carriers' recommendation for increased consumer education, in addition to a meaningful Bill of Rights."[145]

The Wireline Group has been very supportive of consumer education. It stated that "[t]hroughout this proceeding the Wireline Group has consistently argued that the Commission should focus on consumer education rather than adopting prescriptive rules. Confusion for consumers is caused by the plethora of

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[142] Opening Brief of Latino Issues Forum (Oct. 24, 2005) ("LIF Opening Brief").

[143] TURN Reply Brief, p. 22.

[144] Direct Testimony of Barbara R. Alexander (Aug. 5, 2005) ("Alexander Direct Testimony"), p. 54 (on behalf of TURN).

[145] Disability Rights Advocates Reply Comments (June 15, 2005) ("DRA Reply Comments"), p. 7.

laws; and, new rules only multiply consumer's challenges in understanding their rights."[146]

The Wireless Carriers also called for consumer education as a means to empower consumers. They stated that "the Commission could educate consumers in the questions they should ask before choosing a provider so that the consumer's needs are met."[147] As attested by CTIA witness Schulte, "consumer education is by far the most efficient and effective way of empowering consumers so that they understand their existing rights, have the information necessary."[148] On behalf of Wireless Carriers, Katz testified that "the Commission could do so by playing a stronger role in educating consumers about the laws and regulations applicable to the wireless industry and serving as an initial point of contact for consumers that had concerns about wireless service."[149]

Verizon Wireless further supported consumer education and suggested that the Commission compile existing laws in one place so that customers can more easily know of their rights. Specifically it recommended that we post a summary of those laws in plain English on the Commission's website and provide appropriate hyperlinks to other references.[150]

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[146] Wireline Group Opening Brief, p. 18.

[147] Wireless Carriers Opening Brief, p. 48.

[148] *Id*.

[149] Katz Reply Testimony, p. 40.

[150] Verizon Wireless Opening Brief, p. 36.

### 6.3. New Consumer Education Initiative

Given parties' comments, we recognize that existing consumer protection laws and regulations, though extensive, are not readily understood by or available to the average consumer. To the extent that consumers are ignorant of existing legal protections or have difficulty in understanding them, they are not likely to make use of available protections. Consumer education is an obvious response to this situation.

This decision, therefore, launches a new consumer education program that will be directed by Commission Staff. We recognize that the carriers should be the first and most important source of information for consumers. This Commission, however, is in a unique position to provide consumers with information necessary to make informed choices as it can build on its existing programs and divisions that already interact with consumers.

To be effective we will need to devote a significant amount of time and resources to this educational campaign. Our experience with the programs we administer for the benefit of low-income, disabled and non-English-speaking consumers has proven to us that getting information to individuals who fall in these and similar categories can be time-consuming and expensive. The consumers most in need of education are also the hardest to reach. The consumers most likely to be targeted for exploitation by unscrupulous operators are often the least informed about how to protect themselves.[151] We also should be candid and acknowledge that

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[151] *See, e.g.*, LIF Opening Brief, pp. 2-4; DRA Opening Brief, pp. 8-10.

the Commission's role as a consumer protection agency is not widely recognized by California consumers.[152]

We envision three prongs to our consumer education program. The first prong is a broad-based Commission-led information campaign that helps all consumers in the face of the complex and ever-changing array of telecommunications choices. The second prong is a program targeted at consumers new to California and/or non-English speaking. Although this program will also be Commission-led, we anticipate close cooperation with community-based organizations ("CBOs") in our efforts to bring this message to targeted communities. The third prong will consist of an education program to inform consumers of their rights. This prong will use rules compiled into the General Order as its starting point. As part of this education program, we will facilitate public access to our rules and to CAB and ensure that Commission staff is well aware of the rights of consumers and the rules that telecommunications carriers must follow.

#### 6.3.1. Educational Content

It is important that our consumer education materials provide understandable answers to frequently asked questions. Consumer education material must be

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[152] As pointed out in Katz's reply testimony, "the authors of a study sponsored by the Commission concluded that 'Mostly, people seem to be uninformed about the CPUC and what it could and could not do to help consumers resolve problems' (Diane Schmidt and James E. Fletcher, 'A Final Report on Telephone Survey of Telecommunications Customers in California,' report prepared for the California Public Utilities Commission, Telecommunications Division, May 15, 2001 at page 22.)." Katz Reply Testimony, p. 41, n.117. A nationwide survey undertaken for the American Association of Retired Persons reached a similar conclusion. *Id*.

provided clearly, concisely and in laymen's terms. In order to guide development of the consumer education material, Appendix E sets forth consumer education program principles. Also Appendix F provides proposed consumer education topics, in an effort to assist Commission Staff, carriers and consumer groups and organizations as they develop education material. These high level principles along with the proposed education topics are intended to help create material that is informative, understandable and helpful to telecommunications consumers.

In designing such materials we will look to both carriers and consumer groups for input about the questions to be addressed, the form in which answers should be created and the manner in which the materials should be distributed for maximum effect. We find that the FCC provides a good model for this Commission. In collecting this feedback, we direct CAB to hold workshops addressing the design and dissemination of such consumer education materials.

Many entities have significant educational experience that may assist us in our design efforts. One such example is Communities for Telecom Rights ("CTR").[153] CTR is a California non-profit network comprised of over forty nonprofit CBOs, and it provides education and guidance on telecommunications issues focusing on limited-English-proficient communities. CTR provides consumer education

[153] CTR is coordinated and supported by three lead agencies: Asian Pacific American Legal Center ("APALC"), Latino Issues Forum ("LIF") and Utility Consumers' Action Network ("UCAN"). The project is funded by grants primarily from the Telecommunications Consumer Protection Fund ("TCPF"), which is administered by the California Consumer Protection Foundation ("CCPF").

materials in seven languages.[154] These consumer education materials are fact sheets on topics such as avoiding phone fraud, how to choose the best local and long telephone service, and misleading ads and telephone services. CTR's website, www.telecomrights.net, is a model approach to a comprehensive telecommunications education program. CTR is funded by the California Consumer Protection Foundation ("CCPF"), which is in part funded by the Electric Education Trust.[155] CTR also is building a statewide network capable of tracking abusive business practices.

#### 6.3.2. Dissemination of Educational Materials

We expect our educational materials will be disseminated through multiple avenues. The distribution effort will be led by the Commission, but may be aided by carriers, CBOs and organized consumer groups. We describe forms of dissemination below.

One way we can inform consumers is through the Commission's website. We plan to work with carriers and CBOs to develop a portion of the Commission's website as a consumer education center. Among the website's contents, as

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[154] These languages are English, Chinese, Spanish, Khmer, Korean, Laotian, Tagalog and Vietnamese.

[155] The Electric Education Trust was created by Pacific Gas & Electric, Southern California Edison and San Diego Gas & Electric to support a statewide consumer education program regarding electric industry restructuring. Funds are provided by the investor-owned utilities, as directed by the Commission, as needed to pay EET expenses and grants. The participating utilities were allowed to recover these funds from ratepayers.

suggested by the Wireline Group and Wireless Carriers, we will include a section dedicated to existing rules and a description of these rules in layman's terms.

Our website is a powerful tool that we have yet to utilize to its full potential. The Internet makes it possible to cheaply disseminate and readily update such information, and the Commission website can easily accommodate links and new web portals whereby a consumer can access information necessary to make informed choices when purchasing telecommunications services. As stated by CTIA's witnesses Schulte and Johnston, "[a] well developed Commission website can be a very effective element of a consumer education effort. Websites designed to help consumers successfully navigate the competitive telecommunications market have been effectively employed by other domestic and international regulatory bodies."[156] Indeed, websites maintained by carriers,[157] consumer organizations[158] and other public utility commissions in other states[159] are good examples of how we

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[156] Schulte and Johnston Reply Testimony, p. 3 (testifying on behalf of CTIA).

[157] See, for example, the Cingular "customer forum" on its website at http://forums.cingular.com/.

[158] See, for example, the information available at the websites of the National Consumers League at http://www.nclnet.org/phonebill/billingrights.html#top and the Ohio Consumers Council at http://www.pickocc.org/publications/phonerights.pdf.

[159] See, for example, the telephone consumer information posted by the Michigan Public Service Commission at http://www.michigan.gov/mpsc/0,1607,7-159-16368_16408_18085---,00.html and the similar information posted by the Ohio Public Utilities Commission at http://www.puco.ohio.gov/puco/consumer/index.cfm.

can provide significant amounts of educational material regarding telephone service to consumers with Internet access.[160]

We realize, however, that information on our website is not readily available to consumers who do not have Internet access or whose English proficiency is too limited to make effective use of the Internet. For those reasons, an effective consumer education program cannot rely entirely on the Internet as a means of distributing important information.

Thus we also will explore production of public service announcements that help provide consumers with information needed to purchase telecommunications services. We anticipate that a mass media campaign could reach more consumers than our website alone.

Also carriers, community based organizations and organized consumer groups, among others, may assist in distribution of educational materials. We plan to develop community-based outreach programs with CBOs in order to get the information into the hands of consumers who cannot easily get it from the website.

In doing so the Commission must take a lead role and extend its outreach through communication to business and community leaders as well as federal, state and local officials. In particular we should increase our current outreach efforts to include local government, Chamber of Commerce, the Department of Social

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[160] For example, extensive information on a wide range of telephone-related consumer issues is available in English, Chinese and Spanish from Consumer Action at http://www.consumer-action.org/.

Services, senior centers, schools and libraries. Increased outreach will assist in preventing and identifying consumer problems before they occur.

#### 6.3.3. Monitoring and Evaluation

Another important component of a new consumer education program is monitoring and evaluation. If certain materials and approaches are more useful to consumers than others, we will emphasize and extend those materials and approaches. At the same time, we want to be sure that the decisions we make are based on reliable data. The problems that we have faced in using CAB complaint data demonstrate the importance of developing a means of systematically measuring the efficacy of Commission programs. Thus the education program will be regularly monitored and evaluated in order to develop reliable data on which we can base any necessary future rulemaking or enforcement action, as well as any changes to the educational program itself.

#### 6.3.4. Program Funding

We will take steps both internally and as part of the Commission's budget proposal to the Legislature to ensure that CAB has the resources and personnel required to create and monitor the education program. With additional monies, we can expand the scope of our outreach, and we may provide additional training to Commission Staff so that Staff members can respond effectively to consumer inquiries about our education materials. Also, as we describe in more detail in Part 7, we will support our monitoring and evaluation efforts by requesting funds for additional personnel to assist with complaint intake and analysis, and a new database to better assist in monitoring and evaluating complaint data we receive.

While we are requesting these funds, we can develop and implement a consumer education campaign using existing staff and resources. We do not need additional funds to begin a media campaign; expand and improve the Commission's existing outreach program; and develop and post on our website consumer education materials. Our media campaign may include press releases, interviews with Commissioners, editorial boards and a separate portal on our website dedicated to consumer education.

Given our desire to launch our educational program as soon as possible, we direct Commission Staff – working with CBOs, consumer groups, and industry representatives – to develop consumer education campaigns at various funding levels and to develop at least one program that can be launched using existing staff and resources. These campaigns should be consistent with our above-mentioned goals of informing consumers of telecommunications options and advising of them of their rights as consumers.

## 7. Enhanced Enforcement

Improved enforcement of existing laws and regulations will further enhance our consumer protection efforts. Enforcement can be effective in two ways: informally, when we help consumers resolve disputes with carriers; and formally, when we take actions against carriers for violations of our laws and regulations.

### 7.1. Expansion of Our Toll-Free Hotline

To facilitate rapid identification of companies engaged in fraudulent conduct, we will expand the scope of our existing toll-free hotline to address fraud, and we will publicize how consumers can use our hotline specifically to report allegations of

fraud. Allegations that a company is engaged in fraudulent practices will receive priority attention, and if broader civil liability or criminal liability appears likely, the matters will be promptly referred to an appropriate agency for prosecution under relevant state statutes.

### 7.2. Improvements to Compilation and Assessment of Complaint Data

As our earlier discussion of CAB complaint data demonstrated, we frequently lack adequate information on which to base either type of enforcement activity. This lack of information stems from an antiquated database and insufficient personnel devoted to problem solving and customer contact. We recognize that we need to make additional resources available to CAB to permit accurate gathering of complaint data, timely intervention in disputes, and prompt action against companies that abuse or deceive consumers.

In our next proposed budget, we are requesting funds for updating our antiquated database system and hiring additional CAB and CPSD personnel in an effort to accomplish these objectives. If we receive this funding, we will double the operating hours of our complaint and fraud hotline from 10 AM to 3PM, to 8 AM to 6 PM, Monday through Friday. When hiring new agents to answer our complaint and fraud hotline, we will target individuals who speak foreign languages, in order to ensure that we are able to address the needs of individuals who do not speak English. CAB also shall consult the best practices of other states and use those states as models for improving our own receipt and processing of complaints.

### 7.3. Increased Cooperation with Local Law Enforcement Officials

While consumer protection is our primary goal, we are not the only public

body tasked with that responsibility. The Attorney General and local District Attorneys are the principal enforcers of California's general anti-consumer-fraud laws, Civil Code Sections 17200 and 17500, as well as the state's criminal laws. Many acts that violate the P.U. Code or our regulations also violate one or both of the cited Civil Code sections or some portion of the Criminal Code.

There are a variety of ways in which we can work closely with local law enforcement officials to provide effective assistance to consumers injured by unscrupulous or fraudulent conduct. Collaboration may include detailed complaint analysis to determine if there were concurrent violations of our statutes and regulations and other state statutes; referrals of cases to local District Attorneys; preparation of witnesses for cases brought by local District Attorneys; regular meetings between our staff and the district attorneys from around the state; and similar actions designed to bring local enforcement, with its greater array of civil and criminal penalties, to bear on people and companies who defraud or otherwise take advantage of vulnerable consumers.

A central part of our enforcement efforts should be to engage in this sort of cooperation with local law enforcement officials. District Attorneys prosecute most of the consumer fraud actions brought on behalf of the public. In particular the authority to prosecute actions under the Unfair Competition Law on behalf of the public is clearly vested in law enforcement agencies other than the Commission, and jurisdiction to impose penalties under that law lies exclusively in the superior

courts.[161] Remedies under the Unfair Competition Law are cumulative and in addition to remedies that may be imposed under other laws.[162]

The importance of this collaboration with local law enforcement officials is particularly evident with respect to telecommunications matters outside our jurisdiction, such as those involving phone cards or resale of telecommunications equipment and services. While we have no direct authority to regulate companies engaged in such business activities, the District Attorneys can reach these actors through the application of general consumer protection laws.

Given these considerations, we direct Commission Staff to engage in the practice of collaborative law enforcement. Before taking on a case, Staff shall first consider whether a matter would be best addressed by a District Attorney instead. Also we can enable prosecutions by analyzing related complaints and making referrals where appropriate. Thus we require Commission Staff to provide local law enforcement officials with complaint and investigation data concerning entities that Staff finds are engaged in consumer fraud.[163]

We intend to support increased collaboration with law enforcement officials, in part, though additional funding we are requesting from the Legislature. We plan to devote specific funds to interagency cooperation, and hire individuals that will

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[161] CAL. BUS. & PROF. CODE § 17204. *See also* CAL. BUS. & PROF. CODE § 17535. The Attorney General, district attorneys and certain other law enforcement officers are authorized to prosecute such actions on behalf of the public.

[162] CAL. BUS. & PROF. CODE §§ 17205, 17534.5.

[163] CAL. GOV'T. CODE § 26509.

work with local law enforcement officials.

### 7.4. Creation of a Special Telecommunications Consumer Fraud Unit

Within the Consumer Protection and Safety Division ("CPSD"), we will create a special Telecommunications Consumer Fraud Unit dedicated to investigating, documenting and resolving allegations of telecommunications consumer fraud. This unit will enforce our anti-slamming and anti-cramming statutes, monitor the hotline, and meet regularly with local District Attorneys and the Attorney General to compare information and coordinate enforcement activities.

To enhance the capabilities of this Unit, we also are requesting funds for additional Unit personnel. We need more enforcement personnel to analyze and prepare cases for prosecution under our statutes or referral to local District Attorneys and the Attorney General.

### 7.5. Legal Division Recommendations for New Enforcement-Related Legislation

Finally we direct the Legal Division to analyze our existing enforcement authority. Based on its review, the Division shall recommend any additional legislation needed to enhance our enforcement regime.

## 8. In-Language Report

We direct Staff to analyze and create a report on in-language practices and any special problems faced by consumers with limited English proficiency. Building on anecdotal evidence, this Staff report will help us assess the impact of in-language education and enforcement; identify any specific in-language issues that are not

adequately addressed by our consumer protection regime; and recommend whether we should adopt any specific in-language rules. If called for by the Staff report, a future phase of this proceeding will address adoption of in-language requirements.

## 9. Other Procedural Matters

### 9.1. Motion of TURN to Recuse Commissioner Kennedy

On May 31, 2005, TURN filed a motion seeking the recusal of Commissioner Kennedy and her replacement as Assigned Commissioner.[164] In its motion, TURN alleged that Commissioner Kennedy had demonstrated "an unalterably closed mind" with regard to the consumer protection issues that are the subject of this proceeding.[165]

On December 9, 2005, Governor Arnold Schwarzenegger announced that he had appointed Commissioner Kennedy as his Chief of Staff effective January 1, 2006. Consequently Commissioner Kennedy resigned from her position as a Commissioner effective December 31, 2005 and this proceeding was re-assigned to Commissioner Peevey.

The resignation of Commissioner Kennedy and the re-assignment of this proceeding have rendered the issues raised in the Recusal Motion moot. Moreover there is no factual basis to the allegations raised by TURN, so even if Commissioner

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[164] Motion of TURN Seeking the Recusal of Commissioner Kennedy and Her Replacement as Assigned Commissioner (May 31, 2005) ("Recusal Motion").

[165] Recusal Motion, pp. 1-2.

Kennedy were to continue as sole Assigned Commissioner to the decision, this motion would be denied.

**9.2. Petitions for Modification of D. 04-05-057**

On January 6, 2005, the Wireline Group and Wireless Carriers filed separate petitions for modification of D.04-05-057. D. 05-01-058 stayed D.04-05-057 pending completion of this phase of the proceeding. This decision supersedes D.04-05-057 and renders those petitions moot.

**9.3. Petitions for Rehearing of D.05-01-058**

On March 7, 2005, TURN and the City of San Francisco filed separate petitions for rehearing of D.05-01-058. This decision supersedes D.05-01-058 and renders those petitions moot.

**9.4 Other Motions**

On November 9, 2004, Cricket Communications ("Cricket") filed a motion for partial waiver of the provisions of original G.O. 168. Comments on the Cricket motion were filed by Verizon Wireless, Cingular, TURN and ORA and reply comments were filed by Cricket. The portions of original G.O. 168 from which Cricket sought a waiver are not readopted in this decision and the motion is thereby rendered moot.

On December 16, 2004, Time-Warner Telecom ("Time-Warner") filed a motion for a partial waiver of the provisions of original G.O.168. TURN and ORA filed opposition to the Time-Warner motion. The portions of original G.O.168 from which Time-Warner sought a waiver are not readopted in this decision and the motion is thereby rendered moot.

On January 11, 2005, U. S. Cellular filed a motion to file confidential financial material under seal. The motion is granted.

## 10. Comments

The proposed decision of Commissioner Kennedy in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(d) and Rule 77.7 of the Rules of Practice and Procedure.

On _____filed Initial Comments and on _____ filed Reply Comments.

## 11. Assignment of Proceeding

Commission President Michael R. Peevey and Commissioner Susan P. Kennedy currently are the Assigned Commissioners for this proceeding, but as of January 1, 2006, President Michael Peevey will become the sole Assigned Commissioner. Administrative Law Judge James McVicar is assigned to this proceeding.

**Findings of Fact**

1. A primary role of the Commission is to protect consumers against fraud.
2. Consumer education coupled with clearly delineated rights, a competitive marketplace, and effective enforcement of regulations, laws and guidelines arms consumers with the tools necessary to empower themselves when making decisions about telecommunications products and services.
3. Public safety is critical to consumer protection, and as such, we hold that public safety rights are properly included in the Consumer Bill of Rights.
4. Increasing competition in the provision of telecommunications services reduces the need for Commission regulation of telephone service providers.
5. There is no conclusive showing on the record that telephone customers in general are significantly dissatisfied with their service or that their level of dissatisfaction is increasing.
6. Many calls made through a wireline phone could be made through a wireless phone or over the Internet using VoIP.
7. Many calls made using a wireless phone could be made using a wireline phone or over the Internet using VoIP.
8. Some laws and regulations are applicable only to providers of basic service.
9. Regulations applicable to providers of basic service are not necessarily applicable to providers of wireless service.
10. Carriers introduced credible evidence that detailed prescriptive regulations would impose significant new costs on them.

11. Carriers introduced credible evidence that consumer are protected by existing rules, laws and guidelines.
12. Actual use under real world conditions is the best way to determine if a wireless phone meets a customer's needs.
13. Repealing the Interim Non-Com Rules does not alter or reduce carriers' obligations under P.U. Code § 2890, which bars carriers from placing any unauthorized charges, including charges for non-communications services, on a phone bill.
14. The record developed in this proceeding does not support the imposition of new detailed prescriptive regulations on telephone service providers.
15. Wireless companies introduced no credible evidence that that they will suffer significant costs due to extension of rules regarding compliance with CAB requests for information, employee identification and emergency 911 service to wireless carriers.
16. The rules requiring compliance with CAB requests for information support the Commission's mission to oversee the telecommunications industry.
17. The rules requiring employee identification and the provision of 911 service promote public safety.
18. The Interim Opinion Adopting Interim Rules Governing the Inclusion of Non-Communications-Related Charges in Telephone Bills, D.01-07-030, called for a re-evaluation of the interim rules after 18 months.
19. The rules pertaining to non-communications-related charges on telephone bills have never been formally re-evaluated.

20. The record developed in this proceeding shows that the Interim Non-Communication Rules are extremely burdensome.
21. The Interim Non-Com Rules create an irrational regulatory regime in which consumers can incur expensive obligations to pay for telecommunications services without entering a PIN, but must enter a PIN when incurring even modest non-communications charges.
22. There are ways of verifying charges other than requiring the entering of a PIN.
23. The repeal of the Interim Non-Com Rules will not likely result in any significant detriment to consumers.
24. A telecommunication consumer education program developed and publicized in conjunction with carriers and community organizations is the most effective way to empower consumers to choose among competing providers and service offerings.
25. Enhanced enforcement of existing laws and regulations, including increased cooperation with other law enforcement bodies, is the most effective way to protect consumers against fraud and deception in the provision of telecommunication services.

**Conclusions of Law**

1. Except as set forth in the ordering paragraphs below, this order and revised G.O.168 do not relieve any carrier from compliance with any existing Commission decision, rule or general order, any state or federal statute, or any other requirement under the law.
2. Current law prohibits carriers from placing unauthorized charges on their customers' phone bills.
3. The Commission should adopt revised G.O.168, Market Rules to Empower Telecommunications Customers and to Prevent Fraud (Appendix A to this order).
4. The Commission's adoption of revised G.O. 168 does not create a private right of action against any telecommunications carrier nor may the revised general order be used as the predicate for any assertion of liability against a telecommunications carrier including, without limitation, monetary damages, restitution or injunctive relief.
5. The Commission's adoption of revised G.O. 168 does not enlarge or diminish any other rights or preclude any other actions that may be available by law.
6. The incremental benefits of revised G.O. 168 outweigh its incremental costs.
7. The Commission has complied with Public Utilities Code § 321.1.
8. Revised G.O. 168 is based on the record developed in the proceeding and is a reasonable response to the evidence presented in the proceeding.
9. This order should be effective today.

## ORDER

**IT IS ORDERED** that:

1. G.O. 168, "Market Rules to Empower Telecommunications Customers and to Prevent Fraud," is hereby adopted. A copy of the General Order is attached to this decision as Appendix A.
2. The Interim Rules Governing the Inclusion of Non-Communications-Related Charges in Telephone Bills, adopted in D.01-07-030, are repealed.
3. Commission Staff is directed to lead the effort to design, implement, maintain and monitor a telecommunications consumer education program in accordance with this decision in coordination with representatives of carriers and community based organizations.
4. Commission Staff is directed to post on the Commission's website the consumer education material developed in the Commission-led consumer education program within 120 days of this decision.
5. This proceeding shall remain open so that the Commission may consider the special problems faced by consumers with limited English proficiency.

This order is effective today.

Dated _____, at San Francisco, California.

# Appendix A

## REVISED GENERAL ORDER 168,
## MARKET RULES TO EMPOWER TELECOMMUNICATIONS CONSUMERS AND TO PREVENT FRAUD

GENERAL ORDER NO. ___

PUBLIC UTILITIES COMMISSION OF THE
STATE OF CALIFORNIA

**Consumer Bill of Rights**
**Governing Telecommunications Services**

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

IT IS ORDERED that all Commission-regulated telecommunications service providers shall respect the consumer rights and freedom of choice provisions set forth in this General Order.

**PART 1 – Consumer Bill of Rights and Freedom of Choice**

The Commission adopts the following rights and principles in this Consumer Bill of Rights as a framework for consumer protection and freedom of choice in a competitive telecommunications market.

***Freedom of Choice:***

- Consumers have a right to select telecommunications services and vendors of their choice.

- Consumers have a right to access the lawful content of their choice, including voice services, over their broadband Internet connection without any anticompetitive interference from their broadband provider.
- Consumers have a right to purchase commercially available broadband access even if they do not obtain traditional voice service from their broadband provider.

- Consumers have the right to change voice service providers within the same local area and keep the same phone number in accordance with the rules set forth by FCC regulations regarding Local Number Portability.[166]

***Disclosure:***

- Consumers have a right to receive clear and complete information about all material terms and conditions, such as material limitations, for i) products and service plans they select or ii) available products and service plans for which they request information.

- Consumers have a right to be charged only according to the rates, terms and conditions they have agreed to, as set forth in service agreements or carrier tariffs governing services ordered.

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[166] *See* United States Telecomm. Ass'n v. FCC, 400 F. 3d 29 (D.C. Cir. 2005); In the Matter of Telephone Number Portability, Intermodal Order, 18 FCC Rcd. 23697 (2003).

***Privacy:***

- Consumers have a right to personal privacy, to have protection from unauthorized use of their financial records and personal information, and to reject intrusive communications and technologies.

***Public Participation and Enforcement:***

- Consumers have a right to participate in public policy proceedings affecting their rights, to be informed of their rights and what agencies enforce those rights, and to have effective recourse if their rights are violated.

***Accurate Bills and Dispute Resolution:***

- Consumers have a right to accurate and understandable bills for products and services they authorize, and to fair, efficient and reasonable mechanisms for resolving disputes and correcting errors.

***Non-Discrimination:***

- Consumers have the right to be treated equally to all other similarly-situated consumers, free from unreasonable prejudice or discrimination.

***Public Safety:***

- Consumers have a right to maintain the safety and security of their person, property, financial records and personal information.

- Consumers have a right to expect that that carriers will offer connections to E911 emergency services and access to Public Safety Answering Points to the extent this is technically feasible and required by law, and to clear and complete disclosure of material limitations on access to 911 emergency services.

In adopting these principles the Commission does not assert regulatory jurisdiction over broadband service providers, Internet Service Providers, Internet content or advanced services, or any other entity or service not currently subject to regulation by the California Public Utilities Commission. To the extent the California Public Utilities Commission lacks such jurisdiction over any such entity or

service, it will work with the Federal Communications Commission to develop appropriate mechanisms in support of the foregoing rights and principles.

The foregoing principles contained in this Consumer Bill of Rights and Freedom of Choice shall serve the same purpose as a statement of legislative intent that will help guide governmental action to promote consumer protection and freedom of choice in a competitive telecommunications market. These principles shall not be interpreted to create a private right of action, to form the predicate for a right of action under any other state or federal law, or to create liability for that would not exist absent the foregoing principles.

**PART 2 – Consumer Protection and Public Safety Rules**

## A. Applicability

These rules are applicable to telecommunications services subject to the Commission's jurisdiction offered by telecommunication service providers.

Compliance with these rules does not relieve service providers of other obligations they may have under their tariffs, other Commission general orders and decisions, FCC orders and federal or state statutes.

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.

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 consumer rights and regulations shall not be interpreted to create a private right of action or form the predicate for a right of action under any other state or federal law. The standard to be applied in the construction and application of these rules is that of a reasonable consumer.

These rules do not limit any rights a consumer may have to pursue remedies for conduct that is not addressed by these rules or services not subject to the Commission's jurisdiction.

## B. Rules

**Rule 1: Consumer Affairs Branch Requests for Information**

(a) Every carrier and service provider under the Commission's jurisdiction shall designate one or more representatives to be available during regular business hours (Pacific Time) to accept Consumer Affairs Branch inquiries and requests for information regarding informal complaints from subscribers. Every carrier and service provider shall provide to the

Consumer Affairs Branch and at all times keep current its list of representative names, telephone numbers and business addresses.

(b) Every carrier and service provider under the Commission's jurisdiction shall provide all documents and information Consumer Affairs Branch may request in the performance of its informal complaint and inquiry handling responsibilities, including but not limited to subscriber-carrier service agreements and contracts, copies of bills, carrier solicitations, subscriber authorizations, correspondence between the carrier and subscriber, applicable third party verifications, and any other information or documentation. Carriers and service providers shall provide requested documents and information within ten business days from the date of request unless other arrangements satisfactory to Consumer Affairs Branch are made.

(c) Nothing in these rules shall limit the lawful authority of the Commission or any part of its staff to obtain information or records in the possession of carriers when they determine it necessary or convenient in the exercise of their regulatory responsibilities to do so.

**Rule 2: 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 3: Emergency Services 911 / E911**

All carriers and voice service providers providing end-user access to the public switched telephone network shall, to the extent permitted by existing technology or facilities and in accordance with all applicable Federal Communications Commission orders, 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.

## PART 3 — 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.

### 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 effects 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 3.G. The remedies provided in this Part 3 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 3.F(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 3.G(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. 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 3.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. CAB will determine whether an unauthorized change, as defined by Part 3.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 3.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 3.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 3.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 3.D(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 3.H. below, determines after reasonable investigation that an unauthorized change, as defined by Part 3.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 3.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 3.G. shall apply to those payments. If CAB, under Part 3.H. 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 3.B., has occurred and the subscriber has paid charges to an allegedly unauthorized carrier.

(b) If CAB, under Part 3.H. below, determines after reasonable investigation that an unauthorized change, as defined by Part 3.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.

(a) 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 3 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) CAB staff will acknowledge receipt of subscriber's complaint and inform the subscriber of the procedures for resolving it.

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

(3) CAB staff will require the alleged unauthorized carrier to produce evidence of authorization and verification, and any other information or documentation 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 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 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) 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, 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 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 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 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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PUBLIC UTILITIES COMMISSION
STATE OF CALIFORNIA

By Steve Larsen
Executive Director

# Appendix B

## Original G.O. 168 Bill of Rights Language

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:

*Disclosure*: Consumers have a 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.

*Choice*: Consumers have a right to select their services and vendors, and to have those choices respected by the industry.

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

*Public Participation and Enforcement:* Consumers have a right to participate in public policy proceedings, to be informed of their rights and what agencies enforce those rights, and to have effective recourse if their rights are violated.

*Accurate Bills and Redress*: Consumers have a right to accurate and understandable bills for products and services they authorize, and to fair, prompt and courteous redress for problems they encounter

*Non-Discrimination*: Every consumer has the right to be treated equally to all other similarly-situated consumers, free of prejudice or disadvantage.

*Safety:* Consumers have a right to safety and security of their persons and property.

*[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.]*

# Appendix C

## Bill of Rights Language from May 2 ACR

The primary responsibility of the California Public Utilities Commission is to protect consumers. The Commission's role in regulating the communications industry in recent years has changed dramatically with the development of national networks and markets, intermodal competition and changes in technology. Technology convergence, in particular, has blurred the lines between traditional, regulated voice services and largely unregulated services such as wireless, Voice over Internet Protocol (VoIP) and cable telephony.

As competition increases and new technologies mature, the regulatory regime must transition from a prescriptive model designed for public utilities of the last generation to an empowerment model designed for consumer protection in a more diverse and competitive market. The current regulatory framework, which imposes different sets of rules on providers of the same service hinders competition and imposes unnecessary costs on consumers while providing no consumer protection. A new framework for consumer protection must be developed that sets forth basic rights and principles that allow consumers to make informed choices regardless of who the provider is or what technology they choose.

The single most effective consumer protection in a competitive market is freedom of choice. In order for consumers to exercise that choice, laws and regulations against fraudulent and deceptive practices must be strictly enforced and consumers must be empowered to make informed decisions about the products they buy and the terms and conditions of service for which they contract. To achieve these objectives the Commission adopts the following principles in this "Consumer Bill of Rights" as a framework for consumer protection and freedom of choice in a competitive telecommunications market.

Freedom of Choice:

- Consumers have a right to select their services and vendors, and to have those choices respected by the industry.

- Consumers have a right to access the lawful content of their choice, including voice services, over their broadband Internet connection without interference from the broadband provider.

- Consumers have a right to select any voice service provider of their choice, including no voice services, separate from their broadband service provider.

- Consumers have the right to change voice service providers within the same local area and keep the same phone number.

Disclosure:

- Consumers have a right to receive clear and complete information about rates, terms and conditions for products and service plans they select, and to be charged only according to the rates, terms and conditions they have agreed to.

- Consumers have a right to receive clear and complete information about any limitations affecting the services they select, including limitations on bandwidth, applications or devices that may be used in connection with their service.

Privacy:

- Consumers have a right to personal privacy, to have protection from unauthorized use of their financial records and personal information, and to reject intrusive communications and technologies.

Public Participation and Enforcement:

- Consumers have a right to participate in public policy proceedings affecting their rights, to be informed of their rights and what agencies enforce those rights, and to have effective recourse if their rights are violated.

Accurate Bills and Redress:

- Consumers have a right to accurate and understandable bills for products and services they authorize, and to fair, prompt and courteous redress for resolving disputes and correcting errors.

Non-Discrimination:

- Consumers have the right to be treated equally to all other similarly-situated consumers, free from prejudice or discrimination.

Public Safety:

- Consumers have a right to maintain the safety and security of their person, property, and personal financial data.

- Consumers have a right to expect that providers of voice services utilizing numbers from the North American Numbering Plan and connecting to the Public Switched Telephone Network will offer reliable connections to E911 emergency services and Public Safety Answering Points, and to clear and complete disclosure of any limitations on access to 911 emergency services through the use of those services.

In adopting these principles the Commission does not assert regulatory jurisdiction over broadband service providers, Internet Service Providers, Internet content or advanced services, or any other entity or service not currently subject to regulation by the California Public Utilities Commission. The CPUC reserves the right to enforce these principles on Commission-regulated entities and services and to seek delegated authority from the Federal Communications Commission to make adherence to these principles a condition for any provider seeking authorization to use resources assigned to California from the North American Numbering Plan (NANP).

The principles contained in this Consumer Bill of Rights and Freedom of Choice shall serve the same purpose as a statement of legislative intent and 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 regulations not been adopted. Nor are they intended to contravene Public Utilities Code § 1759, as interpreted by San Diego Gas & Elec. Co. v. Superior Court, C 4th 893 (1996),

Hartwell Corp. v. Superior Court, 27 C 4th 256 (2002), and People ex. Re. Orloff v. Pacific Bell, 31 C 4th 1132 (2003).]

# Appendix D

## PREEXISTING STATUTES AND REGULATIONS ADDRESSING PART 1 RIGHTS AND PRINCIPLES[167]

[167] This list of statutes and regulations was provided by Wireline Group Opening Testimony, Aug. 5, 2005, Exhibit A.

## FREEDOM OF CHOICE

## CURRENT STATUTES & REGULATIONS IMPLEMENTING THESE RIGHTS:

| *FEDERAL* | | |
|---|---|---|
| | *Cite* | *Topic* |
| *Statutes* | 47 USC § 228(c)(5) | requires local carrier to offer option to block access to pay-per-call services |
| | 47 USC §258(a) | prohibits unauthorized change of subscriber's carrier selection. |
| *Regulations* | 47 CFR § 64.1120 | authorization and verification of orders for telecom services. |

| *CALIFORNIA* | | |
|---|---|---|
| | *Cite* | *Topic* |
| *Statutes* | PU Code § 728.4 | option for directory listing. |
| | PU Code § 2884(a) | option to block 900/976 service. |
| | PU Code § 2889.3(a) | notice of withdrawal from providing interexchange services and transfer of customers. |
| | PU Code § 2889.4(a) | requires LEC to offer option to block pay-per-use features. |
| | PU Code § 2889.5(a) | prohibits unauthorized change of subscriber's carrier selection. |
| | PU Code § 2890(a) | prohibits unauthorized charges on bill. |
| | PU Code § 2893(a) | option to block Caller ID |
| | PU Code § 2896(a) | requires customer service to provide sufficient information about services for customer to make informed choice |

| | *Cite* | *Topic* |
|---|---|---|
| *Regulations* | G.O. 133-B, § 2.1 | establishes uniform reporting levels of service for installation, maintenance, and quality of telephone service. |
| | D. 95-07-054, App B. §3, Rule 15 | requires CLECs to offer option to block 900/976 service. |
| | D. 96-04-049, Att. Rule 5 | requires CLEC to offer blocking options for Caller ID at no charge |
| | D. 98-08-031, App A Rule 3(b) | prohibits detariffed NDIECs from re-establishing service without express consent. |
| | D. 00-03-020, O.P. 7 | service provider change requests expire 90 days after customer authorization |
| | D. 01-07-030, App. A, §§ A-D | authorizations required for billing telephone company to place non-communications charges on phone bills. |
| | D. 02-01-038, App. § 3, ¶¶ 1 and 2 | requires notice to affected customers of right to select another utility 30 days before proposed transfer of customers |
| | Same, § 3, ¶¶ 1 and 3 | requires notice to affected customers of right to select another utility 25 days before effective date of withdrawal of service |

## DISCLOSURE

## CURRENT STATUTES & REGULATIONS IMPLEMENTING THESE RIGHTS:

| *FEDERAL* | | |
|---|---|---|
| | *Cite* | *Topic* |
| *Statutes* | 15 USC § 45(a)(1) | Prohibits unfair or deceptive acts or practices in or affecting commerce |
| | 15 USC § 6102(a) | Prohibits deceptive telemarketing acts or practices |
| | 47 USC § 228(d)(2) | requires toll free number to inform and to respond to subscribers about pay-per-call services |
| *Regulations* | 47 CFR § 64.1603 | requires notice to subscribers about Caller ID |
| | 16 CFR § 310.1 et seq. | Telemarketing Sales Rules |

| *CALIFORNIA* | | |
|---|---|---|
| | *Cite* | *Topic* |
| *Statutes* | B&P Code § 17500 | Prohibits untrue, misleading, and fraudulent statements in advertising. |
| | B&P Code § 17538.9(b), (1)-(5), (9), (11), (13) | prepaid cards & services: required disclosures in advertising, on cards, at point of sale, at point of use. |
| | Civ. Code § 1799.202(a) | duty to provide consumer contract. |
| | PU Code § 8 | required notices must be in writing, in English, unless otherwise provided. |
| | PU Code § 489(a) | requires carriers to print tariffs and keep open for public inspection |
| | PU Code § 489(b) | duty to inform prospective subscribers and subscribers (1) of basic services available to class, and (2) about ULTS. |

| | *Cite* | *Topic* |
|---|---|---|
| | PU Code § 491 | requires proposed tariff rate/rule changes to be kept open for public inspection; prohibits tariff change from taking effect except after 30 days notice, unless CPUC orders otherwise. |
| | PU Code § 729.5 | duty to provide prior notice of more than10% rate increase |
| | PU Code § 742(b) | requires publication in directory of payphone rules |
| | PU Code § 742.3 | requires surcharge notice at payphones |
| | PU Code § 786 (a), (b) | requires annual notice to residential subscribers of residential services offered and public telephone policies. |
| | PU Code § 788 (b) | requires LECs to provide annual notice to residential subscribers of inside wiring duties and procedures |
| | PU Code § 876 | duty to inform subscribers about ULTS |
| | PU Code § 2889.3 | notice of withdrawal from providing interexchange services and transfer of customers. |
| | PU Code § 2889.5(a), (4), (5)(B), & (6) | duty to provide written confirmation of change in service provider |
| | PU Code § 2889.6(a) and (b) | requires LECs to inform customers annually and in directory of emergency situations affecting the network. |
| | PU Code § 2889.9(a) | duty to truthfully represent affiliation with carrier |
| | PU Code § 2890(b) | content & format standards for written orders and solicitations |
| | PU Code § 2896(a) | duty to provide sufficient information to make informed choice |

| | *Cite* | *Topic* |
|---|---|---|
| *Regulations* | G.O. 96-A,<br>3rd Interim Opinion,<br>D. 05-01-032,<br>App. , § 3.4, ¶ 2 | requires utility, after filing an advice letter, to provide a copy to anyone so requesting. |
| | G.O. 133-B, § 1.4 | requires service quality reports be kept open for public inspection |
| | G.O. 153, Rule 4.1 | requires LECs to inform new residential customers about the availability of ULTS |
| | D. 92-11-062, Att. 1<br>O. P. 7(a), (c), (g) | requires SBC and VZ to notify customers of Caller ID and blocking options |
| | Same, O.P. 7(i) | requires SBC and VZ to maintain 24 hr. toll free number for information about Caller ID and blocking |
| | D. 95-07-054,<br>App. B, § 3, Rule 1 | requires CLECs to provide on request:<br>• carrier identification number;<br>• carrier phone number and address for billing and service inquiries;<br>• CPUC telephone number;<br>• copy of consumer protection regulations. |
| | Same, Rule 2 | requires CLECs to inform prospective customers:<br>• about ULTS.<br>• prior to agreement, of all charges for services and other charges on first bill.<br>requires CLECs to provide new customers:<br>• confirmation of services ordered and charges, within 10 days, in language of sale.<br>• all material terms and conditions affecting what customer pays for services within 10 days of initiating service |
| | Same, Rule 3(A) | Required content and notices on CLEC bills |
| | Same, Rule 3(B) | Required notice for CLEC deposit receipts |

| | *Cite* | *Topic* |
|---|---|---|
| | D. 95-07-054,<br>App. B, § 3,<br>Rule 6(A)(1) | requires CLEC to provide:<br>• rates, terms and conditions on request to current or potential customer.<br>• 30 day prior notice of major rate increases.<br>• notice of changes to terms and conditions. |
| | Same, Rule 6(B)(2) | requires CLEC to provide:<br>• 7 days prior notice of termination for nonpayment<br>• disconnect notice with specified content |
| | Same, Rule 6(C) | requires CLEC to notify customer of change in ownership or identity |
| | Same, Rule 6(D) | standards for CLEC notices: legible, 10 point font, date of mailing is date of presentation. |
| | Same, Rule 10(A) | requires CLEC to provide notice prior to discontinuing service for nonpayment. |
| | Same, Rule 11(A) | LEC and CLEC solicitations required to include current rates, terms and conditions, must be legible and min. 10 point font. |
| | D. 96-04-049,<br>Att., Rule 2 | requires CLEC to notify prospective customers about caller ID and blocking options |
| | Same, Rule 10(a) | requires CLEC to provide new customer with written confirmation of blocking option selected and right to change option |
| | Same, Rule 10(b) | requires CLEC to provide annual notice to customers about Caller ID and blocking options |
| | Same, Rule 12 | requires CLEC to maintain 24 hr. toll free number for information about Caller ID and blocking options |

| | *Cite* | *Topic* |
|---|---|---|
| *Regulations* | D. 01-07-026, App., § 2.1 | requires utility with intrastate revenues exceeding $10 million, to publish its tariff(s) on web, accessible at no charge to the public |
| | Same, § 2.2 | requires utility to maintain a toll-free number for inquiries regarding tariffs and to print the number on bills |
| | Same, § 3 | requires utility that offers choice of rate plans, optional features, or alternative means to select a service, to disclose choices and means of selection. |
| | Same, § 3 | requires representations in advertising or otherwise about tariffed services to be consistent with terms and conditions in tariff. |
| | D. 01-09-058, O.P. 1 | requires SBC to make specific disclosures about Caller ID blocking options |
| | Same, O.P. 4 | requires SBC to disclose to its inside wire customers landlord's responsibility |
| | Same, O.P. 6 | requires SBC to place description of optional services & optional service packages, with prices, in directories |
| | Same, O.P.8 | requires SBC service representatives handling inbound customer service calls to describe lowest-priced option for purchasing the requested services. |
| | D.02-01-038, App. § 3, ¶¶ 1 and 2 | requires notice to affected customers 30 days before proposed transfer of customers; prescribes notice content. |
| | Same, § 3, ¶¶ 1 and 3 | requires notice to affected customers 25 days before effective date of withdrawal of service; prescribes notice content. |
| | Same, § 3, ¶¶ 1 and 4 | requires notice to affected customers of advice letter requesting higher rate /more restrictive term 25 days before effective date; prescribes notice content. |

# PRIVACY

## CURRENT STATUTES & REGULATIONS IMPLEMENTING THIS RIGHT:

| *FEDERAL* | | |
|---|---|---|
| | *Cite* | *Topic* |
| *Statutes* | 47 USC § 222(a) | requires carriers to protect confidentiality of customer proprietary information |
| | 47 USC § 222(c) | prerequisites for disclosure of individually identifiable customer proprietary network information |
| | 47 USC § 227 | Telephone Consumer Protection Act: protections against telephone solicitations and unsolicited advertising |
| *Regulations* | 47 CFR § 64.1601(b), (c) | requires carrier using SS7 to abide by calling party request not to pass Caller ID and to impose no charge |
| | 47 CFR § 64.1601(e) | requires telemarketers to transmit Caller ID |
| | 47 CFR § 64.1602(a) | restricts use of subscriber information provided pursuant to ANI |
| | 47 CFR § 64.2003 et seq. | CPNI rules |
| | 16 CFR § 310.4(b)(1) | National Do Not Call Registry |

| *CALIFORNIA* | | |
|---|---|---|
| | *Cite* | *Topic* |
| *Statutes* | B&P Code § 17590 | California Do Not Call Registry |
| | Civ. Code § 1798.82 | liability for unauthorized disclosure of personal information |
| | PU Code § 588(a) | release of customer information to law enforcement; subpoena required for release of customer usage |

| | *Cite* | *Topic* |
|---|---|---|
| *Statutes* | PU Code § 2891 | requires residential customer's written consent for release of personal information |
| | PU Code § 2891.1(b) | requires mobile provider to get express prior consent to include subscriber number in a subscriber list/directory |
| | PU Code § 2891.1(a) | prohibits including unlisted number in residential subscriber list sold/licensed |
| | PU Code § 2893(a) | requires carriers to allow caller to block Caller ID at no charge |
| | PU Code § 2894.10 | requires LEC to provide residential customers directory and annual notice of privacy rights with respect to telemarketing |
| *Regulations* | G.O 107-B, Part II<br>A. 4 | prohibits monitoring or recording of telephone conversations except in specified circumstances |
| | D. 91-05-018 | sets requirements for ILECs to establish customer creditworthiness; requires that customers be permitted to refuse to provide social security numbers |
| | D. 92-11-062, Att. 1<br>O. P. 6 | requires SBC and VZ to offer blocking options for Caller ID free of charge and to process change orders expeditiously |
| | Same, O.P. 7(i) | requires SBC and VZ to maintain 24 hr. toll free number for information about Caller ID and blocking |
| | D. 95-07-054,<br>App. B, § 3, Rule 4(A) | prohibits CLEC from denying credit to customer for failure to provide social security number |

| | *Cite* | *Topic* |
|---|---|---|
| *Regulations* | D. 96-04-049, Att., Rules 5, 6 | requires CLEC to offer blocking options for Caller ID at no charge and to process change orders expeditiously |
| | D. 96-04-049, Att., Rule 12 | requires CLEC to maintain 24 hr. toll free number for information about Caller ID and blocking options |
| | D. 96-09-098, App. A, Rule 5(A) | Prohibits NDIEC from denying credit for failure to provide social security number |
| | D. 01-07-030, App. A, § I | prohibits billing telephone company from releasing confidential subscriber information absent subscriber's written consent, with certain exceptions. |

## PUBLIC PARTICIPATION AND ENFORCEMENT

## CURRENT STATUTES & REGULATIONS IMPLEMENTING THIS RIGHT:

| *FEDERAL* | | |
|---|---|---|
| | *Cite* | *Topic* |
| *Statutes* | 15 USC § 5711(a)(3), (c) | requires carrier to produce records re pay-per-call service provider to FTC |
| | 47 USC § 206 | carrier liable to person injured by violation for damages sustained in consequence of violation |
| | 47 USC § 207 | private right of action for violation before FCC or federal court |
| | 47 USC § 415(b) | time limit to recover damages |
| | 47 USC § 415(c) | time limit to recover overcharges |

| *CALIFORNIA* | | |
|---|---|---|
| | *Cite* | *Topic* |
| *Statutes* | B&P Code § 17204 | right of action for unfair, deceptive, or fraudulent business practices or advertising |
| | Civ. Code § 1722(c) | liability for damages for missed repair appointment |
| | PU Code § 581 | duty to respond to CPUC data requests |
| | PU Code § 582 | duty to produce documents sought by CPUC |
| | PU Code § 701 | CPUC's necessary and convenient authority |
| | PU Code § 736 | time limit to recover charges |
| | PU Code § 786(c) | requires FCC telephone number and address for inquiries to be displayed on bills |
| | PU Code § 1702 | right of action for unlawful acts or omissions |
| | PU Code § 2106 | carrier liable to person injured as a result of unlawful act or omission for all damages caused. |

| | *Cite* | *Topic* |
|---|---|---|
| *Statutes* | PU Code § 2109 | act/omission of officer, agent or employee considered carrier's act/omission. |
| | PU Code § 2889.9(d) | requires billing telephone companies to provide subscriber complaint reports |
| | PU Code § 2889.9(f) | allows CPUC to order billing telephone company to cease billing for third party if it fails to respond to Staff data requests |
| | PU Code § 2889.9(g) | requires billing telephone companies to cooperate with CPUC in enforcement of third party billing rules |
| | PU Code § 2890 (d)(2)(B) | requires CPUC telephone number for registering complaints to appear on bill |
| | PU Code § 2896(d) | duty to inform of regulatory process |
| *Regulations* | G.O. 133-B, §§ 1.6, 4.4 | requires carriers to make available records/ summaries of service measurements |
| | D. 95-07-054, App. B. § 3, Rule 3.A(7) | requires CLEC bills to contain statement advising where and how to file a complaint with the CPUC. |
| | Same, Rule 6.A(2) | Customer right to bring complaint against CLEC when information provided conflicts with tariffs. |
| | D. 98-08-031, App. A, Rule 6 | requires detariffed NDIECs to cooperate with the CPUC |
| | D. 01-07-030, App. A,§ J | allows CPUC to penalize billing telephone companies and vendors for violations |
| | D. 05-01-032 (G.O. 96-A, Third Interim Opinion), App., § 4.1, ¶ 4 | allows any person to protest or respond to an advice letter within 20 days of the date of filing. |
| | Same, App. , § 4.6, ¶ 1 | sets 30 day initial review period for advice letter filing unless statute or CPUC order authorizes earlier effective date. |

## ACCURATE BILLS AND REDRESS

## CURRENT STATUTES & REGULATIONS IMPLEMENTING THIS RIGHT

| *FEDERAL* | | |
|---|---|---|
| | *Cite* | *Topic* |
| *Statutes* | 15 USC § 5721(a) | rules re correction of billing errors with respect to telephone-billed purchases: Telephone Disclosure & Dispute Resolution Act |
| | 47 USC § 228(d)(4) | requirements for display of pay-per-call services on telephone bill |
| *Regulations* | 47 CFR § 64.201 et seq | Truth-in-Billing requirements |

| *CALIFORNIA* | | |
|---|---|---|
| | *Cite* | *Topic* |
| *Statutes* | B&P Code § 17538.9(b) (6)-(8), (12) | charges for prepaid cards and services |
| | PU Code § 779.2(a) | prohibits termination of residential service for nonpayment of debt owed to another party |
| | PU Code § 786(c) | requires charges imposed in response to FCC regulations to be shown separately and identified on bill |
| | PU Code § 2889.2 | prohibits billing calling party for "800" call |
| | PU Code § 2889.4(c) | requires one-time bill adjustment for pay-per-use features inadvertently activated |
| | PU Code § 2889.5(b) | allows a subscriber, switched without a signed authorization, to request to be switched back within first 90 days at no charge, |
| | PU Code § 2889.9(a) | prohibits misrepresenting affiliation with carrier when soliciting or implementing customer agreement to purchase services and have charges appear on bill |

| | *Cite* | *Topic* |
|---|---|---|
| *Statutes* | PU Code § 2890(a) | allows on bills only charges for authorized products or services |
| | PU Code § 2890(c) | circumstances where local service may be disconnected for nonpayment |
| | PU Code § 2890(d)(1) | requires on bill separate billing section for each entity whose charges appear on bill |
| | PU Code § 2890 (d)(2)(A) | requires separate charge for each product/service, and a clear and concise description of each product/service |
| | PU Code § 2890 (d)(2)(B) | requires on bill toll-free telephone number for dispute resolution, for each entity whose charges appear on bill, and how to address billing dispute |
| | PU Code § 2890 (d)(2)(C) | requires each entity whose charges appear on bill to maintain a toll-free number to respond to questions or disputes about charges |
| | PU Code § 2890 (d)(2)(D) | creates rebuttable presumption that an unverified charge was not authorized;<br>requires process to resolve disputes over unauthorized charges quickly. |
| | PU Code § 2890(e) | Verification of disputed charges |
| | PU Code § 2896(c) | requires reasonable statewide standards for billing |
| *Regulations* | D. 85-12-017<br>D. 86-04-046 | requirements for LECs for late payment charges |
| | D. 86-12-025 | backbilling rules |
| | D. 95-07-054,<br>App. B, § 3, Rule 3.A (1)-(6) | requires CLEC bills to contain specified content |

| | *Cite* | *Topic* |
|---|---|---|
| *Regulations* | D. 95-07-054, App. B, § 3, Rule 6.B | requires CLEC disconnect notice to contain specified content |
| | Same, Rule 6.C | requires CLEC bill to identify change of service provider |
| | Same, Rule 7 | rules for CLECs for prorating bills |
| | Same, Rule 8 | procedures for resolving disputed bills between customers and CLECs |
| | Same, Rule 10.A | prerequisites for CLEC discontinuing service |
| | D. 00-03-020 and D. 00-11-015, O.P. 1 | requirements for carrier name |
| | D. 01-07-026, App., § 2.2 | requires utility to maintain a toll-free number for inquiries regarding tariffs and to print the number on bills |
| | D. 01-07-030, App. A, § E – H | billing for non-communications related charges |
| | D. 01-09-058, O.P. 2 | requires SBC to include on bill: (1) Caller ID blocking status of each line, and (2) code required to block or unblock the number |

## NONDISCRIMINATION

## CURRENT STATUTES & REGULATIONS IMPLEMENTING THIS RIGHT:

| *FEDERAL* | | |
|---|---|---|
| | *Cite* | *Topic* |
| *Statutes* | 47 USC § 201(a) | requires carriers to furnish service upon reasonable request |
| | 47 USC § 201(b) | requires charges and rules for service be just and reasonable |
| | 47 USC § 202(a) | prohibits unjust and unreasonable discrimination, preference, and disadvantage |

| *CALIFORNIA* | | |
|---|---|---|
| | *Cite* | *Topic* |
| *Statutes* | PU Code § 451 | requires charges and rules for services to be just and reasonable |
| | PU Code § 453(a) | prohibits preferences and prejudice as to rates, services, and facilities |
| | PU Code § 453(b) | prohibits disadvantage and different rates or deposits on account of gender, race, national origin, disability, religion, or marital status |
| | PU Code § 453(c) | prohibits unreasonable differences in rates and facilities between localities and classes of service |
| | PU Code § 779.5 | requires a deposit requirement to be based solely on creditworthiness. |
| | PU Code § 2896(b) | requires ability to access live operator by dialing "0", at no charge |
| *Regulations* | G.O. 96-A | Procedures governing tariff changes |
| | D. 91-05-018 | Requirements for establishing customer creditworthiness (ILEC) |

| | *Cite* | *Topic* |
|---|---|---|
| *Regulations* | D. 95-07-054,<br>App. A, Part 4<br>§ F (1) – (2) | requires CLEC to serve customers requesting service within its service territory on nondiscriminatory basis |
| | D. 95-07-054,<br>App. B, § 3, Rule 2 | requires CLEC to provide applicant denied service written notice of reason |
| | Same, Rule 4(A) and (5) | prerequisites for CLECs to require deposits |
| | Same, Rule 12 | allows CLEC to deny service if credit not satisfactory and deposit not paid |
| | D. 96-10-066,<br>App. B, Rule 4.B | elements of basic service |
| | D. 01-07-026,<br>App. B, § 3 | requires service to be provided in accordance with tariffs then in effect. |

## PUBLIC SAFETY

## CURRENT STATUTES & REGULATIONS IMPLEMENTING THESE RIGHTS:

| *FEDERAL* | | |
|---|---|---|
| | *Cite* | *Topic* |
| *Statutes* | 47 USC § 228(c)(4) | prohibits disconnection of local service for non-payment of charges for pay-per-call services |

| *CALIFORNIA* | | |
|---|---|---|
| | *Cite* | *Topic* |
| *Statutes* | B&P Code § 17500.3(a) | requires identification of affiliation for sale |
| | PU Code § 708 | requires employees to carry and present photo ID card to enter customer premises |
| | PU Code § 779.2(a) | prohibits termination of residential service for nonpayment of debt owed to another party |
| | PU Code § 2883(a) | requires access to 911 regardless of whether an account has been established |
| | PU Code § 2883(b) | prohibits termination of access to 911 for nonpayment of delinquent account |
| | PU Code § 2889.6 | requires annual and directory notice of emergency situations affecting the network. |
| | PU Code § 2892(a) | wireless- duty to provide 911 |
| *Regulations* | D. 91188 | procedure for disconnection of service when law enforcement shows probable cause to believe services used for illegal purposes |
| | D. 95-07-054, App. B, § 3, Rule 10(B) | allows CLEC to disconnect service where fraud indicated |
| | Same, Rule 10(C) | requires CLEC to keep 911 access for residential customers disconnected for nonpayment |
| | D. 00-03-020 and D. 00-11-015, O.P. 1 | prohibits disconnection of dial tone for nonpayment of charges other than charges for basic service. |

# Appendix E

## Consumer Education Program Principles

- The California Public Utilities Commission will lead the effort to create, develop and maintain a comprehensive and objective consumer education program.
- The education program will be developed with input from consumer groups, industry representatives and Commission Staff.
- The Commission will develop and maintain a website portal dedicated to telecommunications consumer education.
- Commission website will include the following: principles and rights, consumer education material, existing rules, and links to Community Based Organizations and Governmental websites that include helpful information for consumers.
- Consumer education materials will be concise, available in multiple languages and put into laymen's terms.
- Existing rules, laws and guidelines available to protect consumers should be organized and available in one place on the Commission's website.
- The Commission will regularly evaluate the efficacy of its education program.
- Once a year Commission staff and parties will meet to review the education materials. This review will ensure that we update and augment materials as needed to better suit consumers' needs.

# Appendix F

## Proposed Consumer Education Topics

1. Your Rights
    - Freedom of choice
    - Disclosure
    - Privacy
    - Public participation and enforcement
    - Accurate bills and dispute resolution
    - Non-discrimination
    - Public safety

2. Making an Informed Choice
    - Finding a provider in your area
    - Comparing plans or services
    - Public programs and qualification for them

3. The Purchase
    - Service plan
    - Rates (including early termination fees)
    - Length of commitment
    - Terms and conditions
    - Confirmation
    - Deposits

4. Your Service
    - Pricing
    - Activation/installation
    - Verification
    - Coverage
    - Roaming
    - Dropped calls, dead spots and busy signals
    - Changes to service or provider/ slamming

5. The Bill
    - How to read the bill

- What are my charges
- Taxes, fees, and surcharges
- Minimum amount due and penalty
- Late payment options
- Contacts for questions or billing disputes

6. Solving Problems
   - Whom to contact for help
     - Community-based organizations
     - Consumer groups
     - Filing a complaint with the CPUC
     - Filing a complaint with the FCC

7. Stopping Your Service
   - Review your contract or terms of your service
   - Contact your service provider
   - Find out what you are required to do in order to cancel service
   - Limits that may apply to when you can stop paying for service

8. Glossary, Terms, Helpful Links, and FAQs
   - A glossary with description of major terms
   - Links to additional information not found on the Commission website
   - Frequently asked questions